

# When

the Dallas Court of Civil Appeals convened for its first term in September 1893, the Texas economy was still largely based on farming and cotton was king. But as manufacturing and commerce rapidly increased in importance during the 1880s and early 1890s, an unprecedented economic boom occurred throughout the state. That boom had a dramatic impact upon the courts. The volume of civil litigation increased, but the cases also became more intricate as more disputes arose from commercial transactions, which were themselves becoming increasingly more complex. The economic boom caused a severe overload on our appellate judicial system.

Prior to 1891, the appellate courts of Texas consisted of the Supreme Court, one Court of Appeals, and a Commission of Appeals that sat in two separate sections. The Supreme Court's jurisdiction was limited to civil cases appealed from the district courts, while the Court of Appeals handled all criminal appeals plus the few civil appeals from cases tried in the county courts. Even with the power to assign cases to the Commission of Appeals without the parties' consent, the Supreme Court's docket was overcrowded, and the Court was falling further behind. The state's business development was in serious danger of being thwarted by the lack of an adequate appellate court system that would allow businessmen to resolve their commercial disputes in an efficient and speedy manner.

In 1891, the legislature approved and submitted to the voters a proposed amendment to Article V, Section 6 of the Texas Constitution that would establish an entirely new judicial system for the state with separate criminal and civil appellate systems. The plan envisaged creation of the Court of Criminal Appeals, abolition of the Court of Civil Appeals, and creation of a system of intermediate Courts of Civil Appeals located throughout the state devoted to handling the burgeoning civil docket. In its editorial endorsement of the constitutional amendment, the *Dallas Times-Herald* stated, "The amendment will afford relief to the crowded appellate courts, and, no doubt, one of the proposed civil courts of appeals will be located in Dallas." On August 11, 1891, the voters of Texas approved the constitutional amendment. The amendment allowed the legislature to divide Texas into not less than two, nor more than three, supreme judicial districts "as soon as practicable" after adoption and thereafter into such additional districts "as the increase in population and business may require," and to establish a Court of Civil Appeals in each such district.

The following spring, Governor James Hogg called a special session of the legislature to enact legislation to implement the new plan. On April 13, 1892, the legislature simultaneously established the first district in Galveston, the second district in Fort Worth, and the third district in Austin. The Governor appointed four of the six judges of the Commission of Appeals to the Courts of Civil Appeals and the judges of the Court of Appeals to positions on the new Court of Criminal Appeals. Each Court of Civil Appeals consisted of a Chief Justice and two associate Justices. The cities selected to be seats of the Courts of Civil Appeals were determined by the location of the railheads—the transportation centers of the times. Lawyers had to be able to readily travel on the trains to the appellate court.

From the outset, it was known that additional civil appeals courts would be needed, but the recession caused a delay in funding. On May 13, 1893, the legislature redistricted the state into five supreme judicial districts, establishing in San Antonio a fourth Court of Civil Appeals and the Court of Civil Appeals for the Fifth Supreme Judicial District in Dallas. Governor Hogg appointed Judge Tom Brown of Sherman to become the first Chief Justice of the Fifth District Court; however, a few days later a vacancy arose on the Supreme Court and Judge Brown received that appointment. On June 1, 1893, Henry W. Lightfoot was advised that the Governor had named him as the first Chief Justice of the Fifth District Court.



The Fifth Supreme Judicial District, with its court sitting in Dallas, consisted of 32 counties which covered all of northeast Texas—extending from Dallas north to the Oklahoma border, east to the Arkansas and Louisiana borders, and south halfway to Houston. At the time, Dallas was the largest city in the state with a population in excess of 38,000, and the total citizenry of Dallas County was twice that figure. The Fifth District embraced approximately one-third of the wealth and nearly one-third of the population and business of the state.

On August 9, 1893, Chief Justice Henry W. Lightfoot of Paris, Associate Justice N.W. Finley of Tyler, and Associate Justice Anson Rainey of Waxahachie arrived in Dallas to take office. The Chief Justice and his wife were guests in the home of his wife's brother, Dudley G. Wooten, at 214 Cadiz Street. Wooten, also a lawyer, was a member of the Dallas Bar Association and ultimately became a member of the United States Congress. Justices Finley and Rainey and their wives stayed at the Windsor and McLeod hotels, respectively. Justice Finley went back to his Tyler home on Saturday, August 23rd, and on that same day Justice Rainey, who apparently had gone home in the interim, returned to Dallas with his wife to select a house in Oak Cliff. George W. Blair, of Bonham, became the first Clerk of the Court. Blair's wife arrived on August 29th and they moved into their new home on Routh Street.

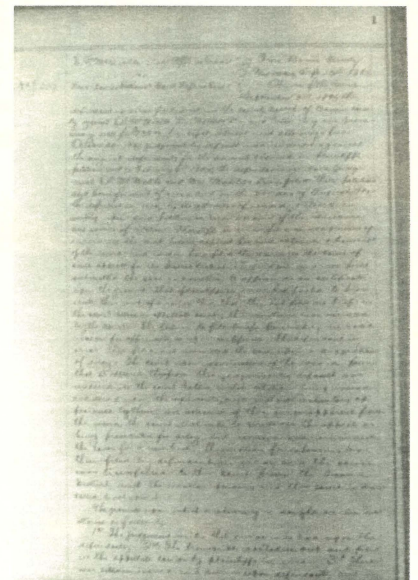


The Court took up offices in the southeast corner of the third floor of the county courthouse, which provided a majestic home for the new court. It was constructed largely of Texas red sandstone and "Blue Arkansas" granite. Although now affectionately known as "Old Red," the courthouse had just been completed and occupied within the prior year. Acclaimed as a masterpiece of Romanesque Revival architecture, it was also proclaimed the "steeliest" courthouse in the Southwest. The courthouse was the second tallest building in Texas (only surpassed by the state capitol), with its massive center tower reaching up 205 feet above the ground, and all the citizens of the city could hear the huge two-ton bell in the clock tower ring every hour.

Dallas County officials were most hospitable to the new court. Justice Lightfoot later expressed his profound gratitude to the commissioners' court for providing "the most comfortable and convenient courtroom, library room, consultation rooms, clerks office and judges rooms in the state." The county judge even vacated his courtroom as an accommodation to the Court.

On Monday, September 4th, the Fifth Court formally opened its first term. The Fifth Court succeeded to a large number of cases pending in the Fort Worth and Galveston courts from which it was carved. At the beginning of the Term, 639 cases were on the docket. The Court's calendar was already overcrowded, but the Justices vigorously attacked the case load.

On September 6th, the Court took up its motions docket, there being forty-seven pending motions. One resulted in the Court's first written opinion, which was issued the following Wednesday, September 13th. On that day, the Court also ruled on motions in twenty-one other cases, including *Davis vs. Estes*, Cause No. 2/534, where the appellants were represented by James M. Talbot, who ten years later would become an Associate Justice of the Court. The opinion in that case was entered on the second page of the Opinion Book and is reported at 4 Tex. Civ. App. 207, 23 S.W. 411. B.F. Looney, who would also subsequently ascend to the Court, was counsel in Cause Number 65, which was also on the docket that September.



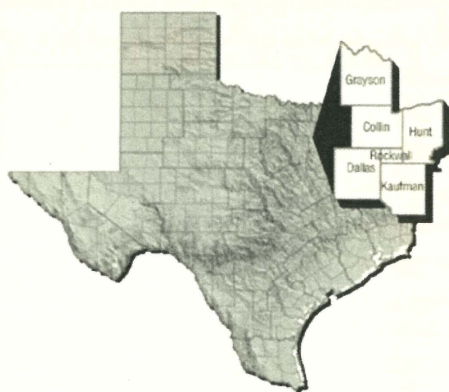


A little over two weeks later, the Court simultaneously announced its first thirteen decisions on the merits and disposed of eleven more motions. The first opinion of the Court decided on initial submission and ordered officially published was from Hillsboro County, Cause Number 27. Styled *Patty & Brockington vs. Hillsboro Roller-Mill Co.*, it is reported at 4 Tex. Civ. App. 224, 23 S.W. 336 and was entered in the Opinion Book at page 24. The case concerned the enforceability of a subscription agreement to buy stock in a start-up flour mill company for \$500. The Court reversed the judgment against the subscribers and remanded the case. During the first term, the Justices disposed of 486 cases, of which 363 were affirmed and 123 were reversed. A total of 333 new cases were filed, leaving 486 cases on the docket.

The legislature had set the salary for each judge at \$3,500 per year and provided for additional compensation only to a porter and to the sheriff for attendance at court. It set no salary for the clerk; instead the numerous fees were to be his compensation. For example, fifty cents were charged for docketing the cases, for filing the record, and even for entering an appearance. Continuances cost twenty cents. Making copies of papers in the case cost ten cents for each one hundred words and there was a similar charge by the word for the recording of the Court's opinions.

The legislature overlooked appropriating funds for furniture, a library, and operating expenses. The Dallas Bar Association, despite the hard economic times caused by the Panic of 1893, furnished at its expense the nucleus of a splendid library, and local bar members threw open their private libraries for the Justices' use. Upon learning that the Court was unable to procure a set of the Texas Reports, one Court of Criminal Appeals judge sent his own set, vowing that his court would get along on two sets. The state also apparently did not pay all of the money that had been appropriated. Consequently, the justices failed to receive their full salaries, and expenses were incurred that could not be paid. Finally, in early 1895, the legislature appropriated monies to make up the deficiencies which then totaled \$6,385.25, the Clerk having advanced from his own funds at least \$2,458.30 of that sum.

From the beginning, the Fifth Court experienced a substantially greater case load than any of the other appellate courts. Its calendar became so overcrowded that drastic action had to be taken. Rather than reducing the case load by transferring cases to the other courts of appeal, the legislature removed Smith and Gregg counties from the Fifth District on February 9, 1895, and transferred all of their pending cases to the First Court in Galveston.



The largest reduction in the size of the Fifth District occurred in 1907 when the legislature created the sixth court in Texarkana and reduced the Fifth District from 30 to 17 counties, removing most of east Texas from the Court's jurisdiction. Additional geographic changes during the 20th Century redefined the Fifth District into its present size. Since 2005, the Fifth District has consisted of Collin, Dallas, Grayson, Hunt, Kaufman, and Rockwall counties. Approximately 73 percent of the Court's case load originates from Dallas County, nineteen percent originates from Collin County, and the other counties within the district contribute the remainder of the Court's filings.

The state's appellate court system has grown from the five districts in 1893 to the fourteen that exist today. In 1978, the legislature increased the number of judges on the Dallas court from three to six in order to meet the burgeoning case load, and the Court began deciding cases in three-judge panels. Then, because the dramatic increase in the number of criminal cases overburdened



the Court of Criminal Appeals, in 1980 Article V, Section 6 of the constitution was amended to give the intermediate appellate courts jurisdiction over all appeals in criminal cases except capital ones. Accordingly, each Court of Civil Appeals was renamed "Court of Appeals." At the same time, the title "Associate" was changed to simply "Justice." These changes became effective September 1, 1981.

Because of the anticipated increase in case load due to the addition of a criminal docket, the size of the Fifth Court was doubled to twelve justices on September 1, 1981, at which time 450 cases were transferred from the Court of Criminal Appeals. A thirteenth justice was added two years later. In 1985, a constitutional amendment renamed each of the supreme judicial districts to their present title, "Courts of Appeal Districts."

Since 1981, the Fifth Court of Appeals has been the largest of the fourteen Courts of Appeal both in number of judges and case load. From 1893 through 1980, a total of 21,132 cases were filed in the Fifth Court. Since 1980, 69,921 cases were filed in the Fifth Court. Civil cases comprise 66 percent of the Court's case load, while criminal cases make up 34 percent of the docket. On average, the Court also hears more than 200 original proceedings annually, such as applications for writs of mandamus or habeas corpus.

The Fifth Court has been able to accomplish efficient docket disposal through diligence and organization. In addition to the Chief Justice and twelve Justices, the Court presently has an extremely dedicated and knowledgeable staff of 55, consisting of the Clerk and deputy clerks, secretaries, a business administrator, a financial officer, a general counsel, a managing attorney, staff attorneys who are permanent employees, and briefing attorneys serving a one-year term who are recent law-school graduates or current third-year law students.

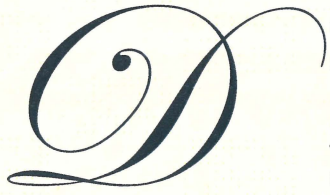
Over the years, the growth in the business before the Fifth Court has required the addition of space to fulfill its needs. In 1928, the Court moved to the sixth floor of the County Hall of Records Building and on January 1, 1966 relocated to its present location on the second floor of the Dallas County Courthouse, which is now called the George L. Allen, Sr. Courthouse. The Dallas County Commissioners funded the expansion of the offices for the judges and the staff, most of which was completed in 1991. Over the course of his tenure with the Court, Retired Justice Tom James generously funded renovations to the Court, including installation of a large, ornate wooden door, painting the Court's entry hall, transforming the Court's break room into a fully functioning kitchen, designing and installing the conference room and conference room furniture, and purchasing and donating pieces of fine art for the Court's common areas. He reframed all of the past and present judicial photos and created the judicial gallery in the entry hall to the courtroom. Justice James also commissioned the mural that adorns the wall behind the bench in the 2nd floor courtroom. The mural depicts the county courthouses in the Court's district, as of the date of commissioning, with Lady Justice as the focal point. Retired Justice Jim Moseley brought the Court into ADA compliance with his donation of a handicapped-accessible podium for the courtroom.

The Court's space has been enlarged several times through the years. Most recently, the Dallas County Commissioners authorized the Fifth Court to use all of the second floor to more adequately accommodate its staff, and renovations to the newly-acquired space once occupied by the County Law Library are currently underway. Additionally, the Dallas County Commissioners partnered with the Fifth Court to add additional courtroom space by renovating the Merrill Hartman Courtroom on the eighth floor of the Dallas County Courthouse. That courtroom can accommodate all





thirteen justices sitting en banc, as well as the justices of the Texas Supreme Court for whom the Fifth Court serves as a disaster relocation site.



Despite the intense demands on the Fifth Court, it has developed a well-deserved reputation for excellence over the past 125 years. It is a “hot court” where, at oral argument, the Justices come well-prepared, possess an intimate knowledge of the facts and legal issues being presented, and ask extremely penetrating and difficult questions of counsel—but always in a cordial manner.

Over the past twenty-five years, the Fifth Court has remained on the forefront of a global technology boom that has taken the Court from reviewing paper files and spiral bound briefs to reviewing the parties’ briefs and the appellate record electronically in the courthouse and also while away from the courthouse through the use of iPads and other portable electronics devices. In December 1996, the Fifth Court was the first appellate court in Texas to design and implement a court website. Courtstuff.com, an award-winning website, provided the public and the Bar with electronic case information that was updated nightly. The website included access to case docket information for all Fifth Court of Appeals cases and published and non-published opinions in full-text searchable format. The website also allowed users to sign up for and receive “v-notices” that would alert the user via e-mail when something was filed or the Court issued an order, notice, or opinion, in a case the person is following.

Then, in September 2013, the Fifth Court implemented the Texas Appellate Management E-filing System (TAMES). TAMES changed the way the Court does business in many ways. Parties are now required, with few exceptions, to e-file all documents filed with the Court. TAMES is integrated with the State of Texas e-filing system, eFile.TXCourts.gov, which provides parties with the ability to e-file documents with the Court twenty-four hours per day, 365 days a year. TAMES consists of three primary software components designed to support the appellate courts of Texas: 1) the Case Management System, 2) the Agenda Information Management System, and 3) the Public Website and Case Mail. The Case Management System is used to track and manage the Court’s docket. It is the system that allows case records to be viewed electronically by the Justices and Court staff. The Agenda Information System is used to electronically circulate documents throughout the Court. Justices can review, revise, and circulate opinions through this component of the system. The website and Case Mail not only provide case information and electronic documents to the public, but they also provide important information for users, such as self-help resources, information for practicing before the Court, electronic notices, and valuable information about the Court. The TAMES implementation took 18 months to complete, and the result is a streamlined system that has increased the efficiency of the Court.

In September 2016, the Fifth Court of Appeals became the first appellate court in the state to provide secure, online access for civil and criminal appellate attorneys to view and/or download case documents not available to the public through the court’s website. The Attorney Portal provides attorneys of record easy access to most case documents twenty-four hours a day. The Fifth Court of Appeals was the pilot court for this system that ultimately became available for use in all appellate courts in the state, including the Supreme Court of Texas.

Today, members of the public, the bench, and the Bar celebrate the Court’s twenty-five year foray into its second century, pausing to reflect on the past. Proudly commemorating this milestone and combining its rich heritage with vision toward the future, the Fifth District Court of Ap-