

in CHAMBERS

THE OFFICIAL PUBLICATION OF TEXAS CENTER FOR THE JUDICIARY, INC. VOLUME 23, No. 1 WINTER 1996

Texas Center kicks off series of regional conferences

The Regional Judicial Conference season has begun!

The Texas Center for the Judiciary, Inc. has scheduled and programmed five regional conferences to be held this winter and spring.

The first conference, the Southeast Texas Judicial Conference was held February 7-9, 1996 in Houston. The conference series will run through late April. (A complete listing of upcoming judicial education opportunities appears on page 16.)

"The logistics in planning and executing five back-to-back conferences within a time frame of three months are daunting to say the least," Mari Kay Bickett, executive director for the Texas Center for the Judiciary, Inc., said.

"Following the success of the first conference (Southeast Texas Judicial Conference), I believe our extensive advance planning really paid off."

Participation was up significantly for 1996. The last Southeast Texas Judicial Conference, held in 1994, hosted 112 judges, representing a little over 50 percent of the judges invited. This year, 174 judges registered for the conference, representing nearly 65 percent of the judges invited.

The education program, which will be the same for all five conferences, includes general sessions on *Ethical Issues in Judicial Elections* and *Expert Witnesses in Family Violence Cases*, as well as more specialized sessions geared toward county court at law judges, juvenile law judges, and general jurisdiction judges.

"As always, the education program is the heart of the regional conferences," Bickett said. "If the program is solid, the conferences can be deemed a success."

Based on the initial feedback from judges attending the Southeast Texas Regional Judicial Conference, it appears that the remaining regional conferences will be well-received and worthwhile for the judges in attendance.

Invitations have already been sent to judges in the South Texas and Central Texas judicial regions. Invitations to the Northeast Texas Judicial Conference and West Texas Judicial Conference will be mailed in the next few weeks. Be sure to register early.

1995 College for New Judges



The 1995 College for New Judges, held at the Grand Kempinski Hotel in Dallas, drew over 30 of the state's newest judges interested in making a smooth transition to the bench. See pages 4 and 5 for more about the College.



Judicial Excellence
Through Education

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ISSUE**

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judicial
notes

**Reminder:
Constitutional
county court judges
can no longer issue
protective orders**

Section 71.01, Family Code, was amended to provide that constitutional county courts may not issue protective orders. That happened when the Legislature changed the definition of "court" for the purposes of what court could issue a protective order, to mean "the district court, court of domestic relations, juvenile court having the jurisdiction of a district court, or other court expressly given jurisdiction of a suit under this subtitle or a statutory county court."

By adding the word "statutory," the constitutional county courts no longer fall under the definition. There are 177 Texas counties without statutory county courts, so the load now falls on the district courts.

This law took effect for all protective orders issued on or after September 1, 1995.

**Schraub
scholarship
available**

The National Judicial College in Reno, Nevada is currently taking applications for the Judge B.B. and Estella Schraub Scholarship for Texas judges. This scholarship is open to any judge who is a member of the Judicial Section of the State Bar of Texas. Priority will be given to first-time attendees of The National Judicial College and to judges with less than three years on the bench.

Tuition, conference fees, meals and lodging costs up to \$1,000 are expenses covered by the scholarship. Transportation costs must be acquired from another funding source. For application information, please contact Nancy Copfer at 1-800-25JUDGE at The National Judicial College.

**McCorkle receives
Barrow Award**

Hon. Lamar McCorkle, judge of the 133rd District Court in Houston, received the 1996 Justice Charles W. Barrow Award at the Texas Association for Court Administration (TACA) Annual Conference held in Austin in October. TACA is a statewide organization of court professionals, including court managers, court administrators, and court coordinators.

The Barrow Award was established in 1981 to recognize individuals who have made "extraordinary contributions in promoting court administration in Texas." It was named in honor of Justice Barrow for his dedication and support for Texas court administration. Justice Barrow was TACA's first liaison from the Supreme Court and for many years his leadership and encouragement significantly contributed to TACA's programs and growth.

Judge McCorkle, who has served the 133rd District Court since 1986, is a member of the executive committee of the Judicial Sec-

tion of the State Bar of Texas and is chair of the Judicial Peer Committee of the Texas Center for the Judiciary, Inc. He is the fourth judge to receive the Barrow Award. Previous judge recipients were Larry Gist, Paul Ferguson, and Robert Pfeuffer.

**New video/book
available**

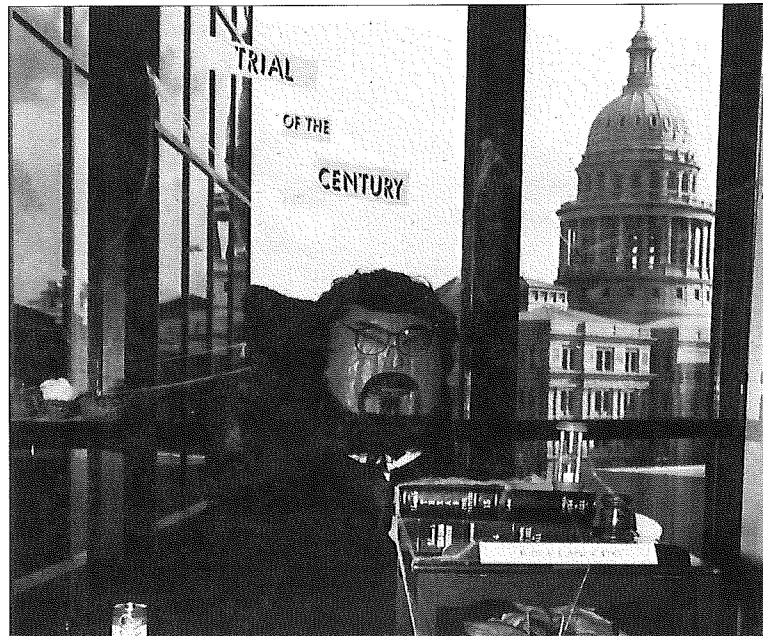
One new book and one new video have recently been acquired by the Texas Center library.

The Ultimate Courtroom is a videotape of the demonstration of state-of-the-art courtroom technology presented at the 1996 Judicial Section Annual Conference in San Antonio.

A new book, *Managing Mass Tort Cases: A Resource Book for State Trial Court Judges*, has been added to the Texas Center library.

For information regarding video/book availability and check-out, call the Texas Center at 800-252-9232.

Order in the gourd



The staff of the Texas Center for the Judiciary, Inc. took first place in the annual Halloween Pumpkin Carving Contest sponsored by the State Bar of Texas. The Texas Center's rendition of high profile Judge Lance Ito edged out some stiff competition. Other entries included Cinderella's carriage, and a towering pumpkin totem pole. The Texas Center wishes to thank the State Bar for including us in their competition.

IN MEMORIAM

For those who served our state courts

Judge Margarito Garza

Former State District Judge Margarito Garza, the first Hispanic in Nueces County to be elected to the bench of a court of record, died November 14, 1995 in Edinburg after suffering a heart attack. He was 64.

After unsuccessful bids for state senator, state representative, and justice of the peace, success came in 1970 when Garza won the judge's seat for Nueces County Court-at-Law #1. In 1982, he was elected judge of the 148th District Court where he served until 1994. At the time of his passing, Garza was serving as a visiting judge.

Judge Timothy Maresh

Judge Timothy Maresh, a former county judge, district attorney, and court at law judge, died December 12, 1995 in Georgetown from injuries following a two-car accident. He was 66.

The accident occurred while Maresh was on his way to attend the funeral for Ellagene Lott, wife of retired state district Judge William Lott.

Maresh served the County Court-at Law #1 from 1985 to 1994. He was a Williamson County judge from 1983 to 1985. He was a lawyer in private practice from 1969 to 1983.

Judge Kenneth W. Booker

State District Judge Kenneth W. Booker died at home on December 13, 1995 after a 10-month battle with cancer. He was 59.

Booker, a Nacogdoches native who received his law degree from Bates College of Law at the University of Houston, first served Smith County as a county court at law judge from 1979 to 1983. He returned to the bench last year by winning the 241st District bench.

Judge Bruce Auld

Judge Bruce Auld died on January 14, 1996. He had recently left the bench on disability retirement in December. He was 41.

Judge Auld served the 352nd District Court in Tarrant County since 1989. He earned his law degree from Southern Methodist University.

Judge Robert Lozano

Retired Judge Robert Lozano of San Antonio died on January 14, 1996 of cancer. He was 78.

Prior to his retirement, Judge Lozano served on the County Court at Law #6 for Bexar County.

THANK YOU FOR YOUR CONTRIBUTIONS

(as of January 30, 1995)

Martin J. Chiuminatto	Dan Moore
Paul Davis	Gladys M. Oakley
Bob Dickenson	Robert C. Pate
David Farris	John A. Pope
James M. Farris	Emil Karl Prohl
John L. Fashing	Wayne F. Salvant
John Forbis	Milton Shuffield
Ben Hardin	Susan R. Stephens
Steven R. Herod	TACA
Jess Holloway	Raul Vasquez
Robert McCoy	Bob Wessels
Delwin McGee	K. Stephen Williams

JUSTICE SPURGEON E. BELL MEMORIAL
Ed J. Harris

JUDGE MARGARITO GARZA MEMORIAL
Martin J. Chiuminatto

JUDGE GUY HAZLETT MEMORIAL
John Forbis

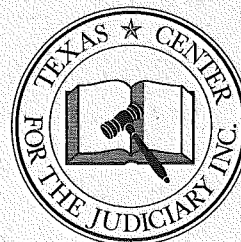
MRS. ELLAGENE LOTT MEMORIAL
Marilyn Aboussie

JUDGE ROBERT LOZANO MEMORIAL
Charles A. Gonzalez

JUDGE TIM MARESH MEMORIAL
Marilyn Aboussie

JUDGE JACK TREADWAY MEMORIAL
Jean Spradling Hughes

JUDGE ROBERT C. WRIGHT MEMORIAL
R. Temple Driver
Tom G. Davis

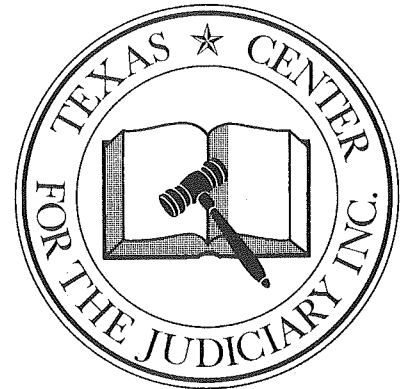


*Judicial Excellence
Through Education*

1995 COLLEGE FOR NEW JUDGES

1995 College for New Judges

December 3-8, 1995, Grand Kempinski Hotel, Dallas



College attendees thank members of the media panel for an interesting and enlightening discussion of judicial/media relations.



Judge M. Kent Sims, dean of the 1995 College for New Judges, thanks Judge John Forbis following Forbis' speech at the Thursday night dinner.



Judge Paul Davis makes a point during his "So You Think You Can't Be Sued?" presentation.

EVALUATION RESULTS

Overall College	4.68
Lodging	4.62
Classroom Facilities.....	4.62

Scale: 5-Exceptional, 4-Good,
3-Adequate, 2-Mediocre, 1-Poor

1995 COLLEGE FOR NEW JUDGES

"Outstanding program. Probably the most worthwhile seminar I've ever attended. Thanks to all of you!"

"It facilitated the transition into "thinking like a judge" instead of just moving offices."

"I really appreciated the opportunity to interact with other judges who have experiences to share, both good and bad."

"One of the best courses I have ever attended. I'd like to come back next year for a refresher course."

"In all honesty, I found this seminar to be the single most effective educational event I have ever attended. The format (and situation) generated an unparalleled feeling of camaraderie with the faculty and fellow students."

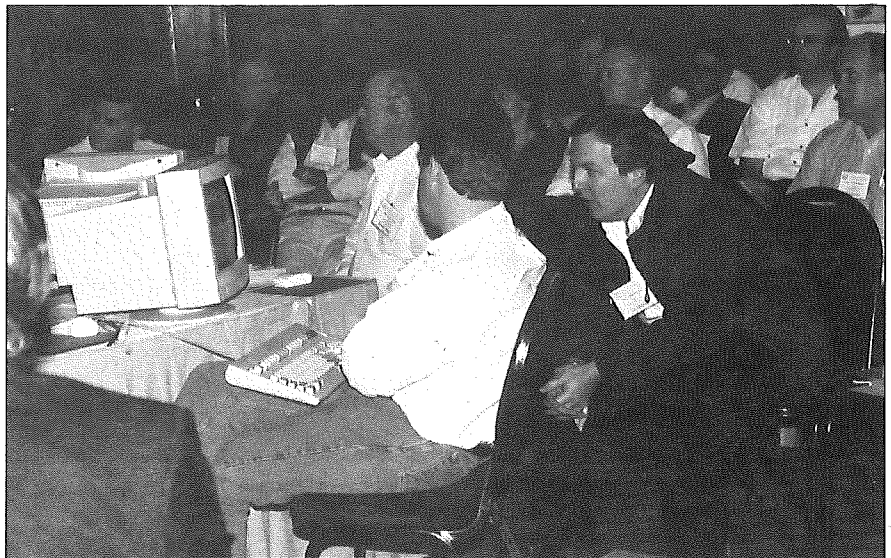
"A real eye-opener. Great presentation."

"This entire conference has been very effective. The faculty should be commended."

"The ethics presentation was one of the best and one of the main reasons that attending was a must."

"The best gift a new judge could receive—the benchbook."

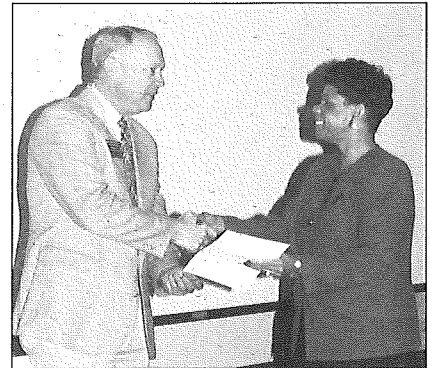
"This was a well thought out conference."



New judges catch up on the latest in courtroom computer technology.



New Judges Dwight Jefferson and Manny Alvarez discuss judicial issues during a break.



Judge M. Kent Sims, dean of the 1995 College for New Judges, presents a diploma to Judge Brenda Green.



Judge Karl Prohl leads the session on "Pro Se Litigants."

The Real Value of Probation

The suspended sentence and adult probation laws may have been originally enacted as measures of leniency or mercy. Maybe they were passed simply to save time and money. During the past two decades, an unexpected beneficial result of the adult probation law became apparent. Primarily due to supervised adult probation, the courts have been able to keep an ever-growing number of criminals isolated from the law-abiding public despite federal court orders that drastically reduced the portion of their sentences that the criminals were required to serve. Although increased prison capacity and the cessation of ridiculously quick

parole releases have been the obvious factors in causing the dramatic increase in prison population in the last couple of years, probation has been the primary facilitator of this trend. The increase could not have taken place if the prison sentences had not been imposed by the courts. The disposition of the bulk of the cases by guilty pleas to probated sentences allowed the courts to get to the more time-consuming cases that demanded a prosecutorial attempt to impose prison sentences *ab initio*. Furthermore, a large percentage of the persons serving time in prisons are there as a result of probation revoked. Without probation there wouldn't be half the prison population there is today.

Harsh sentences do have a tendency to increase the number of criminals isolated because long sentences retard the daily rate of releases, thus allowing the number of incoming criminals to exceed the number of

outgoing criminals. However, because imposing long and/or harsh sentences requires slow jury trials and slows down the judicial process, it is difficult to say whether frequent insistence upon very long sentences or the death penalty would produce more or less prison isolation of criminals. Due to the great absorption of court time and the minimal influence of the death penalty as a deterrent, it may be that capital punishment has an overall effect of increasing rather than decreasing crime. I don't suggest that either extremely long sentences or death sentences are never justifiable. They certainly are in some cases. Not because they affect the behavior of other criminals, but because they eliminate or incapacitate dangerous people, incapacitate hyperactive criminal nuisances (e.g., chronic thieves), and help keep down loss of confidence in criminal justice which may discourage private vengeance and vigilante justice.

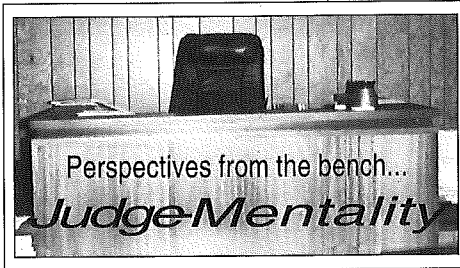
However, neither death sentences nor great numbers of very long sentences are nearly as important to the suppression of crime as is the total number of criminals who are prohibited, by isolation in prison, from committing crimes at any given moment. The most important measure of criminal justice suppression effectiveness is the percentage of the criminal population that is incapacitated from criminal behavior by imprisonment. When the percentage increases, criminal justice is gaining on crime. When it decreases, criminal justice is losing ground to crime. Of course, the percentage of the criminal population kept imprisoned can and did, in the years since World War II, decrease despite great increases in the number of prisoners simply because the percentage of people who grew up to be criminals dramatically increased due

to the moral degeneration in our society.

Harsh treatment doesn't reform true criminals; neither does leniency. Some do reform, but a *scientific* explanation of reform is not known. Probation's supervision and programs unquestionably help the majority of probationers to be good citizens. Probation must ever strive, by experiment, to seek means of inspiring and helping true criminals to reform. Probation's great service to the people is that it allows the courts to manage their dockets by reducing the number of jury trials that would have resulted had the prosecutors not been able to lure the great majority of criminal defendants to plead guilty to probated sentences and deferred adjudication, rather than face the possibility of long prison sentences. Furthermore, probation provides the courts an efficient means to separate the sheep (those convicted who are likely to reform) from the goats (the true criminals). As indicated in the first paragraph, a very large percentage of the criminals in prison are there as the result of ten-minute guilty pleas and subsequent twenty-minute revocation of probation hearings. Compare, as a matter of law enforcement efficiency, thirty minutes to the days, weeks, or months it takes to stagger through a district court jury trial.

This phenomenon also points out the efficiency of long probation terms. Before the establishment of state jail felonies, a criminal who committed a state jail felony type crime could be put on ten years probation. If he committed a similar crime in the tenth year of his probation term, he could be sent to prison for ten years after a twenty-minute revocation hearing. If the pros-

(Continued on next page.)



By Judge Sam W. Callan
Senior District Judge
El Paso

Judge-Mentality is an *In Chambers* guest column, which is written by a judge each issue. Opinions presented in the column are not necessarily the opinions of the Texas Center for the Judiciary, Inc. Please call Michael Mahoney, 800-252-9232, if you want to write a column or a letter to the editor in response to a column.

(Continued from previous page.)

ecutor used his head, forewent indictment, and simply filed and vigorously prosecuted a motion to revoke, the criminal could be sent to prison within a few days after his re-arrest.

Defendants and defense attorneys fear that judges and juries are apt to think criminals who demand full justice in the determination of their guilt deserve full justice in the determination of their sentences. This fear, though it may not be often justified by experience, enabled the courts to dispose of up to 90 percent of their dockets through ten-minute guilty pleas. There simply won't be many guilty pleas unless the alternatives to probation seem horrendous to the defendants and their attorneys. That is the reason a law that mandates probation or provides a short maximum prison term may produce long dockets instead of many quick guilty pleas as had been intended and promised by the sponsors of the law.

This unintended result that may follow from the recent mandated probation and short maximum sentence laws won't show up quickly in the crime statistics for these reasons: 1) It will take some time for lawyers and defendants to realize that plea bargaining can't produce much better deals than the sentences that are guaranteed by the law. 2) The influx of children into the crime-prone years has slowed down dramatically due to decreased birth rate. Therefore, the sheer number of people in the crime-prone years (let's say 16 to 36 years old) is less than it was a decade ago. 3) That there are now and will be for the next couple of years over 100,000 people in prison temporarily impeding any rise in criminal activity.

The isolation of criminals in prison is the best service being performed by Texas government. It doesn't make any difference, from the standpoint of protection to the public, whether criminals are isolated in penitentiaries or in state jails. Keep in mind that the state jail program, because of the shortness of the maximum terms, will produce fewer guilty pleas and relatively quick releases from incarceration, thus hampering attempts to reduce the free criminal populace. Decreased numbers of guilty pleas and quick releases from incarceration will make it impossible to send more criminals to incarceration than are released each day. Furthermore,

any immediate respite from criminal activity is apt to peter out because we are becoming an ever more immoral society and consequently producing an ever higher percentage of youth who grow up to be criminals. The sentences available simply won't permit sending anywhere near as high a percentage of the criminal population to prison for long terms as had been possible for the several years preceding the 1993 legislation.

The legislators will pat themselves on the back for a while. Then things will go sour because we will soon have an abundance of loose criminals roaming our streets.

Probation ought to be under the control of the judges who know something about administering justice. Crime got away from us in the 60s, 70s, and 80s, because of the advent of one of the sorriest generations ever produced in the United States, not because of soft-headed leniency or because of any

failure of effort or of common sense on the part of the trial judges and prosecutors. We gave our best, as did our law enforcement agencies, but, being woefully short of ammunition and soldiers in the war against crime, we were simply overrun by the sheer number of criminals.

I beg you younger judges: When the crisis builds back up the next time and the Legislature's demagogues decide to make the streets safe for democracy again, don't sit around sucking your thumbs as we older judges did during the last decade. Don't let the Legislature act without hearing your opinions. Opinions which are based on training, experience, and expertise in the administration of justice. The last time these issues were discussed the legislators listened to a bunch of self-aggrandizing demagogues and few others. Neither the demagogues nor the others knew any more about criminal justice than I know about opera.

A bit o' the Irish



Judge Larry Gist (front row, third from left) organized a Comparative Criminal Law Course held in Dublin, Ireland, November 22-27, 1995. Gist's group of judges and attorneys met with representatives of the Irish judicial system to discuss and compare our different approaches to criminal justice. Gist's group included Judges Tom Thorpe, John McCall, Cas Dunlap, Tom Price, Randy Isenberg, Oliver Kitzman, Allen Stilley, and Steve Johnson. Pictured to the left of Judge Gist is Nora Owen, Minister of Justice for the Republic of Ireland.

Course participants heard presentations on the Irish legal system, current issues in Irish law, and criminal law in Ireland. Participants also visited probation service projects, rehabilitation facilities, substance abuse programs, and social welfare services.

Blame miscast for why state jails are empty

by **Hon. Robert P. Brotherton**

The following letter was originally published on February 8, 1996 in the Dallas Morning News in response to a January 30 editorial titled "State Jails — This isn't what Texas voters had in mind."

The state jail felony became law on Sept. 1, 1994. At that time, certain offenders, labeled "nonviolent" were shifted to this new category of felonies, to relieve the overcrowded Institutional Division of the Texas Department of Criminal Justice. By necessity, certain offenses were "decriminalized" and placed into this new category of offense. New institutions, the state jails, were constructed, and it is true that a portion of those new facilities are still awaiting their first inmates.

It is not true, however, that "criminal judges simply haven't been inclined to sentence convicted felons in their courts to state jail terms." The original legislation included a provision which read as follows:

"On conviction of a state jail felony, the judge shall suspend the imposition of the sentence of confinement and place the defendant on community supervision." (Emphasis supplied.)

Community supervision, formerly known as probation, was mandated by the Legislature. We judges were prohibited from ordering a convicted state jail felon into the state jails. Under the original legislation, the only way a defendant could get himself into the state jail was to have his community supervision revoked at a subsequent hearing. What a surprise that the newly constructed state jails were empty! The reaction to the new law by most judges and prosecutors was utter disbelief. As the citizens realized the absurdity of the mandatory probation, their reaction was similar. The next Legislature cleaned up Section 15(a) with the following amendment:

"On conviction of a state jail felony punished under Section 12.35(a), Penal Code, the judge shall suspend the imposition of the sentence of confinement and place the defendant on community supervision, unless the defendant has been previously convicted of a felony, in which event the judge may suspend the imposition of the sentence and place the defendant on community supervision or may order the sentence to be executed."

This new provision was not effective until Jan. 1, 1996. Any state jail felony offense committed between Sept. 1, 1994 and Jan.

1, 1996 falls under the original law. The Legislature created a system of state jails and built the facilities, and made it almost impossible for the courts and the prosecutors to use them.

I expect to be held accountable for the decisions I make. However, the blame for the state jail system needs to be placed on the proper shoulders in Austin and not in the courtrooms of this state.

Hon. Robert P. Brotherton is judge of the 30th District Court in Wichita Falls.

TEXAS' NEWEST ADMINISTRATORS OF JUSTICE

Hon. Kathleen Cardone
383rd District Court, El Paso
New court: no predecessor

Hon. James Amador Daross
384th District Court, El Paso
New court: no predecessor

Hon. Carol G. Davies
177th District Court, Houston
Succeeding Judge Miron A. Love

Hon. Kenneth D. DeHart
394th District Court, Alpine
New court: no predecessor

Hon. Fred Garza
County Court at Law #4, Edinburg
Succeeding Judge Leticia Hinojosa

Hon. Homero Garza
County Court at Law #3, Edinburg
Succeeding Judge Richard Garcia

Hon. Deborah G. Hankinson
Fifth Court of Appeals, Dallas
Succeeding Justice James A. Baker

Hon. Jean Spradling Hughes
County Crim. Court at Law #15, Houston
New court: no predecessor

Hon. William B. Lofland
382nd District Court, Rockwall
New court: no predecessor

Hon. Dan Moore
3rd District Court, Palestine
Succeeding Judge R. W. Lawrence

Hon. John A. Pope
381st District Court, Rio Grande City
New court: no predecessor

Hon. Michael Schneider
First Court of Appeals, Houston
Succeeding Chief Justice Alice Oliver-Parrot

Hon. Carter William Tarrance
392nd District Court, Athens
New court: no predecessor

Hon. Robert Hill Trapp
411th District Court, Coldspring
New court: no predecessor

(as of February 8, 1996)

Supreme court embarks on first ever self-study

By Justice Craig Enoch

In late November, a chief justice, two associate justices, an attorney, and a lay person joined with representatives of the National Center for State Courts to begin a first ever supreme court self-study.

At the invitation of the National Center, Chief Justice Alma Wilson, Justice Henry Frye, and Justice Thomas Zlaket of the Supreme Courts of Oklahoma, North Carolina, and Arizona, respectively; along with Richard Pena, Esq., and Mary Evans Sias, Provost of the University of Texas at Dallas, met for two days with the justices of the Texas Supreme Court. The purpose of the conference was to set the framework for an in-depth study of the internal operation of the court.

The National Center for State Courts is the premier national organization devoted exclusively to providing services to the state courts. The National Center is a nonprofit corporation dedicated to modernizing court operations and improving justice at the state and local level throughout the country. It is a focal point for judicial reform, serving as a catalyst for implementing standards of fair and expeditious judicial administration and helping to determine and disseminate solutions to the problems of state judicial systems.

The National Center is no stranger to Texas court administration. At the beginning of the '80s, the citizens of Texas adopted a constitutional amendment granting appellate jurisdiction over criminal matters, except death penalty cases, to the courts of civil appeals. The National Center, at the invitation of the Texas Supreme Court, provided the framework for the orderly transition of small appellate courts of limited jurisdiction to large appellate courts of greatly expanded jurisdiction. Much of the success in the timely disposition of

appellate matters by the intermediate courts is still attributable to the work of the National Center 15 years ago.

Why is the Supreme Court doing an internal study? A short answer is because one hasn't been done before. More to the point, Texas is now the second most populous state in the country and is indisputably a site of significant and complex state court litigation. Further, beginning January 1, 1996, only one sitting justice will have served on the court

"Now is the time to study the historical operations and policies of the court, to determine those that should be discarded or replaced and those that should be kept."

longer than nine years. The average service of the justices on the court will be just over four years. According to Chief Justice Tom Phillips, "Now is the time to study the historical operations and policies of the court, to determine those that should be discarded or replaced and those that should be kept."

Unique to this study is the participation of justices from other supreme courts, along with outside non-judicial personnel. "In requesting this study, the court not only sought the expertise of the National Center staff, but the practical observations and recommendations of those who work in other systems," Phillips said.

The study has three phases. Phase one has just been completed—identifying and focusing the issues. Among the areas open for review were court organization, the discretionary review process, scheduling of conferences and arguments, administrative oversight, central staffing, chambers staffing, clerical procedures, automation and other support

resources, and case load trends. After a day and a half of intense review and study, all the participants left feeling that the time was well spent. For some problems, there were real solutions. For others, there was comfort in knowing that other courts struggle with the same issues.

In phase two, the National Center staff will interview individual justices and administrative and legal staff, study statutes and rules governing appellate pro-

cedure, and study the internal operating rules of the court. The National Center will then formulate recommendations and report back to the court.

The third phase will be the formal presentation of the National Center's report and conclusions. The formal report will be circulated to the 50 state supreme courts and will be available to any other organization dedicated to assisting state courts in the orderly administration of justice.

The study is currently on schedule to be completed in the early Spring of 1996.

Justice Enoch serves on the Supreme Court of Texas.

ETHICS OPINIONS

No. 185 Issued January 5, 1996

Public Support for Anti-crime Luncheon

A luncheon is being held as part of a "Walk Out on Crime" weekend sponsored by the Citizens Crime Commission of Tarrant County. The speaker will be a nationally recognized expert on domestic terrorism and workplace violence. He will provide an overview of current activities in American cities and their implications for Tarrant County. The luncheon is one of many events of the weekend.

Q *May a judge be on the host committee, attend the event, promote it within the community and have her name on the invitation?*

A Yes. Canon 4 provides that a judge may participate in activities concerning the law, the legal system, and the administration of justice so long as such participation does not cast doubt on her capacity to decide any issue that may come before the court.

It appears from the description of the luncheon that the focus of the Citizens Crime Commission is to explain problems that are facing the legal system and suggest possible solutions. The judge may be on the host committee, attend the luncheon, and allow her name on the invitation.

In promoting the luncheon, the judge should not lend the prestige of her office to advance the private interests of any vendors or others associated with the event as prohibited by Canon 2.

See also Opinions 82 and 163.

ETHICS Q & A OPINIONS

No. 186 Issued January 5, 1996

Applicability of Code to Retired Judge Not Subject to Assignment

Q *Does the Code of Judicial Conduct apply to a former judge who is now retired and has not elected to take judicial assignments?*

A No. Canon 6F provides that "a Senior Judge, or a former district judge or a retired or former statutory county court judge who has consented to be subject to assignment as a judicial officer" shall comply with all provisions of the Code, with minimal exceptions. However, compliance with the Code is not required for a former judge, now defined as a "Retired Judge" by Canon 8B(14), who has not consented to be subject to assignment pursuant to Tex. Gov't Code Ann. § 75.001 (Vernon Supp. 1996).

Q *Does the Code of Judicial Conduct prohibit a former judge who is not retired and has not elected to take judicial assignments from writing to Texas district and appellate judges requesting their contribution to a fund to be used to seek an increase in judicial pay?*

A No. Given the resolution to Question No. 1 above, the current Code of Judicial Conduct does not prohibit a former judge who is now retired and has not elected to take judicial assignments from writing to Texas district and appellate judges requesting their contribution to a fund to be used to seek an increase in judicial pay.

No. 187 Issued January 5, 1996

Municipal Judge as Part-time Master

Q *May an associate municipal court judge serve as a part-time Special Master under the authority of Article 11.07 3(d), V.A.C.C.P.?*

A The Committee is of the opinion that this is a question of law, not a question of ethics.

The Committee on Judicial Ethics writes advisory opinions interpreting the Code of Judicial Conduct. The Committee declines to answer the question and suggests the Judge seek a legal opinion from the proper forum.

No. 188 Issued January 23, 1996

Newly Elected District Judge "Winding Down" Obligations as Ex County Judge

District Judge on Criminal Justice Policy Committee

Q *May a newly appointed district judge "wind down" his service on the North Central Texas Council of Governments by attending three meetings in his capacity as immediate past president? Similarly, may he attend meetings remaining during his term as the Texas representative on the board of the National Association of Regional Councils of Government?*

Q *Additionally, this district judge asks if he can sit on the Criminal Justice Policy Committee of the local Council of Governments, a committee which deals exclusively with criminal justice and juvenile and juvenile justice policy issues.*

A No. Canon 4H prohibits judges from accepting appointment to a governmental committee that is concerned with issues of fact or policy on

(Continued on next page.)

ETHICS OPINIONS

(Continued from previous page.)

matters other than the improvement of the law, the legal system, or the administration of justice. There is no provision for "winding down" a previous appointment; if it is improper to accept such an appointment, it is improper to continue such an appointment after assuming the bench.

A Yes. Service on a local council of governments committee concerned exclusively with criminal justice and juvenile justice policy issues is permitted by the language of Canon 4H allowing judges to accept appointment to governmental committees concerned only with issues of fact or policy involving the improvement of the law, the legal system, or the administration of justice. However, service on such a committee must comply with Canon 4A's admonition that the activities not interfere with the judge's proper performance of judicial duties and not cast reasonable doubt on his capacity to act impartially as a judge.

No. 189 Issued January 23, 1996

County Judge Serving on United Way Board of Directors

Q May a constitutional county court judge who performs judicial functions serve on the board of directors of a local United Way charitable organization, provided that the board does not participate in fund raising and only sets policy?

A Yes. A county judge who performs judicial functions is subject to the provisions of the Code of Judicial Conduct under Canon 6(B), subject to exceptions not relevant to this inquiry. Canon 4(C) of the Code authorizes a judge to serve as a director of a charitable organization, provided that he or she does not personally solicit funds and provided that service on the board will not otherwise interfere with the performance of his or her judicial duties.

No. 190 Issued January 23, 1996

Part-time Associate Judges and Partners Prohibited from Practicing in Court Where Associate Judge Appointed

Q May the partners or associate attorneys of a part-time associate judge practice in the court of the district judge where the associate judge is appointed to serve?

A No, they may not. Canon 6D(2) states that a part-time commissioner, master, magistrate, or referee should not practice law in the court in which he or she serves. Canon 2B provides that a judge shall not permit others to convey the impression that they are in a special position to influence the judge. In this situation, partners or associates of the part-time associate judge would be in a position to convey this impression.

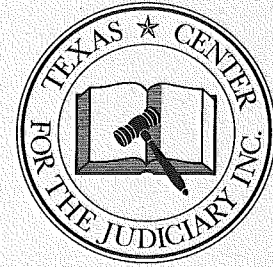
No. 191 Issued January 24, 1996

Appellate Judge Writing Article Discussing Prior Decision

Q May a judge on the Court of Criminal Appeals or the Supreme Court write a newspaper article in the form of an opinion/editorial piece discussing his/her stated position on a case that has been finally resolved by the Court?

A No. Canon 3(B)10 prohibits a judge from discussing a matter which may show his/her probable decision in a matter. Even though a matter has already been decided, it can be revisited and the opinion/editorial would be talking about more than just particular procedures of the court, which is what the Canon allows. More importantly, this would be a direct violation of Canon 3(B)11 where a judge is not allowed to talk about discussions, ... , positions taken, and/or writings of ap-

pellate judges... as these shall be revealed only through a court's judgment, a written opinion or in accordance with Supreme Court guidelines.



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LOOKING AHEAD

JUDICIAL CALENDAR

1996

SOUTH TEXAS JUDICIAL CONFERENCE

March 6-8, 1996
Embassy Suites Hotel
McAllen

CENTRAL TEXAS JUDICIAL CONFERENCE

March 20-22, 1996
Radisson Plaza Hotel
Fort Worth

NORTHEAST TEXAS JUDICIAL CONFERENCE

April 1-3, 1996
Fredonia & Holiday Inn
Nacogdoches

PDP FACULTY DEVELOPMENT

April 11-12, 1996
Galveston

WEST TEXAS JUDICIAL CONFERENCE

April 24-26, 1996
Embassy Suites
Abilene

CRIMINAL JUSTICE CONFERENCE

May 15-17, 1996
Sheraton Park Central Hotel
Dallas

PROFESSIONAL DEVELOPMENT PROGRAM

June 10-14, 1996
University Hotel
Huntsville

JUDICIAL SECTION ANNUAL CONFERENCE

September 24-27, 1996
Marriott & Sheraton Hotels
Corpus Christi

COLLEGE for NEW JUDGES

December 8-13, 1996
Dallas

1997

JUDICIAL SECTION ANNUAL CONFERENCE

September 23-26, 1997
Worthington & Radisson Hotels
Fort Worth

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