



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Summer 2022 Vol. II, No. 4 Editor Emerita Lynne Liberato Editor-in-Chief Hon. John G. Browning

Columns

Message from the President

By Hon. Ken Wise

This special issue of our award-winning Journal features influential women in Texas legal history and examines the ways that women have shaped our legal system. [Read more...](#)



Hon. Ken Wise

Executive Director's Page

By Sharon Sandle

Women lawyers and judges, often described as "groundbreaking," became the focus of attention because of the novelty of their gender. [Read more...](#)

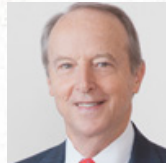


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Fellows Column

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The Houston Bar Association will again use our Taming Texas materials to teach students during the 2022-23 school year. [Read more...](#)



David J. Beck

Editor-in-Chief's Column

By Hon. John G. Browning

William Faulkner famously wrote, "The past is never dead. It's not even past." Recent news supports the truth of this statement. [Read more...](#)



Hon. John G. Browning

Leads

Promiscuity on Trial: Texas Reclamation Centers, World War I, and the Nullification of Women's Rights in Texas

By Jennifer Bridges, Ph.D.

As the world was plunged into a war of carnage and destruction in Europe, the U.S. military was plagued with an epidemic of its own: venereal disease. [Read more...](#)



U.S. Secretary of War (1916-1921)
Newton D. Baker

Cunningham's Legal Defense Committee and Challenges to the Primary (White) Woman Suffrage Law

By Rachel Michelle Gunter

After Texas passed a primary woman suffrage bill allowing female citizens to vote in the all-white primary in 1918, Texas suffragists prioritized protecting that law from legal challenges. [Read more...](#)



Suffragist
Minnie Fisher
Cunningham

Features

More than Milestones: The Groundbreaking Cisneros Sisters

By Luis J. Marín

September 6, 1955, marks the date when Edna Cisneros became the first female attorney in Willacy County, Texas. [Read more...](#)



Edna Cisneros

From Courtrooms to the Silver Screen: The Story of Florence Rabe Jacoby

By Hon. John G. Browning

If you're an aficionado of the "Golden Age" of American cinema, you just might have unwittingly seen one of Texas' female legal pioneers. [Read more...](#)



Florence Rabe
Jacoby



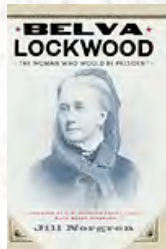
Book Reviews

Book Review—Belva Lockwood:

The Woman Who Would Be President

Book review by Hon. John G. Browning

Most reading Norgren's work know Lockwood best as the first woman to run for president, but this exhaustively researched book offers a new appreciation for a complex, driven woman. [Read more...](#)



Book Review—Civil Rights Queen:

Constance Baker Motley and the Struggle for Equality

Book review by Hon. John G. Browning

As the author points out, "Without Constance Baker Motley's pathbreaking contributions to American law and society, there would be no Ketanji Brown Jackson as we know her." [Read more...](#)



News & Announcements

Remembering Michael Olivas

By Juan F. Perea

Michael Olivas's sudden and untimely death this past April leaves a huge void in the academy, legal and otherwise. [Read more...](#)



Michael Olivas

We Are Pleased to Announce This Year's Hemphill Dinner

The 27th Hemphill Dinner will take place on **Thursday, September 8**, the final day of the Advanced Civil Appellate Practice Course. [Read more...](#)



Keynote speaker
Greg Stohr

Justice Brett Busby Receives Judicial Civic Education Award

By Warren Harris

Justice Brett Busby was recently named the 2022 recipient of the Judicial Civic Education Award from the American Lawyers Alliance. [Read more...](#)



Justice Brett
Busby

Society Trustee Elected to the Massachusetts Colonial Society

The members of the Colonial Society of Massachusetts elected David A. Furlow as a Non-Resident Member. [Read more...](#)



Hon. John G. Browning Wins ABA Silver Gavel Award

The *Journal* Editor-in-Chief has been chosen as one of eight winners of the ABA's Silver Gavel Award for Media and the Arts. [Read more...](#)



And the 2023 Larry McNeill Fellowship Goes On...

Applications are being accepted for TSHA's 2023 Larry McNeill Research Fellowship in Texas Legal History. [Read more...](#)



Larry McNeill

The Society Zoomed

Out of Covid in Galveston

Story and photos by David A. Furlow

The Society celebrated its emergence from Covid's shadow by conducting a live Spring 2022 Meeting at the Bryan Museum in Galveston. [Read more...](#)



Bryan Museum in
Galveston

Come Learn about the Intertwined Histories of Mexican and Texas Federalism

Story and photos by David A. Furlow

Our Society is serving as a co-sponsor of the 16th Quadrennial Meeting of the Conference of International Mexican Historians. [Read more...](#)



Flag of the
Mexican twin-
state of Coahuila
and Texas

2022 Texas Appellate Hall of Fame Inductees

Two appellate justices and one appellate practitioner will be honored this fall for their trailblazing marks on Texas legal history. [Read more...](#)



The 2022
inductees

Save the Date: March 2-4, 2023, to see the Society at the TSHA Annual Meeting

Story and photos by David A. Furlow

Our Society's speakers will present a panel program, "Advancing the Rule of Law along Contested Frontiers." [Read more...](#)



TSHA logo

Membership & More

Officers, Trustees & Court Liaison

2022-23 New Member List

Join the Society

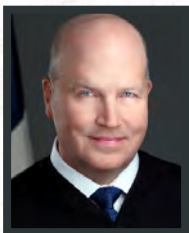


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FB: Texas Supreme Court Historical Society

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Hon. Ken Wise

Message from the *President*

Greetings and welcome to the Summer 2022 Journal. Summer starts a new year for the Society, and I am honored and excited to begin my year as President. I want to thank my predecessor Tom Leatherbury for his leadership this past year. Tom is a wonderful lawyer, leader, and friend to so many of us. His steady leadership has allowed the Society to emerge from the pandemic stronger than ever. I am also excited to work with our tremendous staff, led by our Executive Director Sharon Sandle. It's going to be a great year.

This issue of our award-winning Journal is special. It features influential women in Texas legal history and examines the ways that women have shaped our legal system.

During World War One, the legal system was sometimes deployed against women in a purported effort to fight the spread of venereal disease. In "Promiscuity on Trial," Grayson College Professor Dr. Jennifer Bridges explores several cases that were fought to protect women against overzealous prosecution. Collin College Professor Dr. Rachel Gunter provides a fascinating account of how Minnie Cunningham led a committee that defended Texas' 1918 women's suffrage law.

The Journal features several profiles of influential Texas women. Hon. John Browning provides a charming account of Texas lawyer Florence Rabe who became a famous actress during the golden age of Hollywood. Luis Marín profiles sisters Edna and Diana Cisneros from Willacy County. Edna Cisneros was one of the first Latinas admitted to the State Bar of Texas, and both Cisneros sisters served as the District Attorney for Willacy County.

You'll find two book reviews from Justice John Browning in this summer's Journal. *Belva Lockwood: The Woman Who Would Be President* by Jill Norgren is about the first woman to appear on the official presidential ballot. *Civil Rights Queen: Constance Baker Motley and The Struggle for Equality* by Tomiko Brown-Nagin is about one of the lawyers who litigated *Brown v. Board of Education* and was the first black woman appointed to the federal bench.

This will be a busy administrative year for the Board of the Society. We will begin the process of creating a strategic plan and will be conducting a financial audit. We have also expanded the

work of the Archives Committee to assist with the portraiture of the Courts of Appeal. The staff and trustees are hard at work organizing this year's committees and preparing for the upcoming Hemphill Dinner.

Speaking of the Hemphill Dinner, I hope you will make plans to join us in Austin on the evening of September 8 for one of the premier events for the Texas legal community. The dinner will once again take place at the Four Seasons Austin during the TexasBarCLE Advanced Civil Appellate Practice Course. The Hemphill Dinner is always a wonderful gathering of lawyers and judges. This year's speaker will be Bloomberg News Supreme Court reporter Greg Stohr. It promises to be an interesting presentation and fun evening! Please join us as we thank Tom Leatherbury for his leadership and celebrate our Texas legal history. For more information on the Hemphill Dinner click [here](#).

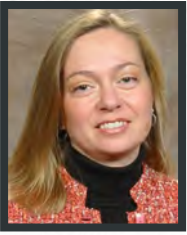
The fourth book in the Taming Texas series is nearing completion. This series originated in connection with a program started by the Houston Bar Association. That program, also called Taming Texas, places lawyers and judges in seventh grade classrooms around the Houston area to present the legal history of Texas to what has now been thousands of students. This program has been extremely successful, and the Society is honored to have played a role in educating our students on the fascinating and important legal history of our great state.

The Society continues to grow its involvement with other prominent historical associations. In this issue, please note the announcements regarding the Society's sponsorship of the 16th Quadrennial Meeting of the Conference of International Mexican Historians as well as the Society's panel at the annual meeting of the Texas State Historical Association.

A new Society year brings the opportunity to renew your membership in the Society. Your membership funds the Society's many projects and is key to the Society's future. To become a member or renew your membership, please click [here](#).

Lastly, the Society is on social media! Please like the Society's [Facebook page](#) and follow the society on Twitter [@SCOTXHistSoc](#).

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Sharon Sandle

Making Headlines: *Women in Texas Law*

It's hard to be the first. When you're the first, you're breaking new ground. It's exciting, but you're often on your own. You're notable as much, or more, for being different than for your skill or talent. But you're also asked to prove you belong. This issue of the Journal is the first of two issues focusing on women in Texas law and featuring the contributions of women lawyers and judges. These women, often described as "groundbreaking," became the focus of attention because of the novelty of their gender.

In 1902, for example, the *El Paso Herald* published an article under the headline *A Woman Lawyer Qualifies for Practice in This City*. The article goes on to describe the qualification process for Edith W. Locke, noting that a panel of three judges gave her "a most searching examination ransacking all of the law from the foundations of the Roman Empire through the English common law and down to the latest Texas statutes" before granting her a license. Were other candidates considered for admission to the Bar at the same time? Were they given the same examination? If so, it didn't make the news. Edith Locke's story made headlines because she was unique, unexpected.

In his article on the Cisneros sisters, Luis J. Marín references an article in *Dallas Morning News* with the headline *Pretty Girl to Take Over as Willacy County's DA*. The headline reflects the novelty of a woman district attorney and is certainly designed to attract attention with the reference to Edna Cisneros's appearance. But it is worth noting that the article appeared, with minor variations to the headline but not to its theme of an attractive woman assuming the office of district attorney, in newspapers across Texas from the Sulphur Springs *Daily News-Telegram* to the *Orange Leader*.

People who are frequently in the public eye are aware that they only have so much control over how they are represented to the world. Those who are clever are aware of what it is about them that interests people, and they use that to call attention to their own message.

At last year's Hemphill Dinner, we heard U.S. Supreme Court advocate Lisa Blatt reminisce about her clerkship with Justice Ruth Bader Ginsburg, then a judge on the U.S. Court of Appeals for the D.C. Circuit. Justice Ginsburg is notable in the legal community for her advocacy on behalf of women's rights and for her opinions, and dissents, as a U.S. Supreme Court Justice. But Lisa Blatt

also recounted how Justice Ginsburg was very aware of how her appearance on the public stage of the Court would be noticed. Blatt recalled how Ginsburg gave advice to Blatt and other women colleagues on how to dress as an appellate advocate, and Ginsburg's lace collars have become an iconic symbol of Justice Ginsburg and the ideals that she stood for. Justice Ginsburg's legacy is a function not just of her talent and dedication as a lawyer and jurist, but also of how she was represented in the media to those who never had the opportunity to interact with her in person.

Guests at this year's Hemphill Dinner will have the opportunity to explore the issues raised by the interaction of the media and the courts. This year's keynote speaker is award-winning journalist and author Greg Stohr, who has covered the Supreme Court for Bloomberg News since 1998. We are excited to hear Stohr's reflections on his coverage of the Court and on the relationship between the media and the courts. It is a relationship that will continue being both fascinating and complex.

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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 2022-23 school year. We appreciate the HBA and its President, Chris Popov, 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 unparalleled support. In the past seven years, Taming Texas has reached over 23,000 Houston-area students. HBA President Popov has appointed Richard Whiteley and Judge Barbara Stalder as the HBA program co-chairs to recruit volunteer attorneys and judges

to teach the seventh-grade students in the upcoming school year. If you would like to participate in this important program, please contact the HBA or one of the co-chairs of the program.

We are in the final stages of layout and design of the fourth book in the Taming Texas judicial civics and history series, entitled *Taming Texas: Women in Texas Law*. This latest book will feature some of the women lawyers and judges who have had an impact on Texas law and society as judges, legislators, public attorneys, and activists. The book will show how far women have come since Texas became a state in 1845. It took many decades and many determined women to change the laws and attitudes that kept them from becoming lawyers, voting, running for public office, serving as judges, serving on juries, and having equal legal rights with men.

Women of color faced even more barriers. After the Texas Equal Rights Amendment passed in 1972, women began going to law school in larger numbers, and many of those who were already lawyers became judges, legislators, and other public leaders. By 2022, 41,000 women were licensed to practice law in Texas, and more than 11,000 of these women were people of color (Black, Latina, Asian/Pacific Islander, American Indian/Alaska Native). The number of women judges is now around 1,200, and they represent all races and ethnic backgrounds. The numbers grow every year, a sure sign that women are taking full advantage of the opportunities now open to them.

The final chapter of the book will offer a glance at some of the other women who were either "firsts" or who held or still hold the highest positions in the Texas judicial system. The photo on the next page shows the eight women who had served as a Justice of the Supreme Court of Texas as of 2013, shown with Justice Sandra Day O'Connor of the United States Supreme Court.



Photo by Mark Matson.

Chief Justice Hecht has written the foreword for this new book, as he has done for all of the *Taming Texas* books. In describing the book, Chief Justice Hecht writes:

This fourth *Taming Texas* book authored by Jim Haley and Marilyn Duncan paints portraits of the women in Texas law—with words, not oil, but just as vivid. These are the stories of pioneers, women entering a legal profession that had always been closed to them, finding ways to practice law with few mentors to show the way, demonstrating how essential inclusion is to justice, and making Texas a better and even bigger place. Many are still leading the way.

Chief Justice Hecht has been a longtime supporter of this important project, and we are thankful for his assistance.

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 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)

Thomas S. Leatherbury
Richard Warren Mithoff*

Greenhill Fellows

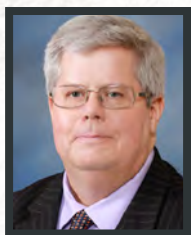
(\$2,500 or more annually)

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
William Fred Hagans
Lauren and Warren W. Harris*
Thomas F.A. Hetherington
Jennifer and Richard Hogan, Jr.
Dee J. Kelly, Jr.*
Hon. David E. Keltner*
Lynne Liberato*
Mike McKool, Jr.*

Ben L. Mesches
Jeffrey L. Oldham
Hon. Harriet O'Neill and Kerry N. Cammack
Hon. Jack Pope* (deceased)
Shannon H. Ratliff*
Harry M. Reasoner
Robert M. (Randy) Roach, Jr.*
Leslie Robnett
Professor L. Wayne Scott*
Reagan W. Simpson*
Allison Stewart
Cynthia K. Timms
Peter S. Wahby
Hon. Dale Wainwright
Charles R. "Skip" Watson, Jr.
R. Paul Yetter*

*Charter Fellow

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Hon. John G.
Browning

Living History

William Faulkner famously wrote, “The past is never dead. It’s not even past.” Recent news supports the truth of this statement, and not surprisingly, the legal system and what was once thought to be relegated to the dustbin of history are front and center. The first example of this is the news from June 29 of the discovery of an unserved arrest warrant from the 1955 murder case of Emmitt Till in Mississippi. The warrant, dated August 28, 1955 and charging Carolyn Bryant Donham in Till’s kidnapping, was found in a file folder in a forgotten box in the Leflore County Circuit courthouse—the same county where Till was murdered. Donham, who was twenty-one when she alleged that fourteen-year-old Till whistled at her, was married to Roy Bryant, one of the two white men who kidnapped, tortured, and killed Till in a case that galvanized the civil rights movement. The sheriff in Leflore County at the time, though aware of Donham’s involvement, supposedly didn’t arrest Donham because she had two young children. Roy Bryant and J.W. Milam were charged with murder but were acquitted by an all-white jury; even though they later admitted to killing, they were never retried.

Donham later admitted lying about Till’s purported behavior, but she has never faced justice for her role in his death. Now eighty-seven and living in Raleigh, North Carolina, she may yet face charges for what happened in 1955—all because of a random discovery in a forgotten part of the courthouse that had eluded historians until now. Another recent courthouse find could aid our understanding of another iconic figure in American history, abolitionist and women’s rights activist Sojourner Truth. While working on a revision to his previously published history of the New York Supreme Court between 1691 and 1847, archivist and author Jim Folts made an exciting discovery buried within 5,000 cubic feet of court records in Albany. Folts found eight pages of an 1828 lawsuit brought against a white man, Solomon Gedney, who had sold Truth’s son Peter to slaveowners in the South. Folts realized that Sojourner Truth had been previously known as Isabella Van Wagenen, and despite being illiterate, she was able to initiate the lawsuit on March 1, 1828, with the assistance of two white lawyers in Kingston, New York. According to Folts, Truth won the case and her son was set free. The document, which Folts described as “new to historians,” contributes important insight not only into Sojourner Truth herself, but also how formerly enslaved

people empowered themselves using available legal remedies. It represents the first time in U.S. history that a Black woman successfully sued a white man for a family member's freedom. Truth's autobiography made vague reference to seeking legal counsel to help obtain her son's release, but until this discovery, the documentation of it was thought lost to history.

In this issue, we honor the significant contributions of women throughout Texas legal history, a subject the Journal last turned its focus to in 2015. At first glance, women have made huge strides toward more equal representation in the legal profession. According to the ABA National Lawyer Population Survey, in 2010 fewer than a third of all lawyers were women; by 2021, that percentage had risen to 37%. Yet despite impressive gains, women still lag behind men in firm leadership positions and partnership ranks, and a gender pay gap still exists. In addition, female lawyers were more likely than their male counterparts to be disrupted by family and home obligations during the pandemic. And even as their numbers rise in the profession, gender disparity and underrepresentation in the courtroom persists. According to one empirical study, men outnumbered women nearly three to one among lawyers arguing in federal appellate courts, and at current rates, it will take until 2059 for this gender disparity to end.

We hope this issue helps shed light on the importance of female legal trailblazers in Texas and on the critical issues that have shaped women's relationship to and treatment under the law in Texas. We are proud to showcase Professor Rachel Gunter's look at early Texas suffragette Minnie Cunningham and the work her Legal Defense Committee did in facing court challenges to Texas' 1918 women's suffrage law—one of which was brought by a group of Black women in Orange, Texas who'd been denied the right to register on racial grounds. We are equally proud to share Professor Jennifer Bridges' illuminating examination of how a World War I-era law intended to combat the spread of venereal disease led to Texas courtrooms becoming key battlegrounds in a crusade against "promiscuous" women that involved the suppression of civil liberties in the name of protecting soldiers. We're also pleased to share profiles of Edna Cisneros, the first Latina admitted to practice in Texas, and early Texas lawyer Florence Rabe, who reinvented herself as a character actress during the Golden Age of Hollywood. Enjoy!

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Promiscuity on Trial: Texas Reclamation Centers, World War I, and the Nullification of Women's Rights in Texas

By Jennifer Bridges, Ph.D.

*"I fear the distinction made...between
'personal work with girls who need special attention'
and 'girls who need police treatment'
will be very difficult to make in practice."*

— Roy Smith Wallace¹

During the early twentieth century, the United States entered the Progressive Era, a period in which the national government was used as a vehicle for change, and reform-minded crusaders helped enact new laws and regulations that were meant to advance or bring "progress" to the whole of society. While there is much to praise in the purposes and achievements of these reformers, their passion and exuberance in the name of progress occasionally led to excesses that resulted in the marginalization and oppression of groups in society deemed objectionable or unworthy. One example of this was the anti-vice movement surrounding World War I and the resultant detainment of women in reclamation centers across the nation.

Although the anti-vice movement dated to the nineteenth century, it grew into maturation during the Progressive era and attained its zenith during World War I. As the world was plunged into a war of unprecedented carnage and destruction in Europe, on the home front the United States military was plagued with an epidemic of its own: venereal disease (VD). Along with the growing number of young men drafted into service and sent to training camps across the nation came an alarming rise in the rate of sexually transmitted diseases (STDs) among them. The prevalence of soldiers afflicted with this "social evil" – as venereal disease was called – combined with the characteristic idealism of Progressivism and the urgency of war, propelled a utopian notion of moral purity into a resolute national campaign to eradicate vice in the United State. Due to the many military bases within its borders, including four training installations, Texas became a key battleground in this moral crusade against women as the carriers and proliferators of VD. "Promiscuous" women were seen as not only dangerous to the soldiers but also as a threat to the nation's security. This view created an environment that led Texas Progressives to suppress women's civil liberties in the name of protecting soldiers.

¹ Roy Smith Wallace to Raymond Fosdick, April 18, 1918, doc. 24782, box 50, entry 393, RG 165, National Archives.

The categorization of prostitution and the resulting increase in STDs as a threat to the nation's very survival became the justification for an immense prosecution of women suspected of transmitting the social evil to soldiers. Nationwide, it is estimated that approximately 30,000 women were detained during the war, including 15,520 held in federally aided institutions. The overall estimate accounts for the thousands of women held in local and state facilities not funded by the national government. Many of these women were detained and their *habeas corpus* rights suspended, merely on the suspicion of prostitution or infection. Detention centers to house these women were established in cities across the nation and the state of Texas, including three in Houston, and one each in San Antonio, Gainesville, and El Paso. Although forty-five percent of these women's cases were dismissed without any record of arrest, only about one-third were ever charged with prostitution, while the rest were detained under myriad fabricated pretenses such as promiscuity, suspicious conduct, incorrigibility, or infection with venereal disease.³

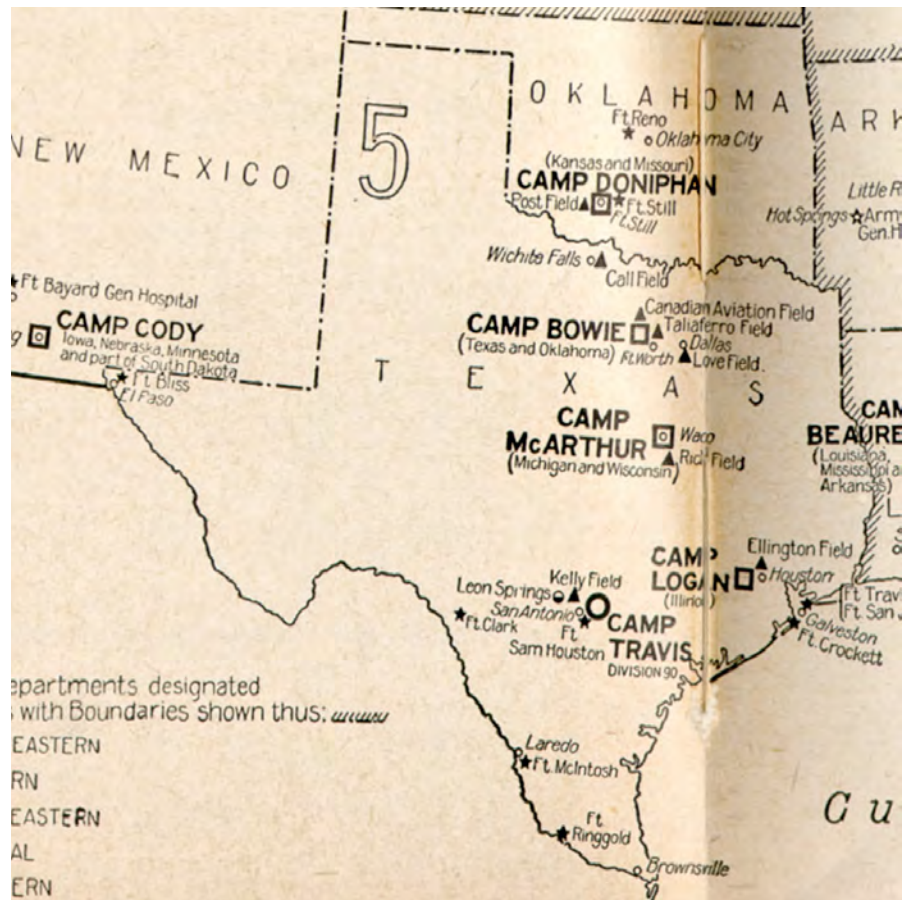


Figure 0.1.1: Texas Military Bases, 1920²

In an attempt to lessen vice around military bases, the federal government under President Woodrow Wilson used several methods to educate soldiers about the dangers of contracting venereal disease. Secretary of War Newton Baker established the Commission on Training Camp Activities (CTCA), which was charged with offering soldiers wholesome entertainment as well as repressing vice around military establishments by eliminating prostitution and the sale of liquor. Its purpose was to increase soldier morale by offering competitive alternatives to brothels and bars. Subsequently, the CTCA organized a variety of private institutions to offer Army recreation that was considered moral and appropriate. Such groups included: Young Men's Christian Association,

² <https://freepages.rootsweb.com/~worldwarone/military/WWI/Maps/images/MapOfCamps-5.jpg>

³ Nancy K. Bristow, *Making Men Moral: Social Engineering During the Great War* (New York: New York University Press, 1996), showcases the estimates of women housed both in federally funded detainment centers and at the local level. For further explanation and information regarding national detainment of women, see Adam Hodges, "'Enemy Aliens' and 'Silk Stocking Girls': The Class Politics of Internment in the Drive for Urban Order during World War I," *The Journal of the Gilded Age and Progressive Era*, 6.4 (October 2007), 431-458. Incorrigibility is difficult to find consistently defined in regards to arrest and detention, but was defined by Martha Falconer in 1910 as a young girl who is restless and unwilling to be guided by her parents, see Martha Falconer, "Causes of Delinquency among Girls," *Annals of the American Academy of Political and Social Science*, 36.1 (July 1910), 77-79.



Figure 1.0.2: Newton D. Baker⁵

Knights of Columbus, Jewish Welfare Board, American Library Association, Salvation Army, War Camp Community Service, and Young Women's Christian Association.⁴

In addition, the Chamberlain-Kahn Act passed by Congress in July 1918 allotted \$1 million "for the purpose of assisting the various States in caring for civilian persons whose detention, isolation, quarantine, or commitment to institutions could protect the military from disease." The act created the Venereal Disease Division of the U.S. Public Health Service and the U.S. Interdepartmental Social Hygiene Board (ISHB) to direct a venereal disease control program throughout the nation and disperse the funds appropriated. The ISHB consisted of the Secretary of the Treasury, Secretary of War, Secretary of the Navy, the Assistant Surgeon General, members of the Army and Navy medical corps, and an executive secretary.⁶

Finally, the civilian-run American Social Hygiene Association (ASHA) was also recruited by the government to help promote social hygiene around military bases by providing sex education in order to inform the public of the consequences of VD. This responsibility combined with the exigency of war, afforded the ASHA a level of importance heretofore unknown. The ASHA was formed in 1913 at a conference in Buffalo, New York, and included several organizations committed to fighting prostitution and venereal disease. Some early important members of the organization included John D. Rockefeller, Jr., who was the initial financial contributor, and Jane Addams of Chicago's Hull House. Through close work with the War Department, the ASHA sponsored a variety of pamphlets, movies, propaganda, and lectures that promoted sexual health through abstinence. Their headquarters were in New York City, although they had regional offices in San Francisco and Chicago. As the organization expanded, state branches were established, including the creation of the Texas Social Hygiene Association (TxSHA), which was instrumental in the creation of detention centers across the Lone Star State.⁷

⁴ Colonel Charles Lynch, Lieutenant Colonel Frank W. Weed, and Loy McAfee, *The Medical Department of the United States Army in the World War, Volume I, The Surgeon General's Office Prepared under the Direction of Major General M.W. Ireland*, Surgeon General of the Army, Washington, Government Printing Office, 1923, 581.

⁵ "Newton D. Baker," *Encyclopedia Britannica*, <https://www.britannica.com/biography/Newton-D-Baker>, accessed August 28, 2018.

⁶ Scott Wasserman Stern, "The Long American Plan: The U.S. Government's Campaign Against Venereal Disease and its Carriers," *Harvard Journal of Law and Gender*, 38 (2015), 385.

⁷ Bristow, *Making Men Moral*, 7-8; Clement, *Love For Sale*, 116-117; American Social Health Association, VCU Libraries Social Welfare History Project, <https://socialwelfare.library.vcu.edu/programs/health-nutrition/american-social-health-association/>, assessed January 5, 2018.



Figure 1.0.3: "Two girls I know want to meet you in the worst way" by C.D. Batchelor⁸

⁸ C.D. Batchelor, "Two girls I know want to meet you in the worst way," American Social Hygiene Association, https://hismastersreview.com/2013/08/26/oh-to-be-a-hooker-in-zurich/2324703717_d991d009f9_b/, accessed August 28, 2018.

The challenge to women's *habeas corpus* rights was a significant problem at each of the detainment centers as well as in local jails and quarantine centers across Texas and the nation. In fact, *habeas corpus* lawsuits were a common occurrence throughout the state during World War I, as numerous women protested being arrested, forcibly medically inspected, and quarantined for spreading venereal disease without a criminal trial. A writ of *habeas corpus* is a challenge to the legality of a prisoner's detention and does not directly determine the guilt or innocence of the person in question. Many of the detained women who filed lawsuits claimed to be healthy and uncontaminated by the social diseases. Such cases were indicative of the overarching obstruction to women's civil liberties that occurred due to increased suspicion and detainment.⁹

In Dallas, two women successfully sued in October of 1918 with the accusation that their *habeas corpus* rights had been abridged, and their case was symptomatic of the issues surrounding social disease quarantine statutes. The examples of Mildred Best and Rose Brooks of Dallas show the unfortunate reality that accompanied the arrest of innocent women for the cause of eradicating so-called social immorality. Mildred Best was the wife of an American army officer deployed to France, and Rose Brooks, a divorced woman, was her friend and roommate. In September of 1918 they were arrested in Dallas without a warrant for suspicious conduct. The police had no proof of any misdoings but arrested the women under the social disease quarantine ordinance in Dallas, which allowed women to be detained on a vague suspicion of sexual misconduct and venereal disease. Dallas city officials based their quarantine statute on a state law signed by Governor William P. Hobby in 1918 that allowed for such restrictions in the case of contagious disease. However, Dallas police and city leaders overstepped their authority in the case of Best and Brooks as they did not issue search warrants, had no probable cause, and held the women without bail. The media attention received by the case of Best and Brooks actually led Governor Hobby to make a trip to Dallas and warn local police and city officials of the need to protect citizen's rights in the fight against social diseases. The attention brought to this case led the illustrious Colonel William L. Crawford to volunteer his services to help extricate Brooks and Best from their legal conundrum. Crawford was a highly successful Dallas criminal and civil attorney and Civil War veteran who, along with his brother, ran one of the most highly respected law firms in the city. He specialized in cases of nationwide importance and was likely attracted by the larger implications and precedents being established by the Brooks and Best case.¹⁰

The challenge with the social disease quarantine statute was that it allowed too much latitude for interpretation on the part of local police officers and health officials. The law was set up as follows: first, local health officers received reports or complaints about known or suspected

⁹ Mary Macey Dietzer and Thomas Andrew Storey, *Detention Centers and Reformatories as Protective Social Agencies, in the Campaign of the United States Government Against Venereal Disease*, United States Interdepartmental Social Hygiene Board, Washington DC: Washington Government Printing Office, June 1922, 37, 177; Courtney Q. Shah, "Against Their Own Weakness: Policing Sexuality and Women in San Antonio, Texas, during World War I," *Journal of the History of Sexuality*, 19.3 (September 2010), 458- 482; "Jurisdiction: Habeas Corpus," <https://www.fjc.gov/history/courts/jurisdiction-habeas-corpus>, accessed January 5, 2018.

¹⁰ Dietzer and Storey, 37,170-173; "No Decision Reached in Hearing of Women," *Dallas Morning News*, October 16, 1918 (quote); "Women Held Under Vice Law Discharged," *Dallas Morning News*, October 10, 1918; "Governor Discusses Social Disease Law," *Dallas Morning News*, September 28, 1918; "Crawford, William Lyne," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fcr14>. For information on Colonel William Lester Crawford, see Cummins, Light Townsend, *Allie Victoria Tennant and the Visual Arts in Dallas*, (College Station: Texas A&M University Press, 2015), 217.

cases of venereal disease; second, a clinic was provided for examination of such cases; next, the local health officer determined whether or not the accused should be quarantined. Subsequently, the County Commissioners Court was responsible for providing a hospital facility for those with contagious diseases (a jail was not acceptable). When quarantine was determined, local health officers were instructed to decide whether the infected person should go to the hospital or remain contained in their home. Finally, the local health officer alone had the authority to end the quarantine once the patient's disease was under control. Thus, the law allowed for in-home quarantine and specifically denoted the unsuitability of jails for treating venereal disease patients. However, these provisions were routinely ignored or blatantly disregarded, and women such as Brooks and Best found themselves arrested, detained, and quarantined without having committed a crime or even being diseased.¹¹

The women met at the Volk Brothers store children's shoe department; Best worked there, and Brooks was a former nurse from Louisiana State University hospital. Mrs. Best had moved to Dallas to find work while her husband was deployed. She had been married for fourteen years and had an eleven-year-old son. Her husband was an army surgeon. Neither woman had a history of prostitution or promiscuous behavior. The case was brought before the Forty-Fourth District Court and was presided over by: Judge Kenneth Foree of the Fourteenth District Court, E.B. Muse of the Forty-Fourth District, and Charles A. Pippen of Dallas County Criminal Court No. 2. State District Courts, although they involved the U.S. Constitution, were the typical location for *habeas corpus* cases. In 1910, Congress had ordered the use of three-judge district courts as a response to the Supreme Court's decision in *Ex Parte Young*, which allowed single judge state district courts to enjoin enforcement of an unconstitutional state law. By moving those cases to three-judge district courts Congress hoped to accomplish multiple things: to reduce the authority of a single state district judge to prescribe enforcement of state or federal laws; to increase the difficulty for plaintiffs to receive such injunctions; and to ensure that any decision was more authoritative and better reasoned due to having multiple judges decide it.¹²

The judges were to determine the legality of holding Brooks and Best in the social disease quarantine ward of the Dallas county jail and decide whether their *habeas corpus* rights had been violated. When it became clear to the judges that the women had been arrested and detained without a warrant, Judge Muse asked if such was common behavior for police officers in Dallas. District Attorney Mike Lively, who represented the city of Dallas in the case, responded that women could be arrested without a warrant if the officers had ascertained that the women were afflicted with venereal disease. Judge Foree then queried if arrests could be made without a warrant if there was only a suspicion of disease, to which Lively answered:

Ah, then the officers would be absolutely without authority, but with this exception, that the law apparently presumes that all prostitutes have such diseases. Many such have been treated and cured in the county jail, but the law never contemplated that persons merely suspected should be picked up, or that the houses of citizens

¹¹ "Makes Interpretation of Social Disease Law," *Dallas Morning News*, October 6, 1918.

¹² "Wife of Lieutenant Testifies at Hearing," *Dallas Morning News*, October 5, 1918; For an explanation on the creation and purpose of the three judge district court, see: Wasserman, Howard M, "Argument preview: Is a three-judge court 'not required' when a pleading fails to state a claim," <http://www.scotusblog.com/2015/10/argument-preview-is-a-three-judge-court-not-required-when-a-pleading-fails-to-state-a-claim/>.

should be entered by officers, unless they had first been found to be afflicted with the disease or known to be common prostitutes.

In the case of Brooks and Best, the arresting officer was a motorcycle policeman referred to as Officer Tanner whose suspicions were aroused by potentially illicit activity in the apartment of the aforementioned ladies, and thus he decided to call in back up and investigate the women inside their home.¹³

After the officers entered the dwelling, in addition to Brooks and Best, another unnamed woman was present, as were two military officers. The policemen felt that the apartment showed signs of a “lively party,” but multiple neighbors testified that they had never observed any negative activity around the place and had no reason to complain. With no warrant, and no actual evidence of prostitution, the women were arrested and brought to jail to be medically inspected. Judge Phippen asked, “why did you arrest them, if there was nothing against them?” Officer Tanner answered, “No, there was nothing against them, only from the way it looked, we thought they ought to be examined.” The judges went on to question the police officers about who had given them instructions to make arrests only on suspicion of promiscuous behavior, to which they could not say. Defense attorney Colonel Crawford then asked, “How many women have you arrested without any charges against them and without any warrants, only on suspicion?” and the officer stated, “Probably about fifty in the last four months.” On cross examination the police officers admitted to regularly arresting women without warrants, and Officer Combs – another officer on the scene – said they did this under the direction of Federal officers from the Department of Justice.¹⁴

While on the stand the policemen admitted to targeting women exclusively for prostitution and the spreading of venereal disease. Colonel Crawford questioned Van McCullough from the Department of Justice, who was also present at the women’s arrest, and asked whether any soldiers or civilian men had been interned under the quarantine statute to which he answered in the negative. Following that assertion, McCullough further admitted that they were principally looking for women. Interestingly, there were varying accounts when it came to what, if any, diseases the women suffered from. Dr. William Hale, Dallas County Health Officer, testified that he took blood samples from Brooks and Best, and that the reports were positive for strong indicators of syphilis. However, on cross-examination, he admitted that he did not conduct a Wasserman test and had no experience with the medical procedure. Dr. Hale further stated that the women had no communicable venereal disease, as syphilis was not communicable unless there were lesions or abrasions, which he had found no sign of. He claimed the women freely allowed themselves to be tested, and that they had not been forced or pressured. Colonel Crawford then asked Dr. Hale, “Is it your habit to take persons without warrants for their arrests and subject them to such treatment?” “It has been the habit there in all cases brought to us,” was Dr. Hale’s reply.¹⁵

¹³ “Wife of Lieutenant Testifies at Hearing,” *Dallas Morning News*, October 5, 1918 (quote); “Jurisdiction: Habeas Corpus,” <https://www.fjc.gov/history/courts/jurisdiction-habeas-corpus>.

¹⁴ “Wife of Lieutenant Testifies at Hearing,” *Dallas Morning News*, October 5, 1918.

¹⁵ *Ibid.*

For a better understanding of the positive results from the blood tests, Dr. N.W. Glass, a pathologist from St. Paul Sanitarium was called to the stand. He testified that although the women had strong reactions to the blood test, tubercular patients occasionally gave reactions similar to syphilis and other maladies as well in certain cases. The blood test also did not specify whether the disease was contracted or genetically inherited. Dr. John H. Dean was also called to testify about syphilis, and he stated that it was a systemic disease, and that one could not make a diagnosis from one blood test only if all other indications were absent. Colonel Crawford asked, "Could one contract syphilis from being cooped up with a dozen or more persons afflicted with it, using the same towels, glasses, and the like?" The doctor admitted that contraction would be likely under such circumstances and that he had twelve cases of the disease under treatment now at the county jail where the women were kept. However, Dr. Dean felt certain that proper safeguards were always taken in the jail hospital to prevent transmission of the disease from one inmate to another. Thus, among the doctors called for the city of Dallas, there were discrepancies in their testimonies and a lack of agreement as to whether the women were diseased, how the disease was contracted, and whether they were at any point contagious.¹⁶

When it came time for the defense to call witnesses, Dr. H.R. Levy was the first to testify. He stated that he was called to the jail where he subsequently examined the women and found no evidence of disease with either. He then took blood specimens and had them examined by Dr. Black, a pathologist. Best's blood test showed positive under the Wasserman test, and Brooks' was negative. Under the Wasserman test, he testified, cancerous growths, tuberculosis, and other diseases may cause a positive result, and thus, the blood test was not sufficient for a diagnosis if not supported by clinical evidence. Certainly, without sores or eruptions, he said the disease was not communicable. Best followed Dr. Levy on the stand, where she testified – while weeping – that she had been married nearly fourteen years to a physician and a surgeon. She said that her husband, who was in France at the time, had been subjected to physical examinations and found healthy before joining the Army. She had one child, a boy of eleven. Mrs. Best then claimed that she had never had any venereal disease that she was aware of. The judges then asked her whether she had committed infidelity, which she answered with a solemn, "No, indeed not – never." According to her testimony, she had moved to Dallas to get work and keep from being idle while her husband was deployed. While working at the Volk Brother's children's shoe department she met Rose Brooks, and they bonded over their service pins. They subsequently became friends and decided to share an apartment in the city.¹⁷

Best then gave her version of the day of the arrest. According to her, Brooks was quite ill that day, and she was tending her friend. The males present were Lieutenant Cherry, their landlord, and one of his fellow officers. He was there to pack up some belongings. Best stated that the police officers simply entered their apartment as the door was open at the time, and she denied having been drunk or inappropriate in any way with the police. After the women were arrested and being driven to jail, Best testified that Van McCullough, sitting in the front seat of the automobile, turned and said to them, "What do you girls see so fascinating in these army Lieutenants; if you would be nicer to us you would not get into so much trouble." She then described conditions in the county jail, saying she and Brooks were forced to use the same toilets, same sink, same bathtubs, and

¹⁶ "Wife of Lieutenant Testifies at Hearing," *Dallas Morning News*, October 5, 1918.

¹⁷ "Wife of Lieutenant Testifies at Hearing," *Dallas Morning News*, October 5, 1918.

same beds with linen unchanged as women afflicted with syphilis. There were spots of blood on the linen of their bed, and she stated that a woman at the jail told her that a woman covered in syphilitic sores had slept there the previous night. Additionally, she said the jailer, Murray Fisher, told them all to drink out of the same bucket the other women had been using, refusing to provide clean cups. She testified that Dr. William Hale, refused to let Dr. Levy - when called by the defendant - use the operating room to examine them, or let the jail nurse boil his needle, forcing him to take it to the jail kitchen to get it boiled.¹⁸

When asked whether she was intoxicated on the night before the arrest, she denied this, but admitted to having one small mixed drink with some cake she had brought home. Both the manager and office manager of Volk Brother's children's shoe department testified as to Best's good conduct, reputation, satisfactory work and modest and womanly manner in the store. Next to take the stand in her defense was Rose Brooks.¹⁹

According to her testimony, Brooks, twenty-four-years-old, was born in New Orleans, had married three years prior, and been divorced for four months. She moved to Dallas two months before the arrest and was renting Lieutenant Cherry's apartment with another woman before asking Best to rent a room as well. Brooks substantiated the claims made by Best in her testimony and further expanded on the conditions in the jail hospital. After all, Best had been a nurse in the Louisiana State University Hospital before moving to Dallas and had first-hand experience with the dangers of infection from venereal diseases. She declared that the room they were given had, "the worst looking beds she ever saw in a hospital, the linen was unchanged, and there was no sign of disinfectant in the toilet or bathroom, with no towel, no soap, not even a rag to wash out the bath tub." After spotting blood on the linen, she stated that she did not sleep all night, but rather sat on the edge of the bed. Mrs. Brooks then testified that Dr. Hale told her if they did not acquiesce to the examination, he would turn them over to the Federal authorities and that they had a padded cell ready for them. She refused to take treatment for syphilis from Dr. Hale, telling the nurse, that she knew she did not have the disease, and had known of cases of death resulting from use of the treatment on persons not suffering from the disease.²⁰

After the arguments for both sides concluded, the three judges conferred before issuing their final decree. Judge Muse subsequently declared that there had never been a more important matter laid before the court, because under the guise of helping the war effort, police officers were doing things that never would be permitted in peace times. He also showed concern that the governmental powers of the city were seemingly sanctioning such law breaking by the officers, and that officials were twisting the Constitution to suit their own purposes and adopting a "Jesuitical attitude that wrong methods may be justified by a right purpose." Judge Muse also indicated concern over the fact that a soldier's wife was involved, stating "she ought to have at least the same rights when her husband is abroad fighting for his country as other women whose husbands are here to protect them."²¹

¹⁸ "Wife of Lieutenant Testifies at Hearing," *Dallas Morning News*, October 5, 1918; "No Decision Reached in Hearing of Women," *Dallas Morning News*, October 16, 1918.

¹⁹ *Ibid.*

²⁰ "No Decision Reached in Hearing of Women," *Dallas Morning News*, October 16, 1918.

²¹ *Ibid.*, (both quotes).

As to the social disease quarantine law, Judge Muse explained the need for due process and declared that it was not criminal to be afflicted with a social disease. He said that arrests can be made without warrant only after an infraction occurred in the presence of an inspector, otherwise officers needed to have properly issued warrants. In regards to the women on trial, Judge Muse stated, "it is time that the constitutional rights of the citizens should be observed and the liberties of the citizen, for which we are fighting over the ocean, should be protected at home, and that Bolshevism, the thing we decry abroad, shall not spread here among us." He continued, "The mere fact of affliction with a venereal disease, even if proved, which it has not been in the case of these two women, constitutes no crime. If a person is afflicted, can he be incarcerated in a jail provided for criminals?" He then advocated home quarantine when an individual is proven to be diseased and contagious and said that it was unconstitutional to remove people to quarantine without their consent.²²

Judge Muse further condemned the actions of Dallas county officials in holding the women in jail without cause and lambasted the jail hospital as being absolutely unsuited and ill prepared for its purposes. He stated, "if officers can invade the sanctity of these women's home, cannot they invade another's home as well. If big, buck officers can haul them without warrant through the streets of Dallas and then in the hoodlum wagon from the city hall to the county jail, can they not do your woman folks and mine the same way?" To conclude his rather impassioned criticism of the city and defense of the women, he finished, "this evidence convinces me beyond all question that these women are absolutely free of any kind of venereal disease, and not for any consideration would I put the blight of want of chastity upon them. There is not a shadow of proof of any such thing, but even if the officers did have it, the right to jail them in this manner is lacking."²³

The city attorney was the next to speak, making one final plea for the city of Dallas and reiterating his belief that the women were diseased prostitutes and that the police officers had acted reasonably. After he concluded, Judge Muse asked him how many men had been confined with social diseases, to which Mr. Hardwicke answered, "I don't know." Dallas Sheriff W.K. Reynolds told the court that three men had been held with venereal disease. Judge Muse then stated, "if 211 women have been arrested, there must have been at least a couple of hundred men afflicted with the disease too, and they should have been punished the same way." The city attorney agreed with the judge that the double standard against women was very questionable, and that men should be similarly burdened.²⁴

Colonel Crawford closed the proceedings very favorably for the defendants. His speech was impassioned in the defense of Best and Brooks, reiterating all the problems and inconsistencies with the case against them. However, his closing was particularly compelling: "Now, you say these women are menaces to our soldiers. Poor soldiers! Poor soldiers, that you have to arrest workingwomen to protect them – have to override every process provided by the Constitution, all to protect our poor soldiers. They can charge the German lines, yet you say they are so weak that the whole state of Texas must be turned loose on these women to save them."²⁵

²² "No Decision Reached in Hearing of Women," *Dallas Morning News*, October 16, 1918.

²³ "No Decision Reached in Hearing of Women," *Dallas Morning News*, October 16, 1918.

²⁴ *Ibid.*

²⁵ "No Decision Reached in Hearing of Women," *Dallas Morning News*, October 16, 1918.

In fact, in the closing statements by the three judges presiding, it was clearly stated that ocular examination was absolutely unacceptable as a method of medical testing. However, the judges upheld the 'Sanitary Code for Texas', which allowed the county health officer to arrest and quarantine individuals with contagious venereal diseases for the protection of the state. In affirming this law, they were clear to indicate that only the county health officer had such privileges, not the local police force. Furthermore, the judges stated that it was not illegal for a person to have venereal disease, nor should all such individuals be arrested and quarantined. The judges took a harsh stance against police officers arresting people under this statute, particularly without just cause and without a warrant. The police had also entered the women's home without a warrant, and this was additionally addressed in the final statements. While the judges admitted that police had the right to enter a disorderly house without a warrant, they made clear the difference between houses of prostitution and houses where immoral actions took place, the latter not being illegal. Therefore, Best and Brooks were acquitted of all wrongdoing and released on their own recognizance. After the case concluded, the mayor of Dallas, Joe E. Lawther, issued a statement indicating his willingness to obey the ruling of the court as regards the police department and their duties, and he further comforted the citizens of his city by relaying his absolute intention to continue the good fight against venereal disease, "giving special attention to all houses of prostitution that may be scattered throughout the residence district." Dallas Police Commissioner T. J. Britton took the ruling and its strong concerns and suggestions for the police very seriously and immediately instituted positive changes with regard to police actions with disorderly houses and social diseases. Overall, the case of Mildred Best and Rose Brooks was a partial victory against social disease quarantine statutes across the state as it set a precedent for the fallibility of government officials and police officers in determining correctly an individual's venereal disease status. At least in Dallas, the case of Best and Brooks led to a more responsible and thoughtful local action plan.²⁶

The Dallas case received considerable attention across the state, leading the Texas Social Hygiene Association to release a statement clarifying their stance on the state quarantine law. If anything, the case of Best and Brooks greatly concerned the TxSHA as they feared a lessening of the statute's usage. Thus, the public statement released by the reform group's secretary, Elmer Scott, doubly emphasized the organization's fear of venereal disease calling on "city, county or health officers to use every available means to ascertain the existence of and to investigate all cases, and to ascertain the source of the infections." He further stated that local health officers are directed to quarantine persons who have "or are reasonably suspected of having the disease." Such flexible wording was what allowed Best and Brooks to be falsely arrested in the first place. However, the concern of social reformers was not the potential innocence and wrongful incarceration of such women, but rather the overarching moral crusade against venereal disease on a national scale. Reformers considered a handful of women sacrificed in the name of social hygiene a small price to pay to achieve their utopian goals of eradicating prostitution and venereal disease.²⁷

Immediately following the court victory for Best and Brooks, another similar case was brought before Judge Richard I. Munroe of the Fifty-Fourth District Court in Waco, Texas. Using the Dallas case for a precedent, Judge Munroe ordered the release of Mrs. D.M. Cohen of Waco,

²⁶ "Women Held Under Vice Law Discharged," *Dallas Morning News*, October 10, 1918, (quote); "City Outlines Policy of Police Department," *Dallas Morning News*, October 13, 1918.

²⁷ "Makes Interpretation of Social Disease Law," *Dallas Morning News*, October 6, 1918, (quote).

who was arrested and held in quarantine by Captain R.A. Herring, the city health officer. Captain Herring claimed that Cohen was infected with a venereal disease and thus needed detention and treatment. Cohen had been married nine years at the time of her arrest, and her husband H.W. Cohen filed suit against the city health officer. Captain Herring asserted that Cohen had gonorrhea and that he had the authority to detain her. Policemen Todd had arrested her on November 20, 1918, at eight o'clock in the evening while she was standing outside a picture show with friends. She was talking with several women and a married couple with a small child, when she was placed under arrest and taken to the city jail. No complaint had been made against her prior to her arrest. After hearing of his wife's detainment, Mr. Cohen promptly called the city hall to secure her release, and then he was promptly put in jail himself, but was quickly released without any complaint filed against him.²⁸

Policemen Todd testified that he arrested Mrs. Cohen without a warrant on the grounds that he believed her to be a common prostitute. He admitted that no complaint had ever been filed against her and that he was not acting under the direction of the city health officers of Waco. His testimony made clear to the court that he had no facts showing the defendant to be a prostitute. It became obvious that the Cohens were a respectable couple who had a home in a decent neighborhood in Waco and that Mr. Cohen had a stable job with a livable income.²⁹

After Cohen was placed in the city jail, she was taken to the Detention Home on North Second Street in Waco and examined for venereal disease by Lieutenant Webb, who worked with Captain Herring for the city health department. Lieutenant Webb claimed that after inspecting Mrs. Cohen, he determined she had gonorrhea, and he then applied a treatment for the disease and sent her back to the city jail where she remained under lock and key until returning to the detention center for further treatment. Therefore, except for the time when she was being treated, she stayed in jail, sleeping on the floor. As the trial progressed, it became clear that the commissioners of the city of Waco had never designated the city jail as a suitable place to quarantine or confine persons infected with venereal disease, and the judge criticized this action stating, "it is not the best place for a city of the size and wealth of Waco to confine any sick person for treatment against whom no criminal charge has been filed and who has violated no law." Judge Munroe went on to quote, with approval, the decision reached in the Best and Brooks case in Dallas. He further said, "the opinion prevalent that a policeman has a right to arrest any person anywhere, for any cause, or for no cause at all, is subservient to the best interests of society and smacks too much of militarism."³⁰

Judge Munroe went on to quote the state's Bill of Rights multiple times in his disavowal of the police actions in question. In addition, the competency and accuracy of the medical results were called into question. Lieutenant Webb, who claimed Cohen was infected with gonorrhea, had begun treating her with a combination of iodine and glycerin. This was a painful treatment by which large quantities of iodine were instilled into the body through urethral or vaginal catheters. Cohen denounced Webb's findings and offered herself to be examined by a reputable physician in order to verify the results. Dr. J.H. Womack signed an affidavit that he had made a clinical examination of Cohen and did not find any evidence of gonorrhea. In addition, Dr. A.G. Gebhardt testified that he

²⁸ "Bill of Rights is Still Operative in Texas, Says Judge Richard I. Munroe," *Waco Daily Times-Herald*, December 10, 1918.

²⁹ "Bill of Rights is Still Operative in Texas, Says Judge Richard I. Munroe," *Waco Daily Times-Herald*, December 10, 1918.

³⁰ *Ibid*, (both quotes).

had made a microscopic examination of both Mr. and Mrs. Cohen and that neither of them showed any traces of the disease in question. Dr. Gebhardt was considered an expert in the treatment of venereal diseases, as that had been his main practice for the last eight years in Waco, and he had obtained his medical degree from the prestigious Tulane University. Furthermore, Dr. Gebhardt told the court he had never heard of treating gonorrhea in the way described by Lieutenant Webb. Due to the medical evidence presented that raised serious questions as to the accuracy of the city health officials' findings, Cohen was absolved of any guilt and released.³¹

The cases of Best, Brooks, and Cohen were by no means the only challenge to *habeas corpus* rights brought up by women affected by the state quarantine statute. While the aforementioned cases took place at the district level, some women did not succeed at that stage and appealed their cases to a highest level of Texas criminal courts: the Texas Court of Criminal Appeals.

Emma Hardcastle was arrested on September 28, 1918, in San Antonio and held in the city jail by Fred Lancaster, the Chief of Police for the city. She was detained for having gone into a place of seclusion, named Brackenridge Park, for the proposed purpose of having sexual intercourse with a male, which was in violation of a city ordinance. On October 8, 1918, Hardcastle was tried and found guilty by a jury of her peers and was fined \$10.00 by the city. The following day, October 9, a motion for a new trial was filed, along with affidavits from two of the former jurors stating that the foreman of the jury had told them that a majority ruled in a jury decision, and as the vote stood four to two for conviction, the verdict should be guilty. The two dissenting jurors did not believe in Hardcastle's guilt, but supposed the foreman knew the law, and thus a guilty verdict was returned. The motion was presented to Judge M.E. Buckley of the Corporation Court of San Antonio, where the assistant city attorney of the city asked for the case to be dismissed, and following the judge's agreement, the case was officially dismissed.³²

However, Emma Hardcastle's troubles were not yet finished, as two days later, on October 11, 1918, Dr. W.A. King, Health Officer of the city of San Antonio, sent a letter to the Chief of Police for San Antonio, Fred Lancaster, instructing him to hold Hardcastle in jail until she could be transferred to Live Oak Farm for treatment. According to Dr. King, Emma Hardcastle was suffering from gonorrhea and was a threat to the city's health. However, according to Hardcastle, on the 2nd of October that same year, Dr. B.F. Stout, a physician in San Antonio, had examined her. Dr. Stout had been a specialist in clinical pathology for fourteen years and inspected Hardcastle to ascertain whether she was afflicted with any venereal disease. After his examination, Dr. Stout provided Hardcastle with a letter containing his results, stating, "This will certify that I have made an examination of the secretions of the cervix and urethra and find no evidence of venereal disease." Additionally, on the same date, Dr. A.O. Hull, a physician of the city of San Antonio, examined Emma Hardcastle, and also found no evidence of venereal disease. Both physicians attached reports for the court.³³

³¹ "Bill of Rights is Still Operative in Texas, Says Judge Richard I. Munroe," *Waco Daily Times-Herald*, December 10, 1918; Kupferschmidt, Kai, "The World May Soon Run Out of Drugs to Treat Gonorrhea," *Science Magazine*, August 30, 2016, <http://www.sciencemag.org/news/2016/08/world-may-soon-run-out-drugs-treat-gonorrhea>.

³² Emma Hardcastle, Appellate #5230, Box 1993/088-63, Texas Court of Criminal Appeals records, Archives and Information Services Division, Texas State Library and Archives Commission, 1-27.

³³ Emma Hardcastle, Appellate #5230, Box 1993/088-63, Texas Court of Criminal Appeals records, Archives and Information Services Division, Texas State Library and Archives Commission, 28-29.

In further explaining her situation to the court, Hardcastle stated that she was a married woman and had never been charged with prostitution. She further explained the myriad reasons why being detained in the Live Oak Farm would be a violation of her constitutional rights as a citizen of both the United States of America and the State of Texas. Since Hardcastle was not a prostitute and not infected with venereal disease, confining her in a quarantine center was denying her of her liberty without due process of the law. Therefore, Emma Hardcastle filed for a writ of *habeas corpus* and appealed her case to the Texas Court of Criminal Appeals in the hopes of being released from her illegal restraint.³⁴

Much of the defense – in addition to asserting Hardcastle’s complete and total innocence – discussed the actions of the city health officer, Dr. King, and his willingness to detain a woman on hearsay alone, without first investigating whether the accusations mentioned had any relevance or truth. The case of Brooks and Best was mentioned as precedent for the overstepping by city officials and the occasional negligence of such individuals in accurately determining whether a woman was in fact diseased. As her defense attorney asked, “Is a woman to be condemned to virtual imprisonment for such length of time as one man may see fit merely upon information or rumor?” He further offered harsh criticism on the quarantine system itself by saying:

Should a pure and virtuous wife who becomes infected with a venereal disease through her wifely relations with her husband, diseased through no fault of her own, and no probability but a theoretical one, to-wit; of spreading the disease by communicating the same through the medium of a toilet, and none but a slanderous statement that she would communicate the disease to any one but the author of her infirmity---her husband, be quarantined and sent out and forced to associate or mingle with a lot of desolate and diseased prostitutes, would this not be but adding insult to the wrong that has already been wrought upon her?

In the case of Emma Hardcastle, it was hard to argue with the statements of her attorney, as there was no physical evidence filed from any physician showing her to be diseased, and only a letter filed by Dr. King, which was written under false information and ultimately totally mistaken in its decision.³⁵

While local health officers were given the authority to quarantine individuals with venereal disease on the basis of public security, Hardcastle’s attorney pointed out an important aspect of that power: the necessity to protect public health. Certainly, not every individual infected with venereal disease was a threat to the safety of the public at large, and health officials had the responsibility to discern the difference. Now in the specific case of Hardcastle, there were no grounds for quarantine under any statute as she was not diseased, but diseased women who were not prostitutes had the ability to argue that they were not a threat to society since they were in monogamous relationships, particularly if they were married.³⁶

³⁴ *Ibid.*

³⁵ Emma Hardcastle, Appellate #5230, Box 1993/088-63, Texas Court of Criminal Appeals records, Archives and Information Services Division, Texas State Library and Archives Commission, 30-34, 35 (quote).

³⁶ Emma Hardcastle, Appellate #5230, Box 1993/088-63, Texas Court of Criminal Appeals records, Archives and Information Services Division, Texas State Library and Archives Commission, 36.

As with the cases of Best, Brooks, and Cohen, there was contradictory information offered by the city in their explanation of Emma Hardcastle's arrest and subsequent detainment. Chief of Police Fred Lancaster claimed that "qualified members of the medical profession" had inspected Hardcastle and found her to be infected with gonorrhea, although no doctor's names were mentioned in the court documents and no medical statements were filed. Another somewhat questionable piece of evidence against Hardcastle was an eyewitness account from a man named Edward Dilgard who made an official statement about her. He was a private in the U.S. Army stationed at Fort Sam Houston and was assigned to the Law Enforcement Division of the War Department's Commission on Training Camp Activities. He was given an assignment to investigate Emma Hardcastle on October 30, 1918. On November 2, 1918, he went to Maverick Park in San Antonio, where he believed Hardcastle hung out for the purposes of picking up soldiers. He positioned himself near Hardcastle on a park bench and after getting her attention, claimed that Hardcastle motioned for him to come and sit next to her. From there, he said that Hardcastle complained of loneliness and that they made a date to meet a couple of days in the future. Dilgard then discussed watching Hardcastle's home and seeing her sitting on her bed with a soldier before the curtains were drawn. Although they never actually went on a date, Dilgard stated to the court that, "judging from her surroundings, her conversation and the fact that she was willing to make a date with me without having met me before, I am quite sure that she was a lewd woman." This was, of course, one individual's word only, and additionally, he was charged with investigating her for morally questionable behavior. The allegations made by Dilgard were unsubstantiated by any other source.³⁷

The Texas Court of Criminal Appeals was not charged with deciding the absolute guilt or innocence of the defendant, but rather of deciding whether Hardcastle had the right to demand a hearing on writ of *habeas corpus*. After listening to both sides of the case and being presented with the relevant facts and details, the court decided in favor of Emma Hardcastle, ordering that the writ be granted and remanding her case back to the 57th Judicial District to be presided over by Judge Robert Minor. Thus, the appellate court determined that Hardcastle had the right to be heard and given the chance to prove the non-existence of the facts necessary for her continued detention. Such a decision was a blow to the near absolute power of local health officials to quarantine women without proper proof of disease or prostitution.³⁸

After Emma Hardcastle, other women arrested under similar circumstances attempted to use her case as a precedent for their own *habeas corpus* hearings. On September 3, 1918, Grace Brooks – a married woman and mother of four – was arrested under Texas Senate Bill No. 48, which declared venereal diseases and prostitution to be dangerous to public health and dictated that local and state health officers comply with proper government officials to suppress prostitution and the diseases connected therewith. Brooks was detained under the authority of John M. Holt, Director of Sanitation and City Health Officer in Houston, Texas. He ordered Brooks to be medically examined at the United States Government Clinic where she was determined to be infected with syphilis, and subsequently remanded to the Municipal Farm for quarantine. Holt's authority was the only legal means by which she was detained; she was not officially arrested, offered bail, or

³⁷ Emma Hardcastle, Appellate #5230, Box 1993/088-63, Texas Court of Criminal Appeals records, Archives and Information Services Division, Texas State Library and Archives Commission, 36.

³⁸ *Ibid*, 48-49.

given the chance at a trial.³⁹

Brooks sued for a writ of *habeas corpus*, and the case was sent to the Texas Court of Criminal Appeals. The attorneys for Brooks argued strongly against Texas Senate Bill 48, stating that it gave local health officers too much autonomy in determining whether women were prostitutes, and thus forcibly medically inspecting women and revoking their right to privacy. They argued that the statute allowed police to invade the personal rights of citizens under the guise of regulation, and thus it should not be upheld. In addition, they contended that it was dangerous to consider all individuals with venereal disease as being prostitutes, since prostitution was not the only way individuals could contract social diseases, and diseased women were then disgraced in the public eye even if they had committed no crime. Brook's attorney stated, "There is no line of demarcation drawn in the act between the innocent victims of the disease and those who contracted it by illicit contact. Therefore we say that because of the unnecessary provision relation to prostitution and relating to the source of said diseases and regulating illicit co-habiting, which it does, it visits disgrace and infamy upon the name of any person quarantined under the provisions of this act."⁴⁰

The sexual double standard present in the Texas quarantine statute was also examined in the case of Grace Brooks. Her attorneys questioned whether the law protected equally all citizens of the state or if women and girls were treated unfairly. He offered the example of a woman using a public toilet and contracting syphilis or gonorrhea from the reusable towels provided for female use. If women were innocently infected in such a way, became contagious, and were discovered by the local health officer, would quarantining them not bring upon their person public condemnation and the wrongful assumption of illicit activity? How were innocent women to be protected from such an instance? Thus, Brooks's attorneys placed most of their arguments on fighting against the law itself, rather than attempting to persuade the court of Brooks's non-diseased status. Her attorneys continuously expounded upon the importance of protecting the constitutional rights of women as more significant than the social fears of venereal disease and its health effects on society.⁴¹

The core of Brooks's case was that she was illegally detained at the Municipal Farm since she had not been convicted of any crime and was not held under any writ, order or process from any Court, was not charged with a violation of any law, but was quarantined solely on the order of the City Health Officer John Holt. Additionally, her attorneys argued that the Municipal Farm was an unsuitable place to hold quarantined women as it was nine miles outside of town and away from proper medical facilities, and it was inhabited by more than fifty women, chiefly prostitutes, all housed together without regard to disease status. Also, at the Municipal Farm were convicted criminals, who mingled freely with women who had broken no law other than being determined to have venereal disease.⁴²

³⁹ Grace Brooks, Appellate #5305, Box 1993/088-63, Texas Court of Criminal Appeals records, Archives and Information Services Division, Texas State Library and Archives Commission, 3-4.

⁴⁰ *Ibid*, 6-8 (quote).

⁴¹ Grace Brooks, Appellate #5305, Box 1993/088-63, Texas Court of Criminal Appeals records, Archives and Information Services Division, Texas State Library and Archives Commission, 9.

⁴² Grace Brooks, Appellate #5305, Box 1993/088-63, Texas Court of Criminal Appeals records, Archives and Information Services Division, Texas State Library and Archives Commission, 10-11.

Throughout the court hearing, Brooks maintained that her diseased status was questionable at best. She claimed that during her confinement she had been subjected to many tests to determine her health prognosis and that she consistently received as many negative test results as positive. Thus, she proclaimed that either she was not infected with any venereal disease or that the tests were improperly and inconsistently delivered by incompetent persons, therefore bringing the legitimacy of the health officials into question. Brooks further claimed that she had been denied the use of outside physicians and had only been examined by those designated by John Holt, whom she claimed were incompetent. A common theme of such *habeas corpus* lawsuits was the concern over the near absolute authority granted to local health officers in determining which women to detain and medically inspect. Once a woman was found to be infected, she was often considered to be morally subversive, regardless of how she became diseased. As previously discussed, cases show tests regarding venereal disease were far from perfect and could be and were often administered incorrectly. Considering that women who were quarantined became socially stigmatized, the concerns regarding equal protection under the law were not inconsequential, but quite appropriate.⁴³

Thus, Brooks asked the Texas Court of Criminal Appeals to grant her writ of *habeas corpus* and allow her to be discharged from her confinement at the Municipal Farm. However, the court viewed her case less favorably than that of Emma Hardcastle. Judge Offa Shivers Lattimore delivered the opinion of the court on June 4, 1919, and he sided with the state against her declarations. Lattimore either disagreed with the assertions made by Brooks' attorneys or felt that they had not presented the necessary evidence for their claims. They had been unable to prove Brooks' contention that she had been medically inspected numerous times with varying results and said that she had not brought the court adequate proof to show that she had been denied her own physician. In addition, Judge Lattimore declared Grace Brooks to be of morally questionable character. She was described by the state as being a married woman, with a hard-working husband and four young children, and yet she chose a life on the streets as a prostitute over her home and family. Supposedly, there was testimony given regarding instances where Grace Brooks had sexual relations with soldiers, although this information was not included in the case files. Therefore, the court dismissed her writ and ordered her continued quarantine until the city health officer deemed to release her from custody.⁴⁴

Another such case brought for consideration before the Texas Court of Criminal Appeals was that of Lela Stedham from Dallas. She was placed under quarantine by Dr. A.W. Carnes, a city health officer for the purpose of being examined and treated for venereal disease. She was placed in the Dallas county jail, specifically on the fifth floor of the Criminal Court Building, where women suspected or found to be diseased were held. Interestingly, the men brought before the court to testify against Stedham were not the doctors who had personally treated her, and thus could only comment on reports they had read of her condition. They claimed the Wasserman test was used to show that Stedham was positive for syphilis, although the name of the doctor who performed the test was unknown to the witnesses called. He was simply described as a pathologist from St. Paul's Sanitarium. In addition, Stedham also supposedly tested positive for gonorrhea. The

⁴³ *Ibid*, 12-13.

⁴⁴ Grace Brooks, Appellate #5305, Box 1993/088-63, Texas Court of Criminal Appeals records, Archives and Information Services Division, Texas State Library and Archives Commission, 15, 18-20.

matron of the Dallas county jail, Mrs. O.B. Nicholson, was called to testify as to the confinement of Lela Stedham. She affirmed that Stedham was being held, along with twenty-four other women. They were not locked in individual cells, but rather inside a run-around on the outside of the cells. They could not get outside the building. The matron admitted that she did not know if any of the women had been charged with a crime, and that it was unlikely since women convicted of crimes were kept in a separate part of the facility. Dr. Carnes testified that it would not be safe to allow Stedham to leave the quarantine facility or to be treated by an outside physician of her choice. He believed it was in the public interest for her to be interned, though he did not give a clear reason for this assertion.⁴⁵

Following these testimonies, Lela Stedham took the stand in her own defense. She detailed her detainment and complained of being quarantined with women of questionable moral character. She said that she had no knowledge of having any venereal disease, and if diseased, believed she must have contracted the illness from her husband, who worked for the Missouri, Kansas, and Texas Railroad. She detailed her willingness to take treatment if she was in fact diseased, and said that she was open to home quarantine, if necessary, with regular reports to the proper authorities until she was given a clean bill of health. She explained that she and her mother maintained a boarding house on Main Street in Dallas and that her mother was in bad health. She implored the court to allow her to return home as her mother could scarcely keep the business afloat without her. Since her husband worked for the railroad, he was often absent.⁴⁶

The Second Criminal District Court, in Dallas, Texas, with the Honorable Charles A. Pippen, presiding, first heard her case. She reiterated that she had violated no law and had no prior knowledge of having any venereal disease. She was willing to undergo whatever medical procedures were necessary, if she was in fact ill, but desired to use her own physician and be remanded to her own home for treatment. She asserted that her incarceration in jail with “notorious women of foul and loathsome diseases” was likely to endanger her health. Following her testimony, Judge Pippen wrote to the Sheriff of Dallas, W.K. Reynolds, asking for proof as to why Lela Stedham was being illegally restrained in the county jail. Reynolds responded that Stedham was held on the ultimate authority of Dr. William Hale, Health Officer of Dallas County by virtue of the city’s quarantine order. Soon thereafter, the court remanded Stedham to quarantine under the care of Dr. A.W. Carnes, which led her to appeal to the Texas Court of Criminal Appeals. However, Stedham was released from quarantine before her case came before the appellate court, so the appeal was dismissed as unnecessary.⁴⁷

Each of these cases offers a glimpse into the potentially injurious and even tragic consequences of arresting and detaining women only on the suspicion of illicit activity and/or venereal disease. The inefficient, inconclusive, and inconsistent results of venereal disease testing showed the dangers of quarantining women solely on such results, not to mention the unconstitutionality of police officers arresting women and entering their private residences

⁴⁵ Lela Stedham, Appellate #5314, Box 1993/088-63, Texas Court of Criminal Appeals records, Archives and Information Services Division, Texas State Library and Archives Commission, 1-4.

⁴⁶ Lela Stedham, Appellate #5314, Box 1993/088-63, Texas Court of Criminal Appeals records, Archives and Information Services Division, Texas State Library and Archives Commission, 5-7.

⁴⁷ *Ibid*, 8-17, quote, 9.

without just cause or warrants. These behaviors were allowed and tolerated due to the national security concerns over the safety of soldiers' health and the double standard placed on women as the possessors and exploiters of social diseases.

While the cases of Best, Brooks, Cohen, and Emma Hardcastle indicate that the courts were occasionally cognizant of the dangers quarantine statutes possessed for women's *habeas corpus* rights, these cases were by no means normative. Many more women were simply statistics; their stories never made headlines and their cases never received court dates. In fact, for most of the women detained in quarantine centers across the nation, their very names have been lost to history. Therefore, the examples offered in this chapter are by no means completely representative of all women detained, but rather they are meant as cautionary tales. The wrongful arrests and quarantine of the women mentioned herein detail the hazards of placing questionable concerns about national security over the constitutional rights of individual citizens. Furthermore, their tales are indicative of the sexual double standard that permeated society during the early years of the twentieth century. Women alone were blamed for spreading the "social evil" of venereal disease, which allowed men to be unaccountable for their role in the increased amount of venereal disease in American society during and around World War I. These fears allowed females to be targeted by social reformers and local law enforcement officers and allowed laws to be passed that disregarded the constitutional protections guaranteed to all citizens. In the name of protecting society from social ills, and while fighting the "war to end all wars," women in Texas and across the nation were sacrificed upon the pyre of progressive ideas and wartime hysteria.



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Cunningham's Legal Defense Committee and Challenges to the Primary (White) Woman Suffrage Law

By Rachel Michelle Gunter

After Texas passed a primary woman suffrage bill allowing female citizens to vote in the all-white primary in 1918, Texas suffragists prioritized protecting that law from legal challenges. They knew how important even partial suffrage measures were. All four of the southern states that went on to ratify the Nineteenth Amendment had significant partial woman suffrage measures. Both Texas and Arkansas had primary suffrage, and Tennessee and Kentucky had presidential suffrage. When the Susan B. Anthony Amendment was sent to these states for ratification, legislators knew that women voters could wield significant power in future elections, a consideration that helped move these legislatures to ratify the federal suffrage amendment. Protecting primary suffrage was paramount to future suffrage victories in Texas and the nation.

The Primary Suffrage Law



Minnie Fisher Cunningham

In 1917, Texas Equal Suffrage Association (TESA) President Minnie Fisher Cunningham joined multiple groups in calling for the impeachment of Texas Governor James E. Ferguson. The Texas House of Representatives impeached the governor on multiple counts including mishandling state funds. Despite promising that he would never resign, Governor Ferguson did just that after the Senate convicted him but before they could decide his punishment. When they voted to bar Ferguson from holding any office of



Gov. James E. Ferguson

public trust in the state, Ferguson argued that as he had resigned instead of being removed by the legislature, their judgment did not apply to him. In 1918, he ran against his own former lieutenant governor, the current Governor William Pettus Hobby. While Texas was a one-party state under Democratic control, Ferguson led the conservatives opposed to the prohibition of alcohol and to woman suffrage; Hobby had become a moderate reformer with the backing of reform Democrats who held a slight majority in the Texas legislature.¹

¹ Rachel Michelle Gunter, "'Without Us, It Is Ferguson with a Plurality,' Woman Suffrage and Anti-Ferguson Politics," *Impeached: The Removal of Texas Governor James E. Ferguson, A Centennial Examination* (Texas A&M University, 2017), 53-84.

Despite the questionable legality of Ferguson's campaign, TESA Suffragist League lamented, "Mr. Ferguson is boasting that he will elect a legislature that will seat him, and that he will also elect judges who will decide the case in his favor..."² Ferguson retained support especially in rural areas of the state, and several progressive candidates would likely split the more liberal vote. Knowing this, Cunningham famously arranged a quid pro quo deal with Hobby: enfranchise the women of Texas to vote in the all-white primary and the women voters would assure his victory in the 1918 gubernatorial election.³ With Hobby's signature on March 26, 1918, Texas women who were American citizens and considered legally white could participate in all primary elections and nominating conventions.⁴

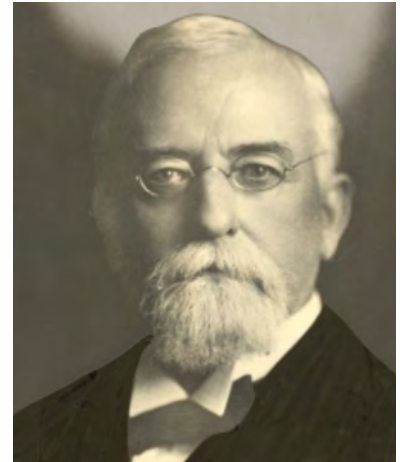


Gov. William Petus Hobby

Legal Defense Committee

Behind the scenes of this dramatic gubernatorial campaign, Cunningham anticipated a legal challenge to the primary woman suffrage law. Supporters wrote warning her of rumors that Ferguson's team would "go into the courts and by way of injunction attempt to prevent the women from participating in the primaries."⁵ Cunningham's solution was a Legal Defense Committee comprised of pro-suffrage attorneys, strategically located throughout the state, willing to defend the law pro bono.

In July, Attorney T.N. Jones expressed concern to Cunningham about the outcome of injunction proceedings if they were submitted before a Ferguson appointee in Tarrant County. He liked her idea of a Legal Defense Committee and conferred with M.M. Crane, the attorney who prosecuted Ferguson during the impeachment proceedings. Crane suggested that Judge Frank A. Williams lead TESA's defense of the law.⁶ Following his advice, Cunningham appealed to Williams:



Judge Frank A. Williams

We are threatened with some sort of legal action to prevent the women of Texas from participating in the primary elections, and, as a counter movement, are forming a committee to take charge of this matter. I have asked to serve on this committee, Gen.

² July 9, 1918, League to Mrs. Neidermeier, Box 2, Folder 53, Minnie Fisher Cunningham Papers, UH Special Collections [hereafter MFC Papers].

³ Judith N. McArthur, "Minnie Fisher Cunningham's Back Door Lobby in Texas: Political Maneuverings in a One-Party State," *One Woman, One Vote: Rediscovering the Woman Suffrage Movement*, ed. Marjorie Spruill Wheeler (Troutdale: New Sage Press, 1995, 1996), 17-18, & 297; Judith McArthur and Harold Smith, *Minnie Fisher Cunningham: A Suffragist's Life in Politics* (Oxford & New York: Oxford University Press, 2003), 52-53; See also *How Did Texas Women Win Partial Suffrage in a One-Party Southern State in 1918?* Documents Selected and Interpreted by Judith N. McArthur. (Binghamton, NY: State University of New York at Binghamton, 2006) in *Women and Social Movements Database*.

⁴ *General Laws of Texas*, Acts 1918, 35th Legislature, Fourth Called Session, Ch 34, 61-64.

⁵ Marshall Eskridge to Minnie Fisher Cunningham [hereafter MFC], July 16, 1918, Box 5, Folder 1, MFC Papers.

⁶ Jones to MFC, July 9, 1918; Box 5, Folder 1, MFC Papers.

M.M. Crane of Dallas, Judge Ocie Speer, of Fort Worth, Judge J.A. Elkins of Houston, Judge Ben L. Jones of Sherman, Judge N.A. Stedman and Mr. D.K. Woodward, Jr., of Austin; and would appreciate it beyond words if you would not only serve on the committee but take the chairmanship and suggest any other names you would want on it.⁷

Williams accepted the position.

Cunningham sent telegrams to each of the proposed committee members requesting their service, and each one quickly assured her of their willingness to serve. Speer explained his enthusiasm for the project:

This partial franchise is only half a loaf (war bread at that) and I am extremely anxious that it not be taken away from the women upon any pretext; it is a weapon by which they will be able to demand and receive the full franchise in a little while; and I for one am anxious to see them wield this weapon for all it is worth.⁸

By mid-July 1918, Cunningham had assembled a formidable defense.

Warnings of forthcoming challenges to the primary woman suffrage law made their way to the Hobby Campaign as well:

The Ferguson forces have about come to the conclusion that they cannot overcome the woman vote; they are to wait and see the extent of the registration; and if it is large, they will have some on[e], some strong Clark man, or Clark himself, to enjoin the woman vote or its constitutionality.

This supporter detailed a plan to change the oath required of Democrats before voting in the all-white primary. The new oath would read, "I am a white democrat and will support the nominee of the primaries."⁹ The Ferguson campaign would allegedly argue that women could not honestly take the oath as they could not vote in the general election. Crawford replied that Ferguson's people had "been threatening to enjoin the women from voting ever since the law was enacted." He assured Strickland that the Hobby Campaign was ready "to care of the situation" if it came to that.¹⁰ Working with Hobby's people, Cunningham requested that J. A. Elkins of the Hobby Campaign joined the legal defense committee as well.

Everyone involved expected a legal challenge, but they disagreed on when it would come. Elkins believed it would come after the election, while Crane argued: "It now seems certain that

⁷ MFC to Williams, July 10, 1918, Box 5, Folder 1, MFC Papers.

⁸ MFC to Crane, Stedman, Ben L. Jones, & Speer, Telegrams, July 10, 1918; Ocie Speer to Cunningham, July 13, 1918, all in Box 5, Folder 1, MFC Papers.

⁹ JJ Strickland to Crawford, July 3, 1918, Folder 1, Box 3H3, Hobby (William P., SR.) Family Papers, Dolph Briscoe Center for American History, University of Texas, Austin, Texas (hereafter referred to as Hobby Family Papers).

¹⁰ Crawford to Strickland, July 6, 1918, Folder 1, Box 3H3, Hobby Family Papers.

the enemy will seek an injunction to prevent the women from voting.”¹¹ Trying to ward off an injunction, the Legal Defense Committee met at the Hotel Galvez in Galveston, Texas, on July 20, 1918. They drafted a press statement, effectively informing Ferguson’s team that their defenses were ready for whatever attack they may try. Crane also issued his opinion to Texas newspapers on Ferguson’s ineligibility for office due to his impeachment and conviction.¹²

The Stakes

For the primary suffrage deal to remain successful, Texas suffragists had to deliver a large bloc of votes to Hobby. It was not just their reputation on the line. While it was an ideal victory for a one-party state, it was also a reversible achievement. If Ferguson won, he could have overturned primary suffrage as easily as it was passed. Additionally, Ferguson opposed the federal woman suffrage amendment inching closer and closer to success in Congress, after which it would go to the states for ratification. TESA needed a pro-suffrage governor in office when the amendment came down to call the legislature into special session if needed.

TESA’s first vice president, Helen Moore, urged suffragists to research primary candidates “so that we may be sure of not only defeating Ferguson but of electing men to the Legislature who will not permit the repealing of our bill and whom we know will ratify the Federal Amendment when it is submitted to them for ratification.”¹³ For Texas to be one of the few but crucial southern states to ratify the amendment, suffragists had to carry Hobby to a win.

As the election heated up, Ferguson publicly addressed the partial enfranchisement of Texas women, back tracking on his earlier opposition to suffrage to woo the newly enfranchised:

But more than three years ago... I declared that if the women wanted to vote, let them vote; that if women wanted more power you might just as well give it to her, because she was going to have it any way. But I said that I wanted the women to decide the question. I did not want to... lead her against her will to the ballot box... Understand, when I say ‘woman’ I mean that in a democratic sense. I mean the great majority of women. I do not mean these women who are running around over the country making woman suffragists foot and block... I am talking, as I say, in a democratic sense, about the great majority of the women, not the favored few, that class of women who would rather raise trouble than to raise a family.¹⁴

The last line was a particular dig at the married but childless Cunningham. In contrast, the Hobby Campaign published fliers instructing women how, when, and where to vote. They reiterated that Hobby gave women the vote and that Ferguson fought it, informing readers of his

¹¹ MM Crane to Crawford, July 9, 1918, Folder 3, Box 3H3, Hobby Family Papers.

¹² MFC to Walter J. Crawford, July 13, 1918, Box 5, Folder 1; JA Elkins to MFC, July 11, 1918, Box 5, Folder 2; MFC to Perkins, July 22, 1918, Box 5, Folder 1; Newspaper clipping, “Ferguson is claimed ineligible to serve,” May 5, 1918, Box 5, Folder 43, all in MFC Papers.

¹³ First VP to Annie Webb Blanton, April 9, 1918, Box 16, Folder 6, Jane Y. McCallum Papers, Austin History Center [hereafter McCallum Papers].

¹⁴ Transcription of Ferguson Speech, May 22, 1918, Box 5, Folder 42, MFC Papers. (Underlines present in original).

anti-suffrage actions at the 1916 Democratic National Convention in St. Louis.¹⁵ The war of words got heated. Ferguson argued, "They say that Ferguson was indicted, but so was Jesus Christ."¹⁶ The Hobby campaign replied that Pontius Pilate found nothing wrong with Jesus, but that the same could not be said of Ferguson. When a Senator introduced Hobby by comparing him to Moses, the Ferguson campaign replied, "According to the 25th chapter of the Leviticus, Moses was a socialist, ruled forty years and never reached the promised land."¹⁷

Who Could Vote and Would They?

Progressive Democrats believed primary woman suffrage would deliver new votes for them. They thought women would vote for progressive candidates who had lost out on the votes of the state's young men who were disfranchised while serving in the United States military during WWI. Under the original Texas state constitution (and every version of it until it was amended after the Korean War), Texas disfranchised all military personnel in the state for the length of their service.¹⁸ It didn't matter if a Texan was drafted or joined of their own will, they lost the right to vote until they left the military. Additionally, the poll tax was due each year before the end of January when poor farmers were least able to pay. Service personnel who returned to the state after February 1 were effectively disfranchised for the rest of the year even if they paid their poll tax. Suffragists later lobbied to end this effective disfranchisement for returning soldiers in 1919.

Texas had not required voters to be American citizens since Reconstruction.¹⁹ To legally vote in Texas, immigrants had to file their intention to naturalize, making them declarant immigrants. In this liminal state of citizenship, immigrants could be tried for treason, could be subject to the draft, and in about two-thirds of the nation at some point in their state or territorial history, they could vote too.²⁰ While Republicans had introduced declarant immigrant voting in Texas to counter the votes of unreconstructed white southerners, Democrats began courting Mexican immigrant voters in South Texas where the system of boss rule emerged. While the political machines like Tammany Hall that dominated east coast urban politics are more well-known, South Texas was likewise controlled by political machines in the early twentieth century. Political bosses like Jim Wells retained power largely through the controlled bloc votes of Mexican immigrants and Mexican Americans.²¹ German and Mexican immigrants in particular were believed to vote against

¹⁵ "Women Can Vote in Texas in July 1918, How, When and Where They Can Cast ballots," Box 5, Folder 49, MFC Papers.

¹⁶ "Those Indictments" by Galveston County Club for Election of W.P. Hobby for Governor, Box 5, Folder 49, MFC Papers.

¹⁷ Newspaper Clipping, untitled, Box 5, Folder 50, MFC Papers.

¹⁸ Rachel Michelle Gunter, "There is Nothing Sacred About the Military Vote," *History News Network*, November 8, 2020. <https://historynewsnetwork.org/article/178133>

¹⁹ Rachel Michelle Gunter, "You didn't always have to be a citizen to vote in America," *The Washington Post*, Wednesday, December 29, 2021. <https://www.washingtonpost.com/outlook/2021/12/29/you-didnt-always-have-be-citizen-vote-america/>

²⁰ Gerald M. Rosberg, "Aliens and Equal Protection: Why Not the Right to Vote?" *Michigan Law Review*, Volume 75, Issue 5, 1977, 1110, see also note 76; Leon E. Aylsworth, "The Passing of Alien Suffrage," *The American Political Science Review*, Vol 25, No.1 (Feb 1931), 114-116.

²¹ For boss rule, see David Montejano, *Anglos and Mexican in the Making of Texas, 1836-1986* (Austin: University of Texas Press, 1987); Evan Anders, *Boss Rule in South Texas: The Progressive Era* (Austin: University of Texas Press, 1982); Jessica Wranosky, *Southern Promise and Necessity: Texas, Regional Identity, and the National Woman Suffrage Movement, 1868-1920* (advanced copy, 2015).

prohibition and woman suffrage. Progressive Democrats opposed immigrant voting as Mexican voters largely backed conservative political bosses, but the progressives lacked the votes needed to end the practice.

The primary suffrage bill also required voters to be citizens, setting up a confusing system.²² Female citizens could vote in the primary but not the general election; male declarant immigrants could vote in the general election but not the primary. The new law made a test of the 1918 primary. How strong would the women vote be? Would there be consequences to disfranchising declarant immigrants even if only partially? Could the woman vote overcome the immigrant vote if both were allowed in the same election?

Black Women and Primary Suffrage

Historian Bruce Glasrud maintains that WWI “strengthened the objective of Black Texas women to acquire the power of the ballot,” particularly after seeing Black men drafted into military service at a higher percentage than whites.²³ In an undated annual report likely from 1917, the El Paso Equal Franchise League, a group of white suffragists, reported a request from the local African Methodist Episcopal Church for suffrage speakers and assistance organizing their own league. According to the report, “four speakers responded and a number of our members went and there was a gathering of about forty women and many men.”²⁴ The Black suffragists organized into a league and held a debate on woman suffrage that year.

In 1918, Mrs. E. Sampson of El Paso wrote directly to NAWSA’s Maud Wood Park requesting recognition of the new El Paso suffrage club. The request was unusual in that NAWSA did not affiliate directly with local organizations. Local organizations affiliated with the state organization (in this case TESA), which then affiliated with NAWSA. NAWSA sent the request to TESA’s Edith League. League wrote Critchett, president of the El Paso Equal Franchise League for an explanation, and Critchett explained that Sampson and her fellow suffragists were Black women. Knowing that TESA would likely refuse to admit a Black suffrage club, white suffragists advised her to try getting recognition directly from NAWSA. NAWSA allowed Black clubs to join, but only if their state organizations allowed it.²⁵

Critchett noted that Sampson was “a well educated woman and is desirous of recognition from the white people,” suggesting



Maud Wood Park



Early NAWSA button,
adopted circa 1896

²² *General Laws of Texas*, Acts 1918, 35th Legislature, Fourth Called Session, Ch. 60, 137-138; Anders, *Boss Rule*, 250.

²³ Bruce Glasrud, “Time of Transition: Black Women in Early Twentieth-Century Texas, 1900-1930,” in *Black Women in Texas History*, eds. Bruce A. Glasrud and Merline Pitre, (College Station: Texas A&M University Press, 2008), 112.

²⁴ Undated annual report of El Paso Equal Franchise League, box 15, folder 5, McCallum Collection, AHC.

²⁵ Sampson to Park, June 1918; HQ Sec to Ruth White, July 9, 1918; Critchett to League, July 1, 1918; all in box 5, folder 10, McCallum Papers.

that Sampson had been building a relationship with white suffragists in El Paso for some time. Although Critchett expressed a desire to help the Black suffragists with their side of the movement, she admitted: "I felt that it was not best nor advisable at this time, our first election to rouse any trouble nor about the 'colored question.'"²⁶ White suffragists intended for primary suffrage to help them dodge the race issue altogether due to the all-white primary. They thought it too risky to support Black woman suffrage.

League asked Catt for advice in the matter. Catt sympathized with Sampson, "I am sure if I were a colored woman, I would do the same thing they are doing." However, Catt acknowledged that in some southern states, the presence of Black suffrage clubs would hinder the suffrage movement. She advised Cunningham that if this were true of Texas, "write to Mrs. Sampson and tell her you will be able to get the vote for women more easily if they do not embarrass you by asking for membership and that you are getting it for colored women as well as for white women and appeal to her interest in the matter to subside."²⁷

Of course, no suffrage amendment at the state or national level secured voting rights for Black as well as white women. The Susan B. Anthony Amendment did nothing to guarantee women of color the vote; it simply removed one of the many barriers between Black women and the ballot. Very few Black women in the South were able to take advantage of the limited opportunities offered by suffrage legislation and vote. Most progressive Democrats supportive of woman suffrage also supported Jim Crow voting laws like the poll tax and the all-white primary as well as disfranchising Mexican and German immigrants by ending declarant voting. Cunningham responded to Sampson citing the uniqueness of the request and leaving the decision for the state convention. This delay tactic saved face but did not stop Black women from registering to vote in the 1918 primary.²⁸



Christia Adair

In Kingsville, Christia Adair had previous experience working across racial lines for progressive change. In an oral history interview later in her life, Adair recalled how "the little town was populated according to race. It had what they called Negro Town, White Town, and Mexican Town." Adair remembered a gambling house at the entrance to the Black town, whose existence "hurt my heart."²⁹ She became incensed after seeing one of the teenage boys she taught in the Sunday school exit the gambling house. Working with the white president of the Mother's Club, Adair organized a Mother's Club among the Black women in Kingsville. The two clubs worked together to end the gambling house. The sheriff, who was being paid off by the owner of the gambling house, subpoenaed multiple Black women to his office "and held court."³⁰ Adair's husband advised her that this "court" was not legal and that she and her

²⁶ Critchett to League, July 1, 1918, box 5, folder 10, McCallum Papers.

²⁷ Catt to League, July 17, 1918, box 5, folder 10, McCallum Papers.

²⁸ McArthur and Smith, *Minnie Fisher Cunningham*, 62.

²⁹ *Black Women Oral History Project Interviews*; Christia Adair interview, April 25, 1977, Schlesinger Library, Radcliffe Institute, Harvard University, Cambridge, Mass, 14 [hereafter Christia Adair interview].

³⁰ Christia Adair interview, 14-15.

clubwomen should “play stupid or dumb, just don’t have any answers.”³¹ The women did just that, and the sheriff was convinced the rumors were all talk. Afterwards, Adair’s white allies sent her to the district attorney who called “real court then with authority.”³² The gambling house was closed, and the crooked sheriff was forced to board up the building himself.

The white clubwomen Adair worked with were suffragists. Adair knew that Black Texan men could vote in the general election but appears to have not considered the fact that they were barred from the primaries. Adair recalled that white suffragists had asked for their help in passing the primary suffrage bill, and that Black women had “helped make contacts and excite public opinion and worked on people about it.”³³ When the bill passed, the Black women presented themselves at the polls on election day. However, the election officials barred them from voting. The official explained that Blacks could not vote in primary elections in Texas, which “just hurt our hearts real bad and we went on.”³⁴ Although Adair and her constituents had helped remove a sex-based barrier to the polls, the racial barrier remained. Adair later moved to Houston and worked for the local branch of the National Association for the Advancement of Colored People (NAACP). Through her work with the Houston NAACP and Thurgood Marshall, Adair was later involved with the Supreme Court case that brought down the all-white primary.



In 1918, multiple groups of Black women tried to register to vote, even knowing they would not be able to participate in the primary. They wanted to get one step closer to the vote and what they considered to be full citizenship. One such group of Black women in Houston was turned away at the tax collector’s office when they tried to register. They returned and presented the official with a letter from the local branch of the National Association for the Advancement of Colored People (NAACP) threatening a lawsuit. This time, they were allowed to register. This is even more remarkable because the Houston chapter of the NAACP went inactive after 1918, before being revived a few years later. Glasrud notes that despite registering, “few [Black women] voted in the primary election,” as the all-white primary usually prevented their participation.³⁵

In the east Texas county of Orange, Black women filed suit against the tax collector who barred them from registering. Attorney T.N. Jones wrote Cunningham informing her that the local newspaper ran a story about an injunction suit filed in Beaumont against R.M. Johnson, the tax collector in Orange County “either for an injunction or a mandamus to compel the registration of a

³¹ Christia Adair interview, 14-15.

³² Christia Adair interview, 15.

³³ Christia Adair interview, 15-16.

³⁴ Christia Adair interview, 15-16.

³⁵ Monroe N. Work, ed. *Negro Year Book: an Annual Encyclopedia of the Negro...* (Tuskegee, Negro Year Book Publishing Co, 1916-1917) 57-58; Rosalyn Terborg-Penn, *African American Women in the Struggle for the Vote* (Bloomington: Indiana University Press, 1998), 148; MFC to Benckenstein, July 17, 1918, Box 1, Folder 35, MFC Papers; Glasrud, “Time of Transition” *Black Women in Texas History*, Eds. Glasrud and Pitre, 114; Wranosky, *Southern Promise and Necessity*, (advanced copy), 2015. For more on the Houston NAACP and Adair, see: Darlene Clark Hine, *Black Victory: The Rise and Fall of the White Primary in Texas* (Columbia & London: University of Missouri Press, 1986), 98.

certain negro woman.”³⁶ However, Jones assumed the injunction was an attempt by antisuffragists to hurt the primary suffrage law, either by having it associated with Black voting or by getting a court ruling against it. Cunningham, equally concerned, sought details of the case from a resident of Orange County. Mrs. Benckenstein replied:

The colored women of Orange were told at their church on Sunday that they would be registered on Monday. They proceeded to the Court house where our Sheriff & Tax Collector instead of being courteous in his refusal to register them was very insulting making our [dusky] population very indignant. They then proceeded to employ an attorney to mandamus the sheriff and their attorney happened to be Geo Holland who at the time was & is chairman of the Men’s Hobby Club of Orange Co. They went to Beaumont next day for trial & the judge before whom the case came up was McDonald a great Ferguson supporter & admirer. The case was dismissed.³⁷

Benckenstein concluded that “the whole affair could have been avoided very easily” and hoped it did not harm the suffrage campaign.³⁸ In Benckenstein’s view, the issue was that the authorities had been rude to the Black women, not that they were being denied even the ability to register. Cunningham was convinced that the primary suffrage law was safe, at least for white women’s use. She told Jones she did not foresee a problem coming out of Orange but assured him that the legal defense committee would handle any that did arise. She added: “The registration figures are enough to make Ferguson sick, and I should not blame him at all if he did want to cut us out. Those are practically all Hobby voters.”³⁹

Officially, the primary suffrage bill did not limit voting based on race, as the all-white primary and the poll tax were expected to legally limit non-white and poor voting. However, tax collectors issued advertisements encouraging women to vote that misrepresented which women were legally entitled to register:

By authority of a ruling of the attorney general of Texas, all white women who reside outside of Waco were not required to register, and therefore all white women in McLennan County residing outside of Waco, over the age of 21 on or before July 27th, 1918, and who are citizens of the United States, and who have resided in Texas one year and in McLennan county six months may vote at the primary election, regardless of whether or not they registered.⁴⁰

Clearly individual poll tax collectors who acted as voter registrars were determined to limit their registrations to white women instead of registering Black women and having to turn them away on election day.

Cunningham wrote to TESA suffragist Jane McCallum about the hard work that summer,

³⁶ T.N. Jones to MFC, July 15, 1918, Box 20, Folder 5, McCallum Papers.

³⁷ Mrs. LF Benckenstein to MFC, July 17-18, 1918, Box 20, Folder 5, McCallum Papers.

³⁸ Mrs. LF Benckenstein to MFC, July 17-18, 1918, Box 20, Folder 5, McCallum Papers.

³⁹ MFC to T.N. Jones, July 13, 1918, box 20, folder 5, McCallum Papers.

⁴⁰ Newspaper clipping, *Waco Times-Herald*, July 21, 1918, Box 3, Folder 42, MFC Papers.



Jane McCallum

made sweeter by being able to register to vote herself,

I think we are going to be reasonably satisfied with the showing of the women in registration over the state. Don't you? Its been an awful strain tho! I registered today. And honey you'll never know how I felt when I walked out with that piece of paper. But I know how a mocking bird feels when he perches on the top most swaying bough and fast tells his heart's secrets to the world. But for a hundred and sixty pounds excess baggage and the trifling matter of lack of voice, I could have done it myself!⁴¹

Approximately 386,000 Texan women registered to vote in seventeen days.⁴² The *Dallas Morning News* headline the morning after the election read: "Hobby Wins by Majority of 250,000 or More."⁴³ After all the election returns were submitted, Hobby won the governorship by more than 300,000 votes, giving him a two-to-one margin over Ferguson.⁴⁴ Ferguson argued that women's votes were unconstitutional, but estimated he earned less than ten percent of them.⁴⁵ A Victoria County paper reported, "If Ferguson's claim... is correct, without the women voting in this county Hobby's vote would have been less than 549 to 742 or more for Ferguson, which would have given Ferguson a majority of at least 149" in Victoria County.⁴⁶ Newspapers ran the numbers for their counties, reporting the actual number and estimates of what they would have been without women's votes, proving the success of woman suffrage to progressive legislators. Congratulations poured into Cunningham's office; one correspondent called it the "greatest victory since [the] battle of San Jacinto."⁴⁷ In August, Cunningham wrote Legal Defense Committee-member Crane with good news. Ferguson had publicly announced that he would accept the election results.

Post-Election Challenges

While Ferguson accepted defeat, not all politicians did. In late August, M.A. Childers, a county judge in Sinton, Texas, informed Cunningham of a challenge to his win over incumbent Judge F.G. Chambliss of Beeville. Judge F.G. Chambliss was considering filing suit, arguing that the primary woman suffrage law was unconstitutional and that he would have won if only the

⁴¹ MFC to Jane McCallum, undated [Monday, 1918], Box 3K84, File: Jane Y. McCallum: Women's Suffrage, Correspondence, Letters Received, 1918-1921 & Undated, Jane Y. and Arthur N. McCallum Papers, Dolph Briscoe Center, University of Texas [hereafter Jane and Arthur McCallum Papers].

⁴² McArthur and Smith, *Minnie Fisher Cunningham*, 64.

⁴³ "Hobby Wins by Majority of 250,000 or More" *Dallas Morning News*, July 28, 1918, Folder 2, Box 3H1, Hobby Family Papers.

⁴⁴ Newspaper clipping, Galveston Daily News, July 28, 1918, Box 5, Folder 50, MFC Papers; William P. Hobby, Jr., "Hobby, William Pettus," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fho04>.

⁴⁵ Walter Buenger, *The Path to a Modern South: Northeast Texas Between Reconstruction and the Great Depression* (Austin: University of Texas Press, 2001), 178.

⁴⁶ Newspaper clipping regarding Victoria County, "Over 646 women in this county voted in primary election," Box 3, Folder 42, MFC Papers.

⁴⁷ Mr. and Mrs. Kirby to MFC, Telegram, July 28, 1918, Box 5, Folder 44, MFC Papers.

“constitutional” vote were counted. Childers wrote Cunningham that he had openly campaigned for woman suffrage, while,

During the campaign before the election he [Judge Chambliss] made the assertion that he would be alright in the election if it were not for the d-M women. Yet he solicited their votes just the same as I did.⁴⁸

Childers wrote Cunningham hoping for help after reading newspaper coverage of TESA’s legal defense committee. Knowing that the suit would be filed in the District Court of San Patricio County, and the Chambliss could not hear his own case, Childers wrote short biographies of each of the four judges in adjoining districts who might be appointed by the Governor to preside over the case. Childers believed Judge Volney Taylor to be the worst possible choice to hear the case; he was a Ferguson supporter and opposed to suffrage. Childers continued,

I am reliable [sic] informed that my opponent has already indirectly conferred with Judge Taylor as to his views on this question, and that Judge Taylor has already expressed it as his opinion that the law granting women the right to vote in the primary is unconstitutional. My opponent expects to bring pressure to bear on the Governor to have Judge Taylor appointed.”

Childers wanted the Governor to select Hobby-supporter and pro-suffrage Judge John M. Green of Cuero to hear the case.⁴⁹ Cunningham asked Childers to keep her informed of his case and promised “we will not sit idly by and permit ourselves to be disfranchised without doing what we can to stop it!”⁵⁰ Childers replied, “The fight is on. Judge Chambliss filed his contest yesterday.”

Chambliss filed a petition in the District Court “to review for illegality and fraud in the Primary Election...the Certificate of Nomination, a Democratic Nominee for District Judge...” He argued that the 1,646 ballots cast by women in the primary election should be thrown out as unconstitutional. Childers again urged Cunningham to lobby Hobby to appoint Judge Green. “He is the only [adjoining] district judge who would give us a ‘square deal.’”⁵¹

Childers handwrote notes on the copy of the petition he sent to Cunningham: “[Chambliss] accompanied his tax collector to the various voting precincts, where the ladies registered, and solicited each and every woman who registered for voting in Bee County.”⁵² Only after winning the male vote by 19 counts, did Chambliss seek to throw out all women’s votes as unconstitutional. Not wanting to commit TESA’s finite resources to a small contest that would not affect the constitutionality of the primary suffrage law in other parts of the state, Cunningham wrote a vague reply to Childers, “You will pardon me if I do not go into detail as to the assistance which we hope to be able to render you in this fight. I can only assure you that we will do our absolute best, and

⁴⁸ M.A. Childers to MFC, August 26, 1918, Box 5, Folder 37, MFC Papers.

⁴⁹ M.A. Childers to MFC, August 26, 1918, Box 5, Folder 37, MFC Papers.

⁵⁰ MFC to Childers, August 27, 1918, Box 5, Folder 37, MFC Papers.

⁵¹ “Petition of F.G. Chambliss, Contestant vs. No. 2596, M.A. Childers, Contestee;” Childers to MFC, August 28, 1918; all in Box 5, Folder 37, MFC Papers.

⁵² “Petition of F.G. Chambliss, Contestant vs. No. 2596, M.A. Childers, Contestee,” Box 5, Folder 37, MFC Papers.

feel sure that you will be satisfied with it."⁵³

Judge Chambliss had indeed spoken with Judge Taylor and, giving rise to questions of impropriety, the two men made a deal to exchange benches while Chambliss' case worked its way through the court. In other words, Judge Chambliss handpicked his friendly colleague to hear his case. Childers reported to Cunningham,

Judge Taylor appeared at Sinton to-day, and took the bench and called the case. We refused to answer, as we had received no notice of the setting of the case, the law requiring the judge who sets the case to give the contestee [sic] five days notice. The case was set for next Wednesday, Sept. 25th. and notice issued to me immediately. Next Wednesday the case will be called, and tried, and a judgment rendered against me.⁵⁴

Cunningham was in DC working on the federal amendment, when Childers' Campaign Secretary asked her to come to Beeville for the trial.⁵⁵ Cunningham, ill with the 1918 Flu that was sweeping the nation, was unable to travel.⁵⁶ Judge Taylor upheld Chambliss' argument that the primary woman suffrage bill was unconstitutional and threw out women's votes. The recount gave Chambliss a nineteen-vote win over his challenger. Due to the stacked nature of the court system and the limited impact this ruling had on the rest of the state, Cunningham and the Legal Defense Team strategically chose not to challenge it.⁵⁷

Childers did not give up after seeing the Democratic nomination officially awarded to Chambliss. His supporters launched a grassroots campaign to have voters write in his name on the general election ballot in November instead of voting for the official Democratic nominee, Judge Chambliss. The Chambliss campaign accused Childers of underhanded tactics and alleged that he had corresponded with people who could help him overturn Chambliss's rightful victory, when in fact he'd been corresponding with Texan Minnie Fisher Cunningham while she was out of state. Childers could not find his copy of his correspondence with Cunningham and feared it might have been stolen. In an effort to clear his name, he got the original letters from Cunningham and made them available to the interested parties. He later forwarded Cunningham a copy of the "affidavit of M.C. Nelson, admitting to the purloining of my correspondence." He added "notwithstanding the person insults, the trickery, the conspiracies, etc. the friends of good government wrote in my name in sufficient numbers to give me more than 300 majority." When the votes containing misspellings were thrown out, Childers' actual majority was approximately 150 votes.⁵⁸ Incredibly, the write-in campaign was successful, and Chambliss was voted out of office.

Another local contest that caught the attention of Cunningham and TESA was that of the machine-connected, Archie Parr, against D. W. Glasscock. After the election, Glasscock had a 1,200-

⁵³ MFC to Childers, August 30, 1918, Box 5, Folder 37, MFC Papers.

⁵⁴ Childers to MFC, Sept 18, 1918, Box 5, Folder 37, MFC Papers.

⁵⁵ R.L. Cox telegram to MFC, October 25, 1918, Box 5, Folder 37, MFC Papers.

⁵⁶ MFC to Childers, October 28, 1918, Box 5, Folder 37, MFC Papers.

⁵⁷ Anders, *Boss Rule in South Texas*, 259-260.

⁵⁸ Childers to MFC, Nov 7, 1918, Box 5, Folder 37, MFC Papers.

vote lead over Parr, but Parr refused to release the election returns from his home county. Fearful that Parr would steal the election by inflating the Duval County returns, the Glasscock campaign appealed to Governor Hobby to launch a Texas Ranger investigation into "election irregularities in Duval County, as well as the Latino precincts of Cameron and Hidalgo counties."⁵⁹



Archie Parr

The Rangers uncovered mass electoral fraud including ballots illegally prepared by election officials for illiterate Mexican voters; a candidate (who happened to be political boss Jim Wells' brother-in-law) who had acted as an election official and marked ballots; voters who were not legally eligible to vote including immigrants who had not filed their first papers; and citizens who had failed to pay the poll tax but were allowed to vote. Parr finally submitted election returns for Duval County, giving himself enough of an edge to



D. W. Glasscock

beat Glasscock. When Wells and Parr's men organized the district convention with the intention of awarding the election to Parr, Glasscock's men bolted and formed their own convention, nominating Glasscock and nullifying the votes in Duval County based on the Ranger investigation.⁶⁰ The fight was now between Glasscock's faction with their legally questionable convention and Parr's faction rife with fraud.

Glasscock's faction appealed to the state Democratic Party, led by Hobby and his supporters, who directed the Texas secretary of state to confirm Glasscock as the nominee. In response, Parr sued to have the Glasscock's Certificate of Nomination reviewed and to have the courts declare which convention had been the proper convention. Glasscock obtained a favorable ruling from none other than Judge Chambliss, who ruled that "Parr's convention was the regular one and directing that Parr's name be printed on the ballot as the nominee..." Judge Volney Taylor would normally have heard the suit, but Taylor and Chambliss had exchanged benches due to Chambliss' own election suit. The same attorney represented Glasscock and Childers.⁶¹

Like Childers' faction, Glasscock's faction refused to give up. In October, they formed the Hobby-Glasscock Club to launch a write-in campaign for Glasscock in the November election. The Chairman of the club, Charles H. Flato Jr., wrote Cunningham that the "club has for its objective the overthrow of the corrupt machine domination heretofore exercised by Archie Parr, and the installation of 'Clean politics on the Rio Grande,' and an honest, decent, patriotic, representative for the citizenship of this district in the State Senate." Flato continued, "Of course, you are entirely familiar with the plan of Mr. Parr's campaign, which is being made on behalf of liquor interests,

⁵⁹ Anders, *Boss Rule in South Texas*, 248.

⁶⁰ Anders, 258.

⁶¹ "For Clean Politics on the Rio Grande," Pamphlet, Box 5, Folder 39, MFC Papers; Anders, 260-261.

Fergusonism and strictly against woman suffrage.”⁶² Flato appealed to Cunningham to enlist the suffragists in the twenty-third senatorial district despite the fact that they could not vote in the general election. Flato wanted local suffragists to educate male voters how to scratch out Parr’s name and write in Glasscock’s. He also wanted Cunningham to write a public endorsement of Glasscock for publication in local and state newspapers.



Charles H. Flato Jr.

Cunningham responded three days later, delayed by her bout with influenza. She forwarded to Flato a list of women in the 23rd senatorial district whom she was writing, urging them to get in the campaign. She specifically lauded Mrs. Wilmer Threadgill of Laredo, “a young, vigorous, well educated, progressive woman, [who] did splendid work during the campaign in June and July in your district.”⁶³ Finally, as TESA and Cunningham rarely endorsed specific candidates beyond giving out their record on suffrage, Cunningham instead wrote her endorsement as an appeal to local women to “get into the fight.”⁶⁴ Hedging Flato’s expectations, Cunningham warned him against using the appeal too widely lest the Parr campaign used it “to rouse a spirit of local resentment at interference from the outside District.”⁶⁵ Cunningham recommended Flato have suffragists distribute educational material, canvass neighborhoods, and act as poll watchers.⁶⁶

In her letter to the women of the 23rd senatorial district, Cunningham called the election “a contest between the advocates of a democratic form of Government and the advocates of the old fashioned ‘Steam Roller.’”⁶⁷ She appealed to the women to work in the campaign “for good government and the election of Mr. Glasscock...”⁶⁸ Drawing connections between democracy at home and WWI, Cunningham continued:

Remember that much blood has been shed that ‘Governments of the people shall not perish from the earth.[.] Remember that today our best and bravest are daily making supreme sacrifice of their lives to ‘Make the world safe for Democracy.’ You are privledged [sic] to bear your share in this world movement, you are privledged [sic] to serve in making Texas a state to which those soldiers of Democracy on the Western front may return with joy. I feel sure that you will hold your part of the line.”⁶⁹

Flato contacted each woman on Cunningham’s list. He was confident they would win the majority of the votes, “whether or not we are able to get a fair count at the polls is another matter.”⁷⁰

⁶² Chas. H. Flato, Jr. to MFC; October 22, 1918, Box 5, Folder 39, MFC Papers. (Underlines present in original).

⁶³ MFC to Flato, Oct 25, 1918, Box 5, Folder 39, MFC Papers.

⁶⁴ MFC to Flato, Oct 25, 1918, Box 5, Folder 39, MFC Papers.

⁶⁵ MFC to Flato, Oct 25, 1918, Box 5, Folder 39, MFC Papers.

⁶⁶ MFC to Flato, Oct 25, 1918, Box 5, Folder 39, MFC Papers.

⁶⁷ Circular “To the women of the 23rd Senatorial District,” MFC, Box 5, Folder 39, MFC Papers.

⁶⁸ Circular “To the women of the 23rd Senatorial District,” MFC, Box 5, Folder 39, MFC Papers.

⁶⁹ Circular “To the women of the 23rd Senatorial District,” MFC, Box 5, Folder 39, MFC Papers.

⁷⁰ Flato to MFC, Oct 26, 1918, Box 5, Folder 39, MFC Papers.

The Glasscock campaign utilized boss-delivered votes in counties friendly to them, while working to limit immigrant declarant voting in counties friendly to Parr. Hobby had the Texas Rangers patrol Parr's territory. The Armed Rangers guarded the polling stations, intimidated Mexican-origin voters. However, Parr was able to retain his state senate seat through political boss tactics of allowing ineligible immigrants to vote and throwing out write in ballots with minor spelling errors. He was also aided by the fact that Glasscock's female supporters could not vote in the general election.⁷¹

Conclusion

Texas suffragists and progressive Democrats were successful in protecting the primary suffrage law from court challenges that would have applied to the entire state and from efforts to overturn the law in the legislature before the 19th Amendment came before the legislature. Despite losing a state suffrage referendum in May, Texas suffragists organized for ratification in June 1919. Knowing that women still had the power to remove legislators from office in the primary, the Texas legislature became the first southern state to ratify the 19th Amendment in June 1919.

⁷¹ Anders, *Boss Rule in South Texas*, 262-265.



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More than Milestones: The Groundbreaking Cisneros Sisters

By Luis J. Marín



Edna Cisneros

September 6, 1955, marks the date when Edna Cisneros became the first female attorney in Willacy County, Texas,¹ and some sources identify her as the first Mexican American woman to become a lawyer in the whole state.² The following year, on December 7, 1956, Edna's sister, Diana, also became a lawyer.³ The story of success of the Cisneros sisters is full of groundbreaking achievements in the legal history of Texas, but also holds a backstory of gender and race negotiation in the deeply divided U.S. South of the of the 1950s and 60s.

Apart from being the first Mexican American woman to be admitted to the Bar, Edna Cisneros also holds the distinction of being the first woman to be elected District Attorney in Willacy County, and possibly the first elected female district attorney in Texas.⁴ In 1964 she became president of the Willacy County Bar Association.⁵

Diana, who opened her private office on July 18, 1957,⁶ was also elected District Attorney of Willacy County several years later, and almost seven months prior to her passing on June 1, 1991, due to a massive heart attack.⁷ In 2013, Edna died at the old age of 83 at the Veranda Nursing and Rehab Center in Harlingen, TX. ⁸ Back in 1958, the sisters became the local sensation of their hometown, Raymondville, when they represented opposing parties before the 138th District Court,

¹ [Edna Cisneros attorney license entry] (n.d.). https://www.texasbar.com/AM/Template.cfm?Section=Find_A_Lawyer&template=/Customsource/MemberDirectory/MemberDirectoryDetail.cfm&ContactID=234576

² Palomo Acosta, T. (n.d.). "Carroll, Edna Cisneros," *Handbook of Texas Online*. <https://www.tshaonline.org/handbook/entries/carroll-edna-cisneros>.

³ [Diana Cisneros attorney license entry] (n.d.). https://www.texasbar.com/AM/Template.cfm?Section=Find_A_Lawyer&template=/Customsource/MemberDirectory/MemberDirectoryDetail.cfm&ContactID=322478

⁴ "Woman District Attorney Sworn in Willacy Possibly First in Texas," *San Antonio News*, Jan. 10, 1957.

⁵ Cisneros, E. (1964, May 18). [Letter]. Archives of the State Bar of Texas

⁶ "Attorney Opens Office in City," *Raymondville Chronicle News*, July 25, 1957.

⁷ D. Murray, "Willacy County DA fondly remembered," *Valley Morning Star*, June 4, 1991.

⁸ "Edna Cisneros Carroll Obituary," *Raymondville Chronicle News*, July 31, 2013. <https://www.raymondville-chronicle.com/articles/edna-cisneros-carroll/>

in a criminal case against Martin de Leon and Domingo Ramirez for their armed holdup of the Bell Loan Company.⁹

Today, the University of Texas' Farris-Cisneros Scholarship celebrates the admission of Edna Cisneros as the first Hispanic Woman admitted to the Texas Bar,¹⁰ along with Charlye Farris, the first African American woman to achieve the same goal on November 12, 1953.¹¹

Pretty Girls

If, instead of the Cisneros' sisters, Edna and Diana would have been the Cisneros *brothers*, the historical account would have probably ended at this point. But they were not. News reports about the accomplishments of Edna and Diana were almost always "adorned" by epithets like "pretty miss"¹² with "snapping black eyes."¹³ These journalistic embellishments were considered compliments in the 1960s, but today they are nothing more than mementos of the bold sexist practices of the 1960s.

On the occasion of an official visit, a late 1950s chronicle reported Edna was "against too many tradeouts with defendants," not without first mentioning that she affirmed so in a "sweet voice," while holding her lipstick and after she "finished powdering her nose." The article, which began with the heading "Nose-Powdering D.A. Resists Trade-Outs" and refers to Edna's being "slim and dark-haired," concluded with a quote attributed to Edna *and* an editorial note: "My campaign slogan was 'Justice for All,' she said firmly, as she pocketed her lipstick."¹⁴ In 1958, when the Cisneros sisters hit the headlines for their appearance as opposing counsels in the same case, it was reported that "both the girls are pretty, both got their law degrees at the University of Texas, and both are considered smart and promising attorneys."¹⁵

On Edna's election as District Attorney, the *Dallas Morning News* reported: "Pretty Girl to Take Over as Willacy County's DA." The newspaper also deemed it necessary to inform that the 26-year-old "slender, brown-eyed barrister" was born in Brownsville and raised in Raymondville, and was the daughter of Manuel Cisneros, a local grocer. The article does not mention Edna's mother but does mention her sister, "Mrs. Ralph Klefisch." Ralph Klefisch was Diana's husband. Despite the avalanche of patriarchy, Edna was able to convey her own voice through the pages of the *Dallas Morning News*, arguing that "she may be a little short on experience—but it's because I'm 26, and not because I'm a woman."¹⁶

⁹ "Woman D.A. Pitted Against Lawyer Sister," *Houston Chronicle*, May 18, 1958. See also "Two Plead Guilty in Loan C. Robbery," *Raymondville Chronicle News*, May 22, 1958.

¹⁰ *The Farris-Cisneros Scholarship*. (n.d.). <https://law.utexas.edu/financial-aid/scholarships/the-farris-cisneros-scholarship/>

¹¹ A. Garcia, "Farris, Charlye Ola," *Handbook of Texas Online*. <https://www.tshaonline.org/handbook/entries/farris-charlye-ola>.

¹² "Pretty Girl to Take Over As Willacy County's DA," *Dallas Morning News*, Aug. 5, 1956.

¹³ "Woman DA Visits Prosecutor Here," *Dallas Time Herald*, Nov. 21, 1958.

¹⁴ "Nose-Powdering D.A. Resists Trade-Outs," *Raymondville Chronicle News*, Sept. 5, 1956.

¹⁵ "Attorney Sisters to Tangle Valley Robbery Trial," *Raymondville Chronicle News*, Jan. 19, 1958.

¹⁶ "Pretty Girl to Take Over As Willacy County's DA," *Dallas Morning News*, Aug. 5, 1956.



Cisneros family photos

Negotiating Identity

One may reasonably assume that women of the caliber of Diana and Edna Cisneros would utilize every opportunity at hand to promote their ideas and advance the cause of Latinas and women in general. However, this might not always be the case for the Cisneros sisters.

Vanessa Erps, Bexar County's Assistant District Attorney and Diana's granddaughter, recalls spending many of her childhood days at her grandmother's office playing with Diana's typewriter and Dictaphone and listening to Diana's stories about an imaginary friend named "Inkpen."¹⁷ Despite being very young when Diana passed away, she holds fond memories of Diana as a "warm woman", "very creative in a very special way," that hardly spoke about being a lawyer herself, or about her accomplishments, much less about feminism or race. She does recall her grandmother telling her that when Diana was a young girl her father took her to a court hearing to attend a case about a *vaquero* of Mexican descent who was kidnapped and tortured. According to Vanessa, that case left such an emotional impression on her grandmother that from that day on Diana knew she wanted to be an attorney.

Vanessa does not recall any more instances in which her grandmother talked to her directly about the legal profession or the cause of Latina women, nor does she remember ever hearing the terms feminism or machismo from her grandmother's mouth. However, she does recall family gatherings as a safe place of cultural affirmation.

Married to Anglo husbands, the Cisneros would speak English in their households daily, but, when left alone, they would get together and speak Spanish among themselves. As Vanessa remembers it, women gatherings in the Cisneros family were always warm, funny, and within a safe environment in which all the different personalities of the women in the family would "come out" through *chisme* (gossip) and their inherited Mexican cuisine and vernacular. Chicana feminist theorists argue that female-dominated places of gathering like the family kitchen had been historically utilized by Chicana women as a negotiated place of gender and cultural affirmation. As Urszula Niewiadomska-Flis posits, "women who wish to disagree with Latino *machista* logic often resort to inconspicuous strategies of 'civil disobedience' rather than to a blatant undermining of patriarchal authority. One of such methods is culinary negotiation."¹⁸ It seems that the Cisneros women were no exception to the norm.

Working Women

Fort Worth Attorney Gerald Pruitt is not related to the Cisneros Sisters, but he can also attest to their long-lasting legacy.¹⁹ Gerald was only a child when Edna Cisneros served as District Attorney of Willacy County in the late 1950s and early 1960s, however, he recalls that when he was ten years old, he went with the local 4H club on a field trip to the courthouse in Raymondville and Edna was the guest speaker. According to Gerald, listening to Edna and being in a courthouse

¹⁷ V. Erps, interviewed by author, July 3, 2022.

¹⁸ U. Niewiadomska-Flis, "'A Kitchen of Her Own': Chicana Identity Negotiations Framed Through Foodways in Carla Trujillo's *What Night Brings*," *Polish Journal for American Studies*, no 7, (2013): 161–177.

¹⁹ G. Pruitt, interviewed by the author, July 8, 2022.

for the first time had “quite an impact,” and motivated him to spend many days in the Reber Memorial Library, on the courthouse grounds, reading books about law, as he was too young to check those books out. Fifteen years later, Gerald became a lawyer himself.

Gerald points out that the impact Edna had on him was due to her profession and the office she held, and not because she was a woman or a Latina. Not pretending to undermine Edna’s accomplishments as a member of a historically underrepresented group in the legal field—which he understood at a later age—, Gerald explains that to his juvenile eyes, a working woman in the Rio Grande Valley was commonplace, since his own mother was a schoolteacher like many of his friends’ moms were. Race was not much of an issue to him, either, as he recalls that roughly ninety percent of his classmates were of Mexican descent. “I wish I had a more clear memory of it ... but her, I think she was well respected... nobody in my house ever made any comments about the impropriety of a Hispanic woman being a DA or the County Attorney,” Gerald concluded.

While she belongs to a much younger generation, Vanessa’s upbringing was quite similar to Gerald’s. Not only, she explained, that she was raised in a family where race and gender equity was the norm, but Vanessa also smirked, “I wish they would have warned me,” in reference to the racial and gender divide still present in US Society.

Curiously enough, Vanessa added that once she became a young adult, it was the men in her family, not the women, who more openly talked to her about the many achievements of her grandmother and grandaunt, as well as the many obstacles they encountered. Vanessa asserts that her family has always counted “very strong men” among its ranks, but these men were also “very supportive” of the women in her family. Not surprisingly, family pictures of the Cisneros shared by Vanessa with this Journal portray men striking poses far from what would be expected of a *machista* patriarch. These images validate Vanessa’s depiction of her family as a safe place of gender and racial equality. As a matter of fact, the revisiting of old photographs has been employed by Chicana feminists to negotiate their own identity and as means to “make meaning of what others may call meaningless, like photographs stored in a box or in someone’s photo album.”²⁰

Unpacking the Cisneros’ Legacy

Chicana feminist Maria Cotera posits that “those further away from the mechanisms of power—women, the working class, ethnic and sexual minorities—are rarely represented in institutional archives.”²¹ The milestones reached by Edna and Diana Cisneros certainly granted them access to official institutions and, ultimately, to institutional archives like that of the State Bar of Texas, without which it would have been very difficult to rememorate their stories sixty years later. However, there is much more to Edna and Diana than the mere statistics and the

²⁰ M. Chávez, “Refocusing Chicana International Feminism: Photographs, Postmemory, and Political Trauma,” Espinoza, D., Cotera, M. E., & Blackwell, M. (Eds.), *Chicana Movidas: New Narratives of Activism and Feminism in the Movement Era*, University of Texas Press, (2018): 325.

²¹ M. Cotera, “Unpacking our mother’s libraries: Practices of Chicana memory before and after the digital turn,” In Espinoza, D., Cotera, M. E., & Blackwell, M. (Eds.), *Chicana Movidas: New Narratives of Activism and Feminism in the Movement Era*, University of Texas Press, (2018): 300.

bare milestones. As women and Latinas, there is still much to excavate and volumes yet to be told about them.



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From Courtrooms to the Silver Screen: The Story of Florence Rabe Jacoby

By Hon. John G. Browning

If you're an aficionado of the "Golden Age" of American cinema, you just might have unwittingly seen one of Texas' female legal pioneers. That's because Florence Rabe Jacoby became far more well known as character actress Florence Bates, who shared the silver screen with such Hollywood luminaries as Laurence Olivier, Errol Flynn, Kirk Douglas, Ava Gardner, Doris Day, Claudette Colbert, Ingrid Bergman, and even future U.S. President Ronald Reagan. A number of sources, including some unsurprisingly embellished movie magazines and even her Wikipedia bio, list her—incorrectly—as Texas' first woman lawyer. And while that isn't true, Jacoby was one of Texas' first female attorneys, and deserves an appropriate measure of recognition.



Florence Rabe Jacoby

Who actually was the first woman admitted to practice law in Texas? Technically, that would be Edith W. Locke, admitted in 1902. Locke was actually from Chicago, and spent a year recuperating for her health in El Paso and "reading the law" while doing so. She was examined by a local committee of three attorneys on May 19, 1902 and perhaps due to her gender was not given an easy time. According to an account in the *El Paso Herald*, "The attorneys gave the lady a most searching examination," "ransacking all the law from the foundation of the Roman Empire through the English common law and down to the latest Texas statutes."¹ Locke, however, left Texas three days after her admission and returned to Chicago. The first women to actually practice law in Texas were Alice Tiernan (licensed in 1909) and Hortense Sparkes Ward (licensed in 1910). While Tiernan's career would later be marred by a barratry case, Ward went on to become one of the leading voices for women's rights in Texas and in 1925 served as Chief Justice of Texas' only all-female Supreme Court.²

The next female lawyers in Texas arrived in 1914. Two were the first women to graduate from the University of Texas School of Law: Irene Gertrude Brown of San Antonio, who practiced

¹ Sherrie S. McLeRoy, *Texas Women First: Leading Ladies of Lone Star History* (2015); see also Betty Trapp Chapman, *Rough Road to Justice: The Journey of Women Lawyers in Texas* (2008).

² David Furlow, "Taking the Law into Their Own Hands: Hortense Sparkes Ward, Alice S. Tiernan, and the Struggle for Women's Rights in the 1910 Harris County Courthouse," *HBA Appellate Lawyers* (Sept. 2013).

law in her home city until her death in 1945; and Rose Zelosky of Fort Worth, who went on to be the first woman to serve on the legal staff of AT&T.³ But another lawyer admitted in 1914 achieved her greatest fame not in the San Antonio courtrooms where she began her career but on the silver screen: Florence Rabe.

Florence was born on April 15, 1888 in San Antonio, one of three children of Sigmund and Rosa Rabe, German Jewish immigrants. Her family operated an antique and curio store in San Antonio. Florence was an outstanding student, graduating from high school in 1903 and then earning her bachelor's degree in mathematics in 1906 from the University of Texas. She was also a gifted pianist, but a hand injury ended her childhood aspirations of being a concert pianist. Florence became a teacher and, later, a social worker. In 1909, she married Joseph Ramer, and the two had a daughter, Mariam. But the marriage was rocky, and soon ended in divorce.

Newly single, looking for a career, and fresh from her firsthand experience with the Texas legal system, Florence decided to become a lawyer. Instead of pursuing a law degree, the single mother "read the law" and in 1914, was admitted to practice in Texas. Hollywood bios to the contrary, she was not the first to accomplish this, but she very likely was the fourth, as well as the first Jewish woman to do so. Florence practiced law for at least four years. After her parents died, however, she left the active practice of law to join her sister in co-managing their late father's store. A fluent Spanish speaker, Florence also worked as a radio commentator with a bilingual program.



With Joan Fontaine in *Rebecca* (1940)



With William Powell in *Love Crazy* (1941)

³ "History-Makers: The First Women at Texas Law," *Univ. Tex. L. News* (Mar. 8, 2021); <https://law.utexas.edu/news/2021/03/08/history-makers-the-first-women-at-texas-law/#:~:text=In%201914%2C%20Irene%20Gertrude%20Brown,States%20Supreme%20Court%20in%201935.>

More life changes were ahead for Florence Rabe. After the death of her sister and the 1929 Wall Street stock market crash, she closed the antique store for good. She also met and married William F. Jacoby, a wealthy oilman. They lived in both El Paso and Mexico, but after a series of business reversals, the couple moved to Los Angeles and opened a bakery. Soon after moving to California, Florence and a friend decided on a lark to audition for a local theater production based on Jane Austen's *Emma* at the Pasadena Playhouse. Florence won the role of Miss Bates, and the play was a success—as was Florence's performance. Florence became a mainstay at the Pasadena Playhouse, and soon adopted "Florence Bates" as her stage name because the role had brought her such luck.



With Grady Sutton in *My Dear Secretary* (1948)



With Bette Davis in *Winter Meeting* (1948)

After garnering rave reviews for the theater's production of *O Evening Star*, Florence began getting offers for small parts in films. She continued to work steadily in community theater as well, up until 1939. That year, she met and auditioned for Alfred Hitchcock, who was impressed with the American lawyer-turned-actress. He promptly cast her in her first major screen role in his 1940 movie *Rebecca*, as the vulgar, widowed Mrs. Van Hopper. In the film's review in *The New York Times*, Bates' character is described as "a magnificent specimen of the ill-bred, moneyed, resort-infesting, servant-abusing dowager." An "overnight success" at the age of fifty-two, Florence Bates had truly "arrived" in Hollywood.

She soon had a thriving career as a character actress, sharing the screen with some of Hollywood's biggest names over the course of the next decade or more. Bates was frequently cast as a wealthy matron (1943's *His Butler's Sister* and *Slightly Dangerous*, as well as 1946's *Cluny Brown*),

an obnoxious mother-in-law (1941's *Love Crazy*, 1942's *My Heart Belongs to Daddy*, and 1947's *The Secret Life of Walter Mitty*), as a landlady (1947's *Love and Learn*, 1948's *Portrait of Jeanie*), and even as a maid (1948's *Winter Meeting* and 1949's *The Judge Steps Out*). She even played a gypsy in 1943's *They Got Me Covered*, a murderer in 1947's *The Brasher Doubloon*, and even revisited her hometown (on celluloid, at least) with Errol Flynn in 1945's *San Antonio*. She was in classics like *Rebecca*, *Heaven Can Wait*, and entertained audiences as the liquor-chugging ballet teacher Madame Dilyovska in 1949's *On the Town*.

But Bates' turns on the screen masked tragedy in real life. Not long after her movie career took off, she lost her daughter and only child, who passed away from complications during childbirth. During the early 1950s, film roles began to dwindle but Bates continued to work steadily in television, making guest appearances on such shows as *I Love Lucy*, *My Little Margie*, and *Our Miss Brooks*. She lost her husband in 1951, and her own health declined. On January 31, 1954, Florence Bates died of a heart attack at the age of sixty-five.

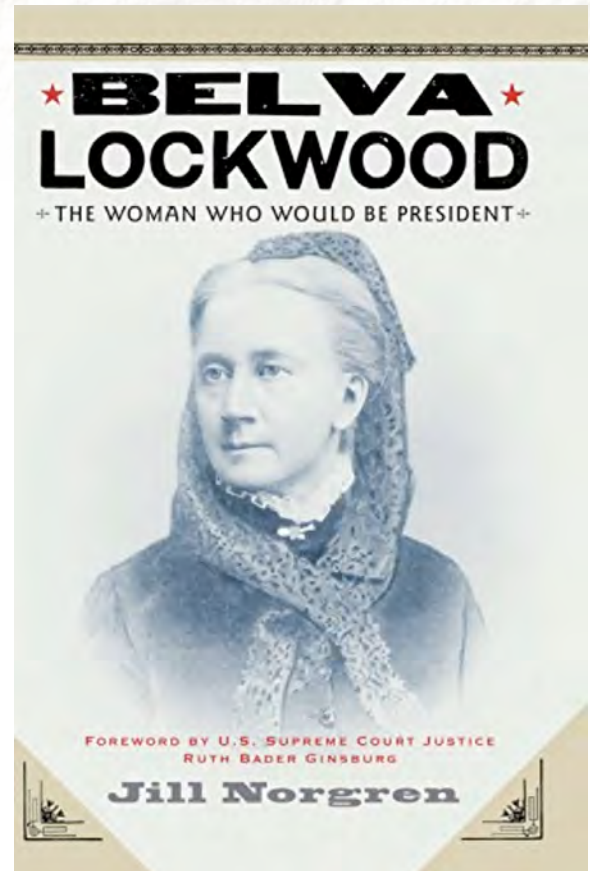
No Oscar or major acting award ever came Florence Bates' way. There is no star for her on the Hollywood Walk of Fame. Even among movie buffs, few remember her name. But she entertained audiences for years, endowed scholarships for young actors, and gave back to her community. More importantly, she was a remarkably accomplished woman of her time who dared to chart her own path: a college graduate, a single mother who made the incredibly brave decision to pursue a legal career, and finally someone who re-invented herself as one of Hollywood's most in-demand character actresses.

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Book Review—*Belva Lockwood: The Woman Who Would Be President*

Book Review by Hon. John G. Browning

In October 1869, George Templeton Strong—a founder of Columbia University Law School—wrote “No woman shall degrade herself by practicing law . . . if I can save her. I think the clack of these possible Portias will never be heard at [Columbia]. ‘Women’s Rights-women’ are uncommonly loud and offensive of late. I loathe the lot.” As Jill Norgren points out in her definitive biography of trailblazing lawyer turned presidential candidate Belva Lockwood, Strong’s patronizing attitude epitomized the legal and cultural barriers confronting nineteenth-century American women seeking entrance to the legal profession. Battling religious mandates, cultural norms, and legal obstacles that sought to keep women in the “proper” sphere of wife and mother, aspiring female lawyers had to defeat the notion that a woman’s allegedly inherent nurturing qualities made her ill-suited for the “hard, unpoetic and relentless” arena of the law. As the late Justice Ruth Bader Ginsburg observes in her foreword to Norgren’s work, the author does a masterful job of rescuing “Lockwood’s extraordinary story from relative obscurity.” Most reading Norgren’s work know Lockwood best as the first woman to run for president,¹ but this exhaustively researched book offers a new appreciation for a complex, driven woman.



Belva Lockwood: The Woman Who Would Be President by Jill Norgren (New York University Press 2007), 309 pages

While Norgren devotes an admirable amount of space to Lockwood’s political aspirations and work to secure the right to vote for women, it is the discussion of her fight to enter the legal profession and practice on an equal footing with men where Norgren’s narrative truly brings Belva

¹ While Victoria Woodhull is often cited as the first woman to launch a presidential campaign, she was not old enough to run. Lockwood, who ran in 1884 and 1888 on the ticket of the National Equal Rights Party, was old enough and was the first woman to appear on official ballots.

Lockwood to life. Educated initially as a teacher, Lockwood worked in upstate New York as the headmistress of a private school. Yearning to be a lawyer, she applied to Columbian Law School in the District of Columbia in 1870, but was rejected out of fears that she might “distract” the male students. She was ultimately admitted to a relatively new law school, National University (now known as George Washington University Law School). Yet even after graduating in May 1873, it took months and a letter to President Ulysses S. Grant for the forty-three-year-old Lockwood to get her diploma (which the school initially refused to give, due to her gender).

Being admitted to the bar was the next hurdle to overcome. In 1869, Myra Bradwell of Illinois had passed the bar exam but had been denied a law license by the Illinois Supreme Court. In 1873, the U.S. Supreme Court affirmed that denial, proclaiming that “The paramount destiny and mission of women are to fulfil the noble and benign offices of wife and mother.”² While it took several committees to eventually admit Lockwood to the District of Columbia bar, when she sought admission to the Maryland bar, the judge told her she had no right to speak and had her removed from the courtroom. She had a similar lack of success seeking admission to practice before the U.S. Court of Claims. And in 1876, when attorney and Howard law professor Albert Riddle moved for her admission to the bar of the U.S. Supreme Court, the Court initially rejected it on gender grounds.

Lockwood refused to give up and continued to build a practice while advocating for causes like women’s suffrage and equal pay. She finally decided to take matters into her own hands by drafting an anti-discrimination bill to allow all qualified women attorneys the right to practice in any federal court. After years of lobbying by Lockwood, in 1879, Congress passed that law. Once again, now armed with the new law, Albert G. Riddle moved for Lockwood’s admission to practice before the U.S. Supreme Court, and this time it was successful. On March 3, 1879, Belva Lockwood was sworn in as the first female member of the U.S. Supreme Court bar.

By the time of Lockwood’s death in 1917, women had been admitted to practice in all but four states. Norgren’s work captures the inexorable determination of Lockwood to fight the prejudice against women in the legal profession perfectly; at times, the narrative resembles a “Rocky” movie—Lockwood is knocked down time and time again, but keeps getting up and moving forward. But Norgren’s narrative suffers from the slighting of those in her corner—not only female allies, but also Lockwood’s supportive husband Ezekiel and critical supporter Albert G. Riddle. Norgren also misses an important aspect of Lockwood’s considerable legacy—her commitment to pull others up as she rose. Belva Lockwood was the first woman to argue a case before the U.S. Supreme Court, and in 1906 won a \$5 million case for the Cherokee Nation.³ She also supported women seeking admission to the U.S. Supreme Court like Sarah Herring Sorin in 1906 as well as sponsoring at least two Black attorneys for admission to the Court—most famously Samuel Lowery in 1880, only the fifth Black lawyer to earn such distinction.

Norgren’s biography remains the definitive look at a true legal pioneer, and a woman who, through sheer force of will, overcame the restrictions imposed by a male-dominated society. It is a worthy addition to any library.

² *In re Bradwell*, 83 U.S. 130 (1873).

³ *United States v. Cherokee Nation*, 202 U.S. 101 (1906).

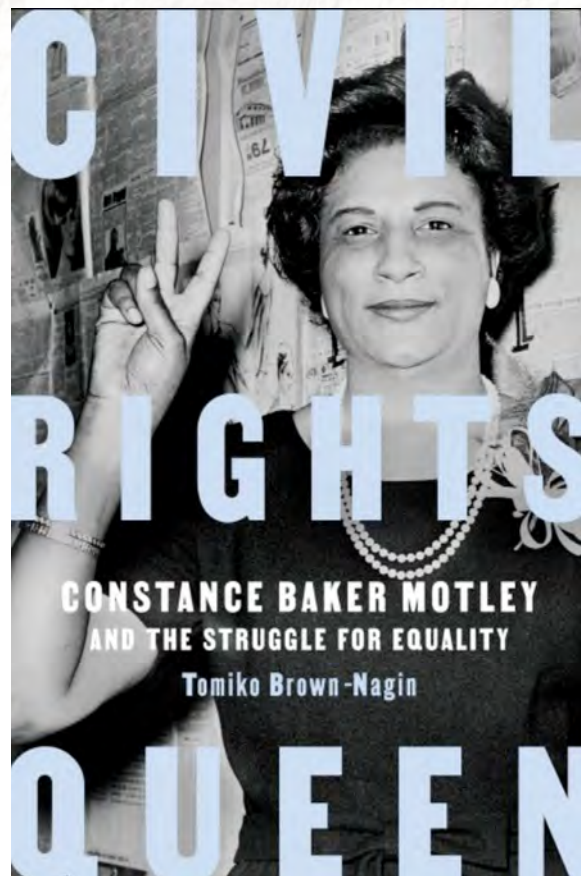
Book Review—*Civil Rights Queen: Constance Baker Motley and the Struggle for Equality*

Book Review by Hon. John G. Browning

En route to her historic confirmation as the first Black woman to serve on the United States Supreme Court, Justice Ketanji Brown Jackson acknowledged that she stood on the shoulders of the many pioneering Black lawyers who came before her. In particular, she singled out Judge Constance Baker Motley, whose work as a lawyer (she helped litigate *Brown v. Board of Education*) and as a judge (she was the first Black woman appointed to the federal judiciary) helped open doors and create opportunities for Justice Jackson and countless others. As author Tomiko Brown-Nagin pointed out, “Without Constance Baker Motley’s pathbreaking contributions to American law and society, there would be no Ketanji Brown Jackson as we know her.”

Brown-Nagin’s book, released earlier this year, couldn’t have come along at a more auspicious moment in American history. Motley litigated dozens of cases that tackled state-mandated racial segregation in the South, addressing everything from the exclusion of Black people from juries to discrimination in housing, the workplace, education, and public accommodations. A protégée of Thurgood Marshall, Motley (who authored the original complaint in *Brown*) worked tirelessly to end segregation in schools and universities. Even after the monumental 1954 Supreme Court decision in *Brown*, Motley’s work was far from done, and she led efforts combating the delays in and resistance to desegregating schools throughout the South.

As Brown-Nagin’s sweeping work relates, Motley was one of the first women at Columbia Law School during World War II, and as a young NAACP lawyer was frequently the only woman in the courtroom, where she regularly endured disrespect from the white male lawyers and judges she faced in court. During one oral argument before the Florida Supreme Court, a judge attempted to justify the University of Florida School of Law’s continued segregation by citing “innate” “moral,



Civil Rights Queen: Constance Baker Motley and the Struggle for Equality by Tomiko Brown-Nagin (Pantheon Books 2022), 497 pages

cultural, and I.Q. differences” between whites and Blacks. And one white lawyer defending Ole Miss’s segregation policies refused to address her as “Mrs. Motley,” referring to her in open court only indirectly as “her” or “she.”

As Brown-Nagin’s compelling biography recounts, Motley persevered with grace and dignity, and despite the strain of doing so as a working mother. She broke other barriers as well, becoming the first Black woman elected as Manhattan borough president and the first elected to the New York State Senate. And like Justice Jackson, Motley faced a rocky road to confirmation. Sen. James Eastland of Mississippi (then Chairman of the Judiciary Committee) held up her nomination for seven months, called her a “Communist,” and claimed that *Brown v. Board of Education* had “destroyed the Constitution.”

Nor did race-based attacks cease once Judge Motley was confirmed to the federal bench. During a 1975 sex discrimination case filed against a large law firm by several female law school graduates (*Blank v. Sullivan & Cromwell*), an attorney for the law firm filed a motion to disqualify Judge Motley because her judgment might be influenced by discrimination she had experienced as a Black woman. Rejecting the notion that her race and sex rose to the level of “bias,” Judge Motley noted that “[I]f background or sex or race of each judge were, by definition, sufficient grounds for removal, no judge on this court could hear this case.”

Before her ascension to the bench, Motley was one of the preeminent Supreme Court advocates of her day, male or female—winning nine of the ten cases she argued there. And though she was considered for potential elevation to both the Circuit Court of Appeals and the U.S. Supreme Court, she never got the chance. Yet as Brown-Nagin convincingly argues, Constance Baker Motley belongs in the pantheon of civil rights giants and is rightfully considered a “professional North Star” by many women lawyers, particularly women of color.

Brown-Nagin, who serves not only as dean of the Harvard Radcliffe Institute but also as a professor of law and history professor at Harvard, has produced a nuanced look at a remarkable human being. If there is a weakness in *Civil Rights Queen*, it is the fleeting attention paid to the backdrop of the shifting civil rights landscape while Motley was seeking legal remedies. The boycotts, sit-ins, marches, and voting rights efforts during this time are neglected, even though Motley played an important role; for example, she successfully represented more than 1,000 students expelled from school during the 1963 Birmingham protests. Motley herself called her advocacy for these children her greatest “professional satisfaction,” yet it is largely overlooked.

Constance Baker Motley, the child of working-class Caribbean immigrants in New Haven, Connecticut, was able to attend college thanks to a local philanthropist who saw her give a speech at a community center. She dedicated her life to making sure doors would be open and opportunities would be provided to future generations. Tomiko Brown-Nagin’s rich narrative will hopefully give even more generations an appreciation for a true “Civil Rights Queen,” whom Justice Ruth Bader Ginsburg once called “my human rights hero.”

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Remembering Michael Olivas

By Juan F. Perea

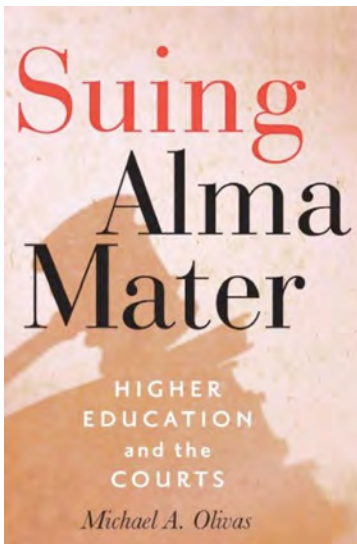
Michael Olivas's sudden and untimely death this past April leaves a huge void in the academy, legal and otherwise. Michael described himself as an "accidental historian," "not so much that [he] was never formally trained in history, although that is accurate, but rather that [his] true and genuine long-standing interests veer[ed] in this direction."¹ Michael's great passion was for more justice, equality, and respect for Mexican Americans, both citizens and residents, other Latinos/as, and other minorities. His many books and articles covered several areas of great interest and importance to Latinos/as: the development of Latino/a lawyering and civil rights organizations; immigration law and history; and law and education. I will highlight some of his major works in each category.



Olivas edited and authored books and articles on the development of Latino/a lawyering and civil rights organizations. In *In Defense of My People: Alonso S. Perales, the Rule of Law and the Development of Mexican-American Public Intellectuals* (2013), Olivas and his co-authors chronicle the life and career of Alonso S. Perales (1898-1960), a Texas lawyer and civil rights activist. Perales fought discriminatory conditions for Mexican Americans in Texas and formed LULAC, the famed Latino civil rights organization, in 1929. In *"Colored Men" and "Hombres Aquí": Hernández v. Texas and the Emergence of Mexican-American Lawyering* (2006), Olivas shined a light on a very important, but little-known Supreme Court decision, *Hernandez v. Texas*, decided in 1954. Both the case and its lawyers were little-known before Olivas's book. The case, decided two weeks before *Brown v. Board of Education*, broke new ground as the first case in Supreme Court history to hold that the equal protection clause applied to protect Mexican Americans against race discrimination. The lawyers who litigated and appealed the case on behalf of Hernandez, Carlos Cadena, Johnny Herrera and Gus Garcia, also made history as the first Mexican American lawyers to argue before the Supreme Court.² The Hernandez case should be treated together with *Brown v. Board*, as both cases fundamentally changed the meaning of equal protection. In *"Breaking the Law" on*

¹ Michael A. Olivas, "The Accidental Historian; or, How I Found My Groove in Legal History," Carlos Kevin Blanton, ed., *A Promising Problem: The New Chicana/o History* (2016), 33, 34-35.

² Michael A. Olivas, "Hernandez v. Texas: A Litigation History," Michael A. Olivas, ed. *"Colored Men" and "Hombres Aquí": Hernández v. Texas and the Emergence of Mexican American Lawyering* (2006), 209, 217.



A few works by Olivas

Principle: An Essay on Lawyers' Dilemmas, Unpopular Causes, and Legal Regimes, 52 U. Pitt. L. Rev. 815 (1991), Olivas presents the work and career of Oscar Z. Acosta, a Chicano author and lawyer who successfully challenged the operation of the Los Angeles grand jury system as part of his representation of his clients. Olivas's theme in these works is to demonstrate the existence and importance of Mexican American lawyers in securing greater respect, dignity, and better justice for their people.

Immigration law and history, and particularly their effects on vulnerable children, were another long-standing focus of Olivas's work. In 1975, while working on his Ph.D in education, he negotiated a deal allowing migrant farm workers to pay in-state tuition at Ohio State.³ *Plyler v. Doe*, decided in 1982, is a key Supreme Court decision that recognized the right of undocumented children to receive a public education. Olivas wrote a book about the case, [*No Undocumented Child Left Behind: Plyler v. Doe and the Education of Undocumented Schoolchildren* \(2012\)](#). Continuing his work seeking to guarantee the rights of undocumented young people resident in the United States, he wrote his most recent book, [*Perchance to DREAM: A Legal and Political History of the DREAM Act and DACA* \(2020\)](#). This book is "dedicated to the many thousands of undocumented and DACAdocumented immigrants for whom I have worked over these many years. As my own life trajectory shifts into retirement, I will never quit until you are all able to participate in this, the country you are helping forge." Olivas also published many articles on these subjects, including *The Chronicles, My Grandfather's Stories and Immigration Law: The Slave Traders Chronicle as Racial History*, discussing Derrick Bell's chronicle and arguing that the repeated mass deportations and expulsions of Mexican workers and others provide real-life examples of Bell's fictional account.

The final area of Olivas's scholarship that I will describe is his work on law and education, a category that overlaps with his interests in the welfare of undocumented students. In [*Suing Alma Mater: Higher Education and the Courts* \(2013\)](#), Olivas creates a kind of primer on higher education law and litigation, analyzing numerous key cases. Michael published a highly regarded and leading textbook, [*Law and Higher Education*](#), in 2006. This book is currently in its 4th edition (2016). Olivas also wrote leading articles on this subject, including "The Education of Latino Lawyers: An Essay on Crop Cultivation," 14 *Chic.-Lat. L. Rev.* 117 (1994), in which he describes the importance of cultivating and growing the number of Latino/a law professors and identifies Anglo racism and indifference as key factors limiting the number of Latino/a law profs.

³ Gabriel J. Chin, "Plyler v. Doe, Olivas v. Kobach," Ediberto Roman, ed., *Law Professor and Accidental Historian: The Scholarship of Michael A. Olivas* (2017), 113, 121. Professor Roman's excellent book provides commentaries on and excerpts from much of Olivas' work discussed here.

In addition to his prolific career as a scholar, Olivas lived out his ideas through his exemplary service to the legal profession and academia. He was a former trustee of the College Board and the National Hispanic Cultural Center Foundation, among others, and a board member of the Mexican American Legal Defense and Education Fund (MALDEF), the Association for the Study of Higher Education, the Society of American Law Teachers, and the Law School Admissions Council. He also served as President of the American Association of Law Schools (AALS), Interim President of the University of Houston-Downtown, and General Counsel of the American Association of University Professors (AAUP). In 2018, he received the Triennial Award for Lifetime Service to Legal Education and to the Law, the highest honor bestowed by the AALS.

Yet for all these accomplishments and titles (and there are more), what mattered most to him was his advocacy on behalf of Latinx students and faculty. In conjunction with the Hispanic National Bar Association, he authored the Dirty Dozen list, which identified the twelve worst law schools located in areas with the highest percentages of Latinx students but with no Latino/a faculty.⁴ His willingness to publicize directly the worst law schools in this regard led to the hiring of many Latino/a faculty, whose numbers have increased from about two dozen when Olivas started his career to approximately three hundred now. In the manner of Colin Kaepernick, he did so at his own expense, for, despite his strong desire to be a law school dean and his eminent credentials, he was never given that opportunity.

A list of accomplishments, no matter how distinguished and impressive, does not do justice to the influence Olivas had on so many of us as our mentor and guiding light. He is the first person I would call whenever a crisis arose, and he never failed to help and suggest a good solution. I know many colleagues who shared such mentoring experiences with Michael, along with his trenchant reviews of our draft articles. Olivas himself wrote that “as satisfying as a recent book or article or testimony is—and there is almost nothing better than laboring at the keyboard and bringing forth a piece into print—I really believe that nurturing young professionals, especially young professors, is the highest calling.”⁵

With remarkable intelligence, wit, grace, generosity and piquant commentary, Michael Olivas lived a life of learning, leading and loving. His dear friend and fellow former seminarian, historian Ramon Gutierrez, writes of Olivas that “with his published work and so many entries in the Library of Congress catalog, it is unlikely anyone will ever erase his stories, his songs, or his legal opinions short of Armageddon. And besides, who would dare, given that pen he always has in his hand, which he sports like Gregorio Cortez brandished his gun.”⁶ Cortez is duly immortalized in a corrido, a border folk song, which celebrates his lengthy evasion and defiance of Anglo authority. As described above, Olivas’s efforts for justice and defiance of racism stayed within the lines. Law professors rarely deserve corridos, but here we are.

⁴ Alfredo Garcia, “Walking the Walk for the Latina Professoriate,” Ediberto Roman, ed., *Law Professor and Accidental Historian: The Scholarship of Michael A. Olivas* (2017), 245, 246.

⁵ Michael A. Olivas, “The Last Word: A Rough Draft of My Life as a Professor,” Ediberto Roman, ed., *Law Professor and Accidental Historian: The Scholarship of Michael A. Olivas* (2017), 279, 283.

⁶ Ramon Gutierrez, “Preface,” in Roman, ed., *Law Professor and Accidental Historian: The Scholarship of Michael A. Olivas* (2017), xiv.

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We Are Pleased to Announce This Year's Hemphill Dinner



Greg Stohr



Four Seasons Hotel



Lisa Eskow

The 27th Hemphill Dinner will take place on **Thursday, September 8, 2022** at 7:00 p.m., the final day of the Advanced Civil Appellate Practice Course. This year's dinner will be held on Thursday rather than Friday to coincide with a change in the Advanced Course made necessary by the UT v. Alabama football game. We are pleased to be returning to the Four Seasons Hotel Austin for a fully in-person event with attendance capacity at pre-pandemic levels.

This year's keynote speaker is award-winning journalist and author Greg Stohr, who has covered the Supreme Court for Bloomberg News since 1998. Mr. Stohr won the New York Press Club spot news award for his coverage of the 2000 Bush v. Gore Supreme Court decision and the Society of American Business Editors and Writers breaking news award for the Court's 2012 Obamacare decision. His book, *A Black and White Case: How Affirmative Action Survived Its Greatest Legal Challenge*, told the story of the University of Michigan admissions cases resolved by the Supreme Court in 2003. He has taught Constitutional Law and the Supreme Court as an adjunct professor at George Washington University Law School. Before joining Bloomberg, he served as press secretary for U.S. Congressman Tom Campbell of California and law clerk to U.S. District Judge Frank A. Kaufman in Baltimore. He is a 1989 graduate of Saint Louis University and 1995 graduate of Harvard Law School.

Lisa Eskow, Co-Director of the University of Texas Law School's Supreme Court Clinic, will join Mr. Stohr in a conversation that will surely be engaging and informative.



Grounds of the Four Seasons

Our sponsorship levels this year will be: (1) Hemphill: \$14,000, two tables for a total of 20 guests to attend the dinner and 10 VIP entrants to the private reception with the keynote speaker; (2) Pope: \$7,000, one table for 10 guests and 4 VIP private reception admissions; (3) Advocate: \$3,500, one table for 10 guests; and Amicus: \$1,200 for 2 Dinner guests. A very limited number of individual tickets may be purchased for \$300 each.

You may visit our website (www.texascourthistory.org/hemphill) or contact Mary Sue Miller at (512) 481-1840 or tschs@sbcglobal.net to reserve tables and purchase individual tickets.

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Justice Brett Busby Receives Judicial Civic Education Award

By Warren Harris



Justice Busby (standing, right) and Warren Harris lead a classroom exercise with students in the KIPP Courage College Prep program at Landrum Middle School in Houston's Spring Branch community in 2016. Photo by Ariana Ochoa, Houston Bar Association.

Justice Brett Busby was recently named the 2022 recipient of the Judicial Civic Education Award from the American Lawyers Alliance. The American Lawyers Alliance is an American Bar Association related organization that supports law related education in schools and communities. The national Judicial Civic Education Award was created in 2017 to recognize and honor judges for their work in promoting civic education in their community and state.

Justice Busby was honored with this award because of his work with students and teachers to promote civics education. Justice Busby was a founding co-chair of the Teach Texas program, a judicial civics and court history project that puts judges and lawyers in seventh-grade classrooms to teach about the judicial system. Teach Texas is a partnership between the Society and the Houston Bar Association that uses lesson plans based on the *Taming Texas* book series, which was created and published by the Society's Fellows. Justice Busby helped develop the Teach Texas classroom curriculum and led the effort in recruiting and training lawyers and judges to teach

these lessons in schools. In just the first year of Teach Texas under Justice Busby's leadership, the program reached over 8,000 seventh-grade students in the Houston area. More than 120 judges and lawyers served as volunteers in the classroom to teach this important curriculum. Justice Busby is involved in expanding Teach Texas, and the program has now reached over 22,000 students in Houston and Dallas and continues to expand throughout the state.

Judge Jennifer Elrod, a Society Trustee and a former Teach Texas co-chair, has worked closely with Justice Busby on the Teach Texas program. "Justice Busby is tireless in his dedication to our students. He has dedicated hundreds of hours to refining the curriculum and in bringing Texas history to life in the classroom," said Judge Elrod. "He is as brilliant as he is kind, and he is a consistent model of professionalism for both the judiciary and the Texas Bar as a whole."

Justice Busby has been an advocate for law-related education for many years. When he was on the board of the Texas Young Lawyers Association, he assisted in organizing the State Moot Court Competition, which is open to all the Texas law schools. Justice Busby regularly judges moot court competitions at several law schools and presides over mock trials for middle school students.

Justice Busby is dedicated to improving the justice system. He serves as the Supreme Court's liaison to the Texas Access to Justice Commission, which helps assure that Texans with limited means have access to basic civil legal services. He is also the Court's liaison to the Texas Board of Law Examiners, which oversees the licensing of new Texas lawyers.

Governor Abbott appointed Justice Busby to the Supreme Court of Texas in 2019, and he was elected to a full term in November 2020. He served for six years on the Fourteenth Court of Appeals prior to his appointment to the Supreme Court. He is Board Certified in Civil Appellate Law and is a former adjunct professor at the University of Texas School of Law, where he helped teach the U.S. Supreme Court Litigation Clinic. Justice Busby is also a Trustee of the Society.

The American Lawyers Alliance will present the 2022 Judicial Civic Education Award to Justice Busby at the 2023 ABA Midyear Meeting in New Orleans.

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Society Trustee Elected to the Massachusetts Colonial Society

During the 1833 Convention at San Felipe de Austin, New England's example played an important but often overlooked role in Texas history. Delegates voted to replace the 1827 twin-state Constitution of Coahuila and Texas with a new constitution for an independent Mexican state of Texas. Sam Houston based his draft of Texas's first constitution on John Adams' Massachusetts Constitution of 1780, "which happened to be on hand," according to Texas scholar Jodella Doroethea Kite. S. S. McKay, "Constitution Proposed in 1833," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/mhc09>. History links New England with Texas in ways that often go unremembered.



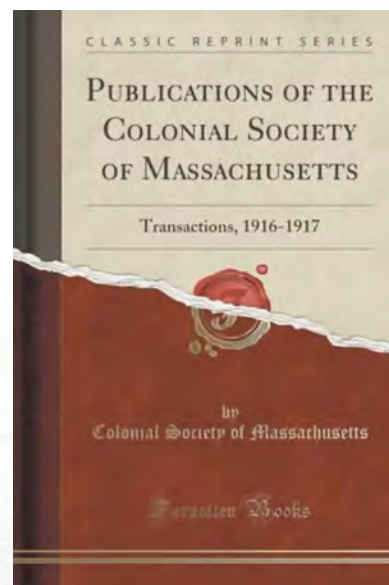
David A. Furlow

Recognizing that the historical links between colonial New England and the colonial Southwest have been important for centuries, the members of the Colonial Society of Massachusetts elected David A. Furlow, a Texas Supreme Court Historical Society trustee, as a Non-Resident Member. "Non-Resident Members, limited to 200 in number, are chosen for their distinguished contributions, written or otherwise, to colonial American history and culture," Susan L. Lively, the Membership Chair of the Colonial Society observed.

Founded in 1892, the Colonial Society of Massachusetts is a non-profit educational foundation designed to promote the study of Massachusetts history from earliest settlement through the first decades of the nineteenth century. The central mission of the Colonial Society of Massachusetts is to publish documents and other resources related to the early history of Massachusetts, broadly defined, from colonization to c. 1830, and taking in local, regional, transatlantic and other perspectives.



Colonial Society building in Boston



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Hon. John G. Browning Wins ABA Silver Gavel Award

Hon. John G. Browning, former Justice on the 5th Court of Appeals, partner at Spencer Fane LLP, Texas Supreme Court Historical Society Trustee and Journal Editor-in-Chief, has been chosen as one of eight winners of the American Bar Association's Silver Gavel Award for Media and the Arts.

The award, which recognizes outstanding work that fosters the public's understanding of law and the legal system, has been presented annually by the ABA since 1958. Eligible categories include books, documentaries, drama and literature, newspapers, magazines, and radio and television. Winners are selected on the basis of such factors as the work's impact on the public; thoroughness and accuracy in presentation of the issues; its creativity, originality, and effectiveness in presenting the information; and the educational value of the legal information or issues treated.



This year, Justice Browning is being honored for his role in conceiving of, curating, and writing much of the content for the *Oklahoma Bar Journal's* May 2021 special issue devoted to Black legal history in Oklahoma. The issue, released to mark the 100th anniversary of the Tulsa Race Massacre of 1921, featured articles written by Justice Browning about the Tulsa Race Massacre and about Oklahoma's pioneering early Black lawyers, as well as articles about milestone civil rights cases originating in the state.

Justice Browning and the *Oklahoma Bar Journal* won top honors in the Magazine category; fellow honorees include *The Washington Post* and Amazon Studios in the newspaper and documentary categories, respectively.

The Silver Gavel was presented by ABA President Reginald Turner on July 12, 2022, in a ceremony at the National Press Club in Washington, D.C. Justice Browning, a graduate of Rutgers University and the University of Texas School of Law, also serves as Distinguished Jurist in Residence

and Professor of Law at Faulkner University's Thomas Goode Jones School of Law in Montgomery, Alabama. His forthcoming work in the field of Black legal history includes articles about Georgia's first Black lawyers, the lives and legacies of Howard University Law School's first Black graduates in 1871, and a look at Everett Waring, the first Black lawyer to argue a case before the United States Supreme Court in 1890. In November, Justice Browning will be leading a panel of distinguished historians at the American Society for Legal History's Annual Conference, in a program entitled "Forgotten Firsts: The Lives and Legacies of Pioneering Black Supreme Court Advocates."



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And the 2023 Larry McNeill Fellowship Goes On...

Applications are now being accepted for TSHA's 2023 Larry McNeill Research Fellowship in Texas Legal History. Our Society worked together with TSHA to establish the Larry McNeill Research Fellowship in Texas Legal History in 2019 to honor Larry McNeill, a past president of the Society and TSHA. The \$2,500 award recognizes an applicant's commitment to fostering academic and grassroots research in Texas legal history. TSHA awards the annual fellowship to an applicant who submits the best research proposal on an aspect of Texas legal history. Judges may withhold the award at their discretion.



Larry McNeill

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 Historical Association's Annual Meeting on March 2-4, 2023 in El Paso. An application should be no longer than two pages, 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. TSHA will announce the award at the Friday Awards Luncheon during TSHA's Annual Meeting in El Paso in March of 2023. Individuals wishing to apply should submit an application form (and attach the proposal and a curriculum vita) by November 15, 2022. Only electronic copies submitted through TSHA's link and received by the deadline will be considered. Anyone who has trouble submitting the form electronically should email TSHA at amawards@tshaonline.org or call TSHA Larry McNeill Annual Meeting Coordinator Angel Baldree at 512-471-2600.



Patrick Cox, Ph.D., a nationally recognized historian and TSHA's President, presents TSHA's 2022 Larry McNeill Award to Daniel Olds. Photo by David A. Furlow.

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The Society Zoomed Out of Covid in Galveston

Story and photos by David A. Furlow

"Galveston, oh Galveston

"I still hear your sea winds blowing..."

— *Galveston*, lyrics by Jimmy Webb,
sung by Glen Campbell (1969)

There's nothing like going to Galveston in April. The air is fresh and clear, the sea birds fly across sunny skies, and the world seems far away, on the other side of the long bridge that connects the palm-fringed island to the mainland. The Society celebrated its emergence from Covid's shadow by conducting a live Spring 2022 Meeting at the Bryan Museum in Galveston. Yet outbreaks of Covid's extremely contagious Delta strain and problematic flight delays still made it necessary for Society Executive Director Sharon Sandle to complement the meeting with a Zoom video component for trustees who could not attend in person.



The Spring Meeting occurred at the Bryan Museum, originally the site of Galveston's historic Orphans Home.

Committee chairs presented reports about the most important aspects of the Society's business. Karen Patton, Managing Editor of our Society's *Journal*, presented a preview of the Spring 2022 issue. Society President Tom Leatherbury commended Karen and Editor-in-Chief John Browning for their extraordinary success in producing a professional, peer-reviewed journal.

Hemphill Dinner Committee Chair Todd Smith and our Society's President Tom Leatherbury provided the Board with an update on our Society's most important annual fundraiser: the 27th Annual Chief Justice John Hemphill Dinner. The dinner will occur on Thursday, September 8. The Thursday setting reflects the Four Seasons Hotel's scheduling of the Advanced Appellate Seminar on Wednesday, September 7 and Thursday, September 8, to avoid a conflict with the Friday, September 9 football game between the University of Texas Longhorns and the University of Alabama in Austin. Greg Stohr, Bloomberg News' Supreme Court correspondent, will speak at the dinner.



Executive Director Sharon Sandle's Zoom lens preserved a record of the Society's Spring Board Meeting.

Todd Smith hailed President Leatherbury for "going above and beyond" to arrange for Greg Stohr to bring his insights and experience to the Hemphill Dinner. Tom Leatherbury reported that "I'm very excited about Greg...I talked to a number of friends who practice before the U.S. Supreme Court. Greg has the reputation of being extremely non-partisan and...calls shots straight down the middle, which we certainly appreciate and wanted for our dinner."

Mr. Stohr won the *New York Press Club Award* for his coverage of the *Bush v. Gore* U.S. Supreme Court case in 2000. He received the Society for American Business Editors and Writers' 2012 *Breaking News Award* for his coverage of the constitutional challenges to the Affordable Health Care Act, more popularly known as Obamacare. He authored *A Black and White Case: How Affirmative Action Survived Its Greatest Legal Challenge* (New York: Bloomberg News, 2006). Critics have described Stohr's book as an in-depth and scrupulously balanced analysis of the constitutional challenge to the University of Michigan law school's affirmative action program that resulted in Justice Sandra O'Connor's 5-4 ruling in *Grutter v. Bollinger*, 539 U.S. 306 (2003). Greg Stohr will discuss what has been a ground-breaking term of the U.S. Supreme Court. "There's even better news. Because he tells me that Bloomberg needs to pay for his expenses because that's their policy, and Bloomberg doesn't want to be beholden to anybody, even a non-profit like us."

After the Business Meeting reports, the Board met to consider Nominating Committee recommendations for new trustees and Members Meeting election of trustees.

After the conclusion of business, Bryan Museum founder and director J.P. Bryan offered his insights about the importance of Texas's unique history and the necessity of preserving it. Society President-Elect Justice Ken Wise, who also serves as a trustee of the Bryan Museum, introduced



J.P. Bryan, center, in the lower frame, shared his insights about the importance of preserving Texas's unique history after the Board Meeting and the Members Meeting elections.

J.P. Bryan. "Welcome, everyone, we are honored to be here at the Bryan Museum...and are double-honored to have the founder here to speak with us..." Justice Wise described J.P. Bryan's pivotal role, during its seven-year history, of creating "the most significant, important collection of artifacts about the western half of the United States, in the world. It's not just an artifact, but an important artifact, which J.P. knows, and acquired for this collection."

J.P. Bryan thanked the Society for inviting him to speak. "It is my deep pleasure to be able to speak before this wonderful crowd. As you pointed out, I've spoken to you before. So we understand each other, I'm also a lawyer, so when I speak about something legal, I have sixty years experience as a lawyer...."

"At the Bryan Museum, what we do, in comprehensive fashion, is tell the story of the settlement of the western part of this United States. We do it better than any institution, ugh, let's say, anywhere in the world. You can see elements of that, quite vividly, on display, in this building, and Ken's going to take some of you on a tour, later today... This was a history that was carried out over four hundred years, by heroes, both visible or invisible. What happened was the greatest historical occurrence in world history...The western part of America by the way, begins at the 98th parallel, which, incidentally, runs just west of the Cotton Bowl in Dallas....The settlement of the West validated something that all of you deal with regularly in your lives, and that was James Madison's theory, that the founding documents of our cherished freedoms—the Declaration of Independence, the Constitution, and the Bill of Rights—could travel. The settlement of the West was freedom in action...Learning that history is a sacred obligation."



Society members touring the Bryan Museum saw many exhibits that commemorated Texas's rich heritage, including (top) a detailed diorama of the Battle of San Jacinto, (left) Spanish ships that sailed the Gulf of Mexico, and (right) a life-sized model of the "Father of Texas," Stephen F. Austin.

After elucidating his ideas about the history of Texas, J.P. Bryan took questions. He discussed the museum's educational-outreach programs, two summer-camps, and a mobile-history project using a bus to take artifacts to public and private schools across Texas. "If we don't teach these students about our history, Texas history will be like some heirloom on a shelf, something no one knows about....Now we want to be an educational institution....We're going to do our best." In response to a question about the status of his forthcoming and long-awaited history of the Battle of San Jacinto. "It's at A&M [Press] right now. We've had two reviewers. We've responded to one and are waiting for the other."

Afterwards, President-Elect Justice Wise led Society members who attended in person on a tour to see highlights of the Bryan Museum. It was a great end to a meeting on a history-filled island surrounded by sun, sand, and surf—Galveston.

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Come Learn about the Intertwined Histories of Mexican and Texas Federalism

Story and photos by David A. Furlow

Texas legal history necessarily includes Mexican legal history. During the first three decades of the nineteenth century, leaders in Texas and Mexico alike engaged in parallel and overlapping efforts to develop a federal, constitutional form of self-government, strengthen the rule of law, and create a pluralistic, democratic society. In furtherance of our Society's educational mission to educate the public "about the judicial branch and its role in the development of Texas," and to enhance professional relationships with the leaders of other non-profit historical societies throughout Texas, our Society is serving as a co-sponsor of the 16th Quadrennial Meeting of the Conference of International Mexican Historians.

The conference will occur at the University of Texas' AT&T Hotel and Conference Center in Austin from October 30 through November 2, 2022. The theme of this year's conference is "Federalisms in the history of Mexico and Mexico-Texas." This theme anticipates and commemorates an anniversary as close as it is significant: the bicentennial of the promulgation of the Federal Constitution of the United Mexican States, which occurred on October 4, 1824. On that date, a new republican order arose—one that would incorporate five territories and nineteen federal states. Among the states—as is well illustrated by the logo of this Meeting—was the Mexican twin-state of Coahuila and Texas, represented by the Coahuilan priest, Miguel Ramos Arizpe, who crafted the legal framework of Coahuila and



XVI Reunión Internacional de Historiadores de México

Austin, Texas ‡ 30 Oct - 2 Nov 2022

Seven Constitutions over Texas

The Mexican Federal Constitution of 1824 and the 1827 Constitution of Coahuila and Texas (Coahuila y Tejas).

The Republic of Texas's 1836 Constitution.

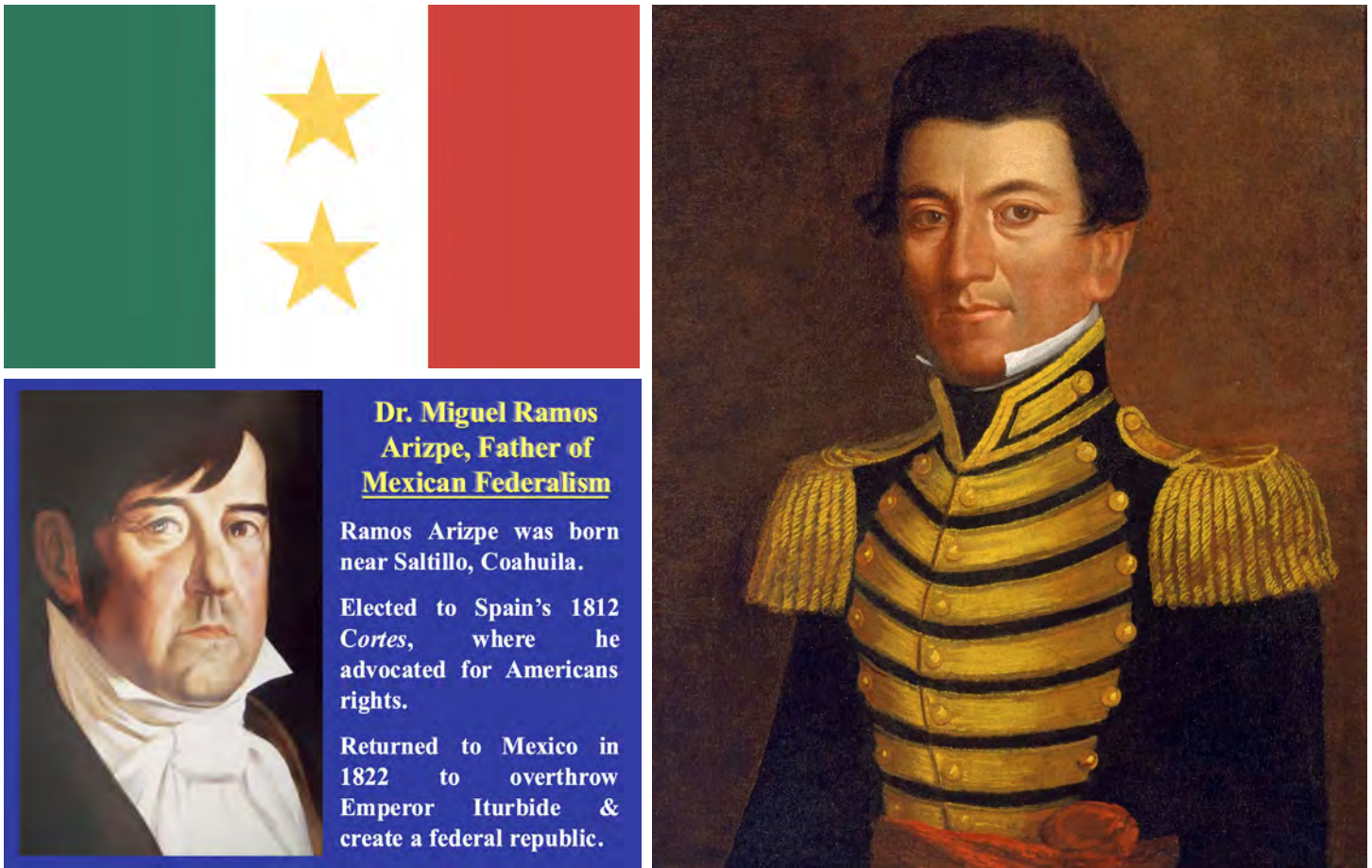
The U.S. Constitution and the Texas State Constitution of 1845.

The Confederate Constitution and the Texas State Constitution of 1861.

The U.S. Constitution and the Texas State Constitution of 1866 (set aside by the U.S. military during Reconstruction).

The U.S. Constitution and the Texas State Constitution of 1869 (Reconstruction).

The U.S. Constitution and the Texas State Constitution of 1876 (current).



Clockwise from top left: Texans gained their first experiences of constitutionalism, and a federal trial and appellate system, under the twin-starred flag of the Mexican twin-state of Coahuila and Texas; a contemporary portrait of Juan Seguín, the only Texan to sign the 1824 Constitution; a slide about Dr. Miguel Ramos Arizpe, from the TSHA 2019 Annual Meeting PowerPoint of the Society's speaker, the Hon. Manuel González Oropeza.

Texas during the first two decades of the nineteenth century, and by Juan Jose Maria Erasmo Seguín, the postmaster of San Antonio, the only Tejano to sign the Mexican Constitution of 1824. The Mexican Constitution of 1824 and the associated Constitution of Coahuila and Texas provided Tejanos and Texians with their first experience of constitutionalism—a subject always worthy of scholarly study.

"The XVI International Meeting of Historians of Mexico also comes to finish off another centenary: the first hundred years of life of the Benson Collection of the University of Texas at Austin (1921-2021)," the conference planning-document accurately declares. "The connection is not accidental, being the subject of federalism so central in all the work and archives of Dr. Nettie Lee Benson. The situation serves, then, not only for the Benson to open its doors to the guild of historians of Mexico that meets in Austin for the first time since 1958; but so that we critically reflect on the nature of archives in terms of freedom of access to a common heritage. The issue of federalism is relevant in this sphere as well, thinking about digital technologies that allow post-custodial archives to be created and projected beyond the walls of physical archives."



Sponsors of the upcoming conference

By joining with the most prestigious historical societies in Texas and beyond to sponsor this conference, the Society will help educate the public about Texas courts, constitutionalism, and the rule of law. In addition, the sponsorship enables the Society to send one of its scholars or trustees to participate in the conference. Our society's name and logo will appear on all conference materials, as they already do on the conference's website, below. <https://xvireunion.utexas.edu/home/>

The Society urges members and trustees to attend this conference—a great way to learn about the history of early Texas law. Registration information is available at <https://xvireunion.utexas.edu/inscripciones/>. The AT&T Hotel & Conference Center is located at 1900 University Avenue, Austin, Texas, 78705.

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2022 Texas Appellate Hall of Fame Inductees



Inductees (from left) Hon. David L. Bridges, Hon. Henry E. Doyle, and Sharon Freytag

Chair of the Texas Bar Appellate Section, Dylan Drummond, alongside President of the Texas Supreme Court Historical Society, Justice Ken Wise, are pleased to announce the 2022 class of inductees to the [Texas Appellate Hall of Fame](#).

Two appellate justices and one appellate practitioner will be honored this fall for their trailblazing marks on Texas legal history. This year's honorees include alumni from SMU Dedman School of Law, Texas Tech School of Law, and Thurgood Marshall School of Law.

The 2022 honorees are:

- **Hon. David L. Bridges**—Justice David Bridges was a beloved member of the Fifth District Court of Appeals at Dallas, on which he served with distinction for nearly a quarter of a century. Nominated by both his current and former colleagues on the court, as well as several sitting federal judges, Justice Bridges authored more than 2,000 opinions as one of the longest-serving justices in the court's history.

A graduate of the Texas Tech University School of Law, Justice Bridges enjoyed one of the most varied professional backgrounds of any justice, having served as First Assistant in Charge of Litigation for the State Bar of Texas and an assistant district attorney, as well as working as an electrician in the U.S. Army, a petroleum landman, and even a bull rider!

- **Hon. Henry E. Doyle**—Justice Doyle was a giant in the law. Not only was he the first Black law student to enroll at a state law school in Texas, he was the state's first Black law school graduate. He was a classmate of Heman Sweatt's and was mentioned in the eventual landmark United States Supreme Court opinion bearing Sweatt's name that desegregated law schools across the country. *Sweatt v. Painter*, 339 U.S. 629, 633 (1950). He was the first graduate of what would become the Thurgood Marshall School of Law—one of just eight HBCU law schools in the country. Five years after being licensed, Justice Doyle was one of the founders in 1955 of the Houston Lawyers Association (now an affiliate chapter of the National Bar Association), which was the only local bar alternative for Black lawyers in Houston who were prevented from joining the Houston Bar Association at the time. In 1978, he became the first Black appellate justice in Texas history when he was appointed to the First District Court of Appeals in Houston where he served with distinction until his retirement in 1984. He now achieves one final well-deserved “first”—becoming the first Black honoree in the Texas Appellate Hall of Fame.
- **Sharon Freytag**—Sharon Freytag was a legendary appellate lawyer. After graduating with honors from SMU Dedman School of Law and serving as the Editor in Chief of the SMU Law Review, she clerked for U.S. Court of Appeals for the Fifth Circuit Judge Patrick E. Higginbotham. In 1983, she began her long and distinguished career with the law firm of Haynes & Boone LLP, where she co-founded its appellate practice group. Later, she not only played a role in founding the American Bar Association's Council of Appellate Lawyers—the only national bench bar organization—she served as its president as well. She went on to serve on both the Board of Directors and Executive Committee of the State Bar of Texas.

The 2022 class will be posthumously inducted into the Texas Appellate Hall of Fame at a ceremony to be held in conjunction with the Advanced Civil Appellate Practice course at the Four Seasons hotel in Austin at noon on Wednesday, September 7, 2022.

The Section and the Society extend grateful thanks to each of the preeminent institutions for educating these outstanding appellate advocates and jurists who have left their mark on our appellate bench and bar!

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Save the Date: March 2-4, 2023, to see the Society at the TSHA Annual Meeting

Story and photos by David A. Furlow

The Society sponsors scholarship relating to the history of the Texas judiciary," our Society's "About Us" web-page declares, "and furthers efforts to raise public awareness about the judicial branch of government and its role in the development of Texas." Our Mission Statement states that, "Through research and scholarship, the Society educates the public about the judicial branch and its role in the development of Texas." One of the most important ways the Society fulfills its educational mission is by presenting panel programs at Texas State Historical Association (TSHA) annual meetings. This is your invitation to watch the Society in action at TSHA's 127th Annual Meeting on March 2-4 in El Paso.



Our Society's "Advancing the Rule of Law along Contested Frontiers" 2023 panel-program

Our Society's speakers will present a panel program, "Advancing the Rule of Law along Contested Frontiers." It focuses on ways courts advanced the rule of law in the nineteenth and twentieth centuries. Sharon Sandle, our Executive Director, will introduce the audience to the Society by describing what we do and by introducing the speakers.



Sharon Sandle



Justice Ken Wise, one of the Society's two principal speakers at the 2019 TSHA Annual Meeting in Austin, discussed the District of Brazos court.

The Hon. Ken Wise, Justice of the Texas Court of Appeals for the Fourteenth District and the Society's President-Elect, will provide the first speech: "Trials on the Prairie, the American Legal System, and the Plains Indian Wars." Judge Wise will describe how Americans modified the Anglo-American legal system to provide jury trials for Native Americans indicted for crimes arising out of their raiding and resistance during the settlement of the frontier. In addition to his legal experience, Justice Wise brings knowledge of Texas history he gained while researching, scripting, and hosting the *Wise about Texas* podcast.

The Hon. Gina M. Benavides, Justice of the Thirteenth Court of Appeals and a trustee of the Society, will speak about "Gustavo 'Gus' Garcia, a Life of Service,

and *Hernandez v. State of Texas*: The Lawyer Who Desegregated Texas Juries.” The Supreme Court addressed one issue: “Is it a denial of the Fourteenth Amendment equal protection clause to try a defendant of a particular race or ethnicity before a jury where all persons of his race or ancestry have, because of that race or ethnicity, been excluded by the state?” The U.S. Supreme Court held that exclusion of Hispanics from criminal court juries violated the Constitution. Justice Benavides will offer insights about *Hernandez* lead counsel Gus Garcia’s military service, his consular background, and the unique contributions to the landmark case *Hernandez v. State of Texas*, 347 US 475 (U.S.: 1954). She recently published two articles in our *Journal* profiling Texas Supreme Court Justice Eve Guzman and Court of Criminal Appeals Judge Elsa Alcala, the two first Latinas on the Texas highest courts.

Colbert N. Coldwell, an independent scholar, El Paso historian, and law partner, is the author of a forthcoming biography of Texas Supreme Court Justice Colbert Coldwell, who served on the Court during the Reconstruction era. He has spoken at Society events in recent years.

But wait, there’s more. Those who attend TSHA’s annual meeting can watch another TSHA panel address an important aspect of Texas legal history: *The Mexican State that Never Was: Perspectives on the Constitution of 1833*. Our Society’s President-Elect, the Hon. Justice Ken Wise, will chair this special program.



Justice Gina Benavides, Thirteenth Court of Appeals website.



Gus Garcia, photo courtesy of the *Huffington Post*.



Trial lawyer and historian Colbert Coldwell spoke about his Reconstruction era ancestor, Texas Supreme Court Associate Justice Colbert Coldwell, during the Society’s April 2017 hanging of Justice Coldwell’s portrait. Photo by Mark Matson.

Judge Manuel González Oropeza, the Judge of Mexico's Federal Election Court, and his colleague Rodrigo Galindo, a constitutional and criminal lawyer associated with the Universidad Nacional Autónoma de México, will present "The Last Mexican Constitution in Texas." An esteemed scholar at the Universidad Nacional Autónoma de México, Judge Oropeza is the former Chief Justice of the Mexican Federal Election Court. He and Professor Jesús Francisco "Frank" de la Teja, served as editors of *Actas del Congreso Constituyente de Coahuila y Texas de 1824 a 1827: Primera Constitución bilingüe, a/k/a, Proceedings of the Constituent Congress of Coahuila and Texas, 1824-1827: Mexico's Only Bilingual Constitution* (Mexico City: Federal Election Court, 2016). Chief Justice Oropeza will discuss the 1827 Constitution of the Mexican twin-state of Coahuila y Tejas and the legal and administrative framework it created.



Judge Manuel González Oropeza and his co-editor Jesús F. de la Teja, TSHA's C.E.O., authored a comprehensive analysis of the 1827 Constitution in 2017. They stand on the front row right. Mark Smith, then Executive Director of the Texas State Library and Archives, stands at far left. David Furlow is at back row center, while Mark Lambert, Deputy Director, Archives & Records Division of the Texas General Land Office stands on the back row, right.

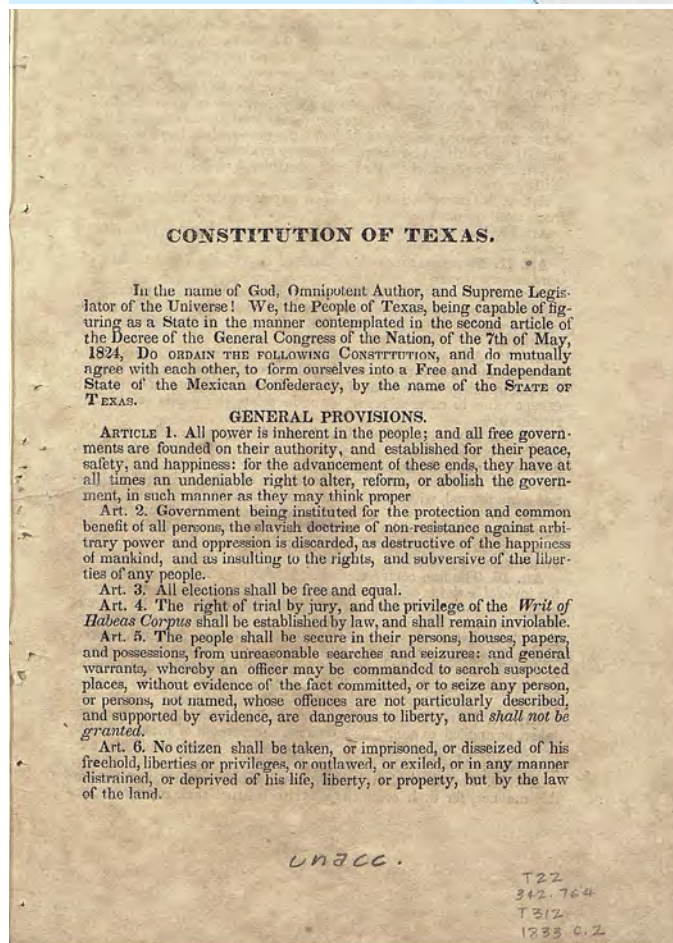


I will then present “The Legal Origins of Sam Houston’s 1833 Draft Constitution for an Independent Mexican State of Texas.” Did another state’s constitution serve as a model for Houston’s draft constitution? If so, was it the Coahuiltecan Twin-State Constitution of 1827? Or was it, instead, John Adams’ Massachusetts Constitution of 1780? Did Houston rely on one or more constitutions from other states, namely, Tennessee, Louisiana, or Arkansas? Or did his constitution represent a blending of the best provisions from each of those legal authorities?

TSHA’s 2023 Annual Meeting: Dates, a Richly Historic City, and a Conference Hotel

The 2023 Annual Meeting will be held at the El Paso Convention Center March 2-4, 2023. TSHA’s Annual Meeting is the largest gathering of its kind for Texas history enthusiasts and scholars. More than 700 historians, lawyers, and members of the public regularly attend the meeting and another 170,000 TSHA members and nonmembers are reached through email and social and traditional media about the event.

El Paso is a vibrant, richly historic city of 678,815, according to 2020 U.S. Census Department records, making it the 23rd-largest city in the United States, the sixth-largest city in Texas, and the second-largest city in the Southwestern United States behind Phoenix, Arizona. It is the second-largest majority-Hispanic city in the United States. Humans have lived in the area for 10,000 to 12,000 years, as evidenced by Folsom points found nearby at Hueco Tanks. When the Spanish arrived, the Manso, Suma, and Jumano tribes populated the region, as did Mescalero Apaches. Sixteenth century Spaniards explored the area while noting the presence of two mountain ranges rising out of the desert divided by a deep chasm between. They erected a settlement at a site they named El Paso del Norte (the Pass of the North), the future location



Top: Wikimedia map of the Mexican state of Coahuila and Texas in 1827. Bottom: The draft Texas Constitution of 1833, courtesy of the University of Texas School of Law’s Tarlton Law Library.



Painter Jose Cisneros depicted the “first Thanksgiving” celebration in North America, when Spanish colonists broke bread with the Mansos, a tribe native to present-day El Paso. Image Courtesy of the University of Texas at El Paso Library, on the KUT website.

of two border cities—Ciudad Juárez on the south or right bank of the Rio Grande, and El Paso, Texas, on the opposite side of the river. The city has been a continental crossroads; a north-south route along a historic *camino real*, a royal highway, during the Spanish and Mexican periods, and an east-west highway, I-10, during the late twentieth and twenty-first centuries.

Álvar Núñez Cabeza de Vaca, author of the famous *Relacion* chronicle of his travel across North America from the Texas coast to the Pacific, and his three companions, probably passed through the El Paso area in 1535 or 1536. Spanish conquistador and later New Mexican Juan de Oñate, leading a major colonizing expedition, passed through El Paso on his way north. On April 30, 1598, he conducted a claiming ceremony, *La Toma*, recently referred to as the “real first Thanksgiving,” by which he took formal possession of the entire territory drained by the Río del Norte (the Rio Grande) at San Elizario Mission.



Downtown El Paso offers a vibrant scene of community arts. Above left, sculptor John Houser's statue *Fray Garcia de San Francisco* commemorates the founder of the Mission Nuestra Señora de Guadalupe. Above right, sculptor Luis A. Jiminez, Jr.'s sculpture *Los Lagartos* memorializes the alligators that were a popular attraction in El Paso's early twentieth century downtown area.

In the late 1650s Fray García founded the mission of Nuestra Señora de Guadalupe on the south bank of the Rio Grande; it still stands in downtown Ciudad Juárez. The Pueblo Indian Revolt of 1680 sent Spanish colonists and Tigua Indians of New Mexico fleeing southward to take refuge at the pass. On October 12, 1680, midway between the Spanish settlement of Santísimo Sacramento and the Indian settlement of San Antonio, the first Mass in Texas was celebrated at a site near that of present Ysleta, which was placed on what is now the Texas side by the shifting river in 1829; some historians therefore argue that Ysleta is the oldest town in Texas. By 1682 five settlements had been founded in a chain along the south bank of the Rio Grande—El Paso del Norte, San Lorenzo, Senecú, Ysleta, and Socorro.

In short, El Paso is a wonderful city to visit. TSHA will make a block of hotel rooms available to speakers and TSHA members who sign up for the conference at discounted rates. The conference hotel will be the Marriott Paseo del Norte, 10 Henry Trost Court, El Paso, Texas, 79901. TSHA will release additional reservation information soon. In the meantime, *save the date*—this will be a great conference.



Top: The Marriott Hotel Paso Del Norte, <https://www.wotif.com/El-Paso-Hotels-Hotel-Paso-Del-Norte.h12389.Hotel-Information>. Bottom: A 1913 postcard depicting the hotel interior.

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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.

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2022-23 New Member List

The Society has added 22 new members since June 1, 2022. Among them are 19 Law Clerks for the Court (*) who will receive a complimentary one-year membership during their clerkship.

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- 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

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- 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
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Patron Membership \$500

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

Contributing Membership \$100

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

Regular Membership \$50

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

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