

**“Administered in Much Discretion”:
William Pinckney Hill and the Confederate
Grand Jury in Galveston, Texas, 1861-1862**

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The American grand jury has traditionally been seen as a guardian of the individual against oppressive government power. From the beginning, it was a local institution voicing local concerns. Besides the traditional task of returning indictments for trial, the “people’s panel” intervened in disputes between citizens and government officials, voiced a community’s desire for new laws, and ferreted out fraud and corruption in government agencies. One nineteenth-century commentator observed that the grand jury was “a great channel of communication between those who make and administer the laws and those for whom the laws are made and administered.”¹

During times of war, however, the grand jury’s role was often less that of an intermediary and more a tool of government authority. It remained a local institution, varying widely from place to place; but the wartime grand jury usually reflected national concerns in prosecuting the national war effort.²

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¹Richard D. Younger, *The People’s Panel: The Grand Jury in the United States, 1634-1941* (Providence, R.I.: Brown University Press, 1963), 60 quoted, is the only really useful book-length historical study of the subject in America; R. H. Helmholz, “The Early History of the Grand Jury and the Canon Law,” *University of Chicago Law Review* 50 (Spring, 1983): 613-627, concentrates heavily on the very early history of the institution; and Marvin E. Frankel and Gary P. Nofllis, *The Grand Jury: An Institution on Trial* (New York: Hill and Wang, 1975), discusses its recent history.

²Younger, ch. 3.

This was particularly true during the Civil War. In the North, such panels denounced secession, defined treason, tried to prevent desertion and draft evasion, policed military camps and generally acted as local conduits for Washington's war program. In the South, grand juries performed these tasks and also addressed uniquely Southern problems, such as slave patrols, price regulations, and prevention of counterfeiting.³

Unfortunately, little is known in detail concerning these actions. Grand juries operated under an ancient rule of secrecy. Newspapermen were not allowed access to their proceedings. Jurors and witnesses were sworn to silence. Records were imperfectly kept and often destroyed after each jury's tenure.⁴ A rare glimpse is available into the activities of the Confederate grand jury for the Eastern District Court of Texas in Galveston. The daily minutes of the panel, covering the period from October 1861 to January 1862, have survived, providing a fascinating view of the Confederate judicial system and its operation in a wartime community. The story told by this document involved three key elements: a harsh Confederate law, a worried Texas judge, and the jury itself.

In March 1861, the United States Congress passed the First Confiscation Act. The law was a relatively limited measure. Southern-owned property in the North was untouched. Federal authorities were allowed to confiscate only items directly employed in the Confederate war effort.⁵ This included slaves, who constructed rebel fortifications and performed various fatigue duties.⁶ Therein lay the rub. Southerners saw the Confiscation Act as a first step towards emancipation, and they were outraged. "Let them confiscate," seethed one Southern commentator, "and while they emancipate our slaves . . . let us console the instruments of their destruction."⁷

Richmond was pressured by newspapers, state politicians, and public opinion to write a retaliatory confiscation bill of its own.⁸ In late August 1861, the Confederate Congress passed the Sequestration Act, which became

³Younger, 106-116; Trichter and Lewis, 97.

⁴Younger, 1-8 and *passim*; Helmholz, 613-622.

⁵John Syrett, "The Confiscation Acts: Efforts at Reconstruction During the Civil War" (Ph.D. diss., University of Wisconsin, 1971); James G. Randall, *Constitutional Problems Under Lincoln* (Urbana: University of Illinois Press, 1964), 275-312.

⁶Randall, 275-278.

⁷Charleston *Mercury*, August 7, 1861.

⁸T. R. Havins, "Administration of the Sequestration Act in the Confederate District Court for the Western District of Texas, 1862-1865," *Southwestern Historical Quarterly* 43 (1940): 295-300; Charleston *Mercury*, July 19, 1861; Richmond *Dispatch*, September 27, 1861; Columbus (Georgia) *Daily Inquirer*, December 13, 1861.

law in early September.⁹ The Charleston *Mercury* pronounced it "eminently practical."¹⁰

The Sequestration Act exceeded its Northern counterpart in scope and severity. All "lands, tenements, hereditaments, goods, chattels, rights and credits" owned by Yankee "alien enemies" in the South were seized by Richmond. Money owed by Southerners to Northern creditors was also confiscated. Such debts were now payable to the Confederate government.¹¹ This went far beyond anything envisioned by the North's Confiscation Act, encompassing property which one Southern paper believed "will not fall short of three hundred millions of dollars," adding that "it is a singular fact that a majority of the city real estate in the South is owned by our enemies."¹²

No state officials were involved in this process. The federal district courts were exclusively responsible for enforcing the law. Southerners who acted as agents for Northern owners of real estate, cattle, slaves, etc., were to be found, and Southern businessmen who owned confiscable debts were to pay up.¹³

The federal courts possessed two tools to accomplish these tasks. First, each judge appointed special officers, or sequestration "receivers," to locate and seize alien property. They managed the property until it could be sold at public sale. The receivers then forwarded the proceeds to the Confederate Treasury Department.¹⁴ Second, the grand jury for each district used its inquisitory powers to question citizens concerning the whereabouts of alien property. Congress considered this task so important that it required federal judges to "give this act especially in charge to the grand juries," ensuring that its members were aware of their duties under the law. Each jury submitted a report at the end of its term to the district receiver stating what it had learned during its investigations, and recommending sequestration proceedings against individuals deemed "alien enemies."¹⁵

⁹Confederate States of America, *Journal of the Congress of the Confederate States of America, 1861-1865* (Washington, D.C.: Government Printing Office, 1904), Vol. 1, 56, 67, 171, 193, and *passim*.

¹⁰Charleston *Mercury*, August 23, 1861.

¹¹A copy of the act may be found in U.S. War Department, *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies* (Washington, D.C.: Government Printing Office, 1880-1891), Series 4, Vol. 3, 586-587.

¹²Charleston *Mercury*, September 2, 1861 (emphasis in the original).

¹³*Official Records*, Series 4, Vol. 3, 586.

¹⁴*Ibid.*, 587; Havins, 300-302; William M. Robinson, Jr., *Justice in Grey: A History of the Judicial System of the Confederate States of America* (Cambridge: Harvard University Press, 1941), 250-264, 493-495.

¹⁵*Official Records*, Series 4, Vol. 3, 587.

Both the receivers and the grand jury were given broad powers. Anyone who refused to cooperate with these authorities could be charged with a "high misdemeanor" and fined or jailed. They could be sued in federal court and forced to pay twice the value of the confiscable property or debts they had tried to conceal.¹⁶ A critic of sequestration complained that the law turned "every man into a scheming informer, the basest character at all times known to the world."¹⁷

Sequestration was aimed at Northerners who owned property in the South. But the question soon arose as to whether the law might be applied to disloyal Southerners. This was not the Confederate Congress's intent. The idea of using sequestration as a measure to enforce loyalty was debated, then rejected.¹⁸ The issue was clouded, however, by the difficulty of defining an "alien enemy" in a civil war. Theoretically, Congress and other Confederate officials viewed the location of one's residence as the determining factor in deciding who was a citizen and who was not. Attorney General Judah P. Benjamin made this clear in a circular he issued a few days after the Sequestration Act was passed: domicile determined citizenship.¹⁹

In reality, matters were not so simple given a war where borders were uncertain and loyalties were difficult to fathom.²⁰ The law exempted persons living in the border states, Delaware, and Washington, D.C.—except those who took an active part in the war against the South.²¹ This seemed to imply that one's actions, not place of residence, might define one's status, at least in border areas and slave-owning states. If this were so, a disloyal Southerner anywhere could be labelled a noncitizen and lose his or her property. The Confederacy's borders were always uncertain, and the distinction between disloyalty in an Upper South state like Missouri or a Deep South area such as Texas might prove difficult to ascertain.

Two criteria could potentially be used in determining citizenship:

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¹⁶*Official Records*, Series 4, Vol. 3, 587.

¹⁷James Petigru Carlson, *Life, Letters and Speeches of James Louis Petigru* (Washington, D.C.: W. H. Lowdermilk and Co., 1920), 395.

¹⁸*Confederate States of America, Journal*, Vol. 1, 89.

¹⁹Copy of Benjamin's circular in Edward McPherson, ed., *The Political History of the United States of America During the Great Rebellion, 1860-1865* (New York: Da Capo Press, 1972), 204.

²⁰One particularly outspoken critic, Virginia lawyer John H. Gilmer, emphasized this point: "Does local residence constitute a true friend an alien enemy, and at the same time convert a real enemy into an alien friend. . . . if [an alien friend] lived a few yards further north [from Delaware], presto, change? he is an alien enemy?" *Confederate States of America, District Court, Virginia, Confederate States v. John H. Gilmer with Authorities; and the Opinion of Judge Halyburton Construing the Sequestration Act, etc.* (Richmond: West and Johnson, 1862), 11.

²¹*Official Records*, Series 4, Vol. 3, 587; McPherson, 204.

domicile and loyalty. Congress wanted the federal courts to use only the first. Sequestration of Southerners' property, even disloyal Southerners, ran contrary to their intent. But this fact was not always clear to Confederate judges, receivers, or grand jury members. Congress passed the law in secret session and the debates were not published until 1863. It was entirely possible that the vagueness of Confederate citizenship might allow overly zealous court officials to use the Sequestration Act as a loyalty test.²²

One Rebel judge worried about possible abuses under the law. "Have you seen the 'sequestration act'?" Judge William Pinckney Hill wrote to his friend David Burnet in October 1861. "Truly it is a comprehensive act, but must be administered in much discretion, or it will destroy some of our people, as it benefits others."²³ A recent Confederate appointee to the bench of the Eastern District Court of Texas, Hill had good reason to worry about the implications of the new act. For the next four years, administration of this law consumed the lion's share of his court's business.²⁴

Sixteen local citizens were chosen as members of the first grand jury in Galveston under the Stars and Bars in November 1861. Foremost in prestige and social standing was Hill's friend David Burnet: a wealthy merchant and former provisional president and vice-president of the Republic of Texas, Burnet was chosen foreman of the jury.²⁵ Three other jurors, A. P. Lufkin, Peter S. Miller, and Aaron Burns, were commission merchants. Edward Ufford was a wealthy Galveston auctioneer. Robert Wynne was a physician. N. B. Yard owned a marine insurance firm, Charles Leonard a saloon (valued at \$10,000 in 1860), and William Armstrong a large book and stationery supply store. While some jurors were less well-to-do—Peter Miller ran a butcher shop and William Sanders was a local farmer—the grand jury was dominated by men representing the upper crust of Galveston society.²⁶

Their city had changed drastically after Fort Sumter. Most Texans felt

²²*Confederate States of America, Journal*, Vol. 1, 89, 95, and *passim*.

²³William Pinckney Hill to David Burnet, David G. Burnet Papers, Rosenberg Library, Galveston, Texas.

²⁴Randolph Nowlin, "Judge William Pinckney Hill Aids the Confederate War Effort," *Southwestern Historical Quarterly* 68 (1964): 15-29; for the high incidence of sequestration cases in this and other Confederate courts, see Robinson, 250-264.

²⁵See generally David G. Burnet Papers.

²⁶Information on the other jurors is so far unavailable; for a complete list of the jurors, see Minutes for the Grand Jury, Eastern District Court of Texas, November 16, 1861, Philip Tucker Collection, 2H86, Barker Center for Texas History, Austin, Texas, unnumbered prefatory page. Information on the jurors listed is taken from the following sources: W. D. Richardson, *Galveston Directory for 1859-1860* (Galveston News Book and Job Office, 1860), 4, 18, 21, 30 (copy located in Rosenberg Library, Galveston, Texas); U.S. Census Records, Galveston County, 1850-1860; *Galveston Tri-Weekly News*, December 4, 1861.

that, should the Federal forces decide to invade Texas, the brunt of their efforts would fall on the island city. Galveston was the logical focus of an amphibious assault, but Confederate military officials could spare little for its defense.²⁷ Yankee blockade ships appeared offshore in July 1861. A Northern invasion seemed imminent, and many Galvestonians fled inland. Commerce practically ceased in the city, and most local businesses closed.²⁸ An observer wrote, "It is really a pity to see the place now everything up where we lived deserted. . . only such families as can't get away, and those who are going to stay anyhow."²⁹

The citizens who did remain were restive. Morale was low, and some openly expressed their desire that the Union occupy Galveston, if for no other reason than to revive the city's flagging economy. "Everyone here is complaining. These war times will bring out strange things before it is over," one man declared.³⁰ Many residents lost their enthusiasm when it appeared that the Confederacy was willing to abandon the island to the Yankees. Others had never supported the Confederacy. Over 300 men rushed to the various foreign consuls in the city, claiming exemption from military service on the grounds of foreign birth. The city's German-language newspaper, *Die Union*, published several editorials criticizing secession; a pro-Confederate mob destroyed the paper's printing press.³¹ One newspaperman observed that, while most Galvestonians were loyal and supported the Confederate soldiers in their city, "there are, however, a few detestable exceptions whose meanness ought to be honored with the mark of *Cain*."³² The Confederate federal court and its grand jury convened in an unstable, volatile atmosphere.

William Hill was discomfited by the Sequestration Act, but he was more alarmed at the prospect of a Union victory. Like everyone else, Hill viewed the act as purely retaliatory. He wrote to Burnet that "they [the grand jury] are sensible that the Law of Sequestration which must engage their principal inquisition, is a harsh measure among the austerities of war." But, he continued, Washington's Confiscation Act gave the South little choice. The members of the grand jury "derive gratification from the fact that, on the part of our illustrious young Government, the origin and policy of that law

²⁷David G. McComb, *Galveston: A History* (Austin: University of Texas Press, 1986), 72-86.

²⁸*Ibid.*, 72-75.

²⁹C. Richard King, "Andrew Neill's Galveston Letters," *Texana* 3 (Fall, 1965): 209.

³⁰*Ibid.*, 203.

³¹McComb, 73.

³²*Ibid.*, 74; Bellville (Texas) *Countryman*, December 11, 1861.

[Sequestration] were, and were designed to be, retributive."³³ Hill apparently found this gratifying as well. When he addressed the grand jury on the morning of November 19, 1861, Hill swallowed his doubts about the propriety of sequestration and delivered a rousing and bombastic charge. Before turning to the specifics of sequestration, he commented at length on the nature of the war and true Southern patriotism.

"Every law of God and man has been defied and disregarded" by the enemy, declared the judge, and "truth, honor and humanity have been banished from their counsel and their conduct. Perfidy, cruelty and cowardice have found daily illustration in their civil and military administration." Hill warmed to his topic, asserting "they have found and occupied a plane of depravity lower and darker than was ever before revealed and seem to glory in their shame. . . [w]hen history writes their deeds, its pages will blush at their own record."³⁴

This surge of patriotic rhetoric led the judge to the topic of disloyalty. He cautioned his listeners that an indictment could not be brought for treason without the testimony of at least two witnesses, as prescribed by the Confederate Constitution. But then he remarked that he would not worry too much about this point. An indictment might be had with only one witness, provided another could be produced in the near future. "If there is treason in our midst, find it and spare it not," Hill said.³⁵

When he turned to the Sequestration Act, the judge was far less concerned with discussing technical details than with justifying the law in the eyes of his audience, and perhaps to himself. "It is not for us to cavil about its propriety or policy," he stated. He reiterated several times that the North deserved what it would get from the law. "The solemn judgement of the civilized world must condemn the wantonness and severity which prompted the [Northern] government and people of the United States to enact and execute [the Confiscation Act]," he declared.³⁶ Hill's remarks concerning the Sequestration Act were lengthy, but not especially helpful. He read the text of the law, but offered little detailed comment. "How far your inquiries may go. . . I must leave to your own enlightened interpretation of the law and to your conscientious sense of duty," he said.³⁷

³³Charge of William Pinckney Hill to Grand Jury, November 19, 1861 (*Confederate Imprints* microfilm collection, roll 15, frame 845), 1; this letter was reprinted in the pamphlet containing Hill's speech.

³⁴*Ibid.*, 3-4.

³⁵*Ibid.*, 6.

³⁶*Ibid.*, 7-11; quote on 11.

³⁷*Ibid.*, 11-14; quote on 14.

Yankee perfidy, treason, and sequestration were all combined in Hill's speech. It was common practice for Civil War era judges, in both North and South, to use the grand jury charge as an opportunity to air their views about patriotism, duty, and love of country.³⁸ Judge Hill was no exception: but he made no effort to separate sequestration from hatred of the bluecoat or the turncoat. Jurors might easily interpret his speech as a mandate to use sequestration as a means to ferret out traitors.

The grand jury began its work immediately after Hill finished delivering his charge.³⁹ They set up their operations in the "grand jury room," located on the second floor of the Galveston Courthouse. From November until the end of the jury's tenure in February 1862, sequestration matters occupied their undivided attention.⁴⁰

Their chief task was to conduct investigations that would allow them to declare various individuals to be alien enemies, and to recommend that sequestration proceedings be enacted against whatever property these persons possessed. The jury began by obtaining a list of local taxpayers from the county assessor. This indicated the residence of all citizens who paid taxes on local property.⁴¹ The list also contained the names of local citizens who acted as agents for Northern property holders. Typically this was a person who lived on a piece of land owned by an "alien." Often the agents looked after cattle, horses, and other such property for their Northern landlords. These men were subpoenaed and questioned by the grand jury.

For example, the jury summoned a militia officer, Colonel John D. Andrews, to "give evidence for five Negroes belonging to Samuel Norris." Norris was a Swede who had lived temporarily in Galveston. Before he left town, Norris asked Andrews to keep his slaves and hire them out. No doubt the two men planned to share the profits of the slaves' labors. Norris went to Sweden, then returned to America. Andrews told the grand jury that Norris was living in New Orleans, but he did not know the address. Amazingly, the grand jury found Norris to be an alien enemy and petitioned for seizure of the slaves. Sweden was not an enemy country; New Orleans was certainly not "alien." Yet, due to a brief stay on Yankee (California) soil, Norris's

³⁸Younger, 37.

³⁹The jury's first act was to commission a publication of Hill's "eloquent" address. Minutes for the Grand Jury, Eastern District Court of Texas, November 16, 1861. All citations from this collection are identified by the date of entry since the page numbers of this notebook are erratic.

⁴⁰*Ibid.*, November 16, 1861 to January 10, 1862. I have located no nonsequestration matters in these notes.

⁴¹*Ibid.*, November 19, 1861.

property was sequestered.⁴²

Colonel Andrews could provide only sketchy information concerning Norris's whereabouts and status. Most agents were more useful. A Galvestonian named M. M. Potter appeared before the jury in mid-December 1861. He testified that he was the agent of Simon Jones, a California man who owned property which was embroiled in a probate suit pending before the Texas Supreme Court. Potter believed Jones to be a permanent California resident. One of the jurors, Edward Ufford, concurred; Jones was Ufford's business partner before the war. The grand jury peremptorily declared Jones to be an alien enemy.⁴³

Most of this business was handled with dispatch. The tax assessor's list provided reliable information concerning the status of many Galveston property owners. Those who lived in the North were usually identified without much trouble. The tax rolls or the word of an agent were readily accepted. Some inquiries took more time, however, because the citizenship of the person in question was difficult to define. This could be a source of worry even when the jury tried to establish citizenship according to one's place of residence. Domicile was usually the most obvious indicator of status, but not always.

The case of Galvestonian Charles W. Adams is an interesting illustration of this problem. Adams co-owned a shipping firm in Galveston with a local merchant named C. H. Jordan. Adams lived in New York with his family at the outbreak of the war.⁴⁴ Dwelling in the North was considered *prima facie* evidence of alien citizenship. But Adams's case was not so simple. An employee of the shipping firm, James S. Tedder, told the jury that Adams's stay in New York was temporary. Tedder stated that Adams planned to travel from there to Liverpool, England, and open a branch of the business in that city.

Adams was always an avid secessionist, Tedder said. Indeed, friends of the businessman told him he was "acting the fool" in the North by expressing openly his Southern sentiments. Tedder told the jury that Adams had never

⁴²Minutes for the Grand Jury, Eastern District Court of Texas, November 19, 1861, and January 6, 1862; see also Galveston *Tri-Weekly News*, December 14, 1861, receiver's notice of sale of Norris's property; the court also seized a large herd of horses.

⁴³Minutes for the Grand Jury, Eastern District Court of Texas, December 17, 1861, and January 6, 1862. The Texas probate case apparently was dropped. Since Jones, as an alien enemy, had no standing in a Confederate court, it is likely that the Texas case was dismissed, allowing the Confederacy to sequester his property. On the business partnership between Ufford and Jones, see 18 *Texas Reports* 811 (1857).

⁴⁴*Ibid.*, December 2, 1861.

actually purchased property in New York. He had not therefore established a Northern domicile, and was not an alien enemy.⁴⁵

Adams's partner, C. H. Jordan, was subpoenaed. He agreed with Tedder, adding that Adams was outfitting two ships under British colors. Another Galvestonian gave more details, pointing out that one of the ships, the brig *William Marsh Rice*, was to be used to aid the Confederacy, probably as a blockade runner.⁴⁶

Not all the testimony furthered Adams's status as a loyal Confederate. Charles Daniels, another witness, testified that Adams intended to buy a house in Massachusetts, and that he had purchased Northern burial plots for himself and his family. This was the fundamental issue: did Adams intend to live in New York or Liverpool?⁴⁷

After hearing several days of testimony, the grand jury decided to give Adams the benefit of the doubt. Most witnesses had testified that the shipper was "a good Southern man" who was trying to help the Rebel cause. The grand jury could ill afford to hamper his efforts, given the scarcity of Southern shipping and the need for vessels to run the federal blockade. Adams's Galveston property was not seized.⁴⁸

He was fortunate. The rulings on 49 possible aliens by the grand jury are extant; of these, only five escaped sequestration. Most were cases which were beyond dispute. Wright S. Andrews, for example, was brought before the jury on December 11, where he testified as an agent for three citizens of Cincinnati who owned real estate in south Texas. The three were quickly declared alien enemies. No one denied that these individuals were Yankees, and their property was quickly and routinely seized.⁴⁹ Such residence-based cases were straightforward and simple. Questions of loyalty were not; and one's beliefs were sometimes a factor, along with residence, in the jury's decisions.

The jury did not set any hard rules concerning how much weight would

⁴⁵Minutes for the Grand Jury, Eastern District Court of Texas, December 2, 1861.

⁴⁶*Ibid.*, December 3-4, 1861.

⁴⁷*Ibid.*, December 3, 1861.

⁴⁸See also testimony of C. H. Jordan, N. B. Yard (jury members were allowed to give testimony), W. R. Howard, C. H. Lenard, and L. M. Hitchcock in *ibid.*, December 3-5, 1861; for jury's decision see *ibid.*, January 6, 1862. The jury did declare Adams's father to be an alien enemy.

⁴⁹*Ibid.*, December 11, 1861. Usually the specific type of property was not listed in the minutes. Copies of several sequestration petitions contained in the Philip Tucker Collection indicate that most of these cases involved real estate, but sequestration could involve all kinds of property. See Galveston *Tri-Weekly News*, January 2, 1862, advertising a receiver's sale of sequestered property, including a "large stock of groceries, Liquors, Wines, Carriages, Buggies, Wagons, carts. . ." etc.

be given to the loyalty issue. Californian Simon Jones's property was taken, as described above, despite the fact that his agent described him as a "very hot secessionist." In Jones's case, his residence on California soil rendered him an "alien enemy," despite his beliefs. Conversely, the repeated assurances of several witnesses that Charles Adams was a "good Southern man" influenced the jury's final decision and spared Adams's property.⁵⁰

The grand jury's two criteria for citizenship, residence and loyalty, were both subject to some ambiguity. The use of patriotism as a litmus test for absent Southerners illustrates one way in which loyalty issues became intertwined with the sequestration of property.

Jurors also delved into their neighbors' beliefs in a more direct way. Keeping in mind Judge Hill's injunction to root out treason, the jury questioned witnesses concerning the state of their neighbors' hearts and minds. They went a long way toward turning their fellow citizens into "informers."

When questioned by the grand jury, James Cole stated his belief that there were many alien enemies in the city. In a circumspet way, Cole expressed doubt about the patriotism of many Galvestonians, declaring that he knew many "who have never voted or acted in any way that would render them obnoxious to the United States Government."⁵¹

The jury asked another witness, William Lipke, whether or not a local ship captain was for or against the institution of slavery. Support of the peculiar institution and the Confederacy were seen as identical. Lipke replied that he had never heard the captain express any opinion on the matter at all.⁵²

W. W. John stated that he knew of two persons "who were not sound on the Southern question." William R. Evans had heard "suspicious reports" but knew of no specific disloyal persons. A. P. Crawford thought there were "many disaffected persons among us," but also offered no names.⁵³

Others were quite specific. William Sanderson stated that a man named Glass had used "language that I thought wrong, he became excited and threatened to pull my nose if I called him a black Republican." John Crawley testified that "Hawley," a dredge boat operator, was "an unsafe man," and had uttered "unsafe remarks." Peter Campbell thought a German grocer, Louis Hoelfenstein, may have spoken "seditious language." Another

⁵⁰Minutes for the Grand Jury, Eastern District Court of Texas, December 3-5, 1861, and January 6, 1862.

⁵¹*Ibid.*, December 13, 1861.

⁵²*Ibid.*, December 14, 1861.

⁵³*Ibid.*, December 14, 17, 19, 1861.

man named Wilson was suspected by Campbell, but was "too guarded in [his] conversation" for Campbell to be certain.⁵⁴

R. T. Bilderbach had heard people "talk some one way, some another." He testified that a man named Varney lived with a "Negro wench." Bilderbach had stopped renting a room to Varney because he "talks both ways." Bilderbach ventured an opinion that Varney was part black, himself. At any rate Varney wanted to see the South overthrown. Bilderbach himself owned no slaves, but he took pains to point out that he had "no objection" to slavery.⁵⁵

Several individuals were denounced by more than one witness. A. P. Whitcomb, a pauper who lived with his son by a local iron foundry, drew exceptionally harsh criticism. W. W. John stated that Whitcomb "needed looking after," and ought to be compelled to take an oath of allegiance. Hiram Close believed Whitcomb was not especially dangerous, but had declared that "he was sorry the Union broke up." Peter Campbell stated that Whitcomb "has on all occasions taken up for the North, that the Northern people were the smartest and would take this Island." Campbell once heard Whitcomb say "that if the city was in flames, he would not turn a hand to put it out."⁵⁶

The consequences for Whitcomb, Varney, and others who were denounced before the grand jury are difficult to ascertain. Their property was not seized. These were poor men, who probably owned little or nothing that could be taken.⁵⁷ The grand jurors might have asked the local police or the provost marshal to arrest them, but there would have been no real legal basis for doing so.⁵⁸ It is more likely that social or economic pressure was brought to bear on suspected Unionists. There is no documentable proof of any such actions. Presumably the jurors acted on the information they gathered, but we do not know what steps they took to "place the mark of Cain" on possibly disloyal Galvestonians.

The grand jury's inquiries are noteworthy for several reasons. Issues of patriotism, citizenship, and property confiscation were intimately connected,

⁵⁴Minutes for the Grand Jury, Eastern District Court of Texas, November 29, December 16, 19, 1861.

⁵⁵*Ibid.*, December 14, 1861.

⁵⁶*Ibid.*, December 14, 16, 19, 1861.

⁵⁷This is based on an examination of the Galveston City Directory for 1859, 1860, Rosenberg Library, Galveston, Texas.

⁵⁸The provost was forbidden to exercise civil jurisdiction; see Allen C. Ashcroft, "Role of the Confederate Provost Marshals in Texas," *Texana* 6 (1968): 390-392. The provost or police might have been able to seize these men under martial law, but Galveston was not at this time under such restrictions, though it later would be; see McComb, 72-79.

despite the intent of the Confederate Congress. Sequestration and loyalty were often inseparable. The law provided the means by which a Confederate grand jury could plumb the depths of community faithfulness to the Cause. Wavering Southerners who wished to leave their homes, even if they did not necessarily go North, could expect to lose whatever property they left behind.

Very early in the war the Galveston grand jury exhibited no qualms about interfering with property rights in the name of the Confederate government. Confiscation was a drastic step for nineteenth-century Americans. Private ownership was seen as the foundation of civil liberties; seizure of an American's property was as serious as newspaper censorship, denial of *habeas corpus*, or the curbing of free speech.⁵⁹

The Confederate grand jury in Galveston was willing to set aside private property concerns to combat Yankees, and men who could be considered disloyal Southerners. They also used the sequestration laws to discover treasonous behavior. In this they reflected the entire South's preoccupation with a united home front. Throughout the war the Confederacy used provost officers, pass systems, loyalty oaths, and other measures to ensure patriotic behavior.⁶⁰ In Galveston, a city economically depressed and politically divided, this mania manifested itself in the behavior of the local federal grand jury.

The jury's tenure ended in February 1862. This was the only Confederate federal jury to meet in the city during the war. Invasion fears soon prompted Hill to move his court to Houston.⁶¹

The judge did not have access to grand jury proceedings; no court officials did. But Hill did discover how the jury had mixed sequestration with treason. The law had not been construed according to Congress's wishes, and Hill realized it. The judge also realized he had played a large part in the grand jury's actions. When he empaneled a new jury in late February 1862, his opening speech was much different. The patriotic rhetoric was gone. He told his audience that they were charged with the "delicate administration of the law. Domicile was the only criteria applicable to the citizenship question.

⁵⁹See the excellent discussion of this topic in Herman Belz, *Emancipation and Equal Rights: Politics and Constitutionalism in the Civil War Era* (New York: W. W. Norton, 1978), ch. 5.

⁶⁰Harold M. Hyman, *To Try Men's Souls: Loyalty Tests in American History* (Berkeley: University of California Press, 1960), 219-230.

⁶¹Charge of William Pinckney Hill to Grand Jury, February 20, 1862 (*Confederate Imprints*, roll 15, frame 844).

Hill emphatically declared that "a domestic enemy is not liable to sequestration by reason of hostility to the [Confederate] government." Sequestration had nothing at all to do with loyalty. "You are instructed to exercise great care and caution in your inquiries," Hill concluded.⁶² The judge clearly saw the dangers of allowing patriotic zeal to outrun the law, as often happens in wartime. In the absence of records, we cannot know whether their fervor for the Southern cause led later jurors to brush aside the legalities of private property ownership and the expressed intent of lawmakers in the Confederate Congress in order to strike at those they perceived as the Confederacy's internal enemies, or whether they did, indeed, administer this difficult law with discretion.

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