Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Summer 2013 Vol. 2, No. 4 General Editor Lynne Liberato Executive Editor David Furlow

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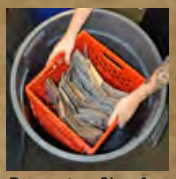

Preparing files for archiving

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Justice O'Connor

2013 History Symposium a Success

The Society's major educational event of the year centered on the history of Texas Supreme Court jurisprudence.

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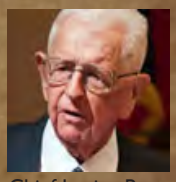
New Texas Judicial History Series Will Open with a Collection of Writings by Chief Justice Jack Pope

The Society publishes the first volume of its own book series. **Read more...**



Chief Justice Pope

Retired Chief Justice Jack Pope is Honored by the State of Texas on His 100th Birthday

By all accounts, he is the oldest living chief justice in the United States and the first to hit the century mark. **Read more...**

Chief Justice Pope is escorted to the celebration

An Interview with Justice John Devine

By Will Feldman

Get to know the newest Justice of the Texas Supreme Court.

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Membership & More

President's Page

Warren W. Harris

On Making History *by the Book*

It is remarkable how well our new history book has been received. I guess this should be no surprise considering the talent involved with the project. Author **Jim Haley** has already made presentations on the new book, *The Texas Supreme Court: A Narrative History, 1836-1986*, at the Texas State Historical Association, the Houston Bar Association Appellate Practice Section, the San Antonio Bar Association Law Day, the Austin Bar Association Civil Appellate Section, and the History of Texas Supreme Court Jurisprudence symposium, all to rave reviews. If you have not yet heard Haley speak about the book—or at least picked up a copy of the book for yourself—you are really missing out. After hearing him speak, about 90% of the audience buy a book following the event.

We plan to have Jim speak around the state, so please watch to see when he will be in your area. Society members can find the order form on the Society's website to purchase the book at a 40% discount. Also, if you have ideas for speaking engagements for him, please let us know. Jim is the best salesperson not only for the book, but for the awe-inspiring history of the Court and its wonderful characters.

Another exciting project of the Society has been the symposium on the *History of Texas Supreme Court Jurisprudence* held on April 11 in Austin. The faculty was an all-star lineup, with the majority of the Supreme Court and many of the most respected practitioners in the state giving presentations. We had a great crowd on hand for the symposium, which everyone thought was both interesting and informative. People are still commenting about what a wonderful program this was. We had thought it would be a one-time program, but the audience told us otherwise. A common observation was how helpful it was in giving a perspective on the law—and a rare chance to really think about where the law has been, where it's going and why. A photo essay about the Symposium is one of the features of this issue. And finally, special thanks go to course directors **Lynne Liberato** and **Richard Orsinger** for making this program a huge success!

The Society's 18th Annual Hemphill Dinner is around the corner. This year's keynote speaker will be **Justice Sandra Day O'Connor**. The Hemphill Dinner will be chaired by Macey Reasoner Stokes and held at the Four Seasons Hotel in Austin on Friday, June 14. Thanks to the hard work of Macey and the rest of the Dinner Committee, tables for the dinner sold out before the invitations were mailed. This promises to be a great event—we hope to see you there!

We are excited that the Society's Fellows recently held their first Fellows Dinner. Seven Justices from the Texas Supreme Court joined the Fellows for a special evening. The Fellows also acquired a first edition copy of the first history book published about the Court and presented it to the Court on that occasion. Special thanks go to the Fellows for generously making the acquisition of this rare book possible. Please see the Fellows Page written by Fellows chair **David Beck** for more details on the Society's Fellows.

Finally, as you see in his column, our long-time Executive Director, **Bill Pugsley**, has recently announced that he will be leaving the Society. I will have a lot more to say about him in the next issues. We also will be paying tribute to him at the Hemphill Dinner. But, I do not want to delay saying that, for now, while we are saddened by this news, we are appreciative of all Bill has done for the Society and we wish him the very best!

— ***Warren W. Harris***, Bracewell & Giuliani LLP

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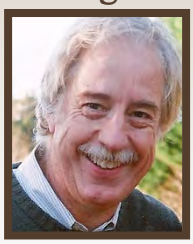
Executive Director's Page



Bill Pugsley

That *Time* of Year

Most people ring in the New Year in January. My year begins in June. I celebrate the New Year at the Hemphill dinner. Everything is there – swanky clothes, elegant food, great wine, good friends, and plenty of hoopla – everything but a mirror ball and Dick Clark. I drive home after each successful dinner, the windows rolled down, my necktie loosened, listening to the radio as the last share of tension slides away into the warm Austin night.

I make my New Year's resolutions in June, I lay plans in July. While watering my drought-stricken yard, I think back over the year just past, and look to the future. The dog days of summer are set aside for logistics, preparations and long-range planning for new projects and existing programs. By autumn I'm already making plans for the next Hemphill dinner, writing columns for the eJournal, and preparing for the spring months, my busiest quarter. In January my life really heats up, but in June, I'm all cool and reflective.

Father's Day and my birthday are also celebrated in June. That's always nice; receiving presents in the summer. It's like Christmas without the fussy decorations and holiday music. This seasonally inverted cycle is one for which I've become thoroughly acclimated, having lived with it for more than a decade. The upcoming Hemphill dinner will be the fifteenth one I've managed as Executive Director. In 1998, the year before I arrived, the Four Seasons sectioned off the banquet hall, placing twelve tables in a smaller, confined portion of the hall. The next year, my first dinner as Executive Director, the staff opened up the entire ballroom so they could place twenty-two tables, seven of them for individual ticket holders. We set forty tables in 2005, and the next year we mailed out 2,500 invitations, and filled the room to capacity for the first time, a record we managed to achieve barely one week before dinner. This year, however, we sold out the grand ballroom by mid-April before we mailed a single invitation and we reserved a second smaller ballroom just to accommodate the private reception. Hard to imagine.

Here's another milestone to consider. In 1997, Judge Will Wilson suggested that the Society should write a history of the Court. Two years elapsed before the contributing authors gathered in a hastily arranged meeting so that Judge Greenhill could announce at the Hemphill dinner that the History Book Project had begun three weeks earlier. Fifteen years down the road, we have a book. Not only a book, but a great book! A book written by an award-winning historian and author who is committed to promoting it in the farthest reaches of Texas. It's hard to imagine, but of the fifteen Trustees who voted their approval for the book project, only two of them remain on the Board – Frank Newton and Judge Jack Pope. Judge Pope celebrated his 100th birthday in April.

Each year as I drive home in the dark, the Hemphill dinner drifting into memory, I find myself reflecting on the relative nature of time. One has to keep a firm grip of the passage of time or it will slip away, and events

will overtake you. That's why I start planning the new year as soon as the dinner is over. I lay objectives for each month, and make a list each morning. In many ways it seems like I've been doing that forever. And yet, I can remember my handshake with Judge Greenhill when he hired me as if were last year. While a lot has been accomplished in fourteen and a half years, a lot more remains to be done.

I never intended to make a career of this job, but I have, and a marvelous, fulfilling career it has been. When Karen Johnson took office as president, I leaned over to her during a Board meeting and said that I'd need about two years, five on the outside, to wrap everything up. That was in 2000. Hard to imagine, but when one commits to a project the size of a narrative history of the Texas Supreme Court, time can slip away, indeed, a lifetime of plans can slip away completely unnoticed. That's what almost happened to me. The weather is warmer, I'm becoming reflective.

The Hemphill dinner is a booming success, year after year. The eJournal is a robust and enduring program. Membership rolls have grown from 170 to over 375, and continue to expand. The history book is done. Judge Pope's book is nearing completion. Everything seems to be coming to a rest, a logical stopping point. When I look down the road, I see challenging projects such as the Court Museum, the Educational Outreach program, and the oral history project, any one of which could take five years to complete, or combined, another fifteen years. Not wanting to leave the Society in the middle of a big project, and not wishing to wait until these projects are completed, I concluded that this is the right time to move on.

My service with the Society will end this summer, and I will begin the next phase of my life with new challenges and adventures. Although I leave behind the day-to-day operations, I trust this does not close the door on the many friendships that have been established with Society members over the years. I've watched this organization grow, as Judge Pope once said, "into long pants," and leave knowing that the Society is in a better position, with excellent support staff, great leadership, a strong Board, and a wonderful future.

Thank you for the privilege of working with each of you. When my movie script is sold, I'll insist that the premiere be held in Austin.

I look forward to seeing you at the dinner.

— **Bill Pugsley**, Executive Director

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Fellows Column

By David J. Beck, Chair of the Fellows

Photo by Alexander's Fine Portrait Design-Houston

I am pleased to report that we had a great group of Fellows attend our first Fellows Dinner. Seven Justices from the Texas Supreme Court joined the Fellows last month at the Blanton Museum of Art in Austin for a wonderful evening of art, dinner, and conversation. The dinner also featured a surprise for the Court. The Fellows acquired a first edition copy of the history book published about the Court 96 years ago, *The History of the Supreme Court of the State of Texas (With Biographies of the Chief and Associate Justices)*, by Jewett H. Davenport. Because the Court did not have a copy of this important historical book, the Fellows surprised the Court by presenting a copy of the rare book. Chief Justice Wallace Jefferson and Justice Paul Green accepted the book for the Court. The generous support of the Fellows made this acquisition possible.

We are also pleased that many of the Fellows were able to attend the *History of Texas Supreme Court Jurisprudence* symposium last month in Austin. All Fellows were invited to attend free of charge. We hope all of you will be able to attend the Hemphill Dinner on June 14 where the Society will recognize and express its appreciation to all Fellows.

On behalf of the Society, I want to thank you for your support. The Fellows are a critical part of the annual fundraising by the Society and we greatly appreciate your generous contributions. The Society has added eight new Fellows since April. Anyone who is interested in becoming a Fellow of the Society is invited to contact me or the Society's office.

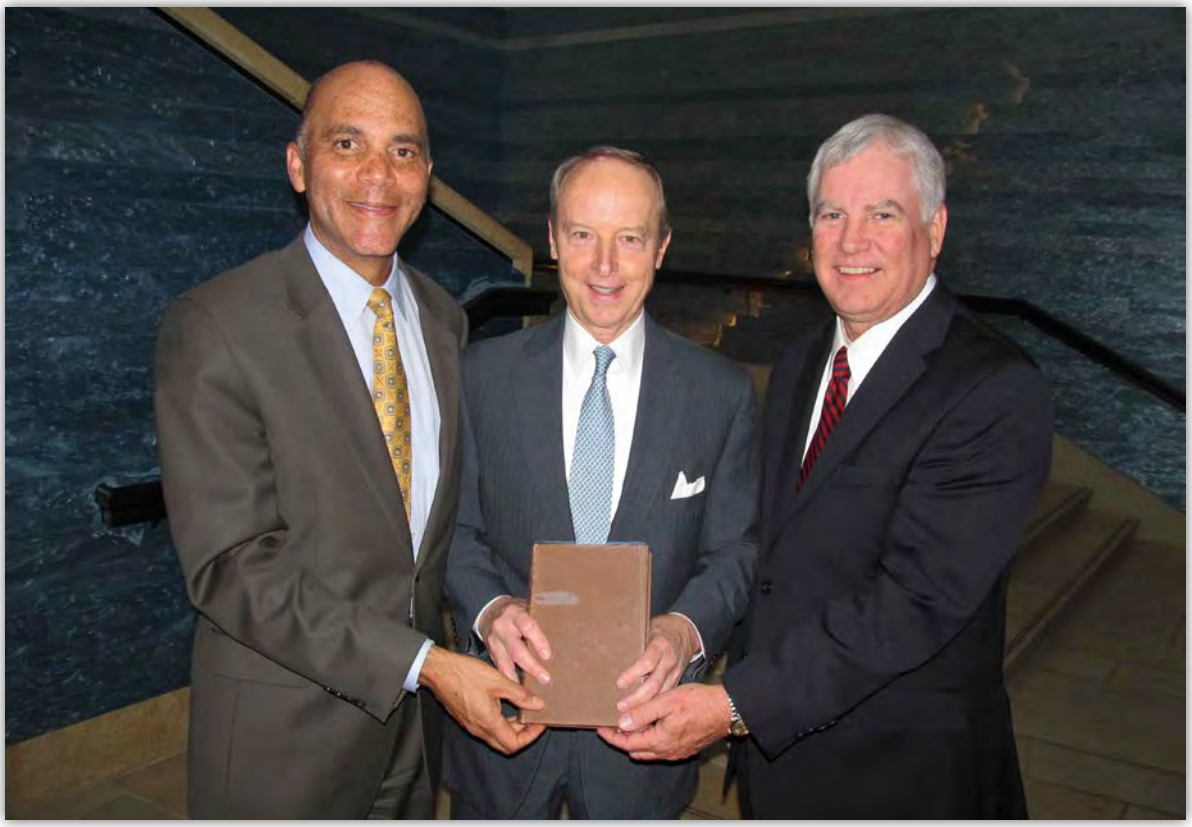
FELLOWS OF THE SOCIETY

HEMPHILL FELLOWS
($5,000 or more annually)

David J. Beck
Richard Warren Mithoff

GREENHILL FELLOWS
($2,500 or more annually)

Bob Black
E. Leon Carter
Tom A. Cunningham
Harry L. Gillam, Jr.
William Fred Hagans
Lauren and Warren W. Harris
Allyson and James C. Ho
Jennifer and Richard Hogan, Jr.
Joseph D. Jamail, Jr.
Dee J. Kelly, Jr.
David E. Keltner
Thomas S. Leatherbury
Lynne Liberato
Mike McKool, Jr.
Ben L. Mesches
Nick C. Nichols
Hon. Thomas Phillips, Chief Justice (Ret.)
Hon. Jack Pope, Chief Justice (Ret.)
Shannon H. Ratliff
Robert M. Roach, Jr.
Professor L. Wayne Scott
Reagan W. Simpson
S. Shawn Stephens
Hon. Dale Wainwright, Justice (Ret.)
R. Paul Yetter



David J. Beck (c.) presents a rare copy of J. H. Davenport's 1917 history of the Court to Chief Justice Wallace B. Jefferson and Justice Paul W. Green.

Fellows and guests enjoy the food and conversation at the Fellows dinner.
(l-r) Warren Harris, Reagan Simpson, Justice Eva Guzman, Fred Hagans, Justice Paul Green, Randy Roach, and Lauren Harris.

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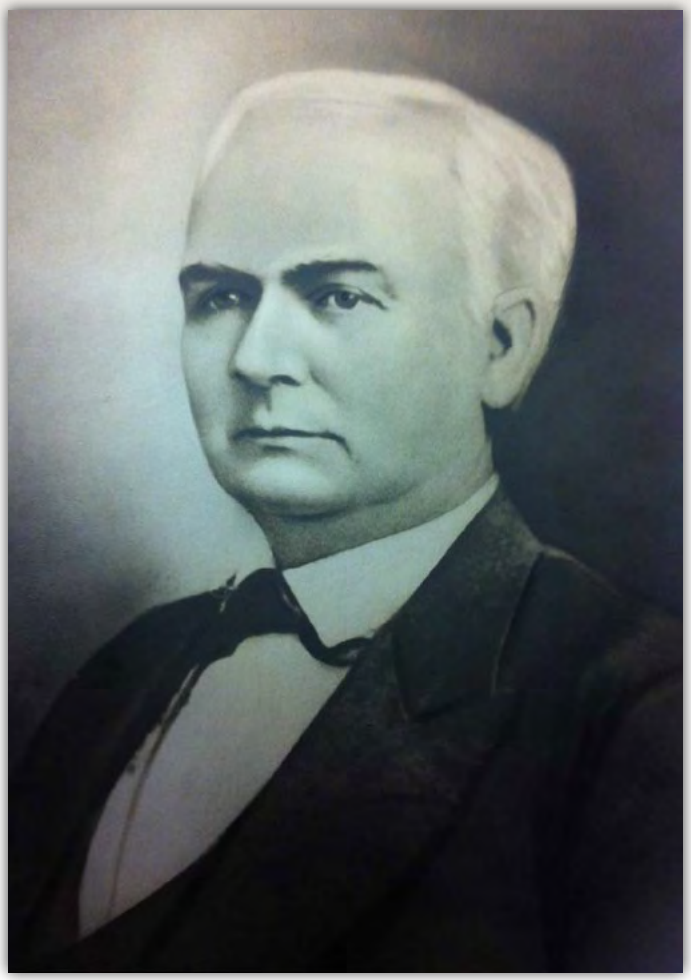
George W. Paschal: Justice, Court Reporter, and Iconoclast

By Dylan O. Drummond



Certainly one of the most fascinating, colorful, feisty, and accomplished reporters ever to serve the Texas Supreme Court was George W. Paschal.[1] No other person to hold the post can lay claim to having: (1) served as a state supreme court justice; (2) successfully litigated before the U.S. Supreme Court both on behalf of and against his client—a sovereign state; (3) sued for peace against the United States, resulting in a ratified treaty; as well as (4) edited and published a state capital's newspaper.

Paschal did all this and more, and it is certain that the jurisprudence of Texas would be far less developed and interesting if not for his seemingly limitless dedication to Texas and her laws.

Law Practice in Georgia and Engagement with the Cherokee

Lorenzo Columbus George Washington Paschal[2] was born just after the outbreak of the War of 1812 in the elegantly-named Skull Shoals, Georgia.[3] Before he reached the age of 20, Paschal was admitted to the Georgia Bar in July 1832 after studying law in Lexington, Georgia.[4] He later described his oral examination for admittance to the bar as being shortened because of his preference to respond to the examining judges in Latin.[5] At some point during his time in Georgia (it is unclear whether this was before or after his admittance to the Georgia Bar), Paschal also worked as both a schoolteacher and a bookkeeper.[6]

After practicing law in Georgia for four years—during which time he associated with former U.S. Vice President John C. Calhoun—Paschal was ordered to serve as the aide-de-camp to General John E. Wool with the Georgia Militia in order to quell a Cherokee uprising.[7] It was during this effort that Paschal met and married the daughter of one of the Cherokee chiefs—Major Ridge—against whom he was militarily engaged.[8] The culmination of the military campaign was the execution of the Treaty of New Echota with the United States in 1835,[9] under which Cherokees exchanged their eastern land for land west of the Mississippi River.[10] This diplomatic agreement led to the infamous "Trail of Tears," during which approximately 4,000 Cherokees died on the journey from Georgia to what is now Oklahoma and Arkansas.[11]

Service on the Arkansas Supreme Court and the 1846 Treaty with the Cherokee

In 1837 Paschal and his family moved to Arkansas so that his wife, Sarah Ridge, could be closer to her relocated family.[12] Almost immediately upon his settlement in Benton County, Paschal began a successful law practice and met future Texas Supreme Court Associate and then Chief Justice Royall T. Wheeler, with whom he jointly represented clients.[13]

Just two years after the Paschals relocated to Arkansas, Sarah's father, brother, and cousin were assassinated in 1839 by Cherokees angry with the Ridges for their support of the Treaty of New Echota.[14] Despite this loss, the Paschals remained in Arkansas for several more years. This decision proved to be prescient as Paschal—who was 30 at the time—was elected in 1843 by the Arkansas Legislature as an Associate Justice on the state's Supreme Court.[15] Of note, Paschal's ascension to the Arkansas Supreme Court came just a year before Wheeler assumed the corollary post on the Texas Republic's Supreme Court in 1844.[16]

After serving just one term (January 1843) on the supreme court, Paschal resigned on August 1, 1843 in order to represent the Cherokee in their claims against the United States.[17] The Cherokee prevailed in the effort, culminating in the ratification of the Treaty with the Cherokee in 1846, which awarded reparations to the Cherokee and specifically named the heirs of Major Ridge as indemnitees.[18]

Immigration to Texas and Editorship of the *Southern Intelligencer*

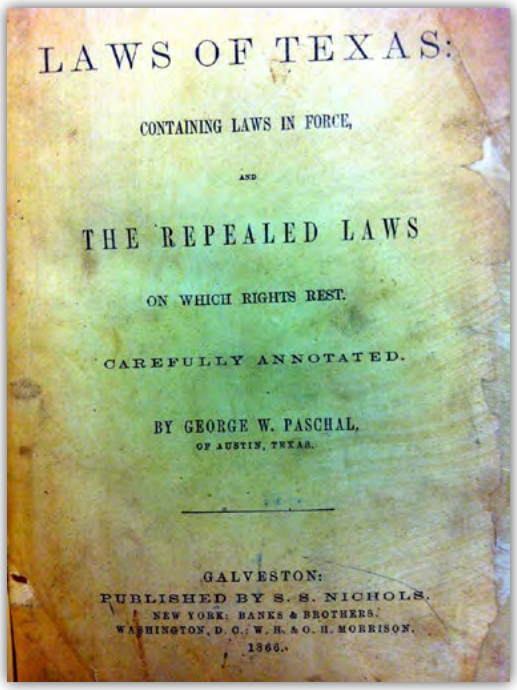
Following his successful prosecution of the Cherokee nation's legal claims against the United States, Paschal and his family moved again, this time to Texas in 1846.[19] Paschal was admitted to the Texas Bar in December 1847.[20] By 1848 the Paschals had moved to Galveston, where they built a home at the corner of 14th Street and Avenue H.[21] Using medical lore from her upbringing as a Cherokee, Sarah opened up their home in 1850 to treat Galvestonians suffering from yellow fever.[22] Perhaps in part due to this undertaking, the Paschals divorced a day before New Year's Eve that same year.[23]

Soon thereafter in 1852, Paschal moved to Austin, where he remarried in March of that year.[24] Not content with merely practicing law, Paschal began editing and publishing in 1856 one of the two newspapers vying to serve the growing state capital—the *Southern Intelligencer*.[25] The *Intelligencer* officed on Eighth Street and carried as its motto: "Nothing extenuate nor set down aught in malice."[26] The professional rivalry between the *Intelligencer* and its chief competitor, the *Texas State Gazette*, grew deadly in 1859 when challenges for duels were exchanged arising from a dispute over state printing.[27] The fight ended soon thereafter when Paschal, along with one of his sons, appeared on Congress Avenue armed with double-barreled shotguns.[28] Somewhat unsurprisingly, Paschal resigned his post at the *Southern Intelligencer* the following year.[29]

Ex Parte *Coupland* and Paschal's Confederate Imprisonment

A staunch Unionist,[30] in 1862 Paschal represented a captured conscript named F. H. Coupland who had failed to present himself for muster with the Confederate Army.[31] Paschal soon managed to obtain a writ of habeas corpus from his old friend from a quarter century before in Arkansas—Texas Supreme Court Chief Justice Royall T. Wheeler—which ordered the army to show cause justifying Coupland's detention.[32] Before the writ could be served, however, Coupland was drafted into the army and released from detention, though he subsequently disappeared and never reported to his regiment.[33] For his trouble, as well as for his "subversive"[34] and "intemperate denunciation of martial law"[35] in the case, Paschal was arrested and jailed by Confederate authorities, apparently and surprisingly with the acquiescence of Chief Justice Wheeler.[36] Following Wheeler's suicide in 1864, Paschal—perhaps not entirely objectively—attributed the Chief Justice's demise, at least in part, to guilt arising from his imprisonment of Paschal.[37]

Paschal's *Digest of the Laws of Texas*, *Annotated Constitution of the United States*, and *Digest of Decisions*


LAWS OF TEXAS:

CONTAINING LAWS IN FORCE,

AND

THE REPEALED LAWS

ON WHICH RIGHTS REST.

CAREFULLY ANNOTATED.

BY GEORGE W. PASCHAL,
OF AUSTIN, TEXAS.

GALVESTON:
PUBLISHED BY S. S. NICHOLS.
NEW YORK: BANKS & BROTHERS.
WASHINGTON, D. C.: W. H. & O. H. MORRISON.
1866.

When civil legal practice in Texas greatly diminished during the Civil War—particularly for a publicly-avowed anti-secessionist like Paschal in Confederate Texas—Paschal turned his keen legal mind to other pursuits.[38] Namely, he undertook the preparation of his seminal *Digest of the Laws of Texas*, which, while generally following the arrangement of statutes utilized by earlier digests, arranged statutes in analytical rather than chronological order, and contained historical notes and analysis in addition to the statutes and case annotation themselves.[39] Texas Supreme Court Associate Justice James P. Hart later remarked that Paschal's annotations in his *Digest* "far excel the very brief citations or notes in the earlier digests."[40]

In 1865, after the death of his second wife, Paschal left Austin for Washington, D.C. to publish his *Digest*, and there he largely remained following the Civil War.[41] The *Digest* was published in 1866, followed by his *Annotated Constitution of the United States* in 1868, and his *Digest of Decisions* in 1872.[42]

Paschal's Role in *Texas v. White*[43]

The boundaries of Texas did not always conform to the now-iconic shape we recognize as uniquely Texan.[44] Prior to the early 1850s, Texas laid claim to territory now contained within the borders of New Mexico up into Montana.[45] Between 1850 and 1851 the United States issued some $10 million in bonds to Texas in exchange for Texas's claim over the land in modern-day New Mexico, Colorado, and Montana.[46]

The bonds—10,000 in number and each denominated $1,000—paid an annual interest rate of 5% and were redeemable after December 31, 1864.[47] Fully half of the bonds (some 5,000) were delivered to Texas while the remaining 5,000 were retained by the United States.[48] While the bonds were made payable to Texas, the Legislature subsequently promulgated a law requiring the Governor's endorsement before any other entity could claim ownership of the bonds—though it later repealed this requirement in 1862 after Texas seceded from the Union.[49] On the day of

the repeal, the Legislature created a military board to sell the bonds to help pay for the Confederate war effort.[50]

Perhaps not coincidentally, the same year Paschal was jailed by Confederate troops in Austin in 1862, he took it upon himself to notify the U.S. Secretary of Treasury of Texas's plans to utilize these Union bonds to finance the Confederate war effort.[51] Alarmed, the U.S. Treasury refused to pay Texas's bonds that had not been endorsed by any of the rebel province's former State governors.[52]

In early 1865, the Confederate military board in Texas delivered 135 unendorsed bonds to George White and John Chiles—worth some $156,000—in exchange for various military and medicinal supply services, which White and Chiles never provided.[53] The Civil War formally concluded in May of that year, and former Texas Congressman and Union General Andrew Jackson Hamilton was appointed by U.S. President Andrew Johnson the following month as provisional governor of Texas.[54] Upon learning of the deal with White and Chiles, Hamilton appointed Paschal as Texas's agent in the matter.[55] By October 1865, both Paschal and Governor Hamilton published notices in the *New York Herald* and *New York Tribune* cautioning consumers and the financial sector not to be snookered by the unendorsed bonds.[56]

After failing to effect service on either White or Chiles in Texas court, the State of Texas sought original redress before the U.S. Supreme Court on February 15, 1867.[57] Oral argument was held a year later in February 1868, and the preliminary jurisdictional question regarding whether Texas had standing to sue while in open rebellion against the United States became the "definitive ruling on the constitutionality of secession."[58] The Supreme Court declared that:

> Considered as transactions under the [C]onstitution, the ordinance of secession adopted by the convention, and ratified by a majority of the citizens of Texas, and all the acts of her legislature, intended to give effect to that ordinance, were absolutely null. They were utterly without operation in law. The state did not cease to be a state, nor her citizens to be citizens of the union.[59]

Indeed, the Court continued, the "[C]onstitution, in all its provisions, looks to an indestructible union, composed of indestructible states."[60] The High Court concluded that, not only did the state of Texas have standing to sue, but the contract between the Confederate military board and White and Chiles was unenforceable.[61]

Incredibly, this historic decision by the U.S. Supreme Court did not end the affair.[62] A fee dispute later arose between the State and Paschal, culminating in an unsuccessful attempt by Texas before the U.S. Supreme Court to compel and hold in contempt Paschal until he remitted the disputed sums.[63] The Supreme Court declined to do so, reasoning that Paschal should be permitted to retain any money or client documents because he possessed a "fair

and honest set-off, which ought in equity be allowed by the complainant."[64] The High Court further revealed that its decision was at least in part influenced by Paschal's inability to sue the State in Texas court because of the bar imposed by sovereign immunity.[65]

Paschal's Service to and Feud with the Military Court

During Reconstruction, the formerly Confederate states were governed under a system of military rule, ordained by the U.S. Congress and organized by military district.[66] The Fifth District was comprised of Texas and Louisiana, and Major General Philip H. Sheridan was given command over it.[67] One of Sheridan's first acts was to replace the sitting Texas governor as well as all Texas Supreme Court Justices who had been elected under the Texas Constitution of 1866.[68] It was this extra-constitutional act that has condemned that era of the Court—known derisively if accurately by the moniker, the "Military Court"—to little, if any, precedential weight.[69]

It was Paschal's misfortune and eventual downfall that his exacting and tenacious judicial temperament would be haltered to the Constitutionally illegitimate Military Court. Paschal was first appointed as Court reporter at the outset of the 1868 term,[70] and he reported portions of the 1860, 1866, and 1869 terms, as well as the entirety of the 1867 and 1868 terms.[71] His reports filled five volumes of the *Texas Reports* (25 Supp., 28–31).[72]

Paschal's reports are characterized by his sometimes polarizing, always frank, and consistently entertaining (and subsequently essential) historical asides contained in the prefaces to each volume.[73] It may also be noted that Paschal rarely missed an opportunity to prominently mention his other legal publications for sale to the public in the prefaces to the volumes of the *Texas Reports* he edited.[74]

Next to his victorious representation of Texas before the U.S. Supreme Court in *Texas v. White* (which Paschal reported in the 25th supplemental volume of the *Texas Reports*), Paschal's service as counsel (as well as reporter in the 31st volume) in the "Emancipation Cases" was particularly noteworthy.[75] A subsidiary issue in the case was upon what date former slaves gained their freedom in Texas: (1) January 1, 1863, when President Abraham Lincoln delivered the Emancipation Proclamation; (2) June 19, 1865, when Union General Gordon Granger issued his General Order No. 3 informing Texans of Lincoln's Proclamation (and the date from which annual "Juneteenth" celebrations in Texas still trace their genesis); or (3) December 18, 1865, when the 13th Amendment to the U.S. Constitution outlawing slavery was ratified.[76] The five Justices on the Court returned three different positions on the question.[77] Writing for the majority, Chief Justice Morrill favored the date of ratification of the 13th Amendment because he asserted that President Lincoln's war powers did not imbue him with the power to unilaterally amend the U.S. Constitution; concurring, Justice Livingston Lindsay reasoned that Juneteenth should govern; and in dissent, Justices Andrew Hamilton and Colbert Caldwell opined that the date the Emancipation Proclamation was delivered should control.[78]

The close of his tenure as Court reporter was again marked by controversy, about which Paschal editorialized freely in the pages of the *Texas Reports*, as was his wont. Following the publication of the 29th volume of the *Texas Reports*, the Military Court ordered Paschal to no longer include a duplicative recitation of the facts of a case when a statement of the facts was already included in the opinion itself.[79] While perhaps reasonable by modern standards, such a request was radical in 1869 because the role of the Court reporter during that time was expanded; the reporter "was expected to make an independent study of the facts and decision of the lower court, as well as to summarize the briefs and arguments of counsel."[80] Naturally, Paschal saw fit to publically comment upon the wisdom of such an order in the preface to the 30th volume, including reprinting the Military Court's order in full.[81]

Not surprisingly, between the publication of the 30th volume of the *Texas Reports* and the issuance of the 31st, Paschal received another order from the Military Court, this time dismissing him as reporter—but only after he had completed his work on the 31st volume.[82] In his final preface contained in the 31st volume, cloaked under the immunity granted by the Military Court's directive to complete his work on that volume, Paschal let loose an unvarnished fullisade of rebuke that is still remarkable to read today.[83]

He began by—what else—reprinting the exchange of correspondence between himself and the Military Court, almost as one would attach exhibits to a pleading today.[84] Except he was sure to note that at least one order, "printed just as written, shows what would have been the character of my books had this order been obeyed."[85] Paschal continued, "Had I desired to retaliate, I should have printed these gentlemen's opinions just as they wrote them, and have left them to take care of their own literary fame."[86] But Paschal was only warming up: "I have a higher respect for their judgment as to the *quantity* [of pages in a given volume of the *Texas Reports*] than as to the *matter* which the reports should contain."[87] The Military Court Justices, Paschal opined, "have been clothed 'with a little brief authority,' and it was necessary for them to cut some 'high capers' to save them from their approaching obscurity."[88] Paschal concluded, "There must be laws, law books and lawyers, and these will live after the men of accident shall 'strut their brief hour upon the stage.'"[89]

Satisfied he had sufficiently impugned the intellects of the Military Court Justices, Paschal tacked his rebuttal towards his judgment that the Military Court's order was absent any "legal authority for this interference."[90] Paschal argued that Chief Justice Amos Morrill "ought to have known that his own powers expired with the adoption and acceptance of the state constitution," before the Military Court's issuance of its order removing Paschal on April 18, 1869.[91] Paschal continued, "Their last order bears date after th[eir] authority had expired, by the acceptance of the new [C]onstitution and the annulment of the power which appointed them to office. The 'provisionals' have fallen, whether they knew how to surrender or not …. Farewell 'provisionals.' *Requiescat in pace*."[92]

Paschal's inflamed emotion may have clouded somewhat his constitutional analysis, however. While the Constitution of 1869 was indeed adopted by the Constitutional Convention of 1868 in February 1869—before Chief Justice Morrill issued the order dismissing Paschal in April 1869—the 1869 Constitution was not ratified by the people of Texas and was therefore without legal effect until December 1869.[93]

After Paschal noted in the preface to the 31st volume of the *Texas Reports* that he had not been paid for his reportage of volumes 29, 30, or 31,[94] the 1874 Legislature authorized the Governor to remit payment to Paschal for his work on these volumes—after deducting attorney fees Texas still claimed Paschal owed it (even though the U.S. Supreme Court had rejected this contention in *In re Paschal*).[95] However, no Governor ever apparently exercised this authority.[96]

Paschal's Final Days

Paschal ended his illustrious legal career in Washington, D.C., where he married for a third time.[97] There, he was instrumental in founding Georgetown University Law School and served on the law faculty there, teaching property, evidence, and civil procedure courses.[98] Paschal passed away on February 16, 1878 and was buried in Rock Creek Cemetery in Washington, D.C.[99]

In Sum

Texas Supreme Court Justice James P. Hart—who to date has recorded the most comprehensive portrait of Paschal—framed Paschal's unique blend of ambition and talent most aptly:

> The impression which we get from considering Paschal's life as a whole is that he was a man of very high ability, approaching genius, who never seemed to find himself, as we would say today, well adjusted to his environment. As a lawyer and legal author, he seems to have been universally respected. He was, however, almost continuously involved in violent controversy.
>
> * * *
>
> As it was, he led an exciting, fearless and industrious life, and we are indebted to him for enlightening many pages of Texas legal history which would otherwise be dull and obscure.[100]

Of the many adjectives that could perhaps be used to circumscribe Paschal and his legal contributions to Texas, "dull and obscure" are surely omitted from the list! Of course, Paschal's own words best encapsulate his contribution to Texas jurisprudence: "The *Reporter* feels no fear that his Texas books will not live. His only fear is that he may have failed to preserve much which ought to have been chronicled."[101]

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1 Hon. James P. Hart, *George W. Paschal*, 28 TEX. L. REV. 23, 23 (1949); Robert B. Gilbreath, *Slaves, Reconstruction, and the Supreme Court of Texas*, APP. ADVOC., Fall 2006, at 8 [hereinafter *Slaves & Reconstruction*].

2 Hart, 28 TEX. L. REV. at 23. Lest anyone think Paschal's name was unusually long, two of his brothers were named Isaiah Addison Sanders Goode Paschal and Franklin Lafayette Warren Greene Paschal. *Id*.

3 *Id*.

4 *Id*. at 24.

5 *Id*.

6 JAMES L. HALEY, THE TEXAS SUPREME COURT: A NARRATIVE HISTORY, 1836–1986, 268 n.38 (Univ. Tex. Press 2013).

7 Hart, 28 TEX. L. REV. at 24.

8 *See id*.; HALEY at 268 n.38. Major Ridge was said to be a friend of Sam Houston's. TEXAS STATE HISTORICAL ASSOCIATION, HISTORICAL MARKER NO. 9130, SARAH RIDGE PASCHAL PIX (erected 1979) [hereinafter RIDGE MARKER].

9 TEXAS STATE HISTORICAL ASSOCIATION, SARAH RIDGE PIX (Kevin Ladd, ed.), **http://www.tshaonline.org/handbook/online/articles/fpi30** (last visited Apr. 16, 2013) [hereinafter RIDGE PIX].

10 RIDGE PIX; RIDGE MARKER.

11 RIDGE MARKER; RIDGE PIX.

12 *See* Hart, 28 TEX. L. REV. at 24; RIDGE PIX.

13 *See* Hart, 28 TEX. L. REV. at 24; James W. Paulsen, *A Short History of the Supreme Court of the Republic of Texas*, 65 TEX. L. REV. 237, 361 (Dec. 1986) [hereinafter *Short History*].

[14] Ridge Pix.; Ridge Marker.

[15] Hart, 28 Tex. L. Rev. at 25; Arkansas Judiciary, Justices of the Supreme Court of the State of Arkansas, Position Two (1843), https://courts.arkansas.gov/courts/supreme-court/historical-society/background-pg-2 (2013). Elsewhere, it has been reported that Paschal served as Chief Justice of the Arkansas high court, but the author cannot locate verification of this. *Contra, e.g.*, Haley at 268 n.38.

[16] *Compare* Hart, 28 Tex. L. Rev. at 25, *with Short History*, 65 Tex. L. Rev. at 361 (noting Justice Wheeler sat during the December 1845 term of the Republic Court, and was then selected as one of the first Justices of the new State's Court) *and* Haley at 29, 54, 236 (same).

[17] Hart, 28 Tex. L. Rev. at 25; Haley at 268 n.38.

[18] Treaty with the Cherokee, 9 Stat. 871, 874 (1846).

[19] Hart, 28 Tex. L. Rev. at 25.

[20] *Id*.

[21] *Id*.; Ridge Pix.

[22] Ridge Pix.

[23] *Id*.

[24] Hart, 28 Tex. L. Rev. at 24–25.

[25] *Id*. at 26.

[26] *Id*.

[27] *Id*. at 27; *Slaves & Reconstruction*, App. Advoc. at 9.

[28] Hart, 28 Tex. L. Rev. at 27; *Slaves & Reconstruction*, App. Advoc. at 9.

[29] Hart, 28 Tex. L. Rev. at 27.

[30] Hon. James R. Norvell, *The Supreme Court of Texas Under the Confederacy—1861–1865*, 4 Hous. L. Rev. 47, 48 (1966); *see also* Jim Paulsen & James Hambleton, *Brother, Can You Spare a Cite?* Robard's Texas Conscript Cases, *The Official Texas Reporter That Has Never Been Cited*, 50 Tex. B.J. 1256, 1257 (Dec. 1987) [hereinafter *Can You Spare a Cite?*].

[31] Haley at 68.

[32] *Id*. There is apparently some debate whether Chief Justice Wheeler issued the writ (*Compare* Ex Parte *Coupland*, 26 Tex.386, 388, Robards 5 (1862) (noting the writ issued before the Court issued its opinion in the matter, *and* Haley at 68, *with* Michael Ariens, Lone Star Law 33–34 (Tex. Tech Univ. Press 2011) (stating that Chief Justice Wheeler initially denied the writ until the Court granted it *en banc*). Regardless, Paschal framed his motivation in taking the case so as to bring the matter "before the [C]hief [J]ustice to test the constitutionality of this declaration of military power over a State [(i.e., conscription)], in which there was not one soldier hostile to the Confederate cause." Ariens at 33.

[33] Haley at 68.

[34] *Id*.

[35] Davenport at 71; Hart, 28 Tex. L. Rev. at 29.

[36] Davenport at 71; Haley, at 68; Hart, 28 Tex. L. Rev. at 29; *see also Preface*, 28 Tex. at vii, 9. When the Court's opinion in the case issued later that year, Paschal was either still imprisoned or Coupland had retained other counsel, as the decision notes Coupland was represented by the law firm of Hancock & West. Ex Parte *Coupland*, 26 Tex. at 388. *But see* Ariens at 34 (recounting that Paschal was released shortly after his initial imprisonment). Another explanation for this omission is that Ex Parte *Coupland* was the first decision printed in *Robard's Texas Conscript Cases*, and although Paschal is not listed as counsel of record in the *Texas Reports* reprinting of the case, he is so noted in the original *Robard's* report. *Can You Spare a Cite?*, 50 Tex. B.J. at 1258 (explaining that *Robard's* was a reporter containing Confederate conscript cases from 1862–65, which had the utilitarian misfortune to be published the same year—1865—that the Civil War ended).

Paschal himself describes the breach in his friendship with Chief Justice Wheeler the *Coupland* case caused, "Our respective positions separated two men who had been intimate friends, and entertained many opinions in common, for over twenty years." 28 Tex. at vi, 8. Interestingly, and perhaps indicative of the schism that developed between Paschal and the three members of the

Court—particularly Chief Justice Wheeler—as a result of the affair, Paschal is not mentioned anywhere in the majority, concurrence, or dissent. *See id* at 386–435; *see also* ARIENS at 35 (explaining the affair ended the long friendship between Paschal and Chief Justice Wheeler); DAVENPORT at 71.

[37] *Preface*, 28 Tex. at vii, 9; *see also Short History*, 65 TEX. L. REV. at 361 (noting Chief Justice Wheeler's death by his own hand in Washington County on April 9, 1864); HALEY at 73 (recording that Chief Justice Wheeler was only 54 years of age at the time of his death). In fascinating detail, Paschal consumes nearly all of the *Preface* to volume 28 of the *Texas Reports* to publically wrestle with the legacy of his old friend. *Preface*, 28 Tex. at vii–xiii, 7–10. While framing Chief Justice Wheeler's reputation as being more known as a "declaimer before juries than as an accurate lawyer," Paschal also hails the Chief Justice as a "pure and good man" with a "moral character … spotlessly pure , and above all reproach." *Id*. at vi–vii, 8–9.

> Paschal movingly described the secessionist fervor he attributed as morally corrupting Chief Justice Wheeler:
>
> In this crisis, the conviction that our liberties were being lost was intensified when I saw such a law student as Chief Justice Wheeler bow to the storm and abdicate the civil law. He only proved unable to resist the current which was dashing the people into a yawning abyss. The whole southern mind had been seized with one of those moral contagions, which no philosophy or ethics can explain and no reason can control.

Id. at vi, 8.

[38] *See, e.g.*, *Preface*, 25 Tex. Supp. at vii ("The courts of justice were entirely suspended, and neither the few members of the bar who remained in their profession, nor the officers or people, had use for judicial precedents."), *cited in Can You Spare a Cite?*, 50 TEX. B.J. at 1257, ; Hart, 28 TEX. L. REV. at 32, 32 n.47 (quoting *Parker v. State*, 26 Tex. 204, 207 (1862) (recounting that, during the Civil War, a "lawyer's office may, also, and in times like the present many doubtless are, very private and quiet and undisturbed places at all hours")).

[39] Hart, 28 TEX. L. REV. at 32–33.

[40] *Id*. at 33 n.52; DAVENPORT at 314 (calling Paschal's *Digest* "excellent").

[41] Hart, 28 TEX. L. REV. at 24 n.7, 32–33.

[42] *Id*. at 33. By way of example, the prefaces to volumes 25 Supplement and 28–31 are all penned from Washington, D.C. *See Preface*, 31 Tex. at ix, 11 (July 15, 1870); *Preface*, 30 Tex. at ix (Feb. 20, 1870); *Preface*, 29 Tex. at vi, 8 (Dec. 1, 1869); *Preface*, 28 Tex. at x, 12 (July 30, 1869); *Preface*, 25 Tex. Supp. at xi (June 24, 1869).

[43] For the most comprehensive treatment of *Texas v. White*, the author recommends perusing Professor Michael Ariens' excellent account of the matter in *Lone Star Law*. ARIENS at 42–44. In addition and likely owing to Paschal's dual service as both counsel for Texas and Texas Supreme Court reporter, *Texas v. White* is reported in both the *Texas Reports* and the *United States Reports*—the only case ever to be so reported. James W. Paulsen, *If At First You Don't Secede: Ten Reasons Why the "Republic of Texas" Movement is Wrong*, 38 S. TEX. L. REV. 801, 808, 808 n.32 (May 1997) [hereinafter *If At First You Don't Secede*]; *Compare Tex. v. White*, 74 U.S. (7 Wall) 700 (1868), *overruled on other grounds by Morgan v. United States*, 113 U.S. 476 (1885), *with Tex. v. White*, 25 Tex. Supp. 465 (1868). Alarmingly, however, the reported text differs between that in the *United States Reports* and the *Texas Reports*. *Compare Tex. v. White*, 74 U.S. (7 Wall) at 702–43, *with* 25 Tex. Supp. at 465-621. Due to these textual differences and out of deference to Paschal in these pages, I will cite only to the *Texas Reports* version of the case.

[44] *See, e.g.*, *How the States Got Their Shapes: How Texas Got Its Shape* (History Channel television broadcast), *available at* **http://www.history.com/shows/how-the-states-got-their-shapes/videos/how-texas-got-its-shape#how-texas-got-its-shape** (last visited Apr. 17, 2013).

[45] *See* TEXAS STATE HISTORICAL ASSOCIATION, COMPROMISE OF 1850 (Roger A. Griffin, ed.), **http://www.tshaonline.org/handbook/online/articles/nbc02** (last visited Apr. 17, 2013) [hereinafter COMPROMISE].

[46] ARIENS at 42; Hart, 28 TEX. L. REV. at 38; COMPROMISE (specifying Texas's new territorial boundaries under the compromise as including: "all land north and west of a boundary beginning at the 100th meridian where it intersects the parallel of 36°30', then running west along that parallel to the 103d meridian, south to the 32d parallel, and from that point west to the Rio Grande"); *see also Tex. v. White*, 25 Tex. Supp. 465, 492 (1868), ; *Texas v. White*, 74 U.S.700, 726 (1868), overruled on other grounds by *Morgan v. United States*, 113 U.S. 476, 496 (1885).

[47] ARIENS at 42.

[48] *Id*.

[49] *Id*.

[50] *Id*.

[51] Hart, 28 Tex. L. Rev. at 38; *see also Tex. v. White*, 25 Tex. Supp. at 472.

[52] *Tex. v. White*, 25 Tex. Supp. at 472.

[53] Ariens at 42; *see also Tex. v. White*, 25 Tex. Supp. at 471–72.

[54] Jim Paulsen & James Hambleton, *Confederates and Carpetbaggers: The Precedential Value of Decisions from the Civil War and Reconstruction Era*, 51 Tex. B.J. 916, 917 (Oct. 1988) [hereinafter *Confederates & Carpetbaggers*] ; Hart, 28 Tex. L. Rev. at 38; *see also Tex. v. White*, 25 Tex. Supp. at 473 (noting the disbanding of rebel forces on May 25, 1865 and the appointment of Hamilton as provisional governor of Texas on June 17, 1865); *Preface*, 25 Tex. Supp. at vii.

[55] Ariens at 42–43; Hart, 28 Tex. L. Rev. at 38; *If At First You Don't Secede*, 38 S. Tex. L. Rev. at 808; *see also Tex. v. White*, 25 Tex. Supp. at 475.

[56] *Tex. v. White*, 25 Tex. Supp. at 472–73.

[57] Hart, 28 Tex. L. Rev. at 38; Ariens at 43. Paschal was reappointed as counsel in the case by Texas Governor Elisha M. Pease, who himself was appointed as Governor by Reconstruction General Phillip H. Sheridan. *Tex. v. White*, 25 Tex. Supp. at 475; Hon. R. Norvell, *Oran M. Roberts and the Semicolon Court*, 37 Tex. L. Rev. 279, 281 (1959) [hereinafter *Semicolon Court*]; Hart, 28 Tex. L. Rev. at 38; Ariens at 43.

[58] *If At First You Don't Secede*, 38 S. Tex. L. Rev. at 808;

[59] *Tex. v. White*, 25 Tex. Supp. at 466.

[60] *Id*.

[61] Ariens at 43.

[62] *See id*.; Hart, 28 Tex. L. Rev. at 39.

[63] Ariens at 43–44; Hart, 28 Tex. L. Rev. at 39–40.

[64] *In re Paschal*, 77 U.S. (10 Wall) 483, 492 (1870); Ariens at 43.

[65] *In re Paschal*, 77 U.S. at 493; Ariens at 43–44; Hart, 28 Tex. L. Rev. at 39–40.

[66] Haley at 79; *Semicolon Court*, 37 Tex. L. Rev. at 281.

[67] *Semicolon Court*, 37 Tex. L. Rev. at 281; Haley at 79.

[68] *Semicolon Court*, 37 Tex. L. Rev. at 281; Haley at 80. Sheridan's selection of Amos Morrill as Chief Justice of the Court was reportedly his second choice. Haley at 80; *Semicolon Court*, 37 Tex. L. Rev. at 281–82.

[69] *Peck v. City of San Antonio*, 51 Tex. 490, 492 (1849) (the Military Court, "not having been organized under the Constitution and laws of the state, with all due respect to the members who composed that court as individuals, their opinions have not received the same authoritative sanction given to those of the court as regularly constituted"); *see, e.g.*, *Confederates and Carpetbaggers*, 51 Tex. B.J. at 917–18 (quoting *Semicolon Court*, 37 Tex. L. Rev. at 287 ("the … Military Court … had no Texas constitutional basis and hence its decisions do not operate as precedents under the rule of stare decisis")); Haley at 81.

[70] *Preface*, 25 Tex. Supp. at ix; Hart, 28 Tex. L. Rev. at 34.

[71] *See Preface*, 31 Tex. at i, 3; *Preface*, 30 Tex. at i; *Preface*, 29 Tex. at i, 3; *Preface*, 28 Tex. at i, 3; *Preface*, 25 Tex. Supp. at i. Under a provision first enacted in May 1846 and later amended in 1850 and 1851, the Court divided each of its annual terms into three sessions, each held in a different city: Austin in November, Galveston in February, and Tyler in April. Davenport at 29; *see* Haley at 54. Therefore, the title page to each of Paschal's *Texas Reports* indicates which session was reported. *See, e.g.*, 30 Tex. i ("The Tyler and Austin Sessions, 1867, and Part of the Galveston Session, 1868").

[72] *See Preface*, 31 Tex. at i, 3; *Preface*, 30 Tex. at i; *Preface*, 29 Tex. at i, 3; *Preface*, 28 Tex. at i, 3; *Preface*, 25 Tex. Supp. at i.

[73] *See Preface*, 28 Tex. at vii–viii, 9–10 ("There may be those who think this brief notice out of place …." But "I feel that I could not have been faithful to judicial history without this notice of one whose opinions will often be quoted, so long as the authority of judicial precedents shall endure in Texas."); 25 Tex. Supp. at xi ("Indeed, as other history recedes, as other literature perishes, the history gleaned from judicial reports increases in interest. If there be those who find fault with the too frequent mention of the irreversible past in my books, let them understand that long years ago I vowed never to travel a mile without setting up a post to warn the people of the dangers of the forbidden walks which lead to disunion.").

[74] *See Preface*, 31 Tex. at v, 7, viii–ix, 10–11; *Preface*, 29 Tex. at v, 7; 28, 489; *Preface*, Tex. at ix, 11; *Preface*, 25 Tex. Supp. at viii, x. To be fair, Paschal also went to great lengths to mention the contributions of his son, Col. George W. Paschal, as well. *See Preface*, 28 Tex. at x, 12; *Preface*, 25 Tex. Supp. at x. Indeed, this proclivity was pointed out by opposing counsel before the U.S. House Judiciary Committee, who remarked: "I think it is modest of you to cite your own book as authority." Hart, 28 Tex. L. Rev. at 40. To which Paschal curtly replied, "A gentleman who has prepared a book which his State has adopted, and which has received a national reputation, has a right to cite it." *Id*.

[75] For a thorough examination of both the substance of and context surrounding these cases, please see Robert B. Gilbreath, *The Supreme Court of Texas and the Emancipation Cases*, 69 Tex. B.J. 946 (Nov. 2006) [*Emancipation Cases*]. *See also Slaves & Reconstruction*, App. Advoc., Fall 2006, at 7–10.

[76] *Emancipation Cases*, 69 Tex. B.J. at 950.

[77] *Id*. at 950–52. It is not known what position Justice Albert Latimer (himself a signer of the Texas Declaration of Independence) took in his concurring opinion to Chief Justice Morrill's majority opinion because the Court clerk at the time lost Justice Latimer's concurrence. *Id*. at 948, 951.

[78] *Id*. at 948, 951–52.

[79] *Preface*, 30 Tex. at vii; Hart, 28 Tex. L. Rev. at 35.

[80] Hart, 28 Tex. L. Rev. at 34.

[81] *Preface*, 30 Tex. at vii–ix; Hart, 28 Tex. L. Rev. at 35.

[82] *Preface*, 31 Tex. at vi, 8; Hart, 28 Tex. L. Rev. at 35

[83] *Preface*, 31 Tex. at v–ix, 7–11.

[84] *Id*. at v–viii, 7–10.

[85] *Id*. at vi, 8.

[86] *Id*. at vi–vii, 8–9.

[87] *Id*. at viii, 10.

[88] *Id*.

[89] *Id*. at ix, 11.

[90] *Id*. at vi, 8.

[91] *Id*. at vii, 9.

[92] *Id*. at viii, 10.

[93] Janice C. May, The Texas State Constitution: A Reference Guide 11–12 (Greenwood Press 1996); *see also Peak v. Swindle*, 68 Tex. 242, 248, 4 S.W. 478, 479 (1887).

[94] *Preface*, 31 Tex. at ix, 11.

[95] *See* Hart, 28 Tex. L. Rev. at 40; *see also In re Paschal*, 77 U.S. (10 Wall) 483, 492–93 (1870).

[96] *Id*.

[97] *See id*. at 24 n.7.

[98] *Id*. at 41.

[99] *Id*.

[100] *Id*. at 41-42.

[101] *Preface*, 30 Tex. at ix.

Return to Journal Index

Preservation of the Texas Supreme Court's History Requires Preservation of Its Files

By Laura K. Saegert

On June 14, 1843, a case was filed with the Texas Supreme Court that would not come to light again for 160 years. In *Lockhart v. Sawyer*, John Lockhart sued Jane Sawyer over the ownership of slaves belonging to the estate of Jane's late husband. Lockhart's case, which originated in Harris County, is not in the *Texas Reports* and eventually faded into obscurity. Over the years the case file of *Lockhart v. Sawyer* has been inaccessible to researchers because of its deteriorating physical condition. It wasn't until recently, when the file was conserved and indexed, that an accurate image of Lockhart's case came to light, including the names of some of the slaves in question–Ben, Poleman, Humphrey, Lac, Letty, and Charity. The history of this case is complex and personal, providing new insight into antebellum Texas and its people.

Lockhart v. Sawyer is just one of thousands of Supreme Court case files now in the Texas State Archives that, because of fragile conditions, withhold the facts–and with those facts, a rich, under-utilized history of Texas.

The Texas State Library and Archives Commission (TSLAC), through the State Archives, has custody of and manages non-current Texas Supreme Court records. In 2012 the State Archives initiated a comprehensive conservation and indexing project to preserve and provide improved access to the early case files of the Court. Of special interest are cases of the early period, from the 1840s to 1891, as these were often not included in the court-reporting publications of that era.

The Texas Historical Foundation (THF), through an endowment called the Texas Legal History Preservation Trust that was created to help save the state's legal history, awarded the State Archives a $5,000 grant to begin the conservation and indexing project. Grant funds covered supplies and staff costs. Acid-free boxes and folders were purchased and a temporary archival intern was hired to humidify, flatten, rehouse, and index the cases. Work through this grant allowed the Archives to conserve and index over five hundred cases from the mid 1840s through the late 1850s, including eighty cases dating up to 1871 recovered through replevin efforts (see postscript, p. 21).

Some folded case files before treatment.

Background

Research use of the nineteenth-century case files has been problematic because the physical cases are in their original rolled or tri-folded condition. In order to safely view the files for research, they first need to be humidified and flattened, a labor-intensive process which, in the past, was only done upon request for specific cases.

Researchers have often had difficulty locating specific cases prior to 1944, as the Court repeated a simple numbering system (1, 2, 3, etc.) several times between 1841 and 1943, making the matching of a cause number to a particular cause a challenge. In 1944, in an attempt to eliminate duplicate numbers, the court clerk assigned new numbers with an "M" prefix to all the pre-1892 files and created a card index to the cases. The index is the only access point for many of the cases, especially cases not reported.

Examples of the fasteners removed by archivists.

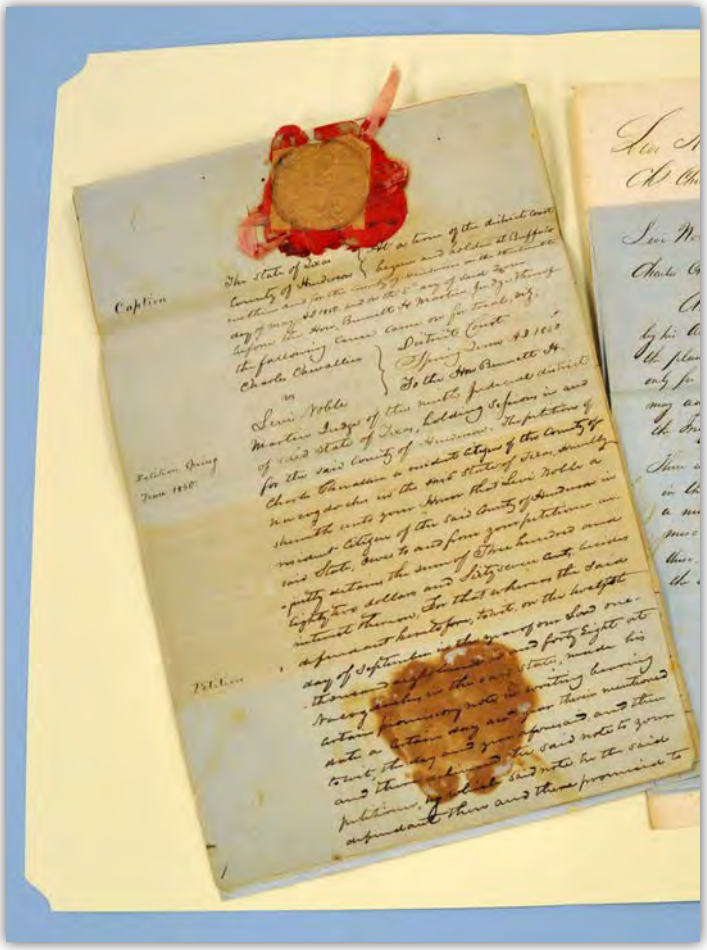
Conservation of Case Files

Conservation of case files is a detailed and time-intensive process. It starts with removing a variety of nineteenth-century metal fasteners, ribbons, strings, and other devices employed to hold the pages together. Wax seals were sometimes attached to the cover pages, and if in good condition the seals are left intact. The documents are also screened for the presence of water-soluble inks and other potential problems.

Once the document pages are carefully separated, they are loosely arranged on edge in plastic crates. The loaded crates are placed in a humidifying chamber configured from an industrial plastic trash can with a water reservoir isolated at the bottom. Depending on the type of paper and how tightly the files are folded or rolled, they are humidified for twenty-four to forty-eight hours in the sealed trash-can chamber under environmentally controlled conditions. Humidification introduces moisture into the paper fibers and allows the rolled or folded paper to relax and flatten.

After humidification the documents are placed between sheets of acid-free archival blotter paper, sandwiched between heavy press boards, and placed in a standing book press for several days. Once removed from the press, the files are reassembled, indexed and rehoused, in archival, acid-free folders and boxes.

Archival assistant Stefanie Lapka prepares documents, then loads judicial records into plastic crates for humidification.



Documents are unloaded after being pressed and placed in archive folders for future storage.

State Archives Access Improvements Will Make It Easier to Use Court Case Files

A database detailing information about the case files is being created to facilitate access to the materials. Currently, access is available through the original dockets (by old cause number) or the "M" series index, with entries accessible by the style of the case, such as *Lockhart v. Sawyer.* If the case was reported, then information can be found in copies of the *Texas Reports*. Many of the cases were not reported, making the dockets and the M series index (both at the State Archives) the only avenues of access. Fields in the new database include the old cause number, the M cause number, the county filed from, additional parties, lawyers, date filed, presiding judge, reporting citation, cause of action or subject, and a brief case summary. Additional fields will list the type of document (only for incomplete case files) and the site of the Court hearing the case (Austin, Tyler, or Galveston), and will include a note field with statements such as "not reported" or "incomplete."

Two example cases in the database include:

John Lockhart v. Jane Sawyer, additional parties–Pamela Mann, cause M-8 (old cause 221); Harris County; filed 6/14/1843; John T. Mills, presiding judge; cause of action or subject: slaves, in a probate estate proceeding; case summary— Regarding return of slaves.

James Powers v. Thomas Ward, et al.; cause M-41 (old cause 749); dating about 1845; Travis County; R.E.B. Baylor, presiding judge; subject: property; case summary —Regarding claim to land owed for services to the Republic.

The State Archives plans to launch the first installment of the database on TSLAC's website by January 1, 2014. Archivists will update it regularly as cases are indexed.

The Archives will continue to conserve and index case files dating through 1943, as funding becomes available. Additional funding is being sought for this project. Donations may be sent to the Texas State Library and Archives Commission, Archives and Information Services Division gift fund – P.O. Box 12927, Austin, Texas 78711-2927, with a notation that the funds are to be used for the Supreme Court records project.

Postscript: A Brief Note about the Incompleteness of the Texas Supreme Court's Files

There are many cases missing from the nineteenth century. For example, the Archives owns a 1965 letter from the Clerk of the Court to an attorney noting many of the old Galveston and Tyler case files were destroyed by fire and flood before the records were transferred to Austin around 1892. However, the bulk of missing cases were the more than 1,000 files stolen from the Court in 1972.

The stolen cases were primarily from the late 1840s to 1860s, most concerned slave or land issues, and many contained signatures of government officials from that period. Almost three hundred stolen cases have been recovered through replevin efforts, leaving an estimated seven hundred still missing.

The State Archives staff continues to work with the Texas Attorney General's Office to recover the cases as they show up for sale at auction houses or on eBay. Our Supreme Court conservation and indexing project will allow the Archives to make a complete list of missing or partial cases that we will post on our website. This project should make it easier for dealers to check the list when they receive a Court record for sale.

LAURA K. SAEGERT *is Assistant Director for Archives in the Archives and Information Services Division of the Texas State Library and Archives Commission. She is a member of the Texas Supreme Court's Texas Court Records Preservation Task Force.*

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The Texas Supreme Court: A History of First Impression

By James L. Haley

The last time anyone wrote a history of the Texas Supreme Court, the United States was entering World War I and American doughboys were headed to France to lick the Kaiser. The book was J. Harbert Davenport's *The History of the Supreme Court of the State of Texas*, published in 1917. Its main component was laudatory biographies of the justices, with the briefest of briefs about the principal cases they decided. The justices were uniformly pillars of their communities, wise husbands and loving fathers, and probing, far-seeing, and compassionate judges. The exceptions to this class were the justices imposed during the Yankee occupation, who were pinched, venal, and corrupt, and whose decisions amounted to a "shameless prostitution . . . of lawless political conspirators against constitutional government." That was where the history lay for three generations, supplemented periodically by short historical articles, often written by serving or former members of the court.

In 1997, at a meeting of the Texas Supreme Court Historical Society's trustees, former Justice Will Wilson suggested that they sponsor a new history of the Court. Early passes at the book relied on volunteer efforts by attorneys and judges who could write with authority on different eras or subjects. Some of their manuscript chapters are of extraordinary quality, but the overall book project fell prey to their busy schedules and the different approaches that they took. In 2009 the Historical Society's executive director, Bill Pugsley, collared me at the annual meeting of the Texas State Historical Association and inquired about my interest in taking over the project. He and his board wanted me to unify the different elements and forge a "narrative" history, one that would show what a compelling part of Texas history the Supreme Court has been. They wanted a book that would be erudite but not esoteric, one that would interest attorneys as well as a more general audience. The Society would raise funds and turn over boxes of research, but they needed a manuscript in a year. Intrigued and challenged, I accepted, and began my daily mantra: "Please do not let this book be as dull as the last one."

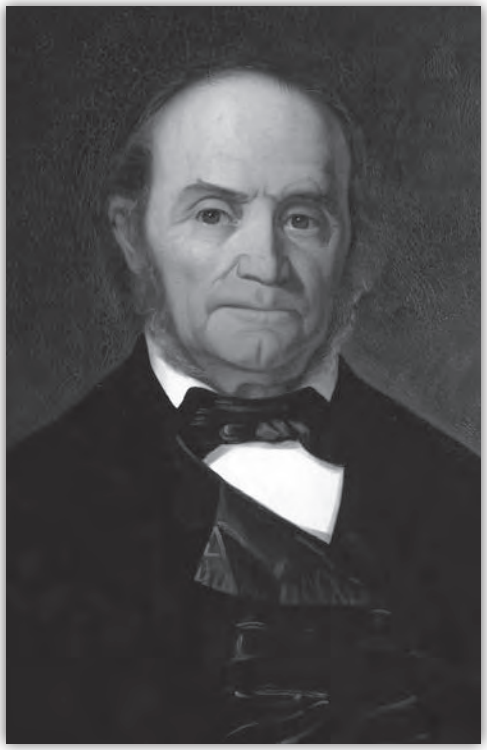
What I discovered was a history that absolutely crackled with drama: one justice was kidnapped by an invading Mexican army and carried off to a dungeon, another died a casualty of the Regulator-Moderator feud, still another fought Comanches with a knife at the Council House in San Antonio. One was murdered, a couple were suicides, a few were carried off by yellow fever. And the Supreme Court cases themselves, from the decade of the Republic of Texas, might never have survived at all but for the enterprise of a twenty-six-year-old immigrant from Baltimore named James Wilmer Dallam. He arrived in the Texas capital, Washington-on-the-Brazos, in 1844, and discovered (not uniquely) that there was not enough law business to employ him in the comfort that he had expected. Thus he took on as his special enterprise the collation and reporting of the decisions of the Texas Supreme Court.

Dallam's Reports is now a rare and brittle volume, but it is a crystal, a seer stone through which early Texas legal history moves to life. Texas law, deriving from the Spanish civil law, was radically different in key areas from the English-derived common law of the United States. Under Spanish law, water was a precious resource; in the U.S. it was taken for granted. Under Spanish law, debtors had to pay up, but creditors could not seize everything they had; the U.S. still had debtors' prisons. Under Spanish law, women could own property, go into business, or leave a marriage with community property; in the U.S. women belonged to their husbands

and had legal status a half-step above that of children and lunatics. At the famous women's rights convention in Seneca Falls, New York, in 1848, the ladies who drafted their manifesto were well aware that Texas entered the Union with the first community property provision in the country, but they chose to laud New York rather than give credit to a slave-holding Southern state!

Chief Justice John Hemphill

During the decade of the Republic, as the Texas Congress looked toward annexation to the U.S. and pushed to align Texas law with American law, it became the special crusade of long-time Chief Justice John Hemphill to preserve the advantages of Spanish law where he could. Thus Texas had a buffet of legal systems from which to choose how to formulate its own unique jurisprudence. Equally important, Texas was a country being hewn from the wilderness; for years, many, many cases that the Supreme Court heard were cases of first impression. As late as 1854, when the court still had criminal jurisdiction, a convicted murderer appealed purely on the contention that he had produced more witnesses than the state. Associate Justice Abner Lipscomb wrote an elegant opinion that, in Texas, things would not work that way; the credibility of witnesses, not their number, would determine the outcome. He did overturn the conviction, however, ruling that it was reversible error for the bailiff to have been giving whiskey to the jury during their deliberations—and cited Robert Burns's lines on "Bold John Barleycorn" as authority. *Jones v. State*, 13 Tex. 168 (1854).

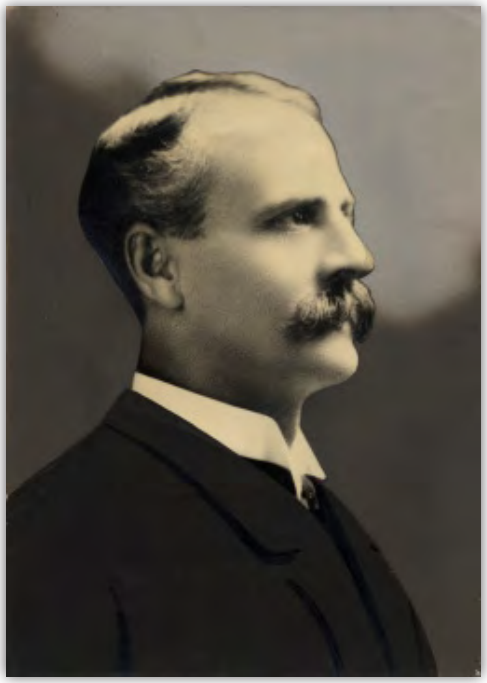


Associate Justice Abner Lipscomb

After annexation and before the Civil War, the Texas Supreme Court continued to chart its own course, displaying a surprising liberalism on matters concerning slaves and free blacks. Several sued their masters for freedom, and won, despite their lack of standing to even come to court. Some of Chief Justice Hemphill's reasoning must have been shaped by his having two mixed-race daughters (whom he enrolled in Wilberforce University in Ohio to spirit them out of the South), but other key opinions were written by Justices Patrick Jack, Oran Roberts, and Royall Wheeler, all card-carrying members of the slaveocracy.

During the Civil War, the court endorsed (barely) the Confederate draft law, but defied the military authorities in important *habeas corpus* actions. At the end of Reconstruction, the notorious "Semicolon Case" threw out the 1874 state election and led to the coup that installed Richard Coke as governor. The case was in fact correctly decided, but it led to generations of lively vituperation against justices imposed by the Union army.

During the post-Civil War frontier, the Texas Court held firm against increasing attempts to erode Texas' traditional protections for women and debtors, and in a blizzard of acrimonious land disputes it favored true settlers over wealthy speculators. That was consonant with the court's stance, under Chief Justices John Stayton



Associate Justice William Hawkins

(1888-1894) and Reuben Reid Gaines (1894-1911), as a leader, not an obstruction or follower, of Progressive Era reforms against corporate abuses of the Gilded Age by railroads and telegraph companies.

To the extent that these narrative threads were omitted in Davenport's history, I found myself with the happy job of writing, as it were, a history of first impression, telling the stories of the nineteenth-century court for the first time, drawing from the draft chapters which those distinguished authors of the Historical Society's project generously made available. And then the Texas Supreme Court in the twentieth century, somewhat to my surprise, did not lose much drama from the frontier days. Early frontier chief justices had inveighed against the folly of subjecting the Supreme Court to popular election, but they were overrun in the stampede of Jacksonian democracy. As they foresaw, the electoral process eventually brought the wrong person to the bench. In 1913, the court's productivity was wrecked by the election of prohibitionist zealot William Hawkins, who, once he discovered how little alcohol he could ban from that chair, gummed up the works for eight years by doing almost nothing.

Women's rights entered a new era with national suffrage, and in 1925 Governor Pat Neff demonstrated his solidarity by appointing a special term of the Court consisting entirely of women. The discovery of oil—Texas tea—made overnight millionaires and impelled the development of a whole new field of law. The Great Depression, World War II, the Civil Rights era and the social upheavals of the 1960s all left their marks on the court.

So it is that the new *The Texas Supreme Court: A Narrative History, 1836-1986* tells many important stories for the first time. It almost always depicts a working institution that managed to maintain itself as independent, flexible, and remarkably in tune with the people. Justice Will Wilson was ninety-three when he passed away near the end of 2005, without seeing his idea bear fruit, but the trustees and the executive director of the Texas Supreme Court Historical Society kept after it until it was done. The court played a central role in the unfolding of Texas history, and I feel privileged to have been chosen to tell its story.

Note: Society members may purchase copies of *The Texas Supreme Court: A Narrative History, 1836–1986* at a discount through the order form on the next page.

JAMES L. HALEY *is the author of the Society-sponsored* The Texas Supreme Court: A Narrative History 1836–1986, *published in February by the University of Texas Press. He has written thirteen other books, including* Passionate Nation: The Epic History of Texas *(Free Press, 2006) and* Sam Houston: A Biography *(University of Oklahoma Press, 2002), winner of nine historical and literary awards.*

History Book Order Form

The Texas Supreme Court: A Narrative History, 1836-1986, by James L. Haley, was published in February under the sponsorship of the Texas Supreme Court Historical Society. The book is the culmination of a sixteen-year project undertaken by the Society to expand public awareness and appreciation of the Texas Supreme Court.

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18th Annual John Hemphill Dinner: Justice Sandra Day O'Connor is Keynote Speaker

This year's John Hemphill Dinner will feature a keynote talk by former U.S. Supreme Court Justice Sandra Day O'Connor, memorial tributes to two former Texas Supreme Court justices, and the presentation of an annual award honoring former Chief Justice Jack Pope.

Justice O'Connor, born in Texas and raised in Arizona, was nominated to the U.S. Supreme Court by President Ronald Reagan in 1981 and served as Associate Justice until her retirement in 2006. She was the first woman in history to serve on the Court.

Another program highlight will be the delivery of memorials to two former justices who passed away in the last year. Former Chief Justice Thomas R. Phillips will give the memorial for Justice William W. Kilgarlin and former Justice Craig T. Enoch will speak for Justice Bob Gammage.

Also on the program is the presentation of the Fifth Annual Chief Justice Jack Pope Professionalism Award by the Texas Center for Legal Ethics.

The event is scheduled for Friday, June 14, at the Four Seasons Hotel in Austin. The reception begins at 6:30 p.m.

A special issue of the *Journal* will be published this summer with photo highlights of this year's dinner.

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2013 History Symposium a Success

The Society's major educational event of the year was a full-day symposium devoted to the history of Texas Supreme Court jurisprudence. Cosponsored with the State Bar of Texas, the event was held April 11 at the Mansion on Judges Hill in Austin.

Symposium co-coordinator Lynne Liberato of Haynes and Boone emceed the program, which opened with a presentation by Chief Justice Wallace B. Jefferson on the mixed legacy of judicial history in Texas. Some of the best legal historians in Texas were featured throughout the day, including Houston attorney David Furlow, who spoke on the Republic Era court, and Austin attorney Bill Chriss, who showed why Jack Pope's tenure as Chief Justice marked the end of the non-partisan court.

Lynne Liberato

Attendees were given sweeping historical overviews on a variety of topics that revealed useful patterns and trends for attorneys practicing in those areas — San Antonio attorney and Symposium co-coordinator Richard Orsinger on the English antecedents to Texas contract law, Austin attorney Dylan Drummond on Texas water law, former Justice Scott Brister on broad form jury charge submissions, Houston attorney Kevin Dubose on the judicial ethics rules in Texas, and SMU Professor William Dorsaneo on the development of rules of civil procedure.

Chief Justice Wallace B. Jefferson

A panel consisting of Austin attorney Mike Hatchell, St. Mary's Professor Wayne Scott, and former Chief Justice Thomas R. Phillips offered their views on the politics surrounding judicial elections after 1988. Justice Eva Guzman joined Kent Rutter in honoring the women who served on the Court, beginning with the 1925 All Women Court. During lunch, author James L. Haley described some of the pivotal cases and events in the Court's first century and a half. The day ended with a look forward at the Court's future by Justice Debra Lehrmann.

Mike Hatchell, Prof. Wayne Scott, and former Chief Justice Tom Phillips

Justice Eva Guzman and Kent Rutter

James Haley and Justice Debra Lehrmann

After the Symposium, attendees and speakers gathered in the central courtyard of the Mansion on Judges Hill to enjoy a reception sponsored by the Society.

Lynne Liberato and Judge Mark Davidson

Kirsten Casteñeda and Kent Rutter

Justice Paul Green and Ben Mesches

HISTORY OF TEXAS SUPREME COURT JURISPRUDENCE PROGRAM

Morning Program Moderator and Course Director
Lynne Liberato, Haynes and Boone

History's Mixed Legacy
Honorable Wallace B. Jefferson,
Chief Justice, Texas Supreme Court

The Supreme Court of the Lone Star Republic: A Compass Pointing to the Future
David A. Furlow, Thompson & Knight

Jack Pope & the End of the Non-partisan Court, 1964-1985
Bill Chriss, Gravely & Pierson

Panel: Elections, Politics and the Texas Supreme Court: 1988-2004
Hon. Thomas A. Phillips,
Chief Justice (Ret.), Texas Supreme Court
Mike A. Hatchell, Locke Lord
Prof. Wayne Scott, St. Mary's University

The Daubert Revolution: Evolution of Expert Testimony
Hon. Priscilla R. Owen, Judge,
U.S. Fifth Circuit Court of Appeals
Former Justice, Texas Supreme Court

Women and the Supreme Court
Hon. Eva Guzman, Justice, Texas Supreme Court
Kent Rutter, Haynes and Boone

Luncheon Program

Moderator
Hon. John P. Devine, Justice, Texas Supreme Court

The Supreme Court Historical Society
Warren W. Harris, Bracewell & Giuliani

The Texas Supreme Court -- A History of First Impression
James L. Haley, author

Afternoon Program Moderator
Hon. Paul W. Green, Justice, Texas Supreme Court

The Supreme Court's Role in Developing Rules of Court
Prof. William V. Dorsaneo III,
Southern Methodist University

170 Years of Contract Law in Texas
Richard R. Orsinger,
McCurley, Orsinger, McCurley, Nelson & Downing

Important Cases Revealed through Documents
Hon. Mark Davidson, Judge,
Multi-District Litigation Civil Court

Texas Groundwater Rights and Immunities: From East to Day and Beyond
Dylan O. Drummond,
Davidson, Troilo, Ream & Garza

Jury Charge: The Swinging Pendulum of Broad Form Submission
Hon. Scott A. Brister, Justice,
Texas Supreme Court (ret.); Andrews Kurth

The Development of Judicial Ethics in Texas
Kevin Dubose, Alexander Dubose & Townsend

The Supreme Court: Looking Forward
Hon. Debra R. Lehrmann, Justice,
Texas Supreme Court

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New Texas Judicial History Series Will Open with a Collection of Writings by Chief Justice Jack Pope

Following the release of the Supreme Court narrative history book through the University of Texas Press this spring, the Society moved forward on its next project—to publish the first volume in its own book series.

The book, entitled *Common Law Judge: Selected Writings of Chief Justice Jack Pope*, is a collection of articles, lectures, essays, and opinions drawn from hundreds of writings by Judge Pope.

Pope's service as a district judge, court of appeals justice, Supreme Court justice, and Supreme Court chief justice spanned almost forty years and was distinguished by thoroughly researched and highly persuasive opinions, many of which became landmark cases. His tenure was also marked by unparalleled administrative innovation.

In the biographical essay written for the book, William J. Chriss describes Judge Pope as a man of tremendous intellect and integrity who recognized early in his career the central importance of process and procedure in the administration of justice.

"Judge Pope saw the common law process as essential to separation of powers and inherent in the notion of an independent judiciary," wrote Chriss. "He was convinced that the substantive law of torts and the more byzantine aspects of civil procedure needed simplification, both to avoid confusion among litigants, judges, and juries, and to further the progress of the common law."

Chriss notes that this focus on improving the judicial process was evident throughout Pope's career, and the results of his advocacy were monumental. Among the improvements that he had a direct hand in bringing about were the provision of admonitory instructions to jurors, the simplification of jury charges, the creation of the Texas Code of Judicial Conduct, the creation of the Judicial Budget Board, the orders for mandatory continuing legal education for judges, the promulgation of new Civil Rules of Evidence, the adoption of deadlines for the timely disposition of civil cases, and the creation of the voluntary IOLTA program to provide legal services to low-income citizens. These accomplishments, combined with the impact of his more than one thousand court opinions, earned Judge Pope a reputation as one of the most productive and influential jurists in Texas history.

While serving on the bench, Pope also was in high demand as a lecturer and public speaker. His speeches displayed the same clarity and intellect as his other writings, with the added characteristic of humor that entertained as it informed. A number of those pieces are included in the *Common Law Judge* volume. The book also includes his classic law review article on the history of juries, a previously unpublished paper on the process of decisionmaking in the Supreme Court of Texas, and an essay on the history of surface water law and its relationship to the landmark *State v. Valmont Plantations* case. The opinion in *Valmont*, which replaced *Motl v. Boyd* in 1961 as definitive water rights law in Texas, was written by Fourth Court of Civil Appeals Justice Pope and was adopted in its entirety by the Texas Supreme Court. The opinion is reprinted in full in *Common Law Judge*, along with summaries of fifteen other significant opinions written by Pope.

The first phase of the fund-raising for this book was led by Judge Pope's former briefing attorneys, his fellow TSCHS board members, and the Texas Center for Legal Ethics. The response to that phase was tremendous, but the Society wants to extend to our membership the opportunity to join in this effort, with a goal of $6,000. If you have not already contributed, please consider adding your support now. Contributions are fully tax deductible, and contributors will be acknowledged in the book as well as on the Society's website.

Please see the next page for the contribution form.

Contribution Form

Common Law Judge:
Selected Writings of Chief Justice Jack Pope

To make a tax-deductible contribution to the Chief Justice Jack Pope Book Project, please fill out this form and return it to the Society by June 30, 2013.

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Retired Chief Justice Jack Pope Is Honored by the State of Texas on His 100th Birthday

Judge Jack Pope is escorted by Chief Justice Wallace B. Jefferson

Retired Texas Supreme Court Chief Justice Jack Pope celebrated his 100th birthday on April 18, 2013, in the chamber of the Texas House of Representatives. By all accounts, he is the oldest living chief justice in the United States and the first to reach the century mark. Rep. Dan Branch introduced House Concurrent Resolution 100 honoring Pope's many contributions to the state judiciary during his thirty-eight years on the bench.

All but one of the living presidents of the United States sent letters congratulating Judge Pope, and Chief Justice Wallace B. Jefferson and Justice Nathan Hecht read those messages to the assembly.

Pope was a founder, with Chief Justices Robert W. Calvert and Joe R. Greenhill, of the Texas Supreme Court Historical Society and continues to serve on the Society's board as Chair Emeritus.

(l-r) Judge Pope, former Justice Dale Wainwright, Chief Justice Wallace B. Jefferson and former Chief Justice Tom Phillips

For more, see:
http://www.legis.state.tx.us/tlodocs/83R/billtext/html/HC00100I.htm
www.supreme.courts.state.tx.us/pdf/Jackpope100Reprint.pdf

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An Interview with Justice John Devine

By Will Feldman

Justice John Phillip Devine was elected to the Supreme Court of Texas last November, and assumed his new position in January 2013. A graduate of Ball State University and the South Texas College of Law, Justice Devine brings to the Court decades of experience acquired in the private sector with Shell Oil and Brown & Root, Inc., as a trial judge on the 190th State District Court, as an appointed special judge for the Harris County justice of the peace courts, and as a lawyer in private practice. While on the district court bench, Justice Devine tried nearly 350 jury trials and presided over approximately 500 bench trials, ultimately reducing the court's backlog by more than 40 percent during his two terms in office.

As he settles into his new job on the Supreme Court, the *Journal of the Texas Supreme Court Historical Society* contacted Justice Devine with a few interview questions.

According to Justice Devine, his professional experience in the private and public sectors provides him with a distinct perspective on much of the subject matter that regularly comes before the Supreme Court. After almost 17 years of experience confronting complicated issues of oil, gas, and construction, Justice Devine feels well positioned to address the intricacies of the complex regulatory and administrative matters that routinely fill the Court's docket. For him, this dense material "comes alive." Moreover, his vast experience as a trial judge gives him a practical perspective into the way that jury trials work and a deeper understanding of the various unspoken factors at play during a trial that may not necessarily appear in the appellate record. Since joining the Court, Justice Devine has also had the opportunity to develop a greater interest and understanding of other legal areas, such as family law, which composes a large percentage of the Court's docket.

Justice Devine has had a consistent judicial philosophy. The job of a Supreme Court Justice, in his view, is to follow the legislature's will and apply its statutes as accurately as possible. According to Justice Devine, Supreme Court Justices are "not there to rewrite the law," but to "apply statutes as closely as they can." In so doing, the Court can ensure that the law is predictable. The Supreme Court must also endeavor to address and resolve inconsistencies amongst the lower appellate courts.

When asked what he has enjoyed most about the Court, Justice Devine immediately focused on the numerous strengths of his colleagues. In particular, he has been struck by his fellow Justices' intellectual vigor, work ethic, and collegiality. While the justices may not agree on everything that comes before them, they "work together well" and foster a "family atmosphere." Justice Devine is "honored to be a part of the Court," which is led by a "great Chief Justice," and has been impressed with how well the Court handles its numerous responsibilities. Justice Devine's move from trial judge to Supreme Court Justice has been both challenging and fascinating. When asked about this transition, Justice Devine stated that the two positions involve "different ways of thinking." The

trial court is "very fast paced," and requires that a judge quickly make numerous decisions to ensure that cases move along smoothly, particularly when before a jury. As a Supreme Court Justice, in contrast, Justice Devine spends much more time "cogitating and discussing cases with his colleagues." He has also adapted to the job's heavy workload. In a typical week, Justice Devine and his colleagues must not only hear and decide cases, but also analyze 20-40 petitions for review, handle liaison assignments, take care of rulemaking responsibilities, and attend state functions.

Soon after arriving at his new job in Austin, Justice Devine discovered that he was not the first in his family to serve on the Texas Supreme Court. A third cousin, Thomas Jefferson Devine, also served as a justice on the Court in the 1870s. Thomas Jefferson Devine came to Texas in the 1840s and worked as a city attorney and judge in San Antonio. He was later appointed by Jefferson Davis to be a judge of the Confederate Western District of Texas, and gained notoriety as a diplomat when he settled a dispute with Mexico regarding a shipment of cotton. Along with Jefferson Davis and Clement Clay, Judge Devine was indicted twice for high treason after the Civil War. He was later pardoned without a trial and his citizenship was restored in 1867. Seven years later, he was appointed to the Texas Supreme Court, but resigned before the end of his term to care for his ailing wife and returned to private practice.

Today, his distant cousin Justice John Devine brings his broad professional experience to his duties on the Court. The *Journal of the Texas Supreme Court Historical Society* wishes him the best in his new position.

WILL FELDMAN *is an associate in the Appellate Section of Haynes and Boone's Houston office. He was law clerk for former 5th Circuit Chief Judge Carolyn King and for District Court Judge Janis Jack.*

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2012-2013 Membership Upgrades

The following Society members moved to a higher dues category since June 1, 2012.

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Prof. L. Wayne Scott

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Dylan O. Drummond
Harry M. Reasoner

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Marialyn Barnard
Hon. John H. Cayce, Jr.
Catherine Smith

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2012-2013 New Member List

The Society has added 94 new members since June 1, 2012. Among them are 18 Law Clerks for the Court (*).

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Justice Rebeca C. Martinez
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Justice Jim Moseley
William W. Ogden
Heather Peckham
Michael John Ramirez
Jason M. Ryan
Judge Rebecca Simmons
Andrew R. Stubblefield

(continued next page)

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Graham Baker
Stephanie Beckett*
Justin Lewis Bernstein*
James D. Blacklock
Justice Bill Boyce
Maria Wycoff Boyce
Justice Jeff Boyd
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Membership Benefits & Application

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Greenhill Fellow - $2,500

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- Complimentary Hardback Copy of All Society Publications
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- Recognition in All Issues of Quarterly *Journal of the Supreme Court Historical Society*
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- Discount on Society Books and Publications
- Complimentary Copy of *The Laws of Slavery in Texas* (paperback)
- Personalized Certificate of Society Membership
- Complimentary Admission to Society's Symposium
- All Benefits of Regular Membership

Patron Membership - $500

- Historic Court-related Photograph
- Discount on Society Books and Publications
- Complimentary Copy of *The Laws of Slavery in Texas* (paperback)
- Personalized Certificate of Society Membership
- All Benefits of Regular Membership

Contributing Membership - $100

- Complimentary Copy of *The Laws of Slavery in Texas* (paperback)
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- All Benefits of Regular Membership

Regular Membership - $50

- Receive Quarterly *Journal of the Supreme Court Historical Society*
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- Invitation to Annual Hemphill Dinner and Recognition as Society Member
- Invitation to Society Events and Notice of Society Programs

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The Texas Supreme Court Historical Society conserves the work and lives of the appellate courts of Texas through research, publication, preservation and education.

Your membership dues support activities such as maintaining the judicial portrait collection, the ethics symposia, educational outreach programs, the Judicial Oral History Project and the Texas Legal Studies Series.

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Please select an annual membership level:

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☐ Patron	$500	☐ Greenhill Fellow	$2,500
☐ Contributing	$100		
☐ Regular	$50		

Payment options:

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