



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Spring 2018 Vol. 7, No. 3 General Editor Lynne Liberato Executive Editor David Furlow

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By Dale Wainwright

The Spring has been interesting and productive for the Society. The Board meeting was filled with reports on the Society's projects and programs. [Read more...](#)



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Our acclaimed judicial civics and history book *Taming Texas: How Law and Order Came to the Lone Star State* continues to be taught in schools throughout Houston. [Read more...](#)



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This edition of the *Journal* focuses on Texas during the Victorian era. Texas history during this period is preserved mostly through handwritten documents, but it is now more accessible than in any prior age. [Read more...](#)



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Queen Victoria made decisions that touched every aspect of Texas economics, history, culture, and law, yet, strangely, are often ignored today. [Read more...](#)



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San Jacinto Justice: The Future Supreme Court Judges Who Won Texas Her Freedom at San Jacinto

By Dylan O. Drummond

Twenty-eight men served as either Chief Justice or Associate Judge of the Republic of Texas Supreme Court. Yet only seven bled in the boggy marshes of San Jacinto to ensure that the Texas Supreme Court could someday be founded. [Read more...](#)



San Jacinto monument



Reconstruction Politics and the Galveston Seven: The Struggle to Appoint a Judge in the Eastern District of Texas, 1869-72, Part 2

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President Grant was to appoint one of the greatest patronage prizes available—a federal judgeship. No fewer than seven nominations would be made before the spot was filled. [Read more...](#)



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History has not been kind to James Collinworth. Among other things, his actual gravesite is unmarked. [Read more...](#)



Chief Justice James Collinworth

Book Review

Jason Gillmer's *Slavery and Freedom in Texas: Stories from the Courtroom, 1821-1871*

Book Review by Daina Ramey Berry and Rachel E. Winston

We learn about the complexities of slavery and how people of multiple backgrounds encountered the law in a narrative that takes us through the antebellum period and beyond into the early years of Reconstruction in Texas. [Read more...](#)



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[A Double-Hitter at the Spring 2018 Board Meeting: Harriet Miers and the George W. Bush Presidential Center](#)

By Cynthia K. Timms

Harriet Miers reminiscing about her time at the White House and a visit to the George W. Bush Presidential Center were the featured events at the Society's meeting. [Read more...](#)



Harriet Miers

[Supreme Spouses](#)

By Dylan O. Drummond

Tobi and Evan Young are not the only power couple in Texas in which each spouse has clerked for the High Court. In fact, there are four Supreme Spouses who reside and practice here in Texas. [Read more...](#)



U.S. Supreme Court building

News & Events

[U.S. Fifth Circuit Chief Judge Carl E. Stewart Will Keynote Hemphill Dinner](#)

By Marilyn P. Duncan

The Honorable Carl E. Stewart, Chief Judge of the United States Court of Appeals for the Fifth Circuit, will be the principal speaker at the Society's Twenty-Third Annual John Hemphill Dinner. [Read more..](#)



Chief Judge Carl Stewart

[Laying Down the Law at the 2018 TSHA Annual Meeting](#)

By David A. Furlow

Historians, lawyers, and members of the public spoke highly of our Society's "Laying Down the Law in Early Texas" presentation. [Read more...](#)



The panel presentation

[New San Felipe de Austin Museum is a State Treasure](#)

By Ken Wise

On April 27, the Texas Historical Commission hosted the opening of the newest museum in Texas at the San Felipe de Austin State Historic Site. [Read more...](#)



Visitors at the opening

[Law and the Texas Frontier Joins the Society's Taming Texas Series](#)

By Marilyn P. Duncan

Written with seventh-grade Texas history students in mind, the new book tells the story of how life on the vast frontier of Texas required creative approaches to maintaining law and order. [Read more...](#)





[MARK YOUR CALENDAR: The Society Will Commemorate the Great War on November 14](#)

By David A. Furlow
Nearly one hundred years ago, on November 11, 1918, the guns that had blazed for four and one half years on the Western Front fell silent.
[Read more...](#)



The early Texas Supreme Court Courtroom, site of the Commemoration

[Nominations Welcomed for the 2018 Texas Appellate Hall of Fame](#)

By Jackie Stroh
The Appellate Section is now accepting nominations for the Texas Appellate Hall of Fame. The Hall of Fame posthumously honors advocates and judges who made a lasting mark on appellate practice in the State of Texas.
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Hon. Dale
Wainwright

Message from the *President*

The Spring has been interesting and productive for the Society. The Board of Trustees met on March 28 in the Greenberg Traurig offices in Dallas, and the agenda was filled with reports on the Society's projects and programs. Many of those activities are described elsewhere in this Journal and show the range of our organization's outreach. I'll highlight some of them here.

The Society created a Great War Commemoration Committee, and Judge Mark Davidson agreed to chair it. The committee is planning an exciting event this Fall in conjunction with the 100th anniversary of the end of World War I. On November 14, 2018, the Society will commemorate the contributions of the seven Texas Supreme Court Justices, two Court of Criminal Appeals Judges, and two Texas Governors who fought in the Great War. Other committee members are Marcy Greer, our incoming president; executive director Sharon Sandle; trustees Warren Harris and David Furlow; and archivist Caitlin Bumford. More about the event will be announced in the coming months.

The Society's session at the Texas State Historical Association's annual meeting on March 8, 2018, was outstanding. The featured speakers were Society board members Justice Jason



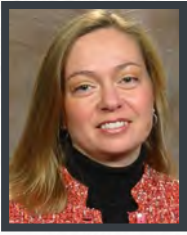
Justice Dale Wainwright (center) stands with (left to right) Cynthia Timms, Marcy Greer, Harriet Miers, Tobi Young, and Judge Sue Walker during the tour at the Bush Presidential Center.

Boatright and Dylan Drummond, who offered intriguing stories and power point presentations about Stephen F. Austin's legal legacy and the future Supreme Court justices who fought in the Battle of San Jacinto. David Furlow organized the session and served as commentator. I am grateful to Justice Craig Enoch for serving as moderator for the session. The Society's annual participation in this statewide conference makes an important contribution to legal history and continues to raise the Society's profile among the state's leading historians.

Another highlight of the Spring board meeting was the luncheon discussion with Harriet Miers. Ms. Miers shared insights from her long and distinguished career in law and government, including her successful bid to become the first woman elected as president of the State Bar of Texas, her service as White House Counsel to President George W. Bush, and her decision to withdraw her name as President Bush's nominee for the U.S. Supreme Court. Ms. Miers's association with President Bush's administration made her the ideal guide for our post-meeting tour of the George W. Bush Presidential Center located on the campus of Southern Methodist University in Dallas. I greatly appreciate the time and unique perspectives that Harriet shared with our board—it was a memorable experience for all of us.

THE HON. DALE WAINWRIGHT *is a shareholder with Greenberg Traurig, LLP and chairs its Texas Appellate Practice Group. He is a former Justice on the Supreme Court of Texas.*

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Sharon Sandle

Gateways to Texas History *Are Open to All*

This edition of the *Journal of the Texas Supreme Court Historical Society* focuses on Texas during the Victorian era. But when most people think of Texas during the nineteenth century, they don't immediately think of Queen Victoria. The only familiar connection between Victoria and Texas in the mind of most Texans is probably the city of Victoria in Victoria County. But both the city and the county were named after General Guadalupe Victoria, the first president of independent Mexico, not after Queen Victoria.¹ Although the beginning of Queen Victoria's reign coincided with the birth of the Republic of Texas, the two events seem separated by more than just an ocean.

Queen Victoria did have an interest in events in the Republic of Texas, though. James Hamilton was commissioned by President Mirabeau B. Lamar to negotiate with France, Holland, and England for a five million dollar loan to the Republic. In spite of securing recognition of the Republic from England and Holland, Hamilton wasn't successful in securing the loan.² However, he negotiated three treaties between the Republic of Texas and Britain in 1840: one concerning commerce and navigation, one providing for British mediation between Texas and Mexico, and one calling for suppression of the slave trade. In 1845, Britain and France again intervened to broker peace between Mexico and Texas. The Ratification of Convention between the United Kingdom and the Republic of Texas, signed by Queen Victoria, resides in the Texas State Library and Archives and can be viewed online [here](#). Although Britain favored an independent Texas republic, Texas accepted the terms of annexation by the United States in the Convention of 1845. This action ended all diplomatic activity of the Republic, including diplomacy with Britain.

The history of Texas during this period is preserved mostly through handwritten documents such as the diplomatic letters between England and Texas and the treaties between the two nations. But this history is now more accessible than in any prior age. Although these historical documents are housed in libraries and archives across the state, numerous online sources are now available to the historian researching Texas history. For example, images of documents such as the Ratification of Convention signed by Queen Victoria are available through the [Texas State Library and Archives online collections](#). The [Handbook of Texas](#), an extensive online resource for

¹ Texas Department of Transportation, *Texas State Travel Guide*, 2008, 72.

² Charles W. Brown, "Hamilton, James," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fha35>.

Texas history, as well as several downloadable [ebooks on Texas history](#), are available through the Texas State Historical Association website. And the [Portal to Texas History](#) is a gateway to rare, historical, and primary source materials from or about Texas. Researchers can also search [TARO \(Texas Archival Resources Online\)](#) for descriptions of the archival, manuscript, and museum collections in repositories across the state available to the public. And the Society's own website includes a [directory of resources focused on the law in Texas](#), providing researchers with a launch pad to search for information on Texas's judicial history.

When Victoria assumed the crown in England in 1837, beginning the Victorian age, Texas was a struggling republic that was still at war with Mexico. By the end of Victoria's reign in January of 1901, Texas had gone from a republic to a state, first in the United States, then the Confederate States, and then once again as part of the Union. But in 1901, Texas was on the brink of another kind of revolution. The eruption of the gusher at Spindletop near Beaumont on January 10, 1901 occurred just twelve days before the end of Victoria's reign on January 22nd. If you're interested, why not spend a few minutes taking a look online at what the *Houston Daily Post* reported about the end of the Victorian Age with the [passing of Queen Victoria](#)³ and the dawn of a new era in Texas with "[The Big Oil Well](#)"?⁴ You'll find that a wealth of history is available at your fingertips.

³ *Houston Daily Post* (Houston, Tex.), January 23, 1901, texashistory.unt.edu/ark:/67531/metaph83391/, University of North Texas Libraries, Portal to Texas History, texashistory.unt.edu.

⁴ *Ibid.*, January 12, 1901, texashistory.unt.edu/ark:/67531/metaph83379/.

SHARON SANDLE, *in addition to serving as the Society's Executive Director, is Director of the State Bar's Law Practice Resources Division and of TexasBarBooks.*

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Fellows Column

By David J. Beck, Chair of the Fellows



Photo by Alexander's Fine Portrait Design-Houston

Our acclaimed judicial civics and history book *Taming Texas: How Law and Order Came to the Lone Star State* continues to be taught in schools throughout Houston. In conjunction with the Houston Bar Association, we are teaching the Taming Texas program to over 2,400 seventh-grade students in the Houston area. We would like to thank the HBA and its President, Alistair Dawson, for recruiting over 65 judges and lawyers to serve as volunteers to teach this important curriculum. Because of the vast resources required to teach this number of students, we would not have been able to

implement such a large-scale program without the assistance of the HBA. And we certainly could not have done it without the hard work of the HBA chairs of the program, Justice Brett Busby, David Furlow, and Richard Whiteley, who made the classroom part of the program a major success. The attached photos will give you some sense of the energy in the classrooms when the HBA volunteers were teaching.

This year we made substantial revisions to the classroom materials, especially the PowerPoints the lawyers and judges use to teach the materials. Special thanks to Marilyn Duncan for all of her work in making our materials even better. All of the Taming Texas resource materials, including both *Taming Texas* books and all of the classroom materials, are available on our website at tamingtexas.org/resources.

Our Taming Texas project continues to grow. We are pleased to announce that the Dallas Bar Association will be implementing Taming Texas in the Fall. Special thanks go to Dallas Bar Association President Michael Hurst for adopting the program for Dallas schools. If you would like to volunteer to teach in the Dallas area schools, please contact Melissa Garcia at mgarcia@dallasbar.org.

Coauthors Jim Haley and Marilyn Duncan are well underway on the third book in the Taming Texas series, *The Chief Justices of Texas*. No other state has produced judicial civics books like *Taming Texas*, *Law and the Texas Frontier*, and the in-progress third book in the series. These books offer an entertaining and educational view of the legal heritage of Texas.

This great project would not be possible without the Fellows. The generosity of the Fellows

has allowed us to produce the *Taming Texas* books and website, as well as allowing us to continue developing the upcoming books in the series.

We are in the process of nominating the Fellows Class of 2018. If you are not currently a Fellow, please consider joining the Fellows and helping us with this important work. Also, we are in the process of considering future projects. Please share with us any suggestions you may have.

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

Taming Texas Photo Album

Houston Bar Association's Teach Texas Classroom Program Spring 2018



Justice Brett Busby of the 14th Court of Appeals, cochair of the HBA's Teach Texas Committee, introduces the Taming Texas curriculum to students in the Gregory Lincoln Education Center in Houston.



Judge Michael Landrum of the 113th Civil District Court in Houston shares his perspective as a judge with students at Spring Branch Middle School.



Seventh-grade social studies teacher Karen Janes of Spring Branch ISD's Landrum Middle School displays the two Taming Texas books donated to her classroom.



Houston attorney Trisha Pollard helps a group of Spring Branch Middle School students with one of the Taming Texas interactive exercises.



Houston attorney Valerie Sworn pauses for a smiling self-portrait after teaching a class at Spring Branch ISD's Memorial Middle School.

FELLOWS OF THE SOCIETY

Hemphill Fellows

(\$5,000 or more annually)

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Joseph D. Jamail, Jr.* (deceased)

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(\$2,500 or more annually)

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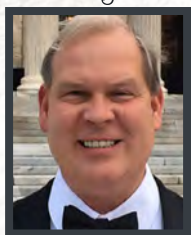
Hon. Dale Wainwright

Charles R. Watson, Jr.

R. Paul Yetter*

*Charter Fellow

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David A. Furlow

Texas Law and Courts in the *Victorian Age*

When we speak of Texas in the Victorian Age, we refer to nearly a century when Queen Victoria lived or reigned over a powerful, wealthy empire on which the sun never set, trade grew exponentially, and industrialization and abolitionism triumphed over slavery through economics, civil war, and the reconstruction of society.

Queen of the United Kingdom of Great Britain, Scotland, and Ireland. Victoria made decisions that touched every aspect of Texas economics, history, culture, and law, yet, strangely, are often ignored today. We do not see the forest because each of the trees is so interesting and important: the primacy of the London Cotton Exchange in bringing settlers to Texas; the blending of Anglo-American and Hispanic legal systems at San Felipe de Austin; the Texas Revolution's fire, the birth of the Republic at San Jacinto and its fight to survive invasion, inflation, and Indian wars; U.S. annexation, antebellum growth, the Civil War, and Reconstruction; and the industrialization of Texas through railroads, cattle, commerce, and oil. Or maybe we just think of Victoria as a dowdy old prude scolding us through a "We are not amused" frown. That's a shame. No era is more important to the history of Texas—and Texas law—than the Victorian Age. In this issue, the *Journal* examines the Victorian Age in Texas.

British producer Daisy Goodwin's ITV/PBS Masterpiece Theater series *Victoria* takes us back to a time when a vibrant young woman, her idealistic consort Prince Albert, and their global empire dominated the world. The history we know, or think we know, had not yet been written. The series challenges us to re-think the many ways the Victorians shaped and reshaped early Texas.

The term Victorian sweeps from the queen's birth on May 24, 1819 until her death on January 22, 1901. It includes the work of writers Anne, Charlotte, and Emily Brontë, Charles Dickens, Lewis Carroll, George Eliot (Mary Ann Evans), Thomas Hardy, Anthony Trollope, Beatrix Potter, and Oscar Wilde; poets Alfred Lord Tennyson, Robert and Elizabeth Barrett Browning, and William Butler Yeats; artists Joshua Reynolds, William Morris, John Everett Millais, Dante Gabriel Rossetti, John Ruskin, and Lawrence Alma-Tadema; scientists Charles Darwin, Mary Anning. Having bested Napoleon, Victorian England bestrode the world as an economic, military, and cultural colossus. It was Great Britain's Silver Age, second only to the Golden Age of Queen Elizabeth I, Shakespeare, and Sir Francis Drake.



Victoria's reign lasted from 1837 to 1901, an important time in Texas.
Top left: Coronation portrait by George Hayter, Wikimedia Commons.
Top right: Photograph by Alexander Bassano, 1882, Wikimedia Commons.
Bottom: British actress Jenna Coleman portrays Victoria as a passionate woman who had to constantly prove herself strong enough to rule in a male-dominated world. Intertitle of ITV Victoria series, Wikimedia Commons.

The history of Victorian era Texas began with whirring bobbins, spinning threads, and cheap cotton cloth. A few years before Victoria was born, English and Scottish businessmen began building a massive cotton textile industry in mills using machines produced on an industrial scale. This resulted in far higher volumes of cheap cotton cloth than had ever occurred using wool shorn from English sheep. Commercialization of Britain's world-wide trade empire created Britain's first futures market at Liverpool. Specialized cotton brokers purchased cotton grown throughout the world.¹ Like the Congreve rockets that cast a red glare over the Royal Navy's bombardment of Fort McHenry and the Redcoat ranks at the Battle of New Orleans, British imports of cotton skyrocketed from 56.1 million pounds in 1800 to more than 660 million pounds by 1850.² As demand increased, Britain's merchants reached across the globe to supply it.

Alcalde justice, Austin's colonists, cotton, and slavery come to Texas. Britain always loomed large in the history of the nineteenth century Gulf Coast, even while Texas was still a part of Spain's empire. General Andrew Jackson's Tennessee long rifles, Kentucky militia and Baratarian pirates' devastation of Major General Edward Pakenham's Redcoat Army at the Battle of New Orleans on January 8, 1815, and his 1819 invasion of Spanish Florida, secured American control of the Gulf Coast from Georgia to Texas's Sabine River boundary.³

Together with hybridized cotton seeds and Eli Whitney's cotton gin, the lure of these fertile coastal lands led ambitious planters to bring their dreams, their slaves, and their families, in that order, into rapidly developing Alabama, Mississippi, and Louisiana. As a result of one of the largest mass migrations in U.S. history, America's cotton production increased tenfold in the 1810s, while the southern U.S. states surpassed British India as the world's leading cotton producer by 1820.⁴

Meanwhile, first in Britain and then in America, Quakers, evangelical Anglicans, and Deists began to urge the abolition of slavery worldwide, leading Britain and America to outlaw the international slave trade.⁵ While the demand for cotton grew, anti-slavery laws limited the supply of slaves available to harvest the world's most profitable crop.

The expansion of America's Gulf Coast cotton economy led to a burgeoning demand for horses in Louisiana, Mississippi, and Alabama. Eager to trade horses and mules for guns, Comanches, Kiowas, and Apaches began raiding the herds of Spanish Texas. David G. Burnet, then living among the Comanche, observed that "the number of mules and horses that these Indians capture annually from the Spanish is immense, probably not less than 10,000."⁶ Incessant

¹ Nigel A. Hall, "The Liverpool Cotton Market: Britain's First Futures Market," *Transactions of the Historic Society of Lancashire and Cheshire* 149 (1999), 99-117.

² Andrew Torget, *Seeds of Empire: Cotton, Slavery, and the Transformation of the Texas Borderlands, 1800-1850* (Chapel Hill: University of North Carolina Press, 2015), 4; Edward Baines, *History of the Cotton Manufacture in Great Britain* (London: Fisher, Firsher and Jackson, 1835), 346-47.

³ Torget, *Seeds of Empire*, 34-36.

⁴ *Ibid.*, 36; Karen Gerhardt Britton, Fred C. Elliott, and E. A. Miller, "Cotton Culture," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/afc03>.

⁵ Torget, *Seeds of Empire*, 4.

⁶ Letter from David G. Burnet to John Jamison, August 1818, "David G. Burnett's letters describing the Comanche Indians," 132, quoted in Torget, *Seeds of Empire*, 38 and 288 n.58.

Indian raiding, the Mexican Revolution, and incursions by U.S. filibusterers destabilized Spanish Texas, made its coast a haven for pirates, and resulted in the collapse of Spanish power and population. By 1820, Spain's last governor of Texas, Antonio Martínez, announced that, "[f]rom now on, I am not responsible for defending and controlling this province..."⁷

In a last attempt to defend their embattled frontier, Spanish imperial leaders opened their Texas frontier territory to empresarios such as Moses Austin and his son, Stephen Fuller Austin. The Tejano elite living in San Antonio de Bexar made common cause with the Austins and other immigrants from the American South to create a "Mississippi in Mexico," an empire of slavery where cotton production would repopulate Texas, ward off Indian raiding, and make Tejanos, American plantation-owners, and British creditors rich beyond their dreams.



Queen Victoria was four years old when Sam Houston Park's 1823 Old Place was built in the eastern part of Stephen F. Austin's Colony. Photo by David A. Furlow.

As historian T.R. Fehrenbach observed, "[t]he attitudes and institutions of Texas civilization were firmly established in the years between 1835 and 1861. This era was the great formative period of the heartland of the state."⁸ Texas was "a great country for men and dogs, but hell on women and horses," he added.⁹

This issue of the *Journal* opens with an examination of law in early Victorian era Texas. Dallas Court of Appeals Justice Jason Boatright's "Alcaldes and Advocates in Stephen F. Austin's Colony, 1822 through 1835" provides new information about the administration of justice in Austin's Colony in Coahuila y Texas during the 1820s and 1830s. The article memorializes Justice Boatright's presentation at the Texas State Historical Association's Annual Meeting in March.

Fourteenth Court of Appeals Justice Ken Wise brings that story of the Austin Colony's Old 300 up to date by covering the Texas Historical Commission's recent opening of a new and exciting San Felipe de Austin museum and visitor's center. It's a must-see place for anyone interested in learning about Texas history and Texas law, as Justice Wise shows.

TSCHS Editor Marilyn Duncan shows how the Society is sharing this history with seventh grade Texas history students through the January 2018 publication of *Law and the Texas Frontier*. As Texas Supreme Court Chief Justice Nathan Hecht's introduction attests, this fine, beautifully

⁷ Torget, *Seeds of Empire*, 17, 40–42.

⁸ T.R. Fehrenbach, *Lone Star: A History of Texas and the Texans* (New York: American Legacy Press, 1983), 279.

⁹ Old Texas proverb, quoted in Fehrenbach, *Lone Star*, 279.

illustrated book tells of pioneers drawn to the Texas frontier by offers of freedom, independence, and opportunities to acquire land.

The Battle of San Jacinto and the birth of the Republic. Vast economic, political, military, and social forces in Queen Victoria's British Empire, the fledgling United States, and revolution-wracked Mexico led to a Texas Revolution where British merchants supplied weapons to both sides. Mexican soldados and Texian soldiers both carried surplus, East India Brown Bess .75 muskets and British-made bayonets, while cavalrymen used .61 caliber British Baker rifles.¹⁰



Photo of British Brown Bess musket, San Jacinto Battlefield Museum. Public domain.

Dylan Drummond, the *Journal's* Deputy Executive Editor and a Society trustee and officer, examines this critical period in depth and detail in "San Jacinto Justice: The Future Supreme Court Judges Who Won Texas Her Freedom at San Jacinto, Part 1." Dylan brings to life the events of April 21, 1836 and their impact on Texas, Texas courts, and the world. Dylan and I are grateful for the research and editorial assistance we received from Lisa A. Struthers, Library Director of the Albert and Ethel Herzstein Library at the San Jacinto Museum of History.

Chief Justice James Collinsworth, the birth of the Texas Supreme Court, and England's exemplary role in the Republic. Next, South Texas College of Law Professor James Paulsen shines a bright light on the early Republic in "Reconsidering James Collinsworth, the Texas Supreme Court's First Chief Justice—Reviewing Roy S. Newsom, Jr. and James B. Collinsworth, Jr.'s *Too Good to Be True: James Collinsworth and the Birth of Texas*." Professor Paulsen's re-examination of too often repeated conventional wisdom will be essential reading for anyone writing about the Texas Supreme Court in the future.

James Collinsworth signed the Texas Declaration of Independence, the 1836 Constitution, and the charter of the Philosophical Society of Texas. Recognizing Britain's status as the font of American law as well as the most powerful economy in the world, Article IV, Section 13 of the 1836 Constitution compelled the Republic's Congress to statutorily enact "the common law of England, with such modification as our circumstances, in their judgment, may require."

While Chief Justice Collinsworth and his peers strove to incorporate English common law into the Republic's system of justice, Texans welcomed Victoria's commerce, shipping, immigrants, and exports. "It was not unusual for a [Texas] planter to seat forty people at lunch. He imported

¹⁰ "Weapons of the Revolution," San Jacinto Battlefield Museum, https://www.sanjacinto-museum.org/The_Battle/Weapons/#Pane2.

excellent boots and fine firearms from London, and wines and liquors from the Continent.”¹¹ Christopher H. Pix, operating on the Strand in Galveston, advertised his company as “Importers of English Goods Direct from London,” and assured customers that they paid “the highest price for any quantity of perfect cotton delivered here in exchange for...splendid goods, lately imported from London.”¹² By 1841 Archibald S. Ruthven of the English Importing House advertised “two first rate British manufacture Piano Fortes...in rose-wood and mahogany, just imported....”¹³



Left: Victorian-era wharves remain along the sides of Houston's Buffalo Bayou in 2018.
Right: Galveston's Tremont Hotel dates back to the second year of Victoria's reign.
Photos by David A. Furlow.

English émigrés came to Texas, stayed, made fortunes, and shared their wealth with others. Born in Somerset, England, Thomas William House, Sr. came to Houston in 1838 and built an economic empire by shipping cotton to English markets.¹⁴ He operated the largest wholesale business in Texas, managed major warehouse facilities in Houston and Galveston, and invested wisely in shipping, railroads, and toll roads. In the early 1840s he wed Mary Elizabeth Shearn, the only daughter of his English-born business partner Charles Shearn.¹⁵ He organized Houston's first fire department and became Houston's mayor in 1862.¹⁶ After making his fortune as a Civil War blockade-runner, he built one of Houston's earliest large residences at Smith Street and the corner of Capitol.

¹¹ Fehrenbach, *Lone Star*, 31.

¹² Dorothy Knox Howe Houghton, Barrie Scardino Bradley, Katherine S. Howe, and Sadie Gwin Blackburn, *Houston's Forgotten Heritage: Landscapes, Houses, Interiors, 1824-1914* (College Station: Texas A&M University Press, 1991), 269.

¹³ *Ibid.*

¹⁴ Betty Trapp Chapman, *Historic Houston: An Illustrated History and Resource Guide* (San Antonio: Historical Publishing Network, 2nd ed., 2011), 34.

¹⁵ Houghton et al., *Houston's Forgotten Heritage*, 23, 113, and 113 Figure 14 (T.W., Sr., house and garden, photos).

¹⁶ *Ibid.*

Eminent Victorians extolled a natural, “organic” way of life, yet often sought to impress others with extravagant architectural flourishes and complex designs that contrasted with their muted colors. Thomas’s son Thomas William House, Jr., for example, brought the English love of gardening to the Lone Star State. After studying abroad, he married Ruth Nicholson, the daughter of English parents; erected a house famous for its tall, conical “witch tower” and gingerbread-fringed porches; and planted a “Victorian garden” that nurtured exotic plants from every corner of Victoria’s empire, including date palms, ferns, primroses, gloxinias, hibiscus, fuschias, asters, cacti, petunias, lantanas, 200 varieties of roses, and “Every Vegetable Known to Man.”¹⁷

A tale of two princes: Christmas trees, German settlers, and abolition. Two German princes played particularly important roles in Queen Victoria’s England and Chief Justice Collinworth’s Republic of Texas. Royal matchmaking provided Victoria with a prospective husband, Prince Albert of Saxe Coburg and Gotha, and an alliance with a prominent, Protestant realm east of the Rhine. They fell in love. Victoria asked for Albert’s hand, and they married in the Chapel Royal of St James’s Palace, in London, on February 10, 1840.



Marriage of Victoria and Albert, painted by George Hayter. Wikimedia Commons.

¹⁷ *Ibid.*, 36, 142 Figures 65 and 66, 202–03 Residence 165 (T.W., Jr. drawing room and master bedroom, photos).

The ITV/PBS series *Victoria* accurately depicts Albert introducing the Christmas tree to the palace in 1841. The German tradition of venerating trees dated back to pagan times. But, as *Victoria* series creator Daisy Goodwin explains it,

The idea of a decorated tree came from the German theologian Martin Luther who, seeing the stars shine through the branches of a fir tree when riding one night, decided to bring one inside and decorate it with candles to remind his children of the star of Bethlehem. But Albert made Christmas at Windsor an astonishingly lavish affair. Each member of the royal family had their own tree standing on its own special altar heaped with presents.¹⁸



Left: an 1848 engraving of Victoria and Albert celebrating a family Christmas. Wikimedia Commons.
Right: Jenna Coleman and Tom Hughes portray Victoria and Albert with their tree in the ITV/PBS Masterpiece Theater series *Victoria*. RadioTimes website.

As a little girl, Queen Victoria grew up enjoying the Christmas tree her mother and father placed in her room. In 1832, the thirteen-year-old princess described the two Christmas trees that filled her family's drawing-room:

After dinner ... we then went into the drawing-room near the dining-room. . . . There were two large round tables on which were placed two trees hung with lights and sugar ornaments. All the presents being placed round the trees. I had one table for myself and the Conroy family had one together. Lehzen likewise had a little table.¹⁹

¹⁸ Daisy Goodwin, "Victoria creator Daisy Goodwin on how a German prince dreamt up the classic English Christmas: It was all Albert's big idea...," RadioTimes website, <http://www.radiotimes.com/news/tv/2018-03-21/victoria-creator-daisy-goodwin-on-how-a-german-prince-dreamt-up-the-classic-english-christmas/>.

¹⁹ Queen Victoria, in Arthur Christopher Benson and Reginald Brett, 2nd Viscount Esher, editor, *The Girlhood of Queen Victoria: A Selection from Her Majesty's Diaries between 1832 and 1842* (London: John Murray, Pub., 1912), vol. 1, 61.

After Victoria, Albert, and their growing royal family publicized their Christmas trees festivities, wealthy and middle-class families in England followed their lead. A book review of *The Christmas Tree* that appeared in London's *Weekly Chronicle* emphasized Victoria's role in making a German custom an English fashion:

The ceremony of the Christmas tree, so well known throughout Germany, bids fair to be welcomed among us, with the other festivities of the season, especially now the Queen, within her own little circle, has set the fashion, by introducing it on the Christmas Eve in her own regal palace.²⁰

While Prince Albert was introducing the indoor Christmas tree to London, another German prince and his followers were planning to make this Teutonic tradition a frontier festivity in the Lone Star Republic. Prince Carl of Solms-Braunfels, one of Queen Victoria's cousins, was getting ready to lead thousands of German immigrants to Texas.

When he arrived with some 10,000 settlers, Prince Carl carried out plans devised by the organizers of the *Verein zum Schutze Deutscher Einwanderer*, or German Emigration Company, the *Adelsverein*.²¹ Intellectuals, craftsmen, artists, and peasants landed in Galveston or Indianola, then moved northwest to New Braunfels, San Antonio, the Hill Country, and Fredericksburg. "Geh mit uns Texas (Go with us to Texas)," *Adelsverein* immigrants implored friends and relatives in Germany.²² By 1850, European immigrants, mostly of them from Germany, outnumbered Tejanos and immigrants from the United States living in San Antonio.²³ Germans liked Houston, too, so much so that 40 percent of the city's population was German in 1850.²⁴

"Most Germans [who came to Texas] were Lutherans, Catholics, or Methodists," the authors of *Houston's Forgotten Heritage* noted, "for whom religion and family were the cornerstones of life. They paced the progress of the year by the church calendar, and they celebrated each milestone with a festival that included all ages. They introduced the Easter Bunny and the Christmas tree to Texas, celebrating on Christmas Eve rather than on Christmas day as the Anglo-Americans did. Candles were lit on a tree decorated with handmade ornaments, durable brass chains symbolizing German practicality, a few treasured glass ornaments from Germany, and an angel at the top."²⁵

Some Texas slaves celebrated Christmas with an indoor tree, too. Some masters gave their slaves nothing, not even time off. More fortunate slaves received new clothes and shoes. But at least a few enjoyed a gift that might have brought a smile to Prince Albert's face:

²⁰ *Weekly Chronicle* (December 14, 1844), quoted in an advertisement headlined "A new pleasure for Christmas," *The Times* (December 23, 1844), 8.

²¹ Terry G. Jordan, "Germans," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/png02>.

²² Fehrenbach, *Lone Star*, 293.

²³ *Ibid.*, 285.

²⁴ Houghton et al., *Houston's Forgotten Heritage*, 23.

²⁵ *Ibid.*, 244, 299.

Most slaves were given a little money to spend at their discretion, plus candy, a hog, fresh beef or chickens, some eggnog, and a big dinner. Some were given their own Christmas trees decorated with popcorn, and perhaps individual gifts. Ex-slave Harriet Jones remembered that Christmas evening the slaves had a supper of wild turkey or chicken and special dishes on a long table in the yard.²⁶

A slave-cabin Christmas tree was possible because Christmas trees were a festive part of life on the frontier.²⁷ The custom expanded into the general population, and even into slave quarters, as more and more Germans settled in Texas.

Yet very few slaves in Texas received the gift that mattered most to them: freedom. Prince Albert loathed the existence of slavery and lent his full support to eliminating it around the world. He led Britain's abolitionist movement as President of the Society for the Extinction of Slavery.²⁸

On June 26, 1840, Prince Albert faced an audience of some 4,600 people at Exeter Hall, where he spoke passionately and eloquently in favor of abolishing the slave trade throughout the world:

I deeply regret that the benevolent and persevering exertions of England to abolish the atrocious traffic in human beings have not led to a satisfactory conclusion. I sincerely trust that this great county, will not relax in its efforts until it has finally and forever put an end to that state of things so repugnant to the principles of Christianity and to the best feelings of our nature....²⁹

Most of Texas's German immigrants shared Prince Albert's view that slavery was evil and inefficient, causing consternation and alarm among their slave-owning neighbors.³⁰ Yet while abolitionism was growing more powerful in Britain



Top: The Heritage Society of Houston decorates the High Victorian, 1891 Lutheran church in Sam Houston Park with wreaths at Christmas. Bottom: an ornament sold at Gonzales to raise funds for a new museum. Photos by David A. Furlow.

²⁶ *Ibid.*, 301.

²⁷ Curtis Bishop, "Early Amusements," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/lleza>.

²⁸ Stanley Weintraub, *Uncrowned King* (London: John Murray Publishing, 1997), 102-05.

²⁹ *The Liberator*, *Liberator Files* (June 26, 1840), 3, <http://theliberatorfiles.com/prince-albert-and-great-anti-slavery-meeting-in-london/>.

³⁰ Rudolph L. Biesele, "German Attitude toward the Civil War," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/png01>.

and Germany, slavery steadily entrenched itself in Texas, both during the Republic and in the antebellum era.

Diplomacy, annexation, cotton, and slavery in antebellum Texas. In her Executive Director's Column, Sharon Sandle discusses Great Britain's diplomacy with the Republic of Texas immediately before annexation. During 1844 and 1845, Captain Charles Elliott, acting on behalf of the British and French minister, Comte de Saligny, sought to prevent U.S. annexation of Texas through diplomacy.³¹ Those efforts culminated in Queen Victoria's signing of the Ratification of Convention between Britain and the Republic of Texas. But the Anglo-French campaign to convince Texas's leaders to avoid annexation failed and Texas became an American state.

"During the decade and a half between the annexation of Texas and its union with the Confederacy," historian Rupert Richardson observed, "Texas experienced the most rapid growth in its history. Its population increased more than fourfold and its assessed property more than eightfold. That its cultural progress did not keep pace with its material development was the result of frontier conditions rather than the lack of fine innate qualities in its people."³²

University of Texas Professor Daina Berry and UT Black Diaspora Archivist Rachel Winston present a compelling analysis of Gonzaga University Professor Jason Gillmer's ground-breaking new book, *Slavery and Freedom in Texas: Stories from the Courtroom, 1821-1871*. Professor Gillmer focused on five "hard" cases that resolved conflicting principles of law governing the enslavement engine of economic growth in St. Augustine's Redlands; in Limestone County's Central Texas; in Orange County near the Sabine River; in a Galveston will-construction lawsuit; and in Wharton County, after the Civil War, when mixed-race children sought their inheritances. I've read this book, too, and I recommend it to anyone interested in the history of slavery and Texas law.

Slavery litigation filled Texas courtrooms in the 1850s because of increasing cultivation of cotton on plantations using slave labor. Great Britain's industrializing textile mills created an ever-increasing demand for Texas cotton. By 1849, Texans were producing some 58,073 bales, each weighing 500 pounds. Cotton production leaped to 431,645 bales by 1859, a more than seven-fold increase in a decade, while the number of slaves in Texas grew from 5,000 in 1836 to 182,000 in 1860.³³ While Prince Albert, John Brown, German Texans, and other abolitionists demanded an end to slavery, the textile mills of Liverpool, Leeds, and London kept spinning, sustaining an unceasing demand for the cheap Texas cotton slavery produced.

Albert, the Civil War, Reconstruction, Victorian architecture, and the Queen of the Gulf. Disaster befell Victoria and Texas alike in 1861. On March 16, 1861, her mother Princess Victoria of Saxe-Coburg-Saalfeld died. Victoria only learned how much her mother had loved her by reading her mother's papers after her death. The queen fell into a deep grief. When her beloved Prince Albert died of typhoid on December 14, 1861, nothing could console her. She wore black

³¹ "Elliot, Charles," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fel09>; Fehrenbach, *Lone Star*, 265.

³² Rupert Norval Richardson, *Texas, the Lone Star State* (Englewood Cliffs, N.J., 1943, rev. 1958), quoted in Fehrenbach, *Lone Star*, 279.

³³ Britton, Elliott, and Miller, "Cotton Culture," *Handbook of Texas Online*; Alwyn Barr, *Black Texans: A History of African Americans in Texas, 1528-1995* (2nd ed.) (Norman: University of Oklahoma Press, 1996), 17.

for the rest of her life, earning her the sobriquet “Widow of Windsor.”

On the other side of the Atlantic, the Texas Supreme Court’s former Chief Justice John Hemphill, now a Senator, and the state’s later Chief Justice and then Governor, Oran Roberts, led Texas into the Confederacy over Governor Sam Houston’s objections. Texas Secessionists believed that Victoria’s Britain and Louis Napoleon’s France, whose mills and mill-workers depended on Southern cotton for their livelihoods, would make alliances with the Confederacy.³⁴

But neither Britain nor France offered succor to the South, and cotton could not be shipped from ports blockaded by the North.³⁵ On June 19, 1865, Union General Gordon Granger landed at Galveston, announced that all acts of the Confederacy were null and void, and read the Emancipation Proclamation. Thus began the celebration of Juneteenth.³⁶

Stephen Pate’s article in this *Journal*, “Reconstruction Politics and the Galveston Six: The Struggle to Fill the Eastern District Federal Judgeship, 1870–72, Part 2,” examines the arduous effort to appoint a U.S. District Court Judge in Galveston after the Civil War. The photos in his article accurately depict the Victorian era ambiance of the federal courthouse built in Galveston on the eve of the Civil War. After the war, cotton-export commerce returned to Galveston and grew at a rapid pace. While only 82,000 bales left Galveston in 1854, exports increased until 2,278,000 bales would leave Texas’s largest city in 1900.³⁷ Cotton would remain Texas’s largest export through the end of Victoria’s reign.³⁸



Left: This home in San Marcos’s Historic District exemplifies the architecture that came to Texas during the Victorian Age. Right: Galveston’s Strand is so Victorian that it hosts Dickens on the Strand each Christmas. Photos by David A. Furlow.

³⁴ Fehrenbach, *Lone Star*, 351.

³⁵ *Ibid.*, 359.

³⁶ *Ibid.*, 394.

³⁷ David G. McComb, *Galveston: A History* (Austin: University of Texas Press, 1986), 47; Britton, “Cotton Culture,” *Handbook of Texas Online*.

³⁸ Michael Ariens, *Lone Star Law: A Legal History of Texas* (Lubbock: Texas Tech University Press, 2011), 64.

The Victorian Age left its most visible imprint on Texas law in the architecture of post-Civil War county courthouses; the lavish walnut furnishings, elaborate draperies, and fine wool carpet of the 1888 Texas Supreme Courtroom on the third floor of the Capitol; and the homes of lawyers, judges, and justices.³⁹ Scalloped brackets and spindle posts replaced front porch columns, while floor-length bay windows, fancy millwork, and stylish asymmetry ornamented courthouses and the homes of the wealthy near downtown Houston, in Galveston's Silk Stocking District, along San Antonio's Prince William Street, and in Round Rock, San Marcos, and Austin.⁴⁰

The Victorian Age also witnessed the rise of local bar associations. "On a Saturday afternoon in April 1870, Houston's lawyers held a meeting at a newly remodeled courthouse to organize a bar association and elect officers."⁴¹ Peter Gray, later a Justice of the Texas Supreme Court, convinced Houston's most prominent attorneys to create the Houston Bar Association in 1870 to professionalize the profession.

The Late Victorian Age provided alternatives to Victoria and Albert's Christian family values, sober sensibilities, and bowdlerized books to the Lone Star State. Gambling, alcohol,



Left: The Historic Texas Supreme Court Courtroom on the third floor of the Capitol dates back to 1888 and the High Victorian era. Right: The Hallettsville Courthouse revels in Dickensian themes every Christmas. Photos by David A. Furlow.

³⁹ Willard B. Robinson, "County Courthouses," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/cgc03> ("After the Civil War, during which virtually no construction occurred, these antebellum architectural traditions of interior spatial arrangement were continued, but as the economy recovered, decorative features progressively reflected a transition from Classical simplicity to Victorian ornateness."); "Texas Supreme Courtroom," State Preservation Board, <http://www.tspb.state.tx.us/prop/tc/tc-spaces/spaces05.html>; "The Texas Capitol," State Preservation Board, http://www.tspb.state.tx.us/plan/brochures/doc/in_print/capitol_brochure/capitol_brochure.pdf.

⁴⁰ Houghton, et al., *Houston's Forgotten Heritage*, 77–80.

⁴¹ Eric L. Frederickson, *A Commitment to Public Service: The History of the Houston Bar Association* (Houston: Gulf Publishing Co., 1992), 10.



Napoleon Sarony's 1882 photo of Oscar Wilde and 1882 sheet music, Wikimedia Commons.

boxing, boardinghouses, brothels, and bordellos were commonplace.⁴² But there was high-brow entertainment, too. A flamboyant, twenty-seven-year-old Oscar Wilde, author of *The Picture of Dorian Gray* and *The Importance of Being Earnest*, amazed, amused, and appalled Texans during a literary tour of Galveston, Houston, and San Antonio in 1882.

The “Apostle of Beauty,” self-proclaimed leader of the Aesthetic Movement, as well as an author, architectural historian, and Classicist, the “Irish Dandy” loved to stun crowds by growing his hair long, wearing a sunflower in his lapel, and sweeping across the stage in opulent purple and brocades. He began the tour in New York, where a customs agent asked if he had anything to declare. Wilde responded, “I have nothing to declare but my genius.”⁴³

After first stopping in Fort Worth, Wilde came to the Pavilion Opera House in Galveston, the Queen of the Gulf and largest city in Texas at that time. He ate up the languid scenery and

⁴² David A. Furlow, “Theodora Hemphill’s Guide to the Texas Constitution, Part IV,” *Journal of the Texas Supreme Court Historical Society*, vol. 5, no. 4 (Summer 2016), 51–67.

⁴³ W.F. Strong, “Oscar Wilde’s Tour of Texas Gives Us Life,” *Texas Standard* (June 29, 2016), <https://www.texasstandard.org/stories/oscar-wildes-tour-of-texas-gives-us-life/>.

relished the people. "Galveston, set like a jewel in a crystal sea, was beautiful," he said. "Its fine beach, its shady avenues of oleander, and its delightful sea breezes were something to be enjoyed." Galvestonians had been wonderful. "They made me an honorary Colonel in the Texas Rangers. So I wrote immediately to all my friends and told them that they should henceforth address me as Colonel Wilde."⁴⁴

Boot-wearing, beer-drinking, hootin' and hollerin' Texans at Gray's Opera House on Houston's Main Street jeered his effete sensibilities and effeminate appearance while a patron in a downstairs saloon interrupted his performance by loudly banging a gong in protest.⁴⁵ He did not even bother to damn Houston with faint praise.

It's unlikely that any Texas Ranger before or since has announced, "Let me be surrounded by luxury, I can do without necessities!" as he said to Henry Ryder-Taylor, a fellow Englishman and former *London Telegraph* journalist, while Wilde stayed in San Antonio's Menger Hotel.⁴⁶ The eminent Victorian lectured on historic architecture at Turner Hall in San Antonio, venerating "those old Spanish churches with their picturesque remains of tower and dome, and their handsome carved stonework, standing in the...sunshine of the Texas prairie," but condemned the "monstrous" condition of the Alamo, lamenting that Texans had permitted the Shrine of Texas Freedom "to fall into such Philistine conditions."

Anyone investigating whether the Menger Hotel is as luxurious today as in 1882 can take a walk on the Wilde side by registering for a conference our Society sponsors every year: the Texas General Land Office's "Save Texas History" symposium. If you check this issue's Calendar, you'll see that the G.L.O. is conducting this year's symposium at San Antonio's historic Menger Hotel on Friday and Saturday, September 14 and 15, 2018. This year's theme is "San Antonio and the Alamo: Connecting Texas for Three Centuries." Why not? History at its most opulent awaits you.

Recessional and Requiem. By the end of 1896, Victoria was the longest-reigning monarch in English history. She celebrated her Diamond Jubilee on June 22, 1897. She rode in a special open carriage on a six-mile procession to St. Paul's Cathedral. Troops from all over her empire and the prime ministers of all of her self-governing dominions celebrated her reign, but not her troublesome grandson Kaiser Wilhelm II of Germany, whom the Prime Minister had not invited.

Rudyard Kipling composed a poem, "Recessional," as an after-comment on the occasion, expressing pride in Victoria's empire while warning that all glory is fleeting. Kipling conveyed his message in the poem's second and third stanzas:

⁴⁴ David M. Friedman, *Wilde in America: Oscar Wilde and the Invention of Modern Celebrity* (New York: W. W. Norton & Co., 2014), 218–19.

⁴⁵ *Ibid.*, 221. See also Michael Hardy, "Oscar Wilde in Houston," *Houstonia* (March 14, 2014), <https://www.houstoniamag.com/articles/2014/3/14/oscar-wilde-in-houston-and-galveston-march-2014>.

⁴⁶ Friedman, *Wilde in America*, 219–21. See also Strong, "Oscar Wilde's Tour," *Texas Standard*.

The tumult and the shouting dies;
The Captains and the Kings depart:
Still stands Thine ancient sacrifice,
An humble and a contrite heart.
Lord God of Hosts, be with us yet,
Lest we forget—lest we forget!

Far-called our navies melt away;
On dune and headland sinks the fire:
Lo, all our pomp of yesterday
Is one with Nineveh and Tyre!
Judge of the Nations, spare us yet,
Lest we forget—lest we forget!⁴⁷

Queen Victoria died on January 22, 1901 after reigning sixty-three years, seven months and two days. She was the longest-reigning British monarch and the longest-reigning queen regnant in world history until her great-great-granddaughter Elizabeth II surpassed her record on September 9, 2015. Sir Almeric FitzRoy, the Clerk of her Privy Council, wrote that “[n]o pen can describe the magnitude of the change. It is not only the passing of a great personality...it is a change from era to era...”⁴⁸ In a front page article, Park Milton, editor of Dallas’s *Southern Mercury* newspaper, agreed that Victoria’s death marked the end of an era:

The Dead Queen

Queen Victoria is dead and Edward VII reigns.

The greatest event in the memory of this generation, the most stupendous change in existing conditions that could possibly be imagined, has taken place quietly—almost gently—upon the anniversary of the death of Queen Victoria’s father, the Duke of Kent. The end of this career, never equaled by any woman in the world’s history, came in a simply furnished room in Osborne House, at Cowes, on the Isle of Wight...⁴⁹

On February 2, 1901, she had a military funeral befitting a soldier’s daughter and the head of an army.

Victoria earned the name “Grandmother of Europe” because her nine children married into different royal lines, presenting her with a large group of grandchildren that included a German Kaiser, a Russian Tsarina, a Spanish queen, a Romanian queen, and an English king. In addition to her son and heir Edward VII and her grandson King George V, her grandsons Kaiser

⁴⁷ Rudyard Kipling, “Recessional,” *The Spectator* (July 24, 1897), [https://en.wikipedia.org/wiki/Recessional_\(poem\)](https://en.wikipedia.org/wiki/Recessional_(poem)).

⁴⁸ Alfred F. Havighurst, *Twentieth Century Britain* (New York: Harper & Row, 2nd ed., 1962), 4.

⁴⁹ Milton Park, “The Dead Queen,” *Southern Mercury* (Dallas, Texas), vol. 21, no. 4, ed. 1 (January 24, 1901), *Portal to Texas History*, University of North Texas Libraries, <https://texashistory.unt.edu/ark:/67531/metaph185884/m1/1/?q=Queen%20Victoria%27s%20death%201901>.

Wilhelm II of Germany and Archduke Franz Ferdinand, heir to the Austro-Hungarian throne, attended. Another grandson, Tsar Nicholas II of Russia, missed the occasion. Mourners who attended Victoria's funeral hoped that a family of monarchs would keep the peace in Europe.

Events in August 1914 dashed that hope of a European peace among Victoria's descendants. This *Journal* issue's last news item discusses the Great War Commemoration our Society will conduct on Wednesday, November 14, 2018 at the Texas Supreme Courtroom on the third floor of the Capitol. It will honor the memories of the seven Justices of the Texas Supreme Court, two Judges of the Court of Criminal Appeals, and two Governors of Texas who grew up in the Victorian Age before serving their state and country in the First World War.

I hope you enjoy reading this issue as much as we enjoyed putting it together.

DAVID A. FURLOW *is a First Amendment attorney, historian, photojournalist, and archaeologist.*

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Alcaldes in Austin's Colony, 1821-1835

By Jason Boatright

Texas trial courts are *old*. They were created before Texas was a state, before it was a republic, before it was part of Mexico, before, even, it was part of Spain. When the Iberian Peninsula was ruled by Moors a thousand years ago or so, the court of the first instance was held by an *al-qadi*, whose office became the *alcalde* of Spain and Mexico, and the first trial courts of Texas.¹ The *alcalde* was originally a municipal official that combined the duties of judge, legislator, and mayor.² Some of the *alcalde*'s judicial practices survive in Texas to this day.

Stephen F. Austin transmitted the ancient office of the *alcalde* to what would become the Republic and State of Texas. He drafted a legal code for the *alcaldes* of his colony in 1824, adopting the nomenclature and a semblance of the procedure of the Spanish office, while adapting it to the needs of his colonists.³ The legal codes were a mixture of Anglo-American and Spanish law,⁴ fitting for a colony of English-speaking settlers residing in a state that had long been governed under the civil law of Spain.

Alcaldes in Spanish Texas

When Iberia was part of the Roman Empire, the judicial officer of a municipality was called a *iudex*. The same sort of official in medieval León, Castile, and Portugal was known as a *juez*, and he was helped during the period of Moorish rule by an *al-qadi*,⁵



Abû Zayd, a litigant, pleads before the *Qadi*, or judge, of Ma'arra, a city in northwestern Syria (1334). Austrian National Library, Vienna. Image shared through the Yorck Project: *10,000 Masterworks of Painters*, Wikimedia Commons.

¹ See Karen B. Graubart, *Learning from the Qadi*, 95 *Hispanic American History Review* 2, 204 n.32 (2015) (explaining that the Spanish office of *alcalde* descends from the Arab *al-qadi*).

² J. H. Elliot, *Imperial Spain, 1469–1716* (New York: Penguin, 2002), 93.

³ Austin's *alcalde* regulations contained two codes, one for civil matters, the other for criminal matters. "Civil Regulations," in Stephen F. Austin, *Establishing Austin's Colony: The First Book Printed in Texas with the Laws, Orders and Contracts of Colonization* (Austin: Pemberton Press, 1970; orig. pub. 1832), 82, 85.

⁴ Clarence Wharton, *Early Judicial History of Texas*, 12 *TEX. L. REV.* 311, 315 (1934).

⁵ Joseph F. O'Callaghan, *A History of Medieval Spain* (Ithaca, New York and London: Cornell University Press, 1983), 270.



Where Spanish conquistadors led, alcaldes followed.
Spanish Empire in the New World. HistoryMaps,
Wikispaces.

who heard oral testimony in cases that followed very little formal legal procedure.⁶ Typically, an al-qadi presided at his own house, or occasionally in a courtroom, asking litigants questions, listening to testimony, and issuing judgments quickly.⁷ Eventually, Spain exported this office to the New World.

Spanish exploration of Texas began with Alonso Álvarez de Pineda's coastal surveys in 1519, well within living memory of the Moorish presence in Iberia.⁸ When the civilian settlement that would become San Antonio was established over 200 years later, Spanish law required that alcalde courts be established for the new settlers.⁹ These courts were similar to the old informal al-qadi courts of medieval Spain.

In Spanish provinces like Texas, legal procedure was "subject to loose interpretation and modification according to local circumstances."¹⁰ Procedure even varied according to a particular judge's personal preference.¹¹ Individualized, ad hoc

judicial procedure was known as *arbitrio judicial*, and it was a legitimate source of Spanish law, just as valid as formal practice under written law.¹² This encouraged flexibility and responsiveness, but it hindered the establishment of a consistent, formal, and enduring Spanish judicial practice in Texas.¹³

⁶ Albert Habib Hourani, *A History of the Arab Peoples* (Cambridge: Harvard University Press, 2002), 114.

⁷ O'Callaghan, *History of Medieval Spain*, 114 (citing *Historia de los jueces de Córdoba*, 7–8).

⁸ Donald E. Chipman and Harriet Denise Joseph, *Spanish Texas 1519–1821* (Austin: University of Texas Press, rev. ed. 2010), 24, 25.

⁹ *Ibid.*, 51.

¹⁰ Jesús F. de la Teja, *San Antonio de Béxar, A Community on New Spain's Northern Frontier* (2001), 140 (citing Peter Marzahl, *Creoles and Government: The Cabildo of Popayan*, *Hisp. Am. Hist. Rev.* 54, 636 (1974)).

¹¹ Charles R. Cutter, *The Legal Culture of Northern New Spain* (Albuquerque: University of New Mexico Press, 1995), 34–35.

¹² *Ibid.*, 35–36.

¹³ *Ibid.*



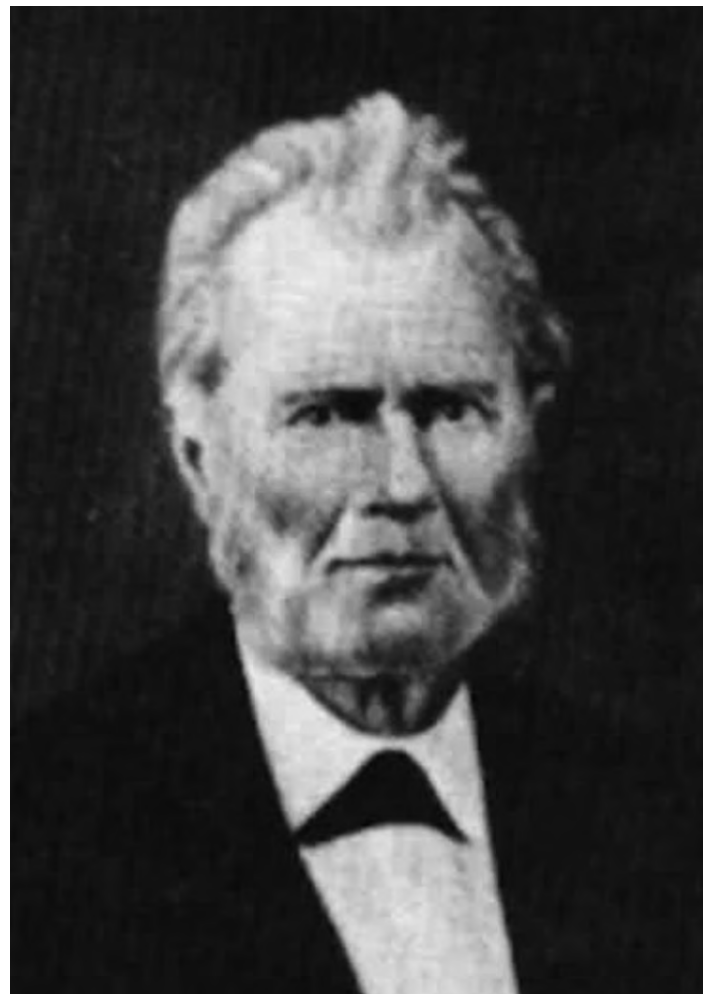
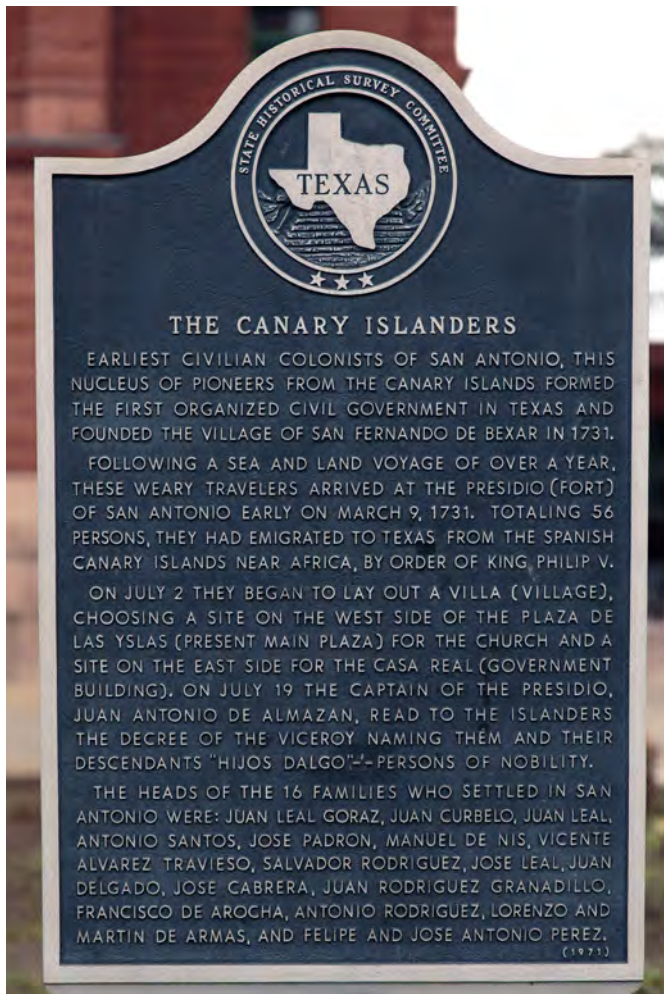
Juan Manuel Blanes, *Meeting of the Cabildo in Buenos Aires*. Wikimedia Commons.

The first Texas *alcaldes* were selected in 1731 at San Fernando, present day San Antonio.¹⁴ The town was governed by a *cabildo*, or city council, the members of which were appointed by order of the crown. The Spanish law that applied to the formation of a *cabildo* provided that, when a settlement like San Fernando contained at least ten married men, the *cabildo* would be authorized to select *alcaldes* from within its ranks.¹⁵

Only immigrants from the Canary Islands served in San Fernando's first *cabildo*. Known as *Isleños*, these residents comprised fifteen families. Members of the *cabildo* were all married, and

¹⁴ de la Teja, *San Antonio de Béxar*, 139–40. *Alcaldes* served in other municipalities in Spanish Texas as well. The first *alcalde* of Laredo was elected in the fall of 1767. Gilbert R. Cruz, *Let There Be Towns, Spanish Municipal Origins in the American Southwest, 1610–1810* (College Station: Texas A&M University Press, 1988), 101 (noting the citizen election of Don José Martínez de Sotomayor as *alcalde ordinario*). Compare with Andres Tijerina, *Tejanos & Texas under the Mexican Flag, 1821–1836* (College Station: Texas A&M University Press, 2010), 28 (noting that the *alcalde* selected in the first Laredo election in 1768 was Don José Martínez de Soto).

¹⁵ Mattie Alice Austin, *The Municipal Government of San Fernando de Béxar, 1730–1800*, Quarterly of the Texas State Historical Association 8, no. 4 (April 1905), 297–98 (citing *Recopilación*, lib. IV, tit. V, ley x).



Left: "The Canary Islanders," Texas Historical Commission sign, public domain.
 Right: Juan Leal Goras, first alcalde of Villa da San Fernando, a.k.a. San Antonio de Béxar.
Handbook of Texas Online, public domain.

older men were preferred to younger ones.¹⁶ Officers were appointed to the *cabildo* for life, but members who were alcaldes served a one-year term.¹⁷ An alcalde had to wait three years after the expiration of his terms before he could be elected to the office another time.¹⁸

To establish the first *cabildo* in San Fernando, the viceroy authorized the governor of Texas, or the captain of the presidio of Béxar if the governor were absent, to select nine officers from the heads of the Isleño families.¹⁹ The Isleños chose six *regidores*, who were roughly the equivalent of American city councilmen; one *alguacil mayor*, who served in an office that was a cross between a sheriff, constable, and clerk; one *escribano de consejo y publico*, or notary public; and one *mayor domo de los bienes y propios*, who was like a treasurer.²⁰ These officers, in turn, were to select two alcaldes from among themselves.²¹

¹⁶ *Ibid.*, 298.

¹⁷ *Ibid.*, 303.

¹⁸ *Ibid.*, 301 (citing *Recopilación*, lib. IV, tit. IX, ley xiii. See also *ibid.*, lib. V, tit. III, ley ix).

¹⁹ Cutter, *Legal Culture of Northern New Spain*, 96.

²⁰ Austin, *Municipal Government of San Fernando de Béxar*, 297.

²¹ Cutter, *Legal Culture of Northern New Spain*, 96.



Spanish Military Governors Palace exterior in San Antonio, Headquarters of the Presidio de San Antonio de Béxar, and a place where *alcaldes* worked. Photo shared through DLS Texas, Wikimedia Commons, public domain.

In the governor's absence, Don Juan Antonio Pérez de Almazán, the captain of the presidio of Béxar, named all of the officers on July 20, 1731, except for the two *alcaldes*. The *regidores* were Juan Leal Goras, Juan Curbelo, Antonio Santos, Salvador Rodríguez, Manuel de Niz, and Juan Leal Alvares. Goras (sometimes spelled Goraz²²) was *alcalde de primera voto*, and Rodríguez was *alcalde de segundo voto*. Francisco de Arocha became the *escribano*, Antonio Rodríguez was *mayordomo*, and Vicente Álvarez Travieso was *alguacil*. The appointees took office on August 1, 1731, and elected the *alcaldes* that day.²³ The viceroy approved the selections on October 24, 1731.²⁴

able to write legibly.²⁵ The most important compilation of Spanish law in the New World, the *Recopilación*, required that *alcaldes* be able to read and write, but neither of San Fernando's *alcaldes* could do so. Juan Leal Goras could draw his signature, but the second, Salvador Rodríguez, could not even do that.

Spanish officials thought that the illiteracy of their provincial judges was a problem. From 1718 until 1731, the *alcalde* court had been run by the governor at the military presidio rather than an *alcalde* in a court of law.²⁶ In 1740, Captain Toribio de Urrutia, the military commander of Béxar, complained to the viceroy that *Isleños* were selecting incompetent *alcaldes* who had useful family ties, but who could not read or write.²⁷

The problem of illiterate and unqualified judges persisted in Spanish Texas. Indeed, all judges in Spanish and Mexican Texas were amateurs, even in places like Béxar that were important centers of political, religious, and commercial life.²⁸ This directly affected the quality

²² See, e.g., de la Teja, *San Antonio de Béxar*, 80.

²³ Austin, *Municipal Government of San Fernando de Béxar*, 298.

²⁴ Chipman and Joseph, *Spanish Texas*, 138.

²⁵ Austin, *Municipal Government of San Fernando de Béxar*, 305.

²⁶ Cruz, *Let There Be Towns*, 152.

²⁷ de la Teja, *San Antonio de Béxar*, 141.

²⁸ See Hans W. Baade, *Law and Lawyers in Pre-Independence Texas*, in *Centennial History of the Texas Bar, 1882-1982*

of the Texas justice system. For example, in 1783, the Béxar alcalde arrested a man for adultery. The governor noted in an official report about the case that he had criticized the alcalde for not charging the defendant in accordance with Spanish law. The alcalde had told the governor that he “did not do it because he did not know whether the circumstances were proper for making [a formal charge], for his profession has solely been that of merchant,” and there were no instructions in the town’s archives on how alcaldes were to charge people.²⁹ The next governor of Texas confronted the same situation. “In many years,” he wrote, “the staff of justice and *regidor* posts are found in a single family of brothers and sons.”³⁰

No alcalde in Spanish Texas had any formal legal training.³¹ They tended to receive help from *letrados en leyes*, who were lawyers hired by the *cabildo*.³² In large municipalities, the alcalde or a similar magistrate presided in court every day but Sunday. In smaller towns, alcaldes spent most of their time on their farms or ranches, convening court only when necessary.³³ The procedures of the alcalde courts remained mostly unwritten and customary throughout the period of Mexican rule.³⁴ Tejanos complained about the old *hombres buenos* system of trial by conciliation—basically, arbitration by amateur referees.³⁵ An article of the 1827 Constitution of Coahuila y Texas provided that civil trials by jury should be instituted “as the advantages of this valuable institution become practically known,” but the state never implemented the article.³⁶

The amateur judges of Mexican Texas heard cases that were litigated by amateurs. There were no government lawyers in any part of northern New Spain,³⁷ and there were no university-trained lawyers practicing in Spanish Texas.³⁸ In the absence of qualified attorneys to litigate legal claims, parties were supposed to use non-attorney pleaders, called *procuradores del numero*, but there were none of those, either.³⁹ In 1810, the governor of Texas prohibited the use of amateur pleaders, and appointed four people who were allowed to handle lawsuits in the province, but there is no evidence that they were ever used.⁴⁰ The escribano in San Fernando did provide some legal services, but he was not a licensed attorney and, when he left office in 1757, he was never replaced.⁴¹ Just before Mexico gained its independence, the governor accepted

(Austin: State Bar of Texas, 1981), 241 (explaining that learning the Spanish legal system required formal training, and that the largest settlement in Spanish Texas was San Antonio, which was a frontier military outpost, far from the nearest university, which was in Mexico City and, later, Guadalajara).

²⁹ *Ibid.*

³⁰ Tijerina, *Tejanos & Texas under the Mexican Flag*, 155 (quoting Munoz to the Viceroy, 7 January 1792).

³¹ Cutter, *Legal Culture of Northern New Spain*, 82.

³² Cruz, *Let There Be Towns*, 149.

³³ *Ibid.*

³⁴ Tijerina, *Tejanos & Texas under the Mexican Flag*, 40.

³⁵ David J. Weber, *The Mexican Frontier, 1821–1846: The American Southwest under Mexico* (Albuquerque: University of New Mexico Press, 1982), 39–40.

³⁶ Tijerina, *Tejanos & Texas under the Mexican Flag*, 41.

³⁷ Hans W. Baade, *The Formalities of Private Real Estate Transactions in Spanish North America, A Report on Some Recent Discoveries*, 38 LA. L. REV. 655, 705 (1978).

³⁸ *Ibid.*, 702.

³⁹ *Ibid.*

⁴⁰ Baade, *Law and Lawyers in Pre-Independence Texas*, 242–43.

⁴¹ *Ibid.*, 243.

the application of a Béxar resident to serve as escribano, but there was no money to pay him, and he never served. Instead, the governor appointed a militiaman to do clerical legal work.⁴²

Spanish law applicable to the Indies, including Texas, allowed litigants to appeal the rulings of alcaldes to the cabildo, but there is no evidence of an appeal like that in San Fernando.⁴³ The *Recopilación* granted alcaldes jurisdiction over all civil or criminal cases that would normally be under the jurisdiction of the governor or lieutenant when both of those officers were absent.⁴⁴ Rulings of alcaldes were appealed to the state *asesor*, or attorney general, in Saltillo, a process that required at least four months. The *asesor* reviewed the record and remanded the case with his *dictamen*, or recommendation. The state supreme court in Saltillo heard appeals in criminal cases involving corporal punishment.⁴⁵

In practice, these procedures were not strictly followed. Consider, for example, a case that probably has the best-preserved record of any legal matter in Spanish Texas. On June 25, 1733, Joseph Padrón complained to one of the alcaldes, Antonio de los Santos, that the other alcalde, Juan Leal Goras, had plowed over Padrón's corn.⁴⁶ Goras



Alcaldes de corte, a fiscal and an alguacil mayor reviewing judicial decisions in an *audiencia real*, or royal audience, in Lima, Peru. Image from Felipe Guaman Poma de Ayala, *Nueva corónica y buen gobierno*; Ms. Copenhagen, Royal Danish Library, GKS 2232, 488, Wikimedia Commons, public domain.

⁴² Félix D. Almáraz, Jr., *Tragic Cavalier: Governor Manuel Salcedo of Texas, 1808–1813* (Austin: University of Texas Press, 1991), 80.

⁴³ Austin, *Municipal Government of San Fernando de Béxar*, 308 (citing 2 *Recopilación*, lib. V, tit. III, ley x).

⁴⁴ *Ibid.*, 314–15.

⁴⁵ Tijerina, *Tejanos & Texas under the Mexican Flag*, 41.

⁴⁶ Austin, *Municipal Government of San Fernando de Béxar*, 316.

was convicted and jailed, but escaped from prison twice and was fined 50 pesos. He appealed to the governor, arguing that the alcalde was biased against him; the governor granted his appeal.⁴⁷

When the case was retried before the alcalde, Goras accused Padrón's witnesses of treason. Padrón's witnesses, in turn, demanded that Goras prove the accusation. The case returned to the governor, who ordered that Goras be released while the case was pending. Goras wrote a petition to the governor charging Padrón with bribing the alcalde who, naturally, demanded that Goras prove *that* charge. Goras failed to respond, claiming that he did not have the papers required for doing so. Eventually, the governor sent the case back to the alcalde, de los Santos, who ordered that Goras pay the fine. Goras appealed this verdict to the governor, who was sitting as *justicia mayor*, or civil appellate judge of the second instance.⁴⁸ Goras failed to respond, claiming that he did not have the records that he would need to do so. After much delay, the governor decreed that Goras be released to gather his crops. Finally, on March 4, 1734, all the parties appeared in front of the governor and settled the case.⁴⁹ The case illustrates the salient features of the justice system in early Texas: ad hoc procedure and a judiciary that left rather a lot to be desired.

The fact that the allegation against Goras concerned trespassing and damage to his neighbor's crops is ironic, because, as alcalde, Goras had enacted a series of ordinances banning similar infractions. He was able to promulgate these laws because alcaldes exercised legislative as well as judicial power. In 1735, not long after he settled the Padrón case—which was about trespass and destruction of property—Goras enacted an ordinance mandating that farmers enclose their properties with stakes and maintain their irrigating ditches in a good condition. Goras imposed penalties for violating the ordinance.⁵⁰ He also required that cattle be penned at night, and fined ranchers whose cattle crossed onto others' property one quarter peso per head of cattle, as well as damage.⁵¹

In addition to judicial duties and legislative duties, alcaldes performed executive functions. For example, they inspected public buildings.⁵² Alcaldes also had the power to make arrests and impose punishment on people who violated municipal ordinances.⁵³ They were supposed to take the census as well and—naturally—the governor ordered that the alcaldes of San Fernando be arrested for failure to do so in January 1784.⁵⁴ Alcaldes were even authorized by Spanish law to step in for executive officials like the governor and lieutenant governor when they were absent.⁵⁵ Accordingly, in 1791, the alcalde of San Fernando, Ignacio Cavillo, administered the oath of office to the cabildo when the governor and lieutenant governor were unavailable.⁵⁶

⁴⁷ *Ibid.*, 317.

⁴⁸ Cutter, *Legal Culture of Northern New Spain*, 73.

⁴⁹ Austin, *Municipal Government of San Fernando de Béxar*, 316–17.

⁵⁰ *Ibid.*, 314.

⁵¹ de la Teja, *San Antonio de Béxar*, 88.

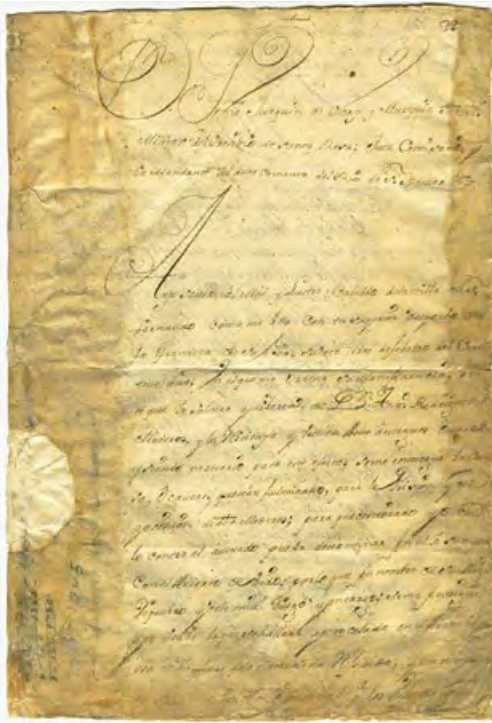
⁵² Austin, *Municipal Government of San Fernando de Béxar*, 312.

⁵³ Cruz, *Let There Be Towns*, 76.

⁵⁴ Austin, *Municipal Government of San Fernando de Béxar*, 312.

⁵⁵ *Ibid.*, 317 (citing *Recopilación*, lib. V, tit. III, ley xii).

⁵⁶ *Ibid.*



Above left: Brief for defendant in *Cabildo of San Fernando v. Antonio Mederos*, June 6, 1750.
Above right: Proceedings concerning license of Francisco José de Estrada to brand and mark livestock.
Bottom: Detail of proceedings focusing on the license of Francisco José de Estrada to brand and mark livestock. Images courtesy of Bexar Archives Online, Dolph Briscoe Center for American History, University of Texas at Austin.

In this way, an *alcalde* in Spanish Texas was a crucially important figure, performing basic judicial, legislative, and executive duties at a time and place in which the law was not well known and central authority was extremely remote. However, in addition to constituting the source of the *alcaldes'* importance, the lack of law and authority was also the source of the *alcaldes'* many limitations: the office was occupied by people who did not have the education, training, and experience to create or maintain a consistent, enduring legal system in the province. Put differently, the *alcalde* was perhaps too important to be successful. Someone who takes the census and enacts municipal ordinances and arrests criminals and serves as the governor when the governor is not around simply cannot tend to the customs and institutions that comprise a durable legal system. This is not a criticism of the office of *alcalde* or the men who occupied it in Texas; it is an observation about the difficulties Spain faced in maintaining an empire on the edge of the world.

Alcaldes in Austin's Colony

Nevertheless, during what turned out to be the last few years of Spanish rule in Texas, Spain took steps that seemed to solidify its control there. In 1819, The United States and Spain set the Sabine River as the border between the two countries and recognized Spanish sovereignty over Texas, something that had been disputed by France since the mid-seventeenth century and by westward-moving American emigrants since the late-eighteenth.⁵⁷ And in 1820, Spain restored the Constitution of 1812, which was a classical-liberal charter influenced by the United States Constitution.⁵⁸ These two events—the removal of any doubt as to Spain's rule in Texas and the restoration of a system of government attractive to Americans—convinced Moses Austin, an entrepreneur who had been a Spanish subject in Missouri, to ask the Spanish government for the right to settle families on land grants in Texas.⁵⁹

Austin traveled to San Antonio to present his petition to Governor Antonio Martínez, who forwarded it to the military commandant of Texas, Nuevo Leon, Coahuila, and Tamaulipas with the recommendation that it be granted.⁶⁰ Austin returned to Missouri almost immediately. The commandant granted the petition on January 17, 1821, but Austin did not learn this until May, when he was gravely ill.⁶¹ Just before he died in June 1821, Moses asked his son Stephen F. take over the enterprise; Stephen honored his request and arrived in San Antonio de Béxar in August.⁶²

Governor Martínez named Stephen F. Austin the successor to his father's colonization

⁵⁷ Treaty of Amity, Settlement and Limits between the United States of America and His Catholic Majesty, 1819. Art. III, reprinted in Louis J. Wortham, *A History of Texas, from Wilderness to Commonwealth* (Fort Worth: Wortham-Molyneaux Company, 1924), 377–78.

⁵⁸ Hubert Howe Bancroft, "History of Mexico," in *The Works of Hubert Howe Bancroft* (San Francisco: A.L. Bancroft & Co., 1885), 697.

⁵⁹ Eugene Barker, *Life of Stephen F. Austin, Founder of Texas, 1793–1836* (Nashville: Cokesbury Press, 1926), 13, 25. For the most recent account of this period, see generally Gregg Cantrell, *Stephen F. Austin: Empresario of Texas* (College Station: Texas A&M University Press, 2016).

⁶⁰ Daffan Gilmer, *Early Courts and Lawyers of Texas*, 12 TEX. L. REV. 435, 437 (June 1934).

⁶¹ Barker, *Life of Stephen F. Austin*, 31.

⁶² *Ibid.*, 33.



Stephen F. Austin, unknown painter. Image courtesy of the Texas State Library and Archives Commission, public domain.

plan and gave him permission to devise terms for land distribution to settlers.⁶³ Martínez also told Austin that, because of the lack of government institutions and law in Texas, Austin would have to make up the law of the colony as best as he could.⁶⁴ Austin spent the next several months exploring his grant, then left for Mexico City to ask the newly established Mexican government to confirm that his settlement project was legal.⁶⁵ Political upheaval in Mexico created long delays in obtaining the necessary approvals, but finally, on February 18, 1823, Emperor Augustín Iturbide decreed that Austin's grant was approved, with the caveat that Austin would have to govern the colony until formal government and law could be instituted.⁶⁶

On Austin's return trip to Texas, he stopped in Monterrey and asked the commandant-general to give him any special instructions or copies of laws that might help him govern his colony.⁶⁷ The commandant forwarded Austin's request to the provincial deputation, which decreed that Austin

had full authority in all civil, judicial, and military matters until the government was organized and copies of laws were furnished.⁶⁸ The government did not give Austin copies of any legal codes or specific instructions that would tell him or his colonists what the law in his colony would be.⁶⁹

Instead, the commandant wanted the colonists to know that *Austin* was the law. The commandant sent a letter to Baron de Bastrop, the commissioner for the colony, instructing him to tell the colonists that Austin was authorized by the government to administer justice in that district and that they should obey his commands.⁷⁰ In this way, Austin was officially given complete legal authority over his colony, and his colonists were instructed to treat his word as law.

Austin and his colonists were well prepared to devise and administer laws that would be suitable for a common-law people living in a civil-law country. Austin had grown up in a

⁶³ Eugene Barker, *The Government of Austin's Colony, 1821–1831*, S.W. HIST. Q. 21 (1918), 225 (citing letter from Martínez to Austin, August 14, 1821).

⁶⁴ *Ibid.*, 225 n.10 (citing letter, Martínez to Austin, August 24, 1821).

⁶⁵ *Ibid.*, 225–26.

⁶⁶ Dudley G. Wooten, ed., *A Comprehensive History of Texas, 1685 to 1897*, Vol. 1 (Dallas: William G. Scarff, 1898), 474 (Decree of the Emperor, Andres Quintana, Mexico, February 18, 1823).

⁶⁷ Barker, *Government of Austin's Colony*, 226.

⁶⁸ 1 H.P.N. Gammel, *The Laws of Texas 1822–97* (1898), 13.

⁶⁹ *Ibid.*

⁷⁰ Wooten, *Comprehensive History of Texas*, 477–78 (letter from El Baron de Bastrop to James Cummings [Provisional Alcalde on the Colorado] At Castleman's, August 5, 1823).

Hispanic world. He was raised in Missouri when it belonged to Spain.⁷¹ His father had taken the oath of allegiance to the Spanish crown in the late eighteenth century, and his family lived near St. Genevieve, which was largely French-speaking but had been governed under Spanish law.⁷² Living in the recently-acquired Louisiana Territory gave Austin an “instinctive, sympathetic understanding” of Hispanic institutions.⁷³

Austin had served in the Missouri Territorial Legislature in 1815—just twelve years after the area had been acquired in the Louisiana Purchase—and introduced several bills to reform court procedure and the judicial system.⁷⁴ At that time, Missouri retained some elements of Spanish law.⁷⁵ Austin briefly served as a circuit judge in 1819 in Arkansas, which had also been part of the Franco-Spanish Louisiana Territory.⁷⁶ By early 1820, Austin was in New Orleans working in the office of a prominent attorney, and studying the civil law.⁷⁷ Austin was thoroughly versed in the folk memory of civil law practice.⁷⁸

Austin’s colonists were also familiar with the civil law. Most of the early Anglo settlers in Austin’s Colony emigrated from areas that were part of the old Louisiana Territory, which included the present states of Louisiana, Arkansas, and Missouri.⁷⁹ The families of some of the most important Anglo settlers had been in those areas for generations, when they were territories of France, then Spain, then France again.⁸⁰ Naturally, those families brought a version of Anglo-American legal culture that had been influenced by their experiences in places that had been a part of French and Spanish Louisiana and, because they were early and influential settlers in Texas, they helped create an Anglo-Texas legal culture that was partly a French and Spanish legal culture, even before Mexican authorities had extended Spanish-Mexican law to Austin’s Colony.⁸¹

⁷¹ Barker, *Government of Austin’s Colony*, 13.

⁷² Louis Houck II, *The Spanish Regime in Missouri* (1909), xxi.

⁷³ Barker, *Government of Austin’s Colony*, 12.

⁷⁴ Joseph W. McKnight, *Stephen Austin’s Legalistic Concerns*, S.W. HIST. Q. 89 (1986), 243–44.

⁷⁵ Joseph W. McKnight, *Law Books on the Hispanic Frontier*, JOURNAL OF THE WEST (July 1988), 79 (explaining that lower Missouri retained some Spanish laws for a while after statehood, and citing cases in post-statehood Missouri which relied on Spanish law).

⁷⁶ Barker, *Life of Stephen F. Austin*, 32.

⁷⁷ *Ibid.*, 33.

⁷⁸ When he settled in Texas, Austin continued to encounter legal affairs arising from his time in old Louisiana. See, e.g., Stephen F. Austin to Henry Elliot, Agreement to accept a plot of land owned by Sylvanus Castleman in the “Common Field” of St. Genevieve, Mo., in exchange for debt on Texas land, March 1, 1822, Stephen F. Austin Papers, Briscoe Center for American History, The University of Texas at Austin (“Austin Papers”). Castleman was elected the first alcalde of San Felipe de Austin in 1823. Election Returns for the San Felipe de Austin Alcalde Election, December 20, 1823, Austin Papers.

⁷⁹ Eugene Campbell Barker Papers, Briscoe Center for American History, The University of Texas at Austin (showing that Louisiana provided over 50 percent more immigrant families to Austin’s Colony than any other state). See also Barker, *Life of Stephen F. Austin*, 149 (explaining that immigrants from Missouri comprised a larger proportion of the earliest colonists than later ones).

⁸⁰ When Moses Austin moved to Missouri in 1798, most of the residents spoke French. McKnight, *Stephen Austin’s Legalistic Concerns*, 239–40.

⁸¹ Barker, *Life of Stephen F. Austin*, 15.

The First Alcaldes in Austin's Colony

In 1822, Governor José Félix Trespalcacios told the residents of Austin's Colony who lived between the Colorado and Brazos Rivers to appoint an alcalde "of their own choice to administer justice."⁸² Josiah Bell was selected, and served in 1823.⁸³ Bell evidently had no law codes or legal instructions, and was left to guess as to whether his decisions as alcalde were acceptable to Mexican authorities.⁸⁴

In May of 1823, Bell wrote Governor Palacios a letter explaining that he caught a horse thief he had sent to San Antonio under guard so that Palacios could decide what to do with him.⁸⁵ However, Bell explained, the alcalde in San Antonio had sent the thief and guard back to Austin's Colony because Bell was supposed to decide all cases for himself. Bell reported that he had made the thief return the stolen property. He then asked Governor Palacios whether he had done the right thing, and concluded with a request for legal guidance, "as we have never received one official line."⁸⁶ There is no record of an answer from Palacios, but Austin wrote Bell later that year commending him for his "prudence and judgment in preserving harmony and content amongst the settlers."⁸⁷

The first formal election for alcalde in Austin's Colony was held on December 13, 1823, by a procedure very different from the one used in the first Spanish settlements in Texas.⁸⁸ The winner was Sylvanus Castleman, who been a landowner in St. Genevieve, Missouri with the Austins⁸⁹ at a time when the area was still largely French speaking, and still retained elements of French and Spanish law.⁹⁰ Many of the electors in the 1823 alcalde election had come to Texas from Missouri, Arkansas, and Louisiana, so, like Stephen F. Austin, they had lived in states of the recently-acquired Louisiana Territory that retained elements of the Spanish civil law.⁹¹

The Mexican government had encouraged Austin to enact his own laws to govern his

⁸² José Félix Trespalcacios to Stephen F. Austin, December 15, 1822, Austin Papers.

⁸³ James E. B. Austin to J. H. Bell, March 16, 1823, Austin Papers. Austin addresses his letter to "Josiah H Bell Alcalde on the Rio Brassos."

⁸⁴ J. H. Bell to José Félix Trespalcacios, May 4, 1823, Austin Papers.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

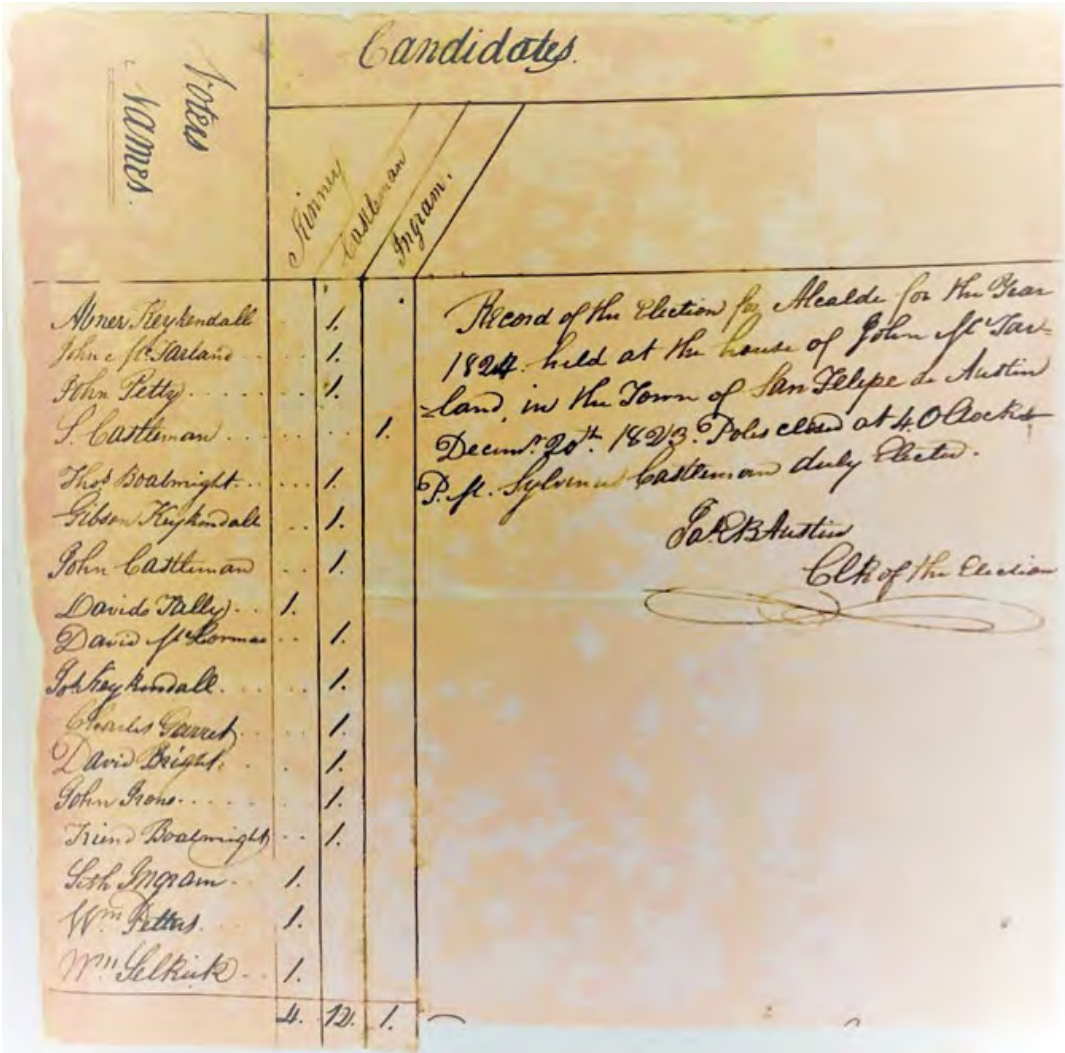
⁸⁷ Stephen F. Austin to Josiah Bell, August 6, 1823, Austin Papers.

⁸⁸ Barker Papers, "Election Returns." In contrast, the first alcalde of Villa San Fernando was selected by the appointed members of the town's *cabildo*. Cruz, *Let There Be Towns*, 75–76. San Felipe de Austin did not have a *cabildo*, or any formal municipal government until an *ayuntamiento*—which is like a *cabildo*—was established in 1828. Tijerina, *Tejanos & Texas under the Mexican Flag*, 32–33.

⁸⁹ Stephen F. Austin to Henry Elliot, Agreement to accept Castleman's lot in the "Common Field" of St. Genevieve, Mo., in exchange for debt on Texas land. March 1, 1822. Austin Papers.

⁹⁰ McKnight, *Law Books on the Hispanic Frontier*, n.34 (explaining that lower Missouri retained French culture for awhile after statehood). *Ibid.* (citing cases in post-statehood Missouri which relied on Spanish law).

⁹¹ Of the seventeen voters, ten have a known state of origin. Of the ten, six came from Arkansas: Abner and Gibson Kuykendall, Thomas and Friend Boatright, David McCormick, and David Bright. Sylvanus Castleman came from Missouri, and Seth Ingram immigrated to Texas from Louisiana. Worth S. Ray, *Austin Colony Pioneers* (Austin: Jenkins Publishing Company, 1949).



The original alcalde election returns at San Felipe de Austin, Stephen F. Austin Papers, Briscoe Center for American History, University of Texas at Austin. Photo by Jason Boatright.

colonists.⁹² Austin responded by drafting a legal code called the Regulations for the Alcaldes in January of 1824. In his draft, he scratched through text and rewrote every section as he went along. His edits demonstrate that he was writing his own laws from scratch rather than copying laws from someone else.⁹³ Austin later wrote that the regulations “were drawn up by me hastily and while I was subject to continual interruptions and without the aid of any books or forms or precedents. . . .”⁹⁴ Austin’s draft of the alcalde codes survives on the same sheet of paper on which the docket sheet of his Colony’s first formal alcalde court was held.⁹⁵ The governor approved Austin’s alcalde codes a few months later, as soon as they were reviewed by the Political Chief of the Province of Texas.⁹⁶

⁹² Barker, *Government of Austin’s Colony*, 223, 225.

⁹³ Regulations for the Alcaldes, Draft, Austin Papers.

⁹⁴ Stephen F. Austin to John P. Coles, Alcalde of the Brazos, January 25, 1824, Austin Papers.

⁹⁵ “Civil Regulations for the Alcaldes,” Austin Papers (showing, on one half of a sheet of paper, a draft of what would become Articles 26 and 27 of the Civil Regulations, and, on the other half, the 1824 Brazos District Alcalde Court Docket). The first lawsuit was filed on January 1, 1824.

⁹⁶ Barker, *Government of Austin’s Colony*, 229. This official added two articles to the civil regulations. Stephen F. Austin, “Civil Regulations,” 82.

Draft of the Austin Colony's Alcalde Codes in Stephen F. Austin's own hand. The text is written in cursive on aged, yellowed paper. It begins with a header that reads "Alcalde Codes" and contains several paragraphs of legal text. The handwriting is dense and somewhat difficult to decipher in places due to the cursive style and fading.

First docket sheet of the first alcalde court in San Felipe de Austin, January 3, 1824. The document is a handwritten ledger with multiple columns. The header reads "Docket for the District of the Alcalde of San Felipe de Austin" and "January 3, 1824". The entries are organized into rows, with columns for case numbers, descriptions of cases, and other details. The handwriting is consistent with the draft above.

Above: Draft of the Austin Colony's Alcalde Codes in Stephen F. Austin's own hand. Below: First docket sheet of the first alcalde court in San Felipe de Austin, January 3, 1824. Stephen F. Austin Papers. Photos by Jason Boatright.

Docket for the District of the Alcalde of San Felipe de Austin
 January 3, 1824

No.	Description	Amount	Plaintiff	Defendant	Remarks
1	...	20 1/2
2
3
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10

During the early 1820s, Austin traveled back and forth between his colony and the interior of Mexico, and had ample opportunity to witness the Spanish justice system first hand. For example, he attended a trial in the alcalde court of José Miguel de Arciniega at Béxar in 1823.⁹⁷ The case was tried by two “referees,” José Antonio Navarro and Erasmo Seguín. Arciniega’s family had been important figures in military and political events of northern New Spain for generations; Seguín and Navarro were from San Fernando and went on to become extremely important political leaders in Mexico and the Republic of Texas.⁹⁸ None of them, however, were trained lawyers. The referees and the alcalde decided the preliminary matters of the case without taking testimony,⁹⁹ in a process like arbitration.¹⁰⁰ Austin included an analogous provision in his Alcalde Regulations.¹⁰¹

The judicial responsibilities of alcaldes in the early years of Austin’s Colony were light, but the alcaldes were crucial nonetheless. They carried out Austin’s orders, oversaw the militia, settled fights, and performed marriages.¹⁰² In 1829, the state of Coahuila y Texas issued a decree called the Code of Laws for the Administration of Justice, which listed procedures for alcaldes to follow when they performed the duties of magistrates.¹⁰³ Lawyers in Austin’s Colony continued to practice before alcaldes into the 1830s. William Barret Travis noted in his diary that he charged a client \$20 to write his will and have it signed and authenticated before the alcalde and eight witnesses in San Felipe de Austin on September 14, 1833.¹⁰⁴

Austin wrote his alcalde codes under authority that was set to expire in 1828, when formal local governments, or *ayuntamientos*, were established under the 1827 Constitution of Coahuila y Texas.¹⁰⁵ However, the *ayuntamientos* in English-speaking areas of Mexican Texas did very little of the work they were required by law to do.¹⁰⁶ And the Mexican government never replaced Austin’s pleading rules with state or federal statute law.¹⁰⁷

⁹⁷ Note from Stephen F. Austin, July 28, 1823, Austin Papers.

⁹⁸ See Tijerina, *Tejanos & Texas under the Mexican Flag*, 115–16 (regarding Navarro), 115 (regarding Seguín).

⁹⁹ Note from Stephen F. Austin, July 28, 1823, Austin Papers.

¹⁰⁰ Among the many variations between the trial practice and the Spanish laws governing arbitration, there was supposed to have been a schedule drawn up by a notary public, or bearing the seal of a notary public, showing all matters in dispute. See *Las Siete Partidas*, Título IV, Partida III, Ley XXIII (Madrid 1805) (requiring that a schedule of all matters in dispute must be drawn up by a notary public), but there was no notary public in Béxar, and there was always a shortage of stamped paper. Almáraz, *Tragic Cavalier*, 78.

¹⁰¹ “Civil Regulations,” in Austin, *Establishing Austin’s Colony*, 77.

¹⁰² Barker, *Life of Stephen F. Austin*, 125–26.

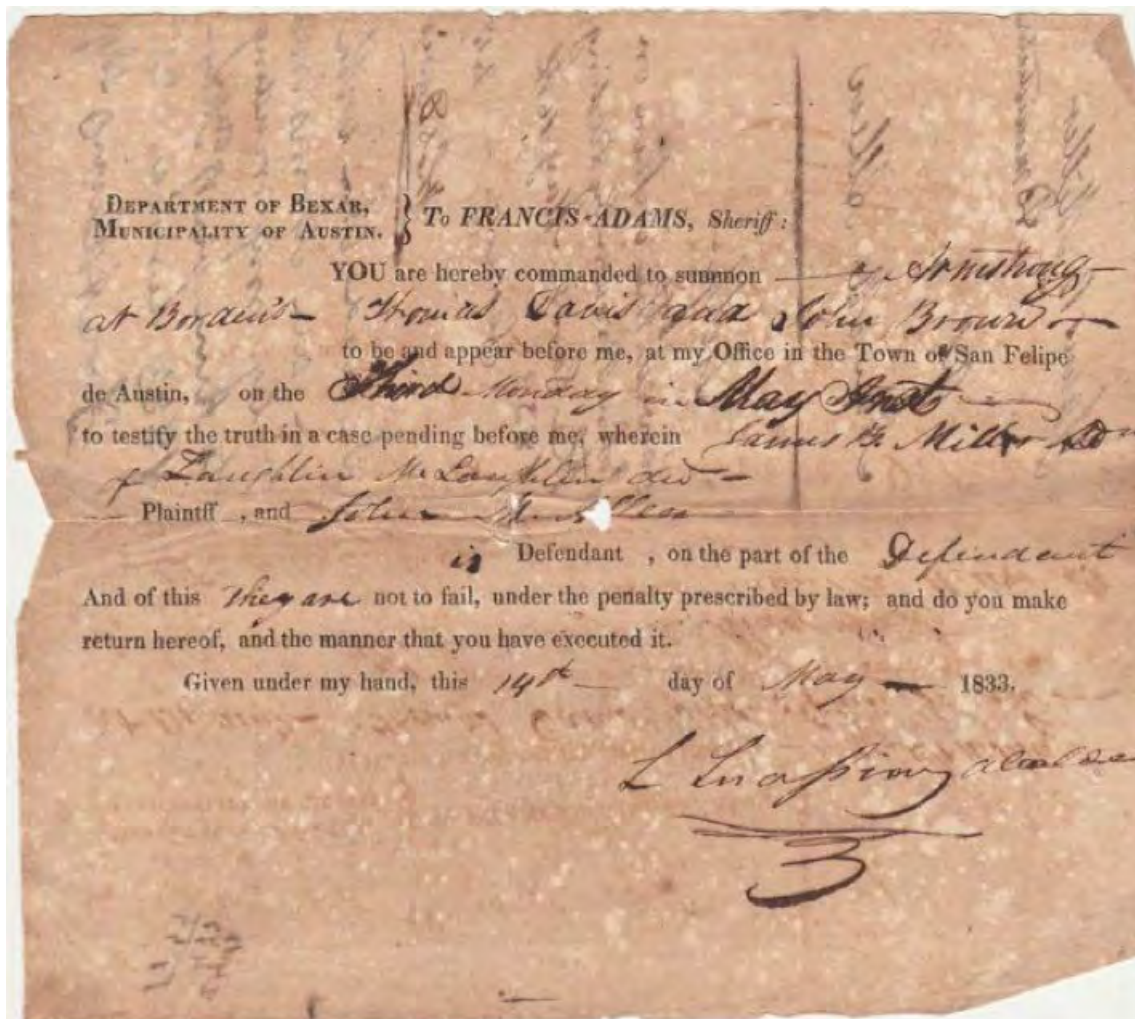
¹⁰³ Tijerina, *Tejanos & Texas under the Mexican Flag*, 40.

¹⁰⁴ Robert E. David, ed., *The Diary of William Barret Travis* (Waco: Texian Press, 1966), 11.

¹⁰⁵ Barker, *Government of Austin’s Colony*, 228.

¹⁰⁶ Stephen F. Austin to Josiah H. Bell, March 17, 1829, Austin Papers. In this letter, he wrote that the “ayto of last year did not comply with the duties required by law in any one particular.”

¹⁰⁷ See John C. Townes, *Sketch of the Development of the Judicial System of Texas*, 2 TEX. HIST. ASS’N Q. 29, 38 (1898) (explaining that the courts created by Decree 277 of the State of Coahuila y Texas were never opened, which means that the pleading law promulgated by the Decree was never in effect).



An 1833 alcalde court summons in the “Municipality of [San Felipe de] Austin” follows article 3 of Austin’s alcalde codes precisely. This was about five years after Austin’s alcalde codes were supposed to have expired. Photo by Jason Boatright.

The Challenges of Practicing in Austin’s Alcalde Courts

Around the turn of the nineteenth century, just before Mexican independence and the founding of Austin’s Colony, the texts of laws governing Spanish provinces like Texas were extremely hard to find and use. They were scattered across dozens of different legal sources, each of which typically contained more than one volume. It is difficult to quantify this because the records of laws were themselves scattered and scant, but Spanish law in Texas was spread out over at least 89 books of 1,543 titles containing 20,335 laws.¹⁰⁸ Nor was there a library containing the legislation applicable to Spanish Texas.¹⁰⁹ The archives of the Spanish governors of Texas contained mostly political and administrative rules, which compelled local leaders to

¹⁰⁸ John H. Tucker, Jr., “Louisiana, Laboratory of Comparative Law,” in *American Bar Association Pamphlet, Proceedings of the Section of International and Comparative Law*, 33, 34 n.10 (citing Gustavus Schmidt, *The Civil Law of Spain and Mexico* (New Orleans: 1851), 102).

¹⁰⁹ Hans W. Baade, *The Formalities of Private Real Estate Transactions in Spanish North America, A Report on Some Recent Discoveries*, 38 LA. L. REV. 655, 706 (1978).

make up the law as they went along.¹¹⁰

For example, Spanish officials in San Antonio usually used legal documents that did not follow any uniform procedure, so in 1810 the governor enacted simple rules for drafting land conveyances and the like, then circulated them to towns in the province. They were either ignored or interpreted so liberally that they were not obeyed, so the governor rescinded the rules less than two weeks after he enacted them.¹¹¹

This state of affairs persisted in Texas under Mexican rule. There was almost no contact between the trial courts in Austin's colony and the appeals courts in the capital city of Saltillo¹¹² where, it was said, law books could not be bought "*por ningun dinero*" anyway.¹¹³ William B. Travis managed to borrow four volumes of a treatise on Spanish legal procedure, probably the *Febrero Adicionado*, from a friend on September 6, 1833.¹¹⁴ Travis evidently considered obtaining the volumes to be a notable accomplishment, because it merited mention in his diary.¹¹⁵ *Febrero* was still extremely rare in Texas for years to come.

Chief Justice John Hemphill of the Texas Supreme Court wrote in 1843 that he did not have access to *Febrero* except for some quotations from it in Louisiana court opinions.¹¹⁶ All available evidence indicates that the two most important sources of Spanish and Mexican law, the *Siete Partidas* and *Recopilación*, were extremely rare in Mexican Texas and were available only at the end of the period of Mexican rule in Texas.¹¹⁷

¹¹⁰ *Ibid.*

¹¹¹ Almáraz, Jr., *Tragic Cavalier*, 81.

¹¹² Barker, *Life of Stephen F. Austin*, 217–18.

¹¹³ Baade, *Law and Lawyers in Pre-Independence Texas*, 246.

¹¹⁴ David, *Diary of William Barret Travis*, 9.

¹¹⁵ Baade, *Law and Lawyers in Pre-Independence Texas*, 247.

¹¹⁶ McKnight, *Law Books on the Hispanic Frontier*, 79 (citing *Scott & Solomon v. Maynard*, Dallam 548, 550 (1843)).

¹¹⁷ Baade, *Law and Lawyers in Pre-Independence Texas*, 247.

TRAVIS LAW OFFICE

WILLIAM BARRET TRAVIS IS REMEMBERED

as a revolutionary patriot and martyr of the Alamo. Before he gave his life for Texas' independence, he was a young attorney in San Felipe who ran a law office located on lot 50.

Travis represented his neighbors in a variety of disputes and was even successfully "retained to defend Celia, a free woman of colour, in the matter of her freedom."

When conflict with Mexico erupted, Travis put himself on the frontlines. He was assigned to the defense of San Antonio and rode out to his post in late January 1836. Travis never saw San Felipe again. He perished when the Alamo fell on March 6, 1836.



SEAL OF THE AYUNTAMIENTO OF SAN FELIPE As secretary of the *ayuntamiento* (town council), Travis used this seal to mark official town documents and correspondence.

TRAVIS IN SAN FELIPE

Travis' San Felipe law practice flourished. He was also chosen secretary of the town council, where he applied his management and Spanish-language skills to recording, translating and organizing government documents.

As tensions with Mexico rose, Travis emerged as a strong voice for war and was an early enlistee in the Texian army. With Mexican forces threatening to overrun the Alamo, Travis wrote back to San Felipe an impassioned call to arms, signing off with the iconic words: "Victory or Death."

Images courtesy: Austin County Clerk, Bettendorfs Rare Book and Manuscript Library, Yale University, Daphn Belton Center for American History, University of Texas at Austin, Houston Public Library, HEMBC, Texas State Library and Archives Commission

Texas Historical Commission signs at the new San Felipe de Austin Museum focus on William B. Travis's role as a trial lawyer and as secretary of San Felipe's *ayuntamiento* council. Photos by David A. Furlow.



Above left: cover, *Las Siete Partidas*, Wikimedia. Above right: Law 3, Title X, of the 3rd Partida, governing the pleading of cases, in *Siete Partidas* (1280). Perspectiva histórica, fundacion.usal.es, <http://fundacion.usal.es/ced36/la-universidad-de-salamanca/perspectiva-historica>. Many scholars believe that it corresponds to the provisions in Article 3 of Stephen F. Austin's Alcalde Codes. Below left: *Nuevo Recopilación de las Indias* (1681), Wikimedia. Below right: Second Title, *Recopilación*. Wikimedia.



There does not appear to be evidence that another crucial source of Mexican law, the *Curia Phillipica*, was available in Texas.

Austin considered the absence of law books to be a very important problem for Texas and Mexico. In 1826, Austin wrote to Baron de Bastrop, who was the Colony's representative in the legislature of the state of Coahuila y Texas. Austin said he thought that Texas needed "a complete digest of all the laws in force, published in a bound book and generally circulated gratis to every officer civil judicial and militia throughout the State," but there was none.¹¹⁸ Austin also said that unless laws were translated into English, the "settlers [would] be totally debarred all access to courts of Justice, for not one in a hundred understands Spanish."¹¹⁹ Copies of new Mexican legislation were sometimes available in Texas toward the end of the period of Mexican rule,¹²⁰ but even as late as 1829, Austin observed that "laws cannot be published in print so that every man will have a copy of them, and there is no other way but for the people to come and read the manuscript translations that are in the office."¹²¹

In 1829, Austin wrote that his colonists could be thrown "into a ferment and create a prejudice against the civil authorities whenever they pleased."¹²² He explained that "they lack the judgment to discriminate between what is the duty of a public officer, and an abuse of his authority. This want of judgment arises from a want of knowledge of the laws by which the persons in office are obliged to be governed."¹²³ The lack of Spanish and Mexican law in Texas was an enduring problem. As late as 1842, the Texas Supreme Court observed that legal questions regarding Spanish law left the justices "to find principles and criteria in a language generally unknown to us."¹²⁴

Only one English-speaking immigrant received government permission to practice law in Mexican Texas. For several years, Thomas Jefferson Chambers tried to qualify as a *letrado*, a fully licensed lawyer authorized to argue cases for clients in court, but he was thwarted by a series of obstacles, a typical example of which was his failure to have a certificate of baptism.¹²⁵ Chambers eventually qualified as *asesor general*, an officer that gave formal legal advice to lay judges. He was not, however, an advocate in court, and he became *asesor* only in 1834, near the very end of Mexican rule in Texas. There is no record showing that he had an opportunity to perform his duties.¹²⁶ Chambers resigned after just three months to become the trial judge of a district court that had been created by law, but that was never actually established.¹²⁷

¹¹⁸ Stephen F. Austin to Baron de Bastrop, November 3, 1826, Austin Papers.

¹¹⁹ *Ibid.*

¹²⁰ Baade, *Law and Lawyers in Pre-Independence Texas*, 247.

¹²¹ Stephen F. Austin to Josiah H. Bell, April 4, 1829, Austin Papers.

¹²² Stephen F. Austin to Josiah H. Bell, March 17, 1829, Austin Papers.

¹²³ *Ibid.*

¹²⁴ *Whiting v. Turley*, Dallam 453, 454 (1842).

¹²⁵ Stephen F. Austin to Samuel M. Williams, February 5, 1831, Austin Papers.

¹²⁶ Baade, *Law and Lawyers in Pre-Independence Texas*, 246.

¹²⁷ *Ibid.*, 246–47. Chambers probably wrote this law, Coahuila y Texas Decree No. 277, promulgated April 17, 1834.

Another immigrant who tried to qualify as an attorney was Samuel May Williams. He was a very successful legal practitioner, but he practiced without training or a license. He attempted to become an *escribano* but did not qualify for the office.¹²⁸

Alcaldes in Districts outside Austin's Colony during Mexican Rule

Alcaldes in other Texas towns profoundly affected the development of Austin's Colony and the course of Texas history. Consider, for example, the crucial role that the alcalde of Nacogdoches played in the events leading up to the Fredonian Rebellion, and the effect that Austin's response to this incident had on the success of his colony.

The first alcalde of Nacogdoches under Mexican rule was James Dill, appointed in 1821.¹²⁹ He was illiterate, did not know the law, and was removed from office in 1823.¹³⁰ Dill was also combative, and he eventually killed a man over a trifling dispute. He was tried in May of 1825 by Pedro Procela, who had succeeded Dill as the alcalde of Nacogdoches. Dill was acquitted by a jury of twelve, but the political chief in Béxar, José Antonio Saucedo, told Procela that jury trials were not allowed under Mexican law, and that he should organize militia companies, rearrest Dill, and "form the corresponding *sumaria*"—the record of the preliminary, investigative stage of a case—"in order that his crime may be punished or pardoned if he should not be guilty." Dill escaped to Louisiana before any of that could happen.¹³¹

In April of 1825, Haden Edwards was granted permission by the Mexican government to settle 800 families around Nacogdoches. Not long after he arrived in Texas, Edwards began informing longtime residents that they would have to prove title to their lands or lose them to Edwards's new families.¹³² Procela harshly criticized Edwards for this, and wrote that the new empresario's behavior would make slaves of Mexican citizens if they allowed Edwards to take their land.¹³³

Procela died in July 1825, not long after Dill's escape. His son Luis assumed the office "*interino*," an arrangement that Edwards called "acting as alcalde by *proxy*, a thing unheard of in a republican country."¹³⁴ An alcalde election was called to replace Procela in December of 1825.

¹²⁸ *Ibid.*, 246.

¹²⁹ Gary L. Pinkerton, *Trammel's Trace: The First Road to Texas from the North* (College Station: Texas A&M University Press, 2016), 118.

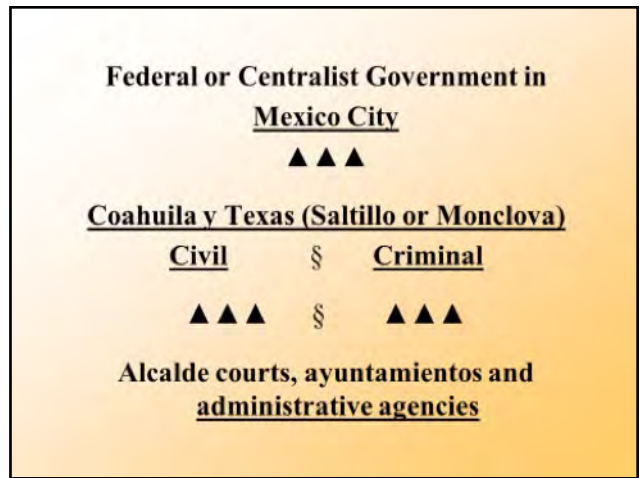
¹³⁰ Joe E. and Carolyn Reeves Ericson, "James Dill," *The New Handbook of Texas* 2 (1996), 643.

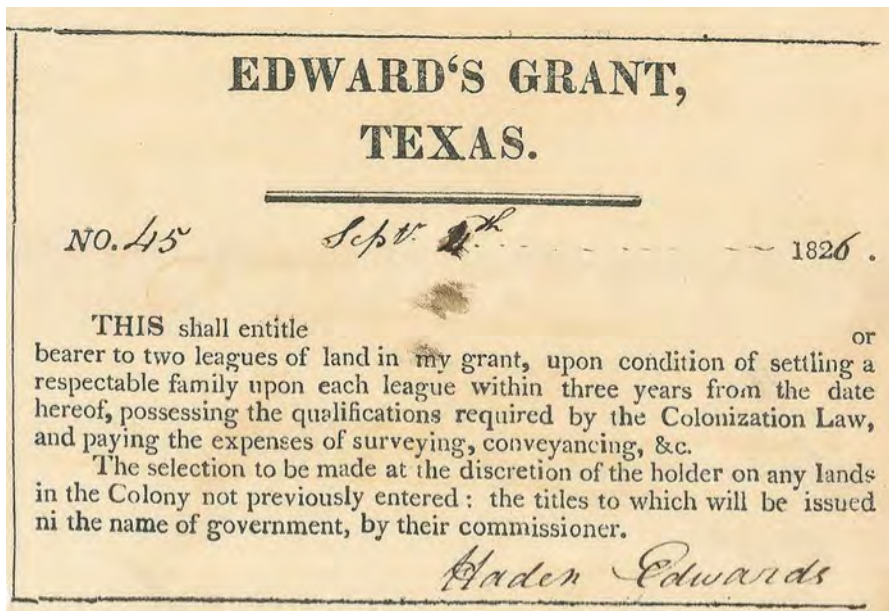
¹³¹ R. Blake., "James Dill," *The Handbook of Texas* (1952), 503 (quoting manuscripts in the former Archives Collection, University of Texas Library).

¹³² Barker, *Life of Stephen F. Austin*, 172–73.

¹³³ Pinkerton, *Trammel's Trace*, 129.

¹³⁴ Barker, *Life of Stephen F. Austin*, 170.





Land grant for Haden Edwards's colony.
Courtesy of Texas General Land Office.

There were two candidates. Samuel Norris was favored by the old settlers, and Chichester Chaplin, who was Edwards's son-in-law, was favored by the new. Chaplin won the election, but Norris appealed to José Antonio Saucedo, the political chief in Béxar, alleging that Chaplin had been elected by unqualified voters. Saucedo sided with Norris, and declared him the winner in 1826.¹³⁵ Edwards refused to recognize the result, and the Mexican authorities revoked his grant.

Edwards declared independence from Mexico later that year, naming his new republic Fredonia.¹³⁶ Stephen F. Austin strongly supported the Mexican government in this conflict; he took a four pound canon and marched to Nacogdoches with a militia force of 400 men, including many of his colonists.¹³⁷ Together with Mexican officers and soldiers, they put down the rebellion in early 1827.¹³⁸

Austin's decision to side with Mexico against Edwards was colossally important. Mateo Ahumada, the military commander of Texas, credited Austin with the restoration of order in Nacogdoches. Ahumada understood that Austin and his colonists could have sided with the English-speaking Edwards and his settlers, and the fact that Austin did not do so, but instead went to great lengths to rally Anglo support for Mexico, confirmed that Austin and his colonial enterprise were trustworthy and good. Had Austin sided with Edwards or decided to be neutral, the Mexican government might have revoked his grant and disbanded the colony.¹³⁹

And all of this was accomplished in response to events that were born of Nacogdoches alcaldes: the very first alcalde under Mexican rule was, like the old alcaldes of San Fernando, illiterate and ineffective; after he was forced from office, he committed a crime that was tried by another alcalde, whose son—also an alcalde—was the pretext for a colonial rebellion that, eventually, secured rather than destroyed Austin's settlement.

The legacy of alcaldes in other Texas towns is also important. For example, in 1832, the alcalde of Goliad issued a land grant near the Gulf of Mexico.¹⁴⁰ The grantee argued at trial

¹³⁵ *Ibid.*, 177.

¹³⁶ Tijerina, *Tejanos & Texas under the Mexican Flag*, 109.

¹³⁷ Barker, *Life of Stephen F. Austin*, 199.

¹³⁸ Pinkerton, *Trammel's Trace*, 136–37.

¹³⁹ Barker, *Life of Stephen F. Austin*, 202.

¹⁴⁰ *Sydeck v. Duran*, 3 S.W. 264 (Tex. 1887). About 500 civilians lived in Goliad at this time. Tijerina, *Tejanos & Texas*

in 1834 that the alcalde had no authority to make the grant, because it was within the littoral leagues. Fifty years later, the Texas Supreme Court ruled in the *Sydeck* case that the alcalde's grant was valid, reasoning that the law that was in effect at the time of the grant was the civil law of Mexico, which would have allowed the grant.¹⁴¹ The Texas Supreme Court relied on the *Sydeck* ruling in 1932,¹⁴² and, in its landmark *Severance* opinion in 2012, the Court cited the portion of the 1932 opinion that relied on *Sydeck*.¹⁴³ Thus, the old Goliad alcalde's authority under the civil law remains relevant today.

The Legacy of Austin's Alcalde Courts

Austin's alcalde court records are not preserved,¹⁴⁴ but parts of pleadings regarding land and probate records survive, including an 1833 summons in probate case. The form of the summons is the same as the one that Austin's alcalde code required,¹⁴⁵ and it is extremely similar to the 1836 judiciary ordinance of the provisional government of Texas.¹⁴⁶ The text of Austin's pleading law is also very similar to the 1836 Republic of Texas pleading law, as well as the current pleading provisions of the current Texas Rules of Civil Procedure.¹⁴⁷ This is fitting, because today's district courts are the successor courts to the district courts established in 1836 by the Republic of Texas which, in turn, were the successor courts to Austin's alcalde courts.¹⁴⁸ The pleading system of these courts was designed to resemble the simple procedures of the alcalde and the *al-qadi*.¹⁴⁹

That constitutes a direct line from the courts of ancient Iberia through Austin's alcalde courts to modern Texas trial courts. There are of course vast differences between these offices—today's Texas district court judges do not usually take the census, for one—but fundamental aspects of legal procedure have indeed been passed across different centuries, sovereigns, continents, and cultures.

under the Mexican Flag, 12.

¹⁴¹ *Sydeck v. Duran*. Previously, the Goliad alcalde's grant had been mentioned in an opinion by Chief Justice Hemphill, *Hamilton v. Menifee*, 11 Tex. 718, 744, 747 (1854).

¹⁴² *Miller v. Letzerich*, 49 S.W.2d 404, 408 (Tex. 1932) (citing "*Sideck [sic.] v. Duran*, 67 Tex. 256, 3 S.W. 264").

¹⁴³ *Severance v. Patterson*, 370 S.W.3d 705, 717, n.16 (Tex. 2012).

¹⁴⁴ Barker, *Government of Austin's Colony*, 249.

¹⁴⁵ Michael Rugeley Moore, "Celia's Manumission and the Alcalde Court of San Felipe de Austin," *Journal of the Texas Supreme Court Historical Society* (Fall 2015), 38, 43 (showing a summons of witnesses dated May 14, 1833, in the Alcalde Court of the Department of B exar, Municipality of Austin, in *James B. Miller v. John M. Allen*).

¹⁴⁶ Ordinances and Decrees of the General Council of the Provisional Government of Texas, An Ordinance and Decree for opening the several Courts of Justice, appointing Clerks, Prosecuting Attorneys, and defining their duties, &c, Section 19, January 16, 1836, in 1 Gammel, *Laws of Texas*, 1044.

¹⁴⁷ Justice Jason Boatright, *The Curious Origin of Texas Pleading*, 71 S.M.U. L. REV. 41, 67, 92 (2018) (comparing Article 3 of Austin's Civil Regulations for the Alcaldes with the Act Approved December 22, 1836, 1st Cong. R.S.,  8, 1836-37, and TEX. R. CIV. P. 45, 47).

¹⁴⁸ See Wharton, *Early Judicial History of Texas*, 323 (noting that the clerk of the district court of Brazoria issued an execution in 1837 to enforce an 1834 alcalde court judgment).

¹⁴⁹ Boatright, *Curious Origin of Texas Pleading*, 75-76, 86-87 (2018) (discussing the connection between Austin, Edward Livingston, and Jeremy Bentham).

AUSTIN, STEPHEN FULLER : 1793-1834

1832

Edward Livingstons
Box: 1

Matamoros June 24th 1832.

Hon. Edward Livingston,

Sir.

You stand before the public as a philanthropist. By your labors to assimilate the condition of your fellow citizens in their various relations with each other, through the medium of the tribunals of justice - your Codes, designed for the particular use of Louisiana, but embracing general principles applicable to all civilized communities; you seem to have given to the people of all countries, a species of trust claim upon the richly stored resources of your mind in relation to the political organization of society, and the general principles of jurisprudence.

Should this view of the subject be correct, it will serve as my apology for this letter. But should you deem it incorrect, I must then solicit your kind indulgence for having intruded upon your valuable time, hoping that the great interest & feel in the subject, will be viewed by you as an excuse, for what might be deemed presumption in me.

It may perhaps, not be entirely unknown to you that I have been engaged since 1821 in establishing Colonies, or Settlements of foreign

Stephen F. Austin's June 24, 1832 letter to Edward Livingston about the importance of the alcalde law codes. Photo by Jason Boatright.



Constitution Square at San Felipe de Austin. Photo by David A. Furlow.



THE HON. JASON BOATRIGHT is a Justice on the Fifth District Court of Appeals in Dallas, Texas. Previously, he was Chairman of the Texas Attorney General's Opinion Committee, Director of the Texas Railroad Commission's General Counsel Section, and Briefing Attorney for Presiding Judge Sharon Keller of the Texas Court of Criminal Appeals. He has also been a litigator in private practice.

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San Jacinto Justice: The Future Supreme Court Judges Who Won Texas Her Freedom at San Jacinto

By Dylan O. Drummond



The 570-foot-tall San Jacinto Monument stands guard over the San Jacinto Battleground. Photo courtesy of @Coach_Naivar, Twitter (March 12, 2017, 3:57 p.m.), https://twitter.com/Coach_Naivar/status/841030509551591425.

Some twenty-eight men served as either Chief Justice or Associate Judge of the Republic of Texas Supreme Court.¹ Yet only seven bled in the boggy marshes of San Jacinto to ensure that the Texas Supreme Court could someday be founded.² They ranged in rank at San Jacinto from Secretary of War to lowly private. Their number included the Court's first Chief Justice, the first Chief Justice to preside over a Court session and write an opinion, and the first judge in the Republic of Texas.

These seven San Jacinto jurists were Chief Justice James T. Collinsworth, Chief Justice Thomas J. Rusk, Associate Judge Edward T. Branch, Associate Judge Benjamin Cromwell Franklin, Associate Judge James W. Robinson, Associate Judge Richardson "Dick" Scurry, and Associate

¹ James W. Paulsen, *A Short History of the Supreme Court of the Republic of Texas*, 65 TEX. L. REV. 237, 290 (Dec. 1986).

² James W. Paulsen, *The Judges of the Supreme Court of the Republic of Texas*, 65 TEX. L. REV. 305, 306 (Dec. 1986).

Judge Robert McAlpin “Three-Legged Willie” Williamson.

The only common thread among the seven San Jacinto veterans who would later serve on the Supreme Court was their extraordinary service to Texas—both on the San Jacinto battlefield and afterwards in the halls of Republic government. They would serve five of the seven Republic judicial districts,³ and count two of the Republic Supreme Court’s four Chief Justices among their number. Four of the seven San Jacinto jurists now have Texas counties named after them.⁴

While only sixteen of the twenty-eight judges who served Republic Supreme Court actually wrote Supreme Court opinions, far fewer San Jacinto jurists did.⁵ In fact, only Chief Justice Thomas J. Rusk and Associate Judge Richardson A. “Dick” Scurry ever authored any Supreme Court opinions at all. Combined, they issued eight decisions (five by Chief Justice Rusk and three by Associate Judge Scurry).⁶ In addition, only four of the San Jacinto jurists ever actually attended a Court session—Chief Justice Rusk, and Associate Judges Branch, Robinson, and Scurry.⁷ And sadly, as we will see, two of San Jacinto jurists took their own lives.

Each of the remarkable men who helped free Texas from Santa Anna’s grip at San Jacinto later ensured that liberty would be enjoyed by her citizens through their devoted service to her courts. Their valor on the battlefield and wisdom in the courtroom cemented the Texas Supreme Court’s lineage and legacy that continues to this day.

Structure of the Republic Supreme Court

The Republic Supreme Court was quite unlike its state successor. Indeed, the Republic “had no permanent supreme court”⁸ at all. By virtue of the Republic Constitution, all elected district judges were made *ex officio* Associate Judges of the Supreme Court automatically.⁹ That is, the Republic Supreme Court “was a temporary committee composed of the district judges,

³ See Appendix B: *Dates of Service for Chief Justices and Associate Judges, Supreme Court of the Republic of Texas*, in Paulsen, *Supreme Court Judges*, 370–71 [hereinafter Paulsen, *Dates of Service*].

⁴ Collingsworth County was established in 1876 in Chief Justice James Collingsworth’s honor. Paulsen, *Supreme Court Judges*, 311. Rusk County, named after Chief Justice Rusk, was created in 1843. *Ibid.*, 317. Franklin County is thought to have been named for Associate Judge Franklin. *Ibid.*, 333, 333 n.192. Williamson County was established in 1848 and named for Associate Judge Williamson. *Ibid.*, 364.

⁵ Compare Paulsen, *Short History*, 243–44 n.29, with James L. Haley, *The Texas Supreme Court: A Narrative History, 1836–1986* (Austin: University of Texas Press, 2013), 20, 30.

⁶ Haley, *Texas Supreme Court*, 20, 30.

⁷ *Ibid.*, 20, 34, 235; James W. Paulsen, *A Sesquicentennial Celebration: The Establishment of a Unique Texas Institution*, 53 TEX. B.J. 43, 43 (Jan. 1990); Paulsen, *Supreme Court Judges*, 313–14, 316; Daffin Gilmer, *Early Courts and Lawyers of Texas*, 12 TEX. L. REV. 435, 449–50 (1934).

⁸ Paulsen, *Short History*, 241.

⁹ *Ibid.* (citing TEX. CONST. art. IV, § 7 (1836), “The Supreme Court shall consist of a Chief Justice and Associate Judges, the District Judges shall compose the Associate Judges, a majority of whom, with the Chief Justice, shall constitute a quorum.”), 307 nn.4, 5; see Michael Ariens, *Lone Star Law: A Legal History of Texas* (Lubbock: Texas Tech University Press, 2011), 16; Clarence Wharton, *Early Judicial History of Texas*, 12 TEX. L. REV. 311, 323 (Apr. 1934); F.A. Williams, *Suggestions for Improving Court Procedure in Texas*, 5 TEX. L. REV. 174, 174 (1927); J.H. Davenport, *The History of the Supreme Court of the State of Texas* (Austin: Southern Law Book Publishers, 1917), 7, 16.

presided over by a permanent Chief Justice.”¹⁰

Several months after the adoption of the Republic Constitution on March 17, 1836, the first Congress of the Republic passed legislation that implemented Article IV’s mandate to establish a judicial branch, and formally created the Supreme Court on December 15, 1836.¹¹ Congress set the Supreme Court’s term to begin annually on the first Monday in December and be held at the seat of the Republic government.¹² The following day, Congress elected the Court’s first Chief Justice—San Jacinto veteran James Collinworth¹³—as well as four Associate Judges drawn from the district courts.¹⁴ Three of these first four Associate Judges were San Jacinto veterans: Benjamin C. Franklin, James W. Robinson, and Robert McAlpin “Three-Legged Willie” Williamson.¹⁵

The Republic Constitution provided that the Congress was to establish no fewer than three, but no more than eight, judicial districts.¹⁶ Initially, there were four district courts covering the Republic’s twenty-two counties.¹⁷ The First Judicial District was massive. Its boundaries formed an “irregular wedge of northern and eastern Texas, along the Red River from Louisiana west to the Indian frontier, and south along the Sabine [River] almost to the coast.” The Second Judicial District was much smaller, forming a “block in the more thickly settled counties along the coast in the heart of the original Anglo colonies.” The Third Judicial District was situated “interior to the [S]econd and stretched northwest to the Indian frontier.” The Fourth Judicial District was comprised of “the coastal bend and brush country from San Antonio to the Rio Grande.”¹⁸

In May 1838, the number of judicial districts was increased to five,¹⁹ and increased again to seven in January 1840.²⁰ Both the Republic Constitution and Congress required district judges to permanently reside within their districts.²¹ The judges themselves were elected by a joint

¹⁰ Paulsen, *Short History*, 241; Wharton, *Early Judicial History*, 323; Williams, *Improving Court Procedure*, 174.

¹¹ Act of Dec. 15, 1836, 1st Cong., R.S., § 1, reprinted in 1 H.P.N. Gammel, *Laws of Texas 1822–1897*, at 1139 (Austin, Gammel Book Co. 1898); Haley, *Texas Supreme Court*, 19, App’x A, 227; Ariens, *Lone Star Law*, 15–16; Davenport, *Supreme Court History*, 7.

¹² Haley, *Texas Supreme Court*, 33; see TEX. CONST. art. IV, § 8 (1836).

¹³ Paulsen, *Supreme Court Judges*, 308; Paulsen, *Dates of Service*, 370; Gilmer, *Early Courts*, 448; Lynch, *Bench and Bar*, 64; see Haley, *Texas Supreme Court*, 235.

¹⁴ Compare TEX. CONST. art. IV, §§ 1, 7 (1836), with Act of Dec. 22, 1836, 1st Cong., R.S., § 1, reprinted in 1 Gammel, *Laws of Texas*, 1258; Haley, *Texas Supreme Court*, 19, 235, App’x A, 227; Ariens, *Lone Star Law*, 19; Davenport, *Supreme Court History*, 16–17.

¹⁵ Haley, *Texas Supreme Court*, 34, 235; Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Dates of Service*, 370–71; Gilmer, *Early Courts*, 448; Davenport, *Supreme Court History*, 16–17.

¹⁶ TEX. CONST. art. IV, § 2 (1836); Williams, *Improving Court Procedure*, 174; Davenport, *Supreme Court History*, 7.

¹⁷ Paulsen, *Short History*, 241 (citing Act of Dec. 22, 1836, 1st Cong., R.S., § 1, reprinted in 1 Gammel, *Laws of Texas*, 1258); see Ariens, *Lone Star Law*, 19.

¹⁸ Haley, *Texas Supreme Court*, 33.

¹⁹ Paulsen, *Short History*, 241 (citing Act of May 24, 1838, 2d Cong., R.S., §§ 1, 6, reprinted in 1 Gammel, *Laws of Texas*, 1500, 1502).

²⁰ *Ibid.* (citing Act of Jan. 29, 1840, 4th Cong., R.S., § 1, reprinted in 2 Gammel, *Laws of Texas*, 350, 350–51); see Ariens, *Lone Star Law*, 19.

²¹ Paulsen, *Short History*, 245 (citing Tex. Const. art. IV, § 2 (1836) and Act of Dec. 14, 1837, 2d Cong., R.S., reprinted in 1 Gammel, *Laws of Texas*, 1400); Davenport, *Supreme Court History*, 7.

ballot of both houses of the Republic Congress.²²

Because these judges served dual constitutional roles as both district judges and Supreme Court Associate Judges, each had to split his time between his district and Supreme Court duties.²³ The first statutes of the Republic required Associate Judges to convene their district courts on various days in March, April, and October.²⁴ As a result, Associate Judges would “ride the circuit” as a district judge during the spring and fall of the year to hold court throughout the counties within their district.²⁵

This “annual migration” was an arduous one in frontier Texas.²⁶ During the spring, Associate Judges were forced to “ride through torrential rains, ford swollen streams, and take lodgings with any settler whose dwelling might afford them shelter from a storm.”²⁷ What reference materials an Associate Judge possessed were often limited by what he could fit in his saddlebags.²⁸

That left the winter or summer for Associate Judges to meet and adjudicate appeals brought before the Supreme Court, the annual term of which was originally mandated by Congress to begin the first Monday of December.²⁹ Between the two, Associate Judges spent much more time overseeing their districts than they did hearing appeals before the Republic Supreme Court.³⁰

In fact, due in part to the crushing caseload, some Associate Judges prioritized riding their circuit over attending en banc Supreme Court sessions.³¹ Faced with a docket of 100 continued cases and 300 new ones, Judge Anthony B. Shelby even publicly announced that he would remain on his district court bench until the docket was clear and ignore the statutory mandate to attend a Supreme Court session.³² Other Associate Judges simply found it impossible to travel to the Republic capital to convene a session of the Supreme Court.³³

The stature of the Supreme Court relative to the district courts was further evidenced by the Republic Congress’s penchant for granting leaves of absence to Associate Judges only during Supreme Court sessions instead of district court ones.³⁴ Indeed, as noted earlier, only sixteen of

²² TEX. CONST. art. IV, § 9 (1836); Davenport, *Supreme Court History*, 7–8.

²³ Paulsen, *Short History*, 241, 243.

²⁴ *Ibid.*, 241, 245 (citing Act of Dec. 22, 1836, 1st Cong., R.S., § 2, reprinted in 1 Gammel, *Laws of Texas*, 1258, 1258–59); see TEX. CONST. art. IV, § 2 (1836).

²⁵ Paulsen, *Short History*, 241, 245; see Haley, *Texas Supreme Court*, 33.

²⁶ Paulsen, *Short History*, 245.

²⁷ *Ibid.* (quoting Duncan W. Robinson, *Judge Robert McAlpin Williamson: Texas’ Three-Legged Willie* (Austin: Texas State Historical Association, 1948), 155).

²⁸ *Ibid.*, 245, 270.

²⁹ *Ibid.*, 241, 245; see Haley, *Texas Supreme Court*, 33.

³⁰ Paulsen, *Short History*, 243.

³¹ *Ibid.* (citing Robinson, *Three-Legged Willie*, 151); see Haley, *Texas Supreme Court*, 33.

³² See Paulsen, *Short History*, 243.

³³ See *ibid.*

³⁴ *Ibid.*; see, e.g., Act of Jan. 16, 1843, 7th Cong., R.S., § 3, reprinted in 2 Gammel, *Laws of Texas*, 858, 859 (granting

the twenty-eight judges who served actually wrote Supreme Court opinions.³⁵

The challenge the Republic Supreme Court faced of convening a quorum was also complicated by the fact that the Constitution barred an Associate Judge from sitting in a case he tried below at the district court.³⁶ The practical effect of this restriction was that even fewer Associate Judges were available to attempt to attend a Supreme Court session.

Where the Republic Supreme Court was supposed to meet was also an issue that frustrated its early ability to function. Between independence on April 21, 1836, and convening in Houston on April 16, 1837, the Republic government was constituted at no less than six locations: Washington-on-the-Brazos, Harrisburg, Galveston, San Jacinto, Velasco, and Columbia.³⁷ Following that, the seat of government moved to Austin in 1839, back to Washington-on-the-Brazos in 1842, and then subsequently back again to Austin for good.³⁸

All these factors combined to prevent the Republic Supreme Court from actually convening its first session until January 13, 1840—just over *three years* after it was created in December 1836.³⁹ The *Austin City Gazette* commemorated the occasion two days later on January 15, 1840, writing, “We congratulate the country on the commencement of a new era in the judicial annals of this Republic; we allude to the opening of the Supreme Court, and the commencement of its first session.”⁴⁰

This multi-year delay can be attributed to several different specific causes. The Supreme Court’s first scheduled session at Houston in December 1837 was canceled when a quorum could not be formed.⁴¹ Because there were only four Associate Judges at the time of the first scheduled session, the failure of any two of them to attend would have denied the Supreme Court a quorum.⁴² Because the Republic Congress moved the Supreme Court’s session date from the first

Judge John T. Mills a leave of absence to visit the United States during his district court’s summer recess and the June 1843 term of the Supreme Court).

³⁵ Paulsen, *Short History*, 243–44 n.29.

³⁶ TEX. CONST. art. IV, § 8 (1836); Ariens, *Lone Star Law*, 16.

³⁷ Jeffrey S. Kerr, *Seat of Empire: The Embattled Birth of Austin, Texas* (Lubbock: Texas Tech University Press, 2013), 13, 224 n.10.

³⁸ Haley, *Texas Supreme Court*, 33; Paulsen, *Short History*, 289–90 (citing Act of Feb. 3, 1842, 6th Cong., R.S., § 1, reprinted in 2 Gammel, *Laws of Texas*, 766; and Act of Feb. 3, 1845, 9th Cong., R.S., reprinted in 2 Gammel, *Laws of Texas*, 1162).

³⁹ Act of Dec. 15, 1836, 1st Cong., R.S., § 1, reprinted in Gammel, *Laws of Texas*, 1139); Haley, *Texas Supreme Court*, 18–19, App’x A, 227; Ariens, *Lone Star Law*, 15–16, 19–20; Paulsen, *Short History*, 248–49; Davenport, *Supreme Court History*, 7.

⁴⁰ *Austin City Gazette*, Jan. 15, 1840, p. 2, col. 4.

⁴¹ Haley, *Texas Supreme Court*, 33; Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Short History*, 249.

⁴² Paulsen, *Short History*, 249. Within two weeks of the Supreme Court’s failure to convene its first session, the Republic Congress passed a law subjecting an absent Associate Judge to a fine of \$1,000 and exposure to civil damages arising from the inconvenience suffered by litigants. *Ibid.* (citing Act of Dec. 14, 1837, 2d Cong., R.S., reprinted in 1 Gammel, *Laws of Texas*, 1400); see Haley, *Texas Supreme Court*, 33; Paulsen, *Sesquicentennial Celebration*, 43. This penalty was not inconsequential as the annual salary of Associate Judges was just \$3,000. Paulsen, *Short History*, 265 (citing Act of Dec. 15, 1836, 1st Cong., R.S., § 1, reprinted in 1 Gammel, *Laws of Texas*, 1139).

Undated painting by William Sandusky depicting the City of Austin in 1839, looking west as viewed from President's Hill, bounded by San Jacinto Boulevard and Brazos, Seventh, and Eighth Streets. Photo courtesy of University of North Texas Libraries, Portal to Texas History, crediting Austin History Center, Austin Public Library.



Monday in December to the second Monday in January, the Court did not convene at all in 1838.⁴³ Finally, no Supreme Court session was held in 1839 because the newly elected Chief Justice,⁴⁴ San Jacinto veteran Thomas J. Rusk, was leading military campaigns against the Cherokee, Kickapoo, and Caddo Indian tribes.⁴⁵ As a result, Chief Justice Rusk did not even learn of his election until January 21, 1839, one week after the date the Court was scheduled to convene.⁴⁶

But having now had a full year's notice of his election, Chief Justice Rusk dutifully presided over the Republic Supreme Court's first term in January 1840 at Austin, convened in the home of Major Asa Brigham—then the Treasurer of the Republic and future Mayor of Austin.⁴⁷

San Jacinto Jurists

Chief Justice James Collinsworth

"First Chief Justice of the Republic of Texas" was just one of several titles James Collinsworth⁴⁸

⁴³ Haley, *Texas Supreme Court*, 34; Paulsen, *Sesquicentennial Celebration*, 43.

⁴⁴ President Sam Houston appointed John Birdsall (Houston's future law partner) as the Supreme Court's interim Chief Justice, but the Republic Congress refused to confirm him, and there was considerable doubt as to whether Houston even possessed the power to appoint a Chief Justice under the Republic Constitution. Ariens, *Lone Star Law*, 19; Paulsen, *Sesquicentennial Celebration*, 43. Instead, Texas Revolution Secretary of War and San Jacinto veteran Thomas J. Rusk was elected by Congress as Chief Justice—albeit on the *seventeenth* ballot. Ariens, *Lone Star Law*, 19; Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Supreme Court Judges*, 316.

⁴⁵ Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Short History*, 252; Paulsen, *Supreme Court Judges*, 316.

⁴⁶ See Haley, *Texas Supreme Court*, 258 n.13; Ariens, *Lone Star Law*, 19; Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Short History*, 252; Paulsen, *Supreme Court Judges*, 316.

⁴⁷ Paulsen, *Sesquicentennial Celebration*, 43. Major Brigham's residence was located on what is now the southwest corner of Congress Avenue and Second Street.

⁴⁸ Chief Justice Collinsworth's name appears both with and without a "g" (i.e., "Collingsworth"). While the State of Texas later memorialized Collinsworth in 1876 by naming Collingsworth County in his honor, Chief Justice



Drawing of James Collinsworth by Anne Stubbs, Ocie Speers's daughter. Courtesy of Tarlton Law Library, Texas Jurists Collection.

held during his remarkable tenure in 1830s Texas.⁴⁹ He also served as Republic Secretary of State and Senator, and signed both the Texas Declaration of Independence and the Republic Constitution.⁵⁰ But before he assumed these posts, Collinsworth was a major and aide-de-camp to General Houston at the Battle of San Jacinto.⁵¹

Collinsworth was a native Tennessean born in 1806, who began practicing law at the age of 20 around 1826.⁵² During this time, one of his good friends was future United States President James K. Polk,⁵³ who appointed him U.S. District Attorney for the Western District of Tennessee in 1830. Collinsworth later declined reappointment and made his way to Texas between 1834 and 1835.⁵⁴

As a delegate to the March 1836 Constitutional Convention at Washington-on-the-Brazos, and Chair of the Military Affairs Committee, Collinsworth introduced the resolution urging Sam Houston's appointment as Commander-in-Chief of the Texian army.⁵⁵ From mid-March to early April, as Military Affairs Committee Chair, Collinsworth received direct reports from General Houston and other battlefield commanders in the Texian army.⁵⁶

Cureton and the Texas Supreme Court chose to omit the "g" in the presentation of his portrait to the Court. Haley, *Texas Supreme Court*, 258 n.7 (citing *In Memoriam*, 126 Tex. xxxi); Paulsen, *Supreme Court Judges*, 311 n.28. His own signature on no less than the Texas Declaration of Independence also omits the "g" in his last name. TEX. DECLARATION OF INDEP. at 9 (Mar. 2, 1836), available at <https://www.tsl.texas.gov/treasures/republic/odeclar-09.html> (last modified Mar. 7, 2016). This article follows both the Texas Supreme Court's and Chief Justice Collinsworth's own spelling convention. **Ed. note:** See James Paulsen's article in this issue of the *Journal*, p. 84, for a current discussion about Collinsworth's name.

⁴⁹ See Haley, *Texas Supreme Court*, 19; Paulsen, *Supreme Court Judges*, 308.

⁵⁰ Paulsen, *Supreme Court Judges*, 310; Davenport, *Supreme Court History*, 7.

⁵¹ Haley, *Texas Supreme Court*, 19; Moore, *Eighteen Minutes*, 435; Paulsen, *Supreme Court Judges*, 310.

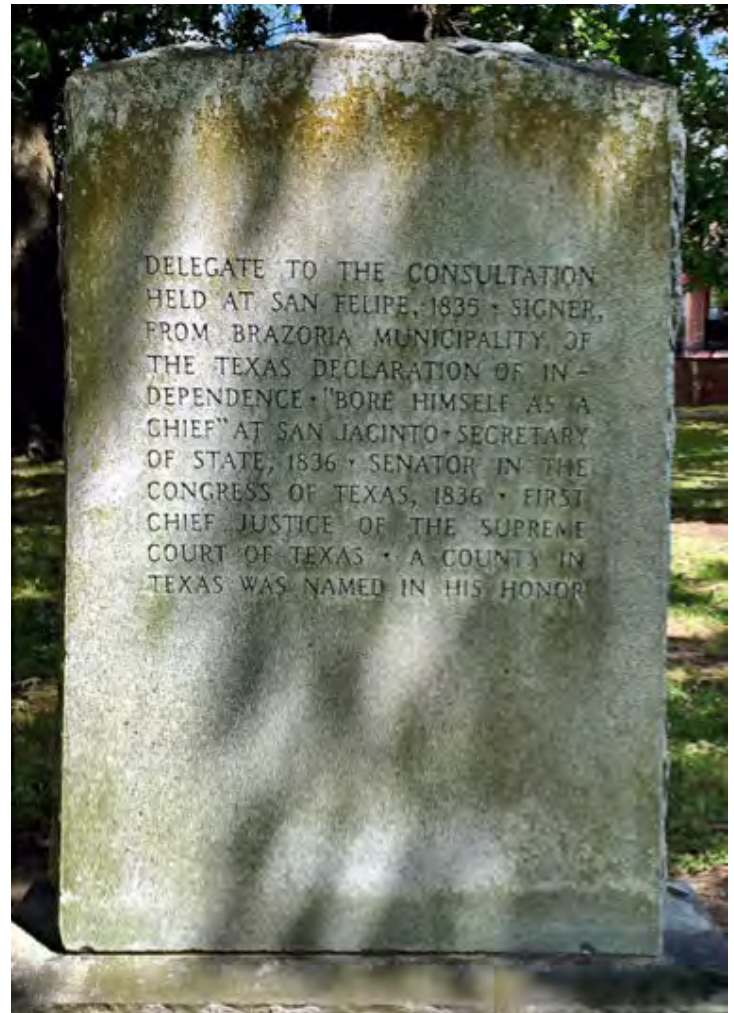
⁵² Paulsen, *Supreme Court Judges*, 308.

⁵³ President Polk would later sign a joint resolution of the U.S. Congress recognizing the admission of Texas as a State of the Union on December 29, 1845. See Ralph H. Brock, *"The Republic of Texas is No More:" An Answer to the Claim That Texas Was Unconstitutionally Annexed to the United States*, 28 TEX. TECH L. REV. 679, 692-93 (1997). This December 29, 1845 date has also been recognized by the United States Supreme Court as the date upon which Texas was admitted into the Union. See *E.P. Calkin & Co. v. Cocke*, 55 U.S. 227, 235-36 (1852) (clarifying that, on that date, "Texas was admitted into the Union," and from that day "the laws of the United States were declared to be extended over, and to have full force and effect within, the State," so that "the old system of [Republic] government, so far as it conflicted with the federal authority, became abrogated immediately on her admission as a State"), *overruling*, *Cocke v. E.P. Calkin & Co.*, 1 Tex. 542, 560 (1846) (holding that certain sections of article 13 of the newly ratified state constitution postponed the operation of the laws of the Union until such time as a state government was organized on February 16, 1846).

⁵⁴ Paulsen, *Supreme Court Judges*, 308, 310.

⁵⁵ Haley, *Texas Supreme Court*, 19; Paulsen, *Supreme Court Judges*, 310.

⁵⁶ Davenport, *Supreme Court History*, 9; see Moore, *Eighteen Minutes*, 72, 74.



James Collinsworth's cenotaph, Founders Memorial Cemetery, Houston. Photos by David A. Furlow.

By April 8, 1836, Collinsworth had arrived at the Texian army training encampment near Groce's Landing, roughly halfway between Washington-on-the-Brazos and San Felipe on the western bank of the Brazos River.⁵⁷ He was now a major in General Houston's command staff, and his aide-de-camp.⁵⁸

Around this same time, future San Jacinto jurist Robert "Three-Legged Willie" Williamson also held the rank of major and was in command of a regiment of Texas Rangers. Upon learning that drunken Rangers under Williamson's command had killed two Mexican prisoners, General Houston and future San Jacinto jurist Secretary of War Thomas J. Rusk relieved Williamson of command and handed his Ranger regiment over to Collinsworth. Houston had wanted to question the prisoners.⁵⁹

Little is known about Collinsworth's specific involvement in the Battle of San Jacinto,⁶⁰ but

⁵⁷ *Eighteen Minutes*, 125, 166.

⁵⁸ *Ibid.*, 166, 180.

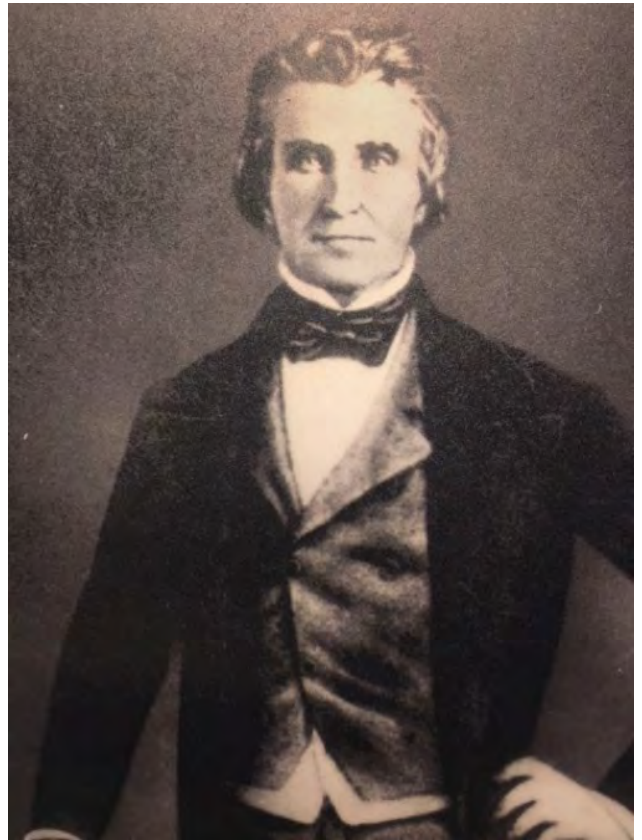
⁵⁹ *Ibid.*, 180.

⁶⁰ *See ibid.*, 435.

Rusk went out of his way to praise Collinsworth's valor on the battlefield in a report to Interim President David G. Burnet:

While I do justice to all in expressing my high admiration of the bravery and gallant conduct of both officers and men, I hope I may be indulged in the expression of my highest approbation of the chivalrous conduct of Major James Collinsworth in almost every part of the engagement.⁶¹

Following the victory at San Jacinto, Collinsworth served in several distinguished posts in the Republic government. Prior to his election as the first Chief Justice of the Republic Supreme Court on December 16, 1836,⁶² he turned down the request of interim President David G. Burnet earlier that spring to serve as the Republic's first judge.⁶³ Collinsworth declined, and Burnet appointed instead fellow San Jacinto jurist Benjamin C. Franklin.



"Three-Legged Willie" Williamson, photo on display at San Felipe de Austin Museum, April 27, 2018. Photo by David A. Furlow.

Though he was the first Chief Justice, Collinsworth never presided over the Court he led, nor authored a single opinion from its bench.⁶⁴ Of this irony, Floride Peterson compared Collinsworth to George Washington:

[I]t is said [that Washington] "was childless so that he may be called the father of his Country." So, it may be said, *Collinsworth never wrote an opinion that he may be called the father of our judiciary.*⁶⁵

The Court never convened its first scheduled session in December 1837 because no quorum could be formed.⁶⁶ And before the Court could meet the following year, Chief Justice Collinsworth drowned in Galveston Bay, likely by his own hand, on July 11, 1838.⁶⁷ Some amount

⁶¹ Paulsen, *Supreme Court Judges*, 310 (quoting *In Memoriam*, 126 Tex. xxxi); see Davenport, *Supreme Court History*, 9.

⁶² Paulsen, *Supreme Court Judges*, 308; Paulsen, *Dates of Service*, 370; Gilmer, *Early Courts*, 448; Lynch, *Bench and Bar*, 64; see Haley, *Texas Supreme Court*, 235.

⁶³ Hon. Ken Wise, "Judge Benjamin Franklin Cromwell: First Republic Judge," *Journal of the Texas Supreme Court Historical Society* (Spring 2016): 16; Paulsen, *Supreme Court Judges*, 332 n.188; Wharton, *Early Judicial History*, 321-23; see Lynch, *Bench and Bar*, 173.

⁶⁴ Paulsen, *Supreme Court Judges*, 308.

⁶⁵ *Ibid.* (quoting *In Memoriam*, 126 Tex. xxxi) (emphasis added).

⁶⁶ Haley, *Texas Supreme Court*, 33; Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Short History*, 249.

⁶⁷ Haley, *Texas Supreme Court*, 19; Ariens, *Lone Star Law*, 19; Moore, *Eighteen Minutes*, 422; Paulsen, *Sesquicentennial*



The San Jacinto diorama at the Bryan Museum in Galveston shows the first line of Texian troops sweeping across the Mexican breastworks into Santa Anna's camp, followed by rapidly advancing second line of Texian troops. Photo by David A. Furlow.

of melancholy, perhaps magnified by what he witnessed or even did at San Jacinto, had followed Collinsworth the rest of his days.⁶⁸ He was known to treat his mood with drink.⁶⁹ His ill-fated campaign for Republic President in 1838 (while Chief Justice) against then-Vice President Mirabeau B. Lamar and Attorney General Peter W. Grayson did not help.⁷⁰ Because Collinsworth was President Houston's chosen successor, he faced the full and bitter brunt of the enmity of supporters of Houston's political enemy, Lamar.⁷¹ "Calumnies of the most appalling sort were hurled."⁷²

State District Judge A.W. Terrell later described Collinsworth as:

[A] lawyer of distinguished ability who preferred to settle his clients' troubles out of court where it was possible. He despised long drawn out litigation.... His mind was a storehouse of legal opinions and his knowledge of common law practice was marvelous.⁷³

Celebration, 43; Paulsen, *Short History*, 250 n.74; Paulsen, *Supreme Court Judges*, 310; Gilmer, *Early Courts*, 449; Davenport, *Supreme Court History*, 10; Lynch, *Bench and Bar*, 64.

⁶⁸ See Haley, *Texas Supreme Court*, 19.

⁶⁹ *Ibid.*; Davenport, *Supreme Court History*, 10 n.1.

⁷⁰ Paulsen, *Short History*, 250; Davenport, *Supreme Court History*, 9–10.

⁷¹ Paulsen, *Short History*, 250.

⁷² *Ibid.*

⁷³ *Ibid.*; Paulsen, *Supreme Court Judges*, 311. No doubt Chief Justice Collinsworth's extensive common-law knowledge was fed by his large law library, consisting of some 175 volumes. Haley, *Texas Supreme Court*, 19.

Chief Justice Thomas J. Rusk

Although Thomas J. Rusk was the *third* Chief Justice of Republic, he was the *first* to preside over a session of the Supreme Court and author an opinion.⁷⁴ If anyone's feats at San Jacinto matched their later judicial service, it was Rusk, who was Secretary of War and led the charge at San Jacinto that routed Santa Anna's army after General Sam Houston was wounded.⁷⁵

Rusk was born on December 5, 1803 in the Pendleton District of South Carolina.⁷⁶ His family lived in a house owned by the future Vice-President of the United States, John C. Calhoun. Calhoun encouraged Rusk's study of the law, procuring for him a position in the office of the district clerk, even lending him law books to study. After being admitted to the South Carolina Bar at the age of twenty-nine, Rusk wed and began his law practice in Clarksville. However, he soon fell prey to embezzlers in a gold-mining scheme, who fled to Texas. Rusk doggedly pursued the criminals, arriving in Nacogdoches, where he decided to settle.⁷⁷



Thomas J. Rusk. Wikimedia Commons

Rusk was quickly drawn up into the Texians' fight for freedom, organizing a company of Nacogdoches volunteers in 1835, and serving as a Colonel at the Siege of Bexar.⁷⁸ Soon thereafter, Rusk served as Nacogdoches's delegate to the Constitutional Convention in March 1836, signing both the Texas Declaration of Independence and Republic Constitution.⁷⁹ On March 16, 1836, he was elected Secretary of War, and was sworn-in the following morning at 4:00 a.m.⁸⁰

Although Rusk possessed the power to take command of the Texan army if he wished as Secretary of War, he chose instead to support General Houston, an indication of his strength of character.⁸¹

⁷⁴ Haley, *Texas Supreme Court*, 20; Paulsen, *Supreme Court Judges*, 313–14, 316.

⁷⁵ Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Supreme Court Judges*, 314; see Gilmer, *Early Courts*, 449.

⁷⁶ Ariens, *Lone Star Law*, 19; Moore, *Eighteen Minutes*, 95; Paulsen, *Supreme Court Judges*, 314; Davenport, *Supreme Court History*, 10; Lynch, *Bench and Bar*, 65.

⁷⁷ Paulsen, *Supreme Court Judges*, 314; Davenport, *Supreme Court History*, 11; Lynch, *Bench and Bar*, 65.

⁷⁸ Haley, *Texas Supreme Court*, 258 n.12; Moore, *Eighteen Minutes*, 95; Paulsen, *Supreme Court Judges*, 314; Davenport, *Supreme Court History*, 11–12; Lynch, *Bench and Bar*, 66.

⁷⁹ Moore, *Eighteen Minutes*, 95; Paulsen, *Supreme Court Judges*, 314; see Lynch, *Bench and Bar*, 66.

⁸⁰ Moore, *Eighteen Minutes*, 77–78; Davenport, *Supreme Court History*, 12.

⁸¹ Moore, *Eighteen Minutes*, 169.

Rusk oversaw the burial of Fannin and his men who were slaughtered at Goliad.⁸² After the dead had been gathered and properly interred, Rusk:

[D]elivered over them an oration, which, in eloquence and pathos was unsurpassed by that of Pericles over those who fell in the Samian war.... It is said that many a rough and hardy soldier, whose eyes had never since childhood been wet with the waters of sorrow and sympathy shed copious tears that day....⁸³

On April 13, 1836, Rusk strongly implored Texians to take up the cause of liberty against the invading Mexican forces:

Will you desert the principles of liberty? You entail upon yourselves and your children eternal infamy and disgrace, if you will not march at once to the field, join the army now on the line of march to meet the enemy, and conquer him, or die nobly in the cause of liberty and their country.⁸⁴

Two days before the Battle of San Jacinto on April 19, 1836, Rusk issued another stirring address to the people of Texas, calling them again to arms:

A few more hours will decide the fate of our army; and what an astonishing fact it is that, at the very moment when the fate of your wives, your children, your honors, your country, and all that is dear to a freeman are suspended on the issue of one battle, not one-fourth of the people (men) of Texas are in the army! Are you Americans? Are you freemen? If you are, prove your blood and birth by rallying at once to your country's standard. Your general is at the head of a brave and chivalrous band, and throws himself, sword in hand, into the breach to save his country, and vindicate her rights.... Rise at once, concentrate and march to the field!—a vigorous effort, and the country is safe! A different course disgraces and ruins you; and what is life worth with the loss of liberty? May I never survive it!⁸⁵

It was said that the "heroic conduct of Secretary Rusk in the battle of San Jacinto was excelled by none who participated in that important engagement."⁸⁶ During the early afternoon of April 21, 1836, Rusk joined Captain Juan Seguin at his campfire to inquire about the habits of the Mexican *soldados*.⁸⁷ It was Seguin who informed Rusk that the Mexican soldiers were likely to take a siesta that fateful afternoon.⁸⁸

⁸² Lynch, *Bench and Bar*, 66.

⁸³ *Ibid.*

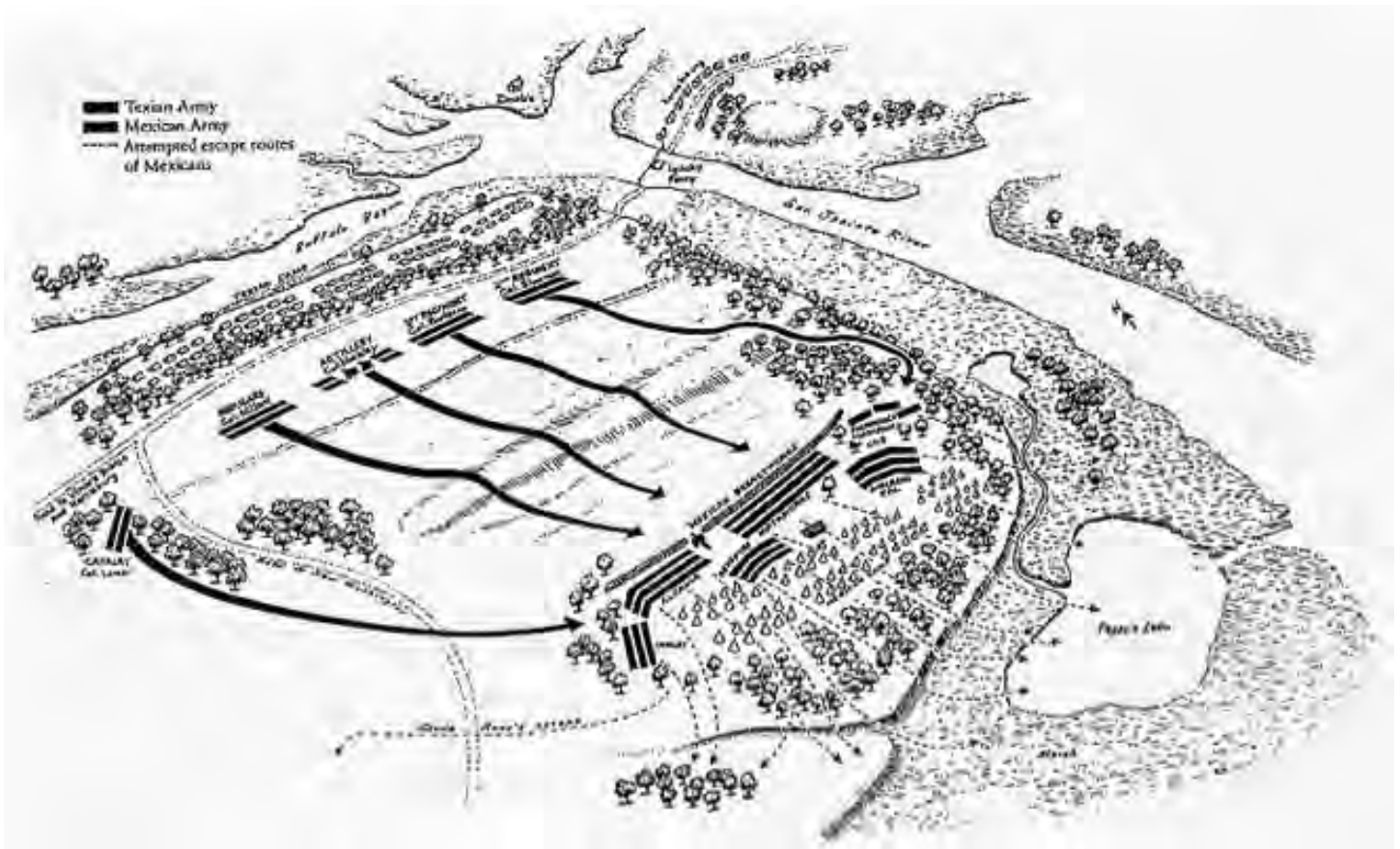
⁸⁴ *Ibid.*, 209.

⁸⁵ Davenport, *Supreme Court History*, 12 n.1; see Moore, *Eighteen Minutes*, 248.

⁸⁶ Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Supreme Court Judges*, 314; see Gilmer, *Early Courts*, 449; Davenport, *Supreme Court History*, 12 n.1.

⁸⁷ Moore, *Eighteen Minutes*, 309. Seguin was one of the last people to escape the Alamo on February 25, 1836, taking with him one of Travis's pleas to Colonel Fannin for reinforcements. James Donovan, *The Blood of Heroes: The 13-Day Struggle for the Alamo—and the Sacrifice That Forged a Nation* (New York: Little, Brown, and Co., 2012), 219–20.

⁸⁸ Moore, *Eighteen Minutes*, 309.



Above: Four columns of Texian troops advancing to the sound of “Remember the Alamo” and “Remember Goliad.” *Handbook of Texas Online*, map courtesy of Stephen L. Hardin and the University of Texas Press.
 Below: Close-up of the San Jacinto Battle diorama at the Bryan Museum shows Texian troops crossing over the Mexican breastworks. Photo by David A. Furlow.



As the Texian columns advanced towards the Mexican forces once the battle began, Rusk observed that cries rose up from his men—“Remember the Alamo! Remember La Bahia!”⁸⁹ “These words,” Rusk remarked, “electrified all.”⁹⁰

As Rusk later rode across the battlefield to report to General Houston, the General’s horse was felled by grapeshot from Santa Anna’s nine-pound cannon, dubbed the “Golden Standard.”⁹¹ The Mexican army began to be overrun by the Texian advance, and General Houston was wounded in the ankle by a brass musket ball near the Mexican breastworks.⁹² Seeing that the Texian troops were in danger of halting their advance after watching Houston fall, Rusk rode forward and cried, “If we stop we are cut to pieces. Don’t stop—go ahead—give them hell,”⁹³ “Push on boys, push on!”⁹⁴ Rusk’s mission at San Jacinto was later described as “to *win* the laurels of that day, and for the other men to *wear* them.”⁹⁵



Henry McArdle’s *Battle of San Jacinto* (1895). Image courtesy of the Texas State Library and Archives.

⁸⁹ *Ibid.*, 321 (emphasis added).

⁹⁰ *Ibid.*

⁹¹ *Ibid.*, 321–22.

⁹² *Ibid.*, 338–39.

⁹³ *Ibid.*, 340.

⁹⁴ Davenport, *Supreme Court History*, 12–13 n.1.

⁹⁵ *Ibid.*



Above left: Sam Houston on horseback, painting by S. Seymour Thomas in the San Jacinto Battlefield Museum. Above right: Historical marker where Mexican fire wounded Sam Houston and killed his horse under him. Photos by David A. Furlow.

Following the battle, when Santa Anna was brought before General Houston after his capture, Rusk interrogated the deposed dictator. Rusk demanded to know what excuse Santa Anna had for the Alamo massacre. Santa Anna coolly replied that it was customary to “put all to the sword” when a smaller force refused to surrender to and inflicted many casualties upon a superior force.⁹⁶

Santa Anna’s calm pretense soon withered under the intensity of Houston and Rusk’s interrogation—so much so that Santa Anna asked for and was permitted to take a quick dose of the opium the Texians had recovered from his personal effects.⁹⁷

Rusk completed his official report of the San Jacinto battle by April 23, 1836, and enlisted future fellow San Jacinto jurist Benjamin C. Franklin to deliver it to Interim President David G. Burnet.⁹⁸ In it, he wrote, “It was freemen fighting against the minions of tyranny, and the result proved the inequality of such a contest.”⁹⁹

Following San Jacinto, Rusk was elevated to General and Commander-in-Chief of the

⁹⁶ Moore, *Eighteen Minutes*, 384

⁹⁷ *Ibid.*, 385.

⁹⁸ Wise, *First Republic Judge*, 14; Moore, *Eighteen Minutes*, 388, 481 n.20; see Paulsen, *Supreme Court Judges*, 332.

⁹⁹ Moore, *Eighteen Minutes*, 411.



Surrender of Santa Anna, by William Henry Huddle, hangs in the Texas State Capitol. Image courtesy of Wikimedia Commons.

Texan forces while Sam Houston recovered from his ankle injury.¹⁰⁰ During the fall of 1836, Rusk was named the Republic's Secretary of War in now-President Houston's cabinet, but he resigned after a few weeks to return his attention to his long-neglected private affairs.¹⁰¹ He soon returned to public life, though, being elected from Nacogdoches to a seat in the Second Republic Congress in 1837.¹⁰²

Rusk was elected by a joint ballot of the Republic Congress as the Supreme Court's third Chief Justice on December 2, 1838.¹⁰³ As noted earlier, because he was leading military campaigns against several Indian tribes, Chief Justice Rusk did not actually receive word of his election until more than a month later on January 21, 1839—one week after the date on which Court would have had to convene its January 1839 session.¹⁰⁴

¹⁰⁰ *Ibid.*, 406; Paulsen, *Supreme Court Judges*, 316; Davenport, *Supreme Court History*, 13.

¹⁰¹ Moore, *Eighteen Minutes*, 413; Paulsen, *Supreme Court Judges*, 316; Davenport, *Supreme Court History*, 13; Lynch, *Bench and Bar*, 67.

¹⁰² Paulsen, *Supreme Court Judges*, 316; Davenport, *Supreme Court History*, 13; Lynch, *Bench and Bar*, 67.

¹⁰³ Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Supreme Court Judges*, 316.

¹⁰⁴ Haley, *Texas Supreme Court*, 258 n.13; Ariens, *Lone Star Law*, 19; Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Short History*, 252; Paulsen, *Supreme Court Judges*, 316.

Finally, just over three years after the Republic Supreme Court was established, Rusk became the first Chief Justice to actually gavel it into session on January 13, 1840.¹⁰⁵ During that, his one and only Court session, Chief Justice Rusk authored five opinions.¹⁰⁶ He resigned from the Court five months later on June 30, 1840.¹⁰⁷

After annexation, Rusk was unanimously elected in March 1846 alongside Sam Houston to serve as Texas's first U.S. Senators.¹⁰⁸

Chief Justice Rusk's wife, to whom he'd been married for nearly a quarter-century, died from tuberculosis on April 23, 1856 at only forty-seven years of age.¹⁰⁹ Just over a year later on July 29, 1857, this great man's grief was such that he took his own life.¹¹⁰

Both Rusk County, established in 1843, and the City of Rusk, founded in 1846, are named in his honor.¹¹¹

¹⁰⁵ Haley, *Texas Supreme Court*, 20; Paulsen, *Sesquicentennial Celebration*, 43; Paulsen, *Supreme Court Judges*, 313–14, 316; Gilmer, *Early Courts*, 449.

¹⁰⁶ Haley, *Texas Supreme Court*, 20.

¹⁰⁷ Ariens, *Lone Star Law*, 19; Paulsen, *Supreme Court Judges*, 316–17.

¹⁰⁸ Paulsen, *Supreme Court Judges*, 317; Davenport, *Supreme Court History*, 13; Lynch, *Bench and Bar*, 68.

¹⁰⁹ Paulsen, *Supreme Court Judges*, 317; Davenport, *Supreme Court History*, 14; Lynch, *Bench and Bar*, 68.

¹¹⁰ Moore, *Eighteen Minutes*, 422; Paulsen, *Supreme Court Judges*, 317; Davenport, *Supreme Court History*, 14; Lynch, *Bench and Bar*, 68.

¹¹¹ Paulsen, *Supreme Court Judges*, 317.

END OF PART 1

Part 2, which will appear in the Summer 2018 issue of this Journal, will tell the stories of the remaining five San Jacinto jurists: Associate Judges Edward T. Branch, Benjamin Cromwell Franklin, James W. Robinson, Richardson "Dick" Scurry, and Robert McAlpin "Three-Legged Willie" Williamson.



DYLAN O. DRUMMOND is a civil appellate and commercial litigator with the law firm of Gray Reed & McGraw LLP. He currently serves as Vice President of the Texas Supreme Court Historical Society, Secretary of the Texas Bar Appellate Section and the Texas Bar College, and subcommittee chair of the Texas Bar Pattern Jury Charge Committee for the Business, Consumer, Insurance & Employment volume.

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Reconstruction Politics and the Galveston Seven: The Struggle to Appoint a Judge in the Eastern District of Texas, 1869-72, Part 2

By Stephen Pate

Part 1 of this article, published in the Winter 2018 issue of this Journal, described how the resignation of U.S. District Court Judge Charles Watrous of the Eastern District of Texas in April 1870 led to a long and contentious battle to replace him.

To set the stage: It had been only on March 30, 1870, roughly three weeks before Watrous's resignation, that Texas had been readmitted to the Union after seceding nine years before. Texas was the last state readmitted and was still deep in the grips of Reconstruction. The Republican Party was ascendant, holding not only the Governor's office but the two Senate seats and, for a time, the entire federal House of Representatives delegation.

All of these officials, plus some more, felt they were entitled to a say in who President Ulysses S. Grant appointed to the greatest patronage prize available—a federal judgeship. The fact that the two Senators despised each other, and the fact that both despised the Governor, who had at first had the ear of Grant on patronage but then lost it, and the fact that Grant was notorious for sometimes ignoring his party in making appointments, meant that there would be no fewer than seven nominations made before the spot was filled.

One man—John F. Appleton of Maine—was nominated and confirmed early on, but he declined due to a terminal illness. That opened the door for candidates waiting in the wings, including former Texas Supreme Court Judges Amos Morrill and Chauncey Sabin, but their efforts to obtain the nomination got caught in the maelstrom of Reconstruction politics. By the end of Part 1 of this article, President Grant had given a recess appointment to J.C.C. Winch, then U.S. Attorney for the Eastern District. The appointment caught everyone by surprise and set the stage for an uphill battle for confirmation.



J.C.C. Winch—The Winter's Judge

Beginning in October 1870, J.C.C. Winch became only the second federal judge the Eastern District of Texas had ever seen. Of all of the federal judges who have ever served in Texas, only two, Winch and Judge Charles Watrous, have no extant photograph or portrait.¹

Nevertheless, Winch came from a prominent New England family active in the Methodist Church. A pen and ink drawing of Judge Winch's grandfather, Joel Winch, appears in an early

¹ Ocie Speer, *Texas Jurists, 1836-1936* (Austin: Ocie Speer, 1936), 65. See also "Winch, Joel C. C.," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fwi60>.

Vermont history.² J.C.C. Winch—Joel was his first name—was born in Northfield, Vermont in 1835.³ His father was a farmer, and his family's prominence did not seem to translate to wealth.

Through teaching and other work, young J.C.C. Winch paid for his own higher education. He both taught classes and read law in 1858.⁴ Admitted to the bar in 1859, he then moved all the way from Vermont to the Texas frontier town of Corsicana, the county seat of Navarro County, Texas. There is nothing to indicate why this 23-year-old New Englander chose Corsicana, or Texas for that matter, to set up a law practice. Why not Iowa? Why not California? We will never know.

The *Navarro Express* of Corsicana contains a November 17, 1859 announcement for "J.C.C. Winch. Attorney and Counselor at Law, practicing in the 12th and 13th Judicial Districts, willing to do collection work, or to investigate land titles."⁵ The 1860 census shows him as a single man living in a Corsicana hotel.⁶ He seemed to be the epitome of an eager young lawyer trying to make his way in a new community. It probably helped that family members were active Methodists. The fact that the Winches, including J.C.C., were active Freemasons also opened doors for him.⁷ Active in civic affairs, he was part of the committee selected to draft the Bylaws of the Navarro Agricultural and Mechanical Society⁸ and apparently became the Recorder of the City of Corsicana, duly taking down ordinances passed by the City Council.⁹

As ambitious young men are wont to do, sometimes he got a little ahead of himself. The *Navarro Express's* editor noted that Winch had announced that he was one of the editors of that paper, "incited, we suppose, by a desire of seeing his name in print."¹⁰ The editor harrumphed, "As to your becoming an editor, Friend W., you had better wait until you are asked."¹¹

Of course Winch was involved in politics, apparently Democratic politics, and sought to attach himself to the right people. At a public meeting in Corsicana on March 15, 1860, he was part of a "Committee of five" called upon to draft resolutions recommending C.M. Winkler for election as Judge of the 13th Judicial District Court.¹² Winch's connection with Clinton McKamy Winkler (for whom Winkler County is named) would be fateful. Winkler was an early Texas pioneer and lawyer. He had represented Navarro County in the state legislature, and had practiced law in Corsicana for many years by the time Winch arrived.¹³ He was exactly the type of older lawyer

² John Gregory, *Centennial Proceedings and Historical Incidents of the Early Settlers of Northfield Vermont* (Northfield, Vermont: private printing, 1876), 95 (entry about Joel Winch).

³ *Biographical Encyclopedia of Texas* (New York: Southern Publishing Company, 1880), 206.

⁴ "Winch, Joel C. C.," in *Judges*, Federal Judicial Center, <https://www.fjc.gov/node/1390891>.

⁵ *Navarro Express* (November 17, 1859), 5.

⁶ *Navarro County Texas Census* (1860), <https://www.ancestry.com>.

⁷ "Masonic," *Galveston Tri-Weekly Telegraph*, September 18 1865, 7.

⁸ "Agricultural Meeting," *Navarro Express* (March 10, 1860).

⁹ "Ordinances," *Navarro Express* (June 5, 1861), 1.

¹⁰ *Navarro Express* (March 17, 1860), 2.

¹¹ *Ibid.*

¹² "Public Meeting," *Navarro Express* (March 17, 1860), 2.

¹³ Robert N. Jones, Jr., "Winkler, Clinton McKamy," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fwi63>.

Winch needed as a mentor.

The fall of 1860 did not see Winkler's election as judge. Instead, it witnessed Abraham Lincoln's election as President. After that happened, Winkler became one of the prominent Navarro County leaders who organized the secession movement in the County.¹⁴ After Texas left the Union in March 1861, Winkler organized a company for the Confederate Army called the "Navarro Rifles" and became its Captain.¹⁵ Under the heading "The Rifle Company," the *Navarro Express* listed Winkler as Captain and many young Navarro County men as privates.

One of those young men listed was J.C.C. Winch.¹⁶

Yes, the rock-ribbed son of New England, only about two years out of Vermont, had become a Johnny Reb. He would not stay with the Navarro Rifles, which would go on to become part of the Fourth Texas Regiment, part of Hood's Texas Brigade, but he would join other Texas units. He is listed as being a Quartermaster's Assistant in Company G, 20th Texas Cavalry, a regiment partially recruited from Navarro County in 1862.

Later, J.C.C. Winch appeared as a private in Speight's regiment—the 15th Texas Infantry—another regiment with a cadre from Corsicana. Winch was later discharged as physically unfit because of lung problems in June 1863.¹⁷ This did not end his service to the Confederacy, however. Another record shows him as a Quartermaster's Agent in Brenham, Texas. A June 2, 1864 record—by this time he must have been in Houston—states that he was "Chief Clerk." A January 1865 record states Winch was a clerk at the "Post of Houston" under the command of the famed General John Bankhead "Prince John" Magruder.¹⁸ As such, Winch himself says he received a Captain of Infantry's pay—but not rank.¹⁹

One of his political rivals would claim that Winch actually applied for a Major's commission in the Confederate Army.²⁰ There is no proof that this occurred. Yet at some point Winch began to refer to refer himself as "Major Winch," and there are newspaper references that reflect that he was.²¹ Perhaps Prince John Magruder gave his chief clerk and quartermaster a courtesy title.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ "The Rifle Company," *Navarro Express* (June 5, 1861), 1. See also "J.C.C. Winch in the U.S. Civil War Soldiers, 1861–1865," Ancestry.com, https://search.ancestry.com/cgi-bin/sse.dll?rank=1&gsln=Winch&gsln_x=XO&db=NPS_civilwarsoldiers&gss=genfact&_F0003CA4_x=1&uidh=000&_F0003CA4=Confederate. Winch began as a private before being promoted. *Ibid.*

¹⁷ Records pertaining to J.C.C. Winch, "Civil War Service Records, Confederate Records, digital images," <http://www.Fold3.com>; Alwyn Barr, "Fifteenth Texas Infantry," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/qkf09>; Matthew K. Hamilton, "Twentieth Texas Cavalry," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/qkt28>.

¹⁸ "Civil War Service Records," Fold 3, <http://www.Fold3.com>.

¹⁹ Application for removal of legal and political disabilities, No. 8077, J.C.C. Winch, NARA.

²⁰ D.J. Baldwin claimed that Winch "voluntarily went into the rebellion" and applied for a Major's commission in a letter to President Grant; *Papers of U.S. Grant*, vol. 21, 293.

²¹ "Echoes from Houston," *Galveston Daily News* (August 17, 1867), 2; "Harris County Criminal Court," *Houston Union* (August 12, 1869), 1.

One thing is certain: Major Winch could only have acquired the title by service to the South.

J.C.C. Winch would bear this Southern Cross for the rest of his life. Years later, he would claim he never willingly participated in the Rebellion, “but only from force of circumstances.”²² To avoid bearing arms against the U.S. Government, and to avoid field service, he said, he had held a “small county office” and taken “a position as a ‘Bonded Agent of the Q.M. Dept.’ on post duty.”²³ Yet the records do indicate some field service: a position as Chief Clerk at the Headquarters of the Military District.²⁴

In 1869 Winch would state “I have always been and still am a Union man.”²⁵ Yet unlike Chauncey Sabin, Amos Morrill, E. J. Davis, and scores of others, Winch had made no attempt to escape to the North. That in and of itself is not so unusual: it is estimated that one third of Texans were actual Unionists and few actually left.²⁶ Nor was it unusual for Unionists to join the Confederate Army; ex-Governor Throckmorton did that, and in fact there was an entire regiment of Texas Unionists in the Confederate Army.²⁷

Yet Winch was Northern born and bred—he did not have the ties to the state that these Southern Unionists felt. Moreover, though it might have taken some time, as it did for Sabin, or Judge Thomas Duval of the Western District, who could not leave for the North until 1863,²⁸ Winch could have gotten out. He was a single man, without family obligations. He was a quartermaster, meaning that he was sent to forage for food and supplies to avoid the Northern Blockade. That meant going into Mexico. Many Unionists went to Mexico to escape, and thence went to New Orleans and the North.²⁹ Winch did not.

Why? In May 1861, when he joined the Navarro Rifles, he was 25½ years old. He was two thousand miles away from where he grew up. He was establishing himself in a new community. His peers were signing on to the Army, and into a unit led by his mentor. Later he entered the orbit of a charismatic and flamboyant general. Things went on from there, and by 1865 he was Major Winch, C.S.A. One suspects he never gave the issue of states rights or more importantly, slavery, a second thought. Perhaps it would be too harsh at that point to call him an opportunist.

²² Winch Disability Petition, No. 8077, J.C.C. Winch, NARA.

²³ Winch letter January 22, 1869 attached to disability petition, Application for removal of legal and political disabilities, No. 8077, J.C.C. Winch, NARA.

²⁴ “Civil War Service Records,” Fold 3, <http://www.Fold3.com>.

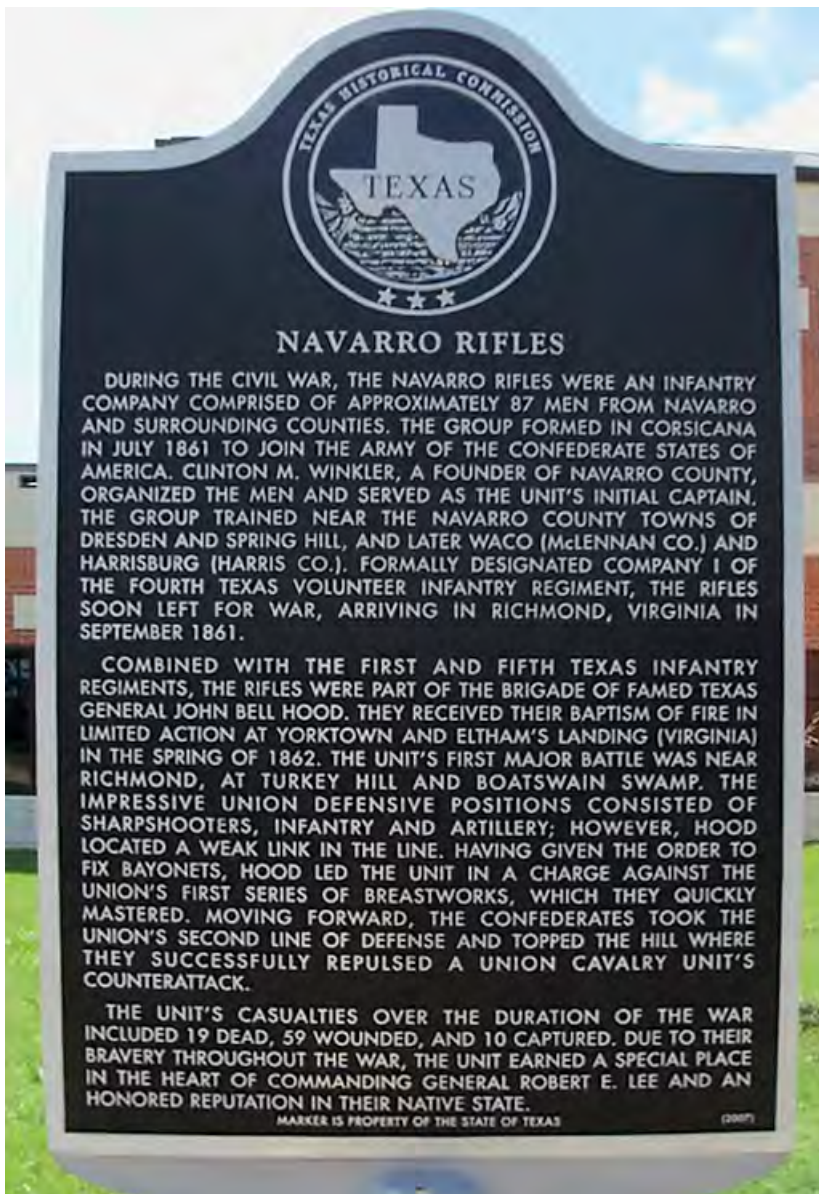
²⁵ Application for removal of legal and political disabilities, No. 8077, J.C.C. Winch, NARA.

²⁶ Richard Parker, “Texas Catches Fire,” *New York Times*, Opinion Pages (May 18, 2011), <https://opinionator.blogs.nytimes.com/2011/05/18/texas-catches-fire/>.

²⁷ David Minor, “Throckmorton, James Webb,” *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fth36>; Michael M. Ludeman, “Johnson, William H.,” *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fjo30>. The regiment was the 22nd Texas Cavalry.

²⁸ Long wagon trains filled with cotton converged at the King Ranch 125 miles north of Brownsville to be traded in Matamoros for merchandise and army supplies. The drivers were “school teachers, college professors [and] society dudes” seeking to avoid Confederate conscription. Few returned north after reaching Mexico. James Marten, *Texas Divided: Loyalty and Dissent in the Lone Star State, 1856–1874* (Lexington: University Press of Kentucky, 1990), 95.

²⁹ *Ibid.*, 94–95.



Texas Historical Commission sign in front of the Pearce Museum on the campus of Navarro College in Corsicana, Texas.³⁰

He was a young man caught up in circumstances. One cannot be so forgiving about his later conduct.

After the war, Winch, who had married a Houstonian in 1865,³¹ remained in Houston to practice law. He became very successful. In 1866, the Harris County Commissioners Court appointed him County Attorney, a position then concerned with both civil and criminal prosecutions.³² He engaged in business as one of the original incorporators of the Bolivar Point and Houston Ship Channel Company, along with Chauncey Sabin, and such luminaries as T.W. House.³³ He purchased the dilapidated Harris County Courthouse, started in 1860 but never finished because of the Civil War. It was demolished, and its bricks were used to build Annunciation Catholic Church.³⁴ He later served one term as the State District Attorney for the criminal court of both Galveston and Harris County.³⁵ He became active in civic activities. As early as September 1865 he was noted as a Grand Officer of the Grand Chapter of Texas Freemasons.³⁶

Of course Winch became involved in politics. At first, he might be said to be a Democrat or at least a

³⁰ Waymarking.com website, http://staging.waymarking.com/waymarks/WMN7NG_Navarro_Rifles.

³¹ *Biographical Encyclopedia of Texas*, 206.

³² Margaret S. Henson, *Origins of Harris County Attorney's Office, Houston City Officials, Harris County Officials 1837-1975 and Volunteer Fire Co. Office to 1894* (Houston: Harris County, 1976), 33.

³³ *Journal of the Reconstruction Convention which met at Austin Texas 1868-69* (Austin: Tracy, Siemering & Co., 1870), 588. T.W. House was a renowned early Houston businessman and merchant. He was the father of Edward M. House, known as Colonel House, Woodrow Wilson's trusted advisor.

³⁴ See "Echoes from Houston," *Galveston Daily News* (August 17, 1867), 2; "Harris County Criminal Court," *Houston Union* (August 12, 1869), 1; "From Houston Telegraph Nov 19," *Flake's Bulletin* (November 21, 1867), 6.

³⁵ *Biographical Encyclopedia of Texas*, 206.

³⁶ "Masonic," *Galveston Tri-Weekly Telegraph* (September 18, 1865), 7.

Conservative; he supported Throckmorton, the Conservative Union candidate, over the Radical E.M. Pease in 1866. His name appears on a letter asking for a man to place his name on the "Throckmorton ticket" as a candidate for Attorney General; other names that appear on this letter are those of W.B. Botts and Peter W. Gray, who founded the law firm of Baker and Botts.³⁷

W.B. Botts had been a Confederate officer in the Fifth Texas Regiment, while Gray had been a Confederate Congressman and later served on the staff of General Magruder, which is where he might have met Winch.³⁸ Other names that appeared with Winch were Charles Stewart, another ex-Confederate officer and later a Democratic Congressman, and James Manly, another ex-Confederate.³⁹ So at first it seemed that Winch kept up with his Confederate colleagues.

As time passed, Winch became a Radical Republican, a member of the E. J. Davis faction. Perhaps he had a change of heart. More likely, he saw which way the wind was blowing. During the Reconstruction Convention, H.C. Pedigo, Chairman of the Special Committee on Political Disabilities, rose from the floor on July 8, 1868 and presented the following report and accompanying resolution to Davis, the President of the Convention, to recognize that Winch and many men like him were to be welcomed back into the fold of rehabilitated citizens:

Hon. E. J. DAVIS, President of the Convention: Your Committee on Political Disabilities have the honor to report that they have had under consideration the application of many persons, citizens of this State, for relief from political disabilities, and herewith submit, as the result of their deliberations, the accompanying memorial and resolution, and ask their adoption by this Convention: H. C. PEDIGO, Chairman.

To THE HONORABLE THE SENATE AND HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES:

Your memorialists, the people of the State of Texas in Convention assembled, would respectfully represent and set forth that the following named persons, who are all resident citizens of the State of Texas, to wit: James H. Bell, R. K. P. Record, S. S. Nichols, C. B. Way, S. W. Ford, T. Douglass Rock, J. G. Bell, ... *J. C. C. Winch*, ... are gentlemen of good moral character and honorable deportment; patriotic and loyal in sentiment, devoted to the Union, and firm supporters of the reconstruction policy of Congress;

that they have talent and intelligence fitting them for positions of usefulness and honor; but that they, on account of having participated in the late rebellion, in many cases against their inclination and better judgment, and

³⁷ "Correspondence," *Galveston Daily News* (May 25, 1866), 2.

³⁸ See Stephanie Piefer Niemeyer, "Botts, Walter Browne," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fbobc>; Thomas W. Cutrer, "Gray, Peter W.," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fgr25>.

³⁹ See <http://www.law.cornell.edu/uscode/17/107.shtml>. Anne W. Hooker, "Stewart, Charles," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fst52>.

because they previously held office as contemplated by the Fourteenth Amendment to the Constitution of the United States, are subject to the disabilities mentioned in said Fourteenth Amendment;

wherefore, your memorialists pray that all disabilities now imposed by law upon the persons aforesaid, be by law removed, and as in duty bound, &c. Be it resolved by the people of Texas, in Convention assembled,

That the accompanying memorial, presented by the Committee on Political Disability, be adopted as the action of this Convention; that Congress be requested to relieve the persons aforesaid of said disability mentioned in said memorial; that certified copies of said memorial and this resolution be transmitted to the Congress of the United States, signed by the President of this Convention and attested by the Secretary.⁴⁰

In 1869 the *Houston Union* stated that "Mr. W. is a strong supporter of the Republican party."⁴¹ Moreover, on March 31, 1869, the *Union* announced the formation of the Republican Association of Houston, with a decidedly Radical platform.⁴² Winch, who was active in the Agricultural Club of Navarro County a few years earlier, and kept minutes of the Corsicana City Council, was on the Executive Committee, along with James G. Tracy, the *Union's* editor, who served as President.⁴³ In September 1869, during the bitter gubernatorial campaign against A.J. "Jack" Hamilton, Winch was selected to be one of the committee to "wait" on "General Davis upon his arrival in Houston" during his campaign stop, a high honor indeed.⁴⁴

The appearance of James G. Tracy, *Houston Union* editor, prominent Radical Republican, and Chair of the State Republican Executive Committee, is important. He and Winch knew each other from more than just Republican associations. During 1869, District Attorney Winch was actively prosecuting Tracy for murder. On February 13, 1869, Somers Kinney, editor of the *Houston Times*, stated in his morning edition that he had seen a handbill stating that Tracy was a "liar, coward, and scoundrel" and that he did not like Tracy's record, "for it is, according to all accounts, black enough to make midnight darkness blush, were the two to meet face to face."⁴⁵

⁴⁰ See *Journal of the Reconstruction Convention: which met at Austin, Texas. Texas Constitutional Convention (1868-1869)* (Austin: Tracy, Siemering & Co., 1870), 226 (July 7, 1868), available online at University of Texas Law School Tarlton Law Library, https://tarltonapps.law.utexas.edu/constitutions/files/journals1868/1868_07_07_jnl.pdf (emphasis supplied).

⁴¹ "J.C.C. Winch," *Houston Union* (March 25, 1869), 4. Winch was a resident of Houston as early as 1864. See W.A. Leonard, compiler, *City of Houston Directory for 1867-68* (Houston: Gray, Smallwood & Co., Printers, 1867), 75 (listing "J.C.C. Winch" of "Winch & Hanks, real estate agents, off courthouse."), "Houston Area Digital Archive," City of Houston Public Library, <http://digital.houstonlibrary.org/pdfs/HCDir-1867-68.pdf>.

⁴² "Republican Association-Houston," *Houston Union* (March 31, 1869), 3.

⁴³ *Ibid.*

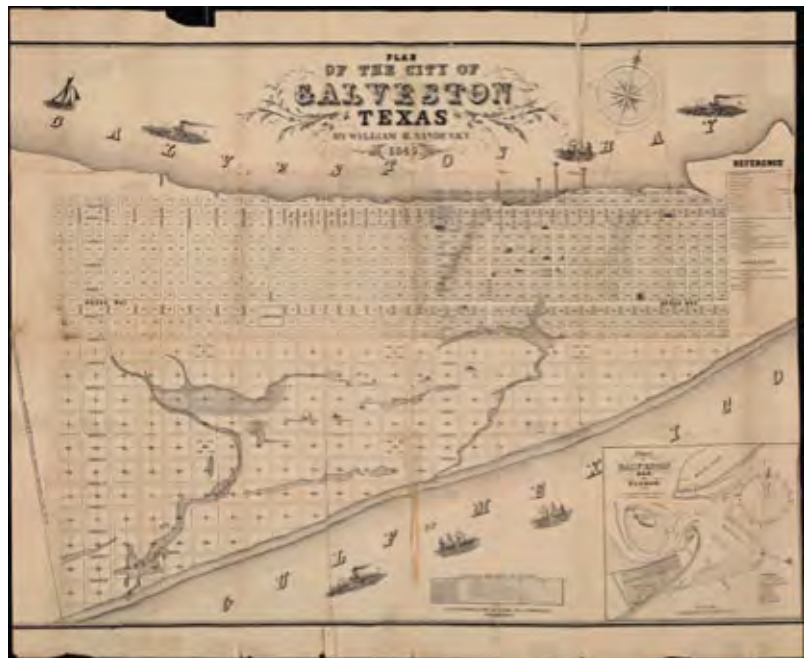
⁴⁴ *Houston Union* (September 16, 1869), 1.

⁴⁵ "Difficulty at Houston between Tracy and Kinney, A Boy Dangerously Wounded," *Flake's Daily Bulletin* (February 17, 1869), 2.

Other things were said as well. Tracy took umbrage. He took a pistol and proceeded to the *Houston Times* office, located close to the corner of Commerce and Travis, and there found Kinney on the street. He shot at Kinney, but missed. However, he did hit and fatally wound a young boy who was walking by.⁴⁶ When the boy died, Tracy was charged with murder. Winch was the prosecuting attorney from the beginning. He tried the case on November 2, 1869, and the jury acquitted Tracy after a five-minute deliberation.⁴⁷ No newspaper mentions that Winch's close connection to Tracy might have made it improper for Winch to prosecute him.

From the standpoint of almost 150 years, Winch's involvement in Tracy's prosecution raises questions. It was in March 1869, a month after the shooting, that Tracy's *Union* called Winch a good Republican and Winch obtained an office in the Republican group that Tracy headed. As noted, 1869 saw the heated gubernatorial election between Davis and Jack Hamilton. Toward the campaign's end, Grant began to support Davis, and swung federal patronage his way.

Texas was not yet readmitted, though, so it fell to the Davis faction, of which Tracy was a major part, to remove Hamilton men through General Joseph J. Reynolds, and supplant them with Davis men. Certainly both Davis and Travis supported Winch. In an October 5, 1869 telegraph to Washington, Davis did not ask for the appointment of Winch. He demanded it. "Have J.C.C. Winch appointed U.S. Dist. Atty for Eastern Dist of Texas..." he wrote.⁴⁸ He telegraphed the next day, "Have it done at once."⁴⁹ Did this demand for immediacy have anything to do with Tracy's trial? On October 10, 1869, the *Galveston Daily News* read, in relevant part, "MORE DECAPITATIONS—It is reported on the streets this morning that there has been another slaughter of the innocents, made at the instance of the General Commanding. Among the victims are United States District Attorney Baldwin, who is to be succeeded by Mr. Winch."⁵⁰



When J.C.C. Winch hoped to succeed Judge Watrous as the new U.S. District Court Judge, Galveston, the port city where he was to serve, was the largest city in Texas. *Plan of the City of Galveston, 1845*. Wikimedia Commons, courtesy of Special Collections, University of Houston Libraries.

On October 26, 1869, a week before the trial, the *Union* itself reported

⁴⁶ "Our Houston Letter," *Galveston Daily News* (February 19, 1869), 2.

⁴⁷ "Tracy Acquitted," *Galveston Daily News* (November 4, 1869), 1.

⁴⁸ Letter, E.J. Davis to Jonathan W. Glenn, October 5, 1869, Box 682, NARA RG 60.

⁴⁹ Letter, E.J. Davis to Jonathan W. Glenn, October 6, 1869, Box 682 NARA RG 60. C.B. Sabin wrote a letter on October 6, 1869 as well, noting his and Tracy's support of Winch. C.B. Sabin to Attorney General, *ibid*.

⁵⁰ "THE CITY—MORE DECAPITATIONS," *Galveston Daily News* (October 10, 1869), 2.



The memorial plaque and federal seal, above, are still visible at the Federal Customs House in Galveston. Photos by David A. Furlow.

that Winch had been appointed U.S. Attorney.⁵¹ President Grant duly nominated Winch on December 6, 1869 and the Senate confirmed him on December 21, 1869.⁵²

Did Winch hang back on a vigorous prosecution of Tracy in return for an appointment? It simply does not look right. There seems to have been no hue and cry over this impropriety in the newspapers, nor any mention of it in the major historical works on Texas Reconstruction. Indeed, it appears that only Charles Ramsdell's 1910 book *Reconstruction in Texas* (long the standard work) mentions Tracy's prosecution, noting that "the prosecuting attorney was a friend of Tracy's."⁵³

Still, Ramsdell notes that Baldwin was removed because he was a friend of A.J. Hamilton's.⁵⁴ For its part, *Flake's Bulletin* complained bitterly that Baldwin, from Tennessee, who had spent the war in a Confederate prison, was being replaced by "Maj. Winch, a son of Vermont [who] was fighting for the overthrow of the Federal Union and the triumph of the rebellion. Yet Baldwin's head drops by the Confederate sword of Winch."⁵⁵ Yet there is no mention of a *quid pro quo*.

Winch did become U.S. Attorney. The stage was set for Winch to appear before Justice Bradley, to impress him, and to receive a recess appointment the following year. Thus in October 1870, Judge Winch went to the Federal Courthouse in Galveston and began to take up the duties of the long-vacant judgeship. But Grant could not formally nominate him until December, when Congress once again went into session. Surely, though, he would be confirmed for a permanent appointment. The President had made his wishes known. The issue was decided.

Not by a long shot. Being the "outside man" did not help Winch. It simply meant he had almost no support. At first, it did not seem that way. In response to the *Houston Union's* articles

⁵¹ *Houston Union* (October 26, 1869), 1.

⁵² Senate Executive Journal, Cong. Globe, 41st Congress Second Session (December 21, 1869), 325.

⁵³ Charles Ramsdell, *Reconstruction in Texas* (New York: Columbia University Press, 1910), 282.

⁵⁴ *Ibid.*

⁵⁵ "The Removal of Judge Baldwin," *Flake's Daily Bulletin* (November 3, 1869), 2.

evidencing displeasure over the fact that Sabin did not receive the nomination, and threatening retribution, Senator Morgan Hamilton wrote a letter condemning the articles and the appointment of a judge “contrary to the wishes and instructions of the editor” of the *Union*; he took exception to the *Union’s* “laying down the law to the President...” Hamilton strongly denounced the *Union*, noting that he had long opposed Sabin, and even stating that, “There is reason to believe that this article was written by the defeated aspirant for the judgeship.”⁵⁶

Chauncey Sabin could not leave well enough alone. He replied to Senator Hamilton’s letter with his own letter to the *Union*. This letter denied his writing the articles—and this is probably true, as Sabin would probably still have been in Washington at the time. Sabin noted that for a long time he had heard that Hamilton “made himself very busy at Washington in running around and abusing me.” Sabin then taunted Hamilton over how Winch “went on and beat the Senator’s pet,” saying that, “Judge Winch beat him so easy that the old gentleman has hardly found it out yet.”⁵⁷ This letter was calculated to, and probably did, cause Senator Hamilton to see red. Moreover, it might have planted a seed in Hamilton’s mind that he would not support Winch.



Judge Winch aspired to serve in the building preserved as Galveston’s Federal Customs House. Photo by David A. Furlow.

The *Houston Telegraph* interpreted Hamilton’s outrage at the *Houston Union* as a sign that while “he would have preferred Judge Morrill, as long as there was a chance for him, yet, that after the matter had been decided, he will set his face against any attempt to defeat the confirmation of Judge Winch.”⁵⁸ The *Telegraph* did not know Hamilton. Grant formally nominated Winch for the judgeship on December 16, 1870.⁵⁹ He was scheduled for a confirmation vote in late December. Sure enough, the *Galveston Daily News* reported on December 30 that “Senator Hamilton makes charges of a personal nature against Winch.”⁶⁰

One of the reasons that Senator Hamilton may have turned against Winch is a letter he received from W.P. Ballinger, who commented on Winch. Ballinger was an extremely well-respected Galveston attorney, an ex-U.S. Attorney himself, and later a Texas Supreme Court

⁵⁶ “Letter from Morgan C. Hamilton,” *Flake’s Daily Bulletin* (November 29, 1870), 3.

⁵⁷ “Letter from Judge Sabin,” *Houston Union* (November 30, 1870), 2.

⁵⁸ J.C. Chew, *The Houston Telegraph* (December 8, 1870), 4.

⁵⁹ Senate Executive Journal, Cong. Globe, 41st Congress, Third Session (December 16, 1870), 586.

⁶⁰ “Two Judicial Districts,” *Galveston Daily News* (December 30, 1870), 3.



The second floor hallway to the courtroom and its outside gallery reveal one of Texas's finest nineteenth century courthouses. Photos by David A. Furlow.

Justice.⁶¹ He was also an ex-Confederate, and a Democrat.⁶² Hamilton usually had no use for either, but he made an exception for Ballinger, a man he deeply respected.⁶³ Moreover, Ballinger's brother-in-law was Justice Samuel Miller of the United States Supreme Court.⁶⁴ In a seven-page, November 29, 1870 letter to Hamilton, Ballinger thoroughly discussed the situation. He concluded that Winch was "inexperienced," wrongly stating that Winch had only received his law license in 1866.⁶⁵ He noted that the period in which Winch had practiced law had been one in which the courts had been "almost disorganized." While stating that Winch had "good personal habits" and would grow steadily in the job, Ballinger wrote that he had no idea that Winch "has ever in his life been engaged in the trial of any important civil case."⁶⁶ This was not a ringing endorsement from one of the stalwarts of the Texas Bar. Still, Ballinger liked Winch better than Sabin, whom he called "erratic, irregular, and of loose character."⁶⁷

⁶¹ C. Richard King, "Ballinger, William Pitt," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fba52>.

⁶² *Ibid.*

⁶³ Letter, W.P. Ballinger to Morgan C. Hamilton, November 29, 1870, Box 682, NARA RG 60.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

That was one blow against Winch, but the Davis Radical faction gave him another. They carried through on their threat to defeat the nomination. In October, Tracy had called him a friend and said Winch could not be blamed for taking the job. Davis bitterly opposed him, despite the fact that a little more than a year before he had demanded Winch's appointment as U.S. Attorney. On November 2, 1870, Davis wrote U.S. Attorney General Amos Akerman: "Without now going further in my objections, I will state [Winch] is not competent."⁶⁸ Davis even dispatched James P. Newcomb, Texas's Secretary of State, to Washington, to protest Winch's appointment.⁶⁹

On December 6, 1870, Davis wrote Attorney General Akerman again. Instead of stating something to the effect of, "Well, my supporter Winch is a fine man, but we Radicals prefer Sabin," Davis was brutal: "About this matter of Mr. Winch's appointment, my opposition has only been dictated by desire to save the administration the odium of what I am sure will hereinafter be regarded as a very unfortunate appointment."⁷⁰ Odium? Not competent? Only a year before Winch had probably kept Davis's lieutenant Tracy from going to jail. Winch had "waited" upon Davis. Nothing reveals E.J. Davis's duplicity and vindictive nature like the letter just cited.

Now James Tracy stuck a knife in. On December 31, 1870, Tracy wrote in the editorial page of the *Houston Union*: "Mr. Winch is our neighbor and our personal friend...[but] Mr. Winch is too young a man, and far too young a lawyer for any such position as the Federal Judgeship."⁷¹ That was one thing. Tracy then continued, "Mr. Winch made a passable County Attorney, and that is the extent of his legal achievement. He is notoriously a man without culture, either legally or generally. He has not a single qualification for the high dignity to which he aspires."⁷² Despite his earlier comments, Tracy now said that Winch was no Republican. His supporters were Democrats.⁷³

So, as of the month Judge Winch was nominated, one senator was against him, as well as his state's governor. As far as Senator J.W. Flanagan was concerned, the *Houston Union* reported that he took "little interest either way."⁷⁴ There was complete silence from the Grant Administration. Was anyone for Winch? As opposed to the lengthy nomination files of Morrill and Sabin, Winch's file is threadbare. It contains the letter from Justice Bradley mentioned before, and much to Winch's credit, a letter signed by many practicing Houston and Galveston attorneys supporting him.⁷⁵

It is refreshing to see such a letter. It does not talk about party affiliation, or faction—it supports Winch because he was a good lawyer and judge. But given the times, this very letter might have posed problems for Winch. Peter W. Gray signed it. Gray was a renowned attorney. Yet he was a prominent Democrat and a former Confederate. Fletcher Stockdale signed the letter

⁶⁸ Letter, E.J. Davis to Amos Akerman, November 2, 1870, Winch Nomination file, RG 60, NARA.

⁶⁹ Letter, E.J. Davis to Amos Akerman, December 6, 1870, Records Group 60, Records of the United States Department of Justice, Entry A1-9, Letters Received, Box 135.

⁷⁰ *Ibid.*

⁷¹ "The Republican Nomination for the Federal Judgeship in Texas—Judge C. B. Sabin, *Houston Union* (December 31, 1870), 1.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ "Editorial Correspondence, Washington," *Galveston Daily News* (December 20, 1870), 2.

⁷⁵ Attorneys to Amos Akerman, January 2, 1871, Winch nomination file, NARA RG 60.

as well; Stockdale was, as Pease and Throckmorton were, a well-respected former Governor. Only Stockdale had been the last *Confederate* Governor of Texas.⁷⁶ One name on the letter would have made Senator Hamilton's blood boil: that of William P. Hale, attorney for the law firm of Cowdrey and James in the Galveston Railroad case.⁷⁷

For his part, and to his great credit, Judge Winch worked hard and diligently. In January 1871, the *Galveston Tri-Weekly* reported: "The U.S. District Court seems to be in session almost night and day. Judge Winch appears determined that litigants shall have no cause to complain that the disposal of their cases are unduly delayed by any fault of his. That court did not cease its labors yesterday until 10 p.m...."⁷⁸ The *Galveston Daily News* stated that, "Attorneys and litigants are informed that all cases that do not require the intervention of a jury can, by consent of parties, or on application to the Court, have them taken up and disposed of after 4:00 p.m. And right here may we say, that the thanks of all those having business before the court are due to Judge J.C.C. Winch for the very persistent and well-directed efforts he is making toward clearing off the long neglected arrears of business pending in his court."⁷⁹

All of this was to no avail. On February 4, 1871, in a Saturday session, the Senate Judiciary Committee rejected Winch's nomination.⁸⁰ Thus, the nomination never reached the Senate floor. Shortly before the vote, Senator Hamilton explained his opposition. He knew that Bradley had recommended Winch, and that Attorney General Akerman had taken up his cause, thinking that he was the second favorite of the Texas Senators and Congressmen. Yet "he did not believe Winch was fitted for the office of Federal Judge; he did not have the experience necessary for the position."⁸¹

Strangely enough, Senator Flanagan said he "had a very high opinion of Winch and doubted they would get so good a man for United States Judge." He "was absent when Winch was nominated and had taken no active part in that matter, but for the sake of harmony he had gone along with Hamilton."⁸²

Senator Hamilton was not being truthful in stating his reasons for opposing Winch. Winch was not Morrill, his "pet." The Davis Radicals wanted Sabin. There were some other reasons as well. Carl Moneyhon, one of the most recent historians to focus on Texas Reconstruction, believes Winch was rejected because his political disabilities had not been removed.⁸³ Moneyhon is incorrect; Winch's disabilities had been removed in February 1868⁸⁴ and Winch had been confirmed by the Senate as

⁷⁶ Stockdale, Fletcher Summerfield," *Handbook of Texas Online*, <http://www.tshaonline.org/handbook/online/articles/fst60>.

⁷⁷ "The Junction Bridge Question Again," *Galveston Daily News* (December 24, 1869), 1. The Galveston Railroad case was discussed in Part 1 of this article.

⁷⁸ "Busy," *Galveston Tri-Weekly News* (January 9, 1871), 3.

⁷⁹ "Important Notice to Litigants," *Galveston Daily News* (January 13, 1871), 3.

⁸⁰ Senate Executive Journal, Cong. Globe, 41st Congress, Third Session, February 3, 1871, 639.

⁸¹ "Senator Hamilton—An interview between the *Galveston News* Special Correspondent and the Peppery Senator," *Houston Union* (January 20, 1871), 2.

⁸² "Our Washington Correspondence," *Galveston Daily News* (March 1, 1871), 2.

⁸³ Carl H. Moneyhon, *Edmund J. Davis of Texas* (Fort Worth: TCU Press, 2010), 198.

⁸⁴ See H.R. 1880.

U.S. Attorney in December 1869, just over a year before. Still, it could not have helped that Winch was an ex-Confederate, whether he meant to be or not, and that he had Democratic friends. "A Letter from Austin," published in the *Houston Union* and authored by "Republican Lady," stated that, "We are all rejoiced by the defeat of Winch. We (that is) the ladies think that perhaps after this, Democrats won't try to creep into the highest offices in the land in the guise of Republicans."⁸⁵

For its own part, the *Union* fairly snickered: "Perhaps Mr. Winch will not go to Washington again soon, as the avowed friend of a friend, to use his influence to secure that friend in office and then come back with the same office himself."⁸⁶ Perhaps it was Sabin who wrote that one odd newspaper comment stating that Winch's nomination was rejected "in a measure attributable to his having been favored by Cowdrey and James."⁸⁷ Little evidence supports this, except for his connection with William P. Hale.

When Congress adjourned on March 3, 1871, Winch's recess appointment expired. The man could not catch a break. And judges who receive recess appointments are not paid. On February 18, 1871, Akerman wrote a letter to Lyman Trumbull, Chairman of the Senate Judiciary Committee, asking that Congress pass a provision to compensate Winch.⁸⁸ The letter is not actually in Akerman's hand because he dictated it to his secretary, a young man named Walt Whitman. Yes, *that* Walt Whitman, author of *Leaves of Grass*. That is how it survives to relate the sad story of Judge Winch's financial sacrifice to serve as a judge:

Feb. 18, 1871.

Hon. Lyman Trumbull,
Chairman of the Judiciary Committee,
U.S. Senate.

Sir:

I beg leave to call your attention to the subject of the official compensation of the Hon. Joel C. C. Winch, Judge of the U.S. District Court for the Eastern District of Texas.

He was appointed to that office last October, during the recess of the Senate, under a temporary commission. He was nominated to the Senate, and has been rejected—and will hold until the end of the present session, unless he should be superseded by another appointment, for which nomination is now before the Senate.

An obstacle to the payment of his salary has been found in Sec. 2 of the Act of Feb. 9, 1863, (12 U.S. Stat. 646.) The accounting officers of the Treasury decline to pay it, on the ground that the vacancy existed while the Senate was in session last summer.

⁸⁵ "Letter from Austin," *Houston Union* (February 16, 1871), 2.

⁸⁶ "Editorial Correspondence," *Houston Union* (February 7, 1871), 2.

⁸⁷ "Rejection of Judge Winch," *Tri-Weekly State Gazette* (February 8, 1871), 1.

⁸⁸ Letter, Amos Akerman to Lyman Trumbull (February 18, 1871); "In Whitman's Hand," Walt Whitman Archive, I.D., NAR 02915, <https://whitmanarchive.org/manuscripts/scrival/tei/nar.02915.html>.

The facts are these: John Appleton, of Maine, was nominated and confirmed, in May last. He declined, and has since died. I find in the office no evidence of the time when he resigned, or when the resignation was accepted, I heard of the vacancy soon after I entered this office in July last, whether before or after the adjournment of Congress, I am unable now to remember. If it were before, the pressure of business at the close of the session prevented an immediate nomination.

Judge Winch has been doing the business of the office, and I believe has been holding a court ever since an early date in November last. And it seems to me right that Congress should relieve him, under these circumstances, from the operation of that stern statute—and I respectfully suggest that provision by law be made of the payment of his salary.

I address a similar letter to the Chairman of the Judiciary Committee of the House.

Very respectfully, &c.

A. T. Akerman,
Attorney General.

The letter went nowhere. The next year Winch's pre-war acquaintance, Vermont Congressman Luke Poland, introduced a bill in the House for Winch's relief. There is no indication it ever passed.⁸⁹

In any event, Judge Winch returned to Houston and opened a law office at 48 Main Street.⁹⁰ He apparently never sought public office again. Yet by all accounts, his private law practice was successful.⁹¹ He did have one last brush with the federal courts. He was appointed Master in Chancery in the *N.A. Cowdrey v. the Galveston, Houston and Henderson Railroad Company* case.⁹² He was active in the affairs of the Methodist Episcopal Church, South, serving as a delegate to its General Conferences.⁹³

⁸⁹ H.R. 2129.

⁹⁰ "Advertisement," *Galveston Daily News* (July 11, 1871), 1.

⁹¹ *Biographical Encyclopedia of Texas*.

⁹² "Notice," *Galveston Daily News* (October 4, 1871), 1.

⁹³ Homer. S. Thrall, *A Brief History of Methodism in Texas* (Austin: M.E. Church South, 1894), 162.

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Very respectfully,
A. T. Akerman,
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He died at the young age of 44. On December 7, 1880, while standing on the corner of Main and Congress in Houston, he suddenly had lung trouble—similar to the trouble that caused him to be first discharged from the Confederate Army—and said to those around him: “I am going to die, friends.” His friends helped him into a carriage and took him to his nearby home, where he expired shortly thereafter.⁹⁴

His wife buried him in the Northfield, Vermont Cemetery. His grave has a large Masonic emblem, and its headstone notes that Winch was “of Houston Texas.”⁹⁵ There is no marker to indicate that Winch was an officer in the Confederacy.⁹⁶ Many Union veterans are buried in that graveyard.

Though the practice will have long died out, it can be assumed that for many years, on Decoration Day, members of the Grand Army of the Republic told their band to play “Marching through Georgia” or “The Battle Hymn of the Republic” there while their grandchildren placed flowers on veterans’ graves. Perhaps, though, there is one grave there that should be much farther south, where on Memorial Day, a grizzled old veteran in a tattered gray uniform might have told his grandchildren: “I was with the Fourth Texas at the Wilderness in ‘64. I remember the day I saw Lee himself riding Traveler....”



The tombstone of Joel C.C. Winch in the Northfield, Vermont Cemetery. Courtesy of the Texas State Historical Association.

To be continued in the Summer 2018 issue of the Texas Supreme Court Historical Society Journal.

⁹⁴ “Sudden Death of Judge Winch,” *Dallas Daily Herald* (December 8, 1880), 1.

⁹⁵ Entry for J.C. C. Winch, Northfield Cemetery, Northfield, Vermont, Find-a-Grave database, <http://findagrave.com>.

⁹⁶ If a reader is ever in Northfield, Vermont, please do not mention this fact to the nice ladies of the Northfield, Vermont Historical Society. It does not make them happy.



STEPHEN PATE, a member of the Cozen O’Connor law firm, is a former law clerk for Judge Joe J. Fisher. He is a Fellow of the American College of Coverage and Extracontractual Counsel, where he serves on the Board of Regents. He is also a member of the American Law Institute and the American Board of Trial Advocates.

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Reconsidering James Collinworth, the Texas Supreme Court's First Chief Justice

Reviewing Roy S. Newsom, Jr. and James B. Collinworth, Jr.,
Too Good to Be True: James Collinworth and the Birth of Texas

By James W. Paulsen¹

History has not been kind to James Collinworth. True, the Texas Legislature did honor the first Chief Justice of the Republic some forty years after his death by attaching his name to one of the Panhandle counties. Unfortunately, the 1876 law establishing Collingsworth County (original population, six) misspelled Collinworth's name in the process.² Though Collinworth had no middle name, some sources add a gratuitous middle initial.³ Collinworth's current monument in Houston's Founders Memorial Park does spell his name correctly. However, the stone memorial was placed "at random"⁴ in 1936 (not 1931, as almost universally stated)⁵. His actual gravesite is unmarked.

¹ Because the research for this article has been relatively broad-ranging, I surely have forgotten some whose help should be acknowledged. With that important caveat, I am grateful for the assistance provided by Michael J. Bailey (Curator of the Brazoria County Historical Museum), Glenn Doolittle (Grand Lodge of Tennessee), Marilyn Duncan and David Furlow (both with the Texas Supreme Court Historical Society); Jeffrey D. Dunn (attorney and a founder of the San Jacinto Symposium), Elizabeth E. Hilken (Tarlton Law Library, The University of Texas), Heather Kushnerick (Fred Parks Law Library, South Texas College of Law Houston), Professor Wallace L. McKeehan (Texas A&M University), Bruce Mercer (Texas Grand Lodge Library and Museum), Chief Justice Thomas R. Phillips (retired), Chief Justice Jack Pope (retired), and various staff members at the Texas State Library and Archives and Texas State Preservation Board. By far the most invaluable help, though, came from the book's authors, Roy Newsom and James B. Collinworth. Their heroic efforts to answer my semi-random questions have them well on the way to a second edition.

² In their footnote biographical sketch in *The Writings of Sam Houston*, Amelia Williams and Eugene Barker assert that James Collinworth occasionally misspelled his own name. See Amelia W. Williams and Eugene C. Barker, eds., *The Writings of Sam Houston, 1813–1863*, vol. 1 (Austin: University of Texas Press, 1938), 369 n.2. I have found nothing to support this assertion. For what it is worth, the Williams and Barker biographical sketch is one of the most unreliable of a bad lot. Among other errors, it provides incorrect dates of birth, death, bar admission, U.S. Attorney appointment, immigration to Texas, and funeral.

³ See, e.g., Mary Whatley Clarke, *Thomas J. Rusk: Soldier, Statesman, Jurist* (Austin: Jenkins Pub. Co., 1971), 106 (adding a "W"); Sam Houston Dixon, *The Men Who Made Texas Free: The Signers of the Texas Declaration of Independence* (Houston: Texas Historical Pub. Co., 1924), 115 (adding a "T"); "Henderson Yoakum," in Dudley G. Wooten, ed., *A Comprehensive History of Texas, 1685 to 1897* (Dallas: William G. Scarff, 1898), 298 (adding a "B"). "T" is the most commonly seen middle initial. This may stem from confusion with James's younger brother and Texas contemporary Colonel John Thompson Collinworth, who died in January 1837. In fact, a few sources actually give the full middle name as "Thompson." See, e.g., "James Thompson Collinworth," *Find A Grave*, <https://www.findagrave.com/memorial/7608092/james-thompson-collinworth>.

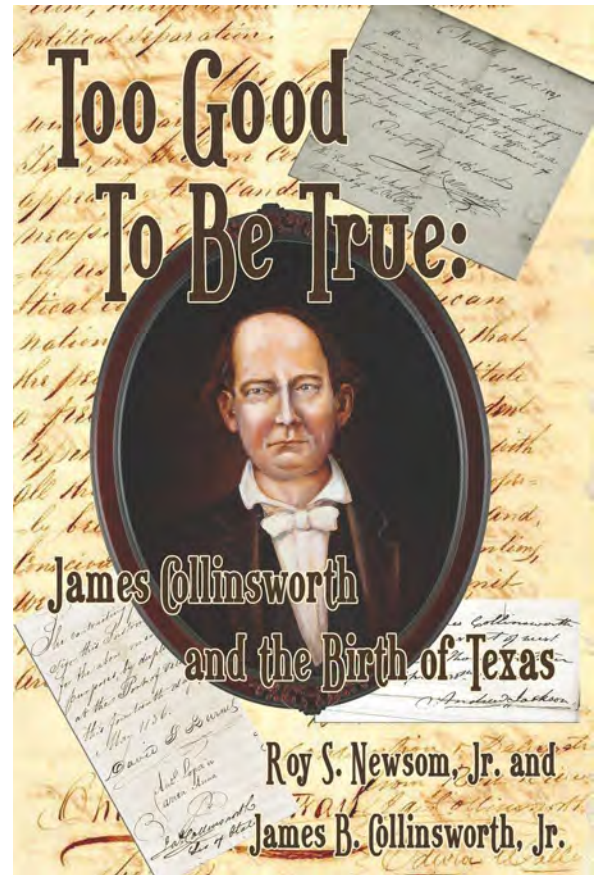
⁴ City of Houston Parks and Recreation Department, "Protected Landmark Designation Report," Dec. 6, 2005, p. 1 (stating that "[s]ince many of the actual gravesites for those individuals were unknown, the monuments were placed at random positions throughout the park").

⁵ To be more precise, the State of Texas and Daughters of the Republic of Texas placed a monument in Houston's

James Collinsworth's face has not fared much better than his name. Most biographical sources illustrate their Collinsworth entries with a second-generation copy of a sepia variation on an unflattering oil painting created for the Texas Centennial nearly a century after the judge's death.

Roy Newsom and James B. Collinsworth Jr.'s recent book is a welcome and long overdue effort to rescue James Collinsworth from the dustbin of history. As the old joke goes, *Too Good to Be True: James Collinsworth and the Birth of Texas* is hands-down the best book ever written about Chief Justice Collinsworth—in part because it is the only book ever written about Collinsworth.⁶

Too Good to Be True passes the basic litmus test for a good Collinsworth biography with flying colors. The authors consistently spell James Collinsworth's last name correctly, except when quoting verbatim from other sources. Of course, one might expect that from the current generation of the extended Collinsworth family. Newsom and Collinsworth get a second gold star for choosing for the book's cover a high-quality color photograph of the least hideous version of Collinsworth's visage—the 1936 oil portrait. As a bonus for the avid reader, they even add new fuel to the fire of the burning historical question: "What did James Collinsworth actually look like?" More on that anon. All joking aside, though, the original research that went into this book makes it a significant contribution to the legal history of early Texas.



Too Good to Be True: James Collinsworth and the Birth of Texas
By Roy S. Newsom, Jr. and
James B. Collinsworth, Jr.
Nashville, TN: Westview, Inc., 2012

This review essay, like any review that aspires to some semblance of credibility, is not altogether positive. So it is only fair to begin with a little comparative context. In 1986, I wrote a three-page biography of James Collinsworth for inclusion in the *Texas Law Review's* Sesquicentennial special issue.⁷ I can immodestly but somewhat truthfully claim that these three

old City Cemetery, now named Founders Memorial Park, on August 15, 1930. See, e.g., "Pioneer Texan Honored," *Tulia Herald*, Oct. 9, 1930. The state report on Texas centennial monuments notes: "New inscription on Collinsworth monument." *Monuments Erected by the State of Texas to Commemorate the Centenary of Texas Independence: The Report of the Commission of Control for Texas Centennial Celebrations* (Austin, 1939), 180.

⁶ For readers unfamiliar with the niche genre of law-oriented book reviews, and who perhaps expect all academic writing to adhere to some minimum standard of decorum, I respectfully point out that I have semi-official permission to write in the first person and pepper the end product with tasteless jokes, sarcastic asides, and irrelevant footnotes. See generally Fred C. Rodell, "Goodbye to Law Reviews," *Virginia Law Review* 38 (1936): 44 (observing that "[w]hen it comes to the book reviews, company manners are not so strictly enforced and it is occasionally possible to talk out loud or crack a joke").

⁷ James W. Paulsen, "The Judges of the Supreme Court of the Republic of Texas," *Texas Law Review* 65 (1986): 305, 308-11.

pages were at that fleeting instant in time the most comprehensive and accurate biographical sketch of Collinsworth in existence.

Retroactively scoring my earlier work with the benefit of Newsom and Collinsworth's painstaking research, I find at least six errors or questionable assumptions.⁸ Even factoring in grade inflation, that is no better than a B minus. My *Texas Law Review* squib is not alone. The current *Handbook of Texas Online* entry contains at least four errors,⁹ as does UT's Tarlton Law Library's *Justices of Texas* website.¹⁰ For what it's worth, if one backtracks to the original sources of various inaccuracies, the most likely culprit for spreading misinformation about Collinsworth's life is Sam Houston Dixon and his 1924 book, *The Men Who Made Texas Free*.¹¹

A point of personal privilege: Because I am writing this review essay, I get to soften the blow to my academic self-esteem by pointing out that the *Texas Law Review* entry is longer and contains more factual assertions than the others. So, using a scientifically sound and empirically validated formula to calculate the factual-errors-per-100-words ratio for all three

⁸ See (or preferably, don't see) *ibid.* Errors include the wrong birth date (off by four years), the wrong date and location at the time of law licensure, the wrong date for the end of service as a U.S. Attorney in Tennessee, a probable mistake on the politics of his appointment to that position, some waffling on the year he arrived in Texas, and the wrong month for his brief entry into the 1838 presidential race.

⁹ See Joe E. Ericson, "James Collinsworth," *Handbook of Texas Online*, <https://tshaonline.org/handbook/online/articles/fco97>. Errors include the wrong birth date, bar admission and immigration, as well as specifying a definitive "early 1834" as the end of U.S. Attorney service, and "by 1835" as date of immigration.

¹⁰ "James Collinsworth," *Justices of Texas 1836–1986* (Tarlton Law Library, Jamail Center for Legal Research), <https://tarltonapps.law.utexas.edu/justices/profile/view/17>. Errors include Collinsworth's birth date, bar admission date, end date of service as a U.S. District Attorney, and some waffling on date of his immigration to Texas.

¹¹ Dixon, *Men Who Made Texas Free*, 115–17. In the preface, Dixon claimed:

"The sketches presented here were prepared from the data secured by the author from personal contact with many of the Signers of the Declaration of Independence; from their associates in the early struggles for Texas independence; from the archives from many states; from unpublished manuscripts and from individuals throughout the country. The collection and compiling of this data has required many years of diligent research and arduous labor."

This certainly sounds like a prodigious amount of effort, well designed to produce accurate results. Nonetheless, in his "James Collingsworth" entry, Dixon presented an impressive list of alternative facts. These include a misspelled name (Collingsworth instead of Collinsworth), an incorrect birth date (1804 instead of 1802), as well as incorrect length of law study (two years instead of six months), location of initial law practice (Columbia instead of Nashville), date of appointment as U.S. Attorney (1830 instead of 1829), length of service as U.S. Attorney (four years instead of nearly six), decision on reappointment (claims Collinsworth rejected a second term, though he actually accepted reappointment), date of immigration to Texas (1834 instead of 1835), and Texas domicile (Matagorda instead of Brazoria). Dixon also made the doubtful claim that James K. Polk orchestrated Collinsworth's appointment as U.S. Attorney. See *ibid.* at 115–17.

In a later book, Dixon and a coauthor generously supplied even more misinformation. This includes a different incorrect birth date (from 1804 to 1806), an incorrect date for Collinsworth's admission to practice (1826 rather than 1823), an incorrect date for the 1838 presidential bid (July instead of June), an incorrect description of the immediate sequel to Collinsworth's death (that the body was recovered one day after death, followed by a military funeral), an incorrect date for the placement of the Founders Cemetery monument (1931 instead of 1930), and a confusing statement of the name of Collingsworth County. On the bright side, Dixon did correct his spelling of Collinsworth's last name and amended the location of his Texas home from Matagorda to "the municipality of Brazoria." See Sam Houston Dixon and Louis Wiltz Kemp, *The Heroes of San Jacinto* (Houston: Anson Jones Press, 1932), 45–46.

flawed biographical entries, my product emerges as the clear winner.¹² I also award my *Texas Law Review* piece extra credit because an inconspicuous footnote does warn readers that there is some doubt as to when Collinsworth was born, though the article does go on to present two possible years of birth—both wrong—and then opts for the more inaccurate of the two.

Newsom and Collinsworth's book leaves little room for doubt on the subject of birth dates. James Collinsworth probably was born during the first four months of 1802—not 1804, and certainly not 1806 (the most commonly cited date). I now will spend a few paragraphs obsessing over this revelation, because nailing down the date of James Collinsworth's birth actually has some historical significance beyond highlighting the need to re-carve his graveyard monument¹³ and replace a couple of state historical markers.¹⁴

During James Collinsworth's two-week run for president of the Republic of Texas in 1838, some detractors claimed the Chief Justice was constitutionally disqualified because he was not yet 35 years old. Collinsworth's backers responded with quaint frontier language along the lines of "We'll cross that bridge when we come to it" (p. 137). As it turns out, though, James Collinsworth surely was eligible for the presidency.

Even after the publication of *Too Good to Be True*, no conclusive proof of James Collinsworth's exact birth date has been discovered. However, the book makes a cogent case for 1802 as the year, and certainly rules out any later date.¹⁵ The most significant material Newsom and Collinsworth have unearthed is a pair of 1823 documents in which, as part of the Tennessee bar application process, James Collinsworth affirmed that he was at least 21 years old.¹⁶ If one

¹² The specific formula used to conduct this self-serving comparison is proprietary and will under no circumstances be revealed on request.

¹³ The monument, located in Houston's Founders Cemetery, is off by four years on Collinsworth's birth, and by one year on his date of death. On the bright side, the cenotaph does spell Collinsworth's name correctly. See, e.g., "James Collinsworth," Texas Heritage Society website, <http://www.texasheritagesociety.org/James-Collinsworth.html>. The current monument was placed in 1936 to commemorate the Texas Centennial. A correction for the Texas Bicentennial may be in order.

¹⁴ The Texas Historical Commission's marker on the site of Temple Lodge No. 4 misspells Collinsworth's name and misidentifies him as chief justice of the state (not Republic) of Texas. See "Harris County Historical Markers, Temple Lodge No. 4 A.F. & A.M.," http://harriscountyhistoricalmarkers.com/HistoricalSites/CurrentMarkers.aspx?udt_1462_param_detail=1108; see also Betty Dooley Awbrey and Claude Dooley, *Why Stop? A Guide to Texas Historical Roadside Markers* (Lanham, MD: Taylor Trade Pub., 4th ed., 1999), 521 (reporting that the "Collingsworth County" historical marker in Wellington has an 1806 birth date).

¹⁵ The authors also address an alternative possibility, though in my opinion it is not as strong as Tennessee court records. James Collinsworth was a Mason. In fact, his cenotaph notes that Collinsworth can claim the unsought honor of being the central participant in the first full-on Masonic funeral ever held in Texas. Lodge records say Collinsworth was 35 years old at the time of his death. See A.S. Ruthven, *Proceedings of the Grand Lodge of Texas, from Its Organization in the City of Houston, Dec. A.D. 1837, A.L. 5837, to the Close of the Grand Annual Communication Held at Palestine, January 19, A.D. 1857* (Galveston: Richardson and Co., 1857), 37 (stating that "Bro. Collinsworth . . . died at thirty-five years of age"). The Masons have a well-deserved reputation for accurate records. However, my conversations with Masonic record-keepers in both Tennessee and Texas make clear that the earliest records are not completely trustworthy.

¹⁶ One of the two documents is an April 1823 court minute entry granting Collinsworth a certificate to study law. The other is a sworn affidavit presented at the October 1823 session, in consequence of which Collinsworth was admitted to the practice of law (p. 11). If one makes the reasonable assumption that Collinsworth wanted to get the bar admission process rolling at the earliest possible date, that would narrow down the probable birth date to the first four months of 1802.

factors in a little more information and makes a reasonable assumption or two, that narrows the probable birth date down to the first four months of 1802.¹⁷

If law-trained writers like this one had devoted any serious thought to the supposed dates of James Collinsworth's birth and bar admission, they might have spotted a fatal discrepancy in the accepted story long ago, even without access to Tennessee court records. If Collinsworth actually had been born in 1806 and admitted to the bar in 1823, that would have made him an attorney at the ripe old age of 17.¹⁸ This makes no sense. There is a very practical reason why Tennessee law required that a prospective lawyer be at least 21 years old. Attorneys represent others in court. If James Collinsworth had not reached the age of majority before becoming a lawyer, he could not legally have represented himself in court, much less anyone else.¹⁹

As mentioned, establishing that James Collinsworth probably was born in 1802 sheds some light on one aspect of the 1838 presidential campaign, if it can be called a campaign. (Mirabeau B. Lamar won almost by default because both his principal opponents died soon after they entered the race.) In consequence, Lamar biographer Jack Ramsay devotes only one sentence to the long-moot question of Collinsworth's age, to wit: "Some question exists as to whether or not he could have served if he had been elected for he was only thirty-two at the time."²⁰

"Some question" is a serious understatement. In 1838, there was "some question" as to whether the Republic of Texas itself was a going concern. The new nation was desperate to attract foreign investment. So any sign of a dysfunctional government was dangerous. For example, a (mostly true) report of an attempted military coup published in Eastern newspapers late in 1836 had significant repercussions for the Republic's public relations efforts.²¹

¹⁷ Though *Too Good to Be True* does not make the point explicitly, the authors' extensive genealogical research narrows the window of possible birth dates from the latter part of 1800 to the first part of 1802. James was the eldest son of the seven Collinsworth children. 1860 census records give an exact birth date for James's younger brother Ben—February 22, 1803—as well as a more general 1800 year of birth for James's older sister Elizabeth (p. 11 n.1). Adjusting for a normal gestation period, James must have been born between October 1, 1800 and mid-May 1802. The former date assumes Elizabeth was a New Year's Day baby.

¹⁸ The most commonly accepted date for James Collinsworth's Tennessee bar admission, at least before publication of *Too Good to Be True*, was 1826, not 1823. However, even by that misreckoning, Collinsworth would have been underage at the time he ran for president.

¹⁹ One member of the United States Supreme Court made a similar point in 1873, as one reason why it was inappropriate to permit married women to become attorneys. See *Bradwell v. Illinois*, 83 U.S. 130, 141–42 (1873) (Bradley, J., concurring).

²⁰ Jack C. Ramsay, Jr., *Thunder Beyond the Brazos: Mirabeau B. Lamar, a Biography* (Austin: Eakin Press, 1984), 62. James Michener's historical novel, *Texas*, contains a two-page imagined conversation on the subject. See James A. Michener, *Texas: A Novel* (New York: Random House, 1985), 587–88.

²¹ See, e.g., Henry Austin to Stephen F. Austin (Oct. 7, 1836) in Eugene C. Barker, ed., *The Austin Papers*, vol. 3 (Austin: University of Texas Press, 1927); *Telegraph and Texas Register*, Dec. 6, 1836 (printing a resolution by "the officers of the army of Texas" rebutting the published statement of E.J. Wilson and J.L. Postlethwaite, and asking that the resolution be printed by newspapers in, inter alia, Kentucky, Louisiana, New York, Tennessee, and Virginia, as well as by "the papers in general, friendly to the cause"); Louis J. Wortham, *A History of Texas: From Wilderness to Commonwealth*, vol. 2 (Fort Worth: Wortham-Molyneaux Co., 1924) (describing the situation as "nothing short of a project ... to establish a military dictatorship").

One clarification is in order. There was “some question” about Collinsworth’s age at the time of the 1838 presidential election. However, there never could have been “some question” whether a 32-year-old Collinsworth legitimately could have served as president of the Republic of Texas. There was no question at all. Mirroring language in the United States Constitution, the Republic’s Constitution stated: “No person shall be eligible to the office of president who shall not have attained the age of thirty-five years”²² Anyone under 35 years of age was constitutionally disqualified, period.

The illegal election of a 32-year-old surely would have been seized on by the Republic of Texas’s many detractors as proof that Texas was just a comic-opera parody of a real nation. If a constitutionally-ineligible president also were the chief judicial officer of the Republic at the time of his election, two of the three branches of Texas government would have been open to ridicule at the same time.

But if the question was a closer one, it is easier to understand why some people doubted James Collinsworth’s eligibility. After all, if records pinning down Collinsworth’s exact date of birth cannot be found in 2017, it might have been difficult for Collinsworth to prove the same thing in the summer of 1838, when he became a candidate on short notice, hundreds of miles from his Nashville birthplace.²³

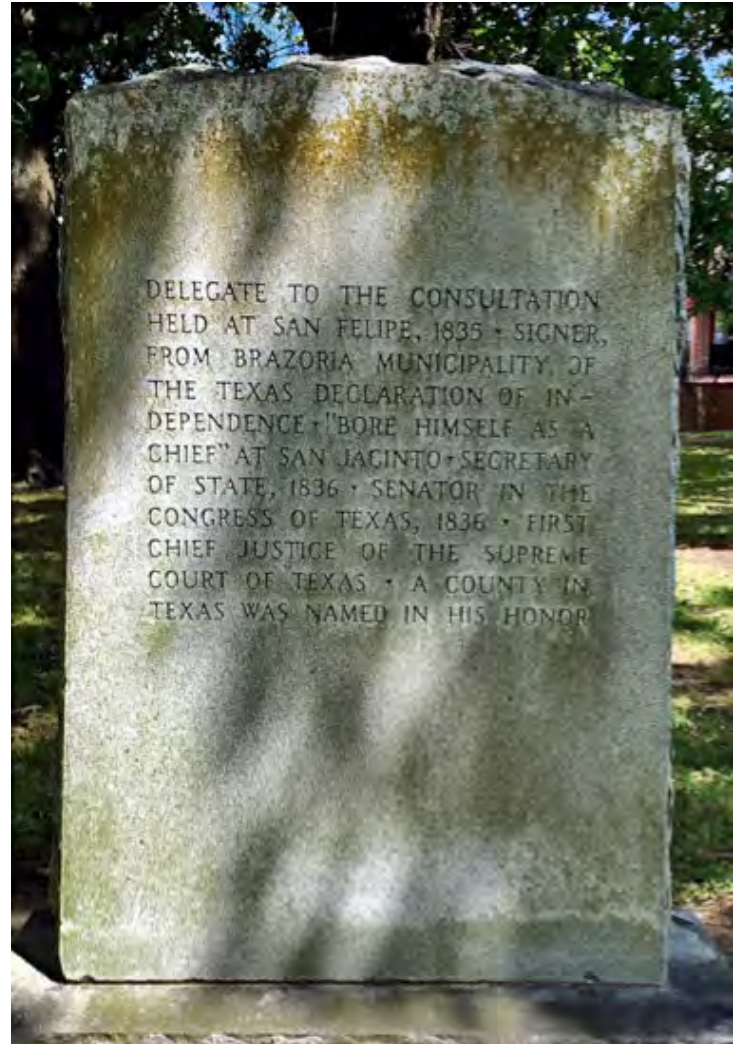
Before leaving the subject, it is worth noting that expressions of doubt regarding James Collinsworth’s age may reflect little more than political opportunism. Collinsworth was not the Houston faction’s first or second choice for a candidate to put up against Mirabeau B. Lamar. James Collinsworth stepped in shortly before Peter W. Grayson, who had a history of mental instability, committed suicide. But Grayson himself was, loosely speaking, a replacement candidate. Thomas J. Rusk, a war hero who would succeed James Collinsworth as chief justice, already had been solicited to throw his hat in the ring. Rusk declined in part because he would turn 35 after the election but before inauguration, and therefore considered his legal eligibility “subject to different constructions.”²⁴ With the age-eligibility question already a matter of public discussion, some Lamar partisans may have been tempted to cast doubt on Collinsworth’s age, whether justified or not.²⁵

²² Repub. Tex. Const. of 1836, art. VI, § 1, *reprinted in* 1 H.P.N. Gammel, *The Laws of Texas 1822-1897*, at 1069, 1075 (Austin: Gammel Book Co. 1898); *cf.* U.S. CONST. art. II, § 1 (stating that no person shall be eligible for the presidency “who shall not have attained to the age of thirty five years”).

²³ The election was held on September 3, 1838. *See* Ramsay, *Thunder Beyond the Brazos*, 62. The constitution provided that the president was to take office on “the second Monday in December next succeeding his election,” or December 10, 1838. *See* Repub. Tex. Const. of 1836, art. VI, § 1, *reprinted in* Gammel, *Laws of Texas*, at 1069, 1075. Some argument could be made as to which date controlled for purposes of determining eligibility. However, unless Collinsworth for some obscure reason lied in his 1823 sworn application for bar candidacy, he was legally eligible to become the Republic’s president on either of the two possible birth dates.

²⁴ Cleburne Huston, *Towering Texan: A Biography of Thomas J. Rusk* (Texian Press, 1971), 100. Rusk also cited the age issue when declining Sam Houston’s suggestion that he run for president in 1836. *Ibid.*, 68-69; *see also generally* Clarke, *Thomas J. Rusk*, 105-6.

²⁵ Mirabeau Lamar was not nearly as vulnerable to age challenges. He was born on August 16, 1798, and was 40 at the time of the election. *See* Ramsay, *Thunder Beyond the Brazos* (giving Lamar’s birthdate), 9.



Chief Justice Collinsworth's cenotaph stands in Founders Memorial Park on the edge of downtown Houston. Photos by David A. Furlow.

One bit of irony also bears mention. Had Collinsworth been elected, unresolved questions about his age might have generated unfavorable news coverage. However, his death less than two weeks into the campaign also generated unfavorable headlines in the United States and beyond.

For example, on August 27, 1838, a Philadelphia newspaper—the *Pennsylvania Inquirer and Daily Courier*—reported the event under the headline “A Chief Justice Murdered”:

A letter from Texas of the 16th of July last says: “The Hon. James Collinsworth, chief justice of the republic, was found drowned in the bay of Galveston a few days since. The body was much mutilated, and there were marks upon it which led to the belief that he had been murdered. He is said to have had considerable money with him when at Galveston. He was a man of extensive research and of superior talents.”²⁶

²⁶ *Pennsylvania Inquirer and Daily Courier*, Aug. 27, 1838.

This brief statement was followed by some scathing editorial comment:

This is bad news for the young republic, and calculated to make a most unfavorable impression. The opinion already prevails to a considerable extent in this section of the Union, that a large portion of the present occupants of Texas, are little better than the refuse of other and more civilized countries; that rogues and murderers find a ready welcome there. A deed like that recorded above, is greatly calculated to strengthen this impression. If, people argue, the life of the chief justice of the republic cannot be considered safe from the poniard of the assassin, what peril must an ordinary citizen undergo! We trust that the authorities will, in this instance, offer a liberal reward for the arrest of the supposed murderers, and at the same time pursue all means calculated to bring them to condign punishment.²⁷

The Philadelphia article was reprinted in full and the editors' sentiments endorsed by at least one newspaper in London,²⁸ and no doubt elsewhere.

Turning from a microscopic analysis of birth dates to a macroscopic survey of the entire book, *Too Good to Be True* does an admirable job of documenting James Collinsworth's rapid rise in public life, as well as the more private disasters that surely hastened his early death. Because "James Collinsworth" is not exactly a household name today, a brief summary of the life story chronicled in the book is in order.²⁹

James Collinsworth was born the third of seven children to a Tennessee pioneer family. His mother actually spent two years as a captive of the Creeks. James began his legal career in Nashville, where he roomed and engaged in questionable pastimes with Sam Houston. In 1829, President Andrew Jackson appointed James Collinsworth to an unexpired term as U.S. Attorney for the Western District of Tennessee. He thereafter was confirmed by the U.S. Senate for two four-year terms.³⁰

Just one year into his second term, Collinsworth resigned his position abruptly and immigrated to Texas, settling in Brazoria early in 1835. Two cousins and a younger brother already were in Texas; James later convinced another brother to join them. Collinsworth immediately threw himself into the independence movement. He signed the August and December 1835 Brazoria petitions, and was elected as one of that municipality's delegates to the 1836 convention. Once there, he chaired the committee that drafted the Texas Declaration of Independence and signed the Republic's Constitution.

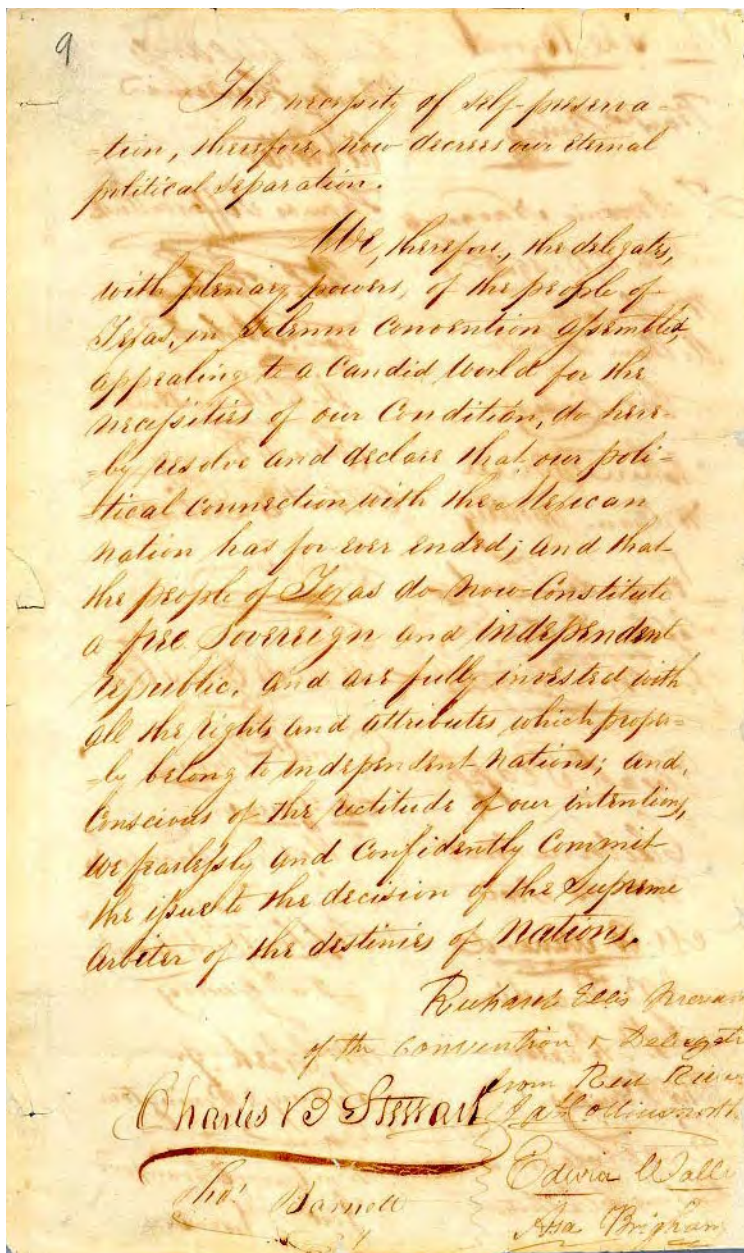
James Collinsworth's involvement with the military side of the Texas Revolution was brief but equally impressive. One day after signing the Texas Declaration of Independence,

²⁷ *Ibid.*

²⁸ "A Chief Justice Murdered," *Daily Commercial* (London), Sept. 13, 1838 (prefacing the reprint by saying the *Philadelphia Inquirer* "very properly remarks").

²⁹ The summary that follows is drawn from the text of *Too Good to Be True* without specific further attribution, unless otherwise noted.

³⁰ See generally *The Mississippian*, March 28, 1834 ("APPOINTMENTS BY THE PRESIDENT ... James Collinsworth to be Attorney of the United States for the Western District of Tennessee. *Re-appointed.*").



The first signature page of the Texas Declaration of Independence bears James Collinsworth's signature. Texas State Library and Archives.

Collinsworth introduced a resolution proposing his friend Sam Houston as Commander-in-Chief of the Texian Army. Three days later, Collinsworth became chair of the convention's Committee on Military Affairs. Once the Constitution was adopted, Collinsworth turned down a position as Attorney General in the interim government, as well as the opportunity to become the first district judge in the Republic of Texas,³¹ probably because he already had accepted a commission in the Texian Army. As he later explained, "when the lives of my friends & the existence of my Country was to be periled, I chose to be with them" (p. 77).

As aide-de-camp to General Houston, James Collinsworth was in the thick of the fighting at San Jacinto. The Secretary of War's official report on the battle lauded "the chivalrous conduct of Major James Collinsworth in almost every part of the engagement" (p. 87). Sam Houston later wrote that Collinsworth "bore himself as a Chief," a description that eventually found its way onto Collinsworth's cenotaph. A practical sequel to a heroic story: Collinsworth received \$300 as compensation for a horse that was shot out from under him during the battle (p. 87).

One week after San Jacinto, James Collinsworth was back in politics, serving for just under a month as acting Secretary

of State in the Burnet administration (p. 87). During that brief period, he managed to embroil himself in controversy by signing the Treaty of Velasco. This treaty was controversial from the outset because it provided in part that Santa Anna would be freed and returned to Mexico rather than be hanged for war crimes (pp. 89–90). Fortunately for Collinsworth, shortly after the treaty was signed—May 26, 1836, to be precise—he was tapped as one of two commissioners dispatched to the United States, tasked with securing recognition of Texas independence (pp. 95–96). The mission did not go well. In fact, it had no chance of success because the commissioners had not been given authority to make any binding agreements with the United States.

³¹ J.P. Bryan, ed., *Mary Austin Holley: The Texas Diary, 1835–1838* (Austin: University of Texas Press, 1965), 114 n.169. The distinction ultimately went to Benjamin C. Franklin. See, e.g., Paulsen, "Judges of the Supreme Court of the Republic," 332.

When James Collinsworth returned to Texas at the end of October 1836, he turned down a second opportunity to be appointed Attorney General, this time in the Sam Houston administration (p. 106). Within a few weeks, though, he won a special election to fill a vacant Senate seat. A few weeks after that, the Republic's Congress selected him to be the first Chief Justice of the Supreme Court of the Republic of Texas. Collinsworth continued in this position for about 18 months, terminating with his death on July 11, 1838.

James Collinsworth's "meteoric career"³² in Texas government was not unique. Unsettled conditions and high mortality offered many opportunities for rapid advancement.³³ Even so, Collinsworth's rise from newly-arrived immigrant to Chief Justice in less than two years stands out. Unfortunately, there also is a very dark side to the Collinsworth saga.

Too Good to Be True is in some respects a family history book. Nonetheless, the authors never give in to the temptation to glorify their collateral ancestor. The title "Too Good to Be True" refers to the stark contrast between the dream of easy riches that probably drew Collinsworth to Texas and the waking nightmare of personal loss and financial failure. Newsom and Collinsworth also do not shy away from discussing James Collinsworth's personal demon—severe alcohol addiction, even judged by the permissive standards of early Texas.

Alcoholism was a defining feature of James Collinsworth's life. A couple of contemporary observations should suffice. Henderson Yoakum's 1855 *History of Texas*, once regarded as the standard history of Texas,³⁴ says Collinsworth "emigrated to Texas to rid himself of a false habit, which unfortunately pursued him, and brought him to a premature grave."³⁵ Yoakum arrived in Texas several years after James Collinsworth's death, but his earlier career as a Tennessee attorney briefly overlapped Collinsworth's.³⁶ In a February 1837 diary entry recording a meeting with Chief Justice Collinsworth, William Fairfax Gray concluded some generally laudatory comments with the prescient words: "I fear his habits will prevent his discharging the duties of his office with the credit and ability that his talents and honesty would lead the world to expect of him."³⁷

James Collinsworth also had serious money problems. It is not entirely clear why he decided to come to Texas in February 1835, soon after he secured reappointment as a U.S. Attorney. However, Newsom and Collinsworth make a convincing case that opportunities for the rapid accumulation of wealth played a very large part. For example, in April 1836, James's younger brother John wrote to one of their sisters: "James . . . says that he has but little doubt that he will make a fortune in a short time" (pp. 78–79). That dream never was realized.

³² Sen. Clint Small, Remarks, *Presentation of Portrait of Chief Justice James Collinsworth*, 126 Tex. xxxi, xxxii (1936).

³³ As examples go, my personal favorite is Robert M. Potter, an ex-convict former midshipman in the U.S. Navy who became Secretary of the (Texas) Navy just one year after immigrating to Texas. See, e.g., Ernest G. Fischer, *Robert Potter: Founder of the Texas Navy* (Gretna, LA.: Pelican Pub., 1976).

³⁴ "Publisher's Preface," in Wooten, ed., *Comprehensive History of Texas*.

³⁵ "Henderson Yoakum," in *ibid.*, 337.

³⁶ A.T. McKinney, "Biographical Sketch of Henderson Yoakum," in *ibid.*, xxi, xxi).

³⁷ Paul Lack, ed., *The Diary of William Fairfax Gray: From Virginia to Texas, 1835–1837* (Dallas: William P. Clements Center for Southwest Studies, Southern Methodist University, 1997), 212.

James Collinsworth spent most of his time in Texas as a public servant, an admirable but not a lucrative choice. The new Republic was virtually insolvent. For example, it took more than a year and a joint resolution of Congress to pay Collinsworth for his service as a commissioner, and his first paycheck as Chief Justice was similarly delayed (p. 142). Collinsworth complained that the result of his involvement in the Texas Revolution was “to bring upon me considerable pecuniary loss at home and absolute indigence here, having expended what little of means I brought with me and accumulated some debts without having ever called or received one cent in any way” (p. 92).

For a little while, it looked like James Collinsworth might realize his dream of easy riches. He was an original incorporator of the Texas Railroad, Navigation, and Banking Company, chartered by the Texas Congress on the same day Collinsworth was appointed Chief Justice of the Supreme Court (p. 119). The incorporators evidently gave the popular word “railroad” prominence in the company’s name to distract public attention from the real intent to pursue “banking,” a much-despised word in Andrew Jackson’s time.³⁸ Exceptionally favorable provisions in the charter should have made owners and early investors wealthy in short order. However, the Panic of 1837, coupled with a vigorous newspaper campaign against the project, doomed the enterprise.³⁹

The real cause of James Collinsworth’s death—murder, suicide, or accident—never has been determined. Murder is the least likely of the three. As mentioned, a contemporary report did suggest Collinsworth was killed because he had “considerable money with him.”⁴⁰ The truth of the matter, though, is that Collinsworth was in financial extremis; he borrowed \$100 from a friend a short time before his death⁴¹ and his estate later was found to be insolvent.⁴² Conspiracy aficionados might be intrigued by the fact that Mirabeau B. Lamar’s opponents died only two days apart.⁴³ However, this political variation on the murder theory lacks any semblance of plausibility.⁴⁴

³⁸ See, e.g., Andrew Forrest Muir, “Railroad Enterprise in Texas, 1836–1841,” *Southwestern Historical Quarterly* 47 (1944): 339, 341 (stating that the company “apparently had little or no intention of building a railroad. It seemed primarily interested in establishing a bank, but apparently its promoters felt that the unpopularity of financial institutions, current as a result of Andrew Jackson’s policy, made expedient their subordinating their financial ambition to the more popular promotion of transportation facilities”); see also “Texas Railroad, Navigation, and Banking Company,” in *Handbook of Texas Online*, <https://tshaonline.org/handbook/online/articles/dft01> (referencing, inter alia, the Panic of 1837).

³⁹ See, e.g., Muir, “Railroad Enterprise in Texas,” 342 (stating that “[v]ery soon the company, particularly its banking privileges, became the target of a large number of significant and vocal opponents ... and that “it was Dr. Francis Moore, Jr., editor of the *Telegraph and Texas Register*, who led the attack”).

⁴⁰ See text accompanying note 26.

⁴¹ Estate records include a cash loan in this amount made by Patrick C. Jack in April 1838. Probate File 79 (1838), Brazoria County, Texas. At the time, Jack was a Republic congressman from Brazoria, Collinsworth’s hometown; he later became a district judge and in consequence an associate judge of the Supreme Court of the Republic of Texas. See, e.g., Paulsen, “Judges of the Supreme Court of the Republic,” 336–37.

⁴² See, e.g., Brazoria County Probate Minutes, Book C, 13 (affidavit of Thomas F. McKinney).

⁴³ James L. Haley, *The Texas Supreme Court: A Narrative History, 1836–1986* (Austin: University of Texas Press, 2013), 19.

⁴⁴ Peter W. Grayson had a history of mental instability and left a suicide note when he died in Tennessee. See, e.g., Ramsay, *Thunder Beyond the Brazos*, 62. Lamar and Collinsworth were on friendly terms, and Lamar probably would have won the election in any event. See, e.g., *ibid.*, 60–61 (Lamar’s edge in the election); Collinsworth and Newsom (p. 91) (“a person who had helped Collinsworth extricate himself from more than one dicey situation”).

Too Good to Be True makes a strong case for suicide. James Collinsworth surely was in a state of severe depression, as would have been any reasonable person in his position. Collinsworth's Texas residence was a far cry from what he left behind in Nashville.⁴⁵ His younger brother John, who came to Texas at James's urging, took ill and died within a few months after his arrival (p. 121). Collinsworth's best hope for wealth died just a month before Collinsworth himself when his longtime friend Sam Houston killed the railroad and banking scheme. Collinsworth's entry into the bare-knuckles 1838 presidential race also put him at odds both with the Lamar faction and with some Houston supporters who still preferred Peter W. Grayson.⁴⁶ On the other hand, a respected early Texas historian and contemporary of Collinsworth openly criticized other writers who spread the "mistaken story" of suicide.⁴⁷

As regards the possibility of accidental death, James Collinsworth had been drinking even more heavily than usual. According to a friend who was with him toward the end, "he was under the influence of Ardent Spirits for a week before hand."⁴⁸ That, plus a little choppy water in Galveston Bay, seems a perfectly adequate explanation.

James Collinsworth's chronic poor health also may have contributed to his death. Here, some information beyond what is found in Collinsworth and Newsom's book (or any other published source known to me) might be useful. Probate records, analyzed in excruciating detail in an appendix, show that James Collinsworth was under a doctor's care for unspecified ailments less than a month before he died. Detailed records for earlier medical treatment suggest chronic intestinal problems and possible syphilis. When one considers the fact that side effects of Collinsworth's known medications include depression and other mental instability if administered in high or sustained doses,⁴⁹ the contribution of health issues should not be discounted.

That said, readers who choose to believe that the Priory of Sion controls the U.S. government and that Beatles lyrics contain imbedded satanic messages might contemplate some facts: (1) Collinsworth's body was virtually unrecognizable, (2) the corpse bore strange wounds or marks, and (3) Collinsworth's estate was for some unknown reason billed for re-coffining. The truth is out there. See, e.g., text accompanying note (unrecognizable body with strange marks); Probate File 79 (1838), Brazoria County, Texas (containing an itemized bill submitted by Secretary of State Robert A. Irion, including a \$10 charge for "re-opening coffin & soldering").

When this footnote originally was drafted, I was looking forward to being the first person ever to speculate in print on the far-fetched possibility of a political assassination. Unfortunately, I discovered during the editing process that I had been beaten to the punch. (Life can be so cruel.) Anyway, three years ago, John Lomax (now a senior editor at *Texas Monthly*) wrote:

"Modern-day conspiracy theorists have their own take: Lamar did away with both of his opponents. (Intriguing but highly unlikely: Grayson left a suicide note apologizing to the tavern-keeper for the mess he was about to make, and half of Galveston saw Collinsworth's seaside Hunter S. Thompson routine.)"

John Lomax, "Sam Houston's Spectacular Farewell," *Houstonia*, December 10, 2013, <https://www.houstoniamag.com/articles/2013/12/10/sam-houstons-spectacular-farewell-december-2013>.

⁴⁵ William Fairfax Gray, Feb. 25, 1837 (describing Brazoria as "a small place, some twenty or twenty-five houses, looking decayed, dirty uncomfortable.") (cited in Newsom and Collinsworth, 123).

⁴⁶ Ken Collier et al., *Lone Star Politics: Tradition and Transformation in Texas*, 5th ed. (CQ Press, Sage Pub., 2017), n.p.

⁴⁷ John Henry Brown, *History of Texas, from 1685 to 1892*, vol. 2 (St. Louis, Mo.: L.E. Daniell Pub., 1893), 140).

⁴⁸ Thomas McKinney's comment is quoted in Haley, *Texas Supreme Court*, 19.

⁴⁹ As regards depression, the most likely culprit would be camphor. See, e.g., John Redman Coxe, *The American Dispensary* (1827), 153, 168 (stating that "[a]t first camphor raises the spirits, but produces a subsequent depression," and adding that "[i]n excessive doses it occasions anxiety, vomiting, syncope, and delirium; these violent effects are best counteracted by opium"); see also Thomas Laycock, *An Essay on Hysteria* (Philadelphia:

Ultimately, the question whether Chief Justice James Collinsworth died by misadventure or suicide is both unknowable and irrelevant. There were no witnesses to whatever happened on board a steamer in Galveston Bay on July 11, 1838. As regards the exact cause of death, there surely were synergies at play between Collinsworth's long-standing alcohol addiction, poor health, personal loss, financial woes, and the prospect of a nasty political campaign against Mirabeau B. Lamar.⁵⁰ Given Collinsworth's volatile personality (at least four challenges, one of which resulted in a full-blown duel⁵¹), alcoholism, and extreme stress stemming from several sources, even an eyewitness—had there been one—might have found it hard to tell whether Collinsworth's actions crossed the line from a drunken stumble to deliberate suicide. Newsom and Collinsworth aptly sum it up: "This combination of high expectations, severe indebtedness and addiction to alcohol was a bomb ready for ignition" (p. 142).

James Collinsworth's funeral was an impressive event. It was organized in part by the Republic's Secretaries of State and War⁵² and "a large concourse of the public" was in attendance.⁵³ It was the first Masonic funeral in Texas and, some say, the first military funeral for an individual as well.⁵⁴ Sad to say, Collinsworth's funeral also was the event at which John K. Allen (principal

Haswell, Barrington, and Haswell, 1840), 28 (stating that "[c]amphor, mezereon, quinia, and antimony are often employed in large doses as specifics, but . . . [i]ndiscriminately used, they are hurtful and dangerous").

⁵⁰ James Collinsworth had more than one reason to be grateful to Mirabeau B. Lamar. Lamar helped Collinsworth extricate himself from a confrontation with a mob that formed after Collinsworth concurred in Interim President Burnett's decision to free Santa Anna; Collinsworth later mediated a dueling challenge that may have been tangentially related to the same event (pp. 90–91, 123).

⁵¹ Three challenges (involving Dr. Anson Jones, General Thomas Jefferson Green, and Colonel Henry Millard) already were known to exist. See, e.g., William Ransom Hogan, *The Texas Republic: A Social and Economic History* (Norman: University of Oklahoma Press, 1946), 285. Collinsworth and Newsom discuss only the Millard near-duel, but they do add extensive information on a consummated and previously unknown (at least to me) duel with David M. Saunders of Gallatin shortly before Collinsworth moved to Texas from Tennessee (pp. 14–18).

⁵² "A Meeting," *Telegraph and Texas Register* (Houston), July 21, 1838.

⁵³ See Ruthven, *Proceedings of the Grand Lodge of Texas*, 37–38.

⁵⁴ Some sources say Collinsworth's funeral was the first Masonic funeral in Texas; others say it was the first military funeral. See, e.g., Ericson, "James Collinsworth," (first Masonic funeral); Dixon and Kemp, *Heroes of San Jacinto*, 45 (first military funeral); Curtis Bishop, "This Day in History," *Texas Daily Herald* (Big Spring), July 24, 1952 (same).

That James Collinsworth's was the first Masonic funeral in Texas is well established. It is the first funeral listed in the Texas Grand Lodge's official records. See Ruthven, *Proceedings of the Grand Lodge of Texas*, 1–38.

I have not found any sources that explicitly claim James Collinsworth's funeral was *both* the first Masonic *and* the first military funeral in Texas. However, the combination surely was possible. Contemporary monuments in Founders Memorial Park, where Collinsworth is buried, provide examples. The memorial to Isaac Moreland, who died June 7, 1840, recites that he was buried "under the auspices of the Masons and the independent military companies of Houston." The memorial to Robert Barr, who died on October 11, 1839, is a trifecta. He was buried "under the auspices of the Masonic and Odd Fellows Lodges and the Milam Guards."

The claim that James Collinsworth had the *very first* military funeral in Texas is not strictly true. The recoverable remains of the Alamo defenders and those executed at Goliad were gathered up and buried with military honors. See, e.g., Scott Huddleston, "Mystery surrounds remains of Alamo fallen," *San Antonio Express News*, Sept. 14, 2017 (stating that "[o]n Feb. 25, 1837, Texan Lt. Col. Juan Seguin gave the defenders a formal military funeral"); Harbert Davenport and Craig H. Roell, "Goliad Massacre," *Handbook of Texas Online*, <https://tshaonline.org/handbook/online/articles/qeg02> (stating that on June 3, 1836, troops under the command of General Thomas J. Rusk "gathered the remains and buried them with military honors").

Even if the claim that Collinsworth received the first military funeral in Texas were modified to read "the first individual military funeral in Texas," the statement would not be accurate. The Texians who died at San Jacinto were buried individually, and at least two were buried "with the full honors of war." "The San Jacinto Campaign

founder of the city of Houston) took ill and died three weeks later.⁵⁵

As mentioned earlier, this review is not altogether positive. So far as substance goes, *Too Good to Be True* surely gets high marks. Unfortunately, the book's style leaves much to be desired. Newsom and Collinsworth write well, and James Collinsworth's life provides substantial grist for a good writer's mill. But the narrative flow is constantly interrupted by the insertion of the full text of lengthy documents. For example, well over half the 31 pages in Chapter 4 ("The President Appoints an Attorney"), consists of letters of recommendation, appointment, and resignation, date-ordered entries from a federal district court's minute book, and miscellaneous other letters and legal documents.

I emphatically do not suggest that this sort of material be excised from the book. Newsom and Collinsworth have assembled in one convenient location a wealth of information that will prove useful to both historians and genealogists.⁵⁶ It would be a shame to lose any of that. However, what I do suggest for a second edition is that verbatim reproductions of long or repetitive documents be moved to appendices, with appropriate summaries and highlights in the text. That would cut the length of the narrative chapters considerably while enhancing readability.

One question about James Collinsworth has not, and perhaps never will be, answered definitively: What did James Collinsworth look like? The short answer is that we really don't know.⁵⁷ Though several variants of Collinsworth's image existed before the publication of *Too Good To Be True*, none have any clear provenance. A brief explanation is in order, because it may give some reader with plenty of spare time an idea where to start looking.

In 1936, with all the pomp and circumstance appropriate to the Texas Sesquicentennial, the Supreme Court of Texas accepted an oil painting of James Collinsworth (Image 1). The donor was Ocie Speer, a prominent lawyer, legal writer, and former member of the Commission of Appeals.⁵⁸ Later the same year, a simplified version of the painting (Image 2) appeared in Ocie

(From the journal of Dr. Nicholas Labadie)," *Sons of DeWitt Colony Texas*, <http://www.sonsofdewittcolony.org/sanjacintolabadie.htm> (reprint of an 1859 *Texas Almanac* article).

James Collinsworth might well have received the first formal Texas military funeral conducted during peacetime. Collinsworth had been a high-ranking officer at San Jacinto, was Chief Justice of the Republic of Texas, and was running for the presidency at the time of his death. He died just over two years after the Battle of San Jacinto, and in a location where an elaborate funeral could be organized on short notice. Surely there could not have been many other contenders for that particular honor.

⁵⁵ *Houston, a History and Guide* (Houston: A. Jones Press, 1942), 49 ("compiled by workers of the Writers' Program of the Work Projects Administration in the State of Texas").

⁵⁶ In fairness to the authors, I should re-emphasize that their canvassing efforts have brought much useful information to light. Consider just one additional example, again drawn from Chapter 4: typescripts of the recommendation letters that helped James Collinsworth secure a position as United States Attorney for the Western District of Tennessee. After browsing the actual text of the letters, I now doubt Sam Houston Dixon's claim, repeated in my earlier work, that Collinsworth's appointment as U.S. Attorney was due to the good offices of James K. Polk. Polk's name does not even appear in recommendation letters that seem quite adequate on their own.

⁵⁷ James Michener described Collinsworth as "handsome." Michener, *Texas*, 587. However, unless Michener had access to some source not known to the general public, one reasonably might question his standards.

⁵⁸ Chief Justice Calvin Cureton, Remarks, *Presentation of Portrait of Chief Justice James Collinsworth*, 126 Tex. xxxiv (1936).

Speer's *Texas Jurists*,⁵⁹ a picture book of high court judges. Both the oil painting and the illustration in *Texas Jurists* were produced by one of Ocie Speer's daughters.⁶⁰ The *Texas Jurists* illustration, which ultimately made its way through Chief Justice Jack Pope to the University of Texas Tarlton Law Library, has been republished in some later sources.⁶¹

Sad to say, Collinsworth's visage did not improve as it was copied. At first and even second glance, the picture that graces *The Handbook of Texas Online's* "James Collinsworth" entry (Image 3) may look like it derives from Ocie Speer's *Texas Jurists* illustration. If that is the case, though, it is a very bad copy. In the *Handbook of Texas* version, Collinsworth does not just look disgruntled or bored; rather, he looks positively snide or shifty.



Left: Image 1, The Texas Supreme Court's oil painting.
Middle: Image 2, Ocie Speer's *Texas Jurists* illustration, Tarlton Law Library.
Right: Image 3, *The Handbook of Texas Online* image.

The obvious question is what Ocie Speer's daughter used as the basis of her oil portrait and *Texas Jurists* illustration. Unfortunately, that trail quickly goes cold. During the formal portrait presentation ceremony, Chief Justice Cureton stated: "It is the painting of Judge Collinsworth, prepared from a small picture, that we are to receive this morning. The source of the picture we do not know."⁶² Ocie Speer did track down one collateral descendent of James Collinsworth in Wharton, Texas. This person evidently did not have a picture. She did, however, confidently assure Speer that "Collinsworth" was spelled with a "G."⁶³

⁵⁹ Ocie Speer, *Texas Jurists: 1836-1931* (Austin: Steck Pub., 1936).

⁶⁰ Chief Justice Cureton, Remarks, *Presentation of Portrait*, xxxv (stating that "The portrait about to be accepted by the Court was painted by Judge Speer's daughter, Mrs. Wright Stubbs, who is not present this morning").

⁶¹ See, e.g., Paulsen, "Judges of the Supreme Court of the Republic," 309 (obtained through Chief Justice Jack Pope).

⁶² Chief Justice Cureton, Remarks, *Portrait Presentation*, xxxi.

⁶³ The story is worth reprinting at some length, as it illustrates the lengths to which Ocie Speer was willing to go in his quest to find pictures of every justice ever to serve on the Supreme Court of Texas.

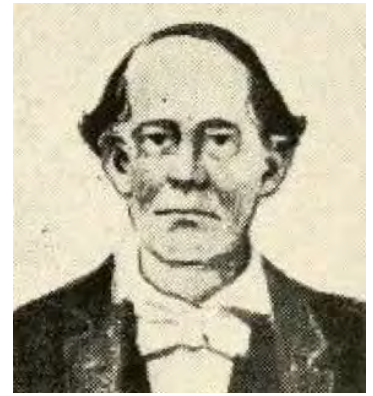
"Search for a likeness of Judge Collinsworth led to the interesting bit of information that the name truly is Collingsworth, though the letter 'g' is omitted in his signature to the Texas Declaration of Independence.

"Searching for a picture, Judge Speer was referred by Clarence Wharton, Houston attorney and historian, to Mrs.

Nonetheless, all is not necessarily lost. Another version of James Collinsworth's image conceivably could be, or at least could share common ancestry with, the "small image" on which the painting and *Texas Jurist* illustration was based. The 1898 Texas State Historical Association reprint, but not the original 1855 edition, of Henderson Yoakum's *History of Texas*⁶⁴ contains a small (1.5 x 2") picture of James Collinsworth (Image 4).⁶⁵

As with the Speer portrait, the source of the Yoakum reprint illustration has not been determined. If the image does accurately portray James Collinsworth's appearance at the time of his death, he surely packed a lot of hard living into a relatively short lifetime. Moreover, if the Yoakum image actually was the model for the Texas Supreme Court's oil painting, considerable artistic license was employed on Collinsworth's behalf. However, if one compares Image 1 to Image 3, this may be a case in which some inaccuracy can be excused on humanitarian grounds.⁶⁶

Newsom and Collinsworth have unearthed a previously unknown and much more flattering image of a young James Collinsworth (Image 5). Like all other likenesses, its provenance is uncertain—in this case, a collateral descendant who no longer is able to elaborate on the source.⁶⁷ Reasonable minds can differ on the question whether all these images possibly could represent the same person, much less whether that person was James Collinsworth. In such a case, family lore may be as reliable a source as any,⁶⁸ especially



Top: Image 4, Henderson Yoakum's *History of Texas* drawing. Bottom: Image 5, Newsom and Collinsworth's collateral descendant image.

W.F. Abendroth, Wharton, Texas, a grand-niece of the first chief justice. Judge Speer wrote to her inquiring for a portrait of James Collinsworth. In reply, she chided him for the spelling; said all the family spell the name with a 'g.' Collingsworth County in the Texas Panhandle, which was named for the first chief justice is officially named 'Collingsworth.'"

Gordon K. Shearer, UP, "Under the Dome at Austin," *Timpson Daily Times*, Feb. 29, 1936.

⁶⁴ Compare H. Yoakum, *A History of Texas, from Its First Settlement in 1685 to Its Annexation to the United States in 1846*, vol. 2 (New York: Redfield, 1855), 176, with Wooten, *Comprehensive History of Texas*, 298.

⁶⁵ James B. Collinsworth, Jr., "Descendants of the Fearless Fifty-Nine, James Collinsworth," *Where Texas Became Texas: Washington on the Brazos* (blog), <http://wheretexasbecametexas.org/descendants-fearless-fifty-nine-james-collinsworth/>.

⁶⁶ On the other hand, when accepting the Speers portrait, Chief Justice Cureton commented that "[t]he picture has been here reproduced with great fidelity by the artist." Chief Justice Cureton, *Remarks, Portrait Presentation*, xxxi.

⁶⁷ Kimbrough Dunlap (a descendant of Benjamin Franklin Collinsworth and early Collinsworth researcher) to James B. Collinsworth, Jr. (Nov. 29, 2000) (on file with this author). The unavailability of the person who supplied the image also makes it difficult to determine today whether the image Newsom and Collinsworth used in their book is a copy of some sort of photograph, or a copy (perhaps photographic) of an oil painting. If the former, the image could not possibly depict James Collinsworth. See, e.g., U.S. Library of Congress, "America's First Look into the Camera: Daguerreotype Portraits and Views, 1839–1862," <http://www.loc.gov/teachers/classroommaterials/connections/daguerreotype/history.html>.

⁶⁸ Collinsworth, Jr., "Descendants of the Fearless Fifty-Nine, James Collinsworth," <http://wheretexasbecametexas.org/descendants-fearless-fifty-nine-james-collinsworth/>.

because male pattern baldness ran in the Collinsworth family.⁶⁹

One important benefit stemming from publication of the first in-depth biography of Chief Justice James Collinsworth is that readers with odd scraps of knowledge about Collinsworth's life in Tennessee or Texas now know with whom they should be sharing that material. In that cooperative spirit, I close by offering one tidbit regarding James Collinsworth, gleaned from a couple of thin files I stumbled across some years back while doing unrelated research in the Texas State Archives.⁷⁰

The few writers who mention James Collinsworth tend to minimize his service as Chief Justice of the Supreme Court of the Republic of Texas with some variation on the statement: "No court session was held during his lifetime." That statement is true, so far as it goes. But the historical record is more nuanced. Despite his brief tenure, Collinsworth actually did make a valuable contribution to the Texas judicial system.

Fragmentary evidence that Chief Justice James Collinsworth was not entirely idle during his time in office already is known to exist.⁷¹ Moreover, December 1837 congressional records suggest strongly that Collinsworth bears no part of the blame for the Court's failure to meet. The 1836 Constitution provided that the Chief Justice and all district judges, acting as a committee, comprised the Supreme Court.⁷² Enabling legislation set the Court's first meeting for December 4, 1837.⁷³ Unfortunately, the Court did not meet for the December 1837 term because a constitutional quorum (three of the four district judges) could not be assembled.⁷⁴

The damage caused by the Supreme Court's failure to hold a December 1837 session was not limited to individual litigants. The Republic's newly organized district courts had just completed their first two terms, in March and September 1837. As might be expected, real-world experience exposed unanticipated deficiencies in the initial legislation. Substantial amendments to the judiciary act enacted in December 1837 prove as much.⁷⁵

In December 1837, as today, Chief Justice Collinsworth was de facto the chief administrative

⁶⁹ See, e.g., James B. Collinsworth, Jr. to James W. Paulsen, March 13, 2018 (email available from the author).

⁷⁰ Files No. 869 and 895, Second Congress of the Republic of Texas, Lorenzo de Zavala Library and Archives (on file with the author).

⁷¹ See, e.g., Newsom and Collinsworth (p. 125) (reproducing a May 1837 document sworn in Houston before James Collinsworth as "Chief Justice, etc."); Andrew Forest Muir, ed., *Texas in 1837: An Anonymous Contemporary Narrative* (Austin: University of Texas Press, 1958), 216 n.12 (referring to law licenses issued or recognized by Chief Justice Collinsworth in Brazoria, Houston, and San Antonio); Tiffany S. Gilman and Blake Hawthorne, "A Brief History of the Texas Supreme Court Clerk's Office," *Journal of the Texas Supreme Court Historical Society* 5 (2016): 34 (referring to Collinsworth's appointment of the Texas Supreme Court's first clerk, William Fairfax Gray).

⁷² See Repub. Tex. Const. of 1836, art. IV, § 7, reprinted in Gammel, *Laws of Texas*, 1069, 1074.

⁷³ Act approved Dec. 15, 1836, § 2, 1st Cong., R.S., § 1, 1836 Repub. Tex. Laws 79, 79, reprinted in Gammel, *Laws of Texas*, 1139.

⁷⁴ The Constitution required that a quorum consisted of the Chief Justice and "a majority" of the district judges. See Repub. Tex. Const. of 1836, art. IV, § 7, reprinted in Gammel, *Laws of Texas*, 1069, 1074. With only four district courts in existence, the absence of any two district judges would preclude a formal court session.

⁷⁵ See, e.g., Act approved Dec. 14, 1837, § 2, 2d Cong., R.S., § 1, 1837 Repub. Tex. Laws at 59, reprinted in Gammel, *Laws of Texas*, 1400, 1401.

officer of the Texas judiciary, with ultimate responsibility for ensuring that the system operated smoothly. But the Supreme Court was stymied; it could not take action as an institution with two district judges missing. So Chief Justice Collinsworth and his colleagues devised a novel workaround: they drafted needed amendments to existing legislation, then handed the resulting bill to Congress—much as the United States Supreme Court did nearly a century later in the 1925 “Judges’ Bill.”⁷⁶

The evidence is unambiguous. The original draft, marked-up by legislators, still can be found in the Second Congress’s bill files. At the end of the four-page draft, the following language appears:

The undersigned respectfully recommend to the Honorable Congress, to make the foregoing amendments to the judiciary laws of the Republic of Texas.

Houston, Dec. 5, 1837.

/s/ James Collinsworth

Chief Justice

/s/ R.M. Williamson

Associate Judge

/s/ James W. Robinson

Associate Judge⁷⁷

With one exception to be discussed momentarily, the Republic’s Congress adopted the text of the judges’ recommendations without substantive change.⁷⁸ Though the printed statute does not reflect the fact, the text of the reconciled bill as enacted also retains the language just quoted, thus formally attributing the legislation to Chief Justice Collinsworth and his colleagues.

The one substantive section Congress struck from the justices’ original draft reinforces the already plausible theory⁷⁹ that the Supreme Court’s failure to hold its first session was occasioned by the absence of two district judges—specifically, Shelby Corzine and Benjamin C. Franklin of the Republic’s First and Second Districts.⁸⁰ Section 1 of the judge-written draft provided that if for some reason “an annual term of the Supreme Court shall not be held on the day prescribed by Law,” a make-up session should be held the following June. Congress excised that language and enacted a draconian substitute through a separate piece of legislation. Absent extraordinary circumstances, any judge who failed to attend any scheduled court session would

⁷⁶ See, e.g., “Judges’ Bill,” Federal Judicial Center, <https://www.fjc.gov/history/timeline/judges-bill>.

⁷⁷ An Act to alter and amend the several Acts establishing Courts of Justice within the Republic at 6, Records of the Second Congress, File No. 869, File Box No. 9 (Lorenzo de Zavala State Library and Archives). Some cosmetic changes have been made here to enhance readability.

⁷⁸ One section of the original draft was struck because it duplicated another section. Three of the other four changes were typographical or stylistic; the fourth changed the possible number of new trial grants from two to one.

⁷⁹ James W. Paulsen, “A Short History of the Supreme Court of the Republic of Texas,” *Texas Law Review* 65 (1986): 237, 249.

⁸⁰ Compare text accompanying note with Paulsen, *Judges of the Supreme Court of the Republic*, 370 (setting out, in Appendix B, the initial district judges and terms of service). Judge Corzine made up for this default to some extent by chairing an ad hoc committee to plan James Collinsworth’s funeral. See “A Meeting,” *Telegraph and Texas Register*, July 21, 1838.

be fined \$1,000 and incur civil liability for damage caused to individual litigants.⁸¹

The bottom line is that Chief Justice Collinsworth is not culpable in the high court's failure to meet during his brief tenure. To the contrary, Collinsworth's and his colleagues' drafting efforts may have contributed more to the public good than if the same time had been devoted to reading briefs, listening to lengthy arguments, and writing opinions.

In short, James Collinsworth deserves more than a footnote in the judicial history of Texas. The authors of *Too Good to Be True* should be commended for taking a large step in that direction.



Appendix: James Collinsworth's Medical Records

Brazoria County probate records⁸² provide a cautionary tale of the need to stay current on medical bills, at least if one wishes to keep unflattering information away from unscrupulous biographers. James Collinsworth's probate records contain unpaid itemized medical bills for treatment by two doctors—W.H. Magee and John McNeill Stewart—in 1837 and 1838. Uninformative references to James Collinsworth also appear in Dr. Stewart's 1837-1838 medical journal, now housed at Rice University.⁸³ My best efforts to transcribe these bills⁸⁴ is found at the end of this appendix.

A couple of caveats: First, what follows is the product of a law professor with no medical background whatsoever. It should be regarded as nothing more the musings of someone who is trying to practice Nineteenth Century medicine without a license. Second, this amateur diagnosis is based almost entirely on three itemized medical bills presented to a probate court for payment. This almost certainly does not present a complete picture of James Collinsworth's ailments. Collinsworth probably paid other medical bills in full, or some creditors may not have bothered to submit claims on an insolvent estate.

That said, court records show that in February and June of 1837, James Collinsworth received aperient pills, pyroligneous acid, castor oil, calomel (mercury chloride) and camphor. In the 1830s, all these were considered useful in the treatment of constipation, as a purgative, or both.⁸⁵ In February and May 1837, Collinsworth also received an unspecified ointment and

⁸¹ See Act approved Dec. 14, 1837, § 2, 2d Cong., R.S., § 1, 1837 Repub. Tex. Laws 59, 59, *reprinted in* Gammel, *Laws of Texas*, 1400, 1401.

⁸² Probate File 79 (1838), Brazoria County, Texas.

⁸³ See Dr. John McNeill Stewart medical log (1836–1837) [Digital Version], <https://scholarship.rice.edu/jsp/xml/1911/26925/1/aa00365.tei.html>.

⁸⁴ At the risk of perpetuating a stereotype, the handwriting of one of these doctors verges on incomprehensibility, even by the reputed standards of the profession. Copies of the original records will be provided to any reader who wants to take a stab at an independent translation.

⁸⁵ One useful general source, published only two years after James Collinsworth's death, is John Savory, *A*

herpetic lotion, as well as blister plasters, including possible camphor plasters. These might have been used in the treatment of skin ailments.

However, the situation is more ambiguous. Two of the medicines or treatments just listed (calomel and blister plasters),⁸⁶ as well as one not listed (bleeding),⁸⁷ would be consistent with syphilis treatment. Camphor could point in either direction. It was used to counteract the effects of excessive use of purgatives, but also as a treatment for skin conditions, presumably including syphilis.⁸⁸ In James Collinsworth's case, the fact that camphor use immediately follows the administration of calomel and castor oil suggests the former. The case for camphor as a remedy for over-effective purgatives is strengthened slightly by the fact that the July 15, 1837 use of camphor powder is accompanied by a charge for two bottles of port wine, strongly suggesting internal use. However, at least one contemporary source seems to have recommended camphor in alcohol as a remedy for skin eruptions, while not recommending external application for the same purpose.⁸⁹

In the case of calomel, the medicine most frequently mentioned in the itemized medical bills, one tiebreaker would be whether calomel was being taken by mouth (usually as a general purgative, but possibly to combat syphilis)⁹⁰ or by external application (unambiguously a syphilis treatment). The word "calomel" is spelled out in full twice (June 11 and 12, 1837). In each case, contemporaneous mention of applying blister plasters supports external (syphilis) use, and contemporaneous mention of "oil" or "castor oil," followed by camphor, suggests internal (usually purgative) use. Strangely, one entry (June 11) suggests a third possible method of administration—*injection*. More on that in a moment.

Further, if one accepts that the word or phrase "caloplaster" is shorthand for "calomel plaster" (and I have not been able to come up with any other candidate), then the balance

Companion to the Medicine Chest, and Compendium of Domestic Medicine (London: J. Churchill, 1840). See, e.g., 5–6 (pyroligneous acid), 34–35 (calomel as laxative or purgative), 35–36 (camphor), 41–42 (castor oil), 98 (mercurial pills for syphilis), and 115–16 (blister plaster). More specifically, camphor was not used as a purgative, but rather to counteract adverse effects of purgatives.

⁸⁶ See, e.g., Berkeley Hill, *Syphilis and Local Contagious Disorders* (London: Smith, J. Walton, 1868), 277 (stating that "[d]uring the past eighteen years several methods of eliminating the poison by counter-irritation on the surface of the body have been tried," including "blistering").

⁸⁷ See, e.g., Henry Clutterbuck, *On the Proper Administration of Blood-Letting for the Prevention and Cure of Disease* (London, 1840), 111 (stating that "[t]he advantage occasionally derivable from blood-letting in syphilis, is pretty generally understood"). Bleeding, however, also was considered part of a treatment regimen in a wide variety of situations.

⁸⁸ See, e.g., Coxe, *American Dispensary*, 168–69 (stating that camphor was used "[i]n eruptive diseases, to favour the eruption" and could be given in alcohol), and 559 (stating that camphor oil was used as laxative); but see also John Ayrton Paris, *Pharmacologia* (New York: Collins and Hannay, 4th Am. ed., 1831), 358 (stating that "camphor has been recommended to be mixed with the blistering composition, and a piece of thin gauze has been interposed between the plaster and the skin"); see also internal note [2].

⁸⁹ See *ibid.*, 168–69; but see also 675 (stating that "[t]his solution of camphor is only employed for external uses, against rheumatic pains, paralytic numbness, inflammations, for discussing tumours, preventing gangrenes, or restraining their progress. They are too pungent to be exhibited internally . . .").

⁹⁰ See, e.g., John Frith, "Syphilis—Its Early History and Treatment until Penicillin, and the Debate on Its Origins," *Journal of Military and Veterans' Health* (2012): 49, 53 (stating that "Gerhard van Swieten (1700–1772), an Austrian army surgeon, introduced the internal use of corrosive sublimate, mercuric chloride, or liquor Swietenii, which stayed in use as treatment for syphilis for many years").

swings in favor of syphilis treatment. In both appearances of “caloplaster,” the word is preceded by “applying,” consistent only with external use. And in one occurrence (June 16, 1838), nothing in the doctors’ notes suggests internal use.

There also is a question regarding how “injections” fits into the picture. Calomel injections once were a recognized syphilis treatment but, it is thought, only at a much later date.⁹¹ Injections, however, were recognized as one component of purgative treatments even in the Republic of Texas. For example, when treating Galveston yellow fever victims in 1839, an eminent Texas doctor (Ashbel Smith), rejected calomel as a purgative, replacing it with “an infusion of senna and rhubarb,” occasionally assisted by an injection. Another contemporary doctor used “a scruple of calomel, to be followed by castor oil, and in some cases an injection.”⁹² The latter is particularly interesting, as it may duplicate the treatment—even to the order of administration—employed by Dr. Magee in treating James Collinworth on June 11, 1837.

That said, not one mention of “injections” specifies exactly what was being injected or why, either in James Collinworth’s treatment or in the medical treatise just quoted. In Ashbel Smith’s case, the material injected certainly would not have been calomel, but it’s also hard to imagine an injection of senna and rhubarb. In the other contemporary doctor’s situation, at least as presented, the only likely candidates for injection would be calomel and castor oil. Of the two, calomel would be the most reasonable. In any event, if calomel was administered by injection it seems in context more likely to have been used as a purgative supplement than as a syphilis remedy, though neither is particularly plausible.

A final note on calomel, also known as mercury chloride. Collinworth certainly was exposed to a good bit of mercury, both by direct ingestion and possible absorption through the skin. The deleterious effects of mercury are well-known. In its early stages, mercury poisoning can cause mood changes, including depression; its long-term effects include serious neurological damage, heart problems and death.⁹³ However, when taken in the form of calomel, “only infinitesimal amounts . . . are absorbed.”⁹⁴



Probate records contain an unpaid mid-June 1838 medical bill (about three weeks before Collinworth’s death, reading more or less as follows:

⁹¹ See, e.g., M. Hirschberg, “The Treatment of Syphilis by Intra-Muscular Injections of Calomel-Oil,” *American Medico-Surgical Bulletin* (May 15, 1895): 586, 587 (noting that “[t]his treatment with calomel-oil injections is comparatively unknown to the general practitioner, and that [a prominent medical writer] “could find no reports in our leading medical journals until lately”).

⁹² See Daniel Drake, *A Systematic Treatise, Historical, Etiological, and Practical, of the Principal Diseases of the Interior Valley of North America* (Philadelphia: Lippincott, Grambo and Co., 1854), 332.

⁹³ See generally Jon Johnson, “Mercury Poisoning: Symptoms and Treatment,” *Medical News Today*, Jan. 9, 2018, <https://www.medicalnewstoday.com/articles/320563.php>; compare with U.S. Food and Drug Administration, “Mercury Poisoning Linked to Skin Products,” <https://www.fda.gov/ForConsumers/ConsumerUpdates/ucm294849.htm>.

⁹⁴ Jennifer Schmid, “Beautiful Black Poison: The History of Calomel as Medicine in America,” Weston A. Price Foundation (Apr. 2, 2009), <https://www.westonaprice.org/health-topics/environmental-toxins/beautiful-black-poison/>).

[Dr?] Magee & Orr
1838

June 16th	1 visit \$5.00 Advise & [?] 2.00	\$7.00
	[Bleeding?] 6/1 visit 8/ [miledge?] 4.00	7.00
	applying [Calo plaster?]	1.00
	Administering [Ensunce?]	2.00
	8 Hours Detention 8.00	8.00
		\$25.00

Earlier unpaid medical bills in the probate files are as follows:

Dr. John M. Stewart
1837

Feb 6	2 doz aperient pills & Box Ointment self	\$2.50
May 8[?]	Herpectic Lotion	1.00
June 8 [/]	Pyroligneous acid [etc.?)	1.00
August	Sundry visits, & consultation with Dr. Magee	20.00
		\$54.50

1838

Jany 23	Visits Med & advice for self	5.00
24	"	5.00
25	"	1.00
		\$65.50

Dr. William H. Magee
1837

June 10th	1 visit \$5.00 + detention 24 hours	\$29.00
11th	1 do \$5.00 - applying 1 plaster \$1.00	6.00
	1 dose calomel 4/ - 1 dose of oil 4/ -	1.00
	4 injections 4/- Detention 12 hours 12.00	16.00
12th	1 Dose [Cloth?] 4/- applying four [calo plasters?]	2.50
	Nursing and detention 24 Hours	36.00
	1 Dose calomel 4/ - 4 doses caster oil 4/	1.00
	[Do/?] applying 5 blister plaster	5.00
	Detention 24 Hours \$24.00	24.00
14th	[Driping/Drissing?] 5 Blisters	\$5.00
	4 injections \$4.00	9.00
	4 Camp Powders 8/- Detention & nursing	25.00
15	[Dripping/Drissing?] blisters \$5.00	
	4 camp Powders 8/-	6.00
	2 [Bots?] [Port?] [wine?] at \$3.00 [pr bot?]]	6.00
	Detention & Nursing	24.00
16 th	Advise and prescription	5.00
		\$197.50



JAMES W. PAULSEN is a Professor of Law at South Texas College of Law Houston. His areas of expertise are civil procedure, family law, marital property, jurisprudence, and legal history. He is the author or coauthor of more than seventy articles, a number of them on the history of the Texas Supreme Court.

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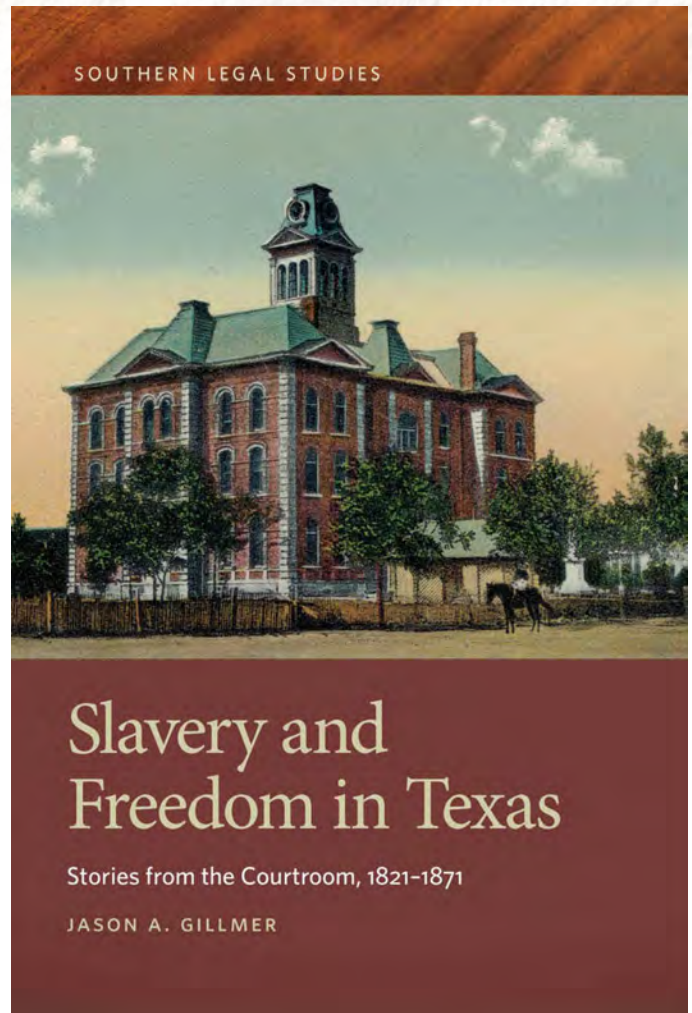
Jason Gillmer's *Slavery and Freedom in Texas: Stories from the Courtroom, 1821-1871*

Book Review by Daina Ramey Berry and Rachel E. Winston

In *Slavery and Freedom in Texas*, Jason Gillmer provides a compelling exploration of the history of Texas through a series of legal cases. We learn about the complexities of slavery and how people of multiple backgrounds encountered the law in a narrative that takes us through the antebellum period and beyond into the early years of Reconstruction in Texas.

Readers are first introduced to Ann, a fair-skinned enslaved woman, and George Gains, her Native American owner. The story of Ann and her legal quest for freedom lay the foundation for Gillmer's thoughtful considerations of how both enslaved and free people of color used the Texas court system throughout the mid-nineteenth century. In the telling of Ann's story, Gillmer illustrates the complex interpretations of race in early Texas.

The first case discussed, *Clark v. Honey*, revolved around "Texas Millionaire" John Clark's estate. With no legal wife, the courts inventoried and sold Clark's assets following his death in 1861. A decade later, children, who were included in the estate inventory and sale as slaves, but were now free, began the legal battle for their inheritance. The first step required proving their enslaved mother Sobrina was in fact Clark's wife, bringing into focus the legality of interracial marriage at a time when miscegenation was the law. While the court initially ruled in favor of the Clark children, subsequent appeals and retrials would entangle them in the courts for the rest of their lives. In *Clark v. Honey*, Gillmer details the deliberate, systematic denial of rights delivered to the enslaved children of John Clark.



*Slavery and Freedom in Texas:
Stories from the Courtroom, 1821-1871*
by Jason A. Gillmer
Athens: University of Georgia Press, 2017
[http://www.ugapress.org/index.php/books/
slavery_and_freedom_in_texas](http://www.ugapress.org/index.php/books/slavery_and_freedom_in_texas)

In his discussion of *Brady v. Price*, Gillmer illustrates how class politics intersected with racial dynamics. This 1854 case involved overseer Charles Brady, who shot an enslaved man named Miles. Because Miles sustained permanent injuries, his owner Tempe Price took Brady to court to recover her lost profits. Through this case, Gillmer describes how white supremacy and slaveholding psychology have permeated the court system, as the humanity and rights of the enslaved were only legally acknowledged when convenient or advantageous for the slaveholding class.

Enslaved people were inextricably linked to free people of color and one cannot examine the institution without recognizing this fact. Gillmer builds on the work of Ruthie Winegarten by examining a case involving free people of color. His discussion of the Ashworth family confirms the presence of free people of color throughout Texas history by emphasizing the ways legislation controlled their access to citizenship, wealth, and freedom in East Texas. It also highlights the systematic disenfranchisement experienced by free people of color, even though they were embedded with prominent white families.

Moving to the urban coastal enclave of Galveston Island, the reader is introduced to David and Betsy Webster, an unusual couple. David and Betsy considered themselves husband and wife even though he was her enslaver. Upon his death in 1856, David Webster entrusted his estate to Betsy and manumitted her. Yet her life as a freedperson did not start off well. She had to hire two elite, slaveowning lawyers to help secure her freedom. This legal action taken by David Webster kept her in court for years.

Building on the existing body of slavery scholarship in Texas, Gillmer's book provides an important glimpse into the ways in which the legal system directly impacted enslaved and free persons of color. It is a nice complement to other studies of slavery in the Lone Star State, including the work of Randolph Campbell, *An Empire for Slavery* (1989), and Andrew Torget, *Seeds of Empire* (2016). This book will be of interest to scholars of slavery and the law as well to those seeking to understand the complexities of slavery in the Southwest.

Strengths aside, there are a few places where the author fell short. While his analysis is thorough, readers will have trouble discerning Gillmer's perspective in relation to the records and stories he shares. His viewpoint is elusive, leaving the reader to question whether this is a strategy employed by the author or simply his writing style. Perhaps Gillmer wanted readers to determine for themselves the outcome of the cases rather than how *he* came to certain conclusions. Clearly, he took great care and skill to research and coalesce the legal cases offered in this volume. To this end, an extended description of his research process in the form of a note on sources or a bibliographical review essay would be helpful.

In the end most readers will conclude that nineteenth century Texas courts were not designed with justice for the enslaved, or for any non-white person, in mind. In his extensive use of legal records from across the state, Gillmer demonstrates how court cases exposed the conflicting and superfluous nature of the law in relation to slaveholding ideals. Ultimately, his work illuminates ways in which the courts were used by the enslaved, and the impressions these legal pursuits for justice left on the Texas legal system as a whole.



DAINA RAMEY BERRY, Ph.D., is Associate Professor of History, African and African Diaspora Studies at the University of Texas at Austin. Her first book, *Swing the Sickle for the Harvest is Ripe: Gender and Slavery in Antebellum Georgia* (Champaign: University of Illinois Press, 2007), examined slave labor, family, and community in two distinct regions. In January 2017, Beacon Press published Professor Berry's second single-authored book: *The Price for Their Pound of Flesh: The Value of the Enslaved, from the Womb to the Grave, in the Building of a Nation*.



RACHEL E. WINSTON is the Black Diaspora Archivist at the University of Texas at Austin. Her professional interests include exploring the documentation and representation of the Black Diaspora within cultural institutions, digital humanities, and archival activism.

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A Double-Hitter at the Spring 2018 Board Meeting: Harriet Miers and the George W. Bush Presidential Center

By Cynthia K. Timms
Photos by David A. Furlow



Top: Harriet Miers spoke to the Society concerning her years serving in the administration of President George W. Bush.
Bottom: The outside entrance to the George W. Bush Presidential Center in Dallas near the campus of Southern Methodist University.

Harriet Miers reminiscing about her time at the White House and a visit to the George W. Bush Presidential Center were the featured events at the Society's Spring 2018 Board of Trustees and Members Meeting conducted in Dallas on March 28. Former Justice and current Society President Dale Wainwright introduced Ms. Miers, who served President George W. Bush from 2001 until 2007 in various roles, including Assistant to the President and Staff Secretary, Deputy Chief of Staff for Policy, and White House Counsel.

During her luncheon talk, Ms. Miers spoke about the need for bipartisan cooperation on the important issues facing our nation. She gave as an example when former President Bush worked with Texas Lieutenant Governor Bob Bullock—a Democrat—when Mr. Bush was the Republican Governor of Texas. Another example was when President Bush worked with Senator Ted Kennedy of Massachusetts on education reform.

Ms. Miers described the first eight months of the Bush administration as a time when the White House focused considerably on domestic policy issues. But the focus of the administration following the events that occurred on September 11, 2001, was the safety of the nation and its people. After the attacks of 9/11, she said, there was a time of intense national unity, but the unity among the branches of government then began to dissipate. Ms. Miers urged our leaders to call for dignity and civility in dialogue, and she emphasized the need to have a country-first attitude.



Left: Society members attended the Presidential Center's special exhibit, "First Ladies: Style of Influence."
Right: Ms. Miers introduced Tobi Young, General Counsel of the George W. Bush Presidential Center.

Mr. Wainwright then asked Ms. Miers questions about her life and experiences. Ms. Miers was born in Dallas and had a large number of siblings, most of them brothers who firmly believed that Harriet could do whatever she put her mind to doing. In her youth, she had contemplated becoming a high school counselor or a data processor. After her father had a stroke and the family had to deal with resulting legal issues, and with the recommendation of a classmate that she consider law school, Ms. Miers decided to go to law school. In response to a question from Mr. Wainwright about an unanticipated experience in her practice, Ms. Miers recounted a story about how she one time was called upon to participate in a bull fight, as other leaders of the State Bar were doing so. She assured the audience that both she and the bull survived the experience.

Mr. Wainwright also asked Ms. Miers about the time she received the Agency Seal Medal awarded by the Central Intelligence Agency. The Seal Medal is an award given by the CIA to people outside the agency who have made significant contributions to the agency's work. Ms. Miers took the opportunity to talk about the important work and selfless attitudes of those serving in the CIA, the diplomatic corps, and the military. She recounted an incident when she was speaking with a young man who told her that he and his friends did not care about the money they could make in the private sector, and that they preferred to make an impact on the world through their government service.

Following Ms. Miers's discussion, the Society members drove to the George W. Bush Presidential Center, which was hosting a special exhibit on the important role of First Ladies. Before the tour, however, Tobi Young spoke to the gathered members. Ms. Young is General Counsel of the George W. Bush Presidential Center and is President Bush's designated Presidential Records Act representative. She described the millions of email, photos, and terabytes of data they have at the Center, and noted that she is tasked with reviewing documents for privilege before they are released to the public. She shared some of her experiences in managing such an extensive mass of information.

Left: The exhibit provided information on each of the first ladies, from Martha Washington through Michelle Obama.

Right: The displays included some of the First Ladies' personal memorabilia, including this favorite blue suit worn by the late Barbara Bush.



Society members then viewed the exhibit together with Ms. Miers accompanying the group, answering questions, and sharing anecdotes. The Society is grateful to both Ms. Miers and Ms. Young for taking the time to provide insights into a recent presidential administration and the work that is required to maintain the presidential records. A special thanks also goes to Dale Wainwright and his firm, Greenberg Traurig, LLP for providing space for the meeting as well as lunch for the membership. And thanks also go to Sharon Sandle and Mary Sue Miller for providing rides to the members who needed transportation to the Presidential Center.



CYNTHIA TIMMS is a partner with Locke Lord LLP in Dallas, where she is Chair of the firm's Appellate Section. She is Treasurer of the Texas Supreme Court Historical Society.

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Supreme Spouses

By Dylan O. Drummond

Earlier this spring, George W. Bush Presidential Center General Counsel Tobi Young, alongside former Chief White House Counsel Harriet Miers, was kind enough to guide the Society's Board of Trustees through the George W. Bush Presidential Library.

Just a few weeks later, U.S. Supreme Court Justice Neil Gorsuch asked Ms. Young to clerk for him at the High Court during its 2018-19 term. As the descendant of a former governor of the Chickasaw Nation, Ms. Young is believed to be the first Native American tribal member to clerk at the High Court.

While any Supreme Court clerkship is notable, this one was particularly so, in part because Ms. Young's husband, Society Trustee and Baker Botts LLP appellate partner Evan Young, also clerked at the Court for the late Justice Antonin Scalia during the 2004-05 term.

Incredibly, the Youngs are not the only Supreme Court power couples in Texas in which each spouse has clerked for the High Court. In fact, there are four Supreme Spouses who reside and practice here in Texas.

Fifth Circuit Judge Jim Ho clerked for Justice Clarence Thomas during the Court's 2005-06 term. His wife, Society Greenhill Fellow and Morgan Lewis appellate partner



Tobi Young and
Evan Young



Left: Jim and Allyson Ho chat with Justice Sandra Day O'Connor during the 2013 John Hemphill Dinner reception. Right: Justice Brett Busby and Erin Busby talk with U.S. Senator John Cornyn prior to the 2015 John Hemphill Dinner. Photos by Mark Matson.

Allyson Ho, clerked for Justice Sandra Day O'Connor during the 2002-03 term, a few years before her husband reached the Court.

Fourteenth Court of Appeals Justice Brett Busby clerked for the late Justice Byron White and Justice John Paul Stevens the same term, 1999-2000, that his wife, Erin Busby, clerked for Justice Stephen Breyer.



U.S. Attorney John Bash and Zina Bash

Finally, U.S. Attorney for the Western District of Texas John Bash clerked for the late Justice Antonin Scalia during 2007-08. His wife, Zina Bash, clerked for Justice Sam Alito during the Supreme Court's 2013-14 term.

The Texas bench and bar are fortunate to have these eight former Supreme Court clerks reside and practice in the state, and the Society is privileged to count at least three among its ranks.

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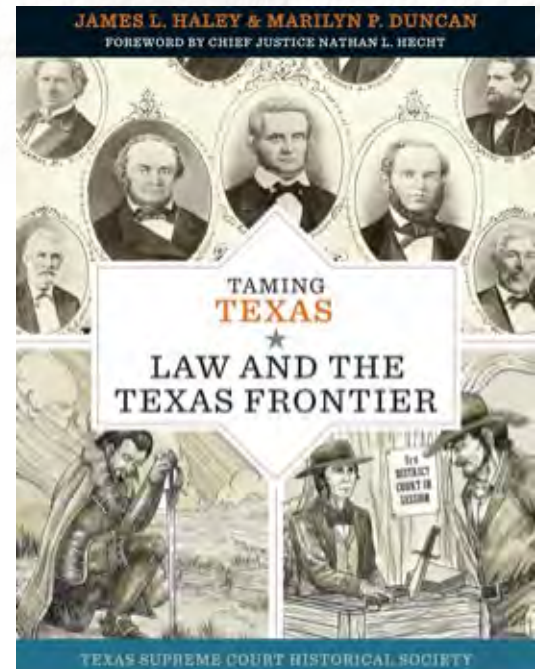
Law and the Texas Frontier Joins the Society's Taming Texas Series

By Marilyn P. Duncan

The latest book in the Texas Supreme Court Historical Society's Taming Texas Series, *Law and the Texas Frontier*, was released in January.

Written specifically with seventh-grade Texas history students in mind, the new book tells the story of how life on the vast frontier of Texas required creative approaches to maintaining law and order.

Beginning with the claiming of El Paso by Spanish conquistador Don Juan Oñate in 1598 and ending with the closing of the Texas frontier in 1900, the book shows how the characters and events of Texas history were connected in important ways to the legal systems in place at each juncture. It also reveals what happened when the laws were not up to the task of protecting people, especially during the Civil War and Reconstruction.



Texas Supreme Court Chief Justice Nathan Hecht's foreword to *Law and the Texas Frontier* captures the book's flavor and purpose beautifully:

I once watched a horse whisperer tame a young, wild mare. Foaled on the open range, she had run free until it came time to train her. Now she stood in a small holding stall. Bam! She furiously kicked the side. Yards away, safe behind a fence, I jumped back. Bam! She kicked again. And again. The gate flew open, and she came charging into the arena, all bucking and snorting, back arching, fiery-eyed, shaking her head, striding around the ring, stomping the ground, brimming with chaotic energy, daring anyone to approach.

The trainer stood in the center, a solitary, calm, commanding, two-legged stranger. She stared, turned and bolted, then stopped and stared again. Quietly, he laid a rope across the ground as she looked on curiously. In a few minutes, he taught her not to cross it, to stay on one side. Then he showed her the rope, stroking it over her side and legs, touching it to her face, overcoming her fear. Warily, slowly, her spirit calmed, she accepted a halter, she began to follow him.

She was more suspicious of a saddle, but after sniffing it and feeling it against her side, she allowed it to be laid on her back. And there she stood, head high, eyes bright, proud and still, now in control of the great spirit that had controlled her.

I thought of this experience reading this second book in Jim Haley and Marilyn Duncan's Taming Texas series. They tell of pioneers drawn to the Texas frontier by her offers of freedom and independence and the opportunities to own and settle the land, vast, open, and fertile. But Texas was also an empty wilderness, daring would-be settlers and civilization with Indian wars, conflicts with Mexico, harsh weather, difficult travel, and the constant threat of disease.

And Texas was lawless. Pioneers coming from states with English and French legal systems confronted various Indian traditions, laws imported by early Spanish explorers, and laws Mexico was trying to impose on the resistant newcomers. All these inconsistent laws meant that Texas had no real law at all until independence and statehood.

Haley and Duncan write: "For law and order to take hold in any new country, it is essential that people accept it." As Texas law began to develop, Texas courts played a key role in securing the people's acceptance. Sheep herders and cattle ranchers warred. Claims arose over land, among businesses and customers, and against the railroads bringing their own problems along with the benefits of travel and commerce. Texas courts had to resolve these disputes and many others in ways that seemed fair, enforcing laws that seemed good. And courts had to assert their independence to protect the rights and liberties the pioneers treasured.

Law tamed the Texas frontier. This book tells how that happened, and how the courts helped.

The book and its predecessor, *Taming Texas: How Law and Order Came to the Lone Star State*, are the centerpieces of the Taming Texas Judicial Civics and Court History Project sponsored by the Society's Fellows (see Fellows Column, pp. 5-7). Copies of the books are provided to seventh-grade social studies classes that participate in the program.

Electronic copies are available for download free of charge at <http://tamingtexas.org/taming-texas-book>, and hard copies may be purchased for \$20 at <http://www.texascourthistory.org/DrawOnePage.aspx?PageID=15>.

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Laying Down the Law at the 2018 TSHA Annual Meeting

By David A. Furlow

A large audience of historians, lawyers, and members of the public spoke highly of our Society's "Laying Down the Law in Early Texas" presentation at the Texas State Historical Association's 2018 Annual Meeting in San Marcos. The program was the culmination of a year's planning—and several days of tightly focused conference preparation.



Left: The audience crowded in to see the "Laying Down the Law in Early Texas" panel. Right: The Hon. Craig Enoch, left, introduces our panel of David Furlow, Dylan Drummond, and Justice Jason Boatright. Photos by Marilyn P. Duncan.



Left: Hays County Historical Commission members Luanne Cullen and Gina Rogers and TSCHS's Marilyn Duncan attended the TSHA Women's History Luncheon. Right: TSHA's Annual Meeting offers readers of Texas history an opportunity to buy the best books. Photos by David A. Furlow.

Several of us attended the Women's History program to hear former TSHA President Dr. Merline Pitre share her personal story, "Reckoning with Gender and Fighting Jim Crow: Lynn Eusan—University of Houston's First African American Homecoming Queen."

The Hon. Craig Enoch, a former Texas Supreme Court Justice and a former President of our Society, gave an exciting introduction to our panel on Thursday, March 8. Justice Enoch stepped in for our President, former Texas Supreme Court Justice Dale Wainwright, who was unable to attend due to a court commitment.



Laying Down the Law in Early Texas **David Furlow**
Commentator

Texas Supreme Court Historical Society

TSHA 2018 Annual Meeting Session 13

The First Courts in Texas

**The Alcalde Courts
of Austin's Colony, Spain, and
Mexican Texas**

Texas Supreme Court Historical Society
TSHA Annual Meeting, March 8, 2018

Justice Jason Boatright
Texas Fifth District Court of Appeals at Dallas

The King of Spain (Madrid)
▲▲▲

The Council of the Indies
▲▲▲

The Audencia of Guadalajara
Civil § Criminal
▲▲▲ § ▲▲▲

Alcalde courts and administrative agencies

**The Toughest Bar in Texas:
The Lawyers and Future Supreme Court Judges
Who Won Texas Freedom at the Alamo & San Jacinto**

Dylan O. Drummond
Gray Reed & McGraw LLP

Texas Supreme Court Historical Society and Texas State Historical Association
2018 Annual Meeting – March 8, 2018

GRAY REED.
Attorneys & Counselors at Law



Top left: Dylan Drummond and Justice Boatright. Center left, center bottom, top right, and top center: Slides to accompany presentations. Bottom right: After their presentations, David Furlow (in background) and Dylan Drummond (right) answered questions from audience members.

The Hon. Jason Boatright, Justice of the Fifth Court of Appeals in Dallas and a Society trustee, presented “Alcaldes and Advocates in Stephen F. Austin’s Colony, 1822 through 1835.” The historians in the room leaned forward to learn things they never knew before about the deep history of alcaldes that dates back to the Moorish occupation of Andalusia in Spain and progresses onward to this day in the alcalde institutions of modern Spain and Latin America. Justice Boatright’s article in this journal shares his original research and presentation with our readers.

Dylan Drummond made the second presentation, “From the Alamo to San Jacinto to Austin: The Attorneys Who Fought in the Texas Revolution and Founded the Republic, 1835 to 1845.” As a trustee of our Society and as Deputy Executive Editor of our journal, Dylan has developed an expertise about the Republic he shared at the annual meeting. He narrowed that presentation to the heroes of San Jacinto in his article for this issue of the Journal.

As the session’s Commentator, I followed Bill Chriss’s 2015 example by presenting a PowerPoint, including maps of Spanish settlements and empresario grants in Coahuila y Texas, to link the Boatright and Drummond presentations and connect dots from Spain to Mexico to Texas. Diagrams compared the Spanish and modern legal systems in Texas.

Our Society’s Hemphill Channel will host videos of the three TSHA presentations later this year. Planning has already begun for our next presentation at TSHA’s 2019 Annual Meeting, which will take place from February 28 through March 2, 2019 in Corpus Christi. Please join us there.

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New San Felipe de Austin Museum is a State Treasure

By Ken Wise

When Stephen F. Austin needed a headquarters for his new colony, he picked a spot on the Atascosito Road along the banks of the Brazos River. The Mexican Governor named the town for his own patron saint and the new Empresario, calling it San Felipe de Austin. The town quickly grew as new colonists arrived to settle Texas. Between its founding in 1823 and the Texas Revolution in 1836, San Felipe was the center of political and commercial activity for Austin's Colony. Austin's land office, arguably the most important office in Texas at the time, was located in San Felipe. Austin also had a residence in town. There was a hotel, a blacksmith shop, three stores, and two taverns.

In the spring of 1836, the more than 600 residents saw their thriving town burned to the ground to prevent it from being used by Santa Anna's army. Captain Moseley Baker's company of around 40 men were guarding the Brazos River crossing at San Felipe along the river bank opposite the town. As the Mexican army marched towards the area, the town was set ablaze. Soon, it was no more. Captain Baker, in fact, set fire to his own law office. Though San Felipe continued to exist after the revolution, it never returned to its preeminent place among the cities of Texas.



The new San Felipe de Austin Museum contains wall-sized vistas that depict the settlement's appearance after Captain Moseley Baker burned it down to keep its supplies from being used by Santa Ana's Mexican army. Photo by David A. Furlow.



Visitors who attended the grand opening of the new museum took shelter from the sun beneath a big tent. Photo by Ken Wise.

One hundred fifty-two years later, however, on April 27, 2018, the town of San Felipe de Austin came alive again as the Texas Historical Commission hosted the opening of the newest museum in Texas at the San Felipe de Austin State Historic Site. Under a beautiful blue Texas sky, several hundred people gathered to dedicate the museum. John Nau, Chairman of the Texas Historical Commission, presided over a program and ribbon cutting featuring State Comptroller Glenn Hegar and State Senator Lois Kolkhorst. After the ceremony, the guests spent the afternoon touring the museum and expanded state historic site.

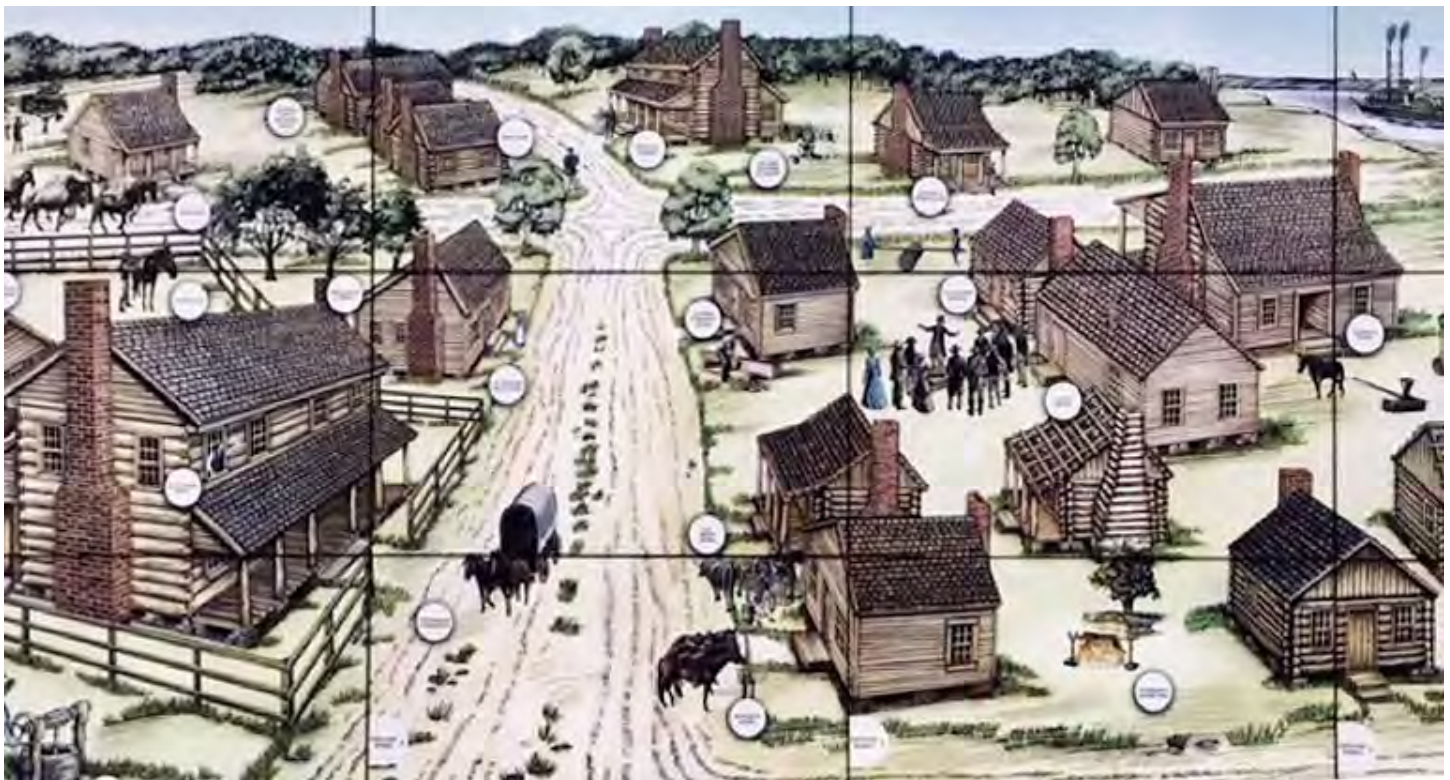
The improvement of the San Felipe de Austin State Historic Site has been a significant project of the Texas Historical Commission since 2008. The THC acquired the eventual museum site in 2011 and began construction in 2016. The finished product is a public-private partnership and a significant contribution to the preservation and interpretation of Texas history. San Felipe de Austin Historic Site Manager Bryan McAuley said he “hopes visitors are drawn in by the near-forgotten stories of the people and events that occurred here over about 13 years during the early days of Texas settlement. These lesser-known chapters of Mexican Texas history at the site have connections to all of the other Texas Revolution and independence sites that Texans and visitors already know and love.”

Standing in front of the museum is a sculpture depicting a terrified family retreating from the approaching Mexican army during the Runaway Scrape. The sculpture reminds visitors of the destruction of the town and the fear the citizens felt.

A statue depicting the Runaway Scrape greets visitors to the new museum.



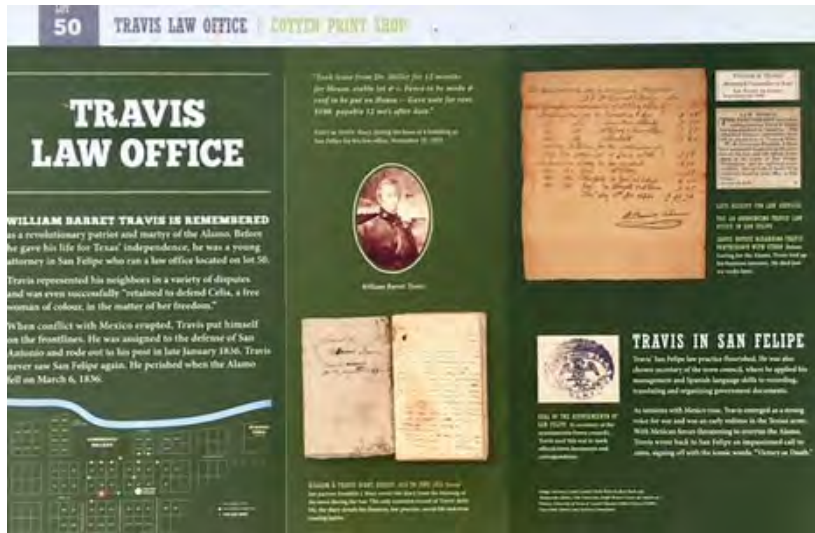
Entering the museum, a visitor is greeted by an oversize map of Austin's Colony integrated with the museum floor, providing not only an interesting work of art, but a helpful glimpse into the scope of the colony and a sense of place for the location of the museum. To the left of the main entrance is a gift shop and to the right is a separate room that will house rotating museum exhibits.



Top: The new museum contains artifacts and information about their importance. Photo by Ken Wise.
 Bottom: A numbered 3-D map depicts early San Felipe. Photo by David A. Furlow.

The main gallery features Stephen F. Austin's desk in which he kept the land files related to his new colony. An 1830s log cabin believed to have been built by a German resident of Austin's Colony has been reconstructed inside the museum gallery. The cabin allows visitors an authentic look at life in San Felipe. The back wall of the gallery is an enormous touch screen providing visitors an opportunity to interact with a map of the town and learn about the various aspects of life in the colony. Many other artifacts and interpretive displays help visitors understand life in pre-revolution Texas.

The museum will serve as the centerpiece for interpreting the San Felipe de Austin site. According to McAuley, “visitors can expect regular themed tours and presentations by visiting scholars or authors. [The museum] will offer occasional living history programming...” The museum also offers packages for personal or professional meetings and events at the site.



scholars or authors. [The museum] will offer occasional living history programming...” The museum also offers packages for personal or professional meetings and events at the site.

McAuley indicated that archeology continues at the site. Archeologists will soon explore the site of the building that housed both a print shop and a law office belonging to William Barret Travis. Another project will include building representations of sites that have been discovered, including the Farmer’s Hotel, which housed the 1835 provisional government. The Commission also intends to reconstruct the first school building and an early print shop. These structures will provide further opportunities for a glimpse into daily life in San Felipe.

The museum is located on FM 1458, two miles north of I-10 between Sealy and Brookshire, approximately 50 miles west of Houston. This site is one of the most important locations in Texas history. Visiting the San Felipe de Austin State Historic Site will transport you back to early Texas and offer a wonderful perspective on life in Austin’s Colony.

The museum displays reconstructed offices as they appeared when San Felipe de Austin was the capital of Stephen F. Austin’s Colony. Top photo by David A. Furlow, bottom photo by Ken Wise.



THE HON. KEN WISE is a Justice of the Texas Court of Appeals for the Fourteenth District in Houston, as well as a trustee of the Texas Supreme Court Historical Society. He is the creator of the WISE ABOUT TEXAS podcast series, which explores the history of Texas over the centuries. <http://wiseabouttexas.com/>

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U.S. Fifth Circuit Chief Judge Carl E. Stewart Will Keynote Hemphill Dinner

The Honorable Carl E. Stewart, Chief Judge of the United States Court of Appeals for the Fifth Circuit, will be the principal speaker at the Texas Supreme Court Historical Society's Twenty-Third Annual John Hemphill Dinner. The dinner, which is the Society's main fundraising event, is scheduled for Friday, September 7, 2018, at the Four Seasons Hotel in Austin.

Chief Judge Stewart began his term as head of the U.S. Fifth Circuit Court of Appeals in October 2012. He has served on the Fifth Circuit since 1994, when he was appointed by President Bill Clinton. He is the first African American to serve as the Fifth Circuit's Chief Judge.



Born and raised in the Shreveport area, Stewart earned his J.D. degree from Loyola University in 1974. Immediately following law school, he joined the Army as a Captain in the Judge Advocate General's Corps, where he served as a defense lawyer for soldiers at Fort Sam Houston in Texas. After leaving the Army, he worked briefly as an associate in a small private law firm before taking a position in the field office of the Louisiana Attorney General.

In 1979, he joined the U.S. Department of Justice as an Assistant U.S. Attorney. During his four years as a federal prosecutor, he successfully pursued corrupt politicians, people trying to defraud the federal government, and loan sharks. He received a letter of commendation from the Attorney General for his work in civil rights cases.

Chief Judge Stewart left the Justice Department in 1983 to go into private practice and to teach at Louisiana State University in Shreveport. In 1984, he won election to a six-year term as a First Judicial District Judge for Caddo Parish, Louisiana. Near the conclusion of the term in 1990, he was elected to Louisiana's Second Circuit Court of Appeal, a position he held until his appointment to the U.S. Fifth Circuit Court in 1994.

Justice Dale Wainwright, 2017-18 Society President, will preside over the evening program at the Hemphill Dinner, which will include a presentation of the Tenth Annual Chief Justice Jack Pope Professionalism Award by the Texas Center for Legal Ethics. The award recognizes a Texas appellate lawyer or judge who demonstrates the highest level of professionalism and integrity.

For ticket information, visit the Society's website at <http://www.texascourthistory.org/hemphill> or email tschs@sbcglobal.net.

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MARK YOUR CALENDAR: The Society Will Commemorate the Great War on November 14

By David A. Furlow

“It is a fearful thing to lead this great peaceful people into war, into the most terrible and disastrous of all wars, civilization itself seeming to hang in the balance....”

— President Woodrow Wilson, Address to a Joint Session of Congress recommending that it declare war against Imperial Germany, April 2, 1917.¹

Nearly one hundred years ago, on November 11, 1918, the guns that had blazed for four and one half years on the Western Front fell silent. To honor the seven Justices of the Texas Supreme Court, two Court of Criminal Appeals Judges, and two Governors of Texas who served in the First World War, and to commemorate the 100th anniversary of the Armistice that ended the war in western Europe, the Texas Supreme Court Historical Society is planning a special event for this fall.

The Commemoration will take place on Wednesday, November 14, 2018, in the historic (1888–1959) Texas Supreme Court Courtroom on the Third Floor of the Capitol. Later, we’ll get together in the Texas Law Center’s Hatton Sumners Conference Room for additional commemorative activities to be announced soon.

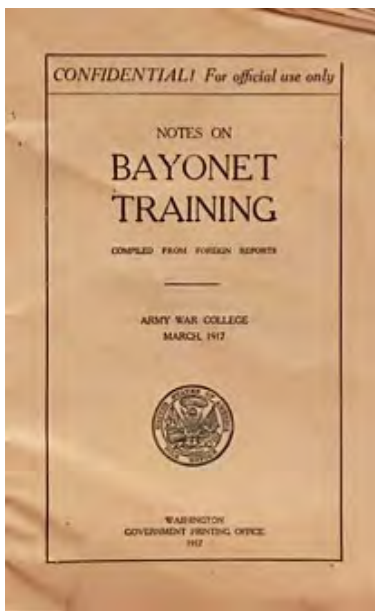
On November 11, 2017, Armistice Day, Judge Mark Davidson enlisted me in his campaign to commemorate Texans who served and sacrificed in the Great War. But no one had plans to commemorate Texas Supreme Court and Court of Criminal Appeals judges or the Texas governors who responded to President Wilson’s call to arms. Judge Davidson told me about his research, including an extended, in-depth visit to America’s only World War I museum in Kansas City.



Left: Judge Mark Davidson, court photo. Center: Great War Commemorative Pin. Right: Justice Dale Wainwright, photo by David A. Furlow.

¹ Albert E. Shaw, ed., *The Messages and Papers of Woodrow Wilson* (New York: Review of Reviews Corporation, 1924), vol. 1, 382–83.

I shared Judge Davidson's interest. I thought of my own grandfather who fought in the Great War, and suffered, until the end of his life, from lungs damaged by mustard gas. I analyzed the origins and expansion of World War I for the University of Texas Government Department's War in the Great Power System Project in 1980. And I had joined the Society in sponsoring the Texas General Land Office's Save Texas History symposium about the Great War and Texas. I set to work gathering resources and drafted a motion to nominate Judge Davidson as Chair of the Society's Great War Commemorative Committee. Justice Wainwright granted that motion on March 26, making Judge Davidson Chair of the Committee.



Left: Call to arms poster, Library of Congress, public domain. Center: Bayonet manual, "View from the Trenches" exhibition, Heritage Society Museum. Right: German Picklehaub Helmet, Rosenberg Library and Museum, Galveston. Photos by David A. Furlow.

Judge Davidson suggested that the Society organize a research project to tell the stories of the judges, justices, and governors who served their country in the war. He provided a list of those who served, a list we subsequently supplemented as follows:

Judges, Justices, and Governors who served in World War I

- (1) **James Allred**
Governor, 1935–1939.
- (2) **Few Brewster**
Commission of Appeals 1941–1945, Associate Justice, Supreme Court, 1945–1957.
- (3) **George Eastland Christian**
Judge, Commission of the Court of Criminal Appeals, 1927–1941.
- (4) **Frank Culver**
Associate Justice, Supreme Court, 1953–1964.
- (5) **Alfred Jennings "A.J." Folley**
Judge, Texas Commission of Appeals, and Justice, Supreme Court, 1943–1956.



Left: Texas troops gather in a trench to attack; "A View from the Trenches" exhibit, Houston Heritage Society, Sam Houston Park, photo by David Furlow. Right: Map: Movements & Objectives of 143rd & 144th Infantry, 36th Infantry Division, Texas National Guard, on October 13, 1918, WWI battle maps of St. Etienne, France. Digitized by the Texas General Land Office for sale through its website. Texas troops, "A View from the Trenches" exhibit.

- (6) **Wilmer St. John Garwood**
Associate Justice, Texas Supreme Court, 1948–1958.
- (7) **Major Meade Felix Griffin**
Associate Justice, Supreme Court of Texas, 1949–1968, and
Judge, Court of Criminal Appeals, 1969.
- (8) **Robert William "Bob" Hamilton**
Associate Justice, Texas Supreme Court, 1959–1970.
- (9) **Beauford Jester**
Governor, 1947–1949.
- (10) **Gordon Simpson**
Associate Justice, Texas Supreme Court, 1945–1949.
- (11) **Charles Stewart Slatton**
Associate Justice, Texas Supreme Court, 1945–1947.

These Texans risked their lives for what President Wilson said was a *necessary* war:

But the right is more precious than peace, and we shall fight for the things which we have always carried nearest our hearts, for democracy, for the right of those who submit to authority to have a voice in their own governments, for the rights and liberties of small nations, for a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world itself at last free.²

² Wilson, Address to Congress, April 2, 1917.



Hearing those words, these brave young men agreed to serve on the seas and on the war-torn battlefields of Europe:

To such a task we can dedicate our lives and our fortunes, everything that we are and everything that we have, with the pride of those who know that the day has come when America is privileged to spend her blood and her might for the principles that gave her birth and happiness and the peace which she has treasured. God helping her, she can do no other.³



Texas State Librarian Mark Smith, who curated the Texas State Library and Archives' World War I Centennial

Commemoration exhibition in 2017, has pledged to make historic letters, newspapers, and photos available to the Society for the program. And Texas Military Forces Museum Director Jeffrey W. Hunt has already assisted with useful ideas about how to research the Great War veterans' military records.

On November 14, we will honor the eleven men listed above for their service. Remembering Lt. Colonel John McCrae's poem "In Flanders' Fields," we shall also honor those other young men who answered their nation's call to arms, but gave their lives for their country.

We are the Dead. Short days ago
We lived, felt dawn, saw sunset glow,
Loved and were loved, and now we lie
In Flanders fields.⁴

Please plan to join us in commemorating the Great War on Wednesday, November 14, 2018.



The Commemoration will take place in the historic (1888–1959) Texas Supreme Court Courtroom on the Third Floor of the Capitol.

³ *Ibid.*

⁴ *In Flanders Fields and Other Poems* (New York: 1919), 3.

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Nominations Welcomed for the 2018 Texas Appellate Hall of Fame

By Jackie Stroh



The Appellate Section of the State Bar of Texas is now accepting nominations for the Texas Appellate Hall of Fame. The Hall of Fame posthumously honors advocates and judges who made a lasting mark on appellate practice in the State of Texas.

Hall of Fame inductees will be honored at a ceremony and reception held by the Appellate Section in conjunction with its annual meeting on Thursday, September 6, 2018, immediately following the conclusion of the State Bar's Advanced Civil Appellate Practice course for that day. Nominations should be submitted in writing to halloffametxt@outlook.com no later than Monday, July 16, 2018.

Please note that an individual's nomination in a prior year will not necessarily carry over to this year. As a result, if you nominated someone previously and would like to ensure his/her consideration for induction this year, you should resubmit the nomination and nomination materials.

Nominations should include the nominator's contact information, the nominee's bio or CV, the nominee's photo if available, and all the reasons for the nomination (including the nominee's unique contributions to the practice of appellate law in Texas). The more comprehensive the nomination materials, the better. All material included with any nomination will be forwarded to the voting trustees for their consideration in deciding whom to induct as part of this year's Hall of Fame class.

Nominations will be considered based upon some or all of the following criteria, among others: written and oral advocacy, professionalism, faithful service to the citizens of the State of Texas, mentorship of newer appellate attorneys, pro bono service, participation in appellate continuing legal education, and other indicia of excellence in the practice of appellate law in the State of Texas. For more information, go to <http://www.tex-app.org/DrawOnePage.aspx?PageID=159> or contact Jackie Stroh at jackie@strohappellate.com.

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Calendar of Events

Society-related events and other events of historical interest

Spring/Summer 2018

The Museum of the Coastal Bend continues the exhibit “Sunken History: Shipwrecks of the Gulf Coast.” The museum displays important collections of French, Spanish, Mexican, and Texas artifacts, as well as artifacts from the French warship *La Belle* and the French cannons that once guarded La Salle’s Fort St. Louis. It is located on the campus of Victoria College at 2200 East Red River, Victoria, Texas, at the corner of Ben Jordan and Red River. For additional information, see <http://www.museumofthecoastalbend.org/exhibits>.

Spring/Summer 2018

The Bob Bullock Texas History Museum’s “La Belle: The Ship That Changed History” exhibition continues in the Museum’s first floor Texas History Gallery. The hull of the sunken *La Belle* is open for viewing. <http://www.thestoryoftexas.com/la-belle/the-exhibit>. The museum is located at 1800 Congress Ave., Austin, Texas 78701.

Throughout 2018

The Bryan Museum’s galleries offer artifacts and records from all periods of Texas and Southwestern history. J.P. Bryan, Jr., a descendant of Moses Austin and a former Texas State Historical Association President, founded this museum at 1315 21st Street, Galveston, Texas 77050, phone (409) 632-7685. Its 70,000 items span 12,000 years. <https://www.thebryanmuseum.org/>. <https://www.thebryanmuseum.org/exhibitions-upcoming>.

Throughout 2018

The Texas Historical Commission’s new Museum and Visitor Center at San Felipe de Austin State Park’s galleries present the story of the capital of Stephen Fuller Austin’s colony in Texas. The Grand Opening of this new museum occurred on April 27, 2018, the first day of a three-day Grand Opening weekend. See the News Item in this issue of the *Journal*. The San Felipe de Austin site is located at 15945 FM 1458, in San Felipe, Texas, about a mile north of I-10. For more information go to www.visitsanfelipedeAustin.com or call 979-885-2181.

May 5, 2018, through
January 27, 2019

Rodeo! The Exhibition, a dynamic and comprehensive exhibition at the **Bob Bullock Texas History Museum**, brings the excitement of rodeos and livestock shows from around the state into the Museum. The museum is located at 1800 Congress Ave., Austin, Texas 78701.

June 5-8, 2018

Archaeology 101 camp for 5th to 8th grade students at Museum of the Coastal Bend. The museum is located on the campus of Victoria College at 2200 East Red River, Victoria, Texas, at the corner of Ben Jordan and Red River. For additional information, see <http://www.museumofthecoastalbend.org/events/2018/06/05/default-calendar/jun.-5---jun.-8-archaeology-101-summer-camp>.

June 21-22, 2018

The State Bar of Texas will conduct its annual meeting at the Marriott Marquis Hotel in Houston, Texas. https://www.texasbar.com/AM/Template.cfm?Section=Annual_Meeting_Home&Template=/CM/HTMLDisplay.cfm&ContentID=30096.

June 30, 2018, through
October 22, 2018

The Bryan Museum presents a special exhibition, "The Life and Times of Charles Goodnight," to honor the Texas cattleman whose exploits and explorations inspired Larry McMurtry's novel *Lonesome Dove*. J.P. Bryan, Jr., a descendant of Moses Austin and a former Texas State Historical Association President, founded this museum at 1315 21st Street, Galveston, Texas 77050, phone (409) 632-7685. Its 70,000 items span 12,000 years. <https://www.thebryanmuseum.org/exhibitions-upcoming>.

June 30, 2018

Alamo Educator Day: "Republic, Statehood, Civil War, & Reconstruction: 1836-1865." As part of its celebration of San Antonio's 300th anniversary, the Alamo will present a series of Alamo Educator Days. 9 a.m. to 4 p.m. | \$20 per person, Lunch & Tour Included | 6 CPE Hours. <http://www.thealamo.org/remember/education/workshops/index.html>.

September 7, 2018

The Society's Annual John Hemphill Dinner will take place at the Four Seasons Hotel in Austin. Justice Dale Wainwright, the Society's 2017-18 president, will preside over the evening program. For ticket information, visit the Society's website at <http://www.texascourthistory.org/hemphill> or email tschs@sbcglobal.net.

September 8, 2018

The Texas Supreme Court Annual BA Breakfast will take place at the Texas Law Center in Austin. More information will be available this summer at <http://www.texascourthistory.org/SCOTXbaBreakfast>.

September 14-15, 2018

The Texas General Land Office's 9th Annual Save Texas History Symposium returns to the Menger Hotel to focus on "San Antonio and the Alamo: Connecting Texas for Three Centuries." TSCHS is one of the sponsors. The Menger is located at [204 Alamo Plaza San Antonio, TX 78205](http://www.tscchs.org/204-Alamo-Plaza-San-Antonio-TX-78205). The symposium is limited to only 200 registrants. Frank de la Teja, Amy Porter, James Crisp, Mark Allan Goldberg, Everett L. Fly, Laura Hernandez-Ehrisman, Gregory Garrett, and Douglass McDonald will speak. Alamo Battlefield Tours and Pioneer Surveying of the Alamo will also be offered.

November 8-11, 2018

The American Society for Legal History will be having its 48th annual meeting in Houston, Texas, at the Hilton-Americas, at a special discounted hotel rate. <http://aslh.net/upcoming-conference/>.

November 14, 2018

10:15 a.m. The Texas Supreme Court Historical Society's Board of Trustees' Fall 2018 meeting begins in the Hatton Sumners Room at the Texas Law Center, 1414 Colorado Street Austin, TX 78701.

November 14, 2018

1:30 p.m. The Texas Supreme Court Historical Society's Great War Commemorative Committee, chaired by Judge Mark Davidson, celebrates the service and sacrifice of seven Texas Supreme Court Justices, two Court of Criminal Appeals Judges, and two Governors of Texas.

The commemoration, which marks the 100th anniversary of the November 11, 1918 Armistice that ended World War I, will take place in the Texas Supreme Courtroom on the third floor of the Capitol, 1100 Congress Ave., Austin, Texas 78705. See http://www.tspb.state.tx.us/plan/brochures/doc/in_print/capitol_brochure/capitol_brochure.pdf.

A reception will follow afterwards, where those who attend the Great War program can see historic newspapers, records, and other artifacts of the Great War, at the Hatton W. Sumners Conference Room, Texas Law Center, 1414 Colorado St., Austin, Texas 78701.

November 15, 2018

6:30 p.m. Members of the Texas Supreme Court Historical Society are invited to attend David Furlow and Lisa Pennington's historical presentation, "Did Women's Work (Dairying) Save Plymouth Colony?" at the Houston Philosophical Society's November 2018 Meeting at the Cohen House Faculty Club, Rice University Campus, 6100 Main Street, #2, Houston, TX 77005. The Houston Philosophical Society charges a set price for dinner and parking. Cocktails will begin at 6:30 p.m., dinner at 7:00 p.m., while the presentation will start at 8:00 p.m. Anyone interested in attending should contact David Furlow at dafurlow@gmail.com.



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Phone: 512-481-1840
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JOURNAL STAFF

General Editor
Lynne Liberato
lynne.liberato@haynesboone.com

Executive Editor
David A. Furlow
dafurlow@gmail.com

Deputy Executive Editor
Dylan O. Drummond
ddrummond@grayreed.com

Managing Editor
Marilyn P. Duncan
mpduncan1201@gmail.com

Production Manager & Graphic Designer
David C. Kroll
dckroll@gmail.com

DISCLAIMER

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

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

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2017-18 Membership Upgrades

The following Society members have moved to a higher dues category since June 1, 2017, the beginning of the membership year.

TRUSTEE

Lawrence M. Doss
Hon. Jennifer Walker Elrod
D. Todd Smith
Mark Trachtenberg

CONTRIBUTING

Melinda Brents

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2017-18 New Member List

The Society has added 14 new members since June 1, 2017,
the beginning of the membership year.

PATRON

Michael Atchley

CONTRIBUTING

Neal Davis III

JT Morris

Hyattye Simmons

REGULAR

Kelly Canavan

Adam H. Charnes

Larry E. Cotten

Lincoln Floyd

Jarrold Foerster

Sara Harris

Karlene Poll

Jake Ritherford

Richard Schechter

Rachel Stinson

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Membership Benefits & Application

Hemphill Fellow \$5,000

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

Greenhill Fellow \$2,500

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

Trustee Membership \$1,000

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

Patron Membership \$500

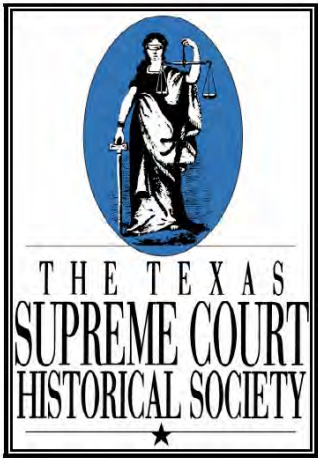
- Historic Court-related Photograph
- Discount on Society Books and Publications
- Complimentary Copy of *The Laws of Slavery in Texas* (paperback)
- Personalized Certificate of Society Membership
- All Benefits of Regular Membership

Contributing Membership \$100

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

Regular Membership \$50

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



Membership Application

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

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

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