



IN CHAMBERS

The Official Publication of the Texas Center for the Judiciary



**Volume 31, Number 2
Summer 2004**

Inside this Issue:

- ◆ ***Come Together: Call to Annual Judicial Section Conference***
- ◆ **2004–05 Leadership Nominations**
- ◆ **DWI/Drug Courts**
- ◆ **Protecting Public Health**

Plus Departments:

- ◆ **In Memoriam**
- ◆ **Contributions and Memorials**
- ◆ **Looking Ahead**

table of contents

features

NAWJ to meet at Annual Conference	3
DWI/Drug Courts make impression	4
Texas College for Judicial Studies graduates first class	6
New cases regarding confrontation clauses: Crawford v. Washington	8
2004–05 Leadership Nominations	13
Resolutions and Bylaw Amendments	13
Texas' Newest Administrators of Justice	15
Come Together	15

departments

In Memoriam	3
Ethics Opinions	5
Making News	7
Contributions and Memorials	14
Looking Ahead	16

Cover photography, magazine layout by Christie L. Smith

In Chambers is the official publication of the Texas Center for the Judiciary. The magazine is published three times a year and funded by a grant from the Texas Court of Criminal Appeals.

The staff of *In Chambers* strives to provide current information about national and local judicial educational issues and course opportunities for Texas judges.

Readers are encouraged to write letters to the editor and submit questions, comments, or story ideas for *In Chambers*. Contact Staci Priest, Publications Coordinator, by calling 800-252-9232, faxing 512-469-7664, or e-mailing stacip@yourhonor.com.

The Texas Center for the Judiciary is located at 1210 San Antonio Street, Suite 800, Austin, TX 78701.

In Chambers

Volume 31, Number 2
Summer 2004

Editorial Board

Chief Justice (Ret.) Marilyn Aboussie
San Angelo

Judge (Fmr.) Susan P. Baker
Fredericksburg

Judge Manuel Banales
105th District Court, Corpus Christi

Justice Scott Brister
Supreme Court of Texas

Justice Molly Francis
5th Court of Appeals, Dallas

Texas Center for the Judiciary Staff

Mari Kay Bickett
Executive Director
mkbickett@yourhonor.com

Tana J. Petrich
Associate Director
tpetrich@yourhonor.com

Ann Blankenship
Program Attorney
annb@yourhonor.com

Carrie Gates
Administrative Assistant
cgates@yourhonor.com

Shirley Irvin
Assistant to the Director
shirleyi@yourhonor.com

Lacy Jemmott
Registrar
lacyj@yourhonor.com

Staci Priest
Publications Coordinator
stacip@yourhonor.com

Amy Cook
Financial Officer
amyc@yourhonor.com

Sherry Ballance
Conference Coordinator
sherryb@yourhonor.com

NAWJ to meet at Annual Conference

The Texas members of the National Association of Women Judges will be hosting their Annual Membership Dinner during the Judicial Section Annual Conference in Dallas. The dinner will be held in the revolving Antares Restaurant atop Reunion Tower on Monday September 13 from 6 to 9 p.m.

Louise Raggio and Vivian Castleberry will be discussing their book "A Texas Tornado: An Autobiography in Courage". Ms. Raggio, a winner of the Sandra Day O'Connor Award, is a pioneering attorney who was instrumental in drafting property rights laws for married women.

Judge Susan Criss will



Louise Raggio (left), with Justice Bea Ann Smith, was honored at the first annual Sandra Day O'Connor Award Luncheon for Professional Excellence held recently by the Texas Center for Legal Ethics and Professionalism. Photo by Al Adcock; provided courtesy Texas Center for Legal Ethics.

also show the 12-minute video "The Color of Justice". The video features minority judges, lawyers and law students encouraging minority students to pursue careers in the law and the judiciary. Appearing in the video are Justice Wallace Jefferson, Judge Morris Overstreet, Judge Belinda Hill, Judge Sue Kurita and Judge Roy Quintanilla.

The dinner is being sponsored by the Law Offices of Deborah Hankinson. Tickets are \$40. Men, as always, are welcome to come to the dinner and to join NAWJ.

Editors note: An article about the "Color of Justice Project" appears on page 3 of the Spring 2004 edition of In Chambers.

in memoriam

For Those Who Served Our State Courts

As of July 12, 2004

Honorable Carl Wilford Friedlander

Judge (Former)
County Court at Law, #5, Dallas

Honorable Harry Hopkins

Justice (Retired)
2nd Court of Appeals, Weatherford

Honorable John James

Justice (Retired)
10th Court of Appeals, Waco

Honorable Glenn R. Lewis

Judge (Former)
Colorado Springs

Honorable Phil Peden

Justice (Retired)
1st Court of Appeals, Houston

Honorable Filemon B. Vela

U.S. District Judge
TX District Court Judge (Former)

DWI/Drug Courts make impression

by David L. Hodges
former Judge

When I first assumed the bench, a senior judge pulled me aside to offer advice. He talked about how we are to be “above the fray,” an informed observer, a dispassionate referee, and uninvolved facilitator of the process. He said, “The only two words a judge should ever say are ‘sustained’ and ‘overruled.’”

Some judges feel that that our job is merely to process the cases in an efficient manner, and let the executive and legislative branches worry about whether the system is serving the overall needs of the society. I remember many times lecturing defendants about their obligation to be personally responsible for their success or failure on probation. I would say, “This is not a social service agency. It is a court of law. We have 2,000 people on probation and do not have time to hold your hand and make sure you comply with this order.”

The only defendants I saw again after placing them on probation were the ones who came before me on a motion to revoke probation or for a subsequent offense. Even though we serve on our Board of Judges, supervising the local probation department, most judges do not involve themselves in the probation supervision or treatment programs. It is viewed as “social work” which is not in our job description.

With that background, I

approached my first exposure to a “DWI/Drug court” with many reservations.

The general concept of “DWI court” is to take the model of a “drug court” and apply it to DWI offenders, to treat alcohol as another drug. In most cases, those defendants placed on probation in DWI courts are repeat offenders with an alcohol addiction, not social drinkers who made a mistake.

There are approximately 1,200 drug courts across the

court with his probation officer and substance abuse counselor present. All three are questioned by the judge about the defendant’s progress in the program. Any defendant who has missed a group session, had a dirty urinalysis, lost his job, or been recalcitrant in any way is immediately sent to jail in front of all of the other participants who are waiting to see the judge. There is a system of immediate consequences for failure, and immediate rewards for success.

My first exposure to DWI court based on this model was in Judge J. Wayne Griego’s court in Albuquerque, New Mexico. Like the other DWI court judges in Albuquerque, he handles his regular docket every week, but has volunteered to set aside one afternoon a week for DWI court. I was interested to see what would make a judge

volunteer to do extra work, and “social work” at that.

What I observed was amazing. Before the court session, the judge staffs each case with the probation officer and the drug/alcohol counselor. With their input, the judge decides how to handle each defendant. In the courtroom, the first defendants are called before the bench, lectured by the judge, and remanded to jail immediately for their violations in front of the other defendants. The rest are brought up to the bench, one by one, flanked by

The exchange between the judge and the defendant is engaging, entertaining, and enlightening. Before we know it, hours have passed...and no one seems anxious to go home.

United States. Their documented success in reducing recidivism is remarkable. Study after study has shown that for every dollar spent on a drug court, taxpayers save \$7 to \$10 on incarceration costs. Instead of having the defendant reappear before the judge only if he violates probation, he is required to appear before the judge every week for the first twelve weeks, submit to urinalysis, attend counseling sessions and drug classes, and meet with probation staff.

His appearance before the judge every week is done in open

continued next page

the probation officer and counselor. The judge spends a few minutes with each defendant, engaging him in a personal dialogue about his successes, failures, attitudes toward treatment and probation, etc.

Using his position as an authority figure, the judge encourages, cajoles, and lectures each defendant on his progress or lack thereof. The exchange between the judge and the defendant is engaging, entertaining, and enlightening. Before we know it, hours have passed, it is after 5 o'clock, and no one seems anxious to go home.

My first thought after observing a DWI court personally, was "I wish I had known about this twenty years ago." Judge Greigo, and every DWI/drug court judge I have interviewed since, have told me that this has saved and invigorated their judicial careers. Each says it is the most rewarding experience in his/her career. In fact, one of the judges opposed to the program sent one of her worst repeat offenders to Judge Griego's DWI court, hoping to prove that it would not work. When that defendant successfully completed the program, she became a believer and is now the Presiding Judge of the DWI court program.

So why should law enforcement, prosecutors, and conservator judges (like myself) consider implementing DWI courts? Don't people who drink and drive deserve to go to jail? Absolutely. For first offenders the fear of jail time, license suspension, and other consequences has been proven to be an effective deterrent.


However, for repeat offenders for whom alcohol is an addiction, jail time and other sanctions are just part of the cost of drinking, and in most cases, will not modify future behavior. If our goal is to reduce alcohol-related accidents, injuries, and deaths, then we will either have to incarcerate them for the rest of their lives or change their behavior.

DWI courts cost approximately one/tenth of the cost of incarceration. What's more important is that for

those who complete their first year in the program, recidivism rates are less than 20% compared to an approximate 65% recidivism rate for those who only receive prison time as a consequence of their repeated DWIs.

The bottom line is that DWI and drug courts work. They effectively and substantially reduce the number who re-offend, and those people become productive taxpaying members of society, instead of costing us untold millions in tax dollars, insurance costs, destruction of property, and peoples' lives.

For further information regarding DWI/drug courts, contact: NHTSA Region 6 Judicial Liaison: Hon. David L. Hodges, Amsler, Amsler & Stearns, 412 West Third Street, McGregor, TX 76657. Phone: 254.840.3291. Fax: 254.840.4261. E-mail: jdh@judgehodges.com.

David L. Hodges was first elected to the trial bench in Texas in 1982. During the last twenty years, he presided over hundreds of jury trials, and the disposition of thousands of civil cases. A past chair of the Judicial Section, his current practice consists of conducting mediations for civil, family, and probate cases, and a general office and trial practice. In addition to mediation, David L. Hodges also provides arbitration services for those who require or prefer a binding process. 

ethics opinions

Questions & Answers

To ask an ethics question, contact Justice Mack Kidd, Chair of the Judicial Section's Committee on Judicial Ethics, (512.463.1686) or the State Commission on Judicial Conduct, 877.228.5750.

Committee on Judicial Ethics

- Hon. Mack Kidd, Chair
- Hon. Thomas Bacus
- Hon. Cathy Cochran
- Hon. Mackey K. Hancock

- Hon. Lora J. Livingston
- Hon. Emil Karl Prohl
- Hon. Mark Rusch
- Hon. Michael Schneider
- Hon. Juan Velasquez
- Hon. Kathleen Olivares, **Liaison**
- Hon. Mario Ramirez, **Liaison**
- Hon. Jay Robinson, **Ex-Officio**
- Hon. Steve Seider, **Ex-Officio**
- Mr. Amon Burton, **Reporter**

Texas College for Judicial Studies graduates first class

The first graduating class of The Texas College for Judicial Studies celebrated their achievement during the College held April 25-30 at the Austin Marriott at the Captiol in Austin.

The Texas College for Judicial Studies is a

featured four, day-and-a-half specialty education programs. The four specialty curriculums included appellate, civil, criminal, and family/juvenile.

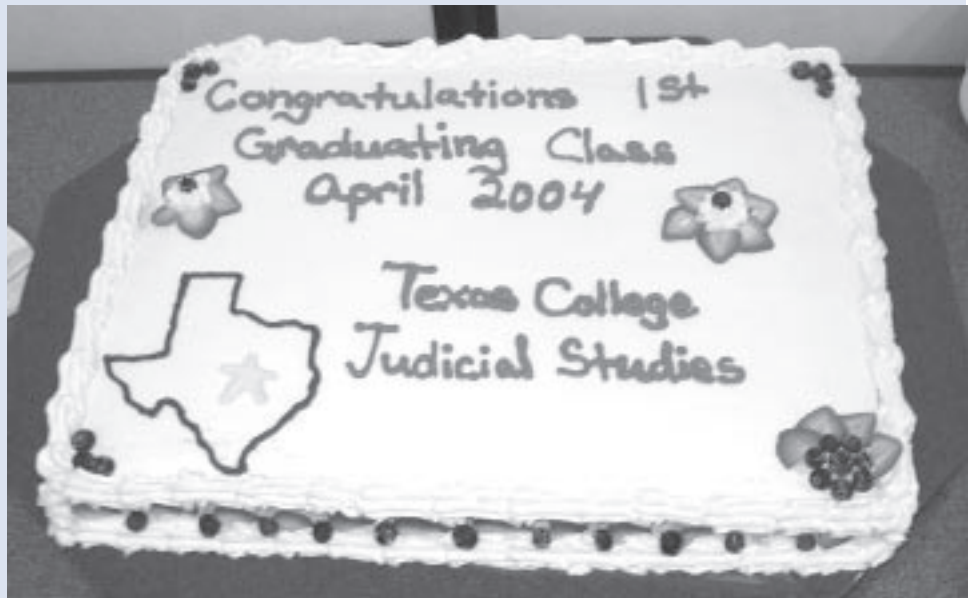
Some of Texas' most respected and experienced judges taught these classes, along with a diverse



Pictured above, the 2004 graduating class of the Texas College for Judicial Studies (photo by PK Studios). At right, the class was honored with a reception, which included a special cake prepared in their honor.

multi-year program curriculum designed to provide advanced educational opportunities to judges who desire to improve their adjudication skills and acquire more knowledge in their jurisdictional specialization. The Texas Center for the Judiciary's Curriculum Committee developed the College curriculum.

This year's conference featured a two-and-a-half-day core education program. Sessions covered topics relating to jurisprudence, evidence, decision-making, ethics, and time management. The conference then




faculty of attorneys and other well-informed professionals in various fields.

"We developed the Texas College for Judicial Studies to allow judges to have the opportunity

continued on next page

to obtain advanced, specialized training in their jurisdictional area so they can excel on the bench. The creation of the College is in keeping with our mission

statement at the Texas Center—*Judicial Excellence Through Education*,” said Mari Kay Bickett, Executive Director of the Texas Center for the Judiciary. 

Class of 2004

Hon. Amado Abascal
Hon. Glen Ashworth
Hon. Bascom Bentley
Hon. Robert Brotherton
Hon. Brent Carr
Hon. Charles Carver
Hon. Martin Chiuminatto
Hon. Thomas Culver
Hon. John Paul Davis
Hon. Paul Davis
Hon. Kenneth DeHart
Hon. Brady Elliott
Hon. Elma Salinas Ender
Hon. Wilford Flowers
Hon. Robert Francis
Hon. Tom Fuller
Hon. Harold Gaither
Hon. Julie Gonzalez
Hon. Guy Griffin
Hon. Ricardo Herrera
Hon. Jess Holloway
Hon. Edward Jarrett
Hon. Joel Johnson
Hon. Guilford Jones
Hon. Joseph P. Kelly
Hon. M. Sue Kurita

Hon. Paula Lanehart
Hon. Alan Mayfield
Hon. Lamar McCorkle
Hon. F.B. McGregor
Hon. Walter McMeans
Hon. Samuel Medina
Hon. Robert Moore
Hon. Rick Morris
Hon. Quay F. Parker
Hon. Jay Patterson
Hon. Mickey Pennington
Hon. Bob Perkins
Hon. Penny Roberts
Hon. Jack Robison
Hon. Randall Lee Rogers
Hon. Barbara Rollins
Hon. Wayne F. Salvant
Hon. Earl Stover
Hon. Ralph Taite
Hon. Harold Towslee
Hon. Martha Trudo
Hon. Bradley Underwood
Hon. Norma Venso
Hon. Larry Wagenbach
Hon. Lee Waters
Hon. Nathan E. White
Hon. Bill C. White


making news

Honors & achievements for Texas judges

Judge Russell Austin of Probate Court No. One (1), Harris County, received the accolades of the South Texas College of Law student body as the recipient of their Professor Excellence Award for Outstanding Teaching during

the 2003-04 academic years. He is a two-time recipient of this award having earlier received it for the 2001-02 academic years.

Judge Jennifer W. Elrod of the 190th District Court in

Harris County has been named the Woodrow Seals Outstanding Young Lawyer of Houston. This award is given in recognition of her professional achievements, service to the Bar, and service to the community. 

New cases regarding confrontation clause: Crawford v. Washington

by Chief Justice Linda Thomas
5th District Court of Appeals

Crawford v. Washington, ___ U.S. ___, 124 S. Ct. 1354 (2004)

Facts: Michael Crawford stabbed a man who allegedly tried to rape his wife, Sylvia. Crawford was tried for assault and attempted murder, and he claimed the stabbing was in self-defense. Sylvia did not testify at trial because of the state's marital-privilege provision.¹ However, she provided a statement during a police interrogation that arguably contradicted Crawford's assertion of self-defense.

Issue: Whether the admission of Sylvia's statement violates Crawford's Sixth Amendment "right to be confronted with the witnesses against him."²

Holding: The State's use of Sylvia's statement violated the Confrontation Clause. When *testimonial* statements are at issue, the Confrontation Clause demands that the witness be unavailable **and** there must have been a prior opportunity for cross-examination. *Id.* at ___, 124 S. Ct. at 1356.

Rationale: The Court concludes that the principal evil at which the Confrontation Clause was directed was the use of *ex parte* examinations of witnesses against a defendant at a criminal trial. Based upon a historical analysis, the majority finds that the Clause's ultimate goal is to ensure reliability of evidence and it demands that reliability be

assessed in a particular manner: "by testing in the crucible of cross-examination." *Id.* at ___, 124 S. Ct. at 1370.

Effect of Decision: In rendering its decision, the Court specifically overruled *Ohio v. Roberts*, 448 U.S. 56 (1980). *Roberts* involved admission of former testimony under Rule 804(b)(1). In *Roberts*, the Court held that to overcome a Sixth Amendment objection, the prosecutor must either call the

In rendering its decision, the Court specifically overruled Ohio v. Roberts...

declarant as a witness or satisfy a two-part test. The Court said the government must demonstrate that:

(1) it was unable to produce the declarant despite a good faith effort to do so; and

(2) the hearsay statement is sufficiently reliable, which may be established if the statement falls within a firmly rooted hearsay exception or the prosecutor can make a showing of "particularized guarantees of trustworthiness." *Roberts*, 448 U.S. at 66.

Test for determining admissibility: Under *Crawford*, confrontation analysis will usually turn on the question whether a

particular statement is testimonial in nature or not.

Questions and Issues:

1 What are *testimonial* statements?

The *Crawford* Court specifically declined to provide a comprehensive definition or test for determining whether statements are *testimonial* in nature. *Crawford*, ___ U.S. at ___, 124 S. Ct. at 1364, 1374. The opinion does, however, provide a non-exhaustive list of examples of *testimonial* statements: *ex parte* testimony at a preliminary hearing (or its functional equivalent); material such as affidavits, depositions,

interrogations by law enforcement officers; prior testimony that the defendant was unable to cross-examine, or "similar pretrial statements that declarants would reasonably expect to be used prosecutorially." *Id.* at ___, 124 S. Ct. at 1364. The majority opinion also indicates that "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial" constitute *testimonial* statements. *Id.*

And, the opinion provides some examples of statements that by their nature are not testimonial:

continued on next page

business records and statements in furtherance of a conspiracy. *Id.* at ___, 124 S. Ct. at 1367.

2 Statements to government officers

The Court observed that “[a]n accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not.” *Id.* at ___, 124 S. Ct. at 1364, 1374. And, statements taken by police officers in the course of “interrogations” clearly were viewed as “testimonial.” Importantly, the Court further noted that it was using the word “interrogation” in its “colloquial, rather than any technical legal, sense.” *Id.* at ___, 124 S. Ct. 1365 n.4.

3 Admissibility of nontestimonial hearsay

The Court specifically held that when nontestimonial hearsay is at issue, the States have flexibility in the development of hearsay law, and that such statements are exempt from Confrontation Clause scrutiny. *Id.* at ___, 124 S. Ct. at 1374. Thus, *Crawford* does not apply to nontestimonial statements and we look solely to hearsay rules to determine admissibility.

4 Admissibility of dying declarations

The majority opinion declines to address whether the Sixth Amendment incorporates an exception for testimonial dying declarations. However, the opinion points out that historically this has

been treated as an exception. *Id.* at ___, 124 S. Ct. at 1367 n.6.

5 Forfeiture of right to confrontation

An accused forfeits his right to confrontation if the witness is absent by the accused’s wrongful procurement. The Court said that it continued to accept the rule of forfeiture by wrongdoing, which “extinguishes confrontation claims on essentially equitable grounds.” *Id.* at ___, 124 S. Ct. at 1370.

◆ admissibility of deceased murder victim’s statement to police officer at the scene of the shooting that defendant had shot him

❖ Murder defendant forfeited his right of confrontation and waived any hearsay objections by killing victim. *State v. Meeks*, No. 89,204, 2004 WL 867738 (Kan. Apr. 23, 2004)

6 Examples where courts determined that out-of-court statements were admissible

◆ admissibility of a videotaped interview with child sex abuse victim

❖ The child testified at trial, thus, *Crawford* did not apply.³ *People v. Martin*, No. A100213, 2004 WL 605440 (Cal.App. 1 Dist. Mar. 29, 2004); *People v. Johnson*, No. C041977, 2004 WL 602393 (Cal. App. 3 Dist. Mar. 24, 2004).

◆ Child’s statements to interview specialist in sexual abuse case was admissible where the child testified at trial and was available for cross-examination. *State v. McClanahan*, No. 50866-1-1, 2004 WL 723283 (Wash. App. Div. 1 Apr. 5, 2004).

◆ admissibility of unavailable witness’ prior testimony at a

preliminary hearing

❖ Defendant had an opportunity to cross-examine the witness at the preliminary hearing, thus the right of confrontation has been satisfied. *State v. Young*, No. 89056, 2004 WL 757815 (Kan. Apr. 9, 2004); *Primeaux v. State*, No. D-2002-319, 2004 WL 728402 (Okla. Crim. App. Apr. 6, 2004).

7 Examples where courts determined that the statements were inadmissible.

◆ The plea minutes of the co-defendants are testimonial in nature. Even though the statements may fall within a hearsay exception (declaration against penal interest), the co-defendants had to be called as witnesses to avoid a violation of the Confrontation Clause. *People v. Carrieri*, Ind. No. 1625-01, 2004 WL 877564 (N.Y. Sup. Apr. 15, 2004).

◆ Non-joined co-defendant’s confession to police constituted testimonial evidence. Thus, admission of the confession violated Confrontation Clause even though co-defendant was unavailable at trial (invoked Fifth Amendment), because defendant did not have an opportunity to cross-examine co-defendant. *State v. Pullen*, No. COA03-234, 2004 WL 834219 (N.C. App. Apr. 20, 2004).

◆ admissibility of police report in probation revocation hearing

❖ Due process mandates that at revocation proceedings, the releasee must be afforded the right to confront and cross-examine adverse witnesses. This report was inadmissible because there was no opportunity to

continued on next page

cross-examine the witness who made the report. *United States v. Jarvis*, No. 03-30388, 2004 WL 603466 (9th Cir. Mar. 26, 2004).

◆ admissibility of police officer's testimony as to what victim told him

❖ The statements were made to a police officer who was conducting a field investigation, not a statement made during a police interrogation. The statements were determined to be testimonial under *Crawford*. *Moody v. State*, No. S03A1669, 2004 WL 546778 (Ga. Mar. 22, 2004).

◆ admissibility of out-of-court statement to Justice Department attorney investigating alleged conspiracy to fix prices in antitrust case.

❖ The witness' statements were barred under *Crawford* rationale. *United States v. Saner*, No. IP-03-181-CR-M/E, 2004 WL 771160 (S.D. Ind. Apr. 9, 2004).

◆ admissibility of child victim's statements to social worker with child protective services

❖ These statements were determined to be testimonial because they were developed for the expressed purpose of presenting them at trial under the state's tender years statute. *Snowden v. State*, No. 2933, 2004 WL 719245 (Md. App. Apr. 5, 2004).

◆ admissibility of accomplice's written inculpatory statement made in course of custodial interrogation

❖ The accomplice's written statement constituted "testimonial evidence" for purposes of Confrontation Clause analysis. *Hale v. State*, 133 S.W.3rd 298 (Tex. App.

– Fort Worth 2004, no pet. h.), *op. withdrawn, superseded by* Nos. 2-03-143/145-CR, 2004 WL 127788 (Tex. App. – Fort Worth June 9, 2004).

◆ admissibility of non-testifying co-defendant's custodial statement made during a criminal investigation

❖ The out-of-court written statement to police officers regarding circumstances of robbery violated Confrontation Clause. *Brooks v. State*, 132 S.W.3rd 702 (Tex.App. – Dallas 2004, no pet.h.).

8 Examples where courts determined the statements were nontestimonial

◆ admissibility of out-of-court statement of child (murder victim) to her mother that her head hurt following her being in the care of the defendant

❖ The court held that the statement was not testimonial and that it was admissible as a hearsay exception (declaration of child's then existing condition). *People v. Becerra*, No. G030893, 2004 WL 576246 (Cal. Ct.App. 4 Dist. Mar. 24, 2004).

◆ admissibility of child's statement to interviewer at the Children's Assessment Center

❖ The court determined that because the interviewer was not a government employee, it was nontestimonial. Further, the child's answer to the question of whether she had an "owie" was not a statement in the nature of "ex parte in-court testimony or its functional equivalent." *Michigan v. Geno*, No. 214768, 2004 WL 893947 (Mich.Ct.App. Apr. 27, 2004).

◆ admissibility of statements of indicted co-conspirator

❖ Co-conspirator statements made in furtherance of the conspiracy are nontestimonial for purposes of defendant's Confrontation Clause rights, citing *Crawford*, ___ U.S. at ___, 124 S. Ct. at 1367. *United States v. Reyes*, Nos. 03-1765 and 03-1939, 2004 WL 613071 (8th Cir. Mar. 30, 2004).

◆ admissibility of 911 call in a domestic assault prosecution

❖ The court held the 911 call was not testimonial as that term was used in *Crawford*; accordingly, it was admissible without offending Sixth Amendment. *People v. Moscat*, No. 2003BX044511, 2004 WL 615113 (N.Y. City Crim. Ct. Mar. 25, 2004).

9 Situations in which *Crawford* will not apply or likely will not apply.

◆ civil child protection proceedings

◆ criminal proceedings in which the child victim testifies

◆ a child victim's casual remark to a parent, teacher, or friend.

(Footnotes)

¹ Washington's "marital privilege" generally bars a spouse from testifying without the other spouse's permission.

² The trial court allowed the State to play the tape-recorded statement, even though *Crawford* did not have an opportunity for cross-examination. The intermediate appellate court reversed the conviction holding that the statement did not bear "particularized guarantees of trustworthiness. The Washington Supreme Court reinstated the conviction after determining that Sylvia's statement was reliable. 147 Wash. 2d 424, 437, 54 P. 3d 656, 663 (2002).

³ If the declarant is available for cross-examination at trial, the Confrontation Clause places no restraints on the use of prior testimonial statements. *Crawford*, *Id.* at ___, 124 S.Ct. at 1369 n 9.

2003-2004 Bench Book Project update

by Lacy Jemmott, TCJ Registrar

The Boards of the Texas Center for the Judiciary and the Judicial Section-State Bar of Texas wish to express their appreciation to the Bench Book Committee and the Texas Tech Legal Research Board for the latest revision to the Bench Book. Professor Alison Myhra and her select team of Texas Tech University School of Law students and the Bench Book Committee worked together to research, write, and edit the Bench Book chapters for the 2003 update.

A new CD-ROM of the Book for the Texas judiciary will be distributed at the Judicial Section Annual Conference. Judges not attending the Annual Conference should expect a CD to be mailed by late September. The online version of the updated Bench Book should be available late August, 2004.

The initial Bench Book project was made possible in part by a grant from the Texas Bar Foundation. The 2003 update was funded by a grant from the Court of Criminal Appeals and by the contribution of time and


expertise of all the judges who served on the Bench Book committee.

Student members: Katherine Everett, Editor; Jill Berry, Administrative Director; Cass Calloway; Sarah



Members of the Texas Tech Legal Research Board, pictured left to right, first row: Katherine Everett, Editor; Jill Berry, Administrative Director; Carolyn Romo, Editor; Steve Burzinski, Editor. Second row: Daisy Floyd, Faculty Advisor; Stacey Shaw; Brandon Spencer; Susan Crawford; Kimberly Houston; Christine Stroud; Nicole Griffin; Lisa Lammers. Third row: Bryan Stanfield; Daniel Simmons; Brandon Berg; Dan Simmons; Cass Calloway; Bryan D. Eisenbise; Sarah Dobson; Alison Myrhra, Faculty Advisor. Photo provided by Alison Myrhra.

Dobson; Bryan Eisenbise; Christine Fincher Stroud; Kimberly Houston; Lisa Lammers; Stacey Shaw.

Bench Book Committee: Hon. John Specia, Jr., Chair; Hon. Caroline Baker; Hon. Hal Gaither; Hon. Vicki Isaacks; Hon. Robert Richardson; Hon. Dean Rucker; Hon. Laura Weiser; Hon. Paula Lanehart, Liaison; Ms. Mari Kay Bickett, Ex-Officio; Professor Daisy Floyd, Ex-Officio; Dr. Alison Myhra, Ex-Officio; Mr. Bob Wessels, Ex-Officio. 

District Judges to meet at JSAC Annual Conference


by Amado Abascal, III
Judge, 365th District Court

The Texas Association of District Judges will hold a business meeting at the Annual Conference Monday September 13, 2004, at 3:30 p.m. If you are a District Judge, please plan to attend. The goal is to have every active Texas District Judge become a member of the Association.

The Texas Association of District Judges was established as a non-profit association at the 1993 Annual Judicial Conference. It is a

voluntary organization for active Texas District Court Judges. Annual membership dues are \$10.

We wish to plan a social hour/reception for the District Judges to immediately follow our September business meeting. If we raise sufficient contributions, refreshments may be provided. To adhere to the judicial canons and ethics rules, sources for contributions are very restricted. A contribution over and above

your regular membership dues is appreciated. Contributions from officeholder accounts are permitted to be made to the Texas Association of District Judges. If you would like to remit your annual dues or a contribution to the Association, please send a check payable to: The Texas Association of District Judges, c/o Judge Amado Abascal, 500 Quarry St., Box 6, Eagle Pass, Texas 78852. 

Conference Roundup

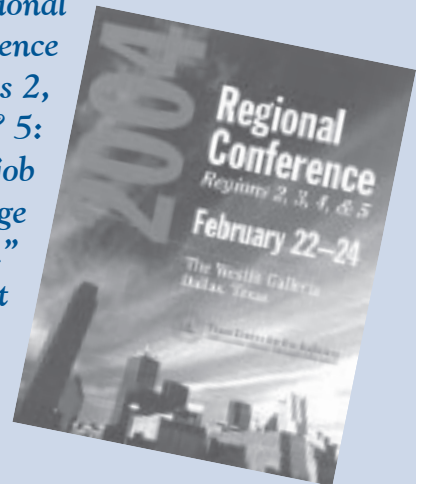
It's been a busy year so far for Texas Center conferences. If you haven't taken advantage of these conferences, here's what you've been missing...



Regional Conference – Regions 1, 6, 7, 8 & 9: “... there was a lot of practical, useful information. Please commend the Curriculum Committee.”

“Very good conference – keep up the good work.”
“Best focus on practical stuff...”

Conference rating:
4.21 out of 5.0.



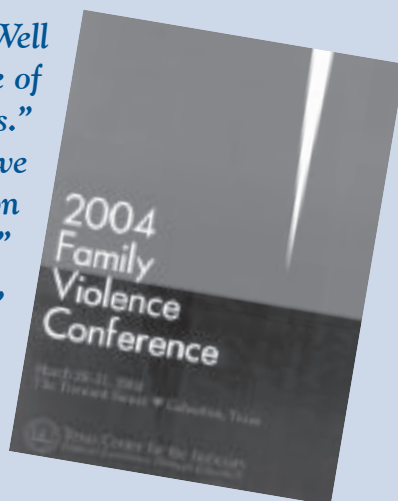
Regional Conference – Regions 2, 3, 4 & 5: “Excellent job - good range of topics.”
“Best conference so far. Appreciate seeing some new speakers...”

“Thanks for a great program.”
Conference rating 4.52 out of 5.0.

Family Violence: “Well planned – good balance of topics.”

“Excellent, informative sessions with information we need.”

“Outstanding, knowledgeable and informative speakers.”
Conference rating: 4.71 out of 5.0.

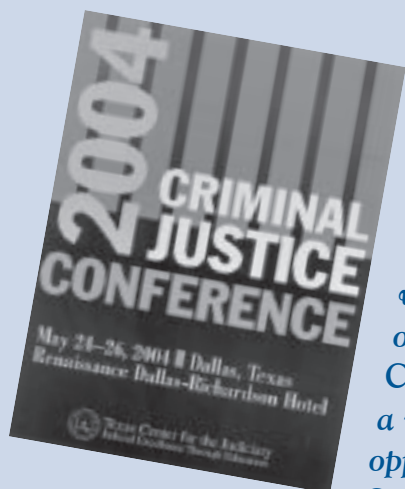


Texas College: “Excellent program.”

“Best seminar I have ever been to.”

“The PowerPoint visual aids and the handouts made

the lectures go smoothly and [made them] easier to comprehend.”
Conference rating: 4.53 out of 5.0.



Criminal Justice: “This was one of the most efficient conferences I’ve been to in a long time.”
“Good conference – good topics.” “Policy discussions were relevant to all members of the judiciary.” “Glad that Criminal Justice Conference is a regular part of our educational opportunities.”

Conference rating: 4.28 out of 5.0.

2004-05 Leadership Nominations

On May 21, 2004, the 2003-04 Nominations Committee chaired by Judge Stephen B. Ables, slated the following judges for nomination for the 2004-05 Judicial Section Board of Directors and the Texas Center for the Judiciary Board of Directors:

Judicial Section Board of Directors

Chair: Hon. Dean Rucker
Presiding Judge 7th Administrative Judicial Region,
Judge 318th District Court, Midland

Chair-Elect: Hon. Laura Weiser
County Court at Law #1, Victoria

Secretary-Treasurer: Appointed by Chair

Place 6: Hon. Carter Schildknecht
106th District Court, Lamesa

Place 7: Hon. Karl Prohl
198th District Court, Kerrville

Place 9: Hon. Daniel Robles
County Court at Law #3, Brownsville

Texas Center for the Judiciary Board of Directors

Chair: Hon. Dean Rucker
Presiding Judge 7th Administrative Judicial Region,
Judge 318th District Court, Midland

Chair-Elect: Hon. Laura Weiser
County Court at Law #1, Victoria

Secretary-Treasurer: Appointed by Chair

Place 2: Hon. Diane DeVasto
12th District Court of Appeals, Tyler

Place 6: Hon. Rose Vela
148th District Court, Corpus Christi

Place 9: Hon. Robert Anchondo
County Criminal Court at Law #2, El Paso

If you are interested in serving on any committees during the 2004-05 term, please contact Hon. Dean Rucker at 432.688.4390 or Mari Kay Bickett at mkbickett@yourhonor.com.

Judicial Section Committees

Legislative (Appellate, Criminal Justice, Trial Judges)
Bylaws
Ethics
Juvenile Justice
Nominations
Resolutions
Site Selection

Texas Center for the Judiciary Committees


Appellate Education Fund
Budget
Bylaws
Curriculum
Fundraising
Judicial Bench Book
Long Range Planning
Nominations
Scholarship

Resolutions and Bylaw Amendments

The Judicial Section Resolutions Committee will meet on September 11, 2004, in conjunction with the Judicial Section Annual Conference.

As stipulated in the Judicial Section bylaws, resolutions must be submitted to the chair of the Resolutions Committee no later than 20 days prior to the date set for the annual meeting. Therefore, the deadline for submitting resolutions is Tuesday, August 24, 2004. Submit resolutions to: Honorable Kristin Wade, County Criminal Court of Appeals #1, 133 N. Industrial, LB9, Dallas, Texas 75207. Fax: 972.304.1596.

Proposed bylaw amendments should be submitted in writing by Tuesday, August 24, 2004 to: Honorable Molly Francis, Fifth District Court of Appeals, 600 Commerce, Dallas, Texas 75202-4658. Fax: 214.745.1083.

Please send copies of any resolutions or proposed bylaw amendments to the Texas Center for the Judiciary, 1210 San Antonio, Suite 800, Austin, Texas 78701 or fax to 512.469.7664. 

contributions and memorials

Thank you for your contributions

Includes contributions received as of July 12, 2004

Contributions to the Texas Center

J.A. Bobo

Cathy Cochran

Vann Culp

Craig Estlinbaum

Jaime Garza

Gary Hall

Gary D. Harger

Jean Spradling Hughes

Andy Kupper

Lora J. Livingston

Mark R. Luitjen

Alan Mayfield

Robert Pate

Ronald R. Pope

Cecil G. Puryear

Stephen Preslar

Daniel T. Robles

Frank B. Rynd

Charles Sherrill

Carol M. Siebman

Tommy Brock Thomas, Jr.

Memorial Contributions

Judge Henry Braswell

Lloyd Perkins

Judge Jerry Dellana Memorial

Charles Ramsay

Judge Dan Gibbs Memorial

John Miller

Craig Penfold

Henry Strauss

Justice Harry Hopkins Memorial

Clyde R. Ashworth

Justice John A. James Memorial

Wayne Bridewell

William Vance

Judge Richard Johnson Memorial

Jack Hampton

Craig Penfold

Justice Paul McCollum Memorial

Charles Chapman

Bob Dickenson

George Kelton

Weldon Kirk

Bill McCoy

Stephen Preslar

Dean Rucker

George M. Thurmond

Barbara L. Walther

Mr. Charles Oakley Memorial

Susan Patricia Baker

June Jackson

Carter T. Schildknecht

Judge Jack O'Neill Memorial

Gene Dulaney

Judge Perry Pickett Memorial

Vann Culp

John Hyde

Judge Filemon Vela

Rose Vela

"In Honor" Contributions

In Honor of Hon. Andrew Z. Baker

Susan Patricia Baker

In Honor of Hon. James A. Baker

James Mehaffy

In Honor of Hon. John Boyd Quinn

Brian Quinn

In Honor of Hon. C.C. "Kit" Cooke

John E. Neill

In Honor of Hon. Temple Driver

Lloyd Perkins

In Honor of Hon. Mackey Hancock

Drue Farmer

Contribution Card

Your generous support is sincerely appreciated and vital to the success of the Texas Center for the Judiciary's mission: Judicial Excellence Through Education.

Enclosed is a contribution for \$ _____* in support of the Texas Center for the Judiciary.

To make a contribution by credit card, complete the following:
 AMEX MasterCard Visa Discover

Credit Card #: _____ Expires: _____

Signature: _____

Date: _____

Name: _____

Court: _____

Address: _____

City, State, & Zip: _____

*If desired, indicate in whose MEMORY / HONOR (circle one) it is made:

_____ The Texas Center is a non-profit organization to which contributions are fully deductible.

Mail your contribution to: Texas Center for the Judiciary, 1210 San Antonio, Suite 800, Austin, TX 78701

Texas' Newest Administrators of Justice

As of July 12, 2004

Hon. Jeff M. Addison

County Court at Law, Bowie Co.
Succeeding Hon. Leon Pesek Jr.

Hon. Beth Maultsby

303rd District Court
Succeeding Hon. Richard Johnson

Hon. Nancy Hohengarten

County Court at Law #5, Travis Co.
Succeeding Hon. Gisela Triana

Hon. Richard Clark Terrell

79th District Court
Succeeding Hon. Terry Canales

Come Together

Come together to the 2004 Judicial Section Annual Conference, September 12-15, 2004 in Dallas, Texas. The conference will be held at the Hyatt Regency.

This year's conference will offer:

- ◆ 12 hours of CJE credit
- ◆ 3 hours of family violence credit
- ◆ Pre-conference Golf Tournament
- ◆ Chair's Luncheon
- ◆ Texas Bar Foundation Luncheon
- ◆ Sunrise Breakfast
- ◆ Come Together Celebration Dinner
- ◆ Silent Auction sponsored by the Texas Court Reporters Association

Conference early registration deadline is Monday, August 30; hotel reservation deadline is Sunday, August 22; and cancellations will not be refunded after Friday, September 3. You may register online at www.yourhonor.com.

looking ahead

Judicial Conference Calendar

Judicial Section Annual Conference
September 12–15, 2004
Dallas

College for New Judges
December 5–10, 2004
Austin

2005

Regional Conference (Regions 1, 3, 4, 5, & 8)
January 26–28, 2005
Horseshoe Bay

Regional Conference (Regions 2, 6, 7, & 9)
February 27–March 1, 2005
Galveston

Family Violence Conference
April 4–6, 2005
Galveston

Texas College for Judicial Studies
May 1–6, 2005
Austin

Criminal Justice Conference
May 22–24, 2005
Plano

PDP Professional Development Program
June 20–24, 2005
Austin

Judicial Section Annual Conference
September 18–21, 2005
Austin

2006

Texas College for Judicial Studies
April 23–28, 2006
Austin

Judicial Section Annual Conference
September 10–13, 2006
Houston

College for New Judges
December 3–8, 2006
Austin



Texas Center for the Judiciary
1210 San Antonio, Suite 800
Austin, TX 78701

First Class Mail
U.S. Postage
PAID
Austin, TX
Permit No. 1390