



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Summer 2021 Vol. 10, No. 4 General Editor Lynne Liberato Editor-in-Chief Hon. John G. Browning

Columns

Message from the President

By Thomas S. Leatherbury

Through the pandemic and the Snowpocalypse, the Society's and the Journal's dedicated staff showed flexibility and grace under pressure.

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Thomas S. Leatherbury

Fellows Column

By David J. Beck

The Houston Bar Association (HBA) will again use our Taming Texas materials to teach students during the 2021-22 school year.

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David J. Beck

Editor-in-Chief's Column

By Hon. John G. Browning

At a time when our national dialogue on and reckoning with past racial injustice *should* help us in improving our race relations, I continue to marvel at the power of remembrance. [Read more...](#)



John G. Browning

Leads

Improper Intimacy: Slavery & Infidelity in Montgomery County, Texas

By Daina Ramey Berry, PhD and Signe Peterson Fourmy, JD, PhD

In September of 1853, Jane, an enslaved woman, her five children, and two grandchildren received devastating news. They were being separated by a court order in a divorce between their enslavers. [Read more...](#)



Illustration from a public notice about a runaway slave

A Hot Time in the Old Town Tonight: Wurzbach vs. McCloskey – Scandal in a 1928 Texas Congressional Election

By Stephen Pate

Wurzbach v. McCloskey deserves to be remembered for both its circumstances and its situation—in some respects eerily reminiscent of today.

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Harry Wurzbach & Augustus McCloskey

Features

Fritz Garland Lanham – Father of American Trademark Protection

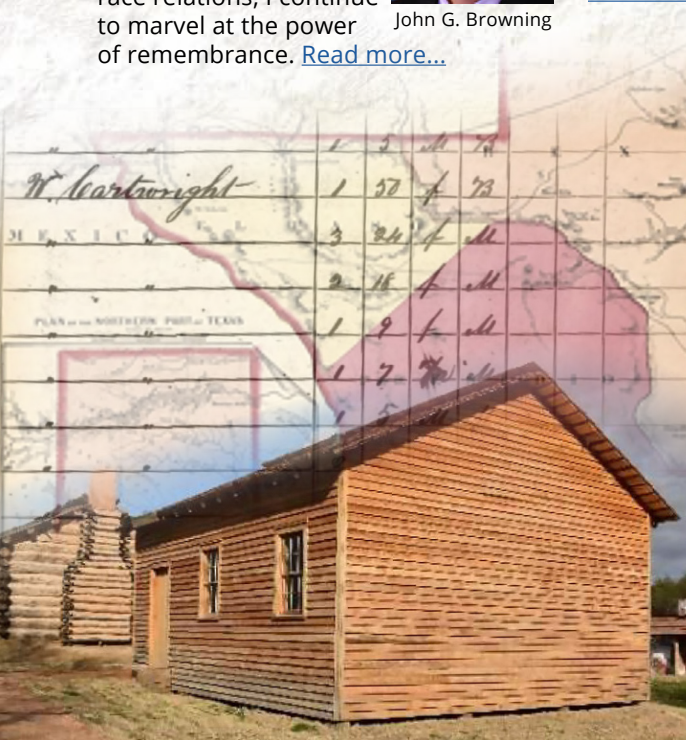
By Joe Cleveland

Congressman Fritz Lanham will always be remembered for the law he championed that proudly bears his name.

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Congressman Fritz Lanham



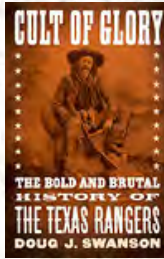
Book Reviews

[Book Review for "Cult of Glory": A Misinterpreted History](#)

By Dr. Richard B. McCaslin

This is indeed a bold and brutal history, as the subtitle declares. But readers seeking an objective, well-researched, or even reasonably accurate history of the Rangers will not find it here.

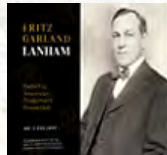
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[Review—Fritz Garland Lanham: Father of American Trademark Protection](#)

Book Review by John Browning

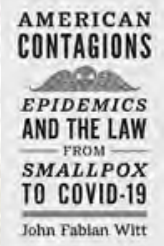
While it seems obvious to the modern reader that a business' trademarks deserve protection under a uniform national scheme, Cleveland reminds us that it wasn't always the case. [Read more...](#)



[Review—American Contagions: Epidemics and the Law From Smallpox to COVID-19](#)

Book Review by John Browning

John Fabian Witt's book is a timely and important narrative of the history of American efforts to prevent pandemics from breaking out and grappling with the legal issues they raise once they do. [Read more...](#)



News & Announcements

[75th Anniversary Celebration of the Lanham Trademark Act](#)

The United States Patent and Trademark Office and the Intellectual Property Law Section of the State Bar of Texas hosted a special two day event to honor former U.S. Rep. Fritz G. Lanham of Texas, the father of the Lanham Act. [Read more...](#)



[Board Trustee Justice Gina Benavides Honored for Pro Bono Commitment](#)

State Bar of Texas Legal Services to the Poor in Civil Matters Committee named TSCHS Trustee Justice Gina Benavides the winner of the Judge Merrill Hartman Pro Bono Judge Award. [Read more...](#)



Justice Gina Benavides

[Journal Editor-in-Chief Wins Top Oklahoma Writing Award](#)

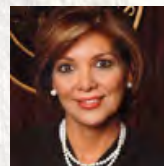
The lawyer and former appellate justice was just named the winner of the Oklahoma Bar Association's Maurice Merrill Golden Quill Award, that state's top legal writing honor. [Read more...](#)



John G. Browning

[Justice Eva Guzman Retires](#)

By John G. Browning
Justice Guzman had served on Texas' highest court since her 2009 appointment by Governor Rick Perry, becoming the first Latina to serve on the court. [Read more...](#)



Justice Eva Guzman

[Call for Applications:](#)

[2022 Larry McNeill Research Fellowship in Texas Legal History](#)

By David A. Furlow

The \$2,500 annual fellowship is awarded to an applicant who submits the best research proposal on an aspect of Texas legal history. [Read more...](#)



Larry McNeill

[Hemphill Dinner 2021 Announcement](#)

This year the Society will host its annual Hemphill Dinner in person at the Austin Four Seasons Hotel, with keynote speaker Lisa Blatt. [Read more...](#)



Lisa S. Blatt

[Villa de Austin Courthouse Fire](#)

[Recovery Campaign](#)

The Texas Historical Commission and the Friends of the THC are committed to rebuilding part of the San Felipe de Austin State Historic Site. [Read more...](#)




Membership & More


[Officers, Trustees & Court Liaison](#)

[2021-22 Membership Upgrades](#)

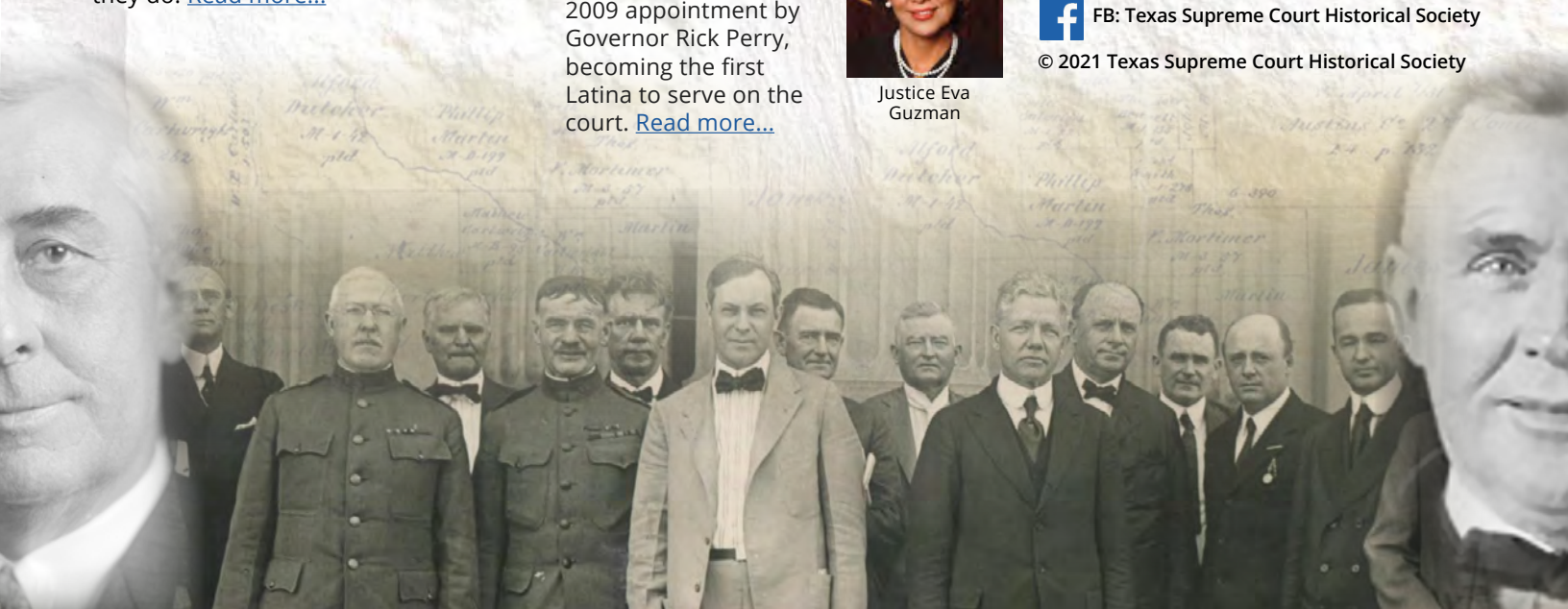
[2021-22 New Member List](#)

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Thomas S.
Leatherbury

Message from the *President*

Welcome to the Summer 2021 Journal, to a new fiscal year for the Society, and to my first column as the Society's president. I have big shoes to fill, as my predecessor and good friend Cynthia Timms ably led the Society through the fiscal and physical challenges of the past year, through our first virtual Annual Dinner, and through some significant and needed governance updates. Through the waves of the pandemic and through the Snowpocalypse, the Society's and the Journal's dedicated staff showed flexibility and grace under pressure, and they all deserve our deepest thanks. Special thanks go to Executive Director Sharon Sandle, Administrative Co-ordinator Mary Sue Miller, to the Journal's Karen Patton, David Kroll, and Kevin Carlsen, and to the State Bar of Texas's Paul Burks (for his extraordinary work on our virtual Annual Dinner).

I think you will enjoy this issue a great deal. We have a microhistory of slavery in Montgomery County by Professor Daina Ramey Berry and Professor Signe Fourmy that looks at marital property rights in antebellum Texas in the 1857 case of *Cartwright v. Cartwright*. Executive Editor Stephen Pate has contributed an article looking at an election fraud case stemming from the 1928 Congressional election for Texas's Fourteenth District.

In addition, we mark the 75th Anniversary of the Lanham Act with an article on the genesis of this act spearheaded by Fort Worth Congressman "Fritz" Lanham written by the State Bar of Texas Intellectual Property Section's Joe Cleveland and Craig Stone.

We also feature three book reviews. One is of Joe Cleveland's recently published book on the history of the Lanham Act, *Fritz Garland Lanham, Father of American Trademark Protection*. We have a spirited scholarly critique of Doug Swanson's *Cult of Glory*. And finally, there is a review of John Fabian Witt's book *America's Contagions: Epidemics and the Law from Smallpox to COVID-19*.

So what are the Board's priorities this year? I hope we expand our membership and continue to engage and deepen the Board's involvement in the Society's work and with its committees, including the revived Archives Committee, as we look forward to kicking off a Strategic Planning process next year. And more than anything, I hope we continue to provide opportunities to explain, to explore, and to re-examine Texas legal history in all of its richness, diversity, contradictions, and complexities. Just as the Board heard from Doug Swanson about his research on the

Texas Rangers and his book, *Cult of Glory*, at our meeting last Fall, we all have a chance to gain a different perspective by reading a new review of his book in this Journal. Recent legislation and a much-publicized, government-ordered cancellation of a book talk by the authors of *Forget the Alamo* prescribe “official” or “authorized” views of history that are antithetical to democracy and to independent-minded Texans’ cherished right of free speech. What happened to the key constitutional principle, “I disapprove of what you say, but I will defend to the death your right to say it,” variously attributed to Voltaire and to Evelyn Beatrice Hall?

As George Orwell wrote, “The most effective way to destroy people is to deny and obliterate their own understanding of their history.” The Society has the opportunity and the responsibility to provide thoughtful, steady, open-minded leadership in the current environment. We need to create and to participate in forums for civil discourse about differing views of our history and about the development and maintenance of the Rule of Law in our State. These are no small tasks – but we have the talent and the energy on our Board, in our membership, and in our staff to rise to the occasion.

A few reminders in closing:

- Our Annual Dinner (on December 3rd) is sold out, but it is not too late to add your name to the waiting list. Thank you to our generous supporters for helping us make this event successful again this year. We look forward to hearing from superb U.S. Supreme Court advocate Lisa Blatt about her career, including her clerkship with the late Justice Ruth Bader Ginsburg.
- It is time to renew your membership. Your membership funds the Society’s many ongoing projects, including sponsoring books and publications on the history of Texas courts, attorneys, and judges; educating school children on the history of courts in Texas; publication of the Society’s award-winning Journal every quarter; maintaining judicial portraits; and contributing to other historical organizations such as the Texas State Historical Society. To become a member or to renew your membership, you can click [here](#).
- To keep up with our ongoing activities, check us out on social media. We are on [Facebook](#) and on [Twitter](#) @SCOTXHistSoc.

I hope you’ve had a chance to rest and recharge this summer and thank you again for your support of the Society!

[Return to Journal Index](#)

Fellows Column

By David J. Beck, Chair of the Fellows

Photo by Alexander's Fine Portrait Design-Houston



The Houston Bar Association (HBA) will again use our Taming Texas materials to teach students during the 2021-22 school year. We appreciate the HBA and its President, Jennifer Hasley, 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. In the past six years, Taming Texas has reached over 22,000 Houston-area students. HBA President Hasley has appointed Richard Whiteley, Justice Frances Bourliot, and Colin Pogge as the HBA program co-chairs to recruit volunteer attorneys and judges to teach the seventh-grade students in the upcoming school year. We would like to give

a special thanks to Society Trustee Judge Jennifer Walker Elrod for her service as a co-chair last year and longtime support of the program; Judge Elrod was instrumental in getting judges and lawyers back in the classrooms teaching the program in person last school year. If you would like to participate in this important program, please contact the HBA or one of the co-chairs of the program.

Since 2016, our three acclaimed judicial civics and history books, *Taming Texas: How Law and Order Came to the Lone Star State*; *Law and the Texas Frontier*; and *The Chief Justices of Texas* have been taught in schools. Jim Haley, the author of the Society's fabulous history book on the Court, and Marilyn Duncan have authored these books. They have now begun work on our fourth book, which will be entitled *Women in the Law*. This book will feature stories about some of the important women in Texas legal history. In addition to biographical vignettes, the book will have sidebars that cover the associated legal and political issues. Some of the judges and lawyers we plan to feature include: Hon. Hortense Ward, who demonstrated that women are as capable as men in passing the bar exam and practicing law; Hon. Sarah T. Hughes, the state's first woman state district judge 20 years before women could serve on juries and who remained an influential jurist for 55 years; Hon. Barbara Jordan, an African-American woman of many "firsts" who remains a national hero; Hon. Ruby Kless Sondock, the first woman appointed to the Texas Supreme Court; and Hon. Eva Guzman, daughter of immigrant parents, who is the first Latina woman to serve as a Texas Supreme Court Justice.

Chief Justice Hecht has written the foreword for all three books, and we hope he will write the foreword for this new book. We would like to thank him as well as the entire Court for their support on this important project.

Taming Texas was recently taught as part of the “Stories of Texas” summer camp at the Bryan Museum in Galveston. Susannah Brown arranged for the opportunity for us to teach at this extraordinary museum in Galveston. Richard Whiteley taught the week of July 12 and Judge Jennifer Elrod taught the week of July 19. We appreciate their helping us expand the reach of Taming Texas.

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

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

FELLOWS OF THE SOCIETY

Hemphill Fellows

(\$5,000 or more annually)

David J. Beck*

Joseph D. Jamail, Jr.* (deceased)

Richard Warren Mithoff*

Greenhill Fellows

(\$2,500 or more annually)

Stacy and Douglas W. Alexander

Marianne M. Auld

Robert A. Black

Hon. Jane Bland and Doug Bland

E. Leon Carter

Michael Easton

Harry L. Gillam, Jr.

Marcy and Sam Greer

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Thomas S. Leatherbury

Lynne Liberato*

Mike McKool, Jr.*

Ben L. Mesches

Hon. Harriet O’Neill and Kerry N. Cammack

Hon. Thomas R. Phillips

Hon. Jack Pope* (deceased)

Shannon H. Ratliff*

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Leslie Robnett

Professor L. Wayne Scott*

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Allison M. Stewart

Cynthia K. Timms

Peter S. Wahby

Hon. Dale Wainwright

Charles R. “Skip” Watson, Jr.

R. Paul Yetter*

*Charter Fellow

[Return to Journal Index](#)



Hon. John G.
Browning

The Power of *Remembrance*

Victor Hugo once described history as “An echo of the past in the future, a reflex from the future on the past.” At a time when our national dialogue on and reckoning with past racial injustice *should* help us in improving our current race relations, I continue to marvel at the power of remembrance. History, we are reminded time and time again, will not be denied. It will not stay buried—in some cases, literally, as the recently unearthed remains of hundreds of Indigenous children at Canada’s residential schools shed new light on that country’s shameful legacy of abuse toward those of the “First Nations.”

History refuses to stay censored. At a Memorial Day ceremony in Hudson, Ohio this year, retired Army Lt. Col. Barnard Kemter was giving a speech honoring veterans; a copy of his speech had been provided to American Legion organizers beforehand. Just as Col. Kemter got to the portion of his speech discussing how freed Black slaves had honored fallen soldiers just after the Civil War, local American Legion Post 464 adjutant Jim Garrison and Memorial Day parade committee chair Cindy Suchan deliberately turned off Kemter’s microphone. The incident triggered a backlash that resulted in both Garrison and Suchan stepping down from their posts (Garrison was also asked to drop his membership altogether). The American Legion Department of Ohio, which had demanded the resignations, stated that it “does not hold space for members, veterans, or families of veterans who believe that censoring Black history is acceptable behavior.” Indeed, the publicity surrounding the censorship raised more awareness about the historical origins of Memorial Day and reached a larger audience than the silenced two minutes of Kemter’s eleven-minute speech would have achieved.

On that same day, May 31, national attention was also marking the 100th anniversary of one of the worst episodes of racial violence in U.S. history, the 1921 Tulsa Race Massacre. Sparked by a dubious allegation of assault by a young Black man, a white mob attacked and devastated Tulsa’s Greenwood district—a thriving community that had become nationally known as “Black Wall Street.” In the smoldering embers the next day, as many as 300 Black citizens lay dead, more than 10,000 others were left homeless, and some thirty-five or so square city blocks were destroyed. More than 1,100 homes and dozens of businesses were destroyed. The lawless white mob included city leaders, members of law enforcement, and even National Guard troops. Turpentine bombs

dropped from airplanes had set buildings in Greenwood ablaze—a chilling use of aircraft to cause terror on U.S. soil 80 years before the September 11, 2001 attacks. In the aftermath, Black citizens were rounded up and put into makeshift internment camps.

Tulsa’s white city leaders blamed “Negro agitators” for the Massacre, and while no white person was ever arrested or brought to justice, a grand jury indicted at least 56 Blacks with inciting a riot (none were ever prosecuted). Black property owners had their insurance claims denied by carriers citing “riot” exclusions, and their efforts at rebuilding were temporarily blocked by a Tulsa fire zoning ordinance (passed just days after the Massacre) that specified expensive new building materials and standards. And in the wake of the Massacre, a culture of silence and truth suppression descended upon Tulsa, as the horrific event was erased from the historical record. Police and fire department records disappeared, inflammatory newspaper articles were cut out, and victims were buried in unmarked graves. Until recent years, generations of Oklahomans were never taught about the Tulsa Race Massacre, and it wasn’t until a government-appointed commission issued a report in 2001 that many of the tragedy’s horrific facts came to light.

In my own research, I found an unlikely source of documentation about the Massacre, an obscure 1926 Oklahoma Supreme Court insurance coverage case, *Redfearn v. American Central Insurance Co.*. William Redfearn was a white man who owned two buildings in Greenwood, a hotel and a theater, that were destroyed. When his insurance company refused to pay (citing a riot exclusion), Redfearn sued. And though he ultimately lost, the record in the case—including hundreds of pages of eyewitness testimony and other damning documentation thought to be lost to history—provides valuable insight into the Massacre. Historians, descendants of Tulsa Race Massacre victims, and the few survivors still living have helped spur renewed interest in this dark episode in Oklahoma history. Books, extensive media coverage, at least four documentaries, and a recently dedicated history center called “Greenwood Rising” have helped bring a national spotlight to Tulsa, as did an emotional visit by President Biden. History cannot be hidden forever, and remembrance is powerful.

In this issue, we are pleased to showcase Professor Daina Ramey Berry’s and Professor Signe Fourmy’s microhistory of slavery in Montgomery County and its impact on marital property rights in antebellum Texas, as reflected in the 1857 case of *Cartwright v. Cartwright*. We are also proud to offer Executive Editor Stephen Pate’s examination of a scandalous election fraud case stemming from the 1928 Congressional election for Texas’ Fourteenth District. In addition, in a year that marks the 75th Anniversary of the Lanham Act, we are indebted to the State Bar of Texas Intellectual Property Section’s Joe Cleveland and Craig Stone for their article on the genesis of this Act that modernized American trademark law and the Act’s architect and namesake, Fort Worth Congressman “Fritz” Lanham. And in addition to these articles and our recurring columns, we are also happy to offer reviews of Joe Cleveland’s recently published book on the history of the Lanham Act; Doug Swanson’s book on the history of the Texas Rangers, *Cult of Glory*; and John Fabian Witt’s book *America’s Contagions: Epidemics and the Law from Smallpox to COVID-19*.

[Return to Journal Index](#)

Improper Intimacy: Slavery & Infidelity in Montgomery County, Texas

By Daina Ramey Berry, PhD and Signe Peterson Fourmy, JD, PhD

Ed.Note: The following article is based on a presentation given at the joint TSCHS panel at the 2021 TSHA Conference.

In September of 1853, Jane, an enslaved woman, her five children, and two grandchildren received devastating news. They were being separated by a court order. The ruling had everything to do with them even though they were not named as either plaintiff or defendant. Three-generations of an enslaved family became collateral damage in a divorce between their enslavers Pink and Williford Cartwright of Montgomery County, TX. Why? Pink accused Williford of sleeping with Jane. Williford, in turn, claimed Pink committed bigamy by marrying him while she was married to another man. Accusations aside, we know that both Jane and Pink alternately gave birth to children almost every year from 1835 to 1848 and there were no other adult males, white or black, on the property, except Williford. Additionally, all of Jane's children and those of her oldest daughter Mary were "mulatto."¹ So, when Pink accused her husband of sleeping with Jane, it was highly likely that her accusations were true.

For twenty years both Pink and Jane gave birth to children in a strikingly similar pattern. One year Jane, the next year Pink until the Cartwright's had 12 white and mulatto children in their community. Jane had all daughters: Tamar, Harriet, Sarah, and Clarissa. Pink had four boys and four girls: Erasmus, Lemuel, Narcissa, Maria, James, Letha, Francis, and Charles. When Pink gave birth to her last child, Charles, in 1848, she and Williford were at odds because he did not think Charles was his son. The marriage fell apart. Williford left their house and moved into Jane's cabin. Pink moved to neighboring Grimes County and took Charles with her. In 1850, Williford appears in the census as a farmer with \$2,654 in real estate, and all of his and Pink's children, except Charles, live in his household. Three years later, Pink filed for divorce claiming that her husband abandoned their bed and engaged in "improper intimacy" with the "negro Jane." The lower court granted Pink's petition for divorce and in their partitioning of the couples' property, separated Jane from some of her children and grandchildren. Harriet and child (she was pregnant), Sarah, and Mary's second child would now belong to Pink. Williford would keep Jane, Mary, Tamar, Clarissa, and Mary's oldest child with him.²

This is the story of a divorce case. It is also, more importantly, the story of black family separation because of that divorce. It shows how a lower court's decision (overruled by the Texas Supreme Court,) uprooted and separated an enslaved family for four years and likely scarred

¹ United States Federal Census (Slave Schedule), *Seventh Census of the United States, 1850*, Montgomery County, Texas.

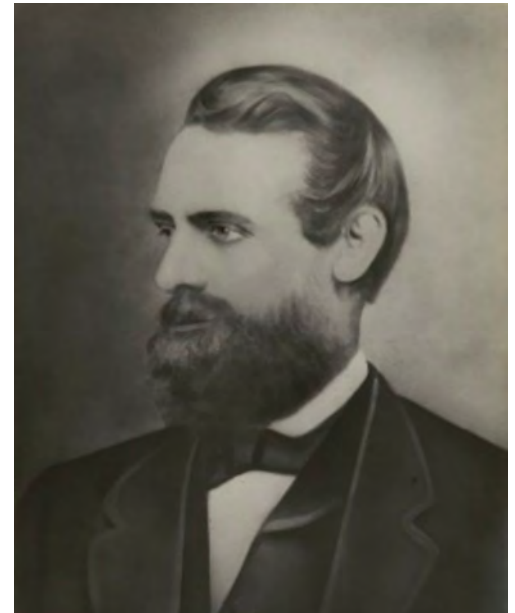
² *Cartwright v. Cartwright* (1853) Montgomery County, Texas, District Court Civil Minutes and Tax Assessor Records, Reel 1006051.

them for even longer. Jane had never been apart from her children or grandchildren, a luxury few enslaved women experienced. But her life changed when Pink filed for divorce. Jane knew Williford longer than Pink and she knew him intimately. Was he the father of her four children? Did his sons later impregnate her daughters? Who were the fathers of Jane’s grandchildren? Finally, how differently would we interpret this case if we knew Jane’s perspective? Unfortunately, we don’t. Instead, we know about her experiences with the Cartwrights through interrogatories given to the jury and through court rulings. But we also know about the larger enslaved community from a host of other documents such as narratives, runaway advertisements, maps, and census records. Such records allow us to tell a more detailed story about what life may have been like for Jane, Mary, and their offspring.

The Case

In 1853, Pink petitioned the court for divorce, alleging that Williford “denied the paternity of the child born in 1848, abandoned the bed and board of plaintiff [Pink], and lived in improper intimacy with the negress Jane, &c, &c.”³ For his part, Williford accused Pink of “infidelity to her marriage vow” and suggested that at the time of their nuptials in Texas, she was still legally married to a James Byrd in Alabama.⁴ He requested, despite their children, that their marriage be declared null. Furthermore, he denied his paternity in respect to Pink’s last child, telling his mother and several friends that the child was not his. While Williford claimed and acknowledged his other white children, he and the record remain silent as to the paternity of Jane and Mary’s children. By 1853, Jane and her oldest daughter Mary were not the only enslaved women of child-bearing age in the Cartwright household, and Williford was not the only man capable of fathering a child. One wonders if Erasmus or Lemuel, Cartwright’s oldest sons, might have fathered Harriet’s child or any of the young, enslaved children present in Williford’s household in 1860. Did any of them father Mary or Harriet’s children?

On September 19, 1853, the estranged couple appeared in the Montgomery County Civil Court, where they made their allegations and counter-allegations in front of the Honorable Peter W. Gray.⁵ Under the Texas Civil Statutes, divorce proceedings were handled at the local level—meaning local courts heard and decided petitions to dissolve matrimonial bonds according to statutory law that offered various protections for women and property. In Texas, under the Divorce Law of 1841 (which remained in effect throughout



Honorable Peter W. Gray

³ *Cartwright v. Cartwright*, 18 Tex. 626 (1857)

⁴ *Cartwright v. Cartwright*, 18 Tex. 626 (1857)

⁵ In 1850, Peter W. Gray appears in the U.S. Federal Census for Houston, Harris County, Texas as a lawyer with \$10,000 in real estate. In 1860, he appears in the 1860 U.S. Federal Census for Houston, Harris County, Texas as a district court judge with a personal real estate worth \$3,000. According to the 1860 Slave Schedule, he enslaved four people: a 30-year-old black female, a 20-year-old black female, a 23-year-old black male, and a 1-year-old black male. It is not readily apparent how many people Gray enslaved in 1850 as the census records are illegible.

much of the nineteenth century) divorcing wives were entitled to receive a portion of the couple's community property. The law provided that a divorce would be favorably granted on behalf of the wife when the husband "shall have abandoned her and lived in adultery with another woman."⁶ Thus, Pink Cartwright's claims of adultery and abandonment, weighed heavily in her favor, despite Williford's similar assertions.

After an extensive examination of the evidence, the jury advised the court that the bonds of matrimony were "hereby forever dissolved" and the court proceeded to consider the partition of the estate. Statutory law granted Judge Gray the power to divide the property in a manner that "shall seem just and right."⁷ As dictated by statute Williford retained ownership of Jane and Mary, both of whom he owned prior to the marriage. The court deemed the remainder of the enslaved people community property, to be equitably divided along with the livestock. What this meant for Jane and Mary was that they were separated from their children at the court's whim. Williford received Tamer, Clarissa, and Mary's oldest child, a toddler. Pink was awarded "Harriet and her child when born," Sarah, and Mary's infant child.⁸

Williford appealed the division of Jane and Mary's children and the Texas Supreme Court agreed to hear the case in 1857. Williford asserted that Jane and Mary's children were not community property as decreed by the county court, but rather that under Texas law, enslaved people "owned by husband or wife, before marriage, remained his/her separate property and the children of such slaves born after the marriage, were and are the separate property of the owner of mother."⁹ The Texas Supreme Court agreed. The Court held that Jane and Mary's children were the "separate property of the defendant," and as such, "they constitute no part of the community of gains." Jane and Mary's children returned to Williford...and to their mothers.¹⁰

The Context

In 1832, when Williford Cartwright emigrated from Alabama to Montgomery County, joining his family who were well established landowners, he likely brought at least two enslaved people with him. When he married Pink Byrd later that year, he owned a woman named Jane and her young daughter Mary. It is probable, for reasons explained later, that Jane and Mary constituted the entirety of Cartwright's enslaved property. Their status as Cartwright's chattel property, however, is almost all we know about them. There is no record of their ages and no physical descriptions except for notations in the Federal Census, Slave Schedules for 1850 and 1860. There

⁶ Article 608 [2], *A Digest of the General Statute Laws of the State of Texas: To Which are Subjoined the Repealed Laws of the Republic and State of Texas*, (Austin: John Marshall & Co., 1859), 149. Accessed June 5, 2021. https://heinonline-org.ezproxy.lib.utexas.edu/HOL/Page?collection=sstatutes&handle=hein.sstatutes/digenste0001&id=2&men_tab=srchresults.

⁷ *Cartwright v. Cartwright*, 18 Tex. 626 (1857)

⁸ *Cartwright v. Cartwright* (1853). Emphasis mine.

⁹ *Cartwright v. Cartwright*, 18 Tex. 626 (1857). The Supreme Court cites, Law 23, Title 31, *Partidas* 3d. A significant portion of Texas family law descends from Spanish civil law. Many of the Spanish rules were collected in legal volumes known as the *Siete Partidas*, a seven-volume legal code.

¹⁰ According to the 1860 U.S. Federal Census, Williford Cartwright's seven children no longer lived with him, but they appear in Pink's household. She has \$7,200 in personal property and Williford owned \$175 in real estate and \$10,000 in personal property.

is no indication of whether they were forced to travel with Cartwright, leaving family and loved ones behind in Alabama, or perhaps they were purchased in one of New Orleans' hundreds of slave markets when he immigrated to Texas. Similarly, we do not know if Mary was Jane's first child or simply the only child who remained with her. And perhaps, even more importantly, we do not know the identity of Mary's father. However, it is likely that Jane's role in Williford's household was that of a domestic. As an unmarried man with his own homestead and thousands of acres of land, Williford likely relied upon Jane to do all the household chores that a wife would do—take care of his home, cook, clean, wash laundry, and perhaps gardening. It is also probable that Jane fulfilled a different “wifely” role in Williford's household. Given her enslaved status, there is no easy way to contemplate the specific dynamics of that “relationship.”¹¹ Whether Jane willingly engaged in a sexual relationship with Williford remains a mystery.

Regardless of Jane's position or presence in Williford's household, he married Pink Byrd in 1832. At the time of their marriage, in addition to his human chattel, Jane and her young daughter Mary, Williford owned a league and labor of land, several heads of cattle, horses, and hogs. Pink did not come to the marriage propertyless. She also brought with her, perhaps from her previous marriage in Alabama, a few head of cattle, horses, and hogs. Over the course of their nineteen years together, as their property increased—so too did the number of people they enslaved. In 1853, there were at least eight enslaved people in the Cartwright household. Jane had given birth to at least four more children—Tamer (1839), Harriet (1841), Sarah (1843), and Clarissa (1846). Additionally, Mary, Jane's oldest daughter, now in her early twenties, was also now a mother of a toddler and an infant.

Pink Cartwright also gave birth to multiple children as well, including Erasmus (1834), Lemuel (1838), Narcissa (1840), James (1842), Letha (1844), Francis (1846), and Charles (1848). However, sometime after Charles' birth in 1848 Williford “quit” the marital bed, the couple stopped sleeping together and Williford told several people, including his mother, that he believed Charles was not his son. Shortly thereafter, he left their home altogether and took up residence “at Jane's house” where he purportedly provided her with “better provisions” than he provided Pink. Williford spent a great deal of time at Jane's house. He took his meals there, likely slept there, and “left his guns, clothes, and shaving utensils” there at least part of the time. In addition to the enslaved property, the Cartwrights owned a league and labor of land, under Williford's headright. They also had “other land, cattle and horses, admitted to be common property.” The significance of this was not unnoticed by the court, who made Williford's living arrangement part of the divorce proceedings' written record.¹² One learns that Williford ate and slept in Jane's cabin after he “quit the bed” of his wife. He kept his personal items at both places (mostly at Jane's) and the record showed that “the negro house was better provided with provisions” than Pink's house. It is rare to find enslavers living in enslaved cabins as part of an open court record. Even though historians have

¹¹ Daina Ramey Berry, “Jefferson and Hemings: How Negotiation Under Slavery Was Possible,” HISTORY.COM, July 9, 2018.

¹² *Cartwright v. Cartwright* (1853) Montgomery County, Texas, District Court Civil Minutes and Tax Assessor Records, Reel 1006051. At the time of their marriage, Williford enslaved “one negro woman and child.” The births came in the following order: 1835—Tamer born to Jane; 1836—Erasmus born to Pink; 1837—Harriet born to Jane; 1838—Lemul (Lemuel) born to Pink; 1839—Sarah born to Jane; 1840—Narcissa born to Pink; 1842—Clarissa born to Jane; 1842—James born to Pink; 1844—Letha born to Pink; 1846—Francis born to Pink; and April 1848—Charles Edward born to Pink. Jane's grandchildren were born in the following order: 1851—Daughter born to Mary and 1853—Son born to Mary. The Act of 1840 declared that “the children of slaves should go to the owner of the mother.” *Cartwright v. Cartwright*, 18 Tex. 626 (1857).

ample evidence of sexual abuse and intercourse between enslavers and their enslaved females, we have not seen open acknowledgement of white men living in slave cabins as we do in this case. Such findings suggest a level of comfort or perhaps power and intimacy rarely acknowledged as overtly as Williford living in Jane's cabin during tumultuous times during his marriage to Pink. Who were these enslaved people he surrounded himself with, and what were their experiences in this community? Turning to other enslaved people and the community in which they resided helps provide a fuller context to the Cartwright story and the lives of those he enslaved.

The Community

These black and white families came of age in Montgomery County, which was founded in July 1837. "Originally in the county of Washington, sixty miles northwest of the city of Houston, thirty-five miles east of the town of Washington, and six miles west of the San Jacinto River" this region was known for its beauty, good water, and rich soil.¹³ As early residents encouraged others to migrate to the area, the city infrastructure took shape.

The first courthouse, a two-room log structure built in 1838, was replaced in 1842 by a two-story building, and in 1855 a large Greek Revival-style brick courthouse was completed. This would have been the space where Pink and Williford went to court. The population grew quickly

MONTGOMERY.

SITUATED in the county of Washington, sixty miles northwest of the city of Houston, thirty five miles east of the town of Washington, and six miles west of the San Jacinto River, in the centre of a high, beautiful and undulating district of country, distinguished for health, good water, and soil.

It is expected that a new county will be organized, at the next session of congress, embracing this section of country, in which event, the town of Montgomery from its central position, must be selected as the seat of justice.

The San Jacinto affords an excellent keel boat navigation to this point. The most direct route from the city of Houston to Robertson's colony and Red River settlements, and from Bevil's settlement to Washington, pass through this town. The great extent of good land lying contiguous, and its increasing and enterprising agricultural population, cannot fail of making this one of the most flourishing inland towns in this republic.

Sales of lots at auction will take place in the town of Montgomery, on the first Monday in September ensuing, and continue for three days.

Terms of sale, six, and twelve months credit. Notes with approved security will be required. Good titles will be made upon the payment of the first notes.

W. W. SHEPPERD, }
J. W. MOODY, } *for company.*

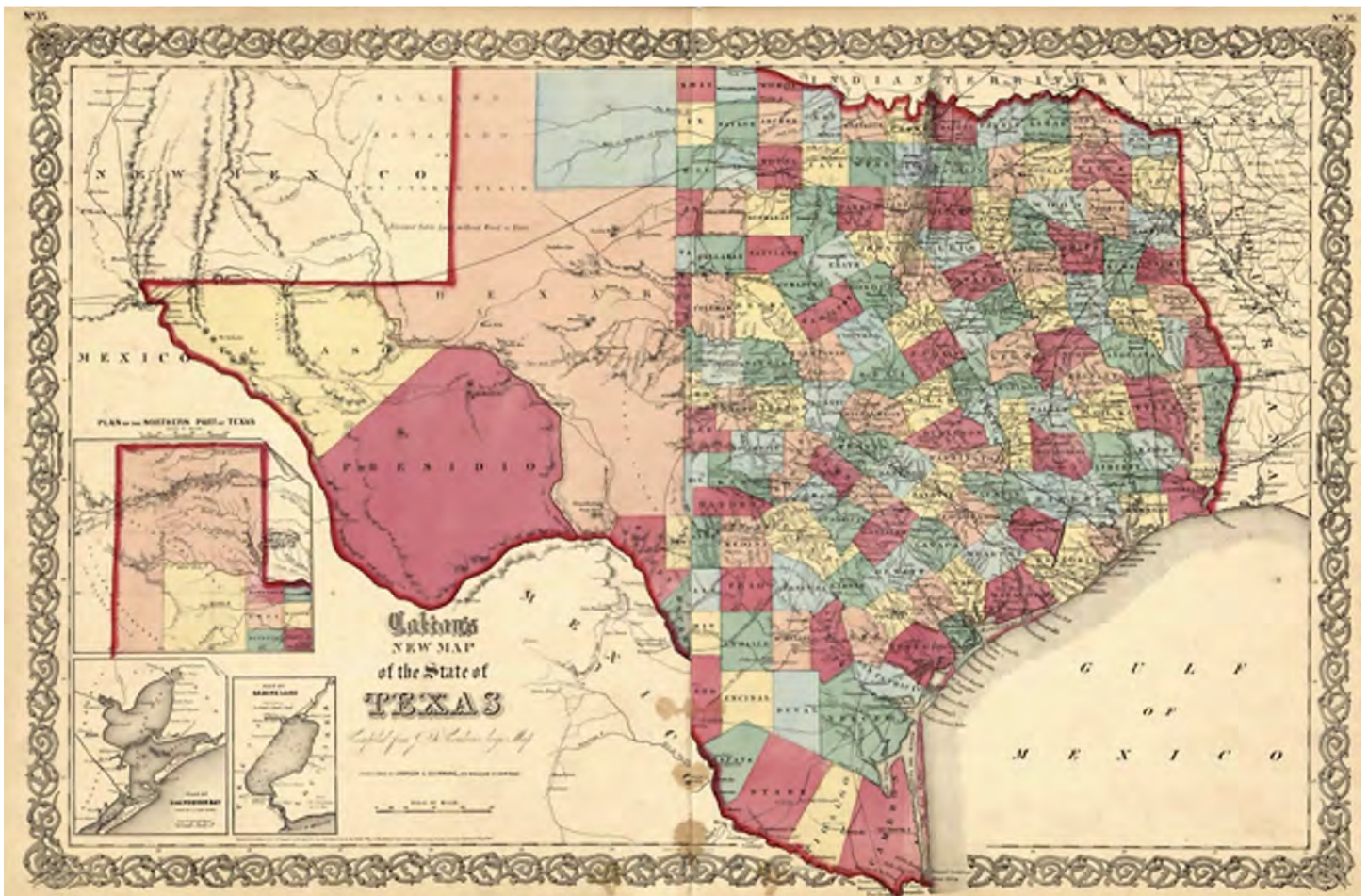
Texas 4th July, 1837.

Advertisement inviting people to migrate to Montgomery County, 1837.

¹³ *Telegraph and Texas Register* (Houston, TX), July 8, 1837.

during the 1840s and 1850s, as large numbers of settlers, lured by the abundant land, moved to the area. In 1850 there were 2,384 residents and 1,448 of them were enslaved. By 1860, as many as two-thirds of the white families in the county owned at least one enslaved persons, and two of the state's largest enslavers, George Goldthwaite and G. Wood, each had more than 100 enslaved people. A decade later the population grew to 5,479 of which 2,416 or 44% were enslaved.¹⁴ Initially most farmers practiced subsistence farming, but by 1860 there was a "thriving plantation economy based largely on cotton production." In 1860, the enslaved population produced more than 8,000 bales/year.¹⁵ Demographics aside, we learn more about enslaved people like Jane and Mary from other enslaved people in the county and those who passed through the region around the same time.

Just a few years after Montgomery was founded in 1839, Sarah, Caty, Ralph and Frank escaped from their enslaver H.G. Johnson who placed an ad in the local papers inquiring about their whereabouts. The group liberated themselves while their enslavers were at a camp meeting during peak harvest season. Frank, described "as stout, well made, complexion light yellow; quick speech, 22 years old, 2 scars on one of his knees, ... had on narrow brim black hat, black cloth



Source: New Map of Texas, 1860 by Colton's General Atlas

¹⁴ Christopher Long, "Montgomery County," *Texas State Historical Association, Handbook of Texas*, <https://www.tshaonline.org/handbook/entries/montgomery-county> Accessed June 3, 2021.

¹⁵ Christopher Long, "Montgomery County," *Texas State Historical Association, Handbook of Texas*, <https://www.tshaonline.org/handbook/entries/montgomery-county>.

coat, copperas colored pants." His compadre, Ralph, was described as talkative, a "tall and ... very black, 22 years old, white eyed, quick spoken," man with "thin lips" who was wearing a white hat when he left. The two women's descriptions are interesting as Caty was 50 years old and Sarah was pregnant. Johnson believed that they "took with them their wearing apparel and bed clothes" and that if they were found heading west it had to be a result of being kidnapped. He was willing to pay a "liberal award" for their return plus all of their expenses.¹⁶

THE following described Negroes have runaway from the subscriber; they left while at a camp meeting in Montgomery county, on Sunday, July 31.
A liberal reward will be paid for the negroes, and all reasonable expenses paid.
A man named Frank, stout, well made, complexion light yellow; quick speech, 22 years old, 2 scars on one of his knees, not recollected which, probably the left; had on narrow brim black hat, black cloth coat, copperas colored pants.
Ralph—tolerably tall and spare, very black, 22 years old, white eyed, quick spoken, had on a white hat, has thin lips, and is rather talkative.
A woman, Caty—rather yellow, out-mouthed, long teeth, hollow eyes, common height, 50 years old.
Woman, Sarah—well made, rather spare, tolerably handsome, very backward in speech, rather down look; pregnant; had on a calico dress.
They took with them their wearing apparel and bed clothes. It is supposed they have gone to the United States. If they have gone west, they must have been kidnapped.
H G JOHNSON
w5-231
Spring Creek, July 24

The Enslaved Community

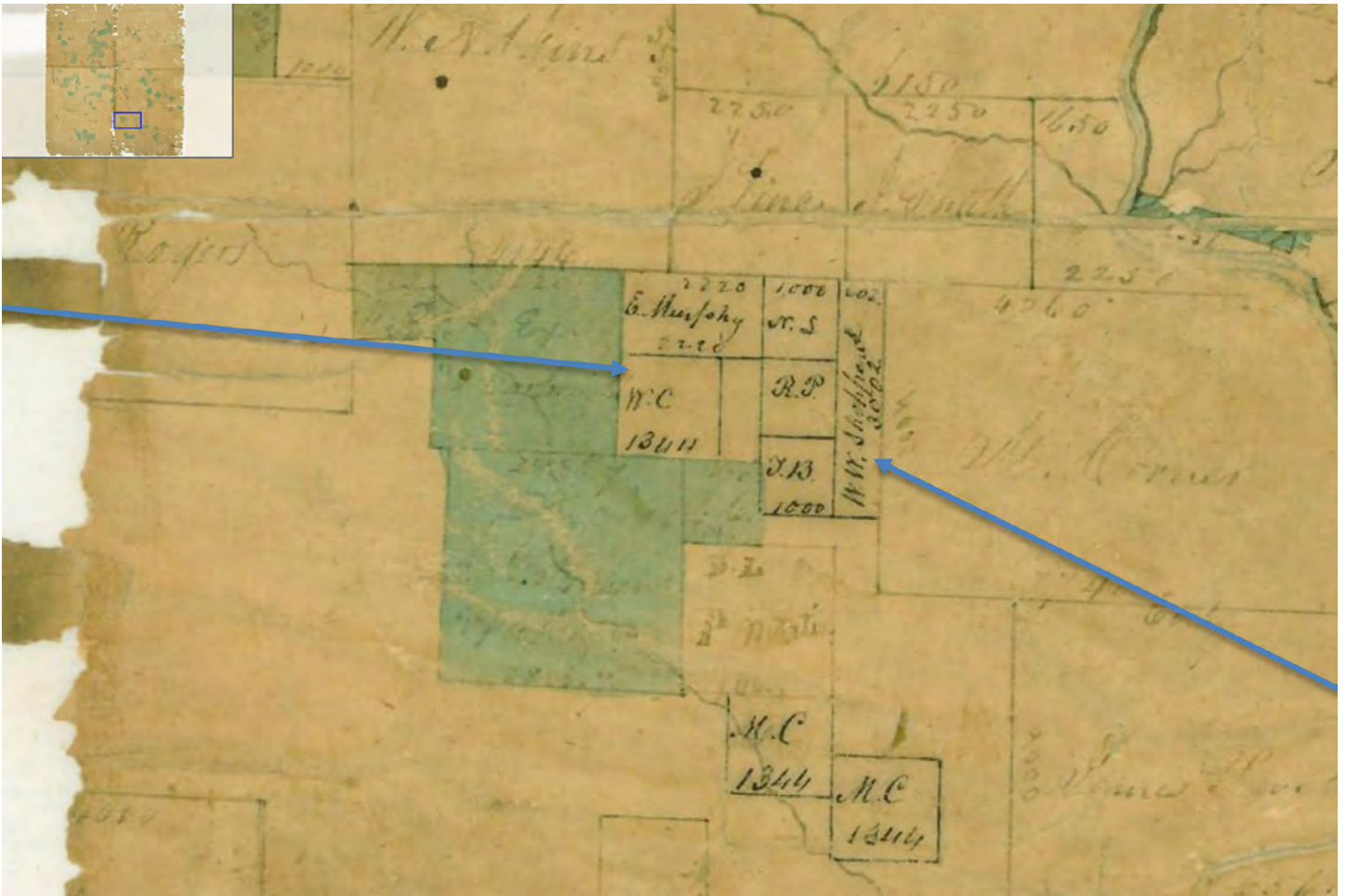
The enslaved community in Montgomery County included men and women—like Carter, Syphax, Caroline, Betsy, Bill and their families—who appeared in bills of sale recorded in the County Clerk's Deed Books. They were sold from one Montgomery County resident to another as James McCown issued a deed to William Sheppard on November 20, 1840, for the sale of these individuals. Sheppard assured McCown that they were his "bonafide property" who were "free from all mortgages or incumbrance" and considered "slaves for life." Some were husband, wife, and child, like 30-year-old Carter and his wife Caroline, and their one-year-old son Bill; others were mothers and daughters like Betsy and her one-year-old daughter. All of these enslaved people were "free from any constitutional disease and sound in body and mind."¹⁷ This warranty of soundness made to satisfy Sheppard's interest in the people he purchased also established that Carter, Caroline, and Betsy were fit to build relationships within their new enslaved community.

When William Sheppard purchased Carter, Syphax, Caroline, Betsy, Bill, and their families, they moved into Jane and Mary's community. Sheppard's land, as seen on the map on the next page, was located directly east of and less than three miles from Williford Cartwright's property. It is likely, then, that at some point their paths crossed.¹⁸ As early residents of a still largely unsettled county, community connections were very important. The enslaved often had to look beyond their immediate households to create and maintain social connections with others. One method for creating community and family bonds was through social gatherings that also served productive purposes. Perhaps Jane, Caroline, and Betsy gathered for working socials—events

¹⁶ *Telegraph and Texas Register* (Houston, Texas), July 31, 1839. Accessed July 28, 2021.

¹⁷ Bill of Sale from James McCown to Wm. W. Shepperd, November 20, 1840, Montgomery County, Texas, Deed Book F, County Clerks' Office, Conroe, TX, pp. 73-74.

¹⁸ Map of Montgomery County (1840), Texas General Land Office, Map #3191. Document #3191 - (1840) - \$20.00 - Montgomery County - <https://s3.glo.texas.gov/glo/history/archives/map-store/index.cfm#item/3191>.



Map of Montgomery County land claims (1840) showing William Sheppard's property just east of Williford Cartwright's (indicated as W.C.) property. M.C. refers to Matthew Cartwright. Map of Montgomery County (1840), Texas General Land Office, Map #3191. Document #3191 - (1840) - \$20.00 - Montgomery County - <https://s3.glo.texas.gov/glo/history/archives/map-store/index.cfm#item/3191>

such as corn shucking or quilting parties in which members of the enslaved community gathered for productive and recreational purposes—and built friendships in which they talked about their children, their struggles, and their moments of joy. Perhaps Jane shared her complicated “relationship” with Williford with these women. As historians have shown, enslaved people built dynamic networks through which they shared information, within and across their communities, about their enslavers, their own lives, and their own efforts or others to resist.¹⁹ In Montgomery County, as the enslaved population grew over the next two decades, opportunities for these types of interactions likely increased.

The 1840s marked an active decade for the growth of slavery and the movement among enslaved people. Just as the institution was taking shape in the young republic, enslaved people continued to resist and rebel through self-liberation. Two enslaved men, Emperor and Bryant,

¹⁹ Daina Ramey Berry, *Swing the Sickle for the Harvest is Ripe: Gender and Slavery in Antebellum Georgia* (Urbana: University of Illinois Press, 2007), 75. See also: Diane Mutti Burke, *On Slavery's Border: Missouri's Small Slaveholding Households, 1815-1865* (Athens, GA: University of Georgia Press, 2010), 202.

TAKEN UP,


TWO runaway slaves, by B. English, J. P. Simpson, W. W. Brotherton, and T. Carnot, and committed to my custody by J. B. Turner, an acting Justice of the Peace, in and for the county of Fannin, on the 31st of October ult. Said slaves call their names Emperor and Bryant, and state that they belong to one Elisha Uzzell of Montgomery country. Emperor is about five feet six or eight inches high, of dark complexion, and forty years of age. Bryant is five feet eight or nine inches high, 21 years old, stout and able bodied, and rather inclined to be thick-lipped. Said boys say they left home some time in the month of August. The owner is requested to come forward, prove property, pay charges, and take them away, or they will be dealt with according to law.

THOMAS DAGLEY, S'ff Fannin co.
Fannin County, Dec. 1, 1843. dec 16—4w

Emperor and Bryant, 1843

A few years later, Albert left Montgomery County for Houston and took "a blanket, 3 pairs of pantaloons, and 3 pair of shoes," perhaps to disguise himself as he tried to blend into life in a bigger city. His enslaver, Francis Sadler, promised to provide a suitable reward for anyone who returned Albert to him.²¹ Just as enslaved people escaped and some were recovered, Jane and Mary were giving birth to their children on the Cartwright property. A few years

RAN AWAY,




FROM the subscriber near Montgomery, my negro man named ALBERT, about 25 or 26 years of age, common size, dark complexion, very stout built, he had when he went away a blanket, 3 pair of pantaloons, and 3 pair of shoes—his dress not exactly remembered. When last heard from he was making his way towards Houston. Whoever will return said negro to me or lodge him in any jail in the Republic so that I may get him, shall be suitably rewarded.

Montgomery, Feb. 21, 1845. FRANCIS SADLER.
feb 22 w4t 480*

Albert, 1845

after Williford Cartwright won his case and all the enslaved were returned to him, three enslaved

NOTICE.



Run Away from the plantation of A. W Gafford on San Jacinto, (in Montgomery county) three NEGRO MEN, on or about the 5th day of July, of the following description: Henry is about 40 years of age, 5 feet 10 inches in height, of dark complexion. Berry about 28 years old, 5 feet 6 inches high, of dark complexion. Ed, about 20 years old, 5 feet 6 inches high, of dark complexion, they took off with them a double barrel shotgun and ammunition.

I will give a liberal reward for their apprehension and delivery to me at Montgomery, or for their confinement so that I can get them.

Aug 21, 1860 REBECCA J. GAFFORD.

Henry, Berry, and Ed, 1860

enslaved by Elisha Uzzell of Montgomery County appeared in local newspapers in 1843. Respectively described as five feet six or eight inches and five feet eight or nine inches, the two men left during the August harvest season and were still being sought four months later when runaway advertisements appeared in local newspapers. They were "taken up" and in the hands of the "acting Justice of the Peace" in nearby Fannin County.²⁰

men from A. W. Gafford's plantation liberated themselves. Henry, Berry, and Ed left just after the July 4th holiday and took with them "a double barrel shotgun and ammunition." Rebecca Gafford placed the advertisement and offered "a liberal reward" for their return, indicating that women enslaved people in this community as well.²² Historian Stephanie Jones-Rogers asserts that female enslavers were much more common than scholars recognize and many, contrary to notions of southern

²⁰ *The National Vindicator* (Washington County, Texas), December 16, 1843.

²¹ *Telegraph and Texas Register* (Houston, Texas), February 26, 1845.

²² *The Weekly Telegraph* (Houston, Texas), August 21, 1860.

feminine passivity, aggressively pursued their human property when they sought freedom.²³

Even though the Cartwright case does not tell us much about the daily lives of the enslaved family, we have detailed information about their working lives from other enslaved people. Isaac Martin, for example, was enslaved in Montgomery County as a field laborer who worked with livestock on the Wood plantation. Remembering the work he was forced to perform during slavery, he explained, “I had to mind de cows and de sheep. I had a mule to ride ‘roun’ on. It was dis way, I hafter mind de cows.”²⁴ He also worked on agricultural crops and helped his enslaver “plant dif’reent fiel’s in co’n, fifty or sixty or a hundred acres.” However, his primary job was to keep the cows nearby. Some of the other boys worked with him to “keep de dogs out de sheep. You know iffen de dogs git in de sheep dey ap’ to kill ‘em.” Isaac had some mobility and had permission to “go huntin’ wid de dogs lots of time, and lots of time us ketch rabbits. Dey was six dogs, and de rabbits we kotch was so much vittles for us.” Having extra meat was always welcomed because enslaved people generally had poor diets.

Unlike young boys who might have had the mobility to go hunting, the enslaved women on his estate often tended to the kitchen and children: “De cook, she was a ol’ woman name’ Forney, and she had to see atter feedin’ de chillen.” Other women were responsible “to look after de babies when dey mammies was out in de fiel’.” Enslavers created a set time for “de mammies te come in and nuss de babies.” Nurses and mothers often worked in the big house and were fortunate to have a “cradle’ for dem babies where de nuss tek care of ‘em.” Jane and Mary’s experiences likely differed slightly from what Isaac Martin remembered about enslaved women’s work. As a woman in a small slaveholding household, Jane’s primary task was likely to work in the house—cooking, cleaning, washing, sewing, and gardening. This was not the extent of her work, however, as a young woman of childbearing age, Jane was also engaged in reproductive labor. In the span of four years, she gave birth to three children. In addition to navigating her own pregnancies and births, she likely also had to help Pink Cartwright navigate her pregnancies and births. But the intimate labor expected of Jane likely did not end there. Enslaved women often served as wet-nurses for white women.²⁵ It is then possible that Jane not only nursed her three newborns, but Pink’s as well.

While Isaac Martin labored in the fields, Charlotte Beverly, like Jane, labored in the house. Charlotte Beverly recalled having 11 children and living on a large plantation while enslaved in Montgomery County. Beverly had fond memories including going “to the white folks church,” the rare occasions when they received a “pass to go dance on nex’ plantation,” where her father lived, the yearly Christmas dinner, and that of her wedding where she wore a “white Tarleyton” dress. There was an enslaved preacher to help with Sunday services and minister to the enslaved community.²⁶

²³ Stephanie Jones-Rogers, *They Were Her Property: White Women as Slave Owners in the American South* (New Haven: Yale University Press, 2019).

²⁴ Interview of Isaac Martin, *Federal Writers’ Project: Slave Narrative Project, Vol. 16, Texas, Part 3, Lewis-Ryles* (Washington D.C.: United States Work Projects Administration), 48-49. Accessed <https://www.loc.gov/resource/mesn.163/?sp=56>. Ron Tyler and Lawrence R. Murphy, eds. *The Slave Narratives of Texas* (Austin: State House Press, 1997), 55-56.

²⁵ Stephanie Jones-Rogers, “[S]he could ... spare one ample breast for the profit of her owner’: white mothers and enslaved wet nurses’ invisible labor in American slave markets,” *Slavery & Abolition* 38, no. 2 (2017): 337-355.

²⁶ Interview of Charlotte Beverly, *Federal Writers’ Project: Slave Narrative Project, Vol. 16, Texas, Part 1, Adams-Duhon* (United States Work Projects Administration), 84-86. Accessed <https://www.loc.gov/item/mesn161/>

Beverly's memories add more details to what we know about enslaved peoples' lives in Montgomery County. Perhaps Jane, and later her daughters, also were allowed to go "dancing" on nearby plantations or celebrate holidays and weddings within their own fictive and biological families. But Beverly's experiences also emphasize the importance of enslaved women's reproductive labor. The eleven children she birthed created significant wealth for her enslaver. Similarly, Jane's four daughters, and later their children created wealth for Williford which might explain why he was determined to see them returned to him.

The Consequences

In 1857, Chief Justice Hemphill, writing for the court, considered the laws regarding enslaved community property under Spanish law (which governed Texas at the time of Williford and Pink's marriage) and the usufructuary right to property shared between partners. Ultimately, Hemphill recognized that the "one exception" to the established rights of usufructuary which normally recognizes a person's property interest in the "fruits produced by the subject of the usufruct," concerns enslaved women's children.²⁷ Consequently, the

court held that when either the husband or wife possesses separate property prior to marriage, that property remains their separate property even if the partner exercised some sort of power or control over it during the marriage. Thus, because Jane and Mary remained Williford's separate property, their children were never part of the couples' community property. Harriet, Sarah, and Mary's youngest child would return to Williford's household. Hemphill's decision in and of itself would have been sufficient to resolve the issue, but he takes the opportunity afforded him in writing the opinion to address what he describes as "the repulsive features in the facts of the case." He excoriates Williford Cartwright for not only accusing Pink of infidelity, but also for "his desertion of her bed and of the house, and obstinately persisting continuously to live in a negro house with his negro woman." Describing his behavior as deliberately cruel, Hemphill determined that based on these facts there were sufficient grounds for the lower court to grant the divorce.



Charlotte Beverly, circa 1837

²⁷ *Cartwright v. Cartwright*, 18 Tex. 626 (1857).



Chief Justice John Hemphill

It is worth noting that Chief Justice Hemphill participated in a similar “relationship” with an enslaved woman named Sabina. Like Williford, the Chief Justice had two daughters with Sabina: Theodora born in 1847 and Henrietta in 1849.²⁸ Sabina and Chief Justice Hemphill lived together in a log cabin and in 1853, around the time that Pink petitioned the district court for divorce from Williford, the two moved into “a larger home at the intersection of Brazos and Ash streets” in Austin. Hemphill’s contemporaries disliked his “relationship” with a “negro wife and family” and outed him in local newspapers. We use the term relationship loosely because of the power dynamic between slavery and freedom that cannot be ignored. Black women giving birth to white men’s babies during slavery was more common than some wish to acknowledge. Historian Brenda E. Stevenson discusses these interactions and labels women like Jane and Sabina as concubines.²⁹

For Pink Cartwright, the Texas Supreme Court’s decision meant that she had no right to Harriet and her child, Sarah, or Mary’s youngest child whom she had received in the partition of the couples’ community property in the 1853 divorce settlement. For Williford, it meant that he regained control of and sexual access to three young women. For Jane and Mary, however, this ruling held a very different significance. Four years after the county court ripped their family apart, the Texas State Supreme Court ordered their respective children returned to Williford’s household and unintentionally reunited their families. The court separation that devastated the family now unified them. One wonders if the “improper intimacy” that ignited this process continued into the next generation.

As the census records on the next page indicate, in 1860, just three years after the final dissolution of his divorce and the return of Jane and Mary’s children, Williford’s real estate was valued at \$175, but his personal estate—meaning his enslaved property—was valued at \$10,000. Additionally, as can be seen in the 1860 Slave Schedule, Williford enslaved twelve people, all of whom were identified as “mulatto” except one, a 50-year-old female, who was most probably Jane.³⁰

The story of enslaved people near Montgomery County illustrates the extreme efforts enslaved people used to secure their freedom as well as ways they exercised it during captivity. Isaac and Charlotte share more about the daily lives of the enslaved in their narratives, but runaway ads in local newspapers tell a much different story. Advertisements like those previously described suggest that many others in the surrounding community sought freedom.

²⁸ David A. Furlow, “Theodora Hemphill’s Guide to the Texas Constitution” Part 1, *Texas Supreme Court Historical Society* 5, no. 1 (Fall 2015) available at <https://www.texascourthistory.org/Content/Newsletters/TSCHS%20Journal%20Fall%202015.pdf>.

²⁹ Brenda E. Stevenson, “What’s Love Got to Do With It?: Concubinage and Enslaved Black Women and Girls in the Antebellum South,” *Journal of African American History* 98, no. 1 (January 2013): 99-125. Daina Ramey Berry, “How Sally Hemings and Other Enslaved People Secured Precious Pockets of Freedom,” HISTORY.COM (2018). <https://www.history.com/news/slavery-negotiations-freedom-concubines-thomas-jefferson-sally-hemings>

³⁰ United States Federal Census, 1860, Slave Schedule, Montgomery County, Texas.

	J W	15	m	Labourer		do	1		
	M F	13	f			do	1		
	C A	7	f			do	1		
	H M	4	f			do			
75-175	W Cartwright	38	m	Farmer	7,125-8,115,000	Ala			
176-176	W H Smith	36	m	do	7,500	Eu			
	Elizabeth (wife)	29	f			Texas			
	Nancy F	11	f			do	1		
	Mary E	7	f			do			
	J C	5	L			do			

93	L. P. Perkins	1	25	f	78				2			1	12	M	78				
93	"	1	35	M	78							4	7	M	78				
94	"	1	6	f	78							3	3	M	78				
95	"	1	5	f	78							2	65	f	78				
96	Maria Spence	1	33	f	78				1			3	35	f	78				
97	"	1	31	f	78							1	27	f	78				
98	"	1	5	M	78							3	15	f	78				
99	W. Cartwright	1	37	f	78				4			4	12	f	78				
30	"	3	24	f	M							2	7	f	78				
31	"	2	16	f	M							4	3	f	78				
32	"	1	9	f	M							1	1	f	78				
33	"	1	7	M	M							1	60	f	78				7
34	"	1	5	M	M							1	45	M	78				
35	"	2	2	f	M							2	27	M	78				
36	"	1	1	f	M							2	25	M	78				
37	W. H. Smith	1	46	M	78				1			2	23	M	78				

Top: United States Federal Census, 1860, Montgomery County, Texas.

Bottom: U.S. Federal Census, Slave Schedule, 1860, Montgomery County, Texas. (highlights added)

In the summer of 1864, an enslaved man from Brazoria County liberated himself when his enslaver Mr. Winston moved to Montgomery County. The Winston family had been in Brazoria for decades, but the 84-mile move was likely unsettling for their enslaved. The unnamed man remained at large for several months evidenced by his pillaging of food and other resources from farms and plantations near Montgomery County. One wonders what he ate? Where he slept? How he managed to survive for months? Did he have help from enslaved people in Montgomery County? When he surfaced at the home of his enslaver, Mrs. Winston was sick and home alone. He demanded Mr. Winston's clothes, money, and sixty pounds of sugar. Frightened, she gave him exactly what he requested and contacted the authorities. The local sheriff, L. D. Clepper, discovered that the enslaved man was the ringleader of a planned rebellion where "their object was to burn, ravage and murder, and destroy everything that came in their way." Their goal: to liberate themselves and end slavery. Thirty enslaved people were involved in the plot and as a result, "a rigid police" force was put into place to watch "over the negroes of the county." Yet none of the enslaved people talked. They refused to tell of their plan until John Clepper's enslaved man confessed after 300 lashes. He had to be beaten to near death before he confessed. Did he

confess because he could not take any more blood drawn from his back with the lash? Was his flesh too raw? Did he want to survive the whipping? Or was he so close to death that he had no choice but to confess? This act of resilience and vow to secrecy confirms the desire for freedom and the tight-knit community that developed among the enslaved.³¹

The ringleader however had already claimed months of freedom despite hardships he may have experienced. Shortly after his exchange with Mrs. Winston, the patrols, planters, and bloodhounds were hot on his tail but “he succeeded in eluding” them until he reached the San Jacinto River “in which he took refuge.” Witnesses noted that he was so determined to be free that he began “drowning the dogs as fast as they came up to him.” He also dodged bullets “frequently shot at him,” and “made his escape.” Miraculously he held onto his freedom, not just for a moment, but perhaps for the rest of his life because no-one in the region ever saw him again.³²

This incident left the white community in fear. It increased their scrutiny over their human “property.”³³ What did it do for Jane and Mary and their offspring? Likely nothing because they seemed to be living in a situation where their extended family was intact.³⁴ This likely reduced their willingness to run away even if they desperately wanted their freedom. We have no evidence of Jane or Mary or any of their offspring attempting to escape. But that does not mean they did not want freedom. What was their desire for freedom? Did any of them participate in the planned rebellion? Did they know about it and offer their silent support—choosing to keep the conspirators’ secret or help in other ways? Although we will never know the answers to these questions, it is clear that Montgomery County was home to enslaved people who chose to remain in slavery to keep their families together and home to enslaved people who did all they could to escape.

Conclusions

In 1853, Williford and Pink Cartwright divorced after nearly twenty years of marriage. As customary, they divided their property which included land, livestock, and enslaved people. However, issues of infidelity, community property, and other rights to land ownership changed the outcome of this broken marriage and the local divorce ended up in the State of Texas Supreme Court. The couple fought over the ownership of enslaved women Jane and Mary and their offspring. But this is not just a story of enslaved ownership, it is a story of a mother and daughter duo, as well as the larger enslaved community. This case enables us to gain insight into the lives of the enslaved, their movement, their kinship ties, and their experiences with slavery in Montgomery County, Texas. Through cases like these, we expand our understanding of slavery and are introduced to historical figures once unknown. We also have the opportunity to learn about other prominent and ordinary men in “relationships” with enslaved women, living in cabins with them and fighting to keep them in their possession in cases that went all the way to the Texas Supreme Court.

³¹ *The Galveston Tri-Weekly News*, (Houston, Harris County, TX) June 19, 1864. See, The Texas Runaway Slave Project, Stephen F. Austin State University, <https://digital.sfasu.edu/digital/collection/RSP/id/11582/rec/29>

³² Ibid.

³³ Ibid.

³⁴ Deborah Gray White, *Ar'n't I A Woman?: Female Slaves in the Plantation South* (New York: W. W. Norton & Company, 1999), 70-75.



This map shows Williford Cartwright's two properties. Map of Montgomery County, Texas (1855) Texas General Land Office. Map #3889 - (1855) - Montgomery County - <https://s3.glo.texas.gov/glo/history/archives/map-store/index.cfm#item/3889>



DAINA RAMEY BERRY is Oliver H. Radkey Regents Professor of History and chair of the history department at the University of Texas at Austin. She is the award-winning author and editor of six books and several scholarly articles including *A Black Women's History of the United States* (with Kali Nicole Gross, Beacon Press, 2020), which was a finalist for an NAACP Image Award. Her work has been featured in *The New York Times*, *The Atlantic*, and *the Washington Post*. She is a distinguished lecturer for the Organization of American Historians and was recently inducted as a fellow of the Society for American Historians and the American Antiquarian Society.



SIGNE PETERSON FOURMY is the Director of Research and Analysis for *Last Seen: Finding Family After Slavery* at Villanova University. Dr. Fourmy completed her Ph.D. in U.S. history at The University of Texas at Austin (2020). She also holds a J.D. from the University of Houston Law Center. She has published a book chapter on teaching slavery and gender in the K-12 classroom titled "A Mixture of Love and Pain": Teaching Enslaved Women's Labor, Motherhood, and Reproductive Resistance," in *Engaging the African Diaspora in K-12 Education* (2020). In addition to her role at *Last Seen*, she teaches at UT Austin and is working on her first manuscript, "Moved and Seduced by the Instigation of the Devil: Enslaved Women, Infanticide, and the Law in the Antebellum South."

[Return to Journal Index](#)

A Hot Time in the Old Town Tonight: *Wurzbach vs. McCloskey* — Scandal in a 1928 Texas Congressional Election

By Stephen Pate

Ed.Note: The following article is based on a presentation given at the joint TSCHS panel at the 2021 TSHA Conference.

It is the conceit of every generation to believe that the events that occur during their era are unique only to their time—and that a certain event can trigger the reaction “this is the worst it’s ever been.” To counter that conceit, there are certain bromides people rely upon regarding how history repeats itself. Perhaps the truth is that though circumstances change, human nature does not, and thus we see the same situations repeat themselves.



Harry Wurzbach

A perfect illustration of this is the now forgotten Election Contest in the House of Representatives styled *Wurzbach v. McCloskey*, concerning the 1928 House race in the Fourteenth Congressional District, the District that covered Bexar County and ten other South Texas counties. The contest involved incumbent Harry Wurzbach, the only Republican from Texas then serving in Congress¹ and his Democratic opponent, Bexar County Judge Augustus McCloskey.



Augustus McCloskey

The immediate result of this race was Wurzbach’s apparent defeat. Yet after over a year, the House of Representatives sustained Wurzbach’s contest of the election results and re-seated him.

Disputed election results are nothing new in Texas. We will always have the example of 1948. Election contests for Congressional seats, while rare, are not unheard of in Texas, with the most famous example being *Giddings v. Clark*, an 1871 contest in which a Republican House of Representatives unseated Republican William Clark in favor of Democrat D.C. Giddings.² Yet *Wurzbach v. McCloskey* deserves to be remembered for both its circumstances and its situation—in some respects eerily reminiscent of today.

For one thing, the race between Wurzbach and McCloskey occurred during a bitterly contested Presidential election with Texas and the nation deeply divided over some core issues.

¹ Jeanette H. Flachmeier, “Wurzbach, Harry McLeary,” *Handbook of Texas Online*, accessed July 05, 2021, <https://www.tshaonline.org/handbook/entries/wurzbach-harry-mcleary>.

² C. T. Neu, “Giddings-Clark Election Contest,” *Handbook of Texas Online*, accessed July 05, 2021, <https://www.tshaonline.org/handbook/entries/giddings-clark-election-contest>.

One of the Presidential candidates—a New Yorker—had some attributes many in the country could not tolerate. The candidate’s own party was torn over his nomination, and many would not support him. This had repercussions even down to the Fourteenth Congressional District. In the other party, the congressional nominee was undermined by his bitter political rival of the same party. There were claims of outright voter fraud and mishandled recounts, manipulation of the courts, and alleged political prosecutions. Indeed, both candidates were indicted for election fraud, with one indictment leading to a landmark Supreme Court opinion written by Oliver Wendell Holmes. It was indeed “a hot time.”

The Candidates

For many years after Reconstruction ended, the Republican party was not a major factor in Texas politics. Yet the party did enjoy some sporadic success occasionally electing candidates when Democrats and Populists split votes. Moreover, the Party could sometimes win in what were known as the traditional German American areas of Bexar, Bandera, Kendall, Kerr and Gillespie Counties.³ Many of the German Americans in these Counties had remained loyal to the Union during the Civil War and still supported the party of Lincoln. This vote would be a major factor in the career of Harry McLeary Wurzbach, who in 1928 was the only Texas Republican Congressman.

Wurzbach was born in San Antonio. He graduated from Washington and Lee University in 1896. He returned to Texas, studied law and was admitted to the bar.⁴ He served as an Army Private during the Spanish American War. After the War, he moved to Seguin to practice law. He was soon elected Guadalupe County prosecuting attorney, and in 1904, Guadalupe County Judge as a Republican. In 1916 he made his first run for Congress in the Fifteenth District, but was defeated by the incumbent, John Nance Garner.⁵ In 1920, Guadalupe County had been placed in the Fourteenth District. That year, Wurzbach ran against incumbent Democrat Carlos Bee and in a major upset, defeated him, becoming the first Texas Republican Congressman in twenty years.⁶ In fact, Wurzbach was the first Texas-born Republican to serve in Congress.

In 1920, Warren G. Harding did surprisingly well in Bexar County in his successful Presidential campaign. Harding voters also voted for Wurzbach, and it was this vote that supposedly put Wurzbach in Congress.⁷ Wurzbach was re-elected three times in 1922, 1924 and 1926, each time in the face of determined Democratic opponents. Wurzbach had to rely on Democratic votes to win. Even given a large 1924 vote for Coolidge, Wurzbach could not have had enough Republican votes in his 11-county district to be re-elected time and again. Instead, he relied on his own personal politics to see him through. Wurzbach has been described a “courtly gentleman of the old school⁸ and as “gregarious.”⁹ He made sure he was personally well-liked and well-known in his district.

³ Wayne Thorburn, *The Republican Party of Texas: A Political History*, (University of Texas Press, 2021),18.

⁴ Ben R. Guttery, *Representing Texas: A Comprehensive History of U.S. and Confederate Senators and Representatives from Texas*, (Booksurge Publishing 2008) 162.

⁵ *Ibid.*

⁶ Roger M. Olien *From Token to Triumph: The Texas Republicans Since 1920* (SMU Press 1982) 30.

⁷ Roger M. Olien *From Token to Triumph*, 31.

⁸ Roger M. Olien *From Token to Triumph*, 52.

⁹ Roger M. Olien, *From Token to Triumph*, 31.

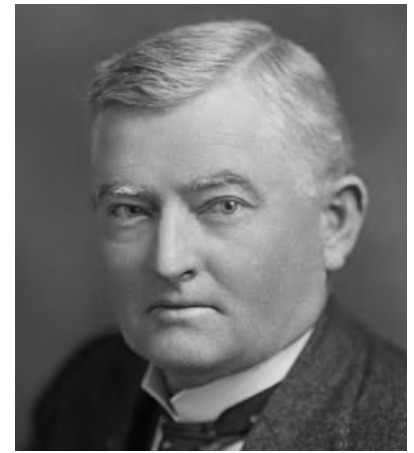
More importantly, he was a master of pork barrel legislation. After all, his party held the White House, and he was the only Texas Congressman who could say that. One commentator wrote: “the bulk of Wurzbach’s energy” in Congress “was given to winning federal funds for projects in his district.”¹⁰ He did make enemies though.

He cast some bitter invective at his former opponent, John Nance Garner, the Uvalde Congressman. Garner would not forget the attacks.¹¹ As we will see, Wurzbach had Republican enemies as well. Still, all in all, given his record and a strong Republican Presidential candidate, Wurzbach could feel optimistic about his 1928 re-election chances.

Not if the Democrats had any say in the matter. Wurzbach’s presence in Congress was a thorn in the Democrat’s side. Garner, his old opponent, of course, wanted him gone. Within the Fourteenth District, such powerful men such as Sam Ealy Johnson, whose young son Lyndon was beginning to take an interest in politics, and George Parr, a rising political boss from Duval County, were looking for a candidate to rid themselves of the lone Republican Congressman.¹²

Most importantly, the San Antonio political machine wanted Wurzbach out. Though today we associate machine politics with Memphis, Jersey City, or Chicago, San Antonio long had a strong city-county machine that had been in power since 1890. Such colorful figures as Mayor John Tobin, and later Mayor C.M. Chambers controlled patronage and awarding city contracts. City and County employees were told how to vote¹³ This Democratic machine hated the Republican Wurzbach and provided the candidate to run against him in 1928.

That man was Augustus McCloskey, the Bexar County Judge. Born in San Antonio in 1878, he attended St Mary’s College. He studied law while working as a court stenographer and was admitted to the bar in 1907. As the Machine’s nominee, he was elected County Judge in 1920.¹⁴ Looking at a photograph of McCloskey, he seems an amiable, reliable fellow—the perfect candidate of “The Boys Downtown.” He seems the kind of fellow you could drink a beer with,



John Nance Garner



Sam Ealy Johnson



George Parr

¹⁰ Roger M. Olien, *From Token to Triumph*, 32.

¹¹ *Ibid.*

¹² Dudley M. Lynch, *The Duke of Duval: The Life and Times of George B. Parr* (Texian Press 1976), 42.

¹³ Judith Kaaz Doyle, “Maury Maverick and Racial Politics in San Antonio, 1938-1941, 53,” *The Journal of Southern History* 194, 199 (1987); Kemper Diehl, “The Big Election Steal,” *San Antonio Light*, November 16, 1958, 1.

¹⁴ Anonymous, “McCloskey, Augustus,” *Handbook of Texas Online*, accessed July 05, 2021, <https://www.tshaonline.org/handbook/entries/mccloskey-augustus>.

while he told travelling salesman jokes, or talked about the kind of year Babe Ruth was having. Moreover, he was Roman Catholic, certainly attractive to the many Catholic voters in the district.¹⁵

The Trouble with Harry

1928 would see a Presidential election with all that would mean for down ballot races. It was shaping up to be an unusual year. In June the Democrats nominated Al Smith, a former Governor of New York at their national convention. Smith was a Roman Catholic and was anti-prohibitionist. Using the slogan “All for Al”, Smith would campaign vigorously, but from the beginning he was anathema to Southern Democrats.¹⁶ In contrast, the Republicans nominated Herbert Hoover, the Secretary of Commerce.¹⁷ Today we associate



Al Smith



Herbert Hoover

Hoover as being the President during the depths of the Great Depression, with a poor reputation. In 1928, however, he was one of the most popular men in the nation, nicknamed “the Great Engineer” and known for his famine relief work in Europe after World War I and his innovative ideas about government and business.¹⁸ In fact, his elevation to the Presidency was seen as inevitable—thus his campaign slogan “Who but Hoover?”.

Hoover seemed poised to break the “Solid South” and deliver states like Texas to the Republicans for the first time since Reconstruction.

Yet Parr, Johnson and the San Antonio Machine saw an opportunity in Smith’s nomination. The Fourteenth Congressional District had many Hispanic voters, who would *like* that Smith was a Catholic. Moreover, the German Americans in the District were known to like beer. They liked Smith’s “wet” stance. If these groups—especially the formerly Republican Germans—voted for Smith, there might be enough down ballot Democratic voting to elect McCloskey.

The Democrats knew Wurzbach had another problem. Many years ago, President Ronald Reagan popularized what became known as “The Eleventh Commandment: Thou shalt not speak ill of



John Tobin



C.M. Chambers

¹⁵ “National Campaign Sidelights,” *Dallas Morning News*, September 13, 1928,1.

¹⁶ Wayne Thorburn, *The Republican Party of Texas*, 46.

¹⁷ *Ibid.*, 40.

¹⁸ David Burner, *Herbert Hoover, the Public Life*, (Knopf Doubleday, 1979) *passim*.

any fellow Republican."¹⁹ Even if not articulated, it was a rule followed faithfully by Republicans for years before Reagan. In the 1928 contest against Wurzbach, this rule was shamelessly violated. The Texas Republican Party State Chairman supported McCloskey.²⁰

That man was Rentfro Banton Creager. Today Texas historians will remember Rayburn, Parr, Garner, and Sam Johnson as well-known figures in the Texas Democratic Party in the early Twentieth Century. Yet no one remembers Creager, the Texas Republican Party leader for much of the early century. If for nothing else but for the havoc that he wrought, he deserves to be remembered. Born in 1877 in Waco, he practiced law and became a prominent, wealthy figure in Brownsville.²¹ Creager became active in Republican politics in the Valley and liked to be known as "The Red Fox of the Rio Grande."²² He was the Republican Gubernatorial candidate (or sacrificial lamb) against Pa Ferguson. In 1920, he was an early supporter of Warren G. Harding. In April 1921, he was elected State Party Chairman.²³ In 1923, he became Republican National Committeeman for Texas.²⁴ By Texas standards, he was a rising Republican politician.



Rentfro Banton Creager

Yet so was Harry Wurzbach, and that caused conflict. Texas Republicans, with rare exceptions such as Wurzbach, were not factors in electoral politics. But the Party was significant in another respect: patronage. Except for the eight years of the Woodrow Wilson administration, Republicans controlled the White House from 1897 until 1933. This meant that Republicans in a particular state would control all federal appointments from Federal Judgeships to Customs Collectors to Postmasters. Indeed, Creager's uncle had been the beneficiary of a patronage appointment under President Benjamin Harrison as a Customs Collector. Creager himself had been a Customs Collector under President Taft.²⁵ With literally thousands of federal jobs to award, there were those who felt the control of patronage took precedence over electing Republican candidates.²⁶ Creager was regarded as fitting into that category. Many believed him corrupt.

Which of these Republicans would control Texas patronage? In states with many more Republicans, Senators and Congressmen held great sway and it was the tradition to allow them patronage. In Texas, without such officeholders, it was the party apparatus that handled appointments. Now that Wurzbach had been elected, he wanted to play a role. He was bitterly opposed by Chairman Creager. They constantly clashed over the issue. Creager even tried to deny Wurzbach patronage picks in his own congressional district. In turn, Wurzbach attempted to

¹⁹ Ronald Reagan, *An American Life*, (Simon and Schuster 1990) 150.

²⁰ Wayne Thorburn, *The Republican Party of Texas*, 45-46.

²¹ Paul D. Casdorff, "Creager, Rentfro Banton," *Handbook of Texas Online*, accessed July 23, 2021, <https://www.tshaonline.org/handbook/entries/creager-rentfro-banton>.

²² Roger M. Olien *From Token to Triumph*, 16.

²³ *Ibid.*

²⁴ Wayne Thorburn, *The Republican Party of Texas*, 29.

²⁵ Wayne Thorburn, *The Republican Party of Texas*, 25.

²⁶ *Ibid.*, 28.

recruit a candidate for state chairman to run against Creager.²⁷ Their bitter conflict spilled out in the open. President Harding himself became involved, chiding both men, and engineering a short-lived truce.²⁸

That truce soon ended. Charges and countercharges flew, with Wurzbach alleging that Creager was selling appointments among other claims, and thus weakening Creager's position in Washington. Creager fought back with his own charges.²⁹ Eventually things turned rough. In 1926, police were called to the Bexar County Republican Executive Committee meeting to break up fistfights between the pro-Wurzbach and pro-Creager factions.³⁰ By 1928 both men sought to seat their own delegation at that year's Republican National Convention, with Creager winning that fight.³¹

Now, with the nomination of Augustus McCloskey, Creager saw his chance for revenge. While he could not give McCloskey his open endorsement, the Texan Republican State Chair made sure McCloskey knew of his "tacit" support.³² He then proceeded to dry up as much of Wurzbach's financial support as he could.

So, as the 1928 election grew nearer, with both a Democratic machine and a Republican Chair against him, the deck appeared to be stacked against Harry Wurzbach. Yet those counting on the Congressman's defeat hadn't yet heard from the man.

The 1928 Campaign

The Congressional campaign in the Fourteenth District kicked off in early October 1928. Wurzbach opened his campaign at Beethoven Hall in San Antonio. Interestingly, his speech was broadcast by radio. He campaigned on his record and noted the good he could do San Antonio because of his rank on the Military Affairs Committee. On the crucial issue of Prohibition, he claimed he supported the Eighteenth Amendment.³³ Yet others believed that Wurzbach was a "wet". McCluskey, on the other hand, was viewed as "dry", but not a "dry dry."³⁴ Wurzbach campaigned vigorously to retain his seat. Yet he also stumped for Herbert Hoover. In what later could be viewed as a mistake, Wurzbach would take time away from his own campaign to stump for Hoover in Oklahoma.³⁵ McCloskey campaigned as well, but there seemed to be few reports of his speeches—or his support of Al Smith. The Democratic Machine would take care of McCloskey. One newspaper noted "His friends are making a tremendous campaign for [him]."³⁶

²⁷ *Ibid.*, 30.

²⁸ Roger M. Olien *From Token to Triumph*, 33-34.

²⁹ *Ibid.*, 39-41.

³⁰ *Ibid.*

³¹ *Ibid.*, 43.

³² Wayne Thorburn, *The Republican Party of Texas*, 47.

³³ "Wurzbach Bids for Office On Record," *San Antonio Light*, October 6, 1928. 9-A.

³⁴ Hugh Nugent Fitzgerald, "Pot Shots at Politics," *Austin American Statesman*, September 19, 1928, 4.

³⁵ "Texas Congressman Spoke Here Tuesday," *The Frederick [Ok] Press*, October 19, 1928, 1.

³⁶ Hugh Nugent Fitzgerald, "Pot Shots at Politics," *Austin American Statesman*, October 18, 1928, 4.



A crowd gathered to hear Herbert Hoover speak from the rear of his train in 1928 in Bristol, Tenn.

The Presidential Campaign was heated in Texas. For the first time, a Republican had a shot at winning the state. Hoover, who had never held elective office before, was a solid Iowa born Mid-westerer with a sterling record of public service. More importantly for Texans, at least most Texans, he was not Catholic and not “wet.” In contrast, Al Smith was both things, in addition to being a product of Tammany Hall. Despite his slogan “All for Al” many prominent Texas Democrats would not support him and became “Hoovercrats.” Cartoons in Texas newspapers extolled Hoover while mercilessly mocking Smith’s Brooklyn accent.³⁷

While these factors boded well for Republican votes in other parts of Texas, there were some contraindications in the Fourteenth Congressional District. One newspaper wrote “...there are many cross currents in the district.”³⁸ Indeed, many Hispanics would vote for a fellow Catholic and many Germans Americans would vote for an anti-prohibition candidate. Thus, the Democrats would have a shot in usually reliably Republican Bexar and Guadalupe Counties—Counties that had been strong for Wurzbach before.³⁹ The Democratic Organization was strong and primed to get out the vote.⁴⁰

³⁷ See *San Antonio Light*, October 6, 1928. 9-A.

³⁸ Hugh Nugent Fitzgerald, “Pot Shots at Politics,” *Austin American Statesman*, October 18, 1928, 4.

³⁹ Roger M. Olien, *From Token to Triumph*, 48.

⁴⁰ Hugh Nugent Fitzgerald, “Pot Shots at Politics,” *Austin American Statesman*, October 18, 1928, 4.

Still, there was a contraindication to the contraindications. Wurzbach had a “personal hold” on the people of his district. After all these years in public office in the area, he knew many people and was well-liked.⁴¹ These personal connections transcended party lines. Moreover, Wurzbach was now an eight-year incumbent who was a master of pork barrel politics and brought many government projects, such as Randolph Airfield, into the district.⁴²

Another one of the contraindications in this race was opposition to Wurzbach from within his own party, which might have helped him. One newspaper asked, “Will Harry get the Creager knife Nov. 6?” The newspaper answered that question “no,” saying “...Harry has been able to keep his political fences intact in three hotly contested campaigns.”⁴³ Wurzbach never over-emphasized his status as a Republican in his district. His running dispute with Creager was said to be highly useful in aiding him in disassociating himself from the Republican Party; it allowed voters to respond to him as an individual.⁴⁴



Al Smith giving a campaign speech

Of course, there would be vote-splitting in the campaign. Texans who voted for Hoover would then vote Democratic for the rest of the ticket. Yet the converse would be true in the Fourteenth District. Rarely for Texas at the time, African Americans actually voted in Bexar County. They were loyal to Harry Wurzbach. Wurzbach had been the lone Southern Congressman who voted for an anti-lynching bill. He spoke before the NAACP, a rare thing for a Southern Congressman, and stated he was a “friend of the negroes.”⁴⁵ By 1928, however, the “lily-white” faction of the

⁴¹ Roger M. Olien, *From Token to Triumph*, 54.

⁴² “Harry M. Wurzbach Is Dead,” *San Antonio Light*, November 6, 1931, 1.

⁴³ Hugh Nugent Fitzgerald, “Pot Shots at Politics,” *Austin American Statesman*, October 18, 1928, 4.

⁴⁴ Roger M. Olien, *From Token to Triumph*, 52.

⁴⁵ Wayne Thorburn, *The Republican Party of Texas*, 31.

Texas Republicans held sway (this faction included Creager) and excluded African Americans from leadership. They responded by voting for Al Smith. Yet they did not abandon Wurzbach.⁴⁶

Thus, the stage was set for one of the most curious of election days in Texas history. Even so, after the election, as Alice might say, things were to become “curiouser and curiouser.”

Election Night at Midnight

On November 6, 1928, returns from statewide elections and from the 11 counties of the Fourteenth District poured in. Herbert Hoover won Texas by 16,481 votes.⁴⁷ And, on election night, Wurzbach was leading McCloskey by the slimmest of margins—28,888 to 28,601—a difference of 287 votes.⁴⁸ Wurzbach seems to have pulled it off.

Or had he? Different returns began to pour in, all giving different results. On November 7, the evening edition of the *Brownsville Herald* reported that as of 3:00 p.m. that day, McCloskey led Wurzbach by 3000 votes.⁴⁹ These figures were never seen again. While the *Brownsville Herald* was wildly inaccurate, other papers, even national ones, were now saying McCloskey had won. Now, the *Washington Evening Star* wrote “Defeat seemed likely for Harry M. Wurzbach...His Democratic opponent, August McCloskey of San Antonio, held a substantial lead.”⁵⁰ Even this soon changed. It appeared figures given by the Election Bureau were at odds with those reported by the newspapers. As of early November 8, newspapers, rather than calling the race, were saying the election “remained in doubt,”⁵¹ and that the lead was “seesawing back and forth.”⁵²

By late Thursday night November 8, Wurzbach had regained a sixty-four-vote lead.⁵³ By Friday, November 9, three days after the election, some newspapers were saying that Wurzbach had won a narrow victory.⁵⁴ The *San Antonio Light* congratulated itself for being the first to give the public the news of Wurzbach’s re-election, “backed up” by “its own tabulation compiled by its special election day organization.” That tabulation, based on “complete but unofficial returns” from every county in the district gave Wurzbach a majority of 129 votes.⁵⁵ That figure would go up to 245.⁵⁶

A few days later, the *Light* was eating crow. On November 15, the Newspaper’s “above the banner” headline read “M’Closkey Holding Lead.”⁵⁷ The accompanying newspaper article said that

⁴⁶ Alwyn Barr, *Black Texans: A History of African Americans in Texas 1528-1995*, (University of Oklahoma Press, 1996), 116.

⁴⁷ “Plurality of 16, 481 Votes Given Hoover,” *Dallas Morning News*, November 8, 1928, 1.

⁴⁸ *Ibid.*

⁴⁹ “McCloskey Leads Wurzbach By 3000,” *Brownsville Herald*, November 7, 1928, 10.

⁵⁰ “‘Revolt’ of Texas Becomes Reality,” *Washington Evening Star*, November 7, 1928, 13.

⁵¹ “Anti-Al Dems Plan to Seek Party Power,” *Brownsville Herald*, November 8, 1928, 1.

⁵² “Republicans Hold Texas for Hoover,” *Houston Post-Dispatch*, November 8, 1928, 1.

⁵³ *Ibid.*

⁵⁴ “Smith Supporters Defy Texas Bolters,” *Denver Post*, November 9, 1928, 1.

⁵⁵ “Light Again Gets it First,” *San Antonio Light*, November 9, 1928, 1.

⁵⁶ “Candidates to Contest Boxes,” *San Antonio Light*, November 15, 1928, 1.

⁵⁷ “M’Closkey Holding Lead,” *San Antonio Light*, November 15, 1928, 1.

though the race was still in doubt, McCloskey “leads by an apparent majority of forty votes.”⁵⁸ What had happened in that one week? *More votes from Bexar County had come in.* When the Bexar County clerk’s returns had been tabulated in the week of the election, along with the ten other counties’ votes, Wurzbach had a majority. Now the official canvass began, and by November 15, it had found 285 more votes for McCloskey in Bexar County precincts.⁵⁹

The Bexar County Clerk’s office had done the first vote tabulation for the County. Now, it was the Bexar County Commissioner’s Court that was conducting this canvass. And who was the head of that Court? Bexar County Judge Augustus McCloskey. Already many were calling foul. Already rumors were flying about the Democratic machine altering vote totals. Wurzbach was livid. He accused San Antonio Mayor C.M. Chambers, head of the machine, of instructing city and county employees to vote for McCloskey.⁶⁰ Now he suspected election fraud, and only a few days after the polling he announced that he would file an Election Contest in the United States House of Representatives if he lost.⁶¹

By November 20, two weeks after the election, the Bexar County Commissioners Court met and ratified its official canvass of the Bexar County poll. It had given McCloskey additional Bexar County votes “discovered” after the county clerk’s total. Thus, McCloskey won the Congressional seat, though the margins were still fluid. One newspaper said his margin was 240; another said it was 309.⁶² Nevertheless, it was all over but the shouting. And shouting there would be. Wurzbach’s followers immediately said he would follow through with the filing of an election contest. Wurzbach said he had been “‘counted out’ of 573 votes” in Bexar County. Indeed, the vote totals were suspicious. The precinct vote tally sheets as accepted by the Commissioners Court were in some cases different from the tally from the County Clerk. The Commissioners threw out five boxes in supposedly safe Wurzbach precincts for technical reasons. Some returns from Election Judges were found in unsealed envelopes, leading to the possibility they had been tampered with. Erasures were found on some tally sheets.⁶³ And why was the winning candidate overseeing the vote-counting?

Wurzbach was convinced the election had been stolen from him. He was reportedly close to a nervous breakdown over what had happened.⁶⁴ A mass meeting of Wurzbach supporters was held in San Antonio to protest the tally.⁶⁵ For his part, Judge McCloskey assailed “newspaper propaganda” about the alleged discrepancies and said that he had not participated in the canvass, even though he was County Judge. He said that with 600 to 1000 election clerks, there were bound to be some unintentional errors. Some election judges must have forgotten to seal their envelopes. Wurzbach was just a sore loser.⁶⁶

⁵⁸ “Candidates to Contest Boxes,” *San Antonio Light*, November 15, 1928,1.

⁵⁹ *Ibid.*

⁶⁰ “Wurzbach Wars on S.A. Ring, Mayor Fights Back,” *San Antonio Light*. November 9. 1929,1.

⁶¹ “Candidates to Contest Boxes,” *San Antonio Light*, November 15, 1928,1.

⁶² “Judge McCloskey Declared Winner,” *The Corpus Christi Times*, November 20, 1928, 1; “A. McCloskey Wins Election,” *Dallas Morning News*, November 21, 1928, 1.

⁶³ “A. McCloskey Wins Election,” *Dallas Morning News*, November 21, 1928, 1.

⁶⁴ “Jurist Winner of House Post,” *Houston Post-Dispatch*, November 21, 1928, 1.

⁶⁵ *Ibid.*

⁶⁶ “A. McCloskey Wins Election,” *Dallas Morning News*, November 21, 1928, 1

This election was far from legitimately over. The allegations went beyond mere rumors. Now the election entered a new phase: one that would involve grand juries, Congressional hearings, criminal proceedings, and the Governor's office.

The State v. Augustus McCloskey

Three days after the Commissioners Court certified the vote, Judge W.W. McCrory, Judge of the 94th State District Court, convened a "Court of Inquiry" to investigate the irregularities in the Bexar County vote.⁶⁷ The Bexar County District Attorney, Lamar Seeligson, conducted the hearing with the idea of determining whether there was enough evidence to go to a grand jury. In several days of testimony, many damaging items of evidence came out. Two precinct election judges testified that the returns, as they saw them, gave McCloskey fewer votes in their precincts than the Commissioners gave him in those precincts. County Clerk Jack Burke testified that based on the returns he tabulated, the votes for Wurzbach would have given the incumbent the election. Another election judge testified that he had loaned his returns to a school board employee and when they were returned, the figures had been changed. There was also a concern about whether the returns had been safeguarded after the election and who had access to them.⁶⁸ After this, the District Attorney had heard enough. He abruptly ended the Court of Inquiry and asked that a Grand Jury be convened, because "the Grand Jury is a body that can act."⁶⁹

On December 3, Congressman-Elect McCloskey was indicted, along with his secretary and a former election judge, for altering the election returns.⁷⁰ The Grand Jury had worked in secrecy, and nothing had leaked about its imminent action, which was a surprise to many. Oddly, what was contained in the indictments was not made public. McCloskey was arrested and quickly made bond.⁷¹

Where did this leave the election? On the day the indictments were handed down, Wurzbach filed a formal motion with the Bexar County Commissioner's Court seeking to re-canvass the election. Yet the Commissioner's Court could not rule on the motion that day because it did not have a quorum, possibly because its Chair had just been indicted. Later that week the Court denied the motion, after receiving opinions from both the County Attorney and District Attorney that since the Court had already certified its results to the Texas Secretary of State, the Court could take no further action.⁷² Wurzbach, perhaps judging the time to be ripe, filed his formal Notice of Contest of Election with the House of Representatives that week.⁷³ He knew that an election contest in the House was his best chance of overturning the election. Yet in these unique circumstances where your opponent has been indicted for election fraud, it would not hurt to press forward on the state level as well.

⁶⁷ "Bexar Ballot is Under Probe," *Houston Post*, November 23, 1928, 25.

⁶⁸ "County Clerk Testifies in Election Case," *Dallas Morning News*, November 25, 1928, 1.

⁶⁹ "Bexar County Ballot Fight to Grand Jury," *Dallas Morning News*, November 27, 1928, 1.

⁷⁰ "McCloskey is Indicted at San Antonio," *Dallas Morning News*, December 5, 1928, 1.

⁷¹ "M'Closkey Indicted in Bexar Election Inquiry," *San Antonio Light*, November 15, 1928, 1.

⁷² *Ibid.*; "Wurzbach Recheck Request is Refused," *Houston Post*, December 8, 1928, 4.

⁷³ "Wurzbach to Contest McCloskey Election," *Houston Post-Dispatch*, December 2, 1928, 10.

Thus, Wurzbach did his best to prevent the Texas Secretary of State from issuing McCloskey a Certificate of Election. The State Board of Elections granted Wurzbach a hearing. At that hearing, while the Board did withhold the Certificate temporarily, it indicated it was probable it lacked jurisdiction to act. Texas Governor Dan Moody, a member of the Board, was present, and intrigued by the legal issue, was seen going back and forth to his office to examine his lawbooks. While sympathetic, he did not believe the Board could go around the canvass.⁷⁴

Public opinion now turned against McCloskey. On December 23, a mass meeting of 20,000 San Antonians occurred where these citizens authorized a telegram to be sent to the Texas Secretary of State protesting issuing a Certificate of Election.⁷⁵ It had no legal bearing but was probably another blow to McCloskey. What a miserable Christmas the man must have had. In November he had reached the pinnacle of his career by being elected to Congress. Now he was under indictment and turned on by his fellow townsmen. Wurzbach was probably miserable as well, feeling he had been cheated out of an office he loved.

The new year brought a Certificate of Election for McCloskey. On Saturday, January 5, 1929, the State Election Board certified the election for the Democrat. The Board believed it could not refuse a Certificate since the returns certified to them showed the election of McCloskey. Unusually, though, the Board noted there had been a protest of the returns alleging fraud but had determined its hands were tied.⁷⁶ And there was the small matter of the criminal trial. One Board member commented that she doubted a convict would be seated in Congress.⁷⁷

A Judge on Trial

McCloskey was set to go to trial the very week after he received the Certificate of Election. On the day set for trial, Judge McCrory transferred the case to Austin. Probably cognizant of the mass protest, the Judge noted that almost every available juror had voted in the election, He also cited "the intense local and political issues and the wide publicity" as the reasons for the change.⁷⁸ As it was, the case would not be tried until late February, shortly before the next session of Congress would begin.

In the meantime, the vote tallying continued. Wurzbach was excited in January to find that the Guadalupe County Judge had discovered 725 votes for him that had been overlooked due to the judge's error. These votes would have given Wurzbach the election.⁷⁹ The next day, however, it developed that the returns from Bee County, a McCloskey stronghold, had never been received by the Secretary of State and added to the canvass. Duplicate returns from Bee County were sent in. Once counted, McCloskey now had a majority of 319, even counting the new votes for Wurzbach.⁸⁰ So, once more, the election would come down to the disputed Bexar County precincts.

⁷⁴ "Action on Bexar Congressional Vote is Delayed," *Beaumont Enterprise*, December 19, 1928,1.

⁷⁵ "Congress Race Protest Made," *Houston Post-Dispatch*, December 23, 1928, 1.

⁷⁶ "Ballot Victory of M'Closkey Certified," *San Antonio Light*, January 5, 1929, 11-A.

⁷⁷ "Action on Bexar Congressional Vote is Delayed," *Beaumont Enterprise*, December 19, 1928,1.

⁷⁸ "Cases against McCloskey to Austin Court," *Dallas Morning News*, January 11, 1929, 1.

⁷⁹ "725 Votes for Wurzbach May Change Result," *Dallas Morning News*, January 9, 1929, 1.

⁸⁰ "Say Bee Vote Gives Victory To McCloskey," *Dallas Morning News*, January 10, 1929, 1.

McCloskey's trial opened on February 20, 1929. The Prosecutor was twenty-three-year-old Travis County District Attorney Henry Brooks, assisted by Seelingson. The first witness was Edward Engelhart, an election judge of the 20th Precinct who testified that his returns showed McCloskey had received 298 votes, while Wurzbach had received 262. Two days after the election, Fritz Russi, a city employee demanded a copy of the tally sheet. When his copy was returned, 30 more votes had been added for McCloskey.⁸¹ A handwriting expert was called to testify that he examined the returns and that the totals for McCloskey had been altered.⁸² This was important evidence, establishing the tallies had been altered, but was McCloskey involved?

Witnesses said he was. David Dewhurst,⁸³ the assistant county clerk of Bexar County, testified that he altered the returns from four precincts sufficiently to give McCloskey a plurality over Wurzbach.⁸⁴ Dewhurst claimed that McCloskey himself brought the election returns to him and watched as he and his assistant altered the returns.⁸⁵ Dewhurst said McCloskey had first shown no interest in altering the vote totals. Dewhurst then told him that Wurzbach had been "counted in" in a dozen San Antonio boxes. Then, McCloskey acceded to the scheme.⁸⁶ Dewhurst swore that Ernest Altgeld, the Bexar County Democratic Chairman, had told him "Get this election. I don't care how in the hell you get it but get it."⁸⁷ Dewhurst now said he was testifying because he was "double-crossed" and set up to be the patsy⁸⁸.

Dewhurst dropped another bombshell in his testimony. He claimed that Altgeld had told both him and McCloskey that he had met with R.B. Creager and Eugene Nolte, another anti-Wurzbach Republican, at the St Anthony Hotel in San Antonio and they told Altgeld to win the election at all costs. A St. Anthony's assistant manager confirmed Creager and Nolte were staying at the hotel when Dewhurst said this meeting occurred.⁸⁹

Dewhurst was far away from being a perfect witness. He had been granted immunity by the state in return for his testimony. He admitted that he had perjured himself during the Court of Inquiry. The defense called Altgeld, who denied he had ever said the things Dewhurst said he did, as well as other witnesses who questioned Dewhurst's credibility.⁹⁰

As has happened with a score of scandals since, the question for Augustus McCloskey became: what did he know and when did he know it? Given what Dewhurst had said, McCloskey had to testify. McCloskey took the stand for an hour and a half and told his story calmly without much drama. He denied everything Dewhurst said. The alleged vote alteration, according to Dewhurst, had occurred on the Saturday afternoon following the election at the Bexar County

⁸¹ "McCloskey's Trial Begins," *Dallas Morning News*, February 21, 1929, 1.

⁸² "Dewhurst Story Attacked," *San Antonio Light*, February 24, 1929, 1.

⁸³ The author has researched this man and found no relation to the former lieutenant governor of the same name.

⁸⁴ "M'Closkey Said to Have Altered Vote," *Arkansas Gazette*, February 23, 1929, 10.

⁸⁵ Roger M. Olien, *From Token to Triumph*, 50.

⁸⁶ "M'Closkey Said to Have Altered Vote," *Arkansas Gazette*, February 23, 1929, 10.

⁸⁷ Roger M. Olien, *From Token to Triumph*, 50.

⁸⁸ "Alteration of Bexar Returns Acknowledged," *Dallas Morning News*, February 23, 1939, 1.

⁸⁹ Roger M. Olien, *From Token to Triumph*, 51.

⁹⁰ Roger M. Olien, *From Token to Triumph*, 50; "Dewhurst Story Attacked," *San Antonio Light*, February 24, 1929, 1.

Courthouse. McCloskey said he could not have been there, because he left the Courthouse shortly after 1:00 p.m. to go dove hunting.⁹¹ His story was backed up by the man he went hunting with—the Reverend Robert T. Small, a Baptist Minister. Deputy Sheriff Frank Newnam and another county employee testified they had seen McCloskey and Small together that afternoon.⁹²

The defense attorneys pulled out all the stops—and tried to pull at some heartstrings—when they called character witnesses to attest to Judge McCloskey’s good character. Several San Antonio judges, and the Travis County Judge, testified to McCloskey’s reputation for honesty.⁹³ Even curmudgeonly but renowned Federal District Judge Duval West was called to testify that he had known McCloskey for twenty-five years and that he was an “upright honorable man.”⁹⁴ The Defense made sure that McCloskey’s wife and four children were present, including “[f]reckled-faced” Tommy McCloskey, eight years old, and his daughter who “hung at her mother’s coat.”⁹⁵ Even McCloskey’s seventy-eight-year-old father testified for his son. James McCloskey related that his son had mostly educated himself and spoke of how as Judge he had built the new courthouse and many roads. Poignantly, he related “Gus has never been arrested before this.”⁹⁶

Both sides’ closing arguments lasted almost eleven hours. The jury then took forty-five minutes to bring in a verdict of acquittal.⁹⁷ To the cheers of spectators, McCloskey hugged his family and shook hands all around. He then went to the Stephen F. Austin Hotel for a coffee and a piece of pie, and then went home to San Antonio to pack his bags to go to Washington to be sworn into Congress.⁹⁸

All was not roses for McCloskey, however. While he had been cleared criminally of involvement, he did not deny that vote tallies had been changed—just not by him.⁹⁹ The statements by Dewhurst and others that returns had been altered were not challenged by the Defense. Thus, the stage was set for the Election Contest before the House.

On March 6, 1929, William Tyler Page, clerk of the House of Representatives placed McCloskey’s name on the “temporary roll” of the House. The Clerk said he had received McCloskey’s credentials and could not do otherwise. McCloskey would retain the seat until the Election Contest could be heard.¹⁰⁰

Wurzbach would be on the attack in that contest. Yet Wurzbach himself was about to face an attack.

⁹¹ Kemper Diehl, “The Big Election Steal: Jury cleared McCloskey,” *San Antonio Light*, November 19, 1958, 32.

⁹² *Ibid.*

⁹³ “Friends Tell Good Repute of McCloskey,” *Dallas Morning News*, February 24, 1929, 1.

⁹⁴ “Dewhurst Story Attacked,” *San Antonio Light*, February 24, 1929, 1.

⁹⁵ Harold Young, “M’Closkey Acquittal Comes as Dramatic Trial Finale,” *San Antonio Light*, February 28, 1929, 8.

⁹⁶ Kemper Diehl, “The Big Election Steal: Jury cleared McCloskey,” *San Antonio Light*, November 19, 1958, 32.

⁹⁷ “Bexar County Judge Is Acquitted of Vote Fraud,” *Beaumont Journal*, February 28, 1929, 1.

⁹⁸ Harold Young, “M’Closkey Acquittal Comes as Dramatic Trial Finale,” *San Antonio Light*, February 28, 1929, 8.

⁹⁹ Wayne Thorburn, *The Republican Party of Texas*, 47.

¹⁰⁰ “Put McCloskey on Temporary Roll of House,” *Dallas Morning News*, March 7, 1929, 1.

Big Election Steal

Winner Denied Knowing of Fraud

(This is the second of a series of six articles on the big election steal in Bexar county. The count-out of U. S. Rep. Harry Wurzbach in the general election of 1928 resulted in the smash-up of the old county-city machine which had ruled for 40 years.)

By KEMPER DIEHL
Recalling the great election steal of 1928 Sheriff Kilday, who was San Antonio's youthful chief of police at the time, said recently:

"If John Tobin had been alive it wouldn't have happened. Tobin wouldn't have stood for that stuff."

Knew Ropes

It is true that when Tobin was boss of the old city-county machine he knew just what was going on and why.

But when he died and C. M. Chambers left the district attorney's office to become mayor, the county organization was left without a real leader.

And with no boss, zealous machine partisans soon mired the courthouse in big trouble over stolen votes.

County Judge Augustus McCloskey told a jury that he knew nothing about the alteration of election returns which counted him into the U. S. House of representatives over Harry Wurzbach, veteran congressman from the south Texas district.

Jury Agreed

Men who knew McCloskey well have always maintained he knew nothing of the fraud. And so ruled the jury which heard his case.

As a matter of fact, the mystery of the shenanigans in the election of 1928 has never been solved.

Though lengthy probes proved without a doubt that votes had been stolen from Wurzbach and given to McCloskey, no one was ever



JUDGE AUGUSTUS McCLOSKEY AND COUNTY CLERK JACK BURKE
Burke's set of returns had Wurzbach winning the race.

Mr. _____	received	votes for
Mr. AUGUSTUS McCLOSKEY	received 298	votes for
Mr. HARRY M. WURZBACH	received 260	votes for
Mr. _____	received 231	votes for

PHOTOGRAPH SHOWS PRECINCT 20 RETURNS HAD BEEN ALTERED
McCloskey's figure of 298 was crudely changed to 328.

found guilty of wrongdoing. Still, over the months of hearings and trials, Bexar county voters got a pretty good idea of what happened.

For a week following the election it appeared Wurzbach had carried the district by 260 votes. In those days of the paper

ballot, precinct election officials drafted three sets of returns. The precinct election (Continued on Page 7, Col. 1)

The United States v. Harry Wurzbach

On February 26, 1929, the day before McCloskey was acquitted in Austin, a Federal Grand Jury in Waco indicted Harry Wurzbach for violations of the new Federal Corrupt Practices Act.¹⁰¹ The claim was that in 1924 and 1926 Wurzbach had accepted illegal campaign contributions from Federal Employees. Apparently, Wurzbach had received some contributions from some railway postal clerks, from the Houston Postmaster, a Veterans Affairs employee, and others. Wurzbach admitted that he had received the contributions, but he believed that they were not illegal because they occurred before his nomination. He did not believe the Corrupt Practices Act applied to primary elections.¹⁰²

If there was ever a “political” prosecution, this was it. It developed that the charges were the handiwork of R.B. Creager, seeking to eradicate Wurzbach once and for all. In early 1929, U.S. Senator Smith Brookhart led a Senate subcommittee that probed the sale of federal patronage in southern states. He held hearings that focused on Texas. There was much unfavorable testimony about Creager, including allegations that Creager had tipped off bootleggers to prohibition agent’s raids in exchange for money and that he extorted money for federal positions.¹⁰³ Wurzbach



Smith Brookhart

testified that one scheme involved the hopeful applicant signing a promissory note to Creager and the state organization, and identified over 350 such notes. In revenge, when Creager testified before the subcommittee, he alleged Wurzbach had taken the “illegal” campaign donations. Wurzbach was indicted while Creager was still testifying.¹⁰⁴

When Creager denied being involved in the indictment, Senator Brookhart lit into him. Brookhart said that Creager “showed by statements before the committee that he knew the indictment had been obtained, even though it was not yet public, and had been obtained by a United States Attorney he had appointed, John D. Hartman.” Brookhart concluded “From the record I have reached the conclusion that he was responsible for the indictment of Wurzbach

for the purpose of stopping the investigation [into him].”¹⁰⁵ That was undoubtedly true, but we should not disregard Creager’s hatred for Wurzbach.

It was odd to a casual observer that the indictment was brought in Waco, some 181 miles from San Antonio. Yet it made sense when it was considered that Creager wanted to keep the case far away from a town where Wurzbach was popular. That gambit did not work. The venue was quickly changed to San Antonio to the Court of Judge Duval West.¹⁰⁶

¹⁰¹ “Wurzbach Indicted,” *San Antonio Light*, March 3, 1929, 1.

¹⁰² “Wurzbach to Force Issue of Indictments,” *Dallas Morning News*, March 7, 1929, 1.

¹⁰³ Wayne Thorburn, *The Republican Party of Texas*, 48.

¹⁰⁴ *Ibid.*, 49.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*, 53.

The indictment enraged Wurzbach, who lashed out at Hartman as a puppet of Creager.¹⁰⁷ Wurzbach had a reputation for honesty.¹⁰⁸ No doubt he genuinely believed that he had not broken the law. Now his attorneys brought a motion to dismiss before Judge West.

On March 23, 1929, after a hearing that lasted less than two hours, Judge West dismissed the indictment. He held that the Federal Corrupt Practices Act did not apply to primary elections. If it did so, it was plainly overreaching and would be unconstitutional.¹⁰⁹ The reasoning was that political parties were essentially private clubs, and that their primaries were not state action and could not be affected by the Act's language relating to a "political purpose" for the contributions.¹¹⁰ Hartman stated he would be appeal to the United States Supreme Court.

Creager would not relent. Since Creager had been an early supporter of Hoover, and helped him win Texas, Creager had friends in the administration, and in the Justice Department. He sent a telegram to the President's secretary asking that the Justice Department appeal Judge West's decision.¹¹¹ With the full knowledge of President Hoover, the Justice Department prepared a notice of appeal.¹¹² Yet the question of whether the Supreme Court would take the case would not be determined for many months. In the meantime, there was an Election Contest to be heard.

Eyes on the Prize

The United States House of Representatives jealously guards its rights to determine the qualifications of its own members. Almost every new Congress had seen Notices of Contest filed, and they are referred to a Special House Committees on Elections, which will then set out a discovery schedule for depositions and briefing, A record is developed and submitted to the Committee, who then hears arguments. The Committee then prepares a Resolution regarding its decision to be sent to the full House, which then votes.

It can be a time-consuming process. It would be so here. 1929 saw no less than six contests filed in the House. In April, House leadership announced that consideration of the cases would not be undertaken until the regular session of Congress began in December.¹¹³ Wurzbach plodded on with his preparation. By March 30, some fifteen depositions were taken, many of election officials who testified about discrepancies in different sets of returns.¹¹⁴

It was not until early November that Wurzbach was told that the Congressional hearing would begin in mid-December.¹¹⁵ This was good news. There was some bad news too. On October

¹⁰⁷ "Wurzbach Indicted," *San Antonio Light*, March 3, 1929, 1.

¹⁰⁸ Kemper Diehl, "The Big Election Steal: It Smashed the Ring," *San Antonio Light*, November 16, 1958,1.

¹⁰⁹ "Judge West Quashes Indictment Against Harry M. Wurzbach," *Dallas Morning News*, March 24, 1929,1.

¹¹⁰ *United States v. Wurzbach*, 31 F.2d 774 (W.D. Tx 1929).

¹¹¹ Wayne Thorburn, *The Republican Party of Texas*, 49.

¹¹² Roger M. Olien, *From Token to Triumph*, 53.

¹¹³ "Half-Dozen Vote Contests in House," *Arkansas Gazette*, April 15, 1929, 3.

¹¹⁴ "Get Testimony For Wurzbach," *Dallas Morning News*, March 31, 1929, 3.

¹¹⁵ "Judgment on Contest Soon," *San Antonio Light*, November 7, 1929, 29.

28, the Supreme Court announced it would review Judge West's decision in *U.S. v. Wurzbach*.¹¹⁶ There was also some bad news for McCloskey. Given the hue and cry, a San Antonio Federal Grand Jury, aided by a Department of Justice attorney, began to investigate the election.¹¹⁷ Nothing would come of this, to the chagrin of some Republicans.¹¹⁸ Still, at least there was light at the end of the tunnel for all the disputes.

Finally, on December 13, 1929,¹¹⁹ three election committees were appointed, with Wurzbach's case submitted to Election Committee No 3. The Committee was composed of six Republicans and three Democrats, none of whom were from Texas. Given the Holidays, there was more delay, and the Hearing would not start until January 20, 1930. The Committee ordered Bexar County officials to appear, bringing all the election returns, tallies, and ballots.¹²⁰

When the Hearing opened, McCloskey's attorney immediately asked for a recount of all ballots in the district. In contrast, Wurzbach's attorney asked the Committee to focus on the fraud in Bexar County.¹²¹ He stated he was sure the returns had been tampered with but did not know if the ballots had been altered.¹²² The testimony about altered tally marks, and the fact that the returns had not been safeguarded was adduced again as it had been at the Court of Inquiry and McCloskey's trial.

McCloskey's attorney argued that the many changes in the tally sheets and return lists were "honest clerical errors." This comment drew "sharp and bitter fire" from Congressman Charles Gifford, who said:

"That is ridiculous. Once, we might stretch our credibility or even twice. But not as many times as appear here."

Representative Charles O'Connor was harsher:

"The election clerks must have all been cross-eyed,"¹²³

The presentation on altered tallies convinced some Committee members to overturn the results then and there. Other Committee Members despaired of finding a result in these circumstances, given the "looseness" of Texas Election laws concerning those tallies.¹²⁴ The upshot was that the recount, even a partial one, now became the "hot" issue of the Hearing. Most members felt it was the only way to find a definitive answer. Over Wurzbach's objection, the Committee

¹¹⁶ "Case against Wurzbach to be Reviewed," *The Brownsville Herald*, October 28, 1929, 1.

¹¹⁷ "Reopen Case," *Brownsville Herald*, December 13, 1929, 2.

¹¹⁸ "Federal Probe of Wurzbach Case is Urged," *Houston Post-Dispatch*, December 28, 1929, 15.

¹¹⁹ "Dispute of Wurzbach-McCloskey is Referred to Longworth," *Dallas Morning News*, December 14, 1929, 2.

¹²⁰ "Open Hearings on Wurzbach Case January 20," *Dallas Morning News*, January 8, 1930, 1.

¹²¹ "Election Vote Recount Asked," *Beaumont Journal*, January 21, 1930, 1.

¹²² "Ballot Recount Sought in Texas Election Fight," *Beaumont Enterprise*, January 22, 1930, 1.

¹²³ "Fraud Denials Heard by Solons," *San Antonio Light*, January 28, 1930, 1.

¹²⁴ "Open Hearings on Wurzbach Case January 20," *Dallas Morning News*, January 8, 1930, 1.

voted five to four to recount sixteen Bexar County Precincts that were in dispute.¹²⁵ No other decision in fifteen months benefitted Wurzbach more.

Strange things were discovered when these precinct's ballot boxes were examined. The first ballot box presented from Precinct 10 was in such poor condition that Committee Members could reach in and take out ballots even though it was locked.¹²⁶ When the Precinct 43 ballot box was opened, it was empty of ballots.¹²⁷ When these ballots began to be counted, Wurzbach made "Spectacular" gains.¹²⁸ At the conclusion of the recount of only seven of the sixteen precincts, Wurzbach had gained 380 votes, enough to overcome McCloskey's claimed majority of 319. This clinched it. No more counting needed to be done. The Committee was ready to report to the full House that Wurzbach should be given the seat.¹²⁹

On February 3, 1930, before that report was made, Augustus McCloskey conceded the election and asked that Harry Wurzbach be declared elected.¹³⁰ He said "I do not have a majority of votes cast, my sense of fairness moves me to say" that Wurzbach had won.¹³¹ He denied any wrongdoing on his part or the part of his supporters. His conscience was clear.

Over the course of time, many have wondered if McCloskey was guilty of election fraud. McCloskey made a statement in his concession letter that is evidence of his innocence: "I think you may safely assume that I would not been insisting upon the actual count of ballots had I any suspicion that they might lead to my being unseated and I think it can be logically assumed that if I had had any knowledge of any wrong doing or tampering of returns, I would not have been so insistent upon a recount of the ballots."¹³²

The Committee Report was now only a formality. While the Committee was unanimous that Wurzbach should be seated, there was a split regarding McCloskey's role. While a majority wanted to base the reports on general grounds of fraud, a minority wanted to lay the fraud charge squarely at McCloskey's feet.¹³³ This would have been a stain on McCloskey for all time. The majority, felt this was not necessary, because McCloskey had already conceded. Wurzbach did not push for a finding against McCloskey. Representative O'Connor was so angry about not making a finding against McCloskey he resigned from the Committee.¹³⁴

On February 10, 1930, the full House adopted the Resolution to seat Wurzbach put forth by

¹²⁵ "Solons find Open Ballot Box," *San Antonio Light*, January 30, 1930, 1.

¹²⁶ "Solons find Open Ballot Box," *San Antonio Light*, January 30, 1930, 1.

¹²⁷ "Empty Ballot Box is Found in Bexar Recount," *Beaumont Enterprise*, February 1, 1930, 1.

¹²⁸ "Precinct 123 Recount is M'Closkey Upset," *San Antonio Light*, January 31, 1930, 1.

¹²⁹ Mark Goodwin, "Victory Seen for Wurzbach," *Dallas Morning News*, February 2, 1930, 1.

¹³⁰ "Election of G.O.P. Opponent to House From 14th Texas Conceded by Rep. McCloskey," *Beaumont Enterprise*, February 4, 1930, 1.

¹³¹ "Recount Ousts House Member," *Knoxville News-Sentinel*, February 3, 1930, 14.

¹³² Election of G.O.P. Opponent to House From 14th Texas Conceded by Rep. McCloskey," *Beaumont Enterprise*, February 4, 1930, 1.

¹³³ "Split seen in Election Committee," *San Antonio Light*, February 9, 1930, 1.

¹³⁴ "House seats H.M. Wurzbach," *Beaumont Journal*, February 10, 1930, 1.

House Committee on Elections No. 3. Harry Wurzbach, who was already on the floor, went to the Well of the House to be sworn in by the Speaker. Then Mr. Wurzbach of Texas took his seat.¹³⁵

Rage against the Machine

Later that month, Wurzbach made a triumphant homecoming to San Antonio. 2000 San Antonians went to Beethoven Hall to cheer him on. That night he lit into the San Antonio Machine that he blamed for the election fraud. The speech, according to one of his supporters, was a “ripsnorter.” The supporter said Wurzbach “told the facts and named names.”¹³⁶ Distinguished San Antonio Journalist Kemper Diehl believed that Wurzbach’s speech that night saw the birth of a crusade that would destroy the Machine that had dominated San Antonio for forty years. Wurzbach’s speech was followed by one by a fiery young Democrat named Maury Maverick. Maverick was Chairman of the new San Antonio Citizens League formed to fight the machine.¹³⁷

The election scandal was the last straw for many. Soon the Citizens League sponsored candidates for county offices against Machine candidates —most won. Probes into some corrupt officials caused them to be removed. The Machine would fight back, and would keep control of city offices, but by smaller majorities in the races. Finally in 1939, Maverick and three allies would capture City Hall, and Machine control was ended once and for all.¹³⁸ One factor that aided the reform: Voting machines replaced the paper ballots that allowed the Wurzbach race to be stolen.

One other factor might have complicated Wurzbach’s life. Exactly two weeks after he was re-seated, the Supreme Court ruled against Wurzbach and re-instated the indictments against him. In a terse 725-word opinion, none other than Justice Oliver Wendell Holmes wrote for a unanimous court that the term “political purpose” was not impermissibly vague but “perfectly intelligible.” The authority to regulate the use of funds in a political campaign did not depend on whether the election was a primary election or a general election¹³⁹ The case returned to Federal Court in San Antonio.

Where nothing happened. U.S Attorney John Hartman, R.B Creager’s friend, might have pushed the indictment to hurt Wurzbach’s chances of re-election. He did not. He would say that the crowded nature of the Court’s docket kept him from setting the case for trial. On February 2, 1931, Hartman presented a motion to dismiss the charges to Judge West, which was swiftly granted. No explanation was offered. We can only surmise that Hartmann did not think he could win the case—or that Creager thought a continued prosecution was not in his interest.¹⁴⁰

When Wurzbach took back his seat, he was eight months away from another general election. He knew that he would face a determined Democratic opponent. Somewhat surprisingly, Augustus McCloskey did not run. In the 1930 race, Wurzbach received help from the Citizen’s

¹³⁵ “House seats H.M. Wurzbach,” *Beaumont Journal*, February 10, 1930, 1.

¹³⁶ Kemper Diehl, “The Big Election Steal: Political Crusade Born,” *San Antonio Light*, November 21, 1958, 38.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *U.S. v. Wurzbach*, 280 U.S. 396 (1930).

¹⁴⁰ “Drop Wurzbach Vote Fund Case,” *San Antonio Light*, February 2, 1931, 1.

League, and focused his campaign on the corruption of the San Antonio Machine. In November, he defeated a Democrat Henry Diehlman by a large margin of 8000 votes.¹⁴¹ Wurzbach did not know it, but it would be his last campaign.

The Death of Harry Wurzbach

On November 6, 1931, a year after his last election, Wurzbach died after complications from an appendicitis operation. The death was shocking; he was only fifty-seven, and it was thought the operation had gone well.¹⁴² 20,000 attended his funeral¹⁴³

Even in death, Harry Wurzbach made his political mark. The country was now in the throes of the Great Depression. The Republicans lost many House members nationwide in the 1930 mid-term elections. Death and resignations took their toll until in 1931, it became apparent that the defection of one Republican member would allow the Democrats to organize the House and elect a speaker. That Speaker would be John Nance Garner. Wurzbach knew very well that he had been elected by Democratic votes in his past races. He was approached about defecting but remained loyal to the Republican Party.¹⁴⁴



Richard Kleberg

Now, with his death, a special election would be called. Everyone expected a Democrat to be elected. Wurzbach's hold on the district had been personal, and not based on party.¹⁴⁵ On November 24th Democrat Richard Kleberg won Wurzbach's seat and gave the House to the Democrats and the Speakership to Garner. A year later Garner was elected Vice-President under Franklin Roosevelt.¹⁴⁶

A Brief Conclusion

Augustus McCloskey never ran for Congress again. He practiced law, and then became a judge of the Corporation Court from 1943 until 1947. He died in 1950.¹⁴⁷ With the election of Democrat Franklin Roosevelt in 1932, Creager lost his patronage empire. He continued to be active in Republican politics until his death.¹⁴⁸ He was singularly unsuccessful in electing Texas Republicans. After Harry Wurzbach, it would not be until 1950 that another Texas Republican would be elected to Congress, and then only for a few months to fill an unexpired term.¹⁴⁹ Eisenhower

¹⁴¹ Roger M. Olien, *From Token to Triumph*, 52.

¹⁴² "Harry M. Wurzbach Is Dead," *San Antonio Light*, November 6, 1931, 1.

¹⁴³ "20,000 Attend Funeral Rites for Harry W. Wurzbach," *Arkansas Gazette*, November 9, 1931, 14.

¹⁴⁴ "Harry M. Wurzbach Is Dead," *San Antonio Light*, November 6, 1931, 1.

¹⁴⁵ "Republicans Agree Democrat Will Be Elected to Succeed Harry Wurzbach in Congress," *Dallas Morning News*, November 7, 1930, 1.

¹⁴⁶ Robert A. Caro, *The Years of Lyndon Johnson: The Path to Power*, (Vintage Books Edition, 1990) 501-5020.

¹⁴⁷ Anonymous, "McCloskey, Augustus," *Handbook of Texas Online*.

¹⁴⁸ Paul D. Casdorph, "Creager, Rentfro Banton," *Handbook of Texas Online*,

¹⁴⁹ Roger M. Olien, *From Token to Triumph*, 109.

would win Texas in 1952, and Dallas began to elect more Republicans to Congress in the 1950's. As time went on the Party would continue to win more congressional elections, even in districts made up of parts of the now dismantled district Wurzbach had won.

Harry Wurzbach should be remembered more. San Antonians certainly know his name because everyone knows and travels on Harry Wurzbach Road there. His family continued in politics. Wurzbach was the uncle of longtime liberal Houston Democratic Congressman Bob Eckhardt.¹⁵⁰

The old San Antonio Machine is long gone. Its legacy is that in fighting against it, Maury Maverick won lasting fame. Undoubtedly, the 1928 election was stolen from Wurzbach. It does not appear that McCloskey was the thief. So, who was? In 1958, after studying the matter, Kemper Diehl wrote "No one was ever proved the villain of the 1928 election steal."¹⁵¹ It must have been faceless members of the Machine—and for that the Machine paid the price.

There is one more legacy. Wurzbach's successor, Kleberg, unlike his hard-working predecessor, had little interest in actually doing the work of a congressman. He left that to his young Administrative Assistant—Sam Johnson's boy, Lyndon.¹⁵² The young man would learn a great deal. The rest, as they say, is history.

¹⁵⁰ Ben R. Gutterty, *Representing Texas*, 162

¹⁵¹ Kemper Diehl, "The Big Election Steal: Political Crusade Born," *San Antonio Light*, November 21, 1958, 38.

¹⁵² Robert A. Caro, *The Years of Lyndon Johnson: The Path to Power*, 5024.

[Return to Journal Index](#)

Fritz Garland Lanham— Father of American Trademark Protection

By Joe Cleveland

Ed.Note: *The Journal is grateful to Joe Cleveland and the Texas Intellectual Property Law Section for the following article based upon Mr. Cleveland's book of the same name. For more information on this book, please see our review of it on page 64.*

Frederick Garland Lanham was born on January 3, 1880, in Weatherford, Texas. Lanham, nicknamed Fritz, was one of eight children of Samuel and Sarah Lanham. Traveling by covered wagon from South Carolina following the Civil War, Lanham's parents first arrived in Texas in 1866. Their entire possessions consisted of their wagon, two horses, personal items, and \$166 in savings.

In 1868, the Lanham family finally settled in Weatherford—a small West Texas town with a population of less than four thousand residents in what was then considered the Texas frontier. The Lanhams made their home among the lonely mesquite trees and rolling grassland prairies midway on the dusty stagecoach run between Fort Belknap and Fort Worth—a major livestock shipping point along the historic Chisolm Trail and “Where the West Begins.”

In its early years, Weatherford was the principal frontier settlement situated on the crest of the divide between the Trinity and Brazos River Valleys. Weatherford is the county seat of Parker County—named after Isaac Parker, the uncle of Cynthia Ann Parker, the famous little girl who was captured from her home by Comanche Indians and later became the mother of the Chief Quanah Parker. Over the years, the City of Weatherford provided a safe haven for residents who fled the country to the city during the Indian raids, which continued in Texas until the early 1870s.

Samuel and Sarah Lanham taught school in a two-room log cabin—teaching in one room and using the other room as their family residence. Tuition ranged from two to four dollars per month depending on the grade. Samuel Lanham was a Latin scholar and according to Fritz “could read Virgil's *Aeneid* in the original text as readily as if it were printed in English.” Sarah was also highly educated and was fluent in several foreign languages. While away from the classroom, Samuel Lanham studied law and was admitted to the bar in 1869.



Fritz Lanham (1900-1901)

Their son, Fritz, was born in 1880—the same year the Gulf, Colorado and Santa Fe Railway arrived in Weatherford. Operating nearly seven hundred miles of track, it was touted as the “Cattle Route of Texas.” The new railroad network established Weatherford as a retail and shipping point for Parker County farmers and ranchers and spearheaded the area’s rapid population growth. By the mid-1890s Weatherford had an estimated population of five thousand with seven churches, several schools, and about one hundred businesses, including three banks, four hotels, and three weekly newspapers.

Fritz grew up in a political family. Not only was his father a lawyer, but also a United States congressman, and later served as the twenty-third governor of Texas. Samuel Lanham began his political career as a district attorney in Weatherford and achieved international fame during the height of the Texas-Indian Wars. In 1871, he prosecuted two Kiowa Indian chiefs, Santanta and Big Tree, for their involvement in the famous Warren Wagon Train raid.

On the Salt Creek Prairie in Texas, on May 18, 1871, over one hundred Kiowa and Comanche Indians from Fort Sill Reservation in present-day Oklahoma attacked a train of twelve wagons owned by Henry Warren, a contractor of supplies for



Samuel Lanham



General William T. Sherman

United States forts in the frontier region of Texas. Seven from the wagon supply party were killed. Three managed to escape. After the chiefs were captured, General William T. Sherman—who narrowly missed being attacked the day before—ordered that they be tried for murder. Samuel Lanham led the prosecution. The trial drew international attention as it marked the first time Indian chiefs stood trial in a United States court.

Though the Indian chiefs were found guilty and sentenced to hang, their executions were never carried out. Their sentences were commuted to life imprisonment on humanitarian grounds and, due to a genuine fear of retribution, they were later paroled.

After the notoriety he received from the trial, Samuel Lanham ran for Congress and was elected to the United States House of Representatives in 1882. He served ten years as a congressman for the Eleventh District of Texas, known as the “jumbo” district because it comprised ninety-seven of the two hundred and fifty-four Texas counties and spanned millions of acres of West Texas ranch land. In 1892, Samuel Lanham retired from Congress and began practicing law in Weatherford. But retirement was short-lived: In 1896, he was elected again as a congressman in the newly created Eighth District and served another six years until 1902.

Fritz Lanham was two years old when his father was first elected to Congress. Consequently, during his father's congressional career, Fritz Lanham spent time living in both Weatherford and Washington, D.C. However, because the sessions of Congress were much shorter than now, he spent most of each year in Weatherford playing sports with his friends, especially baseball. When he was at home, he attended elementary grades at Weatherford College, which at the time, was a Methodist college offering elementary and high school education for Parker and other surrounding counties. While in Washington with his father, he attended the Old Abbott School, a public school where he completed his grammar grades. After graduation, he began his college education at Weatherford College.

Lanham was a very shy and timid young man. He decided that the best way to overcome his timidity would be to learn to speak before an audience. He thus took every opportunity to speak in public and became an eloquent speaker. Lanham later explained that "[t]he mechanics of speaking can be learned by anyone." He believed that good speakers would not be so rare if there were more people willing to do the arduous work required to become one. According to Lanham, "Speaking is not a lazy man's job. Some who appear in public prepare two or three speeches and then try to warp them to fit the various occasions upon which they are called upon to perform. A public speaker should be willing to do the work necessary to have something appropriate for each occasion."

Lanham earned his first bachelor of arts degree from Weatherford College in 1897. Lanham also attended Vanderbilt University in Nashville, Tennessee, from 1897 to 1898. He then attended the University of Texas at Austin, where he was the first editor of the student newspaper, *The Texan*, now known as *The Daily Texan*. In his first editorial, Lanham said the paper's goal should be "ultimately to please the student body." While he acknowledged that there were always two sides to every issue, he said *The Texan* should present only "the proper one." He was a member of the Kappa Alpha Fraternity, participated in student government, and was president of his senior class.

Lanham received a second bachelor of arts degree from the University of Texas in 1900 and was selected as the commencement speaker. Following graduation, he worked for his father, who was then in his second tenure as a congressman. According to Lanham, the labors of a member of Congress were less burdensome in those days, and thus, his work was frequently completed in the morning allowing him the afternoon for study and leisurely activities.

Lanham later returned to Texas and began working for a Weatherford bank. In 1902, he resumed working for his father as his personal secretary in Austin, when his father was elected governor of Texas. He was appointed as secretary to the governor and continued serving in that capacity until the end of his father's administration in 1907.

In 1903, while working for his father, Lanham also began studying law at the University of Texas Law School. Lanham attended law school in the basement of the University's Old Main Building with sixty-one of his fellow law school classmates under the tutelage of Dean John C. Townes—for whom Townes Hall was later named. Due to the heavy workload of the governor's office, he discontinued his legal education before his third and final year in law school. Although

he never earned a law degree, Lanham made the highest grade on the bar exam that year and was admitted to the bar in 1909.

Lanham's life was multi-faceted. He taught Greek at Weatherford College. He was an amateur magician, wrote two musical comedies with his brother Frank, and in 1907 toured with a national stage company. According to the *Fort Worth Star-Telegram*, "he can perform on a par with the country's best professionals." Lanham stated that he "was so impressed with the power of the stage to present moral truths that at one time during his life he was undecided whether he would go into the ministry or on the stage."

He was also the author of several books, including *Putting Troy in a Sack*, a light-hearted book about the Trojan War. He was a sports columnist at the *Dallas Morning News* and covered the baseball games of the Texas League and other sports. And in 1913, he became the first editor of *Alcalde*, a University of Texas alumni magazine, which is still published six times a year and distributed to over one hundred thousand alumni.

In 1908, Lanham married Beulah Rowe, and they made their home in Weatherford. His first wife died in 1930, and he later married Hazel Head in 1932. Shortly after his first marriage to Beulah Rowe, Lanham opened a law office on the Weatherford courthouse square with his former law school classmate and fellow attorney Benjamin G. O'Neal. They had a general law practice consisting of criminal, civil, probate, property cases, and the collection of delinquent property taxes for Parker County.

In 1912, Lanham ran for Parker County Attorney, a position his father once held. Lanham and his other fellow candidates campaigned together for months on horseback. In one of the few setbacks in his career, Lanham was defeated and moved thirty-six miles east to Fort Worth and became an assistant county attorney for Tarrant County.

When Lanham arrived in Fort Worth in 1912, the city had become a major livestock center for the entire Southwest and a bustling town of approximately seventy-three thousand. It boasted the largest meat packing plant south of St. Louis and was home to "Hell's Half Acre"—the infamous rest stop of assorted saloons, gambling parlors, dance halls, and brothels frequented by cowboys, outlaws, and the likes of Wyatt Earp, Doc Holiday, and Sam Bass as well as Butch Cassidy and the Sundance Kid, who were famously photographed in Fort Worth in 1900. In 1912, oil was discovered in Burkburnett near Fort Worth and by 1920, the city's population had ballooned to over one hundred thousand.

While working at the county attorney's office, Lanham prosecuted felony crimes occurring in Fort Worth and surrounding Tarrant County. Lanham once remarked about the responsibilities of that position: "It should be as much the duty of a prosecuting attorney to keep out of prison those who have no real criminal intent and who can be directed in ways of useful citizenship as it is to send to prison those whose incarceration is demanded by the best interest of society."

Lanham was thirty-seven and working in the county attorney's office in 1917 when the United States entered World War I. Although he registered for military service, he was never

called to duty. He considered enlisting, but his family physician advised against it due to a serious childhood injury Lanham suffered while playing ball with his friends along the parkways of Washington, D.C. He was chasing after a ball and dodged one wagon but was run over by another loaded with bricks, crushing both bones just above each ankle. Instead of serving in battle, Lanham publicly supported war bond drives, solicited money for the Red Cross, and entertained troops in camps around Fort Worth.

In 1919, Lanham announced he was running for Congress after fellow Democrat James C. Wilson resigned to accept a federal judgeship on the U.S. District Court for the Northern District of Texas. His hometown paper, the *Daily Herald*, announced his candidacy with great fanfare: "It is a pleasure for *The Herald* to support Fritz Lanham for congress from this district. Besides the fact that he was born and reared in Weatherford, he is every inch a gentleman, [and] well qualified to fill the seat in the House of Representatives . . . long and honorably held by his late father, Governor S. W. T. Lanham."

Fritz Lanham vanquished all other candidates even before the election. In a special election called by Governor William Hobby in 1919, he won by a landslide—receiving all but three votes. On the night of his election, Lanham spoke at a banquet in honor of Judge Wilson. As he rose to speak, Lanham was given a standing ovation. Afterwards, Lanham gave a speech entitled "Our Country" and endorsed President Woodrow Wilson's position on the League of Nations and asked the audience to give their support to the newly elected president while he was endeavoring to bring about a lasting peace among the peoples of the earth.



Congressman Fritz Lanham, center (c. 1920)

Congressman Lanham went on to represent Texas's Twelfth Congressional District for over twenty-seven years from 1919 until 1947. While in Congress, Lanham served on several House Committees. Later, when the Democrats regained control of the House after the 1930 congressional elections, he was elected chair of one of its most influential committees—the Public Buildings and Grounds Committee, responsible for overseeing and dispensing funds for the nation's great public buildings. For twenty-five years, he served and at times was the ranking member of the Committee on Patents, Trademarks, and Copyrights and chaired the subcommittee on trademarks.

When Lanham took up the gavel to chair the House subcommittee on trademarks, trademark law in the United States was uncertain, confusing, and in disarray. In the over one hundred years before the enactment of the Lanham Act, valuable brands of immense commercial value were afforded limited trademark protection under the common law and the statutes of some states. Federal trademark law was cobbled together from various statutes and was not readily ascertainable. In addition, a business could obtain relief against a competitor for false advertising in only extremely limited circumstances.

Federal trademark law began its early development in 1870. At the end of the Civil War and during Reconstruction, Congress first enacted legislation on the subject of trademarks when it passed the Act of 1870. This Act provided for the federal registration of trademarks for a period of thirty years from the date of registration and authorized civil remedies for trademark infringement. In 1876, the Act was amended to provide criminal penalties for the fraudulent use, sale, and counterfeiting of trademarks registered under the Act of 1870.

The 1876 Amendment, however, was subject to a serious constitutional challenge at the United States Supreme Court in the case of *In re Trade-Mark Cases*, 100 U.S. 82 (1879). Three defendants were indicted for selling counterfeited representations and colorable imitations of trademarks for wine and whiskey. On appeal, the defendants challenged the 1876 Amendment on grounds that the Act was not within the constitutional power of Congress and was therefore null and void. The cases were ultimately appealed to the United States Supreme Court.

Advocates for Congress's power to enact the 1876 Amendment argued that two clauses in the Constitution supported the 1876 Amendment: (1) Article 1, Section 8, Clause 8 authorizing Congress "to promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries" and (2) Article 1, Section 8, Clause 3 giving Congress the power "to regulate commerce with foreign nations, and among the several States, and with the Indian Tribes."

In its opinion, the Supreme Court noted that "the power of Congress to legislate on the subject [of trademarks], to establish the conditions on which these rights shall be enjoyed and exercised, the period of their duration, and the legal remedies for their enforcement, if such power exist[s] at all, must be found in the Constitution of the United States, which is the source of all powers that Congress can lawfully exercise." The Court rejected the argument that the constitutional provision securing the exclusive right to inventions and discoveries in the arts and sciences applied to trademarks. The Court concluded that Congress therefore did not have the power to enact the 1876 Amendment under Article 1, Section 8, Clause 8 of the Constitution.

The Supreme Court then turned to Congress’s power under the Commerce Clause. The Court determined that Congress had the power to enact trademark legislation under the Commerce Clause. But the Court found that the 1876 Amendment was unconstitutional because it embraced all commerce—including commerce between citizens of the same state—and was not limited to foreign or interstate commerce or with the Indian tribes as required by the Commerce Clause. Therefore, the Supreme Court struck down the 1876 Amendment as unconstitutional.

Realizing that there might be uncertain constitutional support for the Act of 1870, Congress enacted a new trademark statute in 1881 “to authorize the registration of trademarks and protect the same.” While the old Act of 1870 covered all commerce, including intra-state commerce, the scope of the new Act of 1881 was much more limited. The Act of 1881 only covered commerce with foreign nations and with Indian tribes. Moreover, absent from the Act of 1881 was any reference to interstate commerce or “commerce among the several States.” Thus, under the Act of 1881, owners of trademarks could only register their marks if they were domiciled in the United States and their marks were used in commerce with foreign nations or with Indian tribes.

In 1905, Congress enacted a new trademark statute, which attempted to correct the deficiencies in the previous Act and permitted registration of trademarks used “among the several States.” The Act of 1905 was later amended eight times. The Act of 1905 reflected the view that protection of trademarks was a matter of state concern and that the substantive right to a mark depended solely on the common law. For over forty years, the Act of 1905, as amended, was the only federal legislation relating to trademarks.

In 1920, at a meeting of the Patent Section of the American Bar Association, a committee was appointed to explore possible revisions to the Act of 1905. The committee approved a draft bill authored by Edward S. Rogers, a Chicago lawyer who was considered the dean of the trademark bar. The draft bill was presented by the committee to the American Bar Association for discussion at its annual meeting in 1921. The draft bill was later approved at the ABA annual meeting in 1922.

The draft bill was known as the Vestal bill, named for Congressman Albert Henry Vestal, who agreed to sponsor the legislation in Congress. Beginning in 1924, the Vestal bill was the subject of numerous congressional hearings and revisions over many years, but it never received a final vote in Congress.



Edward S. Rogers



Congressman Albert Henry Vestal

Meanwhile, beginning in 1934, a concerted effort was made at the state level to enact new state trademark statutes. A common feature of these state legislative proposals was compulsory registration and filing fees for all marks used in the state as a condition of trademark ownership. If the mark was not registered within six months of the effective date of the statute, the mark would fall into the public domain and be subject to registration by anyone in the state. Not only were the filing fees for these state registrations onerous, the hodgepodge regulation of trademarks by various states threatened to make operating a business across state lines extremely complex and burdensome. Although these state legislative initiatives were initially thwarted, there was renewed interest among lawyers and the business community to enact a comprehensive federal trademark law, particularly in light of the Supreme Court's more expansive interpretation of the Commerce Clause during the New Deal programs and regulations of the 1930s.

From 1935 until 1937, the ABA committee continued to study the Vestal bill. While there was support among the bar for the bill, others felt that amendments to the Act of 1905 might remedy its many deficiencies. Ultimately, the ABA committee felt that the Vestal bill did not go far enough. The final draft bill approved by the ABA committee, which is the basis of the Lanham Act, incorporated four basic legislative goals:

- To provide trademark owners substantive legal rights to their registered marks;
- To preserve existing law that had proved valuable;
- To incorporate those provisions from the Vestal bill for which there was substantially unanimous support from the bar; and
- To carry out the United States' obligations it assumed under international conventions relating to trademarks.

In 1937, the Commissioner of Patents requested that Rogers come to Washington, D.C., to meet Congressman Lanham, who was then chair of the subcommittee of the House Patent Committee dealing with trademarks.

At their meeting, Lanham lamented to Rogers that "a large number of piecemeal amendments to the 1905 Act had been proposed and that he had been studying the Act and couldn't make head or tail of it; that if it were amended piecemeal it would make incomprehensible what had hitherto been merely obscure." Congressman Lanham then asked Rogers if there was a skeleton draft that could be used as a sort of "clothes horse to hang things on." Rogers told Lanham he had one handy and gladly left Lanham his personal draft of the proposed trademark bill, which Rogers had compiled from the ABA committee meetings. Rogers believed that Lanham would simply study the draft and hold hearings, but was later surprised when the Texas congressman simply introduced the draft as HR 9041 on January 19, 1938.

At the opening hearing, Congressman Lanham remarked that "this bill is a predicate for our discussion and we're not coming with an attitude of advocacy of anything, but to learn, as members of a jury would, what the facts in the case are, in order that we may arrive at some

intelligent conclusion.” The road to enactment of Lanham’s bill, however, was a long and difficult one and faced many roadblocks. First introduced by Lanham in 1938, it was not enacted into law until 1946.

In addition to legislative delays caused by congressional war efforts during World War II, the U.S. Department of Justice, relying on Supreme Court precedent, repeatedly raised objections to the bill as anti-competitive and monopolistic. In 1871, the Supreme Court decided the leading trademark case of *Canal Co. v. Clark*, 80 U.S. 311 (1871). The issue before the Court was whether coal producers had the exclusive right to use the name *Lackawanna coal* for coal mined from Pennsylvania’s Lackawanna Valley. The word *Lackawanna* had been used for many years as a description of that region and its coal deposits. Coal producers sought to enjoin a coal dealer from using the Lackawanna trademark. The dealer’s coal also came from the Lackawanna Valley and was essentially identical to the producer’s coal. The Court determined that because the Lackawanna trademark was a geographic name and did not “point distinctively to the origin” of the producer’s coal, they were not entitled to an injunction. The Court noted that affording the exclusive right in the name *Lackawanna coal* “would practically give [the coal producers] a monopoly in the sale of any goods other than those produced” by them with the result that “the public would be injured rather than protected, for competition would be destroyed.” To assuage critics that the bill might create illegal monopolies for incontestable marks, Lanham included a provision allowing for the defense where a trademark “has been or is being used to violate the antitrust laws of the United States.”



Lackawanna Coal Mine in Scranton, PA

Lanham spent hours conducting committee hearings in the Patent Committee Office Room, writing and rewriting the bill and explaining its provisions to his colleagues. He steered his bill’s passage in the House four times, and he watched his bill pass in the Senate four times. But unfortunately, the bill never passed both houses in the same session.

After the conclusion of World War II, Congressman Lanham laid out a summary of his bill on the floor of the House of Representatives on June 25, 1946:

Lanham: Mr. Speaker, I call up the conference report on the bill (H.R. 1654) to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions and for other purposes and ask unanimous consent that the statement of the managers on the part of the House be read in lieu of the report.

Mr. Speaker, this is the trade-mark bill that has passed the House on three or four different occasions. The purpose of it is to protect legitimate business and the consumers of the country.

Mr. Speaker, the legislative history of this Act is long and extensive. Many hearings have been held over a period of almost eight years. Those hearings may, and probably will, be referred to by the courts in construing and interpreting the provisions of the Act. However, there is one provision in the Act which has no recorded legislative history, and in order that the purpose and intent of the House may be made perfectly clear, I wish this statement to appear in the RECORD as an explanation of our intent and as a part of the legislative history of the Act.

This Trade-Mark Act places in one statute all the Federal law related to the subject and repeals the prior laws specifically referred to in its provisions. It reenacts much prior legislation and creates new rights, some of which are substantive and others procedural. It implements our international commitments and brings the trade-mark law of the United States down to date, recognizing the changes in business and commercial practices since the Act of 1905 became the law.

One of the valuable new rights created by the Act is the incontestable right after five years' use of the mark and the corollary thereto that the certificate of registration is conclusive evidence of ownership and the right to the exclusive use to the mark.

Congressman Lanham's statements were later quoted extensively by Justice Sandra Day O'Connor in the Supreme Court's 1985 landmark decision in *Park 'N Fly, Inc. v. Dollar Park and Fly, Inc.*

Eight years after Fritz Lanham introduced his bill, the Trademark Act of 1946 eventually passed both houses and was signed into law by President Harry S. Truman at Camp David on July 5, 1946. The law is widely known as the Lanham Act, named after the gentleman from Texas, its chief proponent.

Following its enactment, the *Fort Worth Star-Telegram* reported that:

Representative Lanham of Fort Worth achieved success in perhaps the most important legislative objective of his long and distinguished service in Congress when the Lanham Trademark bill was signed into law . . . by President Truman. . . Final passage of the bill, on which Mr. Lanham worked diligently for more than eight years, is a victory not only for its sponsor but for legitimate business and the consuming public.

Judge Learned Hand, an American judicial icon, remarked that the Lanham Act "put federal trademark law on a new footing."

According to his hometown paper, the *Daily Herald*, Congressman Lanham was known as an exceptional public speaker who “with his vibrant, genial personality, held the crowd enthralled.” Reflecting on his work on the Lanham Act in a speech to the New York Patent Law Association in 1945, Lanham joked:

When I first began my perilous journey into this treacherous trademark domain I knew nothing of it whatever, except that the owner of the first mark was Cain and that it was a mark he probably was entirely willing to trade. But there is nothing Canine about this modern group; they like their marks and cling to them with studied tenacity—some of their envious opponents even say with dogged determination, but that is one bone of contention I need not stop to gnaw.

Congressman Fritz Lanham’s significant impact on modern American trademark law was one of many legislative achievements where Lanham used his immense political talent and boundless energy to do what he thought was right and affect the course of events. As the Great Depression began to grip the nation in 1929, Lanham became keenly aware of the suffering of his fellow Americans and devoted himself to addressing their needs.

Exercising his influence as the ranking member, and later chair, of the House Committee on Public Buildings and Grounds as well as his service on the Public Buildings Commission, Lanham put Americans back to work by passing major federal infrastructure and emergency relief bills. He was a lead sponsor of legislation providing work for victims of the Great Depression, federal assistance to the blind, housing for dependents near military camps and defense plants during World War II as well as education, housing, rehabilitation, and employment for returning veterans.

Through his efforts on those committees, he was instrumental in the construction of many important federal buildings, including the Pan American Union Building, the Longworth House Office Building, and United States courthouses and post offices across the nation. But amongst his most significant achievement was his work to build a permanent home for the United States Supreme Court.

In 1928, Chief Justice William Howard Taft requested that Congress consider constructing a separate building for the United States Supreme Court, which was then located in the Old Supreme Court Chamber in the U.S. Capitol. Congress responded to Taft’s request by creating the Supreme Court Building Commission. Congressman Lanham was one of seven members tapped to serve on the commission that planned and implemented the construction and furnishing of the United States Supreme Court Building in Washington, D.C. Architect Cass Gilbert was charged by Taft to design “a building of dignity and importance suitable for its use as the permanent home of the Supreme Court of the United States.” Upon laying the cornerstone for the Supreme Court building, Chief Justice Charles Evans Hughes, who served as chair of the Building Commission after Taft resigned due to his ill health, pronounced: “The Republic endures and this is the symbol of its faith.”

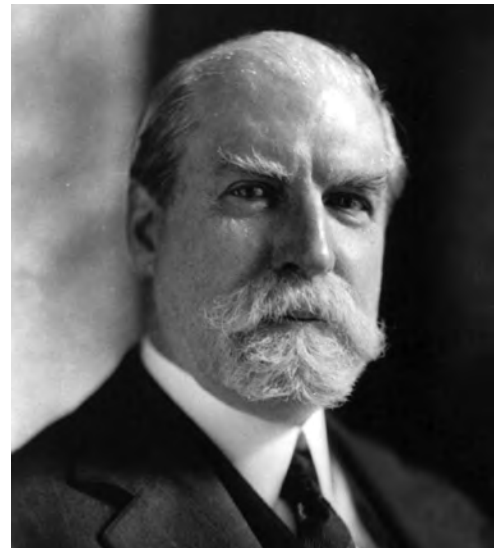
Neither Taft nor Gilbert survived to see the Supreme Court building completed. Construction, however, proceeded under the direction of Chief Justice Hughes, Lanham, and other members of the Supreme Court Building Commission along with architects Cass Gilbert Jr. and John R. Rockart.



Chief Justice William Howard Taft



Cass Gilbert



Chief Justice Charles Evans Hughes

The Supreme Court building was completed in 1935 and came in under budget at a cost of \$9.7 million. Upon its completion, \$94,000 was returned to the U.S. Treasury. In recognition of his service, Lanham's name is carved in the marble walls of the Supreme Court building.

Congressman Lanham was reelected thirteen times and represented his congressional district with distinction for over twenty-seven years until his retirement in 1947.

After retiring from Congress, Lanham remained in Washington to work as a lobbyist for the National Patent Council, a non-profit organization of small manufacturers devoted to the preservation, protection, and promotion of the American patent system.

The Fritz G. Lanham Federal Building in Fort Worth, completed in 1966, was named in his honor. Before the Lanham Federal Building was completed, Congressman Lanham died on July 31, 1965. Upon his passing, Lanham was remembered by House Speaker John McCormack as "one of the giants of the chamber." He is buried at Old City Greenwood Cemetery in Weatherford, Texas.

Fritz Lanham once remarked:

When we reflect upon the lives of men who have left their imprint upon history, we never for an instant stop to inquire about their wealth, but we think rather of their sterling worth and of their works in the interest of their fellowmen. How much, for instance, was Shakespeare worth? What sum did Socrates accumulate? How many servants attended the wants of Aristotle? What amount represents the fortune amassed by Wellington or Washington or Patrick Henry?

What poets extended their wealth to prodigious sums? What philosophers? What statesmen? What orators? What generals? I doubt if there is within the sound of my voice a man or woman who can answer correctly these questions; and yet, in ignorance of the estates they left, we continue daily to delight in their glories and teach the children of the land the worth of their examples.

Seventy-five years after the enactment of the Lanham Act, the impact of Congressman Fritz Lanham's legislative achievement is still profoundly felt throughout America. The Lanham Act—named in Lanham's honor—not only protects American consumers by helping them differentiate goods and services, it protects American businesses by creating a nationwide trademark registration system and a legal framework to provide remedies for trademark infringement. In doing so, Lanham provided the statutory foundation to protect American trademarks in this country and around the globe.



Fritz G. Lanham Federal Building, Ft. Worth, TX

Although the Lanham Act has been amended and portions declared unconstitutional, the vast majority of the Lanham Act remains as it was when first enacted in 1946 and is the foundation of current trademark law. Edward S. Rogers, the dean of the trademark bar who helped draft the Lanham Act, acknowledged Congressman Lanham's significant contribution to American trademark law: "No man ever worked harder or more conscientiously. Without him there would be no Lanham Act."

Robert Daphne, a leading scholar of trademark law, remarked at the time:

Thus, we see that over a period of twenty-two years attempts to revise the trade-mark laws were unsuccessful and industry was forced to continue under a statute which had, in many respects, long outlived its usefulness. The law had neither anticipated nor kept pace with modern commercial necessities; and but for the leadership of Representative Fritz G. Lanham there probably would have been no change. American business owes to Mr. Lanham a debt of gratitude it can never pay.

Lanham was dearly loved by all who knew him. He was a consummate gentleman, a man of uncompromising standards and ethics, and a gifted politician who possessed the courage to fight unrelentingly for what he thought was right. After Lanham's death, the *Fort Worth Star-Telegram*, in its lead editorial entitled "Lanham, Gentleman of the 'Golden Age,'" wrote:

Classically educated, courtly, urbane and eloquent, Mr. Lanham was so much the gentleman that many thought this a handicap to his political career. It never appeared to be. He was a highly effective legislator and had a rare influence with his colleagues, who knew him to be unswervingly a man of his word.

Congressman Fritz Lanham—the gentleman from Texas—will always be remembered for "the worth of his example," his many significant contributions to our nation, and as the father of the Lanham Act, the law he championed during his years in Congress and that proudly bears his name.

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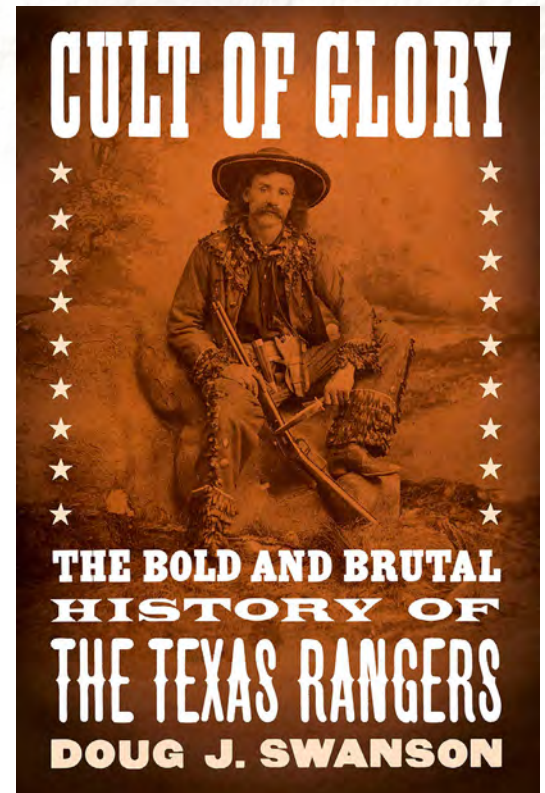
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[Return to Journal Index](#)

Book Review for “Cult of Glory”: A Misinterpreted History

By Dr. Richard B. McCaslin

Doug J. Swanson should be commended for being truthful in his advertising—this is indeed a bold and brutal history of the Texas Rangers, as the subtitle declares, for those who like that sort of thing. But readers seeking an objective, well-researched, or even reasonably accurate history of the Rangers will not find it here. Early in this book, Swanson makes it clear that he wants to reveal to his readers how the Rangers “destroyed” the truth about themselves. Bent upon “deception,” they developed a virtual “fable factory” (p. 5). In fact, it is this work that falls within the category of modern mythmaking, as the author abandons objectivity and presents carefully selected episodes in Texas history, many of which do not directly involve the Rangers, to present a poorly researched and inaccurate condemnation.



To understand Swanson’s lack of objectivity concerning the Rangers, readers need to know that writers on the subject have generally divided into two camps. The extremes of the debate are defined by the books of two men: Walter Prescott Webb and Américo Paredes. Webb, a historian writing within the context of the impending centennial of Texas independence in the 1930s, celebrated what was good about the Rangers. He did not ignore their sins, but he devoted much more attention to their positive contributions, which he tried to corroborate through research. Paredes, who was writing during the 1950s civil rights movement and regarded modern Texas as defined by racism, abandoned objectivity and did little research. The result was myopic, frequently inaccurate in its interpretation of the Rangers, and devoted a lot of pages to folklore. Both men have literary progeny that follow their lead in writing about Rangers, and Swanson falls solidly in the Paredes camp.

Swanson is no more concerned about research than objectivity. Rather than dig, he spends a lot of time discussing Rangers as they appear in movies and fiction. While the latter are useful for Texans who want to think of their state as unique and larger-than-life, such sources are not taken seriously by those who study their history on a substantive level. True scholars in the past

sixty years have been working in the tremendous archives on the Rangers that have become more readily available, such as the records of the Texas Adjutant General's Office, which was the administrative home of the Rangers during their first century. Thanks to the internet, newspapers have now become more accessible, too. Swanson rarely cites these sources, and he also ignores many historical works based upon them. His discussion of men such as Stephen F. Austin and John S. Ford would have been improved by using more recent biographies of them, while better understanding of John R. Hughes, John H. Rogers, and J. Abijah Brooks, gained from books about them, might have led Swanson to do more than just mention them. The same can be said about many events, ranging from the Great Comanche raid of 1840 to the clean-up of San Augustine in 1935. Instead, the author resorts repeatedly to criticizing Webb's 85-year-old work or uses already disproved anecdotes from even older books. While it can be argued that tedious research is not needed for a bold and brutal history, if a work is to be taken seriously as a corrective, it has to at least attempt to address the entirety of its subject, and the scholarly literature on it.

Having abandoned objectivity and deep research, Swanson sacrifices historical accuracy in this work. Austin is portrayed as calling for the "extermination" of Karankawas, which became the keynote for the "birth of modern Texas" and the Rangers (pp. 10-11). No mention is made of official Mexican support for this, or how it was preceded by failed attempts to secure a treaty. Swanson declares that the Rangers "functioned as executioners" for the Republic of Texas (p. 24). But he recounts events that do not prove his point: the killing of Chief Bowl, whose executioners were army captains for the Republic; the Council House Fight, in which the Texas combatants were army troops (and in which almost half of the Comanches were taken prisoner and later escaped), and the Plum Creek fight, where most of the Comanches slipped away. Native American atrocities are downplayed, as are those by Mexican raiders, and stories of John C. "Coffee" Hays are derided as "hyperbole" (p. 57). These literary tactics are no more effective in proving the Rangers were "executioners" than his accounts of the Dawson Massacre, Salado Creek, Somervell Expedition, and Mier Expedition, only one of which was a Texan triumph and none of which were Ranger campaigns. Meanwhile, the operations of over seventy ranging companies in this period are largely ignored.

By the time Swanson reaches the early statehood era, his narrative has problems. He includes stories that are intended to convey how brutal the Rangers were, but they are absent from many of these tales, while at other times the events he cites do not do what he claims. Swanson hints at excesses by soldiers and Rangers in Mexico, but he does not understand military organization, which leads him to exaggerate the role of units that claimed to be "rangers." He also discusses atrocities by Arkansas volunteers, then asserts that the Rangers were worse, with no evidence. Swanson revisits the disastrous raid by James H. Callahan into Mexico in 1855, which was a Ranger operation but was not intended to recover slaves or support the Knights of the Golden Circle, both of which the author asserts. He is also wrong in declaring that Ford was a Knight, the Underground Railroad operated in Texas, and Ranger units joined filibusterer William Walker in Nicaragua. Using Lawrence S. "Sul" Ross to support his declaration that the Rangers were "professional and merciless executioners" for antebellum Texas provides a fitting conclusion to this part of the book. Swanson condemns Ross and his Rangers for killing twelve Comanches in their attack in December 1860, but he does not comment on the fact that the same Comanches had killed twenty-three settlers. The author also tells the sad tale of Cynthia Ann Parker, but he

never mentions another white captive whom Ross recovered in the same period, Lizzie Ross, nor a young Comanche boy he brought home, Pease Ross. They lived well for many years unlike poor Cynthia, whose story grew as part of Ross's efforts to be elected governor after the Civil War, not to promote the Rangers.

Swanson sets the tone for his discussion of the Frontier Battalion and Ranger Force, 1874-1901 and 1901-1935 respectively, by stating, "As before, they mixed bravery and heroism with oppression and atrocity" (p. 179). Leander H. McNelly tried to start a war with Mexico, which he illegally invaded, and was guilty of "summary executions" (p. 188). He accomplished little other than recovering cattle, which Swanson does not understand was very important in a region dominated by ranchers. In his discussion of the Salt War in 1877, Swanson is too busy describing the massacre as a mistake of the Rangers to condemn the Mexican and Mexican American vigilantes, who murdered several of them after they surrendered. Some readers may be puzzled that such inept Rangers could ever arrest John Wesley Hardin or kill Sam Bass, which is the fault of this book, not the facts. Swanson begins his look at the Ranger Force with the story of William J. McDonald at Brownsville in 1906. The real villain there may be Pres. Theodore Roosevelt, who dismissed 167 black soldiers, many more than the dozen whom McDonald thought might have been guilty. Unrest on the border by 1915 is the fault of the Rangers, according to Swanson, rather than a result of the Mexican Revolution or even the Plan de San Diego. Every dead Mexican or Mexican American is "most likely" a victim of Ranger "death squads" along the Rio Grande at that time (p. 248). Violence against Anglos is also downplayed, as are the role played by Gov. James E. Ferguson and the Special Rangers, as well as Ranger efforts at reform both before and after the legislative investigation prompted by Rep. José T. Canales. Swanson does his best work in discussing the tragedy of Porvenir, noting the Army's complicity and the firing of Capt. J. Monroe Fox, but the lack of action against Army leaders and public support of the Rangers indicates an important context that he does not explore. Francis A. "Frank" Hamer provides much of the material for the rest of the narrative concerning the Ranger Force, with vignettes focusing on Borger, Corpus Christi, and Sherman. The recurring theme for Swanson as the Rangers approached the New Deal is racism, with blacks replacing Native Americans as the principal targets, and Hamer fails his litmus test.

Swanson does not see any improvement in the Rangers as they became part of the Department of Public Safety. Ranger E. J. "Jay" Banks is condemned for not promoting integration at Mansfield and Texarkana, despite the fact that the parameters for both operations were set by a micro-managing Gov. Allan Shivers. Ranger Capt. Robert A. "Bob" Crowder negotiated a peaceful ending to an inmate riot at Rusk State Hospital, but state officials broke their promises to the rioters. Swanson concludes this sad tale by declaring, "Rusk inmates fell for the Ranger myth," which does no justice to the dangerous task performed by Crowder (p. 336). He and Banks defused situations and kept people from being killed, as did Alfred Y. Allee in Starr County in 1967, which is often overlooked by writers such as Swanson. The author also devotes entire chapters to the relationship between Clint Peoples and Billie Sol Estes, and between Bob Prince and Henry Lee Lucas. In the former, the narrative devolves into a discussion of how sleazy Estes could be. As for Prince, Swanson only briefly mentions that dozens of officers in thirty-six states were happy to let Lucas claim credit for 229 homicides. A closer inspection led to Lucas being convicted for only three, which is very close to the two for which Ranger Phillip R. "Phil" Ryan wanted him tried after his initial inquiry. But Ryan, and hundreds of other modern Rangers, get scant attention.

Perhaps this is a good book if you want to understand the violence that swirled around the early settlers of Texas, and the legal conflicts that wracked the Lone Star State in the twentieth century, but the Rangers are not the most common source of this brutality. And much of this story has been told in better books, by better scholars. Swanson does write about a lot of bad people going unpunished, but that is more the fault of judges, district attorneys, and juries that refused to convict or even indict. It is a problem in Texas law and society; thus Swanson's book is often more about the flaws of various other individuals and groups in Texas, not the Rangers. And if material on many subjects omitted by Swanson were included, such as Prohibition, it would not change the result. Swanson confesses that it is difficult to find a coherent thread to the last thirty years of Ranger history, and he proves it with an incoherent final chapter that contains an anecdote that is very typical of this book. Ranger Stanley K. Guffey was killed in a successful attempt to rescue a young girl that had been kidnapped. Swanson is careful to write about how, five years later, the girl and both her parents were killed in a plane crash. What he does not discuss is how Guffey and his partner, John Aycock, received Medals of Valor for the rescue, two of only four Rangers so honored, and that later Aycock became the only Ranger to get a second Medal of Valor, when he retrieved an infant from another gunman. Just a little more research by the author might have uncovered some good stories about a still evolving agency, but that is not the bold and brutal story he wants to tell.



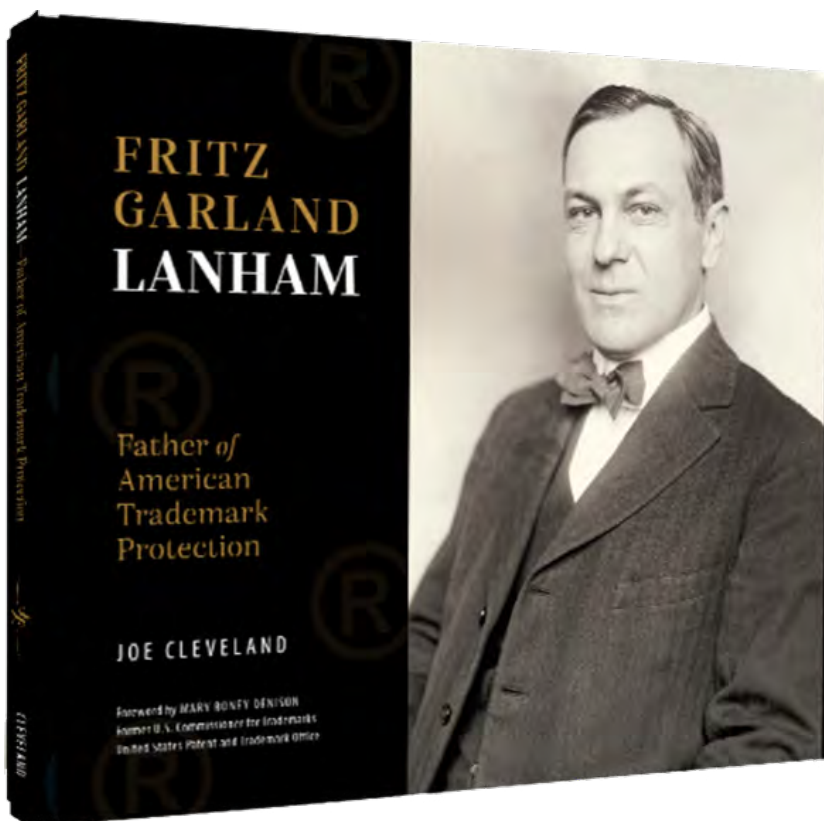
RICHARD B. McCASLIN, *TSHA Professor of Texas History at the University of North Texas, is the author or editor of eighteen books, seven of which won awards, as well as numerous book chapters and articles. A Fellow of the TSHA, he is also an Admiral in the Texas Navy and has received several awards for academic service from historical organizations, including the Civil War Round Tables in Dallas, Fort Worth, and Shreveport.*

[Return to Journal Index](#)

Review—Fritz Garland Lanham: *Father of American Trademark Protection*

Book Review by John Browning

The State Bar of Texas' Intellectual Property Law Section is marking this year as the 75th anniversary of the Lanham Act in a big way: with a splashy, two-day free CLE seminar jointly presented with the United States Patent and Trademark Office, with the world premiere of a documentary about the Lanham Act, and with a glossy “coffee table” biography of Frederick “Fritz” Garland Lanham (1880–1965), the Fort Worth Congressman and lawyer who was the driving force and namesake behind 1946’s Lanham Act. That Act (codified at 15 U.S.C. § 1051, et seq.) revolutionized American intellectual property law with its protections against trademark infringement, trademark dilution, and false advertising. Amended more than twenty times, the Act remains the primary source of statutory protection for trademarks in the country. As former U.S. Commissioner for Trademarks Mary Boney Denison points out in her foreword, “Because of Lanham’s tenacity and perseverance, American consumers, American businesses, and American commerce have vital protections as we move forward into the twenty-first century.”



Texas Intellectual Property Law Foundation (2021)

Cleveland’s book is very accessible, even to non-IP practitioners, and skillfully imparts a sense of the Act’s importance in American law. While it seems obvious to the modern reader that a business’ trademarks deserve protection under a uniform national scheme, Cleveland reminds us that it wasn’t always the case. The right to adopt and use a symbol to designate one’s product or service was previously only recognized under common law and in the statutes of a handful of states. Previous attempts at trademark regulation in 1870 and 1905 proved ineffective, and pirating was a problem. With the prospect of various states enacting a patchwork of their own trademark laws, the need for a new, uniform national law of trademark protection became clear. Beginning in 1937, Fritz Lanham

pressed for the law. His efforts culminated in the Lanham Act being signed into law by President Truman in 1946, nearly nine years after the Fort Worth Congressman began championing the legislation.

Born in Weatherford, Lanham was educated at the University of Texas (where he became the first editor of the campus newspaper, *The Texan*, and later the first editor of *The Alcalde*, UT's alumni magazine). Lanham was a political scion. His father, Samuel Lanham, leveraged his fame from trying Comanche Indian leaders for murder in a notorious 1871 trial (to be discussed in depth in our Fall issue) into service as a Congressman and later as governor of Texas. Admitted to the bar in 1909, by 1917 Fritz Lanham was an assistant district attorney in Tarrant County. When U.S. Rep. James Clifton Wilson left Congress to accept a federal judgeship on the U.S. District Court for the Northern District, Lanham won a special election in 1919 to represent Texas' 12th Congressional district. He would serve until his retirement in 1946. And while the Lanham Act is the crown jewel of his legacy in the House, it is just one of many contributions of interest to legal historians. Beginning in 1931, Lanham also served as chairman of the House Committee on Public Buildings and Grounds. In that capacity, Lanham oversaw the construction of such edifices as the Supreme Court building, completed in 1935 (and under budget at a cost of \$9.7 million). His name is engraved on that building, and the federal building in Fort Worth bears Lanham's name.

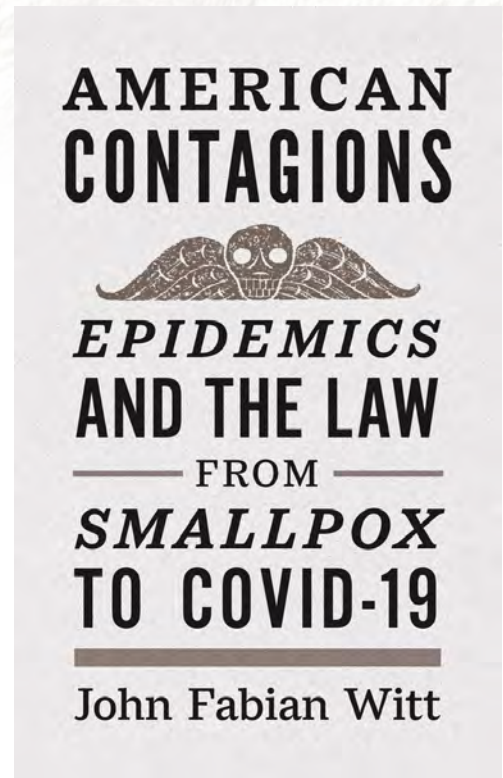
Cleveland's book is no dry homage to a politician of yesteryear. The glossy book is rich in photographs, and not just of Lanham, throughout his life and career. Liberally sprinkled throughout the book are stories behind famous trademarks such as Coca-Cola or AT&T, as well as summaries of famous trademark cases. History—and a new appreciation for the importance of trademark law in the pantheon of American legal history—comes alive in this fitting tribute to one of Texas' own.

[Return to Journal Index](#)

Review—American Contagions: Epidemics and the Law From Smallpox to COVID-19

Book Review by John Browning

If a book's length served as a reliable measure of its merit, it might be easy to overlook this slim (174 pages), unassuming volume. But Yale law and history professor John Fabian Witt's book is a timely and important narrative of the history of American efforts to prevent pandemics from breaking out and grappling with the legal issues they raise once they do. As Professor Witt explains, "New germs help make new laws and institutions, yet old ways of doing things shape the course of epidemics and the ways in which we respond to them." Mining a rich vein of historical literature from America's earliest days as a republic to the present, Witt crafts a compelling analysis of dueling political priorities and societal attitudes that helps lend context to American reactions to the current pandemic.



Yale University Press (2020)

Witt begins with the first two of the book's five chapters: "The Sanitationist State," and "Quarantinism in America." Quarantinism, Witt postulates, is characterized by a more authoritarian framework, in which the government employs its policing powers to impose rigid control over personal movement and civil liberties to contain and limit outbreaks. So-called sanitationist states on the other hand, adopt a more liberal approach aimed at eradicating the environments where disease runs rampant for the health of the general public. The United States, Witt argues, has displayed both approaches, often along socioeconomic and racial lines. For example, while the "sanitationist" approach was often applied where the wealthier classes were concerned, episodes like the 1900 bubonic plague lockdowns in San Francisco's Chinatown show how a "quarantinist" approach characterizes the treatment of racial minorities and the disenfranchised. Unfortunately, as history regularly reminds us, viruses do not adhere to class distinctions, but rather, as Witt reminds us, "evolve to take advantage of the world as it is."

Witt is at his best when discussing the shift in legal attitudes toward the suspension of civil liberties during pandemics. Imagine the anti-vaxxers and anti-mask advocates of the current pandemic who proudly tout originalist beliefs being told that early jurists like John Marshall were

staunch believers in Cicero's maxim *Salus populi suprema lex esto* ("public health is the supreme law"). The religious liberties advocates who applauded the Supreme Court's 2020 decision in *Roman Catholic Diocese of Brooklyn v. Cuomo* (striking down New York's ban on 10- or 25-person limits on religious gatherings) might be surprised to learn of the history of public health requirements taking precedence over religious freedoms (Witt points to the suspension of urban church-yard burials in the early 1800s as one example).

One relative constant, according to Witt, is how the federal government has consistently punted health regulations to the states. And those states, in turn, have frequently exercised discriminating state power against particular communities or specific individuals. Unmarried Irish immigrant Mary Mallon—soon to be better known as "Typhoid Mary"—was a domestic cook in 1907 Manhattan when a typhoid outbreak began, with several of New York's wealthiest households serving as Ground Zero. The outbreak was ultimately traced back to Mallon (a healthy carrier of the typhoid bacillus), and she eventually spent the remaining 23-plus years of her life in isolation on North Brother Island in the East River, never having been charged with, much less convicted of a crime. Whether he is referencing Irish immigrants, Chinese workers, or poor Blacks, Witt's survey of state actions during pandemics reveals that these actions often bring out our worst, instead of our best. There is not that much of an ideological leap from eighteenth century New York orders that "no Indian shall come to towne . . . until they be free of the small poxe" to twenty-first century calls for more stringent health inspections and barriers to block putatively disease-carrying people at the U.S.–Mexico border.

Our legal history in responding to pandemics may reflect what Oliver Wendell Holmes Jr. would characterize as "the felt necessities of the time," but there are certain consistencies. The venerable 1905 U.S. Supreme Court precedent for compulsory vaccination, *Jacobson v. Massachusetts*, has found new legal relevance in the COVID-19 era, for example, as debate continues to rage about mask-wearing, social distancing guidelines, and "vaccination passports." Few legal scholars, however, have been willing to acknowledge a previous reliance on *Jacobson*—in the 1927 Supreme Court case of *Buck v. Bell*, in which Justice Holmes justified eugenic sterilization of the "unfit" with his sweeping "Three generations of imbeciles are enough."

As Witt observes, in his paraphrasing of William Faulkner, "legal responses to past viruses never die; they're not even past."

[Return to Journal Index](#)

75th Anniversary Celebration of the Lanham Trademark Act

In celebration of the 75th anniversary of the Lanham Trademark Act, the United States Patent and Trademark Office (USPTO) and Intellectual Property Law Section of the State Bar of Texas, or IP Section, hosted a special two day event to honor former U.S. Rep. Fritz G. Lanham of Texas, the father of the Lanham Act. The celebratory event was an opportunity to learn about Congressman Lanham, the history of the Lanham Act, and the important role that the act plays in protecting American businesses and consumers.



The IP Section comprises over 2,200 prosecution, transactional, and litigation attorneys practicing in various areas of IP specialty. The mission of the IP Section is to educate, connect, and serve the Texas intellectual property community as well as their clients, and to encourage innovation and opportunities within the state of Texas.

Co-chaired by Joe Cleveland¹ and Craig Stone,² the program included a “Nuts and Bolts” bootcamp for those interested in learning more about trademark law as well as live hearings before the Trademark Trial and Appeal Board. The program also featured a “State of the Office” interview with Drew Hirshfeld, who is performing the functions and duties of the director of the USPTO, and Texas Regional USPTO Director Hope Shimabuku. A blockbuster all-woman panel provided a thought-provoking discussion about strategies for success in the world of intellectual property law. Moderated by Molly Buck Richard, the panel included Lisa Blatt who argued the *Booking.com* case before the U.S. Supreme Court; Dorian Daley of Oracle; former Commissioner of Trademarks Mary Boney Denison; Michelle Lee of Amazon; Chief Judge Barbara M.G. Lynn of the U.S. District Court for the Northern District of Texas; and Register of Copyrights Shira Perlmutter. Commissioner for Trademarks David Gooder provided the keynote address. The program also included special remarks from U.S. Secretary of Commerce Gina Raimondo; U.S. Rep. Kay Granger, of Texas; Chief Administrative Trademark Judge Gerard Rogers of the Trademark Trial and Appeal Board; and Jennifer McDowell, of the International Trademark Association. The program concluded with the world premiere of the documentary *75 Years of the Lanham Act*.

In celebration of the 75th Anniversary of the Lanham Act, the Texas Intellectual Property Law Foundation commissioned a beautiful commemorative limited-edition book about this important milestone in trademark protection.

When Texas Congressman Fritz G. Lanham gaveled the hearing to order as the chair of the

¹ Joe Cleveland is a partner with the law firm of Brackett & Ellis, P.C. located in Fort Worth, Texas.

² Craig Stone is Senior Counsel, Legal at Phillips 66 Company in Houston, Texas.

House Committee on Trademarks in 1937, he could not have envisioned how significant an impact his legislative efforts would become. Author Joe Cleveland traces Lanham's rise from small-town prosecutor on the windswept plains of the Lone Star State to the halls of Congress, where his long and distinguished congressional career burnished his reputation as a legislative giant. The book recaps stories of famous trademark court cases and offers a glimpse into how some prominent trademarks came into our everyday consciousness. *Fritz Garland Lanham—Father of American Trademark Protection* is a remarkable story about the history of protecting American business and American consumers and how one man changed it all.

All sales proceeds from the book will fund a diversity scholarship program sponsored by the Texas Intellectual Property Law Foundation in Congressman Fritz G. Lanham's honor.

To order the book, watch the documentary, or access more information about the Lanham Act 75th anniversary celebration, please visit www.lanham75.org.

[Return to Journal Index](#)

Board Trustee Justice Gina Benavides Honored for Pro Bono Commitment

In May, the State Bar of Texas Legal Services to the Poor in Civil Matters Committee announced its 2021 Pro Bono Excellence award winners. Prominent among the recipients was TSCHS Trustee Justice Gina Benavides, who was named the winner of the Judge Merrill Hartman Pro Bono Judge Award. This award honors a judge sitting or retired, who has provided exemplary pro bono service, including outreach to attorneys to increase the quantity and quality of pro bono representation; modifications to court processes to increase access to justice; advocacy on behalf of access to justice; or service as a volunteer judge for pro bono clinics or other pro bono proceedings.

Justice Benavides serves on the Thirteenth Court of Appeals, and has previously been named “Latina Judge of the Year” by the National Hispanic Bar Association. In honoring Justice Benavides with the Judge Merrill Hartman Pro Bono Judge Award, the Committee cited her work as a board member of the Texas Legal Services Center, in which Justice Benavides provided leadership to navigate the pandemic and the resulting economic downturn that impacted so many of the Center’s vulnerable clients. In addition, the Committee highlighted her service on the Texas Access to Justice Commission’s Legislative Committee as well as Justice Benavides’ prior service on that Commission’s board. Congratulations, Justice Benavides!



Justice Gina Benavides

[Return to Journal Index](#)

Journal Editor-in-Chief Wins Top Oklahoma Writing Award

Come November, TSCHS Journal Editor-in-Chief John Browning's trophy case will be a little more crowded. The lawyer and former appellate justice was just named the winner of the Oklahoma Bar Association's Maurice Merrill Golden Quill Award, that state's top legal writing honor. Named for the late Dr. Maurice Merrill, a longtime OU law professor and noted author, the award is presented annually to the author of the best written article published in the *Oklahoma Bar Journal*.



Justice Browning was the unanimous choice of the OBA Board of Editors for his article in the May 2021 issue, "Blazing the Trail: Oklahoma Pioneer African American Attorneys." The painstakingly researched article traced the lives and legacies of Oklahoma's first Black lawyers,



Maurice Merrill



The May 2021 Issue



John Browning

including figures like former slave George Napier Perkins—who left his Arkansas law practice in 1890 after the passage of Jim Crow laws—and onetime Texas lawyer William Henry Twine. Both lawyers made new starts in the Oklahoma Territory, which was widely seen as a multiethnic land

of opportunity. Perkins and Twine both enjoyed distinguished careers as not only lawyers, but newspaper publishers and political organizers as well, as Oklahoma made the transition to statehood and the days of tolerance were replaced by Jim Crow laws and racial violence.

The May 2021 issue itself, which was curated by Justice Browning, was a first in Oklahoma bar history. Marking the 100th anniversary of the May 1921 Tulsa Race Massacre, the issue was devoted to Black legal history in Oklahoma. Besides Justice Browning's award-winning article, it also included another Browning article on the Tulsa Race Massacre and its legal aftermath; an article on the landmark U.S. Supreme Court case that ended segregation at OU Law School; a look at the 1915 *Guinn v. United States* case in which the U.S. Supreme Court struck down Oklahoma's grandfather clause; and an article analyzing the concept of racial identity in Oklahoma legal history. Amid a sea of events marking the centennial of the Tulsa Race Massacre that drew national attention (including a visit by President Biden), this special issue of the *Oklahoma Bar Journal* was singled out

by the *Tulsa World* newspaper in an article applauding the Bar for shining much-needed light on overlooked episodes in the state's history and detailing the contributions of Black lawyers and civil rights struggles in the court system. In her article, *Tulsa World* journalist Samantha Vicent quoted Justice Browning about the mission behind the issue: "A lot of people look to us lawyers as leaders in the community and sometimes we as lawyers are less informed than we'd like to be. I thought it would be a service to the Bar to put this information out there and a service to the community as a whole."

The Maurice Merrill Golden Quill Award will be presented to Justice Browning (who is a member of the Oklahoma and Texas bars) at the Oklahoma Bar Association Annual Meeting in November.

[Return to Journal Index](#)

Justice Eva Guzman Resigns

By John G. Browning



With utmost gratitude for the opportunity and gift of public service, I write to inform you that I am resigning from my office...It has been the honor of a lifetime to answer this high calling." With these words in a letter to Governor Greg Abbott, Justice Eva Guzman resigned from the Supreme Court of Texas effective June 11, 2021. Justice Guzman had served on Texas' highest court since her 2009 appointment by Governor Rick Perry, becoming the first Latina to serve on the court. Her distinguished judicial career also includes service as a justice on Houston's Fourteenth Court of Appeals, and as a trial judge for the 309th District Court of Harris County.

The Texas Supreme Court Historical Society, the Texas legal community, and the citizens of Texas owe Justice Guzman a debt of gratitude for her faithful service. And she isn't closing the door yet on public service. Shortly after her resignation, Justice Guzman announced her candidacy for the Republican nomination for Attorney General, joining a primary field that includes incumbent Attorney General Ken Paxton and Texas Land Commissioner George P. Bush. In the meantime, Justice Guzman has returned to private practice, joining Chamberlain, Hrdlicka, White, Williams, & Aughtry as a shareholder. At press time, the office of Governor Abbott had not yet announced an appointment to fill the now-vacant seat on the Supreme Court.

[Return to Journal Index](#)

Call for Applications: 2022 Larry McNeill Research Fellowship in Texas Legal History

By David A. Furlow

The Texas Supreme Court Historical Society and the Texas State Historical Association (“TSHA”) are pleased to announce that applications are now being accepted for the 2022 Larry McNeill Research Fellowship in Texas Legal History.

Established in 2019 in honor of attorney Larry McNeill, the \$2,500 annual fellowship is awarded to an applicant who submits the best research proposal on some aspect of Texas legal history. Competition is open to any applicant pursuing a legal history topic, including judges, lawyers, college students, and academic and grass-roots historians. The award will be made at the Texas State Historical Association’s Annual Meeting in Austin on Friday, February 25, 2022.



Larry McNeill

An application, which should be no longer than two pages, should specify the purpose of the research and provide a description of the end product (article or book). An applicant should include a complete vita with the application. Judges may withhold the award at their discretion.

Individuals wishing to apply should submit an application form (and attach the proposal and a curriculum vita) by October 15, 2021. Only electronic copies submitted through the link below and received by the deadline will be considered. For more information, please see the announcement at <https://www.tshaonline.org/awards/larry-mcneill-research-fellowship-in-texas-legal-history>.

[Return to Journal Index](#)

Hemphill Dinner 2021 Announcement

The Hemphill Dinner is an important event for the Texas Supreme Court Historical Society and one that members look forward to as a highlight of the year. In May, the Society announced plans to hold the Hemphill Dinner in person on Friday, September 3, 2021, at the Austin Four Seasons Hotel. At that time, there was a real hope of a steady and measured return to a semblance of normalcy. Unfortunately, cases of COVID across Texas are again rising dramatically. After careful consideration of the options available, the Society has elected to postpone the Hemphill Dinner to Friday, December 3, 2021. Our hope is that by December, the circumstances will have changed to enable us to proceed with a carefully planned in-person dinner that is safe for all.

The speaker this year will be Lisa Blatt of Williams & Connolly in Washington, D.C. She will discuss the life and career of Justice Ruth Bader Ginsburg. Ms. Blatt is an alumna of the University of Texas at Austin, having obtained both her undergraduate and law degrees from UT. Upon graduating from law school, Ms. Blatt clerked for Ruth Bader Ginsburg while Justice Ginsburg was a judge on the Court of Appeals for the District of Columbia.

Ms. Blatt began her career at Williams & Connolly in Washington D.C., a premier litigation firm founded by legendary lawyer Edward Bennett Williams. After a few years, however, Ms. Blatt realized she preferred appellate work and accepted a position with the Office of the Solicitor General. There, she began her impressive evolution into one of the nation's premier Supreme Court advocates. More recently, Ms. Blatt returned to Williams & Connolly, where she serves as Chair of the firm's Supreme Court and Appellate practice.



Lisa S. Blatt

Ms. Blatt has argued 41 cases before the United States Supreme Court, winning 37 of them. In Ms. Blatt's most recent argument, she represented a school district in a first amendment case dealing with the question of a school's authority to discipline a student based on the student's off-campus speech. *The National Law Journal* called Ms. Blatt a "visionary" and one of "the 100 most influential lawyers in America." *Bloomberg* described her as a "legendary high court litigator" while *The National Journal* referred to her as a "SCOTUS legend." Ms. Blatt's Supreme Court cases have covered a wide range of substantive issues, from trademark and ERISA to superfund sites and first amendment issues.

Ms. Blatt has racked up a number of impressive awards. *Washingtonian* Magazine has named her to its list of Top Lawyers. She was also recognized as a *Law360* Appellate MVP and was named to *The National Law Journal's* 2020 list of Washington, D.C. Trailblazers.

In September 2020, when NPR needed assistance in covering Justice Ginsburg's funeral, they enlisted Nina Totenberg and Ms. Blatt. During the broadcast, Ms. Blatt spoke about her relationship with Justice Ginsburg, which commenced with her clerkship and continued through Ms. Blatt's Supreme Court practice. Ms. Blatt will share some of those same stories with the guests at the Hemphill Dinner.

Each year, the Texas Center for Legal Ethics presents the Chief Justice Jack Pope Professionalism Award to a judge or attorney who personifies the highest standards of professionalism and integrity in appellate law. This year, Texas Supreme Court Chief Justice Nathan Hecht will present the Pope Award to former Chief Justice Ann Crawford McClure of the El Paso Court of Appeals at the Hemphill Dinner on December 3.

The Society has had an enthusiastic response to this year's dinner, and tickets for the dinner have sold out. If you are interested in placing your name on a waiting list should additional tickets become available, you can either call the Society at its office: (512) 481-1840 or you can email: tschs@sbcglobal.net.

[Return to Journal Index](#)

Villa de Austin Courthouse Fire Recovery Campaign



On April 9th, 2021, the newly constructed “Courthouse,” part of the *Villa de Austin* exhibit at the San Felipe de Austin State Historic Site, was destroyed by fire. The Texas Historical Commission and the Friends of the THC are committed to rebuilding this integral part of the *Villa de Austin*.

The State of Texas is self-insured, although there may be some insurance coverage for the building and contents. The Friends of the THC have reallocated other project funds to begin off-site construction of the frame and other long-lead items. But new donations are needed as well. \$75,000 is needed by September 15—“\$75,000 in 75 days”—to fund on-site construction.

Sponsorships are also being sought for the furnishings for the building, with a goal of \$25,000 to reproduce the furniture and other furnishings for the building. Once the Courthouse is rebuilt, the *Villa de Austin* project will open to the public in the fall of 2021.

Online donations can be made to the Friends of the Texas Historical Commission: <https://www.thcfriends.org/villa-de-austin-fire-recovery-campaign>. Gifts by check payable to the Friends of the Texas Historical Commission with memo of *Villa de Austin* can be mailed to:

Friends of the Texas Historical Commission
P.O. Box 13497
Austin, Texas 78711-3497

Questions? Contact Anjali Kaul Zutshi, Executive Director, Friends of the Texas Historical Commission at (512) 936-2241 or Anjali.Zutshi@thc.texas.gov.

[Return to Journal Index](#)



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P.O. Box 12673
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JOURNAL STAFF

General Editor
Lynne Liberato
lynne.liberato@haynesboone.com

Editor-in-Chief
Hon. John G. Browning
jbrowning@spencerfane.com

Executive Articles Editor
Stephen P. Pate
spate@cozen.com

Managing Editor
Karen Patton
karenpatton133@gmail.com

Editor
Kevin Carlsen
kevinw.carlsen@gmail.com

Production Manager & Graphic Designer
David C. Kroll
dckroll@gmail.com

Editor Emeritus
David A. Furlow
dafurlow@gmail.com

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

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

[Return to Journal Index](#)

2021-22 Membership Upgrades

The following Society members have moved to a higher dues category since June 1, 2021, the beginning of the membership year.

TRUSTEE

Kendyl Hanks

Rachel H. Stinson

Brandy Wingate Voss

[Return to Journal Index](#)

2021-22 New Member List

The Society has added 24 new members since June 1, 2021. Among them are 20 Law Clerks for the Court (*) who will receive a complimentary one-year membership during their clerkship.

TRUSTEE

Anthony Arguijo
Allyson Ho
Hon. Michael J. Truncale

CONTRIBUTING

Marshall Brown

REGULAR

Phillip Allen*
Emily Bamesberger*
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[Return to Journal Index](#)

Membership Benefits & Application

Hemphill Fellow \$5,000

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

Greenhill Fellow \$2,500

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

Trustee Membership \$1,000

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

Patron Membership \$500

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

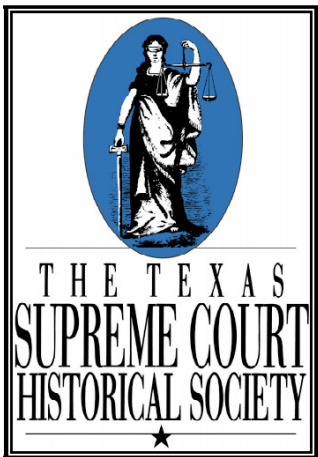
Contributing Membership \$100

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

Regular Membership \$50

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

eJnl appl 8/21



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.

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