



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Winter 2018 Vol. 7, No. 2 General Editor Lynne Liberato Executive Editor David Furlow

Book Review

Dress (Your Writing) for Success:

A Book Review of *Typography for Lawyers*

By Jay Jackson

The author believes that lawyers are professional writers, and so our documents should display a professional appearance.

[Read more...](#)



News & Events

This Past Fall, Trustees Learned the History of a Giant Film

Story and photos by David A. Furlow

Noted author and University of Texas Professor Don Graham, Ph.D., made a star performance as the guest speaker at the Society's Fall 2017 Board of Trustees meeting.

[Read more...](#)



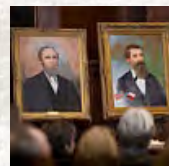
Don Graham's forthcoming book

Historic Portrait Ceremony Honors Reconstruction Judges Wesley Ogden and Colbert Coldwell

Photos by Mark Matson

In January, a ceremony at the Supreme Court dedicated portraits of two Supreme Court judges from Texas's Reconstruction era.

[Read more...](#)



At the ceremony

TSHA Annual Meeting 2018: Laying Down Early Texas Law

By David A. Furlow

The Society will present a special panel, "Laying Down Texas Law: From Austin's Colony through the Lone Star Republic," at the TSHA Annual Meeting March 8-10.

[Read more...](#)



TSHA logo

Come Join Us for the Spring 2018 Members Meeting and Bush Presidential Center Tour

By Cynthia Timms

Following the Meeting, all trustees and members, as well as members of the judiciary, are invited to a free, catered lunch. Our speaker will be Ms. Harriet Miers. [Read more...](#)



Harriet Miers



Celebrating the Legacy of Heman Marion Sweatt

Story and photos by David A. Furlow



Anyone who has watched the University of Texas Longhorns football team, whether live, on television, or on a screen, has heard Walter Cronkite's voice intoning, "What Starts Here Changes the World."¹ The dedication of University of Texas Law School student Heman Marion Sweatt's portrait by the Law School proved the truth of the motto on the quiet afternoon of Thursday, February 15, 2018. The application for admission Sweatt submitted to the university's Registrar at the base of UT's Tower in 1946 changed the world.

The portrait dedication occurred during the UT Law School's annual Celebration of Diversity. The celebration's series of events began with a speech by a graduate of UT Law School, Chief Judge Diane Wood of the U.S. Court of Appeals for the Seventh Circuit, sponsored by the Center for Women in Law. The celebration continued through Friday with presentations about U.S. Supreme Court Justice Thurgood Marshall's contributions to American jurisprudence.

UT Law School Dean Ward Farnsworth dedicated the portrait, paid for by the Law School's faculty, to make Heman Marion Sweatt's story known to a wider audience. In 1946, Sweatt, an African-American postman and NAACP activist living in Houston, applied for admission to

TEXASLAW
A Celebration of Diversity
February 15 & 16, 2018

Thursday, February 15
11:45 am
Lunch with Chief Judge Diane Wood '75 of the U.S. Court of Appeals for the Seventh Circuit Presented by the Center for Women in Law Wright Classroom (TNH2.140)

2 pm
The Texas Law Endowed Lecture 2018: Prof. Randall Kennedy, Harvard Law School, "Sweatt v. Painter Reconsidered" Eidman Courtroom

3:30 pm
Unveiling of the new Heman Sweatt Portrait, with Pres. Greg Fennes and Mr. Sweatt's daughter, Hemella Sweatt Susman Godfrey Atrium

6 pm
Alumni & Student Dinner with Alumni Association President Arleas Upton Kea '82 and Texas State Representative Oscar Longoria '07 Etter-Harbin Alumni Center

Friday, February 16
9 am - 2 pm
TMLS Symposium: "Thurgood Marshall's Legacy: A Look at Modern School Segregation, How Far We've Come and How Far We Need to Go" Eidman Courtroom

PLEASE REGISTER law.utexas.edu/diversity-celebration

¹ "What Starts Here Changes the World," University of Texas Horns UP website, <https://www.utexas.edu/>.

the University of Texas Law School. Sweatt satisfied all academic requirements for admission. But Sections 7 and 14 of Article VII of the Texas Constitution of 1876 and state statutory law restricted admission to the university to whites, and Sweatt's application was automatically rejected because of his race. When Sweatt asked the state courts to order his admission pursuant to the guarantee of equal treatment under the law provided by the Fourteenth Amendment to the U.S. Constitution, the university attempted to provide separate but equal facilities for black law students by creating a separate law school in Houston.

University of Texas constitutional law professor Sandy Levinson provided an overview of the case's constitutional background. A Travis County district court held that a newly established state law school for Negroes offered petitioner "privileges, advantages, and opportunities for the study of law substantially equivalent to those offered by the State to white students at the University of Texas," and denied mandamus to compel his admission to the University of Texas Law School. The Austin Court of Civil Appeals affirmed the trial court's judgment.² The Texas Supreme Court denied writ of error.

After Texas state courts refused to order the University of Texas Law School to admit him, Sweatt filed a petition for *certiorari* in an appeal to the U.S. Supreme Court. His petition asked whether the Texas law school admissions scheme violated the Equal Protection Clause of the Fourteenth Amendment. In *Sweatt v. Painter*,³ a unanimous decision authored by Chief Justice Vinson, the U.S. Supreme Court held that the Equal Protection Clause required that Sweatt be admitted to the university. The Court found, first, that Sweatt had been denied admission to the University of Texas Law School solely because he was African American, and that he had been offered, but had refused, enrollment in a separate law school newly established by the state for Negroes.

The University of Texas Law School had sixteen full-time and three part-time professors, 850 students, a library of 65,000 volumes, a law review, moot court facilities, scholarship funds, an Order of the Coif affiliation, many distinguished alumni, and much tradition and prestige. The separate law school for Negroes had five full-time professors, 23 students, a library of 16,500 volumes, a practice court, a legal aid association, and one alumnus admitted to the Texas Bar, but it excluded from its student body members of racial groups that numbered 85 percent of the population of the state, including most of the lawyers, witnesses, jurors, judges, and other officials with whom petitioner would deal as a member of the Texas Bar. The U.S. Supreme Court concluded that the separate school would be inferior in faculty, course variety, library facilities, legal writing opportunities, and overall prestige. The Court also found that the mere separation from the majority of law students harmed students' abilities to compete in the legal arena.

During the Law School portrait dedication event, Dean Ward Farnsworth introduced a special keynote lecturer: Professor Randall Kennedy of Harvard Law School. As Harvard's Michael R. Klein Professor of Law, Professor Kennedy focuses on racial conflict and legal institutions in American life. No stranger to controversy, Kennedy is widely known for writing *Interracial Intimacies: Sex, Marriage, Identity and Adoption*; *Nigger: The Strange Career of a Troublesome*

² *Sweatt v. Painter*, 210 S.W.2d 442 (Tex. Civ. App.—Austin 1947, writ denied).

³ 339 US 629 (1950).



Harvard University Law School Professor Randall Kennedy discusses the *Sweatt v. Painter* decision's legal legacy.

Word; Race, Crime, and the Law; Sellout: The Politics of Racial Betrayal; and The Persistence of the Color Line; as well as for writing articles for The Nation, the Atlantic, and The Boston Globe.

In a searing, twenty-minute presentation before an audience packed into the Law School's Eidman Courtroom, "*Sweatt versus Painter Reconsidered*," Professor Kennedy examined a series of uncomfortable truths about Heman Sweatt's Fourteenth Amendment challenge to those provisions of the Texas Constitution that kept the University of Texas Law School lily-white until 1950. "A huge amount of time and energy went into keeping Sweatt out of UT Law School," Prof. Kennedy noted. "The story of the deceptions, the lies, the fraudulence, by the judges who held that the Negro Law School was the equivalent of the University of Texas, deserves to be unfurled... When the Court of Civil Appeals noted that Sweatt was the first Negro to apply to the University of Texas, it memorialized the success of the white supremacist system in discouraging African-Americans from even trying to get in. The U.S. Supreme Court's *Sweatt v. Painter* decision did not discuss the day-to-day realities of segregation, describe how the Jim Crow system arose, or end the Separate but Equal Doctrine, Kennedy observed, but it did prove to be a "strong blow against the Pigmentocracy."

Soon after the end of Professor Kennedy's speech, Dean Farnsworth commenced the unveiling of a new portrait of Heman Sweatt in the Susman Godfrey Atrium. University President Greg Fenves celebrated Heman Sweatt as the kind of student UT seeks today: engaged, scholarly, and well-rooted in the community.

Dean Farnsworth then introduced University of Texas administrator and historian Gary Lavergne, the author of *Before Brown: Heman Marion Sweatt, Thurgood Marshall, and the Long Road to Justice*,⁴ *A Sniper in the Tower: The Charles Whitman Murders*,⁵ and many other books and articles about Texas history and culture, regaled the audience with stories about Heman Sweatt, his activism on behalf of the NAACP, and his family life.

"On Emancipation Avenue in Houston's Third Ward, a thoroughfare once named for a Confederate lieutenant stands the Wesley Chapel A.M.E Church," Lavergne announced, setting the scene for the unveiling of Sweatt's portrait at the Law School:

⁴ (Austin: University of Texas Press, 2010).

⁵ (Denton: University of North Texas Press, 1997).

In early October of 1945, during an evening meeting, Ms. Lulu White presented an overview of an NAACP search for a plaintiff for what was then called the University of Texas Law School case. Her presentation included what must have been a near-desperate plea for someone to step forward....Heman Marion Sweatt, a thirty-two-year-old mail carrier, stood up, and with a “soft but certain voice . . . said he would do it.”

Lavergne then described the support this humble Houston postman and dedicated NAACP activist received from “a family as remarkable as any American family who ever lived”:

His father, James Leonard Sweatt, Sr., was the son of a former slave who had been marched to Texas during the Civil War. Leonard grew to become one of the first African Americans to earn a degree from a public college in Texas. “Papa” Sweatt stood five feet six inches tall. As an adult he was thin, balding, and bespectacled—yet everyone knew he was a “forceful man of great dignity.” More than a few residents of the Third Ward considered him a “Great Prophet.”

Heman Sweatt had four siblings who lived to adulthood. They lived with parents who refused to allow their children to believe they could not compete with Whites enrolled in exemplary public and exclusive private schools. Sweatt and his brothers and sisters, all of them, not only went to college, but earned advanced degrees, an accomplishment that is remarkable even today—for anyone.

Lavergne then introduced Sweatt’s daughter, Hemella Sweatt.

Hemella spoke of the importance of continuing her father’s dedication to education. She brought her two children with her to witness the unveiling of their grandfather’s portrait in the law school that at first opposed his admission, then accepted him and, later, celebrated his attendance. She talked about how serious a man Heman Marion Sweatt was, of his suffering, his triumph, and his love of family.

The dedication was a remarkable day for Texas, UT Law School and its faculty, and the Sweatt family. The portrait dedication helped close the baleful legacy of Jim Crow and celebrated the triumph of civil rights in Texas and America. To quote Gary Lavergne,

On occasions like this, it is worthy to ponder what Jim Crow cost us as a nation. How many more architects could we have had to build magnificent structures? How many more scientists could we have had to make unimaginable discoveries? How many more physicians could we have had to treat us when we were sick and cure the diseases that plague us? How many more artists could we have had to make our world more beautiful? And yes, how many more lawyers could we have had to pursue justice?

Beyond *Sweatt v Painter*...Heman Marion Sweatt...is what we desperately need more of today. He never responded to bad manners with more bad manners. He



Clockwise from top left:

UT Admissions Research and Policy Analysis Director and historian Gary M. Lavergne.

Heman Marion Sweatt registers for classes in the University of Texas School of Law on September 19, 1950.⁶

University of Texas Law School Dean Ward Farnsworth welcomes Sweatt back to the Law School.

Heman Sweatt's daughter Hemella Sweatt proudly stands beside her father's recently unveiled portrait.



responded to hate and intolerance with class and dignity. His response to ignorance was scholarship. He was a quiet and humble man who did great things and asked for nothing more than to be treated, in this country, as an adult and citizen.

A new portrait celebrates the diversity of UT Law School's faculty, student body, and state. The legacy of Heman Marion Sweatt proves, once again, that "what starts here changes the law."

⁶ "Heman Sweatt and Sweatt v. Painter," Tarleton Law School website, <http://tarlton.law.utexas.edu/heman-sweatt>. Photo courtesy of the Dolph Briscoe Center for American History.

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