

IN CHAMBERS

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

Volume 12, No. 4

August, 1985

McAllen to host Section conference

"If the good Lord's willin' and the creek don't rise" the 1985 Annual Judicial Section conference will be held near the Texas Gulf Coast in McAllen, Oct. 1-4.

"You know the conference has been planned for a coastal town three times before, and three times before we've been forced to make last minute rearrangements," said program organizer Justice Noah Kennedy.

"But we've just decided to issue a temporary injunction preventing any hurricanes from entering the Gulf of Mexico

"The program will offer up to 12 hours of continuing judicial education credit...(and) will center around topics that directly effect judges."

*Justice Noah Kennedy
Program Chairman*

Kennedy.

Noted lecturer and legal analyst, Professor Charles R. Nesson of Harvard University Law School will lead the day-long discussion on the topic he deems to be the crux of courtroom maneuvers.

"The evidence rules are the central role of a trial, and if you don't know them you're flying by the seat of your pants. Very often you crash," said Nesson.

"Being an expert on the law of evidence is not a main criteria for picking

see McALLEN, p. 3

between now and then," he added with a chuckle.

"Seriously though, we have arranged an excellent program that will offer up to 12 hours of continuing judicial education credit. It is centered around issues and topics that directly effect judges," said Kennedy.

Kennedy is Chairman-elect of the Judicial Section and, therefore, chairs the conference's program committee.

"The first day of the program will be completely devoted to the review and analysis of evidence," said



PROFICIENT PROGRAMMER: Justice Noah Kennedy, chair of the conference program committee, will assume new responsibilities as Chairman of the Judicial Section after formal elections at the conference's Friday morning business session.

Between

Retiring the JRS - Out with the old and in with the newp. 6

Creating a JDB - What lies between the lines?p. 8

Calendaring more CJE - What's on tap for 1986.....p.10

the Lines

- LEADING

REMARKS -



BY DISTRICT JUDGE RAUL L. LONGORIA,
Chairman, Judicial Section

Almost a year ago, more than 550 of us met in Galveston at our annual conference and set forth a concise list of goals for the Judicial Section. The list was brief in terms of

quantity, but certainly not in terms of importance.

During the last 12 months, the Section, with your support:

- ASSISTED IN THE CREATION OF A PERMANENT SOURCE OF FUNDING FOR JUDICIAL EDUCATION. Legislative approval was given to our suggestion of tacking on \$1.00 to criminal convictions, and now \$2.1 million from revenues generated by the tax will flow into the Judicial Training Fund. The Training Fund will allow organizations such as the Texas Center for the Judiciary to receive grant monies from the Fund to cover all of a judge's reasonable expenses incurred while attending a Center conference.

- LAI D THE GROUNDWORK FOR A POSITIVE LEGISLATIVE RESPONSE IN 1987 TO OUR PROPOSALS SUCH AS: 1) creating a fund for court-support personnel and technological equipment; and 2) raising trial court judges' salaries to 85 percent of the salaries of the Associate Justices of the Texas Supreme Court.

We came very close to receiving these long-awaited, and well-deserved requests this year, but got caught in the closing of the economic vise during an austere budget year. It should be noted, however, our requests did receive Senate approval, and nearly a half of the House members voted to support measures that would insure the state's ability to attract and keep well-qualified people to the bench.

- PREPARED THE CANONS OF JUDICIAL ETHICS. Because a constitutional amendment adopted last November would allow a violation of the Code of Judicial Conduct to be used as grounds for removal from office, the Judicial Conference last year authorized me to appoint a special committee to scrutinize the Code (which is to be revised by a committee appointed by the Supreme Court) and develop a list of canons to be used as

ethical guidelines by judges. I appointed Judge Guy Jones to head this committee and they will make final recommendations to the assembly at this year's Section conference in October.

If adopted by the Section, the Canons will provide us with needed direction on many ethical issues we face daily.

Although a great deal has been accomplished, much remains yet to be done in the future.

First of all, before we can expect the Judicial Section to succeed in any program, all of our judges, from the bottom to the top, must be united and decide exactly what our program should be, and all of the judges should stand behind the program.

Second, we need the help and support of the leaders in the state government -- the Governor, the Lt. Governor, and the Speaker. We must prevail upon them to recognize that our program is necessary not only to have a first-class judiciary but to attract new lawyers into the judiciary because of the incentives of good compensation, good retirement benefits and administrative help. After getting commitments from these three leaders, we must have the judges write letters to them in which we show that we are solidly united behind our program and we look to them to carry out their commitments. We cannot assume that just because

a few judges discuss the need for any given legislation with the leadership that will be sufficient to prevail upon these people to stay with our program. We must always remember that we are only one of many groups who are trying to get programs through the Legislature and only those with the greatest political clout will succeed.

Third, every judge has a job to do and that is to know about our program, to be well-versed as to what we are trying to accomplish and to be able to explain it to his or her own senator and representatives. Every judge should get to know his or her senator and representative(s) on a first-name basis and every judge should realize, also, that these people are in a position to help us or to withhold needed help from us. Remember the old saying that "you can catch more flies with honey than with vinegar."

We can succeed with future legislative programs if we will all work together. As elected officials, we have no choice but to be involved in the political process and I am convinced that the other branches of government will respond to our needs only when the judicial branch unites and works as a viable, cohesive force.

Your attendance and participation at

the annual Judicial Section conference this year will insure that the Section's policies represent a unified voice. Come join us in McAllen and help plan a better future for the Texas judiciary. The people in Texas need it, they are entitled to it, and they deserve no less; and in the end they are the ones who really benefit from it!

cont. from p. 1

McALLEN

judges so it sometimes happens that a trial judge needs a little brush up to function at his or her best, and that's what I want to provide."

Nesson's lectures will focus on the Texas rules of evidence and their recent revisions, along with a study of their relation to the federal rules he said.

Nesson, who defended Daniel Elsborg during his Pentagon Papers trial and who frequently appears on public and commercial television as a legal analyst, is considered by many to be the nation's leading expert on evidence.

Judicial liability insurance, the revised mandatory education rules and the new and old judicial retirement systems are a sampling of the topics to be discussed Thursday morning.

Also that morning, Supreme Court Chief Justice John Hill and Court of Criminal Appeals Presiding Judge John F. Onion, Jr. are scheduled to address the general assembly.

Conference attendees will divide into groups Thursday afternoon.

"These break-out ses-

sions will allow judges of different jurisdictions to confer on issues of mutual concern," said Kennedy.

Appellate judges, for example, will discuss inherent judicial powers and the judiciary's relationship with the legislature, the proposed uniform appellate rules of procedure, and re-districting of appellate courts, according to Chief Justice Frank Evans (1st Court of Appeals) of Houston. Evans, who arranged the program, said the justices will also receive a demonstration of the topical index system proposed for appellate courts.

Friday morning, business meetings for both the membership of the Judicial Section and the Texas Center for the Judiciary will be held in order to elect new members to the Section's executive committee and the Center's Board of Directors.

A nominating committee appointed by Section Chairman Raul L. Longoria has proposed a slate of candidates for Section officers that includes: Judge Peter S. Solito of Houston for Chairman-elect; Justice William W. Kilgarlin of Austin, Judge Joe B. Evins of Edinburg, and Judge Hector DePena of Corpus Christi for executive committee members.

Nominees for Texas Center officers are: Kennedy for Chairman; Solito for Vice-Chairman; Raul Rivera of San Antonio for Secretary-Treasurer; and Judge Tom Cave of Fort Worth, Justice Bob Dickenson of Eastland, and Judge Annette Stewart of Dallas for directors.

Additional nominations may be made from the floor at the annual meeting.

Also on the business meeting agenda is the presentation of proposed Canons of Judicial Ethics. At last year's meeting, the Section instructed (via resolution) Chairman Longoria to appoint a committee to consider and recommend to the Section a set of ethical guidelines and standards to guide judges in their personal decisions.

The resolution also called for the Supreme Court to appoint a committee to consider and recommend to the Court a set of specific rules to become the amended Code of Judicial Conduct.

District Judge Guy Jones of Texarkana, appointed by Longoria to chair the Canons committee, said his committee "has unanimously adopted proposals for consideration of the membership at the

see McAllen, p. 10

Friends or foes ?

EDITOR'S NOTE: The following article, prepared by Sen. Ray Farabee, offers his assessment and analysis of the recent Legislative session. Farabee, who chaired the Select Committee on the Judiciary, serves as the chair of the Senate State Affairs Committee.

by Sen. Ray Farabee

The June issue of "In Chambers" carried an article by Judge Raul Longoria on certain acts of the 69th Legislature affecting the judicial system. In it, the judge heavily criticizes the Court Administration Act (H.B. 1658) and the judicial retirement bill (S.B. 105). He opines that the passage of these bills and the failure of another (S.B. 331, which would have increased state-paid salaries and created a technology and personnel fund) will result in the deterioration of the third branch. Finally, he asserts that the Legislature does not understand the judiciary and treats it as a step-child. While few knowledgeable observers can disagree with his central concern that trial courts must receive more money, there are other views of these bills and this session that should be considered.

My initial reaction to the article was mild surprise because the Judicial Section supported both the Court Administration Act and the retirement bill. Both were also unanimous recommendations of the Select Committee on the Judiciary, which include former Chief Justice Jack Pope, District Judge B. B. Schraub, Court of Appeals Justice Joe Spurlock, and County Court-at-law Judge Bob Blackmon. And any comprehensive assessment of the session must also include several other measures that passed: H.B. 309, which provides greatly increased funding for judicial education programs and puts the Supreme Court in charge of judicial education; H.B. 13, which authorizes the Court of Criminal Appeals to promulgate rules of evidence in criminal cases and rules for post-trial, appellate, and review procedures; S.J.R. 10, which proposes a constitutional amendment to allow the Supreme Court and Court of Criminal Appeals to answer questions of state law certified from federal court; and S.J.R. 14

and S.B. 290, which combine to propose a constitutional amendment and implementing legislation for judicial redistricting as well as making other desirable jurisdictional changes to Article V.

These bills add up to more power and money for the judiciary, improved rules of evidence and procedure in criminal cases, and a possibility for improving our skewed distribution of trial courts. This is hardly the stuff given to a step-child or that arises out of some lack of understanding. Just the opposite. The legislature has increasingly realized it is not the proper forum for the resolution of many issues affecting the court system. Thus, various procedural and rule-making powers have been turned over to the judiciary. This deference began with the authorization of Supreme Court promulgation of rules of civil procedure in 1939. It has only accelerated in recent years with the authorization of Supreme Court administrative rulemaking authority in 1977, and the authorization and promulgation of rules of evidence in civil cases in 1983, and the battery of legislation passed this year. We include the Court Administration Act as part of this process.

Most of that act is not new. Large portions are recodifications or extensions of existing law now found in Articles 200a and b, 1812(b), 1918a, 2328b, and 5966b, Vernon's Texas Civil Statutes. Much of the rest was drawn from American Bar Association standards and recommendations relating to trial court organization and administration. The bill as drafted, particularly when combined with the unsuccessful Uniform Jurisdiction Act, essentially mimicked systems already in use in Brazoria, Jefferson, and El Paso Counties. Judges in those counties have successfully linked district with statutory county courts in handling the total caseload. They have also involved themselves to some extent in the active management of cases. These are two major goals of the bill, with the third being achieving some statewide uniformity in court rules and administration.

The most far-reaching of these, active case management, is not mandated. Instead, the bill lists in Section 2.004

several measures that would involve the judiciary in the active management of cases, but it only "mandates" the decidedly unenforceable provision that the Supreme Court "consider" the various rules for adoption. This illustrates the legislative desire for judges to at least debate exercising more power, not less.

I also respectfully disagree with the charge that the bill mandates judges to punch a time clock. As in the past, the only time clock for courts will be on the wrist of the judge. Some judges may suffer consternation over the requirement that local rules be adopted, but these provisions only set out areas the rules should address. They do not attempt to tell judges how to address them. The underlying goal of the section reflects the third major concept behind the bill: to get judges in a county together on a written set of rules and procedures. Theoretically, these local rules will then fall within state and regional policies to give uniformity not only within county lines, but across the region and state as well.

It is true that for the bill to work well, money is needed for technology and personnel. Indeed, the seeds for increased trial court funding are within the act. The initial drafts of the bill did include a technology and personnel fund, but these were severed by agreement with the judicial leadership, which much preferred the S.B. 331 approach of combining this fund with a judicial pay raise. For too long the trial judiciary has been underfunded, but for whatever reasons continual pleas for secretaries to answer phones and type letters have fallen on deaf ears in Austin. There is a vast psychological difference to the legislator, however, between granting funds for secretaries as opposed to granting funds for administrative or technological help to dispose of high caseloads. Seen in this light, the struggle for funds may become easier.

But money is only part, albeit a large part, of the selection and retention riddle. Other parts include election and appointment, discipline and removal, continuing education, and length of term. These should not be ignored while lines are being drawn over salary and retirement. Particularly in this session that was not a good line to draw.

The judicial retirement bill is the best example of this. The genesis of the bill was a 1982 actuarial study that established total biennial costs for the system would increase from less than \$10 million in that biennium to over \$340 million in thirty years. The result was the creation of a double-tiered retirement system that maintains benefits for present judges while setting up a less expensive system for judges taking the bench after Sept. 1, 1985. The average retiree under the second tier will still receive three times as much benefits as the average retiree under any other system in Texas. It also ranks favorably in comparison to judicial retirement systems in other states. It may have frailties, and Judge Longoria's concerns about discouraging judicial service may be true. If so, changes must be made because the impetus was not to "slap" or "demean" the judiciary but was instead to save money while retaining inducement to serve.

Although some may argue that the demise of the major funding bill also laid in fiscal concerns, it is more likely that it flew apart at the hands of differing interest and attitudes within both the legislature and judiciary. Neither of these branches are monolithic, as is shown by an analysis of the bill as it moved through the process. Urban judges had different interests than rural judges. Criminal judges had different interests than civil judges. Appellate judges had different interests than trial judges, and on and on. This was further complicated by internal quarrels within the judiciary over what body should distribute money raised by the bill: the Supreme Court, regional administrative judges, or local judges. Legislative reactions mirrored these splits with many representatives adopting the views of their local judges. When concerns by some House members about giving judges significantly larger raises than other state officials was factored in with these problems, the result was....nothing. Perhaps the lesson to be learned is not that the legislature needs more education, although that may be the case, but that the judiciary needs a more cohesive legislative approach.

Judge Longoria does have legitimate concerns over trial court funding. These

see FARABEE, p. 13

Retirement system undergoes face-lifting

The Legislative overhaul of the questionably funded Judicial Retirement System of Texas (JRS), if approved by the IRS, will paint a new hue on judicial golden years beginning September 1.

"The Legislature took steps to avoid problems like the national social security system is having," said Rita Horwitz, executive director of the State Pension Review Board. Horwitz has studied ways to revamp the retirement system for more than four years.

"The problem is that the system will cost current and future taxpayers more than it should because no interest is being earned with the current (JRS). And since no money is being set aside, judges do not have the reassurance that benefits will be paid in times of financial crisis. Plan II solves these problems for future judges," she said.

Since 1949, district and appellate judges, in return for 10 years of service (the last year of which was continuous), have been able to retire and draw annual annuity benefits.

"...judges (in the current retirement system) do not have the reassurance that benefits will be paid in times of financial crisis. Plan II solves these problems for future judges."

*Rita Horwitz
Executive Director,
Pension Review Board*

Major adjustment were made to the system during the late 1960s. The most costly proved to be the addition of cost-of-living-

adjustments (COLAs) in 1969 which allow retired judges to draw a maximum pension equal to 60 percent of the current salary of the position. [In 1975, Legislators tied their retirement benefits to district judges' salaries, allowing them to receive benefits based on a percentage of a district judge's salary at the time of their retirement.]

As a result, some judges who retired 15 or more years ago now receive more than they did while on the bench. Members of the judiciary and the legislature are the only state officers or employees that have COLAs attached to their retirement plans.

The JRS has always been an unfunded plan with contributions from members deposited directly into the state's General Revenue Fund, and no state contributions made in advance. Benefits are paid out of the General Revenue Fund when they become due.

Since contributions are not invested, there are no earnings to help defray the cost of the system. Consequently, there is no assurance that sufficient funds are set aside to pay present and future benefits.

"Basically, the current pay-as-you-go system is the most costly and precarious system of funding available. The state can no longer afford this luxury," reported the Select Committee on the Judiciary in their recommendations to the 69th Legislature.

Their conclusion was drawn from an estimate by the Pension Review Board that \$220.6 million will be needed to pay all future benefits of those already in the system.

The state's 1982-3 biennial appropriation for JRS was \$10.9 million, will be \$12.7 million for the 1985 biennium, and is estimated at \$200 million for the 2024 biennium.

Current judges will retain their present benefits under the present system.

The legislative response to the increasingly uncomfortable financial squeeze on the JRS is a new two-tiered system which will be implemented September 1.

It must be emphasized that current judges will retain their present benefits under the present system, which will continue to operate on an actuarially unsound basis.

Future judges will be placed in a advance-funded system, which has been labeled Plan II. Judges in both plans will continue to contribute 6 percent of salary.

Plan II was created after the Pension Board examined retirement systems around the county, Horwitz said.

"We compared benefit formulas, salaries, years of service required for vesting and many other things. If you compare Plan II with other systems around the country and to others within our state, you'll see that it compares quite favorably," she said.

The major difference between benefits provided under the two plans is the service retirement annuity. Plan II participants will

earn annuity at a rate of 3 percent per year of service before age 70, and 2 percent per year thereafter, times their average monthly compensation of the highest 36 months of the past 60 months of service. The maximum benefit may not exceed 60 percent of the final average monthly compensation, with no automatic post-retirement adjustments as allowed under the present plan.

Under Plan I, annuities are calculated using statutorily set plateaus to determine percentage rates.

Everand Davenport, general counsel for the state's Employee Retirement System which manages the JRS, explains: "Under Plan I, a judge hits plateaus, and additional service doesn't increase retirement benefits.

"Also, if a judge retires before age 71, she or he will receive an additional 10 percent of salary."

But if a judge retires after age 70, the 10 percent is subtracted giving the judge a maximum benefit of 50 percent of the final average monthly compensation.

"Under Plan II, the longer you work, the more you get paid," said Davenport, "But there is an apparent intention to get people to leave the bench at age 70 by providing smaller increases in benefits after that age."

For example, a district judge who has sat on the bench for the last 15 consecutive years, under Plan I, retiring at the age of 70 years, 11 months will receive a \$32,700 annuity (or 60 percent of \$54,500).

If the same judge elected to retire at age 71, the judge would receive only \$27,250 (or 50 percent of \$54,500). But if the judge elected to serve another five years, upon retirement the judge will receive 50

percent of the 1990 district judge salary. In any event, the retirement benefits would change proportionately with each change in state judicial salaries.

Under Plan II, using the same criteria, a judge electing to retire at age 70 would receive 45 percent of his or her final average salary, or \$23,745. If the judge retired a month after his or her 70th birthday, annuity payments would be increased to \$23,832, or 45.16 percent of the final average salary.

The increase would continue at 2 percent per year until the judge retired at age 75, for example, with 55 percent of final average salary. Unlike JRS Plan I, these benefits would not increase unless the Legislature appropriated funds for post-retirement increases.

Another difference between the plans is the eligibility requirements for membership qualification. Under Plan I, to draw a mon-

The new law also removes the prohibition from practicing in a Texas court when receiving an annuity policy.

thly pension check a judge may retire:

▷ at any age with 20 years of service of which the last 10 years were continuous or;

▷ at or after age 65, with at least 10 years of service, the last year of which was continuous; or

▷ with 12 noncontinuous years.

Plan II has the same requirements except retirement before age 65 is allowed only after 25 years of service, the last 10 of which

was continuous.

The new law also clarifies an area of the present statute currently under litigation. Under Plan II, a retired judge re-elected to office as a full-time judge may not rejoin the retirement system and the judge's annuity will be suspended until she or he retires again. Upon retirement, the member's retirement annuity will resume.

"The present language of the law is not clear and is being challenged by a judge who was re-elected in 1983," said Davenport. This is the first time the JRS has encountered this situation, he added.

The revised plan must receive IRS approval before it can be implemented.

Attorney C. Joseph Cain, who has represented the Judicial Section of the State Bar on tax matters, is handling tax qualification for the tax plan. expected by September 1.

In order to conform to federal tax laws, more specific language on the terms of the optional annuities available has been included in the retirement plan. The major change required by the IRS states that not more than 50 percent of the computed value of the annuity at the time of retirement may be used to provide a benefit for a beneficiary.

The new law also removes the prohibition from practicing in a Texas court when receiving an annuity policy. The statute will prevent only judges who elect to be subject to assignment from making court appearances.

A retiring judge must make the irrevocable decision to remain a sitting judge within 90 days after retiring. Current retirees will have 90 days after the

see JRS, p. 12

Where DO you draw the line?

The last time the Texas Legislature redrew judicial district lines, President Grant's administration was embroiled in allegations of corruption, Texas A&M University was enthralled with opening its campus doors for the first time, and the South was emerging from Reconstruction.

The year was 1876, and the Lone Star State was the 19th most populated state in the nation with slightly more than 800,000 citizens, all of whom were served by 27 district courts and 1 appellate bench.

One hundred and nine years later, the Legislature is asking voters to partially relieve them from the unappealing task of redistricting the state's trial courts.

What the Legislature has proposed for voter approval in November is the creation of the Judicial Districts Board (JDB), a 13-member standing committee invested with the authority to reapportion.

Sen. Kent Caperton (D-Bryan), sponsor of the measure, believes there are two reasons why the board should be created.

"First, there is a distinct mal-distribution of workload across the state. Secondly, if we don't (re-district), the federal courts will because some voters' group will act as plaintiff and allege "one man, one vote" violation. There are many legal scholars that believe they would win," said Caperton.

While Caperton concedes politics is an inherent element to the process, he said the Legislature attempted to minimize political influence by having administrative judges serve as the primary

board membership.

"They are the best qualified to see what courts are overburdened and what courts need help," he said.

"Most importantly, administrative judges hold jobs that are not subject to retaliation by voters."

The JDB, according to its enabling legislation (S.B. 290 and S.J.R. 14), will reapportion judicial districts so that district courts will have judicial burdens that "are as nearly equal as possible."

However, redistricting will remain indirectly a Legislative task since any



"...if we don't do (redistrict judicial districts), the federal courts will.."

*Sen. Kent Caperton,
Sponsor of legislation
proposed to create the
Judicial Districts
Board*



reapportionment order adopted by the JDB will require approval by record vote of the majority of both the Senate and the House of Representatives.

The board will be composed of the Supreme Court Chief Justice (who will chair the Board), the Court of Criminal Appeals Presiding Judge, the nine administrative presiding judges, the president of the Texas Judicial Council, and a member of the State Bar appointed by the Governor and approved by the Senate for a 4-year term.

The JDB will have the authority to designate the county or counties to be

included in each judicial district and may affect any or all the state's judicial districts.

Reapportionment will be done as many times as the Board deems necessary but only in the interims between regular legislative sessions unless the Legislature has enacted a general statewide apportionment.

The Board will be required to make a general statewide reapportionment within three years after each federal census if the Legislature does not.

The Board must convene not later than the first Monday of June of the third year following the year in which the federal census was taken. Reapportionment must be completed and filed with the secretary of state not later than August 31 of the same year.

If the Board fails to do this, the Legislative Redistricting Board, (established by Art. II, Sec. 28, of the Texas Constitution), must do so by the 150th day after the final day for the Judicial Districts Board to make the reapportionment.

The Board will also have the authority to investigate "from time to time the necessity of and appropriate locations for new judicial districts" and will "advise" the Legislature of its findings.

Operating under self-imposed rules of procedure, the Board will have the power to make investigations, hold hearings, subpoena witnesses and records, and administer oaths. Board meetings will be subject to the provisions of the open meetings law (Art 6252-17,

Vernon's Texas Civil Statutes).

In determining the reapportionment that "best promotes the efficiency and promptness of the administration of justice" in the state, the board must consider the following specific guidelines as set out in the statute:

- the numbers and types of cases filed in the district courts of the counties to be affected by the reapportionment;

- the numbers and types of cases disposed of by the district courts of those counties;

- the numbers and types of cases pending in the district courts of those counties;

- the number of district courts in those counties;

- the population of the counties;

- the area to be covered by a judicial district; and

- the actual growth or decline of population and district court case load in the counties to be affected.

Originally, the bill contained language that would prevent the JDB from issuing a reapportionment order that becomes effective earlier than the end of the current term of an incumbent judge.

That wording, however, was deleted from the bill in conference committee and replaced by the requirement that every reapportionment order must receive legislative approval.

Judicial districts must contain one or more complete counties unless a general election is held and a majority of voters in the county agree to allow the county to be divided.

see LINE, p. 12

Say ... what?

Voters will have the option to vote for or against the JDB amendment on the Nov. 5 ballot. It will read as follows:

"The constitutional amendment providing for the reapportionment of the judicial districts of the state by the Judicial District Board or by the Legislative redistricting Board, and providing for the administration and jurisdiction of constitutional courts."

In addition to creating the JDB, the proposed constitutional amendment also amends other sections of Article V of the Texas Constitution.

Article V, Section 8, will be changed to read:

"District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body. District Court judges shall have the power to issue writs necessary to enforce their jurisdiction."

The District Court shall have appellate jurisdiction and general supervisory control over the County Commissioners Court, with such exceptions and under such regulations as may be prescribed by law."

This constitutional revision, according to the final report of the Select Committee on the Judiciary, will "make the district court the state's general jurisdiction court in accord with common perception."

Article V, Section 16, will be amended to read as follows:

"The County Court has jurisdiction as provided by law. The County Judge is the presiding officer of the County Court and has judicial functions as provided by law. County court judges shall have the power to issue writs necessary to enforce their jurisdiction."

County Courts in existence on the effective date of this amendment are continued unless otherwise provided by law."

When the judge of the County Court is disqualified in any case pending in the County Court the parties interested may, by consent, appoint a proper person to try said case, or upon their failing to do so a competent person may be appointed to try the same in the county where it is pending in such manner as may be prescribed by law."

Article V, Section 19, will be amended to read as follows:

"Justice of the peace courts shall have original jurisdiction in criminal matters of misdemeanor cases punishable by fine only, exclusive jurisdiction in civil matters where the amount in controversy is two hundred dollars or less, and such other jurisdiction as may be provided by law. Justices of the peace shall be ex officio notaries public."

The act becomes effective on the date the amendment becomes a part of the Texas Constitution which occurs immediately upon voter approval.

Center pencils in 1986 conference dates

Clear your calenders, there will be no more continuances granted.

Tentative dates have been set for the Texas Center for the Judiciary's 1986 educational conferences which will include five regional conferences, the Criminal Justice conference, the Texas College for New Judges, and the Juvenile Justice conference.

Regional conferences, which will begin in February, will offer the same program of approximately eight hours of continuing judicial education in five different regions of the state.

The first, the Southeast Texas Regional conference, will be held Feb. 12-14 in Huntsville. While site selection for the other regional conferences is still

underway, the following calendar dates have been red lettered and are "fairly firm":

March 5 - 7 = South Texas Regional Conference

March 19 - 21 = Central Texas Regional Conference

April 2 - 4 = Northeast Texas Regional Conference

April 16 - 18 = West Texas Regional Conference.

see DATES, p. 13

cont. from p. 3

McAllen

business meeting. They consist of ten Canons that cover ethical considerations a judge should give to his everyday life and function as a judge.

"If the Canons are adopted by the Section, the Conduct Commission could use them in evaluating the everyday conduct of a judge if they wanted to, but they should not be confused with the Code of Judicial conduct," said Jones.

The Code, if violated, could be used as a basis for disciplinary action by the State Commission on Judicial Conduct under authority granted by a constitutional amendment approved by voters in November, 1984.

MORAL MAJORITY: A set of revised Canons of Judicial Ethics, unanimously approved by the Special Committee on Judicial Ethics, will be proposed for adoption at the Section conference on Friday. Committee members pictured are: (bottom row, l-r) District Judge Linda Thomas of Dallas; District Judge Guy Jones of Texarkana, Chairman; Justice Ross A. Sears of Houston; (back row, l-r) Chief Justice Howard Fender of Fort Worth; Judge Benjamin Martinez of Eagle Pass; Judge Alfonso Chapa of San Antonio; Justice Harry Hopkins of Weatherford; and Judge Thomas Routt of Houston. Not pictured: Justice Richard N. Countiss of Amarillo.

"I hope that the Code of Judicial Conduct and the Canons of Judicial Ethics that are ultimately adopted will be compatible with each other," added Jones.

Jones will also present an honorarium collected from judges statewide to the Texas Center's former Executive Director Jack H. Dillard, who retired last year after serving in that position since the Center's creation in 1973.

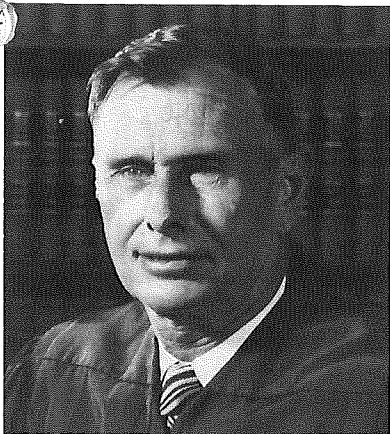
Section by-laws, as amended at last year's conference, allow any member of the State Bar of

Texas who is serving or who has served as a justice or judge of a Federal court, the Supreme Court, the Court of Criminal Appeals, a court of appeals, a district court, a constitutional county court, or a statutory court exercising any of the jurisdiction of a constitutional county court, upon payment of the annual dues (currently set at \$25 per active judge and \$12.50 for retired or former judges) to be enrolled as a member.

see McALLEN, p. 13



In Memoriam:



JUDGE CRISS COLE

District Judge Criss Cole, who served in the Texas Legislature for 16 years where he was an outspoken advocate for veterans and the handicapped, died June 21 in Houston. He was 67 years old.

Judge Cole, who was blind, presided over the 315th District Court. He was one of three judges who heard juvenile cases in Harris County.

Cole attended the University of St. Thomas and graduated from the University of Houston Law School in 1954.

He served in the Texas Legislature as representative and senator from Harris County. Cole was instrumental in passing bills to establish Padre Island National Seashore, the Institute

of Texas Cultures in San Antonio, and anti-discrimination policies by state and local governments.

In 1971, Gov. Preston Smith appointed Cole to the newly-created Harris County Juvenile Court No. 3. That court was designated the 315th District Court in 1977.

Judge Cole received numerous honors from veteran and handicapped rehabilitation organizations. In 1969, the Legislature voted to name the state's rehabilitation center for the blind in his honor.

JUDGE ERVIN "RED" JAMES

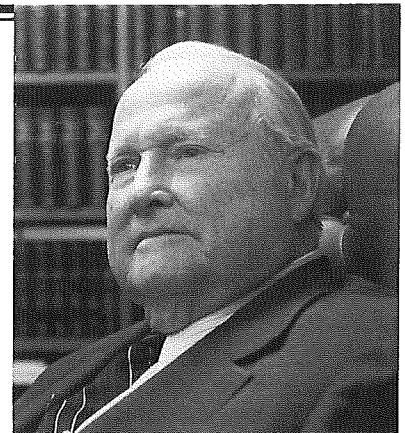
District Judge Ervin "Red" James, who served on the 127th District Court for 11 years, died August 7. He was 74.

First elected to the bench in 1972, James ran unopposed for the duration of his tenure. He had been serving as a visiting judge since choosing not to seek re-election to the bench last year.

James graduated from George Washington University in Washington, D.C., where he also received his law degree in 1941. He moved to Houston in 1953 to join the law practice of Roy Hofheinz.

Well-known as both a legal scholar and raconteur, James was widely sought after as a dinner speaker as well as a lecturer on the law. Combining both skills, he often commented that the qualities of a good trial judge were: "Patience, patience, patience -- and a strong bladder."

James was past president of the Houston Bar Association and a former board member of the Texas Department of Corrections. He recently served as chairman of the National Conference of State Trial Judges and was a faculty adviser to the National Judicial College at the University of Nevada.



EDITOR'S NOTE: Memorial funds are established through donations to the Texas Center for the Judiciary. Acknowledgement of a donation to the Center in memory of a judge is sent to the family. Contributors' names are also published each month under the "JUDICIAL NOTICES" column of this publication.

LINE

"We put this provision in to prevent the creation of single-member districts," said Caperton.

More than one judicial district may contain the same county or counties. But if more than one county is contained in a judicial district, the territory of the district must be contiguous.

The Board can enlarge, decrease, or have a county or counties removed or added to a district's territory.



"If we can't devise a plan using the Judicial District Board, then we have failed.."
Sen. Caperton



But no county having a population as large or larger than the population of the judicial district being reapportioned can be added to the district.

A district can also be removed to another location in the state so that the district contains an entirely different county or counties.

If county court jurisdiction is transferred or made concurrent in a district court by reapportionment, the Board must specify where county court jurisdiction is vested.

Reapportionment may not change the counties included in a district attorney's district where the office is authorized in or for a judicial district.

Cases filed in a court before reapportionment, will

be transferred to the court of the new judicial district of that county. If a county is in more than one judicial district, the case will go to the court with the lowest numerical designation.

If a county is located in two or more judicial districts by reapportionment, all the district courts in the county will have concurrent civil and criminal jurisdiction.

The bill also states that district judges in counties that have two or more district courts, on motion of a party, on agreement of the parties, or on the judge's own motion, may transfer a case to another district court. While the measure does not restrict transfers to courts within the county, Caperton said that was the Legislature's intent.

"If there are areas in the bill that are unclear or prove to be unworkable, we'll just have to go back in and clean it up," said Caperton, who plans to rally the support of the judiciary and state bar leadership to ensure the amendment's passage.

"Overall I think it's a good positive move for Texas to make. We redistrict the Legislature every 10 years, we ought to be able to do it with the judiciary", said Caperton.

"If we can't devise a plan using the Judicial District Board, then we have failed -- and wasted a lot of time and money." ❁

Judges wishing to submit articles for publication in In Chambers are encouraged to do so by sending them to: Editor, In Chambers, P.O. Box 12487, Austin, Texas, 78711.

JRS

bill goes into effect to make this decision.

In some cases, the new JRS Plan II provides additional benefits that the old plan does not. For example, Plan II provides extra death benefits to contributing members. Active members who die while ineligible to retire from the system will be entitled to a lump sum death benefit payable equal to 5 percent of the amount of the member's accumulated contributions, times the number of years of service.

All money returned to the member's beneficiaries will include interest, which is not provided in Plan I. The new plan also allows members to receive interest on their contributions when they choose to withdraw from the system.

JRS currently has 203 service retired annuitants and 5 disability retired recipients.

JRS Plan I currently has slightly more than 470 contributors according to Davenport, a fact that will prevent the state from putting it out to pasture for at least 50 or 60 years.

Until then, people with questions about the systems should contact Davenport at P.O. Box 13207, Austin, Texas, 78711. ❁

IN CHAMBERS

Texas Center
for the Judiciary, Inc.

Managing Editor

Roy J. Rawls

Editor

Lana Kay Varney

cont. from p. 10

DATES

Breaking from tradition, the annual Criminal Justice conference will not be held the first week in May, but is instead scheduled for May 14-16. It will, however, still be held at the Criminal Justice Center on the Sam Houston State University campus in Huntsville. The conference will probably offer eight to ten hours of judicial education credit.

The 1986 Annual Judicial Section Conference is tentatively set for September 23 - 26, location to be determined, and the Juvenile Justice Conference is planned for November 5 - 7 in Austin.

Huntsville will also be the site for the week-long 1986 Texas College for New Judges on November 30 - December 5.

Registration materials for all conferences will be mailed to judges eligible to attend approximately one and a half months prior to the conference date, according to the Center's Executive Director, Roy J. Rawls.

"Since the Center anticipates offering judges virtually cost-free attendance to all of our conferences, we will encourage prompt regis-

tration and early notification of cancellations," said Rawls.

"Preparations for a conference must be made months in advance.

"That very often includes signing contracts

guaranteeing certain numbers of hotel rooms and meals. Last-minute registrations and cancellations can cost the Center a lot of money and none of us want that to happen," he said. ●

cont. from p. 10

McAllen

Membership to the Texas Center, as proscribed by its by-laws, include appellate, district, county courts at law, and statutory probate judges, and masters and referees who are permanently appointed by one of the above listed judges. Retired judges are considered associate members.

The by-laws of both entities require advance notice to members attending the annual conference of any proposed amendments to the by-laws at least 48 hours prior to the business meeting.

Judge Longoria, who issued the call for the annual meeting early this month, has requested any proposed resolutions for Friday morning's business meetings to be delivered to him in writing by September 7.

"This will allow for these matters to be reproduced and included in the registration packet and will thus insure that all members have ample time to review and study them," said Longoria.

More than 800 appellate, district, county court at law, and county judges who are lawyers have been sent registration materials for the conference.

Participants will be housed in four McAllen hotels. All hotel reservations will be made through the Texas Center.

Conference registration will be held at the McAllen International Civic Center in the Convention Hall, 1300 South 10th Street, from 12:00 NOON to 5 p.m.

McAllen, 10 miles from the Mexican border, boasts an average daily temperature in October of 76° F, with an average 62 percent humidity. ●

cont. from p. 5

FARABEE

are shared by many legislators, particularly within the Senate where the funding bill passed by a 26-5 margin. But pillory is usually an ineffective legislative tool. My bottom line hope, however, is in accord with that of the Judge: that when

the legislature convenes in January, 1987, it will be presented with and will pass a cohesive, broad-based selection and retention package that has widespread support within the bar and judiciary. Whatever my concerns with Judge Longoria's methods of highlighting this need, he is correct that the long-term vitality of the judicial branch deserves nothing less. ●

LETTERS SHOULD CERTIFY CREDIT CONFUSION

Judges may hold "hourly" discussions this month as a result of continuing judicial education progress reports recently mailed by the Texas Center for the Judiciary.

Letters informing each judge subject to the mandatory judicial education law of her or his hours have been mailed by the Texas Center, the official recordkeeper for the Supreme Court.

The letters reflect hours reported by judges on or before July 18, 1985.

According to the Supreme Court, each judge must submit a "Judge's Certification Form" to the Texas Center for each conference or seminar a judge wishes to receive credit for attending.

"Our records indicate that slightly more than 30 percent of all the judges required to accumulated 16 CJE hours a year have already done so," said Roy Rawls, executive director of the Texas Center.

"Additionally, of those that haven't already complied, 57 percent have certified attendance to at least eight hours.

"If they attend the annual Judicial Section conference, they'll be home free for the year," added Rawls.

If a judge's records do not concur with the Center's, the judge should submit the necessary certificates to the Center as soon as possible.

Hours in excess of the annual requirement are not transferable to other years.

The Supreme Court has ordered the Texas Center to report to it by February 1 the name of any judge who has not accumulated the required 16 hours for the previous year.

An emergency waiver of compliance may be requested by submitting a statement of reasons for the request to the Supreme Court Education Committee.

The course of instruction or the number of hours for which a waiver is requested should be specified in the request statement.

Unless the Court grants a waiver for emergency reasons, the Court is required by the Mandatory Judicial Education Act, article 5966b, Tex. Rev. Civ. Stat. Ann., to advise the State Commission on Judicial Conduct of the name of any judge who has not complied with the Act.

Emergency waiver requests should be submitted to the chair of the Supreme Court Education Committee, Justice Richard N. Countiss, at P.O. Box 9540, Amarillo, Texas, 79105.



IN OFFICE: Newly-elected Adult Probation Commission officers are: (l-r): Secretary, Judge B.B. Schraub of Seguin; Vice-Chairman, Diana S. Clark; and Chairman, Judge Clarence N. Stevenson of Victoria.

NEW JUDGES

JUDGE	COURT	CITY	SUCCEEDS	EFFECTIVE
Tommy Alteras	County Crt. at Law #1	Cleburne	NEWLY-CREATED	7/24/85
Eric G. Andell	315th District Court	Houston	Criss Cole	7/24/85
Fred Barker	County Crt. at Law	Weatherford	NEWLY-CREATED	7/24/85
Bill Baskette	County Crt. at Law	Kerrville	NEWLY-CREATED	8/1/85
Sam Baxter	71st District Court	Marshall	Ben Grant	8/13/85
Ruth J. Blake	321st District Court	Tyler	Harold B. Clapp	8/7/85
Ernest Cadenhead	35th District Court	Brownwood	Gordon Griffin	7/1/85
Alex W. Gabert	County Crt. at Law	Starr County	NEWLY-CREATED	7/24/85
Ben Grant	6th Court of Appeals	Texarkana	Bun L. Hutchinson	8/13/85
James Keeshan	359th District Court	Conroe	NEWLY-CREATED	7/24/85
Joe E. Kelly	Presiding Judge, 4th Admin. District	Victoria	Reappointed	8/7/85
Lynn E. Markham	County Crt. at Law	Crockett	NEWLY-CREATED	5/1/85
Carolyn Ruffino	361st District Court	Bryan	NEWLY-CREATED	8/1/85
Robert Stem	82nd District Court	Marlin	Tom Bartlett	8/7/85
Olin Strauss	81st District Court	Jourdanton	Taylor Brite	7/24/85
Hilda Tagle	County Crt. at Law #3	Corpus Christi	Joaquin Villarreal	7/1/85
Leo Villarreal	County Crt. at Law	Kingsville	NEWLY-CREATED	8/1/85

* The above chart lists judges who have assumed the bench or have been appointed to a different court since the last publication of In Chambers.

ADULT PROBATION

COMMISSION PICKS

NEW OFFICERS

District Judge Don Carroll of Tyler is the newest member of the Texas Adult Probation Commission. Appointed Commissioner by Chief Justice John Hill, Carroll succeeds retiring Judge Byron L. McClellan of Gatesville. Carroll, who was appointed to a six-year term, took the oath of office at the Commission's June 6 meeting in Dallas.

At the conclusion of that meeting, Commission mem-

bers elected Judge Clarence N. Stevenson of Victoria to serve as chairman and Judge B.B. Schraub of Seguin as secretary. Diana S. Clark of Dallas was selected vice-chairman. Each will serve for a two-year period.

STOVALL TO SERVE ON NAT'L CENTER'S DIRECTING BOARD

Thomas J. Stovall, Jr., presiding judge of the Second Administrative District, is now a member of the board of directors of the

National Center for State Courts.

Stovall, who was elected to the Board at the Center's July meeting in Kentucky, said his association with other national court-oriented organizations will be his biggest asset for his new position.

"I think it will be an excellent opportunity to keep working with representatives from other states that have the same problems we do. I know most of the people in the fields of technology, academic research, and information processing. My goal is to get it all under one tent," said Stovall.

The National Center for State Courts is a national organization that serves as a clearinghouse of research information about trial courts.

They also serve as secretariat for 37 court-related organizations, such as CASA.

CONTRIBUTIONS TO THE TEXAS CENTER

The Texas Center for the Judiciary, Inc., received the following contributions since publication of the last "In Chambers:"

Friends of the Center
\$100 - \$250

Shirley Butts
Raleigh Brown
Tom Cave
R. W. Lawrence
Edward B. Nobles

Other Contributors

J.L. Smith

In Memory of
Justice George E. Miller

Wendell A. Odom

In Memory of
Judge Criss Cole

Latrelle Schieffer

In Memory of
Judge Jim W. Weatherby

Thomas Crofts



JUDICIAL

CALENDAR ☆

1985 CONFERENCES

Annual Judicial Section Conference

October 1-4, 1985
Facilities to be announced
McAllen

Juvenile Justice Seminar

November 6-8, 1985
Quality Inn
Austin

Texas Association for Court Administration

October 22-25, 1985
Quality Inn
Austin

Texas College for New Judges

December 1-6, 1985
University Hotel
Huntsville

1986 CONFERENCES

Southeast Texas Judicial Conference

February 12-14, 1986
Huntsville

Criminal Justice Conference

May 14-16, 1986
Huntsville

South Texas Judicial Conference

March 5-7, 1986
Location: to be announced

Court Management Seminar

June 16-20, 1986
Huntsville

Central Texas Judicial Conference

March 19-21, 1986
Location: to be announced

Annual Judicial Section Conference

September 23-26, 1986
Location: to be announced

Northeast Texas Judicial Conference

April 2-4, 1986
Location: to be announced

Texas Association for Court Administration

October 21-24, 1986
Austin

Juvenile Justice Conference

November 5-7, 1986
Austin

West Texas Judicial Conference

April 16-18, 1986
Location: to be announced

Texas College for New Judges

November 30-December 5, 1986
Huntsville

NON PROFIT ORG.
U.S. POSTAGE PD.
PERMIT NO. 1390
AUSTIN, TEXAS