FOREWORD

“T here’s nothing entertaining about a state court. It’s legal drudgery.” I was told this by a respected historian when the Texas Supreme Court Historical Society was sizing up the task of writing the present volume. I disagreed then, and continued to disagree over the years, yet had only my theatrical predisposition to see dramatic conflict in the most casual interactions to buttress my opinion. But as soon as the manuscript chapters for the first book-length history of the Texas Supreme Court since 1917 began rolling off Jim Haley’s printer in 2010, I had the proof I needed. Filling the pages were story after story, rich in character, thick with tension, and as compelling to read as a mystery novel. Buried beneath the dry legalities of Texas judicial history lay a narrative stream that Haley located with the art and certainty of a seasoned dowser. The dream of the society for the past thirteen years was finally coming to pass.

That dream began in the summer of 1997 during a board of trustees meeting that concentrated largely on how to increase the historical society’s archival holdings of court-related material. Toward the end of the meeting, former justice Will R. Wilson expressed his hope that “the society would sponsor a published history of the Supreme Court.” And he added, parenthetically, that he would be willing to “contribute money toward such a project.” A few minutes later, as one of the final decisions of the day, the board selected Southern Methodist University School of Law professor Joseph W. McKnight, who was, as you might suspect, absent from this particular meeting, for the task of considering Judge Wilson’s offer and submitting a proposal.

That which you hold in your hand differs from the book proposed by Professor McKnight. The subject is the same, of course, and the time frame similar, even if a bit longer, but the board’s decision to rely on a single author’s point of view, to commission a historian who had attended law school but who was not a lawyer, to concentrate as much on stories as on cases, to

include judicial biographies in the main text, and to appeal to the largest possible audience draws this book more in line with the first history of the Court, the one Harbert Davenport wrote almost a century ago, and closer to the handful of other state court histories—those for Tennessee and Missouri, for example—that were on the market when this book was begun. The degree to which this approach altered the initial concept for this book probably disappointed those who came to the task with a grand vision for the final product. Committee members charged with the society’s history book project originally sought a masterwork in three volumes—a chronicle of the Court that included an in-depth study of all the important cases and judicial trends in one volume, with a second volume set aside for biographies, and a third for short articles on court-related topics. More than a judicial history of the Court, the boxed set of books would serve as a reference work written by attorneys for use by attorneys, and would become an invaluable resource for the legal community—a bold reach for the definitive edition.

The book that James Haley was asked to write in 2009, however, was never meant to survey all the cases, sort through all the events, or even mention all the justices who sat on the Court. Though smaller in scope, Haley’s book had a far more challenging task: it had to change people’s attitudes about Texas judicial history, remove the perception of “legal drudgery,” and capture the attention of everyone from the appellate lawyer to the history buff, the middle school teacher to the law school professor, along with all those folks who live outside Texas. Most importantly, Haley had to convince attorneys, especially the younger crop of law school graduates, that as a field of study, civil litigation in Texas is worthy of their time and effort, and quite possibly a career.

Compared to cases laid before the United States Supreme Court, where practically every petition amounts to a confrontation with the Constitution, the civil appeals that reach the Texas Supreme Court, shorn of the pathos and intrigue of criminal conduct and largely devoid of state constitutional concerns—certainly the civil rights issues so often seen at the federal level—present a dismal picture for the legal historian wishing to captivate the general public. This perception is especially true of the twentieth century, the period for which in-depth research in the state’s judicial history is most needed. Whenever legal scholars, who regularly tromped about the Republic era plowing up rustic cases and colorful characters, surveyed the wide, unbroken fields of the subsequent century, they would balk. Across that fence lay one hundred years of lawsuits and civil appeals over contracts, patents, insurance, interest payments, royalties—an exponentially increasing number of cases

resting on an ever-narrower set of issues. Almost to a person, the scholars turned away. They didn't see it as a chance to lay claim to the field for themselves; rather they perceived the subject as one filled with arid legal issues that would be of interest only to a legal specialist. Besides, no one had surveyed the ground; there was no map to give them the lay of the land. Venturing into the twentieth century meant breaking some very hard soil. They would need to spend months of tedious spadework preparing case studies, trend analyses, inquiries on procedural rules, and shifts in judicial philosophy. And after all the facts were gathered, they would still have to sift through the documents to find compelling stories. The prospect of teasing a coherent story line, much less an entertaining one, from a mountain of civil lawsuits was a task they would rather avoid. And they did. Everyone did, pretty much right up until the history book project began.

Contributing authors, nevertheless, took to the field in 2000 with enthusiasm and high aspirations. Organizing chapter assignments, time frames, and research requirements, the volunteer team of authors outlined the first of the three-volume history. The nineteenth century would sort itself out, of course—plenty of solid research from which to draw, some penned as early as the 1890s, the best published in the last thirty years, much of it written by the contributing authors themselves. But the twentieth century? They had only the vaguest notion what they might find after 1900. They undertook their work in their spare time, on weekends and holidays, without compensation, aided by an occasional college student but largely dependent on their own research skills. And those recruited to make sense of the twentieth century labored under especially disheartening conditions. After a point, it became clear they needed more time to develop the important cases within their time frames. But in truth it would probably have required a barnful of historians concentrating on large and small projects across a whole range of issues to satisfactorily consolidate the judicial history of the last century. Contributing authors punched holes in the soil, producing solid, substantive work in specific regions. Despite their efforts, however, no one writing about the twentieth century, except Professor Michael Ariens, managed to traverse his entire time frame. It was inexpressibly daunting. And while Ariens uncovered a fascinating story hidden within his decade, 1911–1921, he would no doubt be the first to admit that he could have written three more papers of the same length on those very same years.

James Haley's task, then, was to pull together the valuable work accomplished by the contributing authors, find enough narrative sustenance in each decade to feed the current group of readers—attorneys and laypeople—and,

if possible, to water the ground for a new crop of legal historians. Haley went drilling for water and struck a geyser. We are all the beneficiaries of his success.

William S. Pugsley
Executive Director
Texas Supreme Court Historical Society