Winner of the American Association for State and Local History's Excellence in History Award

Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Summer 2019 Vol. 8, No. 4 General Editor Lynne Liberato Executive Editor David Furlow

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Dylan O. Drummond

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Gold spine stamp on many volumes from the Texas Supreme Court's library

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Supreme Court Library, ca. 1897

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Compiled by Marilyn P. Duncan

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By Marilyn P. Duncan


Hon. Neil Gorsuch

The Honorable Neil M. Gorsuch, Associate Justice of the United States Supreme Court, will be the keynote speaker at this year's John Hemphill Dinner. Read more...

National History Association Recognizes the *Journal*'s Excellence

By the TSCHS Journal staff

This year, the American Association for State and Local History's Awards Committee conferred its prestigious Award of Excellence in History on the Society. Read more...

TSCHS Journal Joins Texas's Heritage

By David A. Furlow



Texas Heritage magazine

For the first time ever, the Society's *Journal* partnered with a fellow historical organization's publication to share Texas's rich legal heritage with new audiences. Read more...

Call for Applications: 2020 Larry McNeill Research Fellowship in Texas Legal History


Larry McNeill

The fellowship will be awarded to an individual who submits the best research proposal on some aspect of Texas legal history. Read more...

From Waterloo to Austin: Historian Jeff Kerr Will Speak at the Fall Board Meeting

By David A. Furlow


Dr. Jeffrey Kerr

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X Marks the Spot: 10th Annual Save Texas History Symposium

By David A. Furlow



The Texas General Land Office will hold its Save Texas History Symposium, ***X Marks the Spot: New Directions in Texas and Borderlands History***, in Austin. Read more...

In Memoriam: Dr. Don Graham, Writer and Teacher

Article and photos by David A. Furlow


Prof. Don Graham

Professor Don Graham, Ph.D., who passed away June 22, gave a star performance as the Society's guest speaker at the Fall 2017 Board of Trustees meeting. Read more...

Senators Cite Chief Justice Hecht for His 30 Years on the Court

By Osler McCarthy


Chief Justice Nathan Hecht

On May 29, Texas State Senators honored Chief Justice Nathan L. Hecht for the longest tenure of of any justice in Texas history. Read more...

Membership & More

Calendar of Events
Officers, Trustees & Court Liaison
2019-20 Membership Upgrades
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FB: Texas Supreme Court Historical Society

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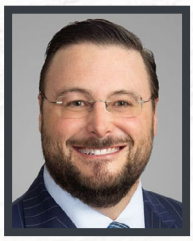
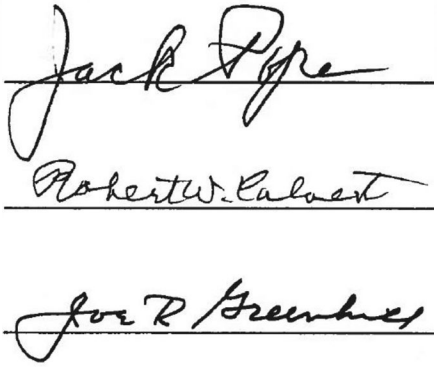


Dylan O. Drummond

Message from the President



The Texas Supreme Court Historical Society will celebrate its thirtieth anniversary early next year on January 13th. When it was founded in 1990, the Society enjoyed perhaps the most jurisprudentially illustrious list of incorporators in Texas history—three legendary former Chief Justices: Hon. Robert W. Calvert, Hon. Joe R. Greenhill, and Hon. Jack Pope.

It is my distinct privilege to serve the Society as its President during this landmark anniversary year. Doing so in the year following the incredible presidency of Marcy Greer is a rare luxury. During her outstanding tenure, the Society was honored that U.S. Supreme Court Justice Neil Gorsuch accepted the Society's invitation to keynote the John Hemphill Dinner—the first ever sitting Justice to do so. Thanks to her efforts alongside David Furlow this past year, the Society established the Larry McNeill Research Fellowship in Legal History, which encourages academic research and writing on Texas legal history and is named after the Society's extraordinary former President, Larry McNeill. To round out her tenure, Marcy presided over the recognition by the American Association for State and Local History of the Society's Summer 2018 issue of the Journal dedicated to the many contributions of Texas African-American judges and justices. This issue was singularly reflective of the tireless efforts of Executive Editor David Furlow and Managing Editor Marilyn Duncan, as well as former President and Texas Supreme Court Justice Dale Wainwright who originally conceived of the issue.

As the Society moves into its thirtieth year, I am in awe of the Society's exceptional Executive Director, Sharon Sandle, amazing Administrative Coordinator, Mary Sue Miller, and remarkable Consulting Editor, Marilyn Duncan. Only through their indefatigable efforts is the Society able to continue to focus on the numerous programs supporting its mission to discover and preserve the Court's history and educate the public about the Texas judicial branch. These include:

- The Twenty-fourth Annual John Hemphill Dinner, which honors one of Texas's greatest Chief Justices, who served as both the last Chief of the Texas Republic and

the first of the State of Texas. Because of the heightened interest surrounding Justice Gorsuch's keynote, we suggest you secure your table reservations and tickets as early as possible, each of which may be purchased at: https://www.texascourthistory.org/hemphill. The Dinner will be held this year on September 6th at the Four Seasons hotel in Austin, Texas. Please reach out to Dinner Co-Chairs Jennifer Hogan at Hogan & Hogan or Evan Young at Baker Botts LLP.

- Continued acquisition and conservation of the Court's judicial-portrait collection, and hosting of new portrait dedications.

- Thanks to the generous support of the Society's Fellows led by David Beck, publication of the third Taming Texas seventh-grade Texas history volume—this time focusing on the state's Chief Justices.

- Ongoing cooperation with the Houston and Dallas Bar Associations, as well as the Texas judiciary, to teach the Taming Texas curricula to seventh-grade students.

- Annual partnership with the Texas Bar Appellate Section to nominate and induct the 2019 class into the Texas Appellate Hall of Fame.

- Quarterly publication of the Society's award-winning Journal focusing on Texas legal history. The Journal continues to be an outstanding reflection of the Society and its mission, which would not be possible without the dedicated and talented work of David Furlow, Marilyn Duncan, General Editor Lynne Liberato, and Production Manager and Graphic Designer David Kroll.

- Annual hosting of the Court's law-clerk reunion traditionally held the morning following the Hemphill Dinner at the Texas Law Center. For more information, please visit https://www.texascourthistory.org/SCOTXbaBreakfast.

- Hosting esteemed historian Jeffrey Kerr, who has written extensively on the fascinating history of the founding of the Republic capital of Waterloo (later renamed Austin), at the Society's fall meeting in Austin.

We are grateful for the Court's steadfast support of the Society, and particularly for Justice Paul Green's wise counsel as its liaison. We can't wait to see what this fourth decade has in store for the Society, and I couldn't be more proud to play a small part in this chapter.

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

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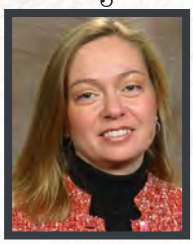

Sharon Sandle

Using Technology to *Preserve Texas Legal History*

Nearly 14 million people use Wikipedia for research every day. Google receives approximately 5.6 billion search requests each day. For most people, an online search is their doorway into researching any subject from where to find a good restaurant in Houston to the history of the Apollo moon landing. This issue of the *Texas Supreme Court Historical Society Journal* focuses on research and the wealth of archival information available to those researching Texas legal history, particularly the information available online. These resources make it easier than ever before to find useful, accurate information about the Texas legal system and its history.

The work of the Texas Supreme Court Historical Society is one part of the larger effort to preserve this important history. The Society's preservation efforts often take a tangible form, such as sponsoring the portraits of those who have served the state as Supreme Court Justices. But technology has also allowed the Society to preserve some of its more transitory events, such as the 2014 reenactment of the landmark *Sweatt v. Painter* case, through a video record available to the public online. The Society's Hemphill channel on YouTube includes the video of the *Sweatt v. Painter* reenactment as well as a number of other video resources available to a nearly unlimited audience. Visitors to the Hemphill channel can also find a wealth of oral history preserved in interviews with persons such as Chief Justice Jack Pope and Chief Justice Wallace Jefferson. The November 2018 Great War Commemoration of Texas Lawyers, Judges, and Governors who fought in World War I is just one more of the many video resources available. To view these videos, go to the Hemphill YouTube site here.

In addition to these video resources, the Society's website makes an abundance of content available. Every issue of the Society's Journal beginning with the Fall 2011 issue can be found on the website. And although the *Taming Texas* series of books is available in print, the material is also available to the public online here along with downloadable classroom materials developed in partnership with the Houston Bar Association, including videos of sample classroom lessons. The Society's hope is that teachers throughout the state will use these online resources to introduce Texas students to the history of our court system.

We are fortunate to live in an age when more people have access to more information than

at any other time in history. Those with an interest in knowing more about the law, about the people who participated in forming our justice system, and about the lawyers and judges making our system work today have ready access to information twenty-four hours a day, seven days a week through the internet. I'm grateful to the members, trustees, volunteers, and staff of the Texas Supreme Court Historical Society for the research, writing, speaking, and stewardship they contribute to preserving Texas's legal history and making it available to an increasingly broad audience.

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

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Fellows Column

By David J. Beck, Chair of the Fellows



Photo by Alexander's Fine Portrait Design-Houston

We are pleased to report that the manuscript for the third book in our judicial civics and court history project, Taming Texas, is now complete. The third book in the series, entitled *The Chief Justices of Texas*, contains interesting, and frequently compelling, stories about the Chief Justices of the Texas Supreme Court. This latest book in our series is intended to educate seventh-grade readers about the particular era in which each Chief Justice served and why their work at the time was so important. As Chief Justice Hecht wrote in the book's foreword:

> This third *Taming Texas* book by Jim Haley and Marilyn Duncan introduces you to the 27 Chief Justices in the 183-year history of the Texas Supreme Court. As you will see, they had very different backgrounds and personalities. Haley and Duncan write that "their stories can be inspiring or disappointing, fun or tragic." But all 27 of them led the Court as it wrote the law, case by case, and built the justice system that tamed Texas.... These stories of their lives will help you understand the Texas Supreme Court and its role in history.

The book will be published in Spring 2020.

The Houston Bar Association (HBA) will again use our Taming Texas materials to teach students during the 2019–20 school year. We appreciate the HBA and HBA President Benny Agosto partnering with us on Taming Texas again this year. It takes over a hundred volunteers to reach the thousands of students we teach each year, and we could not implement this vast program without the HBA's unprecedented support. In the past four years, Taming Texas has reached over 21,000 Houston-area students. HBA President Agosto has appointed Justice Ken Wise and Richard Whiteley as the HBA program co-chairs to recruit volunteer attorneys and judges to teach the seventh-grade students in the upcoming school year. If you would like to participate in this important program, please contact the HBA or one of the co-chairs.

We also are working on a newly revised classroom curriculum that will be used in 2019-20. Special thanks go to Fellow Warren Harris and *Taming Texas* co-author Marilyn Duncan for making changes to the lesson plans based on feedback from teachers and lawyers who taught last Spring.

We also are glad to report that our Taming Texas project is growing beyond Houston. For the first time last year, the Dallas Bar Association taught Taming Texas. If you would like to

volunteer to teach in the Dallas area schools, please contact Melissa Garcia at mgarcia@dallasbar.org. We plan to also expand the program to Austin next Spring, followed by expansion to San Antonio and South Texas.

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

Finally, we are in the process of considering future projects. Please share with us any suggestions you may have. If you would like more information or want to join the Fellows, please contact the Society office or me.

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

FELLOWS OF THE SOCIETY

Hemphill Fellows
($5,000 or more annually)

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

Greenhill Fellows
($2,500 or more annually)

Stacy and Douglas W. Alexander
Marianne M. Auld
S. Jack Balagia
Robert A. Black
Hon. Jane Bland and Doug Bland
E. Leon Carter
Kimberly H. and Dylan O. Drummond
David A. Furlow and Lisa Pennington
Harry L. Gillam, Jr.
Marcy and Sam Greer
William Fred Hagans
Lauren and Warren W. Harris*
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Jennifer and Richard Hogan, Jr.
Dee J. Kelly, Jr.*
Hon. David E. Keltner*
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Hon. Thomas R. Phillips
Hon. Jack Pope* (deceased)
Shannon H. Ratliff*
Harry M. Reasoner
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Leslie Robnett
Professor L. Wayne Scott*
Reagan W. Simpson*
Allison M. Stewart
Kristen Vander Plas
Peter S. Wahby
Hon. Dale Wainwright
Charles R. Watson, Jr.
R. Paul Yetter*

*Charter Fellow

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Executive Editor's Page



David A. Furlow

Honoring *Legal Scholarship*

Legal scholarship enables us to understand who we are by exploring who we, as a people, were. It can enable us to better appreciate everything from origins of Thanksgiving to the intricacies of an accounting for oil and gas revenues. Take the Mayflower Compact, signed at Provincetown on Cape Cod on November 11, 1620. It proclaimed the Pilgrims' intention to "covenant and combine ourselves together into a civil body politic; for our better ordering, and preservation and … to enact, constitute, and frame, such just and equal laws, ordinances, acts, constitutions, and offices, from time to time…for the general good of the colony…"[1] It expanded the franchise, institutionalized recurring elections, and created a framework of self-government.[2] In the words of President John Quincy Adams, it was "perhaps the only instance of human history of that positive original social compact which speculative philosophers have imagined as the only legitimate source of government."[3]

Long before Texas legal scholar Bryan Garner began editing *Black's Law Dictionary*, the *Mayflower* Pilgrims and their descendants brought legal dictionaries to English-speaking America. When Plymouth Colony's fourth governor, Thomas Prence, passed away in 1673 he left to his posterity Thomas Blount's *NOMO_ΛΕΞΙΚΟΝ: A Law Dictionary.*[4] Prence used that book in his quest to understand English law on both sides of the Atlantic. First elected in 1634, then in 1638 and

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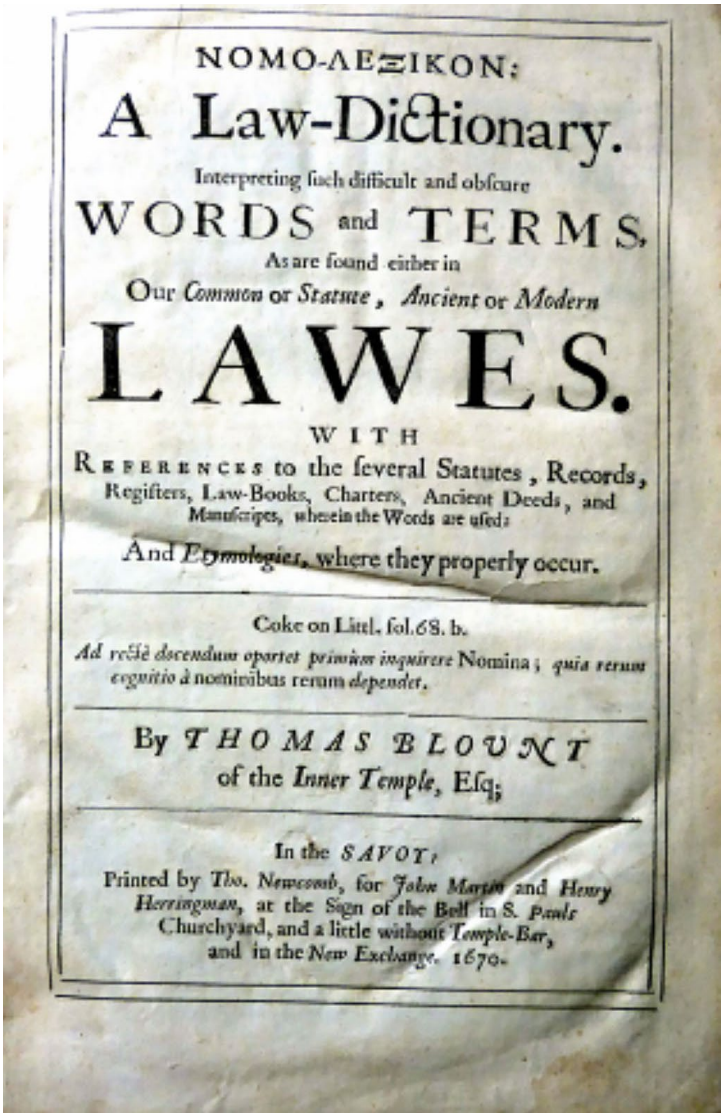
1 William Bradford, *Of Plymouth Plantation, along with the full text of the Pilgrims' Journals for their first year at Plymouth,* ed. Caleb Johnson (Bloomington, IN.: Xlibris Corp., 2006), 126–27 (full text of the Mayflower Compact and a photo from Pilgrim Hall's collections).

2 Nick Bunker, *Making Haste from Babylon*: *The Mayflower Pilgrims and Their World, A New History* (New York: Alfred A. Knopf, 2010), 281-86.

3 John Quincy Adams, "Oration at Plymouth, December 22, 1802, in *Commemoration of the Landing of the Pilgrims*"; John Adams, *John Bailey Pamphlet Collection* (Library of Congress) DLC; Jacob Bailey Moore Pamphlet Collection (Library of Congress) DLC; Thomas Waterman Pamphlet Collection (Library of Congress) DLC; Theological Pamphlet Collection (Library of Congress) DLC (1802), https://archive.org/details/orationdelivered00ada/page/n6.

4 *NOMO_ΛΕΞΙΚΟΝ: A Law Dictionary. Interpreting such difficult and obscure Words and Terms, As are found either in Our Common or Statute, Ancient or Modern Lawes. With References to the several Statutes, Records, Registers, Law-Books, Charters, Ancient Deeds, and Manuscripts, wherein the Words are used: And Etymologies, where they properly occur* (London: In the Savoy, Printed by Tho. Newcomb, for John Martin and Henry Herringman, at the Sign of the Bell in S. Pauls Churchyard [sic], and a little without Temple-Bar, and in the New Exchange, 1670). *See also* Jeremy Dupertuis Bangs, *Plymouth Colony's Private Libraries* (Leiden: Leiden American Pilgrim Museum, rev'd ed., 2018).



NOMO-ΛΕΞΙΚΟΝ:

A Law-Dictionary.

Interpreting such difficult and obscure

WORDS and TERMS,

As are found either in

Our *Common* or *Statute*, *Ancient* or *Modern*

LAWES.

WITH

REFERENCES to the several Statutes, Records, Registers, Law-Books, Charters, Ancient Deeds, and Manuscripts, wherein the Words are used:

And *Etymologies*, where they properly occur.

Coke on Litel. fol. 68. b.

Ad rectè discendum oportet primùm inquirere Nomina; *quia rerum cognitio à nominibus rerum dependet.*

By *THOMAS BLOUNT*
of the *Inner Temple*, Esq;

In the *SAVOY*:
Printed by *Tho. Newcomb*, for *John Martin* and *Henry Herringman*, at the Sign of the Bell in S. *Pauls* Churchyard, and a little without *Temple-Bar*, and in the *New Exchange*. 1670.



MA MA

Thomas Blount, *NOMO_ΛΕΞΙΚΟΝ, A Law Dictionary* …, London, 1670. Photos by Jeremy Dupertuis Bangs.

from 1652 to 1672, Prence was one of the most prominent leaders of the Pilgrim colony. He paid a pretty shilling for the book. Let's examine the legal scholarship that brought an English legal dictionary across the storm-tossed Atlantic to America.

Like *Black's Law Dictionary*, Blount presented his legal dictionary's entries in alphabetical order, beginning with "Abactors," thieves who stole "cattle or beasts, by Herds or great numbers," and ending with "Zwche," a term of art for "withered or dry stock of Wood." As Pilgrim scholar Dr. Jeremy Bangs explained to the audience that filled Pilgrim Hall Museum in Plymouth, Massachusetts on April 22, 2019, Blount's dictionary explained such uncommon phrases as "'free and common soccage,'" the constantly recurring description of the condition in which parcels of land were granted or sold. Blount informs us that "Socage, or Soccage … Is a tenure of Lands, by or for certain inferior or Husbandry services to be perform'd to the Lord of the Fee…."[5] Blount's dictionary defined the most common legal terms, as well as several of the oldest and strangest, for example, "Yvernagium," the term "anciently used for the Winter-Seedness or Season for Sowing Corn."

[5] Jeremy Dupertuis Bangs, "Intellectual Baggage," address at Pilgrim Hall, Plymouth, Massachusetts, April 22, 2019.





Top: Jeremy Bangs delivers his “Intellectual Baggage” lecture at Pilgrim Hall in Plymouth, Massachusetts. Bottom: Dr. Bangs discusses his lecture with former Pilgrim Hall Curator Peggy Baker while holding a blanket presented to him by a Nauset Indian sachem.

Nor was Governor Prence the only Pilgrim to rely on legal scholarship in America. The colony's third governor, Edward Winslow, turned to the English law books he brought from Holland to America when he needed to defend the colony in English courts: "I have been so farre from sleighting the Law of England, as I have brought my owne booke of the Statutes of England into our Court, that so when wee have wanted a Law or Ordinance wee might see what the Statutes provided in that kind, and found a great readinesse in our generall Court to take all helpe and benefit thereby." Winslow used Blount's scholarship not only to understand English law but to reform it, for, "as governor in 1636, [he] presided over the revision of Plymouth Colony's laws that codified legal and governing practice."[6] Few leaders in early America attended law school, yet many became legal scholars while shaping the foundations of American law.



Mike Widener displays one of the oldest English law books in America at Yale University Law Library. Photo by David A. Furlow.

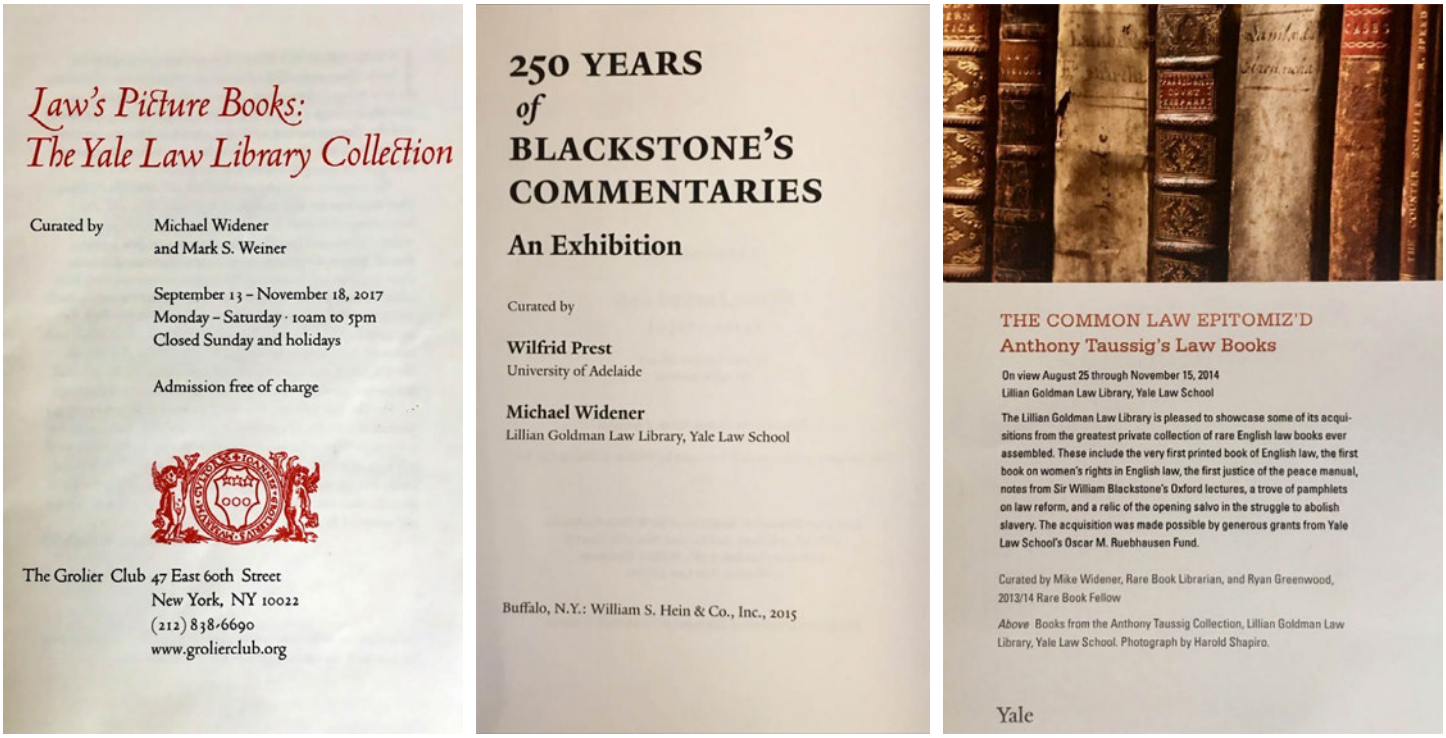
Legal scholarship links English law not only with New England legal pioneers but with the early years of the Republic's Supreme Court of Texas. Michael "Mike" Widener, author of this issue's lead article, "The Civil Law Collection of the Texas Supreme Court," is a man whose scholarship links England, New England, and Texas. His article will explain that linkage. I first learned about Mike when Marilyn Duncan recommended this work for publication in our journal.

Mike is the Rare Book Librarian in the Lillian Goldman Law Library at Yale Law School. That's way north of the border, so far north that no one knows how to make good fajitas or margaritas. Trust me, the only jalapeños there are *pickled*. He lives in Yankee Land. He also serves as a trustee of a sister nonprofit organization, the Connecticut Supreme Court Historical Society. His 2017 exhibition catalogue, *Law's Picture Books: The Yale Law Library Collection* (with Mark S. Weiner), won the gold-standard prize other legal scholars strive for: the Joseph L. Andrews Legal Literature Award from the American Association of Law Libraries.

But wait, there's more. The more I read about Mike, the more I wanted to meet him in person. *What an interesting guy,* I thought. So that's what I did: I drove three hours from Plymouth, Massachusetts, where I was overseeing some backyard archaeology, to visit Mike at the Lillian Goldman Law Library in New Haven.

The first thing we talked about when we met was a project his son was working on in Recife,

[6] *Ibid. See also* Jeremy Dupertuis Bangs, *Strangers and Pilgrims, Travellers and Sojourners: Leiden and the Foundations of Plymouth Plantation* (Plymouth: General Society of Mayflower Descendants, 2009), 685–88.



Left: Legal scholars Mike Widener and Mark S. Weiner curated *Law's Picture Books: The Yale Law Library Collection*. Middle and right: Mike Widener has curated some of Yale University Law School's most compelling exhibitions. He also has the privilege of working in a library that resembles Harry Potter's Hogwarts Academy. Photos by David A. Furlow.

the northeastern part of Brazil once conquered by the Dutch during their Golden Age. Mike's son is a scholar. His wife is a scholar who has collaborated with him on some of his projects. We're not talking about a Renaissance man, but a Renaissance family. By the time we reached the law library, we were sharing stories of University of Texas Law School International Law Professor Hans Baade, SMU legal historian Joe McKnight, and Roy Mersky, the author of the legal research textbook I first read at UT Law School thirty-seven years ago.

Mike works in Yale Law Library's Rare Book Collection. He is responsible for many of the things that make that library outstanding. Its William Blackstone Collection contains the world's largest assembly of the published works of Sir William Blackstone (1723–1780), the acclaimed author of *Commentaries on the Law of England*. No other book has had as profound and lasting an influence on the Anglo-American common law tradition. He showed me the Blackstone collection, the oldest English statutory collection in North America, and a series of trial transcripts, appellate briefs, and magazine articles he assembled to introduce a group of New Haven high school students to the history of American law.

Before he went north by northeast, Mike lived and worked in Texas. From 1991 to 2006 he bled orange as the Director of Special Collections in the Tarlton Law Library, University of Texas at Austin. Mike served on the Texas Supreme Court Historical Society's Board of Trustees from 1999 to 2006. Yet even then, his interests transcended the borders of the Lone Star State, linking Texas with Virginia without spurring either state's secession from the union. As a member of the faculty of the University of Virginia's Rare Book School, he taught a summer course called "Law Books: History & Connoisseurship."





Top: Mike Widener showcases the original trial transcripts, newspaper and magazine articles, and other materials he uses to introduce New Haven high school students to the history of American law.
Bottom: Yale University Law School. Photos by David A. Furlow.

If that sounds as dry as the dust on the ancient Roman law tomes Mike preserves at Yale's law library, then I'm not doing the man justice. He has also gathered the finest collection of official U.S. Supreme Court Bobbleheads in the United States. Legal history can be fun.



Like scholars of the Italian Renaissance, Mike has interests that transcend regional and even national boundaries. He presented an early version of his paper in this journal in Mexico City at the VII *Congreso de Historia del Derecho Mexicano* in 1997. When Mike told me about that experience, I told him about a digital copy of the convention that produced the 1827 Constitution of the Mexican twin-state of Coahuila y Texas, the recently compiled digital copy of the original *Actas del Congreso Constituyente de Coahuila y Texas de 1824 a 1827* (Mexico City: Tribunal Electoral del Poder Judicial de la Federacion, 2016). Then I handed him my iPhone with a photo of Mexican Federal Elections Court Judge Manuel González Oropeza and his wife Luisa, a well-known historian of the Maya civilization, taken recently at the Buffalo Grille, a popular breakfast venue in Houston, where the three of us and their son had met for migas and blueberry pancakes the Sunday morning before I met Mike at Yale University.

"That's Manuel," Mike said. "He and Luisa are good friends." That's the way things go with true scholars of the law. Now back to *Black's Law Dictionary* editor Bryan Garner. In 2013, Mike organized a special Lillian Goldman Law Library exhibition of books once owned by notable judges



Mexican Federal Elections Court Judge Manuel González Oropeza and his wife Luisa at the Buffalo Grille in Houston. Photo by David A. Furlow.

and lawyers, all a part of Garner's personal collection from Texas. It includes former Plymouthean U.S. Supreme Court Justice Oliver Wendell Holmes' autographed copy of the December 3, 1902 program and menu at the Boston dinner commemorating his appointment to the U.S. Supreme Court. What could be a better example of those evanescent but recurring scholarly links among New England, Texas, and American legal scholarship?

Legal scholarship is not limited by gender, however. Just as it can include a band of brothers, it can encompass a sorority of scholarly sisters. Amy Small, author of our second article, "From the Western Frontier to the Digital Frontier: A History of the State Law Library," is helping lead Texas's State Law Library—as well as Texas lawyers and pro se parties—into an exciting digital future that connects Texas not only with New England and old England but the entire world. Working just northwest of the Capitol building, in the Tom C. Clark Building, Amy and the



Texas State Law Library serve the legal research needs of the Texas Supreme Court, the Court of Criminal Appeals, the Office of the Attorney General, other state agencies and commissions, and, perhaps most importantly, citizens of the Lone Star State.

Amy began this year by joining Harris County Law Librarian Joseph Lawson in presenting a legal education program—"Blending Your Legal Research"—to share strategies lawyers and lay library-users can develop for using free and low-cost legal research to win lawsuits and defend personal, property, and constitutional rights. By revealing how ordinary people and solo practitioners can approach legal research systematically, access free resources such as e-books and legal databases in the State Law Library's digital collection, as well as Westlaw and Lexis Advance, Amy is advancing a scholarly cause—that of returning the power of law to the people. By making legal research and legal resources available to the citizenry, she is helping turn the Mayflower Compact's promise into the reality of a government in which citizens decide which leaders and what laws will govern them and their posterity.

State Bar of Texas Archivist Caitlin Bumford further develops the amazing story of technology-driven advancement of legal scholarship in her article, "State Bar of Texas Digital Archives Portal Is Launched." Trained in archaeology and anthropology, she has a scholar's appreciation of past worlds. Perhaps, then, it should come as no surprise that the State Bar's portal provides easy access to over 700 photographs of courts, judges, justices, and lawyers published in the *Texas Bar Journal* since 1938.

Tiffany Shropshire Gilman, Archivist of the Texas Supreme Court, a published legal scholar in her own right, has authored a feature article for anyone interested in the history of this state's highest court. Her "Supreme Court of Texas Archive Update" provides a useful summary of case files, administrative orders, memoranda, and other materials that relate to the Court's promulgation of rules of evidence and procedure, Supreme Court Advisory Committee materials, rolls of attorneys admitted to the Supreme Court of Texas since the 1840s, Sam Houston's Bible, and other records available to historians, attorneys, and other members of the public. The biographical records Tiffany provided last year enabled Judge Mark Davidson and the Society to bring the lives of Texas Great War veterans to life in the pages of this *Journal*.

In this issue we celebrate the scholarship presented by the authors who publish in the *Journal*. But this time we are not alone in doing so. On Friday, August 30, 2019, the American Association for State and Local History will confer its prestigious "Excellence in History Award" to this *Journal* at AASLH's Annual Meeting in Philadelphia. Thank you, all of you *Journal* scholars who published articles and features in the Summer 2018 issue examining and reexamining the nearly four-century history of African American judges in America—the special issue AASLH is honoring.

This current issue tells another story, too: the publication of the *Journal*'s first collaborative venture—the development of an issue of *Texas Heritage Magazine* focusing on Texas's legal history. Last winter, when Texas Historical Foundation Executive Director Gene Krane approached this *Journal*'s Editorial Board with a request for articles about Texas's legal history, Marilyn Duncan, Judge Mark Davidson, and I volunteered. That issue went to print in June and extended the reach of the Society's scholarship to all of the Foundation's members.

Finally, we reach the last major item of scholarly news in this issue—our Society's organization and funding of the Texas State Historical Association's Larry McNeill Research Fellowship in Texas Legal History. Through this fellowship, to be awarded for the first time at TSHA's Annual Meeting in Austin this coming February, the Society is honoring a uniquely gifted, hard-working, and innovative scholar who more than anyone else created the office of Texas State Historian, led TSHA to new heights, and transformed our Society into a scholarly historical organization. In an issue devoted to legal scholarship, it is altogether appropriate that we honor Larry McNeill, whose legacy lives on in this Society and *Journal* to this day.

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

Return to Journal Index

The Civil Law Collection of the Texas Supreme Court

By Michael Widener

This is an account of an unused collection of law books, one that did little to shape the minds of its intended users, an "un-library," as a Spanish colleague of mine put it.[1] In most cases, the fact that a collection was ignored or unused would not be significant historically. But in the case of the Texas Supreme Court's collection of Roman, canon, and Hispanic law, the fact that the Court had such a collection and ignored it does shed some light on the "the dark age of ignorance" of Spanish and Mexican law in Texas,[2] a period stretching from the American Civil War to World War II.

Perhaps "unused" is an exaggeration. A few of the collection's volumes certainly were used and cited occasionally. The collection later inspired me to make extensive use of it, albeit in a way not foreseen or intended by its founder. And today, when rare book curators like myself consider a book requested once to be a "high-use" item, perhaps this is enough. Nevertheless, this concern about low use is something that my colleagues and I worry about. I will return to this issue after I tell the story of the collection.

Origins of the Study

Soon after I began my career in the rare book collection at the Tarlton Law Library, University of Texas at Austin, I noticed that many of the early volumes of Roman, canon, Spanish, Mexican, and French law bore the spine stamps of the Texas Supreme Court Library. I wondered why the Court had owned such a seemingly exotic collection and why it had ended up in our library.

As I learned more about the collection and the legal history of Texas, I became convinced that the collection was part of an attempt to shape "the mind of the law," to introduce civil law principles into a common law system. I remain convinced that this attempt was the handiwork of one man, Chief Justice John Hemphill. It was a collection of its time in some ways, and ahead of its time in others.

As an object of study, the collection offers several advantages. Almost all of the 319 volumes that originally made up the collection still survive, either at the Tarlton Law Library or the State Law

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1 José Calvo González, "La No-Biblioteca de la Corte Suprema de Texas, 1854-1944," personal communication with the author, December 2005.

2 Joseph W. McKnight, "The Spanish Watercourses of Texas," in *Essays in Legal History in Honor of Felix Frankfurter*, ed. Morris D. Forkosch (Indianapolis: Bobbs-Merrill, 1966), 379.

Library in Austin.[3] Its contents are well documented in a catalog of the Texas Supreme Court Library published in 1880, which treated the collection as a distinct component.[4] As an institutional collection, it provides a useful contrast to studies of private libraries. Its use can be measured in part by examining citations to the books in the Court's published decisions. Finally, it provides an example of how books failed to influence their intended users.

I will first give a brief historical sketch of the Texas Supreme Court and its library. I will describe the collection in detail, including the internal and external evidence for its contents, origins, purpose, use, and destiny. I will close with some reflections that this study prompted, regarding institutional collections of rare law books today.

"I became convinced that the collection was part of an attempt to shape 'the mind of the law,' to introduce civil law principles into a common law system."

For the sake of brevity, I will use the term "civil law" according to the first definition given for this term in the 7th edition of Black's Law Dictionary: "One of the two prominent legal systems in the Western World, originally administered in the Roman Empire and still influential in continental Europe, Latin America, Scotland, and Louisiana, among other parts of the world."[5]

A Brief History of the Texas Supreme Court and Its Library

The Republic of Texas formed a Supreme Court following independence from Mexico in 1836, but the Court's structure was overhauled in the state constitution of 1845. The most significant holdover from the Republic's judicial system was its chief justice, John Hemphill, who drafted the judiciary section of the 1845 Constitution and was appointed the first Chief Justice of the Supreme Court of the State of Texas.

The Supreme Court, as originally constituted, heard all appeals from the district courts. It consisted of a chief justice and two associate justices at first appointed by the governor with the consent of the Senate, but became elective in 1850. Jurisdiction over criminal appeals was removed to another court in 1876, and additional appellate courts were created in the nineteenth and twentieth centuries to relieve crowded dockets.[6]

The Court originally held sessions in the state capital, Austin, and also in Galveston and Tyler. In 1892 the Court ceased its wanderings and settled permanently in Austin.

The lack of law books had been a problem for the Court since the days of the Republic.[7] It

[3] The volumes are listed in the Appendix to this article.

[4] *Catalogue of the Supreme Court Library at Austin, Texas* (Austin: State Printing Office, 1880). The section titled "Foreign Books" is on pages 47–49.

[5] Bryan A. Garner, ed., *Black's Law Dictionary*, 7th ed. (St. Paul, MN: West Group, 1999).

[6] Paul Womack, "Judiciary," *Handbook of Texas Online*, https://tshaonline.org/handbook/online/articles/jzj01.

[7] Hans W. Baade, "Law and Lawyers in Pre-Independence Texas," in *Centennial History of the Texas Bar, 1882–1982* (Burnet, TX.: Eakin Press, 1981), 240–55; Joseph W. McKnight, "Law Books on the Hispanic Frontier," in *Spanish and Mexican Land Grants and the Law*, ed. Malcolm Ebright (Manhattan, KS.: Sunflower University Press, 1989), 74–84.

took several more years for the State of Texas to remedy the situation. In his 1849 report to the governor, Attorney General John W. Woods argued that the acquisition of a law library was the top priority for the judicial system. "In the absence of the lights of a single law book furnished by the government," he wrote, "our Supreme Court is often called on to decide questions novel, difficult and vastly important." He complained that it was "exceedingly humiliating" and "inconsistent with the interests of the State" for its officers to depend on the generosity of those who owned private law libraries.[8]

A small law collection was apparently begun in the Texas Secretary of State's office, probably through the exchange of statute books with other states.[9] In 1854 the Texas Legislature remedied the situation when it appropriated $15,000 for the purchase of law books for the Supreme Court. The same statute ordered the Secretary of State's office to transfer its law books to the Court.[10] This legislation is considered the founding act for the Texas Supreme Court Library. To give an idea of what this sum could buy at the time, the 411-volume law library of New Orleans attorney Henry Adams Bullard was auctioned for $363 in 1851.[11] An additional $5,000 was appropriated in 1856, along with $100 "to W. L. Chalmers, for receiving shelving, marking, indexing and acting as Librarian to Supreme Court Library for the year 1855," and similar salaries for the men in charge of the satellite libraries at Tyler and Galveston.[12]

The Court's clerical staff was responsible for maintaining the library, but the appropriations statutes and other sources make it clear that the chief justice had sole authority over acquisitions.[13]

In 1866, the Texas Supreme Court Library was already known as the finest law library in the state,[14] and it remained so until overtaken by the state's academic law libraries in the twentieth century. That same year, the Legislature passed a law which designated the Court's clerks as its librarians, and directed that the library be open to the public, with borrowing privileges limited to the justices and legislators.[15] By 1880 the library had grown enough to justify the printing of a 72-page catalog.[16] A subject catalog of the library came out in 1900.[17]

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[8] "Report of the Attorney General," *Journals of the Senate of the State of Texas, Third Session* (Austin, 1849), 43–45. Thanks to Mark Lambert for bringing Woods' report to my attention.

[9] Harriet Smither and Dorman H. Winfrey, "Texas State Library," *Handbook of Texas Online*, https://tshaonline.org/handbook/online/articles/lct02.

[10] "An Act to Provide Books for the Use of the Supreme Court," approved Feb. 4, 1854. *Gammel's Laws of Texas* (Austin: Gammel Book Co., 1898–1937), v. 3, ch. XXXIX, p. 1493. The funds were from the proceeds of the sale of Texas' public domain to the United States; see George W. Paschal, "Preface," 28 Tex. v (1866).

[11] Robert Feikema Karachuk, "A Workman's Tools: The Law Library of Henry Adams Bullard," *American Journal of Legal History* 42 (Apr. 1998): 161.

[12] "An Act Supplementary to an Act Making Appropriations for the Use and Support of the State Government for the Years 1856 and 1857," approved Feb. 4, 1856. *Gammel's Laws of Texas*, v. 4, ch. CLXXIII, 517–18.

[13] "Supreme Court Library," *Texas Libraries* 1:10-11 (Oct. 1915-Jan. 1916): 81–82.

[14] George W. Paschal, "Preface," 28 Tex. 7 (1866).

[15] "An Act to Confer the Office of Librarian on the Clerks of the Supreme Court," approved Nov. 7, 1866. *Gammel's Laws of Texas*, v. 5, ch. CV, 1016–17.

[16] *Catalogue of the Supreme Court Library at Austin, Texas* (Austin: State Printing Office, 1880).

[17] *Catalogue by Subjects of the Books in the Library and Consultation Room of the Supreme Court of Texas, 1900* (Austin: Von Boeckmann, Moore & Schutze, 1900).

"The Spanish Civilian of Texas"

Civil law was destined to play some part in Texas due to the state's history. Texas was part of the Spanish Empire until 1820, and part of the Republic of Mexico until the Texas Revolution in 1836. About one-seventh of the private land in Texas derives from Spanish or Mexican land grants, and terms of those grants still affect land and water rights today. In addition, the state inherited rights to the seashore and the beds of navigable rivers from the previous sovereigns,[18] rights that have been litigated up through the early years of the twenty-first century. In the first few decades following independence, the courts also faced issues involving inheritance and family law issues arising from marriages contracted under Mexican law.[19]

In addition, Texas lawmakers consciously borrowed several features of Spanish law that appealed to them and fit well with conditions in Texas. These included community property, the homestead exemption, adoption, simplified pleading by petition and answer, the fusion of law and equity, and the independent executor in probate procedure. These survivals of Spanish law in Texas have been thoroughly studied, most notably by Joseph W. McKnight[20] and Hans W. Baade.[21]

The individual most responsible for the borrowings from Spanish law was John Hemphill, the man who served as Chief Justice of the Texas Supreme Court from 1840 to 1858.[22] Hemphill was one of the most colorful figures in Texas legal history, later eulogized as "the John Marshall of Texas" and "the first Spanish civilian of his day."[23] A native of South Carolina, Hemphill graduated from Jefferson College in Pennsylvania in 1825, and returned to South Carolina. He began his legal studies in Columbia, South Carolina, under David J. McCord, one of the state's leading attorneys,

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[18] Joseph W. McKnight, *The Spanish Elements in Modern Texas Law* (Dallas, 1979), 5.

[19] See Hans W. Baade, "The Form of Marriage in Spanish North America," *Cornell Law Review* 61 (Nov. 1975): 1–89.

[20] "Mexican Roots of the Homestead Law," in *Estudios jurídicos en homenaje al Maestro Guillermo Floris Margadant* (México: Universidad Nacional Autónoma de México, 1988), 291–304; "Protection of the Family Home from Seizure by Creditors: The Sources and Evolution of a Legal Principle," *Southwestern Historical Quarterly* 86 (Jan. 1983): 369–99; *The Spanish Elements in Modern Texas Law* (Dallas, 1979); "The Spanish Influence on the Texas Law of Civil Procedure," *Texas Law Review* 38 (Nov. 1959): 24–54; "The Spanish Legacy to Texas Law," *American Journal of Legal History* 3 (1959): 222–41, 299–323; "The Spanish Watercourses of Texas," in *Essays in Legal History in Honor of Felix Frankfurter*, ed. Morris D. Forkosch (Indianapolis: Bobbs-Merrill, 1966), 373–86.

[21] "Los derechos históricos sobre aguas de México ante los tribunales de los Estados Unidos," *Anuario Mexicano de Historia del Derecho* 7 (1995): 25–34; "The Formalities of Private Real Estate Transactions in Spanish North America: A Report on Some Recent Discoveries," *Louisiana Law Review* 38 (1978): 655–745; "The Form of Marriage in Spanish North America," *Cornell Law Review* 61 (1975): 1-89; "The Historical Background of Texas Water Law—A Tribute to Jack Pope," *St. Mary's Law Journal* 18 (1986): 1–98.

[22] The most thorough treatment of Hemphill's judicial career is Timothy S. Huebner, *The Southern Judicial Tradition: State Judges and Sectional Distinctiveness, 1790–1890* (Athens: University of Georgia Press, 1999), 99–129; excerpted as Huebner, "Judge John Hemphill, the Homestead Exemption, and the 'Taming' of the Texas Frontier," *Western Legal History* 11 (Winter/Spring 1998): 65–85. For other biographies of Hemphill, see Rosalee Morris Curtis, *John Hemphill: First Chief Justice of the State of Texas* (Austin, TX.: Jenkins Pub. Co., 1971); Thomas W. Cutrer, "Hemphill, John," *Handbook of Texas Online*, https://tshaonline.org/handbook/online/articles/fhe13; James P. Hart, "John Hemphill—Chief Justice of Texas," *Southwestern Law Journal* 3 (Fall 1949): 395–415; James D. Lynch, *The Bench and Bar of Texas* (St. Louis: Nixon-Jones Printing Co., 1885), 69–73; and James W. Paulsen, "The Judges of the Texas Supreme Court of the Republic of Texas," *Texas Law Review* 65 (Dec. 1986): 317–21.

[23] George W. Paschal, "Preface," 28 Tex. 9 (1866).



Chief Justice John Hemphill. Photo courtesy of the U.S. Senate Historical Office.

and later practiced law in Sumterville.[24]

It is probable—although there is no direct evidence—that during his time in McCord's law office Hemphill would have had contact with the group Michael Hoeflich labeled the "South Carolina Circle," the group of prominent South Carolina lawyers who cultivated an interest in Roman law in the early nineteenth century.[25] McCord published reports for South Carolina's Constitutional Court[26] and Court of Appeals,[27] edited a short-lived legal periodical,[28] and, most significantly, took over the editorship of *The Statutes at Large of South Carolina* from Thomas Cooper, one of the leading figures of the "South Carolina Circle."[29] However, Hemphill would not have needed to belong to this elite group to have absorbed some knowledge and appreciation of Roman law and its European offspring. Several legal historians have demonstrated that citation of civil law sources was widespread in antebellum America.[30]

When Hemphill arrived in the Republic of Texas in 1838, he was one of the few lawyers with a college degree. He reportedly dedicated his first two years in Texas to studying the Spanish language and legal system. He was named Chief Justice of the Texas Supreme Court in 1840. He remained in that post when Texas became a state in 1845, until his election as U.S. Senator from Texas in 1858. When Texas seceded from the Union in 1861, Hemphill was sent to represent Texas in the Confederate Congress and died in Richmond, Virginia in 1862.[31]

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[24] Cutrer, "Hemphill, John."

[25] Michael H. Hoeflich, "Roman Law in American Legal Culture," *Tulane Law Review* 66 (June 1992): 1735–38.

[26] Henry Junius Nott and David J. McCord, *Reports of Cases Determined in the Constitutional Court of South Carolina*, 2 vols. (Columbia, SC: Daniel Faust, 1820-1821); David J. McCord, *Reports of Cases Determined in the Constitutional Court of South Carolina*, 4 vols. (Columbia, SC: Daniel Faust, 1822–1830).

[27] David J. McCord, *Chancery Cases Argued and Determined in the Court of Appeals of South Carolina*, 2 vols. (Philadelphia: Carey, Lea & Carey, 1827–1829).

[28] *The Carolina Law Journal* (1830–1831).

[29] *The Statutes at Large of South Carolina*, 10 vols. (Columbia, SC: A.S. Johnston, 1836–1841). Vols. 1–5 were edited by Cooper, vols. 6–10 by McCord.

[30] R. H. Helmholz, "Use of the Civil Law in Post-Revolutionary American Jurisprudence," *Tulane Law Review* 66 (June 1992): 1649–84; Michael H. Hoeflich, "Roman Law in American Legal Culture," *Tulane Law Review* 66 (June 1992): 1723–43; Peter Stein, "The Attraction of Civil Law in Post-Revolutionary America," *Virginia Law Review* 52 (Apr. 1966): 403–34.

[31] Cutrer, "Hemphill, John."

Hemphill declared himself a great admirer of the Spanish legal system, and frequently cited Spanish sources in his decisions. He urged lawyers to use Spanish sources before turning to English translations and thereby introducing confusion.[32] He was proficient enough in Spanish to correctly point out an erroneous translation in White's *Recopilación*,[33] and complained about the lack of Spanish law books.[34] He lauded the "intrinsic equity" of civil law in his judicial decisions.[35] As chair of the judiciary committee in the constitutional convention of 1845, he was primarily responsible for the adoption of the homestead exemption and community property provisions of the 1845 Constitution. In the convention debates, he stated that he would have "much preferred the civil law to have continued in force for years to come" in Texas.[36]

John Hemphill was clearly the leading champion for the adoption of civil law principles in Texas law. The evidence strongly suggests that the civil law collection in the Texas Supreme Court Library, the collection I found so intriguing, was in fact created by Hemphill as part of his program to promote civil law.

The Texas Supreme Court's Civil Law Collection

The Appendix to this article lists the 124 titles (in 319 physical volumes) that once made up the civil law collection of the Texas Supreme Court. The entries are in alphabetical order by author, and are numbered for reference. Footnotes and tables will refer to the entries by number when the author's name is not provided in the text.

The *Catalogue of the Supreme Court Library at Austin, Texas* (Austin: State Printing Office, 1880; hereafter 1880 Catalogue) lists 111 titles in 301 volumes, almost all of them in the section titled "Foreign Books." When these titles were checked against the holdings of the Tarlton Law Library and the State Law Library in Austin, Texas (the successor to the Texas Supreme Court Library), nine titles (fifteen volumes)[37] were missing, along with five volumes from a six-volume set.[38] Thus, the collection that survives today is substantially intact.

Twelve titles with Supreme Court markings did not appear in the 1880 Catalogue.[39] These could have been removed from the library before 1880, acquired after 1880, or simply overlooked in the preparation of the catalog. Three of these, now in the Tarlton Law Library, have penciled price markings and a September 1964 Tarlton acquisition stamp; they were obviously taken from the Supreme Court Library. They are the three most important primary sources for Spanish law: the *Siete Partidas*, the *Novísima Recopilación*, and the *Recopilación de Indias*.[40]

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[32] *Scott v. Maynard*, Dallam 548, 552 (Texas 1843).

[33] *Treviño v. Fernández*, 13 Tex. 630, 654–60 (1855). "White's *Recopilación*" is no. 123 in the Appendix.

[34] James W. Paulsen, "A Short History of the Supreme Court of the Republic of Texas," *Texas Law Review* 65 (Dec. 1986): 273–74.

[35] *Means v. Robinson*, 7 Tex. 502, 510 (1852).

[36] William F. Weeks, reporter, *Debates of the Texas Convention* (Houston: J.W. Cruger, 1846), 271.

[37] Nos. 8, 18, 28, 32, 47, 57, 83, 87, and 94.

[38] No. 40.

[39] Nos. 2, 13, 38, 45, and 86 are at the State Law Library; nos. 16, 20, 21, 95, 97, 105, and 107 are at the Tarlton Law Library.

[40] Nos. 97, 105, and 107.

TABLE 1: The Civil Law Collection by subject area

Subject	Titles	Volumes	Item numbers (from the Appendix)
Mexican law	3	3	14, 45, 71
Mexican-Spanish law	6	12	70, 86-89, 94
Spanish law	43	101	1-3, 16-17, 27-28, 33, 36, 38, 40, 44, 46-48, 51, 53, 58-60, 63, 65, 72, 85, 96-109, 115-117, 123-124
Roman-Spanish law	3	7	49-50, 66
Roman law	22	44	4-5, 9, 12, 15, 18, 23, 25-26, 57, 73-76, 80, 90, 93, 110, 118-121
Canon law	12	19	10-11, 19-21, 24, 34, 37, 39, 91-92, 122
Roman-canon law	6	9	29, 54-56, 67-68
French law	20	113	6-7, 30-32, 35, 41-43, 61-62, 69, 79, 81-82, 84, 111-114
European law	4	4	8, 52, 64, 78
Nonlegal works	5	7	13, 22, 77, 83, 95
TOTALS	124	319	

Note: Volumes counted are physical volumes.
A volume containing three separate titles would be counted as three titles and one volume.
A title published in five volumes but bound as two volumes would be counted as one title and two volumes.

As shown in Table 1, the collection was strongest in Spanish law. It included all of the fundamental legislation from the Middle Ages to the early nineteenth century, and many of the popular manuals and practice guides, supplemented by the English-language compilations of Rockwell, Schmidt, and White. It is here that the hand of Hemphill can be most clearly seen.

While French law accounted for only nineteen of the titles, the volumes were over a third of the collection. It included several multi-volume encyclopedias, dictionaries, and case law collections, the collected works of Robert Pothier (which were often cited in nineteenth-century American law),[41] and several treatises on commercial law.

In the areas of Roman and canon law, the library contained some of the basic works, but the coverage was not nearly as comprehensive as for Spanish and French law. There were two nineteenth-century German editions of the *Corpus Juris Civilis*, an English translation of Domat's *The Civil Law* (which was the introduction to Roman law for many American lawyers), Vinnius' commentary on the Institutes, Voet's commentary on the Pandects, Savigny's treatise on Roman law, and three English treatises. For canon law, there was a 1614 edition of the *Corpus Iuris Canonici*, Van Espen's survey of canon law (which was a standard textbook in Spanish universities), and various nineteenth-century manuals.

[41] Helmholz, "Use of the Civil Law," 1654; Stein, "The Attraction of the Civil Law," 412–13.

TABLE 2: The Civil Law Collection by imprint dates

16th Century		17th Century		18th Century		19th Century	
Decade	Titles/Vols.	Decade	Titles/Vols.	Decade	Titles/Vols.	Decade	Titles/Vols.
1580s	2 / 2	1610s	2 / 4	17-- s	1 / 1	1800s	4 / 12
		1620s	1 / 1	1720s	1 / 1	1820s	8 / 33
		1660s	3 / 3	1730s	4 / 5	1830s	11 / 35
		1670s	2 / 2	1740s	5 / 8	1840s	29 / 107
				1750s	4 / 5	1850s	21 / 61
				1760s	8 / 11		
				1770s	10 / 21		
				1780s	4 / 7		
				1790s	3 / 4		
Total	2 / 2	**Total**	8 / 10	**Total**	40 / 63	**Total**	73 / 248

Note: For multivolume titles with dates that span decades, the title is assigned to the latest date.

One indication that the collection was a creation of John Hemphill is the imprint dates (see Table 2). None of the "Foreign Books" in the 1880 Catalogue were from later than 1856. It was in 1854 and 1856 that the Legislature made the two large appropriations for the Supreme Court Library. Hemphill, the only justice in the Court's entire history with an avowed interest in the civil law and fluency in Spanish, left the Court in 1858. The library never acquired another book in a foreign language published after that date. The only civil law titles added after 1880 were a few English translations of Mexican law,[42] Thomas Cooper's English translation of Justinian's Institutes, and the overviews of Roman law by Dropsie,[43] Grapel,[44] Mackeldey,[45] and Phillimore.[46]

One book in the collection has a marking that suggests an acquisition date during Hemphill's tenure. *Historia del derecho español* by Juan Sempere y Guarinos (Lima, 1847) has an inscription on the half-title: "Supreme Court of Texas / Austin / 1854."

The "Foreign Books" included all the oldest volumes in the 1880 Catalogue, such as the 1589 edition of Baldus' *Consilia* and eight works from the seventeenth century. Elsewhere in the catalog, the only pre-nineteenth century books were the 1685 edition of Selden's *Fleta*[47] and a smattering of late eighteenth century English case reports and treatises. This suggests that the dozens of old "Foreign Books" were not acquired because of some general interest in antiquarian law books.

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[42] Namely, Frederic Hall, *Laws of Mexico* (San Francisco, 1885); Leonidas Hamilton, *Hamilton's Mexican Law* (San Francisco, 1882); and Joseph Wheless, *Compendium of the Laws of Mexico* (St. Louis, 1910).

[43] Moses A. Dropsie, *The Roman Law of Testaments, Codicils, and Gifts in the Event of Death* (Philadelphia: T. & J.W. Johnson, 1892).

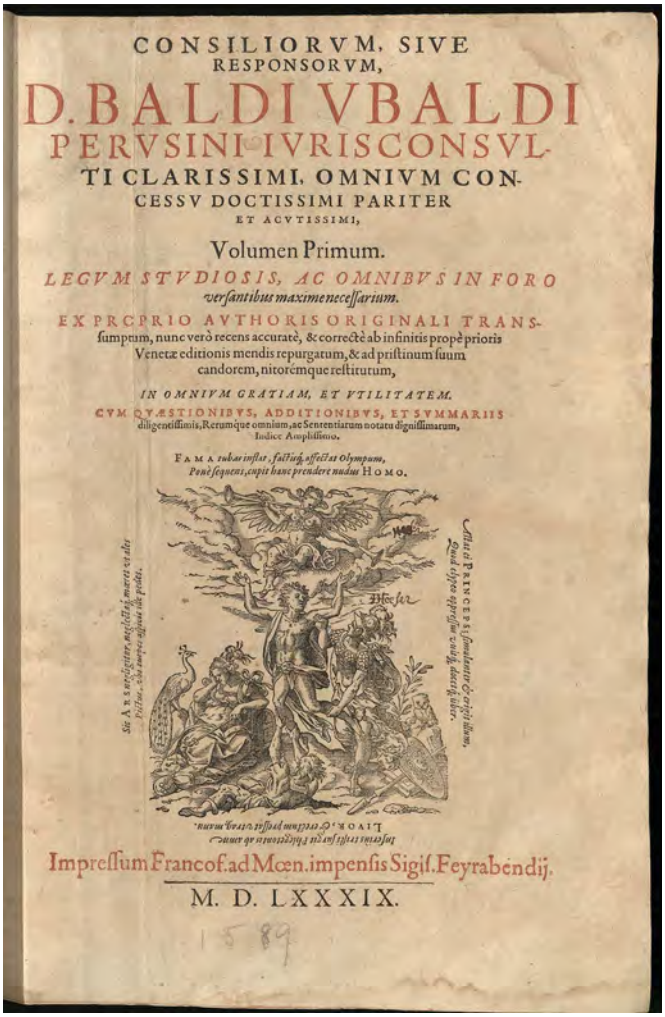
[44] William Grapel, *Sources of the Roman Civil Law* (Philadelphia: T. & J.W. Johnson, 1857).

[45] Ferdinand Mackeldey, *Handbook of the Roman Law* (Philadelphia: T. & J.W. Johnson, 1883).

[46] John George Phillimore, *Private Law among the Romans* (London: Macmillan, 1863).

[47] John Selden, ed., *Fleta, seu Commentarius juris anglicani sic nuncupatus*, 2nd ed. (London: H. Twyford, T. Bassett, J. Place, & S. Keble, 1685).

To summarize the evidence so far: John Hemphill had the motive to acquire civil law books for the Texas Supreme Court's library. He was the only chief justice with both passion for the civil law and language skills to use its books, and he actively promoted the adoption of civil law principles in Texas law. The Court struggled with a severe shortage of books of all kinds in its first years. Hemphill also had the means. The authority for purchasing books for the Texas Supreme Court in the nineteenth century rested solely with the chief justice. The 1854 and 1856 appropriations from the Legislature provided him with the necessary funds.


CONSILIORVM, SIVE
RESPONSORVM,
D. BALDI VBALDI
PERVSINI IVRISCONSVL-
TI CLARISSIMI, OMNIVM CON-
CESSV DOCTISSIMI PARITER
ET ACVTISSIMI,
Volumen Primum.
LEGVM STVDIOSIS, AC OMNIBVS IN FORO
versantibus maxime necessarium.
EX PROPRIO AVTHORIS ORIGINALI TRANS-
sumptum, nunc verò recens accuratè, & correctè ab infinitis propè prioris
Venetæ editionis mendis repurgatum, & ad pristinum suum
candorem, nitorémque restitutum,
IN OMNIVM GRATIAM, ET VTILITATEM.
CVM QVÆSTIONIBVS, ADDITIONIBVS, ET SVMMARIIS
diligentissimis, Rerumque omnium, ac Sententiarum notatu dignissimarum,
Indice Amplissimo.
FAMA tubas instat, factisq; affectat Olympum,
Pouè sequens, cupit hanc prendere nudus HOMO.
Impressum Francof. ad Mœn. impensis Sigis. Feyrabendij.
M. D. LXXXIX.
1589

1589 edition of Baldus' *Consilia*. Image courtesy of Tarlton Law Library, Jamail Center for Legal Research, University of Texas School of Law; published with permission.

I believe that Hemphill had the opportunity to acquire his civil law collection in New Orleans. Legally, Louisiana was a mixed jurisdiction, the only state in the Union where the civil law stood on equal footing with Anglo-American common law, and the New Orleans bar had many members with long experience in the civil law. New Orleans was the region's major commercial center, and one of the most important ports of entry for foreign law books.[48] A New Orleans journal, *Debow's Review*, carried a small advertisement in 1853 for J. B. Steel, "Bookseller, Stationer, and Publisher," who offered "Law, Medical, Literary, and Scientific Works, at Northern publishers' prices—French works on Civil Law, at low prices."[49]

What at first seemed unusual about the Texas Supreme Court's collection was the great number of sixteenth-to-eighteenth century authors from the "Golden Age" of Spanish law and Roman law: Covarrubias, Menochio, Mascardi, Salgado de Somoza, and others. However, these works were commonly found in Louisiana lawyers' libraries from the same period. Inventories of the libraries of six nineteenth-century New Orleans attorneys have been published. In all, fifty-one of the titles in the Supreme Court's civil law collection were present in these libraries, and twenty-four were present in more than one (see Table 3). The Court's civil law collection could have easily passed for the library of a New Orleans attorney.

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48 Michael H. Hoeflich, "Bibliographic Perspectives on Roman and Civil Law," *Law Library Journal* 89 (Winter 1997): 50; Joseph W. McKnight, "Law Books on the Hispanic Frontier," in *Spanish and Mexican Land Grants and the Law*, ed. Malcolm Ebright (Manhattan, KS.: Sunflower University Press, 1989), 75–77; Roger Philip McCutcheon, "Books and Booksellers in New Orleans, 1730–1830," *Louisiana Historical Quarterly* 20 (July 1937): 606–18.

49 *Debow's Review* 15 (July 1853), 112. The ad also ran in the issues for August and November 1853, and January, February, and August 1854.

TABLE 3: Early 19th-century New Orleans lawyers' libraries containing Hispanic & European titles present in the Texas Supreme Court Library

MA – Michel de Armas (1823)	**HB** – Henry Adams Bullard (1851)	**SL** – Samuel Livermore (1833)	**EL** – Edward Livingston (1823)	**ML** – Louis Moreau Lislet (1832)	**GS** – Gustavus Schmidt (1877)
Nos. 2, 29, 32, 33, 40, 42, 49, 52, 53, 58, 67, 68, 77, 79, 81, 83, 84, 90, 91, 92, 97, 105, 117, 118, 121 **(25 titles)**	Nos. 32, 35, 40, 49, 69, 81, 84, 111, 112, 113, 114 **(11 titles)**	Nos. 6, 7, 9, 15, 29, 42, 49, 50, 52, 68, 90, 91, 92, 118, 120, 121 **(16 titles)**	Nos. 29, 32, 40, 81, 121 **(5 titles)**	Nos. 33, 40, 41, 49, 52, 53, 67, 79, 81, 84, 90, 91, 92, 117 **(14 titles)**	Nos. 22, 29, 33, 38, 40, 52, 53, 59, 62, 68, 75, 77, 78, 79, 81, 82, 88, 89, 97, 102, 103, 105, 107, 111, 112, 117, 118, 121, 124 **(29 titles)**

Notes: (1) It was impossible in most cases to match specific editions of a given title. The Livermore and Schmidt inventories are well ordered and provide adequate bibliographic descriptions, but the others are disordered lists with sketchy descriptions. Some of the matches cannot possibly be for the same edition (for example, no. 79, Pardessus' *Cours de droit commercial*). (2) Some of the titles listed under several New Orleans lawyers could be for the same copy with different owners. These lawyers would have known each other professionally, and Schmidt was related by marriage to Moreau Lislet.

Sources:

Catalogues of Early American Law Libraries: The 1877 Sale Catalogue of Gustavus Schmidt's Library (Austin, TX.: Jamail Center for Legal Research, 2005).

Combe, David. "The Louisiana Lawyer's Roman-Law Library: Recollections of an Antiquarian Bibliophile." *Tulane Law Review* 70 (June 1996), 2003–49. Appendix 1: The Livermore Gift to Harvard.

Franklin, Mitchell. "Libraries of Edward Livingston and of Moreau Lislet." *Tulane Law Review* 15 (Apr. 1941), 401–14.

Franklin, Mitchell. "Library of Michel de Armas." *Louisiana Law Review* 4 (Mar. 1942), 573–85.

Karachuk, Robert Feikema. "A Workman's Tools: The Law Library of Henry Adams Bullard." *American Journal of Legal History* 42 (Apr. 1998), 160–89.

There are other aspects of the Court's civil law collection which give the impression that this was an "opportunity purchase," as if the buyer walked into a New Orleans bookshop and said "Give me everything you've got on civil law." Salgado de Somoza's *Labyrinthus creditorum* might have been of some use in a civil law jurisdiction like Louisiana, but it would have never been relevant or useful to a Texas lawyer, even if he understood Latin.

It is possible that the collection was acquired at an auction in New Orleans, but the evidence suggests otherwise.[50] Several of the large French sets appear to have been practically brand new, and three bear an ink stamp for an 1852 copyright convention between France and Belgium.[51] Only a few volumes bear marks of previous owners.[52]

[50] I could find no record of New Orleans book auctions during the 1850s in George McKay, *American Book Auction Catalogues 1713–1934: A Union List* (New York: New York Public Library, 1937). However, note that Henry Adams Bullard's library was auctioned by a New Orleans probate court in 1851. See Karachuk, "The Law Library of Henry Adams Bullard," 161.

[51] Nos. 35, 43, and 82.

[52] Nos. 48, 51, 78, and 115 almost certainly were not acquired by Hemphill, but are fascinating in their own right. All

The Fading of Hemphill's Dream

John Hemphill's departure from the Court in 1858 marks the beginning of what Joseph McKnight has called "the dark age of ignorance" of Spanish and Mexican law,[53] which did not end until two landmark decisions of the Texas Supreme Court in the 1950s and early 1960s, *Luttes* and *Valmont Plantations*.[54] Hans Baade has also noted the poor quality of the jurisprudence in cases involving Hispanic law after 1870. He asks why the Court's decisions were so consistently wrong, and why the sources were ignored when they were readily available.[55]

In land and water law cases during this dark age, the Supreme Court in particular tended to cite the English translations of White, Gustavus Schmidt, and others, or its own previous decisions.[56] The only Spanish-language source cited with any frequency was Joaquín Escriche's *Diccionario razonado de legislación y jurisprudencia*.[57] This was also generally true of the litigants, although a pair of cases in 1871 are an exception. Among a few of the more uncommon works cited are those of Diego de Covarrubias, known as "the Spanish Bartolus," the commentaries on the *Siete Partidas* by Gregorio López, and the *Jurisprudence Generale* de Armand Dalloz,[58] all of which were available in the Texas Supreme Court Library. The Court, however, made no reference to these sources in its decision.

The library's printed catalogs reflect this decline. The 1880 Catalogue segregates the non-English civil law in the section titled "Foreign Books," suggesting that the civil law collection was viewed as something strange and alien. The 1900 subject catalog of the Court ignores the foreign-language materials completely. The compilers probably did not appreciate or understand the collection, and judged it to be useless to the library's patrons and thus unworthy of mention.[59] This was the same period that witnessed a general decline in the study of Roman law.[60]

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are inscribed by E.B. O'Quinn, and since all are listed in the 1880 Catalogue, they were in O'Quinn's possession before that date. One is signed "E.B. O'Quinn / Austin, Texas," two are signed "E.B. O'Quinn / City of Mexico," and most interesting of all, the last is signed "E.B. O'Quinn / Esquela de Leyes Mexicanos / City of Mexico." The Escuela de Leyes Mexicanos later became the Escuela Nacional de Jurisprudencia, itself the forerunner of the law school at the Universidad Nacional Autónoma de México. I have been unable to further identify O'Quinn, but the indication that a Texan was connected in some way with legal education in mid-19th century Mexico is extremely intriguing. For a brief history of legal education in Mexico, see Lucio Mendieta y Nüñez, *Apuntes para la historia de la Facultad de Derecho*, reprinted from *Revista de la Facultad de Derecho* 4 (1939); (México: Universidad Nacional Autónoma de México, 2002).

53 McKnight, "The Spanish Watercourses of Texas," 379.

54 *Ibid*., 374, 386. *State of Texas v. Valmont Plantations*, 346 S.W.2d 853 (Tex. Civ. App.—San Antonio 1961). *Luttes v. State of Texas*, 324 S.W.2d 167 (Tex. Sup. Ct. 1958). For a brief summary of both cases, see Baade, "Los derechos históricos sobre aguas de México," 25–34.

55 Baade, "The Formalities of Private Real Estate Transactions in Spanish North America," 743–44; Baade, "The Form of Marriage in Spanish North America," 87.

56 Baade, "The Historical Background of Texas Water Law," 23.

57 There were dozens of editions; see no. 38.

58 *Cavazos v. Treviño*, 35 Tex. 133 (1871); *City of Brownsville v. Basse & Hord*, 36 Tex. 461 (1871).

59 *Catalogue by Subjects of the Books in the Library and Consultation Room of the Supreme Court of Texas, 1900* (Austin: Von Boeckmann, Moore & Schutze, 1900).

60 Michael H. Hoeflich, "Bibliographic Perspectives on Roman and Civil Law," *Law Library Journal* 89 (Winter 1997): 51.

The books themselves bear witness to the lack of use. The volumes that were lost to theft or wear and tear were the popular English-language translations and treatises, or the most important and frequently-cited Spanish and Mexican titles. Latin and French titles enjoyed a 100-percent survival rate, and their condition today is generally excellent. They are almost totally free of annotations, and one of the few exceptions is telling: on the front cover of Menochio's *De praesumptionibus* (1628), someone wrote in pencil, "What next?"

What was next came in 1943, when the Legislature authorized the Texas Supreme Court to transfer books and documents to the University of Texas Law Library. The act mentioned "the fact that there are many books, documents and publications in the library of the Supreme Court that the library does not need, and that the library is not equipped to store or preserve."[61] The State Capitol was badly overcrowded at that time. A contemporary photograph shows the Supreme Court Library literally drowning in books. Book thefts had become a serious problem.[62] The transfer was effected promptly. A 1954 report by the University of Texas law librarian mentions that "One section of the Rare Books Room houses volumes of foreign law and textbooks which are on indefinite loan from the Supreme Court of Texas."[63]

The Court sent to the University of Texas Law Library all of its law books in Latin and French, and kept all of the civil law books in English. Some of the Spanish law books that the Supreme Court had "lost" were rejoined with their companions in the Tarlton Law Library in 1964 when they were purchased. Another title ended up in the law library at Southern Methodist University in 1960.[64]

Ironically, only a few years after the Court divested itself of much of its civil law collection, the revival in civil law jurisprudence in Texas began, first with the Tidelands litigation,[65] followed soon by the *Luttes* and *Valmont* cases.

"Ironically, only a few years after the Court divested itself of much of its civil law collection, the revival in civil law jurisprudence in Texas began...."

The State Law Library's portion of the collection is stowed away in a locked book case in an out-of-the-way corner of the library. The remainder is in the Tarlton Law Library's rare book room. Perhaps a half-dozen of the eighty-one titles in the Tarlton Law Library were consulted during my fourteen years there, and another still holds a 1949 call slip.[66] I was fond of showing a couple of my favorite volumes to tour groups. My guess is that this is a fairly typical use rate for sizable rare law book collections in the U.S.

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61 *General and Special Laws of the State of Texas Passed by the Regular Session of the Forty-eighth Legislature* (1943), ch. 78.

62 David B. Gracy II, *This Best But Last Chance: Representative Bill Daniel's Fight for a State Courts and Office Buildings in Texas, 1949–1954* (Austin: Graduate School of Library and Information Science, the University of Texas at Austin, 1995), 6.

63 "Law Library University of Texas Biennial Report 1952–1954," call no. Archives Z 733 T4 L3, Rare Books & Special Collections, Tarlton Law Library, University of Texas at Austin.

64 No. 14.

65 *United States v. Texas*, 339 U.S. 707 (1950).

66 No. 46.

And, of course, I used every single one of the volumes in my research for this essay.

Was Hemphill's civil law collection a failure? Not necessarily. To begin with, Hemphill's reputation as the great civilian of Texas law was already cemented in his judicial decisions, and in the civil law features he implanted in Texas law such as the homestead exemption and the community property doctrine. In light of the revival of Texas jurisprudence on Spanish law in the 1950s, Hemphill's collection may have been a hundred years ahead of its time.

A few of the books were used and cited in later years. Some of the volumes were perceived to be useful enough to be worth stealing. Any library collection that has been formed with energy and imagination will have a number of volumes that no one ever asks for. While use is one measure of a collection's quality, it is not the only measure. Given John Hemphill's opportunity in 1854, I might have done the same thing and asked my New Orleans book supplier for everything he had on civil law, and I would have been pleased with the result.

Lessons for Librarians Today

This brings me back to the issue I raised in my introduction: the usefulness of collections of early law books.

Rare book librarians like myself, working in institutions dedicated to training future lawyers or to serving our judicial system, worry a good bit about the usefulness of our collections. In work environments increasingly dominated by performance measures and cost/benefit ratios, we wonder whether we and our collections will be deemed worthy of continued funding.

Usefulness is a special challenge for rare book collections. Our books are old, fragile, beautiful, expensive, and often written in languages that most of our patrons cannot read. Readers cannot take them home, or photocopy them. Much of the law these books contain is simply dead law, in terms of current legal research. Several years ago in Texas a lawyer used a number of our early law dictionaries in a brief for a U.S. Supreme Court case, and I felt like giving him a parade.

We actually seek out collections that other institutions have determined are no longer useful. The Association of the Bar of the City of New York recently transferred to the Yale Law Library a wonderfully rich collection of Roman and canon law, 1,600 volumes, that had long since ceased being used in its library.

Some collections are not used at all, or at most they function as trophy cabinets. This strikes librarians like myself, who love books and love sharing them, as a bit sad. I thought of museums once as trophy cases and swore I'd never run one.

Today I see things differently. I see myself in many ways as a curator of a law book museum, an interactive hands-on laboratory for legal and cultural history. I collect and present law books as physical objects, valuable for what they can teach us about the legal cultures of yesterday and today, valuable because they can be held, opened, smelled. Every year I give presentations to tour groups of incoming law students. I put out selections of books from our rare book collection

that they can see and touch. If this is the only time a student comes in contact with our rare book collection, and if the only thing the student learns is that she or he is about to enter a profession with a rich tradition and a deep involvement in human civilization, then I have performed a useful service.

The physical book, especially the book in its original binding and filled with the earnest annotations and idle doodles of its early owners, helps bring to the forefront the human element in law, in ways that a digital surrogate cannot. Real live people printed these books, bound them in leather or vellum, wrote in the margins, and used them to legislate and adjudicate and argue and plead. Law is, after all, a human endeavor, about people trying to get along and get ahead.

My research on the Texas Supreme Court's civil law library is in some ways an archaeological study. The rare law book museum preserves a physical record of the inquiries, work habits, and aspirations of the legal profession throughout history. It preserves and presents a record of "the mind of the law." Perhaps that is use enough.



MICHAEL WIDENER *is the Rare Book Librarian in the Lillian Goldman Law Library, Yale Law School. From 1991 to 2006 he was Head of Special Collections in the Tarlton Law Library, University of Texas at Austin. He is on the faculty of Rare Book School, University of Virginia, where he teaches a week-long summer course, "Law Books: History & Connoisseurship." Widener served on the Board of Trustees of the Texas Supreme Court Historical Society from 1999 to 2006, and is presently on the board of the Connecticut Supreme Court Historical Society. His 2017 exhibition catalogue,* Law's Picture Books: The Yale Law Library Collection *(with Mark S. Weiner), won the Joseph L. Andrews Legal Literature Award from the American Association of Law Libraries.*

Acknowledgments

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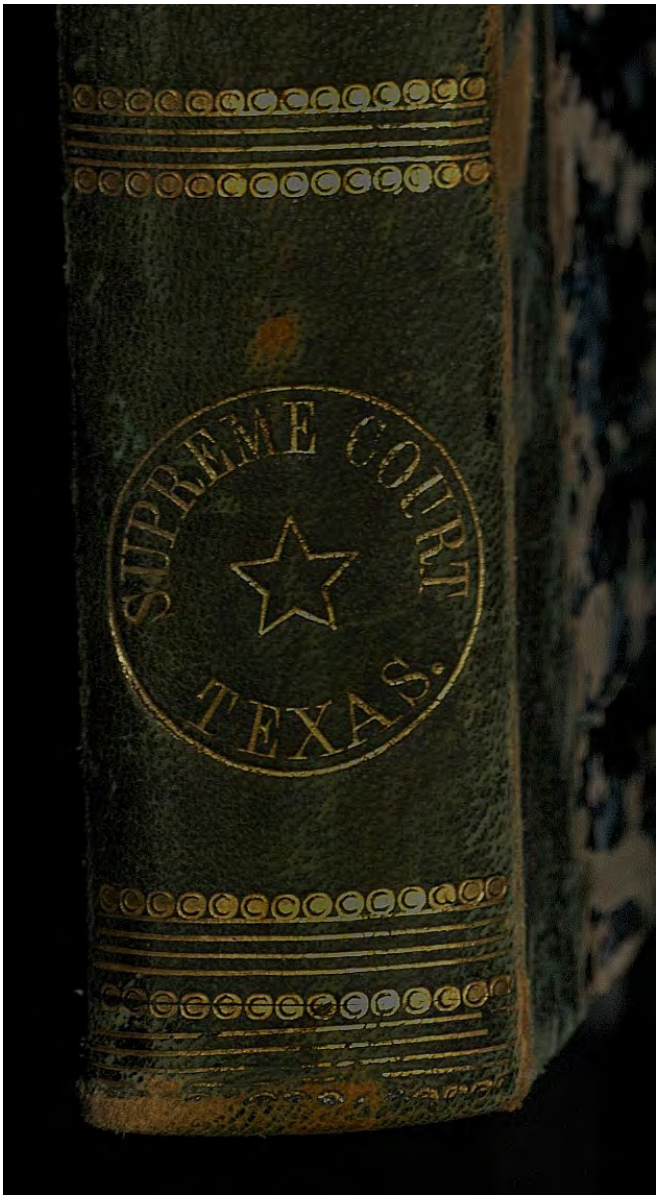
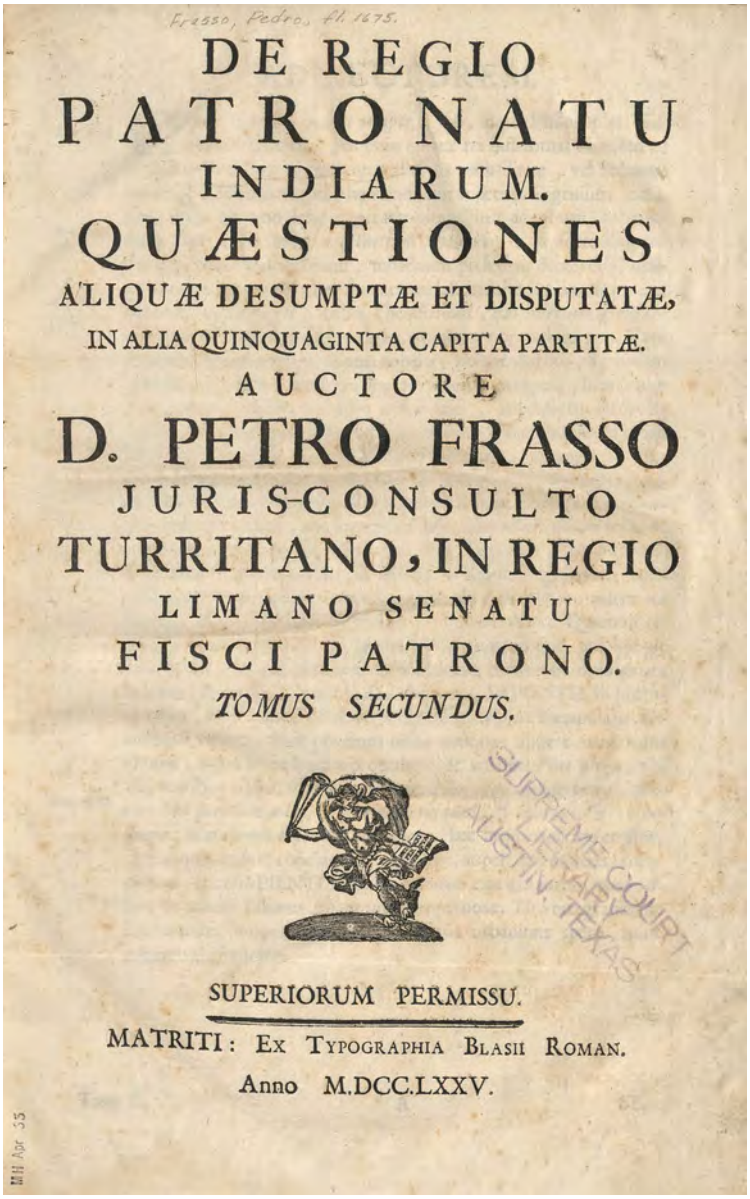
APPENDIX
The Civil Law Collection in the Old Texas Supreme Court Library





Left: The circular gold spine stamp that identifies many of the volumes from the Texas Supreme Court's library; this example from Pedro Frasso, *De regio patronatu Indiarum* (Madrid, 1775). Right: Title page of Pedro Frasso's *De regio patronatu Indiarum*, showing the Texas Supreme Court Library's distinctive ink stamp. Frasso's treatise, on the Spanish crown's right to regulate the Catholic Church in its American colonies, would have been of little or no use to the Texas Supreme Court, even if it had not been written in Latin. Images courtesy of the Tarlton Law Library, Jamail Center for Legal Research, University of Texas School of Law; used by permission.

The basis for the following list is the titles listed under the heading of "Foreign Books" in the *Catalogue of the Supreme Court Library at Austin, Texas* (Austin: State Printing Office, 1880) (hereafter 1880 Catalogue), along with a few books on Roman and Mexican law listed elsewhere in that catalog, which total 111 titles in 301 physical volumes. In addition, another 12 civil law-related titles (22 volumes) with Texas Supreme Court Library markings that did not appear in the

1880 Catalogue were found in the Tarlton Law Library and the State Law Library. The total is 123 titles in 323 volumes. See Table 1 for an analysis of the books by broad subject area, and Table 2 for a summary of the imprint dates. Languages represented are Spanish (51 titles), Latin (38 titles), French (19 titles), English (15 titles), and German (1 title).

Notes following the bibliographic entries indicate those titles not listed in the 1880 Catalogue, and information on markings in the books such as ownership signatures, annotations, bookseller's tickets, etc. The books usually bear spine stamps or ink stamps of the Texas Supreme Court Library, so only the absence of these markings is noted. The notes also indicate which titles appear in the published library inventories of several early nineteenth-century New Orleans lawyers: Michel de Armas (MA), Henry Adams Bullard (HB), Samuel Livermore (SL), Edward Livingston (EL), Louis Moreau Lislet (ML), and Gustavus Schmidt (GS). Table 3 gives a summary of the titles that appear in New Orleans law library inventories.

Thanks to Catherine Harris, Texas State Law Library, and the late Joseph W. McKnight, Southern Methodist University, for their assistance.

Location symbols (following the item number):

* ..... State Law Library, Austin, Texas (32 titles / 70 vols.).
** ..... Underwood Law Library, Southern Methodist University (1 title / 1 vol.).
† ..... Listed in the 1880 Catalogue, but now missing (9 titles / 15 vols.); see also no. 40 (5 of 6 vols. missing).
No symbol... Rare Books & Special Collections, Tarlton Law Library, University of Texas at Austin (81 titles / 232 vols.).

1.* Alvarado y de la Peña, Salvador de. *Cartilla real novísima teórico-práctica* (Madrid, 1836). Vol. 2 only.
The 1880 Catalogue notes vol. 1 as missing.

2.* Álvarez, José María. *Instituciones de derecho real de España* (Madrid, 1829). 2 vols.
Not in the 1880 Catalogue. New Orleans libraries: MA.

3.* Álvarez, José María. *Instituciones de derecho real de España* (Buenos Aires, 1839). 2 vols.

4.* Ayliffe, John. *A new pandect of Roman civil law* (London, 1734).

5. Baldo degli Ubladi. *Consiliorum* (Frankfurt, 1589). 5 vols. in 1.
No markings, but in 1880 Catalogue.

6. Boullenois, Louis. *Dissertations sur des questions qui naissent de la contrariete des loix et des coutumes* (Paris, 1732).
New Orleans libraries: SL.

7. Boullenois, Louis. *Traite de la personnalite et de la realite des loix* (Paris, 1766). 2 vols.
New Orleans libraries: SL.

8.† Bowyer, George. *Commentaries on the modern civil law* (London, 1848).

9. Brederode, Pieter Cornelis van. *Repertorium sententiarum et regularum* (Frankfurt, 1587). 2 vols. in 1.
No markings, but in 1880 Catalogue. New Orleans libraries: SL.

10. Brouwer, H. H. J. *De jure connubiorum apud Batavos recepto, libri duo* (Amsterdam, 1665).
No markings, but in 1880 Catalogue.

11.* Cavalario, Domingo. *Instituciones del derecho canónico* (Paris, 1846). 3 vols.

12. Censalio, Francisco. *Observationes ... ad tractatum de fideicommissis Marci Antonii Peregrini* (Frankfurt & Nuremberg, 1669).
Includes: Fideicommissariae materiae tractatus sive epitome / Francisci Marzarii; Tractatus varii ... / Marci Antonii Peregrini.

13.* Clavigero, Francesco Saverio. *The history of Mexico* (London, 1807). Vol. 1 of 2.
Not in the 1880 Catalogue. Heraldic bookplate with motto: "Vigilans et audax".

14.** Coahuila and Texas (State). *Laws and decrees of the state of Coahuila and Texas, in Spanish and English* (J.P. Kimball, trans.; Houston, 1839).
Purchased by SMU from book dealer Price Daniel, Jr. in 1960 (letter from Prof. J.W. McKnight, SMU, to M. Widener, 13 Mar. 1998).

15. *Codex Theodosianus* (Leipzig, 1736-1745). 6 vols. in 4.
New Orleans libraries: SL.

16. Colón de Larriategui, Félix. *Apendice a ... los juzgados militares de España y sus Indias* (Madrid, 1791).
Not in the 1880 Catalogue.

17. Colón de Larriategui, Félix. *Juzgados militares de España y sus Indias* (Madrid, 1797). Vol. 1 of 4.
The 1880 Catalogue lists this as a one-volume title.

18.† Colquhoun, Patrick MacChombaich de, Sir. *A summary of the Roman civil law* (London, 1849). 3 vols.

19. Council of Trent (1545-1563). *El sacrosanto y ecuménico concilio de Trent* (Paris, 1853).

20. *Concilios provinciales primero, y segundo: celebrados en la muy noble, y muy leal ciudad de México ... 1555 y 1565* (Mexico City, 1769).
Not in the 1880 Catalogue. Price markings.

21. *Concilium mexicanum provinciale III. celebratum Mexici anno MDLXXXV* (Mexico City, 1770).
Not in the 1880 Catalogue. Bound at end of #20.

22.* Conde, José Antonio. *Historia de la dominación de los* árabes *en España* (Barcelona, 1844). 3 vols.
New Orleans libraries: GS.

23. *Corpus iuris Romani anteiustiniani* (Bonn, 1841).

24. *Corpvs ivris canonici* (Lyon, 1614). 5 pts. in 1 vol.

25. *Corpus juris civilis / Albertus, Mauritius, Kriegelii, Herrmann & Osenbruggen* (Leipzig, 1844). 3 vols.

26. *Corpus juris civilis / Albertus, Mauritius, Kriegelii, Herrmann & Osenbruggen* (Leipzig, 1854). 3 vols.

27. Council of the Indies (Spain). *Extracto historial del expediente que pende en el Consejo Real, y Supremo de las Indias: a instancia de la ciudad de Manila* (Madrid, 1736).

28.† Council of the Indies (Spain). *Ordenanzas del Consejo real de las Indias* (Madrid, 1747).

29. Covarrubias y Leyva, Diego de. *Opera omnia* (Geneva, 1762). 2 vols.
New Orleans libraries: MA, SL, EL, GS.

30. Dalloz, Armand. *Dictionaire general et raissonne de legislation* (Paris, 1835-1841). 5 vols.

31. Dalloz, Armand. *Jurisprudence generale du Royaume* (Paris, 1825-1830). 12 vols.
No markings, but in 1880 Catalogue.

32.† Domat, Jean. *The civil law in its natural order* (Boston, 1850). 2 vols.
New Orleans libraries: MA, HB, EL.

33. Domínguez Vicente, José Manuel. *Ilustración, y continuación a la Curia philípica* (Madrid, 1736-1739). 2 vols.
New Orleans libraries: MA, ML, GS.

34.* Donoso, Justo. *Instituciones de derecho canónico americano* (Paris, 1854). 3 vols.

35. Duranton, Alexandre. *Cours de droit civil: suivant le Code francais* (Brussels, 1841). 12 vols.
Ink stamp on half-title: "Belgique / France / Convention du 22 Aout 1852". New Orleans libraries: HB.

36. Escalona y Agüero, Gaspar de. *Gazophilacium regium perubicum* (Madrid, [1775]).

37. Escaño, Ferdinando de. *Tractatus de perfectione voluntatis testamento requisita* (Seville, 1676).

38.* Escriche, Joaquín. *Diccionario razonado de legislación y jurisprudencia* (Paris, 1852).
Not in the 1880 Catalogue. New Orleans libraries: GS.

39. Espen, Zeger Bernard van. *Jus ecclesiasticum universum* (Louvain, 1778). 5 vols.

40.* Febrero, José. *Febrero: o, Librería de jueces, abogados y escribanos* (Madrid, 1852). Vol. 4 of 6.
The 1880 Catalogue indicates all 6 vols. present. New Orleans libraries: MA, HB, EL, ML, GS.

41. France. *The code Napoleon* (New York, 1841).
New Orleans libraries: ML.

42. France. *Les codes annotes de Sirey* (Paris, 1853-1854). 3 vols.
New Orleans libraries: MA, SL.

43. France. *Lois de la procedure civile* (Brussels, 1846-1852). 4 vols.
Ink stamp on half-title: "Belgique / France / Convention du 22 Aout 1852".

44. Frasso, Pedro. *De regio patronatu Indiarum* (Madrid, 1775). 2 vols.

45.* Galvan Rivera, Mariano. *Ordenanzas de tierras y aguas* (Mexico City, 1842).
Not in the 1880 Catalogue.

46. Gamboa, Francisco Javier de. *Comentarios a las ordenanzas de minas* (Madrid, 1761).
Contains call slip from University of Texas Law Library, dated 1949.

47.† Gamboa, Francisco Javier de. *Commentaries on the mining ordinances of Spain* (London, 1830). 2 vols.

48.* García Goyena, Florencio. *Código criminal español segun las leyes y práctica vigentes* (Madrid, 1843). 2 vols.
Inscription on flyleaf: "E. B. O'Quinn / Austin, Texas".

49. Gómez, Antonio. *Opera omnia* (Lyon, 1661). Vol. 1 of 2.
New Orleans libraries: MA, HB, SL, ML.

50. Gómez, Antonio. *Variae resolutiones juris civilis, communis, et regii* (Madrid, 1794). 3 vols. in 2.
New Orleans libraries: SL.

51.* Gómez de la Serna, Pedro, & Juan Manuel Montalban. *Tratado academico-forense de los procedimientos judiciales* (Madrid, 1848). 3 vols.
Inscription on flyleaf: "E. B. O'Quinn / Esquela de Leyes Mexicanos / City of Mexico".

52.* Grotius, Hugo. *De jure belli et pacis* [Latin & English] (Cambridge, 1853). 3 vols.
New Orleans libraries: MA, SL, ML, GS.

53. Hevia Bolaños, Juan de. *Curia filípica: primero, y segundo tomo* (Madrid, 1825).
New Orleans libraries: MA, ML, GS.

54. Ibáñez de Faria, Diego. *Additiones, observationes et notae ad libros Variarum resolutionum … D. Didaci Covarruvias a Leiva* (Geneva, 1762).

55. Ibáñez de Faria, Diego. *Enucleatus et auctus practicis in quaestionibus* (Geneva, 1762).

56. Ibáñez de Faria, Diego. *Novae additiones observationes et notae ad libros Variarum resulutionum … d. Didaci Covarruvias a Leiva* (Geneva, 1762).

57.† Irving, David. *An introduction to the study of the civil law* (London, 1837).

58. Jordán de Asso y del Río, Ignacio, & Miguel de Manuel y Rodríguez. *Instituciones del derecho civil de Castilla* (Madrid, 1771).
Inscription on t.p.: "Lic.do Guerra[?]". New Orleans libraries: MA.

59. Jordán de Asso y del Río, Ignacio, & Miguel de Manuel y Rodríguez. *Instituciones del derecho civil de Castilla* (Madrid, 1805).
New Orleans libraries: GS.

60.* Jordán de Asso y del Río, Ignacio, & Miguel de Manuel y Rodríguez. *Institutes of the civil law of Spain* (London, 1825).

61. *Jurisprudence generale du Royaume, annee 1825-1848* (Paris, 1825-1848). 24 vols.
No markings, but in 1880 Catalogue.

62. Laferrierre, Louis Firmin Julien. *Histoire du droit francais: precedee d'une introduction sur le droit civil de Rome* (Paris, 1852-53). Vols. 2-4 of 4.
No markings, but in 1880 Catalogue (also shown as lacking vol. 1). New Orleans libraries: GS.

63.* Laso, Eustoquio. *Elementos de derecho mercantil de España* (Madrid, 1849).

64.* Linden, Joannes van der. *Institutes of the laws of Holland* (London, 1828).

65.* Llamas y Molina, Sancho de. *Comentario crítico, jurídico, literal, a las ochenta y tres Leyes de Toro* (Madrid, 1853). 2 vols.

66. Magro, Jacobo, & Eusebio Ventura Beleña. *Elucidationes ad quatuor libros Institutionum Imperatoris Justiniani* (Mexico City, 1787-1788). 4 vols.

67. Mascardi, Giuseppe. *Conclusiones probationum omnium* (Frankfurt, 1619). 3 vols.
New Orleans libraries: MA, ML.

68. Menochio, Giacomo. *De praesumptionibus, coniecturis, signis, & indicijs, commentaria* (Cologne, 1628).
Inscription in pencil on front cover (vellum): "What next?". New Orleans libraries: MA, SL, GS.

69. Merlin, Philippe Antoine. *Recueil alphabetique des questions de droit* (Paris, 1827-1830). 9 vols.
New Orleans libraries: HB.

70. México. *Colección de los decretos y* órdenes *de las Cortes de España, que se reputan vigentes en la República de los Estados-Unidos Mexicanos* (Mexico City, 1829).
Annotations in subject index and text.

71.* México. *Ordenanzas de minería* (Paris, 1854).

72. Molina, Luis de. *De primogeniorum hispanorum origine, ac natura, libri quatuor* (Venice, 1757).

73. Mortreuil, Jean-Anselme-Bernard. *Histoire du droit Byzantin ou du droit Romain dans l'empire d'orient* (Paris, 1843-1846). 3 vols.

74. Muhlenbruch, Christian Friedrich. *Delectus legum quae in Muhlenbruchii Doctrina pandectarum laudantur* (Brussels, 1839).

75. Muhlenbruch, Christian Friedrich. *Doctrina Pandectarum: Scholarum in usum* (Brussels, 1838).
New Orleans libraries: GS.

76.* Navarro Zamorano, Ruperto, Rafael Joaquín de Lara & José Álvaro de Zafra. *Curso completo elemental de derecho romano* (Madrid, 1842). 4 vols.

77.* *Nuevo diccionario de la lengua castellana* (Paris, 1853).
New Orleans libraries: MA, GS.

78.* Pando, José María de. *Elementos del derecho internacional* (Valparaiso, 1848).
Inscription on flyleaf: "E. B. O'Quinn / City of Mexico". New Orleans libraries: GS.

79. Pardessus, Jean Marie. *Cours de droit commercial* (Brussels, 1842-1843). 3 vols.
New Orleans libraries: MA, ML, GS.

80. Pellegrini, Marcantonio. *Tractatus … de fideicommissis* (Nuremberg, 1725).

81. Pothier, Robert Joseph. *OEuvres de Pothier* (Paris, 1845-1848). 10 vols.
New Orleans libraries: MA, HB, EL, ML, GS.

82. Proudhon, Jean Baptiste Victor. *Traite du domaine de propriete* (Brussels, 1842).
Ink stamp on half-title: "Belgique / France / Convention du 22 Aout 1852". New Orleans libraries: GS.

83.† Real Academia Española. *Supplemento al diccionario de la lengua castellana* (Paris, 1854).
New Orleans libraries: MA.

84. *Repertoire universal et raisonne de jurisprudence* (Paris, 1827-1828). 18 vols.
No markings, but in 1880 Catalogue. New Orleans libraries: MA, HB, ML.

85.* Rios, Juan Miguel de los. *Derecho político, general, español y europeo* (Madrid, 1845-1846). 3 vols.

86.* Rockwell, John Arnold. *A compilation of Spanish and Mexican law: in relation to mines, and titles to real estate* (New York, 1851).
Not in the 1880 Catalogue.

87.† Rodríguez de San Miguel, Juan Nepomuceno. *Pandectas hispano-megicanas* (Mexico City, 1852). 3 vols.

88.* Sala, Juan. *Sala hispano-mejicano* (Paris, 1844). 2 vols.
New Orleans libraries: GS.

89. Sala, Juan. *Sala mexicano, o sea, La ilustración al derecho real de España* (Mexico City, 1845-1849). 4 vols.
New Orleans libraries: GS.

90. Salgado de Somoza, Francisco. *Labyrinthus creditorum concurrentium ad litem per debitorem communem inter illos causatam* (Lyon, 1757). 2 vols.
New Orleans libraries: MA, SL, ML.

91. Salgado de Somoza, Francisco. *Tractatus de regia protectione vi oppressorum appellantium a causis & judicibus ecclesiasticus* (Lyon, 1759).
New Orleans libraries: MA, SL, ML.

92. Salgado de Somoza, Francisco. *Tractatus de supplicatione ad Sanctissimum a literis* (Lyon, 1758).
New Orleans libraries: MA, SL, ML.

93. Savigny, Friedrich Karl von. *Traite de droit romain* (Paris, 1840-1851). 8 vols.

94.† Schmidt, Gustavus. *The civil law of Spain and Mexico* (New Orleans, 1851).

95. *Schul-und-reife-Tarchen-Worterbuch der Franzossichen und Deutschen Sprache* (Leipzig, [17--]).
Not in the 1880 Catalogue. Inscription on flyleaf: "G. B. Rosenbach 1829."

96.* Sempere y Guarinos, Juan. *Historia del derecho español* (Lima, 1847).
Inscription on half-title: 'Supreme Court of Texas / Austin / 1854."

97. *Las siete partidas del sabio rey Don Alonso el IX* (Madrid, 1829-1831). Vols. 1, 3-4 of 4.
Not in the 1880 Catalogue. Price markings; acquired by Tarlton Law Library Sept. 1964. New Orleans libraries: MA, GS.

98. Solórzano Pereira, Juan de. *De Indiarum jure* (Madrid, 1777). 2 vols.

99. Solórzano Pereira, Juan de. *Emblemata centum, regio politica* (Madrid, 1779).

100. Solórzano Pereira, Juan de. *Obras varias posthumas del doctor don Juan de Solórzano Pereyra* (Madrid, 1776).

101. Solórzano Pereira, Juan de. *Politica indiana* (Madrid, 1776). 2 vols.


D. FRANCISCI
SALGADO
DE SOMOSA,
IN REGALI CANCELLARIA
VALLISOLETANA SENATORIS.
LABYRINTHUS
CREDITORUM CONCURRENTIUM
AD LITEM PER DEBITOREM
communem inter illos causatam,
TOMI DUO.
Editio novissima, Antverpiensi, Veneta, & Francofurtensi multò auctior & emendatior.
CUI ACCESSERUNT
Decisionum S. R. R. CENTURIÆ DUÆ ad materiam ejusdem Tractatus collectæ:
Prior à Perillustri & Excell. D. V. I. D. ANDREA CENSALIO, Rotæ Perusinæ & Provinciæ Umbriæ Auditore Generali: Posterior verò à D. NICOLAO ANTONIO, I. V. Doctore & Professore.
Papillon. f.
LUGDUNI,
Sumptibus FRATRUM DE TOURNES.
M. DCC. LVII.
CUM PRIVILEGIO REGIS.

90. Salgado de Somoza's *Labyrinthus*. Image courtesy of the Tarlton Law Library, Jamail Center for Legal Research, University of Texas School of Law— used by permission.

102.* Spain. *Código de comercio, decretado, sancionado y promulgado en 30 de mayo de 1829* (Madrid, 1856).
New Orleans libraries: GS.

103.* Spain. *Los códigos españoles* (Madrid, 1847-1851). 12 vols.
New Orleans libraries: GS.

104. Spain. *Decretos del Rey Don Fernando VII: año primero de su restitucion al trono de las Españas* (Madrid, 1818-1824). 8 vols.

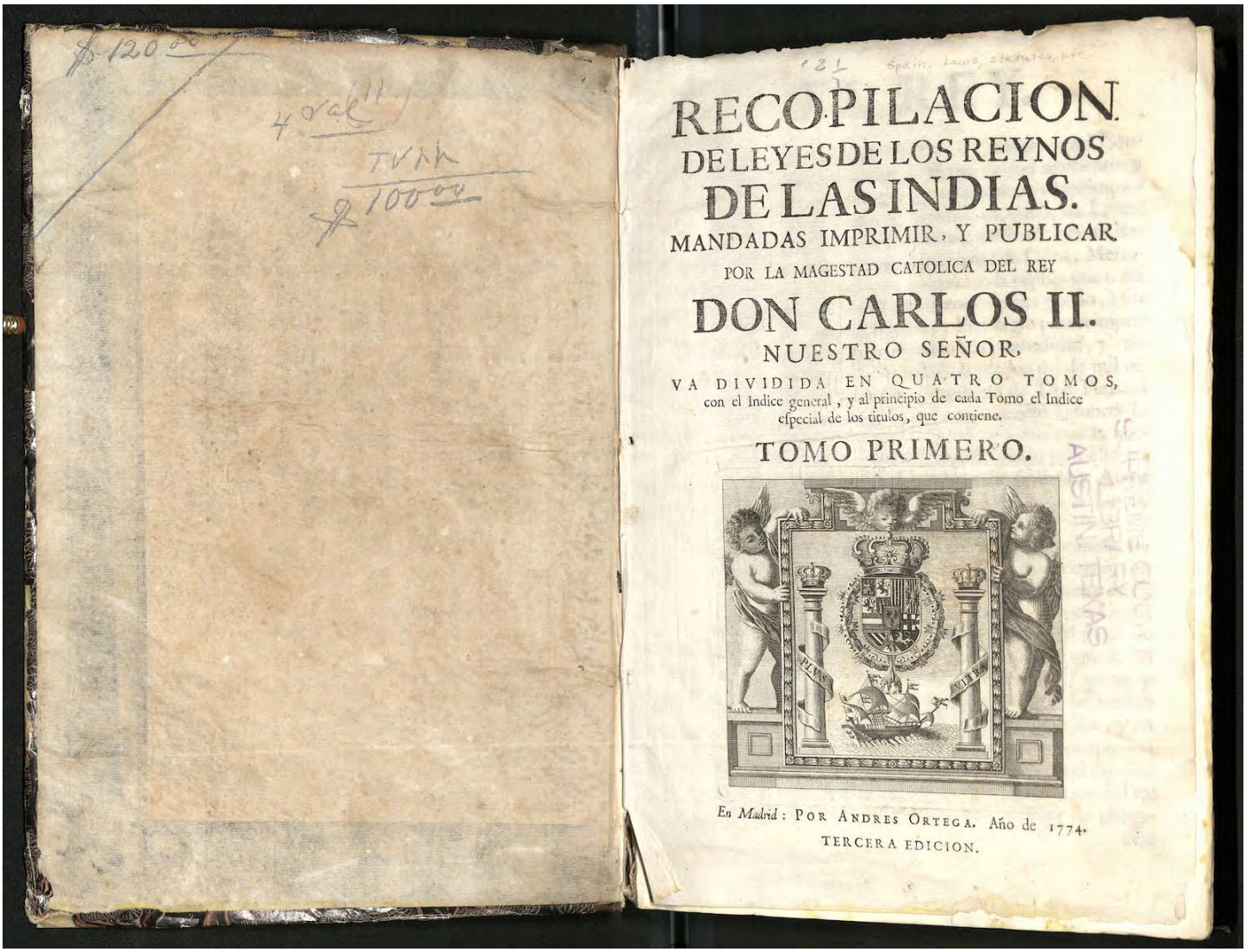
105. Spain. *Novísima recopilación de las leyes de España* (Madrid, 1805-1807). 6 vols.
Not in the 1880 Catalogue. Price markings; acquired by Tarlton Law Library Sept. 1964. New Orleans libraries: MA, GS.

106. Spain. *Reales ordenanzas para ... la minería de Nueva-España* (Madrid, 1783). [2 copies.]
Both copies listed in 1880 Catalogue.

107. Spain. *Recopilación de leyes de los reynos de las Indias* (Madrid, 1774). 4 vols.
Not in the 1880 Catalogue. Price markings; acquired by Tarlton Law Library Sept. 1964. New Orleans libraries: GS.

108. Spain. *Tomo tercero de autos acordados* (Madrid, 1745).

109. Suárez de Paz, Gonzalo. *Praxis ecclesiastica et saecularis* (Madrid, 1780).



107. Recopilación de leyes de los reynos de las Indias, 1774. Image courtesy of the Tarlton Law Library, Jamail Center for Legal Research, University of Texas School of Law— used by permission.

110.* Taylor, John. *Elements of the civil law* (London, 1828).

111. Troplong, Raymond Theodore. *Commentaire des privileges et hypotheques* (Brussels, 1844). 2 vols.
New Orleans libraries: HB, GS.

112. Troplong, Raymond Theodore. *Commentaire du contrat de societe en matiere civile et commerciale* (Brussels, 1843).
New Orleans libraries: HB, GS.

113. Troplong, Raymond Theodore. *Commentaire du mandait* (Brussels, 1847).
New Orleans libraries: HB.

114. Troplong, Raymond Theodore. *Commentaire du pret, du depot, du sequestre et des contrats aleatoires* (Brussels, 1845).
New Orleans libraries: HB.

115. Veitía Linage, Joseph de. *Norte de la contratación de las Indias Occidentales* (Seville, 1672). 2 vols. in 1.
Inscription on verso of t.p.: "E. B. O'Quinn / City of Mexico". Bookseller's ticket: "Librería Nacional y Estrangera de Charlain y Fernandez ... Habana".

116. Vilanova y Mañes, Senen. *Materia criminal forense* (Madrid, 1807). 4 vols.
Bookseller's ticket in v.1: Hortal y Compañia, Cádiz. Cancelled inscription on t.p.

117. Villadiego Vascuñana y Montoya, Alonso de. *Instrucción política y práctica judicial* (Madrid, 1788).
New Orleans libraries: MA, ML, GS.

118. Vinnius, Arnoldus. *Institutionum imperialium commentarius academicus, et forensis* (Lyon, 1761). 2 vols.
New Orleans libraries: MA, SL, GS.

119. Vinnius, Arnoldus. *Jurisprudentiae contractae, sive, partitionum juris civilis* (Lyon, 1748).
Bound at the end of vol. 2 of #118.

120. Vinnius, Arnoldus. *Tractatus quatuor: nempe de pactis, jurisdictione, collationibus, et transactionibus* (Lyon, 1748).
Bound at the end of vol. 2 of #118. New Orleans libraries: SL.

121. Voet, Joannes. *Commentarius ad Pandectas* (Geneva, 1778). 2 vols.
Inscription on the half-title of vol. 1: "Supreme Court Library / Austin, Texas / June 7 1882". New Orleans libraries: MA, SL, EL, GS.

122.* Walter, Ferdinand. *Manual del derecho eclesiástico universal* (Paris, 1852).

123.* White, Joseph M. *A new collection of laws ... of Great Britain, France and Spain: relating to the concessions of land* (Philadelphia, 1839). 2 vols.
"To which is prefixed Judge Johnson's translation of Azo and Manuel's Institutes of the civil law of Spain."

124.* Zamora y Coronado, José María, comp. *Biblioteca de legislación ultramarina* (Madrid, 1844-1849). 7 vols.
New Orleans libraries: GS.

Return to Journal Index

From the Western Frontier to the Digital Frontier: A History of the State Law Library

By Amy Small

"[A] lawyer without books would be like a workman without tools."

– Thomas Jefferson[1]

1840–92: The Early Years

During the Republic of Texas and the early days of statehood, legal materials were scarce. Public law libraries were unheard of and practitioners primarily depended on private collections. While some private collections were dazzling in scope, such as John Hemphill's 2,400-volume collection,[2] even the collections of respected and successful lawyers were more often meager holdings of fewer than 100 books.[3] In one astonishing case, the chief justice of Brazoria County opted to spend "considerable sums on clothes and liquor" and owned only two law books at the time of his death.[4] Even if they owned numerous books, frontier attorneys and judges were in practice limited to the number of books that they could stuff into their saddlebags.[5]

The paucity of Republic-era law libraries may have been as much due to the difficulty of having books delivered and distributed as it was to the relatively small number of legal publishers. In a letter to a friend, Chief Justice John Hemphill related a book-delivery mishap worthy of the Wild West: "These books were landed at Linnville and from thence carried off by the Indians in their late incursion. They were recaptured afterward on the Plumb Creek Battle ground and most of them sent to Victoria."[6] The books in question, a volume of the United States Supreme Court Reports and an English summary of Spanish law, suffered considerably before making their way back to the judge. The books were "strung to the Indians' saddles by strings run through the

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1 Thomas Jefferson to Thomas Turpin, 5 February 1769, in *The Papers of Thomas Jefferson*, vol. 1, ed. Julian P. Boyd (Princeton: Princeton University Press, 1950), 24.

2 *Journals of the Sixth Congress of the Republic of Texas 1841–1842*, December 20, 1841, 198. Available online: https://lrl.texas.gov/scanned/CongressJournals/06/houseJournalsCon6_201.pdf#page=2.

3 William Ransom Hogan, *The Texas Republic: A Social and Economic History* (Norman: University of Oklahoma Press, 1946; Austin: Texas State Historical Association, 2006), 252. References are to the Texas State Historical Association edition.

4 *Ibid.*, 251–52.

5 *Ibid.*, 251.

6 John Hemphill to Washington D. Miller, 24 August 1840, Washington Daniel Miller Papers, Texas State Library and Archives.

volumes."[7] The book thieves forced a woman captured in the same heist to read aloud from the volumes for their amusement, which caused an observer to declare that "[d]eath would have been preferable."[8] Once all parties tired of that, several pages were torn out and used as cigarette rolling papers.[9]

Whatever the cause, the scarcity of legal materials is reflected in the quality of the scholarship in legal opinions of the time. Chief Justice Thomas J. Rusk's opinions from 1840, collected in Dallam's Reports, did not cite to any legal authorities whatsoever. In *The History of the Supreme Court of the State of Texas*, J. H. Davenport posits that this could be due to the fact that "in the infancy of the Republic there were practically no authorities accessible to the court," rather than a lack of "great learning" on Chief Justice Rusk's part, as a contemporaneous biographer suggested.[10] Other opinions from this time period explicitly lament the lack of access to legal resources. Several of Chief Justice Hemphill's opinions qualify his decisions due to "the want of authorities."[11] In one case, *Republic v. Dewees*, the Court declined to rule on a point of law entirely because they felt they could not properly consider it "without Books and the assistance of counsel."[12]

The Texas Supreme Court was formally established in 1846 without an accompanying library or devoted research materials.[13] The new Supreme Court justices surely must have been plagued by the same problems that justices in the Republic of Texas faced, because in 1849 Attorney General John W. Harris delivered a report to Governor George T. Wood containing an impassioned plea for the acquisition of a law library. Harris recognized the danger that inadequate legal resources posed to the fledgling body of civil law in Texas. "The system which is being formed by the decisions of our Supreme Court, when tested by the legal lights of other states and countries may be found (in many important particulars) at variance with some of the longest established principles of the law."[14] Creating and perpetuating a body of law based on faulty legal fundamentals, he warned, endangered "thousands of innocent citizens."[15] He urged immediate action to supply the Supreme Court with materials so that the Court could adjudicate correctly from that point forward. "Remedies come too late when the mischief has already been done."[16]

His request did not fall on deaf ears. The following year, the Legislature issued a joint

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7 Mary A. Maverick, *Memories of Mary A. Maverick* (Lincoln: University of Nebraska Press, 1989), 44.

8 Z. N. Morrell, *Flowers and Fruits in the Wilderness: or, Thirty Six Years in Texas and Two Winters in Honduras* (Waco, TX: Baylor University, 1972), 130–31.

9 Maverick, 44.

10 J. H. Davenport, *The History of the Supreme Court of the State of Texas* (Austin: Southern Law Book Publishers, 1917), 15.

11 *Smith v. Townsend*, Dallam 569, 570 (Tex. 1844).

12 *Republic v. Dewees* (Tex. 1845), 65 Texas L. Rev. 382, 405 (Paulsen rep. 1986).

13 An Act to Organize the Supreme Court of the State of Texas, approved May 12, 1846, 1st Leg., R.S., 1846, *Laws of the State of Texas* 249, reprinted in 2 H.P.N. Gammel, *The Laws of Texas 1822–1897,* 1555. Available online: https://texashistory.unt.edu/ark:/67531/metapth6726/m1/1559/.

14 *Journal of the House of Representatives of the State of Texas*, 3rd sess., October 27, 1849, 44. Available online: https://lrl.texas.gov/scanned/HouseJournals/3/houseJournal3rdLeg001.pdf#page=38.

15 *Ibid*.

16 *Ibid*.

resolution granting the Supreme Court an appropriation of $100 "for the purchase of thirteen volumes of a collection of the laws, decrees, edicts, regulations, etc."[17] Four short years later, in 1854, the Legislature transferred the Secretary of State's collection of law books to the Supreme Court and appropriated the eye-popping sum of $15,000 for the purchase of books.[18]

To put the size of that budget and its purchasing power into perspective, the private law library of New Orleans attorney Henry Adams Bullard was auctioned in 1851, bringing in $362.91 for the 411 volumes in the collection.[19] Fifteen thousand dollars was enough to procure a world-class law library.

The responsibility for purchasing material for the Library of the Supreme Court rested with the Chief Justice. At the time of this windfall, that position was held by John Hemphill, owner of the fabulously extensive legal collection referenced above. Chief Justice Hemphill's involvement in the development of early Texas law cannot be overstated. As a legal scholar, he had a particular passion for Spanish and Mexican law. He was conversant in Spanish and helped to incorporate concepts from Spanish law, such as homestead exemptions and community property, into the Texas Constitution.[20] His interest in Spanish civil law is reflected in the purchases of this era; a Supreme Court Library catalog from 1880 shows that Spanish law titles make up a third of the civil law collection and were all purchased prior to Hemphill's departure from the Court in 1858.[21]

From this point, the Supreme Court Library began to take shape with new guidelines issued from the Legislature every few years. Beginning in 1860, the Secretary of State was required to furnish all three branch libraries of the Supreme Court with sufficient copies of case reports, statutes, and digests so that the individual judges plus every branch library would receive a complete set of each. In 1864, the clerk of the Court was mandated to be the librarian, responsible for "keeping and preserving the books of the Supreme Court."[22] The duties of the clerk/librarian were further expanded in 1866 to include the creation of catalogs of the libraries' books. The 1866 bill also required that the libraries be open to public use.[23] The lack of any other law libraries

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[17] Joint Resolution Making an Appropriation for the Purchase of Certain Books for the Use of the Supreme Court, approved February 11, 1850, 3rd Leg., R.S., ch. 141, *Special Laws of the Third Legislature of the State of Texas*, 94, reprinted in 3 H.P.N. Gammel, *The Laws of Texas 1822–1897*, 764. Available online: https://texashistory.unt.edu/ark:/67531/metapth6728/m1/768/.

[18] An Act to Provide Books for the Use of the Supreme Court, approved February 4, 1854, 5th Leg., R.S., ch. 34, *Laws of the Fifth Legislature of the State of Texas,* 49, reprinted in 3 H.P.N. Gammel, *The Laws of Texas 1822–1897,* 1493. Available online: https://texashistory.unt.edu/ark:/67531/metapth6728/m1/1481/.

[19] Robert Feikema Karachuck, "A Workman's Tools: The Library of Henry Adams Bullard," *American Journal of Legal History* 42 (1998): 161.

[20] Thomas W. Cutrer, "Hemphill, John," *Handbook of Texas Online*, http://www.tshaonline.org/handbook/online/articles/fhe13.

[21] Michael Widener, "The Civil Law Collection of the Texas Supreme Court," Yale Law School Legal Scholarship Repository, https://digitalcommons.law.yale.edu/ylss/30/, p. 9.

[22] An Act to Amend the Fourth Section of an Act to Organize the Supreme Court of the State of Texas, approved May 12, 1846, 10th Leg., 2d C.S., ch. 2, *General Laws of the Tenth Legislature* 3, reprinted in 5 H.P.N. Gammel, *The Laws of Texas 1822–1897,* 809. Available online: https://texashistory.unt.edu/ark:/67531/metapth6727/m1/825/.

[23] An Act to Confer the Office of Librarian on the Clerks of the Supreme Court, approved November 7, 1866, 11th Leg., R.S., ch. 105, General Laws of the State of Texas 98, reprinted in 5 H.P.N. Gammel, *The Laws of Texas 1822–1897,* 1016. Available online: https://texashistory.unt.edu/ark:/67531/metapth6727/m1/1032/.

open to the public in the area meant that local attorneys and law students often stopped in to discuss and debate, creating a convivial environment for the keen legal minds of the time.

By 1882, these developments had transformed the Supreme Court Library from a nonentity to a celebrated collection of "all the learning—continental, English, and American."[24]

1892–1959: Stretched Thin



"Supreme Court Library," ca. 1897. Smoot-Graham Papers, Briscoe Center for American History.

In 1892, the Galveston and Tyler branches of the Supreme Court and its libraries were disbanded by the Legislature, and the Court settled into its permanent home in Austin.[25] The contents of the now-defunct branches were consolidated into one Supreme Court Library, which was housed in the north wing of the newly constructed Capitol. The Supreme Court Library and the Texas State Library shared a beautiful space which is now home to the Legislative Reference Library.

After the succession of legislation that formalized the Supreme Court Library in the 1860s, the Library remained mostly untouched by the Legislature until the 1950s. The Library did not receive any further large infusions of money, and its day-to-day operations were left in the capable hands of its librarian, Lawrence K. Smoot. Although the clerk of the Supreme Court was statutorily designated as the librarian, then-clerk Dr. Charles S. Morse decided that he much preferred to hire someone to serve as a librarian to manage the Court Library. Morse hired Smoot as librarian in 1896, marking the beginning of a long career with the Supreme Court. In a 2011 Senate Resolution honoring his daughter, Jane Smoot, he was recognized as the longest-tenured state employee ever, with sixty-six years of service to the state.[26] The one major instance in which the Legislature meddled with Library operations came in the 1907 legislative session. The House of Representatives adopted a resolution to keep the Supreme Court Library open

[24] George W. Paschal, Preface to *Reports of Cases Argued and Decided in the Supreme Court of the State of Texas*, vol. 28 (St. Louis: Gilbert Book Company, 1882), 7.

[25] Act approved April 13, 1892, 22nd Leg., 1st C.S., ch. 14, *General Laws of Texas* 19, reprinted in 10 H.P.N. Gammel, *The Laws of Texas 1822–1897,* 383. Available online: https://texashistory.unt.edu/ark:/67531/metapth6733/m1/385/.

[26] Tex. S. Res. 546, 82nd Leg., R.S., 2011 (honoring Jane Smoot). Available online: https://lrl.texas.gov/legis/billSearch/BillDetails.cfm?legSession=82-0&billTypeDetail=SR&billnumberDetail=546.

from 8 a.m. to 11 p.m., seven days a week, with a mere pittance appropriated for "additional help."[27] Ever dedicated, Smoot manned the Library day and night by himself for months, straining his health to the point that he needed an entire year to recover.

Smoot recalls the general disorder that greeted him in his early days on the job. "The judges would send a porter to the library to locate a book. If the book was missing, the porter would just bring the book next to the one that was missing."[28] This lackadaisical attitude towards library resources can be seen in photographs of the Capitol basement around the turn of the century. Books are piled on the ground, spilling into disorderly heaps of haphazard pages.

A constitutional amendment adopted in 1945 increased the number of Supreme Court justices from three to nine.[29] The newly tripled Court, plus the additional support staff, placed further strain on library resources. The number of library staff did not increase proportionally,



Supreme Court Library in the basement of the Capitol, ca. 1909, image 1/103-127.
Courtesy of Texas State Library and Archives Commission.

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[27] *Journal of the House of Representatives of the Regular Session of the Thirtieth Legislature of Texas*, January 28, 1907, 261. Available online: https://lrl.texas.gov/scanned/Housejournals/30/01281907_18_253.pdf#page=9.

[28] Jack Pope, "The Path to the Texas State Law Library: Our Forgotten Heritage" (unfinished draft, undated), 18.

[29] Tex. S.J. Res. 8, 49th Leg., R.S., 1945 *Tex. Gen. Laws* 1043. Available online: https://lrl.texas.gov/legis/billSearch/BillDetails.cfm?legSession=49-0&billTypeDetail=SJR&billnumberDetail=8.

stretching the one librarian and one porter that the Legislature allotted to the Supreme Court even thinner. By the 1950s, stagnant funding and suffocating overcrowding in the Capitol had taken its toll on the Supreme Court Library. Books and records were stored in disarray in barns in north Austin, literally piled to the rafters.[30] The justices' offices were separated into two groups on the third and fourth floors of the Capitol, while the library itself was inconveniently still located on the second floor.[31] The library collection was scattered throughout hallways, with a makeshift "huddle room" on the third floor. Valuable volumes had to be kept in secure locations to protect them from theft,[32] possibly by attorneys who feared never being able to find a specific book again if they returned it.[33] In this state, the library was all but useless, and in fact was rarely used by members of the Court. Justice Joe Greenhill recalls that he "certainly never checked out a book"[34] from the "poor excuse for a library."[35]

Recognizing the desperate need for adequate facilities, Representative Bill Daniel led a charge in the Legislature for the construction of additional buildings in the Capitol area to house the Courts, the State Library, and the Office of the Attorney General. His initial attempts were not successful, but Representative Daniel was undeterred, and a constitutional amendment approving the use of Confederate pension funds for a new Supreme Court Building was finally approved by voters six years later in 1954.[36] The Supreme Court Building was completed in 1959.

While the new building temporarily gave the Library some much needed space, it did not address any of the deeper problems it was facing. The Legislature had neglected to appropriate money for any furniture or additional staff for the new library. Frances Horton, the long-suffering librarian since 1947, soldiered on with only a porter to assist her with book repairs and shelving. She regularly exhausted her book budget partway through the year and had no funds for treatises or textbooks.[37]

The beleaguered Library found a champion in Jack Pope upon his election to the Supreme Court in 1964. Justice Pope found the Library to be sorely lacking compared to the Bexar County Law Library at his previous post as Court of Appeals Justice in San Antonio. Upon joining the high court, he expressed shock that everyone seemed satisfied with such a poorly-maintained library. His dismay prompted Chief Justice Robert Calvert to ask him to assume administrative oversight of the Library in 1969. Justice Pope immediately got to work and took his concerns directly to the Legislature. He recalled a particularly effective appearance before the Senate Committee in his interview in *A Texas Supreme Court Trilogy:*

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[30] David B. Gracy II, *This Best but Last Chance: Representative Bill Daniel's Fight for a State Courts and Office Buildings in Texas, 1949-1954* (Austin: Graduate School of Library and Information Science, University of Texas at Austin, 1995), 8.

[31] James A. Elkins, "State Courts Housing," *Texas Bar Journal* 17, no. 6 (June 1954): 385.

[32] *Ibid.*, 386.

[33] Gracy, *This Best but Last Chance,* 6.

[34] Pope, "Path to the Texas State Law Library," 27.

[35] *Ibid.,* 26.

[36] Tex. S.J. Res. 10, 53rd Leg., R.S., 1953, *General and Special Laws of Texas*, 1172. Available online: https://lrl.texas.gov/legis/billSearch/BillDetails.cfm?legSession=53-0&billTypeDetail=SJR&billnumberDetail=10.

[37] Jack Pope, "Addendum—Judicial Opinions & Administrative Reform, March 3, 1992," *A Texas Supreme Court Trilogy*, *Volume 3*, ed. H.W. Brands (Austin: Jamail Center for Legal Research, 1998), 96.

> I asked Chief Justice Calvert if he would consent to my appearing before the Senate Committee to request funds, and he heartily agreed. I appeared and displayed to the Committee a textbook published in 1920 by Professor Cooley. I told the Committee that I was showing them the most recent work in the Supreme Court Library about constitutional law and that most law firms in Texas had more recent and scholarly materials than the Texas Supreme Court.[38]

Justice Pope worked closely with Frances Horton to develop a plan to improve the Library's standing. A critical component of this plan was the solicitation of evaluations of the Library's collection and staff from local professional librarians. Horton and Pope reached out to Alfred J. Coco, law librarian at the Bates School of Law at the University of Houston; Professor Roy Mersky from the Tarlton Law Library at the University of Texas School of Law; and Dr. Dorman Winfrey and Lee Brawner of the Texas State Library, for their expertise. To no one's surprise, the evaluations found that the Library was "in desperate need of additional staff" and that the budget was "wholly inadequate" to maintain a collection that had value but was sadly neglected.[39]

Thinking that bringing the Library out from under the shadows of the Supreme Court might improve its standing, Justice Pope and John Onion, Presiding Judge of the Court of Criminal Appeals, asked State Senator Jack Hightower and Representative Don Cavness to sponsor a bill changing the name of the Supreme Court Library to the State Law Library. The critical shortcomings described in the Library evaluations spurred the Legislature to act, and the bill sailed through both chambers without a single dissenting vote.[40] The legislation also had the purpose of expanding the Library's patron base to include citizens of the state.

On June 8, 1971, Governor John Connally, once a part-time employee in the Supreme Court Library,[41] signed the bill creating the State Law Library as an independent agency.

1971–2004: A New Beginning

The first order of business for the new agency was to get the Library's collection back into shape. To do so, the Library needed three things: more staff, a systematic analysis of what the collection had and what it lacked, and funding.

The newly formed Board of Directors, consisting of Justice Jack Pope from the Supreme Court, Judge Wendell Odom from the Court of Criminal Appeals, and Alfred Walker from the Office of the Attorney General, approved the hire of Jane Olm as Assistant Librarian. Olm brought to the job four years of experience at the University of Texas's Tarlton Law Library and a master's degree, making her the first professionally trained librarian in the Library's history. She also brought her personal electric typewriter. As of 1968, the new Library had no catalog[42] and the

[38] *Ibid*., 96.

[39] Pope, "Path to the Texas State Law Library," 32, citing a letter from Alfred J. Coco to Frances Horton, June 6, 1969.

[40] An Act Relating to the Creation of the State Law Library, approved June 8, 1971, 62nd Leg., R.S., enrolled vote tally: https://lrl.texas.gov/LASDOCS/62R/SB528/SB528_62R.pdf#page=23.

[41] Pope, "Path to the Texas State Law Library," 25.

[42] Frances Horton to Chief Justice Robert Calvert, 18 January 1968. Robert Wilburn Calvert Papers, Texas State Library and Archives.



First State Law Library Board: standing, Judge Wendell Odom, Justice Jack Pope, and Alfred Walker; seated, Marian Boner, Director of the State Law Library. Reprinted with permission from the September 1972 issue of the *Texas Bar Journal*.

staff had no real grasp of what the collection contained, presenting obvious problems for Library patrons. Jane Olm and her typewriter set to work on the necessary but monumental task of creating a card catalog from scratch. In addition to solving basic usability problems, a complete catalog would allow the staff to identify areas of the collection that needed development and to submit targeted requests for funding to the Legislature.

As far as funding, the development of the state budget for the 1972–73 biennium was taking place at the same time that the bill establishing the State Law Library as a separate agency was moving through the Legislature. The initial appropriations bill granted the Supreme Court $20,000 per year for the operation of the Law Library in 1972 and 1973.[43] Governor Preston Smith vetoed the entirety of the 1973 appropriations,[44] causing this portion of the budget discussions to be deferred to a special session that would not start for a full year. Justice Pope seized upon this extra time and again came to the Library's rescue. His advocacy to the Legislature resulted in a total of

[43] An Act Appropriating Money for the Support of the Judicial, Executive, and Legislative Branches of the State Government, approved June 20, 1971, 62nd Leg., R.S., ch. 1047, *General and Special Laws of Texas*, 3421. Available online: https://lrl.texas.gov/scanned/ApproBills/62_0/62_R_article01.pdf.

[44] Veto Message of Gov. Smith, S.B. 11, 62nd Leg., R.S. (1971). Available online: https://lrl.texas.gov/scanned/vetoes/62/sb11.pdf.

$106,173 being set aside from the budgets of the Supreme Court, the Court of Criminal Appeals, and the Office of the Attorney General for the operation of the State Law Library in the 1973 fiscal year.[45] This huge increase in budget, along with a $30,538 grant from the Criminal Justice Council, permitted the Library to purchase six hundred new titles and fill gaps in the collection that had accrued over time.

Frances Horton retired in February of 1972, concluding twenty-five years as the steadfast, if often underappreciated, law librarian for the State of Texas. The Library's Board offered the Director position to Marian Boner, who readily accepted. Boner was an attorney, Associate Professor at the University of Texas School of Law, Reference Librarian at Tarlton Law Library, and according to Jane Olm, "a bundle of energy" and a "tireless legal scholar."[46]

Boner's enthusiasm was apparent in the incredible headway Library staff made in her first two years as Director. The Library hired two additional librarians, a cataloger, and an acquisitions librarian, doubling the size of the professional staff almost overnight. The collection was carefully evaluated and more than 9,000 out-of-date or duplicate volumes were discarded or sold.[47] She acquired modern equipment, such as electric typewriters, an ultrafiche reader/printer, a coin-operated Xerox machine, and an electric adding machine, for the use of staff and patrons. The Library extended its hours to remain open in the evenings. The Library also took on the responsibility of assisting incarcerated Texans with locating copies of their case files, a huge task that formerly fell to the State Bar. During this era, Boner somehow also managed to find the time to write *A Reference Guide to Texas Law and Legal History: Sources and Documentation*, a thoroughly researched overview of the evolution of Texas's legal framework and relevant resources.

Boner made concerted efforts to increase awareness of the Library's new and improved services and collection. She published an update on the Library's progress in the *Texas Bar Journal* in 1976, explaining what the newly established agency had to offer and emphasizing its utility to practicing attorneys. She urged attorneys from all across Texas to visit the Library to "get acquainted with its collection."[48]

The net effect of many of the changes that Boner implemented was to transform the Library from a mere collection of books to a research facility that was managed by professionals. The librarians she hired had been educated in the most effective ways to match patrons with the information they were seeking, which heightened the services that patrons could expect to receive. She and her two successors, Jim Hambleton and Kay Schlueter, were all active in regional and national law librarian organizations. They held leadership roles in these organizations and spoke at conferences, raising the profile of the Library as a truly professional entity.

Jim Hambleton succeeded Marian Boner as Director in 1981. Like Boner, Hambleton was an attorney and former Head of Public Services at UT's Tarlton Law Library. Hambleton's primary

[45] An Act Appropriating Money for the Support of the Judicial, Executive, and Legislative Branches of the State Government, 62nd Leg., 3d C.S., ch. 1, 1972 *General and Special Laws of Texas*, 15. Available online: https://lrl.texas.gov/scanned/ApproBills/62_3/62_3_article01.pdf.

[46] Pope, "Path to the Texas State Law Library," 41.

[47] *Ibid.*, 42.

[48] Marian Boner, "The State Law Library: A Resource for the Practicing Bar," *Texas Bar Journal* 39, no. 2 (1976): 160.

professional interests were exploring the quirks of Texas law and considering how attorneys and librarians could use new computing technology to improve access to information. In 1983, he correctly predicted that "[t]he day will arrive when most attorneys do their legal research at a terminal beside their desk, at a considerable saving of time and with greater accuracy than presently."[49] As Director of the State Law Library, he did his part to encourage the legal community to embrace computers. His direction set an enduring precedent in the Library: it would adopt cutting-edge technology that would allow patrons to conduct more efficient and effective research. In 1984, the very first year that personal computers were available through a state purchasing contract, Hambleton bought two for the Library.[50] It was also during his tenure as Director that the Library acquired Westlaw and Dialog terminals.

Hambleton was also an enthusiastic and prolific author. During his time as Director he published frequently, mostly in the *Texas Bar Journal*, as author or coauthor of over twenty articles from 1982 to 1985. He had a keen mind for discussing aspects of legal research that would interest and affect practicing attorneys. As a representative of the State Law Library, his constant presence in legal periodicals reflected well on the Library as a serious and professional center of legal thought. He, along with librarian Karl Gruben, edited the second edition of Marian Boner's *Reference Guide to Texas Law and Legal History*.

The Library's success in recreating itself as a relevant and vital member of the legal community was tempered by the fact that it was once again housed in inadequate and crumbling facilities. The Supreme Court Building housing the Library was showing its age. The building itself was falling apart and staff and patrons were regularly startled by exploding fluorescent light fixtures.[51] An outdated electrical system and asbestos ceiling posed additional hazards.[52] The Library was bursting at the seams with hundreds of new titles and no amount of conversion to microfiche alleviated the need for more space. In time, the Library even ran out of room for microfiche storage.

To address these concerns, the Legislature authorized the construction the Price Daniel Building and the renovation of the Supreme Court Building with new library space in 1985. By the time construction broke ground in May of 1991, Kay Schlueter had risen to the role of Director. The renovations required the relocation of the books and equipment that the Library had so carefully acquired in recent years. The temporary location in the new Price Daniel Building was not large enough to accommodate the 110,000 to 120,000 volumes the Library now owned, and so the majority of the collection was housed in a makeshift storage area in a parking garage. The garage was plagued with problems: horrendous smells, fluctuating temperatures, and mosquitoes.[53] Worst of all, patrons were frustrated by their inability to access over half of the Library's collection. Library staff suffered these professional indignities for two years, bringing to mind the disjointed and chaotic conditions that the Supreme Court Library endured in the 1950s.

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[49] James Hambleton and David Matone, "Computers and the Law," *Arkansas Lawyer* 17 (1983): 28.

[50] James Hambleton, "FY84 Annual Report of the State Law Library," 1997/116, Texas State Library and Archives.

[51] *Ibid*.

[52] *Ibid*.

[53] "Justice in Cramped Quarters," *Texas Bar Journal* 54, no.10 (1991): 59.



Library collection housed in a parking garage, ca. 1991.

In another stroke of misfortune reminiscent of the mid-century move from the Capitol to the Supreme Court Building, the Legislature yet again did not provide funding for furniture for the new space. Kay Schlueter rallied supporters of the Library to form the Friends of the State Law Library, known as FOSLL. FOSLL organized a fundraising effort whereby donors could honor loved ones by etching their names on brass dedicatory plaques on the chairs and tables that their donations made possible. In Schlueter's own words:

> When planning our renovated space and moving back into our building several years ago, we wanted to find a way to make this more than just another state office building. We wanted to recapture the warmth of our old surroundings and to have some obvious ties to the history and development of our legal system. We couldn't think of a more appropriate way of doing this than recognizing the men and women who have shaped our system through the years.[54]

These pieces of furniture remain a lovely feature of the Library even today, and the occasional visits by donors and their families to see their chairs continue to delight the staff.

[54] Kay Schlueter, email message to author, June 10, 2019.

When not enduring the horrors of the parking garage workspace, Schlueter's focus as Director was to continue Marian Boner's outreach efforts to the legal community. Schlueter assembled a strong network of Library advocates and volunteers. The Library regularly drew more than1,000 volunteer hours per year. Volunteers lightened the burden of clerical work and created the Library's first website. FOSLL grew into a fundraising powerhouse, capable of raising donations equal to about 25 percent of the Library's annual appropriations.[55] Schlueter also involved county law libraries in the Library's services for the first time. Her push to have local government law libraries included in the first statewide LexisNexis and Westlaw contracts resulted in incredible cost savings at the local level. She organized and hosted the first meeting of the Texas County Law Librarians, which served to encourage cooperation and collaboration among the state's government law libraries.

The dedication ceremony for the new State Law Library facilities took place on May 27, 1993. The ceremony's program reflected the support system that Schlueter and her predecessors had built. Representatives from all corners of the local legal community spoke in celebration of the Library and the ideals of justice and knowledge that it represented: Supreme Court Justice Nathan Hecht, Court of Criminal Appeals Presiding Judge Michael McCormick, State Solicitor Renea Hicks, former Director Jim Hambleton, Judge John Powers of the Third Court of Appeals, and local law firm librarian Joan O'Mara.

Tony Estrada replaced Kay Schlueter as Director in 2002 and continued FOSLL and the Library's volunteer program as an important support system for the Library. He also honored Jim Hambleton's tradition of pursuing technology to improve the dissemination of information by initiating a historical statutes digitization project. Supported by a grant from the Litigation Section of the State Bar of Texas, the Library scanned the complete text of the 1879–1925 Revised Civil Statutes and posted them on the Library's website to be used by the public for free.

2004–Present: The Digital Era

Dale Propp became the Director of the Library in May of 2007. The first challenge he faced was the continued disconnect between the rising costs of keeping the Library's print collection up to date and the amount of funding provided by the Legislature. For years, the Library saw publishing costs increase steeply without a commensurate increase in budget. In the Administrator's Statement for the Library's FY 2008-09 Legislative Appropriations Request, Propp stated that "[i]n a comparison between the years 2000 and 2004, publishing costs have increased 38 percent."[56] Over that same time period, total funding for the Library *decreased* by 7.5 percent.

This ever-present problem for the Library continued mounting in the 2010–11 biennium, when a statewide fiscal setback caused by the 2008 recession required all state agencies to cut their budgets by 5 percent. The budget crunch reached critical point in 2011 with the Legislature's proposed budget for fiscal years 2012–13. The first draft of the state budget gave the State Law Library **zero** dollars in appropriated funds,[57] prompting fears that the Library would be eliminated

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[55] Kay Schlueter, "What You'll Find at the State Law Library," *Texas Lawyer* 8, no. 47 (February 22, 1993): 10.

[56] Dale Propp, "FY2008-09 Legislative Appropriations Request: Administrator's Statement," August 4, 2006.

[57] HB 1–Introduced, 82nd Leg., R.S., available on the Legislative Budget Board's website: http://www.lbb.state.

as an agency altogether. Thanks to the support of the legal community and key legislative leaders who understood the Library's value, the Library was eventually funded but received a devastating 22 percent cut to its operating budget.[58]

The only way for the Library to continue functioning on such a shoestring budget was to render deep cuts to the Library's print collection. In 2011, the Library was forced to cancel subscriptions for many treatises and periodicals. These cuts are still felt to this day, as in the ensuing years the Library's funding for print materials would never keep pace with rising costs, let alone increase enough to allow for the renewal of canceled subscriptions.

A common refrain during the fraught budget hearings leading up to the 82nd Legislative Session was: If Austin has so many other law libraries—why do we need the State Law Library? At first glance, Austin does have an embarrassment of riches when it comes to law libraries: Travis County Law Library, Tarlton Law Library at the University of Texas, the Legislative Reference Library, and the State Law Library. However, each library has a unique focus and serves the public in a distinct way. The other libraries serve the needs of local citizens (Travis County Law Library), the Legislature (Legislative Reference Library), and law students and legal scholars (Tarlton Law Library), and they do it exceedingly well. However, none of these libraries is mandated to serve the staff of state agencies, the practicing legal community, and the general public on a statewide basis in the way the State Law Library is.

Understanding that the Library needed to distinguish itself among the other law libraries in Austin and recognizing that recent advances in technology finally made true statewide support possible, in 2013 Propp began the development of an initiative to make the Library's resources available from a distance and expand its reach beyond the Austin city limits. Prior to this time, the Library would field calls and letters from citizens throughout the state, but the ways in which librarians could assist those remote patrons was limited. Patrons outside the Austin area certainly didn't have the ability to use the Library's resources to research on their own.

A complete overhaul of the Library's website in 2013 transformed it from a simple page that only offered basic details about the Library's services to a sophisticated site that contained usable legal information. Librarians began using software called LibGuides to create research guides on topics that members of the public frequently asked about, such as common law marriage and small claims court. These research guides link to the text of the law itself, as well as explanatory articles which put the legal jargon of the statutes into context. At the time of their debut in January 2013, the Library offered guides on only six topics: Common Law Marriage, Historical Texas Statutes, Historical Texas Court Rules, Name Changes, Occupational Drivers Licenses, and Small Claims Court.[59] A year later, there were four times as many guides, garnering *thirty-five times* the number of monthly views. The Library currently offers fifty-two guides that receive approximately 70,000 total monthly visits.

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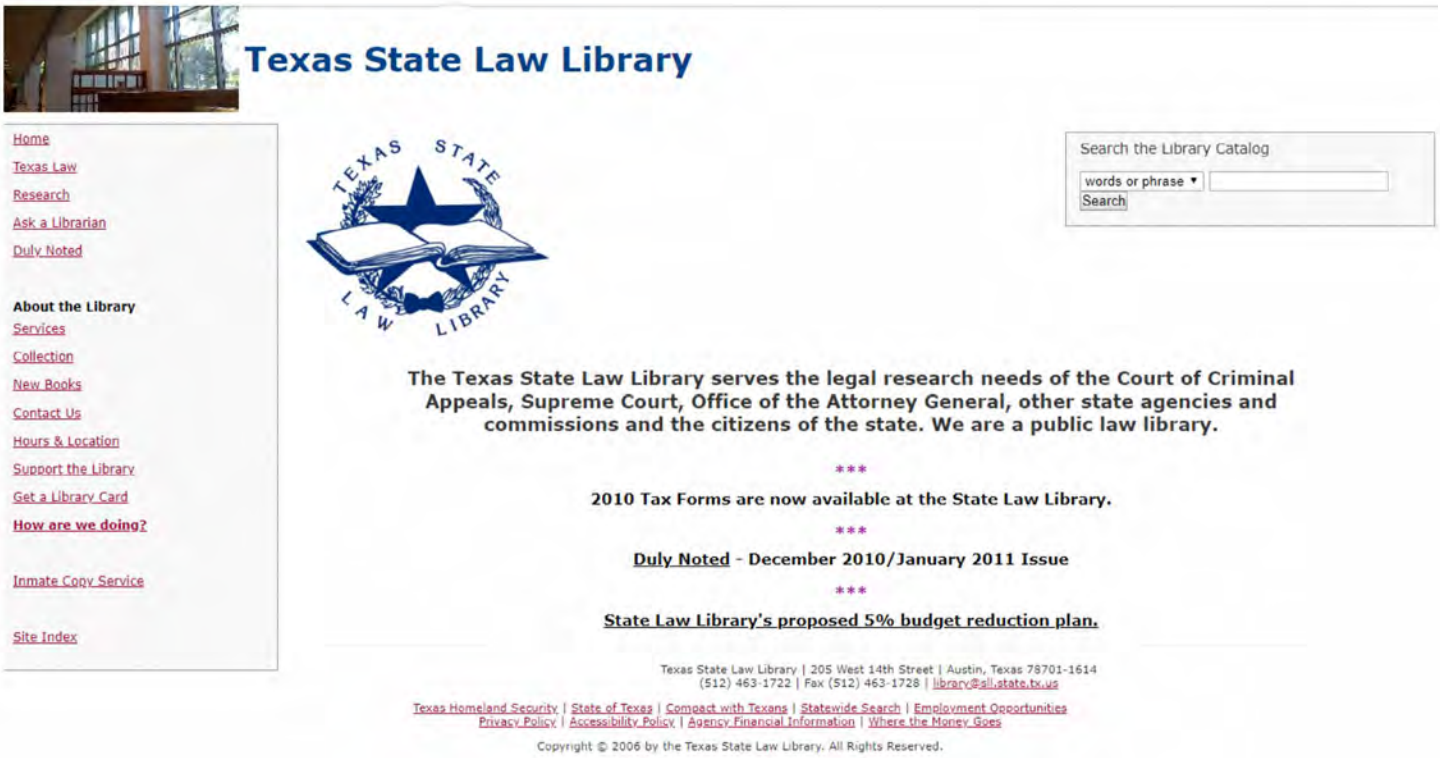
tx.us/Documents/Appropriations_Bills/82/2012-13%20General%20Appropriations%20Act%20-%20House%20HB1%20Introduced.pdf.

[58] General Appropriations Bill, approved June 17, 2011, 82nd Leg., R.S., ch. 1355, *General and Special Laws of Texas*, 4028. Available online: https://lrl.texas.gov/scanned/ApproBills/82_0/82_R_ALL.pdf.

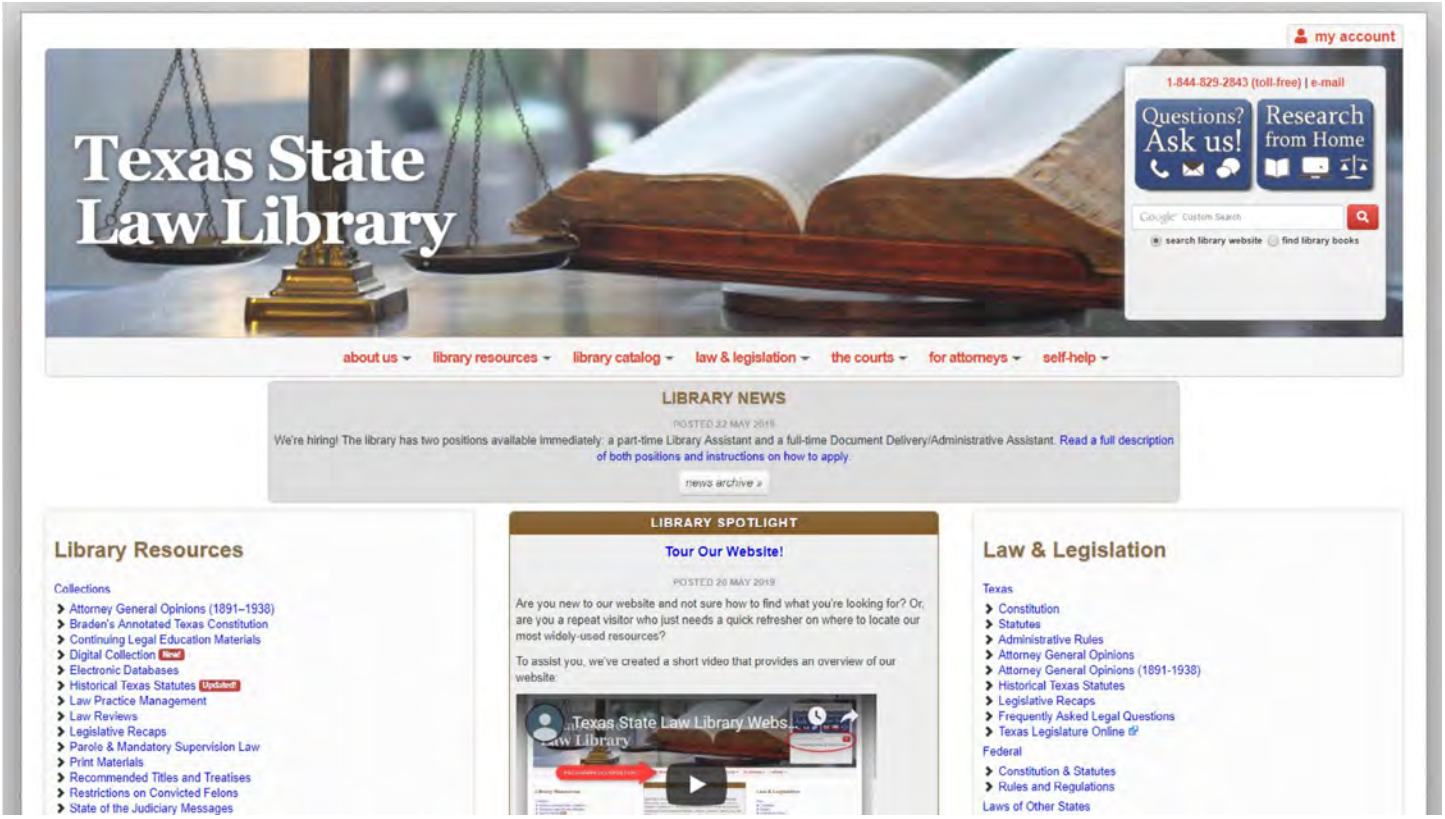
[59] "Research Guides by Topic," State Law Library, as it appeared on January 18, 2013, courtesy of the Internet Archive Wayback Machine, http://web.archive.org/web/20130118104200/http://www.sll.state.tx.us/self-help/research-guides-by-topic/.



Above: Screen capture of the Law Library website on June 5, 2002, courtesy of the Wayback Machine, https://web.archive.org/web/20020605192000/http://www.sll.state.tx.us/.



Above: Screen capture of the Law Library website on February 19, 2011, courtesy of the Wayback Machine, https://web.archive.org/web/20110219233642/http://www.sll.state.tx.us/.



Screen capture of the Law Library website on June 5, 2019.

In an effort to increase the amount of legal information available through the website, Propp continued and expanded Tony Estrada's historical statute digitization initiative, eventually securing grant funding and copyright permission to digitize the Library's historical statutes through 1984. Before the completion of this project, tracking these statutes down was difficult—only Baylor University and the State Law Library held a complete collection.

The crown jewel in the Library's efforts to make reputable legal information widely available is the Remote Access Program, established in 2015. As legal publishers began producing e-books and online databases, Propp recognized an opportunity to use these resources to support Texans in far-flung parts of the state. The first stage of the program involved getting permission from publishers to allow the Library to make their products available remotely. Assistant Director Leslie Prather-Forbis's careful and patient negotiations convinced numerous publishers that allowing the public to access their materials through the Library would not only not affect their profits, but it would also generate immense goodwill with the legal community.

Next, Library staff needed a way to control access to these resources and limit it to registered patrons. The Library switched public catalog systems in 2015, moving from the State Library-controlled SirsiDynix to Koha, an open-source, web-based application. Koha offered many new features that SirsiDynix lacked, including online patron self-registration. Self-registration reduced barriers to registering for a Library account, as patrons no longer had to come to the Library in person to sign up. It also offered a way for librarians to gatekeep access to the resources they planned to offer remotely.

With all the details worked out, the Library could now curate a digital collection for remote use. Prather-Forbis, who also served as Acquisitions Librarian, selected and purchased approximately five hundred e-books, ranging from self-help titles for the legal novice to specialized practice guides and treatises for attorneys. The contracts she negotiated for electronic access to legal databases were put into place. Suddenly, Library patrons had a wealth of high-quality resources available to them outside the Library's walls. At the time of these purchases, only 59 of Texas's 254 counties maintained any type of law library collection, not all of which were open to the public or staffed by professionals who could assist with research. Rural Texans who could not afford an attorney were often left with few ways to obtain accurate legal information. The digital resources the Library provided at no charge to all Texans, regardless of their economic status, opened up a whole new world of information.

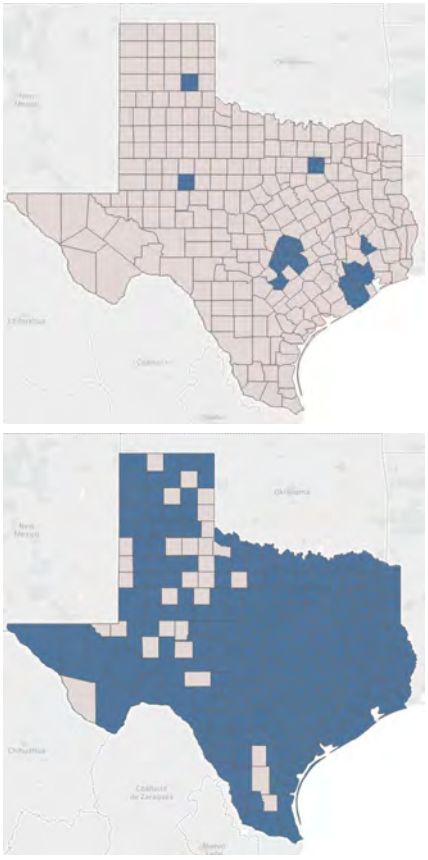
To demonstrate the sheer scale of the volume of information available to State Law Library patrons through the Remote Access Program, one must only look at the Library's collection of legal periodicals throughout time. In 1912, the Supreme Court Library did not receive any current periodicals.[60] At the same time, the University of Texas only received four legal periodicals.[61] Today, HeinOnline's Law Journal Library includes 2,707 titles that patrons can access using their State Law Library account, at any time of day or night.

2019: Looking to the Future

Beginning in 2013, Propp approached the Legislature each session with requests for more stable funding for the Remote Access Program. Even as usage of the program climbed steadily, indicating a real demand for the service, the Legislature declined to grant the additional funding that would sustain the program. Finally, in 2019, the Library received the good news that the Legislature had at last appropriated funds to support its efforts to provide digital legal resources.

The Library also received funding to continue the digitization project and make additional important Texas historical texts freely available via the State Law Library website. Former Library Director Marian Boner's classic *A Reference Guide to Texas Law and Legal History,* including links to digital editions of many of the key resources highlighted, is slated for inclusion in this project.

Today, the Library has had 14,721 users register from 223 of 254 counties in Texas, indicating considerable success in efforts to support citizens statewide. It is doubtful that visitors to the Supreme Court Library 150 years ago could ever have imagined the size and reach of the modern State Law Library's collection. The Library is committed to continuing the traditions



Maps showing the increase in counties with registered State Law Library patrons, July 2013 to May 2019.

[60] John Boynton Kaiser, "Law and Legislative Library Conditions in Texas," *Law Library Journal* 4, no. 4 (January 1912): 29.

[61] *Ibid.*, 30.

of excellence established by previous Supreme Court librarians and State Law Library Directors, albeit with a wider audience.



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State Bar of Texas Digital Archives Portal is Launched

By Caitlin Bumford



Texas Supreme Court Justices and Commissioners rise for invocation at the Court's centennial ceremony, January 13, 1940. Left to right: Commissioners S. H. German, J. D. Harvey, and John E. Hickman, Associate Justice John H. Sharp, Chief Justice Calvin M. Cureton, Associate Justice Richard Critz, and Commissioners William M. Taylor, Graham B. Smedley, and Charles S. Slatton.

The State Bar of Texas Archives Department is pleased to announce the launch of our new Digital Archives Portal. The Bar's Archives Department has spent the last two years, with the help of software vendor MINISIS, Inc., developing a tool to provide public access to selected digitized archival materials from our collection. That tool is now up and running and ready to help you with your Texas legal history research needs.

Developed with governance transparency in mind, the Digital Archives Portal currently provides full-text searchable access to all State Bar of Texas Board of Directors meeting minutes dating back to the first meeting in 1940. Documenting eighty years of formal actions by Texas lawyers' representatives to the Bar, these minutes tell the story of the Texas legal profession's evolving interests and concerns over time.

The Digital Archives Portal also contains a complete library catalog of the Archives' collections of TexasBarBooks publications (1961–2019) and TexasBarCLE course articles (1960s–1998). Viewed as a historical resource, these publications can illustrate for researchers how experienced attorneys taught certain legal concepts, and what law practice advice they shared with their colleagues at a given moment in Texas legal history. The publications themselves are not available in digital format on the portal, but once researchers find them in the catalog, they can contact the Bar's Archives Department staff to gain access to them.

Additionally, the portal showcases over 700 photographs that have been published in the pages of the *Texas Bar Journal* since its first issue in 1938. These photos offer a glimpse into



Guests of the Texas Supreme Court stop to inspect items in a State Archives historical exhibit at the Court's centennial ceremony, January 13, 1940. Looking at the Bible used by the Supreme Court in 1840 are representatives of the three principal Texas law schools at the time: Dean Ira P. Hildebrand of The University of Texas, Dean C. S. Potts of S.M.U, and Judge James P. Alexander of Baylor (elected Chief Justice later that year). Highway Commissioner Robert Lee Bobbitt and Judge Walter E. Monteith of the Galveston Court of Civil Appeals study a century-old letter from the exhibit.

the professional lives of everyday Texas lawyers and the leaders of the profession. The photos shown below, which are available on the portal, document a ceremony commemorating the Texas Supreme Court's centennial on January 13, 1940. These images illustrate the long tradition of honoring Texas court history that the Texas Supreme Court Historical Society carries on to this day.

We invite you to browse or search the collections at www.texasbar.com/digitalarchives and look forward to helping you find information you can use to tell the stories of the appellate courts of Texas.



CAITLIN BUMFORD *is Director of Archives at the State Bar of Texas.*

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Supreme Court of Texas Archive Update

By Tiffany Gilman

While the majority of Texas Supreme Court case file records and early documents are in the custody of the Texas State Library and Archives Commission and must be accessed through them, the Supreme Court Clerk's Office also maintains some of the Court's inactive official records. Many of the Court's records are judicial work product, and therefore confidential. For instance, the Court maintains its own archive of study/conference memoranda and opinion drafts that are unavailable to outside researchers. However, the Court also generally maintains the following records open to the public.

Case Files

In 2016, thanks to assistance from Justice Jeff Brown, the "A" and "B" Supreme Court case files from 1945 to 1980 were transferred from the University of Houston's digital archive and uploaded into the Texas Appellate Management E-file System (TAMES), greatly expanding online access for legal research on this time period.

Additionally, in 2018 the Court Clerk's Office scanned over 50,000 case records from microfiche format into digital PDF. Soon these fully searchable "C" (1981-1990), "D" (1991-1994), and 1994-1999 case files will also be uploaded to TAMES and made readily available to the public. We believe these efforts, when completed, will result in the largest online repository for court case records in the country.

Prior to the Court's move to all-digital filings in 2014, the Clerk's Office maintained permanent paper copies of all case records. Paper files from 2005-2013 are currently maintained onsite and are largely accessible online via TAMES as well.

All other paper records prior to 2005 are currently in the custody of the Texas State Library and Archives Commission. TSLAC is the only place to view Supreme Court case files dated prior to 1945.

Administrative Orders

This series records Court actions and decisions not specifically related to its function of hearing cases. Topics range from State Bar administration, to attorney disciplinary orders, to resolutions honoring attorneys and judges, to orders establishing and repealing rules, among other miscellaneous administrative topics. In 2011 all administrative orders (also known as "miscellaneous docket orders") dating from 1990 onward were digitized and uploaded onto

the Court's website. Prior to 1990, these orders were filed topically, and the Clerk's Office has maintained this original order.

Court-Appointed Organization Materials

The Court frequently appoints professionals to organizations that analyze legal issues and make actionable recommendations to the Court. The Clerk's Office maintains files on the proceedings of these committees, including drafts, public commentary, correspondence, and final reports. Examples of these organizations include the Board of Law Examiners, Board of Disciplinary Appeals, Texas Access to Justice Commission, Texas Court Records Preservation Task Force, and Texas Judicial Council.

Rules History Materials

This series consists of the working files for the Court-promulgated rules of procedure in Texas. These include Rules of Civil Procedure, Rules of Appellate Procedure, Rules of Evidence, Rules of Judicial Administration, and others. The oldest of these files date back to 1940 and relate to the Rules of Civil Procedure. The Supreme Court also maintains files on approved local rules for lower courts and administrative judicial regions. Rules history files include redlines, drafts, correspondence, and public commentary on proposed rule changes. Some rules materials related to internal judicial work product, however, are confidential and may not be publicly viewed.

Supreme Court Advisory Committee (SCAC) materials

The Supreme Court Advisory Committee consists of legal professionals appointed by the Court and was established in 1940 to assist the Court in the promulgation of the Rules of Civil Procedure. Since then SCAC has met regularly to assist the Supreme Court in the continuing study, review, and development of rules of administration and procedure for Texas courts. The Committee drafts rules as directed by the Court; solicits, summarizes, and reports to the Court the views of the bar and the public on court rules and procedures; and makes recommendations for change.

Committee meetings are held after public notice and are open to the public. Records are made of all Committee proceedings, which the Court maintains. In 2011, SCAC agendas, minutes, transcripts, and supplementary materials dating back to 1982 were digitized and uploaded to the Supreme Court's website for greater public access. Earlier files are in paper format.

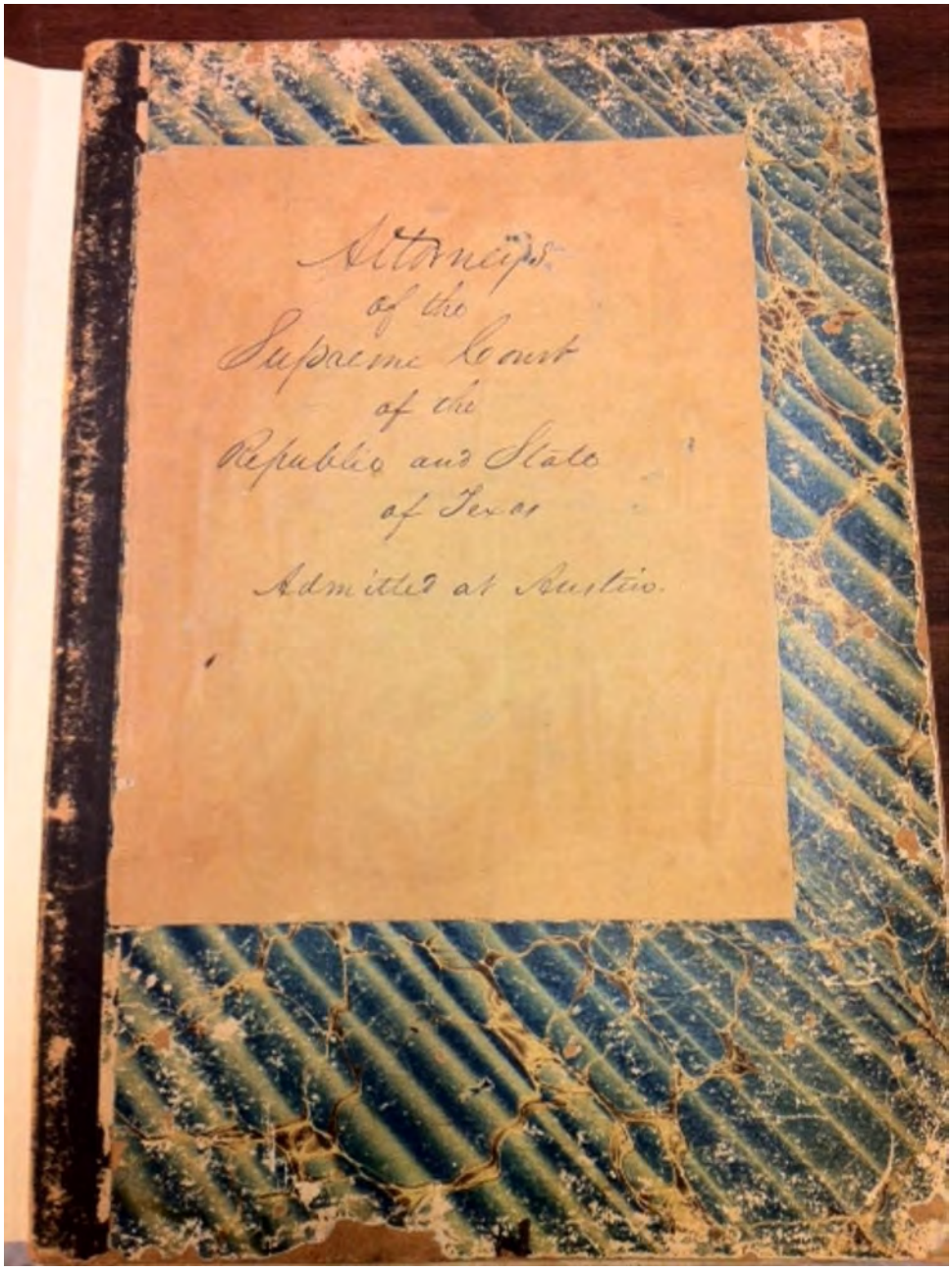
Rolls of Attorneys

These large ledgers document the Court's role in registering attorneys for practice from 1840 to the establishment of the State Bar of Texas in 1939. Seven ledgers and several lists record the names of new attorneys admitted to law practice in Texas over nearly a century. Generally, the entries include the attorney's name, date of registration, and city of residence. Sometimes additional notes on the registrant are included in the ledger, written in the margins. The Clerk's Office also maintains a card catalog of all licensed attorneys, which ends in 2002. This series is commonly used in genealogical research.

Minute Books and Docket Books

Minute books provide a summarized account of the proceedings and decisions of the Court, dating from 1943-present. Information found in the minutes includes the date, justices present and cases discussed, application or cause number, parties, actions, county and district court of origin, and the date a mandate was issued. They also include resolutions, memorials, and administrative orders.

Beginning with the "C" cases, docket books function as a brief entry of the Court's proceedings. Several types of dockets are present in this series: file dockets, docket sheets, and chambers dockets.



The Supreme Court Archives includes this ledger of new attorneys licensed to practice before the Supreme Court in the Republic and after statehood until 1939.

Oral Argument Audiovisual Recordings

Oral arguments in the Court were often video recorded, beginning with *Edgewood v. Kirby* in 1989, sporadically throughout the 1990s, frequently in the 2000s, and regularly since 2007. Other notable oral argument recordings include *Seagram's v. McGuire* (1991) and *Edgewood v. Meno* (1994). Some arguments are audio only, and some are in video format. All videotaped oral arguments have been digitized.

A 2008 Clerk's Office initiative digitized hundreds of oral argument cassette tape recordings dating back as far as 1980. The digital audio files were then uploaded to TAMES and attached to their case entries. These are now all freely available to the public, and the original cassette tapes have also been retained.

Court Ceremony and Event Audiovisual Recordings

Court ceremonies and important events in the late twentieth century were often recorded, beginning in 1985 on audio cassette tapes, and later on a variety of video formats. Some examples include the investitures of Justices Raul Gonzalez, Greg Abbott, Alberto Gonzales, and James Baker, as well as those of Chief Justices John Hill and Wallace Jefferson. Memorials, retirement ceremonies, press conferences, and portrait dedications are also common subjects. The videos were digitized in 2012, and the audio tapes are digitized upon request.



Videocassettes in the Court's collection.

Supreme Court Justices' Biographical Files

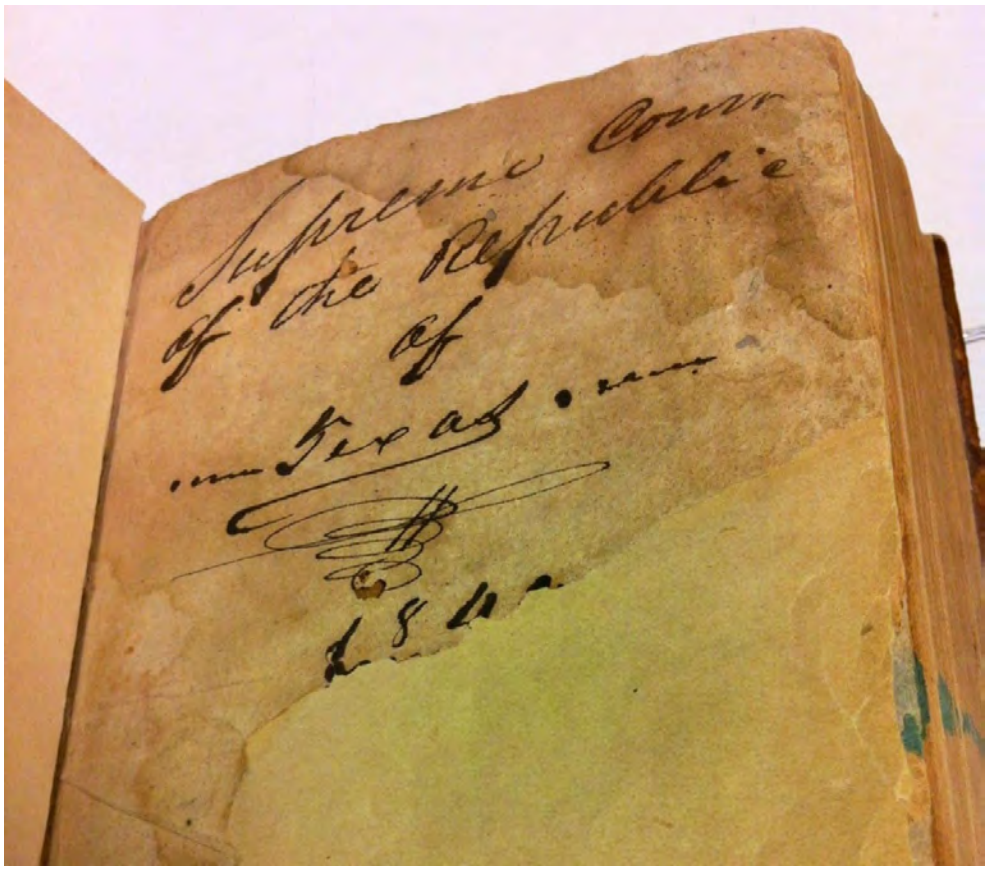
The Court has long maintained biographical vertical files on its justices, with the earliest files dating back to the 1930s; however, the bulk of this series dates from the mid and late twentieth century. These files may include newspaper clippings, *Texas Bar Journal* clippings, speech transcripts, authored articles, ceremony materials, campaign materials, personal photographs, correspondence, college transcripts, armed services papers, and other materials related to the lives of individual justices. Justice William Pierson's correspondence is notable, as it contains letters to and from his troubled son, who would later murder both the judge and his wife.

The "Sam Houston" Bible, c. 1816

Perhaps the Court's most precious historical artifact, the Supreme Court "Sam Houston" Bible has been used in nearly every Governor's inauguration for 150 years. Today it is still used for this purpose, as well as for the investitures for new justices on the Court, judges on the Court of Criminal Appeals, and other government officials. This simple King James Bible is over 200 years old and is accompanied by a well-known legend attributing it to Sam Houston. The inscription on the torn flyleaf indicates that it has been in the Court's possession since the days of the Republic. The Bible is available to historians and researchers for viewing only by special permission of the Court.

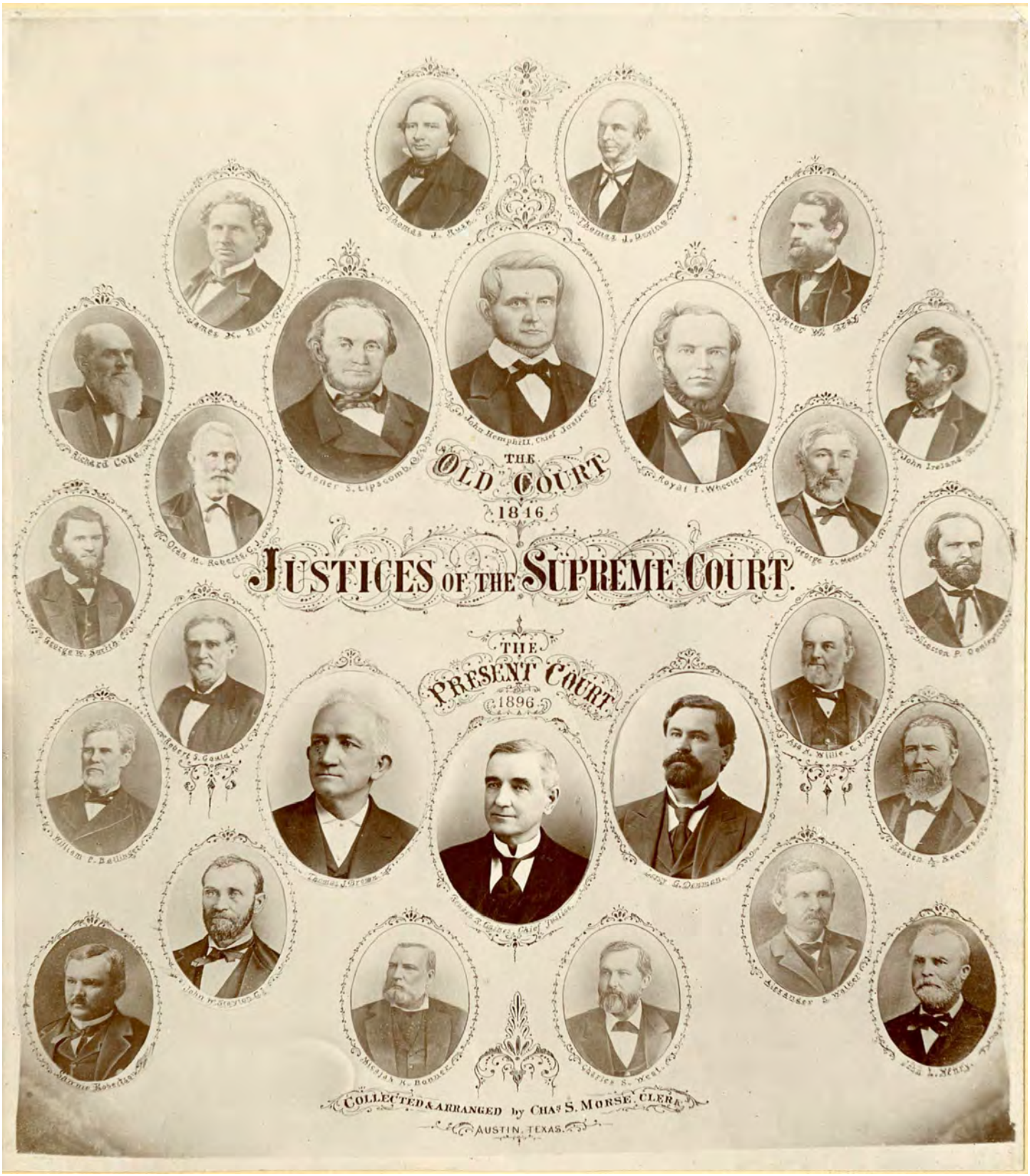
Photographs

These photographic prints largely date from the mid to late twentieth century, although the archive also contains a handful dating from the 1920s to 1940s. Commonly documented subjects include Court group photos, individual justices' portraits, law clerk photos, special events, ceremonies, and Court staff.





Top: A prized artifact in the Supreme Court's collection is the Republic-era "Sam Houston" Bible. Bottom: Among the photos in the Supreme Court Archives is this shot of the 1923-34 Cureton Court. Pictured left to right are Justice Thomas Greenwood, Chief Justice C. M. Cureton, and Justice William Pierson.



This Cabinet Card from the Court's fiftieth anniversary in 1896 features portraits of the 1846 and 1896 justices.

All records requests are subject to authorization by the Court, and all authorized viewings are by appointment only. Please contact Tiffany Gilman, Supreme Court Archivist, at tgilman@txcourts.gov or 512-463-2665 for more information on these materials, to request copies, or to set up a research appointment.



TIFFANY GILMAN *is Archivist at the Supreme Court of Texas.*

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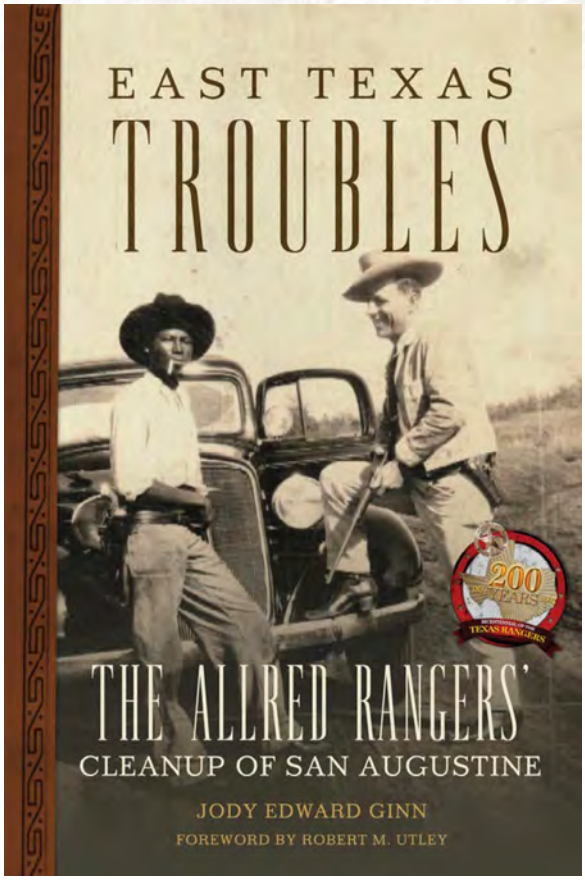
Recent Books of Interest

Compiled by Marilyn P. Duncan

When the gun smoke cleared, four men were found dead at the hardware store in a rural East Texas town. But this December 1934 shootout was no anomaly. San Augustine County had seen at least three others in the previous three years, and these murders in broad daylight were only the latest development in the decade-long rule of the criminal McClanahan-Burleson gang. Armed with handguns, Jim Crow regulations, and corrupt special Ranger commissions from infamous governors "Ma" and "Pa" Ferguson, the gang racketeered and bootlegged its way into power in San Augustine County, where it took up robbing and extorting local black sharecroppers as its main activity.

After the hardware store shootings, white community leaders, formerly silenced by fear of the gang's retribution, finally sought state intervention. In 1935, fresh-faced, newly elected governor James V Allred made good on his promise to reform state law enforcement agencies by sending a team of qualified Texas Rangers to San Augustine County to investigate reports of organized crime. In *East Texas Troubles*, historian Jody Edward Ginn tells of their year-and-a-half-long cleanup of the county, the inaugural effort in Governor Allred's transformation of the Texas Rangers into a professional law enforcement agency.



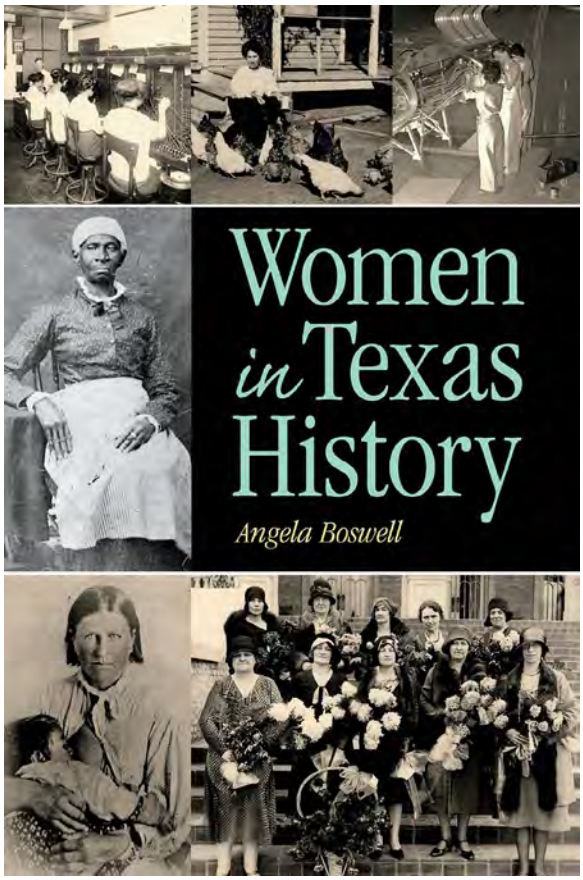
East Texas Troubles: The Allred Rangers' Cleanup of San Augustine
by Jody Edward Ginn
University of Oklahoma Press
July 2019
https://www.oupress.com/books/15109934/east-texas-troubles

Besides foreshadowing the wholesale reform of state law enforcement, the Allred Rangers' investigative work in San Augustine marked a rare close collaboration between white law enforcement officers and black residents. Drawing on firsthand accounts and the sworn testimony of black and white residents in the resulting trials, Jody Ginn examines the consequences of such cooperation in a region historically entrenched in racial segregation.

In this story of a rural Texas community's resurrection, Ginn reveals a multifaceted history of the reform of the Texas Rangers and of an unexpected alliance between the legendary frontier lawmen and black residents of the Jim Crow South.

In recent decades, a small but growing number of historians have dedicated their attention to analyzing the role of women in Texas history. From early Native societies to astronauts, *Women in Texas History* assembles those published works into the first book to cover the full scope of Texas women's history.

Angela Boswell uses three broad themes to tie together the narrative of women in Texas history. First, the physical and geographic challenges of Texas as a place significantly affected women's lives, from the struggles of isolated frontier farming to the opportunities and problems of increased urbanization. Second, the changing landscape of legal and political power continued to shape women's lives and opportunities, from the ballot box to the courthouse and beyond. Finally, Boswell demonstrates the powerful influence of social and cultural forces on the identity, agency, and everyday life of women in Texas. In challenging male-dominated legal and political systems, Texan women have had a lasting impact on class, religion, community organizations, literary and artistic endeavors, and more.



Women in Texas History
by Angela Boswell
Texas A&M University Press
October 2018
https://www.tamupress.com/book/9781623497071/women-in-texas-history/

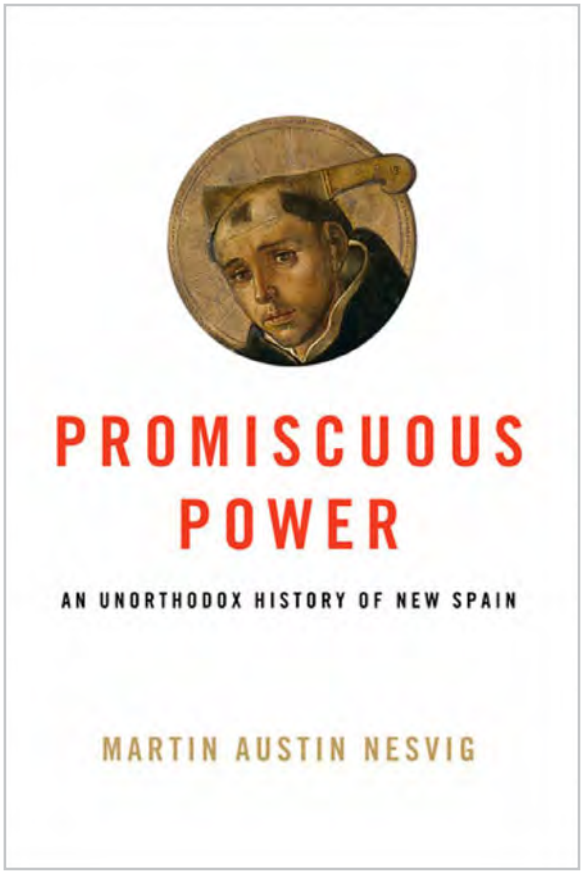
From the Preface by the author:

"Some of the first histories about women were 'compensatory,' in that scholars searched the past to tell the stories of some famous or infamous women. During the next stage of women's histories, researchers uncovered the stories of unsung women who had 'contributed' to the traditional narrative, usually as forgotten or behind-the-scenes actors. Both contributory and compensatory histories, however, tended to celebrate the remarkable woman without leading to a historical understanding of most women's lives. When researchers began looking at history through women's eyes, concentrating on the spaces in which women spent their lives—such as family and reproduction, work, community building, and social reform—a fuller understanding of the history of women emerged. This text does celebrate remarkable women, but the overarching story is about how unremarkable women coped with daily life, acted as agents in their own lives, and participated in the historical changes that shaped women's future opportunities."

The book is part of the Women in Texas History Series, sponsored by the Ruthe Winegarten Memorial Foundation.

Scholars have written reams on the conquest of Mexico, from the grand designs of kings, viceroys, conquistadors, and inquisitors to the myriad ways that indigenous peoples contested imperial authority. But the actual work of establishing the Spanish empire in Mexico fell to a host of local agents—magistrates, bureaucrats, parish priests, ranchers, miners, sugar producers, and many others—who knew little and cared less about the goals of their superiors in Mexico City and Madrid. Through a case study of the province of Michoacán in western Mexico, *Promiscuous Power: An Unorthodox History of New Spain* focuses on the prosaic agents of colonialism to offer a paradigm-shifting view of the complexities of making an empire at the ground level.

Presenting rowdy, raunchy, and violent life histories from the archives, Martin Austin Nesvig reveals that the local colonizers of Michoacán were primarily motivated by personal gain, emboldened by the lack of oversight from the upper echelons of power, and thoroughly committed to their own corporate memberships. His findings challenge some of the most deeply held views of the Spanish colonization of Mexico, including the Black Legend, which asserts that the royal state and the institutional church colluded to produce a powerful Catholicism that crushed heterodoxy, punished cultural difference, and ruined indigenous worlds. Instead, Nesvig finds that Michoacán—typical of many frontier provinces of the empire—became a region of refuge from imperial and juridical control and formal Catholicism, where the ordinary rules of law, jurisprudence, and royal oversight collapsed in the entropy of decentralized rule.



Promiscuous Power:
An Unorthodox History of New Spain
by Martin Austin Nesvig
University of Texas Press
July 2018
https://utpress.utexas.edu/books/nesvig-promiscuous-power

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U.S. Supreme Court Justice Neil Gorsuch

Is Featured Speaker at the 24th Annual John Hemphill Dinner

By Marilyn P. Duncan

The Honorable Neil M. Gorsuch, Associate Justice of the United States Supreme Court, will be the keynote speaker at this year's John Hemphill Dinner. The dinner is scheduled for Friday, September 6, 2019, at the Four Seasons Hotel in Austin.



Justice Gorsuch was confirmed as the 113th Justice of the U.S. Supreme Court in April 2017. Prior to that, he served for eleven years as a Judge on the U.S. Court of Appeals for the Tenth Circuit in Denver, Colorado.

Born in Denver, Neil Gorsuch moved to Washington D.C. in his youth when his mother Anne became the first female Administrator of the U.S. Environmental Protection Agency. After graduating from Harvard Law School, Gorsuch clerked for Judge David B. Sentelle of the United States Court of Appeals for the District of Columbia Circuit. He then went on to clerk at the Supreme Court for Justices Byron White and Anthony Kennedy. In 1995 he entered private law practice, and in 2004 he earned a doctorate in legal philosophy from Oxford University. In 2005–06 he served as Principal Deputy Associate Attorney General at the U.S. Department of Justice. He was appointed to the U.S. Court of Appeals for the Tenth Circuit in 2006.

This year's John Hemphill Dinner will be presided over by Marcy Hogan Greer, 2018-19 President of the Texas Supreme Court Historical Society. The highlight of the evening will be an on-stage conversation with Justice Gorsuch led by Texas Supreme Court Justice Nathan L. Hecht. The program will also include a presentation of the Eleventh Annual Chief Justice Jack Pope Professionalism Award by the Texas Center for Legal Ethics. The award recognizes a Texas appellate lawyer or judge who demonstrates the highest level of professionalism and integrity.

For ticket and event information, visit the Society's website at http://www.texascourthistory.org/hemphill or email tschs@sbcglobal.net.



24th Annual John Hemphill Dinner





When: **Friday, September 6, 2019**

Where: **Grand Ballroom, downstairs**
Four Seasons Hotel
San Jacinto and Cesar Chavez Streets
Austin, Texas

Time: 6:00 p.m. Invitation-only Reception with Dinner Speaker
6:30 p.m. Reception with Host Bar
7:00 p.m. Dinner

Sponsorship Levels:

Hemphill Sponsorship
(2 tables/seats 20)—$10,000

Pope Sponsorship
(1 table/seats 10)—$5,000

Advocate Sponsorship
(1 table/seats 10)—$2,500

Individual Tickets: $200

Wine service during dinner is included in price

Dress: Business suits and dinner dress

Speaker: **Hon. Neil Gorsuch**
Associate Justice
Supreme Court of the United States
In Conversation with
Hon. Nathan L. Hecht
Chief Justice
Supreme Court of Texas

Program: Presentation of Chief Justice Jack Pope Professionalism Award

Guests: Members of the Supreme Court of Texas and their spouses are guests of the Society

Questions: Contact TSCHS Office
(512) 481–1840;
tschs@sbcglobal.net
Mary Sue Miller,
Administrative Coordinator

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National History Association Recognizes the *Journal*'s Excellence

By the TSCHS Journal Staff





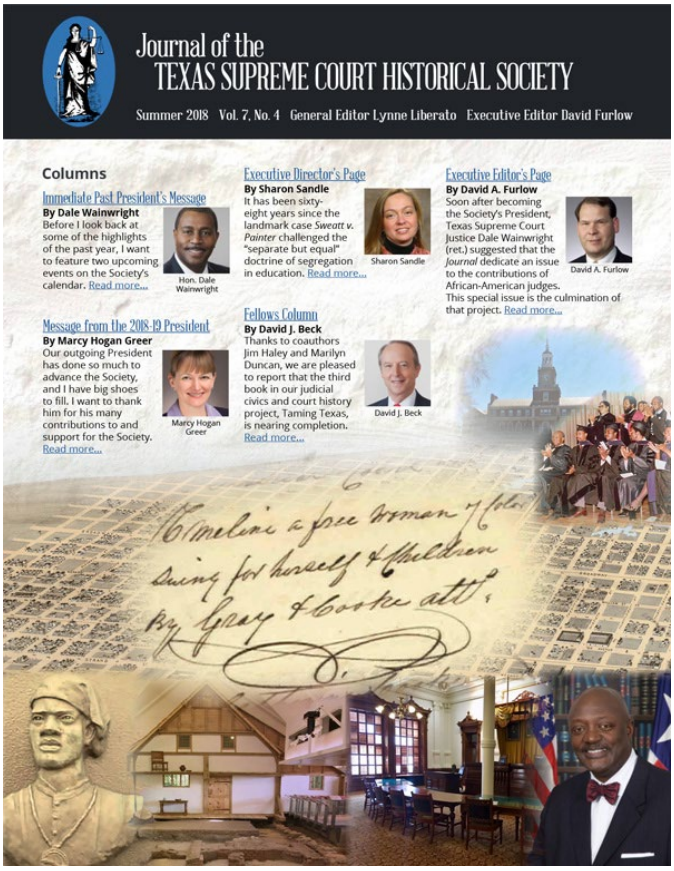
Left: Philadelphia, site of AASLH's 2019 Annual Meeting. Photo from the AASLH website.
Right: AASLH Excellence in History Awards.

This year, the American Association for State and Local History's Awards Committee conferred its prestigious Award of Excellence in History on only one organization in the Lone Star State: the Texas Supreme Court Historical Society. The Society received the news from AASLH representative Aja Bain in late May:

> On behalf of the American Association for State and Local History (AASLH), I am delighted to inform you that the publication *Journal of the Texas Supreme Court Historical Society* was selected as a 2019 Award of Excellence winner by the Leadership in History awards committee. The AASLH Leadership in History Awards is the nation's most prestigious competition for recognition of achievement in state and local history. We congratulate you for the work that has brought this honor.

The award specifically honors the Summer 2018 issue of the *Journal*, which examined the history of African American judges, justices, and magistrates from 1642 to the present, from Maryland to Texas. AASLH will present the award during its annual meeting in Philadelphia on August 30, 2019. Four Society representatives will attend the conference and accept the award on the Society's behalf: former Justice and former Society President Dale Wainwright, Executive Director Sharon Sandle, Journal Executive Editor David Furlow, and Journal Managing Editor Marilyn Duncan.

AASLH's Award of Excellence recognizes outstanding history programs, projects, and people when compared with similar activities nationwide. "Each year the awards program bestows this









The contents pages of the award-winning Summer 2018 issue display the range of topics and the talents of *Journal* graphics designer David Kroll.


Hon. Dale Wainwright

honor on organizations and individuals who model best practices and innovative work in our field," said Nicholas Hoffman, AASLH National Awards Chair and Managing Director of Education and Visitor Experience at the Missouri Historical Society. "These fifty award winners show the importance of using history to address contemporary issues and working with communities to share history that is relevant to them."

Thanks to the Society's 2017-18 President, Justice Dale Wainwright. During his term as President, Justice Wainwright made this AASLH award possible by inspiring our *Journal* team to dedicate a special issue to the history of African American judges. His final President's Message appears in that issue.

Thanks to Executive Director Sharon Sandle and 2018-19 President Marcy Greer. Sharon Sandle and Marcy Greer supported the Society's nomination at every step of the process. In addition, Sharon's column "Recognizing the Paths and Accomplishments of Texas's African American Judges" set the tone for every article and feature that followed in the special *Journal* issue.

Thanks to our Summer 2018 *Journal* Authors:

- **The Hon. Wallace Jefferson**, former Texas Supreme Court Chief Justice, shared important life lessons gleaned from the example his father set for him, in "The Constitution Imparts Responsibilities as Well as Rights."


Hon. Wallace B. Jefferson

- Prairie View A&M author/scholar **Michael Hurd** provided a professional Texas historian's story of one judge's unprecedented accomplishments in "Texas Court of Criminal Appeals Judge Morris Overstreet," spotlighting the first African American elected to a statewide Texas office.

- Attorney/historian **John Browning** contributed the most recent of his series of excellent historical articles with his biography-in-progress "Chief Justice Carolyn Wright: A Profile in Excellence."

- **The Hon. Murry Cohen**, First Court of Appeals Justice, and **Virgie Mouton**, Assistant Dean of the Thurgood Marshall School of Law in Houston, prepared complementary judicial biographies of the same lion of the law—Justice Henry E. Doyle, the first African American Justice of a Texas Court of Appeals. Their personal recollections of Justice Doyle, along with the photos and other images they provided, offered new perspectives on one of Texas's most important appellate judges.

- **The Hon. Andrew Edison**, U.S. Magistrate Judge for the Southern District of Texas in Galveston, authored a discerning portrait of Senior U.S. District Court Judge Kenneth M. Hoyt, the first African American man to serve as a federal judge in Texas.

- Attorney, author, and American Bar Association leader **Melanie Bragg** shed new light on the Hon. Gabrielle Kirk McDonald, the first African-American appointed to serve on a federal Texas court and the third African American appointed in the United States. We're also grateful to Judge McDonald for participating in Melanie's in-depth interview regarding her early years and her international service presiding over the first International Criminal Tribunal for the Former Yugoslavia.

- **The Hon. Evelyn McKee**, retired Austin Municipal Court Presiding Judge and acclaimed author, penned an essay, "The Lady on the Bus Stop," that told the inspiring story of a single incident that led her to attend law school and become a judge.

- The life story of **the Hon. Harriet M. Murphy**, the first permanently appointed African American woman judge in Texas, was an important addition to the award-winning *Journal* issue. We thank the University of Texas at Austin's Division of Diversity and Community Engagement for allowing us to reprint the story from their book, *As We Saw It: The Story of Integration at the University of Texas at Austin*. **Marilyn Duncan** compiled and illustrated the article and added a piece about Judge Murphy's memoir, *There All the Honor Lies*.

- **Stephen Pate**, an attorney and historian who has contributed many fine articles to this *Journal*, provided an in-depth analysis of Reconstruction's impact on the Texas federal judiciary when African Americans first began thinking of becoming judges and justices in Texas.

- Maryland historian Dr. Henry M. Miller and his colleagues the archaeologists and historians of Historic St. Mary's City, Maryland, first made **David Furlow** aware of Mathias de Sousa's story as America's first African American magistrate, a man elected in 1642. David's Executive Editor Column placed de Sousa's story in the wider context of African American contributions to judicial history.

- **Bill Kroger** wrote a call to action for the Summer issue: "The Time to Preserve Texas's Slave Case Records is *Now*." It has led to fruitful discussions about judicial records preservation by the members of the Texas State Historical Association's Archives Committee.

- *Journal* Deputy Executive Editor **Dylan Drummond**, then President-elect and now President of the Society, contributed a scholarly article documenting how Sam Houston's victory at the April 21, 1836 Battle of San Jacinto filled the ranks of the Republic of Texas's judiciary with men of courage, competence, and character.

Thanks to the four outstanding individuals who supported the Journal's nomination with strong letters of recommendation:

- **The Hon. Carl E. Stewart,** Chief Judge of the U.S. Court of Appeals for the Fifth Circuit, wrote that the "Journal's thoughtful, detailed work shed light on the narratives of those African-American stalwarts in the Texas judiciary whose lives may have not been widely chronicled in other historical writings."

"Historical contributions such as the Society's Summer 2018 Journal issue are important



The Hon. Carl E. Stewart, Chief Judge of the Fifth Circuit. Photo courtesy of United States Courts website.

avenues for telling these previously untold or rarely told stories," Chief Judge Stewart noted. "States across the nation should endeavor to research the 'hidden stories' in their own communities, using the Texas Supreme Court Historical Society Journal's Summer issue as an exemplary model of how to accomplish that. It is important to bring awareness to the stories of those hidden figures in communities around the nation. Their stories are a part of the fabric of our society."

- **Harris County Law Library Director Mariann Sears** wrote in her letter of recommendation that "The Summer 2018 issue of the *Journal* has profoundly influenced the Law Library by weaving together the inspiring stories of Texas African American jurists and attorneys, both past and present. As a consequence of the information contained in the articles of this issue, the Law Library has begun gathering materials from its collection and the Harris County Archives to create a physical exhibit and a digital exhibit that will highlight the contributions of Justice Doyle, Robert Hainsworth, and other founding members of the Houston Lawyers Association."



Harris County Law Library Director Mariann Sears. Photo courtesy of *HBA Appellate Lawyer*.

She added that the exhibits would launch in May 2019, near the 65th anniversary of the issuance of *Brown v. Board of Education*. "Because it has inspired action on the part of the Law Library to make the history of African American jurists in Texas more accessible to all of its patrons, the Summer 2018 issue of the *Texas Supreme Court Historical Society Journal* is deserving of the AASLH's Award of Excellence. Inspiration to action seems to me to be the very definition of excellence."



Professor Randolph B. "Mike" Campbell. Photo courtesy of *Faces of TSHA*, Texas State Historical Association website.

- **Randolph B. "Mike" Campbell**, Regents Professor of History at the University of North Texas and author of *Gone to Texas: A History of the Lone Star State*, recommended the Summer 2018 issue of the *Journal* for the award "because it tells a story that heretofore largely has not appeared in print. A great deal of the history of what judges have handed down in applying the law to African Americans has been described at great length," he wrote, "but the stories of African Americans themselves as jurists are largely unknown. This history is relatively brief because Texas remained a bastion of segregation until the second half of the twentieth century, but that makes the stories of pioneer African American judges at all levels all the more significant."

Professor Campbell added that "the *Journal* also offers invaluable primary source material on the experiences of African Americans as they traveled the road to joining the Texas Judiciary."


Gary M. Lavergne.
Photo from Twitter.

Such first-person accounts of major milestones in their careers, he noted, are "an invaluable source" for historians.

- Historian **Gary M. Lavergne**, author of *Before Brown: Heman Marion Sweatt, Thurgood Marshall, and the Long Road to Justice* and other books, wrote that "The summer 2018 issue is a splendid blend of uncompromising scholarship providing innovative approaches to the interpretation, contextualization, corroboration, and sourcing of evidence, and the consideration of a deeply personal need we all have to actually enjoy what it is we are reading." He added that the issue "is a splendid example of what scholarly and historical journals are supposed to be—historical works exploring sources and stories that, if included in a book, would likely make any single volume pedantic."

Lavergne observed that through its "consistent excellence in the field of state and local history, … the *Journal of the Texas Supreme Court Historical Society* reminds us of the fact that the object of writing is reading."

These four letters of recommendation were key parts of the Society's nomination packet, providing the critical assessments of impact required by the AASLH Awards Committee. The full letters are available on the Society's website here.

A final word of thanks:

The *TSCHS Journal* was established in Fall 2011 through the initiative of 2011-12 Society President **Lynne Liberato**, who envisioned that the *Journal* would take root and grow into a premier legal history publication over time. This award is clear evidence that that time has come. Thank you for the vision and ongoing support, Lynne.

★ ★ ★ ★ ★

A PDF of the Summer 2018 issue is available in the Society's web archives at https://www.texascourthistory.org/journal.

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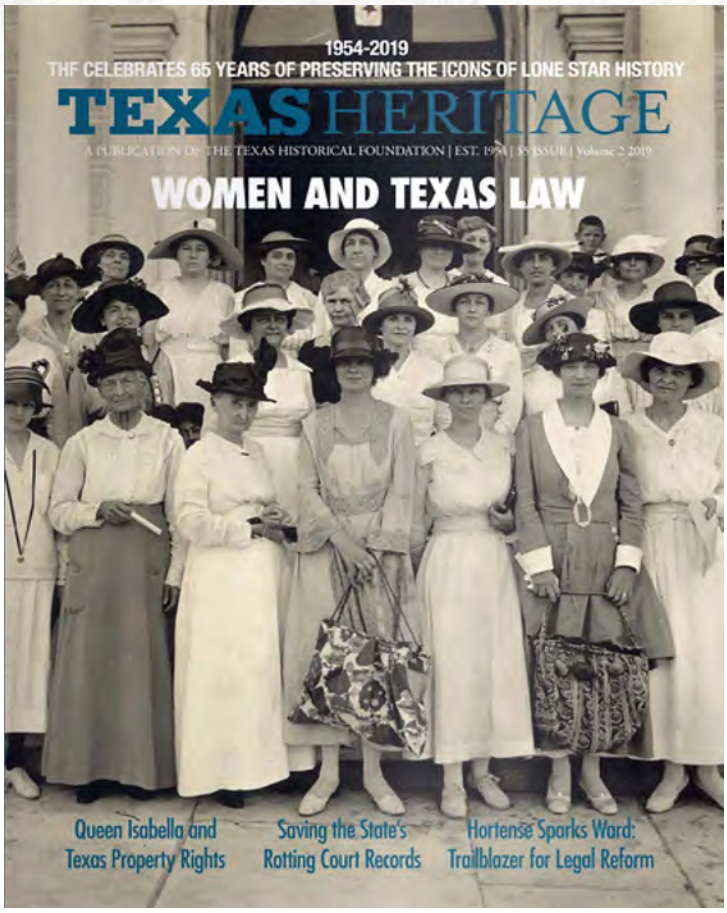
TSCHS Journal Joins Texas's Heritage

By David A. Furlow

For the first time ever, the Society's *Journal* has partnered with a fellow historical organization's publication to share Texas's rich legal heritage with new audiences throughout the Lone Star State. In response to an inquiry from Texas Historical Foundation Executive Director Gene Krane, this *Journal* linked arms with THF to produce an issue of *Texas Heritage* magazine on Texas legal history, with a special focus on the history of Women and Texas Law.



With the support of 2018-19 Society President Marcy Greer, Society Executive Director Sharon Sandle, and *Journal* General Editor Lynne Liberato, Marilyn Duncan and I submitted a proposal to Gene Krane last spring to produce four articles related to Texas legal history and women's rights: an overview of women's property rights by Marilyn, a biography of early women's rights activist Hortense Sparks Ward by David, a story about court records preservation efforts by Society board member Judge Mark Davidson, and a short description of the Society's Taming Texas books and project, also by Marilyn. We got an enthusiastic thumbs-up and moved forward to compile *Texas Heritage* magazine's first issue devoted to Texas legal history.

Fast forward to mid-June, when the Texas Historical Foundation mailed copies of *Texas Heritage Magazine* to THF members and select libraries and schools throughout Texas. As is evident in the photos of the magazine's cover and inside stories, Gene Krane and her staff, including editor Pam Murtha, did an outstanding job of designing and editing this issue.

Marilyn Duncan's article titled "The Spanish Roots of Women's Property Rights in Texas" explores a centuries-long saga that began in late medieval Spain and culminates in the present day. Gene Krane made that article the lead because of its legal and historical importance.



The Spanish Roots of Women's Property Rights in Texas

By Marilyn P. Duncan

Opposite page: Queen Isabella of Castile (a Spanish kingdom during the Middle Ages) reigned from 1474 to 1504 and greatly influenced women's property rights in Texas. She and husband King Ferdinand of Aragon ruled together while maintaining control over their separate dominions. The couple's motto was *tanto monta, monta tanto*, loosely translated as "equal in all things." Portrait circa 1490, in the public domain.



Hortense Sparks Ward

Trailblazer for Women's Rights in Texas

By David A. Furlow

Early in the 20th century, married women lived at the mercy of their spouses. A husband could be good, bad, or, under Texas law, a brute. Then, in 1912, Hortense Sparks Ward published a call for reform in *The Delineator*, a popular woman's magazine. In "Property Rights of Married Women," Ward pointed out that a husband might "even mortgage or sell every piece of furniture in the home... even if [his wife's] earnings have paid for every piece. He has a right to sell her dresses if he sees fit." An intelligent, articulate advocate for change, Ward, the first woman to practice law in the state, forever changed Texas by devoting her life to leading the women's rights movement to victory after victory between 1912 and 1942.

A Humble Beginning

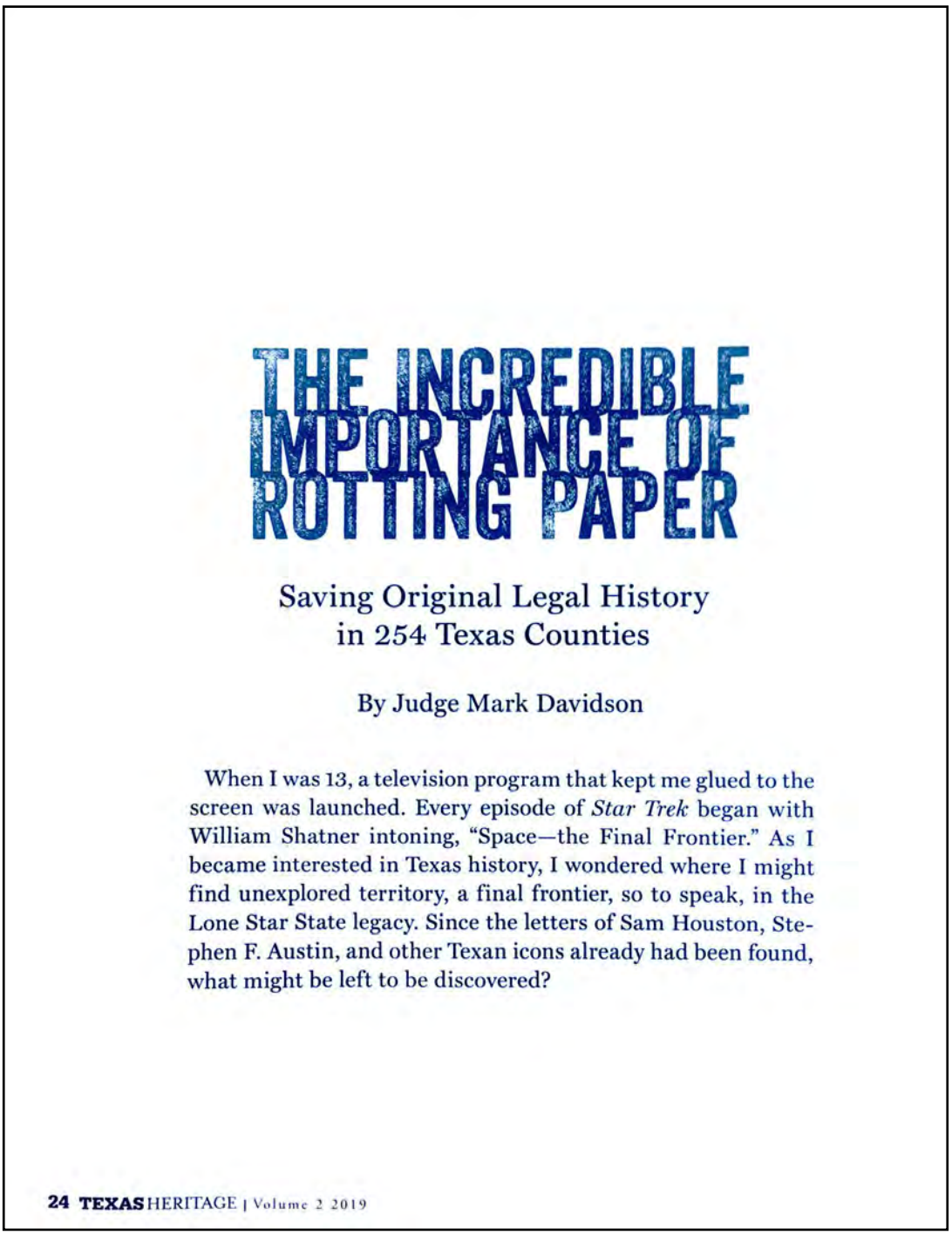
Born in rural Matagorda County in 1872 and educated in a Roman Catholic convent school, Hortense Sparks married Albert Malsch in Edna in 1891. The couple had three daughters before moving to Harris County in 1903. But the marriage faltered and then failed because, as Hortense Ward pleaded in her 1906 divorce petition, her husband was "lazy and of no account and...works only about half the time."

The single mother took a job as a court reporter to keep food on the table. Aspiring to more, she began studying law through a correspondence school. In 1909, she married William Henry Ward, one of Houston's most prominent lawyers. The following year, her studies proved successful; she passed

Opposite page: Hortense Sparks Ward's legal career spanned nearly three decades and included her service on the state's highest court. Photograph courtesy of the Texas State Library and Archives Commission

My mini-biography of Hortense Sparks Ward examines the life story of the extraordinary woman who led Texas's Suffrage Movement to victory and, later, served as Special Chief Justice of the Texas Supreme Court's All-Woman Court in 1925. The article continues our Society's celebration of this brave and forward-thinking woman's amazing accomplishments.

Judge Mark Davidson's article "The Incredible Importance of Rotting Paper" issues a clarion call for the preservation of courthouse records as the first draft of Texas history. He gives several examples of how recent preservation efforts have led to some fascinating finds, including the details of a previously unknown lawsuit between Sam Houston and Mirabeau B. Lamar over damaged furniture.



THE INCREDIBLE IMPORTANCE OF ROTTING PAPER

Saving Original Legal History in 254 Texas Counties

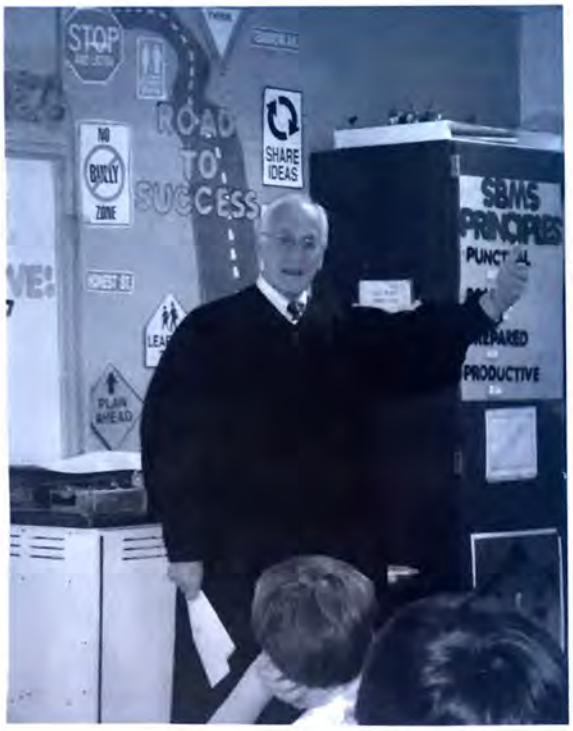
By Judge Mark Davidson

When I was 13, a television program that kept me glued to the screen was launched. Every episode of *Star Trek* began with William Shatner intoning, "Space—the Final Frontier." As I became interested in Texas history, I wondered where I might find unexplored territory, a final frontier, so to speak, in the Lone Star State legacy. Since the letters of Sam Houston, Stephen F. Austin, and other Texan icons already had been found, what might be left to be discovered?

The Society's Taming Texas Judicial Civics and Court History Project was the focus of another story by Marilyn Duncan. Together with the other articles in the magazine, this promotional piece shows how our organization ties Texas legal history to the rest of Texas history.

Promoting Judicial Heritage
Taming Texas Project

An innovative educational program, led by volunteer judges and attorneys, teaches 7th graders the history behind Lone Star law.



Jurists participating in the Taming Texas program share their professional expertise and experience with junior high students. Photograph courtesy of the Texas Supreme Court Historical Society. Original in color.

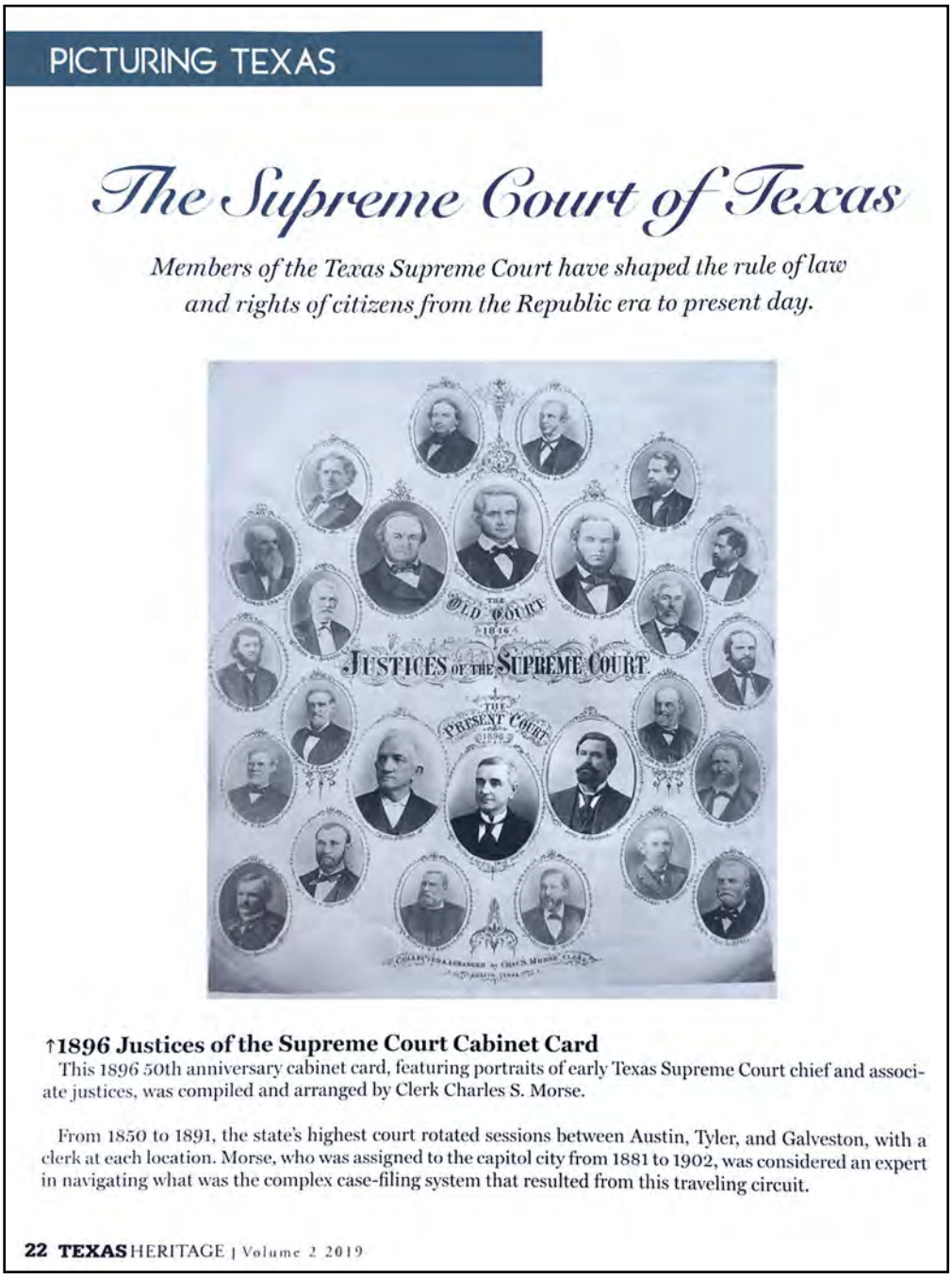
The Taming Texas Judicial Civics and Court History Project is a 7th-grade classroom educational program that debuted in 2016. Created by the Texas Supreme Court Historical Society and funded by the organization's fellows, the curriculum focuses on teaching young students the history behind Texas law and the workings of the state's judicial system.

Two books, authored by historian James L. Haley and writer-editor Marilyn P. Duncan, anchor the lesson plans. *Taming Texas: How Law and Order Came to the Lone Star State* gives an overview of the establishment of laws and development of the judicial system from Spanish colonization to present day. The second volume, *Taming Texas: Law and the Texas Frontier*, provides a more in-depth account of how frontier life influenced and was impacted by a changing legal system from Spanish exploration to the turn of the 20th century. Targeted towards a middle-school audience, the books use stories and illustrations to engage young scholars in learning about the state's unique and complex legal history.

In pairs, volunteer judges and attorneys spend two hours in 7th-grade classrooms presenting the Taming Texas curriculum. Using PowerPoint slides and a variety of hands-on activities, they tie the history of the state's courts to the structure and functions of today's judicial system. They also share their personal experiences as legal practitioners with the students, a component that has helped earn high marks for the curriculum.

The pilot program was organized through the Houston Bar Association and has reached more than 15,000 students in the citywide area since 2016. The Dallas Bar Association introduced Taming Texas during the 2018-2019 school year as part of its Law-in-the-Schools program. The Texas Supreme Court Historical Society is working with other local groups, including the Austin Bar Association, to recruit volunteers in more areas. The long-term plan is to expand the program throughout the state, using both judge-attorney teams and educators to guide the lessons.

In the meantime, teachers are welcome to use any or all of the materials in their classrooms. In addition to downloadable lesson plans and a curriculum guide, both Taming Texas books are available in pdf and digital e-book formats at www.tamingtexas.org. A link also provides a listing of the TEKS (Texas Essential Knowledge and Skills) standards addressed in the books and classroom materials.—*Marilyn P. Duncan*



PICTURING TEXAS

The Supreme Court of Texas

Members of the Texas Supreme Court have shaped the rule of law and rights of citizens from the Republic era to present day.

↑1896 Justices of the Supreme Court Cabinet Card
This 1896 50th anniversary cabinet card, featuring portraits of early Texas Supreme Court chief and associate justices, was compiled and arranged by Clerk Charles S. Morse.

From 1850 to 1891, the state's highest court rotated sessions between Austin, Tyler, and Galveston, with a clerk at each location. Morse, who was assigned to the capitol city from 1881 to 1902, was considered an expert in navigating what was the complex case-filing system that resulted from this traveling circuit.

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The issue also included a brief article featuring some of the photos maintained in the Texas Supreme Court Archives. This feature, including images and information obtained from Supreme Court Archivist Tiffany Gilman, added even further to the visibility of the Court and its history.

Our Society was proud to work closely with the Texas Historical Foundation to bring these stories of Texas legal history to a new statewide audience. Please share and post about this news to elevate the Society's profile as one of Texas's most important historical organizations.

A preview of the issue and subscription information is available on the Texas Historical Foundation's website at https://texashistoricalfoundation.org/texas-heritage-magazine/.

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Call for Applications:
2020 Larry McNeill Research Fellowship in Texas Legal History

The Texas Supreme Court Historical Society and the Texas State Historical Association are pleased to announce that applications are now being accepted for the 2020 Larry McNeill Research Fellowship in Texas Legal History.



Established in Summer 2019 in honor of former TSCHS and TSHA President Larry McNeill, the $2,500 annual fellowship will be awarded to an individual who submits the best research proposal on some aspect of Texas legal history. Competition for the fellowship is open to any applicant pursuing a legal history topic, including judges, justices, lawyers, higher-education students, and academic and grass-roots historians.

The application, which should be no longer than two pages, should specify the purpose of the research and provide a description of the end product (article or book). The deadline for applications is December 28, 2019. The award will be announced at the Association's Annual Meeting in February 2020. For application forms and submission information, see the TSHA's announcement at https://tshaonline.org/awards-and-fellowships/2562.

TSHA
Texas State Historical Association
An Independent Nonprofit Since 1897

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From Waterloo to Austin: Historian Jeff Kerr Will Speak at the Fall Board Meeting

By David A. Furlow



Historian Dr. Jeffrey S. Kerr, author of the novel *Lamar's Folly* and such works of history as *Seat of Empire: The Embattled Birth of Austin, Texas*, offers the Society's Trustees good reason to attend the Fall 2019 Board meeting. The meeting will be held in the same place so many Board meetings occurred in recent years: in Room 101 of the Texas Law Center at 1414 Colorado Street in Austin. The business portion will start at 10:00 a.m. and will culminate in Dr. Kerr's noon-time presentation.

Dr. Kerr's own story is as fascinating as the tales he tells of the Republic. He grew up in Houston, then went to school at Rice University, where he graduated with a degree in electrical engineering. He then earned his medical degree from Texas A&M University and completed his pediatric residency training at Scott & White Hospital in Temple, Texas. He later pursued a child neurology residency at Wake Forest University, where he served on the faculty for two years. Dr. Kerr moved to Austin in 1991 to practice at the Austin Diagnostic Clinic. Most recently, he became a physician for Pediatric Specialty Services at Dell Children's Medical Center. He became one of Texas's most preeminent board-certified child neurologists.



Covers for a few of Dr. Kerr's books



In an April 2019 presentation before Houston's Heritage Society, Dr. Kerr brought Republic-era Austin to life with stories about how Mirabeau B. Lamar and Sam Houston's rivalry shaped and reshaped Texas history.

Yet Dr. Kerr has never lost his love for Texas history. He began writing narrative nonfiction histories more than a decade ago. He published *Austin, Texas Then and Now: A Photography Scrapbook* in 2004, then continued to explore the city's story in such books as *The Republic of Texas* and, most recently, in a novel that enabled him to explore the inner lives of the Republic's most important leaders, *Lamar's Folly*. So saddle on up, Trustees, there's a good lunch and a great speaker waiting for you this October.

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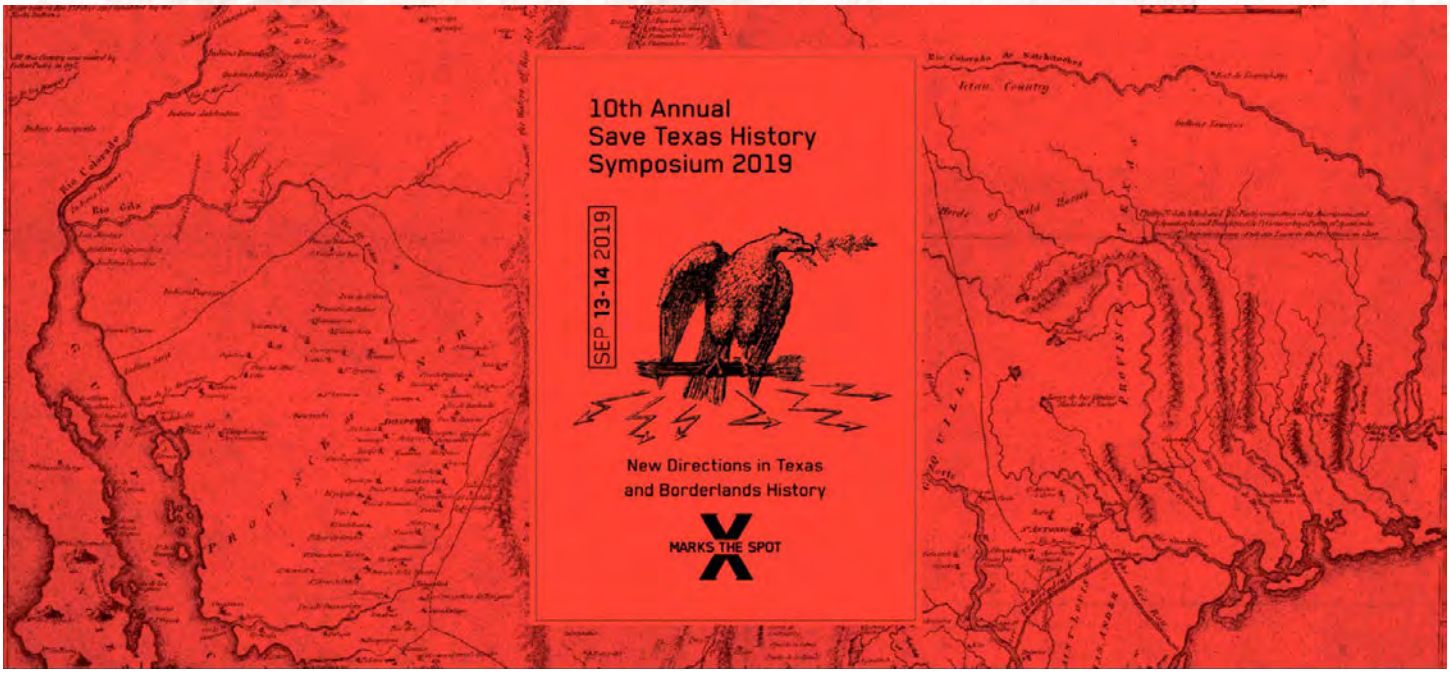
X Marks the Spot: 10th Annual Save Texas History Symposium

By David A. Furlow



The Texas General Land Office will hold its 10th Annual Save Texas History Symposium, ***X Marks the Spot: New Directions in Texas and Borderlands History***, on the weekend of September 13–14, 2019 in Austin.

The symposium will examine Texas borderland exploration, with topics including the earliest maps of the Gulf Coast, sovereign Indian territorial claims, the influence of Stephen F. Austin on mapping Texas, and much more. The event will take place at the historic InterContinental Stephen F. Austin Hotel in downtown Austin, as well as at the General Land Office and Bullock Texas State Museum, with more than fifteen speakers presenting at these three great locations. The Texas Supreme Court Historical Society is one of the program's sponsors.

Registration information can be found at: https://events.r20.constantcontact.com/register/eventReg?oeidk=a07eg2afm747c847adb&oseq=&c=&ch=.

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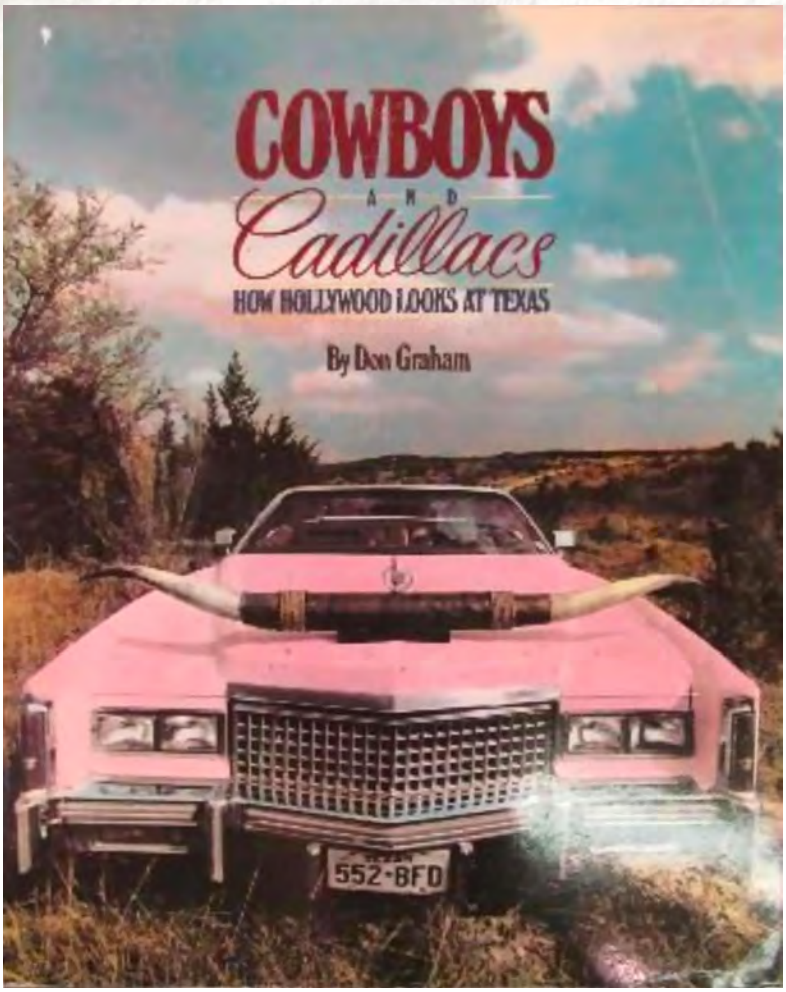
In Memoriam

Dr. Don Graham, Writer and Teacher

Article and photos by David A. Furlow

Professor Don Graham, Ph.D., gave a star performance as the Society's guest speaker at the Fall 2017 Board of Trustees meeting. He shines now in Texas's literary firmament, though his courses about Texas films will no longer shed light for University of Texas undergraduates. A great man passed away on June 22, 2019 and was interred at the Texas State Cemetery on June 28.[1] As with many other members of this Society and the literary community, I will miss this stellar writer's warmth and humor.



Don Graham's book *Cowboys and Cadillacs*: *How Hollywood Looks at Texas* (Austin: Texas Monthly Press, 1982)

I had the honor of introducing Don Graham twice, first to the Society in October 2017, then to the Houston Heritage Society in April 2019. He exhibited a showman's flair on both occasions. Each time, he focused on the writing of Edna Ferber's bestselling book and then analyzed the relationships among celebrity actors James Dean, Rock Hudson, and Elizabeth Taylor, and directorial genius George Cooper Stevens. Emphasizing Stevens's talents as a film-maker, Professor Graham showed how Stevens presented a thinly disguised narrative about the King Ranch and its owner Robert "Bob" J. Kleberg, Jr., the Spindletop gusher's transformation of the Texas economy from one dominated by cattle to one ruled by oil, oilman Glenn McCarthy's construction of the Shamrock Hotel, and the casual racial discrimination of 1950s America.

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[1] For a thoughtful tribute to Don discussing his literary career and contributions to Texas letters, *see* Jeff Salamon, "Remembering Don Graham, the Demanding Critic Who Helped Put Texas Literature on the Map," *Texas Monthly* (June 25, 2019), https://www.texasmonthly.com/the-culture/remembering-don-graham-demanding-critic-helped-put-texas-literature-on-map/.



Dr. Don Graham told Society board members and guests the inside story of director George Stevens's production of the 1956 blockbuster *Giant*.



Don Graham's book *Giant* (New York: MacMillan Publishing Company, 2018).

Dr. Graham, the J. Frank Dobie Regents Professor of American and English Literature in the University of Texas's English Department, made this Society's Fall 2017 meeting memorable by reading excerpts of his book *Giant: Elizabeth Taylor, Rock Hudson, James Dean, Edna Ferber, and the Making of a Legendary American Film* and by analyzing the pivotal "Sarge's Place" fight scene near the end of the film.

The high point of Graham's presentations for the Society and for Houston's Heritage Society came when he analyzed, frame by frame, a video of *Giant*'s "Sarge's Place" fist-fight between Rock Hudson's Bick Benedict and Sarge, the brutal, racist owner of a greasy-spoon close to the Benedict oilfields. Graham noted that Stevens adhered closely to Edna Ferber's story of Texas in transition. He did not hesitate to show the ugly nature of 1950s era racism against Hispanics and African Americans, but he also reflected on the persuasive power of film to educate audience and showed how one box office blockbuster made it easier for President Lyndon B. Johnson to pass the Civil Rights Act in 1964.



Dr. Graham shared his insights about the film *Giant* with a large audience at the Heritage Society in Houston in March 2019.



In addition to his UT Austin professorship, Don Graham was a writer-at-large for *Texas Monthly* magazine. He also authored a host of influential books, including *No Name on the Bullet: A Biography of Audie Murphy* (1989), *Cowboys and Cadillacs: How Hollywood Looks at Texas* (1983); and *Kings of Texas: The 150-Year Saga of an American Ranching Empire* (2003), which won the Texas Institute of Letters' Carr P. Collins Prize for Best Nonfiction Book. Don is survived by his wife, University of Texas English Senior Lecturer Betsy Berry, who always accompanied Don when he traveled. She strove always to ensure that nothing dimmed the brilliance of his presentations.

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Senators Cite Chief Justice Hecht for His 30 Years on the Court

By Osler McCarthy

On May 29, Texas State Senators honored Chief Justice Nathan L. Hecht for his 30 years' tenure on the Texas Supreme Court, the longest of any justice in Texas history.

In a presentation in the Senate, the resolution noted that since he joined the Court in 1989 Chief Justice Hecht "has reshaped Texas courts to be more conservative in addressing civil litigation and more progressive in matters relating to social justice...." It cited him as the first Republican elected to the Court since Reconstruction and for being a pioneer for court efficiency and modern rules and procedures and for advocating civil legal services for those who cannot afford them.



Many legal historians, the resolution continued, "agree that no single justice has had more influence on the Texas legal system" and "his landmark opinions have been referenced in courts throughout the nation...."

With him for the presentation on the Senate floor were Justices Jeff Boyd and John Devine.

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Calendar of Events

***Society-related events* and other events of historical interest**

Summer 2019	**The Bob Bullock Texas History Museum's "*La Belle*: The Ship That Changed History" exhibition continues in the Museum's first floor Texas History Gallery.** The hull of the sunken *La Belle* is open for viewing. http://www.thestoryoftexas.com/la-belle/the-exhibit. The museum is located at 1800 Congress Ave., Austin, Texas 78701.
Throughout 2019	**The Witte Museum in San Antonio presents "The Art of Texas: 250 Years."** Artists range from 19th century Theodore Gentilz to 20th century Georgia O'Keeffe. The more than 100 art pieces include a mural by John Biggers, a sculpture by Jesús Moroles, and a painting by Julian Onderdonk, "Chili Queens at the Alamo," that once graced the Oval Office during President George W. Bush's time in the White House. Art traveled from museums and collectors from throughout the United States and in Texas, from El Paso to Houston and from Dallas to Corpus Christi. https://www.wittemuseum.org/art-texas-250-years.
Throughout 2019	**The Bryan Museum's galleries offer artifacts and records from all periods of Texas and Southwestern history.** J.P. Bryan, Jr., a descendant of Moses Austin and a former Texas State Historical Association President, founded this museum at 1315 21st Street, Galveston, Texas 77050, phone (409) 632-7685. Its 70,000 items span 12,000 years. https://www.thebryanmuseum.org/.
Throughout 2019	**The Texas Historical Commission's Museum and Visitor Center at San Felipe de Austin State Park's galleries present the story of the capital of Stephen Fuller Austin's colony in Texas.** The San Felipe de Austin site is located at 15945 FM 1458, in San Felipe, Texas, about a mile north of I-10. For more information go to www.visitsanfelipedeaustin.com or call 979-885-2181.

September 5, 2019	**The Texas Appellate Hall of Fame, cosponsored by the Society and the State Bar Appellate Section, will induct its 2019 honorees at a luncheon presentation and ceremony to be held during the State Bar's Advanced Civil Appellate Practice Course at the Four Seasons Hotel in Austin.** For event and CLE course information see http://tex-app.org/DrawOnePage.aspx?PageID=147 or http://connect.texasbar.com/events/event-description?CalendarEventKey=d608b513-5c41-4013-9e71-f3b2c442f2ac&Home=%2Fevents%2Fcalendar.
September 6, 2019	**The Society's Annual John Hemphill Dinner will take place at the Four Seasons Hotel in Austin.** Marcy Hogan Greer, the Society's 2018-19 president, will preside over the evening program, which features a keynote talk by the Hon. Neil Gorsuch, Associate Justice of the U.S. Supreme Court.
September 7, 2019	**The Texas Supreme Court Annual BA Breakfast will take place at the Texas Law Center in Austin.** More information is available at https://www.texascourthistory.org/SCOTXbaBreakfast.
September 14-15, 2019	**The Texas General Land Office presents its 10th Annual Save Texas History program in Austin: "X Marks the Spot: New Directions in Texas and Borderlands History."** This program, cosponsored by the Texas Supreme Court Historical Society, will examine 500 years of the exploration and mapping of Texas, including Dr. Juliana Barr (Mapping Indian Sovereignty in Spanish Archives); Dr. Gene Smith (Expansion and the Adams-Onis Treaty and the impact on Texas); Dr. Andrew Torget (Stephen F. Austin's contributions to mapping Texas); Dr. Jay H. Buckley (Zebulon Pike's Journey through Texas and the Southwest); and Dr. Harriett Denise Joseph (Pineda's mapping of the Gulf Coast, a 500 year anniversary).
October 3, 2019	**The Society's Fall 2019 Board of Trustees Meeting will be held in Room 101 of the Texas Law Center**, 1414 Colorado St., Austin, TX 78701. The noontime speaker will be Dr. Jeffrey S. Kerr, author of the novel *Lamar's Folly*, about the move of the Republic of Texas's capital from Houston to the hamlet of Waterloo and its transformation into the city of Austin, *Seat of Empire: The Embattled Birth of Austin, Texas*, and *The Republic of Austin*.

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DISCLAIMER

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

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

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2019-20 Membership Upgrades

The following Society member has moved to a higher dues category since June 1, 2019, the beginning of the membership year.

GREENHILL FELLOW

Kristen Vander Plas

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2019-20 New Member List

The Society has added 27 new members since June 1, 2019, the new fiscal year. Among them are 17 Law Clerks for the Court (*) who will receive a complimentary one-year membership during their clerkship.

TRUSTEE

Kristen Vander Plas

Jasmine Wynton

CONTRIBUTING

Jerry Bullard

Thomas F. Loose

REGULAR

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Membership Benefits & Application

Hemphill Fellow $5,000

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

Greenhill Fellow $2,500

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

Trustee Membership $1,000

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

Patron Membership $500

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

Contributing Membership $100

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

Regular Membership $50

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

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Membership Application

The Texas Supreme Court Historical Society conserves the work and lives of the appellate courts of Texas through research, publication, preservation and education. Your membership dues support activities such as maintaining the judicial portrait collection, the ethics symposia, education outreach programs, the Judicial Oral History Project and the Texas Legal Studies Series.

Member benefits increase with each membership level. Annual dues are tax deductible to the fullest extent allowed by law.

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