



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Fall 2022 Vol. 12, No. 1 Editor Emerita Lynne Liberato Editor-in-Chief Hon. John G. Browning

Columns

Message from the President

By Hon. Ken Wise

This Fall, we continue our two-part series focusing on female legal trailblazers in Texas and women's relationship to and treatment under Texas law. [Read more...](#)



Hon. Ken Wise

Executive Director's Page

By Sharon Sandle

When I was a young child, I remember going to vote with my mom. The whole experience fascinated me. [Read more...](#)



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Fellows Column

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The fourth book in the Taming Texas series is in final stages of layout and design. This new book is an important addition to the Society's Judicial Civics and Court History Project. [Read more...](#)



David J. Beck

Editor-in-Chief's Column

By Hon. John G. Browning

"I really admire how you've used your scholarship for activism," the young law review editor said earnestly. The comment took me by surprise. [Read more...](#)



Hon. John G. Browning

Leads

Supreme Court Shortlists and the Women of Texas

By Professor Renee Knake Jefferson

Even as the United States neared its bicentennial, a woman had never occupied a position on the Supreme Court. In fact, women were not supposed to pursue the law at all. [Read more...](#)



To Find the Gates of Heaven: The Legal Fight Over the University of Texas McDonald Observatory Legacy

By Robert J. Reagan

The McDonald Observatory was the result of a legacy in the will of banker William McDonald. It might not have been created if disgruntled relatives had been successful in their contest of the will. [Read more...](#)



McDonald Observatory

Features

Charlye O. Farris – Opener of Doors

By Justice John G. Browning

No chronicle of female legal pioneers in Texas is complete without discussing Charlye O. Farris, widely regarded as the first Black woman admitted to practice law in Texas. [Read more...](#)

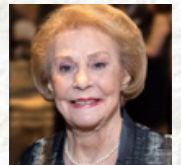


Charlye Farris

Justice Ruby Sondock: Our Mentor, Colleague, and Friend

By Steven Selsberg, Esq., and Chief Judge Lee H. Rosenthal

Judge Ruby Sondock is a woman of valor, and her name says it all. She and her life story are valuable far beyond the jewel she is named for. [Read more...](#)



Judge Ruby Sondock

Wise Up! The Wise About Texas Podcasts

Society President Justice Ken Wise is the creator and host of the award-winning Texas history podcast *Wise About Texas*. [Read more...](#)

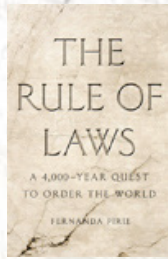


Book Reviews

[Fernanda Pirie's *The Rule of Laws: A 4,000-Year Quest to Order the World*](#)

Book review & essay by David A. Furlow

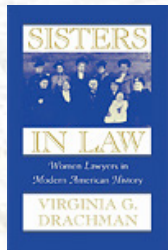
Beginning in ancient Mesopotamia, India, and China, this book describes the many ways people have used laws to impose order, regulate trade, define social relations, and create civilizations. [Read more...](#)



[Book Review – *Sisters in Law: Women Lawyers in Modern History*](#)

By Hon. John G. Browning

Drachman's work effortlessly weaves the individual stories of legal trailblazers like Myra Bradwell and Belva Lockwood into the larger struggle of the fight for women's suffrage. [Read more...](#)



News & Announcements

[Reconnecting with Long-Time Friends: The 2022 Hemphill Dinner](#)

By David A. Furlow

Our Society's members reconnected at the 27th Annual Chief Justice John Hemphill Dinner at the Four Seasons Hotel on September 8. [Read more...](#)



Keynote speaker
Greg Stohr

[A Global Force for the Rule of Law: The Center for American and International Law Celebrates its 75th Anniversary](#)

By Karla P. Lárraga

CAIL worked with legal and law enforcement professionals around the world with the vision of establishing fair and just legal systems. How did CAIL do it? [Read more...](#)



[The American Academy of Arts and Sciences Recognizes Chief Justice Nathan L. Hecht](#)

By Justice Jane Bland

Chief Justice Hecht was recognized for his stalwart advancement of access to justice, both within Texas and throughout the country. [Read more...](#)



Chief Justice
Nathan Hecht

[Remembering Randolph B. "Mike" Campbell](#)

By William J. Chris

Randolph B. "Mike" Campbell, Ph.D., a giant among Texas historians and a great friend to the Society, passed away August 13, at the age of eighty-one. [Read more...](#)



Randolph "Mike"
Campbell

[Professor L. Wayne Scott, 1938-2022](#)

By D. Todd Smith

Prof. L. Wayne Scott, a great friend of the Society, passed away on September 14 at age eighty-three. He taught at St. Mary's University School of Law for fifty-one years, the longest tenure of any faculty member. [Read more...](#)



Professor L.
Wayne Scott

[Save the Date: March 2-4, 2023, to see the Society at the TSHA Annual Meeting](#)

Story and photos by David A. Furlow

Our Society's speakers will present a panel program, "Advancing the Rule of Law along Contested Frontiers." [Read more...](#)



TSHA logo


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Hon. Ken Wise

Message from the *President*

Welcome to the Fall 2022 issue of the Journal. I hope everyone reading this is ready for the holiday season and some cooler weather in Texas.

I am pleased to report a tremendously successful Hemphill dinner on September 8. All nine Justices from the Texas Supreme Court attended, along with lawyers and judges from all over Texas. We enjoyed a fascinating conversation between UT Law School Professor Lisa Eskow and Supreme Court Journalist Greg Stohr. In this issue, you'll find Editor Emeritus David Furlow's recap of the dinner and award presentations. I hope you will mark your calendars for the 2023 Hemphill dinner on Friday, September 8, 2023.

This Fall, we continue our two-part series focusing on female legal trailblazers in Texas. We are honored to have an article by Renee Knake Jefferson writing on Texas women who were shortlisted for the U.S. Supreme Court from the book she wrote with Hannah Brenner Johnson entitled *Shortlisted*. We also feature Robert J. Reagan's fascinating article "To Find the Gates of Heaven" about the intricacies of an inheritance case that went to the Texas Supreme court and eventually resulted in the University of Texas's McDonald Observatory.

This issue also features several profiles, including Justice John Browning's exploration of the remarkable accomplishments of Charlye O. Farris and an affectionate and inspiring portrait of the incomparable Judge Ruby Sondock by Steven Selsberg, Esq. and Chief Judge Lee H. Rosenthal.

You will find two book reviews. Justice Browning reviews *Sisters in Law: Women Lawyers in Modern American History*, by Virginia G. Drachman, and David Furlow reviews Fernanda Pirie's *The Rule of Laws: A 4,000-Year Quest to Order the World*.

In August 2022, Texas lost one of its most important historians, the legendary Randolph M. "Mike" Campbell. Dr. William Chriss remembers Dr. Campbell with a beautiful heartfelt tribute. Also, D. Todd Smith pays tribute to Professor L. Wayne Scott of St. Mary's University School of Law.

In connection with our theme, we are very excited to feature a "sneak peek" at a chapter

from the latest book in the Taming Texas series by Jim Haley and Marilyn Duncan, which covers women in the law.

I hope you enjoy this issue of the Journal. Thank you for your continued support of the Texas Supreme Court Historical Society, and I wish you and yours a healthy and happy holiday season.

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Sharon Sandle

History Worth Preserving:

Celebrating Both the Trailblazers and the Everyday Heroes

When I was a young child, I remember going to vote with my mom. The whole experience fascinated me. The voting booths were set up in the hallways of my elementary school. I waited in line holding my mom's hand until it was her turn. Then she took me with her to one of the metal voting machines. We stepped up to the machine, and she pulled a lever that closed curtains behind us so that she could vote in privacy. The machine itself had a collection of labelled levers, and my mom pulled the lever next to each of her chosen candidates. The whole process seemed very serious, very important. And very cool—who wouldn't want to pull all those levers! I wanted to be an adult so that I could vote, too. Years later, I found out that women hadn't always been entitled to vote, hadn't always been entitled to serve on a jury, and hadn't really been invited to participate in democracy at all for most of American history.

Just days ago, we again had the opportunity to participate in our community by going to the polls to vote. While the data is still incomplete, it appears that voter turnout was strong, particularly among young voters.¹ But voting is only one way of participating in democracy. The legal system is another important avenue to participation. This issue of the *Texas Supreme Court Historical Society Journal* is the second of two issues that focus on women who were legal trailblazers. From the stories of Texas women who were shortlisted for the U.S. Supreme Court to the stories of Charlye O. Farris and Judge Ruby Sondock, this issue highlights the Texas women who stepped forward to take their place in the legal history of Texas and pave the way for all Texas women, and all Texans, to be involved in their community.

While this *Journal* often focuses on the contributions of lawyers and judges, we should also recognize another means of participating in the legal system: jury service. In his article *To Find the Gates of Heaven*, Robert J. Reagan describes the legal battle concerning the testamentary grant that led to establishment of the McDonald Observatory. The opinions and judgment of two juries were critical to the outcome of that case.

In his 2000 book entitled *Bowling Alone*, Robert D. Putnam examined the evidence to support an alarming collapse of social capital in the United States and argued that this trend threatens American communities and institutions, including democracy itself. Twenty-two years later, we

¹ <https://circle.tufts.edu/2022-election-center>

are emerging from a pandemic that isolated people in a way we have never seen before. I hope the stories of legal trailblazers like Charlye O. Farris and Judge Sondock and of ordinary citizens like the jurors in *Rodgers, et al v. Fleming* (The McDonald Observatory case) help to restore our optimism that engagement in our community can be strong and healthy. The Society's goal is to raise public awareness about the judicial branch and its role in Texas. Here are just a few of the ways the Society will be active during the coming year:

The Journal of the Texas Supreme Court Historical Society

Our Fall 2022 *Journal* explores Women's Legal History in Texas and features articles about female lawyers from Texas shortlisted for the U.S. Supreme Court in addition to profiles of trailblazing women like Hon. Ruby Sondock and Hon. Charlye O. Farris. In the coming year, the Society's *Journal* will continue to feature articles and special features on a variety of legal history topics. The e-journal is sent quarterly to all members and is available on the Society's website.

TSCHS Panel at the Texas State Historical Association Annual Meeting

The Society is sponsoring a panel at the upcoming 2023 Texas State Historical Association Annual Meeting to be held March 2-4, 2023, in El Paso. The panel is entitled "Advancing the Rule of Law Along Contested Frontiers" which will feature discussions by myself, the Hon. Ken Wise and the Hon. Gina Benavides. The Society sponsored a panel at the 2022 Texas State Historical Association Annual Meeting entitled "We Stand on Their Shoulders: The Lives and Legacies of Texas' Earliest Black Lawyers." It featured discussions by Hon. John G. Browning and Hon. Carolyn Wright-Sanders with commentary by David A. Furlow. Congratulations to Daniel Olds, winner of the Larry McNeill Fellowship in Legal Research sponsored by the Society.

The Taming Texas Judicial Civics and History Project

The Taming Texas Judicial Civics and Court History Project, sponsored by the Society's Fellows, allows judges and attorneys to work with seventh graders to teach the history and workings of the Texas courts. Centered on the Taming Texas book series, the project has already reached thousands of Texas students and will continue to grow. The next volume in the Taming Texas series, *Women in Texas Law*, will be released soon, and an excerpt from that volume appears in this issue.

Events

The Society conducted its annual John Hemphill dinner in-person this year. The dinner speaker was award-winning journalist and author Greg Stohr, who has covered the U.S. Supreme Court for Bloomberg News for more than two decades. Lisa Eskow, Co-Director of the University of Texas Law School's Supreme Court Clinic, joined Mr. Stohr in a conversation that was engaging and informative. The next John Hemphill Dinner will be held on Friday evening, September 8, 2023.

The Texas Supreme Court Historical Society is one of the most active organizations of its kind in the nation. Your support makes its programs possible. Thank you for your continued commitment to Texas's judicial history.

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Fellows Column

By David J. Beck, Chair of the Fellows

Photo by Alexander's Fine Portrait Design-Houston

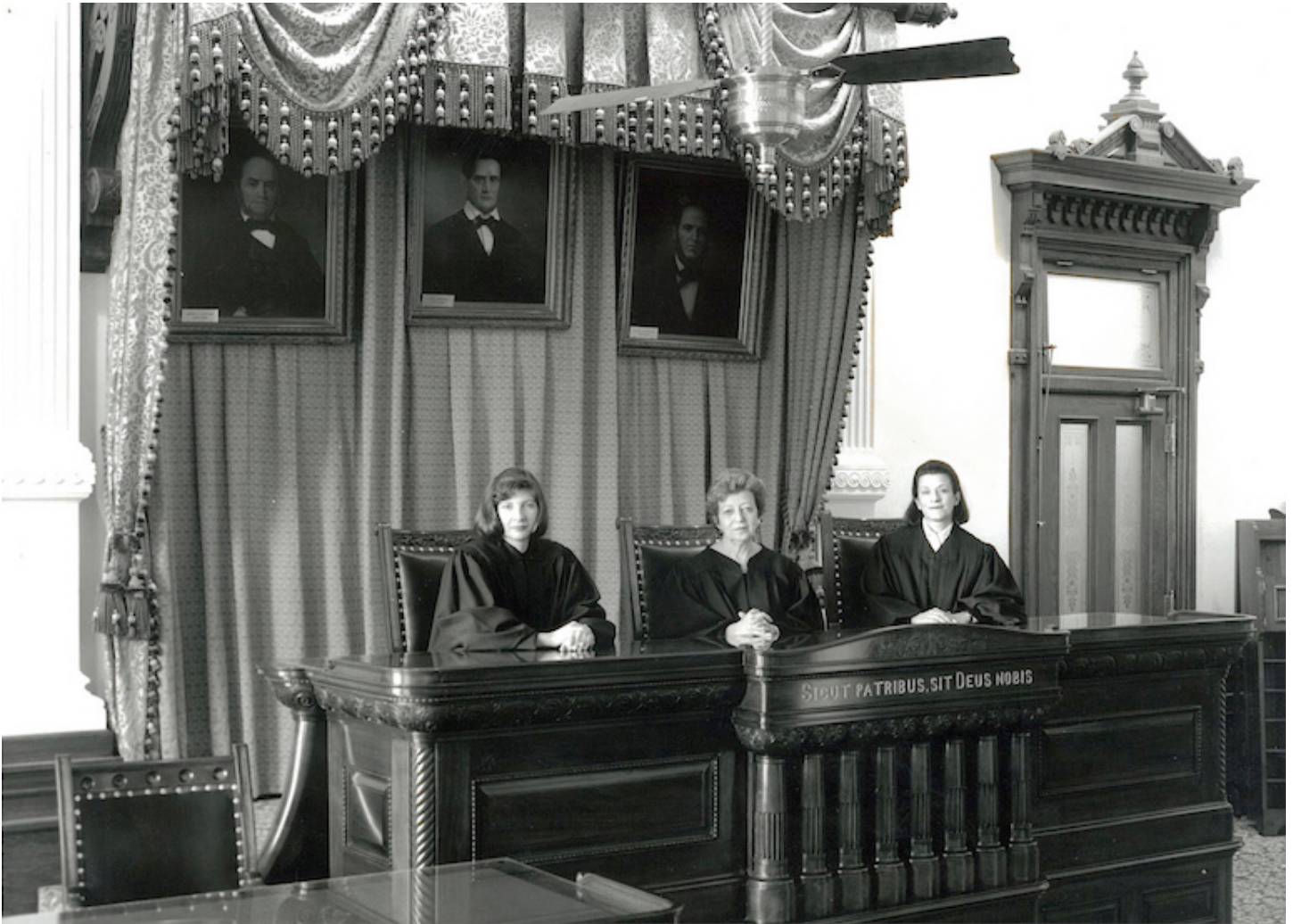


The manuscript for the fourth book in the Taming Texas series is complete and the book is in final stages of layout and design. This new book is an important addition to the Texas Supreme Court Historical Society's Judicial Civics and Court History Project. The book tells the stories of many of the Texas women who helped shape law from the frontier days to modern times. As demonstrated in this volume, our justice system would be very different today if women had not worked to bring about positive changes in the law and then become lawyers and judges. To give a preview of the book, we have reprinted Chapter 1 below. This chapter tells the story of an early first lady of Texas (Frances Henderson,

wife of Governor J. Pickney Henderson, the first governor after Texas became a state) and how she ran her husband's law office long before women could study law or become lawyers.

In researching this book, we discovered a photo that many of us did not know existed. We are all familiar with the classic 1925 photograph of the All-Woman Supreme Court in the historic courtroom in the Capitol. What we did not know was that Justice Deborah Hankinson replicated that photo the second time there were three women to serve on the Court. This 1998 photo of Justices Priscilla Richman, Rose Spector, and Deborah Hankinson is at the top of the next page.

Many people and organizations have played a part in making the Taming Texas books and classroom program a success. Chief Justice Nathan L. Hecht wrote the forewords for all four books in the series. His wonderful insights on our law and history and colorful stories make these forewords a valuable addition to the book and a real pleasure to read. Justice Brett Busby co-chaired the Houston Bar Association's inaugural Teach Texas Committee and has continued to be involved in the leadership of the project. He has been instrumental to the success of the program at many levels. David Furlow was also an inaugural Teach Texas Committee co-chair who had a major impact on the great success of the program. Judge Jennifer Walker Elrod and Judge Jeff Brown have been key supporters and were among the first to teach the program. We also greatly appreciate all of the Justices of the Texas Supreme Court for their continuing interest and support.



Justices Priscilla Richman, Rose Spector, and Deborah Hankinson in 1998.
Photo credit: Tommy Holt, Third Eye Photography.

The Fellows want to extend special thanks to the books' coauthors, Jim Haley and Marilyn Duncan. Jim and Marilyn have been critical to the success of *Taming Texas*. Beginning in 2013, they wrote and designed this new series of books especially for seventh-grade students. Jim and Marilyn have been a great team and produced a wonderful series of books. In addition to coauthoring the books, Marilyn took lead on the design of the books and was also instrumental in designing and updating the classroom curriculum. We would also like to thank Nathan Carmichael, whose original illustrations make many of the stories in the *Women in Texas Law* book come alive.

The *Taming Texas* project would not be possible without the generous support of the Fellows of the Texas Supreme Court Historical Society, who have provided the funding for these books. Their continuing interest and support are vital to the Society's mission of sharing the state's rich judicial history with Texans of all ages. If you would like more information or want to join the Fellows, please contact the Society office or me.

WOMEN IN TEXAS LAW

by James L. Haley and Marilyn P. Duncan

Volume 4 in the **TAMING TEXAS** Book Series

Sponsored by the Fellows of the Texas Supreme Court Historical Society

We are pleased to share this chapter from the forthcoming Taming Texas book, *Women in Texas Law*. The chapter introduces seventh-grade Texas history students to an early Texas woman who defied the social norms and constraints of her day and demonstrated that women could learn and practice law. It sets the stage for subsequent chapters on women who fought for and won equal legal rights and became outstanding lawyers and judges.

Chapter 1

Texas's Law-Savvy First Lady: Frances Cox Henderson

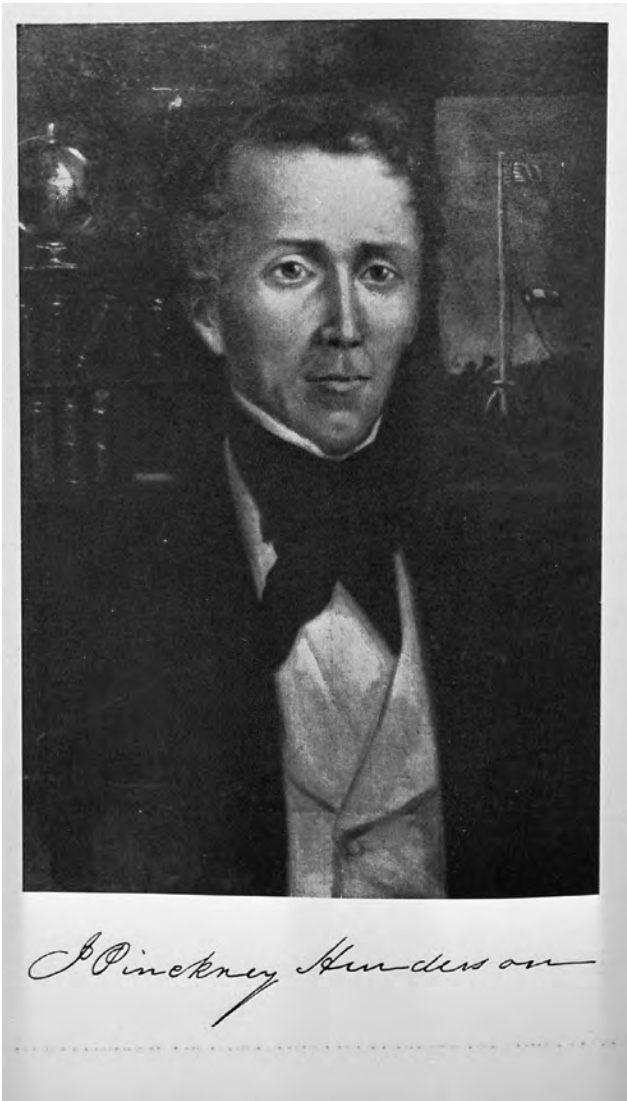
Long before women could become lawyers, Frances Cox Henderson ran her husband's law office while he was away on state business, including serving as the first Governor of Texas.

As we have seen in the prologue to this book, women in frontier Texas enjoyed legal rights, thanks to the Hispanic heritage, that women in the United States did not yet have. However, they still were allowed almost no role in the legal or political process. Most people would have been shocked by the idea of women voting, or running for office, or becoming lawyers. Even women in the most privileged class lived under these restrictions.

Not everyone agreed with this view of women's roles. In fact, the first governor after Texas became a state in 1845, J. Pinckney Henderson, was married to a woman who was almost a firebrand in her progressive opinions. Moreover, she was a lady of fantastic ability, and she was not shy about following her own interests. She was born Frances Cox, in Philadelphia, and was known by the nickname of Fanny. Her family was rich, and she was sent to school in Paris, where she met Henderson while



Photo courtesy of the Texas State Library and Archives Commission.



Governor James Pinckney Henderson was a lawyer, war hero, political leader, and international diplomat—a great match for his multi-talented wife. Photo courtesy of UT Arlington Libraries, Digital Gallery.

he was representing the Republic of Texas at the Tuileries Palace, the court of King Louis Philippe of France. She was only nineteen when they got married in London, and moving from Europe to a rugged place like Texas was a major culture shock.

It is hard to believe, but Frances Henderson spoke eighteen languages, and she knew big bits and pieces of seven more. She had her own business, publishing foreign stories that she translated into English. She was also a mathematician and a gifted musician, and her piano was the first that was ever heard in the East Texas town of San Augustine, where they settled. Her husband was a lawyer, and women were not allowed to study law, but she learned it anyway so she could run his law office while he was out of town. When Henderson was elected governor, Frances did not follow him to Austin to be his social hostess, which was shocking because that's what women were supposed to do. Instead, she stayed home where she was very active in the Episcopal Church, and she helped to start congregations in the towns of Rusk, Palestine, and Nacogdoches, as well as San Augustine.

Frances Henderson was also an early and forceful voice that women should be allowed to vote and participate in public life. Success lay many years in the future, but Frances gave those later Texas women a powerful example that they could be more than just mothers and housewives. Like her, though, they would have to be very smart and work hard at it.



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(\$5,000 or more annually)

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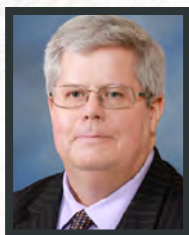
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*Charter Fellow

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Hon. John G.
Browning

Legal History *as Activism*

“I really admire how you’ve used your scholarship for activism,” the young law review editor said earnestly. The comment took me by surprise. I’m a bookish lawyer and law professor nearing sixty, and I have a hard time envisioning myself as the picture of what I considered an “activist”—a placard-waving, megaphone-toting protester leading others in chanting at a rally about some law, policy, or Supreme Court decision. The law student was referring to my ongoing efforts, spurred by research and writing about early minority lawyers, to win posthumous bar admission for various aspiring lawyers from the nineteenth and early twentieth centuries who, though qualified in all other respects, were denied entry to the legal profession because of the color of their skin. My “activism” had begun with writing about the only five instances in American legal history where a state’s highest court had granted such posthumous bar admission, and continued with leading the successful effort in the sixth such instance, that of a Black aspiring lawyer, J.H. Williams, whose posthumous admission was granted by the Supreme Court of Texas in October 2020.

Reflecting on the law student’s comment, I suppose that I had indeed embarked on a kind of activism. My research had uncovered other examples of diverse attorney candidates who’d been denied bar admission by the racist policies of the past. I’ve been active in two more campaigns of righting historic wrongs. In New York, I’m working to win posthumous bar admission for Ely S. Parker, a Native American hero whose visage is now emblazoned on a U.S. gold coin, and who drafted the surrender papers signed by Robert E. Lee and Ulysses S. Grant at Appomattox in 1865. A close friend of and senior officer on Grant’s staff, Parker was the first Native American to achieve the rank of general and later became the first to lead the Bureau of Indian Affairs (its headquarters building today bears his name). A Tonawanda Seneca chief in western New York who’d been educated in white schools, Parker aspired to be a lawyer and had met all the qualifications for admission, including “reading the law” for two years as an apprentice to a New York firm. But he was prevented from realizing his dream because, as a Native American, he was not considered a “citizen.” Parker, however, was undaunted, and put his legal training and acumen to good use, working with white counsel to win victories for his people before New York’s highest court and the U.S. Supreme Court that preserved the Seneca’s rights to their ancestral lands.

I'm also working to secure posthumous bar admission in Maryland of Edward Garrison Draper. Draper, a free Baltimore resident who was one of Dartmouth's first Black graduates in 1855, spent two years "reading the law" under the tutelage of a well-respected Baltimore lawyer, Charles Gilman. He'd even spent several months in Boston with another lawyer, Charles Storey, observing courtroom practice. The judge who examined Draper for admission found him "most intelligent and well informed in his answers to the questions proposed by me, and qualified in all respects to be admitted to the bar in Maryland, *if he was a free white citizen of this state.*" Denied the chance to become a lawyer simply because he was not white, Draper soon emigrated to Liberia, where he tragically died just over a year later. Maryland's racially restrictive bar admission statute would survive longer than that of any other former slave state, withstanding legal challenge after legal challenge until 1885.

Is it activism not to leave such injustices in the past? What good can a symbolic gesture do? It is certainly true that the echoes of the past are felt in the present. Why else would Louisiana Governor John Bel Edwards take the historic action in January 2022 of issuing a posthumous pardon to Homer A. Plessy, whose conviction for violating the state's Separate Car Act led to the "separate but equal" U.S. Supreme Court decision of *Plessy v. Ferguson* in 1896? Commenting on the pardon, Gov. Edwards stated, "there is no expiration on justice," and that while we "still have a long way to go when it comes to equality and justice," this pardon "is certainly a step in the right direction."

The incredible women whose stories we're proud to share in this issue are also activists and trailblazers. From Renee Knake Jefferson's story of the Texas women who were shortlisted for the U.S. Supreme Court, and Judge Lee Rosenthal's and Steven Selsberg's moving tribute to Judge Ruby Sondock to my own profile of Charlye O. Farris, all these women blazed a trail that still inspires us today. All could be considered "activists" in the best sense of the word.

Perhaps legal history is a form of activism, after all. I recently spoke with my friend, Fred Gray, an Alabama lawyer and civil rights icon who represented Rosa Parks, Dr. Martin Luther King, and John Lewis (among many others). This summer, Fred received the Presidential Medal of Freedom from President Biden. At ninety-one years old, Fred still actively practices law, and he and I were discussing a civil rights lawsuit he's currently handling. I asked him why he's still practicing at his age. Fred looked at me quizzically and said matter-of-factly, "Because there's still work to be done."

So, I will keep researching, writing, and engaging in my own modest "activism"—because there's still work to be done.

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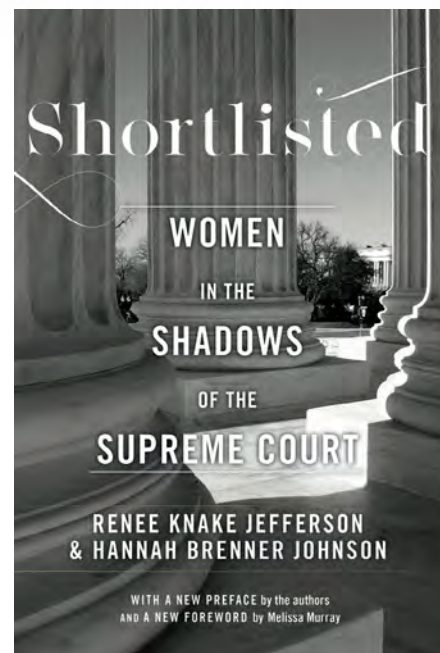
Supreme Court Shortlists and the Women of Texas

By Professor Renee Knake Jefferson

This essay contains material reprinted from the book *Shortlisted: Women in the Shadows of the Supreme Court* (New York University Press 2022) by Renee Knake Jefferson and Hannah Brenner Johnson.

As the *New York Times* reported in 1971, Mildred Lillie fortunately had no children. The article marveled at how she maintained “a bathing beauty figure” in her fifties. Lillie was not, however, featured in the news as a swimsuit model.

Instead, she was shortlisted. President Richard Nixon had included her among six potential nominees on his list for the United States Supreme Court. At the time, Lillie had served as a judge on California courts for more than twenty years. Her resume was as competitive if not more so than others on Nixon’s list. Lillie could have been the nation’s first female justice, but she was not chosen. Instead, Nixon claimed to care about diversity but preserved an all-male Court. The *Times* article provoked outrage on the opinion page even in that era. As one reader observed:



To the Editor:

Your description of the “qualifications” of Judge Mildred Loree Lillie (biographical sketches of Supreme Court nominees Oct. 14) illustrates perfectly the absurd sexist prejudices to which all women are persistently subjected. Why did you choose to objectify this woman and diminish her accomplishments by including such a totally irrelevant and subjective item? You implied that Judge Lillie’s body was just as significant as any single professional attribute she possesses. There was no discussion of the health—much less the physique—of any of the other possible nominees. Perhaps you could rectify this inequality by printing a discussion of the extent to which Senator Byrd has retained his schoolboy figure or the manner in which Herschel Friday fills his swimsuit.²

— Barbara B. Martin, “Sketch of Judge Lillie,” *New York Times*, October 23, 1971

The image of Lillie in swimwear reflects the sexism of that era and resonates even today as consistent with society’s ongoing obsession about the female body. The prevailing sentiment

during Lillie's time placed men at work and women at home, with minority women often cooking and cleaning for others. Women were largely excluded from the professional class. As articulated by Justice Bradley, concurring in the Supreme Court's decision to deny Myra Bradwell admittance to the Illinois Bar in 1873: "The civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood." Even as the United States neared its bicentennial, a woman certainly had never occupied a position on the Supreme Court. In fact, women were not supposed to pursue the law at all.



Judge Mildred Lillie

The simple fact that President Nixon shortlisted Lillie for the Court pushed back against gender norms that dominated the era and still persist. His shortlisting of Lillie is an early example of the very idea this book explores—being sufficiently qualified but not ultimately selected from a list that creates the appearance of valuing diversity but preserves the status quo. Nixon faced immense political pressure to place a woman on the Court but personally believed women belonged only in the home—he did not think women should even be allowed to vote! Shortlisting a woman allowed Nixon to pacify those demanding equal representation on the Court while simultaneously maintaining it as a man's world. But Nixon was not the first president to shortlist a woman and would not be the last.

Contemporary discourse on gender and the Supreme Court in disciplines like gender studies, law, media, and political science has mostly focused on the stories of the women who are selected, not shortlisted. Reporters, commentators, and scholars frequently retell Justice O'Connor's story as the first woman to serve on the Court, followed by a discussion of the three successful female nominees who followed in the wake of her legacy. The year 1981 is remembered as a pivotal and celebrated year as President Ronald Reagan made history by nominating the first woman to the Court. Over the course of the next thirty years, six more women would be nominated, five successfully confirmed. Ruth Bader Ginsburg was nominated and appointed to the Court in 1993, followed by Sonia Sotomayor in 2009 and Elena Kagan in 2010. Harriet Miers was nominated but withdrew from consideration in 2005. Amy Coney Barrett joined the Court in 2020 and Ketanji Brown Jackson in 2022.

Coverage of the women nominated and confirmed to the Court is important, but here we expand the narrative to include the lesser known and untold stories of those shortlisted who ultimately did not secure a seat. It is valuable, as a preliminary matter, to tell their stories as part of the larger historical record of women's entry into the legal profession. But beyond that, their stories also expose barriers that endure whenever a candidate is shortlisted but not selected. Their collective history offers insights for transcending modern shortlists. Our work builds upon earlier scholarly efforts that developed the theory of the "leaking pipeline," in other words, the idea that women enter the profession in numbers equal to men but do not advance into leadership positions

at the same rate, if at all. One way the pipeline “leaks” is via shortlisting, with qualified women considered in the mix of candidates but not selected.

Shortlists help to identify and explain latent discrimination and bias both within and outside of the judiciary. Many attempts to achieve diversity are effectively nothing more than window-dressing intended to create the appearance that diversity is valued. Take the so-called “Rooney Rule,” named for former president and owner of the Pittsburgh Steelers Dan Rooney, which is a policy adopted by the National Football League requiring that at least one ethnic minority be interviewed when hiring for head coaching and senior leadership positions. Some herald the rule as a success because it has increased the number of minorities who interview for these positions, arguing that even if a minority candidate is not selected, there is benefit in at least considering them. Aspirational policies like these, however, have done little to change the demographics of who is actually hired.



Clockwise from top left: Justice Ruth Bader Ginsburg; Justice Sonia Sotomayor; Justice Elena Kagan; Arabella Mansfield; Justice Ketanji Brown Jackson; Justice Amy Coney Barrett

Some companies have experimented with similar policies. In 2017, the Diversity Lab launched the Mansfield Rule for law firms and corporate legal departments, named after Arabella Mansfield, the first woman admitted to practice law in the United States when she received a law license from the Iowa Bar in 1869. The Mansfield Rule requires that employers consider diverse candidates for thirty percent of open positions in leadership or governance; thus, for ten potential hires, three must be women or minorities. With a significant cohort of prestigious firms and corporations committed to the effort, this new policy seems promising, but it is too soon to assess the impact. In 2010, the Securities and Exchange Commission began requiring companies to disclose efforts to address diversity when choosing board directors in their proxy statements; however, this effort has not increased the number of women on Fortune 500 boards. The data reveals a dismal picture where, even after implementation of the SEC rule, the number of women named to boards decreased by two percent, down from approximately twelve percent to ten percent. We do not mean to diminish the importance of policies like these, but we are more concerned with who is actually selected, not just who appears on the shortlist.

Shortlisted: Women in The Shadows of The Supreme Court not only recounts the history of women shortlisted for the Supreme Court, but it develops their stories as a framework to identify the harms of shortlisting and strategize solutions for women to be selected, not just shortlisted. The individual life of each woman profiled here could easily be the subject of an entire book of her own. However, the stories of women shortlisted before and immediately after O'Connor's confirmation have not yet been told in any meaningful way and have certainly not been studied in relation to one another as they are here. We believe there is power in a collective narrative of their lives, especially as we strive to better understand and ultimately ameliorate the dynamics that perpetually keep women on the shortlist.

Before Sandra Day O'Connor secured her legacy as the first woman nominated and confirmed to the Court in 1981, a handful of presidents formally shortlisted at least nine others for that role dating back to the 1930s. Each of these women repeatedly went from shortlisted to selected as she ascended to the judiciary, the dean's office, or the president's cabinet, even if not selected from the ultimate shortlist for the Supreme Court. Their stories offer lessons to inform and remedy the pervasive, enduring gender inequality in positions of leadership and power.

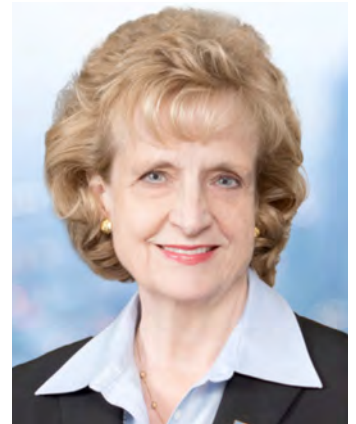
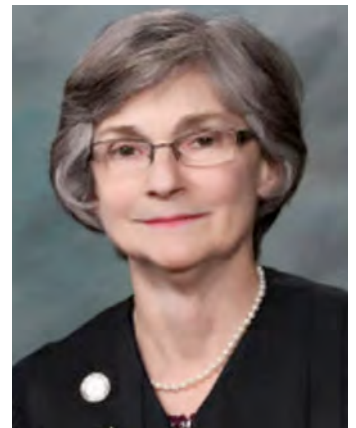
Two of the women profiled in *Shortlisted* have strong Texas ties, and their histories are included here: Edith Jones and Harriet Miers.

"Judge Jones has been on the shortlist longer than most contenders have been on the bench."

— *Wall Street Journal*, 2005

After the appointment of O'Connor, Reagan faced two more opportunities to nominate justices from an ever-growing list of qualified women. In addition to five women he considered for O'Connor's seat, Reagan later shortlisted three additional women, including Edith Jones, for vacancies.

Jones studied economics at Cornell University, graduating with honors. She went on to earn her law degree from the University of Texas Law School, where she served as a law review editor and graduated Order of the Coif. She began her professional life in 1974 at the firm now known as Hunton Andrews Kurth. Jones became the first female partner of the firm in 1982, an honor bestowed upon her while on maternity leave with her second child. In 1985, she was appointed by Reagan to the U.S. Court of Appeals for the Fifth Circuit. While reportedly "an unknown commodity to most Houston practitioners when she was appointed" to the Fifth Circuit, she quickly established a reputation as a strong and outspoken conservative. Her judicial opinions have called into question the *Roe v. Wade* abortion decision, supported expediting death penalty



Top to bottom: Justice Sandra Day O'Connor; Judge Edith Jones; Harriet Miers

executions, and she has also spoken openly about the importance of “moral values.” Additionally, she supported the creation of stricter bankruptcy laws, and in a 1997 opinion, overturned a federal ban on the possession of machine guns.

Not only was she shortlisted by Reagan, but she resurfaced when George H.W. Bush needed to fill a vacancy created by the resignation of Justice William Brennan. She must have come extremely close to being selected. The Bush presidential archives contain a speech printed on heavy, formal paper that reads:

My oath to the Constitution charges me to faithfully execute the Office of President and to the best of my ability preserve, protect, and defend the Constitution of the United States. Few duties are more important in discharging that obligation than my responsibility under Article II, Section 2 of our Constitution to select, from among all possible choices, one nominee to fill a vacancy on the Supreme Court of the United States. The task of narrowing the selection to one highly qualified jurist committed to the rule of law and faithful to the Constitution could never be easy, but I have found it enormously satisfying. My choice, I think, will serve the Court and the Constitution well.

I am most pleased to announce that I will nominate as Associate Justice of the United States Supreme Court a remarkable woman of vigorous intellect and first-rate ability—a firm Judge, a fair Judge, and a Judge committed to interpreting the law—Judge Edith Jones of the United States Court of Appeals for the Fifth Circuit. Judge Jones, I believe with all my heart, will prove a worthy Member of the Court...

In a handwritten thank you note, Jones joked to President Bush after meeting with him to discuss her candidacy that it “was the first ‘job interview’ I’d had in 17 years – since I first went to Andrews & Kurth.” Some were surprised by Bush’s selection of David Souter over Jones. Others speculated that she would be the choice when another vacancy opened. Instead, Jones served as chief judge of the United States Court of Appeals for the Fifth Circuit from 2006 to 2012 and remained on the court after stepping down from this leadership role. She was shortlisted again, this time by George W. Bush who eventually selected John Roberts, Harriet Miers, and Samuel Alito.

“So conservatives are caught between loyalty to their ideas and loyalty to the president they admire. Most of them have come out against Miers—quietly or loudly. Establishment Republicans are displaying their natural loyalty to leadership. And Miers is caught in the vise between these two forces [conservatism and Republicanism], a smart and good woman who has been put in a position where she cannot succeed.”

— David Brooks, *New York Times* op-ed 2005

Harriet Miers made it off President George W. Bush’s shortlist and became the third woman officially nominated for the Supreme Court in 2005. His included three other women: Edith Jones (yet again!) and two other judges from the U.S. Court of Appeals for the Fifth Circuit—Edith Clement

and Priscilla Owen. When O'Connor announced her retirement, she and others, including Justice Ruth Bader Ginsburg and first ladies Hillary Clinton and Laura Bush, publicly expressed hope that the President would name another woman to the Court. Instead, he nominated John Roberts, then a judge on the U.S. Court of Appeals for the D.C. Circuit. But, just over a month after the announcement, Justice Rehnquist passed away, leaving Bush with two simultaneous vacancies to fill. Bush then nominated Roberts to fill the role of Chief Justice and obliged the wish of his wife and others by selecting White House Counsel Miers. Similar to Justices Clark, Murphy, Rehnquist, and White, Miers had worked to vet candidates when Roberts was selected only to then find herself the nominee. Unlike those men, however, her candidacy would be fraught with controversy.

Miers overcame significant family hardships in her youth and went on to accomplish many firsts as a female lawyer. Her family fell into debt after her father suffered a stroke during her first year as an undergraduate at Southern Methodist University. She persevered and secured admission to the law school, one of seven women in a class of almost 100. Miers excelled, securing a spot on the law review and then a judicial clerkship with Texas District Judge Joe Estes after graduation in 1970. She then joined the Dallas firm Locke, Liddell & Sapp, where she eventually was named the first female managing partner.

Miers practiced law for decades and served as the first female president of both the Dallas Bar Association and the Texas State Bar Association before becoming George Bush's personal attorney during his first term as the Governor of Texas in 1995. She also chaired the Texas Lottery Commission at the time, leaving that role in 2000 as Bush anticipated a White House run. After his inauguration, she held several roles in the administration, including assistant to the president, deputy chief of staff for policy, and White House counsel, the position she held when Bush announced his intention to place her on the Court in 2005.

Miers' many years of government service providing legal counsel to a governor and president are what led Bush to select her for the nomination. While she did not graduate from one of the more prestigious law schools that recent nominees claim as their alma mater like Yale or Harvard, she was at the top of her class in a well-regarded law school. She consistently rose to top leadership roles in her firm and bar organizations. Even with these strong credentials, Miers was critiqued as being inexperienced for not having served as a judge, though others on the Court over the years lacked this experience. The media focused endlessly on her appearance and status as a single woman. The *New York Times* and the *Washington Post* reminded readers of Harriet Miers' fondness for "girls' nights out" and engaging in "a lot of girl talk" with "Condi and the other single girls," referencing then-Secretary of State Condoleezza Rice.

Robert Bork, whose own confirmation process derailed, wrote a scathing op-ed in the *Wall Street Journal*, complaining that "the administration's defense of the nomination is pathetic: Ms. Miers was a bar association president (a non-qualification for anyone familiar with the bureaucratic service that leads to such presidencies)," even though Justice Powell's service as president of the American Bar Association had been touted among his exemplary credentials for securing his seat on the Court. Nixon, for one, lauded Powell's experience as "President of the American Bar Association, and [noted] in that . . . role he provided leadership in the provision of legal services for the needy and with revision of the standards for criminal justice." An asset for a male nominee was characterized as a liability for a female nominee, a phenomenon that by now is all too familiar.

Rather than emphasize her actual qualifications as a skilled lawyer and leader, the administration focused upon her religious convictions—an evangelical Christian who, by implication, would vote to overturn *Roe v. Wade*—in an effort to appease conservative critics. This strategy failed. Miers withdrew her name from consideration after only twenty-four days. In her place, Bush nominated Samuel Alito, who was confirmed with minimal controversy by a vote of 58-42, mostly along partisan lines.



At a time when women still have not achieved parity with men in attaining leadership roles, it is worthwhile to explore not just the successes or the ends, but to examine the spaces in between. The history of the United States Supreme Court is incomplete, missing the stories of how women came to be considered, even if they were ultimately never nominated. There is power in the collective stories of these women seen not in isolation, but as a whole. No one story is the same; however, when recounted together they offer a path forward. Our goal is to inspire women from all backgrounds as they navigate their own professional advancement into positions of power and leadership.



RENEE KNAKE JEFFERSON is a Professor of Law at the University of Houston Law Center and holds the Larry & Joanne Doherty Chair in Legal Ethics.

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To Find the Gates of Heaven: The Legal Fight Over the University of Texas McDonald Observatory Legacy

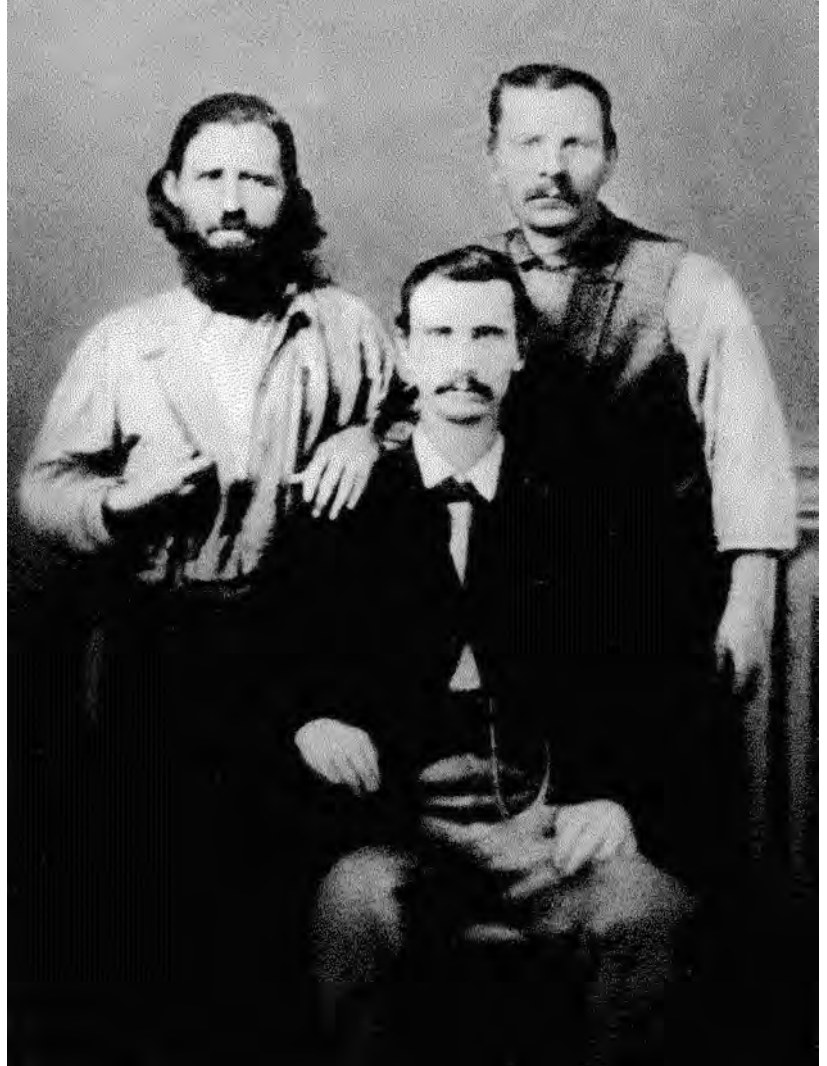
By Robert J. Reagan



The University of Texas McDonald Observatory, located on a mountain near Fort Davis, came into being as a result of a legacy in the will of Paris, Texas banker William McDonald. It might not have been created if disgruntled relatives had been successful in their contest of the will on the basis that McDonald lacked testamentary capacity because he had insane delusions. That contest was tried to a jury, whose verdict and the judgment upholding the will, went to the Court of Civil Appeals, then to the Texas Supreme Court. The Supreme Court remanded for another trial. That trial ended with a hung jury, and the parties subsequently settled on terms favorable to the University, the principal legatee. The practical result was the Observatory's establishment and construction soon thereafter, but there was also a legal issue that was determined and appears to remain good law.

William McDonald and his Legacy

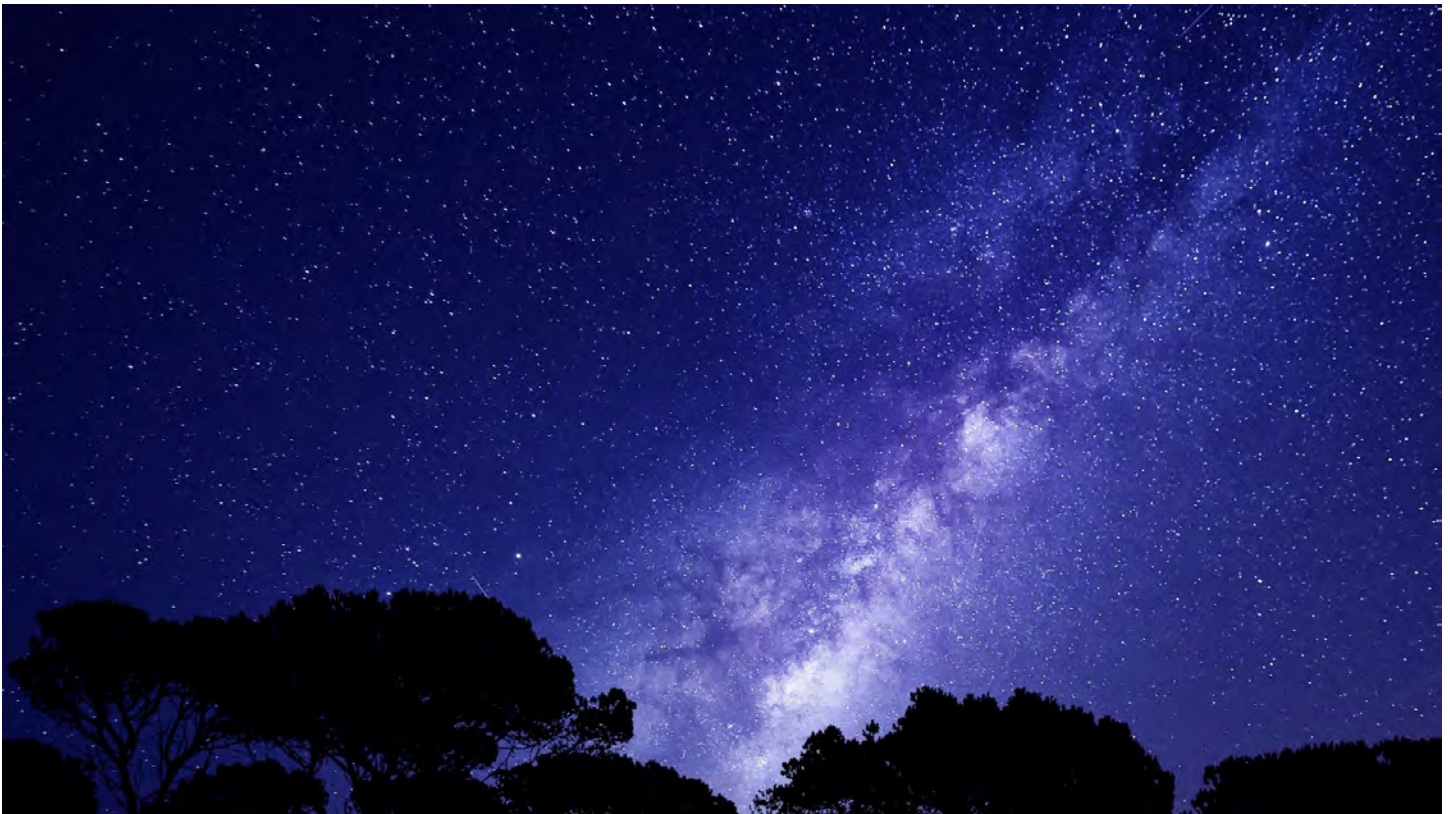
William Johnson McDonald was born in December of 1844 when Texas was still, just barely, an independent Republic.¹ His father Henry was a physician, one of the few certified medical professionals on the frontier. Dr. McDonald settled in Lamar County where Paris was incorporated in February 1845.² William was educated at the McKenzie Institute in nearby Clarksville, and later apprenticed to a law firm in Mount Pleasant, Titus County. He served briefly in a Texas regiment of the Confederate Army but saw little or no action and never left the state. After the war he returned to Clarksville and opened a law practice. Income from the practice enabled him to make small loans and buy Red River county warrants at a fraction of their face value during the depression of the 1870s. Those warrants regained their value after the depression and nearly overnight made William McDonald wealthy. Sensing he was in the wrong business, he abandoned the legal practice and moved to Paris to become a full-time banker. With his brothers' help, McDonald founded several banking institutions in Clarksville and Paris. The banks proved successful and made McDonald a very wealthy man. He lived most of his life in Paris, but traveled extensively. Other than his banking career, he had numerous side interests, including literature, botany, geography, and most important for this discussion, astronomy. McDonald never married and had no children.



The McDonald brothers in middle life: left to right, James Thomas, William Johnson, and Henry Dearborn.

On May 8, 1925, McDonald executed a will leaving specific pecuniary gifts of \$15,000 each to eight relatives, who appeared to be heirs at law. The rest and residue of his estate he gave, in trust, to the University of Texas for the specific purpose of establishing an astronomical observatory. The will nominated Morris Fleming, cashier of the Paris bank, and the First National Bank of Clarksville as co-independent executors.³

William McDonald died February 6, 1926, nine months after making the will, at the age of eighty-one years. His estate was valued at approximately \$1.25 million.⁴



The Milky Way over Mount Locke

The Litigation

The will was admitted to probate in the county court of Lamar County, and later, after a contest and appeal, in the District Court. Seven heirs contested the will, alleging that McDonald did not have testamentary capacity at the time of execution. They generally denied the application and specially pleaded as follows:

On the 8th day of May, 1925, the date of making said purported will, and prior thereto and up to and including the 8th day of February, 1926, the day of his death, W. J. McDonald, deceased, did not have testamentary capacity to make a will; was of unsound mind; and did not have mental capacity to know, understand, and appreciate the character, amount, and extent of his property or the objects of his bounty, or the real disposition he was making, or attempting to make, of his property by the instrument offered for probate.⁵

A jury was empaneled, and, after presentation of evidence, the court submitted the case on a single special issue: "Did or did not W. J. McDonald have testamentary capacity on May 8, 1925, at the time he executed the will in controversy?" Accompanying the issue was an instruction defining testamentary capacity:

"To make a valid will, the person making the will must have testamentary capacity at the time of the execution of the will. By testamentary capacity is meant that the person at the time of the execution of the will has sufficient mental ability to

understand the business in which he is engaged, the effect of his act in making the will, and the general nature and extent of his property. He must also be able to know his next of kin and the natural objects of his bounty. He must have memory sufficient to collect in his mind the elements of the business to be transacted and to hold them long enough to perceive at least their obvious relation to each other, and to be able to form a reasonable judgment as to them.⁶

The contestants requested an additional instruction “No. 2” that

If at the time of the execution of the will by W. J. McDonald on May 8, 1925, he was under the influence of an insane delusion or delusions affecting the disposition of his property which he was making, then you are instructed that he did not at said time have testamentary capacity. An insane delusion is the belief of the existence of a state of supposed facts which no rational person would have believed.⁷

The district court did not include the instruction and the jury answered that McDonald had testamentary capacity when he executed the will.⁸

Upon appeal, the Texarkana Court of Civil Appeals affirmed. The issue in the Court of Civil Appeals was whether the court should have given the “insane delusion” instruction to the jury.⁹

The contestants made four contentions and referenced evidence allegedly supporting them that raised an issue as to McDonald’s “insane delusion” affecting his testamentary capacity:

- That McDonald was suffering with an insane delusion of poverty.
- That McDonald was suffering with an insane delusion that a certain relation in law had wrongfully deprived him of certain of his tablecloths, napkins, and books.
- That McDonald was suffering with an insane delusion that he had to protect himself against his nephew, one of the contestants, who, he thought, intended or desired to murder him in his home on Clarksville Street.
- That McDonald was suffering with an insane delusion that someday astronomers would be able to see the gates of heaven, and when we got (to) that we would be able to see who was inside of heaven; that it was only a question of time when they did that, and then this would be the next great wonder of the world, and it needed only a little money.¹⁰

The Court of Appeals affirmed the district court ruling that

After a careful consideration of the record, we conclude that there is no sufficient evidence in respect to the objects of delusion, considered singly or all together, upon which to found a finding of fact of insane delusion or delusions affecting the testamentary capacity of the testator. We conclude the evidence is ample and greatly

preponderates in support of the jury verdict, arrived at under proper and complete and duly approved instructions.¹¹

Specifically addressing the insane delusion issue the Court discussed the testimony of Autrey Burnett, McDonald's barber, to whom the testator said, "some day or another astronomers would be able to see the gates of heaven, and when we got to that we would be able to see who was inside heaven."

The Court opined that "[a]ll the evidence goes to show that the real force and substance of the spoken declaration was that of a pure predication or avowed belief of the scientific progress 'some day or another' of astronomy, with proper equipment and funds for observation. At most that was the force and effect of the spoken words of the mere chance conversation, even though couched in language extravagant or facetious."¹²

. . . that it is plain that the will in suit, in its provisions as to the erecting and equipping of an astronomical observatory at the University of Texas, was not the result of any sudden impulse, but of a definite and deliberate purpose and testamentary intention formed and adhered to in former years by the testator while sufficient soundness of his mind and memory admittedly existed. The same specific bequest appeared in the first will in 1915 and was inserted in each of the five other wills made respectively during the ten years to 1925. The fact that the testator supervised his own large estate wisely and prudently during the times of these wills until the date of the will in suit opposes an inference that he was of an irrational mind to a degree to incapacitate him from making the will and disposing of his property as he did. It was long known to the testator's most beloved and trusted brother that it was his purpose to make the specific bequest.¹³

Regarding McDonald's alleged belief about astronomers someday seeing the "gates of heaven" and see in there, the Court said

. . . testator was shown to be for years "very much interested in astronomy, plant life, and botany." There is no pretense in the evidence of a sudden change or departure in the last will of testamentary intent indicated in the bequest to the regents of the University from ordinary habits of thinking and acting in that respect.

* * *

And, as predicated by the testator according to the witness, "astronomers would be able," in figurative expression, "to see the gates of heaven," in the wide generalization of "some day or another," and "see who was inside heaven." In applying these considerations to the particular declaration it is most likely and natural that the words of the testator were "see the heavenly bodies" rather than "see who was inside heaven." The very terms of the will, made two weeks afterwards, evidence the mind of the speaker at the time in "the study and promotion of the study of astronomical science." All the evidence goes to show that the real force and substance of the spoken declaration was that of a pure predication or avowed belief of the scientific progress "someday or another."

* * *

It is not capable of disproof that there may not be progress and perfectly established scientific theory, founded on the widest study of the celestial regions, of which at present we apparently know so little. The belief has prevailed among thinking man of telescopes being made with powers far exceeding our present ones to “see” or observe “the heavens” and “the heavenly bodies.”¹⁴

McDonald’s relatives were dissatisfied and pressed on to the Texas Supreme Court. From 1918 to 1945, the Supreme Court consisted of three Justices. It was assisted by a Commission of Appeals that comprised two sections each having three Commissioners.¹⁵ With the consent of the parties to a suit, the Court would assign some petitions for writs of error Section A or Section B of the Commission. The Court granted a writ of error and assigned hearing and consideration to Section B.

The Commission considered the contested question of whether the evidence presented raised the issue of insane delusions. If so, it opined, it was necessary to give requested jury instruction the trial court declined to give. The Commission considered the testimony and concluded, and the Court concurred, that the evidence did raise the issue. Thus, the trial court and the Court of Civil Appeals erred in holding to the contrary. Commissioner Speer wrote an opinion reversing the Court of Civil Appeals.¹⁶

The Commission recognized that

[insane delusions are not within themselves a ground of attack against the probating of a will, except as they show a want of testamentary capacity. In other words, the real defense is want of testamentary capacity, whether such want of capacity is produced by ordinary and complete insanity, or by temporary aberrations or insane delusions. The real vice, from a judicial standpoint, in either case that vitiates the instrument, is want of capacity. So that, where want of capacity is pleaded as ground of contest, though general in the form of its expression, nevertheless that mental defect may be proven in any of the ways recognized by the law of evidence.¹⁷

But the Commission found persuasive that

a reproduction of the hypothetical question propounded by contestants to Dr. Guy F. Witt, a practicing physician, and a specialist in nervous and mental diseases, together with his answer, will show conclusively, we think, that the issue of want of mental capacity through insane delusions was raised by the testimony. The hypothetical question finds support in the statement of the evidence. . .¹⁸

The hypothetical question and the answer addressed the four contentions that the Court of Civil Appeals considered.

The Commission concluded that “[w]e base our conclusion, not only upon the facts recited in the hypothetical question, which, as we have said, the evidence tends to show, but upon the

affirmative answer of the expert witness that the testator was, on the 8th day of May, 1925, of unsound mind."¹⁹

The Court then approved the holding of the Commission on February 29, 1928 and reversed and remanded the judgments of the district court and the Court of Civil Appeals, and remanded the case to the district court.²⁰

Re-trial of the case commenced in Paris in late October 1928. The evidence was more or less the same as in the previous trial, but there was more of it. Several witnesses testified that they heard McDonald talk about looking into heaven and there were arguments on whether he meant Heaven or the heavens. The barber who earlier testified that McDonald made a point of privately telling he believed some days astronomers would find the gates of heaven now said that McDonald was "off his caboose."²¹

The final argument to the jury lasted six and one-half hours for each side. There are several appeals to the presumably fundamentalist religious beliefs of some jury members. One contestant's lawyer went so far as to argue that "if the University of Texas does not believe W. J. McDonald suffered from an insane delusion about the gates of heaven, that does not believe in the Bible and is no fit place to send Boys and Girls."²² Apparently that worked for at least two—another demonstration that a trial lawyer must know his jury. It hung ten in favor of the will, and two against.²³

The University at this time had spent close to \$80,000 (in 1928 dollars) on attorneys. The parties settled for distribution of \$250,000 for the plaintiffs, and the balance of around \$840,000 to the University.²⁴ After solving several logistical problems, the McDonald Observatory, on a mountain near Fort Davis, Texas, became a reality.

Conclusion

Judgments based on jury verdicts are often reversed on appeal based on erroneous jury charges. In this case, the jury was not specifically instructed on the contestants "insane delusion" allegation. The original trial court apparently considered that issue subsumed in the testamentary capacity instruction. The Court of Appeals agreed, but the Supreme Court reversed, stating that the case turned upon the correctness of the trial court's ruling in refusing this instruction, and held that the court should have given the insane delusion instruction.²⁵ The Court's reasoning appeared to be that, when the testator's false belief amounts, in law, to an insane delusion and the terms of his will are influenced thereby, testamentary capacity is lacking even though he might know the nature and extent of his property, the effect of his will, the natural objects of his bounty, and be able to handle complex business matters. A jury of laymen might well conclude that such a person did have testamentary capacity, however, if their only guide were the ordinary definition of that term. An additional instruction on insane delusions is required, therefore, where the issue is fairly raised by the evidence.²⁶

Points may be learned from William McDonald's bequest and the will contest case. (1) Had the contestants been wholly successful, the observatory might never have been built. Whether

another similar one might later have been, of course, is counterfactual, and purely speculative. Maybe another state and university would have had the honor. (2) If in a will contest tried before a jury, credible evidence is presented that the testator had an insane delusion at the time he made the will, an instruction to that effect must be given in the jury charge. (3) Most important, when drafting and executing a will, both testators and their legal advisors should be in mind of the adage that one never knows another family member until they share an inheritance.

Endnotes

1. The facts of McDonald's life are taken from David S. Evans and J. Derral Mulholland, *Big and Bright, A History of the McDonald Observatory*, University of Texas Press Austin, 1986.
2. The town was founded by merchant George W. Wright, who donated fifty acres of land in February 1844, when the community was also designated the county seat by the voters. It was incorporated by the Congress of the Republic of Texas on February 3, 1845. The community was named for Paris, France, by one of Wright's employees. Evans and Mulholland stated that Paris was originally called Pin Hook. A community that still exists fourteen miles northeast of Paris. See <https://tshaonline.org/handbook/online/articles/HDP01>
3. See, *passim*, *Rodgers, et al v. Fleming, et al*, 295 S.W. 326, 327 (Tex. Civ. App.— Texarkana 1927) *rev'd*, 3 S.W.2d 77 (Tex. Comm'n App. 1928, holding approved).
4. Over \$17 million in today's dollars. <https://www.dollartimes.com/inflation/inflation.php?amount=100&year=1926>.
5. *Fleming*, 295 S.W. at 327.
6. *Fleming*, 295 S.W. at 329.
7. *Ibid.*, 331. This is the "insane delusion" instruction.
8. *Ibid.*
9. The contestants had also requested an instruction that "You are instructed that if at the time of the execution of the will by W. J. McDonald on May 8, 1925, he did not have strength of mind equal to the purpose to which it was applied, then he did not have testamentary capacity at said time." This was also refused by the trial court. The Court of Civil Appeals agreed this instruction was unnecessary. It was not assigned as error to the Supreme Court. *Ibid.*, 330.
10. *Ibid.*, 331.
11. *Ibid.*, 337.
12. *Ibid.*
13. *Fleming*, 295 S.W. at 336.
14. *Fleming*, 295 S.W. at 237.
15. See James L. Haley, *The Texas Supreme Court: A Narrative History 1836-1986* University of Texas Press (2013). By 1913, the Texas Supreme Court's caseload had increased only to 106, but parties could generally not expect a final disposition for around five years. In 1915, a proposed constitutional amendment to expand the court to five justices was badly beaten at the polls. Haley describes Justice William E Hawkins as "the wrench in the gears" for his slowness in writing opinions and general obstreperousness. See Haley, 151-162.

In 1913, Chief Justice Brown and Justice Phillips wrote twenty-four and fourteen majority opinions respectively and Hawkins, only four. See Haley, 159. The legislature passed a statute enabling this Chief Justice to appoint "Committee of Judges" from courts of appeal to review applications for writs of error. The court upheld statutes constitutionality over Hawkins' dissent. A special session in 1917 created "Commission on Appeals." Governor W. P. Hobby appointed six commissioners whose jurisdiction extended to cases given to them by the Supreme Court whose parties agreed for such review. In its first two years the Commission disposed of over 250 cases and set the court back on a path to a credible calendar. A constitutional amendment in 1945 increased the Supreme Court from three to nine justices, abolished the commission, and provided that the six sitting commissioners would become associate justices and all justices would serve six-year terms with three standing for election every two years. See Haley, 179.

See also Michael Ariens, *Lone Star Law-legal History of Texas*, Texas Tech University Press (2011), 203-04 (concerning Justice Hawkins).

16. The Supreme Court could adopt the entire opinion, and, if so, it would be the opinion of the Court and cited as such. The Court alternatively approve the specific holding(s) and adopt the judgment, or simply adopt the judgment where specific holding or reasoning was not necessarily approved. These latter actions nevertheless would be treated as precedent.
17. *Rodgers, et al v. Fleming, et al*, 3 S.W.2d 77, 80 (Tex. Comm'n App. 1928, holding approved).
18. *Ibid.*, 81.
19. *Ibid.*, 84.
20. *Ibid.*
21. Evans and Mulholland, *Big and Bright*, 34.
22. *Ibid.*
23. Until 1973, civil cases required unanimous jury verdict as in criminal cases. See 4 *McDonald & Carlson Tex. Civ. Prac.* § 25:3 (2d. ed.). The 1973 amendment to the Texas Rules of Civil Procedure deleted the unanimity requirement in Rule 291 and reworded Rule 292 to provide for a 10 to 2 jury verdict. TEX. R. CIV. P. 291, 292.
24. Evans and Mulholland, *Big and Bright*, 35.
25. The question and instruction the trial court gave the jury was:
 "Did or did not W. J. McDonald have testamentary capacity on May 8, 1925, at the time he executed the will in controversy?"
 Accompanying the issue was an instruction defining "testamentary capacity", as follows:
 "To make a valid will, the person making the will must have testamentary capacity at the time of the execution of the will. By testamentary capacity is meant that the person at the time of the execution of the will has sufficient mental ability to understand the business in which he is engaged, the effect of his act in making the will, and the general nature and extent of his property. He must also be able to know his next of kin and the natural objects of his bounty. He must have memory sufficient to collect in his mind the elements of the business to be transacted and to hold them long enough to perceive at least their obvious relation to each other, and to be able to form a reasonable judgment as to them."
 The contestants requested the following special charge:
 "If at the time of the execution of the will by W. J. McDonald on May 8, 1925, he was under the influence of an insane delusion or delusions affecting the disposition of his property which he was making, then you are instructed that he did not at said time have testamentary capacity. An insane delusion is the belief of the existence of a state of supposed facts which no rational person would have believed."
Rodgers, et al v. Fleming, et al, 3 S.W.2d at 78-79.
26. *Lindley v. Lindley*, 384 S.W.2d 676, 679 (Tex.1964) citing *Fleming*.



ROBERT J. REAGAN received a B.A. in 1967 from Loyola University and earned his J.D. from Texas Tech University in 1990. While in law school, Mr. Reagan was a Research Editor for the Texas Tech Law Review. In 1988, he received the American Jurisprudence Award for Constitutional Law. Mr. Reagan worked for a year as a briefing attorney for the Texas Court of Appeals, Fifth District in Dallas. From 1991 to 2012, Mr. Reagan was Adjunct Instructor for the Legal Assistant Certification Program at El Centro College, Dallas County Community College District where he taught Real Estate law and Civil Procedure. Before practicing law, Mr. Reagan served in the United States Army with overseas tours in Korea, attaining the rank of Captain. He also was a detective in the Dallas Police Department, working in the Crimes Against Property Section and the Special Investigations Unit. He founded and operated a private security business which installed and maintained alarm and television surveillance systems.

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Charlye O. Farris — Opener of Doors

By Justice John G. Browning

No chronicle of female legal pioneers in Texas is complete without discussing Charlye O. Farris, widely regarded as the first Black woman admitted to practice law in Texas.¹ While the first Black man admitted in Texas, William A. Price, achieved that feat in 1873, shockingly it wasn't until eighty years later that Ms. Farris' milestone admission occurred. Though historians have acknowledged that the progress of women lawyers in America has been "modest, not monumental" and that most U.S. law schools remained unreceptive to women law students throughout the late nineteenth century,² there were Black female lawyers as early as 1872, when Charlotte E. Ray graduated from Howard and was admitted to practice in the District of Columbia.³ Why, then, did it take so long for Texas to welcome a Black woman into the legal profession?



The answer likely resides in the fact that any Black female aspiring lawyer has had to contend with two sets of obstacles – one based on gender, and the other based on race. This dual discrimination meant that in the legal ranks in Texas before 1953, there were already comparatively few Black men and few women. It is hardly surprising, therefore, that Black women in the Jim Crow South would not readily view becoming a lawyer as a realistic goal.

¹ Crediting Farris, admitted in 1953 as the first is not without some controversy. J. Clay Smith's sweeping and authoritative work on the history of Black lawyers in America reveals that "the Sixteenth Census (1940) records the existence of one black woman lawyer in Texas but that her identity remains a mystery." Smith, *Emancipation: The Making of The Black Lawyer, 1844-1944* (Univ. of Pa. 1999). If such a person existed, perhaps she was a lawyer admitted elsewhere who found herself living (but not practicing) in Texas. Or, perhaps she was a biracial woman who "passed" for white at the time of admission, but later publicly identified as Black. In any event this does not diminish Ms. Farris' achievement.

² Virginia Drachman, *Sisters in Law: Women Lawyers in Modern American History* (1998), 8, 43-46.

³ For a look at Charlotte Ray's education and early practice see John G. Browning, "Pioneers of an Interesting and Exciting Destiny: The Lives and Legacies of Howard's First Law Graduates," 66 *Howard L.J.* 2 (forthcoming 2022).

But Charlye O. Farris was not just any other young Black woman. Even the circumstances of her birth on June 30, 1929 in Wichita Falls were a reminder of the ugly realities of life under Jim Crow. Because Black expectant mothers could not go to the “white” hospital, Charlye’s mother Roberta gave birth at Roberta’s parents’ home. A Black doctor who was a neighbor, Dr. Daniel King, delivered the baby. But it was a difficult delivery, and Dr. King persuaded a white colleague to come and assist. Roberta and her husband, James Farris, both teachers, had promised an uncle, Charlie Booth, that their firstborn would be named after him. When this child turned out to be a girl, Roberta was unfazed; she simply spelled Charlye’s name with a “ye,” to indicate her gender.

The two educators (Roberta taught elementary school for forty-nine years, while James was the first Black school superintendent in Texas) produced a brilliant daughter. Charlye was reading and writing at age three, and in 1945 she graduated as the valedictorian of Booker T. Washington High School – at age fifteen. At eighteen, she graduated with a bachelor’s degree in political science from Prairie View A&M. Throughout her childhood, Charlye experienced reminders of life in a segregated world. Her grandmother, an accomplished seamstress, made most of her clothes, because Black people were not allowed to try on clothing in the stores in Wichita Falls. And on a family train trip to California when Charlye was fourteen, she and the others endured the separate and inferior “Black” cars from Texas to New Mexico; from New Mexico to California, however, the accommodations were far more comfortable, seated with white passengers.

It was in college, during her political science studies, that Charlye was exposed to the law, including the writings of Judge Learned Hand. To appease her parents, she took a job after graduation teaching in the small community of Stamford, Texas (about 85 miles southwest of Wichita Falls). But Charlye’s heart wasn’t in teaching. In 1948, she prevailed upon her parents to let her attend law school. Her father relented, on the condition that she attend the University of Denver (a relative was completing her master’s degree there, and James Farris wanted family close by). Charlye’s first year was not very successful academically; realizing she needed a different educational environment, she transferred to Howard University School of Law in Washington, D.C. in the fall of 1950.

At Howard, Charlye found the structure she needed and the support system of other Black students. It was an exciting time to be a law student at the historically Black school. As she would later recall, “Jim Nabrit (one of her professors) ...was one of the lead counsels in *Brown v. Board...* and we’d see Thurgood Marshall and people like that...come over and do the dry runs [of their Supreme Court arguments] to our classes.”⁴

After her graduation from Howard, Charlye contemplated taking a job as a guide at the United Nations, but decided to “hedge her bets” and take the Texas bar exam. Once again, racism reared its ugly head. Her application needed to be accompanied by at least three letters of recommendation from practicing attorneys, and at least one refused to recommend the young Black woman. Fortunately, a lawyer friend of her father was able to help Charlye secure other necessary letters. On October 13, 1953, she was one of 129 law graduates taking the Texas bar (eight of whom were Black). In November, Charlye received the news that she was one of the ninety-two who passed.⁵

⁴ Sheree Scarborough, “Charlye O. Farris Oral History Interview,” *Texas Bar Foundation* (2004), 24-25.

⁵ Kenneth E. Hendrickson, Jr., *She Opened Many Doors: The Life and Career of Charlye Ola Farris* (Midwestern State University Press, 2013), 85.

She would become the first Black woman admitted to practice law in Texas.

Charlye decided to hang out her own shingle in Wichita Falls. She did some bookkeeping work for a Black-owned cab company, and gradually began to develop her own docket of family law and criminal law cases from the Black community. Her work ethic impressed her white and (mostly) male colleagues in the local bar, and in July 1954 Farris was named Special County Judge, or County Judge Pro Tem. It was a short-term position of several days (requiring her to serve in the absence of the elected county judge, Guy McNeely), and it marked what one historian called “the first time since Reconstruction that a Black person had served as a judge in any capacity in the South.”⁶ That distinction prompted calls and interviews from newspapers like the New York Times and the Washington Post.

Closer to home, however, Charlye was not as celebrated. *The Wichita Falls Times* did not seek an interview, and ran only a brief, perfunctory blurb with no photo. Rhea Howard, the paper’s then publisher, had a policy against publishing photos of Black people. It was a slight Charlye never forgot. And despite her judicial status, Charlye was not permitted to join the all-white Wichita County Bar Association, or its social arm the Blackstone Club. Nor was she welcome to attend the bar association’s monthly luncheons at the Marchman Hotel, because no Black people were allowed on the premises. At the local courthouse (segregated until 1962), Charlye encountered the same indignities that Black litigants did, restricted to using a “colored” drinking fountain on a different floor and “colored” restrooms in the basement. Judge Arthur Tipps of the 30th District Court, however, reached out to the young attorney and told her she was welcome to use the facilities in his chambers whenever necessary. That gesture of kindness and decency began a lifelong friendship.

Over the course of her long career, Charlye Farris maintained a practice primarily devoted to family law and criminal defense. One of her rare ventures into civil rights came in 1963, when she was successful in winning injunctive relief preventing a Wichita Falls police officer from keeping his police dog at his residence in a predominantly Black part of town. Keenly aware of the use of police dogs in the South to attack Black civil rights demonstrators, Farris knew that Black residents viewed the dog’s presence as an intimidation tactic.

In 1973, Charlye experienced two milestone events. The more fleeting one was her selection as acting district judge of Wichita County’s 78th District Court; though it only lasted for the summer, it was a reflection of the professional reputation she had earned. The second, and more important, was her adoption as a single mother of a baby boy, whom she named Troy Farris. Adoptions had always been Charlye’s most rewarding aspect of practice, and at last she became a mother herself. Troy would go on to follow in his grandparents’ footsteps, earning graduate degrees as a teacher and becoming a high school vice principal.

In her later years, Charlye O. Farris received numerous accolades. The Wichita County Bar Association, which once barred her from membership, now offers a scholarship named after her. The local public school district, whose schools she could not attend because of the color of her skin, named an elementary school after Charlye and her mother Roberta. In 2003, the

⁶ *Ibid*, 92.

American Bar Association – which itself was once segregated, prompting Charlye to join its Black counterpart, the National Bar Association – presented her with its prestigious Margaret Brent Award. In recommending Charlye for this honor, Judge Juanita Pavlick wrote:

Where many young women attorneys have opted to outdo their male counterparts at their own game, showing they can be as aggressive, hostile, and uncompromising as the next man, Charlye offered an alternative model. She showed us all that she could win cases with her intelligence, hard work and dedication, without sacrificing courtesy, kindness, and femininity.⁷

Writing in her column in the Texas Bar Journal, then– State Bar President Betsy Whitaker elaborated on Charlye’s significance:

Charlye is a lawyer, a Texan, and a woman whose dignity and strength helped her overcome the adversity that could have obliterated her dream of being a lawyer. Many have benefited from her persistence and patience. All Texas lawyers, especially women and minority lawyers, have individuals like Charlye to thank for leading the way, for standing tall, and for making it a little easier for those of us who have come later.⁸

That same year 2003, Charlye O. Farris received the National Bar Association’s coveted Gertrude E. Rush Award, joining such previous honorees as Rev. Jesse Jackson and Rep. Shirley Chisholm. The following year, she received both the State Bar Women and the Law Section’s Sarah T. Hughes Award and the Texas Bar Foundation’s Outstanding Fifty-Year Lawyer Award. On February 18, 2010, Charlye O. Farris passed away to the greatest reward of all, after battling lung cancer.

The life of Charlye O. Farris is a study in quiet perseverance, and of dignity in the face of insult and intolerance. She walked a lonely road as a young, Black female lawyer, and she walked this path with grace.



⁷ *Ibid*, 164.

⁸ Betsy Whitaker, “President’s Column,” *Texas Bar Journal* (September 2003).

Justice Ruby Sondock: Our Mentor, Colleague, and Friend

By Steven Selsberg, Esq., and Chief Judge Lee H. Rosenthal

Thinking about Judge Ruby Sondock brings to mind a famous biblical quote. “A woman of valor, who can find? Her worth is far beyond rubies.” Proverbs 31:10. Judge Ruby Sondock is a woman of valor, and her name says it all. She and her life story are valuable far beyond the jewel she is named for.

The story of how Ruby Sondock got to be Lawyer Sondock, Judge Sondock, Justice Sondock, and Mediator Sondock is well known. She was born in 1926, in Houston. After two years in a small women’s college, she married and had two daughters. Many women at that time, married to a successful businessman, would have called it a professional day. Not Ruby Sondock. She entered the University of Houston when her youngest daughter entered kindergarten. She finished college, then went on to the Law Center, not with the goal of working as a lawyer, but to be able to work if the need arose. Imagine the surprise of her (almost all male) classmates when, in 1962, she graduated first in her class and was its valedictorian. She didn’t think she would get a job as a lawyer. Imagine the surprise of all (including herself) when this improbable (read “female”) success story got a job as an associate practicing law with a prominent Houston lawyer.



After seven years of practicing in that firm, Ruby Sondock opened her own office. And then, in 1973, Lawyer Ruby Sondock became Judge Ruby Sondock. She describes her great surprise when she was appointed to the Harris County Domestic Relations Court No. 5. She was so surprised that she thought the appointment was a hoax. She accepted it nonetheless, and in 1977, was appointed to be a State District Court Judge. She was a great judge. Lawyers loved her, even though she regularly delivered constructive criticism in the courtroom, with blunt directness. One did not want to be on the receiving end of a Judge Sondock scolding in a courtroom. It was humbling, but it was never mean or personal.

Another call out of the blue came in 1982, appointing her to the Texas Supreme Court to fill a sudden vacancy. Again, imagine her surprise when she became the first woman to sit on the Texas Supreme Court. But the trial bench remained her calling, and after six months, after the term ended, she went back to Houston and her courtroom. No one dared to oppose her candidacy to be reelected. Six years later, she started her mediation practice. She got business, good business, from a wide variety of clients. She ended that mediation practice some years ago. Gatherings with family and friends, giving good advice and counsel, having good conversations, cooking, playing cards, and attending lots of events, all keep her busy.

Despite the intellect, hard work, and courage demonstrated by Judge Sondock's remarkable career, she's allergic to being called a "pioneer" or "role model." She credits being in the right place and time, to simply being lucky. She says that she doesn't believe her own life story happened to her. We don't mean to quarrel with her, but there's more to this story.

One of us, Steve Selsberg, practiced law with, then mediated before, Justice Sondock. The other, Lee Rosenthal, was a brand-new lawyer who appeared before Judge Sondock, admired her from afar for years, and in the last decade has delighted in being one of Judge Sondock's friends and frequent visitors. Here is our take on some of what makes Judge Sondock "a woman of valor."

Judge Sondock, the Mentor

Ruby Sondock's genuine modesty makes her resist labels like "pioneer" and "role model," but she is justifiably proud of her mentoring skills and successes. She has coached lawyers at all stages of their careers. She has improved how lawyers work with clients and opposing counsel; how lawyers address judges; and how lawyers write and talk. She knows how to be understanding and, when necessary, blunt. She is always willing to devote her time to edit a brief or provide feedback on oral argument.

Judge Sondock mentored Mr. Selsberg when he was part of the law firm where she worked. She still does. Steve reports that in the many briefs he wrote and submitted to Judge Sondock, she would invariably locate the only issue in the case that Steve himself had doubts about and demand an explanation. Judge Sondock was notorious for taking a lengthy brief and drafting a one-paragraph "Summary of Argument" that captured the winning facts and legal argument.

Judge Sondock doesn't just mentor lawyers. She's mentored many a mediator, and many a judge. She has mentored Judge Rosenthal for many years, and still does. She has mentored many judges in how we preside over pretrials and trials, how we write opinions, and how we can earn the respect she enjoyed. Without saying it, she taught us the secret: "be the judge I was."

Judge Sondock, the Worker

Judge Sondock has a tremendous work ethic. It showed when she was in law school, raising a family, and graduating first in her class. It showed when she was in practice reviewing briefs. Even the longest and dullest briefs were returned bleeding red ink (albeit red ink that was challenging to read and understand). Steve Selsberg reports that when he worked with Judge Sondock he received frequent phone calls (landline and cell) from her early in the mornings, and late in the nights, asking him to research an issue or—depending on the year—to fax, email, or hand deliver a case.

Judge Sondock used her work ethic to be careful and thorough. She often spent her weekends in Galveston with her husband, Soupy, who loved to fish. Visitors to her Galveston home would often find her surrounded by pages of deposition transcripts or pages of the trial court record. There would be boxes of briefs. There would be legal pads of notes. She was always preparing—not only for cases she had as a judge, or cases she handled as a lawyer, but also preparing for upcoming mediations. Judge Sondock would often prepare for mediations by asking for additional submissions from the lawyers. She didn't rely on just the mediation memo or select

filings, or the lawyers' versions of what the case was about. She wanted to review for herself the filings and key testimony, the documents, and the cases, so she, not the lawyers working on the case, could decide what they all meant and why they mattered.

Judge Sondock was persistent. She rarely accepted "no" as an answer when she mediated. If a case did not settle during the allotted time, she scheduled follow-up calls. If the case did not settle during the follow-up calls, Judge Sondock asked the lawyers to allow her to speak to the client. If the case did not settle after speaking with a client, Judge Sondock requested another meeting with the client. If the party was an insurance company or corporation, she would ask to speak to the adjuster's client or the person's supervisor. Judge Sondock would continue mediating a case to achieve settlement for weeks, even months. Cases that did not settle were rare. It took a lot to withstand the persuasive force of a Judge Sondock.

Judge Sondock, the Stuff of Legend

Judge Sondock really is a living legend. Steve Selsberg reports that once, when he and Judge Sondock were in the same firm, he met opposing counsel to discuss potential settlement on a large securities fraud case. He wisely took a break to go to Judge Sondock's office to ask her for advice on the best approach. Judge Sondock announced that she was going back into the meeting with him. When they walked into the conference room and opposing counsel saw Judge Sondock, the lawyer literally dropped the entire file and proclaimed that it was simply unfair to have to negotiate with her. The case settled that day.

Judges as well as lawyers held Judge Sondock in the highest regard. When she walked into a courtroom, the presiding judge would often stop whatever proceedings were taking place to announce that he or she was honored to have Judge Sondock in the courtroom. Ruby Sondock may disclaim the labels of pioneer and role model, but she talks the talk and walks the walk, and she can't duck the acclaim.

Judge Sondock, the Friend

Judge Sondock is rarely overtly sentimental. She's too matter of fact for that. But she is invariably kind and generous. The children of countless law clerks and colleagues have received (educational) birthday and holiday gifts. She's quick to offer advice and assistance in pursuit of a just cause or a deserving person. And no one is a more generous friend.

Steve Selsberg recalls that once he canceled a dinner with Judge Sondock because he was suffering from back pain. That same day, a masseuse arrived at his house because Judge Sondock paid her to travel there to do a massage.

And then there is the soup. Judge Sondock makes soup. Both Steve Selsberg and Judge Rosenthal love soup. When Judge Rosenthal had COVID, containers of mushroom soup and lentil soup in containers labeled "From Ruby's Kitchen" were delivered to Judge Rosenthal's home. When Judge Rosenthal had a back issue and was in trial, she got soup delivered to chambers. When Steve Selsberg visits Judge Sondock, she always had his favorite beef and barley soup waiting for him. It's just what she does.

Judge Sondock is the most gracious of hosts. A visit to her home for any meal will find her and her table beautifully coiffed and dressed. The food will be served in courses, on lovely china. Conversation inevitably starts with Judge Sondock wanting to know about us—our families, our work, our travels, and our favorite recipes. Judge Sondock sets high standards for herself, and she doesn't disappoint. She sets high standards for others, and she is quick to praise when those standards are met.

Judge Sondock, the Head of Her Family

Above all, Judge Sondock is devoted to her family. She and Soupy had seventy years of marriage. Judge Sondock would drop everything on her large and crowded plate to help Soupy with whatever he needed. She talks about her children, grandchildren, great grandchildren, sisters, nieces, nephews, and friends with pure pride and joy. She has endured some tough times, but she does not indulge in complaints. She focuses her prodigious energy into loving and celebrating her family and friends.

Judge Sondock, the Woman of Valor

All of these experiences, all of these qualities, make our Judge Ruby Sondock the woman we are exhorted to find. To paraphrase; "a woman of valor, we have found." She is our own Judge Ruby Sondock.



*After graduating from Georgetown University and Washington University in St. Louis, **STEVEN SELSBERG** has practiced law in Houston for 36 years. After clerking for a federal judge and practicing in big law firms for over 25 years, Steve now practices solo.*



LEE H. ROSENTHAL (S.D. Texas), Chief United States District Judge. B.A., University of Chicago, 1974; J.D., University of Chicago Law School, 1977. Private practice, Houston, Texas, 1978-1992; Judge, U.S. District Court, Southern District of Texas, 1992-present; Chief Judge, U.S. District Court, Southern District of Texas, November 2016-present. Judge Rosenthal served on, and then chaired, the Judicial Conference Advisory Committee on the Federal Rules of Civil Procedure, then the Standing Committee on the Rules of Practice and Procedure. She is Vice-President of the American Law Institute and served as an adviser for the Transnational Rules of Civil Procedure Project, the Restatement of Employment Law, the revision to the Model Penal Code on Sexual Assault, and the Restatement on the Conflict of Laws. She is the 2012 recipient of the Lewis F. Powell Jr. Award for Professionalism and Ethics given by American Inns of Court, and is a member of the American Academy of Arts and Sciences.

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Wise Up! The *Wise About Texas* Podcasts



Among his many legal and scholarly accomplishments, Texas Supreme Court Historical Society President Justice Ken Wise is the creator and host of the award-winning Texas history podcast *Wise About Texas*. The podcast takes a scholarly but also entertaining look at Texas history. The 133 episodes explore both well-known and little-known events and the people who shaped Texas history. This sampling of episodes all focus on some of the remarkable Texan women featured in the podcast:



Episode 112: A Texas Mother - Mary Christian Burleson

Mary Christian Burleson, a mom to 7 and stepmom to 12, was a pioneer, a farmer, and a stock raiser. She faced hostile Indians and the tragedy of widowhood. She lost a child but raised, educated and inspired even more. She was a businesswoman and education advocate. Oh, and she founded a town. Learn about a remarkable Texas mom.

Listen: <https://wiseabouttexas.com/ep-112-a-texas-mother-mary-christian-burleson/>



Episode 107: Texans You Should Know - Anna Mebus Martin

She arrived from Germany with very little, not even speaking English. She braved Indian attacks, frontier outlaws and a civil war to become a cattle queen and a bank president. Learn about a great Texas entrepreneur.

Listen: <https://wiseabouttexas.com/ep-107-texans-you-should-know-anna-mebus-martin/>

Episode 96: The All-Woman Supreme Court

In 1925, there were only a few women lawyers in Texas. But women still couldn't serve as jurors and nobody dreamed there would ever be a female judge. Then a real estate lawsuit came to the Texas Supreme Court involving a mutual life insurance company called the Woodmen of the World. At the time, every member of the Supreme Court of Texas was a member of the Woodmen of the World and thus disqualified from hearing the case. That left Governor Pat Neff to appoint judges to sit on the Supreme Court but he couldn't find any that weren't affiliated with the Woodmen. So he turned to Texas women. Hear about the first all-female state Supreme court in American history.

Listen: <https://wiseabouttexas.com/ep-96-the-all-woman-supreme-court/>



Episode 76: The Texas Cattle Queen

Right after the civil war, women weren't really expected (or even thought capable) to be in business. But of course, Texas women proved them wrong. Lizzie Johnson was a school teacher and writer who discovered how lucrative the cattle business could be. So she became a cattle baroness and Austin real estate mogul. Learn more about the Texas Cattle Queen.

Listen: <https://wiseabouttexas.com/ep-76-the-texas-cattle-queen/>

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Fernanda Pirie's *The Rule of Laws: A 4,000-Year Quest to Order the World*

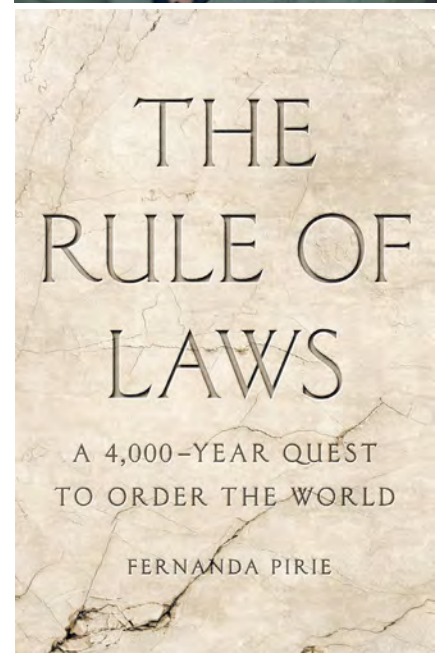
Book review and essay by David A. Furlow

Fernanda Pirie's *The Rule of Laws: A 4,000-Year Quest to Order the World* is the best legal history I've read in nearly a decade—since reading James L. Haley's and the Society's history of the Texas Supreme Court. Beginning in ancient Mesopotamia, India, and China, this book describes the many ways people have used laws to impose order, regulate trade, define social relations, and create civilizations.

The author, Fernanda Pirie, is a Professor of the Anthropology of Law at the Centre for Socio-Legal Studies at the University of Oxford. In addition to *The Rule of Laws*, she has authored *The Anthropology of Law* (Oxford: Oxford University Press, 2013). In addition to her publications, he has conducted fieldwork in the mountains of Ladakh, the grasslands of eastern Tibet, and other parts of the Himalayas to study ways in which ordinary people use law and apply it in their lives. A trial lawyer with a decade's experience practicing as a barrister at the London bar, she lives in Oxford, England.¹

This book resulted from the author's participation in and leadership of the *Oxford Legalism* project. For nearly a decade, from 2009 through 2018, Professor Pirie and a group of colleagues in many different institutions and from many distinct disciplines—including linguistics, classics, archaeology, and history—conducted a colloquy about the nature and practice of law. They presented papers, analyzed case studies, debated, and discussed the nature and history of laws throughout the world. They examined the origin and evolution of Mesopotamian, Hindu, Jewish, Chinese, Roman, Islamic, Rus (early Russian and Slavic), European, and colonial law over the course of millennia. Professor Pirie's colleagues in Oxford University's Centre for Socio-Legal Studies granted her a year-long sabbatical to compose the manuscript that became this book.²

While ancient Hebrews created complicated laws to govern the way they ate, assembled armies, and had sex, other societies



Top: Fernanda Pirie is an Oxford professor of legal anthropology. Wikimedia Commons. Bottom: Fernanda Pirie, *The Rule of Laws: A 4,000-Year Quest to Order the World*, Oxford University Press, 2021, 570 pages

¹ Fernanda Pirie, *The Rule of Laws: A 4,000-Year Quest to Order the World* (Oxford: Oxford University Press, 2021), flyleaf.

² *Ibid.*, 457-59.

functioned without using law at all. “The Old Kingdom of ancient Egypt, the Aztec and Inca Empires in Central and South America, and the kingdoms that flourished in sub-Saharan Africa all maintained order without, as far as archaeologists have been able to discern, creating sets of rules or recording legal judgments as precedents.”³ The lawlessness of ancient civilizations may astound members of the State Bar of Texas’s Trial and Appellate Divisions.

“Kings and governments have used law to cement their power, expand their domains, and discipline their populations,” Professor Pirie observes. “The Mesopotamian laws made liberal references to the death penalty; Chinese emperors used legally sanctioned sentences of penal labour to create an army of state slaves; brahmins supported the political projects of Indian kings; and Muslim caliphs enforced harsh criminal penalties, which they claimed were consistent with the directions of Islamic law.”⁴

The Rule of Laws begins in the beginning, in Mesopotamia, the land between the Rivers Tigris and Euphrates, within the venue later known as the Garden of Eden, in the year 2,112 B.C. In what ought to become the Year Zero for legal historians, an ambitious general, Ur-Namma, elevated himself to power as the god-king of Ur of the Chaldees and the founder of its Third Dynasty. Keenly aware of the insecurity of a kingdom secured by Bronze Age swords, he proudly proclaimed his commitment to providing justice for all: “I did not deliver the orphan to the rich. I did not deliver the widow to the mighty. I did not deliver the man with one shekel to the man with one mina [sixty shekels]. I did not deliver the man with only one sheep to the man with one ox....I eliminated enmity, violence, and cries for justice.”⁵



A Sumerian cylinder-seal depicts King Ur-Namma, enthroned at right, receiving the laws of his kingdom from three goddesses. Photo by Steve Harris, Wikimedia Commons.

³ *Ibid.*, 11, Introduction.

⁴ *Ibid.*, 13, Introduction.

⁵ *Ibid.*, 17, Chapter One, Mesopotamia and the Lands of the Bible.

Whether Ur-Namma was the original law-giver or merely a usurper who followed the past precedent of previous god-kings, his words survive because “in the fertile lands between the Tigris and Euphrates, the dry climate has preserved the earliest relics of any writing, cuneiform script, inscribed on stones and impressed onto clay tablets.”⁶ Professor Pirie devotes twenty-seven pages to marshalling evidence that reveals that the rule of law—the harsh, arbitrary, and grandiloquent laws of Ur-Namma, eye-for-an-eye Hammurabi, and the Hittites, but law nevertheless—began in Mesopotamia and spread into and throughout the Lands of the Bible.⁷

When Professor Pirie discusses Jewish dietary laws in the Pentateuch (the Torah), she finds the order and purpose that eluded the Jewish theologian Maimonides, many biblical scholars, and almost all Bible School students. The Book of Leviticus’s prescriptions and prohibitions reflected a priestly consensus that decreed the contents of an observant Jew’s dining-table by distinguishing between unclean and clean animals:

The cattle, sheep, and goats that provided basic sustenance in the region [of ancient Israel and Judah] were cloven-footed ungulates who chewed the cud, so the priests decided that these qualities should define the class of clean animals. As a result, it included some wild beasts, such as antelopes and wild goats, but not all domesticated animals, most importantly pigs. They declared that fish without scales and fins were abominations, as were four-footed animals that could fly, animals with hands that used them for walking, and anything that swarmed. To their minds, proper animals should walk, fish should swim, and birds should fly. Hopping was close enough to walking, so they declared that grasshoppers, crickets, and some locusts were clean. But swarming was not. Whatever the rationale behind their decisions, the rules were more important for what they symbolized, dividing pure from impure, than the ways from which they might save Jews from unclean food.⁸

By distinguishing what was clean from what was unclean, ancient Israel’s Levite priests engaged in a centuries-long process of religious and ethnic self-identification that “set the Israelites apart from gentiles, as peoples who followed God’s laws. Behind them was a religious vision for a chosen people.”⁹ The Torah and Talmudic traditions distinguished Jewish society from its gentile neighbors in the same way that the Koran and Shariah law later differentiated Islamic society from Christian, Hindu, Buddhist, and Persian neighbors.¹⁰ Just as Professor Pirie’s use of the Oxford comma, a rule many scholars view as a law, distinguishes her and other Oxfordians from Philistines whose prosperity depends on the sales-racks of airport convenience-stores.

Chapter Two, Indian Brahmins: The Order of the Cosmos, explores another civilization that inextricably interwove religion and law. Professor Pirie describes how an anonymous Hindu scholar assumed the identity of Manu, the Creator-God’s son, to deliver a law code governing all aspects of life in a text consisting of 2,964 two-line verses. Manu’s *Dharmastrastra* offered divine

⁶ *Ibid.*, 18.

⁷ *Ibid.*, 17-44.

⁸ *Ibid.*, 7, Introduction.

⁹ *Ibid.*

¹⁰ *Ibid.*, 175-234, 358, 368, 370, 375-76, 378, 384-86.

guidance for every stage of the ruling brahmin's life, which it defined through duties rather than rights. The *Dharmastra*'s rules for the royal *kshatriya* class told kings how to judge cases in court, how to punish crimes, and what legal procedures to use.¹¹ The ancient Hindu text came to govern adversary proceedings in formal Hindu courts, in cases where Hindu scholars recorded judgments in parchment, palm leaves, and copper plates, then authored authoritative commentaries on laws that governed some of the world's most populous cities and rural districts.¹² Those ancient law codes and commentaries reflect the vibrant, millennia-old Indian civilization that continues to shape and reshape the legal culture of an increasingly high-tech nation on the verge of becoming the world's most populous country.

The Rule of Laws' third chapter chronicles the legal history of a neighboring civilization based on a radically different understanding of law: China, where law has been an instrument of state power and control for more than three thousand years, dating back to the Shang Dynasty in 1,600 B.C.¹³ Chinese emperors, beginning with the first emperor Qin Shi Huang Ch'in, refused to allow a religious priesthood to mitigate their imperial power to regulate society through discipline, punishment, and broad case-by-case discretion to administer justice. When Confucian reformers challenged the emerging Qin empire's legal system circa 221 B.C., Emperor Qin Shi Huang Ch'in burned their texts and buried Confucian scholars alive. As a result, China's emperors "successfully avoided becoming, themselves, subject to the rule of law." Chinese emperors created a centralized, bureaucratic state exemplified by the tightly-ordered rows of terra cotta warriors buried en masse around the first emperor's tomb—an eternal Nuremberg Rally underground. Today the Communist Party of the People's Republic of China is implementing the world's most comprehensive set of social controls that continues the totalitarian impulses of China's millennia-long legal traditions.¹⁴



Terra Cotta Totalitarianism. Photo of the Terra Cotta Warriors, in 2018, next to the First Emperor's tomb, Xian, China. Photo by David A. Furlow.

¹¹ *Ibid.*, 45-70 at 54-55.

¹² *Ibid.*, 56-57.

¹³ *Ibid.*, 71-96.

¹⁴ *Ibid.*, 71-72.

Turning to the Roman legal system that undergirds Western civilization, Professor Pirie demonstrates the wisdom of Shakespeare's line "What's past is prologue..." in *The Tempest*.¹⁵ The book's fourth chapter focuses on "Advocates and Jurists: Intellectual Pursuits in Ancient Rome." Pirie describes how Roman lawyers and magistrates made the promise of law for all of the people a reality—while noting a second century Roman historian's observation that "it is more difficult to govern a province than to acquire one, for they are conquered by force, but they must be retained by law." By the sixth century A.D., the Byzantine Emperor Justinian was so confident of his knowledge of Roman legal history that he declared that his *Corpus Iuris Civilis* would bring both law and order to what was then left of the Roman Empire with a set of laws that would be valid for all time. I know of no one else who has successfully summarized twelve centuries of Roman jurisprudence—in both the Republic and the Empire—in a mere twenty-six pages.¹⁶

Pirie's fifth and tenth chapters, "European Kings: Courts and Customs after the Fall of Rome" and "Courts and Customs in the European Middle Ages," show how medieval kings combined Germanic law with the legacy of Roman jurisprudence to serve as a new foundation for the development of medieval and modern European law.¹⁷ When Spanish kings Ferdinand III and Alfonso X drew upon Visigothic and Roman sources, Spanish statutes, and royal decrees to promulgate the *Sietes Partidas*, or "Seven Parts of the Law," they published an evolving legal code that made its way to Texas with sixteenth century Castilian conquistadors. *The Rule of Laws* shows how similar initiatives to advance the rule of law by cobbling together post-Roman codes of law and procedure took place in medieval Italy, England, Germany, and Holland.¹⁸



Fifteenth century Dutch courtroom scene, with a magistrate in the middle, court personnel to the left and right, and contending parties at extreme left and right, on display at the Lakenhal museum in Leiden, Holland. Photo by David A. Furlow.

¹⁵ William Shakespeare, *The Tempest*, Act II, Scene 1, the character Anthony's line. Shakespeare's words now appear at the entrance to the U.S. National Archives building in Washington, D.C.

¹⁶ Pirie, *Rule of Laws*, 97-122 at 121.

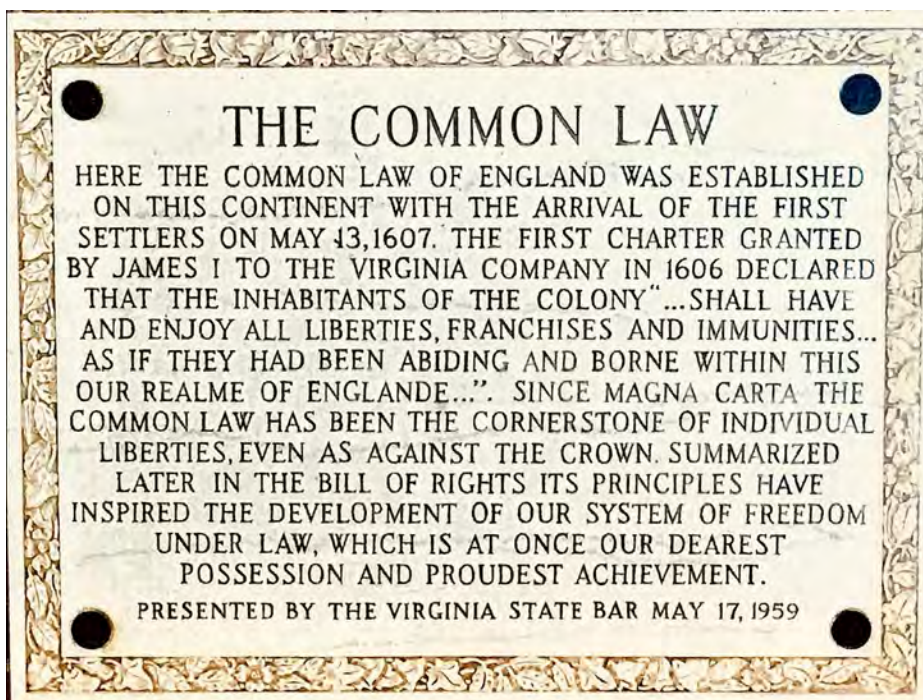
¹⁷ *Ibid.*, 147-171 (Chapter Five) and 261-85 (Chapter Ten).

¹⁸ *Ibid.*, 163-64, 262-66, 317, 341, 364.

Professor Pirie then turns west to show how Spanish caravels, Dutch *fluyts*, and English galleons brought the law codes and legal systems of their homelands across the Atlantic Ocean to their colonies in the Western Hemisphere. Chapter 12, “From Kings to Empires: The Rise of Europe and America,” and Chapter 13, “Colonialism: Exporting the Law,” transports the accumulated wisdom and experience of Europe’s lawmakers across the Atlantic, Pacific, and Indian Oceans. Colorful anecdotes and insightful analysis bring these stories to life. Specialized branches of the law, such as the *Lex Mercatoria* (the “Law of Merchants”), arose and spread as English Common Law became more common through successful colonialism.¹⁹ Yet critics of the Common Law gained adherents. As support for Napoleonic-style statutory codifications spread through the Continent, English social reformer Jeremy Bentham sent a letter to America’s fourth president, James Monroe, asking the American to free the young United States from “the yoke” of Common Law “which remains about your necks.”²⁰ President Monroe stuck with English Common Law, despite its critics, resulting in a republic governed by common law, statutory codes, and a written constitution.

Professor Pirie argues that “[l]aw is a deceptively simple way of ordering the world” and then proves precisely how that has occurred, in society after society, century after century, from the reign of the ambitious god-king Ur-Namma in Mesopotamia four thousand years ago to the

far more mundane legislators, judges, and presidents who shape, interpret, enforce the laws that shape and reshape our lives and times. Beginning with rules governing murder, rape, theft, injury-compensation, inheritance, debt, and regulation of marriage, lawmakers of every kind, creed, and color have formulated a wide variety of competing, conflicting rules to govern every aspect of our modern world, including international agreements governing human rights, soccer, and Olympic competition—for ill and for good. I strongly recommend *The Rule of Laws* as a masterful summary of the history of law, and of laws, on a global scale.



A 1959 Virginia State Bar celebration of the virtues of English Common Law hangs on the wall of Jamestown’s church, where Virginia’s lawmakers began meeting to enact new laws in 1619.
Photo by David A. Furlow

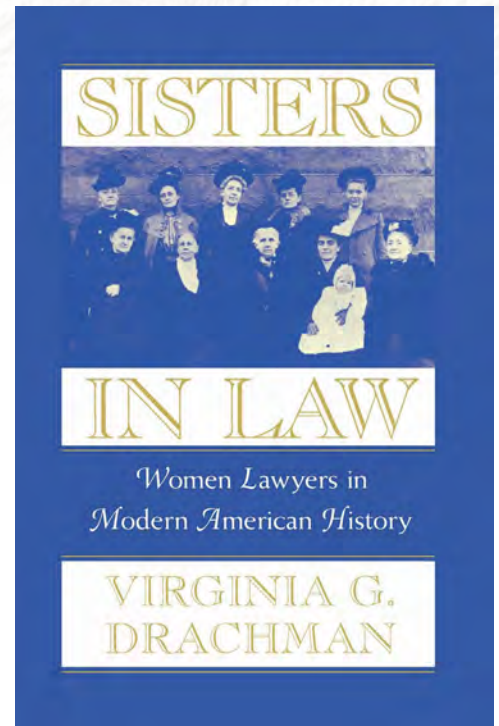
¹⁹ *Ibid.*, 325-33.

²⁰ *Ibid.*, 333.

Book Review — *Sisters in Law: Women Lawyers in Modern History*

By Hon. John G. Browning

Although it was originally published more than twenty years ago, Virginia Drachman's *Sisters in Law: Women Lawyers in Modern American History* remains the go-to authoritative legal history of women in the profession. Charting a path from the first female lawyers in the United States in the 1860s (such as Myra Bradwell of Illinois) to the point of modest professional success and inroads by the 1930s, Drachman's work is still a powerful chronicle of discrimination, begrudging integration, and an ongoing battle for equality and autonomy—in the legal profession and in society as a whole. Aware of the jarring effect of sexist newspaper and magazine headlines of the late nineteenth and early twentieth centuries trumpeting the novelty of a “woman lawyer,” Drachman has chosen them as chapter titles. Here, the patronizing nature of headings like “Sweeter Manners, Purer Laws” and “Girl Lawyer Has Small Chance of Success” signal a contrast between the attitudes of the times and the inspiring achievements of the women in the narrative.



Sisters in Law: Women Lawyers in Modern American History, by Virginia G. Drachman (Harvard University Press, 2001), 334 pages

Drachman's work effortlessly weaves the individual stories of legal trailblazers like Myra Bradwell and Belva Lockwood into the larger struggle of the fight for women's suffrage. She deftly shows the similarities between the rationale for accepting women as lawyers and for extending the right to vote to them. Drachman's book shows how Victorian mores and societal expectations for women to devote themselves to more “nurturing” roles in the workplace (if they had to leave home and hearth, that is) like nursing or teaching had an impact on their legal employment opportunities. Female attorneys were expected to gravitate to family law practice rather than contend in the “male domain” of business law and litigation. For example, Charlotte E. Ray, an 1872 graduate of Howard Law and the first Black woman lawyer, was widely regarded in D.C. legal circles as an expert on corporate entities—but her only known legal work was in the family courts.

Beyond the individual stories, Drachman describes the obstacles that women of this period had to confront when it came to the gender discrimination in the institutions of the legal system: in courts, bar associations, law firms, law schools, and legislatures. Of particular interest is the story of the rise of all-female law schools like Boston's Portia Law School (now subsumed by

Northeastern University). Founded in 1908 as the first all-women's law school, Portia was the brainchild of Arthur MacLean. He believed that "women would make excellent real estate lawyers because of their special attention to detail," and that their "unique capacity to understand women's needs" ideally suited them for divorce law. By 1929, nearly a third of all female law students in the country were enrolled at Portia, yet as more and more schools opened their doors to women by the late 1930s, Portia's days as an all-female school were numbered.

Another strength of Drachman's outstanding work is its rich mix of research material. Drachman goes beyond the expected court records and legislative sources and draws upon manuscripts, contemporary newspapers, institutional archives, and studies of the profession. And no detail is too small for Drachman's studied eye. One example is the quandary of courtroom attire (echoes of which remain today, as women lawyers still confront criticism for their clothing choices that their male counterparts manage to evade). In the 1880s, ladies customarily wore bonnets in public places like courtrooms, but male lawyers always removed their hats when addressing the court. Female attorneys had to decide between the expectations associated with their gender and those associated with their profession.

Sisters in Law fills a void in the scholarship of the legal profession generally, and of women lawyers in particular. And while many of the examples of the casual sexism that female attorneys of the time chronicled by Virginia Drachman may seem cringeworthy and remote to us today, remember that it wasn't that long ago that female law graduates routinely encountered the kind of attitudes that Sandra Day O'Connor experienced. After graduating at the top of her class at Stanford Law School, the future Supreme Court justice was offered a job at a law firm—as a secretary (she would later take an initially unpaid position as a deputy county attorney). *Sisters in Law* reminds us of how far women have come in the legal profession, even as the need for continued progress remains.

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Reconnecting with Long-Time Friends: The 2022 Hemphill Dinner

By David A. Furlow

Our Society returned to its pre-Covid roots, and reconnected its members with one another, at the 27th Annual Chief Justice John Hemphill Dinner at the Four Seasons Hotel on September 8. The evening opened, as recent Hemphill Dinners have done, with the Bedichek Junior Marine Corps Color Guard bringing an American flag and a Texas flag to the front of the Society's Four Seasons ballroom for the annual presentation of colors. Immediate Past President Thomas "Tom" S. Leatherbury led the Society's members in the pledge of allegiance.

This year all nine justices of the Texas Supreme Court attended the dinner, as well as former Chief Justice Wallace Jefferson, former Justices Craig Enoch, Paul Green, Eva Guzman, Priscilla Richman (now a Judge of the Fifth Circuit), Dale Wainwright, and Don Willett (now a Judge of the Fifth Circuit). Hundreds of Texas's best appellate attorneys joined the judges and justices to break bread together and renew friendships at the best appellate event of the year.

The 2022 Jack Pope Professionalism Award goes to Lynne Liberato

A mainstay of each Hemphill Dinner is the Texas Center for Legal Ethics' presentation of the Chief Justice Jack Pope Professionalism Award. The Center confers the award on the judge or attorney who best personifies the highest standards of professionalism and integrity in appellate law. This year, Jonathan E. Smaby, the Center's Executive Director, described the Jack Pope Professionalism Award, while Chief Justice Nathan Hecht presented it to former Society President Lynne Liberato. Jonathan Smaby began by describing the award.

"For fourteen years, the Pope Award has honored an appellate judge or appellate lawyer who represents the highest standards of integrity and civility, following the example set by Chief Justice Pope.

"This award is not about accomplishments—though all Pope Award honorees have been quite accomplished. And there's a number of them here tonight.

"Rather, it is about the manner in which these colleagues conducted themselves, both professionally and personally, while reaching the heights of our profession. Their civility and their integrity sets an example that we all can follow.

"I read all of the nomination letters for the Pope Award—and I am always inspired by the nomination letters that we receive—they are always a glowing review of a person's character. It's always very inspiring to me as an attorney. I know you will be inspired by this year's honoree as well—a very special honoree, indeed. I will now call on the Chief Justice to make the presentation."



Chief Justice Hecht describes how Lynne Liberato came to win the 2022 Jack Pope Professionalism Award. Photo by Mark Matson.

Chief Justice Nathan Hecht spoke next. He described the reasons this year's award was going to Lynne Liberato.

"Everyone knows Lynne Liberato. Everyone admires Lynne. Those two things are connected. I don't see how you could have practiced very long in Texas without knowing her many contributions to our profession. She served as President of the State Bar of Texas. Was the first woman to serve as President of the Houston Bar Association. She entered the practice just as the idea of a specialized appellate practice was emerging and she was among its first promoters. Not only was she a pioneer—she was good at it. Just watching her argue a case you could see why an appellate bar was such a good idea. Over the years, she's argued a bunch of cases.

"She's written extensively on the law. The articles that she and Judge David Hittner have written over the years, since 1989, have been cited a gazillion times. I'd be more definite than that but I just can't be—it's a number beyond counting. Look it up on Westlaw. And *why*? Because they know whereof they speak and have presented the subject clearly and thoroughly.

"What you may not know, but I'm sure you'd expect from a person like Lynne, is that she has been dedicated not only to the improvement of the Bar but her community as well. She chaired the Board of the United Way in Greater Houston, chaired its community campaigns, and received its Volunteer of the Year. She received the Karen H. Sussman ADL Jurisprudence Award. She participated on the Annual 59th Security Forum of the Air Force War College. I could go on and on.



Jonathan E. Smaby, Executive Director, Texas Center for Legal Ethics (left), presented Lynne Liberato (second to right) with the TCLE 2022 Jack Pope Professionalism Award. TCLE Executive Director Jonathan E. Smaby, TCLE Trustee Judge Audrey Moorehead, TCLE Board Chair Dr. Lucía Durá; Lynne Liberato, and TCLE Chair-Elect Marie Jamison. Photo by Mark Matson.

“My point is that she’s given back. Actually, she’s been an example of giving back. And for her service to the community and the profession we admire her.

“But another reason she’s received the Pope Award tonight—is because she’s so very *nice*. As I was writing this speech, I thought, she may be the nicest person who’s ever received the award...She certainly fits well in the group.”

“And though you cannot help notice how nice Lynne is, you also see just as clearly the thoughtfulness, the firmness, the dedication she brings to everything she does. Professionalism, by which we here mean adherence to the values expressed in the Texas Lawyer’s Creed, in our ethical canons, and our commitment to civility in the practice, is not always easy and harder these days as our divided society is distinctly un-civil. But Lynne Liberato has done it, and helps inspire us. In nominating her, Kevin Dubose wrote that ‘when he and Lynne have been on the opposite sides of contentious cases, in warring camps, Lynne always treated me with warmth, generosity, and respect, in other words, like a friend, not an enemy.’

“The Chief Justice Jack Pope Professionalism Award is presented each year by the Texas Center for Legal Ethics to the Texas appellate lawyer or judge who epitomizes the highest level of professionalism and integrity. Lynne Liberato brings honor to that award.”



Warren Harris, a former President of the Society (left), shared news about the *Taming Texas* program with Keynote Speaker Greg Stohr (center) and Texas Supreme Court Justice John Devine (right).
Photo by David Furlow.

The Fellows move forward with the *Taming Texas* educational project

Warren Harris discussed the Society Fellows' *Taming Texas* program that has funded the publication of three textbooks, and the development of a fourth, for use by 7th Grade Texas History students. Those volumes chronicle the history of the Rule of Law and of the Texas judiciary. During the past seven years, lawyers and judges serving as volunteers have taught 21,000 students about the Rule of Law and the Texas judiciary in Society-sponsored classes in Houston and Dallas. Plans are underway now to begin the next round of *Taming Texas* classes in Texas schools.

The President's Award goes to Judge John Browning

Every Hemphill Dinner offers the Society's Immediate Past President an opportunity to summarize the year's events and initiatives. "I had the pleasure this year of introducing our panel for the Texas State Historical Association's Annual Meeting," Tom Leatherbury announced. "The panel featured the Hon. Carolyn Wright-Sanders, former Chief Justice of the Texas Fifth District Court of Appeals in Dallas, and the Hon. John G. Browning, who is also the Editor-in-Chief of the Society's Journal. The panel, entitled "*We Stand on Their Shoulders: The Lives and Legacies of Texas' Earliest Black Lawyers*," explored the lives of William A. Price, Texas' first black lawyer, and civil rights lawyer John N. Johnson. David Furlow was the commentator for the panel."

"The TSHA Annual Meeting is also the venue for awarding the *Larry McNeill Research Fellowship in Texas Legal History*. The fellowship is named for Society past president Larry McNeill and provides a \$2,500 fellowship to an applicant whose work fosters academic research in Texas legal history. This year's recipient was Daniel Olds for his research on the history and development of the common law in Texas and, as Olds puts it, "how statutes came to rule."

"This year our award-winning *Journal* continued its tradition of excellence with issues that focused on the complicated legal history of Native Americans in Texas, the contributions made by Native American lawyers and judges, important civil rights cases in Texas, and Asian-American legal history. One of the projects of the Society is the *Taming Texas* series of books aimed at educating middle school students about the history and workings of the Texas court system. The Houston Bar Association will once again be using the *Taming Texas* books in its program to send volunteer lawyers and judges into Houston-area schools in the coming school year. And we look forward to adding a fourth book to the series soon: Marilyn Duncan's and Jim Haley's *Taming Texas: Women in Texas Law*. The *Taming Texas* series is just one of the publications projects that the Society has undertaken.

"I'd like to take a moment to recognize the recent passing of Randolph B. 'Mike' Campbell, the editor of the Society's first book *The Slave Laws of Texas*. This excellent work of scholarship set a benchmark for the Society's publishing program, and we are indebted to Mike Campbell for his service to the Society and contribution to legal scholarship."

"It has been a great honor to represent the Society and our talented Board of Trustees in furthering the Society's mission," President Leatherbury concluded. "There are more people to thank than I have space or time to cover. We could do nothing without our talented and hard-working staff, Sharon Sandle and Mary Sue Miller. And we are incredibly fortunate beyond belief that Karen Patton, Kevin Carlsen, and David Kroll apply their talents and skills to this award-winning *Journal*. To all our Committee Chairs, I also give my greatest thanks for your diligence, hard work, and determination to get the work, especially the non-glamorous work, of the Society done. It is going to be a pleasure to stay on the Board and to hand the President's pen to the Hon. Ken Wise. I know he and the other officers and Trustees will keep pushing us forward and making us better."

Tom Leatherbury is entitled to recognize the person who has contributed most to the Society during the previous year. This year, Tom Leatherbury conferred the annual award on Judge John Browning, Editor-in-Chief of the *Journal of the Texas Supreme Court Historical Society*. "One of the privileges I have as President of the Society is selecting the recipient of the President's Award. This year I'd like to recognize a trustee who is tireless in his work for the Society. In addition to serving as the Editor-in-Chief of the Society's *Journal*, the Hon. John Browning has also written numerous articles, news items, and book reviews for the *Journal*. And as I mentioned earlier, he was a panelist at our Texas State Historical Association Annual Meeting this year. This is just one of many awards that John Browning—*who I don't think sleeps*—has received for his excellence as a lawyer and as a scholar. This year we're honoring him with the President's Award for his service to the Society."



Left: Judge John Browning hold his President's Award at the Hemphill Dinner. Right: Former Society President Lynne Liberato and her husband James Flodine enjoyed a fine evening at the Hemphill Dinner. Photos by David Furlow.

University of Texas Professor Lisa Eskow interviewed Keynote Speaker Greg Stohr

Tom Leatherbury introduced our Keynote Speaker, Greg Stohr, to offer a press perspective on the U.S. Supreme Court during a period of transition. Mr. Stohr has gained a special expertise about the Court while working for the *Bloomberg News* network since 1998. A winner of the New York Press Club Spot News Award for his coverage of the landmark 2000 *Bush v. Gore* Supreme Court decision and a recipient of the Society of American Business Editors and Writers Breaking News Award for the court's 2012 *Obamacare* decision. His book, *A Black and White Case: How Affirmative Action Survived Its Greatest Legal Challenge*, offered an in-depth exploration of the Supreme Court's disposition of the *University of Michigan v. Gruter* affirmative action and law school admissions cases in 2003. A 1995 graduate of Harvard Law School, he has taught Constitutional Law and the Supreme Court as an adjunct professor at George Washington University Law School.

Tom Leatherbury chose Lisa Eskow, Co-Director of the University of Texas Law School's Supreme Court Clinic, to conduct a dialogue with Greg Stohr. She joined the university's law faculty in 2014 after working eighteen years as an appellate specialist. Named 2018 Professor of the Year for Legal Writing by the Student Bar Association and 2016 Professor of the Year by the Women's Law Caucus, Ms. Eskow taught first-year classes and upper-level electives. Ms. Eskow clerked

for the Hon. Pamela A. Rymer on the United States Court of Appeals for the Ninth Circuit after graduating from Stanford Law School. A fourteen-time *Texas Monthly Super Lawyer*, Ms. Eskow argued in the U.S. Supreme Court, Texas Supreme Court, and federal and state courts of appeals nationwide. Prior to practicing at Weil, Ms. Eskow served as Deputy Solicitor General for the State of Texas, specializing in constitutional and sovereign-immunity issues.



Bloomberg News network reporter Greg Stohr discussed the U.S. Supreme Court in a dialogue with University of Texas Law School Professor Lisa Eskow. Photos by Mark Matson.

In response to Lisa Eskow’s questions about his role as “an intermediary between the Justices and the public,” Greg Stohr said that “I think of myself as a beat reporter who covers the Supreme Court. I’m one of about twenty-five people who has permanent Supreme Court credentials. And I try to treat that very seriously. It’s an honor to have that. The core of my job, the most important thing I do, is being able to convey, as quickly as I can, as soon as the Court does something, what they’ve done, and why that matters. That usually involves a lot of brief-reading in advance, trying to figure out the things the Court can do in a particular case, it means thinking about the context of a ruling...and trying to convey the scale of it.”

Lisa Eskow and Greg Stohr discussed the Court’s most recent term, the ways he gets to know the Justices, and the role that the Covid epidemic impeded reporters’ ability to get to know the Justices personally. Lisa Eskow and Greg Stohr described the leaked-opinion controversy, the Court’s increasingly active shadow-docket, the future of affirmative action litigation, and the ways journalistic writing about the Court’s opinions are accelerating in response to the needs of a fast-paced, competitive news market.

“My job, in part, is to understand everything that I can about the Court,” Greg Stohr observed, “and that includes the people who are on it...You have a conversation...Different justices are different...Some justices do this publicly, they will talk about the things they’ve written...You get a sense of the inner personal dynamics on the Court. You get a sense of who they’re close to, who they like, who they work with. And you just get to know them as people a little bit.”



Justice Jane Bland congratulated Chief Justice Hecht on a new honor and swore in new President Justice Ken Wise. Photo by Mark Matson.



AMERICAN ACADEMY
OF ARTS & SCIENCES

The American Academy of Arts and Sciences inducts Chief Justice Hecht

During her time at the microphone to swear in new President Ken Wise, Justice Jane Bland shared news known to few Society members. “Before I swear in my colleague,” Judge Bland announced, “I have a brief announcement...”

“Founded in 1780, the American Academy of Arts and Sciences convenes leaders from every field of human endeavor to advance the interests, honor, dignity, and happiness of a free, independent, and virtuous people in service of the public good. It was founded by John Adams and John Hancock and other scholar patriots way back when. And given its mission, a remarkably few number of Texans have been included in its ranks. And most of them have been scientists of the Nobel Laureate variety.

“But this weekend, they are inducting a humble state court judge into their ranks—Chief Justice Nathan Hecht.”

Prolonged applause ensued. “His nimble and innovative leadership of state courts in Texas and throughout our country could not go unnoticed,” Justice Bland continued. “Congratulations to Chief Justice Hecht, to his lovely wife Chief Judge Richmond. Have a great time in Cambridge. Show them what we’re made of. You’re a credit to Texans, and in particular to Texas lawyers. We’re very proud of you.”



The Society's Immediate Past President Tom Leatherbury (right) congratulates new President Justice Ken Wise. Photo by Mark Matson.

Welcoming new President Justice Ken Wise

Justice Jane Bland swore into office the Society's 2022-2023 President, the Hon. Ken Wise, Justice of the Texas Court of Appeals for the Fourteenth District, founder of the *Wise about Texas* podcast, and a professor of history at Houston Christian University (until September 21, 2022, Houston Baptist University).

"Sometimes a name says it all and other times you try to live it down—mine." *Laughter erupted.* "Tonight we swear in a wise man who has made so many contributions to Texas history. And it's just so fitting to take over the leadership of this Society that we've been so fortunate to have in Tom Leatherbury. We've just had great leadership for decades in this Society. And so here's a very wise man, and in particular, he's wise about Texas. It's my honor to swear him in."

Justice Ken Wise announced the *2022 Texas Appellate Hall of Fame Inductees*. The Texas Appellate Hall of Fame recognizes distinguished judges, attorneys, and court personnel who have made unique contributions to the practice of appellate law in Texas. The State Bar Appellate Section and the Texas Supreme Court Historical Society jointly confer the award to attorneys, judges, and court personnel no longer living. Inductees are selected based on their written and oral appellate advocacy, professionalism, faithful service to citizens of Texas, mentorship of appellate attorneys, pro bono service, and other indicia of excellence in appellate practice.¹

¹ State Bar of Texas Appellate Section, *Texas Appellate Hall of Fame* website, <https://tex-app.org/TexasAppellateHall-ofFame/>, accessed Sept. 26, 2022.



THE TEXAS
SUPREME COURT
HISTORICAL SOCIETY

TWENTY - SEVENTH ANNUAL

JOHN HEMPHILL DINNER



2022 Texas Appellate Hall of Fame Inductees



Hon. David L. Bridges



Hon. Henry E. Doyle



Sharon Freytag

Annual Appellate Hall of Fame announcements are an important part of every Hemphill Dinner.

This year the Society and the State Bar posthumously saluted the lives of three outstanding Texas jurists—the Hon. David L. Bridges, the Hon. Henry E. Doyle, and appellate superstar attorney Sharon Freytag—by announcing their election to the Texas Appellate Hall of Fame during the Hemphill Dinner. Justice David Bridges was a member of the Fifth District Court of Appeals at Dallas, on which he served with distinction for nearly a quarter of a century. Nominated by both current and former colleagues on the court, as well as several sitting federal judges, Justice Bridges authored more than 2,000 opinions as one of the court’s longest-serving justices. A graduate of the Texas Tech University School of Law, Justice Bridges served as First Assistant in Charge of Litigation for the State Bar of Texas and an assistant district attorney, as well as working as an electrician in the U.S. Army, a petroleum landman, and a bull rider.²

The Hon. Henry E. Doyle—Justice Doyle was a giant in the law. Not only was he the first Black law student to enroll at a state law school in Texas, he was the state’s first Black law school graduate. He was a classmate of Heman Sweatt’s and was mentioned in the eventual landmark U.S. Supreme Court opinion that desegregated law schools across the country, *Sweatt v. Painter*, 339 U.S. 629, 633 (1950). Doyle was the first graduate of what would become the Thurgood Marshall School of Law. Five years after being licensed, Justice Doyle was one of the founders in 1955 of the Houston Lawyers Association (now an affiliate chapter of the National Bar Association), the only local bar alternative for Black lawyers in Houston who were prevented from joining the Houston

² Dylan O. Drummond, Chair, Appellate Section of the State Bar of Texas, and the Hon. Ken Wise, Texas Court of Appeals for the Fourteenth District at Houston, President of the Texas Supreme Court Historical Society, *Appellate Hall of Fame 2022 Press Release* (July 19, 2022), <https://www.tex-app.org/Uploads/2022%20Texas%20Appellate%20Hall%20of%20Fame%20Press%20Release.pdf>, accessed Sept. 26, 2022.

Bar Association at the time. In 1978, he became the first Black appellate justice in Texas history when he was appointed to the First District Court of Appeals in Houston where he served with distinction until his retirement in 1984. He now achieves one final well-deserved “first”—becoming the first Black honoree in the Texas Appellate Hall of Fame.³

Sharon Freytag was a legendary appellate lawyer. After graduating with honors from SMU Dedman School of Law and serving as the Editor in Chief of the SMU Law Review, she clerked for U.S. Court of Appeals for the Fifth Circuit Judge Patrick E. Higginbotham. In 1983, she began her long and distinguished career with the law firm of Haynes & Boone LLP, where she cofounded its appellate practice group. Later, she not only played a role in founding the American Bar Association’s Council of Appellate Lawyers—the only national bench bar organization—she served as its president as well. She went on to serve on both the Board of Directors and Executive Committee of the State Bar of Texas.⁴



The Society’s Administrator Mary Sue Miller, left, her husband Tom Miller, center, and *Journal* Managing Editor Karen Patton, right, made the dinner possible. Photo by David Furlow.

Former President Tom Leatherbury and current President Judge Wise thanked Todd Smith for his work making this Hemphill Dinner a success and a great time for friends and colleagues to reconnect. Next year’s Hemphill Dinner will occur on Friday, September 8, 2023.

³ *Ibid.* See also Hon. Murry B. Cohen, “A Personal Remembrance of the Unforgettable Justice Henry Doyle,” *Journal of the Texas Supreme Court Historical Society*, 7, 4 (Summer 2018): 34-37,

⁴ Drummond and Wise, *Appellate Hall of Fame 2022 Press Release*.

A Global Force for the Rule of Law: The Center for American and International Law Celebrates its 75th Anniversary

By Karla P. Lárraga

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The Center for American and International Law building in Plano.
Photo courtesy of the Center for American and International Law

The Center for American and International Law (CAIL) is discreetly located on an unassuming street in the heart of Plano, Texas. Few may be aware that the building, emblazoned with the scales of justice and anchored by an impressive Jeffersonian dome, houses a nonprofit organization that has spent 75 years working to advance the quality of justice and promote the rule of law in the United States and around the world.

Over its 75-year history, CAIL has worked with legal and law enforcement professionals around the world with the vision of establishing fair and just legal systems at home and abroad. However, how did CAIL do it? What impact has it had?

A Rich Tradition: Revisiting CAIL's History

Robert G. Storey was a prominent Texas lawyer who joined the military after World War II broke out. Near the war's end, while the U.S.S.R. remained an American ally, the U.S. Army sent Storey to observe prosecutions of alleged German collaborators after the Soviet Army began occupying Eastern Europe; in that role, he watched what proved to be Stalinist show trials. Soon after, following Germany's defeat, Storey served as executive trial counsel to Justice Robert H. Jackson in the Allied prosecution of the highest-ranking Nazis during the first Nuremberg Tribunal trial.



Clockwise from upper left: Robert G. Storey; Executive trial counsel Storey presenting evidence at the International Military Tribunal trial at Nuremberg; Justice Robert H. Jackson

Having become an expert on the nature of the Nazi regime and witnessed the brazen display of injustice in the guise of law by Soviet forces, Storey felt compelled to establish an organization that would champion the rule of law over arbitrary power, or what some may call *“the rule of the fist.”* Storey envisioned the establishment of *“a ‘clearinghouse’ for legal problems, a forum where lawyers, judges, interested laymen, public officials, professors, and students may coordinate their efforts for the improvement of the law and the administration of justice.”*¹

In 1947, having returned to Dallas from Europe, Storey established the Southwestern Legal Foundation (now CAIL), the country’s first legal center of its kind. Storey was a big proponent of the *“legal center movement”* and hoped that the Southwestern Legal Foundation would be the first of many such centers located throughout the country and around the world.

To date, CAIL’s scope has expanded to include five institutes that have established internationally recognized forums and programs addressing criminal justice, law enforcement administration, energy law, international and comparative law, transnational arbitration, law and technology, and other relevant topics.

In addition, CAIL has benefited from the leadership and experience of many great lawyers—often leaders of the Texas Bar—including terms as chair of its board by Leon Jaworski, the Hon.

¹ *Southwestern Legal Center: Plans Announced to Establish It At Dallas Source*, American Bar Association Journal, Vol. 34, No. 2, pp. 121-123 (February 1948), <https://www.jstor.org/stable/25716302>.

Patrick Higginbotham, David Beck, and Harriet Miers, among others. In 2020, CAIL adopted a strategic plan with the objective of creating a more dynamic, diverse, and cohesive organization. As a nonpartisan organization, CAIL refrains from political stances but strives to inspire and connect champions of the rule of law across borders and disciplinary lines: prosecutors and public defenders, academics and practitioners, advocates and arbitrators, police officers and criminal defense lawyers, in the U.S. and around the world.

Advancing the Rule of Law: Measuring CAIL's Impact

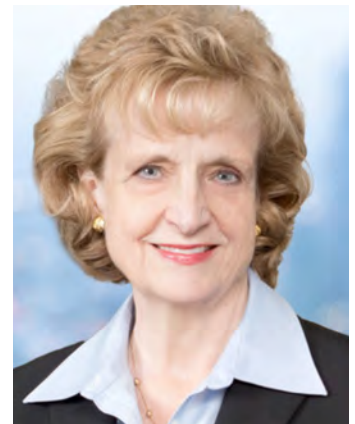
Today, the impact of CAIL goes beyond the tens of thousands of lawyers and law enforcement officers from all fifty states and 130 countries that have participated in its programs. The broader communities whose lives are impacted by the new knowledge participants put into practice are another intangible way to gauge CAIL's impact.

For more than half a century, attorneys from developing countries have attended programs in Texas—for the past twenty years, at CAIL's education center in Plano—to connect with one another and learn how upholding the rule of law can improve both their countries' economic development and their protection of fundamental rights. Alumni of these programs have risen to high ranks in judiciaries and government ministries, in international legal organizations and NGOs, and in their legal professions at home. The impact on participating lawyers has been transformative and provided a foundation that creates leaders within the international community.

Additionally, CAIL serves as a venue for training law enforcement professionals in ethics, diversity, leadership, and communication. The focus on advancing the rule of law includes criminal justice education, such as programs on Actual Innocence that illuminate systemic problems in the justice system with audiences that include judges, prosecutors, defense lawyers, and law enforcement officials. Other educational programs address the complexities of capital murder cases and ensure that prosecutors and defense counsel are well prepared for their respective roles in criminal litigation with the very highest of stakes.

The impact of CAIL's programs is directly felt when:

- *public confidence in policing is restored in communities with law enforcement agencies that have provided their officers with tools for effective leadership and ethical decision making;*
- *wrongful convictions are prevented by defense lawyers and prosecutors who are more aware of the sometimes esoteric or*



Top to bottom: Leon Jaworski; Hon. Patrick Higginbotham; David Beck; Harriet Miers

subtle pitfalls that can derail the pursuit of actual justice;

- *advocates are current on the law, practiced in their advocacy skills, and thus better equipped to provide quality and efficient representation;*
- *foreign attorneys return to their home countries with a new legal mindset, setting off a ripple effect that influences their immediate legal community and impacts the people they serve; and*
- *lawyers share their expertise and forge solid professional connections through participation in CAIL's institutes and programs.*

In short, CAIL facilitates the necessary training and network-building opportunities to raise the professional standards for the legal and law enforcement professionals charged with upholding the justice system and protecting the rights of others.

Honoring the Past by Enriching the Future: CAIL's 75th Anniversary

As CAIL celebrates 75 impactful years of providing exceptional education to improve the quality of justice and promote the rule of law both domestically and internationally, it must look to the future. Leading up to its jubilee anniversary, CAIL has seen a transition of leadership and adopted a new strategic plan that focuses on building an even more dynamic, diverse, and cohesive organization positioned for its centennial and beyond. In 2021, Thomas "T.L." Cabbage III began managing CAIL's programs as president. Later that year, the Board of Trustees elected Randall M. Ebner to succeed Ms. Miers as its Chair as CAIL enters the next era of its history.



Thomas Cabbage III



Randall M. Ebner

CAIL's 75th Anniversary Fundraising Campaign has been launched as a cornerstone of the 75th Anniversary celebration. Donations to the 75th Anniversary Fundraising Campaign will support CAIL's institutes, special programs, research, publications, and events to advance and improve the quality of the justice system for decades to come. The upkeep and modernization of our education center, which is over 20 years old, will also be supported by donations. This is essential as CAIL continues its mission to improve the quality of justice over the coming decades.

Throughout 2022, multiple events were organized to share CAIL's mission and promote the rule of law. The yearlong 75th Anniversary celebration was kicked off with a live virtual event featuring unique perspectives on the Rule of Law from Circuit Judge Higginbotham and Professor Michael Tigar, whose storied career as a trial lawyer and human rights activist includes a pivotal role in establishing CAIL's educational programs for death penalty litigation.



Michael Tigar



Prof. Jonathan Bush

Soon after Russia invaded Ukraine early in 2022, CAIL invited Professor Jonathan Bush from Columbia University Law School to discuss the legal issues raised by and legal mechanisms that have been used historically to hold people accountable for instigating wars of aggression. Later in the year, CAIL partnered with Project Aletheia from the John Jay College of Criminal Justice to convene top academic, law enforcement, and legal experts to address principles and best practices arising from recent multidisciplinary research on interrogations of witnesses, sources, and suspects.



Sen. Kay Bailey Hutchison

The celebrations were topped off in October with a 75th Anniversary Gala held in downtown Dallas. The gala drew attention to CAIL’s rich history and recent impacts, and featured the presentation of CAIL’s prestigious Great Leaders Award to Senator Kay Bailey Hutchison in front of approximately 400 business, civic and legal leaders.

Closing Thoughts

In the *Texas Bar Journal* in 1961, Storey shared that an *“important element of a law state is the necessity for a responsible, capable, honest, and independent legal profession. Such a legal profession is the medium through which the law reaches people, and the highest honor and integrity must mark the calling which deals with the rights, privileges, and liberties of the people...We of the legal profession of the Americas have a direct, urgent, and responsible role to further the rule of law.”*²

In recent years, we have witnessed the rule of law being tested in many arenas, including evident crimes against international norms occurring in the Russian invasion of Ukraine. As many concerned observers have pointed out, the issues that motivated CAIL’s creation in 1947 remain as urgent as they have ever been during its history. CAIL carries on its founder’s belief that professional education and the cultivation of communities with shared values are needed to ensure that those charged with protecting the rule of law continue to serve with exceptional skills, ethical integrity, and a commitment to justice.

The occasion of CAIL’s 75th anniversary gives us the opportunity to reflect on what our collective responsibility is to ensure a just society for future generations to come.

² Robert G. Storey, *Developments in International Law Rule of Law Conferences*, *Texas Bar Journal*, Vol. 24, No. 4, pg. 296 (April 1961).



KARLA P. LÁRRAGA is the Communications Officer at The Center for American and International Law. Lárraga, a member of the Public Relations Society of America and a former contributor to the *Forbes Communications Council*, has built her career around the education, nonprofit, professional sports, and real estate industries. She is an alumna of Baylor University, where she studied public relations and international studies.

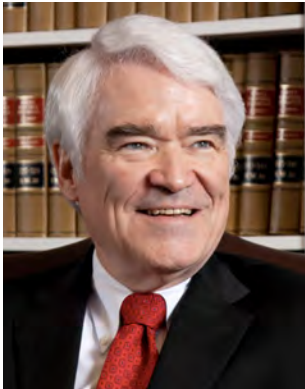
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The American Academy of Arts and Sciences Recognizes Chief Justice Nathan L. Hecht

By Justice Jane Bland

Founded in 1780, the American Academy of Arts and Sciences “convenes leaders from every field of human endeavor to examine new ideas [to] address issues of importance to the nation and the world.” Its members work together “to cultivate every art and science which may tend to advance the interest, honor, dignity, and happiness of a free, independent, and virtuous people.”

Given the Academy’s mission, it boasts remarkably few Texas members, and even fewer Texas lawyers. In acknowledgement of extraordinary service it could not overlook, however, the Academy added Texas Supreme Court Chief Justice Nathan L. Hecht to its ranks in September 2022.



Chief Justice
Nathan Hecht

The Academy recognized Chief Justice Hecht for his stalwart advancement of access to justice, both within Texas and throughout the country. Chief Justice Hecht joins Texas lawyer luminaries James A. Baker III, Kay Bailey Hutchison, and Lee H. Rosenthal, each of whom models the Academy’s core values—upholding democratic ideals, preserving independence, and fostering deliberative discourse.

Oliver Wendell Holmes Jr., who served as Chief Justice of the Supreme Court of Massachusetts and later as a Justice on the Supreme Court of the United States, had a few things in common with Chief Justice Hecht: more than 30 years of service on a high court, a reputation for pithy opinions and deference to the decisions of elected legislatures, and now, Academy membership. Justice Holmes had followed in his father’s footsteps. The senior Holmes was a poet and a physician who had made a landmark study of childbed fever to prove the then-controversial germ theory of disease. At the Academy’s Centennial Celebration in 1882, trusting “implicitly to its [members] good nature,” Dr. Holmes penned a commemorative poem, the last stanza reading:

Oh might our spirits for one hour return
When the next century rounds its hundredth ring,
All the strange secrets it shall teach to learn,
To hear the larger truths its years shall bring,
Its wiser sages talk, its sweeter minstrels sing!¹

Congratulations to Chief Justice Hecht, a sage for this century.

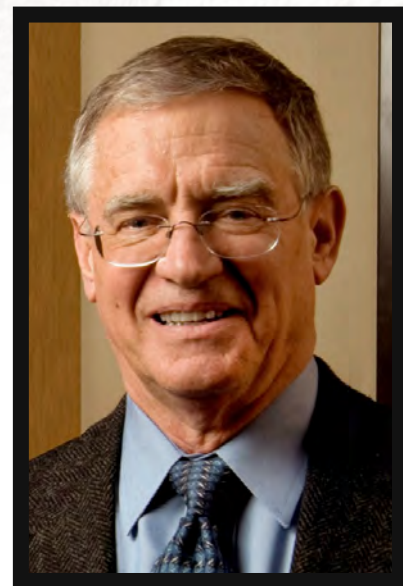
¹ “Remarks and Poem of Dr. O.W. Holmes”, *Memoirs of the American Academy of Arts and Sciences*, New Series, Vol. 11, No. 1, Centennial Celebration (1882), 11–13. Justice Holmes may have taken after his maternal grandfather, who had served as a Massachusetts state judge.

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Remembering Randolph B. “Mike” Campbell

By William J. Chriss

Randolph B. “Mike” Campbell, Ph.D., a giant among Texas historians and a great friend to the Texas Supreme Court Historical Society, passed away on August 13, 2022, at the age of eighty-one. Dr. Campbell served as president and then as chief historian of the Texas State Historical Association, and he also edited its *Southwestern Historical Quarterly* for many years. He provided invaluable guidance and assistance to the Texas Supreme Court Historical Society and co-edited its scholarly volume, *The Laws of Slavery in Texas: Historical Documents and Essays* published by the University of Texas Press. His co-worker in producing that volume, Marilyn Duncan, recalled that “In early 2009, the Society’s book on the laws of slavery in Texas was a manuscript-in-progress in need of an expert’s hand. We found our expert in Mike Campbell, whose interpretative commentaries elevated the book from a loose collection of essays and legal documents to a masterwork on the laws affecting slaves and free Blacks in antebellum Texas.” Dr. Campbell was a professor of history at The University of North Texas (formerly known as North Texas State University) for over fifty years, winning teaching excellence awards and ultimately becoming Regents Professor of History and holding the school’s Lone Star Chair in Texas History. He was, quite simply, a legend in the field of Texas History. As his fellow southwestern historian Robert Wooster described him, “As a teacher, scholar, and mentor to an entire generation of students, readers, and colleagues, Campbell helped to drag our approaches to and understanding of Texas history—sometimes kicking and screaming—into the twenty-first century.”



Professor Campbell was born in Charlottesville, Virginia on November 16, 1940. He attended The University of Virginia and earned his Ph.D. in History from that institution in 1966, immediately thereafter taking a tenure-track teaching position at North Texas State. His first books, *Wealth and Power in Antebellum Texas* (co-authored with Richard G. Lowe) and *A Southern Community in Crisis: Harrison County Texas, 1850-1880*, were groundbreaking works, the first a socio-economic overview of antebellum Texas, and the second a micro-study of one county’s participation in and reaction to Kansas-Nebraska, Secession, Civil War, and Reconstruction. In addition to scores of scholarly articles and conference presentations, Dr. Campbell followed these early books with three masterpieces of Texas History: *Grassroots Reconstruction in Texas, 1865-1880*; *An Empire for Slavery: The Peculiar Institution in Texas, 1821-1865*; and *Gone to Texas: A History of the Lone Star*

State, this last volume being perhaps the most popular and well utilized Texas History textbook in undergraduate courses on the subject.

In addition to his other accomplishments, Dr. Campbell received the H. Bailey Carroll Award for the best scholarly article in the *Southwestern Historical Quarterly* (1969 and 1989), the Coral Horton Tullis Memorial Prize for the best book on Texas History (1988), and the Mary Jon and J.P. Bryan Leadership in Education Award (2010). His contributions to the Texas State Historical Association are unequaled in the past half-century. He authored 217 entries in the society's encyclopedia, *The Handbook of Texas*, and oversaw the process of updating and expanding the online version of that original six-volume work. He mentored and advised countless students and Texas historians over his long and distinguished career. Dr. Campbell was predeceased by his wife of many years, Diana, and he is survived by his sons, Landon and Clay, and by his grandchildren, Flynn Landon Campbell, Wylie Lachlan Campbell, and Evy Gracyn Campbell.

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Professor L. Wayne Scott, 1938-2022

By D. Todd Smith

Professor L. Wayne Scott, a great friend of the Society, passed away on September 14, 2022 at age eighty-three.

Professor Scott taught at St. Mary's University School of Law for fifty-one years, the longest tenure of any faculty member. I first got to know him as coach of our St. Mary's national moot court team in the mid-1990s. Despite his long tenure and stature at the law school, he was most comfortable being called "Wayne."

Wayne's teaching and mentoring focused on the practicalities of lawyering. He practiced for several years and tried dozens of cases before finding his way to St. Mary's. Wayne became an expert in Texas procedure and taught appellate advocacy for many years. He also published case law digests covering civil and criminal cases from Texas appellate courts. He later shifted his attention to alternate dispute resolution, where he found his calling and created a program that educated a generation of lawyers on that critical part of law practice.

Wayne taught me about the things that really matter as a lawyer. These include the importance of building relationships with opposing counsel, judges, and staff and how maintaining those relationships could make law practice and life better. Wayne also lived out the example of balancing law practice with family—his wife, Maxine, was a fixture at both law school and outside events. Finally, Wayne taught me to respect the rule of law and the institutions connected with it, especially the Texas Supreme Court.

Wayne was always kind and encouraging, and he loved appellate law. He was always quick with a story about founding members of the Texas appellate bar. And it was Wayne who first taught me about the great Chief Justice Robert W. Calvert, one of the architects of Texas appellate practice. Wayne's tribute in the *St. Mary's Law Journal* following Chief Justice Calvert's death helps document just how significant his influence was. See generally *In Memoriam: Robert Wilburn Calvert, The Prudentialist*, 26 ST. MARY'S L.J. 4 (1995).

Wayne was too humble to include himself among the greats in Texas appellate law or any other area. But he left a substantial legacy all the same. St. Mary's Law School and the Texas bar owe him a debt of gratitude. And so do I.

Rest in peace, my friend. May your legacy carry on.



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Save the Date: March 2-4, 2023, to see the Society at the TSHA Annual Meeting

Story and photos by David A. Furlow

The Society sponsors scholarship relating to the history of the Texas judiciary,” our Society’s “About Us” web-page declares, “and furthers efforts to raise public awareness about the judicial branch of government and its role in the development of Texas.” Our Mission Statement states that, “Through research and scholarship, the Society educates the public about the judicial branch and its role in the development of Texas.” One of the most important ways the Society fulfills its educational mission is by presenting panel programs at Texas State Historical Association (TSHA) annual meetings. This is your invitation to watch the Society in action at TSHA’s 127th Annual Meeting on March 2-4 in El Paso.



Our Society’s “Advancing the Rule of Law along Contested Frontiers” 2023 panel-program

Our Society’s speakers will present the first panel program, “Advancing the Rule of Law along Contested Frontiers,” at 9:00 a.m. on Friday, March 3, 2023 at the Marriott Hotel Paso Del Norte in El Paso. The program focuses on ways courts advanced the rule of law in the nineteenth and twentieth centuries. Sharon Sandle, our Executive Director, will introduce the audience to the Society by describing what we do and by introducing the speakers.



Sharon Sandle



Justice Ken Wise, one of the Society’s two principal speakers at the 2019 TSHA Annual Meeting in Austin, discussed the District of Brazos court.

The Hon. Ken Wise, Justice of the Texas Court of Appeals for the Fourteenth District and the Society’s President, will provide the first speech: “Trials on the Prairie, the American Legal System, and the Plains Indian Wars.” Judge Wise will describe how Americans modified the Anglo-American legal system to provide jury trials for Native Americans indicted for crimes arising out of their raiding and resistance during the settlement of the frontier. In addition to his legal experience, Justice Wise brings knowledge of Texas history he gained while researching, scripting, and hosting the *Wise about Texas* podcast.

The Hon. Gina M. Benavides, Justice of the Thirteenth Court of Appeals and a trustee of the Society, will speak about “Gustavo ‘Gus’ Garcia, a Life of Service,

and *Hernandez v. State of Texas*: The Lawyer Who Desegregated Texas Juries.” The Supreme Court addressed one issue: “Is it a denial of the Fourteenth Amendment equal protection clause to try a defendant of a particular race or ethnicity before a jury where all persons of his race or ancestry have, because of that race or ethnicity, been excluded by the state?” The U.S. Supreme Court held that exclusion of Hispanics from criminal court juries violated the Constitution. Justice Benavides will offer insights about *Hernandez* lead counsel Gus Garcia’s military service, his consular background, and the unique contributions to the landmark case *Hernandez v. State of Texas*, 347 US 475 (U.S.: 1954). She recently published two articles in our *Journal* profiling Texas Supreme Court Justice Eve Guzman and Court of Criminal Appeals Judge Elsa Alcala, the two first Latinas on the Texas highest courts.



Justice Gina Benavides, Thirteenth Court of Appeals website.



Gus Garcia, photo courtesy of the *Huffington Post*.

Colbert N. Coldwell, an independent scholar, El Paso historian, and law partner, is the author of a forthcoming biography of Texas Supreme Court Justice Colbert Coldwell, who served on the Court during the Reconstruction era. He has spoken at several Society events in recent years.



Trial lawyer and historian Colbert Coldwell spoke about his Reconstruction era ancestor, Texas Supreme Court Associate Justice Colbert Coldwell, during the Society’s April 2017 hanging of Justice Coldwell’s portrait. Photo by Mark Matson.

But wait, there’s more. Those who attend TSHA’s annual meeting can watch another TSHA panel address an important aspect of Texas legal history: *The Mexican State that Never Was: Perspectives on the Constitution of 1833*. Our Society’s President, the Hon. Justice Ken Wise, will chair this special program. That program will also occur on Friday, March 3rd, but it will begin at 2:00

p.m. Members of our Society can watch one program in the morning, enjoy a leisurely lunch, and return in time to watch the second program in the afternoon.

Judge Manuel González Oropeza, the Judge of Mexico's Federal Election Court, and his colleague Rodrigo Galindo, a constitutional and criminal lawyer associated with the Universidad Nacional Autónoma de México, will present "The Last Mexican Constitution in Texas." An esteemed scholar at the Universidad Nacional Autónoma de México, Judge Oropeza is the former Chief Justice of the Mexican Federal Election Court. He and Professor Jesús Francisco "Frank" de la Teja, served as editors of *Actas del Congreso Constituyente de Coahuila y Texas de 1824 a 1827: Primera Constitución bilingüe, a/k/a, Proceedings of the Constituent Congress of Coahuila and Texas, 1824-1827: Mexico's Only Bilingual Constitution* (Mexico City: Federal Election Court, 2016). Chief Justice



Judge Manuel González Oropeza and his co-editor Jesús F. de la Teja, TSHA's C.E.O., authored a comprehensive analysis of the 1827 Constitution in 2017. They stand on the front row right. Mark Smith, then Executive Director of the Texas State Library and Archives, stands at far left. David Furlow is at back row center, while Mark Lambert, Deputy Director, Archives & Records Division of the Texas General Land Office stands on the back row, right.



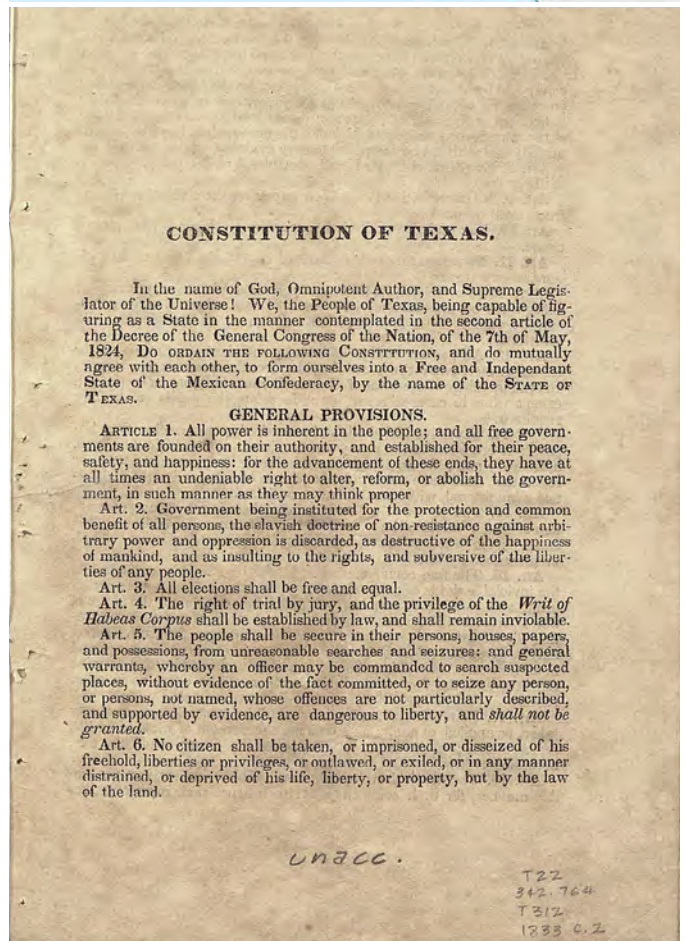
Oropeza will discuss the 1827 Constitution of the Mexican twin-state of Coahuila y Tejas and the legal and administrative framework it created.

I will then present “The Legal Origins of Sam Houston’s 1833 Draft Constitution for an Independent Mexican State of Texas.” Did another state’s constitution serve as a model for Houston’s draft constitution? If so, was it the Coahuiltecan Twin-State Constitution of 1827? Or was it, instead, John Adams’ Massachusetts Constitution of 1780? Did Houston rely on one or more constitutions from other states, namely, Tennessee, Louisiana, or Arkansas? Or did his constitution represent a blending of the best provisions from each of those legal authorities?

TSHA’s 2023 Annual Meeting: Dates, a Richly Historic City, and a Conference Hotel

The 2023 Annual Meeting will be held at the El Paso Convention Center March 2-4, 2023. TSHA’s Annual Meeting is the largest gathering of its kind for Texas history enthusiasts and scholars. More than 700 historians, lawyers, and members of the public regularly attend the meeting and another 170,000 TSHA members and nonmembers are reached through email and social and traditional media about the event.

El Paso is a vibrant, richly historic city of 678,815, according to 2020 U.S. Census Department records, making it the 23rd-largest city in the United States, the sixth-largest city in Texas, and the second-largest city in the Southwestern United States behind Phoenix, Arizona. It is the second-largest majority-Hispanic city in the United States. Humans have lived in the area for 10,000 to 12,000 years, as evidenced by Folsom points found nearby at Hueco Tanks. When the Spanish arrived, the Manso, Suma, and Jumano tribes populated the region, as did Mescalero Apaches. Sixteenth century Spaniards explored the area while noting the presence of two mountain ranges rising out of the desert divided by a deep chasm



Top: Wikimedia map of the Mexican state of Coahuila and Texas in 1827. Bottom: The draft Texas Constitution of 1833, courtesy of the University of Texas School of Law’s Tarlton Law Library.



Painter Jose Cisneros depicted the “first Thanksgiving” celebration in North America, when Spanish colonists broke bread with the Mansos, a tribe native to present-day El Paso. Image Courtesy of the University of Texas at El Paso Library, on the KUT website.

between. They erected a settlement at a site they named El Paso del Norte (the Pass of the North), the future location of two border cities—Ciudad Juárez on the south or right bank of the Rio Grande, and El Paso, Texas, on the opposite side of the river. The city has been a continental crossroads; a north-south route along a historic *camino real*, a royal highway, during the Spanish and Mexican periods, and an east-west highway, I-10, during the late twentieth and twenty-first centuries.

Álvar Núñez Cabeza de Vaca, author of the famous *Relacion* chronicle of his travel across North America from the Texas coast to the Pacific, and his three companions, probably passed through the El Paso area in 1535 or 1536. Spanish conquistador and later New Mexican Juan de Oñate, leading a major colonizing expedition, passed through El Paso on his way north. On April 30, 1598, he conducted a claiming ceremony, *La Toma*, recently referred to as the “real first Thanksgiving,” by which he took formal possession of the entire territory drained by the Río del Norte (the Rio Grande) at San Elizario Mission.



Downtown El Paso offers a vibrant scene of community arts. Above left, sculptor John Houser's statue *Fray Garcia de San Francisco* commemorates the founder of the Mission Nuestra Señora de Guadalupe. Above right, sculptor Luis A. Jiminez, Jr.'s sculpture *Los Lagartos* memorializes the alligators that were a popular attraction in El Paso's early twentieth century downtown area.

In the late 1650s Fray García founded the mission of Nuestra Señora de Guadalupe on the south bank of the Rio Grande; it still stands in downtown Ciudad Juárez. The Pueblo Indian Revolt of 1680 sent Spanish colonists and Tigua Indians of New Mexico fleeing southward to take refuge at the pass. On October 12, 1680, midway between the Spanish settlement of Santísimo Sacramento and the Indian settlement of San Antonio, the first Mass in Texas was celebrated at a site near that of present Ysleta, which was placed on what is now the Texas side by the shifting river in 1829; some historians therefore argue that Ysleta is the oldest town in Texas. By 1682 five settlements had been founded in a chain along the south bank of the Rio Grande—El Paso del Norte, San Lorenzo, Senecú, Ysleta, and Socorro.

In short, El Paso is a wonderful city to visit. TSHA will make a block of hotel rooms available to speakers and TSHA members who sign up for the conference at discounted rates. The conference hotel will be the Marriott Paseo del Norte, 10 Henry Trost Court, El Paso, Texas, 79901. TSHA will release additional reservation information soon. In the meantime, *save the date*—this will be a great conference.



Top: The Marriott Hotel Paso Del Norte, <https://www.wotif.com/El-Paso-Hotels-Hotel-Paso-Del-Norte.h12389.Hotel-Information>. Bottom: A 1913 postcard depicting the hotel interior.

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JOURNAL STAFF

Editor-in-Chief
Hon. John G. Browning
jbrowning@faulkner.edu

Executive Articles Editor
Stephen P. Pate
spate@cozen.com

Managing Editor
Karen Patton
karenpatton133@gmail.com

Editor
Kevin Carlsen
kevinw.carlsen@gmail.com

Production Manager
David C. Kroll
dckroll@gmail.com

Editor Emerita
Lynne Liberato
lynne.liberato@haynesboone.com

Editor Emeritus
David A. Furlow
dafurlow@gmail.com

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2022-23 Membership Upgrades

The following Society members have moved to a higher dues category since June 1, 2022, the beginning of the membership year.

TRUSTEE

Kirsten Castañeda

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2022-23 New Member List

The Society has added 22 new members since June 1, 2022. Among them are 19 Law Clerks for the Court (*) who will receive a complimentary one-year membership during their clerkship.

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Kirk Pittard

CONTRIBUTING

Hon. Staci Williams

REGULAR

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Laura Bach*
Haley Bernal*
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- 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

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

Patron Membership \$500

- Discount on Society Books and Publications
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