

# IN CHAMBERS



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MAY, 1977

## BRISCOE LUNCHEON SPEAKER

Gov. Dolph Briscoe will address the Judicial Section luncheon to be held Friday, June 17, during the annual State Bar Convention in Houston.

Site of the noon luncheon is the grand ballroom of the Rice-Rittenhouse Hotel, which serves as the headquarters hotel for the Section.

A convention registration form was mailed May 6 to Section members, with additional forms available in the May issue of the Texas Bar Journal.

Several noted national speakers will appear at the Convention, including William D. Ruckelshaus, former acting head of the FBI, F. Lee Bailey, defense attorney, and Ray Marshall, U. S. Secretary of Labor.

In addition to Governor Briscoe,



Gov. Dolph Briscoe

state leaders speaking include Atty. Gen. John Hill, Lt. Gov. Bill Hobby, Supreme Court Chief Justice Joe Greenhill, Houston lawyer Leon Jaworski, former State Bar President Leroy Jeffers, and U. S. Congressman Bob Krueger of New Braunfels.

## SECTION CHAIRMAN CUNNINGHAM DIES

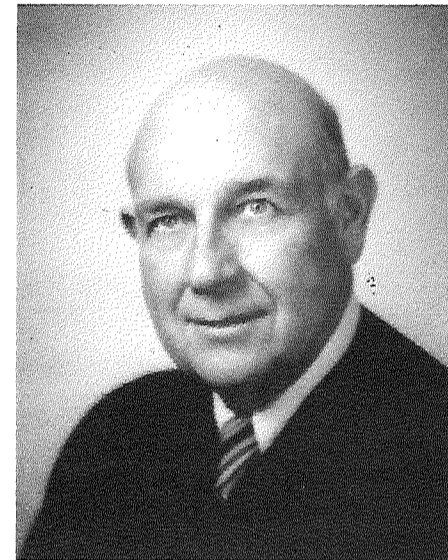
Warren P. Cunningham Jr., chairman of the Judicial Section of the State Bar, died March 19, 1977, in Galveston.

Judge Cunningham, 62, was judge of the 164th District Court in Houston, and served as a faculty member of the National College of the State Judiciary in Reno, Nevada.

Judge Cunningham was elected Section chairman in September, 1976, in Tyler at the annual Section conference. Chairman-elect Paul W. Nye, chief justice of the Corpus Christi Court of Civil Appeals, assumes the duties of chairman.

In a memorial resolution adopted by the State Bar Board of Directors, Judge Cunningham was praised for serving the Judicial Section with "honor, industry and distinction.

"[T]he life of Judge Cunningham epitomized everything the life of a great lawyer, a great judge, a devoted family man and outstanding citizen should stand for . . ."



Warren P. Cunningham

The resolution concluded by saying, "the Board of Directors of the State Bar of Texas . . . expresses its gratitude for the manifold contributions of Judge Warren P. Cunningham Jr. to the legal profession of this State and Nation."

Before assuming the bench Sept. 1, 1963, after appointment by Governor Connally, he was special attorney of the Anti-Trust Division of the U. S. Department of Justice, 1939-42. He received his BA and JD from the University of Texas and, from 1942 through 1945, served in the navy.

Survivors include his wife, Ellen, and a son, Tom Alan Cunningham, both of Houston; a son, Warren P. Cunningham III, of Dallas; a daughter, Dr. Suzie Tindall, of Atlanta, Georgia; and a brother, Jack P. Cunningham, of Houston.

## PLANNING COMMITTEE ESTABLISHED

An 18-member Judicial Planning Committee has been established by the Supreme Court of Texas for the "preparation, development and revision of an annual state judicial plan."

The action came by order of the Supreme Court May 2, 1977, in accordance with provisions of the Crime Control Act of 1976, signed into law by the President October 15, 1976.

According to the court order, the committee will serve "as the principal agency within the Texas

judicial system to plan, coordinate, administer and supervise grant-funded programs which are designed to improve the administration of criminal and juvenile justice in program areas in which the judicial branch of government has primary responsibility."

The committee "is empowered to review applications to the Law Enforcement Assistance Administration and to the Criminal Justice Division of the Governor's Office for assistance in court projects, to establish priorities for the

improvement of the courts of the state, [and] to define, develop, and coordinate programs and projects for the improvement of the courts of the state . . ."

Chief Justice Joe R. Greenhill, Supreme Court of Texas, is chairman.

Committee members are:

- James G. Denton, Supreme Court of Texas, Austin
- Thomas M. Reavley, Supreme Court of Texas, Austin
- Truman Roberts, Court of

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State Bar of Texas  
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# ETHICS OPINIONS

The Committee on Judicial Ethics has released five opinions formulated in February and May meetings. Committee chairman is Quentin Keith, Beaumont Court of Civil Appeals justice.

Questions concerning the Code of Judicial Conduct and its applicability may be addressed to the Texas Center for the Judiciary, P. O. Box 12487, Capitol Station, Austin 78711, Attention: Committee on Judicial Ethics.

## OPINION

**QUESTION:** May a judge of a court of record serve as a member of a Criminal Justice Advisory Board which supervises applications for LEAA and juvenile justice funds?

**OPINION:** The Committee is unanimous in its opinion that such activity is a proper one for a judge to engage in, subject, however, to the preliminary language found in Canon 4 of the Code of Judicial Conduct.

## OPINION

**QUESTION:** Does a trial judge violate Code of Judicial Conduct, *Canon 3 A (7)*:

1. By permitting newsmen to film, photograph, record or broadcast all or any of the trial proceedings from a vantage point inside the courtroom?

2. By permitting newsmen to film or photograph all or any part of trial proceedings through the glass panels in the doors without actually entering the courtroom?

3. Is the answer the same if the parties, attorneys, and witnesses agree to the filming, photographing, broadcasting or recording?

**OPINION:** We answer each of the three questions in the affirmative for the reasons now to be stated.

Each of the questions is prefaced with "permission" having been given by the judge for such conduct. The Canon does not speak to "permission"; rather, it speaks clearly but negatively: the judge should prohibit *all* broadcasting except upon the occasions specified in the Canon, none of which are material here.

The most recent authoritative expression of opinion in this area of the law is that found in *Nebraska Press Association v. Stuart*, . . . U.S. . . , 49 L.Ed.2d 683, 96 S.Ct. . . (1976), and the opinion should be studied carefully before taking any action which might be considered as a prior restraint upon the freedom of the press.

On the other hand, the opinion in *Bird v. State*, 527 S.W.2d 891, 895-896 (Tex. Crim. App. 1975), is directly in point and should govern judges in Texas conducting criminal trials subject to review by that court. This latter opinion is particularly helpful since it is the only judicial construction of the particular Canon under consideration known to the Committee.

The Committee on Judicial Ethics declines to answer questions propounded seeking advice as to steps to be taken against a person who may violate any rules regulating the conduct of spectators at a trial of a case. Such questions relate to the duties and responsibilities of members of the judiciary and do not come within the scope of the authority of this Committee.

## OPINION

**QUESTION:** May a district judge become a part owner (with no more than three co-owners, one of which is a local attorney) of a title insurance business?

**OPINION:** The Committee is of the opinion that such ownership and participation in a title insurance business would be in violation of *Canon 5 C (1)*:

"A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves."

This opinion is confined to the specific facts set forth herein.

## OPINION

**QUESTION:** May a district judge act as a moderator for a short (five-minute) bi-weekly television program designed to educate the public on the duties and functions of courts and related agencies dealing with the administration of justice?

**OPINION:** Such activity is authorized by the provisions of *Canon 4 A*. Before engaging in such activity, however, the judge should familiarize himself with the provisions of *Canon 2A*, the preamble to *Canon 4*, and *Canon 7 A*. Conduct in violation of either of the latter provisions of the Code is not authorized by the broad language found in *Canon 4 A*.

## OPINION

**QUESTION:** What criteria determines whether a judge is a part-time judge under the provisions of Compliance Section, paragraph B, Code of Judicial Conduct (Feb. 18, 1977) ?

**OPINION:** Essentially, the determination of whether a judge is a "part-time judge," as defined in the cited paragraph of the Code, is a factual determination and must be made upon a case by case basis.

Without intending to lay down any hard and fast rules governing every situation, the Committee is of the opinion that one would be considered a part-time judge if two conditions are met:

1. The statute creating the court does not specifically prohibit the judge thereof from devoting time to some other profession or occupation; and,

2. The agency making the appointment of the judge to such court (ordinarily the Commissioners Court), at or about the time of the appointment, acknowledges that the compensation of such judge is less than that of a full-time judge.

## DILLARD ELECTED SJEA PRESIDENT

Jack H. Dillard, executive director of the Texas Center for the Judiciary, has been elected president of the State Judicial Educators Association (SJEA), a national organization of persons engaged in judicial education on the state level.

Dillard's election came at a recent meeting of the organization in Santa Fe, N.M.

William S. Nail, associate director of the Texas Center, also attended the Santa Fe conference.

Main objectives of SJEA are

improvement of the quality of judicial education through development of professional standards; promotion of research and development in judicial education; cooperation with other organizations in the field of judicial and criminal justice education; and establishment of a mechanism for the exchange of judicial education information.

Dillard succeeds Sofron B. Nedilsky, director of judicial education for the State of Wisconsin, as president.

## CORRECTION

The February, 1977, issue of *In Chambers* listed Judicial Section committees and their members. Under the heading, "Executive Committee," names of members and expiration dates of their terms were listed. The dates are incorrect. Following are the correct dates:

### EXECUTIVE COMMITTEE

Warren P. Cunningham Jr., Houston, Chairman (deceased)

Paul W. Nye, Corpus Christi, Chairman-Elect

George E. Miller, Houston, Secretary-Treasurer

Wendell A. Odom, Austin, Immediate Past Chairman

James F. Clawson, Belton (1978)

Peter Michael Curry, San Antonio (1977)

Ross Doughty, Uvalde (1979)

F. Harold Entz, Dallas (1977)

James H. Moore, Tyler (1977)

Charles L. Reynolds, Amarillo (1978)

Henry J. Strauss, Abilene (1979)

George M. Thurmond, Del Rio (1978)

Mary Pearl Williams, Austin (1979)

Terms expire during the annual Judicial Section Conference of the year listed, usually held the last week in September.

We regret the error.

## CRIMINAL JUSTICE CONFERENCE—1977

The eighth annual Criminal Justice Conference was held in Huntsville May 4-6. More than 180 judges participated in panel discussions on various aspects of the criminal justice system, and heard addresses delivered by Presiding Judge John Onion, of the Court of Criminal Appeals, and Dr. Norval Morris, Univ. of Chicago Law School dean.

Panel discussion topics included "Futuristic View of Criminal Justice," "TDC—Interaction with the Courts," "Prevention of Crime and Disposition of Criminals (Role of the Judiciary in Prevention, working with citizens groups, sentencing)," and "Evidentiary Problems in the Trial of Criminal Cases."

Site of the conference was the Criminal Justice Center on the Sam Houston State University campus.



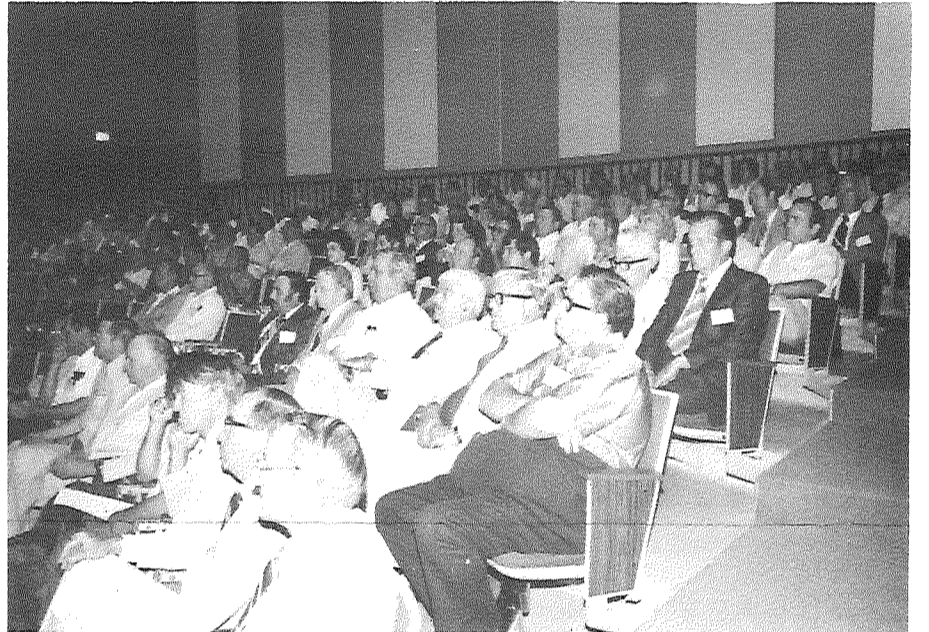
Judge Max Rogers of Huntsville mans the registration desk.



Judge Larry Gist of Beaumont speaks during panel discussion.



Judge Tom Stovall of Houston, left, and Dr. George Killinger, director of the SHSU Institute of Contemporary Corrections and the Behavioral Sciences, stand with State seal presented to the Criminal Justice Center by the conference participants. Dr. Killinger holds Texas flag also presented to the Center. Judge Stovall's son made the leather seal.



Conference participants attend opening session.



## TEXAS COLLEGE OF THE JUDICIARY—SPECIAL SESSION

A special session of the Texas College of the Judiciary was held April 20-23 in Austin. Thirty-one new judges, including judges appointed to courts created by the 65th Texas Legislature, attended. Among those attending and serving as faculty: **Front Row, Seated I-r:** Albert White Jr., Fort Worth; Harold Valderas, Fort Worth; David Wilson, Lufkin; Ted Butler, San Antonio; Ruby Sondock, Houston; Joe Kegans, Houston; Al Klein, San Antonio; Mike Machado, San Antonio; and J. Q. Warnick Jr., Lubbock. **Middle Row, Standing I-r:** Don Morgan, Galveston; Glenn Phillips, Tyler; Allen Stilley, Houston; J. D. Guyon, Houston; Felix Salazar, Houston; Andrew Campbell, Hamilton; Wes Gulley, Hereford; Calvin Ashley, Wichita

Falls; Alfonso Chapa, San Antonio; John McFall, Lubbock; John McCraw, McKinney; Don Cain, Pampa; Richard Dambold, Amarillo; and David Cook, Lufkin. **Back Row, Standing I-r:** Lee Alworth, Conroe; James K. Allen, Dallas; R. L. Echenburg II, Floresville; Jack Dillard, Austin, executive director, Texas Center for the Judiciary; Tom Stovall, Houston, faculty; Vann Culp, Midland; Charles Storey, Dallas; Tom Davis, Austin, College Director; John Onion, Austin, faculty; Fred Hooey, Houston, faculty; Quentin Keith, Beaumont, faculty; Nick Barrera, Houston; Charles Dickerson, Richmond; and David Dunn, Orange.



The Continuing Legal Education Committee of the Judicial Section met during the recent Criminal Justice Conference in Huntsville. Chairman Lewis Dickson of Houston, seated at end of table, chaired the meeting.



Section Chairman Paul W. Nye, third from right, conducts meeting of Executive Committee held in conjunction with the Huntsville conference.

## HARVEY O. PAYNE DIES

Harvey O. Payne, the first public relations director of the State Bar of Texas, died April 30, 1977, at his home in Austin.

Payne, 66, served as director from January, 1956, until his retirement May 1, 1976. Previously, he was a member of the Marine Corps Public Information Office during World War II, a staff aide to Lyndon Johnson during Johnson's term as Senate majority leader, and a member of the editorial board of the Austin American and Austin Statesman newspapers.

At the 1976 Criminal Justice Conference in Huntsville, Texas, Payne was presented a plaque in honor of his "long friendship and service" to the judges of Texas by Jack H. Dillard, executive director of the Texas Center for the Judiciary.

On his retirement May 1, 1976, the State Bar Board of Directors passed a resolution honoring "his work, his courtesy and his unflinching good humor." And John Onion, presiding judge of the Court of Criminal Appeals, wrote: "The State Bar of Texas without Harvey Payne will never seem the same to me. The man with the ready smile and soft chuckle who so diligently labored to improve the public image of the Texas lawyer . . . will be sorely missed by all of us who have taken part in activities of the State Bar in the last 20 years."

He is survived by his wife, Mary, and a daughter, Mrs. Janis McCullough, both of Austin; mother, Mrs. R. B. Payne Sr. of Hutto; two sisters, Mrs. R. H. Nelson of



Harvey O. Payne

Hutto and Mrs. Nannette Holmstrom of Austin; and a brother, R. B. Payne Jr. of Round Rock.

## JUDICIAL PLANNING COMMITTEE

(Continued from page 1)

- Criminal Appeals, Austin
  - Wendell Odom, Court of Criminal Appeals, Austin
  - Clarence A. Guittard, 5th Court of Civil Appeals, Dallas
  - Max M. Rogers, 2nd Administrative Judicial District, Huntsville
  - Paul Peurifoy, 1st Administrative Judicial District, Dallas
  - John T. Boyd, 64th District Court, Plainview
  - M. Ted Butler, 226th District Court, San Antonio
  - Darrell B. Hester, 197th District Court, Harlingen
  - Mary Pearl Williams, County Court at Law #2, Travis County, Austin
  - Ronald D. Earle, District Attorney, Travis County, Austin
  - George E. Gilkerson, Lubbock attorney
  - Jim D. Bowmer, Temple attorney
  - Ben Z. Grant, State Representative, Harrison County, Marshall
  - David A. Anderson, Austin attorney and University of Texas Law School faculty member
  - Gabrielle K. McDonald, Houston attorney
- Advisory committees to assist the committee in "its deliberations and to promote the involvement of the public, the executive and legislative branches of government, and other interested parties, in its efforts to upgrade the state court system" may be established by the committee, the court order said.

## NEW JUDGES ASSUME BENCH

New Texas judges, including those appointed by Gov. Dolph Briscoe March 17 to courts created by the current Texas Legislature, are:

### District Court

- Lee G. Alworth, 221st, Conroe
  - Calvin Ashley, 30th, Wichita Falls (replaces *Arthur Tipps*)
  - M. Ted Butler, 226th, San Antonio
  - Don E. Cain, 223rd, Pampa
  - Andrew Campbell, 220th, Hamilton
  - Alfonso Chapa, 225th, San Antonio
  - Vann Culp, 238th, Midland
  - James F. Dear, 126th, Austin (*Jim Meyers*)
  - Charles A. Dickerson, 240th, Richmond
  - Robert Lee Eschenburg II, 218th, Floresville
  - David Wesley Gulley, 222nd, Hereford
  - J. D. Guyon, 232nd, Houston
  - Joe Kegans, 230th, Houston
  - Al J. Klein, 224th, San Antonio
  - Mike M. Machado, 227th, San Antonio
  - John L. McCraw Jr., 219th, McKinney
  - John R. McFall, 237th, Lubbock
  - Glenn S. Phillips, 241st, Tyler
  - Ruby Kless Sondock, 234th, Houston
  - Joe Spurlock II, 231st, Fort Worth
  - Allen L. Stilley, 228th, Houston
  - Harold Louis Valderas, 233rd, Fort Worth
  - Albert L. White Jr., 236th, Fort Worth
  - David V. Wilson, 217th, Lufkin
- ### Criminal District Court
- James K. Allen, #5, Dallas (*Ed Gossett*)
- ### County Criminal Court at Law
- Nickolas Barrera, #2, Houston (*J. D. Guyon*)
- ### County Court at Law
- David Cook, Lufkin (*Clark Anderson*)

Richard Dambold, Amarillo

County Criminal Court of Appeals  
Jan Hemphill, Dallas (*Newton Fitzhugh*)

### Domestic Relations

Felix Salazar Jr., #5, Houston (*Ruby Kless Sondock*)

## BRISCOE SIGNS LEGISLATION

The following is a list of bills affecting the Texas judicial system passed by the Texas Legislature and signed by Governor Briscoe.

**SB 330 Lombardino**—Relating to the creation of certain new judicial districts and the reorganization of certain existing districts; providing for appropriation of funds. Signed 2-24-77; effective 4-1-77.

**SB 192 Ogg**—Relating to the creation, administration, powers, and duties of the Office of Court Administration of the Texas Judicial System. Signed 4-5-77; effective immediately.

**HB 810 Edwards**—Relating to the creation, jurisdiction, administration, and procedures of the County Court at Law of Walker County. Signed 4-18-77; effective 9-1-77.

**HB 828 Grant**—Relating to the delivery of a state of the judiciary message by the chief justice of the supreme court. Signed 4-25-77; effective 90 days after session adjourns.

**HB 502 Bird**—Relating to the compensation of judges in certain counties. Signed 5-2-77; effective immediately.

**HB 609 Benedict**—Relating to active duty, assignment, and compensation of former district judges. Signed 5-4-77; effective 90 days after session adjourns.

## JUDICIAL CALENDAR

June 14-18

95th Annual State Bar Convention, Houston

June 17

Judicial Section Luncheon Noon, Rice-Rittenhouse Hotel, Houston

July 27-29

Third Court Administration Seminar, Ramada Gondolier, Austin

August 25-26

Seminar for Chief Clerks of Court of Civil Appeals, Supreme Court, Court of Criminal Appeals, Quality Inn South, Austin

September 27-30

Annual Judicial Section Conference, El Paso

November 2-4

Juvenile Court Judges Seminar, Ramada Gondolier, Austin