

Winter 2007

CHAMBERS

The official publication of the Texas Center for the Judiciary.

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In Chambers
Volume 34, Number 3, Winter 2007



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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 future issues.

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Mock courtroom set-up for High-Tech Justice during the general session of the 2007 Annual Judicial Conference in Galveston, Texas

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Letter from the Chair

Chief Justice Brian P. Quinn

We're More Than What We Are

Living by a law school affords me the luxury of having an intern twice a year. You've seen the type, a novice law student eager and nervous and most often with that deer-in-the-headlights look. They hold us in awe, given the job we do.

I remember one intern driving home with me from court in Amarillo. My Pink Floyd CD was playing and I began humming. Slowly, the intern's head turned until she was staring at me. She said, "You listen to Pink Floyd?" to which I replied "Yep." Her response was, "But you're a judge!"

Since becoming a judge, I've had to invite friends, acquaintances, and lawyers to call me by my name instead of "Judge" or even worse "Justice." More often than not, their response is, "I don't feel comfortable calling a judge by his first name." Too bad I don't get the same treatment at home. The trash cans to be emptied still await me at the house.

What can I say? I can't walk on water, nor did I go through divine selection. I thought I was still that forgetful guy who doesn't call his mom enough. Well, in a way I am, but then again I am not. Yeah, I always hide in my shop wrenching on motorcycles to retain my sanity, and rock and roll will never die—at least in *my* mind. But I can't forget the fact that I hold a position loaned to me by fellow Texans, and with that position comes a status that carries burdens.

Despite my political affiliation, I am obligated to put party politics aside and focus on the law. So too must I "do right" not just "be right." That requires calm thought, neutral attachment, and the willingness to subordinate personal whim and dislike to what is right. A mentor told me long ago that there are two sides to every story. Both have to be heard and analyzed, since you are no longer an advocate but a judge.

Admittedly, fulfilling those obligations is ongoing work. Being human gets in the way at times. Nevertheless it's work that must continue, not just when sitting

in the courtroom but also when dealing with lawyers, the populace, and fellow judges. More is expected of us.

Maybe that's why when a colleague stumbles, the mishap garners media attention. We may not like it, but maybe it should be that way. After all, we are servants bestowed with the public trust and hold office by leave of the voters. Nothing gives us a right to the position. Irrespective of our personal views toward the law and those with whom we regularly deal, the authority and power of office are not our own but are *on loan*. They come with strings warning against abuse. All of us must remember that, from the justice sitting in J.P. court to the judges donning robes in the Supreme Court or Court of Criminal Appeals. People are watching and judging us, as we too should be.

My wife Abby calls. Time to get off the soapbox and empty the trash. Thanks for listening.

Meet Chief Justice Quinn

Chief Justice Brian Quinn has served on the Seventh Court of Appeals in Amarillo for over ten years and was appointed Chief Justice in 2005. Prior to taking the bench, he was a partner with McWhorter, Cobb, and Johnson L.L.P. in Lubbock for nearly ten years. Chief Justice Quinn is a member of

the Texas Bar Association, Amarillo Bar Association, and the Panhandle Family Law Association. He has served on the Board of Directors for the Judicial Section, State Bar of Texas, the Texas Supreme Court Advisory Committee on the Code of Judicial Conduct, and the State

Bar Rules Committee. Chief Justice Quinn is a frequent speaker for local and state continuing judicial education programs. He holds an undergraduate degree from the University of Texas at El Paso and a JD from Texas Tech University School of Law.

Letters to the Editor

Dear Editor:

I like and respect Robert Hirschhorn, having worked with him recently to pick a jury that returned a verdict in favor of our joint client for \$153 million. Robert is highly skilled, deservedly successful, and a gentleman. Nevertheless, having served as an appellate court justice for almost 20 years, I found the article “Five Psychological Tips for Getting Re-elected Every Time,” by Hirschhorn and Lisa Blue, Ph.D. (see *In Chambers*, Summer 2007) to be a recipe for lowering public esteem for the judiciary and, with a little luck, getting those who follow its suggestions in real trouble.

The worst idea in the article was headlined, “Be creative in your fundraising.” It proposed writing to your opponent’s donors “inviting them to visit you in your chambers and meet you as the newly elected judge.” The authors warned, “As always, check with your counsel to make sure you are not inappropriately using state [property] to fund raise for your campaign.”

Why check with counsel when it is so obvious that you are using your chambers for that exact improper purpose? Or would the real purpose be to intimidate the opponents’ supporters by letting them know “there’s a new sheriff in town”? The authors say this is “one tactic that is not often utilized,” which is comforting. It should never be utilized, except by one wishing to test the limits of the Code of Judicial conduct

or the Penal code. Such use of public property for campaign purposes should be suppressed, not encouraged in a journal for judges.

I also disagree with many other of the article’s suggestions, found below and followed with my response:

1. SUGGESTION: Help jurors remember your name by using and making all court personnel refer to the court not by number or otherwise, but always as “Judge Smith’s court.”

RESPONSE: It isn’t “Judge Smith’s court.” It’s the public’s court, and what is important is for Judge Smith to remember that, not for the public to remember Smith’s name.

2. SUGGESTION: Use mnemonic devices (“My name is Judge Fairchild. Remember by thinking Judge Fairchild is fair.”) . . . “Build a bond with jurors” by answering some of the questions you ask them in questionnaires, such as age, family background, and “brag on” your spouse.

RESPONSE: What if your spouse is not that great? (Mine is, of course.) Jurors don’t care how great the judge’s spouse is, which is probably no better than their own. Jurors can recognize cheesy behavior for what it is, i.e., campaigning on their valuable time, time that the judge has involuntarily seized from them.

3. SUGGESTION: “The best way to give your jury a sense of what it is like to be a judge is by letting them have a chance to do it themselves . . . Have a prospective

juror try on your robe and then ask the juror questions about how he or she views fairness and the role of a judge . . . [T]his exercise will have a big and lasting impression . . . on the entire panel. It is also likely these persons will tell their friends and family about the experience, increasing the opportunities for your name to be mentioned by potential voters.”

RESPONSE: Do I really need to say anything about this one?

4. SUGGESTION: The authors recommend passing out coffee mugs, key chains, or nail files bearing the judge’s name. “This,” the authors say, “can be done cheaply.”

RESPONSE: It sure can. In fact, I doubt it can be done any other way.

What’s next? Holding court outside during a hurricane so the judge can be seen on television rendering justice come hell or high water? Live screen tests during an actual trial to see if the judge can be more obnoxious than Judge Judy?¹

I guess we’ll soon find out.

Sincerely,

Murry B. Cohen

¹ Actually, that can’t be next. It has already happened.

JUSTICE AND POLITICS

By Judge Stephen Ables



During my term as Chairman of the Judicial Section of the State Bar, the Board of Directors decided to reconstitute the Ethics Committee. I had no hesitancy in appointing a chairman for that committee. I called on my friend and judicial hero, Justice Mack Kidd. Mack was wonderful to accept and immediately created a team spirit between the Ethics Committee, the Judicial Conduct Commission, and the Supreme Court. On several occasions after his appointment I checked with Justice Kidd to see how things were going. Mack, in his always enthusiastic manner, would tell me, “Steve, it is mostly like our day job. It is mostly listening.”

Later, when the chair position on the Ethics Committee reopened, I received a call from our Judicial Section Chair, Dean Rucker, asking me to take the position. I was honored to be asked to follow Mack, but questioned my time to do it—and my talent.

That was three years ago. Now during my time as Ethics Committee Chairman, we have produced a minimal number of ethics opinions. The reason for the dearth is that, invariably, judges requesting an opinion would ask, “What can I do?”—but, with just a few questions and a lot of “Mack Kidd” listening on our part, would move to “What *should* I do?”

I am proud to report that in three years, the Ethics Committee never had to tell a judge what to do. They always figured it out for themselves.

Then, almost to the end of my term as chair—so close I could see the finish line—we got the tough question: “Can I buy souvenir cups for jurors with my name and court number and the seal of Texas on the cup?” The Ethics Committee was troubled by the prospect of judges giving gifts to jurors.

An old ethics opinion, Number 68, deals with showing appreciation to jurors by sending them a letter. The issue in that opinion was whether sending a letter of appreciation would be perceived as a “thank you” or as a political “remember me” from the judge. Opinion 68 has a three-prong analysis that raises the obvious questions:

1) Is the letter extended as a courtesy to the juror? (The Canons admonish us to be courteous to jurors.)



2) Does the letter have the appearance of impropriety? (Propriety is the foundation for all of our canons.)

3) Is this using the prestige of the office for political gain? (See old Canon 7A.)

The committee writing Opinion 68, in my estimation, did the proper analysis and gave the judges of this state an okay to send well-deserved thank-you notes to jurors. After several emails with our earlier judge who asked for the opinion, that judge suggested taking the judge’s name off the cup but leaving the court number and the seal of Texas. The Ethics Committee liked the suggestion and hoped the judge would withdraw his request for an opinion. He did, and the committee was relieved. I’ll explain more about that comment later.

Within days of the resolution about the cups, our August *In Chambers* arrived in the mail. One of the articles included practical advice from two very fine attorneys about how judges can get re-elected. You can probably imagine my face when I read the section on “showing appreciation to jurors.” The specific advice in the article is to give the juror something to remember you by in your next election. Understandably, within hours I received an email from our earlier inquiring judge, saying “I don’t understand.”

Which brings me to my “the committee was relieved” comment. The question and the *In Chambers*

article present a troubling issue. Old Canon 7A, which is subsumed in Canon 2(B) and Canon 5, clearly tells us that we cannot use the prestige of our office to advance our private interests or anyone else's. In years past and as clearly stated in old Canon 7A, our speech and conduct were severely curtailed in regard to political activities.

We are all aware that *Minnesota v. White* has opened the door to permitting judges more freedom to engage in political activities, but the progeny of *White* in federal

courts, state court opinions around the nation, and opinions by our own court system indicate that the politics of today are far different than the politics of yesterday. It is not difficult to note the disdain by the federal courts for the Texas system of electing judges. In my words, I think they have succinctly said, "If your judges are going to be political, they get to act political."

So where are we? Chief Justice Brian Quinn, Chairman of the Judicial Section, has named Judge Kelly G. Moore as the Chairman of the Ethics Committee. I have turned the reins over to him. On this issue, I am not sure what the Ethics Committee will do. They may dodge the issue and wait for a re-write of our canons. They

may ignore case law and issue an opinion that is in the spirit of Canon 7A (of course we are not inclined to ever ignore case law). Or they may say the issue involves the appearance of

impropriety and give a "thumbs up" or "thumbs down" on a case-by-case basis (yes to letters, no to beer coolers).

Regardless of the outcome, I am absolutely confident that the judges of the state of Texas feel what they do is a calling. Every year at College for New Judges, I am humbled by the men and women who come to the bench because

they want to make a difference for good in their communities. During Chief Justice Linda Thomas' opening talk on "Profile of a Judge," the quality always listed first by the class as the most important is integrity. All of us deal with a vocation that has the potential to make a lot of people mad, but despite that, we have a desire to be loved and respected and, hopefully, re-elected.

Not long ago our wise Justice Ann McClure reminded us that in the field of judicial ethics our focus is not on our ability to take action, but on whether we should take an action. To all my fellow warriors out there, keep fighting the good fight and perhaps put this note on the corner of your bench and your desk:

"Ask not what *can* I do, but what *should* I do."

Look at it before you call Judge Moore, and know he will continue the legacy of Justice Kidd and be ready to listen.

**Ask not,
what can I do,
but
what *should* I do.**

New Administrators of Justice

(Appointments through 11/15/07)

**Hon. Christopher
Allen Antcliff**

Judge, 448th Judicial District
El Paso County

Hon. Melissa Goodwin

Judge, 427th District Court
Travis County

**Hon. Jay Michael
"Pat" Phelan**

Judge, 286th District
Hockley and Cochran Counties

Hon. Samuel

"Roger" Bridgwater III

Judge, 178th District Court
Harris County

Hon. Charlotte G. Hinds

Judge, 423rd District Court
Bastrop County

Hon. Louis E. Sturns

Judge, 213th District Court
Tarrant County

Hon. Randy Clapp

Judge, 329th District Court
Wharton County

**Hon. Albert Marvin
"Buddy" McCaig, Jr.**

Judge, 506th District Court
Grimes County and Waller County

Texas Association Selects New Leaders

At the annual business meeting of the Texas Association of County Court at Law Judges held in Galveston, September 17, 2007, Judge Gary Harger of Sweetwater became president with Judge Alfonso Charles of Longview voted president-elect.

Following the election, Judge Benton Eskew of Bastrop was appointed secretary, with Judge Karen Crouch of San Antonio and Judge Jack Cagle of Houston as legislative co-chairs.

Baker Honored by Texas Executive Women

Caroline E. Baker, Harris County Civil District Court judge, was honored October 19 by the Texas Executive Women as one of “10 Women on the Move.”

The Women on the Move® Awards honor outstanding women leaders in the Houston-area. The focus of the event is to celebrate the accomplishments of women in their professional and community activities.

In 2001 Baker created the Leadership Forum — held at the James A. Baker Institute for Public Policy at Rice University — so Houston high school students can learn about their city, its history, and the leadership role they can play in the community.

For more information, go to www.tewhouston.org.

Senate Confirms Texas Judge Elrod to Serve On Federal Bench

Judge Jennifer Walker Elrod, of Houston and Port Arthur, has been confirmed to serve on the U.S. Court of Appeals for the Fifth Circuit.

U.S. Senator John Cornyn, a member of the Senate Judiciary Committee, said, “As Judge Elrod’s career makes clear, she is well qualified for a seat on the federal appellate bench. Judge Elrod has demonstrated the legal acumen, the judicial temperament and dedication to public service, which the senate wisely requires of all judicial nominees.”

Sen. Cornyn continued, “Since 2002, Judge Elrod has been a state district court judge, serving on the 190th District Court in Harris County, Texas. As a trial judge, she’s presided over more than 200 jury and nonjury trials. Before that, Judge Elrod practiced law in Houston, Texas, for the trial department of Baker Botts, a top national law firm. Judge Elrod is known for her outstanding intellect, her strong work ethic, her integrity and her courteous demeanor. She has an outstanding record as a practicing attorney and an active state court judge.”

Judge Elrod graduated from Baylor University in 1988 and from Harvard Law School in 1992. From there, she served as a law clerk on the U.S. District Court for the Southern District of Texas from 1992 to 1994, was an associate at



Baker Botts from 1994-2002, an adjunct professor at the University of Houston Law Center in 1995 and has been a district court judge for Harris County since 2002.

Phillips Receives 2007 Justice Award

On November 15, 2007, Thomas R. Phillips received the Justice Award for 2007.

The Justice Award is the highest honor bestowed by the American Judicature society and recognizes a lifetime of dedication and devotion to the administration of justice in the United States of America. Phillips was a trial court judge, Chief Justice of the Texas Supreme Court from 1988 to 2004, and President of the Conference of Chief Justices.

Macias Named President-Elect of National Judicial Organization



Judge Patricia A. Macias

Judge Patricia A. Macias, presiding judge of the 388th Family District Court in El Paso, Texas, was elected President-Elect of the National Council of Juvenile and Family Court Judges during the organization's 70th Annual Conference held July 22-25, 2007, in San Francisco. Macias is slated to become the organization's president in July 2008.

Judge Macias has served on the bench for 12 years, first as Associate Judge of the Children's Court and for the past five years as District Judge presiding over high conflict custody and divorce, domestic violence and child support enforcement cases. Under her leadership, the Children's Court was designated as a Model Court of the NCJFCJ's Child Victims Act Model Courts Initiative and, most recently, has developed a state pilot project unifying the El Paso Family Courts.

A graduate of St. Mary's University School of Law, Judge Macias has long been involved with state and national organizations focusing on the needs of children. In May 2003, she was named to the Pew Commission on Children in Foster Care. She is also a member of the Texas Supreme Court Task Force on Foster Care. A frequent judicial educator, Judge Macias has presented before state judicial conferences and national child advocacy programs.

Judge Macias was honored in 2005 as a Texas Trailblazer by the El Paso Bar Association and in 2003 for her outstanding public service with induction into the El Paso Women's Hall of Fame. She received the Public Citizen of the Year Award in 2000 from the El Paso Chapter of the National Association of Social Workers and, in 1996, was named Judge of the Year by the State Foster Parent Association.

Founded in 1937, the Reno, Nevada-based National Council of Juvenile and Family Court Judges, the nation's oldest judicial membership organization, is focused on improving the effectiveness of our nation's juvenile and family courts. A leader in continuing education opportunities, research, and policy development in the field of juvenile and family justice, the 2,000-member NCJFCJ is unique in providing practice-based resources to jurisdictions and communities nationwide.

Indigent Defense in the Texas Juvenile Justice System

The Task Force on Indigent Defense and Texas Juvenile Probation Commission (TJPC) jointly published an information booklet summarizing the key requirements for providing counsel to indigent youth in juvenile court. The booklet is designed to:

- Ⓢ Provide an overview of the key provisions of the Fair Defense Act as applied to juvenile court cases;
- Ⓢ Answer many of the questions families and juveniles have about the right to counsel, processes used to determine who qualifies

for counsel and the time-frame for appointment;

- Ⓢ Answer questions for attorneys who practice before juvenile courts containing information on who can serve as appointed counsel, how attorney appointment lists are created and maintained, how appointments are made from the list, and the process for paying attorneys;
- Ⓢ Detail the juvenile board requirements for the indigent defense plans that each board must create and maintain; and

- Ⓢ Provide an overview of key statutes and resource materials.

You may download, print, or distribute the booklet from the Task Force's website at:

www.courts.state.tx.us/tfid/pdf/Indigent%20Defense%20Booklet%20Final.pdf

Legislative Success

Gov. Perry Signs SB600

By Judge Gary Harger

Through the efforts of the Judicial Section Legislative Committee, headed by Chief Justice Linda Thomas and District Judge Lamar McCorkle, Mr. Lynn Nabers of the Alliance for Judicial Funding, Mr. Bob Wessels of Harris County, and the Legislative Committee of the Association of County Court at Law Judges (CCAL), Governor Rick Perry signed SB600 into law. The bill, sponsored by Senator Robert Duncan, went into effect October 1, 2007.

The CCAL Legislative Committee, consisting of Judge Penny Roberts, Judge Gary Harger, Judge Alfonso Charles, and Judge David Garcia, wishes to thank all of its members who answered surveys, participated in planning meetings, made calls to their respective senators and representatives, and supported our efforts. Everyone came together to accomplish a major feat that had been in the works almost 20 years.

SB600 was designed to create parity in compensation for the judiciary serving the Statutory County Courts at Law of Texas by amending §25.0005 of the Government Code. In addition, SB600 provided an additional \$40,000 salary supplement per court in recognition of the state work performed by CCALs.

Prior to SB600, §25.0005 provided two compensation formulas: the first tied to a district judge's salary as of August 31, 1999; and the second tied to an amount

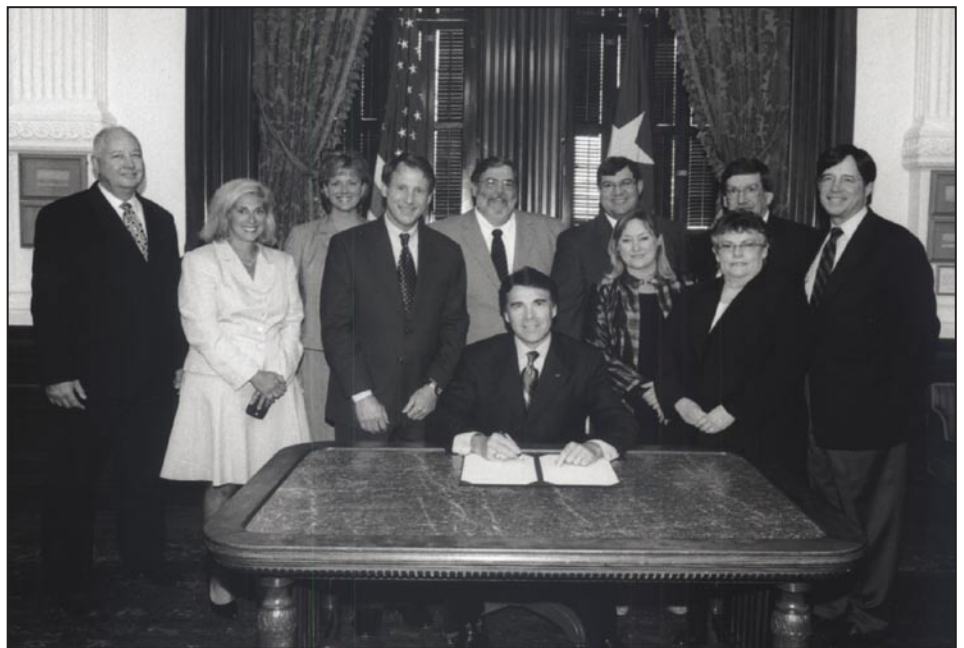
paid to the particular CCAL on a specific date when that court began assessing certain fees. Both formulas were fixed to arbitrary dates that provided counties justification not to raise judicial salaries. To further complicate the matter, inconsistency in application of those formulas resulted in not less than eight interpretations, which created annual salary disparity between CCALs of more than \$60,000.

As a result of the passage of SB600, §25.0005(a) of the Government Code was amended to provide that a "statutory county court judge . . . shall be paid a total annual salary set by the county commissioners court at an amount that is not less than \$1,000 less than the total annual salary received by a district judge in the county." Total annual salary

is defined to include any and all contributions and supplements paid by the state or a county, excluding only the compensation paid to the administrative presiding judges under §74.051.

Prior to the 80th Legislative Session, 220 fulltime CCALs served 84 counties. Of those, 32 counties had previously adopted compensation policies consistent with the new language of SB600. The courts serving those counties benefited from the District Court salary increase contained in HB11 of the 79th Legislature. The 74 courts in the remaining 52 counties received no benefit from the passage of HB11 until SB600 was passed.

To underscore the importance of CCALs to the state, it was necessary to educate many members of the legislature



Governor Rick Perry signs SB600.

Present for the signing were: (front row, l-r) Lisa Kaufman, Sen. Robert Duncan, Gov. Rick Perry, Judge Penny Roberts, Judge Linda Thomas; (back row, l-r) Judge Joe Bridges, Judge Lisa Burkhalter, Judge Gary Harger, Judge David Garcia, Bob Wessels, and Judge Lamar McCorkle.

regarding the varied tasks performed by many CCALs. Although subject-matter jurisdiction for a CCAL may be limited to a single type of case in larger counties, e.g., criminal or civil only, more frequently in the medium and smaller counties, CCALs are created with general jurisdiction. Their responsibilities often encompass divorces, child custody and support, paternity, adoptions, terminations, child protective services matters,

protective orders, contested probate and guardianship matters, mental health commitments, juvenile delinquency, and misdemeanor criminal matters, together with general civil litigation. Some CCALs have been enabled to preside over felony matters as well.

At the administrative level, CCAL judges are often called upon to serve on their respective juvenile board, administer indigent defense plans, participate in the oversight of their community supervision

and corrections department, and authorize search warrants, while at the same time covering Justice Court magistration duties, inquests, and death pronouncements.

For the first time in the history of the Texas Judiciary, compensation issues for all of our courts have been legislatively united. In the future we can speak with one, unified voice. The legislature must know that an independent judiciary must be fairly compensated.

Appeals Court Celebrates 100 Years

On October 3, 1907, the Court of Civil Appeals, Sixth Supreme Judicial District, first opened for business. This year, the court celebrated its centennial anniversary.

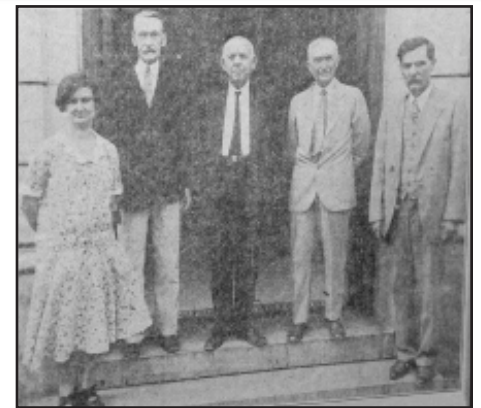
The Court is literally the sixth court of appeals created in Texas (only five had come before it, in Houston, Fort Worth, Austin, San Antonio, and Dallas). It was designated to serve 18 counties during an era when railroads had no peer as the chief and fastest means of transportation. This was one year before production of the Model T and not long after the Wright brothers first flew. In 1907 most people traveled by horseback or animal-drawn conveyances, and it is theorized that Texarkana

was chosen to take advantage of its proximity to railroads. This, according to Donald R. Ross, Justice (retired), in his “History of the Sixth Court of Appeals” (rev. 12/06), which can be found on the Court’s official website, www.6thcoa.courts.state.tx.us.

The courtroom facilities were first located in the City Hall building; then in 1924 moved to the newly built Municipal Building; and finally in 1985 to the second floor of the Bi-State Justice Building, where it operates today.

In 1981, the Texas Legislature expanded the district’s jurisdiction to include criminal cases, which is when the word “Civil” was dropped from the Court’s title. Today Texas has 14 intermediate, regionally distributed courts of appeals which statistically are the final word in over 90 percent of all Texas state-court appeals.

Just 24 justices have served on the Texarkana Court over the years, making longevity a tradition. The first three justices, Chief Justice Samuel Priest Willson and Associate Justices Richard B. Levy and



The original justices and staff of the Sixth Court of Appeals (l-r): Stenographer Mary DeLoach, Justice Richard B. Levy, Chief Justice Samuel P. Willson, Justice William Hodges, and Clerk Eli T. Rosborough.

William Hodges, were appointed by Governor Tom Campbell and sworn into office on August 5, 1907. They served no less than 23 years each, together with only one clerk and one stenographer.

Today, Chief Justice Josh Morriss presides over the Sixth Court of Appeals, continuing a family legacy. Justice Morriss is the grandson of Isaac N. “Ike” Williams, the third associate justice of the Sixth, who served from 1937 to 1954.

Special thanks to Chief Justice Josh Morriss for his assistance in developing this article.



The Bi-State Justice Building in Texarkana, which currently houses the Sixth Court of Appeals.

PUT DRUGS IN YOUR TOOLBOX

By Judge David L. Hodges, Judicial Resource Liaison



One of the greatest frustrations I experienced being on the bench for twenty years was dealing with the addicted alcoholics who returned to my court again and again for DWIs, assaults, and other offenses resulting from their addiction. The frustration was the result of seeing defendants continually ignore my court orders, their continuing danger to my community, and the inevitable destruction of not only their lives, but of all unfortunate enough to be close to them.

I believe one of our most important jobs as judges is to educate ourselves about the various options we have available for sentencing, sanctioning, and ultimately changing the behavior of these high-risk defendants.

This article will explore the use of certain prescription medications whose specific purpose is to control alcohol consumption by the addict. This is an option that has been used sparingly by Texas courts, but with great success in other jurisdictions.

The Drugs

Aversive Treatment

Aversive treatments involve taking drugs which will make a person very sick if they relapse and try to use an abused drug. The theory is that if people associate drug use with becoming ill, they will be less and less likely to use drugs. The best known aversive treatment is disulfiram (Antabuse),

which is used to treat individuals who are alcohol dependent. People who drink after taking disulfiram experience nausea, vomiting, and a variety of other negative effects. Ideally, disulfiram is taken every morning in order to decrease the likelihood of impulsive drinking. However, a person who makes a conscious decision to resume drinking can simply stop taking disulfiram, and can safely resume drinking within a few days. Without an additional structured treatment program, disulfiram has not been shown to be particularly effective in treating alcoholism.

According to the American Academy of Family Physicians, the drug Antabuse has been found to be less effective in treating alcoholism than naltrexone, and also has toxic qualities that have led to major medical complications. See Judge Stephen E. Benson and Gregory Lynch's "Promising Sentencing Practice No. 9 - Drug Therapy," in *Strategies For Addressing the DWI Offender: 10 Promising Sentencing Practices*, Department of Transportation Publication DOT HS 809 850 (2004).

However, Antabuse was one of the first drugs used by certain courts as a condition of granting probation to the high-risk alcoholics, and used with some measure of success.

A review of Texas cases reveals that judges have been ordering the ingestion of Antabuse as a condition of probation for almost

three decades. It is well settled that the trial judge can order the administration of these types of drugs as a condition of probation, and revoke the probation if the condition is not complied with.

See *Burns v. State*, 835 S.W.2d 733 (Tex. App. Corpus Christi 1992, pdr refused) where defendant's probation was revoked after pleading true to an allegation that she failed to comply with Antabuse treatment which had been included as a condition of her original probation order.

For a Court of Criminal Appeals case, see *Sanchez v. State*, 603 S.W.2d 869 (Tex. Crim. App. 1980). Here, through two orders of modification the appellant was ordered to report to a different named probation officer each Monday and Friday and to orally ingest Antabuse. The trial court found that the appellant failed to report five consecutive times. The order revoking probation was sustained by the Court of Criminal Appeals.

Antagonist Treatments

Antagonist drugs actually block the effects of alcohol. Currently, the most widely used antagonistic drug is naltrexone. Naltrexone (brand names: ReVia, Depade) is a medicine that reduces the defendant's desire for alcohol after he stops drinking. It is therefore usually administered after a period of detoxification is completed. Naltrexone has been shown to assist in sobriety not only when

being taken, but for an extended period of time after the regimen has been completed.

How does naltrexone work?

Naltrexone blocks the parts of the brain that “feel” pleasure when you use alcohol and narcotics. When these areas of the brain are blocked, you feel less need to drink alcohol, and you can stop drinking more easily. Unlike disulfiram (brand name: Antabuse), naltrexone does not make you feel sick if you drink alcohol while taking it. For that reason, it is still possible to become intoxicated while taking naltrexone because it does not interfere with the other physical effects of alcohol ingestion.

Naltrexone is beneficial when only a modest level of supportive or psychosocial therapy is available, a reality in many clinical and court settings. The Australian researchers were able to demonstrate that naltrexone, with adjunctive medial advice, is effective in the treatment of alcohol dependence irrespective of whether it is accompanied by formal psychosocial interventions. See Noeline C. Latt, Stephen Jurd, Jennie Houseman, and Sonia E. Wutzke’s *Naltrexone in alcohol dependence: a randomised controlled trial of effectiveness in a standard clinical setting*, 176 (11) *The Medical Journal of Australia* 530-534 (2002).

So this brings us to the question of how and when naltrexone can be used in a courtroom setting.

Court-Ordered Treatment

ReVia® Project

A good example of how naltrexone can be used in the court system is demonstrated by

the Butte County ReVia® Project, which has been an ongoing project of Judge Darrell Stevens, of the Butte County Superior Court, California, since 1996. This project has extensively studied the use of ReVia (brand name of naltrexone) in a court supervised setting.

ReVia is a medication utilized for many years as a highly effective opiate treatment (referred to as an opioid receptor antagonist). It was determined that the brain pathways utilized by alcohol and opiates may be the same. Because of this, ReVia reduces or stops the cravings experienced by alcoholics during

... if an alcoholic is sincerely working on behavior changes through treatment, true progress can be made.

treatment. It is these cravings (physiological reactions which are triggered by behavioral cues) which interfere with an alcoholic’s ability to complete a treatment program. While on ReVia, sobriety can be obtained long enough to successfully establish a pattern of behavior modification. At the end of 180 days, the client in this project is examined for reduced use of ReVia.

It was determined that for project participants, ReVia functions as a tool to aid recovery and treatment. It is not a “stand alone” treatment. While being

utilized by these recovering alcoholics, ReVia functions in two manners: (1) it blocks cravings and (2) there is no pleasure derived from drinking alcohol when the addict “tests” the medication. There is no “buzz” and no reward for drinking. Thus, if an alcoholic is sincerely working on behavior changes through treatment, true progress can be made.

Protocol for ReVia® Project

1. Upon conviction or plea, the court places the defendant on formal supervised probation.
2. The defendant is mandated to contact a physician immediately, to receive an examination and a prescription for ReVia. Ingestion is initiated and a log signed by the pharmacist or physician.
3. The defendant reports forthwith to specific probation officers to present proof of the prescription and ingestion.
4. The defendant is directed to participate in alcohol treatment programs, as ordered by the court, or probation; to return every two weeks at a minimum; to submit to urine testing, search and seizure; abstention from all use or possession of alcohol, controlled substances, or entry into places where alcohol is sold or is a primary focus of business. Reviews before the court occur every seven weeks, or as directed by the probation officer.
5. Probation officers conduct field searches, and are expected to arrest ReVia clients who are violating the protocol and presenting a danger to the public.
6. After 24 weeks, the court examines the status of the probationer to determine if the supervision level will be reduced.

(Continued on page 12)

Defendants who were placed in this program were tracked for recidivism and sobriety and compared to defendants on regular supervised probation and defendants who were administered Antabuse. Their findings are summarized on their website as follows:

Behind all of the statistics and summaries, there is one simple and sterling clear fact: ReVia works on this group of offenders far better than any other supervision model. It is clear that utilization of Antabuse did not impact the addictive behavior to the degree ReVia did . . . Over the progression of weeks: they look better, walk better, smile more, and are restored. Many ReVia graduates resemble drug court graduates: stable employment and better health.

Further information about this project can be obtained by visiting the web site, www.aca-usa.org/reviaproject.htm, which was created by the American Council on Alcoholism.

Cost and Administration

Two of the main problems that have been mentioned by judges who have used the administration of drugs as a condition of probation are the cost of the drugs themselves and the need for a process to verify their administration.

Most courts have dealt with the administration problem by having the defendant prove that the prescription was filled, and having the probation officer, pharmacist, or physician sign a written log detailing the proper administration of the drug. In recent years, the cost of the drug has become more affordable. Currently, a prescription

can be filled from a discount online pharmacy for approximately five dollars per 50 mg tablet, which constitutes a one-day dose. Although not inexpensive, if a defendant is given the choice of bearing this expense (approximately \$150 per month) or going to jail and losing his job, he may opt for the former. Also, some defendants will be able to obtain the drug at reduced cost if they are covered by health insurance.

In addition, a long-acting injectable form of naltrexone is now available. Marketed under the name of Vivitrol, this injectable form of naltrexone need only be administered once every 30 days. Developed by the Addiction Treatment Division of Alkermes, Inc., Vivitrol not only makes compliance more convenient and verifiable, but recent research has shown that Vivitrol, because it does not pass to the stomach lining, can increase the effectiveness of the drug, while only requiring the administration of one-fourth of the amount of the oral version of naltrexone. Obviously, it would be much easier to monitor compliance with the court ordered administration if the administration occurred monthly instead of daily. At this time, Vivitrol has the disadvantage of costing considerably more than the oral medication. The increased cost may be offset in the long run by increased effectiveness, the convenience of administration, and the fact that it may be covered by the defendant's insurance plan. For more information, see James C. Garbutt, et al., *Efficacy and Tolerability of Long-Acting Injectable Naltrexone for Alcohol Dependence*, 293 (13) JAMA 1617-1625 (2005).

Summary

The ordering and administration of naltrexone or Vivitrol as a condition of probation will obviously not be appropriate in every situation. It would be better to simply look at this as another tool to put in your toolbox to be used when appropriate. When confronted with a hard-core addicted alcoholic, it may be beneficial to inquire into the cost and availability of the drugs, and the defendant's possible insurance coverage to determine if the drug treatment regimen is a viable option. Research had shown that use of a drug regimen alone, even without further support services, can be very effective in treating an addicted alcoholic. If you factor in court supervision, supportive therapy, adjunctive psychosocial interventions, and/or weekly group therapy, successful outcomes increase dramatically.

An excellent detailed discussion of this topic with a detailed bibliography can be found on the SAMHSA (Substance Abuse and Mental Health Services Administration) website: <http://ncadi.samhsa.gov/govpubs/BKD268/default.aspx>

For further information and full citations, contact:

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Annual CONFERENCE Wrap-Up

Lessons from the Past; Visions of the Future



Hon. Barbara Walther with Mr. Bob Wessels, co-winner of the Chair's Award of Excellence.



Judge Stephen Ables, winner of the Mari Kay Bickett Judicial Excellence in Education award, presented by Mari Kay Bickett (left).

The 2007 Judicial Section Annual Conference was held September 16-18, 2007, in Galveston, Texas. In attendance were 580 judges from all over the state, plus 303 attendees under the umbrella of spouses, assistants, court reporters, exhibitors, faculty, TCJ staff and special guests. All total, over 800 people attended this event.

This year's theme was *Lessons from the Past; Visions of the Future*, befitting of our times.

Congratulations are in order for distinguished recipients of the 2006-2007 awards.

The **CHAIR'S AWARD OF EXCELLENCE** was shared by Justice Elizabeth Lang-Miers and Mr. Bob Wessels.

Judicial Excellence in Education Awards were presented as follows:

- **EXEMPLARY ARTICLE AWARD** to John F. Nichols, Sr. for authoring *Life Beyond Schlueter: Fraud and Fiduciary Relations, Alter Ego, Breach of Fiduciary Duty and Property Related Torts*.

- **EXEMPLARY NON-JUDICIAL FACULTY AWARD** to Professor Daniel Shuman (SMU) and Professor Gerald R. Powell (Baylor).
- **EXEMPLARY JUDICIAL FACULTY AWARD** to Judge John Hyde.
- **MARI KAY BICKETT JUDICIAL EXCELLENCE IN EDUCATION AWARD** to Judge Stephen B. Ables.

Special thanks to Patti Hoag, Legal Assistant to Chief Justice Brian Quinn, for organizing the silent auction that went off without a hitch and helped raise \$9,340 to aid day-to-day operations of the Texas Center.

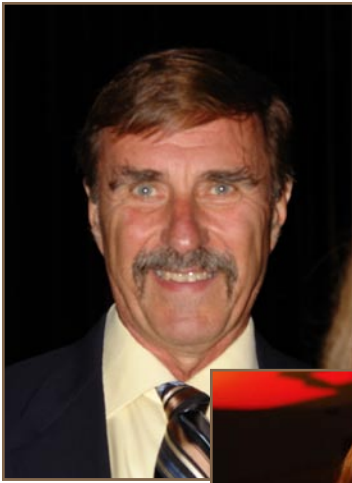
Also raised was \$9,950 from the Vespa raffle. Official winner of the Vespa was Judge Thomas Lowe.

Following is the conference in photos. Thanks to Lacy Jemmott for all of her great shots. We had a difficult time choosing which ones to use.

2007 ANNUAL JUDICIAL CONFERENCE

in pictures





2007-2008

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(Lists include contributions made through October 31, 2007.)

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Grant Condition Change

Internet Booking and Reimbursements

Please make note of the following change to the grant conditions under which the Texas Center for the Judiciary operates. This change pertains to judges and staff making travel arrangements and providing valid receipts for reimbursement.

Effective September 1, 2007, Internet booking receipts, such as Expedia, Travelocity, etc., are not valid receipts and therefore will not be reimbursed.

IN MEMORIAM

(List includes those passing as of November 15, 2007)

Our hearts go out to the families of those honorable souls who have passed before us and served the bench so well.

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WINTER REGIONALS (2, 6, 7, 9)

January 27-29

San Antonio

WINTER REGIONALS (1, 3, 4, 5, 8)

February 24-26

Houston

FAMILY VIOLENCE CONFERENCE

March 31 - April 2

Galveston

CRIMINAL JUSTICE CONFERENCE

May 19-21

Dallas

PROFESSIONAL DEVELOPMENT PROGRAM

June 16-20

Austin

JUDICIAL SECTION ANNUAL CONFERENCE

September 14-17

Dallas

2009

JUDICIAL SECTION ANNUAL CONFERENCE

August 30 - September 2

Grapevine

More 2008 and 2009 conferences
await confirmation. Watch for
announcements in your email and
future editions of *In Chambers*.
