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

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Spring 2025 Vol. 14, No. 3 Editor Emerita Lynne Liberato Editor-in-Chief Hon. John G. Browning

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By Warren W. Harris

Warren W. Harris

One benefit of being a Fellow is an exclusive event. We gather each year with Justices of the Texas Supreme Court for a collegial Fellows Dinner. Read more...

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Hon. John G. Browning

The study of history helps us understand our origins, preserve our cultural heritage, and draw inspiration from the past. It also helps us learn from our past mistakes. Read more...

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Judge John Coughenour, one of the judges who enjoined the order.

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Labors of the Profession: The Law Practice of Nathaniel Hart Davis, A Texas Lawyer, 1850-1882

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Nathaniel Hart Davis

Davis practiced law for over thirty years, yet we know relatively little of what occurred inside his or any other law office in early America. Read more...

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Chief Justice Hecht Presides Over His Final Arguments and Issues His Last Opinions

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Chief Justice Hecht on Dec. 5, 2024

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News & Announcements

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The Society attracted a large audience for its 2025 panel program at the Texas State Historical Association's 129th Annual Meeting in Houston. Read more...

And the 2025 Larry McNeill Research Fellowship in Texas Legal History goes to... Justice John G. Browning

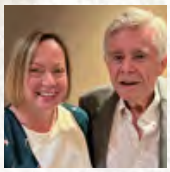
Article and photos by David A. Furlow

Hon. John G. Browning with the award

The Texas State Historical Association awarded Justice John G. Browning (ret'd) the 2025 Larry McNeill Fellowship in Legal History during its Fellows and Awards Luncheon. Read more...

Sharon Sandle Receives 2025 Pat Nester Innovation in Professional Development Award

By Will Korn



Sharon Sandle and Pat Nester

Director of the Law Practice Resources Division of the State Bar of Texas Sharon Sandle received the 2025 Pat Nester Innovation in Professional Development Award. Read more...

Call for Nominations: 2025 Chief Justice Jack Pope Professionalism Award

Chief Justice Jack Pope

The Texas Center for Legal Ethics is now accepting nominations for the 17th annual Chief Justice Jack Pope Professionalism Award. Read more...

Mark Your Calendar for the 2025 John Hemphill Dinner

Four Seasons Hotel

The 30th Annual John Hemphill Dinner will be held on Friday, September 5, 2025, at 7:00 p.m. in the Grand Ballroom of the Four Seasons Hotel in Austin. Read more...

Membership & More

Officers, Trustees & Court Liaison

2024-25 Member Upgrades

2024-25 New Member List

Join the Society

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FB: Texas Supreme Court Historical Society

Fellows Column

By Warren W. Harris, Chair of the Fellows

One of the benefits of being a Fellow is our exclusive event, the annual Fellows Dinner. About this time each year, the Fellows gather with the Justices of the Texas Supreme Court for a collegial dinner. We always choose a unique Austin venue, and the locations for past dinners have included the Blanton Museum of Art, the Texas Lieutenant Governor's private dining room in the State Capitol, the Bullock Texas State History Museum, the Frank Denius Family University of Texas Athletics Hall of Fame, the Bauer House, the Lyndon Baines Johnson Presidential Library, and most recently the Harry Ransom Center on The University of Texas Campus in Austin. The attendees always comment on the dinner's elegance, uniqueness, and fellowship.

The 2025 Fellows Dinner was one of our most special dinners to date. The Justices from the Texas Supreme Court joined the Fellows in March at the incredible Harry Ransom Center for a wonderful evening of history, dinner, and conversation. The Ransom Center, an internationally renowned humanities research center, was a perfect venue for our historical society with one million books (including one of twenty copies of the Gutenberg Bible in the world), forty-two million manuscripts, and five million photographs. In Fall 2025, it will feature *Live from New York! The Making of Lorne Michaels*, exploring the remarkable career of Lorne Michaels and his pivotal role in shaping *Saturday Night Live*. I would like to give a special thanks to Ransom Center Director Stephen Enniss, who hosted us at the dinner, and Justice Harriet O'Neill, who arranged the venue for the dinner.

This dinner was also special because we have a new Chief Justice since our last Fellows Dinner. Chief Justice Blacklock made comments to the group and presented a nice toast recognizing Chief Justice Hecht and his service to the Court.

At the Fellows Dinner we have a tradition of having the wines for the evening provided by Fellows. I would like to thank Hon. Harriet O'Neill and Kerry Cammack, Lauren Harris, Tom Hetherington, and Randy Roach for providing the evening's special wines.

We appreciate Justice Bland, a Fellow and the Court's liaison to the Society, for coordinating the scheduling of the dinner so that the Justices could attend. The photos below will give you some sense of the evening's elegance, uniqueness, and fellowship.

We are pleased to welcome our newest Fellows, Hon. Chris Bryan and Trey Peacock, Mindy and Josh Davidson, Joe Greenhill, Hon. Tom Phillips, and Russell Post, who recently joined as Greenhill Fellows. We are excited to have them as Fellows and appreciate their generous support of our group.

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 our Supreme Court. A major educational project of the Fellows is "Taming Texas," a judicial civics program for seventh-grade Texas History classes. If you would like more information or want to join the Fellows, please contact the Society office or me.

FELLOWS DINNER

Harry Ransom Center

March 18, 2025

Justice Debra Lehrmann and Kerry Cammack

Justice Rebeca Huddle and Justice Brett Busby

Doug Bland, Fred Hagans, and Justice Jane Bland

Former Justice Dale Wainwright, Former Justice Harriet O'Neill, and Justice James Sullivan

David Beck, Lauren Harris, and Shannon Ratliff

Justice Rebeca Huddle and Fred Hagans

Kerry Cammack and Justice Brett Busby

Sam Greer and Justice John Devine

Skip and Janita Watson

Tom Hetherington, Warren Harris, and Chief Justice Jimmy Blacklock

Warren Harris with Chief Justice Jimmy Blacklock and Jessica Blacklock

Macey Stokes with Justice Evan Young and Former Justice Tom Phillips

FELLOWS OF THE SOCIETY

Hemphill Fellows
($5,000 or more annually)

David J. Beck*
David E. Chamberlain
Lauren and Warren Harris*
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
Hon. Jane Bland and Doug Bland
Hon. Christina Bryan and J. Hoke Peacock III
E. Leon Carter
Hon. John H. Cayce
Joshua and Mindy Davidson
David A. Furlow
Harry L. Gillam, Jr.
Joe Greenhill
Marcy and Sam Greer
William Fred Hagans
Mary T. Henderson
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. Thomas R. Phillips
Hon. Jack Pope* (deceased)
Russell S. Post
Shannon H. Ratliff*
Harry M. Reasoner
Robert M. Roach, Jr.*
Professor L. Wayne Scott* (deceased)
Macey Reasoner Stokes
Tracy C. Temple
Cynthia K. Timms
Hon. Dale Wainwright
Charles R. Watson, Jr.
R. Paul Yetter*

*Charter Fellow

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Editor-in-Chief's Column

Hon. John G. Browning

History's *Purpose*

It is frequently said that researching and studying history have many purposes. The study of history helps us understand our origins, preserve our cultural heritage, and draw inspiration from the past. It also helps us learn from our past mistakes. This Spring issue of the Texas Supreme Court Historical Society Journal underscores the significance of this last purpose. For example, the concept of birthright citizenship—guaranteed under our Constitution in the Fourteenth Amendment—is currently being challenged by the Trump administration, even though an 1898 U.S. Supreme Court decision, *United States v. Wong Kim Ark*, made it abundantly clear that a child born in the United States to alien parents is a citizen. As my article in this issue reveals, the federal immigration authorities in Texas had a largely forgotten connection to this landmark decision. Three years after the Supreme Court's ruling, a "sore loser" immigration commissioner in El Paso made the ill-fated decision to arrest Wong Kim Ark again on the claim that he was "illegal."

This issue also features another example of learning from our past mistakes, in the form of an article by Houston attorney Ashley Cromika and Dean Cathy Burnett of South Texas College of Law about their successful campaign to win posthumous justice for the Black soldiers convicted following the 1917 Camp Logan Riot. As their article details, 118 Black soldiers from the 24th Infantry were charged with mutiny after violent confrontations broke out with white civilian authorities over local Jim Crow law abuses and the beating of one Black soldier while in police custody. After the largest court martial in U.S. history, nineteen soldiers were hanged and sixty-three received life sentences in federal prisons; no white civilians or police officers were ever brought to trial. Thanks to the efforts of Ms. Cromika, Dean Burnett, and others, in November 2023 the U.S. Army overturned the convictions of all of the 110 Black soldiers who were found guilty, acknowledging that they had been "wrongly treated because of their race and were not given fair trials."

The fallout from the Camp Logan Riot echoed throughout the Black community, as an article forthcoming in our Summer issue reveals. Our Summer issue centers around the First

Amendment, and it includes an article about how the Black press in Texas was targeted by the federal government for any news coverage deemed sympathetic of the convicted Black soldiers (all nineteen who were executed were hanged at Camp Travis and Fort Sam Houston in San Antonio). After a letter to the editor critical of the treatment of the soldiers was published in the *San Antonio Inquirer* (the newspaper of San Antonio's Black community), federal officials arrested G.W. Bouldin, the newspaper's editor under the Espionage Act. In one of the few trials held under this Act, Bouldin was convicted and sentenced to two years in federal prison.

This issue provides a bridge, then, to our Summer issue. It does so at a time when the current presidential administration routinely challenges well-settled doctrines like birthright citizenship and threatens to jail journalists using the Espionage Act, and at a time when our state restricts how episodes of racial injustice are taught in public schools. One of the most cherished and constructive purposes of the study of history is to help us to learn from the mistakes of the past, and hopefully articles such as these are a step in the right direction.

We are also proud to bring you in this issue Prof. William Yancey's fascinating look at early Texas Supreme Court Justice Oran Roberts, the "Old Alcalde", Prof. Brian Dirck's illuminating glimpse into the life of a typical 19th century Texas frontier lawyer, Nathaniel Hart Davis, and Dylan Drummond's moving account of former Chief Justice Nathan Hecht's last oral argument. We hope you enjoy these, along with our usual recurring columns and news.

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The Battle Over Birthright Citizenship:

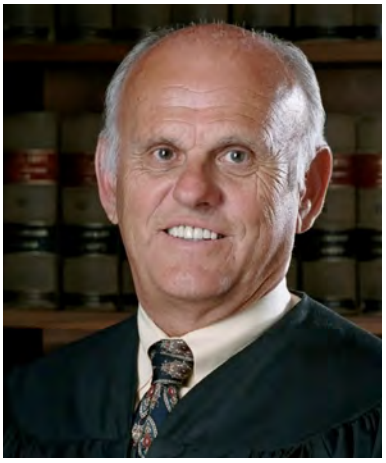
The Hidden Texas Connection to a Supreme Court Milestone

By Hon. John G. Browning

I. Introduction

On his first day in office for his second term, President Donald Trump issued a sweeping executive order ending birthright citizenship—the guarantee of citizenship to anyone born in the United States. Entitled "Protecting the Meaning and Value of American Citizenship," the order mandated that going forward, people born in the United States would not be automatically entitled to citizenship if their parents are in this country illegally.[1] The executive order would appear to fly in the face of Section 1 of the 14th Amendment, which declares "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

Federal judges in four states have enjoined the executive order. One of them, U.S. District Judge John Coughenour of Seattle, called it "a blatantly unconstitutional order," while another court stated that the order "conflicts with the plain language of the 14th Amendment."[2] In the meantime, lawsuits brought by immigrants' right's groups and other interested parties are moving forward. Judge Coughenour recently extended his ban on the order's enforcement, stating that "the Constitution is not something with which the government may play policy games."



Judge John Coughenour

For the overwhelming majority of lawyers, judges, and legal scholars, this issue has been settled since 1898. That year the U.S. Supreme Court held in the case of *United States v. Wong Kim Ark* that individuals born on American soil are U.S. citizens.[3] But in a little-known postscript to this landmark case that should be of particular interest to Texas readers, federal immigration authorities in El Paso actually arrested Mr. Wong just three years later and initiated deportation proceedings against him, seemingly oblivious to the fact that Wong had already gone all the way to the highest court in the land and been vindicated as an American citizen. Once again, Wong would have to win a ruling protecting him from being deported.

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1 Executive Order, "Protecting the Meaning and Value of American Citizenship," January 20, 2025.

2 Mike Catalini and Gene Johnson, "A Federal Judge Temporarily Blocks Trump's Executive Order Redefining Birthright Citizenship," Associated Press (January 23, 2025).

3 169 U.S. 649 (1898).

This article will look at Wong Kim Ark's fight for recognition as a citizen, first with an overview of his milestone case before the U.S. Supreme Court and then with immigration authorities in El Paso.

II. The Birthright Citizenship Battle—*U.S. v. Wong Kim Ark*

Our story begins with a little thing called the Fourteenth Amendment. It was passed after the Civil War in 1868 to clarify that the formerly enslaved Black Americans were in fact citizens and entitled to all of the legal protections that came with that status. The Fourteenth Amendment provided that "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."[4] In 1882, Congress passed the Chinese Exclusion Act, the first significant federal law restricting immigration into the United States. The law's provisions, which would remain essentially intact until 1943, barred most Chinese people from entering the United States, and also prohibited them from becoming naturalized citizens.[5]


Wong Kim Ark in 1894

Sandwiched between these two events was the birth of a baby boy in 1870 to Chinese immigrants living in San Francisco. Wong Kim Ark, as the boy would be known, was something of a rarity—one of only 518 children of Chinese ancestry to have been born in the U.S. up until then. Wong and his family lived above his father's grocery store in the Chinatown district. When Wong was about eight years old, however, his parents decided to return to China with him. One can only speculate as to the reasons why, but it was hardly coincidental that it happened on the heels of mounting racial violence against Chinese immigrants in California. On October 24, 1871, a white mob attacked members of Los Angeles' Chinese community, hanging nineteen Chinese immigrants in what has been described as the largest mass lynching in U.S. history.[6] On July 24, 1877, another white mob rampaged through San Francisco's Chinatown, setting buildings on fire and murdering at least four Chinese men. *The New York Times* described how the mob was "resolved to exterminate every Mongolian and wipe out the hated race." Wong's parents would never return to America.

Wong, however, did return three years later with an uncle. He began working as a dishwasher and a cook. Ten years later, Wong returned to China again, this time to find a bride. After marrying and fathering a son, Wong returned to the land Chinese immigrants referred to as "Gold Mountain."[7] Wong knew that his birth in America made him a U.S. citizen, since he repeatedly noted that status on forms he filled out when leaving and entering the country.

Unfortunately, the U.S. government disagreed with Wong. By Wong's return in August 1895, Federal officials were determined to close the loophole that "mere accident of birth" had opened up in the Chinese Exclusion Act. The 14th Amendment's caveat "subject to the jurisdiction thereof,"

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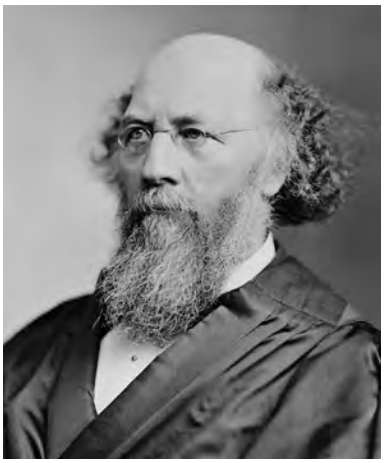
4 14th Amendment to the U.S. Constitution.

5 For an excellent discussion of the Chinese Exclusion Act and how it relates to the Wong Kim Ark case, see Amanda Frost, *You Are Not American: Citizenship Stripping from Dred Scott to the Dreamers* (Beacon Press, 2021).

6 Scott Zesch, *The Chinatown War: Chinese Los Angeles and the Massacre of 1871* (2012).

7 Amanda Frost, Y*ou Are Not American: Citizenship Stripping from Dred Scott to the Dreamers* (2021).

had been intended to exclude only the children of diplomats, the children of enemy invaders, and Native Americans—all of whom owed allegiance to a separate sovereign.[8] The government, however, wanted to interpret that language beyond such narrow exceptions and treat any child born in the United States to noncitizen parents as someone who "owed allegiance" to a foreign sovereign, and therefore could not be a birthright citizen.


Justice Stephen J. Field

Denying that Wong was a citizen by virtue of his birth in San Francisco, the U.S. government refused him reentry. Wong spent the next four months locked up on a steamship in San Franciso Bay, followed by another three years out on bail while his case worked its way up to the U.S. Supreme Court.[9] Interestingly, there was a robust body of caselaw that had been established of Chinese-Americans fighting challenges to their birthright citizenship. In 1884, for example, Justice Field (riding circuit) had ruled that both the 14th Amendment and common law supported the claims of fourteen-year-old Sacramento-born Look Tin Sing to U.S. citizenship.[10] There were at least 100 habeas cases on behalf of American-born Chinese between 1882 and 1892.[11]


Look Tin Sing

However, Wong was likely not feeling overly confident when the case finally reached the Supreme Court. After all, an 1889 decision upholding the Chinese Exclusion Act had claimed that such discriminatory laws were needed to protect the nation from an "Oriental invasion" that was a "menace to our civilization." But in 1898, the Court ruled for Wong in a 6-2 decision. Justice Horace Gray, writing for the majority, painstakingly went over the legal support for birthright citizenship before, during and after Reconstruction, calling it an "ancient and fundamental rule of citizenship."[12] The Fourteenth Amendment, he pointed out, had affirmed this rule "in clear words and in manifest intent," including as citizens "children born within the territory of the United States of all other persons of whatever race or color, domiciled within the United States."[13] The few exceptions, the court held, were for "children of foreign sovereigns or their ministers, or born on foreign public ships,


Justice Horace Gray

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8 While Native American tribes were ostensibly treated as sovereign entities (when deemed convenient to do so by the U.S. government), Native Americans were officially given U.S. citizen status by a 1924 federal statute.

9 See, generally, Bethany Berger, "Birthright Citizenship on Trial*: Elk v. Wilkins and United States v. Wong Kim Ark,"* 37 *Cardozo Law Review* 1185 (2016).

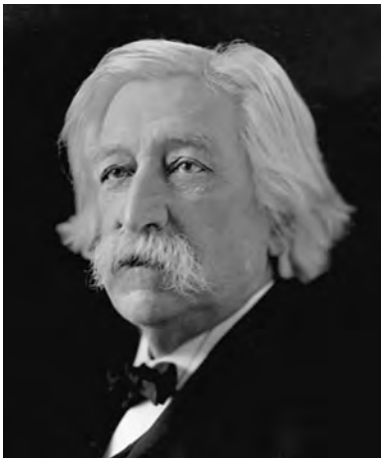
10 In re Look Tin Sing, 21 F. 905 (C.C.D. Cal 1884).

11 Berger, "Birthright Citizenship on Trial," 1227.

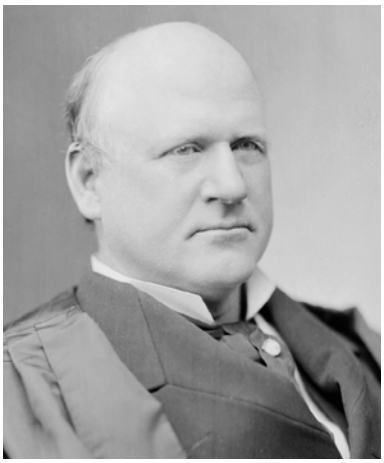
12 *U.S. v. Wong Kim Ark*, 169 U.S. at 693.

13 *Ibid*.

or of enemies within and during a hostile occupation of part of our territory, and …children of members of the Indian tribes owing direct allegiance to their several tribes."[14] As the Court observed, rejecting birthright citizenship would have an unintended effect on a huge number of white citizens, since it would "deny citizenship to thousands of persons of English, Scotch, Irish, German, or other European parentage, who have always been considered and treated as citizens of the United States."[15]


Chief Justice Melville Fuller

Chief Justice Melville Fuller dissented and was joined by Justice John Marshall Harlan. To Fuller, Wong could not be a U.S. citizen because he could not ever be "completely subject to the jurisdiction" of the United States.[16] Wong's parents, as Chinese citizens, owed their loyalty to the emperor of China and thanks to the Chinese Exclusion Act were barred from becoming U.S. citizens. Fuller reasoned that while the Fourteenth Amendment might have been intended to establish citizenship for Black Americans, it was not meant to provide citizenship to the children of those parents "who, according to the will of their native government and of this Government, are and must remain aliens."[17]


Justice John Marshall Harlan

Responding to Chinese courtroom victories in using the rule of law to challenge exclusion from citizenship, the federal government soon took steps to transform the rights associated with entry into and deportation from the U.S. Congress deprived courts of jurisdiction to review administrators' decisions to exclude immigrants at the border.[18] The U.S. Supreme Court upheld this virtually unchecked power to exclude and deport foreigners, describing this power as "essential to self-preservation."[19] In one decision, the Court declared the right to exclude immigrants based on race "no longer open to discussion." [20]


Ju Toy in 1903

Initially, it was clear that those individuals claiming U.S. citizenship were entitled to judicial review of exclusion by immigration authorities at the border. By 1905, however, the tide had turned. In *United States v. Ju Toy*, a district court found that a California-born Chinese American cook named Ju Toy was a citizen born in the United

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[14] *Ibid.*

[15] *Ibid*., 694. Incidentally, the Court's figure was a gross underestimate. In reality, at that time 15 million white native-born U.S. residents had foreign-born parents.

[16] *Ibid.*

[17] *Ibid.*

[18] Immigration Act of 1891, ch. 551, §8, 26 stat. 1084; Act of Aug. 18, 1894, ch. 301, 28 stat. 372, 390.

[19] *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892).

[20] *Yamataya v. Fisher*, 189 U.S. 86, 97 (1903).

States, reversing a decision by a U.S. customs collector. But the U.S. Supreme Court reversed, holding that Ju Toy was not entitled to judicial review.[21]

By a fluke of timing, Wong Kim Ark was spared a similar fate to Ju Toy.

III. A Texas Connection

In October 1901—3 years after his citizenship was vindicated by the Court—Wong Kim Ark ran afoul of U.S. immigration authorities again, this time in El Paso, Texas. Wong had gone to Mexico for unknown reasons and was returning through Juarez. Because communities on both sides of the border relied on Chinese labor and merchants, it was most likely for work. El Paso had been a "boom town" since the arrival of railroads in 1881, when the burgeoning city's population was roughly 2,000. As one scholar describes, the Chinese "took on work that most Euromericans refused to do (commercial laundry service, for example), but also ran restaurants, grocery stores, and small truck farms, or worked as waiters, cooks, or domestic servants."[22] According to the 1900 U.S. Census, the Chinese population of El Paso at the time was 336 (mostly men), while the city's overall population had grown to 24,886.

Wong was hardly unknown in the community, thanks to his milestone Supreme Court case. On October 29, 1901, the *El Paso Times* took notice of his planned entry:

> Wong Kim Ark, the Celestial who the United States Supreme Court decreed was a citizen of the United States and not a subject of the Boxer land, and who has been temporarily residing in Juarez awaiting an opportunity to enter the country again legally, will doubtless have his case adjusted in a few days...Evidence has arrived, however, to show that the Celestial in Juarez and Wong Kim Ark whose citizenship was passed upon in 1898 are one and the same. In that event, and the federal decision still in force, his admittance will be beyond question.[23]

However, neither Wong nor the *El Paso Times* had accounted for the racism of Charles Mehan, the official responsible for enforcing the Chinese Exclusion Act in El Paso. Mehan arrested Wong the same day the *El Paso Times* story ran. On the charging document, the "Chinese inspector" Mehan identified Wong by name and described him as "a Chinese person" who had "unlawfully, fraudulently, and knowingly" entered the United States in violation of the Chinese Exclusion Act. No mention of Wong's Supreme Court case was made. Although most people arrested by the "Chinese inspector" were jailed until they were ultimately deported, Wong's treatment was different. He was freed on a $300 bond (the equivalent of $10,000 today). How could a humble cook afford such a sum, one might ask? The bond had been guaranteed by Mar Chew, identified in a contemporary El Paso city directory as a restaurant owner, and a white man, R.F. Campbell. Campbell was a powerful ally; he had served as El Paso's mayor from 1895 to 1897, and in 1901 he held the position of the city's postmaster.

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[21] *United States v. Ju Toy*, 198 U.S. 253 (1905).

[22] Dr. Edward Staski, "*Early Chinese Life in a Southwestern Community; El Paso's Chinatown*," Maxwell Museum , University of New Mexico.

[23] *El Paso Times*, October 29, 1901, 3. ("Celestial" and "Boxer" were terms commonly used at that time to refer to Chinese immigrants.)

Dismissal in El Paso of the prosecution of Wong Kim Ark in 1902.

The United States of America) Before W. D. Howe, U. S. Commissioner
vs No. 7) for the
Wong Kim Ark.) Western District of Texas, at El Paso.

Offence Charged:- Unlawfully entering into and remaining in the United States of America, in violation of the Chinese Exclusion Acts.

Be it remembered that on this 18th day of February, A. D. 1902, came on regularly to be heard in open court the above styled and numbered cause, and thereupon came the plaintiff, The United States of America, by A. G. Foster, Esq., Asst. U. S. District Attorney, and said it would no further prosecute this cause, and asked that the same be dismissed, for the reason that the examination into this cause leads the officers charged with the enforcement of the Chinese Exclusion Acts to believe, that this defendant Wong Kim Ark is the same Wong Kim Ark who was decided by the Supreme Court of the United States, on March 28, 1898, to be a citizen of the United States of America, born in San Francisco, California.

This cause is therefore dismissed by the Court, and it is the order of the Court that said defendant, Wong Kim Ark, be, and he is hereby, discharged, and that he go hence without day.

Wallace D. Howe.
U. S. Commissioner, Western District of Texas, at El Paso.

SURETIES OF DEFENDANTS IN ABOVE RECOGNIZANCES.

NAME.	RESIDENCE.
Mar Chew	El Paso, Tex
W. H. Campbell	" " "

A True Likeness of Wong Kim Ark defendant in above styled & numbered cause, I certify.
W. D. Howe. U. S. Comm.
W. D. Tex at El Paso.

Wong Kim Ark's declaration of intention to leave the U.S.temporarily in 1913.

Form 430 APPLICATION O[illegible]EGED AMERICAN-BORN CHINESE FOR PREINVESTI[illegible]ON OF STATUS ORIGINAL

壹號壹

此稟專爲土生欲離美國由外而返立實憑證之所用

Department of Commerce and Labor

IMMIGRATION SERVICE

COMMISSIONER OF IMMIGRATION

Office of PORT OF SAN FRANCISCO

Port of

, 19

To HON. CAMUEL W. BACKUS

Chinese and Immigrant Inspector.

COMMISSIONER OF IMMIGRATION

PORT OF SAN FRANCISCO

CERTIFICATE OF IDENTITY No. 1727

NOV 10 1914

OCT 28 1913

Korea

Sir: It being my intention to leave the United States on a temporary visit abroad, departing and returning through the Chinese port of entry of SAN FRANCISCO, I hereby apply, under the provisions of Rule 16 of the Chinese Regulations, for preinvestigation of my claimed status as an American citizen by birth, submitting herewith such documentary proofs (if any) as I possess, and agreeing to appear at such time and place as you may designate, and to produce then and there witnesses, for oral examination regarding the claim made by me.

This application is submitted in triplicate with my photograph attached to each copy, as required by said rule.

Respectfully,

Signature in Chinese 簽唐字名 徒金英

Signature in English 簽番字名 Wong Kim Ark

Address 具稟人之住址 766 Clay St S.F. Cal.

相	簽	詢	委	亦	憑	國	九	而	來	人	遊	欲	委	管
三	名	問	員	親	據	出	欵	回	亦	出	外	暫	員	理
幅	稟	口	之	與	呈	世	之	茲	卽	埠	入	邦	離	知	外
上	供	公	證	上	所	例	依	由	而	之	今	美	之	人
並	照	辦	人	查	有	在	三	該	去	港	由	國	我	入
附	例	房	到	驗	之	美	十	埠	將		華	出	現	口

Angel Island, Cal

Oct. 16/13, 19

Respectfully forwarded to

THE ~~INSPECTOR-IN-CHARGE~~, Port of San Francisco Cal,

accompanied by triplicate hereof and report and transcripts of testimony, in accordance with Rule 16.

W. A. Deckell

Chinese and Immigrant Inspector.

Port of SAN FRANCISCO

OCT 27 1913

, 19

This is to certify that the person of Chinese descent named herein, and whose photograph is attached under the signature of the investigating officer and under my signature and seal, to the above application, has filed in my office the duplicate of this application, and evidence in corroboration of his claimed American birth. Upon his return to this port and his identification as the person to whom this paper, thus approved, is delivered, he will be permitted to reenter the United States, unless pending such return it has been found that his claim is false.

Samuel W. Backus

Inspector in Charge.

11—2847

COMMISSIONER OF IMMIGRATION PORT OF SAN FRANCISCO

Wong Kim Ark's declaration of intention to leave the U.S.temporarily in 1931.

Form 430 APPLICATION OF ALLEGED AMERICAN CITIZEN OF THE CHINESE RACE FOR PREINVESTIGATION OF STATUS DUPLICATE

此稟專爲土生欲離美國由外而返立實憑證之所用 貳號稟

Wong Kim Ark, nat.
(Cer. Iden. lost)

U. S. DEPARTMENT OF LABOR
IMMIGRATION SERVICE

San Francisco, Calif.

July 14, 1931., 192...

To U. S. Commissioner of Immigration
Officer in Charge, Immigration Service,
Angel Island, California

Age 62 Height (In shoes) 5 ft. 7 in.

Marks Scar right temple

Cook 62

SIR: It being my intention to leave the United States on a temporary visit abroad, departing and returning through the Chinese port of entry of San Francisco, I hereby apply, under the provisions of Rule 16 of the Chinese Regulations, for preinvestigation of my claimed status as an American citizen, submitting herewith such documentary proofs (if any) as I possess, and agreeing to appear at such time and place as you may designate, and to produce then and there witnesses for oral examination regarding the claim made by me.

This application is submitted in triplicate with my photograph attached to each copy, as required by said rule.

Respectfully,

Signature in Chinese 簽唐字名 黃金德

Signature in English 簽番字名 Wong Kim Ark

Address 具稟人之住址 878 Sacramento St. San Francisco.

Wong Kim Ark 7/21/31 R. R. Ratcliff Insp.

管理外人入口委員知之我入欲暫離美國出遊外邦今由華人出入之港埠而去將來亦即由該埠而回茲依三十九款之例在美國出世所有之憑據呈上查驗亦親與證人到委員之公辦房詢問口供照例簽名稟上並附相三幅

此稟未落船之先要親到管理外人入口委員公辦房換回壹號稟方可落船

DEPARTMENT OF ... SAN FRANCISCO ... PRESIDENT PIERCE JUL 31 1931 ... INSPECTOR

SAN FRANCISCO JUL 22 1931

..., 192...

...is application having been approved, this duplicate is delivered to the applicant (with appropriate ...ment written across the margin of the photograph), *who must exchange it at the office of the immigra...er in charge at the port of departure for the original.*

...S DUPLICATE IS OF NO VALUE FURTHER THAN TO IDENTIFY THE HOLDER AS THE PERSON WHOSE ... HAS BEEN INVESTIGATED.

Edw. Haff
ACTING *Commissioner of Immigration,* ~~*Inspector in Charge.*~~

14—73 GOVERNMENT PRINTING OFFICE

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Federal prosecutors quickly realized that Mehan's racism had clouded his knowledge of the law. The United States Attorney, A.G. Foster, formally requested that the case be dismissed "for the reason that the examination into this cause leads the officers charged with the enforcement of the Chinese Exclusion Act to believe, that this defendant Wong Kim Ark is the same Wong Kim Ark who was decided by the Supreme Court of the United States, on March 28, 1898, to be a citizen of the United States of America, born in San Francisco, California."[24] The Commissioner for the Western District of Texas, Walter D. Howe, dismissed the case that same day, on February 18, 1902.


R.F. Campbell

Wong remained in El Paso for at least a brief period of time. A 1903 city directory lists a "cook" named Wong Kim Ark living at a boarding house at 225 S. Oregon Street, in the heart of what was then El Paso's Chinatown. According to National Archives records, Wong made at least another trip to China, because records show him returning from China to San Franciso in October 1905.[25] According to one scholar, Wong made multiple attempts to bring several of his sons from China to the United States. His eldest son, Wong Yook Fun, arrived in San Francisco on October 28, 1910. Despite days of interrogation of both father and son, however, on December 24, 1910, a three-member commission ruled that the evidence gathered "shows conclusively that the applicant's claims are fraudulent." Wong's son was deported to China on January 9, 1911, and would never return.[26] Although more than thirteen years would pass before another son of Wong's emigrated to the U.S., in 1924 Wong's third son, Wong Yook Sue came to San Francisco and eventually became a U.S. citizen, as did Wong's second son in March 1925.[27]


Walter D. Howe

Wong Kim Ark himself returned to China in 1931, and he filed a document with U.S. immigration officials that year indicating that he planned to return. But he never did. The exact date of his death in China remains unknown.


Wong Yook Fun

Why did Wong encounter the resistance he did from immigration authorities in El Paso? The easiest explanation is that the government was a sore loser. Stung by the Court's decision, federal authorities declared that the "Chinese are an undesirable addition to our society," and therefore "every presumption, every technicality… should be held against their admission, and their testimony should

[24] *U.S. v. Wong Kim Ark*, Order of February 18, 1902, by U.S. Commissioner for the Western District of Texas W.D. Howe.

[25] Amanda Frost, "Birthright Citizens and Paper Sons," *The American Scholar*, (January 18, 2021).

[26] *Ibid.*

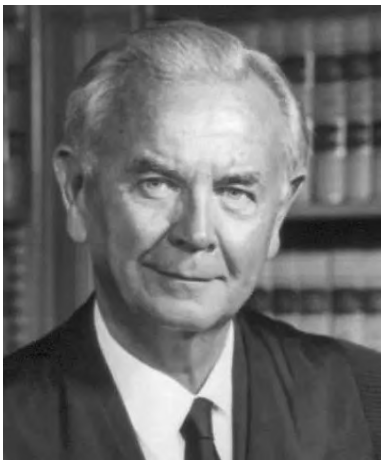
[27] *Ibid*.

Signature of Wong Kim Ark

have little or no weight when standing alone."[28] Because no one would believe a witness of Chinese ancestry, those claiming birthright citizenship had to produce a minimum of two white witnesses in support of their claim—a high bar to achieve. Wong himself was no exception. In an effort—during an era without fingerprinting or DNA testing—to prove that he was himself, Wong obtained a sworn affidavit from a white attorney, Frank Bell, in October 1901 to attest that a recent photo of Wong and the photo appended to his habeas petition with the district court "are photographs of the same person, to wit; Wong Kim Ark."[29]

IV. Conclusion

How will the current debate over birthright citizenship end? The U.S. Supreme Court has scheduled oral arguments on the Trump administration's challenge to birthright citizenship for May 15, 2025. Time will tell if the Fourteenth Amendment's guarantee and the precedent enshrined by the U.S. Supreme Court in 1898 will remain intact. The 1901 prosecution of Wong Kim Ark in Texas was not the Lone Star State's last word on the subject. In the 1982 case of *Plyler v. Doe*, the Supreme Court interpreted a similar clause of the Fourteenth Amendment to have an equally expansive scope.[30] There, in a 5-4 decision the Court held that a Texas law barring undocumented immigrants from attending public school violate the Fourteenth Amendment's equal protection clause. In Justice Brennan's opinion for the majority, he rejected the state's argument (which referenced the *Wong Kim Ark* case) that undocumented immigrants' children were not persons "subject to the jurisdiction of the United States."[31] Those who entered the U.S. even without proper documentation, the Court ruled, are both "subject to the full range of obligation imposed" by the state's laws and "entitled to the equal protection of the laws that a State may choose to establish."[32]



Justice William Brennan

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[28] *Ibid*.

[29] Amanda Frost, "By Accident of Birth: The Battle Over Birthright Citizenship After *United States v. Wong Kim Ark*," 32 *Yale Journal of the Humanities* 1, 66 (2021).

[30] *Plyler v. Doe*, 457 U.S. 202 (1982).

[31] *Ibid*.

[32] *Ibid*.

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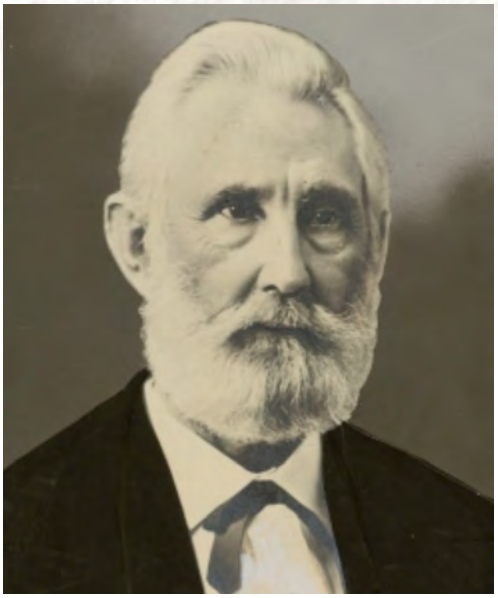
"The Most Proper Man for the Supreme Bench:"
Oran Robert's Legacy on the Texas Judiciary, 1874-1878

By William Yancey

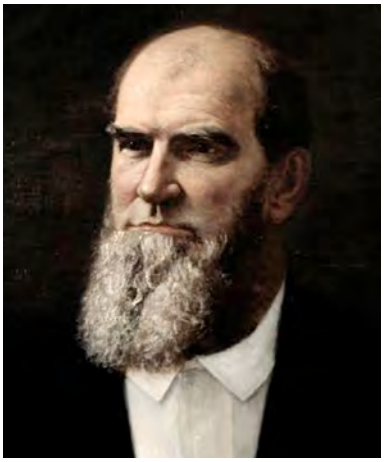

Oran Milo Roberts

Aside from Judge John Hemphill, no Texas jurist influenced the state's legal system during the nineteenth century more than Oran Milo Roberts. Roberts moved to Texas from Alabama in 1841 and set up a private law practice in San Augustine. He later served as district attorney from 1844–1846, district judge from 1846–1851, Associate Justice of the Texas Supreme Court from 1857–1862 and again from 1864–1865. He had also served as Chairman of the Secession Convention in 1861, colonel of the 11th Texas Infantry Regiment from 1862–1864, and was elected to be a U.S. Senator in 1866 (although the Senate refused to seat him). During Reconstruction he taught law at a school in Gilmer and influenced many future prominent Texas jurists. After Democrats returned to power in 1874, Roberts was appointed Chief Justice of the Texas Supreme Court and was later elected to the same position after the Constitution of 1876 made it elective rather than appointed. He served as governor from 1879–1883, and then as the first professor of law at the University of Texas until the 1890s.

As Chief Justice during the 1870s, Roberts perhaps had his most lasting influence on the history of Texas. During this period, he not only ruled on several landmark cases, he also wrote rules for the judicial branch that greatly streamlined its efficiency in disposing cases. Roberts served as a bridge between antebellum legal thought and Texas jurisprudence well into the twentieth century. His strict constructionist legal interpretations had to conform to challenges from an increasingly industrialized and organized society, and the resolution of his Old South worldview with the looming modernism of the twentieth century influenced political and legal thought in Texas for decades.

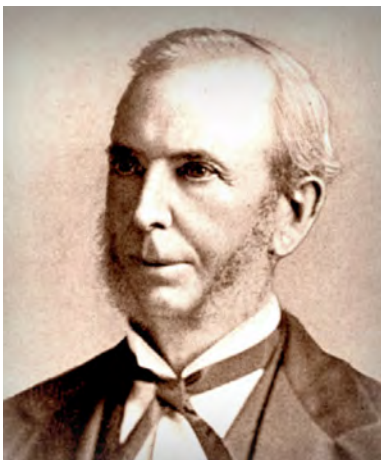
From 1867 to 1873, Oran Roberts had largely stayed out of public affairs. After he was refused a seat in the U.S. Senate, he returned to his private legal practice in East Texas. For most of that period, Republicans were in charge of Texas and secessionists like Roberts were barred from holding office. However, in 1873, Democrats reclaimed control of the state legislature and started to undo much of what Republicans had enacted. In December 1873, the Democrats managed

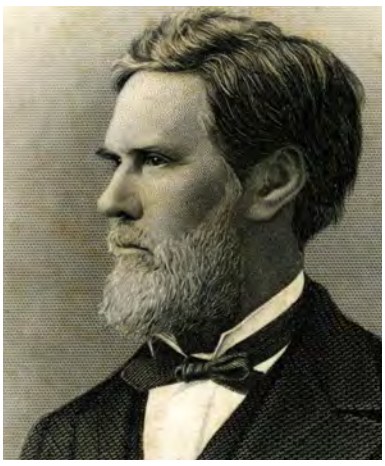
to amend the 1869 Constitution to make Supreme Court Justices appointed rather than elected. That same fall ex-Confederate Richard Coke was elected governor and was inaugurated in January 1874.[1]


Governor Richard Coke

When the legislature convened that same month, many of its members firmly expected Coke to name Roberts as Chief Justice. Roberts's son Bobby was in Austin and overheard several legislators discussing his father. One of them related a conversation with Coke in which the governor stated that the judge "had been an ornament to the bench and saw no reason why [he] could not be again and that if he (Coke) ever did appoint a court that [Roberts] should be chief justice" [underlined in original]. It was no surprise then, that on January 27, 1874, when Coke announced his appointments to the Supreme Court, Roberts was named Chief Justice. Joining him on the bench as associate justices were old friends and colleagues Reuben A. Reeves, George F. Moore, Thomas J. Devine, and William Pitt Ballinger.[2]


Justice George F. Moore


Justice Thomas J. Devine


Justice William Pitt Ballinger

Roberts returned to the state bench at a time of great social and economic transition in Texas. The building of railroads represented an attempt to link the state with the rest of the nation and expand commerce. In 1860, there were only 500 miles of track in Texas; by 1880, there were more than 8,000. By the time Richard Coke took office in January of 1874, The Houston and Texas Central Railroad connected Houston with Dallas and Denison. In Denison, it connected with the Missouri, Kansas and Texas Railroad, which ran to St. Louis. The state government recognized the importance of railroads to economic growth in Texas and had begun to shower railroads with favors in order to entice them to build in the state. Even before the Civil War the state was giving

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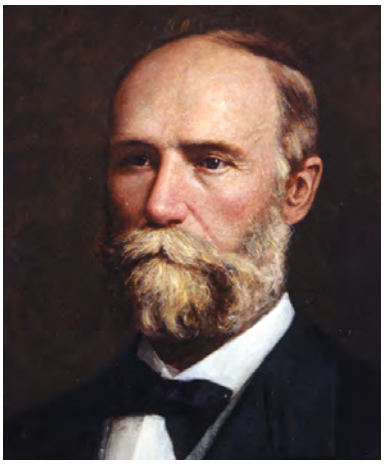
1 Randolph B. Campbell, *Gone to Texas: A History of the Lone Star State* 2nd Edition (New York: Oxford University Press, 2012), 282-283.

2 R.P. Roberts to O.M. Roberts, January 19, 1874, Oran M. Roberts Papers, Briscoe Center for American History, University of Texas at Austin (hereafter cited as Roberts Papers) [quotation]; James L. Haley, *The Texas Supreme Court: A Narrative History, 1836–1986* (Austin: University of Texas Press, 2013), 88–90. Ballinger only served for one day before resigning. Coke replaced him with Peter W. Gray, but he had to resign in April 1874, due to poor health. Gray was replaced by Robert S. Gould who was still on the court when the Constitution of 1876 made the post an elected one.

sixteen sections of land for every mile of track completed. The Constitution of 1869 prohibited such grants, but not the outright payment of money to these railroad companies.[3]

One of the first major cases to come before Roberts's Supreme Court in 1874 was *Bledsoe v. The International Railroad Company*. In 1870, the legislature passed an act to charter the International Railroad Company and agreed to pay the company $10,000 per mile to build it. The state issued $500,000 in state bonds and in November 1871, turned them over to the Comptroller of Public Accounts, Albert A. Bledsoe, to be countersigned and transferred to the railroad company. Bledsoe refused and returned the bonds to Governor Davis, unsigned. The railroad took legal action in November 1873 and asked for a writ of mandamus against Bledsoe from the District Court of Travis County. Bledsoe argued that the act authorizing the payment to the railroad company was procured by "fraud, corruption, and bribery" on the part of said railroad and was therefore "null and void." The District Court sided with the railroad and ordered Bledsoe to countersign and register the bonds. Bledsoe then appealed to the Supreme Court.[4]



Governor E. J. Davis

The case came before the court during the spring session in Austin. Associate Justice Moore recused himself from the case as he had previously been a lawyer for the International Railroad Company. J.W. Ferris of Ellis County, a friend of Roberts's, was appointed Special Justice for this case. Roberts had his friend write the opinion but conferred with him on it and wrote the last part of it himself. Bledsoe's lawyers argued that "A *mandamus* does not lie, even in a court that has original jurisdiction, to compel any officer to do against his judgment and will any act involving an exercise of official discretion." They cited as precedent Judge Wheeler's opinions in *Arbery v. Beavers* and *Commissioner of the General Land Office v. Smith*, as well as Roberts's own opinion in *Houston Tap and Brazoria Railroad v. Randolph*. Wheeler had argued in *Commissioner of the General Land Office v. Smith* that a mandamus could only be issued to a state official when the duty being mandated was "ministerial" in its character. Any other duties were discretionary. The case, therefore, rested upon the definition of "ministerial" duties.[5]

Chief Justice
Robert S. Gould

The court was divided on this issue. Justices Devine and Reeves argued that countersigning and registering the bonds was a ministerial function, while Roberts, Ferris, and Gould argued the

[3] Campbell, *Gone to Texas,* 304–305.

[4] Leila Bailey, "The Life and Public Career of O.M. Roberts," Ph.D. Dissertation, University of Texas, 1932, 220–221; *Reports of Cases Argued and Decided in the Supreme Court of the State of Texas, Vol 40* (Galveston: Civilian Book Office, 1845–1886), 539 (hereafter cited as *Texas Reports*). A writ of mandamus is a court order to execute or not execute a particular action. In this instance, the railroad company wanted a district court to order Bledsoe to turn over the bonds to them.

[5] Bailey, "The Life and Public Career of O.M. Roberts," 221–222; 40 *Texas Reports* 541 [first quotation], 548 [(subsequent quotations].

opposite. The majority opinion was based on two questions:

> 1. Does the record present a proper case for a *mandamus*, considered on general principles?
>
> 2. Has the district court the power and authority to compel the comptroller of the state of Texas to countersign and register the state bonds?[6]

On the first question, the majority ruled that the Constitution of 1869 gave the comptroller discretion in matters such as these, writing, "The comptroller being thus placed at the head of the fiscal department, clothed with the power of directing the same, and entitled to bring to his aid able counsel, surely it was intended that in all matters pertaining to the duties of his office, under the constitution, he should exercise judgment and discretion." On the second question, the majority opinion was "that the District Court had not the power and authority under the Constitution to compel an officer of the executive department of the government to perform an official duty." They cited separation of powers as the basis for this decision.[7]

The majority opinion was lauded by a significant faction of the Democratic Party. State Senator William Neal Ramey wrote, "We feel that we have a court that is not carried away with the progressive ideas of the day – many of them put into existence and sustained by the monopolists and others at the expense of the country." Others, however, disagreed with Roberts's and Ferris's conclusions in the *International* case, among them, Roberts's fellow justice George F. Moore. Moore criticized the majority opinion in *International* in writing the opinion for a case decided during the same term, *Keuchler v. Wright*.[8]

When *Keuchler* came before the Roberts court, it was the third time the state bench heard the case that involved a grant of land originally reserved for the Memphis, El Paso and Pacific Railroad. Chartered by the Texas Legislature in 1853, the railroad was supposed to run west through the Red River Valley and turn southwest somewhere near the headwaters of the Trinity River. The railroad was only able to grade sixty-five miles of roadbed before the Civil War broke out, and the one load of iron rail they were able to acquire was confiscated by the Confederate government. In 1870, one of the members of the railroad's board of directors, George W. Wright, filed a land certificate for 1,280 acres, 640 of which were unlocated, with the Lamar County clerk. Wright wanted to claim his unlocated acres on a fractional portion of the Memphis, El Paso and Pacific Railroad's reserved lands in Lamar County. In March of 1871, Wright had the land surveyed and filed the survey, with the field notes and certificate, with the General Land Office.[9]

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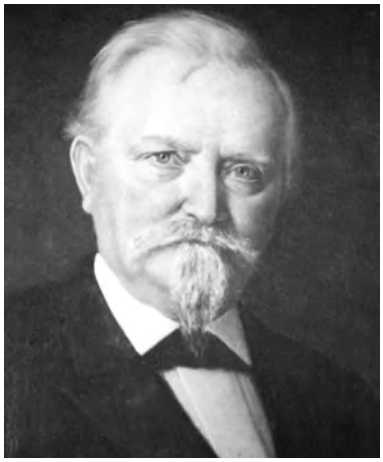
6 40 *Texas Reports,* 557.

7 40 *Texas Reports,* 562 [first quotation], 564 [second quotation].

8 Ramey to Roberts, July 31, 1874, Roberts Papers.

9 Bailey, "Life and Public Career of O.M. Roberts," 227; George C. Werner, "Memphis, El Paso and Pacific Railroad," *Handbook of Texas Online* (http://www.tshaonline.org/handbook/online/articles/eqm03). Wright, besides being a board member of this railroad, was one of the early pioneers of Lamar County. As a member of the 1861 Secession Convention, he had voted against secession, one of only eight delegates to do so. Skipper Steely, "Wright, George Washington," *Handbook of Texas Online* (http://www.tshaonline.org/handbook/online/articles/fwr05).


Jacob Keuchler

Jacob Keuchler, Commissioner of the General Land Office, refused to issue a patent for those lands because they were reserved for the railroad. Wright asked a Travis County court to issue a writ of mandamus to compel Keuchler to issue the patent. The district court granted the mandamus, and Keuchler appealed to the Supreme Court in 1872. The Supreme Court ruled in favor of Keuchler, reversing the decision of the lower court on the grounds that Wright did not have a legal right to a patent. Wright managed to have the case reheard in October 1873, but the court maintained its earlier opinion. Wright was granted a second rehearing, and his case was heard by Roberts's court on March 20, 1874. Roberts's court reached the same conclusion its predecessor did, and the case was dismissed.[10]

Justice George F. Moore wrote the majority opinion in *Keuchler*, and in doing so, attacked Roberts's decision in the International case. Moore's opinion centered on the question of what exactly constituted a ministerial act. Roberts (through special justice Ferris) had ruled in *International* that a state official had discretion on whether to carry out certain acts. In writing that opinion, Ferris, stated that this question had been "authoritatively decided in this state under the Constitution of 1845 in the Randolph case." Moore attacked this statement, writing that Roberts's opinion in *Houston Tap and Brazoria Railroad v Randolph* case was mere dictum and not authoritative. Furthermore, Moore argued that the other judges on the state bench at the time, Bell and Wheeler, never endorsed Roberts's opinion either. Interestingly, Moore had been the court reporter in 1859 when the case was decided and reported it as authoritative, not dictum.[11]


Alexander W. Terrell

Some questioned Moore's motives in effectively overruling Roberts's earlier decision in the *International* case, writing that his opinion showed "more the attorney, than the disinterested judge." The implication was that Moore, who had recused himself from the earlier case because he had been a lawyer for the International Railroad, was motivated by protecting the interests of railroad companies. Regardless of Moore's motives, Roberts determined to issue an opinion of his own. Although most described this as a dissenting opinion, fellow lawyer Alexander W. Terrell preferred to call it a "separate" opinion because Roberts reached the same conclusion as the majority but arrived there for completely different reasons.[12]

Roberts's main purpose in writing a separate opinion was to validate the strict constructionist viewpoint he had espoused regarding the writ of mandamus in the *International* case. In typical Roberts style, his opinion was lengthy (forty-six pages, ten pages longer than Moore's majority opinion), well-researched, and well-written. The Chief Justice traced the origin of the writ of

[10] Bailey, "The Life and Public Career of O.M. Roberts," 222.

[11] 40 *Texas Reports*, 600 [quotation]; 623–624; Bailey, "The Life and Public Career of O.M. Roberts," 228.

[12] Ferris to Roberts, August 20, 1874, Terrell to Roberts, December 14, 1874, Roberts Papers.

mandamus backed to English Common Law, noting its historical usage and frequently quoting Blackstone, the famous English legal commentator. He noted its historical usage in America and ended his opinion by criticizing the United States Supreme Court's most famous mandamus case, *Marbury v. Madison*. Of John Marshall's famous decision, Roberts wrote, ". . . it is high time that the judicial idolatry for a name, however great and deserving, by which a *dictum* of any court has been made the law of the land should begin to cease in this country [emphasis in original]." He closed his opinion with a quote from William Blackstone, writing that "nothing is more to be avoided in a free constitution than uniting the provinces of a judge and a minister of the state."[13]


Chief Justice John Marshall


William Blackstone

Roberts's opinion in the Keuchler case is significant for a number of reasons. Again, he had produced a memorable "first" in the judicial history of Texas. Just as he had earlier been the first to write a dissenting opinion in *Cain v. the State* in 1857, he was now the first to write a "separate" opinion. It also is a profound exposition of his strict constructionist views on both constitutional and statute law. Roberts clearly viewed the right of judicial review as pioneered by John Marshall as dangerous and unconstitutional. Others shared his viewpoint and praised him for his opinion on it. One writer in a prominent legal journal of the time wrote, "Mr. Chief Justice Roberts dissented at great length, and in his opinion examines the question involved with an ability which, in our judgment, stamps him as one of the foremost jurists of the country."[14]

The chief justice's opinion in *Keuchler* also furthered his popularity with white Democratic voters in Texas, many of whom were opposed to railroad subsidies. The issue of public support for railroads was a divisive issue for Texas Democrats after Reconstruction. Although several Democratic politicians argued that Texas could not develop economically without subsidizing railroad companies, many rank-and-file Texas Democrats rejected the idea. To many, public support for these corporations was merely a scheme to aid the rich and powerful at the expense of the ordinary Texan. To make matters worse, many of these railroad companies were controlled by northeastern stockholders. Roberts's decisions in both the International and Keuchler cases resonated with these voters. One Clarksville lawyer compared him favorably to Judge Hemphill and wrote that his Keuchler opinion "shows clearly that you are a friend of the people, and willing to give them the benefit of the law as against their natural enemies, the monied corporations." As the Texas Democratic Party became more divided over this issue, Roberts was seen as a reasonable middle ground between those viewed as friendly to the railroads and those completely opposed to railroad subsidies.[15]

[13] 40 *Texas Reports,* 693.

[14] John F. Dillon, "Power of the Judiciary to Control the Official Acts of Officers of the Executive Department of the Government," *Central Law Journal* 2 (January, 1875), 20–31.

[15] Patrick G. Williams, *Beyond Redemption: Texas Democrats After Reconstruction* (College Station: Texas A&M University Press, 2007), 93–97; Charles S. Todd to Roberts, December 14, 1874, Roberts Papers [quotation].

By early 1875, Texas legislators wanted a new constitution to replace the Constitution of 1869. The state legislature issued a call for an election to be held in August of 1875. Voters approved a constitutional convention and elected delegates. Although Roberts and the other justices of the Supreme Court did not stand for election as delegates, their views on the judicial branch were solicited by prominent delegates and the result surely reflected at least some of Roberts's views. The convention met on September 6, 1875, and comprised seventy-five Democrats and fifteen Republicans, six of whom were black. The document produced by this convention was radically different from its predecessor. The delegates set out to decentralize state government, reduce the cost of operating said government, and curb the power of the executive. This commitment to decentralization and fiscal retrenchment extended to the judicial branch as well. The number of justices on the Supreme Court was reduced from five to three (one chief justice and two associate justices), and these seats were made elective, with judges serving six-year terms. Salaries for Supreme Court justices were cut by $1,000 per year, and the number of district courts was reduced from thirty-five to twenty-six. Changes were also made to try and reduce the excessive caseload for the Supreme Court, which by 1875 lagged two years behind. A Court of Appeals was created to handle appeals in civil cases from county courts, as well as having appellate jurisdiction in all criminal cases. The Supreme Court was given direct appellate jurisdiction in civil cases only.[16]

The Convention adjourned on November 24, 1875, and an election to approve the new Constitution and elect state officials was called for February 15, 1876. Although some railroad supporters made a feeble effort to oppose him, there was little doubt that Roberts would be elected as Chief Justice. Governor Coke assured him that "No man in the state could poll five per cent of the Democratic vote against you." A.W. Terrell could find only one delegate to the convention that would not support Roberts and added, "outside of the bar the sentiment is universal in the convention in favor of your candidacy."[17]

The judgment of Coke and Terrell soon proved valid. On Election Day, Roberts was elected as chief justice, while Moore and Gould were returned as associate justices. The Constitution of 1876 was approved by the voters by a more than two to one margin and went into effect on April 18. Article V of the new constitution continued the practice of having the Supreme Court hold three sessions per year, in Galveston, Austin, and Tyler. Nepotism perhaps played a part in the selection of clerk for each session of the court. Nicholas J. Moore, Judge Moore's brother, was appointed to be the clerk for the Galveston session, Bobby Roberts was appointed for the Tyler session, and William P. De Normandie, the one clerk not related to a Supreme Court justice, was chosen for the Austin session.[18]

During the first few days of the legislature, Governor Coke came to visit Judge Roberts and suggested that he draft an amendment to improve the judicial article in the Constitution of 1876.

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[16] Williams, *Beyond Redemption,* 52–53; Haley, *The Texas Supreme Court*, 91–92; Joe E. Ericson and Ernest Wallace, "Constitution of 1876," *Handbook of Texas Online* (http://www.tshaonline.org/handbook/online/articles/mhc07). *Gammel's Laws of Texas,* Vol. 8, 800-808; Reagan to Roberts, August 5, 1875; Terrell to Roberts, October 28, November 29, 1875, Roberts Papers.

[17] Bailey, "The Life and Public Career of O.M. Roberts," 239–240; Coke to O.M. Roberts, November 26, 1875; Terrell to Roberts, November 29, 1875, Roberts Papers.

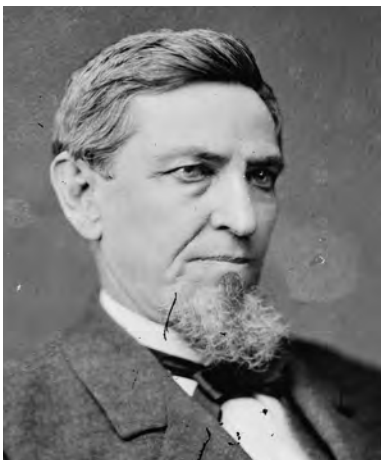
[18] Haley, *The Texas Supreme Court*, 92; Oran M. Roberts, "Journal of Supreme Court Organization, 1876," 1–3, Roberts Papers.

William W. Lang

The Constitution was a product of compromise, and, according to Roberts, "it was generally agreed that the late constitution was very defective in that respect [the judiciary]." Earlier that year, William W. Lang, leader of the Texas Grange and representative from Falls County, had written to the judge and requested his views on how to improve the judicial system. Governor Coke had since conferred with Lang and agreed that Judge Roberts's experience and wisdom was vital to any amendments that Lang might propose. They decided, however, that Roberts's participation should not be known, because some of the legislators would vote down anything with which he was connected. Roberts prepared a manuscript and gave it to Lang who presented it as his own. However, nothing came of this as no amendments were made to the Judiciary article until 1891. Roberts's participation was likely known anyway; his writing style was very precise and legalistic, and Lang was not a lawyer. Regardless of the failure of his amendment, this incident demonstrates the esteem in which Judge Roberts was held as Texas's premier jurist.[19]

Although Roberts's proposed amendment to the judiciary article was not accepted at the time, state legislators sought his advice in revising statutes. Former Attorney General George Clark, now a state legislator from Waco, was assigned to revise the Texas Penal Code. He wrote to Roberts:

> . . . I have to request as a special favor, not only to myself personally but to the profession and people generally, that at your convenience you give me the benefit of such suggestions concerning changes, modifications and alterations therein as may have occurred to you as proper and necessary, in the course of your judicial and professional labors, to the end that the commission may have the benefit of such suggestions in the important work before it.[20]



Morgan Hamilton

Similarly, Charles S. West was charged with revising statutes pertaining to the Supreme Court and Court of Appeals. He also appealed to Roberts, writing, ". . . it is the desire of the commission and especially my own desire, in the interest of the public to get the benefit of your own experience and that of your associates, with the view of remedying as far as is possible such defects in the present law as experience has shown to exist."[21]

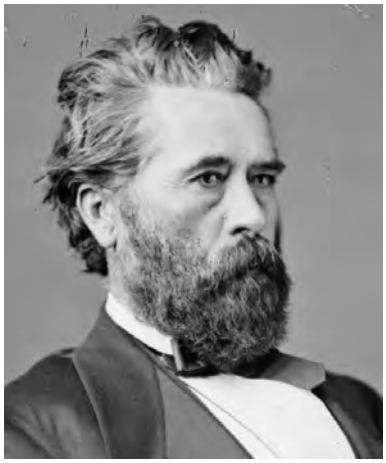
Texas politicians continued to seek legal, constitutional, and political advice from Roberts as well. After winning reelection as governor in February 1876, Richard Coke allowed himself to be nominated for election to the U.S. Senate seat held by Morgan Hamilton, a Republican elected to the Senate when his party

[19] Roberts, "Journal of Supreme Court Organization, 1876," 8–9, Roberts Papers.

[20] Clark to Roberts, December 15, 1876, Roberts Papers.

[21] Charles S. West to Roberts, April 20, 1877, Roberts Papers.

controlled the state legislature. In May of 1876, the Texas legislature elected Coke to the U.S. Senate over John Ireland, John Hancock, and Fletcher Stockdale. Earlier, Coke had promised members of his party who were uncomfortable with Lieutenant Governor Richard Hubbard becoming the executive of the state that he would not resign until March 1877, when Hamilton's term officially ended. However, toward the end of 1876, he chose to resign and sought advice from Roberts as Chief Justice on the best way to submit his resignation. Some had suggested that Coke had to submit a resignation to the state legislature, and have it accepted before he could legitimately step down, and he did not want the Republicans to use the issue against him. Roberts suggested that he issue a proclamation to the people of Texas and have it read also to the legislature, Supreme Court, and Court of Appeals. Roberts advised the governor:



John Hancock

> You are no more bound to tender your resignation to the Legislative Department than you are to the Judicial Department. The Legislature did not make you Governor in whole or in part, they simply recognized you as Governor, after the Speaker of the House counted and declared the vote in your favor, so did the Judicial Department and all of the officers of the state.[22]

John Ireland

Fletcher Stockdale

Coke heeded Roberts's advice, and on December 1, 1876, issued a proclamation announcing his resignation and the accession of Lieutenant Governor Richard Hubbard to the executive office.[23]

Lieutenant Governor Richard Hubbard

Roberts spent a great deal of time as chief justice establishing rules for the judicial branch of Texas's government. The Constitution of 1876 granted the Supreme Court the power to make rules and regulations governing the state judiciary, and Judge Roberts poured himself into the task, preparing an exhaustive system of judicial rules to govern calling a docket, preparation of legal briefs, and almost every other legal matter. The new rules were adopted by the Supreme Court during their session at Tyler, December 1, 1877. Roberts gave several lectures on the new rules in Tyler and was requested to publish his lectures in newspapers so attorneys who had not been

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[22] Roberts to Coke, November 20, 1876, Roberts Papers.

[23] Alwyn Barr, *Reconstruction to Reform: Texas Politics, 1876–1906* (Dallas, TX: Southern Methodist University Press, 1971); 28-31; Coke to Roberts, November 6, 1876, Roberts Papers.

able to hear his exposition could read what he had said.[24]

During the Galveston term of the court, in the early spring of 1878, Roberts further expounded upon and defended the new judicial rules. His opinion in *Texas Land Company v. Fletcher Williams* was essentially a statement of the new rules and an exposition on the proper preparation of legal briefs. He argued that the new rules were necessarily exhaustive:

> so as that the points of controversy in judicial proceedings in all of the courts should be presented with distinctness and certainty, the want of which, under our present practice, produces delay, expense, and injustice in litigation, that have long been increasing from year to year, until they now amount to intolerable evils that must be remedied.[25]

Reception of the new judicial rules was mixed. One Hopkins County lawyer was pleased with the rules and expressed his belief that "They will facilitate the dispatch of business, curtail the expenses of litigation, lessen the labors of the courts and make better lawyers and cause more accuracy, precision and certainty in pleading." Others, like former associate justice John Ireland, believed the rules would speed up the dispatch of business but worried that it would create much more work for attorneys with a large number of cases to handle already. Letters poured in from attorneys across Texas during the spring and early summer of 1878. However, Judge Roberts's time on the Supreme Court came to a sudden end during July of that year when the Texas Democratic Party selected him to be their nominee for governor.[26]

Immediately, the political class in Texas began to speculate on Roberts's intentions to resign his judgeship. If he resigned from the bench fairly quickly, the Democratic Party would have time to nominate a candidate for the November general election. If he waited until after the election, Governor Hubbard, as a lame duck, would have to appoint a judge who would be in place until the next general election in 1880. John Ireland was worried that Hubbard would run for chief justice and wanted Roberts to wait until after the election to resign. Many Texas Democrats, however, wanted him to resign and focus on the coming gubernatorial election. Roberts acquiesced to his party's wishes and tendered his resignation as Chief Justice on August 9, to take effect on the first Monday in October.[27]

Roberts's election as governor in the 1878 election took him from the judicial branch of Texas government to the executive branch. He would never return to the former. After serving two terms as governor, Roberts served as the first professor of law at the University of Texas. However, his influence as a jurist had more permanent consequences than that of his term as the state's executive officer. As governor, his commitment to fiscal retrenchment would be largely repudiated by his successors. By contrast, his opinions as chief justice would be cited well into the

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[24] *Gammel's Laws of Texas,* Vol. 8, 808; 47 Texas Reports, 597–641.

[25] 48 Texas Reports, 604.

[26] Haley, *The Texas Supreme Court*, 92-93; Green J. Clark to Roberts, March 1, 1878, John Ireland to Roberts, February 8, 1878, Roberts Papers.

[27] *State Gazette* (Austin, TX), as quoted in *Weekly News* (Galveston, TX), August 5, 1878; Ireland to Roberts, July 24, 1878, O.M. Roberts, "Copy of Resignation as Chief Justice of the Supreme Court of Texas," August 9, 1878.

twentieth century, as would his rules for the disposition of cases and preparation of legal briefs. Many of his law students and proteges would play important roles in the state's judiciary as well. It is not an exaggeration to state that Oran Roberts directly influenced at least two generations of legal scholars in Texas. As such his political and legal thought, heavily influenced by his antebellum Alabama upbringing, continued to permeate Texas jurisprudence long after his death.

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Recognizing the Legacy:
Restoring the Colors for the 24th Infantry Buffalo Soldiers

By Catherine Greene Burnett and Ashley Keel Cromika

It was the largest court martial in U.S. military history. It sparked massive changes in the military's death penalty review processes, which continue to this day. It was seen as a mutiny and a race riot with double digit death tolls. And yet, today, it is largely unknown, even in the city and the state in which it occurred.

Troops of the 24th Infantry on Trial for Mutiny and Murder [Electronic Record]; Colored Troops; American Unofficial Collection of World War I Photographs, 1917-1918; Records of the War Department General and Special Staffs, 1860-1952, Record Group 165 (RG 165); National Archives at College Park, College Park, MD, NAID 26431266, https://catalog.archives.gov/id/26431266.

I. Background

In July of 1917, roughly three months after the United States entered into World War 1, the 24th Infantry Regiment arrived in Houston, Texas, under orders to assist with security during the construction of Camp Logan. Camp Logan was one of thirty-four planned training camps intended

to prepare white soldiers to become battle ready. When the 3rd Battalion, 24th Infantry Regiment reported for a seven-week security detail in Houston it consisted of nearly 650 African American soldiers belonging to companies I, K, L, and M.

Prior to arriving in Houston, the 3rd Battalion, 24th Infantry Regiment, through its assignments in Utah, Wyoming, the Indian Territories, and New Mexico, had provided critical support for American efforts for westward expansion. In addition to their service out west, these soldiers fought in the battles of San Juan Hill and El Caney in Cuba during the Spanish-American War. With the dawn of the new century, they had three tours in the Philippines during its decades of insurrection and subsequent pacification. And in the year immediately prior to their arrival in Houston, they had been deployed to the United States-Mexico border for the expedition against Pancho Villa and his Mexican guerilla forces. They were no strangers to combat and had served with distinction.

It is undisputed that the City of Houston was eager to secure the military contract for the construction of Camp Logan and Ellington Field. At this time, Houston, like much of the South, was under the purview of strict Jim Crow Laws which lead to a racial conflict that the soldiers faced from the moment they reported for duty.

As expected, news of the impending arrival of African American soldiers to assist with security at the construction site of Camp Logan was not well received by the majority of Houston citizens even as it was promoted by city leaders. This sentiment was not lost on the Army. In fact, prior to arriving, Colonel William Newman, the battalion commander for the 24th Infantry, recognized the potentially problematic assignment and openly questioned the city's acceptance and tolerance of his battalion's presence in Houston. Undeterred by their general awareness of racial tensions or the potential for racially fueled incidents, the City of Houston and the military made the decision to move forward with the contract and with assigning the 24th Infantry Regiment to provide security for the construction of Camp Logan.

During the first three weeks of duty at Camp Logan, officers of the Houston Police Department engaged in numerous assaults and arrests of 24th Infantry Regiment soldiers. In addition to the police department's deplorable treatment, the soldiers were often the target of unprovoked racial rhetoric from the locals. Not only did the 24th experience personal attacks, but they also witnessed the demoralizing effect Houston's Jim Crow laws had on African American citizens. Several physical altercations had taken place between white construction workers and African American workers who were helping with the camp's construction. Of significance was the "Payroll Riot," a physical altercation involving forty construction workers. It involved a disagreement over the order of the line the men were standing in to pick up their paychecks, and the stabbing of an African American construction worker by a white worker. Other incidents centered around segregated seating in the street cars leading from downtown Houston back to the construction site and the 24th's nearby encampment northwest of the city.

Instead of advocating on behalf of its soldiers and demanding that the 24th Infantry soldiers be shown the respect they had earned and were owed, the Army succumbed to the will of the City of Houston in several ways. The first conciliatory move was disarming the men while they were on guard duty patrolling the San Felipe District and instructing the soldiers who were permitted

Answering the Call to Serve: Camp Logan, Houston, Texas 1917-1919, Stories, Camp Logan, THE HERITAGE SOCIETY AT SAM HOUSTON PARK, https://www.heritagesociety.org/camp-logan. (last visited Feb. 11, 2025).

to carry a weapon that they were prohibited from loading those weapons. Colonel Newman assigned sixteen armed soldiers to patrol the San Felipe District after Houston's Chief of Police Clarence Brock agreed that doing so would assist the police department in keeping the peace in that neighborhood. This decision was extremely unpopular with the white officers patrolling that area. These officers refused to work in tandem with the soldiers and were adamant that the soldiers should not be armed. Shortly thereafter, Colonel Newman had the guards patrolling the San Felipe District disarmed.[1] The second appeasement was restricting where the soldiers could go when they were off duty. When it became apparent that restricting the movement of the off-duty soldiers was not effective enough and racially charged incidents continued, Colonel Newman enacted an unprecedented visitor policy at the encampment. In an attempt to keep more soldiers in camp, civilians were allowed to come and go freely between the hours of 1:00 PM and 10:45 PM.[2]

II. The Riot / Mutiny

The Lead-Up

On the morning of August 23, 1917, Private Alonzo Edwards was on duty in the Fourth Ward. While on duty, Private Edwards witnessed two white police officers engaged in a physical altercation with an African American woman who was standing on the sidewalk in her house coat, holding a baby. Private Edwards approached the officers and attempted to deescalate the situation. The soldier's actions were not received well by the two officers, as evidenced by their decision to beat and arrest him.

Several hours later, Corporal Charles Baltimore reported for duty in the San Felipe District. While on duty, Corporal Baltimore asked these same officers about their earlier arrest of Private Edwards. Seemingly insulted by the thought of having to explain their actions to an African American soldier, the two officers once again engaged in physical violence against a soldier, in uniform and on-duty. After being pistol whipped, Corporal Baltimore fled. As he fled, one officer fired three shots at him. After the officers found Corporal Baltimore, he was assaulted again and arrested.

Charles W Baltimore's Memorial Page, Veterans Legacy Memorial, https://www.vlm.cem.va.gov/CHARLESWBALTIMORE/B2C42A6. (last visited Feb. 11, 2025).

Because the officers' assault of Corporal Baltimore took place in the middle of the afternoon in front of residents of the San Felipe District, rumors of the altercation quickly made their way to the encampment of the 24th Infantry Regiment. Unfortunately, by the time those rumors reached the encampment, they inaccurately reported that in addition to assaulting Private Edwards, the same white officers of the Houston Police Department had shot and killed Corporal Baltimore.

After newly appointed battalion commander, Major Kneeland Snow, learned of the assaults and arrests of both Private Edwards and Corporal Baltimore, he dispatched Captain Haig Shekerjian to the headquarters of the Houston Police Department to inquire about the earlier events and the status of the two detained soldiers.

Eventually, the Houston Police Department released both Private Edwards and the injured, but very much alive, Corporal Baltimore. By the time both men returned to camp with Captain Shekerjian, several soldiers had expressed a desire to seek revenge against the police officers involved in the assault on their fellow soldiers. In addition to the rumors regarding Corporal Baltimore and Private Edwards, there were rumors that a white mob was coming into the camp in an effort to push the soldiers out of town.

Instead of requiring that all nine commanding officers remain present that day, Major Snow allowed four of them to take passes, and he decided to leave himself to go out on the town -- or that was his initial plan. Around 7:00 PM, as he was leaving camp Major Snow was informed by

First Sergeant Vida Henry of I Company that despite Corporal Baltimore's return, there was unrest among the soldiers at the camp.[3] First Sergeant Henry also expressed his concerns that there could be trouble that night in camp. Sergeant Henry suggested that the officers speak with the soldiers in an effort to try to make the soldiers feel more at ease and to get things under control.

The apprehension and agitated state of their soldiers did not go unnoticed by the leadership for the 24th Infantry. It is clear that the officers found First Sergeant Henry's information credible when Major Snow's remedy for alleviating any possibility of trouble in camp was to issue a series of orders: cancellation of an offsite watermelon party, revocation of passes for enlisted men, removal of all visitors from camp, and the turning in of weapons and ammunition to the supply tents that were to be placed under heavy guard. Naively, Major Snow failed to extend the camp confinement to the officers of the 24th and several officers were absent from camp.[4] After reducing the number of officers in camp, Major Snow also rejected an offer of police assistance that was extended prior to his frantic claim that, "hell has broken loose in my camp, and I can do nothing with the men."[5]

The Soldier's Reactions

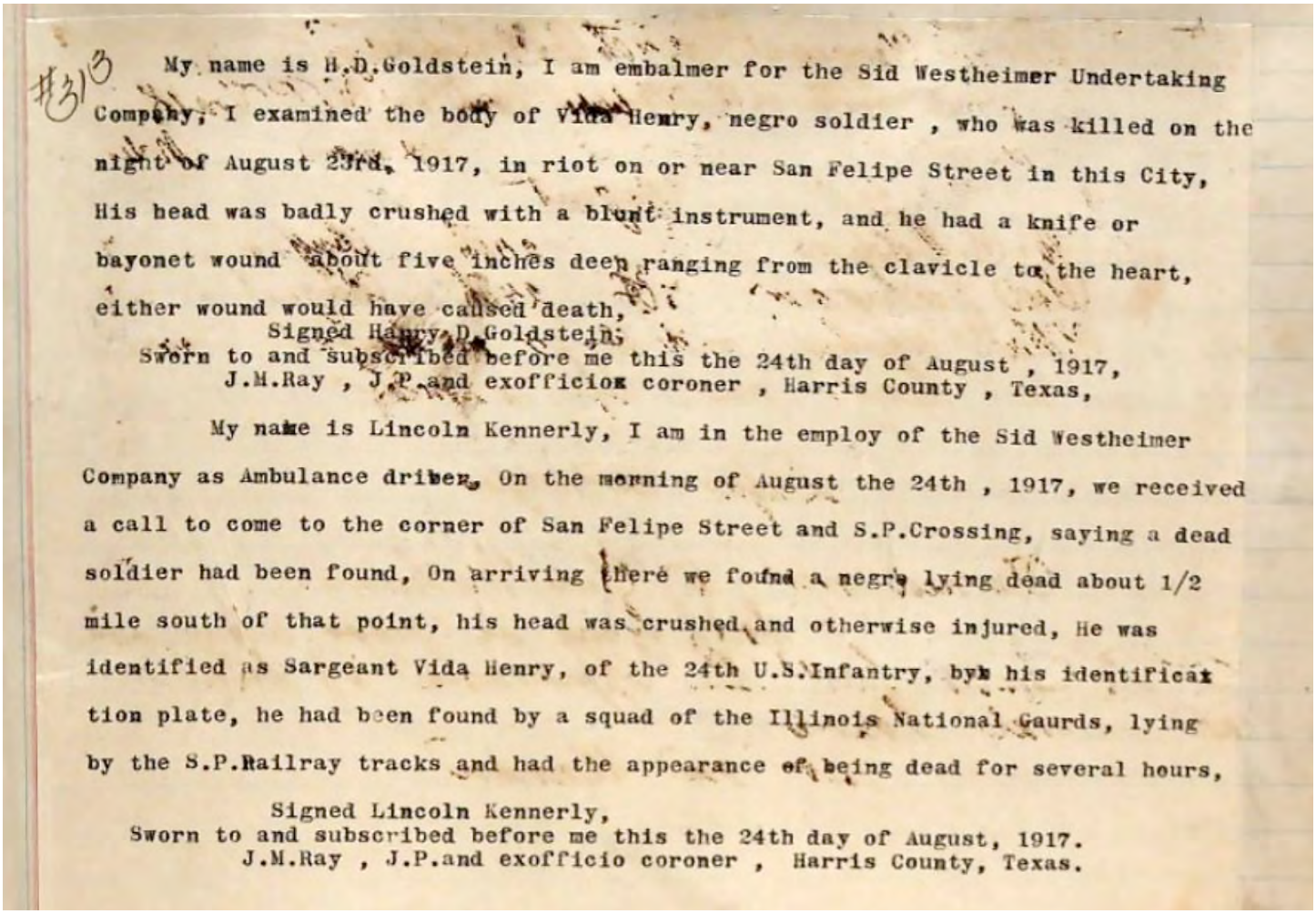
Somewhere between 8:00 PM and 9:00 PM, after hours of uncertainty and unmitigated fear, Private Frank Johnson yelled out, "Get your guns, boys! Here comes the mob!"[6] The first gunshot rang out immediately after Private Johnson's yell and soldiers raced to the closest supply tents and attempted to obtain a service weapon and ammunition. As the indiscriminate gunfire continued, many of the soldiers in Companies K, L, and M, with the approval of their respective officer in charge, formed a skirmish line between the camp and direction of downtown Houston. While most of the men in camp were hunkered down in anticipation of being invaded and attacked by a white mob, Major Snow, the battalion commander, fled from camp on foot, abandoning his men and his post.[7]

During the volley of gunfire, First Sergeant Henry attempted to calm the soldiers of I Company down and stop them from firing their weapons. When those attempts failed, Henry ordered men to fill their canteens and fall in line with their weapons. He then proceeded to lead the soldiers out of camp and the column headed in the direction of the San Felipe District.

Around the same time First Sergeant Henry and his column marched out of the encampment, Corporal Washington along with fifteen of the eighteen soldiers assigned to guard the Lower A division at Camp Logan, heard the gunfire and decided to leave their post and head towards the 24th's encampment. As they headed east on Washington Road, the men at the front of the group ordered the driver of a jitney to stop.[8] When the driver failed to obey the order, the men opened fire, killing the driver, E.M. Jones and wounding passenger Charles T. Clayton.[9]

At some point after shots were fired at the 24th's encampment, the Houston Police formed its own skirmish line between camp and downtown Houston. Subsequent civilian testimony revealed that white citizens, including off duty police officers, deputies, and at least one judge were permitted to enter into a local hardware store to obtain firearms and ammunition in preparation of crossing the police department's skirmish line and heading to the San Felipe District to meet up with any soldiers who were outside of the encampment.[10]

By 11:30, there were no soldiers belonging to the 24th Infantry to be found on the streets of downtown Houston, or the San Felipe District. Most of the soldiers who had left the camp with First Sergeant Henry had already headed back towards camp, while others had either been arrested or sought refuge somewhere near camp. Although most of his column made their way back to camp, First Sergeant Henry did not. His body was found the next morning near the railroad tracks at San Felipe Street and S.P. Crossing.[11] Over the years, First Sergeant Henry's death was attributed to suicide; however, the attestations of the ambulance driver, who recovered his body, and embalmer H.D. Goldstein are inconsistent with such a finding. Embalmer Goldstein's stated that two wounds were fatal, and his inquest listed First Sergeant Henry's causes of death as a crushed skull and a stab wound.[12]



#313

My name is H.D.Goldstein, I am embalmer for the Sid Westheimer Undertaking Company, I examined the body of Vida Henry, negro soldier , who was killed on the night of August 23rd, 1917, in riot on or near San Felipe Street in this City, His head was badly crushed with a blunt instrument, and he had a knife or bayonet wound about five inches deep ranging from the clavicle to the heart, either wound would have caused death,

Signed Henry D.Goldstein.

Sworn to and subscribed before me this the 24th day of August , 1917,
J.M.Ray , J.P.and exofficiox coroner , Harris County , Texas,

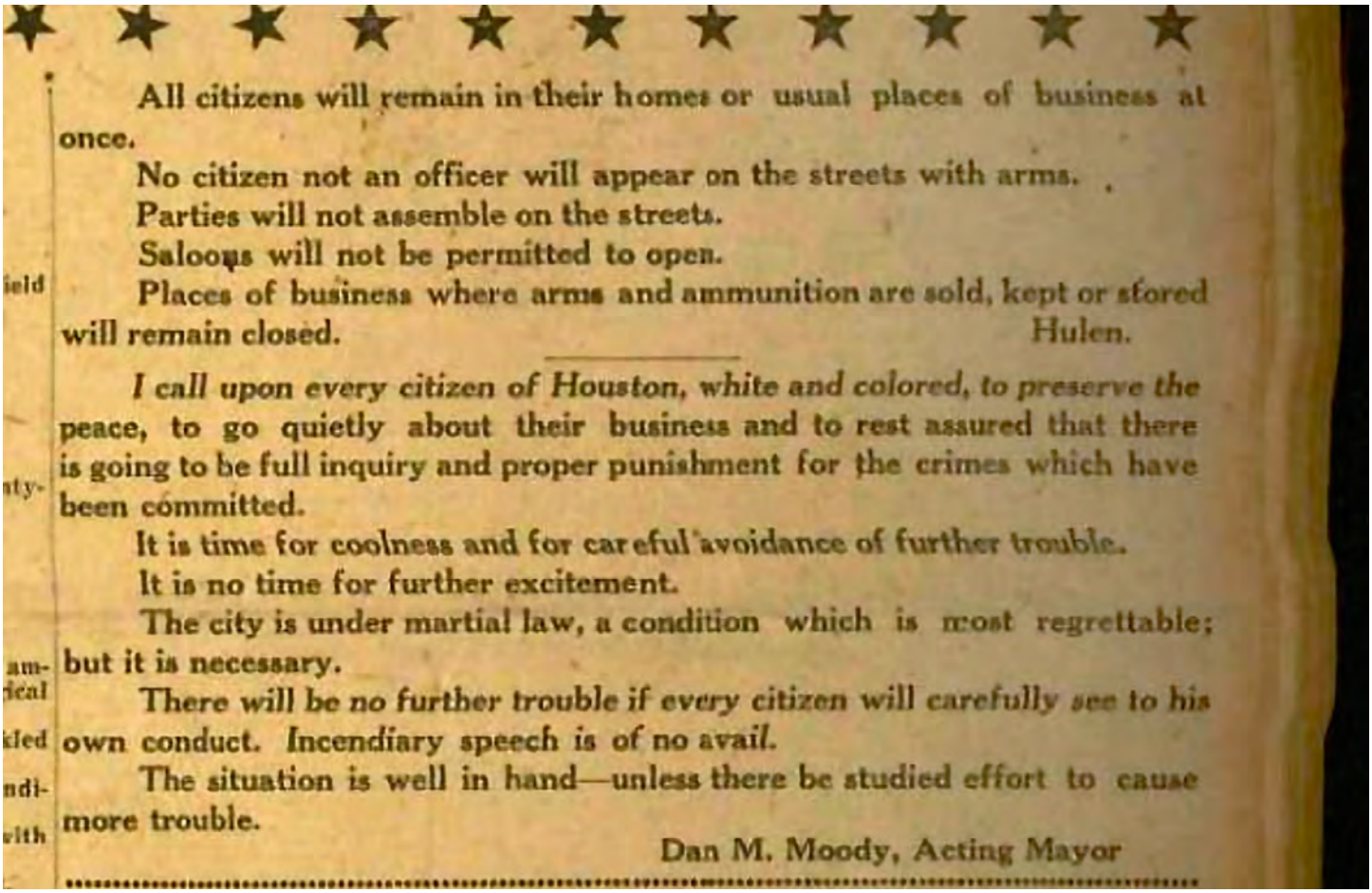
My name is Lincoln Kennerly, I am in the employ of the Sid Westheimer Company as Ambulance driver, On the morning of August the 24th , 1917, we received a call to come to the corner of San Felipe Street and S.P.Crossing, saying a dead soldier had been found, On arriving there we found a negro lying dead about 1/2 mile south of that point, his head was crushed and otherwise injured, He was identified as Sargeant Vida Henry, of the 24th U.S.Infantry, byh his identificat tion plate, he had been found by a squad of the Illinois National Gaurds, lying by the S.P.Railray tracks and had the appearance of being dead for several hours,

Signed Lincoln Kennerly,
Sworn to and subscribed before me this the 24th day of August, 1917.
J.M.Ray , J.P.and exofficio coroner , Harris County, Texas.

Statements of H.D. Goldstein and Lincoln Kennerly[13]

III. Immediate Aftermath and Investigations

Shortly after midnight, Governor Ferguson declared a state of emergency and placed Houston under martial law. Brigadier General J.A. Hulen of the Texas National Guard was assigned to take charge of the city.[14] The following statements of Brigadier General Hulen and Dan Moody, Houston's acting Mayor were published in the Houston Post:



All citizens will remain in their homes or usual places of business at once.

No citizen not an officer will appear on the streets with arms.

Parties will not assemble on the streets.

Saloons will not be permitted to open.

Places of business where arms and ammunition are sold, kept or stored will remain closed. Hulen.

I call upon every citizen of Houston, white and colored, to preserve the peace, to go quietly about their business and to rest assured that there is going to be full inquiry and proper punishment for the crimes which have been committed.

It is time for coolness and for careful avoidance of further trouble.

It is no time for further excitement.

The city is under martial law, a condition which is most regrettable; but it is necessary.

There will be no further trouble if every citizen will carefully see to his own conduct. Incendiary speech is of no avail.

The situation is well in hand—unless there be studied effort to cause more trouble.

Dan M. Moody, Acting Mayor

Statement of Acting Mayor Dan M. Moody [15]

The military took immediate action to locate and secure the 24th Infantry soldiers. After Colonel Millard F. Waltz, commander of the First Battalion of the 19th Infantry unit made his way to camp, he ordered his men to surround the perimeter with their weapons aimed towards the soldiers while the 24th was disarmed. Colonel Waltz also ordered his men to "annihilate" any soldiers who "made a break for their arms."[16] When he addressed the men of the 24th , Colonel Waltz stated, "the guard will shoot outwards against unauthorized persons attacking the dignity of the United States Camp just as quickly as it will fire inward on you if you attempt any further disorder."[17] Within four weeks of their arrival in Houston, Texas, the soldiers belonging to the 24th Infantry Regiment found themselves on train cars heading back to Columbus, New Mexico after experiencing what was likely the longest three hours of their lives.

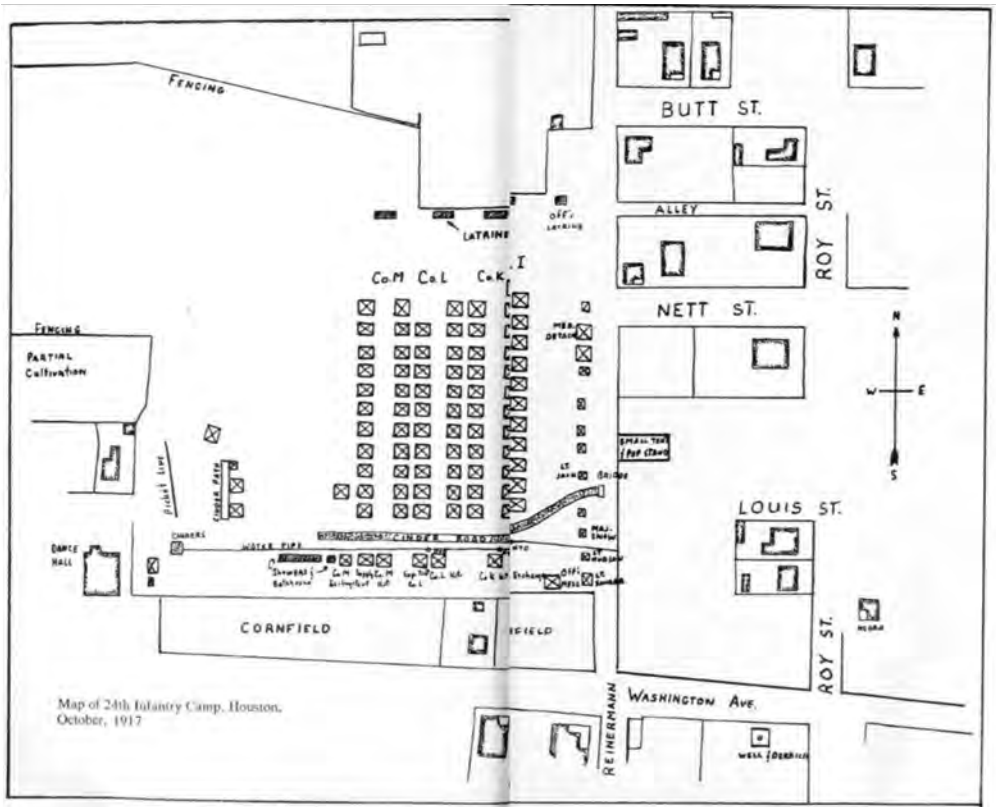
SIXTEEN KILLED*

- 13 White civilians
- 1 White soldier
- 2 African American soldiers

*This does not include the death of First Sergeant Henry

Both military and city officials also initiated an in-depth investigation into the events that occurred the night before.

The military's investigation began on the trains carrying the 24th Infantry back to New Mexico and continued until the conclusion of the final court martial. The majority of the investigation, conducted by the Regimental Board of Officers, was unsuccessful in providing the military with credible information from the detained soldiers who remained silent as well as the white witnesses who were unable to identify any individual soldier. Once investigators realized that they lacked evidence sufficient to support the desired convictions, their investigatory strategy shifted. This shift started by isolating I Company at the stockades where they were being detained, in hopes that men from Companies K, L, and M would be willing to cooperate with the investigation and start identifying the soldiers who participated in the Houston incident.[18] This strategy appeared to be successful given the testimony of numerous witnesses Colonel Hull secured throughout the three courts martial.



Robert V. Haynes, A Night of Violence: The Houston Riot of 1917 (Baton Rouge: Louisiana State University Press, 1976) 138-39.

"A COURT MARTIAL, A HOLLOW SQUARE AND A FIRING SQUAD WILL SETTLE THE MATTER ONCE AND FOR ALL."[19]

IV. The Courts-Martial

There were three separate Courts Martial following the events of August 23, 1917. They were held in rapid order, beginning November 1, 1917, and ending March 27, 1918. In total, 118 soldiers were tried and 110 convicted. Nineteen were sentenced to death by hanging and executed. There were similarities, but also striking differences, between the three courts martial. All defendants in the three courts martial were represented by a single officer. The trial judge advocate [analogous to a civil criminal prosecutor in many respects] for the first two courts martial was the same officer.[20] His second chair prosecutor served as the lead prosecutor for the third court martial. The officers panel [civil analogy to judge and fact finder] for the three courts martial differed in composition as officers were called to active duty in the war. Only two of the three courts martial involved a charge of mutiny with its attendant concept of joint responsibility.

Summary of Court Martials

First Court Martial: *United States vs. Nesbit*[21]

- Proceedings held November 1-30, 1917
- Location: Gift Memorial Chapel, Fort Sam Houston, San Antonio, Texas
- 63 soldiers were tried: 1 sergeant, 4 corporals, 2 cooks, 1 bugler, and 55 privates
- Charges were (1) mutiny (overriding military authority by breaking out of camp with the intent of marching upon the city of Houston); (2) willful disobedience of orders (Major Snow's order to remain in camp and turn in their arms and ammunitions) (3) murder, and (4) assault
- 58 soldiers were convicted
- 13 were sentenced to death by hanging (all five of the noncommissioned officers and 8 privates); they were hanged December 11, 1917, with no outside review or opportunity to seek clemency[22]
- Defense representative: Major Harry Grier
- Trial judge advocate [prosecutor]: Colonel John A. Hull, assisted by Major Sutphin and Harris County District Attorney John A. Crooker
- Panel: 3 Brigadier Generals, 7 Colonels, and 3 Lieutenant Colonels[23]

Second Court Martial: *United States v. Washington*

- Proceedings held December 17-21, 1917
- Location: Infantry Post Gymnasium, Fort Sam Houston, San Antonio, Texas
- 15 soldiers were tried; soldiers were members of guard post at Camp Logan itself on August 23rd
- Charges were murder and violations of the general order (quitting their posts); no mutiny charge[24]
- 15 soldiers were convicted
- 5 soldiers were sentenced to death by hanging; they were executed on September 11, 1918
- Defense representative: Major Grier
- Trial judge advocate [prosecutor]: Colonel John A. Hull, assisted by Major Sutphin
- Panel: only one replacement from Nesbit court martial several weeks earlier[25]

Third Court Martial: *United States v. Tillman*

- Proceedings held February 18 – March 27, 1918
- Location: Gift Memorial Chapel, Fort Sam Houston, San Antonio, Texas
- 40 soldiers were tried: including 4 noncommissioned officers (corporals)
- 37 soldiers were convicted
- 11 soldiers were sentenced to death by hanging; 10 were commuted to life imprisonment by President Wilson[26]
- Defense representative: Major Grier
- Trial judge advocate [prosecutor]: Major Sutphin [who had served as second chair for first two courts martial][27]

United States v. Nesbit, et al.

The first court martial, *United States v. Nesbit, et al.*, began on November 1, 1917, at Fort Sam Houston, in the Gift Chapel. There sixty-three soldiers were tried for willful disobedience of a lawful command, mutiny, assault with intent to commit murder, and murder by Colonel John A. Hull, Major Dudley V. Sutphin, and Harris County District Attorney John Crooker, all experienced criminal lawyers. A panel of thirteen high ranking white officers were empaneled to adjudicate the innocence or guilt of the defendant.[28]

The military assigned one man, Major Harry S. Grier, to represent all sixty-three defendants in the first of three Courts Martial. In fact, according to the Manual for Courts-Martial at that time, a judge advocate was precluded from serving as counsel for a defendant.[29] Although Major Grier had previously served in the 24th Infantry as the Regimental Adjutant, his only knowledge of or experience in legal advocacy appears to be limited to the legal courses he taught at the United States Military Academy.[30] [31]

Five enlisted members of the 24th Infantry were called to testify against the defendants; however, most of these men do not appear to have been identified as witnesses until a few days before trial.[32] Prior to testifying, all five were being held as prisoners in the stockades at Ft. Bliss, Texas, for their involvement in the Houston incident. None of these witnesses were ever charged despite the military's previous identification of all four men as active participants in the crimes at issue and the soldiers testifying to firing weapons in camp, threatening officers and leaving camp, firing at cars, firing at houses, assaulting and firing at police officers.[33] On cross-examination, each witness also admitted that in addition to never being charged, they had been offered immunity for their testimony in the days leading up to trial.[34]

Cleda Love enlisted in the Army in April of 1917 and had only been with the 24th Infantry for a couple of months when they were assigned to guard Camp Logan. Of the five immunized witnesses, it is likely that Private Cleda Love, notwithstanding numerous inconsistent statements, provided the most damning testimony against the accused. On his own, Private Love was only able to identify, by name, roughly twenty soldiers that he saw leave camp the night of the incident. It was only when Colonel Hull's questions provided the full names of twenty additional soldiers that Private Love was led to confirm their participation in the incident.[35]

After twenty-two days of trial, which included the testimony of nearly 200 witnesses, the court granted clemency to one soldier, acquitted four others, and convicted the remaining fifty-eight. Of those fifty-eight, Sergeant William Nesbit, Corporal Larnon J. Brown, Corporal James Wheatley, Corporal Jesse Moore, Corporal Charles W. Baltimore, Private First Class William Breckenridge, Private First Class Thomas C. Hawkins, Private First Class Carlos Snodgrass, Private Ira B. Davis, Private James Divins, Private Frank Johnson, Private Riley W. Young, and Private Pat McWhorter were sentenced to be hanged.[36] The death sentence was withheld from those soldiers until the evening before the sentence was to be carried out.[37]

William C Nesbit's Memorial Page, Veterans Legacy Memorial, https://www.vlm.cem.va.gov/WILLIAMCNESBIT/20643D3. (last visited Feb. 11, 2025).

Robert V. Haynes, "Houston Riot of 1917," Handbook of Texas Online, accessed February 11, 2025, https://www.tshaonline.org/handbook/entries/houston-riot-of-1917.

Before sunrise on December 11, 1917, without any opportunity to seek either outside review or clemency; thirteen men were hanged in secret and buried in unmarked graves along the banks of Salado Creek.

United States v. Washington, et al.

On December 17, 1917, days after the execution of thirteen soldiers convicted in the first Court Martial, the Army began its next prosecution, *United States v. Washington, et al* in the Infantry Post Gymnasium located at Fort Sam Houston.[38] Colonel Hull and Major Sutphin continued in their roles as the appointed judge advocates in the prosecution of the fifteen defendants during the second Court Martial. The adjudicating panel in this proceeding was reduced to twelve officers with all but one of the officers having served on the panel in the first court martial.[39] With roughly two weeks to prepare, Major Grier maintained his role as defense counsel for all fifteen defendants who were all part of the same guard post at Camp Logan.

Colonel Hull again called Private Cleda Love as a witness in the second court martial, but this time it was Private Ezekial Bullock who provided incriminating testimony against five of the fifteen defendants. Private Bullock admitted to leaving the guard post with all defendants. He also testified that he was with five defendants [Privates Collier, Robinson, Wright, McDonald, and Smith] who opened fire on a jitney driving by, killing the driver and wounding a passenger.[40] In exchange for his testimony, Private Bullock was given immunity.

After only four days, the second court martial ended and all fifteen defendants were found guilty. Of the fifteen convicted, the five soldiers identified during Private Bullock's testimony, were sentenced to death by hanging. Unlike in the first court martial, the death sentences were not carried out immediately and the soldiers facing execution were awarded the opportunity to have the case reviewed and the sentence confirmed.[41]

Photograph of Wash Adams [Electronic Record]; Inmate File of Wash Adams; Inmate Case Files Jul. 3, 1895-Nov. 5, 1957; Records of the Bureau of Prisons 1870-2009, Record Group 129; National Archives at Kansas City, Kansas City, MO, NAID 7788762.

Photograph of John Hudson, Jr. Photo [Electronic Record]; Inmate File of John Hudson, Jr.; Inmate Case Files Jul. 3, 1895-Nov. 5, 1957; Records of the Bureau of Prisons 1870-2009, Record Group 129; National Archives at Kansas City, Kansas City, MO, NAID 7788886, https://catalog.archives.gov/id/7788886.

United States v. Tillman, et al.

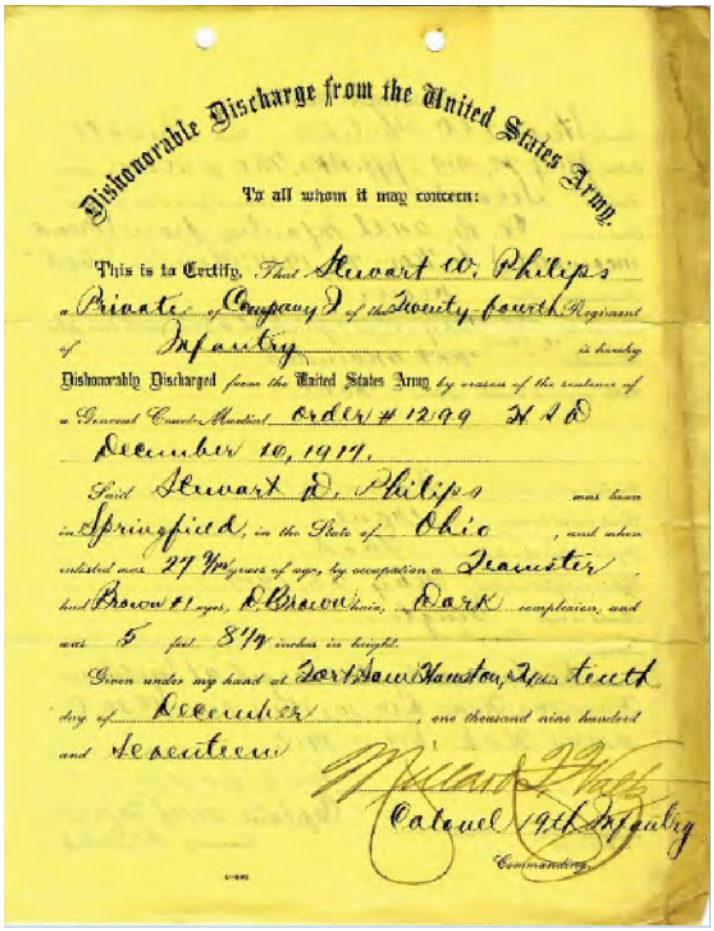
On February 18, 1918, *United States v. Tillman, et al.*, the final court martial began in the Gift Memorial Chapel at Fort Sam Houston. The delay between the second and third courts martial was a result of Major Sutphin's decision to continue investigating the unindicted prisoners still being housed in the stockades at Fort Bliss, Texas. Major Sutphin's investigation went so far as to embed certain soldiers in the stockades to elicit incriminating statements from anyone they could. Based on the information that his informants were able to obtain, Major Sutphin moved forward with charging forty more members of the 24th Infantry.

For this trial, Major Sutphin stepped into Colonel Hull's previous role as the lead judge advocate, with Major Thomas Finley assigned to assist him. Once again Major Grier represented all forty defendants. All but one of the officers empaneled to adjudicate this court martial were replaced with officers new to the history and facts of the prior proceedings.[42]

After being convicted and sentenced to life imprisonment in the first court martial, Private William Kane testified as a prosecution witness, over the objection of Major Grier. Shortly after his conviction, Kane agreed to testify for Major Sutphin in exchange for a reduction of his sentence. With months to prepare for the trial, Kane's testimony appeared to be consistent and reliable, and he seemed to be unshaken when cross-examined by Major Grier.[43]

For a third and final time, Private Cleda Love was called as a witness. Private Love testified to seeing many of the defendants outside of camp the night of the disturbance, but the majority of his testimony homed in on a single defendant, Private William Boone. Private Love identified Private Boone as being responsible for shooting and killing a white civilian who at the time was on his knees in the street crying out.[44]

Photograph of Stewart W. Philips [Electronic Record]; Inmate File of Stewart W. Philips; Inmate Case Files Jul. 3, 1895-Nov. 5, 1957; Records of the Bureau of Prisons 1870-2009, Record Group 129; National Archives at Kansas City, Kansas City, MO, NAID 17405828, https://catalog.archives.gov/id/17405828?objectPage=451.



Dishonorable Discharge from the United States Army.

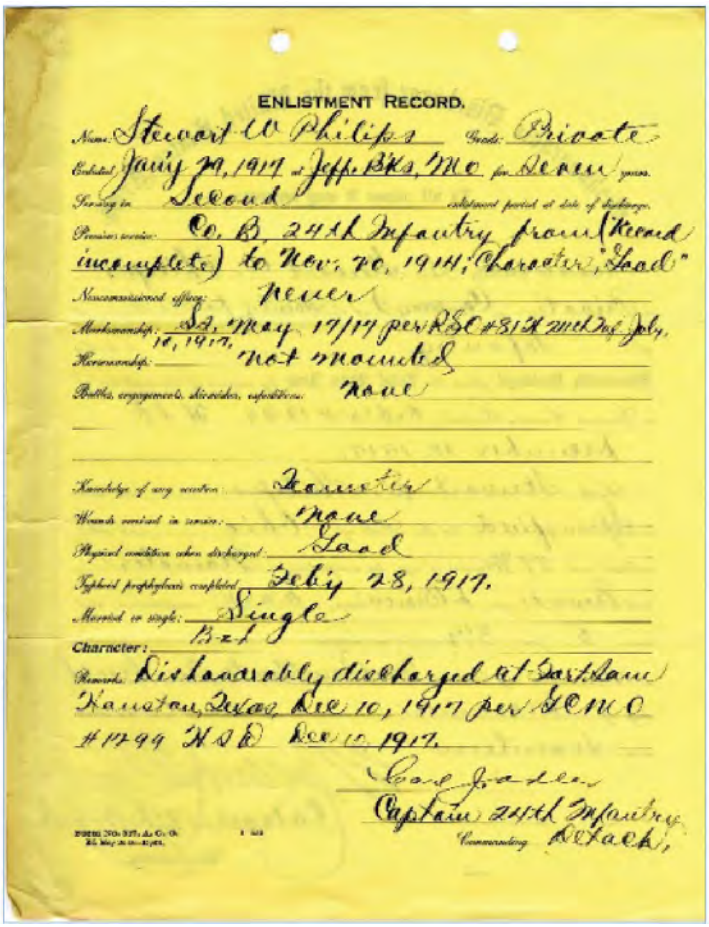
To all whom it may concern:

This is to Certify, That Stewart W. Philips a Private of Company D of the Twenty-fourth Regiment of Infantry is hereby Dishonorably Discharged from the United States Army by reason of the sentence of a General Court-Martial order # 1299 W D December 10, 1917.

Said Stewart W. Philips was born in Springfield, in the State of Ohio, and when enlisted was 27 Yrs years of age, by occupation a Teamster, had Brown ☐ eyes, ☐ Brown hair, Dark complexion, and was 5 feet 8½ inches in height.

Given under my hand at Fort Sam Houston, Texas this 12th day of December, one thousand nine hundred and Seventeen

Willard Wack
Colonel 24th Infantry
Commanding



ENLISTMENT RECORD.

Name Stewart W Philips Grade Private
Enlisted July 29, 1917 at Jeff. Bks, Mo for Recruit years.
Serving in Second enlistment period at date of discharge.
Previous service Co. B 24th Infantry from (Record incomplete) to Nov. 20, 1914; Character, "Good"
Noncommissioned office: never
Marksmanship: 2d, May 17/17 per R&C #31 A.M.G.O. July 10, 1917.
Horsemanship: not mounted
Battles, engagements, skirmishes, expeditions: none

Knowledge of any trades:
Wounds received in service: none
Physical condition when discharged: Good
Typhoid prophylaxis completed: Feby 28, 1917.
Married or single: Single
Character:
Remarks: Dishonorably discharged at Fort Sam Houston, Texas Dec 10, 1917 per G.C.M.O. #1299 W.D. Dec 10 1917.

Carl Jansen
Captain 24th Infantry
Commanding Detach.

Dishonorable Discharge [Electronic Record]; Inmate File of Stewart W. Philips; Inmate Case Files Jul. 3, 1895-Nov. 5, 1957; Records of the Bureau of Prisons 1870-2009, Record Group 129; National Archives at Kansas City, Kansas City, MO, NAID 17405828, https://catalog.archives.gov/id/17405828?objectPage=330.

On March 27, 1918, thirty-seven members of the 24th Infantry were found guilty, two members were found not guilty of all charges, and one member, Private Wilder Baker's charges were dropped after the court martial commenced. Twenty-three defendants were found guilty on all charges, with eleven soldiers sentenced to death by hanging and the remaining twelve sentenced to life imprisonment. Fourteen defendants were found guilty of one or more charges and were given either two or fifteen year sentences.[45]

After General John W. Ruckman reviewed the court's findings and sentences, he disapproved the guilty findings related to the mutiny charge for several soldiers, citing the insufficiency of evidence, and reduced their original sentences from fifteen to two years. The execution of the eleven soldiers sentenced to hang was stayed until Secretary of War Baker and President Wilson completed a final review of the trial and approved the death sentences.[46] Upon review, Private Boone's death sentence was the only one approved by President Wilson based on the brutality and callousness of the crime; the other ten sentences were commuted to life imprisonment.[47]

V. Failures of Fairness in Courts-Martial

Legal scholars agree that the three courts martial largely met the requirements of the 1917 Manual for Courts-Martial.[48] However, despite that surface level compliance, there remains a sense that justice failed. That unease is grounded in four aspects of the courts martial themselves: a single non-lawyer defense representative for all 118 soldiers, improper investigative questioning, insufficient evidence of mutiny, and reversal of the burden of proof. The unease grows when considering two additional facts in the aftermath of the three courts-martial: denial of review and fair consideration of clemency petitions, and the Army's failure to seek accountability for the conduct of the battalion's white officers.

Single Defense Representative for all Soldiers

All 118 accused soldiers were represented by a single non-lawyer, Major Harry Grier. Although he had legal knowledge, Major Grier was not a practicing attorney, nor had he ever been one.[49] His lack of trial experience stood in stark contrast to the two seasoned "top-level military lawyers" assigned as trial judge advocates, Col. John A. Hull and Major Dudley V. Sutphin.[50] Major Grier's representation was marred by two important challenges: the conflict of interest inherent in joint representation of soldiers with different roles and potential defenses, and his acquiescence in both procedural and evidentiary aspects of the three cases.

Turning first to his acquiescence, Major Grier had less than two weeks to prepare his strategy and collect evidence for a capital murder trial of sixty-three defendants. In contrast, the trial judge advocate had been preparing for several months. And yet, Grier did not seek a delay of the courts martials.[51]

Grier also acquiesced to Hull's efforts to limit consideration of racial tensions in Houston leading up to August 23rd. These racial conflicts were relevant to the charge of mutiny and for extenuation and mitigation. Nevertheless, in agreement with Col. Hull, Grier presented an "anodized, curtailed version" of events in Houston and virtually nothing about the pattern of

racial violence prevalent in Texas or nationally at the time.[52] This acquiescence raises interrelated questions of counsel's independence and conflict of interest. Grier's hands off approach to the issue of underlying race-related circumstances won praise from his prosecutorial counterpart. In between the second and third courts martial, Col. Hull wrote to the Southern Department Judge Advocate about Major Grier:

> "You of course appreciate fully the opportunities he had as counsel to raise race questions and so forth, which, while they might not have helped his clients, certainly would not have helped the interests of the service."[53]

The potential for conflicts of interests was a major challenge throughout all three courts martial. And it occurred in two forms. One conflict was between Grier's role as his clients' advocate and his position within the service and loyalty to that institution, as illustrated by his cursory presentation of race-related tensions to explain the events leading to the night of August 23rd or to support a claim of mitigation or extenuation to the charges if the crimes were committed under some special stress. The failure to develop racial tensions as either a stressor leading to soldier action or a mitigating factor is especially confusing in light of the Inspector General's contemporaneous report concluding, after meeting with both Army and civilian witnesses, that the "ultimate cause of the trouble was racial".[54]

The second conflict of interest is the more familiar scenario of counsel undertaking joint representation when defendants have varying roles, potential culpability, and possible defenses. For example, to refute the charge of mutiny, the defense of many soldiers would be that they were following the orders of the most senior officer on hand, Sgt. Henry, to fall in and march out to defend the camp from the threat of mob attack. As the column diminished in size and a number of men returned to camp, demonstrating the specific intent to join in a mutiny was possible for a small handful of soldiers but not the majority of those remaining. How could one defender present those antagonistic versions of events.

In the second court-martial, Grier faced a glaring example of conflict of interests when considering which soldiers deliberately had fired on the jitney cab and which had merely left their posts and marched down a public highway in a riotous manner. Testimony from the key government witness [Bullock] had five men from the front, advance ranks firing their rifles with the remaining ten some distance behind:

Grier's apparent strategy of *sacrificing* the five men whom Bullock had seen firing their rifles at the Jones jitney in order to save the other ten defendants from capital punishment was successful.[55]

Improper Investigation and Interrogation

The conduct and role of the Army's investigatory boards brings into question whether the resulting confessions were "voluntary." The behavior of superior military officers when questioning enlisted soldiers involves a power dynamic which requires a heightened showing of voluntariness.[56] Although the President of the Board of Investigation testified denying reports of threats of hanging, cursing or berating, numerous soldiers provided a different narrative.[57] And, members of the Board itself described their conduct as "devious".[58]

Insufficient Proof of Mutiny

Mutiny is a unique military crime, lacking a civil analog. It is generally considered to occur when a person "with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance."[59] Additionally, mutiny is considered a crime of conspiracy.[60] The impact of finding that a mutiny occurred and that a person has joined in the mutiny has far reaching legal consequences. Soldiers who have joined the mutiny are then liable for all the acts committed by any of the participants in that mutiny.

It was critical in two of the three courts martial that the judge advocate prove the existence of a mutiny in order to convict all 103 soldiers of murder and assault.[61] The panel of the first (Nesbit) court martial decided that the thirteen men sentenced to death were responsible either as ringleaders for a plan formed earlier that day in camp or had assumed positions of authority in the column's march to the San Felipe district. Historians reviewing the trial transcripts are divided on that issue. One view is that a small group elaborately planned and organized the mutiny and pledged themselves to secrecy, stampeding the other soldiers at camp into rushing the supply tents and grabbing weapons and ammunition so that later, no specific rifle could be tied to a specific soldier.[62] The opposite view is that the men of the 3rd Battalion responded "as a trained and experienced combat unit to what they believed was an imminent attack on their camp by a hostile mob," that non-commissioned officers were established as rear guards under prevailing best practices, and that until the column realized there was no mob to repeal during the halt at Shepards Dam bridge, there could be no criminal or specific intent to mutiny for a majority of the men.[63] Under that reading, and given what had happened in East St. Louis a short few weeks earlier, it is unclear if even the oft-excoriated Sgt. Henry entertained thoughts of mutiny when ordering the men to march from camp to meet the attackers.[64]

Col. Hull downplayed the credibility of soldiers' belief that a mob of white attackers was marching to the camp. He likened that reaction to the fears of nine-year-old schoolgirls.[65] However, that evening after four prominent white Houstonians made appeals for calm to armed citizens gathering on Main Street, local media opined that these four men "saved the negroes from annihilation".[66] At the camp itself, Captain Shekerjian had encouraged black solders under his command to form a skirmish "to repulse the very attack that those persons on Washington Street were then contemplating."[67] This illustrated the legitimacy of that fear among the white officers at camp. And the possibility for violence continued when that night by 9:00 p.m. saw more than 1,000 white Houstonians at the police station, ready to stop the Black soldiers from reaching town with an additional 500 citizens on Washington Avenue, less than six short blocks from the camp. The specter of violence continued into the following day. General Hulen, of the Texas National Guard, fearful that the crowds "might at any moment turn into lynch mobs" ordered 150 artillerymen stationed around the county jail where some soldiers were being held and another fifty at a nearby infirmary.[68]

Evidence tending to support the theory of a preexisting conspiracy to depart the camp with Sgt. Henry came primarily from immunized witness testimony. At least one witness, twenty-year-old Cleda Love, was deemed "unreliable" when senior judge advocates conducted transcript

reviews in 1919-1922.[69] Significantly, Love was the sole prosecution witness to testify about a preexisting agreement to leave camp that night by 9 p.m. Testimony from three remaining cooperating Privates reflected significant changes in content from the first court martial (Nesbit) to the third (Tillman).[70]

Insufficient Proof of Disregarding Orders

The charges relating to disregarding orders refer to Major Snow's order to remain in camp and return all weapons to the supply tents and the soldiers subsequent rush to those tents when a shot was fired and cries of "they're coming" were heard. However, the troops were responding in real time to a fluid situation – including creating hasty defense skirmish lines within the camp itself. Significantly, when the armed I Company left camp, it was as a military unit acting under the orders of the only apparent military authority still present – Sgt. Henry.

Reversal of the Burden of Proof

Identifying the soldiers in Henry's column who marched out of camp was perhaps the largest evidentiary hurdle for the trial judge advocate. Col. Hull had no civilian witnesses or victims who were able to identify particular soldiers either in the column itself or as perpetrators of specific acts of violence. He was thus forced to rely on two sources: the camp "check ins" that night and the frequently contradictory testimony of immunized witnesses. Neither was sufficient.

Using the camp "check in" record had the impact of requiring soldiers not on that list to prove that therefore they were *not* in Sgt. Henry's column. In other words, any soldier whose name was not on one of the lists was deemed absent from camp and therefore likely in the Henry column.[71] However, the checklists were unreliable. They were compiled at various times, some more than an hour after the men had set up a skirmish line, another not until 11 that night. They were hastily done and involved minimal searches of the camp; in fact, they were little more than an order to appear in the street.

Testimony from immunized witness concerning the identity of soldiers in the Henry column similarly fell short of the proof needed to sustain a finding of guilt. Private Cleda Love, a twenty-year old recruit with less than six total months of Army service and only three months with the 3rd Battalion, was a critical participant in the first and third courts martial. Love was thought by some to be the "most effective" of the prosecution's witness in the first court martial, with an ability to remember names and faces of forty-one participating soldiers that was "nothing short of incredible".[72] However, as senior judge advocates reviewing the courts martials in 1919, concluded, Love's testimony was "so unreliable" that it was insufficient to sustain proof of guilt for some of the soldiers.[73] Taken as a whole, the testimony from all three courts-martial are replete with misidentification of soldiers, even by prosecution witnesses.[74]

Lack of Meaningful Review Following Conviction

The first thirteen soldiers were hanged at dawn on the banks of Salado Creek near Camp Travis and Fort Sam Houston in San Antonio, Texas. This mass execution occurred without outside

review, and several hours before public and press were informed. This procedure was authorized since the United States was at war; however, it had never been invoked within the continental United States, far from the battlefield.

In response to the public reaction to the Nesbit executions, the Articles of War were changed by General Order 7, effective January 1918. That Order now mandated that all military death sentences required executive review by the President of the United States. That change impacted the results for the final court martial charging mutiny, *United States v. Tillman*. In that prosecution of forty soldiers, eleven soldiers were sentenced to death and President Wilson commuted the sentence for ten of them from death to life imprisonment.

Failure of Accountability for Officers

Two senior Inspectors General investigating the events in Houston shortly after they occurred, recommended that charges be brought against Major Snow and Lieutenant Silvester at the conclusion of the courts-martial of the soldiers, with the ultimate resolution being left to the Commander General of the Southern Department.[75]

Reports show that Major Snow left camp shortly before Sgt. Henry's column, ran to the nearby fire station in a state of panic to find a working phone, then flagged down a civilian driver and went to a drug store forty blocks away where he was treated.[76] Captain Rothrock testified that that Snow was not in physical or mental shape to take command when they spoke at the fire station.[77] Snow met with General Hulen in the early morning hours. The General's aide made these observations: "I remember distinctly Major Snow's inability to direct his thoughts with clearness… he was weak and a rotten disciplinarian as you will see from his report as to the manner in which he wavered when he needed firmness."[78]

The proposed charges for Major Snow suggested by Col. Cress included gross neglect, inefficiency in preventing mutiny, and failure to take proper efforts to identify participants. Inspector General Chamberlain concurred and added that Snow's inefficiency and criminal negligence demonstrate his unfitness to command. The proposed charge for Captain Silvester was neglect of duty for leaving his company in the early evening when he was aware that conditions in camp could lead to trouble.

However, the Army did not follow up on these recommendations. And in the end, did not hold any of the officers responsible either for their failure of leadership or their failure to preserve evidence. Historians deem these two officers as "far more culpable than a majority of the enlisted men brought to trial and convicted in the three courts-martial."[79]

VI. Army's Responses, Corrective Actions, and the Path to Clemency

Almost immediately following the first court martial, there were requests for clemency and review of convictions for those soldiers who had not been executed. These requests came from soldiers themselves, their families, family members of executed soldiers, civic organizations, private citizens, and elected officials. These requests, and the army's response to them, have

Shannon Collins, *Army honors World War I Buffalo Soldiers with new headstones*, (Mar. 21, 2004), https://www.army.mil/article/274093/army_honors_world_war_i_buffalo_soldiers_with_new_headstones.

been well documented by historians.[80] Official governmental responses generally fell into one of several categories: (1) an acknowledgement of deficiencies in proof, with no resulting corrective action[81]; (2) sentence reduction for an individual soldier or small group of soldiers[82]; and (3) general statements that the hearing records had been examined and found legally sufficient[83], or that the records show no errors prejudicial to substantial rights of the accused.[84] Following the secret, non-externally reviewed hangings in December 1917 for thirteen soldiers found to have mutinied in *United States v. Nesbit*, the Articles of War were changed by General Order 7, effective January 1918. That Order mandated that all military death sentences receive executive review by the President of the United States before those sentences could be imposed. It was in place for the second two courts martial. It is credited for the commutation to sentences of life imprisonment for ten of eleven soldiers sentenced to death by hanging in *United States v. Tillman* by order of President Wilson. Commentators also credit public response to the thirteen Nesbit hangings as leading to the subsequent creation of the Army's Court of Criminal Appeals.[85]

The next major clemency development occurred when an original petition on behalf of all 110 soldiers was presented to the Army General Counsel on October 27, 2020.[86] The clemency petition was created out of a joint project between the NAACP and South Texas College of Law Houston to restore the honorable characterization of the 110 soldiers of the 3rd Battalion, 24th Infantry,

Bethany Huff, Interpretative marker for Houston Riot graves unveiled at Fort Sam Houston National Cemetery, (Feb. 23, 2022), https://www.army.mil/article/254192/interpretative_marker_for_houston_riot_graves_unveiled_at_fort_sam_houston_national_cemetery.

who were convicted of mutiny in the 1917 Houston Riot. Lead counsel was Dru Brenner-Beck, a retired Army officer and experienced attorney; her co-author was John Haymond an experienced historian; their in-depth research was assisted by student, retired military, and civilian volunteers from across the country.[87]

The Petition provided a reassessment of the events in Houston on August 23, 1917, based on new historical research. And it highlighted serious due process flaws found in the three ensuing courts-martial. That Petition was supplemented in December 2021 with an Addendum.[88] The Addendum outlined significant discrepancies in testimony from critical immunized prosecution witnesses as they testified in each of the three courts martial, discrepancies that would not be apparent upon examination of any one of those proceedings standing alone. It also focused on the legal sufficiency and logical inconsistencies of the *United States v. Tillman* verdicts when nine soldiers were found guilty of mutiny but acquitted of murder and assault. The Petition and Addendum asked to upgrade to honorable the characterization of service for all 110 convicted soldiers and to overturn the three courts martial. On November 9, 2023, the Secretary of the Army advised the Petition's authors that records for the 110 soldiers were corrected to reflect they received an Honorable Discharge and that all rights and privileges lost because of the courts-

Leah Binkovitz, *One Hundred Years Later, Camp Logan and the Houston Riot Bring Fresh Questions*, (Aug. 24, 2017), https://kinder.rice.edu/urbanedge/one-hundred-years-later-camp-logan-and-houston-riot-bring-fresh-questions.

martial convictions had been restored. A headstone dedication ceremony for the thirteen soldiers executed and buried at Fort Sam Houston was held in February 2024.

ENDNOTES

1 Testimony of Houston Police Chief Clarence Brock, Stenographer's report of testimony adduced before the board of inquiry appointed by the city council of the city of Houston to investigate and report on conditions leading up to and immediately connected with the mutiny or riot of troops of the Twenty Fourth United States Infantry (colored) (hereinafter "Houston Inquiry"), 299-300, South Texas College of Law Houston Digital Collection, available at https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2057/rec/39.

2 Memorandum: 1917 September 13, Inspector General of the Army to The Adjutant General of the Army at 6-7, (hereinafter "IG Report") South Texas College of Law Houston Digital Collection, available at https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/1206.

3 Testimony of Major Snow, Record of Trial, *United States v. Nesbit, et al.*, (hereinafter "*Nesbit* Transcript") South Texas College of Law Houston Digital Collection, available at https://digitalcollections.stcl.edu/digital/collection/p15568coll1; Chamberlain Report at 166-67.

4 IG Report, 5-6.

[5] Robert V. Haynes, *A Night of Violence: The Houston Riot of 1917* (Baton Rouge: Louisiana State University Press, 1976), 117, citing to Testimony of B.S. Davison, Sept. 8, 1917, Cress Report, Appendix A, pp. 126, 134.

[6] Testimony of Private Ernest Phifer, *Nesbit* Transcript.

[7] Testimony of R.R. McDaniels, Stenographer's report of testimony adduced before the board of inquiry appointed by the city council of the city of Houston to investigate and report on conditions leading up to and immediately connected with the mutiny or riot of troops of the Twenty Fourth Unites States Infantry (colored) (hereinafter "Houston Inquiry") 218-25, South Texas College of Law Houston Digital Collection, available at https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2057/rec/39.

[8] Testimony of Private Ezekial Bullock, Record of Trial, *United States v. Washington, et al.* (hereinafter "*Washington* Transcript"), South Texas College of Law Houston Digital Collection, available at https://digitalcollections.stcl.edu/digital/collection/p15568coll1.

[9] *See generally* Houston Inquiry.

[10] *Ibid.*

[11] Vida Henry Inquest, https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2144/rec/38.

[12] *Ibid.*

[13] *Ibid.*

[14] Houston Press, Aug. 24, 1917.

[15] The Houston Post- Camp Logan Riot, "Martial Law Declared," *The Houston Post*, Aug. 24, 1917 at 1, Harris County Digital Archives, available at https://archives.hcpl.net/Documents/Detail/the-houston-post-camp-logan-riot/23987.

[16] Haynes, *A Night of Violence*, 189-90, citing to Chamberlain Report, 107-109 (statement of Colonel Millard F. Waltz, Sept. 7, 1917); Cress Report, Appendix A (testimony of Major Snow, Aug. 25, 1917).

[17] *Ibid.*

[18] IG Report at 6.

[19] "A Matter of Military Discipline," *Houston Chronicle*, Aug. 24, 1917, p. 1.

[20] Several years later this "trial prosecutor" was given the quasi-appellate task of reviewing the proceedings in the face of repeated clemency requests from the convicted soldiers, family members, and the public.

[21] Each court martial is styled with the name of the highest-ranking soldier among the accused. For the first court martial, the highest-ranking soldier was Sergeant William C. Nesbit. Digital copies of the official "trial" records for all three courts-martial are available on the South Texas College of Law Houston Digital Collection, available at https://digitalcollections.stcl.edu/digital/collection/p15568coll1.

[22] It remains the largest mass execution of American soldiers by the Army. Dru Brenner-Beck and John A. Haymond, Original Clemency Petition at 12 (hereinafter "Brenner-Beck Petition"). The Clemency petition was created out of a joint project between the NAACP and South Texas College of Law Houston to restore the honorable characterization of the 110 soldiers of the 3rd Battalion, 24th Infantry, who were convicted of mutiny in the 1917 Houston Riot. available at: Returning the 24th Infantry Soldiers to the Colors. - Houston Mutiny and Riot Records - South Texas College of Law Houston Digital Collections. It was filed in October 2020. The Petition was later supplemented in December 2021. That addendum ("hereinafter "Brenner-Beck Addendum"), South Texas College of Law Houston Digital Collection, available at Returning the 24th Infantry Soldiers to the Colors, Addendum. - Houston Mutiny and Riot Records - South Texas College of Law Houston Digital Collections.

[23] *See*, Haynes, *A Night of Violence*, 254-274.

[24] Mutiny charges were reserved for the 103 soldiers who were charged with leaving the 24th Infantry Camp, a temporary base on a 10-acre tract of land located a little over a mile to the east of Camp Logan itself.

[25] *See*, Haynes, *A Night of Violence*, 275-286 for a narrative description of testimony and strategies, explaining that since the panel of officers was largely the same from the Nesbit court martial, the prosecution "was relieved of having to provide the members with the necessary background" of the events of August 23rd. Haynes includes contemporaneous efforts to provide executive review prior to carrying out the executions.

[26] In response to the public reaction to the Nesbit executions, the Articles of War were changed by General Order 7, effective January 1918. That Order now mandated that all military death sentences required executive review by the President of the United States.

[27] Sutphin had a reputation as a skillful practitioner of criminal law. His closing address was characterized as "a brilliant

display of courtroom rhetoric" that contained "enough sarcasm and wit to retain the interest of an appreciative audience," Haynes, *A Night of Violence*, 292.

[28] The panel consisted of 3 Brigadier Generals, 7 Colonels, and 3 Lieutenant Colonels. See, *Nesbit* Transcript.

[29] U.S. War Dep't, MANUAL OF COURTS-MARTIAL [hereafter MCM], 1917, ¶ 108.

[30] War Dep't Letter from Secretary of War John W. Weeks to Representative Julius Kahn (Dec. 6, 1921) found in National Archives, Records of HR67A-F28.1, House Military Affairs Committee, 67th Congress; see also H.R. Rpt. No. 503, HOUSTON RIOT CASES, ADVERSE REPORT, H. Comm. on Milit. Aff., 67th Cong. 2d Sess. (Dec. 9, 1921). (available from the authors on request).

[31] Brenner-Beck Addendum.

[32] Memorandum 1917 October 29, Commanding Officer, 24th Infantry to Commanding Officer, New Mexico Sun District, Columbus, New Mexico, South Texas College of Law Houston Digital Collection, available at https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2005/rec/59.

[33] Privates Shorter, Alexander, Bandy, Peacock, and Love all testified to leaving camp and committing numerous acts of violence. *Nesbit* Transcript.

[34] *Ibid.*

[35] *Ibid.*

[36] See, *Nesbit* Transcript.

[37] General Court Martial Order 1299, Nesbit et al., South Texas College of Law Houston Digital Collection, available at https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/41/rec/22.

[38] General Court Martial Order 1353, Washington et al., South Texas College of Law Houston Digital Collection, available at https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/42/rec/23.

[39] *See*, Haynes, *A Night of Violence*, 275-286 for a narrative description of testimony and strategies, explaining that since the panel of officers was largely the same from the Nesbit court martial, the prosecution "was relieved of having to provide the members with the necessary background" of the events of August 23rd. Haynes includes contemporaneous efforts to provide executive review prior to carrying out the executions.

[40] *See*, testimony of Private Ezekial Bullock, *Washington* Transcript.

[41] In response to the public reaction to the Nesbit executions, the Articles of War were changed by General Order 7, effective January 1918. That Order now mandated that all military death sentences required executive review by the President of the United States.

[42] Record of Trial, *United States v. Tillman, et al.*, (hereinafter *Tillman* Transcript") South Texas College of Law Houston Digital Collection, available at https://digitalcollections.stcl.edu/digital/collection/p15568coll1.

[43] *Ibid.*

[44] *Ibid.*

[45] *Ibid.*

[46] *Ibid.*

[47] Explanation of Presidential affirmation of sentences in Washington and Tillman Cases, South Texas College of Law Houston Digital Collection, available at https://digitalcollections.stcl.edu/digital/collection/p15568coll1/id/2101/rec/1.

[48] Brenner-Beck, Addendum at 2.

[49] Haynes, *A Night of Violence*, 250, noting that Grier was a career soldier and "not a legal expert". Grier was a 1903 West Point graduate and had been a West Point instructor in law for three to four years in 1907-1910. Brenner-Beck, Original Petition at 83; Haynes, 250. Prior to his appointment, he had spent a portion of his military career with black soldiers, including the 24th Infantry, although it was his "availability" rather than that service that was his most important asset. Haynes, 251.

[50] At the time of his appointment in September, Hull was serving as judge advocate central of the Central Department in Chicago. Sutphin was a member of a prominent Cincinnati law firm who had served as a superior court judge and had only recently been called to active duty. Haynes, *A Night of Violence*, 249.

[51] One suggestion for this failure is that Grier was "understandably obliging to his superior officer". General Ruckman had made it clear that he wanted trial to begin as soon as possible, preferably by the beginning of November.

Haynes, *A Night of Violence*, 251.

[52] Brenner-Beck, Original Petition at 26-29; Haynes,258 (Commentators view the phrasing of this agreed statement as "actually a victory for the prosecution", noting that the statement specifically ruled out the role of causative factors for the charged offenses.).

[53] Brenner-Beck, Original Petition at 23, citing to Harry Grier's scrapbook, on file with his papers at the US Army Heritage and Education Center, Carlisle Penn.

[54] *See*, IG Report.

[55] Haynes, *A Night of Violence*, 278, emphasis added. The five soldiers who composed the advance ranks were all found guilty and sentenced to hang. The remaining ten received sentences of seven to ten years at hard labor, depending on their rank.

[56] The 1917 MCM required that "in view of the authority and influence of superior rank, confessions made by inferiors, especially when ignorant or inexperienced and held in confinement and close arrest, should be regarded as incompetent unless very clearly shown not to have unduly influenced." MCM, Sec. 225.

[57] Testimony of soldiers Richardson, Bolden and Burns during the first court martial. *Nesbit* Transcript at 1469-70, 1829, 1868.

[58] Captain Preston's telegram to Colonel Cress, who was conducting a separate investigation in Houston. Haynes, *A Night of Violence*, 246-247.

[59] *See, e.g.*, Article 94, Uniform Code of Military Justice (UCMJ). The UCMJ applies apply to all uniformed United States military branches, including the Marines, Navy, Coast Guard, Air Force, Army, and Space Force. Defining mutiny as a military offense is not a recent phenomenon. It had been codified in Britain since 1694. https://www.loc.gov/item/2011525304 at 10. At the time of the three courts martials, soldiers were charged with mutiny under Article 92 Article of War. The United States had entered World War I on April 6, 1917.

[60] William Winthrop, Military Law and Precedents (1920) [hereafter Winthrop]. As noted by the Library of Congress, The second edition of Military Law and Precedents, published in 1920, is a comprehensive treatise on the science of military law. The genesis of this work traces back to an 1880 work published by the author as an annotated digest of JAG opinions. This digest was updated in 1886 to reflect significant trials and acts of military government, and material modifications to written military law, particularly Army Regulations. The treatise presented herein updates the 1886 work to reflect changes since that date in the scope and procedures of military law, as the courts and the legislature defined them. https://www.loc.gov/item/2011525304.

[61] Brenner-Beck, Original Petition at 35, explaining that joint liability was critical since no victim or non-cooperating witness was able to identify any soldier as committing murder or assault beyond a reasonable doubt. Thus, group complicity was the lynchpin.

[62] Haynes, *A Night of Violence*, 316-317.

[63] Brenner-Beck, Original Petition at 36.

[64] Brenner-Beck, Original Petition at 37-38. Trial testimony showed First Sgt. Henry responding "there will be no camp to return to" when a corporal tried to convince Henry to stay and defend the camp itself. *Nesbit Transcript* at 198.

[65] *Nesbit* Transcript at 2122, "In this case we have no evidence the fear that would stampede a soldier and fear that would warrant a successful defense should be of a greater character than might stampede a crowd of nine-year old school girls."

[66] Houston *Chronicle*, August 24, 25, 1917.

[67] Haynes, *A Night of Violence*, 176.

[68] Haynes, *A Night of Violence*, 186.

[69] Brenner-Beck, Addendum at 7, citing to handwritten note by reviewing member Col. King and Memorandum to the Secretary of War by Lt. Col. Kreger.

[70] Brenner-Beck, Addendum at Encl. C, 11 single-space pages summarizing contradicting testimony of Private Lloyd Shorter, Private Frank Draper, Private John Denty, and Private Cleda Love.

[71] Haynes, *A Night of Violence*, 259.

[72] Haynes, *A Night of Violence*, 266; *Nesbit Transcript*, 1266-1288.

[73] Brenner-Beck, Addendum at 7, citing to handwritten note by reviewing member Col. King and Memorandum to the Secretary of War by Lt. Col. Kreger.

[74] Problems with accurate identifications were compounded by the fact that many soldiers shared the same surname. Taking just I Company as an example, military records reveal: 5 Davis, 4 Johnson, 4 Jackson, 3 Robinson, and 3 Brown. Brenner-Beck, Addendum, Encl. B.

[75] *See*, IG Report.

[76] Houston Inquiry at 218-25. (Testimony of R.R. McDaniels).

[77] Haynes, *A Night of Violence*, 179, citing both Cress and Chamberlain Reports.

[78] Brenner-Beck, Original Petition Appendix D, Statement of Major Snow August 24, 1917.

[79] Haynes, *A Night of Violence*, 304, concluding that by the summer of 1918, military authorities were interested in forgetting the entire affair rather than prolonging it with these additional charges, and so the decision not to charge either officer was made "almost by default".

[80] *See, e.g.*, Haynes, *A Night of Violence*, 278-285; Brenner-Beck, Original Petition at 46-52.

[81] September 15, 1918, Memo of General Ansell regarding Tillman Court martial: 1-page document reciting a finding of insufficient evidence on some charges for four enlisted men and recommending mitigation of their punishment and insufficient evidence for another solider with a recommendation of no sentence mitigation; available digitally at [Memorandum] 1918 September 5, Office of the Judge Advocate General to The Commanding General, Southern Department, Fort Sam Houston, Texas. - Houston Mutiny and Riot Records - South Texas College of Law Houston Digital Collections.

[82] *Ibid.*

[83] The Army's review of all three courts martials in 1918 found no material error and no evidence of racial discrimination. *See, e.g.*, 18-page review of *United States v. Washington*, available electronically at United States v. Corporal John Washington et al. Review of record of trial. Action of the President. - Houston Mutiny and Riot Records - South Texas College of Law Houston Digital Collections.

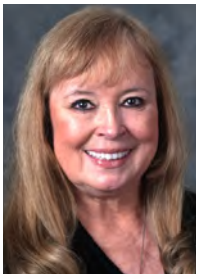
[84] July 3, 1918 Report of Judge Advocate General to the Secretary of War, available digitally at [Memorandum] 1918 July 3, Judge Advocate General to Secretary of War. - Houston Mutiny and Riot Records - South Texas College of Law Houston Digital Collections.

[85] Brenner-Beck, Addendum at 5: "[the] lasting legacy of these trials as the genesis for the implementation of the first appellate review process in American military justice through the immediate issuance of General Order #7 and the ultimate amendment of the 1920 Articles of War."

[86] *See*, Brenner-Beck Petition.

[87] Brenner-Beck, Petition, at 8, footnote outlining research efforts.

[88] *See*, Brenner-Beck, Addendum.



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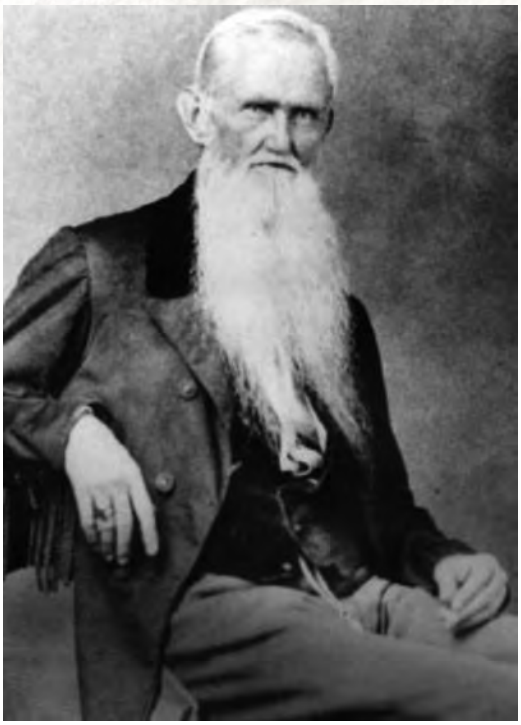
Labors of the Profession:

The Law Practice of Nathaniel Hart Davis, A Texas Lawyer, 1850-1882

By Brian Dirck



Nathaniel Hart Davis

A little wooden structure stands near the center of the town of Montgomery, Texas. The casual observer might mistake it for a barn or storehouse, with its single door, small window, and lack of adornment. A metal plaque identifies the building as the office of a mid-nineteenth century attorney, Nathaniel Hart Davis.[1]

Davis practiced law for over thirty years, yet we know relatively little of what occurred inside this or any other law office in early America; and there were many such offices. "It is an old and true saying that we may have too much of a good thing," noted an observer in 1857, "I believe we have arrived at this state of super-perfection. We have too much of law, and assuredly too many lawyers."[2]

Texas was no exception. Lawyers flocked to Texas throughout the nineteenth century. The state's growing population and expanding economy offered opportunities which resulted in what one Texan termed an "oversupply of lawyers." Another noted sardonically that the state's supply of barristers "is not likely to run out," and believed that throughout Texas there was one lawyer for every twenty voters. The tiny town of Clarksville alone boasted fourteen attorneys in 1852.[3]

The early Texas bar acquired an unsavory reputation. The state supposedly harbored the most incompetent and unscrupulous legal practitioners in the entire country. The Southern humorist James Baldwin wrote of a fictional attorney, "Ovid Bolus, esq.," who cheated a client of valuable real estate. "I can conceive of but one extenuation; Bolus was on the lift for Texas, and the device was natural to qualify himself for citizenship."[4] Texas attorneys were supposedly unversed in the letter of the law. They read few law books and were entirely ignorant of legal precedent. One observer contemptuously dismissed Texans as "cornstalk lawyers," the legal equivalent of medical quacks. Another suggested that a competent attorney from the East could do well in Texas, since so many there were "unreliable." These men preyed on the chaotic social and economic conditions of frontier areas. The Texas attorney was an outsider, a predator, an exploiter of other's misfortunes. He earned his living from the inherent instability of the frontier, the litigation arising from widespread violence, squabbles over water and mineral rights, boundary disputes, badland

titles, estate settlements, and unpaid debts. Texas farmers and businessmen disliked the lawyer because he did not contribute to the state's development with real physical toil. He was a sharp-witted speechmaker who honed his rhetorical skills in courtroom harangues, but was not good for any "honest" work. Historian Theodore R. Fehrenbach wrote that the attorney brought "a whole frightening bag of tricks" and was "rarely cast in the role of hero" by Texas folklorists.[5]

Were these impressions accurate? What did a relatively ordinary Texas lawyer like Nathaniel Davis actually do? What clients did he represent? What cases did he litigate? Was he actually a semi-educated, bombastic opportunist who took advantage of Texas's unstable social and economic environment?[6]

Davis was a Southerner, born in Kentucky in 1815 and raised in Alabama. Not much else is known about his early life, except that his parents, Nathaniel Sr. and Martha Davis, appear to have been people of some means, able to afford Nathaniel Jr. a brief stint at Lexington's Transylvania University. At some point he decided on a legal career, and at the age of twenty he apprenticed himself to his brother Hugh, an attorney in Marion, Alabama.

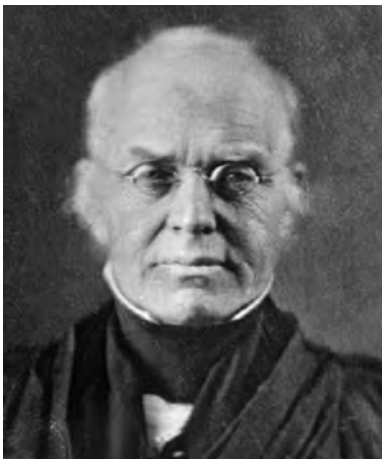
This was a normal approach to acquiring a legal education; few law schools then existed in the United States outside urban areas like Boston and New York. An aspiring lawyer-to-be primarily needed to obtain the necessary books, usually from an older and more established lawyer, who traded access to his library for clerking and other mundane legal labor.

Whether a given law student acquired competency at his trade depended largely on the character and abilities of his instructor, and here Nathaniel was fortunate. Hugh was a conscientious teacher, and he took pains to ensure that his younger brother was well prepared. Nathaniel read the standard legal texts of the day: Coke, Blackstone, and Chitty. But he also read the two primary treatises on American law by Joseph Story and James Kent, as well as cases reported from various state courts and the United States Supreme Court. Later he would amass a considerable library of his own after his admission to the bar. One list of purchases included Howard's law review, Wheaton's treatise on international law, a volume summarizing the work of the U.S. Court of Claims, and Paschal's digest of Texas law. Nathaniel also later made a serious effort to master Spanish property law, a handy skill in Texas.[7]


Sir Edward Coke


Sir William Blackstone


Sir Joseph Chitty



Joseph Story

James Kent

He followed a strict regimen of study during his apprenticeship. A typical daily schedule called for one hour of Spanish language and legal study, "one hour at least" of reading Texas and other court reports, and two hours of general legal reading per day. This in addition to the preparation of cases, "answer[ing] business letters, writ[ing] business [and] prepar[ing] papers."

Here was no frontier courtroom huckster, getting by on his wits and little else. Whether due to his older brother's prodding or his own innate instincts, Davis would pursue a career characterized by a methodical, cautious approach to the law, and to life generally. "Never speak on any Subject, till you have studied profoundly," he wrote, quoting Alexander Hamilton, "[t]ill you have mastered the Subject, so as to do it justice."[8]

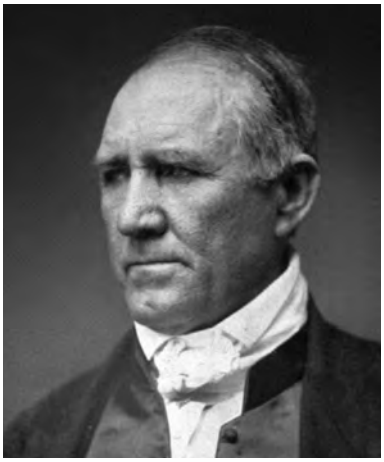
He was admitted to the Alabama bar in January 1837. Exactly what he did to obtain a law license is unknown, but in all likelihood it was not a written test, which were as rare as formal law schools at the time. Very likely he undertook a brief oral examination by a local judge—or possibly an attorney appointed by a judge for the task—after which his name would have been entered into a docket book as a lawyer and (if following the standard practice of the day) a person of "good moral character."[9]

Alexander Hamilton

Prospects for a young lawyer in Alabama apparently were not promising, for within two years he emigrated westward to Texas. Davis is said to have been persuaded in this decision by Sam Houston, whom he met on a New Orleans steamboat. Houston painted a bright picture of the opportunities awaiting a good attorney in the Lone Star Republic, particularly one who knew something of property and real estate law.[10]

Davis settled in the raw little community of Montgomery, located in southeast Texas and barely nine years old when he arrived. The town was a collection of log houses and not much else. Montgomery did not even have a courthouse, though land had been set aside for one. Davis recorded in his journal, "I arrived in Montgomery, Texas on April 4, 1840, at eleven and one half o'clock."[11]

He did not immediately begin practicing law. For the first several years he was preoccupied with helping his neighbors create a home in the wilderness. He was Montgomery's first mayor, an officer of the local militia, a notary public, a land commissioner, a Mason,



Sam Houston

and a church leader. He also performed a lengthy stint as Montgomery's justice-of-the-peace.[12]

Davis finally began practicing law full time in 1850. He specialized almost entirely in civil litigation. Possibly the two other attorneys in town already possessed a monopoly on the criminal law trade; but this was more likely a straightforward business decision. Frontier areas were not nearly as violent or chaotic as Western myths and legends would have us believe, and in all likelihood there was simply not enough criminal law business in the area to sustain a full-time practice by itself. Moreover, attorneys of that time were not typically specialists. Abraham Lincoln, who received his law license in Illinois a year before Davis did so, built a sprawling practice that touched on nearly every area of the law; and (like Davis) most of his cases involved civil rather than criminal disputes.[13]

Like so many others of his profession, he began from the bottom up, handling simple, mundane cases for law fees as he slowly built a clientele and a reputation. Davis's first customers were primarily local citizens. Advertising was out of the question, since Montgomery had no newspaper at the time. He seems to have solicited business largely through personal contacts. Many clients were neighboring farmers and merchants. Others were acquaintances from Davis's days as justice-of-the-peace, such as William Fowler, his court clerk.[14]

Thirty-eight cases are extant from Davis's practice in 1850. These cases were litigated for thirty-two different clients, indicating that many of them were one-time-only customers in what was a very new law practice. Only three men gave Davis any repeat business. William Fowler, Alexander McGown (both would be lifelong clients), and a local farmer named R.B. Martin. Cash was in short supply, so most business was conducted on credit. Davis collected debts owed to his clients through these transactions. Thirty-seven of the thirty-eight cases in 1850 involved some form of debt collection, with Davis almost always representing the plaintiff.[15]

Much of this work also involved real estate transactions. In a typical case heard before the state district court in July 1850, Davis represented McGown in a suit involving a promissory note for land signed by William Simonton and endorsed by John M. Lewis and Charles Lewis. Davis named Simonton and the Lewises as co-defendants in the suit. The note was valued at $536.00; Davis and his clients sued for $1,000.00. The defendants denied owing McGown anything at all, but Davis produced a copy of the note, with their signatures, and won his case.[16]

Land was not the only species of property involved in these debt cases. Davis's clients sued over money owed for a variety of goods and services. On one occasion, McGown hired him to sue Jason Ballew, claiming Ballew owed him for boarding children, caring for his horse and saddle, a quart of brandy, several dinners, and a cargo of animal fodder. Ballew replied that such claims were "confused, indefinite and in law wholly unsufficient[sic]." How the matter was resolved is unknown.[17]

Usually Davis was able to prove that the debt in a given case was legitimate. He produced promissory notes signed by the defendant, rendering a decision in his favor a foregone conclusion. The court then ordered the county sheriff to seize the defendant's property, if any could be found, and sell what was necessary to repay the debt. In one case, the court sold thirty-seven hogs to

cover a debt owed by Fowler to J.A. Luter; in another the court took and sold a longhorn steer.[18]

These seizures were somewhat uncommon. In ten of the thirty-seven debt cases litigated by Davis, neither the defendant or his property could be located. The state district court ruled in his favor, but found no property to seize. Several other cases were never resolved; Davis served a subpoena to the debtor, who promptly vanished. In Texas a man who owed money could easily skip town with his belongings and disappear. Traveling conditions were too poor and officials too few to chase them down.[19]

That first year of full-time law practice was a hardscrabble existence for Davis. He litigated short-term debt cases, few of which lasted longer than one court term. His earnings could not have been great; he often received only a dollar for serving a subpoena to a debtor who would never appear in court.[20]

But after 1850, Davis' practice steadily grew. He was a recognized town leader, a former mayor, militia officer, and judge; and this civic prominence no doubt helped attract new business. His connections with Montgomery's propertied class, the men and women with whom he built the little town, also contributed to his prosperity.[21]

Davis was earning a comfortable living by the middle of the 1850s. Records show that from 1856 to 1858 he often earned $100 a month from his profession, a good salary by contemporary standards. Business was so good that Davis asked his brother James to join him as a law partner. Twelve years younger, James received his training in Alabama, probably in Hugh Davis' law office, and was admitted to that state's bar in 1848. He tried to establish a practice in rural Mississippi, but prospects looked brighter on the Texas frontier, so James moved west in early 1856. He continued as Nathaniel's partner for over thirty years.[22]

There are forty-seven extant cases from January 1860 to the beginning of the Civil War. In many ways these were the best years of Davis' professional career as a respected and prosperous middle-class lawyer. His clients did not differ in class or background from ten years earlier. Davis continued to represent property holders, such as James Price, a well-to-do Montgomery farmer and physician, or Peter Willis, a wealthy merchant. Most were local townspeople, although three of his customers resided in nearby Washington County, one in Houston, and one in Galveston.[23]

Debt collection continued to be Davis' chief service. Twenty-four of the forty-seven cases involved this sort of action. Many were still relatively simple, involving direct default on a promissory note. The amounts in question varied from $17 to over $6,000 owed for several tracts of land. In a typical case decided in the fall of 1860, Davis' client, Abner Womack, sued J.R. Dupree for failing to honor a $400 note. Dupree could not be found (a frequent occurrence, as in 1850), and since Davis produced the note as evidence, the court ruled in his client's favor.[24]

Such cases differed little from the debt litigation of 1850. But some of his debt-related work was more complicated than ten years previously. Montgomery was no longer a marginal establishment in the wilderness. By the eve of the Civil War, it was a permanent thriving community with several mills and retail stores, as well as extensive agriculture and ranching. The types of

debts its citizens incurred, and the property on which they were owed, reflected a more developed, complex economy.[25]

Five cases centered around probate issues. The men and women who founded Montgomery were growing old and dying by 1860. Many left large estates and often large debts. In November 1860, Davis represented the executors of the estate of Alexander McGown. A man named Foster claimed a variety of property from McGown's heirs: a horse, mule, several beds and other furniture, as well as several outstanding debts. Foster also claimed part ownership of several parcels of land and a slave named Lund. After a lengthy deliberation, the state district court divided the land between Foster and Davis' clients, and awarded Lund to Foster. Ownership of the other property was still in doubt, however, and the case languished in court through the Civil War and into the 1870s. No resolution was ever recorded.[26]

Probate cases were complicated, prolonged affairs, often involving many separate transactions which took place over long periods of time. The deceased often kept poor records, and executors were confronted with a variety of claims on the finite sources of the estate. It is revealing to note that, of the five probate cases litigated by Davis in 1860-1861, only two were completed. The other three lingered on the state district court docket for years without final resolution.[27]

Another form of debt collection pursued by Davis during this period involved the most vexing form of "property" known in the antebellum South: slaves. Davis personally disliked slavery, once declaring that bondage, with ignorance and guilt, "constitute the sum total of human misfortune."[28]

Nevertheless, the peculiar institution was a steady source of business. Davis litigated five cases involving slaves in 1860-1861. Four concerned money owed to Davis' clients for hiring slaves out. The other case required the attorney, representing William Fowler's widow, to fend off the claim of a local rancher, Willifort Cartwright, who sued the estate for the value of a slave mortgage.[29]

Slave cases were often no different from other litigation involving "property," but sometimes the fact that a human bondsman was involved in a given transaction complicated matters considerably. Peter Willis "hired out" an enslaved carpenter named Hector to William Arnold, a local farmer, in the winter of 1856. Davis drafted the hire contract for Willis, which required Arnold to "treat [Hector] well, and to put him to no work more dangerous to his life or health than working a farm or common carpenting [sic]". Arnold was not "to take [him), suffer or allow him to go out of the county." He agreed to pay Willis a bond of $6000 if Hector were not returned at the end of the hiring period. Hector took matters into his own hands and ran away. He travelled to Guadalupe County where one of his former owners lived, a farmer named Elizabeth Johnson. Johnson had announced her intention to reclaim Hector, legally or not. Her brother Telephus lived near Montgomery, and there was strong evidence that he had enticed Hector to run away.

Davis' client, Peter Willis, sued Arnold for the value of the slave and the bond. Davis lost the case in the fall of 1860 after a lengthy court battle. The district judge ruled that Willis should have told Arnold of Elizabeth Johnson's claim to Hector; without such information, Arnold could not

have known that extra precautions were needed to keep the carpenter in the county. Willis was unable either to collect the bond money or recover Hector.

This was a ruling unique to slave "property." Willis would not have been required to furnish Arnold with such information for a wagon, horse, or cow. The inescapable fact in this dispute was that Hector was a human being who could, on his own volition, become more than inanimate "property" by running away. As the attorney who drafted the hire contract, Davis did not foresee this and take what the court deemed proper precautions by warning Arnold of Johnson's claim. Nor was he able to force payment of the hire bond from Arnold. Slave property issues could be complex and unpredictable, as Willis' attorney learned to his regret.[30]

Davis' business in 1860-1861 included non-debt related cases. Chief among these was land litigation. Real estate often appeared in his debt practice. But in 1860-1861 there were six cases concerning disputes over land in which no promissory note was involved. These were contests concerning clear title to a tract of land. In one case, two Montgomery farmers claimed a 125-acre plot situated between their two homesteads. Davis' client, James Lynch, sued his neighbor, George Matthews, for possession of the tract. But the two litigants and their attorneys arranged a satisfactory out-of-court settlement which divided the land into two parcels. When the case was brought before the district court in April 1861, Davis' only task was to record the survey marks.[31]

He also handled three divorce cases in 1860-1861. He represented physician James Price, who successfully sued his wife for desertion under Texas' divorce statute. He also represented Matilda Burden, who sued her husband John, again for desertion. Matilda had lived apart from John for several years. When the county sheriff seized a flock of sheep belonging to the couple to pay her absent spouse's debts, Matilda asked Davis if it were possible to forestall the seizure. He advised her not to attempt such a suit, which she could not possibly win while still married to John. Mrs. Burden thereupon hired Davis to sue her husband for divorce. He failed to appear in court, and the judge peremptorily granted Matilda's request, after which a jury convened to dispose of the ex-couple's property. Their 177-acre farm was divided, but Matilda was awarded everything else: household goods, several hogs, horses, cattle, and oxen, as well as a slave woman named Hannah.[32]

Davis represented some local citizens for unusual purposes. In the fall of 1860, Robert Simonton asked the lawyer to petition the local district court to alter a local pathway called the Danville road. Simonton wanted the road to run south rather than north of his land. Davis tried, but the court refused his request. There was little technical work involved; Simonton turned to Davis because, as a lawyer, he knew how to work within the system, even if the task required little legal expertise.[33]

His practice grew steadily larger and more diverse between 1850 and 1860, and in the process his daily labors became more diverse. He found that being a lawyer meant far more than giving a rousing speech before a jury. Much of it was drudgery.

Gathering information was a particularly time-consuming and difficult task. Many cases required Davis to find and question witnesses, who often lived far away from Montgomery.

Traveling conditions were uniformly wretched throughout the state, so Davis often could not realistically expect a witness to appear personally in court. He usually tried instead to obtain a written deposition; and in doing so, he was compelled to write out what he normally would have done in a courtroom. As a result, his questionnaires were often lengthy and detailed; since he possessed only one chance to question a witness, he tried to cover all eventualities by asking many questions.

Preparing these documents, mailing them—usually to the court clerk of the county in which a potential witness was thought to reside—and trying to ensure they were filled out properly was probably Davis' most tedious and time-consuming work; and it was also likely frustrating. He depended on the local clerk or some other court official to locate the witness, question him or her, notarize the completed questionnaire, and return it to him in time for the trial. He was at the mercy of these distant functionaries; sometimes they proved reliable, sometimes not. They were under no obligation to comply with his wishes. One clerk wrote that he was unable to aid Davis because no one was willing to write down the answers to his questions. Another informed him that the person he sought could not be found. Many simply returned the unanswered interrogatory with no explanation at all.[34]

Other out-of-court labors called for Davis' attention. He often acted as a real estate broker, buying and selling land for land speculators such as Edward Greenway, who hired Davis to purchase several choice tracts of land in 1856. The attorney attended sheriff's sales in counties all over Texas, buying real estate for Greenway, recording the deeds, and later supervising the resale of these lands, at a handsome profit for his client. The work was grueling. Davis wrote Greenway that one sale was "over 200 miles from us and we shall have to go horseback through such a country, at this season of the year … our Winter has been so bad that we have concluded to wait until it breaks before we have the lands sold." Davis asked for, and received, a generous sum for this work; Greenway eventually paid Davis over $800 in fees and expenses.[35]

Probate cases also involved him in all sorts of odd jobs. As noted earlier, the settlement of an estate could prove complicated. Davis' old friend and court clerk, William Fowler, left a great deal of unfinished business for the attorney. Fowler died in 1854, and Davis was named as one of the executors of his estate. Merely listing Fowler's assets—land, sheep, cattle, etc.—and liabilities—creditors demanding payment of outstanding debts—was a monumental task which occupied Davis for years. The liabilities outnumbered the assets. A.M. Branch was a typical correspondent, querying Davis in April 1860, "Will you please say when I can expect a payment on the note of W.H. Fowler to J. Roberts due 1 May, 1860 [?] The old man begins to want his money…."

Davis also was expected to care for Fowler's property until it could be sold. A man named A.H. Mason wrote him from Huntsville, informing him "I have been acting as agent for W.H. Fowler in looking out and to keep off trespassers from cutting Wood from his land near town. I don't believe the wood can be saved." Mason asked, "would it not be well to sell the wood at so much a [sic] chord and let it all be cut off?" Such decisions were Davis' responsibility, and they plagued him for years. Indeed, the Fowler case was a lifelong burden; the estate was not settled until after Davis died.[36]

By the eve of the Civil War, Davis had found his place as a civil law attorney. He earned a steady living to support a growing family—he had married Sara Elizabeth White in 1851, and they would eventually have seven children—and lived in a solidly middling class home in Montgomery. He could be relied upon by his clients to carefully represent their interests; and while in no sense a legal superstar, Davis was a quietly competent lawyer whose chief asset was his understated but very persistent and meticulous work ethic. James Baldwin and other purveyors of the Texas lawyer/huckster myth would not have found much grist for their mills in Davis and his law practice.

That practice was affected profoundly by the war. Davis had been one of Montgomery's foremost annexationists during the days of the Republic, fighting hard to have Texas admitted to the Union. He was, therefore, loath to see that Union dissolved. Davis campaigned for the short-lived Constitutional-Union Party during the election of 1860, helping to draft a resolution calling for loyalty to the United States and the Constitution.[37]

When Abraham Lincoln was elected, Davis chose to stay in Texas, rather than flee northward with other Southern nonconformists. He possessed strong ties to Montgomery. a town he had helped create, and he remained there throughout the war. It was not an easy existence.

His practice was severely curtailed by the war's various disruptions. From April 1861 until December 1862, only nineteen cases litigated by Davis are extant. These were almost all debt matters, with a few other cases involving slave hire, probate, and land disputes. There are no surviving cases litigated by him after 1862 until the end of the war. though his financial records indicate that he continued to practice law sporadically during that time.

With fewer clients and cases, his income dropped dramatically. Before 1861 he could expect to earn at least a $100 a month, but during the war he often earned a third of that amount, or even less. On occasion he was paid much more, gathering almost $300 from his practice in one month. But since many of his fees were necessarily paid in Confederate scrip, the value of those dollars was doubtful. Small wonder that he often took barter, such as several bales of wool, in payment for his services. In general, Davis seems to have kept a very low profile during the war, eking out what sort of living was available to him and largely staying out of his neighbor's way.[38]

After Appomattox, Davis' practice entered a brief period of prosperity that equaled his pre-war business. Between April 1865 and January 1868, he litigated at least ninety-eight cases. Over half were the usual debt cases, many of which concerned pre-war debts. The Confederate states, including Texas, passed debtor relief laws during the war to protect the fragile Southern economy and the men away in the army. These laws made debt collection difficult. It is doubtful in any case that creditors were eager to collect what was owed them in deflated Confederate scrip. After the war creditors clamored for payment, and attorneys such as Davis reaped profits from their business. In a typical case litigated in February 1867, Davis sued George H. Vilz on behalf of Jonathan Haggerty for a $135 debt owed to Haggerty since 1862. In another, he represented Peter Willis for a small debt owed him by a local Montgomery citizen.[39]

The war affected his post-Appomattox practice in interesting ways. Davis litigated many cases in which the debt was tabulated not in dollars, but in pounds of cotton. In the failing Confederate

economy, many Southerners reverted to the same sort of barter system Davis had used during the war for his legal fees, with cotton as the preferred medium of exchange. A typical promissory note required the cotton "to be well packed, in good merchantable condition" and delivered to a factory in Galveston. In one such matter, Davis represented a local farmer, E.E. Byrd, who sued the executors of A.J. Davis' estate for non-payment of four cotton bales. The courts treated these cases as no different from payments in specie.[40]

Several of Davis' clients sued for debts owed on slave-related matters. Davis represented the plaintiff in two of these cases. In the third, Davis himself was the defendant. Calvin Brooks sued the attorney for failing to pay him several bales of cotton in return for hiring "two negroes, Greene and Caroline." In another case, Davis represented James Woods, an overseer who sued his former employer for over $100 in back wages. [41]

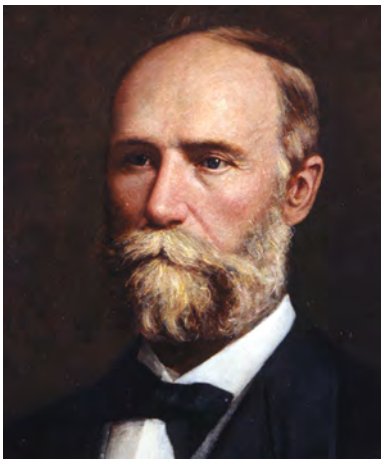
The freedmen themselves were a new source of business for Davis. In an unusual case, an ex-slave asked him "to procure an apprenticeship" for himself and his three stepchildren. The records are vague concerning the details of this case; Davis apparently was asked to sue a local citizen over apprenticeships which were promised to the freedmen but never delivered. He wrote, "if the matter is settled before the court my fee [is] $10- if out [of court] $25." The different fees likely reflect the ex-slaves' desire to avoid publicly suing a white man in open court before an all-white jury. Davis seems to have settled the matter without a lawsuit, for no court decision was recorded.[42]

Most black Southerners found the months following Appomattox trying and difficult, particularly in their dealings with the legal system. The judges and court officials in Texas during Presidential Reconstruction were almost exclusively former Confederates. They excluded blacks from juries, blocked prosecution of cases involving white violence against blacks, and otherwise bolstered white supremacy. Complaints from the state's Republican Party members were so numerous that by August 1867, Congress instructed the military authorities in Texas to remove these men and appoint loyal Unionist Republicans in their place. Davis was a Republican, having joined the party after Appomattox. He noted that "the war abolished slavery ... and necessity [and] general principles made the freedman a citizen." This outcome did not displease the Unionist attorney, who was an early post-war supporter of black suffrage.[43]

Davis was a logical choice for the bench during the statewide overhaul. He was urged to accept the post of state district judge by a close friend and fellow Republican, who wrote, "1know you can take the oath, you never saw the day but that you sympathized with the U.S. He also appealed to Davis' economic needs. "At your time of life and a growing family I know you would be happier with a comfortable salary than the labors of the profession."[44]

Davis assumed the post of Texas district court judge for the Eleventh District of Texas in the winter of 1868. He remained on the bench for three years. His brief tenure as a Republican-appointed judge was rewarding, but uncomfortable. There were rumors that a petition was being circulated to oust him from office, for unspecified reasons. He wrote an anxious letter to Governor Edmund J. Davis in March 1870, asking if his removal was imminent. Governor Davis reassured him that "no petition has been received at this office."[45]

Nevertheless, Davis was not re-appointed to the bench in the spring of 1870. He returned home to Montgomery in August. His brother James had taken over the practice during his absence, and Davis looked forward to resuming his work as an attorney. "I found that my general health improved," he wrote. and believed that he returned to the bar "with (as far as I know and believe) as good prospects as when I quit.'"[46]


Governor Edmund J. Davis

In this he was mistaken. Davis was fifty-five years old when he returned to his law office. While he continued to practice law as he entered old age, his business steadily declined. There were probably many reasons for this. The postwar boom in legal business had ended by the beginning of the 1870s. Most of the outstanding wartime debts owed by local citizens had been settled. Davis also faced greater competition; at least three more attorneys arrived in Montgomery during the war to share in the growing town's legal market. Many of his old customers had died during or after the war, and Davis' scalawagism no doubt rendered problematic any attempt to build a new following.[47]


Peter Willis

The Montgomery attorney's practice was dominated by one customer after 1870: Peter Willis. Willis was an old friend and client who had settled in Montgomery in the 1840s. A wealthy plantation owner with many slaves, Willis gave up agriculture in the 1850s and moved to Galveston, where he established a lucrative dry goods firm with his brother Robert. One observer described the Willis store as being "of colossal proportions, transacting business involving millions of dollars all over."


Robert Willis

Willis and Bro. experienced considerable difficulty in collecting payment for their merchandise. Customers moved, or died, or simply refused to pay. The ease with which Texas debtors could elude their creditors before the war continued into the 1870s and 1880s. The firm spent a good deal of time and money in court trying to collect what was due them. They brought lawsuits in Galveston, Washington, Harris, and Robertson counties, as well as Montgomery. Davis was their representative in Montgomery. but he was only one of several attorneys retained by the Willis brothers. Davis litigated over one hundred cases for the Willis store during his career. Most occurred after the war, especially early in the 1870s, and was almost entirely debt-related; and it seems to have been largely predicated on Davis' personal relationship with Peter Willis, for when Willis died in 1873, Davis' business with the firm slackened considerably. He litigated several cases during the middle 1870s for Willis and Bro., but most of this work had been pending since the beginning of the decade.[48]

By 1880, Davis was nearing retirement. His account book for that year listed twenty cases.

A surprising number were divorce cases—approximately thirty percent. In the last years of his practice, he turned to divorce as his primary area of specialization to replace the debt litigation which largely disappeared after Peter Willis' death. In one such case, Davis represented Mary Paulins, who sued her husband for divorce in September 1880 for desertion. Davis declared that Mary had been "a good and faithful wife," and that the defendant had "without cause voluntarily abandoned her … [declaring] to different persons that he never intended to return." The district court sympathized, and granted Davis' client a divorce. This was the only divorce case completed by Davis.[49]

All of the other pending suits were dismissed in 1882 when he retired. He was sixty-eight. A photograph showed an unbent, dignified man with balding head and a knee-length white beard.[50]

Davis had acquired several tracts of land over the years: two town lots in Montgomery, a 600-acre farm, a 500-acre plot, and other similar tracts in the area. "Bob Hamilton farming on Eldridge place which I have bought," he noted in one expense book. Davis hired out his land to be farmed by others and lived on the profits during his retirement. He did not return to the practice of law before his death in October 1893.[51]

When we open the door to Nathaniel Davis' law office, we find a scene which is quite different from what might have been expected. His office was filled with law books and treatises. Thorough preparation and familiarity with legal precedent were lessons instilled in Davis from his earliest days. He was no semi-educated "cornstalk lawyer." Davis' office was the center of his practice, not the courtroom.

He was an effective public speaker, able to express himself "in a very feeling and lucid manner," according to one observer. But speechmaking was not his most important or time-consuming labor. Davis' oratorical ability was secondary to his out-of-court work. This work reveals a practice devoted to promoting and maintaining economic stability. Davis did not exploit frontier chaos: far from it. His debt collection work nurtured confidence in an otherwise shaky credit system. Creditors needed to be reasonably sure they would either be paid or compensated for their expenses if the system were to function at all. As a probate attorney, Davis concluded a great many unfinished transactions began by his deceased clients and participated in the equitable distribution of large amounts of property and land. As a purchasing agent for men such as Edward Greenway, the Montgomery attorney acted as a land broker in an era preceding the existence of a specialized real estate profession.

These were not the actions of a legal predator. Davis was not a man "with a whole frightening bag of tricks." He functioned as an integral part of his society, filling several important economic roles. These were the true "labors of his profession."

Endnotes

1 The house and office still exist: see https://www.mhs-tx.org/n-h-davis-law-office; also Sydney S. Connor, "Memoirs of the Old Homestead," *Houston Chronicle Magazine*, December 7, 1958, 8; and Marilyn McAdams Sibley, *Travelers in Texas, 1761-1860* (Austin: University of Texas Press, 1967), 164.

2 *Semi-Weekly Union* (Washington DC), November 25, 1857; Marilyn McAdams Sibley, *Travelers in Texas, 1761-1860* (Austin: University of Texas Press, 1967), 164; Maxwell Bloomfield, "The Texas Bar in the Nineteenth Century," *Vanderbilt Law Review* 32, (1979), 269.

3 Austin [TX] *Southern Intelligencer*, January 12, 1859; Sibley, *Travelers in Texas*, 128; Maxwell Bloomfield, "The Texas Bar in the Nineteenth Century," *Vanderbilt Law Review* 32, (1979), 269.

4 Joseph G. Baldwin*, The Flush Times of Alabama and Mississippi; A Series of Sketches* (New York, 1853; reprinted Baton Rouge, 1987), 11.

5 Sibley, *Travelers in Texas*, 128; Ophia D. Smith, "A Trip to Texas in 1855," *Southwestern Historical Quarterly*, 59 (January 1955), 53; Theodore R. Fehrenbach, *Lone Star: A History of Texas and the Texans* (New York, 1985), 283; see also Lawrence M. Friedman, *A History of American Law* (New York, 1985), 107, 283, 306–307.

6 The literature addressing early to mid-nineteenth century attorneys is quite thin; see Maxwell Bloomfield, "Texas Bar in the Nineteenth Century," *Vanderbilt Law Review*, 32 (1979), 262–287; his excellent chapter on Galveston attorney William Pitt Ballinger in *American Lawyers in a Changing Society, 1776-1876* (Cambridge, 1876) 282–296; and his discussion of black Texas attorneys in Gerald W. Gawalt, *The New High Priests: Lawyers in Post-Civil War America New York* (Praeger, 1984), ch. 6; John Anthony Moretta, *William Pitt Ballinger, Texas Lawyer, Southern Statesman, 1825-1888* (Austin: Texas State Historical Society, 2000); Brian Dirck, *Lincoln the Lawyer* (Urbana: University of Illinois Press, 2007).

7 H.L. Bentley and Thomas Pilgrim, *The Texas Legal Directory for 1867-1877* (Austin, 1877), 52; also Montgomery County Genealogical Society, *Montgomery County History* (Winston-Salem. N.C. 1981), 252; on legal education in America at this time, see Robert B. Stevens. *Law School: Legal Education in America from the 1855 to the 1880s* (New York: 1983). Nathaniel Hart Davis Papers (hereinafter identified as NHD), Box 3K403, Book 1338. Barker Center for Texas History, Austin. Texas; this is Davis' notebook dating back to 1839; for a later example of his study regimen, see notebook "No.2," (private collection, Nat Hart Davis, Conroe, Texas). "

8 *Ibid*., No. 2.

9 See Dirck, *Lincoln the Lawyer*, 21; and Robert M. Jarvis, "An Anecdotal History of the Bar Exam," *Georgetown Journal of Legal Ethics* 9 (1996): 374.

10 See Sydney S. Connor, "Memoirs of the Old Homestead," *Houston Chronicle Magazine*, December 7, 1958, 8.

[11] W.N. Martin, "A History of Montgomery: A Research," M.A. thesis, Sam Houston State Teacher's College, 1950, pp. 1–18 and *passim*; Davis' journal is apparently lost; it is quoted in *Montgomery County Genealogical Society, Montgomery County History*, 252.

[12] Bentley and Pilgrim, *Texas Legal Directory*, 52; also Montgomery County Genealogical Society, *Montgomery County* (Winston-Salem, NC; 1981), 252; an election return listing Davis as a major in the local militia may be found in "An Abstract of an Election held in the County of Montgomery on the 1st of March, 1847," archives of Sam Houston State University, Huntsville, Texas.

[13] A list of practicing attorneys in Montgomery, taken from a missing notebook of Davis' may be found in Martin, "A History of Montgomery," 87–38; Dirck, *Lincoln the Lawyer*, esp. chps. 3–4.

[14] NHD, Box 3K403, Book 1032, 1-8; this assessment of Davis' clientele is based on an examination of their backgrounds is from Montgomery County Genealogical Society, Montgomery County History; Martin, "Montgomery County," esp. pp. 11–35; and U.S. Census Records for Montgomery County, Texas, 1860.

[15] NHD, Box 3K403, Book 1032.

[16] District Court Minutes, 1848–1870. District Clerk's Office, Conroe, Texas; in three cases I was unable to identify who Davis represented; I found no cases in which he represented the defendant; McGown v. Simonlon, District Court Minutes, 1848·1870, (District Court Records, Conroe County, hereinafter identified as DCO).

[17] McGown v. Ballew District Court Minutes, 1848–1870, DCO.

[18] Luter v. Fowler, NHD, Box 3K403, Book 1032, 1; Potter v. McCollum NHD, Box 3K403, Book 1032, 2.

[19] *Ibid*., Book 1032; see for example A.H. White, Guardian of P. Shepperd v. M.A. Shepperd and W.A. Shepperd, Book 1032, 5. *ibid*., Book 1032.

[20] For example, see Randolph v. Russell, *ibid*., Book 1032, 6.

[21] NHD, Box 3K401, Book 1329; this is a record of cash received by Davis during the late 1850s and 1860s.

[22] Biographical sketch of James in Bentley and Pilgrim, *Texas Legal Directory*, 52; James left almost no evidence of his role in the business; scattered fragments indicate that he split the civil law caseload with his brother; see 3K40I, Book 1332 and Book l325.

[23] Evidence concerning this phase of Davis' practice is derived from three sources: NHD papers, Box 3K402, Book 1356, 29–55; District Court Minutes, Civil Law, vols. E-F, DCO; and miscellaneous court records from these sources; Davis' clients were identified from this material and from U.S. Census Records, Montgomery County, 1850: many of these individuals were also profiled in Montgomery County Genealogical Society, Montgomery County History, and Martin, "Montgomery: a History," esp. 11–35.

[24] NHD Papers, Box 3K402, Book 1356, pp. 29-55; Dupree v. Womack, Minute Book F, 18,99, DCO.

[25] Martin, "Montgomery: a History," chp. 3.

[26] Foster, et.al. v. McGown's exec., Minute Book E, pp. 112. 127, 169, 222, 266, 270, 304, 314–315, DCO; see also NHD Papers, 3K402. Book 1345.

[27] See generally NHD Papers. 3K402, Boole. 1345; also Minute Books E-G, Civil Law, DCO.

[28] NHD Papers, 3K401, Book 1335.

[29] Cartwright v. Fowler, NHD Papers, 3K402. Book 1345.

[30] "Order in Vacation to hire negroes of estate of John Fridge, deceased," December 16, 1854, records, case number 1054, DCO; Case No. 670, William Fridge v. Elizabeth Johnson," Fall, 1856 (facts of case pending in Guadalupe County as related to Willis litigation), case 1054, DCO. NHD Papers, 3K401, Book 1347: District Court Minutes, E, 29, 56, 112, 128 and passim, DCO.

[31] Matthews v. Lynch, Minute Book F, pp. 77-78, DCO.

[32] Price v. Price, Minute Book F, p. 60, DCO; for Texas divorce statute, see H.P.N. Gammel, Laws of Texas, 10 vols. (Austin, 1898), vol. 2, 19.

[33] NHD Papers, 3K402. Book 1356, 29.

[34] See interrogatories for F.H. Webb and Ralph Hooker. Pounds v. Baker, case number 1036, DCO.

[35] Quotes are from NHD Papers, "Nathaniel Hart Davis to E.M. Greenway," January I, 1859, May 28. 1860 and September 13, 1860, 3K396; also Greenway v. DeYoung, et.aI. Minute Book E, 231, 246-247, DCO.

[36] NHD Papers, 3K402, Book 1097, "First Draft of Brief and Argument for [Texas] Supreme Court, Fall, 1853," pp. 21–

31; "Edward Austin to Nathaniel Hart Davis, exec. of Fowler Estate," May 27, 1860, 3K396; also 3K403, Book 1337; A.M. Branch to Nathaniel Hart Davis, April 2, 1860, 3K396; there is a great deal of correspondence related to Davis' work with the Fowler estate in Davis' papers; see e.g. "Henry B. Epperson to Nathaniel Hart Davis," January 27, 1868. 3K396; "F. Dear Ramb Co. to Nathaniel Hart Davis," November 1, 1860, 3K396: "George Washington Williams to Nathaniel Hart Davis," April 29, 1860, 3K396. \0"A.H. Mason to Nathaniel Hart Davis," August 21, 1860, 3K396. "Montgomery County Genealogical Association, Montgomery County History, 168.

37 *Civilian and Gazette* (Galveston), September 25, 1860.

38 Montgomery County Genealogical Society, Montgomery County History, 252. NHD Papers, Box 3K402. Book 1356; this account book contains information for Davis' practice from 1860-1873; the financial records are in 3K401, Books 1329 and 1322; NHD Papers, Books 1329 and 1322; these list cash received for Davis from the late 1850s through the war; I have based my conclusions on the entries identifying monthly income for "Davis and Bro." NHD Papers, Box 3K4O2, Book 1356. 191-304.

39 NHD Papers, Box 3K402, Book 1356, 101, 208.

40 *Ibid*., 78–83.

41 *Ibid*., 78–81.

42 *Ibid.*, 100.

43 Randolph B. Campbell, "The District Judges of Texas in 1866-1867; An Episode in the Failure of Presidential Reconstruction," *Southwestern Historical Quarterly* (January, 1990), 356–377; for problems throughout the South in general, see Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York, 1988), 202–210; NHD Papers, Box 3K401, Book 1322.

44 Caldwell to Nathaniel Hart Davis, November 11, 1867. ibid.; Montgomery County Genealogical Society, *Montgomery County History*, 252; NHD Papers, Box 3K402, Book 1356, 34.

45 NHD Papers, Box 3K398; E.J. Davis to Nathaniel Hart Davis," March 22. 1870; whether such a petition actually existed is unknown.

46 Ibid., Box 3K402, Book 1356, 34–50.

47 Martin, "Montgomery: a History," 87; on Southern scalawags see David Donald and James G. Randall, *The Civil War and Reconstruction* (New York, 1961); Allen Trelease, "Who Were the Scalawags?" *Journal of Southern History*, 39 (1963), 445–468; Richard O. Curry, "The Civil War and Reconstruction: an Overview of Recent Trends and Interpretations," *Civil War History* (1974), 233.

48 *Tri-Weekly News* (Galveston), November 30, 1873: Martin, "Montgomery: a History," 25–26. *Galveston Tri-Weekly News*. November 30, 1873; Willis v. Stamps 36 Texas Reports 48 (1871); Willis v. Owen 43 TR 40 (1875); Willis v. Davis 47 TR 154 (1879), for examples of the Willis litigation outside Montgomery County; Index to District Court Minutes A-H, DCO, lists over 100 cases litigated by Davis for the Galveston firm from 1850 to 1880; NHD Papers, Box 3K402, Book 1356, 124.

49 Paulins v. Paulins, District Court Minutes H, 382, 421, 438–439, DCO.

50 NHD Papers, Box 3K402, Book 1331; also docket entries for cases in District Court Minutes, H, DCO; photograph in 3K396.

51 NHD, 3K402, Book 1340, un-numbered page, "Sundry Matters to N.H. Davis; also Montgomery County Genealogical Society, *Montgomery County History*, 252.

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Chief Justice Hecht Presides Over His Final Arguments and Issues His Last Opinions

By Dylan O. Drummond

Current and former Justices gathered for Chief Justice Nathan Hecht's final argument setting.

13,119 days after he presided over his first oral arguments at the Supreme Court of Texas, retired Chief Justice Nathan Hecht presided over his final three arguments on December 5, 2024. Incredibly, due to the herculean efforts of Court Clerk Blake Hawthorne and his team, the arguments from Chief Justice Hecht's first sitting on January 4, 1989 can be heard at https://txcourts.gov/supreme/oral-arguments/archived-recordings/by-year-argued/1980-1989/1989/. During the nearly 36 years from his first sitting to his last, Chief Justice Hecht heard more than 2,700 oral arguments.

Seventeen of the forty-one Justices he served alongside during his nearly thirty-six years at the Court attended the Chief's final argument setting.

Following the arguments, the Court presented the Chief with six bound volumes containing the 530 authored opinions (including majority, concurring, and dissenting opinions) he penned

during his landmark tenure—the Hecht Reports. Former Justices signed the volumes containing opinions issued while they served on the Court with the Chief.

The Chief issued his final authored opinions a few weeks later on December 31st—bringing the total he wrote during his tenure to 533. Fitting for the Chief's legendary work ethic, his three majority opinions were the most by any Justice on the Court's year-end orders. His final opinions were rendered 13,068 days after his first writing at the Court—a March 22, 1989 dissent in *State v. Thomas*, 766 S.W.2d 217, 222 (Tex. 1989) (Hecht, J., dissenting). And they came 12,886 days from his first majority opinion on September 20, 1989 in *Walker v. Blue Water Garden Apartments*, 776 S.W.2d 578 (Tex. 1989). Once published, these final three opinions will eventually be bound in the seventh volume of the Hecht Reports.

The six volumes (so far) of the Hecht Reports

rized by law." *See* Tex. Const. art. IV, § 22. We held that under the "toll" provision, the Attorney General had the constitutional authority to seek injunctive relief. In reaching its conclusion, the court reasoned as follows:

> [I]t is held that *in the absence of rate regulation by some authorized body*, state or municipal, the telephone company may prescribe and apply its own rates, subject to the dictates of reasonableness and justice [citations omitted]. This legal obligation upon the telephone company—that of not exacting exorbitant or unreasonable charges for its services—would be meaningless if there were not judicial redress for its violation.

Southwestern Bell, 526 S.W.2d at 529 (emphasis added).

Our holding in *Southwestern Bell* stands for the proposition that in *absence* of state regulation, the Attorney General may resort to the courts to oppose a rate increase not authorized by law. We had no occasion to consider in that case whether the Attorney General would have the right, in the *presence* of state regulation, to intervene in the regulatory process itself in order to challenge a request for a rate increase.

In the case now before us, several utility companies filed requests for rate increases with the PUC. It is erroneous to conclude, as the court has done, that the act of filing for a rate increase before the PUC is tantamount to the utility company demanding an unlawful rate, thereby providing the predicate for intervention by the Attorney General into the rate process. This is an unjustified and illogical extension of our holding in *Southwestern Bell*.

The PURA prohibits a utility from making any unauthorized changes in its rates. Tex.Rev.Civ.Stat.Ann. art. 1446c, § 43 (Vernon Supp.1989). In the event that the utility should increase rates without authorization, the Attorney General may institute appropriate court proceedings to enjoin such action and impose statutory penalties. *Id.* §§ 71, 72. The enforcement provisions clearly recognize the right and duty of the Attorney General to "prevent the exercise by a corporation of a power not conferred by law." *Southwestern Bell*, 526 S.W.2d at 531. On the other hand, when the utility properly submits itself to the regulatory authority, the Attorney General has no constitutional or statutory role in the regulatory process. If the Legislature had intended the Attorney General to have a role in protecting the public interest in the regulatory process itself, it would have so provided. *Cf.* Tex. Ins.Code Ann. art. 1.09–1(b) (Vernon Supp. 1989) (Attorney General authorized to intervene in the public interest in insurance rate hearings). However, in failing to provide for a role for the Attorney General, the PURA does not in any way detract from the Attorney General's power to oppose a demand or collection of an *unauthorized* rate. Tex. Const. art. IV, § 22; *see also* Tex. Gov't Code Ann. §§ 402.021, 402.023(b) (Vernon Pamphlet 1988).

In summary, the Attorney General has no constitutional or statutory right to intervene in these rate cases without the consent of the PUC. The court ignores the plain meaning of the words used in the constitution and prior pronouncements of this court, *e.g.*, *Day Land & Cattle Co.* and *Laughlin*, to reach this result. Furthermore, none of the prerequisites for the issuance of a writ of mandamus are present here. For these reasons I dissent.

HECHT, Justice, dissenting.

Today the Court holds that the Attorney General has a constitutional right to intervene in proceedings before the Public Utility Commission. In fact, the Attorney General claims no such right in this case. He claims only the right to provide legal representation to various state agencies before the PUC. Those agencies, not the Attorney General, claim the right to intervene in PUC proceedings. Thus, the Court confers upon the Attorney General a right he does not claim, and one I believe he does not possess. Furthermore, the Court issues its writ of mandamus [1] even though the strict

1. The Court does not extend the PUC the courtesy usually afforded respondents in mandamus cases of issuing the writ only on the condition

A page from *State v. Thomas.*
(highlighting added)

quired to perfect her pauper's appeal to county court.

Court of Appeals reversed; remanded to county court.

1. Justices of the Peace ⇐159(12)

Rule under which appellate court may allow appellant to cure defect of substance or form in any bond or deposit given as security for costs applies to county court in cases appealed from justice court. Rules App.Proc., Rule 46(f).

2. Landlord and Tenant ⇐291(18)

Jurisdiction was conferred on county court in tenant's appeal from justice court, where tenant's affidavit alleged facts from which could readily be inferred implicit conclusion that tenant was unable to pay or give security for any costs in that case, notwithstanding affidavit's failure either to refer to cause, judgment, or appeal involved or to state explicitly that tenant was unable "to pay such costs, or any part thereof, or to give security." Vernon's Ann.Texas Rules Civ.Proc., Rule 749a.

3. Justices of the Peace ⇐159(10)

Five-day deadline for deposit required to supersede enforcement of justice court judgment for possession of premises does not apply to deposit required to perfect appeal from justice court to county court. Vernon's Ann.Texas Rules Civ.Proc., Rules 749b, 749c.

4. Landlord and Tenant ⇐291(18)

Court would not imply specific deadline for deposit required to perfect appeal to county court from justice court judgment in forcible entry and detainer case, where no such deadline exists expressly. Vernon's Ann.Texas Rules Civ.Proc., Rule 749c.

5. Landlord and Tenant ⇐291(18)

Tenant's reasonably prompt efforts to meet requirements of rule requiring deposit of one month's rent to perfect appeal to county court from justice court judgment in forcible entry and detainer case were sufficient to perfect her appeal, where clerks of both courts had refused to accept tenant's deposit four days after judgment was signed and tenant eventually made deposit with county court 50 days after judgment was signed. Vernon's Ann.Texas Rules Civ.Proc., Rule 749c.

Samuel T. Jackson, Amarillo, for petitioner.

Rex W. Easterwood, Hereford, for respondent.

OPINION

HECHT, Justice.

We address two issues of appellate procedure in this forcible entry and detainer case: whether petitioner's pauper's affidavit was sufficient to perfect her appeal from the judgment of the justice court to the county court under Texas Rule of Civil Procedure 749a,[1] and whether petitioner's deposit of one month's rent required to perfect her appeal under Rule 749c was timely. The county court held that petitioner's deposit was not timely, and dismissed petitioner's appeal for want of jurisdiction. Without addressing this issue, the court of appeals held that petitioner's affidavit was not sufficient to establish her inability to pay the costs of appeal, and affirmed the judgment of the county court. We disagree with both courts. Consequently, we reverse the judgment of the court of appeals and remand the cause to the county court for further proceedings.

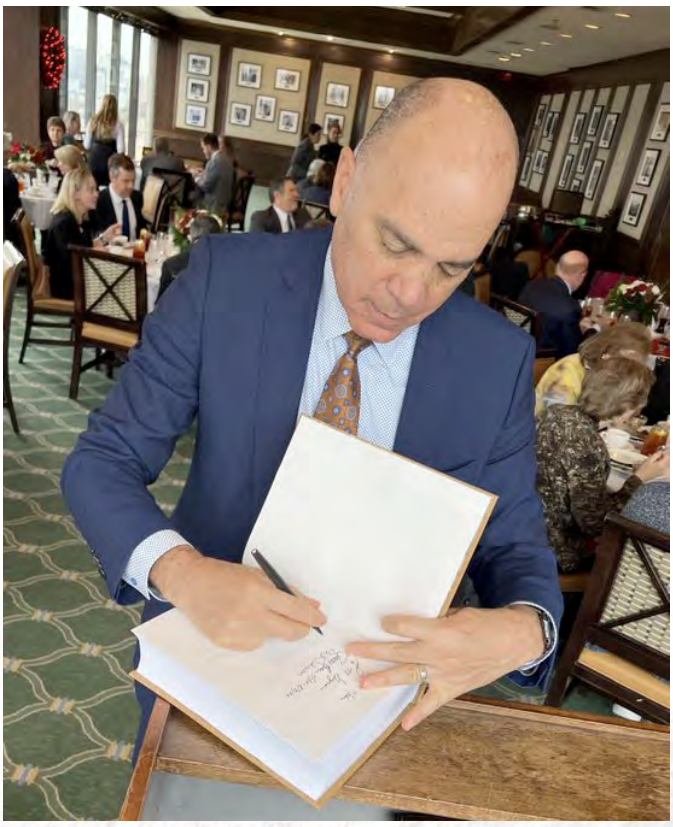
I

Blue Water Garden Apartments sued Opal Lee Walker to recover possession of and unpaid rent for an apartment which Blue Water rented to Walker. The justice court rendered judgment in favor of Blue Water for both possession of the apartment and unpaid rent. Walker then sought to appeal to the county court without filing the cost bond required by Rule 749.[2] To be

1. Except as otherwise noted, all references to rules are to the Texas Rules of Civil Procedure.

2. Rule 749 states in pertinent part:

A page from *Walker v. Blue Water Garden Apartments*
(highlighting added)



Former Texas Supreme Court Justices sign volumes of the Hecht Reports

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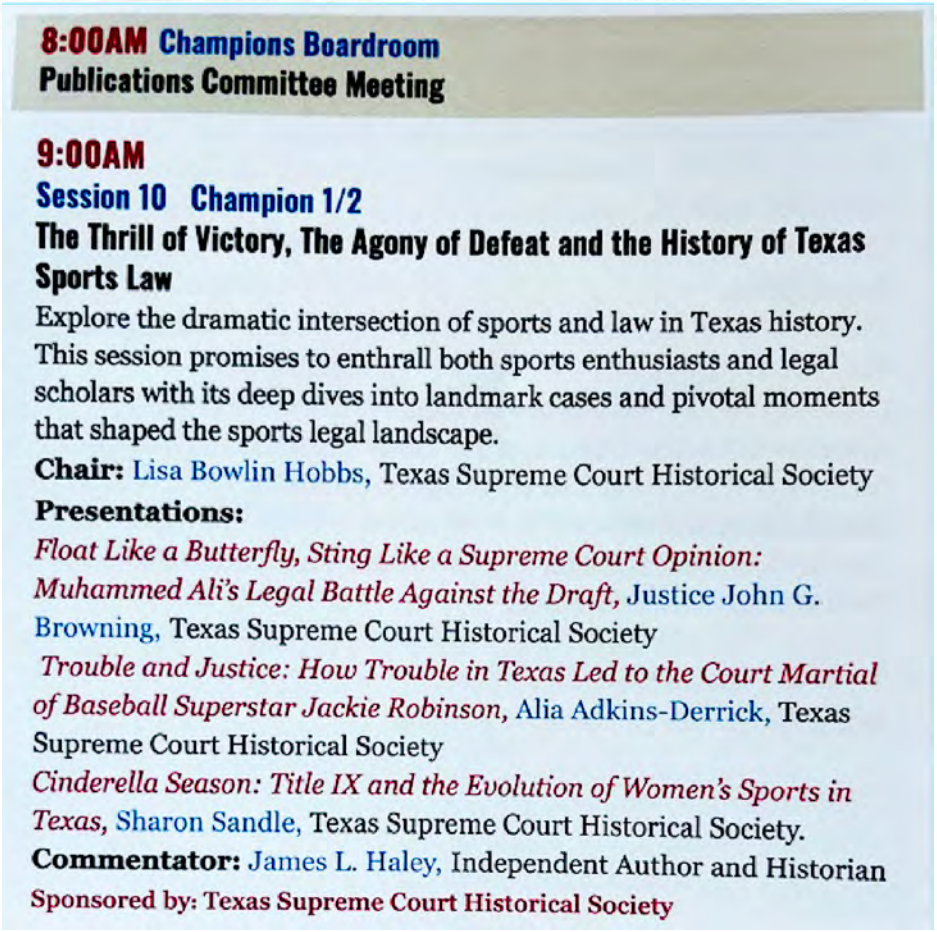
Texas Law's Wide World of Sports

By David A. Furlow

The Society attracted a large audience when it presented its 2025 panel program—*The thrill of victory, the agony of defeat and the history of Texas sports law*—at the Texas State Historical Association's 129th Annual Meeting in Houston. Our panelists re-examined the fascinating history of Texas sports law on the last day of February 2025. TSHA's annual meeting, the biggest and best historical conference in Texas, occurred at the Royal Sonesta Houston Conference Center, from February 26 through March 1, 2025 this year.

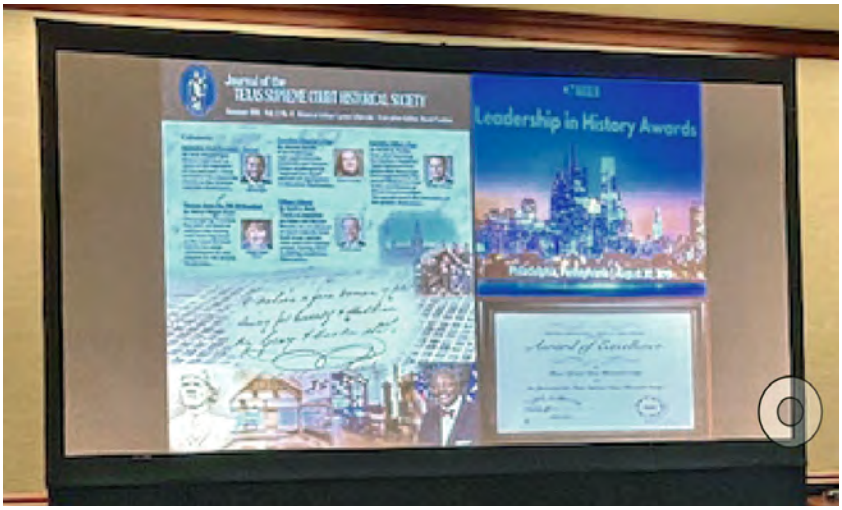

8:00AM Champions Boardroom
Publications Committee Meeting

9:00AM
Session 10 Champion 1/2
The Thrill of Victory, The Agony of Defeat and the History of Texas Sports Law
Explore the dramatic intersection of sports and law in Texas history. This session promises to enthrall both sports enthusiasts and legal scholars with its deep dives into landmark cases and pivotal moments that shaped the sports legal landscape.
Chair: Lisa Bowlin Hobbs, Texas Supreme Court Historical Society
Presentations:
Float Like a Butterfly, Sting Like a Supreme Court Opinion: Muhammed Ali's Legal Battle Against the Draft, Justice John G. Browning, Texas Supreme Court Historical Society
Trouble and Justice: How Trouble in Texas Led to the Court Martial of Baseball Superstar Jackie Robinson, Alia Adkins-Derrick, Texas Supreme Court Historical Society
Cinderella Season: Title IX and the Evolution of Women's Sports in Texas, Sharon Sandle, Texas Supreme Court Historical Society.
Commentator: James L. Haley, Independent Author and Historian
Sponsored by: Texas Supreme Court Historical Society

A TSHA signboard in front of the conference room advertised our Society's speakers' panel and presentations.

Our Society's President, Lisa Bowlin Hobbs, a board-certified Civil Appellate lawyer and the Founding Member of the premier appellate boutique, Kuhn Hobbs P.L.L.C., began our session. She discussed our society's important role in chronicling and publicizing the history of the Texas Supreme Court, the Texas judiciary, and Texas law. Her PowerPoint highlighted our publication of scholarly books, the 13-year story of the *Journal of the Texas Supreme Court Historical Society*, our society's leadership of the Taming Texas 7th Grade Texas History project, and other activities that make our society unique in the Texas historical community.

The Hon. John G. Browning, Justice for the Texas Court of Appeals for the Fifth Judicial District in Dallas and the Distinguished Jurist in Residence, Faulkner University's Thomas Goode Jones School of Law, presented "Float Like a Butterfly, Sting Like a Supreme Court Opinion: Muhammed Ali's Legal Battle Against the Draft." Justice Browning's story reflected Americans' evolving views of the nation's



President Lisa B. Hobbs told the audience about our Society's past, present, and publications.

Hon. John G. Browning

most controversial boxer, born Cassius Clay, who adopted the name Muhammed Ali. Justice Browning developed Ali's story against the backdrop of shifting support of and against the politically divisive Vietnam War.

Stripped of his title and facing imprisonment based on his conscientious-objector status, Muhammed Ali embarked on a legal journey from a Houston federal courtroom to the United States Supreme Court. Justice Browning described how Ali's legal team

The conviction was affirmed by the 5th Circuit in May 1968. Ali appealed to the U.S. Supreme Court. He was stripped of his title and his livelihood.

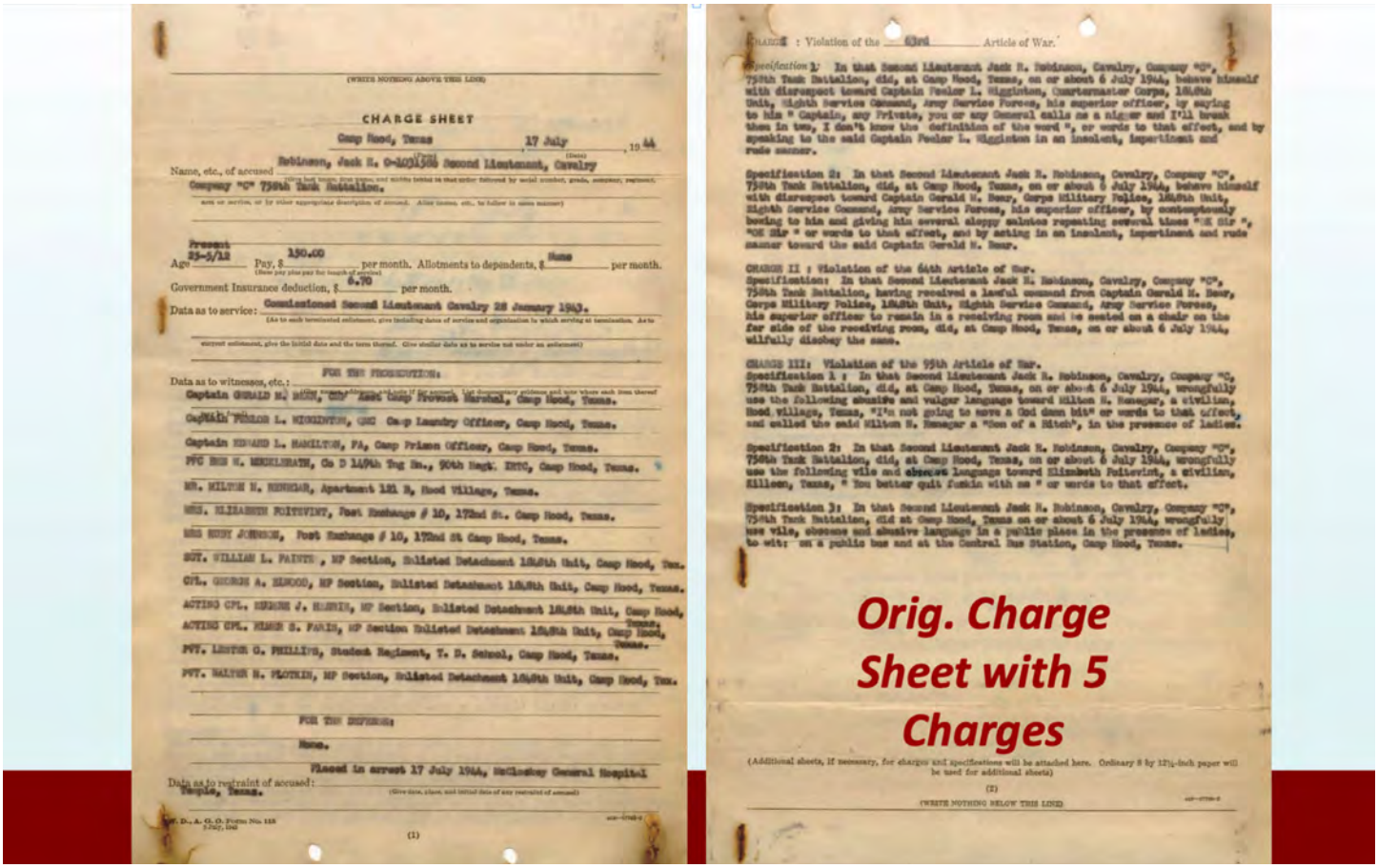
Ali's fate rested in the hands of the Court. And on June 28, 1971, the Court announced its decision in *Clay v. United States* – holding that Ali's conscientious objector status was wrongfully denied.

Clay v. United States articulated the standard for classification as a conscientious objector. Two years later, the U.S. formally ended the draft. Ali began the long road back to heavyweight contender status, and in October 1974, he defeated George Foreman to take back the title wrongfully taken from him 7½ years earlier.

won the case by focusing the high court's review on the case's complex procedural history.

Next, the Society's Vice-President, Alia Adkins-Derrick, directed the audience's attention to America's pastime, baseball, in her presentation "Trouble & Justice: How Trouble in Texas Led to The Court Martial Trial of Baseball Superstar Jackie Robinson." She re-examined the U.S. Army's court martial of Second Lieutenant Jack R. "Jackie" Robinson.

Alia Adkins-Derrick

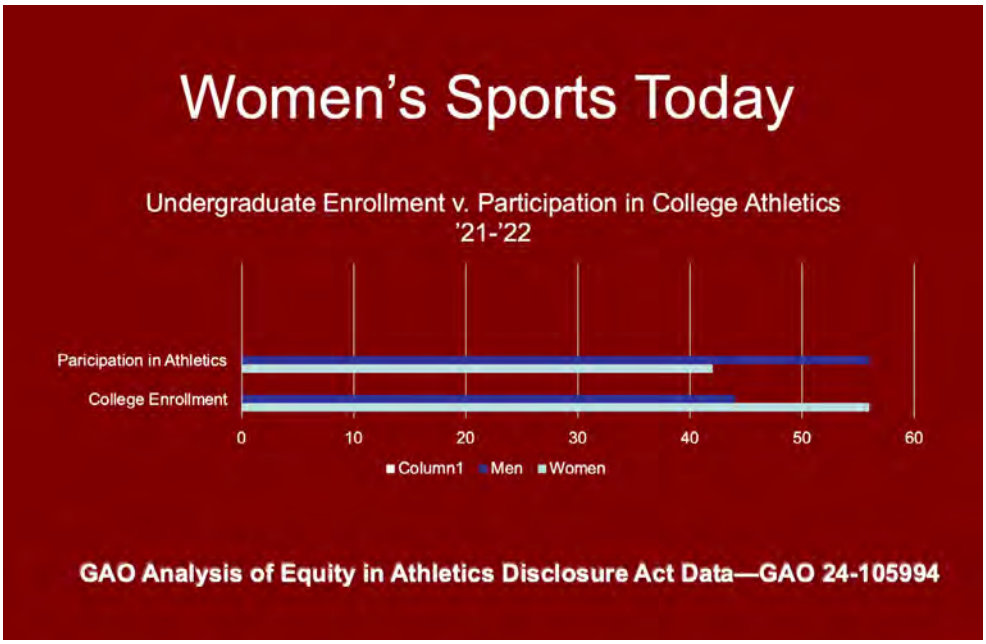


Baseball superstar Jackie Robinson took a courageous stand against the Jim Crow segregation that a number of states had imposed on America's African American soldiers on Army bases during World War II. She re-examined the facts, procedures, and outcome of Jackie Robinson's court martial at Fort Hood—and the legal victory that helped lead first to the integration of Major League Baseball and, second, to Jackie Robinson's Hall of Fame career. She presented the facts about Jim Crow laws that discriminated against Jackie Robinson, then re-examined the charges against him using photographs of those charges. She discussed the evidence that went to trial, the cross-examination of witnesses, and the outcome that resulted when four members of the jury found Robinson not guilty.

Our society's Executive Director, Sharon Sandle, presented an important story about a federal program that has transformed sports for girls and women in Texas: "Cinderella Season: Title IX and the Evolution of Women's Sports in Texas." In the fifty years since the implementation of

Sharon Sandle

Title IX, women's participation in sports has soared. In 1972, there were 294,015 opportunities for women and girls to participate in sports; by 2020, that number exceeded 3 million. Girls made up only 7% of high school athletes and 15% of college athletes in 1972, but today, they constitute more than 40% of athletes at both levels. Despite these gains, significant inequities persisted.



Against this backdrop Sharon Sandle told stories about legal complaints and lawsuits that focused on the right of girls and women to participate in sports competitions and on high school and college teams. The state has been both a battleground for Title IX's implementation and a proving ground for its athletes. Texas is home to some of the most iconic female athletes of the last half-century.

The triumphant stories of Simone Biles, Sheryl Swoopes, Judy Conradt, Brittney Griner, and Mia Hamm are paralleled by the stories of lesser-known figures like Tina Bennett and her fellow athletes at West Texas State University, coaches Marlene Stollings and Jan Lowrey, and parent-advocate Kevin McCully. Their struggles, triumphs, and failures paint a picture of the ongoing struggle for equality in Texas sports.

Fifty years after the introduction of Title IX, 86% of NCAA institutions still offer higher rates of athletic opportunities to male athletes relative to their enrollment, and male athletes receive over $250 million more in athletic scholarships than their female counterparts. But the Cinderella story continues as girls and women consolidate their hard-won gains in junior high schools, high schools, and colleges across the nation.

Renowned Texas historian James L. "Jim" Haley wrapped up the program by providing his own observations about the nature of history and the challenges to truth-telling in the early twenty-first century. Jim Haley has long served as the Society's celebrated author with extensive works on Texas law and history, including *The Texas Supreme Court: A Narrative History, 1836-1986* (Austin: Univ. of Texas, 2013) and almost a dozen other novels and non-fiction narratives. Mr. Haley has also co-authored the *Taming Texas* book series with co-author Marilyn Duncan, namely, *Taming Texas: How Law and Order Came to the Lone Star State* (Austin: Texas Supreme Court Historical Society, 2016), *Taming Texas: Law and the Texas Frontier* (Austin: Texas Supreme Court Historical Society, 2017), *Taming Texas: The Chief Justices of Texas* (Austin: Texas Supreme Court Historical Society, 2020), and *Taming Texas: Women in Texas Law* (Austin: Texas Supreme Court Historical Society, 2023).

James L. "Jim" Haley

Jim Haley did a fine job of fielding audience questions to our panelists, individually and as a panel. Jim engaged our audience in a discussion of how courthouse history about sports can raise questions about the relationships among celebrity athletes, civil rights, and the military. Our panelists remained together to take questions from the audience after the program ended. It was a great session that exemplified our Society's core mission of educating the public about the judicial branch and its role in the development of Texas. Members of the audience expressed their gratitude for the thoroughness of our panelists' research and the professionalism of their presentations.

The Society will present another panel at TSHA's 130th Annual Meeting on March 3 – March 7, 2026 in Irving. TSHA's annual program committee is requesting proposals for sessions and papers. This Society will answer that call.

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And the 2025 Larry McNeill Research Fellowship in Texas Legal History goes to... Justice John G. Browning

Article and photos by David A. Furlow

Justice Ken Wise, one of our Society's trustees, presided over TSHA's 2025 Fellows and Awards Luncheon.

The Texas State Historical Association awarded Texas Court of Appeals for the Fifth Judicial District (Dallas) Justice John G. Browning (ret'd) the 2025 Larry McNeill Fellowship in Legal History during TSHA's Fellows and Awards Luncheon. This is the latest fellowship TSHA has awarded since our Society first sponsored the Larry McNeill Research Fellowship in Texas Legal History seven years ago. TSHA awards the fellowship annually to a scholar in recognition of that scholar's submission of the best research proposal on some aspect of Texas legal history.

Justice Ken Wise, Texas Court of Appeals for the 14th District, and the only two-term President in TSHA's history, presented the fellowship award. It was one of more than ten fellowships and other awards that Justice Wise or TSHA Executive Director J.P. Bryan, Jr. presented at the awards luncheon. TSHA awarded the Fellowship to Justice Browning based on his submission of "Forgotten Firsts: Chronicling Texas's Black Legal Pioneers." The submission reflects Justice Browning's deep

interest in African American legal history in Texas and beyond.

Justice Browning is the Editor-in-Chief, *Texas Supreme Court Historical Society Journal*; a Trustee of the Texas Supreme Court Historical Society; a Distinguished Jurist in Residence at Faulkner University Thomas Goode Jones School of Law; former Justice on Texas' Fifth District Court of Appeals; and the author of five books and more than sixty law review articles.

Congratulations to Justice Browning!

Justice Wise congratulates Justice Browning.

Left to right: Alia Adkins-Derrick, TSCHS Vice-President; David A. Furlow, *Journal* Emeritus Editor; TSCHS President Lisa Bowlin Hobbs; Justice John Browning (with the award); TSCHS Executive Director Sharon Sandle; and TSHA President Justice Ken Wise.

TSHA is now accepting applications for the 2026 Larry McNeill Fellowship

Applications are now being accepted for the Texas State Historical Association's 2026 Larry McNeill Research Fellowship in Texas Legal History. Six years ago, our Society began working 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.

Competition for the next Larry McNeill Fellowship is open to any applicant pursuing a legal history topic, including judges, lawyers, college students, and academic and grass-roots historians. The deadline for submission is November 15, 2025. 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. TSHA has set a November 15, 2025 deadline for submissions. 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/awards/larry-mcneill-research-fellowship-in-texas-legal-history or call TSHA Annual Meeting Coordinator Angel Baldree at 512-471-2600.

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Sharon Sandle Receives 2025 Pat Nester Innovation in Professional Development Award

By Will Korn

This article about our own Executive Director of the Texas Supreme Court Historical Society was published on the Texas Bar Blog and has been reprinted with permission.

Sharon Sandle, director of the Law Practice Resources Division of the State Bar of Texas, is the recipient of the 2025 Pat Nester Innovation in Professional Development Award. This award was established by the State Bar of Texas CLE Committee in 2017 and recognizes an individual whose innovative contributions have substantially advanced continuing legal education in Texas.

Sharon holds the award alongside Pat Nester.

Under Sandle's direction, the State Bar's Law Practice Resources Division comprises the Texas Bar Books legal publishing program, the Law Practice Management Program, and the Texas Opportunity & Justice Incubator program (TOJI). Under her guidance, the division has shifted from traditional publishing to a digital-first approach, including the launch of TexasBarPractice.com, a hub for the Texas Bar Books legal publishing program and practice management resources. Sandle was also instrumental in the early development of TOJI and its transition to a virtual program with a statewide reach.

A graduate of the University of Texas School of Law, Sandle serves as the executive director of the Texas Supreme Court Historical Society and on the executive committee of the Association for Continuing Legal Education (ACLEA).

Sharon smiles alongside another friend: Chloe.

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Call for Nominations: 2025 Chief Justice Jack Pope Professionalism Award

The Texas Center for Legal Ethics is now accepting nominations for the 17th annual Chief Justice Jack Pope Professionalism Award. The Award is presented to an appellate lawyer or judge who epitomizes the highest level of professionalism and integrity.


Chief Justice Jack Pope

The Award honors one of the Center's three founders, former Chief Justice Jack Pope, who was the recipient of the inaugural Award in 2009. Both active and retired lawyers and judges are eligible. The 2025 Pope Award will be presented at the 30th Annual John Hemphill Dinner on Friday, September 5, 2025, in the Grand Ballroom of the Four Seasons Hotel in Austin, Texas.

Nominations should include a one-page explanation of the nominee's qualifications as well as a bio or C.V.

Deadline for nominations: July 1, 2025.

Send nominations to:
The Honorable Audrey Moorehead
Texas Center for Legal Ethics
1414 Colorado, 4th Floor
Austin, TX 78701
info@legalethicstexas.com

https://www.legalethicstexas.com/chief-justice-jack-pope-professionalism-award/

Texas Center for LEGAL ETHICS
Professionalism in Practice™

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Mark Your Calendar for the 2025 John Hemphill Dinner

Justice Craig Enoch

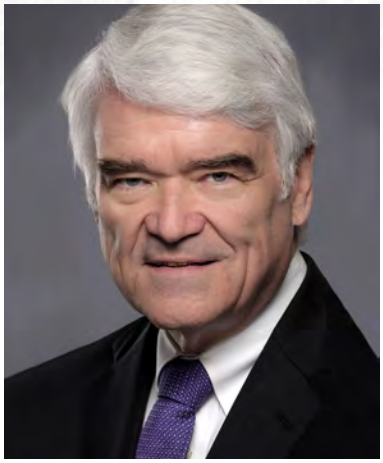
Justice Brett Busby

The 30th Annual John Hemphill Dinner will be held on Friday, September 5, 2025, at 7:00 p.m. in the Grand Ballroom of the Four Seasons Hotel in Austin.

This year's dinner program will be focused on "Judiciary and the Arts." The program will be emceed by Justice Craig Enoch and the panel will include Chief Justice Nathan Hecht, Justice Brett Busby, and Chief Judge Jennifer Walker Elrod.

The Texas Center for Legal Ethics will present the Jack Pope Professionalism Award and the Texas Supreme Court Historical Society will present their President's Award.

Call Society Administrative Coordinator Mary Sue Miller at (512) 481-1840 for availability.



Chief Justice Nathan Hecht

Chief Judge Jennifer Walker Elrod

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THE TEXAS SUPREME COURT HISTORICAL SOCIETY

DISCLAIMER

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

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

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2024-25 Membership Upgrades

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

HEMPHILL FELLOW

Lauren and Warren W. Harris

GREENHILL FELLOW

David A. Furlow

Joe Greenhill

Hon. Thomas R. Phillips

TRUSTEE

Hon. April Farris

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2024-25 New Member List

The Society has added 34 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.

GREENHILL FELLOW

Hon. Christina Bryan
and
J. Hoke Peacock III

Hon. John Cayce
Joshua and Mindy Davidson
Mary T. Henderson

Russell S. Post
Tracy C. Temple

TRUSTEE

Heriberto “Eddie” Morales, Jr.

Amanda G. Taylor

J. Joseph Vale

PATRON

Brandon Duke

CONTRIBUTING

Jason Bramow
Kirk Cooper

Paul Gaytan
Danica Milios
Christine Nowak

Frank Rynd
Dwayne Simpson

REGULAR

Annie Adams*
Laura Beth Bienhoff*
Jeffrey Carr*
Steve Chiscano
Colton Cox*
Hannah Fassler*
Hartson Fillmore*
Garrett Gray*

Aiden Henderson*
Brandon King
Margaret Kohl*
Will Kovach*
Elizabeth Kreager*
Spencer Lockwood*
C. Frank Mace
Benton McDonald*
Macy Merritt*

Caleb Morrison*
Mohmed Patel*
Richard Schechter
Courtney SoRelle*
Martha Vazquez*
Alison Welch*
Madeline White*
Rachel Wolff*

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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 5/25

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 5/25