



Journal of the TEXAS SUPREME COURT HISTORICAL SOCIETY

Spring 2013 Vol. 2, No. 3 General Editor Lynne Liberato Executive Editor David Furlow

Arbitration Comes to Texas

By Tasha Lea Willis

Arbitration has been a part of the Texas justice system for the past two centuries—from Spanish jurisprudence brought by the Conquistadors.

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A Conquistador

Dallam's Digest and the Unofficial First Reporter of the Supreme Court of Texas

By Dylan O. Drummond

Interestingly, the first person to compile and distribute the decisions of the Supreme Court of Texas was never officially sanctioned as the Court's reporter. [Read more...](#)



Texas Reporter volumes

President's Page

By Warren W. Harris

The Supreme Court of Texas convened in special session to receive the first book published on the history of the Court in almost a century.

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Warren W. Harris

Fellows Column

By David J. Beck

The release of the new history book on the Texas Supreme Court pointed out a glaring omission in our efforts to preserve the Court's history.

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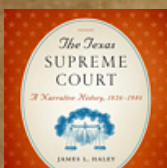


David J. Beck

Long-Awaited History of the Texas Supreme Court Published in February

The Society reaches a new milestone with the release of its definitive history of the Texas Supreme Court.

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James Haley's book

Court Holds Book Presentation Ceremony in Historic Courtroom

For the first time in fifty-three years, the Supreme Court of Texas held a formal session in the Historic Courtroom of the Capitol. But that wasn't the only "first" that day.

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Chief Justice Jefferson greeted guests

Register Now for the April 11 Symposium

Seventeen of the state's premier judges, attorneys, and legal historians are slated to speak at this CLE event.

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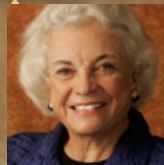


The Mansion at Judges' Hill, site for the symposium

Justice Sandra Day O'Connor to be Hemphill Dinner Keynote Speaker

The first woman to serve on the U.S. Supreme Court will be the keynote speaker at the dinner next June.

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Justice O'Connor

Investiture for Incoming Justices Jeff Boyd and John Devine

Guests packed the Capitol extension auditorium to see Gov. Perry swear in two new justices along with two reelected ones.

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Gov. Perry

Meet Justice Jeff Boyd

By David A. Furlow

Few people know the reasons the Court's most recently appointed Justice decided to pursue a life in public service.

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Justice Boyd

An Interview with Former Justice Dale Wainwright

By Amy Saberian

The former Justice has a long history of exemplary leadership and laudatory public service.

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Justice Wainwright

Abel Acosta Appointed Clerk of Texas Court of Criminal Appeals

Acosta is the eighth Clerk of the Court of Criminal Appeals since 1918, when the legislature gave each court its own clerk.

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Abel Acosta

Carol Vance Speaks at March Board Meeting

The former Harris County District Attorney and author of *Boomtown DA* was the luncheon speaker at the meeting.

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Carol Vance

Society Acquires 300 Copies of Hemphill Biography

Ray Hemphill, a descendant of Judge Hemphill, reprinted the book. [Read more...](#)

Haley and Phillips at 2013 TSHA Conference

Author/historian Jim Haley and former Chief Justice Tom Phillips spoke. [Read more...](#)



Haley and Phillips

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2012-13 New Member List

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Dallam's Digest and the Unofficial First Reporter of the Supreme Court of Texas

By Dylan O. Drummond

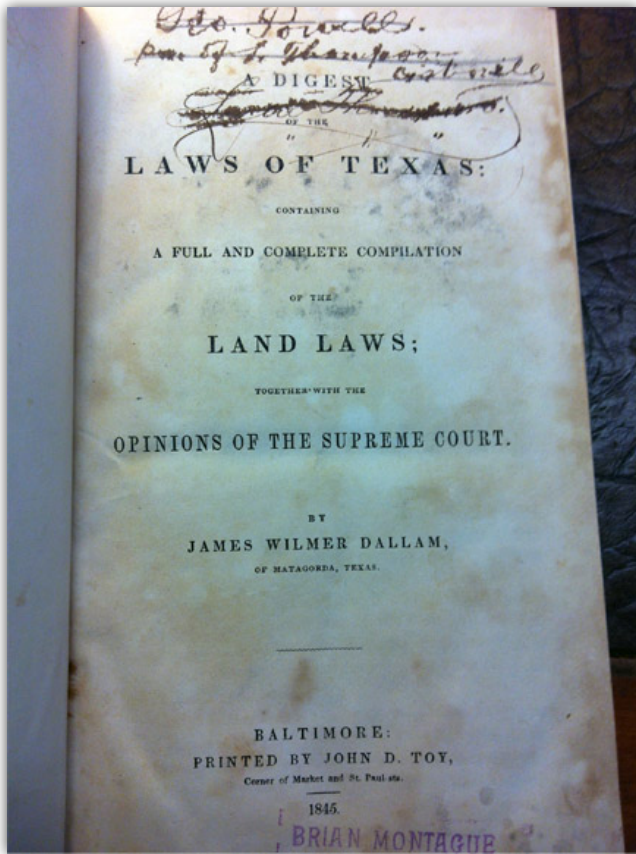
The Texas Supreme Court has benefited from a long lineage of distinguished court reporters whose line lasted for over a century from 1840 to 1962.¹ But the first person to compile and distribute the decisions of the Supreme Court of Texas was never officially sanctioned by the Republic as the Court's reporter.² Yet, while James Dallam was never formally appointed to the task, his groundbreaking efforts in publishing a digest of the first four years of decisions issued by the Court remains one of the most significant contributions of any official reporter in Texas jurisprudential history.³ This article is the first in a series examining some of the most influential and more colorful Texans to hold the office of Court reporter.

Formation of the Supreme Court of the Republic of Texas

Several months after the adoption of the Republic's Constitution on March 17, 1836—Article IV of which provided for the establishment of “one Supreme Court”⁴—the first Congress of the Republic passed legislation that implemented Article IV's mandate and formally established the Court on December 15, 1836.⁵ The following day, Congress elected the Court's first Chief Justice⁶ and four⁷ Associate Judges.⁸ Because section 7 of Article IV made every district judge in the Republic an *ex officio* member of the Republic Supreme Court, that Court has been described as a “temporary committee composed of the district judges, presided over by a permanent chief justice.”⁹ Given the difficulties of travel at the time, this structure led to inherent quorum and majority issues.¹⁰

However, it was not until some three years later in January 1840 before the Court actually held its first session.¹¹ The reasons for this delay include the failure of the Court to achieve a quorum in 1837, the suicide of its Chief Justice in 1838, and the absence of its third Chief Justice from the bench due to military campaigns in 1838 and 1839 against the Cherokee, Kickapoo, and Caddo Indian tribes.¹² The January 1840 term convened in the home of Major Asa Brigham, who was then the Treasurer of the Republic and would later serve as Mayor of Austin, whose residence was located on what is now the southwest corner of Congress Avenue and Second Street.¹³ During the January 1840 session, the Court issued its first opinion, *Texas v. McCulloch*, which was penned by Chief Justice Thomas Jefferson Rusk and perhaps prophetically dismissed the first writ of error ever brought before the Court for lack of jurisdiction.¹⁴

During the Republic years, “there were practically no authorities accessible to the court.”¹⁵ Because Associate Judges would “ride [the] circuit” as district judges during part of the year,¹⁶ much of what reference materials a district judge possessed were limited by what he could fit in his saddlebags.¹⁷ Even the stationary Chief Justice was often forced to rely on his own personal library, which was rarely augmented because of frequent Indian raids of overland shipments.¹⁸ Indeed, for any Republic-Court jurist, gaining access to previous decisions of the Court (at least from a prior panel on which the authoring Judge did not sit)¹⁹ was problematic because no official reprinting of Court decisions was undertaken until 1848.²⁰



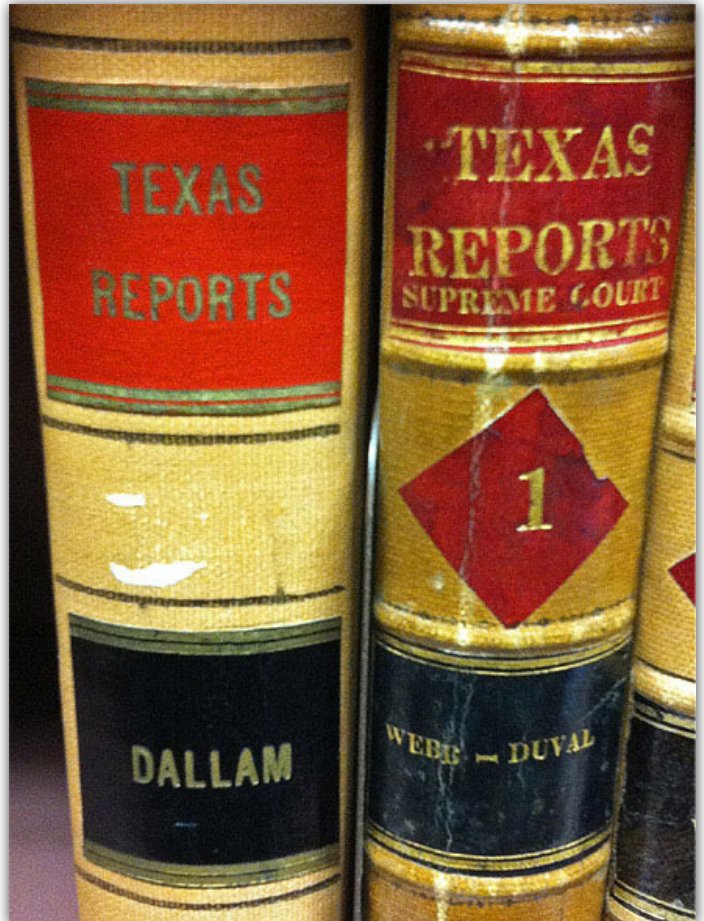
Dallam's Digest

The challenges that plagued and delayed the establishment of the Republic Court similarly affected the institution of the Court's first official reporter. While the fourth Republic Congress authorized the appointment of a reporter for the Court in January 1840,²¹ it did not allow for the first publication of Court decisions until there were enough opinions issued to fill 400 pages.²² Unfortunately, the Republic expired long before this minimum requirement was met.²³

In response to the Congress's January 1840 legislation authorizing the appointment of a Republic Court reporter, the Court appointed George W. Horton to the post.²⁴ Because of the Republic Congress's minimum-page requirement, however, Horton never oversaw the publication of a single Court decision.²⁵ Nevertheless, the Court issued some 140 decisions between 1840 and 1844.²⁶ Specifically, the January 1840 term—the Court's first—produced 18 opinions; 30 decisions were issued during the Court's term in January 1841; 19 during the January 1842 term; 38 during the June 1843 term; and 35 during the June

1844 term.²⁷ During this time, the bench, bar, and public could only read truncated synopses of Court decisions in select newspapers across the region.²⁸

So into this jurisprudential void stepped a young attorney from Matagorda named James Wilmer Dallam.²⁹ Dallam was from Baltimore, Maryland, graduated from Brown University in 1837, and read law in Baltimore under future United States Attorney General Reverdy Johnson until his admittance to the Maryland Bar sometime around 1839.³⁰ By 1840, Dallam had relocated to Matagorda, Texas, where he founded the law firm of Henshaw and Dallam on July 4th of that year.³¹ However, by November 1840, Dallam had already moved his practice to the new firm of Dallam and Kerr.³² Dallam was said to be witty, even being called the "life of the social circle in which he moved."³³ Perhaps as his changing firm affiliation attested,³⁴ Dallam had little legal business at hand, and so passed the winter of 1844 in the Republic capital of Washington-on-the Brazos, where he set about compiling a digest of the laws of the Republic³⁵—what was to become known as *Dallam's Digest*.³⁶ He was just 26.³⁷



His digest contained not only the Republic Constitution of 1836 and the Republic statutes, both of which were already in print and readily available, but the text of the Republic Court’s 140 opinions issued from 1840 to 1844, which were not.³⁸ Missing from its 632 pages were only one majority decision from the 1841 term, and two dissenting opinions from the 1844 term.³⁹ The result was a single volume, the end of which was appended with the text of Court decisions.⁴⁰ This is why the first reported decision ever issued by the Court appears at page 357 of the digest.⁴¹ In the preface to the digest, Dallam dryly remarked that the “pioneer in any enterprise toils wholly at a disadvantage,”⁴² and explained some of his motivation in drafting the tome: “Evils which have opposed me in professional labor, arising from the defective situation of the laws, I have sought to remedy, *first and most effectually*.” Dallam finished his digest in spring of 1845, and it was published at a cost of \$6 per copy by John D. Toy—a preeminent publisher in Dallam’s native Baltimore—and subsequently released to the public on September 1, 1845.⁴³

It was enthusiastically received by the Republic press. One month after the digest was published, the *Houston Telegraph & Texas Register* remarked that it “is the only one of the kind that has ever been published and is highly recommended by competent judges.”⁴⁴ In December 1845, the *LaGrange Intelligencer* opined that “[s]uch a work will prove of infinite value to the members of the bar, and should be placed in every law library of the Republic.”⁴⁵ It was also eagerly purchased by the Republic bar, and was soon regarded amongst Republic lawyers as virtually “indispensable in the practice of their profession.”⁴⁶ Perhaps the most impressive praise of *Dallam’s Digest* came from the Republic Court itself, which cited Dallam in December 1845, just three months after his digest was published.⁴⁷

Following publication of the digest, Dallam married the daughter of the Republic’s Secretary of the Navy, Ann Pleasants Fisher, in October 1845.⁴⁸ Soon thereafter, Dallam became the editor and publisher of a small newspaper in Matagorda, the *Colorado Herald*.⁴⁹ While attempting to extend his newspaper interests in New Orleans, Dallam contracted yellow fever and succumbed to the malady within just three days in August 1847⁵⁰—just two years after the publication of his digest. He was buried in a family plot in the Matagorda cemetery, and was survived by his wife and infant daughter, Annie Wilmer Dallam.⁵¹



Dallam’s Jurisprudential Impact

Even as many as 130 years ago, it was said that “Dallam must be attributed the merit of being the only lawyer in the Republic who conceived the idea of the enterprise” of compiling the digest.⁵² Ironic that his digest was never officially sanctioned despite its universal acclaim, yet Dallam’s work remains the only source cataloguing the first 140 opinions issued by the Texas Supreme Court. Beginning with its first citation by the Court in 1845, *Dallam’s Digest* has been continually cited by Texas courts nearly 600 times over a span of more than 165 years.⁵³ In this, it alone has served as the sole catalog of the state’s foundational jurisprudence upon which nearly 170 years of common law have been built.

Appendix⁵⁴

Name	Volumes	Court Terms Reported	Appointed
George W. Horton	na	na ⁵⁵	Yes
James Wilmer Dallam	“0”	January 1840 to June 1844	No
James Webb & Thomas H. Duval	1 – 3	December 1846 to December 1848	Yes
Oliver Cromwell Hartley	4 – 10	December 1849 to 1853	Yes
Oliver Cromwell Hartley & R.K. Hartley	11 – 21	1853 to 1858	Yes
George F. Moore & Richard S. Walker	22 – 24	1858 to 1860	Yes
Richard S. Walker	25	1860	Yes
George W. Paschal	25 Supp. ⁵⁶	1860	Yes
Charles L. Robards ⁵⁷ & A.M. Jackson ⁵⁸	26 – 27	1861 to 1865	Yes
George W. Paschal	28 – 31 ⁵⁹	1866 to 1869	Yes
E.M. Whitlock	32 – 37	1869 to December 1872	Yes
Alexander W. Terrell & Alexander S. Walker	38 – 51	December 1872 to 1879	Yes
Alexander W. Terrell	52 – 71	1879 to 1888	Yes
Alexander S. Walker	72 – 88	1888 to December 1895	Yes
A.E. Wilkinson	89 – 119	December 1895 to January 1931	Yes
A.E. Wilkinson ⁶⁰ & L.K. Smoot	120	January 1931 to June 1931	Yes
L.K. Smoot	121 – 161	June 1931 to March 1961	Yes
L.K. Smoot ⁶¹ & Ghent Sanderford	162	March 1961 to November 1961	Yes
Ghent Sanderford ⁶²	163	November 1961 to October 1962	Yes
James W. Paulsen	na	December 1845	Yes



DYLAN DRUMMOND is a civil appellate attorney practicing in Austin, Texas. He currently serves as a Trustee of the Texas Supreme Court Historical Society, is rated AVTM by Martindale Hubbell®, and has been selected as a Rising Star in appellate practice the past 4 years by Thomson Reuters and Texas Monthly.

- ¹ See Appendix, *infra*; see also, e.g., Jonathan P. Graham & David A. Greenblatt, *Editors' Foreword*, 65 TEX. L. REV. (Dec. 1986) (noting James W. Paulsen was specially appointed by the Texas Supreme Court on April 28, 1985 to serve as the Court's reporter for the December-1985 term); James W. Paulsen, *A Short History of the Supreme Court of the Republic of Texas*, 65 TEX. L. REV. 237, 275 n.232 (Dec. 1986) (noting the appointment of George W. Horton in 1840) [hereinafter *Short History*]; James Hambleton & Jim Paulsen, *The "Official" Texas Court Reports: The Rest of the Story*, 49 TEX. B.J. 842, 842 (Sept. 1986) (noting L.K. Smoot, held the post from 1932 to 1961) [hereinafter *Rest of the Story*]; Jim Paulsen & James Hambleton, *Whatever Happened to 1845? The Missing Decisions of the Texas Supreme Court*, 48 TEX. B.J. 830, 830 (July 1985) (noting the first reporters of the Supreme Court of the State of Texas) [hereinafter *Whatever Happened*]; J.H. DAVENPORT, *THE HISTORY OF THE SUPREME COURT OF THE STATE OF TEXAS* 307–19 (1917) (listing the first ten official reporters of the Supreme Court of the State of Texas).
- ² JAMES L. HALEY, *THE TEXAS SUPREME COURT: A NARRATIVE HISTORY, 1836–1986* 263 n.31 (Austin, Univ. Tex. Press 2013). Although *Dallam's Digest* is often found bound with a red and gold "Texas Reports" on its spine and occasionally listed as Volume "0," it is not part of the official *Texas Reports* series. *Whatever Happened*, 48 TEX. B.J. at 830.
- ³ HALEY at 52, 263 n.31; *Short History*, 65 TEX. L. REV. at 276.
- ⁴ TEX. CONST. art. IV, § 1 (1836); HALEY at App'x A.
- ⁵ Act approved Dec. 15, 1836, 1st Cong., R.S., § 1, *reprinted in* 1 H.P.N. GAMMEL, *LAWS OF TEXAS 1822–97*, 1139 (Austin, Gammel Book Co. 1898); HALEY at App'x A; MICHAEL ARIENS, *LONE STAR LAW: A LEGAL HISTORY OF TEXAS 15–16* (Lubbock, Tex. Tech Press, 2011); DAVENPORT at 7–8.
- ⁶ James W. Paulsen, *The Judges of the Supreme Court of the Republic of Texas*, 65 TEX. L. REV. 305, 308 (Dec. 1986) (noting the Court's first Chief Justice, James T. Collinsworth, never wrote an opinion and never presided over a session of the Court) [hereinafter *Republic Judges*]; *Short History*, 65 TEX. L. REV. at 250; DAVENPORT at 9–10.
- ⁷ Article IV mandated that the Court would consist of a Chief Justice as well as Associate Judges composed of the Republic's district judges, and the first Republic Congress established four judicial districts covering the Republic's 22 counties on December 22, 1836. *Compare* TEX. CONST. art. IV, §§ 1, 7 (1836), *with* Act approved Dec. 22, 1836, 1st Cong., R.S., § 1, *reprinted in* 1 H.P.N. GAMMEL, *LAWS OF TEXAS 1822–97*, 1258 (Austin, Gammel Book Co. 1898); see also HALEY at 15–16, 19, APP'X A.
- ⁸ *JOURNALS OF THE SENATE OF THE REPUBLIC OF TEXAS: FIRST CONGRESS—FIRST SESSION 95-96* (Columbia, Texas 1836).
- ⁹ *Short History*, 65 TEX. L. REV. at 241; HALEY at 18; ARIENS at 16 (The 1836 Constitution "disqualified from any case heard by the supreme court the district judge who signed the judgment after the trial"); see also James W. Paulsen, *A Sesquicentennial Celebration: The Establishment of a Unique Texas Institution*, 53 TEX. B.J. 43, 43 (Jan. 1990) [hereinafter *Sesquicentennial Celebration*].
- ¹⁰ HALEY at 18; ARIENS at 16, 19 (a majority of the Associate Judges and the Chief Justice constituted a quorum); *Sesquicentennial Celebration*, 53 TEX. B.J. at 43.
- ¹¹ HALEY at 18, App'x A; ARIENS at 20; *Short History*, 65 TEX. L. REV. at 248–49; AUSTIN CITY GAZETTE, Jan. 15, 1840, at 2, col. 4 ("We congratulate the country on the commencement of a new era in the judicial annals of this Republic; we allude to the opening of the Supreme Court, and the commencement of its first session.").
- ¹² HALEY at 19–20, App'x A; ARIENS at 19–20; *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Short History*, 65 TEX. L. REV. at 252; *Republic Judges*, 65 TEX. L. REV. at 316; DAVENPORT at 10, 13. While the Court's third Chief Justice, Thomas Jefferson Rusk, may not have been a "learned judge or a profound lawyer," he was acclaimed as the most heroic combatant at the Battle of San Jacinto, where he rallied the Texian troops after General Sam Houston was wounded in the ankle by shouting, "Remember the Alamo! Remember Goliad!" *Compare Republic Judges*, 65 TEX. L. REV. at 316 (quoting JAMES D. LYNCH, *THE BENCH AND BAR OF TEXAS* 67 (St. Louis, Nixon-Jones Printing Co. 1885)), *with* DAVENPORT at 12–13 n.1. Indeed, it was said that Chief Justice Rusk won the laurels of the Battle of San Jacinto, while other men wore them. DAVENPORT at 13 n.1.
- ¹³ *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; Dylan O. Drummond, *A Vote By Any Other Name: The (Abbreviated) History of the Dissent from Denial of Review at the Texas Supreme Court*, APP. ADVOC., Spring 2006, at 8–9 n.12 (noting that street corner is now occupied by the 22-story 100 Congress office building).
- ¹⁴ *Dallam* 357 (Tex. 1840) (cause number "I").
- ¹⁵ DAVENPORT at 15; see also ARIENS at 20.

- 16 *Sesquicentennial Celebration*, 53 TEX. B.J. at 43; *Short History*, 65 TEX. L. REV. at 241.
- 17 *Id.* at 270.
- 18 *Id.* at 270–71. There are accounts of one hijacked shipment of Chief Justice John Hemphill’s law books being used by the Comanche to torture their captives by forcing the prisoners to read the books aloud. *Id.* at 271. An observer remarked, “[d]eath would have been preferable” to such treatment. *Id.* When not using the law books as torture aids, the Comanche tore out the pages to roll into cigarettes. *Id.*
- 19 See *Short History*, 65 TEX. L. REV. at 275, 275 n.236.
- 20 Compare *Short History*, 65 TEX. L. REV. at 275, with *Whatever Happened*, 48 TEX. B.J. at 830.
- 21 Act approved Jan. 21, 1840, 4th Cong., R.S., reprinted in 2 H.P.N. GAMMEL, LAWS OF TEXAS 1822-97, 401 (Austin, Gammel Book Co. 1898); see also HALEY at 263 n.31.
- 22 Act approved Jan. 21, 1840, § 1, 4th Cong., R.S., reprinted in 2 H.P.N. GAMMEL, LAWS OF TEXAS 1822-97, 401, 402 (Austin, Gammel Book Co. 1898).
- 23 HALEY at 263 n.31; *Short History*, 65 TEX. L. REV. at 275. At the time of the Republic’s demise, the Court had only issued approximately 276 pages of opinions. *Id.* at 275 n.234.
- 24 *Short History*, 65 TEX. L. REV. at 275 n.232.
- 25 See *id.* at 274–75.
- 26 Daffan Gilmer, *Early Courts and Lawyers of Texas*, 12 TEX. L. REV. 435, 449 (1934).
- 27 Gilmer, 12 TEX. L. REV. at 449.
- 28 *Short History*, 65 TEX. L. REV. at 275; *Whatever Happened*, 48 TEX. B.J. at 830; Bowen C. Tatum, Jr., *A Texas Portrait: James Wilmer Dallam*, 34 TEX. B.J. 257, 258 (Mar. 1971).
- 29 *Short History*, 65 TEX. L. REV. at 275; Tatum, 34 TEX. B.J. at 257–58.
- 30 LYNCH at 251; see also HALEY at 51; Tatum, 34 TEX. B.J. at 257.
- 31 Tatum, 34 TEX. B.J. at 257–58; LYNCH at 251.
- 32 Tatum, 34 TEX. B.J. at 258.
- 33 LYNCH at 253.
- 34 *Id.*
- 35 LYNCH at 251; see also HALEY at 51; *Short History*, 65 TEX. L. REV. at 275.
- 36 *Short History*, 65 TEX. L. REV. at 275 n.239; Tatum, 34 TEX. B.J. at 257; LYNCH at 251.
- 37 Dylan O. Drummond, *Citation Writ Large*, 20 APP. ADVOC. 89, 91 n.15 (Winter 2007); *Short History*, 65 TEX. L. REV. at 275 (describing how Dallam began to compile his digest of Republic Court opinions in 1844); see also HALEY at 51; Tatum, 34 TEX. B.J. at 257 (noting Dallam’s birth in 1818).
- 38 ARIENS at 19; *Short History*, 65 TEX. L. REV. at 275; Tatum, 34 TEX. B.J. at 258.
- 39 *Short History*, 65 TEX. L. REV. at 276, 373–74. All three missing opinions were finally published some 141 years later when South Texas College of Law Professor Jim Paulsen was appointed by the Court to compile and publish missing opinions from the Court’s 1845 term. James W. Paulsen, *The Missing Cases of the Republic: Reporter’s Introduction*, 65 TEX. L. REV. 372 (1986) (the Court’s order appointing Paulsen as Reporter for the 1845 term appears in the unnumbered preceding pages of volume 65 of the *Texas Law Review*, issue no. 2); see *Hall v. Aldridge* (Tex. 1841), 65 TEX. L. REV. 429 (Paulsen rep. 1986); *H.H. Williams & Co. v. Borden* (Tex. 1844), 65 TEX. L. REV. 432, 433 (Paulsen rep. 1986) (Jones, J., dissenting); *Republic v. Skidmore* (Tex. 1844) 65 TEX. L. REV. 441, 445 (Paulsen rep. 1986) (Ochiltree, J., dissenting).
- 40 *Whatever Happened*, 48 TEX. B.J. at 830; Tatum, 34 TEX. B.J. at 259.
- 41 See *Texas v. McCulloch*, Dallam 357 (Tex. 1840) (cause number “I”); *Whatever Happened*, 48 TEX. B.J. at 830. The 140 decisions issued by the Republic Court contained in *Dallam’s Digest* comprised only 276 pages, from page 357 to page 632. *Short History*, 65 TEX. L. REV. at 275 n.234.
- 42 DALLAM, A DIGEST OF THE LAWS OF TEXAS: CONTAINING A FULL AND COMPLETE COMPILATION OF THE LAND LAWS; TOGETHER WITH THE OPINIONS OF THE SUPREME COURT IV (Baltimore 1845). James Haley, who has recently published an authoritative narrative history of the Court, has observed that Dallam was clever to include in the title of his digest the claim that it contained a “full accounting of Texas’s byzantine land laws.” HALEY at 52.
- 43 Jim Paulsen & James Hambleton, *The “Official” Texas Court Reports: Birth, Death and Resurrection*, 49 TEX. B.J. 82, 82 (Jan. 1986); *Whatever Happened*, 48 TEX. B.J. at 830; Tatum, 34 TEX. B.J. at 259; LYNCH at 252. In 1881, Dallam’s digest was reprinted in larger typeface with the inclusion of headnotes. J. DALLAM, OPINIONS OF THE SUPREME COURT OF TEXAS: FROM 1840 TO 1844 INCLUSIVE (1881); see *Short History*, 65 TEX. L. REV. at 239 n.5, 275 n.234.
- 44 *Short History*, 65 TEX. L. REV. at 275; Tatum, 34 TEX. B.J. at 258.
- 45 Tatum, 34 TEX. B.J. at 259.
- 46 LYNCH at 252.
- 47 *Short History*, 65 TEX. L. REV. at 276, 276 n.245, 399; see *Mitchell v. Barton* (Tex. 1845), 65 TEX. L. REV. 397, 399 (Paulsen rep. 1986).
- 48 HALEY at 52; Tatum, 34 TEX. B.J. at 259–60; LYNCH at 252.
- 49 HALEY at 52; Tatum, 34 TEX. B.J. at 259; LYNCH at 252.
- 50 HALEY at 52; Tatum, 34 TEX. B.J. at 259–60; LYNCH at 252.

- 51 Tatum, 34 TEX. B.J. at 260; LYNCH at 252–53.
- 52 LYNCH at 252.
- 53 HALEY at 52, 263 n.31; *Short History*, 65 TEX. L. REV. at 276. The author performed an electronic search of all Texas cases citing *Dallam's Digest* on January 7, 2013, which returned 568 cases.
- 54 The dates (and, in some instances, the reporters themselves) noted in this table differ somewhat from that in previous accounts from authors much more learned than the present scrivener. *Contra Rest of the Story*, 49 TEX. B.J. at 842; DAVENPORT at 307–19. Nonetheless, the dates and identities of Court reporters in this table were taken directly from the *Texas Reports* volumes stored at the State Law Library.
- 55 As is explained, *supra*, George W. Horton was appointed as Court reporter in 1840 but never published any decisions of the Court. *Short History*, 65 TEX. L. REV. at 275 n.232.
- 56 In the preface to this volume, George Paschal explains the greater political and military forces at work that lead to the incomplete compilation of decisions and disjunctive printing of volumes 25 through 30. 25 Supp. Tex. vii-x. Alas, a further examination of this history will have to wait for another installment of this series.
- 57 Charles Robards is himself the editor of another compilation of Court cases found nowhere else in print, *Robards' Texas Conscript Cases*. Jim Paulsen & James Hambleton, *Brother, Can You Spare a Cite? Robards' Texas Conscript Cases, The Official Texas Reporter That Has Never Been Cited* 50 TEX. B.J. 1256, 1256 (Dec. 1987). This is yet another historical quirk that may be explored in a subsequent article in this series.
- 58 Removed from office 1867 by federal authorities because he was deemed an “impediment to reconstruction.” DAVENPORT at 313.
- 59 George Paschal included in an appendix to volume 29 several cases from the Court’s 1861 term that were never published in volume 26. 29 Tex. 487–521.
- 60 Died in office on July 15, 1932. 120 Tex. i.
- 61 Retired in October 1961. 162 Tex. i; *Rest of the Story*, 49 TEX. B.J. at 842. In an unnumbered flyleaf included in the initial pages of volume 163, L.K. Smoot penned a literary epitaph for the *Texas Reports*. See 163 Tex., at preface (“[I]t seems that the official reports are no longer necessary. THEREFORE, with this volume, they bid adieu to the legal profession, although they may be helpful archives to the historical welfare of the State.”).
- 62 Apparently, Ghent was hired with the understanding that the Court was in the process of eliminating the position of Court reporter. *Rest of the Story*, 49 TEX. B.J. at 842.

[Return to Journal Index](#)

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Prof. Steven Harmon Wilson

Mr. R. Paul Yetter

COURT LIAISON

Justice Paul W. Green
Supreme Court of Texas

TEXAS SUPREME COURT
HISTORICAL SOCIETY
P.O. Box 12673
Austin, Texas 78711-2673

Phone: 512-481-1840

Email: tschs@sbcglobal.net

Web: www.texascourthistory.org

Executive Director
Bill Pugsley

Accounts and Operations Manager
Mary Sue Miller

JOURNAL STAFF

General Editor
Lynne Liberato
lynne.liberato@haynesboone.com

Executive Editor
David Furlow
david.furlow@tklaw.com

Deputy Executive Editor
Dylan Drummond
dodrummond@gmail.com

Assistant Editor
Bill Pugsley
tschs@sbcglobal.net

Consulting Editor
Marilyn Duncan
mpduncan@austin.rr.com

Production Manager
David Kroll
dkroll@texasbar.com

[Return to Journal Index](#)