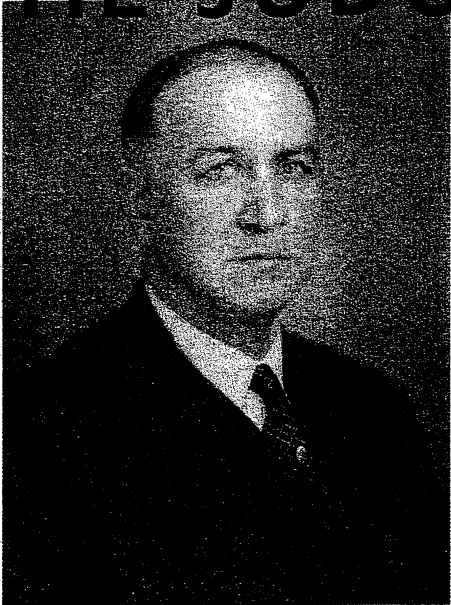




THE COLONEL VERSUS THE JUDGE



By U.S. tradition, free elections are held even in times of war, when state and local events are often overshadowed by news of a world in turmoil. It was under these conditions that during World War II, a lawyer serving abroad in the United States armed forces challenged a respected incumbent judge on the Supreme Court of Texas. The result was a race unlike any the court had ever seen.

The Soft, Gruff, Opinionated Incumbent

Justice Richard Critz was a member of the Supreme Court when World War II began and the court replaced its male briefing attorneys with the talented and dedicated women profiled in the first part of this article (January, page 18). However, Critz found little use for the women who served as briefing attorneys during the war. This was not because the briefing attorneys were women, but rather because of his disdain for all briefing attorneys, whether male or female. Usually, he refused even to speak to them.¹

Critz was a principled man, an outstanding jurist, and a famously stern presence. Critz's son-in-law, former Congressman J.J. "Jake" Pickle, describes him as "a loyal old staunch American from a family that had been here 200 years."² Critz's ancestors came to the United States from Germany in the 17th century and fought in the American Revolution. His father and brothers fought in the Civil War under General Stonewall Jackson.

Critz began his career as a country lawyer in Granger. He was later elected city attorney, and then served as the county judge of Williamson County. In the 1920s, he helped the local district attorney prosecute the Ku Klux Klan. That paid off when the district attorney, Dan Moody, was elected governor and appointed Critz to the Commission of Appeals.

In 1935, Justice William Pierson of the Supreme Court was shot and killed by his son. Governor Jimmy Allred appointed Critz to fill the vacancy, calling him "one of the strongest men that ever sat on either the Supreme Court or the Commission of Appeals."

As he had on the Commission of Appeals, Critz devoted himself to the painstaking, intellectually rigorous work of the court. Congressman Pickle recalls that Critz was deeply satisfied with life on the court because "there, he could read and study, read and study, and write." A man with few hobbies, Critz was a devout servant of the law and a prolific author of methodical, exacting opinions. During his tenure, the court started to eliminate its significant backlog.

THE TEXAS SUPREME COURT GOES TO WAR

BY JUDGE MARK DAVIDSON AND KENT RUTTER

Critz's judicial skills were widely admired, but his brusque demeanor won him few friends. Nowhere was Critz's abruptness more evident than at oral argument. Then, as now, during argument an appellate judge typically would either ask a series of questions or maintain a respectful silence until the lawyer's time expired. Not Justice Critz. When Critz disagreed with the position a lawyer had taken, he would ask, "Do you really mean to argue that" and then proceed to summarize the lawyer's argument. When the lawyer responded in the affirmative, Critz was known to announce: "I believe that's the silliest thing I've ever heard." He would then swivel his chair so that his back faced the lawyer and remain in that position until the lawyer completed his argument. Critz used oral argument to size up the cases; he never cared much that it also gave lawyers a chance to size up the judges, and never worried that his unvarnished demeanor might cost him his politically advantageous friendships with the bar. Congressman Pickle recalled: "If he thought an argument was ridiculous, he'd show it. He had his own ideas of what the law was, and he just wasn't political."

Behind the imposing facade, however, was a gentle man. "People who got to know him recognized him as a character," Congressman Pickle recalls. Critz adored his family, and Congressman Pickle remembers him as "one of the most understanding family men I've ever known." When Pickle married Sugar Critz, the judge's daughter, Critz helped — on a judge's salary — the newlyweds get started by providing them the support they needed to buy their first home. "Judge Critz was gruff and tough with lawyers," Congressman Pickle recalls, "but he was an old softie. People who knew him, loved him."

The Lawyer Who Held a Grudge

One night in 1942, an angry lawyer stormed into Andrew's Cafe in Hillsboro. Angus Wynne, the first president of the State Bar, had just lost another case in the Supreme Court.³ Wynne had lost in the Supreme Court several times before.⁴ This time, Wynne had appeared before the court as one of the parties. Wynne contended that his suit to try title to land could be maintained in Van Zandt County, even though the land was located in Rusk County. Wynne prevailed in the district court and the court of appeals, but after two mandamus proceedings and an appeal on a certified question, he lost in the Texas Supreme Court. The opinion was written by Critz.

Robert W. Calvert⁵ was having a cup of coffee at Andrew's

Cafe when Wynne came in. "We're going to run somebody against Critz," Wynne told Calvert.⁶ "And we're going to beat him."

The Long Distance Candidate

The man chosen for the job was Gordon Simpson, a lawyer, politician, and patriot from Tyler. A World War I veteran who had served as a state representative in the 1920s, Simpson was later appointed by Governor Moody to complete an unexpired term as a district judge. He succeeded Wynne in 1941-42 as president of the State Bar. In 1942, although not subject to the draft, he joined the Army's Judge Advocate General Corps.

THE COLONEL GORDON SIMPSON



THE JUDGE RICHARD CRITZ

In 1944, Simpson was stationed in Italy. The last thing on his mind was a campaign for the Texas Supreme Court. But early that year, Wynne called Simpson's wife, Maria, and asked her if she thought her husband would be interested in coming home to serve on the Supreme Court. Wynne told Mrs. Simpson that he was speaking as the unofficial spokesman for the bar and that there was massive dissatisfaction with Critz. It is unknown whether it was Wynne or Mrs. Simpson who wrote to Italy and asked Simpson to run. According to Calvert, Simpson's reaction was somewhat muted. He quoted Wynne as saying of Simpson, "Well, he was willing."

See How They Run

It was a five-way race. Critz outspent the other candidates, advertised extensively, and won endorsements from the major newspapers and most lawyers on both sides of the docket. Because of wartime travel restrictions and gas rationing, none of the candidates toured the state. In Critz's case, it is unlikely

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he would have done so under any circumstance. Critz saw political campaigning as a disdainful task for a judge seated on the state's highest court. Unlike his colleagues, he rarely gave speeches or made appearances around the state, even when he was running for re-election. Congressman Pickle recalls: "He never talked politics. He never talked about political issues. He just assumed he'd be re-elected." For Simpson, who remained in Italy with the Fifth Army, campaigning was not just unlikely, but impossible.

Given the limited name identification of the membership of the court, the race was a low-key affair. Everyone knew that a runoff was likely. Each of the five candidates ran well in his home county. James B. Hubbard, a former district judge from Bell County, finished with 10 percent of the vote; Tom Smiley, the county judge of Karnes County, finished with 11 percent;⁷ Charles T. Rowland of Fort Worth finished with 17 percent; and Simpson finished with 24 percent, running very strongly in his (and Wynne's) area of Northeast Texas, and poorly in the rest of the state. Critz finished first or second in most counties and won 38 percent of the vote — more than any other candidate, but not enough to avoid a runoff against Simpson.

In the runoff, Simpson's supporters, with Angus Wynne at the helm, launched an aggressive — and highly negative — campaign. Critz was handicapped by his lack of military

service and his German-sounding name. Wynne started a slogan among Simpson's supporters of "Stop Fritz, Beat Critz." "Fritz" was the slang term for the Nazi forces, the enemy of all Americans. The slogan intentionally mispronounced "Critz" (which rhymes with "rights") to make its point. Wynne placed advertisements that emphasized that "Lt. Col. Gordon Simpson" was serving his country in Italy. In a typical swipe at Critz, one ad charged: "Behind his back, and while he can't say one word in his own defense, he is being made the subject of the most vicious slander, and that by men who never wore their country's uniform." What the slander was is not determinable. It does not appear in any newspaper account of the race or in any available campaign material, and no one interviewed for this article remembers any negative campaigning by Critz.

Not all of Simpson's advertising focused on war-related issues. Another ad charged:

ATTENTION, Mr. and Mrs. Voter! Do you know that you can't take a lawsuit to the Supreme Court of Texas just because you want to? That court must grant its permission first. The docket of that court has been cleared (about which the incumbent boasts) by refusing to grant this permission — by refusing A RIGHT TO BE HEARD!⁸

The harshest attacks, however, were reserved for advertising not officially sponsored by the Simpson campaign. One ad stated:

On two occasions the Associate Justice now seeking re-election held that because a mechanic working in a bakery did not have a health card he could not collect Workmen's Compensation Insurance, otherwise due him for permanent injuries, nor could his widow, where the injuries proved fatal. Fair-minded people should resent such a technical holding by any judge.

The advertisement urged voters to elect Simpson, but the small print at the bottom of the ad stated: "This advertisement paid for by disinterested Houston lawyers as a public service." Whether these lawyers were disinterested, or even from Houston, is an interesting question. Critz's ads in the Houston Post featured virtually every leader of the bar from both sides of the docket. It is very possible the ads were paid for by a lawyer from Longview who was very interested in the campaign — Angus Wynne.⁹

Critz had the endorsement of virtually every newspaper in the state. His campaign responded to Wynne's attacks with advertisements boasting support from influential public figures, the major newspapers, and a cross-section of the bar. One ad urged voters to "Ask Your Lawyer!" about Critz's abilities as a judge. Another set of ads asked people to "Think Critz!" Given the slogan Wynne had started, it is apparent that they did, but with unintended results.

Vox Populi

The runoff election in the Democratic Primary was held Aug. 26, 1944. Voter turnout was low. Many registered voters

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KEEP CRITZ FOR HIS SECOND FULL TERM
(Pol. Adv. by Friends of Judge Critz)



were overseas, and those who were at home were not focused on the election — on the same day Texans were voting in the runoff, the Allied armies were liberating Paris. Rural and suburban voters were loath to use rationed gasoline to drive any distance to go to the polls. A total of 468,000 votes were cast in the race, compared to more than 860,000 votes cast in the 1940 runoff for chief justice of the Supreme Court.

The results of the election were reported by the press as a political upset. Simpson received 274,157 votes to Critz's 194,937. Simpson carried 140 counties, losing only 76. He received overwhelming support in East Texas, getting 94.53 percent of the vote in Smith County. Critz did best in South Texas, where a few calls from former Governor Allred won Critz the support of the political bosses who dominated the region. He also carried, but not overwhelmingly, the counties in Central Texas with a sizeable German-American population.

Why did Simpson win? Certainly Critz's lack of political acumen cost him dearly, and Angus Wynne ran a skillful campaign. Simpson's best counties were in the areas of northeast Texas where Wynne had his best political contacts.¹⁰ Simpson's work with the State Bar of Texas earned him many friends

around the state, and his well-advertised military record was popular with the electorate. It was believed at the time, and it seems likely given the benefit of hindsight, that the determining factor was simply that running for re-election in the political environment of 1944 with a German-sounding name was more of a political liability than Critz could overcome.

After the Election

After he left the court, Critz joined the firm of Mann, Bauknight, Kuykendall & Stevenson in Austin. "He didn't really prosper as a lawyer after he left the court, since his love of the law was best expressed in the contemplative setting of an appellate court," says Congressman Pickle. "He missed being on the Supreme Court. Very much so."

To what cause did Critz attribute his defeat? The answer is lost to history. "Judge Critz would never talk about Gordon Simpson, Angus Wynne, or what happened. He never carried a grudge and he never talked about it," says Pickle. Several other people interviewed for this article agree. His death in 1959 was mourned by the court and the bar.

Gordon Simpson returned from Italy to take the oath of office in January 1945. He quickly acquired a reputation as being one of the brightest and hardest-working members of the court. "He made us write opinion drafts using language that could be understood by the public," according to a former briefing attorney. "He would always tell us, 'Write like you are writing for a newspaper.'"

Three years after Simpson joined the Supreme Court, the army ordered him to report to Dachau, Germany, to serve as an appellate judge on the tribunal that reviewed the convictions of Germans charged with war crimes. Simpson upheld the convictions of the Nazi higher-ups who engineered the Holocaust, but he had reservations regarding the convictions of non-commissioned officers who were following orders when

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they killed U.S. soldiers captured during the Battle of the Bulge. The prisoners had been taken to Malmady, a town in northern France, and on orders from German generals, had been shot. The Nuremberg tribunal had ordered the German non-commissioned officers incarcerated for terms of up to 10 years.

Judge Simpson wrote a white paper to President Truman and made a report to the World Court that recommended that the sergeants and corporals who had followed the orders of their superiors be released for time served. Having served in World War I and World War II, he understood the mind of a soldier and felt that a lesser degree of culpability attached to a low-ranking soldier who was following orders given by a superior during wartime. Simpson's performance on the Dachau tribunal — one of the toughest jobs any judge could face — brought him praise from all sides. Today, his portrait hangs in the German courthouse where he presided.

Not long after Simpson returned to Texas, he was offered the job of vice president and general counsel of the General American Oil Company, one of his clients before the war. He resigned his seat on the Supreme Court and moved to Dallas. Later, he joined Thompson & Knight, where he reported to the office every day well past his 90th birthday. He died in 1987 at the age of 92. A briefing attorney from the post-war years summed up the opinion of many when he recalled that Simp-

son "was as fine a man as I have ever known."

ELECTING A "NAME"

America has traditionally been a "melting pot" in which the many different cultures that make up the people that have moved to our country have blended in. Today, that concept is being replaced with a view of cultural diversity making a "tossed salad" of our identity, in which every ethnic group remains separate, and yet a part of the whole of our nation. Regardless of which theory prevails, making choices for elective office solely on the basis of the "name" of a candidate is beneath the democratic ideals of our nation. If Justice Critz was defeated because of his Germanic name, it was not the last time a candidate's ethnicity hurt a political campaign. Discrimination in any form against anyone, even in times of war, solely on the basis of an ancestry in common with our nation's enemies is wrong. It did happen to many patriotic Japanese-Americans and German-Americans during World War II. If our nation is to thrive in this century, it will not happen now or in the future.

Authors' Note

This article would not have been possible with the assistance of many people who agreed to be interviewed about

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their knowledge of the characters and stories in this article. Among the people that were most helpful were Congressman Jake Pickle, Chief Justice Joe Greenhill, Martha Edmunds, Beth O'Neil Atkins, Patsy Spaw, Margaret Simpson Carloss, and Carol Noel King.

This article would have been much better had it been written 15 years ago, when more of the subjects were alive. We hope that efforts are made to preserve the history of our legal system, since the judiciary is the one branch of government that bases its current rulings on those of the past.

We note that the number of lawyers who have memories of World War II is diminishing with every passing day, and we hope that bar associations around the state will do what they can to capture and preserve the history they represent.

Notes

1. Joe Greenhill, Critz's briefing attorney, says he went into his office no more than 10 times. Beth O'Neil Atkins says she never met him, even though she worked for the court for three months in which he was still a member.
2. Congressman Pickle shared his memories of Judge Critz in an interview for this article. He has also written about Critz in a book co-authored by his daughter, Peggy Pickle. See Jake Pickle & Peggy Pickle, *Jake* 197-200 (1997).
3. *Tide Water Oil Co. v. Bean et al.*, 138 Tex. 497, 160 S.W.2d 235 (1942).
4. E.g., *Simpson-Fell Oil Co. v. Stanolind Oil & Gas Co.*, 136 Tex. 153, 125 S.W.2d 263 (1939); *Wood v. State ex rel. Lee*, 133 Tex. 110, 126 S.W.2d 4 (1939) (opinion by Critz, J.); *Ex parte Henry*, 132 Tex. 575, 126 S.W.2d 1 (1939) (opinion by Critz, J.); *Ex parte O'Brien*, 132 Tex. 579, 126 S.W.2d 3 (1939) (opinion by Critz, J.).
5. Calvert, a former Speaker of the Texas House of Representatives and chair of the State Democratic Executive Committee, served as an associate justice on the Supreme Court of Texas from 1950 to 1961, and as chief justice from 1961 to 1972.
6. All quotations from Calvert in this article came from an oral history interview conducted in late 1985 and early 1986. It is available in published form at the University of Texas Law School Library.
7. Smiley had run unsuccessfully for the Supreme Court of Texas in 1938. During World War II, he refused to accept a rationing book for shoes and groceries, and attained some notoriety as the "Barefoot Judge."
8. It goes without saying that Simpson did not end the "Writ of Error" system of case review when he was on the court. Of course, since he didn't write, or even see, the advertisements criticizing the practice, he couldn't have been expected to do so.
9. The provisions of the law that require disclosure of contributors and of those who pay for political advertising was not adopted until 1973.
10. Wynne had boasted to Calvert that anyone who ran against Critz wouldn't carry a county east of the Trinity River. He was right. In fact, Simpson carried every county east of the Brazos River.

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