



HISTORY LESSON

The Texas Supreme Court Historical Society sets the record straight.

WRITTEN BY MARILYN P. DUNCAN AND DAVID A. FURLOW

On January 13, 1990, three former chief justices of the Texas Supreme Court—Robert W. Calvert, Joe R. Greenhill, and Jack Pope—announced they had filed the incorporation papers with the Texas secretary of state to establish a nonprofit, nonpartisan organization aimed at preserving the history and artifacts of the Texas courts. The founders chose that date because it was the 150th anniversary of the Supreme Court’s first session, called to order on January 13, 1840, by Chief Justice Thomas J. Rusk.

The Texas Supreme Court Historical Society, or TSCHS, thus came into being 30 years ago. The sesquicentennial celebration in the state capitol focused both on the heritage of the Texas Supreme Court and on the creation of an organization dedicated to preserving that heritage. The event, and TSCHS itself, were the culmination of years of planning by several key players: Texas Supreme Court Justice Jack Hightower, Lyn Phillips (wife of Chief Justice Thomas R. Phillips), Chief Justices Pope, Greenhill, and Calvert, and attorney James W. Paulsen. Tying the sesquicentennial to TSCHS’s launch gave the new organization the visibility and support it needed to move forward.

Judicial History Book Project

Hightower became the first president of TSCHS and served from 1990 until 1998. During those years, the organization began addressing some of the gaps in the documented history of the Texas courts. The last book on the history of the Texas Supreme Court had been published in 1917, so TSCHS trustees set a goal of publishing a multivolume work on the court’s history

through the 20th century. SMU Dedman School of Law professor Joe McKnight, a trustee and preeminent legal historian, organized a team of volunteers to write the books, but quickly hit a roadblock: few secondary sources were available on the 20th-century court, requiring that the team start from scratch.

The original project yielded a number of substantive papers, but the vision of a multivolume history proved unviable. In 2006, TSCHS Executive Director Bill Pugsley hired publications consultant Marilyn P. Duncan to help reshape the book project. Spurred by board trustee and former Texas Supreme Court Justice Craig T. Enoch to “find” a legal history book among materials at hand, Pugsley and Duncan compiled a manuscript of previously published essays and original court documents that revealed the realities of slave laws in antebellum Texas. Professor Randolph B. “Mike” Campbell, of the University of North Texas, provided expert editorial commentary for *The Laws of Slavery in Texas*, the first book in the Texas Legal Studies Series co-sponsored with the University of Texas Press.

The goal of publishing a definitive history of the court remained a priority, and in 2009, the society commissioned a single author to write a one-volume narrative history. As luck and fate would have it, award-winning historian James L. Haley was available. TSCHS President Larry McNeill and

attorney Harry Reasoner led a fundraising drive that raised more than \$100,000 in less than 10 months, the largest amount raised for any project in TSCHS’s history.

Working closely with editor Duncan, Haley drew on the earlier project’s research, a collection of oral history interviews, and archival materials in TSCHS files. Haley’s engaging narrative style made the court’s history accessible to a wide readership. *The Texas Supreme Court: A Narrative History, 1836-1986*, published in the Texas Legal Studies Series in 2013, represented a milestone for the society and the Supreme Court, one celebrated in a special session of the court in the capitol’s historic Supreme Court Courtroom.

In 2014, the society published a third book, *Common Law Judge: Selected Writings of Chief Justice Jack Pope of Texas*. Compiled and edited by Duncan as part of the history book project, the volume showcases a wealth of landmark court opinions, legal essays, and other materials drawn from Pope’s 38-year tenure on the bench.

Taming Texas Judicial Civics and Court History Project

An important part of the society’s mission is to educate the public about the Texas court system and its influences. The idea of reworking some of the stories in the narrative history book for a younger audience took root in 2013. Board President Warren W. Harris led a new project funded by the society’s fellows that published a book aimed at seventh graders called *Taming Texas: How Law and Order Came to the Lone Star State*. The book, co-authored by Haley and Duncan, is the centerpiece of the society’s Taming Texas Judicial Civics and Court History Project,

ABOVE: Chief Justice Thomas J. Rusk, left, presided over the first session of the Texas Supreme Court in January 1840. Chief Justice John Hemphill took the reins in December 1840 and served until 1858. Photo of Rusk courtesy of Wikimedia Commons; photo of Hemphill courtesy of the U.S. Senate Historical Office.

launched in Houston-area middle schools in spring 2016. Administered through local bar associations, the program sends volunteer judges and lawyers into Texas history classes to teach lessons on the history and functions of Texas courts. Since its inception, Taming Texas has reached more than 21,000 students.

The book series now has two additional volumes: *Law and the Texas Frontier* (2018) and *The Chief Justices of Texas* (2020). The books are provided free to classrooms in both hardcover and electronic formats.

Journal of the Texas Supreme Court Historical Society

The society has also fulfilled its dual mission of preservation and education by publishing a quarterly e-journal. Established in 2011 as an initiative of board President Lynne Liberato, the *Journal of the Texas Supreme Court Historical Society* combines scholarly articles on historical topics with book reviews, oral history interviews, and special features on TSCHS-sponsored events. Its founding executive editor, attorney/historian David Furlow, led fellow team members Dylan Drummond, Duncan, and David Kroll in developing what is now the foremost publication of Texas legal history. In 2019, the American Association for State and Local History honored the *Journal* with its Leadership in History Award of Excellence. The summer 2018 issue on African American judges received special recognition.

Texas State Historical Association Sessions

Each year since 1998, the society has presented a panel session on Texas legal history topics at the Texas State Historical Association Annual Meeting. The sessions have attracted increasingly large audiences over the years as the panelists, many of them current and retired members of the Texas judiciary, explored Texas legal history, including school prayer litigation, alcaldes and advocates in Stephen F. Austin's colony, and the Republic of Texas' secret court.

Larry McNeill Fellowship

In cooperation with the Texas State Historical Association, TSCHS created the Larry McNeill Research Fellowship in Texas Legal History in 2019 to foster grassroots legal history research. See the announcement on page 422.

Judicial Portrait Collection

Paintings of retired and deceased Texas Supreme Court justices are important artifacts, and an early project of the society was to rejuvenate the dormant judicial portrait collection. Over the years TSCHS has brought the collection mostly up to date. The society arranges for retired members of the court to present their framed portraits to the Supreme Court in ceremonies in the Supreme Court Courtroom. In a historic ceremony in 2018, descendants of two long-neglected Reconstruction-era judges—Chief Justice Wesley B. Ogden and Justice Colbert Coldwell—presented their portraits to the court. It was a rare opportunity to set the record straight.

Great War Commemoration

On the 100th anniversary of the Armistice, the society joined with the Texas Supreme Court in honoring Texas judges and

governors who served in the First World War. The event, held in the historic Supreme Court Courtroom in the capitol, was a moving testament to the veterans who later served on the Texas Supreme Court and Court of Criminal Appeals and in the governor's office. A video of the program appears on the society's Hemphill Channel at <https://www.youtube.com/watch?v=RBvryBxcGSI>.

Supreme Court History Symposia and Reenactments

Other TSCHS-sponsored educational events include the reenactment of historically significant cases and a biannual CLE symposium on the history of Supreme Court jurisprudence. The society's fellows have sponsored reenactments of three landmark court cases: *Texas v. White* (1868), *Johnson v. Darr* (1925), and *Sweatt v. Painter* (1950). The symposia, co-sponsored with the State Bar, were organized by trustees Liberato and Richard Orsinger.



ABOVE: The 2013 Hemphill Dinner program featured a conversation between former U.S. Supreme Court Justice Sandra Day O'Connor and then-Texas Supreme Court Chief Justice Wallace B. Jefferson. Photo by Mark Matson

Annual John Hemphill Dinner

For the past quarter century, the society has hosted the annual John Hemphill Dinner to fund educational outreach and bring members and guests together to share stories with and about great judges and lawyers. Held at Austin's Four Seasons Hotel, these annual dinners have become go-to events for lawyers, judges, and historians throughout Texas.

Today the Texas Supreme Court Historical Society has 450 members, including 39 fellows and a 39-member board of trustees, of which 18 are current or former judges. Anchored by Executive Director Sharon Sandle and Administrative Coordinator Mary Sue Miller, the society continually seeks new ways to preserve and celebrate the unfolding history of Texas courts and law. **TBJ**



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