



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Fall 2015 Vol. 5, No. 1 General Editor Lynne Liberato Executive Editor David Furlow

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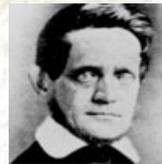


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By Lynne Liberato

The first Justice Devine arrived in Texas in 1844; the second one arrived in 1981. Their tenures on the Texas Supreme Court began a mere 139 years apart. [Read more...](#)



The Justices Devine

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By William J. Chriss

In 1821 Moses Austin planned to found a colony of 300 families in Texas. The plan assumed slaves would work the land colonists would receive. [Read more...](#)



Moses Austin

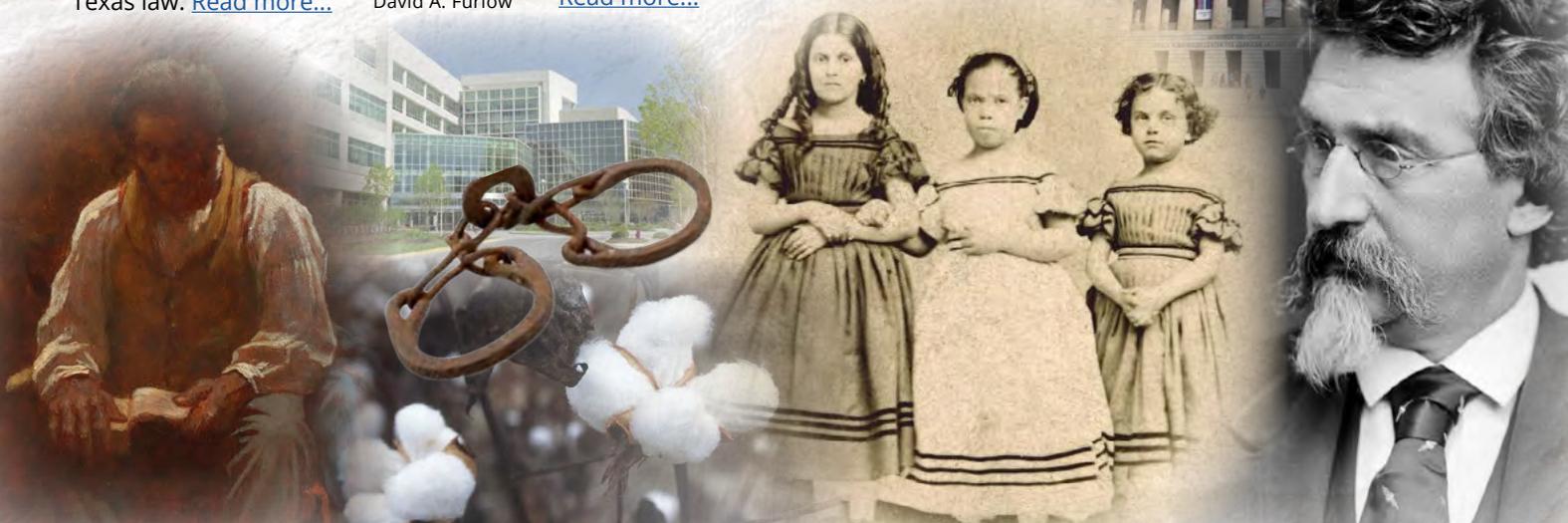
Celia's Manumission and the Alcalde Court of San Felipe de Austin

By Michael Rugeley Moore

Almost two years after having been emancipated, Celia still had to fight to keep her freedom. Young attorney William Barret Travis took her case. [Read more...](#)



William Barret Travis



[Slaves, Reconstruction, and the Supreme Court of Texas](#)

By Robert B. Gilbreath

Learn how the early Supreme Court took pains to protect civil rights within the constraints of the system of slavery and about George Paschal, the court's shotgun-toting official reporter. [Read more...](#)

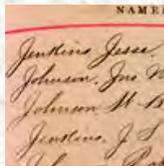


George Paschal

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By John G. Browning

By 1890 there were only a dozen black lawyers in the state, but one stood out—the first African American to be admitted to practice before the Supreme Court of Texas. [Read more...](#)

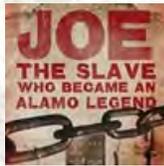


Johnson's name on the Supreme Court attorney rolls

[Book Review: Joe, the Slave Who Became an Alamo Legend](#)

By Bryan McAuley

Too often we forget the amazing reality that there were survivors of the battle of the Alamo. [Read more...](#)



From the book cover

[Reintroducing a Gem of Antebellum Texas History: The Laws of Slavery in Texas](#)

By Marilyn P. Duncan

The book includes slavery-related laws and decrees, constitutional provisions, court cases and reprints of scholarly articles that are classics in the study of Texas slave laws. [Read more...](#)



From the book cover

News & Announcements

[20th Annual John Hemphill Dinner: Senator John Cornyn Was the Featured Speaker](#)

By Marilyn P. Duncan

About four hundred appellate attorneys, judges, their spouses, and others filled the Grand Ballroom of the Four Seasons Hotel. [Read more...](#)



The Grand Ballroom

["Knowledge is Power": Chief Justice Nathan Hecht Celebrates the Centennial of the Harris County Law Library](#)

By David A. Furlow

Access to knowledge is easier, broader, and quicker than ever before, Chief Justice Hecht told the audience, through the twenty-five computer terminals the library now provides. [Read more...](#)



Chief Justice Nathan L. Hecht

[Haley Spoke at the Star of the Republic Museum October 24](#)

By David A. Furlow

Texas Supreme Court historian James L. Haley joined another three distinguished scholars making presentations about the Republic of Texas. [Read more...](#)



James L. Haley

[Haley Speaks at General Land Office SAVE TEXAS HISTORY Symposium November 14](#)

By David A. Furlow

Historian James L. Haley will share colorful stories about the early twentieth century Texas Supreme Court. [Read more...](#)



Symposium web promotion

[Frank de la Teja to Speak at October 28 Board Meeting](#)

By David A. Furlow

Historian Jesús Francisco ("Frank") de la Teja will speak on "The Union of Coahuila and Texas: A Forced Marriage and an Ugly Divorce." [Read more...](#)



Frank de la Teja

[Texas State Historical Association Annual Meeting First Announcement](#)

By David A. Furlow

On March 3 at the TSHA Annual Meeting, the Society will present a panel on "The Restatement (Second) of Torts and the Revolution in Texas Asbestos Liability Law." [Read more...](#)



TSHA logo

[The Society Rides the Circuit with Its Magna Carta Program](#)

By David A. Furlow

The program "Magna Carta's 800-Year Legacy" has so far been presented to teachers and administrators in Houston and New Braunfels. [Read more...](#)



Cy-Ranch audience

[Texas Digital Archive Will Include Texas Supreme Court 1841-1870 Records](#)

By David A. Furlow

An easily accessible digital archive focusing on the early Texas Supreme Court is coming to the Texas State Library. [Read more...](#)



Texas State Library logo

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Ben L. Mesches

Letter from the *President*

The Society hosted the 20th Annual John Hemphill Dinner on September 11 in Austin. And it was a tremendous success. Thanks to our many law-firm sponsors, attendees, speakers, and special guests for making this another special evening.

I think one particular part of the event captures why we are so committed to the work of the Society. We were privileged to have one of the finest keynote programs I can recall—an engaging conversation between Chief Justice Nathan Hecht and Senator John Cornyn. This was an important program for the Society to present. Our mission is simple, but critical: to preserve the history of the Texas Supreme Court and promote public awareness about the Court and the broader judicial system.

The keynote accomplished both. We received a first-hand account of Senator Cornyn's distinguished legal and judicial career—including service on the Texas Supreme Court in the 1990s. And we learned about Senator Cornyn's journey from state district judge in San Antonio to the United States Senate in Washington, D.C. Senator Cornyn's remarks provided valuable insights about the judicial selection process at the federal level, furthering a discussion that is critical to our democracy. Chief Justice Hecht deserves recognition for sparking this fascinating and accessible conversation.

An event like the Hemphill Dinner doesn't just happen. A big thanks to Mary Sue Miller, our Administrative Coordinator, who takes care of each of those small details that add up to our most important event of the year. Past President Warren Harris continues to play a pivotal role in making the dinner a great success as well.

As I was being sworn-in as President of the Society to conclude the evening, I had the opportunity to reflect on what makes this organization so special. We have a dedicated and resourceful staff, an energetic membership base, and a thoughtful and ambitious board. But most of all, we have been fortunate to have unparalleled leadership. The Society has been led in recent years by Warren Harris, Lynne Liberato, Doug Alexander, and—most recently—Marie Yeates.

The Society is where it is today because these past presidents have lent their voices, time, and passion to the important cause of preserving for posterity the lives and work of the Supreme Court of Texas. These are big shoes to fill, but the example they have set will guide my own efforts over the coming year.

Very truly yours,
Ben L. Mesches

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Pat Nester

Bon Voyage to a Top-Flight *Professional*

One of the real pleasures of my job is getting to work with top-flight professionals. Usually they are lawyers and historians who volunteer their time on Society projects. The list of them is long and the company distinguished.



Alexandra poses with one of her favorite volumes from the archives of the State Bar of Texas.

Photo by David Kroll.

Another accomplished contributor has been Alexandra Myers Swast, Director of Archives for the State Bar of Texas. Recently, she announced that she was leaving her position to relocate to Seattle with her husband Tim who has been offered a new position with Google.

Alexandra is a prime example of those people who make the wheels turn at the highest level of quality. If we are lucky, we have such go-to paragons in our own shops. An example of Alexandra's behavior: when the Society moved its headquarters from the Texas Supreme Court Building to the Texas Law Center across the street, she and her associate, Caitlin Bumford, undertook to catalog almost 200 storage boxes of documents and artifacts.

Did I mention that this task was not in either of their job descriptions? They work for the State Bar, not the Society. But they offered out of a sense of professional duty, seeing that a vast potential treasure trove of historically interesting documents needed curating. With Alexandra's leadership and both of their hard physical work, the first stage of that task, the cataloging, was quickly accomplished and the collection safely stored at a controlled facility.

Afterwards, Alexandra prepared a substantial report for the Society board giving her recommendations for the next steps. First will be sifting more carefully through the collection to

discover and record a finer level of detail on our holdings, which we believe can be accomplished in the coming year by trained interns.

Alexandra was also particularly helpful to me in gathering examples of “deed of gift” documents and acquisition policies from a variety of organizations around the country that professionally manage historical collections. After discussions with her, we now have drafts of documents customized for the needs of the Society that the board will consider at its fall meeting.

Access to historical collections being one of the Society’s main purposes, Alexandra identified a number of websites that could be models for the Society website. If we can digitize a document or a photograph and post it on a page that a search engine can find, then scholars can immediately inspect the historical record without the need for travel and scheduled appointments.

We hope that Alexandra won’t feel too wistful next January gazing out some rain-streaked window drinking that good Seattle coffee and thinking of sunshine and 76 degrees back in Austin. If she does, we hope she remembers the profound thanks of her friends at the Texas Supreme Court Historical Society who wish her now our sincerest bon voyage.

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Fellows Column

By David J. Beck, Chair of the Fellows

Photo by Alexander's Fine Portrait Design-Houston



We had an excellent turnout of Fellows at the Society's recent Twentieth Annual John Hemphill Dinner. I presented at the dinner a recap of the Fellows' activities and wanted to report that information here.

The Society's Fellows program continues to grow. We have recently added four new Fellows, bringing the total number of Fellows to thirty-seven. They are all listed below.

The Fellows are critical to annual fundraising and allow the Society to undertake new projects to educate the bar *and the public* on the third branch of government—and the rich history of our Supreme Court. One project the Fellows are finalizing is a statewide judicial civics program for seventh-grade Texas history classes. This project will put judges and lawyers in classrooms across the state teaching students about our third branch of government. The generosity of the Fellows has allowed us to produce a new book as an integral part of this project, which is the first book of its kind in the country. The book and program is named *Taming Texas: How Law and Order Came to the Lone Star State*. Jim Haley, the author of the Society's fabulous history book on the Court, has written this book along with Marilyn Duncan, both of whom were present at the Hemphill Dinner. The manuscript is complete and Marilyn is currently finishing the illustrations. We are especially pleased to announce that Chief Justice Hecht has written the foreword for our book. We are actively working on this project in conjunction with the Law Related Education Department of the State Bar.

We are ready to get *Taming Texas* in the classrooms. In November, we will do a pilot of the program in seventh grade Texas history classes at KIPP Courage College Prep middle school in Houston. Laura Gibson, President of the Houston Bar Association, and David Keltner, President of the Tarrant County Bar Association, have agreed for their respective organizations to provide judges and lawyers as volunteers to assist us in putting *Taming Texas* in Houston and Fort Worth schools in February 2016. We will take the *Taming Texas* project statewide the following year. We are very excited about getting this project in the schools this spring.

In April we held our Third Annual Fellows Dinner. The Justices from the Texas Supreme Court joined the Fellows in the Blanton Museum of Art in Austin for a wonderful evening of dinner, conversation, and art. It was a great event, and we are already planning next year's Fellows Dinner for April 2016. We will let all Fellows know as soon as we set the date for the dinner.

On behalf of the Society, I want to thank all of the Fellows for their generous support. If you are not a Fellow, please consider joining and helping us with this important work. If you would like more information or want to join the Fellows, please contact the Society office or me.

Fellows of the Society

Hemphill Fellows

(\$5,000 or more annually)

David J. Beck*

Joseph D. Jamail, Jr.*

Richard Warren Mithoff*

Greenhill Fellows

(\$2,500 or more annually)

Stacy and Douglas W. Alexander

Marianne M. Auld

S. Jack Balagia

Bob Black

Elaine Block

E. Leon Carter

Tom A. Cunningham*

David A. Furlow and Lisa Pennington

Harry L. Gillam, Jr.

William Fred Hagans

Lauren and Warren Harris*

Thomas F.A. Hetherington

Allyson and James C. Ho*

Jennifer and Richard Hogan, Jr.

Dee J. Kelly, Jr.*

David E. Keltner*

Thomas S. Leatherbury

Lynne Liberato*

Mike McKool, Jr.*

Ben L. Mesches

Nick C. Nichols

Jeffrey L. Oldham

Hon. Harriet O'Neill and Kerry N. Cammack

Hon. Thomas R. Phillips

Hon. Jack Pope*

Shannon H. Ratliff*

Robert M. Roach, Jr.*

Leslie Robnett

Professor L. Wayne Scott*

Reagan W. Simpson*

S. Shawn Stephens*

Hon. Dale Wainwright

Charles R. Watson, Jr.

R. Paul Yetter*

*Charter Fellow

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David A. Furlow

A Fire Bell in the Night: *Slavery in Texas*

On April 22, 1820, former President Thomas Jefferson began to know how the mythic Cassandra felt: able to foresee disaster but unable to forestall it. In response to news of the Missouri Compromise, he explained his fear about what the institution of slavery would do to America in a letter he quilled to John Holmes:

I thank you, dear Sir, for the copy you have been so kind as to send me of the letter to your constituents on the Missouri question....This momentous question, like a fire bell in the night, awakened me and filled me with terror. I considered it as once the knell of the Union. It is hushed, indeed, for the moment. But this is a reprieve only, not a final sentence. A geographical line, coinciding with a marked principle, moral and political, once conceded and held up to the angry passions of men, will never be obliterated, and every new irritation will mark it deeper and deeper.¹

In the nineteenth century, slavery tore a terrible gash through the heart of America, and of Texas, leading, as Sam Houston foresaw, to civil war, death, and destruction on a scale never seen before or since in the United States—but also ultimately to freedom for an enslaved people.

This issue of the *Journal* focuses on slavery. University of Texas History Professor Daina Ramey Berry begins by giving us a succinct timeline of slavery in Texas. Next, former Texas Supreme Court Chief Justice Wallace B. Jefferson brings our issue to life by sharing his story of slavery's impact on his own enslaved ancestor Shedrick Willis.

I then offer readers a different kind of biography, analyzing primary sources to explore how five Texas constitutions—those of 1836, 1845, 1861, 1869, and 1876—shaped and reshaped the life of Theodora Hemphill, the first child born to Chief Justice John Hemphill and his slave Sabina.

Texas Historical Commission archaeologist Michael Moore shares the true tale of how William Barrett Travis, commander of the Alamo, vindicated the freedom of Celia Allen, a wrongfully enslaved woman in Stephen F. Austin's colony. Another THC archaeologist, Bryan McAuley, reviews the 2015 biography of William B. Travis's slave, *Joe, the Slave Who Became an Alamo Legend*, by Ron J. Jackson, Jr. and Lee Spencer White.

¹ Thomas Jefferson to John Holmes, April 22, 1820, in *The Writings of Thomas Jefferson*, ed. Merrill D. Peterson (New York: Library of America, 1984), 1433-35, <http://teachingamericanhistory.org/library/document/letter-to-john-holmes/>.

Lynne Liberato interviews Texas Supreme Court Justice John P. Devine to discuss, *inter alia*, a prominent Texas judge and ancestor named Thomas Jefferson Devine who administered justice during Texas's transition from a slave state to a free one.

William J. Chriss analyzes slavery's role in the buildup to the Texas Revolution and its immediate aftermath, beginning with the arrival of slaves in Stephen F. Austin's colony and culminating in the drafting of the pro-slavery Republic of Texas Constitution of 1836.

In "Slaves, Reconstruction, and the Supreme Court of Texas," Robert B. Gilbreath shows how the Texas Supreme Court granted standing to slaves before the Civil War, and then examines how Court Reporter George Paschal led the court into Reconstruction. Then John Browning introduces us to the first African American who practiced before the Texas Supreme Court.

So please join us as the *Journal* examines one of the most tragic but important periods of Texas history through the lens of Texas law.



Eyre Crowe's *Slaves Waiting for Sale—Richmond, Virginia*, oil painting exhibited at the Royal Academy in 1861, based on an 1853 sketch; public domain

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Essay: In Texas, History of Slavery Unique—But Not “Brief”¹

By Daina Ramey Berry

When most Americans think about slavery, they imagine large cotton plantations filled with hundreds of slaves working from sunup to sundown. People talk about the Deep South and the enslaved being traded to large markets in places such as Georgia, Louisiana and South Carolina—with Texas often excluded.



“A day's work ended,” drawing by Matt Morgan; courtesy Wikimedia Commons

In fact, some of my professors suggested Texas slavery was not significant because it “only lasted twenty years.” At the time, I was writing a dissertation on Georgia.

After all, Georgia was the only American Colony that had a ban on slavery for nearly two decades. However, when I moved to Texas a few years ago, I thought about the nearly complete dismissal of slavery in Texas. I began studying the history of slavery in the Lone Star State.

Texas’s slave history stands out because it involves Spain, Mexico, and the United States. Depending on who was in charge, there was always a mix of pro-slavery and anti-slavery activists in Texas, leading to a contentious and confusing struggle for land acquisition, labor practices, and race relations.

Looking at Texas through selected historical periods and from the voices of the enslaved, we see the contours of Anglo-American chattel slavery evolve.

Age of Contact (1528–1690): This period marks contact between indigenous people who lived in this region well before European explorers arrived in 1528. As cultures clashed, certain groups became servants to others, but there was no official policy on slavery.

Spanish Colonial (1690–1821): Spain settled the region by establishing missions and presidios. The Spanish viceroyalty allowed slavery in New Spain, which includes present-day Central America north of Panama; Mexico; the U.S. Southwest; and parts of the Philippines and Caribbean Islands.

However, the institution did not grow to the level of plantation slavery, as we know it. By the

¹ This article was originally published in the *San Antonio Express-News* on November 8, 2014, and is used by permission of the publisher.

late eighteenth century, Spanish Texas's enslaved population represented less than 1 percent.

Mexican National (1821–1836): This represents the greatest shift in the early history of slavery in Texas as Mexico claimed the territory from Spain. This and a host of other conditions, such as soil exhaustion elsewhere and land incentives encouraging settlement, fueled slaveholders from other parts of the Deep South to move to Texas, bringing captive laborers.

Stephen F. Austin, the first Anglo-American settler, worked with officials in Mexico City to create a policy regarding slavery that initially offered Anglo settlers fifty acres, and later eighty, for each enslaved person brought to the region.

Most settled in East Texas between Nacogdoches and the Louisiana state line. During these years, Anglo Texans battled with Mexican authorities over slavery because there was a strong anti-slavery sentiment in Mexico.

This was evident in 1829 when Mexico outlawed slavery. However, historian Randolph Campbell explains, "Mexican leaders showed disapproval of slavery but did nothing effective to abolish it."

Republic (1836–1845): Slavery remained controversial even after Texas won independence from Mexico. Southern slaveholders continued to populate the region. The removal of Native Americans and the devastation wrought by the Trail of Tears meant the arrival of Cherokee, Chickasaw, Creek, Seminole, and indigenous groups. It also meant cultural clashes that involved slaves who were sometimes enslaved by, married to, or had run away with Native Americans.

Texas had about 5,000 slaves at the time of its revolution in 1836, but by 1845, when the state was annexed to the United States, this grew to 30,000.

Statehood and Slavery (1845–1865): Texas applied for statehood just sixteen years before the Civil War and was admitted to the Union in 1845 as a slave state. The period of statehood and Anglo-American slavery lasted twenty years and reflects the reason why people identify Texas as having a short slave history. By 1860, on the eve of the Civil War, the enslaved population was 30 percent of the state's population—182,566.

Although many enslaved people migrated to Texas with their enslavers, some were born here, such as Willis Easter, born near Nacogdoches about ten years before the Civil War. His mother was "de bes' cook in de county and a master hand at spinnin' and weavin,'" according to "Slave Narratives: a Folk History of Slavery in the United States From Interviews with Former Slaves. Texas Narratives, Part 2."

Most women like Easter's mother worked in the fields or homes of their slaveholders. A large group of bondwomen served as cooks. Their days began at 3 a.m. when they gathered wood and boiled water to make coffee. Field hands ate before dawn, and the planter family had a large breakfast when they rose. Enslaved laborers ate beans, cornmeal, and salt pork and peas. Field workers produced cotton, and those along the Brazos River, sugar. Enslaved men also worked in the fields on cotton and sugar plantations, and on ranches and small farms raising cattle and corn.

To keep pace with the demands of the crop, they sang songs, such as this one remembered by Pauline Grace nearly fifty years after slavery ended.

“Old cotton, old corn, see you every morn. Old cotton, old corn, see you since I’s born. Old cotton, old corn, hoe you till dawn. Old cotton, old corn, what for you born?”

One in four Texas families owned slaves; slaveholdings were typically small as most enslavers owned fewer than ten people. The largest slaveholder in 1860 was Robert Mills, who, along with his brother D.G. Mills, had more than 300 slaves. Large cotton plantations populated Fort Bend, Brazoria, Wharton and Matagorda counties.

It is my hope the teaching of U.S. history and slavery includes Texas. Our story differs starkly from other Southern regions because of the Spanish and Mexican influence. To simplify it would ignore the movement to prohibit slavery and limit importation during the Colonial era, overlook the battles during the Mexican National period, and assume enslavement in Texas lasted only a few years. After all, enslaved people recall being “brung to Texas” and working in communities that had a presence of Anglo-Americans, Spanish, Native Americans, and Mexican people. They established relationships that make Texas’s slave story unique.

Photo by Sheila Marie Hunter



PROFESSOR DAINA RAMEY BERRY serves on the faculty of the University of Texas at Austin in the Department of History and the Department of African and African Diaspora Studies. She is the author of *The Price for Their Pound of Flesh: The Value of Human Chattels from Preconception to Postmortem* (Beacon Press, forthcoming in 2016), and *Swing the Sickle for the Harvest is Ripe: Gender and Slavery in Antebellum Georgia* (University of Illinois Press, 2007), and coeditor of *Slavery and Freedom in Savannah* (University of Georgia Press, 2014). Berry, who has a Ph.D. in U.S. History from UCLA, is the recipient of numerous awards and fellowships, including a Faculty Fellowship from the National Endowment for the Humanities and the Frederick Burkhardt Fellowship from the American Council of Learned Societies.

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Legacies of Justice: Shedrick Willis, Nicholas Battle, and the Rule of Law

By Wallace B. Jefferson, Chief Justice (ret.)

Shedrick¹ “Shed”² Willis lived a remarkable Texan life, which began in slavery but ended in freedom as a successful businessman devoted to public service. His accomplishments as a free man and elected official were supported and nurtured by his former owner, District Judge Nicholas W. Battle—who himself had decided a seminal slavery-era decision later upheld by the Texas Supreme Court. It is unlikely that Abraham Lincoln would have predicted Willis’s journey, or that 140 years after the Civil War, Willis’s great-great-great grandson would become the first African American Justice, and Chief Justice, on the Supreme Court of Texas. Willis—a slave and then a City Councilman. Battle—a Confederate soldier and then a Reconstructionist. Theirs is a story rich with irony and triumph.

The Remarkable Life of Shedrick Willis

Willis, born in Virginia in May 1818, died eighty-six years later on September 7, 1903 in Waco.³ He was married twice, first to Isabella, and then to Laura Williams when he was sixty-eight years old. He fathered three children with Isabella—Pleasant (“Pleos”), W. Austin, and William Shedrick. William, who died in 1929, was Willis’s only child born after slavery’s abolition.

It is likely that Willis was acquired by the Battle family in Monroe County, Georgia, and that Nicolas Battle brought him to Texas in 1850, settling near Waco. In 1854 and 1856 Battle was elected district attorney, and in 1858 he was elected judge of the Third Judicial District.⁴

Willis was freed on December 18, 1865, soon after the federal adoption of the Thirteenth Amendment.⁵ During Reconstruction, he served two terms as an Alderman on the Waco City Council,⁶ and even as Mayor Pro Tem.⁷ His former owner, Judge Battle, publically supported Willis,⁸ and was said to have “aided [Willis] in many ways...in assuming the duties of citizenship.”⁹ While on the City

¹ Also sometimes spelled at the time as “Shedrack.”

² *Dallas Morning News*, Sept. 8, 1903.

³ *Ibid.*

⁴ Thomas W. Cutrer, “Battle, Nicolas William,” *Handbook of Texas Online*, <https://tshaonline.org/handbook/online/articles/fbaaj>

⁵ Although slavery in Texas formally ended on June 19, 1865—“Juneteenth”—and the necessary majority of states ratified the Thirteenth Amendment on December 6, 1865, Texas did not ratify the amendment until February 18, 1870, long after the law had taken effect.

⁶ Hon. Wallace B. Jefferson, “A Connecting Thread to the Past,” *Texas Bar Journal* 75 (March 2012): 198; see Michael Hall, “The Paper Chase,” *Texas Monthly* (Feb. 2012); Kevin Priestner, “Scalia Swears in Jefferson as New Chief Justice,” *Texas Bar Journal* 67 (Dec. 2004): 935.

⁷ Hall, “Paper Chase”

⁸ Anita Davis, “Wallace Jefferson Takes Oath of Office,” *Texas Bar Journal* 64 (June 2001): 580; Priestner, “Scalia Swears in Jefferson,” 935.

⁹ Hall, “Paper Chase.”

Council, Willis largely voted for progressive measures, one of which awarded a \$100,000 bonus to the first company to build a railroad through Waco.¹⁰

Willis succeeded in private business as well. In his obituary in the *Dallas Morning News*, Willis was christened as “the pioneer blacksmith of his race in Central Texas.”¹¹ So renowned were his blacksmithing skills that Willis was engaged to shoe General Sam Houston’s steed in 1859, and was employed by the Confederate Cavalry as a farrier.¹² Willis became a realtor after the Civil War, selling property all around Waco.¹³ His younger son, William Shedrick, eventually followed him into the realty business.¹⁴ His grandson, William Shedrick Willis, Jr., became the first African-American faculty member at Southern Methodist University in Dallas.¹⁵ Upon the elder Willis’s passing, another obituary called him “one of the best known negroes in Waco.”¹⁶



Poster of Shedrick Willis’s wheelwright shop in Waco

Judge Battle’s Seminal Decision in *Westbrook v. Mitchell*

Judge Battle fought for the Confederacy but later advocated forcefully for the rights of former slaves like Willis.¹⁷ A foreshadowing of Battle’s post-War enlightenment came in the form of a pre-War dispute, the case of *Westbrook v. Mitchell*.¹⁸

The case arose in the sparsely-inhabited frontier country in Johnson County, just south of modern-day Fort Worth.¹⁹ James Westbrook’s father had emigrated to Texas from Mississippi, and liberated his slave—Lewis John Red Rolls.²⁰ Red Rolls continued in the family’s service after being freed, eventually working for the family’s son—James Westbrook—alongside ten slaves.²¹ In 1855, Red Rolls was in need of money and proposed to Westbrook that he sell himself back into slavery for the sum of \$2,500.00.²² Westbrook agreed, and Red Rolls worked for him for the next three years as a slave.

In 1858, the Texas Legislature passed an act that authorized free blacks to choose their

¹⁰ *Dallas Morning News*, Sept. 8, 1903.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Hall, “Paper Chase.”

¹⁴ *Ibid.*

¹⁵ Rosemary Levy Zumwalt and William Shedrick Willis, *Franz Boas and W.E.B. DuBois at Atlanta University, 2006* (Philadelphia: American Philosophical Society, 2008).

¹⁶ *Ibid.*

¹⁷ Jefferson, “Connecting Thread,” 198; James Daniel Lynch, *The Bench and Bar of Texas* (St. Louis: Nixon-Jones Printing Co., 1885): “[Willis] had always been a State’s rights Democrat of the straightest school, a strict constructionist of the Constitution, and a nullifier, and while in the main he adhered to his old Democratic faith, he promptly accepted the arbitration of the sword and the new features which it had wrought upon the constitution.”

¹⁸ 24 Tex. 560 (1859).

¹⁹ James L. Haley, *The Texas Supreme Court: A Narrative History, 1836–1986* (Austin: University of Texas Press, 2013), 62.

²⁰ *Ibid.*, 62–63.

²¹ *Ibid.*, 62.

²² *Ibid.*, 63; *Westbrook v. Mitchell*, 24 Tex. 560, 561 (1859).

owners and sell themselves into bondage.²³ Later that year, and likely so that he could be closer to the enslaved mother of his two children, Red Rolls left the Westbrooks and journeyed to the nearby farm of a former neighboring landowner—William Mitchell. Red Rolls proposed the same deal to Mitchell that he had to Westbrook, but this time, such an arrangement was allowed by the newly-enacted statute. When Westbrook's son later came to retrieve Red Rolls, Mitchell charged Westbrook with kidnapping. In turn, Westbrook sued Mitchell for the return of his property. Judge Battle held that Red Rolls was Mitchell's property because the law, before 1858, prohibited the purchase of a free person. In other words, Red Rolls had never legally been the younger Westbrook's slave.²⁴

Westbrook appealed to the Texas Supreme Court.²⁵ Affirming Judge Battle's judgment, Justice James Bell analyzed the legal underpinnings of slavery, and its defense in Western jurisprudence, as recorded in the *Institutes of Justinian*.²⁶ Declining to judicially adopt a common-law mechanism by which free blacks (or any other persons for that matter) could sell themselves into slavery, the Court noted that the Legislature "evinced the greatest caution" in enacting the recent statutory framework for such a transaction.²⁷ Such caution, the Court reasoned, "will suggest to the intelligent mind, that there are reasons of public policy, why the courts of the State should not recognise the right of free negroes to sell themselves into slavery. The recognition of such a right might lead to its exercise for bad purposes."²⁸

A Contemporary Lesson

Willis experienced a breathtaking metamorphosis from private property to public servant. Battle fought for the right to own human beings, but later upheld his oath to support the Constitutional abrogation of slavery. These two men are bound together by a rule of law that has evolved, just as their lives did, toward justice. Their unlikely partnership shows that even the most profound differences can be overcome when inalienable rights, like liberty, combine with equality under law. Let us hope that our descendants, 140 years from now, will carry on that tradition.

²³ Haley, *Texas Supreme Court*, 63; see *Westbrook*, 24 Tex. at 562.

²⁴ *Ibid.*

²⁵ See *Westbrook*, 24 Tex. at 561.

²⁶ *Ibid.* The *Institutes* were issued in December 533 by the Roman Emperor Justinian and later formed the basis of much of Western jurisprudence, including English common law and Spanish mainland law. Harbert Davenport and J. T. Canales, "The Texas Law of Flowing Waters with Special Reference to Irrigation from the Lower Rio Grande," *Baylor Law Review* 8 (1956): 138, 157-58 (the "law as declared in the *Las Siete Partidas* [which governed peninsular Spain], ... was taken almost bodily from the Roman Law; and, more particularly, from the *Institutes*"); Alan Watson, *The Law of the Ancient Romans* (Dallas: Southern Methodist University Press, 1970), 93; Sir William Searle Holdsworth, *A History of English Law*, Book IV (Boston: Little, Brown, 1926), 221 ("The text of Justinian was both the Aristotle and the Bible of the lawyers").

²⁷ *Westbrook*, 24 Tex. at 562.

²⁸ *Ibid.*



THE HON. WALLACE B. JEFFERSON was the twenty-sixth Chief Justice of the Supreme Court of Texas, serving in that post from 2004 until his retirement in October 2013. In 2001, he became the first African American to serve on the Court as Justice, and three years later he again made history when he became the state's first African-American Chief Justice. He is currently a partner in the Austin law firm of Alexander Dubose Jefferson Townsend.

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Theodora Hemphill's Guide to the Texas Constitution

• Part I •

By David A. Furlow

Theodora Hemphill, the older daughter of Texas Supreme Court Chief Justice John Hemphill, offers a unique perspective on the way Texas's constitutions shape and reshape lives. The 1845 Constitution made her a slave and forced her father to exile her at age twelve. The 1861 Constitution ushered Texas into the Confederacy—and orphaned Theodora the next year. Texas's 1869 Constitution, Reconstruction, and three amendments to the U.S. Constitution empowered her to claim her father's inheritance in Texas. The 1876 Constitution segregated and sidelined her, then led her to declare her independence from the disabilities and discrimination that Jim Crow-era Texas lawmakers meted out to African-American women. Theodora's life sheds new light on the influences and dilemmas that shaped Chief Justice John Hemphill and, through him, the jurisprudence of the Texas Supreme Court during the fifteen years between statehood and Secession.

Texas's Constitution of 1845 enslaved and exiled Theodora

In 1847, an enslaved African American gave birth to a baby girl¹ in a small, one-story, dog-trot cabin close to the corner of Pecan Street and Congress Avenue in Austin.² That daughter was the first child born to Texas Supreme Court Chief Justice John Hemphill, a blue-eyed, forty-four-year-old father of Scots Irish descent, and Sabina, a dark-complexioned African-American slave thirty-one years old.³

Believing Sabina's baby a gift from God, Hemphill named her Theodora,⁴ "gift of God" in Greek, the Gospel language.⁵ The name echoed Psalms 127:3 in the King James Bible: "Lo, children

¹ Henry Barnard, *Special Report of the Commissioner of Education on the Condition and Improvement of Public Schools,...* etc. (Washington, D.C.: Government Printing Office, 1871), 319 ("Senator Hemphill came to Wilberforce University late in the autumn of 1859...with...a lad of about 18, and two girls, of about 12 and 10 years...Theodora and Henrietta..."); *Theodora Hemphill v. James Hemphill*, Cause No. 3074, Travis County, 1871–72, in Andrew F. Muir, "John Hemphill, Miscegenator," unpublished paper, Rice University, 1950, 4–15, in the Mary Smith Fay Papers, Clayton Genealogical Library, Houston.

² See Alexander W. Terrell, "The City of Austin from 1839 to 1865," *Southwestern Historical Quarterly*, XIV (Oct. 1910): 122; Jeffrey Stuart Kerr, *Seat of Empire: The Embattled Birth of Austin, Texas* (Lubbock: Texas Tech University Press, 2013), 248–49, n. 10. Pecan Street is now Sixth Street.

³ See Muir, "John Hemphill, Miscegenator," 4; John Hemphill Vertical File, Austin History Center; James L. Haley, *The Texas Supreme Court: A Narrative History, 1836–1986* (Austin: University of Texas Press, 2013), 59–60, citing Richard Rust's testimony in *Theodora Hemphill v. James Hemphill*, Cause No. 3074, Travis County, June 1871.

⁴ Hemphill earned a diploma certifying his proficiency in Greek and Latin in 1823, then taught those languages at two private academies. Rosalee M. Curtis, *John Hemphill: First Chief Justice of the State of Texas* (Woodstock, Ga: Hemphill Family Association, rev. ed., 1997), 11–13; Mary Smith Fay Papers, Clayton Library.

⁵ Theodora (Θεοδώρα, *Theodōra*) derives from θεός, *theos*, "god" and δῶρον, *doron*, "gift," a composite name found in Linear B scripts dating to the time of the Trojan War (*te-o-do-ra*, "gift of a god"). John Chadwick, *The Mycenaean World* (Cambridge, Eng.: Cambridge University Press, 1976), 64.



Above: Austin circa 1844, photo of the illustrated map on display at the Historic French Legation, Austin; photo by David A. Furlow. Below: The dogtrot log cabin in the middle of the top row may have been the cabin where Hemphill and Sabina lived from 1847 to 1853.



are an heritage of the Lord: and the fruit of the wombe is his reward.”⁶ Hemphill, the fifth child of the Reverend Dr. John Hemphill, a Presbyterian minister from Londonderry, Ireland, and Jane Lind, daughter of the Reverend Matthew Lind, a Presbyterian minister, knew his Bible—and knew that it condoned slavery.⁷

Sabina’s very name evokes Romulus’s abduction of neighboring tribeswomen.⁸ Hemphill purchased her from the publisher Greenberry Horras Harrison and his wife Ann on December 31, 1844.⁹ No known image depicts Sabina, but a Travis County Deed Record describes her as dark-complexioned and twenty-eight years old.¹⁰ Hemphill paid \$500 for her,¹¹ \$200 more than the \$314 mean purchase price for a slave in Texas,¹² probably due to her child-bearing potential.¹³ Sabina was the first of two slaves Hemphill bought from Greenberry Harrison and his wife; Hemphill bought the second, Jim, from Ann Harrison on March 5, 1855. Unlike most slaves, Theodora and Sabina resided in a town, Austin.¹⁴ The enslaved population grew rapidly from the 1820s until the 1860s, when nearly 30 percent of Texans were enslaved.¹⁵

Sabina’s status as a concubine was not unusual. By 1850, there were some 246,000 slaves of mixed race out of 3.9 million slaves in the United States.¹⁶ Concubinage became so common in cosmopolitan New Orleans that it almost gained social respectability—*almost*, and in Louisiana, not Texas.¹⁷

⁶ Psalms 127:3, King James Bible (1611).

⁷ Curtis, *John Hemphill*, 4, 12–19, 80–81. See Genesis 9:25–26, King James Bible (1611); Joshua 9:23.

⁸ Titus Livius (Livy) (trans. Aubrey de Sélincourt), *The Early History of Rome* (London: Penguin Classics, 2002), 1.9.

⁹ Timothy S. Huebner, *The Southern Judicial Tradition: State Judges and Sectional Distinctiveness, 1790–1890* (Athens: University of Georgia Press, 1999), 103; Curtis, *John Hemphill*, 27–28; Mary Smith Fay letter to James W. Paulsen, June 12, 1993, Mary Fay Papers, Clayton Library, 1; Laurie E. Jasinski, “Harrison, Greenberry Horras,” *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fhaab> (accessed Sept. 24, 2015).

¹⁰ Deed Records of Travis County, Book I, 374.

¹¹ Muir “John Hemphill, Miscegenator,” 4.

¹² Randolph B. Campbell, *An Empire for Slavery: The Peculiar Institution in Texas* (Baton Rouge: Louisiana State University Press, 1989), 71, Table 2 (including Travis and Washington County data).

¹³ Research at the Good Hope Plantation in Orangeburg, South Carolina, revealed that the average age of a slave woman’s first birth was 19.6 years, while some bore children at 13 or 14. Herbert G. Gutman, *The Black Family in Slavery and Freedom, 1750–1925* (New York: Pantheon Books, 1976), 50, cited in Marquis, “Slave Children,” 100. See also Dorothy Sterling, ed., *We Are Your Sisters: Black Women in the Nineteenth Century* (New York: W.W. Norton, 1984), 31 (a slave’s price reflected her fertility).

¹⁴ Alwyn Barr, *Black Texans: A History of African Americans in Texas, 1528–1995* (2nd ed.) (Norman: University of Oklahoma Press, 1996), 24; William Ransom Hogan, *The Texas Republic: A Social and Economic History* (Norman: University of Oklahoma Press, 1946), 21–24.

¹⁵ Barr, *Black Texans*, 17–25.

¹⁶ John Hope Franklin and Alfred A. Moss, Jr., *From Slavery to Freedom: A History of African Americans* (New York: Vintage Books, 1985), 35, in Catherine Marquis, “The Rearing of Slave Children and their Parental Relationships before and after Emancipation,” *Sloping Halls Review*, 3, 99–110, 101 (1996), <http://repository.cmu.edu/cgi/viewcontent.cgi?article=1029&context=shr> (accessed Sept. 9, 2015). See also Alecia P. Long, *The Great Southern Babylon: Sex, Race, and Respectability in New Orleans, 1865–1920* (Baton Rouge: Louisiana State University Press, 2004), 10–59.

¹⁷ Franklin and Moss, *From Slavery to Freedom*, 140, in Marquis, “Slave Children,” 3, 101.

Slave Population in Texas

YEAR	POPULATION
1825	443
1836	5,000
1840	11,523
1850	58,161
1860	182,566
1865	250,000 ¹⁸

Theodora has left no known image to posterity. But in a statement made in 1939, Austinite J. E. Grizzard described Theodora as weighing “175–180 pounds,” having a “light yellow” color, and appearing “40 to 42 years old” when he last saw her in 1893.¹⁹ In 1847, Theodora became one of a reported 38,753 slaves in a Texas population of 142,009.²⁰ Two years later, in 1849, Sabina gave birth to Hemphill’s second daughter, Henrietta.²¹

Under the Constitution of 1845, Theodora’s and Henrietta’s births to an enslaved mother meant that they, too, were slaves.²² In 1859, Texas Supreme Court Justice Oran Roberts held,

Negroes are, in this country, *prima facie* slaves. While held as such, they are slaves *de facto*, whether *de jure* or not. If they are dissatisfied with their condition, and have a right to be free, our courts are open to them...to assert their right. As long as they fail to do so, they recognize their *status* as slaves.²³

While serving in the Convention of 1845, Chief Justice Hemphill helped empower the Legislature to “permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge.”²⁴ The Constitution of 1845 authorized “laws which will oblige the owners of slaves to treat them with humanity; to provide for their necessary food and clothing; to abstain from all injuries to them, extending to life or limb...” The 1845 Constitution’s drafters sought to moderate the Peculiar Institution’s brutality—with the aim of reducing the ever-present risk of servile insurrection.²⁵

After December 31, 1844, Hemphill came to apply the lessons of his life as a father and a *de facto* husband to his roles as a judge and a lawmaker. He and Sabina built a life together, first in

¹⁸ See Barr, *Black Texans*, 17, for the numbers of slaves in the bar graph.

¹⁹ Muir, “John Hemphill, Miscegenator,” 17 nn. 30, 31, and 35; “Statement of J.E. Grizzard (March 31, 1939),” Mary Smith Fay Papers, Clayton Library, and John Hemphill Vertical File, Austin History Center.

²⁰ Campbell, *Empire for Slavery*, 55.

²¹ Haley, *Texas Supreme Court*, 61–62 and 264 n.23.

²² Marquis, “Slave Children,” 3, 100. The Constitution of 1836 barred private emancipation of slaves without the consent of Congress and declared that “no free person of African descent, either in whole or in part, shall be permitted to reside permanently in the Republic, without the consent of Congress...” Constitution of the State of Texas (1836), General Provisions, Section 9. The drafters of that constitution drafted that language to keep slaveholders from manumitting their slaves at the end of their work lives, which would have imposed a financial burden on the Republic’s resources. They also sought to avoid creating a large population of free blacks whose very freedom would have undermined the racist ideology justifying the existence of slavery as an evil necessary to care for a people unable to care for themselves.

²³ *Boulware v. Hendricks*, 23 Tex. 667, 669 (1859) (emphasis in original) in Campbell, *Empire for Slavery*, 112.

²⁴ TEX. CONST. of 1845, art. XIII, § 1.

²⁵ *Ibid.* See also Randolph B. Campbell, ed., *The Laws of Slavery in Texas: Historical Documents and Essays* (Austin: University of Texas Press, 2010); Winthrop Jordan, *The White Man’s Burden, Historical Origins of Racism in the United States* (Oxford: Oxford University Press, 1974), 61–68, 79, 87.



Chief Justice John Hemphill, photograph taken while he was Texas's U.S. Senator, circa 1860; photo courtesy U.S. Senate Historical Office

their log cabin, then, in 1853, in a larger home at the intersection of Brazos and Ash streets.²⁶ The Hemphill Court granted slaves greater standing to vindicate their freedom in Texas courts.²⁷ In *Guess v. Lubbock*, the Hemphill Court set aside evidentiary deficiencies to recognize an enslaved woman's claim to freedom.²⁸ In *Chandler v. State*, the Hemphill Court rejected a master's argument that a slave's murder was outside the jurisdiction of the courts.²⁹ And in *Moore v. Minerva*, the Hemphill Court reaffirmed the liberty of a slave freed in Ohio.³⁰ Perhaps Hemphill shielded Sabina by avoiding the most controversial slave cases, but Justice Abner Lipscomb and the Hemphill Court liberalized the law of slavery as well as those protecting homesteads and women's community property rights in Texas.³¹

Try as he might, Hemphill could not keep his relationship with Sabina quiet forever. In November 1857, Anson Jones, the Republic's last President, lashed out at Hemphill in a letter to Oliver Jones, a senator and a fellow delegate at the 1845 Convention:

The election of Hemphill [to replace Sam Houston in the Senate] appears to have given the country a "chill". . . [T]he only jubilant parties...are the South Carolina fire-eaters and nullifiers, the filibusters,... and the [Know Nothings] generally, with Gen. Houston in particular, who has been laboring *hard* for Hemphill since February, 1851...[A] South Carolina birth, the practices of a gamester, and the habits of a drunkard, or a negro wife and family, with a life of licentiousness and *incest*, and a seventeen year pensionship upon Texas have been declared...paramount considerations in the choice of Senators."³²

Determined to "out" Hemphill, Jones wrote a similar letter to John Henry Brown, publisher of the *Galveston Civilian* newspaper:

It is a most significant fact connected with the recent election of Hon. J. Hemphill as Senator...that...I, who for twenty-four years have been constantly sacrificing myself

²⁶ Mary S. Barkley, *History of Travis County and Austin 1839-1899* (Waco: Texian Press, 1963), 48, 72; Terrell, "The City of Austin," 118-19; Curtis, *John Hemphill*, 63.

²⁷ Huebner, *Southern Judicial Tradition*, 124-28.

²⁸ 5 Tex. 525 (1851). See also Haley, *Texas Supreme Court*, 61-62; Mark Davidson, "One Woman's Fight for Freedom," *Houston Lawyer* (Jan.-Feb. 2008): 10-15, reprinted in Campbell, *Laws of Slavery*, 87-93.

²⁹ *Chandler v. State*, 2 Tex. 305, 309 (1847); see also *Nix v. State*, 13 Tex. 575 (1855).

³⁰ *Moore v. Minerva*, 17 Tex. 539 (1856). See also Michael Ariens, *Lone Star Law: A Legal History of Texas* (Lubbock: Texas Tech University, 2011), 31 and 290-91 n. 64.

³¹ In *Jones v. Laney*, 2 Tex. 342, 349-50 (1847), decided a few years after Hemphill purchased Sabina and, apparently, the very year Theodora was born, Associate Justice Lipscomb ruled in favor of former slaves whose Chickasaw Indian masters manumitted them on a Georgia Indian reservation.

³² Carolyn Hyman, "Jones, Oliver," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fjo61> (accessed Sept. 13, 2015); letter from Edward Morehouse, Nov. 25, 1843 in Anson Jones, *Memoranda and Official Correspondence Relating to the Republic of Texas, Its History and Annexation, 1836-1846, with my Endorsements and Notes at the Time* (New York: D. Appleton & Co., 1859; reprint, Chicago: Rio Grande Press, 1966), 626-27.

for the welfare of Texas...should have been the *very first*...to be sacrificed for the pretended...welfare of the *party!! Credat Judaeus !! !...* [A] South Carolina birth, a negro wife and family, and a life of public and notorious licentiousness and INCEST...have... been rewarded with a U.S. Senatorship."³³

Hemphill had thwarted Jones's last hope to vindicate his post-presidential political career by winning the Legislature's unanimous vote to replace Sam Houston as Texas's U.S. Senator. Legislators never considered asking Jones, even though he waited a week to receive their call.

Spurned by the Legislature, Jones's rage against Hemphill culminated at the Capitol Hotel in Houston, where, on January 9, 1858, he shot himself to death.³⁴ But Jones would still strike back at Hemphill from beyond the grave:

There is a time coming when our present remarks will be of service; we may not live to see it, but Texas will; and depend upon it, a very different choice will then be made in lieu of Judge Hemphill....

"Anson Jones rendered valuable services to Texas in her trying hours,"—for this that country has thought proper to murder me. Such is the reward Texas gives to one who served and saved her. A.J.³⁵

On January 1, 1859, Jones's New York publisher, D. Appleton & Company, began selling Jones's *Republic of Texas*, broadcasting its venom throughout the world.³⁶

When evaluating Jones's screed, we must consider his obvious bias. By late 1857, Jones hated Hemphill. Jones first grew envious of him when Hemphill seemed likely to win more votes than Jones during the 1844 presidential campaign.³⁷ When delegates to the 1845 Convention considered removing Jones from the Republic's presidency because they had doubts about his commitment to U.S. annexation, Jones blamed Hemphill.³⁸ When Jones sought rehabilitation as Texas's U.S. Senator in 1857, Hemphill beat Jones hands down without lifting a finger.

Contrary to Jones's assertions, no evidence suggests that Hemphill engaged in incest or alcoholism. Before he knew Hemphill well, Justice Royall Wheeler noted that the chief justice suffered from a "torpor":

³³ Jones, *Republic of Texas*, 640–41, Jones's Nov. 13, 1857 memorandum (emphasis in original) explaining his prediction that the State would engrave his tombstone: "MURDERED BY A COUNTRY HE SERVED AND SAVED," *ibid.*, 640 (emphasis in original); Herbert Gambrell, *Anson Jones: The Last President of Texas* (Garden City, N.Y.: Doubleday, 1948), 434–35; Curtis, *John Hemphill*, 76–77. See also Erma Baker, "Brown, John Henry," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fbr94> (accessed Sept. 13, 2015).

³⁴ Texas State Library and Archives, "Anson Jones: Left Behind," <https://www.tsl.texas.gov/exhibits/presidents/jones/later.html>, Sept. 14, 2015.

³⁵ Jones, *Republic of Texas*, 646, on Jones's Dec. 6, 1857 comments.

³⁶ Herbert Gambrell, "Jones, Anson," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fjo42> (accessed Sept. 13, 2015); Curtis, *John Hemphill*, 77.

³⁷ Jones, *Republic of Texas*, 233–36, July 30, 1843 letter of Attorney General G. W. Terrell to Jones; *ibid.*, 332–33, March 29, 1844 letter of Judge M.P. Norton to Jones; Judge Norton's May 18, 1844 letter to Jones; Curtis, *John Hemphill*, 76.

³⁸ Jones, *Republic of Texas*, June 21, 1845 letter from Stephen Hoyle to Jones; *ibid.*, 483, Judge William B. Ochiltree's Aug. 6, 1845 letter to Jones; Curtis, *John Hemphill*, 76.

[Richard] Gillespie says it was [Hemphill's] custom after a session of the Supreme Court absolutely to box up his books and lie about the places appropriated for loafers in Washington [County] in a perfect state of torpor like a lizzard [sic] in the winter until next Supreme Court.³⁹

But Wheeler later retracted his negative opinion of Hemphill, explaining that he had “abundant reason to change that opinion” because Hemphill was “a very strong man and exceedingly safe judge.”⁴⁰ And the torpor resulted not from alcohol but the debilitating hepatitis that led to Hemphill's honorable discharge from the U.S. Army during the Second Seminole War.⁴¹ No “drunkard” could have turned out 636 opinions and judgments between 1841 and 1857,⁴² many while riding the circuit during court sessions in Austin, Tyler, and Galveston.⁴³

Jones had no legitimate basis for condemning Hemphill's “seventeen year pensionship,” either. Hemphill earned his pension at the Council House Fight, in Texas Ranger Captain Jack Hays's Company, in Colonel Burleson's Volunteer Company, and as Acting Adjutant General of the Southwestern Army that chased General Adrian Woll back to Mexico,⁴⁴ all while serving as a judge from 1840 through 1858.⁴⁵

The most difficult question is whether Hemphill, the South Carolina Nullifier who fought two duels in defense of slavery, came to love Sabina as his *de facto* “wife”? Did his apparently monogamous child-rearing relationship with Sabina parallel the complex relationship between President Thomas Jefferson and Sally Hemings, Jefferson's deceased wife's mixed-race half-sister?⁴⁶

Hemphill, a Covenanting Presbyterian, saw nothing unholy about a man fathering children with a concubine socially inferior to a traditional wife. His King James Bible taught that Abraham, the father of three monotheistic religions, offered his first-born son Isaac to God but gave gifts to the sons of his concubines (plural).⁴⁷ And Hemphill knew that Solomon kept “threescore queens, and fourscore concubines, and virgins without number.”⁴⁸

As their father moved Texas toward secession, Theodora and Henrietta must have asked

³⁹ J. H. Davenport, *History of the Supreme Court of Texas* (Austin: Southern Law Book Publishers, 1917), 28–29, as quoted in Curtis, *John Hemphill*, 57.

⁴⁰ Haley, *Texas Supreme Court*, 261 n.38. Professor James W. Paulsen has best explained Justice Wheeler's initial negativity as a response to Hemphill's calling of a December 1845 session of the Texas Supreme Court when Wheeler planned to take his ailing wife out of Texas.

⁴¹ Curtis, *John Hemphill*, 58.

⁴² Email from Ms. Robbi Horvath, Texas State Law Library Reference Librarian, Jan. 7, 2015, sending a 636-case West-law database of Judge Hemphill's decisions, for which I'm grateful.

⁴³ See John Hemphill's May 29, 1852 letter to James Hemphill, Charles Colcock Jones, Jr. Papers, in the “Signers of the Confederate States of America Constitution,” Manuscript Department, William H. Perkins Library, Duke University.

⁴⁴ Austin History Center, John Hemphill Vertical File.

⁴⁵ James P. Hart, “John Hemphill—Chief Justice of Texas,” 3(4) Sw. L. J. 395, 398–99 (Fall 1949); Haley, *Texas Supreme Court*, 20–21, 26–59; Curtis, *John Hemphill*, 39–74.

⁴⁶ Annette Gordon-Reed, *The Hemingses of Monticello: An American Family* (New York: W.W. Norton & Co., 2008), 353–55.

⁴⁷ Genesis 25:6, King James Bible (1611) (“But unto the sons of the concubines, which Abraham had, Abraham gave gifts, and sent them away from Isaac his son, while he yet lived, eastward, unto the east country.”) (modernized into current standard English).

⁴⁸ Song of Solomon 6:8, King James Bible (1611) (modernized into current standard English).

about their mother's status as a slave, their status, and slavery. Hemphill could have read from the King James Bible while pointing out that its verses ordained the institution of slavery, slave-trading, and the inheritability of slaves:

Both thy bondmen, and thy bondmaids, which thou shalt have shall be of the Heathen, that are round about you: of them shall ye buy bondmen and bondmaids. Moreover, of the children of the strangers that do sojourn among you, of them shall ye buy, and of their families that are with you, which they begat in your land: and they shalbe your possession....⁴⁹

Hemphill probably quoted Ephesians 6:5-6 to Theodora, as slaveholders often did to justify their actions. "Servants [Slaves], be obedient to them that are your masters according to the flesh, with feare and trembling, in singleness of your heart, as unto Christ: Not with eye service as men pleasers, but as the servants of Christ, doing the will of God from the heart..."⁵⁰ And he may have explained that Colossians 4:2 commanded him to be kind: "Masters, give unto your servants [slaves] that which is just and equal, knowing that you also have a Master in heaven."⁵¹

Hemphill apparently saw himself as a patriarch entitled to keep a concubine, but was never a hypocrite who maintained a white wife and family while making nightly forays into the slave quarters for women. South Carolina diarist Mary Boykin Chesnut knew such men well:

God forgive us, but ours is a monstrous system, a wrong and iniquity. Like the patriarchs of old, our men live all in one house with their wives and their concubines; and the mulattoes one sees in every family partly resemble the white children. Any lady is ready to tell you who is the father of the mulatto children in everybody's household but her own. Those, she seems to think, drop from the clouds....⁵²

Hemphill never married⁵³ and neither did Sabina, so neither committed adultery.⁵⁴

One of Texas's wealthiest and most prominent men, Hemphill had many opportunities to woo and wed. He could charm a woman, too, as South Carolina diarist Mary Boykin Chesnut noted in Montgomery, Alabama in 1861, after Chesnut placed a Southern general's violets in her breastpin. "'Oh,' said my *Gutta Percha* Hemphill, 'if I had known how these [violets] were to be honored, I would have been up at daylight picking the sweetest flowers.'"⁵⁵ Hemphill could have

⁴⁹ Leviticus 25:44-46, King James Bible (1611) (modernized into current standard English)

⁵⁰ Ephesians 6:5 to 6:6, King James Bible (1611) (modernized into current standard English).

⁵¹ Colossians 4:1, King James Bible (1611) (modernized into current standard English).

⁵² Catherine Clinton, *The Plantation Mistress: Woman's World in the Old South* (New York: Pantheon Books, 1982), 199, quoting Mary Boykin Chesnut, *A Diary from Dixie* (Cambridge, Mass.: Harvard University Press, 1980), 46. See, e.g., *Hagerty v. Harwell*, 16 Tex. 663 (1856) (where a divorcing wife, Rebecca Hagerty, accused her husband of having "adulterous intercourse" with a slave); Campbell, *Laws of Slavery in Texas*, 2.

⁵³ Curtis, *John Hemphill*, 68; Haley, *Texas Supreme Court*, 20, 59, 264 n.23.

⁵⁴ Texas Penal Code, Article 392 (1856). Texas law defined adultery as sexual relations between two persons, one married to a third person, from 1836 to 1848 and from 1856 to 1973. Ibid. 392 (1856); Ariens, *Lone Star Law*, 29, 160 and 311 n.30.

⁵⁵ Chesnut, *Diary from Dixie*, 46. Chesnut used "Gutta Percha" as a term of endearment that referred to a tough, rubbery substance made from Malaysian rubber trees (*genera Palaquium* and *Payena*). Anne Soukhanov, ed., *American Heritage Dictionary of the English Language* (Boston: Houghton Mifflin Co., 1992), 808.

charmed a white woman into marriage, but remained faithful to Sabina unto her death.

In *The Hemingses of Monticello: An American Family*, attorney Annette Gordon-Reed discussed an emancipation “treaty” between President Thomas Jefferson and Sally Hemings, the enslaved concubine who bore several of Jefferson’s children:

The historiography of slavery has long since moved beyond the notion that slave owners were deity-like in their omnipotence and that slaves were actual chattel, like pieces of furniture lacking conscience and will...[W]ithin their admittedly limited sphere, enslaved people helped shape the contours of the master-slave relationship, both as actors and as reactors.⁵⁶

So how did Sabina shape the contours of her relationship with Hemphill? Perhaps by convincing her *de facto* husband to free and educate their daughters.

Under the Constitution of 1845, Hemphill could emancipate Sabina and their daughters, either while he was alive or by leaving a written will, but only (1) if he convinced the Legislature to let them remain as “free negroes” or (2) if he sent them out of Texas.⁵⁷ A petition for post-emancipation leave to remain in Texas was politically risky, however. The Republic’s Congress granted only two of fifteen requests by owners seeking leave for freemen to remain in Texas.⁵⁸

A petition for Sabina’s manumission would have required Hemphill to publicly disclose and justify an inherently private consensual relationship difficult for Texas legislators to approve.⁵⁹ Yet even if Hemphill had persuaded the Legislature to let Sabina stay, an 1837 miscegenation statute, re-adopted in 1844, barred marriage between whites and blacks.⁶⁰ To keep Sabina with him, Hemphill had to leave Sabina enslaved.⁶¹

Hemphill, Sabina, and their daughters lived together in the second, larger house Hemphill

⁵⁶ Gordon-Reed, *The Hemingses*, 353–54.

⁵⁷ See, e.g., *Moore v. Minerva*, 17 Tex. 539, 20, 27–28 (1856); *Purvis v. Sherrod*, 12 Tex. 140, 172 (1854); see *Armstrong v. Jowell*, 24 Tex. 58, 60–61 (1859) (reaffirming *Purvis*); *Philleo v. Holliday*, 24 Tex. 38, 45 (1859) (invalidating a slave owner’s manumission bequest).

⁵⁸ Ariens, *Lone Star Law*, 31.

⁵⁹ Hemphill’s relationship with Sabina faced new challenges after February 12, 1858, when the Legislature enacted Texas Penal Code Article 392 to ban fornication between men and women of the same race and Article 395a to bar fornication between whites and blacks. Williamson S. Oldham and George H. White, *A Digest of the General Statute Laws of the State of Texas, etc.* (Austin: J. Marshall & Co., 1859; Clark, N.J.: Lawbook Exchange, Ltd., 2004), 504; Articles 392 and 395a, amended by Act of Feb. 12, 1858, 7th Leg., R.S., reprinted in 4 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, at 1028, 1036–37 (Austin, Gammel Book Co. 1898) (amending articles 392, 395a). But U.S. Supreme Court Chief Justice Taney’s 1856 *Dred Scott* decision, *Scott v. Sanford*, 60 U.S. 393, 407 (1856), held that slaves were “so far inferior, that they had no rights which the white man was bound to respect,” so the Legislature may not have intended the law to apply to slaves. The 1858 Legislature’s amendment that added the undefined term “fornication” to Articles 392 and 395a was void *ab initio* because only specifically-defined crimes were punishable in Texas—a defect the Legislature did not remedy until 1879. *Richardson v. State*, 37 Tex. 346, 347 (1872); Ariens, *Lone Star Law*, 222. Hemphill thus did not violate an enforceable Texas law while sharing a home with his slave Sabina.

⁶⁰ Act of June 5, 1837, 1st Cong., R.S., reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, at 1293 (Austin, Gammel Book Co. 1898); Act of Feb. 9, 1854, 5th Leg., R.S., reprinted in 3 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822–1897*, at 1502, 1510 (Austin, Gammel Book Co. 1898), cited in Ariens, *Lone Star Law*, 61–62 and 295 n. 76. See also Mark M. Carroll, *Homesteads Ungovernable: Families, Sex, Race, and the Law in Frontier Texas, 1823–1860* (Austin: University of Texas Press, 2001), 64–75.

⁶¹ Goodell, *American Slave Code*, 90.

acquired for his growing family in 1853.⁶² There, in 1859, Sabina died. If he had not been in Washington, D.C., Senator Hemphill, prematurely aged by sun and circuit-riding, would have been at her side. Two years later, in 1861, diarist Mary Chesnut said that he had “a face as old and dried as a mummy, and the color of tanned leather, with a thousand wrinkles, but [with] the hair (or wig) of a man of twenty.”⁶³ Theodora and Henrietta shared the company of Hemphill’s other slaves, *i.e.*, Washington Hemphill, fifty-three years old, Maria Hemphill, forty-three years old, John Hemphill, nine years old, and Perry Hemphill, eleven years old.⁶⁴

Historian James L. Haley concluded that John Hemphill and Sabina shared “a relationship of love and respect” within the “compulsion implied by their respective positions.”⁶⁵ But, as Jefferson biographer Annette Gordon-Reed observed about Thomas Jefferson and his love Sally Hemings, “[t]he world they shared twisted and perverted practically everything it touched, making entirely human feelings and connections difficult, suspect, and compromised. What could have been in the hearts of any human beings living under the power of that system was inevitably complicated, inevitably tragic.”⁶⁶

And what of John Hemphill and Sabina? His devotion to their daughters offers the best evidence that he transcended the color bar and came to love Sabina, tragically but deeply. In 1859, perhaps in response to the publication of Anson Jones’s vitriolic *Republic of Texas*, Hemphill spirited his daughters out of Texas. Hemphill’s fellow Texans were then growing more hostile to slaves and freemen as legislators enacted harsh anti-insurrection laws.⁶⁷ Texas mobs murdered as many as eighty slaves and thirty-seven whites in 1860, including a Methodist minister, out of fear of an imminent slave rebellion.⁶⁸

In his *Special Report of the Commissioner of Education on the Condition and Improvement of Public Schools in the District of Columbia*, presented in 1868 but not published until 1871, Henry Barnard recorded how an officer of Wilberforce University—not Reverend Rust but another official—wrote about Hemphill’s autumn 1859 visit to the university. Hemphill enrolled his daughters in a school named, ironically, after the world’s foremost abolitionist, William Wilberforce:⁶⁹

Senator Hemphill came to Wilberforce University late in the autumn of 1859, having with him three children, a lad of about 18, and two girls, of about 12 and 10 years of

⁶² Haley, *Texas Supreme Court*, 59 and 264 n.23; Curtis, *John Hemphill*, 63; John Hemphill Vertical File, Austin History Center, including copies of the original petition and discovery responses, in *Theodora Hemphill, Plaintiff v. C. S. West, et al.*, File No. 3074, File Boxes, Civil District Court of Travis County, filed on June 7, 1871, settled on Feb. 1, 1872.

⁶³ Chesnut, *Diary from Dixie*, 48.

⁶⁴ These figures backdate by five years the list of Hemphill estate slaves found in estate administrator F. W. Chandler’s Nov. 15, 1864 inventory in Hemphill Probate Estate Papers, Cause No. 295, Travis County Probate Court, in the John Hemphill Vertical File, Austin History Center, and the Mary Fay Smith Papers, Clayton Library. It reads: “1 man Washington, 58 years old[;] 1 woman Maria, 48[;] 1 boy Perry, about 17[;] 1 boy John, about 15[.]”

⁶⁵ Haley, *Texas Supreme Court*, 59.

⁶⁶ Gordon-Reed, *Hemingses of Monticello*, 651.

⁶⁷ Ariens, *Lone Star Law*, 29–30.

⁶⁸ *Ibid.*, 30.

⁶⁹ Rev. Rust’s Nov. 3, 1871 interrogatory testimony states that Senator Hemphill enrolled Theodora and Henrietta “while I was President” (*ibid.*, Interrogatory No. 2), *i.e.*, in 1858 or later. Rev. Rust’s answer to Cross-Interrogatory No. 1 explained: “I first met Hon. John Hemphill at Xenia, Ohio, in the autumn of 1859, I think...they were there [at Wilberforce] two to three years before the Rebellion [which began with secession in 1860–61].”

age. The lad...evidently his son, he took to Washington. His two daughters, Theodora and Henrietta, remained with us until 1862, when the pressure of the civil war constrained the trustees to suspend the operations of the institution, and they went to Cincinnati, where Henrietta (the younger) died of consumption [tuberculosis]....

The young ladies were both beautiful. Their complexions proclaimed their mother to have been a black woman....They were well supported by Senator Hemphill, who kept up his correspondence with them, both by letters and by presents, till he left Washington to perform his part in the drama of rebellion. The last time we heard from their brother he wrote to me from California touching the condition and wants of his sisters.⁷⁰

That Wilberforce University officer may have erred about Hemphill having a son, but there is no doubt that Hemphill paid for his daughters' tuition, board, clothes, and books.⁷¹

Hemphill's payment for his daughters' books implies that he taught them to read. If so, he acted in accord with his Presbyterian church's highest values. Robert Lathan, author of the *History of Hopewell Church together with Biographical Sketches of Its Pastors* (where Hemphill's father preached), observed that,

One of the characteristics of the Covenanters is that they regard it as a sacred duty to teach their children to read and write. When they dedicate their children to God in Baptism, they most solemnly vow to teach, or cause to be taught, their offspring to read the Scriptures.⁷²

Hemphill did not violate Texas law by teaching his daughters to read. In contrast to some other Southern states, Texas never barred masters from teaching children and other slaves to read.⁷³ Hemphill's library consisted of 907 valuable volumes when inventoried in 1864, including *Don Quixote*, *Pilgrim's Progress*, *Shakespeare's Works*, the *London Quarterly Review*, and *Harper's Monthly Magazine*, along with hundreds of case books and legal treatises.⁷⁴

Reverend Richard Rust shed some light on Hemphill's warm relationship with his daughters when he supported Theodora's 1871 intervention in her father's Travis County probate estate proceeding with sworn testimony:

Mr. Hemphill...admitted [in the autumn of 1860] that Theodora and Henrietta were his children, and...treated them as his children, taking them in his arms...in his carriage to ride with him; and...fondled and kissed them...He...always treated and petted them as children.⁷⁵

⁷⁰ Barnard, *Special Report*, 319.

⁷¹ Ibid., Rev. Rust's response to Estate Administrator Chandler's Interrogatory No. 2.

⁷² (Yorkville, S.C.: Yorkville Enquirer, 1879), 47, quoted in Curtis, *John Hemphill*, 4.

⁷³ Campbell, *Laws of Slavery in Texas*, 2.

⁷⁴ F. W. Chandler, "Inventory of the Estate of John Hemphill, Deceased," Nov. 15, 1864, Cause No. 395, Probate Court Records of Travis County.

⁷⁵ Rev. Rust's answer to interrogatory No. 4, *Theodora Hemphill v. C. S. West, et al.*, Travis County District Court Records, Card 2, John Hemphill Vertical File, Austin History Center and Mary Fay Smith Papers, Clayton Library. Ibid., Rev. Rust's response to Interrogatory No. 3.

During his last visit to Wilberforce, Hemphill assured Reverend Rust that he would soon write a will to ensure that Theodora and Henrietta inherited his wealth:

The last visit [Hemphill] made to Xenia was on his way to Washington City, shortly before the Rebellion broke out. He sent for me to meet him at the Hotel in the City, for a private interview. He then stated that troublous times were ahead, & intimated that the South would separate, & dissolve the Union, that a bloody war would probably be the result. He wished me to be the guardian & protector of his children....

[H]e intended to make his will, and make provision for his children. He said that...on reaching Washington, he would confer with his legal adviser there, and make his will....[He] was very anxious to make provision for his children, lest his distant relatives, for whom he felt no interest, might claim and get his property.... [H]e intended his property should go to Theodora & Henrietta....⁷⁶

Hemphill enrolled his daughters in an ideal place to learn.

Wilberforce University resulted from the idealistic intentions of the Cincinnati Conference of the Methodist Episcopal Church and the African Methodist Episcopal Church, whose Board of Trustees included Bishop Daniel A. Payne and the abolitionist governor of Ohio, Salmon P. Chase. The Board purchased the rustic Tawawa Springs resort, hotel, several cottages and 54 surrounding acres of bucolic woods and creeks to create “a Literary Institution of a high order, for the education of Colored People and the preparation of Teachers” in co-operation with the African Methodist Episcopal Church.⁷⁷

By 1860, almost two hundred black, white, and mixed-race boys and girls were attending Wilberforce, many of them the natural children of Southern planters.⁷⁸ Xenia and several other towns in Ohio—Chillicothe, Yellow Springs, and Zanesville—attracted free African Americans in search of economic opportunity.⁷⁹ Runaway slaves and abolitionists settled there, too, and several Xenia homes became way stations on the Underground Railroad.⁸⁰ Twice a year, on Founder’s Day and Commencement Day, Xenia’s entire community walked the two miles from town to Wilberforce University to renew the school’s welcome to students like Theodora and Henrietta.⁸¹

Texas’s Constitution of 1845 compelled Hemphill, a loving father, to send his twelve-year-old daughter Theodora and ten-year-old daughter Henrietta into exile in Ohio to emancipate

⁷⁶ Rev. Rust’s answer to interrogatory No. 5, *Theodora Hemphill v. C. S. West, et al.*, Travis County District Court Records, Card 2, John Hemphill Vertical File, Austin History Center. See also Muir, *John Hemphill, Miscegenist*, 5–16.

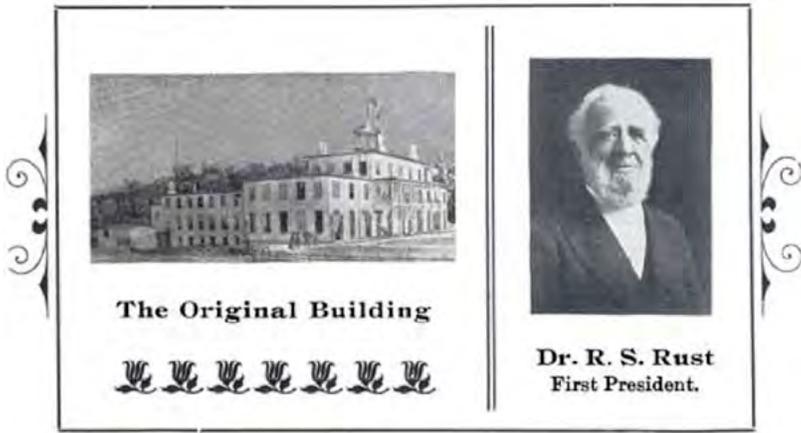
⁷⁷ Horace Talbert, *The Sons of Allen: Together with a Sketch of the Rise and Progress of Wilberforce University... 1906* (Xenia, Ohio: Aldine University Press, 1906), 264.

⁷⁸ *Ibid.*, 267–68.

⁷⁹ James T. Campbell, *The African Methodist Episcopal Church in the United States and South Africa* (New York: Oxford University Press, 1995), 260.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*, 261.



Wilberforce University's Original Building in Horace Talbert's *The Sons of Allen, Together with a Sketch of the Rise and Progress of Wilberforce University...1906*
<http://docsouth.unc.edu/church/talbert/talbert.html>

three amendments to the U.S. Constitution that empowered her to stake a claim to her inheritance in Texas. We'll examine Theodora's unorthodox response to the 1876 Constitution's introduction of segregation that sidelined her from society, leading her to declare her independence from the disabilities and discrimination Texas's Jim Crow-era lawmakers meted out to African Americans and women. Finally, we'll reflect on the ways Theodora's life affected Chief Justice Hemphill's life and jurisprudence, and the ways Hemphill and a rapidly-changing Texas constitution shaped and reshaped the life of a young African-American woman in nineteenth century Texas.

⁸² Huebner, *Southern Judicial Tradition*, 121-222; Haley, *Texas Supreme Court*, 59.



DAVID A. FURLOW is an attorney, historian, and archaeologist. He would appreciate any additional information a reader can provide about John, Sabina, Theodora, and Henrietta Hemphill.

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The Justices Devine

By Lynne Liberato

A framed display dominates the reception area leading to Justice John Devine's office at the Texas Supreme Court. The display contains a signed 1856 order allowing thousands of German nationals to settle in New Braunfels, a German "promotional" map showing in color where they were to settle, and the German Embassy's sealed authorization allowing their immigration to Texas. These documents surround a short biography of the judge who signed the order: District Judge Thomas Jefferson Devine, who went on to become a justice on the Texas Supreme Court.

Justice Thomas Devine was a Texan of mythical proportions. Appointed to the Texas Supreme Court after Reconstruction, he was twice indicted for high treason, was elected the first president of the Texas Bar, and had his name placed in nomination for governor by the 1878 Democratic convention, which he declined because of his wife's health. And judged by the great weight and preponderance of the evidence, Thomas Devine and Justice John Devine are related. It appears that both descended from five brothers of Irish descent who lived in Nova Scotia in the late 1700s and ultimately scattered across North America. The evidence points to the fact that Justice Thomas Devine was the son of one of the brothers, while Justice John Devine is the great-great-grandson of another.



Justice John Devine stands in front of the historical display outside his Supreme Court office. Photo by Lynne Liberato

"We are related in some regard but I can't prove definitively that one of the five boys that came to Nova Scotia from Ireland was kin to him," explained Justice Devine.

A history aficionado whose office is decorated with historical documents and Japanese

swords, Justice Devine has what he describes as “a lot of projects” and has not yet found time to sit down and sort out the information he has on Thomas Devine. No doubt, one day he will do so.

This we do know: The first Justice Devine arrived in Texas from Mississippi in 1844 and the second Justice Devine arrived from Indiana in 1981. Having both served as Texas district court judges, they began their tenures on the Texas Supreme Court 139 years apart.

“I came to Texas from Indiana and later assumed the same position he held,” said Justice Devine. “It’s pretty interesting—and eerily coincidental—that his life brought him to this place and my life would cross his one hundred years later.”

Only when John Devine arrived in Houston in the early 1980s to work for Shell Oil Company did he first hear of Thomas Devine. Before that, not only was he unaware of his ancestor’s significant role in the Confederacy, he had no knowledge that he even had Southern ancestors. “And to think,” said Justice Devine, “I knew nothing of the man when I lived in Indiana. My family fought for the other side.” In fact, his great grandfather, also John Devine, was captured at the Battle of Shiloh and was prisoner of war of the Confederacy.

But, once in Texas, he learned that his family fought on both side of the War. Even before he started law school at South Texas College of Law, Thomas Devine’s name started popping up. Over time, he met another “Devine,” read a genealogy produced by a distant relative and purchased the documents now hanging in his reception area. Fast forward to Justice Devine’s first day in office at the Supreme Court, when Bill Pugsley, then the executive director of the Texas Supreme Court Historical Society, showed up with a sheaf of historical papers and accounts of Thomas Devine.

Those papers showed that Thomas Devine was one of the justices appointed by Governor Richard Coke to the Texas Supreme Court at the end of Reconstruction. “He was quite remarkable in the number of things he did,” noted Justice Devine. “His opinions are brief. But, from his opinions and the accounts of his life, he appears to have had a great deal of common sense and applied the law in a practical way. That is what I try to do.”

Thomas Devine graduated from Transylvania University in 1843 and joined the Kentucky Bar before coming to Texas—first to New Braunfels and then to San Antonio, where he served as city attorney and then a district judge for ten years. Justice John Devine suspects that Thomas Devine may have developed his relationship with Confederate president Jefferson Davis when he began the study of law in the office of Truxton Davis, a prominent lawyer in Woodville, Mississippi, who may have been related to Jefferson Davis.

Before the Civil War, Thomas Devine was a member of the Secession Convention, and during the war he was the judge of the Confederate Western District of Texas and a diplomat for the Confederacy in Mexico. Like many other Texas secessionists, he fled to Mexico as the war came to an end, and like most of them, he returned before long. He shares the distinction with Jefferson Davis of being one of the only two Americans ever to be indicted twice for treason. He was imprisoned in New Orleans until the charges were finally dropped and his citizenship restored in June 1867.¹

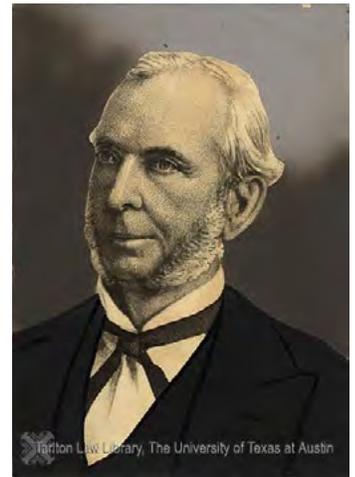
¹ James L. Haley, *The Texas Supreme Court: A Narrative History, 1836–1986* (Austin: University of Texas Press, 2013), 89.

After Reconstruction, Thomas Devine became a member of what was described as the “Redeemer Court” by Texas Supreme Court historian James Haley. The appointees “meant to restore as much of the antebellum southern ways as they could manage, short of provoking a second war.”² Each of the new justices had been prominent in the Confederacy, and Thomas Devine was no exception.

His tenure on the court was a short two years. He resigned in 1875, “owing in probably equal measure to concern for his wife’s ill health and to the remunerative prospects of successful private practice.”³ After he left the court, he continued his remarkable career. He served on the Board of Regents of the nascent University of Texas. He also was recognized as a “part of the trend toward greater professionalism and efficiency in legal practice in this period.”⁴ A group of lawyers met in Galveston in 1882 to establish the Texas Bar Association and they elected Thomas Devine as its first president.⁵ In March 1890, he died of “la grippe in a very acute form,” according to his obituary.

His obituary described him as follows: “As a lawyer he was considered in the front ranks, and as a man he was bold, open, and both physically and morally fearless. He was considered the poor man’s friend in both his official and civil capacities—patient in judicial investigation, and courteous and gentle in his manner toward all mankind.”⁶

Justice Devine is rightfully proud of his political heritage, which also includes his father John, who was the mayor of Peru, Indiana, and might have become governor of Indiana if his health had not prevented it. From both his father and Justice Thomas Jefferson Devine, public service is a Devine heritage.



Justice Thomas Jefferson Devine; courtesy Texas Jurists Collection, Tarlton Law Library, University of Texas School of Law

² Ibid., 88.

³ Ibid., 90.

⁴ Ibid.

⁵ *Texas Bar Journal* IX, no. 9 (Oct. 1946): 386.

⁶ *San Antonio Semi-Weekly Express*, March 19, 1890.



LYNNE LIBERATO is a partner in the Appellate Section of the Houston office of Haynes and Boone, LLP. She was president of the State Bar of Texas in 2000–2001 and of the Houston Bar Association in 1993–1994.

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Slavery and the Texas Revolution

By William J. Chriss

In 1821, Moses Austin obtained permission from Spanish authorities in Mexico to found an Anglo-American colony of three hundred families in Texas. Austin died before he could begin the colonization process, and his son and heir, Stephen, was forced to reconfirm in his own name the terms of his father's arrangement. The Austins had prospered in the lead-mining business in the state of Missouri, and their colonization plan always assumed that their Anglo colonists from the neighboring areas of the Upper South would bring slaves to help work the land they were to receive in Texas.¹



Moses Austin; courtesy
Wikimedia Commons



Stephen F. Austin; courtesy
Wikimedia Commons

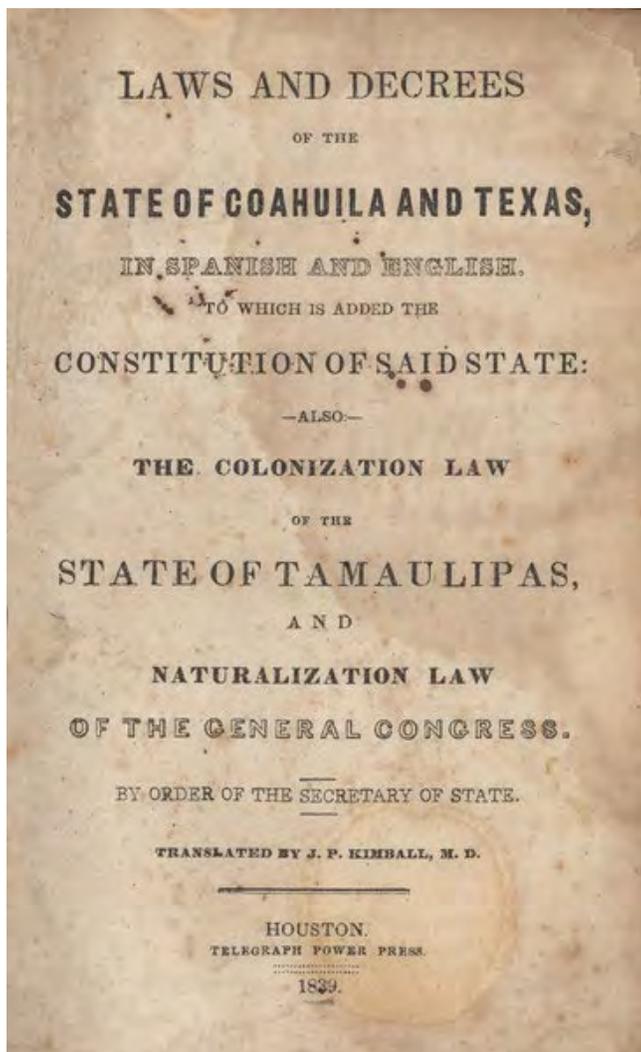
But an ideology of liberation was then sweeping the globe, unleashed by the American Revolution. Fortified by the French revolutionary experience and by anti-colonial revolts in Haiti and throughout South America, its manifestations included the Mexican Revolution, which finally culminated in Mexican independence from Spain in August 1821. As Yale historian David Brion Davis argued persuasively in the 1970s, this "Age of Revolution" cast doubt upon the continuing viability of slavery. The Republic of Mexico, for example, was born an abolitionist nation. Its earliest revolutionary leaders, Father Miguel Hidalgo and José María Morelos, both publicly connected the abolition of slavery with the independence of Mexico from Spain.²

The pro-slavery views of Austin's colonists constantly chafed at Mexican efforts toward universal emancipation. Indeed, Stephen Austin's first setback after obtaining his colonial charter was an 1822 bill in the Mexican Congress threatening to prohibit any trade or commerce in slaves and declaring that slave children born in Mexico would automatically become free at age fourteen. Before the bill could be enacted into law, Mexican president Agustín de Iturbide staged a coup, but his junta then

¹ David B. Gracy II, "Austin, Moses," *Handbook of Texas Online*, article published June 9, 2010, modified January 27, 2014, <http://www.tshaonline.org/handbook/online/articles/fau12>.

² David Brion Davis, *The Problem of Slavery in the Age of Revolution* (Ithaca, N.Y.: Cornell University Press, 1975); Randolph B. Campbell, *An Empire for Slavery: The Peculiar Institution in Texas, 1821-1865* (Baton Rouge: Louisiana State University Press, 1989), 14.

issued an imperial colonization law incorporating essentially the same terms. When Iturbide was deposed by liberals who enacted the constitution of 1824, the Mexican congress passed a new law prohibiting the slave trade altogether. Another colonization law, passed by the Mexican national congress in 1825, expressly reaffirmed the thrust of the prior laws banning the importation of more slaves and emancipating slave children once they reached age fourteen.³



1827 Constitution of Coahuila and Texas; courtesy Tarlton Law Library, University of Texas School of Law, Constitutions of Texas Collection

But far distant from the national government, the Anglo colonists of the frontier ignored its decrees, which went unenforced, and Anglo immigrants kept bringing their slaves to Texas. The liberal Mexican Constitution of 1824 was federal (anti-centralist) in nature, creating a strong new state of Coahuila and Texas, whose legislature remained in session from 1824 to 1827. One of this legislature's tasks was drafting a new state constitution, and in 1826, one article added to the proposed constitution would have immediately abolished slavery under promise of indemnifying owners. Austin soon learned of this turn of events and dispatched his brother, Brown Austin, to lobby the legislature to rescind this provision. Brown Austin brought with him petitions from his brother and other local officials pleading for the protection of slavery. As a result of these efforts and the Mexican need for labor and for Indian protection on the northern frontier, the 1827 Constitution of Coahuila and Texas dropped the immediate abolition plan, but still decreed that "from and after the promulgation of the constitution in the capital of each district, no one shall be born a slave in the state..."⁴

As they had done before, Texians responded by ignoring or circumventing the law. They converted their slaves into indentured servants for extremely long terms of years. But events soon demonstrated the precariousness of the slave owners' position. On September 15, 1829, a new president, Vicente Guerrero, issued a summary executive decree emancipating every slave within the territorial limits of Mexico. The Anglo colonists panicked. They demanded that their state officials request an exemption for Texas from the national decree. These protests were heeded by Guerrero and three months later he agreed to exempt Texas from his emancipation proclamation.

³ Sheri Marie Schuck-Hall, "Borderlands and Identities in Imperial Texas: The Alabamas and Coshattas in the Anti-Comanche Union, 1820-1840," *The International History Review* 25, no. 3 (Sept. 2003): 563, 574-75, online version, accessed October 9, 2014, <http://www.jstor.org/stable/40109399>; Campbell, *Empire for Slavery*, 15-17; Eugene C. Barker, *The Life of Stephen F. Austin* (Nashville: Cokesbury Press, 1925; reprint, Austin: Texas State Historical Association, 1949; New York: AMS Press, 1970), 202-3.

⁴ Campbell, *Empire for Slavery*, 19-22.

But by the early 1830s, Texans had good cause to fear that their involuntary labor arrangements were in peril from the national government.⁵

Mexico then promulgated the colonization law of April 6, 1830, cited by many later historians as the primary *casus belli* for the Texas Revolution. But it is often overlooked that, in addition to curtailing Anglo immigration, this statute provided that existing laws against introducing more slaves into the colony were to be “strictly enforced.” And then, in 1832, the state legislature in Saltillo cracked down on the indentured servitude dodge by setting a ten-year limitation on the length of all labor contracts.⁶

In the same year, a proslavery mob incited by William Barret Travis attacked the Mexican customs house at the port of Anahuac, where Mexican officials had given asylum to two runaway slaves from Louisiana. This hastily formed “militia” then marched to San Felipe to retrieve four cannon, but along the way they learned of Santa Anna’s “liberal” coup of 1832 that promised to reinstate the Constitution of 1824. They then adopted the Turtle Bayou Resolutions in support of his coup. Of course, the Texians would soon learn that Santa Anna was neither a liberal nor a pro-slavery man. As one historian has observed, the reason for the agitation in 1832 was the Anahuac customs collector’s “enforcement of the national law against slavery...which declared after 1829 slavery was not permitted anywhere in the republic.”⁷



Monument to the San Felipe de Austin Town Hall, where the consultations of 1832 and 1833 and the Convention of 1835 took place. Photo by David A. Furlow.

⁵ Ibid., 25–26; Barker, *Life of Stephen F. Austin*, 213–14.

⁶ Historian Paul Lack agrees that this action “helped spur a movement in Texas for separate statehood that originated in that year.” Paul D. Lack, “Slavery and the Texas Revolution,” *Southwestern Historical Quarterly* 89, no. 2 (Oct. 1985): 184–86; Campbell, *Empire for Slavery*, 27.

⁷ Campbell, *Empire for Slavery*, 29, 36–38; Margaret Swett Henson, *Juan Davis Bradburn: A Reappraisal of the Mexican Commander of Anahuac* (College Station: Texas A&M University Press, 1982), 94–95 (quote), 104–9 (events of 1832 in Anahuac). See also James L. Haley, *The Texas Supreme Court: A Narrative History, 1836–1986* (Austin: University of Texas Press, 2012), 13 and n33; and Edna Rowe, “The Disturbances at Anahuac in 1832,” *Quarterly of the Texas State Historical Association* 6, no. 4 (April 1903): 265–99. Haley seems to argue that slavery was only an instigator of these riots as an instance or example of a “general distaste for taxation” that predisposed Texians to protest the installation of Bradburn as collector of port duties at Anahuac. He describes Rowe’s article as a “traditional account of the disturbances and Henson’s as “highly revisionist.” If by this he means to imply that Rowe was closer to the true causes of the conflict than Henson, I disagree.

Anglo colonists then held a convention in October of 1832 that historians believe made a pro-slavery declaration that is no longer extant, followed by another convention in April 1833. These meetings both urged repeal of the 1830 immigration/slavery law and the separation of Texas and Coahuila as independent states within Mexico.⁸ The 1833 convention even proposed a constitution for the independent state of Texas written by a committee chaired by Sam Houston.⁹ The convention nominated Austin to carry this plea for separate statehood to the Mexican capital. Two months later, he wrote to Wiley Martin that "*Texas must be a slave country*. Circumstances and unavoidable necessity compel it. It is the wish of the people there, and it is my duty to do all I can, prudently, in favor of it. I will do so" (emphasis added).¹⁰

The Texians' petition for statehood was rebuffed. This action justified the radicalism of firebrand Anglo colonists like Travis. Their opinion was only reinforced by Santa Anna's arrest and imprisonment of Austin before he could return from his diplomatic mission.¹¹



William B. Travis; courtesy
Wikimedia Commons

Shortly after Austin's arrest, a civil war erupted within the state of Coahuila. The instability of the government and concern over civil war caused the San Antonio *ayuntamiento* to call a meeting for November 15, 1834 with other colonists from Nacogdoches and Brazoria. A few weeks later, Santa Anna made General Perfecto de Cos commander of the entire eastern portion of Mexico, and Cos delegated command of Texas to Colonel Domingo de Ugartechea. Ugartechea dispatched Captain Antonio Tenorio in January of 1835 to forcibly reopen the customs house at Anahuac, the location of the 1832 pro-slavery violence. Meanwhile, Santa Anna's Mexican Congress repealed the Constitution of 1824 and centralized the government, converting what had been states into mere provinces.¹²

The Anglos once again protested the installation of the Mexican customs inspector, and at a meeting where Travis was present, they adopted a resolution demanding the removal of Mexican troops from Anahuac. Travis then began enlisting volunteers to expel the Mexican army. On June 29, 1835, at the head of a small force with one cannon, he besieged the customs house, demanding its surrender. Captain Tenorio surrendered his arms and retreated.¹³

⁸ Stephen Austin, Address to the Convention, April 1, 1833, in Eugene C. Barker, ed., *The Austin Papers* (Washington: Government Printing Office, 1924–28), 934.

⁹ Campbell, *Empire for Slavery*, 38.

¹⁰ "Constitution or Form of Government of the State of Texas (1833)," in *Texas Constitutions 1824–1876* (Austin: Tarlton Law Library, Jamail Center for Legal Research at The University of Texas School of Law), electronic version, accessed October 11, 2008, <http://tarlton.law.utexas.edu/constitutions/text/cah3gp.html>; Barker, *Life of Stephen F. Austin*, 22–24; Campbell, *Empire for Slavery*, 38; Austin to Henry Austin, April 9, 1833, in *Austin Papers*, 953; Austin to Wiley Martin, May 30, 1833, in *Austin Papers*, 981.

¹¹ Barker, *Life of Stephen F. Austin*, 370–94; Campbell, *Empire for Slavery*, 39–41; Lack, "Slavery and the Texas Revolution," 187.

¹² Schuck-Hall, "Borderlands and Identities," 563, 577–78.

¹³ *Ibid.*; Barker, *Life of Stephen F. Austin*, 356–409.

Travis had been agitating against the central government since 1832 because of its abolitionist ideology. Travis's 1835 letters prove the extent to which he and his militia considered Mexican "tyranny," Anglo "rights," and slavery to be connected.¹⁴ In a letter to David G. Burnet, who would soon become Texas's provisional president, Travis wrote:

You have heard of the piracies and robberies committed by the dread Montezuma upon the property of our citizens! It is too much to have politically – it will not be borne...I read in a No. of the *Sol* published in Mexico, that a project has been introduced in the Genl. Congress to free all slaves in the Republic – to abolish the article of the state constitution of Coahuila y Texas, declaring colonists as citizens and abrogating that article of the Colonization Law which grants the rights of naturalized citizens as Colonists. These are alarming circumstances. The law of the 6th of April is again to be renewed – indeed we stand or fall now by ourselves. I hope we may be united. The political chief Dr. Miller recommends a convention of the whole people, by means of delegates to devise measures of safety –.¹⁵

Days after the June 1835 hostilities in Anahuac, Ben Milam of San Antonio de Bexar called the Texians to arms to defend their "domestic institutions" from the invading Mexican army. Writing a hundred miles west of Travis's location in Anahuac, Milam described what he saw as Mexico's real intentions:

Their intention is to gain the friendship of the different tribes of Indians; and, if possible, to get the slaves to revolt (emphasis added).¹⁶

Three months later and several leagues to the east of San Antonio de Bexar, Gonzales militiamen fired on Mexican cavalry detachment sent by General Cos to retrieve two cannons previously provided the settlers for defense against Indians. The psychological connection between Indian savages, Negro slaves, and the Mexican authorities who threatened to free them to topple the Anglo-Texians' precarious local hegemony was clear to Milam, Travis, and other Texans who would be martyred in the cause of independence. The Texas Revolution had begun.

Reviewing the sequence of events that culminated in Texas independence compels the conclusion that the right to own slaves was at least one of the principal rights Anglo-Texians fought to protect. It was a right deemed important enough to be enshrined in the 1836 Constitution of the Republic of Texas, which provided that:

Congress shall pass no laws to prohibit emigrants from bringing their slaves in to the republic with them, and holding them by the same tenure by which such slaves were held in the United States; nor shall congress have the power to emancipate slaves; nor shall any slave holder be allowed to emancipate his or her slave or slaves without the consent of congress.¹⁷

¹⁴ William B. Travis to David G. Burnet, February 6, 1835, in Jenkins, *Papers of the Texas Revolution*, vol. 1, 100.

¹⁵ Travis to Burnet, May 21, 1835, in *ibid.*, 121–22.

¹⁶ Ben Milam to Francis Johnson, July 5, 1835, *Austin Papers*, 83. The Matagorda Safety Committee voiced the same concerns: "being advised that danger is apprehended from the slave population on the Brazos, the Committee recommends...adoption of prompt measures to prevent in our section both alarm and danger." Matagorda Safety Committee Resolutions of 1835, in *Austin Papers*, 143.

¹⁷ General Provisions, Section 9, Constitution of the Republic of Texas (1836), in *Texas Constitutions 1824–1876*, Tarlton Law Library, Jamail Center for Legal Research, accessed October 11, 2008, <http://tarlton.law.utexas.edu/constitutions/text/cah3gp.html>; Campbell, *Empire for Slavery*, 47.

It was not deemed sufficient to prohibit abolition by the government. Even the possibility of a master emancipating his own slaves was declared an illegal threat to the social order. Stephen Austin and his compatriots had indeed vindicated the ideal that “Texas must be a slave country.”



WILLIAM J. CHRISS, of counsel to *Gravely & Pearson, L.L.P.*, is a practicing trial and appellate lawyer with offices in Austin, San Antonio, and Corpus Christi. He serves on the Texas Pattern Jury Charge Committee and the Appellate Law Section Council and Insurance Law Section Council of the State Bar, serves as editor-in-chief of *The Journal of Texas Insurance Law* and coeditor of *The Appellate Advocate*, and was recently elected a member of the American Law Institute, publisher of the Restatement. He holds graduate degrees in law, theology, history, and politics, including a J.D. from Harvard Law School and a Ph.D. in History from The University of Texas, where he studied under the acclaimed American historian, H.W. Brands.

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Celia's Manumission and the Alcalde Court of San Felipe de Austin

By Michael Rugeley Moore

"Retained by Celia—a free woman of colour to defend her in matter of her freedom"

William Barret Travis, a young attorney in San Felipe de Austin, noted his new client in the December 6, 1833 entry in his daily journal. Almost two years after having been emancipated, Celia still had to fight to keep her freedom. Another year would pass before the issue was finally settled. While largely forgotten to history, Celia's story has been retold generation by generation among her descendants who continued to live in the San Felipe area. The defining event that changed this family's history occurred in March 1832 in the Alcalde's Office in San Felipe de Austin.

Celia stood inside the small log cabin that served as the town hall, gathered around by her four children, all under the age of seven. The thirty-nine-year-old Celia had no last name, being a slave and the property of others. Standing beside Celia was John M. Allen. A dozen years younger than Celia, Allen was the "master and owner" of her and her family. They all stood in front of Alcalde Horatio Chriesman, the local face of constitutional government in Mexican Texas. Elected for the 1832 term for the Municipality of San Felipe de Austin, Chriesman served as both the president of the town council—the *Ayuntamiento*—and judge for the *Juzgado*, or municipal court.



Seal of the *Juzgado* of the Municipality of Austin; courtesy Yale Collection of Western Americana, Beinecke Rare Book and Manuscript Library

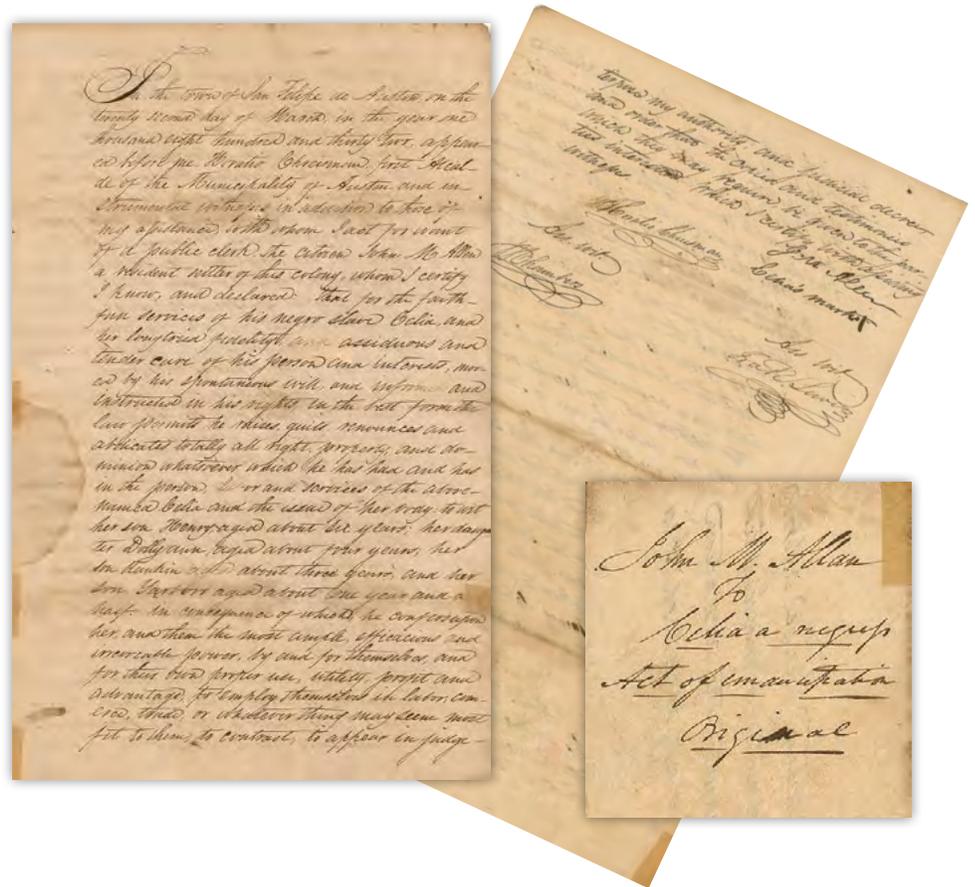
Allen reached out and placed his hands on Celia and her children, symbolizing his dominion over them. He told Chriesman that he wished to emancipate this family because of Celia's "longtried fidelity" and the "assiduous and tender care" she had provided to him. As he spoke he withdrew his hands from them, breaking the bond "in token of true and perpetual emancipation." Celia addressed the Alcalde to accept the manumission, and paid to Allen "the tribute of the most grateful thanks" for the "boon which her master makes to her and her children." With this ceremony, Celia and her children—Henry, Dollyann, Rankin and Yarboro—were free.¹

The act of emancipation did not require the approval of the Alcalde—or any other legal authority in Mexican Texas. Yet, Allen performed this ceremony in the Alcalde's presence to add "official approbation and authority to give the act the greatest possible solemnity, firmness and

¹ Act of Emancipation, March 22, 1832, Rudin Slavery Collection, Cornell University Library.

validity.”² To further protect Celia’s rights as a free person of color, Allen’s attorneys were present in the room and had prepared an instrument to more fully define the act of manumission. Ira R. Lewis and his law partner, Thomas Jefferson Chambers, had drafted the document, specifying in detail Allen’s abdication of all “right, property and dominion” he had to the “person, labor and services” of Celia and the “issue of her body.”³ The instrument also listed the rights conveyed to Celia and her children “to employ themselves in labor, commerce, trade, or whatever thing may seem most fit to them,” to contract, to appear in judgment, administer property, sue in court, and “generally to do whatever a freeman might lawfully do.”⁴ Allen signed the document formalizing the manumission, as did Celia for herself and her children by providing her “mark.” Witnessing the instrument were two citizens of the community and the two attorneys, Lewis and Chambers.⁵

Celia’s manumission in March 1832, however, was not as final as the document would suggest. Her freedom was contested for the next several years, not on the issue of a slave owner’s legal right to manumit, but on the question of whether John M. Allen was in fact her owner. As the case passed through various stages of its legal process, Celia’s quest for freedom encountered some of early Texas’s most prominent lawyers and judges, and illustrates the workings of the judicial system in Mexican Texas.



Act of Emancipation, March 22, 1832; courtesy Rudin Slavery Collection, Cornell University Library

Questions regarding Celia’s ownership were tied to the finances of the San Felipe business partnership of Baker Larkin, Laughlin McLaughlin, and John M. Allen. The three had moved westward in two groups from Lawrence County, Mississippi, bound for Austin’s Colony. McLaughlin arrived by the end of 1829, with the two other partners meeting him in San Felipe by February 1830.⁶ Celia and her three young children likely accompanied Larkin and Allen’s immigration to Texas.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Michael Rugeley Moore, “Regulation Double Log Cabins”: *The Built Environment of Colonial San Felipe de Austin*, report on file, Texas Historical Commission, Austin, 2014, 318–20.

Celia and her children were brought to Mexican Texas during a time of conflicting laws and practices that confused the legal status of slavery.⁷ Prospective colonists frequently wrote Stephen F. Austin or searched letters from Texas in their local newspapers to understand whether slaves could be brought to Texas. F. S. Mayes accurately summarized the situation in a letter to the *Mississippi Democrat*: “As to the law in relation to slavery, the Constitution forbids it, but says all contracts made between the master and servant shall be valid; therefore it is best to take their indentures before a justice or notary public.”⁸ Many slaves came to Texas as “indentured servants” by this process. A few weeks after the migration of Celia, Mexico passed the restrictive Law of April 6, 1830 that threatened to end immigration to Texas—by masters and slaves alike—until Austin was able to gain exemption for his colony.⁹

Larkin, McLaughlin, and Allen brought merchandise as well as Celia’s family from the United States. Settling in San Felipe, they purchased a boarding house and store building in the spring of 1830. The boarding house had been formerly operated by Joseph White as the Farmer’s Hotel, located just off the town’s center at Commerce Plaza. Baker Larkin died in November 1830, and the two remaining partners continued to expand their businesses. Acquiring an adjoining lot, the partners built a large outdoor brick bake oven. While Allen focused on merchandising, McLaughlin operated the bakery. The former Farmer’s Hotel was the residence for the partners, their hired helpers, and Celia and her family. She was a “good house servant” who cared for all of these men in the household, served as a washwoman, and additionally helped McLaughlin at the bake oven.¹⁰ They baked pilot bread, wheat bread, corn bread, cakes, and confections utilizing cranberries, raisins, sugar, and molasses. The partners also apparently had a grist mill, and ground corn into meal, some of which they sold and some they baked in their oven.¹¹



Left: An early nineteenth century bake oven; right: a log cabin home in 1835; author’s collection

⁷ 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS, 1822-1897*, at 188-89, 202, 213, 423-24 (Austin: Gammel Book Co. 1898).

⁸ *The Mississippi Democrat*, February 12, 1831.

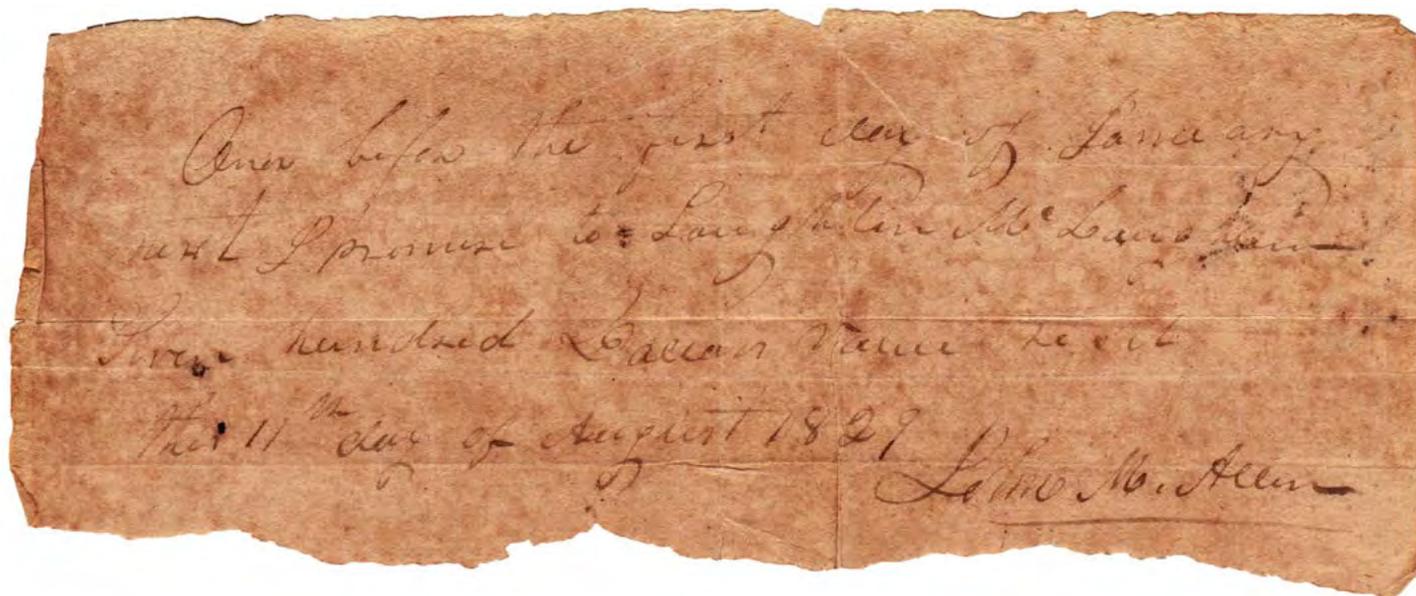
⁹ Randolph B. Campbell, *An Empire for Slavery: The Peculiar Institution in Texas, 1821-1865* (Baton Rouge: LSU Press, 1989), 22-29.

¹⁰ Case Papers, *James B. Miller, Adm. v. John M. Allen*, Austin County Courthouse.

¹¹ Moore, *Regulation Double Log Cabins*, 316-20, 329-30.

Partners McLaughlin and Allen came into conflict in their second year of business, and dissolved their connection in September 1831. They partitioned their real estate, including the houses, store, outbuildings, and bake oven. Some of the properties were owned individually, and some jointly, making the division of the business complicated, and much remained unsettled in the spring of 1832. Celia proved to be a particular point of conflict between the two partners, with each claiming to own her and her children.

A promissory note for \$700 executed by John M. Allen to Laughlin McLaughlin on August 11, 1829 proved to be the source of the conflicting claims of ownership. The note had been executed in the United States prior to the partners' move to Texas, and affected the ownership of Celia. Determination of the validity and intent of this note—and the related question of Celia's ownership—would occupy several years of legal process.



Promissory note, 1829; Austin County Courthouse, photo by the author

After the September 1831 split of his business with McLaughlin, John Allen determined to manumit Celia and her children. He appeared before Alcalde Horatio Chriesman to express his wish to do so, but was opposed by his former partner. McLaughlin "said the girl had been his and had not yet been paid for. Allen said if he owed any thing for her he could pay for her." McLaughlin's opposition to Celia's manumission "become notorious" and the act "was not passed for some time after it was written."¹² McLaughlin's personal opposition to freedom for Celia ended in the spring of 1832, when he was killed in an accident at the pitsaw that adjoined the bake oven. McLaughlin's administrators and attorneys, however, continued to pursue the case in the courts for several years.¹³

Allen retained San Felipe attorneys Ira R. Lewis and Thomas Jefferson Chambers to draft the document that would emancipate Celia's family. Lewis and Chambers had established their partnership in late 1831, occupying a small office one block south on Guadalupe Victoria Street from where Celia labored at the bake oven.¹⁴ Educated in Ohio, Lewis had studied law under

¹² Case Papers, *James B. Miller, Adm. v. John M. Allen*, Austin County Courthouse.

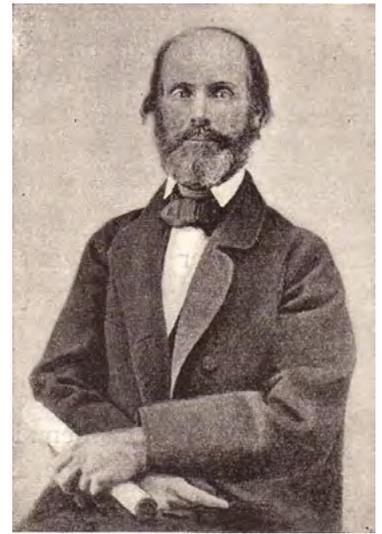
¹³ Moore, *Regulation Double Log Cabins*, 319, 327–30.

¹⁴ *Texas Gazette*, February 18, 1832, 3, Yale Collection of Western Americana, Beinecke Rare Book and Manuscript Library; Moore, *Regulation Double Log Cabins*, 115.

Nicholas Longworth, a prominent Cincinnati attorney. He married at an early age, and moved to Mississippi, and then Louisiana, to manage plantations inherited by his wife.¹⁵ By 1830 he had explored Texas, and he returned with this wife and four young daughters in early 1831. By late that year he had established himself as an attorney in San Felipe.¹⁶

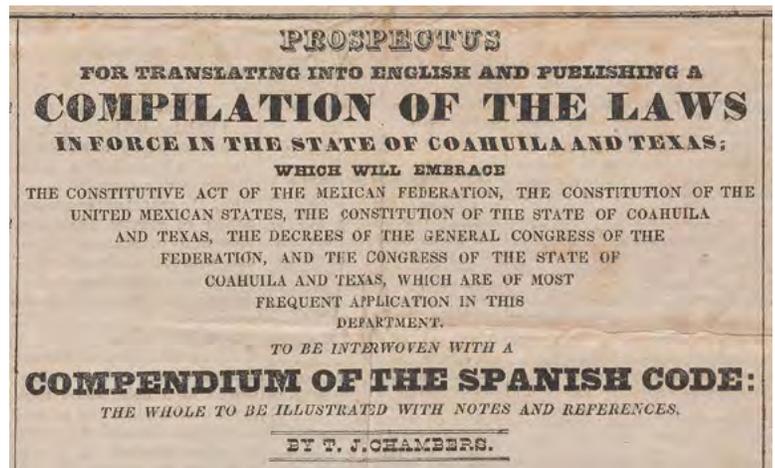


LAW.—THOMAS JEFFERSON CHAMBERS and IRA R. LEWIS, having associated themselves together in the practice of their profession and as public agents, will attend to business in any part of this republic to which they may be called. They hope, by this arrangement, to render more effectual services to their clients, as, if they should believe that justice had not been done them in the first instance, it will enable one of them to appear in person before the Supreme Tribunal of the State. One of them will always be found at their office in this place. (Translations from the Spanish, French and Italian languages will be made, and every class of documents in English or Spanish.)
Villa de Austin, December 27, 1831.



Ira R. Lewis (left, courtesy private collection) and Thomas Jefferson Chambers (right, author's collection) announced their law partnership in the *Texas Gazette* (center, courtesy Yale Collection of Western Americana, Beinecke Rare Book and Manuscript Library)

T. J. Chambers arrived in San Felipe after six years spent in Mexico City and Saltillo learning the Spanish language, legal customs, and surveying skills. During that time, Chambers became a naturalized Mexican citizen and was appointed as Surveyor General of Texas. After his sojourn in San Felipe, he became the first foreigner to hold a Mexican law license, and in 1834 would be named the first Superior Judge for the Judicial Circuit of Texas.¹⁷ During his San Felipe residence, Chambers began work on a translation and publication of the laws of Coahuila and Texas. In February 1832, he published a lengthy *Prospectus* for his book in the *Texas Gazette*. His ambitious undertaking, anticipating a 600- or 700-page volume, would be printed if sufficient subscribers could be committed at \$25 each.¹⁸ Leaving his volume unfinished—perhaps barely even begun—Chambers returned to the capital of Coahuila and Texas and applied his legal mind to drafting a



Preamble to Chambers's prospectus for his *Compilation of the Laws in Force in the State of Coahuila and Texas*; courtesy Yale Collection of Western Americana, Beinecke Rare Book and Manuscript Library

¹⁵ John Henry Brown, *Indian Wars and Pioneers of Texas* (Austin: L. E. Daniell, c.1896), 176–77.

¹⁶ Villamae Williams, *Stephen F. Austin's Register of Families* (Baltimore: Genealogical Publishing Company, 1984), I:103.

¹⁷ Thomas W. Streeter, *Bibliography of Texas, 1795–1845* (Cambridge: Harvard University Press, 1955), pt. I, vol. 1, 32–34.

¹⁸ *Texas Gazette*, February 18, 1832, 3.

new judicial system for Texas.¹⁹

Despite the keen legal minds that drafted Celia's manumission, she lived for several years with the prospect of a return to slavery hanging over her head. The legal question hinged on Allen's ownership of Celia, and whether he had the right to free her.

After McLaughlin's death in the pitsaw accident, Alcalde Chriesman appointed Dr. James B. Miller as administrator of his succession. The economy in Austin's Colony was largely based on credit and debt—accounts maintained by merchants for purchases from their stores, mortgages on real estate, and handwritten promissory notes secured all types of debts for goods and services. Virtually no currency or specie circulated in the economy. The death of a resident began a probate process to settle the financial affairs of the deceased. An administrator was appointed by the Alcalde, an inventory conducted, and sufficient property sold at public auction to pay off the debts of the estate before heirs were allowed to receive their legacies.

McLaughlin's administrators sold property belonging to the estate in June 1832, but were not able to promptly collect on all of the debts owed to McLaughlin. In the early months of 1833, administrator James B. Miller pressed for payment from a variety of individuals in the Alcalde Court presided by Luke Lesassier, who had replaced Chriesman at the beginning of the year. Most debtors to the estate confessed judgment and paid or settled by arbitration. Yet, John M. Allen gave no satisfaction on the \$700 promissory note.²⁰

Early in 1833, Miller retained attorney William H. Jack to sue Allen for payment. Jack was one of San Felipe's "distinguished" lawyers, "one of the ablest at the Texas bar."²¹ He had received a university education in Georgia, and served in the state legislature in Alabama prior to his move to San Felipe in 1830. Jack kept his law office on the western edge of San Felipe, midway between the Alcalde's Office downtown and the Land Office located near the homes of Samuel May Williams and Stephen F. Austin.²²

Responding to a petition filed by W. H. Jack on Administrator Miller's behalf, Alcalde Lesassier commanded the sheriff to summon John M. Allen to appear on January 26, 1833. One month later, Lesassier cited Allen to appear on February 22nd, "to conciliate by means of arbitrators" the demand against him made by Miller. When Allen failed to appear a second time, Lesassier certified that Miller had met the requirement for a plaintiff to use "the necessary means to effect a conciliation according to the law."²³

These procedures reflected Decree No. 39 of the State of Coahuila and Texas, which was approved on June 21, 1827 to guide the operation of the judicial system.²⁴ The Alcalde Court in

¹⁹ O. M. Roberts, "The Chambers' Jury Law of 1834 for Texas," Musquis Collection, Yale Collection of Western Americana, Beinecke Rare Book and Manuscript Library.

²⁰ Alcalde Court Docket D (1832–1833), pp. 169–71, 182–84, 187, 193–99, 209–10, 215. Docket Book D survived among the archives of the Municipality of Austin until the mid-twentieth century, but is now in private hands. Recent attempts to purchase or recover the volume have to date been unsuccessful.

²¹ James D. Lynch, *The Bench and Bar of Texas* (St. Louis: Nixon-Jones Printing Co., 1885), 198.

²² Moore, *Regulation Double Log Cabins*, 178–79.

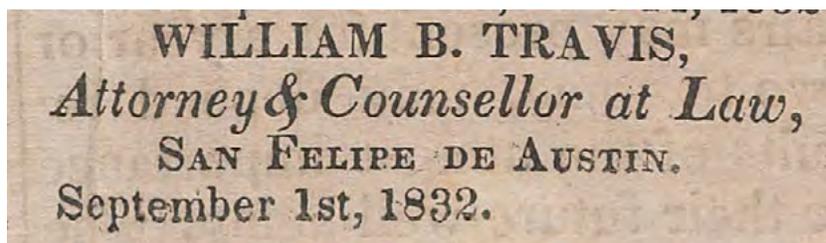
²³ Case Papers, *James B. Miller, Adm. v. John M. Allen*, Austin County Courthouse.

²⁴ 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS, 1822–1897*, at 170 (Austin, Gammel Book Co. 1898); Streeter, *Bibliography of Texas*, pt. II, vol. I, 47–48.

San Felipe had received notice of this law by March 1828, adopting its provisions to replace the provisional “Civil Regulations” put in force by Stephen F. Austin during the early days of the Austin Colony courts system.²⁵ The 1827 code emphasized arbitration prior to trial. Each party would nominate “his *hombre bueno* or good-man,” forming with the Alcalde a trio to consider the case and decide by a majority of the three votes. If a defendant ignored two citations to appear, the Alcalde was to provide “a certificate of having attempted the conciliation, and not having effected it for failure of the defendant.”²⁶ Decree No. 39 was in force as the judicial system for Texas until revised by Decree 277 in 1834.²⁷

Having met the arbitration prerequisite, McLaughlin’s administrator James B. Miller petitioned Alcalde Lesassier for a trial on debts owed by Allen to the estate, which amounted to more than \$1,300. Included in the amount was the \$700 due on the 1829 promissory note for Celia. Lesassier had Sheriff Frank Adams serve yet another summons on Allen, ordering the defendant to appear on March 11, 1833 in the case of *James B. Miller v. John M. Allen*.

Allen did not have to look far to find an attorney to defend him. Within shouting distance of his home was the office of William Barret Travis, who occupied a structure rented from merchant Walter C. White.²⁸ The twenty-one-year-old Travis briefly stopped in San Felipe when he first moved to Texas in May 1831, but soon moved to the port of Anahuac. There he and Patrick C. Jack—brother of San Felipe attorney William H. Jack—ran afoul of Mexican customs officials. Their fifty-day incarceration in the summer of 1832 set off a small rebellion that resulted in several skirmishes between the colonists and Mexican troops before negotiations calmed the air. After being released in early July, Travis left Anahuac and moved to San Felipe de Austin to establish a law office.²⁹ By September 1st he proudly posted his business card in the newspaper announcing



William Barret Travis (courtesy Texas State Archives) and Travis’s law notice (courtesy Yale Collection of Western Americana, Beinecke Rare Book and Manuscript Library)

²⁵ Thomas M. Duke to Ramón Músquiz, March 17, 1828, Bexar Archives, Briscoe Center for American History; Stephen F. Austin, *Translation of the Laws, Orders, and Contracts, on Colonization* (San Filipe [sic] de Austin: Godwin B. Cotten, 1829), 16, 60–64.

²⁶ David B. Edward, *History of Texas* (Cincinnati: J. A. James, 1836), 160–62.

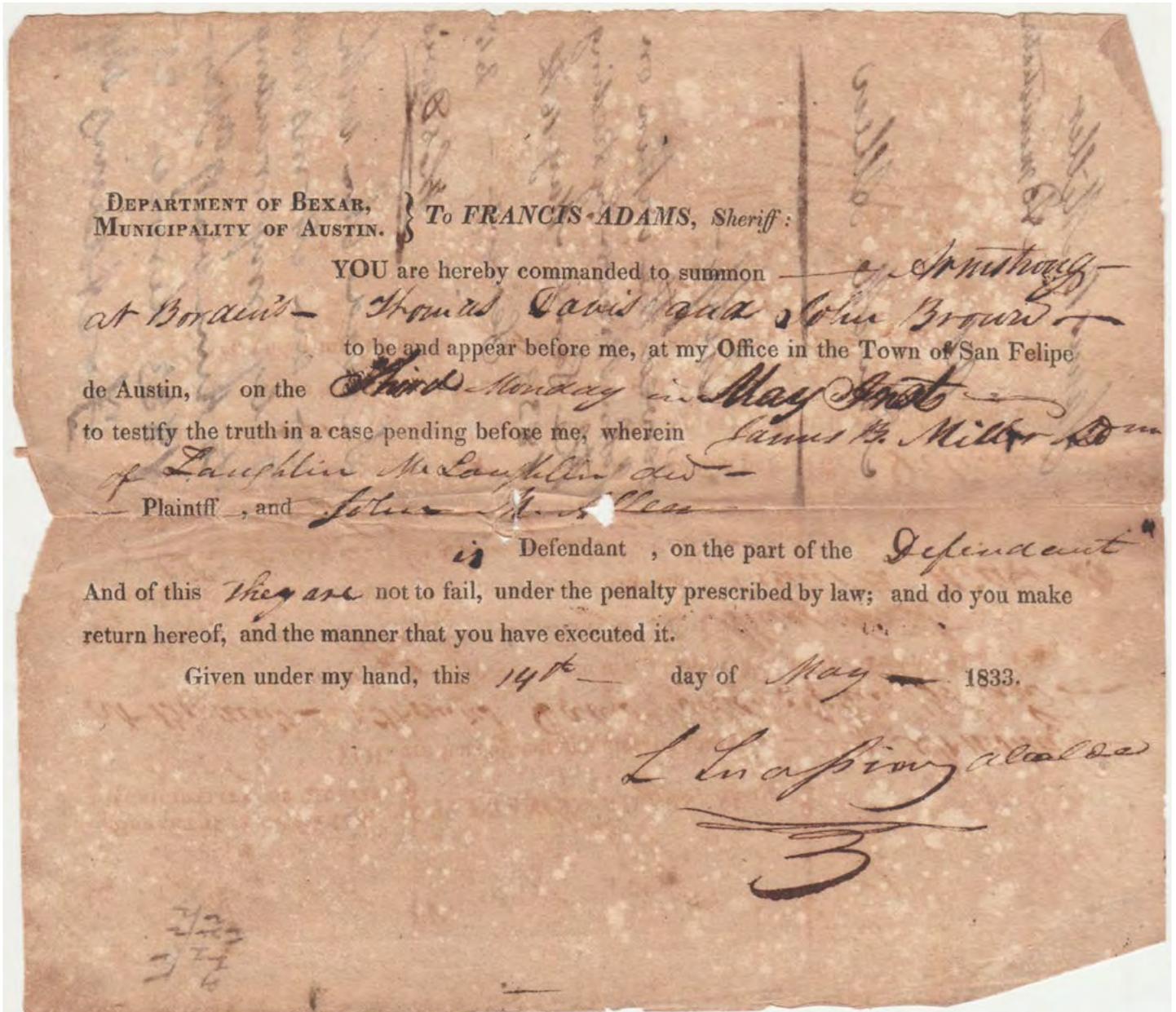
²⁷ John C. Townes, “Sketch of the Development of the Judicial System of Texas,” *Quarterly of the Texas State Historical Association* 2, no. 1 (July 1898): 33–36; *Clements et al. v. Texas Co. et al.*, 273 S.W. 993 (Tex. Civ. App. 1925).

²⁸ Moore, *Regulation Double Log Cabins*, 293, 311–14.

²⁹ William C. Davis, *Three Roads to the Alamo* (New York: HarperCollins, 1998), 262–74.

his law practice in the Colony capital.³⁰ By the spring of 1833 when John M. Allen retained the now twenty-three-year-old Travis, he had taken in Ephraim Roddy as his law partner.

No action took place on Miller's petition complaining of John Allen in March or April. On May 13th, William Barret Travis filed a written answer on behalf of Allen. On the question of the \$700 note, Travis argued that the note was not valid, since it was made in the United States and was not enforceable in the Republic of Mexico. Moreover, Travis asserted that the note had been fraudulently obtained, as it was not the intention of the parties that it ever should be paid. Finally, rather than Allen's being in debt to McLaughlin, Travis calculated that McLaughlin's estate, in fact, owed his client more than \$1,100. Alcalde Lesassier set a court date for the next Monday, May 20th, and had Sheriff Adams begin serving notices to witnesses to appear.



Summons of witnesses, May 14, 1833; Austin County Courthouse, photo by the author

³⁰ *The Constitutional Advocate and Texas Public Advertiser*, Brazoria, Tex., November 14, 1832, p. 3, Yale Collection of Western Americana, Beinecke Rare Book and Manuscript Library.

On the day of trial, William H. Jack first presented the “Plaintiff’s Proof,” consisting primarily of the \$700 note related to the ownership of Celia, another note of \$111 due from Allen, and an account due from Allen resulting from the settlement of the McLaughlin & Allen partnership.

Travis’s “Defendant’s Proof” consisted of live and written testimony asserting Allen’s position that McLaughlin did not intend to ever collect on the \$700 promissory note. One witness said that McLaughlin had received the note to “protect the aforesaid Negro woman Celia & her children from being taken by his Creditors in the United States.” While the words “by his Creditors” was stricken from the evidence, this testimony suggests that the promissory note was either a subterfuge to foil McLaughlin’s creditors or related to the separate migrations by Allen and McLaughlin that may have separated Celia from her owner—providing a guarantee that the two partners and their co-owned slaves would all end up in Texas. Witnesses also testified about the partners’ business affairs and the conflict that resulted in the dissolving of their interests in 1831. Two of the parties to Celia’s manumission the previous year also testified on behalf of Allen. Horatio Chriesman and Ira Lewis, who had participated in Celia’s manumission as Alcalde and attorney, respectively, gave evidence of Allen’s efforts to emancipate Celia and her family, and of McLaughlin’s opposition.³¹

No decision resulted from the testimony in the case, and the next month saw Miller’s resignation as administrator for McLaughlin’s estate. William H. Jack was named by Alcalde Lesassier to serve in his stead. William Barret Travis took a break from serving as Allen’s attorney to be retained by his opposing counsel, W. H. Jack, to write Jack’s bond and appointment for Jack to take on the administration of the estate.

Three days after Jack’s appointment, Travis mustered more evidence for the defense. He had the court issue a summons for John W. Moore, James Haggard, and Thomas McQueen for additional evidence on the debts at issue. Written testimony from these was received by June 20, 1833. But then the case stalled. There is no evidence of any action from June 1833 until November 1834 on the case of what was now termed *William H. Jack, Admr. v. John M. Allen*.

Jack apparently opened a different front to the legal battle in late 1833. Rather than trying to recover the \$700 debt, Jack apparently sought to recover Celia herself. No court filings exist on the case, but William H. Jack billed the McLaughlin estate \$25 for his fees in the case of “Admr vs. Cely woman of colour.”³² Travis recorded in his diary on December 6, 1833 that he had been “Retained by Celia—a free woman of colour to defend her in matter of her freedom.” In his journal four days later, Travis repeated his participation in the case: “Girl Celia vs Wm H. Jack—retained for Deft—&c.” Travis reversed the order of the parties in this second journal entry, making it seem like his client was Jack as defendant, rather than Celia. Celia promised to pay whatever fees Travis would charge, which would be covered by the merchant Alexander Somervell. Travis wrote a power of attorney for her to either George or William P. Huff. The next day, December 11th, Travis recorded in his journal that the case had been dismissed. Four months later, Travis received \$5 from Celia, presumably payment of his fees in the case.³³

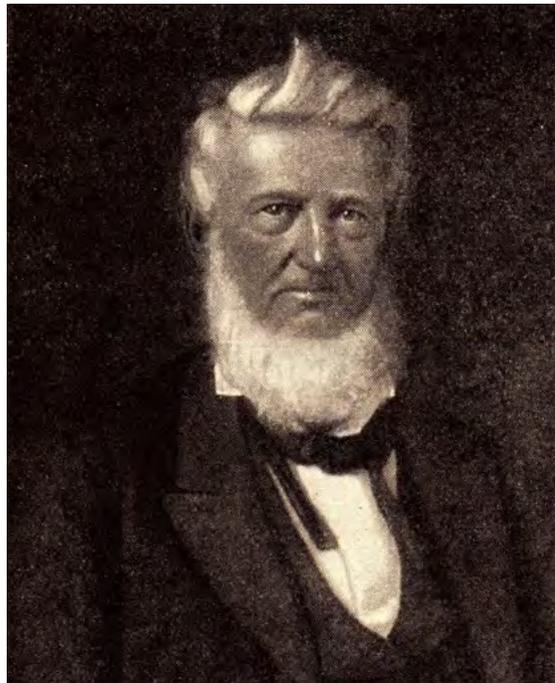
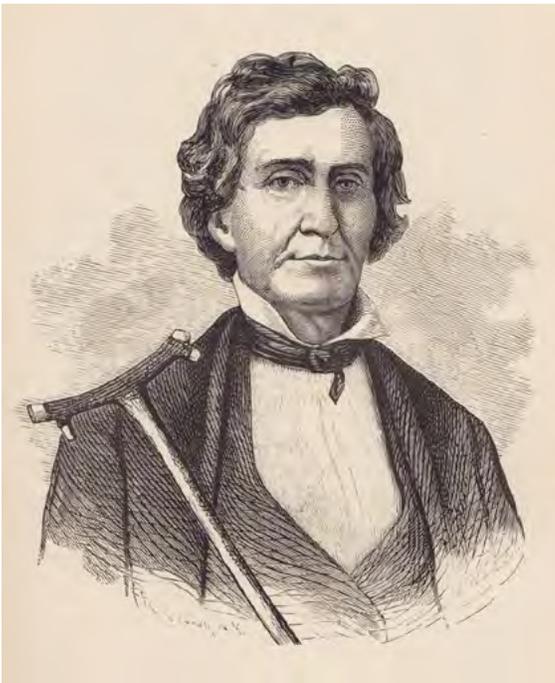
Thwarted in the attempt to recover Celia as payment on the debt, William H. Jack continued to press the case against John M. Allen. This next phase of the court case came during a period

³¹ Case Papers, *James B. Miller, Adm. v. John M. Allen*, Austin County Courthouse.

³² Colonial Succession Record of Laughlin McLaughlin, Austin County Courthouse.

³³ Robert E. Davis, ed., *Diary of William Barret Travis* (Waco: Texian Press, 1966), 86–88, 158.

of changes to the Texas courts. The state Congress of Coahuila and Texas passed Decree No. 262 in March 1834, which created a system of Primary Courts to replace the Alcalde Courts.³⁴ The Ayuntamiento of Austin met on April 28th to implement the provisions of Decree No. 262, nominating four candidates for the judicial post. William Barret Travis, named in February as Secretary of the Ayuntamiento, was tasked with facilitating the formation of the court.³⁵ David G. Burnet was Travis's preferred choice for the judgeship, and Travis felt he had been "instrumental" in getting his name to the top of the list. After the June meeting of the Ayuntamiento, Travis could formally write Burnet to appoint him to the office.³⁶ The transition to the new court occurred quickly. Alcalde R. M. Williamson was still approving filings to his Alcalde Court on June 12th. The next day Burnet was installed as Primary Judge—or Judge of the First Instance, as it was also known—and immediately took over jurisdiction on the cases. The first session of the Primary Court convened on Monday, June 16, 1834.³⁷



Alcalde R. M. Williamson (left) and Primary Judge David G. Burnet; author's collection

Despite the creation of the new Primary Court, W. H. Jack's case against John Allen for the \$700 debt related to Celia did not proceed promptly. The case languished for a year after William Barret Travis's defense of Celia's freedom in the Alcalde Court. Finally, the suit was scheduled to be heard before Judge Burnet's court on December 30, 1834. Witnesses were summoned and the attorneys again prepared their cases. Two jury statements are all that survive from that day's court proceedings. The twelve jurors on one statement told the court that they could not reach a verdict and asked to be dismissed. A second statement, presumably written after the judge instructed them to continue deliberating, found for the defendant, John M. Allen. The jury concluded that the \$700 note given by Allen in 1829 was not recoverable, and that the defendant was to be paid \$28.88 plus the costs of the suit. The dozen jurors signed the statement, beginning with Horatio Chriesman, who

³⁴ 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS, 1822–1897*, at 347–50 (Austin, Gammel Book Co. 1898).

³⁵ Davis, *Diary of William Barret Travis*, 124, 159, 182–84.

³⁶ Mary Whatley Clarke, *David G. Burnet* (Austin: Pemberton Press, 1969), 47.

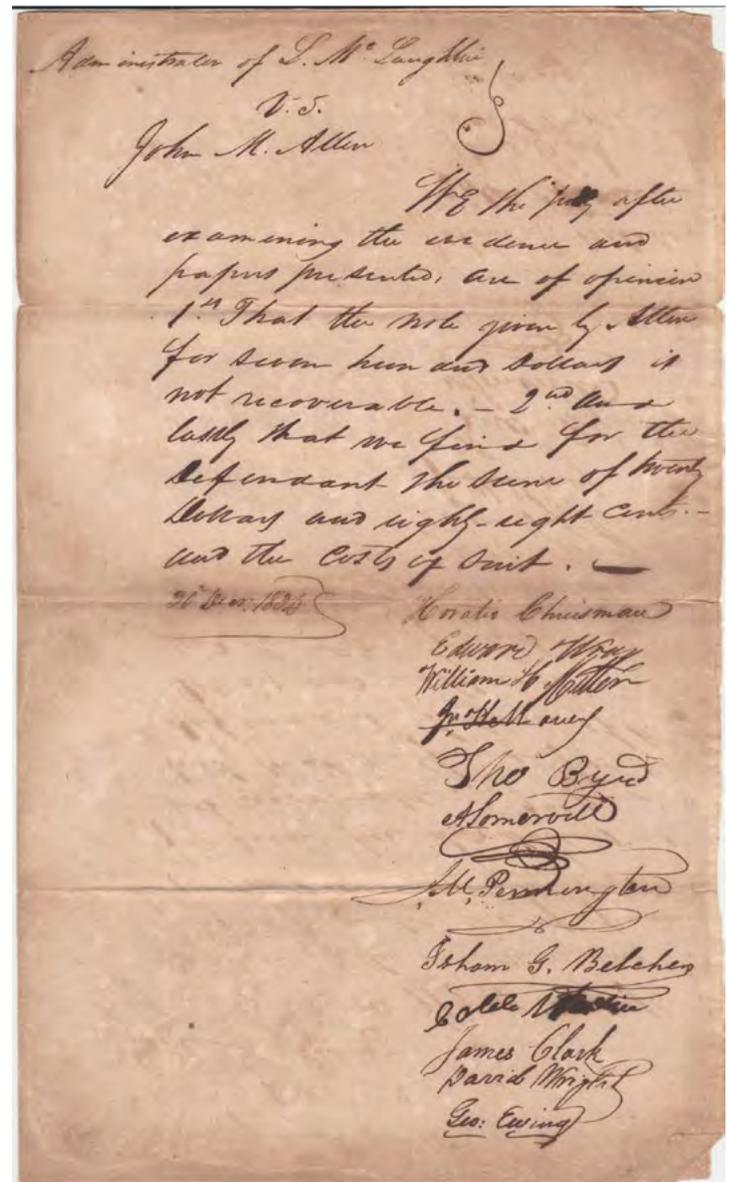
³⁷ Colonial Succession of John Dunlevy, Austin County Courthouse.

had been Alcalde when the drama first began with Celia's manumission in March 1832.³⁸

The legal case ended with more of a whimper than a bang; the December 1833 suit against Celia personally was probably the last direct threat to her freedom. The jury's decision a year later likely only saved her former owner from paying her value to his former partner's estate. The verdict not only decided the legal case, but sheds some light on changes in the Texas legal system in the 1830s.

While Decree No. 262 formed the Primary Courts in 1834, it did not provide a system of procedures for the court to follow. The state legislature provided that guidance six weeks later, passing Decree No. 277 on April 13, 1834. This act, subtitled "A Plan, for the better regulation of the administration of justice in Texas," resulted from the advocacy of Thomas Jefferson Chambers. This act created a "Superior Judicial Circuit of Texas" with appellate jurisdiction from the Primary Courts in each of the three districts of Texas, including the District of Brazos centered at San Felipe de Austin.³⁹ Chambers was appointed as the first Superior Court Judge provided by that law, but never convened a court session. Because of this, it is commonly asserted that Decree No. 277 failed to be implemented. Many follow Law Professor John C. Townes's conclusion that "this first attempt to establish a Texas judicial system was of little, if any, practical effect."⁴⁰

But Decree No. 277 had a second major focus, providing specific procedures for the operation of the primary and superior courts. A significant provision expanded the use of jury trials. Juries of seven members had been previously specified for criminal cases in the Alcalde Courts. Decree No. 277 expanded the number of jurors to twelve, and extended their role to civil causes as well. In fact the law was generally known as the "Chambers Jury Law."⁴¹ Although he never convened a court, Chambers did travel to San Felipe in October 1834 to implement the law. He wrote lengthy letters to Judge Burnet as Primary Judge and to the political leaders of the Department of the Brazos



Jury verdict (right), December 30, 1834; Austin County Courthouse, photo by the author

³⁸ Case Papers, *W. H. Jack Adm. v. John M. Allen*, Austin County Courthouse.

³⁹ 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS, 1822-1897*, at 364-66 (Austin, Gammel Book Co. 1898).

⁴⁰ Townes, "Sketch of the Development of the Judicial System of Texas," 2:38.

⁴¹ O. M. Roberts, "The Chambers' Jury Law of 1834 for Texas," Musquis Collection, Yale Collection of Western Americana, Beinecke Rare Book and Manuscript Library.

recounting his struggles to organize the judicial circuit despite political upheaval in the State Capital of Monclova.

Chambers had more success in putting the act into effect than has been realized. He instructed Primary Judge Burnet in October 1834 to “regulate yourself in your judicial acts by the law of the 17th of April,” meaning Decree No. 277.⁴² There is evidence in the final stages of the case of *Jack v. Allen* that Burnet was managing his court by the provisions of the decree. The finding of a verdict by a twelve-man jury in a civil case is itself evidence that the law had been implemented by December 1834. This jury verdict represents one of the earliest manifestations of the Chambers Jury Law in Texas. Perhaps the long-held legal conclusion that the law “was not carried out” should be revised to reflect that it was, in fact, partially implemented.⁴³

Despite the years of court proceedings that threatened to revoke their manumission, Celia and her family lived as free persons in San Felipe from March of 1832 onward. One store account lists her as “Celia McLaughlin” up through July 1833 when she drops the McLaughlin last name.⁴⁴ She began calling herself Celia Allen, which became her formal name in later court documents. Celia continued her work at the bake oven, baking for the community—and a few years later—for the troops fighting for Texas independence. War touched Celia even closer in March 1836, when the Mexican Army approached San Felipe. The town was evacuated and burned. Mexican artillery utilized the brick bake oven as a fortification to fire on the Texian troops across the Brazos River,⁴⁵ According to family lore, Celia and her children were still in the ruined town when General Santa Anna arrived with his troops. These stories were recounted by her children, including “Free Ann” Allen, George Allen, and Sam Allen.⁴⁶



George and Yarboro (Sam) Allen in their later years; courtesy Austin County Historical Commission

Celia Allen and her family returned to the “Bake oven lot” after the Texas Revolution and continued its operation. In 1839, John Allen’s probate administrator donated to her a portion of the lot on which she resided. Celia was living there at the time of her own death in 1841. Her descendants remained in the San Felipe community, and a number of current residents of the town trace their genealogy back to Celia and her children, particularly her only daughter, Dollyann—or “Free Ann,” as she was generally known. Their legacy is one remembered proudly by their descendants and others in the San Felipe community, and is one of many significant stories of early Texas interpreted at the San Felipe de Austin State Historic Site.

⁴² T. J. Chambers to the Political Chief, October 15, 1834, RG 307, Texas State Archives.

⁴³ Henderson Yoakum *History of Texas*, I:321.

⁴⁴ Perry Store Ledger, 1833, J. F. Perry Papers, Briscoe Center for American History.

⁴⁵ Michael Rugeley Moore, *Historic Context of San Felipe de Austin*, Report on File, Texas Historical Commission, Austin, 2008, 87, 127–36; Moore, *Regulation Double Log Cabins*, 327–31.

⁴⁶ *Sealy News*, January 3, 1946 (courtesy of Sharon Sutton).

Records documenting the journey of Celia Allen and other residents of Austin's Colony through the legal system of Mexican Texas have seemingly been imperiled continuously since the evacuation and burning of San Felipe de Austin in March of 1836. The official records of Texas local government prior to 1836 were primarily contained in the Departmental Archives of Bexar, Nacogdoches, and Brazos. The first has been preserved by Bexar County and is currently housed at the University of Texas at Austin's Briscoe Center for American History. The Nacogdoches records are now part of the collection of the Texas State Archives.

The Brazos Departmental records, which documented the areas between San Antonio and Nacogdoches—particularly Austin's Colony and its capital of San Felipe de Austin—have not survived intact. Records from the Austin Colony land office formed the beginnings of the archive of the Texas General Land Office. Some land and court records were distributed to the counties formed during the Republic of Texas. Brazoria County has a particularly strong collection. The disruption of the Texas Revolution and burning of San Felipe led to the loss of some records. Many of the records survived in the Austin County

Courthouse, although a 1960 courthouse fire may have destroyed some files. More recently, however, has been the theft of documents that had survived into the twentieth century from courthouses and archives. This sad story is recounted in W. Thomas Taylor's book *Texfake* (Austin: W. Thomas Taylor, 1991; see pages 27–44 particularly). Some of these documents are still offered for sale, and others are now in museum collections and university archives received by donation or purchase from the collectors market.

The Texas Historical Commission is leading efforts to preserve the San Felipe de Austin State Historic Site. In recent years the THC has preserved more of the land that composed the historic townsite, and is planning a visitor center and other facilities. As historian to that effort, I have encountered many documents originally from the municipal archives that are widely scattered in public and private hands. Among my goals for the project are to encourage preservation of these significant documents and to develop an archive—whether physical or digital—that assembles these far-flung resources and reconstructs their original organization. Please contact the author if you are interested in helping with this effort.



MICHAEL RUGELEY MOORE is a historian and farmer/rancher in the Richmond area of Fort Bend County. He has spent more than a decade encouraging the development of the San Felipe de Austin State Historic Site, and serves as contract historian to the project for the Texas Historical Commission. His extensive primary research is informing exhibits, archeological investigations, and programs at the site for the THC. He is currently working to turn that research into a book-length history of San Felipe de Austin.

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Slaves, Reconstruction, and the Supreme Court of Texas¹

By Robert B. Gilbreath

I. Introduction.

History, Oliver Wendell Holmes, Jr. once observed, is a part of the rational study of law.² A look at the history of the Supreme Court of Texas reveals a rich and fascinating past, and the articles reviewed here cover some of the most tumultuous times in that court's history. Read on to find out how the antebellum supreme court took pains to protect the civil rights of African Americans within the constraints imposed by the system of slavery and to learn about George Paschal, the court's iconoclastic, shotgun-toting official reporter.

II. A.E. Keir Nash, *The Texas Supreme Court and Trial Rights of Blacks 1845-1860*, 58 J. Am. History 622 (1971).

In the 1970's, political scientist A.E. Keir Nash published a number of articles examining southern judicial decisions in slave cases.³ Nash introduced his laudatory 1971 article on the Texas Supreme Court's treatment of African Americans before the Civil War with this excerpt from *Calvin v. State*, 25 Tex. 789, 796 (1860): "The law of the case . . . is precisely the same as if the accused were a free white man, and we cannot strain the law even 'in the estimation of a hair,' because the defendant is a slave."⁴

I discovered Nash's article while writing a piece on the Texas Supreme Court's decision in the "Emancipation Cases," *Hall v. Keese* and *Dougherty v. Cartwright*, 31 Tex. 504 (Tex. 1868), which dealt with the question of exactly when slave contracts became unenforceable. Nash's theory—that the supreme court had "a remarkable antebellum tradition of fair treatment of blacks"⁵—came as a great surprise. There is a substantial body of supreme court case law on slaves, and though my Emancipation Cases article does not involve the antebellum slave cases, I read a handful of those decisions and found little to encourage the notion that the court was progressive in its views on slavery.

¹ This article originally appeared in *The Appellate Advocate* 19, no. 1 (Fall 2006): 7-10. It is reprinted here by permission of the State Bar of Texas. *The Appellate Advocate's* house style, including footnote style, has been retained.

² Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897).

³ Others have written on this topic as well. See, e.g., WILLIAM E. WIETHOFF, *A PECULIAR HUMANISM: THE JUDICIAL ADVOCACY OF SLAVERY IN HIGH COURTS OF THE OLD SOUTH, 1820-1850* (Univ. of Georgia Press 1996).

⁴ A.E. Keir Nash, *The Texas Supreme Court and Trial Rights of Blacks 1845-1860*, 58 J. AM. HISTORY 622, 622 (1971) [hereinafter "Nash"].

⁵ *Id.*

Nash's comprehensive look at the cases, however, led him to a different conclusion: "Before 1861, a pattern of Texas judicial behavior prevailed which . . . was active in expanding protection of the black under the rule of law. The judges of the antebellum Texas supreme court appear to have been anxious to secure as much justice for the black man as was possible within a caste society."⁶ Nash too was surprised to find that the Texas Supreme Court "exhibit[ed] a strong strand of concern for the black man *qua* human."⁷

Professor Nash analyzed four types of cases: (i) criminal prosecutions by the state against whites who harmed African Americans, (ii) felony trials of African Americans, (iii) civil suits by slaves seeking their freedom, and (iv) "subversion" against the slave system—enticing slaves to abscond or petty infractions such as selling liquor to African Americans.⁸ His review revealed three commendable attitudes of the five judges who sat on the Texas Supreme Court from 1845 to 1860: "a measured insistence on the rule of law as against hysterical protection of the institution of slavery; a demand that the 'humanity' of blacks be recognized as a countervailing force to the exigencies of 'property'; and a sympathy with the individual black seeking liberty."⁹

One of the cases Nash discusses draws an intriguing link between the past and present. After I mentioned my Emancipation Cases article to Chief Justice Wallace Jefferson, he directed my attention to *Westbrook v. Mitchell*, 24 Tex. 560 (1859). There, the supreme court affirmed a judgment rendered by N.W. Battle, a Waco judge whose slaves included Chief Justice Jefferson's ancestor, Shedrick Willis.¹⁰ Judge Battle ruled that former slave Lewis John Redrolls could not lawfully sell himself back into slavery before January 27, 1858, when the Texas Legislature enacted a law permitting such transactions. The supreme court agreed: "The recognition of such a right might lead to its exercise for bad purposes."¹¹ In Nash's view, the court's opinion in *Westbrook* "contained a substantial hint that the Texas judges were less than warmly sympathetic to the new law."¹²

Nash concludes with this plaudit for the supreme court's progressive views on the treatment of African Americans before Reconstruction:

The "unfree" marketplace of the slave economy seemed to allow in the judicial marketplace of ideas greater freedom for the display of justice and humanity toward the black than did state courts after emancipation. Nowhere was this more true than on the Texas supreme court between 1845 and 1860. At the very least, it seems safe to assert that the judicial lot of the southern black in this century would have been measurably more secure had all twentieth-century southern judges been as insistent as [Justice James H.] Bell and his brethren that the law was to be applied precisely the same for a black claimant as for a white man, and that it could not, because of color,

⁶ *Id.* at 624.

⁷ *Id.*

⁸ *Id.* at 624-25.

⁹ *Id.* at 625; but see Thomas D. Russell, *Articles Sell Best Singly: The Disruption of Slave Families at Court Sales*, 1996 UTAH L. REV. 1161, 1164-65 (1996) (arguing that "Nash's findings of solicitude and fairness must be confined to the narrow categories of cases that he examined: white assaults on and murders of slaves and free blacks and manumissions.").

¹⁰ See Kevin Priestner, *Profile: Wallace Jefferson*, 66 TEX. B. J. 405 (2003); Anita Davis, *Wallace Jefferson Takes Oath of Office*, 64 TEX. B. J. 580 (2001).

¹¹ 24 Tex. at 562.

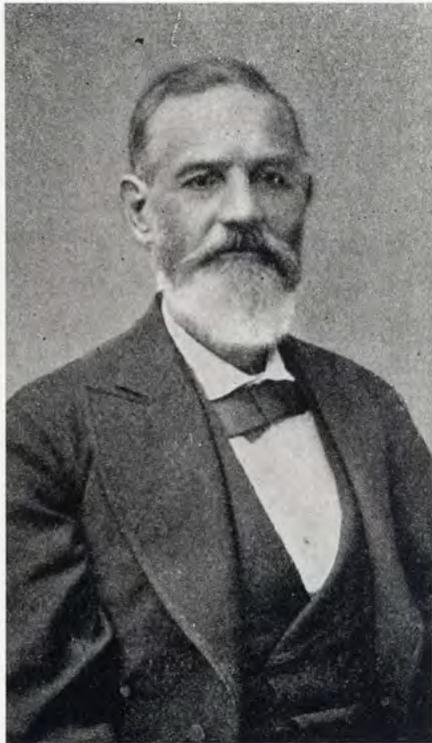
¹² Nash at 636.

be strained “even in the estimation of a hair.”¹³

III. James P. Hart, *George W. Paschal*, 28 Tex. L. Rev. 23 (1949).

James P. Hart was an associate justice on the Supreme Court of Texas from 1947 to 1950. His 1949 biographical piece on George W. Paschal, whose many vocations included official reporter of the Texas Supreme Court, is absolutely riveting. Paschal was a fascinating character:

George W. Paschal was one of the outstanding figures in the legal profession in Texas in the period from the annexation of Texas to the Union to the end of Reconstruction. He is remembered today chiefly because of his *Digest of the Laws of Texas* and his reports of the decisions of our Supreme Court, but he was also an outstanding legal practitioner, a judge of the Supreme Court of Arkansas, a lecturer in law in Georgetown University in Washington, D.C., and he even edited a newspaper in Austin, *The Southern Intelligencer*.¹⁴



George W. Paschal; photo courtesy Texas State Library and Archives



Justice James P. Hart; photo courtesy Tarlton Law Library, University of Texas School of Law, Texas Jurists Collection

Paschal’s life, Justice Hart observed, was “full of paradoxes.” He was a native Southerner and an anti-abolitionist, but he was vehemently opposed to secession and was placed under house arrest by Confederate authorities during the Civil War.¹⁵ Yet when the war ended, Paschal disparaged “carpetbaggers” and urged clemency for imprisoned Southern leaders.¹⁶ Federal military authorities appointed Paschal official reporter of the Texas Supreme Court during Reconstruction, but he was “bitterly critical” of the court he served even though its members were appointed by the same authorities.¹⁷

Justice Hart’s article also came to my attention while doing research for my Emancipation Cases article because Paschal played a significant role in that litigation. Not only was he the supreme court’s official reporter, but he also argued the cases, joined by Charles S. West. Only West and Paschal responded to the Court’s call to the entire bar for lawyers willing to present arguments.¹⁸ In his official report of the court’s decision, Paschal baited his enemies with anti-secessionist vitriol, including this harangue against the former rebels:

¹³ *Id.* at 642.

¹⁴ James P. Hart, *George W. Paschal*, 28 TEX. L. REV. 23, 23 (1949) [hereinafter “Hart”].

¹⁵ *Id.*; see also James W. Paulsen, *If At First You Don’t Secede: Ten Reasons Why The “Republic of Texas” Movement is Wrong*, 38 S. TEX. L. REV. 801, 808 (1997).

¹⁶ Hart at 13.

¹⁷ *Id.*

¹⁸ *Hall v. Keese*, 31 Tex. 504, 534-35 (1868) (Hamilton, J., dissenting).

Those who had been loudest to proclaim their purpose to perish in the defense of slavery were the first to reach the provost marshal's and the loudest in their response to the manumission oath. Then they hurried back to contrive some plan to retain the services of those who they had owned. The negroes stood aghast, not knowing whether most to trust their old masters or their liberators.¹⁹

Justice Hart recounts intriguing details about Paschal's life, such as his marriage to the daughter of a Cherokee chief, his service as a justice on the Arkansas Supreme Court, his practice as a Texas attorney, and his tenure as editor and publisher of *The Southern Intelligencer*, a weekly newspaper published in Austin.²⁰ In one account, Justice Hart describes how the intense competition between *The Southern Intelligencer* and *The Texas State Gazette*, also published in Austin, led to a near gun battle on the streets of Austin:

The culmination of this bad feeling was an incident in 1859 in which challenges for duels were exchanged, Paschal and his son and their antagonists appeared on Congress Avenue, armed with double-barreled shotguns (but at different times), and the parties were finally put under peace bonds by Judge Vontress at Georgetown and Judge Terrell at Austin.²¹

Paschal reported the cases decided by the Texas Supreme Court from 1866 to 1869, in volumes 28–31 of the Texas Reports.²² In those days, Justice Hart explains, the reporter “was expected to make an independent study of the record and to make independent statements of the facts and the decision of the lower court, as well as to summarize the briefs and arguments of counsel.”²³ Paschal's summaries contain valuable historical information and “lively personal reminiscences” about members of the supreme court and some of the more notable cases that came before the court.²⁴

The court, however, was not amused by Paschal's creative reporting and ordered him to truncate his reports.²⁵ Unbowed, Paschal rebuked the justices in his preface to volume 31 of the Texas Reports:

I know of no legal authority for this interference. Every lawyer will well understand the little credit to be given to reports which should leave the whole history of the facts to the judge and suppress the beliefs of counsel! Had I desired to retaliate, I should have printed these gentlemen's opinions just as they wrote them, and have left them to take care of their own literary fame.²⁶

Paschal's insubordination got him fired.²⁷ He later became a professor at the Law School of

¹⁹ *Id.* at 511.

²⁰ Hart at 24-27.

²¹ *Id.* at 27.

²² *Id.* at 34.

²³ *Id.*

²⁴ *Id.* at 34-35.

²⁵ *Id.* at 35.

²⁶ *Id.*

²⁷ *Id.*

Georgetown University in Washington, D.C., which he was instrumental in founding.²⁸ He died in 1878 in Washington, where he is buried in the Rock Creek Cemetery.²⁹ Justice Hart concludes with this masterful synopsis of Paschal's legacy:

The impression which we get from considering Paschal's life as a whole is that he was a man of very high ability, approaching genius, who never seemed to find himself, as we would say today, well adjusted to his environment. As a lawyer and legal author, he seems to have been universally respected. He was, however, almost continuously involved in violent controversy. His fate was to be in the minority in the South at a time when the South was in dire trouble and when his views were regarded by most of his neighbors as treasonable. We may conjecture that under different conditions he would have been a nationally famous advocate, jurist or author, or possibly all three. As it was, he led an exciting, fearless and industrious life, and we are indebted to him for enlightening many pages of Texas legal history which would otherwise be dull and obscure.³⁰

IV. Conclusion.

It's anyone's guess what the contrarian George Paschal would say about Professor Nash's theory that the Texas Supreme Court was a champion of African American civil rights before the Civil War. Most likely, his response would have been something akin to Abba Eban's sardonic remark: "History teaches us that men and nations behave wisely once they have exhausted all other alternatives."³¹

²⁸ *Id.* at 41.

²⁹ *Id.*

³⁰ *Id.* at 41-42.

³¹ JON WINOKUR, *THE PORTABLE CURMUDGEON* 135 (Dutton 1992).



ROBERT B. GILBREATH is a senior partner in Hawkins Parnell Thackston & Young LLP's Litigation Department and serves as Appellate and Legal Issues Practice Group Leader. He has authored more than thirty articles, several of them on historical topics, including the one reprinted here as well as an article published in the Texas Bar Journal in November 2006 titled "The Supreme Court of Texas and the Emancipation Cases." He served as a law clerk for Texas Supreme Court Justice Raul Gonzalez, and interviewed the retired justice for an article published in The Appellate Advocate in Summer 2004. Rob is a founding member and current trustee of the Texas Supreme Court Historical Society.

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John N. Johnson: Crusader for Justice

By John G. Browning

Even by the standards of legal historians who have explored the murky and often-overlooked history of African-American lawyers, the early history of black lawyers in Texas has been characterized as “uncertain.”¹ Part of this can be attributed to scant historical records, and part of it is a factor of paucity in numbers. The earliest known African-American attorney in Texas, William A. Price, was practicing in Fort Bend County in 1872 and even by 1890 there were only a dozen black lawyers in the state. Most of these shunned the cities for rural areas or small towns, usually places “with sizable black populations and receptive political climates,” where they attended to the mundane legal needs of their communities.²

But during this same period one of Texas’s first African-American lawyers stood out, not only because he practiced in the capital city of Austin and was the first African American admitted to practice before the Supreme Court of Texas, but because long before *Brown v. Board of Education*, he was filing what may have been the earliest civil rights cases in Texas and generally serving as a crusader for justice.

SUPREME COURT, AUSTIN.			
NAMES	ENROLLED		
Jenkins, Jesse	Meridian	May 4	1882
Johnson, John N.	Austin	Feb 9	1883
Johnson, H. B.	Gainesville	Apr 2	1883
Jenkins, J. S.	McKinney	" 7	1884
Johnson, Robt. L.	Fall Branch	Feb 14	1886
Jones Joseph	Del Rio	Feb 8	1887
Jones Jacob W.	"	" 8	"
Johnson Albert S.	Laredo	Apr 23	"
Jones Ashby S. (James)	Wichita Falls	Apr 2	1888
Jaynes, W. B.	Sherman	May 16	1889
John, Robt. A.	Georgetown	Jan 28	1891

His name was John N. Johnson. Although it is unclear where he received his legal education or when he was admitted to practice in Texas, we do know that he was the first African American enrolled to practice before the Supreme Court of Texas. The rolls of the Court reveal his name on February 9, 1883, during a period in which most Texas lawyers did not seek admission to the Court unless they actually had a case pending before it.³ Little is known about his personal background, other than the fact that he was a schoolteacher in Calvert

Supreme Court attorneys rolls; Austin attorney John N. Johnson (second name on the list) was enrolled to practice before the Texas Supreme Court on February 9, 1883, and may have been the first African American to have that distinction. Photo courtesy Archives of the Supreme Court of Texas

¹ J. Clay Smith, *Emancipation: The Making of the Black Lawyer, 1844-1944* (Philadelphia: University of Pennsylvania Press, 1993), 344.
² Carter, G. Woodson, *The Negro Professional Man and the Community* (New York: Negro Universities Press, 1969), 107.
³ Rolls of Attorneys Admitted to Practice Before the Supreme Court of Texas, February 9, 1883, Supreme Court of Texas Archives, Austin, Texas. Tiffany Shropshire, Archivist at the Texas Supreme Court, uncovered this and other key information about Johnson.

and was politically active. In August 1884, for example, he presided over the Colored Men's State Convention in Houston, at which topics such as civil rights, sentencing disparities for white and black criminals, and lynchings were addressed.⁴

Thanks to contemporary newspaper accounts in which he was almost always referred to as "the colored lawyer at Austin," we know that Johnson was an ardent voice for equality. In April 1883, he wrote to the state attorney general to protest the shooting death of Sam White, an African-American convict sentenced to five years in the penitentiary by the Brazos County District Court.⁵ White was part of a prison detail working on the Burleson County plantation of H.K. White when he was killed by a guard. Johnson implored the attorney general to launch an investigation in the wake of the county attorney's failure to do so, saying "I have seen colored convicts beaten to death, and colored citizens who witnessed the scene were afraid to testify from the fact that the guards are generally desperate men and are feared, and white citizens, not being much interested and are not often around, do not testify."⁶ The attorney general responded by ordering the Burleson county attorney to investigate the shooting.⁷

In August 1883, Johnson made headlines by filing three civil rights lawsuits against the Houston and Texas Central Railway Company for denying African Americans facilities equal to those for white passengers.⁸ Newspapers condemned Johnson's legal maneuverings as just stirring up trouble. As one newspaper stated,

The race troubles in eastern Texas have given origin to a good deal of unnecessary comment....These agitations are beneficial to nobody, while, since they show Texas in the light of depravity not really existing, we ought to hear the end of them....J.N. Johnson, the colored lawyer at Austin, has done much to keep up this feeling by bringing suits under the civil rights bill against railroads for refusing negroes the privilege of occupying the cars reserved at the end of the train for white people.⁹

By late September 1883, Johnson had met in Houston with the railroad's management and announced that he was dismissing the lawsuits, as well as discouraging "the bringing of similar suits on the part of our people."¹⁰ Johnson pointed out that the Houston and Texas Central Railroad had promised to furnish "separate, exclusive, equal accommodations for colored patrons" within three months. He denied that his lawsuits were "brought to force social admixture," noting that they were instead brought to achieve a "just verdict of public opinion and a lawful demand by lawful means."¹¹

Johnson continued to earn a living teaching school, practicing law, and writing for an African-American newspaper in Austin. By 1886, he had not only moved to Brazos County and the town

⁴ Alwyn Barr, "Black State Conventions," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/plcb01>.

⁵ *Dallas Weekly Herald*, vol. 30, no. 21, April 19, 1883, <http://www.texashistory.unt.edu/ark:/67531/metaph295031>.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Fort Worth Daily Gazette*, vol. 7, no. 114, August 9, 1883, <http://texashistory.unt.edu/ark:/67531/metaph114503/m1/2>.

⁹ *Ibid.*

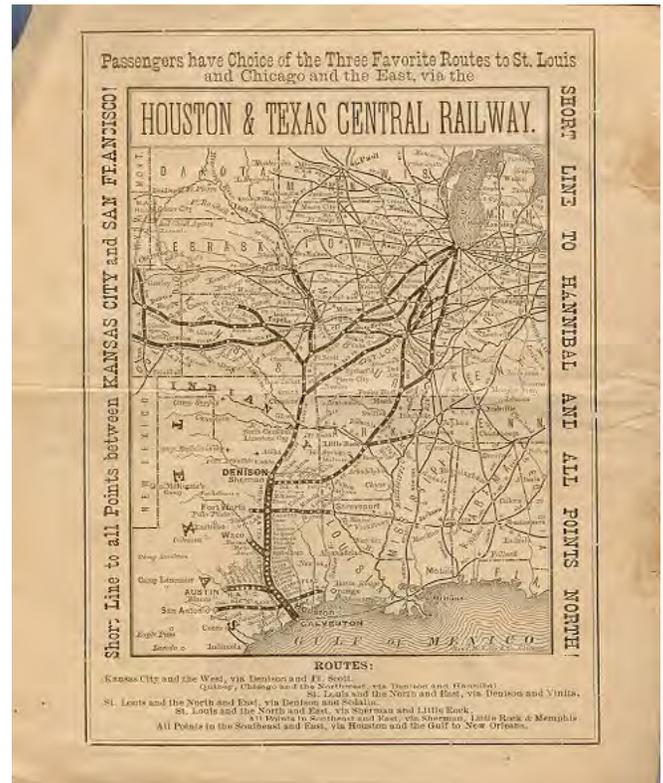
¹⁰ *Austin Weekly Statesman*, vol. 13, no. 4, September 27, 1883, <http://texashistory.unt.edu/ark:/67531/metaph277913>

¹¹ *Ibid.*

of Bryan, but was also the Republican nominee for district attorney for that judicial district.¹² Yet even with a different home base he continued his civil rights efforts. That year, in the aftermath of “the Brazoria troubles”—attempted forced evictions by whites of black settlers in Brazoria and Matagorda counties—Johnson wrote to the governor requesting that he appoint a commission to investigate.¹³

According to contemporary newspaper accounts, while the governor questioned the constitutionality of appointing a commission, he did take action that indicated Johnson’s plea was favorably received. An October 15, 1887 article included an excerpt from the governor’s October 6 letter to the district judge for both counties, W.H. Burkhardt, directing him to “form a constituent part to incite the officers and especially the grand juries” to use “every means in their powers to make such strenuous queries as shall lead to the arrest and conviction of all parties concerned in the late outbreak.”¹⁴

John N. Johnson could have led a life of obscurity content with handling land conveyances and minor criminal matters. Instead, he chose to fight for justice at a time when justice was rarely to be had for African Americans. Consider the chilling words in a newspaper report about “a negro rapist arrested and jailed in Bowie County,” an account that ironically appears on the same page as news of Johnson’s civil rights settlement with the Houston and Texas Central Railroad. The newspaper gleefully anticipated a lynch mob, noting there was “a fair prospect” of the alleged rapist “getting justice without the formality of a trial.”¹⁵



Houston and Texas Central Railway Schedule, November 1879; Richard Niles Graham Collection, Archives and Information Services Division, Texas State Library and Archives Commission

¹² *Galveston Daily News*, vol. 45, no. 167, ed. 1, Sunday, October 10, 1886, <http://www.texashistory.unt.edu/ark:/67531/metaph463913>.

¹³ *Fort Worth Daily Gazette*, vol. 13, no. 74, October 15, 1887, <http://texashistory.unt.edu/ark:/67531/metaph85589/>.

¹⁴ *Ibid.*

¹⁵ *Brenham Daily Banner*, vol. 8, no. 228, ed. 1, Sunday, September 23, 1883, <http://www.texashistory.unt.edu/ark:/67531/metaph486140/>.

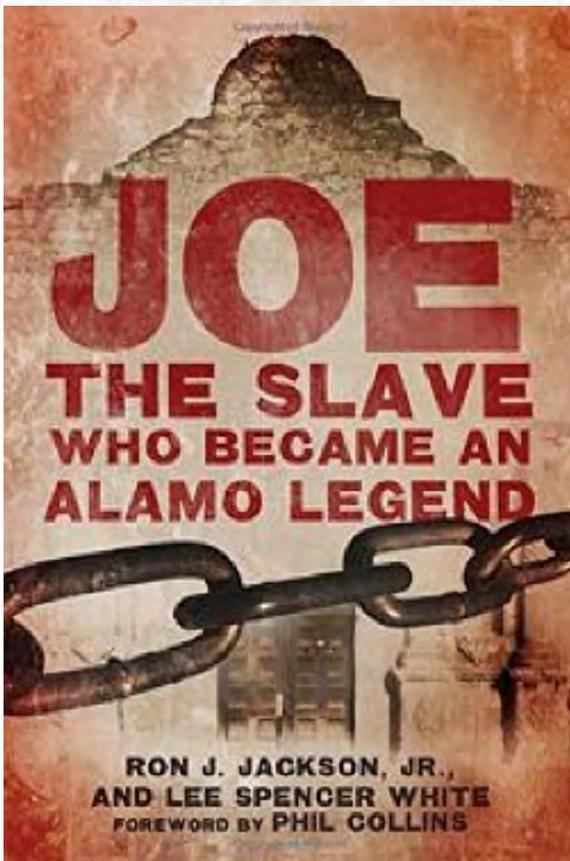


JOHN G. BROWNING is an attorney with *Passman & Jones* in Dallas. An award-winning legal writer and journalist, Browning is the author of *The Lawyer’s Guide to Social Networking: Understanding Social Media’s Impact on the Law* (New York: Thomson Reuters/West Publishing, 2010). He serves as the Chair of the Texas Bar Journal Board of Editors, is a contributing editor for *D CEO Magazine*, and is an adjunct law professor at SMU Dedman School of Law, Texas Tech University School of Law, and Texas A&M University School of Law.

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Book Review: *Joe, the Slave Who Became an Alamo Legend*

By Bryan McAuley



Joe, the Slave Who Became an Alamo Legend by Ron J. Jackson, Jr. and Lee Spencer White; foreword by Phil Collins
University of Oklahoma Press, 2015

One of the most exciting aspects of the larger-than-life stories of the Texas Revolution is that scholarship is ever improving our base of knowledge. Historians and readers continue to be drawn to this story. In many cases these new efforts fill in gaps where myth and hagiography have taken the place of fact and analysis. Too often we forget the amazing reality that there were survivors of the battle of the Alamo—it's almost unimaginable that people were that close to so much death and destruction and walked away. Susanna Dickinson and her daughter Angelina are the survivors that typically come to mind. Those of us who might recall William Barret Travis's slave Joe are suddenly handcuffed by the unknowable—history has largely erased those that human bondage treated as chattel. Names were changed at the whim of a sale, and families were separated with no hope of ever finding each other again. Joe himself lived his life largely ignorant of what became of much of his family. What hope do simple history-lovers have of knowing the details of these lives that history so often forgets?

Thanks to some remarkable historical and legal detective work, readers can now get as close to the amazing story of Joe as will likely be possible. After more than a decade of researching, authors Ron Jackson and Lee White have achieved something worth celebrating—they have given voice to an important figure of Texas history who had been mostly silent for too long. And they have filled in some important gaps in our understanding of the Mexican Texas era, allowing readers to wonder at the depth and detail they uncovered about Joe.

The new insights into Joe's life begin with a probate file. The authors discovered the name of the owner who brought Joe to Texas from St. Louis—Isaac Mansfield—and his connection to Travis. Travis was an attorney involved in the probate of Mansfield's estate. Joe, as property of the deceased, was auctioned off to provide relief against Mansfield's debts. The winning bidder was John Cumings, whose sister, Rebecca, Travis courted during his years at San Felipe de Austin. In

short order, Travis became Joe's owner. Fate would put Joe in a position to join Travis when he was assigned to the Alamo—the authors note that Joe's training as a domestic laborer may have encouraged Travis to select him as a manservant.

The authors' next remarkable insight is the discovery that Joe's brother, left behind in Missouri, would escape slavery and become the famous abolitionist and writer William Wells Brown. Brown's memoir and other writings offer unique insights into his life and, by extension, Joe's. Ironic, since Joe would live out his life without knowing his brother's fate.

Joe's experiences at the Alamo were extraordinary—he fought at the beginning of the final assault, but found a hiding place after Travis's death. Ultimately, he led Santa Anna and other Mexican officers through the Alamo when the siege was over to confirm the identities of the deceased. Through it all, Joe remained enslaved and eventually found himself part of the probate of Travis's estate. He managed to escape during this legal limbo (delayed until after Texas independence by circumstances of the conflict) and traveled on his own to Travis's family in Alabama. The authors' research provides a satisfying resolution to what became of this man whose involvement in the seminal moment of the Texas Revolution was not enough to remove his chains of bondage.

The book is well-paced and the authors do a good job of handling the speculative aspects of their story, made necessary by the challenge of discovering details of Joe's life. They masterfully weave in the stunning revelations where facts do indeed emerge from the hazy past to let the reader glimpse through this window into the previously unknown. This book provides an important and signature chapter in our understanding of Texas's past.



BRYAN MCAULEY is the Site Manager for the Texas Historical Commission's Fannin Battleground and San Felipe de Austin State Historic Sites. He joined the newly formed Historic Sites Division of the Commission in 2008 following seven years at the Fort Bend County Museum Association. Bryan lives in Fort Bend County with his wife, Amanda, and daughters, Zoe and Piper.

Executive Editor's Note: Phil Collins, the former lead singer and drummer in the group Genesis, wrote the foreword for this new book exploring the facts about an Alamo survivor. Last year, the British singer donated a significant part of his massive, \$100 million collection of Alamo and Texas Revolution artifacts to the State of Texas in an agreement in which then-Texas Land Commissioner Jerry Patterson represented the State. The donated artifacts included a Tennessee long rifle owned in life by Alamo defender Davy Crockett (Collins's boyhood hero while growing up in London), Crockett's fringed leather pouch, and an original Bowie knife that Jim Bowie owned until Mexican *soldados* seized it at the end of the Alamo battle. Collins identifies those and other artifacts (and their sometimes-disputed provenance), as well as Gary S. Zarchy's illustrations of them, in Collins's superb book *The Alamo and Beyond: A Collector's Journey* (Buffalo Gap, TX: State House Press, 2012).

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Reintroducing a Gem of Antebellum Texas History: *The Laws of Slavery in Texas*

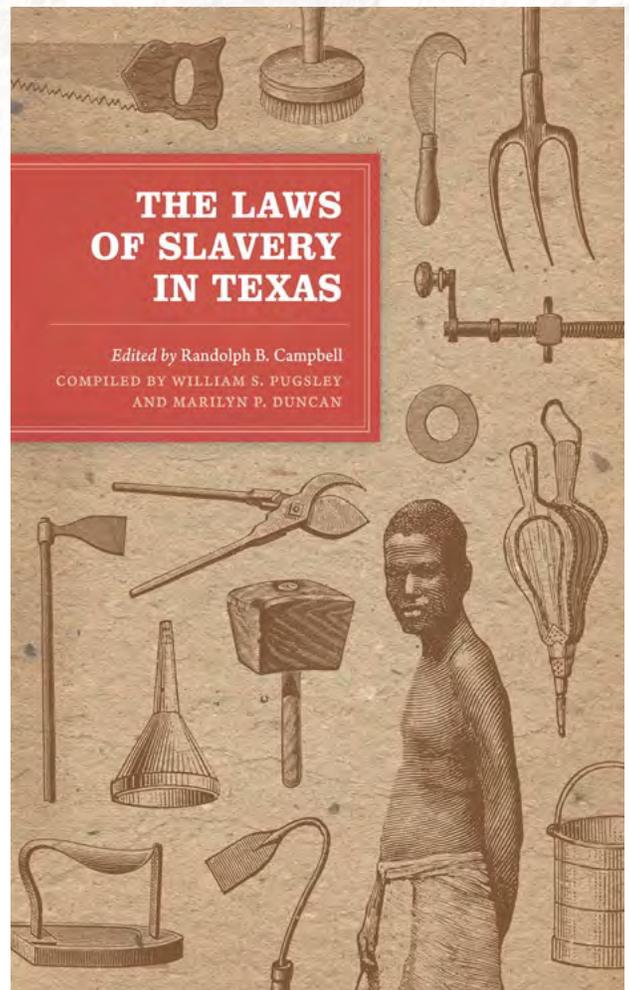
By Marilyn P. Duncan

Many of the *Journal's* readers are already familiar with the first book published in the Society-sponsored Texas Legal Studies Series—*The Laws of Slavery in Texas*—but the theme of this issue gives the book particular relevance.

Excerpts from historian Randolph B. Campbell's introduction to the book provide a good starting point for understanding how the legal dilemmas posed by holding human beings as property helped lead to the demise of the "Peculiar Institution."

The institution of African slavery as practiced in the antebellum United States depended on the ownership of humans as chattels, pieces of movable personal property. As chattels, slaves remained property for life with no legally prescribed way to earn freedom. They had no property rights themselves but could be bought and sold, mortgaged, hired, bequeathed to heirs, and distributed in estate settlements. Clearly, the status of slaves as property defined the institution in vital ways for both the enslaved person and the slave owner and is a key to any study of slavery and the law.

Property rights in organized societies generally require the protection of law, and England, the progenitor of most American legal concepts and practices, had a long experience with the laws of property. Thomas Jefferson's list of the natural rights of man—"life, liberty, and the pursuit of happiness"—came directly, most believe, from John Locke's "life, liberty,



***The Laws of Slavery in Texas:
Historical Documents and Essays***
Edited by Randolph B. Campbell
Compiled by William S. Pugsley
and Marilyn P. Duncan

Published by the University of Texas Press
in cooperation with the
Texas Supreme Court Historical Society
Texas Legal Studies Series
2010

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the list price of \$19.95)

[http://utpress.utexas.edu/
index.php/books/camlaw](http://utpress.utexas.edu/index.php/books/camlaw)

and property.” Historians can only speculate on why Jefferson changed “property” to the “pursuit of happiness”—a cynic might say that the pursuit of property is the pursuit of happiness—but the change certainly did not lessen Americans’ belief in the sanctity of property and the need for laws to protect it. Property rights stood as natural rights protected by an enforceable code of statute and case law.

Treating slaves as property, however, presented a serious difficulty to those who wrote and interpreted the law because, unlike any other form of property, slaves were human....

...

Some historians downplay the legal issues created by the holding of humans as chattels by arguing that slaveholding society did not recognize the humanity of the enslaved. For example, Marxist scholars contend that the capitalist economic system required laws that treated slaves purely in terms of their dollar value. However, in the words of Thomas D. Morris, the foremost scholar of southern slavery and the law, the Marxist model does not capture “the messy and often complex attempts of Southern judges to deal with the problems created by ‘thinking property.’” Nor, for that matter, does any other model, including the argument that the extreme racism of whites denied the humanity of blacks and reduced them to the level of inanimate property. There are simply too many cases in which southern whites, their deeply racist views notwithstanding, sought legal recognition that their slaves and free blacks they knew personally were human. Thus, in spite of the effort by some historians to say that slave societies treated bondsmen as property pure and simple, the essential question about the laws of slavery remains: How did statutes and court decisions solve the paradoxical issues created by the holding of humans as chattels? An even deeper issue is to understand what those laws tell us today about the realities of what southerners called their “Peculiar Institution.”

...

The documents in this collection offer especially valuable insight into the day-to-day realities of slavery because the laws were not written and the cases were not decided with the intention of commenting on the “rightness” or “wrongness” of the peculiar institution. Traditional sources such as newspapers and travelers’ accounts often were influenced by a strong emotional involvement in either attacking or defending slavery, and therefore told as much or more about the writer as about the institution. Laws and legal actions, however, intended only to ensure the security of slave property and settle disputes. In general, legislators and judges agreed that slavery was right, and they had no reason to misrepresent its nature. Perhaps, in some cases, judges made decisions with an eye to how critics of slavery would read them, but even in those instances, the statements of the facts of the cases open highly revealing windows into the institution. The most reliable sources on any controversial subject are those not created deliberately as statements on that subject. This book offers exactly those kinds of sources.

As the table of contents below shows, the book includes a wide selection of slavery-related laws and decrees, constitutional provisions, and court cases as well as reprints of scholarly articles that are considered classics in the study of Texas slave laws. Among the latter are both parts of Lester G. Bugbee's "Slavery in Texas" article, originally published in 1898 in the *Political Science Quarterly*. Bugbee effectively refuted the arguments of post-Civil War historians that Mexico's opposition to slavery precipitated the Texas Revolution by showing that neither the Mexican national government nor the state government of Coahuila and Texas acted to prevent the growth of slavery in Texas.

The book also includes A. E. Keir Nash's seminal article "The Texas Supreme Court and the Trial Rights of Blacks, 1845–1860," published in the *Journal of American History* in 1971. Using the verdicts of numerous court cases from the antebellum period in Texas, Nash demonstrated that the Texas Supreme Court handled blacks' trial rights with a remarkable degree of liberalism. This record of relatively fair treatment of slaves and free blacks was, in Randolph Campbell's words, "one of those wonderful ironies so common in southern history."

The last installment of Harold Schoen's six-part dissertation on free blacks during the Republic era in Texas, published in the *Southwestern Historical Quarterly* in 1937, is also included in the book. Titled "The Free Negro in the Republic of Texas: The Extent of Discrimination and Its Effects," the article broke new ground by exploring how free blacks as a group were both discriminated against and protected by an Anglo population that was "unable to draw a more intelligent distinction between master and servant than one based on color alone."

New members of the Texas Supreme Court Historical Society at the \$100 Contributing Level and above receive a complimentary copy of *The Laws of Slavery in Texas*. The book is also available for purchase from the University of Texas Press (see information in the sidebar above).

Book Contents

Introduction: Human Chattels: The Laws of Slavery in Texas *Randolph B. Campbell*

1. Laws on Slavery in Mexican Texas, 1821–1836

Legal Documents

Empire of Mexico, Colonisation Law of January 4, 1823

Stephen F. Austin's Colony Criminal Regulations, Articles 10-14, 1824

Congress of the United Mexican States, Decree on the Slave Trade in Mexico, July 13, 1824

Constitution of Coahuila and Texas, Article 13, March 11, 1827

State of Coahuila and Texas, Decree No. 18, September 15, 1827

State of Coahuila and Texas, Decree No. 35, November 24, 1827

State of Coahuila and Texas, Decree No. 56, May 5, 1828

Republic of Mexico, Decree of April 6, 1830

State of Coahuila and Texas, Decree No. 190, April 28, 1832

Articles

Slavery in Early Texas, I *Lester G. Bugbee*

Slavery in Early Texas, II *Lester G. Bugbee*

2. Laws on Slavery in the Republic and Statehood Periods, 1836-1860

Legal Documents

Constitution of the Republic of Texas, 1836, General Provisions, Sections 6, 9, 10
Constitution of the State of Texas, 1845, Article 8

Articles

The Law of Slavery in Texas *Randolph B. Campbell*

The Texas Supreme Court and the Trial Rights of Blacks, 1845–1860 *A. E. Keir Nash*

Cases

Case Study: One Woman's Fight for Freedom: *Gess v. Lubbock*, 1851 *Mark Davidson*

Case Report: *Henry B. Hedgepeth and Others v. Felix W. Robertson*, 1857

3. Laws on Free Negroes in the Republic and Statehood Periods, 1836–1860

Legal Documents

Republic of Texas: Debate and Act, Emancipation of Peter Martin, 1839–1840

Republic of Texas: An Act Concerning Free Persons of Color, February 5, 1840

Republic of Texas: An Act for the Relief of Certain Free Persons of Color, December 12, 1840

Article

The Free Negro in the Republic of Texas: The Extent of Discrimination and Its Effects
Harold Schoen

Case

Case Report: *Jesse Benton v. Eli Williams*, 1843

4. Laws on Slavery and Freedom in Confederate and Reconstruction Texas, 1861–1874

Legal Document

Secession Convention of Texas, A Declaration of the Causes Which Impel the State of Texas to Secede from the Federal Union, February 2, 1861

Article

The End of Slavery in Texas: A Research Note *Randolph B. Campbell*

Cases

Case Report: Emancipation Proclamation Cases: *W. M. Hall v. T. M. Keese* and *Dougherty v. Cartwright*, 1868

Case Report: *William Garrett v. John H. Brooks*, 1874

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20th Annual John Hemphill Dinner: Senator John Cornyn Was the Featured Speaker

By Marilyn P. Duncan Photos by Mark Matson

An interview with U.S. Senator John Cornyn by Texas Supreme Court Chief Justice Nathan L. Hecht was the highlight of this year's John Hemphill Dinner. More than four hundred appellate attorneys, judges, their spouses, and other members of the community filled the Grand Ballroom of the Four Seasons Hotel in Austin on Friday, September 11, to enjoy dinner and the evening's program, which also included several award presentations.

The program began with a welcome by outgoing Society President Marie Yeates, followed by the Pledge of Allegiance led by the Bedichek Junior Marine Corps.

2014-15 Society President Marie R. Yeates welcomes dinner guests.



Members of the award-winning Bedichek Middle School Junior Marine Corps enter the ballroom in the opening flag ceremony.



Dinner guests recite the Pledge of Allegiance and take a moment of silence in honor of the victims of the September 11, 2001 terrorist attack.

A new feature of the Hemphill Dinner program was the presentation of the first President's Awards for outstanding service to the Texas Supreme Court Historical Society. President Yeates announced that the inaugural recipients of the awards are David A. Furlow and Dylan O. Drummond, both members of the Society's Board of Trustees.

In presenting the award, President Yeates enumerated some of David's and Dylan's many ongoing contributions to the Society. Foremost among these, she said, are their efforts to elevate the Society's *Journal* "to the highest level of excellence" as that publication's Executive Editor and Deputy Executive Editor. She also noted David's outstanding work on the Society's joint session at this year's annual meeting of the Texas State Historical Association, which he organized and participated in as a paper presenter, and Dylan's important contributions both to the *Journal* and to the Society's website and social media channels, which he oversees.

An up-close view of the Society's First Annual President's Award. Photo by Lynne Liberato.



President's Award recipients Dylan O. Drummond (left) and David A. Furlow



2015 Jack Pope Professionalism Award recipient Judge Jennifer Elrod (right) stands with (from left) TCLE executive director Jonathan Smaby, Chief Justice Nathan L. Hecht, and TCLE board member Brent M. Rosenthal.

The Texas Center for Legal Ethics then presented the annual Chief Justice Jack Pope Professionalism Award to Judge Jennifer Walker Elrod of the U.S. Court of Appeals for the Fifth Circuit. In presenting the award, TCLE executive director Jonathan Smaby called Judge Elrod “a persistent and influential advocate for legal ethics and *pro bono*.”

David Beck, chair of the Society Fellows, reported on the activities and accomplishments of the Fellows, including the sponsorship of a statewide judicial civics education project called Taming Texas (see Fellows Column in this issue, p. 4).



Fellows chair David J. Beck

This year's keynote talk took the form of a Q&A-style conversation between Chief Justice Hecht and Senator Cornyn. The interview followed the trajectory of the Senator's public service career over the past three decades, from his first role as a Judge on Texas's Thirty-Seventh District Court to his time as a Justice on the Texas Supreme Court, to his term as Texas Attorney General, to his election to and service on the U.S. Senate. The conversation—which offered insights into how Senator Cornyn's philosophy of service and governance has been shaped by each of these experiences—was videotaped and will be posted on the Society's YouTube Hemphill Channel soon.



The informal stage setting gave an up-close-and-personal feel to the interview between Chief Justice Hecht and Senator Cornyn.

To conclude the evening's program, Justice Paul Green, Supreme Court liaison to the Society, administered the oath of office to incoming Society president Ben Mesches. President Mesches thanked outgoing president Marie Yeates for her year of outstanding leadership and thanked the dinner attendees for their support of the Society, with a special thanks to the law firms who sponsored tables (see list of sponsors below).



Pre-Dinner Reception with Senator Cornyn

Prior to the beginning of the Hemphill Dinner, members of the Court, Society Fellows, and other guests met with Senator Cornyn in the Four Seasons San Jacinto Room. The photos below offer a sampling of this occasion and the open reception that followed. For more photos of the Hemphill Dinner, visit the Society's Facebook page at https://www.facebook.com/SCOTXHistoricalSociety/photos_stream.



Justice Paul W. Green administers the oath of office as Society president to Ben L. Mesches.



(left to right)
Chief Justice Nathan Hecht,
Judge Priscilla Owen,
Senator John Cornyn,
and Sandy Cornyn



(left to right)
Justice Jeff Brown,
Justice Phil Johnson,
and Ryan Rieger



(left to right, foreground)
former Justice Harriet O'Neill,
Kerry Cammack,
Sandy Cornyn, and
Senator John Cornyn



Justice Don Willett



(left to right) Macey Reasoner Stokes, Bob Stokes, Harry Reasoner, and Justice Phil Johnson



(left to right) Craig Haynes, former Justice Craig Enoch, and U.S. Fifth Circuit Judge Catharina Haynes

2015 John Hemphill Dinner Table Sponsors

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“Knowledge is Power”: Chief Justice Nathan Hecht Celebrates the Centennial of the Harris County Law Library

Article and photos by David A. Furlow

On October 1, 2015, Texas Supreme Court Chief Justice Nathan Hecht joined Harris County Law Librarian Mariann Sears, Harris County Deputy Librarian Joseph Lawson, Harris County Attorney Vince Ryan, Fourteenth Court of Appeals Justice Brett Busby, and approximately three hundred judges, justices, lawyers, and members of the public to celebrate the Harris County Law Library’s hundred-year anniversary. The historic event inspired several great speeches.

County Attorney Vince Ryan, whose office administers the Law Library, was the first to speak. He began by discussing the purpose of the Law Library and the expansion of its use over the past century:

When the County Law Library opened in 1915, Judge James L. Autry requested that the library “always be open to the free use of struggling young lawyers.” One hundred years later, the library not only remains true to that original purpose, but has also grown to serve a larger audience with greater resources.

More than 5,000 students, attorneys, and self-represented litigants access the law library’s resources each month. The library has more than 30,000 volumes of printed materials and provides access to major research databases like Westlaw, LexisNexis, and HeinOnline.

He thanked the County’s Commissioners’ Court for funding the expansion of the Library after its move from an often-overlooked seventeenth floor location to the spacious site of the former Harris County Jury Assembly Room. Vince concluded by acknowledging the leadership of “Law Library Director Mariann Sears...as she and her staff continue to find new ways for the library to be of service to all.”

Harris County Law Librarian Mariann Sears





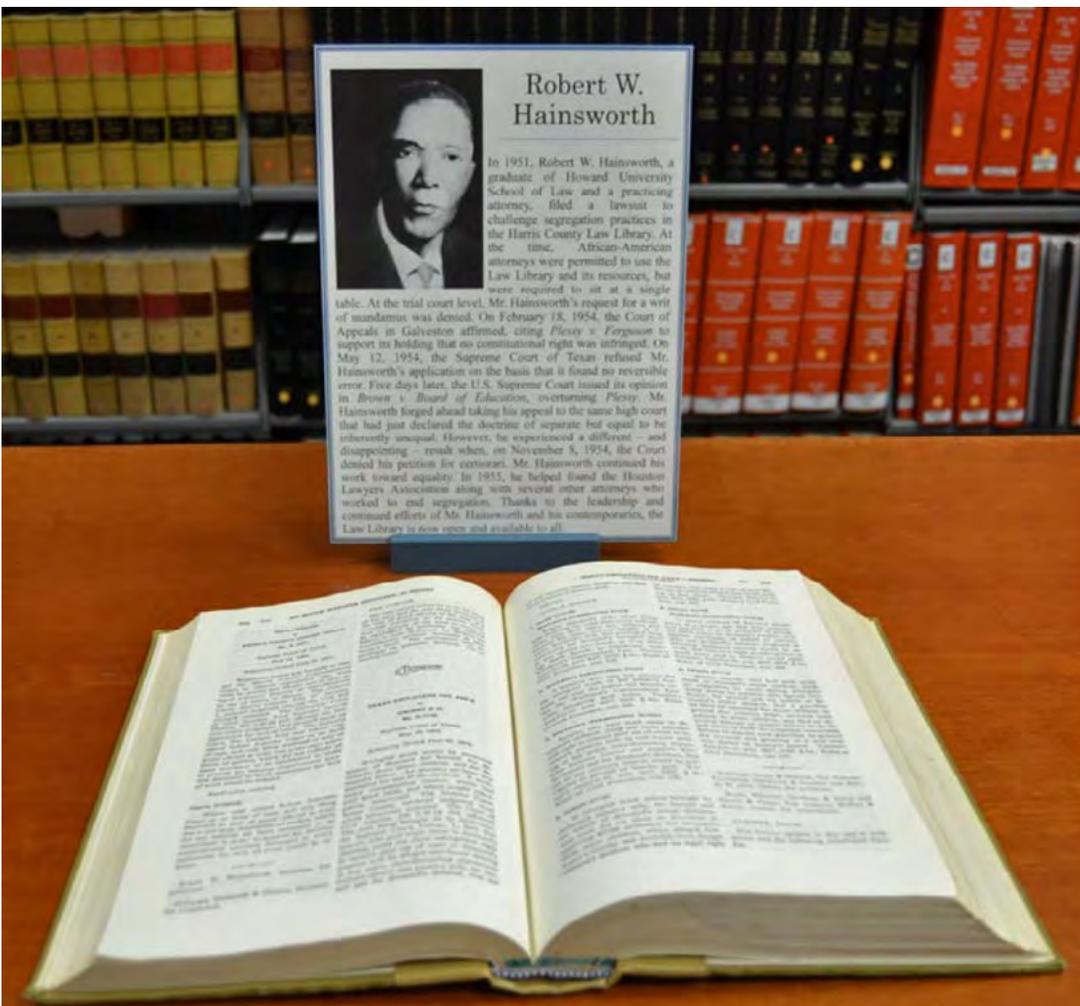
Harris County Attorney Vince Ryan's "Century of Service 1915-2015" celebratory cake.



County Law Librarian Mariann Sears presented attendees with scholarly materials about the Harris County Library's one-hundred-year history, including a faux-leather copy of a genuine, Law Library Catalogue distributed to Houston Bar Association members in 1949.



About three hundred judges, justices, and attorneys attended the Centennial Celebration. Left, the Hon. Tracy Christopher, Justice on the Fourteenth Court of Appeals; center, the Hon. Harris County District Court Judge Robert Schaffer of the 152nd District Court; right, the Hon. Jane Bland, Justice on the First Court of Appeals.



The Harris County Law Librarian assembled a collection of historic photos to commemorate the Library's history. One exhibit focused on African-American attorney Robert W. Hainsworth's 1951 lawsuit to desegregate the Harris County Law Library, with a page open to the official Southwest report of Hainsworth's case.

Joseph Lawson, Deputy Director of the Law Library, followed County Attorney Ryan's introduction by identifying the judges, justices, and other public servants in attendance while discussing the library's history:

When talking about the history of the Harris County Law Library, we really have to begin in the year 1870. That year, the Houston Bar Association was established and its first president, Peter Gray, called for the creation of a law library for Houston's growing bench and bar. In addition to serving as HBA President, Gray was also the original owner of the firm that would become Baker Botts and served as an associate justice of the Texas Supreme Court.

Many years passed before Gray's call led to serious efforts. In 1913, seven prominent members of Houston's legal community incorporated the Lawyers Library Association for the purpose of raising funds to establish a law library. The Association's board included several members who were influential in Houston's growth during the early twentieth century.

After discussing the contributions of Captain James A. Baker and Thomas Ball, Lawson noted the arrival of the first "WALT" Westlaw terminal in the library in 1986.



Joseph Lawson, Deputy Director of the Harris County Law Library

Harris County Law Librarian Mariann Sears spoke next, describing the technological revolution that had transformed the law library in recent years.

We've graduated from WALT terminals connected to hand-held, dial-up modems in order to access West Publishing's expanse of legal information to the WestlawNext platform that runs at lightning speed through a global system of interconnected computer networks on what we know as the Internet.

And we've gone from providing resources and services to only dues-paying members of the Law Library Association to opening our doors to anyone and everyone who needs access to legal information....

Sears noted the things that had not changed: one of the best collection of legal books in the Southwest and a user-friendly, professional library staff.

Very quickly then, what's new and cool about the Harris County Law Library today? Well,...we've got 25 public access computers available with access to all the latest and greatest legal research databases...[including] WestlawNext and Lexis Advance. We've got access to RIA's CheckPoint, a tax research database. We've got O'Connor's Online, HeinOnline, and State Bar Practice Manuals online. We've got Internet access and MSWord and Excel, too. And all of it's FREE to our patrons.

Not to mention ServiceDocs, a full service copy and reprographics center located right here within the law library. Sears then described the library's "greatest partnership...the one we're continuing to develop with the Houston Volunteer Lawyers."

Laura Gibson, President of the Houston Bar Association, then spoke to celebrate the Harris County Law Library as a modern facility that vastly improves access to the law, not only for legal professionals, but for all Harris County citizens who have a right to equal access to justice, including the right to review the library's own copy of Magna Carta, purchased by the HBA in 1951 and later donated to the library. Laura described how

Our legal community has been dedicated to equal access to justice for a very long time; as far back as 1847...[when] Houston lawyer Peter Gray took on the pro bono representation of a freed slave named Emeline against a man who claimed to own Emeline and her children. He posted the \$250 bond for the TRO with his own money, which was quite a lot back then. Gray tried the case to a jury of 12 white men. To say that the task before him was challenging is an understatement. But he won. Emeline and her children went free. Houstonians can be very proud of Gray's work.

This year, the HBA will be working in partnership with the Houston Grand Opera, Baker Botts which is a firm co-founded by Peter Gray, and Communities in Schools to commission an opera telling the story of Peter Gray and his pro bono representation of Emeline. The opera will be performed three times as part of a service raiser at the 1910 courthouse to raise money for pro bono and to remind attorneys of the importance of providing pro bono service. After that, the opera will be performed for high school seniors whom we hope to motivate to engage in public service and perhaps, plant the seed that they too can become a lawyer.



Above, left to right: Vince Ryan, Joseph Lawson, Mariann Sears, and, at the podium, Laura Gibson.
Below: Justice Brett Busby introduces Chief Justice Hecht.



Justice Brett Busby, who was recently appointed to the State Bar's Supreme Court Advisory Committee, then introduced Chief Justice Nathan Hecht, the keynote speaker. Justice Busby noted that, among Chief Justice Hecht's other accomplishments, he holds a B.A. degree with honors in philosophy from Yale University. The four years Chief Justice Hecht devoted to studying philosophy beneath the stately elms of New Haven Green became apparent a few moments later when the Chief Justice took the rostrum.

"Scientia potentia est," Chief Justice Hecht observed in opening his speech, "Knowledge is power." He then placed that phrase in its seventeenth century context before showing that it symbolized a law library's power to change the world:

Thomas Hobbes wrote that phrase in the Latin edition of *Leviathan* in 1668, but his

point, which was clear in the earlier English edition, was that *scientia*—by which he meant the natural sciences—are small and unimportant when compared with human powers, particularly the powers derived from the commonwealth and vested in a single leader. When Hobbes wrote that the natural sciences were small and unimportant, Isaac Newton was only 9. Maybe Newton would have changed his mind. In any event, Hobbes never met Albert Einstein, or Steve Jobs.

Yet, as Chief Justice Hecht pointed out, the nearly simultaneous creation of printing presses in the East and West began a long historical process of democratizing knowledge on a worldwide basis, knowledge that could then become accessible in a library available not only to justices, judges, and lawyers but also to private citizens willing and for the first time able to read the law for themselves and apply it to improve their own lives:

Before the advent of the printing press, in the East in the late 14th century, and a few years later in the West with Gutenberg’s machine, writings were few and books nonexistent. For thousands of years, the principal association between knowledge and power was that knowledge was available only to the powerful, or the privileged or fortunate. Knowledge was not so much a way to power as power was a way to knowledge.

But in today’s world, power flows out of a power cord: “Now the traffic almost all runs the other way. Knowledge is power, at least where, as in this country, knowledge abounds.”

The Chief Justice celebrated those prominent members of the bar who, one century ago, empowered the people of Harris County by organizing a law library:

It is in opposition to a suppression of knowledge, and in support of its general diffusion, that we gather in celebration of this great public law library. We remember its century of proud and faithful service to the Houston community; the towers of the bench and bar who founded it—James A. Baker, Thomas H. Ball, Judge Charles E. Ashe, John C. Williams, R. W. Franklin, James A. Breeding, and Lewis R. Bryan; the many and extensive collections it has housed, historical and current, on display here today; its present sponsor, Harris County Attorney Vince Ryan; and its staff over the decades, and its current director, Mariann Sears.



Chief Justice Nathan Hecht

“The Chief Justice did his homework,” Deputy Librarian Joseph Lawson told me afterwards. “He mentioned all of the founders by name.”

Not one to venerate the past at the expense of the future, the Chief Justice hailed a “new—relatively new—conduit to knowledge: computers and the Internet.” Access to knowledge is easier, broader, and quicker than ever before, he told the audience, through the twenty-five computer terminals the Harris County Law Library now provides its patrons. “The collections the library can access are orders of magnitude greater than the 30,000 volumes it houses. And for that expanded service, for the untold tomes as close as the push of a button, there is still—no charge.”

The audience broke into applause.

“I must mention another impediment to access to knowledge,” Chief Justice Hecht noted, “one that Orwell and Bradbury did not describe, prescient as they were.” He described not a hurdle but a gap resulting from a gradual separation of knowledge from the people who need it, a drifting apart:

People without access to legal services may suffer the deprivation of rights and liberties, just as if they were ignorant. American lawyers have formally recognized this for more than a century, forming organizations—like the Houston Bar Association’s Houston Volunteer Lawyers—to provide legal aid to the poor, and donating their time and services *pro bono publico*—for the public good...for the good of us all, in support of the rule of law, in witness to the precious rights and liberties *pro bono* lawyers protect.

Many members of the audience nodded in agreement, while others offered applause.

Chief Justice Hecht ended the evening’s celebration of the Harris County Law Library’s centennial on a reflective note. He looked toward the justices, judges, and attorneys present, and with a smile he finished:

Libraries are quiet places. It’s the thing I like best about them. They are little worlds you can go off to, not just to find answers, but to reflect on outside turmoils. In the quiet, surrounded by knowledge, there is power. This library, for 100 years, has been a bastion of legal knowledge for Houston, and enriching the community. That’s good reason to celebrate, to be grateful for the vision and service that have made the library all it is, and to wish it continued success.

This time, the applause went on and on as members of the audience rose in recognition of the library’s historic place in the history of Harris County and Texas.

Inspired by the Chief Justice’s words, empowered not only by the stories of what the Harris County Law Library’s founders had intended but also by the success they had achieved, the justices, judges, lawyers, and citizens who attended the Harris County Law Library’s Centennial Celebration left the Library with a few memorable stories of how a quiet place of power had helped mold the world in which they lived.



To learn more about the Harris County Law Library, visit its website at <http://www.harriscountylawlibrary.org/>. An excellent online exhibition about the Centennial Celebration is available at <http://www.harriscountylawlibrary.org/100>.

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Haley Spoke at the Star of the Republic Museum October 24

By David A. Furlow



James L. Haley

On Saturday, October 24, Texas Supreme Court historian James L. (“Jim”) Haley joined another three distinguished scholars making presentations about the Republic of Texas when he spoke about Texas’s Native Americans at the Central Texas Historical Association’s first symposium, “Republic of Texas Mosaic: Cultural Diversity from Independence to Statehood.” Jim shared his insights about Sam Houston’s relationship with the Cherokees, dispelled a few myths, and discussed the experience of Indians in the Republic gleaned from his decades-long study of Texas history.

Carolina Castillo Crimm, retired Professor of History at Sam Houston State University, examined the Tejanos’ experiences during the Republic era. Mary L. Scheer, Professor of History at Lamar University, discussed the lives, times, and careers of women during the Republic. James C. Kearney, instructor of Germanic studies at the University of Texas at Austin, reconstructed the immigration of Germans into Texas, their settlement, and their relationships with the home country.



Star of the Republic Museum, Washington-on-the-Brazos State Historical Park; Star of the Republic Museum photo, Wikimedia Commons

“The symposium provided an opportunity for anyone interested in Texas history to learn more about the area in which we live and its different cultural groups,” said Dr. Kenneth Howell, Blinn College history instructor and executive director of the Central Texas Historical Association. “That’s the mission of the CTHA—to promote the history and culture of the Central Texas region.”

The Republic of Texas Mosaic symposium was held from 9 a.m. to 5 p.m. at the Washington-on-the-Brazos State Historic Site Conference Center, 23200 Park Road 12, Washington, Texas 77880, phone: (936) 878-2461. Additional information about the museum is available at <http://www.starmuseum.org>.

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Haley Speaks at General Land Office SAVE TEXAS HISTORY Symposium November 14

By David A. Furlow

Historian James L. Haley will top off the morning session of the Texas General Land Office's Fifth Annual Save Texas History symposium by sharing colorful stories about the early twentieth century Texas Supreme Court.

The symposium, which will take place at the Travis Building at 1701 North Congress Avenue in Austin, will begin at 8 a.m., Saturday, November 14, when the General Land Office opens its doors to last-minute registration. The Saturday morning session culminating in Haley's speech includes:

- | | |
|-------------------------|--|
| 8:30 a.m. | Opening Comments |
| 9:00–9:45 a.m. | <i>Jeff Kerr: The Pig War: French Pride, Texan Stubbornness, and Hungry Hogs in the Republic of Texas</i> |
| 9:50–10:30 a.m. | <i>Ali James: From Calamity to Celebration: Over 160 Years at Texas Capitol Square</i> |
| 11:00–11:45 a.m. | <i>James L. Haley: Carpet Slippers and Flying Inkwells: The Texas Supreme Court A Hundred Years Ago</i> |

Anyone fortunate enough to have seen one of Haley's speeches about the history of the Texas Supreme Court knows that he combines a thorough mastery of court's many-faceted history with a born story-teller's narrative gifts.

In addition to Haley's speech, there are many other panel presentations that might interest Society members. The symposium's 1:00–2:00 p.m. breakout session offers attendees a choice of several special panel presentations:

- Richard Zelade: "Guy Town by Gaslight" and Doug Dukes "The Servant Girl Annihilator"; or
- Teri E. Flack: "Texas Civil War and Reconstruction Genealogy Research" and Kevin Klaus: "German-Texan Genealogy"; or
- a guided tour of the Texas General Land Office Archives and Records.

The 3:00–4:30 p.m. breakout session offers even more aspects of Austin's history and Texas's heritage:

- Dr. David Gracy: "George W. Littlefield in Austin" and Andres and Juanita Tijerina,

“Austin Slave Narratives”; or

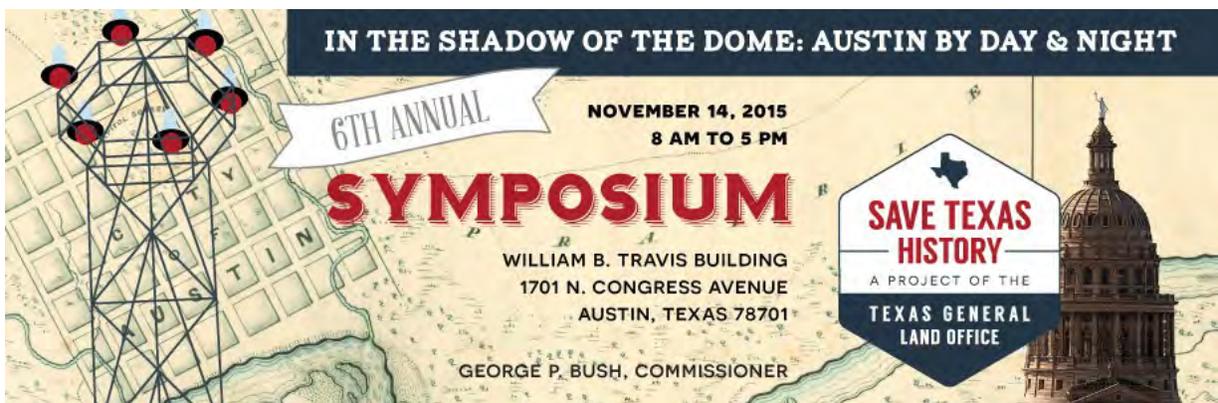
- a tour of Texas General Land Office Archives (at the Stephen F. Austin Building); or
- technology in Texas History Education, with Dr. Bruce Ellis and Buck Cole in a Texas History Teacher Workshop; or
- a Pioneer Land Surveying Field Trip to the State Capitol with the G.L.O. Surveying Staff.

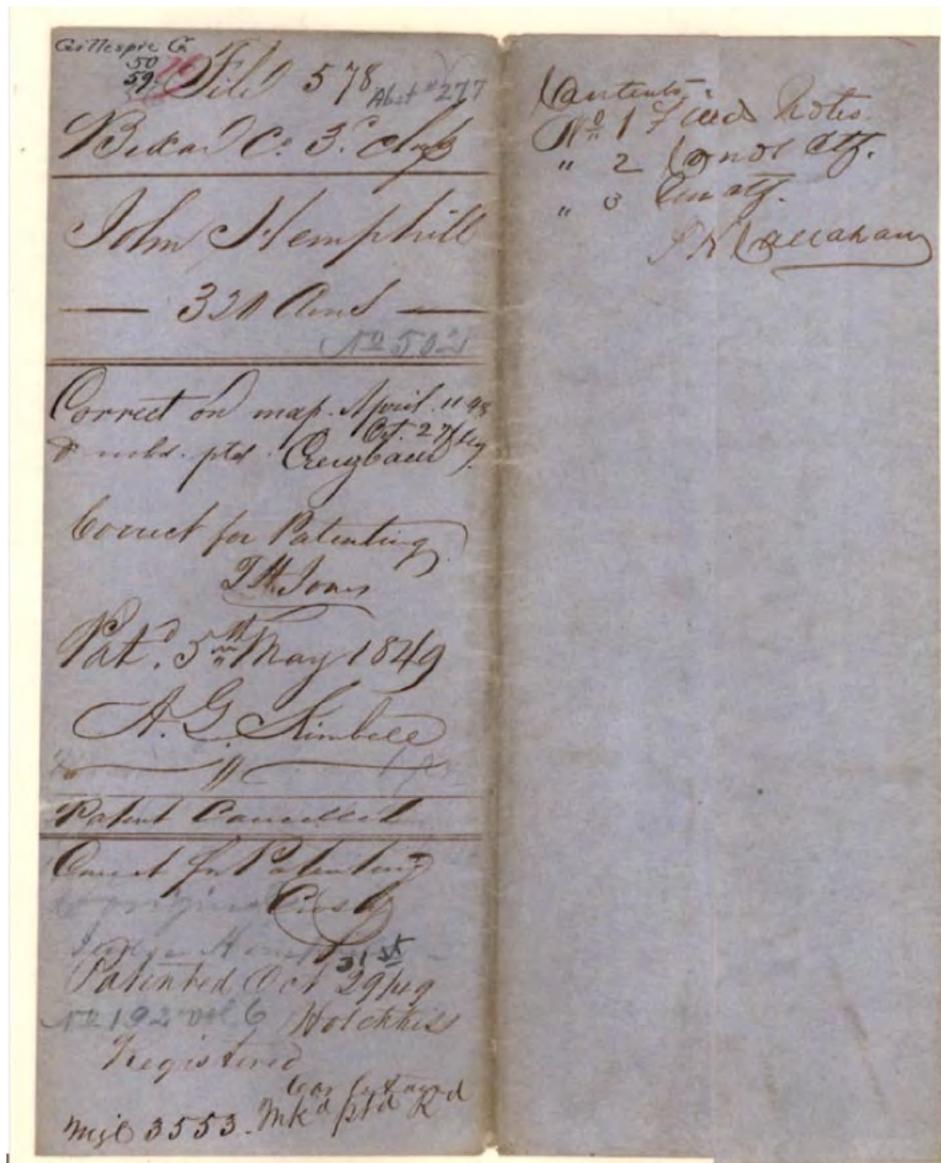
This year, for the first time, the Society is supporting the G.L.O.’s symposium as a General Level sponsor, in fulfillment of the Society’s mission of preserving papers, photographs, and artifacts relating to the Texas Supreme Court and other Texas appellate courts. The G.L.O. uses symposium revenue to preserve historic maps, records, and land patents. G.L.O. land records include, e.g., the State’s October 31, 1849 320-acre patent to Chief Justice John Hemphill, which remains in need of special preservation funding.

Anyone interested in meeting Texas Land Commissioner George P. Bush, other G.L.O. officers, and legislators involved in the preservation of historic records can register for the VIP “Meet and Greet” from 6:30 to 7:00 p.m. on November 14 and then stay for the general reception at the Capitol Visitors Center from 7:00 to 9:00 p.m. There are also opportunities for attendees to be photographed with Commissioner Bush.

Society members unable to attend the event will be able to watch Haley’s speech later this year. Jim Haley and the General Land Office have graciously granted permission for this Society to post a video of Haley’s presentation on the Society’s Hemphill Channel.

Anyone interested in registering for the program can do so at <https://events.r20.constantcontact.com/register/eventReg?oeidk=a07eatogs50a8dc7b21%20&oseq=&c=&ch=> . The G.L.O. officer in charge of the program is James Harkins, Manager of Public Services, Archives and Records Program Management Division. He may be reached at 512-463-3289 or at james.harkins@glo.texas.gov.





Chief Justice Hemphill's 320-acre Bexar County Land Patent available at the G.L.O., http://www.glo.texas.gov/ncu/SCANDOCs/archives_webfiles/arcmeps/webfiles/landgrants/PDFs/1/5/2/152980.pdf.

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Frank de la Teja to Speak at October 28 Board Meeting

By David A. Furlow

Members of the Board of Trustees and others who attend the Society's fall meeting on Wednesday, October 28 have something special to look forward to: a special presentation by Jesús Francisco ("Frank") de la Teja, Texas's first official Texas State Historian (2007–2009) on "The Union of Coahuila and Texas: A Forced Marriage and an Ugly Divorce."



Texas historian Frank de la Teja in front of the Bob Bullock State History Museum

YouTube viewing. We've asked him to bring some of his books about Texas history to sell and to autograph for those interested in reading more about Texas history.

Frank is the Jerome H. and Catherine E. Supple Professor of Southwestern Studies and Regents' Professor of History at Texas State University, where he also serves as Director of the Center for the Study of the Southwest. He holds a Ph.D. in Latin American History from The University of Texas at Austin, and

Frank will talk about the work of the Constituent Congress, which wrote the state constitution of Coahuila and Texas in 1827. His in-depth study of the Constituent Congress has led him to rethink how Coahuila's politicians thought about Texas in the early days of the Republic of Texas. Frank's insights offer new ways of thinking about the lives Texans lived when the federal constitution of Mexico and the state constitution of Coahuila and Texas governed Texas—a subject he analyzed in his superbly-illustrated article "Texas in the Mexican Constitutional Order" in the Spring 2015 issue of *The Texas Supreme Court Historical Society Journal*. Frank has graciously authorized the Society to film his presentation and post it on the Society's Hemphill Channel for



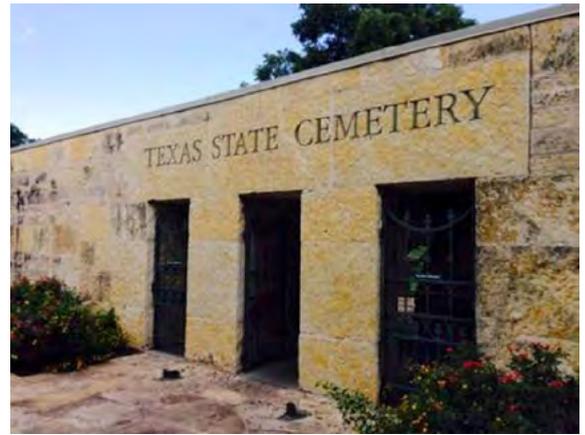
Frank de la Teja's photo of Coahuila's official record of its constitutional proceedings; reproduced with permission of the Tribunal Electoral del Poder Judicial de la Federación, Mexico

worked in the Archives and Records Division of the Texas General Land Office. His research focuses on the northeastern frontier of Spanish colonial Mexico and Texas through the Republic era. He has authored, *inter alia*, *San Antonio de Béxar: A Community on New Spain's Northern Frontier* (Santa Fe: University of New Mexico Press, 1995) and edited *Tejano Leadership in Mexican and Revolutionary Texas* (College Station: Texas A&M University Press, 2010). He has published in *Americas*, *Historia Mexicana*, *Journal of the Early Republic*, and the *Southwestern Historical Quarterly*. A consultant for the Texas State History Museum and a book review editor of the *Southwestern Historical Quarterly*, Frank served earlier this year as a Co-Moderator of the San Jacinto Symposium, which sponsored sessions devoted to Texas Indians in Spanish, Mexican, and Anglo Texas history.

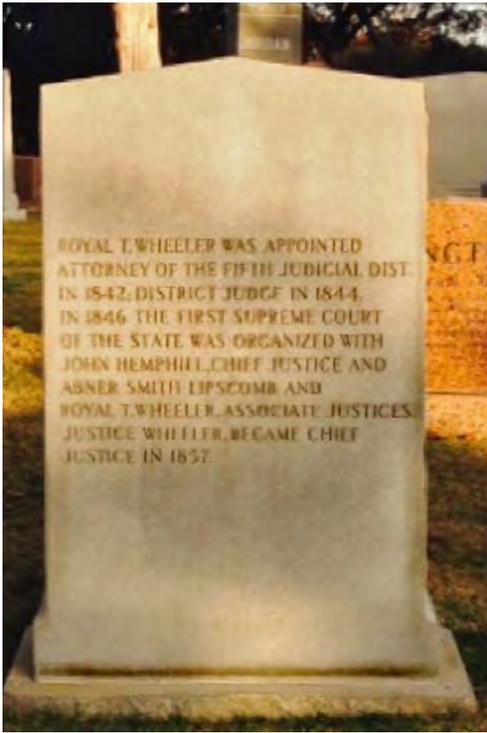
The Board of Trustees' fall meeting will begin at its usual start time of 10:15 a.m. in the Hatton W. Sumners Conference Room, 1414 Colorado Street, Austin, Texas 78701, in the Texas Law Center. The meeting will break sometime between 11:45 and noon to set up the lunch available to all Trustees, liaisons, and guests. Minutes from the Society's March 2015 meeting will be distributed before the meeting. For information, contact the Society office at 512-481-1840 or tschs@sbcglobal.net.

After lunch and Frank de la Teja's speech, all attendees will have an opportunity to take a special tour of the Texas State Cemetery guided by Will Irwin, the Cemetery's Executive Director, Senior Historian, and Cemetery Photographer. Will, along with Jason Walker and Helen Thompson, coauthored *Texas State Cemetery* (Austin: University of Texas Press, 2011). Illustrated with the photographs of Lawrence Parent and an epilogue by former governor Rick Perry, *Texas State Cemetery* tells the story of Texas through the lives of notable Texans, from Stephen F. Austin to Barbara Jordan, buried in the hallowed ground the Society's Trustees can tour on the afternoon of October 28, 2015.

Will has published two articles in the Society's *Journal*—"The Best People in Texas Are Dying to Get In: Justices in the Texas State Cemetery, Part 1," in the Summer 2012 issue, and "The Tragic Case of Justice



Texas State Cemetery and grounds;
photos by David A. Furlow



Tombstone of Chief Justice Royal T. Wheeler; photo by David A. Furlow

William Pierson: Justices in the State Cemetery, Part 2, in the Fall 2012 issue. He will lead those taking the tour to see the gravestones of Texas justices and heroes of the Texas Revolution and offer some wonderful tales along the way. The Cemetery contains the last remains of fifteen signers of the Texas Declaration of Independence, Texas Supreme Court Chief Justice John Hemphill, Associate Justice Abner Lipscomb, Associate Justice Royal T. Wheeler, other Justices of the Texas Supreme Court, three U.S. Senators, and several Confederate generals.

If adverse weather conditions compel a postponement of the Texas State Cemetery tour, David Furlow will use the same tour bus to take interested Trustees and others to the Texas State Library and Archives, where David and Texas State Librarian Mark Smith will answer questions about TSLAC's new lobby exhibit, *Evolution of the Texas Rangers, 1836-1920*.

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Texas State Historical Association Annual Meeting First Announcement

By David A. Furlow

Together with the Texas State Historical Association (TSHA), the Texas Supreme Court Historical Society is sponsoring a joint session panel presentation at 2:00 p.m. on Thursday, March 3, 2016 at the TSHA Annual Meeting in Irving, Texas. The theme of the Society's program is "The Restatement (Second) of Torts and the Revolution in Texas Asbestos Liability Law."

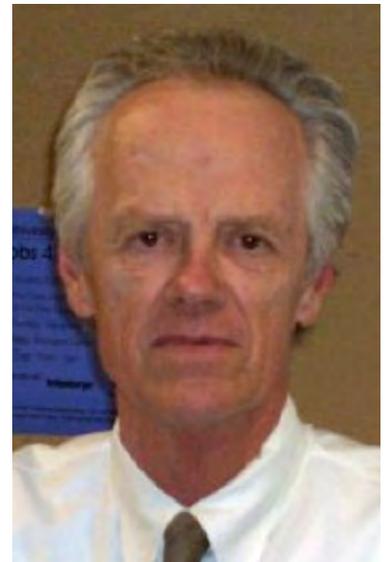
Society President Ben L. Mesches will preside over the panel and introduce the speakers, just as Marie Yeates did in 2015 and Doug Alexander in 2014.



The Hon. First Court of Appeals Justice Evelyn Keyes

The Honorable Evelyn Keyes, a Justice on Texas's First Court of Appeals in Houston, will present the paper, "The American Law Institute: Stating, Restating, and Shaping American Law since 1923." Judge Keyes can speak from her own ALI experience, since she is a member and an advisor to the ALI Government Ethics Project (she also serves on the National Advisory Council of the American Judicature Society and is a member of its Ethics Committee). Appointed to the bench by Governor Rick Perry in 2002, she was elected in November 2002 and reelected in 2004 and 2010. Justice Keyes earned an M.A. and Ph.D. in philosophy from Rice University and an M.A. and Ph.D. in English from the University of Texas. She received her B.A. from Sophie Newcomb College, Tulane University, magna cum laude, with honors in English.

Lamar University History Professor Robert J. Robertson will present the paper, "*Clarence Borel v. Fiberboard Paper Products Corporation, et al.* (1973), a second look at the landmark case in asbestos litigation." Robertson has published two books: *Her Majesty's Texans: Two English Immigrants in Reconstruction Texas* (College Station: Texas A&M University Press, 1998), and *Fair Ways: How Six Black Golfers Won Civil Rights in Beaumont, Texas* (College Station: Texas A&M University Press, 2005). He has published articles about Beaumont on the eve of the Civil War; French homesteaders in the Texas Panhandle; Congressman Jack Brooks and the Civil Rights Act of 1964; and U.S. District Court Judge Joe Fisher and the *Borel* asbestos case, in various journals, including the *Texas Gulf Historical and Biographical Record*, the *East Texas Historical Journal*, the *West Texas Historical Journal*, *Military History of the West*, and the *Massachusetts Historical Review*.



Lamar University History Professor Robert J. Robertson



The Hon. Mark Davidson,
Multi-District Litigation
Panel Judge

The Honorable Mark Davidson, former Eleventh District Court Judge and now Multi-District Litigation Judge of all asbestos cases in Texas, will serve as the panel's commentator. Judge Davidson is one of Houston's most frequently-published legal historians and most requested speakers. He has played a vital role in preserving historic county records throughout Texas, and serves on the Texas Supreme Court Task Force on Document Preservation.

As this Society's Executive Director Pat Nester has attested in earlier issues of the *Journal*, TSHA's annual meetings are fascinating events. Interesting speakers, compelling panel programs, and visits to historical sites and museums fill the days and nights. The panel programs the Society jointly sponsors with TSHA have been drawing larger audiences and generating greater buzz in recent years. So if you're interested in the history of Texas, the Texas Supreme Court, and the Texas judiciary, you should attend TSHA's 2016 Annual Meeting. Beginning on December 1, 2015, you can register to attend the meeting and reserve a room at the Omni Mandalay Hotel in Irving.

Planning is now underway for submission of a proposal for a joint session at TSHA's Annual Meeting in Houston in March 2017. Anyone interested in participating in that panel presentation, or in helping the Society fund the costs of participation, should contact TSCHS Journal Executive Editor David A. Furlow at dafurlow@gmail.com or at 713.202.3931.

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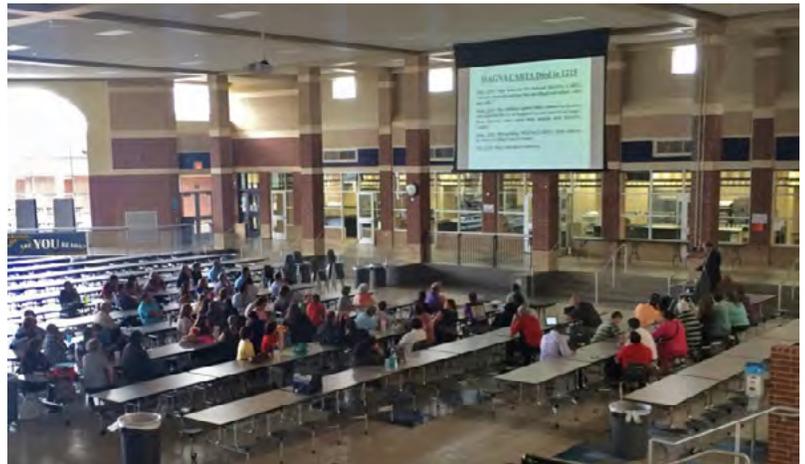
The Society Rides the Circuit with Its Magna Carta Program

By David A. Furlow

Early this summer, the Society made common cause with the American Board of Trial Advocates (ABOTA) to help Texas teachers learn more about the history of Texas law and Texas courts so they could share that information with their students. At the invitation of Erin Lunceford, then a managing shareholder at the Sprott Newsom Lunceford private law firm but now a Harris County District Court Judge, and Cay Dickson, the Executive Director of TEX-ABOTA (the Texas chapters of American Board of Trial Advocates) and the Executive Director of Houston ABOTA, I requested permission from the Society's Executive Director, Pat Nester, to present a version of the Society's State Bar of Texas Annual Meeting program to Texas high school teachers.

Pat agreed and I soon joined with First Court of Appeals Senior Justice Terry Jennings and City of Houston Judge "Kin" Spain to present the program "Magna Carta's 800-Year Legacy" for the Texas Chapter of ABOTA's Second Annual Teacher's Law School in Houston on Friday, June 12, 2015. Forty-five teachers and administrators from all across Texas participated in the program and asked the leaders of ABOTA's Houston Chapter to take that joint Society/ABOTA program on the road.

On August 18, 2015, I joined Jerry Young, a director of the Coats Rose law firm in Houston and the Houston in charge of ABOTA educational events, to present the Magna Carta program to a large audience of middle school and high school teachers and administrators interested in improving the way they teach the history of Texas law to their students. Leigh Rappaport, Curriculum Coach for Secondary Social Studies in the Instructional Support Center of the Cypress-Fairbanks Independent School District, organized the program.

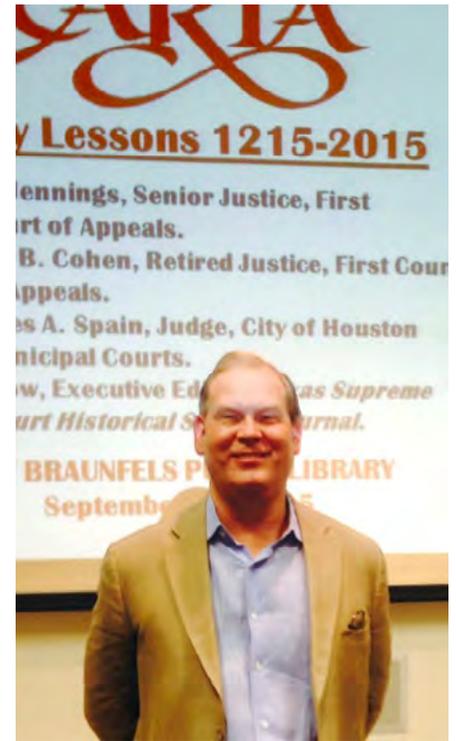


David Furlow presents the Society's Magna Carta's 800-Year Legacy program to eighty Cy-Ranch high school teachers and administrators (many off-camera) on August 18, 2015. Photos by Leigh Rappaport, Cy-Fair Independent School District administrator.

Afterwards, Ms. Rappaport asked the Society and ABOTA to present another such program. She stated that, "We absolutely loved the presentation! The teachers had great things to say about you and are excited to use the information in their classrooms this year. We look forward to working with you in the future and seeing more presentations. At Cy Ranch there were approximately 80 teachers and 5 administrators."

On Tuesday, September 22, the Society took its Magna Carta program on the road again. This time the program occurred in New Braunfels, as the Journal's Executive Editor presented a forty-five minute PowerPoint presentation about Magna Carta's 800-year legacy of the Rule of Law. Ben Pensiero, Public Service Librarian at the New Braunfels Public Library, described the program as "without a doubt one of the best we've ever offered the patrons of the New Braunfels Public Library. Thirty seven people attended your program, including some of our older and very educated patrons, as well as some teenagers and families with younger children. I think your talk engaged all of those who attended, as evidenced by the number of interesting questions you fielded at the conclusion of your program."

The Society is prepared to present programs about the history of the Texas Supreme Court for county bar associations, schools, and libraries. The Society will work with local bar organizations, historical societies, archaeological groups, and individuals to investigate and publicize the history of Texas law and Texas courts.



David A. Furlow at the New Braunfels Public Library

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Texas Digital Archive Will Include Texas Supreme Court 1841-1870 Records

By David A. Furlow

An easily accessible digital archive focusing on the early Texas Supreme Court during the period from 1841 through 1870 is coming to the Texas State Library and Archives (TSLAC) in the reasonably near future.

In January 2015, TSLAC received approximately 7 Terabytes (TB) of electronic records, along with 4,000 cubic feet of paper records, from the administration of outgoing Governor Rick Perry (2000–2015). TSLAC already had a robust digitization program for the last decade generating over 150,000 digital files, including the conversion of 25,000 audio cassette tapes of the Texas Senate (from 1972 to 2006) producing 18 TB of digital audio files. TSLAC combined these materials with electronic records from Governor Perry's Office to create the Texas Digital Archive.



During the legislative session of 2015, TSLAC secured funding for the Texas Digital Archive allowing for ongoing development and expansion. Beginning in the period stretching from the last quarter of 2015 into 2016, TSLAC will begin working with three additional agencies to acquire, preserve, and make accessible their electronic records.

Laura K. Saegert, Assistant Director for Archives in TSLAC's Archives and Information Services Division, is now drafting a Request for Proposal to outsource the creation of a digital database focusing on the Texas Supreme Court's handling and disposition of cases from the 1840s to about 1870 or 1875. Once TSLAC completes the digitization of those Texas Supreme Court records, it will make the images, records, and the database accessible on TSLAC's website for online access. The timing will depend on when the images are digitized.

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Calendar of Events

Society-sponsored events (in dark red) and other events of historical interest

Oct. 2–Nov. 29, 2015

The University of Texas Harry Ransom Center hosts the exhibition ***Frank Reaugh: Landscapes of Texas and the American West*** from Tuesday, August 5 through Sunday, November 29, 2015. Frank Reaugh (1860–1945) (pronounced “Ray”), one of the Southwest’s most distinguished artists, devoted his life to sketching and painting Western vistas while riding horseback with cattlemen during some of Texas’s most historic roundups. See <http://www.hrc.utexas.edu/exhibitions/2015/reaugh/>.

Oct. 2015–
March 27, 2016

The Austin History Center hosts the exhibition, ***Making the Grade: Austin’s First Public Schools from September 16, 2015 – March 27, 2016***. In a time in which the Texas Supreme Court is again addressing the constitutionality of the State’s system of financing public schools, this exhibition explores the difficulties Austin faced in establishing a free public school system in the 1870s, and what life was like for students and teachers in the early years of the Austin Public Schools—before the creation of the Austin Independent School District in the 1950s. See <http://library.austintexas.gov/ahc/current-exhibits-17946>.

Oct.–Dec. 2015

The exhibition ***La Belle: The Ship That Changed History***, re-opens in the Bob Bullock Museum of Texas History’s first floor Texas History Gallery. The reassembled hull of the French ship *La Belle* that sank in 1686 in Matagorda Bay will remain open for viewing during the museum’s renovation of the first-floor Texas History Gallery. See <http://www.thestoryoftexas.com/la-belle/the-exhibit>.

Oct. 2015–
March 18, 2016

The Texas State Library and Archives will continue displaying its in-lobby exhibition ***Evolution of the Texas Rangers, 1836-1920***. TSLAC’s lobby is at 1201 Brazos Street in Austin and is open Mon.–Fri 8 a.m. to 5 p.m. See <https://www.tsl.texas.gov/ranger-exhibit.html>.

Oct. 1–Dec. 31, 2015

The Harris County Law Library’s ***Centennial Celebration*** continues to celebrate its 100th anniversary with an online exhibition and display of historically significant books and records. Law Library Director Mariann Sears has launched a digital exhibit

webpage and a chronological webpage where attorneys, judges, justices, and the public can learn about the Law Library's 100-year history: www.harriscountylawlibrary.org/100 and <http://www.harriscountylawlibrary.org/centennial-timeline>.

Sat., Oct. 24, 2015

The 86th Annual Meeting of the Texas Archaeological Society offers cutting-edge programs about Texas history. The Archeological Society's members explore, excavate, and publish about every phase of Texas history and prehistory. The annual meeting and conference at the Omni Houston Hotel will be held at Westside, 13210 Katy Freeway in Houston, Texas. See <http://www.txarch.org/Activities/AnnualMeeting/am2015/>.

Tues., Oct. 27, 2015

Texas Supreme Court Historical Society Journal Executive Editor David Furlow speaks about Chief Justice John Hemphill's life at the Chappell Hill Historical Society Museum. A 50-minute program, followed by a 10-minute question and answer session, will begin at 6 p.m. and end at 7 p.m. at the Museum, located at 9220 Poplar St., Chappell Hill, in Washington Cty., Texas 77426, phone number, 979-836-6033. See <http://www.chapelhillhistoricalsociety.org/en/2011/programs.html>.

Wed., Oct. 28, 2015

Fall Meeting, TSCHS Board of Trustees

10:00 a.m.–1:00 p.m.
Hatton Sumners Meeting Room
Texas Law Center
1414 Colorado St.
Austin, Texas 78701

Luncheon Speaker: Jesús F. de la Teja, Supple Professor of Southwestern Studies and Regents' Professor of History, and Director, Center for the Study of the Southwest, Texas State University; former State Historian of Texas, will speak about, "The Union of Coahuila and Texas: A Forced Marriage and an Ugly Divorce."

Tour of the Texas State Cemetery: Will Erwin, the Senior Historian and Cemetery Photographer at the Texas State Cemetery, will lead Trustees on a tour of the cemetery that will include visits to the graves of Chief Justice John Hemphill and other famous Texas jurists and leaders of the nineteenth and twentieth centuries.

Sat., Nov. 7, 2015

The town of San Felipe celebrates the Annual Father of Texas Celebration. Staged since the 1920s, it features hands-on activities and lectures/programs about life in Austin's Colony. See <http://www.visitsanfelipedeAustin.com/index.aspx?page=694> and <http://www.txhas.org/PDF/Father%20of%20Texas%203rd%20November%202012.pdf> (covering the November 2014 celebration).

Sat., Nov. 14, 2015

The Texas General Land Office will conduct its 6th Annual Save Texas History Symposium, "In the Shadow of the Dome: Austin by Day & Night." This symposium, sponsored by the Texas Supreme Court Historical Society, will focus on the history of nineteenth century Austin, will occur at the William B. Travis State Office Building at 1701 N. Congress Ave., Austin, from 8 a.m. until 4:30 p.m., to be followed by a reception at Capitol Visitors Center from 7 to 9 p.m. See <http://www.glo.texas.gov/save-texas-history/symposium.html>.

***Author/historian James L. Haley will speak about the Texas Supreme Court from 11 to 11:45 a.m. Austin historian Jeff Kerr will talk about the Pig War between Richard Bullock and the French consul at the French Legation from 9 to 9:45 a.m. Curator of the Capitol Ali James will discuss "From Calamity to Celebration: Over 160 Years at Texas Capitol Square" from 9:50 to 10:30 a.m.

Sat.-Sun., Nov. 21-22, 2015

Civil War Weekend at Liendo Plantation in Hempstead, Texas. During the War between the States, Liendo hosted cavalry and infantry training camps, an internment camp, and a hospital. After the War, it served as headquarters for General George Armstrong Custer. The Civil War Weekend at Historic Liendo Plantation is a unique way to experience Texas's Victorian era. Battles will be performed Saturday and Sunday at 2 p.m. See <http://www.liendo.org/civilwarweekend/civilwar.html>.

Fri.-Sat., Dec. 4-5, 2015

The Fort Bend Museum Docent Society presents its 2015 Candlelight Tours at the 1883 Moore Home next door to the Fort Bend Museum at 406 South 5th Street in Richmond. Docents lead visitors through time and life on the Brazos River and teach Fort Bend's story through exhibit galleries, historic home museums, and walking tours of historic Richmond. See <http://www.fortbendmuseum.org/>.

Through Sat., Jan. 2, 2016

American Indian Art from the Susan J. Allen Collection is on display at the Panhandle-Plains Historical Museum in Canyon. Susan Janney Allen of Haverford, Pennsylvania, gave her American Indian collection to the museum in 1934 in memory of her parents, Samuel L. and Sarah H. Allen of Philadelphia. Selections from this collection are featured in the museum's Mary E. Bivins Gallery. See http://panhandleplains.org/pages/exhibitions_7.asp.

Through Feb. 16, 2016

The Star of the Republic Museum at Washington on the Brazos State Park will continue its current exhibit, *Enduring Spirit: African Americans in Nineteenth Century Texas*. The first African Americans in Texas were free men, seeking opportunity and advancement, along with many others. But the laws of the newly formed Republic of Texas forced them out and opened the door to thousands of enslaved people who served as the backbone of

the labor force for almost thirty years. Finally gaining their freedom after the Civil War, they discovered that their struggle was far from over. Artifacts include typical documents of the period such as slave records, freedmen contracts, and an oath of allegiance. Stoneware pottery made at the Wilson Pottery near Seguin is included, as well as an example of the intricate Pine Burr pattern quilt. See <http://www.starmuseum.org/>.

Thurs., March 3, 2016

The Texas Supreme Court Historical Society presents the legal history program, *The Restatement (Second) of Torts and the Revolution in Texas Asbestos Liability Law*, at the Texas State Historical Association's 120th Annual Meeting. The Texas State Historical Association is cosponsoring the event, which is Session 13 in the Annual Meeting's series of presentations. The program will commence at 2 p.m. in the Andaman Room of the Omni Mandalay Hotel at 221 E. Las Colinas Blvd, Irving, Texas 75039, 972-556-0800. Society President Ben L. Mesches will preside.

Texas First Court of Appeals Justice Evelyn Keyes will speak about her paper, *The American Law Institute: Stating, Restating, and Shaping American Law since 1923*.

Lamar University History Department Professor Robert J. Robertson will then discuss his paper, *Clarence Borel v. Fiberboard Paper Products Corporation et al. (1973), a second look at the landmark case in asbestos litigation*

In his role as Commentator, Multi-District Litigation Panel Judge Mark Davidson will help the audience analyze and appreciate some important aspects of legal history raised by each of the speakers.

Fri., April 1, 2016

Spring Meeting of the Texas Supreme Court Historical Society (tentative). More information will be posted in the *Journal's* Winter Issue Calendar.

Wed.-Fri., April 6-8, 2016

Texas Association of Museums annual meeting in Corpus Christi, Texas. <http://texasmuseums.org/annual-meeting.html>

Fri.-Sat., April 8-9, 2016

April 8-9, 2016 - Annual Meeting of the West Texas Historical Association in Abilene, Texas. <http://swco.ttu.edu/WestTexas/WTHApapers.html>.

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P.O. Box 12673
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JOURNAL STAFF

General Editor

Lynne Liberato

lynne.liberato@haynesboone.com

Executive Editor

David A. Furlow

dafurlow@gmail.com

Deputy Executive Editor

Dylan O. Drummond

dylan.drummond@squirepb.com

Managing Editor

Marilyn P. Duncan

mpduncan@austin.rr.com

Production Manager

David C. Kroll

dckroll@gmail.com

DISCLAIMER

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

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

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2015-16 Member Upgrades

The following Society members moved to a higher dues category since the Spring 2015 issue of the *Journal*.

GREENHILL FELLOW

Jeffrey L. Oldham

Harriet O'Neill and Kerry Cammack

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2015-16 New Member List

The Society has added thirty-four new members since the Spring 2015 issue. Among them are sixteen Law Clerks for the Court (*) who received complimentary memberships.

GREENHILL FELLOWS

Elaine Block
Thomas Hetherington

CONTRIBUTING

Paul Dodson
Amy Saberian
Robert A. Shivers

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Frank E. Stevenson
Natalie Thompson*
Scott Toland*
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Membership Benefits & Application

Hemphill Fellow \$5,000

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

Greenhill Fellow \$2,500

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

Trustee Membership \$1,000

- Historic Court-related Photograph
- Discount on Society Books and Publications
- Complimentary Copy of *The Laws of Slavery in Texas* (paperback)
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- Complimentary Admission to Society's Symposium
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Patron Membership \$500

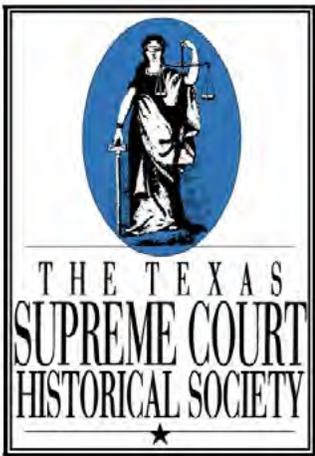
- Historic Court-related Photograph
- Discount on Society Books and Publications
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- Personalized Certificate of Society Membership
- All Benefits of Regular Membership

Contributing Membership \$100

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- Personalized Certificate of Society Membership
- All Benefits of Regular Membership

Regular Membership \$50

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



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

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