



# Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Spring 2022 Vol. II, No. 3 Editor Emerita Lynne Liberato Editor-in-Chief Hon. John G. Browning

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**By Thomas S. Leatherbury**

In this Journal we celebrate Asian American and Pacific Islander Heritage Month by showcasing key figures and events in Asian American legal history in Texas.

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Thomas S. Leatherbury

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This May the Society chose Galveston for our Spring Board of Trustees meeting and General Membership meeting.

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Sharon Sandle

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In the past six years, Taming Texas has reached over 22,000 Houston-area students.

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Our state's history with the Asian American community is a complicated and often shameful one, in which the legal system has played a critical role.

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John G. Browning

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### Wellington Yee Chew – Yee Yuen Chew

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Any biography that simply starts with Chew's standing as the first Chinese American lawyer licensed in Texas would neglect the impact made by the women in his life.

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Wellington Yee Chew

### "Pershing's Chinese"

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Wellington Chew's family of merchants emigrated to the United States from Mexico after supplying Gen. Pershing's "Punitive Expedition" during its pursuit of Pancho Villa.

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### This Land is *Not* Your Land:

### The Texas Alien Land Law of 1921

**By Hon. John G. Browning**

Even for devotees of Texas history, it may have escaped attention that the Lone Star State was invaded in late 1920 and early 1921. The "invasion," according to newspapers, was the arrival of two Japanese families in Harlingen.

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American Legion members protested the arrival of Japanese immigrants.

## Features

### Judicial Profile of Hon. James Ho

**By Chad Baruch**

Most Texas appellate lawyers know that James C. Ho is the first Asian American judge to serve on the U.S. Court of Appeals for the Fifth Circuit.

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Judge James C. Ho

### Profile of Judge Karen Gren Scholer

**By Meyling Ly Ortiz and Stacey Cho Hernandez**

When the U. S. Senate voted 95-0 to confirm her, Judge Scholer became the first judge of Asian descent to serve as a federal district court judge in Texas.

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Judge Karen Gren Scholer

### Meet Judge R. K. Sandill, a Trailblazer for the South Asian Legal Community

**By Punam Kaji Bains**

Judge Ravi K. Sandill of the 127th District Court of Harris County embodies the term trailblazer.

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Judge R.K. Sandill



## [Harry Gee, Jr.: A Profile](#)

**By Daniel David Hu**

When Harry Gee, Jr. opened his own practice in 1966 he was probably the first Houston Asian lawyer relying entirely on his law practice for income. [Read more...](#)



Harry Gee, Jr.

## [How a Tokyo Lawyer Saved the Texas Rice Industry](#)

**By Hon. John G. Browning**

Seito Saibara didn't leave his mark on the legal system. What he *did* do, however, was save the Texas rice industry. [Read more...](#)



Seito Saibara

## **Book Reviews**

### [Book Review—Juneteenth: The Story Behind the Celebration](#)

**By Hon. John G. Browning**

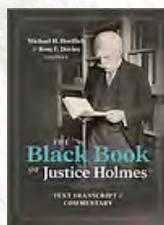
*Juneteenth* tells the story behind General Granger's General Orders No. 3—the "Juneteenth Order" read aloud to the formerly enslaved in Galveston on June 19, 1865. [Read more...](#)



### [Book Review—The Black Book of Justice Holmes: Text Transcript and Commentary](#)

**By Hon. John G. Browning**

Justice Oliver Wendell Holmes kept track of all the books he read for more than fifty years, filling a volume he called his "Black Book" with lists organized by year. [Read more...](#)



## **News & Announcements**

### [And the 2022 Larry McNeill Research Fellowship in Texas Legal History goes to . . . Daniel Olds](#)

**Article and photos by David A. Furlow**

Daniels' proposed research-topic is "The Influence of Statutes & Legislation on the History & Development of the Common Law in Texas & How Statutes Came to Rule." [Read more...](#)



Daniel Olds

### [Our Society Shared Stories About Texas's First Black Lawyers at TSHA's 2022 Annual Meeting](#)

**By David A. Furlow**

The Society presented a special program: "We Stand on Their Shoulders: The Lives and Legacies of Texas' Earliest Black Lawyers." [Read more...](#)



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

The Hall of Fame posthumously honors advocates and judges who made a lasting mark on appellate practice in the State of Texas. [Read more...](#)



## [Lynching in Texas Project Overview](#)

**By Jeffrey L. Littlejohn**

Littlejohn and his co-authors discovered that reliable online information about lynching in Texas was difficult to find. They decided to build a website to present the facts to the public. [Read more...](#)



From lynching-intexas.org

## [Announcing the 27th Annual John Hemphill Dinner](#)

On September 8, the Society will hold its Hemphill Dinner live at the Four Seasons Hotel in Austin, featuring "A Conversation with Greg Stohr." A 1995 graduate of Harvard Law School, Mr. Stohr has covered the Supreme Court for Bloomberg News since 1998. [Read more...](#)



Greg Stohr

## **Membership & More**

### [Officers, Trustees & Court Liaison](#)

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Thomas S.  
Leatherbury

# Message from the *President*

**W**elcome to the Spring 2022 issue of the Texas Supreme Court Historical Society Journal! This quarter our Journal is proud to help celebrate Asian American and Pacific Islander Heritage Month by showcasing key figures and events in Asian American legal history in Texas.

In this issue, you will find numerous profiles of legal trailblazers from the Asian American communities. Retired El Paso Court of Appeals Chief Justice David Wellington Chew has contributed a moving tribute to his father, Wellington Chew. Mr. Chew Sr. was the first Asian American Lawyer in Texas, blazing a trail for so many others to follow.

Chad Baruch offers us a profile of the Hon. James Ho, the first Asian American judge to serve on the Fifth Circuit, and Meyling Ly Ortiz and Stacey Cho Hernandez have written an inspiring profile of their mentor, Hon. Karen Gren Scholer, the first Asian American U.S. district judge in Texas.

In addition, the first South Asian state court judge in Texas, the Hon. R.K. Sandill, is profiled by Punam Kaji Bains, and Daniel David Hu gives us an in-depth profile of Houston legal pioneer and past president of the National Asian Pacific American Bar Association, Harry Gee.

The Journal's Editor-in-Chief, the Hon. John G. Browning, has written a fascinating article about the Texas Alien Land Law of 1921 and in "Pershing's Chinese" provides historical background for the circumstances around the immigration of families like that of Wellington Chew's. He also offers us two book reviews, as well as a thought-provoking article, "How a Tokyo Lawyer Saved the Texas Rice Industry."

We also feature wonderful, picture-rich coverage by Editor Emeritus David A. Furlow of the 2022 Texas State Historical Association Conference, including the presentation of this year's Larry McNeill Research Fellowship in Texas History and the Society's Panel Program "We Stand on Their Shoulders: The Lives and Legacies of Texas' Earliest Black Lawyers." What a wonderful way to showcase the work of the Society!

Texas has many, many rich and varied strains of legal history. The area that is closest to my heart and to my law practice, both at Vinson & Elkins and in the First Amendment Clinic at the SMU

Dedman School of Law, is the development of Texas's First Amendment jurisprudence. Texas has had more than its share of headline First Amendment cases – from *Roe v. Wade* to *Whole Women's Health*, from *Texas v. Johnson* to *Lawrence v. Texas*, our state has influenced the national conversation about the value of free speech and privacy. On the state level, we've seen big verdicts in libel cases before Tort Reform, abusive lawsuits filed to suppress speech, and journalists held in contempt and sometimes jailed for refusals to testify. We've also seen responsive, pro-press legislation, including laws providing for caps on exemplary damages, for interlocutory appeals from the denial of motions for summary judgment in libel cases, for a reporter's qualified privilege to decline both to reveal a source's identity and to produce unpublished notes and materials, and for quick dismissals of meritless lawsuits filed to retaliate against publishers and speakers. Recently, we've had an explosion of state laws staking out very unusual First Amendment positions so we can be sure that Texas will continue to influence the national debate. From the Star-Spangled Banner Protection Act (compelling sports teams with government contracts to play the national anthem before every game or match) to laws prohibiting government contractors from "boycotting" Israel, fossil fuel companies, and firearms businesses to laws micromanaging the largest social media platforms, we will have no shortage of new First Amendment decisions in our future.

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

We hope you enjoy this issue!

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Sharon Sandle

## A Historical Location for *Making Plans for the Future*

**G**alveston is a place full of history. While most Texans are aware of Galveston's history as an important port, as the location for the final emancipation of enslaved people on June 19, 1865, and as the site of devastation from the hurricane of 1900, Galveston also has significance for Texas lawyers. In 1882, hundreds of Texas lawyers convened in Galveston to establish the volunteer organization that was the precursor to the State Bar of Texas.<sup>1</sup>

On May 12, 2022, the Texas Supreme Court Historical Society chose Galveston as the site for our Spring Board of Trustees meeting and General Membership meeting. The Bryan Museum generously provided the Society with a venue for the meeting, and we met in person for the first time since October of 2019. It was my pleasure to give the Board of Trustees an update on the operations of the Society, and I was pleased to be able to report as follows:

The last two years have been as challenging for the Texas Supreme Court Historical Society as they have for everyone, but the staff and leadership of the Society have met those challenges with ingenuity and perseverance. I'm pleased to report that the Society has been able to maintain its day-to-day operations, hold its Board of Trustees meetings and Hemphill Dinner, publish the Society's Journal, and participate in events like the Texas State Historical Association Annual Meeting. Additionally, the Society has made significant improvements to its operations over the past year despite the challenging circumstances.

### **Remote Operations**

The Society closed its physical offices in the Law Center and began working remotely on March 13, 2020. In March 2022, the Law Center reopened fully to staff. The Society's staff currently works a hybrid schedule that involves time in the office and time working remotely.

The State Bar has hired a new archivist, Trina Purcell, who has been working with the Archives committee to assess the materials in the Society's collection and begin acquiring new material for the collection.

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<sup>1</sup> You can access the 1882 Proceedings of the Texas Bar Association on Google's digital book repository [here](#).

## HeinOnline

The Society has entered into an agreement with HeinOnline, an online database of journals, to include the Society's Journal in the database. David Kroll, our production manager for the Journal, sent HeinOnline all past issues of the Journal, and they are now included in the database. As new issues are released, they will be sent to HeinOnline to be included. HeinOnline has asked us to begin providing the Journal in XML format so that metadata can be included in the files. The inclusion of metadata is a best practice for digital publications and will make our material easier to find in searches. David Kroll has been consulting with Texas Bar Books staff on how to convert the Journal into XML format and how to include metadata in the files.

## Financial Health

Last year the Society's Board of Directors approved a Financial Control Policy for the Society. This was our first year operating under the new policy, and it is a significant advance in protecting the financial health and transparency of the Society. Over the next year, the Society will implement a schedule for regular audits.

## Looking Ahead

While the unusual circumstances of the global pandemic that began in 2020 are moving toward resolution, there are other challenges that the Society plans to address in the coming months:

- The Society's website will be updated to make it easier for members to join and renew online and to make it easier for staff to quickly update information on the website.
- We are looking to procure support for the expansion of the Taming Texas Judicial Civics and History Project.
- Since the Society's last strategic planning effort in 2016, many of the goals identified at that time have been achieved. The Society will soon revisit the 2016 report and update it to identify the Society's priorities for the future.

The Texas Supreme Court Historical Society continues to be a dynamic and focused organization, that strives to improve its processes and policies while preserving its original mission. We appreciate the support we have enjoyed and continue to aim to live up to and surpass expectations.

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# Fellows Column

By David J. Beck, Chair of the Fellows

Photo by Alexander's Fine Portrait Design-Houston



Our three prior acclaimed judicial civics and history books, *Taming Texas: How Law and Order Came to the Lone Star State*; *Law and the Texas Frontier*; and *The Chief Justices of Texas* have been taught in schools since 2016. The Houston Bar Association (HBA) is back in the classrooms this Spring using our Taming Texas materials to teach students in Houston-area schools. It takes over a hundred volunteers to reach the thousands of students we teach each year, and we could not implement this vast program without the HBA's invaluable support. We appreciate the HBA and its President, Jennifer Hasley, partnering with us on Taming Texas again this year.

In the past six years, Taming Texas has reached over 22,000 Houston-area students. This year, the HBA is visiting eight schools and there will be forty-one classes, which represents eighty-two in-person lessons. This is about double the number of classes the HBA was able to conduct last year, and this year all classes will be in-person. "One of my favorite aspects of the Teach Texas program is that the seventh graders gain exposure to lawyers and judges who are at the top of their profession and great role-models. Often these students have either had no experience with the legal profession, or their experience has been negative because it involves a divorce or criminal issue," said Richard Whiteley, HBA program co-chair. "In addition to teaching them the content of the program, being there, answering their questions about being a lawyer, and setting an example for the students is just as important."

Past co-chairs of the HBA program include Society Trustees Justice Brett Busby, Justice Ken Wise, and Judge Jennifer Walker Elrod. We appreciate their service as co-chairs and longtime supporters of the program. If you would like to participate in this important program, please contact the HBA or one of the co-chairs of the program.

The manuscript is complete on our fourth book, which will be entitled *Women in the Law*. This book will feature stories about some of the important women in Texas legal history. In addition to biographical information, the book will cover associated legal and political issues. Some of the judges and lawyers we plan to feature include: Hon. Sarah T. Hughes, Hon. Barbara Jordan, Hon. Ruby Kless Sondock, Hon. Eva Guzman, Louise Raggio, and Hon. Carolyn Wright. Chief Justice Hecht has recently written the foreword for this new book, as he has done for the prior three books. We appreciate the support for this important project given by Chief Justice Hecht and the

entire Court. Jim Haley and Marilyn Duncan are the authors of all the Taming Texas books.

Our exclusive event, the annual Fellows Dinner, is one of the benefits of being a Fellow. At the dinner each year, the Fellows gather with the Justices of the Texas Supreme Court for a wonderful evening of history, dinner, and conversation. Because of the pandemic, we were not able to have the dinner this year. Nevertheless, we are already working on plans now for our next event at a unique Austin venue. Further details will be sent to all Fellows.

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

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

## FELLOWS OF THE SOCIETY

### Hemphill Fellows

(\$5,000 or more annually)

David J. Beck\*  
Joseph D. Jamail, Jr.\* (deceased)

Thomas S. Leatherbury  
Richard Warren Mithoff\*

### Greenhill Fellows

(\$2,500 or more annually)

Stacy and Douglas W. Alexander  
Marianne M. Auld  
Robert A. Black  
Hon. Jane Bland and Doug Bland  
E. Leon Carter  
Michael Easton  
Harry L. Gillam, Jr.  
Marcy and Sam Greer  
William Fred Hagans  
Lauren and Warren W. Harris\*  
Thomas F.A. Hetherington  
Jennifer and Richard Hogan, Jr.  
Dee J. Kelly, Jr.\*  
Hon. David E. Keltner\*  
Lynne Liberato\*  
Mike McKool, Jr.\*

Ben L. Mesches  
Jeffrey L. Oldham  
Hon. Harriet O'Neill and Kerry N. Cammack  
Hon. Jack Pope\* (deceased)  
Shannon H. Ratliff\*  
Harry M. Reasoner  
Robert M. Roach, Jr.\*  
Leslie Robnett  
Professor L. Wayne Scott\*  
Reagan W. Simpson\*  
Allison Stewart  
Kristen Vander-Plas  
Peter S. Wahby  
Hon. Dale Wainwright  
Charles R. Watson, Jr.  
R. Paul Yetter\*

\*Charter Fellow

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Hon. John G.  
Browning

## Celebrating *Asian-American* Legal History in Texas

**M**ay marks the observance of Asian American and Pacific Islander Heritage Month, and our Journal is proud to help celebrate it by showcasing key figures and events in Asian American legal history in Texas. Our state's history with the Asian American community is a complicated and often shameful one, in which the legal system has played a critical role. Chinese contract laborers first came to Texas in January 1870 to work on the Houston and Texas Central Railroad. Their labor on the Houston-Dallas line was abruptly terminated less than a year later, and the workers ultimately had to sue for unpaid wages. But other waves of railroad laborers would follow, and by 1890, the Chinese population statewide numbered 710.

Having to sue for wages was only the first of a series of harsh interactions with the legal system and the prejudices of American society at the time. Judge Roy Bean, the storied frontier justice of the peace known as the "Law West of the Pecos," once infamously dismissed the charges against a white track worker who had killed a Chinese laborer because he "couldn't find anything in his lawbooks that made it illegal to kill a [Chinese person]." With the passage of the Chinese Exclusion Act in 1882, further immigration from China came to a halt. The Scott Act of 1888 prohibited Chinese laborers who had temporarily left the United States from returning—even those who possessed reentry permits. The Geary Act of 1892 extended Chinese exclusion for another ten years; it would be renewed again in 1902 before being renewed in perpetuity in 1904. Not until the Magnuson Act of 1943 would Chinese Americans living in the United States be permitted to become naturalized citizens. Other acts of discrimination continued with the passage of "alien land laws" in Texas and more than a dozen other states. And in the 1927 case of *Gong Lum v. Rice*, the U.S. Supreme Court upheld a Mississippi Supreme Court decision that held Chinese Americans were "colored" and therefore had no right to attend a "white" school.

It would be easy to say anti-Asian discrimination is a thing of the past. After all, in 2011–2012, Congress condemned the Chinese Exclusion Act and affirmed our nation's commitment to civil rights protections; cities like San Francisco and San Jose followed suit in 2021 and 2022. However, when elected officials like Rep. Marjorie Taylor Greene (R – GA.) feel no compunction about using offensive slurs in referring to Asian Americans, and when members of the Asian

American community are victims of xenophobic attacks nationwide, it is clear that we have a long way to go.

And despite the success stories embodied in the judicial trailblazers we feature in this issue, Asian Americans too often remain an invisible minority in contemporary discourse on diversity in the legal profession. According to ABA statistics, from 2011 to 2019, Asian American student enrollment in law schools declined by twenty-eight percent. In a 2017 study conducted by the National Asian Pacific American Bar Association and Yale Law School, it was revealed that while Asian Americans have penetrated virtually every sector of the legal profession, they are “significantly underrepresented in the leadership ranks of law firms, government, and academia.” As of the date of that study, for example, Asian Americans comprised only three percent of the federal judiciary and only two percent of state judges.

The judicial pioneers in this issue demonstrate that while Asian Americans have long faced exclusion from the legal profession, when provided the same opportunities as others, they have been just as successful as architects and practitioners of the law rather than as subjects of it. In this issue, we look at the tradition of familial success established by Texas’ first Asian American lawyer, Wellington Chew, thanks to the moving profile contributed by his son, retired El Paso Court of Appeals Chief Justice David Wellington Chew. We’re also privileged to share with you profiles of the Hon. James Ho, the first Asian American judge to serve on the Fifth Circuit; the Hon. Karen Gren Scholer, first Asian American U.S. district judge in Texas; the Hon. R.K. Sandill, first South Asian state court judge in Texas; and Houston legal pioneer and past president of the National Asian Pacific American Bar Association, Harry Gee. We gratefully acknowledge the support of the leadership and members of the Asian Pacific Interest Section of the State Bar of Texas, including its Chair, Amar Raval, and contributing authors Daniel Hu, Punam Kaji Bains, Meyling Ly Ortiz, and Stacey Cho Hernandez.

We hope you enjoy this issue.

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# Wellington Yee Chew – Yee Yuen Chew

By Chief Justice David Wellington Chew

**A**ny biography that simply starts with Wellington Yee Chew's (Yee Yuen Chew) standing as the first Chinese American lawyer licensed in Texas, according to the State Bar of Texas, would neglect the impact made by the women in his life, especially three: his mother, Herlinda Perry Chew, his eldest sister, Josephine Chew Wong, and his wife, Patricia Howe Chew. And then, there is the heavy emotional and psychological burden of the Chinese Exclusion Act and World War II and their concussion that foretold if not profoundly affected his life and legal career.



Wellington Yee Chew

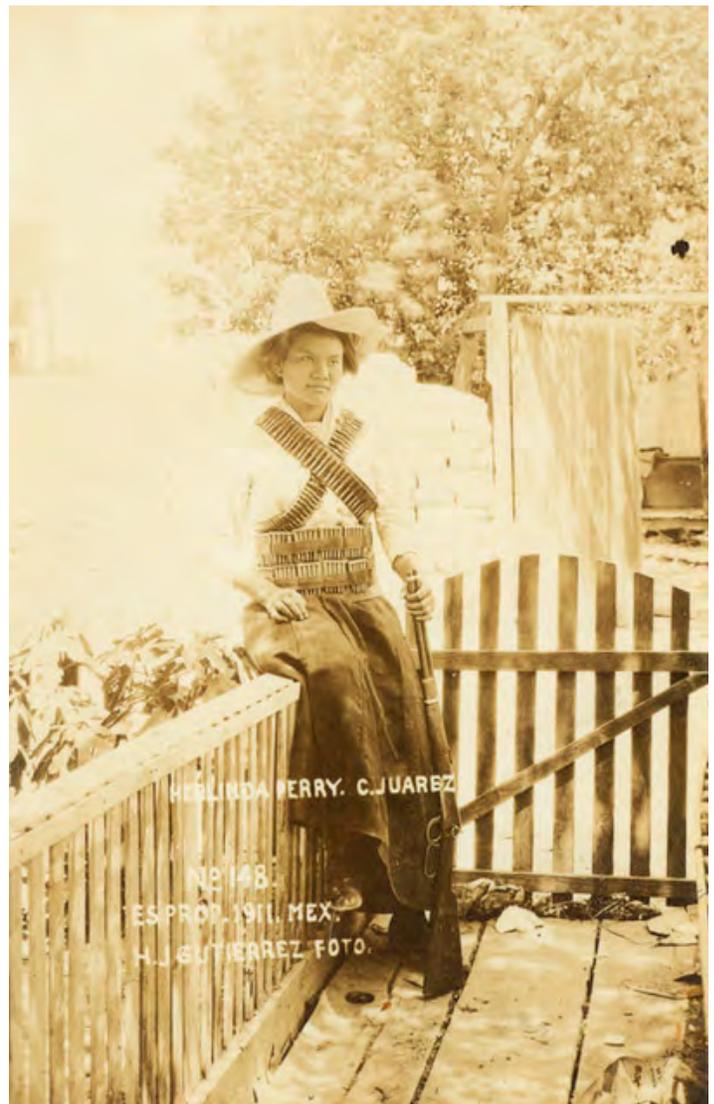
Wellington was born on December 10, 1921 in Cd. Juarez, Chihuahua, Mexico. This desert city at the foot of the Rocky Mountains in northern Mexico is on the Rio Grande opposite El Paso, Texas. The arrival of the Southern Pacific railroad to El Paso in 1881, that completed the southern transcontinental route, brought hundreds of Chinese laborers who stayed in either El Paso, then only a small village of 750 inhabitants or in Cd. Juarez with over 5,000 residents, and created the largest Chinese colony in Texas, though most would eventually move east and north to San Antonio and beyond.<sup>1</sup>

His mother, Herlinda Perry Chew (Sun Far Wong), was born in Guadalajara, Jalisco, Mexico on March 26, 1894. Her Chinese father, whose Chinese family name was Wong, immigrated to Mexico from Guangzhou, China with the adopted name of a sponsoring Baptist missionary -- Charles V. Perry.<sup>2</sup> Her mother, Francisca Vasquez, was an indigenous Indian from Southern Mexico, who died soon after Herlinda's birth. Wellington's father was Yee Wing Chew who was also born in Guangzhou in about 1889 and sojourned to Mexico, where he arrived in Cd. Juarez in about 1905, and where he adopted the first name of Antonio.

Herlinda moved to Juarez with her father and his next wife sometime before the November 1911 Battle of Juarez, the beginning armed conflict of the Mexican Revolution. She was 16 years old

<sup>1</sup> "The Chinese in El Paso," Nancy Farrar, *Southwestern Studies Monograph* No 33, Texas Western Press, 1972.

<sup>2</sup> "Mrs. Chew Look," H.A. Lamb, *El Paso Morning Times*, June 27, 1919, p. 6.



Postcard images of Herlinda Perry de Chew, WYC's mother, taken in May 1911 in Cd. Juarez by photographer Aurelio Escobar Castellanos. The originals are in the collection of the Instituto Nacional Del Antropología E Historia, in Mexico City and are available online.

when she posed as a “soldadera” holding a Winchester 92 saddle ring carbine and bullet belts. These photos became popular postcards which depicted her as a “Yaqui” Indian in the Mexican Revolution.

These iconic photographs are reflective of a “colorful and brilliant life”<sup>3</sup> that have been chronicled. First interviewed by the El Paso Morning Times in 1919, she was described with the following words: “Versatile is a weak word for describing the accomplishments of Mrs. Chew...and though she disclaims all title to leadership of Chinese [Colony in Cd. Juarez], all the immigration authorities and others declare that as far as they can observe she is also a real leader.”<sup>4</sup>

And so, in Mexico and later in the United States, she began studying American laws, particularly immigration laws, to ensure that her family and others were protected in the United

<sup>3</sup> “Second Store to Celebrate Anniversary. New China Grocery Co. Five Years Old This Month,” *El Paso Evening Post*, Feb. 1, 1928, p 6.

<sup>4</sup> “Mrs. Chew Look,” H.A. Lamb, *El Paso Morning Times*, June 27, 1919, p. 6.

States and she defended the fair treatment of men and women of Chinese nationality and other minorities. "For North American laws, Herlinda was Chinese; for the nationals she was Mexican...."<sup>5</sup> In the United States, Herlinda is remembered as a social fighter and prosperous businesswoman, fluent in Spanish, English and Chinese. She was the only woman member of the El Paso Merchants' Association, as well as a representative of minorities before the National Recovery Administration and was appointed as an Honorary Consul for the National Republic of China in the early 1930s. She is remembered in Mexico for caring for Mexican women who, married to Chinese, were abandoned in China and when on her multiple trips to China, she took on the mission of repatriating as many of these women as she could arrange through her shipping and railroad affiliations and knowledge of U.S. and Mexican immigration laws.<sup>6</sup>



Wellington and his mother Herlinda on December 10, 1936 at the LingNam University in Hong Kong. He boarded there during their last stay in China.

After their marriage in 1913, Antonio and Herlinda and partner Joe Yat Look, established the Chew & Look Company in February 1914 that did business as, La Garantia Grocery, in downtown Cd. Juarez directly across the U.S. – Mexico border from El Paso, Texas amidst the turbulence of the Mexican Revolution and isolationism of the Chinese Exclusion Act of 1882.

Following the March 1916 raid on Columbus, NM by the Mexican rebel Pancho Villas' forces, President Woodrow Wilson ordered the U.S. Army to pursue Villa's forces and Gen. John J. Pershing led the Punitive Expedition of more than 14,000 regular army troops into Mexico days later until departing nearly a year later. During these operations, Chew & Look Company prospered by providing groceries and merchandise to Chinese and Mexican merchants who directly supplied the Pershing Expeditionary force camps throughout the State of Chihuahua.

During this period, their four eldest children were born in Mexico: Josephine, in 1913; Antonio Jr. in 1915; Gracia in 1918; and Wellington in 1921. A year after Wellington's birth, the family, immigrated to the United States on February 17, 1922 at Calexico, California as Merchants, a category exempt from the exclusion grounds of the Chinese Exclusion Act of 1882 which remained in effect until 1943. It should be noted that the Act was the only U.S. law to have been implemented to prevent all members of a specific ethnic or national group from immigrating to the United States or becoming a naturalized citizen and that Calexico was one of only two ports of entry where Chinese nationals could apply to be admitted entry to the U.S.

<sup>5</sup> Escobar, Arturo Guevara, "Herlinda Perry, La Emblemática Mujer en Las Fotos de La Revolución," *Relatos e Historias en México*, Number 75.

<sup>6</sup> *Ibid.*

## GIRLS NO LONGER WEAR TROUSERS SOCIETY DOESN'T INTEREST THEM

MEET the Misses Chan, wealthy girls of Canton, China, and friends of Mrs. Chew Look of Juarez. And notice the manner in which they are dressed, because that's the reason for printing the picture. Progressive young womanhood of the Flowery Land has not only ditched the tiny shoes which still make Chinese republicans blush for shame, but is rapidly adopting skirts in place of the trousers which have constituted a portion of the costume for 400 centuries. Will they ever come to Georgette crepe and "bareback" waists? Mrs. Chew Look does not think so.



By H. A. LAMB.

**V**ERSATILE is a weak word for describing the accomplishments of Mrs. Chew Look, wife of a Chinese merchant of Juarez.

She was amusing a restless baby in her arms, talking Spanish to three Mexican callers and, at intervals, Chinese to a friend of her husband in her home yesterday afternoon, as she gave an interview in excellent English. This ambidextrous achievement was easy for her and she was most gracious but when it came to furnishing a photograph of herself she drew the line.

### Society Not Interesting.

"My husband would not like it," she said, "and I must say I shrink from such publicity. It is the result of my ancestry, I suppose. I admire American women, but it seems to me that many of them are too prone to seek publicity. The society pages of the newspapers do not interest me.

"Mexican women, however, are much in need of instruction in rearing children and home management. I wish all of them could be furnished with some weekly or monthly magazine that would give them information along such lines. Publications of this kind are becoming more and more popular in China.

### Stop Binding Feet.

"Binding of the feet"—here Mrs. Look showed the visitor a Chinese slipper three inches long and an inch wide, with high heels, which had been made to encase the foot of a woman—

"went out of use in China at beginning of the revolution, even among the old aristocrats. Now the younger women especially are adopting skirts in place of trousers and with the blouse that falls over them they make an attractive combination. Skirts have become a fad in China. In the schools many of the Chinese girls are now wearing prescribed uniforms, as in the United States.

"Both the men and women of China dress more comfortably than Europeans, I think, although many of the younger Chinese men are now adopting the European dress. The Chinese costume is simple, easy for the women to make, easy to clean and press and is not subject to the frequent changes of style that keep American women forever sewing and paying dressmaking bills.

### Much to Learn.

"Chinese women have much to learn from American women in the way of greater freedom, out-door life and physical training, but they can teach not only America, but the whole world simplicity and modesty and how to economize, and that seems to be a lesson we all need now."

Mrs. Look returned a year ago from Canton from a visit to her father, who retired from business in Mexico two years ago. She was in Canton a year, assisting as a teacher in a mission.

She was born in Juarez, her mother being a Mexican woman, but later the family moved to Monterrey, where the girl received most of her education. Her father taught her English without the aid of books. He came to Mexico from China under the name of Charley V. Perry, the name of the Baptist missionary who brought him over. The girl's linguistic accomplishments made her a valuable stenographer in El Paso for several years before she was married. A visitor was trying to translate a Spanish letter that had been handed him.

### She Knows Slang.

"Let me see it and I will translate it in a jiffy," she said, which seemed to bear out her statement that she was forgetting correct English as she was acquiring slang.

Mrs. Look disclaims all title to being a leader of the Juarez Chinese, saying that she merely serves as interpreter for her husband, who is president of the Fraternal Union, a Chinese organization there, but the United States immigration authorities and others declare that as far as they can observe she is also a real leader. She shows much interest in the progress and prosperity of the Chinese in Juarez. A knowledge of English is one of the things that she thinks will help them. The pidgin English which Chinese and Americans developed for transacting business is not sufficient, she says. As a result the Juarez Chinese must delegate Mexicans to do much of their banking and buying for them.

An article about Herlinda Chew that appeared in the *El Paso Morning News* for June 27, 1919 (reconfigured to fit on this page)

In their considered good luck month, February, of the year following, their first U.S. grocery store, New China, was opened in downtown El Paso. Over the course of the next 15 years: four more children were born in El Paso, and the family businesses grew to five stores - La Garantia remained open in Juarez, three New China's, the Shanghai Grocery and the wholesale grocery The Western Grocery. Beyond their merchants' businesses, Antonio and Herlinda were retained Chinese Passenger Agents for the Southern Pacific Railroad and Dollar Steamship Lines, arranging for "transit in bond" passage through the United States for Chinese, mostly males, traveling to and from Mexico to China, and assuring compliance with the Chinese Exclusion Act. Herlinda, again fluent in Spanish, English and Chinese, also served as a simultaneous interpreter for immigration interviews of sponsoring families at the El Paso del Norte Bridge, the "Bridge of Sighs," that compared the sponsors' answers to transcripts of interrogations of Chinese entrants held at Angel Island, the Pacific equivalent of Ellis Island.<sup>7</sup>

<sup>7</sup> Interview Alicia Lombard, assistant to Special Inspector Henry Blackwell, Dept of Labor, 2008.

Wellington's upbringing, education and enculturation were divided between El Paso and multiple, extended trips in China. In El Paso, he attended local elementary schools and El Paso High School. In China, he had tutors in Hong Kong and he and his brother Antonio Jr. boarded at the Lingnan University campus then in Canton. But, even splitting his education between China and the United States, he excelled in his academics, sports and extracurricular activities: he was an El Paso High School senior class officer, president of the National Honor Society and Pan-American Club, an EPHS Letterman and the 1940 El Paso City high school 120-yard-high hurdles champion.

In 1933, Josephine enrolled in the College of Arts and Sciences at the University of Texas. In the fall of 1936, when her mother and all of her brothers and sisters sailed to Hong Kong on the President McKinley, staying until December 1937, Josephine began Law School at UT. Josephine's status as a senior in the university yearbook (*The Cactus*) suggests that she was on track to graduate in 1939, and had completed two years of law school coursework by Fall 1938.<sup>8</sup> Her study of law was a source of great pride and prestige to Herlinda and often mentioned in her correspondence. However, Josephine did not graduate; she left school, to help her brother Antonio Jr. take over the family businesses and care for their younger siblings, ages eighteen, sixteen, fourteen, twelve and six because of the illnesses of their parents. Wellington was at the time a junior in El Paso High School.



Josephine Chew's senior photo in *The Cactus* for 1939

In late April 1939, their mother, afflicted with tuberculosis, left El Paso for Portland, Oregon where she admitted herself into the Portland Open Air Sanitorium. On August 1, 1939, as Josephine and her father were on a train on their way to see her mother and his wife, they received a wire that she had died. They returned to El Paso with her body. A month later, Antonio died in El Paso.



Yee Yuen Chew as a young cadet

Wellington graduated from El Paso High School in January 1941; and in the fall, he enrolled in Texas A&M University, where he majored in Chemical Engineering. He was a member of the Corps of Cadets in 1942 and 1943, in the First Battalion, Field Artillery Battalion.<sup>9</sup> However, because of the Chinese Exclusion Act, as a Chinese national, he was not eligible to become a naturalized citizen or be commissioned in the U.S. Army upon graduation; whereas other Chinese American cadets received draft deferrals so that they could graduate and receive their military commissions. Consequently, in February 1943, he left Texas A & M and the Corps, returned to El Paso, and was inducted into the U.S Army.

After he completed Infantry Replacement Training at Camp Wolters, Texas in October 1943, he was naturalized as a U. S. Citizen in the U.S. District Court in Oklahoma City and his name was legally changed from Yee Yuen Chew to Wellington Yee Chew. This event is likely another first, for he was one of first, if not the first Chinese national, to be naturalized before the repeal of the Chinese Exclusion Act in December 1943. His naturalization was presumably under a special

<sup>8</sup> *Non-Graduating Alumni of the University of Texas School of Law Through June 1943*, Univ. of Texas, Tarlton Law Library, Special Collections Department.

<sup>9</sup> *Longhorn*, Texas A&M University, 1942 & 1943.

provision of the Nationality Act, which allowed military service to serve as a qualifier for citizenship; though legally questionable, his naturalization was never challenged.<sup>10</sup>

Wellington landed on the Normandy beachhead as an infantryman replacement in July 1944, and he was assigned to Company B, 1<sup>st</sup> Battalion, 12<sup>th</sup> Infantry Regiment of the 4<sup>th</sup> Infantry Division which had landed on Utah Beach on D-Day. Only days later, he faced hostile fire and engaged in ground combat during the breakout from the beaches, and Wellington Yee Chew was awarded the Combat Infantryman's Badge (CIB) on July 11, 1944. On August 25, he was among the first American troops to enter and liberate Paris and his unit bivouacked in Bois de Vincennes Park. In later years, he expressed his disdain for exercise, saying that he had already walked across France, Belgium and into Germany.

He saw combat in four campaigns: Normandy, Northern France, Central Europe and Ardennes-Alsace. In the last campaign, as a Squad Leader, he fought in the Hurtgen Forest and the Battle of the Bulge, where he left the battlefield nearly frozen to death and was hospitalized for two months. He was twice offered battlefield commissions, which he declined, and Wellington Yee Chew's decorations included the Bronze Star, American Theater Campaign EAME with 4 Bronze Stars, Good Conduct, and Meritorious Unit Award. In July 1945, while still in Europe on limited duty he wrote his sister Josephine:

"Of course, I am pretty anxious to get home. Especially now that I am pretty sure of eventually getting home. Before, I was more worried about being alive so going home didn't enter into the picture so much."

Returning home, Wellington quickly discarded engineering as a career choice and instead chose to focus on becoming a lawyer. "I think the war changed his perspective of what he needed to do going forward," his son David says. "But like many WWII combat veterans, he never really talked about the war. It was a life changing experience—both good and bad."

His sister Grace introduced him to Patricia Mary Howe, a co-worker at the Popular Dry Goods, then El Paso's largest department store. They married and their first son, David Wellington, was born in 1947. The following year they moved to Dallas and Wellington began law school at Southern Methodist University on the G.I. Bill. He graduated and was admitted to the State Bar in 1951. So while his sister Josephine nearly graduated from law school a decade earlier, which would have fulfilled a hope and dream of their mother; it was Wellington who realized that hope and dream.

During his twenty-six-year legal career, he maintained a wide-ranging and multi-cultural practice that began with a focus on criminal defense and that expanded to civil service and immigration defense matters, a focus and an acknowledged community reputation for excellence as champion of the downtrodden that would have pleased his mother, Herlinda.

With his first law partner, Joe Calamia, he represented the famous Mexican movie actor Rosaura Reveultas who starred in the controversial "Salt of the Earth" movie deemed subversive and which previewed the very consequential Supreme Court ruling of *Jencks v. United States*, 353 U.S. 657 (1957), that resulted in one of the most important constitutional doctrines, the Jencks

<sup>10</sup> Interview with Marian Smith, Historian U.S. Immigration and Naturalization Service, 2008.

doctrine, that criminal defendants have a constitutional right to obtain discovery of exculpatory statements, for impeachment of government witnesses during the investigatory stage of a case.



Wellington Chew later in life

He was one of the premier trial lawyers of his era, who was remembered at his death in 1977 as having “tried more murder trials than anyone in El Paso except me. I know we tried a bunch of them together” recalled his close friend, retired 168<sup>th</sup> District Court Judge George Rodriguez Sr.

He was often appointed to represent indigent defendants in Federal cases by long serving U.S. District Court Judge R.E. Thomason, who (ironically) had many years earlier, when he was El Paso’s congressman, sponsored special legislation that ordered the Attorney General to admit Wellington after he was barred from entry from Mexico after he and a group of El Paso High School students went to Mexico City for a football game, because he was not a citizen and barred from entry at El Paso because of the Chinese Exclusion Act.<sup>11</sup>

In the later years of his career, Chew was recognized for his expertise in immigration and nationality law and Federal civil service defense. He was named as one of the Legal Legends of Texas of the 20th Century by *Texas Lawyer* magazine.<sup>12</sup>

He was also very active in community affairs: he organized and represented numerous civic associations; he was elected President of the El Paso County School Board; he was active with the Democratic party as organizer and precinct chair; a member of the Chinese Benevolent Society; and, appointed to the El Paso City Civil Service Commission. He was also for many years a restaurateur and co-owner of the Chinese Blossom restaurant in El Paso. In 1994, the City of El Paso named its Northeast senior center the Wellington Chew Senior Center in his honor.

As legendary as his legal career was, it was also shortened by the longevity, severity and intensity of the combat trauma he experienced. But for the calm and unshakeable support provided by his wife, Patricia, his life would have been even shorter than it was. While her own professional achievements, special by any measure and accomplished during and after raising four children, may seem often overshadowed by her husband’s, his obvious pride in his wife, mother and sister was apparent to his family, and certainly his children.

Testimony of the family’s legacy are his children. Their eldest son, David Wellington Chew, a former naval officer and El Paso City council member, and Southern Methodist University School of Law graduate became the first elected Asian American appellate justice in Texas when he was elected in 1995 to the 8<sup>th</sup> Court of Appeals, and first Texas court of appeals Chief Justice in 2006. He sat on the Texas Supreme Court in the spring of 1999 on the commission of Gov. Bush as a tie breaker becoming the first (and, to date, only) Asian American to serve on the Supreme Court of

<sup>11</sup> “Young Lawyer Who Studied in China Is Only Chinese Attorney in Texas,” Marshall Hail, *El Paso Herald Post*, May 5 1953, p. 15.

<sup>12</sup> “Legal Legends: A Century of Texas Law and Lawyering,” *Texas Lawyer*.

Texas. In 2002, the Asian Pacific Interest Section of the State Bar of Texas established their highest annual award -- Justice David Wellington Chew Award.

Their daughter, Linda Yee Chew, a graduate of South Texas College of Law is the first lawyer of Chinese descent to serve as a District Court judge in El Paso and is the sitting judge of the 327<sup>th</sup> District.

Their youngest daughter, Patricia B. Chew, a graduate of Texas Southern University School of Law, is the first lawyer of Chinese descent to serve as Probate Court for El Paso and is the sitting judge of the 1<sup>st</sup> Probate Court of El Paso.

The youngest son, Brian K. Chew, is not a lawyer but he is the Chief Technology Officer of the Georgia MLS. However, his daughter, Linda Li Chew, is a law school applicant.



**CHIEF JUSTICE (SENIOR STATUS) DAVID WELLINGTON CHEW** was born in El Paso, Texas on September 29, 1947. He attended Irvin High School and Texas Western College before accepting a congressional appointment to the United States Naval Academy. He graduated from the Academy with a Bachelor of Science degree in 1971 and was commissioned as an Ensign in the United States Navy. His first assignment was U.S.S. *Claud Jones* (DE-1033) as Communications Officer, then fleeted to Operations Officer when his ship was deployed to West-Pac service. In 1975, then Lieutenant Chew was assigned as the Flag Lieutenant/Personal Aide to Commander Cruiser Destroyer Group 12, homeported in Mayport Florida. He attained the rank of Lieutenant Commander. During his service he was awarded the Navy Achievement Medal, National Defense Medal, Vietnam Service Medal and the Republic of Vietnam Campaign Medal. Chief Justice Chew graduated from Southern Methodist University School of Law in 1978 and entered private practice of law in El Paso immediately following; forming a partnership with Paul M. Douglass, who practiced law with Justice Chew's father. They were later joined by his sister, Linda Yee Chew and succeeded by another sister Patricia B. Chew. Chief Justice Chew was board-certified in Immigration and Nationality law in 1985 and listed in 1994/95 and 1995/96 Best Lawyers in America. He was elected and served one term as West-Central City Representative on the El Paso City Council from 1989 to 1991. In 1994, he was elected to the Eighth District Court of Appeals. Justice Chew was appointed as Chief Justice of the Eighth Court of Appeals in 2006 by then Governor Rick Perry. He is married to Mandy Chew and they have one son Wellington Montgomery Chew, an architect in Austin, Texas. He retired in October 2011 and has continued to serve as a senior judge to the present.

### **"PERSHING'S CHINESE"**

**by Hon. John G. Browning**

**As Chief Justice David Wellington Chew alludes to in his profile of his father, Wellington Chew's family of merchants emigrated to the United States from Mexico after supplying Gen. Pershing's "Punitive Expedition" during its pursuit of Pancho Villa. The story of "Pershing's Chinese," as these merchants and their families came to be**

known, and the circumstances behind their immigration to the United States despite the Chinese Exclusion Act, is a fascinating and little-known chapter in Texas history.

In the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, there were approximately 30,000 Chinese living in Mexico. Discrimination and mistreatment were not uncommon, particularly during the political upheaval of Pancho Villa's revolution. In May 1911, 303 Chinese were massacred at Torreón, in perhaps the most infamous atrocity. After Pancho Villa's forces crossed the U.S. border and raided Columbus, New Mexico on March 9, 1916, an outraged President Woodrow Wilson authorized the "Punitive Expedition." In this military operation, Gen. John J. Pershing led a force of approximately 6,600 soldiers across the border into Mexico on March 15, charged with the mission of pursuing and capturing or killing Pancho Villa.

Logistical support for this expedition was hardly what a modern military undertaking would entail. The U.S. forces would be relying on supplies and services from locals; however, most Mexicans refused to cooperate, either out of opposition to the invading army or fear of reprisal from the Villanistas. Only the Chinese were willing to deal with the Americans. They followed Pershing's army wherever it went, and eventually won the provost marshal's approval to set up shops, cafes, and laundries catering to the U.S. troops. Eleven months later, when the expeditionary force eventually withdrew without having captured Pancho Villa, Pershing asked for and received special permission from U.S. immigration authorities to bring his 527 Chinese followers into the United States despite the Chinese Exclusion Act.

On June 7, 1917, a ten-car special Southern Pacific Railroad train arrived in San Antonio with the entire company of Chinese, military commander James Ord, the Chinese consul general T.K. Fong, and a civilian advisor William Tracy Page. A compromise had been brokered under which the Chinese refugees would be engaged by the Army's Quartermaster Department at Fort Sam Houston in San Antonio, working as artisans, blacksmiths, cooks, carpenters, laborers, laundry workers, and mess attendants. Some would be at Camp Wilson (later named Camp Travis), and at the Ellington Field and Kelly Field aviation bases. Classified as "interned refugees," they were kept on parole but were paid for their work and provided with room and board and medical facilities. Although none of them defected, one man named Jung Hoy secretly accompanied the 7<sup>th</sup> Field Artillery on its deployment to France in August 1917. He was later commended for his wartime service.

The Chinese were universally praised for being hardworking, reliable, and patriotic. Each had been given, upon arrival in San Antonio, a certificate of identity that admitted him to temporary residence in the United States, under the jurisdiction of the War Department but only until conditions in Mexico would permit

his return there. And with the war's end, the question loomed: what to do with the Chinese? Anti-Chinese sentiment was still rampant in Mexico, and military personnel on the bases in San Antonio had grown both accustomed and loyal to their Chinese workers. While the State Department, the War Department, and the Treasury Department were busily exchanging memoranda on how the repatriation to Mexico would work and what it would cost, someone had to step up.

That someone was William Tracy Page, recently resigned civilian advisor to Pershing. Page mobilized support, retained the Washington, D.C. law firm of Bouve and Parker, and began meeting with key officials, including the chairman of the House Committee on Immigration & Naturalization (Albert Johnson), General Pershing himself, now a household name from his World War I service, also weighed in and suggested that Congress pass a joint resolution giving the Chinese permission to reside in the United States. The wheels of government turned slowly, but following the 1920 presidential election, Senate Joint Resolution 33 was introduced in early 1921. Congress was slower to move, and its amended resolution was not passed until November 16, 1921. On November 23, Pres. Warren G. Harding signed Public Law No. 29 into law, permitting "Pershing's Chinese" to remain in the United States. They would be required to register and pay the normal \$8 head tax assessed of all immigrants entering the United States. Between January 27, 1922 and February 3, 1922, a total of 281 Chinese were processed by immigration authorities. All refugees were permitted to remain at the camp until such time as they found employment in the city or went into business for themselves. Earlier in January, Gen. Pershing himself toured Fort Sam Houston and spoke to about one hundred of the refugees, urging them to become "good Americans."

Many of the Chinese were emotional at the prospect of remaining in their adopted nation. About half remained permanently in San Antonio, going into businesses like retail grocery and restaurants. Their children, grandchildren, and great-grandchildren wove themselves into the vivid and diverse tapestry that typifies Texas, and indeed the United States.

**For Further Reading:**

- Edward J.M. Rhoads, "The Chinese in Texas," 81 *Southwestern Historical Quarterly* 1 (July 1977).
- Edward Eugene Briscoe, "Pershing's Chinese Refugees in Texas," 62 *Southwestern Historical Quarterly* 4 (Apr. 1959).
- Gregory James, "Pershing's Chinese: The Other Chinese Labour Corps.," 58 *Journal of the Royal Asiatic Society Hong Kong Branch* 189–2017 (2018).

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# This Land is *Not* Your Land: The Texas Alien Land Law of 1921

By Hon. John G. Browning

## I. INTRODUCTION

Even for devotees of Texas history, it may have escaped attention that the Lone Star State was invaded in late 1920 and early 1921. The “invasion,” according to various newspapers, was the arrival of two Japanese families in the Rio Grande Valley town of Harlingen on January 6, 1921. Met at the train station by an angry mob, these families and others who would arrive were quickly informed of how strong public opinion was about their relocation to Texas. As one newspaper’s Texas correspondent described it,



*New York Times* headline,  
January 7, 1921

The Japanese “invasion” of Texas appears to be in full swing . . . [the] Rio Grande district is apt to prove a hornet’s nest for the Japanese, because the [white] natives of this region, which retains many aspects of the old frontier, are more inclined to take “direct action” than the [white] people of California, where the dispute over the Japanese land holdings has been largely confined to the legislature and the courts.<sup>1</sup>

This article will examine Texas’ reaction to Japanese immigrants in the early twentieth century, a response that in some ways mirrored the sentiments in other states and which culminated in the passage of an “Alien Land Law” by the Texas legislature in 1921. In other ways, Texas’ stance on Japanese immigration differed from the actions taken by other states, and even represented a departure from the racialized violence that characterized Texans’ dealings with other minority communities of the time. Despite the implied threat of “frontier justice” made in the newspaper article, racialized violence against Japanese immigrants to Texas was almost unheard of. Even the passage of Texas’ Alien Land Law resulted in little challenge in the courts, unlike the resistance mounted by Japanese Americans in other states. To understand more about Texas’ Alien Land Law experience and its impact, it is first necessary to look at the Japanese immigrant experience in Texas and to examine the alien land laws of other states in historical context.

## II. THE JAPANESE IMMIGRANT EXPERIENCE

Interestingly enough, Texas had an “alien land law” even before there were land-acquiring Japanese immigrants to spark nativist concern. During the administration of Governor James Hogg, an alien land law was passed on April 13, 1891. Introduced to ban land speculation by

<sup>1</sup> “Start of the Invasion,” *Kansas City (Mo.) Times*, Jan. 7, 1921, 1.

foreign-controlled companies, the law provided that no alien or alien corporation could obtain any ownership of or interest in land in Texas except for those who became citizens within six years after they acquired the land. Those aliens who were not exempted under the law had six years within which to surrender their land. But the law was short-lived; on December 11, 1891, the Supreme Court of Texas declared the law unconstitutional because the statute did not specify what law it was amending.<sup>2</sup> The case was decided on those narrow technical grounds, and since it concerned a corporation from Great Britain and Ireland, there was no anti-immigrant or anti-Asian animus involved. On April 12, 1892, a new alien land law was enacted by the 22<sup>nd</sup> Legislature. This new law didn't prohibit alien corporations, and it changed the time limit from six years to ten years. Not until 1921 would Texas pass an alien land law grounded in xenophobic beliefs.



Governor James Hogg

Anti-Asian sentiment awaited the first Japanese immigrants to south Texas at the dawn of the twentieth century. In 1907, Japanese who entered the United States from the southern border were not greeted with open arms. As the *Fort Worth Telegram* reported,

There are many Japanese coming into Texas continually from Mexico and hundreds of these are finding their way to San Antonio, where they are meeting with a very chilly reception. The hotels in that city refuse to receive the little brown men as guests, notwithstanding the fact that they have money to defray the expense of accommodation, and this is causing the new arrivals to sleep out in the open at any old place they can snatch a few hours of slumber. The police of that city are arresting these men.<sup>3</sup>

The hostile sentiments were not confined to white residents. African Americans were openly hostile to the Japanese, who were perceived as undercutting them in competition for work. As one newspaper described, Black workers were pushing Japanese off of sidewalks, and "making threats openly to drive the Japanese out of the city."<sup>4</sup>

At first, the small numbers of Japanese immigrants to south Texas who stayed worked in their favor; to many, the individuals or couples who arrived inspired more curiosity than prejudice. Then, in 1919, a larger group of seven Japanese families purchased 389 acres of land near Brownsville.<sup>5</sup> In October 1920, real estate developer F.Z. Bishop sold 280 acres of land near Harlingen to a Japanese broker in Los Angeles, B. Yamada, who planned to sell the land to Japanese looking to leave California. As one newspaper reported: "A rumor that appears to be widespread is to the effect that Japanese, fearing the passage of the anti-alien land-owning bill

<sup>2</sup> Gunter v. Tex. Land & Mort. Co., 82 Tex. 496 (Tex. 1891).

<sup>3</sup> "Arresting Japs in San Antonio," *Ft. Worth Telegram*, Feb. 6, 1907, 6.

<sup>4</sup> "Japs Take Jobs From Negroes," *Brownsville Daily Herald*, Jan. 28, 1907, 1.

<sup>5</sup> Hisako Ochiai, *The Community of the Japanese Americans in the Rio Grande Valley* (M.A. thesis, Texas A&M University, 1974), 32-40.

in California, are looking to Texas for colonization.”<sup>6</sup> The paper went on to reveal the thoughts of many white residents as articulated by the commander of Harlingen’s American Legion post: “We are not looking for trouble and don’t want it. But if the Japs come, I can safely say, from the temper of public opinion in the Valley, it will mean a fight.”<sup>7</sup>

At first, white Rio Grande Valley residents believed their outpouring of opposition had led Bishop to reconsider his sale to the Japanese. When dozens of Japanese immigrants began to arrive in late December 1920 and early 1921, however, they realized they were wrong. Members of the American Legion (the national veterans’ organization formed in 1919) led the protests that followed. They roamed the countryside, threatening the new Japanese settlers and demanding that they leave. Legionnaires also threatened white absentee landowners, requesting authority to force out “squatters.” The American Legion was at the forefront of a coalition of Chamber of Commerce members, farmers organizations, and retail merchants calling for the Japanese to leave. The *San Antonio Express* observed that “Considerable anti-Japanese sentiment has developed in Rio Grande Valley towns during the past two months.”<sup>8</sup> The *San Benito Light* noted that a consensus had apparently been reached by white residents on opposing Japanese settlement, saying “Now that we are all together, let’s keep together and see that the Valley is to be a little section of America that is kept safe for Americans.”<sup>9</sup> Later, the same paper would speak of “our determination to keep the lower Rio Grande Valley for the white race.”<sup>10</sup>



The threats became more menacing. When the Okuma family arrived in Harlingen on January 6, they were “persuaded” not to go to the farm they had purchased, but to remain in a hotel instead by a crowd of American Legion members. They remained virtual hostages for several weeks before abruptly boarding a north bound train and departing, causing the local newspaper to rejoice that “The Valley has won its fight so far by impressing upon the Japanese that they are not wanted and are not welcome.”<sup>11</sup> By that point, the Valley’s opposition to Japanese immigrants had become national news.<sup>12</sup> Elsewhere around the state, newspapers were perpetuating myths about the Japanese. *The Dallas Morning News*, for example, said, “There is much talk about the Japanese being undesirable as citizens, but very little reason has been given, except that they are ‘unassimilable.’”<sup>13</sup> The *Corpus Christi Caller* pointed to Hawaii’s population being increasingly composed of “yellow men,” and applauded the alien land laws being passed by California and other states, saying “What California and the west coast have been doing must be done all over the country if we would heed the warning writ plain upon the wall by events in Hawaii.”<sup>14</sup>

<sup>6</sup> “F.Z. Bishop in Interview is Quoted as Saying Deal With Orientals Will Be Completed,” *San Benito Light*, Oct. 29, 1920, 1.

<sup>7</sup> *Ibid.*

<sup>8</sup> “Japanese Arriving in Harlingen Asked by Citizens to ‘Move On,’” *San Antonio Express*, Jan. 7, 1921, 1.

<sup>9</sup> “Clearing the Situation,” *San Benito Light*, Jan. 1, 1921, 2.

<sup>10</sup> “Our ‘Jap Situation,’” *San Benito Light*, Jan. 14, 1921, 2.

<sup>11</sup> “Japanese Leave Harlingen,” *San Benito Light*, Feb. 1, 1921, 1.

<sup>12</sup> See, e.g., “Texas to Consider Passage of Bill to Bar Out All Japs,” *Tucson Citizen*, Jan. 7, 1921, 7; “Asks About Texas Ban on Japanese,” *Pawtucket (R.I.) Times*, Jan. 11, 1921, 2.

<sup>13</sup> John Sneed, “Alien Land Bill Causes Agitation,” *Dallas Morning News*, Feb. 6, 1921, 6.

<sup>14</sup> “Japs and the Valley,” *Corpus Christi Caller*, Jan. 26, 1921.

Besides overt racism, what was behind the anti-Japanese sentiment? Some in the Valley feared that supposed Japanese plans for world domination would go through south Texas. One paper claimed that “Acquisition of land in the Valley, there is every reason to believe, was done in accordance with the policy of the Japanese government and of the Japanese people to colonize favorable sections of the United States and permanently establish their race in this country.”<sup>15</sup> Others regarded the Japanese as part of vanguard of spies and saboteurs, saying they would be “creating bases for secret preparations and activities against the American flag.”<sup>16</sup> Still others were more focused on fear that the Japanese were supposedly more industrious and would drive out competitors. One newspaper quoted a resident as saying “I know the Japs and what they can do. I know that they are better farmers than the American farmers. These American farmers are afraid to put their farming up against the Jap kind.”<sup>17</sup>

### III. ALIEN LAND LAWS IN CONTEXT

As noted earlier, south Texas residents in 1921 pointed favorably to the legal measures California and other states had taken to ban Asian land ownership. But in reality, alien land laws trace their lineage back to 13<sup>th</sup> century England and the justification for royal seizure of the lands of Normans and other Frenchmen there. Coke, centuries later, would provide legal justification for seizure of foreign-owned lands during wartime: “1. The secrets of the realm might thereby be discovered. 2. The revenues of the realm (the sinews of war, and ornament of peace) should be taken by strangers born. 3. It would tend to destruction of the realm.”<sup>18</sup> In peace, Coke continued, such seizure of freeholds held by aliens was justified by the need to ensure smooth administration of the legal system. Without enough English freeholders to man the juries, he argued, “there should follow a failure of justice.”<sup>19</sup>



Sir Edward Coke

In the United States, states on the West Coast led the way in passing alien land laws. As early as 1859, Oregon amended its constitution to provide that no “Chinaman” could own property in the state. And while California’s first constitution in 1849 gave resident aliens of every race and nationality a constitutional guaranty of complete equality of property rights with citizens, by 1879, it had been amended to protect (besides white citizens, of course) only “[f]oreigners of the white race or of African descent, eligible to become citizens of the United States under the naturalization laws thereof.”<sup>20</sup> By 1894, even this constitutional protection was further whittled down to cover only property “other than

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<sup>15</sup> “Our ‘Jap Situation,’” *San Benito Light*.

<sup>16</sup> “Sun Thinks Japanese Gold Has Made Some Upper Valley Residents Speak Favorably of Colonization Project,” *San Benito Light*, Jan. 31, 1921, 2.

<sup>17</sup> “Start Invasion of Texas,” *Kansas City Times*, Jan. 7, 1921, 1.

<sup>18</sup> Calvin’s Case (1609), 77 Eng. Rep. 377.

<sup>19</sup> *Ibid.*

<sup>20</sup> CAL. STATS. 1881, xxiv.

real estate.”<sup>21</sup> Years later, in 1913, California would pass its first Alien Land Law prohibiting aliens ineligible for citizenship from owning property or from entering into leases longer than three years.<sup>22</sup> By 1920’s Initiative Act, further restrictions had been added that barred companies owned by ineligible aliens from purchasing land.<sup>23</sup>

California’s Alien Land Law was specifically targeted at the Japanese, a fact noted by the California Supreme Court when it upheld the statute in 1922, acknowledging that “The object sought to be attained by these statutory provisions, that is, to discourage the coming of Japanese into this state . . .”<sup>24</sup> In two cases the following year, the U.S. Supreme Court ruled that the alien land laws in Washington and California were constitutional. Washington’s law, which denied the right to hold land in the state to all aliens except an alien who had in good faith declared his intention to become a U.S. citizen, was upheld in *Terrace v. Thompson*.<sup>25</sup> In it, the Court observed that:

. . . each State, in the absence of any treaty provision to the contrary, has power to deny to aliens the right to own land within its borders. . . . The quality and allegiance of those who own, occupy, and use farmlands within its borders are matters of highest importance and affect the safety and power of the State itself.<sup>26</sup>

On the same day that the Supreme Court announced its decision upholding Washington’s law, it delivered its ruling in *Porterfield v. Webb* upholding the principal components of California’s Alien Land Law.<sup>27</sup> Alluding to its earlier ruling, the Court held that “Our decision in *Terrace v. Thompson* . . . controls the decision of all questions raised here.”<sup>28</sup> Emboldened, perhaps, by the highest court in the land approving of such laws, other states began enacting alien land laws. For example, in 1925, Arkansas enacted an “ineligible alien” land law closely patterned on California’s law. However, it was struck down by the Arkansas Supreme Court as conflicting with provisions in the state constitution.<sup>29</sup> Most of the eighteen states that followed California’s lead with statutes closely modeling one or more of its alien land laws showed no such restraint, however; these included Arizona (1917), Louisiana (1921), Texas (1921), New Mexico (1922), Idaho (1923), Montana (1923), Oregon (1923), and Kansas (1925).<sup>30</sup>

Against this backdrop, we now move on to a discussion of Texas’ Alien Land Law and how it came to be.

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<sup>21</sup> CAL. STATS. 1885, xxxii.

<sup>22</sup> Dudley O. McGovney, *The Anti-Japanese Land Laws of California and Ten Other States*, 35:1 CAL. L. REV. 26 (Mar. 1947).

<sup>23</sup> *Ibid.*, 28–30.

<sup>24</sup> Estate of Yano, 188 Cal. 645, 658, 206 Pac. 995, 1001 (1922).

<sup>25</sup> 263 U.S. 197 (1923).

<sup>26</sup> *Ibid.*, 2217, 221.

<sup>27</sup> Porterfield v. Webb, 263 U.S. 225 (1923).

<sup>28</sup> *Ibid.*, 233.

<sup>29</sup> Applegate v. Lum Jung Luke, 173 Ark. 93, 291 S.W. 978 (1927).

<sup>30</sup> McGovney, *The Anti-Japanese Land Laws of California*, 7–8. Other states, including Arkansas (again) and Wyoming would adopt specifically anti-Japanese laws at the height of World War II in 1943, but they are not discussed here. Oddly, McGovney’s article made scant mention of Texas’ Alien Land Law.

## IV. TEXAS PASSES AN ALIEN LAND LAW

Ironically, for all the jingoistic bluster, posturing, and implied threat of physical violence, even the American Legion standard bearers who pressed for Japanese settlers' departure admitted that immigrants like the Okuma family "had a legal right" to their land and that more "orderly processes" were needed to stem the tide of Japanese immigration.<sup>31</sup> Enter Brownsville attorney



Harbert Davenport

Harbert Davenport. Davenport would one day serve as president of the Texas State Historical Association from 1939–1942, and he was a noted Texas historian and expert on land and water law rights. He would go on to arguably become best known for a victory at the Supreme Court of Texas in a case brought by the descendants of Padre Nicolas Balli over title to the island named for him—Padre Island.<sup>32</sup> But back in 1921, Davenport used his legal acumen to assist the American Legion in their quest to combat the Japanese "onslaught."

Davenport shared his professional opinion that the 1892 statute denied the right to own land in Texas to any non-resident alien. While the law had been held invalid in certain provisions, Davenport pointed out to the media that had been in the isolated case of a Mexican national whose land claim was protected under the terms of the Treaty of Guadalupe Hidalgo. Since "No such treaty arrangement exists in the case of a Japanese subject," Davenport explained, such a precedent wouldn't be relevant.<sup>33</sup> Flawed as it might be, Davenport acknowledged, the 1892 statute was "the only legal method" that those drafting new legislation could conceivably invoke "at this time to prevent Japanese colonization of the Valley."<sup>34</sup>

With public sentiment providing momentum and Davenport supplying legal justification, on January 28, 1921, Sen. Richard Moberley Dudley of El Paso introduced Senate Bill 142, an "anti-Japanese colonization bill." Dudley pointed to "the danger of Texas becoming overrun with Japanese," and said the measure was modeled after the California law prohibiting ownership of land by persons not eligible to become citizens.<sup>35</sup> In early February, Harbert Davenport along with other prominent white residents of the Valley headed to Austin to testify before the legislature in support of Dudley's bill. State representatives took note of the public support,



Sen. Richard Moberley Dudley

<sup>31</sup> "The Texas Way," *Twin Falls Daily News*, Jan. 15, 1921, 6.

<sup>32</sup> *State v. Balli*, 190 S.W.2d 71 (Tex. 1944). Despite this, ownership of Padre Island would remain a hotly contested issue for decades, persisting well into the 21<sup>st</sup> century.

<sup>33</sup> "Senators Endorse Valley Offensive Against Japanese," *San Antonio Express*, Jan. 8, 1921, 1.

<sup>34</sup> "Japanese Deeds to be Attacked Under 1892 Law," *Corpus Christi Times*, Jan. 14, 1921, 3.

<sup>35</sup> *Journal of the Senate of Texas: Being the Regular Session of the Thirty-Seventh Legislative, Begun and Held in the City of Austin, January 11 to March 12, 1921* (Austin 1921).

saying that “the people of the Rio Grande Valley are determined to prevent the settlement of their lands by Japanese, or other foreigners, who do not become in truth and in fact American citizens.”<sup>36</sup>



Walter Elmer Pope

In February, supporters of the bill received two encouraging pieces of news. First, the California-based broker and dealer involved in the first land sale had agreed to cut his losses and abandon further efforts in the Valley. Then, the Senate Legislative Committee reported favorably on the alien land law introduced by Dudley, sending it for a vote. On March 11, the bill—slightly changed and renamed the Pope bill to include its sponsor in the Texas House, Walter Elmer Pope of Nueces County—was passed.<sup>37</sup> On April 1, Governor Pat Neff signed it into law, effective June 11, 1921.<sup>38</sup> While most of the law consisted of the typically dispassionate language one would expect in legislation (it exempted, for example, Europeans and citizens of Canada and Mexico—not by specific name but as “aliens eligible for citizenship” and “citizens of nations which have a common land boundary with the United States”),<sup>39</sup> still signs of the anti-Japanese hysteria crept in. In its final clause, the bill betrays the fever pitch of emotions that spurred the legislation:



Governor Pat Neff

The fact that aliens who do not propose becoming citizens of the United States are now attempting to acquire title to large bodies of fertile land in this State creates an emergency and an imperative public necessity that this bill shall and it hereby does take effect from and after its passage and it is so enacted.<sup>40</sup>

There were a number of things lost in the self-congratulatory aftermath of the bill’s passage. The first was that the “emergency and an imperative public necessity” was no public emergency at all. The hysteria had begun with the arrival of merely a handful of Japanese immigrants—most of whom had already been run off. Also lost in the xenophobic cacophony of the legislature was the poignant testimony of Saburo Arai, a Japanese national and Houston resident who begged the committee to “weigh the matter carefully before rendering a final decision.”<sup>41</sup> He said that he and his fellow Japanese should not be looked upon as interlopers.

<sup>36</sup> “Legion Men Hopeful of Law to Bar Japs,” *San Benito Light*, Feb. 5, 1921, 1.

<sup>37</sup> *An Act to amend . . . “Aliens,” relating to the rights, powers, and disabilities of aliens . . . with respect to property in this state*, April 1, 1921, General Laws of the State of Texas, Passed by the Thirty-Seventh Legislature at the Regular Session, . . . Adjourned March 12, 1921 (Austin, 1921), at 261–63.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> John Sneed, “Alien Land Bill Causes Agitation,” *Dallas Morning News*, Feb. 6, 1921, 6.

Arai argued that the U.S. Expedition led by Commodore Matthew Perry in 1853 had forced Japan—after centuries of self-imposed isolation—to engage with the rest of the world. Arai testified that the Japanese looked upon the United States as their benefactor.<sup>42</sup>

Finally, as bill proponents claimed that the Japanese “invasion” had been resolved peacefully through legislation rather than bloodshed, another development was overlooked; the murder of a Japanese farmer, J. Onishi. Onishi, who lived in La Marque on the Gulf Coast, was found shot to death on June 10, 1921. Onishi’s young son said a man had been peering through the windows of their home before pounding on the door and demanding to see “the boss” of the house.<sup>43</sup> When Onishi came to the door, he was gunned down and the stranger fled.<sup>44</sup> Onishi died at eight o’clock p.m.—just four hours before the anti-Japanese land law went into effect. No one was ever arrested or prosecuted for Onishi’s murder. Given the anti-Japanese hysteria that gripped Texas it is hard to imagine this as anything but what would be regarded today as a hate crime.

While most scholars examining alien land laws in the United States have confined their discussions to the impact of California and other West Coast states, the influence of Texas’ law should not be underestimated, particularly on other Southern/Gulf Coast states. Louisiana delegates who were rewriting their state’s constitution in the spring of 1921 to ban alien land ownership looked specifically at Texas’ example. The state delegate who introduced the state’s change, J.S. Dykes, said:

Louisiana has enough of radical conflict without continuing the possibility of colonization by oriental people. And the recent trouble in Texas and the necessity for drastic action taken there to prevent Japanese colonization would show that with the threat of expulsion from California impending, or at least a restriction upon rights of ownership of real property in that state, the Jap is beginning to look elsewhere in the nation . . . we don’t want him here!<sup>45</sup>

In another neighboring state, New Mexico, concerned residents and legislators also looked at Texas’ alien land law. As the Las Cruces paper the *Rio Grande Republic* reported, inspired by “citizens of the San Benito district of Texas,” the “Dona Ana County Farm Bureau of this state will soon take up the matter, and from the sentiment expressed a petition will be sent to the New Mexico legislature asking for protection from aliens for the lands in this state.”<sup>46</sup> By September 1921, New Mexico, like Louisiana, had amended the state constitution to include an alien land law provision. Mississippi legislators applauded their Texas and Louisiana counterparts for what their former governor and U.S. senator James Vardaman called “a very wise precaution.”<sup>47</sup> Nevertheless, Mississippi considered, but did not pass, alien land ownership restrictions. That did not stop the *Dallas Morning News* from portraying Texas as leading the fight to freeze out Japanese immigration and from correctly predicting that other states would emulate Texas. It declared that:

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<sup>42</sup> *Ibid.*

<sup>43</sup> “Japanese Farmer Called to Door and Fatally Shot on Farm Near La Marque,” *Galveston Daily News*, June 12, 1921, 10.

<sup>44</sup> *Ibid.*

<sup>45</sup> “Convention Gets Under Way with Important Work,” *Opelousas (La.) St. Landy Clarion*, Mar. 26, 1921, 1, 5.

<sup>46</sup> “Sentiment is Crystalizing Against Alien Competition,” *Las Cruces (N.M.) Rio Grande Republic*, Jan. 13, 1921, 1.

<sup>47</sup> “Keep the White Race Pure,” *Jackson (Miss.) Vardaman’s Weekly*, Mar. 24, 1921, 5.

It is admitted by all that the question is an important one and that Japanese settlement in Texas looms up as one which might become of great seriousness in the future and is pregnant of another race problem that might have to be dealt with by the South in years to come.<sup>48</sup>

## V. CONCLUSION

In 1920, the number of Japanese residents in Texas prior to the enactment of the Alien Land Law was 449. As a result of that law, and the xenophobic hysteria that helped promulgate it, by 1930, the number had inched just slightly up to 519.<sup>49</sup> Incredibly, the arrival of a few dozen Japanese settlers from California to the Rio Grande Valley in late 1920 and early 1921 triggered a wave of anti-Asian sentiment and ultimately the legal exclusion of these people from Texas, Louisiana, and New Mexico, further stimulating the rise in anti-Japanese feelings across the American South and West. White residents—no strangers to the use of racial violence against both ethnic Mexicans and African Americans—mobilized their efforts to exclude yet another racial minority. But this time, their efforts preyed upon white fears of competition from the industrious Japanese as well as fears of a looming international threat, yet fell mainly short of resorting to violence. Nevertheless, the story behind and the enactment of Texas' Alien Land Law remains a dark chapter in the legal history of our state. It would take until 1952 for the California Supreme Court to invalidate its alien land law as a violation of the 14<sup>th</sup> Amendment's Equal Protection Clause.<sup>50</sup>

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<sup>48</sup> John Sneed, "Alien Land Bill Causes Agitation."

<sup>49</sup> Bruce A. Glasrud, "Asians in Texas: An Overview," 1870–1990, 39:2 *East. Tex. Hist. J.*, 14 (2001).

<sup>50</sup> *Sei Fujii v. California*, 242 P.2d 617 (1952), 38 Cal. 21 718; see also Keith Aoki, "No Right to Own? The Early Twentieth-Century Alien Land Laws as a Prelude to Internment," 40 *Boston College L. Rev.* 37 (1998).

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# Judicial Profile of Hon. James Ho

By Chad Baruch

**M**ost Texas appellate lawyers know that James C. Ho is the first Asian American judge to serve on the U.S. Court of Appeals for the Fifth Circuit. But they may not know that Judge Ho and his wife, Allyson, may be the only married couple in history to have both clerked at and then later both argued and won cases in the U.S. Supreme Court.

## Taiwanese by Birth, Texan by Marriage

This success was hardly preordained. Judge Ho's life is quintessentially American: an immigrant's success story. Born in Taipei, Taiwan in 1973, Judge Ho moved with his parents to New York as a toddler and learned English by watching *Sesame Street*.



Judge James C. Ho

His family moved to Southern California just in time for him to start kindergarten. Even in California—with its substantial Asian American population—his classmates told him the food he brought to school smelled “funny” (and couldn't help but notice that he brought it in a bento box rather than a lunchpail). He remembers racial slurs on the playground and, later, the football field.

For most of Judge Ho's youth, his family resided in Pasadena. He graduated from Polytechnic High School (though he definitely can't claim to be its most renowned alum; that would be Julia Child) where he played linebacker on the football team and was a founder—with current California Supreme Court Justice Leondra Kruger—of the school newspaper. As a senior, “on a lark,” he joined the cast of the school's production of *How to Succeed in Business Without Really Trying*. His acting career was fleeting (his only other appearance in a musical was during his first year of law school), but it birthed a lifelong love of theater (*Les Miserables* and *Hamilton* are his two favorites—he even wrote a judicial opinion sprinkled with *Hamilton* references—no word yet on whether *Les Mis* will get similar treatment someday).

During a high school summer journalism camp at Stanford University, he fell in love with the campus and was determined to enroll there as an undergrad. At Stanford, he became a devout fan of Cardinal football; he has attended every Rose Bowl Game the school has played in during his lifetime (he notes that is only four—but expresses great optimism for the future).

Judge Ho graduated from Stanford with honors, obtaining a B.A. in public policy. Following college, he earned a fellowship to serve as a legislative aide to California State Senator Quentin Kopp.

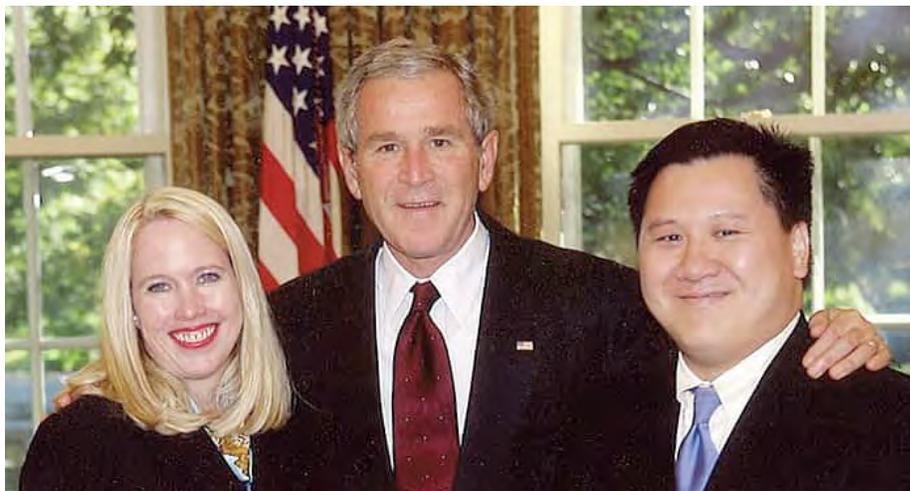
During the process of choosing a law school, Judge Ho visited the University of Chicago and heard a faculty debate featuring then-professor Elana Kagan. The high level of discourse mesmerized him; he “just fell in love with the intellectual rigor of the place.” During his second year at Chicago, Judge Ho met an engaging first-year student from Texas named Allyson Newton, who already had a Ph.D. in English from Rice University. The two became fast friends.

After graduating from Chicago with high honors, Judge Ho began a clerkship with Judge Jerry E. Smith of the Fifth Circuit in Houston. His law-school friend, Allyson, took a summer clerkship with a law firm in Houston at the same time. Soon, they were dating.

## **A Passion for Public Service**

After his clerkship, Judge Ho accepted a job with Gibson, Dunn & Crutcher in the firm’s Washington DC office (where he assisted firm partner Ted Olson in representing President George W. Bush during *Bush v. Gore*). Allyson came to Washington too, working in the Bush White House and clerking at the U.S. Supreme Court for Justice Sandra Day O’Connor.

After a short stint at Gibson Dunn, Judge Ho went to work in the Justice Department, first as Special Assistant to the Assistant Attorney General for Civil Rights and later as an attorney-advisor at the Office of Legal Counsel. He then served as chief counsel of the Senate Judiciary Committee’s Subcommittees on the Constitution and Immigration under Senator John Cornyn.



Allyson and James Ho with President George W. Bush

In 2004, Judge Ho and Allyson were married. The following year, Judge Ho accepted a position as a law clerk for Justice Clarence Thomas. Judge Ho quickly came to appreciate the warmth and friendliness that Justice Thomas showed to everyone who worked in the Supreme Court’s building. And he admired that Justice Thomas “took the job very seriously, but didn’t take himself too seriously.”

The justice made a lasting impression on the young lawyer by working hard each day, but always focused on returning home to be with his wife. Judge Ho realized that Justice Thomas was “first, and foremost, a husband—then a justice.” It was a lesson he heeds to this day. Justice Thomas also taught Judge Ho that being a judge means you “look at the law, make the best intellectual assessment you can, and then let the chips fall where they may.”

After completing his clerkship for Justice Thomas, Judge Ho accepted a position with Gibson Dunn in the firm’s Dallas office. He then succeeded Ted Cruz as Texas Solicitor General. Judge Ho considers Senator Cruz “one of the top appellate advocates of his generation.” He credits Cruz with

helping him form a style in oral argument: “confident, conversational, and with an encyclopaedic grasp of the entire case.”

Apparently, these lessons took hold; Judge Carl Stewart—a present member of the Fifth Circuit and its former Chief Judge—recalls that as an oral advocate before that court, Judge Ho “possessed an excellent grasp of the entire case—both the record and the case law—that enabled him to answer any question.”

Judge Ho served as the fourth Solicitor General of Texas for three years, the first Asian American to hold that office. During that stint, he received three Supreme Court Best Brief Awards from the National Association of Attorneys General, and he remains the only state solicitor general in American history to be invited by the U.S. Supreme Court to express the views of a state.

Judge Ho left government service to rejoin Gibson Dunn’s Dallas office, serving as co-chair of the firm’s national Appellate and Constitutional Law Practice Group. In his appellate career, Judge Ho presented fifty oral arguments in federal and state courts nationwide. He won numerous appeals as lead counsel—including three in the U.S. Supreme Court—and routinely ranked among the nation’s leading appellate advocates.

## **Client Praise and Courtroom Success**

Alan Tse has served as general counsel for multiple Fortune 500 companies and repeatedly hired Judge Ho to handle appellate matters. Tse describes Judge Ho as having “one of the most thoughtful legal minds” he ever encountered, and as being “extremely passionate about his clients.” Another client, Sarah Teachout, chief legal officer of Trinity Industries, particularly appreciated Judge Ho’s ability as an appellate lawyer to make even the most difficult issues readily understandable:

Judge Ho is the consummate appellate advocate and jurist—wielding an almost superhuman ability to distill complex legal concepts down to simple, unassailable legal arguments. In our case, he remained steadfastly focused on delivering a winning message and result. While it goes without saying that Jim possesses exceptional skills as an appellate attorney, his ability, in our case, to work at all levels within our organization in a personal and caring way truly set him apart. Jim was totally dedicated to us as a client, and he did so while embodying all of the best attributes of an appellate advocate.

Among his many successes as an attorney, Judge Ho persuaded the U.S. Supreme Court to grant *certiorari* and reverse intermediate-court decisions without even requesting merits briefing or hearing oral argument. This is a rare action for the Court to take—yet Judge Ho convinced the justices to do it in two different cases involving constitutional issues.

In the first case, the Court voted unanimously to reinstate a capital sentence after finding that the Fifth Circuit ruled improperly on an issue concerning peremptory challenges based on a potential juror’s demeanor. *Thaler v. Haynes*, 559 U.S. 43 (2010) (per curiam). The *National Law Journal* said Judge Ho and his team achieved “the rare result that the high court reinstated a death sentence that the [Fifth] Circuit had set aside.”

The second case involved a rare summary reversal to deny qualified immunity to a government official in a case involving violations of religious liberty. Police officers visited a woman’s apartment while investigating a noise complaint and engaged in a course of strange and abusive conduct—including refusing to let her pray in her own home even while they were simply waiting to hear back from another officer. *Sause v. Bauer*, 585 U.S. \_\_\_, 138 S. Ct. 2561 (2018) (per curiam).

In December 2017, the United States Senate confirmed President Trump’s nomination of Judge Ho to the Fifth Circuit, and he was sworn in by Justice Thomas and Judge Smith in early January. As an active judge on the Fifth Circuit, Judge Ho sits in New Orleans seven times per year on panels of three judges. He also participates in up to three en-banc sessions each year. He spends the remainder of his time working from his chambers in Dallas.



Justice Clarence Thomas swore in Judge Ho at his investiture to the Fifth Circuit Court of Appeals in 2018.

## Powerful Writer, Persuasive Jurist

Although Judge Ho is just into his fifth year on the Fifth Circuit, his influence is being felt both in New Orleans and Washington. In an opinion reversing the Fourth Circuit, Justice Kavanaugh—writing for an eight-justice majority—quoted one of Judge Ho’s opinions concerning federal criminal law:

In sum, as the Fifth Circuit aptly stated, demonstrating prejudice under *Rehaif* “will be difficult for most convicted felons for one simple reason: Convicted felons typically know they’re convicted felons.”

*Greer v. United States*, 141 S. Ct. 2090, 2098 (2021) (quoting *United States v. Lavalais*, 960 F.3d 180 (5th Cir. 2020)). And Justice Kagan, also writing for eight justices, reversed the Fifth Circuit on a federal arbitration issue and adopted the view urged in Judge Ho’s dissent in *Quezada v. Bechtel OG&C Constr. Servs., Inc.*, 946 F.3d 837 (2020), noting his “fidelity to text.” *Badgerow v. Walters*, \_\_ U.S. \_\_ (2022) (quoting *Quezada*, 946 F.3d at 846 (Ho, J., dissenting)).

Justice Alito twice has written dissents citing opinions by Judge Ho. *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1765 (2020) (Alito, J., dissenting) (citing *Wittmer v. Phillips 66 Co.*, 915 F.3d 328, 333 (5th Cir. 2019) (Ho, J., concurring)); *California v. Texas*, 141 S. Ct. 2104, 2135 n.9 (2021) (Alito, J., dissenting) (citing *Lopez v. Pompeo*, 923 F.3d 444 (5th Cir. 2019)). And in a recent First Amendment case from Texas, where the Fifth Circuit divided 8-8, one of the lawyers opened his oral argument by quoting Judge Ho’s dissenting opinion in the Fifth Circuit: “This is not the right result. As Judge Ho said, the First Amendment protects freedom of speech, not freedom from

speech.” The Supreme Court subsequently agreed in a unanimous decision by Justice Gorsuch. *See Houston Community College System v. Wilson*, \_ U.S. \_ (2022).

In the Fifth Circuit, Judge Ho has authored en banc majority opinions ranging from federal civil procedure and asbestos liability to labor law and the oil-and-gas industry. *See Williams v. Taylor-Seidenbach, Inc.*, 958 F.3d 341 (5th Cir. 2020); *Hewitt v. Helix Energy Sols. Grp.*, 15 F.4th 289 (5th Cir. 2021). He has written a number of dissents that later became majority opinions, ranging from securities fraud to the Fair Labor Standards Act to Title VII. *See Alaska Electrical Pension Fund v. Asar*, 898 F.3d 648, 667 (5th Cir. 2018) (Ho, J., dissenting); *Faludi v. U.S. Shale Solutions, L.L.C.*, 936 F.3d 215, 221 (5th Cir. 2019); *Sambrano v. United Airlines, Inc.*, 19 F.4th 839, 839 (5th Cir. 2021) (Ho, J., dissenting).

These shifts in judicial thinking only occur in an atmosphere of openness that encourages the free exchange of ideas. Judge Steve Higginson—another colleague on the Fifth Circuit—cites Judge Ho’s receptiveness to the ideas of other jurists on the court:

Judge Ho has an exceptional mind which allows him to be fearless in inquiry and to welcome all viewpoints. That’s a lawyer’s dream; it’s certainly mine as a colleague.

Judge Stewart echoes that sentiment, noting that while Judge Ho is “decisive,” he “welcomes and always wants to hear opposing viewpoints from his colleagues—and never is dismissive of those opposing views in conference.” Judge Stewart describes Judge Ho as being “courteous and collegial in every way, from emails to phone conversations to conferences.”

In addition to his collegiality, Judge Ho’s colleagues also point to his attention to detail and force of reasoning. In a comment reminiscent of what struck Judge Ho about Justice Thomas’s commitment to family all those years ago, Judge Higginson notes that “Judge Ho instantly checks errors yet embraces what’s convincing. That confidence—and independence—would be easy to credit to Gibson Dunn or the positions he held in state and federal government, but I think Judge Ho’s creativity is more than courtroom talent—it’s what he needs to keep up with Allyson and their wonderful children.”

Another colleague on the court, Judge Gregg Costa echoes that sentiment:

Outsiders tend to view the court of appeals as a place akin to a law school classroom where judges can think deeply about a legal issue. The reality is that the crushing load of cases doesn’t often allow for that. But more than most judges, Judge Ho makes time to vigorously engage with a case, consider first principles, and debate the proper outcome with clerks and colleagues. He relishes the respectful back-and-forth among colleagues that helps us arrive at the right answer. He also has a strong independent streak. Because of his deep intellectual engagement and independence, I always look forward to hearing his views on a case.

Ross Davies, a law professor at George Mason and editor of *The Green Bag*, recalls Judge Ho’s work helping to edit that publication in its early years and notes his “relentless attention to detail and insistence that each author present a gap-free argument (even if it was an argument

with which he disagreed).” As further testament to his lifelong passion for excellence in legal writing, Davies persuaded Judge Ho two years ago to start an annual column on exemplary judicial opinion writing for *The Green Bag*.

But the law isn’t Judge Ho’s only passion. In addition to his love of theater, he has from his youth been an avid movie fan. As a teenager and college student, he collected film posters (back when that meant pestering movie-theater owners rather than just perusing Amazon and Ebay). Among the favorites from his collection are posters from *Shakespeare in Love*, *Glory* (his all-time favorite movie), *The Player*, and *Any Given Sunday*—all of which adorn the walls of the home he shares in Dallas with Allyson and their children. Additionally, Judge Ho is an avid poker player; he and Judge Costa share that passion—and unwind with hotly contested games of Texas Hold ‘Em.

## **Community Leader**

Throughout his legal career, Judge Ho remained active in the Asian American legal community. He served as co-chair of the judiciary committee for the National Asian American Pacific Bar Association. He and Allyson hosted annual “games nights” at their home for the local chapter of that organization. He has written a series of articles of interest to the Asian American community that have attracted national attention and widespread acclaim.

Judge Ho has received numerous recognitions from the Asian American community, including the President’s Award from the National Asian Pacific American Bar Association and the Award for Outstanding Contributions to Asian Pacific American Leadership from the Conference on Asian Pacific American Leadership.

Alamdar Hamdani, the former president of the South Asian Bar Association of North America, has a two-decade friendship with Judge Ho that began “in the wake of the September 11 attacks and the resulting racial backlash against Muslims, South Asians, and Arabs.” During Hamdani’s presidency of the association, he and Judge Ho “worked together to help insure the civil rights of folks who looked like me or shared my parents’ Muslim faith.”

So, it shouldn’t be surprising that Tse believes Judge Ho “also happens to be one of the most respected attorneys within the Asian American community.” Hamdani echoes the sentiment, calling Judge Ho “a positive example to many, and especially to Asian lawyers.”

## **Staying Grounded**

As a newer member of the judiciary, Judge Ho worries about what he calls “judge-itis”—being on the bench so long that he forgets the challenges confronting the lawyers who appear before him. But that seems unlikely. After all, Judge Ho remains married to a practicing lawyer; Allyson keeps him closely connected to the daily realities of practicing law. After four years on the bench, Judge Ho says that “when I look in the mirror, I see a husband, a father—not a judge.” And that probably will never change.

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# Profile of Judge Karen Gren Scholer

By Meyling Ly Ortiz and Stacey Cho Hernandez

**T***railblazer.* That single word aptly captures Judge Karen Gren Scholer's remarkable career, a legacy of professional excellence marked by the many "firsts" she has accomplished during her lifetime.

She made history when the United States Senate voted 95-0 to confirm her as an Article III judge for the United States District Court for the Northern District of Texas. Not only was the vote count extraordinary, but Judge Scholer also became the first judge of Asian descent to serve as a federal district court judge in Texas. Topping that off, she was nominated not once but *twice* under two different administrations—first by President Obama on March 15, 2016, and then by President Trump on September 7, 2017.



Judge Karen Gren Scholer

As detailed in Judge Susan Oki Mollway's book, *The First Fifteen: How Asian American Women Became Federal Judges*, Judge Scholer's achievement is especially impressive as women first entered the federal judiciary less than a century ago. And, as of 2019, of the sitting female Article III judges, a mere four percent were Asian American women.

Judge Scholer's achievements here in Texas are well-documented. In 2019, the *Texas Lawyer* remarked that Judge Scholer's decade-long journey to becoming the state's first Asian American federal district judge is a testament to her exceptional qualifications and the universal respect she has earned from her colleagues throughout her career. In another important "first," Judge Scholer will be the first Asian American to receive the esteemed Fellows Justinian Award from the Dallas Bar Foundation in 2022.

What is a trailblazer? It is one who forges a new path through uncharted territory to help others find their way. Note both parts of the definition—someone who boldly charts a new course while, at the same time, lights the path for others to follow. That is Judge Scholer—continuing to break proverbial glass ceilings, all the while inspiring, mentoring, and bringing others up with her.

Some may say that Judge Scholer was destined to be a trailblazer. Born in Tokyo, she is the daughter of a Japanese mother, who is a college graduate, a rare and impressive accomplishment for a woman in 1940s Japan. Her father was an American World War II veteran who served in the 82nd Airborne, the son of Polish immigrants, and the first in his family to attend college. Judge Scholer's parents met while her mother was working at a doctor's office that provided treatment for many American patients, one of whom was Judge Scholer's dad.



Left: Judge Scholer with her husband Gunnar Scholer at her swearing in on March 7, 2018. Right: At the investiture, Judge Scholer stands with her brother (in white uniform), her three sons and her son's wife.

Judge Scholer's family moved to the United States when she was four years old, and their adjusting to life here came with its own slate of unique challenges. Their move to the States came on the heels of the first (and only) instance in American history where U.S. citizens were forced to abandon their homes and businesses to reside in internment camps solely because of their ancestry. To say that it was a trying time to be Japanese or Japanese American in America would be a profound understatement. In that regard, Judge Scholer recalls learning at a young age how some people can be cruel and mistreat others simply because they, their parents, or their grandparents were immigrants to this country.

Looking back, Judge Scholer credits her parents for emphasizing education and the work ethic necessary to ensure that she would ultimately have the confidence and determination to forge her own path. Given her parents' exceptional background, it is no surprise that Judge Scholer went on to excel in her own right. She would become the first on her father's side of the family to complete college, which she did when she graduated from Rice University triple-majoring in legal studies, political science, and sociology. Somehow, Judge Scholer also found the time to maintain an active campus life, including serving as head varsity cheerleader and a freshman advisor while also playing a variety of intramural sports (linebacker on her powderpuff football team and pitcher on her co-ed softball team).

While Judge Scholer would go on to obtain her J.D. from Cornell Law School in Ithaca, New York, her commitment and desire to return home to Texas remained unwavering. During the summers following her 1L and 2L years, Judge Scholer worked at elite Dallas law firms in litigation. Her experiences there forged her desire to become a trial lawyer.

After law school, Judge Scholer settled back in Dallas and entered private practice focusing on complex tort and business litigation. In private practice, Judge Scholer was a co-managing and named partner at litigation boutique law firm Carter Scholer (2014-18), and a litigation partner at Jones Day (2009-13), Andrews & Kurth (1996-2000), and Strasburger & Price (1982-96). She was



repeatedly recognized as one of the top lawyers in Texas, selected as a finalist for Attorney of the Year by *Texas Lawyer*, and included in Thomson Reuters' *Super Lawyers*® (Texas), *D Magazine's* Best Lawyers, and Best Lawyers in America. She was also identified as one of the Top 50 Women Lawyers in Texas by Thomson Reuters' *Super Lawyers*®. As further evidence of Judge Scholer's trailblazing nature and career, she ascended to partnership at each of her previous law firms during a time when women of color comprised only 1.5 percent to 3 percent of lawyers at firms (according to a Berkeley Law 2020 Diversity Report).

Judge Scholer's advocacy skills and legal excellence preceded her calling to the bench. As Judge Mollway notes in her book, when Judge Scholer was urged by others to pursue a state judgeship, she said they were telling her what was already in her heart—a willingness to serve. This led her to become the first Asian American elected as a Texas state district judge in Dallas. Judge Scholer served as judge of the 95<sup>th</sup> District Court from 2001 to 2008. After serving two full terms on the state court bench, Scholer returned to private practice in 2009 after deciding not to run for a third term. But her passion for judicial service never waned, and soon Judge Scholer was tapped to fill existing vacancies on the federal bench.

In 2016, Senators Cornyn and Cruz sent Judge Scholer's name to President Obama for consideration for openings in both the Northern District of Texas and Eastern District of Texas. President Obama initially nominated her for a district judgeship for the Plano federal courthouse in the Sherman Division of the Eastern District of Texas on March 15, 2016. However, due to the change in the Administration, it was not until President Trump nominated her to be district judge

for the Northern District of Texas, Dallas Division, on September 7, 2017, that the stars aligned. On March 5, 2018, the Senate confirmed Judge Scholer on a 95-0 roll call vote, and she was sworn into office two days later. Many were eager to celebrate the newly minted U.S. District Judge Karen Gren Scholer—turning what is typically a small swearing-in ceremony attended by a few family members and close friends into a packed courtroom with many friends, lawyers, and other judges.

In the words of E. Leon Carter, a principal of Carter Arnett, and Judge Scholer’s former law partner: “Having appeared before Judge Scholer when she was on the state court bench and having been a partner with her for a number of years, I can truly say that Judge Scholer is the epitome of integrity, competence, and patience, and she has the unique yet necessary ability to make sound, practical, and impartial decisions in all matters that come before her. She is truly an inspiration for our profession and a model jurist for our judiciary.”



Judge Scholer at a judiciary committee hearing

Commensurate with the second part of the definition of trailblazer, Judge Scholer’s service goes beyond the courtroom. As anyone who knows her can attest, Judge Scholer is passionate about mentoring young lawyers and giving back as a way to recognize the support she received as she rose through the ranks in her legal career. And as Judge Scholer has been

known to say, being “the first” helps break down barriers for other people and opens up what they think they can do in their own lives. Stacey Cho Hernandez, a partner at Carter Arnett, shares that the mentoring she received as a young associate while working with Judge Scholer was of critical importance to her professional development: “Judge Scholer took the time to give me advice and push me to be a leader within the firm and the local bar. It is to her credit that I joined the Board of Directors of the Dallas Asian American Bar Association and later became its President. She is such a champion for other women attorneys.”



Judge Scholer with her mother

Beyond mentoring, Judge Scholer’s contribution to the bar spans the local, state, and national levels. She has served in leadership roles for the Dallas Bar Association, Dallas Bar Foundation, State Bar of Texas, and the National Asian Pacific American Bar Association. In another trailblazing achievement, Judge Scholer created the Inspiring Women Luncheon & Seminar, the most popular and well-attended CLE program in the history of the Dallas Bar Association—an annual event that celebrates women in the legal profession and consistently sells out within a matter of hours. Judge Scholer is also a past recipient of the National Asian Pacific American Bar Association Trailblazer Award,



Judge Scholer (front row, fourth from left) with U.S. district and appellate judges in December 2019. The back row includes U.S. Sens. John Cornyn (sixth from left) and Ted Cruz (seventh from left).

Dallas Women’s Lawyer Association Louise B. Raggio Award, and the Dallas Asian American Bar Association Lifetime Achievement Award. Sakina Rasheed Foster, who serves on the Board of the Dallas Women’s Lawyers Association and led the Dallas Bar Foundation committee that presented Judge Scholer for consideration for the Fellows Justinian Award, adds: “Throughout her career, Judge Scholer has consistently demonstrated the highest levels of professional excellence and made extraordinary contributions through her professional achievements in the legal field. Judge Scholer’s impeccable professional reputation, commitment to legal excellence, and fortitude are a perfect reflection of the ideals espoused by the Fellows Justinian Award.”

When asked about her journey to the federal bench, Judge Scholer says, “I don’t think it would have been possible without caring about and working for my community.” Indeed, if history indicates anything, it is that Judge Scholer lives by these words—in her courtroom and beyond. We know that Judge Scholer, as the trailblazer that she is, will continue to serve the community and light the way for others. And as her mentees, we are ever grateful to follow.

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# Meet Judge R. K. Sandill, a Trailblazer for the South Asian Legal Community

By Punam Kaji Bains

**A** Trailblazer is the first to walk through uncharted territory, moving forward into the unknown, leaving behind a trail for others to follow. The verb “blaze” in “trailblazer” refers to the act of marking the path along the way. Imagine hiking through the woods and taking a pocketknife to the tree bark, making signs so someone else could find the route. Being a trailblazer is not about clearing a path, it is marking a path, ensuring the next explorer can follow their way behind you.

Judge Ravi K. Sandill of the 127th District Court of Harris County embodies the term trailblazer. As Texas’ first South Asian District Judge he set a new path for South Asian lawyers. He demonstrated what can be achieved as an elected official and respected Judge. But, for him, it was not enough to be the first to take the path; he *blazed* the trail, marking the trees along the way, stopping to look back for the lawyers behind him, becoming a teacher as much as a voyager in his journey.



Judge R. K. Sandill

## What does it mean to be South Asian?

South Asian Americans include Americans whose ancestry comes from one of seven countries - Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka, and can also include descendants from the diaspora (the Caribbean, Africa, and the Middle East for example). The South Asian identity brings together descendants of these nations that share commonalities in American life. In their countries of origin these individuals do not necessarily share a connected identity, with different languages, religions, customs, and foods.

In the United States, Texas is the home for many South Asians, including immigrants as well as first and second-generation Americans. Texas is among the five states with the largest South Asian American population alongside California, Illinois, New York, and New Jersey.<sup>1</sup> The community is also quickly growing. Census data looks at Asian Americans as a whole, but the statistics may surprise you - Asian Americans are among the fastest growing population in the United States. Texas experienced 154% growth in the Asian American population from 2000-2019.<sup>2</sup>

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<sup>1</sup> [https://saalt.org/wp-content/uploads/2016/01/Demographic-Snapshot-updated\\_Dec-2015.pdf](https://saalt.org/wp-content/uploads/2016/01/Demographic-Snapshot-updated_Dec-2015.pdf)

<sup>2</sup> [https://www.pewresearch.org/fact-tank/2021/04/09/asian-americans-are-the-fastest-growing-racial-or-ethnic-group-in-the-u-s/ft\\_2021-04-09\\_asianamericans\\_05/](https://www.pewresearch.org/fact-tank/2021/04/09/asian-americans-are-the-fastest-growing-racial-or-ethnic-group-in-the-u-s/ft_2021-04-09_asianamericans_05/)

It was not until 1965, in the wake of the U.S. Civil Rights Movement that the Immigration and Nationality Act created a pathway for most South Asian immigrants. With the majority of South Asians immigrating in the 1970s or after, the South Asian legal community has truly only had the last few decades to develop. Recently, with “famous” lawyers like former U.S. Attorney Preet Bharara, United States Associate A.G. Vinita Gupta, and of course Vice President Kamala Harris, it feels like South Asian lawyers have made it. But, in practice, most South Asian lawyers will tell you they grew up without knowing any attorneys, let alone South Asian lawyers. South Asian lawyers are still used to being the only one in a room full of attorneys.

With some lawyers in the spotlight, we are seeing how to turn this experience of being the only one into being the first one - the first South Asian partner of a law firm, first South Asian elected official, etc. We watch some of these headlines live, and others are still unwritten. Judge Sandill was one of these headlines fourteen years ago. In 2008, at the young age of thirty-one, he took on the title of the first South Asian American to be elected District Court Judge in the State of Texas.

### **Judge Sandill’s Journey as a South Asian Trailblazer**

Judge Sandill is the son of immigrants from India. His family first immigrated to Canada, where he was born. His family moved to Philadelphia, and in 1982 Judge Sandill’s father joined the United States Army. In support of his father’s military service, Judge Sandill moved around as a child, spending formative years in Texas, Canada, and England.

Growing up in officer housing in the early 1980s on a military base in Fort Hood, Texas, Judge Sandill was the only kid who looked like him, and with parents who immigrated from India. Even if he did not see himself as different, his “difference” was made clear to him through the eyes of others. Judge Sandill said he remembers playing outside with his neighbor when his neighbor’s mother stopped them and told her son not to play with an illegal alien. As a young child, he did not know what an illegal alien meant and that this was a slur based on his brown skin, but the incident remains in his memory. For most of his childhood, he would be the only South Asian in his classroom, neighborhood, or friend group.

But Judge Sandill did not let the lack of belonging get the best of him. After graduating high school in England, he went to the University of Texas at Austin and started his studies in pre-medicine. His father was a psychiatric nurse for the U.S. Military, and South Asian families often perceive healthcare as a steady and respected field for their children. But Judge Sandill found government and economics and left the chemistry classes behind. In his final years of college, he had an internship with the Council of Economic Advisors of the White House, an experience that led him to volunteer with the White House’s Office of Advance, where he was able to travel and learn from White House officials.

After completing his undergraduate degree, Judge Sandill went on to graduate from the University of Houston Law Center. He then clerked for Justice Murry Cohen on Texas’s First District Court of Appeals before going into private practice as a litigator. Judge Sandill was in his first year of practice as a young attorney when a diagnosis of Hodgkin’s Lymphoma changed his life unexpectedly. He married his wife Kelly Sandill who he met in law school while undergoing eight

months of chemotherapy and radiation. The cancer returned six months later, bringing on more treatment, and eventually a stem cell transplant, thankfully resulting in full remission.

In 2006, after surviving cancer before turning thirty, Judge Sandill and his wife Kelly decided to expand their family. Because of the effects of the cancer treatments, the couple began the journey of adopting a child born in Guatemala. In July of 2007, with an adopted infant at home, the local Democratic party in Harris County approached Judge Sandill and asked him if he would consider running for Judge.

“I was thirty-one years old, and I did not know any Judges,” he said. “After my life experiences, I always figure you might as well take your shot. You only live once, and you don’t know when you’ll get another opportunity.”



Judge Sandill, son Asher, and wife Kelly

With the support of his wife and his law firm, he ran for the 127th Civil District Court Judge of Harris County. He won the election in 2008, beating a twenty-year incumbent, and has won every reelection since.

Judge Sandill ran on the ballot as R.K. Sandill, and still does, avoiding the potential xenophobia that comes with his full ethnic name. While he did not set out to break a barrier, Judge Sandill remembers that after winning the election “there was tremendous focus on being the first South Asian elected in Texas.” Judge Sandill accepted this role and the responsibility that comes with it, becoming more engaged with the community and helping the South Asian Bar Association of Houston with its revival.

Judge Sandill sees himself not just as a South Asian but as a Houstonian, an American, and most significantly, as the father of his Guatemalan American son. He recognizes the importance of using his position to promote equality and opportunity for all people. But he also values the special kinship of the South Asian community. “Sometimes you just need to feel like you belong, and the South Asian community has been a strong source of support for me through the years,” Sandill said.

Judge Sandill has become an important figure for the South Asian community, but he is also a voice for greater diversity, equity, and inclusion in the Bar at large. In 2018, he created a standing order allowing parental leave following the birth or adoption of a child. The order gives peace of mind to litigators in the 127th District Court, knowing they can take the time away to prioritize family during a trial.

In 2021, Judge Sandill began requiring that anyone seeking an appointment in the 127th

District Court complete at least six hours of bias training in the last four years. He led the way by adopting this policy, and then rolled up his sleeves to help the Houston Bar Association put together classes for people to meet the six-hour requirement.

In the diversity and inclusion space, Judge Sandill describes the work as inward looking as much as a call for change externally. “The work that I do on diversity and inclusion is because I have found areas in which I need improvement to be the best possible judge and human. And I figure if I can make myself a better person by being more mindful and aware, I can probably help other people to be their best selves too.”

Judge Sandill has won countless awards for his service to the community, including the Distinguished Jurist Award from the African American Lawyers Section, the Houston Bar Association Diversity Award, the President’s Award from the Houston Bar Association, the Trial Judge of the Year Award from the Hispanic Bar Association of Houston, and the Justice David Wellington Chew Award, the highest honor from the Asian Pacific Interest Section of the State Bar.

He said, “as a Judge you resolve disputes, and you call balls and strikes. That is important work, but being a judge also gives you a platform to create progress in the legal arena and to advocate for fairness and equity.”

When Judge Sandill talks about what motivates him, he repeatedly comes back to his son. “He makes me more vulnerable and because of that I am able to do more good.” In regards to his run for the Texas Supreme Court in 2018, Judge Sandill said he put his name on the ballot—even though he knew a Democrat likely would not win—to show his son that his family stands up against hateful rhetoric rather than standing by.

Judge Sandill has tried over 250 cases and disposed of over 20,000 matters. But rather than pointing to a particular case or an accolade, he said the best part of his job is interacting with the twelve jury members in each case. It is his opportunity to meet people from all walks of life and get to know some of the 4.1 million people in Harris County that he serves as an elected official.

When asked what it means to be the first South Asian elected to county-wide office in Texas, Judge Sandill said that title comes with the responsibility to create a pipeline. “The greatest part is seeing those in our community rise,” Sandill said as he listed off names of other South Asians who have become judges after him (Judge Rabeea Collier, Judge Juli Mathew, and Judge Dimple Malhotra to name a few). “It is nice not being the only one. It is nice to be able to help others [...] because I know how meaningful it is to the community.”

Judge Sandill’s story is a reminder of how South Asians in the Texas Bar are making history. Texas lawyers are living among the first generation of South Asian lawyers and seeing the development of the community as it rises to prominence, finds ways to serve the public, and defines itself.

Judge Sandill wants to be sure that the story does not end with him. “I am just trying to create space for other people, and make sure the legacy I have tried to build is continued by folks coming down the line.” Being a trailblazer is meaningless to Judge Sandill if no one is walking the path behind him.

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# Harry Gee, Jr.: A Profile

By Daniel David Hu<sup>1</sup>



Harry Gee, Jr.

**H**arry Gee, Jr. is a trailblazing Houston lawyer. When he opened his own practice in Houston in 1966 he was probably the first Houston Asian lawyer who relied entirely on his law practice for income. His trailblazing journey is recounted here.<sup>2</sup>

The trail starts with Harry's father, Harry Gee, Sr., a pioneer Chinese immigrant in Houston. Harry Sr. came to the United States in 1909 at age fourteen and worked as a dishwasher in San Francisco.<sup>3</sup> Harry Sr. saved his money and opened restaurants in Pampa, TX, Lake Charles, New Orleans and finally Houston, Texas. In 1937 he went

back to China because his mother was ill. While there he got married but had to return to the United States before his first child was born. His wife, Mar Sui Gee, traveled to Hong Kong when she was seven months pregnant but, unable to get a visa, returned to the family village, Hoi Peng. Harry Gee Jr. was born in Hoi Peng in 1938. The family obtained visas in 1941. Finally, Harry Sr. was able to make arrangements to bring his wife and son to the United States. Due to the war, Harry Jr. and his mother traveled by sedan chair and sampan to Hong Kong, a British colony not under siege. In January 1941 the USS Calvin Coolidge left Hong Kong and arrived in San Francisco with Harry Jr. aboard. Harry Jr. and his mother arrived at Angel Island and were quarantined in San Francisco for six weeks. Among the restaurants owned by Harry Gee Sr. were Houston's Chinese Village, one of the first drive-in restaurants in the country and China Star Restaurant.<sup>4</sup>



1941 family photo (Harry & parents)

<sup>1</sup> Daniel Hu is an attorney in Houston, Texas. He is the founder of the Asian Pacific Islander Section of the State Bar of Texas. He is the second (Harry Gee is the first) APA to serve on the State Bar of Texas board of directors. Mr. Hu was first introduced to Mr. Harry Gee in 1986 by Fifth Circuit Judge Thomas Gibbs Gee, no relation.

<sup>2</sup> Harry Gee Jr. kindly met for an interview with the author in January 2022. See also, interview with Harry Gee, Chao Center of Asian Studies, June 15, 2012.

<sup>3</sup> Martinello & Field, *Who Are the Chinese Texans*, p. 72, Institute of Texas Cultures (1979).

<sup>4</sup> The Gees in Texas, Gee family Association, 50<sup>th</sup> Anniversary 1998.

Harry Jr. attended San Jacinto High School in Houston and then enrolled at Rice. After graduating from Rice in 1960, Harry Jr. entered UT law school. He finished in twenty-nine months and obtained his Bachelor of Law degree in 1963.

Upon graduation from UT Law in 1963 opportunities for minority lawyers were limited. Fortunately, Albert Gee<sup>5</sup>, who managed Harry Sr.'s restaurant (Chinese Village), had a good connection through John Connally to Texas Attorney General Waggoner Carr and an opportunity arose. To get trial experience and fulfill his goal of public service, Harry Jr. joined the AG's office in Austin.



Harry Jr. and his mother in church photo

He handled tax, banking, insurance commission and condemnation matters. He was quickly recognized for his legal acumen — for example, he asserted a novel laches defense and won a difficult case for the savings and loan commissioner who lost many similar cases in the previous five years. At that time part of the AG's office income was money recovered in tax cases and Mr. Gee more than doubled collections to the benefit of the office.

When Mr. Gee decided to move to the private sector in Houston in 1966, no law firm was interested in his skills despite demonstrated results and work ethic. At that time there were two Houston Asian Pacific American lawyers, Sam Eng and Jimmy Lee. Both Eng and Lee had other business interests, so Harry Gee Jr. may have been the first APA Houston lawyer whose income was derived entirely from law practice in Houston.

When Mr. Gee opened his own shop, he handled a general docket. Houston Lawyer Referral Service was very helpful. One of his first cases was a municipal court dog leash violation case where he was able to secure a good resolution at trial for his client. Many of his early cases were divorce proceedings. Fortunately, he was referred a number of cases and ultimately received an immigration case involving two Ph.D. candidates from Rice University who were working for Brown and Root. In 1965 the immigration laws for labor certification cases changed and through his first case for Brown & Root Mr. Gee pivoted into immigration law.

One case led to another and Mr. Gee became the dean of the immigration bar, especially employer cases. In 1979 Mr. Gee was one of the first lawyers certified in immigration law by the Texas board of legal specialization. He went on to chair the examination committee for Immigration Board Specialization for five years. Mr. Gee handled a number of high-profile matters including representing Ghulam Bombaywala, a prominent Houston restaurant owner (Bombaywala

<sup>5</sup> Albert Gee is another trailblazer. See Ann Chao, "Asian Americans Quietly Made Houston History", *The Houston Chronicle*, March 28, 2021.

appeared on Oprah in 1999) who had some controversy with the INS. Mr. Gee pointed out that the case showed the incredible diversity of our city — a Mexican restaurant owned by a Pakistani immigrant was represented by a Chinese American lawyer. Only in America!

Mr. Gee's innovation has helped improve immigration practice. For example, around 1977 when Houstonian Leonel Castillo was Commissioner of the INS, Mr. Gee, in a liaison role between the American Immigration Lawyers Association (AILA) and the government, helped improve relations. He worked out a simple solution to an old problem – how to acknowledge attorney representation when submitting papers to the INS. The procedural change implemented was a document showing representation by counsel on blue paper so representation could be easily identified.<sup>6</sup>



Antje and Harry Jr.

When asked why he chose to practice law, Mr. Gee candidly said he made that choice “where I could best serve the community.” And he has served the community well. In addition to his law practice Mr. Gee's civic engagements include serving as a Senior Fellow of The American Leadership Forum, as well as serving as Chair of the organization. He has been a member of the board of the Greater Houston Partnership, the Institute of International Education, The Center for Houston's Future, the University of Texas Health Science Board and the Houston International Festival Foundation.

For six years, he served as President of Sister Cities of Houston, Inc., an organization dedicated to the promotion of cultural, educational and economic interests between Houston and its sixteen sister cities throughout the world. He had previously served as president of the Houston Taipei Society for three years. Also, he chaired the Houston Council on Foreign Relations and the Houston International Festival Foundation.

Mr. Gee has served the community as the President and Chairman of the Friends of the Houston Public Library. During his chairmanship, the format of the annual book sale was improved to substantially increase its sales revenues. He has also served as President of the Gee Family Association and the Chinese Professional Club. During his term of office the Chinese Professional Club raised and made its largest contribution to its scholarship fund. He also served as President of the Chinese American Citizens Alliance for two years. Among the many other boards he has served on are the National Conference of Christians and Jews, the Mickey Leland Kibbutz Program, the Greater Houston Community Foundation, the University of Houston Law Foundation, the Child Abuse Prevention Council, the Asian American Coalition and the Institute of Chinese Culture, the United Way, the Gulf Coast Regional Blood Center, the Children's Fund Task Force of the Joint City/County Commission on Children, the Jefferson Award and the Advisory Board of JPMorgan Chase, Houston.

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<sup>6</sup> Ruby Powers, “Profile of Harry Gee”, *The Houston Lawyer*, November 2020.



Harry was honoree at the 1995 Family Association dinner shown here with wife Antje and children, Claudia, Andrew and Sonja.

In 1999, Mr. Gee was elected as chair of Leadership Education for Asian Pacifics (LEAP), a national organization promoting the advancement of Asians into positions of leadership within their companies, educational institutions, and communities, as well as instituting research and publication of public policy analysis germane to the Asian community. He is one of a select few Chinese from Houston to have been invited to join the prestigious Committee of 100.

Mayor Bob Lanier appointed Mr. Gee as a founding member of the Steering Committee of Imagine Houston and appointed him as the first Asian on the board of the Metropolitan Transit Authority. Mayor Lee Brown appointed Mr. Gee to the Board of Houston 2012, a non-profit foundation which promoted Houston as the site of the 2012 Olympics. Mr. Gee served on the Super Bowl Host Committee as Chair of the Community Relations Committee responsible for the establishment of the Youth Education Town (YET) Center. He obtained contributions of over \$2,000,000 to the Houston community from the National Football League and the Houston Host Committee and created two YET centers in the community, the first time the NFL created two centers in the same year.

Beyond his community service, Mr. Gee has also served our profession. Actively involved in various legal organizations, Mr. Gee served as President of the National Asian Pacific American Bar Association, 1990-91, an organization comprised of attorneys of Asian ancestry throughout the country. During his term, NAPABA established the Thomas Tang Moot Court competition which has become a most prestigious event at the annual NAPABA conference. He has been recognized for his service and leadership and awarded the NAPABA Trailblazers Award. He has also served as a member of the Board of Governors of the American Immigration Lawyers Association, Chairman of the Texas Chapter of AILA for two years, Chairman of the Immigration and the Law Day Committees of the Houston Bar Association, and as President of the Asian American Bar

Association of Houston. In 2005, the Asian Bar of Houston honored him with its inaugural Impact Award. In 1993, he was honored by his colleagues in his election to the Board of Directors of the State Bar of Texas and chaired the Texas Board of Legal Specialization.

Although Mr. Gee's parents had a combined formal education of eight years, they instilled the value of education in Harry Jr. Mr. Gee has given back to our community by leading education efforts and scholarships. His family has established a Presidential Scholarship at the University of Texas in the field of Immigration Law in honor of his parents, a Red Rose scholarship at the University of Houston-Downtown, a scholarship at the University of Texas Health, a Chinese Professional Club academic scholarship and a scholarship in honor of Antje Gee for Rice women athletes. In 2005, the Houston Bar Association Women's Auxiliary presented Mr. Gee the prestigious Leon Jaworski Award for his significant community service, the first minority to receive this honor. In Chicago, the American Bar Association presented him with the Spirit of Excellence Award in 2006.

Because of his concern about education, he has served as a member of the Board of Directors of St. Thomas University, the Annenberg Challenge, the Concerned Houstonians for Effective and Superior Schools Committee, the Citizen's Initiative for Higher Education, Class Chairman of the Rice University Alumni Fund Drive, President of the Rice University Chinese Alumni Association and as an Executive Advisory Committee Member of the University of Houston Creative Partnerships Campaign and the Chancellor's National Advisory Committee. He was on the Board of the Association of Rice Alumni and served as President of the Rice Alumni Association from July 1, 2006 to June 30, 2007.



The Gee name  
in Chinese

Mr. Gee is a minority owner of the Houston Texans. He has been a volunteer throughout his career. Through his volunteer work at his alma mater, Rice, Mr. Gee was invited to join the UT Health Science board. A fellow UT board member was asked by the Texans' owner to help recruit minority investors. In turn Mr. Gee was asked to recruit investors and ultimately Mr. Gee was offered the opportunity to become one of the first Asian American investors in an NFL franchise.

Mr. Gee's service includes serving as a mentor for many lawyers. For example Gordon Quan, former mayor pro tem of the City of Houston and prominent immigration attorney worked with Mr. Gee when Mr. Quan was in law school and for three years as an associate attorney.

Mr. Gee has been happily married to the former Antje Wuelfrath for more than sixty-two years (married in 1970) and they are the proud parents of three children, Andrew, Claudia, and Sonja, who are 1997, 1999 and 2001 graduates of Rice University respectively. The Gees are especially proud grandparents of nine adorable grandchildren. Mr. Gee's children are trailblazers too – Andrew is Mr. Gee's law partner, Claudia serves as the President of the Houston Botanic Garden and Sonja the President and CEO of Memorial Assistance Ministries (MAM), where she leads seventy-five employees and more than 1,500 volunteers per year.

Harry Gee, Jr. is a pioneer and trailblazer. Hopefully his story will inspire others to follow.

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# How a Tokyo Lawyer Saved the Texas Rice Industry

By Hon. John G. Browning

**A**mong the Asian American lawyers and judges whose stories are chronicled in this issue, it would be fair to say that all of their contributions were to the legal system and the profession itself. All, that is, except for a lawyer from Tokyo named Seito Saibara. Seito Saibara didn't leave his mark on the legal system. What he *did* do, however, was save the Texas rice industry.



Seito Saibara

It all began back in 1902. There were only thirteen Japanese immigrants living in Texas as of the 1900 U.S. Census, but in 1902 Japanese Consul General Sadatsuchi Uchida visited Houston. He learned that only officials, hoping to improve the state's rice cultivation, were interested in recruiting immigrants from Japan to grow rice in the region. Uchida believed that Japanese hoping to improve their economic outlook would be interested in emigrating, so it was a win-win. He turned to Seito Saibara to make this happen.<sup>1</sup>

Saibara was an interesting choice, since he was not a farmer by training – he was a lawyer. Born in 1861, Saibara was raised during a revolutionary period in Japan that saw the fall of the samurai ruling class and the rise of a centralized more Western-influenced governing power. In 1898, Saibara was the youngest member of the Diet (the Japanese parliament), as well as the only Christian. He left to serve as the president of Doshisha University at Kyoto, an institution founded by American Congregationalists, and in 1901 traveled to Connecticut to attend Hartford Theological Seminary.<sup>2</sup> The goal was to acquire training that would enable him to spread the gospel of Christianity among the Japanese.

Saibara wound up spreading a different kind of gospel, that of rice cultivation. In 1903, after leasing more than 1,000 acres of land near Webster (then on the railway line halfway between Galveston and Houston), Saibara – accompanied by his wife Taiko, son Kiyooki, and thirty other Japanese families, – arrived in Texas.<sup>3</sup> As Megan White, a scholar at the University of Illinois Urbana-Champaign who has studied rice cultivation in Texas at the dawn of the twentieth century, points

<sup>1</sup> Abbie Grubb, "From 'Tom Brown' to Mykawa Road: The Impact of the Japanese American Community on Houston in the Twentieth Century," 13 *Houston History* No. 1 (October 2015).

<sup>2</sup> "Telling: The Saibara Story in Texas," [LegacyTree.com](https://www.legacytree.com), <https://www.legacytree.com/blog/untold-immigration-stories-seito-saibara>.

<sup>3</sup> Kiyoko T. Kurosawa, "Seito Saibara's Diary of Planting a Japanese Colony in Texas," 2 *Hitotsubashi J. of Social Studies* 1 (August 1964)



Left: Workers gathering rice on Saibara's land in the Webster area. Right: The Saibara home circa 1927.

out "For the early rice colonies in Texas, this was a strategic migration on the part of the Japanese government and in collaboration with very prominent white rice farmers and the U.S. Department of Agriculture."

Saibara's help was desperately needed. Scott Pett, a scholar at Rice University, explains that the Great Galveston hurricane of 1900 had just devastated one of the busiest ports in the country, and the Spindletop oil field began gushing in 1901. He says "the Gulf Coast needed help rebuilding and Texan officials saw Japanese horticultural knowledge, practice, and capital as a way to improve their rice production, especially."<sup>4</sup> As Megan White observes in her dissertation ("Rice Empires: Japan, the USDA, and the Inter-Imperial Development of the Gulf Coast Rice Industry 1890-1924"), the Gulf Coast rice industry may have been the first in the world to be mechanized, but the rice that Texas farmers were growing wasn't robust enough for the technology built to refine it. "They noticed the rice was crumbling in the milling process. They were losing half their crop," says White.

Saibara and his fellow colonists brought with them a gift from the Emperor of Japan – 300 pounds of Japanese Shinriki ("God power") rice, a much more resilient rice with a higher yield than the American or Honduran seed that Texas rice farmers had been using. The 1904 harvest was a huge success: rice yields jumped from nineteen barrels an acre to thirty-four barrels an acre.<sup>5</sup> That year's harvest was primarily distributed as seed to replace the inferior native strain. The proof of the Japanese rice's greater resistance to disease and harsh weather conditions was borne out over time; by 1972, Texas rice production totaled more than two billion pounds.

Yet while the rice they brought was an overwhelming triumph, the Japanese immigrants themselves did not fare as well. Two years after Seito Saibara and his fellow colonists arrived, the Naturalization Act of 1906 sharply curtailed immigration. The rice market crashed after World War I, leading a number of Japanese American growers to switch to other crops, like cotton. Frustrated by the lack of a path to citizenship, Saibara and his wife left to establish rice colonies along the

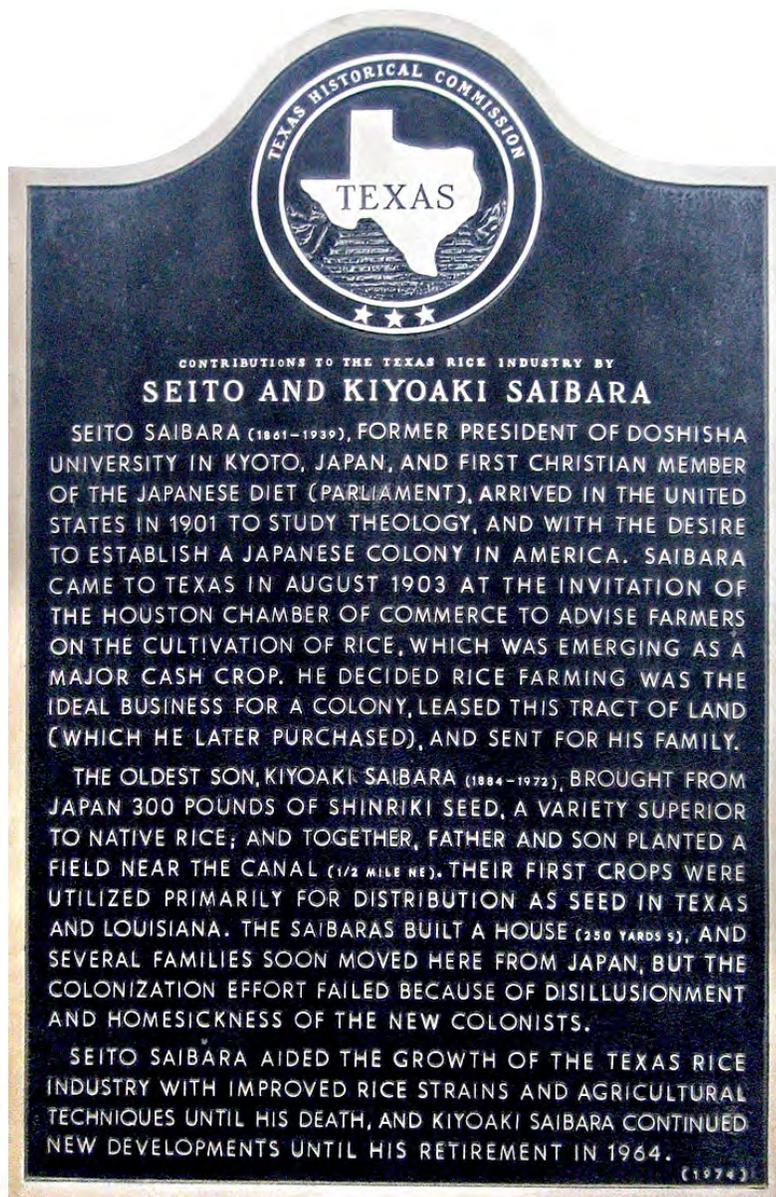
<sup>4</sup> Scott Pett, "Japanese Texas: On the Border of Belonging" *Transnational Asia* 3:1 (2019).

<sup>5</sup> Isaac Schultz, "How a Japanese Family Jumpstarted Rice Farming, Deep in the Heart of Texas," *Atlas Obscura* (January 8, 2020).

Amazon in Brazil. They spent fifteen years in South America before a brief return to Japan. Plagued by health issues, Saibara returned to Texas in 1937.<sup>6</sup> He died in Webster on April 11, 1939 – still a Japanese citizen.<sup>7</sup> His son Kiyooki, who had remained in Texas and continued to develop new and improved rice strains, didn't become a U.S. citizen until 1953 – after the Immigration and Nationality Act did away with racial restrictions on naturalization. He was the first Japanese American in Houston to become a U.S. citizen.

A historical marker honoring Seito and Kiyooki Saibara for their contributions to the Texas rice industry was erected by the Texas Historical Commission in 1974 (Marker Number 10758), in Webster, Texas.<sup>8</sup> Perhaps just as importantly, rice is still cultivated on land Saibara developed in Webster more than a century ago. Saibara and his fellow immigrants gave so much, yet they received little in return. Not only did the 1906 act prevent them from becoming citizens, the Johnson-Reed Immigration Act of 1924 barred new Japanese immigrants from entering the country. Distrust and nativist sentiment led to the Texas legislature passing the Alien Land Law in 1921, forbidding the immigrants from purchasing land. And of course, due to fear and wartime panic after the December 7, 1941 attack on Pearl Harbor, thousands of Japanese "Issei" (first-generation immigrants) on the West Coast were rounded up as "enemy aliens" and confined to internment camps. In Texas, Japanese Americans were prohibited from traveling extensively or assembling in large groups.

The historical marker for the Saibaras father and son, attributes the failure of their colonization effort to "disillusionment and homesickness of the new colonists." Sadly, that is not the whole story. Seito Saibara did more for Texas than Texas did for him.



<sup>6</sup> Grubb, "From 'Tom Brown' to Mykawa Road."

<sup>7</sup> Diana J. Kleiner, "Seito Saibara," *Handbook of Texas Online* (Texas State Historical Association).

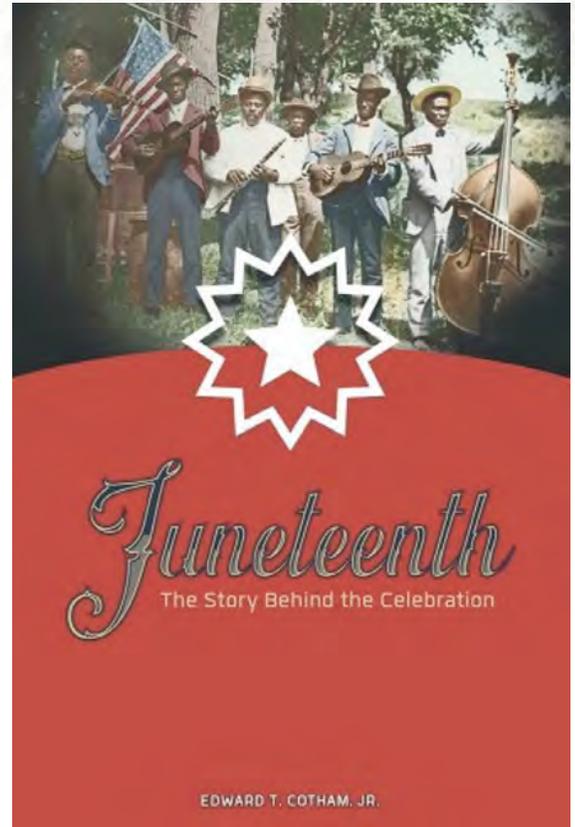
<sup>8</sup> "Seito and Kiyooki Saibara," *HMdb.org* (the historical marker database): <https://www.hmdb.org/m.asp?m=163082>

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# Book Review— *Juneteenth: The Story Behind the Celebration*

By Hon. John G. Browning

2021 was a milestone year for Juneteenth, the day celebrating the end of slavery. Following efforts by U.S. Senator John Cornyn and Opal Lee, Juneteenth became officially recognized as a national holiday. The same year witnessed the publication of two books on the holiday: *On Juneteenth*, by Pulitzer Prize-winning historian, Harvard Law professor, and Texas native Annette Gordon-Reed, as well as *Juneteenth: The Story Behind the Celebration*, by University of Texas Law School graduate Edward T. Cotham, Jr. But where Gordon-Reed's slim volume (144 pages) is a mix of historical work and family memoir, Cotham's work is perhaps the first scholarly effort at chronicling the history behind the holiday. Relying upon extensive archival research, *Juneteenth* tells the story behind General Granger's General Orders No. 3—the "Juneteenth Order" read aloud to the formerly enslaved in Galveston on June 19, 1865. Cotham's painstakingly researched book is an origin story of what has transcended a purely Texan celebration to become a national phenomenon.



*Juneteenth: The Story Behind the Celebration*, by Edward T. Cotham, Jr.  
(Texas A&M University Press, 2021),  
344 pages

Among other things, Cotham points out that while the first sentence of the famed General Orders No. 3—the sentence proclaiming that “all slaves are free”—gets all the attention, there are additional sentences that merit greater study. One of them, he says, essentially defined freedom as an absolute equality of personal and property rights. This went beyond the actual Emancipation Proclamation itself but foretold the post-war constitutional amendment that would guarantee the full benefits of equal citizenship to the freedmen.

Cotham is arguably the preeminent historian of Civil War Texas, and particularly of Civil War Galveston. Accordingly, *Juneteenth* builds up slowly to June 19, 1865. Cotham works his way through the background of and steps leading to the Civil War itself and provides useful background on the “peculiar institution” of slavery in Texas. He then continues with a detailed look at how the Emancipation Proclamation itself came to be, the reaction to it, and its implementation. Cotham

continues with the military campaign that followed the proclamation, including Sherman's devastating "March to the Sea" that divided the Confederacy and hastened the war's end. The book goes on with an examination of General Granger himself, the campaign in Louisiana and Texas that led to his arrival in Galveston, and how word of the Emancipation spread throughout Texas after June 19, 1865.

Cotham ultimately focuses on some of history's unanswered questions about Juneteenth. Emancipation, he observes, was addressed repeatedly following President Lincoln's proclamations. Why celebrate "a seemingly pedestrian military order issued in Texas more than two months after Confederate Gen. Robert E. Lee's surrender at Appomattox and use it as the point of origin for emancipation?" And why did the orders include admonitions to the newly-freed slaves, in patronizing language, to "remain at their present homes and work for wages," and avoid "idleness"?

Critics will be quick to point out that, for a book centered around a specific event, the author spends considerable time on events leading up to that June day in Galveston, and on developments well outside of Texas. But, as Cotham explains, such discussion is necessary to understand Juneteenth in historical context. Indeed, as Cotham's book goes on to argue, the individual most frequently associated with Juneteenth, General Gordon Granger, in reality "played one of the smallest and least essential parts" in this narrative. In other historians' focus on the *reaction* to General Orders No. 3, Cotham reminds us, the truth of the document's *intent* is overlooked. One of its principal aims was "to maintain order, keep laborers at work in the fields, and prevent the civil unrest that white officers and politicians feared might result from exuberant celebrations by the newly emancipated freedpeople."

As *Juneteenth* emphasizes, the importance of the Order lies not in its language but in its results—the liberation of at least 250,000 people in Texas and surrounding territories. And it can be said that Juneteenth is that rare holiday that commemorates not a document, a battle, or a birthday, but rather the fundamental promise of America being more fully realized. Another overlooked dimension of Juneteenth history into which Cotham provides an intriguing glimpse are the 1868 Emancipation Proclamation cases decided by the Texas Supreme Court. A number of legal cases turned on the question of when slavery in Texas ended; for example, could a lender invalidate a loan made in 1864 or 1865 where slaves served as collateral? The court came to the conclusion that June 19, 1865 was the most logical date to mark the end of slavery in Texas.

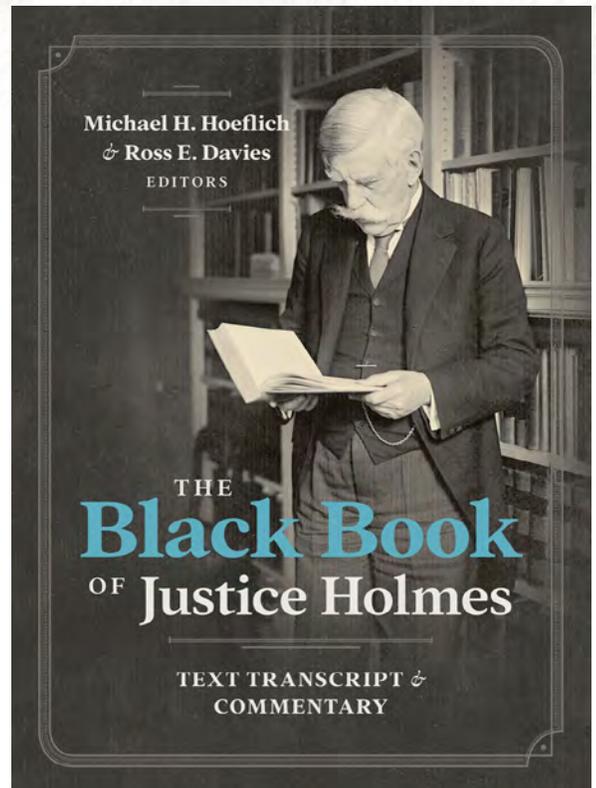
*Juneteenth* is a splendid and important work of history. Just as importantly, it is a reminder that Juneteenth is not an African American holiday or a Texas holiday, but a celebration of the evolution of our nation to the "more perfect union" that the Founders promised.

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# Book Review—*The Black Book of Justice Holmes: Text Transcript and Commentary*

By Hon. John G. Browning

Few U.S. Supreme Court judges have left as lasting an imprint on American constitutional history as Justice Oliver Wendell Holmes, Jr. The erudite yet enigmatic “Yankee from Olympus” served on the Court from 1902 to 1932, delivering opinions that still resonate today on subjects ranging from free speech to limitations on governmental authority. Yet while his lengthy tenure on the Court is impressive, Holmes also diligently kept track of all the books he read for more than fifty years, filling a volume he called his “Black Book” with lists organized by year. In addition to the titles and authors, Holmes would also sometimes include detailed notes on his readings, as well as references to his travels. Right up until his death in 1935, the justice made copious—and sometimes hard to decipher—entries.



*The Black Book of Justice Holmes: Text Transcript and Commentary* (Lawbook Exchange Ltd., 2021), 560 pages, Editors: Michael H. Hoeflich & Ross E. Davies

My first introduction to the Black Book came when, as a senior at Rutgers researching my Henry Rutgers Scholar honors thesis on Social Darwinist influences on Justice Holmes’ jurisprudence, I was awarded a grant to do original research at Harvard Law and the U.S. Supreme Court on Holmes’ personal papers. I spent hours poring over the original Black Book, analyzing the chronicle of Holmes’ reading in the justice’s own cramped handwriting and sometimes obscure references. Using his own reading lists as a guide, I was able to identify various books Holmes had read at different points in time that could have helped influence his judicial and extrajudicial writings. Needless to say, my work would’ve been considerably easier had Professor Hoeflich and Professor Davies’ work existed back then.

One cannot become a great writer without being a prodigious reader, and Holmes—one of the greatest writers in the Court’s history—was a voracious reader with a broad range of interests. In addition to law, Holmes’ reading list featured literature, poetry, philosophy, and history. The thrice-wounded Civil War veteran—who had a tendency to note the anniversaries of

battles in which he'd fought and wounds he had suffered—also had persistent feelings of what psychologists today would call survivor's guilt, and frequently read works of theology as well. The many influences on Justice Holmes' thinking manifested themselves in his opinions, speeches, scholarly articles, and even his correspondence. This transcription of Holmes' reading, along with the editor's helpful annotations, helps illuminate the sources of these influences.

The editors have provided the original text in facsimile, with its accompanying transcription on facing pages. Admittedly, due to Holmes' own imperfect handwriting, there are some gaps and speculation. But Davies and Hoeflich have also included scholarly essays that provide helpful insight, context, and a lens into the iconic jurist's thinking. These additions transform this book from mere transcript to something more akin to a Rosetta Stone for Holmes scholars.

*The Black Book of Justice Holmes: Text Transcript and Commentary* is a must-have for students of Holmes' jurisprudence, and a worthy addition to the bookshelves of anyone who views himself as a scholar of legal and constitutional history.

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# And the 2022 Larry McNeill Research Fellowship in Texas Legal History goes to . . . Daniel Olds

Article and photos by David A. Furlow



Congratulations to Daniel Olds, the winner of the Texas State Historical Association's 2022 Larry McNeill Fellowship in Legal Research. Daniels' proposed research-topic is "The Influence of Statutes & Legislation on the History & Development of the Common Law in Texas & How Statutes Came to Rule."

"For much of Texas legal history," Daniel Olds observes, "the common law reigned supreme. The Texas legal landscape was dominated by common law rules and most cases brought in Texas courts revolved around interpretations of the common law."

But times have changed. "Today, that is no longer true," Olds notes. "Statutes create most of the legal rules in Texas. Whereas most cases decided by the Texas Supreme Court in even the relatively recent past revolved around interpretations of common law rules, today, the Texas Supreme Court's docket consists largely of cases of statutory interpretation, rather than common law interpretation."

"How did this happen?" Olds asks. "And what role does the common law still have left to play in Texas? My article will attempt to answer these questions. The article will consist of: (1) an examination



Larry McNeill Research Fellowship in  
Texas Legal History

**Daniel Olds**

The Influence of Statutes and Legislation on the  
History and Development of the Common Law in  
Texas and How Statutes Came to Rule



Patrick Cox, Ph.D. of Wimberley, a nationally recognized historian and TSHA's President, presents TSHA's 2022 Larry McNeill Award to Daniel Olds.

of the history of the common law in Texas; (2) how courts have interpreted and given weight to statutes early on in Texas history; (3) the advent of the Code Construction Act; (4) the proliferation of statutes in Texas over the last several decades; and (5) how the common law continues to influence the interpretation of statutes today, and what other roles the common law still plays in Texas."

### **And the 2023 Larry McNeill Fellowship goes to...**

Applications are now being accepted for TSHA's 2023 Larry McNeill Research Fellowship in Texas Legal History. Our Society worked together with TSHA to establish the Larry McNeill Research Fellowship in Texas Legal History in 2019 to honor Larry McNeill, a past president of the Society and TSHA. The \$2,500 award recognizes an applicant's commitment to fostering academic and grassroots research in Texas legal history. TSHA awards the annual fellowship to an applicant who submits the best research proposal on an aspect of Texas legal history. Judges may withhold the award at their discretion.



Larry McNeill

Competition is open to any applicant pursuing a legal history topic, including judges, lawyers, college students, and academic and grass-roots historians. The award will be made at the Texas Historical Association's Annual Meeting on March 2-4, 2023 in El Paso. An application should be no longer than two pages, specify the purpose of the research and provide a description of the end product (article or book). An applicant should include a complete vita with the application. Judges may withhold the award at their discretion. TSHA will announce the award at the Friday Awards Luncheon during TSHA's Annual Meeting in El Paso in March of 2023.

Individuals wishing to apply should submit an application form (and attach the proposal and a curriculum vita) by November 15, 2022. 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 [amawards@tshaonline.org](mailto:amawards@tshaonline.org) or call TSHA Annual Meeting Coordinator Angel Baldree at 512-471-2600.

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# Our Society Shared Stories About Texas's First Black Lawyers at TSHA's 2022 Annual Meeting

By David A. Furlow



Panelists presented their program at the University of Texas. Photo courtesy of TSHA.

The Society presented a special program at the Texas State Historical Association's 126th Annual Meeting this past February: "We Stand on Their Shoulders: The Lives and Legacies of Texas' Earliest Black Lawyers." The panel generated interest among historians and members of the public who attended this, the first TSHA annual meeting since the Covid-19 pandemic descended on the world two years ago.



Tom Leatherbury, the Society's President, introduced both the Society and the panel in an introductory PowerPoint that elevated the Society's profile while educating citizens about the work and history of the Texas Supreme Court and the state's appellate courts. "Through research and scholarship," our organization's Mission Statement declares, "the Society educates the public about the judicial branch and its role in the development of Texas."

Although one might expect that the history of Texas's first Black lawyers would be well known by now, it is not. Our Society has pioneered the presentation of new narratives about Texas's extraordinary courthouse and legal history that have become accessible in recent years because of new digital, archival, and photographic databases. Tom Leatherbury described our organization's origins, its publication of important books about the law of slavery and the history



Our Society's President Tom Leatherbury begins his presentation. Photo by Sharon Sandle.

of the Texas Supreme Court, the creation and evolution of the *Journal of the Texas Supreme Court Historical Society*, and the impact of the Fellows' *Taming Texas* program for some 21,000 Seventh Grade Texas History students, then introduced each of the speakers.

The Hon. Carolyn Wright-Sanders, former Chief Justice (ret.) of the Texas Fifth District Court of Appeals in Dallas, spoke first. She told the story of "John N. Johnson: Texas' First Civil Rights Lawyer," while illustrating important episodes of a life that involved constant challenges and the struggle for justice during Texas's Jim Crow era.

Justice Wright-Sanders began by explaining that John N. Johnson was more than just Austin's first Black lawyer, or the first Black lawyer admitted to practice before the Supreme Court



Lives & Legacies of Texas' Earliest Black LawyersWright, Texas Court of Appeals for the Fifth District in Dallas (ret'd)



**John N. Johnson: Texas' First Civil Rights Lawyer**

**Texas Supreme Court Historical Society**

**On February 9, 1883, Johnson became the first African-American admitted to practice before the Supreme Court of Texas.**

SUPREME COURT, AUSTIN.		
NAMES	ENROLLED	
Jordan Jesse	Wesley	May 1880
Johnson J. N.	Clinton	July 8 1880
Johnson H. B.	Lawrence	Apr 2 1881
Johnson J. S.	McHenry	7 1881
Johnson Robt. J.	W. W. Cook	Sept 1881
Jones Joseph	Abt. Rice	March 1885
Jones Jacob W.		
Johnson Albert S.	Larson	Apr 23
Jones Ashley S. James	Wesley Falls	Apr 2 1881
Joyner H. B.	Shannon	March 1881
Robt. P. H. B.	Georgetown	Jan 22 1881

Hon. Justice Carolyn Wright-Sanders makes her presentation. Photo by David A. Furlow.

of Texas. She showed how he used his status to speak out on issues that still resonate through society today: civil rights, racial violence, unequal educational opportunities for Black people, the exclusion of Black people from juries, and disparate treatment of incarcerated Black men.

Like later U.S. Supreme Court Justice Thurgood Marshall, John Johnson was born in Maryland circa 1853. Johnson knew how harsh life could be because his father, a minister, was murdered in Gaithersburg, Maryland in the 1860's, while Johnson was still a child. "His widowed mother worked as a laundress," Justice Wright stated, "but Johnson managed to complete high school and gain a college education by 1873."

Johnson began as a teacher in the Washington, D.C. area, where he became known as "Professor Johnson," before he moved to Texas. She showed how hard Johnson worked to win admission to the bar, first in Brazos County, then in Travis County, where he earned praise as "the Colored Lawyer of Austin." Justice Johnson showed how Johnson persevered in the face of adversity to win admission to practice before the Supreme Court of Texas in 1883.

The severe weather that plagued the country during the last week of February 2026 precluded the Hon. John G. Browning, our *Journal's* Editor-in-Chief, from returning from Alabama, where he teaches law school classes. With the technical assistance of our Executive Director Sharon Sandle, Justice Browning bridged the distance by presenting his paper in a virtual setting, as he and so many others learned to do during our two-year Covid-19 pandemic. Justice Browning presented "William A. Price: From a Legacy of 'Firsts' to a Civil Rights Milestone."

Justice Browning recounted the contributions of William A. Price, Texas' first black lawyer, and also offered biographies of Black legal pioneers from around the country, including courageous



## John Merce Langston

- 1<sup>st</sup> Black to apply to a U.S. law school, but rejected by law schools in New York and Ohio due to race
- Admitted to Ohio Bar in 1854
- Founding Dean of Howard University Law School (1868)
- First Black person elected to Congress in Virginia



## Robert Morris

- 2<sup>nd</sup> Black lawyer in U.S.
- Admitted in 1847 in Massachusetts
- Filed and tried *Roberts v. City of Boston*, 59 Mass. 198 (1849), the first challenge to segregated public schools in U.S. history.
- Was very successful.

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ATTORNEYS AND COUNSELLORS AT LAW,  
221 Washington Street,  
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ROBERT MORRIS. (French Spoken.) ROBERT MORRIS, Jr.

Slides from Hon. John G. Browning's virtual presentation



# Nominations Welcomed for the Texas Appellate Hall of Fame



**T**he Appellate Section of the State Bar of Texas is now accepting nominations for the Texas Appellate Hall of Fame. The Hall of Fame posthumously honors advocates and judges who made a lasting mark on appellate practice in the State of Texas.

The current plan is to honor Hall of Fame inductees at a luncheon presentation and ceremony held by the Appellate Section during the State Bar's Advanced Civil Appellate Practice course on Wednesday, September 7, 2022. Nominations should be submitted in writing to halloffametxt@outlook.com no later than Monday, May 30, 2022.

Please note that an individual's nomination in a prior year will not necessarily carry over to this year. As a result, if you nominated someone previously and would like to ensure his/her consideration for induction this year, you should resubmit the nomination and nomination materials.

Nominations should include the nominator's contact information, the nominee's bio or CV, the nominee's photo if available, and all the reasons for the nomination (including the nominee's unique contributions to the practice of appellate law in the State). The more comprehensive the nomination materials, the better. All material included with any nomination will be forwarded to the voting trustees for their consideration in deciding whom to induct as part of this year's Hall of Fame class.

Nominations will be considered based upon some or all of the following criteria, among others: written and oral advocacy, professionalism, faithful service to the citizens of the State of Texas, mentorship of newer appellate attorneys, pro bono service, participation in appellate continuing legal education, and other indicia of excellence in the practice of appellate law in the State of Texas.

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# Lynching in Texas Project Overview

By Jeffrey L. Littlejohn

In 2016, Sam Houston State University (SHSU) professor Jeffrey L. Littlejohn began a two-year study into the Cabiness family lynching that occurred in Walker County, Texas. With his writing partner, Dr. Charles H. Ford, and two graduate students, Briana Weaver and Jami Horne, Littlejohn examined hundreds of pages of newspaper stories, census records, court reports, property deeds, and archival letters to document the targeted killing of George Cabiness, his mother Sarah, and four of their relatives between May 30 and June 1, 1918. During the research process, Littlejohn and his co-authors discovered that reliable online information about lynching in Texas was difficult to find. As a result, the team decided to build a website to present the facts to the public.

**lynching  
in texas**



[The Lynching in Texas project](#) is built on the open-source Omeka Content Management System (CMS) and uses the Curatescape theme developed at Cleveland State University to produce a dynamic, map-based experience. Visitors to our website may find geo-located entries on more than 680 lynchings that occurred in Texas. Each entry contains: 1) the name, race, gender, and age of the victim; 2) the alleged crime the victim committed; and 3) the date, location, and manner of lynching. In addition, our entries include newspaper stories, historic photographs, and other primary sources to document the lynchings that occurred.

Professor Littlejohn and his team received three grants for construction of the Lynching in Texas project. Humanities Texas, Sam Houston State University, and the EURECA program at SHSU contributed financially to the effort. Students in the Honors College at SHSU performed the initial round of data entry. Then, MA students in the History Department fact-checked and added additional primary sources to each of the victim's stories. Finally, a team of scholars wrote essays for the website. Patricia Bernstein provided an essay on "The Lynching of Jesse Washington." Dr. William Carrigan wrote on "The Making of a Lynching Culture in Central Texas." Dr. Robert "Ty" Cashion submitted an essay on "The Fort Griffin Vigilante Movement." Dr. Charles H. Ford provided an essay on "Immigration and Lynching." Dr. John Gruesser wrote on "Lynching in the Novels of Sutton E. Griggs." And Dr. Sonia Hernandez provided an essay on "The Lynching of Hispanic Victims on the Texas Border."



# E.U.R.E.C.A.

Enhancing Undergraduate Research Experiences and Creative Activities

The Lynching in Texas project has three principal goals. The first is to document the victims' stories and relate them to the public so that they are not forgotten. Second, we hope to reshape the historical narrative in Texas by showing that lynching was not an aberration in the state. On the contrary, mobs in Texas carried out lynchings on a regular basis to enforce white supremacy and Jim Crow. And, finally, we hope the site will inspire new scholarship on lynching that will deepen our knowledge about the past and its relationship to the present. In fact, Michael Barnes writing in the *Austin American-Statesman*, applauded the site for its effort in this regard. He called the project "required reading" and said that "[e]very single one of the locations" that the site documents "deserves a somber and serious historical marker."

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# Announcing the 27th Annual John Hemphill Dinner

On Thursday, September 8, 2022, the Society will hold its 27<sup>th</sup> Annual Hemphill Dinner live at the Four Seasons Hotel in Austin, Texas. The John Hemphill Dinner is an important event for the Texas Supreme Court Historical Society and one that members look forward to as the highlight of the year. This year we are pleased to feature “A Conversation with Greg Stohr.” Greg Stohr has covered the Supreme Court for Bloomberg News since 1998. He won the New York Press Club spot news award for his coverage of the 2000 *Bush v. Gore* Supreme Court decision and the Society of American Business Editors and Writers breaking news award for the court’s 2012 Obamacare decision.



Greg Stohr

His book, “A Black and White Case: How Affirmative Action Survived Its Greatest Legal Challenge,” told the story of the University of Michigan admissions cases resolved by the Supreme Court in 2003. During his time at Bloomberg, he has served as co-host of the Bloomberg Law radio program and covered the Justice Department and Federal Trade Commission. He has taught Constitutional Law and the Supreme Court as an adjunct professor at George Washington University Law School.

Before joining Bloomberg, he served as press secretary for U.S. Congressman Tom Campbell of California and law clerk to U.S. District Judge Frank A. Kaufman in Baltimore. He is a 1989 graduate of Saint Louis University and 1995 graduate of Harvard Law School.

This year’s John Hemphill Dinner will be presided over by Thomas S. Leatherbury, 2021-22 President of the Texas Supreme Court Historical Society. In addition to the conversation with Mr. Stohr, the program will also include the annual Chief Justice Jack Pope Professionalism Award by the Texas Center for Legal Ethics. The award recognizes a Texas appellate lawyer or judge who demonstrates the highest level of professionalism and integrity.

For additional information about table reservations and purchasing individual tickets, please visit our website at <https://www.texascourthistory.org/hemphill>.

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# 2021-22 Membership Upgrades

The following Society members have moved to a higher dues category since June 1, 2021, the beginning of the membership year.

## **TRUSTEE**

Kendyl Hanks

Rachel H. Stinson

Brandy Wingate Voss

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# 2021-22 New Member List

The Society has added 35 new members since June 1, 2021. Among them are 20 Law Clerks for the Court (\*) who will receive a complimentary one-year membership during their clerkship.

## **TRUSTEE**

Anthony Arguijo  
Allyson Ho  
Hon. Michael J. Truncale

## **CONTRIBUTING**

Marshall Bowen  
Perry Cockrell  
Elizabeth Herrera  
Hon. Bill Pederson  
Hon. Staci Williams

## **REGULAR**

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Emily Bamesberger\*  
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Cece Burbach\*  
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James Sullivan  
Holden Tanner\*  
Chelsea Teague\*  
Cody Vaughn\*

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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

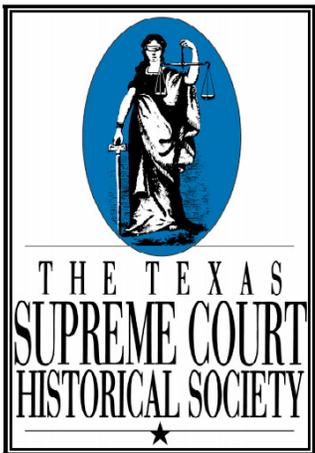
## **Contributing Membership** \$100

- 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

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## 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.

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