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**Gigi Diem-Uyen Do**

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**The Dissertation Committee for Gigi Diem-Uyen Do  
certifies that this is the approved version of the following dissertation:**

**A Case Study of the Franklin Lindsay Student Aid Fund and Its  
Intersection With Black College Student Access to Higher Education in  
Texas from the Post-Civil War Era to the Present**

**Committee:**

---

Richard Reddick, Supervisor

---

William Carter

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Patricia Somers

---

Victor Saenz

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**Gigi Diem-Uyen Do, B.A., M.A.**

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## **Dedication**

This work is dedicated to my husband, Edward B. Hegstrom, who has been a constant source of support and encouragement during the challenges of graduate school and life. Your wisdom is immeasurable and I thank you for sharing this life with me.

To my children, Calvin and Sofia, your presence in my life is the reinforcement of why this journey is important.

To my parents who taught the value of education to me and how your sacrifices helped me to attain it.

To my loving siblings – Aimee, Julie and Avril – your unwavering love for me is appreciated more than you know. And Myly, you are never far from us.



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## **Abstract**

# **A Case Study of the Franklin Lindsay Student Aid Fund and Its Intersection With Black College Student Access to Higher Education in Texas from the Post-Civil War Era to the Present**

by

Gigi Diem-Uyen Do

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SUPERVISOR: Richard Reddick

The case study of the Franklin Lindsay Student Aid Fund is an historical examination of a sixty-two year-old private foundation originally created to help White Texas students pursue post-secondary education in the State of Texas. At the present time, the Fund is a thriving, \$23 million student loan trust for all qualified young Texans. For this study, a qualitative research method was applied for an in-depth examination of the Franklin Lindsay Student Aid Fund and how it became accessible for Black students in Texas. Research also focused on the impact changes in Texas higher educational policy had on the outcome of the Franklin Lindsay probate court cases from 1954-1957, and the Fund's reformation stages beginning in 1957. The results indicated three key findings: (1) The Tax Reform Act of 1969 (TRA69) ended the exclusion of Black students from the Franklin Lindsay Student Aid Fund, (2) Black students were still banned from the program for twenty-two years after the *Brown V. Board of Education of Topeka* (1954) decision and seven years after the TRA69, and, (3) Current committee members lacked knowledge about the history of the Fund.

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## Chapter 1: Introduction

The death of Franklin Lindsay on May 1, 1954, drew surprisingly little attention in Texas. Although later revealed to have been a wealthy investor in numerous Texas banking enterprises and real estate ventures, the unmarried Lindsay had neither heirs nor permanent home, living quietly in a San Antonio hotel room in the years before his death (Duncan, 1954). His passing did not generate a full obituary, as he was memorialized in a one-paragraph death notice in the *San Antonio Light* (May 4, 1954, p. 26). Lindsay, however, would posthumously become rather legendary relative to higher education in Texas as his executors fulfilled his instructions to use the bulk of his \$3 million fortune to create a student loan program designated for White Texas students only.

In his will, Lindsay specifically banned loans to any student attending a non-segregated school, stating “My feeling toward negroes being that they should not be in co-education with other students [White].” The restrictive nature of Lindsay’s endowment reflected not only his racism but concomitant commitment to segregation. Thus the stipulation in his will that his scholarship fund be used to educate “deserving White students of either sex who may be desirous, but financially unable, of obtaining college educations at any of the Texas state institutions such as University of Texas, Agricultural and Mechanical College, etc., in which Negroes or those having Negro blood shall not be entered” (*Franklin Lindsay estate probate*, 1954, p. 3) (Appendix F).

Interestingly, Lindsay’s death came just sixteen days before the landmark 1954 United States Supreme Court decision, *Brown v. Board of Education of Topeka, Kansas*, (1954), which reversed the Court’s 1896 ruling in *Plessy v. Ferguson*, which had

established the concept of “separate but equal” in all public institutions, including schools at all levels. The *Brown* decision dramatically altered the trajectory of American education in general and the Franklin Lindsay Student Aid Fund in particular.

Lindsay originally intended that his loans only fund public universities in Texas, but he later added a provision allowing loans for students admitted to private universities such as Southern Methodist University and Rice University, apparently in the belief that those schools would not be affected by any subsequent order for the desegregation of public institutions (*Dallas Morning News*, July 28, 1954, p. 6) (Appendix C).

Anachronistic as it may appear from the perspective of the early 21<sup>st</sup> century, Lindsay’s decision to support racially exclusive educational scholarships was in line with the segregationist policies then legally in force. Prior to Lindsay’s death, the majority of Texas state educational institutions were restricted to White students in accordance with the Texas constitution and the laws in practice. The University of Texas at Austin, and the Agricultural and Mechanical College of Texas (now Texas A&M University), were among those Texas universities that prohibited African Americans from admission. However, a provision was added to the endowment in 1950 allowing for the admission of Black students to public colleges or universities if no African American equivalent existed, thus adhering to the concept of “separate but equal” (*Sweatt v. Painter*, 1950).

In its present form, the Franklin Lindsay Student Aid Fund is a thriving \$23 million nonprofit foundation. (JP Morgan Chase Bank Yearly Report, 2013). The grant is managed by JP Morgan Chase Bank as Trustee and its board membership is comprised of individuals from different racial backgrounds including Caucasians and Hispanics. On

the Fund's website, the criteria for eligibility lists the requirements students must have in order to be considered for funding; but gone is the racial mandate. (The Franklin Lindsay Student Aid Fund, a Nonprofit Foundation, 2015). How did this loan program manage to become inclusive to students of all races and ethnicities when its donor's original intent was keeping his endowment for White students only?

### **Statement of the Problem**

This project originated as an effort to explore the largely unknown history of the Franklin Lindsay Student Aid Fund, and only later did it become apparent that the remarkable timing of the trust's creation made it subject to the profound changes brought by desegregation, arguably the most important transformation of American higher education in the 20<sup>th</sup> century (*Looney v. Capital National Bank*, 1957).

In exploring Lindsay's motives for establishing the Fund, it must be remembered that he lived in a time and in a place when segregationist racism was endemic and normative, and when Lindsay established the Fund, he undoubtedly believed his initiative reflected a sincere altruistic philanthropy even though his magnanimity was shrouded in racism. Interestingly, the Fund he established now distributes loans in a way that directly contradicts his expressed wishes. This history obviously requires some understanding of the important forces that led to desegregation; a discriminatory practice that, as an Asian immigrant arriving in this country long after the most important civil rights struggles had passed did not directly experience.

A crucial component to this case study is to understand the tireless persistence of organizations like the National Association for Advancement of Colored People



(NAACP), the profound changes brought by *Brown v. Board of Education* (1954), and the largely forgotten efforts of courageous individuals like Herman A. Barnett and Herman Marion Sweatt, all of who contributed to the ending of de jure segregation in the United States. (Storey & Kelley, 2008; Lavergne, 2011).

As will be discussed in greater depth in a later chapter, although initially committed to Black equality, by the end of Reconstruction the Republican-controlled federal government failed to protect freedmen from Southern White racism and violent reprisals against African Americans who dared to assert any form of their rights as citizens of the United States, guaranteed to them by the Fourteenth and Fifteenth Amendments to the United States Constitution. The federal government and the Republican Party after 1877 abandoned Southern Blacks to the mercy of a Southern White establishment determined to keep African Americans in their “proper place,” that of a completely racialized, marginalized, and oppressed people. Southern Whites were free from any federal government restrictions or legal mandates preventing them from dealing with their “Negro problem” in any manner they deemed appropriate for maintaining a completely segregated society.

The 1880s saw the passage of the infamous Jim Crow laws in every ex-Confederate state including Texas and establishing de jure segregation in the South until the 1960’s, or as one historian has noted, “a different layer of slavery.” (Pfeffer, 1990, p. 46). Although the 1960s Civil Rights Act of 1964 ended this form of segregation, White Southerners quickly implemented another manifestation of the separation of races, *de facto segregation*, which lasted for several more years (Pfeffer, 1990). As will be

examined in detail, both expressions of segregation were enforced in Texas and both informed Franklin Lindsay and his endowment.

### **Purpose of the Study**

The proposed research seeks to examine the effects federal and state desegregation laws had to allow Black Texans access to the Franklin Lindsay Student Aid Fund. In researching Franklin Lindsay and the Franklin Lindsay Student Aid Fund, one must understand the times in which he lived and the history that guided his decisions to restrict student loan funds to White students. The purpose of this study was to take a historical perspective on race relations from *Plessy v. Ferguson* (1896) through *Brown v. Board of Education* (1954) and beyond. Research will review higher education policies prior to and during the time the program was created. Did the level of racism at that time influence the original design of the program to include only White students and did the Brown, et. al. decisions and subsequent civil rights legislation ultimately force a repositioning of Lindsay's original objective of his student loan initiative?

This research uses a qualitative case study to answer the research questions that frame this study (Yin, 2009). This investigation proposes an explanatory study of court cases and trust reformation, while tracing their effects on the final legal outcome of the Franklin Lindsay Student Aid Fund. What historical dynamics of Lindsay's life and times led him to exclude Black students from his aid program? Much of the socio-cultural and historical dynamics that informed Lindsay's life and thus his student aid initiative can be related to the "power politics" theory of political and economic elites who emerge out of a non-egalitarian, stratified capitalist socio-economic system to dominate the

nation's key financial, military, and political institutions. The impact of the Texas "power elites" of Franklin Lindsay's time and their impact on public policy are most relevant to this study. For example, Texas' institutionalized Jim Crow laws reflected the local White power elites' determination to subordinate African Americans, which in turn affected the scope and outcome of the Franklin Lindsay Student Fund policy (Mills, 1956; Light, 1974; Lipitz, 2009). While White Southern power elites affected Blacks negatively by enforcing segregation, their liberal, Northern counterparts within the federal government impacted African Americans positively by promoting desegregation.

However, in the history of 20<sup>th</sup> century race relations, the transformative power of certain elites was not solely responsible for the ending of segregation in the United States. One cannot ignore the remarkably powerful grassroots civil rights movement that challenged the elites from below. For example, in the early 20<sup>th</sup> century a coalition of progressive White reformers and their Black counterparts formed the National Association for Advancement of Colored People (NAACP) in 1909 and the National Urban League in 1911 to ameliorate oppressive practices against African Americans (Jonas, 2005; Weiss, 1974). As will be discussed in greater depth in a later chapter, during the 1950s and 1960s, under the eventual leadership of Martin Luther King, Jr., non-violent activists operated on the local as well as regional and national levels to illuminate not only the racist policies of White Southern elites but through direct, massive peaceful protest, to bring down the walls of segregation and oppression of Black folk in the South that had existed for close to a century.

## **Research Questions**

In order to determine how the Franklin Lindsay Student Aid Program was able to disperse loans to students of all races when its donor's intent was to deny Black students access, this study posits and answers the following three research questions:

1. How did the Franklin Lindsay Student Aid Fund become accessible for Texas' Black college students in Texas?
2. What effect did changes in Texas higher educational policy prior to and during the formation of the Franklin Lindsay Student Fund Program have on the Franklin Lindsay court cases from 1954-1957?
3. What role did these changes in higher educational policy play in the reformation stages of the Franklin Lindsay Student Aid Program for Texas students from 1957-2002 and beyond?

## **Significance of the Study**

The intent of this study was to contribute to the overall knowledge about the history of Franklin Lindsay Student Aid Fund and what influenced the radical change of the original intent to allow Black students to become beneficiaries. Specifically, this study focuses on Franklin's Lindsay's life and how Jim Crow in Texas formed much of his racial attitudes and by extension his views on education. The current committee members of The Franklin Lindsay Student Aid Fund have very little knowledge of Franklin Lindsay or his original intent for the loan trust. They are now the third and fourth generation Franklin Lindsay Student Aid Fund committee members. As a result of changing bank trustees repeatedly over sixty-years, the loan program lost many important

historical documents that would have offered vital insights into the enterprise's evolution. Nonetheless, existing records still provide ample information relative to the trust's history and thus useful to contemporary committee members and scholars of Texas educational history more generally.

### **Methodology**

I chose the qualitative research method for this case study. In general, qualitative research methods are used to discover and learn the meaning of how people respond to and feel about certain events that they experienced and encountered (Bogdan & Biklen, 2003; Denzin & Lincoln, 2000). The purpose of this study is to explore the personal motives along with the socio-cultural and historical dynamics involved in Lindsay's decision-making process to dedicate his wealth to the founding of a student aid fund. In addition, the decision jointly made by his first hand-picked committee members was even more intriguing when they overturned his mandate to exclude Black students from his loan program. Chapter 3 provides a more detailed explanation of the methods section for the proposed research.

### **Limitations**

The lack of biographical information about the reclusive Franklin Lindsay obviously limits the ability to understand his motivations. Court records regarding the Franklin Lindsay estate probate filed in 1954 and the lawsuits filed by his sisters in 1954 through 1957 were the only documentation readily accessible that I could use that referenced Lindsay and his dedication to enhancing educational opportunities for Texas' White college students. Lindsay's obituary mentioned very little about his life and the

only other extant records available (newspaper clippings) were from his sisters' lawsuit in challenging his bequest. In addition, there were no records of committee members or student participants before 2002. The current bank trustee, JP Morgan Chase acquired this Fund from the second Trustee, Bank One, in 2002. Prior to that transfer, Bank One acquired the endowment from the original Trustee, Capital National Bank. Consequently, I am relying on information disclosed in court documents and phone calls to current Franklin Lindsay appointed committee members and JP Morgan bank trustees to confirm research data. There is an abundance of exhibits in the court documents that provide a thorough background of Franklin Lindsay's family, his business, associates, and wealth.

### **Delimitations**

I understand that the study is based on past historical events that affected the outcome of the Franklin Lindsay Student Aid Fund. There will be no survey, questionnaire or bank trustees or students as their experiences have no bearing on the outcome of the Fund itself. Conversations with the committee members were conducted not only to check facts, but to ascertain their understanding, or lack thereof, of the history of the Fund and the changes it has encountered over the past sixty years. This study, based in the constructivist paradigm, uses a case study approach to explain the perceptions and experiences of Franklin Lindsay that led to the development of his trust.

### **Dissertation Overview**

In this chapter, I have outlined the purpose of the study, stated the research questions, presented the study's significance, theoretical perspective, and limitations and

delimitations. Chapter 2 reviews both the historical as well as the primary and secondary sources available for this dissertation. Chapter 3 defines the theoretical/conceptual framework used in this qualitative case study, as well as case study research design, methodology, researcher positionality, limitations and delimitations and timeline. Chapter 4 discusses the research findings based primarily on the analysis of court records, bank records, loan records and interview transcripts. Lastly, Chapter 5 reviews, analyzes, and discusses the findings of the study. Moreover, I outlined the implications of the findings, the potential impact that the committee members can make, and recommendations for the future of the Franklin Lindsay Student Aid Fund.

## Chapter 2: Literature Review

To better understand Franklin Lindsay and the sections of this Will that addressed recipients of loans through his program, one must review the history of segregation and desegregation in Texas from the Reconstruction period until Franklin Lindsay's death in 1954. Race and segregation were critical in the history of Franklin Lindsay's life, and greatly influenced the formation of his student aid program. During his lifetime, higher education was considered a social status attainment and a "property" from which only Whiteness could benefit.

As described by Harris (1993), Whiteness is defined as the right to exclude others not considered White. The possessors of Whiteness were granted the legal right to exclude others from the privileges inhering in Whiteness, and Whiteness became an exclusive club whose membership was closely and grudgingly guarded (Harris, 1993). The legal system played an active role in enforcing this right to exclude – determining who was and was not White enough to enjoy the privileges accompanying Whiteness. To that end, the courts protected Whiteness in the form of property (Harris, 1993).

In addition, Bell (2000) made a distinction between "race" (categories segmenting the human population) and "racialization" (the process by which individuals are assigned membership in these categories, and that "racism" is the product of the two working together). Finally, the research presents a critical review from *Brown v. Board of Education* (1954). These significant changes legally required a restructuring of the Franklin Lindsay Student Aid Fund, contrary to the specific instructions of its founder.



## **Early Higher Education for Black Texans**

The life of Franklin Lindsay spanned an important epoch in the history of race relations in the American south. He was born in 1874, in the middle of the Reconstruction era following the Civil War (*San Antonio Light*, 1954). Both the constitutions of the nation of Texas and the State of Texas, after annexation in 1845, recognized the legality of slaves, including the buying and selling of humans as property outside the parameters of the legal system. Lynching became a common form of vigilante justice (Calvert, De Leon, & Cantrell, 2013). Though denied of their social identity, slaves created their own social units. Family creation was an important defense to cope against the brutality of their masters, including physical and sexual abuse inflicted on slaves and their family members. Slave owners encouraged creation of slave families for this led to more valuable property, and also offered owners an opportunity to coerce obedience by threatening violence against a relative. Slaves, through permissible family arrangements from their masters, were able to have parental roles with their children and provided individual love, support, and self-worth for one another to cope with the brutality from the hands of their White owners (Calvert et al., 2013).

The church became the most influential social force for the African American community. Church gatherings were often allowed, as slaveholders believed that slavery would liberate Africans from their savage-like ways if they were infused with Christianity (Guzman, 2015). Through the church Blacks could congregate, free from the scrutiny of Whites. Blacks in Texas did not learn of their emancipation until June 19, 1865. This date became an important African American celebration in Texas known as

“Juneteenth” which was celebrated through churches. As they celebrated the emancipation at a gathering known as “Juneteenth,” the church evolved into an institution where Blacks could develop leadership for their community (Calvert et al., 2013). Other forms of entertainment such as music, dancing, speeches, barbecues, and picnics also served as invigorating forces in the Black community offering a much-needed reprieve from the dominant and hostile White establishment. Nonetheless, the church was the central place where Blacks could develop their leadership qualities by learning the techniques of independent planning and executing a group agenda (Glasrud, Borrer & Byerly, 2011).

### **Emergence of Historically Black Colleges and Universities in Texas**

Following the Civil War, the Texas Constitution of 1866 (May, 2011) stipulated that public schools for Black children be separate; that “income derived from the Public School Fund be employed exclusively for White scholastic inhabitants”; and that African Americans be taxed for “the maintenance of a system of public schools for Africans and their children” (Behnken, 2011). Across the nation, 20 percent of Whites were illiterate in 1870 compared to 80 percent of African Americans (National Center for Education Statistics [NCES], 1993). The elevated levels of illiteracy among Blacks, combined with their dismal economic conditions meant that there was little tax revenue available to support their education. With African Americans unable to fund their own schools, and Whites unwilling to do so, education suffered. The lack of support from the Whites did not deter freed slaves from striving to learn to read and write. Literate Blacks, in turn, helped establish their own educational collectives and associations, staffed schools

entirely with Black teachers, and were unwilling to allow their educational movement to be controlled by the “civilized” Yankees (Anderson, 1988).

Ten years later, the Texas State Constitution of 1876 (May, 2011) made modest progress by mandating an “efficient system of public free schools” in which Whites and Blacks would attend different schools (Williams, 1997, p. 218). The Texas Constitution stipulated that, “when deemed practicable,” there be an establishment and maintenance of a “College or Branch university for the instruction of the colored youth of the State, to be located by a vote of the People” (Williams, 1997, p. 217). Because a college already existed for people of color known as the Texas Normal and Mechanical College in Waller County (now called Prairie View Agricultural & Mechanical College University), officials determined that the language of the Constitution did not require the creation of other colleges. So, no further effort was made on the part of the state legislature to establish or provide another institution for African American Texans, until the 1950 Supreme Court decision in *Sweatt v. Painter* (1950).

Throughout the last two decades of the 1800s and into the early 1900s, sincere efforts to support Black education came from the White Northerners and their philanthropy (Williams, 1997). Major religious faiths formed philanthropic groups to direct financial support from the North to assist Blacks in Texas and other parts of the South. Historically Black Colleges and Universities (HBCUs) in Texas, developed in the late 1800s, were supported by the Freedmen’s Aid Society to teach freed slaves and their children to be educated as teachers, nurses, and professionals. The Freedmen’s Aid

Society was largely supported by the American Missionary Association (AMA), made up of Congregational, Methodist, and Presbyterian churches in the North (Williams, 1997).

Religious organizations first promoted higher education for Blacks in Texas. Many prominent and accomplished Blacks received their leadership training from the church, and these Black leaders played prominent roles in education and politics. One such early prominent Black leader was Dr. Lawrence Aaron Nixon, a physician and civil rights activist (Guzman, 2015). Born in Marshall, Texas, in 1883, Nixon graduated from both Wiley College in Texas and Meharry Medical College in Tennessee. Both institutions were established by the Methodist Episcopal Church and were among the oldest HBCUs of their time. During his years of medical practice in El Paso, Nixon was repeatedly denied membership into the El Paso Medical Society because of his color. After witnessing the lynching of ten Black men in 1909, Nixon became a civil rights advocate and the following year established the first Texas chapter of the National Association for the Advancement of Colored People (NAACP) in El Paso (Guzman, 2015).

From 1866 to 1912, a total of thirteen HBCUs were established in Texas by different religious organizations (Williams, 1997). The Paul Quinn College (Austin) was established by a small group of African Methodist ministers in 1872. Texas College (Tyler) founded by the Christian Methodist Episcopal Church in 1894, and it is still in operation. The United Methodist Conferences established the Samuel Huston College in 1876, and later merged with Tillotson College (Austin) in 1953. The Catholic Diocese of Texas founded St. Phillips College (San Antonio and now part of the Alamo Community

College) for Black students in 1898. Bishop College (Dallas), Guadalupe College (Seguin), Butler College (Tyler), and Conroe College (Montgomery County) were also established through the efforts of religious leaders. Many of these schools still operate today to serve Black Texans and other races, but it is important to note that they were first established because of legal segregation. In earlier times, they functioned with very limited academic programs, offering poorer facilities and much smaller budgets than traditional White institutions (Williams, 1997).

Congress approved the second Morrill Act in 1890, which offered additional support of higher education for Black students. The Act required states with racially segregated public higher education systems to provide a land-grant institution for Black students whenever a land-grant institution was established for White students. The second Morrill Act was aimed at former Confederate states including Texas (Storey & Kelly, 2008). Prairie View Normal and Industrial College, now called Prairie View Agricultural & Mechanical University, was the first and only university to be established for Black students through the Texas land-grant to provide training in agriculture, home economics, engineering, and related branches of learning. Prior to the Land Grant Act, it served as an institution for the preparation and training of teachers (Williams, 1997). Another Texas land-grant institution, The Texas Agricultural and Mechanical College – now called Texas Agricultural and Mechanical University in College Station, Texas – served White students. It was the first land-grant institution to open in 1876 as a result of the Morrill Act in 1862. This elite White male university finally opened its door to female and Black students in the early 1960's (Shabazz, 2004).

## **White Texas During the Life of Franklin Lindsay**

Throughout his life in Texas from the time he was born in 1874 until his death in 1954, Franklin Lindsay lived in a strictly segregated, separate, and unequal community. Information about his place of birth is all but nonexistent. Very few records exist as to the life and times of Lindsay. His death certificate stated that he was born in Alabama in 1874, his father was born in South Carolina and his mother was born in Virginia (Appendix J). The Blacks in his community were denied all privileges that were given to Whites, and many Anglo Texans in Lindsay's environment regarded African Americans as racially inferior and degenerate. Bolstered by a belief that White superiority was natural, genetic, and immutable, they perpetuated the ideological backing for continued segregation (Behnken, 2011).

### **Reconstruction era**

The post-Civil War years between 1865 and 1876 were known as Reconstruction Era, and during this time, the federal government created the Freedmen's Bureau to help former Black slaves and poor southern Whites in the aftermath of the U.S. Civil War, from 1861-1865 (Glasrud et al., 2011). National agents of the Freedmen's Bureau, stationed throughout Texas to help and protect former slaves, assisted newly freed people to start new lives by acquiring land, education, and the right to vote. Because of their labor and skills in farming and manual labor, Black freedmen and their families were able to make the transition to south Texas where a large cattle industry existed (Cimbala, 2005).

The Freedmen's Bureau assisted freed slaves legalize marriages, locate lost relatives, negotiate labor contracts, and manage veteran affairs; however, this effort was met with ferocious resistance from southern Whites. The Freedman's Bureau, an initiative of President Abraham Lincoln, was undermined by President Andrew Johnson, who reduced the Bureau's role and removed employees deemed too sympathetic to former slaves. Johnson also pardoned many former Confederates and restored their land, thereby eliminating a source of land for freed slaves looking for advancement (Crouch, 1992). In the summer of 1872, responding to pressure from influential White southerners, Congress dismantled the Freedmen's Bureau. The Bureau's demise terminated all initiatives to provide long-term protection for Blacks or to ensure any real measure of racial equality (Crouch, 1992). The end the Freedman's Bureau and Reconstruction heralded another eight decades of suffering and segregation for Blacks in America until the 1964 landmark Civil Rights legislation that outlawed all discrimination based on race, color, religion, sex, or national origin (Harris & Tienda, 2011).

### **Legal and political oppression**

The legal system in Texas during the life of Franklin Lindsay operated against the Black community. African Americans convicted of crimes usually received longer and harsher sentences than Whites convicted of similar offenses. For example, a White man who assaulted a Black girl was given a two-year prison sentence, as reported in the August 30, 1904, *Dallas Morning News*, but a Black man charged with assaulting a White girl was punished with a thirty-eight-year imprisonment, as reported in the *Dallas Morning News* on October 18, 1905. Furthermore, Blacks were not allowed to serve on

juries. This denial of representation in the jury pool, which the Texas courts did not constitute as discrimination, led to little sympathy for Black defendants (Glasrud, 1977).

Overt examples of prejudice and discrimination were countless. When the great storm struck Galveston in September, 1900 and killed an estimated 6,000 people, and left many thousands more homeless, national and local newspapers depicted images of Blacks as thieves. The *Galveston Daily News* portrayed Blacks as ghouls and lazy loafers who would not join the cleanup efforts unless forced by bayonet. Reports by media accounted for between 45 to 75 African Americans shot for looting; however, official records cited only six such shootings, but did not offer a racial breakdown (Halstead, 1900).

Racial violence in the form of lynching and mob riots occurred with little interference from the criminal justice system. From 1883 through 1903, an estimated 199 Blacks were lynched in Texas, and from 1904 to 1930 another 171 Blacks were killed at the hands of lynch mobs (Storey, 2008). Photographs captured the especially gruesome lynching of Jesse Washington in Waco in 1916 after Washington was dragged out of the Waco courthouse following his conviction for murder. He was beaten, burned, hanged, and dragged as several thousand well-dressed citizens, including women and children, witnessed the spectacle (Glasrud et al. 2011). The extent of this vicious assault demonstrated the pure racial hatred toward African Americans from the White community.

Many politicians voiced their racial views toward Blacks as inferior beings who required White help, guidance, rigid control, whipping, and lynching. Senator Joseph



Bailey of Texas condemned President Theodore Roosevelt's 1901 invitation to Booker T. Washington to visit the White House. "I believe more in purity of the Anglo-Saxon race than in the principles of democracy," Bailey said, as quoted in Glasrud, 1997, p. 38. He emphasized that Blacks should not live side-by-side with educated Whites, since they were trained for servitude and "nothing in the world could be more supremely foolish than to spend people's money in trying to educate a race of menials." (p. 38). He went on to say, "Lest I be misunderstood, I have no prejudice against the negro in his place. But I think his place is in the White man's kitchen and not the White man's dining room. I want to treat the negro justly and generously as long as he behaves himself, and when he doesn't, I want to drive him out of this country" (p. 39).

Other public officials stated their paternalistic and racist opinions on the matter of Black citizens. Governor Joseph Sayers reminded the Texas legislature in 1901 that "the Negro is the weaker race and in matters of legislation, he is altogether dependent upon the White man" (Glasrud, 1977, p. 38). Governor S.W.T. Lanham warned Black Baptists in 1904 to "keep out of partisan politics" and to "respect the social limitations between the races. If these are transcended, there will be trouble" (Glasrud, 1977, p. 37). To alleviate racial tension, M.J. Denman, a Democratic Congressional candidate, advocated sending all Blacks to the Philippines. In 1905, a resolution was introduced to the Texas legislature opposing any appropriations to Black schools at Prairie View on the grounds "that the cotton field is the proper place for the negro" (Glasrud, 1977, p. 39).

African Americans also suffered political ostracism. In the first decade of the 20<sup>th</sup> century, the Democrats in the state legislature established a poll tax as a prerequisite for

voting in Texas elections, which resulted in a substantially reduced size of Black electorates (Osborn, 2002). In addition, both the Democratic state executive committee and Republicans refused to contest local and state elections where victory was dependent upon Black votes, distributing patronage only to White votes (Osborn, 2002). Poll taxes, which African Americans could not afford, had a devastating effect on voting rates. Through the Poll Tax of 1902, and the Terrell Election Laws of 1903 and 1905, Blacks were excluded from voting in the primary elections and were eliminated by voter residency and registration requirements (Osborn, 2002). These laws influenced lower income voters, a disproportionate number of whom were Blacks. Voter intimidation also added to the decline of Blacks participating in politics. In 1890, there were over 100,000 registered Black voters, but by 1906, only 5,000 African Americans voted in Texas (Osborn, 2002).

### **Early Press Depiction of Black Texans**

Texas newspapers in the early 1900s depicted Blacks in three types of reports: crime, humorous incidents, and lynching or other types of White violence aimed directly at Blacks (Glasrud, 1977). Franklin Lindsay grew up in this era of media sensationalism at its worst. News about Blacks was not about accomplishments or positive aspects of their lives, but mostly about death and crime committed toward or by Blacks. In the December 26, 1909, issue of the *Houston Daily Post*, brief stories from around the state were about the deaths of three Blacks, the wounding of three others, and the shooting and stabbing of Whites by Blacks. No other news about Blacks was mentioned. Humorous stories about Black Texans depicted them as silly, childlike, and unlearned. The *Dallas*

*Morning News* carried a cartoon titled “Sambo” in their Sunday edition. Sambo was a stereotype of African American slaves depicted as servile, docile, irresponsible, lazy, and prone to lying and stealing. The childlike Sambo grinned and ate watermelon all day (Glasrud, 1977).

Accounts of lynching sometimes appeared on the front pages of newspapers, with Black victims typically described as fiendish and brutish. One editor of the *Lubbock Morning Avalanche* expressed his opposition to Blacks moving into Lubbock because “negroes are like Johnson grass when it comes to taking roots and increasing in a town.” He described Blacks as “kinky headed coons.” A lynching in Whitesboro in 1901 was headlined in the *Dallas Morning News* as “Negro Murderer is burned...” (Glasrud, 1977, p. 42). A Nacogdoches newspaper wrote in 1903 that “you can say what you please, but the Negro will never rise in respectability or even be classed as a human being until he ceases his damnable outrages on women. He has either got to stop it, leave the U.S., or be exterminated” (Glasrud, 1977, p. 38). In 1905, some White Houstonians wrote to Governor Lanham demanding he legalize mob punishment of Blacks found guilty of assaults on White women. They insisted that these assaults must be stopped “even if it is necessary to wipe out the race” (Glasrud, 1977, p. 43).

The press, in the early part of the 20<sup>th</sup> century, not only ignored Black Texans’ accomplishments but also suppressed any constructive social, economic, and political reports about their lives. Their reporting instead helped mold the negative sentiments from the Whites toward Blacks that led to violence, disfranchisement, and segregation. The incessant reports of Blacks as simple and sinister beings perpetuated this belief. For

example, a reporter of the *Houston Chronicle* wrote in October 22, 1902, “the negro is inferior not because he is Black nor is he Black because he is inferior, but he is inferior because he belongs to an inferior race” (Glasrud, 1977, p. 37). Franklin Lindsay reflected this racial bias by including in his will his belief that Black and White students should co-mingle (*Franklin Lindsay Estate Probate*, 1954).

### **Segregation and Inaccessibility**

Segregation began in Texas immediately after Reconstruction as a way of undoing racial reforms put in place to protect Blacks. The Texas Constitution of 1876 ordered the segregation of the public school system. In 1891, seating on railroad cars was legally segregated (Williams, 1997). But it was the Supreme Court decision in *Plessy v. Ferguson* (1896), that upheld a Louisiana law requiring separate railroad cars for Whites and Blacks, that opened the door to the principle of “separate but equal”, which led to widespread segregation (Williams, 1997). From 1909 to 1911, the Texas legislature enacted several laws that required separate waiting rooms in railway stations and separate employee compartments (Williams, 1997). Local governments in Texas also segregated facilities, for example Houston and Galveston had separate libraries for Blacks. Separate restrooms and drinking fountains were common, and theaters and amusement parks were allowed to prohibit Blacks from entering, although some amusement parks would allow Blacks to enter but only on major holidays, like Juneteenth (Calvert et al., 2013).

Segregation, humiliation, and violence against African-Americans were the status quo throughout Franklin Lindsay’s adult life in Texas. As an influential and wealthy

businessman, many of Lindsay's friends and associates were involved in politics, banking, schools, and the legal system. If he did not actively participate in supporting segregation, those with whom he associated with certainly shaped segregation policies in Texas. Paradoxically, his life straddled the segregation era, having been born at its commencement and dying just before its demise.

### **Texas Jim Crow Laws**

The first Franklin Lindsay loan was not issued until 1957; three years after Franklin Lindsay established the loan program (Internal Revenue Service [IRS], 2001). His Will languished in court from 1954 until 1957 while his sisters contested it based on legal segregation, which was established not only in Texas but other Southern states (*Looney v. Capital National Bank*, 1954). The outcome of the Franklin Lindsay lawsuit would not have succeeded had it not been for the concurrent challenges in Texas and other states to contest segregation and disenfranchisement in public schools, especially in higher education.

To better understand the grounds and rationale for desegregation, it is critical to know where it began. In 1866, twenty-seven Jim Crow laws were passed in the Lone Star State (Osborn, 2002). The Jim Crow laws segregated Blacks and Whites in almost all aspects of their livelihood, not just in higher education. It aimed to keep Blacks from scholarly advancement and prevent them from having any connections to the lives of White Texans (Osborn, 2002). In addition, the Black Codes, part of the Jim Crow laws, were passed by the Texas legislature to define the legal status of freed Blacks after the Civil War (Moneyhon, 2004).

## **Black Texas Codes Law**

In 1866, the Eleventh Legislature in Texas produced laws aimed at defining the legal place of Blacks in society. These laws were called Black Codes (Texas State Historical Association, 2015). The intent of the Black Codes was to keep the slaves and freed Blacks in their inferior position and to regulate Black labor. Among the Black Codes were laws such as apprentice law, contract law, vagrancy law, and convict-labor law aimed against Blacks and designed to give the masters the power to inflict corporal punishment to ensure work, pursue runaways, and implement heavy fines on people who were viewed as idle. Local courts had the power to place idle people and/or convicts to work at any labor until fines were paid.

Though the Black Codes gave freed Blacks basic property rights, they were not allowed to vote or hold office, serve on juries, or marry Whites. In addition, this law prohibited use of designated public education funds for Black schools; African American schools could only be established from taxes paid by Blacks (Moneyhon, 2004). On January 3, 1967, General Joseph B. Kiddoo of the Freedmen's Bureau declared the contract law biased against freedmen and prohibited its enforcement (Texas State Historical Association, 2015).

In addition, Chapter CII of the Texas Black Codes required that "all railroad companies shall attach one passenger car for the special accommodation of freedmen" (Moneyhon, 2004). Franklin Lindsay reached adulthood in this era of legalized Jim Crow laws, and like most Texans living during that time, he very likely did not feel the social injustice in the Black Codes law and the Jim Crow laws. As reflected in his

passage in his Will, Lindsay mandated that his Fund be allocated to any Texas state school “in which negroes or those having Negro blood shall not be entered” (*Franklin Lindsay Estate Probate*, 1954).

### **Railroad Statutes**

Franklin Lindsay’s formative years in Texas were distinctly segregated. The segregation of Black passengers was a longstanding practice in Texas. He never would have entertained the thought to sit in a railway with an African American passenger. The fact railroad statutes were in Louisiana and overturned by *Plessy v. Ferguson* (1896). *Plessy* challenged the law enacted in 1890 that required railroads to provide “equal but separate accommodations for the White, colored races (*Plessy v. Ferguson*, 1896).

Louisiana was not the only state to adopt this “separate but equal” law. Florida passed a law in 1887, with Mississippi, Texas, and other southern states following suit (Moneyhon, 2004). The new law enraged the Black citizens of New Orleans, at the time, which led the New Orleans Comite des Citoyens (Committee of Citizens) to arrange a test case using Homer Plessy, who himself was one-eighth Black but could have easily passed as a White person. On June 7, 1892, Plessy boarded the East Louisiana Railway Train and purposely refused to move to the car designated for “colored passengers.” As anticipated, he was arrested for civil disobedience, and the case eventually reached the U.S. Supreme Court where a decision was made to uphold the “separate but equal” doctrine. Justice Henry Billings Brown argued that as long as racially separate facilities were equal, they did not violate the Fourteenth Amendment that guaranteed equal protection for all citizens of the United States (*Plessy v. Ferguson*, 1896).

The 1889 Texas Statute required railroad companies to maintain separate coaches for White and Black passengers with equal comfort. Railroad companies were fined between five to twenty dollars for infractions. In subsequent years, segregation was reinforced by the 1891 Statute by requiring coaches with equal comforts and convenience for both races. The 1909 Statute required depot buildings to provide separate waiting areas and the 1914 Statute forbade Black porters from sleeping in cars intended for White passengers (Guzman, 2015). State codes in 1935, 1943, and 1953 further ordered separate coaches, buses, and all public carriers to be segregated (Reed, 1941). Segregation of public transportation in Texas continued for many decades until the issue was finally settled in the case of *The U.S v. Texas* in 1970, when William Wayne Justice, chief judge of the U.S. District Court for the Eastern District of Texas, ordered the Texas Education Agency (TEA) to assume responsibility for desegregating Texas public schools, including all bus routes. He gave TEA the ability to impose sanctions and denial of accreditations if schools violated the order (Guzman, 2015).

### **Voting Rights**

A component of this literature review is to provide readers with an overview of the United States and more narrowly, Texas during the lifetime of Franklin Lindsay, to better comprehend the deep-rooted discrimination felt in every aspect of life in Texas. The Texas Constitution of 1876, required electors to pay a poll tax before registering to vote that ranged from one dollar to one dollar and fifty cents. These poll taxes were a financial barrier to the working class and poor Blacks, and were sometimes accompanied by literacy tests (Calvert et al., 2013). The Voting Rights Statute of 1922 prohibited



Blacks from participating in a Democratic Party primary election held in the State of Texas; however, the U.S. Supreme Court, in the case of *Nixon v. Herndon* (1927), overturned this statute in 1927. But in 1951, the poll tax was again reinstated (Guzman, 2015). Voting and segregation went hand in hand to keep Blacks from the Whites, and as long as they were kept from the voting polls, Blacks would have no say in their desire for desegregation.

### **Miscegenation**

Laws were passed throughout the country that prohibited Whites to enter into relationships with Blacks. This was the law in Texas as well, where Whites were forbidden from entering into a relationship with Blacks. The statute stressed that this law was not about interracial sex but about formalized interracial unions. Franklin Lindsay, like most Texans during his lifetime probably opposed interracial relationships between Black and White Americans. An interracial marriage would suggest that Blacks were social equals to Whites and, therefore, were not tolerated by Whites who believed the opposite.

These laws go back to the Republic of Texas when on June 5, 1837, the Republic of Texas Congress enacted a measure that made it unlawful “for any person of European blood or their descendants, to intermarry with Africans or descendants of Africans” (Robinson, 2004). In 1858, the Texas State Legislature revised this law to include a two- to five-year prison term for violation; and extended the law to include third-generation “Negro ancestry” (Robinson, 2004). The miscegenation statutes of 1915, 1925, and 1951

also called for imprisonment of between two- to five-years for intermarriage (Robinson, 2004).

Early Jim Crow legislation authorized the one-drop rule to set precedence for “separate but equal” racial segregation. Historically, the one-drop rule was used in America to distinguish between people with African heritage and those with “pure” White European heritage (Johnson, 2008). The one-drop rule assumes that even one drop of “Black blood” is enough to classify a mixed-race person “Black” despite dominant racial traits. *Plessy v. Ferguson* (1896) was a landmark case where the one-drop rule determined that Homer Plessy, a light-skinned American citizen, could not be White and segregation laws could decide that he was Black which denied him of a seat in the White section of the Southern railways in New Orleans (*Plessy v. Ferguson*, 1896).

## **Education**

Franklin Lindsay, like other Texans of his time, strongly opposed any educational opportunity for Blacks as it would provide for them more upward mobility. This would be a threat to most segregationists as this would imply a step toward equality. Beginning with the State Constitution of 1866, a range of laws in Texas established the basis for legal segregation of schools. Despite the landmark decision of *Brown v. Board of Education* (1954) declaring that state-sanctioned segregation of public schools was a violation of the Fourteenth Amendment and unconstitutional, Texas countered by passing a statute in 1958 establishing that no child could be compelled to attend schools that were racially mixed. The statute furthered declared that desegregation could only occur as the

result of a popular election, and the Texas governor was given the authority to close schools occupied by federal troops (Chermerinsky, 2002).

### **Segregated Health Care**

Throughout the segregation era, Blacks in Texas had limited economic and housing options. Franklin Lindsay and prominent White Texans lived in neighborhoods that were restricted to White property owners. In 1915, a collection of statistical data and aspects of the social, economic, and educational conditions of Houston's African American population were compiled in a record book called the Red Book of Houston (Houston Metropolitan Research Center [HMRC], 1915). According to the Red Book, Black Houstonians lived in "death traps" where their homes were in such unsanitary and deteriorated conditions that they were more susceptible to diseases, such as tuberculosis, typhoid fever, cholera, or typhus, associated with poor sanitation. Estimates state that forty-five percent of an estimated 800 deaths of Black Houstonians in 1914 were preventable (HMRC, 1915). At the turn of the 20<sup>th</sup> century, few Texas hospitals admitted African American patients, and many White physicians refused to see them at their offices, often forcing them to wait in separate rooms or to enter through separate doors. Additionally, physicians often charged fees beyond the means of many poor Blacks. Consequently, they resorted to home remedies and patent medicines to treat their health issues (HMRC, 1915).

Blacks often relied on the handful of African American physicians to visit their homes for emergencies, or travel to segregated "Negro" hospitals. In Houston, Black patients had to travel to a segregated hospital at the University of Texas Medical Branch

at Galveston, more than forty miles southeast of Houston. Lack of access to proper health care undoubtedly claimed many Black lives, but the problem received so little government attention that preventable mortality rates were not well understood (HMRC, 1915). At the height of the tuberculosis epidemic, a healthcare statute established for a segregated state tuberculosis sanitarium, and in 1952, another statute was created to establish tuberculosis hospitals for Blacks. The Jim Crow laws affected the Black community in every aspect of their lives, even at the very core of their physical wellbeing. Without adequate healthcare to ensure healthy lives, it undoubtedly affected high achievement in educational experiences for Black students.

### **The Unraveling of Jim Crow in Texas Higher Education**

During President Franklin D. Roosevelt's administration, from the 1930s to 1940s, the tide began to turn somewhat for the nation's African American community. The appointment of four new justices helped steer the sentiment toward fully enforcing the Bill of Rights and preserving human and civil rights (Storey, 2008). Around this time, Franklin Lindsay was well into his sixth decade of life, and observed the changes in the landscape of segregation in higher education. The first true challenge to the constitutionality of state segregation laws was *Missouri ex. rel. Gaines v. Canada* (1938). Lloyd Gaines, an African American student, was denied admission to the White-only, state-run University of Missouri Law School that upheld the state constitution provision for "separate education of the races." Gaines took legal action and claimed the right to be admitted to the University of Missouri because no other provision had been made for the legal education of qualified Black students in Missouri (Osborn, 2002).

In January 1939, the Supreme Court affirmed the legality of segregation going back to the 19<sup>th</sup> century *Plessy* case, thereby denying Gaines admittance to the Missouri Law School. However, the Court ruled that since Missouri had no Black law school, the university was required to pay for Blacks to go to law school out of state or build a facility equal to that provided for White students. Because of expenses involved in building a Black law school, the University of Missouri Law School reluctantly admitted Gaines for the fall term of that same year. Unfortunately, Gaines disappeared and his whereabouts are still unknown to this day. The case was subsequently dropped, but this case initiated a series of court cases to overturn the *Plessy v. Ferguson* (1896) ruling (Osborn, 2002).

Following the Supreme Court ruling on Gaines, et.al., that “separate but equal” was a serious and uncompromising measure, a pattern of state legal actions began throughout the southern states. Black college students denied admission to graduate and professional schools at White state universities, filed lawsuits. Many state legislatures quickly responded by authorizing or establishing “equal” facilities at the Black state institutions before the legal suits were adjudicated (Osborn, 2002).

In August 1949, the University of Texas Medical School in Galveston reluctantly admitted its first Black student, Herman A. Barnett, on a temporary basis, while awaiting the construction of a separate medical school at the Texas State University for Negroes, now Texas Southern University (Storey & Kelly, 2008). As a strained attempt to preserve the segregation laws, UTMB decided that Barnett would attend classes at the Galveston school until receiving his enrollment from the “Negro college,” however, their

ploy did not last long. The Federal Department of Veteran's Affairs, responsible for Barnett's tuition, refused to recognize the admission arrangement, and by fall 1950, UTMB officially admitted and enrolled Barnett as their student (Storey & Kelly, 2008).

In Houston, a thirty-seven year old mail carrier by the name of Heman Marion Sweatt decided to apply to the University of Texas School of Law on February 26, 1946. Knowing that he would be denied admission, Sweatt met with a delegation from the National Association for Advancement of Colored People (NAACP) in Austin to accompany him to the University of Texas registrar's office. There he met with then-President of the University of Texas, Theophilus S. Painter, who, based on the outcome of the earlier Gaines case, informed him that "nothing was available for him except out-of-state scholarships" (Furlow, 2012). The NAACP leaders concluded that an out-of-state scholarship was "an unacceptable continuation of inherently second-class treatment" (Furlow, 2012, p. 37), so Sweatt proceeded to present his college transcripts and formally request admission to the University of Texas School of Law. Painter held Sweatt's application until he could obtain a ruling from the Texas Attorney General's office. Painter included in his appeal to the Texas Attorney General that Sweatt "is duly qualified for admission to the School of Law at the University of Texas, save and except for the fact that he is a Negro" (Lavergne, 2011, p. 64).

On March 16, 1946, Attorney General Grover Sellers responded and upheld the University of Texas' policy of segregation that made this case a hot-button issue in the gubernatorial election that same year. Both Texas gubernatorial candidates vowed to

preserve and protect the State's official policy of racial segregation (Furlow, 2012).

Attorney General Sellers stated in his opinion:

The wise and long continued policy of segregation of races in educational institution of this State has prevailed since the abolition of slavery, and such policy is found incorporated not only in the Constitution of the State of Texas but also in numerous related statutes. There is no doubt that if equal educational advantages are not provided for the applicant within the state, he must be admitted to the law school of the University of Texas. (Furlow, 2012, p. 34)

The last sentence written by Attorney General Sellers opened the door for counsel Thurgood Marshall to focus the Supreme Court on the constitutionality of graduate school segregation before the U.S. Supreme Court.

Upon rejection by the University of Texas Law School, Sweatt filed suit against Painter and other UT officials on May 16, 1946. On December 17, 1946, District Judge Roy Archer denied Sweatt's petition for Writ of Mandamus after finding that the legal training to be offered at Prairie View was "substantially equivalent to that offered at the University of Texas," thus satisfying the state's legal obligation to provide "separate but equal" education for Black students under *Plessy v. Ferguson* (1896) and Texas law (Furlow, 2010). The litigation made national headlines in news media such as the New York Herald-Tribune newspaper, and *Life* and *Newsweek*. The *Dallas Express* named Sweatt as its 1946 Texan of the Year. At the same time, Sweatt and his family experienced vandalism in their home, cross burnings in their yard, and threatening notes and telephone calls (Furlow, 2012).

In November 1949, the NAACP and Thurgood Marshall took this case to the U.S. Supreme Court to decide on the issue:

To what extent does the Equal Protection Clause of the Fourteenth Amendment limit the power of a state to distinguish between students of different races in professional and graduate education in a state university? (Furlow, 2010, p. 35)

On June 5, 1950, Chief Justice Vinson wrote for a unanimous Court,

We hold that the Equal Protection Clause of the Fourteenth Amendment requires that petitioner be admitted to the University of Texas Law School. The judgment is reversed and the cause is remanded for proceedings not inconsistent with this opinion.

Heman Sweatt, Thurgood Marshall, and the NAACP had achieved a stunning legal victory and paved the way for the *Brown v. Board of Education* verdict four years later (Furlow, 2010). What had started at the University of Texas changed the world—at least in the world of American higher education.

*Sweatt v. Painter* (1950) no doubt influenced how Franklin Lindsay prepared his Will. By this time, not only was he a wealthy bachelor with stocks in practically every bank, building, and loan company in Austin, Texas (Duncan, 1954), but he was also a seventy-six year old man. He clearly was politically connected, as demonstrated by the list of his appointed committee members for the loan program; prominent politicians and business people throughout the state of Texas (*Looney v. Capital National Bank*, 1954). Like many prominent, White public figures in Lindsay's time, he lived in an era where Whiteness was seen as a political signifier of socioeconomic power (Harris, 1993).

Suchet (2007) stated,

(W)hiteness is produced, and is maintained, by the power relations and institutions that form our society. We learn to take a position of Whiteness by assuming superiority, an entitlement to privileges, and a dominant belief in their view of the world.”



In the words of W.E.B. Dubois:

Whites were given public deference because they were White. It is important to note the effect of this hyper-evaluation of Whiteness – owned White-identity as property affirmed the self-identity and liberty of Whites and, conversely, denied the self-identity and liberty of Blacks” (p. 878).

Altman (2006) wrote that to become White involves a denial of Blackness. He asserted that Whiteness is not only about race and racism, but is a lived experience. It is an ideology, a system of beliefs, policies and practices that enable White people to maintain social power and control (Thompson, 1997).

### **The Intersection of Race and Franklin Lindsay Court Cases**

Shortly after the historic ruling of *Brown v. Board of Education* (1954) by the Supreme Court on May 17, 1954, Franklin Lindsay’s Will began its three-year dispute in the Federal District Court, with a lawsuit filed by Lindsay’s two sisters, Emma L. Baker and Virginia Looney (Appendix F3). The sisters sought a declaratory judgment on Lindsay’s Will, arguing that it was unenforceable in the wake of *Brown*. Their suit, filed on July 28, 1954, claimed that they, as the closest surviving relatives, should be entitled to the Lindsay fortune (Duncan, 1954).

The suit argued that the language of Lindsay’s Will, ordering loans only to White students in segregated institutions, was clearly unenforceable “for the reason that there are no state institutions in which qualified Negro students may not enter, such discrimination being a violation of the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and a violation of the

Due Process clause of the Fourteenth Amendment to the Constitution of the United States” (*Looney v. Capital National Bank*, 1954, p. 23).

The sisters asserted that private schools of higher learning, sponsored by religious organizations, also would be ineligible. With few exceptions, tenets of the religious orders do not permit discrimination, the petition stated. The sisters also alleged such schools would be ineligible because they enjoyed some state tax benefits, making them limited state agencies and therefore subject to constitutional prohibitions, especially that against segregation and discrimination (*Looney v. Capital National Bank*, 1954).

The plaintiffs contended that there were no schools within the definition of the testator, which could lawfully exclude Negroes or those having any Negro blood. The intended objective of the trust could not be fulfilled. Upon their assumption of failure of the trust, the plaintiffs requested for the remainder of the estate to go to the sisters as the next of kin (*Looney v. Capital National Bank*, 1954).

### **Separate-but-Equal Doctrine**

When Franklin Lindsay’s sisters challenged his Will in July 1954, they depended on the groundbreaking *Brown* ruling to support their argument. Prior to this ruling, the “separate but equal” doctrine was the standard in the U.S. law as a result of the decision on *Plessy v. Ferguson* (1896). As indicated in this case, the constitutionality of state laws requiring that African Americans be segregated was upheld, as long as they were provided with equal opportunities and facilities in education, public transportation, and jobs (*Plessy v. Ferguson*, 1896).

In reviewing the history of segregation and desegregation from 1866 through 1954, it is clear that Whiteness and power politics shaped the lives of African Americans in Texas. While it is impossible to speculate on Franklin Lindsay's response had he lived a year or two longer, when it became obvious that college funds could no longer be established based on racist segregation, he may have put in place measures to protect his educational fund. Nor can it be known what he would have thought of the results in the Fund now, sixty years later has increased to over \$23 million dollars helping Black and White students.

### **Conceptual Framework**

The conceptual framework of the study is based on the "power politics" theory, also known as "political elites" or "power elites" theory. This theory describes the power and class structures (e.g., political, military, and economic elites) and how they interact with and impact public policy (Wright, 1956). The underlying assumptions of the power politics theory is that some people have more power than others and they are sometimes the decision makers, or influence decision makers, to shift the existing norms to increase alignment on policy issues, increase political will, affect policies, and impact changes in social and/or physical conditions (Light, 1974). The Jim Crow laws were created by power of the elites and their Whiteness (Lipitz, 2009) that have effectively established and shaped Franklin Lindsay's decision to ban African Americans from his student fund program.

The "power elites" theory proposes that the power to influence policy is concentrated in the hands of few (Mills 1956). Power and class structures in Texas

during the lifetime of Franklin Lindsay greatly influenced the policies of segregation of African Americans.

The research interpretations and findings in this qualitative research are context-specific. They are based on an epistemological approach that asserts different people construct meanings in different ways, even when they experience the same event (Crotty, 1998). Constructivism is identified in several ways that are relevant to this study:

1. because meaning is constructed by human beings as they engage with the world they are interpreting, Franklin Lindsay allocated his estate to fund only White students because that was how his environment was segregated;
2. humans engage with their world and make sense of it based on their historical and social perspectives;
3. the basic construction of meaning is always social, arising in and out of interaction with a human community (Crotty, 1998).

Constructivists subscribe to the idea that all social reality is constructed, created, or modified by all the social players involved (Stake, 1995). Therefore, it is important to consider that “most contemporary qualitative researchers nourish the belief that knowledge is constructed rather than discovered. The world we know is a particularly human construction” (Stake, p. 99).

Constructivists would explain the early years of the life of Franklin Lindsay shaped how he felt toward Blacks. It was during the years when Jim Crowism was at its peak in all of its most severe and violent manifestations in Texas that Franklin Lindsay

lived. Given the racist and segregated socio-cultural environment in which he came of age, it should surprise few people that his endowment would exclude from its largesse people of color, specifically African American Texans.

Texas' Jim Crow laws had, perhaps, their most adverse, long-term effects on Black education in the state, which not only amplified the blatant racism inherent in Lindsay's student aid fund but the deeper bigotry pervading the White Texas community toward African Americans during Lindsay's lifetime. Despite such hostility and prejudice, Black Texans persevered in the area of education, creating for themselves within the restrictive confines and oppression of Jim Crow, opportunities to improve their education and some remarkable accomplishments.

## **Chapter 3: Case Study Methodology**

The purpose of this study is to explain the meanings behind the decisions made by Franklin Lindsay when he established his student aid fund to exclusively help White students. It is equally compelling to learn why his first appointed committee members overturned his mandate to ban Black students while fulfilling his wish of “the greatest good can be done to the country and even to the world by education of its people” (*Franklin Lindsay Probate Estate*, 1954). (Appendix F.1) To begin my research, I selected the qualitative method for this study. In general, qualitative research methods are used to discover and learn the meaning of how people react to and feel about certain events that they experience and encounter (Bogdan & Biklen, 2003; Denzin & Lincoln, 2000).

### **Research Questions**

The following research questions guided the study:

1. How did the Franklin Lindsay Student Aid Fund become accessible for Black college students in Texas?
2. What effect did changes in Texas higher educational policy prior to and during the formation of the Franklin Lindsay Student Fund Program have on the Franklin Lindsay court cases from 1954-1957?
3. What role did these changes in higher educational policy play in the reformation stages of the Franklin Lindsay Student Aid Program for Texas students from 1957-2002 and beyond?

## Qualitative Research

Qualitative research questions prepared for this paper began with *how* or *what*, so that the research gains an in-depth understanding various occurrences relative to my topic (Patton, 2002; Seidman, 1998). This approach is justified when the research questions requires exploration (Stake, 2005). For my study, I explored the environment in which Franklin Lindsay lived while growing up in Texas that made him want to have a separation between Blacks and Whites. In his will, Lindsay specifically stated, “My feeling toward negroes being that there should not co-education with other students” *Franklin Lindsay Estate Probate* (1954). What experiences did White Texans have during Lindsay’s life that warranted their beliefs in segregation?

Second, a qualitative study makes available for me to explore phenomena, such as feelings or thought processes that are difficult to measure or gather through conventional research methods (Strauss & Corbin, 1998). I researched the segregation era from the end of the Civil War until the time of Franklin Lindsay’s death to learn about his life and environment.

Third, qualitative methods are best to be used when studying phenomena to understand social processes in their natural setting (Denzin & Lincoln, 2000). I focused on Franklin Lindsay’s selection of his first committee members and their social statuses at the time that they were appointed.

My research study followed the Creswell’s (2009) recommended steps during data analysis process: researching all Franklin Lindsay Student Aid Fund court documents and records, the lawsuit filed by his sisters to contest his will, the reformation

of the loan program within the last sixty years of its operation, and communication with the bank trustee and current committee members of the loan program to fact check. These steps are called “an interactive practice” to analysis (Creswell, 2009), and will be further illustrated in the data analysis section of this chapter.

As part of the qualitative method, I used the case study approach with the focus on the explanatory research concept. This technique is used to explore the perception and life experience of Franklin Lindsay leading to his death, the changes in segregation laws and policies that led to important court cases and later determined the outcome of desegregation. According to Yin (1994), a case study research is good for contemporary events when the relevant behavior cannot be manipulated. “A how and why question is being asked about a contemporary set of events over which the investigator has little or no control” (Yin, 1994, p. 9). In addition, a case study researcher can use a variety of evidence from different sources such as documents, archival analysis, surveys and interviews, and this goes beyond the range of sources of evidence that might be available in a historical study (Yin, 1994). I secured multiple sources as evidence for my research.

The qualitative approach is based on the idea of striving to understand social processes in context, while exploring the meaning of historical and social events to those involved in them (Esterberg, 2002). Constructivism will be the philosophical framework. My role as a researcher will be gathering and interpreting. This is essential for a constructivism framework in which knowledge is made up largely of social interpretations rather than awareness of an external reality: “Most contemporary qualitative researchers nourish the belief that knowledge is constructed rather than



discovered. The world we know is a particularly human construction” (Stake, 1995, p. 99).

### **Case Study Research Design**

The three modern case study methodologists that I relied on for suggested techniques of organizing and conducting my case study research are Merriam (1988), Stake (1995), and Yin (2009). According to Stake (1995), case study methodology is a strategy of inquiry in which the researcher explores in-depth of an event or activity. My research study was focused on a particular event which was the timeline of segregation as it paralleled the lifespan of Franklin Lindsay, and the information collected from court documents, bank trustee and committee members of the Franklin Lindsay Student Aid Fund.

For this study, the phenomenon under investigation was the segregation laws that influenced Franklin Lindsay in allocating his money for the loan trust, and the desegregation law that affected the final legal outcome of the program. Another component of case studies was the unit of analysis, defined as the area of focus of the study (Merriam, 1988). My unit analysis was the Franklin Lindsay Student Loan Fund Program from 1954 until present day. Five components of effective case study research design are as follows:

1. research questions;
2. propositions or purpose of study;
3. unit analysis; logic that link data to propositions;
4. connecting data to propositions; and
5. criteria for interpreting findings (Yin, 2009).

As previously stated, research questions are in the “how” and “why” forms of questions. I specifically wanted to know how Franklin Lindsay came to the decision of excluding Blacks on his student fund program. In addition, I inquired about segregation laws that affected Black students from enrolling in state funded college and universities.

The second component of case study research design was to define the study purpose clearly, commonly recognized as the purpose statement. My purpose in this case study was to understand the driving force behind the Franklin Lindsay Student Aid Program that was designed to exclude African American students from benefitting this program. What was his intent when he created his fund program? Was he abiding by state segregation law in order to ensure his loan program could be used at state funded colleges and universities?

The third component of case study research design was the unit of analysis. It was the area of focus that a case study analyzes (Yin, 2009). The unit of analysis was directly tied to the research questions developed by me. This study’s units of analysis were the Franklin Lindsay Student Fund Program and its legal history. Sixteen legal stages of the Franklin Lindsay court case existed as the loan trust went through many reformation and reinstatement stages between 1954 through present day as segregation laws progressed through the years.

The fourth component of case study research design was to connect data to propositions. This connection was made after the data collection phase as results emerge. After the data was analyzed, I compared it to the theoretical propositions of the case study. The results emerged from the analysis served as key to the research questions.

The fifth component of the case study research design was the criteria for interpreting my findings. Once I had the results development stage, I deciphered the meanings from the findings that provided insights to my research questions. It was also important for me to use personal notes and reflections to help identify results as they emerge (Creswell, 2009).

Yin (2009) recommends case studies can be categorized in three different approaches: explanatory, exploratory or descriptive. The explanatory case study approach is normally used to explain causal links in real-life phenomenon or intervention that are too complex for the survey or experimental strategies. Second, the exploratory case study is used to explore situations in which the intervention being evaluated has no clear, single set of outcomes. Third, the descriptive case study is used to describe an intervention or phenomenon and the real-life context in which it occurred (Yin, 2003).

Based on the literature review of the Texas history of higher education, and the federal and state laws created to segregate and desegregate programs and services affecting African Americans, my case study approach is an explanatory case study. The explanatory category is appropriate for this research because there is a strong possibility of identifying the causal links of Franklin Lindsay's decision to ban Black students from his fund.

## **Analytical Strategy**

### **Designing Case Protocol**

The first stage in the case study methodology recommended by Yin (1994) is the design of the case study protocol. This stage is composed of two parts: determine the

required skills and develop and review the protocol (Yin, 1994). My required skill was to understand my research questions. What was it that I was trying to find from my study? I wanted to find out how the Franklin Lindsay Student Aid Fund Program became accessible to Black college students in Texas. What effect did the changes of the Texas higher education policy have on the fund program that led to its many stages of formation and reformation throughout the years between 1954 and the present day? My question fulfilled the “how” and “what” questions for an explanatory study. Second, as a researcher, I had no control over the behavior events in the Franklin Lindsay research which is a characteristic of case studies. Third, the events being examined were contemporary, although historic information was used (Yin, 1994).

Throughout this process, I determined my required skills and created well-developed rules and procedures to enhance the reliability of my case study research. Yin (1994) suggested protocol should include a good overview of the case study project, field procedures, case study questions, and a guide for the case study report.

The second stage of the methodology was the conduct of the case study (Yin, 1994). There are three tasks of this stage: preparation for the data collection, distribution of the questionnaire, and conducting interviews. In preparation for my data collection, I started with an examination of the probated estate of Franklin Lindsay. I searched for Franklin Lindsay’s birthplace as it would be interesting to know where he grew up and the environment in which he lived from childhood until his death (Appendix A).

Newspaper clippings of Franklin Lindsay were helpful to assess his prominence, if any (Appendix C). I compiled all court documents including his sisters’ contested

lawsuit through the various stages of the Franklin Lindsay trust formation, reformation, appeals, and stipulation from 1954 until the most recent legal filing of the Fund (Appendix F). In addition, I collected all yearly meeting minutes from the bank trustee, JPMorgan Chase, for review and program updates.

### Preparation for Data Collection

In preparation for the collection of data, it was important to ascertain the strengths and weaknesses of my data sources. Yin (1994) identified six primary sources of evidence for case study research. Not all of these sources were essential for my case study, but it was helpful to use the chart for efficient analysis. No single source had an advantage over the others; rather, they were complementary with the others and could be used in tandem (Yin, 1994). Thus, a case study should use as many sources that are relevant to the study. Table 3.1 indicates the strengths and weaknesses of each type.

**Table 3.1 - Reference Guide to Types of Evidence (Yin, 1994, p. 80)**

Source of Evidence	Strengths	Weaknesses
Documentation	<ul style="list-style-type: none"> <li>stable - repeated review</li> <li>unobtrusive - exist prior to case study</li> <li>exact - names etc.</li> <li>broad coverage</li> <li>extended time span</li> </ul>	<ul style="list-style-type: none"> <li>irretrievability – difficult</li> <li>biased selectivity</li> <li>reporting bias - reflects author bias</li> <li>access - may be blocked</li> </ul>
Archival records	<ul style="list-style-type: none"> <li>Same as above</li> <li>precise and quantitative</li> </ul>	<ul style="list-style-type: none"> <li>Same as above</li> <li>privacy might inhibit access</li> </ul>
Interviews	<ul style="list-style-type: none"> <li>targeted - focuses on case study topic</li> <li>insightful – provide perceived causal inferences</li> </ul>	<ul style="list-style-type: none"> <li>bias due to poor questions</li> <li>response bias</li> <li>incomplete recollection</li> <li>reflexivity - interviewee expresses what interviewer wants to hear</li> </ul>
Direct observation	<ul style="list-style-type: none"> <li>reality - covers events in real time</li> <li>contextual - covers event context</li> </ul>	<ul style="list-style-type: none"> <li>time-consuming</li> <li>selectivity - might miss facts</li> <li>reflexivity - observer's presence might cause change</li> <li>cost - observers need time</li> </ul>
Participant observation	<ul style="list-style-type: none"> <li>Same as above</li> <li>insightful into interpersonal behavior</li> </ul>	<ul style="list-style-type: none"> <li>Same as above</li> <li>bias due to investigator's actions</li> </ul>
Physical artifacts	<ul style="list-style-type: none"> <li>insightful into cultural features</li> <li>insightful into technical operations</li> </ul>	<ul style="list-style-type: none"> <li>selectivity</li> <li>availability</li> </ul>

The main sources of evidence were documents, archival records, and quasi-interviews. Documents included letters, memoranda, meeting minutes of the Franklin Lindsay Loan Fund committee members and trustee. The validity of documents has been carefully reviewed to avoid the inclusion of incorrect information in the data base. One of the most important uses of documents was to corroborate evidence gathered from other sources. There may be risks of mistaking some types of documents for unmitigated truth (Yin, 1994). Archival records would include court documents, records, end of the year report, and even personal records. As an investigator, I was meticulous in determining the origin of the records and their accuracy. Quasi-interviews were in the open-ended form of verification of records and information. Since my main research focus is in the past, any interviews that I conducted were to verify the information such as facts or events that I have already located and/or to corroborate previously gathered data.

In the fall 2014 semester, I had the pleasure of working with the Franklin Lindsay Student Fund Program. For a class project in the Education Economics and Finance Policy course, two colleagues and I were asked by the Franklin Lindsay trustee, JP Morgan Chase Bank, and the current committee members to help explain the decreasing demand in recent years for student loans offered by the Franklin Lindsay loan program, and an increase in number of their student loan defaults. This mini report offered a summary of the history and current landscape of the private student loan market, an analysis of the Franklin Lindsay Student Fund Program in comparison to the private loan market, and future recommendations for the Franklin Lindsay Student Loan Committee. Because of this prior working relationship, I came to know several of the committee

members who had the lengthiest tenure on the committee and who had first and second hand memories of Mr. Franklin Lindsay.

Through my previous experience with the Franklin Lindsay Student Fund Program, I obtained a completed set of the program loan statements and financial reports from JP Morgan Chase, current bank trustee, from 1991 through 2014. Because the Franklin Lindsay trust is a non-profit foundation, their financial documents are public records and are not bounded by confidentiality. The committee members were aware of my dissertation topic, and encouraged me to reach out any of the long time members who could provide additional information about Mr. Franklin Lindsay to confirm my findings. (Appendix E)

My questions to the committee members who had knowledge about Franklin Lindsay were to verify my collected data information. Following are some sample questions that I asked the committee members:

1. How long have you been a member of the Franklin Lindsay Committee?
2. How were you selected and/or appointed?
3. Do you have first-hand knowledge of Mr. Franklin Lindsay or do you know anyone who does?
4. I would like to learn more about the birthplace of Mr. Franklin Lindsay. Do you have knowledge of this information or anyone who can provide this information?
5. Do you have any photographs of Mr. Franklin Lindsay other what is available on the Franklin Lindsay Student Aid Foundation website?
6. Who was the first non-White committee member and when was he/she appointed?
7. As a member of the Franklin Lindsay Student Fund Program, what are your aspirations for the future of this program?

Answers to these questions could provide important glimpse of the program knowledge from the committee members without being intrusive. Another important

point to consider was that most of these committee members have little knowledge of Mr. Franklin Lindsay's original intent of racial exclusivity.

### **Maintaining Data Collection**

Three recommended principles of data collection were used for case studies:

1. To use multiple sources of data,
2. To create a case study database and
3. To maintain a chain of evidence (Yin, 1994).

The reasoning for using multiple sources of data was the triangulation of evidence. According to Yin (1994), triangulation serves to confirm the data gathered from other sources. For my case study, I was uncertain if the triangulation method was useful as the data that I obtained were court records and they are legal documents. In terms of creating a database for my case study, I organized my data into a well-designed collection that was easy to read so that other researchers could easily access the materials contained in my documentation. I also kept a researcher's journal to reflect and recorded all my thoughts and knowledge throughout the data collection and research process. These journal entries included my perceptions throughout the research. My notes were helpful in allowing me to recall the meanings of what I found during the analysis process. By keeping a journal to record ongoing thoughts, I listened for emerging patterns and results as my research progresses. Notes from my journal formed the basis for the beginning of my analysis procedures (Cresswell, 2013).

### **Data Analysis**

Explanation-building, a form of pattern-matching, is considered one of the most desirable strategies for analysis in case studies (Yin, 1994; Trochim, 1989). Its analysis



is carried out by building an explanation of the case. For this reason, I began to analyze my data following examination of the court documents and their outcomes. I then compared the reasoning of the legal outcomes, and compared and paralleled them to the historical events of landmark cases that affected the Franklin Lindsay court verdicts. According to Trochim (1989), explanation-building is the most useful in explanatory case studies. As a researcher, I was careful in reviewing my analysis is of high quality including: showing that all relevant evidence was used to explain the Franklin Lindsay court outcome; that all rival explanations were used; and my analysis addressed the most significant aspect of my case study, which is to answer the research questions and make sure that my knowledge and experience are used to maximum advantage of my research study.

Now that I identified the explanation-building strategy to analyze my Franklin Lindsay case study, I followed the Creswell's (2009) six steps during the data analysis process to maximize the validity of my findings. I documented in my journal my thoughts and reflections throughout the six-step process. Creswell's method is described as "*an interactive practice*" to analysis.

Step 1: "Organize and prepare the data for analysis" (p. 185). During this step, I reviewed all court documents and organized them into my case study data base.

Step 2: "Read through the data" (p. 185). I reflected on the overall meaning of my data to gain a sense of understanding what my information conveyed.

Step 3: "Begin detailed analysis with the coding process" (p. 186). I organized my data into categories of historical events and court verdicts.

Step 4: “Use the coding process to generate a description of the setting or people as well as categories for these for analysis” (p. 189). I used this process to generate codes for descriptions, which will then lead to generalizing results. Once I had results, I analyzed the results that emerged.

Step 5: “Advance how the description of the results will be represented in the qualitative narrative” (p. 189). For this step, I put the results into narrative passages.

Step 6: “Interpret the meaning of the data” (P. 189). I used my personal background as part of meaning process.

### **Researcher Positionality**

While I am currently the executive director of international programs at a college, I spent more than twenty-three years working at a community college, including five years as a college counselor, and eighteen years as a senior administrator. This extensive experience gave me insight into working with students from different backgrounds. I am of Asian descent and came to the United States as a refugee from Vietnam more than thirty-eight years ago. Though I have not experienced the type of racism that African Americans have encountered, especially in the deep American South including Texas, my professional position provided me a broader scope of working with students from different ethnic and socio-economic backgrounds, and their educational challenges. My personal background and upbringing as an Asian helps me to remain impartial to my methodological approach.

## **Limitations and Delimitations**

Limitations and delimitations were present in this study. The function of this research was not to provide an answer to social injustice, but to lend an interpretation of a historical event. An ongoing interpretive role as a researcher was prominent in any qualitative case study (Stake, 1995). This qualitative research study provided me an opportunity to explore perceptions and lived experiences (Jones, Torres, & Arminio, 2006) as a possible explanation of Franklin Lindsay's original mandate for his student aid program. The scope of my case study was limited to understanding the Franklin Lindsay Student Aid Fund only and, therefore, my findings should not apply to similar contexts.

Delimitation was how the study was narrowed in scope (Creswell, 2003). Conducting a case study on the Franklin Lindsay Student Loan Aid program only may be viewed as delimitation. My findings for this research study may be useful to understand how power can be used as a direct influence when individuals participate in the actual decision making; an indirect influence when individuals influence others who decide policy; and implicit power when individuals are influenced by the anticipated reaction of other individuals or groups (Mills, 1956). Speculations that the results of this study would be similar to another similar situation should be discouraged.

## **Timeline**

The study took place over the course of five months beginning in December 2015 and concluding in April 2016. Upon approval of my proposal from my dissertation committee, I began to examine the collected court cases, contact the bank trustee and current committee members. Communication with members of the Franklin Lindsay

committee and trustee was to verify facts and information found in the court documentation. Conversations took place by telephone and email. February and March were dedicated to data analysis. A completed draft of the dissertation was submitted to Dr. Richard Reddick for editing at the end of March. After completing any requested edits, the full committee received a copy of the dissertation with a tentative date in April 2016. Following edits and committee approval, all required paperwork was submitted to the graduate school for May 2016 graduation.

### **Summary**

Chapter 3 of this dissertation outlined the case study methodology by restating the purpose, the research questions, rationale for the qualitative research approach, conceptual framework, case study research design, analytical strategy, research positionality, and limitations and delimitations. My anticipated results are as follows:

1. Though a deeply-rooted believer in segregation, Mr. Franklin Lindsay was a true advocate for education and wanted to make it accessible for all Texans,
2. Segregation and desegregation laws were the driving force of the formation and reformation of the Franklin Lindsay Student Fund Program, and
3. The first appointed committee by Franklin Lindsay proved that his mission for the fund program was to provide access to higher education for all Texans.

## **Chapter 4: Research Findings**

The purpose of this study was to examine and explore the largely unknown history of the Franklin Lindsay Student Aid Fund created in 1954 by Franklin Lindsay. This Fund was created using the majority of Lindsay's \$3 million fortune and designed to create a student loan program for White Texas college students to attend public Texas colleges and universities.

The following research questions informed this study:

1. How did the Franklin Lindsay Student Aid Fund become accessible for Black college students in Texas?
2. What effect did changes in Texas higher educational policy prior to and during the formation of the Franklin Lindsay Student Fund Program have on the fund-related court cases from 1954-1957?
3. What role did these changes in higher educational policy play in the reformation stages of the Franklin Lindsay Student Aid Fund?

Because the bank changed Fund trustees numerous times over the 62 years of operation, many vital records of committee members, meeting minutes and student participants were lost prior to the year 2002 when JP Morgan Chase, the current bank trustee, began supervision of the Fund and maintenance of its records. I relied on court documents and interviews with current members to confirm research data. An email letter was sent out to each of the committee members requesting for a face-to-face interview when possible or phone interview if distance was a challenge to meet. An example of the introduction letter is found at Appendix G.

During in-depth interviews, committee members discussed their appointments to the committee, their length of time as committee members, knowledge of Franklin

Lindsay and his intent to keep the Fund for White students only, and the reformation stages of the Franklin Lindsay Student Aid Fund. They also provided names of non-committee members who held important information to the legal changes of the Franklin Lindsay Student Aid Fund that finally made it accessible for Black college students in Texas. These findings are compelling and provided answers to my research questions.

The research findings that this chapter reports are based on the analysis of the following data sources: semi-structured interviews, court records, loan information, bank records, and my observations from the conducted interviews.

## **Background**

The participants of this study were current committee members of the Franklin Lindsay Student Aid Fund. They came from Austin, Houston, College Station, San Antonio, Dallas, Abilene, Corpus Christi and El Paso. They ranged in ages from possibly late 30's to late 70's. Most of the members had backgrounds and experience in education. They were former school teachers, a former school board member, retired university professors and administrators, as well as current higher educational administrators in the registrar's office, financial aid and the Honors College. Of the fourteen committee members, seven agreed to be interviewed.

The seven members who were interviewed included: a retired school board member from San Antonio with at least twenty years as a committee member; a financial aid director who served thirteen years as a committee member; an Honors College director who served eight years as a committee member; a head registrar who served twenty years as a committee member; one committee member worked in finance but not

for educational sector and served five years as committee member. One retired university administrator is the longest serving current member with more than twenty-five years of service, and one retired university professor and administrator in finance who served at least sixteen years on the committee.

All committee members were seated on the Franklin Lindsay Student Aid Fund committee through referrals of other current or out-going members. One committee member replaced his father who served before him.

The format for the initial interview questions, and additional questions and comments later emerged based on their knowledge of the questions. Examples of these questions are included in Appendix H.

### **Study Findings**

Three results emerged from the data:

Result 1: Inclusion of Black students to apply for the Franklin Lindsay Student Aid Fund

Result 2: Perceptions of the committee members of the donor's intent for the Franklin Lindsay Student Aid Fund

Result 3: What it would take to enhance the effectiveness of current efforts to make the Franklin Lindsay Student Aid Fund available to all Texas students

After completion of the interviews with the seven committee members, the three results began to overlap. The interviewees' responses to my questions often addressed more than one result. In those cases, the interview data was labeled where they appeared to fit most logically.

## **Result 1: Inclusivity of Black students for the Franklin Lindsay Student Aid Fund**

This result is discussed in two parts: (1) collection of data, and (2) analysis of data. Each part is further divided into sections based on different sources of information and data analysis experiences.

### **Data collection**

The type of data that I collected to answer the research questions was described in this section. The data included court records, loan records and bank records, Franklin Lindsay Student Aid Fund website and interviews.

Court records:

I requested numerous court records pertaining to the Franklin Lindsay Student Aid Fund and found the following cases:

***Looney v. Capital National Bank*, case number 785, civil action, docket number 1957.**

This case was filed in the Federal District Court in July 1954 and settled on July 15, 1957. Plaintiffs Virginia Looney and Emma Baker, sisters of Franklin Lindsay, filed a lawsuit against the Capital National Bank in Austin, Trustee of the Franklin Lindsay Student Aid Fund. The lawsuit alleged the Trust was invalid and unenforceable due discrimination. The case was settled in favor of the plaintiffs who received a total sum of \$462,500.

The final judgment also further indicated that:

Any language in said last will and testament, particularly but not limited to paragraphs numbered 7 and 11 thereof, which may indicate an intent that the universities, colleges, and schools of higher education referred to in the preceding subparagraph (a) should only include those “in which Negroes or those having any Negro blood shall not be entered,” is directory only and not



mandatory and does not bind the committee named in said last will and testament or the Trustee, the defendant, the Capital National Bank in Austin.

This information led me to conclude that the committee members in 1957 agreed to settle the sisters' lawsuit and the Court recognized that the language in the Will to exclude Black students was only directory and was not a mandatory. This opinion provided a method for committee members to amend the Will to legalize the inclusion of Black students, but made no official attempt to include these students (Appendices F1-F10).

**Final Judgment on First Original Petition of Franklin Lindsay Student Aid Fund, cause number 16, 470.**

This uncontested case was filed by Michael L. Cook, attorney for Capital National Bank in Austin, the petitioner, and Coleman Gay, attorney and committee member on behalf of the Franklin Lindsay Student Aid Fund committee. The case was settled on March 31, 1976. This case requested an amendment the last Will and Testament of Franklin Lindsay due to race discrimination. In the will, the original paragraph stated:

Believing that the greatest good can be done to the country and even to the world by education of its peoples, subject to other provisions of this will, the properties of the estate are to be held in trust by The Capital National Bank in Austin, Texas, as a fund for the assistance of worthy and deserving White students of either sex who may be desirous, but financially unable, of obtaining college educations at any of the Texas State institutions, such as University of Texas, and Agricultural and Mechanical College, etc. etc. in which Negroes or those having any Negro blood shall not be entered.

The Court order did not change the original Will but stated that word "*White*" and the phrase, "*in which Negroes or those having any Negro blood shall not be entered*" legally and permanently removed.

Below is an excerpt from the amended will:

Believing that the greatest good can be done to the country and even to the world by education of its peoples, subject to other provisions of this will, the properties of the estate are to be held in trust by The Capital National Bank in Austin, Texas, as a fund for the assistance of worthy and deserving students of either sex who may be desirous, but financially unable, of obtaining college educations at any of the Texas State institutions, such as University of Texas, and Agricultural and Mechanical College.

This petition was penned by attorney Michael L. Cook. who worked for the Clark, Thomas, Harris, Denius & Winters law firm. This law firm represented the National Capital Bank in Austin, Texas. I was introduced to Cook by one of committee members with whom I spoke. According to Cook, the IRS law started the reformation stages of the Franklin Lindsay Student Aid Fund. The Texas Higher Educational Policy from 1954 through 1976 was not the driving force for the first reformation of this loan program. The Franklin Lindsay Student Aid Fund was at risk of losing its status as a tax-exempt organization if they did not change their policies to include students of all races.

By the 1960's, a growing perception existed among policy makers that private foundations, which were mostly family controlled foundations, were less accountable to the public than traditional charities. These concerns led to the sweeping reforms of the charitable sector. They were addressed with the Tax Reform Act of 1969 (TRA69) (Arnsberger, Ludlum, Riley, & Stanton, 2008). The Franklin Lindsay Student Aid Fund was unique in that it was created by a single person.

In order to qualify for tax-exempt status, an organization must prove that its purpose served the public good, as opposed to a private interest. To be eligible, the organization, for any purpose, shall not discriminate. In addition, organizations qualified

for tax exemption, under IRC Section 501(C)(3), must have religious, charitable, scientific, literary, and educational purposes (Arnsberger et al.).

According to the petition, in 1970, subsequent to the passage of the Tax Reform Act of 1969, the Internal Revenue Service (IRS) determined that the Franklin Lindsay Student Aid Fund was not a private foundation as such term is defined in section 509(a) of the code. On October 24, 1973, the IRS mailed a letter to the Franklin Lindsay Student Aid Fund stating it was withdrawing its prior determination that the Fund was not a private foundation, and as of December 31, 1974, the Fund was to be a private foundation as described in section 509(a) of the Code.

Cook disclosed to me that at the time of the IRS notification in October 1975, they did not know that the Fund was operating under the original will which was racially discriminant. Cook quickly informed the committee members that they either had to amend the will or lose the tax exemption. Because the Franklin Lindsay Committee was of the “old guard,” they did not want to change any part of the will. The original first appointed chair committee member was livid. He stated that he knew Franklin Lindsay well, and he was certain that Franklin Lindsay did not want his will to be amended in any way shape or form. There were several resignations from the committee members when the overall decision was made to proceed with the petition to amend the will.

Cook furthered recalled that another committee member, Coleman Gay, was agreeable to the will amendment and became the attorney to represent the remaining committee members. Gay was an original committee member and was a licensed lawyer. Cook said Gay was an old timer with the driest wit. Both Cook and Gay appeared in

front of Judge Herman James and requested for the final judgment on the petition. Judge Herman James at first was not happy with the petition to change a donor's intent but signed it anyway. But not before the judge gave both attorneys a long lecture about how the federal government should "stay out of people's monies." Coleman Gay was relieved when the final judgment was signed. He said to Cook, "I was afraid I'd suffered the first loss at an uncontested hearing."

When asked if he thought the committee members made loans to minorities before the amendment, he said "I'd be shocked if they gave any loans to non-White students. In all the years that I worked with them, they were very adamant about making sure that Franklin Lindsay's wish for the Fund was strictly followed." He also added, "the IRS 69 Reform Act was the sweeping change in the South."

#### **Reformation 1987 – cause number 422,595**

On August 20, 1987, the Judicial District Court of Travis County, Texas, entered a judgment that clarified various matters involving the administration of the trust. It gave the Trustee authorization to purchase and maintain a policy of insurance to indemnify the committee members from liability for expenses, costs, and attorney's fees associated with the Trust. It also allowed the committee to make loans to students attending private institutions.

#### **Reformation 2001 – cause number GN102892**

On October 4<sup>th</sup> 2001, Chase Manhattan Bank petitioned to resign as trustee of the Franklin Lindsay Student Aid Fund. Due to many bank mergers throughout the late 1980's and 1990's, the original bank Trustee, Capital National Bank in Austin, Texas

merged with Texas Commerce Bank who later merged with Chemical Bank that then merged with Chase Manhattan Bank.

### **Reformation 2002 – cause number GN1200166**

On July 29<sup>th</sup>, 2002, a judgment was ordered to declare Bank One as trustee of the Franklin Lindsay Student Aid Fund and clarifications of roles of trustee and committee members for efficiency of fund distribution

### **Loan and bank records**

In the fall semester of 2014, two colleagues and I conducted a short study to learn why the Fund experienced a significant decrease in demand for student loans and an increase in loan defaults in recent years (Do, Thomas & Wang, 2014). In the interest of maximizing the benefits of the Fund, the Franklin Lindsay Student Loan Committee expressed the desire to learn the causes of the decreased demand for loans and receive recommendations how to proceed to reverse this trend. After an examination of the program website ([www.franklinlindsay.org](http://www.franklinlindsay.org)), we found the Fund did not have a robust online presence including the lack of an online application. The hard copy application was not user-friendly as the applicants would download the application, complete and submit hard copies to any representing committee members in the area.

In order to be approved, applicants were required to meet with the committee members for “character” interviews. Interestingly, the loan application required personal information such as age, social security number, and citizenship, but did not address race. When I asked why race was not included in the application, a long-time committee member replied, “We did not want to give the appearance that race could influence our

decision.” Given the history of racial exclusion, not having race on the application would be a missed opportunity for the Fund to learn if their loan program has been accessible to all students in Texas.

Bank records indicate that from 1991 to 2014, the total yearly loans decreased from 393 in 1991 to 128 in 2013. The number of yearly delinquent loans increased from 231 for the year of 2005 to 1275 in calendar year 2013. The committee members were understandably concerned that they may lose their tax exempt status if they did not meet their yearly loan quotas. In my interview with a committee member, it was revealed that in the last two years, the executive committee divided up the unused loan money and donated it to their choice of colleges and universities.

### **Interviews**

The length of the interviews with the seven committee members was commensurate with the length of time that the member(s) served in the Franklin Lindsay Student Aid Fund, and how much they knew about the history of the Fund. I had a very short conversation with one member who was based in Dallas. He worked in the financial sector, but not in the educational sector. He was appointed about five years ago to replace his father who was a committee member. This committee member had no knowledge of the history of the Fund, and admitted that he was too busy to recruit students for the program. At least two of the interviewees were not aware of Black student exclusion from the will. The other five members, who did have knowledge of the donor’s intent, did not express concern over whether Black students were included. Their

position on these matters appeared to be based on the fact that they did not exclude Black students from the Franklin Lindsay Student Aid Fund.

### **Analysis of Data**

The final judgment on March 31, 1976 that amended the Franklin Lindsay Last Will and Testament was the first legal step to determine that Black students would not be excluded. It took twenty-two years since *Brown v. Board of Education of Topeka (1954)*, ten days after the death of Franklin Lindsay for the Fund to finally recognize that by excluding Black students, they were out of compliance with the Civil Rights Acts, and most importantly to them, with the International Revenue Services (IRS).

In reviewing the court cases, the 1954 lawsuit filed by Franklin Lindsay's sisters provided a glimpse of the civil rights violation of the Franklin Lindsay Student Aid Fund in their lawsuit:

*In Brown v. Board of Education (1954), the Supreme Court of the United States laid the ghost of Plessy v. Ferguson, the plaintiff will demonstrate that there are no schools within the definition of the testator which can lawfully exclude Negroes or those having any Negro blood...”*

In 1976, the attorney for the Franklin Lindsay Student Aid Fund used the judgment of the sisters' 1954 lawsuit as part of a base to support the request to amend the will. In addition, the attorney stated the Texas Revised Civil Statutes, and the taxes imposed by section 4945 (a) and (b) of the code will prohibit the Fund to carry out *the testamentary dispositive desires of the testator, Franklin Lindsay*. This information provided evidence that the Franklin Lindsay Student Aid Fund committee members made an effort to ensure that the Fund would not exclude Black students.

In an interview with a long time committee member, he stated he was very proud of the fact that the committee was able to amend the will to further fulfill the distribution of the loan funds to all Texas students. As to the work of the attorney who successfully amended the will, he stated, “Don’t underestimate the intellectual power to overturn the intent.” When I relayed this quote to the attorney, he laughed and said, “I was only a messenger.”

In the interviews I conducted, the committee members discussed their duties. They meet twice a year with the bank trustee to review and approve financial records and administrative functions. They approve the applications and conduct “character” interviews. There was no application quota for each member. Some reported that they average about 15-20 loans per year, and others reported less than five loans per year. One member felt the committee members have more authority within the organization and should exercise it more so that they can do more to increase the loan applications. Currently, there are fourteen active committee members on the Fund. There are four females and ten males. Out of this group, eleven are Caucasian, three are Hispanic but no Black members are currently on the committee. One committee member said she did not object to having African-American representation on the Franklin Lindsay Student Aid Fund committee, but she felt “that criteria should not be made to admit a Black member to the committee.”

The overall analysis of the court records, application process, and interviews with the committee members provided evidence that the Franklin Lindsay Student Aid Fund had many dedicated people who were committed to helping Texas students. In every



conversation I had with the committee members, they conveyed their genuine wish to help make education accessible for all students. However, I did not get a sense that a unified outreach effort was being made for a more efficient way to reach needy students. Further, it was difficult for me to verify the inclusivity of Black students in the records of the Franklin Lindsay Student Aid Fund. No documentation addressing race existed in the loan and bank records, although March 31, 1976 was the official day that the Franklin Lindsay Student Aid Fund legally ended exclusion of Black students. Therefore, it can only be inferred that March 31, 1976 was the day Black students were legally allowed in the Franklin Lindsay Student Aid Program. Unfortunately, no records were found that supported the premise that Black recipients were provided the loans.

**Result 2: Perceptions of the current committee members on the donor’s original intent for the Franklin Lindsay Student Aid Fund**

A series of questions were prepared for the interviews of the seven committee members. These questions may be viewed in Appendix H. These questions were created to ascertain the level of knowledge of the members about Franklin Lindsay, his legacy, and their knowledge of the history of the Fund. I began by asking how long the seven members had been with the Committee, and the answers were mixed, ranging from five years to more than twenty years. It was interesting that none of the members could recall the exact year they were admitted.

**Member A:**

Member A had the longest tenure as a member and, interestingly, graduated from high school the same year that Lindsay died in 1954. Member A was an energetic former school board member in San Antonio. Member A stressed enjoyment in participating with the Fund and often sought ways to find students who needed the loans. Member A never met Franklin Lindsay, but had second-hand information about him from previous committee members who knew him personally. Member A said Franklin Lindsay was a true Southern man. Member A knew about the section of the will that specifically excluded Black students, but felt the Fund has come a long way since that time. Member A did not express knowledge of the sisters' lawsuit or the events that led to the amendment of the will in 1976. Member A was very worried, however, that the Fund would be jeopardized if they lose their tax exemption due to missed quotas.

**Member B:**

Member B has been a committee member for thirteen years. Member B was introduced to the Fund by another member who was a work colleague. Although Member B has been on the committee for many years, Member B did not know much about Franklin Lindsay other than bits and pieces of the Fund history. He was not aware of the sisters' lawsuit. Member B was very concerned about the recent decline in borrowers and the fact that foundation may not be able to use sufficient funds in order to retain their tax exempt status. Member B hoped to see the program gain a higher profile so it can serve deserving students who may use the program toward the completion of their degrees.

**Member C:**

Member C has been a committee member since 2008. A former committee member is family and recommended Member C when she resigned. Member C did not have first-hand knowledge of Franklin Lindsay but said that second-hand information from an older committee member related that there was a time when several committee members threatened to resign if the Fund did not make funds accessible to all qualified students. Member C heard that “this came to a head” but did not know the nature of the dispute. Member C processed approximately three to seven loans a year. Member C’s desire was for the Franklin Lindsay Student Aid Fund to go back to its original intent—which was to set loans that will maximize benefits to Texas students. I discerned that Member C was misinformed about the original intent of the will. Member C did not know about the sisters’ lawsuit. Member C felt perhaps the program should give scholarships, too. Member C concurred there are no African-American committee members. The only minorities were three Hispanic committee members. Member C also indicated that this loan program is unusual in that it was a *character* loan; that is, approvals of loan were based on face-to-face interviews, which is rare in the student loan circle.

**Member D:**

Member D became a committee member in 1996. Member D was the first Hispanic to be seated on the committee. In the 1990’s, one of the bank personnel gathered most of the original documents together in one place. Member D was able to learn more about the Franklin Lindsay Student Aid Fund and its history.

Member D had a copy of Franklin Lindsay death certificate. Lindsay was born in Alabama in April 16, 1874. According to the death certificate, George Fryer Lindsay, Lindsay's father, was born in South Carolina and Mary Corbin, Lindsay's mother was born in Virginia. Lindsay's major business was listed as in cotton exchange and his body was cremated.

Member D had an impressive knowledge of Franklin Lindsay and his legacy. This committee member learned of the history from Jim Stegall, a former committee member who is now deceased. Mr. Virgil Patterson, a first generation committee member became angry when the Trustee tried to change the will. He got up, left and resigned. Mr. Patterson said he knew Franklin Lindsay personally and was adamant that Lindsay would never agree to changes to his will to allow Black students to receive loan money.

Member D mentioned Chair committee member in 2001. At that time, Chase Bank did not want to be trustee because of high risk. Bank One then became Trustee until JPMorgan Chase assumed the role it now holds as Trustee for the Fund.

As previously stated, the loan application does not require the applicant to declare his or her race. Member D explained this is intentional so that if an applicant is denied, the committee would not be accused of racism. Because of this race omission on the application, the committee does not have official count of how many minorities they served. As for hopes and aspirations for the program, Member D would like to serve on the committee for many generations. Member D would like to see the default rate decrease wants to continue to assist students to better their lives.

**Member E:**

Member E has been a member for four to five years. Member E took over the position from a family member who was on the committee. Member E's family member is no longer able to serve due to ill health. Member E did not offer much information as the committee member did not know much of the Fund's history. Member E said the family member would know, but was currently unable to communicate. Member E said he averaged about five loans a year.

**Member F:**

Member F is another long-time member. Member F discussed a Franklin Lindsay Student Aid Fund situation in the 1970's regarding the Civil Rights Act of 1964. Member E is a long time retiree and spoke at great length about general information but did not provide substantial information about the program history. It was very difficult to schedule a meeting time with this member due to poor health.

**Member G:**

Member G was the most significant interviewee for me. Member G was a senior administrator at a university and before that was a well-respected professor. In addition, Member G knew many individuals who had long ties with the Franklin Lindsay Student Aid Fund. Member G discussed Mike L. Cook, attorney who represented the Franklin Lindsay Student Aid Fund for Capital National Bank in the mid 1960's. According to Member G, attorney Cook compiled documentation to effectively change the will. Though Member G never met Franklin Lindsay, this committee member knew a great deal about Franklin Lindsay through university colleagues who were also on the

committee. Member G stated that Franklin Lindsay believed that being a Texan was a big deal and took great pride in his Texas heritage.

Member G asserted support for the Fund's stand to provide loans to Texas students only. Member G stated that the committee does not believe in online universities like University of Phoenix. Member G further stated that if the school is not based in Texas, then it is not qualified.

Member G went on to talk about Michael Cook, the attorney for Franklin Lindsay, who made the full circle. Member G's praised Cook, "Don't estimate the intellectual power to overturn the intent". According to Member G, the mandate for the committee member is to fulfill distributing the loans to Texas students.

Member G became a committee member in early 2000's to assume the seat held by Dr. John Dollard. Member G discussed the historic significance of UT-Austin's participation in the Fund. Dr. Dollard was a UT-Austin mathematics professor and was the fifth UT-Austin appointed committee member. UT Vice Chancellor James Dolly encouraged Franklin Lindsay to establish the Fund. Dr. Dolly resigned immediately after the will was changed by Cook in 1976.

Dr. Dolly was the first UT-Austin appointed committee member. He helped Lindsay write the will and established the loan program from Lindsay's estate. Lawrence Crumbs was the second UT-Austin appointed committee member. He had a finance background as did Dr. Dolly. James Kay was the fourth UT-Austin appointed committee member. He recommended Member G to the committee who became another UT-Austin-appointed committee member to the Fund. Member G could not remember the

exact year of induction to the committee, but believed it was either in the late 90's or early 2000. There is no existing record shown of the year Member G began service on the Fund committee.

Member G recalled John Dollard was a UT mathematician and the fifth UT-Austin appointed committee member. He was a full time member of the committee. He was on it like, as he said, "a duck on a June bug." A former UT professor was the seventh and latest UT-Austin appointed committee member.

### **Analysis of Data**

With the exception of the two newest committee members who I interviewed and who did not have knowledge of the Franklin Lindsay original intent to exclude Black students from his Fund, the remainder of the interviewed members had at least some knowledge of the history of the will. They had some knowledge of the intent written into the document and events that occurred subsequent to its probate. None of the committee had knowledge how tax laws at that time influenced the committee members to amend the will to make proceeds of the Fund available to Black students. Though they acknowledged it was wrong to exclude Black students, they never expressed the opinion that Franklin Lindsay was wrong in his decision to exclude Blacks. Several indicated that was "just the way it was back then." They all believed Franklin Lindsay was altruistic, that he cared deeply for Texas and its people, and that he wanted his money to be put to good use. Evidence in the interviews showed that the committee members thought the Fund included minority students after the settlement of the 1957 lawsuit by the sisters, but none knew that it took twenty-two years after the establishment of the

Franklin Lindsay Student Aid Fund and a Court order for the committee members to finally remove the discriminatory vocabularies from the Franklin Lindsay's Will and Testament.

**Result 3: Perceptions of what it would take to enhance the effectiveness of their current efforts to make the Franklin Lindsay Student Aid Fund available to all Texas students**

Much was discussed in Result 2 about the perception and knowledge of the committee members about the history of the loan program. Based on the information collected from the interviews, I found different levels of knowledge and understanding of the program history from the committee members. One member had a reversed understanding of the history. He incorrectly thought the committee members threatened to resign in 1976 if the will *wasn't* amended, which is the opposite of the actual events.

The Fund was established sixty-two years ago, and the current committee members are several generations removed from the Fund's creation. In essence, they have little knowledge of the history of the Fund or an understanding of the original mission. No documented chronology exists of the program's history and its evolution over this time period. Much of what they knew about the history was passed on through word of mouth. From this analysis, Result 3 emerged and asked the question "now that they have the program history facts, what would the committee members do differently to enhance their effort in making their program accessible to Black students?" I feel the committee members do not yet have an answer for this question. They were very concerned and worried about the possible demise of the program and wanted to develop



ways in which the program could operate more efficiently. In order to progress to a point to where committee members strive, it is strongly advised that they examine the beginnings of the Fund and the path it took over the past six generations to arrive at its current state.

### **Summary**

The findings of the study were presented in Chapter 4. These findings were based primarily on the analysis of court records, bank records, loan records, and interview transcripts. My findings were discussed in three segments that correspond to the three major results that emerged from the collected data. Evidence was presented that the Fund gradually took the necessary steps to end the exclusion of Black students, but found no evidence of inclusivity of Black students.

I further found different levels of understanding of the history of the Fund from the committee members. No question exists as to the profound dedication of the committee members to the Fund program and the students that they serve. The committee members were committed to improving Fund operations, but needed direction. To that end, Chapter 5 discusses analysis and evaluation of results that emerged from this study, and recommends for future practice and research.

## **Chapter 5: Discussion, Recommendations, and Conclusion**

The purpose of this study was to examine the history of the Franklin Lindsay Student Aid Fund and the effect of federal and state desegregation laws to allow African American students access to seek loans from this program. Primary source material used in this dissertation were court, bank, and loan records and semi-structured face-to-face and telephone interviews. Seven committee members of the Franklin Lindsay Student Aid Fund were interviewed. Court records were obtained from the United States Federal District Court located in Dallas, Texas. The fund trustee, JP Morgan Chase Bank, provided limited bank and loan information. This chapter reviews, analyzes, and discusses the findings of this study as well as outlining the committee members' responses to the interview questions and what they perceive to be the future of the Franklin Lindsay Student Aid Fund. This chapter concludes with suggestions for further research.

### **Discussion**

Three fundamental questions framed this research:

1. How did the Franklin Lindsay Student Aid Fund become accessible for Black college students in Texas?
2. What effect did changes in Texas higher educational policy prior to and during the formation of the Franklin Lindsay Student Fund Program have on the Franklin Lindsay court cases from 1954-1957?

3. What role did these changes in higher educational policy play in the reformation stages of the Franklin Lindsay Student Aid Program for Texas students from 1957-2002 and beyond?

The research questions were answered by results that emerged from interview data, and were reported in Chapter 4. However, analysis and evaluation of each of these results will be further explained in Chapter 5 that will guide to future recommendations and research for the committee members of the Franklin Lindsay Student Aid Program.

### **Result 1. Analysis and Evaluation: Inclusivity of Black students for the Franklin Lindsay Student Aid Fund**

When I began collecting data to gain knowledge about the history of the Franklin Lindsay Student Aid Fund, I was provided a copy of the Franklin Lindsay Last Will and Testament by the JP Morgan Chase Bank, the Fund trustee. This copy was not easy to locate as it was logical that the trustee of a tax-exempt foundation would not want to publicize the fact that its donor excluded Black students from the program. But at some point in its sixty-two year history, changes to this mandate were required or the program would be in violation of the Due Process clause of the Fourteenth Amendment to the United States Constitution and the Civil Rights Act of 1964, which would, in turn, jeopardize its status as a tax exempt organization.

The lawsuit brought by the sisters of Franklin Lindsay in 1954 led to an examination of the related court records and the final settlement in 1957. The final judgment awarded the sisters was \$462,000, and a legal reference in the judgment order

stated that the exclusion of Black students was “*directory only and not mandatory.*” Based on this clause, it was reasonable to assume that African American students were allowed to apply for the loan program in 1957, the year that Franklin Lindsay Student Aid Fund awarded its first loans to White students. I later discovered through court documents and interviews that African American students were not admitted to the program until at least 1976, after the Last Will and Testament of Franklin Lindsay was amended by Court order. My conceptual framework discussed power politics and the elites who are among the few that have the power to influence policy that impact changes in social and/or physical conditions (Light, 1974). The early committee members of the Franklin Lindsay Student Aid Fund mirrored this concept on a smaller scale. They tightly held the reign of the program to ensure no African American will be able take part in this program. On a bigger scale, they reflected the bigger massive white resistance in the deep South during the Civil Rights movement throughout the 21<sup>st</sup> century.

No historical documentation was available for the Franklin Lindsay Student Aid Fund and its operation until 1991. Invaluable insight of the program would have been attained had the meeting minutes of the Fund’s early years been available which would have provided key primary source material regarding the endowment’s mission, goals, policies, and student profiles. In the interview with attorney Michael Cook, the individual charged in 1976 with amending will, to his knowledge no Black students had been award a loan from the Fund until after 1976. Cook recalled the original committee members were devoted friends of Franklin Lindsay and most of them were still on the committee in 1976. They were personally selected by Franklin Lindsay and they were

influential members of their respective communities. They met once or twice a year as a close knit circle of friends, and they were determined to uphold Franklin Lindsay's wishes for the loan program.

In conversations with the current committee members, the conclusion reached by me was that the committee made loans to students of all races, including Black students after 1976. However, no documentation exists that would verify that the Franklin Lindsay Student Aid Fund had made a positive impact on the lives of African American students in Texas; this is only an assumption. In addition, no documentation is available that would confirm Black inclusivity prior to and after the will amendment in 1976. Without evidence of Black inclusivity, I speculated that early records may have been intentionally destroyed due to the fund's controversial beginning. As the trustees of the fund changed four times over the course of the endowment's history, the respective banks responsible for administering the loans may have believed that it was in the foundation's best interest to keep existing records unavailable to the public in order to keep the Fund in IRS compliance. If it was true that records were intentional hidden to protect the Fund, then the power elites indeed can impact social changes, as in this case, to conceal their inconvenient truth (Mills, 1956).

## **Result 2. Analysis and Evaluation: Perceptions of the Committee Members on the Donor's Intent for the Franklin Lindsay Student Aid Fund**

I found it interesting that none of the members who sat on the committee for many years and were responsible for a \$23-million-dollar Fund that had been in effect for sixty-two years had any extensive knowledge about Franklin Lindsay other than a few

photos from the program archive and a death certificate. His death certificate listed his birthday was April 16, 1874, and his date of death was May 3, 1954. Lindsay's occupation was listed as investment stockbroker in the cotton brokerage industry. His father's birthplace was listed as Alabama, and his mother's birthplace was Virginia. He died of heart failure at age 80.

Given the above information, and from the interviews with the committee members, it is fair to conclude that Lindsay had deeply-rooted Southern values. As discussed in Chapter 2, losing the Civil War was a demoralizing experience, compounded by the alleged "Yankee takeover and occupation" of their region during Reconstruction. No doubt Lindsay grew up inculcated with the belief that Texas, along with the rest of the former Confederate states, suffered humiliation and degradation of scalawag and Black misrule and abuse, and certainly with the overarching fear that the end of slavery meant the advent of Black equality; an anathema to all southern Whites who were the power elites.

For a man like Franklin Lindsay, born during the last years of the Radical Reconstruction, he would have felt this fear every day of his life. However, his trepidations about Black equality quickly dissipated with the advent of Jim Crow and for the next century in the South, including Texas, African Americans became once again a servile and oppressed people. This deep-seated fear, if not collective paranoia about Black empowerment, drove the Southern Whites to keep Blacks from access to voting, education, from any avenues of possible enfranchisement in any capacity. Lindsay was part of a massive White resistance to keep Blacks in their "proper place" in Southern

society as a completely subjugated and segregated people, stripped of all civil rights and liberties. By 1900 a systematic and institutionalized racism existed throughout the South, including Texas. Chilling examples of a “campaign of coercion and suppression designed to deprive Negro citizens of Texas of their civil rights” was in evidence throughout the South (Reddick, 2005).

The establishment of the Franklin Lindsay Student Aid Fund serves as an example of the massive resistance to educating African Americans in Texas. The intent of the Fund was to increase more power and class statuses for White Texans. As stated in his will, Lindsay specifically banned loans to any student attending a non-segregated school, stating “my feeling toward negroes being that there should not be co-education with other students” and directed his Fund be used to educate “deserving White students of either sex who may be desirous, but financially unable, of obtaining college education at any of the Texas state institutions such as University of Texas, Agricultural and Mechanical College, etc. in which Negroes or those having Negro blood shall not be entered.” It is not my intention to demonize Franklin Lindsay as a person, but to understand him as part of the defiant southern White society as it relates to segregation and the burgeoning civil rights movement toward the end of his life. His intention was to empower young White Texans through the hands of older White Texan elites (Wright, 1956).

The current committee members should not feel culpable for Franklin Lindsay’s exclusion of Black students from his Fund. More than sixty years have passed since the endowment’s inception and the foundation has a healthy net worth of \$23 million. This vast Fund can be put to greater use for students throughout the state of Texas which will,

in turn, guarantee the future of the Fund. The committee members should be encouraged to learn more about the program's history and engage in an open dialogue about the evolution of the Fund that benefitted many Texan lives in the past decades. In the interviews with the committee members, I sensed their overwhelming passion for the program and willingness to improve their duties and functions toward maximizing their effort to help students. But, at the same time, there seemed to be a sense of remorse from the committee members for the long-time exclusion of Black students in the Fund. This proved to be a rather sensitive area they were reluctant to address.

The program operated for many decades without collecting or archiving any historical documents. When I was first approached by one of the committee members to help research their decline in loans, the member revealed that he believed that his co-committee members had lost their passion for continuing with the initiative. The committee member asked me to conduct a short review of the program to find out why the Franklin Lindsay Student Aid Fund experienced such a decline in recent years. After a brief presentation and recommendations to increase their online profile and marketing strategies for the program, the committee members were energetic and eager to learn more about the Franklin Lindsay program and its history. After much investigation, I tracked down many rare, vital court records related to Franklin Lindsay and his Fund at the National Archives at Fort Worth, Texas. Neither the bank trustee nor the committee of the Franklin Lindsay Student Aid Fund had this information in their records or archives.



As previously stated, research findings indicate that the Fund did not allow Black students access to the Fund until 1976, well after the landmark Civil Rights Acts of 1964 and The IRS Reform Act of 1969—both of which the Franklin Lindsay Student Aid Fund violated. The committee members at that time were defiant to the end but had no recourse but to “reform” the endowment by including *all* Texans, regardless of race, gender, or ethnicity, or lose their tax-exempt status. Michael Cook said that the resistant members, in their last attempt to avoid amendment, inquired, “couldn’t we just accept Black students without having to amend?”

The revelation that the Fund, from its inception, was blatantly racist disturbed many current committee members. However, it is imperative for the committee members to recognize this history in order for the program to progress. The committee members expressed their admiration for Franklin Lindsay for his overall passion to educate (White) Texans. They want to continue his legacy to help students, and a concerted effort to show inclusiveness and diversity can go a long way—even if it means making every effort to recruit an African American committee member and document diversity and inclusion in their loan applications. Recent photo of the current committee members on the Franklin Lindsay Student Aid Fund website reflected a tinge of Franklin Lindsay’s last dying wish in that there is still no hard evidence of Black participation in his program and money.

**Result 3. Analysis and Evaluation: Perceptions of What It Would Take to Enhance the Effectiveness of Current Efforts to Make the Franklin Lindsay Student Aid Fund Available to All Texas students**

A unified concern is apparent among the committee members to keep the Fund as it currently exists and create a greater awareness among a broader spectrum of Texas citizenry. In 2014, two colleagues and I conducted a short research study for the committee members of the Franklin Lindsay Student Aid Fund (Do, Thomas, & Wang, 2014). This study resulted in recommendations in various areas including marketing and an increased online presence.

In order to increase the number of participants, committee members were encouraged to actively engage with community members or organizations that serve or interact with students who would be eligible for Franklin Lindsay loans. Examples of such individuals and organizations include Upward Bound, College Forward, college-prep institutions, churches, high school college counselors, and local college counselors. The committee might also consider adding members from regions that are not currently represented. This would broaden the reach of the committee, as well as increase the word-of-mouth activity statewide.

The mini study recommended regular evaluation of satisfaction with the application process by surveying the borrowers each year. Assessment of the application process will help the committee adjust processes in order to accommodate changing applicant needs and maintain positive experiences. This survey could also include questions that capture useful information not solicited in the application process. For example, a question that asks, “How did you hear about the Franklin Lindsay Student Aid Fund?” may prove helpful in determining future marketing efforts.

The evolution of technology has changed the way society accesses and distributes information. Organizations see numerous benefits when enhancing their online presence and the Franklin Lindsay Student Aid Fund would be no different. We recommended the following strategies to increase the visibility and reputation of the Franklin Lindsay Student Aid Fund.

When considering the future sustainability of the Franklin Lindsay Fund, the committee must consider how future borrowers prefer to receive communication. According to the Millennial Impact Report (2013), Millennials prefer to connect via technology and use websites and search engines primarily for information gathering. Moreover, they rely on social media and email for communicating, especially through mobile technology.

Therefore, it is important for the Franklin Lindsay Student Aid Fund to consider a presence in social media (Facebook and Twitter). Information made available through these channels is likely to capture a larger number of millennials and future loan borrowers than current word-of-mouth practices. Social media platforms are the easiest way for borrowers to advertise the loan through their peer networks. Updates to social media sites can be made manageable by recruiting a student intern or volunteer.

Regular updates to the Franklin Lindsay Student Aid Fund website are important for potential borrowers. The Fund did a good job of providing updates on loan information and deadlines. The recommendation would be for the foundation to consider creating a mobile-friendly website, which will allow easier access to website contents via mobile technology.

In order to expedite the student loan application process and decrease barriers for student applicants, the mini research suggested the Franklin Lindsay Student Aid Committee develop a centralized process for accepting, reviewing, and administering the student loan funds. For example, if an online application is created, submitted applications can be directed immediately to the regional representative for review, thereby avoiding the wait time inherent in postal mail. The data from online applications can also be easily captured for future analysis of borrowers.

As of July 2012, graduate students were no longer eligible for subsidized Stafford loans. Therefore, Franklin Lindsay's loans may be appealing to graduate students, whose only remaining options include unsubsidized Stafford loans, private loans with variable rates, and Perkins loans. Franklin Lindsay's loan structure is similar to the Perkins loan; however, the Perkins loan interest rate is fixed at 5% compared to Franklin Lindsay's 4% interest rate.

Since the report was prepared and submitted (Do, G. et al, 2014), the committee members took the recommendations earnestly, and strove to make some changes. The website has been updated and the information was easier to read and access. The application process has not changed and still is a paper application. The marketing plan has not been developed. It would be interesting what the committee members would decide to do next in addition to recent new findings discussed from this dissertation research.

## **Recommendations as a Result of This Study**

The committee members of the Franklin Lindsay Student Aid Fund recognized that their Fund needs improvement initiatives for sustainability and enhancement. Student loans make postsecondary education possible for many students who could not otherwise afford it (Trends in Student Aid, 2013). The private loan market played an important role in student loans. Over the last decade, the private loan market has been influenced by numerous factors—from increasing costs of higher education to consumer protections through private loan reform. Private loan providers, as a result, are forced to adjust to changes in demand and increased regulations around private loans. The Franklin Lindsay Student Aid Fund shares the same dilemma.

The following section is a landscape of private lending from the early 2000s to the current day, including changes in private student loan volume and private student loan reform. These facts should be taken into serious consideration as part of plans for future recommendations of the Franklin Lindsay Student Aid Fund.

### **Private Student Loan Volume**

Private lenders saw a boom in private lending volume from \$7 billion in 2001 to over \$20 billion in 2008 (Blumenstyk, 2012). During this period, private lenders increasingly marketed and disbursed loans directly to students, reducing the involvement of schools (Private Student Loans, 2012). This led to students borrowing more than necessary to finance education. The increased risk for borrowers and trends in loan defaulting fueled consumer protection and private loan reforms and ultimately reduced private lending (Figure 1).

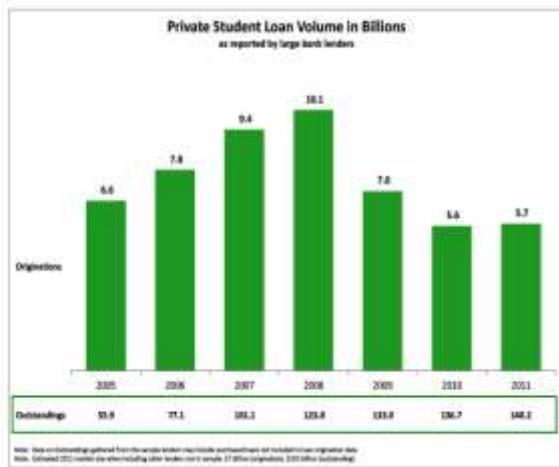


Figure 1. Private Student Loan Volume in Billions

2007-08 to 6% in 2011-12, while the percentage of graduate students fell from 11% to 4%. As demand for private loans decreased, federal loans represented a larger percentage of student loans (Figure 2). Private lenders are competing with federal loan programs, which offer better interest rates and repayment options. Moreover, reforms addressing consumer protection introduced more students to federal loan options together with the risks associated with private loan options.

### Private Loan Reforms

Recent changes to lending laws have influenced the landscape of student private loans and led to a decrease in private student lending. These laws include the Truth-in-Lending Act (TILA), the Equal Opportunity Act (EOCA), the Fair Credit Reporting Act (FCRA), the Fair Debt Collection Practices Act (FDCPA), the Federal Trade Commission Act (FTCA), and the Consumer Financial Protection Act.

According to the College Board Report on Trends in Student Aid (2013), the percentage of undergraduate students taking private educational loans fell from 14% in

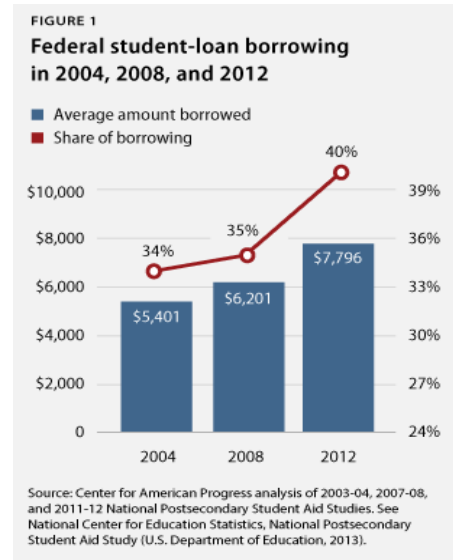


Figure 2: Federal Student Loan Borrowing

According to the 2013 Private Student Loans report, the most significant recent change in borrower protections came from 2010 amendments to TILA, which increased the number of required disclosures throughout the stages of an application process. Included in these amendments is the self-certification form, which highlights the availability of federal aid and addresses the issue of over-borrowing with a template that computes borrowing need. TILA is one example of private student loan reforms that have steered students away from private lending and toward federal loans.

### **A Comparison of Delinquency**

The Center for American Progress (2013) suggests that more than \$34 billion—or 15.9 percent—of outstanding private loans are “distressed.” This includes loans in deferment, forbearance, or default. Currently, there are over seven million borrowers in default on either a federal or private student loan (Chopra, 2013). According to the 2013 Student Loan Affordability report, more than \$8 billion in defaulted private loan balances existed as of 2011 with even more in delinquency. The U.S. Department of Education defines a loan as in default when payment is 270 days or more past due. Without documentation of Franklin Lindsay default rates, I was unable to draw a comparison with these default rates and balances. However, the current number of loans in “judgments” status—those that are transferred to collection agencies—is 52 out of 987 total loans. This means that at most, 5% of Franklin Lindsay loans could be considered in default.

In March 2012, TransUnion reported in their study that 5.33% of private student loans were delinquent. Around the same time period, the Franklin Lindsay delinquent loan history report indicated that 18.69% of Franklin Lindsay loans were considered

delinquent. I recognized that Franklin Lindsay defines a loan as delinquent when repayment is one day late. Therefore, it is understandable that reported rates are higher than the rates for all private student loans. Further breakdown of delinquencies by 30- or 90-day lateness may offer a better comparison with the private loan market. See Appendix of the history of loan reports.

### **Decrease in Demand for Franklin Lindsay Private Student Loans**

When reviewing the trends in private student loans, it is reasonable that Franklin Lindsay saw a decrease in demand for student loans at about the same time the private loan market saw a significant drop. The federal drive to educate and encourage students to maximize federal student loans has led to aggressive marketing of federal loans in high schools (personal communication, 2013). In addition, other private loan providers have a larger base of borrowers, which provide additional word-of-mouth advertising.

An important factor to consider is that the Fund gives priority to borrowers who wish to renew their loans. As a result, the reported count of new loans may be deceptive, as the number of renewal loans may be high (personal communication, 2013). However, an analysis of the February 2014 Statement of New and Renewal Student Loans showed that the total number of loans has indeed decreased over time—from 393 total loans in 1991-1992 to 128 in 2013-2014.

The February 2014 statement also demonstrated an increase in loan amounts disbursed to students over time, with a sharp increase in amounts in 2006-2007. Prior to this increase, the average loans disbursed was \$4,000-\$5,000. Beginning in 2006-2007, loan amounts increased to \$6,000-\$7,000. It is unclear whether this was a decision made



by the loan committee to distribute larger loan amounts or whether borrowers began applying for larger loan amounts. If the latter is the case, these data speak to the increased cost of higher education and the burden placed on students to pay higher tuition. As of 2015, the Franklin Lindsay Student Aid Fund increased the maximum loan amount from \$7,000 to \$10,000.

The landscape in the private loan market shows that the decline of loan demands for the Franklin Lindsay Student Aid Fund may be part of a national trend. JP Morgan Chase, Bank of American, Citigroup, and U.S. Bank are exiting the student loan business, and Sallie Mae, Wells Fargo, and Discover are left as the big three firms dominating the market (Bowers, 2013). The Franklin Lindsay Student Aid Program needs to improve its loan quota or to reinvent itself in such a way that students will avail themselves of the programs offered by the Fund.

The findings of this study and the current overall landscape of the private loan industry point to three recommendations for addressing and improving the Franklin Lindsay Student Aid Fund (Appendix I).

### **Recommendation 1: Collect and Use Data**

Collecting consistent data and having a concurrent systematic procedure to analyze is paramount for increasing the effectiveness of the functions of the Franklin Student Aid Fund. The committee members are encouraged to research new studies that focus on at-risk college students in effort to achieve their critical higher education milestones.

In 2014, President Barack Obama announced a new initiative called My Brother's Keeper, which rallied resources and support from public, private, and foundation establishments to address the persistent educational gap for males of color. The goal of this initiative is to ensure all youth, including boys and young men of color, will have opportunities to improve their life outcomes and overcome barriers to success (U.S. Department of Education, 2014).

According to the My Brother's Keeper initiative, by the fourth grade, many Black and Latino students are nearly three years behind their counterparts. Perhaps the Franklin Lindsay Student Aid Fund application could include race as part of their tracking to see if they have reached these at-risk students.

The application could make it optional to self-report. (See text box below as an example of what they could include in their application)

*Ethnicity and Race*

*Providing the information below is voluntary and will not be used in a discriminatory manner. These questions comply with the U.S. Department of Education's standards for ethnic and racial data collection.*

*Ethnicity: Are you Hispanic or Latino? Yes No*

*Race: Please select one or more that apply.*

*American Indian or Alaska Native*

*Asian*

*Black or African American*

*Native Hawaiian/Other Pacific Islander*

*White*

Figure 3

The desire of the committee maybe to be “color blind,” while laudable in the abstract, is hard to defend given the devastating history of exclusion of African Americans in their program, and by having a “color blind” approach may actually continue the exclusion and support the “power elites” theory discussed in chapter 3.

**Recommendation 2: Leverage the new finding on the history of the Franklin Lindsay Student Aid Fund**

The history of the Franklin Lindsay Student Aid Fund from inception until the present time should be celebrated and made public. This new discovery could be used to leverage as marketing strategies to a wider audience. As discussed in Chapter 4, the members should not feel accountable for the early exclusion of Black students to the Fund.

In the case of *Bob Jones University v. United States* (1983), a fundamentalist Christian University founded in 1927 in Greensboro, South Carolina did not begin admitting Black students to the college until the Supreme Court ruled in 1983 that the United States Internal Revenue Service (IRS) had authority to deny tax-exempt status because of their racially discriminatory admissions policies (Johnson, 2010).

In 2008, then-President Stephen Jones, the great-grandson of the school founder, Bob Jones, issued an apology stating,

We failed to accurately represent the Lord and to fulfill the commandment to love others as ourselves. For these failures we are profoundly sorry. Though no known antagonism toward minorities or expressions of racism on a personal level has ever been tolerated on our campus, we allowed institutional policies to remain in place that were racially hurtful"

Jones asked civil rights leaders not to hold the decisions made by his forefathers against him (Associate Press, 2008).

I am not suggesting that the members should publicly apologize as did the President of Bob Jones University, but it could help to leverage their knowledge of the history of the Fund to further their cause for the program if they did recognize and accept past actions. Bob Jones University President Stephen Jones said he decided to issue the apology because the school still received questions about its views on race. The committee members should recognize that the very race that they originally tried to keep out of their fund could actually be the ones to save their program due to studies that showed the more outreach toward the protected groups including Black students, the more resources for them to sustain the Franklin Lindsay Student Aid Fund program.

**Recommendation 3: Review and Revise the mission, goal and functionality of the Franklin Lindsay Student Aid Fund committee**

The current operation of the Franklin Lindsay Student Aid Fund operates in the same manner as was directed by Franklin Lindsay in his will in 1954. According to information listed in the new member orientation packet, new members are chosen by the Chairman or Vice Chairman of the loan committee, and loan committee members are given the authority to approve or disapprove a student application. JP Morgan Chase Bank, the Fund Trustee, manages the Fund, but the committee members can adopt policies to best accomplish its purposes.

The overall operations of the committee should be re-examined and recommendations made for more authority to set policies to keep up with the changing

landscape in higher education and student loans. The newly-discovered historical information on the program should set the tone for review and revision of the mission and goals of the Franklin Lindsay Student Aid Fund to maximize its outreach to needy college students of Texas.

### **Recommendations for Future Research**

This research study attempted to understand the history of the Franklin Lindsay Student Aid Fund to help increase the efficiency of the program's functionality. Previously, the lack of historical literature made it challenging to fully grasp the importance of the program's evolution. With this newly discovered evidence, the committee members can now use this information to further its mission and goals to help Texas students.

The qualitative methodology utilized in this study offered a detailed examination of the reformation stages of the Franklin Lindsay Student Aid Fund. This study can represent a start for developing a larger body of research on Franklin Lindsay and his personal life. With additional new data that shows support for programs such as the My Brother's Keeper Initiative, the Fund can indeed promote and expand its outreach for college students in Texas.

### **Conclusion**

In earlier chapters of this dissertation, I raised the questions in my research to discover when Black students first had access to the Franklin Lindsay Student Aid Fund, and if the Texas higher educational policy had any effect on the formation and the reformation stages of the Fund. The findings of my research provided evidence of

“desegregation,” which meant the mere physical presence of Black students in formerly all-White classrooms, rather than “integration,” which required the full inclusion of African American into all campus activities and positions of power (Shabazz, 2004). Massive resistance was not confined to the classrooms, but in various corners of life that affected Black students. The evolution of the Franklin Lindsay Student Aid Fund paralleled the initial response to the *Brown* decision, which achieved minimal actual school desegregation. The Fund program resisted desegregation until their tax exemption was at risk. With my research findings, it is my hope that this information could place the action or inaction of the committee members in a clearer perspective.

My theoretical framework of the eponymous “power elites” for the history of the history of the Franklin Lindsay Student Aid Fund explained the outcomes of my findings. Power elites are those who occupy the dominant positions, in the dominant institutions such as military and education. Their decisions or lack of decisions have enormous consequences. The elites themselves, in this case the committee members, often are uncertain about their roles and without conscious effort, but they aspire to be the ones who will make the decisions (Mills, 1956). The Franklin Lindsay Student Aid Fund committee members unilaterally agreed the need to re-examine the mission, purpose, and goals for their program. This study began the journey of examining the meaning behind the decisions made by Franklin Lindsay when he established his student aid fund to exclusively help White students. It was equally compelling to find the important answer that made it inclusive for all, including Black students, to fulfill Lindsay’s wish of “the greatest good can be done to the country and event to the world by education of its

people.” The results of the study suggest that the key to having a clear path of mission and goals to enhance results would require an understanding of its beginning.

## **Appendices**

**Appendix A: Franklin Lindsay court document request**

**Appendix B: Newspaper article, The Dallas News, May 29, 1954**

**Appendix C: Newspaper article, The Dallas News, July 20, 1954**

**Appendix D: Franklin Lindsay Will, filed May 31, 1954**

**Appendix E: The Franklin Lindsay Student Aid Fund Handbook**

**Appendix F: Court documents**

- F.1 Probate of Will, 1954
- F.2 Stipulation, December 22, 1954
- F.3 Original Complaint, March 1955
- F.4 Amended complaint prior to March 16, 1955
- F.5 Second amended complaint, March, 16, 1955
- F.6 Appeal, March 16, 1955
- F.7 Stipulation, July 5, 1955
- F.8 Agreed motion to withdraw, June 1957
- F.9 Final Judgment, July 15, 1957
- F.10 Motion to enforce judgment October 25, 1957
- F.11 Reformation, March 1976
- F.12 Reformation, August 1987
- F.13 Policy Reinstatement 2001
- F.14 Trust Reformation (change of Trustee), October 2001
- F.15 Trust Reformation, January 2002
- F.16 Trust Reformation, July 2002

**Appendix G: Introduction Letter – Franklin Lindsay Student Aid Fund committee**

**Appendix H: Interview Questions – Franklin Lindsay Student Aid Fund committee**

**Appendix I: Franklin Lindsay Student Aid Fund, report findings and  
recommendations February 22, 2014**

**Appendix J: Franklin Lindsay death certificate**

**Appendix K: Photographs of Franklin Lindsay**



**Appendix A**  
**Franklin Lindsay court document request**

March 25, 2015

Gigi Do  
Email: [gigi.d.do@gmail.com](mailto:gigi.d.do@gmail.com)

Attn: Clerk  
Austin Division Clerk Office  
501 W. 5th Street, Suite 1100  
Austin, TX 78701

Dear Clerk's Office,

Enclosed is a check of \$30.00 for your services.

I am writing to request for a copy of a court case involving a lawsuit contesting the Franklin Lindsay will that was set up as a loan fund for students attending segregated colleges.

The lawsuit was filed in the Federal District Court in Austin, Texas on July 27, 1954 by two women by the name of Virginia L. Looney of Oklahoma and Emma L. Baker of Florida.

This suit was filed in Federal District Court in Austin, asking for a declaratory judgment construing the will.

Please see attached relevant news articles from the Dallas Morning News in 1954 that will provide you additional information to locate this court case.

I am currently a doctoral student at UT-Austin and my dissertation is about the Franklin Lindsay Student Loan Fund. This court case will provide useful information for my studies.

I can be reached by email at [gigi.d.do@gmail.com](mailto:gigi.d.do@gmail.com).

Sincerely, Gigi Do



Appendix B  
Newspaper article, The Dallas News, May 29, 1954

America's Historical Newspapers

infoweb.newsbank.com.ezproxy.lib.utexas.edu /view-search/view/HistoryArchive/?p\_product=EANX&p\_theme=ahnp&p\_rbid=C58A4

Home - Houston ... | HCC - Contact us -- Ho... | HCC

**America's Historical Newspapers** including Early American Newspapers Series 1 - 3, 1690-1922; African American Newspapers, 1827-1963

Home > America's Historical Newspapers > Segregation Ruling Voids Will Provide > Printer Friendly

To print, select from the options below. First choose what to print: image only, image and citation, or citation only. Next choose a paper size and page layout, making sure your printer settings match. Then click your browser's **Print** function.

CONTENTS: Image and Citation PAGE LAYOUT: Portrait PAPER SIZE: US letter (8.5" x 11")  Fit Image to Page

Headline: Segregation Ruling Voids Will Provide; Article Type: News/Opinion  
Paper: Dallas Morning News; Date: 05-29-1954; Page: 2; Location: Dallas, Texas

# Segregation Ruling Voids Will Provide

**Austin Bureau of The News**  
AUSTIN, Texas.—End of segregation in public colleges Friday apparently had robbed many white students of financial aid to help get them through school.

That was disclosed in the will of Franklin Lindsay, who died recently in San Antonio, which was filed in court here. Lindsay made the Capital National Bank here trustee of the estate.

Estimates of the worth of the estate range from \$2,000,000 to \$4,000,000.

Lindsay specified that income from the estate, after payment of the specific bequests, be used to

provide loans for deserving college students who otherwise would not be financially able to attend a college.

But he was an ardent believer that white and Negro students should not mix. He specifically banned loans to any student attending a nonsegregated school.

Anticipating in 1949 that state schools might become ineligible, Lindsay said if they could not qualify then others which can meet the requirements, such as Southern Methodist University, Rice Institute and other Texas colleges and universities shall be substitutes.

# Appendix C

## Newspaper article, The Dallas News, July 20, 1954

I-Part II

The Dallas Morning News

Wednesday, July 28, 1954

"ES

### Killed in Jet Crash

BRYAN, Texas (AP).—Lt. Robert L. Sambol, 23, of Kansas City, Kan., was killed early Tuesday as he attempted his first solo night landing in a jet training plane. The trainer crashed and burned 1,500 feet off the south end of the north-south runway at Bryan Air Force Base.

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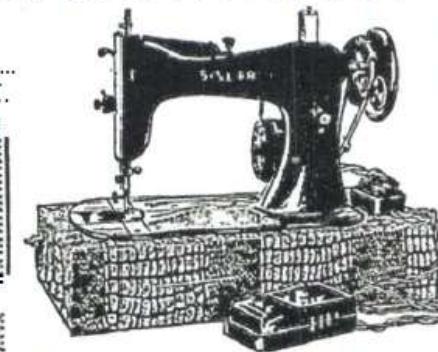


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Freshens taste—moistens throat.  
Satisfying, long-lasting.

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Mr. C. L. Swan Cus  
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### COURT MAKES \$10 CHANGE

Criminal Dist. Judge Harold B. Wright dismissed a court-appointed lawyer for John Melvin Thompson, charged with robbery, after Thompson said Tuesday he didn't think the lawyer was competent to represent him.

Judge Wright then appointed another lawyer, Bob Stinson, to represent Thompson. A court-appointed attorney gets \$10 a day from the county while in court representing a client without funds.

The Thompson case is now scheduled to be tried Wednesday. Thompson is alleged to have taken \$78.99 from Ben R. Stout, 4214 Gaston, last May 31.

The Dallas News May 29, 1954

Appendix C:

## SISTERS' Challenge Will On Segregation Basis

By DAWSON DUNCAN

AUSTIN, Texas.—A will setting up a loan fund for students attending only segregated colleges was challenged in Federal Court here Tuesday on grounds it is unenforceable because of discrimination.

At stake is the bulk of an estate valued at more than \$3,000,000, left by the late Franklin Lindsay of San Antonio. The rich bachelor, who owned stock in practically every bank and building and loan company in Austin, died last May 1.

Relatively small specific bequests were made, as the bulk of the estate was to be held in trust for the loan fund.

Lindsay had no fixed place of residence, but his principal property and business interests were here. He designated the Capital National Bank here as independent executor.

Attacking the provision creating the fund for aid of students in non-segregated schools are his two sisters, Virginia L. Looney of Oklahoma and Emma L. Baker of Florida.

Suit was filed in Federal District Court, asking for a declaratory judgment construing the will.

Lindsay's will sought to set up a committee to screen "deserving white students of either sex who may be desirous, but financially unable, of obtaining college education at any of the Texas state institutions . . . in which Negroes or those having any Negro blood shall not be entered."

When he made the will in 1949, he anticipated none might qualify and broadened the provisions to permit the aid of students in Southern Methodist University and other religious schools.

The two sisters alleged in the suit the trust was invalid and unenforceable and therefore they, as heirs, were entitled immediately to the residue of the estate.

The provision barring aid to students in colleges which admit Negroes is void, they alleged, "for the reason that there are no state institutions in which qualified Negro students may not enter, such discrimination being a violation of the equal protection of the laws guaranteed by the Fourteenth Amendment . . . and a violation of the due process clause . . ."

They also contended that private

schools of higher learning sponsored by religious organizations also would be ineligible. With few exceptions, tenets of the religious orders do not permit discrimination, the petition stated.

They also alleged such schools would be ineligible because they enjoy some state tax benefits, making them limited state agencies and therefore subject to constitutional prohibitions, especially that against segregation and discrimination.

Other legal technicalities also were raised in the suit.

### \$243,858 Listed As County Share Of Road Money

The state Tuesday advised County Judge W. L. (Lew) Sterrett that Dallas County's share of state road money for 1955 will run \$243,858.

County Auditor Moore Lynn explained that the money will not be turned over to Dallas County, but will be applied to the county's road debts.

Lynn said that \$38,933 of the \$243,858 represents Dallas County's share of this year's gasoline tax.

The remaining \$204,925 represents payment on the obligations Dallas County owed on certain county roads which Texas took over as part of its state highway system in the mid-thirties, said Lynn.

When Texas took over these roads and designated them state highways, it agreed to pay off a certain percentage of the debt against each road.

### Engineer to Join Toll Road Project

AUSTIN, Texas.—Robert E. Killmer of Dallas, retiring from the Highway Department after thirty-four years, will become project engineer with consulting engineers on the Dallas-Fort Worth toll road.

D. C. Greer, state highway engineer, announced retirement Tuesday of Killmer, who accepted modified service with the Highway Department last May. He has been serving as principal engineer consultant with the Dallas district office since then. Prior to that, he was engineer-manager of the Dallas urban expressway.

**J. ROSS WOODUL, D.D.S.**  
Returning from Military Service  
announces the re-opening of his  
office.  
GENERAL DENTISTRY



## Appendix D Franklin Lindsay Will, filed May 31, 1954

THE STATE OF TEXAS )  
COUNTY OF BEXAR )

KNOW ALL MEN BY THESE PRESENTS:

That I, Franklin Lindsay, of the State of Texas, being of sound and disposing mind and memory and not in fear of death, do hereby make, publish and declare this my last will and testament, hereby revoking all other wills heretofore made by me, and for each purpose do hereby declare and provide as follows:

1 -

I desire and direct that my just debts shall be paid out of my estate by my executor, hereinafter named, as soon as possible after my death, including expenses in connection with my last illness and cremation of my body or, preferably my body given to a hospital for useful purposes for

I do not want a grave or mound  
To clutter up the living ground  
And be a curse to those with needs,  
Or better, covered with vines and weeds:  
Do not wish a slab or stone  
For death cannot follow it alone  
And my poor body has no worth  
But only death while on this earth;  
So, doctors may use it to aid the ill  
Or it is scattered whither they will.

2 -

hereby give and bequeath the sum of Twenty Five Hundred Dollars (\$2,500.00) in cash, to be paid as soon as practicable from the income of the estate after my death, to each of the following friends:

Mr. Camille L. Sweeney,	San Antonio, Texas.
Mrs. Margaret Ramsey Jennings,	Brandenburg, Mo.
Mrs. Paula Rohlf's Kauter,	(Last address known 780 Home St., Bronx, N. Y. (Present address Hotel Manin, Milan, Italy. Waco, Texas.
Anthony and Annely Fachiri, or to the survivor,	
Mrs. Gladys A. Gregg.	

3 -

hereby give, devise and bequeath unto the Capital National Bank in Austin, Texas, all the balance of the property of which I die seized and possessed, of every character whatsoever, real, personal and mixed and whatever situated, in trust, for the following uses and purposes and upon the conditions hereinafter set out.

In case the Capital National Bank shall ever surrender its corporate charter or its trust powers or shall merge with another institution or discontinue its functions or its trust department or any reason whatsoever, the successor, as trustee, shall be selected by the committee hereinafter described, as then constituted, from among the financial institutions in Austin, having trust powers.

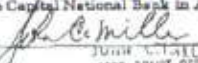
I expressly direct that no security interest shall be placed on the trust estate from the Trustee, either directly or indirectly, nor shall any property be purchased for the trust estate which has at any time been owned or held in trust by said trustee.

All provisions in this will relating to the "Trustee", shall likewise apply to any successor trustee.

AT 31196'

Certified to be a true copy and to be full force and effect.

/s/ signed/ FRANKLIN LINDSAY

The Capital National Bank in Austin  
By   
JOHN C. MILLER  
ASST. TRUST OFFICER

The said bank shall at once after my death take possession of the properties belonging to the estate, and shall have full power and authority to handle, manage and control all property that may come into the possession hereunder, for the use and purpose herein after set forth, and the purchaser or purchasers under any such sale or sales shall not be required to look to the application of the proceeds thereof; and the said Bank shall have full authority to invest and reinvest any funds or monies that may come into its possession hereunder, in any manner that it may see fit, my intention being that the income from my estate shall be continuously as far as practicable under sound judgment and management, and as large as possible commensurate with safety, in the discretion of said Bank. The said Bank shall not be liable nor responsible nor answerable to any person or authority whatever for any act performed by it hereunder, except for fraud or gross mismanagement or neglect or bankruptcy, in which case the trustee of the bond, if any, shall be held responsible.

From the income from the estate to be paid quarterly or at three month intervals, as far as practicable, the following amounts, to be net in amount, any necessary taxes, if any, to be paid by the estate:  
 To my Sister, Emma L. Baker, present address Miami, Florida, and to my other Sister, Virginia L. Looney, now living at 628 N. W. 16 Street, Oklahoma City, Oklahoma, annually during their lifetime the sum of Six Hundred Dollars (\$600.) each, which sums are to be increased to each upon the death of their present husband to Twelve Hundred Dollars (\$1,200.).

With other income which have been provided for them, the above amounts are considered sufficient for their comfort.

After the death of their father, each of the then living children of my Sister Virginia, are to be given the sum of Twenty Thousand Dollars (\$20,000.) in cash, or preferably the equivalent value in securities from the estate and, after the death of his father, the son of my other Sister, Beverly H. Baker, Jr., is to be given the sum of One Thousand Dollars (\$1,000.) in cash.

The above amounts to be net, any necessary taxes, if any, to be paid by the estate and are not made greater as I believe that making life too easy tends to destroy incentive and the satisfaction of results from one's own effort.

Believing that the greatest good can be done to the world and even to the world by education of people, subject to other provisions of this will, the properties of the estate are to be held in trust by The Capital National Bank in Aultin, Texas, as a fund for the assistance of worthy and deserving white students of either sex who may be desirous, but financially unable, of obtaining college education at any of the Texas state institutions, such as University of Texas, Agricultural and Mechanical College, etc. etc. In which negroes or those having any negro blood shall not be entered.

*X emphasis*

"b A.C. L..."

/s/ FRANKLIN LINDSAY

Under the Texas State Educational Commission, then those which can meet the requirements, such as Rice Institute, Texas Agricultural University, Southern Methodist University or any other such college or university in the State of Texas. Applying students of course, must be able to meet the requirements for entrance to the university or college.

This fund to be known as the Franklin Lindsey Student Aid Fund.

**Loan.** Loans to the above mentioned Trust Fund are to be made to deserving students once yearly, before the beginning of the college term or year, in amount considered necessary, with economy, or such term by members of the committee described below. All loans shall be repaid and, when possible, with a fair rate of interest, in order that the fund may be continued available for others.

The loans are to become available as soon as practicable after the gift, from the income of the estate, to the members of the committee mentioned below.

"Income" shall be construed to mean all revenue from the trust estate, together with proceeds of repaid loans, whereas capital gains and losses shall affect only the principal or corpus of the fund.

From such income direct that there shall be paid, as soon as practicable, as a gift, the sum of Twenty Five Hundred Dollars (\$2,500.) to each of the original committee hereinbefore named. In instances in which a husband and wife is mentioned, they shall be considered as one and but one gift of \$2,500 is to be made to the two or to the survivor,

The first committee to pass upon the application for loans by the described student and to approve them is to be composed as follows:

Edgar H. Perry, Sr.	Austin, Texas	Paulino F. Stephen, W.L.Co, Texas
Coleman Gay,	Austin, Texas	Glady A. Gregg, Waco, Texas
Marc Anthony,	Dallas, Texas	Wm. B. Paddock, Odessa, Texas
Virgil P. Patterson,	Amulillo, Tex.	Glaude W. Soar or his wife,
Ma'ld S. Paddock,	Houston, Texas	Georgianna, Houston, Texas
Maude P. Cahin or Husband D'Arcy M. Cahin,	Houston, Texas	
Emmett T. Sweeney or his wife Camille L. S'Reeney,	San Antonio, Texas	

and upon the death of any of the above or of their refusal to serve the remaining members of the committee shall select others in their stead to maintain the number of the committee to nine, at least, in order that the burden may not be too onerous for any of them in investigating applications for and recommending loans and such committee shall be perpetuated in the manner described above for the perpetuation of the committee first named above. In other words, the surviving members shall be asked to maintain the committee to a minimum of nine members by continually cooing others to replace those members who may for any cause whatsoever fail to serve.

I nominate as the first Chairman of the Committee Edgar H. Perry, Sr. and upon his death or resignation, I request that the committee shall elect his successor and successor,

/Signed/ FRANKLIN LINDSAY



9 - (Continued)

As the domiciles of the various members of the committee are so widely scattered, I suggest that recommendation of any one or more of the members be considered as approval of the committee for a loan, especially of the first one to its application; the second or later application by a student may be considered in the light of the record, results and progress made by the student. I have no further suggestion to offer to the committee, who shall have full discretion in approving or disapproving loans, other than that in my opinion there are sufficient number of lawyers and preachers and probably enough physicians and that more of other professions and trades will, on the whole, be more helpful.

The trustee shall keep the Chairman of the committee informed as to the estimated amount available for such loans for each next succeeding college full term so that the members of the committee may be advised as to how many loans may be made for such term. In case more loans should be approved than can be made from available income for that purpose, the first number of the approved applications whose total shall equal the ultimate amount available, to reach the trustee, shall be accepted by the said trustee.

10 -

The recommendations, as outlined above, of members of the committee, however, formed, for loans are to be recognized by the Bank, the trustee, the amount approved paid from to me during the college term, at the discretion of the trustee, to students whose applications have been approved, their notes including a fair rate of interest, taken and efforts made to maintain such notes in legal standing and to the same when practicable, for further maintenance of the fund.

11 -

After a trial of ten years, if the plan as above described, shall be found to prove unsuccessful that is, if students shall not apply for loans to utilize the income of the trust or if the results shall prove to be unsatisfactory to the committee, as then constituted, such committee shall be empowered in its discretion to use the income and any portion of the corpus of the trust fund which may be considered necessary, for other purposes for the utterance and increase of education: such as building, halls, hospitals, etc., preferably in connection with Texas State Institute, which meet the requirements. My feeling toward negroes being that there should not be co-education with other students.

12 -

thereby nominate and appoint said Capital National Bank, of Austin, Texas, executor of this will and of my estate.

All portion of the estate may consist of farms, oil or gas properties, etc. formerly in partnership with D. C. Reed, now deceased, I desire and direct that in its discretion, the said Bank as executor or trustee shall consult Bernard C. Mollberg, of Austin, who is familiar with such properties and interests and shall pay him as compensation, liberally, amounts such as in the opinion of said Bank shall be commensurate with his advice and services rendered.

/s/ med/ FRANKUN LINDSAY

13 -

I do here and direct that no proceeding shall be had upon my estate in any court, except the probating of this will and appraisement thereof.

If it should be considered necessary or advisable by the executor named by the committee above described, to employ an attorney, other than the regularly retained attorney of said Bank as executor or trustee, I hereby designate as such attorney Coleman Gay of Austin who shall be compensated accordingly.

14 -

I declare and direct that said executor and trustee shall receive & be compensated, as agreed between us, for their services hereunder a commission of Two per cent (2%) of the income, rent, interest and proceeds derived from all of said property.

WITNESS my hand at San Antonio, Texas, this fifth day of October, A. D. Ninety Nine Hundred Forty Nine (1949), this will, consisting of Five pages, each bearing my signature.

/s/ FRANKLIN LINDSEY

We, Clarence S. Culbertson and George N. Dilworth do here and now sign our names as witnesses to the foregoing will of Franklin Lindsey and we, each of us separately for himself, declare that we know the signature above to be that of Franklin Lindsey to said will and testament, and that we each sign our names as witnesses to said will at the request of said Franklin Lindsey and in his presence and in the presence of each other and that this will was done at San Antonio, Texas, this fifth day of October, A. D. 1949.

/s/ CLARENCE S. CULBERTSON

/s/ GEORGE N. DILWORTH



**Appendix E**  
**The Franklin Lindsay Student Aid Fund Handbook**

**The Franklin Lindsay**  
**Student Aid Fund**

## Preface

This orientation packet was put together by the JPMorgan staff for the benefit of all Franklin Lindsay Student Aid Fund Committee members. This packet includes copies of the governing instrument, some old pictures of Mr. Franklin Lindsay, committee members' contact information along with current guidelines and procedures.

We hope that you will find this packet informative and useful. This is a dynamic document, so if you feel we need to add or correct any information presented here, please let us know.

Welcome to the Franklin Lindsay Student Aid Fund! We look forward to working with you.

Sincerely,

The JPMorgan Staff  
February 2009

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- I. Pictures of Mr. Franklin Lindsay and his friends
- II. Background
- III. July 2002 Trust Reformation
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- VIII. Last Will and Testament of Franklin Lindsay
- IX. Policy Statement 2
- X. Current Guidelines
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## Background

Mr. Franklin Lindsay believed that the greatest good that could be done for the country and the world was to educate its people. With this intent, Mr. Lindsay generously established in his Last Will and Testament to provide loans to students to further their education. The Franklin Lindsay Student Aid Fund makes student loans to worthy and deserving students, of either sex, who may be desirous, but financially unable, of obtaining an education at an institution of higher learning within the State of Texas.

Mr. Franklin Lindsay passed away on May 3, 1954 at the age of 80. He provided in his Last Will and Testament that his \$2,000,000 estate would be held and managed in Trust so as to benefit the students of the State of Texas. Following final court approval, this loan fund was activated in July 1957 and the first student loans were approved for the academic year of 1957-58. Mr. Lindsay set forth in his Last Will and Testament the appointment of the Student Loan Committee. Subject to funds being available, the Student Loan Committee has authority to approve or deny a student application. From time to time the Student Loan Committee will adopt policies regarding maximum loans available to a student, interest rate, etc., to best accomplish the purpose of the fund.

*How the Fund was  
Established*

Mr. Franklin D. Roosevelt died May 3, 1954, and he clearly (SO) very generously provided in his Will that approximately a few million bequests his \$1 million Estate should be held and administered in Trust. My intention in this case income from my Estate should be contributed for a practical and sound judgment and investment and is far more than the common practice with respect to the discretion of the Trustee. Mr. Roosevelt believed that the world should be done for the country and even to the world's education people. The structure of the Trust is to be used for the establishment of a research fund for the study of the work of the University of Chicago which are who may be diligent but financially unable to obtain an education and inasmuch as of higher education within the State of Texas. The Will provides that the Trust Fund is to be established on the 10th day of January 1957 before the beginning of the calendar year or year (inasmuch as) considered necessary with respect to the study of the members of the Student Loan Committee. The second or later application by a student may be considered in the light of record results and previous academic achievement. The Trustee of the Franklin D. Roosevelt Student Loan Fund is 811 Olive N.A.

Following final court approval the trust was established in July 1957, and the first student loan was approved for the academic year of 1957-58.

## How Applications are Made and Approved

Among but of any friend Mr. Lindsley set forth in this Will the appointment of a certain member of the original Student Loan Committee and provided that such committee would at all times consist of at least nine members. As members but of the committee to serve for any reason, the remaining members are to elect and fill the person or persons to the committee. Subject to funds being available and the coordination of the committee activities by the Chairman or Vice Chairman, the Loan Committee shall have authority to approve or disapprove a student's application for a loan, from time to time. The Committee shall adopt policies as to minimum loan amounts, interest rates, etc., to best accomplish its purpose.

Inasmuch as Bank One National Trustee for purposes of mortgaging the land only, all applicants are reminded to contact directly any member of the Loan Committee who will be pleased to arrange an interview and provide appropriate application forms.

## Present Policies Concerning Loans

1. The policy of The Franklin Lindsley Student Aid Fund shall be that no loans shall be made to members of the committee, an officer, directors or employees of the Trustee (Bank One National Trust), or to the family (defined as spouse, in-laws, children and grandchildren, great-grandchildren and the spouses of such children, grand children and great-grandchildren) of either parent.

Through the years the Loan Committee has adopted the following policies which presently govern the policies and procedures. These policies are subject to change or modification from time to time, but any such change will be explained fully to an applicant at the interview by the Committee member.

Loans up to \$5,000 per academic year, but not exceeding an aggregate amount of \$20,000 for the student's school career, may be granted to any worthy student in the discretion of the Committee and subject to the availability of funds under the following conditions:

1. The student must have completed (1) year of college.
2. A personal interview with the Committee member is required for all loan borrowers.
3. Loan commitments will be made for not more than a twelve-month period; however, the student must repay each academic year for the remaining balance.
4. Funds received from loans must be used only to maintain the student while attending an accredited college or university located in the State of Texas.
5. This student will be required to carry the normal academic course load (as determined by the Policy hereof from unit to unit for all undergraduate and graduate students in a class) throughout the school year.
6. A student presently attending a college or university who applies for a loan must be able to show no less than an average of "C" for all course work theretofore completed. Graduate students must not be on academic probation and must maintain an overall grade average of 80. At the end of each semester the student shall furnish



a Util script of all codes as well as affidavits or any other information which the Commence requires. Failure to do so will result in a default.

- 7 The note and the application must be signed by the applicant, a parent, guardian or other responsible adult (other than spouse) must also sign the note application and the general agreement, guaranteeing payment of all obligations made to the student by the Student Aid Fund.
- 8 The student must be a citizen of the United States.
- 9 If the loan does not cover more than one semester's need, the proceeds will be disbursed in two equal amounts, one in August and one in December.
- 10 All supporting data required to be furnished with this application will become a part of the permanent file and will not be returned to the student.
- 11 Failure on the part of a student to comply with the TERMS AND CONDITIONS, the terms of the note set forth and found in the Student Loan Financial Attachment may cause the note to be declared immediately due and payable. While the student is in a college or university and in compliance with the TERMS AND CONDITIONS and terms of the note, the note shall be non-interest bearing during the college or university. Because the note is due and payable on the first day of the fourth month following departure from the college or university, including summer months within 30 days following departure from the college or university, the student should contact the Financial Aid Office Student Aid fund office, Box One, N.A. to arrange repayment schedule on the loan.

## Loan Committee Members

The following persons are now serving on the Loan Committee, without remuneration, and are contributing their time and effort to help plan the fund to carry out Mr Lindsay's purposes to the fullest.

Jamie R Kay  
202 McCord Drive  
Aurora, Texas 78746  
(512) 327-0142  
Mr Alvin P Bormann, Jr  
Stewart Financial Aid - Associate Executive Director  
Texas A&M University  
PO Box 30016  
College Station, Texas 77842-3016  
(409) 845-917  
abornmann@ohio.tamu.edu  
Or W Stepien  
2509 McCombs  
Bryant, Texas 77802  
(979) 776-4792  
llegal@tmu.edu - St. Joseph.org  
Mr M K Connelly  
Connelly Insurance Agency  
1209 East Hamson  
Houston, Texas 77050  
(956) 415-8821  
Mr Charles W Billings  
5119 Oaklawn  
Houston, Texas 77051-701  
(713) 522-6470  
Cwm@bimcsghol.com  
Mr Jack Hall  
First National Bank of Austin  
905 South Fillmore, Suite 701  
Austin, Texas 78701  
ca06@msb.com  
jhall@msb.com  
Mr Edgar Jablonowski  
3620 Chateau  
Waco, Texas 76701  
(254) 736-641  
Mr Ivan L Paterson  
PO Box 3009  
Lubbock, Texas 79402  
(806) 741-1446  
jpaterson@lubbock.com

Continued on Back

*LJan Committee Members*  
(Continued)

**Mr. Jim Novic**  
Executive Director for Financial Aid  
PO Box 7501 & 1, SMJ  
Dallas, Texas 75275-0181  
(214) 768-1500  
jnovic@jnovic-smu.edu

**Mr. William Heam**  
Associate Vice President for Student Affairs  
and Administration  
Texas Tech University at Odessa  
PO Box 1675  
Galveston, Texas 77551  
(409) 740-4588  
wheam01@mailgw.ttu.edu

**Mr. Timothy Ray**  
209 Roxbury  
El Paso, Texas 79902  
(915) 584-8254

**Mr. Fred L. Jones**  
571 Low Water Road  
Corinth, Texas 76050  
(817) 866-2300

**Mr. Mary Evelyn Swanson**  
1483 Bockhewald  
Abilene, Texas 79603  
(915) 673-1914  
eork\_m\_swanson@yahoo.com

**Dr. John D. Dollard**  
Associate Dean  
Office of the Vice President  
& Office of Graduate Studies  
University of Texas  
Main Bldg. 101  
Austin, Texas 78712  
(512) 471-7213  
dollard@utmsi.utexas.edu

**Mr. Tom Spoo**  
7603 Viewwood Court  
San Antonio, Texas 78209  
(210) 829-1919

**Mr. Alvin Rodriguez**  
715 S. Edinburg  
San Antonio, Texas 78212  
(210) 999-7262  
G0dnB4@utmsi.utexas.edu

PL 50 (Rev. 11/2001)



## **Current Guidelines**

## THE FRANKLIN LINDSAY STUDENT AID FUND GUIDELINES

The following are guidelines for considering new and renewal student loans:

1. Student must schedule a personal interview with the Loan Committee Member located in or near the community where residing.
2. Selection of loan recipients will be made on the basis of character, financial need, and scholastic ability without regard to race, sex, creed, national origin, age or disability.
3. No loans shall be made to members of the Committee, to officers, directors or employees of the Trustee or to any of their family members (spouse, ancestors, children, grandchildren, great grandchildren and spouses of such).
4. Student must provide a transcript from the college/university confirming that they have completed one year of college or a minimum of 24 hours.
5. Student must provide a transcript from the college/university confirming that they have a minimum 2.0 grade point average if an undergraduate, a 3.0 grade point average if a graduate student.
6. During each long semester the student must remain continuously enrolled full time (taking a minimum of 12 hours for undergraduate or 9 hours for graduate). Exceptions may be considered and approved by the Loan Committee Member. A student is eligible for funds in their last semester prior to graduation without requiring full time enrollment.
7. Student and Co-maker must be United States Citizens. Co-maker should not be a spouse of the borrower. All co-makers must sign the Loan Application, Advance Note, and Notice of Co-signer. If application is for a new loan (not a renewal), or student is changing to a new co-maker, then co-maker must also sign the Financing Agreement and the Guaranty Agreement. The Guaranty Agreement must be notarized.
8. Student must be a degree candidate at a Texas college or university that has been accredited by the Commission on Colleges of the Southern Association of Colleges & Schools.
9. New loan students must provide three reference letters.
10. If the loan is to cover more than one semester's needs, the proceeds will normally be disbursed in two equal amounts.

11. Funds received from loan must be used only to maintain the student while registered in an accredited college or university located in the State of Texas.
12. Student must provide verification of enrollment and grades each semester while attending school and notification of withdrawal or graduation. No interest accrues until 1<sup>st</sup> day of the 4th month after withdrawal or graduation, when repayment must begin. The maximum loan amount for an academic year shall be \$7,000 and the interest rate shall be 4% with a maximum payback of 7 years.
13. Renewal loan amount must not cause student's total loan balance to exceed \$28,000.
14. If a student's prior loan has gone into repayment status, renewals shall be subject to review of the student's repayment history.
15. If a loan is disbursed and then the student fails to satisfy the conditions for full time enrollment as set forth above in #6, he or she must return the funds for the semester in question immediately. Exception: with the approval of the Committee Member, a graduate student who is in candidacy for a doctoral degree may receive a loan during a year in which the student is registered for the number of hours required by his or her institution for students in candidacy, even if this is less than 9 hours.
16. Any exceptions to the Guidelines may be considered and approved by the Executive Committee.
17. The maximum loan amount to any student for a school year is \$7,000.

Revision 072608

**THE FRANKLIN LINDSAY STUDENT AID FUND  
EXTENSION GUIDELINES**

The following are guidelines presently used in granting or denying requested extensions:

1. All loan documents to begin repayment must be signed and returned to Bank One before an Extension can be considered.
2. The loan must be paid current at the time of the request.
3. Request can be either written or by telephone. All requests will be considered if borrower is in medical residency or experiencing financial hardship. Trustee will request written verification of current financial difficulties from the borrower. Forbearance beyond the initial period may be considered by the Executive Committee and will require supporting documentation and a written agreement by the borrower.
4. Extension cannot be granted until the fully executed Extension Form is received and processed. Co-maker signature is required on the form.
5. Maximum extension period allowed is twelve (12) months over the life of the loan, except for military call ups. See item # 6 under Deferment Guidelines.

Revision 07/18/03

**THE FRANKLIN LINDSAY STUDENT AID FUND  
DEFERMENT GUIDELINES**

The following are guidelines presently used in granting or denying requested deferments:

1. Student's verification of enrollment and grades must be current. Student can bring his/her records up-to-date at time of request to be considered.
2. Student must maintain full-time status (twelve hours per semester for undergraduate or nine hours per semester for graduate), regardless of school attending.
3. Deferment continues even though a student may transfer to a school outside of Texas, or to an unaccredited school. Such a student, however, would not qualify for any additional renewal loans.
4. A student who is in candidacy for a Doctoral Degree, who has completed the required course work, and who is registered for the number of hours required by his or her institution for students in candidacy, may qualify for continued deferment, even if the numbers of hours required by the institution is less than nine hours. The deferment lasts until (1) the student is awarded the doctoral degree or (2) five years have elapsed since the student entered candidacy for a Doctoral Degree, whichever comes first.
5. Borrowers who have completed all course work and are working in a medical residency do not qualify for deferment. They do, however, qualify for an extension of up to twelve months.
6. If a borrower's loans are in an in-school status, in-school deferment status, or in a grace period when the borrower is ordered to active duty or re-assigned, the loan holder must maintain the loans in that status during the period of the borrower's active duty service or re-assignment, plus the time necessary for the borrower to resume enrollment in the next regular enrollment period reasonably available to the borrower. The maintenance of loan status may not exceed a total of three years, including the period of time necessary for the borrower to resume enrollment. For a borrower whose loans are in repayment, the loan holder must grant a forbearance (temporary suspension of repayment) for the expected period of the borrower's active duty status, beginning on the first day of active duty, not to exceed one year. During this period of forbearance, no interest shall accrue on the loan. Forbearance beyond the initial period will require supporting documentation and a written agreement by the borrower. The maturity date will be extended by the same number of months as the approved deferment period.

Revision 7/18/03

## Appendix F: Court Documents

### Appendix F.1 Probate of Will, 1954

SITTING IN PROBATE.

In the Matter of the Estate of:

FRANKLIN LINDSAY, )

Deceased.

APPLICATION FOR PROBATE OF WILL

TO THE HONORABLE TUD E. JOHNSON, COUNTY JUDGE:

Comes now your petitioner, The Capital National Bank in Austin, a national banking corporation with its principal office at Austin, Travis County, Texas, and respectfully shews to this Court:

1. That Franklin Lindsay is dead; that he died on or about the 1st day of May, A. D. 1954, in the County of Bexar, State of Texas; that the deceased had no domicile or fixed place of residence in the State and that at the time of his death his principal property was situated in the County of Travis, State of Texas.

2. That at the time of his death the said Franklin Lindsay was seized and possessed of real and personal property of net probate value in excess of \$100,000.00, and left a written will, duly executed and herewith filed, in which your petitioner was appointed independent executor.

3. That your petitioner is not disqualified by law from accepting the letters testamentary.

... for ... be had or taken by the probate court ...  
probate; said will and filing and inventory and settlement  
of said estate and list of claims.

Wherefore, your petitioner prays the Court that citation  
be issued to all parties in said estate as required by law;  
that said will be admitted to probate; that letters testamentary  
be issued to your petitioner as independent executor and that  
such other and further orders be made herein as to the Court may  
seem proper.

Is Coleman Galt  
Attorney for Petitioner \_\_\_\_\_

FILED: 1/10/54 IN THE COUNTY COURT OF TRAVIS COUNTY, TEXAS,  
S. TRUMAN PROBATE. IN THE MATTER OF THE ESTATE OF FRAUJIF  
LUDAY DECBASD. APPLICATION FOR PROBATE OF WILL FILED  
1954 MISS EUGENIE DEBERG COUNTY CLERK, TRAVIS COUNTY, TEXAS. BY  
L. BARNES DEPUTY.

--

"If, at the time of my death, the two sisters, Helen (nee Young) Miller and Bonnie (nee Young) Attkman, or either of them shall be at my disposal as nurse, as heretofore, each of which so qualifies as available nurse, or both, shall be given in cash One Thousand Dollars (\$1,000) as gift.

"April 30, 1952            / / Franklin Lindsay."

(There is written through this codicil in handwriting the following:)

"This codicil now is null and void, all else valid.

"/s/ Franklin Lindsay. (There is an illegible date written beneath the signature.)

-----



FRANKLIN LINDSAY,

Deceased.

ORDER PROPATING WILL AND GRANTING LETTERS TESTAMENTARY

On this the 17th day of May, A. D. 1951, came on to be heard the application of The Capital National Bank in Austin, national banking corporation for probate of the last will and testament of Franklin Lindsay, deceased, now produced in Court, and the evidence, a statement of which is filed in this cause, being heard and fully considered by the Court, and it appearing to the Court that citation thereon has been duly made as required by law, to which no objection has been made, and that said The Capital National Bank of Austin is named and appointed in said will as executor thereof and that it is not disqualified therefor; and it further appearing to the Court that said will directs that no other action shall be had in the County Court in the administration of said estate than to prove and record said will and to return an inventory and appraisement of said estate and list of claims, and it further appearing to the Court that Franklin Lindsay at the time of executing said will was of at least twenty-one years of age and was of sound mind, that he resided in Bexar County, Texas, on or about the 1st day of May, A. D. 1951, without having revoked said will, and that he executed said will with the formalities and solemnities and under

of Travis County, State of Texas, and that The Capital National Bank in Austin is accordingly qualified to act as executor under said will without giving bond as such, it is therefore

ORDERED, ADJUDGED and DECREED by the Court that the said local will and testament of said Franklin Lindsay, deceased, is hereby admitted to probate and recorded and the testimony shall be recorded in the minutes of this Court. It is further ORDERED by the Court that letters testamentary thereof be granted to said The Capital National Bank in Austin without bond upon its taking the required oath, and that no other action shall be had in this Court in the administration of said estate, except to return into this Court an inventory and appraisal of this estate and list of claims.

And it further appearing to the Court that B. C. Mollberg, W. Douglas Cooper Jr. and E. P. Cravens are citizens of Travis County, Texas, and disinterested persons in said estate, it is therefore ORDERED that they or any two of them be and they are hereby appointed to appraise the estate, both real and personal, of Franklin Lindsay, deceased.

L. E. Johnson  
County Judge

CLERK OF THE COUNTY COURTS OF TRAVIS COUNTY, TEXAS. BY A. Gillespie, DEPUTY.

THE STATE OF TEXAS

COUNTY OF TRAVIS

I, EMILIE LINDEBERG, Clerk of the County Courts of Travis County, Texas, do hereby certify that the following pages contain a true and correct copy of the following papers, to-wit:

- |                         |                  |
|-------------------------|------------------|
| 1. Application          | Vol. 172 Page 14 |
| 2. Will                 | Vol. 172 Page 15 |
| 3. Order Probating Will | Vol. 172 Page 22 |

in Cause No. 16,470, ESTATE OF FRANK, LIKDSAY, p. En'd \_\_\_\_\_  
as the same appear on file in my office and of record (book and page as shown above) PROBATE Minutes of the County Court of Travis County, Texas.

WITNESS my hand and seal of office on this the 20 day of July, A. D. 1954.

EMILIE LINDEBERG  
Clerk, County Courts,  
Travis County, Texas,

By /s/ A. Gillespie  
Deputy

(SEAL.)

The Court, having considered the plea that the jurisdiction filed herein by the defendants and the briefs of the parties thereon, concludes that this Court has no jurisdiction of this cause of action.

IT IS THEREFORE, ORDERED that defendants' motion to dismiss this cause for want of jurisdiction be sustained, and this cause is hereby dismissed.

Done at San Antonio, Texas, this 23rd day of September, A. D. 1955.

/s/ Ben H. Rice, Tr.  
United States District Judge

Entered: Civil Order Book, Vol. 4, page 57

Notice is hereby given that Virginia L. Looney, et al.,  
and Emma L. b...r, plaintiffs above named, hereby appeal "J the  
Court of Appeals for the Fifth Circuit from the order dismissing  
plaintiffs' cause of action for lack of jurisdiction entered  
in this action on the 23rd day of September, 1955.

*Is/* Julian C. Clopton  
JULIAN C. CLOPTON  
1009 Porry-Brooks Building  
Austin 1, Texas

*Inl* C. C. Wallace  
CREEK, E. WALLACE  
P. O. Box 207  
Pryor, Oklahoma

*Thomas A. Wallace*  
THOMAS A. WALLACE  
310 Pyhlan Building  
Tulsa, Oklahoma

ATTORNEYS FOR PLAINTIFFS.

The Point on which appellants intend to rely on this appeal is as follows:

The Court erred in dismissing this cause for want of jurisdiction.

/s/ Julian C. Clopton  
JULIAN C. CLOPTON  
1009 Perry-Brook Building  
Austin 1, Texas

~~/s/ Creel (no reference)~~  
CREEK WELLS WALLACE  
P. O. Box 297  
Pryor, Oklahoma

by Thomas A. Wallace  
THOMAS A. WALLACE  
310 Pythian Building  
Tulsa, Oklahoma

ATTORNEYS FOR PLAINTIFFS.



Appellant designates the following portions of the record, proceedings, and stipulation to be contained in the record on appeal in this action:

- (1) Plaintiffs' amended complaint.
- (2) Original answer of defendants, The Capital Federal Bank in Austin, Texas; Edgar H. Perry, Sr., Goleman Guy, Virgil P. Patterson, and B. Paddock, Emmett T. Sweeney, Camille L. Sweeney, Pauline M. Stephens, Gladys A. Greig, Claude J. Senrs, and Georgianna Cars.
- (3) Amended Answer of the defendant, Attorney General of the State of Texas.
- (4) Motion to dismiss for lack of jurisdiction of defendants, Mrs. C. Anthony, Maude R. Cashin and William E. Paddock.
- (5) Transcript of stipulation in open court that original answer of defendants to be refiled and considered as answer to plaintiffs' amended complaint.
- (6) Stipulation of fact.
- (7) Order sustaining defendants' motion to dismiss.
- (8) Notice of appeal.
- (9) Statement of points on which appellant intends to rely.
- (10) This designation.

/s/ Julian C. Clopton  
JULIAN C. CLOPTON  
1009 Perry-Brooks Building  
Austin 1, Texas

I, MAXEY HART, Clerk of the United States District Court in and for the Western District of Texas, do hereby certify that the foregoing on 67 pages is a true and correct transcript of proceedings had and orders entered, as herein stated, in Cause No. 785 Civil Action, styled Virginia L. Looney, et al, Plaintiffs, vs. Capital National Bank of Austin, Texas, et al, Defendant, as the same appear on file and of record in this office, except that the titles of certain documents and endorsements thereon except dates of filing have been omitted.

I further certify that said transcript of record embraces only such pleadings, process and orders as are specified in the Designation of Contents of Record on Appeal filed here by the Appellants.

WITNESS my official signature and the seal of said District Court, at office in the city of San Antonio, Texas, this the 3rd day of November, 1955.

MAXEY HART, Clerk of said Court

By

Joe E. Steiner, Deputy -



**Appendix F.2**  
**Stipulation, December 22, 1954**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
WESTERN DISTRICT OF TEXAS, AT AUSTIN

Virginia L. Looney, et al,

Plaintiffs,

v.

Capital National Bank of Austin, Texas, et al.,

Defendants

No. 785

Civil Action

STIPULATION

TO SAID HONORABLE COURT:

It is hereby stipulated by and between the plaintiffs and John Ben Shepperd, Attorney General of Texas, one of the defendants herein, that said defendant may file the amended answer attached hereto, and service of a copy thereof is hereby accepted.

  
JULIAN C. GEPPERT  
ATTORNEY FOR PLAINTIFFS

JOHN BEN SHEPPERD  
Attorney General of Texas

W. V. GEPPERT  
Assistant Attorney General

*J. G. L.*

*L. L.*

I L E LEE  
Assistant Attorney General

December 22, 1954

  
I L E LEE  
Assistant Attorney General

**Appendix F.3**  
**Original Complaint, March 1955**

Recd. 5-23-55  
J.S.

No. 785-Civil

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS**

VIRGINIA L. LOONEY, ET VIR, and EMMA L. BAKER,  
*Plaintiffs,*

V E R S U S

CAPITAL NATIONAL BANK OF AUSTIN, TEXAS, a national  
banking corporation, EDGAR H. PERRY, SR., COLEMAN M. GAY,  
MARC ANTHONY, VIRGIL P. PATTERSON, MAUDE R. CASHIN,  
D'ARCY M. CASHIN, EMMETT J. SWEENEY, CAMILLE L. SWEENEY,  
PAULINE F. STEPHENS, GLADYS A. GREGG, WILLIAM B. PADDOCK,  
CLAUDE W. SEARS, GEORGIANNA SEARS, and HONORABLE JOHN BEN  
SHEPPERD, Attorney General of Texas,  
*Defendants.*

**TRIAL BRIEF OF PLAINTIFFS**

JULIAN C. CLOPTON,  
1009 Perry-Brooks Building,  
Austin, Texas;

CREEKMORE WALLACE,  
P. O. Box 297,  
Pryor, Oklahoma;

THOMAS A. WALLACE,  
310 Pythian Building,  
Tulsa 3, Oklahoma.

*Attorney for Plaintiffs,  
Virginia L. Looney and  
Emma L. Baker.*

May, 1955.

UTTMERACK TYN-1" TONN Co., 13 SO. WALKER, OKLAHOMA CITY, PH. PO 9-4190

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No. 785-Civil

In the United States District Court for the  
Western District of Texas

VIRGINIA L. LOONEY, ET VM, and EMMA L. BAKKILL,  
Plaintiffs,

V

CAPITAL NATIONAL BANK OF AUSTIN, TEXAS, a national  
banking corporation, EDGAR H. PERRY, SR., COLLEMAN GAY,  
MARC ANTOIN, VIRGIL P. PATTERSON, MAUD S. PADDOCK,  
MAUDE R. CASHIN, D'ARCY M. CASHIN, EMMETT T.  
SWIENY, CURTIS L. SWEENEY, PAULINE F. STEPHENS,  
GLADYS A. GIBSON, WILLIAM B. PADDOCK, COUNCIL W.  
SUNN, GEORGEAINE SUNN, and HONORABLE JOHN PER  
SHEPHERD, Attorney General of Texas,  
Defendants.

**TABLE OF PLAINTIFFS**

**STATEMENT OF THE CASE**

Jurisdiction in this case is founded on diversity of  
citizenship, and the matter in controversy exceeds, ex-  
clusive of interest and costs, the sum of \$3,000.00.

This is an action for declaratory judgment under the  
provisions of 28 U.S.C., Sec. 2201, 62 Stat. 964, amended  
May 24, 1949, 63 Stat. 105.



The plaintiff seeks a declaratory judgment, praying that the testamentary trust which Franklin Lindsay, deceased, attempted to create be held invalid, and that plaintiffs be declared to be entitled to the proceeds of the estate of the testator as the next of kin and sole heirs at law of the decedent.

Franklin Lindsay died testate on May 1, 1954, in San Antonio, Texas. He had no domicile or fixed place of residence in the State of Texas, at the time of his death. However, his principal property and business interests were situated in the County of Travis, State of Texas. His last will and testament of testator W. U. was duly offered for probate in the County Court of Travis County, Texas, on May 5, 1954, and was admitted to probate on May 17, 1954. The Capital National Bank of Austin, Texas, a national banking corporation, was granted letters testamentary and qualified as independent executor of the will of the deceased.

The plaintiffs, Virginia L. Looney and Emma L. Baker, are the sisters and sole heirs at law of Franklin Lindsay, deceased. Plaintiff Virginia L. Looney is joined herein by her husband, C. M. Looney. Plaintiff Virginia L. Looney is a resident and citizen of the State of Oklahoma. Plaintiff Emma L. Baker is a resident and citizen of the State of Florida.

The defendants, Capital National Bank of Austin, Texas, a national banking corporation, Edgar H. Perry, Sr., Cecil All Gay, Marc Anthony, Virgil P. Patterson, Claude S. Paddock, Maude R. Cashin, D'Arcy M. Cashin, Ernest T. Sweeney, Camille L. Sweeney, Pauline F. Stephens,

Gladys A. Gregg, William B. Paddock, Claude W. Sears, and Georgianna Sears, are sued herein both as trustees *quod* and as members of the committee to pass upon application of described testament for JOMMS, according to the will of Franklin Lindsay, deceased. The Attorney General of the State of Texas, the Honorable John Ben Sheppard, is a proper party and is made a defendant.

After directing payment of his debts and funeral expenses and making several individual bequests, testator set forth in paragraph 3 of his will as follows:

"I hereby give, devise and bequeath unto The Capital National Bank in Austin, Texas, all the balance of the property of which I die seized and possessed, of every character whatsoever, real, personal and mixed and wherever situated, in trust, for the following uses and purposes and upon the conditions hereinafter set out:

"In case the Capital National Bank shall lose or surrender its corporate charter or its trust powers or shall merge with another institution or discontinue its functions for any reason whatsoever, its successor, as trustee, shall be selected by the committee hereinafter described, as then constituted, from among the financial institutions in Austin, having trust powers.

"I expressly direct that no securities nor properties shall be purchased for the trust estate from the Trustee, either directly or indirectly, nor shall any property be purchased for the trust estate which has at any time been owned or held in trust by said trustee.

"All provisions in this will relating to the Trustee, shall likewise apply to any successor trustee."

In paragraph 5 of the will testator provided:

From the income from the estate are to be paid quarterly or at three-month intervals, as far as practicable, the following sums, to be net in amount, any necessary taxes, if any, to be paid by the estate:

"To my Sister, Emma L. Baker, present address Miami, Florida, and to my other Sister, Virginia L. Loomis, residing at 628 N. W. 8 Street, Oklahoma City, Oklahoma, annually during their lifetime the sum of Six Hundred Dollars (\$600.00) each, which sums are to be increased to each upon the death of their present husband, to Twelve Hundred Dollars (\$1,200.00).

With other incomes which have been provided for them, the above amounts are considered sufficient for their comfort."

In paragraph 6 of the will it is provided that:

"After the death of their father, each of the then living children of my Sister Virginia, is to be given the sum of Twenty Thousand Dollars (\$20,000.00) in cash, or preferably the equivalent value in securities from the State and, after the death of his father, the son of my other sister, Beverly H. Baker, Jr., is to be given the sum of One Thousand Dollars (\$1,000.00) in cash.

"These amounts to be net, any necessary taxes, if any, to be paid by the estate and are not made greater as I believe that making life too easy tends to destroy incentive and the satisfaction of results from one's own efforts."

In paragraph 7 of the will it is provided:

"Believing that the greatest good can be done to the country and even to the world by education of its peoples, subject to other provisions of this will, the properties of the estate are to be held in trust by The Capital National Bank in Austin, Texas, as a fund for the assistance of worthy and deserving white students of either sex who may be desirous, but financially unable of obtaining college educations in any of the Texas State institutions, such as the University of Texas, Agricultural & Mechanical College, etc., in which negroes or those having any negro blood shall not be entered.

"If the Texas State institutions cannot so qualify, then those which can meet the requirements, such as Rice Institute, Texas Christian University, Southern Methodist University or other such colleges or universities in Texas shall be substituted. Applying students, of course, must be able to meet the requirements for entrance to the universities or colleges.

"This fund to be known as the Franklin Lindsay Students Aid Fund."

In paragraph 8 of the will it is provided:

"Loans from the income of the above mentioned trust fund are to be made to deserving students once yearly, before the beginning of the college term or year, in amount considered necessary, with economy, for such term by members of the committee defined below. As soon as practicable, without causing undue hardship to the borrower, such loans are to be repaid and, when possible, with a fair rate of interest, in order that the fund may be continued available for others.



"These loans are to become available as soon as practicable after the gift, from the income of the estate, to members of the committee mentioned below.

"Income" shall be construed to mean all revenues from the trust estate, together with proceeds or repaid loans, whereas capital gains and losses shall affect only the principal or corpus of the fund.

"From such income I direct that there shall be paid, as soon as practicable, as a gift, the sum of Twenty Five Hundred Dollars (\$2,500.00) to each of the original committee hereinafter named. In instances in which a husband and wife are mentioned, they shall be considered as one and but one of \$2,500.00 is to be made to the two or the survivor."

In paragraph 9 of the will it is provided:

"The first committee to pass upon the applications for such loans by the described students and to approve them is to be composed as follows:

- |                                |                    |
|--------------------------------|--------------------|
| F. Edgar H. Perry, Sr.         | Austin, Texas      |
| Coleman G. Dy                  | Austin, Texas      |
| Marc Anthony                   | Dallas, Texas      |
| Virgil P. Patterson            | Amarillo, Texas    |
| Maud S. Paddock                | Houston, Texas     |
| Maudie R. Cahin or his wife    |                    |
| D'Arcy J. Cashin               | Houston, Texas     |
| Emmett T. Sweeney or his wife, |                    |
| Camille L. Sweeney             | San Antonio, Texas |
| Pauline E. Stephens            | Waco, Texas        |
| Gladys A. Gregg                | Waco, Texas        |
| Wm. B. Paddock                 | Odessa, Texas      |
| Claude W. Sears or his wife,   |                    |
| Georgianna                     | Houston, Texas     |

As the domiciles of the various members of the committee are so widely scattered, I suggest that recommendation of any one or more of the members be considered as approval of the committee for a loan, especially of the first one to an applicant; the second or later applications by a student may be considered in the light of the record, results and progress made by the student. I have no further suggestions to offer to the committee, who shall have full discretion in approving or disapproving loans, other than that in my opinion there are sufficient numbers of lawyers and preachers and probably enough physicians and that more of other professions and trades will, on the whole, be more helpful.

"The Trustee shall keep the Chairman of the committee informed as to the estimated amount available for such loans for each next succeeding college full term so that the members of the committee may be advised as to how many loans may be made for such term. In case more loans should be approved than can be made from available income for this purpose, the first number of the approved applications whose total shall equal the estimated amount available, to reach the Trustee, shall be accepted by the said Trustee."

In paragraph 10 of the will it is provided:

"The recommendations, as outlined above, of members of the committee, however formed, for the loans are to be recognized by the Bank, as Trustee, the amount so approved paid from time to time during the college term, at the discretion of the Trustee, to students whose applications have been so approved, their notes including a fair rate of interest, taken and efforts made to maintain such notes in legal standing and to collect same when practicable, for further maintenance of the fund."

in paragraph 11 or the will it is provided:

"After a trial of ten years, if the plan as above described, shall be found to prove unsuccessful; that is, if students shall not apply for loans to utilize the income of the trust or if the results shall prove to be unsatisfactory to the committee, as then constituted, such committee shall be empowered in its discretion to use the income and any portion of the corpus of the trust fund which may be considered necessary, for other purposes for the furtherance and increase of education; such as buildings, halls, hospitals, etc., preferably in connection with Texas State institutions, which meet the requirement. My feeling toward negroes being that there should not be co-education with other students."

Thus it seems that the following are the conditions of the will, or general plan thereof:

The testator first makes specific bequests. Then he gives the rest of his estate to The Capital National Bank of Austin, Texas, in trust for certain uses and benefits. Part of the trust income is to be given to his sisters, plaintiffs herein. Another portion is to be given to the children of the sisters.

Next, the provision is made that the income from the trust is to be loaned out at intervals, to students who have the following requirements:

"... Worthy and deserving white students of either sex who may be desirous, but financially unable, of obtaining college education at any of the Texas State institutions, such as University of Texas, Agricultural and Mechanical College, etc., in which negroes or those having any negro blood shall not be entered.

"If the Texas State Institutions cannot so qualify, then those which can meet the requirements, such as Rice Institute, Texas Christian University, Southern Methodist University, or other such colleges or universities in Texas shall be substituted. Applying students, of course, must be able to meet the requirements for entrance to the universities or colleges" (Paragraph 8).

The students are selected by a committee whose members were nominated in the will. Upon the death or refusal of any member of the committee to serve, the remaining members are asked to elect other members, keeping a minimum of nine members on the committee (Paragraph 9).

The committee after a trial period of ten years may in its discretion use the income and corpus of the trust for other purposes for the furtherance and increase of education (Paragraph 11).

The Capital National Bank of Austin, Texas, named Trustee in the will, has no discretion as to whom the income and corpus of the trust shall be paid. The selection is left to the committee set up by testator.

Plaintiffs will show by a detailed analysis of the provisions of the will and the authorities applicable thereto that the trust provisions of the will are invalid and unenforceable, and therefore the testator died intestate as to that portion in the attempted trust.

Proposition I.

A trust which a testator attempts to create by will is void and unenforceable if the income and corpus of the trust may be used for private or mixed purposes.

The Capital National Bank of Austin, Texas, is the designated trustee of testator's residuary estate (Paragraph 3 of will). However, it does not exercise all of the functions of a trustee. A committee is set up by paragraph 9 of the will to select the objects of the trust. The trustee pays the income or corpus of the trust to these objects selected by the committee. Thus, the committee is performing part of the functions of a trustee, although limited by none of the usual safeguards thrown about trustees. We question the legality of this division of the trust functions between a trustee and other persons elsewhere in this brief. Nevertheless, throughout the discussion of this proposition we treat the activities of the committee authorized by the will which fall within the scope of the traditional powers of a trustee as being sanctioned by law without conceding the propriety of the plan.

The trust which testator attempts to create provides for a fund for loans to certain students (Paragraph 7 of will). Then it authorizes the use of the corpus and income of the trust as follows (Paragraph 11):

"After a trial of five years, if the plan as above described shall be found to prove unsuccessful, that is, if students shall not apply for loans to utilize the income of the trust or if the results shall prove to be unsatisfactory to the committee, as then constituted, such committee shall be empowered in its discretion to use the income and any portion of the corpus of

the trust fund which may be considered necessary, for other purposes or the furtherance and increase of education; such as buildings, halls, hospitals, etc., preferably in connection with Texas state institutions, which meet the requirements. My feeling toward negroes being that there should not be co-education with other students."

It is with this latter provision with which we are concerned in this first proposition.

All of the trust provisions in testator's will create a trust in perpetuity. Perpetuities are forbidden by the Constitution of the State of Texas, Article 1 Section 16. Therein it is provided:

"Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State."

Public charitable trusts are an exception to this rule. *POINDEXER v. First National Bank of Comstock*, 138 Tex. 00., 161 S.W.2d 273 (1940). However, the trust must be created for public charities exclusively. *Allred v. Beggs*, 125 Tex. 584, 84 S.W.2d 223 (1935); cf. *Boyd v. Frost National Bank*, 145 Tex. 206, 106 S.W.2d 497, 168 A.L.R. 1328 (1946).

The plaintiffs contend and will demonstrate conclusively that the trust which testator attempted to create is a non-charitable or "mixed" trust. Paragraph 11 of the will would permit the committee to give income or corpus to the institutions or organizations which are operated for



a profit. This brings the trust under the ban of the Constitution or the State of Texas.

In *Allred v. Beggs*, 15 Tex. 584, 84 SW 2d 223 (1935), the testator left property in trust to be given to charities and worthy objects as the executor and the sister of testator might determine. The Attorney General brought suit for an injunction and accounting. The question presented by the case was whether or not the will created a public charitable trust. If it did, then the Attorney General would have standing to enforce the trust. If not, then the executor could not be held accountable by the Attorney General. The Supreme Court of Texas held that the trust was personal to the executor. It was stated in the Court's opinion (at page 228 of 84 SW 2d):

"A further reading of this will discloses that while it authorizes the executor to use this estate for charity, it just as plainly authorizes it to be used for worthy objects other than for charity, at the personal discretion of the executor. In this respect it is evident that the will creates a purely personal trust in the executor. This was done by providing in plain and certain language that he should decide and select the charities and worthy objects to benefit by this estate. Such a trust cannot be transferred to another, or be exercised by a court of equity. The petition in the district court seeks to have that court take charge of this estate and select and decide the charities and worthy objects to benefit thereby. Such a procedure would be to substitute the will of the court for the will of the testator. The laws of this state will not permit such a procedure."

In paragraph 11 of the will the objects of the trust are left in the absolute discretion of the committee. This trust has as its objects Institutions which can be non-charitable as well as charitable in that educational institutions and hospitals can be profit-making.

By the proviso of paragraph 11, quoted above, the committee is given a blank check to pay money over to any institutions which it sees fit in its absolute discretion after a period of ten years so long as such institutions are for the purpose of the furtherance and increase of education. It is a commonplace that there are many institutions in the State of Texas, whose purpose is the furtherance and increase of education, which are operated for a profit. And although there is a preference stated for Texas state institutions, the uses to which the income and corpus of the fund may be put can lie outside the State of Texas, or for that matter, outside the United States. The choice would lie with the committee as to what institutions would be favored, provided that such institutions do not admit Negroes.

Without misfeasance, the committee could finance schools of naturopathy (Revised Statutes of Texas, 1925, Art. 4590d, Sec. 9[c]), barber schools or colleges (Penal Code of Texas, Art. 734a, Sec. 9), schools of beauty culture (Penal Code, Art. 734b, Sec. 3[c]), optometry schools (Revised Statutes of Texas, 1925, Art. 254.2a, Sec. 9), schools of dentistry (Revised Statutes of Texas, 1925, Art. 254.2a, Sec. 9), embalming schools (Revised Statutes of Texas, 1925, Art. 4585A), veterinary schools (Revised Statutes of Texas, 1925, Art. 41a, Sec. 12[1]), and medical schools (Re-

vised Statutes of Texas, §25, Art. 4501). All of these schools are in contemplation of the laws of Texas. The committee has authority from the terms of paragraph 11 of the will to make any or all of such institutions the *certain que trust*. All of them could be run for a profit.

Moreover, the committee might contribute to profit-making research organizations in the fields of electronics, antibiotics, physics, or chemistry. These institutions can at the same time be foremost in promoting education and making profits.

In these circumstances, there would be no way in which the state could limit the application of funds to charitable purposes. The committee would be entirely free of supervision, since the Attorney General has no authority to oversee the activities of private trusts. *Alfred v. Bell*, 125 Tex. 384, 84 SW2d 223 (1935).

Since this trust is created in perpetuity and is not limited to charitable uses, it is invalid and unenforceable because prohibited by the Rule Against Perpetuities. In *Brooker v. Brooker*, 130 Tex. 27, 106 SW2d 247 (1937), it is stated (at page 26 of 106 SW2d):

"Our Constitution declares that perpetuities are contrary to the genius of a free government and shall never be allowed. This constitutional provision expresses one of the cardinal and basic principles of our system of government. It is not a mere rule of construction. It goes further than that and constitutes a peremptory command of constitutional law that must be relentlessly enforced. In spite of this, we think that where there is any ambiguity in the provisions of an instrument creating or transferring an interest or

estate in property, the court will incline to such construction as makes it consistent with the rule, under the doctrine that a construction should be favored which gives effect to intention rather than one which defeats it. But if the meaning is clear, it must be adopted even if the rule renders the gift so construed illegal, and a forced or unnatural construction will not be made in order to avoid the application of the rule." 48 C.J. 997 et seq. and notes."

The possibility of ambiguity suggested in the foregoing quotation is absent here. The will permits the committee to use the fund in its discretion for objects not necessarily charitable. Under such circumstances the trust is void and unenforceable. *Mortice v. Bishop of Durham*, 9 Ves. 399 (Rolls Ct. 1804), *aff'd*, 10 Ves. 521 (Ch. 1805).

As one eminent textwriter has stated:

"... In exercising such a power to fill in the details of the charitable gift, it is important for the trustee to find his authority in the terms of the settlor's written instrument. In every case the choices to be made must be certain to stay within the scope of purposes which are charitable. It does not suffice that the choices actually made do stay within the scope of purposes which are charitable, if the trustee might, consistently with the instrument's language, have strayed into non-charitable activities. ..."

-4 Powell on Real Property, Sec. 579, p. 487.

In American Law Institute, Restatement of the Law of Trusts, Vol. 2, Sec. 398(1), the following is stated as the prevailing rule:

the contrary, vests the trustees with the power to use the property in any manner which the trustees deem beneficial to the Town of Paonia or Paonia schools. Such devises are generally held to fail as charitable trusts because (1) they do not compel the trustees to use the property for a strictly charitable purpose; (2) the purpose of the trust is incapable of being determined, and the court cannot control the trustee's discretion; and (3) the beneficiaries are not sufficiently designated.

"It is essential that the trustees are compelled to devote the property to and only to a charitable use in order :for a devise to come within the meaning of 'charitable trusts.' See Zollman, Am. Law of Charities (1924), page 264; Tudor on Charities (5th Ed., 29 London 64). *In re Sutro's Estate*, 155 Cal. 727, 102 P. 920; 1 Restatement of the Law of Trusts, Sec. 123, pp. 306, 307; 2 Restatement of the Law of Trusts, Sec. 398, p. 1198; 3 Page on Wills 593; 10 Am. Jur., Charities, Sec. 100, pp. 655, 656.

• • • • •

"The trustees not being bound to devote the devise exclusively to a charitable purpose, the trust fails and the property goes to testatrix' heirs at law in conformity with and as set out in the judgment of the learned trial judge."

In the case of *In re Sutro's Estate*, 155 Cal. 723, 102 Pac. 920 (1909), the settlor made the following the purposes of the trust (at 102 Pac. 921):

"\* • • [T]he funds realized from such sales, shall be managed and applied by said board of trustees for such charities, institutions of learning and science and tor premiums to be set apart for distinguished scholarships and scientific discovery and inventions as shall be directed by my executors."



"The rule upon this subject was stated in the decision of this court in *Estate of Hinckley*, 58 Cal. 509, in these words: 'Where a bequest is made for charitable purposes, and also for purposes of an indefinite character, which are not charitable, the whole bequest will be void. If, for instance, a bequest is made for such charitable or other purposes as the trustees should think fit, the whole bequest will be void for uncertainty'-citing Tudor on Charitable Trusts, 223. This statement of the rule is well established by a long line of cases on the subject. In *Mason v. Perry*, 22 R. I. 475, 494, 48 Atl. 671, 678, the court says: '*It is well settled that, in order to create a valid charitable trust in perpetuity, the language employed must require the fund to be expended for charitable purposes only, and it must not be left in the discretion of the trustees to spend the money for a charitable or non-charitable purpose.* In other words, the devotion of the fund to charity must be clear and certain.' In the case of *In re Shattuck's Will*, 193 N. Y. 446, 86 N. E. 455, decided by the New York Court of Appeals, the provision was that the trust funds were to be 'paid over to religious, educational, or eleemosynary institutions' as the trustees should deem advisable. The court says: 'The word "educational" does not necessarily describe a public or charitable institution. \* \* \* An "institution" is an established or organized society or corporation. It may be private in its character, designed for profit to those composing the organization, or public and charitable in its purposes. An institution is a mere organism for the accomplishment of an object, and the existence of such organism cannot, in the nature of things, make such object definite. The use of the word "institution" does not point to a public, as distinguished from a private, organization, and there is nothing whatever in the will, except the words "religious," "educational," and "eleemosynary," that

tutions it wishes to receive benefits from the trust. There is no way in which the committee can be limited to the selection of public charitable institutions.

As a further instance of the intention of the testator, his will provides in part in paragraph 9:

"• • • I have no further suggestions to offer to the committee, who shall have full discretion in approving or disapproving loans, other than that in my opinion there are sufficient numbers of lawyers and preachers and probably enough physicians and that more of other professions and trades will, on the whole, be more helpful."

The education of students in the business or profession of accounting-to give one example-is in full compliance with the purposes of the will. The education of accountants is a necessary process in our society. The committee may give the income or corpus of the trust to a school of accountancy and may in all propriety designate such institutions as recipients of buildings.

The desire to further the education of accountants is altogether commendable. It is equally plain that there are many such institutions which are operated for a profit. Gifts of buildings to such institutions are gifts for non-charitable purposes. Since the terms of the trust permit such action on the part of the committee, it is a trust created in perpetuity. Such a trust is absolutely prohibited by the Constitution of the State of Texas.

There are numerous other institutions which have been set forth above which are engaged in the education of students in the practical arts. All of these institutions



was, "Does the will permit any of the income of said trust to be used for non-charitable purposes?" A written stipulation was entered into by the parties that in Los Angeles there were organizations of persons specializing for profit in the "aiding and betterment of crippled children"; and that there was also a non-profit crippled children's corporation in the City of Los Angeles. The Court held that the designated beneficiaries of the intended trust were not limited to charitable organizations. The defendants contended that the language should be construed to mean that each of the beneficiaries was "charitable." This contention was denied by the Court. The Court stated (at pages 680-681 of 32 P.2d):

"As executed, the effect of the paragraph of the will to which attention hereinbefore has been directed is that the trustee therein named is permitted to disburse a portion of the income of the trust property to uses that in legal contemplation either are or may be noncharitable. Especially as applied to a noncharitable corporation, that such a provision in a will defeats its intended purpose is attested by so many authorities that to cite them would amount to a certain superfluity. • • \*"

Moreover, that Court, in answering the argument of defendants that the provisions of the trust should receive favorable interpretation, stated (at page 680 of 32 P.2d):

"\* • • Manifestly, even-handed justice cannot be administered on the basis of partisanship, expressed or indicated, either in favor of, or in antagonism against, either of the parties to the litigation. Nor may the subject-matter in controversy in any manner affect

w my EXECUTOR. • • • in trust, however, to be invested in Bibles, to be distributed in home and foreign lands in such quantities and in such places as may to my said executors seem best."

In holding the trust invalid in that case, the Court stated (at page 978 of 4 P.2d):

"A distribution of the Bibles to private schools and libraries, conducted entirely for profit, would not be in furtherance of a charitable purpose. • • • The trustees, however, could limit the distribution to just such institutions, without a qualm of conscience occasioned by any limitation put upon their actions by the terms of the will. • • •"

In the recent case of *Goetz v. Old National Bank of Martinsburg* (W. Va.), 84 SE.2d 759 (1954), the testatrix left her residuary estate in trust for the use of religious, charitable, scientific, literary, educational, or fraternal corporations in the United States as the trustees might choose

proceed contrary to the expressed intent of testator. The trust must fail because the terms of the will do not limit the trustee or the committee to charitable objects. Testator attempted to create a trust which is forbidden by the Constitution of the State of Texas. Therefore, the trust is invalid and unenforceable.

Propoaition II.

A testamentary trust is invalid which has as its beneficiaries students who attend schools of higher education which do not admit Negroea, for failure of the objecta of the trust.

Paragraph 7 of the will is the one which defined the class of *cestuis que trust*. The specific provisions were as follows:

"Believing that the greatest good can be done to the country and even to the world by education of its peoples, subject to other provisions of this will, the properties of the estate are to be held in trust by The Capital National Bank in Austin, Texas, as a fund for the assistance of worthy and deserving white students of either sex who may be desirous, but financially unable, of obtaining college educations at any of the Texas State institutions, such as University of Texas, Agricultural and Mechanical College, etc., in which negroes or those having any negro blood shall not be entered.

"If the Texas state institutions cannot so qualify, then those which can meet the requirements, such as Rice Institute, Texas Christian University, Southern Methodist University or other such colleges or uni-

meet the requirements such as Rice Institute, Texas Christian University, or other such colleges or universities in Texas shall be substituted. Thus the objects of the trust must be desirous of obtaining an education at Texas state institutions in which Negroes or those having any Negro blood shall not be entered. The objects of the trust must in addition to all the other qualifications be able to attend schools in which those having Negro blood cannot be entered, whether state institutions, or private institutions. It is vital then that there be schools in Texas which can or will lawfully prohibit the admission of Negroes or those having any Negro blood. Otherwise, an essential element in the class of objects to take is missing and the intent of the testator is defeated. The trust then fails for lack of beneficiaries or *cestuis que trust*.

The plaintiff will demonstrate that there are no schools within the definition of the testator which can lawfully exclude Negroes or those having any Negro blood. Absent such a place for the attendance of students who otherwise qualify, there is a failure of the objects for which the trust was intended. Upon the failure of the trust, the remainder of the estate then goes to the next of kin and sole heirs at law of the testator, who in this case are your plaintiffs, Virginia L. Looney and Edna L. Baker.

In *Brown v. The Board of Education of Topeka*, 347 U.S. 483, 74 Sup. Ct. 686, 98 L. Ed. 583 (1954), the Supreme Court of the United States laid the ghost of *Plessy v. Ferguson*, 163 U.S. 537, 16 Sup. Ct. 1138, 41 L. Ed. 256. In *Brown v. The Board of Education of Topeka*, minors of the Negro race sought admission to the schools of Kansas, South Carolina, Virginia and Delaware on a non-segregated

taken together is that a state cannot prohibit the attendance of Negroes in schools which are state agencies.

The schools which testator mentions in his will in paragraph 7, and again referred to in passing in paragraph 11, are Texas state institutions. These schools are qualified by the statement by way of example of the "University of Texas, Agricultural and Mechanical College, etc." As to these schools it is no longer an open question as to whether or not they can deny admission to Negroes on a level of scholastic equality. The broad scope of the opinion of *Brown v. The Board of Education of Topeka, supra*, fully forecloses this argument. Moreover, it has been held that discrimination against Negroes in admission to a junior college wherein inequality would result, was a violation of the Fourteenth Amendment. *Wichita Falls Junior College Dist. v. Battie*, 204 F.2d 623 (C.A. 5th 1953) cert. den., 347 U.S. 974, 74 Sup. Ct. 783, 98 L. Fil.883.

The question further arises as to whether or not schools such as Rice Institute, Texas Christian University, Southern Methodist University or other such colleges or universities in Texas, listed alternatively by the testator may constitutionally prohibit Negroes from attending without violating the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. Plaintiffs assert that they cannot for the reason that these universities and colleges are limited state agencies enjoying certain tax benefits, and that their action in segregating or permitting Negroes to be discriminated against or causing them to be discriminated against is state action in violation of the equal protection clause of the Fourteenth



universities and colleges if they do so segregate and do so discriminate are acting in violation of the law.

If the courts of Texas should enforce the provisions of the will relating to the trust, then its action would be state action. In addition, any action on the part of the Attorney General of Texas to force compliance with the terms of the trust would likewise be state action. The efforts of these governmental units to validate or enforce the provisions of the testamentary trust would be state action prohibited by the Fourteenth Amendment to the Constitution of the United States. *Shelley v. Kraemer*, 334 U.S. 1, 68 Sup. Ct. 836, 3 A.L.R.2d 441 (1947).

The actions of denominational or private schools can be state action as well. The actions of such schools in discriminating against Negroes is also constitutionally prohibited. *Smith v. A Uright*, 321 U.S. 649, 64 Sup. Ct. 757, 88 L. Ed. 987 (1944); *Marsh v. Alabama*, 326 U.S. 501, 66 Sup. CL 276, 90 L. Ed. 265 (1946); *Kerr v. Enoch Pratt Free Library*, 149 F.2d 212 (C.C.A. 4th 1945); and see *HOU.Sing Authority v. Banks*, 120 Cal.App.2d 1, 260 P.2d 668 (1953), *cert. den.*, 347 U.S. 974, 74 Sup. Ct. 784, 98 L. Ed. 1114 (1954).

Plaintiffs do not have direct knowledge as to whether or not the colleges and universities which are directly supported by the taxes of the State of Texas do segregate or discriminate against Negroes or those having any Negro blood. However, for our purposes this point is immaterial. The question is rather whether or not these colleges or universities can segregate or can discriminate. The answer is clear under the pronouncements of the Supreme Court of

In summary, students cannot attend institutions of higher learning in the State of Texas which lawfully discriminate against Negroes, because Texas state institutions, as such, are prohibited from excluding Negroes and "private institutions" are likewise prohibited under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

#### Proposition III.

A trust is void which divides the functions of the trustee between a corporate trustee and private persons.

The trust as envisioned by testator has a bank as the trustee. The bank's function is to sequester the residuary estate insofar as the educational purposes of the attempted trust are concerned. It collects the profits and reinvests them (Paragraph 4 of will). It collects the notes given by students for their loans, assuming that there may be such persons, which we deny. It is under a duty to pay money to those whom the committee designates as beneficiaries (Paragraph 8 of will).

The members of the committee are asked to choose the qualified students or institutions as beneficiaries (Paragraphs 9 and 11 of will). They can select whomsoever they please without reference to any external authority. *Allred v. Beggs*, 125 Tex. 584, 84 S.W.2d 223 (1935).

The committee may go out of existence through failure to function. Or it may cease to exist without choosing successor committee members (Paragraph 9 of the will). The

available in the Constitution, Article 1, Section 26. The Court in this case should resort without hesitation to this powerful and effective remedy.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the Court should grant judgment for the plaintiffs and against the defendants as prayed.

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1009 Perry ding,

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C/ LACE,

P. O. Box 297,

/ji);? OJ!! hα/  
THOMAS A. WALLACE,

310 Pythian Building,  
Tulsa 3, Oklahoma,

Attorney for Plaintiffs,  
Virginia L. Looney and  
Emma L. Baker.

May, 1955.



No. 785 - Civil.

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In the United States District Court for the  
Western District of Texas.

---

VIRGINIA L. LOONEY, *ET AL.*, *Plaintiffs,*

*vs.*

THE CAPITAL NATIONAL BANK OF AUSTIN, TEXAS,  
*ET AL.*, *Defendants.*

---

REPLY BRIEF.

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JULIAN C. CLOPTON,  
Perry-Brooks Building,  
Austin 1, Texas,

CHEERMORE WALLACE,  
P. O. Box 297,  
Pryor, Oklahoma,

THOMAS A. WALLACE,  
310 Pythian Building,  
Tulsa 3, Oklahoma,  
*Attorneys for Plaintiffs.*

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IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS.

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**v.**

THE CAPITAL NATIONAL BANK OF AUSTIN, TEXAS,  
*ET AL.*, *Defendants*.

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R E P L Y   B R I E F .

In their Brief, defendants argue under General Considerations that the courts favor a construction which will uphold the validity of a charitable trust. That rule is applicable only in the event the language of the instrument creating the trust is ambiguous. Defendants attempt to find an ambiguity in the will of Franklin Lindsay which is not present, in order to obtain a resolution of ambiguity in their own favor. The testator spoke plainly in paragraph 11 of his will wherein he said :

"••• [S]uch committee shall be empowered in its discretion to use the income and any portion of the corpus of the trust fund which may be considered necessary, for other purposes for the furtherance and increase of education; such as buildings, halls, hospitals, etc., preferably in connection with Texas State institutions, which meet the requirements. My feeling toward negroes being that there should not be co-education with other students."

Plaintiff believe that the following text will be more helpful to the Court: (a) The committee members give the income or corpus of the trust to charitable institutions operated for profit, and the Attorney General or courts act to penalize them for such action or litigation to compel them to devote the funds to charitable institutions. Plaintiff asserts that neither of these positions is available.

A detailed analysis of the case or *Atwood v. Begg*, 125 Tex. 384, 8 S. W. 2d 113 (1933), is binding on this court here. In that case, a testator left his property for "such charitable and worthy objects" and the executor and defendant's sister should determine. The Attorney General of Texas brought an injunction against the executor alleging a departure from the terms of the will. The question at issue was whether or not the Attorney General could maintain a suit against the executor of a will in these circumstances. The court held that in such circumstances the funds are for a worthy object that the will was not public but private to the executor, and therefore the Attorney General had no interest which would give him standing in the suit. The court stated (at page 22 of 51 S.W. 2d):

"When a fund or property is so given that it may or may not be used for charity, or may or may not be used for a charitable object of a public character, without violating the directions of the will, the case is one for enforcing the gift to a charity in a suit by the Attorney General . . ."

Thus it may be seen that the members of the committee could not be compelled to devote the resources of the trust

to charitable institutions. If an attempt were made by the Attorney General to bring suit to force them to limit the use of the funds to charitable institutions, it would fail, under the authority of the *Atwood* case, supra. Under the same authority, the committee members could not be held accountable for devoting the funds to other than charitable institutions because they would not be violating the directions of paragraph 11 of the Will. Moreover, the members of the committee are not trustees, and not accountable as trustees.

*Prill v. First National Bank of Corlieo*, 38 Tex. 604, 161 S. W. 2d 273 (1942), and *Boyd v. First National Bank*, 31 Tex. 206, 196 S. W. 2d 497, 35 A. L. R. 126 (1946), relied on so strongly by defendants do not overrule *Atwood v. Begg*, supra. They distinguish that case, and are in turn themselves distinguishable from the case at bar.

In the *POWER* case, supra, the testatrix gave to "worthy objects of charity." She further explained the objects of the charitable trust as: (1) Relief of poverty; (2) aid of orphans; (3) support of the Christian religion; and (4) aid to students. The court properly held there that all of the objects were charitable. The distinction between that case and the case at bar lies in the fact that all of the purposes there were qualified by the charitable designation and limitation. There is no such limitation in the entire will of Franklin Lindsay.

In the *Boyd* case, supra, the testatrix gave to charitable association or associations which the trustee in its absolute discretion might fix. She further stated that the trust was for "charitable purposes in perpetuity." Those attacking the trust in that case took the untenable position that a char-



ity could be public or private, and that a private charity would violate the Rule Against Perpetuities. In the case at bar, the plaintiff's position is that educational purposes can be charitable or non-charitable. The committee may devote the trust to charitable purposes, non-charitable purposes, and both charitable and non-charitable purposes. Any limitation of the power of the committee in the will would be contrary to the express provisions of the will and would be invalid as to the will of the testator.

The rule argued for by the defendant as to the Rule Against Perpetuities is that when one construction will make the trust valid and another will make it invalid the courts will apply the construction making it valid if applicable only where there is a serious question of construction. The distinction is illustrated in *Kelly v. Kelly*, 268 S. W. 2d 903, 900 (Sup. Ct. 1954):

... "It is one thing to say that if the instrument creates any possible contingency which would violate the rule against perpetuities, the instrument is void ab initio and must be held void. It is quite another thing to say that if by any possible construction the instrument creates some possible contingency in violation of the rule the instrument must be held void."

Paragraph 11 of the Lindsay will is clear in its meaning and there is no possible construction. Therefore the trust is wholly or not at all void because of the contingency which would violate the Rule Against Perpetuities. The will does not create the possible contingency that the committee will make a gift or the funds to a school or other institution which is operated for a profit. Therefore the instrument is valid.

*Brook v. Brook*, 80 Tex. 21, 16 S. W. 2d 247 (1937), remains as the most authoritative statement on the Rule Against Perpetuities:

"According to our authorities, and also according to the authorities generally, the rule against perpetuities as contained in the above constitutional provision, is that no interest within it is good unless it must vest, if at all, not later than twenty-one years after some life in being at the time of the creation of the interest, and in some instances the period of gestation will be added. *Clarke v. Clarke*, 121 Tex. 165, 16 S. W. 2d 658; *Neely v. Brogden*, (Tex. Com. App.) 239 S. W. 192, 193. In this connection, it is the settled law that 'if by any possible construction a devise violates the rule, it cannot stand, and must be held void.' *Neely v. Brogden*, *supra*."

"Ruling Case Law, Vol. 21, p. 287, par. 9 gives the following definition of perpetuities, which is very cogent here: '... Another definition is that a perpetuity is a limitation which takes property out of trade and commerce for a longer period of time than a life or lives in being and twenty-one years thereafter, and when necessary the period of gestation.' ..." (At page 254 of 16 S. W. 2d.)

The application of the test in the *Brook* case, *supra*, yields the result of the invalidity of the Lindsay will trust provisions of paragraph 11, so that the trust cannot stand, it being a violation of the Rule Against Perpetuities.

REPLY TO DEFENDANTS' FIRST COUNTER PROPOSITION.

Under the will of Franklin Lillard the committee is authorized to devote any portion of the trust funds to a school of schools opted for profit.

We reiterate here without going forth in detail the arguments made above on the basis of *Alford v. Regga*, 125 Tex. 551, 84 S. W. 2d 13 (1935).

Plaintiff do not ignore the rest of the will of Franklin Lillard except paragraph 11 intended by defendant. In fact, it is clear that the power given under paragraph 11 cannot be limited by reference to another part of the will.

Considerable part of paragraph 11, the reference to "Texas State institutions, which meet the requirements" no doubt refers to paragraph 7. However, even were the committee not limited. The testator stated a preference only, and not a limitation, will have said "preferably in connection with Texas State institutions." (Italics added.) The committee is thus in no way limited in the exercise of its broad discretion.

To indicate further the broad discretion conferred upon the committee, the following portion of paragraph 9 should be read in conjunction with paragraph 11, wherein it is stated -

"... I have no further dispositions to offer to the committee, who shall have full discretion in approving or disapproving loans, other than that in my opinion there are sufficient number of lawyers and preachers and probably enough physicians and that more of other professions and trades will, on the whole, be more helpful"

Including the learned professions, the testator by intention give preference to the trade schools, many of which are operated for profit. Schools of business are probably the most common of the trade schools, and they are often privately owned and operated for a profit.

The cases which the defendant cite in their brief from other jurisdictions of the type represented by *Boyd v. Frost*, *Samuel JJ. Co.*, 141 Tex. 206, 196 S. W. 2d 497, 168 A. L. R. 226 (1946). They are cases in which a charitable trust is established with the choice to be made by the trustees. The distinction applicable in the *Boyd* case, and not applicable to these cases. The charitable limitation is applied to the discretion of the trustee or trustee in their choice of objects by the creating instrument. Here that limitation is lacking.

REPLY TO DEFENDANTS' SECOND COUNTER PROPOSITION

The will provisions of paragraph 7 cannot be made effective without violation of the intent of the testator.

In reply to defendant's argument about term "shall not be entitled" it should be noted that the words "shall not" are imperative in their force. Thus, a loan made to a student attending a school in which Negroes are permitted to enter would be a violation of the terms of the will. It is not so much a matter of grammatical construction as it is of fact. If Negroes are permitted to enter schools, then they will enter. They are permitted to enter unless prohibited. They can no longer be prohibited from entering schools under the latest Supreme Court decisions. There-

fore, it is impossible for the provisions of the will of Franklin Lindley, deceased, to be carried into effect without violating the expressed intent of the testator. The expressed intent of the testator is further amplified by the statement in paragraph 11 of the will in which he states:

"My feeling toward negroes being that there should not be co-education with other races."

If the doctrine of cy pres is available to Texas courts it is not applicable in this case. The doctrine of cy pres is not clearly established in Texas. Cf. *J. McNeil v. Litchell*, 27 Tex. 173 with *Swan v. Steffen*, (Civ. App.) 234 S.W. 2d 917 (1950, writ ref. N.R.). The distinction seems to be that granted a valid charitable trust, there is a latitude in working out the administrative details.

However, in the present case there is no valid charitable trust established because of the possibility that the funds may be used for non-charitable purposes without a violation of the terms of the will. Moreover, the wishes of the testator cannot be approximated in the event there are no schools which Negroes can attend. If funds are made available to students for tuition to attend schools in which Negroes are entered, the trust is violated. Similarly, if gifts are made to those same schools, then the intent of the testator is violated. There is no way that his bequest can stand without violating his intent that there should not be co-education of the races.

*Conclusion.*

For the reasons stated, it is respectfully submitted that the testamentary trust which Franklin Lindley attempted to create should be **held null and void.**

J. C. O. OPTON,  
Perry-Brook Building,  
Austin, Texas  
Atty. Gen. C. U. ...  
P. O. Box 297,  
For ...  
TULSA, W. J. ...  
310 Pythian Building,  
Tulsa 3, Oklahoma.  
Attorney for Plaintiff.

**Appendix F.4**  
**Amended complaint prior to March 16, 1955**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

VIRGINIA L. LOONEY, ET VIR, and  
EMMA L. BAKER,

PLAINTIFFS,

VS.

CAPITAL NATIONAL BANK OF AUSTIN, TEXAS,  
A NATIONAL BANKING CORPORATION,  
EDGAR H. PIURY, SR.,

COLEMAN GAY,

MARC ANTHONY,

VIRGIL P. PATTERSON,

MAUD S. PADDOCK,

MAUDER CASHIN,

D'ARCY M. CASHIN,

EMMETT T. SWEENEY,

CAMILLE L. SWEENEY,

PAULINE F. STEPHENS,

GLADYS A. GREGO,

WILLIAM B. PADDOCK,

CLAUDE W. SEARS,

GEORGIANNA SEARS, and

HONORABLE JOHN BEH SHEPPERD,  
ATTORNEY GENERAL OF TEXAS,

DEFENDANTS.

NO. 785

CIVIL

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT  
CONSTRUING WILL

Plaintiffs respectfully represent and show to the  
court as follows:

**I.**

Plaintiff Virginia L. Looney, joined herein pro  
forma by her husband, C. M. Looney, is a resident of the County of Tarrant, State of Texas.



of the State of Oklahoma. Plaintiff Emma L. Baker is a resident and citizen of the State of Florida.

The defendants Capital National Bank of Austin, Texas, a national banking corporation; Edgar H. Perry, Jr., Colellan & Co., Maro AntboJJV, Virgil P. Patterson, MIIWI S. Paddock, R. Cashin, D'Arcy M. Cashin, Ellinett T. Sweeney, Camille L. Sweeney, Pauline F. Stephens, Oladya A. Megg, William B. Paddock, Claude W. Sears, and Georgianna Sears are residents of the State of Texas. The Attorney General of the State of Texas, the Honorable John Ben Shepperd, resides in the City of Austin, Travis County, Texas, and is a proper party.

That jurisdiction is founded on diversity of citizenship, and the matter in controversy exceeds, exclusive of interest and costs the sum of \$3,000.00.

#### I.

This action is prosecuted under the provisions of 28 USC Section 2201, 62 Stat. 964, amended May 24, 1949, 63 Stat. 105.

#### III.

Plaintiffs named are the sisters of Franklin Lindsay, deceased, and, are the sole heirs at law of Franklin Lindsay, deceased.

#### IV.

Franklin Lindsay died testate on or about July 1, 1964, in the City of San Antonio, Bexar County, Texas; the deceased had no domicile or fixed place or residence in the State of Texas, at the time of his death; however, his principal property and business interests are situated in the County of Travis, State of Texas. A copy of the last will and testament of the deceased is attached hereto, marked Exhibit "A", and made a part hereof.

#### V.

The last will and testament was duly admitted to probate in the County Court of Travis County, Texas, on May 5, 1964,

and was admitted to probate on May 17, 1954. The Capital National Bank of Austin, Texas, a national banking corporation, was granted letters testamentary and qualified as independent executor of the will of the deceased.

VI.

Defendant Capital National Bank of Austin, Texas, is sued herein as independent executor of the purported will of Franklin Lindsay, deceased, and as trustee of the residuary estate of Franklin Lindsay, deceased. Defendants Edgar H. Peeler, Sr. Cbleman, Oay, Maro Anthony, Vgil P. Patterson, Maude M. J. de R. Cashin, D. Attoy Cashin, Emmett T. Sweeney, Camille L. Sweeney, J. Paul Stephana, Gladys A. Gregg, William B. Saddock, Claude W. Seara, and Georgianna Seara, are sued herein in both as trustees of trust and as members of the committee to pass upon applications or described atudenta for loans, according to the purported will of Franklin Lindsay, deceased. Defendants Mr. S. Camille L. Sweeney and Mrs. Gladys A. Oreg, are sued herein as beneficiaries of the purported will of Franklin Lindsay, deceased.

VII.

Franklin Lindsay attempted in his purported will to set up a charitable trust which limits material portions may be summarized as follows. By the terms of paragraph three of the purported will the residue of the estate of Franklin Lindsay, deceased, is to be held in trust by the Capital National Bank of Austin, Texas and paragraph seven of the purported will directs that the properties of the estate are to be held in trust by the Capital National Bank of Austin, Texas, as a fund for the assistance of students who desire, but are financially unable to obtain college educations at any of the Texas State Institutions, such as the University of Texas, and Agricultural and Mechanical Colleges, "in which negroes or those having any negro blood shall not be entered"; paragraph eight of the purported will provides that the income of the trust fund are to be made to certain

students, the loans to be repaid when possible, with a tail rate of interest; paragraph 1.1. of the purported will provides that the first committee to pass upon applications for loans are to be Edgar H. Perry, Sr., Coleman Gay, Marco Anthony, Virgil P. Patterson, and S. Paddock) and Claude R. Cahin, Darcy M. Cahin, Emmett T. Sweeney, and Camille L. Sweeney, Pauline F. Stephens, Gladys A. Gregg, William B. Paddock, Claude W. Sears, and Georgianna Searaj paragraph 1.1. further provides that upon the death of any of the members of the original committee, or the refusal of any of its members to serve, the remaining members of the committee are to select others to serve so that there will be a full complement of nine members of the committee and paragraph 1.1. of the purported will it is provided that in the event the Capital National Bank of Austin, Texas, shall lose or surrender its corporate charter or its license or shall merge with another institution or discontinue its operations or trust department for any reason whatsoever, its successor, as to be selected by the committee herein after described, as then constituted, from among the financial institutions in Austin, Texas, having the powers,

#### VIII.

It is provided in paragraph eight of the purported will that each member of the original committee shall be paid as a gift the sum of \$2,500.00, but in the event husband and wife are named, they are to be considered as one, and \$2,500.00 is to be made to both or to the survivor.

#### IX.

Paragraph two of the purported will gives \$2,500.00 to each of the following: Mrs. Camille L. Sweeney, Mrs. Margaret Ramsey Jennings, Mrs. Pauline Rohlf's Kalitel, Anthony and Annell Pachiri, or to the survivor, and Mrs. Gladys A. Gregg.

#### X.

Paragraph five of the purported will directs the

quarterly payments from the trust estate of \$60000 each to Emma L. Baker and Virginia L. Looney, during their lifetimes, the amounts are to be increased to each upon the death of their present husbands, to \$1,200.00, and said sums are to be net in amount, the taxes, if any, to be paid by the estate,

XI.

Paragraphs of the purported will provide that after the death of their father, each or the then living children of Virginia L. Looney is to be given the sum of \$20,000.00, in cash, net after taxes, or its equivalent value in securities from the estate, and paragraph six further provides that Beverly H. Baker, Jr., is to be given the sum of \$1,000.00, in cash, after the death of his father.

XII,

Paragraph eleven of the purported will provides that after a trial of ten years, if the plan for landing money to students is unsuccessful, or unsatisfactory to the committee, then the committee is empowered in its discretion to use the income and a portion of the corpus of the trust fund which may be considered necessary, for other purposes, for the furtherance and increase of education, such as building, bells, and hospitals, preferably in connection with Texas State institutions which meet the requirements, the feeling of the testator, as expressed, toward Negroes being, "that there should be no discrimination with other students"

XIII,

The testamentary trust being invalid and unenforceable for reasons hereinafter set forth, plaintiffs Virginia L. Looney and Emma L. Baker are entitled to the immediate possession or the residuary estate of Franklin Lindsay, deceased, as sisters and sole heirs of the deceased, by virtue of the laws of descent and distribution of the State of Texas.

XIV.

Plaintiffs allege that the trust aforesaid to be created in the purported will is not a charitable trust, but is a

private trust, and as such violates the rule against perpetuities, and therefore is void and unenforceable.

XV.

The testamentary trust attempted to be created by testator which would provide funds for loans to students, at interest, to attend colleges in which Negroes shall not be entered is void and unenforceable, for the reason that there are no State institutions in which qualified Negro students may not enter, such discrimination being a violation of the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and a violation of the Due Process clause of the Fourteenth Amendment to the Constitution of the United States; that private schools of higher learning within the State of Texas are, with a few exceptions, sponsored by religious organizations whose tenets do not permit of the discrimination required by the provisions of the purported will as heretofore set forth; and that the private institutions of higher learning of this State enjoy certain tax benefits which make them limited State agencies, subject to Constitutional prohibitions, especially the prohibition against segregation and discrimination of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and the Due Process clause of the Fourteenth Amendment to the Constitution of the United States.

XVI

The provisions of the purported will attempting to create the testamentary trust which empower the committee in its absolute discretion to use the funds of the testamentary trust for construction of buildings after a trial of the plan for loans to students, for ten years, are void and unenforceable for the reason that the provisions are vague, indefinite, and wholly incapable of being administered, in that the vested trust are inadequately defined; furthermore, since there are no Texas State institutions of higher learning which



can bar, tram attendance, Negroes otherwise qualified, the provisions cannot be executed since gifts to schools in which white and Negro attend on an equal basis would violate the intent of the testator that the only schools to which gifts may be made are those barring Negroes from attendance.

#### XVII.

The terms of the will of testator invest the committee with the naked power to select the beneficiaries of said trust estates that the power of selecting the beneficiaries and objects of the trust reverts exclusively to the committee that at the time of the execution of the will the power of the committee to select the beneficiaries could not be excluded because there were no schools which could lawfully exclude Negroes or those having any Negro blood, and at and after the death of testator there were no schools which could lawfully exclude Negroes or those having any Negro blood, and that there is no subject matter upon which the committee may act without violating the provisions of the will and the intent of the testator, and therefore the attempted testamentary disposition of the residuary estate is void.

#### XVIII.

The provisions of the purported will attempting to establish a charitable trust are void and unenforceable because the committee is not responsible or accountable to any person, persons or legally constituted authority for the administration of the fund, and the trustee has no discretion or control of the expenditures of the trust.

#### XIX.

That the committee selected by the testator is vested with the power to select the beneficiaries of the trust estate, and to devote the income and corpus of the estate to private as well as public or State institutional that under the terms of the Will the committee is not compelled to devote the income of the estate or the corpus of the estate

to charity or charitable institution exclusively, in that the provisions of the will vest in said committee the discretion to select the institutions to receive the benefit of the trust estate in the construction of buildings, hospitals, etc., and that no restriction or limitation is placed upon the committee restricting the use of all or the income or the corpus of the trust estate to charitable or public institutions that by reason thereof, said will is void in that it violates Article I, Section 26, of the Constitution of the State of Texas relating to perpetuities.

**XX.**

The provisions of the trust are void and unenforceable because private persons designated as the trustees of the trust as an indefinite class of persons and objects as the donors of the attempted trust, which constitutes a mingling of public and private objects of the trust.

**XXI.**

By the terms of the will the legal title to the real estate is vested in the trustee, the equitable title is vested in some indefinite donee to be selected by the committee, and the beneficial interest is not to be enjoyed until such times as the committee in its discretion may fix for this reason the enjoyment of the beneficial interest will be indefinite and postponed and no judicial power or authority can compel the committee to perform its duty. Failure of the committee to perform will leave the real estate in possession of the trustee in perpetuity, and therefore the trust is void and unenforceable.

**XXII.**

The trust which the testator has attempted to create by his purported will is void and unenforceable because there is no assurance that the committee which is designated for the selection of described students who are to receive loans will continue in existence in perpetuity, whereas the trust will continue in perpetuity, and upon the failure of the committee

to continue or to function, there are no means by which another instrumentality for the selection of a trustee for loans may be designated, whereupon the residuary estate of the testator will vest in the trustee in perpetuity as a private trust, which is contrary to the rule against perpetuities.

1/herefore premises considered a plaintiffs respectfully prays

(1) That process issue out of this court to each and all of the defendants, to appear and answer the complaint filed herein.

(2) That this court enter Judgment construing said will to leave the trustee simple title in these plaintiffs in the said decedent's estate of which the deceased died seized.

(3) That a declaratory Judgment be entered hereinto declaring that the testamentary provisions of the will creating a trust of the residuary estate is void and unenforceable for the reasons set forth in this complaint and that plaintiffs have Judgment against the individual devisees herein holding that the \$2,500.00 bequest to each member of said committee is not a gift, but is a consideration for services which cannot be returned, and that the same be declared apart from the residuary estate.

(4) That the executor of the will be directed to determine the amount of inheritance and income taxes payable on the total assets of the estate, and the residuary estate remaining after payment of income and inheritance taxes, if any, be disbursed and paid to these plaintiffs as heirs at law and next of kin of Franklin Lindsay, decedent.

(5) And that the court grant to plaintiffs such other relief, both legal and equitable, general and



special, to which plaintiffs may be entitled, and the  
costs of this action.

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Julien C. Clepton  
1009 Percy-Brookm Building  
Austin, Texas

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Creekmore Wallace  
P.O. Box 297  
Pryor, Oklahoma

Thomas A. Wallace  
310 pythian BU'lding  
Tulsa, Oklahoma

Attorneys for Plaintiffs  
Virginia L. Looney and  
Emma L. Baker

THE STATE OF TEXAS  
COUNTY OF BEXAR )

NOW ALL IN & BY THESE PRESENTS:

I, I. Franklin Lindsay, of the State of Texas, being of sound and disposing mind and memory and not in fear of death do hereby make, publish and declare this my last will and testament, hereby revoking all other wills heretofore made by me, and for each purpose do hereby declare and provide as follows:

1.

I desire and direct that my Just debts shall be paid out of my estate by my executor, hereinafter named, as soon as possible after my death, including expenses in connection with my last illness and cremation of my body or, preferably my body given to a hospital for useful purposes for

I do not wish a grave or mound  
To clutter up the living ground  
And best a care to those with needs,  
O' better, covered with vines and weeds,  
I do not wish a slab or stone  
For dates cannot for slingers atone  
And my poor body has no worth  
But only needs while on this earth;  
So, doctors may use it while I live,  
Or my ashes scattered whither they will,

2.

I hereby give and bequeath the sum of Twenty five Hundred Dollars (\$2,500.00) in cash, to be paid as soon as practicable from the income of my estate to my

- Mrs. Camille L. Sweetney, San Antonio, Texas,
- Mrs. Margaret Ramsey Jennett, 1414 Lyell St., Dallas,
- Mrs. Paula Rihlfel Heuter, 7611 Rock St., P.O. Box 17, Y.
- Anthony and Annaly Faohr, J., 11111 Milan, Italy.
- Mrs. G. Olga A. Jg., Waco, Texas.

I hereby give, devise and bequeath unto The Capital National Bank in Austin, Texas, all the balance of the property of which I die seized and possessed, of every character whatsoever, real, personal and mixed and wherever situated, in trust, for the following uses and purposes and upon the conditions hereinafter set out.

In case The Capital National Bank shall lose or surrender its corporate charter or its trust powers or shall merge with another institution or discontinue its functions or its trust department for any reason whatsoever, its successor, as trustee, shall be selected by the committee hereinafter described, as then constituted, from among the financial institutions in Austin, having trust powers.

I expressly direct that no securities nor properties shall be purchased for the trust estate from the trustee, either directly or indirectly, nor shall any property be purchased for the trust estate which has at any time been owned or held in trust by said trustee.

All provisions in this will relating to the "Trustee", shall likewise apply to any successor trustee.

/s/ Franklin Lindsay

4.

...the bank shall of course & invest in any ...  
...possession or the properties belonging to the estate, and  
shall have full power and authority to handle, manage and control  
all properties that may come into its possession hereunder, for  
the uses and purposes hereinafter set forth, and shall have full  
power and authority to sell and dispose of and convey any prop-  
erty that may come into its possession hereunder and that it  
may see fit and upon any terms that it may deem best for the  
uses and purposes hereinafter set forth, and the purchaser or  
purchasers under any such sale or sales shall not be required to  
look to the application of the proceeds thereof and the said  
Bank shall have full authority to invest and reinvest any funds  
or monies that may come into its possession hereunder, in any  
manner that it may see fit. It is the intention being that the income  
from this estate shall be continuous so far as practicable under  
sound judgment and management, and as large as possible com-  
mensurate with safety, in the discretion of said Bank. The said  
Bank shall not be liable nor responsible nor answerable to any  
person or authority whatever for any act performed by it here-  
under, except for fraud or gross mismanagement or neglect or  
bankruptcy, in which case the makers of the bond, if any, shall  
be held responsible.

5.

From the income from the estate are to be  
paid quarterly or at three month intervals, as far as practica-  
ble, the following amounts, to be net in amount, any necessary tax-  
es, if any, to be paid by the estate:

To my Sister, Emma L. Baker, present ad-  
dress Miami, Florida, and to my other Sister, Virginia L. Looney,  
now living at 628 N. W. J. B. Street, Oklahoma City, Oklahoma, an-  
nually during their lifetime the sum of Six Hundred Dollars  
(600) each, which sums are to be increased to each upon the  
death of their present husbands to Twelve Hundred Dollars (\$1,200),  
with other incomes that have been provided  
for them, the above amounts are considered sufficient for their  
comfort.

6.

After the death of their father, each of  
the then living children of my father William, is to be given  
the sum of Twenty thousand Dollars (\$20,000) in cash, or prae-  
sently the equivalent value in securities from the estate and, af-  
ter the death of his father, the son of my other Sister, Bever-  
ly H. Baker, Jr., is to be given the sum of One thousand Dollars  
(\$1,000) in cash.

These amounts to be net, any necessary  
taxes, if any, to be paid by the estate and are not made greater  
as believe that making life too easy tends to destroy incentive  
and the satisfaction of results from one's own efforts,

Believing that the greatest good can be  
done to the country and even to the world by education of its  
peoples, subject to other provisions of this will, the proper-  
ties of the estate are to be held in trust by the Capital Nat-  
ional bank in Austin, Texas, as a fund for the assistance of  
worthy and deserving white students of either sex who may be  
desirous, but financially unable, of obtaining college educations  
at any of the Texas state institutions, such as university of  
Texas, Agricultural and Mechanical College etc. etc, in which  
negroes or those having any negro blood shall not be entered,

/s/ Franklin Lindsay



\* Continued)

If the Texas state institutions cannot so qualify, then those which can meet the requirements, Rice Institute, Texas Christian University, Southern University or other such colleges or universities in shall be substituted. Applying students of course, able to meet the requirements for entrance to the unvt or colleges.

Edgar H. Perry  
Cashier  
Chairman of Y.M.C.A.

to be known as the "Franklin Students Aid Fund",

8;

Loans from the income of the above mentioned Trust Fund are to be made to deserving students once yearl. Y, before the beginning of the college term or year, in amounts considered necessary, with economy, for such term by members of the committee described below. As soon as practicable, without causing undue hardship to the borrower, such loans are to be repaid and, when possible, with a fair rate of interest, in order that the fund may be continued available for others.

These loans are to become available as soon as practicable after the gifts, from the income of the estate, to the members of the committee mentioned below.

"Income" shall be considered to mean all revenues from the trust estate, together with proceeds or repaid loans, whereas capital gains and losses shall affect only the principal or corpus of the fund.

From such income I direct that there shall be paid, as soon as practicable, as a gift, the sum of \$2,500.00 to each of the original committee hereinafter mentioned. In instances in which a husband and wife are mentioned they shall be considered as one and but one gift of \$2,500.00 to be made to the two or to the survivor.

9.

The first committee to pass upon the applications for such loans by the descendants and to approve them is to be composed as follows:

Edgar R. Perry, Sr.	Austin, Texas,	Pauline F. Stephens,	Waco,
Coleman Clay,	Austin, Texas,	Gladys A. Gregg,	Laco, Tex.
Maria Ann Hill,	Dallas, Texas,	Wm. E. Paddock,	Odeana, Tex.
Virgil P. Patterson,	Amarillo, Tex.	Claude J. Sears or his wife,	
S. Paddock,	Houston, Tex.	Georgianna,	Houston, Texas.

Bud  
Maude R. Cashin or Husband, Arcy M. Cashin, Holilton, Texas.  
Ellinett T. Sweeney or his wife Camille L. Sweeney, San Antonio, Tex.

and upon the death of any of the above or of their refusal to serve the remaining members of the committee shall select others in their stead so as to maintain the number of the members of the committee to name, at least, in order that the burden may not be too onerous for any or them in investigating applications for and recording such loans and such committee shall be perpetuated in the manner described above for the perpetuation of the committee hereinafter named above. In other words, the surviving members are asked to maintain the committee to a minimum of nine members by continually choosing others to replace those members who may for any cause whatsoever fail to serve.

I nominate as the first Chairman of the Committee Edgar H. Perry, Sr. and upon his death or resignation, I request that the committee shall elect his successor and successors.

As/ Franklin Lindsay

9. Continued)

AB the domiciles of the " " members of the committee are somewhat scattered, I suggest that recommendation of any one or more of the members be considered as approval of the committee or a loan, especially if of the first one to an applicant; the second or later applications by a student may be considered in the light of the record results and progress made by the student. have no other suggestion to offer to the committee, who shall have full discretion in approving or disapproving loans, other than that in my opinion there are sufficient numbers of lawyers and preachers and probably enough physicians and that more of other professions and trades will on the whole be most helpful.

The trustee shall keep the Chairman of the committee informed as to the estimated amount available for such loans for each next succeeding college year so that the members of the committee may be advised as to how many loans may be made for each term. In case more loans should be approved than can be made from available income for this purpose, the first number of the approved applications whose total shall equal the estimated amount available, to reach the balance, shall be accepted by the said trustee.

10.

The recommendations as outlined above of members of the committee, however formed, for loans are to be recognized by the Bank, as Trustee, the amounts so approved paid from to time during the college term, at the discretion of the trustee, to students whose applications have been so approved their notes including a fair rate of interest, taken and efforts made to maintain such notes in legal standing and to collect same when practicable for further maintenance of the fund.

11.

After a trial of ten years, if the plan as above described, shall be found to prove unavailing, then it and the trust or its results shall prove to be unnecessary to the committee, as then constituted, such committee shall be empowered in its discretion to use the income and any portion of the corpus of the trust fund which may be considered necessary for other purposes for the furtherance and increase of educational such as buildings, halls, hospitals, etc. preferably in connection with Texas state institutions, which meet the requirements. If feeling toward education being that there should not be co-education with other students.

12.

I hereby nominate and appoint said Capital National Bank of Austin, Texas, executor of this Will and of my estate.

As a portion of the estate may consist of farms, oil or gas properties, etc. formerly in partnership with D. C. Reed, now deceased, I desire and direct that in its dissolution, the said Bank as executor or trustee shall consult Bernard C. Mollberg, of Austin, who is familiar with such properties and interests and shall pay him as compensation, liberally, amounts such as in the opinion of said Bank shall be commensurate with his advice and services rendered.

/s/ Franklin Lindsay

13.

I desire and direct that no proceedings shall be had upon my estate in any court, except the probating of my will and appraisal of my estate.

14.

If it should be considered necessary or advisable by the executor and/or by the committee above described, to employ an attorney, other than the regular lawyer retained by said bank as executor or trustee, hereby designate as such attorney Coleman Gay or Austin who shall be compensated accordingly.

15.

I desire and direct that said executor and trustee shall receive as compensation, as agreed between said trustee and me, hereunder a commission of two per cent of the incomes, rents and revenues derived from all of said properties.

WITNESS my hand at San Antonio, Texas this 7th day of October, A. D. Nineteen Hundred Forty Nine (1949). This will, consisting of five pages, each bearing my signature.

/s/ Franklin Lindsay

We, Clarence S. Culbertson and George N. Dilworth do here and now sign our names as witnesses to the foregoing will of Franklin Lindsay and we each of us speaking for ourselves, declare that we know the signature above to be that of Franklin Lindsay to said will and testament, and that we each sign our names as witnesses to said will at the request of said Franklin Lindsay and in his presence and in the presence of each other and that this all was done at San Antonio, Texas; the 7th day of October, A. D. 1949.

/s/ Clarence S. Culbertson

/s/ George N. Dilworth



NO. 785  
CIVIL

IN THE DISTRICT COURT OF THE UNITED STATES.  
FOR THE  
WESTERN DISTRICT OF TEXAS, AT AUSTIN

---

VIRGINIA L. LOONEY, ET AL  
Plaintiffs

v.  
CAPITAL NATIONAL BANK OF AUSTIN, TEXAS, ET AL  
Defendants

---

DEFENDANT ANSWER OF JOHN BEN SHEPPERD,  
ATTORNEY GENERAL OF THE STATE OF TEXAS  
ON BEHALF OF THE DEFENDANTS HERETOFORE

---

JOHN BEN SHEPPERD  
ATTORNEY GENERAL OF TEXAS  
W. V. GEPPERT  
ASSISTANT ATTORNEY GENERAL  
BILLY E. LEE  
ASSISTANT ATTORNEY GENERAL  
MARIETTA MCGREGOR PAYNE  
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR DEFENDANT  
JOHN BEN SHEPPERD, ATTORNEY GENERAL OF THE STATE OF TEXAS

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FILED

DEC 22 1954  
MAXEY H. REES, Clerk  
BY [Signature] CLERK

NO. 775£  
CIVIL

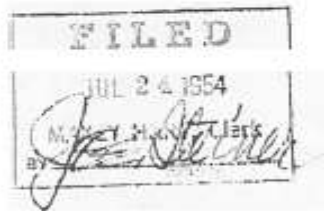
VIRGINIA L. LOONEY, ET AL.

VS.

CAPITAL NATIONAL BANK OF AUSTIN, TEXAS, ET AL.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

COMPLAINT FOR DECLARATORY JUDGMENT  
CONSTRUING WILL







**Appendix F.5**  
**Second amended complaint, March, 16, 1955**

IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF TEXAS

VIRGINIA L. LOONEY, ET VIR, AND  
EMMA L. BAKER, ET VIR, ET AL,  
PLAINTIFFS,  
VS.  
CAPITAL NATIONAL BANK OF AUSTIN,  
TEXAS, A NATIONAL BANKING CORPORATION,  
ET AL, DEFENDANTS.

NO. 785  
CIVIL

SECOND AMENDED COMPLAINT

Plaintiffs respectfully represent and show to the Court as follows:

I.

Plaintiff Virginia L. Looney, joined herein pro forma by her husband, C. M. Looney, is a resident and citizen of the State of Oklahoma. C. M. Looney is a resident and citizen of the State of Oklahoma. Plaintiff Emma L. Baker, joined herein pro forma by her husband, Beverly H. Baker, is a resident and citizen of the State of Florida. Beverly H. Baker is a resident and citizen of the State of Florida.

Plaintiff Eleanor Biddy, joined herein pro forma by her husband J. C. Biddy, is a resident and citizen of the State of Oklahoma. J. C. Biddy is a resident and citizen of the State of Oklahoma.

Murray Looney is a resident and citizen of the State of Oklahoma.

Beverly H. Baker, Jr., is a resident and citizen of the State of Florida.

The defendants Capital National Bank of Austin, Texas, a national banking corporation, Edgar H. Perry, Sr., Coleman Gay, Marc Anthony, Virgil P. Patterson, Maud S. Paddock, Maude R. Cashin, D'Arcy R. Cashin, Emmett T. Sweeney, Camille L. Sweeney, Pauline P. Stephens, Gladys A. Gregg, William B. Paddock, Clause W. Sears, and Georgianna Sears are resident citizens of the State of Texas.

Since this action was commenced, Will Wilson has succeeded John Ben Sheppard to the office of Attorney General of the State of Texas. By agreement and concurrence of all the parties to this action Will Wilson is substituted for John Ben Sheppard as a party defendant, and all causes and defenses stated and all orders made and entered in this action apply to Will Wilson with the same force and effect as they did to John Ben Sheppard.

That jurisdiction is founded on diversity of citizenship, and the matter in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.00. This action is prosecuted under the provisions of 26 USC Section 2201, 62 Stat. 964, amended May 24, 1949, 63 Stat. 105.

## II.

Plaintiffs named are the sisters of Franklin Lindsay, deceased, and, are the sole heirs at law of Franklin Lindsay, deceased.

## III.

By agreement and concurrence of all the parties to this action, Eleanor Biddy, joined herein pro forma by her husband J. C. Biddy, Murray Looney, and Beverly H. Baker, Jr., are made parties to this action by this amendment, and enter their general appearance in this action and state that they are named as legatees in paragraph 6 of the will of Franklin Lindsay, deceased, which is described more particularly hereinafter, and that under the provisions of the will Eleanor L. Biddy and Murray Looney are entitled to \$20,000.00 each and Beverly H. Baker, Jr., is entitled to \$1,000.00.

## IV.

Franklin Lindsay died testate on or about May 1, 1954, in the City of San Antonio, Bexar County, Texas; the deceased had no domicile or fixed place of residence in the State of Texas, at the time of his death; however, his principal property and business interests are situated in the County of Travis, State of Texas. A copy of the last will and testament of the deceased is attached hereto, marked Exhibit 'A', and made a part hereof.

## V.

The last will and testament was duly offered for probate in the County Court of Travis County, Texas, on May 5, 1954, and was

admitted to probate on May 17, 1954. The Capital National Bank of Austin, Texas, a national banking corporation, was granted letters testamentary and qualified as independent executor of the will of the deceased,

VX.

Defendant Capital National Bank of Austin, Texas, is sued herein as independent executor of the purported will of Franklin Lindsay, deceased, and as trustee of the residuary estate of Franklin Lindsay, deceased. Defendants Edgar H. Perry, Sr., Coleman Gay, Marc Anthony, Virgil P. Patterson, Maud S. Paddock, Maudie R. Cashin, D'Arcy M. Cashin, Emmett T. Sweeney, Camille L. Sweeney, Pauline V. Stephens, Gladys A. Gregg, William B. Paddock, Claude W. Sears, and Georgianna Sears, are sued herein both as cestui que trust and as members of the committee to pass upon applications of described students for loans, according to the purported will of Franklin Lindsay, deceased. Defendants Mrs. Camille L. Sweeney, and Mrs. Gladys A. Gregg, are sued herein as beneficiaries of the purported will of Franklin Lindsay, deceased.

VII.

Franklin Lindsay attempted in his purported will to set up a charitable trust which in its material portions may be summarized as follows: By the terms of paragraph three of the purported will the residuum of the estate of Franklin Lindsay, deceased, is to be held in trust by the Capital National Bank of Austin, Texas; paragraph seven of the purported will directs that the properties of the estate are to be held in trust by the Capital National Bank of Austin, Texas, as a fund for the assistance of students who desire, but are financially unable to obtain college educations at any of the Texas State institutions, such as the University of Texas, and Agricultural and Mechanical Colleges, "in which negroes or those having any negro blood shall not be entered"; paragraph eight of the purported will provides that loans from the income of the trust fund are to be made to certain students, the loans to be repaid when possible, with a fair rate of interest; paragraph nine of the purported will provides that the first committee to pass upon applications for loans are to be: Edgar H. Perry, Sr., Coleman Gay, Marc Anthony, Virgil P. Patterson, Maud S. Paddock, Maudie R. Cashin, D'Arcy M. Cashin, Emmett T. Sweeney, Camille L. Sweeney, Pauline V. Stephens, Gladys A. Gregg, William B. Paddock, Claude W.

Bears, and Georgianna Bears; paragraph nine further provides that upon the death of any of the members of the original committee, or the refusal of any of its members to serve, the remaining members of the committee are to select others to serve so that there will be a minimum of nine members of the committee; and by paragraph three of the purported will it is provided that in the event the Capital National Bank of Austin, Texas, shall lose or surrender its corporate charter or its trust powers or shall merge with another institution or discontinue its functions or trust department for any reason whatsoever, its successor, as trustee, shall be selected by the committee hereinafter described, as then constituted, from among the financial institutions in Austin, Texas, having trust powers.

VIII.

It is provided in paragraph eight of the purported will that each member of the original committee shall be paid as a gift the sum of \$2,500.00, but in the event husband and wife are named, they are to be considered as one, and \$2,500.00 is to be made to both or to the survivor.

IX.

Paragraph two of the purported will gives \$2,500.00 to each of the following: Mrs. Conille L. Sweeney, Mrs. Margaret Ramsey Jennings, Mrs. Paula Rohlfs Euter, Anthony and Annely Fakhiri, or to the survivor, and Mrs. Gladys A. Grogg.

X.

Paragraph five of the purported will directs the quarterly payment from the trust estate of \$500.00 each to Emma L. Baker and Virginia L. Looney, during their lifetimes, which sums are to be increased to cash upon the death of their present husbands, to \$1,200.00, and said sums are to be net in amount, the taxes, if any, to be paid by the estate.

XI.

Paragraph six of the purported will provides that after the death of their father, each of the then living children of Virginia L. Looney is to be given the sum of \$20,000.00, in cash, net after taxes, or its equivalent value in securities free the estate, and paragraph six further provides that Beverly E. Baker, Jr., is to be

given the sum of \$1,000.00, in cash, after the death of his father.

XII.

Paragraph eleven of the purported will provides that after a trial of ten years, if the plan for lending money to students is unsuccessful, or unsatisfactory to the committee, then the committee is empowered in its discretion to use the income and any portion of the corpus of the trust fund which may be considered necessary, for other purposes, for the furtherance and increase of education, such as buildings, halls, and hospitals, preferably in connection with Texas State institutions which meet the requirements, the feeling of the testator, as expressed, toward negroes being, "that there should not be co-education with other students."

XIII.

The testamentary trust being invalid and unenforceable for reasons hereinafter set forth, plaintiffs Virginia L. Lounsey and Emma L. Baker are entitled to the immediate possession of the residuary estate of Franklin Lindsay, deceased, as sisters and sole heirs of the deceased, by virtue of the laws of descent and distribution of the State of Texas.

XIV.

Plaintiffs allege that the trust sought to be created in the purported will is not a charitable trust, but is a private trust, and as such violates the rule against perpetuities, and therefore is void and unenforceable.

XV.

The testamentary trust attempted to be created by testator which would provide funds for loans to students, at interest, to attend colleges in which Negroes shall not be entered is void and unenforceable, for the reason that there are no State institutions in which qualified Negro students may not enter, such discrimination being a violation of the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and a violation of the Due Process clause of the Fourteenth Amendment to the Constitution of the United States; that private schools of

higher learning within the State of Texas are, with a few exceptions, sponsored by religious organizations whose tenets do not permit of the discrimination required by the provisions of the purported will as heretofore set forth; and that the private institutions of higher learning of this State enjoy certain tax benefits which rules when limited State agencies, subject to Constitutional prohibitions, especially the prohibition against segregation and discrimination of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and the Due Process clause of the Fourteenth Amendment to the Constitution of the United States.

XVI.

The provisions of the purported will attempting to create the testamentary trust which empower the committee in its absolute discretion to use the funds of the testamentary trust for construction of buildings after a trial of the plan for loans to students, for ten years, are void and unenforceable for the reason that the provisions are vague, indefinite, and wholly incapable of being administered, in that the pegnia quo trust are inadequately defined; furthermore, since there are no Texas State institutions of higher learning which can bar, from attendance, Negroes otherwise qualified, the provisions cannot be executed since gifts to schools in which white and Negro students attend on an equal basis would violate the intent of the testator that the only schools to which gifts may be made are those barring Negroes from attendance.

XVII.

The terms of the will of testator invest the committee with the naked power to select the beneficiaries of said trust estate; that the power of selecting the beneficiaries and objects of the trust rests exclusively with the committee; that at the time of the execution of the will the power of the committee to select the beneficiaries could not be exercised because there were no schools which could lawfully exclude Negroes or those having any Negro blood, and at and after the death of testator there were no schools which could lawfully exclude Negroes or those having any Negro blood, and that there is no subject matter upon which the committee may act without violating the provisions of the will and the intent of the testator,



and therefore the attempted testamentary disposition of the residuary estate is void.

XVIII.

The provisions of the purported will attempting to establish a charitable trust are void and unenforceable because the committee is not responsible or accountable to any person, persons or legally constituted authority for their administration of the fund, and the trustee has no discretion or control of the expenditures of the funds.

XIX.

That the committee selected by the testator is vested with the power to select the beneficiaries of the trust estate, and to devote the income and corpus of the estate for private as well as public or State institutions; that under the terms of the will the committee is not compelled to devote the income of the estate or the corpus of the estate to charity or charitable institutions exclusively, in that the provisions of the will vest in said committee the discretion to select the institutions to receive the benefit of the trust estate in the construction of buildings, hospitals, etc., and that no restriction or limitation is placed upon the committee restricting the use of all of the income or the corpus of the trust estate to charitable or public institutions; that by reason thereof, said will is void in that it violates Article I, Section 26, of the Constitution of the State of Texas relating to perpetuities.

XX.

The provisions of the trust are void and unenforceable because private persons are designated as the cestui que trust as an indefinite class of persons and objects as the donees of the attempted trust, which constitutes a mingling of public and private objects of the trust.

XXI.

By the terms of the will the legal title to the residuary estate is vested in the trustee, the equitable title is vested in some indefinite donee to be selected by the committee, and the beneficial interest is not to be enjoyed until such time as the committee in its discretion may fix; for this reason the enjoyment of the

beneficial interest may be indefinitely postponed and no judicial power or authority can compel the committee to perform. Failure of the committee to perform will leave the residuary estate in possession of the trustee in perpetuity, and therefore the trust is void and unenforceable.

XIII.

The trust which the testator has attempted to create by his purported will is void and unenforceable because there is no assurance that the committee which is designated for the selection of described students who are to receive loans will continue in existence in perpetuity, whereas the trust will continue in perpetuity, and upon the failure of the committee to continue or to function, there are no means by which another instrumentality for the selection of students for loans may be designated, whereupon the residuary estate of the testator will vest in the trustee in perpetuity as a private trust; which is contrary to the rule against perpetuities.

Wherefore, premises considered, plaintiffs respectfully pray:

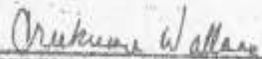
- (1) That process issue out of this Court to each and all of the defendants, to appear and answer the complaint filed herein,
- (2) That this Court enter judgment construing said will and, to vest the fee simple title in Virginia L. Looney and Emma L. Baker, plaintiffs in the residuary estate of which the deceased died seized.
- (3) That a declaratory judgment be entered herein determining that the testamentary provisions of the will creating a trust of the residuary estate is void and unenforceable for the reasons set forth in this complaint and that plaintiffs Virginia L. Looney and Emma L. Baker have judgment against the individual devisees herein holding that the \$2,500.00 to each member of said committee is not a gift, but is a consideration for services which cannot be performed, and that the sums be declared a part of the residuary estate.
- (4) That the executor of the will be directed to determine the amount of inheritance and income taxes payable on the total assets of the estate, and the residuary estate remaining after payment of income and inheritance taxes, if any, be disbursed and paid to plaintiffs Virginia L. Looney and Emma L. Baker, as heirs


at law and next of kin of Franklin Lindsay, deceased.

(5) That it be determined that Eleanor L. Biddy and Murray Looney are entitled to \$20,000.00 each and Beverly H. Baker, Jr., is entitled to \$1,000.00, under the provisions of the will of Franklin Lindsay, deceased.

(6) And that the Court grant to plaintiffs such other relief, both legal and equitable, general and special, to which plaintiffs may be entitled, and the costs of this action.

  
JULIAN C. CLOPTON  
1009 Perry-Brooks Building  
Austin 1, Texas

  
CASSMORE WALLACE  
P. O. Box No. 297  
Pryor, Oklahoma

  
THOMAS A. WALLACE  
310 Pythian Building  
Tulsa 3, Oklahoma

ATTORNEYS FOR PLAINTIFFS  
Virginia L. Looney  
and Susan L. Baker

EXHIBIT 'A'

THE STATE OF TEXAS }  
COUNTY OF BEXAR }

KNOW ALL MEN BY THESE PRESENTS

That I, Franklin Lindsay, of the State of Texas, being of sound and disposing mind and memory and not in fear of death, do hereby make, publish and declare this my last will and testament, hereby revoking all other wills heretofore made by me, and for such purpose do hereby declare and provide as follows:

1.

I desire and direct that my just debts shall be paid out of my estate by my executor, hereinafter named, as soon as possible after my death, including expenses in connection with my last illness and cremation of my body or, preferably my body given to a hospital for useful purposes for

I do not want a grave or mound  
To clutter up the living ground  
And be a care to those with needs,  
Or better, covered with vines and weeds;  
I do not wish a slab or stone  
For ceter cannot for errors atone  
And my poor body has no worth  
But only deeds while on this earth;  
So, doctors may use it to aid the ill  
Or its ashes scattered whither they will.

2.

I hereby give and bequeath the sum of Twenty Five Hundred Dollars (\$2,500.00) in cash, to be paid as soon as practicable from the income of the estate after my death, to each of the following friends:

Mrs. Cassile L. Sweeney, San Antonio, Texas.  
Mrs. Margaret Ramsey Jennings, Brantsville, Mo.  
Mrs. Paula Rohlf's Kauter, (last known address  
750 Ross St. Bronx, N. Y.  
Anthony and Annaly (children), (present address  
or to the survivor, Hotel Nardin, Milan, Italy.  
Mrs. Gladys A. Gregg, (Waco, Texas.

3.

I hereby give, devise and bequeath unto The Capital National Bank in Austin, Texas, all the balance of the property of which I die seized and possessed, of every character whatsoever, real, personal and mixed and wherever situated, in trust, for the following uses and purposes and upon the conditions hereinafter set out.

In case The Capital National Bank shall lose or surrender its corporate charter or its trust powers or shall merge with another institution or discontinue its functions or its trust department for any reason whatsoever, its successor, as trustee, shall be selected by the committee hereinafter described, as then constituted, from among the financial institutions in Austin, having trust powers.

I expressly direct that no securities nor properties shall be purchased for the trust estate from the Trustee, either directly or indirectly, nor shall any property be purchased for the trust estate which has at any time been owned or held in trust by said trustee.

All provisions in this will relating to the "Trustee", shall likewise apply to any successor trustee.

/s/ Franklin Lindsay

4.

The said bank shall at once after my death take possession of the properties belonging to the estate, and shall have full power and authority to handle, manage and control all properties that may come into its possession hereunder, for the uses and purposes hereinafter set forth, and shall have full power and authority to sell and dispose of and convey any property that may come into its possession hereunder and that it may see fit and upon any terms that it may deem best for the uses and purposes hereinafter set forth, and the purchaser or purchasers under any such sale or sales shall not be required to look to the application of the proceeds thereof; and the said Bank shall have full authority to invest and reinvest any funds or monies that may come into its possession hereunder, in any manner that it may see fit, my intention being that the income from my estate shall be continuous so far as practicable under sound judgement and management, and as large as possible commensurate with safety, in the discretion of said Bank. The said Bank shall not be liable nor responsible nor answerable to any person or authority whatever for any act performed by it hereunder, except for fraud or gross mismanagement or neglect or bankruptcy, in which case the makers of the bond, if any, shall be held responsible.

5.

From the income from the state are to be paid quarterly or at three month intervals, as far as practicable, the following sums, to be net in amount, any necessary taxes, if any, to be paid by the estate:

To my Sister, Emma L. Baker, present address Miami, Florida, and to my other Sister, Virginia L. Looney, now living at 628 N. W. 15 Street, Oklahoma City, Oklahoma, annually during their lifetimes the sum of Six Hundred Dollars (\$600.) each, which sums are to be increased to each upon the death of their present husbands to Twelve Hundred Dollars (1,200.) with other incomes which have been provided for them, the above amounts are considered sufficient for their comfort.

6.

After the death of their father, each of the then living children of my Sister Virginia, is to be given the sum of Twenty Thousand Dollars (\$20,000.) in cash, or preferably the equivalent value in securities from the estate and, after the death of his father, the son of my other Sister, Beverly H. Baker, Jr., is to be given the sum of One Thousand Dollars (\$1,000.) in cash.

These amounts to be net, any necessary taxes, if any, to be paid by the estate and are not made greater as I believe that making life too easy tends to destroy incentive and the satisfaction of results from one's own efforts.

7.

Believing that the greatest good can be done to the country and even to the world by education of its peoples, subject to other provisions of this will, the properties of the estate are to be held in trust by The Capital National Bank in Austin, Texas, as a fund for the assistance of worthy and deserving white students of either sex who may be desirous, but financially unable, of obtaining college educations at any of the Texas state institutions, such as University of Texas, Agricultural and Mechanical College etc. etc. in which negroes or those having any negro blood shall not be entered.

/s/ Franklin Lindsay

7. (Continued)

If the Texas state institutions cannot so qualify, then those which can meet the requirements, such as Rice Institute, Texas Christian University, Southern Methodist University or other such colleges or universities in Texas shall be substituted. Applying students, of course, must be able to meet the requirements for entrance to the universities or colleges.

This fund to be known as the "Franklin Lindsey Students Aid Fund".

8.

Loans from the income of the above mentioned Trust Fund are to be made to deserving students once yearly, before the beginning of the college term or year, in amounts considered necessary, with economy, for such term by members of the committee described below. As soon as practicable, without causing undue hardship to the borrower, such loans are to be repaid and, when possible, with a fair rate of interest, in order that the fund may be continued available for others.

These loans are to become available as soon as practicable after the gifts, from the income of the estate, to the members of the committee mentioned below.

"Income" shall be construed to mean all revenues from the trust estate, together with proceeds of repaid loans, whereas capital gains and losses shall affect only the principal or corpus of the fund.

From such income I direct that there shall be paid, as soon as practicable, as a gift, the sum of Twenty Five Hundred Dollars (\$2,500.) to each of the original committee hereinafter named. In instances in which a husband and wife is mentioned, they shall be considered as one and but one gift of \$2,500 is to be made to the two or to the survivor.

9.

The first committee to pass upon the applications for such loans by the described students and to approve them is to be composed as follows:

Edgar H. Perry, Sr.	Austin, Texas,	Pauline F. Stephens, Waco,
Coleman Gay,	Austin, Texas,	Gladys A. Gregg, Waco, Tex.
Merc Anthony,	Dallas, Texas,	Wm. B. Paddock, Odessa, Tex.
Virgil P. Patterson,	Amarillo, Tex.	Claude W. Sears or his wife,
Kaud S. Paddock,	Houston, Tex.	Georgianna, Houston, Texas.
Kaude R. Cashion or Husband D'Arcy M. Cashion,	Houston, Texas.	
Emmett T. Sweeney or his wife	Cemille L. Sweeney,	San Antonio, Tex.

and upon the death of any of the above or of their refusal to serve the remaining members of the committee shall select others in their stead so as to maintain the number of the members of the committee to nine, at least, in order that the burden may not be too onerous for any of them in investigating applications for and recommending such loans and such committee shall be perpetuated in the manner described above for the perpetuation of the committee first named above. In other words, the surviving members are asked to maintain the committee to a minimum of nine members by continuously choosing others to replace those members who may for any cause whatever fail to serve.

I nominate as the first Chairman of the Committee Edgar H. Perry, Sr. and upon his death or resignation, I request that the committee shall elect his successor and successors.

/s/ Franklin Lindsey

9. (Continued)

As the domiciles of the various members of the committee are so widely scattered, I suggest that recommendation of any one or more of the members be considered as approval of the committee for a loan, especially of the first one to an applicant; the second or later applications by a student may be considered in the light of the record, results and progress made by the student. I have no further suggestions to offer to the committee, who shall have full discretion in approving or disapproving loans, other than that in my opinion there are sufficient numbers of lawyers and preachers and probably enough physicians and that more of other professions and trades will, on the whole, be more helpful.

The Trustee shall keep the Chairman of the committee informed as to the estimated amount available for such loans for each next succeeding college full term so that the members of the committee may be advised as to how many loans may be made for such term. In case more loans should be approved than can be made from available income for this purpose, the first number of the approved applications whose total shall equal the estimated amount available, to reach the Trustee, shall be accepted by the said Trustee.

10.

The recommendations, as outlined above, of members of the committee, however formed, for loans are to be recognized by the Bank, as Trustee, the amounts so approved paid from to time during the college term, at the discretion of the Trustee, to students whose applications have been so approved, their notes including a fair rate of interest, taken and efforts made to maintain such notes in legal standing and to collect same when practicable, for further maintenance of the fund.

11.

After a trial of ten years, if the plan as above described, shall be found to prove unsuccessful; that is, if students shall not apply for loans to utilize the income of the trust or if the results shall prove to be unsatisfactory to the committee, as then constituted, such committee shall be empowered in its discretion to use the income and any portion of the corpus of the trust fund which may be considered necessary, for other purposes for the furtherance and increase of education; such as buildings, halls, hospitals, etc., preferably in connection with Texas state institutions, which meet the requirements. My feeling toward negroes being that there should not be co-education with other students.

12.

I hereby nominate and appoint said Capital National Bank, of Austin, Texas, executor of this will and of my estate.

As a portion of the estate may consist of farms, oil or gas properties, etc. formerly in partnership with D. C. Reed, now deceased, I desire and direct that in its discretion, the said Bank as executor or trustee shall consult Bernard C. Kollberg, of Austin, who is familiar with such properties and interests and shall pay him as compensation, liberally, amounts such as in the opinion of said Bank shall be commensurate with his advice and services rendered.

/s/ Franklin Lindsay



13.

I desire and direct that no proceedings shall be had upon my estate in any court, except the probating of this will and appraisement of my estate.

14.

If it should be considered necessary or advisable by the executor and/or by the committee above described, to employ an attorney, other than the regularly retained attorneys of said Bank as executor or trustee, I hereby designate as such attorney Coleman Gay of Austin who shall be compensated accordingly.

15.

I desire and direct that said executor and trustee shall receive as compensation, as agreed between us, for its services hereunder a commission of Two per cent (2%) of the incomes, rents and revenues derived from all of said properties.

WITNESS my hand at San Antonio, Texas, this fifth day of October, A. D. Nineteen Hundred Forty Nine (1949), this will, consisting of Five pages, each bearing my signature.

/s/ Franklin Lindsey

We, Clarence S. Culbertson and George N. Dilworth do here and now sign our names as witnesses to the foregoing will of Franklin Lindsey and we, each of us speaking for himself, declare that we know the signature above to be that of Franklin Lindsey to said will and testament, and that we each sign our names as witnesses to said will at the request of said Franklin Lindsey and in his presence and in the presence of each other and that this all was done at San Antonio, Texas, the Fifth day of October, A. D. 1949.

/s/ Clarence S. Culbertson

/s/ George N. Dilworth



NO. 785  
CIVIL

VIRGINIA L. LOONEY, ET AL.

VS.

CAPITAL NATIONAL BANK OF AUSTIN, TEXAS, ET AL.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT  
CONSTRUING WILL



**Appendix F.6**  
**Appeal, March 16, 1955**

TRANSCRIPT OF RECORD

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UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

No. \_\_\_\_\_

VIRGINIA L. LOONEY, et vir, and  
EMMA L. BAKER,

Appellants,

vs.

CAPITAL NATIONAL BANK OF AUSTIN, TEXAS,  
et al,

Appellees.

*(Stipulation of Facts Inside)*  
*Filed: November 3, 1955,*

MAXEY HART, Clerk, U. S. District Court,

By *[Signature]*

Deputy

APPEALS FROM THE DISTRICT COURT  
OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF TEXAS

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Original Record Received:

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Original answer of defendants, The Capital National Bank in Austin, Texas; Edgar H. Perry, Sr., Coleman Gay, Virgil P. Patterson, Maud S. Paddock, Emmett T. Sweeney, Camille L. Sweeney, Pauline F. Stephens, Gladys A. Gregg, Claude W. Sears, and Georgianna Sears . . . . .	26
Amended Answer of the defendant, Attorney General of the State of Texas . . . . .	29
Motion to dismiss for lack of jurisdiction of defendants, Marc Anthony, Maude R. Cashin and William B. Paddock . . . . .	33
Reporter's transcript of stipulation had in open court . . . . .	34
Reporter's certificate . . . . .	36
Stipulation of facts . . . . .	37
Order sustaining defendants' motion to dismiss . . . . .	60
Notice of appeal . . . . .	61
Statement of points on which appellant intends to rely . . . . .	62
Designation of record on appeal . . . . .	63
Clerk's certificate . . . . .	65

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VIRGINIA L. LOONEY, ET AL.

VS.

CAPITAL NATIONAL BANK OF AUSTIN, TEXAS, ET AL.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT  
CONSTRUING WILL

(Filed in Clerk's office March 16, 1955.)

EMMA L. BAKER,

PLAINTIFFS,

VS.

CAPITAL NATIONAL BANK OF AUSTIN, TEXAS,  
A NATIONAL BANKING CORPORATION,

EDGAR H. PERRY, SR.,

MARC ANTHONY,

VIRGIL P. PATTERSON,

MAUD S. PADDOCK,

MAUDE R. CASHIN,

D'ARCY M. CASHIN,  
COLEMAN GAY  
EMMETT T. SWEENEY,

CAMILLE L. SWEENEY,

PAULINE F. STEPHENS,

GLADYS A. GREGG,

WILLIAM B. PADDOCK,

CLAUDE W. SEARS,

GEORGIANNA SEARS, and

HONORABLE JOHN BEN SHEPPERD,  
ATTORNEY GENERAL OF TEXAS,

DEFENDANTS.

NO. 785

CIVIL

court as follows:

I.

Plaintiff Virginia L. Looney, joined herein pro forma by her husband, C. M. Looney, is a resident and citizen of the State of Oklahoma. Plaintiff Emma L. Baker is a resident and citizen of the State of Florida.

The defendants Capital National Bank of Austin, Texas, a national banking corporation, Edgar H. Perry, Sr., Coleman Gay, Marc Anthony, Virgil P. Patterson, Maud S. Paddock, Maude R. Cashin, D'Arcy M. Cashin, Emmett T. Sweeney, Camille L. Sweeney, Pauline F. Stephens, Gladys A. Gregg, William B. Paddock, Claude W. Sears, and Georgianna Sears are resident citizens of the State of Texas. The Attorney General of the State of Texas, the Honorable John Ben Shepperd, resides in the City of Austin, Travis County, Texas, and is a proper party.

That jurisdiction is founded on diversity of citizenship, and the matter in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.00.

II.

This action is prosecuted under the provisions of 28 USC Section 2201, 62 Stat. 964, amended May 24, 1949, 63 Stat. 105.

Lindsay, deceased.

IV.

Franklin Lindsay died testate on or about May 1, 1954, in the City of San Antonio, Bexar County, Texas; the deceased had no domicile or fixed place of residence in the State of Texas, at the time of his death; however, his principal property and business interests are situated in the County of Travis, State of Texas. A copy of the last will and testament of the deceased is attached hereto, marked Exhibit "A", and made a part hereof.

V.

The last will and testament was duly offered for probate in the County Court of Travis County, Texas, on May 5, 1954, and was admitted to probate on May 17, 1954. The Capital National Bank of Austin, Texas, a national banking corporation, was granted letters testamentary and qualified as independent executor of the will of the deceased.

VI.

Defendant Capital National Bank of Austin, Texas, is sued herein as independent executor of the purported will of Franklin Lindsay, deceased, and as trustee of the residuary estate of Franklin Lindsay, deceased. Defendants Edgar H. Perry, Sr., Coleman Gay, Marc Anthony, Virgil P. Patterson, Maud S. Paddock, Maude R. Cashin, D'Arcy M. Cashin, Emmett

dents for loans, according to the purported will of Franklin Lindsay, deceased. Defendants Mrs. Camille L. Sweeney, and Mrs. Gladys A. Gregg, are sued herein as beneficiaries of the purported will of Franklin Lindsay, deceased.

VII.

Franklin Lindsay attempted in his purported will to set up a charitable trust which in its material portions may be summarized as follows: By the terms of paragraph three of the purported will the residue of the estate of Franklin Lindsay, deceased, is to be held in trust by the Capital National Bank of Austin, Texas; paragraph seven of the purported will directs that the properties of the estate are to be held in trust by the Capital National Bank of Austin, Texas, as a fund for the assistance of students who desire, but are financially unable to obtain college educations at any of the Texas State institutions, such as the University of Texas, and Agricultural and Mechanical Colleges, "in which negroes or those having any negro blood shall not be entered"; paragraph eight of the purported will provides that loans from the income of the trust fund are to be made to certain students, the loans to be repaid when possible, with a fair rate of interest; paragraph nine of the purported will provides that the first committee to pass upon applications for loans



...Sears, and Georgianna Sears; paragraph nine further provides that upon the death of any of the members of the original committee, or the refusal of any of its members to serve, the remaining members of the committee are to select others to serve so that there will be a minimum of nine members of the committee; and by paragraph three of the purported will it is provided that in the event the Capital National Bank of Austin, Texas, shall lose or surrender its corporate charter or its trust powers or shall merge with another institution or discontinue its functions or trust department for any reason whatsoever, its successor, as trustee, shall be selected by the committee hereinafter described, as then constituted, from among the financial institutions in Austin, Texas, having trust powers.

VIII.

It is provided in paragraph eight of the purported will that each member of the original committee shall be paid as a gift the sum of \$2,500.00, but in the event husband and wife are named, they are to be considered as one, and \$2,500.00 is to be made to both or to the survivor.

IX.

Paragraph two of the purported will gives \$2,500.00 to each of the following: Mrs. Camille L. Sweeney, Mrs.

Paragraph five of the purported will directs the quarterly payment from the trust estate of \$600.00 each to Emma L. Baker and Virginia L. Looney, during their lifetimes, which sums are to be increased to each upon the death of their present husbands, to \$1,200.00, and said sums are to be net in amount, the taxes, if any, to be paid by the estate.

XI.

Paragraph six of the purported will provides that after the death of their father, each of the then living children of Virginia L. Looney is to be given the sum of \$20,000.00, in cash, net after taxes, or its equivalent value in securities from the estate, and paragraph six further provides that Beverly H. Baker, Jr., is to be given the sum of \$1,000.00, in cash, after the death of his father.

XII.

Paragraph eleven of the purported will provides that after a trial of ten years, if the plan for lending money to students is unsuccessful, or unsatisfactory to the committee, then the committee is empowered in its discretion to use the income and any portion of the corpus of the trust fund which may be considered necessary, for other purposes, for the furtherance and increase of education, such as buildings, halls, and hospitals, preferably in connection with

The testamentary trust being invalid and unenforceable for reasons hereinafter set forth, plaintiffs Virginia L. Looney and Emma L. Baker are entitled to the immediate possession of the residuary estate of Franklin Lindsay, deceased, as sisters and sole heirs of the deceased, by virtue of the laws of descent and distribution of the State of Texas.

XIV.

Plaintiffs allege that the trust sought to be created in the purported will is not a charitable trust, but is a private trust, and as such violates the rule against perpetuities, and therefore is void and unenforceable.

XV.

The testamentary trust attempted to be created by testator which would provide funds for loans to students, at interest, to attend colleges in which Negroes shall not be entered is void and unenforceable, for the reason that there are no State institutions in which qualified Negro students may not enter, such discrimination being a violation of the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and a violation of the Due Process clause of the Fourteenth Amendment to the Constitution of the United States; that private schools of higher learning within the State of Texas are, with

enjoy certain tax benefits which make them limited State agencies, subject to Constitutional prohibitions, especially the prohibition against segregation and discrimination of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and the Due Process clause of the Fourteenth Amendment to the Constitution of the United States.

XVI.

The provisions of the purported will attempting to create the testamentary trust which empower the committee in its absolute discretion to use the funds of the testamentary trust for construction of buildings after a trial of the plan for loans to students, for ten years, are void and unenforceable for the reason that the provisions are vague, indefinite, and wholly incapable of being administered, in that the cestuis que trust are inadequately defined; furthermore, since there are no Texas State institutions of higher learning which can bar, from attendance, Negroes otherwise qualified, the provisions cannot be executed since gifts to schools in which white and Negro students attend on an equal basis would violate the intent of the testator that the only schools to which gifts may be made are those barring Negroes from attendance.

and object of the trust rests exclusively with the committee; that at the time of the execution of the will the power of the committee to select the beneficiaries could not be exercised because there were no schools which could lawfully exclude Negroes or those having any Negro blood, and at and after the death of testator there were no schools which could lawfully exclude Negroes or those having any Negro blood, and that there is no subject matter upon which the committee may act without violating the provisions of the will and the intent of the testator, and therefore the attempted testamentary disposition of the residuary estate is void.

XVIII.

The provisions of the purported will attempting to establish a charitable trust are void and unenforceable because the committee is not responsible or accountable to any person, persons or legally constituted authority for their administration of the fund, and the trustee has no discretion or control of the expenditures of the funds.

XIX.

That the committee selected by the testator is vested with the power to select the beneficiaries of the trust estate, and to devote the income and corpus of the estate for private as well as public or State institutions; that under



cretion to select the institutions to receive the benefit of the trust estate in the construction of buildings, hospitals, etc., and that no restriction or limitation is placed upon the committee restricting the use of all of the income or the corpus of the trust estate to charitable or public institutions; that by reason thereof, said will is void in that it violates Article I, Section 26, of the Constitution of the State of Texas relating to perpetuities.

XX.

The provisions of the trust are void and unenforceable because private persons are designated as the cestuis que trust as an indefinite class of persons and objects as the donees of the attempted trust, which constitutes a mingling of public and private objects of the trust.

XXI.

By the terms of the will the legal title to the residuary estate is vested in the trustee, the equitable title is vested in some indefinite donee to be selected by the committee, and the beneficial interest is not to be enjoyed until such times as the committee in its discretion may fix; for this reason the enjoyment of the beneficial interest may be indefinitely postponed and no judicial power or authority can compel the committee to perform. Failure of the committee

The trust which the testator has attempted to create by his purported will is void and unenforceable because there is no assurance that the committee which is designated for the selection of described students who are to receive loans will continue in existence in perpetuity, whereas the trust will continue in perpetuity, and upon the failure of the committee to continue or to function, there are no means by which another instrumentality for the selection of students for loans may be designated, whereupon the residuary estate of the testator will vest in the trustee in perpetuity as a private trust, which is contrary to the rule against perpetuities.

Wherefore, premises considered, plaintiffs respectfully pray:

(1) That process issue out of this court to each and all of the defendants, to appear and answer the complaint filed herein.

(2) That this court enter judgment construing said will and, to vest the fee simple title in these plaintiffs in the residuary estate of which the deceased died seized.

(3) That a declaratory judgment be entered herein determining that the testamentary provisions of the will creating a trust of the residuary estate is void and unenforceable for the reasons set forth in this complaint and that

part of the residuary estate.

(4) That the executor of the will be directed to determine the amount of inheritance and income taxes payable on the total assets of the estate, and the residuary estate remaining after payment of income and inheritance taxes, if any, be disbursed and paid to these plaintiffs as heirs at law and next of kin of Franklin Lindsay, deceased.

(5) And that the court grant to plaintiffs such other relief, both legal and equitable, general and special, to which plaintiffs may be entitled, and the costs of this action.

/s/ Julian C. Clopton  
Julian C. Clopton  
1009 Perry-Brooks Building  
Austin 1, Texas

/s/ Creekmore Wallace  
Creekmore Wallace  
P. O. Box 297  
Pryor, Oklahoma

/s/ Thomas A. Wallace  
Thomas A. Wallace  
310 Pythian Building  
Tulsa 3, Oklahoma

Attorneys for Plaintiffs  
Virginia L. Looney and  
Emma L. Baker



That I, Franklin Lindsay, of the States of Texas,  
being of sound and disposing mind and memory and not in fear  
of death, do hereby make, publish and declare this my last  
will and testament, hereby revoking all other wills hereto-  
fore made by me, and for such purpose do hereby declare and  
provide as follows:

1.

I desire and direct that my just debts shall be  
paid out of my estate by my executor, hereinafter named, as  
soon as possible after my death, including expenses in con-  
nection with my last illness and cremation of my body or,  
preferably my body given to a hospital for useful purposes for

I do not want a grave or mound  
To clutter up the living ground  
And be a care to those with needs,  
Or better, covered with vines and weeds:  
I do not wish a slab or stone  
For dates cannot for errors atone  
And my poor body has no worth  
But only deeds while on this earth;  
So, doctors may use it to aid the ill  
Or its ashes scattered whither they will.

to each of the following friends:

Mrs. Camille L. Sweeney,	San Antonio, Texas.
Mrs. Margaret Ramsey Jennings,	Brandaville, Mo.
Mrs. Paula Rohlf's Kauter,	(Last known address (760 Home St. Bronx, N.Y.
Anthony and Annely Fachiri,)	(Present address
or to the survivor. )	(Hotel Manin, Milan, Italy.
Mrs. Gladys A. Gregg,	(Waco, Texas.

3.

I hereby give, devise and bequeath unto The Capital National Bank in Austin, Texas, all the balance of the property of which I die seized and possessed, of every character whatsoever, real, personal and mixed and wherever situated, in trust, for the following uses and purposes and upon the conditions hereinafter set out:

In case The Capital National Bank shall lose or surrender its corporate charter or its trust powers or shall merge with another institution or discontinue its functions or its trust department for any reason whatsoever, its successor, as trustee, shall be selected by the committee hereinafter described, as then constituted, from among the financial institutions in Austin, having trust powers.

purchase for the trust estate which has at any time been  
owned or held in trust by said trustee.

All provisions in this will relating to the  
"Trustee", shall likewise apply to any successor trustee.

(End of page 1 - - /s/ Franklin Lindsay)

The said bank shall at once after my death take  
possession of the properties belonging to the estate, and  
shall have full power and authority to handle, manage and  
control all properties that may come into its possession  
hereunder, for the uses and purposes hereinafter set forth,  
and shall have full power and authority to sell and dispose  
of and convey any property that may come into its possession  
hereunder and that it may see fit and upon any terms that it  
may deem best for the uses and purposes hereinafter set forth,  
and the purchaser or purchasers under any such sale or sales  
shall not be required to look to the application of the pro-  
ceeds thereof; and the said Bank shall have full authority  
to invest and reinvest any funds or monies that may come into  
its possession hereunder, in any manner that it may see fit,  
my intention being that the income from my estate shall be  
continuous so far as practicable under sound judgement and  
management, and as large as possible commensurate with safety,  
in the discretion of said Bank. The said Bank shall not be  
liable nor responsible nor answerable to any person or

5.

From the income from the state are to be paid quarterly or at three month intervals, as far as practicable, the following sums, to be net in amount, any necessary taxes, if any, to be paid by the estate:

To my Sister, Emma L. Baker, present address Miami, Florida, and to my other Sister, Virginia L. Looney, now living at 628 N. W. 16 Street, Oklahoma City, Oklahoma, annually during their lifetimes the sum of Six Hundred Dollars (\$600.) each, which sums are to be increased to each upon the death of their present husbands to Twelve Hundred Dollars (1,200).

with other incomes which have been provided for them, the above amounts are considered sufficient for their comfort.

6.

After the death of their father, each of the then living children of my Sister Virginia, is to be given the sum of Twenty Thousand Dollars (\$20,000.) in cash, or preferably the equivalent value in securities from the estate and, after the death of his father, the son of my other Sister, Beverly H. Baker, Jr., is to be given the sum of One Thousand Dollars (\$1,000.) in cash.

These amounts to be net, any necessary taxes, if any, to be paid by the estate and are not made greater as I

the country, and even to the world by education of its peoples, subject to other provisions of this will, the properties of the estate are to be held in trust by The Capital National bank in Austin, Texas, as a fund for the assistance of worthy and deserving white students of either sex who may be desirous, but financially unable, of obtaining college educations at any of the Texas state institutions, such as University of Texas, Agricultural and Mechanical College etc. etc. in which negroes or those having any negro blood shall not be entered. (End of page 2 - /s/ Franklin Lindsay.)

If the Texas state institutions cannot so qualify, then those which can meet the requirements, such as Rice Institute, Texas Christian University, Southern Methodist University or other such colleges or universities in Texas shall be substituted. Applying students, of course, must be able to meet the requirements for entrance to the universities or colleges.

This fund to be known as the "Franklin Lindsay Students Aid Fund".

8.

Loans from the income of the above mentioned Trust Fund are to be made to deserving students once yearly, before the beginning of the college term or year, in amounts

interest, order that the fund may be continued available for others.

These loans are to become available as soon as practicable after the gifts, from the income of the estate, to the members of the committee mentioned below.

"Income" shall be construed to mean all revenues from the trust estate, together with proceeds of repaid loans, whereas capital gains and losses shall affect only the principal or corpus of the fund.

From such income I direct that there shall be paid, as soon as practicable, as a gift, the sum of Twenty Five Hundred Dollars (\$2,500.) to each of the original committee hereinafter named. In instances in which a husband and wife is mentioned, they shall be considered as one and but one gift of \$2,500 is to be made to the two or to the survivor.

9.

The first committee to pass upon the applications for such loans by the described students and to approve them is to be composed as follows:

Edgar H. Perry, Sr.	Austin, Texas,	Pauline F. Stephens,	Waco,
Coleman Gay,	Austin, Texas,	Gladys A. Gregg,	Waco, Tex.
Marc Anthony,	Dallas, Texas,	Wm. B. Paddock,	Odessa, Tex.
Virgil P. Patterson,	Amarillo, Tex.	Claude W. Sears or his wife,	

and upon the death of any of the above or of their refusal to serve the remaining members of the committee shall select others in their stead so as to maintain the number of the members of the committee to nine, at least, in order that the burden may not be too onerous for any of them in investigating applications for and recommending such loans and such committee shall be perpetuated in the manner described above for the perpetuation of the committee first named above. In other words, the surviving members are asked to maintain the committee to a minimum of nine members by continuously choosing others to replace those members who may for any cause whatsoever fail to serve.

I nominate as the first Chairman of the Committee Edgar H. Perry, Sr. and upon his death or resignation, I request that the committee shall elect his successor and successors.

(End of page 3 - /s/ Franklin Lindsay.)

As the domiciles of the various members of the committee are so widely scattered, I suggest that recommendation of any one or more of the members be considered as approval of the committee for a loan, especially of the first one to an applicant; the second or later applications by a student may be



sufficient numbers of lawyers and preachers and probably enough physicians and that more of other professions and trades will, on the whole, be more helpful.

The Trustee shall keep the Chairman of the committee informed as to the estimated amount available for such loans for each next succeeding college full term so that the members of the committee may be advised as to how many loans may be made for such term. In case more loans should be approved than can be made from available income for this purpose, the first number of the approved applications whose total shall equal the estimated amount available, to reach the Trustee, shall be accepted by the said Trustee.

10.

The recommendations, as outlined above, of members of the committee, however formed, for loans are to be recognized by the Bank, as Trustee, the amounts so approved paid from time during the college term, at the discretion of the Trustee, to students whose applications have been so approved, their notes including a fair rate of interest, taken and efforts made to maintain such notes in legal standing and to collect same when practicable, for further maintenance of the fund.



the trust. If the results shall prove to be unsatisfactory to the committee, as then constituted, such committee shall be empowered in its discretion to use the income and any portion of the corpus of the trust fund which may be considered necessary, for other purposes for the furtherance and increase of education; such as buildings, halls, hospitals, etc., preferably in connection with Texas state institutions, which meet the requirements. My feeling toward negroes being that there should not be co-education with other students.

12.

I hereby nominate and appoint said Capital National Bank, of Austin, Texas, executor of this will and of my estate.

As a portion of the estate may consist of farms, oil, or gas properties, etc. formerly in partnership with D. C. Reed, now deceased, I desire and direct that in its discretion, the said Bank as executor or trustee shall consult Bernard C. Mollberg, of Austin, who is familiar with such properties and interests and shall pay him as compensation, liberally, amounts such as in the opinion of said Bank shall be commensurate with his advice and services rendered.

(End of page 4 - /s/ Franklin Lindsay.)

14.

If it should be considered necessary or advisable by the executor and/or by the committee above described, to employ an attorney, other than the regularly retained attorneys of said Bank as executor or trustee, I hereby designate as such attorney Coleman Gay of Austin who shall be compensated accordingly.

15.

I desire and direct that said executor and trustee shall receive as compensation, as agreed between us, for its services hereunder a commission of Two per cent (2%) of the incomes, rents and revenues derived from all of said properties.

WITNESS my hand at San Antonio, Texas, this fifth day of October, A. D. Nineteen Hundred Forty Nine (1949), this will, consisting of Five pages, each bearing my signature.

/s/ Franklin Lindsay

We, Clarence S. Culbertson and George N. Dilworth do here and now sign our names as witnesses to the foregoing will of Franklin Lindsay and we, each of us speaking for himself, declare that we know the signature above to be that of Franklin Lindsay to said will and testament, and that we each sign our names as witnesses to said will at the request of said Franklin Lindsay and in his presence and in the presence of

Plaintiffs,

)

v.

)

No. 785

Capital National Bank of Austin, Texas, et al., ) Civil Action

Defendants. )

ORIGINAL ANSWER OF DEFENDANTS THE CAPITAL NATIONAL BANK

IN AUSTIN, ET AL.

TO SAID HONORABLE COURT:

In answer to the complaint the defendants The Capital National Bank in Austin, independent executor and testamentary trustee of the estate of Franklin Lindsay, deceased; Edgar H. Perry, Sr., Coleman Gay, Virgil P. Patterson, Maud S. Paddock, Emmett T. Sweeney, Camille L. Sweeney, Pauline P. Stephens, Gladys A. Gregg, Claude W. Sears and Georgianna Sears say:

First Defense

The complaint fails to state a claim against defendants or any of them upon which relief can be granted.

Second Defense

These defendants admit the truth of the allegations contained in Paragraph I, Paragraph II, Paragraph III, Paragraph IV, Paragraph V, Paragraph VI, Paragraph VII, Paragraph VIII and Paragraph IX of said complaint.

respective husbands are \$150.00 each, which amounts are to be increased to quarterly payments of \$300.00 each upon the deaths of said husbands, said will providing that the annual payments to plaintiffs shall be \$600.00 while their respective husbands are living and \$1,200.00 thereafter.

Fourth Defense

These defendants admit the allegations contained in Paragraph XI and XII of the complaint.

Fifth Defense

Defendants deny all the allegations contained in Paragraph XIII of the complaint and deny specially that the testamentary trust established by said will is invalid or unenforceable for any reason, but say that even if the testator had died intestate as to the residuary estate plaintiffs would still not be entitled to the immediate possession thereof.

Sixth Defense

Defendants deny all the allegations contained in Paragraph XIV of the complaint.

Seventh Defense

Defendants deny all the allegations contained in Paragraph XV of the complaint.

Eighth Defense

Defendants deny all the allegations contained in

Tenth Defense

Defendants deny all the allegations contained in Paragraph XVIII of the complaint.

Eleventh Defense

Defendants deny all the allegations contained in Paragraph XIX of the complaint.

Twelfth Defense

Defendants deny all the allegations contained in Paragraph XX of the complaint.

Defendants pray that plaintiffs' demands be rejected and their suit dismissed at their cost.

/s/ Dean Moorhead  
Dean Moorhead  
Brown Building  
Austin, Texas

/s/ Coleman Gay  
Coleman Gay  
Capital National Bank  
Building  
Austin, Texas

Attorneys for Defendants

Looney, Clark and Moorhead  
Brown Building  
Austin, Texas  
Of Counsel

I hereby certify that copy of the above and fore-going answer has been served on opposing counsel, Austin, Texas, this 13th day of August, 1954.

/s/ Coleman Gay  
Attorney

STIPULATION

TO SAID HONORABLE COURT:

It is hereby stipulated by and between the plaintiffs and John Ben Shepperd, Attorney General of Texas, one of the defendants herein, that said defendant may file the amended answer attached hereto, and service of a copy thereof is hereby accepted.

/s/ Julian C. Clopton

JULIAN C. CLOPTON

ATTORNEY FOR PLAINTIFFS

JOHN BEN SHEPPERD  
Attorney General of Texas

W. V. GEPPERT  
Assistant Attorney General

/s/ Billy E. Lee

BILLY E. LEE  
Assistant Attorney General

December 22, 1954

/s/ Marietta McGregor Payne

MARIETTA MCGREGOR PAYNE  
Assistant Attorney General

TO THE SAID HONORABLE COURT:

For answer to the complaint of the plaintiffs in the above entitled cause, John Ben Shepperd, Attorney General of Texas, one of the defendants in the above entitled cause, says:

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

Defendant admits the truth of the allegations contained in paragraphs I, II, III, IV, V, VI, VII, VIII, and IX of the complaint.

Third Defense

Defendant admits the allegations contained in paragraph X of said complaint except that the quarterly payments to be made to the plaintiffs during the lifetimes of their respective husbands are \$150.00 each, which amounts are to be increased to quarterly payments of \$300.00 each upon the deaths of said husbands, said will providing that the annual payments to plaintiffs shall be \$600.00 while their respective husbands are living and \$1,200.00 thereafter.

Fourth Defense

Defendant admits the allegations contained in

paragraph XIII of the complaint and denies specially that the testamentary charitable trust established by the last will and testament of Franklin Lindsay, deceased, is invalid or unenforceable for any reason.

Sixth Defense

Defendant denies all the allegations contained in paragraph XIV of the complaint.

Seventh Defense

Defendant denies all the allegations contained in paragraph XV of the complaint.

Eighth Defense

Defendant denies all the allegations contained in paragraph XVI of the complaint.

Ninth Defense

Defendant denies all the allegations contained in paragraph XVII of the complaint.

Tenth Defense

Defendant denies all the allegations contained in paragraph XVIII of the complaint.

Eleventh Defense

Defendant denies all the allegations contained in paragraph XIX of the complaint.

Twelfth Defense

Defendant denies all the allegations contained in



JOHN BEN SHEPPERD  
Attorney General of Texas

W. V. GEPPERT  
Assistant Attorney General

/s/ Billy E. Lee  
BILLY E. LEE  
Assistant Attorney General

/s/ Marietta McGregor Payne  
MARIETTA MCGREGOR PAYNE  
Assistant Attorney General

TO SAID HONORABLE COURT:

Defendants Marc Anthony, Maude R. Cashin and William B. Paddock move the Court as follows:

I.

To dismiss the action on the ground that the Court lacks jurisdiction to grant the relief prayed for, the complaint showing on its face that the object of the suit is to annul the testamentary trust created in the will of Franklin Lindsay, deceased, which will has been admitted to probate in the County Court of Travis County, Texas, a court of competent jurisdiction, and that jurisdiction to grant the relief herein sought is vested exclusively in the probate courts of Texas and is outside the general equity powers of the federal courts.

II.

To dismiss the action on the ground that it is a collateral attack on the order of the probate court admitting said will to probate and sustaining its validity, which order can be attacked only in the court which entered said order.

LOONEY, CLARK AND MOORHEAD  
Brown Building  
Austin, Texas

COLEMAN GAY  
Capital National Bank Building  
Austin, Texas

By /s/ Coleman Gay  
Attorneys for Defendants Marc  
Anthony, Maude R. Cashin and  
William B. Paddock

Plaintiffs,  
VS. NO. 785 - CIVIL  
CAPITAL NATIONAL BANK OF  
AUSTIN, TEXAS, ET AL.  
Defendants.

TRANSCRIPT OF STIPULATION IN OPEN COURT

BE IT REMEMBERED that on the 5th day of July, 1955, in the Austin Division of the United States District Court, Western District of Texas, before the Honorable Ben H. Rice Jr., judge of said court, without a jury, there came on to be heard the above styled and numbered cause, whereupon the following stipulation was entered into in open court:

APPEARANCES:

JULIAN C. CLOPTON, Austin, Texas,  
CREEKMORE WALLACE, Pryor, Oklahoma, and  
THOMAS A. WALLACE, Tulsa, Oklahoma,

appearing on behalf of the plaintiffs;

LOONEY, CLARK AND MOORHEAD by DEAN MOORHEAD,  
Austin, Texas, and  
COLEMAN GAY, Austin, Texas,

appearing on behalf of all defendants except  
John Ben Shepperd;

MARIETTA MCGREGOR PAYNE, Assistant Attorney General,  
Austin, Texas,

appearing on behalf of the defendant John Ben  
Shepperd, Attorney General of Texas.

MR. CREEKMORE WALLACE: I'd like to suggest to the Court we have an agreement with counsel that we can amend, insert an amendment here in the amended petition as to the prayer number (2) where it says: "That this court enter judgment construing said will" and insert the word "and," "and to vest the fee simple title in these plaintiffs in the residuary estate of which the deceased died seized."

THE COURT: You mean you are amending by inserting the word "and"?

MR. WALLACE: Yes, sir.

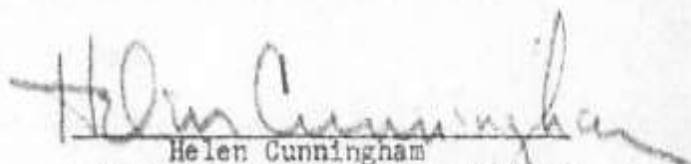
THE COURT: All right.

=====

I, Helen Cunningham, Official Reporter of the United States District Court, Western District of Texas, Austin Division, do hereby certify that the above and foregoing transcript is a full, true and correct transcript of the stipulation had in open court upon the hearing of the above numbered and styled cause, as set out in the caption to this transcript, which was had before the Hon. Ben H. Rice, Jr., United States District Judge, without a jury, on the 5th day of July, 1955.

I further certify that this transcript has been prepared by me at the request of the attorneys for the plaintiffs for the purpose of an appeal from the judgment entered herein.

Witness my official signature in the city of Austin, Texas, this 2nd day of November, 1955.

  
Helen Cunningham  
Official Reporter, United States  
District Court, Western District  
of Texas, Austin Division

The plaintiffs and defendants herein stipulate, agree and admit that each of the following statements are true; to-wit:

(1) Franklin Lindsay died testate May 1, 1954, left estate in Travis County, Texas.

(2) That the will of Franklin Lindsay, deceased, was filed in the County Court of Travis County, Texas, Cause No. 16,470, styled "In the Matter of the Estate of: Franklin Lindsay, Deceased", and thereafter the Capital National Bank, qualified as independent executor of said estate, has determined and paid the debts of said estate, part of the specific bequests as outlined in the will and is now holding the rest and residue of said estate in its trust account designated as No. 83, as shown by "Review and Appraisal of Trust Assets", marked as Exhibit "A". The amount of the Federal Estate Tax and Texas Inheritance Tax due by the Franklin Lindsay estate has not been determined or paid.

(3) That certified copies of the Application for Probate of Will, the Will of Franklin Lindsay, and the Order Probating Will and Granting Letters Testamentary, are attached hereto as Exhibit "B".

(4) It is admitted that Virginia L. Looney and Emma L. Baker are sisters of the deceased and are the sole and only

Agency as ) 1955. Included in this number are 16 st ) supported senior colleges and universities, 33 public junior colleges supported in whole or in part by state appropriations, 37 independent senior colleges and universities, and 8 independent junior colleges. There are 19 business junior colleges, 4 schools of music and arts, and 6 schools of special subjects.

That the 19 business junior colleges, the 4 schools of music and arts, and the 6 schools of special subjects are privately owned schools operated for a profit to their owners.

Under the rules and regulations prescribed by their governing bodies or under the law creating them negroes and those having negro blood are prohibited from attending a large number of the above mentioned schools, both those that are supported by public funds and those that are privately supported. There are no negroes or persons having negro blood now enrolled in a large number of the colleges and universities in Texas and this is true both of the schools that are supported by public funds and those that are privately supported.

That there are a large number of business colleges, barber colleges, schools of naturopathy and other similar schools in the State of Texas not on the approved list of the Texas Education Agency which are operated for a profit to

CHAS. W. WALLACE  
P. O. Box 297  
Fryer, Oklahoma

THOMAS A. WALLACE  
310 Pythian Building  
Tulsa 3, Oklahoma

By /s/ Creekmore Wallace  
Attorneys for Plaintiffs

JOHN BEN SHEPPERD, Attorney  
General of Texas

By /s/ Marietta McGregor Payne  
Assistant Attorney General of  
Texas

COLEMAN GAY  
Capital National Bank Building  
Austin, Texas

DEAN MOORHEAD  
Brown Building  
Austin, Texas

By /s/ Coleman Gay

Attorneys for Defendants



KIND OF TRUST THROUGHOUT ACCOUNTED FOR AS FOLLOWS:  
 trust under will of Franklin Lindsay, deceased, with \$100  
 to \$2400 annual Life estate in sisters and balance used for  
 student loan fund.

INVENTORY

Carrying Value	Classification of Assets	Approximate Market Value	% Of Total
\$ 1,708,277.16	Stocks	\$ 1,953,143.89	86.7%
\$ 18,707.00	Bonds	\$ 18,707.00	.88%
\$ 185,564.71	Mortgages & Notes	\$ 185,564.71	8.23%
\$	Real Estate	\$	
\$ 42,000.00	Miscellaneous	\$ 42,000.00	1.86%
\$ 52,636.03	Income Cash	\$ 53,669.53	2.33%
\$ 215.00	Principal Cash	\$ 215.00	- -
<u>\$ 1,954,978.87</u>		<u>\$ 2,253,300.13</u>	<u>100%</u>

LIABILITIES-MEMO ACCOUNT \$ -0-

APPROXIMATE AVERAGE AMOUNT OF CORPUS OF ESTATE FOR YEAR

NET EARNINGS BEFORE FEES ARE DEDUCTED 61,727.56 FOR Period  
 5-3-54 to 12-31-54

FEES 2% gross income

AVERAGE NET YIELD 4.21%

REMARKS: After providing for approximately \$70,000.00 in  
 specific bequests, the residue is to constitute a perpetual

Bank Trust granted wide discretionary investment authority.  
Lindsay's two sisters are contesting will, only on grounds  
alleging that because of the racial restriction in use of  
the loan fund the residue of the estate would go to the two  
sisters under laws of descent and distribution.

(e) It was the intention of the testator, Franklin Lindsay, that the plan outlined in his last will and testament, and particularly numbered paragraph 7 thereof, for making loans to students should receive a trial for a period of ten years, the commencement of which trial period, however, having been delayed by the filing of this civil action by plaintiffs on July 24, 1954, continuously down to this time; such period of ten years, therefore, shall terminate July 15, 1967.

3. As to further details of the administration of the trust, and particularly the portions of numbered paragraphs 15, 8 and 3 of the last will and testament, as to which an interpretation is requested:

(a) It was the intention of the testator, Franklin Lindsay, and the court finds independently of the agreement between the parties, that The Capital National Bank in Austin, as Independent Executor of the Estate of Franklin Lindsay, deceased, is not entitled to the regular statutory compensation and commission payable to an executor under the Texas law for its services as such Executor; and that The Capital National Bank in Austin, as Testamentary Trustee of the charitable trust created and held valid under the provisions of numbered paragraph 3 hereof, is entitled to a commission of two per cent (2%) of the incomes, rents and revenues derived from all of said properties (which includes but is not limited to the sums of money collected from students on loans made pursuant to numbered paragraph 7 of the last will and testament of Franklin Lindsay, deceased, and the full amount of money received, either as cash bonus, delay rentals or royalty payments for the lease of oil, gas and other minerals belonging to the trust estate) for its services as such Trustee.

(b) Except as and if provided in sub-paragraph (a) hereof, the defendant, The Capital National Bank in Austin, Trustee, shall not be entitled to a commission on the proceeds from the sale or collection of capital assets constituting the corpus of the estate as it existed on May 17, 1954, or any mutations thereof.

**Appendix F.7**  
**Stipulation, July 5, 1955**

ELL:H 6-11

Appendix F.7

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Stipulation, July 5, 1955  
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IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF TEXAS  
AT AUSTIN

VIRGINIA L. LOONEY, ET AL.,  
Plaintiffs

VS.

CAPITAL NATIONAL BANK OF  
AUSTIN, TEXAS, ET AL.,  
Defendants

↓  
↓  
↓  
↓  
↓

NO. 785

CIVIL ACTION

-----  
STIPULATION

TO SAID HONORABLE COURT:

The plaintiffs and defendants herein agree that the Stipulation heretofore filed herein on the 5<sup>th</sup> day of July, 1955, may be and the same is hereby withdrawn and that in lieu thereof the plaintiffs and defendants for the purposes of this case herein stipulate, agree and admit that each of the following statements are true:

1. Franklin Lindsay died testate May 1, 1954, leaving an estate in Travis County, Texas.
2. The will of Franklin Lindsay, deceased, which was executed by him on October 5, 1949, was filed for probate in the County Court of Travis County, Texas, in Cause No. 16,470, styled "In the Matter of the Estate of Franklin Lindsay, Deceased" on May 5, 1954, and was admitted to probate on May 17, 1954. Thereafter The Capital National Bank in Austin qualified as independent executor of said estate. The bank has determined and paid the debts of said estate and a part of the specific bequests as outlined in the will and is now holding the rest and residue of said estate in its Trust Account, designated as No. 88, as shown by "Review and Appraisal of Trust Assets" marked as Exhibit "A".

The amount of the federal estate tax, if any, and Texas inheritance tax, if any, due by the Franklin Lindsay Estate has not been determined or paid.

3. Certified copies of the application for probate of will, the will of Franklin Lindsay and the order probating will and granting letters testamentary are attached hereto as Exhibit "B".

4. The Capital National Bank in Austin is a defendant in Civil Action No. 785 pending in the District Court of the United States for the Western District of Texas, at Austin, entitled Virginia L. Looney, et al., plaintiffs, vs. Capital National Bank, of Austin, Texas, and is one and the same banking corporation as Capital National Bank, of Austin, Texas, named Independent Executor and Trustee of the Estate of Franklin Lindsay, deceased, and as a defendant in the aforesaid civil action.

5. It is agreed that Virginia L. Looney and Emma L. Baker are sisters of Franklin Lindsay, deceased, and that if present in court and sworn as witnesses each would testify as follows:

We were each the children of and well and personally acquainted with George F. Lindsay and Mary C. Lindsay during their lifetime. They were lawfully married in the year 1871 at Selma, Alabama, and continued to live together as husband and wife until the death of George F. Lindsay which occurred during the year 1928 at Oklahoma City, Oklahoma. After the death of George F. Lindsay, the aforesaid Mary C. Lindsay, his wife, lived as a widow until she died during the year 1939 at Oklahoma City. That the said George F. Lindsay and Mary C. Lindsay were each married only one time and such marriage was to each other. To the aforesaid marriage four children only were born, namely:

Franklin Lindsay, who died on May 1, 1954, leaving a last will and testament which is the subject of Civil Action

No. 785 pending in the District Court of the United States for the Western District of Texas, at Austin, entitled Virginia L. Looney, et al., plaintiffs, vs. Capital National Bank of Austin, Texas, et al., defendants. The said Franklin Lindsay did not marry; he remained a single man throughout his life and he had no children, either by blood or by adoption.

George Lindsay, a brother of Franklin Lindsay, during his lifetime was married one time only and there were no children of said marriage, either by blood or adoption. That the said George Lindsay died during the year 1926 at Durant, Oklahoma; and the wife of the said George Lindsay died during the year 1934, also at Durant, Oklahoma.

Virginia Lindsay Looney, a sister of Franklin Lindsay, is a married woman and the wife of C. M. Looney. She, the sister, has been married only the one time and, as aforesaid, to the said C. M. Looney. She, the sister, is one and the same person as Virginia L. Looney, one of the plaintiffs in the cause mentioned and numbered and entitled as aforesaid, and she resides in Oklahoma City, Oklahoma.

Emma Lindsay Baker, a sister of Franklin Lindsay, is a married woman and the wife of B. H. Baker. She, the sister, has been married only the one time and, as aforesaid, to the said B. H. Baker. She, the sister, is one and the same person as Emma L. Baker, one of the plaintiffs in the cause mentioned and numbered and entitled as aforesaid, and she resides in Miami, Florida.

Virginia L. Looney and Emma L. Baker, sisters of Franklin Lindsay, deceased, were on May 1, 1954, and are the sole and only surviving heirs at law of Franklin



Lindsay, deceased; and they each, Virginia L. Looney and Emma L. Baker, are of sound and disposing mind and memory, fully capable of knowing and understanding the extent and nature of their respective claims asserted in this civil action and to make their own independent decision as to the disposition of such case, including their claims asserted therein.

6. (a) On, prior and subsequent to October 5, 1949, the University of Texas and the Agricultural and Mechanical College of Texas, referred to in the last will and testament of Franklin Lindsay, deceased, were each (1) operated, maintained and supported by the State of Texas with its public funds as a "University of the first class...for the promotion of literature and the arts and sciences...", and (2) Texas state institutions where white persons applying for admission and admitted as students thereto could obtain college educations.

Likewise on, prior and subsequent to October 5, 1949, there were a number of other Texas state institutions "such as the University of Texas and the Agricultural and Mechanical College of Texas" where white persons applying for admission and admitted as students thereto could obtain college educations.

(b) On and prior to October 5, 1949, the University of Texas and the Agricultural and Mechanical College of Texas were restricted to white students in accordance with the Texas Constitution and laws and in practice, and on and prior to said date negroes and all persons of mixed blood descended from negro ancestry were not only prohibited by the Texas Constitution and laws to be students of the University of Texas and the Agricultural and Mechanical College of Texas, but also in practice such persons were not permitted to become students.

(c) On May 1, 1954, and on May 17, 1954, the University of Texas and the Agricultural and Mechanical College of Texas continued to be restricted to white students in accordance with the Texas Constitution and laws.

In practice one or more negroes were admitted as students in the University of Texas subsequent to October 9, 1950, and prior to May 1, 1954.

In practice on or prior to May 17, 1954, no negro or person of mixed blood descended from negro ancestry had been admitted as a student at the Agricultural and Mechanical College of Texas.

(d) On June 5, 1957, the University of Texas and the Agricultural and Mechanical College of Texas continue to be restricted to white students in accordance with the Texas Constitution and laws.

In practice negroes have been admitted as and have become and are students in the University of Texas.

In practice on or prior to June 5, 1957, no negro or person of mixed blood descended from negro ancestry had been admitted as a student at the Agricultural and Mechanical College of Texas.

(e) During all times mentioned in the preceding portion of this numbered paragraph 6 there were a number of other Texas state institutions, such as the University of Texas and the Agricultural and Mechanical College of Texas, (1) operated, maintained and supported by the State of Texas with its public funds as a university or college of the first class, and (2) where white persons applying for admission and admitted as students thereto could obtain college educations.

On all dates mentioned in the preceding portion of numbered paragraph 6, these other Texas state institutions were restricted to white students, in accordance with the Texas



Constitution and laws and in practice; and in practice no negro or person of mixed blood descended from negro ancestry has been admitted as a student at said other Texas state institutions.

(f) On, prior and at all times subsequent to October 5, 1949, Rice Institute [The William M. Rice Institute] referred to in the last will and testament of Franklin Lindsay, deceased, was (1) operated, maintained and supported in the State of Texas by private funds as a university or college of the first class for the promotion of literature and the arts and sciences, (2) not supported in whole or in part by public funds from the State of Texas, (3) a privately supported, non-profit, charitable institution, and (4) not operated for the pecuniary gain of any person or group of persons.

On, prior and at all times subsequent to October 5, 1949, Rice Institute was restricted to white students, in accordance with its articles of incorporation and the rules, regulations and by-laws governing its operation; and on, prior and subsequent to said date negroes and all persons of mixed blood descended from negro ancestry were not only prohibited from becoming students, but also in practice such persons were not admitted as students.

(g) On, prior and at all times subsequent to October 5, 1949, Texas Christian University, referred to in the last will and testament of Franklin Lindsay, deceased, was (1) operated, maintained and supported in the State of Texas by private funds as a university or college of the first class for the promotion of literature and the arts and sciences, (2) not supported in whole or in part by public funds of the State of Texas, (3) a privately supported, non-profit, charitable institution, and (4) not operated for the pecuniary gain of any person or group of persons.

On, prior and at all times subsequent to October 5, 1949, Texas Christian University was not restricted to white students by its articles of incorporation and the rules, regulations and

by-laws governing its operation; and on, prior and subsequent to said date negroes and all persons of mixed blood descended from negro ancestry, while not prohibited by the articles of incorporation and the rules, regulations and by-laws of Texas Christian University governing its operation from becoming students therein, in actual practice Texas Christian University has not admitted such persons as students thereat.

(h) On, prior and at all times subsequent to October 5, 1949, Southern Methodist University, referred to in the last will and testament of Franklin Lindsay, deceased, was (1) operated, maintained and supported in the State of Texas by private funds as a university or college of the first class for the promotion of literature and the arts and sciences, (2) not supported in whole or in part by public funds of the State of Texas, (3) a privately supported, non-profit, charitable institution, and (4) not operated for the pecuniary gain of any person or group of persons.

On, prior and at all times subsequent to October 5, 1949, Southern Methodist University was not restricted to white students by its articles of incorporation and the rules, regulations and by-laws governing its operation; and on and prior to May 17, 1954, negroes and all persons of mixed blood descended from negro ancestry, while not prohibited by the articles of incorporation and the rules, regulations and by-laws of Southern Methodist University governing its operation from becoming students therein, in actual practice Southern Methodist University had not permitted such persons to become students thereat; and subsequent to May 17, 1954, negroes have been admitted as and are students in Southern Methodist University.

(i) During all times mentioned in the preceding portion of this numbered paragraph 6, there were a number of other universities and colleges located in Texas, such as Rice Institute, Texas Christian University and Southern Methodist University,

(1) operated, maintained and supported in the State of Texas by private funds as universities and colleges of the first class for the promotion of literature and the arts and sciences, (2) not supported in whole or in part by public funds from the State of Texas, (3) privately supported, non-profit, charitable institutions, and (4) not operated for the pecuniary gain of any person or group of persons.

During all times mentioned in sub-paragraph (f) of this numbered paragraph 6, there were in Texas a number of other universities and colleges of the first class for the promotion of literature and the arts and sciences, such as Rice Institute, in which negroes and all persons of mixed blood descended from negro ancestry were not only prohibited from becoming students, but also in practice such persons were not admitted as students.

During all times mentioned in sub-paragraph (g) of this numbered paragraph 6, there were in Texas a number of other universities and colleges of the first class for the promotion of literature and the arts and sciences, such as Texas Christian University, in which negroes and all persons of mixed blood descended from negro ancestry, while not prohibited by their articles of incorporation and the rules, regulations and by-laws governing their operation from becoming students therein, in actual practice such other universities and colleges have not admitted such persons as students.

During all times mentioned in sub-paragraph (h) of this numbered paragraph 6, there were in Texas a number of other universities and colleges of the first class for the promotion of literature and the arts and sciences, such as Southern Methodist University, in which negroes and all persons of mixed blood descended from negro ancestry were not only not prohibited by the articles of incorporation of such universities and colleges and the rules, regulations and by-laws governing their operations

from becoming students therein but which have in practice admitted such persons as students.

This Stipulation is for the purpose of this Civil Action; and is made at Austin, Texas, this 15<sup>th</sup> day of June, 1957.

JULIAN C. CLOPTON  
Perry-Brooks Building  
Austin, Texas

CREEKMORE WALLACE  
P. O. Box 297  
Pryor, Oklahoma

THOMAS A. WALLACE  
310 Pythian Building  
Tulsa 3, Oklahoma

By Creekmore Wallace  
ATTORNEYS FOR PLAINTIFFS

JOHN BEN SHEPPERD  
Former Attorney General of Texas

WILL WILSON  
Attorney General of Texas  
By Marjorie McPherson Payne  
Assistant Attorney General  
of Texas

LOONEY, CLARK & MOORHEAD  
1020 Brown Building  
Austin 1, Texas

JAMES R. MEYERS  
COLEMAN GAY  
Capital National Bank Building  
Austin, Texas

By Coleman Gay  
ATTORNEYS FOR DEFENDANTS

No. 785 Civil Action

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

Judgment

FILED  
11/11/11  
J. Stovall

**Appendix F.8**  
**Agreed motion to withdraw, June 1957**

Agreed motion to withdraw, June 1957

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

VIRGINIA L. LOONEY, ET AL.  
Plaintiffs

VS.

CAPITAL NATIONAL BANK OF  
AUSTIN, TEXAS, ET AL.  
Defendants

NO. 785 CIVIL

AGREED MOTION TO WITHDRAW ANNOUNCEMENTS OF READY

Come now all parties to the above styled and numbered cause and respectfully move the Court to permit them to withdraw their announcements of ready herein in order that they may supplement the record in this cause and supply additional facts; and that the cause be continued to the June, 1957, Term of this Court, Austin Division.

JULIAN C. CLOPTON  
1009 Perry-Brooks Building  
Austin 1, Texas

CREEKMORE WALLACE  
P.O. Box 297  
Pryor, Oklahoma

THOMAS A. WALLACE  
310 Pythian Building  
Tulsa 3, Oklahoma

By Creekmore Wallace  
Attorneys for Plaintiffs

WILL WILSON  
Attorney General of Texas

By James D. Sullivan  
Assistant Attorney General

LOONEY, CLARK & MOORHEAD  
Brown Building  
Austin 1, Texas

COLEMAN GAY  
Capital National Bank Building  
Austin, Texas

By James R. Meyers  
J. R. Meyers  
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

VIRGINIA L. LOONEY, ET AL.

Plaintiffs,

VS.

CAPITAL NATIONAL BANK OF  
AUSTIN, TEXAS, ET AL.

Defendants.

NO. 785 - CIVIL

STIPULATION

TO THE SAID HONORABLE COURT:

The plaintiffs and defendants herein stipulate, agree and admit that each of the following statements are true; to-wit:

(1) Franklin Lindsay died testate May 1, 1954, left estate in Travis County, Texas.

(2) That the will of Franklin Lindsay, deceased, was filed in the County Court of Travis County, Texas, Cause No. 16,470, styled "In the Matter of the Estate of: Franklin Lindsay, Deceased", and thereafter the Capital National Bank, qualified as independent executor of said estate, has determined and paid the debts of said estate, part of the specific bequests as outlined in the will and is now holding the rest and residue of said estate in its trust account designated as No. 88, as shown by "Review and Appraisal of Trust Assets", marked as Exhibit "A". The amount of the Federal Estate Tax and Texas Inheritance Tax due by the Franklin Lindsay estate has not been determined or paid.

(3) That certified copies of the Application for Probate of Will, the Will of Franklin Lindsay, and the Order Probating Will and Granting Letters Testamentary, are attached hereto as Exhibit "B".

(4) It is admitted that Virginia L. Looney and Emma L. Baker are sisters of the deceased and are the sole and only

heirs at law of the deceased, Franklin Lindsay; and that Emma L. Baker is a widow.

(5) That there are approximately 130 universities and colleges in Texas on the approved list of the Texas Education Agency as of 1955. Included in this number are 16 state supported senior colleges and universities, 33 public junior colleges supported in whole or in part by state appropriations, 37 independent senior colleges and universities, and 8 independent junior colleges. There are 19 business junior colleges, 4 schools of music and arts, and 6 schools of special subjects.

That the 19 business junior colleges, the 4 schools of music and arts, and the 6 schools of special subjects are privately owned schools operated for a profit to their owners.

Under the rules and regulations prescribed by their governing bodies or under the law creating them negroes and those having negro blood are prohibited from attending a large number of the above mentioned schools, both those that are supported by public funds and those that are privately supported. There are no negroes or persons having negro blood now enrolled in a large number of the colleges and universities in Texas and this is true both of the schools that are supported by public funds and those that are privately supported.

That there are a large number of business colleges, barber colleges, schools of naturopathy and other similar schools in the State of Texas not on the approved list of the Texas Education Agency which are operated for a profit to their owners.

JULIAN C. CLOPTON  
1009 Perry-Brooks Building  
Austin 1, Texas

CRKEMORE WALLACE  
P. O. Box 297  
Fryor, Oklahoma

THOMAS A. WALLACE  
310 Pythian Building  
Tulsa 3, Oklahoma

By Crkmore Wallace

Attorneys for Plaintiffs



JOHN BEN SHEPPERD, Attorney  
General of Texas

By Melitta M. McHugh Payne  
Assistant Attorney General of  
Texas

COLEMAN GAY  
Capital National Bank Building  
Austin, Texas

DEAN MOORHEAD  
Brown Building  
Austin, Texas

By Coleman Gay  
Attorneys for Defendants

**Appendix F.9**  
**Final Judgment, July 15, 1957**

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF TEXAS  
AT AUSTIN

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VIRGINIA L. LOONEY, ET AL., Plaintiffs		
vs.		NO. 785
THE CAPITAL NATIONAL BANK IN AUSTIN, ET AL., Defendants		CIVIL ACTION

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FINAL JUDGMENT OF THE COURT

On this the 15<sup>th</sup> day of July, 1957, at a regular term of the District Court of the United States for the Western District of Texas, sitting at Austin, came on to be heard the above numbered and entitled cause wherein Virginia L. Looney and husband C. M. Looney, Murray Looney, Eleanor Biddy and husband J. C. Biddy, Emma L. Baker and husband B. H. Baker, and Beverly H. Baker, Jr. are plaintiffs, and The Capital National Bank in Austin, the duly qualified and acting Independent Executor and Testamentary Trustee of the Estate of Franklin Lindsay, deceased, Edgar H. Perry, Sr., Coleman Gay, Marc Anthony, Virgil P. Patterson, D'Arcy M. Cashin and wife Maude R. Cashin, Emmett T. Sweeney, Camille L. Sweeney, Pauline F. Stephens, Gladys A. Gregg, Claude W. Sears and wife Georgianna Sears, The First National Bank of Fort Worth, Texas, Guardian of the Estate of William B. Paddock, N. C. M., and Will Wilson, Attorney General of the State of Texas, are defendants (Maud S. Paddock who was originally named as a defendant herein having died since the institution of this suit and having been dismissed as a party defendant, The First National Bank of Fort Worth, Texas, Guardian of the Estate of William B.

Paddock, N. C. M., having been substituted for said William B. Paddock who was originally named as a defendant herein, and Will Wilson, Attorney General of the State of Texas, having been substituted as a defendant for John Ben Shepperd as Attorney General of Texas);

And came the plaintiffs Murray Looney, Eleanor Bidy and husband J. C. Bidy, and Beverly H. Baker, Jr., in person and by their attorneys of record; and came also the plaintiffs Virginia L. Looney and husband C. M. Looney and Emma L. Baker and husband B. H. Baker, by their attorneys of record;

And came also all the defendants by their attorneys of record;

Whereupon all parties announced ready for trial, both upon the cause of action asserted in Plaintiffs' Amended Complaint and on the Amended Answer and Counter Action filed herein by the defendants;

And a jury having been expressly waived by all parties in open court, all matters in controversy, as well of fact as of law, were submitted to the court; and the court proceeded to hear the pleadings, the written stipulations filed herein, the evidence adduced by the respective parties, and the argument of counsel, during the course of which all parties made known to the court that, subject to the approval of the court, the parties hereto have agreed that judgment be rendered as hereinafter decreed, particularly that (1) judgment be entered herein in favor of the plaintiffs for the total sum of Four Hundred Sixty-two Thousand Five Hundred Dollars (\$462,500.00), and no more, to be paid to them in the manner hereinafter set out in lieu of all other benefits to which they and each of them may be entitled from the Estate of Franklin Lindsay, deceased, under or independently of the will of Franklin Lindsay, deceased; (2) except for the recovery of such sum, plaintiffs take

nothing; (3) the testamentary trust established under the last will and testament of Franklin Lindsay, deceased, dated October 5, 1949, and admitted to probate in the County Court of Travis County, Texas, on May 17, 1954, be in all things upheld and sustained as creating a valid testamentary trust as hereinafter decreed; and (4) certain provisions of said last will and testament of Franklin Lindsay, deceased, be construed in the manner hereinafter set out;

And the court having considered said agreement, as well as the pleadings, the written stipulations, the evidence adduced by the respective parties and the argument of counsel, and being of the opinion that the agreement is not only fair and equitable to all parties to this suit and to all persons directly or indirectly interested in the Estate of Franklin Lindsay, deceased, but also correctly construes certain provisions of said will of Franklin Lindsay, deceased, as hereinafter decreed, the court does hereby approve said agreement, all as hereinafter decreed; and it is, therefore,

ORDERED, ADJUDGED and DECREED by the court as follows:

(1) That plaintiffs Virginia L. Looney and husband C. M. Looney, Murray Looney, Eleanor Bidy and husband J. C. Bidy, Emma L. Baker and husband B. H. Baker, and Beverly H. Baker, Jr. do have and recover of and from the defendant The Capital National Bank in Austin, as Independent Executor and Testamentary Trustee of, and out of, the Estate of Franklin Lindsay, deceased, the sum of Four Hundred Sixty-two Thousand Five Hundred Dollars (\$462,500.00), to be paid and satisfied in the following manner:

(a) The sum of Three Hundred Thousand Dollars (\$300,000.00) in cash; and

(b) The sum of One Hundred Sixty-two Thousand Five Hundred Dollars (\$162,500.00), to be evidenced by a non-interest bearing, non-negotiable promissory note, to read as follows:

"Austin, Texas, July 15, 1957. Subject to, and in accordance with, the provisions hereinbelow set out, The Capital National Bank in Austin, as Independent Executor and Trustee of the Estate of Franklin Lindsay, deceased, promises to pay from and out of the Estate of Franklin Lindsay, deceased, to Virginia L. Looney and husband C. M. Looney, Murray Looney, Eleanor Bidy and husband J. C. Bidy, Emma L. Baker and husband B. H. Baker, and Beverly H. Baker, Jr., at Austin, in Travis County, Texas, the sum of One Hundred Sixty-two Thousand Five Hundred Dollars (\$162,500.00), upon and only upon surrender of this note to The Capital National Bank in Austin and the delivery to it of proper releases and acquittances of said Franklin Lindsay Estate and The Capital National Bank in Austin as Executor and Trustee of said Estate, from all liability for federal estate taxes due and owing the United States of America and all state inheritance and succession taxes due and owing the State of Texas upon the Estate of Franklin Lindsay, deceased; PROVIDED, if The Capital National Bank in Austin, as such Executor and Trustee, should so elect, it may, though not so bound, pay all or any part of the federal estate taxes as computed by the Internal Revenue Service and state inheritance and succession taxes as computed by the Comptroller of the State of Texas against said Estate, the legal representatives and the beneficiaries thereof, in which event this note shall be and is credited with any amount or amounts so paid by it.

THE CAPITAL NATIONAL BANK IN AUSTIN

By \_\_\_\_\_  
Its Vice President and Trust  
Officer

Independent Executor and Trustee  
of the Estate of Franklin Lindsay,  
deceased."

(2) Except for the recovery adjudged in the preceding numbered paragraph (1), plaintiffs take nothing by their suit and they and each of them are divested of any interest whatsoever in the Estate of Franklin Lindsay, deceased, whether real or apparent, and whether present or future.

(3) The provisions of the will of Franklin Lindsay, deceased, and particularly, but not limited to, numbered paragraph 3 thereof, in which he gave, devised and bequeathed unto The Capital National Bank in Austin, Texas, except for certain minor money bequests, all of his property of every kind and character whatsoever, real, personal and mixed, and wheresoever situated, in trust for the uses and purposes and upon the conditions therein stated, are valid and



enforceable and the trust so created is a valid charitable trust.

(4) The intent of the testator, Franklin Lindsay, construing the provisions of his last will and testament aforesaid from the four corners thereof, was:

(a) That his residuary estate given, devised and bequeathed unto The Capital National Bank in Austin, Texas, as Trustee, be used for the promotion, furtherance and increase of higher education in literature and the arts and sciences at and in universities, colleges and schools of higher education located within the State of Texas not operated for pecuniary gain or profit of itself or of any person or group of persons; and

(b) Any language in said last will and testament, particularly but not limited to paragraphs numbered 7 and 11 thereof, which may indicate an intent that the universities, colleges and schools of higher education referred to in the preceding subparagraph (a) should only include those "in which negroes or those having any negro blood shall not be entered," is directory only and not mandatory and does not bind the committee named in said last will and testament or the Trustee, the defendant The Capital National Bank in Austin.

(5) It was the intention of the testator, Franklin Lindsay, in paragraph numbered 2 of his last will and testament, to bequeath Two Thousand Five Hundred Dollars (\$2,500.00) to Anthony Fachiri, and an additional Two Thousand Five Hundred Dollars (\$2,500.00) to Annelly Fachiri, and said Executor shall pay to them such amount as may be necessary to complete such payment of Five Thousand Dollars (\$5,000.00) to the two of them.

(6) It was the intention of the testator, Franklin Lindsay, to bequeath the sum of Two Thousand Five Hundred Dollars (\$2,500.00) to each of the original committee members named in numbered paragraph 9 of said will, to be paid to each of them "as a gift" (except that if both husband and wife were named as members of the

committee it was intended to make only one bequest of Two Thousand Five Hundred Dollars (\$2,500.00) to the two of them), and it was not the intention of the testator, Franklin Lindsay, that said sum of Two Thousand Five Hundred Dollars (\$2,500.00) should be paid to them as compensation for services rendered, but that said amounts should be paid regardless of whether they actually served as members of the committee, and the defendant The Capital National Bank in Austin, Independent Executor, is authorized and directed to pay said amounts to said committee members or to their legal representatives.

(7) As to the details of the administration of the trust, and particularly the portions of numbered paragraphs 7, 8, 9, 10 and 11 of the last will and testament, as to which an interpretation is requested:

(a) The Trustee may legally and properly, out of the trust funds, pay the expenses of the committee and of its members, including a reasonable per diem, while in the discharge of their duties under said will, including but not limited to necessary clerical assistance, postage, long distance telephone tolls, travel expense, the employment of a fiscal agent, rent, and other reasonable and necessary expenses, WHEN the Trustee receives authorization for any such expenditure from the chairman of the committee or from some other person who has been duly empowered by the committee to authorize such expenditure; and the defendant The Capital National Bank in Austin may legally and properly be employed and compensated by the committee as such fiscal agent and for the performance of such other duties of the committee or of the members thereof which may by such committee be delegated to it.

(b) The recommendation in writing by any one or more of the members of the committee of a student for a loan, and the amount and terms thereof, shall be sufficient authority for the Trustee, The Capital National Bank in Austin, to make such loan, UNLESS at

least five other members of such committee shall, prior to the actual consummation of such loan, notify the Trustee, The Capital National Bank in Austin, in writing of their disapproval of same.

(c) It was the intention of the testator, Franklin Lindsay, that the committee provided for in numbered paragraph 9 of said last will and testament should be continuously maintained with a membership of nine, with such committee to have the authority and duty of maintaining such membership at said number; that a majority of said membership shall be necessary for any action on its part; and the Trustee, The Capital National Bank in Austin, shall have the right, but not the duty, to petition any district court of Travis County, Texas, to fill any vacancy on said committee when such vacancy shall have continued for as long as thirty days.

(d) Upon and in the event of the happening of the contingency mentioned in numbered paragraph 11 of the last will and testament of Franklin Lindsay, deceased, the Trustee shall have the right, but not the duty, of applying to one of the district courts of Travis County, Texas, for a declaration as to whether the use intended to be made of the funds or any part thereof of the Estate is for the furtherance and increase of education within the meaning of said numbered paragraph 11.

(e) It was the intention of the testator, Franklin Lindsay, that the plan outlined in his last will and testament, and particularly numbered paragraph 7 thereof, for making loans to students should receive a trial for a period of ten years, the commencement of which trial period, however, having been delayed by the filing of this civil action by plaintiffs on July 24, 1954, continuously down to this time; such period of ten years, therefore, shall terminate July 15, 1967.

8. As to further details of the administration of the trust, and particularly the portions of numbered paragraphs 15, 8 and 3 of the last will and testament, as to which an interpretation is requested:



(a) It was the intention of the testator, Franklin Lindsay, and the court finds independently of the agreement between the parties, that The Capital National Bank in Austin, as Independent Executor of the Estate of Franklin Lindsay, deceased, is <sup>not</sup> entitled to the regular statutory compensation and commission payable to an executor under the Texas law for its services as such Executor; and that The Capital National Bank in Austin, as Testamentary Trustee of the charitable trust created and held valid under the provisions of numbered paragraph 3 hereof, is entitled to a commission of two per cent (2%) of the incomes, rents and revenues derived from all of said properties (which includes but is not limited to the sums of money collected from students on loans made pursuant to numbered paragraph 7 of the last will and testament of Franklin Lindsay, deceased, and the full amount of money received, either as cash bonus, delay rentals or royalty payments for the lease of oil, gas and other minerals belonging to the trust estate) for its services as such Trustee. BNA

(b) Except as and if provided in sub-paragraph (a) hereof, the defendant, The Capital National Bank in Austin, Trustee, shall not be entitled to a commission on the proceeds from the sale or collection of capital assets constituting the corpus of the estate as it existed on May 17, 1954, or any mutations thereof.

(c) It was the intention of the testator, Franklin Lindsay, that the word "income," as used in numbered paragraph 8 of his will, should include all revenues from the trust estate, together with proceeds of repaid loans (and the term "revenues" should include, but not be limited to, the full amount of money received, either as cash bonus, delay rentals or royalty payments for the lease of oil, gas and other minerals belonging to the trust estate).

9. In numbered paragraph 3 of the last will and testament of Franklin Lindsay, deceased, wherein it is provided "no securities nor properties shall be purchased for the trust estate from the Trustee, either directly or indirectly, nor shall any property be

purchased for the trust estate which has at any time been owned or held in trust by said Trustee," it was the testator's intention to prohibit self-dealing on the part of the Trustee as generally understood among trust departments and fiduciaries, and it was not the testator's intention that such provision should be strictly and literally construed; and that under said quoted provision of the will, funds received or held by The Capital National Bank in Austin as Independent Executor or Trustee of the Estate of Franklin Lindsay, deceased, shall not be invested in stocks or obligations of, or property acquired from, the bank or its officers, directors or employees, or in the stocks or obligations of, or property acquired from, affiliates of the bank, nor shall property or assets belonging to the Estate of Franklin Lindsay, deceased, be sold or transferred to The Capital National Bank in Austin or its directors, officers or employees, all as provided in Regulation F of the Board of Governors of the Federal Reserve System outlining the trust powers of national banks.

10. The court finds independently of the agreement between the parties that the employment of the attorneys for the Executor and Trustee was necessary, and the fees to be paid to them for their services rendered herein as set out in numbered paragraph 8 of the Amended Answer and Counter Claim of the Defendants, The Capital National Bank in Austin, Trustee, et al, are reasonable and therefore approved.

11. The defendant, The Capital National Bank in Austin, Independent Executor and Testamentary Trustee of the Estate of Franklin Lindsay, deceased, shall pay out of the funds of said Estate costs of court incurred herein not to exceed Five Hundred Dollars (\$500.00), and that any costs of court incurred in excess of said amount are taxed against and shall be paid by the plaintiffs.

12. The defendant, The Capital National Bank in Austin, Independent Executor and Trustee of the Estate of Franklin Lindsay,

deceased, having in open court paid the plaintiffs the sum of Three Hundred Thousand Dollars (\$300,000.00) in cash, and having delivered to them the One Hundred Sixty-two Thousand Five Hundred Dollar (\$162,500.00) note, all as provided in numbered paragraph (1) hereof, and plaintiffs having accepted the same, and the parties having paid the court costs herein in conformity with this Judgment, no execution shall issue hereon.

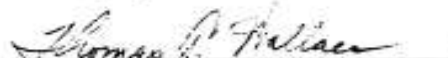
ENTERED, ordered of record and signed this 17 day of July, 1957.

  
\_\_\_\_\_  
Judge Presiding

The foregoing is Approved:

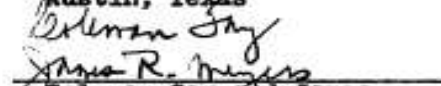
  
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Julian C. Clopton  
Austin, Texas

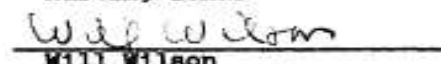
  
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Creekmore Wallace  
Pryor, Oklahoma


  
\_\_\_\_\_  
Thomas A. Wallace  
Tulsa, Oklahoma

Attorneys for Plaintiffs

  
\_\_\_\_\_  
Looney, Clark & Moorhead  
Austin, Texas

  
\_\_\_\_\_  
Coleman Gay and James  
R. Meyers  
Austin, Texas

  
\_\_\_\_\_  
Will Wilson  
Attorney General

By   
\_\_\_\_\_  
Marietta McGregor Payne  
Assistant Attorney General

Attorneys for Defendants

ENTERED: Civil Order Book, Vol. 4, page 341

**Appendix F.10**  
**Motion to enforce judgment October 25, 1957**

Motion to enforce judgment October 25, 1957

WESTERN DISTRICT OF TEXAS  
ADDRESS AS SHOWN IN DATE LINE

P. O. Box 1017, Austin, Texas,  
October 25, 1957.

Hon. Maxey Hart,  
Clerk, U. S. District Court,  
P. O. Box 2208,  
San Antonio, Texas.

RE: No. 785 Civil Action, Virginia L. Looney,  
et al, vs. Capital National Bank in Austin,  
Texas, et al

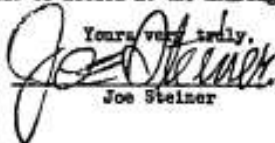
Dear Sir:

Miss Grace Jones, Secretary to Judge Rice, has advised us that the motion to enforce the judgment in the above case has been set for hearing at San Antonio on Monday, November 4, 1957, at 9:30 A. M. The following papers in the case are enclosed herewith:

- / Motion to Enforce Judgment,
- / Stipulation,
- / Final Judgment,
- / Mandate and Opinion of U. S. Court of Appeals,
- / Amended Complaint for Declaratory Judgment  
Construing Will,
- / Amended Answer and Counter Claim of Defendants The  
Capital National Bank in Austin, et al.

Mr. Julian Clepton, Attorney for Plaintiffs, says that this is all of the papers that will be needed at the hearing.

Yours very truly,

  
Joe Steiner Deputy.

Enclo.

CC: Miss Grace Jones,  
P. O. Box 1000,  
San Antonio, Texas.

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK  
WESTERN DISTRICT OF TEXAS  
ADDRESS AS SHOWN IN DATE LINE

Waco, Texas, Dec. 2, 1957

Mr. Joe Steiner, Deputy  
U. S. District Court,  
P. O. Box 1017,  
Austin, Texas.

Dear Joe:

Attached you will find the entire papers which you will find enclosed, together with the memo sheet relative to the Motion to enforce Judgment in the following cause:

Re: No. 785 Civil Action, Virginia L. Looney, et al vs. Capital National Bank in Austin, Texas, et al

With kindest regards,

Yours very truly,

By  Deputy  
Joe B. Doran

u/  
Enc.

EVERETT L. LOONEY  
EDWARD CLARK  
H. DEAN MOORHEAD  
CHARLES D. MATTHEWS  
DORRIS S. THOMAS  
MARTIN HARRIS  
FARRELL W. DUFFICE  
THOMAS E. JAMES  
MARY JOE GARNALL

LAW OFFICES  
**LOONEY, CLARK & MOORHEAD**  
BROWN BUILDING  
AUSTIN 1, TEXAS

November 27, 1957

Mr. Maxey Hart, Clerk  
United States District Court  
United States Courthouse  
Waco, Texas

Re: Virginia L. Looney, et al. vs.  
The Capital National Bank in Austin,  
et al. No. 785 Civil, in the United  
States District Court for the Western  
District of Texas

Dear Sir:

Enclosed you will find the original and one copy of  
REPLY OF DEFENDANT, THE CAPITAL NATIONAL BANK IN AUSTIN,  
TO THE MOTION FILED BY PLAINTIFFS DENOMINATED BY THEM  
"MOTION TO ENFORCE JUDGMENT."

Please file these among the papers of the case and  
bring a copy to the attention of Judge Rice who is to hear  
this Motion on Monday, December 2, at 10:00 a.m.

Very truly yours,



ELL:H  
Encl.

cc-Mr. Coleman Gay  
Capital National Bank Building  
Austin, Texas

Mr. Creekmore Wallace  
P. O. Box 237  
Pryor, Oklahoma

OFFICE OF THE CLERK  
UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

John A. Feehan, Jr.  
Clerk,

New Orleans, Louisiana  
November 15, 1955.

Clerk  
U. S. District Court  
Austin, Texas.

Dear Sir:

I wish to acknowledge receipt of yours  
of November 14th, enclosing transcript of the  
record in re:-

VIRGINIA L. LOONEY, ET VIR, and EMMA L. BAKER  
VS. CAPITAL NATIONAL BANK OF AUSTIN, TEXAS, ET AL.,

Thanking you for giving me the names and  
addresses of counsel for the parties, I am,

Very truly yours,  
JOHN A. FEEHAN, JR., Clerk,

By Louis J. Hayes  
Deputy Clerk

Austin, Texas, November 5, 1955.

Honorable John A. Feehan, Jr.,  
Clerk, U. S. Court of Appeals for the Fifth Circuit,  
New Orleans, La.

Dear Mr. Feehan:

There is enclosed herewith Order, signed by Hon. Ben H. Rice, Jr., Judge of U. S. District Court for the Western District of Texas, on November 3, 1955, Extending Time For Filing Record and Docketing Appeal to November 22, 1955, in re:-

Virginia L. Looney, et al. vs. Capital National Bank  
of Austin, Texas, et al.

Yours Very truly,

MAXY RARE, Clerk,

By Joe Steiner, Deputy.

Enclosure.



OFFICE OF THE CLERK  
UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

JOHN A. FEEHAN, JR.  
CLERK

NEW ORLEANS 6, LA.  
November 7, 1955.

Mr. Joe Steiner  
Deputy Clerk, U. S. District Court  
Austin, Texas

Dear Sir:

Receipt is acknowledged of your letter of November 5th enclosing order signed by Hon. Ben H. Rice, Jr. extending time for filing record and docketing appeal to November 22, 1955 in re:-

VIRGINIA L. LOONEY et vir, and EMMA L. BAKER  
vs. CAPITAL NATIONAL BANK OF AUSTIN, TEXAS, a  
national banking corporation, et al. (Your No.  
Civ. Action 785)

Very truly yours,

JOHN A. FEEHAN, JR.  
Clerk.

By *Clara R. James*  
Chief Deputy Clerk.

CRJ:jl

Austin, Texas, November 24, 1935.

Honorable John L. Forham, Jr.,  
Clerk, U. S. Court of Appeals for the Fifth Circuit,  
New Orleans, La.

Re: Virginia L. Lacey, et vir, and Vera L.  
Poker, Appellants, vs. Capital National  
Bank of Austin, Texas, et al. Appellees

Dear Sir:

Certified Transcript of Record on Appeal in the above  
cause is enclosed herewith for filing in the United States Court  
of Appeals for the Fifth Circuit. Receipts of John Ben Sheppard,  
Attorney General of Texas, and Coleman Gay, attorney for all  
defendants except John Ben Sheppard, for three copies each, are  
also enclosed.

The additional copies of the Transcript of Record on  
Appeal, as provided in the rules of your Court, have been or are  
being forwarded to you by Mrs. Helen Cunningham, Official Reporter  
of this Court, from Austin, Texas.

For your information, attorneys in the case are as fol-  
lows:

For Appellants-  
Julian C. Clayton,  
1009 Perry-Brooks Bldg.,  
Austin, Texas,

For Appellees-  
Coleman Gay,  
Capital National Bank Bldg.,  
Austin, Texas,  
John Ben Sheppard, Attorney General of Texas,  
Capitol Station,  
Austin, Texas.

Yours very truly,

MARYE HARRIS, Clerk.

By \_\_\_\_\_ Deputy.  
Joe Steiner

LAW OFFICES OF  
JULIAN C. CLOPTON

PERRY-GRUBBS BUILDING  
Austin 1, Texas  
November 10, 1955

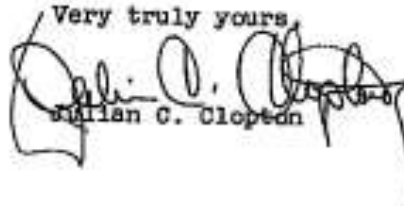
U. S. District Clerk  
Austin, Texas

Re: Looney vs. Capital National Bank

Gentlemen:

Enclosed herewith please find my check in the sum of \$6.40 in payment of your certification of record in the above captioned case.

Very truly yours,

  
Julian C. Clopton

JCC:l  
Encl.

SEN H. RICE, JR.  
U. S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
Western District of Texas

San Antonio 6, Texas  
November 4, 1955

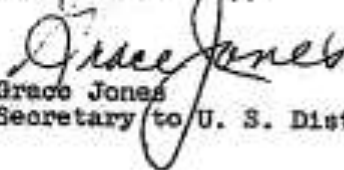
Mr. Joe Steiner  
Deputy U. S. Clerk  
Austin, Texas

Re: Virginia L. Looney et al v.  
Capital National Bank et al  
Civil Action No. 785

Dear Mr. Steiner:

There is enclosed Order Extending Time for Filing  
Record and Docketing Appeal in the above case,  
signed by Judge Rice on November 3, 1955.

Yours very truly,

  
Grace Jones

Secretary to U. S. District Judge

cc: Mr. Julian C. Clopton  
Perry-Brooks Building  
Austin 1, Texas

Mrs. Helen Cunningham  
Austin, Texas

Mr. Coleman Gay  
Capital National Bank Bldg.  
Austin, Texas

Mr. R. Dean Moorhead  
Brown Building  
Austin, Texas

Mrs. Marietta McGregor Payne  
Assistant Attorney General  
Austin, Texas

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

Waco, Texas  
March 4, 1957

SEN H. RICE, JR.  
U. S. DISTRICT JUDGE

Mr. Joe Steiner  
Deputy U. S. Clerk  
Austin, Texas

Re: C. A. No. 785, Virginia L.  
Looney et al v. Capital  
National Bank of Austin, Texas  
et al

Dear Mr. Steiner:

I enclose herewith Agreed Motion to Withdraw  
Announcements of Ready and Order Granting said  
motion, in the above cause. The order has been  
signed by Judge Rice today.

Yours very truly,

  
Secretary to Judge Rice

P. O. Box 1017, Austin, Texas,  
May 16, 1957.

Miss Grace Jones,  
Secretary to U. S. District Judge,  
P. O. Box 1000,  
San Antonio, Texas.

RE: No. 785 Civil Action, Virginia L. Looney, et  
al. vs. Capital National Bank of Austin, et al

Dear Grace:

We have your letter of 15th instant regarding above case. The Clerk's Memo of Proceedings Sheet, in reference to the above case, on January 29, 1957, shows the following entries:

Facts Stipulated  
Oral Arguments of Counsel Concluded  
Case Taken Under Advisement by Court.

But afterwards an Agreed Motion to Withdraw Announcements of Ready was filed on March 1, 1957, and an Order was signed by Judge Rice on March 4, 1957, Granting the Agreed Motion to Withdraw Announcements of Ready and Continuing the Case to the June, 1957, Term of Court.

The above mentioned motion and Order are enclosed herewith for your inspection in helping determine the present status of the case. You may mail them back to this office at your convenience.

Yours very truly,

\_\_\_\_\_  
Joe Steiner, Deputy Clerk.

Encls.

P. O. Box 1017, Austin, Texas,  
March 2, 1957.

Miss Grace Jones,  
Secretary to U. S. District Judge,  
P. O. Box 608,  
Waco, Texas.

RE: No. 785 Civil, Virginia L. Looney, et al  
vs. Capital National Bank of Austin, Texas,  
et al

Dear Miss Jones:

You will find enclosed herewith Agreed Motion to Withdraw Announcements of Ready and form of Order Granting the Motion, prepared by Mr. J. E. Meyers, one of the attorneys, in the above case.

Please present the enclosures to Judge Rice for his consideration.

Yours very truly,

\_\_\_\_\_  
Joe Steiner, Deputy Clerk.

Encls.

CC: Mr. James E. Meyers,  
Capital National Bank Bldg.,  
Austin, Texas.

MON H. RICE, JR.  
U. S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
San Antonio 6, Texas  
May 15, 1957

Mr. Joe Steiner  
Deputy U. S. Clerk  
Austin, Texas

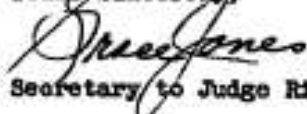
Re: Virginia L. Looney et al v.  
Capitol National Bank of Austin  
et al, C. A. No. 785

Dear Joe:

I notice that the above case is still pending on the docket at Austin. From my last settings it appears that this case was tried on January 29, 30, or 31, and Helen is of the opinion that Judge Rice took the case under advisement. However, I have no briefs or papers in the case, and if it is under advisement we have overlooked it completely.

I shall appreciate it if you will look on your proceedings sheets for the above dates and see what you can find with regard to this case. Let me know what you find out. I have a hazy recollection of some stipulation or instrument being filed in the case just before we left Austin. If it is under advisement please send me the papers in the case and I will contact the lawyers if briefs are to be filed.

Yours sincerely,

  
Secretary to Judge Rice

Helen's notes are in Austin, or I would have her look it up for me.



Austin, Texas  
August 20, 1956.

Hon. John A. Feehan,  
Clerk, U. S. Court of Appeals for the Fifth Circuit  
New Orleans, La.

Dear Sir:

This will acknowledge receipt of Mandate of the  
U. S. Court of Appeals for the Fifth Circuit, together  
with a copy of its opinion in re:

No. 15860, Virginia L. Looney, et vir, et al  
vs. Capital National Bank of Austin,  
Texas, et al.

Yours very truly,

Marcy Hart, Clerk,

By

Deputy.

OFFICE OF THE CLERK  
UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

JOHN A. FEEHAN, JR.  
CLERK

NEW ORLEANS 6, LA.  
August 17, 1956

Clerk,  
U. S. District Court  
Austin, Texas

Dear Sir:

Enclosed is the mandate of this Court, together  
with a copy of its opinion, in re:-

No. 15860, VIRGINIA L. LOONEY, ET VIR, ET AL., vs.  
CAPITAL NATIONAL BANK OF AUSTIN, TEXAS,  
ET AL.

Incorporated on the mandate is a detailed state-  
ment of the costs in this Court, recoverable by the ap-  
pellant, as follows:

Docketing cause, etc.....\$ 25.00

Please acknowledge receipt.

Very truly yours,

JOHN A. FEEHAN, JR.  
Clerk.

By Clarence R. Gaudin  
Chief Deputy Clerk

CRJ:jl  
Enc.

cc: Mr. Julian C. Clopton  
Mr. Creeksore Wallace  
Mr. Thomas A. Wallace  
Mr. Coleman Gay  
Mr. L. P. Lollar  
Mr. R. Dean Moorhead

OFFICE OF THE CLERK  
UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT  
NEW ORLEANS 8, LA.

December 10, 1956

Hon. Ben H. Rice, Jr.  
U. S. District Judge  
San Antonio, Texas

Dear Judge Rice;

We received from the Clerk of the Supreme Court of the United States, a certified copy of the order denying certiorari in re:-

No. 15860, VIRGINIA L. LOONEY, ET VIR and  
EMMA L. BAKER vs. THE CAPITAL  
NATIONAL BANK OF AUSTIN, TEXAS,  
ET AL.

Sincerely,  
JOHN A. FEZAN, JR., CLERK  
*Clara R. James*  
Chief Deputy Clerk

CRJ:mk  
cc: Clerk  
U. S. District Court  
Austin, Texas

P. O. Box 1017, Austin, Texas,  
October 25, 1957.

Hon. Marcy Hart,  
Clerk, U. S. District Court,  
P. O. Box 2208,  
San Antonio, Texas.

RE: No. 785 Civil Action, Virginia L. Looney,  
et al, vs. Capital National Bank in Austin,  
Texas, et al

---

Dear Sir:

Miss Grace Jones, Secretary to Judge Rice, has advised us that the motion to enforce the judgment in the above case has been set for hearing at San Antonio on Monday, November 4, 1957, at 9:30 A. M. The following papers in the case are enclosed herewith:

Motion to Enforce Judgment,  
Stipulation,  
Final Judgment,  
Mandate and Opinion of U. S. Court of Appeals,  
Amended Complaint for Declaratory Judgment  
Construing Will,  
Amended Answer and Counter Claim of Defendants The  
Capital National Bank in Austin, et al.

Mr. Julian Clepton, Attorney for Plaintiffs, says that this is all of the papers that will be needed at the hearing.

Yours very truly,

Encls.

\_\_\_\_\_  
Joe Steiner, Deputy.

CC: Miss Grace Jones,  
P. O. Box 1000,  
San Antonio, Texas.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS  
San Antonio 6, Texas  
October 24, 1957

DENNIS H. RICE, JR.  
U. S. DISTRICT JUDGE

Mr. Joe Steiner  
Deputy U. S. Clerk  
Austin, Texas

Re: Looney et al v. Capital National  
Bank et al, C. A. No. 785

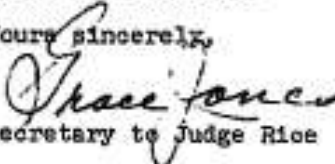
Dear Joe:

Judge Rice has set the motion to enforce the judgment in the above case for hearing at San Antonio on Monday, November 4, 1957, at 9:30 A.M.

I do not know what papers they will need, but suggest you send the judgment, motion, and stipulation, if any, filed in the case. You might call Mr. Clopton and see what he desires sent over.

Best regards to you and Miss Monfort.

Yours sincerely,

  
Secretary to Judge Rice

P. O. Box 1017, Austin, Texas,  
November 27, 1957.

Hon. Harry Fort,  
Clerk, U. S. District Court,  
P. O. Box 2208,  
San Antonio, Texas.

Re: No. 755 Civil Action, Virginia L. Looney,  
et al, vs. Capital National Bank in Austin,  
et al

Dear Harry:

I wrote you on October 25, 1957, advising that the motion to enforce the judgment in the above case was set for hearing at San Antonio on Monday, November 4, 1957, at 9:30 A.M., and enclosed to you the following papers:

Motion to Enforce Judgment,  
Stipulation,  
Final Judgment,  
Mandate and Opinion of U. S. Court of Appeals,  
Amended Complaint for Declaratory Judgment  
Contraing Will,  
Amended Answer and Counter Claim of Defendants The  
Capital National Bank in Austin, et al.

Mr. John J. McKay, attorney, Austin, Texas, now acting in the case as attorney for Plaintiffs after the recent death of our friend Julian Clifton, informs this office that the hearing was not held in San Antonio on November 4, 1957, but will be held next Monday, December 2, 1957, in Waco. If the papers are still in your office in San Antonio, please forward them on up to Waco, together with the enclosed subpoena to produce documents. Mr. McKay desires the enclosed subpoena to produce documents to be on hand in the court room at Waco in event the witness (Raymond N. Todd) should fail to show up. If the above listed papers have already been sent up to Waco for the hearing, then please send or carry with you to Waco the enclosed subpoena.

Yours very truly,

Enclosure.

\_\_\_\_\_  
Joe Steiner Deputy.

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

VIRGINIA L. LOONEY, ET AL.  
Plaintiffs,

VS.

CAPITAL NATIONAL BANK OF  
AUSTIN, TEXAS, ET AL.  
Defendants.

No. 785 CIVIL

ORDER

The agreed motion to withdraw announcements of ready heretofore filed by all parties in this cause, having been presented to the Court in chambers, is hereby granted and this cause is continued to the June, 1957, term of this Court, at Austin, Texas.

Entered this 4th day of March, 1957.

  
\_\_\_\_\_  
Judge

Entered: Civil Order Book, Vol. 4, page 267

22

No. 785 Civil  
IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS

Virginia L. Looney, et al.,  
Plaintiffs,  
v.  
Capital National Bank of Austin,  
et al.,  
Defendants.

ORDER to continue to  
June term

FILED  
MAR 4 1957  
Rich Mougart



# Appendix F.11 Reformation, March 1976

Appendix F.11

Reformation, March 1976

NO. 243,896

IN RE:	}	IN THE DISTRICT COURT
THE FRANKLIN LINDSAY	}	TRAVIS COUNTY, TEXAS
STUDENT AID FUND	}	53rd JUDICIAL DISTRICT

FINAL JUDGMENT

On the 31<sup>st</sup> day of March, 1976, came on to be heard this cause on its merits before the Court without a jury, and the Court having considered the pleadings in said cause, and the Court having considered the arguments by the Petitioner and the Attorney General and the merits of the case, and the Court being of the opinion that the prayers of the Petitioners as specifically set forth in the First Original Petition should in all respects be granted; it is accordingly

ORDERED, ADJUDGED AND DECREED that effective as of January 1, 1975, the last will and testament of Franklin Lindsay executed on October 5, 1949, and admitted to probate on May 17, 1954, in Cause Number 16,470, County Court of Travis County, Texas, Sitting in Probate, is hereby amended so that Article 7 of said will shall from the effective date of this Final Judgment read as follows:

NO. 793 and 626

"Believing that the greatest good can be done to the country and even to the world by education of its peoples, subject to other provisions of this Will, the properties of the estate are to be held in trust by The Capital National Bank in Austin, Texas, as a fund for the assistance of worthy and deserving students of either sex who may be desirous, but financially unable, of obtaining college educations at any of the Texas state institutions, such as University of Texas, Agricultural and Mechanical College, . . .

} Revised

If the Texas state institutions cannot so qualify, then those which can meet the requirements, such as Rice Institute, Texas Christian University, Southern Methodist University or other such colleges or universities in Texas shall be substituted. Applying students, of course, must be able to meet the requirements for entrance to the universities or colleges.

}

FILED  
MAR 31 1976  
CLERK OF DISTRICT COURT  
TRAVIS COUNTY, TEXAS

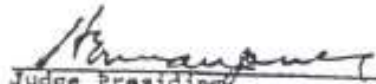
EXHIBIT  
"B"

This fund to be known as the 'Franklin  
Lindsay Students Aid Fund'.

and it is further

ORDERED, ADJUDGED AND DECREED that the Petitioner,  
The Capital National Bank in Austin, as Trustee of the Franklin  
Lindsay Student Aid Fund, and the Student Loan Committee of  
the Franklin Lindsay Student Aid Fund are hereby relieved from  
any and all liability arising out of the application of Article  
7425(e), Texas Revised Civil Statutes from January 1, 1975, to  
the date of execution of this Final Judgment.

ENTERED AND ORDERED on this 31<sup>st</sup> day of March, 1976.

  
\_\_\_\_\_  
Judge Presiding

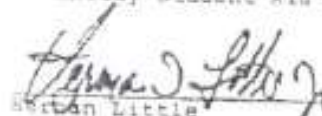
APPROVED:

  
\_\_\_\_\_  
Michael L. Cook

Attorney for Petitioner,  
The Capital National Bank in Austin

  
\_\_\_\_\_  
Coleman Gay

Attorney for the Student  
Loan Committee of the Franklin  
Lindsay Student Aid Fund

  
\_\_\_\_\_  
Barton Little

Assistant Attorney General  
of the State of Texas

NO. 793 MAR 627

## Appendix F.12 Reformation, August 1987

### THE FRANKLIN LINDSAY STUDENT AID FUND POLICY RESTATEMENT NO. 1

#### BACKGROUND

Franklin Lindsay died May 3, 1954. His Will, dated October 5, 1949, was admitted to probate May 17, 1954, in Travis County, Texas (the "Will"). The Will created a charitable/educational trust known as The Franklin Lindsay Student Aid Fund (the "Fund") designed to provide loans for worthy and deserving students attending colleges and universities in Texas.

Portions of Mr. Lindsay's Will were later construed by the following court decrees:

- (1) Judgment of the Federal District Court, Western District, Austin Division, entered on July 17, 1957, in Civil Action No. 785;
- (2) Judgment of the District Court of Travis County, Texas, 53rd Judicial District entered on March 31, 1976, in Cause No. 243,896; and
- (3) Judgment of the District Court of Travis County, Texas, 201st Judicial District, entered on June 22, 1979, in Cause No. 292,048.

The Will named the Capital National Bank in Austin, now Texas Commerce Bank-Austin, N.A., Austin, Travis County, Texas, as Trustee (the "Trustee").

The Will also named a Committee (the "Committee") of Mr. Lindsay's friends to approve loans to deserving students and instructed the Committee to name replacements and additions from time to time.

It is apparent from the Will that the Committee and the Trustee are to work in harmony, and they are to have separate and distinct functions. Members of the Committee are to make the student loans, and the Committee itself is to make decisions concerning the loan program. The Trustee is to handle the normal duties of a corporate trustee, including disbursement of funds to student borrowers, handling the mechanics and records regarding the loans and arranging terms for the repayment of loans.

As members of the Committee have died or retired, they have been replaced, and their numbers have been increased, in accordance with the provisions of the Will. The Committee now consists of 16 members located in various parts of Texas.

Mr. Virgil Patterson of Amarillo, the last surviving original member of the Committee and long the Committee's beloved and respected chairman, passed away May 4, 1986. His wisdom and background and his keen personal interest in The Franklin Lindsay Student Aid Fund will be greatly missed.

As time has passed and as new situations have developed, the Committee has found it necessary to change some of its policies and procedures. Because the policies and procedures were first adopted in 1979, the Committee believed it is time to publish this, its updated policy statement.

Accordingly, the following policies are hereby adopted by the Committee, subject to any necessary approval, to replace and to be substituted in lieu of THE FRANKLIN LINDSAY STUDENT AID FUND POLICY STATEMENT adopted with approval of the Attorney General of the State of Texas and the District Court of Travis County, Texas, under order dated June 22, 1979, as referred to above. This restated policy statement shall be referred to as "THE FRANKLIN LINDSAY STUDENT AID FUND POLICY RESTATEMENT NO. 1".

I. GENERAL PURPOSE OF THE FRANKLIN LINDSAY STUDENT AID FUND.

The general purpose of the Fund is to provide loans for worthy and deserving college students. These students must attend colleges and universities, either public or private, accredited by the Southern Association of Colleges and Schools, in the State of Texas. The present policy set by the Committee is not to require the accrual of any interest while the student is in college on a full time basis. A reasonable rate of interest is required during the repayment period. The repayment period is determined by agreement between the Trustee and the student. Interest begins to accrue on the first day of the fourth month after the borrower is no longer a full time student.

Every effort is made by the Committee and the Trustee to see that all of the distributable net income of the Fund, including loan repayments, is loaned each year. Accordingly, if the need arises to make additional distributions to avoid a tax or penalty on undistributed income, the Committee in its discretion will take such action consistent with the Will to obtain sufficient applicants to loan all of the distributable income of the Fund or to distribute such income for any educational purposes.

Loans are made to students without regard to race, sex, creed, national origin, age, or handicap.

II. LOAN MAKING PROCEDURES.

Exclusive authority for the selection of recipients of student loans shall rest with the members of the Committee, not the Committee as a whole. Each member of the Committee is individually responsible within his or her area of the state for furnishing application forms to prospective borrowers, interviewing applicants and selecting loan recipients in accordance with this policy statement.

While members of the Committee may select loan recipients from any area of the state, the members of the Committee should normally look to their respective areas as the primary source of loan applicants.



A. Selection of Applicants.

1. Selection of loan recipients will be made on the basis of character, financial need and scholastic ability.
2. Students pursuing regular academic courses should not be awarded loans until the beginning of the sophomore year of undergraduate school. Loans will be made to students only when the member of the Committee is satisfied additional funds are available to the borrower to complete his or her education.
3. Letters of recommendation shall be required with each application. These letters will normally (but not necessarily) be from the persons listed by the applicant as character references. While hard-and-fast rules are difficult to define, the letters should be from persons who have known the applicant over a long enough period of time to have formulated opinions regarding the character and abilities of the applicant.
4. No loan will be approved unless the applicant has maintained an average grade of "C" or its equivalent. It is recognized that colleges and universities have different grading systems, and members of the Committee are expected to use their judgment in specific cases.
5. All borrowers, guarantors or co-signers must be citizens of The United States of America.
6. Applicants must be full time students during the entire academic year for which loans are made.
7. No loans shall be made to members of the Committee, to officers, directors or employees of the Trustee or to the family (defined as spouse, ancestors, children, grandchildren, great grandchildren and

the spouses of such children, grandchildren and great grandchildren) of either category.

B. Mechanics of Loans.

1. Each borrower is required to execute a promissory note which will be cosigned and guaranteed in a manner satisfactory to the member of the Committee. Normally, the guarantees will be signed by a parent or guardian of the borrower or by another responsible adult.
2. Loans up to \$3,000.00 per academic year per student, but not exceeding an aggregate amount of \$9,000.00 for the student's school career, may be granted. These loan limits may be changed from time to time by the Committee.
3. No interest shall accrue on any note until the borrower has completed his or her educational program or has withdrawn from school as specified in the loan application. On the first day of the fourth month following the borrower's graduation, termination of studies or withdrawal from school on a full time basis, interest will begin to accrue at a rate set from time to time by the Committee. Notes are due on the first day of the fourth month following the borrower's graduation or withdrawal from school, but other repayment terms may be arranged by the Trustee and the borrower.
4. Loan funds are disbursed directly to the borrower. If the loan is to cover more than one academic period's needs (e.g., one semester's needs), a part of the loan, usually one-half, is disbursed at the beginning of each academic period. If for any reason a borrower does not register for a full academic load, he or she is required to return the

loan funds immediately, so that alternate recipients may have the benefit of the funds.

5. Applications for additional loans will require completion of a new application form and a transcript of grades or a copy of a grade report, but need not be accompanied by new letters of recommendation. Borrowers must submit transcripts or grade reports to the Trustee for each semester after approval of their first loans. This is required even though no subsequent applications are submitted.
6. Questions regarding receipt of loan proceeds, submission of transcripts or grade reports, changes of mailing address, and the negotiation of a repayment schedule should be referred to the trustee bank at the following address:

The Franklin Lindsay Student Aid Fund  
Texas Commerce Bank-Austin  
Trust Department  
P.O. Box 550  
Austin, Texas 78789  
Telephone (512) 476-6611

### III. LOAN COLLECTION PROCEDURES.

The Trustee shall be primarily responsible for administering and collecting outstanding student loans. In its collection efforts, the Trustee is authorized to utilize collection agencies and attorneys to be selected by the Trustee with the approval of the Committee. The Committee is not responsible for administering and collecting outstanding student loans.

### IV. INVESTMENT AUTHORITY.

The Trustee shall have and exercise exclusive authority concerning the investment of assets and undistributed income of



the Fund, and shall perform such other duties as are reasonable and necessary to carry out its duties as Trustee.

V. COMPENSATION.

In recognition of the fact that the responsibility for administering and collecting outstanding student loans requires efforts beyond those normally required of a Trustee, the Committee has authorized fair and reasonable compensation to the Trustee and expects to continue to approve such compensation from time to time. Such compensation shall be in addition to the commission set forth in Article XV of the Will and shall be determined from time to time by the Committee by taking into consideration the cost to the Trustee of employee salaries, overhead and other expenses necessary to insure the efficient administration and management of the loan program, including the supervision of collection efforts.

VI. GENERAL PROVISIONS.

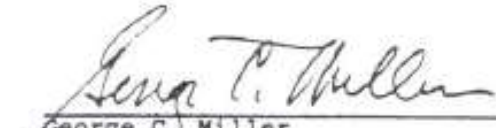
- A. An Executive Committee shall be elected each year by the Committee to transact administrative and policy matters that may arise between regular semi-annual meetings.
- B. Vacancies on the Committee and the selection of additional members from time to time, shall be by election of the Committee. Nominations shall be submitted to the Committee Chairman in writing at a time and place to be designated by the Chairman. Election from such nominees shall be made thereafter by the Committee in a regular or special meeting or by mail.
- C. The Chairman, at the July meeting each year, shall appoint a committee of members to nominate officers for the following calendar year. The officers, to be elected the following January by the Committee, shall be the Chairman, Vice Chairman and Secretary.
- D. This Policy Statement may be amended in whole or in part by a vote of the Committee.


- E. A member of the Committee who has not joined in exercising a power shall not be liable to any person directly or indirectly for the consequences of the exercise of such power, nor shall a dissenting member of the Committee be liable for the consequences of an act in which he joins at the direction of the majority of the members of the Committee, if he or she expresses his or her dissent in writing to any of the other members of the Committee at or before the time of such action.
- F. The Committee authorizes the Trustee to purchase and maintain a policy or policies of insurance to indemnify the members of the Committee from all liabilities, expenses, costs and attorneys' fees which may be incurred by them while acting in accordance with the policies contained herein or otherwise conducting activities of the Fund as members of the Committee. The premiums for such insurance shall be paid from the income of the Fund. The Committee may recommend to the Trustee such other action as may be appropriate to indemnify the members of the Committee from such liability and hold them harmless from any and all personal loss as a result of legal action or threatened legal action taken against them individually or collectively to the fullest extent permitted by law which is not inconsistent with the tax exempt status of the Fund, including direct indemnification by the Fund; provided, however, that the members of the Committee may not be directly indemnified by the Fund for defending against or for liability resulting from an original petition filed by the Attorney General of the State of Texas stating as a cause of action the breach of a fiduciary duty by a member of the Committee.
- G. Each member of the Committee shall receive a fee for each meeting in the same amount that is paid to each

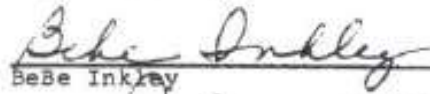
Director of the trustee bank for attendance at a bank Board of Directors meeting.

- H. When action of the Committee is required, the Committee shall act by vote of the majority of members of the Committee in attendance at any regular or special meeting of the Committee. However, a quorum of members necessary to vote at any regular or special meeting of the Committee shall not constitute less than fifty percent (50%) of the total number of members then serving.

Adopted by the Committee on September 3, 1986 to be approved and executed by the members of the Executive Committee.

  
George C. Miller  
Date: July 2, 1987

  
John Barry Hubbard  
Date: July 6, 1987

  
BeBe Inkley  
Date: July 10, 1987

## **Appendix F.13 Policy Reinstatement 2001**

### **FRANKLIN LINDSAY STUDENT AID FUND POLICY RESTATEMENT NO. 2**

#### **BACKGROUND**

Franklin Lindsay died on May 3, 1954. His last will and testament, dated October 5, 1949, was admitted to probate on May 17, 1954, in Travis County, Texas, and has subsequently been construed by various court decrees (as so construed, the "Will"). The Will created a charitable educational trust, known as The Franklin Lindsay Student Aid Fund (the "Fund"), to provide loans for worthy and deserving students attending colleges and universities located primarily in Texas.

The Will named the Capital National Bank in Austin, as trustee of the Fund (the "Trustee"). The current Trustee is Bank One, N.A.

The Will also named a committee (the "Committee") of Mr. Lindsay's friends to approve loans to deserving students and instructed the Committee to name replacements and additions from time to time. It is apparent from the Will that the Committee and the Trustee are to work in harmony, but they have separate and distinct functions. Members of the Committee make the student loans, and the Committee makes decisions concerning the loan program. The Trustee handles the normal duties of a corporate trustee, including disbursement of funds to student borrowers, maintaining records, arranging terms (within certain parameters) for repayment of the loans, and enforcement of the loans.

As members of the Committee have died or retired, they have been replaced, and their numbers have been increased, in accordance with the provisions of the Will. The Committee now consists of sixteen members located in various parts of Texas.

As time has passed and as new situations have developed, the Committee has found it necessary to change some of its policies and procedures. Because over fifteen years have



elapsed since the policies and procedures were last updated, the Committee has decided to publish this updated policy statement.

Accordingly, the following policies are hereby adopted by the Committee to replace and to be substituted in lieu of the existing Franklin Lindsay Student Aid Fund Policy Restatement No. 1, adopted September 3, 1986. This restated policy statement shall be referred to as the "Franklin Lindsay Student Aid Fund Policy Restatement No. 2."

#### **I. GENERAL PURPOSE OF THE FUND.**

The general purpose of the Fund is to provide loans for worthy and deserving college students. These students must attend colleges and universities, either public or private, accredited by the Southern Association of Colleges and Schools, located primarily in the State of Texas. Loans may be made to students who take courses outside the State of Texas if (i) the student satisfactorily demonstrates that he or she is a candidate for a degree from a qualified Texas institution and (ii) the student provides documentation that the courses will be credited to that degree by the Texas institution. The present policy set by the Committee is not to require the accrual of any interest while the student is in college on a full time basis. A reasonable rate of interest is required during the repayment period. The repayment period is determined by the borrower by choosing among certain optional repayment periods allowed by the Trustee. Interest begins to accrue on the first day of the fourth month after the borrower is no longer a full time student.

Every effort is made by the Committee and the Trustee to see that all of the distributable net income of the Fund is loaned each year. Accordingly, if the need arises to make additional distributions to avoid a tax or penalty on undistributed income, the Committee in its discretion will take such action consistent with the Will to obtain sufficient applicants to loan all of the distributable income of the Fund or to distribute such income for educational purposes. The

Trustee is authorized to use principal of the Fund to make student loans in extraordinary circumstances if this action is approved by the Committee.

Loans are made to students without regard to race, sex, creed, national origin, age, or handicap.

## II. LOAN MAKING PROCEDURES.

Subject to the authority of the Committee as a whole to make decisions regarding the general administration of the loan program, exclusive authority for the selection of recipients of student loans shall rest with the members of the Committee, not the Committee as a whole. Each member of the Committee is individually responsible within his or her area of the state for furnishing application forms to prospective borrowers, interviewing applicants and selecting loan recipients in accordance with this policy statement.

While members of the Committee may select loan recipients from any area of the state, the members of the Committee should normally look to their respective areas as the primary source of loan applicants.

### A. Selection of Applicants.

1. Selection of loan recipients will be made on the basis of character, financial need and scholastic ability. In determining whether a student is financially unable to obtain a college education (as required by paragraph 7 of the Will), "financially unable" means that a student must show a need for financial assistance to obtain a college education. In determining whether a student has shown a need for financial assistance to obtain a college education, the members of the Committee shall have broad discretion to consider a student's other resources, sources of income and financial obligations. The term "college education" includes undergraduate, graduate and professional education.

2. A student pursuing regular academic courses should not be awarded loans with respect to the period prior to the beginning of the sophomore year of undergraduate school.
3. Letters of recommendation shall be required with each application. These letters will normally (but not necessarily) be from persons listed by the applicant as character references. While hard-and-fast rules are difficult to define, the letters should be from persons who have known the applicant over a long enough period of time to have formulated opinions regarding the character and abilities of the applicant.
4. No loan will be approved unless an applicant for undergraduate education has maintained an average grade of "C" or its equivalent, or an applicant for graduate or professional education has maintained an average grade of "B" or its equivalent. It is recognized that colleges and universities have different grading systems, and members of the Committee are expected to use their judgment in specific cases.
5. All applicants and required guarantors and co-signers must be citizens of the United States of America. + Tab 4
6. An applicant must enroll as a full time student for each semester for which a loan is made.
7. No loans shall be made to members of the Committee, to officers, directors or employees of the Trustee, or to the family (defined as spouse, ancestors, children, grandchildren, great grandchildren and the spouses of such children, grandchildren, and great grandchildren) of either category.

B. Mechanics of Loans.

1. Each borrower is required to execute a promissory note which will be cosigned and guaranteed in a manner satisfactory to the member of the Committee

authorizing the loan. Normally, the guarantees will be signed by a parent or guardian of the borrower or by another responsible adult.

2. Loans up to \$5,000 per academic year per student, but not exceeding an aggregate amount of \$20,000 for the student's school career, may be granted. These loan limits may be changed from time to time by the Committee.
3. No interest shall accrue on any note until the borrower has completed his or her educational program or has withdrawn from school as specified in the loan application. On the first day of the fourth month following the borrower's graduation, termination of studies or withdrawal from school on a full time basis, interest will begin to accrue at a rate set from time to time by the Committee. Notes are due on the first day of the fourth month following the borrower's graduation or withdrawal from school, but other repayment terms may be arranged by the Trustee and the borrower.
4. Loan funds are disbursed directly to the borrower. If the loan is to cover more than one academic period's needs (e.g., one semester's needs), a part of the loan, usually one-half, is disbursed at the beginning of each academic period. If for any reason a borrower does not register for a full academic load, he or she is required to return the loan funds immediately, so that alternate recipients may have the benefit of the funds.
5. Applications for additional loans will require completion of a new application form and a transcript of grades or a copy of a grade report, but need not be accompanied by new letters of recommendation. Borrowers must submit transcripts or grade reports to the Trustee for each semester after approval of their first loans. This is required even though no subsequent applications are submitted.



6. Questions regarding receipt of loan proceeds, submission of transcripts or grade reports, changes of mailing address, or the negotiation of a repayment schedule should be referred to the Trustee at the following address:

The Franklin Lindsay Student Aid Fund  
Bank One, N.A., Trustee  
National Real Estate Operations, TX1-1315  
403 West Fourth Street, 1<sup>st</sup> Floor, WC  
Fort Worth, Texas 76102  
Telephone (800) 765-8338  
Telefax (817) 884-4862

### III. LOAN COLLECTION PROCEDURES.

The Trustee shall be primarily responsible for administering and collecting outstanding student loans. In its collection efforts, the Trustee is authorized to utilize collection agencies and attorneys to be selected by the Trustee with the approval of the Committee. The Committee is not responsible for administering and collecting outstanding student loans.

### IV. INVESTMENT AUTHORITY.

The Trustee shall have and exercise exclusive authority concerning the investment of assets of the Fund, and shall perform such other duties as are reasonable and necessary to carry out its duties as Trustee.

### V. COMPENSATION OF TRUSTEE.

The Committee shall determine reasonable compensation of the Trustee from time to time during the term of the Fund. In fixing the Trustee's compensation, the Committee shall take into consideration, if the information is available, the amount of compensation paid to other trustees that perform comparable or similar services.

### VI. GENERAL PROVISIONS.

- A. An Executive Committee shall be elected each year by the Committee to attend to administrative and policy matters that may arise between meetings of the full Committee.

The Executive Committee members shall be chosen from the membership of the Committee and shall consist of the officers of the Committee elected in the manner described herein. The Chairman may call meetings of the Executive Committee from time to time as the Chairman determines to be necessary for or conducive to the efficient operation of the Fund. The Chairman shall determine the date, time and location of all meetings of the Executive Committee and shall provide (or cause to be provided) appropriate notice thereof to all members of the Executive Committee.

- B. Vacancies on the Committee, and the selection of additional members from time to time, shall be by election of the Committee. Nominations shall be submitted to the Committee Chairman in writing at a time and place to be designated by the Chairman. The Committee members shall elect new Committee members from among such nominees at a regular or special meeting of the Committee. The Committee shall have the power to remove a member of the Committee at any time for cause. This removal power shall be exercised by the delivery of a written removal notice to the member of the Committee being removed, and shall be effective as specified in the notice of removal. For purposes of this provision, the term "cause" means (i) the inability to perform the duties and responsibilities of a member of the Committee (whether due to illness, incapacity or some other cause), (ii) repeated failures to attend meetings of the Committee, or (iii) contributions to the Committee that are significantly disproportionately lower than the contributions being made by other members of the Committee.
- C. There shall be two regular meetings of the Committee each calendar year. The Chairman may also call additional special meetings of the Committee from time to time as the Chairman determines to be necessary for or conducive to the efficient operation of the Fund. The Chairman shall determine the date, time and location of all meetings of the Committee and shall provide (or cause to be provided) appropriate notice thereof to all members of the Committee.

- D. The Chairman, at the second regular meeting of the Committee each calendar year, shall appoint a committee of members to nominate officers for the following calendar year. The officers, to be elected by the Committee (from the members of the Committee) at the next regular meeting of the Committee, shall consist of a Chairman, Vice Chairman and Secretary, and such other officers as the Committee may determine from time to time. The duties and authority of the officers, except as otherwise specified herein or in the Will, shall be as determined from time to time by the Committee. Any interim vacancy arising in any office (other than the office of the Chairman) shall be filled by the Chairman's selecting a member of the Committee to serve in such office until the next regular election of officers by the full Committee. An interim vacancy in the office of Chairman shall be filled by the Vice Chairman's selecting a member of the Committee to serve as Chairman until the next regular election of officers by the full Committee. It is anticipated that the Vice Chairman would select himself or herself to fill any such vacancy in the office of Chairman, but such a selection shall not be required.
- E. The members of the Committee shall be generally subject to the same standard of care that is applicable to the directors of non-profit corporations under Texas law, and the members of the Committee shall be entitled to take advantage of any additional benefits, protections or reduction of liability exposure that may be available to them under Texas law, including, but not limited to, any benefits, protection or reduction of liability exposure that may be available to them under the Charitable Immunity and Liability Act set out in Chapter 84 of the Texas Civil Practice and Remedies Code.
- F. The Committee authorizes the Trustee to purchase and maintain a policy or policies of insurance to indemnify the members of the Committee from all liabilities, expenses, costs and attorneys' fees which may be incurred by them while acting in accordance with the policies contained herein or otherwise conducting activities of the Fund as members of the Committee. The premiums for such insurance shall be paid from the income of the

Fund. The Committee may recommend to the Trustee such other action as may be appropriate to indemnify the members of the Committee from such liability and hold them harmless from any and all personal loss as a result of legal action or threatened legal action taken against them individually or collectively to the fullest extent permitted by law which is not inconsistent with the tax exempt status of the Fund, including direct indemnification by the Fund; provided, however, that the members of the Committee may not be directly indemnified by the Fund for defending against or for liability resulting from an original petition filed by the Attorney General of the State of Texas stating as a cause of action the breach of a fiduciary duty by a member of the Committee.

- G. Each member of the Committee shall receive from the Fund reasonable compensation for services rendered to or for the benefit of the Fund. In determining the amount of such compensation, the Committee shall take into consideration (i) the services performed by members of the Committee, (ii) the time spent on the Fund's activities by members of the Committee, and (iii) the amount of compensation paid to third parties who provide comparable services in a similar setting. The members of the Committee shall be entitled to reimbursement from the Fund for all reasonable and necessary expenses they incur to perform their duties as members of the Committee.
- H. Any action of the Committee shall be taken by the vote of a majority of members of the Committee in attendance at any regular or special meeting of the Committee. A quorum of at least fifty percent (50%) of the members of the Committee then serving must be present at any regular or special meeting of the Committee in order for a vote taken at such meeting to become a binding act of the Committee. Voting by proxy shall not be allowed at any meeting of the Committee.
- I. Any action required or permitted to be taken at a meeting of the Committee may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be sent to all members of the Committee and shall be



signed by members of the Committee having not ~~less than~~ the minimum number of votes that would be necessary to take such action at a meeting at which all members of the Committee were present and voted.

- J. This Franklin Lindsay Student Aid Fund Policy Restatement No. 2 may be amended, in whole or in part, in any manner not inconsistent with the Will, by a vote of the Committee.

The foregoing Franklin Lindsay Student Aid Fund Policy Restatement No. 2 was adopted by the Committee by resolution duly presented, debated and approved by a majority of a duly convened quorum of the Committee on \_\_\_\_\_, 2001.

Attest:

\_\_\_\_\_  
Secretary of the Committee

**Appendix F.14**  
**Trust Reformation (change of Trustee), October 2001**

Cause No. GN102892

IN RE:

FRANKLIN LINDSAY  
STUDENT AID FUND

§  
§  
§  
§  
§

IN THE DISTRICT COURT  
OF TRAVIS COUNTY, TEXAS  
53<sup>RD</sup> JUDICIAL DISTRICT

FINAL JUDGMENT

On the 4<sup>th</sup> day of October, 2001, came on to be heard the Original Petition for Approval of Trustee's Resignation and Appointment of Successor Trustee filed in the above-entitled and numbered cause by Chase Manhattan Bank, Trustee of the Franklin Lindsay Student Aid Fund (the "Fund"). Petitioner, Chase Manhattan Bank, Trustee of the Fund, appeared through its duly authorized representative and attorney of record and announced ready for trial. Respondent Mike Novak, as Chairman of the Executive Committee of the Student Loan Committee of the Fund, appeared by and through his duly authorized representative and attorney of record and announced ready for trial. This action involves a charitable trust, and the Attorney General, after being properly notified of this proceeding as provided in the Texas Trust Code, has declined to participate. No jury having been demanded by any party, all issues of fact and law were submitted to the Court for decision.

Having reviewed the pleadings and other papers on file in this cause, and having considered the evidence presented at trial and the arguments of counsel, the Court finds as follows:

- (1) This Court has jurisdiction and venue of this action.

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*Wanda T. ...*

DISTRICT CLERK  
TRAVIS COUNTY, TEXAS



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- (2) All necessary parties to this action are properly before the Court and have been duly served with citation in the manner required by law, or have voluntarily entered a general appearance in this cause.
- (3) Franklin Lindsay executed a Last Will and Testament dated October 5, 1949. Mr. Lindsay later died on May 3, 1954, and his Will was duly admitted to probate on May 17, 1954, in Cause Number 16,470 in the County Court of Travis County, Texas. Franklin Lindsay's Will created a charitable Trust entitled the "Franklin Lindsay Student Aid Fund", and designated Capital National Bank to serve as Trustee. The purpose of the Fund is to make loans to qualifying students who desire to attend universities and colleges in the State of Texas, but lack the financial resources to do so.
- (4) The current Trustee of the Fund is Chase Manhattan Bank, Petitioner, as a result of the following transactions: Texas Commerce Bank succeeded to the trust business of Capital National Bank; Chemical Bank succeeded to the trust business of Texas Commerce Bank; Chase Bank of Texas, N.A., succeeded to the trust business of Chemical Bank; Chase Manhattan Bank succeeded to the trust business of Bank of Chase Bank of Texas, N.A.
- (5) Section 113.081 of the Texas Trust Code provides that on the petition of a Trustee, a Court may grant the Trustee permission to resign as such and discharge the Trustee from the Trust.
- (6) Chase Manhattan Bank has tendered its resignation as Trustee of the Fund, subject to this Court's permission.



- (7) This Court should accept Chase Manhattan Bank's resignation as Trustee of the Fund.
- (8) Bank One, N.A., is a duly qualified corporate Trustee located in Austin, Texas, with trust powers, and is eligible to serve as Successor Trustee of the Fund. This Court should appoint Bank One, N.A., as Successor Trustee of the Fund in accordance with Section 113.083 of the Texas Trust Code.
- (9) The interests of the Fund and its beneficiaries, to enable the Fund to fulfill its purposes as created by Settlor, would be furthered and best served by accepting the resignation of Chase Manhattan Bank as Trustee of the Fund, and by appointing Bank One, N.A., as Successor Trustee of the Fund.
- (10) Chase Manhattan Bank, while serving as Trustee of the Fund, has properly administered the Fund and provided the Student Loan Committee of the Fund (the "Committee") complete and accurate accountings of its administration of the Fund. Chase Manhattan Bank has provided periodic accountings to the Committee throughout its service as Trustee of the Fund, listing all of the property being administered with an accurate description of each asset and liability, as well as a complete account of the receipts,<sup>2</sup> disbursements and other transactions regarding the trust property for the period covered. In addition, Chase Manhattan Bank, in connection with this proceeding, has filed herein and made independently available to the Committee, or its attorneys of record, as well as the Attorney General, copies of annual audited financial reports from January 1, 1966 through December 31, 2000, as well as summary account statements for the period January 1, 2001 through





August 31, 2001 and account investment review statements as of August 31, 2001, listing all of the property that has been or is currently being administered with an accurate description of each asset and liability, as well as a complete account of the receipts, disbursements and other transactions regarding the Trust property for the periods covered. Chase Manhattan Bank will continue to furnish periodic account statements to the Committee for all periods through the date of the Court's approval of Chase Manhattan Bank's resignation and delivery of the assets of the Fund to the Successor Trustee appointed by the Court. The statements referred to in the preceding two sentences are herein collectively referred to as "the Final Accounting".

- (11) The Attorney General has reviewed the Final Accounting and has filed no objection to the Final Accounting.
- (12) The Final Accounting should be approved in all respects, and Chase Manhattan Bank is entitled to a release and discharge from its duties, and to be relieved from any further obligation with respect to the administration of the Fund, or to account for the Fund after delivery of the assets of the Fund to the Successor Trustee, and from any and all liabilities arising out of or in any way related to the administration of the Fund. This discharge and release shall apply to Chase Manhattan Bank, in its individual corporate capacity and as Trustee of the Fund, its corporate parents, subsidiaries, affiliates, predecessors, successors, assigns, directors, officers, employees, agents, and representatives, and their successors in interest.



- (13) Upon approval of the resignation of Chase Manhattan Bank as Trustee of the Fund and appointment of Bank One, N.A., as Successor Trustee, Chase Manhattan Bank shall transfer all assets of the Fund to Bank One, N.A., as the Successor Trustee of the Fund.
- (14) The Committee participated in this action for the purpose of preserving and protecting the interests of the Fund and its beneficiaries. The relief sought in this action was necessary to enable the Fund to accomplish the purposes of the Fund as established by the Settlor. Accordingly, the Committee is entitled to recover its reasonable and necessary attorney's fees and litigation expenses from the Fund pursuant to Section 114.064 of the Texas Trust Code.
- (15) Chase Manhattan Bank brought this action for the purpose of preserving and protecting the interests of the Fund and its beneficiaries. The relief sought in this action was necessary to enable the Fund to accomplish the purposes of the Fund as established by the Settlor. Accordingly, Chase Manhattan Bank is entitled to recover its reasonable and necessary attorney's fees and litigation expenses from the Fund pursuant to Section 114.064 of the Texas Trust Code.

It is therefore, ORDERED, ADJUDGED and DECREED that the resignation of Chase Manhattan Bank as Trustee of the Franklin Lindsay Student Aid Fund is accepted and that Bank One, N.A., is appointed Successor Trustee of the Fund.

It is further ORDERED, ADJUDGED and DECREED that the provisions of this Final Judgment shall constitute sufficient legal authority to all persons owing any money to the Fund, having custody of any property of the Fund, or acting as registrar or transfer agent of any evidence



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of the Fund, for payment or transfer of such money, property or right, without liability, to Bank One, N.A., and its legal successors in interest, as Successor Trustee of the Fund.

It is further ORDERED, ADJUDGED and DECREED that Chase Manhattan Bank shall promptly deliver all assets of the Fund held in the Fund's name in its possession, after payment as provided herein of all: (i) Trustee's fees, expenses and administrative costs; (ii) the Committee's and Chase Manhattan Bank's Court costs and expenses; and (iii) the Committee's and Chase Manhattan Bank's legal fees, to Bank One, N.A., as Successor Trustee as soon as reasonably possible after the entry of this Final Judgment. In addition, if requested to do so, Chase Manhattan Bank shall execute any other documents reasonably required to effect the transfer of title or delivery of its interest in the properties of the Fund to Bank One, N.A., as Successor Trustee of the Fund.

It is further ORDERED, ADJUDGED and DECREED that the Final Accounting submitted by Chase Manhattan Bank is approved in all respects, and that Chase Manhattan Bank is hereby released and discharged from its duties, including any further obligation with respect to the administration of the Fund, or to account for the Fund after delivery of the assets of the Fund to the Successor Trustee, and from any and all liabilities arising out of or in any way related to the administration of the Fund. This discharge and release shall apply to Chase Manhattan Bank in its individual corporate capacity and as Trustee of the Fund, its corporate parents, subsidiaries, affiliates, predecessors, successors, assigns, directors, officers, employees, agents, and representatives, and their successors in interest. This release and discharge does not relieve Chase Manhattan Bank from any obligations imposed upon it by the immediately preceding paragraph of this Final Judgment.



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It is further ORDERED, ADJUDGED and DECREED that the Committee is entitled to recover its reasonable attorney's fees and costs of Osborne & Helman, L.L.P., in connection with this proceeding, as well as related services performed to promote the appointment of the Successor Trustee, the same to be charged against the Fund pursuant to Section 114.064 of the Texas Trust Code, and that these fees and costs shall be paid prior to the delivery of any properties to Bank One, N.A., as the Successor Trustee of the Fund.

It is further ORDERED, ADJUDGED and DECREED that Chase Manhattan Bank, as Trustee of the Fund, is entitled to recover its reasonable attorney's fees and costs of Clark, Thomas & Winters, P.C., in connection with this proceeding, as well as related services performed to promote the appointment of the Successor Trustee, the same to be charged against the Fund pursuant to Section 114.064 of the Texas Trust Code, and that these fees and costs shall be paid prior to the delivery of any properties to Bank One, N.A., as the Successor Trustee of the Fund.

It is further ORDERED, ADJUDGED and DECREED that all filing fees and court costs in this cause are hereby taxed against the Fund, for which execution shall issue if not timely paid.

All relief requested and not expressly granted herein is denied.

Signed this 4th day of October, 2001.

AMALIA RODRIGUEZ-MENDOZA, District Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on Oct 14, 2001



AMALIA RODRIGUEZ-MENDOZA

DISTRICT CLERK

By Deputy

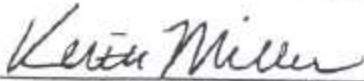
*Aut Casares*

*Paul Cass*  
\_\_\_\_\_  
JUDGE PRESIDING






IN ACCEPTANCE OF APPOINTMENT  
AS SUCCESSOR TRUSTEE  
OF THE FRANKLIN LINDSAY STUDENT AID FUND:



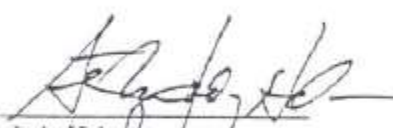
Keith Miller, Vice President  
Bank One, N.A.

APPROVED AS TO FORM:

By:

  
John R. Ott  
State Bar No. 00791383  
CLARK, THOMAS & WINTERS, P.C.  
P.O. Box 1148  
Austin, Texas 78707  
(512) 472-8800 Telephone  
(512) 474-1129 Facsimile  
Attorneys for Chase Manhattan Bank

By:

  
Stephen Jody Helman  
State Bar No. 09399500  
OSBORNE & HELMAN, L.L.P.  
301 Congress, Suite 1910  
Austin, Texas 78701  
(512) 542-2015 Telephone  
(512) 542-2011 Facsimile  
Attorneys for Mike Novak, as Chairman of  
the Executive Committee of the  
Student Loan Committee of the  
Franklin Lindsay Student Aid Fund



## **August 1987 Reformation**

IN RE:	§	IN THE DISTRICT COURT
THE FRANKLIN LINDSAY	§	TRAVIS COUNTY, TEXAS
STUDENT AID FUND	§	<u>20<sup>th</sup></u> JUDICIAL COURT

ORDER

On this the 20<sup>th</sup> day of August, 1987, came to be heard the First Original Petition filed herein by **TEXAS COMMERCE BANK-AUSTIN, N.A.**, as Trustee ("Trustee") of the FRANKLIN LINDSAY STUDENT AID FUND ("Fund"), and the individual members of the Student Loan Committee of the Fund ("Committee") by and through their counsel, (hereinafter collectively referred to as "Petitioners"), wherein construction of the Last Will and Testament of Franklin Lindsay, Deceased ("Will"), with respect to such portion of the Will which constitutes the testamentary trust known as THE FRANKLIN LINDSAY STUDENT AID FUND, and to declare rights and determine questions of administration arising thereunder was sought and that the Court having examined the pleadings, the argument of counsel and the evidence presented herein finds: (1) that it has venue and jurisdiction of the subject matter of such proceedings and jurisdiction of all necessary parties who were joined herein, entered their appearance herein or waived notice and citation of these proceedings; (2) that the allegations in such First Original Petition are true; and (3) that the relief prayed for therein should be granted.

It is therefore ORDERED, ADJUDGED and DECREED: (1) that the Trustee is authorized to purchase and maintain a policy or policies of insurance to indemnify the members of the Committee from all liabilities, expenses, costs and attorneys' fees which may be incurred by them while acting in accordance with the policy guidelines of the Fund or otherwise conducting activities of the Fund as members of the Committee, that the premiums for such insurance shall be paid from the income of the Fund, and that the Trustee is authorized to take such other action as may be


EXHIBIT  
"C"

appropriate to indemnify the members of the Committee from such liability and hold them harmless from any and all personal loss as a result of legal action or threatened legal action taken against them individually or collectively to the fullest extent permitted by law which is not inconsistent with the tax exempt status of the Fund, including direct indemnification by the Fund provided, however, that the members of the Committee may not be directly indemnified by the Fund for defending against or for liability resulting from an original petition filed by the Attorney General of the State of Texas stating as a cause of action the breach of a fiduciary duty by a member of the Committee; (2) that the individual Committee members are entitled to disclaim their individual liabilities on the Financial Aid Forms sent to the education loan recipients; (3) that the fee allowed the Trustee is to be determined as that which is "fair and reasonable compensation as shall be approved by the Committee members from time to time", in addition to the commission set forth in Article XV of the Will and that such fair and reasonable compensation is to be determined by the Committee members taking into consideration the cost to the Trustee of employee salaries, overhead and other expenses necessary to insure the efficient administration and management of collection of student loans; (4) that the Committee is relieved of any liability for any past deviations from the Trustee's fee arrangement as set out in the Will; (5) that the Will's terms regarding recipients of education loans from the Fund are construed to mean that the Committee in its selection of recipients of education loans from the Fund is not restricted to making such loans to students attending state institutions, but may also make such loans to students attending private institutions; (6) that the Committee members are relieved of any liabilities for their past selections of students attending private institutions as recipients of education loans; and (7) that the amended "THE FRANKLIN LINDSAY STUDENT AID FUND POLICY RESTATEMENT NO. 1" attached hereto and authorizing administration of the Fund in accordance with such policy guidelines, and



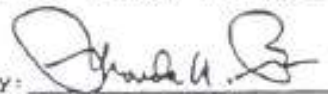
authorizing the Trustee to take any action designated in such guidelines is approved.

SIGNED ~~As~~ this 20<sup>th</sup> day of August, 1987.

  
Presiding Judge

APPROVED AS TO FORM ONLY:

CLARK, THOMAS, WINTERS & NEWTON

By:   
RHONDA H. BRINK  
For the Firm

State Bar I.D. #03003300  
P. O. Box 1148  
Austin, Texas 78767  
(512) 472-8800

ATTORNEYS FOR THE PETITIONERS

ATTORNEY GENERAL OF THE STATE OF TEXAS

By:   
ANN KITCHEN  
Assistant Attorney General

THE STATE OF TEXAS  
COUNTY OF TRAVIS

I, JOHN DICKSON, Clerk of the District Courts, within and for the State and County aforesaid, do hereby certify that the within and foregoing is a true and correct copy of

ORDER

In Cause No. 422,595, wherein

IN RE: THE FRANKLIN LINDSAY STUDENT AID FUND

as the same appears on file and of record in this office.

Given under my hand and seal of office at Austin,  
Texas, this the

20TH day of August, 1987.

JOHN DICKSON  
Clerk, District Courts, Travis County, Texas

By Gwenda A. Brown  
Deputy  
Gwenda A. Brown

**Appendix F.15  
Trust Reformation, January 2002**

COPY

No. GN200166

IN RE:	§	IN THE DISTRICT COURT
THE FRANKLIN LINDSAY	§	OF TRAVIS COUNTY, TEXAS
STUDENT AID FUND	§	<u>5B</u> JUDICIAL DISTRICT
	§	

**ORIGINAL PETITION  
FOR DECLARATORY JUDGMENT AND OTHER RELIEF**

Come now Bank One, N.A., Trustee of The Franklin Lindsay Student Aid Fund, and the Student Loan Committee of The Franklin Lindsay Student Aid Fund, Petitioners herein, and file this, their Original Petition for Declaratory Judgment and Other Relief, and in support thereof would respectfully show the Court the following:

**I. Parties**

1.1 Petitioner Bank One, N.A. (hereinafter referred to as "Bank One") is a national banking association with trust powers and offices located at 221 West 6th Street, Austin, Texas 78701. Bank One brings this action in its capacity as Trustee of The Franklin Lindsay Student Aid Fund (hereinafter referred to as the "Trust").

1.2 Petitioner the Student Loan Committee of The Franklin Lindsay Student Aid Fund (hereafter referred to as the "Committee") is an unincorporated association of individuals that is responsible for selecting the recipients of student loans made by the Trust.

1.3 Since the Trust is a charitable trust, Petitioners will provide a copy of this petition and will give notice of this proceeding to the Texas Attorney General, Charitable Trusts Section.

FILED #6

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Consumer Protection Division, P.O. Box 12548, Austin, Texas 78711-2548, as required by Sections 115.011(c) and 123.003 of the Texas Property Code.

## **II. Jurisdiction and Venue**

2.1 This Court has jurisdiction over the issues raised in this Petition pursuant to Sections 112.054 and 115.001 of the Texas Property Code.

2.2 Pursuant to Section 115.002 of the Texas Property, venue of this proceeding is proper in Travis County, Texas, because Bank One is a corporate trustee and the situs of administration of the Trust is maintained in Travis County.

## **III. Factual Background**

3.1 Petitioner seeks a judicial interpretation and modification of the terms of the Trust, which was established by the will of Franklin Lindsay, Deceased. Mr. Lindsay died on May 1, 1954, leaving a will dated October 5, 1949 (hereinafter referred to as the "Will"). A true and correct copy of the Will is attached to this Petition as Exhibit "A" and incorporated herein by reference for all purposes.

3.2 The Will was duly admitted to probate on May 17, 1954, by the County Court of Travis County, Texas, in Cause no. 16,470, styled "In the Matter of the Estate of Franklin Lindsay, Deceased."

3.3 The Will created the Trust and appointed Capital National Bank of Austin, Texas, to serve as the initial trustee of the Trust. Chase Manhattan Bank, the legal successor in interest to Capital National Bank of Austin, Texas, recently resigned its position as trustee of the Trust, and the 53<sup>rd</sup> Judicial District Court of Travis County, Texas, appointed Bank One to serve as

Trustee of the Trust. Bank One has accepted such appointment and is now serving as Trustee of the Trust.

3.4 The Trust was originally formed to provide educational loans for students desiring to obtain college educations from certain Texas colleges and universities. Pursuant to paragraph 9 of the Will, the Committee has been responsible for selecting the students who receive educational loans from the Trust.

3.5 Over the years since Mr. Lindsay's death, certain aspects of administering the Trust became illegal or impractical, thereby frustrating the purposes of the Trust. These changes were due to circumstances not known to or anticipated by Mr. Lindsay, such as laws adopted after his death. The Trust has been interpreted and/or reformed on at least three separate occasions since its creation, including the following:

a. On July 17, 1957, in Civil Action No. 785, the United States District Court for the Western District of Texas, Austin Division, entered a judgment that modified the Trust as follows:

Any language in said last will and testament particularly but not limited to paragraphs numbered 7 and 11 thereof, which may indicate an intent that the universities, colleges and schools of higher education referred to in the preceding subparagraph (a) should only include those "in which negroes or those having any negro blood shall not be entered," is directory only and not mandatory and does not bind the committee named in said last will and testament or the Trustee . . . .

b. On March 31, 1976, in cause numbered 243,896, the 53<sup>rd</sup> Judicial District Court of Travis County, Texas, entered a judgment that modified paragraph 7 of the Will to provide for the assistance of worthy and deserving

students of either sex, who may be desirous, but financially unable, of obtaining a college education at any of the Texas state institutions such as the University of Texas and Texas A&M University, but also including Rice Institute, Texas Christian University, Southern Methodist University, or similar institutions. A true and correct copy of such judgment is attached to this Petition as Exhibit "B" and incorporated herein by reference for all purposes.

c. On August 20, 1987, in cause numbered 422,595, the 200<sup>th</sup> Judicial District Court of Travis County, Texas, entered a judgment that clarified various matters involving the administration of the Trust, including but not limited to, the following:

- (1) the Trustee could purchase and maintain a policy of insurance to indemnify the Committee members from liability for expenses, costs and attorneys' fees associated with the Trust;
- (2) the Committee members could disclaim their individual liabilities on financial aid forms sent to loan recipients;
- (3) the Trustee was entitled to receive fair and reasonable compensation for its services, as approved by the Committee members from time to time after considering various factors specified in the judgment;
- (4) the Committee was relieved of any liability for any past deviations from the Trustee's fee arrangement, as set out in the Will;
- (5) the Committee could make loans to students attending private institutions;



- (6) the Committee members were relieved of any liabilities for the past selection of students attending private institutions as recipients of educational loans; and
- (7) the Court adopted and approved certain policy guidelines formulated by the Committee for the administration of the Trust.

A true and correct copy of such judgment is attached hereto as Exhibit "C" and incorporated herein by reference for all purposes.

3.6 In establishing the Trust, Mr. Lindsay's general intent was to create a perpetual fund that would provide loans for worthy students desiring to obtain college educations at institutions located in the State of Texas. As a result of the ever-changing economic, political and social factors affecting education in both private and public colleges, including the expansive growth of universities outside the State of Texas, together with other circumstances that were not known to or anticipated by Mr. Lindsay when he executed the Will, Mr. Lindsay's intent to provide funding to college students through educational loans will be better served if certain clarifications or revisions are made to the administrative provisions of the Trust. Petitioners believe that the relief requested in this Petition will enable the Committee and the Trustee to address these factors and other changed circumstances in a manner that is most consistent with Mr. Lindsay's original intent.

#### **IV. Requests for Interpretation and Modification of the Trust.**

4.1 In light of the facts and circumstances described in paragraph 3.6 above, Petitioners ask this Court to interpret various provisions of the Trust. Petitioners also ask the Court to modify other provisions of the Trust pursuant to Section 112.054(b) of the Texas Property Code. Because of circumstances not known to or anticipated by Mr. Lindsay,

compliance with the terms of the Trust subject to Petitioners' modification request would defeat or substantially impair the accomplishment of the purposes of the Trust. Petitioners believe that the requested modifications of the Trust, as set forth below, would result in changes that conform as nearly as possible to the intentions of Mr. Lindsay. Alternatively and/or additionally, Petitioners request that this Court use its powers under Section 37.005 of the Texas Civil Practice and Remedies Code to judicially declare certain rights, obligations, and legal relations with respect to the Trust, as requested herein.

4.2 **Resignation or Removal of Trustee.** The Will does not include any provisions or procedures to address the resignation or removal of an acting trustee of the Trust. Situations may arise where the acting trustee of the Trust desires to resign, or where it is appropriate to remove an acting trustee of the Trust. Unless appropriate provisions and procedures are provided for addressing these issues, the efficient and effective operation and administration of the Trust may be hindered and limited, thereby frustrating one of Mr. Lindsay's purposes in establishing the Trust. To avoid this result, paragraph 3 of the Will should be reformed to add the following provisions to that paragraph of the Will:

The acting trustee of the Trust may resign as trustee, without judicial action, by giving at least six (6) months prior written notice of its intended resignation to all members of the Student Loan Committee. In that event, the Student Loan Committee shall have the power to appoint a successor trustee of the Trust from among the financial institutions in Austin, Texas, having trust powers. Any appointment of a successor trustee pursuant to this paragraph shall be by an acknowledged instrument in writing and shall be effective upon the later of (i) the time of the satisfaction of any conditions specified in such instrument and (ii) acceptance of the trusteeship by such appointee. The appointment of a successor trustee by the Student Loan Committee may be modified or revoked by the Committee from time to time prior to the time the appointment becomes effective; provided, however, that any such modification or revocation to an appointment must be made by an acknowledged instrument in writing and shall be effective at



the time or under the conditions specified in the instrument. In the event that two or more instruments of appointment, revocation, or modification by the Student Loan Committee exist and are inconsistent, the instrument executed latest in time shall control.

The Student Loan Committee shall have the power, exercisable at any time, to remove any then serving trustee of the Trust, with or without cause, and to appoint a successor trustee of the Trust from among the financial institutions in Austin, Texas, having trust powers. This removal power shall be exercised by the delivery of an acknowledged written removal notice to the trustee being removed, and shall become effective immediately at the time or upon occurrence of the event specified in the notice of removal. Any appointment of a successor trustee pursuant to this paragraph shall be by an acknowledged instrument in writing and shall be effective upon the later to occur of (i) the time of the satisfaction of any conditions specified in such instrument, and (ii) the acceptance of the trusteeship by such appointee. The appointment of a successor trustee by the Student Loan Committee may be modified or revoked by the Committee from time to time prior to the time the appointment becomes effective; provided, however, that any such modification or revocation to an appointment must be made by an acknowledged instrument in writing and shall be effective at the time or under the conditions specified in the instrument. In the event that two (2) or more instruments of appointment, revocation, or modification by the Student Loan Committee exist and are inconsistent, the instrument executed latest in time shall control.

These provisions will appropriately address issues that may arise in the future with respect to the resignation or removal of the acting trustee of the Trust.


#### **4.3 Definition of "Financial Institutions in Austin, Having Trust Powers."**

Paragraph 3 of the Will authorizes the Committee to select a successor trustee from among the "financial institutions in Austin, having trust powers." Since the Will does not provide a definition of the term "financial institutions in Austin, having trust powers," Mr. Lindsay's intended meaning of the term is not altogether clear. This uncertainty has become more pronounced in recent years because there has been a proliferation of companies and entities other than banks that offer trust services. Petitioners request that the term "financial institution in Austin, having trust powers," as used in paragraph 3 of the Will, be defined to include any bank

- B. Award Petitioners their reasonable and necessary attorneys' fees and court costs; and
- C. Award Petitioners such other and further relief to which they may be entitled.

Respectfully submitted,

OSBORNE & HELMAN, L. L. P.  
301 Congress Avenue, Suite 1910  
Austin, Texas 78701  
(512) 542-2000  
(512) 542-2011 (Fax)

By:   
Stephen Jody Helman  
State Bar ID No. 09399500  
Jeffrey T. Knebel  
State Bar ID No. 11589000

ATTORNEYS FOR BANK ONE, N.A., TRUSTEE  
OF THE FRANKLIN LINDSAY STUDENT AID  
FUND, AND THE STUDENT LOAN  
COMMITTEE OF THE FRANKLIN LINDSAY  
STUDENT AID FUND

**Appendix F.16  
Trust Reformation, July 2002**

Cause No. GN 200166

IN RE:

THE FRANKLIN LINDSAY  
STUDENT AID FUND

2002 JUL 29 9:20 AM

IN THE DISTRICT COURT  
OF TRAVIS COUNTY, TEXAS  
53rd JUDICIAL DISTRICT

**JUDGMENT**

On this 29th day of July, 2002, the Court considered the pleadings of the parties, arguments of Petitioners' counsel, evidence presented to the Court and the pleadings and other documents on file in this matter, and in support thereof issues the following judgment:

The Court makes the following findings:

1) The Court finds that the jurisdictional and factual allegations contained in the Original Petition For Declaratory Judgment and Other Relief are admitted. Accordingly, the Court adopts and incorporates by reference all of the jurisdictional and factual circumstances described in the Petition.

2) Petitioners gave the proper notice to the Attorney General of the State of Texas regarding this proceeding as required by Tex. Prop. Code § 123.003. The Attorney General has waived in writing their right to participate in this proceeding. The Attorney General's written waiver was properly filed with this Court on July 29, 2002.

3) Franklin Lindsay created the Franklin Lindsay Student Aid Fund (the "Fund") through his will dated October 5, 1949 (the "Will"). Mr. Lindsay's Will was probated on May 17, 1954, upon which date the Fund began operations. The Will provides for the operation of a Fund by a Trustee, which is currently Bank One, N.A., and a Student Loan Committee (the "Committee"). Since May 17, 1954, there have been circumstances not known to or anticipated by Franklin Lindsay, whereby compliance with the terms of the trust would defeat or

Filed in The District  
of Travis County, Texas  
on July 29 2002  
at 9:20 AM  
Luisa Pedri  
Luisa Clark

substantially impair the accomplishment or purposes of the trust, including but not limited to: (1) a proliferation of student loans and educational assistance provided through the Fund; (2) a marked increase in the type of educational institutions at which students may obtain a college education, both in Texas and outside of Texas; (3) significantly more complex procedures for the Trustee and Committee in processing loans and loan applications within the Fund; (4) a significantly larger number and type of institutions in Austin, Texas that offer trust services; and (4) a significant increase in the responsibilities, powers and obligations of Trustees under Texas law.

4) It is appropriate for the Will to be modified in certain respects to improve the efficiency of the Trustee's and Student Loan Committee's administration of the Fund. In this regard, the Court makes the further following findings for those issues on which the Trust should be modified:

5) The Will does not include any provisions or procedures to address the resignation or removal of an acting trustee of the Trust.

6) The meaning of the term "financial institutions in Austin, having trust powers" as used in Paragraph 3 of the Will is not clear.

7) The Will does not adequately define the powers and authority of the Trustee.

8) The Will does not provide a definition of the term "financially unable," and Mr. Lindsay's intended meaning of the term is unclear.

9) The term "college education," as used in paragraph 7 of the Will, is not defined.

10) It is not clear whether paragraph 7 of the Will authorizes loans to students who take courses outside the State of Texas.



11) Paragraph 8 of the Will only authorizes the Trustee to make loans using income of the Trust, which limits the administration of the Trust according to its terms.

12) The current policy guidelines for the Trust include compensation and reimbursement provisions for Committee members that are not appropriate or workable.

13) The Will does not include any provisions or procedures to address the removal of an ineffective or inactive member of the Committee.

14) The Committee has acted in good faith to comply with the terms of the Will and to properly resolve questions that have arisen in connection with the selection of students to receive educational loans from the Fund.

15) The standard of liability for members of the Committee is not clear.

16) New policy guidelines for administering the student loan program of the Trust have been set forth in the document entitled "Franklin Lindsay Student Aid Fund Policy Restatement No. 2.

Based on the above findings, the Court ORDERS as follows:

1) Paragraph 3 of the Will shall be reformed to add the following provisions to that paragraph of the Will:

The acting trustee of the Trust may resign as trustee, without judicial action, by giving at least six (6) months prior written notice of its intended resignation to all members of the Student Loan Committee. In that event, the Student Loan Committee shall have the power to appoint a successor trustee of the Trust from among the financial institutions in Austin, Texas, having trust powers. Any appointment of a successor trustee pursuant to this paragraph shall be by an acknowledged instrument in writing and shall be effective upon the later of (i) the time of the satisfaction of any conditions specified in such instrument and (ii) acceptance of the trusteeship by such appointee. The appointment of a successor trustee by the Student Loan Committee may be modified or revoked by the Committee from time to time prior to the time the appointment becomes effective; provided, however, that any such modification or revocation to an appointment must be made by an acknowledged instrument in writing and shall be effective at the time or under the conditions specified in the instrument. In the event that two

or more instruments of appointment, revocation, or modification by the Student Loan Committee exist and are inconsistent, the instrument executed latest in time shall control.

The Student Loan Committee shall have the power, exercisable at any time, to remove any then serving trustee of the Trust, with or without cause, and to appoint a successor trustee of the Trust from among the financial institutions in Austin, Texas, having trust powers. This removal power shall be exercised by the delivery of an acknowledged written removal notice to the trustee being removed, and shall become effective immediately at the time or upon occurrence of the event specified in the notice of removal. Any appointment of a successor trustee pursuant to this paragraph shall be by an acknowledged instrument in writing and shall be effective upon the later to occur of (i) the time of the satisfaction of any conditions specified in such instrument, and (ii) the acceptance of the trusteeship by such appointee. The appointment of a successor trustee by the Student Loan Committee may be modified or revoked by the Committee from time to time prior to the time the appointment becomes effective; provided, however, that any such modification or revocation to an appointment must be made by an acknowledged instrument in writing and shall be effective at the time or under the conditions specified in the instrument. In the event that two (2) or more instruments of appointment, revocation, or modification by the Student Loan Committee exist and are inconsistent, the instrument executed latest in time shall control.

2) The term "financial institution in Austin, having trust powers," as used in paragraph 3 of the Will, shall be defined to include any bank or trust company, either state or national, that is authorized to serve as the trustee of an express trust in the State of Texas, and that maintains an office in Austin, Texas. Further, the Fund does not have to be administered in Austin as long as the Trustee qualifies as a "financial institution in Austin, having trust powers," as defined above.

3) The Trustee's powers under Paragraph 4 of the Will include the following:

Subject to the restrictions and limitations set out in the following provisions of this paragraph, the trustee of the Trust shall have all powers conferred on trustees by Texas trust law, and the powers granted to the trustee shall include, without limitation, the following powers, all of which may be exercised without the necessity of securing the approval or order of any court: (i) to acquire, by purchase (including purchase of securities on margin) or otherwise, retain, invest, reinvest, and manage, temporarily or permanently, any interest (including an undivided interest) in any realty or personalty, without diversification as to kind, amount, or risk of nonproductivity and without limitation by statute or rule of law; (ii) to alter, improve, repair, replace, abandon, and demolish assets; (iii) to sell,

exchange, encumber, lease for any period, or otherwise dispose of any asset of the trust estate, publicly or privately, with or without notice, wholly or partly for cash or credit, without appraisal, and to give options for those purposes; (iv) to advance or borrow money (with or without interest after taking into account attendant tax consequences), to guarantee payment of the liabilities of others, and to hold, mortgage, and pledge property for repayment; (v) to continue, invest in, or liquidate any partnership, corporation, or business; (vi) to hold title in the name of a nominee; (vii) to determine all matters of trust accounting as established by controlling law or customary practices; (viii) to set up and maintain reasonable reserves for taxes, assessments, insurance premiums, repairs, improvements, depreciation, depletion, amortization, obsolescence, general maintenance of buildings or other property, and any other purpose; (ix) to employ agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, investment counsel, and other assistants and advisers and compensate them out of principal or income or both; (x) to sell a pool of loans made by the Trust if such sale has first been approved by the Student Loan Committee, (xi) to purchase liability insurance coverage for the Student Loan Committee and the trustee, (xii) to abandon, compromise, contest, arbitrate, settle and compound claims, including claims involving student loans made by the Trust, provided that such action is approved by the Student Loan Committee, (xiii) to write off student loans made by the Trust in cases where there is documentation of a student's death or other hardship, provided that such action is approved by the Student Loan Committee; and (xiv) to delegate powers and duties to other persons, partnerships, corporations, and financial or business organizations. Notwithstanding any provision herein to the contrary, however, the trustee, in administering the Trust, shall have no power or authority (and none shall be exercised) that would result in the Trust not being exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. In addition, the trustee is prohibited from engaging in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code, from retaining any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code which would subject the Trust to tax under Section 4943 of the Internal Revenue Code, from making any investments, or acquiring or retaining any assets, which would subject the Trust to tax under Section 4944 of the Internal Revenue Code, and from making any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code. The trustee shall make distributions at such time and in such manner as not to subject the Trust to tax under Section 4942 of the Internal Revenue Code. The purpose of the foregoing provisions is to comply with the provisions of Section 508(e) of the Internal Revenue Code, to the extent, if any, that such provisions are applicable to the Trust. Nothing herein shall be construed to restrict the trustee from investing the assets of the Trust in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of Trust assets.

4) Paragraph 7 of the Will shall be reformed by adding the following provisions to that paragraph of the Will:



For purposes of determining whether a student is financially unable to obtain a college education under paragraph 7 of the Will, financial inability means that a student must show a need for financial assistance to obtain a college education. In determining whether a student is financially unable to obtain a college education under paragraph 7 of the Will, members of the Student Loan Committee have broad discretion to consider a student's other resources, sources of income and financial obligations.

5) Paragraph 7 of the Will shall be interpreted or modified to provide that the term "college education" includes both undergraduate, graduate and professional education.

6) Paragraph 7 of the Will, as modified by subsequent judicial proceedings shall be further modified to provide that the Trust may make loans to students who take courses outside the State of Texas if (i) the student satisfactorily demonstrates that he or she is a candidate for a degree from a qualified Texas institution and (ii) the student provides documentation that the courses will be credited to that degree by the Texas institution.

7) Paragraph 8 of the Will shall be reformed to authorize the Trustee to use principal of the Trust to make student loans in extraordinary circumstances, if this action is approved by the Student Loan Committee.

8) The Will shall be modified to include the following provisions that govern compensation and reimbursement of expenses to Committee members:

The Student Loan Committee is entitled to set reasonable compensation for its members from time to time during the term of the Trust. In fixing compensation, the Student Loan Committee shall take into consideration (i) the services performed by members of the Committee, (ii) the time spent on the Trust's business by members of the Committee and (iii) the amount of compensation paid to third parties who provide comparable services in a similar setting. The members of the Student Loan Committee are entitled to be reimbursed from the Trust for all reasonable and necessary expenses that they incur to perform their duties as members of the Student Loan Committee.

9) Paragraph 9 of the Will be reformed by adding the following provisions:

The Student Loan Committee has the power to remove a member of the Committee for cause. This removal power shall be exercised by the delivery of an acknowledged written removal notice to the member of the Committee being



removed, and shall become effective immediately at the time or upon occurrence of the event specified in the notice of removal. For purposes of this paragraph 9, the term "cause" means (i) the inability to perform the duties and responsibilities of the office (whether due to illness, incapacity or some other cause), (ii) repeated failures to attend meetings of the Committee, or (iii) contributions to the Committee that are significantly and disproportionately lower than the contributions being made by other members of the Committee.

10) Paragraph 15 of the Will shall be reformed to provide as follows:

The Student Loan Committee is authorized to set reasonable compensation for the Trustee from time to time during the term of the Trust. In fixing the Trustee's compensation, the Student Loan Committee shall take into consideration, if the information is available, the amount of compensation paid to other trustees that perform comparable or similar services.


11) The members of the Student Loan Committee are relieved of any liabilities for their past selections of students to receive educational loans from the Fund.

12) The members of the Student Loan Committee are generally subject to the same standard of care that is applicable to the directors of a non-profit corporation under Texas law, and that they are entitled to take advantage of any additional benefits, protection or reduction of liability exposure that may be available to them under Texas law, including but not limited to, any benefits, protection or reduction of liability exposure that may be available to them under the Charitable Immunity and Liability Act set out in Chapter 84 of the Texas Civil Practice and Remedies Code.

13) The Franklin Lindsay Student Aid Fund Policy Restatement No. 2 is approved and the Committee is authorized to take any actions allowed by these policy guidelines.

14) The Committee is authorized to approve and implement other rules, guidelines and procedures that are not inconsistent with the Will, as modified, for the purpose of providing for the efficient and effective administration of the student loan program of the Trust in the future.

Signed this 29th day of July, 2002.

  
Presiding Judge

APPROVED AS TO FORM:

\_\_\_\_\_  
Jeffrey T. Knebel  
State Bar No. 11589000  
Osborne & Helman, L.L.P.  
Attorneys for Bank One, N.A. and the  
Student Loan Committee

**Appendix G            Introduction Letter – Franklin Lindsay Student Aid  
Fund committee**

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Dear Mr. xxxxxx,

Happy new year, and I hope this email finds you and your family well.

My name is xxxxxx, and I am a Ph. D. candidate for the Program in Higher Education Leadership (PHEL) at the University of Texas at Austin. I am writing to follow up on Dr. William “Bill” Lasher’s email to you and the Franklin Lindsay Student Aid Program committee members about a possible interview with me in person or by phone.

Dr. Lasher mentioned that you are the current Chair for the committee, and I would love to talk to you more about my dissertation thus far.

I had the pleasure of meeting many of the committee members at the Franklin Lindsay Board meeting in February 2014, when my doctoral colleagues and I presented a report about the Franklin Lindsay loan program. Our report provided the committee some findings about the program and our recommendations to help make the Franklin Lindsay more visible and accessible for future loan recipients.

After the report presentation, I was encouraged by the committee to write my dissertation about the history of the Franklin Lindsay student loan program, especially focusing on the its namesake and founder, Mr. Franklin Lindsay. Your name was provided to me by Dr. Lasher for a possible interview to discuss your participation with the program as well as your possible knowledge about Lindsay’s life and history.

I hope to have my report completed by the end of this month. Do you think I can conduct a short 30-minute telephone interview with you at your convenience sometime between January 18 until January 25? Please let me know and I will be happy to arrange a call with you at your availability.

Besides being a doctoral candidate at the University of Texas at Austin, I am currently an administrator at the xxx Community College overseeing all international initiatives for the college. I can be reached at this email or by cell phone: xxxxxx. I look forward to hearing from you soon. Thank you for your consideration.

Best regards,



## Appendix H

### Interview Questions – Franklin Lindsay Student Aid Fund committee

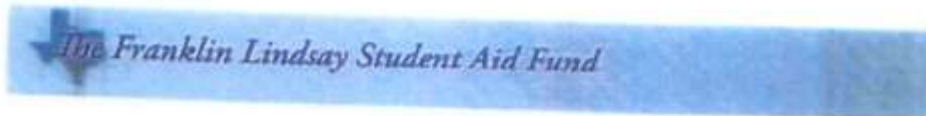
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#### Interview questions for the Committee Members of the Franklin Lindsay Student Aid Fund

Following are some questions that I asked the committee members in the interviews:

- 1) How long have you been a member of the Franklin Lindsay Committee?
- 2) How were you selected and/or appointed?
- 3) Do you have first hand knowledge of Mr. Franklin Lindsay or do you know anyone who does?
- 4) I would like to learn more about the birthplace of Mr. Franklin Lindsay. Do you have knowledge of this information or anyone who can provide this information?
- 5) Do you have any photographs of Mr. Franklin Lindsay other what is available on the Franklin Lindsay Student Aid Foundation website?
- 6) Who was the first non-White committee member and when was he/she appointed?
- 7) As a member of the Franklin Lindsay Student Fund Program, what are your aspirations for the future of this program?

**Appendix I**  
**Franklin Lindsay Student Aid Fund, report findings and**  
**Recommendations February 22, 2014**



[www.franklinlindsay.org](http://www.franklinlindsay.org)



**Franklin Lindsay Student Aid Fund:**

**A Report on Findings and Recommendations**

Prepared by: Gigi Do, James Thomas, and Jennifer Wang

College of Education, The University of Texas at Austin

February 22, 2014

**Franklin Lindsay Student Aid Fund:**

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**February 22, 2014**

## Appendix A

**THE FRANKLIN LINDSAY STUDENT AID FUND**  
**STATEMENT OF NEW AND RENEWAL STUDENT LOANS**  
**August 2013**

**NUMBER OF LOANS BY YEAR**

<b>DATE</b>	<b>NEW</b>	<b>RENEWAL</b>	<b>TOTAL</b>
1991-1992	212	181	393
1992-1993	143	196	339
1993-1994	166	171	337
1994-1995	165	161	326
1995-1996	203	159	362
1996-1997	160	186	346
1997-1998	226	184	410
1998-1999	202	239	441
1999-2000	205	240	445
2000-2001	134	254	388
2001-2002	-0-	220	220
2002-2003	95	103	198
2003-2004	103	84	187
2004-2005	167	95	262
2005-2006	184	143	327
2006-2007	71	176	248
2007-2008	68	133	201
2008-2009	89	101	190
2009-2010	97	112	209
2010-2011	108	119	227
2011-2012	60	132	192
2012-2013	63	105	168
2013-2014	47	81	128



**THE FRANKLIN LINDSAY STUDENT AID FUND**  
**STATEMENT OF NEW AND RENEWAL STUDENT LOANS**  
**August 2013**

**AMOUNT OF FUNDS LOANED TO STUDENTS**

<b>DATE</b>	<b>NEW</b>	<b>RENEWAL</b>	<b>TOTAL</b>
1991-1992	\$ 612,800	\$ 513,000	\$1,125,800
1992-1993	\$ 414,250	\$ 559,900	\$ 974,150
1993-1994	\$ 456,650	\$ 483,700	\$ 940,150
1994-1995	\$ 486,200	\$ 463,238	\$ 949,438
1995-1996	\$ 591,450	\$ 456,500	\$1,047,950
1996-1997	\$ 470,200	\$ 536,000	\$1,006,200
1997-1998	\$ 637,825	\$ 525,500	\$1,163,325
1998-1999	\$ 582,407	\$ 667,000	\$1,249,407
1999-2000	\$ 587,100	\$ 668,300	\$1,255,400
2000-2001	\$ 657,580	\$1,158,950	\$1,816,450
2001-2002	\$ -0-	\$1,008,400	\$1,008,400
2002-2003	\$ 456,400	\$ 490,500	\$ 946,900
2003-2004	\$ 491,650	\$ 404,060	\$ 895,710
2004-2005	\$ 813,100	\$ 451,500	\$1,264,600
2005-2006	\$ 899,200	\$ 684,000	\$1,583,200
2006-2007	\$ 489,500	\$1,158,000	\$1,647,500
2007-2008	\$ 472,000	\$ 903,500	\$1,375,500
2008-2009	\$ 613,500	\$ 674,000	\$1,287,500
2009-2010	\$ 673,600	\$ 719,200	\$1,392,800
2010-2011	\$ 723,550	\$ 798,500	\$1,522,050
2011-2012	\$ 411,800	\$ 879,500	\$1,291,300
2012-2013	\$ 425,000	\$ 687,000	\$1,112,000
2013-2014	\$ 329,000	\$ 554,500	\$ 883,500

# Appendix J

## Franklin Lindsay death certificate

**TEXAS DEPARTMENT OF HEALTH  
BUREAU OF VITAL STATISTICS  
CERTIFICATE OF DEATH**

STATE OF TEXAS

STATE FILE NO.

1. PLACE OF DEATH a. COUNTY <b>Bexar</b>		2. USUAL RESIDENCE (When deceased lived in another residence before death) a. STATE <b>Texas</b> b. COUNTY <b>Bexar</b>	
3. CITY (If outside corporate limits, give R.M.L. and give street address no.) <b>San Antonio</b>		4. CITY (If outside corporate limits, give R.M.L. and give street address no.) <b>San Antonio</b>	
5. FULL NAME OF HOSPITAL OR INSTITUTION <b>300 W. Travis</b>		6. STREET ADDRESS (If rural, give location) <b>300 W. Travis</b>	
7. NAME OF DECEASED a. (First) <b>Franklin</b> b. (Middle) c. (Last) <b>Lindsay</b>		8. DATE OF DEATH <b>May 3, 1954</b>	
9. SEX <b>Male</b>	10. COLOR OR RACE <b>White</b>	11. MARRIED, NEVER MARRIED, DIVORCED, OR SEPARATED <b>Never married</b>	12. DATE OF BIRTH <b>April 6, 1874</b>
13. USUAL OCCUPATION (Employed or work done during part of week) <b>Investment broker</b>		14. KIND OF BUSINESS OR INDUSTRY <b>Cotton brokerage</b>	
15. FATHER'S NAME <b>George Fryer Lindsay</b>		16. BIRTHPLACE (State or foreign country) <b>Alabama</b>	
17. WAS DECEASED EVER IN U.S. ARMED FORCES? (If so, see instructions) (If yes, give year or dates of service)		18. MOTHER'S MAIDEN NAME <b>Mary Cortin</b>	
19. SOCIAL SECURITY NO.		20. INFORMANT'S SIGNATURE <i>[Signature]</i>	
17. CAUSE OF DEATH Enter only one cause per line for (a), (b), and (c). *This does not mean the mode of dying, such as heart failure, suffocation, etc. It means the disease, injury, or complication from which death resulted.			
I. DISEASE OR CONDITION DIRECTLY LEADING TO DEATH (a)		MEDICAL CERTIFICATION	
ANTECEDENT CAUSES		INTERVAL BETWEEN ONSET AND DEATH (in days)	
DUE TO (b)		<b>Heart failure</b>	
DUE TO (c)		<b>Mesenteric thrombosis</b>	
II. OTHER SIGNIFICANT CONDITIONS		<b>Arteriosclerosis</b>	
Conditions contributing to the death but not related to the disease or condition causing death.		<b>Chronic hepatitis</b>	
		<b>Chronic bronchitis</b>	
18. DATE OF OPERATION		19. MAJOR FINDINGS OF OPERATION	
20. ACCIDENT, SUICIDE, HOMICIDE (Specify)		21. PLACE OF INJURY (e.g., fire, street, home, store, factory, street, office, etc.)	
22. TIME OF INJURY (Month) (Day) (Year)		23. CITY, TOWN, OR PRECINCT NO. (COUNTY) (STATE)	
24. INJURY OCCURRED WHILE AT WORK? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		25. HOW DID INJURY OCCUR?	
26. I hereby certify that I attended the deceased from <b>May 2, 1954</b> to <b>May 3, 1954</b> that I last saw the deceased alive on <b>May 2, 1954</b> , and that death occurred at <b>1:40 A.M.</b> from the causes and on the date stated above.			
27. SIGNATURE <i>[Signature]</i>		28. ADDRESS <b>M.D. San Antonio, Texas</b>	
29. DATE SIGNED		30. DATE OF OPERATION	
31. BURIAL, CREMATION, REMOVAL (Specify)		32. DATE <b>May 4, 1954</b>	
33. LOCATION (City, town, or county) (State) <b>San Antonio Texas</b>		34. NAME OF CEMETERY OR CREMATORY <b>Mission Crematory</b>	
35. REGISTRAR'S FILE NO.		36. FEDERAL DIRECTOR'S SIGNATURE <i>[Signature]</i>	
37. DATE REC'D BY LOCAL REGISTRAR <b>MAY 4 1954</b>		38. REGISTRAR'S SIGNATURE <i>[Signature]</i>	

NOTE: THE INFORMATION SHOULD BE ON THE REVERSE SIDE

MAY 11 1954

STATE OF TEXAS  
CITY OF SAN ANTONIO:

I hereby certify that the foregoing is a true and correct copy of the record as same appears in the Bureau of Vital Statistics of the City of San Antonio Health Department.

WITNESS BY CITY HEALTH OFFICER: *[Signature]*

**Appendix K:  
Photographs of Franklin Lindsay**

Appendix K:

Photographs of Franklin Lindsay



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