



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Winter 2021 Vol. 10, No. 2 General Editor Lynne Liberato Editor-in-Chief Hon. John G. Browning

Columns

[Message from the President](#)

By Cynthia K. Timms

This Journal edition continues the Society's exploration of civil rights issues, this time focusing on the struggles and contributions of the Latinx community. [Read more...](#)



Cynthia K. Timms

[Executive Director's Page](#)

By Sharon Sandle

The simple act of admitting evidence and making a record allows later generations to remember what happened and even reconsider that record from a new perspective. [Read more...](#)



Sharon Sandle

[Fellows Column](#)

By David J. Beck

The Fellows are a critical part of the annual fundraising and allow the Society to undertake new projects.

[Read more...](#)



David J. Beck

[Editor-in-Chief's Column](#)

By Hon. John G. Browning

The contributions made by Texans of Latinx heritage and the adversity they faced in securing and safeguarding their civil rights have been among our state history's most overlooked, least understood chapters. [Read more...](#)



John G. Browning

Leads

[Injustice: Racial Violence against Mexican Americans on the Texas Border](#)

By Monica Muñoz Martinez

The early decades of the twentieth century proved to be an era of widespread anti-Mexican violence in the American southwest and in Texas in particular. [Read more...](#)

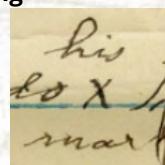


Antonio Rodriguez was removed from Edwards County Jail and lynched.

[The Unbearable Whiteness of Being: *In Re Rodriguez*, Race, and Citizenship](#)

By Hon. John G. Browning

Rodriguez's citizenship application and the court's ultimate decision would hold tremendous implications, not only for immigrants but for the thousands of Mexican Americans in Texas. [Read more...](#)



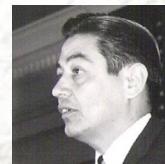
Ricardo Rodriguez' mark on his application to become a U.S. citizen

[A Profile of Roy R. Barrera, Sr.](#)

By Judge Xavier Rodriguez

A skilled criminal defense attorney, Roy Barrera Sr.'s style has been described as shifting one's attention from the "vicious acts of the crime into one of sympathy..."

[Read more...](#)



Roy R. Barrera, Sr. in 1969

Features

[The Texas Latinx Lawyer Report Card](#)

By Luz E. Herrera

Although almost one in four Texans are Latinx the latest Texas State Bar demographics tell us that only one in 10 of its attorneys are Latinx. [Read more...](#)

Texas Latinx Population
1995 5.2 million
2000 6,669,666
2005 8,010,747
2010 9,460,923
2015 10,999,120
2019 11,446,898

[The Lost Law Schools of Texas](#)

By Hon. John G. Browning and Josiah M. Daniel, III

With the Lone Star State now boasting ten law schools, it may be hard to imagine a time when there were few prospects in Texas for obtaining a formal legal education. [Read more...](#)

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A newspaper ad for Somerville Law School

[Justice Delayed, But Not Denied: Texas Supreme Court Grants Historic Posthumous Bar Admission](#)

By Hon. John G. Browning

In October, Texas became only the sixth state to grant posthumous bar admission to a person of color who'd been denied entry to the legal profession on racial grounds. [Read more...](#)

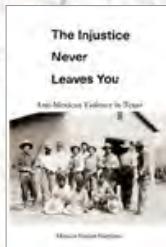


Book Review

The Injustice Never Leaves You: Anti-Mexican Violence in Texas

Book review by Hon. John G. Browning

Monica Muñoz Martinez provides a meticulous documentation of how law enforcement agencies like the Texas Rangers and vigilante groups facilitated violence against Mexican Americans in Texas during the early twentieth century. [Read more...](#)



News & Announcements

Justice Rebeca Aizpuru Huddle Joins the Court

By Macey Reasoner Stokes

On October 30, 2020, Rebeca Aizpuru Huddle was sworn in by Governor Greg Abbott as the newest member of the Texas Supreme Court. [Read more...](#)



Justice Rebeca
Huddle

In Memoriam: Thomas M. Reavley, 1921-2020

By Bryan A. Garner

Chief Justice Joe Greenhill called Tom Reavley "one of the ablest judges ever to serve on this bench." [Read more...](#)



Judge Tom
Reavley



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TSHA Annual Meeting 2021

By David A. Furlow

The Society is proud to participate in a special panel program, "Account-Ability in Court: From Slavery to Scandal," at the Texas State Historical Association 2021 Annual Meeting. [Read more...](#)



TSHA logo

Hemphill Dinner 2021

Speaker Announcement

The Society is honored to be hosting Lisa S. Blatt as its keynote speaker for the annual Hemphill Dinner at the Four Seasons hotel in Austin on September 3, 2021. [Read more...](#)



Lisa S. Blatt

Membership & More

Officers, Trustees & Court Liaison

2020-21 Membership Upgrades

2020-21 New Member List

Join the Society

Somerville Simple System





Message from the President

Cynthia K.
Timms

Although I majored in chemical engineering, I allowed myself, each semester, one interesting class: a class that did not involve numbers and equations. Among those classes, I took a humanities course during which we studied a mixture of writings, both secular and religious. One day the professor asked a question: "Why would a caring, all-powerful God allow people to suffer?" He awaited an answer. As was typical of most college classes, there was no rush of students yearning to provide a response. Awkward silence oppressed the room. Each person waited for someone else, anyone else, to attempt to explain God's earthly motivations. The professor asked the question again. This was not a rhetorical exercise; he wanted an answer. As I watched him, I realized he was not asking this to provoke a scholarly debate; he was asking this for himself. He was a widower, and the loss still gnawed at his soul. More than wanting an answer to this question, he needed an answer to this question.

A student gingerly raised her hand into the air. "I cannot say why God allows people to suffer," she started. "But I have noticed that it is during times of difficulty and pain that I appear to grow. Life is more enjoyable when things are easy, but I tend to stagnate during those times." The professor looked at the student, contemplating her thoughts on the subject. Eventually he nodded, and class continued.

That student's observations are echoed in the words of Supreme Court Justice Sonia Sotomayor:

There are uses to adversity, and they don't reveal themselves until tested. Whether it's serious illness, financial hardship, or the simple constraint of parents who speak limited English, difficulty can tap unexpected strengths.

Justice Sotomayor knows something about adversity. She grew up with poverty, type I diabetes, and her father's alcoholism and early death. Her natural optimism and tenacity enabled her to discover her strength amidst a world of adversity. In her memoir, "My Beloved World," she revealed the richness of experiences—both good and bad—that molded her into the person who would be the first Latina to serve on the United States Supreme Court.

This Journal edition continues the Society's exploration of civil rights issues, this time focusing on the struggles and contributions of the Latinx community. Once again, the Society has to thank John Browning (Editor-in-Chief) and Stephen Pate (Executive Articles Editor) for their editing work. We are fortunate to feature contributions from Judge Xavier Rodriguez, John Browning, Prof. Monica Munoz Martinez, and Prof. Luz Herrera. Bryan Garner has authored a memorial on the life of the late Judge Thomas Reavley. Once again, the Journal is published with the excellent assistance of managing editor Karen Patton, editor Kevin Carlsen, and production manager and graphic designer, David Kroll.

The work of the Society is progressing on many fronts, including:

- The Society is sponsoring a presentation on March 6, 2021 from 12:00-12:45 pm at the Texas State Historical Association's Annual Meeting. The Society's joint session with TSHA is titled: "Account-Ability in Court: From Slavery to Scandal." We will be presenting two excellent lectures: (1) Daina Ramey Berry, University of Texas at Austin, "*Improper Intimacy: Slavery & Infidelity in Montgomery County, Texas*"; and (2) Stephen Pate, Texas Supreme Court Historical Society, *A Hot Time in the Old Town Tonight! Wurzbach vs. McCloskey—Scandal in a 1928 Texas Congressional Election*. David Keltner will present commentary on the two lectures. Due to the pandemic, the TSHA Annual Meeting will be taking place online. The complete schedule can be found by clicking [here](#). You can register by clicking [here](#). The Annual Meeting begins on Wednesday, March 3 and wraps in the afternoon of Saturday, March 6.
- We have already lined up our speaker for the 2021 Hemphill Dinner in Austin, which we are hoping to conduct in person on September 3, 2021. Our speaker is Lisa Blatt of Williams & Connolly in Washington D.C. Lisa is a top United States Supreme Court practitioner, having had 40 arguments before the Court and having won 37 of those cases. Following her graduation from the University of Texas Law School, Lisa clerked for Justice Ruth Bader Ginsburg when Justice Ginsburg was a judge on the Court of Appeals for the District of Columbia. Lisa will discuss the life and career of Justice Ginsburg.
- It is time to renew your membership. Your membership funds the Society's many ongoing projects, including sponsoring books and publications on the history of Texas courts, attorneys, and judges; educating elementary school children on the history of courts in Texas; publication of the Society's award-winning Journal every quarter; maintaining judicial portraits; and contributing to other historical organizations such as the Texas State Historical Society. To become a member or renew your membership, you can click [here](#).
- To keep up with our ongoing activities, check us out on social media. We are on [Facebook](#) and on [Twitter](#) @SCOTXHistSoc.

Enjoy reading our Journal. And remember the words of David McCollough: "History is who we are and why we are the way we are."

[Return to Journal Index](#)



Sharon Sandle

The Past We Step Into:

*Recognizing the Importance of the
Historical Record in Uncertain Times*

How do you know what to believe? All too often we hear this question asked, often in reaction to a media item. It's an uncomfortable feeling to think that you can't rely on what you've read. It's disorienting when the same story is told so differently in different forums that it seems like the different versions can't possibly be based on the same set of facts. And it's understandable that the human brain starts to compensate by looking for facts to support the most familiar version of events and disregarding facts that don't match what we were expecting from the story.

This phenomenon is hardly new. In this issue of the Journal of the Texas Supreme Court Historical Society, we focus on the history of civil rights in Texas. In her article on violence against Mexicans and Mexican Americans in Texas, Professor Monica Muñoz Martinez vividly recounts the conflicting narratives surrounding incidents of mob violence and lynching in early 20th century Texas. As Martinez recounts, many of these incidents occurred in defiance of the courts outside of the law and without the benefit of a trial. Without official testimony and evidence, we are left to tease out the history of these events from the often-conflicting narratives from media reports of the time. In contrast, Justice John Browning's article on *In re Rodriguez* relies on court records to recount how the circumstances of Ricardo Rodriguez's application for citizenship fit into the larger tapestry of citizenship and civil rights for Texas's Latinx population at the turn of the 20th century.

The simple act of admitting evidence and making a record is a valuable contribution and one that allows later generations to remember what happened and even reconsider that record from a new perspective. The record made in a hearing or trial is a point of reference for those seeking information they can rely on, both contemporaneously and in future generations.

The Texas Supreme Court Historical Society celebrates the contribution of the courts to the community and to the lives of Texans. We do this through the Journal with articles that look back at important cases from Texas history; both those that reaffirm our faith in the law, and those that challenge us to keep working to improve the justice system. The Society also strives to record the history that we are living and creating today. In December, the Society partnered with the Appellate Section of the State Bar of Texas to sponsor "An Evening with the Texas Supreme Court," an online discussion with the current Justices of the Texas Supreme Court. This event invited the

Court to reflect on the Texas courts' response to the important events happening right now: the COVID pandemic, civil unrest, and a contentious election. The recorded event has become the most-watched video on the Texas Supreme Court's YouTube channel.

Reflecting on our history helps guide our path in the future, and the Society works to foster an interest in the law for the future with its *Taming Texas* educational program that places Texas lawyers and judges in Texas schools to promote understanding of the law and the courts among the children who will be our future lawyers, judges, and citizens.

As the articles in this month's Journal illustrate, preserving a historical record is vital in furthering a just and civil society. Organizations like the Texas Supreme Court Historical Society play an important role in keeping the historical record alive. And the members of the Society are vital in making it possible for the Society to continue this work. If you have yet to renew your membership with the Texas Supreme Court Historical Society for this year, please take a moment today to do so [here](#). And be sure to make your voice heard by attending the Society's virtual Annual Membership meeting on April 22, 2021.



"An Evening with the Texas Supreme Court" brought Chief Justice Nathan Hecht together with Justices Eva Guzman, Debra Lehrmann, Jeff Boyd, Brett Busby, Jane Bland, and Rebeca Huddle.

do so [here](#). And be sure to make your voice heard by attending the Society's virtual Annual Membership meeting on April 22, 2021.

[Return to Journal Index](#)

Fellows Column

By David J. Beck, Chair of the Fellows

Photo by Alexander's Fine Portrait Design-Houston



Our exclusive event, the annual Fellows Dinner, is one of the benefits of being a Fellow. About this time each year, the Fellows gather with the Justices of the Texas Supreme Court for a wonderful evening of history, dinner, and conversation. The unique Austin venues for the dinner have included the Blanton Museum of Art, the Texas Lieutenant Governor's private dining room in the State Capitol, the Bullock Texas State History Museum, and the Frank Denius Family University of Texas Athletics Hall of Fame. For many of the Fellows, it has been their first time in these special venues. The attendees always comment on the dinner's elegance, uniqueness, and fellowship. We are saddened that we have postponed this year's Fellows Dinner. We are reviewing when it may be feasible to reschedule the dinner. Further announcements will be sent directly to all Fellows.

The Fellows would like to give a special thanks to former Justice Paul Green, who was the Court's liaison to the Society for nearly a decade until he left the Court last year. Justice Green helped the Fellows in many ways, including assisting with the Fellows Dinner. Justice Green always coordinated the scheduling of the dinner so that the other members of the Court could attend. We appreciate his work for the Society and friendship to the Fellows. The Fellows want to give a warm welcome to Justice Jane Bland, who now serves as the Court's liaison to the Society. Justice Bland is a Trustee of the Society and she and her husband, Doug, are Fellows of the Society. We look forward to working with Justice Bland for many years to come.

Our third Taming Texas book, *The Chief Justices of Texas*, which contains interesting stories about the twenty-seven Chief Justices of the Supreme Court of Texas, was released a year ago. We are now well underway with the next book. Jim Haley and Marilyn Duncan, the authors of all three prior Taming Texas books, have been working on the manuscript for the fourth book in the series. That book will be entitled *Women in the Law* and will feature stories about important women in Texas legal history. We are considering publishing the book in a graphic-novel format to make it more attractive to seventh graders.

We would like to thank both Jim and Marilyn for their exceptional work on these excellent books. Chief Justice Hecht has written the foreword for all three books. Marilyn has also been

instrumental in developing and updating the Taming Texas classroom curriculum. We could not have done this project without her.

The Fellows are a critical part of the annual fundraising by the Society and allow the Society to undertake new projects to educate the bar and the public on the third branch of government and the history of our Supreme Court. If you are not currently a Fellow, please consider joining the Fellows and helping us with this important work.

Finally, we are in the process of considering future projects. So please share with us any suggestions you may have.

If you would like more information or want to join the Fellows, please contact the Society office or me.

FELLOWS OF THE SOCIETY

Hemphill Fellows

(\$5,000 or more annually)

David J. Beck*

Joseph D. Jamail, Jr.* (deceased)

Richard Warren Mithoff*

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(\$2,500 or more annually)

Stacy and Douglas W. Alexander

Nick C. Nichols

Marianne M. Auld

Hon. Harriet O'Neill and Kerry N. Cammack

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Hon. Jane Bland and Doug Bland

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*Charter Fellow

[Return to Journal Index](#)



Hon. John G.
Browning

Texas' Latinx *Legal Trailblazers*

Texas' Latinx community comprised 38.2% of the state's population as of the 2010 U.S. Census, and 2020 U.S. Census Bureau estimates from last June indicate that this number has grown by more than 2 million since 2010. The state's demographer predicts that Latinx will be Texas' largest population group by mid-2021. Yet from Texas's very beginnings, both the contributions made by Texans of Latinx heritage and the adversity they faced in securing and safeguarding their civil rights have been among our state history's most overlooked, least understood chapters. Recently, we have addressed the similarly neglected chapters in the legal history of Texas' African American lawyers and judges as well as civil rights milestones in Texas history. With this issue and our Spring 2021 issue, we are proud to turn our focus to Texas' Latinx legal trailblazers and major civil rights cases.

In this issue, our featured offerings include Prof. Monica Muñoz Martinez's look at the history of racial violence against Mexican Americans in Texas during the early twentieth century (as well as a review of her outstanding book on the subject, *The Injustice Never Leaves You*); Judge Xavier Rodriguez's profile of legendary trial lawyer and Texas' first Latino Secretary of State Roy Barrera, Sr.; and my own look at the 1897 case of *In re: Rodriguez*, a landmark case about the legal construct of "whiteness" that demonstrated how unclear, yet very critical, citizenship status was for Mexican Americans in Texas.

The subject of racial violence against people of Mexican ancestry in Texas is particularly thought-provoking, as Dr. Martinez's article demonstrates. Only in recent years has this overlooked and dark chapter in Texas legal history begun to receive the scholarly attention it deserves, from historians like Monica Muñoz Martinez, William D. Carrigan and Clive Webb, Nicholas Villanueva, and others. Our issue can only scratch the surface of this rich and complicated history. There are many important narratives, such as the June 19, 1911 lynching of fourteen-year-old Antonio Gómez in Thorndale (Milam County), Texas. In a street altercation with garage owner Charles Zieschang instigated by the businessman, Gómez stabbed the older man and killed him. After his arrest, Gómez was in the process of being moved to a "safer" location, the Cameron County jail, when a lynch mob seized the boy and hung him from a ladder. Less than three hours had elapsed since Zieschang's stabbing. Although Gov. Oscar Colquitt ordered a court of inquiry into

the lynching, it went nowhere; of the four lynch mob members who were indicted, three were acquitted and the charges were dropped against the fourth. But the lynching became a catalyst for organizing efforts to safeguard the legal rights of Mexican Americans in Texas, including the June 1911 formation of Agrupación Protectora Mexicana in San Antonio and other groups. The lynching also led to condemnation by the Mexican government as well as protests and boycotts in Mexico.

Those in Texas' burgeoning Latinx legal community did not stand idly by during these darkest chapters. Brownville lawyer and legislator J.T. Canales publicly spoke out against the Texas Rangers' abuses and initiated hearings into the 1918 Porvenir massacre. Although the hearings yielded no indictments and the climate of fear persisted along the border, the courage of Representative Canales is unquestionable. Weathering assaults on his character and threats against his life, Canales sought accountability from those in law enforcement, government, and the legal system.

We remember the adversity and racial violence faced by the Latinx community in Texas' legal history, and we celebrate the legal pioneers from this community for what they have given to our state.

[Return to Journal Index](#)

Injustice: Racial Violence against Mexican Americans on the Texas Border

By Monica Muñoz Martinez

In November 1910, a mob in Rocksprings, Texas removed twenty-year-old Antonio Rodríguez from the county jail in Edwards County, where he stood accused of murdering a local resident Effie Greer Henderson. A mob formed and removed Rodríguez from his prison cell. The mob marched Rodríguez to the edge of town, bound him to a mesquite tree, saturated kindling with kerosene, and burned him alive at the stake. Newspapers reported that thousands of residents attended the lynching.

Over the next days, weeks, and months, reporters, Mexican diplomats, and Texas Rangers would descend on Rocksprings to investigate the lynching. Reports showed that Rodríguez was a young Mexican national in his twenties living in the region for work. Local officials reported that unidentified mob participants overpowered the local jailer and took Rodríguez. Despite calls by Mexican consuls to arrest and prosecute mob participants, no civilians or officers were ever prosecuted for the lynching in Rocksprings. For generations, people in Rocksprings debated whether the lynching was justice for the murder of Effie Greer Henderson, or if Rodríguez was innocent and merely at the wrong place at the wrong time. For those who believed Rodríguez was innocent, they wondered, who murdered Henderson? They believed that both Henderson and Rodríguez were innocent victims of brutal violence in November 1910.¹

The brutality of the lynching captured international media coverage. The English-language press stoked fear by circulating rumors that Mexican mobs planned revenge. On November 14, the *El Paso Times* published an article that claimed a Mexican mob had been sighted marching toward Rocksprings to seek revenge. Although such a march through rough and unforgiving terrain was unlikely, the rumors caught national attention. The *New York Times* reported that more than 2,000 "Texas cowboys" descended on Rocksprings to defend the rural community from the oncoming Mexican demonstrators. Only two days later the *El Paso Times* explained that the claims of encroaching Mexicans proved to be mere rumor, but the media portrayals of savage Mexicans and a dangerous international border had done their part to shape public opinion.²

¹ For more on the Rocksprings lynching and the competing memories of the event that circulate still today see chapter one of Martinez, *The Injustice Never Leaves You: Anti-Mexican Violence in Texas* (Cambridge, MA: Harvard University Press, 2018).

² William D. Carrigan and Clive Webb, *Forgotten Dead: Mob Violence against Mexicans in the United States, 1848–1928* (Oxford: Oxford University Press, 2013), 81–82; Nicholas Villanueva Jr., *The Lynching of Mexicans in the Texas Borderlands* (University of New Mexico Press, 2017); Arnoldo De León, *Mexican Americans in Texas: A Brief History* (New York: Harlan Davidson, 1999), 50; Gerald Raun, "Seventeen Days in November: The Lynching of Antonio Rodríguez and American-Mexican Relations, November 3-19, 1910," *Journal of Big Bend Studies* 7 (1995) 62. "Armed Mexicans Marching on Town of Rock Springs," *El Paso Times*, November 14, 1910. Articles circulating similar ideas about fear include the following: "Mexicans on Warpath," *Advocate*, November 19, 1910; "Fear Fight at Rock Springs,"

The Spanish-language press, on the other hand, decried the brutality of burning a man alive. Accounts of the lynching triggered immediate reaction in Mexico and across the American Southwest. Journalists portrayed Rodríguez as a compatriot and vehemently condemned the act as an embodiment of American racism. The newspaper *El Debate* raged, "The iron hoof of the Texas 'Yankee' in his barbarous and savage sentiments of race hatred, is now trampling upon the Negro; but the rottenness of his core has spread out so as to wound and even kill a Mexican, by the iniquitous method of lynching."³ The article suggested that the brutality regularly practiced on African Americans could continue to spread to all vulnerable groups in the United States.



Práxedis G. Guerrero

In the newspaper *El Regeneración*, journalist Práxedis G. Guerrero tied the lynching to the history of slavery in the United States. He recalled the execution of the prominent abolitionist in Virginia in 1859 and described Rodríguez's lynching as occurring "on the same piece of land that still has not escaped the shadow cast by the hanging of John Brown." Guerrero sarcastically clarified that the mob was not made up of "hordes of cannibals, nor equatorial Africans, nor wild men from Malaysia, nor Spanish inquisitors." To the contrary, the white vigilantes were "descendants of Washington, of Lincoln, of Franklin," and the men were "well dressed, educated, proud of their virtues."⁴ For these journalists, the Rocksprings lynching needed to be understood as a part of the long legacies of slavery and colonization in the United States.

The lynching of Antonio Rodríguez was unique in that it was covered so widely in the press across the United States and in Mexico, but not in the cruelty of the mob participants. In the months and years to come, Spanish-language newspapers continued to recall the injustice of the lynching in Rocksprings, but they also reported outrage at the newest terror: lynch mobs targeting children. In June 1911 *La Crónica*, a Spanish-language newspaper owned by the Idar family of Laredo, profiled a Mexican boy slain at the hands of a Texan mob. In June, the local authorities in Thorndale arrested fourteen-year-old Antonio Gómez for stabbing a local store owner. A mob removed Gómez from jail and hanged him from a telephone pole. Newspapers reported that the Thorndale mob capped their murder with a terrifying display, tying Gómez's corpse to a buggy and dragging it through town. In November 1911, a grand jury failed to indict one alleged mob participant identified as Z. T. Gore. On February 27, 1912, a grand jury in a new venue took only twenty minutes to acquit Garrett F. Novack, Ezra W. Stephens, and Henry Wuensche.⁵

³ *Laredo Times*, November 20, 1910; "Americans Are Warned," *Dallas Morning News*, November 12, 1910; Trouble at Guadalajara," *Dallas Morning News*, November 12, 1910; "Quemado Vivo," *El Regidor*, November 10, 1910; *San Antonio Daily Express*, November 14, 1910, and *El Paso Times*, November 4, 1910.

⁴ *El Debate*, November 5, 1910, as quoted in Gerald Raun, "Seventeen Days in November: The Lynching of Antonio Rodríguez and American-Mexican Relations, November 3-19, 1910," *Journal of Big Bend Studies* 7 (1995): 159.

⁴ Práxedis G. Guerrero, "Blancos, Blancos," *El Regeneración*, November 19, 1910.

⁵ The newspaper *El Regeneración* in Los Angeles, California, continued to publish articles that referenced the lynching of Antonio Rodríguez years after the lynching. See: Práxedis G. Guerrero, "A La Huelga," *El Regeneración*, December 9, 1916; "Regeneración Por Rangel, Cline, y Compañeros," *El Regeneración*, May 23, 1914. For more on the Thorndale lynching see: Carrigan and Webb, *Forgotten Dead*, 144-145; "Cobarde Infame e Inhumano Lynchamiento de Un Jovencito Mexicano en Thorndale," *La Crónica*, June 29, 1911; "Lo Mismo de Siempre," *La Crónica*, November 16, 1911; "Mob Law," *Laredo Times*, July 2, 1911. Despite protests from participants in El Primer Congreso Mexicanista

Journalists reported outrage at the newest terror of lynch mobs targeting children and the continued failure of local authorities to prosecute mob participants. In a series of articles *La Crónica* raised alarm. One titled “Cobarde Infame e Inhumano Lynchamiento de Un Jovencito Mexicano en Thorndale” and another “Lo Mismo de Siempre,” the newspaper chronicled the horror of the Gómez lynching, as well as another attempted lynching, of León Cárdenas Martínez in Pecos.⁶ In May 1911 fifteen-year-old Martínez stood accused of murdering an Anglo teacher, Emma Brown. Texas courts sentenced him to death by hanging and called in the Texas Rangers to prevent a mob. In a report by the Mexican ambassador, the boy’s father explained that after being arrested, authorities placed a double-barreled shotgun to his son’s head and coerced him into confessing to the murder. The efforts by diplomats and journalists failed to save the teenager. Martínez was hanged on May 11, 1914.⁷

Historians have argued that summary executions and violence by vigilance committees should be considered in studies of racial violence. A broader view of this history helps to dispel the myth that mob violence was a tool for those living in the West where local judicial systems were still developing. Ken Gonzales-Day, for example, argues in *Lynching in the West: 1850-1935*, that histories that rationalized “frontier justice” by mobs hid a history of summary executions, vigilance committees, and lynch mobs that took place in parts of California that had the greatest law enforcement presence. Legal trials, he found, were common precursors to vigilante violence that prevented the accused from appealing death sentences or petitioning to governors for a reprieve or pardon.⁸

The early decades of the twentieth century proved to be an era of widespread anti-Mexican violence in the American southwest and in Texas in particular. These were years of great social, cultural, demographic, and economic transformation in Texas. From a civil war in Mexico to military

in Laredo in 1911 and the family’s appeals to a Mexican ambassador in Washington, Martínez was executed on May 11, 1914. For the father’s correspondence with Mexican ambassadors, see León Cárdenas Martínez Sr. to Mexican ambassador, August 3, 1911, as reprinted in Francisco Arturo Rosales, *Testimonio: A Documentary History of the Mexican American Struggle for Civil Rights* (Houston: Arte Publico Press, 2000), 111–112; “Al Benecio de León Cárdenas Martínez,” *La Crónica*, September 21, 1911. For more on the place of the lynching of Antonio Gómez and Antonio Rodríguez in the history of the Chicana/o civil rights movement, see Francisco Arturo Rosales, *Pobre Raza! Violence, Justice, and Mobilization among México Lindo Immigrants, 1900–1936* (Austin: University of Texas Press, 1999), 119; Francisco Arturo Rosales, *Chicano! The History of the Mexican American Civil Rights Movement* (Houston: Arte Publico Press, 1997), 61–62.

⁶ The newspapers can be translated as “The Infamous Coward and Inhumane Lynching of a Young Mexican Boy in Thorndale” and “The Same as Always.”

⁷ Carrigan and Webb, *Forgotten Dead*, 144–145; “Cobarde Infame e Inhumano Lynchamiento de Un Jovencito Mexicano en Thorndale,” *La Crónica*, June 29, 1911; “Lo Mismo de Siempre,” *La Crónica*, November 16, 1911; “Mob Law,” *Laredo Times*, July 2, 1911. For the father’s correspondence with Mexican ambassadors, see León Cárdenas Martínez Sr. to Mexican ambassador, August 3, 1911, as reprinted in Francisco Arturo Rosales, *Testimonio: A Documentary History of the Mexican American Struggle for Civil Rights* (Houston: Arte Publico Press, 2000), 111–112; “Al Beneficio de León Cárdenas Martínez,” *La Crónica*, September 21, 1911. For more on the place of the lynching of Antonio Gómez and Antonio Rodríguez in the history of the Chicana/o civil rights movement, see Francisco Arturo Rosales, *Pobre Raza! Violence, Justice, and Mobilization among México Lindo Immigrants, 1900–1936* (Austin: University of Texas Press, 1999), 119; Francisco Arturo Rosales, *Chicano! The History of the Mexican American Civil Rights Movement* (Houston: Arte Publico Press, 1997), 61–62.

⁸ Ken Gonzales-Day, *Lynching in the West: 1850-1935* (Durham, NC: Duke University Press, 2006), 5–6. For more on Gonzales-Day and the ongoing recovery efforts see Monica Muñoz Martinez, “Racial Violence in the West,” *The Journal of the Gilded Age and Progressive Era*, 2020, 1–8. doi:10.1017/S1537781420000535.

preparations for World War I staged in Texas, residents witnessed turbulence abroad and at home. Ethnic Mexicans, regardless of whether or not they were American citizens or Mexican nationals, were profiled as a foreign threat, as bandits, revolutionaries, murderers, and rapists. Politicians, the media, and local law enforcement called for an increase in policing and brutal policing methods.



Gov. Oscar Colquitt

In 1913, Governor Oscar Colquitt dispatched over 1,000 state militiamen and the Texas National Guard to appease residents of Brownsville and El Paso. U.S. soldiers trained for World War I deployment and were stationed on the Texas–Mexico border. By 1916 the Wilson administration had deployed approximately 100,000 National Guard troops along the border between Yuma, Arizona, and Brownsville, Texas.⁹ The border region was transformed into a militarized zone.

In 1915 the state police included only twenty-six men. Responding to calls for more policing, the Texas legislature increased the state budget, and the governor expedited the hiring process. In 1916 hundreds of new Texas Rangers patrolled the region; by 1918 the force swelled to approximately 1,350 Rangers. Rangers initiated a revenge-by-proxy policy, killing ethnic Mexicans, regardless of evidence of guilt, merely for being near the location of a crime. They profiled any ethnic Mexican as a Mexican bandit, made arrests, and then left prisoners vulnerable to mob violence. Historian Benjamin Johnson describes the Rangers' methods as ethnic cleansing: an attempt to remove ethnic Mexicans from Texas. In addition to these policing regimes, vigilante groups formed with euphemistic names, like "Home Guard" and "Law and Justice League." They also developed reputations for inflicting fear and violence.¹⁰

By decade's end, the intersecting regimes of vigilante, state, and military policing took hold of the broader social landscape, and Mexicans were declared enemies of the state. Anti-Mexican violence during this era took many forms. Mexican Americans and Mexican nationals alike were intimidated, tortured, and murdered by hanging, shooting, beating, and some, like Antonio Rodríguez, were burned alive. Most of the known victims were adult men, though teenagers, children, and women were also victims. Historians have recorded at least 547 lynchings of Mexican Americans and Mexican nationals between 1848 and 1928. Nearly half of these tragedies, approximately 232, took place in Texas.¹¹

⁹ Dunn, *The Militarization of the U.S.–Mexico Border*, 9; Evan Anders, *Boss Rule in South Texas: The Progressive Era* (Austin: University of Texas Press, 1982), 215–218; Arnoldo De León, *War along the Border: The Mexican Revolution and Tejano Communities* (College Station: Texas A&M University Press, 2012). Texas Rangers enlistment papers and rolls available at the Texas Adjutant General's Department Service Records (TAGDSR), Archives and Information Services Division (AISD), Texas State Library and Archives Commission (TSLAC), Austin, TX.

¹⁰ For more on the practice of ethnic cleansing, see Johnson's chapter "Repression," in *Revolution in Texas*, 108–143; Elliott Young, *Catarino Garza's Revolution on the Texas–Mexico Border* (Durham, NC: Duke University Press, 2004), 311; Webb, *The Texas Rangers*, 478; David Montejano, *Anglos and Mexicans in the Making of Texas, 1836–1986* (Austin: University of Texas Press, 1987); Arnoldo De León, ed., *War along the Border: The Mexican Revolution and Tejano Communities* (College Station: Texas A&M University Press, 2012). José T. Canales, testimony, "Proceedings of the Joint Committee of the Senate and the House in the Investigation of the Texas State Ranger Force," Adjutant General Records, Texas State Library and Archives Division, 678; E. M. Sorrenson, testimony, "Proceedings," 1034.

¹¹ William D Carrigan and Clive Webb, *Forgotten Dead: Mob Violence against Mexicans in the United States, 1848–1928* (Oxford: Oxford University Press, 2013); Ken Gonzales-Day, *Lynching in the West: 1850–1935* (Durham, NC: Duke University Press, 2006).

In addition to mob violence, Mexican Americans and Mexican nationals living in the United States were also victims of extralegal violence by law enforcement officers and U.S. soldiers. They were regularly denied due process, abused, killed in police custody, or left vulnerable to suffer from vigilante violence. In Texas, the decade between 1910 and 1920 was especially bloody. Anti-immigrant and anti-Mexican rhetoric fueled brutal policing practices by vigilantes, law enforcement, and U.S. soldiers who claimed the lives of hundreds of victims.¹²

During this era, members of law enforcement and vigilantes acted with impunity. Assailants rarely faced arrest, grand juries regularly failed to indict the accused, and as a result, crimes were not prosecuted. Texas governors, like James Ferguson, offered their pardoning power to law enforcement officers.¹³ Police abuse and collusion with vigilante mobs, followed by state cover-ups, set a pattern for sanctioned abuse.

For Mexican Americans, when Texas courts failed to bring justice, they had limited recourse. But, if the victim was a Mexican citizen, there were more avenues for redress. Mexican nationals turned to Mexican consuls for help to open investigations and to pressure Texas governors and American diplomats to act. Some families turned to diplomatic procedures and filed claims through the U.S.-Mexico General Claims Commission of September 8, 1923. The Mexican and U.S. governments bilaterally created the commission to settle the majority of claims of both Mexican and U.S. nationals arising between July 4, 1868, and the start of the commission.

For nearly a century, historians of racial violence overlooked claims filed through the General Claims Commission of 1923. Some Mexican nationals filed claims that provide evidence into cases of anti-Mexican violence. They reveal that the U.S. was charged with the wrongful deaths of Mexican nationals, denial of justice, unlawful use of firearms by U.S. soldiers, death during custody, and international delinquency. They constitute only a small portion of the total 3,617 claims filed with the commission, but they are invaluable for historians because they show the great lengths some widows, parents, and children went through to seek justice for their loved ones in the face of intimidation and negligence on the part of the U.S. judicial system.

Four cases provide examples of claims filed by Mexican nationals for violence at the hands of local law enforcement officers or U.S. soldiers and the failure of U.S. and Texas judicial systems to prosecute perpetrators.

Concepción García, Shot and Killed by a U.S. Soldier on the Rio Grande, 1919

In April 1919, nine-year-old Concepción García lived in Texas to attend school. She became ill and needed to return home to Mexico to recover. With the help of her mother and aunt, Concepción attempted cross the Rio Grande into Mexico, but the group came under fire from a

¹² For more on anti-Mexican violence in this era see: Benjamin H. Johnson, *Revolution in Texas: How a Forgotten Rebellion and Its Bloody Suppression Turned Mexicans into Americans* (New Haven, CT: Yale University Press, 2003); Elliott Young, *Catarino Garza's Revolution on the Texas-Mexico Border* (Durham, NC: Duke University Press, 2004); Arnoldo De León, ed., *War along the Border: The Mexican Revolution and Tejano Communities* (College Station: Texas A&M University Press, 2012); David Montejano, *Anglos and Mexicans in the Making of Texas, 1836–1986* (Austin: University of Texas Press, 1987).

¹³ Robert Utley, *Lone Star Justice: The First Century of the Texas Rangers* (New York: Oxford University Press, 2002) 27, 28, 260.

U.S. soldier, leaving Concepción dead. A court martial investigated the shooting and found that the U.S. soldier was guilty of manslaughter for firing on unarmed persons. Despite the court finding, acting on the advice of the board of review, the judge advocate general, and the secretary of war, U.S. President Woodrow Wilson ordered the lieutenant freed. The soldier was restored to military duty in September 1919.

Concepción García's parents filed a claim through the 1923 U.S.-Mexico General Claims Commission. They charged the U.S. government with the wrongful death of their daughter and denial of justice for failing to punish a U.S. border agent. Hearing the case on December 3, 1926, the General Claims Commission discussed the duty not only of municipal and federal authorities but also of soldiers to eliminate any reckless use of firearms. For U.S. soldiers on the U.S.-Mexico border, the commissioners referred to U.S. Military Bulletin No. 4 of February 11, 1919, stating that "firing on unarmed persons supposed to be engaged in smuggling or crossing the river at unauthorized places, is not authorized." Moreover, General Order No. 3 dated March 21, 1919, outlined that "Troop commanders will be held responsible that the provisions of Bulletin No. 4 . . . is carefully explained to all men."

The commissioners found that states should be punished for "such offenses as unnecessary shooting across the border without authority." The commission obligated the U.S. government to pay an indemnity on behalf of Teodoro García and María Apolinaria Garza. The tribunal decided, "An amount of \$2,000 without interest, would seem to express best the personal damage caused the claimants by their killing of their daughter by an American officer."¹⁴

Alejo Quintanilla, Died in Police Custody in Hidalgo County, 1922

In July 1922, Tom Casey accused his employee Alejo Quintanilla of harassing his daughter. At Casey's request, Sam Bernard, Edinburg deputy sheriff, traveled with Walter Weaver and two other civilians to arrest Quintanilla. Witnesses last saw Quintanilla in police custody, but he never arrived at the Hidalgo County jail. Three days later, around noon on July 18, 1922, Quintanilla's corpse was found near the side of the road, three miles outside of Edinburg. A Mexican consul opened an investigation and accused Deputy Sheriff Bernard and Walter Weaver, a civilian, of murdering Quintanilla. A grand jury of Hidalgo County never heard the case against Bernard or Weaver.

Francisco and María Inéz Pérez de Quintanilla, father and mother of Alejo Quintanilla, filed a claim charging the U.S. with denial of justice, direct responsibility for acts of minor officials, death during custody, failure to apprehend or punish, and measure of damages for wrongful death of their son, who they alleged died in the custody of local police in Edinburg in 1922. The commission found that under international law, when a government takes prisoners, hostages, or interned soldiers into custody it is responsible and obligated to account for them. They found

¹⁴ *Teodoro García and M. A. Garza (United Mexican States) v. United States of America* (1926). For more on this case and others see the third chapter of Martinez, *The Injustice Never Leaves You*. Mexican nationals that fell victims to state and federal policing and vigilante violence often had more judicial recourse than American citizens. When judicial systems failed to prosecute assailants that murdered American citizens, most were left without other forms of recourse. Mexican nationals, on the other hand, could turn to Mexican consuls in the aftermath, for help in demanding investigations, and in the case of the U.S.-Mexico General Claims Commission of 1923, to actually file claims against the U.S. government. In at least five cases, Mexican nationals successfully filed charges against the United States government for failing to prosecute assailants, for the denial of justice, and for wrongful death.

that the U.S. government was obligated to pay \$2,000 to the Mexican government on behalf of Quintanilla's parents.¹⁵

Adolfo Pedro Galván, Shot and Killed by Foreman in Nueces County, 1921

On August 25, 1921, Adolfo Pedro Galván was working on the construction of a bridge near Driscoll, Texas. He had an altercation with the son of Hugh Kondall, the work foreman. Five eyewitnesses testified that Hugh Kondall shot Galván twice, killing him on the spot. Local authorities arrested Kondall and on August 29, 1921, he was given a preliminary hearing before a justice of the peace. Despite witness testimonies, Kondall was not indicted until March 1922. Kondall's initial trial was scheduled for April in the Nueces County Criminal District Court, but the trial was rescheduled a total of twelve times. In April 1927, more than five years after Galván was shot and killed, Hugh Kondall had still managed to avoid standing trial.¹⁶

Galván's surviving wife, Salome Lerma, filed a claim through the General Claim Commission charging the U.S. for failure to apprehend or punish her husband's murderer, who was indicted by a grand jury but never brought to trial. Commissioners who decided the case wrote a scathing rebuke of the Nueces County courts: "There is no reason to suppose that the legal machinery of the state of Texas is so defective that in a case in which a preliminary trial reveals that there were at least five eye witnesses to the shooting of Galván the authorities during a period of six years later found themselves unable to conduct a proper prosecution." The commissioners found that in the case of *Salome Lerma De Galván v. United Mexican States* (1927), the US government was obligated to pay the Mexican government \$10,000 on behalf of the Galvan family for failing to punish the murderers of Adolfo Galván.¹⁷

Porvenir Massacre in Presidio County, 1918

In January 1918, a group of Texas Rangers, U.S. soldiers, and local residents traveled to a rural farming community called Porvenir, woke residents from their beds in the middle of the night, and separated fifteen men and boys from their families and neighbors. The unarmed group was taken into custody, denied due process, and executed in cold blood. The victims included Antonio Castañeda, Longino Flores, Pedro Herrera, Vivian Herrera, Severiano Herrera, Manuel Moralez, Eutimio Gonzalez, Ambrosio Hernandez, Alberto Garcia, Tiburcio Jáques, Roman Nieves, Serapio Jimenez, Pedro Jimenez, Juan Jiménez, and Macedonio Huertas. The massacre triggered an investigation by the Mexican government. The survivors provided sworn statements, including that of Juan Méndez, who wrote an official testimony of the massacre for Gen. J. C. Murguía in Ojinaga. By February 15 the Mexican embassy filed a formal protest with Secretary of State Robert Lansing and asked that the State Department charge assailants with responsibility and "to apply to them a well earned punishment."¹⁸

¹⁵ Francisco Quintanilla (*United Mexican States*) v. *United States of America* (1926), in *Reports of International Arbitral Awards*, 101–104.

¹⁶ *Salome Lerma de Galván (United Mexican States) v. United States of America* (1927), in *Reports of International Arbitral Awards*, 273–275.

¹⁷ *Ibid.*

¹⁸ For more on the Porvenir massacre see chapter three of Martinez, *The Injustice Never Leaves You*; Monica Muñoz Martinez, "Porvenir Massacre," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/jcp02>.

Investigations by Mexican consuls, U.S. soldiers, and the United States State Department found that the victims of Porvenir were killed while they were unarmed and in Texas Ranger custody. U.S. soldiers who witnessed the Porvenir massacre, for example, wrote to Governor Hobby with information. Captain Harry Anderson of the Eighth Cavalry provided an account of what he described as the “midnight murder” when Rangers and ranchmen “took out the owner of the ranch and fourteen others—all farmers and small stock owners and shot them to death. *There was not a single bandit in the fifteen men slain . . . two of them were boys.*” Panicked, Anderson pleaded with the Governor. “The object of this appeal is to call your attention to this unprovoked and wholesale murder by Texas Rangers in conjunction with ranchmen—Rangers who instead of maintaining peace are committing murder by the wholesale and to request Your Excellency to have these Rangers removed at once. . . .”¹⁹ With growing federal and diplomatic pressure, the Texas governor responded to the mounting evidence. On June 4, 1918, Governor William Hobby disbanded Company B of the Texas Rangers, fired five Texas Rangers and pressured the captain of Company B, James Monroe Fox, to resign. This proved a rare occasion when state police faced reprimand and dismissal for extralegal violence.



Capt. James Monroe Fox

The survivors of the Porvenir massacre continued to seek redress years after the initial tragedy. After collecting more than 100 pieces of evidence on behalf of the survivors, on February 15, 1935, Mexican attorney Oscar Rebasa filed *Concepción Carrasco de González, et al. (United Mexican States) v. the United States of America*, on behalf of the surviving relatives. The Mexican attorneys made three charges: Texas authorities did not give due protection to the men arrested by the Texas Rangers; the local authorities were the material authors and accomplices of the crimes committed at Porvenir; and the state authorities denied justice by failing to apprehend, prosecute, and punish the persons responsible for the murders.²⁰

No law enforcement or civilians were prosecuted for their involvement in the Porvenir massacre. Some Rangers, like Captain Fox, worked in local law enforcement and even rejoined the Texas Ranger force years later.²¹

¹⁹ Army Captain Harry Anderson to Governor William P. Hobby, undated, evidence, “Proceedings,” 849–851; emphasis in original.

²⁰ Unfortunately, the general claims commission closed before hearing the claims filed by the Porvenir survivors. *Concepción Carrasco de González, et al. (United Mexican States) v. the United States of America*. Annex 97-A, Docket 561, Mexican Claims, RG 76, NACP.

²¹ General Order No. 5, June 4, 1918, evidence, “Proceedings,” 836–837; James M. Fox to Governor William P. Hobby, June 11, 1918, evidence, “Proceedings,” 839–840; Jas A. Harley to James M. Fox, July 3, 1918; letter published in the *El Paso Herald*, July 3, 1918, and in the *Brownsville Herald*, July 12, 1918; Ignacio Bonillas, Mexican Ambassador, to Robert Lansing, Secretary of State, July 19, 1918, Annex 97-A, Docket 561, Mexican Claims, RG 76, NACP. United States Reply Brief, Docket 561, Mexican Claims, (Mexican Claims), Records of Boundary and Claims Commission and Arbitrations, 1716–1994, Record Group 76, National Archives at College Park (NACP), College Park, MD; “Memorial,” February 15, 1935, Docket 561, Mexican Claims, RG 76, NACP; “Oath of Members Ranger Force, James M. Fox, June 6, 1925,” and “Oath of Members Ranger Force, James M. Fox, February 19, 1934,” Texas Adjutant General’s Department service records (TAGDSR), Archives and Information Services Division (AISD), Texas State Library and Archives Commission (TSLAC), Austin, TX.

Legacies of Racial Violence in Texas

Separated by time, location, and outcome, these cases give a glimpse into the far-reaching practices of anti-Mexican violence. Studied together, these cases expose the linked practices of racial violence that created a long-lasting, pervasive atmosphere of terror. Ethnic Mexicans were victims of mob violence, extralegal violence by law enforcement and U.S. soldiers, and their survivors rarely saw assailants prosecuted.

Although there is now international consensus on the importance of confronting traumatic histories, the United States has fallen far behind other nations in creating a clear record of past atrocities and pursuing methods for racial redress. The interconnected histories of racial violence at the hands of vigilantes, mobs, and by police is one brutal past that has urgent historical lessons. History has shown that time does not heal all wounds. To the contrary, historians, sociologists, and legal scholars have shown that practices of racial violence meant to subordinate racial and ethnic minorities have had a widespread influence on daily life in the United States, ranging from policing practices and incarceration, disenfranchisement, immigration policies, and even corporal punishment in public schools. And yet, there is no official archive of racist violence in the United States or in Texas. Fully reckoning with these histories requires a full and accurate record.

This need for a record drives ongoing recovery work begun in 2014 when I launched a recovery project [*Mapping Violence: Racial Terror in Texas 1900-1930*](#), a digital archive that includes racial violence at the hands of law enforcement, U.S. soldiers, mobs, and vigilantes that targeted African Americans, Mexican Americans, Asian Americans, Native Americans, and European immigrants. Considering victims of racial violence from multiple racial and ethnic groups can help expose interconnected histories of violence, the legacies of colonization, slavery, and genocide that intersect in Texas. *Mapping Violence* is part of a growing number of projects exploring new digital methods to recover histories of racial violence and make them available to public audiences.



Margaret Burnham

The Civil Rights and Restorative Justice project, founded by legal scholar Margaret Burnham, has recovered over 1,100 cases of racially motivated homicides in the United States between 1930 and 1970 in the U.S. south. The project recovers cases of anti-civil rights violence that include lynchings and police killings. With political scientist Melissa Nobles, Burnham developed the CRRJ-Nobles archive, a digital reading room, and an interactive map. The Racial Violence Archive, developed by sociologists Geoff Ward and David Cunningham, includes cases of racial terror targeting African Americans in the U.S. south. In addition to murders, this archive includes church bombings, cross-burnings, assaults, and cases of police brutality. By mapping cases of racial violence that did not end in death,

Ward and Cunningham have developed a topography of racial terror, allowing researchers to study how racial violence manifested in specific regions in different forms over time. Sociologists Amy Kate Bailey, E. M. Beck, and Stewart Tolnay developed the Bailey-Washington-Beck database of lynchings and what they call averted lynchings, cases of mob violence that did not end in death. This database shows the widespread practices of intimidation and torture in the U.S. south.

Developing these “digital red records” as Margaret Burnham has called them, builds on the foundational efforts of the NAACP, the Tuskegee Institute, journalists, and lawyers in the early twentieth century that kept records of lynchings, vigilante violence, and of people that died in police custody. Working on the margins of power, and often times facing intimidation and violence themselves, data collectors of the past had to take on these monumental tasks in large part because federal, state, and local governments refused to keep such records and refused to make systemic efforts to end practices of racial violence.

Recovery is only the first crucial step in reckoning with histories of racial violence. For too long civil rights organizations, individuals, and descendants of violence have borne the burden of preserving records of lynchings and police killings and demanding a public reckoning with the long legacies of racist violence. As a founding member of Refusing to Forget, an educational nonprofit established in 2013 to commemorate the forgotten history of anti-Mexican violence in Texas, I am working with colleagues and partnering with cultural institutions in Texas to develop public projects to reach a wider audience. Working with Christopher Carmona, John Morán González, Trinidad Gonzales, Sonia Hernández, and Benjamin Johnson, we collaborated with the Bullock Texas State History Museum to develop the award-winning exhibit, “Life and Death on the Border, 1910–1920,” in 2016. The exhibit marked the first time a state cultural institution acknowledged this period of state-sanctioned racial violence. The team also collaborated with the Texas Historical Commission to secure four state historical markers along the Texas-Mexico border commemorating this period of racial terror, the victims that lost their lives, and civil rights pioneers who risked their lives to fight injustice. Slowly, cultural institutions are presenting more accurate accounts of Texas history to the public.

Historians have an important role to play in recovering and interpreting records of state violence, exposing uncomfortable truths, documenting the efforts of people who fought for freedom and social justice, and sharing lessons of the past. What are the responsibilities of other institutions and systems? As the cases in this article show, judicial systems in Texas played an important role in allowing aggressors to enjoy a culture of impunity. Instead of correcting the course of history, judicial systems failed to hold accountable elected officials that called for violence or to prosecute law enforcement officers that committed crimes. Judges, district attorneys, juries, sheriffs, and even coroners made decisions on a daily basis that created and maintained the conditions that allowed lynchings and extralegal violence by law enforcement to continue for decades. What are the institutional legacies of this period of anti-Mexican violence on judicial systems in Texas throughout the 20th century and today? These are questions for historians, but also for members of the State Bar of Texas.



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[Return to Journal Index](#)

The Unbearable Whiteness of Being: *In Re Rodriguez*, Race, and Citizenship

By Hon. John G. Browning

I. INTRODUCTION

On May 11, 1896, an illiterate, thirty-seven-year-old laborer named Ricardo Rodriguez walked into the federal courthouse in San Antonio, Texas and applied for United States citizenship. A native of Guanajuato, Mexico who had lived in Texas since 1883, Rodriguez likely had no idea that by doing so, his application would become part of a tapestry being woven in American courts about “whiteness,” race, and citizenship. Rodriguez’s application and the court’s ultimate decision would hold tremendous implications, not only for immigrants but for the thousands of Mexican Americans in Texas (and, indeed, the Southwest) and their ongoing struggle for civil rights.

Yet despite its significance, *In re Rodriguez* has received relatively scant scholarly scrutiny. Most of those analyzing the case tend to fall into one of two camps: Latinx studies scholars examining *In re Rodriguez* as part of the pantheon of Latinx civil rights cases and its status as a stand against legal discrimination against Mexican Americans,¹ and a second, somewhat overlapping group—critical race theorists looking at race as a social and legal construct.² However, as this article discusses, *In re Rodriguez* was apparently a test case brought more out of concern over ballot fraud and its then-outsized influence in south Texas elections than out of solely racist motivations. While its significance as a critical step in Latinx enfranchisement and as an outlier among other cases of its time construing race and citizenship remain intact, *In re Rodriguez*’s hidden history as a test lawsuit fueled by concerns over questionable electoral maneuvering merits consideration—particularly when viewed through a 21st century prism in which concerns about electoral integrity, citizenship, and the Latinx community persist.

II. BACKGROUND

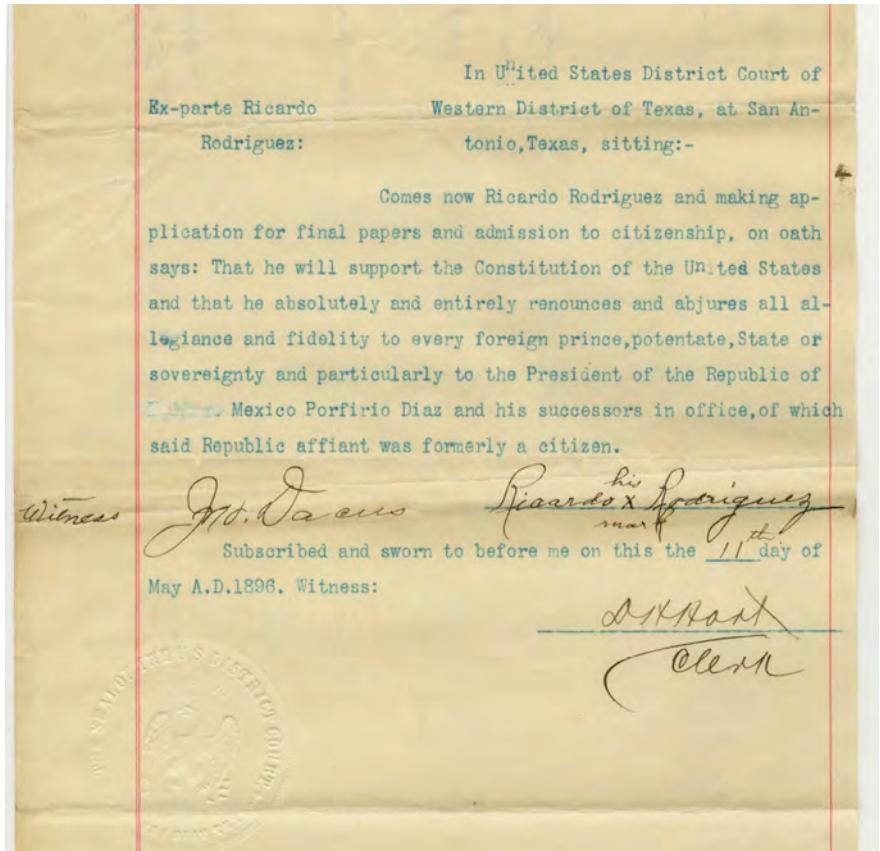
In order to understand how *In re Rodriguez* was as much a reflection of political dynamics as it was an example of the racialized thinking of the Gilded Age, one must examine the central figures in this case and the political backdrop of it. Perhaps not surprisingly, the person who is the least understood by modern historians is the man at the center of the case, Ricardo Rodriguez. A native

¹ For an example of this school of thought, see Arnoldo de León, *In re Ricardo Rodriguez: An attempt at Chicano Disenfranchisement in San Antonio, 1896–1897* (Caravel Press, 1979).

² While there are many historians in this category, two leading works are the outstanding book by Ian Haney Lopez, *White by Law: The Legal Construction of Race* (New York; New York University Press, 1996), and the thoughtful article by George A. Martinez, *The Legal Construction of Race: Mexican Americans and Whiteness*, 2 HARV. LATINO L. REV. 321 (Fall 1997).

of the state of Guanajuato, Mexico, Rodriguez was an illiterate, thirty-seven-year-old laborer who spoke no English. The court record notes that he described himself as "a pure-blooded Mexican," and that he is "not an Indian" and "knows nothing of the Aztecs or the Toltecs."³ He was described as a "copper-colored" man with "dark eyes, straight black hair, and high cheekbones."⁴ Rodriguez had lived in Texas since 1883, and indeed his only stated reason for desiring citizenship was "because he lived here."⁵ According to the affidavit of J.G. Fisk, a friend who had known him "[i]n the neighborhood of ten years" at the time of Rodriguez's citizenship application, Rodriguez was an industrious, hard-working man of good moral character, and a law-abiding citizen who had been working for the city of San Antonio, "working on the ditches, cleaning the ditches and river."⁶ And while 1896 was when Rodriguez actually moved forward with applying for citizenship, he had actually filed paperwork evidencing his intention to become a citizen back in 1893; a critical point, since such "intention papers" permitted immigrants under Texas law to vote in Texas elections—regardless of whether they ever followed up on such an expressed intention.

Curiously for someone as impoverished as Ricardo Rodriguez, he appeared in court on May 16, 1896 with counsel (identified only as "Mr. Ogden" in the court transcript), along with the necessary affidavits "embodying the essential prerequisites prescribed by the naturalization laws."⁷ These affidavits, together with the hearing transcript (containing Ogden's direct examination of Rodriguez, along with the court's perfunctory questioning of him on issues such as his knowledge of the U.S. Constitution and government), comprise part of the court's official file. However, the record of Rodriguez's application hearing also contains a formal objection to the application filed by two local lawyers, Theodore J. McMinn, a Populist, and Andrew Jackson Evans, a



1896 citizenship application by Rodriguez in U.S. District Court.
National Archives Catalog, Identifier 350, Record Group 21.

³ *In re Rodriguez*, 81 F. 337 (W.D. Tex. 1897). This refers to not just the case opinion itself, but the entire court file from the National Archives, Naturalization Case File Relating to Mexicans Living in Texas – *In re Rodriguez*, www.archives.gov.

⁴ *In re Rodriguez*, 81 F. 337.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

Republican. In their brief affidavit, as amicus curiae, these two seemingly strange bedfellows (who just happened to be at the courthouse prepared to file simultaneously with Mr. Rodriguez) maintained that Rodriguez was ineligible for citizenship since “he is not a white person, nor an african [sic] nor of african [sic] descent, and is therefore not capable of becoming an American citizen.”⁸

Within days of Rodriguez’s application and recognizing “the delicacy and gravity of the question which the present application invokes,” U.S. District Judge Thomas S. Maxey (a Democrat appointed to the bench in 1888 by President Grover Cleveland) “thought it advisable to obtain the views of several members of the bar” as to the proper interpretation of the naturalization statute.⁹ Maxey appointed six lawyers to this committee to submit amicus curiae briefs, but apparently

only four did so: McMinn, Evans, Floyd McGown, and Thomas M. Paschal. Three of these lawyers—McMinn, Evans, and McGown—would eventually submit briefs arguing against Rodriguez’s application. Paschal’s brief supported Rodriguez’s bid for citizenship, and as we shall see was particularly influential on Maxey’s decision.



Portrait of Judge Maxey courtesy of the U.S. District Court for the Western District of Texas, Philip Devlin, Deputy Clerk.

This issue of “delicacy and gravity,” the citizenship and naturalization of nonwhites, was one that Maxey realized was “of much importance.” The United States’ basic naturalization statute, which had been in effect since 1802, declared that “any alien, being a free white person,” could become a citizen. During Reconstruction, Congress had amended the law to include Africans and persons of African descent but no other nonwhites. In the decades leading up to *In re Rodriguez*, courts had heard a series of “prerequisite” cases, in which the various applicants claimed “whiteness” as a necessary legal prerequisite. In the first and perhaps most influential of these cases, *In re Ah Yup*, a federal court held that a Chinese immigrant was not white, and therefore ineligible for citizenship.¹⁰ Following that, in the 1880s, *In re Camille*, an Oregon federal court similarly pronounced a person of mixed

Native American and white ancestry to be nonwhite.¹¹ In fact, in case after case leading up to *In re Rodriguez*, courts—relying upon assorted definitions, pseudoscientific theories, and arguments about race—consistently ruled against non-European immigrants seeking citizenship.¹² As a result, the anti-citizenship argument being urged by McMinn and Evans seemed legally sound.

⁸ *Ibid.*

⁹ *Ibid.*

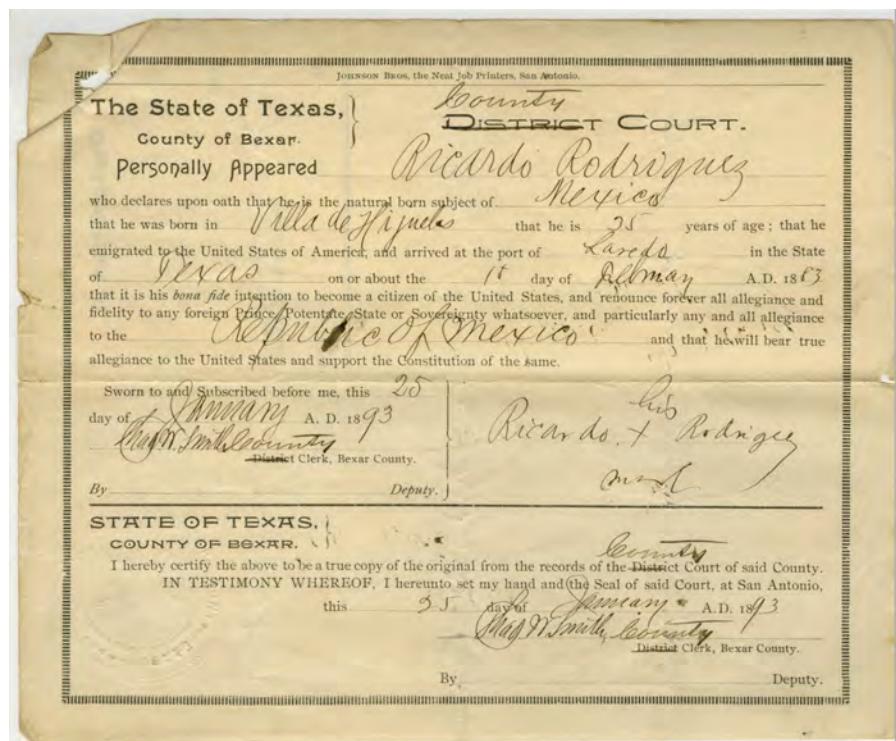
¹⁰ *In re Ah Yup*, 1 F. Cas. 223 (C.C.D. Cal. 1878).

¹¹ *In re Camille*, 6 F. 256 (C.C.D. Cal. 1880).

¹² See *In re Kanaka Nian*, 6 Utah 259, 21 Pac. 993 (1889) (citing “scientific” evidence that Hawaiians are not white); *In re Hong Yen Chang*, 84 Cal. 163, 24 Pac. 156 (1890) (Chinese not white); *In re Po*, 7 Misc. 471, 28 N.Y. Supp. 838 (1894) (Burmese not white); *In re Saito*, 62 F. 126 (C.C.D. Mass. 1894) (Japanese not white); *In re Gee Hop*, 71 F. 274 (N.D. Cal. 1895) (Chinese not white)).

But there was also a political dynamic at work here. The Texas Constitution of 1869 extended the right to vote to immigrants, a move sometimes attributed to Radical Republicans seeking to capture the vote of German immigrants. However, Democrats began using the law to their advantage, particularly in border areas. Upon regaining control of the legislature in 1872, Democrats tried to make it even easier for aliens to vote by permitting them to declare their intention to become citizens before a district clerk rather than in open court. Republican Governor Edmund Davis vetoed the proposal, explaining "On the Rio Grande, where the facilities of crossing the line are easy, half the males living near our border in Mexico might 'declare their intention,' and thereon exercise the privilege of voting in Texas with impunity."¹³

Because 19th century jurisprudence made citizenship a federal issue and suffrage a state issue, in many states a person did not have to be an American citizen at all to cast a vote. In Texas particularly, all an immigrant needed to do was merely sign a form declaring his intention to become a citizen and that form constituted sufficient proof of voter eligibility. The final step of actually petitioning a court for naturalization could wait indefinitely. Ricardo Rodriguez had first filed citizenship intention papers in 1893, but many of those filing such paperwork waited even longer or never sought naturalization. According to the *San Antonio Light*, out of 12,000 intention papers issued in Bexar County between 1871 and 1895, "not one Mexican" had actually petitioned for citizenship, a claim that the newspaper attributed to voter bribery and the fact that for such individuals, voting was "a commercial affair, involving no risk or outlay of money with a certainty of reward."¹⁴ This experience was echoed in other counties as well. Between 1880 and 1899, two border counties, Hidalgo and Starr, saw 2,239 Mexicans file intention papers; of these, fewer than ten men ever petitioned for final citizenship. Of those declarations, 85 percent (1,914) were filed in election years during the last month before the general election.¹⁵



1893 application by Rodriguez in County Court.
National Archives Catalog, Identifier 350, Record Group 21.

At the start of the 19th century, twenty-two states permitted immigrants to vote based on

¹³ Journal of the Senate of Texas: Being the Session of the Thirteenth Legislature Begun and Held at the City of Austin, Jan. 14, 1873 (Austin, 1873), 234–35, https://lrl.texas.gov/scanned/Senatejournals/13/01141873_3.pdf.

¹⁴ "Short Stops," *San Antonio Daily Light*, May 15, 1896, 4.

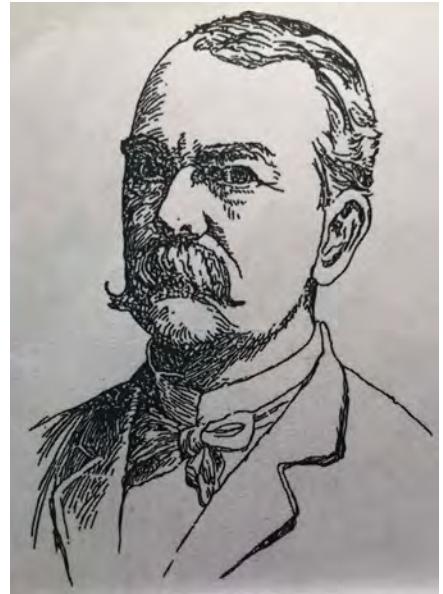
¹⁵ Martha Menchaca, *Naturalizing Mexican Immigrants: A Texas History*, (Austin: University of Texas Press, 2011), 55, 58, 70, 113.

some variation of intention papers. By 1896, the Texas legislature had passed a compromise reform measure (requiring immigrants to file intention papers at least six months before voting), and in November of that year, voters approved that measure by an overwhelming 84 percent margin.¹⁶ Still, by 1896, Texas was one of eleven states nationwide that still allowed this form of alien suffrage. Texas didn't abolish it until 1926, and shortly thereafter, the last two states allowing the practice (Missouri and Alabama) ended it as well.¹⁷

III. DRAMATIS PERSONAE

A. *Theodore J. McMinn*

Against this backdrop we encounter the central protagonist pitted against Rodriguez's citizenship application, Theodore J. McMinn. Born the son of a millwright in Logansport, Indiana in 1845, McMinn was ambitious. He worked his way up from blacksmithing to clerking, and ultimately earned a law degree. However, he chose a career in journalism, working for the *St. Louis Globe - Democrat* and the *Springfield (Missouri) Herald*. McMinn drifted into the livestock business, becoming an agent of the St. Louis Livestock Exchange and later helping to found the National Cattle and Horse Growers Association. In 1887, McMinn moved to San Antonio, where he managed the literary bureau of the San Antonio and Aransas Pass Railroad. He also worked as an agent for the Southwestern Immigration Association, before finding himself back in journalism as the editor of the *San Antonio Times*. McMinn earned a reputation as a muckraker, frequently publishing exposés on criminal activity and political corruption. Not surprisingly, he made enemies, and was soon fired.



Newspaper sketch of
Theodore J. McMinn

McMinn resumed his legal career, and even argued a case before the U.S. Supreme Court in 1890. He also became politically active, joining the new People's Party (the Populists) in 1891, and serving on the platform committee at the founding convention of the party's Texas chapter. McMinn even ran for Congress on the Populist ticket in 1892, losing to a conservative Democrat and former state district court judge with whom his path would cross in the *In re Rodriguez* case—Thomas M. Paschal.

For McMinn and the Populists, a roadblock to success in Texas, particularly south Texas, was the "patronage democracy" that dominated border politics. The ability of large ranch owners and industrialists to wield influence over their Mexican/Tejano employees meant that ordinary "Mexicano" voters could be compelled to vote for certain candidates or tickets. With the railroads came not only social and economic change, but the need for large numbers of unskilled laborers. Newly arrived Mexican immigrants, who were likely to be poor, illiterate, and unfamiliar with U.S. laws and politics, provided not only a source of readily available labor but of votes as well—votes

¹⁶ *Ibid.*, 119.

¹⁷ Leon E. Aylsworth, "The Passing of Alien Suffrage," *American Political Science Review* 25 (Feb. 1931):114-16.

that were easily manipulated by the “bosses.”

One election of great interest to Theodore J. McMinn illustrates this. The 1894 race for the Eleventh Congressional District encompassed twenty-nine counties—much of south Texas below San Antonio. That year, Populists and Republicans were united behind an independent candidate with Populist leanings, Vachel Weldon, and had high hopes. But election fraud was rampant, with Democratic election officials seen opening ballot boxes, and even discarding opposition ballots. Weldon’s attorney, R.B. Rentfro, alleged that hundreds and perhaps thousands of Mexicans were brought across the Rio Grande to cast ballots; in three counties alone, he estimated that two thousand fraudulent votes had been cast. Excluding the Rio Grande counties, Weldon won 55 percent of the vote. But with the Mexican intention papers and votes swamping the ballot boxes in key counties like Cameron, Democratic candidate William Crain won. Weldon briefly contemplated a legal challenge to contest his defeat, ultimately opting not to go to court. Interestingly, however, McMinn suggested to him that challenging Mexican naturalization could be part of such a lawsuit. McMinn wrote to Weldon, reminding him that U.S. law banned “the yellow man[,] the red man[,] and the brown man” from becoming citizens, and arguing that except for those of “pure” Spanish blood, the Mexican “is a red man.” If Congress were to take this position, McMinn maintained, “it would cure the river disease with which our politics is suffering.”¹⁸

In 1896, McMinn saw an opportunity with the Rodriguez application for a test case to cure this “river disease.” He also had personal reasons for doing so, since he happened to be running on the Populist ticket as a candidate for a seat on the Supreme Court of Texas. However, while some historians have superficially assumed that McMinn’s opposition to Rodriguez’s citizenship application stemmed from Populist urging, the evidence points squarely to this being a test case instigated by McMinn and Evans with the backing of a nonpartisan reform group concerned about voter fraud and political corruption.

First, McMinn himself had written publicly of “the need for a legal test” of Mexican naturalization as far back as 1888.¹⁹ Second, although there is no historical record indicating Ricardo Rodriguez being aware of being a pawn in a larger game, at least some portion of the public seems to have known that this was a test case brought by the lawyers. Newspapers like the *San Antonio Light* openly referred to it as “the Mexican citizen test case.”²⁰ Finally, several sources publicly linked the *In re Rodriguez* case to the “Good Government Club of San Antonio,” a nonpartisan reform group fighting against political corruption. These sources included an editorial published under the pseudonym “NOFOOL” stating that McMinn and Evans were “employed by the Good Government club,”²¹ as well as an editorial by Texas Commissioner to Mexico Henry Ryder Taylor that “the good government club, a society consisting of some thousand members, are testing the legality of the Mexican vote” and that “Rodriguez is in harmony with the good government club.”²² While McMinn and Evans were not actually employed by San Antonio’s Good Government

¹⁸ Letter from Theodore J. McMinn to Weldon, December 5, 1894; Box 3E470, Vachel Weldon Collection (Dolph Briscoe Center for American History, University of Texas at Austin).

¹⁹ T.J. McMinn, “Something Startling,” *San Antonio Daily Express*, Nov. 21, 1888, 7.

²⁰ “The Express Dodge,” *San Antonio Daily Light*, May 19, 1896, 3.

²¹ NOFOOL, “Two Stories,” *San Antonio Daily Light*, May 31, 1896, 5.

²² “The Mexican Vote,” *Dallas Morning News*, June 19, 1896, 7.

Club, they were clearly acting with its blessing. McMinn was certainly not acting at the behest of the Populist Party, a notion that McMinn himself denied, as did every Populist leader who ever commented on the possibility of the party's involvement in *In re Rodriguez*.

In fact, McMinn's opposition to Rodriguez's citizenship application was interpreted by many as an attempt to disfranchise all Mexican Americans regardless of how long they or their families had lived in the United States, and a backlash ensued. One newspaper opined that a victory for McMinn "would deprive the democratic party of 20,000 votes."²³ The Mexican American community naturally denounced McMinn and Evans, with editor Pablo Cruz of the Spanish language newspaper *El Regidor* calling the pair frustrated office seekers and "dos adoloridos" ("two soreheads"). Cruz also called McMinn a "sworn enemy of Mexicans," and urged voters to "scratch [out] his name wherever you find it on the ballot."²⁴

Fellow Populist leaders also attacked McMinn. Lawyer Selig Deutschmann, a German-born Jew well acquainted with bigotry, disavowed McMinn, saying that most Mexicans "make good citizens and are certainly entitled to citizenship," and pointing out that Mexicans "enjoyed in their own country the highest civilization when New York City was a little Dutch village . . . To classify the Mexicans with the Indian seems to me to be rot."²⁵ State representative John O'Connor, San Antonio's most prominent Populist-elected official, was even more blunt in denouncing McMinn:

I desire to denounce this effort to disfranchise the Mexicans with all the fire and vigor an Irishman is capable. It not only has no support, but has no sympathy among the Populists. Truly, some of the best and oldest citizens of this city and section are Mexicans. They have aided in building up this city and country, and were paying taxes to our government before some of those who would now disfranchise them were born . . . And to say that these people have no right to become citizens here in the home of the free and the land of the brave, this asylum for the oppressed, is simply absurd.²⁶

Local Populist groups were quick to pass resolutions denouncing McMinn and Evans and the notion of disfranchising Mexican Americans. McMinn and the *In re Rodriguez* case had put the Populists in a dilemma. While opposition to election fraud united Populists with the largely African American Republican Party, McMinn's tactic of targeting election fraud in south Texas through the disfranchisement of Mexicans played into Democratic hands, enabling them to present African Americans with the argument that their voting rights might be next in the crosshairs. In some counties, Democrats were downright exuberant over McMinn's test case. In Wilson County, where three-fourths of the Mexican American vote had been Populist in 1894, Democrats crowed that three-fourths of the Mexican American vote would go Democrat in 1896, and that "Mr. McMinn's action in the federal court at San Antonio had no little to do with it."²⁷

²³ "The Mexican's Right to Vote," *San Antonio Daily Express*, May 12, 1896, 4.

²⁴ "Dos Adoloridos," *San Antonio El Regidor*, May 14, 1896, 1; "McMinn," *San Antonio El Regidor*, Aug. 13, 1896, 4.

²⁵ "The Mexican's Right to Vote," 5.

²⁶ "Say They Are Not to Blame," *San Antonio Daily Express*, May 13, 1896, 5.

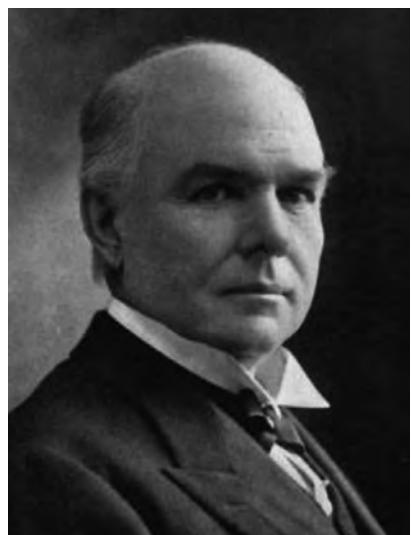
²⁷ "Wilson County Notes," *Galveston Daily News*, July 16, 1896, 6.

B. Andrew Jackson Evans

Joining Theodore J. McMinn in the test case and in the filing of an amicus brief was sixty-four-year-old Republican lawyer Andrew Jackson Evans. Born in South Carolina in 1832, Evans moved to Texas after becoming a lawyer first in Mississippi. He represented McLennan County in the Seventh Texas Legislature. A prominent litigator who handled cases before the Texas Supreme Court, Evans served as a state district judge as well. An outspoken Unionist during the Civil War, Evans served in the provisional Twelfth Texas Legislature as a state senator. Although he was ousted in a February 1870 election, in 1872 he was nominated by Pres. Ulysses S. Grant to serve as U.S. district attorney for the Western District of Texas, a post he held for many years. By 1890, Evans was the U.S. district attorney for the Austin District. After the initial furor over the *In re Rodriguez* case subsided, Evans faded back into relative obscurity. In fact, he did not live long after Judge Maxey's May 1897 opinion, dying just months later on August 28, 1897, at the age of 65.²⁸

C. Thomas M. Paschal

Although Floyd McGown filed an amicus brief that, like those of McMinn and Evans, argued against Rodriguez's citizenship application, his involvement seems to have begun and ended there. A far greater role in the case would be played by the author of the only amicus brief in favor of granting citizenship to Rodriguez, Thomas M. Paschal.



Thomas M. Paschal

Paschal was born in Louisiana in 1845 and moved with his parents to San Antonio in 1846. He attended St. Mary's in San Antonio and Centre College in Kentucky, graduating from the latter in 1866. After reading the law, he was admitted to the bar in July 1867. His career in public service began with a stint as U.S. Commissioner for the Western District of Texas from 1867 to 1869, continued with a brief tenure as city attorney for San Antonio, and from 1870 to 1875, he served as district attorney for the Twenty-fourth Judicial District. In 1876, he was elected judge of the Thirty-eighth District Court, and was reelected in 1880, 1884, and 1888. In 1892, he ran successfully as a Democrat for Congress, defeating Theodore J. McMinn. He failed in his bid for renomination in 1894, however, and returned to private practice.²⁹

Like McMinn, Paschal's involvement was likely not free of political motivations. In his past political campaigns, Paschal the Democrat was a likely benefactor of Mexican American votes—including his 1892 Congressional victory over McMinn. Interestingly, a previous case that Paschal had presided over as a judge evidently made an impression upon Judge Maxey, to the point that Maxey included Paschal's decision in this earlier naturalization case as an appendix to the *In re Rodriguez* opinion. In the 1891 case of *Ex parte Sauer*, Judge Paschal denied the petition for citizenship of German immigrant Richard Sauer.³⁰ As with Maxey's opinion in *In re Rodriguez*,

²⁸ "Andrew Jackson Evans," *Handbook of Texas Online*, <https://www.tshaonline.org/handbook/online/articles/fev30>.

²⁹ "Thomas Moore Paschal," *Handbook of Texas Online*, <https://www.tshaonline.org/handbook/entries/paschal-thomas-moore>.

³⁰ *Ex parte Sauer*, reported as an appendix to *In re Rodriguez*, 81 F. 337, 355 (W.D. Tex. 1897); Dist. Ct. Tex., Uvalde Cnty. (Sept. 1891).

race was not the determining factor in deciding the case—no doubt due to the absence of any doubt as to the “whiteness” of a German like Sauer. However, citizenship candidates also had to satisfactorily show their “attachment to the principles of the constitution of the United States,” and this is where Judge Paschal deemed the German immigrant lacking. Sauer was an admitted socialist who favored government ownership of the railroads, along with “the forced sale of all lands owned by the citizens in excess of that which was actually necessary to make a living upon . . . for the purpose of giving it to those who owned none.”³¹ Paschal called Sauer’s views “un-American, impracticable, and dangerous in the extreme to society.”³² Finding that Sauer’s beliefs were “contrary to his oath of citizenship” and “subversive of constitutional government and our free institutions,” Judge Paschal denied Sauer’s citizenship petition.³³

IV. THE AMICUS BRIEFS

While the amicus briefs filed by three of the four lawyers (McMinn, Evans, and McGown) argued against Rodriguez being approved for citizenship, all four of the briefs ultimately agreed that Rodriguez was an “Indian” or of mixed race; even Paschal’s brief conceded that Ricardo Rodriguez was not “white” by either the scientific or ordinary meanings associated with that word. However, all three of the briefs against naturalization did little beyond discussion of the mechanical requirements of the naturalization statute’s focus on a candidate having to be “a free white person,” the ethnological roots of “whiteness,” and the body of legal precedent (such as *In re Ah Yup*) rejecting candidates who were not of “Caucasian, or white, race.” McGown argued that Rodriguez’s appearance “indicates that he is a descendant of the original races of Mexico,” and that “by the scientific classification, [Rodriguez] is not a white person.”³⁴ Almost as an afterthought, McGown added that Rodriguez’s “utter ignorance of the principles of our constitution” was also disqualifying and would be so even “if he were a white person.”³⁵

Similarly, Andrew Jackson Evans’ brief focused on pseudo-scientific ethnological theory, arguing that Rodriguez could not hope to qualify as a “free white person” since he was one of the “six million Indians of unmixed blood” in Mexico, “nearly one-half of whom are nomadic savage tribes” whose origin is “of Asian or Mongolian descent.”³⁶ Evans, however, drew a distinction between citizenship and enfranchisement, pointing out in passing that the state of Texas “determines who shall or shall not vote, and Texas, if she chooses, can make the wildest Indian of Mexico a voter upon one hour’s arrival.”³⁷ McMinn’s brief was equally narrow in its focus on Rodriguez’s lack of “whiteness,” but he added a racist flourish to his interpretation of existing law. McMinn agreed that the Texas revolution was fought “to get rid of the ‘Mexican people,’” and he approvingly quoted Sam Houston (“I have no confidence in them”) and John C. Calhoun (“They cannot govern themselves. Shall they govern us?”) on the purported lack of fitness of Mexicans for American

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *In re Rodriguez*, 81 F. at 346.

³⁵ *Ibid.*

³⁶ *Ibid.*, 346–47.

³⁷ *Ibid.*, 347.

citizenship.³⁸ McMinn further denied that it was “ever politically contemplated by the United States that Mexicans should become citizens.”³⁹ McMinn’s argument was a far cry from his 1888 editorial, in which he takes pains to distance himself from racial prejudice, dispensing such sentiments as “our worth and intellect are not fixed by color” and “history is full of instances of genius and virtue within dusky skins.”⁴⁰ By 1896, McMinn’s solution to the problem of electoral fraud was to classify Mexicans as nonwhite and thus punish an entire class of innocent immigrants by barring them from naturalization.

But if Ricardo Rodriguez’s detractors invoked racist beliefs to support their legal interpretation, his sole defender, Thomas Paschal, was no better. His brief—the longest of the four—is similarly riddled with Paschal’s opinions about the unfitness of nonwhites, specifically the Chinese, for citizenship. He declared them “not only alien in color, but . . . in all things that render possible a sound citizenship.”⁴¹ Paschal sounds like a harbinger of Madison Grant when he writes of the “Mongolian’s idol worship; his mode of living; his very vices” and warns of “the countless myriads who stood hovering on the shores of the Chinese waters, ready and anxious to swarm upon us.”⁴² And his belief in white supremacy comes through loudly and clearly in his pronouncing that Caucasians “as a species, have no equal, physically or mentally.”⁴³

At the same time, however, Paschal warns against abandoning broad principles in favor of “a hair-splitting technical and meaningless consideration of who are meant by ‘white people.’”⁴⁴ Paschal urges caution in disqualifying candidates for naturalization, restricting denials to those who “are excluded by express judicial interpretation and legislative intent, and those expressly declared to be excepted from that interpretation.”⁴⁵ For the former judge, “The spirit of the law must be present, whatever may be its letter, else we may have no flavor in its meat, or saving grace in it.” Paschal points to the absence of any anti-miscegenation laws preventing white-Mexican unions. And while acknowledging Rodriguez to be “of Indian origin or extraction,” Paschal cites his good character and desire for citizenship and maintains that the question of eligibility for such an “Indian” does not revolve around color, but around two issues. The first is “whether there are treaty stipulations that make him a citizen, or by compliance with some of its provisions he may become one.”⁴⁶ The second is “whether he has abandoned his tribal relations, and become subject to the jurisdiction of the United States . . . and make application under our law to be naturalized.”⁴⁷ As support for this reasoning, Paschal cites the 1884 U.S. Supreme Court case of *Elk v. Wilkins*, in which Native American John Elk argued that he was eligible to vote by virtue of being born in the U.S. (and thus subject to the protection of the Fourteenth Amendment) and having renounced any

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ “Something Startling,” *San Antonio Daily Express*, Oct. 21, 1888, 2.

⁴¹ *In re Rodriguez*, 81 F. at 340.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*, 342.

⁴⁵ *Ibid.*, 342–43.

⁴⁶ *Ibid.*, 342.

⁴⁷ *Ibid.*

formal tribal allegiance.⁴⁸ Rodriguez had implicitly renounced any tribal allegiance or affiliation, Paschal argued, and subjected himself to U.S. jurisdiction by living here most of his adult life.

Judge Maxey postponed his decision until May 1897, roughly six months after the November 1896 election. In that election, the *San Antonio Light* complained “thousands of these alien Mexican voters were voted for all officers from president of the United States down to constable” and that “hundreds of these people were brought over the Rio Grande river and herded like so many cattle until they were voted.”⁴⁹ McMinn himself, having alienated the Mexican American vote, lost by nearly 100,000 votes in his bid to become a Texas Supreme Court justice. It was by far the worst margin of defeat for any Populist candidate; by comparison, Populist gubernatorial candidate Jerome Kearly lost by about 60,000 votes. His role in the *In re Rodriguez* case, even before the ruling, effectively ended McMinn’s political career.

V. JUDGE MAXEY’S RULING

In his ruling, Judge Maxey began by acknowledging prior naturalization cases like *In re Ah Yup* and by accepting what McMinn, Evans, McGown, and even Paschal had concluded about Rodriguez from an ethnological standpoint. Maxey conceded that “If the strict scientific classification of the anthropologist should be adopted, he would probably not be classed as white.”⁵⁰ However, the court questioned, even if Rodriguez were to be deemed ineligible by the strict letter of the law, couldn’t he be embraced “within the intent and meaning of the statute?”⁵¹ As it turns out, Maxey found the answer to his question in Paschal’s references to treaties and naturalization.

Judge Maxey followed Paschal’s lead and went back to the language of the Republic of Texas constitution, as well as the 1848 Treaty of Guadalupe Hidalgo and other international pacts. He concluded that, just as thousands of ethnic Mexicans had already been allowed to become citizens by virtue of these guarantees without regard to any issue of race, the case of Ricardo Rodriguez was also “embraced within our naturalization laws,”⁵² and that Mexicans like Rodriguez “had the right, individually, to invoke the aid of the statute, notwithstanding the provision which at that time limited the right of naturalization to free white persons.”⁵³ Maxey went on to point out that “we have freely received emigrants from all nations and invested them with the rights of citizens.”⁵⁴ Consequently, he said, “the conclusion forces itself upon the mind that citizens of Mexico are eligible to American citizenship, and may be individually naturalized by complying with the provisions of our laws.”⁵⁵ Judge Maxey also referenced the Fourteenth Amendment, finding that while it was “intended primarily for the benefit of the negro race,” it also “confers the right of citizenship upon persons of all other races, white, yellow, or red, born or naturalized

⁴⁸ *Elk v. Wilkins*, 112 U.S. 84, 5 S. Ct. 41 (1884). Elk was not successful in his bid, and Native Americans would not be considered U.S. citizens until federal legislation in 1924.

⁴⁹ “Short Stops,” *San Antonio Daily Light*, Nov. 12, 1896, 5.

⁵⁰ *In re Rodriguez*, 81 F. at 337.

⁵¹ *Ibid.*, 349.

⁵² *Ibid.*

⁵³ *Ibid.*, 354.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

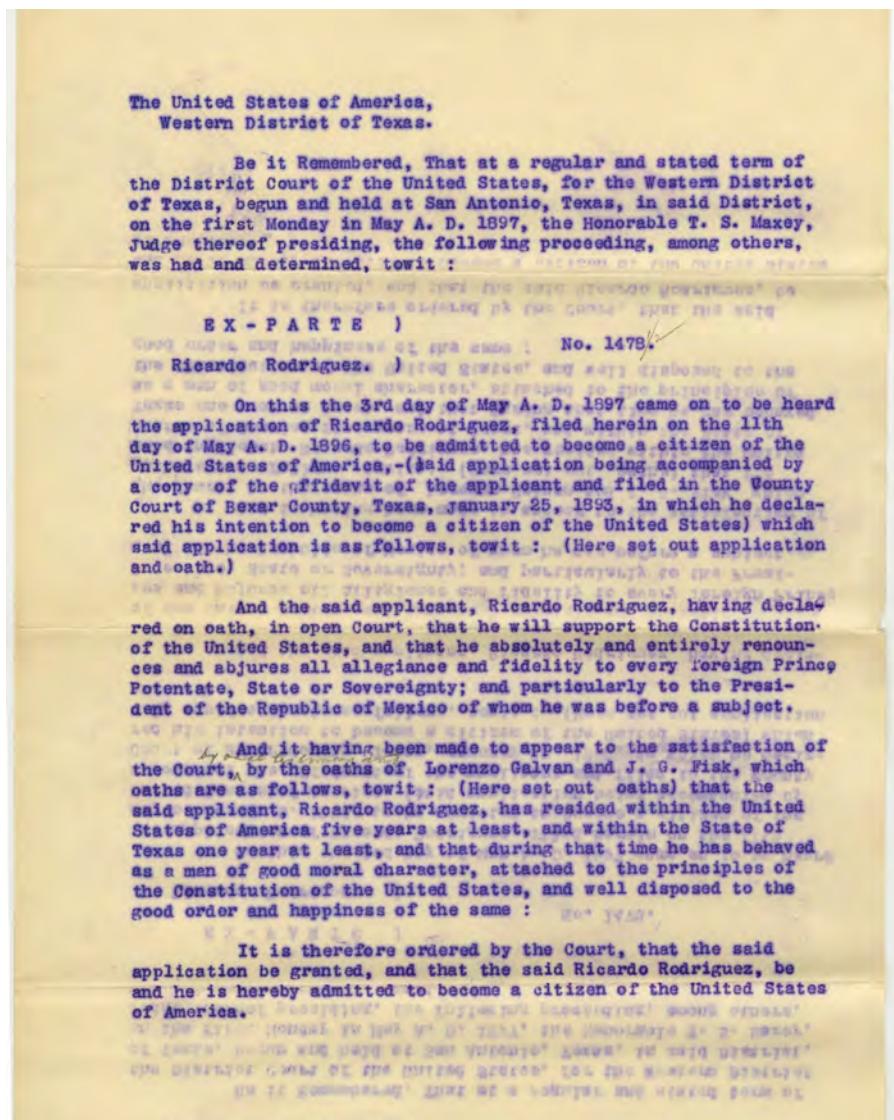
in the United States, and 'subject to the jurisdiction thereof.'"⁵⁶

Judge Maxey, in finding that Rodriguez's bid for citizenship fit within the meaning and spirit if not the strict letter of naturalization law, brushed aside concerns about Rodriguez's illiteracy or lack of familiarity with the Constitution. By virtue of his ten years as a "peaceable and industrious" as well as "law abiding to a remarkable degree" resident of San Antonio, Ricardo Rodriguez had "practically illustrated and emphasized his attachment to the principles of the constitution."⁵⁷ Finding that Rodriguez possessed the requisite qualifications for citizenship, Judge Maxey granted the application. For Maxey, alone among his judicial contemporaries, "whiteness" as a biological construct did not matter nearly as much as who could be encompassed within the legal construct of those eligible for citizenship.

V. CONCLUSION

In re Rodriguez represents a break from the jurisprudence that proceeded it, and even many of the "racial prerequisite" cases that followed it in the early decades of the twentieth century, in that it bypassed the pseudoscience of the time that regarded "whiteness" as a biologically defined group or a static taxonomy. Judge Maxey's counter to the argument that Rodriguez was not white and that race should determine eligibility for citizenship was that, for legal purposes, Mexicans could be considered "white." Maxey was not the first jurist to be confronted with the question, nor the last; in 1913, another judge would bluntly ask, "Then, what is white?"⁵⁸

As Ian Haney Lopez and other scholars have persuasively demonstrated, "Whiteness is a social construct, a legal artifact, a function of what people believe, a mutable category tied to



Judge Maxey's 1897 order granting citizenship to Rodriguez.
National Archives Catalog, Identifier 350, Record Group 21.

⁵⁶ *Ibid.*, 353.

⁵⁷ *Ibid.*, 355.

⁵⁸ *Ex parte Shadid*, 205 F. 812, 813 (E.D.S.C. 1913).

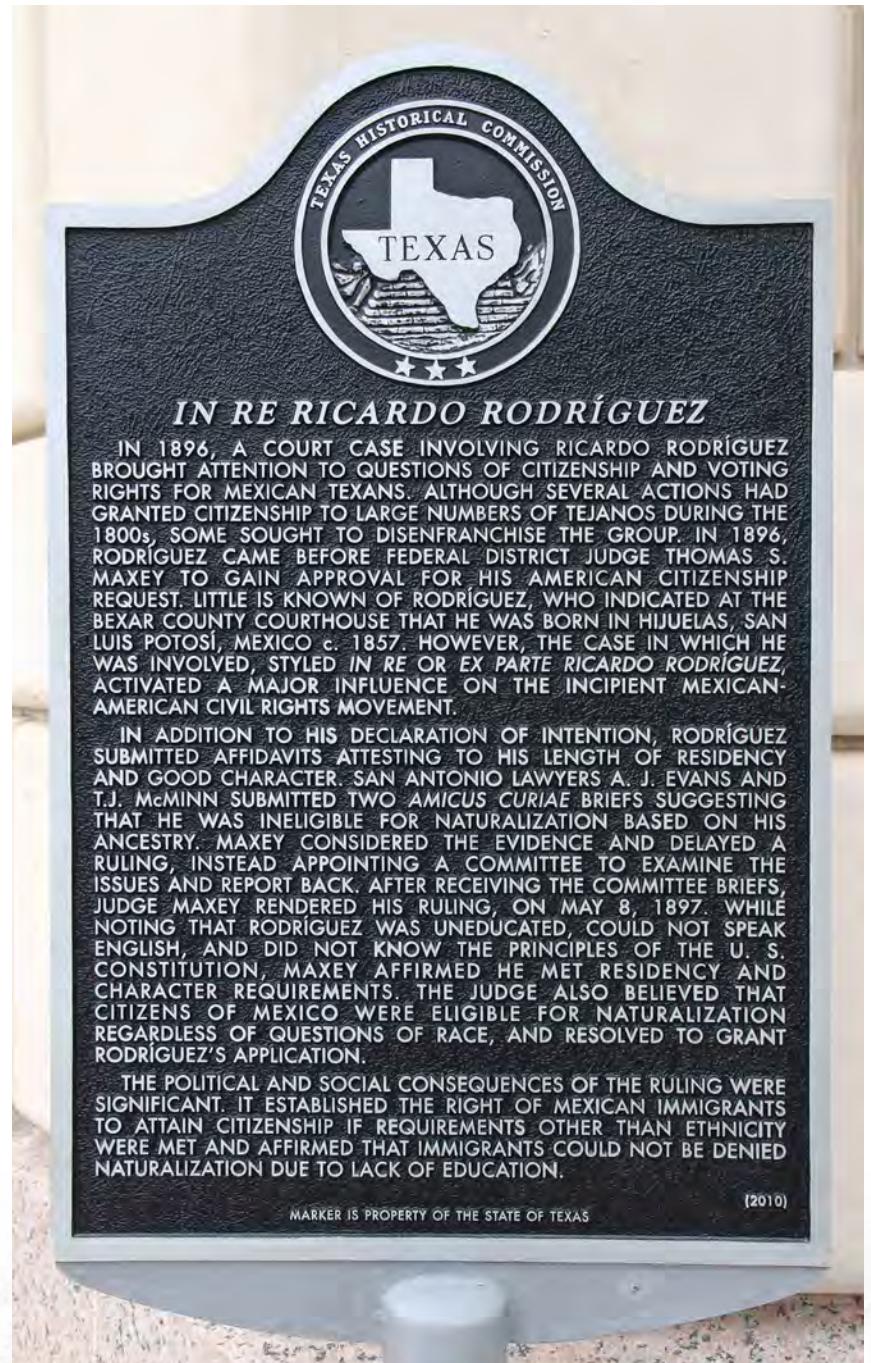
particular historical moments . . . ‘White’ is what we believe it is.”⁵⁹ *In re Rodriguez* rejected the notion of “whiteness” as a trope for welcome immigrant groups or as a tool for excluding those of unfamiliar origin, and said that, for legal purposes, Mexicans could be considered white since it had never been the intention of U.S. policy to deny them citizenship, regardless of race. If anything, *In re Rodriguez* pointedly illustrates how race really is a legal and social construct. McMinn and Evans made racial, even xenophobic, arguments for what the historical record shows was a political purpose—to bring an end to the voter manipulation dominating south Texas elections. While their opposition to Ricardo Rodriguez’s bid for citizenship obviously featured racialized thinking and assumptions, McMinn and Evans were motivated not by a desire to persecute the Mexican American community (as some scholars have suggested), but by the desire for a test case that would police alien suffrage. *In re Rodriguez* also had unforeseen ramifications, as its ruling that Mexicans would be considered white for immigration purposes influenced other areas. Mexican Americans over the next half century would sometimes invoke their legal “whiteness” to resist segregationist measures seeking to relegate them to the same Jim Crow system as African Americans.⁶⁰

Throughout U.S. history, there have been many attempts to use race to define what it means to be a citizen, and *In re Rodriguez* is sometimes regarded as little more than a footnote in that history. But as America continues to wrestle with persistent questions about immigration, citizenship, and the racializing of politics, *In re Rodriguez* deserves renewed attention for what it can teach us about how little this artificial legal construct called “whiteness” truly matters.

⁵⁹ Lopez, *White By Law*, 76.

⁶⁰ For a more detailed discussion of this, see Benjamin H. Johnson, “The Cosmic Race in Texas: Racial Fusion, White Supremacy, and Civil Rights Politics,” *Journal of American History* 98, (Sept. 2011): 404–19.

[Return to Journal Index](#)



A Profile of Roy R. Barrera, Sr.

By Judge Xavier Rodriguez

A skilled criminal defense attorney, Roy Barrera Sr.'s style has been described as shifting one's attention from the "vicious acts of the crime into one of sympathy..." He uses "folk identity to argue for mercy" and his "plea is suffused with references to family, kinship relations, the fabric of community, God, vagaries of life – all traditional Mexican American cultural concerns."¹ These are not merely rhetorical theater devices he deploys, but rather Mr. Barrera channels his upbringing and directs juries to share in these experiences.

Born in San Antonio in 1927 to Stevan Barrera and Rosaura Cantu, he was raised in San Antonio's Westside.

Although Mr. Barrera's father was born in Galveston, Texas, his mother was born and raised in the Monterrey, Nuevo Leon and Nava, Coahuila areas. His paternal grandfather was born in Santiago, Chile and immigrated through Mexico to the United States after marrying Barrera's grandmother in Monterrey, Mexico. Like many fleeing the violence and chaos of the Mexican Revolution (1910–1920), Mr. Barrera's ancestors migrated to Texas. In 1920, San Antonio had the largest Mexican population in the United States and the majority lived in Laredito, west of San Pedro Creek near downtown, and the Westside neighborhoods adjacent to the Alazan and Apache Creeks.² Located just a few blocks east of San Pedro Creek, the San Fernando Cathedral was in close proximity to the Laredito neighborhood.³ San Fernando would serve as a religious focal point for Mr. Barrera; he was baptized there, received his First Communion there, married there, and celebrated his 60th Wedding Anniversary at the Cathedral.⁴

He began his schooling at James Bowie Elementary. Serving the Westside, the school was established in 1893.⁵ When closed in 2009, the student population was over 98% Hispanic.⁶ Mr. Barrera's father moved the family to Seguin, Texas for one year, where Mr. Barrera attended Juan Seguin Elementary School, the segregated "All-Mexican" school. The Boy Scouts and movie theaters were also segregated at the time. Mr. Barrera's father, a member of The League of United Latin American Citizens (LULAC), established his own "Mexican" Boy Scout Troop, to allow his sons

¹ Sam Schrager, *The Trial Lawyer's Art* (Temple Univ. Press 1999): 109.

² Ricardo Romo, "The World of Our Fathers Westside Life 1920-1950," *La Prensa Texas*, June 14, 2019, <https://laprensatexas.com/the-world-of-our-fathers-westside-life-1920-1950/>.

³ *Ibid.*

⁴ Pasha Moore, Oral History Interview of Roy R. Barrera, Sr. (Texas Bar Foundation 2009).

⁵ James Bowie, S.A.I.S.D. "Application for Blue Ribbon Schools Program," U.S. Department of Education, November, 2002, <https://www2.ed.gov/programs/nclbtrs/2003/applications/tx-james-bowie.pdf>.

⁶ James Bowie Elementary School, *Public School Review*, <https://www.publicschoolreview.com/james-bowie-elementary-school-profile/78207>.



Left: Barrera and brothers at their Westside home; Right: Barrera, US Army in Korea

an opportunity to participate. LULAC, founded in 1929, is a Hispanic civil rights organization in the United States of America dedicated to civil and human rights.

The family relocated back to San Antonio, where he attended Washington Irving Junior School and Technical High School⁷, a vocational school. Like many in the neighborhood who lived during the Great Depression period (1929-1939), he worked a variety of odd jobs to help supplement the family's income. When American involvement in World War II commenced in 1941, he joined the Army Jr. ROTC program. In 1944, he enlisted in the Army and was deployed to the Philippine Islands. He later was deployed to Korea and served until 1946.

Upon leaving military service, he used his GI benefits and disability benefits (a motor vehicle accident in a military vehicle caused him to lose a finger) to enter St. Mary's University. He initially contemplated using his GI benefits to become an auto mechanic, but instead wisely followed his mother's advice to become an attorney.⁸ Although Mr. Barrera was not among the first Hispanic attorneys to enter law school and become licensed, the numbers were small. Among that group, notables that influenced and inspired Mr. Barrera included Alonso S. Perales⁹, James

⁷ Later renamed as Louis W. Fox Technical and Vocational High School and now known as Louis W. Fox Academic and Technical School.

⁸ Following his mother's advice, Barrera spawned a family of attorneys, including his sons Roy, Jr. and Bobby and grandchildren Roy Barrera III, Mark Joseph Barrera, Marissa Barrera Morales, Robert Erasmo Arellano, and Monica Ramirez Khirallah.

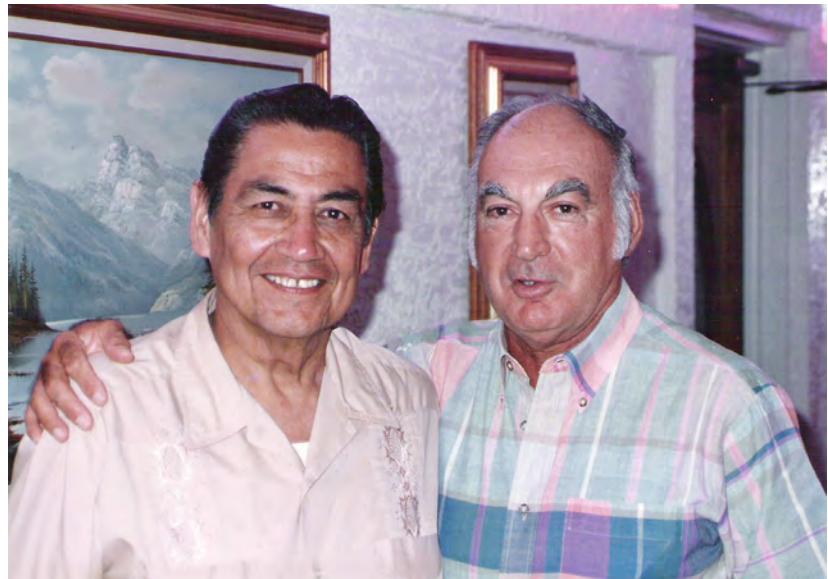
His son Gilbert earned a law degree but has chosen a successful career as an artist. Grandsons Roy III and Mark, also work with the Barrera Firm, and granddaughter Marissa, Mark's twin sister, is married to attorney Lawrence Morales. His nephew Gilbert Jr., a former prosecutor, teaches law, and his late nephew Steve, who died last fall, was a lawyer. Great-nephew Stephen Christopher practices law in Floresville, and grandson Jason Shoup recently finished his studies at St. Mary's University School of Law, Roy Sr.'s alma mater.

⁹ Perales, born in 1898 in Alice, Texas received his law degree in 1926. In the 1920s and 1930s, Perales went on

"Jimmy" Tafolla¹⁰ and Manuel M.C. Gonzales.¹¹ Barrera graduated in 1951 with a LL.B degree¹² and thereafter took and passed the bar examination.

His first legal job was working in the Bexar County District Attorney's Office as an investigator, as he waited for an attorney position to become open. After a delay of over a year, he began assisting Pat Maloney¹³ in felony court cases.

Mr. Barrera left the District Attorney's Office in 1957 and began his private practice with Anthony Nicholas. The partnership of Nicholas & Barrera lasted until the death of Mr. Nicholas in 2011. Barrera credits the early success of his practice to the fact that while he and Nicholas were chief felony prosecutors, newspaper publicity and photography in the courthouse were much more prevalent in those years. Barrera and Nicholas were frequently photographed and named in news articles and when they began private practice a certain level of name recognition was already prevalent. Continued success in achieving favorable pleas and acquittals, along with involvement in community affairs, saw the practice flourish. In 2007, Texas Lawyer recognized the firm of Nicholas & Barrera as one of oldest unchanged legal partnerships in Texas.¹⁴ Barrera merely states that the



Barrera and longtime partner Nicholas

thirteen diplomatic missions to various Latin American countries. He also served in the Eisenhower administration. Perales was a major political leader from the 1920s until his death and was one of the most influential Mexican Americans of his time. See Cynthia E. Orozco, "Perales, Alonso S.," *Handbook of Texas Online*, <https://www.tshaonline.org/handbook/entries/perales-alonso-s#:~:text=Perales%20was%20also%20a%20member%20of%20the%20American,immigrant%20community.%20Perales%20died%20on%20May%209,%201960>.

¹⁰ Born in Bexar County in 1989, Tafolla served as an assistant district attorney for a number of years and was also active in LULAC and civic affairs. See "James 'Jimmie' Tafolla," *League of United Latin American Citizens*, https://lulac.org/about/history/past_presidents/james_tafolla/.

¹¹ Gonzales, born in Hidalgo County, Texas in 1900, became licensed in 1924. Active in the Mexican Chamber of Commerce and LULAC, he was one of the first Hispanics to seek office in Bexar County. See Cynthia E. Orozco, "Gonzales, Manuel C.," *Handbook of Texas Online*, <https://www.tshaonline.org/handbook/entries/gonzales-manuel-c>.

¹² St. Mary's School of Law recognized Barrera in 2009 with its Lifetime Achievement Award noting a "legendary career: that has spanned half a century, his service as Texas' Secretary of State, and his recognition as one of the Top Ten Criminal Lawyers in Texas. See "St. Mary's Law Holds 75th Graduation," *St. Mary's University* (May 18, 2009), <https://www.stmarytx.edu/2009/st-marys-law-holds-75th-graduation/>.

¹³ Pat Maloney was employed at the Bexar County District Attorney's office for three years, becoming chief trial attorney and first assistant district attorney. In 1953, after losing an election for Bexar County district attorney, Maloney entered private practice, establishing his own law firm, the Law Offices of Pat Maloney, PC. Maloney achieved great financial success in his personal injury practice.

¹⁴ Brenda Sapino Jeffreys, "Test of Time: The Handshake That Launched a 50-Year Partnership," *Law.com: Texas Lawyer*, Aug. 6, 2007, 12:00 AM, <https://www.law.com/texaslawyer/almID/900005487890/test-of-time-the-handshake-that-launched-a-50year-partnership/>.

partnership was built on “trust, compatibility, loyalty” and the fact that each supported the other.

At one time it was estimated that he had obtained the largest number of acquittals at the San Antonio federal courthouse. Amongst the many cases he prosecuted or defended (a number so large he cannot recount), the following are some of the more notable:

Alcorta v. State, a murder case. After Barrera was part of the team that secured a conviction for the State, the defendant received 11 stays of execution and ultimately the Supreme Court of the United States reversed the conviction.¹⁵

State v. Felipe Orta, a 19-year-old Hispanic male shot and killed a highway patrolman who stopped him for speeding. The State refused to plea bargain, seeking the death penalty. The jury, after hearing Mr. Barrera’s closing argument, returned a verdict of murder without malice, which carried a five-year maximum sentence.

State v. Woodrow Collums, the defendant shot and killed his brother, who was suffering from Alzheimer’s Disease and was being kept alive with a feeding tube. The defendant pled guilty. After Mr. Barrera assembled a slew of character witnesses and introduced a letter written by the victim, wherein the victim stated he wanted to be taken off life support, the judge sentenced the defendant to ten years of probation.

In addition to his law practice, Barrera became involved in political races. He was often recruited to assist in various judicial campaigns, as well as county commissioner and sheriff races. His ability to secure Westside votes was often interpreted as key in obtaining a victory. In 1953, Barrera was appointed to the Edgewood Independent School District¹⁶ and served on the Board and as its Board President from 1953 to 1959. Edgewood I.S.D. was one of the first school districts in the area to fully comply with *Brown v. Board of Education*’s desegregation mandate.

In his political and community activity work Barrera became acquainted with John Robert Peace, Jr.¹⁷ Peace was also a San Antonio attorney. In 1967, Governor John B. Connolly named Peace to the University of Texas Board of Regents. Peace enlisted Barrera to help in the Connolly gubernatorial campaign. Governor Connolly thereafter asked Barrera to serve as Texas Secretary of State. Barrera

¹⁵ 355 U.S. 28 (1957).

¹⁶ Later in 1968, 400 students participated in a walkout of Edgewood High School to protest inadequate resources. Edgewood parents subsequently filed a class action lawsuit arguing that Texas’ school finance system was unconstitutional. Although initially successful in the district court, the United States Supreme Court ultimately concluded that despite the fact that Edgewood I.S.D., with its predominantly Mexican-American population, and one of the highest tax rates in Bexar County, received \$37 per pupil, while the more affluent and Anglo students in Alamo Heights got \$413 per pupil, the “Equal Protection Clause does not require absolute equality or precisely equal advantages.” *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 24, 93 S. Ct. 1278, 1291, 36 L. Ed. 2d 16 (1973). As a result, challenges to the state’s education funding system have repeatedly been heard in the state courts and funding inequality remains an ongoing challenge.

¹⁷ Peace is credited with being a driving force in the establishment of the University of Texas at San Antonio. Peace also was an avid collector of Texana, and he amassed a collection of about 900 books and 500 manuscripts, some dating back to the 1700s. See “A Guide to the John Peace Collection, 1710-1973,” *Texas Archival Resources Online: UTSA Libraries Special Collections*, [https://legacy.lib.utexas.edu/taro/utsa/00169/utsa-00169.html#:~:text=John%20Robert%20Peace,%20Jr.%20\(1917-1974\)%20was%20a%20Texas,of%20the%20University%20of%20Texas%20at%20San%20Antonio](https://legacy.lib.utexas.edu/taro/utsa/00169/utsa-00169.html#:~:text=John%20Robert%20Peace,%20Jr.%20(1917-1974)%20was%20a%20Texas,of%20the%20University%20of%20Texas%20at%20San%20Antonio).



Barrera and wife, Carmen

was the first Mexican American appointed to serve in that capacity (March 1968–January 1969). The first Secretary of the Republic of Texas was Stephen F. Austin. “The Secretary of State is one of six state officials named by the Texas Constitution to form the Executive Department of the State. The Secretary serves as Chief Election Officer for Texas, assisting county election officials and ensuring the uniform application and interpretation of election laws throughout Texas. The Office of the Secretary of State also provides a repository for official and business and commercial records required to be filed with the Office. The Secretary publishes government rules and regulations and commissions notaries public. The Secretary also serves as keeper of the state seal and attestor to the Governor’s signature on official documents. In addition, the Secretary serves as senior advisor and liaison to the Governor for Texas Border and Mexican Affairs and serves as Chief International Protocol Officer for Texas.”¹⁸ In his capacity as Secretary of State, Barrera welcomed the President of the newly created Republic of Chad to Texas, amongst many other notables.

¹⁸ “About the Office,” *Texas Secretary of State*, <https://www.sos.state.tx.us/about/index.shtml>.



Barrera with sons and daughters

After his return to private practice, he resumed his local bar association work and civic work, most notably the SA Job Corps program and the Boy Scouts of America.¹⁹ He was also recruited by the San Antonio Good Government League (GGL) to run for the City Council of San Antonio Mayor slot. At the time the secretive GGL business coalition was under considerable pressure to diversify its candidates to reflect the growing minority population. When the secret nominating committee chose Barrera for the mayor's slot instead of grocery magnate Charles Becker, Becker ran against Barrera and became mayor. That race and a subsequent race were largely responsible for the end of the GGL, the election of San Antonio's first woman mayor, and the later election of Henry Cisneros.²⁰

Throughout a remarkable career, Barrera's extended family remains at his core. He has ensured that values of hard work, perseverance, respect, and loyalty are passed down to each member of his very large extended family.

¹⁹ He was awarded the Order of the Arrow Brother, akin to a national honor society in the BSA program.

²⁰ Rick Casey, "An Unorthodox Route: How a Powerful San Antonio Mayor Honed Her Skills," *San Antonio Report*, May 28, 2019, <https://sanantonireport.org/an-unorthodox-route-how-a-powerful-san-antonio-mayor-honed-her-skills/>.

As we reflect on the tragic and violent attack on our nation's Capitol, it is remarkable how relevant and poignant remarks delivered by Barrera in 1969 remain.

On January 14, 1969, as Texas Secretary of State, Barrera was provided the opportunity to deliver some remarks²¹ at the beginning of the Session.

He stated, in part:

Today, we live in a world which has shrunk to the size of the picture tube on our TV sets and no part of which is any farther than our tele-phone or a few hours distant. Our exploding populations and our dependence upon the peace, prosperity and stability of most other nations, for our own, makes it even smaller. As our world shrinks in size our relations with other nations become more entwined and interdependent thereby making necessary that we know and understand them and conversely that they know and understand us. This can only be brought about through communication and association. In this melting pot of the world that we call America, we have been blessed as a nation with representative peoples from all over the world. With them they have brought their language, culture, skills and crafts, their customs, habits and characteristics. The very diversity of these people has made our country the greatest in the world. We, as Americans, therefore have the world within our borders. We have the colors of the rainbow; the religions of the world. Indeed we have a melting pot. Before we can know and understand these nations, we must know and understand each other. We must know that all of us irrespective of our ancestry, of the pigment of our skin or of our manner of worship, were created in the image and in the likeness of God. We must believe therefore that as human beings, we are possessed of reason and accordingly can love or hate, be friendly or hostile and are subject further to all of the wonderful attributes of man as well as his frailties.

For too long the world has suffered strife and turmoil due to man's inhumanity to man. For too long have some men sought to enslave and make vassals of others. For too long have theories and philosophies of the superiority of certain peoples over others, been permitted to seed, take root and flower into hate, prejudice, suspicion and distrust and ultimately untold suffering, death and destruction.

Today in this country hate and violence have become a part of our daily lives as a result of our ignorance and lack of understanding of our fellow Americans who may not look, speak and pray as we do.

²¹ House Journal, Sixty-First Legislature, Regular Session, January 14, 1969, pp.1-3.



Texas Secretary of State Barrera giving remarks at the State Capitol

Today in this "new nation," long years after that conception and that dedication referred to by Abraham Lincoln so simply, yet eloquently in his immortal Gettysburg²² Address, there are those who would have us believe that this is not so. There are those who would still stand in the schoolhouse door and deny to some Americans their fair share of America.

Regretfully, but true, for various and sundry reasons, some obvious, some quite subtle, over the course of time and history laws, rules and regulations have been enacted and found their way into the statute books of this and other states and of our nation, that have favored some Americans over others; that have relegated some Americans to second-

²² Misspelled in the House Journal and corrected here.

class citizenship and worse; that have deprived some Americans of the fulfillment of their ambitions and their dreams; laws that have in some instances deprived some of life and liberty.

America and Americans have lived and suffered with some of these laws for generations after generations, but "their cup has now runneth over." They have had their fill. Much of the unrest in our country today can be attributed to long-sought, but never obtained, remedies to grinding and degrading social and legal injustices.

Falling back on my ancestry and the language of my father's "No hay enfermedad que dure cien anos, ni enfermo que los aguante"; there is no illness that lasts for one hundred years nor an ill person that can endure them.

America and Americans must face up to this fact for unless and until we do we shall continue to experience strife and turmoil throughout our nation.

Texas is not of one color, nor of one race, nor one creed. Texans all, we must live and work here side by side. We all want what is best for Texas and the nation. We want to progress, to educate our children and to afford them every opportunity available to other Americans to not only dream and aspire in the promised land but to share in her, restricted only by their personal ambitions, and not by their ancestry or the color of their skin.

We have fostered and condoned second-class citizens and worse. We can no longer afford to do so. We must no longer do so.

With all of us as citizens; with you primarily as lawmakers, lies the legal and moral responsibility to insure that this will be so.

With you lies the responsibility not only to your respective communities but to the State of Texas and to all Texans, to strike down any and all laws that are unjust and unfair; any law that would perpetuate second-class citizens in Texas; all laws that discriminate against or segregate any Texan because of his birth or belief.

With you also rests the responsibility to enact such laws as will inure²³ to the benefit and common good of all Texans generally; giving vent to the will of the majority with due regard to the rights of the minority.

²³ Misspelled in the House Journal and corrected here.

In 2020, the State Bar of Texas Hispanic Issues Section awarded Mr. Barrera its Reynaldo G. Garza Lifetime Achievement Award, an award given to a Texas attorney “who has demonstrated a long commitment and made great achievement in addressing concerns and issues affecting the Hispanic community and to the Hispanic Bar in Texas and has worked toward advancing diversity and access to justice in the practice of law.”

[Return to Journal Index](#)

The Texas Latinx Lawyer Report Card

By Luz E. Herrera

This spring the U.S. Census will reveal the results of its much-anticipated national population survey. Most projections tell us that Texas has gained at least two million more residents - its population growth is amongst the highest in the country.¹ One of the driving segments of that growth is the Latinx population which accounts for 11.5 million and comprise thirty-nine percent of the Texas population.²

Although almost one in four Texans are Latinx the latest Texas State Bar demographics tell us that only one in 10 of its attorneys are Latinx.³ That difference may seem stark at first glance, but Texas fares better than most states in its ratio of Latinx attorneys.⁴ In the last twenty-five years, significant efforts by individual lawyers, bar organizations, and law schools have been instrumental in doubling the percentage of Latinx lawyers in the state. Table 1 shows the number growth of the Latinx population and Latinx lawyers from 1995-2019.

Table 1: Number and Percentage of Latinx Population and Latinx Lawyers in Texas, 1995-2019

	Texas Latinx Population ⁵	Percentage of Total Population ⁶	Texas Latinx Lawyer Population	Percentage of Lawyer Population
1995	5.2 million ⁷	27.6%	2,727 ⁸	5%
2000	6,669,666	32%	4,059 ⁹	6%
2005	8,010,747	35%	5,040 ¹⁰	6.9%
2010	9,460,923	37.6%	6,374 ¹¹	8%
2015	10,999,120 ¹²	40% ¹³	8,158 ¹⁴	8.7%
2019	11,446,898 ¹⁵	39% ¹⁶	9,812 ¹⁷	10%

¹ United States Census Bureau, Annual Estimates of the Resident Population by Sex, Race and Hispanic Origin of Texas: April 1, 2010 to July 1, 2019 (2020), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-detail.html> (last visited Jan. 29, 2021); Texas Demographic Center, Texas Populations Projections 2010 to 2050 (Table 1) (2019), https://demographics.texas.gov/Resources/publications/2019/20190128_PopProjectionsBrief.pdf.

² Erin Duffin and Jan 20, "U.S. Hispanic Population, by State 2019," Statista (Published by Statista Research Department, January 20, 2021), <https://www.statista.com/statistics/259850/hispanic-population-of-the-us-by-state/>.

³ https://www.texasbar.com/AM/Template.cfm?Section=Content_Folders&Template=/CM/ContentDisplay.cfm&ContentID=48795

⁴ According to the 2020 ABA Profile of the Legal Profession, Latinxs are only five percent of all lawyers nationwide. <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>. The California Bar reported that Latinos made up seven percent of the active members of their bar in 2019. <http://www.calbar.ca.gov/Portals/0/documents/reports/State-Bar-Annual-Diversity-Report.pdf>. In 2016, Florida reported that Latinx comprised 10 percent of their attorney population. "Minorities in the Legal Profession," The Florida Bar, accessed January 28, 2021, <https://www.floridabar.org/about/diversity/diversity003/#V.%20Facts%20and%20Statistics>.

In the last quarter century, the legal profession in Texas has developed pipeline projects and mentoring programs that help address historical barriers to entry into the profession. Some of these barriers include low educational achievement, law school admission test preparation, lack of role models, and the high cost of legal education. A recent article by Professor Albert H. Kauffman discusses the history of educational barriers for Latinxs in Texas which highlights legal battles that impact the law school pipeline and include the desegregation of public schools, school finance equity, bilingual education, proper use standardized tests for educational advancement, and the right of undocumented children to obtain an education.¹⁸ The history of Texas civil rights litigation points to a number of attorneys and civic leaders, most affiliated with the Mexican American Legal Defense and Education Fund, who have been instrumental in forging a path to higher education for Latinxs in Texas.

Civil rights litigation in this state may have knocked down institutional barriers for Latinxs in Texas, but it has taken numerous pre-law program efforts to help get students who would land in law school through the door. There are a number of pre-law programs at colleges and universities

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- ⁵ United States Census Bureau, Intercensal Estimates of the Resident Population by Sex, Race, and Hispanic Origin for Texas: April 1, 2000 to July 1, 2010, <https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-state.html>
 - ⁶ United States Census Bureau, Time Series of Texas Intercensal Population Estimates by County: April 1, 1990 to April 1, 2000, <https://www2.census.gov/programs-surveys/popest/tables/1990-2000/intercensal/st-co/co-est2001-12-48.pdf>; U.S. Census Bureau, Intercensal Estimates of the Resident Population by Sex, Race, and Hispanic Origin for Texas: April 1, 2000 to July 1, 2010, <https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-state.html>
 - ⁷ Missy Turner, *Hispanics are Driving Texas' Population Growth, Study Shows* (1996), <https://www.bizjournals.com/sanantonio/stories/1996/12/23/story6.html>
 - ⁸ State Bar of Texas, Racial/Ethnic Minority Attorneys: Attorney Statistical Profile (2005-06), <https://www.texasbar.com/AM/Template.cfm?Section=Archives&Template=/CM/ContentDisplay.cfm&ContentID=11456>
 - ⁹ Carol L. Cannon, M.A. and Kevin J. Priester, Statistical Profile on the State Bar of Texas Membership (2000-01), <https://www.texasbar.com/AM/Template.cfm?Section=Archives&Template=/CM/ContentDisplay.cfm&ContentID=11533>.
 - ¹⁰ State Bar of Texas, 2015 Population Trends of Racial/Ethnic Minorities in the State Bar of Texas (2015), https://www.texasbar.com/AM/Template.cfm?Section=Demographic_and_Economic_Trends&Template=/CM/ContentDisplay.cfm&ContentID=33673
 - ¹¹ State Bar of Texas, Racial/Ethnic Minority Attorneys: Attorney Statistical Profile (2010-11), <https://www.texasbar.com/AM/Template.cfm?Section=Archives&Template=/CM/ContentDisplay.cfm&ContentID=13345>
 - ¹² Texas Demographics Center, Estimates of the Population by Age, Sex and Race/Ethnicity for July 1, 2015 for State of Texas, https://demographics.texas.gov/Resources/TPEPP/Estimates/2015/2015_ASRE_Estimate_alldata.pdf
 - ¹³ *Id.*
 - ¹⁴ State Bar of Texas, 2015 Population Trends of Racial/Ethnic Minorities in the State of Texas, https://www.texasbar.com/AM/Template.cfm?Section=Demographic_and_Economic_Trends&Template=/CM/ContentDisplay.cfm&ContentID=33673
 - ¹⁵ Texas Demographics Center, Estimates of the Population by Age, Sex and Race/Ethnicity for July 1, 2019 for State of Texas, https://demographics.texas.gov/Resources/TPEPP/Estimates/2019/2019_ASRE_Estimate_alldata.pdf
 - ¹⁶ *Id.*
 - ¹⁷ State Bar of Texas, 2019 Population Trends of Racial/Ethnic Minorities in the State Bar of Texas, https://www.texasbar.com/AM/Template.cfm?Section=Demographic_and_Economic_Trends&Template=/CM/ContentDisplay.cfm&ContentID=48797
 - ¹⁸ Albert H Kauffman, "Latino Education in Texas: A History of Systematic Recycling Discrimination," *St. Mary's Law Journal* 50, no. 3 (October 2019): pp. 861-916.

throughout the state. Those based in communities with high Latinx populations and with a direct pipeline to the University of Texas produce the greatest number of Latinx law students. For example, the University of Texas El Paso¹⁹ and the University of Texas San Antonio²⁰ both host summer programs to prepare students to apply to and attend law school. Law schools also have programs to increase applicants to be admitted to their schools. The Houston Law Center offers a successful Pre-Law Pipeline program that enrolls a number of Latinx students who are first generation and low income.²¹ These and similar programs offer students courses, incorporate lawyers as guest speakers, provide mentoring through the application process including tackling the Law School Admissions Test, and are responsible for sending hundreds of Latinx students to law schools.

From 2016 to 2020, Texas law schools enrolled an average of 515 Latinx students per year and more than a seventeen percent increase between 2017 to the present.²² Once in law school, there are law school student organizations and a number of bar groups that are focused on ensuring Latinx law students' success. Bar organizations, particularly those located in cities where there are law schools, offer scholarships and mentoring programs that target Latinx law students. The Hispanic Bar Association of Austin Charitable Foundation, among other things, provides scholarships to supplement summer income for law students at the University of Texas who work for nonprofit agencies and stipends to assist them with bar preparation programs.²³ In addition to scholarships, organizations such as the Hispanic Bar Association of Houston (HisBa) offer mentoring opportunities. The HisBA Law School Mentorship Program connects experienced attorneys with law students who attend or recently graduated from a Houston-based law school. The program helps connect mentors with mentees, provides them direction on how to develop the relationship and organizes quarterly events to help facilitate professional development.

Bar organizations also help Latinx attorneys advance in their career by being advocates. Various bar organizations, including Dallas Hispanic Bar Association (DHBA), are mentoring new law lawyers who have been impacted by the economic turnovers affiliated with CoVID019 through a multi-bar program named S.T.E.E.R - Stability Tools for Employment and Economic Resilience.²⁴ DHBA and other bar associations also form the Diversity Task Force which evaluates diversity and inclusion progress of attorneys of color, women, and LGBT attorneys in the largest law firms in Dallas.²⁵

Efforts by the State Bar of Texas have also been instrumental in supporting diverse law students and attorneys. The Hispanic Issues Section of the State Bar of Texas, established in 1979 as the Concerns of the Spanish Speaking Community Section, has been at the forefront of advocating for Latinxs in the Texas legal profession. That section offers a space for members of the bar to

¹⁹ "Patti and Paul Yetter Center for Law," UTEP, <https://www.utep.edu/liberalarts/lspi/college-program/summer-program.html>.

²⁰ "Summer Law School Preparation Academy," UTSA, <https://www.utsa.edu/ilpa/summer-academy.html>.

²¹ UHLC Pre-Law Pipeline Program, <https://www.law.uh.edu/pipeline/Scholarl.asp>

²² "Statistics Archives," American Bar Association, https://www.americanbar.org/groups/legal_education/resources/statistics/statistics-archives/.

²³ "The HBAA Charitable Foundation," *Hispanic Bar Association of Austin, Texas*, <http://www.hispanicbaraustin.com/hbaa-foundation.html>.

²⁴ Dallas Hispanic Bar Association - S.T.E.E.R.: Stability Tools for Employment and Economic Resilience, <https://dallaspanicbar.com/news/8980037>.

²⁵ Dallas Hispanic Bar Association - Diversity Task Force, <https://dallaspanicbar.com/diversity-task-force>.

study laws, regulations, and court decisions that impact Latinx in the state.²⁶ The State Bar of Texas' Office of Minority Affairs and the Diversity in the Profession Committee sponsors several initiatives aimed to support the career development of diverse law students and lawyers in Texas through mentorship and continuing legal education.²⁷ The Texas Minority Council Program (TMCP) is perhaps the most well-regarded. Established in 1993, the TMCP helps promote business opportunities for Latinx attorneys who represent corporate and governmental clients.²⁸ In addition, the State Bar of Texas has historically offered opportunities for diverse attorneys to develop leadership within its ranks through LeadershipSBOT²⁹ and previously designated diversity board positions.³⁰

While Latinx lawyers and law students have many resources available to support their entry and success in the profession, there is room for improvement. Despite these efforts, in its eighty-one year history, the State Bar of Texas has only had three Latinx presidents.³¹ There is little information available on how Latinx lawyers are faring in different sectors of the legal profession, however, preliminary research reveals that Latinxs are underrepresented in areas such as the judiciary and legal education where only 5.5 percent, are Latinx.³² Finally, most legal resources and lawyers seem to be located in urban centers. The next steps in increasing the presence of Latinxs in the legal profession in Texas must include additional resources to provide pre-law mentoring, legal education, and legal service provision in parts of the state with high Latinx populations.

²⁶ "History," *Hispanic Issues Section of the State Bar of Texas*, <https://texashispanicissuessection.com/history/>.

²⁷ Some of these mentoring programs include the Texas Minority Law Student initiative and The Texas Minority Attorney Program, a one-day live continuing education program and networking event that targets minority and women lawyers in solo and small firms. See State Bar of Texas Minority Initiatives, State Bar of Texas Office of Minority Affairs, <https://www.texasbar.com/Content/NavigationMenu/ForLawyers/BarServiceOpportunities/FindDiversityResources/MinorityAffairs.htm>

²⁸ Texas Minority Counsel Program (TMCP), State Bar of Texas, <https://www.texasbar.com/Content/NavigationMenu/ForLawyers/BarServiceOpportunities/FindDiversityResources/TMCP.htm>

²⁹ LeadershipSBOT, State Bar of Texas, <https://www.texasbar.com/Content/NavigationMenu/ForLawyers/BarServiceOpportunities/FindDiversityResources/LeadershipSBOT.htm>

³⁰ From 1991 to 2016, Texas Government Code Section 81.020 required four of the forty-six seats on the State Bar of Texas board to be designated for minority attorneys. Prompted by a federal lawsuit, *Gegenheimer v. Stevenson*, the Texas Legislature changed the law in 2017 to allow for at-large directors instead of minority directors. Texas Government Code Section 81.020.

³¹ The first Latinx president of the State Bar of Texas was Richard Pena who served in 1998-99. The second was Eduardo Rodriguez who served in 2005-06. The third is Sylvia Borunda Firth, who will serve during president in 2021-22.

³² The total number of full-time law faculty in Texas is 509, according to law school issued Disclosure 509 forms filed with the American Bar Association in 2020. See <http://abarequireddisclosures.org/Disclosure509.aspx>. The author called Latinx faculty at each school to get a total of their full-time professor who identified as Latinx and the number was 28. Those communications are on file with the author.



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[Return to Journal Index](#)

The Lost Law Schools of Texas

By Hon. John G. Browning and Josiah M. Daniel, III

With the Lone Star State now boasting ten law schools, it may be hard to imagine a time when there were few prospects in Texas for obtaining a formal legal education. Half of Texas' current law schools are of relatively recent, post-World War II vintage, as universities sought to meet the increasing demand ushered in by post-war economic prosperity. These include what is now the University of Houston Law Center (1947); what is now the Thurgood Marshall School of Law at Texas Southern University (1947)¹; Texas Tech University School of Law (1964); what is now Texas A&M University School of Law (founded as Texas Wesleyan in 1993); and the University of North Texas Dallas College of Law (2014). The decades leading up to World War II witnessed the birth of three other current Texas law schools, including South Texas College of Law (1923), Southern Methodist University Dedman School of Law (1925), and St. Mary's University School of Law (1934). Baylor University hosted a law department offering a 2-year curriculum from 1857 until 1872, and then revived in 1919. The University of Texas School of Law has operated continuously since its 1883 founding.

Austin College offered Texas' first formal law curriculum in 1855 at its original site in Huntsville, long before the institution's move to its current home in Sherman, but its significance was short-lived since the curriculum was discontinued after its four students had completed just one academic year. In the 20th century, a number of new law schools appeared that, although long gone, merit a notice in Texas legal history. Some still linger in the DNA of the currently-operating law schools into which they were merged or absorbed, such as the San Antonio School of Law that started in 1927 and merged into St. Mary's in 1935, or the 1922 YMCA Law School of Dallas that became the Dallas School of Law before absorption by SMU in 1938. Others were ephemeral.

For instance, in the late twenties the *American Law School Review* reported the creation of the Port Arthur Night School of Law with fourteen students and the South and West Texas School of Law, also in San Antonio with forty-five.² Yet another, the Galveston Institute of Law was organized by three local attorneys in 1926 with a thirty-month curriculum and classes on Tuesday and Thursday nights; in 1927, four of its twenty-seven students were women, one of whom, Mary

¹ The inspirational early story of this law school—that began when in 1946 Heman Marion Sweatt, sought admission to the segregated University of Texas School of Law and resulted in the Supreme Court's decision in *Sweatt v. Painter*, 339 U.S. 629 (1950)—has been chronicled by scholars and lawyers See, e.g., Vonciel Jones, *Texas Southern University School of Law—The Beginning*, 4 TEX. S. U. L. REV. 197 (1977).

² *Registration in Law Schools*, 6 AM. L. SCH. REV. 356, 363 (1928).

E. McGowan, was class president.³ The trails of these three schools run cold around 1930. Review of multiple sources identifies yet more short-lived Texas law schools launched in the late 1920s and 1930s including the Texas College of Law in Houston; three in Fort Worth, the Fort Worth Law School, Coley's Law Class, and the Madison College of Law; Weber Law School in San Antonio; the East Texas College of Law in Beaumont; Jackson's Law Class in Cleburne; the Rio Grande Valley School of Law in Harlingen; the West Texas School of Jurisprudence in El Paso; the Longview Night Law School; and the Tyler Law School.⁴ A unique one was a unit of a local public school system, the San Antonio Public School of Law,⁵ which grew rapidly—it produced the State's second highest number of new lawyers in 1934⁶—but was defunct by 1939.⁷

The three most significant Texas law schools that are today largely forgotten but deserve acknowledgment are Houston School of Law, Somerville Law School, and Jefferson School of Law. The first was Houston School of Law, which has been called "certainly the most important of the proprietary Texas law schools."⁸ Organized in 1912 by John Townes, the son of the Dean of the UT Law School, Judge John C. Townes, the school took off when two returning veterans of World War I, Jesse E. Moseley and Ewing Werlein, teamed up as President and Dean with other Houston lawyers contributing as part-time lecturers. It was a night school with classes in the Harris County Courthouse twice a week throughout the year. Until 1927, it was a two-year program; after that, its third year included moot court. By 1929, the school had 440 students.⁹

In 1927, Werlein described Houston Law School students:

The purpose of the school is to prepare students for the practice of law in this state, and to enable them to pass the State Bar Examination. There are quite a few of the students, however, who are studying merely to acquaint themselves with the law to help them in their own business or profession.¹⁰

³ *Ibid.*; *Notes and Personals*, 6 AM. L. SCH. REV. 33, 52 (1926); *Notes and Personals*, 6 AM. L. SCH. REV. 146, 159 (1927); *Galveston Institute of Law*, 5 LAW STUDENT 1, 33 (1927); "Law Institute Gives Banquet for Teachers and Governing Board," *Galveston Daily News* 4 (July 8, 1927). An apparent copycat was organized in 1928 by yet another local attorney under the name Galveston School of Law, which lasted until at least 1933. *Notes & Personals*, 6 AM. L. SCH. REV. 365, 390 (1928); *Memorials*, 49 TEX. B.J. 664, 668 (1968) ("Severin attended night classes at the Galveston School of Law, completing his courses in 1933").

⁴ *Registration in Law Schools*, 6 AM. L. SCH. REV. 615, 622 (1929); *Notes and Personals*, 6 AM. L. SCH. REV. 623, 650 (1930); id., 7 AM. L. SCH. REV. 50, 57 (1930); id., 7 AM. L. SCH. REV. 667, 698 (1932); id., 8 AM. L. SCH. REV. 330, 338 (1935); id., 8 AM. L. SCH. REV. 646, 653 (1936). See also Mark E. Steiner, *The Secret History of Proprietary Legal Education: The Case of the Houston Law School, 1919-1945*, 47 J. LEGAL EDUC. 341, 343 (1997). See also ALFRED Z. REED, REVIEW OF LEGAL EDUCATION IN THE UNITED STATES AND CANADA FOR THE YEARS 1926-1934 at 35 (1931).

⁵ See "Blind Student Makes Highest Grade at San Antonio Law School," *The Whitewright Sun* (Whitewright, Texas) 5 (June 11, 1936).

⁶ TEX. BAR ASS'N, PROCEEDINGS OF THE ANNUAL SESSION 1935 at 53.

⁷ U.S. DEPT. OF INTERIOR, EDUCATIONAL DIRECTORY, BULLETIN 1939, No. 1 at 72.

⁸ Nancy Jo Newton & W. Frank Newton, *Legal Education in Texas*, STATE BAR OF TEXAS, Committee on the History and Traditions of the Bar, CENTENNIAL HISTORY OF THE TEXAS BAR at 159, 162 (1982).

⁹ Steiner, *The Secret History* 343-44.

¹⁰ *Ibid.*, 344 (quoting Werlein to Reed, Feb. 26, 1927, Houston Law School Papers, Box 1, Folder 3, Houston Metropolitan Research Center).

The school welcomed women students. From 1927 to 1939, according to the historian of this school, "92 of the Houston school's 629 graduates were women (nearly 15 percent). During the same period less than 3 percent of the University of Texas law graduates (only 30 out of 1,223) were women. Nationally the percentage of women lawyers was 1.4 in 1920...and 2.4 in 1940."¹¹ The admitted women did not include African Americans but were otherwise diverse. For example, a Jewish woman, Mrs. W. Ray Scruggs, graduated in 1928 and immediately announced for election to Congress.¹²

Houston Law School was a proprietary venture, and it competed with the nonprofit South Texas College of Law which at that time was run by the local YMCA. It did so by pointing up its record of preparing students to pass the bar exam. In 1927, it asserted that none of its students had ever failed it. While South Texas stressed its devotion to the Langdellian casebook method of instruction, Houston Law School emphasized in advertisements that its twice-weekly schedule of textbook and lecture-style instruction enabled "working men and women to attend without overtaxing them physically or mentally" and that the school offered the "advantages" of "shorter hours" and a "shorter course."¹³ South Texas's receipt of the diploma privilege from the Texas Supreme Court in 1929 was a serious disadvantage to the Houston Law School which it worked to overcome through publicity.¹⁴ When the Legislature abolished the diploma privilege in 1935,¹⁵ at the urging of the Texas Bar Association (the "TBA"), Houston Law School touted that its students had always taken the bar exam with great success. However, during the Depression of the thirties, the stiffening of requirements for pre-law education and for a lengthened law school curriculum of three years caused the Houston Law School's enrollment to steadily decline such that it had to close in 1945.¹⁶ Its historian concluded: "And so ends the story of the Houston Law School, a school that briefly flourished and then disappeared. Like almost all the proprietary schools that mushroomed in the early decades of this century, it left no lasting legacy. It was affordable; it was practical; it was doomed."¹⁷

The second of the three significant but now forgotten law schools, Somerville Law School, was the brainchild of former oilfield worker and Missouri educator-entrepreneur Charles Laverne Somerville.¹⁸ Somerville advocated a "triple speed method" of teaching reading comprehension in Missouri and claimed that this "speed learning" would enable students to complete a legal education faster than the traditional three year law school curriculum, indeed in as little as a year. Somerville opened his first law school in Wichita Falls.¹⁹ Somerville' offered day and night classes and even correspondence courses. The school proved popular enough that it soon expanded to six cities in Texas, including Dallas in 1931. The Somerville Law School boasted forty students by 1931.²⁰ In 1933,

¹¹ *Ibid.*, 345.

¹² "Mrs W. Ray Scruggs for Congresswoman," *The Texas Jewish Herald* (Houston, Tex.) 4 (Jan. 26, 1933).

¹³ Steiner, *The Secret History*, 349 (quoting *Houston Chronicle*, Sept. 4, 1930, 10 and *ibid.*, Sept. 8, 1930, 3).

¹⁴ *Ibid.*, 353-56.

¹⁵ Act of May 8, 1935, ch. 176, 1935 Tex. Gen. Laws 438.

¹⁶ Steiner, *The Secret History*, 361-62.

¹⁷ *Ibid.*, 368.

¹⁸ "Dixie University," *Lost Colleges.com*, <https://www.lostcolleges.com/dixie-university>

¹⁹ *Ibid.*

²⁰ *Ibid.*

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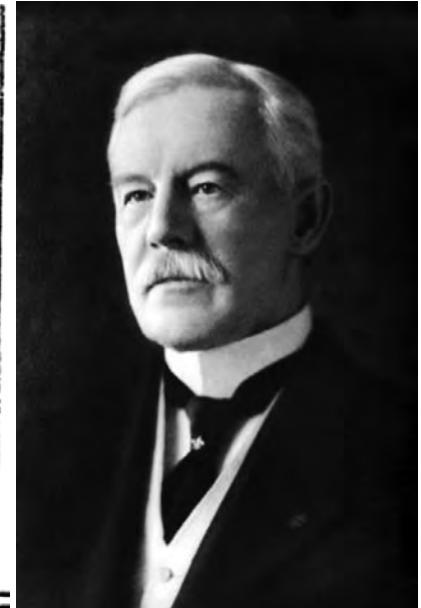
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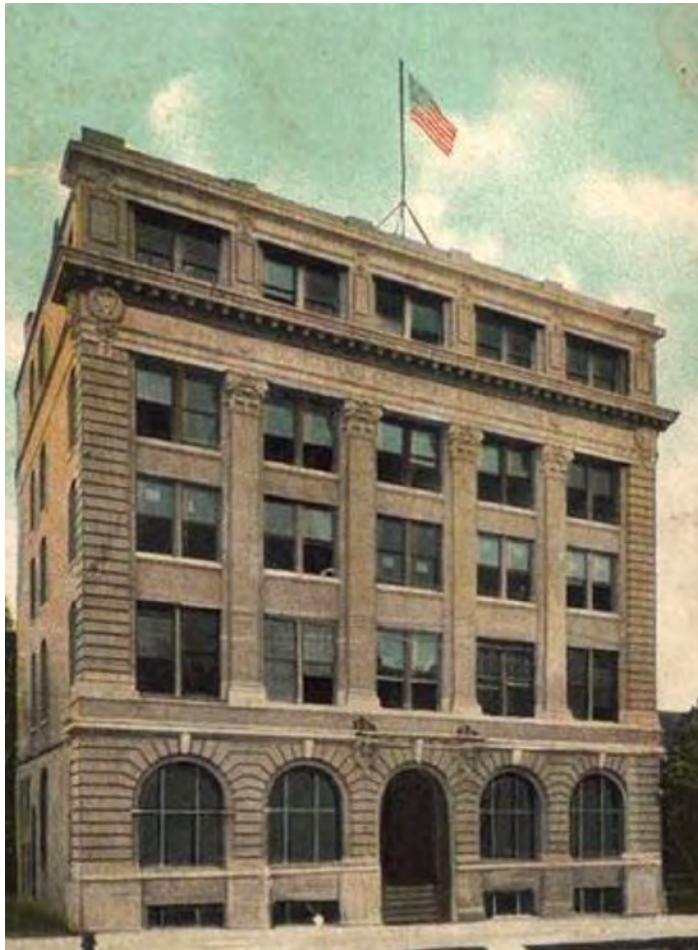
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A newspaper ad for Somerville Law School



Charles Laverne Somerville



The YMCA Building was home to Dixie University in 1933.

Somerville added schools of Commerce, Public Administration, and Accounting to what he now chartered as "Dixie University." By its peak in the fall of 1933, Dixie University had roughly 400 students. Its Somerville Law School had outgrown its original Dallas location at 1807-1/2 Main Street and relocated to the five-story "Old YMCA Building" at 1910 Commerce Street in downtown Dallas, a bastion of education that included rival Dallas Law School and the Dallas Institute of Technology as tenants.²¹

Success, however, was short-lived. Dixie University ceased by 1936, but Somerville Law School continued operating—one graduate reminisced in 1996 about taking night courses from the mid-1930s and receiving the LL.B. from Somerville in 1942²²—until Somerville himself died in 1947. Dixie University's home, the "Old YMCA Building," became the Savoy Hotel, which in turn was razed in 1950 to make room for the new Statler-Hilton Hotel. Before his death, Charles Somerville had largely turned his attention away from his work in legal education and moved towards politics. He founded the Roosevelt Independent Party and

²¹ *Ibid.*

²² C.S. Fletcher, *Reflections*, 59 Tex. B.J. 76 (1996).

finished dead last in a six-way Democratic gubernatorial primary in 1942, garnering 4,853 votes to Coke Stevenson's 651,218 votes.²³ Somerville also ran in the crowded 1941 U.S. Senate special election, again finishing in last place with only twenty votes (behind even the Communist Party candidate Homer Brooks).²⁴

The third of the most significant of the forgotten law schools is Jefferson School of Law in Dallas. Founded in 1919 by Dallas attorney Andrew J. Priest with an initial enrollment of only three students,²⁵ the law school grew steadily in size and reputation. *The American Law School Review* reported that it had fifty students in 1923, sixty-three in 1924, eighty-one in 1925, and 119 by 1929.²⁶ The school added a moot court program in 1927, and in 1929 its successful first decade inspired Priest to add a branch campus in Fort Worth. By 1931, Jefferson Law School not only had its own three-story building at 210 S. Harwood in downtown Dallas, it had also been recognized by the Supreme Court of Texas on its list of "approved law schools."²⁷ Such status conferred "diploma privilege" upon Jefferson Law School graduates, giving them an automatic license to practice law without having to take a bar examination.

By 1931, Jefferson's law faculty had expanded to ten lawyers, including Priest himself—then the chief prosecutor for Dallas County District Attorney William S. McGraw.²⁸ The faculty included prominent Dallas attorneys, as well as an up-and-coming "lady lawyer," Sarah T. Hughes. Hughes, who became Texas' first female state district court judge and the nation's first female federal judge before rocketing into national prominence by swearing in Lyndon Johnson as President upon John F. Kennedy's assassination. Hughes embodied the inclusiveness of Jefferson Law School. A February 1925 *Dallas Times Herald* profile of eight prominent women attorneys included two Jefferson Law School graduates, Isabelle Albright and Hellie B. Martin, as well Jefferson instructor Hughes.²⁹ By that point, Hughes had also become a name partner of Andrew Priest's law firm,



Federal Judge Sarah T. Hughes taught classes at Jefferson Law School.

²³ TEXAS ALMANAC, "Election of Texas Governors 1900-1948," <https://texasalamanac.com/topics/elections/election-texas-governors-1900-1948>.

²⁴ WIKIPEDIA, "Electoral History of Lyndon B. Johnson," https://en.wikipedia.org/wiki/electoral_history_of_Lyndon_B._Johnson.

²⁵ "Jefferson University," LostColleges.com, <https://www.lostcolleges.com/316-jefferson-university>.

²⁶ Registration in Law schools, 5 AM. L. SCH. REV. 238, 244 (1923); id., 5 AM. L. SCH. REV. 417, 423 (1924); id., 5 AM. L. SCH. REV. 59, 601 (1925); id., 6 AM. L. SCH. REV. 615, 622 (1929).

²⁷ Darwin Payne, *As Old as Dallas Itself: A History of the Lawyers of Dallas, The Dallas Bar Associations, and the City They Helped Build* (Dallas: Three Forks Press, 1999), 148.

²⁸ *Ibid.*

²⁹ *Daily Times Herald*, February 1, 1925.

Priest Herndon & Hughes.³⁰ Such success was a far cry from the chilly reception that Hughes received when she first moved to Dallas and searched for employment as a lawyer. Until her blossoming business relationship with Andrew Priest, the future federal judge received only rejection and secretarial job offers from Dallas firms.

The successful law school expanded by 1931 into Jefferson University, adding a "School of Commerce and Accounts" and a "School of Secretarial Training." What was once just a small night school now purported to offer a full college experience, complete with a fraternity (Alpha Beta Sigma), debate team, school orchestra ("The Jeffersons"), and even a football team that competed against the likes of Paris Junior College, Hillsboro Junior College, and North Texas Teachers College. The law school even had its own fight song:

"Oh! We are jolly students of the law;
We have the best old crowd you ever saw.
We have high ideals of law and right,
And for these things we will always fight;
The spirit of Jefferson guides us all along.
We will uphold the right and denounce the wrong;
For Law and Justice in this land,
We jolly students always stand."³¹

Unfortunately, Jefferson's success was short-lived as the Depression took its toll. The liberal arts college at Jefferson University lasted only a year, and by 1936 the grandiose vision of "Jefferson University" was gone and replaced with a re-chartering as "Jefferson Law School." By 1937, the school had folded and Andrew Priest returned to being a prosecutor, working under new Dallas County District Attorney Andrew Patton from 1937 to 1940. A later bid by Priest for the office of District Attorney proved unsuccessful.

Ironically, the death knell of Jefferson Law School may have been sounded by its trailblazing female instructor, Sarah T. Hughes. While serving as State Representative (not long before being confirmed to the state bench), Hughes was successful in getting the bill passed that required passage of the bar examination for all applicants for admission to practice. The legislation became effective in 1935, ending the diploma privilege that had been enjoyed by a select few law schools, including Jefferson.³² While Hughes' law was undoubtedly a victory for higher standards in legal education, it proved to be the last nail in the coffin for Jefferson Law School.

³⁰ Darwin Payne, *Indomitable Sarah: The Life of Judge Sarah T. Hughes* (Dallas: Southern Methodist University Press, 2004), 30-31.

³¹ Payne, *Indomitable Sarah*, 9.

³² Act of May 8, 1935, ch. 176, 1935 Tex. Gen. Laws 438; Payne, *supra* n.12, at 85.

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Jefferson Law School had a brief but interesting tenure, one that on occasion became intertwined not only with Dallas history but national history as well. Former Jefferson professor Hughes was not the school's only tie to the Kennedy assassination and its aftermath. When Jack Ruby went on trial for the murder of JFK's assassin Lee Harvey Oswald, the presiding judge was Joe B. Brown, Sr. Brown had gone to Jefferson Law School at night while working as a railroad clerk.³³ Unimpressed by his legal acumen or academic credentials, wags in the press dubbed him "Necessity Joe"—because "Necessity knows no law."³⁴

The development of new, additional law schools during the 1920s and 1930s was one manifestation of the process of professionalization of the practice of law in Texas that began when the TBA organized in 1882 and really took off after World War I. As the gatekeeping function of licensing examinations was taken from the district judges, where it had always rested during the nineteenth century, and replaced with increasingly standardized, centralized admission processes,³⁵ prospective lawyers increasingly recognized the superiority of law schools over law-office apprenticeship for preparation. Furthermore, the authorization by the Texas Legislature for the Supreme Court to grant varying forms of a "diploma privilege" between 1891 and 1935—whereby graduation from law school conferred automatic admission to the bar—undoubtedly spurred demand for more law schools.³⁶ But the demise of the diploma privilege in 1935—at the urging of the TBA, which had noted that admissions to practice by diploma had begun to exceed those by examination,³⁷ together with the raising of pre-law requirements and extension of law study from two to three years undoubtedly caused the decline of proprietary and night schools in Texas; and "law schools became homogeneous in program and differentiated largely by the social origins and employment destinations of their students."³⁸

Among other contributions, the new law schools provided entry to the legal profession for some of those who had previously been denied—not for aspiring blacks, who were relegated to reading law or attending out of state law schools, but for members of the white working class who labored by day in order to attend classes by night and for women who had been generally denied the opportunities enjoyed by male counterparts. Schools like Houston Law School, Jefferson School of Law, and Somerville Law School may have faded from human memory, but they remain nevertheless important threads of the rich tapestry of Texas legal history.

³³ Diane Holloway, *Dallas and the Jack Ruby Trial: Memoir of Joe B. Brown, Sr.* (iUniverse Books, 2001).

³⁴ Peter Worthington, "The Limelight: Why Jack Ruby's First Trial Couldn't Happen Here," *Macleans'* (April 18, 1964).

³⁵ See, generally, Stephen K. Huber & James E. Myers, *Admission to the Practice of Law in Texas: An Analytical History*, 15 Hous. L. REV. 485 (1978).

³⁶ "Exemption from the bar examination was an incentive to attend and complete law school." *Ibid.*, 499.

³⁷ TEX. BAR ASS'N, PROCEEDINGS OF THE ANNUAL SESSION 1935 at 53.

³⁸ Michael Ariens, *Lone Star Law: A Legal History Texas at 182-83* (2011), In this, Texas's experience was no different from all the other states. See, generally, Alfred S. Konetzky & John Henry Schlegel, *Mirror, Mirror on the Wall: Histories of American Law Schools*, 95 HARV. L. REV. 833, 834 (1982).

Justice Delayed, But Not Denied: Texas Supreme Court Grants Historic Posthumous Bar Admission

By Hon. John G. Browning

For most of those newly minted Texas lawyers who received word of their admission in 2020, it was the culmination of a year of pandemic-induced challenges. As historic as those challenges were, one name appearing on the admission rolls made history in a completely different way. That's because in October 2020, Texas became only the sixth state to grant posthumous bar admission to a person of color who'd been denied entry to the legal profession on racial grounds.

It all began in 1882. Dallas' first—and only—African American lawyer, Samuel Scott, had left the city the year before after a stay of only six months, departing after what the *Dallas Herald* euphemistically described as "a slight prejudice against him on account of his race."¹ In December 1882, a twenty-eight-year-old African American merchant from Mineola named J.H. Williams arrived in Dallas with the hope of being admitted to practice law. Like most aspiring attorneys of the time, Williams lacked a formal legal education but had "read the law" under the tutelage of an older lawyer, to the point where the *Dallas Herald* described him as "a colored disciple of Blackstone."²

Texas' standards for admission to the bar at the time have been described as "extraordinarily easy"; even the notorious outlaw John Wesley Hardin was admitted to Texas' legal profession—after a fifteen year jail term for murder.³ There was no bar exam. In 1882, an applicant simply had to prove he was at least twenty-one years of age, a citizen who had resided in Texas for a minimum of one year, and that he was "of good moral character and deportment."⁴ An applicant would simply present himself to the presiding judge of the district, and the judge would appoint a committee of lawyers to orally examine the candidate on his legal knowledge, and then report back with a recommendation on the young man's fitness to practice law. The bar was set so low that, up until 1890, only two candidates were ever denied admission to the Dallas bar—J.H. Williams would be one of them.⁵

Williams made his application to the presiding judge of the then-Eleventh Judicial District Court (the next year, it would be reorganized as the Fourteenth Judicial District), George Aldredge. Aldredge was a former Confederate officer whose greatest claims to fame were a eulogy he

¹ "Our Colored Lawyers," *Dallas Weekly Herald*, Oct. 6, 1881. Scott later moved to Arkansas and had a successful career that included being elected as one of Arkansas' first African American legislators.

² "A Colored Disciple of Blackstone," *Dallas Daily Herald*, Dec. 13, 1882.

³ MICHAEL ARIENS, LONE STAR LAW: A LEGAL HISTORY OF TEXAS 182 (2011).

⁴ John G. Browning & Chief Justice Carolyn Wright, *We Stood on Their Shoulders: The First African American Lawyers in Texas*, 59 HOWARD L.J. 74, 76 (2015).

⁵ BERRY B. COBB, A HISTORY OF DALLAS LAWYERS: 1840–1890, 16 (1933).

delivered for Robert E. Lee and having a son who would later become mayor of Dallas. Aldredge appointed a four-man committee to examine Williams. But that committee unexpectedly deadlocked, 2-2. The two voting in favor of Williams' admission were two of Dallas' most respected attorneys: Yale- and Harvard-educated W.W. Leake, then president of the Dallas Bar Association, and prominent lawyer Jeff Word.⁶ With the two other lawyers voting no, Judge Aldredge handpicked a second committee of three. That second committee wasted no time in doing what was expected; the day after being appointed, it reported "unfavorably" about J.H. Williams. Although the Dallas newspaper reported that Williams intended to continue his studies until he could pass examination, there is no record of his admission in Texas or elsewhere.⁷ Dallas would not see a black lawyer until the 1885 arrival of Joseph E. Wiley.

The racial prejudice Williams encountered was hardly unusual. Black lawyers were a rarity, both in Texas and nationally. By 1890, there were only a dozen statewide, and even as late as 1930, there were still only twenty African American lawyers in Texas.⁸ The arrival of an African American lawyer or aspiring lawyer was newsworthy at best, but sometimes sparked racial violence. Those few African Americans who did seek entry into the legal profession encountered barriers much like Williams did. Macon Bolling Allen, who became the first African American lawyer in the United States when he was admitted to practice in Maine in 1844, was initially rejected because he was not a "citizen." John N. Johnson, the first African American admitted to practice before the Supreme Court of Texas in 1883, was twice rejected by local bar committees in Brazos County in 1881 and 1882.



John N. Johnson

The J.H. Williams story might have ended after the rejection in Dallas. But throughout my years of researching, writing, and speaking about Texas' earliest African American lawyers, the adversities they faced, and the important legacy they left, I couldn't let his story go. In February 2016, I published an op-ed in the *Dallas Morning News* discussing J.H. Williams's story, and calling for the Dallas Bar Association—an organization that had remained segregated until 1963—to pass a resolution honoring Williams. I noted that "for a profession that still struggles with diversity, even such belated recognition would both acknowledge the many contributions made by lawyers of color and help heal the racial divides that still plague us today."⁹ Unfortunately, no progress was made.

As I continued to research and write about pioneering lawyers of color, I learned that in recent years, a number of state supreme courts have acknowledged the racial injustice of the past involving minority applicants from the 19th century who were denied bar admission because of the color of their skin, and have granted applications for posthumous admission for such individuals. These include the Washington Supreme Court's admission of Japanese American Takuji Yamashita in 2001¹⁰; the Pennsylvania Supreme Court's admission of African American George Vachon in

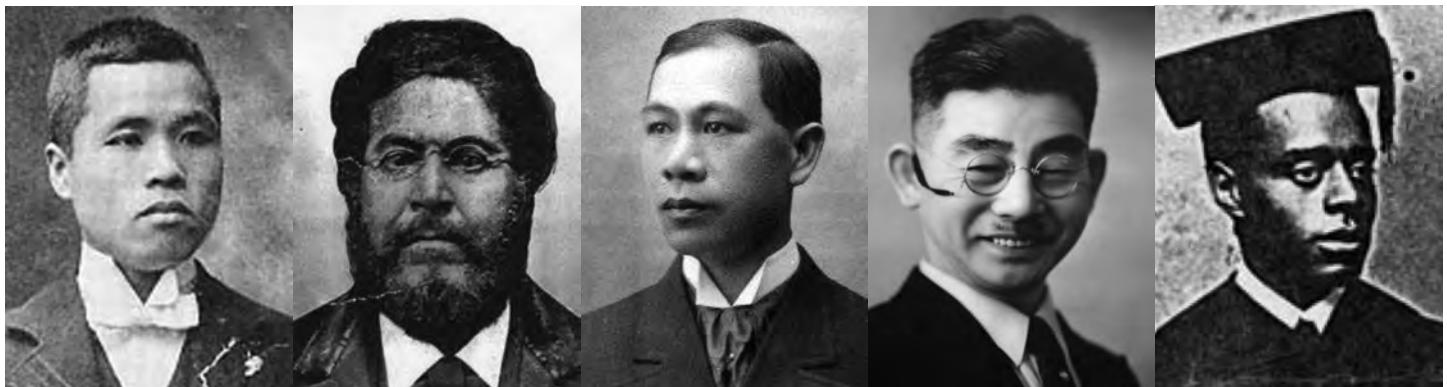
⁶ "A Colored Disciple of Blackstone," *Dallas Daily Herald*, Dec. 13, 1882.

⁷ "Not Admitted," *Dallas Daily Herald*, Dec. 14, 1882.

⁸ Browning & Wright, *We Stood on Their Shoulders: The First African American Lawyers in Texas*, 59 HOWARD L.J. 74, 76 (2015). 88.

⁹ John G. Browning, "A Chance for the Dallas Bar to Right a Historic Wrong," *Dallas Morning News*, Feb. 16, 2016.

2010¹¹; the California Supreme Court's admission of Chinese American Hong Yen Chang in 2015 and Japanese American Sei Fujii in 2017¹²; and the New York Supreme Court's admission of African American William Herbert Johnson in 2019.¹³ There was also precedent of posthumous bar admission under extraordinary circumstances at the Supreme Court of Texas, with its January 2020 admission of Baylor law graduate Ty Drury after he succumbed to cancer before he was able to pass the bar examination. I wrote about such posthumous bar admissions and restorative justice in a forthcoming law review article, but at the same time, I recognized that actions were needed more than words.



Left to right: Takuji Yamashita, George Vachon, Hong Yen Chang, Sei Fujii, William Herbert Johnson

The opportunity came after former Chief Justice Carolyn Wright and I gave a Zoom presentation for the Dallas Bar Association in early August 2020 about Texas' early black lawyers. Upon hearing about J.H. Williams at a time when a national dialogue about systemic racism was taking place, DBA President Robert Tobey asked, "Can't we do something about this?" As it turns out, we could. Chief Justice Wright and I began with an application asking the current judge of the Fourteenth District Court, the Hon. Eric Moyé, to vacate the order of his 19th century predecessor. Judge Moyé, the first African American man to serve as judge on that court, did so and—keeping with 19th century custom—appointed a committee of current and former DBA presidents, Robert Tobey, Paul Stafford, and Al Ellis to re-examine the evidence regarding J.H. Williams' qualifications. The committee did so, and issued a report to Judge Moyé unanimously recommending that J.H. Williams be admitted to practice. Judge Moyé adopted this recommendation.

Armed with Judge Moyé's order, the committee's recommendation, and a letter of support from the Dallas Bar Association, Chief Justice Wright and I made a formal application to the Supreme Court of Texas—the ultimate authority on bar admission. And in an October 19, 2020

¹⁰ Steven Goldsmith, "Takuji Yamashita: State's Leaders Honor a Man Once Rejected Because of His Race," *University Wash. News* (Feb. 12, 2001), <https://www.washington.edu/news/2001/02/12/takuji-yamashita-states-leaders-honor-a-man-once-rejected-because-of-his-race/#:~:text=February%20202001-,Takuji%20Yamashita%3A%20State's%20leaders%20honor%20a%20man,rejected%20because%20of%20his%20race&text=A%20University%20of%20Washington%20Law,after%20passing%20his%20bar%20exam.>

¹¹ Order, In the Matter of George B. Vachon, Case No. 5WM-2010, Supreme Ct. of Pa., W. Dist. (May 4, 210).

¹² *In re Hong Yen Chang*, 60 Cal. 4th 1169, 344 P.d 288 (2015); Admin. Order 2017-05-17 (S239690), 394 P.3d 488 (Cal. 2017).

¹³ Press Release, Fourth Department Schedules Special Posthumous Bar Admission Ceremony for First African American Graduate of the Syracuse University College of Law, Supreme Ct. State of N.Y. (Sept. 30, 2019), <https://ad4.nycourts.gov/press/notices/5d938c81c5379565541557e5.>

Order signed by every member of the Court, Texas' highest court posthumously admitted J.H. Williams to the State Bar of Texas. Williams' certificate will soon reside on a wall in the Dallas Bar Association headquarters at the Belo Mansion. For J.H. Williams and the cause of racial justice, lawyers, bar leaders, and judges came together to right a historic wrong.



THE SUPREME COURT OF TEXAS

This is to certify that

J.H. Williams

is upon the motion of Justice John G. Browning and
Chief Justice Carolyn Wright-Sanders (retired)
posthumously issued this honorary license as an

ATTORNEY AND COUNSELOR AT LAW

in all courts of the State of Texas

In testimony whereof, we hereby set our hands and have ordered to be
affixed the seal of the Supreme Court of Texas

Nathan L. Hecht, Chief Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

Jeffrey S. Boyd, Justice

John P. Devine, Justice

James D. Blacklock, Justice

J. Brett Busby, Justice

Jane N. Bland, Justice

Issued on the 19th day of October A.D., 2020



Blake A. Hawthorne, Clerk of the Supreme Court

[Return to Journal Index](#)

• Book Review •

The Injustice Never Leaves You: Anti-Mexican Violence in Texas

Review by Hon. John G. Browning

Maya Angelou famously wrote that “History, despite its wrenching pain, cannot be unlived, but if faced with courage, need not be lived again.” Nowhere is the truth of that statement more evident than in Monica Muñoz Martinez’s searing indictment of the long history of racial violence along the Texas border, *The Injustice Never Leaves You: Anti-Mexican Violence in Texas* (Harvard University Press 2018). Martinez, a professor at the University of Texas whose doctoral dissertation research inspired this book, provides a meticulous documentation of how law enforcement agencies like the Texas Rangers and vigilante groups facilitated violence against Mexican Americans in Texas during the early twentieth century. Martinez also points out that such violence was sanctioned and covered up by state agencies as well as by complicit U.S. and Mexican diplomats hesitant to disrupt the mutually beneficial border economy.

The Injustice Never Leaves You doesn’t pretend to offer an exhaustive chronicle of each and every episode of racial violence against Mexican Americans. Instead, it narrows its focus to several incidents and examines not just the circumstances surrounding each tragic event but their long legacies as well. The book examines the 1910 public lynching of Mexican national Antonio Rodriguez by a white mob in Rocksprings; the double murders of two Mexican American landowners, Jesus Bazán and Antonio Longoria by Texas Rangers and a local posse in south Texas; and the notorious 1918 Porvenir massacre of fifteen Mexican American men by Texas Rangers, local ranchers, and U.S. soldiers in west Texas. In addition, what sets Martinez’s approach to these darker episodes of Texas history apart from those of other historians is her extensive use of oral histories, letters, and other source material from witnesses, survivors, and victims’ family members. Such oral histories, Martinez reminds us, are “examples of the will that has made this book possible . . . a will that insists on documenting what has been disavowed; a will that hopes future generations will reckon with the past.” All too often, historical facts deemed uncomfortable or inconsistent with a more popular, romanticized narrative are suppressed. As Martinez

The Injustice Never Leaves You

Anti-Mexican Violence in Texas



Monica Muñoz Martinez

describes, sometimes such disavowal results from the overt acts of those in law enforcement or public office, sometimes a community itself suppresses uncomfortable truths, and sometimes even archivists and historians are guilty of undermining the credibility of a memory or “[guiding] researchers away from testimonials that seem officially troublesome.”

Another feature of Martinez’ work is how it demonstrates that the echoes of these past episodes of racial violence are still very much felt in the present—especially a present marked by controversial border security and immigration policies. Martinez details the modern struggles in the affected communities to acknowledge these lynchings and racial violence in memorials and historical markers. And while some of Martinez’s most compelling passages involve interviews with present day descendants of the victims in these incidents, equally striking is an anecdote about stopping in a local Dairy Queen and encountering framed photos on display of early 20th century vigilante violence—a jarring example of the casual racism that permeated the past and seeps into the present.

Texas’ shameful history of anti-Mexican violence is largely overshadowed by the romanticized history of the Texas Rangers and tales of the rugged individualism of Anglo settlers, even though scholars like Martinez have recently devoted more critical attention to these long-neglected chapters. Martinez estimates that at least 232 “ethnic Mexicans” (a term encompassing both Mexican nationals and Mexican Americans) were lynched by vigilantes between 1848 and 1928, while anywhere from 300 to several thousand more were murdered by Texas Rangers and other state forces between 1910 and 1920. But such numbers (likely underreported) don’t tell the whole story, which is why Martinez devotes considerable effort to sharing the “community historian” work of people like Norma Longoria Rodriguez, whose grandfather and great-grandfather (Antonio Longoria and Jesus Bazán) were shot in the back by a group of Texas Rangers and local landowners in 1915. Or Benita Albarado, whose grandfather, Longino Flores, was one of the fifteen bound and unarmed men killed by Texas Rangers in the 1918 Porvenir massacre. Benita’s parents witnessed the massacre, an event that haunted them for life (Benita’s mother, Juana, later committed suicide).

As *The Injustice Never Leaves You* eloquently illustrates, real, warts-and-all history is heavier than mythologized, heroicized tales of the past. Thanks to this book’s amplifying the voices of the victims’ families and communities, that weighty burden isn’t carried alone.

[Return to Journal Index](#)

Justice Rebeca Aizpuru Huddle Joins the Court

By Macey Reasoner Stokes

On October 30, 2020, Rebeca Aizpuru Huddle was sworn in by Governor Greg Abbott as the newest member of the Texas Supreme Court. Justice Huddle succeeds Justice Paul Green, who retired from the Court in August.

An El Paso native, Justice Huddle attended Stanford University and the University of Texas School of Law, graduating with honors. Immediately prior to joining the Court, Justice Huddle practiced commercial litigation and appellate law as a partner at Baker Botts and served as Partner-in-Charge of the firm's Houston office. She also served as a Justice of the First Court of Appeals from 2011 to 2017.

Justice Huddle was a member of the Judicial Compensation Commission of Texas before her appointment to the Court. In 2018, she received the Houston Bar Association Appellate Practice Section's award for Outstanding Judicial Service and Leadership. In 2019, she was named a Woman on the Move by Texas Executive Women. She is a Fellow of both the Texas Bar Foundation and the Houston Bar Foundation.



Justice Rebeca Huddle
Image from <https://www.txcourts.gov/supreme/about-the-court/justices/justice-rebeca-aizpuru-huddle>

[Return to Journal Index](#)

In Memoriam

Thomas M. Reavley, 1921-2020

By Bryan A. Garner

Upon Tom Reavley's retirement from the Supreme Court of Texas in 1977—after eight years of distinguished service—Chief Justice Joe Greenhill called him "one of the ablest judges ever to serve on this bench." After his death in 2020, Chief Judge Priscilla Owen of the U.S. Court of Appeals for the Fifth Circuit called him "legendary, with an intellect, kindness, sense of justice, and sense of humor that were unsurpassed."

Thomas M. Reavley was an unforgettable man whose legal career spanned 71 years. During that time, he served as Texas Secretary of State (1955–1957), Texas Supreme Court Justice (1968–1977), and Fifth Circuit judge (1979–2019). Whatever task Judge Reavley undertook he approached with common sense and uncommon intelligence.

Born June 21, 1921, in Quitman, Texas, to Thomas Mark and Mattie (Morrow) Reavley, he grew up in Nacogdoches, where his parents had a general store and a cafe. He earned his bachelor's degree from the University of Texas at Austin in 1942 and enlisted in the United States Navy, where he served as an officer aboard a destroyer and an aircraft carrier in both the Atlantic and the Pacific theaters. After his discharge in 1946, he earned his law degree from Harvard (1948) and served as an assistant district attorney in Dallas and later as Nacogdoches County Attorney. In 1952 he was elected president of the State Junior Bar.

Always an active Sunday-school teacher and lay preacher in the United Methodist Church, Reavley spoke out early—beginning in the 1940s—against racial segregation. It was a stance unpopular in his native East Texas. At the time, he was engaged in private law practice in Nacogdoches, Lufkin, and Jasper. His outspoken opposition to Jim Crow caught the attention of Governor Allan Shivers, who in 1955 invited Judge Reavley into his administration and appointed him secretary of state.

When that appointment expired, Reavley returned to private practice in Jasper and Austin. In 1962 he ran for Attorney General of Texas. Though his campaign was unsuccessful, it brought him to the attention of the newly elected governor, John Connally, who in 1964 appointed him to a district judgeship in Austin.





Judge Reavley in 1968

Four years later, Judge Reavley was elected to the Texas Supreme Court, where he served for eight years. In 1979 he served as a Special Judge on the Texas Court of Criminal Appeals—becoming one of the few judges in Texas history to sit on both state high courts. Later that year, President Jimmy Carter appointed Judge Reavley to the United States Court of Appeals for the Fifth Circuit. He served as an active judge on that court until 1990, when he took senior status but continued hearing cases for another 29 years. During his early years on the Fifth Circuit, Reavley earned an LL.M. from the University of Virginia. He received four honorary doctorates from universities in Texas and California.

At the time of his death at the age of 99, Judge Reavley was the oldest sitting federal judge in the United States. During his long tenure, he had the distinction of sitting as a visiting judge on all but one of the United States Courts of Appeals.

Judge Reavley also served as an adjunct professor at the University of Texas School of Law, lectured at the law schools of Baylor, Pepperdine, and Texas Tech, and served on many judicial committees and civic organizations. He was a coauthor of the 800-page treatise *The Law of Judicial Precedent* (2016). In the winter of 2016, *Baylor Law Review* dedicated volume 68 to Judge Reavley in recognition of his unique contributions to Texas and to American law.

He was married for 60 years to Florence Wilson Reavley, who preceded him in death in 2003. They had four children—two boys and two girls. In 2004 he married his second wife, Judge Carolyn Dineen King, who at the time served as Chief Judge of the Fifth Circuit. They were the only married couple among Article III appellate judges. Judge King survives him, as do Reavley's four children.

Judge Reavley was a person of great integrity, compassion, and magnetism. Wherever he went, with whomever he spoke, he made an impression—whether with his colleagues on the bench, his law clerks, the staff at any hotel or restaurant, or panhandlers on the street (to whom he always showed kindness). He had a well-developed view of the law and its central place in a thriving society. No judge worked harder to master the facts of the cases under decision, and few judges could equal his clarity, candor, and brevity in delivering an opinion.

He would often say to his law clerks, on the last day of a clerkship: “Now just because you’ve clerked for me doesn’t mean that you have the Reavley stamp on you. You’re no longer my lawyer. You’re your own lawyer now.”

But among his former clerks are scores of lawyers and judges who profess to bear the Reavley stamp with a quiet, circumspect pride.

[Return to Journal Index](#)

TSHA Annual Meeting 2021

By David A. Furlow

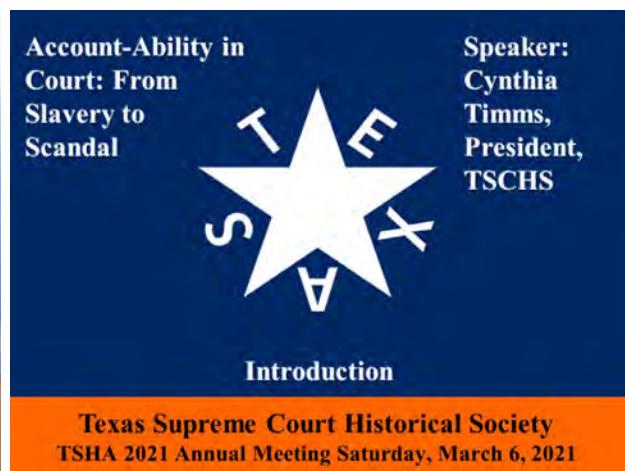
The Society is proud to participate in a special panel program, “**Accountability in Court: From Slavery to Scandal**,” at the Texas State Historical Association (“TSHA”) 2021 Annual Meeting. The panel will begin at noon on March 6, 2021 and end by 1:00 p.m. See TSHA Annual Meeting Schedule: <https://am.tsha.events/meeting-schedule-2021/>.

This is TSHA’s first online, virtual annual meeting. While the format may be different, TSHA’s officers and employees have worked to ensure that the meeting will be memorable, educational, and fun. Thirty-four sessions feature the research and work of top Texas historians, including your colleagues in the Society.

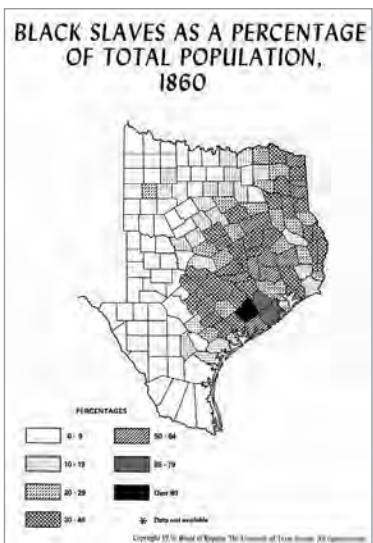
The Society’s presentation, along with all others, has been pre-recorded. Everyone who registers can watch each session beginning on February 17, 2021. Live special events and Q&As with presenters will occur from March 3-6. Everyone who registers can also participate by asking questions of the panelists. The registration fee is inexpensive: **\$25.00 per person**.

For those who miss TSHA’s hall of history-focused booksellers, TSHA is offering online sales of its books as well as a silent auction. For more information, see TSHA, “2021 Annual Meeting,” https://www.tshaonline.org/events/2021-tsha-annual-meeting?gclid=Cj0KCQiAmL-ABhDFARIsAKywVafkIWbxDgJXBoCPWAsKww2_cZOXWUN5p1YPB8JytfvTouH2U99GLYaAi_VEALw_wcB.

The Society’s President, Cynthia Timms, a partner in the Locke, Lord law firm and the Chair of its Appellate Practice Group, will introduce the Society and the speakers. She will discuss the programs, publications, and preservation the Society contributes to Texas history.



Left: Society President Cynthia Timms. Right: The first slide of President Timms’ presentation introducing the Society and the panel.



Top: Prof. Daina R. Berry.
Bottom: "Black Slaves as a Percentage of Total Population," University of Texas Regents.

Supreme Court Historical Society Journal. Pate is a partner at Cozen O' Connor in Houston Texas. He is a Phi Beta Kappa graduate of Vanderbilt University, where he majored in History, and is a graduate of Vanderbilt Law School. He is an Advocate in the American Board of Trial Advocates, a Regent of the American College of Coverage Counsel, and a Member of the American Law Institute. He has been a Trustee of the Society for the past two years.

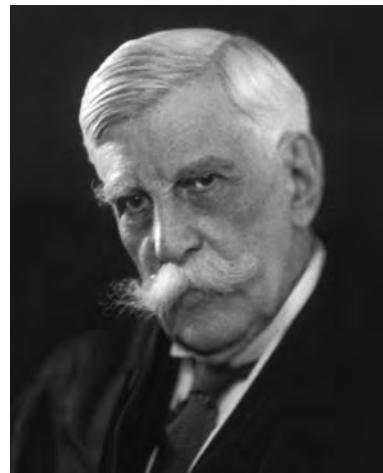
Stephen Pate examines an election scandal about missing and fraudulent votes in the 1928 election in the Fourteenth Congressional District, which included eleven counties. The contest involved the only Texas Republican Member of Congress for a fifty-year stretch. Republican Harry Wurzbach was the incumbent Congressman. San Antonio Mayor C.M. Chambers, "Duke of Duvall County" George

The Society's first speaker, Prof. Daina Ramey Berry, is the Oliver H. Radkey Regents Professor and the Chair of the History Department at the University of Texas at Austin. She is a scholar of slavery and Black Women's History and the award-winning author/editor of six books including the recent book *A Black Women's History of the United States*.

Prof. Berry offers a microhistory of slavery in Montgomery County, Texas by focusing on *Cartwright vs. Cartwright*, 18 Tex. 626 (1857). In the 1850s, Williford and Pink Cartwright divorced after nearly twenty years of marriage. As customary, they divided their property which included land, livestock, and enslaved people. However, issues of infidelity, community property, and other rights to land ownership changed the outcome of this broken marriage, and the local divorce ended up in the Texas State Supreme Court. The couple fought over the ownership of enslaved women Jane and Mary. But this is not just a story of enslaved ownership, it is also the story of an enslaved mother and daughter duo and their connections to a larger enslaved community. This case enables us to explore the lives of the enslaved, their movement, their kinship ties, and their experiences with slavery in Montgomery County, Texas.



Stephen Pate, the Society's second speaker, is a lawyer and a historian. He has published works in the *Handbook of Texas* and numerous articles in the *Texas*



Top: Stephen Pate.
Bottom: In *U.S. v. Wurzbach*, 280 U.S. 396 (1930), Associate Justice Oliver Wendell Holmes, Jr. wrote for a unanimous Supreme Court.

Parr, State Representative Sam Ealy Johnson, and Johnson's son Lyndon met in Houston to plot Wurzbach's defeat. The San Antonio political "machine" supported Augustus McCloskey, a Democrat. Insiders destroyed and altered ballots, resulting in an election contest in Congress, ultimately won by Wurzbach. Both candidates were indicted for election fraud. The U.S. Supreme Court's ruling in *U.S. vs. Wurzbach*, 280 U.S. 396 (1930), upheld the validity of the Federal Corrupt Practices Act, reviving an indictment of Harry Wurzbach, though the charge was later dismissed. A jury acquitted McCloskey of stealing votes. Stephen Pate offers an examination of how claims of election fraud at a local level can have an enormous impact not only in Texas but in Congress and in the U.S. Supreme Court, in as timely a topic as TSHA could ever hope to present.



Hon. David Keltner

The Hon. David Keltner, a partner in the Kelly & Hart Law Firm, and a former Justice of the Fort Worth Court of Appeals (retired), serves as the panel's commentator. Justice Keltner will handle questions and answers from the online audience while discussing the presentations.



DAVID A. FURLOW, an attorney and historian, served as Executive Editor of this journal from 2011 through 2020, and now serves as an Emeritus Editor and occasional contributor.

[Return to Journal Index](#)

Hemphill Dinner 2021 Speaker Announcement

The Society has secured its keynote speaker for the annual Hemphill Dinner at the Four Seasons hotel in Austin on September 3, 2021. We are honored to be hosting Lisa S. Blatt of Williams & Connolly in Washington D.C., who will speak on the life and career of Justice Ruth Bader Ginsburg.

Lisa is an alumna of the University of Texas, both undergraduate and law school. When she graduated from law school, Lisa had the privilege of clerking for Ruth Bader Ginsburg while Justice Ginsburg was a judge on the Court of Appeals for the District of Columbia.

Lisa began her career at Williams & Connolly in Washington D.C., a premier litigation firm founded by legendary lawyer Edward Bennett Williams. After a few years, however, Lisa realized she might prefer appellate work and took a job with the Solicitor General's office. There, she began her impressive transition into one of the nation's premier Supreme Court advocates. More recently, Lisa returned to Williams & Connolly, where she serves as Chair of the firm's Supreme Court and Appellate practice.

Lisa has argued 40 cases before the United States Supreme Court, winning 37 of them. As her website explains: "*The National Law Journal* has called her a 'visionary' and one of 'the 100 most influential lawyers in America.' *Bloomberg* has described her as a 'legendary high court litigator' while *The National Journal* likewise has referred to her as a 'SCOTUS legend.'" Lisa's Supreme Court cases have covered a wide range of substantive issues, from trademark and ERISA to superfund sites and Indian rights. Of course, Lisa also handles appeals to the various federal appellate courts.

Lisa has racked up a number of impressive awards. *Washingtonian Magazine* has named her to its list of Top Lawyers. She was also recognized as a *Law360* Appellate MVP and was named to *The National Law Journal's* 2020 list of Washington, D.C. Trailblazers.

Recently, Lisa published an article, "Reflections of a Lady Lawyer," in a special joint law review issue that the nation's sixteen "top" law schools sponsored. The issue commemorated 2019 as the first time that the Editors-in-Chief of each of the participating law reviews was a woman,



Lisa S. Blatt

and each law review presented an essay on the topic of women and the law. The *Texas Law Review* sponsored Lisa's article.

This past September, when NPR needed assistance in covering Justice Ginsburg's funeral, they enlisted Nina Totenberg and Lisa Blatt. During the broadcast, Lisa spoke about her personal dealings with Justice Ginsburg, which commenced with her clerkship and continued through Lisa's Supreme Court practice.

The Society looks forward to hearing from such an outstanding speaker who can fill us in on the life of a legendary justice. We look forward to what will surely be a fascinating evening.

[Return to Journal Index](#)



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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.

[Return to Journal Index](#)

2020-21 Membership Upgrades

The following Society members have moved to a higher dues category since June 1, 2020, the beginning of the membership year.

GREENHILL FELLOW

Cynthia K. Timms

CONTRIBUTING

Misty Hataway-Coné

[Return to Journal Index](#)

2020-21 New Member List

The Society has added 27 new members since June 1, 2020. Among them are 19 Law Clerks for the Court (*) who receive a complimentary one-year membership during their clerkship.

TRUSTEE

Hon. Gina M. Benavides

PATRON

Robert Weston Nuzum

CONTRIBUTING

April Farris

Michael McCormick

REGULAR

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[Return to Journal Index](#)

Membership Benefits & Application

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

Greenhill Fellow \$2,500

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- Recognition in All Issues of Quarterly *Journal of the Texas Supreme Court Historical Society*
- All Benefits of Trustee Membership

Trustee Membership \$1,000

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

Patron Membership \$500

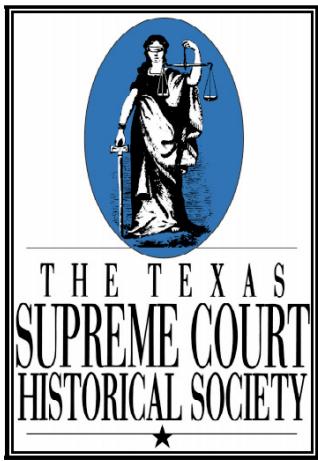
- Discount on Society Books and Publications
- All Benefits of Contributing Membership

Contributing Membership \$100

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

Regular Membership \$50

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



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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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