

# IN CHAMBERS

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## Capital improvements

# Legislature invests in judicial education

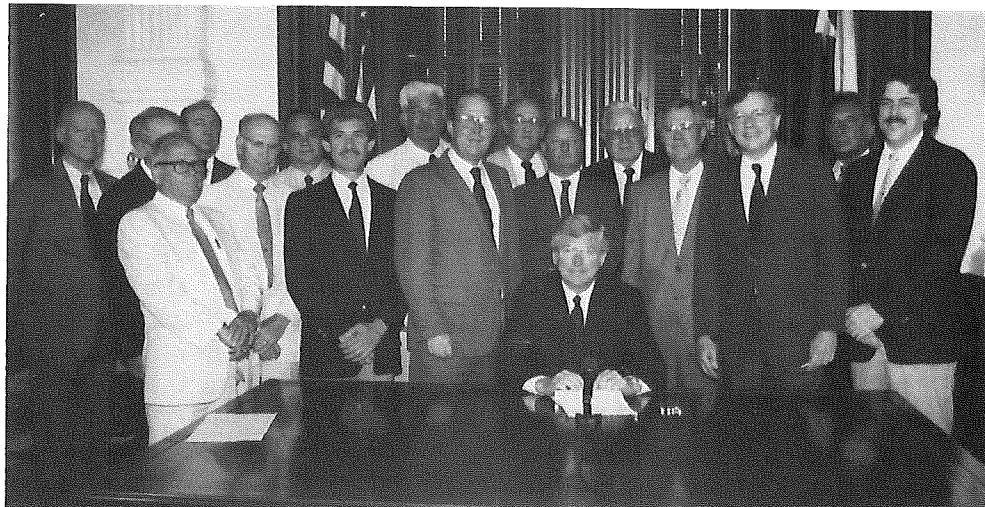
Contrary to trite adages, crime does pay.

Beginning September 1, crime will pay for the schooling of Texas judges.

By attaching \$1 to all criminal convictions, the Texas Legislature has created a permanent source of funding which will require those convicted of crimes to pay for judicial education.

The state began requiring judges to attend 16 hours of continuing legal education seminars per year in 1984.

In some dramatic, midnight-hour maneuvering in the waning hours of the regular session, a bill sponsored by Sen. Ray Farabee and Rep. Terral Smith which creates the "Judicial and Court Personnel Training Fund," was pulled from its



**EYES WITNESS:** Calling it a vehicle which will greatly improve the judicial system of Texas, Gov. Mark White signs into law the 1985 Court Administration Act (H.B. 1658) as those who will use it look on. Pictured are: (l-r) State Bar President Tom Ramey, 3rd Administrative District Judge James C. Clawson, 5th Administrative District Judge Joe B. Evins, 1st Administrative District Judge John D. Ovard, 8th Administrative District Judge Charles Murray, 6th Administrative District Judge George M. Thurmond, Supreme Court Justice Raul A. Gonzales, 2nd Administrative District Judge Thomas J. Stovall Jr., Rep. Lloyd Criss, 7th Administrative District Judge Ray McKim, District Judge Tom McDonald, 9th Administrative District Judge E.E. Jordan, Supreme Court Chief Justice John L. Hill, 4th Administrative District Judge Joe E. Kelly, Sen. Ray Farabee, former Judge Solomon Casseb, and Senate State Affairs Committee Counsel Mel Hazlewood.

certain-death-last-page position on the House Calendar and attached to another measure which was given legislative approval on the last day of the regular session.

The original bill, H.B. 1168, was unanimously passed by the Senate April 1, but did not reach the House floor until Friday, May 24 -- just three days before sine die. With time at a

premium, a quick search by the staffs of Sen. Farabee and Rep. Smith turned up another "vehicle" to which H. B. 1168 was attached as a Senate amendment.

That bill, H.B. 309 by Lloyd Criss which generates funds for crime victims and for funding of local crime stoppers programs, was unanimously

see **FUND**, p. 7

### Between

*Grading what the 69th Legislature did for/to/ with you. A report....p.4*

*Changing the criminal rules of evidence. A sneak preview.....p.10*

### the Lines

# - LEADING REMARKS -



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

*The following is the report of the Judicial Section's legislative activities which I delivered to the Board of Directors of the State Bar on June 7 at the State Bar Convention in Dallas.*

First of all, on behalf of the State Judiciary I express our sincere appreciation to the members of the State Bar Association for all you have done during the last session of the Legislature to help the Judiciary in its attempt to pass its legislative package. I particularly want to thank our President, Mr. Tom Ramey, Jr., for the many hours he spent in Austin helping us.

In order for me to give you a better picture of the background of our legislative program for 1985, I need to go back about six years to 1979 when I was still serving as a State Senator.

During that session, the Courts of Appeals of the State were realigned so that they were empowered to hear appeals in criminal cases from the district courts instead of the cases being appealed from the district courts straight to the Court of Criminal Appeals. At that time, the Courts of Appeals were civil courts of appeal and heard only the civil cases. This change was necessary because the Court of Criminal Appeals in Austin was being loaded with criminal cases and it was taking up to three years to dispose of cases that were appealed from district courts.

As you know, justice delayed is justice denied; so, we had to alleviate this serious problem by giving the Courts of Appeals jurisdiction over criminal matters. Money was necessary to create more courts because it was evident that the Courts of Appeals would not have enough justices.

In line with that, we also saw the necessity for funds for personnel to help the justices carry out the extra duties imposed upon those courts. Not only were funds provided for personnel, but the salaries of the Justices of the Courts of Appeals were, by statute, tagged at 90% of the salary of the Associate Justices of the Supreme Court which is seventh salarywise nationwide and the Courts of Appeal are eighth salarywise nationwide.

This positive response on the part of

the Legislature has enabled our appeals system to become much more effective and efficient and the dockets of these courts have been reduced dramatically.

Realizing that the next step in its attempts to make the entire Texas Judiciary more effective was a similar type program for the District Courts, the Judicial Section initiated an attempt to pass legislation in the regular Legislative Session of 1983 by which the salaries of district judges would be tagged at 85% of the salaries of the Associate Supreme Court Justices.

The present salary of district judges is only \$54,500.00 (not much more than beginning lawyers, fresh out of law school, are being offered by law firms in Houston and Dallas). And, while some district judges do receive supplemental pay from counties, some do not; and, while some district courts are provided by their respective counties with personnel such as coordinators, some judges do not even have help to answer their telephone, but the judge himself has to do all of his own clerical work. And, furthermore, in counties where the salaries of the district judges are supplemented by county funds appropriated by the County Commissioners, it appears to me that this situation creates a conflict of interest for the district judges who are charged with the duty of overseeing the County Commissioners Court and yet must look to them for salary supplementation.

For this reason, we felt that the State should be paying the entire salary of the district judges and that all district judges should be provided with money for necessary personnel.

We approached the Legislature with our program in 1983, and it passed the House but was filibustered in the Senate and was killed on the last day of the session.

We were, at that time, told that if we could show the State where and how it could come up with money for the proposals for the judiciary, we would have a good chance of getting our legislation passed in 1985.

Long before the session started, we prepared our legislative package proposing,

again, that the salaries of the district judges be set at 85% of the salaries of the Associate Supreme Court Justices, proposing money for personnel and, additionally, we recommended that one million dollars be set apart for computer-aided transcription of records of the district courts so that the records of the cases tried in district courts could be transcribed forthwith and sent to the Courts of Appeals to expedite the disposition of cases.

Furthermore, we pointed out to the Legislature that funds for all of the proposals we had made could be raised by raising the cost of filing district court cases.

After much effort, the Senate passed this legislation, but it failed in the House because, we were told, there was no time to put it on the calendar so that the House of Representatives could have the opportunity to vote on this legislation which was, in our opinion, all important.

They did find time, however, to use our idea of raising filing fees for district court cases from \$25.00 to \$75.00 and jury fee from \$5.00 to \$60.00 -- but not one cent of this money was earmarked for the district courts. All the money which will be generated by the raise in fees for filing cases and by the raise in the jury fee will be dedicated to other uses.

It is very ironical, indeed, to tell you that at the same time that the Judiciary was deprived by the Legislature of needed salary increases and money for personnel and assistance in transcription of records, the Legislature did pass legislation requiring the judiciary to be more accountable for their time and the disposition of cases. The provisions of H.B. 1658 are so stringent that district judges are going to be required to punch a time clock as if they were hourly employees; no other elected officials in the state have such insulting requirements.

Furthermore, the Legislature passed legislation to change the retirement system of the judiciary so that no judges from now on will get the same type of retirement benefits that were made possible for judges in the past. The very excellent retirement system has been one of the main reasons why many lawyers have had the incentive to join the judiciary -- it certainly has not been because the salary was good, because, even now, as I told you earlier, most lawyers make more than twice the salary paid to district judges by the State.

The fact is that many young judges are

leaving the Judiciary at the present time simply because their salary is not in any way comparable to the money they can earn in private practice or with a law firm, and because the salary is not adequate to compensate them for the responsibilities and burdens of overloaded dockets in both civil and criminal cases.

In my opinion, these legislative measures are a slap in the face of the judiciary and reflect a lack of understanding on the part of the Legislature that the Judicial Branch of government is a separate but equal branch of government provided by the Constitution of the State of Texas, which should and must be provided with the necessary money for decent salaries for district judges paid for from state funds, money for personnel and equipment in order that the quality of our judiciary may be kept high.

The fact is that less than 3/10 of one percent of the total state budget of approximately 36 billion dollars is set aside to finance all the Judicial Branch of Texas State Government. That fact is enough to make one realize that the Judicial Branch of Texas State Government is being regarded more as a step-child than as an equal branch of government.

When our founding fathers established three equal branches of government, their intention was to have each act strongly and independently. A strong and independent judiciary is essential to the operation of our government as it was designed to operate. You show me a country in which the judiciary is weak and dishonest and I will show you a country which is in chaos. You don't have to take my word for that but only look south of the border. We certainly do not want the Texas Judiciary to deteriorate to the point that we have a government of men instead of a government of laws. In a government of men, the powerful will govern at the expense of the weak. We must maintain a strong judicial system so that we will continue to have a rule of law and not a rule of men.

I do not like to be pessimistic, but it is my measured opinion that something must be done to alleviate the very serious problems we were trying to get the Legislature to address during the past session.

All of the laws passed during the immediately-ended legislative session have had an adverse effect on the morale of the trial judges. And, as I said before, I fear that many more may leave the bench now and that good, capable lawyers will have no

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incentive to become judges because of the inadequate pay and the inadequate help provided for the district judges. Further, the demeaning provisions of the accountability law will certainly not encourage any self-respecting lawyer to enter the judiciary.

I hope that you, the members of the Board of the Bar, will be kind enough and concerned enough to spread the message that we must have a judiciary in the State of Texas second to none because if this is not done, your cases that you have to try, either civil or criminal, will not be disposed of

by the type of efficient, capable, independent and honest judiciary you expect to have and to which you are entitled. Please do whatever you can to encourage the Governor, the Lt. Governor, the Speaker of the House, and our State Senators and State Representatives to realize that unless we can have a judiciary with good pay, provided by the State of Texas, so that there will be no conflict of interest, a good retirement system, and the personnel and equipment with which to work effectively, we can never be first in this all important task of carrying out the functions and duties imposed upon us by the Constitution. ●

## LEGISLATIVE REPORT CARD: Pass Other Fail

As a result of actions taken by the 69th Legislature, judicial education will be mandated by the Supreme Court, the Court of Criminal Appeals will be able to promulgate rules of procedure and evidence in criminal cases, and retired judges

who elect to remain active judicial officers shall be referred to as "senior" judges.

There will also be 24 new courts -- two district courts, 20 county courts at law, and two probate courts -- and 21 additional coun-

ty courts at law that will have jurisdiction over civil cases up to \$50,000.

Some of the bills of interest to the judiciary that were passed by the Legislature include:

### H.B. 1658 - COURT ADMINISTRATION ACT.

**Signed by the Governor June 14. Effective Jan. 1, 1986.**

Among many other things, this bill repeals the statute mandating continuing judicial education and places the responsibility for ordering and administering judicial education with the Supreme Court.

Supreme Court Justice Raul A. Gonzalez, who is the liason between the Supreme Court and the Supreme Court Education Committee, said judges should not anticipate any variation in the current mandatory requirements.

"The feeling of the Court is to continue with the mandatory judicial education requirements that have been put in place," said Gonzalez.

The Legislature has provided adequate funding for judicial education by creating the Judicial Training fund, Gonzalez noted, thus eliminating lack of financing as a viable excuse for non-compliance.

The bill also:

● allows a party to a civil case to file an objection to the assignment of a visiting judge. The bill requires the presiding judge, "if it is reasonable and practicable and if time permits," to give notice of the assignment to each attorney representing a party to the case that is to be heard in whole or part by the assigned judge.

"If a party to a civil case files a timely objection to the assignment, the judge is disqualified to hear the case," the bill reads.

The bill does not require any statement of reason or cause for objections.

An objection under this section must be filed before the first hearing or trial, including pretrial hearings, over which the assigned judge is to preside.

● requires the Supreme Court to adopt rules of administration setting policies and guidelines necessary or desirable for the operation and management of the court

system and to consider adoption of rules relating to:

- 1) time standards for pleading, discovery, motions, and dispositions;
- 2) dismissal of inactive cases from dockets;
- 3) judicial accountability for and incentives to avoid delay and to meet time standards;
- 4) penalties for filing frivolous motions;
- 5) firm trial dates with a strict continuance policy;
- 6) restrictive devices on discovery;
- 7) a uniform docket policy;
- 8) formalization of mandatory settlement conferences of settlement programs;
- 9) standards for selection and management of nonjudicial personnel;
- 10) establishment of a monthly statewide information reporting system from individual courts including the number of new cases filed; types and numbers of cases filed, terminated, and pending at the beginning and end of each month; cases pending past established time limits; and continuances requested and granted;
- 11) emphasis on getting older cases to trial; and
- 12) regulation of attorneys with heavy case loads that inhibit case flow system.

● requires the election of a local administrative judge in each county by the district and statutory county court judges for a term of not more than two years.

The local administrative judge cannot be elected on the basis of rotation or seniority and shall:

- 1) implement and execute the local rules of administration, including the assignment, docketing, transfer, and hearing of cases;
- 2) appoint any special or standing committees necessary or desirable for court management and administration;
- 3) promulgate local rules of administration if other judges do not act by majority vote;
- 4) recommend to the regional presiding judge any needs for assignment from outside the county to dispose of court case loads;
- 5) supervise the expeditious movement of court case loads, subject to local, regional, and state rules of administration;
- 6) provide the Supreme Court and the office of court administration requested statistical and management information;
- 7) set the hours and places for holding court in the county;
- 8) supervise the employment and performance of nonjudicial personnel;
- 9) supervise the budget and fiscal matters of the local courts, subject to local rules of administration; and
- 10) perform other duties as may be directed by the chief justice or a regional presiding judge.

● requires retired or former district judges who wish to be eligible for assignment to annually demonstrate the completion within the last calendar year at least five days of continuing legal education in courses approved by the state bar or the Supreme Court.

● requires the Supreme Court to assess the need for adding, consolidating, eliminating, or reallocating existing appellate courts and requires the Court to promulgate rules, regulations, and criteria to be used in assessing those needs and biennially recommend to the Legislature any needed changes in the number or allocation of those courts.

#### H.B. 13 COURT OF CRIMINAL APPEALS RULE-MAKING AUTHORITY.

***Signed by the Governor June 14. Effective August 26.***

This bill authorizes the Court of Criminal Appeals to promulgate rules of procedure in criminal cases relating to post-trial, appellate, and review procedures; and to promulgate rules of evidence in criminal cases.

H.B. 2509 - JUDICIAL FILING FEES.

***Filed without Governor's signature June 15. Effective August 26.***

This bill increases the filing fees in the general primary election for appellate justices, district judges, and statutory county court judges in counties with a population of more than 2,400,000 (which, currently, limits it to Harris County) from \$700 to \$2,000 and requires that the \$2,000 filing fee be accompanied with a petition containing the signature of at least 250 voters eligible to vote for the office sought.

H.B. 377 - SENIOR JUDGES.

***Signed by the Governor June 10. Effective August 26.***

Designates retired judges who elect to remain active judicial officers as "senior judges".

S.B. 290 - JUDICIAL DISTRICTS BOARD.

***Signed by the Governor June 15. Effective upon voter approval of constitutional amendment: election November 5.***

Creates the Judicial Districts Board and charges it with reapportionment of the judicial districts of the state. Their recommendations must be approved by a record vote of the majority of both the Senate and the House of Representatives before it becomes effective and binding. Creation of the Board is contingent on the passage of a constitutional amendment.

S.J.R. 10 - QUESTIONS OF STATE LAW.

***Placed on November 5 ballot.***

Proposed constitutional amendment to be submitted to voters on Nov. 5 that if passed will grant the Supreme Court and the Court of Criminal Appeals jurisdiction to answer questions of state law certified from a federal appellate court.

S.B. 105 - RETIREMENT SYSTEM.

***Signed by the Governor June 14. Effective September 1.***

Restructures the Judicial Retirement System of Texas to a two-tiered program in which current judges would retain current benefits, and future judges would have a new, less generous benefit formula.

NEW COURTS:

The following counties have one new county court at law (except where numbers indicate differently):

Johnson	Parker	Starr
Moore	Denton	Bexar (3)
Midland	Kerr	Harris (2)
Collin	Henderson	Bastrop
Fort Bend	Brazos	Coryell
Austin	Polk	

Newly-created districts courts will be in Denton and Brazos counties. Probate courts were created in Harris and Brazoria counties.

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## FUND

passed by both houses in the last hours of the session.

The dollar cost will be levied on all criminal court convictions, except those arising under laws that regulate pedestrians or the parking of motor vehicles.

The monies will be funneled through the state treasury and administered by the Supreme Court.

Ten percent of the money generated by the fee will be retained by local governments as a collection fee. The Supreme Court will be allowed to spend up to three percent of the fund for administrative purposes.

After administrative costs are deducted, the fund will be divided evenly among the following three groups:

1) judges of appellate courts, district courts, county courts at law, and county courts performing judicial functions;

2) judges of justice courts; and

3) judges of municipal courts.

The Supreme Court will issue grants from the fund to "statewide professional associations of judges and other entities whose purposes include providing continuing legal education courses, programs and projects for judges and court personnel," the bill reads.

The bill also requires grantees of such funds to ensure that sufficient funds are available for each judge to meet the minimum educational requirements before

lifeline," said the Center's Executive Director, Roy J. Rawls.

The Center will present a grant application to the Supreme Court that will request enough money to allow the Center to continue its present level of service to Texas judges, Rawls said.

"For the past four years, the Center has operated on grant monies from the Criminal Justice Division of the Governor's Office. The Legislature knew that money was not going to be available in the future,

so they found an alternative method to fund a program in which they obviously had confidence.

"We plan to ask for sufficient funds to pay for each judges' lodging, meals and transportation to and from our conferences," said Rawls.

The Center will sponsor five regional conferences, the Criminal Justice conference, the Juvenile Justice conference, Court Management Seminar, and the Texas College for New Judges this year. ●

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***The Texas Center will ask for sufficient funds to pay for each judges' lodging, meals and transportation to and from its conferences.***

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any funds are awarded to a judge for education that exceeds those requirements.

The bill was signed by both the House and Senate on May 27, and was signed by Gov. Mark White June 13. It becomes effective September 1.

"The fund is the Texas Center for the Judiciary's

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cont. from p. 6

## LEGISLATIVE REPORT

Copies of these bills can be obtained from your local legislator or by calling or writing: SENATE DOCUMENTS, P. O. Box 12068, Austin, Texas 78711, (512) 475-2520; or HOUSE BILL DISTRIBUTION c/o Legislative Council, P. O. Box 12128, Austin, Texas 78711, (512) 475-8454 ext. 1139. The Texas Center does not have copies of these bills for distribution.

*Regional gatherings draw large crowds*

## Record number of judges attend conferences

Texas has until October, 1987 to respond to federal child support laws which were enacted in 1984, but won't wait until the last minute to do so an attorney from the attorney general's office told judges at the annual Northeast Texas Judicial conference held last month.

A review of the state's response to the federal regulations was one of many topics discussed at the Texas Center for the Judiciary's five regional conferences this year.

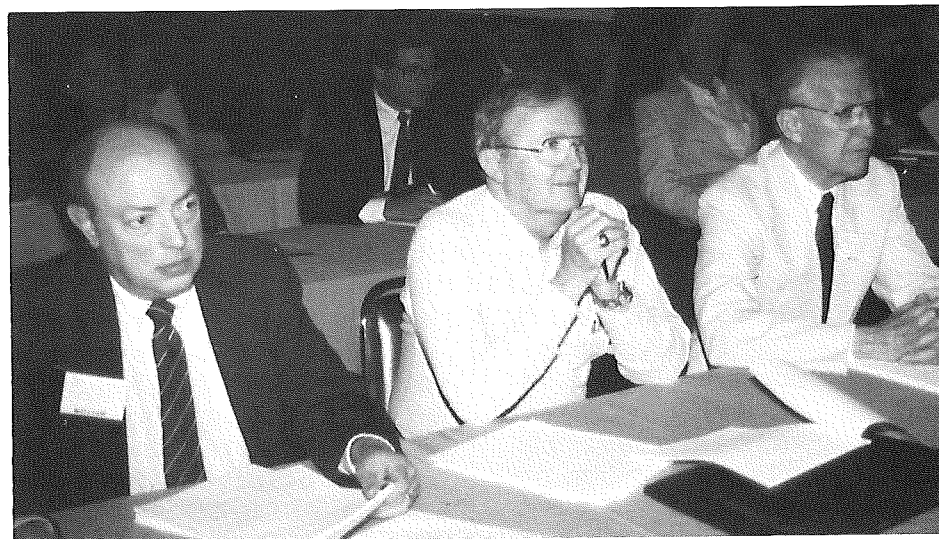
The last two conferences held in Del Rio and Nacogdoches drew large numbers of judges which helped set a record total attendance to regional conferences sponsored by the Center.

Final tabulations indicate 87 percent, or 520 of the 600 eligible judges attended one of the five conferences the Center sponsored in as many different areas of the state.

At the Northeast Texas conference, held May 22-24, Troy V. Smith, lead attorney for the AG's office in Tyler, said Texas will have to change current laws in order to comply with the new federal regulations designed to improve states' enforcement of child support obligations.

The state must make its wage withholding process apply to interstate cases, and the maximum amount which can be deducted will increase to comply with the Federal Consumer Protection Act, which means a 50 to 60 percent withholding, said Smith.

Two other mandated changes will require states to establish laws to expe-



dite child support processes, and establish guidelines for setting the amount of child support.

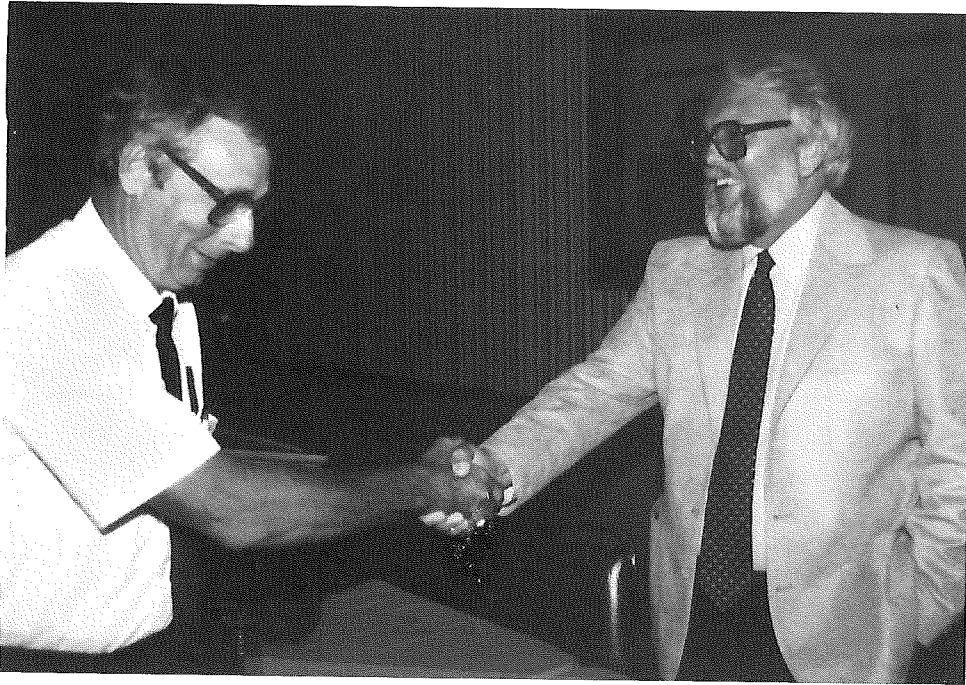
"Judges shouldn't be apprehensive of these guidelines because they will allow lawyers to know what will be set before going to court," he said.

The state may choose to expedite procedures by increasing the use of court masters in family law cases and by removing family law designation of courts in Texas, Smith said.

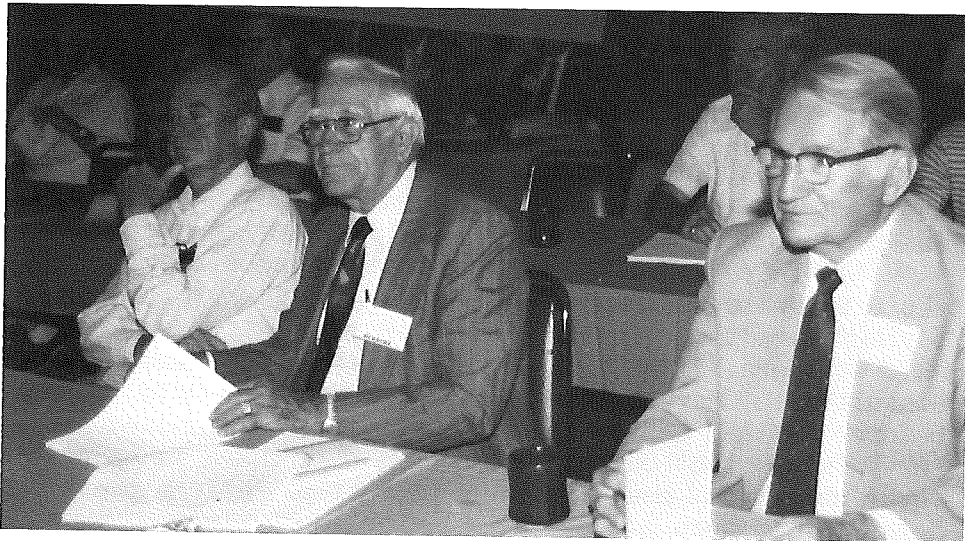
**USEFUL TIPS:** Putting her finger on the crux of the issue, District Judge Frances Harris (second from right) takes the opportunity at the Northeast Texas conference to discuss with other Dallas judges matters of mutual concern. Pictured are: (l-r) Judges Harlan Martin, Merrill Hartman, Harris, and Ed Kinkeade.

**JOINT VENTURE:** Up to their elbows in educational materials, District Judge William C. Martin III, County Court at Law Judge Lloyd Perkins and Senior Judge R.C. Vaughn find seating at the Northeast Conference at a premium. A record number of judges attended the Center's regional conference this year.





**MASTERFUL HANDIWORK:** For having a firm grasp of his subject, Judge Larry Gist (right) is offered complimentary remarks by Judge Ben C. Boles at the Northeast Texas Judicial Conference. Gist offered constructive remarks about the philosophy of sentencing at all five regional conferences.



**ACTIVE LISTENERS:** Senior Judges James F. McCarthy of Dallas, Herbert Line and former Supreme Court Justice T.C. Chaddick of Texarkana earn part of their required 16 hours of judicial education by attending a regional conference. The Supreme Court expanded their mandatory education order to include senior judges in February.

● states must use liens against real and personal property for overdue support, bonds or security to guarantee payment; and

● statutes of limitations in paternity actions must be extended until at least the child's eighteenth birthday.

Other topics discussed at the conferences included comparative causation, judicial immunity and the latest decisions from the Court of Criminal Appeals.

One hundred five judges attended the West Texas Judicial Conference held in Del Rio, April 10-12.

"I think so many judges attended because they were treated to a wide variety of informative presentations by their peers on pertinent issues," said District Judge George M. Thurmond, who serves as associate dean of the West Texas region.

District Judge Jack Pierce, associate dean of the Northeast region who coordinated local conference activities, said the conference was a success because: "It was very useful material learned at an exceptionally well-planned conference that will go toward satisfying our mandatory education hours. I'd say it was the best of all worlds." ●

Other changes do not require state legislation and are already in effect or will be phased in over the next few years. These include:

● the attorney general must publicize its child support enforcement services ("You will probably see more cases than you did in the past," said Smith);

● the state must make child support services equally available to welfare recipients and to those families not receiving government support;

● medical support

must be included in each child support order;

● each state governor must appoint a commission to study child support problems;

● the state must enforce child support rights of children who reside in AFDC-supported foster care;

● enforcement of child support arrearages by deductions from IRS tax refunds will be available for families not receiving welfare for refunds payable from 1986 to 1990;

# Evidence indicates time for procedural change

Now that the Texas Legislature has given the Court of Criminal Appeals authority to promulgate rules of procedure and evidence in criminal cases, proposals prepared by a committee that has been studying codification of such rules will be submitted for the Court's review.

A law school professor and member of the committee gave a sneak preview of the proposed rules of criminal evidence to more than 260 Texas trial judges attending the 16th Annual Criminal Justice Conference held in Huntsville May 1-3.

University of Texas Law School Professor Guy Wellborn, who presented the set of rules to those who will interpret them, said: "You could hardly describe this as a revolutionary document, but it is definitely one whose time has come."

The idea to codify rules for criminal evidence originated in the early 1900s, Wellborn said. But consolidating and streamlining criminal statutes and case law was not seriously considered until Thomas Black, a St. Mary's School of Law Professor, wrote an article in a 1970 Bar Journal.



*"A fair appraisal of these rules would leave some saying they are lopsided. I personally consult with Charles Bronson before voting, and I think they favor the defendant."*

Professor Guy Wellborn



In the interim between the 68th and 69th Legisla-

tures, the Senate-House Select Committee on the Judiciary held numerous hearings and meetings before forming a Subcommittee on Criminal Matters. The Subcommittee in turn appointed an Advisory Committee consisting of trial and appellate judges, prosecutors, defense counsel, and legal scholars.

The Advisory Committee drafted the proposed rules, using a format similar to the Federal Rules and Texas Civil Rules of Evidence.

Their product covers topics including: general provisions; judicial notice; relevancy and its limits; privileges; witnesses; opinions and expert testimony; hearsay; authentication and identification; contents of writings, recordings and photographs; and miscellaneous provisions.

"A fair appraisal of these rules would leave some saying they are lopsided," said Wellborn. "I personally consult with Charles Bronson before voting, and I think they favor the defendant. Invariably you could find defense lawyers to say otherwise."

There are 15 noted variations from current law, Wellborn told the judges.

One such change would allow introduction of evidence about a defendant's prior criminal record, reputation and character, provided reasonable notice is given in advance of trial.

Hearsay evidence would not be admissible except as provided by statute or by exception under the proposed rules.

However, in a major change, the rules would provide that inadmissible hearsay admitted without objection would not be denied

probative value merely because it is hearsay.

"All the English-speaking world except Georgia and half of Texas (I refer to the current criminal practice in Texas) already have this rule," said Wellborn.



*"As with most conferences of this nature, a judge often derives the most benefit from the camaraderie and the exchange of ideas."*

Judge Mike McCormick



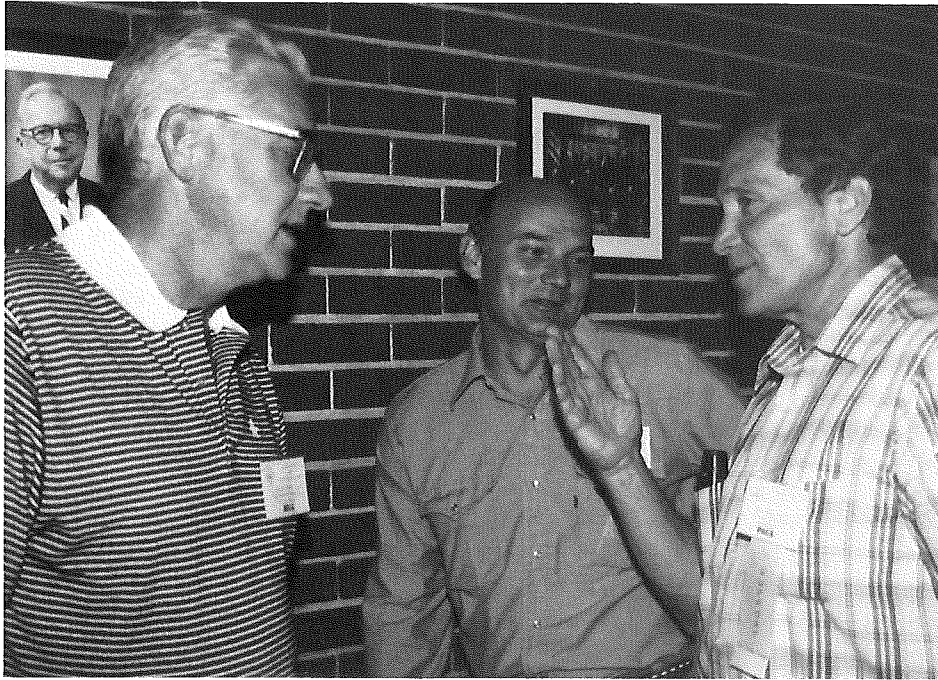
As to spousal privilege, the proposed rules would provide no privilege in a proceeding in which an accused is charged with a crime against any minor child or any member of the household of either spouse.

"Additionally, a defendant can no longer marry a witness to silence him or her," Wellborn said in reference to the proposed exception that there is no privilege as to matters occurring prior to marriage.

The new rules would also repeal Sec. 38.13, of the Code of Criminal Procedure which currently allows a judge presiding at a trial to testify in that trial as a witness.

The proposed rules will be presented to the Court for their review and revision, Wellborn said. "We're probably at least a year away from implementation," he added.

Other topics discussed at the conference and their speakers included: "Recent Decisions of the Texas Court of Criminal Appeals" by Court of Criminal Appeals Judge Mike McCormick; "Recent



Decisions of the United States Supreme Court" by Court of Criminal Appeals Judge Charles F. (Chuck) Campbell; "Guilty Pleas" by District Judge Ted Poe; "Selecting a Capital Jury in Less than One Week" by District Judge Donald Carroll; "Trial Judges' Role in Post Conviction Writs" by Court of Criminal Appeals Chief Staff Attorney Walter C.

Prentice; "Search and Seizure" by Justice Sam Robertson; and "An Update on Criminal Law Matters in the 69th Legislature" by the Executive Director of the District and County Attorneys Association, Steve Capelle.

Judges also toured two units of the Texas Department of Corrections (TDC) facilities.

The conference was sponsored by the Texas Center for the Judiciary under the direction of the Texas Court of Criminal Appeals. TDC and the Institute of Contemporary Corrections and Behavioral Sciences at Sam Houston State University also assisted in coordinating conference plans.

"This conference was

the genesis for the Texas Center for the Judiciary," said the Center's Executive Director Roy J. Rawls.

"The first Criminal Justice Conference was the prototype for the concept of training judges at in-state conferences by assembling a distinguished faculty of experienced Texas judges and legal experts," Rawls added.

Judge McCormick, who chaired the conference, said of the three-day seminar:

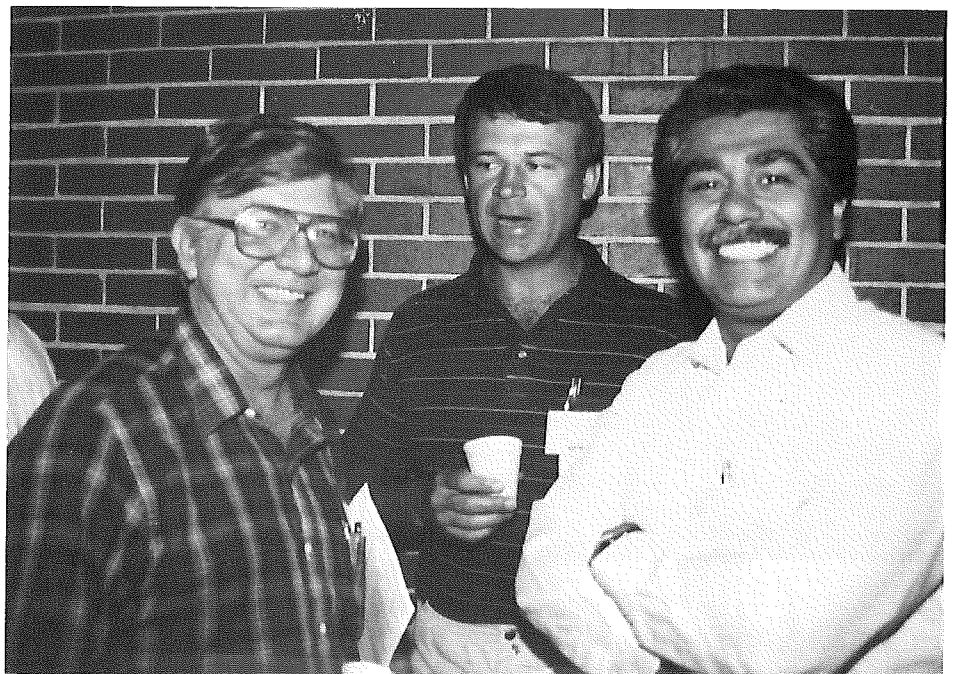
**THE RIGHT STUFF:** Practical, hands-on information offered at the Criminal Justice conference stirs up discussion among participants 76th District Court Judge Bill Moye of Mt. Pleasant, 276th District Court Judge Bill Porter of Daingerfield, and Justice Paul Colley of the Tyler Court of Appeals.

"The beauty of the conference is the ability to be with other trial judges to discuss with them the solution of individual problems.

"As with most conferences of this nature, a judge often derives the most benefit from the camaraderie and the exchange of ideas," he added.

"I found it to one of the most beneficial conferences I've attended in terms of substantive material," said District Judge Marilyn Aboussie. "Much of the information will be very useful in the day-to-day operation of our courts." \*

**TURNING POINT:** District Judge Gus J. Strauss (center) offers his opinion on selecting a capital murder jury to Justice Robert J. Seerden (left) and County Court at Law Juan Velasquez who offer their beaming approval.



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# In Memoriam:

## JUDGE DALLAS A. BLANKENSHIP



Dallas A. Blankenship, who served 36 years in public office as legislator, district judge and administrative judge, died May 8. He was 89 years old.

Beginning in 1936, Judge Blankenship served 12 years as a state representative from Dallas County before his appointment to the 101st district bench by Gov. Beauford Jester in 1948.

As a legislator, he was a member of the "Immortal 56," a group of lawmakers that blocked a transaction and sales tax during the administration of Gov. W. Lee O'Daniel. He also authored a bill that guaranteed teachers a minimum salary of \$2,000 a year.

In 1961, Gov. Price Daniel appointed Blankenship to the presiding judgeship of the 35-county First Administrative Judicial District. Blankenship retired as district judge in 1969.

Blankenship attended the University of California and received his LL.B from Southern Methodist University Law School in 1933.

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## JUSTICE GEORGE E. CIRE

Judge George E. Cire, who devoted more than two decades of his life serving on district, appellate and federal benches, died May 5 in Houston. He was 62 years old.

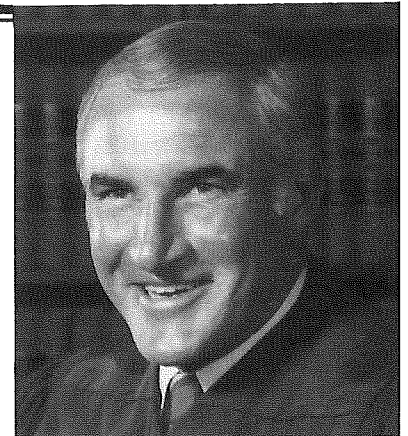
Born in Houston in 1922, Judge Cire received his B.S. from St. Edwards University and a LL.B. from the University of Texas School of Law in 1948.

He was appointed judge of Harris County's new 165th District Court in 1964 by then Gov. John Connally. Cire served on that bench until 1976, when he was appointed to the 14th Court of Civil Appeals by Gov. Dolph Briscoe.

Three years later, he was appointed U. S. District Judge of the Southern District of Texas by President Jimmy Carter.

Judge Cire continued his educational studies after law school by attending Rice Institute, University of Houston and Southwestern University. He earned the rank of Major in the U.S. Marine Corps after serving on active duty from 1943 to 1946 and from 1950 until 1952.

Before beginning his judicial career, Cire was a trial lawyer for 15 years and a founding partner of the Cire and Jamail law firm.



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## JUDGE SARAH T. HUGHES

U.S. District Judge Sarah Tilghman Hughes, who received national attention when she administered Lyndon Johnson the presidential oath of office after President Kennedy was assassinated, died April 23. She was 88.

Hughes was the first woman ever to serve regularly as a district judge in Texas.

Born in Baltimore in 1896, Hughes earned a zoology degree from Goucher College. She taught high school for two years before enrolling in night classes at George Washington University in Washington, D.C.

While working as a Washington police officer, Judge Hughes earned her law degree from Washington University School of Law in 1922. She moved to Dallas that same year and practiced law with her husband until she was elected to the Texas House of Representatives in 1931. She served there until she was



appointed judge of the 14th District Court in 1935 by Gov. James Allred.

She was elected to that judgeship in 1936, and was re-elected six times before President Kennedy appointed her to the federal bench in 1961.

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## **JUDGE WALLACE MILLER**

District Judge Wallace Miller, who presided over the 314th District Court in Houston for ten years, died May 1. He was 59 years old.

A native Houstonian, Miller served as a member of the Texas House of Representatives for three terms, from 1960 to 1966. He authored many bills including the first Battered Child Act, the Mental Health Warrant Act, the Mental Health Appeals Act and the Texas Mental Health Code.

Judge Miller attended the University of Houston and Mississippi State College. He earned his law degree as a member of the first class of the Houston School of Law in 1946.

He was appointed to the newly-created bench in 1969 by then-Gov. Preston Smith. He served there for 10 years and retired in 1979 due to health reasons.

After retiring, Miller moved to Huntsville where he served as a visiting professor from 1980 to 1985 at the Criminal Justice Center at Sam Houston State University.



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## **JUDGE DENNIS RATLIFF**

District Judge Dennis Ratliff, who held numerous public offices during his lifetime, died March 15. He was 85.

Judge Ratliff's lengthy record of public service included stints as a state legislator, judge, assistant attorney general and city attorney.

After attending Decatur Baptist College and the Metropolitan Business College in 1920, Judge Ratliff received his law degree from Cumberland University in Tennessee and was admitted to the Texas bar.

He served in the Texas House of Representatives from 1931 to 1935 until he was appointed to the 39th District bench by Gov. James Allred.

Judge Ratliff returned to private practice in 1943 and was appointed as special assistant attorney general in 1956. He also served as Haskell city attorney for 10 years.

Two of Ratliff's brothers and his father, L.D. Ratliff, also served as judges in Texas. His brothers were Dennis P. Ratliff, of the 39th District Court, and L.D. Ratliff, Jr. of the 110th District Court.

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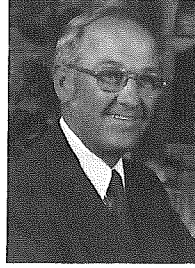
*EDITOR'S NOTE: Memorial funds are established through donations to the Texas Center for the Judiciary. Acknowledgement of a donation to the Center in memory of a judge is sent to the family. Contributors' names are also published each month under the "JUDICIAL NOTICES" column of this publication.*

# JUDICIAL NOTICES

## NEW HANDS ON THE HELM

Two district judges are now also administrative judges after receiving Senate confirmation of their gubernatorial appointments to the four-year terms.

Judge James F. Clawson Jr. of the 169th District Court in Belton was confirmed by the Texas Senate on May 2 to assume the presiding judgeship of the 3rd Administrative Judicial District.



Judge  
Clawson



Judge  
Evins

Judge Herman Jones of Austin, whose term as presiding judge of the 3rd Administrative District expired April 26, conducted the investiture ceremony in the Bell County Courthouse May 10.

"I'm delighted with the challenge that the position affords me," said Judge Clawson. "I have always thought there were great opportunities for improving the system by working in the administrative end of this business."

Former Chief Justice Jack Pope, nearly two dozen district and appellate judges within the 31-county administrative district, and numerous friends and relatives of Judge Clawson were present.

Clawson, who has served on the district bench for 16 years, will be responsible

## ETHICS OPINIONS

### Opinion No. 78

*QUESTION: Under the Code of Judicial Conduct, does a judge have the authority, in a criminal case, to remove a retained attorney for ineffective assistance of counsel.*

*ANSWER:* No. The committee is of the opinion that the action of removal of an attorney by a judge is a matter of law, not a question of ethics. Although the Code of Judicial Conduct, Canon 3B(3) provides that "a judge should take or initiate appropriate disciplinary measures against a lawyer for unprofessional conduct of which the judge may become aware," it does not authorize a judge to remove or take disciplinary action.

The intent of Canon 3B(3) is to advise a judge that it is unethical for a judge not to fulfill the responsibilities that the law places upon him or her; in this instance, to initiate appropriate action when he or she becomes aware of unprofessional conduct by a lawyer. See *Guillory v. State*, 557 S.W. 2d 118, 121 (Tex. Crim. App. 1977) for types of appropriate action a judge may initiate.

### Opinion No. 79

*QUESTION: May a judge appoint an attorney as a master, pursuant to Art. 1918B, Vern. Ann. Civ. St. or Rule 171 Tex. R. Civ. Pro., where that attorney appears in the judge's court on a regular basis in other unrelated matters?*

*ANSWER:* The committee is of the opinion that this is a question of law as distinguished from a question of ethics. Whether an attorney is qualified to be appointed a master is a matter of law. The only foreseeable ethical consideration would be if a judge knowingly appointed a master who was not qualified or made an appointment in disregard of Canon 3B(4).

Your committee respectfully declines to assume that a judge would knowingly not follow the law by appointing a master who is not qualified.

Your committee also points out that its function is limited to issuing opinions on ethical matters, not matters of law. Therefore, your committee respectfully declines to give an opinion on the legal question you have posed.

## NOTICES

for the administrative supervision of 37 judges. Counties in the 3rd Administrative Judicial District are bounded by Johnson County to the north; Mason County to the west; Austin County to the east; and Gonzales County to the south.

Judge Jones served as administrative judge for 15 years. He was first elected to the 53rd District Court in 1960 and was reelected until he retired in 1980. Gov. Preston Smith first appointed Judge Jones to the presiding judgeship in 1970.

Presiding over the 5th Administrative Judicial District in South Texas as of May 16 is 206th District Court Judge Joe B. Evins.

Evins, who replaces Judge Jose R. Alamia, was sworn in by Secretary of State Myra McDaniel in Austin immediately after Senate confirmation.

A formal investiture ceremony is planned for July 15 in the Pan American University Fine Arts auditorium at 5:30 p.m. Gov. White and

Federal District Judge Reynaldo Garza are scheduled to attend, as is Lt. Gov. Bill Hobby, who will administer a ceremonial oath of office.

Evins, who was appointed to the district bench by Gov. Dolph Briscoe in 1973, will preside over the administration of 11 counties that include 20 active judges and 9 active retired judges.

## CONTRIBUTIONS TO THE TEXAS CENTER

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

### Sustaining Membership \$500 - \$1,000

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### **IN CHAMBERS**

*Texas Center  
for the Judiciary, Inc.*

**Managing Editor**

*Roy J. Rawls*

**Editor**

*Lana Kay Varney*

# NEW JUDGES

JUDGE	COURT	CITY	SUCCEEDS	EFFEC-TIVE
James W. Bass Jr.	12th Crt. of Appeals	Tyler	Connally McKay	6/1/85
James F. Clawson	3rd Admin. Jud. Dist.	Belton	Herman Jones	5/2/85
Joe B. Evins	5th Admin. Jud. Dist.	Edinburg	Jose R. Alamia	6/5/85
Don R. Emerson	320th District Court	Amarillo	Jerry Shackelford	6/1/85
Mackey K. Hancock	County Ct at Law #2	Lubbock	J. Q. Warnick	1/14/85
Guy Herman	County Ct. at Law #4	Austin	Mark Schrieber	5/17/85
Antonio Jimenez	County Ct. at Law #7	San Antonio	NEWLY-CREATED	5/21/85
John Narsutis	16th District Court	Denton	Will C. Boyd	1/1/85
Michael Peden	County Ct. at Law #8	San Antonio	NEWLY-CREATED	5/21/85
Bonnie Reed	County Ct. at Law #9	San Antonio	NEWLY-CREATED	5/21/85
Joe Tunnell	241st District Court	Tyler	Glenn S. Phillips	6/14/85
Joaquin Villarreal	347th District Court	Corpus Christi	Jorge C. Rangel	6/17/85

\* 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.

## ★ JUDICIAL CALENDAR ★

### Annual Judicial Section Conference

October 1-4, 1985

Facilities to be announced  
McAllen

### Texas Association for Court Administration

October 22-25, 1985

Quality Inn  
Austin

### Juvenile Justice Seminar

November 6-8, 1985

Quality Inn  
Austin

### Texas College for New Judges

December 1-6, 1985

University Hotel  
Huntsville

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