



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Spring 2014 Vol. 3, No. 3 General Editor Lynne Liberato Executive Editor David Furlow

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By Douglas W. Alexander

Over the course of the last few months, there have been a number of exciting developments. [Read more...](#)



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Coldwell's status as an Associate Justice of the Texas Supreme Court could not shield him from a bullet, his enemies warned. [Read more...](#)



Justice Coldwell

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The Society will join with the Texas State Historical Association to present "Murder and Mayhem on the Texas Supreme Court" at the Wyndham Riverwalk in San Antonio. [Read more...](#)



The Wyndham Riverwalk

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This summer the Fellows will present their second reenactment of the oral argument of a historic case. [Read more...](#)



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Chief Justice Jefferson

Chief Justice Hecht: A Record for Texas

On January 26, the Chief Justice became the longest-serving justice in Texas Supreme Court history. [Read more...](#)



Chief Justice Hecht

Features

The Enduring Legacies of Judge R.E.B Baylor, Part 1

By Thomas R. Phillips and James W. Paulsen

While Baylor was a charismatic, consequential figure in his own time, it is almost a fortuity that he is remembered today. [Read more...](#)



Judge Baylor

Non-Trivial Pursuits: Little-Known Facts About the Texas Supreme Court

Know one? Share it in this new feature of the Journal. [Read more...](#)

Benson Wins Southwestern Historical Quarterly Award for Best Article

Megan Benson has won the 2013 H. Bailey Carroll Award for the best article published in the *Southwestern Historical Quarterly*. [Read more...](#)



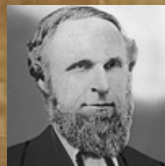
Megan Benson

Letters from Exile, 1864-1865:

A Family View of Judge Wesley Ogden

By William W. Ogden

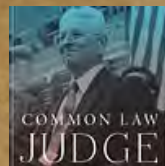
Forced to leave Confederate Texas because he was an unapologetic Unionist, Ogden was dangerously out of step with his fellow Texans. [Read more...](#)



Judge Ogden

Special Book Announcement

Chief Justice Jack Pope's eagerly-awaited book is now available. [Read more...](#)



Common Law Judge book cover

Ambassador Ron Kirk Will Speak at This Year's Hemphill Dinner

The former United States Trade Representative has agreed to be the keynote speaker at the Nineteenth Annual John Hemphill Dinner in June. [Read more...](#)



Ambassador Ron Kirk

Membership & More

Calendar of Events

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2013-2014 New Member List

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Douglas W. Alexander

Springing *Forward*

OVER THE COURSE OF THE LAST FEW MONTHS, there have been a number of exciting developments that I would like to share.

Pope Book: Under the leadership of **Larry McNeill**, *Common Law Judge: Selected Writings of Chief Justice Jack Pope of Texas* has been published and is now available for purchase at <http://www.texascourthistory.org>. The book, which was edited by **Marilyn Duncan**, contains over 350 pages of text, including a biography of Chief Justice Pope by **Bill Chriss**.

The book was formally released in January, with a pre-release ceremony at which the 100-year-old former Chief signed copies that were presented to current members of the Texas Supreme Court, as well as other former Chiefs. It was a memorable occasion at which Chief Justice Pope presided in good health and great spirits!

Texas Judicial Civics and Education Center: In my Fall President's Message, I described how Supreme Court Clerk **Blake Hawthorne** was leading a long-term initiative to establish what we then thought would be a museum of Texas judicial history. While that was an ambitious undertaking in its own right, it has blossomed into something even more ambitious.

In order to combat a limited understanding of the Texas Judicial Branch, the Society is partnering to establish a **Texas Judicial Civics and Education Center** in the Tom C. Clark Building in Austin. The Society's impressive partners in this initiative include the **Supreme Court of Texas**, the **Court of Criminal Appeals**, the **Council of Chief Justices of the fourteen Courts of Appeals**, and the **Office of Court Administration**.

With tens of thousands of visitors to the Capitol complex each year, the Society and its partners envision that the Center will serve as an educational destination, teaching visitors Texas's legal history and the importance of an independent judiciary, while also creating a space for lectures, forums, and other small assemblies. Modeled after several other successful civic centers in other states but drawing upon particular Texas nuances, the Center is planned to provide both a historical context and an interactive learning experience.

The Society and its partners have submitted a grant application to the Texas Bar Foundation, seeking funding to acquire a professional design plan for the planned Civics and Education Center. Stay tuned for future developments.

Hemphill Dinner: The Society's annual fundraising dinner is scheduled for **Friday, June 6, 2014**. It promises to be a fun and historic evening. Our keynote speaker will be **Ambassador Ron Kirk**, who until a year ago served as United States Trade Representative in the Obama Administration. As Trade Representative,

Ambassador Kirk served as a member of President Obama's Cabinet and negotiated trade agreements around the world.

The evening will also feature a historic passing of the torch as **Chief Justice Nathan Hecht** pays tribute to his predecessor **former Chief Justice Wallace B. Jefferson**. The dinner will also feature a tribute by Texas Supreme Court **Justice Jeff Brown** to his former boss, the beloved **Justice Jack Hightower**, a key founder of the Society who passed away last year.

—*Douglas W. Alexander*, Alexander Dubose Jefferson & Townsend LLP

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Fellows Column

By David J. Beck, Chair of the Fellows



Photo by Alexander's Fine Portrait Design-Houston

THIS YEAR MARKS THE 50TH anniversary of the Civil Rights Act of 1964, championed and signed by President Lyndon B. Johnson. The 2014 State Bar of Texas Annual Meeting will feature thought-provoking speakers and presentations to commemorate this momentous law that impacted the nation. As part of that program, the Fellows will present their second reenactment of the oral argument of a historic case.

The Texas Supreme Court Historical Society in conjunction with the State Bar of Texas will present a live oral argument reenactment and discussion of *Sweatt v. Painter*, 339 U.S. 629 (1950), which challenged the constitutionality of the separate-but-equal doctrine in law school admissions in Texas. Arguments in the case were originally presented by Thurgood Marshall on behalf of Sweatt and Joe Greenhill on behalf of the State of Texas and the University of Texas Law School.

Chief Justice Tom Phillips will give a historical overview of the case before the oral argument reenactment. The Honorable Dale Wainwright will argue on behalf of Sweatt and the Honorable David Keltner will argue on behalf of the State. Chief Justice Nathan Hecht will preside over the oral argument with a panel that includes Justice Paul Green, the Society's liaison to the Texas Supreme Court, and Judge Priscilla Owen. The reenactment will be presented at 2:00 pm on June 27, 2014 in Austin at the State Bar Annual Meeting.

The Fellows are also working with the Court in planning the second annual Fellows Dinner for April 22. This dinner is exclusively for the Fellows and members of the Court will be invited. Please watch for further details on the dinner.

Thank you again to the Fellows for their support of the Society and its projects. If you would like to join the Fellows of the Society, please contact me or the Society's office.

FELLOWS OF THE SOCIETY

HEMPHILL FELLOWS (\$5,000 or more annually)

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

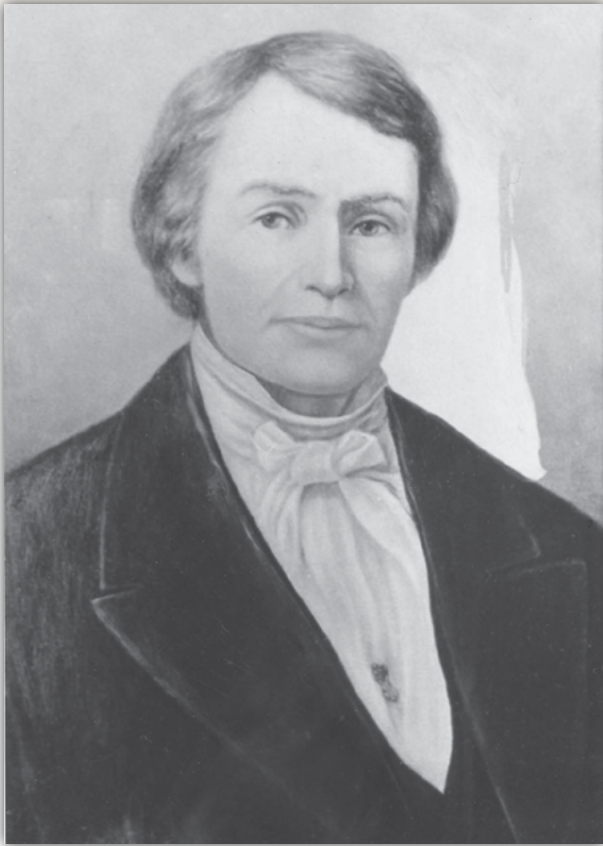
GREENHILL FELLOWS (\$2,500 or more annually)

S. Jack Balagia
Bob Black
E. Leon Carter
Tom A. Cunningham*
David A. Furlow and Lisa Pennington
Harry L. Gillam, Jr.
William Fred Hagans
Lauren and Warren W. Harris*
Allyson and James C. Ho*
Jennifer and Richard Hogan, Jr.
Dee J. Kelly, Jr.*
David E. Keltner*
Thomas S. Leatherbury
Lynne Liberato*
Mike McKool, Jr.*
Ben L. Mesches
Nick C. Nichols
Hon. Thomas R. Phillips
Hon. Jack Pope*
Shannon H. Ratliff*
Robert M. Roach, Jr.*
Professor L. Wayne Scott*
Reagan W. Simpson*
S. Shawn Stephens*
Hon. Dale Wainwright
R. Paul Yetter*

*Charter Fellow [Return to Journal Index](#)

The Enduring Legacies of Judge R. E. B. Baylor, Part 1

By Thomas R. Phillips and James W. Paulsen



Robert E.B. Baylor

ROBERT E.B. BAYLOR, said a biographer, “believed profoundly that the courthouse, the church and the school . . . were the institutions through which the moral and intellectual elements of human society must find their highest and best expression.”¹ If this indeed was his personal philosophy, then Baylor’s life was well lived. In each area, his contributions were substantial and lasting.

While Baylor was a charismatic, consequential figure in his own time, it is almost a fortuity that he is remembered today. He was neither the founder, nor the principal donor, nor the head of any educational or healthcare institution now bearing his name. Indeed, the legislation to charter the nascent academy that ultimately became today’s Baylor University bore two other names before his name was substituted at the eleventh hour. Nevertheless, as noted in a student paper, Baylor “was a fine example of the indispensable man—the one who does the heavy work in the background, while others . . . monopolize the spotlight.”² Thus, it is fitting that his name lives on in a university which claims service to church and state as its motto (Pro Ecclesia, Pro Texana) and whose adherents seek

to spread word of the school “to light the ways of time.”³ It is equally fitting that in modern decades some of Judge Baylor’s formative court judgments and opinions have been preserved, studied, and disseminated, shedding new light on how a fledging polity like mid-nineteenth century Texas could combine multiple jurisprudential traditions to install a generally functioning and widely respected legal system on a far-flung, hostile frontier.

Baylor’s Pioneer Upbringing

Baylor came from a distinguished pioneering family, his forebears having prospered financially and politically after settling in Virginia.⁴ His uncle was an aide-de-camp to General Washington in the Revolutionary War, and his father and uncle served in Washington’s “Life Guards.”⁵ After the War, his father married Jane Bledsoe, who came from a family of Baptist preachers; soon thereafter, they moved with members of their family to Kentucky.⁶ Baylor’s family was surely above average in prosperity, but living on the frontier, he attended only a local school and was in large measure self-taught.⁷

Robert was attracted to law at an early age, and probably studied in the office of his uncle, Jesse Bledsoe, whose public career included a stint in the United States Senate.⁸ After interrupting his studies for military service

on the Northwestern frontier during the War of 1812, Robert commenced to practice law with one of his eight brothers in Paris, Kentucky, north of Lexington.⁹

Baylor's First Forays into Politics

Shortly thereafter, Baylor entered politics, offering himself for the Kentucky Legislature in 1819 in place of his older brother George, who was stepping down.¹⁰ Both Baylor and his opponent, Robert P. "Black Bob" Letcher, played the violin or fiddle to attract voters as a prelude to their stump speeches, as did Henry Clay, Davy Crockett, and countless other frontier politicians. When Baylor noted that Letcher's left-handed fiddling seemed to win more favor than his own right-handed performances, he told rural audiences that Letcher played right-handed in the towns, saving his inferior left-handed offerings for the country folk.¹¹ (As will be explained, only much later in life did Baylor become a preacher of the Gospel.) Whether for this or other reasons, those rural voters gave Baylor a narrow victory over his older and more experienced opponent, who nevertheless recovered sufficiently to render future public service as a congressman, governor, and ambassador.¹² Whether he ever learned to fiddle with his right hand is lost to history.

After a single term in office, however, Baylor abruptly left Kentucky and moved to Alabama. Why? Baylor never said, but many believed that the cause was grief. A persistent story said that while he was riding with a young woman whom he intended to marry, she was bucked off her horse and dragged to her death. Unable to save her, a mortified Baylor found the familiar scenes of Kentucky too painful to endure, and removed to Tuscaloosa, Alabama. Whether for this or some other reason, he never married.¹³

Baylor had handsome features, and at more than six feet two inches towered over most of his contemporaries.¹⁴ He spoke and sang in a deep, sonorous voice, had a ready wit, a keen intellect and prodigious memory, and seemingly at will could move crowds to cheer, laugh, or cry.¹⁵ Given his political ambitions, which various relocations and even spiritual rebirth failed to quench, it is little wonder that Baylor soon thrust himself into community affairs.¹⁶ By 1824 he was again a candidate for the state legislature, finishing first in a field of five seeking the three seats allotted to Tuscaloosa County.¹⁷

But the state legislature was hardly Baylor's ultimate political goal. The next year, he challenged incumbent United States Congressman John McKee, falling short by only 176 votes.¹⁸ When McKee retired in 1829, Baylor tried again. Running on a platform favorable to the policies of the popular new president, Andrew Jackson, Baylor won handily.¹⁹ Coincidentally, one of his opponents was Judge Richard Ellis, who would also later migrate to Texas and render signal service as president of the 1836 Convention that declared independence and wrote the Constitution of the Republic.²⁰

Once in Washington, however, the erstwhile-Jacksonian fell in with those seen by many of his constituents as bad company.²¹ For example, Baylor took lodgings at Mrs. Ball's boarding house with eight other congressmen, including Kentucky's Thomas Chilton, his cousin who was an ordained Baptist minister, and Tennessee's David Crockett. All three, though professed Democrats, became disillusioned with the decisive, high-handed leader of their party. They openly consorted with Jackson's opponents, including old fiddlin' Bob Letcher, now a third-term Kentucky congressman. Baylor even became friends with Daniel Webster and Henry Clay, who led the opposition to Jackson's policy initiatives.²² But Jackson remained wildly popular in the Middle District of Alabama, and barely one in five voters supported Baylor's candidacy for re-election.²³ He fared even worse in a comeback try in 1833.²⁴

Baylor then moved to Cahawba, Dallas County, the former state capital,²⁵ practicing law and—surprise—making another unsuccessful bid for Congress, this time losing to Francis Strother Lyon of Demopolis, Marengo

County, in an open race.²⁶ In 1836, Baylor raised a small volunteer company in the Creek War,²⁷ being discharged as a lieutenant colonel.²⁸ Soon thereafter, he moved yet again, this time to Mobile.²⁹ In 1837, Baylor re-challenged Lyon in a campaign where both candidates found support across the political spectrum.³⁰ Baylor lost, not unexpectedly, but by an astonishingly close 43 votes.³¹

Baylor's Religious Awakening

It was at this point, with no domestic considerations and his political ambitions dashed, that Baylor experienced the great turning point in his life. Despite his parents' devotion to the Baptist Church, and in defiance of the rapid growth of religious fervor along the American frontier during the so-called Second Great Awakening, Baylor had always been a skeptic. He read and adopted the teachings of Voltaire and Paine, among others, professing first to be a Deist and then a Unitarian.³² If he studied the Bible, it was more with an eye to finding inconsistencies than to receiving spiritual truth.³³

As the years progressed, Baylor was touched by particular preachers, particularly revivalist Jeremiah Vardeman,³⁴ and his hostility to organized religion abated. Still, he was an infrequent denizen of church houses when, early in 1839, he felt obliged to attend a service pastored by his cousin, Thomas Chilton. Chilton, it may be recalled, had served in Congress with Baylor, and had suffered the same political fate for his anti-Jackson apostasy.³⁵ Like Baylor, he renounced Kentucky for Alabama, but Chilton had also been ordained as a Baptist preacher.³⁶ During his cousin's sermon at a revival at the Talladega Baptist Church, Baylor became suddenly but irrevocably convinced of his need to be saved. He was soon baptized and admitted into fellowship, whereupon, with the zeal of the newly converted, he was licensed as a minister and commenced preaching throughout the region.³⁷ In October, a fire destroyed his somewhat neglected Mobile law office.³⁸ Rather than rebuild, he moved to Texas, where some members of his family were entitled to bounty lands because of his nephew's death from wounds sustained at the Battle of San Jacinto.³⁹

After touring the state, Baylor located in LaGrange, where he had settled by February 1840.⁴⁰ There, in a small log building, he established what is said to have been the first school in La Grange.⁴¹ Working with Z.N. Morrell, T.W. Cox, and other pioneer Baptists, he preached regularly, founded new churches, and helped formed the Republic's first formal Baptist organization, the Union Baptist Association.⁴² He also found time, along with Morrell and Cox, to fight Comanches at the 1840 Battle of Plum Creek.⁴³

Baylor Begins His Texas Judicial Service

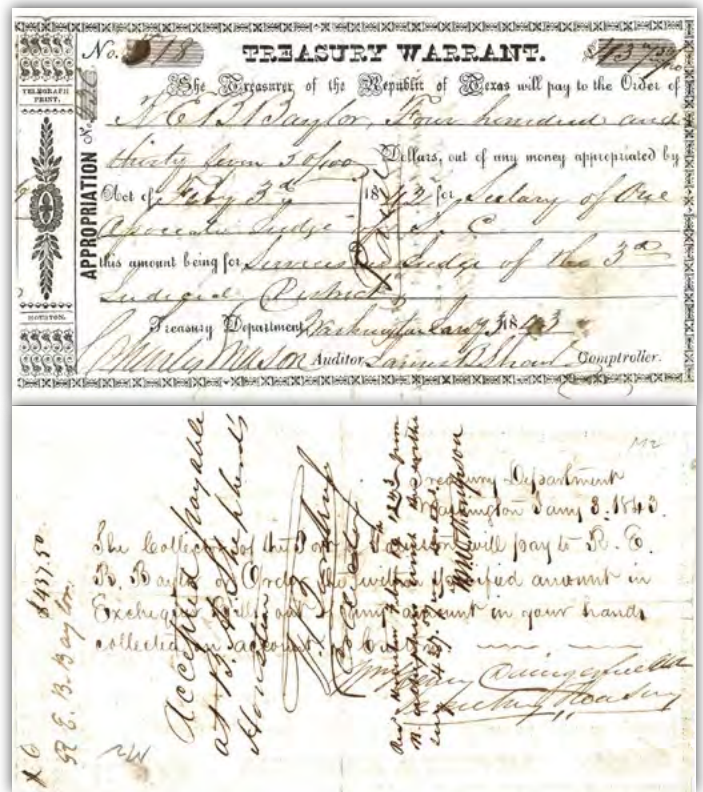
Whether Baylor ever intended to emulate his cousin Thomas Chilton and become a full-time minister is unknown. His legal reputation was so strong among those who had recently emigrated to Texas from Kentucky and Alabama, however, that he was elected without opposition by both houses of the Republic Congress in January 1841, to be Judge of the Third Judicial District.⁴⁴ With some notable interruptions during fiscal crises, the judiciary gave him a steady, if modest, income, so that he did not have to charge for his pulpit appearances.⁴⁵

At the time of Baylor's election, the Republic's seven district judges each rode circuit to hold court in the counties of their district. Twice a year they would meet to form, along with the Chief Justice, the nation's Supreme Court. While each district judge was expected to put in service as an associate judge of the Republic Supreme Court, not all did. But Baylor was one of the most dependable members of the high court, attending every court session from his election in 1841 through statehood in 1846.

Riding the circuit was an arduous job, particularly in the large Third District, which covered most of what was

then West Texas—from Brenham to Austin in the South, and then north to the Red River to the border with the Indian Territory. Baylor, traveling alone by horseback or, roads permitting, in a buckboard carriage, had to contend with searing heat, swollen rivers, washed-out roads, and any other hardships that frontier travel presented.⁴⁶ The court sessions themselves offered little respite—new counties frequently lacked any kind of courthouse, and on occasion he held sessions in stores, private homes, tents, or under the open skies. Sleeping accommodations were similarly diverse. Indeed, the court sessions themselves could be as hazardous as the travel in between, as criminal defendants and others were not above making rather pointed threats on the judicial person.⁴⁷

As a trial judge, Baylor was regarded as fair, thoughtful, and decisive. His charges to his grand juries, as was the custom of the time, ranged far and wide over political, moral, and social issues. He inveighed against gambling,⁴⁸ and about alcohol he said: “Gentlemen of the grand jury, I would not stand behind a bar and deal out death and damnation by the half pint for a pile of guineas as high as the seven stars.”⁴⁹



Republic Treasury voucher to Judge Baylor, 1843; James W. Paulsen personal collection

Preaching on the Judicial Circuit

On top of the brutal schedule of an itinerant judge, Baylor superimposed the duties of his calling as an itinerant preacher. Weekend travel was so often required for court sessions that Baylor seldom could make reliable plans to preach on Sundays, so he did most of his evangelical work after court was adjourned each night. Sometimes, he preached in the very courtroom where he had just imposed a sentence or rendered a monetary judgment.⁵⁰

Baylor thought his own preaching abilities inferior, particularly because he told too many anecdotes and resorted too often to tears.⁵¹ When he was unexpectedly called to a pulpit, Baylor explained that he “usually went right to the cross of the blessed Savior, there lingered around it, stood in its awful shadow and pointed out to the sinner His mighty agony there on it for a lost and perishing world.”⁵² His most celebrated sermon, entitled “Jesus Wept,” was repeatedly delivered.⁵³

Baylor’s Role in the Founding of Baylor University

Meanwhile, Baylor continued to preach, found new churches, and take a leadership role in denominational affairs. At his urging, the Union Baptist Association formed the Texas Baptist Education Society in 1841, and Baylor was probably its first president.⁵⁴ In 1844, at the suggestion of Rev. William M. Tryon, the Society directed Baylor, Tryon and J.G. Thomas, an experienced lawyer, to petition the Congress of the Republic to charter a Baptist literary institution. The charter was to be “so broad that the requirements of existing conditions would be fully met,” yet be “fully susceptible of enlargement and development to meet the demand of all ages to come.”⁵⁵ With Baylor as the chief author, the bill to grant the charter was introduced on December 28, 1844, seeking the incorporation of a college

or university “for the purpose of a more general diffusion of useful knowledge.”⁵⁶ Two days later, the name San Jacinto University was inserted on second reading.⁵⁷ The bill was reported favorably from committee, and on the floor, the name Milam University was substituted.⁵⁸ But many members of the Society wanted the school to bear a closer relationship to the school’s Baptist heritage and to honor the leadership role of its founding fathers. Baylor wanted to name the school after Tryon, and Tryon proposed Baylor.⁵⁹ This Alphonse-and-Gaston routine was finally ended by Republic Vice President Kenneth Anderson, who insisted that it be named for Judge Baylor, and as such, the charter was granted on February 1.⁶⁰ It was the sixteenth institution of higher learning chartered by the Republic, and the only one that still survives in name.⁶¹



Baylor University at Independence, 1881

Part 2 will appear in the Summer/Dinner issue of the Journal.

My thanks to Amanda Norman and Jim Snider for their critical reading of the draft and assistance in gathering and checking factual details. —Thomas R. Phillips

¹ Joseph W. Hale, *Judge Baylor in Review*, 3 BAYLOR L. REV. 379, 387–88 (1951) [hereinafter Hale].

² Robert Emmett Bledsoe Baylor (1793-1863) at 16 [hereinafter Baylor Sketch], in R. E. B. BAYLOR PAPERS, Texas Collection, Baylor University [hereinafter BAYLOR PAPERS].

³ ENID EASTLAND MARKHAM, THAT GOOD OLD BAYLOR LINE (1931/52).

⁴ EUGENE W. BAKER, IN HIS TRACES: THE LIFE AND TIMES OF R. E. B. BAYLOR 9 (1996) [hereinafter BAKER].

⁵ *Id.* at 10.

⁶ *Id.*

⁷ *See id.* at 12.

⁸ *Id.* at 12, 21. Jesse Bledsoe held a number of offices in Kentucky, including Secretary of State (1808–12), State Representative (1812–13), United States Senator (1813–14), State Senator (1817-20), and Circuit Judge, before becoming a professor of law at Transylvania University and then a Campbellite minister. He moved to Mississippi in 1833 and to Nacogdoches in 1835, where he died the following year “under circumstances his contemporaries and kinfolk could only describe as a significant fall from grace.” *Jesse Bledsoe*, WIKIPEDIA (last modified Mar. 15, 2013), http://en.wikipedia.org/wiki/Jesse_Bledsoe.

⁹ BAKER, at 12–21.

¹⁰ *Id.* at 23–24.

¹¹ *Id.* at 23–24.

¹² *Robert P. Letcher*, WIKIPEDIA (last modified Jan. 16, 2014), http://en.wikipedia.org/wiki/Robert_P_Letcher

¹³ BAKER, at 26–27.

¹⁴ Rufus C. Burleson, “The Old Guard’ Biographies: R. E. B. Baylor,” in THE LIFE AND WRITINGS OF RUFUS C. BURLESON (Georgia J. Burleson, comp. and publisher) (1901) at 691 [hereinafter Burleson].

¹⁵ *Id.* at 29–30, 82.

¹⁶ *Id.* at 30, 35.

¹⁷ The results of the August 1824 election for three state representatives from Tuscaloosa County, where each voter was permitted to

cast three votes, were:

Robert E. B. Baylor	876
William Tindall	874
Hardin Perkins	824

Two other candidates trailed far behind. BAKER at 30–31.

¹⁸ The official returns from thirteen counties, “together with the unofficial accounts received from the other two counties, which are thought to be correct,” gave McKee 4,284 votes; Baylor, 4,108; and Terrell, 2,079. CAHAWBA PRESS AND ALA. ST. INTELLIGENCER, Oct. 1, 1825, at 3. The partial returns from the Middle District from a later tally in the Alabama Department of Archives and History are as follows:

County	McKee	Baylor	Terrell
Franklin	243	725	58
Jefferson	287	474	145
Morgan	412	488	139

The Franklin County returns are official. Jefferson and Morgan County returns are from the HUNTSVILLE DEMOCRAT, Aug. 8, 15, 1825. A note attached to the Archives tally identifies John D. Terrell as a Whig.

¹⁹ The vote total given in the most widely consulted source is Baylor, 3,845; Seth Barton, 1,879; and Henry W. Ellis, 1,335 votes. But three counties reported only the winner’s margin, so the actual total vote was higher. The individual county returns from the Middle District are as follows:

County	Baylor	Barton	Ellis
Bibb	702	130	22
Fayette	343	37	154
Greene	won by 60		
Jefferson	472	220	99
Marengo		won by 4	
Marion	75	12	450
Morgan	196	500	243
Perry	820	227	22
Pickens	424	161	175
Shelby	won by 123		
Tuscaloosa	682	568	140
Walker	131	24	30
Total	3,845	1,879	1,335

Later tally in Alabama Department of Archives and History compiled from the HUNTSVILLE DEMOCRAT, Aug. 7–21, 1829. *See also* CAHAWBA PRESS AND ALA. ST. INTELLIGENCER, Aug. 14, 1829.

²⁰ BAKER, at 38–39; *see also* CAHAWBA PRESS AND ALA. ST. INTELLIGENCER, July 3, 1829. Some later recapitulations of the returns have assumed that Ellis was one Henry W. Ellis. *See, e.g.,* CONGRESSIONAL QUARTERLY, GUIDE TO U.S. ELECTIONS 951 (3d ed. 1994) [hereinafter CQ GUIDE]. But Henry W. Ellis was actually elected to the Legislature from Tuscaloosa County in the same election where Baylor beat Richard Ellis. MOBILE COM. REG., Aug. 15, 1829.

²¹ *See Circular Posing Questions about Activities to Robert E. B. Baylor*, in JAMES K. POLK PAPERS, Library of Congress, *quoted in* BAKER 43–44.

²² BAKER, at 40–41.

²³ Samuel W. Mardis, a Democrat, won 5,400 votes; Jesse Winston Garth, a National Republican, won 4,611 votes; and Baylor took 2,976 votes. CQ GUIDE, at 954.

The individual county returns from the Middle District are as follows:

County	Mardis	Garth	Baylor
Bibb	326	303	295
Blount	396	174	42

Fayette	155	344	60
Franklin	79	669	257
Greene	277	564	599
Jefferson	544	185	145
Marengo	374	63	411
Marion	26	412	15
Morgan	166	829	67
Perry	571	301	370
Pickens	420	167	241
Shelby	664	52	52
St. Clair	504	303	5
Tuscaloosa	898	245	419
Total	5,400	4,611	2,976

Later tally in Alabama Department of Archives and History is compiled from HUNTSVILLE DEMOCRAT, Aug. 18, 1831. Contrary to Professor Baker, Justice Hale surmises that Baylor lost because he supported Jackson too fervently, as Alabamians “were apparently sympathetic to the exacting demands of South Carolina on the tariff question.” HALE at 385.

²⁴ Mardis was re-elected over his National Republican opponent, Elisha Young, 5,242 to 2,053. Baylor ran last with 1,867 votes. CQ GUIDE, at 958. The individual county returns from the Third District are as follows:

County	Mardis	Young	Baylor
Bibb	373	312	189
Greene	788	499	434
Jefferson	470	230	109
Perry	645	473	305
Pickens	846	59	274
Shelby	608	74	10
Sumter	283	36	144
Talladega	410	41	38
Tuscaloosa	849	329	364
Total	5,262	2,023	1,867

Later tally in Alabama Department of Archives and History compiled from HUNTSVILLE ADVOCATE, Sept. 3, 1833.

²⁵ BAKER, at 45.

²⁶ Francis Strother Lyon defeated Baylor and Joseph Bates in the Fifth District. Tuscaloosa FLAG OF THE UNION, Aug. 22, 1835. The incomplete returns from a later tally in the Alabama Department of Archives and History are as follows:

County	Lyon	Bates	Baylor
Baldwin	11	176	5
Mobile	172	771	17
Monroe	288	182	182

The Monroe County returns are official. Baldwin and Mobile County returns are from MOBILE COM. REG., Aug. 5, 1835. In Dallas County, the results were Baylor, 633; Lyon, 422; and Bates, 212. SELMA FREE PRESS, Aug. 8, 1835. Incomplete returns including votes from some other counties may be found in other press reports, but no final totals are available.

²⁷ Ben Windham, “Baylor University founder had city ties,” TUSCALOOSA NEWS, Feb. 18, 2007; Henry W. Baylor, Biography of Hon. R. E. B. Baylor at 3 [hereinafter Henry Baylor], in BAYLOR PAPERS.

²⁸ ALABAMIANS AT WAR, ALABAMA DEPARTMENT OF ARCHIVES AND HISTORY, 2ND CREEK WAR, 1836–37, SG013379.

²⁹ BAKER, at 47.

³⁰ Both Baylor’s and Lyon’s political positions were complex. As one correspondent explained:

[T]he *Cahawba Democrat* ... calls [Lyon] the “democratic candidate” Whigs ... ought ... to ... concentrate their growing strength on ... Baylor ... in opposition to ... Lyon, who, instead of ... openly declaring his sentiments on the important topics ..., thinks he has done enough by going just on the eve of the election to a

Van Buren Editor, and getting himself endorsed and proclaimed as a Democrat! Col. Baylor is a gentleman (and so we understand is Mr. Lyon) in principles, manners and practice, is well informed, and endowed with highly respectable talents, and is, and has been for years a firm, undisguised and unwavering Whig, and is the ostensible and fully recognized candidate of the Whig party throughout the District.

SELMA FREE PRESS, Aug. 5, 1837.

After the election, one editor explained:

Mr. Lyon and his friends were over-confident In this county [Mobile], having been originally nominated ... as the candidate of the Whig party—and expecting the acquiescence ... from the Democratic party, to which many of his opinions and much of his political course are acceptable, he ... had a right to expect, little opposition from this quarter. It turns out, ... Mr. Lyon was generally abandoned by the Whig party, and owes his seat ... to ... his declarations of impartial purposes towards the administration of Mr. Van Buren The whole Nullification party of the upper counties under the present cognomen of Whigs went in mass, for Mr. Baylor, who ... hold[s] most of the doctrines of ... the National Republican school....

MOBILE COM. REG. AND PATRIOT, Aug. 18, 1837. A letter to the editor from the same edition confirmed this analysis, saying in part:

Every ultra-man of the opposition voted against [Lyon]. Those Simon-pures, the nullifiers. ... used every experience in their power to promote Baylor's election [T]hey are reduced to the unenviable position of mere hangers-on to the skirts of men with the vain hope of being dragged into power....

Id. The political currents that caused frequent party changes among Alabama officeholders during Baylor's career are discussed by Theodore Henley Jack in his "Sectionalism and Party Politics in Alabama 1819–1842." THEODORE HENLEY JACK, SECTIONALISM AND PARTY POLITICS IN ALABAMA 1819–1842 (1919). In particular, the alliance between Whigs, National Republicans, and Nullifiers in the late 1830s is explored by J. Mills in his "Politics and Power in a Slave Society: Alabama, 1800–1860." J. MILLS THORNTON III, POLITICS AND POWER IN A SLAVE SOCIETY: ALABAMA, 1800–1860, at 3–58 (1978). Unfortunately, neither work specifically addresses Baylor's political campaigns or his party allegiances.

³¹ Lyon won—3,651 to 3,604—in Alabama's Fifth Congressional District. CQ GUIDE, at 966. The individual county returns from the Third District are as follows:

County	Lyon	Baylor
Baldwin	211	34
Clarke	577	102
Dallas	432	870
Marengo	705	384
Mobile	741	832
Monroe	370	564
Washington	252	136
Wilcox	363	682
Total	3,651	3,604

Later tally in Alabama Department of Archives and History from MOBILE COM. REG., Aug. 18, 1837. *See also* SELMA FREE PRESS, Aug. 26, 1837.

³² Baylor Sketch, at 8.

³³ BAKER, at 23.

³⁴ *Id.* at 22–23.

³⁵ Chilton was elected in 1829 from Kentucky's 11th Congressional District and in 1833 from Kentucky's 6th Congressional District. C.Q. GUIDE, at 951, 958.

³⁶ BAKER, at 49.

³⁷ *Id.* at 49–50.

³⁸ *Id.* at 50.

³⁹ *Id.* at 58.

⁴⁰ *Id.* at 61.

- ⁴¹ Billye Beth Baker, *Judge R. E. B. Baylor*, FOOTPRINTS OF FAYETTE (May 17, 2011), <http://www.fayettecountyhistory.org/footprints1.htm#baylor2>.
- ⁴² BAKER, at 61–66.
- ⁴³ *Id.* at 63–64.
- ⁴⁴ S.J. of Tex., 5th Cong. 110 (1841); H.J. of Tex., 5th Cong. 426 (1841).
- ⁴⁵ Baylor would, however, accept food or clothes if congregations were moved to make such offerings. BAKER, at 66.
- ⁴⁶ *Id.* at 69–70, 72–75.
- ⁴⁷ *Id.* at 110–11.
- ⁴⁸ *Id.* at 76.
- ⁴⁹ Harry Haynes, *Biography of Dr. Burleson*, in Burleson, at 181.
- ⁵⁰ BAKER, at 74.
- ⁵¹ *Id.* at 79.
- ⁵² R.E.B. Baylor, Baylor as a Man and Preacher, in BAYLOR PAPERS, *quoted in* BAKER, at 107.
- ⁵³ JAMES L. HALEY, SAM HOUSTON 329 (2002).
- ⁵⁴ BAKER, at 95.
- ⁵⁵ EUGENE W. BAKER, TO LIGHT THE WAYS OF TIME 12 (1987) [hereinafter WAYS OF TIME].
- ⁵⁶ BAKER, at 120.
- ⁵⁷ *Id.* at 121.
- ⁵⁸ *Id.* at 121.
- ⁵⁹ WAYS OF TIME, at 12.
- ⁶⁰ *Id.* at 15.
- ⁶¹ BAKER, at 121–22.



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Letters from Exile, 1864–1865: A Family View of Judge Wesley Ogden

By William W. Ogden



Judge Wesley Ogden

“I am more surprised and astonished at the intolerance which has grown in the hearts of the great mass of the people . . . than anything else. [We] who once boasted of our devotion to free institutions, and universal toleration, have become the most persecuting and intolerant people perhaps on the earth. The Pope persecutes those who disagree with him in religious matters, and the Tyrant those who differ with in temporal matters, but it seems to be reserved for free America to exhibit the climax of refinement in persecution, . . . by in every way pursuing those who even think differently in almost anything from those who are temporarily in the ascendant. . . . And I now think it very doubtful if I or you live to see again the freedom of speech and action we once enjoyed.”

This description of political intolerance and polarization sounds eerily descriptive of American politics in the twenty-first century. But the writer is not speaking of the 2013 Congress.

The letter was written April 4, 1865, by Texas attorney Wesley B. Ogden, exiled in New Orleans, to his wife Elizabeth, living with their children in Port Lavaca. Forced to leave Confederate Texas because he was an unapologetic Unionist, Ogden’s outspoken and contrarian beliefs had put him dangerously out of step with his fellow Texans. He opposed secession. He opposed slavery. He was a staunch Republican¹ in a strongly Democratic state.

He was also my great grandfather.

After the Civil War, Ogden would return to practice law in Texas, eventually being appointed district attorney for the Tenth Judicial District in 1866, district judge in 1867, and associate justice of the Texas Supreme Court in 1870. He served on the Texas Supreme Court for four years, the last year as its presiding justice. He would retire from the bench in 1874 and practice law for the next fourteen years in San Antonio.² His firm, originally Ogden & Ogden, would survive various mergers into the twentieth century, eventually known as Matthews, Nowlin, Macfarlane & Barrett, before that firm merged in 2004 with Cox & Smith.³

But in the winter of 1863, at the height of the Civil War, the future seemed to hold little promise. The danger of his situation, and the sacrifices he and his family made as a result, are evident in the correspondence between Wesley and Elizabeth written after he fled Texas for the relative safety of New Orleans.



WESLEY B. OGDEN was born December 16, 1818 in Monroe County, New York.⁴ He taught school and read for the law in Akron, Ohio, and was admitted to the Ohio Bar in 1845. He returned to New York and either taught school or practiced law, or both, in Rochester, New York from 1845 to 1849.

On a doctor's advice, he moved in 1849 to the milder climate of Port Lavaca, Texas, with his first wife, the former Jane Church. He opened a law office in Port Lavaca. Jane died in 1853, leaving Wesley with their three children: Helen, Henry, and Charles.

Five years later, in 1858, he was remarried to Elizabeth Chichester, whom he affectionately called "Lizzie." They would eventually have five children: Lillian (b. 1862), Mary (b. 1864), Alma (b. 1866), William Benjamin (b. 1871) (my grandfather), and Ida (b. 1873).

While we don't know precisely what disagreements caused Wesley to leave Port Lavaca for New Orleans in late 1863 or early 1864, circumstances must have been dire.⁵ Union gunboats shelled Port Lavaca on October 31, 1862,

Lavaca July 27. 1864

My Dear Husband.

I have waited a long time for a letter from you - but have never received the first - written on the 18th of May. I answered almost immediately. You must write often, as you know we are anxious to hear from you - and I will try to do the same. I hope the time will soon come when we will be able to write to each other - but I must say this



Wesley Ogden and his children by his first wife, Jane: Henry, Charles, and Helen, c. 1855.



The Union navy's October 31–November 1, 1862 shelling of Port Lavaca and attacks along the coast made Confederate Texas dangerous for Port Lavaca resident Wesley Ogden.

Used with permission of the Special Collections & Archives Department, U.S. Naval Academy Chester W. Nimitz Library.

and Union troops occupied Port Lavaca in December 1863, but the troops evacuated the Matagorda Bay area in June 1864.⁶ It's possible that Ogden became involved in some controversy during the period of Union occupation. Wesley and Elizabeth's first baby, Lillian, had just been born in 1862.⁷ Apparently Elizabeth became pregnant with her second child shortly before Wesley's departure:

Lavaca, December 29, 1864

Dear Husband,

*I write again to you, but hardly in the hope of its reaching you. My letters, if you get half of them, must seem a mere repetition of the same things over and over again, but I have nothing new to write about, and I know not which will reach you. I have sent you four letters since the birth of our little one – and hope you will get some of them. One, I know you will not, for it was sent on the *Ike Davis*, and the boat was lost. So I will recapitulate. We are all well. The baby was born on the 7th of November, and is perfectly healthy, and quite pretty. She has dark hair, and blue eyes. We have named her *Mary Shelton* . . .*

*Ever yours with fondest love,
Lizzie*

Lizzie's letters show her deep anxiety for Wesley's safety, and for the safety of their oldest son Henry, who was coming of age to be drafted:

Lavaca, January 5, 1865

Dear Husband –

You seem to be very anxious about us, and think I do not write the whole truth. Of course, I do not trouble you with all my little troubles and annoyances, for that would be of no use, and only worry you for nothing. But I can assure you that when I say we are getting along well, I mean it. We are not suffering for anything, and live as well as when you were here, as regards the necessaries of life. I have sold various things to raise money to live on, and shall continue to do so, if I need it. So do not be uneasy about us, for there is no need. Since the baby was born I have been relieved of much anxiety, and now if we could only see you again, we would all be happy indeed. But do not think of doing so rash a thing as coming here alone—that would be dreadful—your life would not be safe a moment, though you have many friends here, they would not dare to help you. Do not come till you can do so openly and boldly, defying all of your enemies, for you know as well as I do, that you have many bitter ones here.

I am fearful they will try to put Henry in the Army soon. What shall I do with him? Send him to you? I can do it. So you had better keep watch for him in a month or so. I should hate to have him go as he has quite a dependant for me, but he shall not go into the Army if I can prevent it.

Ever your own – Lizzie

Mail was unreliable. They posted letters to each other through intermediaries in Matamoros, Brownsville, Galveston, Havana, and Shreveport. They were anxious for more news from each other, and at the same time concerned that more frequent communications would put their intermediaries in danger:

I forgot to give you the direction again for sending letters by Brownsville. Here it is—direct the outside envelope to A. Bartlett, Matamoras, Mexico. The inner one to me. Please write often and freely. I have sent you many letters that way, and in every one have enclosed the direction—and have been sadly disappointed when I received no answers. I also sent one by Mrs. Mar when she went to Mexico, you certainly ought to have received that. Perhaps you could send letters by way of Havana, by directing them to Vignier, Robertson & Co., as we used to. Blockade runners come in so often that it would be quite a sure way if they would forward them. There are a number of boats in here now, and they make almost regular trips into Galveston. . . .

You will love the little one. She is growing very pretty—and is so plump and healthy—she is very strong—raises herself up on her feet, and holds up her head as still as any one. Tell Elijah that Nelson goes to school yet and Joe Sheldon is going to Mexico. Bob is in Ark. is well and has plenty of good Yankee clothing which was captured at Cabin Creek. He was in the fight. He has lost two horses since he went back and now has none. Keep writing—some of the letters will come. . . .

Keep sending by Matamoras. That one came through so well and so quickly. Direct some to S. W. Higgins—so as not to trouble Bart. with too many. He has been very kind to me, and offers to help us in any way he can. Lilly sends lots of kisses for papa. The baby would laugh and pull your hair if she could see you. She sits alone—and is as lively as a cricket.

Ever your own, Lizzie

By March 14, 1865, Lizzie had made good on her word, and arranged for their oldest son, Henry, to be transported to New Orleans. She was anxious to hear word that he arrived safely:

Lavaca, March 14, 1865

I hope I shall receive some from you before long—for this suspense is hard to bear. I received a note from Brazos Santiago dated January 14, signed “Amigo” which said that you was well on the 25th of December. That is the latest I have heard. I hope and pray that Henry may reach you safely—he can tell you about us and relieve your anxiety. I sent you a letter by a blockade runner since he left—and shall continue to write often—O, how I wish I could hear from you, a good, long letter—and that you would tell me what to do.

Ever yours, Lizzie

Two days after Lizzie wrote this letter, Wesley sat down in New Orleans to write to her, unaware that Henry was en route:

New Orleans, March 16, 1865

My dear wife,

I have just heard of an opportunity to send a letter to Texas by a gentleman who leaves here in about 2 hours. And as I have not written for several days, I hasten to embrace the chance, and again to thank you for your kind and very welcome favor of January 5th. That was the first

unreserved and long letter I have received from you since I left home, which seems almost an age. And you can little imagine how much satisfaction it brought to me. In some respects it was like a visit to the ones most dear to me on earth, and a brief but joyous participation in their smiles of welcome and love—But the sad reality was soon forced upon me again that I was still a stranger in a strange land, and those dear ones far away from my “reach to bless or protection to serve.” . . .

I hope and trust that it will not be long before we will have the pleasure of meeting again. You know better than any one else that I never intentionally injured anyone, and though I may have felt that I have been wronged and my motives misinterpreted, yet my personal wrongs have never caused me to wish to wrong another, and I expect to see the time not far distant when I will be enabled to prove the honesty of my purpose, by returning good for evil. But O! Who shall be able to return to me the pleasure of a quiet life with my dear family, for the anxiety, losses and misery I have endured for the last four years, and more particularly for the last year, but if I am permitted to return again to those dear ones in peace and to find them all well and once again happy, I shall certainly feel as though my sacrifices have been comparatively small, and at least honorable if they are hard to bear.

Wesley’s letter goes on to describe a community of “Texas folks” who were living in New Orleans and “are all about as usual. . . . Doctor Hughes & Woodman still board in the same house with me and are well. Mr. McBen has gone to Baton Rouge but his family are yet here. Mrs. McKee wished to be particularly remembered to all friends.”

By April 1865, hopes were rising in the expatriate community that the conflict would soon be over:

New Orleans, April 4th 1865.

Dear Wife,

I am informed that a flag of truce leaves here for the Confederate lines tomorrow, which will afford me a fair chance of getting a letter through to you. And I cannot afford to allow the opportunity to pass unimproved. I have written several letters recently but if my letters share the same fate of yours, for the last three months they were written to little or no purpose, for as yet, none have reached me bearing a later date than January 5th. I do not blame you, for I know you have written on every occasion but it seems hard indeed, that after being despoiled of what little means we had, then forcibly separated, and deprived of the trifling privilege of communicating by letter, and all for the simple and sole reason that we honestly differed from our neighbors in questions affecting the general interests of the country in which we lived—but such is the present state of affairs and we must submit with as good grace as possible.

His frustration with the politics of the day is as obvious as it is understandable:

I am disgusted with Politics and Politicians and as I have often said, if I could get my little family off into some quiet corner of the world where we could live quietly and undisturbed by the rest of the world I would be happy. . . . Our separation I trust is fast drawing to a close. And perhaps there are brighter days approaching. I can give you no advice what to do as I know little of your present situation, but I hope you will try and keep the family together, and if you think it advisable to remain in the house, but as to that do what you think best. Do not hesitate to sell anything you can spare to procure you the necessaries of life so long as you have anything

saleable. I think I can say to you with much certainty that you have no occasion to calculate or provide for more than two months from this date. And you can make arrangements accordingly as I believe you will not be disappointed. . . .

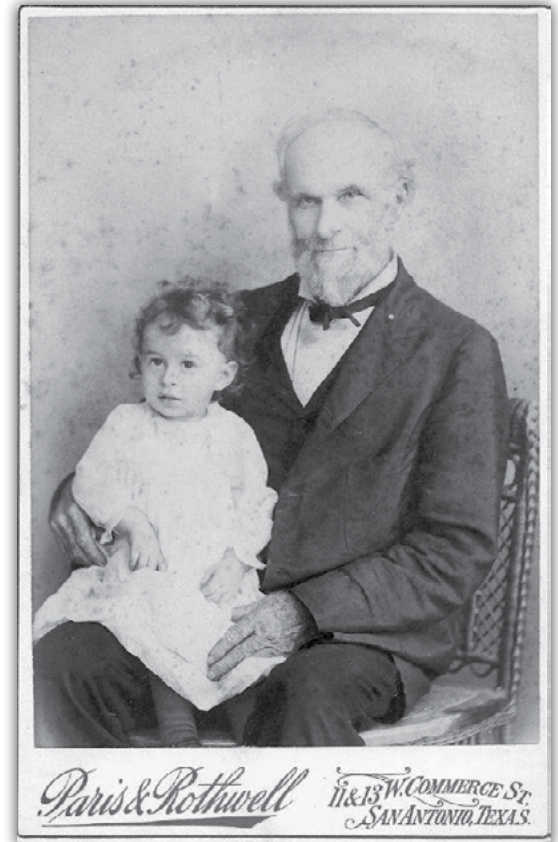
Please give my respects to any who would not be ashamed of its being made public, and always remember that I remain your affectionate and devoted husband.

Wesley Ogden

Five days after this letter was written, Robert E. Lee, General of the Confederacy's Army of Northern Virginia, surrendered to Ulysses S. Grant, General of the Union's Army of the Potomac, leading soon afterwards to the end of the Civil War.

Sometime later in 1865, conditions had changed sufficiently so that Ogden could return to Port Lavaca and be reunited with Lizzie and the children. He rose to prominence in the Reconstruction government of Texas, culminating in four years of service as a justice on the Texas Supreme Court. He had a successful San Antonio law practice with his son, Charles, from 1874 until his retirement in 1888. He died in his home at age seventy-seven on June 15, 1896. Courts in San Antonio adjourned that day out of respect to his memory.⁸

While Ogden's political career remained periodically controversial in Reconstruction-era Texas, especially for his service on the much-maligned "Semicolon Court," John Henry Brown would write that he was remembered as "a lawyer of splendid



Judge Wesley Ogden with an unknown grandchild, c. 1890–92.



Judge Wesley Ogden's oldest son and law partner, Charles Ogden, in the San Antonio law office of Ogden, Brooks & Napier, c. 1910.

abilities and a judge of clear and profound discrimination."⁹ When Charles Ogden died in 1911, the *San Antonio Light* noted in passing that his father "was a judge of the supreme court during Reconstruction times, and his ability and integrity is now generally conceded by the public, although at that time political feelings against him were very bitter."¹⁰

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The bitterness did not entirely pass with the nineteenth century. For many years the decisions of the Reconstruction Court were disfavored or not cited at all. Early in the twentieth century, when a portrait gallery of all Supreme Court justices was being assembled in the Capitol Building, the decision was made to exclude those justices who served during Reconstruction. Many equated Unionist sentiment with disloyalty to Texas, despite the examples of other prominent Texans who opposed secession yet whose integrity was unquestioned—Sam Houston being notable among them.

Wesley Ogden, like other Reconstruction-era judges, has received little credit for courageous and highly unpopular decisions that protected the civil rights of emancipated slaves, protected alike the rights of Confederate veterans and their widows, and affirmed the rule of law against the intolerant and sometimes violent emotions of the day. As one example, in *Gaines v. State*, Judge Ogden reversed the conviction of a black man whose motion to remove his case to federal court had been summarily denied by a state court judge:

The constitutionality of the [1866] civil rights law [allowing removal] has been repeatedly recognized by the supreme court of the United States, the only tribunal which has the ultimate and final determination of the constitutionality of all acts of congress, and we think state courts should be exceedingly cautious in attempting to settle questions of grave importance which belong peculiarly to a different and higher tribunal. . . .

It cannot be controverted that the object and purpose of this act was primarily to protect the recently emancipated slaves of the country against class and unfriendly legislation by the states, and the prejudices which had grown up with the institution of slavery against the colored man enjoying any of the rights of a citizen. . . . We must therefore decide that the district court erred in refusing the removal of this case to the United States court and for that reason the judgment must be reversed.¹¹

We are currently observing the fiftieth anniversary of the Civil Rights Act of 1964, and honoring the many individuals who were instrumental in passing Lyndon Johnson’s signature landmark legislation. Surely we can honor as well those courageous nonconformists who stood up for civil rights one hundred years earlier, when emotions were much more raw, intolerance much more pervasive, and the cost of conscience much more deadly.

Wesley Ogden was clearly a devoted husband and father. He paid a price for his convictions, as did his family. But I have little doubt that he came to feel, as he first wrote to Lizzie in March of 1865, that his own sacrifice had been comparatively small, and made with honor.

Note: The Texas Supreme Court Historical Society Journal and the author gratefully acknowledge the kind permission of the Special Collections & Archives Department, U.S. Naval Academy Chester W. Nimitz Library, to publish Union sailor Daniel D. T. Nestell’s contemporaneous, hand-sketched image of the Union naval attack.

¹ JOHN HENRY BROWN, *INDIAN WARS AND PIONEERS OF TEXAS* 517 (c.1896) [hereinafter *PIONEERS OF TEXAS*].

² *Wesley B. Ogden (1818–1896)*, TARLTON LAW LIBRARY JAMAIL CENTER FOR LEGAL RESEARCH: JUSTICES OF TEXAS 1836–1986, <http://tarlton.law.utexas.edu/justices/profile/view/78> (last visited Feb. 13, 2014).

³ *San Antonio Firm Formed in 1874*, 39 TEX. BAR J. 848 (Oct. 1976).

⁴ This is the birthdate listed in Walter Prescott Webb’s and Eldon Stephen Branda’s *Handbook of Texas* (1952), as well as in *Justices of Texas 1836-1986*, database maintained by the University of Texas Tarleton Law Library, and the Texas State Historical Association’s website. Brown’s treatise, *Indian Wars and Pioneers of Texas*, lists the year of his birth as 1817. A newspaper article written on the occasion of his death listed his birthday as December 18, 1818. *SAN ANTONIO LIGHT*, June 15, 1896.

- ⁵ See James L. Haley, *THE TEXAS SUPREME COURT: A NARRATIVE HISTORY, 1836-1986* (Univ. of Tex. Press, 2013), at 32; Randolph B. Campbell, “Ogden, Wesley B.,” *HANDBOOK OF TEXAS ONLINE*, <http://www.tshaonline.org/handbook/online/articles/fog04> (last visited Jan. 30, 2014).
- ⁶ See Daniel T. Nestell, *Drawing of bombardment of Port Lavaca under bombardment* (Oct. 31, 1863), <http://cdm16099.contentdm.oclc.org/cdm/singleitem/collection/p15241coll4/id/372/rec/1> (last visited Jan. 30, 2014); EDWARD T. COTHAM, JR., *BATTLE ON THE BAY: THE CIVIL WAR BATTLE FOR GALVESTON* (1998) at 227; Lonnie Ficklen Maywald, “Port Lavaca, Texas,” *HANDBOOK OF TEXAS ONLINE* <http://www.tshaonline.org/handbook/online/articles/hep07> (last visited Feb. 13, 2014); Tom Trescott, “January Meeting,” *LXVIII(6) THE CIVIL WAR ROUND TABLE 3* (FEB. 2008) at 3; <http://www.chicagocwrt.org/newsletters/CWRT200802.pdf> (accessed Feb. 13, 2013); Amy Borgens and Robert Dearhart, *U.S.S. Westfield: The Loss and Recovery of a Civil War Ferry-Gunboat in Galveston Bay*, 12(2) *CURRENT ARCHAEOLOGY IN TEXAS* 1 (Nov. 2010) at 3, <http://www.thc.state.tx.us/public/upload/publications/current-archeology-november-2010.pdf> (accessed Feb. 13, 2013) (stating that the *U.S.S. Westfield's* 9-inch, rifled Parrott gun exploded during the raid on Port Lavaca).
- ⁷ Wesley Ogden had reason to fear that his pro-Union opinions endangered his live and the lives of his family. Confederate law officers hanged some forty Union sympathizers around Gainesville, while “[s]cores were killed or driven out of the German settlements in the Hill Country for their prevalent anti-slavery attitudes.” See HALEY, *TEXAS SUPREME COURT*, at 70. By October of 1863, there was so much hostility toward pro-Union Texans that the Confederate government of Texas arrested and jailed five Texans for publishing the pamphlet “Common Sense,” which questioned the Confederacy’s justification for continuing to fight a war that the battles of Gettysburg and Vicksburg showed it to be losing. See MICHAEL ARIENS, *LONE STAR LAW: A LEGAL HISTORY OF TEXAS* (2011) at 34–35; PAUL C. BOETHEL, *COLONEL AMASA TURNER: THE GENTLEMAN FROM LAVACA, AND OTHER CAPTAINS AT SAN JACINTO* (1963) at 145-56 (describing strong support for the Confederacy in Port Lavaca and Calhoun County.)
- ⁸ *SAN ANTONIO LIGHT*, June 15, 1896.
- ⁹ *PIONEERS OF TEXAS*, at 517.
- ¹⁰ *SAN ANTONIO LIGHT*, Apr. 19, 1911.
- ¹¹ See *Gaines v. State*, 39 Tex. 606 (1873).



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Setting the Record Straight: Colbert Coldwell's Quest for Justice

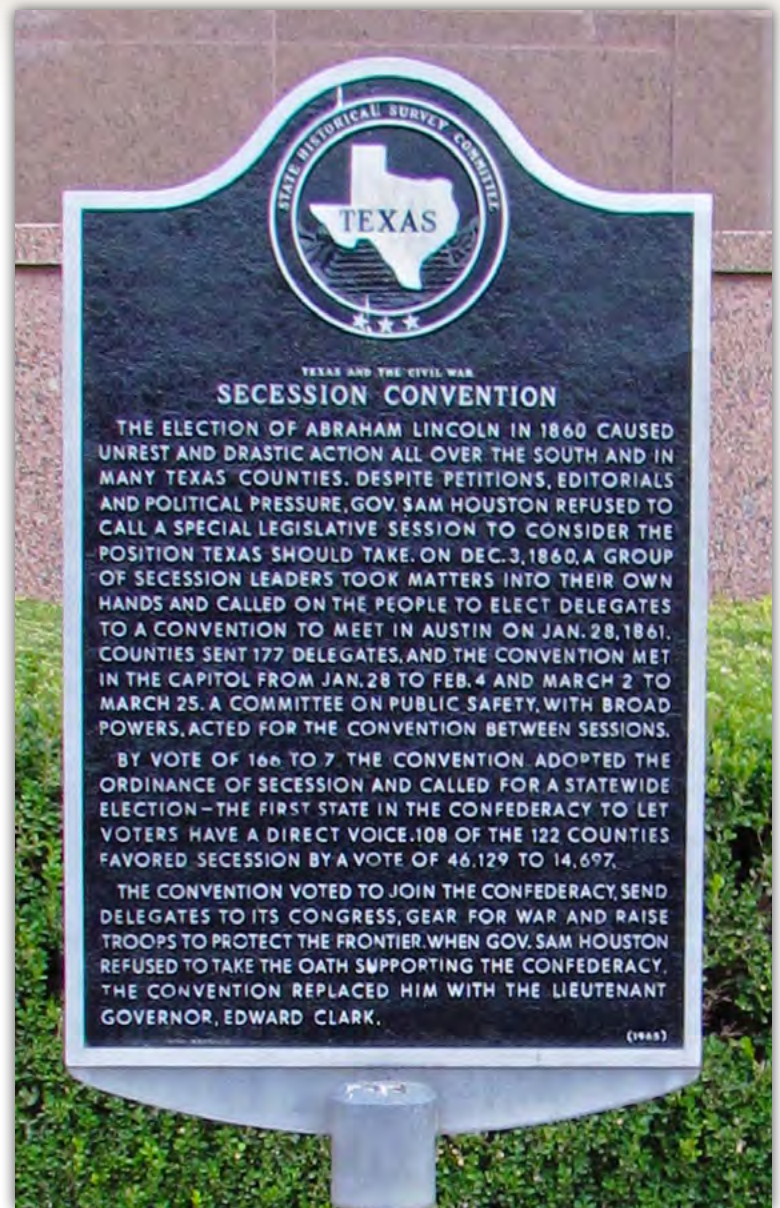
By Colbert N. Coldwell

Executive Editor's Introduction by David A. Furlow

The Texas Supreme Court Historical Society is honored to publish an article about Texas Supreme Court Justice Colbert Coldwell written by his great-grandson, El Paso lawyer Colbert Nathaniel Coldwell. First licensed to practice law in Texas on September 18, 1967, after graduating from the University of Texas Law School, Colbert Nathaniel Coldwell has long played a prominent role in El Paso.

Colbert Nathaniel and his cousin Colbert Coldwell worked with Texas Supreme Court Historical Society board member Judge Mark Davidson and Baker Botts attorney Bill Kroger to commemorate their great-grandfather's service on the Reconstruction era Court by hanging a portrait of him in Judge Mark Davidson's court in 2008. Justice Coldwell's portrait, painted by artist Jearine Reat, hangs with honor beside those of other judges of the Eleventh Judicial District Court, originally the Seventh Judicial District Court, the first district court in Harris County.

A HARSH BLUE NORTHER blew through the broad streets of Marshall, Texas on December 30, 1867, slashing at the Union League banners next to the Harrison County Courthouse.¹ But the howling wind could not keep Colbert Coldwell, Associate Justice of the Texas Supreme Court, and his entourage of Radical Republicans and freedmen advisors, from walking to the courthouse. Nor could it silence the band of black musicians playing "Battle Hymn of the Republic" to cheer on three hundred freedmen gathering nearby for the Republican rally. Colbert Coldwell, a Tennessee-born Texan



Sam Houston, Colbert Coldwell, and other Texans opposed secession. Photo of the Secession Convention plaque on the grounds of the Texas Capitol taken by David Furlow in 2013.

¹ See RANDOLPH B. CAMPBELL, *GRASS-ROOTS RECONSTRUCTION IN TEXAS, 1865-1880* (1997), at 116-117 [hereinafter *GRASS-ROOTS*]; Charles Christopher Jackson, "Caldwell, Colbert," *HANDBOOK OF TEXAS ONLINE*, <http://www.tshaonline.org/handbook/online/articles/fca10> (last visited Feb. 17, 2014) [hereinafter *Colbert Caldwell*]. Colbert Nathaniel Coldwell, *Colbert Coldwell's Quest* 126-43 (unpublished manuscript) (on file with author and the Texas Supreme Court Historical Society) [hereinafter *Coldwell's Quest*].

who opposed Secession before the war, yet owned eleven slaves by war's end,² was in Marshall seeking votes for the February 1868 race to serve as a delegate in Texas's Constitutional Convention of 1868.³

Coldwell's status as an Associate Justice of the Texas Supreme Court Justice could not shield him from a bullet, his enemies warned. Not when he "stirred up" ex-slaves to vote for Radical Republicans over the Democrats who had dominated the Lone Star State's politics for decades. And not when Coldwell owed his appointment to General "Little Phil" Sheridan, the five-foot, four-inch commander of the federal Fifth Military District responsible for enforcing the Military Reconstruction Act of 1867 in Texas and Louisiana.⁴ Too many Texans remembered Little Phil's bloody victories in Kentucky, Tennessee, and Georgia; his devastation of the Shenandoah Valley; and his cavalry corps' role in compelling Robert E. Lee's surrender in April, 1865. Many Texans found it hard to respect anyone appointed by Sheridan after his July 30, 1867 removal of recently-elected Texas Governor James W. Throckmorton, a former Confederate cavalry officer, or Sheridan's September 10, 1867 firing of all of the judges serving on the Texas Supreme Court of Texas, as "impediments to the reconstruction of the State."⁵

So when Colbert Coldwell came to Marshall, he came prepared for trouble. And he suspected something was wrong as soon as A.G. Adams, the Deputy Sheriff, refused his request to use the courthouse's main courtroom.⁶ Not one to be thwarted, Coldwell led his supporters down to the basement hallways, where three hundred freedmen crowded in to get out of the cold. After giving a stump speech, Justice Coldwell asked the freedmen to elect him in the February 1868 election. Then one of Coldwell's entourage broke into song, rallying voters with "Rally 'Round the Flag, Boys." It was a song ex-Confederates hated. S. J. Richardson, Marshall's Chief of Police and a former captain in the Confederate Army, worried that the song might lead to a riot. He strode into the basement hallway, pulled his pistol, and fired it into the ceiling to drive the freedmen outside.

When Assistant Deputy A.G. Adams arrived, ostensibly to preserve order, Justice Coldwell assumed that he was there to do Police Chief Richardson's bidding. Coldwell led his men outside, where several fellow members of the Union League surged around, shielding the Justice as they sought refuge at the federal military base in Marshall.⁷ To make the promise of equal rights a reality, Justice Coldwell repeatedly risked his life, especially in 1868, after he won his election to the Constitutional Convention and the editor of *The Houston Telegraph* published an editorial about Justice Coldwell and Morgan Hamilton, the brother of former Governor Colossal Jack Hamilton: "We say it solemnly, such men ought to die."⁸

A few weeks afterwards, in Jefferson, the Klan murdered George W. Smith, a Union Army veteran who supported the rights of freedmen, and two freedmen, then marched toward Justice Coldwell's house, intending to seize and murder him as well. Justice Coldwell escaped, while his young son Nathaniel's testimony helped arrest and convict some of the murderers after a ten-week trial.⁹

² See JAMES L. HALEY, *THE TEXAS SUPREME COURT: A NARRATIVE HISTORY, 1836–1986*, 81 (2013) (referring to "Colbert Caldwell (spelled 'Coldwell' in some sources)" and his service on the Texas Supreme Court).

³ See GRASS-ROOTS, at 117.

⁴ See Joseph G. Dawson III, "Sheridan, Philip Henry," *HANDBOOK OF TEXAS ONLINE*, <http://www.tshaonline.org/handbook/online/articles/fsh26> (last visited Feb. 17, 2014).

⁵ See MICHAEL ARIENS, *LONE STAR LAW: A LEGAL HISTORY OF TEXAS* 40–41 (2011).

⁶ See Van Craddock, "Caldwell survived mob, 'Marshall Riot,'" *LONGVIEW NEWS-JOURNAL* (Oct. 30, 2011). See also Colbert Coldwell's letter to Gov. E. M. Pease, *HOLDINGS OF THE TEXAS STATE ARCHIVES, GOVERNOR'S PAPERS, ELISHA M. PEASE, Folder 28* (Dec. 26–31, 1867).

⁷ See Letter from Donald Campbell to Governor E. M. Pease (Dec. 31, 1867), in *PEACE PAPERS*.

⁸ See *Journal of the Reconstruction Convention* (1868), vol. I, at 504, available at <https://archive.org/details/journalofreconst11texa> (last visited Feb. 17, 2014).

⁹ See Coldwell's Quest, at 143–59; Max S. Lale, "Stockade Case," *HANDBOOK OF TEXAS ONLINE*, <http://www.tshaonline.org/handbook/online/articles/jrs03> (last visited Feb. 17, 2014).



Portrait of Justice Colbert Caldwell on display in the Eleventh Judicial District Court in Houston. Dedicated and hung in 2008; photo by David A. Furlow.

Much of what has been written about Justice Coldwell is wrong. Many authoritative reference books, including the Texas State Historical Association's *Handbook of Texas*, misspell Colbert Coldwell's name as Colbert Caldwell, with an *a*. Many members of the sprawling Scotch-Irish family of Coldwells and Caldwells spelled their name that way. But the Justice and his descendants, as well as judges, lawyers, and historians who hung his portrait in the Eleventh Judicial District Court's courtroom in Harris County on October 18, 2008, did not misspell.¹⁰ When Justice Coldwell litigated an important issue of creditor law in the courts of Kansas, he did so under the surname Coldwell, not Caldwell.¹¹ When Justice Coldwell's grandson entered the real estate business, he named his company *Coldwell Banker*.¹²

Colbert Coldwell was born in Shelbyville, Tennessee. His father died of cholera when he was eleven. He came to Texas with an uncle, Hamilton Ledbetter, who settled in Victoria after 1836, then lived with his uncle Thomas Alfred Coldwell in southwestern Missouri. He went overland from Missouri on the Santa Fe Trail, with the scout and trailblazer, Kit Carson.¹³

Coldwell engaged in the Santa Fe trade, based for six years in Chihuahua, Mexico and traveled as far south as Durango. He learned Spanish, his trade prospered, and he became a close friend of one New Mexico Governor, Mariano Martinez de Lejanza, from whom he received trade preferences. During the Mexican War he was interpreter and guide for the Missouri Volunteer Regiment under Colonel Alexander Doniphan, which captured El Paso and Chihuahua. He played a prominent role at the Battle of Brazito, New Mexico on Christmas Day, 1846, twenty-six miles north of El Paso.

After the Mexican War, Coldwell "read" law and engaged in the family trading business. He married Martha Michie and moved to St. Francis County, Arkansas where he traded, practiced law, and served in the Arkansas Legislature. He served as a delegate to the 1856 Democratic Convention that nominated President James Buchanan. Coldwell moved, with his wife and seven children, to Mansfield, Texas, in 1859, and campaigned in the 1860 presidential election for Stephen Douglas, the Northern Democratic candidate.

Coldwell refused military service under the Confederacy, causing his legal practice to languish during the Civil War. He traded from his home at Navasota to Brownsville and into Mexico during the war, only to see his wagons, mule teams, and goods commandeered by the increasingly desperate Confederates. He spent nine months in jail in late 1864 and through April, 1865 as a Union sympathizer.

Soon after the Civil War ended, he won appointment as the first Chairman of the Union League in Texas,

¹⁰ See J.R. Gonzales, *Portrait unveiling honors Reconstruction-era judge*, HOUSTON CHRON., Oct. 18, 2008, <http://blog.chron.com/bayoucityhistory/2008/10/portrait-unveiling-honors-reconstruction-era-judge>.

¹¹ See *Tootle, Hosea & Co. v. Coldwell*, 30 Ka. 125, 1 P. 329 (1883).

¹² See *id.*

¹³ See *Coldwell's Quest*, at 32–55; Colbert Caldwell.

established to support for public office only reliable Union men. In August 1865, Provisional Governor Andrew Jackson “Colossal Jack” Hamilton appointed him as District Judge of the Seventh Judicial District, which included Galveston, Houston, Huntsville, and several rural counties. Judge Coldwell helped re-establish the rule of law after the war and generously assisted many former Confederates obtain the restoration of their legal rights and law licenses, including Judges James A. Baker and Peter W. Gray, founders of the Baker Botts law firm.

On November 27, 1865, Seventh District Judge Colbert Coldwell addressed the first Harris County grand jury to convene after the Civil War. Speaking to powerful community leaders, he emphasized their duty to respect the rights of former slaves under the recently amended U.S. Constitution:

“Gentlemen:—you have been duly elected, empanelled and sworn as grand jurors...and it is now incumbent upon me to give you in charge such matters as may come before you....[N]ow that the national authority is fully restored, and peace has again asserted her mild dominion...we should . . . steadily bear in mind, that upon the juries of the country—grand and petit, devolves the not less arduous task of bringing order out of chaos, by a firm and impartial administration of the criminal laws....

“The civil war which has recently terminated involved the destruction of the institution of slavery in this State, and swept away with it those distinctions, both as to protection and liability to punishment, which hitherto existed between whites and blacks. Hence the late slaves—now freedmen—and that class denominated “free persons of color,” stand upon terms of perfect equality with all other persons in the ‘penal code.’

“This greatly enlarges the scope of your enquiries...It is logical and necessarily follows that persons of African descent are competent witnesses where any of that race are parties. The reason of their exclusion heretofore, it is now believed, has ceased to exist. It was because they were slaves, and descendants of slaves....

“And here an axiomatic principle, as old as our system of jurisprudence comes to our aid. ‘When the reason of the law fails, the law likewise fails.’...The tree having been cut up, by the roots, it would be idle to suppose that its branches could still flourish.”¹⁴

In 1867, Major General Philip Sheridan appointed Coldwell and four other anti-secessionists, including his mentor and colleague, former Provisional Governor and leading pre-war attorney, A.J. Hamilton, to a reconstituted Texas Supreme Court. Coldwell was the only appointee with prior judicial experience.

Coldwell soon moved to Jefferson, then the second largest city of Texas, and acted as a political organizer in northeast Texas for the moderate Republican Governor, Elisha M. Pease. Although Coldwell had been a slave owner, he championed the right of former slaves to enjoy full civil and political rights in Marshall, Jefferson and elsewhere in Texas. This support for the rights of freedmen earned him the enmity of unreconstructed Confederates who supported the underground groups that became the Ku Klux Klan. He evaded assassins laying in ambush to kill him in Jefferson, and elsewhere.

Despite those attacks, voters elected Coldwell to serve as Jefferson’s delegate to the Constitutional Convention of 1868–1869. Once there, Coldwell and fellow Supreme Court Justices A.J. Hamilton and Livingston Lindsay led Moderate Republicans while continuing to serve on the Court. The Ultra Radical Republicans, led by former Union

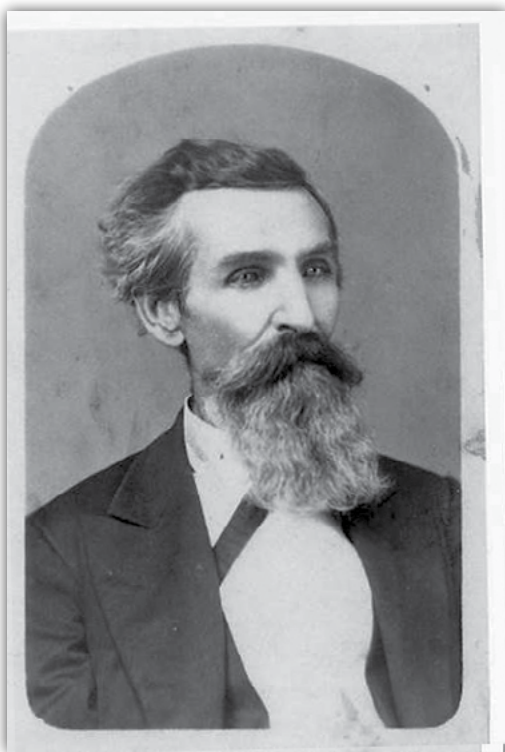
¹⁴ See Coldwell’s Quest, at 2.

Brigadier Gen. Edmund J. Davis, won the Convention's first test vote by electing Davis President of the Convention over Coldwell by 44 to 33. Coldwell wrote the committee report on terror and violence, a subject on which he had first-hand experience. Davis convinced the Convention's delegates to ratify the Fourteenth Amendment by granting full civil rights to freedmen as a condition for Reconstruction and for Texas's readmission to the Union.

Coldwell and other Convention delegates debated many issues, including the terms of a new state constitution; the effect of legal acts undertaken during the Civil War; the *ab initio* question of whether all acts take during rebellion from the beginning of the war were illegal or, on the other hand, whether only those acts tainted with support for the Confederacy were illegal; whether Texas should divide into as many as five states; the rate and extent of taxation; ways to address widespread lawlessness; and measures concerning railroads and public schools. Coldwell successfully opposed Governor Davis's efforts to divide the state, and in 1869, a military commander replaced all five justices of the Texas Supreme Court.

At a recess during the Convention in October 1868, a local branch of Klan, known as the Knights of the Rising Sun, killed carpetbagger Convention Delegate and former Union Captain George W. Smith and two Negroes in Coldwell's hometown of Jefferson. When two black witnesses escaped lynching, the leaders of the enraged mob sought to kill the remaining Republicans in Jefferson. Warned by shots outside, Judge Coldwell took off in the night with two sons, barely avoiding a search party. Coldwell sent his fourteen-year-old son Nathaniel to tell his wife Martha and their three daughters that he was safe. As Nat neared the house the Klan search party caught him and grilled him for several hours, sometimes threatening to kill him. Nathaniel defied them, saying, "You can kill me, that's all you could do. I won't tell."

The Klansmen gave up the search and the next day all the Republicans in Jefferson fled town. While the Coldwells left for the safety of New Orleans, federal troops went to work apprehending suspects and convened a tribunal known as the Stockade Case for the place where the military tribunal conducted its lengthy proceedings. Nat and the two blacks who escaped the lynch mob were important witnesses. Because of false alibis and Klan disguises, the tribunal convicted only three men of Smith's murder and another three for threatening Judge Coldwell's life. But the federal prosecution put a damper on Klan activity in northeast Texas.



Texas Supreme Court Justice Colbert Coldwell, a/k/a Colbert Caldwell, family photograph taken in Topeka, Kansas, ca. 1880; provided by Colbert Nathaniel Coldwell.

During his two years on the Texas Supreme Court, Justice Coldwell's opinions dealt with the usual array of commercial and criminal cases of the day, including liability for payment of debts in Confederate money. He was the lead writer in expounding on the issue of self-defense and in deciding cases involving proof in the Spanish language from trials in south and west Texas.

In *Ake v. State*, a case involving the particularly brutal torture of Negro suspects in a sensational inter-racial murder, Justice Coldwell addressed issues arising from a confession obtained by hanging one of the suspects three times until nearly dead, then staking him to the ground and burning brush over him until skin peeled from his feet. Justice Coldwell's opinion rebuked "these monstrosities" to "mark in pointed and emphatic phrase our utter detestation of this fiendish outrage" from "this abominable and detestable villainy."

In 1873, President Ulysses S. Grant appointed Justice Coldwell to serve as the Collector of Customs at El Paso, a post Coldwell held until 1877. From El Paso he successfully appealed to the Texas Supreme Court *Lyles v. State*, which established the requirement that jurors be able to speak and deliberate in English. He then moved to Kansas to please his long-suffering wife, practicing law there. While visiting his lawyer son Nathaniel's home in Fresno, California, Justice Coldwell died in 1892, leaving a record of honorable service and bravery in the face of constant danger.



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Interview with Former Texas Supreme Court Chief Justice Wallace B. Jefferson—Part 2

By William J. Chriss

CHIEF JUSTICE WALLACE B. JEFFERSON stepped down from the Texas Supreme Court on October 1, 2013 after serving on the Court for twelve years, nine as Chief Justice. In mid-November he returned to the private practice of civil appellate law, joining the law firm of Alexander, Dubose, Jefferson & Townsend. Attorney/legal historian William J. Chriss interviewed him soon afterward for the TSCHS Journal. In Part 1 of the interview, which appeared in the Winter 2013 issue of the Journal, CJ Jefferson talked about some of his early formative experiences, including his boyhood in a military family, his college years at Michigan State University and the University of Texas Law School, and his law career in San Antonio prior to his appointment to the Supreme Court. In Part 2, Chriss directs the discussion toward Jefferson's interest in genealogy and his thoughts on such subjects as the relationship between the Court and the other two branches of government, judicial selection, and his accomplishments during his tenure on the Court.

WC: We now turn to the question of how you became interested in your ancestry, the story of your family. So what can you tell me about the chronology of that in terms of how you became interested in it, what you did to find out about it, and what you learned.

WJ: Well, let me start with this, which just came to mind when you said this is an interesting transition about family history. My new partner Doug Alexander and I have been friends for decades. When I was being considered for a seat on the Supreme Court, Doug observed that others mentioned for the seat had emphasized their deep lineage in Texas whereas I was born in Tacoma, Washington. "How do you counter that?" he asked. I said, "Well, as a matter of fact, even though I wasn't born in Texas, my grandmother was born in Anderson County, in Palestine, Texas." Doug encouraged me to highlight that fact and talk more about my Texas ancestors. When I spoke to the governor, he was very interested in that story and you'll see in his speeches, even to this day, he'll place my appointment in the context of the evolution of liberty in our state and nation.



Former Chief Justice Wallace B. Jefferson

But going back, I first became interested in genealogy with the TV mini-series, *Roots*, based on a book of the same name by Alex Haley. My father bought me that book and I was intrigued at how Haley was able to discover his roots going way back to Africa. And my father was quite interested in that as well. So beginning in the 1970s we'd pull out the family Bible and explore who was baptized when, how many generations were listed, and where were they from. That began my father's career as an amateur genealogist. He would go to the library, pull census records, and interview family members.

When I was a law student at Texas I saw the State Archives and genealogical library on San Jacinto. I invited my father to come up to Austin to plumb their impressive collection of Texas history. And around that same time we asked my grandmother how much she knew about her ancestral history. She could only go a few generations back, to her grandparents in Waco.

Anyway, that is a long way of saying my father came up to the State Archives. We found her great grandfather (my great, great, great grandfather) in an obituary that said: “Shedrick Willis, well known Negro, died at age 83 in 1903,” and it said he served two terms on the City Council in Waco in the 1870s, and before his service on the Waco City Council, that he was *owned* by



The Chief's paternal grandmother, Johnnie May Williamson (seated, far left), with her siblings and her parents, Samuel Thurston Williamson and Mary Ollie (Willis). Mary Ollie is the granddaughter of Shedrick Willis, the Chief's great great great grandfather (c. 1909).

Judge Nicholas W. Battle. And that was the first time we could verify that there was slavery in our family background. And so that was fascinating to me. I was at law school, and so I said okay, who's this Judge Battle? And there was a lot of information about him. He was a contemporary of Judge Baylor, he knew Governor Richard Coke. He was a graduate of the College of William and Mary in Virginia, and Richard Coke also went to William and Mary.

And so there's all this interesting research you can find out about Judge Battle. One day after I joined the Court, I was judging a Moot Court competition at William and Mary and arranged to visit the archives to see what I could find out about Nicholas Battle as a student. And I asked the librarian there, “Can you find anything about the classes he took?” And she came back with a list

of his professors. One of his professors was Thomas R. Dew, who ultimately became president of the college but was famous for an influential essay he wrote defending slavery in relation to the abolition debates in Virginia.

So I thought, okay, this Battle had a sort of academic justification for the institution of slavery that he took with him when he went to Texas, which may explain why he fought for the Confederacy in the Civil War. He was with General Maxey, Samuel Bell Maxey, but when he was on the bench, he ruled that a free black man cannot sell himself into slavery. He determined that a transaction like that is void as contrary to public policy, which led to either a constitutional amendment or a statutory change permitting a free black to sell himself if certain requirements were met. I thought that was fascinating. I am sure Judge Battle's decision was not popular at the time.

When Judge Battle returned to Waco after the Civil War, he became a defender of the rights of the newly freed slaves. Part of the obituary that I mentioned said that it was on Judge Battle's recommendation that Willis became a city councilman right after the war. So it's, to me, a very

complex period of history. There's a lot more that we need to know about that and I want to pursue it when I have time. So that's what led me to an interest in not only my family history, but also thinking about what historic court records exist in the courthouses around the state. We formed a task force with Bill Kroger's excellent help, Judge Mark Davidson as well, to learn about things like what records do we have? Are they being preserved? Are they being stolen? Are they protected, or are they slowly decaying in rooms with high humidity? Can we digitize them and make them available to the public? We've made a lot of progress on that front.

WC: Talking about your service on the Supreme Court, a couple of questions. How would you describe your relationship or the Court's relationship with the Legislature during the time that you were Chief Justice and anything you want to say about the three co-equal branches of government?

WJ: Well, when I first came to the Court in 2001, I had limited interactions with the Legislature. I quickly decided that the legislative and judicial branches speak different languages. Courts would analyze a case depending on what the evidence showed and what the rule of law required and embark on a rational development of the law. And I thought the Legislature was more about power, that whatever the merits, there are ways to gain power, and one of the ways is to stand in the way of good legislation, to show that you have to go through this particular Representative or Senator in order to prevail. That's kind of how I thought of the two at an early stage of my career.

But as Chief, I came to understand that while there will always be political games, most of the men and women in the Legislature are intent on making the State of Texas a better place. If we in the judiciary come to the legislature with ideas for making the administration of justice more fair, with data backing up those ideas, you can quickly find advocates both in the Senate and in the House, and in both political parties.

And so the relationship became increasingly more fruitful between the Court and the other two branches of government. Using the great offices of the Office of Court Administration, the judges throughout the state who have relationships with Senators and Representatives, working very closely with the staffs of these public servants, you can move the ball in a positive direction. And so my last session with the Legislature was very productive. I harnessed the talents of Jen Cafferty, who was the Court's General Counsel, and David Slayton, the Executive Director of the



Robin and Peggy Williamson, the parents of Samuel Thurston Williamson and the Chief's great great grandparents (c.1870s).

Office of Court Administration. We had many, many meetings with the chairs and members of the committees and made our case, and I think as a result were helpful in reforming certain aspects of juvenile justice and moving toward electronic filing of pleadings throughout the State of Texas. We achieved an increase in judicial compensation and successfully advanced access to justice initiatives both in terms of direct appropriations and other initiatives that I think are going to make it more possible for people who have no resources to find a lawyer and receive pro bono assistance.

WC: What are the most satisfying things that you accomplished as Chief Justice and if you care to comment on it, is there an opinion, or are there an opinion or two, that you found particularly rewarding to write?

WJ: The most satisfying achievement, I think, is the Legislature's now current and thoughtful awareness of the need to provide basic civil legal services to those who cannot afford it. I think they understand it,

I think now there is a statewide commitment to this cause, and I believe that from the Governor on down, people are paying attention to this. And that means veterans who are entitled to benefits but can't hire a lawyer to pursue them, well they have a better chance of getting those benefits. Or somebody in a domestic violence situation has a better chance of obtaining a restraining order or perhaps a divorce if that's necessary. I think these basic needs are increasingly being met. We've got a long way to go but that's been very satisfying.

The other is administrative. We have become a much more efficient court with the smart use of technology and a renewed



Poster of the Chief's great great great grandfather's wheelwright shop in Waco.

determination to decide cases more quickly than historically had been the case. And so the last couple of terms we've only carried over single-digit number of cases from one term of court to the next. I think that's been important because, like most lawyers, I believe that if you delay justice it's often effectively denied.

You know everyone always asks what are your favorite cases, and I'm not sure what the best answer to that is. It changes from week to week. But let me mention a few. One involves statutory interpretation, which is another way of asking how do the legislative and judicial branches best communicate with each other. I dissented in the case that Justice Hankinson wrote. It was a workers' compensation question and it was about whether a carrier waives its defense if it fails to timely contest a worker's claim for benefits. It's *Continental Casualty Company v. Downs*. I thought the

carrier doesn't waive the right, there are administrative penalties that attach but not waiver, but the majority decided the other way. In the next session, the Legislature passed a statute saying essentially that Jefferson was right, you don't waive.

In between the first law and the second law there was another case pending, *Southwestern Bell Telephone Company v. Mitchell*, and I thought that case should have been governed by *Downs*, but the lawyers made the argument that the Legislature passed this new statute which shows that their intent when *Downs* was decided was the other way, and so they wanted the Court to reverse *Downs* and hold for the carrier. The Court agreed. But it was over my dissent. I said the law, as stated by the *Downs* Court governed in the case being litigated before the statute was amended. I thought that it was inappropriate to disturb settled expectations and that, as construed by the Court, the statute meant what the *Downs* majority said it meant until the amendment was effective.

I can't find an example where a judge says he is dissenting from the Court's adoption of his own prior dissent. But I thought it was symptomatic of the way the process is supposed to work. We interpret a statute and the Legislature may or may not agree with the public policy implications of our interpretation, and they have the right to amend the statute to come closer to what the current Legislature's concept of public policy is. And the courts ought to step away and let that process work. Well, I disagreed with the retroactive application of that statute essentially in that case.

Another case is called *Ojo v. Farmers Group Inc.* My concurrence in that case said legislative history is not always a bad thing, that it is just one tool in the box to try to determine what the Legislature's intent is. There's inherently nothing wrong with looking at the environment of the debates and what was happening and how prominent they were during the time that the statute was passed. You can look at what bills were not passed, et cetera. It doesn't necessarily make the quest to determine legislative intent easier, but it puts it in a context that is helpful to the Legislature and to the public to understand what's going on, and potentially to the interpretation of the statute.

WC: Since you studied Constitutional History as a student, even as an undergraduate, is there a case that you didn't write, your favorite Supreme Court case or your favorite opinion that you really admire?

WJ: Well, you know, I think *Brown v. Board of Education* is one of my favorites, but it also presents a dilemma. I had a great conversation with Chief Justice Joe Greenhill about *Sweatt v. Painter*. He represented the State of Texas in that case involving separate but equal at the University of Texas School of Law. Greenhill had retained all the drafts of his briefs and he was very quick to say that his advocacy on behalf of the University of Texas was not based on any sort of prejudice but on trying to figure out what the law is. And part of his argument was that when the Fourteenth Amendment was adopted, right there in D.C. and in many states, there was segregation; that it could not have been the intent of those who adopted the Amendment to ban segregation among races. Similar arguments—that segregation cannot be unconstitutional because it existed when the Fourteenth Amendment was adopted—were presented in *Brown v. Board of Education*. Many scholars have therefore concluded that the *Brown* court went too far in holding that segregation is inherently unequal, a violation of the Fourteenth Amendment.

On the other hand, *Sweatt v. Painter* was decided not on that ground, but on equality of facilities. But for *Sweatt* and *Brown*, it would have been highly unlikely for there to be as much progress in civil rights as occurred, and I know that “all deliberate speed,” et cetera, raised issues, but you

have the U.S. Supreme Court saying we're not going to permit unfair discrimination based on race. The dilemma *Brown* presents is who really should be making these public policy determinations. Should it be part of the very ugly legislative process, or can nine unelected judges simply come down against the majoritarian will, and dictate human relations? I like thinking about that opinion in those terms, and it's a cautionary tale. Sometimes the legislative process bogs down of its own accord, and then the judiciary has a role to play. But if a court goes too far on its own, a valid argument can be made that it has exceeded its limited role. In every case where a matter of constitutional law is at issue, the court should contemplate deeply the structure of our democracy and what role the three branches play within it.

WC: You mentioned unelected judges, but in Texas we have elected our judges for more than 150 years. Your predecessor chiefs have been critical of this system, at least going back to Chief Justice Hill. What are your views?

WJ: Public officials must be accountable for their conduct in office. This imperative was critical at the founding and was renewed with vigor during Andrew Jackson's presidency. But the public lacks the means to properly evaluate a judge's performance. The typical Texas voter is not aware of the qualifications of the judges listed on the ballot. For that reason, they vote according to the judge's political party, which is a poor proxy for merit and an even poorer indication of how a judge will apply the rule of law. Nevertheless, Texas judges are swept in and out of office based on straight-ticket partisan votes. Because it is not true that a judge of one political persuasion is inherently better than a judge of another, it makes little sense to cast a vote on that basis. Nor is it rational to vote, as an alternative, based on the sound of the judge's name, which has occurred far too frequently.

A third factor is how much money the judge can raise. The money buys television, radio, and print advertisements that are often based on slick marketing approaches or misleading attack campaigns. A nasty byproduct of fundraising is the public's distrust of a system in which lawyers contribute money to the campaigns of judges before whom they appear. All of this is to say that partisan elections accomplish neither accountability nor assure qualified judicial officers.

This is why I would prefer a system in which a commission evaluates judicial applicants' qualifications based on objective measures, such as trial or appellate experience, peer review, board certifications, and disciplinary history. The commission can then recommend names of highly-qualified judges to the Governor for appointment, subject to Senate confirmation. The judge can then be evaluated by the commission while the judge is in office and make an objective assessment to the electorate about whether voters should keep that judge in office in a non-partisan retention election. This process would assure that the judge has the experience at the outset to preside over important cases of life, liberty, and property. It would also afford the electorate a real means by which to determine if the judge should remain in office.

WC: Why did you decide to retire from the bench, and what are your future plans? What are you excited about now?

WJ: I came to a crossroads. Having served twelve years, I had to decide whether or not to mount another campaign in 2014. Several factors came into play. First, I had accomplished much of what I set out to achieve during my tenure as Chief Justice. We established a permanent judicial

commission for children, youth, and families in 2007, which has greatly improved how the judicial system treats families who are struggling to achieve a loving home. We urged, and the Legislature adopted, significant reforms in juvenile justice so that our youth are not precipitously referred to the juvenile and criminal courts.

We harnessed technology to broadcast all Supreme Court oral arguments online; required appellate briefs to be submitted electronically, and issued a mandate that all documents attorneys file in court be filed electronically. Using technology this way makes the court system more transparent, and therefore more accountable to the public. An important fringe benefit of transparency is that the public will have a much better understanding of how the courts operate.

Finally, and most importantly, we were able to increase funding for basic civil legal services so that indigent Texans have the ability to vindicate their rights in court. I felt I had made a significant contribution to the administration of justice in these areas, so I could leave with my head held high.

Secondly, my wife and I have three sons; one is in college, one is a senior in high school, the third is in eighth grade. We decided that my returning to private practice would make it easier to get our sons through college than if I had remained in public office. Finally, I have to confess that the prospect of running another campaign was less than attractive—for all of the reasons I mentioned earlier. I decided to return to a civil appellate practice and could think of no better fit than Alexander Dubose & Townsend, which just celebrated its tenth year as the premier civil appellate firm in Texas. The firm is comprised primarily of board-certified civil appellate specialists with offices in Austin, Houston, and Dallas. My staff attorney Rachel Ekery and I have recently joined the firm as partners, and the name has changed to Alexander, Dubose, Jefferson & Townsend. I look forward to handling challenging appeals in state and federal court in Texas and nationally. I am thrilled to begin another chapter in my professional life.



WILLIAM J. CHRISS is an Austin attorney with *Gravelly & Pearson, L.L.P.* From 2007–2009, he served as *Executive Director and Dean of Curriculum and Instruction* for the *Texas Center for Legal Ethics*. Chriss is the author of numerous legal and historical articles as well as a book, *The Noble Lawyer*, published in 2011. A member of the *Texas Supreme Court Historical Society Board of Trustees*, Chriss currently heads the *Society’s Oral History Project*.

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Non-Trivial Pursuits: Little-Known Facts about the Texas Supreme Court

Beginning with this issue of the Journal, we will offer one or more facts about the Court that you might not know. If you are in possession of a novel or obscure piece of information that might be featured here, please email it to tschs@sbcglobal.net, and use “Non-Trivial Pursuits” in the subject line.

Little-Known Fact #1:

Since 1980, the non-presiding members of the Texas Supreme Court have borne the title of Justice, not Associate Justice.

To explain:

As title insurance companies, petroleum landmen, and European’s remaining nobility will attest, titles can be important. Titles reflect traditions and often mark fine distinctions in a hierarchy of power. In England and Wales, for example, the Lord Chief Justice has been the overall head of the judiciary since April 3, 2006, and Judges of the Court of Appeal are known as Lords Justices, as befits a system of justice that traces its origins to medieval England. The formal titles judges bear are important not only to those judges but also to the lawyers who must address them in briefs and during oral argument.

In Texas, the titles of the judges serving on the Supreme Court of Texas have changed over time, but without substantively affecting the usually collegial, power-sharing relationship among the Court’s judges.

The members of the Republic of Texas Supreme Court carried the titles Chief Justice and Associate Judges. The Chief Justice was the only full-time member of the Supreme Court; the others served on the Court ad hoc through their appointment as District Judges.

When Texas became a state in 1845, the new constitution changed the titles to Chief Justice and Associate Justice. Those titles remained throughout the Civil War and into Reconstruction. The Constitution of 1869 reconfigured the Court to include three Judges, one of whom served as Presiding Judge by virtue of having the shortest remaining term within the staggered nine-year term. (The first three appointees drew straws for three-, six-, and nine-year terms.)

In 1874, a constitutional amendment changed the titles back to Chief Justice and Associate Justice, and those titles were retained by the Constitution of 1876.

In 1980, voters approved an amendment to the Judicial Article of the Constitution of 1876 that changed the non-presiding members’ title to Justice.

The U.S. Supreme Court and about half of all state supreme courts continue to use the title Associate Justice (a few use Associate Judge). The Justice title is used in twenty-five states, including Texas.

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Special Book Announcement

Released in January:

Common Law Judge:

Selected Writings of Chief Justice Jack Pope of Texas

Edited by Marilyn P. Duncan

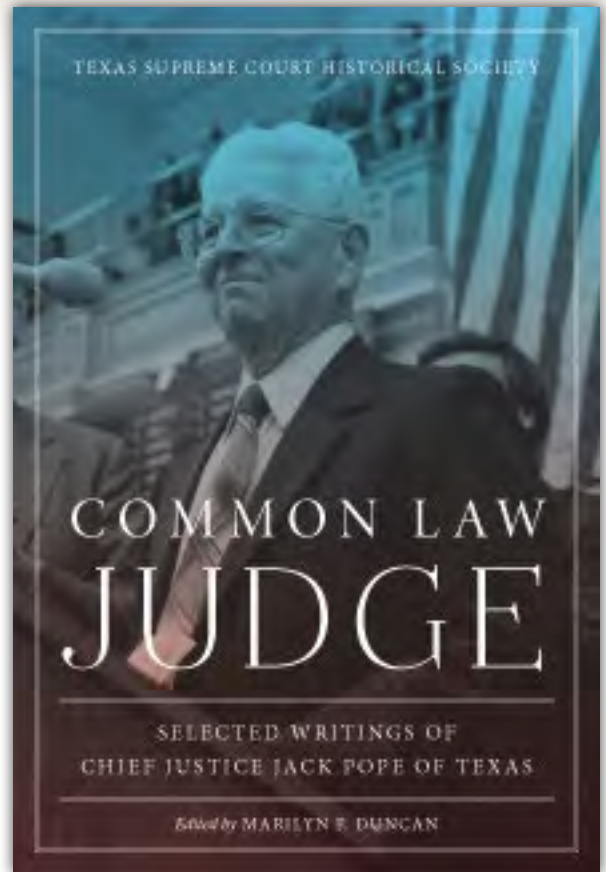
453 pp., hardback

ISBN: 978-0-9897925-0-9

\$29.95 (**\$20.00 for TSCHS members**)

To order: www.texascourthistory.org

Chief Justice Jack Pope is widely acknowledged in the legal community as one of the Texas judiciary's brightest stars. During his thirty-eight years on the bench he not only authored more than one thousand opinions, many of them landmark cases, but he also led the charge to bring about fundamental judicial reforms. While some observers point to his monumental impact on Texas water law as his greatest contribution, others make an equally strong case for his role in establishing the first Rules of Judicial Administration and other administrative improvements. Still others laud his successful campaign to eliminate the proliferation of special issues in jury trials. Not to be outdone, those in the know add that Pope played a pivotal role in the creation of the IOLTA program, the Judicial Budget Board, and the State Law Library.



Given this record of productivity, it should come as no surprise that Jack Pope the jurist and administrative activist produced hundreds of articles, essays, lectures, and speeches of remarkable quality. The same clarity and persuasiveness that distinguish his court opinions are displayed in his other works, with the added qualities of humor and stylistic virtuosity. Readers of *Common Law Judge* will both enjoy and learn from what this legendary master has to say.

To order, visit the Society's web page at www.texascourthistory.org or call 512/481-1840.

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Ambassador Ron Kirk Will Speak at This Year's Hemphill Dinner

AMBASSADOR RON KIRK, former United States Trade Representative, has accepted the Society's invitation to be the keynote speaker at the Nineteenth Annual John Hemphill Dinner in June.

Ambassador Kirk served as U.S. Trade Representative from 2009 until April 2013. As a member of President Obama's Cabinet, he was the President's principal trade advisor, negotiator, and spokesperson on trade issues. He was the first African American to hold that post.

A native Texan, Ambassador Kirk had a distinguished career in local and state government before being appointed U.S. Trade Representative. He served two terms as the first African-American mayor of Dallas, and prior to that he served as Texas Secretary of State under Governor Ann Richards. In addition, Ambassador Kirk has practiced law as a partner in the international law firm Vinson & Elkins, LLP, and was a partner at Gardere Wynne Sewell in Dallas.

Since leaving his Cabinet post last spring, Ambassador Kirk has served as Senior Of Counsel in Gibson, Dunn & Crutcher's Dallas and Washington, D.C. offices.

This year's Hemphill Dinner will be held on Friday, June 6, at the Austin Four Seasons Hotel. For ticket and other program information, visit the Society's website at www.texascourthistory.org, or email tschs@sbcglobal.net.



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Event Announcement: “Must-See” Session at TSHA Annual Meeting

MURDER AND MAYHEM ON THE TEXAS SUPREME COURT

Session sponsored by the Texas Supreme Court Historical Society

Annual Meeting of the Texas State Historical Association

Friday, March 7, 2014 2:30 p.m.

Wyndham San Antonio Riverwalk Hotel Executive Salon 4

Moderator: Doug Alexander, TSCHS Board President; partner, Alexander, Dubose, Jefferson, & Townsend LLP

Paper: “Family Matters: The Shocking Death of Justice William Pierson,” presented by Gary Lavergne, author of *Before Brown: Heman Marion Sweatt, Thurgood Marshall, and the Long Road to Justice*

Paper: “Election Hustle: The Flimflam, Fraud, and Flight of Justice Don Yarbrough,” presented by Mark Davidson, retired Judge, Eleventh District Court.

Commentator: Bill Pugsley, former TSCHS Executive Director

The Society’s association with the Texas State Historical Association and its annual meeting is a long-standing one. Since the late 1990s, the Society has organized a session dealing with some aspect of court history as a means to integrate the history of the Texas Supreme Court into the broader study of Texas history. The past three sessions have been among the best attended and most talked-about programs at the conference, which



Wyndham San Antonio Riverwalk Hotel

draws noted historians and Texas history enthusiasts from throughout the state. This year’s session, with its focus on two spectacularly dramatic episodes in the Supreme Court’s history, promises to continue that trend.



Gary Lavergne



Mark Davidson

TSCHS members may attend the Society’s session on Friday, March 7, for a discounted registration fee of \$45. For information, email the Society office at tschs@sbcglobal.net or call 512/481-1840. A full program and registration information is available at <https://tshasecurepay.com/annual-meeting>.

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Chief Justice Hecht: A Record for Texas

ON SUNDAY, JANUARY 26, the state's longest-serving appellate judge, Chief Justice Nathan L. Hecht, became the longest-serving justice in Texas Supreme Court history.

That record had been held by the late Chief Justice Joe R. Greenhill, who served 25 years and 25 days on the Court until his retirement in October 1982. Chief Justice Greenhill, who died in February 2011, served as a Justice for 9,156 days.

“To have served the people of Texas as a member of the Supreme Court for a quarter century, as long as Chief Justice Greenhill did, is truly an honor,” Chief Justice Hecht said. “Now as Chief Justice, I am privileged to lead a Court that is respected for its commitment to the rule of law and access to justice for all.”



Justice Nathan Hecht (far left) is greeted by his new colleagues on the Court after taking the bench for the first time in January 1989.

Hecht, appointed to lead the Court last October, was first elected Justice in November 1988 and took his seat January 1, 1989. Before his election, he served on the Dallas Court of Appeals for two years and, before that, on the 95th District Court in Dallas County for more than five.

January 26 marked his 9,157th day on the Supreme Court.

A video of Osler McCarthy's interview with Chief Justice Hecht is available at <http://vimeo.com/86142205>.

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Benson Wins *Southwestern Historical Quarterly* Award for Best Article

THE TEXAS SUPREME COURT HISTORICAL SOCIETY is pleased to announce that **Megan Benson** has been named by the Texas State Historical Association as the winner of the 2013 H. Bailey Carroll Award for the best article published in the *Southwestern Historical Quarterly*—which itself has been continuously published since 1897.

This award is particularly noteworthy to the Society for two reasons.

First, the article goes into great and heretofore unknown detail surrounding the backdrop to the 1904 Texas Supreme Court case in *Houston & Texas Central Railroad Co. v. East*, 98 Tex. 146, 81 S.W. 279. The East case set the foundations of Texas groundwater law, some of which remained largely unresolved until the Court's 2012 decision in *Edwards Aquifer Authority v. Day*, 369 S.W.3d 814.

Second, the first iteration of Dr. Benson's article initially debuted at the Society's joint session at the 2011 Texas State Historical Association Annual Meeting, at which Benson presented alongside now-Chief Justice Nathan Hecht and Society Trustee Dylan Drummond.

Special thanks are due to our former Executive Director, Bill Pugsley, who recruited Dr. Benson to speak at the 2011 event.

A copy of her article may be found at <http://texascourthistory.org/documents/116.3.benson.pdf>, and its citation is: Megan Benson, *Railroads, Water Rights and the Long Reach of Houston and Texas Central Railroad Company v. W. A. East* (1904), 116 S.W. Hist. Q. 261 (Jan. 2013).

—Dylan O. Drummond



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Calendar of Events

Society-sponsored events and other events of interest

Spring 2014

Opens Feb. 1

On the Run: Currency, Credit & Capitals of the Republic of Texas,
Texas Capitol Visitors Center, Austin, Texas
<https://www.facebook.com/TexasCapitolVisitorsCenter>

Opens Feb. 14

Magna Carta: Royal Power Limited,
Houston Museum of Natural Science, Houston, Texas
http://www.hmns.org/index.php?option=com_content&view=article&id=652&Itemid=684

March 7

**TSCHS Joint Session,
Texas State Historical Association Annual Meeting**
“Murder and Mayhem on the Texas Supreme Court”
Wyndham Riverwalk Hotel, San Antonio
2:30–4:00 p.m.

March 14

Spring Meeting, TSCHS Board of Trustees
San Jacinto Center Conference Room, Austin
10:00 a.m.–1:30 p.m.
David A. Furlow, luncheon speaker

April 12

**The Tejano Side of the Texas Revolution:
from the Siege of Béjar through the Battle of San Jacinto**,
2014 Battle of San Jacinto Symposium, The Ripley House,
4410 Navigation, Harrisburg/Houston, Texas
9:00 a.m. to 4:30 p.m.
<https://www.friendsofsanjacinto.com/sites/default/files/uploads/San%20Jac%20Flyer%202014%20v10.pdf>

April 22

TSCHS Fellows Luncheon (details TBA)

Summer 2014

June 6

**19th Annual John Hemphill Dinner:
Ambassador Ron Kirk, Keynote Speaker**

Four Seasons Hotel, Austin

6:30–9:30 p.m.

(See story, page 35)

June 26

State Bar Annual Meeting, James Haley Presentation

“No Rest for the Weary: The Texas Court Enters the 20th Century.”

Austin Convention Center (Room TBA)

1:30 p.m.

June 27

State Bar Annual Meeting, Re-enactment of *Sweatt v. Painter*

Sponsored by the TSCHS Fellows

Old Supreme Court Courtroom, Texas State Capitol

2:00 p.m.

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To profit from the past, we must first preserve it.

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Supreme Court of Texas

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2013–2014 Membership Upgrades

The following Society members moved to a higher dues category since June 1, 2013.

HEMPHILL FELLOWS

David J. Beck
Joseph D. Jamail, Jr.

GREENHILL FELLOWS

David A. Furlow and Lisa Pennington
Thomas S. Leatherbury
Ben L. Mesches
Hon. Thomas Phillips, Chief Justice (Ret.)

TRUSTEE

William W. Ogden

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2013–2014 New Member List

The Society has added 39 new members since June 1, 2013.

GREENHILL FELLOWS

S. Jack Balagia
E. Leon Carter
Harry L. Gillam, Jr.
Nick C. Nickols
Hon. Dale Wainwright,
Justice (Ret.)

TRUSTEE LEVEL

Joe Garza
Marc Tabolsky
Cynthia Timms

CONTRIBUTING LEVEL

Russell R. Barton
Barbara Clack
Thomas Fulkerson
Andrew W. Guthrie
Rachel Palmer Hooper
Kevin Jewell
Daniel Lockwood
Wes Lotz
Patrick A. Nester
Jason M. Ryan
Jane Lipscomb Stone
Gilbert Vara, Jr.
Anne Wynne

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Stacy Alexander
Audrey Andrews
Susana Ayers
James D. Blacklock
Josh Blackman
Jennifer Cafferty
Chad Flores
Yvonne Y. Ho
Anne Johnson
Margaret Lyle
Eric E. Munoz
Jimmy Eric Pardue
Lisa Pennington
Karen S. Precella
Scott E. Rozzell
Patti Gearhart Turner
Michael J. Willson
Michael A. Yanof

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Membership Benefits & Application

Hemphill Fellow - \$5,000

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

Greenhill Fellow - \$2,500

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

Trustee Membership - \$1,000

- Historic Court-related Photograph
- Discount on Society Books and Publications
- Complimentary Copy of *The Laws of Slavery in Texas* (paperback)
- Personalized Certificate of Society Membership
- Complimentary Admission to Society's Symposium
- All Benefits of Regular Membership

Patron Membership - \$500

- Historic Court-related Photograph
- Discount on Society Books and Publications
- Complimentary Copy of *The Laws of Slavery in Texas* (paperback)
- Personalized Certificate of Society Membership
- All Benefits of Regular Membership

Contributing Membership - \$100

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

Regular Membership - \$50

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



Membership Application

The Texas Supreme Court Historical Society conserves the work and lives of the appellate courts of Texas through research, publication, preservation and education.

Your membership dues support activities such as maintaining the judicial portrait collection, the ethics symposia, educational outreach programs, the Judicial Oral History Project and the Texas Legal Studies Series.

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

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Firm/Court: _____

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Telephone: _____

Email (required for eJournal delivery): _____

Please select an annual membership level:

- | | | | |
|---------------------------------------|---------|---|---------|
| <input type="checkbox"/> Trustee | \$1,000 | <input type="checkbox"/> Hemphill Fellow | \$5,000 |
| <input type="checkbox"/> Patron | \$500 | <input type="checkbox"/> Greenhill Fellow | \$2,500 |
| <input type="checkbox"/> Contributing | \$100 | | |
| <input type="checkbox"/> Regular | \$50 | | |

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