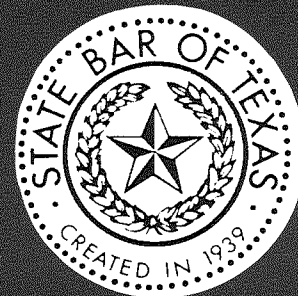




IN CHAMBERS



Official Publication of The Texas Center for the Judiciary, P.O. Box 12487, Capitol Station Austin, Texas 78711

VOL. 5, NO. 3

AUGUST, 1977

El Paso Host City

SECTION CONFERENCE SEPTEMBER 27-30

The annual Judicial Section Conference will be held in El Paso, September 27-30.

Registration information will be mailed in mid-August to members of the State Bar's Judicial Section by the Texas Center for the Judiciary.

All conference business meetings will be held in the El Paso Civic Center and room accommodations will be provided by Paso del Norte Hotel, Holiday Inn Downtown, Ramada Inn Central and Travelodge Central.

Registration is 10 a.m. to 4 p.m., Tuesday, September 27, at the Civic Center.

Conference sessions are scheduled all day Wednesday and Thursday, and Friday morning. Adjournment is noon Friday.

Legislation, judicial retirement, products liability and judicial history are among the topics to be discussed during the four-day meeting.

In addition to registration, Tuesday's schedule will feature golf and tennis at Santa Teresa Country Club, and a reception in the evening.

Wednesday's schedule includes a prayer breakfast, business sessions, and in the evening, a trip to Juarez for dinner and entertain-

ment at the dog races.

Business sessions will be held Thursday morning and afternoon, with the afternoon session being divided into appellate and trial judges meetings. A reception and the annual banquet will be held at the Civic Center Thursday night.

Election of officers and committee reports are scheduled Friday morning as well as a ceremony in remembrance of deceased judges.

Judicial Section Chairman Paul W. Nye, chief justice of the Corpus Christi Court of Civil Appeals, will preside at the conference.

BARROW NEW JUSTICE OF SUPREME COURT

Charles W. Barrow, chief justice of the 4th Court of Civil Appeals in San Antonio, was appointed associate justice of the Texas Supreme Court July 15, replacing Don B. Yarbrough.

Yarbrough resigned shortly after the Texas Legislature, meeting in joint session July 15, convened to hear allegations of misconduct against him.

Gov. Dolph Briscoe, after receiving Yarbrough's letter of resignation, appointed Barrow, who was confirmed by the Senate July 18.

Barrow began his judicial career in 1959 as 45th District Court judge. He served until 1962, when he succeeded his father, H. D. Barrow, as associate justice of the 4th Court of Civil Appeals in San Antonio.

In 1967 Barrow was elected chief justice of the appellate court.

He is a Baylor University School of Law graduate and, in 1972, was

named Lawyer of the Year by that institution.

Barrow has been active in the Texas legal community, serving on the State Bar's Committees on Pattern Jury Instructions and Administration of Justice. He is a charter member of the Judicial Qualifications Commission and served a four year term on the Commission.

A former chairman of the Judicial Section (1971-72), Judge Barrow also served as chairman of the CLE Committee, governing body of the Texas Center in 1975. He presently is a member of the CLE Committee.

He and his wife, Sugie, have four sons: Charles W., Jr., a Chicago architect; John, a San Antonio lawyer; David, attending law school at Boston University; and James, who will be a freshman at Southern Methodist University this fall.



Charles W. Barrow greets well-wishers after being sworn in as associate justice of the Supreme Court of Texas.

Inside . . .

PAGES 2 & 3

A Summary of Legislation

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THE 65TH TEXAS LEGISLATURE: A SUMMARY

This summary of action taken by the 65th Texas Legislature focuses on legislation affecting the judiciary of Texas. It was compiled by Jim Hutcheson, general counsel of the Texas Judicial Council.

DISTRICT COURTS

Three acts of the 65th Legislature created a total of 79 new district courts. S.B. 330, passed early in the session, and signed into law, created 23 new courts, effective April 1, 1977. S.B. 368, popularly called the "Omnibus Courts Bill," created 25 more. It has not yet been signed. S.B. 266, also not yet signed, converts the 31 functioning domestic relations and special juvenile courts into district courts.

Summary of S.B. 330:

- effective April 1, 1977
- creates the following 23 new district courts:

217th	Angelina
218th	Atascosa, Frio, Karnes, LaSalle, Wilson
219th	Collin
220th	Hamilton, Comanche, Bosque
221st	Montgomery
222nd	Deaf Smith, Oldham
223rd	Gray
224th (civil preference)	Bexar
225th (civil preference)	Bexar
226th (criminal preference)	Bexar
227th (criminal preference)	Bexar
228th (criminal preference)	Harris
230th (criminal preference)	Harris
231st (family law preference)	Tarrant
232nd (criminal preference)	Harris
233rd (family law preference)	Tarrant
234th	Harris
236th	Tarrant
237th	Lubbock
238th	Midland
239th	Brazoria
240th	Fort Bend
241st (juvenile, family law preference)	Smith
- Make the following changes:
 1. Removes Collin from the 59th, leaving Grayson only.
 2. Removes Hamilton, Comanche and Bosque from the 52nd, leaving Coryell only.
 3. Removes Deaf Smith and Oldham from the 69th, leaving Moore, Hartley, Sherman and Dallam.

Summary of S.B. 368:

- creates the following 25 new district courts:

NUMBER	COUNTIES	EFF. DATE
1A	Jasper, Newton, Tyler	9-1-77
242nd	Castro, Hale, Swisher	9-1-77
243rd	El Paso	9-1-77
244th	Ector	9-1-77
245th (family law preference)	Harris	9-1-77
246th (family law preference)	Harris	9-1-77
247th (family law preference)	Harris	9-1-77
248th (criminal preference)	Harris	9-1-77
249th	Johnson, Somervell	9-1-77
250th	Travis	9-1-77
251st	Potter, Randall	9-1-77
252nd (criminal preference)	Jefferson	9-1-77
253rd	Chambers, Liberty	9-1-77
254th (family law preference)	Dallas	9-1-77
255th (family law preference)	Dallas	9-1-77
256th (family law preference)	Dallas	1-1-77
257th (family law preference)	Harris	9-1-77
258th	Polk, San Jacinto, Trinity	9-1-77
259th (with county ct. jurisdiction)	Jones, Shackelford	9-1-77
260th	Orange	1-1-78
261st	Travis	9-1-77
262nd (criminal preference)	Harris	1-1-78
263rd (criminal preference)	Harris	9-1-78
264th	Bell	1-1-79
265th (criminal preference)	Dallas	1-1-79
- creates offices of distinct attorney for:

258th	Polk, San Jacinto, Trinity	9-1-77
259th	Jones, Shackelford	9-1-77
- makes the following changes:
 1. Removes Brazoria, Fort Bend and Wharton Counties from the 130th District, leaving Matagorda County only. 1-1-81
 2. Removes Shackelford from the 90th, leaving Stephens and Young. 9-1-77
 3. Removes Jones from the 104th, leaving Taylor only. 9-1-77
 4. Removes Jones from the criminal district attorney's district leaving Callahan and Taylor Counties. 9-1-77

Summary of S.B. 266:

- effective 9-1-77 (31 courts)
- replaces all functioning domestic relations and special juvenile courts with district courts of general jurisdiction to be called family district courts and which are to "have primary responsibility for" cases involving family law matters:

NUMBER	COUNTY	COURT REPLACED
300th	Brazoria	D. R. Court
301st	Dallas	D. R. Court No. 1
302nd	Dallas	D. R. Court No. 2
303rd	Dallas	D. R. Court No. 3
304th	Dallas	Juvenile Court No. 1
305th	Dallas	Juvenile Court No. 2
306th	Galveston	D. R. Court
307th	Gregg	D. R. Court
308th	Harris	D. R. Court No. 1
309th	Harris	D. R. Court No. 2
310th	Harris	D. R. Court No. 3
311th	Harris	D. R. Court No. 4
312th	Harris	D. R. Court No. 5
313th	Harris	Juvenile Court No. 1
314th	Harris	Juvenile Court No. 2
315th	Harris	Juvenile Court No. 3
316th	Hutchinson	Court of D. R.
317th	Jefferson	Court of D. R.
318th	Midland	Court of D. R.
319th	Nueces	Court of D. R.
320th	Potter	Court of D. R.
321st	Smith	Court of D. R.
322nd	Tarrant	Court of D. R. No. 1
323rd	Tarrant	Court of D. R. No. 2
324th	Tarrant	D. R. Court No. 3
325th	Tarrant	D. R. Court No. 4
326th	Taylor	Court of D. R.
327th	El Paso	D. R. Court
328th	Fort Bend	D. R. Court
329th	Wharton	Court of D. R.
330th	Dallas	D. R. Court No. 4

The geographic jurisdiction of several district courts was altered by other bills: S.B. 1223 adds Hudspeth and Culberson Counties to both the 205th and 210th judicial districts, which formerly included El Paso County only. H.B. 1319 removes McCulloch County from the 35th Judicial District and replaces it with Mills, resulting in the 35th district being composed of Brown, Coleman and Mills Counties. Mills County is removed from the 27th district, leaving Bell and Lampasas Counties. McCulloch County remains in the 198th district, along with Bandera, Concho, Kerr, Kimble and Menard.

COUNTY COURTS AT LAW

Sixteen new county courts at law were created:

COUNTY	COURT	EFF. DATE	BILL NO.
Harris	Probate Court No. 3 (to hear all mental illness proceedings)	9-1-77	S.B. 522
Harris	County Civil Court at Law No. 4	1-1-78	S.B. 569
Galveston	County Court No. 2	9-1-77	S.B. 806
Hidalgo	County Court at Law No. 2	5-10-77	S.B. 920
McLennan	County Court at Law No. 2	1-1-79, or earlier as determined by the Co. Commissioners	S.B. 1213
Comal	County Court at Law	7-15-77	H.B. 926
El Paso	County Court at Law No. 4		H.B. 1092
Tarrant	County Court at Law No. 2 (civil and probate only)	1-1-79	H.B. 1382
Midland	County Court at Law	1-1-80, or earlier as determined by the Co. Commissioners	H.B. 1519
Tom Green	County Court at Law	1-1-80, or earlier as determined by the Co. Commissioners	H.B. 1733
Randall	County Court at Law	1-1-80, or earlier as determined by the Co. Commissioners	H.B. 2134
Dallas	County Criminal Court No. 6 (criminal only)	1-1-77	H.B. 2141
Dallas	County Criminal Court No. 7 (criminal only)	1-1-77	H.B. 2141
Dallas	County Court of Dallas Co. at Law No. 5 (civil only)	1-1-77	H.B. 2142
Reeves	County Court at Law	1-1-78, or earlier as determined by the Co. Commissioners	H.B. 2147
Walker	County Court at Law	9-1-77	H.B. 816

The names of two existing county courts at law were changed:

COUNTY	FROM	TO	EFF.	BILL
Galveston	"Probate Court"	"Probate & County Court"	9-1-77	S.B. 806
Tarrant	"County Court at Law"	"County Court at Law No. 1"	1-1-79	H.B. 1382

APPELLATE COURTS

S.J.R. 18, to be voted on in November, 1977, would create a nine-member Court of Criminal Appeals which may sit and decide cases in three-judge panels, the designation thereof to be under rules established by the court. The court must sit en banc for capital punishment cases. The Court is empowered to appoint Commissioners as provided by law. The writ of power of the Court is increased to include mandamus, procedendo, prohibition and certiorari for the purpose of protecting its jurisdiction or enforcing its judgments. The two present permanent commissioners of the Court would become two of the new judges, and the Governor would appoint the other two judges from among qualified persons on or after January 1, 1978.

S.J.R. 45, to be voted on in November, 1978, would allow the Legislature to increase the membership of Court of Civil Appeals and authorize them to sit in sections.

H.B. 1355, is anticipatory implementing legislation for S.J.R. 45. Upon adoption of S.J.R. 45 by the voters, the First and the Fourteenth (Houston) and the Fifth (Dallas) courts would each consist of one Chief Justice and five Associate Justices. Effective January 1, 1983, the Second (Fort Worth) Court is similarly increased. The courts may sit in panels of not less than three. When the courts are increased, the new justices draw lots for terms of office.

Another section of the bill provides that justice of a Court of Civil Appeals may be assigned temporarily to another Court of Civil Appeals by the Chief Justice of the Supreme Court regardless of whether a vacancy exists in the Court of Civil Appeals to which he is assigned. A qualified retired Justice may be assigned to a Court of Civil Appeals for active service regardless of whether a vacancy exists.

APPROPRIATIONS

H.B. 510, the General Appropriations Act, contains the following judicial salaries:

	'78	'79
Supreme Court & Ct. Crim. App.		
Chief J. Presid J	50,300	51,900
Justices & Judges	49,800	51,400
Court of Civil Appeals		
Chief Justices	44,400	45,900
Justices	43,900	45,400
District Judges	34,500	35,700
District Attorneys	26,100	27,000

Some new items in the bill are:
 —a central staff for the Supreme Court, consisting of an Executive Assistant (\$28,500/\$29,500) and three Research Assistants (\$20,000/\$20,700).
 —Amounts were appropriated to three Courts of Civil Appeals to employ retired judges on a per diem basis:

	'78	'79
First (Houston)	\$17,840	\$18,760
Fifth (Dallas)	\$35,680	\$37,520
Fourteen (Houston)	\$17,840	\$18,760

S.B. 1253 makes a supplemental appropriation of \$4,000 for the year ending August 31, 1977, for travel expenses of judges of Courts of Civil Appeals when sitting in other districts. The amount allowed for the 78-79 biennium was raised from \$5,000 to \$11,500 per year.

JUDICIAL RETIREMENT

S.B. 12 lowers the service requirement from 24 to 20 years for judicial retirement regardless of age (Section 4 of Article 6228b, V.A.T.S.) SIGNED, EFF. 5-20-77

S.B. 343 allows an additional 10% benefit for judges who retired at or before age 70 and are serving as presiding judges of administrative judicial districts.

S.B. 349 provides that the compensation a retired judge receives while on assignment to a court or while serving as a commissioner to the Court of Criminal Appeals is retirement allowance and is not to be construed as salary or remuneration for service.

H.B. 617 provides a system for persons to receive retirement benefits from more than one statewide retirement system, including the Judicial Retirement System.

S.B. 609 permits retired appellate and district judges to conduct marriage ceremonies. SIGNED, EFF. 90 days

JUDICIAL QUALIFICATIONS COMMISSION

S.J.R. 30, to be voted on in November, 1977, would change the name of the judicial Qualifications Commission on Judicial Conduct and add one citizen (appointed by the Governor) and one justice of the peace (appointed by the Supreme Court) to its membership. The Commission would be empowered to suspend a judge upon indictment and to recommend suspension to the Supreme Court in other instances. The powers of a Master would be strengthened. The Commission could issue a public reprimand or censure and the Supreme Court would be empowered to prohibit a removed judge from holding judicial office in the future. The resolution would empower the Legislature to diminish the confidentiality of the Commission's proceedings and would allow the Commission to issue public statements at any time concerning cases of notoriety. A case against a justice of the Supreme Court would be heard by a 7-member panel of judges of Courts of Civil Appeals.

S.B. 365 changes the name of the Judicial Qualifications Commission to the Commission on Judicial Conduct and strengthens the power of a master in compelling testimony.

COURT ADMINISTRATION

S.B. 192 creates the state office of Court Administration to assist the Supreme Court and Chief Justice in administrative matters. It directs the Supreme Court to

SUMMARY OF JUDICIAL LEGISLATION

promulgate rules of administration and to appoint an administrative director of the courts who shall serve under the direction and supervision of the Chief Justice and an additional duty of office, shall also serve as Executive Director of the Texas Judicial Council. As a duty of office the administrative director is directed to consult with various court administrative officers to encourage a more efficient operation of the Texas judicial system and to aid judges, clerks and court coordinators in this regard. This bill makes no changes in Article 200a which provides for the administrative judicial districts and the presiding judges thereof. The bill specifically prohibits any infringement upon the judicial discretion of any judge, does not limit authority of any court to appoint clerical personnel, and does not authorize a judge to act in a case of which his court would not have potential jurisdiction.

H.B. 828 directs the Chief Justice of the Supreme Court to deliver a "state of the judiciary" message at the commencement of each regular session of the legislature. SIGNED, EFF. 90 days

S.B. 1164 allows the assignment of a retired district or domestic relations judge by the presiding judge of the administrative district in which he resides to a court outside that administrative district and allows assignment of retired district judge to domestic relations or special juvenile courts.

H.B. 609 allows the assignment under Article 200a of "former" district judges, who have not been removed from office, are not more than 70 years of age and who agree to the prohibition of practice of law as do retired judges subject to assignment. SIGNED, EFF. 90 days

S.B. 65, amending Article 200a, V.A.C.S., makes it the duty of a district judge "to diligently discharge the administrative responsibilities of office [and] to rule on a case within three months after that case has been taken under advisement." The bill also makes it a duty to request the Presiding Judge to assign an outside judge for election contests, suits to remove local officials and motion to recuse the regular judge.

S.B. 812 adds Rockwall County to the First Administrative Judicial District, which heretofore had not been included in any administrative district.

H.B. 782 allows the exchange of benches without former order by the judges of the 51st and 119th judicial districts, including the counties in which the districts do not overlap. (involves Coke, Concho, Irion, Runnels, Schleicher, Sterling and Tom Green (Counties) SIGNED, EFF. 5-25-77

S.B. 865 allows domestic relations court judges in Harris County to appoint masters to hear judgment motions. The master's recommendations are then referred to the judge for action.

H.B. 1488 provides that, with the approval of the commissioners court in any court where two or more county courts at law have criminal jurisdiction, those courts may establish a court administrator's system and appoint and designate by rule the duties of a court administrator. The commissioners court is required to provide necessary funding.

S.B. 517 permits a court manager and coordinator system for the Harris County criminal courts-at-law to be established and governed by the courts and requires the commissioners court to provide necessary funding.

S.B. 519 permits the Harris County criminal court-at-law judges, to select a presiding judge who is to be the chief administrator of court-related services and may appoint special judges to sit for absent or disabled judges. The judges are also empowered to adopt local rules of practice and procedure.

S.B. 835 allows the commissioners courts of Harris and Dallas Counties to authorize locations other than the courthouse as auxiliary county seats for courts to hear non-jury proceedings.

NOTE: Early versions of the appropriations bill included line items for district judges to utilize in hiring supportive staff. These line items were deleted in the final bill.

COURT REPORTERS

S.B. 586 requires court reporters to be certified by the Supreme Court establishes a Court Reporters Committee to administer tests on the qualifications set out in the Act, collect fees, certify applicants to the Supreme Court, and revoke certificates for unprofessional conduct (appealable to the district court). Disciplinary rules are to be promulgated by the Supreme Court. A "grandfather" clause is included and official court reporters continue to be appointed by the individual judges.

H.B. 2193 provides that a visiting court reporter from another judicial district shall receive actual travel expenses and a per diem of \$30.

TRIAL COURT JURISDICTION

H.J.R. 37, to be voted on in November, 1978, would extend the civil jurisdiction of justices of the peace from \$200 to \$1,000.

S.B. 714 allows a property owner to appeal a decision of a board of equalization on the value of property to a district court, with or without a jury, which is to then fix a value on the property. Rights under the bill are cumulative and do not preempt other remedies.

H.B. 459 allows county courts to grant occupational drivers licenses. SIGNED, EFF. 90 days

S.B. 249 deals with the section of the Family Code requiring a juvenile court judge to be a lawyer. The former confusing provisions allowing some exceptions to the lawyer-judge rule is replaced with a subsection requiring that if a non-lawyer judge is designated the juvenile judge, an alternate juvenile court must also be designated to which the child has the right to a trial de novo of any appealable orders of the non-lawyer judge.

H.B. 1482 returns regular jurisdiction to the County Court of Parker, which was diminished in 1973 by conferring concurrent jurisdiction to the 43rd district court. SIGNED, EFF. 5-25-77

S.B. 1057 grants the county courts at law of Lubbock County concurrent probate jurisdiction with the county court.

CIVIL PROCEDURE

S.B. 481 makes the prevention of execution of process in a civil case a Class C misdemeanor.

S.B. 1062 provides that service of citation in suits against a school district may be served on the president of the school board or the superintendent.

H.B. 786 amends the venue statute to provide that in a suit against an executor, administrator or guardian growing out of a negligent act or omission of the person whose estate the executor, administrator or guardian represents, the suit may be brought in the county where the negligent act or omission of the person whose estate the executor, administration or guardian represents occurred. SIGNED, EFF. 90 days

S.B. 271 allows venue in workmen's compensation cases to be in the county of the employee's or his beneficiaries' residence.

S.B. 930 requires venue in justice of the peace courts in suits by creditors on contracts for consumer goods or services to be in the precinct where the contract was signed or the precinct of the defendant's residence, regardless of any contrary provision in the contract.

H.B. 452 allows recovery of attorney's fees in suits founded on oral or written contracts. SIGNED, EFF. 90 days

S.B. 208 provides for recovery of attorney's fees in certain land possession suits.

H.B. 318 allows recovery of attorney's fees in suits based on breach of a restrictive covenant pertaining to real property.

S.B. 699 adds to Chapter V of the Probate Code procedures for appointing a limited guardian for the person or estate of a mentally retarded person without a finding of incompetency.

S.B. 700 is the lengthy "Mentally Retarded Persons Act of 1977 regarding the rights of persons subject to the Department of Mental Health and Mental Retardation. SIGNED, EFF. 1-1-78

H.B. 524 provides that if the last day of a limitations period under any statute of limitations falls on a Saturday, Sunday, or holiday, the period for filing suit is extended to the next day that the offices of the county are open for business.

H.B. 148 adds some discovery rules to the Administrative Procedure and Texas Register Act for documents, entry on land, reports and previous statements. SIGNED, EFF. 90 days

H.B. 128 provides for statewide jurisdiction of notaries public. SIGNED, EFF. 8-29-77

H.B. 1048 on medical professional insurance and liability places a \$500,000 ceiling on awards due to physician or hospital negligence (damages other than actual medical expenses). The legislation also continues the joint underwriting pool through which doctors in the high risk category can obtain insurance coverage. It permits physicians to counter-sue lawyers in "bad faith" actions, gives the Texas Board of

Medical Examiners more authority to weed out incompetents and fixes new time limits on filing malpractice lawsuits.

S.B. 561 repeals a lengthy list of statutes pertaining to particular county law libraries and provides statewide authority for commissioners courts to appropriate up to \$20,000 to establish a library and tax as costs in civil cases an amount up to \$10 for maintaining such libraries. SIGNED, EFF. 5-11-77

PENAL CODE AND CRIMINAL PROCEDURE

S.B. 1043 is a "speedy trial act" for criminal cases. A court must grant a motion to set aside an indictment, information or complaint if the state is not ready for trial within:

(1) 120 days of the commencement of a criminal action if the defendant is accused of a felony;

(2) 90 days of the commencement of a criminal action if the defendant is accused of a misdemeanor punishable by a sentence of imprisonment for more than 180 days;

(3) 60 days of the commencement of a criminal action if the defendant is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less; or

(4) 30 days of the commencement of a criminal action if the defendant is accused of a misdemeanor punishable by a fine only. Periods of time may be excluded for continuances requested by the defendant, unapprehension of the defendant and other delays.

A defendant who is detained in jail pending trial of an accusation against him must be released either on personal bond or by reducing the amount of bail required, if the state is not ready for trial of the criminal action for which he is being detained within:

(1) 90 days from the commencement of his detention if he is accused of a felony;

(2) 30 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment in jail for more than 180 days;

(3) 15 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less; or

(4) five days from the commencement of his detention if he is accused of a misdemeanor punishable by a fine only.

S.B. 155 places control of extensions of time for filing transcripts or briefs with the Court of Criminal Appeals rather than the trial court. SIGNED, EFF. 5-25-77

S.B. 334 requires permission of the trial court for a defendant to appeal if he has plea bargained for an agreed punishment and receives that punishment.

S.B. 937 requires a judge, before accepting a plea of guilty or nolo contendere, to inquire as to whether a plea bargaining agreement has been made with the state, and if so, whether the court will follow or reject the agreement. If the court rejects the agreement, the defendant may withdraw his plea and any evidence received may not be used in subsequent proceedings. SIGNED, EFF. 90 days

S.B. 1070 makes various changes in the handling of post-conviction writs of habeas corpus, including time limits on disposing of them.

H.B. 951 makes extensive changes in the procedures involved in the examination and commitment by the Department of Mental Health and Mental Retardation of persons alleged incompetent to stand trial or invoking the insanity defense to criminal prosecution.

H.B. 2257 allows a defendant charged with a misdemeanor punishable by a fine only to mail to the court a plea of guilty or nolo contendere and a waiver of jury trial, or a plea of not guilty. If the plea is guilty, or nolo contendere, the court is to notify the defendant of the amount of fine by mail and may dispose of the case without an appearance by the defendant.

S.B. 471 sets out a procedure for a person against whom charges have been dropped to get records and files on the charge expunged.

H.B. 1592 requires interpreters for deaf persons in court proceedings.

S.J.R. 3, to be voted on in November, 1977, would permit denial bail for persons who commit felonies while on bail for a prior felony or when a deadly weapon is used and he has previously been convicted of a felony.

S.B. 52 will allow judges to deny bail pending appeal in cases where the sentence is less than 15 years. SIGNED, EFF. 90 days

H.B. 1214 requires that records be kept of the setting of bail by the magistrate or other officer who sets the bail.

S.B. 39 creates the Texas Adult Probation Commission to establish rules establishing minimum standards and a code of ethics for probation services. Three district judges and two citizens are to be appointed by the Chief Justice. Three district judges and one citizen are to be appointed by the Presiding Judge of the Court of Criminal Appeals. It is to distribute state appropriated funds for probation services in qualifying judicial districts. The bill also requires each judicial district in the state to establish a probation office and sets out qualifications for probation officers.

S.B. 695 is the so-called "shock probation" bill which permits a judge to commit a first offender to prison or jail for 60 to 120 days (prison) or 10 to 60 days (jail), then place the defendant on probation. Some conditions are added to probation orders, including paying a percentage of the probationer's income to victims. SIGNED, EFF. 90 days

S.B. 32 raises the fee to be paid by a probationer from \$10 to \$15 per month but allows a defense of inability to pay if revocation of probation is sought for nonpayment of the fee.

S.B. 61 provides that an order of probation may require the probationer to reimburse the county for appointed counsel.

H.B. 1322 allows the judge to place certain conditions on the sentence of a person allowed to serve jail time on weekends regarding payment of part of his wages to the court for support of dependents, reimbursement to the county for maintenance of the prisoner in jail and installment payment of restitution, fines and court costs.

S.B. 620 authorizes the judge of a municipal court to commit chronic alcohol users to a treatment facility in lieu of a sentence or fine.

H.B. 97 allows the defendant to see a pre-sentence investigation report by a probation officer. SIGNED, EFF. 4-6-77

S.B. 157 permits the use of oral confessions for impeachment of a defendant.

S.B. 156 allows search warrants to be issued to search for and seize specifically named pieces of evidence of a crime. SIGNED, EFF. 5-25-77

S.B. 1059 and **H.B. 1963** (identical) provide that venue for rape may be in the county in which the victim was abducted or any county through or into which the victim is transported in the course of the abduction and rape. **H.B. 1963** SIGNED EFF. 5-25-77

H.B. 451 adds a court cost of \$1.00 to a conviction of any criminal offense, to be used by the Commission on Law Enforcement Officer Standards and Education. SIGNED, EFF. 9-1-77

H.B. 812 directs the Attorney General, upon request, to defend a grand jury commissioner or grand juror in federal court in suits involving his duties as a grand jury commissioner or grand juror. SIGNED, EFF. 90 days

S.B. 217 creates the offense of sale or purchase of a child. SIGNED EFF. 3-30-77

S.B. 311 creates the offense of solicitation of a child.

H.B. 1269 creates the offense of commercial obscenity with materials involving a person under 17.

S.B. 489 makes theft of rental services an offense.

S.B. 151 defines organized crime as a separate felony and contains a list of offenses which if involve five or more persons becomes organized criminal activity.

H.B. 678 raises the offense of prostitution from a Class C to a Class B misdemeanor (Class B to Class A for second offense). SIGNED, EFF. 5-27-77

H.B. 679 broadens the definition of promotion of prostitution to include not only receiving money pursuant to an agreement, but also soliciting a person to engage in sexual conduct with a prostitute or procuring a prostitute for another. SIGNED, EFF. 5-27-77

OTHER JUDICIAL AGENCIES

H.B. 1304 increases membership of the Board of Law Examiners from 5 to 9, increases the maximum examination fee from \$40 to \$75 and vests exclusive jurisdiction for regulating the use of the fees in the Supreme Court. SIGNED, EFF. 5-13-77

S.B. 54 is the well-publicized "Sunset Act" which subjects state agencies to periodic review by a joint legislative commission to determine "whether a public need exists for the continuation of" the agency. The commission's report is then presented to the Legislature which may continue an agency for only 12 years. The initial expiration dates of some selected existing agencies are:

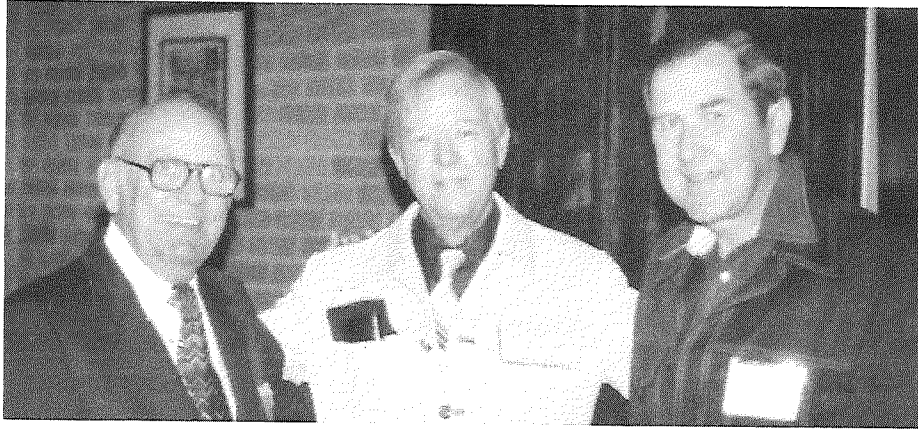
Board of Law Examiners—Sept. 1, 1979

State Bar—Sept. 1, 1979

"Civil" Judicial Council—Sept. 1, 1987

State Law Library—Sept. 1, 1987

The Judicial Qualifications Commission is subject to review in 1987 but may not be abolished.



Paul W. Nye, chairman of the Judicial Section, left, stands with Texas Center Executive Director Jack H. Dillard and Charles W. Barrow, a former Section chairman, at a recent seminar.

UNIFORMITY GUIDELINES SOUGHT BY COMMITTEE

A 12-member committee to study the establishment of guidelines for uniform punishment in Texas has been appointed by Judicial Section Chairman-Elect Paul W. Nye.

The Committee on Uniformity of Punishment in Texas, authorized by the Section's Executive Committee, will develop guidelines "not only on felony matters, but on misdemeanor matters as well," Judge Nye said.

"Although I do not charge the Committee with any specific area of study," he said, "it is hopeful the Committee will provide some guidelines in sentencing criminals where guilty pleas are accepted—to be included in the benchbook—and to possibly propose legislation that would provide more uniform punishment in jury determined cases."

He expressed hope the Committee would also "work out some legislation recommendation that would

give the Court of Criminal Appeals the right to remit excessive sentences along the same guidelines that the trial and appellate courts remit excessive damages."

Committee chairman is Carl E. F. Dally, commissioner of the Court of Criminal Appeals. F. Harold Entz, Dallas County Criminal Court judge, was named vice chairman and Executive Committee advisor.

Other members are Joe R. Alamia, Edinburg, James E. Barlow, San Antonio, John T. Boyd, Plainview, Don Busy, Belton, Sam W. Callan, El Paso, Donald Carroll Jr., Tyler, Larry Gist, Beaumont, Byron Matthews, Fort Worth, Frank Price, Houston, and R. T. Scales, Dallas.

The committee met June 16 and August 6, and will meet again in September.

ETHICS OPINIONS

The following are opinions delivered by the Committee on Judicial Ethics in July.

Questions concerning the interpretation of the Code of Judicial Conduct should be addressed to:

Texas Center for the Judiciary
P. O. Box 12487, Capitol Station
Austin, Texas 78711
Attention: Committee on Judicial Ethics

Chairman of the committee is Quentin Keith, justice, 9th Court of Civil Appeals, Beaumont. Members are Max Bennett, Corpus Christi, Jack Brookshire, Beaumont, Donald Carroll, Tyler, Ralph Elliott, Sherman, Harry Hopkins, Weatherford, Stephan F. Preslar, El Paso, William Shaver, Lubbock, and Jack Smith, Houston.

OPINION

QUESTION: Does a judge violate any of the Canons of the Code of Judicial Conduct by attending a public meeting of an organization composed largely of local citizens of a particular religious faith at which time such organization will bestow upon the judge an award of honor? The organization specifically states in its invitation "that funds will not be solicited during this event."

ANSWER: No. Attendance upon such an event, even though a minimum covert is required for attendance, does not violate **Canon 5 B (2)** of the Code of Judicial Conduct.

OPINION

QUESTION: A development council formed to assist in the funding of a new parochial school has invited a judge to join the council which is "designed to lend prestige to the Development Program and to provide individual and collective advice and guidance" to the leadership of the entity. The invitation recites that the "insight, counsel and prestige [of the judge] in the community will be very helpful." It has been made known to the Committee that the judge will not be required to take part in any fund raising program "other than to allow the use of his name as a member of the group seeking to raise funds." Is it a violation of the Code of Judicial Conduct for a judge to accept membership in such council?

ANSWER: Yes. Participation in such activity would be in violation of **Canon 5 B (2)** of the Code of Judicial Conduct.

JUDICIAL NOTICES

CLERKS WORKSHOP

A workshop for clerks of the Courts of Civil Appeals will be held August 25-27 at the Quality Inn South in Austin.

Topics to be discussed include judgments, mandates and costs, original proceedings, records on sickleave and vacation, office procedures and management, forms, and budget preparation.

Registration information will be provided by the Texas Center for the Judiciary.

NUECES COUNTY COURTHOUSE

Nueces County has retired its 63-year-old courthouse.

The new courthouse, located at 601 Leopard in Corpus Christi, will house all of Corpus Christi's courts, from county to appellate.

The move from old to the new facilities is expected to be completed by mid-August. The central information phone number for the new building is (512) 888-0111.

PROBATION MASTER PLAN

A master plan for adult probation and community corrections in Texas has been completed by the Texas Center for the Judiciary.

The plan is one of four components to be integrated into an Adult Corrections Plan for Texas.

The 800-page work in two volumes—the first an overview of adult probation, volume two containing recommendations—culminates an 18-month project funded by the Law Enforcement Assistance Administration of the U. S. Department of Justice and awarded by the Criminal Justice Division of the Governor's Office.

An advisory board, chaired by Houston District Judge Fred Hooey, supervised the preparation of the Master Plan. Board members included Judges Perry D. Pickett, Midland, George M. Thurmond, Del Rio, John C. Vance, Dallas, and former judge Charles Sherrill, Ft. Stockton. Also on the board were Chief Probation Officers Dale Brown, Brownfield, Giles Garmon, Austin, J. C. Ledbetter, Dallas, and Charles W. Nail, San Antonio.

Copies of the master plan, currently being printed, will be distributed to Texas judges by the Texas Center for the Judiciary.

BRIEFING ATTORNEYS INSTITUTE

The annual Briefing Attorneys Institute will be held September 8-9 in Austin.

Briefing attorneys of the Texas Supreme Court, Court of Criminal Appeals and Courts of Civil Appeals are eligible to attend the seminar to be held at the Ramada Gondolier.

Responsibilities and duties of research assistants and briefing attorneys will be discussed by Texas appellate judges.

Registration information will be mailed to eligible persons by the Texas Center for the Judiciary.

NEW JUDGES

New Texas judges who have taken office recently are:

District Court

Joe B. Burnett, 134th, Dallas (*Charles E. Long Jr.*)

Jon Nelson Hughes, 174th, Houston (*Garth Bates*)

Thomas Routt, 208th, Houston (*Peter Solito*)

Peter S. Solito, 164th, Houston (*Warren Cunningham, Jr.*)

County Court at Law

Alice A. Bonner, County Criminal Court at Law #6, Houston (*Thomas Routt*)

D. H. (Buck) Buchanan, New Braunfels (*New Court*)

Kenneth Vaughan, County Criminal Court of Appeals, Dallas (*Jan Hemphill*)

Jon Wisser, #3, Austin (*James F. Dear*)

Appellate Court

Charles W. Barrow, Supreme Court of Texas, Austin (*Don B. Yarbrough*)

Carlos C. Cadena, Chief Justice 4th Court of Civil Appeals, San Antonio