

# IN CHAMBERS

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## HOUSE SELECT COMMITTEE STUDIES JUDICIAL SELECTION

During the past four months, the Texas House of Representatives Select Committee on Judicial Selection has diligently studied the method of judicial selection in Texas and alternate methods of selection in other states. The committee, chaired by Representative Bob Bush of Sherman, will make recommendations to the 68th Legislature for improvements in the judicial selection process.

House Speaker Bill Clayton said the committee was created "to examine the many problems which currently surround our system of judicial selection, including the high costs of campaigns and the barrage of candidates for many judicial posts."

Although a segment of the legal community has advocated a different method of judicial selection in Texas for years, the state has steadfastly held to the notion of popular election of judges. Since 1973, not one of fifteen proposed bills providing for non-partisan election or some form of merit selection has reached the floor of the House or Senate. The Select Committee on Judicial Selection represents the first time the legislature has authorized an in-depth examination of the methods of judicial selection.

Hearings of the Select Committee have thus far been held in Austin, Dallas, and San Antonio, with a fourth hearing scheduled for the middle of this month in Houston. Judges, lawyers, and other interested citizens have testified at these hearings on issues surrounding the initial selection of judges, as well as on judicial redistricting, compensation and tenure, additional sup-

port personnel, campaign financing, campaign ethics, candidate screening, training, and continuing judicial education.

Committee Chairman Bush said testimony indicates judicial selection problems may be more severe in metropolitan areas. In a July press release, Bush said the committee "may have to take local factors into account when we recommend legislation to the next legislature."

Judges testifying at the hearings included the following:

*Austin* — Chief Justice Joe Greenhill, Supreme Court of Texas, Austin; Justice Charles Barrow, Supreme Court of Texas, Austin; Justice Paul Murphy, 14th Court of Appeals, Houston; Judge Mike McCormick, Court of Criminal Appeals, Austin; Justice C. L. Ray, Supreme Court of Texas, Austin; former Chief Justice Robert Calvert, Austin; former Judge Don Dean, Amarillo.

*Dallas* — Chief Justice Clarence Guitard, 5th Court of Appeals, Dallas; Judge John L. McCraw, Jr., 219th Dis-

trict Court, McKinney; Justice Patrick Guillot, 5th Court of Appeals, Dallas; former Judge Oswin Chrisman, Dallas; Justice Richard Countiss, 7th Court of Appeals, Amarillo; Judge Ron Chapman, Criminal District Court, Dallas.

*San Antonio* — Justice Jack Pope, Supreme Court of Texas, Austin; Justice John Clark, 4th Court of Appeals, San Antonio; Justice James Baskin, 4th Court of Appeals, San Antonio; Judge B. B. Schraub, 25th District Court, Seguin; Judge Tom Rickhoff, 289th District Court, San Antonio; Judge Rose Spector, 131st District Court, San Antonio.

The committee will meet for a final work session in October, after which the members will issue a report to the full House.

Two other committees, the Judicial Section Legislative Committee, and the State Bar Committee on Judicial Selection, Compensation, and Tenure, have also discussed legislative proposals for changes in Texas' method of judicial selection.

## ETHICS OPINION

### Opinion No. 62

Question: May a district judge serve as a consultant for a private non-profit corporation engaged in the construction and development of a housing project for the elderly?

The Judicial Ethics Committee is informed on the following facts pertinent to the question. The project is financed by a loan from the Department of Housing and Urban Development under Section 202 of the Housing Act of 1959.

The judge served in a similar consulting capacity on numerous projects before assuming the bench. He would be compensated on a fee basis by the private non-profit corporation that employs him. The fee is based upon a formula established by HUD and based upon the loan authority for the project. As a consultant he would give advice on the determination and selection of the project site and on various other matters

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# REPORT ON JUDICIAL RETIREMENT TAX

by Chief Justice Joe R. Greenhill

The Congress, on or about August 21, 1982, enacted a measure which is of great importance to Texas judges. It relieves us of paying income tax on judicial retirement when it vests.

The general plan was to tax "deferred income" when the tax payer earned his or her entitlement to it. For example, a professional athlete, or other persons, may make a contract for a large amount, payable over many years. The tax, as I understand it, would be payable on the entire sum when it "vested."

The bill, as passed, was overbroad. Judicial retirement benefits were capable of being construed as "deferred income." The Internal Revenue Service declined to rule that judicial retirement was not meant to be included. The tax, at regular income tax rate and payable in a lump sum, would have been disastrous to judges. For example, if your retirement had a calculated value of \$250,000 when it vested, you would owe immediately income tax on that amount as ordinary income for that year. Legislation or a lawsuit (which might not have been won) was imperative.

Senators Bentsen and Tower, and U. S. Representative J. J. (Jake) Pickle worked hard for us to redefine deferred compensation, and I testified before Jake Pickle's Ways and Means sub committee on behalf of the Section and at its expense. We got a favorable report.

Senator Bentsen passed the measure through the Senate without our having to go to Washington. The details were ironed out in conference; and Senator Bentsen got the measure attached to the "big" appropriations bill (called a "tax adjustment" or a "tax bill" in various quarters.) Since President Reagan worked so hard for the passage of the bill, he will surely sign it.

In a letter dated August 20, 1982, Representative Pickle sets out the language which sets out our exemption from general deferred income taxes. It reads in part:

## "(3) DEFERRED COMPENSATION PLANS FOR STATE JUDGES

"(A) IN GENERAL. — The amendments made by this section shall not apply to any qualified State judicial plan.

"(B) QUALIFIED STATE JUDICIAL PLAN. — For purposes of subparagraph (A), the term 'qualified State judicial plan' means any retirement plan of a State for the exclusive benefit of judges or their beneficiaries if —

"(i) such plan has been continuously in existence since December 31, 1978,

"(ii) under such plan, all judges eligible to benefit under the plan —

"(I) are required to participate, and

"(II) are required to contribute the same fixed percentage of their basic or regular rate of compensation as a judge,

"(iii) under such plan, no judge has an option as to contributions or benefits the exercise of which would affect the amount of includible compensation,

"(iv) the retirement payments of a judge under the plan are a percentage of the compensation of judges of that State holding similar positions, and

"(v) the plan during any year does not pay benefits with respect to any participant which exceed the limitations of section 415(b) of the Internal Revenue Code of 1954."

It would be in order for judges to write Senator Bentsen and Representative Pickle for their special efforts, and to Senator Tower for his support. Our other congressmen also supported the measure.

Joe Cain, an Austin tax attorney, did great work for the Section on the measure. We greatly appreciate his help.

The addresses of Senators Bentsen and Tower, and Congressman Jake Pickle are:

Senator Lloyd Bentsen  
240 Russell Office Building  
Washington, D. C. 20510

Senator John Tower  
142 Russell Office Building  
Washington, D. C. 20510

Congressman Jake Pickle  
Room 242 Cannon  
House Office Building  
Washington, D. C. 20505

## FORMER PRESIDING JUDGE DIES

Paul G. Peurifoy, former presiding judge of the first administrative judicial district, died in Dallas August 10, 1982. Judge Peurifoy served as presiding judge from 1973 until his retirement earlier this year. Judge John Ovard was appointed May 15 to succeed Judge Peurifoy in office.

Judge Peurifoy practiced law and served on the bench for more than 50 years. He was very dedicated to his legal career and in addition held positions of leadership in various civic organizations.

The judge attended the University of Texas and later became the first graduate of the then newly-created SMU law school to receive a law license. Upon graduation, he began practicing law in Dallas and in 1937 was appointed assistant district attorney.

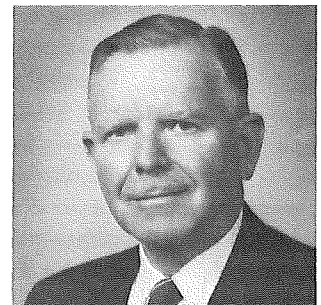
During World War II, Judge Peurifoy spent twenty-six months in service with the

Twelfth and Fifteenth Air Forces in North Africa, Sicily, and Italy. Following a job with the federal government, he returned to Dallas in 1947 and practiced law until his appointment as University Park municipal judge in 1948.

He was elected judge of Dallas County Court-at-Law No. 1 in November, 1948, and served in that capacity until his election to the position as judge of the 95th District Court in 1953. Judge Peurifoy retired as district judge in 1972, and ten months later was appointed as presiding judge of the first administrative district.

He is survived by his wife Audrey, 6337-B Bandera, Dallas, 75255, a step-son and daughter-in-law, and a grandson.

The Texas Center for the Judiciary, Inc. recently established an on-going memorial fund, allowing friends, family members, or



Judge Paul G. Peurifoy

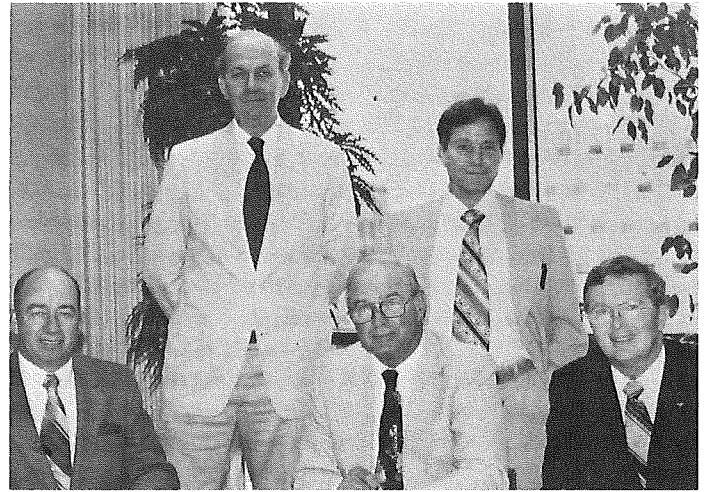
organizations the opportunity to contribute to the cause of continuing judicial education in the name of the deceased.

Contributions in memory of Judge Peurifoy or other members of the judiciary can be mailed to the Texas Center for the Judiciary, Inc., P. O. Box 12487, Capitol Station, Austin, Texas 78711.

# Meetings at the Center



ABOVE: Members of the Juvenile Justice Committee, Judicial Section, met July 30 to plan the Annual Juvenile Justice Conference. Seated, l-r, are Judges James Farris, Beaumont; Rachel Littlejohn, (chairman) Beeville; Craig Penfold, Dallas. Standing, l-r, Judges William C. Martin, III, Longview; Jerry Shackelford, Amarillo; Scott Moore, Fort Worth; and Bill Logue, Waco.



ABOVE RIGHT: Judicial Section Nominating Committee members, l-r, Judge David Walker, Lufkin; Justice Bob Shannon, Austin; Judge Robert C. Wright, (chairman) Lubbock; Judge Paul Colley, Henderson; and Judge Lloyd Perkins, Sherman, met July 9 to nominate Judicial Section officers for 1982-83.



RIGHT: l-r; Justice Earl Smith, (chairman) Austin; Judge Robert T. Pfeuffer, New Braunfels; Judge Carl Dally, Austin; and Judge Ted Butler, San Antonio; also met at the Center to nominate 1982-83 Texas Center for the Judiciary, Inc. officers.

## Ethics Opinion

*continued from page 1*

related to the project, confer with representatives of the various entities involved in the project and assist in the establishment of sound business practices for the project. He would not perform any legal work. The legal work would be performed by an attorney outside his district who does not appear regularly before him. The corporation he would be assisting also does not appear regularly in his court. The work would require an average of ten hours per month for fifteen to eighteen months and could be done before or after normal working hours. The judge would not be engaged in arbitration or mediation, nor would he participate in hearings or testimony before governmental bodies.

Answer: The Committee is of the opinion that service as a consultant under the facts stated does not violate the Code of Judicial Conduct.

The resolution of the question is controlled by Canon 5 of the Code. Canon 5C(2) permits a judge to "engage in other remunerative activity including the operation of a business." That permission is conditioned upon compliance with Canon 5C(1), which states:

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

Canons 5E and 5F, which bar a judge

from acting as an arbitrator or mediator or from practicing law, are also restrictions on the activity in question.

Under the facts stated none of the conditions or limitations in Canon 5 are violated, however, a judge should at all times keep in mind that it is his duty to uphold the integrity and independence of the judiciary and avoid impropriety and the appearance of impropriety in all his activities. Thus, the judge should carefully monitor his activities and immediately terminate his service as a consultant if he perceives a violation of the Code.

Inquiries about judicial ethics may be addressed to:

Associate Justice Jackson B. Smith, Jr.  
Chairman, Judicial Ethics Committee  
1st Court of Appeals  
Harris County Civil Courts Building  
Houston, Texas 77002

# JUDICIAL NOTICES

## Judges Recognized for 50 Year Law Service

Seventeen Texas judges were recognized and honored at the State Bar of Texas 1982 Convention as practitioners of law for 50 years. The judges, along with other 50 year lawyers, were recognized during the Convention's General Assembly, held July 2 in Austin.

Members of the judiciary recognized were:

Judge A. P. Allison, Kerrville  
 Judge James A. Amis, Jr., Bryan  
 Judge Eva Barnes, Fort Worth  
 Judge John R. Brown, Houston  
 Judge Price Daniel, Austin  
 Judge Leo Darley, Uvalde  
 Judge Myrlin Johnson, Kerrville  
 Judge Trueman O'Quinn, Austin  
 Judge Carl Periman, Amarillo  
 Judge R. C. Slagle, Jr., Sherman  
 Judge Magus F. Smith, McAllen  
 Judge Truitt Smith, Tahoka  
 Judge W. M. Taylor, Jr., Dallas  
 Judge Z. C. Steakley, Austin  
 Judge Esco Walter, Eastland  
 Judge Frank D. Wear, Paris  
 Judge Lewis M. Williams, Knox City

## New Judges

*Sam Bournias* was appointed by Governor Bill Clements as judge of the 87th Judicial District, Fairfield. Judge Bournias succeeds Judge Tate McCain, who retired in July.

*John E. Clark* was appointed by Governor Clements July 19, 1982 to fill the position left by the resignation of Justice Fred Klingeman, Fourth Court of Appeals, San Antonio.

*Bob Perkins*, former county court-at-law judge from Austin, recently assumed duties as judge of the newly-created 331st Judicial District, Austin.

*Blair Reeves*, appointed by the Governor July 19, will serve as Associate Justice, Fourth Court of Appeals, San Antonio.

*Richard E. Stephanow* was appointed by the Governor June 28, 1982 as judge of the 232nd District Court, Houston. He succeeds Judge J. D. Guyon, who died in office.

*Jon Wisser* was sworn in September 1 as judge of a new court, the 299th District Court, Austin.

*W. David West*, appointed July 14 as judge of the 234th District Court in Houston, fills the unexpired term of now Supreme Court Justice Ruby Sondock.

## Texas Center Contributions

The Texas Center for the Judiciary, Inc. received contributions from the following in July and August:

*Friends of the Center* \$100-\$250  
 Judge and Mrs. Jack R. King,  
 Beaumont

Judge Carl Periman, Amarillo

*In Memory of James G. Denton*  
 Judge and Mrs. Joe H. Eidson, Jr.,  
 Fort Worth

Judge and Mrs. Ralph Elliott,  
 Sherman

Judge and Mrs. James A. Ellis,  
 Lubbock

Judge and Mrs. Connally McKay,  
 Tyler

*In Memory of Paul G. Peurifoy*  
 Hon. Jack H. Dillard, Austin  
 Hon. Charles E. Nay, Austin

## ★ JUDICIAL CALENDAR ★

**September 28-October 1, 1982**

Annual Judicial Section Conference  
 El Paso, Texas

**November 10-12, 1982**

Juvenile Justice Seminar  
 Austin, Texas

**November 16-18, 1982**

Texas Association of Court  
 Administration  
 Annual Conference  
 Austin, Texas

**November 29-December 3, 1982**

Texas College of the Judiciary  
 Huntsville, Texas

**March 9-11, 1983**

West Texas Judicial Conference  
 Abilene, Texas

**May 4-6, 1983**

Criminal Justice Conference  
 Huntsville, Texas



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