Winner of the American Association for State and Local History's Excellence in History Award

Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Summer 2024 Vol. 13, No. 4 Editor Emerita Lynne Liberato Editor-in-Chief Hon. John G. Browning

Columns

Immediate Past President's Message

By Richard B. Phillips, Jr.

Richard B. Phillips, Jr.

It has been my honor to try to build on the amazing work that the Society has done and make sure that we are in a strong position going forward. Read more...

Message from the President

By Lisa Bowlin Hobbs

Lisa Bowlin Hobbs

What an honor it is that my first message as President of the Society is a tribute to my mentor, Chief Justice Nathan Hecht. Read more...

Executive Director's Column

By Sharon Sandle

Sharon Sandle

Texas has had twenty-seven Chief Justices, but Chief Justice Nathan Hecht has served longer than the rest. Read more...

Fellows Column

By David J. Beck

David J. Beck

The Houston Bar Association will again use our Taming Texas materials to teach students during the 2024-25 school year. Read more...

Editor-in-Chief's Column

By Hon. John G. Browning

Hon. John G. Browning

In this issue, the Journal attempts to accomplish a monumental task: to do justice to the illustrious career of Chief Justice Nathan L. Hecht. Read more...

Leads

"Unwhipped of Justice"- The Conflict Between John Bankhead Magruder and the Texas Supreme Court · Part 2 of 2 ·

By Randal B. Gilbert

John Bankhead Magruder

The author concludes his exploration of the legal implications of Magruder's imprisonment of those accused of dissent and the resulting conflict. Read more...

Features and Profiles

The Opinions of Nathan Hecht

By David Coale

This article reviews some of the most notable opinions from Justice Hecht's storied service on the Texas Supreme Court. Read more...

Justice for All: The Legacy of Chief Justice Nathan Hecht

By Chad Baruch

Chief Justice Nathan Hecht

"One of a kind." "Stalwart champion." "The GOAT."—a few of the phrases used by access-to-justice leaders to describe the contributions of Chief Justice Hecht to legal services for the poor. Read more...

HECHT, YES! "Herewith, a Tribute..."

By Judge Don Willett

If Texas had a Mount Rushmore of *legal* giants, it would include one name by acclamation: Nathan Lincoln Hecht. Read more...

A Legacy Not Just of Law, But of Lawyers

By Dylan O. Drummond

When he retires, Chief Justice Nathan Hecht will have served longer on the Supreme Court of Texas than any other Justice—just one day shy of ***thirty-six years***. Read more...

News & Announcements

Society Trustees and Members Appointed to New 15th Court of Appeals


Gov. Greg Abbott

In June, Governor Abbott appointed the first three justices to the newly-created 15th Court of Appeals—seasoned judges who just happen to be trustees or members of the Texas Supreme Court Historical Society. Read more...

Into the Treasure-House: The Board's Spring 2024 Meeting

Article and photos by David A. Furlow


Judge Mark Davidson shares history at the spring meeting

To historians, a treasure-house contains records that bring the past to life. The site of our spring meeting, the Harris County District Clerk Office—Records Center, is a treasure-house. Read more...

And the 2025 Larry McNeill Research Fellowship in Texas Legal History Goes to . . . ?

Article and photo by David A. Furlow


Larry McNeill

Applications are now being accepted for the Texas State Historical Association's 2025 Larry McNeill Research Fellowship in Texas Legal History. Read more...

Journal Article Leads to New State Historical Marker


John N. Johnson

A newly approved Texas Historical Marker will soon be dedicated in Bryan, Texas honoring John N. Johnson, the first Black lawyer in Austin and Texas' first civil rights lawyer. Read more...

@SCOTXHistSocy

FB: Texas Supreme Court Historical Society

Membership & More

Richard B. Phillips, Jr.

Immediate Past President's Message

It is difficult to believe that my year as President of the Society has ended. (Although that might be because it won't really be over until after the Hemphill Dinner.) Speaking of which, if you have not yet, please make plans to join us at the Hemphill Dinner as we honor the service of Chief Justice Nathan Hecht. It promises to be an unforgettable evening. Information about tickets is on the Society's website.

The year has gone by too quickly. It has been my honor to spend this year trying to build on the amazing work that the Society has done and making sure that we are in a strong position to continue our mission going forward. But I would not have been able to do anything if it were not for the incredible Society staff, who do the day-to-day work necessary to keep the Society going. We are so lucky to have Sharon Sandle and Mary Sue Miller working for the Society. Their dedication to the Society and its mission is unequaled. When you see them at the Hemphill Dinner, please take a moment to thank them for all they do.

Nor can I write this last column without recognizing the tireless efforts of the Hon. John Browning as editor of the Journal. John thoughtfully plans and prepares each issue and then has the thankless job of following up with the authors (especially me) to remind us of deadlines to get each issue out. The Society is justifiably proud of this consistently high-quality Journal, and we have John Browning to thank for that.

I am proud of where we are as a Society. Our financial condition is strong and will allow us to continue our mission and to plan for new avenues of work. Over the last few years, we have made a few adjustments to bylaws and policies to ensure our financial hygiene. We have strengthened our committees and we are looking at new opportunities to preserve and present the history of Texas courts. The Fellows continue to do amazing work, particularly with Taming Texas and our education initiative. They are continuing to work to expand that program to additional school districts. And, of course, none of that would be possible without the continuing support of our members. Thank you for your continued support (and please feel free to invite others to join you in supporting the Society).

I am now thrilled to hand the Presidency to Lisa Hobbs, who has a long history of service to the Texas Supreme Court, from law clerk, to staff attorney, to the Court's first general counsel.

The Society is in excellent hands, and I look forward to working with Lisa and supporting her work as President.

In the meantime, I'll still be around with the best title in any organization: immediate past president. I am excited to stay involved with the Society's work this year and then into the future. The Society's mission is perhaps more important than ever as we work preserve the history of Texas courts and to ensure that future generations will know that history and understand the importance of the rule of law in our county and our state.

So, please enjoy this issue. And, as always, if you have thoughts about how the Society can perform its mission or if you'd like to be more involved, please feel free to reach out to me at: rich.phillips@hklaw.com.

Return to Journal Index

Lisa Bowlin Hobbs

Message from the *President*

What an honor it is that my first message as President of the Texas Supreme Court Historical Society is a tribute to my mentor, Chief Justice Nathan Hecht. I first met then Justice Hecht in 1998 when he selected me to be an intern in his chambers. After clerking for the late (great) Justice James A. Baker, Hecht later hired me to be the Court's fourth Rules Attorney. (This job is absolutely the best legal position in the State, trust me.) Later, I was promoted to be the Court's first ever General Counsel, working for all nine justices.

All that to say: the first decade of my legal career was mostly at the Texas Supreme Court and extremely Hecht-centric. So, I am thrilled to add some personal notes to this issue that honors the historic legacy of Chief Justice Nathan Hecht.

In this issue, Chad Baruch gives us a clear picture of Justice Hecht's passionate and collaborative support of access to justice in "Justice for All: The Legacy of Chief Justice Nathan Hecht." David Coale's feature article reviews some of Justice Hecht's most notable opinions and identifies key themes that recur in his work. We also feature personal reminiscences of the Justice's colleagues by Judge Don Willett. All these articles present a vivid, fascinating picture of a remarkable man.

I share in these perspectives of my appellate colleagues. But I also want to add a personal element to the issue, based on my many years working under and with the Chief. Specifically, I want to emphasize the compassion of the man who is leaving the helm of the judiciary after thirty-five years.

In addition to being a mentor – wow, too many examples to share -- the Chief was a friend. While working at the Court, I had my first daughter. Soon after her birth, she needed care in the NICU. I was beyond stressed. I spent every waking hour right by her side. Visitors were limited. One evening a nurse came to me and said there was a man outside whose name was not on my guest list. His name was Nathan. Exhausted, it took me a second. Justice Hecht came to the hospital to check on me and Lily. I will never forget this. (Lily is fine. She's starting in the Honors Program at University of Oregon this fall. Go Ducks!)

I could go on and on about the Chief's compassion and loyalty to his staff. It wasn't just me. He held all his current and former staff close to his heart. Many, many times – at the Court and after -- he asked about a staff member he heard to be struggling and inquired whether it would be appropriate for him to check-in with the staff member and how best to do so. Everyone he has worked with is family to him. He truly loved and appreciated the many lawyers who supported his legacy. It is why so many of us – regardless of where we land on the political spectrum – will eagerly express our love and devotion to Chief Justice Hecht.

I'd like to end with one of Justice Hecht's writings that gets no mention but shows the heart of the man I tried to show in my personal musings. Please read *In re L.M.I.*, 119 S.W.3d 707 (Tex. 2003). It is a splintered opinion concerning termination of parental rights. And while I am glossing over the other opinions (from justices I respect greatly), the gist was whether a non-English speaking father understood he was relinquishing his rights to his child. Then Justice Hecht ends his dissenting opinion as follows:

> If Ricardo could read the Court's opinion, he would no doubt be surprised (and dismayed) to learn that he is not entitled to a decision on the only claim he has ever made because his lawyer in the trial court phrased it differently than his lawyer on appeal. The one benefit of Ricardo's inability to understand English is that he will not be able to read of the injustice that has been done to him. He should at least have a paraphrase of the Court's opinion, however, just as his affidavit was paraphrased for him. I offer the following:
>
> *¡Peligro!*
> *Si usted no puede hablar Inglés,*
> *usted puede perder a sus niños.*

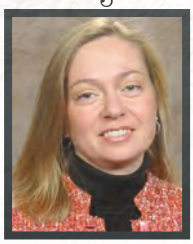
Translation: *Danger! If you can't speak English, you can lose your children*.

Chief Justice Hecht will retire before the end of this year. We will hear many tributes over the next few months, rightly recognizing him as a national leader, an unparalleled intellect as a justice, an endeared colleague, mentor and friend. I am so proud that I have the platform to say to you, Nathan, thank you for investing in me and supporting me throughout my career.

PS: Um, hi, you've ruled against me several times. I guess your love and loyalty is just in my personal life, rightly so.

Return to Journal Index

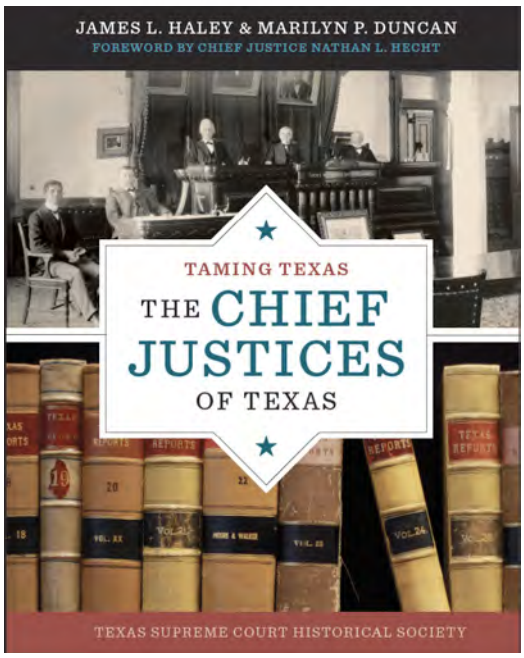
Executive Director's Page



Sharon Sandle

What Does it Mean *to be the Chief?*

One of the primary projects undertaken by the Fellows of the Texas Supreme Court Historical Society is the *Taming Texas* series of educational materials for Texas middle school students. This series and the corresponding in-person component that places Texas lawyers and judges in the classroom illustrate the importance to the Society and to the Fellows of instilling a deep understanding and appreciation of the judicial system in Texas's young generations. The second volume of the *Taming Texas* series is entitled *The Chief Justices*, and it begins with the question "What is a Chief Justice?" In answer to this basic but important question, the book makes the point that "the chief of any group is the person with the most authority—the leader."



But being elected Chief Justice is not what makes a person a leader. The skills, talents, and character that one needs to successfully lead are developed from a variety of experiences. Several of the early Texas Supreme Court Justices were notable as volunteers in Texas's fight for independence. Texas's first Chief Justice, James Collinsworth, was an early volunteer in the conflict and was praised for his valor during the Battle of San Jacinto. His military reputation, and his reputation as a Senator in the Republic Congress, led to his election by the Congress as Texas's first Chief Justice. But Collinsworth's bravery in the battlefield and skill as a politician did not enable him to overcome the systemic barriers that stood in the way of the Supreme Court functioning efficiently, and in his year and a half of service as Chief Justice, Collinsworth was never able to organize the Supreme Court to convene. Chief Justice Collinsworth never heard a case or issued an opinion. After that less than auspicious beginning, Texas's second Chief Justice, John Birdsall, was never confirmed by the Congress. The third Chief Justice, Thomas Jefferson Rusk, was at last able to preside over a sitting Texas Supreme Court. The term lasted two years, and the Court heard 49 cases and issued 18 opinions. After the conclusion of the term, Chief Justice Rusk resigned to re-enter private practice.

Texas's fourth Chief Justice, John Hemphill, served for 18 years over a Court that sought to bring a functioning legal system to a society being built on the margins. Chief Justice Hemphill's Texas straddled civilization and wilderness, Spanish and English law, independence and statehood. The Court was often presented with cases that illustrated the everyday struggles of people living in what was still the frontier—problems like a dispute over a wayward horse that wandered into a neighbor's land—and the Court often decided these cases based on a record that provided little in the way of hard evidence. By the end of Chief Justice Hemphill's service, Texas had a body of law that served as legal precedent, and it had transitioned from a republic to statehood. Chief Justice Hemphill's contribution to Texas is honored each year with the Society's John Hemphill Dinner.

Texas has had twenty-seven Chief Justices, but Chief Justice Nathan Hecht has served longer on the Texas Supreme Court than the rest. During his more than three decades of service on the Court, Justice Hecht has seen many transitional moments. He has seen the Court transition into the digital age. He has been on the front lines of the struggle to ensure all Texans have equal access to justice. And he has led the Court as it decided cases involving highly charged issues that attracted national attention. During this time, Chief Justice Hecht has demonstrated his commitment to fostering justice in Texas in numerous ways. In this issue, we include several articles that illustrate the different facets of Chief Justice Hecht's service. But one more that deserves notice is Chief Justice Hecht's support for the Society's educational initiatives. He has graciously written the foreward for each volume of the *Taming Texas* series. In his Foreward to *The Chief Justices*, Chief Justice Hecht elaborates on his view of what it means to be the Chief Justice:

> Being chief of anything often means you're in charge, you have the right to make the decisions. But a Chief Justice is both leader and servant. . . . The Court functions best when one person directs its various functions. But the Chief Justice has only one vote, the same as every other Justice. Every case and administrative policy is decided by a majority vote. A Chief who ends up in the minority must serve the will of the majority. That's part of the job.
>
> A presiding officer who shares authority with others in a group is referred to as the "first among equals." All the members have an equal say, but the presiding officer is their leader. How does a Chief Justice stay "first" and not be in complete control? You reason with the other Justices and try to persuade them. You offer suggestions, you don't order them around. You listen to them, hear them out, show that you respect different views. You assume they are all sincere, and that when you disagree, it's in good faith. You earn the other Justices' respect, help the Court work better, and strengthen its reputation. You prove to the public that the Court is committed to equal justice for all. And most importantly, you make sure everyone shares the credit. You're not boss of the Court, but you're its leader.

This year, the Society will celebrate Chief Justice Hecht's more than three decades of service to the Texas Supreme Court at our annual John Hemphill Dinner. Chief Justice Hecht will be joined by former Chief Justices Thomas R. Phillips and Wallace B. Jefferson for the keynote program. I hope that you will join us in Austin on the evening of September 6th for what promises to be a historic celebration.

Return to Journal Index

Fellows Column

By David J. Beck, Chair of the Fellows

Photo by Alexander's Fine Portrait Design-Houston

The Houston Bar Association (HBA) will again use our Taming Texas materials to teach students during the 2024-25 school year. We appreciate the HBA and its President, David Harrell, partnering with us on Taming Texas again this year. It takes over a hundred volunteers to reach the thousands of students we teach each year, and we could not implement this vast program without the HBA's support.

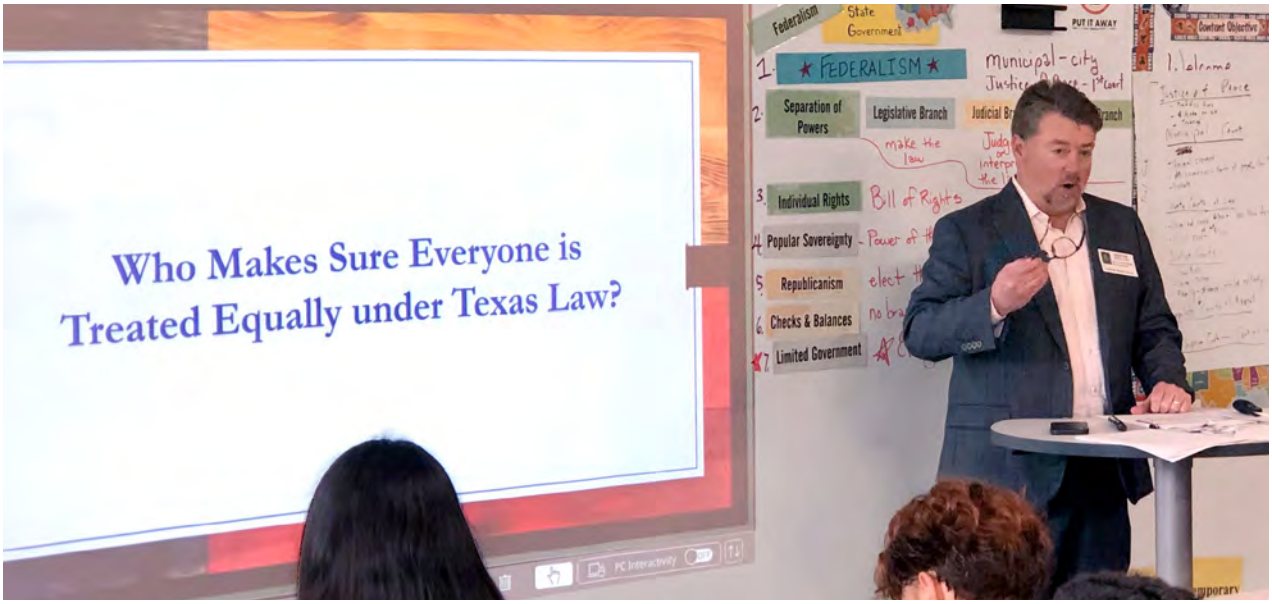
In the past nine years, Taming Texas has reached over 24,000 Houston-area students. HBA President Harrell has appointed Richard Whiteley and Judge LaShawn Williams as the HBA program co-chairs to recruit volunteer attorneys and judges to teach the seventh-grade students in the upcoming school year. "The Taming Texas program is a great way for lawyers to serve the community by teaching seventh graders about the rule of law in Texas as well as the Texas court system, which are subjects that are not part of their normal curriculum," said Whiteley. "An additional benefit of the program is that it exposes the students to successful role models that demonstrate that students can become successful lawyers by working hard and making good grades in school. My favorite part of the lessons I teach are answering the questions the students almost always have about how I became a lawyer." If you would like to participate in this important program, please contact the HBA or one of the HBA co-chairs of the program.

We are also pleased that the Austin bar joined us in implementing Taming Texas in Austin-area schools in the 2023-24 school year. Justice Brett Busby coordinated the Austin program, which taught Taming Texas at Covington Middle School this year and plans to expand to other schools in 2024-25. We also are working on an expansion in Dallas schools.

Our fourth and newest book, entitled *Women in the Law*, was used in the classrooms for the first time during the 2023-24 school year. This new book by Jim Haley and Marilyn Duncan features stories about some of the important women in Texas legal history. Chief Justice Hecht has written the foreword for this book, and the book's back cover features comments on the book by three of our Society Fellows, Justice Jane Bland, Justice Harriet O'Neill (ret.), and Lynne Liberato. We appreciate the support for this important project given by Chief Justice Hecht and the Court.

The Fellows are a critical part of the annual fundraising by the Society and allow the Society to undertake new projects to educate the bar and the public on the third branch of government and the history of our Supreme Court, such as our Taming Texas judicial civics program. If you would like more information or want to join the Fellows, please contact the Society office or me.

Photos of TAMING TEXAS in 2023-24



Richard Whiteley

Karen Janes, teacher at Landrum Middle School

Austin volunteers with Justice Brett Busby

Stacy Williams and Vicky Fealy

FELLOWS OF THE SOCIETY

Hemphill Fellows
($5,000 or more annually)

David J. Beck*
David E. Chamberlain
Joseph D. Jamail, Jr.* (deceased)
Thomas S. Leatherbury
Richard Warren Mithoff*

Greenhill Fellows
($2,500 or more annually)

Stacy and Douglas W. Alexander
Marianne M. Auld
Robert A. Black
Hon. Jane Bland and Doug Bland
E. Leon Carter
David A. Furlow
Marcy and Sam Greer
William Fred Hagans
Lauren and Warren Harris*
Thomas F.A. Hetherington
Jennifer and Richard Hogan, Jr.
Dee J. Kelly, Jr.*
Hon. David E. Keltner*
Lynne Liberato*
Ben L. Mesches
Jeffrey L. Oldham
Hon. Harriet O'Neill and Kerry N. Cammack
Connie H. Pfeiffer
Hon. Jack Pope* (deceased)
Shannon H. Ratliff*
Harry M. Reasoner
Robert M. Roach, Jr.*
Leslie Robnett
Professor L. Wayne Scott* (deceased)
Macey Reasoner Stokes
Cynthia K. Timms
Hon. Dale Wainwright
Charles R. Watson, Jr.
R. Paul Yetter*

*Charter Fellow

Return to Journal Index

Editor-in-Chief's Column

Hon. John G. Browning

To Honor a *Justice*

In this issue, the Journal attempts to accomplish a monumental task: to do justice to the illustrious career of Chief Justice Nathan L. Hecht. He is the 27th Chief Justice of the Supreme Court of Texas, and the longest-tenured Texas judge in active service. Chief Justice Hecht has served on the Court since 1988, and as its Chief Justice since 2013. We are proud to include articles by David Coale on some of the Chief's most notable opinions, by Chad Baruch on the Chief's numerous extrajudicial accomplishments (including his tireless advocacy for equal access to justice), and by 5th Circuit Judge (and former Texas Supreme Court Justice) Don Willett on his personal remembrances of working with the Chief. However, this issue is doomed to failure in its mission because it would take volumes to adequately recount the legacy of Chief Justice Hecht's historic tenure on the Supreme Court.

So, I'm not going to pretend that we can adequately honor Chief Justice Hecht's historic tenure in these meager pages. Instead, I'm going to share what having Chief Justice Hecht on the Court has meant to me personally. I'm privileged to now consider him a friend, but when I started my legal career in Dallas in 1989, then-Justice Hecht was already serving on the Court. I was vaguely aware of his service as trial judge of the 95th Judicial District Court in Dallas County. And as a young appellate lawyer, I'd regularly see his portrait in the Fifth Court of Appeals hallway, paying tribute to his service on that court (never dreaming that one day my own judicial portrait would grace that same hallway). For the most part, however, I only got to know the Chief the way most lawyers did—reading and citing his opinions in the cases I argued.

I soon grew to see other sides of the multifaceted Nathan Hecht. I witnessed his fierce loyalty to and unwavering support of his close friend (and White House Counsel) Harriet Miers, when she was unfairly pilloried by the press and others in the wake of her ill-fated nomination to the U.S. Supreme Court. I learned of his deep and abiding faith, as someone who frequently returned to Dallas to play the organ at his longtime church. Chief Justice Hecht's thoughtful, intellectually curious nature is wide-ranging, as his membership in the Texas Philosophical Society and his 2021 election as a member of the American Academy of Arts and Sciences attest.

That Academy—founded in 1780 by John Adams and others to "advance the interest, honor, dignity, and happiness of a free, independent and virtuous people"—is merely the latest to acknowledge both Chief Justice Hecht's intellectual gifts and his commitment to using them to benefit society. Chief Justice Hecht is an elected member of the prestigious American Law Institute, and he is a contributing author to a book with Bryan Garner on legal writing (one of the few state court judges to do so). However, making life easier for his fellow lawyers and judges pales by comparison to Chief Justice Hecht's unflagging work on behalf of those who too often lack a voice in our legal system. Texas legal aid organizations are only able to help about 10 percent of the low-income people in our state who need lawyers. For years, Chief Justice Hecht has been a stalwart in efforts to level this uneven playing field and improve access to justice.

On August 15, 2024, Chief Justice Hecht turned seventy-five years old. Unfortunately, due to mandatory retirement age provisions in Texas law, we are losing this lion of the appellate bench. His voice and his leadership on our state's highest court will be deeply missed. But the rich legacy he built continues. Chief Justice Hecht, you have our heartfelt thanks for your service—on and off the Court.

Return to Journal Index

"Unwhipped of Justice"

The Conflict Between John Bankhead Magruder and the Texas Supreme Court

• Part 2 of 2 •

By Randal B. Gilbert

This is the conclusion of Gilbert's in-depth exploration of the legal implications of Magruder's imprisonment of those accused of dissent and the resulting conflict. Part 1 of this article can be found in the Spring 2024 issue of the Texas Supreme Court Historical Society Journal.

In the fall of 1863, General John Bankhead Magruder, commander of the Confederate Department of Texas was beset with myriad difficulties managing the defense of the westernmost Confederate state. A chronic lack of manpower threatened invasions of the Texas coast, and the management of the cotton trade created almost insoluble problems. Additionally, he had been confronted with perceived sedition and treason in various parts of the state. His efforts to suppress dissent in the eastern German areas of Texas would lead to a true constitutional crisis in a dramatic conflict between the military and the civilian government. The complex legal issues centered on the detention of civilians by the military, the suspension of the writ of habeas corpus, and the defining of what constituted treason.

Gen. John Bankhead Magruder

Who were these dissidents and alleged traitors that Magruder was so intent on holding under military arrest? Most notable was Dr. Richard R. Peebles. Born in Ohio in 1810, he received a medical degree from the Ohio Medical College, and moved to Texas in 1835, settling at Washington on the Brazos. He enlisted in the Texas Army and remained at Harrisburg tending the sick during the battle of San Jacinto. He moved to Austin County after the revolution, and in 1843 married Mary Ann Calvit Groce, the widow of Jared E. Groce, Jr. He formed a large cotton brokerage company and was heavily involved in the development of the Houston and Texas Central Railroad and the town of Hempstead. A slave owner, he was very wealthy by the standards of the day. The 1860 census listed him as a planter, with real estate valued at $200,000 and personal property at $50,000. With the assets of his wife, they were one of the richest couples in the state.[1]

David G. Baldwin, born in New Jersey in 1818, was a Houston Attorney. He had $3,000 worth of real estate, and $5,500 in personalty. Ernst Seeliger was sixty-three, a native of Prussia

[1] HBT 1860 Census

and a grocer in Industry, Texas. At the time of his arrest, he had been found with an address to the Germans of the area, encouraging disloyalty, and also with a loyalty oath to be taken by both blacks and Germans. Seeliger was a known Unionist and had participated in the anti-draft meetings in Fayette County. In December of 1862 he had been renting a store building in Industry from Captain Robert Voight, a German Texan in the CS Army. Voight wrote to his wife requesting that she evict Seeliger because of his association with "that Union Party."[2]


Reinhard Hillebrand

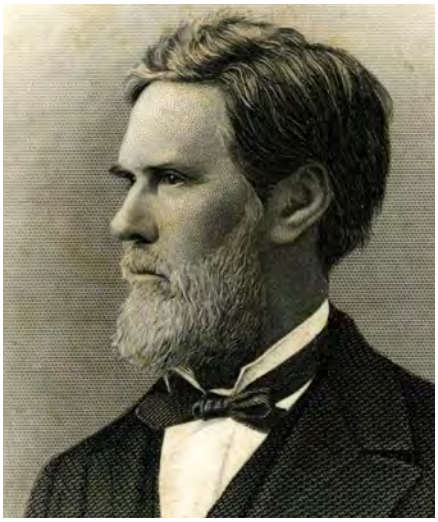
O. F. Zinke, thirty-eight, was a printer in Houston. Born in Prussia, he had no estate listed in the census and apparently lived with his mother.[3] Reinhard Hillebrand, fifty-three, emigrated from Prussia about 1850 and by 1860 was living in Ruttersville in Fayette County. He was married with seven children and had $4,000 in real estate and $1,830 in personalty. Both Hillebrand and Seeliger had been associated with anti-draft activities in early 1863.


CS Senator Robert Johnson

Magruder's high handedness was not unnoticed and was causing some comment. In a letter to CS Senator Robert Johnson of Arkansas on January 15, 1864, Kirby Smith wrote of Magruder:


General Kirby Smith

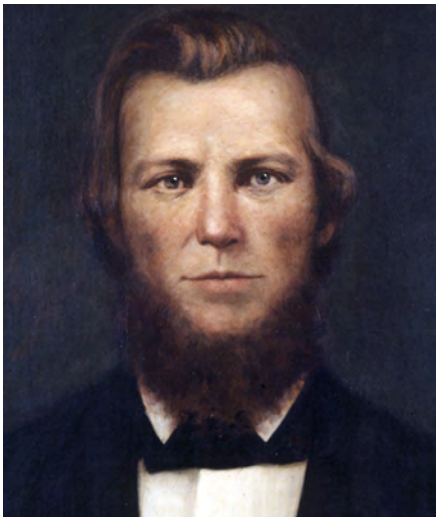
"Magruder has ability and great energy; he acts by impulse, commits follies, and has an utter disregard for law; he has no faculty for drawing around him good men, and his selection of agents is almost always unfortunate; he has no administrative abilities, though he is active and can do a large amount of work; he would be a better commander of a corps, though no reliance could be placed upon his obedience to an order unless it chimed in with his own plans and fancies."


William P. Ballinger

Texas jurist William P. Ballinger held a similar opinion, as he noted in a diary entry on February 6, 1864 concerning the

[2] Letter of Capt. Robert Voigt, CSA, to his wife Anna (originals in Barker Center, Austin), which we are preparing for publication: Grenada, 18 December 1862; Opinion by Justice James H. Bell in Ex Parte Richard Peebles, Et Al, *Austin State Gazette Supplement*, April 27, 1864.

[3] 1860 Manuscript Census Harris, Fayette counties.



Gov. Pendleton Murrah

John Hancock

dispute between Magruder and Governor Murrah over state troops: "I think myself that Gen. Magruder is very deficient as an administrative officer, and that his abuses justify & require the firmest ground & the strongest action of the gov'r as the state executive to protect the rights of the people."[4]

The prisoners languished in San Antonio, but the wheels of justice were beginning to turn. On March 7, 1864, Mary Ann Peebles, the wife of Richard Peebles, filed an application for a writ of habeas corpus with the Texas Supreme Court. Representing her was John Hancock of Austin. An avowed Unionist, Hancock was expelled from the Texas Legislature in 1861 for refusing to take the oath of allegiance to the Confederate States. Paradoxically, Hancock was a wealthy member of the planter class, as he owned twenty-one slaves in 1860. An able lawyer and no stranger to the Texas Supreme Court, in the fall of 1862, he and fellow Unionist and jurist George Paschal had unsuccessfully challenged the constitutionality of the Confederate Conscription Act. The vehicle that they had used to get that case before the Supreme Court was also an application for habeas corpus filed on behalf of Frank H. Coupland, a resident of Austin who had been conscripted into the 17th Texas Infantry.[5]

George Paschal

Thomas E. Sneed

The same day the application was filed, the Court issued the writ, directing that the prisoners should be brought before the Court on March 14. The named respondent was Major A.G. Dickinson, commanding the post at San Antonio but the writ was served upon Lt. Thomas E. Sneed, 33rd Texas Cavalry, and acting Commander of the Post due to the absence of Dickinson. Sneed filed an answer to the writ, alleging that he was acting under orders of Maj. General John Bankhead Magruder, Commander

[4] Official Records, War of the Rebellion, Union and Confederate Armies, Washington, Government Printing Office, 1, XXVI, Pt 2, 9/713 (I,IX, 713)[given command]; 19/ 855 (I,XIII, 855)[Holmes assigned]; ar62_870 (1,XXXIV, Pt2, 870) [Smith quote] ; XV,826 [ordered to Texas]; second quote William Pitt Ballinger Diary November 18, 1862- October 20, 1864, Typescript, Center for American History, University of Texas at Austin, 144.

[5] Charles L. Charles, *Synopsis of the Decisions of the Supreme Court of the State of Texas* (Austin, Tx: Brown and Foster, 1865) 5-7.

of the Military District of Texas. Because Sneed asserted that he was acting under the authority of General Magruder, the Court determined that Magruder was the real respondent and issued notice to him "to show cause, if he could do so, why the prisoners should not be discharged from custody." [6]

On March 14, the prisoners were brought to Austin and delivered to the Supreme Court by Captain Ruiz, Provost Marshal of San Antonio. Associate Justice James H. Bell gave receipt to Sneed for the prisoners and further advised him that the prisoners had been placed in the custody of the sheriff of Travis County. The Justice assured Sneed that if the relief requested in the writ were not granted, the prisoners would be returned to the military authorities in Austin. The Travis County Jail was located at the southwest corner of Fourth and Guadalupe Streets, behind the Travis County Courthouse, seven blocks south of the Capitol building.

As Magruder had not been formally served with a copy of the writ, the Court continued the case to Monday the 21st to afford him proper notice. The court took the additional step of appointing attorneys Charles L Robards and Spencer Ford to represent Magruder. Ford was an attorney from Lockhart and had been a delegate to the Secession Convention, where he had voted for secession. Robards was from Austin, and also served as the reporter for the Supreme Court in 1864 and 1865. [7]

During this same time period, due to the fact that the delivery time of written communications between Houston and Austin was governed by the speed of a fast horse, the seeds of approaching conflict were sown. On March 14, Magruder had issued Special Order Number 74, directed to Sneed, as follows:

> "Lieut. Thomas E. Sneed, Thirty-third Texas Cavalry, commanding Post San Antonio, will take necessary steps at once to securely guard the political prisoners, Peebles, Baldwin, Zinke, Hillebrand, and Zeeliger, until returned by the supreme court at Austin, Tex., against an attack or forcible seizure of them by an irrepressible mob. He will be held personally responsible for the safety of them, and to enable him to fully execute this order he will call upon Colonel Ford, or any commanding officer, for the necessary guard.
>
> *The commanding officer at Austin will take necessary steps for the execution of this order to the letter, as they must be protected at all hazards*."

It was apparent that Magruder wanted the prisoners guarded by the military, even though they were technically in custody of the Texas Supreme Court. Most importantly, it appears that on this date he recognized that the prisoners had been turned over to the Supreme Court.[8]

Ruiz had returned to San Antonio by the 18th, as Sneed forwarded the Receipt and note from Bell to Magruder on that date. Sneed's report gave no indication that he had seen Special

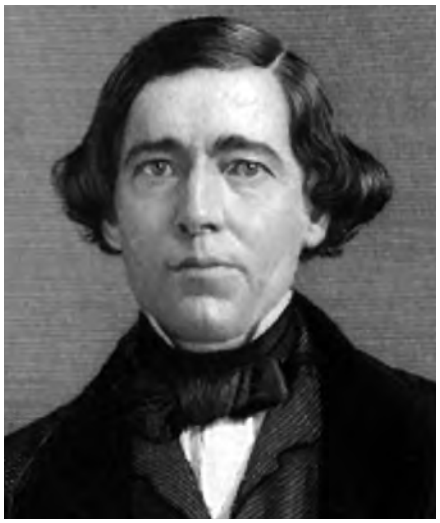
[6] Supreme Court Minute Book, p 569. Sadly, the original court file is lost, presumably pilfered in the 1960's. *The State V. Sparks,* 27 Texas Reports 502, 1864.

[7] Handbook of Texas, Charles L. Robards, Synopsis of the Decisions of the Supreme Court of the State of Texas Brown& Foster (Austin, 1865).

[8] Official Records, War of the Rebellion, SERIES II--VOLUME VI [S# 119] ar119_107.

Order 78 and further expressed his concern over returning the prisoners to San Antonio. He advised Magruder that there was a very "mobocratic element" in San Antonio, and that if the Court did return the prisoners to the military, Sneed recommended that they be kept in Austin, as the capital city was not so hostile.[9]

On Friday, March 19th a new player entered the fray in the person of Major Jesse H. Sparks, the Commander of the Confederate Post at Austin. Sparks had begun his military career on the Staff of General Paul A. Hebert in late 1861. After Hebert was relieved by Magruder as departmental commander in November 1862, Sparks continued on Hebert's staff as Provost Marshal. The Federal Army accused Sparks of murdering two captured federal officers of the 1st Arkansas [Colored] at Lake Providence, Louisiana in June of 1863, and by late that year Sparks was back in Texas, where he was assigned the command of the post of Austin.



Gen. Paul A. Hebert

Sparks had received Special Order Number 74 on the 19th, and on the same date he advised Magruder that the prisoners had been turned over to the Travis County Sheriff prior to the receipt of the order. Sparks related that initially he had met with the Travis County Sheriff, who had rebuffed his offer of military assistance, stating that he could "find enough men to protect and defend them." Sparks then met with the Governor but reported that his offer of an additional military guard had also "been positively refused and declined." Sparks asserted that the prisoners were not secure in the custody of the sheriff of Travis County and could "escape at any moment." He concluded that he would make no further efforts to guard the prisoners unless he received special orders from Magruder as he did not wish to risk clashing with the civil authorities. [10]

It is no wonder that Sparks clashed with the Travis County sheriff and had concerns over the security of the prisoners. Thomas C. Collins was the fifty-nine-year-old sheriff of Travis County at the time. A native of Alabama, Collins had come to Texas in 1836 and was described as "an uncompromising Union Man." The Travis County Jail was a stone structure that had been built in 1856. The "dungeon" or cell was four feet below ground level, with a one-foot-thick floor of heavy hammered stone. Even so, the facility was not escape proof, as the November 9, 1865 ***Southern Intelligencer*** reported, "The jail is a notoriously insecure and unhealthy affair. The health, comfort and safe keeping of prisoners imperatively demand that a new jail should be erected. It has been a very common occurrence for prisoners to gopher out of it." [11]

Spark's reply provoked further concern from Magruder. On the 20th, Lt. Col. O. Steele, commanding the post at Gonzales was ordered to "select fifty of his best and most reliable men,

---

[9] Robards was an Austin Attorney and sometimes reporter for the Supreme Court. Ford was from Lockhart and had represented Caldwell County in the Secession Convention. HBT Official Records, War of the Rebellion, SERIES II--VOLUME VI p 1077.

[10] Official Records, War of the Rebellion 1, IV.107; OR 1, XXIV pt.3, 590; Official Records, War of the Rebellion 2, VI, 1079.

[11] Frank Brown, *Annals of Travis County and of the City of Austin: From the Earliest Times to the Close of 1875* (Austin, 1900).

and proceed at once by forced marches to Austin, Travis County, where he will assist in protecting the political prisoners at that place, Peebles, Baldwin, etc., now before the Supreme Court in that city on a writ of Habeas Corpus."[12]

On Monday the 21st, Horace Cone arrived in Austin and made his initial appearance before the Supreme Court. He filed a formal answer for Magruder, asserting that the prisoners were held by the general on the charges of treason and conspiracy against the Confederate States. Cone also requested a continuance until Friday the 25th to be allowed more time to secure the presence of necessary witnesses. The court granted the continuance, and reserved five days for the hearing, as Cone indicated that there was a large amount of documentary evidence. On the 23rd Cone requested attachments for witnesses, and the Court issued them. Cone and his two associates spent the next three days preparing for the hearing.[13]


Gen. W.R. Boggs

In the interim, Magruder had been very active, fulfilling the image painted of him by Smith three months earlier as to "acting on impulse, committing follies and disregarding the law." On Friday, March 18, Magruder had written Gen. W.R. Boggs, Kirby Smith's Chief of Staff, that "he had read in the February 26 issue of the *Cincinnati Commercial* of the passage of the enactment by the Confederate Congress authorizing the suspension of the writ of habeas corpus." Magruder then asked Boggs if he could suspend the writ in this cause. Since Cone was in Austin on Monday the 21st, it is assumed that Magruder was doing this without consulting his own Judge Advocate General, as Cone would have had to have departed Houston on Thursday March 21, to have reached Austin by Sunday. [14]

Kirby Smith, seemingly seeing a major problem developing, took time to give Magruder some personal advice on his staff. Major Guy M. Bryan, Texas Lawyer, nephew of Stephen F. Austin, and an Assistant Adjutant General on Smith's staff, had apparently been approached by Magruder to serve on his staff. In a letter to Magruder on March 24, Smith advised

> *"He [Bryan] will be invaluable to you, especially in your unpleasant relations with the Governor of Texas, with whom I believe he has influence. Maj. Bryan is pure minded, self-sacrificing, and is patriotic, sensitive personally on the subject of his State and its people. Give him your confidence. His sound judgment and good sense in all matters communicated with the Governor and the people, will be of great value to you in the difficulties which I anticipate for you in administering to your district. I only consent to parting with Maj. Bryan in the conviction that if you consult him and give him your complete confidence in any difficulties that may arise with the Governor and people, that he will do you good service. With little experience in military matters and unacquainted with the mountain of business, his sphere of usefulness is not the desk of an Adjutant General."*

---

[12] NARA RG 109, II, Vol 107, Sp Ordr # 80 3/20/864, p 168.

[13] *Austin Weekly Gazette*, March 23, 1964.

[14] Official Records, War of the Rebellion, Series II--Volume VI p. 1076.

It is not known if Magruder withdrew the request or if Bryan declined the offer, but in any event, he remained on Smith's staff.[15]

Magruder was apparently incensed that the prisoners had physically passed out of military custody. On March 24th Col. E.P. Turner, Magruder's Assistant Adjutant General, issued an order to Sparks directing him to take the prisoners back into military custody, regardless of the status of the hearing before the Supreme Court, and to take them immediately to Houston. Displaying a certain amount of arrogance, Turner stated that

> "The major-general is surprised to learn that these prisoners should have been allowed to pass out of the hands of the military authorities, as the habeas corpus act has been suspended in this case. The major-general commanding is of opinion that the prisoners should always have been under a military guard when not actually before court, and that even in this last case proper military arrangements should have been made to prevent an escape from the courthouse. As the habeas corpus act in the case of these prisoners has been legally suspended under the act of Congress, and the same has been communicated to you, you will cause these prisoners to be taken in charge by a military guard, and have them sent under the same, in charge of good and reliable officers, to Houston." The order to Sparks also included the instruction "**You will yourself disregard the present writ of habeas corpus or any writ which may subsequently be issued**."

The Order was carried by one of Magruder's Assistant Adjutant Generals', Lt. Stephen D. Yancey, who was directed to "take all proper steps to hasten the removal of the prisoners from that place [Austin] to Houston." Yancey also carried a private letter from Magruder addressed to Cone. [16]

Yancey must have taken the train from Houston to Hempstead. He then surely wore out several horses on the hundred-mile ride from Hempstead to Austin, as he arrived in the capital city in the morning of Friday March 25. Yancey's arrival created a tremendous dilemma for the attorneys. Cone had been informed of the Order only shortly prior to the commencement of the hearing, and Sparks was adamant upon complying with it and taking the prisoners back into military custody.

In an effort to avert a direct conflict between the civil courts and the military, immediately upon the commencement of the hearing, Cone filed a motion requesting that the prisoners be returned to the military. The motion was accompanied by several exhibits; (1) a note from Sparks that he had received the orders referenced above, and that Magruder had issued this order based upon an order received by him from E. Kirby Smith; (2) an affidavit from Spark's attesting to his note; (3) an affidavit of Guy M. Bryan, Assistant Adjutant General to Smith, stating that "sometime in the month of October, A.D. 1864 Smith had directed Magruder to hold and detain the applicants;" and (4) a letter addressed to Cone from Magruder, asking Cone to inform the Court that Magruder was acting under Orders from Kirby Smith, that Kirby Smith had invoked the Suspension Act, and that General Magruder "intended no discourtesy or disrespect to the Court."

---

[15] NARA, RG 109 Chapter 2, vol 73 ½, Letters sent TMD, letter # 2403 EKS to JBM pp116, March 24, 1864.

[16] Official Records, War of the Rebellion, – Series II - Volume VI p_1092> ; Special Order Number 84, March 24, 1864, Department of Texas, New Mexico and Arizona, NARA Record Group 109, Chapter II, Vol. 109 p. 201.

Cone was being as artful as he could possibly be under the circumstances, but was faced with several legal dilemmas: first, it was clear that Kirby Smith had not ordered the initial arrest of the prisoners - it had been done by Magruder. The actual pertinent part of the October letter was "*The men you have arrested or who may be implicated and arrested should be carefully confined and guarded in proportion to their offenses and the importance attached to them*."

Secondly, at the time of the arrest, the Suspension Act had not even been drafted. Cone was very careful in his drafting, as he only had Sparks swear to the fact that the order had been received by him. Had he had Sparks file a sworn affidavit as to the invocation of the Suspension Act, as required by the act, it would have been blatant perjury. Finally, Cone was probably aware that there was no actual order from Smith, and that most of the communications from Magruder regarding the suspension acts would have been perjurious had they been presented as sworn testimony instead of exhibits. The Court took the motion under advisement and recessed until the next day, Saturday, March 26.

Cone and his associates had, unknown to Magruder, already determined a viable solution to the problem. The burden of proving the legitimacy of the detention was on the military. Cone believed that the arrest and detention of the prisoners by Magruder was not lawful, and that the Court would in all probability grant the relief and order the release of the prisoners no matter what was presented to the Court. Cone's premise was based upon several factors. First, under the Suspension Act, the issue of the validity of the arrest was based upon the initial order and not on subsequent orders. Therefore, the defect could not be legally corrected by showing a subsequent directive from Kirby Smith. Second was the main issue of treason and the military's case was admittedly weak. If Cone attempted to introduce evidence that treason had been committed, and failed in his burden of proof, a finding of such failure of proof by the Court would create a tremendous legal and political bar to further detention, even if the Suspension Act were properly invoked. If the government offered no evidence at all, then a discharge would be because of that fact, and not because of the failure of proof upon introduced evidence. Cone was finely, but legitimately, splitting legal hairs. He determined his strategy in light of the fact that there was now a valid order of arrest from Kirby Smith and determined to present no evidence at the hearing, thereby allowing the prisoners to be discharged. The prisoners could then immediately be re-arrested under the valid Kirby Smith Order and the properly invoked Suspension Act would prevent them from seeking a new writ. At the time of the recess, Cone sent word to Sparks not to attempt to re-arrest the prisoners until the Court ruled on the Motion. The prisoners were remanded to the custody of the sheriff, who then returned them to the jail. [17]

Sparks now found himself in the untenable position of having received a direct order from Magruder and being given a legal directive from Magruder's Judge Advocate General to disobey that order. Sparks was adamant in his position and opted for the safer course of obeying Magruder. At noontime, and despite Cone's request, with the aid of two companies of infantry, Sparks proceeded to take the prisoners back into military custody. The Court had been using a chamber in the Capitol to hold its hearing, and apparently Sparks was unsure of the location of the prisoners. Initially his men surrounded the Capitol building, sealing it off and preventing anyone

[17] Official Records, War of the Rebellion, II, 6, p 1076, "State V. Sparks". As noted above, the Supreme Court file is lost, and the Motion, letter and order have not survived. Their content is reconstructed from other references; Collins to Murrah, Letter, March 25, 1864, *Pendleton Murrah Papers*, Texas State Archives.

from leaving or entering. Not finding the prisoners there, the detachments then proceeded the eight blocks to the jail, where Sparks demanded that Collins "instantly" deliver the prisoners to him. Collins refused, and Sparks then ordered Captains' C.H. Randolph and L. D. Carrington to forcibly take the prisoners from Collins, which was done, and the men were taken to a military guard house in Austin. Collins had demanded some show of authority from the officers and was advised by Randolph that "he had seen the order but had not time to send for it." After the detail left, the sheriff reported the affair to the Governor, and requested of Murrah "such action in the process as you may deem expedient, to secure a faithful administration of the laws and to resume unimpaired the right of the Citizen and the integrity of the State of Texas." [18]

Pandemonium erupted. The Court called itself back into session at 2:00 p.m. The sheriff presented the Court with an affidavit reflecting the circumstances of having the prisoners wrested from him, and the Court then issued a contempt citation for Sparks as well as a writ of attachment for both Sparks and the prisoners. Sparks was served with the citation, but neither he nor the prisoners were taken back into custody. The sheriff was faced with the impossible job of being ordered to arrest a military officer and to take prisoners back into custody from the same armed detail that had taken them from him at bayonet point not three hours earlier![19]

Cone had his afternoon's [and night's] work cut out for him. Governor Murrah had been informed of the situation and became actively involved in the affair. Over the course of the afternoon and evening, he sent Sparks a series of letters. In the first note Murrah advised that the Court was considering the motion to remand the prisoners, demanded that Sparks return the prisoners and that Sparks had "violated the civil laws of this state and insulted its highest Judicial tribunal." Initially Murrah was apparently not aware that Sparks had surrounded the capitol, and in his second note, castigated Sparks for this breach and demanded that Sparks explain his authority for this act:

> "The chief clerk of the Adjutant and Inspector General's Office of the state of Texas stated that you in the exercise of your military authority caused the capitol of this State to be surrounded by armed men today and prevented men on business and the officers of this state from their departure from the capital when through with their legitimate business - Your armed men stopped men at the capital door who had business with the Adjutant and Inspector General of this state as I am informed – You surrounded this capital when you knew the business of the various offices therein situated were going on and when you knew that the Supreme Court of this State was in holding a Session in one of the rooms of the capitol – I want Sir to learn from you what authority you have under the civil or military laws of this free country —for interfering thus with the free movement of the citizens of Texas in the discharge of legitimate business – I wish sir to know of you by what authority you surrounded the capitol of a sovereign state with armed men without consulting the executive of that State. I must respectfully request an answer to these questions at your earliest convenience."[20]

---

[18] Collins to Murrah, March 25, 1864, Pendleton Murrah papers, Texas State Archives; The arsenal block was at the intersection of East First and Rio Grande in the Southeast corner of the original plat of Austin and had been used as such since the time of the Republic. It is assumed that this was the location of Sparks' headquarters and of the guardhouse.

[19] *State V. Sparks*

[20] Murrah to Sparks, March 25, 1864, *Pendleton Murrah Letterbook*, Texas State Archives.

During the same time Cone had a number of meetings with the Governor and Major Sparks, as well as conferences with the justices of the Court in an attempt to broker a deal "to prevent an ugly collision between the civil and military authorities." Sparks had not been responding to the governor's notes, for Murrah's third note to the Major indicated that the Governor had spoken with Cone, but as of yet the Governor had had no reply from Sparks. Murrah reiterated the illegality of Sparks' acts and demanded that Sparks advise him what course he intended to pursue.

At some point Cone gave Sparks a second written legal opinion on the matter. It stated that as the Court had legal custody of the prisoners, it was legally improper to remove them from the Court's jurisdiction until a decision was rendered. He suggested that Sparks return the prisoners to the sheriff, and that the Major should provide troops to assist the sheriff in guarding the prisoners. Upon reviewing the opinion, Major Sparks advised the governor that he would be willing to return the prisoners, and furnish a supplemental guard, but that his offer was conditioned upon it being approved by Magruder.

At 11:00 p.m. that night, Cone sent a private telegram to Magruder. In the carefully worded letter, Cone very politely chastised Magruder for his interference. He recounted that he and the other two lawyers had spent the entire week preparing their evidence and that he felt it was sufficient to convict the group for treason. Cone made the following statement: "The whole affair was unfortunate, and I had much difficulty in finally arranging matters satisfactorily to all parties. Your order to Sparks contained the following words, viz: 'You will yourself disregard the present writ of habeas corpus or any writ which may subsequently be issued,' &c. Sparks was determined to obey it, and the Governor and the Supreme Court were determined to have the prisoners back." The order to disregard the Court would come back to haunt Magruder. Cone stated his plan, assuming that the Court would not grant the motion to remand the prisoners. He would then proceed into the hearing, offer no evidence, let the prisoners be released, and then have Sparks immediately re-arrest them under the valid Kirby Smith order. The letter concluded with the following paragraph:

> "It was apparent to me, however, that you did not exactly know the position of affairs, and had not scrutinized the recent act of Congress closely. The law nowhere contemplates the taking from a judicial tribunal parties who may be before it on a writ of habeas corpus, and if my construction of the law is correct, in all the cases enumerated in the law, the writ may issue, but if the return upon it shows that the prisoner is held in custody by authority of any of the persons and for any of the offenses mentioned in the act, then all proceedings cease."

At that hour of the night, Cone was under the impression that a compromise had been made and that Murrah agreed with his plan to return the prisoners to the sheriff with a supplementary military guard. It is possible that at that time, Murrah had initially agreed to the compromise. Murrah had apparently sent a note to Collins advising him of the negotiations. Collins reply to the governor was that the writ issued to him by the Supreme Court for the recovery of the prisoners was unconditional, and that "under such writ I cannot receive said prisoners in any other way than unconditional." At 1:00 am on the 26th, Murrah sent a final note to Sparks stating:

> "I have received and considered your last note in relation to the prisoners taken by you from the possession of the Sheriff of Travis County. Its contents are not deemed by us, upon consideration, satisfactory. I do not undertake to determine what would be satisfactory to the Supreme Court, but suppose that nothing short of releasing the prisoners unconditionally to the custody of the sheriff where you found them, will be satisfactory to that tribunal; and I think that nothing short of this course will satisfy the demands of the military. I must request of you, therefore, to return these prisoners at once to the custody of the sheriff that he may, without obstruction or interference, bring them at the proper hour appointed, before the Supreme Court, in accordance with the Orders, and continue his custody of them as that tribunal may direct." [21]

On Saturday morning, the 26th, the Court came back into session with the crisis continuing. The Court refused to accept the prisoners under military guard, and demanded that they be returned to the Court without any conditions. Cone resumed his brokering. He advised Sparks to comply with the Court's demand and turn over the prisoners back to the sheriff. By subsequent telegram, Cone informed Magruder that he had had a conversation with the Justices, and that they had advised him that when they made their decision, then the military could have their way with the prisoners. Cone also stated that if the prisoners should make an escape that "they will never trouble the civil or military authorities again." The Judge Advocate general concluded with the following: "I have taken the responsibility to act as I have done believing it to be the best course, and one which will preserve your influence in the State and avoid unpleasant difficulties between the authorities." [22]

Sparks, under pressure from Cone, relented and returned the prisoners to the Sheriff unconditionally. The court then proceeded with the hearing and immediately overruled Cone's motion to halt the proceedings and return the prisoners to the military. They held that to invoke the Suspension Act, it must be shown that the prisoners were arrested by order of the President, Secretary of War, or General Commanding the Trans-Mississippi Department, by "certificate, under oath, of the officer having charge of anyone so detained, that such person is detained by him as a prisoner under the authority aforesaid." No such evidence had been presented, and the affidavit prepared by Cone for Sparks was deemed insufficient evidence. It is apparent that Cone had gone as far as he could without suborning perjury by Sparks and the Court was obviously aware of the real situation.

At that time, Cone then formally announced his strategy, and informed the Court that he would present no evidence at the case in chief. This provoked an immediate response from John Hancock, the attorney representing the prisoners. He requested a continuance to "consider what action it was his duty to take in their behalf." The Court granted the continuance until Monday the 28th. Cone's strategy was sound. In a habeas corpus proceeding, the burden of proving the legality of the confinement is on the respondent. With no evidence, the Court would have no alternative but to release the prisoners, and then they could be legally arrested. On the same date Kirby Smith telegraphed a terse order to Magruder, "Detain in confinement the following-named prisoners, to wit: R. R. Peebles, D. J. Baldwin, A. F. Zinke, Ernst Zeeliger, and Reinhardt Hillebrand." [23]

---

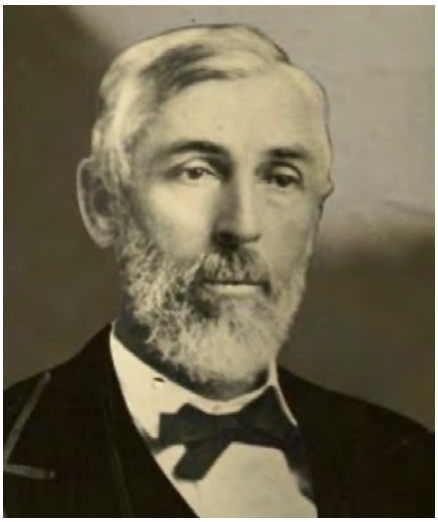
[21] Murrah to Sparks "*Pendleton Murrah Letterbook": Collins to Murrah, Papers of Pendleton Murrah,* Texas State Archives.

[22] Official Records, War of the Rebellion, 2, VI, 1097.

[23] Official Records, War of the Rebellion, 2, VII, 5.

At the same hearing, the court then took up the issue of the contempt citation against Sparks. Cone had filed an answer on Sparks' behalf, asserting three issues of justification: one, that the sheriff was failing to properly guard the prisoners; two, that the Court had failed in its duty by declining to act on his request to remand the prisoners immediately and delaying a ruling until Saturday; and three, that he was acting under direct orders of his superior, General Magruder. Attached to the answer were excerpts from Sparks' orders, including the statement that they had been ordered arrested by E. Kirby Smith, and that "you will yourself disregard the present writ of habeas corpus, or any writ which may subsequently be issued."

Justice George F. Moore delivered a scathing judgment for the Court. Moore had been the first colonel of the 17th Texas Cavalry but had resigned his commission in 1862 to serve on the Court. Making short work of the issue of the alleged laxity of the sheriff, the opinion stated, "if he was in any way interested in the safe keeping of the prisoners, he should have brought the matter to the attention of the court, by whom it could and would have been corrected." Regarding the continuance by the court, Moore stated that Sparks position "can only be regarded as a justification or extenuation of such an act as was committed by the defendant, when the civil tribunals sit merely for the purpose of registering the edicts of the military authorities." The weightier issue of obedience to military superiors drew longer attention from Moore. Illegal acts could not be justified by an order from a superior, and Moore opined that both military and civil law was clear that a subordinate was bound to disobey an illegal order. However, if the order came from such a high source as General Magruder, then the officer acted at his peril in disobeying it, and by extenuating his acts, Sparks only "inculpated Maj. General Magruder."


Justice George F. Moore

Expressing the apparent real issue for the court, Moore wrote, ". . . it is the civil government alone that stands for the state, and the military is only an instrument that it uses as its judgment requires. ***Better far would it have been, for the prisoners who are in custody of the court, though doubly guilty beyond all that has been charged against them, to go unwhipped of justice than for the civil authorities of the state to be subordinated to military control, and made dependent upon the consent of the latter for the exercise of their legitimate functions.***" Moore stated that the facts before the court clearly implicated Magruder in "so palpable and glaring an outrage upon the law," but that it was the duty of the court to afford Magruder "an opportunity of relieving himself from the improper attitude in which, as the record now stands, he is presented before this court." The court then ordered a citation be issued to Magruder, accompanied by Sparks' answer, directing that Magruder file a sworn answer stating why he should not be held in contempt for ordering Sparks to take possession of the prisoners, and for disregarding the writ of habeas corpus. Although the opinion was biting, the court did exercise some degree of caution. The usual procedure would have been to issue a writ of attachment, or order of arrest, but they opted to only order a citation and answer. Although clearly angry with Magruder, they were not prepared to order his arrest. He was directed to file his answer by the fourth Monday in April when the court would be sitting at Tyler.[24]

[24] State V. J. H. Sparks, 27 Texas Reports 502 (1864).

Over the remainder of the weekend Hancock diligently tried to salvage his case. He knew that if the Court discharged his clients, that they would be immediately rearrested, and since it would be done under Kirby Smith's order, his clients would be denied further habeas corpus relief. On Monday Hancock presented sworn statements from the prisoners setting forth the details of their arrest and the search of their property. They further asserted that they believed that upon their release by the court that they would be re-arrested, that such arrest would be illegal, and that the court should enter an Order preventing an intended unlawful arrest by the military. Hancock realized that a full evidentiary hearing would result in a finding that the military did not have legally sufficient evidence to hold his clients for treason, which would result in their discharge and probably forestall a new arrest. A hearing with no evidence presented would result in his client's discharge and immediate re-arrest.


Associate Justice James H. Bell

Hancock's worst fears came to pass on Monday. At the habeas corpus hearing, Cone rested without putting on any evidence, and the court took the matter under advisement. Associate Justice James H. Bell delivered the Court's opinion setting forth the two issues before the court; [1] were the prisoners entitled to be discharged, and [2] did the Court have the duty to interpose itself between the prisoners and the military to preclude an additional arrest? Bell had been born at Columbia, Texas in 1825, had studied law at Harvard, and had been on the Court since 1858. An opponent of secession and a Unionist, Bell had written a strong dissent in the Coupland case which had upheld the constitutionality of the conscription act. Moore, although a former Confederate colonel, was somewhat a moderate. He would stay on the court, and would be named Chief Justice under presidential reconstruction in 1866.[25] The record is unclear if Chief Justice Wheeler participated in the case, and he would commit suicide less than two weeks after the decision. Bell and Moore, although opposites at first glance, obviously were in strong agreement as to the decisions. [26]

The answer to the first legal question was emphatic - "There can be no doubt that they are entitled to be discharged from their present custody. To deny this, would be to assert that the military officer commanding this Military District, has the power, not only to arrest but detain citizens of this State, whenever he may think proper to do so." Expressing the Court's obvious anger with Magruder, the opinion further stated, "The power that has sometimes been claimed for the military authorities, viz : that the General who is charged with the defence of the country, may

[25] "Bell, James Hall," *Handbook of Texas Online*, https://www.tshaonline.org/handbook/entries/bell-james-hall.

[26] The Confederacy never established a Supreme Court, and constitutional decisions normally associated with a national supreme court were rendered by the Supreme Courts of the various southern states. Bell, a unionist had taken a strong State's Rights stance on the issue of conscription in the Coupland case, asserting that the Confederate Government did not have the right to conscript soldiers, but that individual states did. Moore, who wrote the majority opinion rejected the state's rights argument and stated a more Federalist approach that the power vested to the Confederate States to raise armies gave the government the implied right to conscript men into the army. By 1863, Bell had moved towards a more federalist position and joined with Moore in holding in *Ex Parte Turman,* 26 Tex 708 (1863) that the individual's constitutional obligation for state militia duty was superseded by a constitutional duty for military service to the confederacy.

lawfully do whatever he deems necessary to that defence, has no existence in the Constitution of the Confederate States. Such a claim of power is directly at variance with the source of its plainest and most valued provisions, and is subversive of the most fundamental principles of constitutional liberty."

Bell then addressed the issue of the impending arrest. In terse comments he stated that although the evidence presented regarding Kirby Smith's habeas corpus suspension order was legally insufficient, it was "strongly persuasive" that the order had been issued, and that a new arrest under that authority would be valid. The court declined further protection of the prisoners. They were released from custody of the sheriff, and immediately taken back into custody by Major Sparks. Apparently, they were held in Austin for the remainder of the week, as on Sunday, April 3, Sparks was formally sent a copy of Kirby Smith's March 25 arrest order. Additionally, Sparks was ordered to proceed immediately to Houston with the prisoners, with a sufficient guard to both prevent them from escaping and from being harmed. [27]

Even though there had been threats of mob violence, it is apparent that the Suspension Act had caused some public concern. On March 30, the Austin ***Weekly Gazette*** ran a lengthy article on the act, commencing with the following paragraph;

> "*The Act suspending the writ of habeas corpus seems to be misapprehended by many. They seem to think that the suspension places the liberty of the citizen at the mercy of every irresponsible officer who may see fit to arrest any one, and a trial granted only when they see fit to grant one. This is a mistake.*"

The article went on to set forth the offenses for which the act could be suspended, that it required a prompt investigation of any detention by military officers, and a prompt trial. "The loyal and true man has nothing to fear," stated the writer "The Confederacy demands, and has a right to demand, that her citizens shall be true and loyal, and that the time has now come when it is the duty not only of the Military authorities, but of every good citizen, to arrest the tories and other enemies of our country and bring them to condign punishment." It is possible that this article was written by William Pitt Ballinger, as he had written an editorial concerning the Suspension Act for the Houston *Telegraph* on March 23. Noting in his diary on that date, Ballinger had remarked: "Authority has been given to suspend the writ of habeas corpus - and I hope this legislation may do good - it is certainly rigid and extreme - there is a good deal of talk against . . . the suspension of habeas corpus."[28]

David Richardson, the owner and editor of the Austin *Weekly Gazette*, was a staunch defender of Magruder. Presaging the current trend to "spin" issues, in the same issue he ran a complimentary article on Magruder and the case before the Supreme Court. The article was reasonably factual until the last paragraph, when a decided whitewash was added. "Throughout the investigation the Court showed a disposition to extend every courtesy and aid to the military authorities in the discharge of their duties, and a disposition was shown by the military authorities to submit to the Court in its decision. An apparent collision arose at one time through a misapprehension of facts, which was remedied as soon as practicable, and we presume to the satisfaction of the Court."

---

[27] Official Records, War of the Rebellion, Ser.2, Vol VII p 5.

[28] Ballinger diary, March 23, 1864, 156.

After the dust had settled, Cone apparently came under fire from Magruder for his actions before the Court. On March 30, Charles Robards, one of Cone's associate counsel, sent a long letter to Magruder setting forth his opinion of the case. There were two apparent points of contention between Magruder and Cone: the first was Cone's ordering Sparks to return the prisoners unconditionally to the Court, and the second was Cone's decision to put on no evidence at the habeas corpus hearing. As to the first, Robards asserted that the Court had jurisdiction over the prisoners, and the military had no authority to interfere until a judgment was entered. Robards stated succinctly "The arrest of the prisoners in the custody of the sheriff came in direct conflict with this jurisdiction and brought the civil and military authorities in collision. I was satisfied that the major-general commanding, charged with the protection of the State, would use every possible means consistent with the high trust with which he is charged to avoid any such conflict and would deprecate any such collision." He went on to reiterate that since it was a foregone conclusion that the Court would release the prisoners, and that they could then be immediately re-arrested under proper authority, then any conflict would be avoided.

Robards gave four reasons for not presenting evidence. The first was that they did not have sufficient evidence, as he stated "As a mere matter of policy and to satisfy the public mind, it might have been advisable to have entered into a full and complete investigation; but the evidence was not prepared for such an investigation, though every effort had been made to obtain the testimony. To have gone into the investigation unprepared would have been to fail to make good the charges set forth in the return of the major-general commanding and perhaps defeated the ends of justice." His second reason reiterated the fact that the only object of the hearing was to detain the prisoners and as Kirby Smith had already issued a valid order, there was no point in proceeding further. Thirdly, if the Court had heard the measure, they could deny bail only if a clear case of treason was made, and the evidence was weak, but a military tribunal could order detention on charges other than treason. His fourth point was somewhat cryptic. "Under the orders of the major-general commanding, Captain Cone could not consistently do otherwise."

Robards reiterated his support of Cone and stated that Spencer Ford, the third associate, also concurred. Robards concluded with the following: "I take pleasure in saying that throughout the long and somewhat complicated proceedings, the major-general commanding was ably represented by Captain Cone, firm and decided, yet urbane and courteous. Submitting with grace to the civil tribunals, at the same time maintaining the rights of the military authorities, and attaining his object in the end. I also take pleasure in bearing testimony to the prompt action, unremitting vigilance, and uniform urbanity of Major Sparks, commander of post."[29] No further communications are found, so the dispute must have ended.

There were apparent security problems with the guard house in Houston where the prisoners had been placed. Captain Peter McGreal, the commander of the post at Houston, had reported the facility to be insecure and was severely "dressed down" by Magruder. He was told that he could have remedied the situation by his own order, and that the prisoners should be placed in irons until the jail was made secure. McGreal was ordered to inspect the prisoners twice a day, and that the officer of the guard was to be arrested if he did not remain with his charges the entire night. Even with these orders, Magruder was so concerned that he determined to move the

[29] Official Records, War of the Rebellion, Ser. 2, Vol VI, 1119.

prisoners from Houston. On April 7 a communication was sent to Captain W.S. Good at Anderson, Grimes County, Texas to arrange for the use of the county jail for the prisoners, and insure that it was secure. Waul's Legion, under the command of Col. Bernard Timmons was ordered to move to Anderson. By April 13, everything was ready for the reception of the prisoners, and the provost Marshall of Houston was ordered to deliver them to Capt. W. G. Webb, who would transport them by rail and stage to Anderson.[30]

The jail at Anderson was a pit in the ground secured by a trap door, with a log building on top of it, and certainly not a pleasant environment for anyone. Expressing his concerns to Magruder, Captain W. G. Webb was directed to confine the prisoners "where he deemed best." but was held personally responsible for them. On the 21st Webb was advised that it was Magruder's "desire to render the political prisoners under your charge as comfortable as the times and circumstances will permit; and whereas he does not deem it advisable to allow them too many privileges nor too much latitude, yet he is willing they shall be permitted such articles of luggage, &c., as will conduce to their comfort and such exercise as will be necessary and beneficial to their health." No more than two of them could exercise in the jail yard at any one time, visitors were to be limited and searched, and all mail to and from the prisoners was to be sent to Houston for inspection. The prisoners had trunks, and the sheriff of Grimes County complained to Magruder that the iron bands could be used as tools for escape not only by the political prisoners, but for the county inmates as well. The quartermaster's department issued Webb some iron bars to make the upper part of the building secure, and the fence around the jail yard was expanded to give more exercise room.[31]

Even so, the prisoners promptly became ill, with Peebles and one other contracting typhus. Peebles lost sight in one eye, and by May 19 had to be taken out of the jail because of his health. Webb was directed to see if the county courthouse could be made secure to hold the prisoners. A suggestion had been made by the county jailor that the prisoners be chained to the floor to allow the trap door to be opened for ventilation, but Magruder thought that the structure was well enough guarded that the chains were not necessary. By June 15 the work on the upper floor had been completed, and Magruder directed that all of the political prisoners were to be placed there to obtain the benefit of ventilation. Reinhardt Hillebrand's wife Louise sent a plaintive letter to Governor Murrah on May 15, begging for his assistance. She asserted that her husband was ill, and that he had never committed any treason. She had been promised evidence by Horace Cone, but had never received it, and stated that seven of the witnesses who had been summoned by Cone for the hearing [who were never called to testify] had given affidavits that her husband had done nothing. She concluded her letter with "In the name of humanity, can nothing be done to the relief of the innocent to prevent the ruin of himself, his wife, and children?" A similar letter on behalf of Peebles, was sent by his daughter Maggie on April 30, with an endorsement by Captain M.M. McClain of San Antonio as to the loyalty of Miss Peebles. Miss Peebles also indicated that her father was to be sent to Tyler. It can only be assumed that the military authorities were contemplating placing him at Camp Ford. Governor Murrah forwarded the letters to Smith, and in his note to Smith stated that "Hillebrand is an old

---

[30] Official Records, War of the Rebellion, 2, VII, 20, 23, 45; *Ibid*., 1, XXXIV Pt 3, 753.

[31] Magruder to Webb, April 21, 1864 Official Records, War of the Rebellion, 2,VII, 79; Magruder to Webb, April 26, 1864 *Ibid.*, 2,VII, 91, 371.

man and you will judge of the propriety of having his case investigated. I would be pleased to hear your determination."[32]

During the month of May, Cone had been flooded with a series of affidavits regarding Hillebrand. Sworn to by various Justices of the Peace in Fayette County, Hillebrand's neighbors asserted that although he had chaired the Draft Resistance Meetings in late 1862, he had been a moderate and had resigned the chair when more radical voices prevailed. Of some interest is the fact that Joel Robinson, one of the captors of Santa Anna after the battle of San Jacinto, and a neighbor of Hillebrand stated,

"Since the last draft some of my German neighbors that was drafted went to Him for advice. He advised them to go into the Service and comply with the law. I Have Had Several conversations with Him since the war comenced in all of them He regreted the Present State of things But always said that it was the duty of all to comply with the laws of the country. I have never Herd Him uter a disloyal Sentiment." [33]

While the military was deciding on the disposition of the prisoners, on May 16, 1864, the Supreme Court took up the contempt trial of Magruder and Sparks at its Tyler term. Only Justices Bell and Moore were sitting, as Chief Justice Royal Wheeler had committed suicide on April 9. Although the Court's record cannot be located, Magruder's answer can be reconstructed from the court's opinion. In an amazing bit of sophistry, Magruder stated that he was not aware that the prisoners were ever out of military custody, and he never intended that they should pass out of his control, that he had operated under the premise that the prisoners were technically still in his custody until the court determined the legality of the arrest. In short, Magruder asserted "ignorance of the law" coupled with military necessity. Finally, Magruder attempted to reassert that the act suspending habeas corpus had been invoked, and the court had no jurisdiction.


Chief Justice Royal Wheeler

Justice Moore again delivered the Court's opinion, which was not kind to Magruder. Moore recited from the Sparks opinion that the Court had desired to give the General the opportunity to defend and hopefully vindicate himself. The answer "instead of exculpating him, places him, if possible, in a still more unenviable light than did the facts previously developed in the record." Moore then proceeded to unravel Magruder's defense. The Court pointed out that the prisoners had been turned over to the sheriff of Travis County by the provost guard from San Antonio, which had then returned to its post, and inferred that Magruder knew full well that they had passed out of military control. As to his argument that the legal possession of the prisoners did not pass from the military until the court ruled on the legality of the arrest, the court cited a number of treatises and English cases that held squarely against Magruder's position. The court noted that:

---

[32] Official Records, War of the Rebellion, 2, VII, 219.

[33] National Archives and Records Microfilm publication M-346 from Record Group 109 "Confederate Papers Relating to Citizens or Business Firms."

> [Magruder] seeks to excuse, if not to justify, his interference with and violation of the mandates of the court, and his orders to his subordinate officer to disregard its process. If it were not for the mischievous character of such an assumption, coming from such a source, we would deem it scarcely necessary to say that it is unsustained by judicial authority or plausible argument**. It will perhaps be admitted, even by those with whom it has become of late too much the fashion to violate the rights of persons and property upon the plea of "a military necessity," as a novelty of which the defendant is entitled to the paternity.**

In response to the issue of the Suspension Act, the Court tersely noted that the prisoners were initially arrested by Magruder's order, and not by that of General Kirby Smith. The order of General Kirby Smith had been issued after the prisoners were in custody of the Court, and therefore did not mandate the court to recognize it. The court acknowledged the law but opined that Magruder had misconstrued it. In a bit of its own legal sophistry, the court noted several things. First, Magruder had in effect recognized that the prisoners were in custody of the court when he ordered Sparks to "disregard the present writ of habeas corpus or any writ which may subsequently be issued." The Act did not forbid the courts to issue writs of habeas corpus, unless, according to the court, it appeared from the application that it should not be granted. In other words, the court stated that if the application showed that the applicant was being held under one of the categories listed in the Act, then the Court was obligated to grant the writ. The burden then shifted to the person holding the prisoners to respond to the writ, that they were being held under an order of arrest by the President, Secretary of War, or the General Commanding the Trans-Mississippi Department. At that time all further proceedings were to cease. The law required a certificate by the officer, under oath, that the prisoners were held under the authority of the Suspension Act. This had not been provided, and therefore, the Suspension Act, had not been properly invoked.

Moore then proceeded to chastise Magruder for his seeming hypocrisy. Along with his answer, Magruder had:

> ...caused a letter to be addressed to the Court, in which he assured he intended no contempt of the Court, but entertained for it the most profound respect; that **'**it was his pleasure, at all times, to sustain the civil authorities; and that it was also his studious desire to avoid all conflict between the military authorities and the civil tribunals.' Similar manifestations of exquisite politeness by criminals, while in the act of violating the laws, will perhaps readily suggest themselves to the readers of fictitious literature, but we doubt if its parallel can easily be found in the dry details of judicial proceedings.

The Court concluded its opinion by stating:

> We have felt called upon to say so much in this case, because, from the position and official responsibility of the principal offender, and the situation of the country, we cannot resort to the ordinary punishment of imprisonment by which such offences are usually repressed and corrected. Yet the magnitude of the offense, in

its paralyzing influence on the usefulness of the judicial tribunals of the country, if unchecked, and that it is the first instance of the kind in which the court has been called to act since its organization, and especially the vital interest of the citizens in respect to personal liberty and security from military usurpation, forcibly admonish us that the acts of the defendants should not be passed by with the brand of our most decided condemnation.

As we have said in our former opinion, the order of Maj. Gen. Magruder furnishes no justification for the act of Maj. Sparks, and the Court would be fully justified in punishing him by either fine or imprisonment. But such a fine as the law authorizes us to impose, would, in our opinion, be inadequate to the offence of which Maj. Gen. Magruder is guilty. The situation of the country, as we have said, forbids our attempting to punish him by imprisonment; we feel that it would fully comport with the dignity of the Court to visit its penalty upon the subordinate officer while the principle is enabled to go **unwhipped of justice**. We shall therefore discharge the writ in this case, with a judgment against the defendants merely for costs. But as it presents a question of equal, if not greater political than judicial importance, we will order a copy of the proceedings to be transmitted to his Excellency the Governor, that he may give it such consideration as in his judgment it may deserve, and as may be compatible with public policy and interest. It is the judgment of the Court that the defendants be discharged upon the payment of costs. [34]

The Court was seemingly too timid to order Magruder's arrest. It would have probably resulted in furtherance of the crisis. It is doubtful that Magruder would have submitted to arrest, and it is probable that the Court did not want to continue the fight.

At least one period observer was highly critical of the court's opinion. A Tyler lawyer, writing under the pseudonym of "Claude De Mogyns, Jr." took the court to task for what he considered poor logic and a worse decision. He concluded by stating:

They would, if they dared, imprison the commanding officer of this State - taking him from the head of the victorious legions defending our homes, and visit the severest penalties of the law on him. I would be the last man to bring our civil tribunals into contempt. Law is my profession. But it is a most momentous crisis in the affairs of our country. We are beleaguered on every side, and the people are too apt to neglect the conduct of their civil officers at home. In the exertion of every means to achieve our independence, let us not forget our duties as citizens. An election for Judges of the Supreme court, and other civil officers is close at hand. Upon the few, who remain at home, devolves the whole responsibility of choosing men to fill these high stations. Let us look to it, that we place no man in any position of public trust, who is not a true patriot and good LOYAL CITIZEN. Such men can be found. Let us take such and such only. [35]

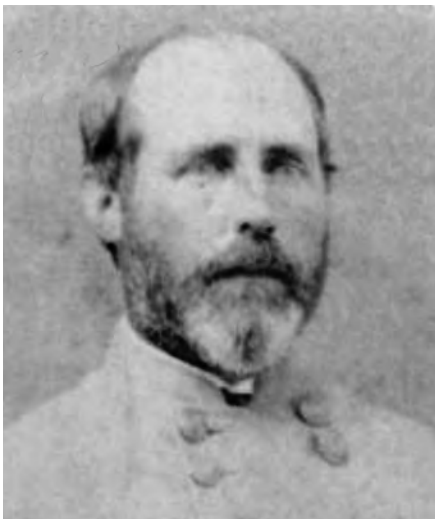
---

[34] State V. J.H. Sparks and J. Bankhead Magruder, 27 Texas Reports 564 (1864).

[35] *Austin Weekly Gazette*, June 1, 1864; De Mogyns was a character from the Thackeray novel The Book of Snobs.

Justice Bell had filed for the position of Chief Justice of the Supreme Court after the death of Justice Wheeler. He was soundly defeated in the election by Reuben A. Reeves, a prewar judge from Palestine, slave owner, and a captain in the 34th Texas Cavalry. Reeves resigned his military commission to become a justice.

By the early summer, it was apparent that the prisoners were becoming an embarrassment and a liability. On June 5, 1864, Kirby Smith ordered Magruder to re-examine their cases. The Suspension Act would expire on August 1, and at that time they would be free to file for a new writ. Kirby Smith was concerned that the men would suffer violence from a mob, or "under the protection of the law which had screened them from punishment hatch new treason." Magruder was instructed to consider sending them "beyond our lines." If they would do no harm, they should be sent to the union blockading fleet or to Mexico. If their release to the United States would result in some form of security compromise, he suggested exiling them to the Indian Territory! In a second wire to Magruder on June 5, Smith stated that if Magruder did decide to send them outside the lines, that it be done with complete secrecy. The men's families could be sent later, and that he should inform Governor Murrah of his decision. On June 9, Cone and jurist John Sayles, also serving as Magruder's Assistant Adjutant General had recommended to Magruder that the prisoners be sent outside the lines, because as long as they were held, they would be "a constant source of irritation." In a damning statement Sayles concluded, "Upon the evidence which has been developed against them these men cannot be convicted before the civil courts. But the moral evidences of their guilt are so strong that all good men would concur in the propriety of sending them without our lines."[36] It was apparent that Magruder had ignored the requirement of the Suspension Act that officers were to investigate cases "in order for them to be released if improperly detained." At the same time, Magruder seemingly decided that it was time to rid of himself of the problem, comply with Smith's recommendation, and send the prisoners out of the state.



Brigadier General
James M. Hawes

A significant part of the Texas citizenry was still inflamed over the prisoners. On June 4th, a mob of about a hundred armed men had gathered near Anderson with the avowed intent to overwhelm the guard and hang the prisoners. Only prompt action by Lt. C.P Smith in command at Anderson prevented this from happening. The situation became so volatile in Anderson that Magruder decided to move the prisoners to Houston. On the 17th Magruder ordered Webb to turn the prisoners over to Captain Robert S. Poole of the 24th Texas Cavalry. Poole was in Columbus, and in the same order was directed to take a squad of five men, proceed by train to Houston, and then by the next available train to Anderson, take delivery of the prisoners, and transport them to Galveston. There he was to turn them over to Brigadier General James M. Hawes, Commanding the post there. [37]

---

[36] Official Records, War of the Rebellion, Ser.2, Vol VII, 218.

[37] NARA, RG 109, II, Vol 106 ½ , SO 169 6/17/64, PP2-4, ; "Hawes, James Morrison," *Handbook of Texas Online*, https:/www.tshaonline.org/handbook/entries/bell-james-hall.

In a post war newspaper article, the ***Houston Telegraph*** gave more details regarding the lynch mob. A citizen had passed by the mob and ridden on to Anderson to warn Lt. Smith of their approach. Smith wired Magruder for reinforcements, and the article reported that a special train was sent from Houston with two companies of Infantry, and a cavalry company at Huntsville was also ordered to Anderson. Smith had only thirty men, and when the mob arrived after nightfall and demanded the prisoners, he replied "come and take them, but you will have to fight for it." After several parleys and the arrival of reinforcements, the mob disbursed. [38]

A second mob gathered at Anderson on the evening of June 20, again threatening to lynch the prisoners. On the same evening, Captain Poole arrived with his five men and with the orders to take the prisoners to Galveston. Lt. Smith was obviously rattled by what was going on and had concerns over the validity of the Order and the identity of Capt. Poole. He refused to turn the prisoners over to Poole until he received telegraphic verification of the order and of Pool's identity on the morning of June 21. Poole and the prisoners arrived in Houston on June 22 and were apparently halted there. [39]

The secrecy that Kirby Smith had urged upon Magruder had not been observed, as on the day the prisoners arrived at Houston, a telegram was sent to Kirby Smith signed by "many citizens" of Houston that the news that Peebles was being sent outside the lines had created an uproar. They demanded that they be continued to be held. A large part of the Houstonians' animosity must have been directed at Baldwin, who was from Houston. As on the 23rd, Magruder ordered all the prisoners to be sent to Galveston under the escort of Poole, with the exception of Baldwin, who was to be returned to the jail in Anderson. [40] As an interesting note on available transportation, on the 26th Poole was ordered to return to Houston by Handcar, and thence by train to Columbus where he was to resume command of his company. Seventy miles by pumping a handcar would not be a pleasure trip! [41]

Magruder, who was in Galveston, seemingly could not make a firm decision, or public pressure was too great, but in any event, on the 27th Magruder ordered Hawes to dispatch the prisoners from Galveston to Houston under a guard of ten men. Upon their arrival at Houston, Hillebrand and Zinke were to be released and allowed to return to their homes, but Peebles and Seeliger were to be taken under the same guard to Anderson, and again delivered over to Webb. For some reason, Baldwin was not referenced, although he was still in custody. [42]

The populace at Anderson was apparently still in a lynching mood, as on the 29th, Magruder's Chief of Staff J.E. Slaughter in Houston wired Magruder asking if the prisoners could not be more safely held at Camp Groce near Hempstead. At the same time Webb at Anderson was sent the following order: "The major-general commanding directs that you take steps to prevent the molestation of the political prisoners in your charge by a mob, or in any other way. He expects

---

38 *The Houston Telegraph*, October 28, 1869.

39 Official Records, War of the Rebellion, 2, VII, 393, 397.

40 ar 120_404.

41 NARA, RG 109, II, Vol 106 ½ , SO 178 6/26/64, p. 13.

42 NARA, RG 109, Chapter II, Vol 106 ½ Special Orders, Department of Texas, Special Orders 179, Galveston, June 27, 1864, p 16 Paragraph IV.

the officers in charge of these prisoners to be responsible for any unauthorized interference with them."[43]

In the interim, Magruder's Assistant Adjutant General, L.G. Aldrich, had attempted to take some initiative in the matter. When the prisoners had arrived in Houston, Aldrich had requested that Col. C.C. Gillespie, commanding at Camp Groce to make preparations to receive the prisoners. He added to Special Order 179, directing Lt. E.L. Jones to stop at Hempstead and if Gillespie was prepared to receive the prisoners, to leave them at the prison camp. Upon the arrival of Jones and the prisoners, Gillespie asserted that he was not prepared to receive them, and Jones went on to Anderson arriving on the evening of June 30.

On July 1st Webb reported that the mob was still active and threatening. He had one company that was charged with guarding the prisoners, four other posts in the county, as well as Ordnance Stores at Washington. Webb was concerned that he did not have the manpower to resist a determined assault from an "overwhelming force," but he was "resolved to defend the prisoners to the very last extremity, and whatever may be the turpitude of their conduct, this I regard as my imperative duty." He strongly recommended that the prisoners be moved to Camp Groce, as Gillespie had sufficient men to overawe the mob. If the prisoners were not moved, Webb requested that his men at Washington be relieved and sent back to him.[44]

The situation languished for nearly three weeks, and on July 20, Magruder seemingly had had enough. On that date, he ordered the indefatigable Captain Poole to proceed from Columbus to Anderson and there take possession of the Peebles, Baldwin and Seeliger from Webb, and transport them back to Columbus. Poole was to 'hold and protect the prisoners while in his custody at all hazards and is authorized to call upon any Officers of the Army for any assistance he may require for this purpose." Once back at Columbus he was to turn the prisoners over to Captain W.G. Tobin of Pyron's 2nd Texas Cavalry, who would receive them from Poole. In the same order Tobin was directed to "proceed with them to Eagle Pass, at which point he will turn them over to the Officer at that point, who will cause them to be safely carried across the line into Mexico and thence released. Capt. Tobin will present the Officer receiving the prisoners with a copy of this order, by which he will be governed"[45]

On the 21st, the orders were changed slightly, as Tobin was directed to personally "see prisoners safely into Mexico" in lieu of transferring them to the officer in command at Eagle Pass. Pyron's regiment had been decimated at the Battle of LaFourche Crossing west of New Orleans in June of 1863. The regiment had been returned to Texas and was doing duty along the western frontier. It is some 270 miles from Columbus to Eagle Pass, and a trip of that distance on horseback in July would not be pleasant. Two weeks prior to receiving the order to transport the prisoners, Tobin had been examined by a surgeon, who pronounced him unfit for further field duty. Tobin suffered from four gunshot wounds presumably received thirteen months before in Louisiana. They were in the right shoulder, left arm, right groin, and left thigh, and the balls still remained in the shoulder and thigh wounds. Even so, Tobin made the 540-mile round trip! [46]

---

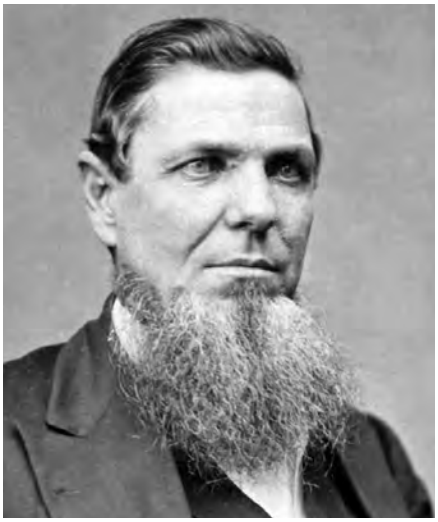
[43] ar120_424.

[44] ar120_433.

[45] NARA, RG 109, Ch II Vol 105 SP Or DOT July - 1864, SPECIAL ORDER 202 D.O.T. July 20, 1864 p 58 , 60.

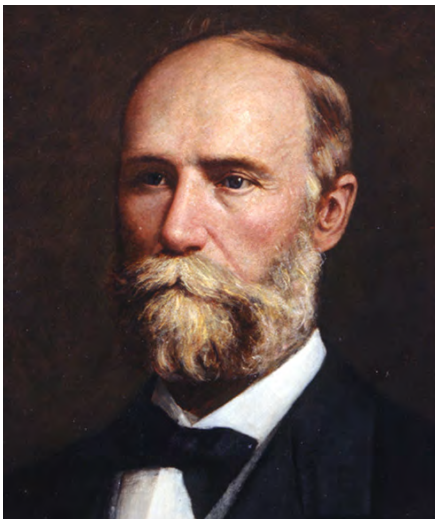
The record is silent as to the exact date that the prisoners were put across the river. From Eagle Pass they traveled to Matamoros, and thence to New Orleans. After a visit to his family in Ohio, Baldwin went to New Orleans and then back to his native state of New Jersey, where he remained until the end of the war. On July 18, 1865, the citizens of Belleville, New Jersey, passed a resolution honoring him for his loyalty to the Union, recognizing his sufferings while a prisoner, and wishing that he be as honored in Texas as he was in New Jersey. On his return to Texas in August 1865, Baldwin served a brief stint as customs collector at Galveston. He then moved back to Houston, and in August 1865 published a very remarkable and magnanimous broadside announcing his return to Texas. Recounting some of his experiences as a prisoner, he urged people to work together to rebuild the country and to obey the laws. Urging forgiveness he stated, "I have suffered with those who suffered, and can now rejoice with those who rejoice. It is a blessed thing to be able to forgive. Let each set an example of forgiveness." He concluded by thanking his guards while a prisoner for their kindness to him.[47]

As noted above, Hillebrand and Seeliger were simply released in Houston in June and went home. Hillebrand was elected county Judge of Fayette County in 1869 and in 1871 was elected to fill a vacant seat in the Texas Senate. He was killed in a wagon accident in September 1887.[48] Seeliger returned to his home at Industry in Austin County. Peeble's health prevented him from returning to the practice of medicine, and by 1880 had lost most of his fortune. Peebles was an active Republican, and during Reconstruction an attempt was made to name what became Waller County "Peebles County" in his honor. He died in 1893 at the age of eighty-three.



Andrew Jackson Hamilton

Baldwin was United States Attorney for the Eastern District of Texas but was removed from that position ostensibly because he supported Andrew Jackson Hamilton over E.J. Davis.[49] In 1870 he had moved to Jack County and was practicing law there. Zinke moved to Austin and died there on February 23, 1888.[50] Justice Moore continued on the court until 1867 when he was removed by the reconstruction military governor. Reappointed



E.J. Davis

---

[46] NARA, RG 109, Ch II Vol 105 SP Or DOT July - 1864 SPECIAL ORDER 203 D.O.T. July 21, 1864 p 67; Compiled Service Record, W.G. Tobin, National Archives.

[47] Undated broadside, Texas State Archives, published in *Bellville Countryman* August 18, 1865, Robert L. Kerby, *Kirby Smith's Confederacy: The Trans-Mississippi South, 1863-65* (New York and London: Columbia University Press, 1972), 273, *Houston Tri-Weekly Telegraph* (Houston, Tex.), Vol. 31, No. 67, Ed. 1 Monday, August 21, 1865; *The Weekly Southern Intelligencer*. (Austin City, Tex.), Vol. 1, No. 7, Ed. 1 Friday, August 18, 1865 (Broadside).

[48] "Footprints of Fayette" online article http://www.fayettecountyhistory.org/footprints2.htm#hillebrand.

[49] *The Houston Telegraph*, October 28, 1869.

[50] He is buried in Oakwood Cemetery. http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=46947512.

to the Court in 1874, and named Chief Justice in 1878, Moore served in that capacity until 1881, and died in 1883. Justice Bell never returned to the Court. He served as Secretary of State under Governor Hamilton in 1865-66 and died in Austin in 1893. On August 4, 1864, Magruder was removed as Commander of the Department of Texas, and moved to the command of the Department of Arkansas. [51] It is unknown how much the Supreme Court controversy impacted this reassignment, but in light of the circumstances and Smith's opinion of Magruder, it is logical to assume that it did. Magruder was reinstated to the Texas command in March 1865 and went to Mexico after the collapse, offering his services to Emperor Maximilian. After the fall of Maximilian, he returned to Texas making his home in Houston, where he died in 1871.[52]

An analysis of the cast of characters in this drama certainly raises questions as to stereotypes of Texas unionists. Why did John Hancock and James Bell remain loyal to the union, when by birth and position they should have been secessionists? It is unfortunate that most Texas newspapers of the Civil War era are fragmentary, as it is difficult to draw conclusions as to the impact of the press on the general population from such an incomplete record. It is obvious that Magruder's high handed tactics in dealing with civilians would have had some impact on Texans that would have exacerbated the "loss of will to fight." However, there is no way of quantitatively analyzing this issue. A careful analysis of the voting patterns in the Bell-Roberts race for the Chief Justice seat could be extremely revealing. This race presented a clear choice of a Unionist versus a die-hard Confederate. Even though Bell was decisively defeated, a cursory examination of voting patterns showed reasonably strong support for him in the counties that did not have heavy slave populations, and this could be a strong indicator of growing tepidity for the Confederate cause. There is still room for continued study of unionism in Texas during the war.

---

[51] Official Records, War of the Rebellion, 1, XLI Pt2, 1039.

[52] Paul Casdorph, *Prince John Magruder: His Life and Campaigns*, 1996.

Randal B. Gilbert *is a 1975 graduate of the University of Texas School of Law and practiced in his hometown of Tyler until his retirement in 2023. In 1992 he purchased and restored the 1881 Smith County Jail as his office. An avid historian, he has published numerous history articles and coauthored two books on World War One.*

Return to Journal Index

The Opinions of Nathan Hecht

By David Coale

Above all else, in his long and distinguished career in state government, Nathan Hecht was an appellate judge. And as an appellate judge, he wrote opinions. This article reviews some of the most notable opinions from Justice Hecht's storied service on the Texas Supreme Court. In so doing, the article identifies some key themes that recur in his work, as follows:

1. **Simplification:** A recurring theme in Justice Hecht's opinions is a search for rules of decision that are simple, understandable, and straightforward to implement.

2. **Simplification Plus:** In several significant cases, Justice Hecht's statement of a new and simpler rule was accompanied by an expansion of the scope for that rule. If that technique seems familiar, that's because it's just what Chief Justice John Marshall did in Marbury v. Madison to claim the power of judicial review in a politically palatable way.

3. **Texas sovereignty:** In his writing about several significant bodies of law, Justice Hecht asserted a distinct and significant role for Texas law and the Texas Constitution, even with a considerable body of federal law in place.

4. **Freedom of contract:** In a theme that over time became shared by the entire Supreme Court, Justice Hecht repeatedly affirmed and enforced a strong Texas public policy in favor of freedom of contract.

5. **Procedural forgiveness:** Justice Hecht was well known as a stickler about evidentiary sufficiency. But while he could be strict about the substance of a lawyer's work, he showed understanding about the difficulties of the process; for example, in his landmark opinion about a workable standard for "death penalty" sanctions that has stood for over twenty years.

1. Simplification

Justice Hecht's opinions emphasize simplicity—a rule of decision that's both easy to understand and practical to implement. Probably the best-known example is his 2001 opinion in *Lehmann v. Har-Con Corp.*,[1] which addressed the long-vexing problem of when a judgment rendered without a traditional trial is final and appealable.

[1] 39 S.W.3d 191 (Tex. 2001).

An earlier Supreme Court opinion recommended use of a "Mother Hubbard" clause (a recitation that "all relief not expressly granted is denied"),[2] but that approach didn't work well in practice.[3] As Justice Hecht summarized, "the routine inclusion of this general statement in otherwise plainly interlocutory orders and its ambiguity in many contexts have rendered it inapt for determining finality when there has not been a conventional trial."[4]

Accordingly, *Lehmann* ended the appellate courts' focus on "Mother Hubbard" clauses, substituting a two-factor test that has stood largely unchanged until the present day: that a judgment rendered without a conventional trial should only be considered final for purposes of appeal if it explicitly states that it is a final judgment covering all claims and parties or if it actually resolves all pending issues and parties.[5]

A concurring opinion questioned whether a serviceable phrase about finality could be developed.[6] Justice Hecht dismissed that concern in two sentences that provide a clear snapshot of the heart of his judging philosophy:

> [I]t is a long way from the now well-established fact that Mother Hubbard clauses can understandably be misread to the concurring opinion's conclusion that clear language should be given no meaning. We require certainty for finality, but we cannot say that certainty is impossible.[7]

If perfection wasn't achievable, Justice Hecht would gladly take as much "near-perfection" as he could get—so long as the rule of decision was fair and practical to implement.

Another example of Justice Hecht's concern for simple, workable rules appeared in the 1999 case of *Hyundai Motor Co. v. Rodriguez*.[8] Decided a year before the Supreme Court's landmark jury-charge case of *Crown Life v. Casteel*,[9] his sensible approach to jury questions played a significant role in keeping *Casteel*'s complexities from becoming more challenging than they already were.

The *Hyundai* plaintiff sued Hyundai after suffering severe injuries in a rollover accident, claiming that key parts of the vehicle were defectively designed. She sued for negligence, strict liability, and breach of implied warranty. The trial court submitted only two liability questions to the jury, one pertaining to negligence and the other to design defect under strict liability, and did not submit a separate question for breach of implied warranty. The jury found no design defect and the trial court rendered judgment for Hyundai.

The plaintiff appealed, arguing that the trial court erred by not giving an instruction on

---

2 Mafrige v. Ross, 866 S.W.2d 590 (Tex. 1993).

3 *Lehmann*, 39 S.W.3d at 200 *et seq.*

4 *Ibid.*, 192.

5 *Ibid*., 192-93; *see generally* David S. Coale & Ben Taylor, *Judgment Rendition in Texas*, 75 Baylor L. Rev. 354 (2023).

6 *Lehmann*, 39 S.W.3d at 208 (Baker, J., concurring).

7 *Ibid.,* 207.

8 995 S.W.2d 661 (Tex. 1999).

9 Crown Life Ins. Co. v. Casteel, 22 S.W.3d 378 (Tex. 2000).

her implied-warranty claim. Justice Hecht's opinion reasoned that in a case where claims for strict liability and breach of implied warranty are based on the same facts about product safety, duplicative jury questions could confuse the jury and were unnecessary. The key substantive issue—defectiveness of the product—was adequately addressed in the questions about strict liability.

2. *Simplification Plus*

Justice Hecht wrote several other opinions that turned on the crafting of a simple and workable rule. In some of them, he combined the statement of a straightforward principle with an expansion of the underlying substantive principle.

That deft maneuver calls to mind Chief Justice Marshall's brilliant tactics in *Marbury v. Madison*, in which he combined a straightforward rule (a definition of what it meant to "delivery" of William Marbury's judicial commission) with enormous expansion of judicial power (judicial review), all in a package that was politically acceptable to all stakeholders (inability to use judicial review because of the unconstitutionality of part of the Judiciary Act):

> This was the genius of Marshall's reasoning *in Marbury v. Madison*. The Court had initially ruled that Secretary Madison's actions were illegal, likely making Federalists everywhere squeal with glee. But the final ruling gave Jefferson and his administration the outcome they desired, as well—Madison was not required to deliver Marbury's commission. The cherry on top? Marshall was able to introduce judicial review, a power that he had been itching to establish for the Court.[10]

Three well-known cases provide illustrations. The first is *Gammill v. Jack Williams Chevrolet, Inc.*,[11] which addressed the then-novel question whether the *Daubert* requirement of reliability applied to all types of scientific experts. The Gammills argued that defects in their Isuzu Trooper caused a severe accident, offering expert testimony about an allegedly defective seat belt and wiring harness.

Justice Hecht's opinion reversed, reasoning that "[i]t would be an odd rule of evidence that insisted that some expert opinions be reliable but not others."[12] That holding is simple enough—essentially, his opinion concluded that an expert is an expert—but it also significantly expanded the duties of the trial court as "gatekeeper." The Supreme Court's earlier precedent, *Merrell Dow Pharmaceuticals, Inc. v. Havner*,[13] had focused on scientific testimony.

The second of these cases is *In re: Prudential Ins. Co. of America*,[14] which held that a jury-trial waiver in a commercial lease was enforceable. The case came before the Supreme Court as a petition for a writ of mandamus, in which the petitioner argued that it lacked a remedy by direct appeal (since the waiver would have no value after trial).

---

[10] Tara Kibler, *Marbury v. Madison: The Most Important Decision in American Constitutional Law*, HeinOnline Blog (Nov. 12, 2020) (last checked May 2, 2024) (available at https://tinyurl.com/yc4kt8x3).

[11] 972 S.W.2d 713 (Tex. 1998).

[12] *Ibid.*, 726.

[13] 953 S.W.2d 706 (Tex. 1997).

[14] 148 S.W.3d 124 (Tex. 2004) (orig. proceeding)

Justice Hecht's opinion accepted that argument—over a vigorous dissent by four Justices about the proper scope of mandamus—and noted that his opinion was establishing a "prudent" but flexible test for when a party lacked a meaningful appellate remedy.[15] A straightforward rule, to be sure, but also one that significantly expanded appellate power in the process, as the dissents noted.[16]

And the third, *Romero v. KPH Consolidation, Inc*.,[17] involved a Casteel problem arising from a theory of recovery that lacked legally sufficient evidence to support it (as opposed to the facts of *Casteel* itself, which involved an incorrect trial-court conclusion about the scope of a DTPA provision.) Justice Hecht's opinion concluded that the logic of *Casteel* necessarily included a failure of proof as well as the failure of a legal theory.[18]

Here again, this was a straightforward rule that avoided potentially arcane disputes about whether a particular case presented a legal or factual problem. But in stating that simpler rule, Justice Hecht's opinion materially expanded the scope of appellate review to include verdicts that presented such issues. The U.S. Court of Appeals for the Fifth Circuit, for example, declined to reverse in a case presenting a Casteel-type issue, stating: "We will not reverse a verdict simply because the jury might have decided on a ground that was supported by insufficient evidence."[19]

3. Texas Sovereignty

Two opinions by Justice Hecht strongly affirm the independence of Texas law, while a third notes the limits that the federal system imposes—even if Texas has an independent and strong source of its own law.

The first is *Nafta Traders, Inc. v. Quinn*[20] from 2011, which held that the scope of judicial review was broader under the Texas General Arbitration Act than the Federal Arbitration Act.

The arbitration clause in that case said that any arbitration decision could not include reversible errors of law.[21] In 2008, the U. S. Supreme Court decided *Hall Street Associates, L.L.C. v. Mattel, Inc*., which held that the FAA didn't allow that much judicial review of arbitration awards.[22] Justice Hecht's opinion reached a different conclusion under the TAA, concluding that such a provision doesn't conflict with that statute.[23]

---

[15] *Ibid.*, 135-36 ("The operative word, 'adequate,' has no comprehensive definition; it is simply a proxy for the careful balance of jurisprudential considerations that determine when appellate courts will use original mandamus proceedings to review the actions of lower courts.").

[16] *Ibid.*, 141 (Phillips, C.J., dissenting) ("I see no need to inject even greater uncertainty into an already difficult and frequently subjective process.").

[17] 166 S.W.3d 212 (Tex. 2005).

[18] *Ibid.*, 215 ("[B]road-form submission cannot be used to put before the jury issues that have no basis in the law or the evidence.").

[19] Nester v. Textron, Inc., 888 F.3d 151 (5th Cir. 2018).

[20] 339 S.W.3d 84 (Tex. 2011).

[21] *Ibid.*, 90.

[22] 552 U.S. 576 (2008).

[23] *Nafta Traders*, 339 S.W.3d at 100-01.

The real significance of *Nafta Traders* may not be in its specific holding about the relative scope of the FAA and TAA, but in its recognition of the broader principle that federal arbitration law doesn't automatically shape state law. Consider, for example, the U.S. Supreme Court's recent opinion that a showing of prejudice is not required to establish waiver under the FAA.[24] Citing *Nafta Traders*, courts of appeal haven't automatically assumed that this precedent carries over to the TAA.[25]

The second opinion is *Robinson v. Crown Cork & Seal Co*.,[26] which gave a vigorous explanation of the "retroactivity clause"—a provision unique to the Texas Constitution with no counterpart in the federal one.

The case involved the constitutionality of Chapter 149 of the Texas Civil Practice and Remedies Code, which limits successor liability for asbestos-related claims. Barbara Robinson claimed that her husband developed mesothelioma from asbestos exposure, and sued Crown Cork & Seal as a successor to Mundet Cork, the company that made the relevant asbestos products.

Her claim ran afoul of Chapter 149 of the Civil Practice and Remedies Code, which was enacted to limit successor liability for asbestos-related claims. Under that law, Crown Cork's liability was capped at the fair market value of Mundet's assets at the time of acquisition.

In *Robinson*, the Supreme Court held that Chapter 149 violated the Texas Constitution's prohibition on retroactive laws. Clarifying a confused set of earlier opinions, Justice Hecht's opinion stated a three-factor test designed to balance the general public interest against the impact that such laws have on specific claims such as the Robinsons.

As a result of this holding, Texans have an additional constitutional protection against governmental overreach, that bolsters and reinforces the constitutional guarantees of due process and equal protection that are common to the state and national constitutions.

The third case, *Coca-Cola Co. v. Harmar Bottling Co*. from 2006,[27] provides a significant counterpoint to *Nafta Traders* and *Robinson*. Coca-Cola was accused of anti-competitive practices in the Ark-La-Tex region, in the form of marketing agreements that favored their products over competitors such as Royal Crown Cola. The jury sided with the plaintiffs, leading to a substantial award for damages and an injunction against those practices.[28]

Justice Hecht's opinion reversed. It affirmed that Texas has its own antitrust laws—independent of the federal statutes and those of other states—but one limited to Texas' borders. Because Texas law could not govern economic activity outside of Texas, the Texas courts could not consider injuries suffered outside of Texas. And because the Supreme Court found no substantial

---

[24] Morgan v. Sundance, 596 U.S. 411 (2022).

[25] *See, e.g*., Zurvita Holdings, Inc. v. Jarvis, No. 05-23-00661-CV, 2024 WL 1163209 (Tex. App.—March 14, 2024, no pet. h.) (mem. op.).

[26] 335 S.W.3d 126 (Tex. 2010).

[27] 218 S.W.3d 671 (Tex. 2006).

[28] *Ibid*., 678-79.

evidence of the claimed anti-competitive harm within Texas, judgment was rendered for Coca-Cola in all respects.[29]

4. Freedom of contract

The Texas Supreme Court's support for freedom of contract is well-known today. Justice Hecht's opinions are important waystations on the path to the present state of the law.

One is *Prudential*, discussed previously, in which the parties disputed the validity of a jury-trial waiver in a commercial lease. The Supreme Court ruled for Prudential, holding that the waiver was valid and enforceable.[30]

Justice Hecht's opinion reasoned that even though jury-trial waivers affect the conduct of court proceedings, they are generally permissible so long as parties contract to make one knowingly and voluntarily.[31] Texas law had long provided strong protection for freedom of contract, but the application of that principle in this setting provided a clear reference point for future cases about the overall strength of that protection.

The second opinion is *LAN/STV v. Martin K. Eby Const. Co.*,[32] a 2014 opinion that applied the economic-loss rule to the complexities of the construction plans for a sophisticated light-rail project. The project was owned by Dallas Area Rapid Transit, the plans were prepared by LAN/STV (an architecture firm), and the plans were used by Martin K. Eby Construction Co. (Eby) to bid and build the project.

Shortly after construction began, Eby claimed that inaccuracies in the plans caused it to incur significant extra costs. After settling with DART, Eby sued LAN/STV about the plans for negligence.[33] The issue before the Supreme Court was whether Eby could sue for negligent misrepresentation in spite of economic loss rule, which ordinarily bars recovery of purely economic damages in negligence cases (absent physical injury or property damage).[34]

Justice Hecht's opinion answered "no," concluding that the economic loss rule barred Eby's claim. He emphasized the critical role of contract terms and relationships in defining the allocation of risk for complex situations such as this construction project. The opinion then highlighted that Eby had no direct contractual relationship with LAN/STV, which meant that a negligence claim could upset the structure of the project.[35]

The themes of negotiation and certainty, taken together, were then given a ringing

---

[29] *Ibid.*, 690-91.

[30] 148 S.W.3d at 127.

[31] *Ibid.,* 129 & n.11.

[32] 435 S.W.3d 234 (Tex. 2014).

[33] *Ibid.,* 237.

[34] *Ibid.,* 238.

[35] *Ibid.,* 246 *et seq.*

endorsement by Justice Hecht's 2020 opinion in *Energy Transfer Partners, L.P. v. Enterprise Prods. Partners, L.P.*[36]

Texas has adopted a uniform state law that recognizes the creation of a "partnership by conduct," even if the parties did not intend to form a partnership, so long as their objectively observable actions established a partnership under a set of statutory factors.[37] The issue in *Energy Transfer* was whether parties could agree, by contract, to conditions that must be satisfied before a partnership is officially recognized—even if their conduct would otherwise create partnership under the statute.[38]

Justice Hecht's opinion noted that Energy Transfer and Enterprise entered preliminary agreements to explore a joint venture, which said that no binding partnership would exist until certain conditions (board approvals and execution of definitive agreements) were satisfied. Enterprise did not dispute that Energy Transfer had proven a partnership under the statutory factors.

Facing a direct conflict between contract and statute, Justice Hecht's opinion chose contract, and reversed a substantial judgment for Energy Transfer. In so doing, the Supreme Court concluded that parties can not only define the terms of a business relationship by contract, but the conditions for not having a business relationship—and in so doing, avoid what would otherwise be a statutory "partnership by conduct."[39]

Justice Hecht's opinions show how the Texas Supreme Court's support for freedom of contract grew stronger over time—in no small part, through those opinions. In each of these three cases, that freedom was balanced against other, significant considerations: court rules in *Prudential*, the realities of complex business situations in *LAN/STV*, and the partnership-formation statute in *Energy Transfer*. Each time, the Supreme Court struck that balance in favor of contractual freedom.

5. Procedural forgiveness

In 1991, when the Supreme Court decided *TransAmerican Natural Gas Corp. v. Powell*,[40] the Texas bench and bar had substantial concern about the phenomenon of overly aggressive tactics known as "Rambo litigation."[41] The tension between a lawyer's duty of zealous advocacy and obligations to the judicial system was under intense scrutiny.

That atmosphere sets the background for Justice Hecht's opinion in *TransAmerican*. TransAmerican sued Toma Steel Supply, Inc. for breach of contract. When TransAmerican failed

---

[36] 593 S.W.3d 732 (Tex. 2020). The author was among the counsel for Energy Transfer, the unsuccessful party.

[37] Tex. Bus. & Comm. Code § 152.052 ("Rules for Determining if Partnership is Created"); *see* Ingram v. Deere, 288 S.W.3d 886 (Tex. 2009) (applying those factors).

[38] *Energy Transfer*, 593 S.W.3d at 736-37.

[39] *Ibid.,* 741.

[40] 811 S.W.3d 913 (Tex. 1991) (orig. proceeding).

[41] *See generally* Mark Donald, *"Rambo Justice,"* Dallas Observer (March 19, 1998) (summarizing notable characters and events of Dallas-area litigation in the late 1980s).

to comply with discovery requests—in particular, not providing their president for a deposition—the trial court took the drastic step of striking TransAmerican's pleadings and rendering a default judgment for Toma.[42]

The Supreme Court reversed. Justice Hecht's opinion established a two-prong test for when such sanctions were permissible: (1) they must be directly tied to the wrongdoing, and (2) proportionate to the harm caused by the misconduct—or, in Justice Hecht's words: "The punishment must fit the crime."[43] These factors deftly balanced the conflicting duties that arise in these situations, and they have stood the test of time, serving as a reliable framework for these difficult disputes for over thirty years now.

While only *TransAmerican* continues to be cited, it's notable that it was one of several sanctions opinions written by Justice Hecht during the late 1980s and early 1990s, including his tenure on the Dallas Court of Appeals.[44] All have the same pragmatic tone, and all reverse, to some degree, a lower-court sanction.

While Justice Hecht hasn't written in this area for some time, these opinions illustrate an interesting contrast in his judicial philosophy. He's well-known as a "stickler" about the amount of evidence needed to prove a wide range of substantive claims. At the same time, these opinions show his acute awareness of how hard it can be to assemble that evidence, and they doubtless influenced his leadership of the Texas Supreme Court as it reviewed other issues about sanctions and professional responsibility in more recent years.

Conclusion

While the above are only a handful of the many opinions written by Justice Hecht during his many years as a Texas appellate judge, they provide a window into his broader philosophy about judicial decision-making. Emphasizing simplicity and clarity at every turn, his opinions led the way to the vigorous appellate review of today's Texas Supreme Court.

---

[42] *TransAmerican*, 811 S.W.3d at 915-16.

[43] *Ibid.,* 917.

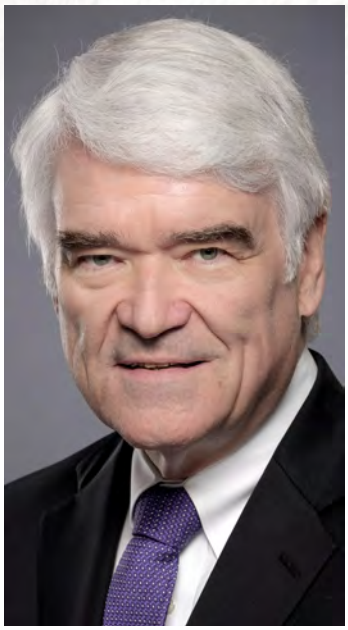
[44] *See* GTE Communications Systems Corp. v. Tanner, 856 S.W.2d 725 (Tex. 1993); Braden v. Downey, 811 S.W.2d 922 (Tex. 1991); Plorin v. Bedrock Foundation & House Leveling Co., 755 S.W.2d 490 (Tex. App.—Dallas 1988, writ denied).

DAVID COALE *leads the appellate practice at Lynn Pinker Hurst & Schwegmann in Dallas. He was recently named the Lawyer of the Year in civil appellate law for North Texas by "Best Lawyers." He publishes the popular blogs 600Camp.com, about the Fifth Circuit, and 600Commerce.com, about the Dallas Court of Appeals, and frequently comments on legal issues for local and national media.*

Return to Journal Index

Justice for All: The Legacy of Chief Justice Nathan Hecht

By Chad Baruch



"One of a kind." "Stalwart champion." "The GOAT." These are just a few of the phrases used by access-to-justice leaders around the country to describe the contributions of Chief Justice of Texas Nathan Hecht to legal services for the poor. That shouldn't be a surprise. Anyone who has heard the Chief speak during the past decade knows of his commitment to closing the justice gap.

As Chief Justice Hecht often says: "Justice for only those who can afford it is neither justice for all nor justice at all." It would take an entire book to catalog all of the ways his commitment to this principle has manifested itself. This brief article discusses just a few of them.

Funding for the Legal Services Corporation

When it comes to access to justice, there's no substitute for lawyer boots on the ground. That makes government funding for the Legal Services Corporation critical.

John Levi, Chair of the LSC Board, refers to Chief Justice Hecht as "a stalwart champion" of the organization who provides much-needed support by "weighing in every year on behalf of increasing funding for LSC with key Members of Congress at crucial times in the appropriation process." And he has brought others into the fold as well. Levi notes that under the Chief's leadership, "the Conference of Chief Justices has been a strong advocate on Capitol Hill, paving the way for chief justices across the country to make their voices heard on behalf of low-income people."

The Chief has made similar inroads at the state level. Perhaps the best example is a timely collaboration with his predecessor, Wallace Jefferson, on a 2011 letter to Texas legislators. Economic issues had resulted in a massive decrease in income generated by lawyers' IOLTA accounts—a vital source of funding for access to justice. Sympathetic legislators suggested that Chief Justice Jefferson write a letter to lawmakers explaining the crisis.

At that time, then-Justice Hecht served as the Court's liaison for access to justice. And that in itself is something of a story. Former Justice Harriet O'Neill served as the access-to-justice liaison

at the time of her retirement from the Court in 2010. Chief Justice Hecht was the Senior Justice on the Court. He and Chief Justice Jefferson believed the appointment of the longest-serving justice would signal the depth of the Court's commitment to the issue.

With the Chief serving as liaison, he and Jefferson prepared the letter together. The response was immediate and remarkable—the Legislature pushed through an emergency appropriation of more than $20 million for access to justice.

But what makes Chief Justice Hecht so effective in securing funding for access to justice? Harriet Miers, Chair of the Texas Access to Justice Commission, offers one perspective on what she deemed the Chief's "tremendous impact in helping obtain vital resources for Legal Services funding." She says the Chief is effective because he doesn't speak to legislators in abstractions. Instead, he uses down-to-earth language and explains graphically "what it means to be poor, to need legal services desperately, and to be unable to obtain a lawyer."

Levi says the Chief is so effective that even after he retires from the Supreme Court of Texas, LSC will continue to rely on him as one of its most effective advocates on Capitol Hill: "Believe me, we aren't going to let him just go out to pasture."

A Bully Pulpit—and the Willingness to Use It

Chief Justice Hecht is known nationally for his powerful voice in support of access to justice. While he long has been an advocate for the cause, his service as president of the Conference of Chief Justices afforded him the proverbial "bully pulpit" to spread the word even further and more powerfully.

Early in his term as president-elect of the Conference, the incumbent president unexpectedly died. The Chief was forced to serve out his predecessor's term before his own—making him the longest serving president in the Conference's history. This lengthy term in office afforded Chief Justice Hecht a unique opportunity to advance the cause of access to justice. And advance it he did. Mary McQueen, President of the National Center for State Courts, sums it up succinctly:

"When it comes to access to justice, Chief Justice Nathan Hecht is our GOAT."

The Chief uses a variety of tools to help spread the word. Levi points to numerous "persuasive and powerfully crafted speeches and op-eds" across the country as being critical to helping both members of the public and legislators understand the access-to-justice crisis and its importance to the continued viability of our system of government.

When Chief Justice Hecht served as president of the Conference, LSC had just released its first legal-gap study showing the staggering short fall in meeting the needs of low-income Americans. Under the Chief's leadership, the Conference issued a formal statement supporting legal services funding and expressing an intent to explore the use of technology to help close the justice gap. By this time, says Levi, Chief Justice Hecht "was known nationally as a champion of access to justice."

In addition to speeches and op-ed pieces, the Chief has participated in panels across the country to help focus attention on the crisis. He focuses heavily on law schools, sensitizing future lawyers to the issue. As Levi says: "No one more than Nathan has really stepped up, used his voice and his position, to encourage others to address a legal-services gap that simply is not sustainable." Jefferson echoes that sentiment: "He's become a national leader by using his influence with his fellow chief justices across the country and in the American territories to further the cause of access to justice."

Leading American Courts Through the Pandemic

No discussion of Chief Justice Hecht's work to ensure access to justice would be complete without mention of the COVID-19 pandemic.

The onset of the pandemic closed courthouse doors. But it didn't reduce Texans' need for access to the justice system. Divorcing parents still needed orders governing child support and possession for their children; criminal defendants still required bail hearings; civil litigants still needed temporary restraining orders; and so on.

Jefferson described the resulting challenge: "How do you preserve people's rights to the courts when the courts are physically closed?" In a state the size of Texas, there are no easy answers. Each year, Texas state courts resolve more than twenty times the number of cases handled by all federal courts in the country combined.

Under the leadership of Chief Justice Hecht and the Supreme Court of Texas, the state took the lead in using remote technology to conduct court proceedings and ensure continued access to the justice system. Within weeks of the pandemic's onset, the Court issued the first of what would become numerous emergency orders adjusting rules and procedures to ensure the continued functioning of and access to Texas courts.

In the twelve months following the onset of the pandemic, Texas courts conducted nearly 1 million Zoom hearings involving more than 3.5 million participants. A Texas judge became the first in the nation to oversee an entirely remote jury trial. Chief Justice Hecht and Texas illuminated a pathway for courts across the country to function efficiently and effectively even while they remained physically shuttered.

McQueen calls Chief Justice Hecht "the COVID Drum Major" for state courts across the country. Under his leadership, the Conference of Chief Justices and the Conference of State Court Administrators jointly formed a Pandemic Rapid Response Team chaired by the Chief. Within just one week of the pandemic's onset, the Center established an extensive resource center tracking how courts across the country were dealing with the pandemic—and serving as a public repository for that information, enabling judges and court administrators to share challenges and solutions.

According to McQueen, the "Rapid Response Team helped to place the courts ahead of the other branches of government in responding to the pandemic."

Rules Changes and Litigant Resources

The Chief has a lengthy history of involvement in the Court's rulemaking process. Jackson Walker partner Chip Babcock has worked alongside Chief Justice Hecht on numerous rules-related projects, and notes that "discovery rules, summary judgment practice, and abolition of unpublished opinions are just a few of the rules changes effected by the Court under Justice Hecht's leadership."

But the pandemic revealed new strategies for expanding access to justice through rules amendments. The use of remote proceedings resulted in a dramatic increase in attendance by pro se litigants, who no longer had to arrange for transportation, child care, or time off from work to attend their hearings.

The lesson was not lost on the Chief and Supreme Court. Texas again led the way nationally in establishing rules and procedures for the continued use of remote proceedings after the pandemic.

Even before the pandemic, Chief Justice Hecht encouraged changes to the rules and the creation of resources to assist pro se litigants. Kennon Wooten, an Austin lawyer heavily involved in the rulemaking process, notes the Chief's encouragement of the "use of plain language that can be understood by people who aren't lawyers."

Wooten also explained that with the Chief's guidance, the Court "has included references to Texas Law Help—a great resource for self-represented litigants—in the rules themselves, including rules relating to citations." Continuing an effort that began under Wallace Jefferson's leadership, the Supreme Court also has expanded its bank of forms for use by pro se litigants.

Bail Reform

Working alongside the Chief of the Texas Court of Criminal Appeals and the Legislature, Chief Justice Hecht supported the most significant changes in the Texas bail system in a century. Federal judges had deemed the Texas bail system unconstitutional, saying it resulted in defendants being detained simply because they were too poor to pay bond amounts.

The Chief helped lead a bipartisan effort to address these shortcomings and ensure that defendants who pose no risk of flight or violence are not detained while enabling detention of defendants when no conditions of release could reasonably assure future appearances in court and community safety.

An Admirable Record of Service to Access to Justice

As the Chief says: "For a promise of justice to be real, it cannot be a mere abstraction, pie in the sky. It must be meaningful, concrete, and accessible." He has worked tirelessly to make this vision a reality.

Perhaps a story Chip Babcock told me sums it up best: "A state senator once confided in me that 'You know, as a liberal Democrat, I should be opposed to Nathan Hecht but I'm not. He has done more for the underprivileged and under-served citizens of our state than anyone I can think of. I greatly admire him.'" So should we all. As Miers aptly puts it:

"Our Chief is one of a kind when it comes to access to justice."

Return to Journal Index

HECHT, YES!
"Herewith, A Tribute..."

By Judge Don Willett

The Berlin Wall was still standing when Nathan Hecht joined the Texas Supreme Court on January 1, 1989, after serving for eight years as a Texas trial and appellate court judge. For more than four decades, including a dozen years as Chief Justice, he has made monumental contributions to the branch and the profession. His influence has been felt far beyond the Lone Star State, especially through his work with the American Law Institute and the Advisory Committee on Civil Rules. I congratulate him on a remarkable judicial career and look forward to his continued contributions to advancing the rule of law.

— John G. Roberts Jr. (17th Chief Justice of the United States Supreme Court)

If Texas had its own Mount Rushmore, a few titans of Lone Star history would be no-brainers—Sam Houston, for example. Honestly, Texas boasts so many icons that we could flex on the other forty-nine states by having separate Rushmores for music, sports, business, Hollywood, etc. No doubt, the debates over "who belongs" would be fierce given our rich talent pool. But Texas's Mount Rushmore of *legal* giants would include one name by acclamation: Nathan Lincoln Hecht.

In 1842 (during Chief Justice Hecht's second term on the Court),[1] then-President Sam Houston proclaimed to the Congress of the Republic of Texas, "To maintain an able, honest and enlightened Judiciary should be the first object of every free country."[2] A half-century earlier, another great president, also a commanding general, George Washington, voiced a similar view, advising his attorney general that "the due administration of justice is the firmest pillar of good Government."[3]

Two presidents. One precedent. A strong judiciary is indeed indispensable to a strong State and to a strong *United* States. Presidents Washington and Houston had their priorities right, and they doubtless had in mind jurists in the mold of Nathan Hecht—those with a surpassing fidelity to the rule of law; those who see the judiciary as a legal institution, not a political or cultural one; those who see the business of judging as fulfilling a sacred legal duty, not gratifying a personal agenda.

By any measure, Nathan Hecht is straight from Central Casting, with a dashing silver mane to boot. He hits the center of the bull's-eye on every attribute of a model jurist. He has always

[1] While it's fun to razz Chief Justice Hecht over his, umm, durability . . . I recently realized that I'm now older than he was when I joined the Supreme Court of Texas in 2005.

[2] The Writings of Sam Houston, Volume II, p. 436, https://archive.texashistorytrust.org/view/728306094/468/.

[3] Letter from President George Washington to Attorney General Edmund Randolph (Sept. 28, 1789) (on file with the Library of Congress).

Nathan is, like Tom was, the best of Texas. Learned, thoughtful, conscientious, and quietly authoritative. They both looked like Central Casting judges. And they were.

—Carolyn Dineen King (U.S. Circuit Judge, 1979–present)[4]

Three thoughts come to mind. First, how rare it is for a person of his extraordinary ability to persevere in a judicial career, with its consistently low pay, frequent unfair attacks, and the rigors of regular electioneering. Second, the Chief has left an indelible intellectual mark on Texas law. Consequently, the Texas Supreme Court is one of the best in the country due in large part to Nathan Hecht's tenure and leadership.

—Edith Jones (U.S. Circuit Judge, 1985–present)

Nathan is a huge figure in the law. I have come to see Nathan as the indispensable jurist, bringing wisdom, experience, and an unwavering commitment to the rule of law to every challenge.

—David Levi (U.S. District Judge, 1990–2007; Dean, Duke University School of Law; 2007–2018; President, American Law Institute, 2017–present)

acted impartially by adjudicating, never politically by legislating. He is an evenhanded referee, not an ideological combatant or philosophical crusader itching to indulge a personal agenda. Bottom line: Nathan is a judge's judge, the archetype, the very best of us.

In 2013, at Nathan's formal investiture as Chief Justice—on Veteran's Day to honor his proud U.S. Navy service, and with the wee Willetts leading the Pledges of Allegiance—Nathan's oath was administered by none other than Supreme Court Justice Antonin Scalia. That day, Justice Scalia drew rapturous applause in the packed House chamber when he thundered, "If I wasn't a Virginian, I probably would want to be a Texan."[5] Justice Scalia was the perfect person to swear in Nathan as Chief Justice because Justice Scalia understood the front-and-center role of state judiciaries. Day by day, American justice is dispensed—overwhelmingly—in state courts. How much? A whopping 96 percent of all cases.[6] As Justice Scalia once observed, state courts matter far more to citizens' everyday lives: "If you ask which court is of the greatest importance to an American citizen, it is not my court."[7] Justice Scalia recognized that when it comes to our shared duty "to say what the law is," state courts are *equal* partners, not *junior* partners. Since the Founding, they have been fundamental, not ornamental. Indeed, the federal judiciary didn't even exist for the first several years after independence. Justice Scalia knew, as Chief Justice Hecht knows, that "[f]or most Americans, Lady Justice lives in the halls of state courts."[8]

---

4 By "Tom," Judge King is referring to the beloved Thomas Reavley, who served nine years on the Texas Supreme Court and then 41 years on the Fifth Circuit. Judge King and Judge Reavley, like Chief Judge Richman and Chief Justice Hecht, had a decades-long friendship that eventually blossomed into marriage. They met at their joint confirmation hearing in 1979, were confirmed together the next month, wed a quarter-century later, and worked in side-by-side offices in the federal courthouse. https://www.houstonchronicle.com/news/houston-texas/houston/article/judge-marriage-court-house-love-story-15053985.php.

5 Chuck Lindell, "Justice Scalia Swears in Two for Texas Supreme Court," *Austin American-Statesman* (Nov. 10, 2013, 11:01 PM), https://www.statesman.com/story/news/2013/11/11/justice-scalia-swears-in-two-for-texas-supreme-court/9945346007 (quoting Justice Scalia).

6 *Access to Justice (AJ2) Videos: The Who, What, When, Where and How of State Courts*, Nat'l Ctr. for State Cts., https://www.ncsc.org/consulting-and-research/areas-of-expertise/access-to-justice/a2j-videos (last visited July 26, 2024).

7 "Justice Scalia Honors U.S. Constitution," *Geo. Wash. Today* (Sept. 18, 2013), https://gwtoday.gwu.edu/justice-scalia-honors-us-constitution.

8 John Schwartz, "Critics Say Budget Cuts for Courts Risk Rights," *New York Times* (Nov. 26, 2011), https://nyti.ms/2E0XUw7 (quoting former Colorado Supreme Court Justice Rebecca Love Kourlis).

In May 2024, at the Fifth Circuit Judicial Conference, Judge Lee Rosenthal and I had the rich privilege of interviewing Chief Justice Hecht and his equally esteemed spouse (and fellow chief), Priscilla Richman of the United States Court of Appeals for the Fifth Circuit. (Snarky readers might tease that Chief Justice Hecht isn't even the ablest judge in his own house.) The segment was titled *A Tale of Two Chiefs*. (We toyed with other snappy ideas: *Hail to the Chiefs*, *Dancing Chief to Chief,* even the Seussian *One Chief, Two Chief, He Chief, She Chief*). Some have called this judicial power couple—the first such chief-chief "courtship" in U.S. history—a case of permissive joinder.[9]

I'll repeat what I said at the Judicial Conference (and what I've said at other events over the years): Nathan Hecht is, hands down, the most consequential jurist in the history of Texas. Born in far, far west Texas (Clovis, New Mexico), Texas's longest-serving Supreme Court Justice is a first-ballot Rushmore legend and a true Lone Star treasure.

Check out the fun infographic at the end of this article, which tries to capture the profound breadth of Chief Justice Hecht's storied, 13,149-day tenure on the Supreme Court.

- Elected to the Supreme Court a record seven times, Chief Justice Hecht's 36-year tenure spans seven U.S. presidencies and five Texas governorships—plus two millennia.

- He served alongside 41 fellow justices, roughly one-third of all those who have served throughout Texas history.

- A gallon of gas cost $1.09/gallon when Nathan joined the Supreme Court.

Besides the lifetime's worth of opinions and orders as the leader of his Texas courts, Chief Justice Hecht has been a major force in shaping the Federal Rules of Civil Procedure. We are grateful.

—Lee Rosenthal (U.S. District Judge, 1992–present)

Chief Justice Hecht is a rare intellect combined with acute sagacity and the character of a gentleman anchored on a godly foundation. History will confirm what those of us who served with him already know: his service in the judiciary has been legendary.

—Dale Wainwright (Justice, 2003–2012)

No Texan since Chief Justice John Hemphill has more profoundly affected Texas law than Nathan Hecht. As the Supreme Court's intellectual leader and rules liaison for more than three-and-a-half decades, he leaves an indelible imprint on the substantive and procedural law of the State. His passion for obtaining genuine access to the courts, his devotion deciding cases on merits rather than technicalities, and his commitment to the scholarly, orderly development of precedent set a standard to which future generations of judges and lawyers should aspire.

—Thomas R. Phillips (Chief Justice, 1988–2004)

[9] I still haven't gotten a straight answer to my question of whether the chiefs have a prenuptial agreement that limits the number of certified questions that Chief Judge Richman's court can send to Chief Justice Hecht's court.

When I first read Ron Chernow's Hamilton, I thought of Nathan: he is a genius in the law, but also prolific in science, philosophy, and the arts. A man for all seasons. He is also Machiavelli, cunning and competitive, yet Nathan adds compassion and caring. There is no one else like him. He has been a treasured friend and colleague. Texas and the nation have benefitted immensely from his extraordinary public service.

—Wallace Jefferson (Justice, 2001–2004; Chief Justice, 2004–2013)

The Chief is the living embodiment of the Texas Supreme Court. He commands the deep respect of all his fellow Justices not just because of his experience and wisdom, but because despite his extraordinary stature, he graciously and patiently treats each colleague as his equal and his friend.

—Jimmy Blacklock (Justice, 2018–present)

Nathan Hecht may be the most consequential jurist in Texas history. In more than four decades on the bench, including 36 years on our Supreme Court, Chief Justice Hecht has contributed mightily to judicial excellence and the rule of law in the Lone Star State.

—Greg Abbott (Justice, 1996–2001; Attorney General, 2002–2015; Governor, 2015–present)

- Nathan's arrival at the Court predated the invention of the World Wide Web.
- He joined SCOTX the year Taylor Swift was born and the Berlin Wall fell.
- Fittingly, the Grammy-winning Song of the Year when Nathan joined the Court was *Don't Worry, Be Happy*.

When I arrived at the Texas Supreme Court in 2005 as a thirty-something father of one, I already respected Nathan Hecht. Now, as a fifty-something father of three, I revere him. Back then, owing to a flurry of turnovers at the Court—ten new justices between 2001–05—Nathan had more tenure than the other eight of us *combined* (something he never tired of reminding us). But it isn't Nathan's length of service that makes him so formidable. It's more tenor than tenure, more decency than durability, and more levity than longevity.

Then and now, Nathan Hecht sets the Court's tone and mood. Impeccably prepared, he marinates deeply in every case, mastering the record and the minutiae better than the lawyers themselves. His knowledge is both encyclopedic (extensive) and microscopic (intensive). What would you expect from a polymath who was recently inducted into the American Academy of Arts and Sciences? And tellingly, Chief Justice Hecht wields his genius in a shrewd way: He writes the most brilliant, most penetrating, most side-splittingly hysterical "post-submission" memos . . . in every single case. The week after oral argument, the Court gathers in its conference room to discuss the recently argued cases, and authorship in these cases has already been randomly and tentatively assigned—weeks before argument. Most justices will write a post-submission memo in the one case they've been assigned. Not Nathan. He writes a post-submission memo in *every* case, always beginning with the same three words: "Herewith, a memo." Nathan is, as

the kids say, "built different." He plants a strategic flag in *all* cases. Besides smartly seizing a chance to steer the Court's discussion from the outset, Nathan's memos take you on a rollicking intellectual journey that often, at first blush, seems to have little (if any) bearing on the case—what does this eccentric Belgian mathematician and this medieval Portuguese botanist have to do with the *Stowers* Doctrine? But inevitably and brilliantly, Nathan ties it all together in a way that leaves you breathless . . . yes because the insights are so razor-sharp but just as often because you're convulsing in uproarious laughter. (For the record, Nathan has graciously given me dibs on the posthumous publication of his thousands of Pulitzer-worthy post-submission memos!)

That said, don't let the Chief's sheer brilliance fool you. For all his seeming formality—the imperial bearing, the regal coiffure, the natty pocket squares—Nathan is the life of every party. He delights in good cheer and good humor. Every year at the Court holiday party, Nathan, a longtime church organist, sits at the piano and leads the Court family through Christmas carols. And at the annual end-of-Term "Free Speech" party, where the outgoing clerks good-naturedly (usually) lampoon the justices, Nathan takes his gentle gibes with riotous laughter. And countless times during our often-tense conferences at the Supreme Court, he would casually utter some homespun colloquialism (like referring to something as a "mare's nest") that would instantly defuse the tension.

Chief Justice Hecht's sterling reputation reaches far beyond the borders of Texas. Besides spending decades overseeing revisions to the Texas rules of administration, practice, and procedure, he was also appointed by the Chief Justice of the United States to the *federal* Advisory Committee on Civil Rules. Nathan even recently served as *Chief of the Chiefs*, leading the national Conference of Chief Justices, the highest judicial officers of all 50 states. In that position, which overlapped with the beginning of the COVID-19 pandemic, Chief Justice

Chief Justice Hecht came to the Court at a time when he was desperately needed and, for more than 35 years, proceeded to devote nearly all of his prodigious energy to the Court. The Lord blessed the Chief with profound intelligence, judgment, eloquence, goodness, and memory. Those attributes transformed a tenure that could have been historic for its record-breaking length into one that is historic for its significance: No judge on any Texas Court, from the days of the Republic onward, has been more consequential.

—Evan Young (Justice, 2021–present)

Two things: First, his wonderful sense of humor that is largely underappreciated by the outside world. Second, his seeming limitless capacity to juggle so much— huge responsibilities statewide, obviously, but nationally, too. At the same time, he cares deeply about individuals—he takes the time to stay current with Court members, professional staff, and administrative staff and their families. Quite a remarkable man!

—Paul Green (Justice, 2005–2020)

Chief Justice Hecht is my beau ideal of a judge. Learned, wise, industrious, compassionate—and always the gentleman—Chief Justice Hecht has dedicated his life in service to Texas, and we are all better for it.

—John Cornyn (Justice, 1991–1997; Attorney General, 1999–2002; U.S. Senator, 2002–present)

Hecht delivered innovative leadership, not just statewide but nationwide.

Despite inhabiting such rarefied air, Nathan Hecht never forgets that the law, fundamentally, is about real people walloped by real problems in the real world. He has earned countless kudos for leading efforts to ensure that low-income Texans have access to basic legal services. Indeed, you know you've made an impact in increasing access to justice when the State Bar names an award after you called The Nathan L. Hecht Access to Justice Leadership Award. And on behalf of the judicial branch, he deftly negotiates Capitol corridors and hearing rooms, both here and in Washington, D.C., to ensure that his groundbreaking ideas are enshrined in statutes and budgets to benefit veterans, victims of domestic abuse, and other vulnerable citizens.[10] In this politically venomous age, few people—and even fewer *judges*—enjoy broad admiration that transcends party lines. Nathan does. Recently, he testified before the U.S. Senate Judiciary Committee regarding access to justice issues. No other judge in America was invited. Our beloved Chief Justice was the only jurist from sea to shining sea that both Republicans and Democrats could agree on.

Even so, despite the well-earned deference he receives, Chief Justice Hecht still has only one vote. Even in purely administrative matters, he does always not rule by might. Rather, he leads and persuades (and coaxes and beguiles), usually getting what he wants in the long run. In my final months on the Supreme Court in 2017, I undertook a quixotic bid to redesign the appearance of our opinions, modernizing our typeface and formatting. Heaven knows, pedantic lawyers are prone to feisty font feuds. And while I expected earnest discussion, I didn't expect all Helvetica to break loose. I had just

Chief Justice Hecht—much like his spouse—models the qualities that foster judicial excellence: humility; integrity; discipline; respect for the dignity of every person; intellectual curiosity; grace; a strong work ethic; and a sense of humor. He approaches any challenge with gusto, never losing sight of the best interests of the people we serve.

—Jane Bland (Justice, 2019–present)

Nathan's opinions are always clear and direct; what's more they are peppered with Texas history and colorful quotations . . . like "public policy is a very unruly horse, and when you once get astride it, you never know where it will carry you."* Fairfield Ins. Co. v. Stephens Martin Paving, LP*, 246 S.W.3d 653, 673 (Tex. 2008) (Hecht, J., concurring).

—Scott Brister (Justice, 2003–2009)

A legal giant with a disarming sense of humor, Nathan has transformed the judiciary by setting the highest intellectual and ethical standards and working tirelessly to make the justice system fair and accessible to all. For his profound impact, he shuns the credit—always shining the light on others. Nathan is, quite simply, the best of the best whose legacy will continue to benefit many generations to come.

—Harriet O'Neill (Justice, 1999–2010)

---

[10] For an example of Chief Justice Hecht's valiant work in this area, here's his recent eloquent testimony before the U.S. Judiciary Committee, *Closing the Justice Gap: How to Make the Civil Justice System Accessible to All Americans:* https://www.judiciary.senate.gov/imo/media/doc/2024-07-09_-_testimony_-_hecht.pdf.

one ally in the formatting foxhole: Nathan. We were trounced. But he was undaunted. Nathan Hecht plays the long game, and thankfully, this style story has a happy ending—on both the state and federal levels. Nathan eventually won over his colleagues, and the Supreme Court in 2021 finally updated its opinion layout (replacing workaday Times New Roman with Century Schoolbook). Same for the Fifth Circuit after Chief Judge Richman took the reins (replacing Century Schoolbook with Equity). The dynamic duo of Hecht and Richman understands that refined style aids readability and that design choices help readers better digest the content that's been so assiduously crafted. Thanks to their forward-thinking leadership, there's now a new serif in town on both courts, helping us not just to present clear opinions, but to present our opinions clearly.

And finally, this heartfelt contribution from his distinguished spouse (and former Supreme Court colleague), Chief Judge Richman:

Nathan has done so much on so many fronts, and few know how hard he works. The many opinions he has written certainly reflect his commitment to his responsibilities as a judge, but his deep commitment to improving the justice system have compelled him to do more. Dealing with the Texas Legislature across five decades, plus interacting with Congress, leadership roles in the Conference of Chief Justices, helping guide the ABA on bringing about transformational changes in legal education and providing legal services—the list goes on and on. Nathan's a national leader on innumerable issues, traveling all across America to champion access to civil justice and bail reform (not an issue for a civil-court judge unless you have a very long and perceptive view of the justice system). I'm admittedly biased, but Nathan's record and impact are incalculable. And he's universally beloved. When we go to the grocery store together or in airports across the country, countless people recognize him and come up to talk to him, including celebrities like Ben Crenshaw. Nathan's incredibly principled and has a very tender heart (tearing up when he reads certain news stories or hears certain hymns at church). Certainly, he's totally committed to deciding his cases correctly. But he's about so much more than that, trying to make our imperfect system work for everyone and be accessible to everyone. Just one example: his visionary leadership during COVID on landlord–tenant issues, working out humane eviction procedures that everyone could agree upon. Again, I am biased, but Nathan is truly an amazing force. To say that he is the longest-serving Justice does not come close to capturing the magnitude of his contributions. He is obviously someone I love, but he's also someone I deeply, deeply respect for who he is, what he stands for, and what he has done for generations of Americans.

—Priscilla Richman (Justice, 1995-2005; U.S. Circuit Judge, 2005–present)

A Word Cloud of Tributes
for Nathan L. Hecht

Our 27th Chief Justice is sui generis. But don't take my word for it. I asked a few of Nathan's admirers and colleagues, past and present, to distill their thoughts into a few words or sentences. Throughout this article you've seen some of the glowing responses, edited for brevity and clarity. The word cloud of their tributes is telling, and three adjectives are particularly apt: **consequential**, **transformational**, and **indispensable**.

★ ★ ★

Engraved in the marble bench at the Supreme Court of Texas is this Latin phrase: *Sicut Patribus, Sit Deus Nobis*. Loosely translated, it means, "As God was with our fathers, may He be with us." This phrase (which is also the motto for the City of Boston), first appeared in the Old Testament, with King Solomon writing, "The Lord our God be with us, as He was with our fathers."[10] It's impossible to imagine the Supreme Court of Texas without Nathan Hecht in the middle chair. This exceptional servant-leader has led our judiciary with Solomonic wisdom, and the Lone Star State owes him an unpayable debt.[11]

Judges come and go. With any luck, their legacy endures. Nathan Lincoln Hecht has left an incomparable legacy. How monumental is his impact? Consider: When he joined the Court in 1989, the World Wide Web was not yet invented. Fast forward to July 2024, roughly half his life later, and Chief Justice Hecht is tutoring the U.S. Senate Judiciary Committee on how generative artificial intelligence can improve access to justice. Much has changed over the Chief's storied legal career, but this magnificent man in the arena has remained steadfast, an exquisite exemplar of high-mindedness, good-heartedness, and civic-spiritedness. Our Lone Star State has had 100-plus Supreme Court justices, but none has been more consequential than Nathan Hecht—and the Texas justice system will be forever richer for his noble service.

Chief Justice Hecht inspires superlatives galore, each one deeply earned.

And when he crosses my mind, which is often, two words instantly follow: ***"Hecht, Yes!"***

Chief Justice Nathan Hecht Yes!
TEXAS SUPREME COURT

[11] 1 Kings 8:57 (KJV).

[12] For me, the debt is doubly unpayable. One night years ago, I was walking with Chiefs Hecht and Richman through the rugged West Texas brush, one of them wielding a flashlight so we could see in the pitch-black darkness. I was setting the pace, and mid-stride I heard one of them yell, "SNAKE!" as I was inches away from stepping on a Western diamondback rattler.

Don Willett *has served since 2018 as a U.S. circuit judge of the U.S. Court of Appeals for the Fifth Circuit. He was previously a justice of the Supreme Court of Texas from 2005 to 2018.*

NATHAN L. HECHT

43 YEARS OF JUDICIAL SERVICE

~800 OPINIONS

SERVED WITH **41** SUPREME COURT JUSTICES

5 GOVERNORS

7 PRESIDENTS

Licensed to Practice Law 1974

5th Court of Appeals 1986

Chief Justice, SCOTX 2013

2024

1981 — 95th District Court

1989 — Supreme Court of Texas

2022 — Married CA5 Chief Judge Priscilla Richman

1989

Nathan L. Hecht was elected to the Supreme Court of Texas in 1988 and assumed the role of Chief Justice in 2013. He is the longest-serving member of the Supreme Court in Texas history and the longest-tenured Texas judge in active service. See below to see what was happening in 1989, the year he joined the Supreme Court.

$12,000 — 40" TELEVISION

$4,720 — 1 YEAR OF PUBLIC COLLEGE TUITION, FEES, ROOM, & BOARD

$7,300 — 16-LB MACINTOSH PORTABLE M5120

$3.99 — MOVIE TICKET

$1.06 — GALLON OF GAS

$0.95 — DOZEN EGGS

#1

Every Rose Has Its Thorn by Poison

The Cosby Show

The Phantom of the Opera

Rain Man

GEORGE H. W. BUSH BECAME 41st POTUS

TAYLOR SWIFT WAS BORN

INVENTION OF THE WORLD WIDE WEB

THE BERLIN WALL FELL

Return to Journal Index

A Legacy Not Just of Law, But of Lawyers

By Dylan O. Drummond

When he retires from the Supreme Court of Texas this December 31, 2024, Chief Justice Nathan Hecht will have served longer on the Court than any other Justice in its history—just one day shy of ***thirty-six years***.

His tenure has been defined by decades of landmark and consequential decisions upon which modern Texas legal practice has been built. He has served on the Court with ***thirty-eight*** fellow Justices — among whose ranks have been a future U.S. Attorney General,[1] White House Counsel,[2] U.S. Senator,[3] U.S. Congressman,[4] two Judges of the U.S. Court of Appeals for the Fifth Circuit[5] (including Chief Judge)[6], three U.S. District Judges,[7] a Texas Governor,[8] and two Texas Attorneys General[9]. He served with the Court's first woman Justice elected to the Court,[10] as well as with the Court's first Black[11] and Hispanic[12] Justices.

---

1 Hon. Alberto R. Gonzales. U.S. Department of Justice, Office of the Attorney General, Attorney General: Alberto R. Gonzales, https://www.justice.gov/ag/bio/gonzales-alberto-r (last updated Oct. 25, 2022).

2 Hon. Alberto R. Gonzales. Supreme Court of Texas, Court History, Justices, Place 4, https://www.txcourts.gov/supreme/about-the-court/court-history/justices-since-1945/justices-place-4/ (last visited Aug. 5, 2024).

3 Hon. John Cornyn. John Cornyn, United Senator for Texas, https://www.cornyn.senate.gov/about/about-john-cornyn/ (last visited Aug. 5, 2024).

4 Hon. Lloyd Doggett. Lloyd Doggett, U.S. Representative, About, https://doggett.house.gov/about (last visited Aug. 5, 2024).

5 Hon. Don R. Willett. Federal Judicial Center, History of the Federal Judiciary, Judges, Willett, Don R., https://www.fjc.gov/history/judges/willett-don-r (last visited Aug. 5, 2024).

6 Hon. Priscilla Richman. Federal Judicial Center, History of the Federal Judiciary, Judges, Richman, Priscilla, https://www.fjc.gov/history/judges/richman-priscilla (last visited Aug. 5, 2024).

7 Hon. Xavier Rodriguez, Hon. Michael H. Schneider, Sr., and Hon. Jeffrey V. Brown. Federal Judicial Center, History of the Federal Judiciary, Judges, Rodriguez, Xavier, https://www.fjc.gov/history/judges/rodriguez-xavier (last visited Aug. 5, 2024); Federal Judicial Center, History of the Federal Judiciary, Judges, Schneider, Michael H., Sr., https://www.fjc.gov/history/judges/schneider-michael-h-sr (last visited Aug. 5, 2024); Federal Judicial Center, History of the Federal Judiciary, Judges, Brown, Jeffrey Vincent, https://www.fjc.gov/history/judges/brown-jeffrey-vincent (last visited Aug. 5, 2024).

8 Hon. Greg Abbott. Office of the Texas Governor | Greg Abbott, Texas Governor Greg Abbott, https://gov.texas.gov/governor-abbott (last visited Aug. 5, 2024).

9 Hon. John Cornyn and Hon. Greg Abbott. Ken Paxton, Attorney General of Texas, Opinions, https://www.texasattorneygeneral.gov/opinions (last visited Aug. 5, 2024).

10 Hon. Rose B. Spector. Exploring Our Past: Histories of St. Mary's School of Law, Rose B. Spector, https://stmupublichistory.org/law/?page_id=851 (last updated 2018).

11 Hon. Dale Wainwright. The University of Chicago, The Law School, Dale Wainwright, '88: Navigating Multiple Arenas in Pursuit of Justice, https://www.law.uchicago.edu/news/dale-wainwright-88-navigating-multiple-arenas-pursuit-justice (last updated Oct. 4, 2017).

12 Hon. Raul A. Gonzalez, Jr. Texas State Cemetery, Raul A. Gonzalez, https://cemetery.tspb.texas.gov/pub/user_form.asp?pers_id=2668 (last modified Feb. 1, 1998).

And he has also mentored an incredible ***seventy-four*** law clerks during that time,[13] each of whom has taken the legal reasoning and writing lessons he imparted and the unmatched professional example he set with them into the practice of law. They have hailed from ***twenty*** law schools all across the country.[14] His former clerks have gone on to practice at ***forty-eight*** law firms (including the nation's most prestigious);[15] clerk for the U.S. Courts of Appeals for the Armed Forces and the Fifth Circuit, the Northern and Southern Districts of Texas, and the U.S. Court of International Trade; serve in the U.S. Department of Justice, U.S. Senate, U.S. House of Representatives, U.S. Department of Homeland Security, U.S. Commodity Futures Trading Commission, Georgia Department of Law, Office of the Texas Attorney General; manage MLB and NBA franchises; and even join him in the judiciary.[16] And sadly, two have since passed away.[17]

---

[13] Alexa Acquista (2022–23), Emily Alban (2006–07), Jamie A. Aycock (2005–06), Reed Bartley (2023–24), Alan Beck (1997–98), Justin Bernstein (2012–13), Maryjane Bonfield (2004–05), Jeffrey D. Boyd (2011–12), Patrick Caldwell (2000–01), Hon. Kristina Williams (2012–13), Hayley Cook (2019–20), Andrew Cookingham (2008–09), Nicole Leonard Córdoba (2017–18), Barbara DePeña (2018–19), Evelyn Derrington (1988–89), Melissa Devine (2007–08), René Dimetman (2008–09), Dylan O. Drummond (2003–04), Edward Duffy (2010–11), Elana S. Einhorn (1989–90), Leila M. El-Hakam (1998–99), Barbara Ellis (1994–95), Lauren Morgan Fincher (2009–10), Hon. Joshua C. Fiveson (2014–15), Samantha Garza (2022–23), Mark A. Giugliano (1999–2000), Daniel Goldberg (2003–04), Dana Gordon-O'Brien (1995–96), Garrett Gray (2024–25), Lindsay Hagans (2013–14), Jefferson Harwell (2015–16), James Holmes (1995–96), Robbi Hull (1991–92), Jordan Kazlow (2016–17), Deanna King (1998–99), Matthew Macdonald (2007–08), Jacob Matthew (2023–24), Abbey Gans Maher (1996–97), Margaret Niver McGann (1992–93), Morgan Menchaca (2018–19), Kristina Crump (2016–17), Michael P. Murphy (2005–06), Minh-Hien Nguyen (1996–97), J. Cavanaugh O'Leary (1988–89), Bennett Ostdiek (2020–21), Joel M. Overton, Jr. (1993–94), Julie Melton Partain (2001–02), Michael G. Pattillo Jr. (1999–2000), Matthew Ploeger (2001–02), George Postolos (1990–91), Sabine Pratsch (1990–91), Evan Rios (2021–22), Bradley L. Rockwell (1989–90), Hon. Fernando Rodriguez (1997–98), O. Rey Rodriguez (1993–94), Kyle Ryman (2020–21), Tara Shaw(2002–03), Zachary S. Smith (2009–10), Stephen Snow (2021–22), Courtney SoRelle (2024–25), Solace Southwick (1992–93), David Spiller (2006–07), Ellen Springer (2015–16), Mary Margaret Steinle (2017–18), John Summers (2011–12), Natalie Thompson (2014–15), Brian K. Tully (2003–04), Tim Tyler (1994–95), Elissa Underwood Marek (2004–05), Peter Wahby (2000–01), Dawn S. Walker (2010–11), Kirstie Wallace (2019–20), Earnest W. Wotring (1991–92), and Patrick Yarborough (2013–14).

[14] Baylor University School of Law, Boston College Law School, Duke University School of Law, Georgetown Law, Harvard Law School, Loyola Law School, Pepperdine Caruso School of Law, South Texas College of Law, Stanford Law School, SMU Dedman School of Law, Texas Tech University School of Law, U.C. Berkeley School of Law, University of Chicago Law School, University of Houston Law Center, University of Michigan Law School, University of Mississippi School of Law, The University of Texas at Austin School of Law, Washington and Lee University School of Law, William and Mary Law School, and Yale Law School.

[15] Ahmad Zavitsanos & Mensing PC, Akin Gump LLP, Andrews Myers PC, Arnold White & Durkee PC, Baker Botts LLP, Beck Redden LLP, Bracewell LLP, Caldwell Cassady & Curry PC, Cox Smith Matthews Inc., Crowell & Moring LLP, Dewey & LeBoeuf LLP, Dykema Gossett PLLC, Fee Smith & Sharp LLP, Gable Gotwals PC, Gibbs & Bruns LLP, Gibson Dunn & Crutcher LLP, Graves Dougherty Hearon & Moody PC, Gray Reed & McGraw LLP, Greenberg Traurig LLP, Howrey LLP, Hunton Andrews Kurth LLP, Jenkens & Gilchrist LLP, Jones Day LLP, K&L Gates LLP, Kasowitz Benson Torres LLP, Kirkland & Ellis LLP, Langley & Banack Inc., Locke Lord LLP, Mayer Brown LLP, McDermott Will & Emery LLP, McGuireWoods LLP, McKool Smith LLP, Miller & Martin PLLC, MoloLamken LLP, Munger Tolles & Olson LLP, Norton Rose Fulbright LLP, O'Melveny & Myers LLP, Parsons Behle & Latimer PC, Quinn Emanuel Urquhart & Sullivan LLP, Reid Collins & Tsai LLP, Squire Patton Boggs (US) LLP, Thompson & Knight LLP, Vinson & Elkins LLP, Wiley Rein LLP, Williams & Connolly LLP, Wilson Sonsini Goodrich & Rosatti LLP, Winstead PC, and Yetter Coleman LLP.

[16] Hon. Fernando Roriguez, Jr., Federal Judicial Center, History of the Federal Judiciary, Judges, Rodriguez, Fernando, Jr., https://www.fjc.gov/history/judges/rodriguez-fernando-jr (last visited Aug. 5, 2024). Hon. Kristina Williams. Norton Rose Fulbright, Kristina Williams, https://www.nortonrosefulbright.com/en-us/people/1018261 (last visited Aug. 5, 2024). Hon. Joshua C. Fiveson. LinkedIn, Joshua Fiveson, https://www.linkedin.com/in/joshua-fiveson-14038113/ (last visited Aug. 5, 2024).

[17] Andrew Cookingham (2008–09) and Evelyn Derrington (1988–89).

Justice Hecht with the Court and its Law Clerks during the Court's 1995–96 term. Among those pictured are current Texas U.S. Senator and former Texas Attorney General, John Cornyn—center, second row; current Chief Judge of the U.S. Court of Appeals for the Fifth Circuit (and Chief Justice Hecht's future spouse), Priscilla Richman—second from right, bottom row; current U.S. Southern District of Texas Judge, Jeff Brown—far left, top row; current Texas Governor and former Texas Attorney General, Greg Abbott—center, bottom row; current Fifteenth Court of Appeals Justice, Scott Field—center right, top row; first elected woman Justice, Rose Spector—second from left, second row; and first Hispanic Justice, Raul Gonzalez—center left, bottom row.

During his time on the Court, he has also served with four chambers executive assistants[18] and just two chambers staff attorneys.[19] He has hired nine Court staff attorneys for rules ("Rules Attorney"),[20] four Court staff attorneys for original proceedings ("Mandamus Attorney"),[21] and one of the Court's general counsels.[22]

[18] Amy Bannatyne, Suzann Madeley, Kathy Miller, and Joyce Nunn.

[19] Sylvia Herrera and Martha Newton.

[20] Lee Parsley, Hon. Bob Pemberton, Chris Griesel, Lisa Bowlin Hobbs, Jody Hughes, Kennon L. Wooten, Marisa Secco Giles, Martha Newton, and Jackie Daumerie.

[21] Peter McGuire, Martha Newton, Steven Seybold, and Colleen Sullivan.

[22] Nina Hess Hsu and Lisa Bowlin Hobbs.

In short, Chief Justice Hecht's judicial legacy is vast—not just for the law he has made but for the people whose lives and careers he has influenced and guided.

This article compiles some of the anecdotes, memories, and photographs of the people who've been so grateful to serve with Chief Justice Hecht over the past three decades.

Justice Hecht with former Executive Assistant, Amy Bannatyne, and former Law Clerks, Jeff Boyd and John Summers, during the Court's 2011–12 term.

Amy Bannatyne —former Executive Assistant

Chief Justice Hecht is the nicest gentleman around! I love his wit and humor and how he truly cares about people.

Alan Beck—former Law Clerk (1997–98)

Almost thirty years later, my earliest memory of Judge Hecht was receiving a heavy mark-up of a briefing memo that I had prepared which was coupled with a kindly delivered critique—to never use more words than are necessary to convey the point you are trying to make. And, without question, Judge Hecht has an uncommon mastery of the English language. His writing style is crisp and convincing and leaves little room for ambiguity. And while I have avoided courtrooms and practiced corporate law for the last quarter century, that lesson has served me well as a securities law practitioner and contract draftsman.

Justice Hecht with former Law Clerk, Alan Beck, and his wife, Melanie, after performing their wedding ceremony on September 5, 1998.

But my fondest memory of Judge Hecht by far was when he masterfully delivered the vows at our wedding 25+ years ago. He described the delivery of vows as "something we lawyers—present here this evening in such wonderfully larger numbers—might call instead 'the closing.' This is the moment when, as we say in the profession, it's a done deal!" He continued that "there is no contract here, as at most closings .... Instead, you are called upon to give each other your word, something more solemn than a clause in a contract, though it may seem old-fashioned to say so."

Maryjane Bonfield—former Law Clerk (2004–05)

Clerks have the incredible opportunity to witness up close the beauty of our legal system and how the rule of law is created over time through the genuine, earnest efforts and dedication of brilliant, but mere, men and women. Judge Hecht, in his humility, taught me to look at the big picture and have faith in the larger systems and institutions of our society and the people who work for them, even when I personally find myself face to face with the imperfections of the present. I am forever grateful.

Justice Hecht with former Law Clerk, Maryjane Bonfield, during the Court's 2004–05 term.

Jackie Daumerie—current Rules Attorney

The Chief starts every Supreme Court Advisory Committee meeting—which are transcribed by a court reporter—by giving a Supreme Court update. At my first meeting back from maternity leave, the Chief read into the record my daughter Juliette's birth statistics—full name, date of birth, height, and weight—and even went so far as to calculate her days of life. I loved this moment, and I think it exemplifies just a few of the Chief's many wonderful qualities. Namely, that he cares deeply about people and what is important to them and that he takes time to make his staff feel not only like trusted advisors and integral team members that are capable of hard and important work but also like members of his family

Chief Justice Hecht with the Court's current Rules Attorney, Jackie Daumerie, and her daughter, Juliette, in March 2024.

who have personal accomplishments and milestones that should be celebrated. The Chief leaves the Court with a remarkable legacy of kindness for which we are all grateful. We will miss him.

Dylan Drummond —former Law Clerk (2003–04)

I will be forever grateful to Chief Hecht for the patience and kindness he unfailingly showed me as a young law clerk. I not only wouldn't be an appellate lawyer today without the faith he showed in me, I owe my career to the opportunity he provided me. It was the honor of my professional life to serve in his chambers and I wish him and Chief Richman the best in their next chapter.

Justice Hecht with former Law Clerk, Dylan Drummond, during the Court's 2003–04 term.

Leila M. El-Hakam—former Law Clerk (1998–99)

My year on the Texas Supreme Court as Justice Hecht's Briefing Attorney in 1998-99 has been my favorite and most rewarding year of practice. He has a genuine interest in "getting it right" and a passion and excitement for the cases before him. His chambers was welcoming and collegial.

Justice Hecht with former Law Clerk, Leila El-Hakam, during the Court's 1998–99 term.

As intimidating as the role of Briefing Attorney felt at the beginning, I remember the helpful feedback he would offer us after we turned in a draft of an opinion.

Even after I left the Court and joined a law firm, Justice Hecht has been kind with his time to his former briefing attorneys and their families. Justice Hecht attended my wedding and even swore in my husband, Matías Adrogué, in our living room in Dallas after he passed the bar exam.

I am honored to have worked for him on the Court. It is also super cool that we share a birthday of 8/15.

Samantha Garza—former Law Clerk (2022–23)

One of my favorite memories of the Chief is from my interview for a position in his chambers. He was taking a chance on a new attorney from California who had no connection to Texas other than the fact that my husband's job was relocating our family there. The Chief was openminded and welcoming, and I am forever grateful. When I asked what he was looking for in a clerk, he answered, 'an Oliver Wendell Holmes. Or in your case, an Olivia Wendell Holmes.' This made me laugh, and I realized that we would get along great. We had a wonderful year, filled with challenging but rewarding work and some fun trips to Headliners. I still cannot believe I was blessed with the opportunity to work for and learn from one of the greatest jurists in Texas history.

Chief Justice Hecht with former Law Clerk, Samantha Garza, during the Court's 2022–23 term.

Sabine Pratsch—former Law Clerk (1990–91)

There's no doubt in my mind that I will be but one voice in a chorus when I say that my year as a Briefing Attorney with Judge Hecht was a high point in my life.

He was a role model for me as I observed how he crafted opinions in clear and precise language, bearing little resemblance to the convoluted legalese I had struggled to internalize during law school. My lifelong endeavor ever since has been to live up to that level of skill and devotion. Looking back, I also appreciate the camaraderie among us at the Court, epitomized by Judge Hecht's legendary Flag Day party in the summer. Here again, he was a role model, not only in his dedication to the profession but also in his commitment to the spirit of community among the staff. No other office party would ever come

Justice Hecht with former Law Clerk, Sabine Pratsch, and her husband, David, after performing their wedding ceremony in September 1991.

close. Finally, I must also mention the important role that Judge Hecht holds in my personal life. At the end of my term, he presided over my wedding to my husband David. As David and I approach our 33rd anniversary, we remember with gratitude the Judge's part in joining our families together.

Our older son was married this summer so our family is still expanding, an ongoing legacy that Judge Hecht will forever share.

Hon. Fernando Rodriguez, Jr. —former Law Clerk (1997–98)

Toward the end of my clerkship, in June 1998, my wife (Terry) gave birth to our first child, Nicolas. About an hour after his birth, while my wife and I were still in the delivery room, Justice Hecht walked in to congratulate us and wish us well. Thus, at the age of about one hour, our son's first official visitor was Justice Hecht.

Justice Hecht with former Law Clerk and current U.S. Southern District of Texas Judge, Fernando Rodriguez, Jr., during the Court's 1997–98 term.

Kyle Ryman—former Law Clerk (2020–21)

I clerked for the Chief during the thick of COVID. What I remember most was the Chief's steadfast leadership. He kept the trains running. And he did it while implementing common-sense solutions to keep the staff safe. He was a true leader in a trying time. And I'll always appreciate that.

Colleen Sullivan —former Mandamus Attorney

Before I began working at the Court a short three-plus years ago, I knew of the Chief's reputation as a jurist and had some idea of his contributions to the legal community. But it wasn't until I had the privilege of working here and learning from him—so much learning—that I really appreciated him and all he does. The Chief works incredibly hard and has many demands on his time, so I was very moved when he took the time to attend a local bar event because I was being presented with an award.

Chief Justice Hecht with former Mandamus Attorney, Colleen Sullivan, in April 2022, when she was presented with the Austin Bar Association's Larry F. York mentoring award.

Elissa Underwood Marek —former Law Clerk (2004–05)

Clerking for Chief Justice Hecht was one of the most transformative experiences of my life, and I will forever be grateful for his insight, guidance, and generosity. He has been there to celebrate my happiest moments and has helped me through difficult times. His support has been unwavering, and I can't thank him enough for taking a chance on a "far out" Jersey girl.

Justice Hecht with former Law Clerk, Elissa Underwood Marek, and her husband, Chris, after performing their wedding ceremony on November 10, 2012.

Kennon L. Wooten—former Rules Attorney

I've learned so much from Chief Justice Hecht while working as a law clerk, as the Rules Attorney, and as a volunteer on various rule-related matters, including access-to-justice initiatives. While I could go on and on about the substantive knowledge I acquired, I'll focus here on how Chief Justice Hecht has helped me on the personal front. When I reported to Chief Justice Hecht directly as the Rules Attorney, he always had an open door, was always kind (no matter what was happening), and was always willing to roll up his sleeves and work with me on rule proposals and issues. He made me feel like I was part of his team, rather than a mere subordinate, and that motivated me to work hard for him and for the rest of the Court. As someone who now manages others, I strive to treat everyone the way Chief Justice Hecht treated me when he was my boss. This has worked wonders for me and for my teams over the years.

I can't imagine the Court without Chief Justice Hecht. I'm grateful I've been able to learn about the law and life from him during his time on the bench.

Hon. Bob Pemberton—former Rules Attorney

As the judicial career of Chief Justice Nathan Hecht draws to a close, much can (and will) be said in praise of his powerful intellect, his elegant and persuasive writing, his many professional accomplishments, and his longstanding (indeed, unparalleled) record of service to the Texas judiciary, the People they serve, and the Rule of Law. And I might add that no one could ever beat him at a ballot box, either.

But while I had the honor and treasured experience of working first-hand with this great judge, and he later helped me realize many professional joys for which I remain grateful, what will always stand out most vividly in my own memories of him involved my newborn son who had a terminal condition.

That same Nathan Hecht was among the first to reach out to me, with words of prayer, comfort, and support. He would be there, too, at the memorial service, after

Cole passed away on his 74th day. And in the meantime, Nathan Hecht gave further of himself in remaining in close contact with me and keeping others apprised.

It's often been said that the community of the Texas Supreme Court's current and former justices, briefing and staff attorneys, and clerical and administrative staff, comprise a kind of family. And Nathan Hecht was that family's kind and loving granddad.

This, too, should be remembered about Chief Justice Nathan Hecht as he concludes his judicial service, and thereafter.

Justice Hecht's chambers including former Rules Attorney and future Third Court of Appeals Justice, Bob Pemberton, during the Court's 1998–99 term.

Return to Journal Index

Society Trustees and Members Appointed to New 15th Court of Appeals

In June, Governor Greg Abbott appointed the first three justices to the newly-created 15th Court of Appeals. Last year, the Legislature created the court to oversee appeals involving the state, challenges to the constitutionality of state laws, and cases from the also newly-formed business trial courts. In staffing the brand-new appellate court, Governor Abbott drew from the ranks of seasoned judges who just happen to be trustees or members of the Texas Supreme Court Historical Society.

Former Texas Supreme Court Justice (and current TSCHS member) Scott Brister has been chosen to serve as chief justice of the 15th Court of Appeals. Brister previously served as an associate justice and later chief justice of the First and Fourteenth Courts of Appeal, as well as the trial judge of the 234th Judicial District Court. Chief Justice Brister earned his bachelor's degree in history from Duke University and his Juris Doctor from Harvard Law School.

Chief Justice Scott Brister

Joining Brister on the new court will be Justice April Farris and Justice Scott Field. Justice Farris is a Society trustee, and has served on the First Court of Appeals since January 2021. She received her bachelor's degree from Abilene Christian University, and her Juris Doctor from Harvard Law School. Justice Field, a TSCHS member, previously served on the Third Court of Appeals, and as the presiding judge of the 480th Judicial District Court. He received his bachelor's degree from Texas A&M University and his Juris Doctor from the University of Texas School of Law.

Justice April Farris

Each will serve a term beginning on September 1, 2024 and expiring on December 31, 2026. In appointing all three, Governor Abbott praised them as "highly experienced individuals" who "will serve a vital role in our state's effort to ensure that the Texas Constitution and state statutes are applied uniformly throughout Texas and that businesses have a sophisticated and efficient process to resolve their disputes." The Journal extends its congratulations to Chief Justice Brister, Justice Farris, and Justice Field.

Justice Scott Field

Return to Journal Index

Journal Article Leads to New State Historical Marker

On a yet to be announced date in the very near future, a newly approved Texas Historical Marker will be dedicated in Bryan, Texas honoring John N. Johnson, the first Black lawyer in Austin and Texas' first civil rights lawyer. The journey culminating in this event began in the pages of this Journal, in a Fall 2020 article by John G. Browning entitled *John N. Johnson, Texas' First Civil Rights Lawyer*.

John N. Johnson

Johnson, born in Maryland in 1853, was originally a schoolteacher in Limestone, Robertson, and Brazos counties. Seeking a better life for himself and a way of helping the Black community, Johnson "read the law" and sought admission to practice. On his first two attempts, in Brazos County in 1881 and 1882, Johnson was denied admission, likely due to racism. But by the late summer of 1882, Johnson was a licensed lawyer and the first to practice in Austin. In February 1883, he became the first Black lawyer admitted to practice before the Supreme Court of Texas. That same year, Johnson filed the first civil rights lawsuits in Texas, suing the Houston & Texas Central Railway over the unequal accommodations provided for Black passengers. Johnson also used his legal prowess to advocate against lynching and the exclusion of Black citizens from juries.

Despite his crusading for civil rights and his historical significance, Johnson was forgotten until research and writings by Journal Editor-in-Chief John G. Browning brought the trailblazer's accomplishments to light. Besides the Journal article, Browning has written about John N. Johnson in the *Texas Bar Journal*, *Texas Heritage* magazine, and at least one law review article. Newspapers like the *Dallas Morning News* and the *Austin American Statesman* have also shared Browning's research with the public.

After reading some of Justice Browning's work on Johnson, Brazos County Historical Commission Chairman Henry Mayo and City of Bryan Senior Planner Randy Haynes set the wheels in motion for petitioning for the historical marker from the Texas Historical Commission. They received the approval earlier this year. The chosen spot for the placement of the marker, outside the Brazos County Courthouse, once likely symbolized despair to John N. Johnson. It was the site of bigoted denials of his efforts for his civil rights plaintiff and criminal defendant clients. Today, however, that marker reminds us of one man's courage and perseverance.

Return to Journal Index

Into the Treasure-House: The Board's Spring 2024 Meeting

Article and photos by David A. Furlow

The unassuming exterior of the Harris County District Clerk Office—Records Center, from Google Maps.

In lore and legend, a treasure-house holds goods of great value: diamonds, rubies, emeralds and other gems; gold and silver; spices and silks. Heavy walls protect the treasure, sometimes supplemented by trap-guns, trap-doors, and, in legends, fire-breathing dragons. To historians, archivists, judges, and attorneys, a treasure-house contains records that bring the past to life. Thick walls, armed guards, temperature controls, and closed-circuit tv cameras ensure the safety and integrity of its treasures.

The Harris County District Clerk Office—Records Center at 5900 Canal Street in Houston is a treasure-house. That's why Judge Mark Davidson, a former trustee of this Society, invited the Society to conduct its Spring 2024 meeting there. It is also the place where Harris County honored Judge Mark Davidson by dedicating Harris County District Clerk Marilyn Burgess Office's new archival research center as the "Hon. Mark Davidson Archives and Document Room" on September 9, 2022.

This new archive is the second historical archive Judge Davidson has inspired and helped organize. The first was the Charles Bacarisse Historical Documents Room in the Harris County District Clerk's Office. You can still access that first, earlier archive in the Civil Courts Building at 201 Caroline in the Harris County Courts Complex. It keeps historical records dating from 1837 to 1925, including case files, accounting books, criminal case indexes, minutes books, and fee docket books.

After the annual election of new officers, annual meeting of all members, and a hearty Tex-Mex lunch ordered by Society Administrator Mary Sue Miller, Judge Davidson gave us a superb guided tour. Judge Davidson started the tour by presenting examples of original records dating back to the Republic of Texas's early years.

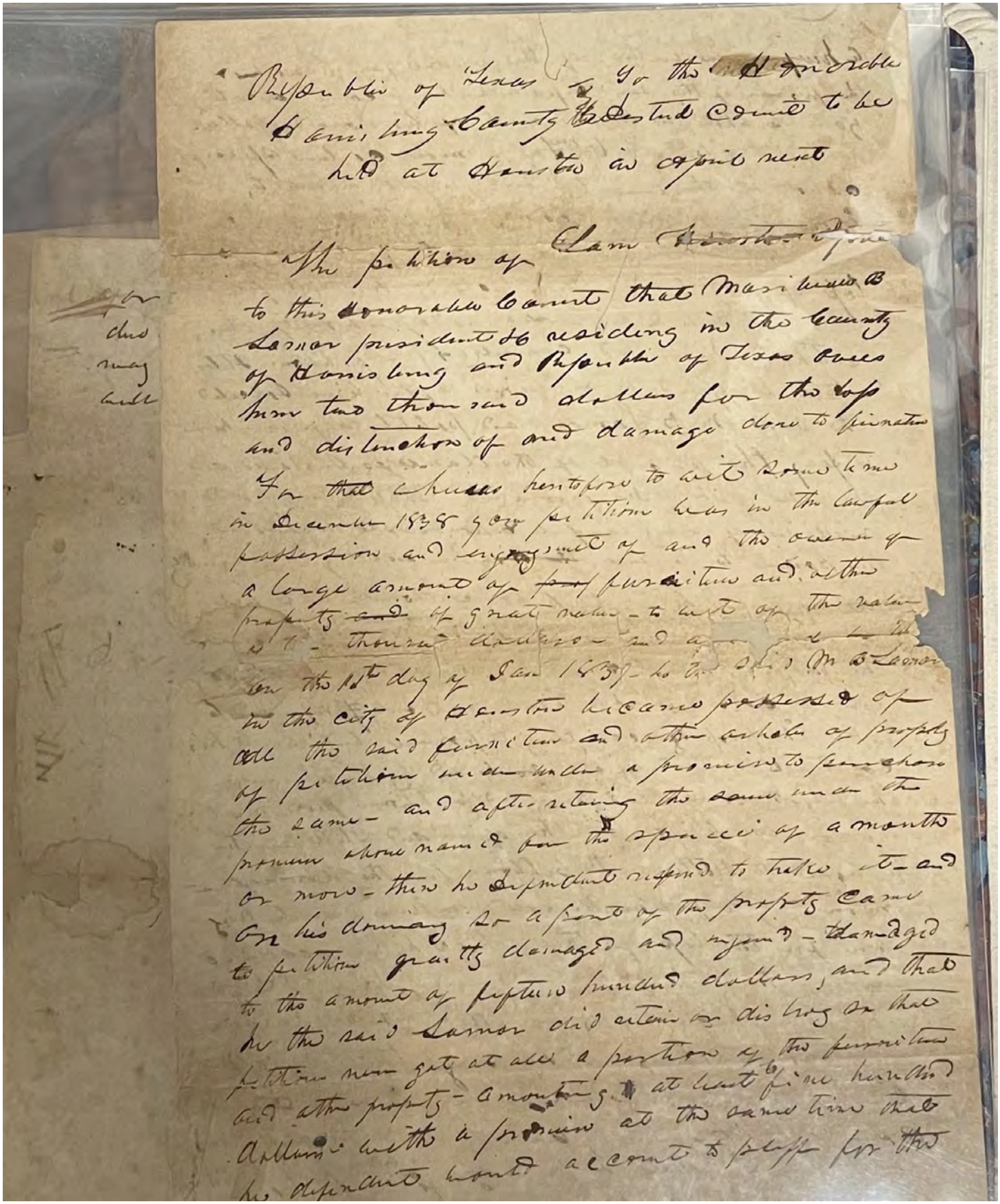
The first was Harris County Case #20, the case file for the civil lawsuit that the Republic's first elected president, Sam Houston, filed against the Republic's second elected president, Mirabeau B. Lamar, on April 6, 1839. That lawsuit exemplifies the antagonistic relationship between those two early leaders of the Republic—one long absent from biographies of the two men.

Judge Mark Davidson discusses the records in the *Samuel Houston, Plaintiff v. Mirabeau B. Lamar* civil suit with Society Trustees, including, left to right, Mark Trachtenberg, Texas Supreme Court Associate Justice Brett Busby, Rachel Stinson, and Jasmine Wynton.

The *Houston v. Lamar* litigation began because of the wild party that occurred in Houston's presidential mansion on December 10, 1838. That was the wet, bitterly cold night that Lamar succeeded Houston as president of Texas. On the day of Lamar's inauguration, Houston gracefully offered to say a few words to welcome Lamar to office in Houston, the Texas capital that bore his name. Houston's stem-winder of a speech lasted for over three hours, by which time the audience that had assembled to see the new president had mostly gone home.

Die-hard Lamar supporters remained behind, rowdy and sullen. Lamar welcomed them to the presidential home he now occupied—one filled with Houston's furniture and bedding. Kegs of beer, casks of cider, and bottles of whiskey soon circulated among Lamar's supporters as they tried to remain warm amongst winter's chills. When the hearth-fires fell low, Lamar's fellows fed the fireplace with the wooden planks that comprised the floor. Soon chairs fed the glowing fire—Sam Houston's chairs. Then things got out of hand. Lamar's supporters auctioned off a washstand, six linen mosquito nets, and most mattresses. By morning, the presidential mansion was a ransacked wreck. When Sam Houston learned what had happened, he was not a happy man—as his original petition reflects.

The Republic's Congress appropriated $5,000 in funds to repair the mansion, but that sum did not compensate Houston for his personal losses. Lamar moved the capital to Waterloo in



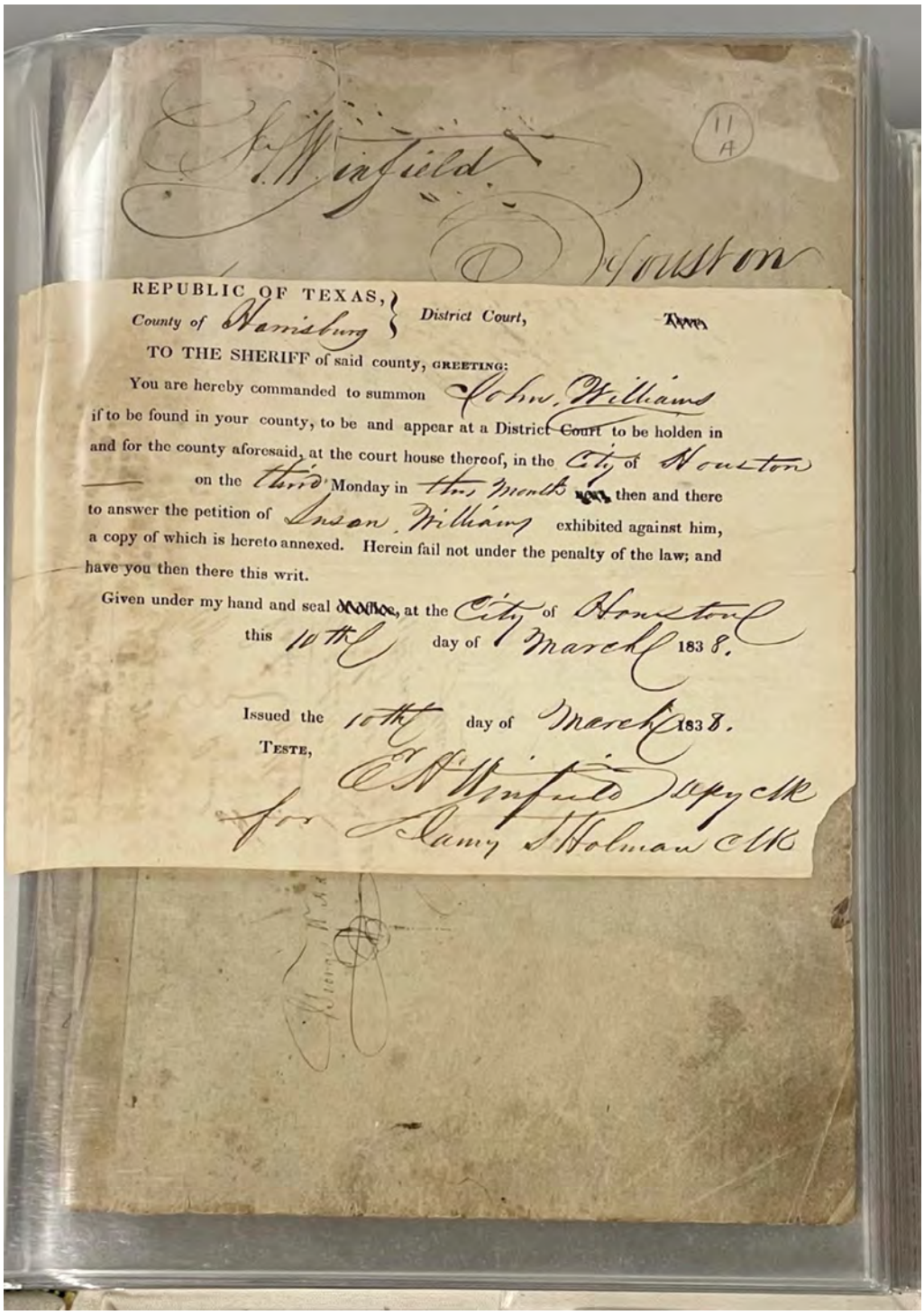
Republic of Texas } To the Honorable
Harrisburg County } District Court to be
held at Houston in & for said

The petition of Sam Houston of
to this honorable Court that Mirabeau B
Lamar president & residing in the County
of Harrisburg and Republic of Texas owes
him two thousand dollars for the loss
and dislocation of and damage done to finances
For that whereas heretofore to wit some time
in December 1838 your petitioner was in the lawful
possession and enjoyment of and the owner of
a large amount of personal property and other
property and of great value - to wit of the value
of - thousand dollars - and upon or about the
on the 10th day of Jan 1839 - he the said M B Lamar
in the city of Houston became possessed of
all the said personal and other articles of property
of petitioner under a promise to surrender
the same - and after retaining the same under the
promise above named for the space of a month
or more - then he defendant refused to take it - and
on his demand for a part of the property came
to petitioner greatly damaged and injured - damaged
to the amount of fifteen hundred dollars, and that
he the said Lamar did retain or dispose or that
petitioner never got at all a portion of the personal
and other property - amounting to at least five hundred
dollars with a promise at the same time that
he defendant would account & pay for the

The first pages of Sam Houston's original petition against Mirabeau B. Lamar.

central Texas—which he promptly renamed Austin in honor of empresario and revolutionary hero Stephen F. Austin. An invasion of San Antonio led Defendant Lamar to seek a continuance because a witness was serving in the Texas Army. A Harrisburg County jury entered a verdict in favor of Houston in 1843. On December 30, 1845, the day after Texas entered the Union, the Republic of Texas's Supreme Court affirmed the jury's verdict—in its last published decision. Judge Davidson chose an excellent case file to show our Trustees Texas history viewed through the lens of the law.

Yet the *Houston v. Lamar* case file was not the only thing Judge Davidson selected to share with Trustees. He brought many other original case-files with him, including the original minutes of the 11th Judicial District Court, as kept by the Hon. Benjamin C. Franklin. It included hand-written entries for all judgments recorded between March 1837 and March 1838. If you want to understand how the Republic's judges administered justice, this is where you look.



REPUBLIC OF TEXAS,
County of Harrisburg } District Court, Term

TO THE SHERIFF of said county, GREETING:

You are hereby commanded to summon John Williams if to be found in your county, to be and appear at a District Court to be holden in and for the county aforesaid, at the court house thereof, in the City of Houston on the third Monday in this Month, then and there to answer the petition of Anson Williams exhibited against him, a copy of which is hereto annexed. Herein fail not under the penalty of the law; and have you then there this writ.

Given under my hand and seal of office, at the City of Houston this 10th day of March 1838.

Issued the 10th day of March 1838.

TESTE, E. W. Winfield Dep. Clk
for Samy. Holman Clk

Minute Book of the 11th Judicial District Court.

But wait! There's more. Thanks to Judge Davidson's careful planning, our society's officers and trustees had an opportunity to examine the raw material of Texas courthouse and judicial history, including:

Margaret Gess v. Francis Lubbock—the courthouse saga of an African American woman suing for her freedom that began in 1848 and took five-and-one-half

years and two trials to resolve, and also produced an opinion by Judge Abner Lipscomb, a man who served as a justice of the Alabama Supreme Court, and then of the Texas Supreme Court, in *Guess v. Lubbock, Adm'r*, 5 Tex. 535 (Tex: Jan. 1, 1851);

Maddox v. Ferguson, 263 S.W. 888, 888 (1924), a 1924 case challenging Ma Ferguson from running for Governor because she was a woman;

G.A. Stowers Furniture Co. v. American Indemnity Co., 15 S.W.2d 544 (Tex. 1929), the origin of Texas' *Stowers* Doctrine about an insurer's obligation to tender policy limits in good faith, and the underlying case, *G. A. Stowers Furniture Co. v. Bichon*, 254 S.W. 606 (Tex. Civ. App.--Galveston 1923, rhg. denied, Oct. 4, 1923), writ dism'd for want of jurisdiction (Tex. Nov. 21, 1923).

City of Houston v. Clear Creek Water Authority, 573 S.W.2d 839 (Tex. Civ. App.—Houston [1st Dist.]1978, rhg. denied), 589 S.W.2d 671 (1979), Texas' most frequently cited summary judgment case; and

Anthony Cox v. Yoko Ono Lennon (Harris Cty. Dist. Ct. 1971), a child-custody lawsuit between the father of Mrs. Yoko Ono Lennon's daughter and Yoko Ono—a case infamous because of a Harris County District Clerk's destruction of priceless works of art that had been entered into evidence as trial exhibits.

It was a great day—and a great way to explore the courthouse history of Texas.

Return to Journal Index

And the 2025 Larry McNeill Research Fellowship in Texas Legal History Goes to . . . ?

Article and photo by David A. Furlow

Applications are now being accepted for the Texas State Historical Association's 2025 Larry McNeill Research Fellowship in Texas Legal History. *See* https://www.tshaonline.org/awards/larry-mcneill-research-fellowship-in-texas-legal-history. This website contains links to winning fellowship proposals from 2020-2024 to serve applicants as a guide.

Our Society worked together with TSHA to establish the Larry McNeill Research Fellowship in Texas Legal History in 2019 to honor Larry McNeill, a past president of the Society and TSHA. The $2,500 award recognizes an applicant's commitment to fostering academic and grassroots research in Texas legal history. TSHA awards the annual fellowship to an applicant who submits the best research proposal on an aspect of Texas legal history. Judges may withhold the award at their discretion.

Larry McNeill

Competition is open to any applicant pursuing a legal history topic, including judges, lawyers, college students, and academic and grass-roots historians. The award will be made at the Texas Historical Association's Annual Meeting at the Royal Sonesta Houston Galleria in Houston from February 26 through March 1, 2025. The deadline for submission is November 15, 2024. An application should be no longer than two pages, specify the purpose of the research and provide a description of the end product (article or book). An applicant should include a complete vita with the application. Judges may withhold the award at their discretion. TSHA will announce the award at the Friday Awards Luncheon during TSHA's Annual Meeting in Houston on March 1, 2025.

Individuals wishing to apply should submit an application form and attach the proposal and a curriculum vita. Only electronic copies submitted through TSHA's link and received by the deadline will be considered. Anyone who has trouble submitting the form electronically should email TSHA at https://www.tshaonline.org/about/contact or call TSHA Annual Meeting Coordinator Angel Baldree at 512-471-2600.

Return to Journal Index

THE TEXAS
SUPREME COURT
HISTORICAL SOCIETY

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

Phone: 512-481-1840
Email: tschs@sbcglobal.net
Web: www.texascourthistory.org

Executive Director
Sharon Sandle

Administrative Coordinator
Mary Sue Miller

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.

Return to Journal Index

2024-25 Membership Upgrades

The following Society members have moved to a higher Membership category since June 1, 2024.

GREENHILL FELLOW

David A. Furlow

TRUSTEE

Hon. April Farris

Return to Journal Index

2024-25 New Member List

The Society has added 28 new members since June 1, 2024. Among them are 21 Law Clerks for the Court (*) who will receive a complimentary one-year membership during their clerkship.

TRUSTEE

Heriberto “Eddie” Morales, Jr.
Amanda G. Taylor
J. Joseph Vale

CONTRIBUTING

Jason Bramow
Kirk Cooper
Danica Milios
Christine Nowak

REGULAR

Annie Adams*
Laura Beth Bienhoff*
Jeffrey Carr*
Colton Cox*
Hannah Fassler*
Hartson Fillmore*
Garrett Gray*
Aiden Henderson*
Margaret Kohl*
Will Kovach*
Elizabeth Kreager*
Spencer Lockwood*
Benton McDonald*
Macy Merritt*
Caleb Morrison*
Mohmed Patel*
Courtney SoRelle*
Martha Vazquez*
Alison Welch*
Madeline White*
Rachel Wolff*

Return to Journal Index

Membership Benefits & Application

Hemphill Fellow $5,000

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

Greenhill Fellow $2,500

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

Trustee Membership $1,000

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

Patron Membership $500

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

Contributing Membership $100

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

Regular Membership $50

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

eJnl appl 8/24

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.

Join online at http://www.texascourthistory.org/Membership/.

Name _____

Firm/Court _____

Building _____

Address _____ Suite_____

City _____ State_____Zip _____

Phone (_____)_____

Email (required for eJournal delivery) _____

Please select an annual membership level:

- ☐ Trustee $1,000
- ☐ Patron $500
- ☐ Contributing $100
- ☐ Regular $50
- ☐ Hemphill Fellow $5,000
- ☐ Greenhill Fellow $2,500

Payment options:

- ☐ Check enclosed, payable to **Texas Supreme Court Historical Society**
- ☐ Credit card (see below)
- ☐ Bill me

Amount: $_____

Credit Card Type: ☐ Visa ☐ MasterCard ☐ American Express ☐ Discover

Credit Card No._____Expiration Date _____CSV code_____

Cardholder Signature _____

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

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

eJnl appl 8/24

[Return to Journal Index](#)