



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Winter 2012 Vol. 2, No. 2 General Editor Lynne Liberato Executive Editor David Furlow

Feature Articles

Governor Dan Moody and Judicial Reform in Texas During the Late 1920s

By Josiah M. Daniel, III
The Texas court system needed to be modernized, and a today-little-known Governor set about to get changes made. [Read more...](#)



Gov. Dan Moody

Alexander's Waterloo: The Fights for the Texas Supreme Court and Padre Island Intersect - Part 2

By Judge Mark Davidson
Did Padre Balli succeed in leaving the island to his heirs? The Court struggled to dispose of the question once and for all. [Read more...](#)



A statue of Padre Jose Nicolas Balli

An Interview with the Fifth Joe Greenhill

By Bill Pugsley
Judge Medina's law clerk tells what it's like to follow in the footsteps of a legendary chief justice. [Read more...](#)



Joe Greenhill

Justice J. Dale Wainwright Resigns from Court

The Court family gathered on Sept. 27 to reminisce and bid farewell to a colleague headed back to private practice. [Read more...](#)



Justice Wainwright

Justice William W. Kilgarlin, 1932-2012

The retired Texas Supreme Court Justice was also a former board member of the Society. [Read more...](#)



Rest well, friend

President's Page

By Warren Harris
Whether you're a judge, lawyer, client, or historian, you can play a unique part in the Society. Share with us! [Read more...](#)



Warren Harris

Executive Director's Page

By Bill Pugsley
The Supreme Court of Texas celebrates one significant date, out of many in its history. Do you know which one, and why? [Read more...](#)



Bill smiles because he knows the answers!

Fellows Column

By David J. Beck
The Fellows are Society members who contribute at the highest levels — a critical part of our fundraising. [Read more...](#)



David J. Beck

Society News

Former U.S. Justice Sandra Day O'Connor to be 2013 Hemphill Dinner Speaker

The first woman to serve on the U.S. Supreme Court will be the keynote speaker at the dinner next June. [Read more...](#)



Justice O'Connor

Ramsey Clark Tours Court Building

Former U.S. Attorney General Ramsey Clark viewed the portrait of his father, the late U.S. Supreme Court Justice Tom C. Clark. [Read more...](#)



Gen. Clark

Fall Board Meeting

New trustees were welcomed, future plans discussed, and former Chief Justice Jack Pope honored. [Read more...](#)



Justice Pope

Society to Co-sponsor Symposium in April 2013

Held along with a State Bar CLE course, the conference will focus on the history of Texas Supreme Court jurisprudence. [Read more...](#)



The Mansion at Judges' Hill, site for the symposium

2013 TSHA Session

Author/historian Jim Haley and former Chief Justice Tom Phillips will be featured speakers. [Read more...](#)



Haley and Phillips

Membership & More

New Member List

Welcome, newest members! [Read more...](#)

Membership Upgrades

Some members have moved to a higher membership category. [Read more...](#)

Calendar of Events

Dates to remember. [Read more...](#)

Officers, Trustees, & Court Liaison

Keep in touch with your Society. [Read more...](#)

Join the Society

Discover the benefits of membership and apply today! [Read more...](#)

Governer Dan Moody and Judicial Reform in Texas During the Late 1920s

By Josiah M. Daniel, III

For those seriously interested in the history of Texas law, lawyers, and courts, the publication in October 2011 of *LONE STAR LAW: A LEGAL HISTORY OF TEXAS*¹ by Professor Michael S. Ariens has been a watershed event. At last the broad sweep of the legal history of the state—previously available only in bits and pieces via scattered journal articles and occasional papers given at Texas-based scholarly and professional gatherings—is presented in a single descriptive, insightful, and readable chronicle. One impact of this overdue volume hopefully will be to stimulate scholars and history-minded lawyers to build on Ariens’ work by filling in, with additional details and nuanced interpretations, the interstices of the very, very large story that Ariens has well limned, including specifically the development of Texas courts and legal process over time.

Indeed, reading chapters 6 and 8 of *LONE STAR LAW* and their endnotes prompted me to write this article. In those chapters, Ariens points out and discusses an “unusual aspect” of the Texas judicial system, its “byzantine structure.” That structure was and is generally a product of Texas history both before and after the Civil War, and specifically the embodiment of the requirements of the Texas Constitution of 1876, as amended. Texas lawyers’ concern about the poor functioning of the state’s courts has been expressed recurrently over that very long time. This article first presents the determined attempts of a today-little-known Texas Governor, who was a lawyer, to persuade the Legislature to structurally change and materially improve the administration of justice in Texas in the late 1920s; then it proposes a reassessment of his success in the short and long runs; and it concludes with an analysis of the broader significance of this Governor’s efforts in that cause.

Dan Moody and Judicial-Improvement Legislation from 1927 to 1930

That Governor was Dan Moody.² Youngest ever when elected in 1926 at age 33, Moody served as Governor from 1927 to 1931. Born and raised in Taylor, Texas, Moody graduated from The University of Texas in 1914 and was admitted to the bar. After service in World War I, he served as County Attorney of Williamson County from 1920 to 1922. Then as District Attorney from 1922 to 1925, he won a statewide reputation for prosecuting the brutalities of the Ku Klux Klan. From that springboard, he won election as Attorney General of Texas for the following two years during which Miriam A. (“Ma”) Ferguson served as Governor—really as the surrogate for her husband James E. (“Pa” or “Farmer Jim”) Ferguson, who had been impeached and removed

¹ Michael S. Ariens, *LONE STAR LAW: A LEGAL HISTORY OF TEXAS* (Texas Tech University Press, 2011). Ariens is Professor of Law and Director of Faculty Scholarship at St. Mary’s University School of Law.

² Daniel James Moody, Jr. (1893-1966). A good biography of Moody remains to be written. A fair but short bio is available through the Texas State Historical Association: Moody, Daniel James Jr., *HANDBOOK OF TEXAS ONLINE*, available at <http://www.tshaonline.org/handbook/online/articles/fmo19>. A biography based on secondary sources is Ken Anderson, *DAN MOODY: CRUSADER FOR JUSTICE* (2009).



Governor Dan Moody

from the governorship in 1917. As the state's chief legal officer from 1925 to 1927, Moody enlarged his reputation by exposing the corruption of the Fergusons in the selling of pardons and in the letting of highway and textbook contracts. In the gubernatorial election of 1926, Moody trounced Ma Ferguson.³

Moody had campaigned⁴ on a platform of what George B. Tindall, the historian of the New South, has posited as "business progressivism."⁵ This postwar, Southern-style progressivism largely ignored three themes of the earlier national Progressive Movement, which Tindall labeled "democracy," "corporate regulation,"⁶ and "social justice," but it emphasized and enlarged upon two other Progressive goals: (1) improving efficiency of government on the state level, and (2) expanding the services it provided to citizens. Business progressivism in the 1920s is illustrated in Texas in the administrations of two governors, Pat M. Neff, who served from 1921 to 1925, and Moody. Under them, state expenditures increased dramatically for public purposes such as education, eleemosynary institutions, and highways, but also for conservation and parks, promotion of industry, child welfare, the licensing of professions, and penal and judicial reforms.⁷ Moody's program drew inspiration from that of Neff,⁸ and its progressiveness contrasted sharply with the retrograde record of the Fergusons.

When the newly inaugurated Governor Moody laid out his business-progressive legislative agenda at the opening of the 40th Legislature on 20 January 1927, the second on his list of eleven recommendations was judicial reform,⁹ a subject with which he was quite familiar by virtue of his legal experience and his prior public service. It was a topic well deserving attention. The structure and the rules of the Texas court system in 1927 needed modernization and reorganization. Characterized by inherent delay and inefficiency in both civil litigation and criminal prosecution, the judiciary structure, as mandated by a constitutional amendment of 1891, comprised overlapping layers of trial courts and appellate courts of limited and sometimes unclear jurisdiction.

The trial courts consisted of justice of the peace courts with civil jurisdiction over small claims and misdemeanor criminal jurisdiction, county courts presided over by mostly non-lawyer county judges with circumscribed civil jurisdiction, and district courts with general civil and criminal jurisdiction. Intermediate Courts of Civil Appeals handled most civil appellate matters; and the Supreme Court of three justices, assisted by an appointive six-member Commission of Appeals, possessed the final civil authority, subject to some restrictive

³ See, generally, Josiah M. Daniel, III, "Business Progressivism in Texas: The Administration of Governor Dan Moody and the Fortieth and Forty-first Legislatures, 1927-1931" (M.A. thesis, Dept. of Hist., Univ. of Tex. at Austin, 1986); and Lenora Nickels, "Public Services of Dan Moody" (M.A. thesis, Texas Technological College, 1948).

⁴ For Moody's 1926 campaign, see chapter 8 of Norman D. Brown, *HOOD, BONNET, AND LITTLE BROWN JUG: TEXAS POLITICS, 1921-1928* (1982) at 297-339.

⁵ George Brown Tindall, *THE EMERGENCE OF THE NEW SOUTH, 1913-1945* (1967) at 224-233.

⁶ Moody may be an exception to Tindall's concept of business progressivism in that he did seek seriously to regulate business, in particular the electric power industry, through a farsighted proposal for a Public Utility Commission (not created until 1975); and during his second term, the common-carrier, intrastate trucking industry was brought under the Texas Railroad Commission.

⁷ *Id.*

⁸ Dorothy Blodgett, Terrell Blodgett & David L. Scott, *THE LAND, THE LAW, AND THE LORD: THE LIFE OF PAT NEFF* (2007) 95-101, 129-137 (discussing Neff's legislative agenda). However, Neff was a desultory promoter of judicial reform. While he recalled in his memoir that "the entire judiciary of the State [needed to be] simplified and perfected," he noted that "Of the ninety-three bills vetoed by me, none of them was passed over my veto except the twelve different bills each creating a new State court. Instead of creating new courts, I thought that about half of those we had should be abolished." Pat M. Neff, *THE BATTLES OF PEACE* at 244 (1925).

⁹ Texas, Legislature, House Journal, 40th Leg., reg. sess., 1927, pp. 102-104.

jurisdictional rules.¹⁰ The Court of Criminal Appeals heard all criminal appellate matters. Court procedure was fixed by an awkward amalgam of statutes and court rules.¹¹ Delays were endemic, and previous legislative responses to the ever-increasing case load had been to add more and more district courts. Texans then, as probably always, were a fairly litigious lot, and the rather hodgepodge judicial system was simply not efficiently and fairly resolving the controversies presented to it.¹²

This Commission of Appeals furnished a clear example of a need for restructuring. The Legislature had created an earlier commission with that name in 1879 but terminated it in 1891. The Commission of Appeals in existence at the time of Moody's governorship had been created nine years earlier, in 1918, and it was intended to supply additional manpower to handle the increasing case load. Because it was not "the Supreme Court," however, its decisions had variable precedential value, depending on whether the Supreme Court justices (1) took no action on a Commission's decision (in which event, its value was uncertain or low and it was published in unofficial *South Western Reporter* as a decision of the Commission); (2) adopted the judgment or approved the holding of a Commission decision (which meant that the case was published only in the *South Western Reporter* but with the imprimatur of such adoption or approval to indicate a higher level of precedence; or (3) adopted the entire opinion of the Commission (in which event the case was published as if it were a decision of the Supreme Court and published in the official reporter, *Texas Reports*, with full precedential authority).¹³

The Texas Bar Association (the "TBA") had been pointing up deficiencies of the state's legal system and proposing reforms for most of its 45 years with only occasional, piecemeal improvements to show.¹⁴ Academics and commentators added their voices in criticism of the system throughout the decade of the 1920s. In every volume from its inception in 1922 into the first year of Moody's administration, the TEXAS LAW REVIEW carried articles by academics and practitioners under the broad heading "Suggestions for Improving Court Procedure in Texas." For example, in a 1925 article, one attorney wrote in the REVIEW:

The movement for reform in the rules of practice and procedure in the courts of Texas to secure a simpler, speedier, more economical and, therefore, better, administration of justice brings up the question whether the principal fault may not lie deeper, whether it is not in the structure of the existing system itself.¹⁵

In another article in that journal, Professor Leon Green of The University of Texas Law School put it more bluntly:

Our court organization is organically diseased, and, therefore, radical treatment will be required. On the other hand, our rules of procedure are basic[al]ly sound, but so involved and confused as to

¹⁰ A good contemporary summary of the development of the courts under the Constitution of 1876 and the amendment of 1891 is found in a student note published in 1931. M. L. Cook, "Texas Courts of Exceptional Jurisdiction and Organization—Constitutionality—Small Claims Court," 9 TEX. L. REV. 388, 389-400 (1931). See also Leila Wynn, "History of the Civil Courts of Texas," 60 SW. HIST. Q. 60 (1956): 5-12; F. A. Williams, "History of the Texas Judicial Machine and Its Growth," 5 TEX. L. REV. 174-182 (1927); Keith Carter, "The Texas Court of Criminal Appeals," 11 TEX. L. REV. 1-27, 185-203, 301-334, 455-476 (1932-1933).

¹¹ A short overview of the history of court rules in Texas is on the Texas Supreme Court's website. See Texas Court Rules: History and Process, available at <http://www.supreme.courts.state.tx.us/rules/history.asp>.

¹² Innumerable articles on the problems of Texas judicial procedure are found in each issue of the Texas Law Review and the Proceedings of the Texas Bar Association from 1922 through 1931, and thereafter.

¹³ Spurgeon E. Bell, "A History of the Texas Courts," in STATE BAR OF TEXAS, CENTENNIAL HISTORY OF THE TEXAS BAR 201-02, 205-06 (1982); Marian Boner, A REFERENCE GUIDE TO TEXAS LAW & LEGAL HISTORY: SOURCES AND DOCUMENTATION (1976) at 30-33, 37; Texas Law Review, THE GREENBOOK: TEXAS RULES OF FORM § 5.2-5.2.4 (12th ed. 2010).

¹⁴ Josiah M. Daniel, III, "In the Beginning—Organization and Activities of the Texas Bar Association" at 45 TEX. B.J. 36, 38 (1982) ("The organization also took a lively interest in the reform of Texas civil procedure.") This article bears another's name, but I am its author.

¹⁵ F. A. Williams, "History of the Texas Judicial Machine and Its Growth," 5 TEX. L. REV. 174 (1925).

defeat their purpose. Court organization, therefore, must be seriously remodeled; court procedure must be merely simplified and modernized.¹⁶

In Moody, the TBA had a member who shared the professional organization's and the law school professoriate's zeal to reform the system, and Moody's specific proposals were numerous.

To the assembled legislators, Moody enumerated seven specific judicial-reform recommendations, most of which had been generated by the Special Legislative Committee of the TBA. By December 1926, that committee had drafted bills proposing amendment of the judiciary article of the Texas Constitution to re-vest rule-making power in the Supreme Court. That power had been removed from the Court and placed with the Legislature by a constitutional amendment in 1891. The constitutional amendment as proposed by the TBA Committee was quite wide-ranging and progressive, even giving the Supreme Court control over admission and disbarment of attorneys¹⁷ and authorizing declaratory judgment suits. That committee even proposed moving toward nonpartisan judicial selection by excepting judges from the state's primary election law. Moody embraced and recommended to the Legislature all of the committee's proposals save the exclusion of judges from the primary election law.¹⁸

In the related realm of legal process, the TBA Committee also urged the elimination of the manslaughter degree in homicide cases, a proposal with which Moody concurred based on his experience as a criminal prosecutor. In his speech to the TBA's convention in the summer of 1927, the Governor remarked that from his early days of practice he had found the technicalities involved in submitting the manslaughter charge to a jury to be irrational and often to permit the guilty to go free for purely procedural mistakes. Representative Alfred P. C. Petsch of Fredericksburg, a lawyer who served as Moody's manager in the House of Representatives, carried the proposal; that bill would have simply deleted the manslaughter charge and left murder and negligent homicide as the only crimes of homicide. Ironically this measure—a part of the TBA's legislative package—was resisted by many lawyers in both houses.¹⁹ But the Senate weakened the bill by limiting only slightly the circumstances in which the judge could charge the jury on manslaughter; and then the House committee reported the amended bill adversely 8-4, forcing Petsch to bring it out to the floor on a minority report. "Over strenuous and oratorical objections" of lawyer-legislators such as Cecil Storey of Vernon, who castigated "these modern reformists" and charged that the rights of homicide defendants would be imperiled, the Legislature nonetheless adopted the amended bill, giving Moody a small victory.²⁰



Rep. Alfred P. C. Petsch

The 40th Legislature also voted out, at Moody's behest, a total of seven proposed constitutional amendments, four of which were fixed for submission to the voters on the first Monday in August 1927. Among those was the judicial amendment to increase the number of Supreme Court justices to nine and to make other changes. The TBA's Special Legislative Committee had wished to have a constitutional amendment along the lines of

¹⁶ Leon Green, "Simplification of Civil Procedure," 2 TEX. L. REV. 464-66 (1922).

¹⁷ It was also in 1927 that the Texas Bar Association seriously initiated its legislative effort to "incorporate" the bar (i.e., to transform the voluntary association into the membership-mandatory State Bar of Texas), with the first bill introduced in the 40th Legislature styled as the "Self-Governing Bar Bill." That bill died, and ultimately another dozen years' work were required to enact the 1939 State Bar Act. See, generally, Josiah M. Daniel, III, "Creating the State Bar of Texas, 1927-1940," 45 TEX. B.J. 454 (1982).

¹⁸ Texas, Legislature, House Journal, 40th Leg., reg. sess. (1927), pp. 102-104; A. H. McKnight, "Progress of the Special Legislative Committee," 5 TEX. L. REV. 49-50 (1926).

¹⁹ It should be remembered that the voluntary Texas Bar Association never represented a majority of Texas attorneys.

²⁰ Texas Bar Association, PROCEEDINGS 46 (1927): 64-67; unidentified newspaper clippings in Dan Moody Scrap-books, University of Texas Archives; Texas, Legislature, General and Special Laws, 40th Leg., reg. sess. (1927), ch. 274, pp. 412-413, 40th Leg., 1st called sess. (1927), ch. 8, pp. 18-19.

the federal Constitution's judiciary article, that is, with the Supreme Court as the only constitutionally created court and with the Legislature authorized to enact legislation to establish lower courts as needed. The question provoked much interest in the bar, and lawyers in the Legislature were divided over the issue of abolishing the constitutional foundation of the intermediate appellate courts.

A compromise measure was crafted by three blue-ribbon Dallas attorneys, A. H. McKnight, a persistent critic of the judicial system; M. M. Crane, a former Lieutenant Governor and Attorney General; and Nelson Phillips, a former Chief Justice of the Supreme Court.²¹ The essential features of the revised measure were a Supreme Court of nine members, continuous terms of court, and power to transfer trial judges to dispose of congested dockets. The amendment sailed through its final votes in the Legislature, and at the TBA's annual convention in the summer of 1927, Moody entreated the membership to work hard for its ratification.²²



Lt. Gov. Walter Woodul

But at the ratification election on 1 August, the electorate in a small turnout rejected the judicial amendment, along with the other three, by a margin of approximately four to one. The reason may have been that amendments were submitted at an inopportune time. After the election, Moody's friend and supporter, and future State Senator and Lieutenant Governor, Walter F. Woodul of Houston wrote that "the fault was with the people of Texas. . . . [I]f the . . . amendments had been submitted at a general election, they would have carried." In a 1975 interview Woodul attributed the defeat to the fact that during summertime "fishing weather," Texans did not stay around to vote on constitutional amendments.²³

Despite the loss of the constitutional amendment, the 40th Legislature did fulfill the Governor's requests by enacting a number of additional judicial adjustments and revisions of a reorganizing nature, short of what Moody and the TBA's Committee wanted, but improvements nonetheless. The most noteworthy acts organized the state into nine administrative judicial districts, authorized the Supreme Court to make semi-annual equalizations of the dockets of the eleven Courts of Civil Appeals, and required continuous terms for those appellate courts. Omissions included the failure to require continuous terms for the district courts. That was a point Moody specifically identified as an example of the shortcomings of the trial system; he noted that in some counties a district judge appeared only twice a year, and because lawsuits then had only to be answered upon appearance before the court, six months could elapse before anything could begin to happen in the suit.²⁴

While the enacted changes did help to reduce congestion in the courts, the changes were clearly less fundamental than Moody had hoped. In the second year of his first term, when he summarized his legislative achievements in a press release on 23 June 1928, Moody cited the increased funding of public and higher education

²¹ Phillips, Nelson (1873–1939), HANDBOOK OF TEXAS ONLINE, available at <http://www.tshaonline.org/handbook/online/articles/fph08>.

²² Texas Bar Association, PROCEEDINGS 46 (1927): 68-72; McKnight, "Progress of the Special Legislative Committee," pp. 49-50; idem., "The Fortieth Legislature and Judicial Reform," 5 TEX. L. REV. 361-362 (1927); Moody to A. P. Willis, 13 August 1927, Moody Papers; Texas, Legislature, General and Special Laws, 40th Leg., reg. sess. (1927), S.J.R. No. 24, pp. 468-472.

²³ Texas, Legislature, General and Special Laws, 40th Leg., reg. sess. (1927), S.J.R. No. 30, pp. 463-464, S.J.R. No. 24, pp. 468-472, H.J.R. No. 25, pp. 472-473, H.J.R. No. 32, pp. 500-501; Walter F. Woodul to Moody, 19 August 1927, Moody Papers; author's interview with Woodul, 11 July 1975.

²⁴ Texas, Legislature, General and Special Laws, 40th Leg., reg. sess. (1927), ch. 36, pp. 50-53, ch. 76, pp. 115-116, ch. 156, pp. 228-231, ch. 255, pp. 378-379, ch. 273, pp. 411-412, 40th Leg., 1st called sess. (1927), ch. 51, pp. 148-149; Texas Bar Association, PROCEEDINGS 46 (1927): 47, 65-66 (1928): 181-182; Texas, Legislature, Senate Journal, 40th Leg., reg. sess. (1927), pp. 91-92, 379; Dallas News, 11 September 1927; Moody to N. R. Morgan, 2 November 1927, Moody Papers.

as his administration's primary achievement but, among other accomplishments, remarked and characterized the judicial enactments as "initial steps toward [the] goal" of judicial reform.²⁵

Moody easily won reelection in November 1928, and when he outlined his agenda for the 41st Legislature in an address on 20 January 1929, the Governor pled for "compromise of views" in respect to his proposed subjects of legislation, many of which were the same as before. Reminding the legislators of his fiscal stewardship of the state during the preceding biennium, he once again recommended legislation on the topic of judicial reform. Specifically, Governor Moody requested that the Legislature make another attempt to amend the Constitution to increase the Supreme Court's membership to nine, based on the same rationale as two years earlier. He also advocated authority for the Supreme Court, instead of the Legislature, to promulgate the rules of civil procedure, and he proposed the creation of an advisory judicial council composed of both judges and attorneys such as existed in Massachusetts and Wisconsin. Third, he asked that the right of appeal in criminal cases be replaced with a discretionary writ of error system. Finally, he urged, again, adoption of the TBA's recommendation for continuous terms of the district courts.²⁶

The Legislature complied and submitted another nine-member Supreme Court amendment to the voters; but on 16 July, it too failed to be adopted by the voters. Nothing was done to restore rule-making to the Supreme Court, but Moody had identified a large problem: the Legislature was spending a vast effort each session to enact and revise highly specific, detailed procedural rules that the Court itself more appropriately could establish and from time to time refine. However, it was not until 1939 that the Legislature remedied the problem by finally enacting the Rules of Practice Act. No change was made in the criminal right of appeal, as Moody requested in 1929.²⁷

Yet the 41st Legislature did accept the Governor's request to create the Civil Judicial Advisory Council, another measure promoted by the TBA.²⁸ Civil judicial councils originated in Ohio and Oregon in 1923 and by 1930, thirteen states had created such agencies. Justice J. W. McClendon of the Austin Court of Civil Appeals advocated such a council for Texas in a speech to the Association of the Courts of Civil Appeals in 1928, and a special committee of the TBA endorsed the proposal late that year.²⁹ The bill to create the Texas Civil Judicial Advisory Council passed easily. Once the bill was enacted, Moody appointed nine prominent attorneys from around the state and seven appellate and trial judges as ex officio members; and the Council began work immediately to collect statistics and study ways of improving the court system.³⁰ Over the next decade, the Council would prove to be an effective exponent of judicial reform.

Moody's Achievements within the Larger Story of Texas Judicial Reform

After four years, Moody stood down from office in order to establish his law practice in Austin and, with his wife Mildred Moody, to raise a family, a first child having been born in the Governor's Mansion. Texas historians have generally accounted Governor Moody's legislative program less than successful if not a failure because he did not achieve his largest business-progressive goals such as fundamental prison and tax reforms.

²⁵ Unidentified newspaper clipping dated 28 June 1928 in Dan Moody Scrapbooks, University of Texas Archives; Amarillo News, 6 July 1928, 22 July 1928.

²⁶ House Journal, 41st Leg., reg. sess. (1929), pp. 20-35. 77.

²⁷ Texas, Legislature, General and Special Laws, 41st Leg., reg. sess. (1928), ch. 309, pp. 689-691, H.J.R. No. 6, pp. 711-713; 41st Leg., 1st called sess. (1929), ch. 19, pp. 51-54.

²⁸ Act of May 15, 1939, H.B. 108, 46th Leg., R.S., ch. 25, 1939 Tex. Gen. Laws 201 (formerly codified as Tex. Rev. Civ. Stat. Ann. art. 1731a, now codified as Tex. Gov't Code § 22.004). The agency is now known as the Texas Judicial Council.

²⁹ "Powerful Argument for Judicial Council (Speech of J. W. McClendon to Ass'n of Judges of the Courts of Civil Appeals," 12 J. AM. JUD. SOC. 45-53 (1928); A. H. McKnight, "Judicial Reform in the Forty-first Legislature of Texas," 7 Tex. L. Rev. 103-07 (1928).

³⁰ A. H. McKnight, "Texas Judicial Council," 8 TEX. L. REV. 101-03 (1929).

Pertinently in the area of judicial and legal-system reform, one historian, Professor Randolph B. Campbell, has written that Moody “sought *in vain* . . . to overhaul the antiquated court system,” and other accounts are to the same effect.³¹

A closer look at the legislative requests of Moody and the enactments of his legislatures reveals, however, the measured progress discussed in this article. A more accurate characterization of Moody and the 40th and 41st Legislatures is that they obtained notable, albeit incremental, improvements and probably generated important momentum that advanced the cause of reform and efficiency of the judicial branch of Texas state government and ultimately led to enactment in 1939 of the Rules of Procedure Act and the State Bar Act.

For example, what might appear to be the major defeat in that effort, the failure—twice—to obtain by constitutional amendment a nine-member Supreme Court, was in fact overcome by practical innovation. The problem with the Supreme Court was not shortage of personnel; as noted, the Court at that time consisted constitutionally of only three justices, but the Legislature in 1918 had provided, and the 40th and 41st Legislatures in 1927 and 1929 continued provisions for, six extra judges in the form of the Commission of Appeals. The High Court’s problem was authority and organization: by statute, only justices could hear and decide applications for writ of error from the Courts of Civil Appeals, so that the three justices had to spend all their time on the technical process of granting and denying the writ applications, leaving little time for adjudication of the merits of appeals. The six Commission judges inherited the task of hearing the appeals for which writ applications were granted; but because they were not “the Court,” their decisions had the variable precedential value discussed above.

The result was a large backlog of appellate cases. When the Supreme Court amendment failed the second time, Moody and his bar allies found a simple expedient to overcome the problem: a relatively simple statutory change to permit the Court to organize itself into three committees, each committee containing one justice and two Commission members, to hear writ applications.³² Efficiency was thereby improved almost as much as if the constitutional amendment had been adopted by the electorate, which was not accomplished until 1945.

Indeed the entire judicial branch was similarly reorganized during Moody’s four-year administration, not constitutionally or fundamentally, but practically. Modernizations included continuous terms and semi-annual docket equalizations for the Courts of Civil Appeal, and the organization of the district courts into nine administrative districts with docket-equalizing procedures. These innovations worked; almost immediately congestion and delay were reduced in those forums, both trial and appellate.³³ Finally, judicial salaries were raised and numerous technical changes and additions made to the statutory rules of practice. Last, the Civil Judicial Council, a “quasi-official body” as Moody called it, proved over the following ten years to be a highly effective exponent of the judicial reforms Moody had promoted, culminating in the 1939 enactment of the State Bar Act and the Rules of Practice Act.

In short, Moody was hardly a failure in the field of judicial reform; he did not “s[ee]k *in vain* . . . to overhaul the antiquated court system.” I rate Governor Moody a success for actually obtaining many of the judicial and legal process reforms he advocated.

³¹ Randolph B. Campbell, *GONE TO TEXAS: A HISTORY OF THE LONE STAR STATE* (2003) at 375 (emphasis added). See also T. R. Fehrenbach, *LONE STAR: A HISTORY OF TEXAS AND THE TEXANS* (1968), 647 (“the legislature and the people ignored his recommendations”); Norman D. Brown, “Texas in the 1920s,” *HANDBOOK OF TEXAS ONLINE*, available at www.tshaonline.org/handbook/online/articles/npt01 (during Moody’s terms, “no fundamental changes were made in the cumbersome judicial system”); Anderson, *supra* note 2 at 133 (“there was no judicial reform”). But see Rupert N. Richardson, *TEXAS: THE LONE STAR STATE* (1943) at 432 (“The fortieth legislature [1927] made *some* progress toward reform of the court system”) (emphasis added).

³² Texas, Legislature, General Laws, 41st Leg., 5th called sess. (1930), ch. 2, pp. 112-114.

³³ According to an incomplete survey conducted by the Texas Civil Judicial Council, the total number of pending suits on the dockets of the district courts declined from 56,671 on 1 January 1928 to 36,722 on 1 January 1929. Texas Civil Judicial Council, “Second Annual Report of the Texas Civil Judicial Council to the Governor and Supreme Court” [n.d., n.p.], p. 36.

Reflections on Moody and the Historical Problem of Judicial Reform in Texas

Beyond revising prevailing characterizations of the legislative record of this Governor and his two legislatures, what does this vignette of only four years within the long history of Texas courts and legal process teach? An easy answer is that it demonstrates that the process of change in the Texas legal system is difficult and slow. Substantial, indeed fundamental, innovations such as Moody proposed happen neither easily nor quickly. But beyond that obvious observation, a fuller answer may be at least adumbrated, without venturing into the thicket of “public interest,” “interest group,” and other theoretical speculations as to why any legislation ever happens, based on Texas history and Moody’s record.³⁴

To begin, Texas in the late twenties was relatively prosperous. Even after the Great Crash of October 1929, Texans, who generally were not invested in the stock market, continued to experience relatively good times throughout 1930.³⁵ As T. R. Fehrenbach put it, “In [the] prosperous times [of the 1920s], there was almost no chance for any kind of political change.”³⁶ So judicial reform may have been, and may always be, more difficult to accomplish in the good times.³⁷

Furthermore, although the legal system touched and affected Texans of the twenties in myriad ways, issues of court organization and legal process were not the natural stuff of political discourse or of much interest or concern either for individual Texans or for the owners and managers of Texas businesses. This is understandable considering that clients, when they have to resort to legal process, then as now, generally rely on their attorneys to navigate the intricacies of filing or defending lawsuits; and while citizens may learn a little about trials and lawsuits from periodic trips to the courthouse under a jury summons, those experiences do not truly inform them about the system’s inefficiencies, quirks, and needs for reform and adjustment.

And how could they? Only lawyers and judges actually observe, experience, and know these things. To acquire a lawyer’s intimate knowledge about the court system requires, first, legal education (through apprenticeship in older days and law school in more modern times), and then experience in representing clients in litigation after admission to the bar. And judges may be political actors in the sense that they stand for election on party tickets, but because of separation-of-power concerns, temperament, and/or prudence, they do not usually lobby legislators for changes to the courts they staff and the rules they administer. So it was Texas attorneys who were the natural constituency for Moody on the issue of legal and judicial improvement during his two terms. In fact, lawyers were the only constituency for it. This is reflected in the Governor’s reliance on the Texas Bar Association, of which he was a member, and its Special Legislative Committee, which drafted the specific bills that were introduced into the Legislature pursuant to his broad agenda.

This brief episode illustrates that any effort, at any time, to change any material feature of the Texas court system and its legal processes has required lawyers, or, more particularly, their professional organizations, to raise the problem, to propose the solution, and to actuate and manipulate the levers of political and legislative power to cause legislation or constitutional amendments to happen. Such changes are, of course, harder to obtain by

³⁴ See, e.g., Richard A. Posner, “Economics, Politics, and the Reading of Statutes and the Constitution,” 49 CHI. L. REV. 263 (1982).

³⁵ Campbell, *supra* note 31 at 377-78. See also Robert C. Cotner, ed., TEXAS CITIES IN THE GREAT DEPRESSION (1973), “Introduction” at xii (After 1929, “the booming oil industry in Texas did much to ease the strain on unemployment rolls.”). Dealing with the Depression in Texas fell to subsequent governors beginning with Ross Sterling, who took office on January 20, 1931.

³⁶ Fehrenbach, *supra* note 31 at 647.

³⁷ It may be noted that both the Rules of Procedure Act and the State Bar Act were enacted in 1939, when the worst effects of the Depression were suffered. Hopefully historians or history-minded lawyers will dig into the judicial reform effort from the end of Moody’s administration through the 1930s and 1940s.

constitutional amendment and much easier to achieve by small legislative enactments, as had been happening in the decades after the constitutional amendment of 1891 and leading up to the late 1920s, as the lawyer-members of the Legislature regularly enacted small tweaks to the procedural rules and, from time to time, added more district courts.

Changes larger than minor revisions and tweaks required a stronger voice, a governor's voice. As the state's chief executive, Moody—a lawyer and politician—commanded the attention of the public and of the Legislature. Provided with what he must have seen as an opportunity for progressive legislation in the wake of his exposure of the scandals of Ma Ferguson's administration and his landslide electoral victories, Moody undoubtedly thought the time right to push judicial reform forward in very significant ways, even though he had not campaigned on that issue. That he was able to do so only to incremental extents—by legislation, and not by constitutional amendment—just indicates the magnitude of the obstacle to bringing about fundamental changes and improvements to the judicial system in Texas.³⁸



JOSIAH M. DANIEL, III is a Wheeler Life Member of the Society. He is a partner in the Restructuring and Reorganization Practice Group of Vinson & Elkins, L.L.P., in its Dallas office. He holds a B.A. from Sewanee and an M.A. from The University of Texas at Austin, both in history, and a J.D. from The University of Texas School of Law. Daniel is the founder and chair of the Dallas Bar Association's Legal History Discussion Group. His most recent legal-historical article is a study of historical lawyering in *LBJ v. Coke Stevenson* [see 31 *REV. LIT.* 1 (2012)].

³⁸ This last sentence is based on my own experience and observations, beginning as a law student in 1975 and continuing as a practicing lawyer for the last 34 years in Texas, of the periodic debates within, and the external efforts by, the organized bar to cause changes in the system and improve the administration of justice.

[Return to Journal Index](#)

Alexander's Waterloo: The Fights for the Texas Supreme Court and Padre Island Intersect

Part 2, The Case Unfolds

By Judge Mark Davidson

The story so far...

Padre Balli bought the entirety of Padre Island in 1817 for twenty pesos, and, being childless, left it to his nieces and nephews. They made no effort to develop or sell the property. Five generations of Balli heirs did little to preserve their title or pay taxes on the property. Protected, in part, by a patchwork of constitutional protections and statutes dealing with Spanish land grants, each heir's inheritance became increasingly fractionalized. In 1937, Texas Attorney General Gerald Mann brought a suit in Nueces County to challenge the title the heirs claimed. About the same time, a New York lawyer named Gilbert Kerlin obtained quitclaim deeds from many of the heirs for their interests. Kerlin hired well-connected lawyers to represent the Balli family and himself in the Attorney General's suit. The case was filed in the court of Judge Cullen W. Briggs, an eccentric who would later turn up on the report of the Warren Commission that investigated President John F. Kennedy's assassination.

The Road to Austin

Given the high quality of the attorneys on all sides, it is not surprising that there was very little pre-trial activity in the case.¹ One party sought and obtained the right to intervene in the case, and then disclaimed any interest in the property. Another minor party sought to abate, or freeze, the entire case, but was unsuccessful. Beyond that, pre-trial activity consisted of the parties coming to the judge on three occasions and asking for continuances of the trial.

The trial started on January 15, 1942. On the morning of trial, Judge Briggs was informed, apparently for the first time, that the parties were waiving their right to a jury trial, and would try the case "to the court." This was, and is today, a typical procedure when there are relatively few disputed questions of fact and intense dispute on the legal effect of those facts. Nonetheless, the file reflects that the trial lasted eleven days, not counting weekends, ending on January 26th. Judge Briggs requested the parties to file post trial briefs by February 10th. Those briefs do not appear in the file of the District Clerk, which means that Judge Briggs saw them as being outside the formal record.

One stipulation was made at the trial that simplified the judge's task considerably – the defendants all asked that the judge not decide which of them owned the island, or adjudicate their claims against each other. Rather, the judge was only to decide whether the claims by the state were valid. While this made Briggs's decision easier, it would lead to decades of subsequent litigation between the Balli Family and Kerlin.

¹ The court's docket sheet reflects that a "General Demurrer" was filed. A general demurrer was a pleading that made a general denial that there was a legal basis for the relief sought by a plaintiff. General demurrers were abolished by the adoption of the Texas Rules of Civil Procedure in 1939, the year before this suit was filed.

On March 17, 1942, Briggs announced his ruling. A judgment was rendered for the defendants on all counts, and a final order in the case was signed.² The file reflects that the Attorney General immediately gave notice of appeal, indicating that they would seek review by the San Antonio Court of Appeals.³ Since the waiver of jury trial had to have been agreed by all parties, it is likely that all parties had evaluated the case and concluded that the case would be determined as a matter of law, and not on any contested facts. The appeal was inevitable, and Judge Briggs's ruling was, and was probably known to be, but an advisory ruling to the reviewing appellate courts.

Given what was at stake, the review of the ruling by the San Antonio Court of Appeals was also a preliminary proceeding to review by the state's highest court. Drawing the task of reviewing a voluminous record and writing an equally voluminous opinion was Associate Justice James R. Norvell. It was almost certainly a coincidence that prior to becoming a judge, Norvell had practiced in the Rio Grande Valley. Since he had written an abstract of real estate records in Starr County, it is likely that he knew Francis Seabury. Because he had done extensive real estate title work in both Starr and Hidalgo counties, it is hard to imagine a judge with more experience in dealing with the Spanish and Mexican land grants.⁴

It took two months for the Nueces County District Clerk to prepare the trial record, and another three months for the Court to schedule oral argument on the appeal. Eight months after that, on June 23, 1943, the Court affirmed the trial court ruling. In a twenty-two-page ruling, Norvell analyzed each of the state's arguments that it owned the island. Examining Spanish law and the shifting laws of the Republic of Mexico, Norvell concluded that Padre Balli had substantially complied with the laws in effect at the time, and had acquired the island from the government. Noting that all current surveys of the island showed it to contain thirty square leagues of land, while the original grant was only eleven and a half, the opinion assumed it was the result of accretion, or natural growth, of the island, and concluded that under Roman, Spanish, Mexican and Texas law accretions belong to the owner of the land on the shore. The extent to which the land was greater than that which Mexican law allowed someone to buy from the government, Norvell concluded that, even if he was incorrect on his belief that that growth went to the owners, the 1852 legislative act waived any defect.

As is typical in appellate proceedings after losing an appeal, the State filed a motion for rehearing, which the court denied on July 21, 1943, only twenty-eight days after issuance of their opinion and only nine days after the motion was filed. In appellate law, a motion for rehearing is a prerequisite to an appeal to the Texas Supreme Court. Since all parties knew from the beginning of the litigation that it where the case would be decided, the road to Austin was complete.

The Texas Supreme Court in 1944

It is the nature of appellate courts to change slowly and incrementally. Until December 31, 1944, the Supreme Court of Texas had been an exemplar of this truism. It had enjoyed the same membership from Chief Justice James P. Alexander's swearing in in 1941. The other two members of the court, John Sharp and Richard Critz, had served since 1937.

Chief Justice Alexander had served as an Associate Justice on the Waco Court of Appeals and as a law professor at Baylor Law School when he had run for, and been elected to, Chief Justice in 1940. He had previously served as a District Attorney and as a District Judge in McClennan County. He was considered the scholar of the

² Judge Briggs apparently typed the judgment himself, since in 1942 Nueces County District Judges did not have secretaries or other clerical help.

³ While there is today a Corpus Christi Court of Appeals, it was not created until 1965.

⁴ Information on Norvell is from 32 TEX. B. J. 882 (1969). Norvell would go on to serve on the Court of Appeals until 1956, and would serve on the Texas Supreme Court from 1956 until 1968.



Justice James P. Alexander

court, and was renowned, even by those who he disagreed with, as a brilliant administrator. His personality has been described as “dry” and “imperial.”

The senior member of the Court, Justice John Sharp, was friendly, yet mild mannered. Unlike Alexander, he had come to the Court not from the bench, but by way of service as mayor of Ennis, Texas, and service on the Ennis School Board. In 1929, he had been appointed to serve on the Commission of Appeals by Governor Dan Moody. In 1934, he ran for the Supreme Court, and was narrowly elected in a runoff.

The third member of the Court in 1944 was Richard Critz. He had also come to the Court by way of the Commission of Appeals. Like Sharp, Critz had been appointed to the Commission by Governor Moody. Critz, who was a very poor natural politician, had been appointed as a member of the Court by Governor James Allred. He had had an opponent in the 1938 election, and had handily defeated two opponents. While Critz was a member of the Court at the time the case arrived from San Antonio, he would not be there at its conclusion. In the 1944 Democratic Primary, he had three opponents for reelection. Critz declined to campaign, and his sworn reports show no money raised or spent on any political activity. He was taken into a runoff by Gordon Simpson, a former president of the State Bar of Texas. At the time of the election, Simpson was a Colonel in the Judge Advocate General Corps, and was stationed with the Fifth Army in Italy. Notwithstanding the fact that Simpson was unable to campaign, he obtained 58.44 percent of the vote against Justice Critz in the runoff, and returned from military service to become a member of the Court on January 1, 1945.

The Supreme Court had consisted of three members since 1876. In 1921, in response to the Court’s increasing workload, the constitution was amended to provide for six commissioners of appeals, who worked in two panels of three judges each. The commissioners wrote opinions for the court, which usually adopted the opinions without further comment.

There was something of a caste system between the three justices and the six commissioners. While the justices had offices on the third floor of the State Capitol, the commissioners were on the fourth floor. All opinions of the commissioners had to be approved by the Court, with widely varying degrees of intensity of review. Joe Greenhill,⁵ who served as a briefing attorney both before and after the war, noted later that “there were several 2-7 majority opinions. Two Justices would vote one way, and the other justice and all six commissioners the other. The two justices’ votes would prevail.”⁶

When the case came in from San Antonio, it was assigned to the Commission for review. Why a case of this magnitude would have been assigned to the Commission cannot today be determined. It is extremely likely the members of the Court knew something of the case. The Capitol contained all state offices at the time, and coffee room talk had almost certainly taken place about its progress through the courts. Perhaps the political uncertainty of Justice Critz’s service on the Court played a role in the assignment. It is possible that the justices, being political animals, were reluctant to unnecessarily rule on a case that could put them between a rock (the very popular Attorney General) and a hard place (the politically connected attorneys representing the defendants). The opinion was assigned to “Panel B” of the Commission of Appeals, which consisted of Commissioners Graham Smedley, W. M. Taylor, and Charles S. Slatton.

⁵ Greenhill would subsequently serve as a member of the Court from 1957 until 1972, and as its Chief Justice from 1973 until 1982.

⁶ Greenhill interview with author, 1992.

Slatton had been a member of the Commission of Appeals since 1940. Before that, he had served as the District Attorney in Atascosa County, and later as a member of the San Antonio Court of Appeals. Like all the commissioners, he had been appointed to the Court by the members of the Supreme Court (the power of appointment had been transferred from the Governor to the Court in 1930). Slatton was thought to be especially close to Justice Critz through their mutual friendship with James Allred.⁷

To prevail, the Attorney General only had to persuade the Court that he was correct on any one of four separate theories: 1) that there was no extant proof that Padre Balli had ever completed his acquisition of the property; 2) that the final clause of the 1852 act, exempting all islands or salt lakes from the property relinquished by the State to owners of Spanish land grants, voided any transfer; 3) that the laws of Tamaulipas prohibited transfer of more than eleven leagues of land, and that there was no proof that the expansion of the property to thirty leagues of land was due to accretion; or 4) that the failure of the Balli claimants to file a survey within four years of either the 1852 act or the 1876 Constitutional Amendment barred their title. Both sides filed extensive briefs, surpassing by a considerable margin the thirty-page limit currently placed on parties with cases before the Court.

On December 20th, 1944, the Supreme Court of Texas announced its eagerly anticipated opinion. In an opinion written by Commissioner Slatton and adopted by the Court, the Balli family's claims were upheld. The opinion began with an extensive history of the property and the efforts Father Balli and his nephew had made to perfect title to the property. Discussing the records obtained from the Mexican government, in light of early Texas cases dealing with similar challenges, Slatton harmonized the evidence and precedent in a manner which supported his opinion. Slatton discussed numerous aspects of both Spanish and Mexican law to determine the issues presented to him. The end of his opinion simply contains the notation that the court had approved his opinion.

Slatton's opinion declared as inherently valid all actions of the Mexican Government of Tamaulipas. In so ruling, he brushed aside complaints from the State that the land grant to the Ballis violated Mexican law. Arguments that coastal lands could not have been legally conveyed and that the grant of the lands were more than the law allowed were all swiftly dismissed as being irrelevant given the approval of the Mexican Government of those titles.

From the Third Floor to the Second

Proposals to expand the Court had been made in previous years, but had not advanced far in the legislative labyrinth. In the 1945 Session of the Texas Legislature, Senator Kyle Vick, from Waco, introduced a constitutional amendment to expand the Supreme Court from three to nine members. As originally introduced, the amendment, once adopted by the Legislature and ratified by the citizenry, would have given the Governor the power to appoint the six new members of the Supreme Court. The amendment passed the House as introduced. In the Senate, over light opposition, an amendment was inserted into the resolution specifying that the six new members of the Court were to be the six members of the Commission of Appeals. With that amendment, the bill was adopted by the Legislature on April 21st and set for a special election on ratification for August 25th, 1945.

The need for an accelerated special election on ratification, especially during a time of wartime fuel rationing, was questionable. In the previous three legislative sessions, referenda on proposed constitutional amendments were always set in the November elections in the next general election, fifteen months after adjournment of the session. In this case, the Legislature chose to call the election for just over ninety days following adjournment of the session – as quickly as a special election could have been called under the law. The voters of Texas took advantage of the election to approve the change, and the Court was expanded by six members – the commissioners that had been serving the court – as of the date of canvass of the election, September 21, 1945.

⁷ James V. Allred was Attorney General of Texas from 1931 to 1935 and Governor from 1935 until 1939.

The Perfunctory Motion for Rehearing

As is customary with Supreme Court opinions, motions for rehearing followed the December 1944 judgment. The motions were filed on January 15, 1945. Most of the time, those opinions are denied perfunctorily and quickly. Between 1946 and 1955, only three were granted. On the motion for rehearing in the Balli case, an extraordinary voting pattern developed. All three members of the “old” court – Alexander, Sharp, and Simpson – dissented. In three separate opinions, they dissented from the opinion they had adopted ten months before. The majority of the Court, the six former commissioners, declined to change the opinion or respond to the dissents. Sharp’s opinion added additional facts and evidence, and quoted additional documents that Slatton had ignored, concluding that because the State of Tamaulipas had deeded the Balli’s eleven leagues, that is all they should get. Simpson concluded that since the Mexican Government’s survey clearly intended to convey pastureland to the Ballis, they should only receive the land within the literal words of the survey and nothing else. Alexander’s dissent was acidic, especially in its conclusion:

Since under Mexican law as it existed at the time the parties negotiated for the purchase of the land, Balli and his nephew could purchase only twelve leagues of land; and since their field notes called for only 11.15 leagues and they actually paid for only 11.15 leagues ... I am unwilling [to] approve a judgment for 30½ leagues, or approximately 135,000 acres of land.

The timing of the opinions is both instructive and puzzling. The Court approved Slatton’s opinion on December 20, 1944. The motion for rehearing would have been filed no later than January 18, 1945. The Court did not rule on the motion for rehearing until November 7, 1945. Had they done so before September 21st, the day the commissioners became full-fledged justices, Slatton’s opinion would have been withdrawn and replaced with one that resembled Sharp’s dissent. The commissioners could not have known until April 21st that the Legislature had approved the constitutional amendment converting them into members of the Court, nor could they have been certain that the people would approve the amendment until the election on August 25, 1945.

What happened? Could a panel of commissioners have “snuck” an opinion in a complicated case by an overburdened Court eager to close out its books for the year? Perhaps, but if the justices were persuaded by the motions for rehearing, why did they not act on them earlier? Could Commissioner Slatton have sat on the motion for rehearing during the legislative session, knowing expansion of the Court was a possibility? Assuming some sort of sleight-of-hand did take place, the short period of time between the expansion of the Court and the announcement of the dissenting opinions indicates that if the three dissenters had felt strongly about the case, they could have ruled a little earlier.

The role of Justice Critz is another possibility. The opinion was issued eight days before he left office. He could have “walked” Slatton’s opinion through the Court, both because it was right and to help out lawyers that had helped him in his campaign. Critz had carried Cameron County in both the first primary and the runoff. There are no records to indicate if Seabury, Tarlton, or any of the other lawyers assisted Critz’s campaigns in South Texas. Of Critz’s ten best counties in the runoff, six were in South Texas. In a race in which he got only 42 percent of the vote statewide, he received 60 percent of the vote in Cameron County. Critz might have been the justice assigned by the Court to review the opinion in *Balli*, and could have approved it knowing that he would not be on the Court at the time of consideration of the motion for rehearing.

Whatever happened, the case clearly embittered the Chief Justice. According to one witness, he later said, “Slatton’s initials (CS) stand for what you might imagine they do.”⁸ Alexander is known to have suggested

⁸ Greenhill comment to author, circa December 2001.

to some that the Balli family and their attorneys had contributed to the campaign to approve the constitutional amendment expanding the court. Given the scanty reports that were required of political expenditures in the 1940s, this cannot today be proved or disproved.⁹ What is clear is that Alexander and the other justices either had an opinion they came to disagree with get by them or they failed to properly supervise the commissioners' handling of motions for rehearing in the last days of the Commission of Appeals.

Alexander's claim that the Ballis and their assigns were responsible for the constitutional amendment expanding the Court is more difficult to accept. The joint resolution adopted by the Legislature was sponsored by Senator Kyle Vick, from Waco. It is difficult to believe that Alexander's own state senator would have sponsored a bill that the Chief Justice did not support. By the same token, the constitutional amendment originally introduced by Vick gave the Governor the power to appoint six new members of the Court. The bill was amended in the Senate to specify that the new justices would be the commissioners. The amendment was offered by Senator Vick.

The sands of time can hide many truths, and create many mysteries. *Balli* was but one of several cases that came out after the Court's expansion in which the "old" justices dissented from the majority opinions of their new colleagues. How and why this case came out as it did will never be completely known. If one walks the beaches of South Padre Island today after reading the Balli case, one cannot help but wonder how much different the island might be if the state had succeeded in claiming ownership of all or most of the island.



JUDGE MARK DAVIDSON, who currently presides over the Multi-District Litigation Court in Harris County, has written numerous legal history articles for the *Texas Bar Journal* and the *Houston Lawyer*. His article on Chief Justice James Alexander and the *Balli* case is based on a paper presented at the Society's joint session at the 2006 Texas State Historical Association Annual Meeting.

⁹ Four years after the opinion came out, Justice Slatton's son, James Allred Slatton, was hired by the Brownsville firm of Taylor and Wagner, the successor firm, after Seabury's retirement, to the firm of Seabury, Taylor and Wagner.



Warren Harris

Another Hemphill Dinner *You Won't Want to Miss*

The Society is beginning work on the 18th Annual Hemphill Dinner.

I am pleased to report that the keynote speaker for the 2013 Dinner will be **Justice Sandra Day O'Connor**. We are very excited to have Justice O'Connor joining us for the Hemphill Dinner. We owe special thanks to **Chief Justice Wallace Jefferson** and to **Justice Paul Green**, the Society's liaison to the Court, for inviting Justice O'Connor to be our speaker.

The Hemphill Dinner will be chaired by **Macey Reasoner Stokes** and held at the Four Seasons Hotel in Austin on June 14, 2013. Tables for the dinner will go on sale in January, and it will be another sell-out event. Order your table early because this is sure to be a great occasion you won't want to miss!

Would you like to play a part in this Journal? Like an orchestra that gathers diverse talents and harmonizes instruments, the Journal produces an experience greater than its parts. Whether you're a judge, lawyer, client, or historian, you can play your unique part in the Society by sharing your experience and insights with a statewide audience. Whether it is an article that covers an issue in depth, a short essay about Texas law, or a book review, the Society welcomes your ideas. Any member interested in submitting an article should forward that article to **Executive Editor David A. Furlow** or the Society office. The editorial team welcomes new submissions and provides encouragement and assistance to submitting authors. Please join us in making an excellent Journal even better.

The Society will soon be releasing our book on the history of the Texas Supreme Court. Several years in the making, this book marks an important milestone for the Society. More details will appear in the next issue of the Journal.

— *Warren W. Harris*, Bracewell & Giuliani LLP

[Return to Journal Index](#)



Bill Pugsley

History is a *Living Thing*

One of the persistent myths about history is that it's "dead" in the sense that it is about dead people, past events, ruined buildings, extinct civilizations, all of them long gone and buried. Such an assumption is an easy one to make given the lifeless way the subject is often taught in high school. The better college professors can overcome some of the damage, but for most people the initial impression remains — history is a concatenation of pointless dates about earlier and now irrelevant events. This view is a fallacy of reasoning that confuses the commencement with the consequences, the wedding for the marriage, a bullet for ballistics, a noun for a verb.

History is of two parts, the act and the continuing outflow of consequences from that act. Most high school teachers barely have time to communicate the important events and actors that constitute our national history; little surprise they rarely get around to addressing the impact of those events. But it's only after one gains an appreciation for the ongoing effects that past events have on the present arrangement that one can truly grasp the value of knowing one's history and then, perhaps, how to apply that knowledge to good advantage.

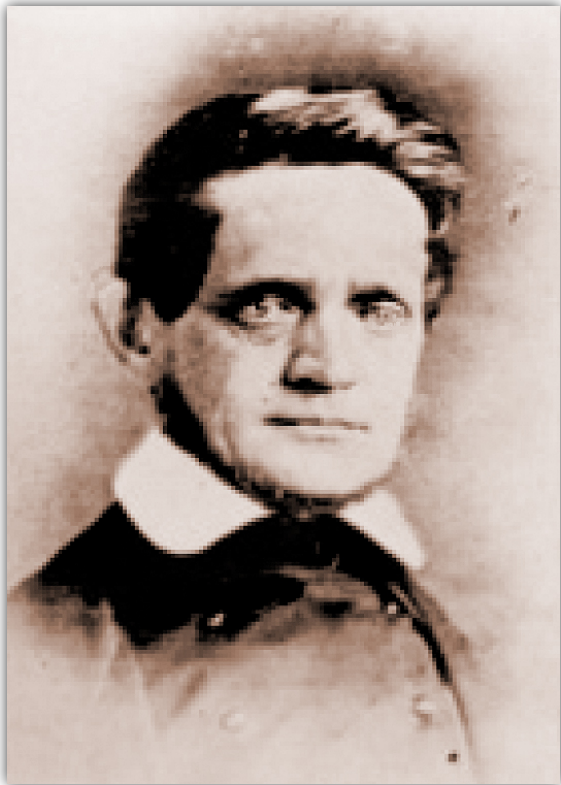
Holidays are one way a nation will highlight key events that have ongoing influence. I am writing this on Veterans Day; next week I'll eat turkey on Thanksgiving. These celebrations memorialize significant changes in our nation's narrative stream -- the contributions of soldiers during time of war, the concord between foreign-born settlers and native inhabitants. They memorialize a particular moment in time, *because of* all the subsequent moments influenced by that occasion, changes that continue to resonate with the present, inspiring further change that will, in turn, seed others. Which event is chosen over another, even the name of the holiday itself, can bespeak a country's values and aspirations. Veterans Day is a good example of such a national holiday; the date, name, and underlying message each reflects evolving aspirations of the United States.¹

Celebrating birthdays of influential people is another way nations, as well as families, commemorate individuals who have a continuing impact on events. The difference is that families celebrate an ongoing life,

¹ Raymond Weeks, veteran of World War II, came up with the idea of Veterans Day in 1945. He wanted a special day in which those who served in time of war and survived could be honored. Memorial Day honored the dead, so he wanted a day that honored the living. He decided against VE Day or VJ Day as the date for his holiday, choosing Armistice Day, the pre-existing national holiday (established in 1938) marking the end of the war to end all wars. Two years later, he organized the first veterans celebration with a massive parade in his hometown, and in cities across the country. But it was another seven years of lobbying and letter writing before Raymond Weeks saw Armistice Day officially changed to Veterans Day. He did not have a hand in writing the bill, nor did anyone from his home state. It's not certain if he even attended the signing ceremony which took place in Kansas. President Eisenhower wanted to make a point about veterans, all veterans, regardless of rank, branch of service, or combat assignment. He signed the bill into law ten months after the end of the Korean Conflict, and barely a month after the fall of Dien Bien Phu. But Eisenhower's larger point was hammered home because he signed the bill on June 1, 1954, two weeks after *Brown v. Board of Education* (of Topeka, Kansas), and days after the Klan set off yet another bomb in Birmingham, Alabama— Raymond Weeks's hometown.

whereas countries don't really crank up the festivities until someone is dead and the changes wrought by that person are considered sufficiently praiseworthy. In the case of civil rights champion Martin Luther King Jr., the changes he sought were not complete at the time of his death, and his legacy was still uncertain. It was hoped that by establishing a federal holiday for King that annual celebrations of his birthday would inspire further advancements in civil rights, as much as commemorate the changes already made.

The Supreme Court of Texas celebrates one significant date, out of the many important dates in the 176 years of its history. The choice of January 13, 1840 goes to the heart of my piece. As much as anything the decision reflects what is *not* being celebrated, as what is. For instance, the year 1840 does *not* memorialize the year the Supreme Court of Texas was legally established by the constitution, nor does it commemorate the year



**Chief Justice John Hemphill,
honoree of the Society's annual dinner**

the Court was formed through the election of its first chief justice. No. Neither of those dates suffice. The Supreme Court observes the date on which the Court's history actually changed. Things took off when the third chief justice gavelled the three-year-old Court into action for the first time ever. The date commemorates actions of the new institution, which up until that point had existed only in the constitution and statutes. Actions over words, a quality highly valued by the Republic of Texas.

Likewise, the Society's annual fundraising dinner in June honors the contributions of one member of the Court above all other justices, many of whom have made notable contributions. The choice of Chief Justice John Hemphill reflects, once again, as much who is *not* being celebrated as who is. The Society did not choose the first chief justice appointed to the Court, nor the first chief justice *elected* to the Court, nor even the very chief justice who held that all important gavel in January 1840, Thomas J. Rusk. Instead, the Society skipped over Rusk and chose Hemphill, the *fourth* chief justice in the line of succession, the third to be elected to the post. Why? Because he was the longest serving chief justice during the Republic? Perhaps. Because he was the *first* chief justice for the State of Texas? Maybe. But I suspect it was also because, unlike his predecessors, Hemphill's judicial career had a more extensive impact on the state. His decisions

applying Spanish civil law in the areas of community property law and marital rights are noteworthy, but not the end of his many contributions. In choosing Hemphill, the Society decided that significance trumped precedence in the choice of names.

Strangely, neither the Society nor the Court has ever made a fuss over Hemphill's birthday. I dare say not one attorney in a thousand knows when John Hemphill was born. It's December 18, 1803. Historians are quite a bit more fascinated with, one might say fixated on, dates than the general public. I'm especially guilty of this trait. Very few are aware of this, but I actually celebrated Hemphill's birthday in 2003, and I enjoyed it so doggone much, I threw a little party for Hemphill the following year, and have continued doing so every year since. In years past, I've worn funny pointed hats, I've strung decorations, lit candles on a birthday cake, and I always make sure to serve myself a big bowl of vanilla ice cream. As I said earlier, historians *really* like dates. Hemphill was an important figure in Texas history, and he's someone whose birthday I'd like to keep fresh in my memory. I think we all should.

Truth be told, I didn't know I was celebrating *Hemphill's* birthday at the time—I thought I was celebrating my son's birthday, December 18, 2003. I didn't stumble across this coincidence until a month ago, and was flabbergasted when I realized that not only did the great Chief Justice John Hemphill share the same birth *day* as my son William, but my curly-haired rascal was born exactly two hundred years to the day that Hemphill came into the world. A coincidence, to be sure, but who's to know if that coincidence won't be enough to inspire William to pursue a career in the law, one in which he could make a lasting impact on those around him. He's certainly had an impact on our family. I was fifty years old when William was born, and convinced that fatherhood was not in my cards. He has aged me, and kept me young at the same time, if that's possible. Will he be a historian or another chief justice? Who knows? Right now he seems more interested in music. But I keep a stack of law school brochures in my desk just in case. That being said, there's a much better example of familial influence right here.

For this issue of the eJournal I interviewed Joe Greenhill, Justice Medina's law clerk, who is the son of Bill Greenhill, attorney for Haynes and Boone in Fort Worth, who himself is the son of an attorney and a former law clerk of the Texas Supreme Court by the name Joe Greenhill. *That* Joe Greenhill, the third one to carry the name, became a chief justice of the Court for which he once clerked. When Chief Justice Greenhill was a kid, *his* dad told him stories about Henry Ormsby, one his English forbears who served as a judge in the Chancery Division of the High Court of Ireland. Decades later, the chief justice acquired a large portrait of that prelate, decked in fine robes and wearing a powered wig, which he hung in the family's formal dining room. Young Joe Greenhill, the grandson of Chief Justice Greenhill, ate more than a few Thanksgiving dinners with that painting staring down at him. Was it the painting, the family name, or the example of grandfather, father, and two uncles who drew the fifth Joe Greenhill to appellate law? Who can say for certain. Yet here he is, writing briefing memos and adding his contribution to the Court's continuing history.



**William Pugsley, exactly
200 years younger than
Chief Justice John Hemphill!**

— **Bill Pugsley**, Executive Director

[Return to Journal Index](#)

Fellows Column

By David J. Beck, Chair of the Fellows



Photo by Alexander's Fine Portrait Design-Houston

On behalf of the Society, I want to thank all of our Charter Fellows for their support. The Fellows are a critical part of the annual fundraising by the Society. We appreciate their continued support.

The Fellows are members of the Society who contribute at the highest levels, with Hemphill Fellows contributing \$5,000 or more annually and Greenhill Fellows contributing \$2,500 or more annually. The Fellows program raises funds for special projects, which will be announced as they are developed. In addition, there will be special events for the Fellows, including dinners, and special recognition at all Society events.

If you are interested in becoming a Fellow of the Society, please contact me or the Society's office.

CHARTER FELLOWS OF THE SOCIETY

HEMPHILL FELLOW

Richard Warren Mithoff

GREENHILL FELLOWS

David J. Beck	Mike McKool Jr.
Tom A. Cunningham	Chief Justice Jack Pope (Ret.)
Lauren and Warren Harris	Shannon H. Ratliff
Allyson and James C. Ho	Robert M. Roach, Jr.
Joseph D. Jamail, Jr.	L. Wayne Scott
Dee J. Kelly, Jr.	Reagan W. Simpson
David Keltner	S. Shawn Stephens
Lynne Liberato	R. Paul Yetter

[Return to Journal Index](#)

An Interview with the Fifth Joe R. Greenhill

By Bill Pugsley



Joe R. Greenhill

Among the newest class of Law Clerks is a name quite familiar to our membership: Joe Greenhill. A few weeks before Thanksgiving I sat down with Judge Medina's law clerk and asked what it was like following in the footsteps of a legendary chief justice.

BP Thanks for taking time from your schedule to talk today. You may not be aware, but seven decades ago, almost to the year, the Court hired three young attorneys to serve as the very first class of law clerks, and one of them had a name very similar to yours. Just to set the record straight: what's your full name?

JG My name is Joseph Robert Greenhill, the same as my grandfather and uncle. I'm referred to as the fifth Joe Greenhill, but that's not technically correct, I guess. I'm not entirely sure how family names work, but there are two other Joes from the old country. My grandfather, though, went by Joe R. Greenhill, an original. Then he named his first son—my uncle—Joe Greenhill, Jr. So I guess technically I'm an original myself, but I am the fifth Joseph Robert Greenhill in our family. I'm sorry, I know it's confusing. I've been confused by it for my entire life.

BP Can you tell us a little about your family life growing up?

JG I grew up in Fort Worth. My father, Bill, is the younger of the two sons, and is a lawyer with Haynes and Boone specializing in transactional law. My mother, Ann, is the Executive Director of the Fort Worth Affiliate of the Susan G. Komen Foundation, a position she's held for about ten years. I have two older brothers—Duke, who is with a public relations firm in New York City, and Frank, who is a biologist with the U.S. Forest Service in Colorado. My childhood was great, but actually pretty typical. I played a lot of sports and fought constantly with my older brothers—still do, and I still can't beat them up.

BP How did you become interested in the law?

JG My grandfather was an attorney. My dad is an attorney and two of my uncles are, too. Also, at my grandparents' house is a very large portrait that looms over the dinner table of an older man with a powdered wig named Henry Ormsby. He was one of our relatives from the old country and the attorney general of Ireland. So, really, the law is something that has pervaded my life since I was born, and I was always vaguely fascinated by it.

BP And yet, of the three boys, you were the only one who took an interest in the law. Why do you suppose that was?

JG I'm not entirely sure, really. My brothers and I were never pressured by our father or grandfather into following in their footsteps, and I suppose my brothers just ended up doing what they enjoy in life. Frank, my middle brother, has always been—unlike me—an outdoorsman. He loves to hunt, fish, etc. So, when choosing a career path I think being as far away from a desk as possible was a priority. Duke, my oldest brother, on the other hand, has always been into theater. So naturally, he moved to New York and got a masters in fine arts from Columbia. I suppose I caught the family bug when it comes to the law. The way a bunch of words written on a piece of paper could mean so many



Bill Greenhill

different things to different people, but at the same time hold our entire society together. On a more personal level, to me, my dad and grandfather are and were two of the most honorable men I know, so following in their footsteps was really something I've always dreamed of doing.

BP What are your earliest memories of Judge Greenhill?

JG It's interesting, I have memories of Papu (we called him Papu, which my Greek wife, Melissa, tells me means "grandfather" in Greek, although none of us knew that until after I met Melissa) from when I was very young. Mostly just glimpses of him and his cigars that he chewed on. But, my earliest concrete memories are when I was probably five or six when he would take us fishing down in the Gulf. He always hired out this real rough and tumble captain named Butch who had missing teeth, and if my memory serves me, an eye patch. Anyway, we'd hire out a twenty-footer and head out from Galveston. I don't remember much of what was said, but I do remember Papu would sit in his chair and hold court over the rest of the occupants—including the captain. Papu loved to fish; I think it was one of the great pleasures of his life. My dad (Bill) and I, on the other hand, couldn't stand it. In fact, I get pretty enthusiastically sea sick. At which, Papu would just chuckle.



Chief Justice
Joe R. Greenhill

BP I'm sure it must have been wonderful to talk over appellate cases with Judge Greenhill.

JG You know, unfortunately, I never had the opportunity to do that. I didn't begin law school until 2009 and at that point, Papu had already begun his decline—he passed during my 2L year. But, I really regret not having the opportunity to do that, particularly now that I'm working for the Court. It would be incredible to get his take on certain aspects of a case, or just the law in general. Also, it'd be great to run things by him so that I don't look foolish when I give my own thoughts.

BP What are your plans for the future?

JG You know, I'm not entirely sure at this point. My grandfather's favorite Bible passage was: "He has told you, O man, what is good; And what does the Lord require of you but to do justice, to love kindness, and to walk humbly with your God." To him, I think this passage required that he do his duty to the public, which he did by serving in the Navy and also for many, many years on this Court. Likewise, my dad, who is an attorney in Fort Worth, is a trustee for Tarrant County College. So public service is something that I'd like to pursue. In what form, I'm not sure yet.

BP What would you like people to know about you that they might not know, or appreciate?

JG I ride a moped to work. Great gas mileage and easy to park, but I look a little silly on it.

BP One last question. What pie will you have for Thanksgiving?

JG *[laughs]* Well, actually, grandmother Greenhill makes a banana pudding for Thanksgiving that is simply to die for.

BP How is she doing?

JG She's doing great. She turned nine-five in August but looks eighty, and is sharp as a tack. She still drives and plays bridge with her "young friends," as she calls them—who I understand are in their eighties. She's an amazing woman, and being here in Austin with her has been a joy.

BP Thanks. I enjoyed this.

JG My pleasure.

[Return to Journal Index](#)

Justice J. Dale Wainwright Resigns from Court



The Court family gathered in the third floor lounge on September 27 to bid farewell to Justice J. Dale Wainwright, who resigned from the Court after nine years and nine months to join the Austin office of Bracewell & Giuliani.

At the farewell party, Chief Justice Wallace Jefferson gave a few remarks about Justice Wainwright's contributions, and then asked Justice Nathan Hecht and Justice Paul Green to speak. Having sat next to Justice Wainwright on the bench and around the conference table, they were able to offer a variety of insights, both personal and professional.

Then CJ Jefferson asked the surprise guest, Judge Priscilla Owen, to make a few comments, not only because Judge Owen and Wainwright served two years together on the Court before she went to the Fifth Circuit, but because she was Wainwright's "boss," as he put it, at Andrews Kurth, working together on a large international Anheuser-Busch case in their pre-Court days.

Justice Wainwright expressed appreciation for his time on the Court, responded to each presenter, and thanked his staff for their help in "making him look good."

Chief Justice Jefferson presented him with a framed photo of the redecorated conference room, and a beautiful silver serving tray with a quote from U.S. Justice Hugo Black. Cake and ice cream were served to the twenty-five to thirty law clerks, staffers and others in attendance.

Effective December 3, 2012, Governor Perry appointed Jeffrey S. Boyd to succeed Justice Wainwright on the Court. At the time of his appointment, Boyd was Governor Perry's Chief of Staff. He previously served as the Governor's General Counsel, as well as Deputy Attorney General for Civil Litigation under both Attorneys General Greg Abbott and John Cornyn. In private practice, Boyd was a senior partner in the Austin office of Thompson & Knight LLP.

[Return to Journal Index](#)

In Memoriam: Justice William W. Kilgarlin, 1932-2012

By Judge Mark Davidson



The Hon. William W. Kilgarlin (Justice, ret.), died on Monday, November 5, 2012, in Albuquerque, New Mexico, at the age of seventy-nine. Judge Kilgarlin served on the Supreme Court of Texas from January 1, 1983 to December 31, 1988. He was a State Representative from Harris County from 1959 until 1961, and served as Judge of the 215th District Court from 1978 until 1982. He was twice elected chairman of the Harris County Democratic Executive Committee. In that capacity, he was one of those who welcomed President John F. Kennedy to Texas on November 21, 1963.

A native of Houston and graduate of Houston public schools, Judge Kilgarlin earned his B.A. degree from the University of Houston. He was a star in his college debate team, advancing to the finals of the National Collegiate Debate tournament his senior year. While serving in the Legislature, he attended the University of Texas Law School, graduating in 1962. From 1962 until 1978, he was an active member of the bar, founding the firm of Kilgarlin, Dixon and Hancock.

Judge Kilgarlin was preceded in death by his wife of forty years, Margaret Rose Kruppa Kilgarlin. Bill and Margaret shared passions for life, particularly enjoying fine food, the opera and world travel. While they had no children, they leave behind hundreds of friends whose lives they enriched by visits to their homes in Houston, Austin and New Mexico. Particularly close to Bill were his briefing attorneys from his tenure on the Supreme Court, all of whom looked to him as a mentor and friend.

Judge Kilgarlin was proud of his service on the Supreme Court, and was a friend of the Texas Supreme Court Historical Society, serving on its board of directors until his health made it impossible for him to attend its meetings. He was an annual attendee of the Society's Hemphill Dinner.

[Return to Journal Index](#)

Ramsey Clark Tours Court Building

Former U.S. Attorney General Ramsey Clark stopped by the Texas Supreme Court on November 13 for a brief tour of the judicial portrait collection. His main interest was viewing the portrait of his father, the late U.S. Supreme Court Justice Tom C. Clark, which hangs above the stairwell in the building named in his father's honor. He also wanted to see the large portrait of Texas Supreme Court Justice William F. Ramsey, his grandfather and namesake, which his sister Mimi Clark Gronlund donated to the Court several years ago.

Gronlund's biography of her father was published in 2010 by the University of Texas Press as the first volume in the newly created Texas Legal Studies Series co-sponsored by the Society.

Ramsey Clark was accompanied on this occasion by Laura Castro Trognitz, a visiting scholar with the University of Texas School of Law, who had coordinated a speaking tour for Mr. Clark sponsored by the Texas Writers' League. Trognitz is conducting interviews and archival research for a forthcoming book about Ramsey Clark.



Former U.S. Attorney General Ramsey Clark talks with Executive Director Bill Pugsley in front of the 1913 portrait of Justice William F. Ramsey.
Photo by Laura Castro Trognitz.

[Return to Journal Index](#)

Fall Board Meeting Welcomes New Trustees, Enjoys Pope Tribute

Four new Trustees were welcomed at the Fall Board meeting held October 4 in Austin. Dylan Drummond, solo appellate practitioner in Austin, and Harry Reasoner of Vinson Elkins in Houston attended the meeting. Robin Gibbs of Gibbs & Bruns and Paul Yetter of Yetter Coleman were unable to attend.

Members learned about plans to improve and upgrade the website from Doug Alexander, heard Warren Harris's ideas for marketing the Society's narrative history of the Supreme Court due to be released in mid-February 2013, listened to David Furlow review the eJournal's progress over the past year and its plans for the current year, discussed the Spring 2013 Symposium developed by Richard Orsinger, and learned from Lynne Liberato about the thumping success of the 17th Annual Hemphill Dinner.

Bill Chriss closed the meeting with talk on the judicial legacy of former Chief Justice Jack Pope, who will celebrate his 100th birthday on April 18, 2013. It was a masterful overview of Judge Pope's contributions to water law, the rule of procedure, and judicial ethics. Largely extemporaneous, Chriss wove his message around blocks of text drawn from Judge Pope's judicial opinions, the 1985 interview with Bill Brands, and Pope's personal writings, which Chriss read to the Trustees, letting Judge Pope's own words inspire and convince.



Bill Chriss

Many times during the speech, Chriss, who remained seated at the front table, would turn and look directly at Judge Pope, sitting next to him, and describe in more personal terms the significance of the passage he had just finished reading. In all, it was a moving experience and not a few of our Trustees were brought to close to tears with their admiration for the man and the judge.

[Return to Journal Index](#)

2013 TSHA Session to Highlight History of the Supreme Court

Author/historian **James L. Haley** and former Chief Justice **Thomas R. Phillips** will be the featured speakers at the Society's joint session during the 2013 Annual Meeting of the Texas State Historical Association (TSHA). The meeting will take place on Friday afternoon, March 1, in downtown Fort Worth.

Haley will talk about how he approached the task of writing a 150-year narrative history of the Texas Supreme Court, the first book-length history of the Court since 1917. University of Texas Press will release the book, titled *The Texas Supreme Court: A Narrative History, 1836-1986*, in mid-February. This will be the third volume published in the Texas Legal Studies Series, which the Society cosponsors.

Judge Phillips will share some of the many interesting stories and lesser known facts and coincidences he ran across while researching the election results for the Texas Supreme Court between 1851 and the present. His paper will draw on research the Society will eventually publish as a monograph on the history of judicial elections.

Executive Director Bill Pugsley will comment on the growth in our understanding of the Court's history as exemplified by the two presentations. He will look back on the first history of the Court published in 1917 by Harbert Jewett Davenport.

Society President Warren Harris of the Houston office of Bracewell & Giuliani will chair the session.

[Return to Journal Index](#)

Society to Co-sponsor Symposium in April 2013

The Society is joining with the State Bar of Texas to sponsor a symposium next spring on the History of Texas Supreme Court Jurisprudence. The event, scheduled for Thursday, April 11, 2013, will trace the development of law in the Supreme Court. Planned topics include: historical development of sufficiency of the evidence review; the Daubert Revolution; the court's role in developing rules; one hundred years of contract law; and the swinging pendulum of broad-form submission.

Former Society President Lynne Liberato (Haynes and Boone, L.L.P.), current President Warren Harris (Bracewell & Guiliani, L.L.P.) and Society Board member Richard Orsinger (McCurley Orsinger McCurley Nelson and Downing L.L.P.) created the program. It will be held in conjunction with the State Bar's bi-annual Practice Before the Supreme Court course, which will be on Friday, April 12. Liberato is the course director for the Symposium and Orsinger is the course director for the Practice Before the Supreme Court course. Both will be held in Austin at the Mansion at Judge's Hill. Program details and registration information will be available in the next issue of the eJournal and in the TSCHS website.

[Return to Journal Index](#)

Former U.S. Supreme Court Justice Sandra Day O'Connor Will be 2013 Hemphill Dinner Speaker



The Honorable Sandra Day O'Connor has accepted the Society's invitation to be the keynote speaker at the 18th Annual John Hemphill Dinner next June. Justice O'Connor was nominated to the U.S. Supreme Court by President Ronald Reagan in 1981 and served as Associate Justice until her retirement in 2006. She was the first woman in history to serve on the Court.

The event is scheduled for Friday, June 14, 2013, in Austin. Tables for the dinner will go on sale in January 2013.

[Return to Journal Index](#)

TEXAS SUPREME COURT HISTORICAL SOCIETY

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

OFFICERS

PRESIDENT

Mr. Warren W. Harris

PRESIDENT-ELECT

Mr. Douglas W. Alexander

VICE-PRESIDENT

Ms. Marie R. Yeates

SECRETARY

Mr. Robert B. Gilbreath

TREASURER

Justice Jeff Brown

IMMEDIATE PAST PRESIDENT

Ms. Lynne Liberato

CHAIR EMERITUS

Hon. Jack Pope, Chief Justice (Ret.)

PRESIDENT EMERITUS

Hon. Jack Hightower, Justice (Ret.)

BOARD OF TRUSTEES

Mr. Keith Calcote

Mr. William J. Chriss

Judge Mark Davidson

Mr. Dylan O. Drummond

Hon. Craig T. Enoch, Justice (Ret.)

Mr. David A. Furlow

Mr. Robin C. Gibbs

Ms. Marcy Hogan Greer

Mr. David F. Johnson

Mr. Peter M. Kelly

Mr. Christopher W. Martin

Prof. Joseph W. McKnight

Mr. Larry McNeill

Mr. W. Frank Newton

Hon. Harriet O'Neill, Justice (Ret.)

Mr. Richard R. Orsinger

Prof. James W. Paulsen

Hon. Thomas R. Phillips, Chief Justice (Ret.)

Mr. Harry M. Reasoner

Mr. Randall O. Sorrels

Ms. S. Shawn Stephens

Ms. Macey Reasoner Stokes

Mr. C. Andrew Weber

Prof. Steven Harmon Wilson

Mr. R. Paul Yetter

COURT LIAISON

Justice Paul W. Green
Supreme Court of Texas

TEXAS SUPREME COURT
HISTORICAL SOCIETY
P.O. Box 12673
Austin, Texas 78711-2673

Phone: 512-481-1840

Email: tschs@sbcglobal.net

Web: www.texascourthistory.org

Executive Director
Bill Pugsley

Accounts and Operations Manager
Mary Sue Miller

JOURNAL STAFF

General Editor
Lynne Liberato
lynne.liberato@haynesboone.com

Executive Editor
David Furlow
david.furlow@tklaw.com

Deputy Executive Editor
Dylan Drummond
dodrummond@gmail.com

Assistant Editor
Bill Pugsley
tschs@sbcglobal.net

Consulting Editor
Marilyn Duncan
mpduncan@austin.rr.com

Production Manager
David Kroll
dkroll@texasbar.com

[Return to Journal Index](#)

Calendar of Events

- Early February** **Publication of the Society's *Texas Supreme Court: A Narrative History*, by the University of Texas Press**
- February 11** **Public Event: Presentation of the Narrative History to the Texas Supreme Court**
Old Supreme Court Courtroom, State Capitol
- March 1** **Joint Session, Texas State Historical Association Annual Meeting**
Ft. Worth
- March 8** **Spring Board of Trustees meeting**
Houston
- April 11** **Seminar on the History of Texas Supreme Court Jurisprudence**
Cosponsored with the State Bar of Texas
Mansion at Judges' Hill, Austin
- June 14** **18th Annual John Hemphill Dinner**
Hon. Sandra Day O'Connor, Keynote Speaker
Four Seasons Hotel, Austin

[Return to Journal Index](#)

2012 Membership Upgrades

The following Society members moved to a higher dues category since May 29, 2012, after the release of the winter issue of the eJournal.

GREENHILL FELLOW

L. Wayne Scott

TRUSTEE

Harry M. Reasoner

PATRON

Thomas S. Leatherbury

CONTRIBUTING

Marialyn Barnard

[Return to Journal Index](#)

2012 New Member List

The Society has added thirty-nine new members since June 1, 2012.
Among them are eighteen Law Clerks for the Court (*).

GREENHILL

Shannon H. Ratliff

TRUSTEE

Robin C. Gibbs

CONTRIBUTING

Jenny and Brent Bailey

Gina Fulkerson

Rachel Palmer Hooper

William W. Ogden

Jason M. Ryan

REGULAR

David Armendariz*

Stephane Beckett*

Justin Lewis Bernstein*

James D. Blacklock

Bill Boyce

Maria Wycoff Boyce

Ellen Burkholder*

Kristina Campbell*

William Christian

Morgan Craven*

Texanna Davis

Daniel Durell*

Joe Greenhill*

Sharon Hemphill

Kyle Highful*

Yvonne Y. Ho

Alex W. Horton

Kathy and Jimmy Kull

Jaclyn Lynch*

Danielle Mirabal*

Jason Muriby*

Charlotte Nall*

Melanie Kemp Okon

Kinchen C. Pier

Casey Potter*

Scott P. Stolley

Katherine Tsai*

Nathan White*

Jennifer Wu*

Andrew Wynans*

[Return to Journal Index](#)

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

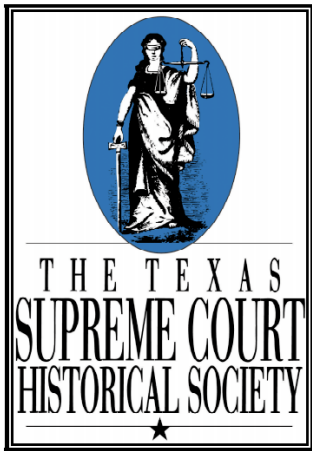
- Complimentary Copy of *The Laws of Slavery in Texas* (paperback)
- Personalized Certificate of Society Membership
- All Benefits of Regular Membership

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

eJrnl appl 11/12

[Return to Journal Index](#)



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.

Name: _____

Firm/Court: _____

Building: _____

Address: _____ Suite: _____

City: _____ State: _____ ZIP: _____

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 | | |

Payment options:

- Check enclosed -- payable to the Texas Supreme Court Historical Society
- Credit card
- Bill me

Amount: \$ _____

Card Type (Circle): Visa MasterCard American Express Discover

Credit Card No: _____

Expiration Date: _____

Cardholder Signature: _____

Please return this form with your check or credit card information to:

Texas Supreme Court Historical Society
P. O. Box 12673
Austin, TX 78711-2673

[Return to Journal Index](#)