IN CHAMBERS

Official Publication of The Texas Center for the Judiciary, P.O. Box 12487, Capitol Station Austin, Texas 78711

VOL. 4, NO. 1

APRIL, 1976

CRIMINAL JUSTICE CONFERENCE SET FOR HUNTSVILLE, MAY 5-7

The 1976 Texas Criminal Justice Conference will be held May 5-7 in Huntsville, Texas.

The opening session will feature an address by Gov. Dolph Briscoe. Additional Conference speakers include Presiding Judge John F. Onion Jr., Texas Court of Criminal Appeals, and Judge Horace Gilmore, Circuit Court Judge in Detroit, Michigan.

The program also includes four panel discussions: Fair Trial and Free Press; Evidentiary Problems, TDC and DPS Emphasis; Voir Dire Examination; and Evidentiary Problems in Trial.

Moderator of the Fair Trail and Free Press panel is Dr. Charles M. Friel, Director of Research of the Institute of Contemporary Corrections and the Behavioral Sciences, SHSU, Huntsville. Panelists are James E. Crowther, general counsel of the *Houston Post*, and Rolondo del Carmen, SHSU professor.

Evidentiary (TDC and DPS) panelists include three DPS officials: J. D. Chastain, Identification and Criminal Records Division chief; H. A. Albert, Fingerprints and Records Section manager; and Eldon Straughan, Crime Laboratory manager. Also on the panel is Billy Ware, chief records officer of TDC. Moderator is D. V. McKaskle, assistant director for Special Services, TDC.

Voir Dire panelists are Craig Washington, state representative from Houston; Jim Hippard, University of Houston law professor; and Judge Tom Davis, Court of Criminal Appeals commissioner. Moderator is Houston District Judge Miron Love.

Evidentiary (Trial) panelists are Lubbock District Judge Robert Wright; Sam Robertson, first assistant district attorney of Harris County; and Wayne Scott, St. Mary's School of Law professor. Moderator is Criminal Court of Appeals Judge Leon Douglas.

Tours of various TDC units will be conducted during the Conference. All meetings will be held on the Sam Houston State campus.

Texas district and county court at law judges who try criminal cases are eligible to attend the seventh annual Conference, and will receive registration information from the Texas Center for the Judiciary. The 1975 Conference drew some 175 participants.

Conference headquarters is the Sam Houston Inn (formerly TraveLodge). Room accommodations

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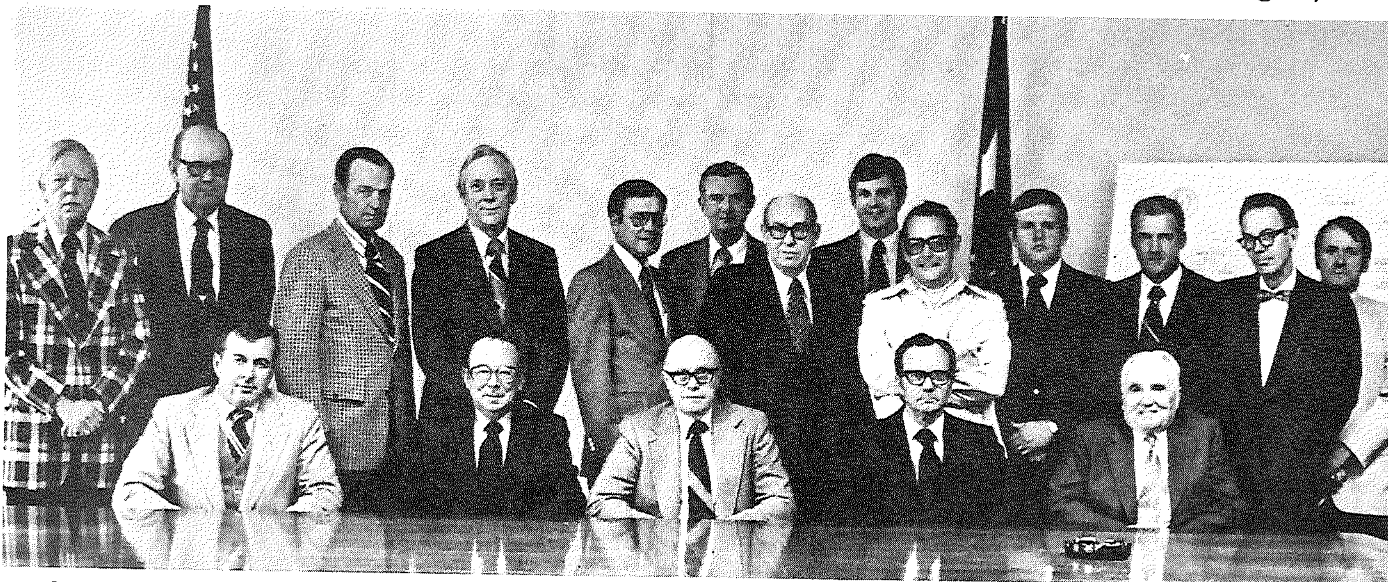
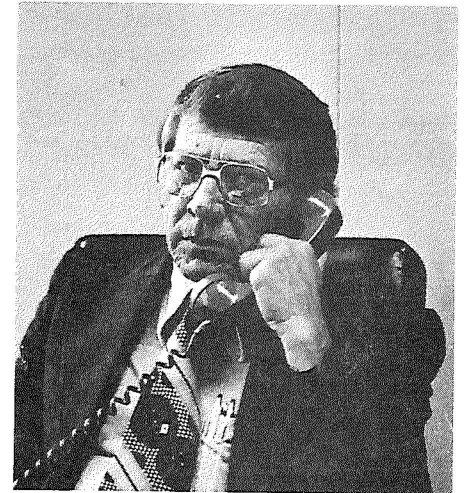


Members of the CJC planning committee met in Austin in December. Chairman is Carl E. F. Dally, seated third from left, who is a commissioner of the Court of Criminal Appeals.

Standing, l-r, are Jack H. Dillard, Austin; Dr. George Beto, Huntsville; Judge Truman Roberts, Austin; Judge Miron Love, Houston; Judge Jerry Garrett, Victoria; Alfred Walker, Austin; Judge Archie S. Brown, Austin; William S. Nail, Austin; Judge John Boyd, Plainview; Ron Taylor, Huntsville; Jack Kyle, Huntsville; Willis Whatley, Austin; and William L. Willis, Austin.

Seated, l-r, are W. J. Estelle Jr., Huntsville; Dr. George Killinger, Huntsville; Judge Dally; Judge Wendell Odom, Austin; and Judge Max Rogers, Huntsville. Not pictured are Judges Thomas J. Stovall Jr., Houston, and John Vance, Dallas.



Robert W. Turner

PROBATION PROJECT HEADED BY TURNER

Robert W. (Bob) Turner, chief probation officer of San Angelo, has been named project coordinator of the Adult Corrections Master Plan for Probation, Houston Judge Fred Hooey announced.

Judge Hooey is chairman of the nine-member advisory board, composed of judges and probation officers, who will oversee the project, along with Executive Director Jack H. Dillard and Associate Director William S. Nail of the Texas Center for the Judiciary.

The project is federally funded by LEAA through the Criminal Justice Division of the Governor's office and the State Bar of Texas, and is administered by the Texas Center for the Judiciary. It is housed with other federal grant programs of the State Bar on the fourth floor of the American Bank Tower in Austin.

Turner said the project has three phases:

- Determination of the present status of probation in Texas by surveying probation departments in all 254 Texas counties. The survey will be conducted by a 45-member task force of probation officers.

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State Bar of Texas
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Members of the Master Plan advisory board are, seated, l-r, Jack H. Dillard, Austin; Judge Fred Hooey, Houston; and J. C. Ledbetter, Dallas. Standing, l-r, are T. J. Gizelbach, Austin; Project Director Turner; Judge George M. Thurmond, Del Rio; Judge Perry D. Pickett, Midland; Dale Brown, Brownfield; and Giles Garmon, Austin. Not pictured are Judges Charles Sherrill, Ft. Stockton, and John Vance, Dallas; and Charles W. Nail, San Antonio.

PROBATION PROJECT

(Continued from Page 1)

• After assimilating information, the determination of what the goals of probation in Texas should be.

• Formulation of a plan of action to attain the goals.

Implementing the plan, Turner said, could require legislation, which woud be prepared for presentation to the State Legislature at an early date.

"We hope to be ready to write any legislation that's needed by September," he said.

NEW JUDGES TAKE OFFICE

Judges who have assumed the bench recently (with the judges they replaced in italics) include:

County Court at Law

Dudley K. Bummett, #2, Lubbock *(Thomas L. Clinton)*

Bill Jouette, McKinney *(New Court)*

District Court

Thomas L. Clinton, 99th, Lubbock *(Howard Davison)*

George Wayne Miller, 110th, Floydada *(L. D. Ratliff)*

O. J. Wellborn Jr., 23rd, Angleton *(Thurman M. Gupton)*

ETHICS COMMITTEE DELIVERS OPINIONS

The following opinions were announced by the Committee on Judicial Ethics.

• OPINION •

The National Conference of Metropolitan Judges (composed of trial judges from jurisdictions whose populations exceed 650,000) will hold its annual meeting in Dallas during 1976 and contributions of approximately $20,000 must be obtained to finance the conference.

QUESTION: Since the National Conference of Metropolitan judges is a professional organization, are we (the local judges participating therein) limited in any manner in soliciting funds? Are there any guidelines under Canon 5 B of the Code of Judicial Conduct?

ANSWER: Canon 4 C permits a judge to "serve as a member, officer, or director" of an organization, such as the National Conference of Metropolitan Courts. It also provides that a judge may "assist such an organization in raising funds . . . but (he) should not personally participate in public fund raising activities." However, Canon 5 B (2) manifests the clear prohibition that "A judge should not solicit funds . . ." as well as the further prohibition that he should not "use or permit the use of the prestige of his office for that purpose . . ." The intent of the Canons, therefore, forbids the solicitation of funds by judges, or the use of the prestige of judicial office for solicitation of funds.

• OPINION •

QUESTION: Is the selling of tickets for various fund raising activities prohibited by Canon 5 B 2 ("A Judge should not solicit funds for any educational, religious, charitable . . .")?

ANSWER: Canon 5 B (2), forbidding the solicitation of funds or the use of the prestige of his office for that purpose, includes "the selling of tickets for various fund raising activities" and the answer to the question is in the affirmative.

• OPINION •

QUESTION: A lawyer who is now a district judge borrowed money from A, executing his promissory note payable over a period of four years; prior to maturity, A was shot and killed by B who was found to be mentally incompetent to stand trial and was committed to a mental hospital; the lawyer, now the district judge, paid A's widow the loan balance but made another loan from her which has since been repaid. B has now been returned to the court for trial. Is the district judge disqualified to preside at any judicial proceedings involving B?

ANSWER: The Code of Judicial Conduct does not contain a specific answer to the question presented. A judge should bear in mind the provisions of Canon 3 C (1) and should recuse himself from any pending matter if he knows or has reason to believe that "his impartiality might reasonably be questioned."

• OPINION •

QUESTION: May a District Judge introduce a candidate for the State Legislature to his personal friends and recommend that such friends vote for such candidate?

ANSWER: The Committee on Judicial Ethics is of the opinion that the question should be answered in the affirmative. In Opinion No. 2 (see "In Chambers," Vol. 3, p. 3, August, 1975), this Committee held that a Texas judge would not violate the Code of Judicial Conduct by privately introducing candidates for *judicial* office to his friends and recommending that such friends vote for such candidates. The Committee now reaffirms that opinion and extends its scope so that henceforth it will be applicable to all candidates for *public* office.

• OPINION •

QUESTION: Whether or not a District Judge is in violation of the Code of Judicial Conduct by meeting with and privately discussing political issues and political campaign strategy with a candidate for elective public office other than his own.

ANSWER: It is the opinion of the Committee on Judicial Ethics that the conduct inquired about in the question amounts to "other political activity" contrary to Canon 7 A (4). The essence of Canon 7 is to prevent judges from engaging in political activity other than that which is necessary and appropriate for their own election.

• OPINION •

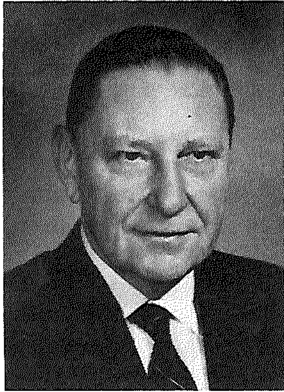
QUESTION: Question concerning the applicability of the Code of Judicial Conduct to Retired Judges who are eligible for recall to judicial service and to Retired Judges who are not subject to recall.

ANSWER: A retired judge who is eligible for recall to judicial service should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5 G. A retired judge who is not subject to recall for judicial service is excused from compliance with Canon 5 G. (NOTE: Canon 5 G provides—"Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.")

Questions may be addressed to: Texas Center for the Judiciary, P. O. Box 12487, Capitol Station, Austin, Texas 78711, Attn: Committee on Judicial Ethics.

Archie S. Brown, Court of Criminal Appeals commissioner, served as director of the first Texas Seminar for County Judges held December 2-5 in Austin. Barbara Culver, Midland County judge, was program coordinator. Seventy judges attended.

THE CODE OF JUDICIAL CONDUCT REVISITED



by
Quentin Keith
Associate Justice
9th Court of Civil Appeals
Beaumont

(EDITOR'S NOTE: Justice Keith is presently chairman of the Committee on Judicial Ethics, an activity of the Judicial Section of the State Bar.
This article is taken from a speech presented by Justice Keith March 13, 1976, at the Mid-Winter South Texas Judicial Conference in Laredo.)

Nearly eighteen months ago, the Supreme Court of Texas promulgated the Code of Judicial Conduct governing the Texas judiciary. It came after a long and careful study of the subject by some of the more eminent judges and justices of our state. It was designed to codify the basic rules which govern all of us in our judicial activities. It was, and must continue to be, somewhat vague in terminology, leaving to the conscience of the several judges the application of the Code to specific situations as they are encountered.

However, added to the disclosure requirements imposed upon all state officials, including the judiciary, as an aftermath of the Sharpstown Scandals, we wound up as the most regulated arm of the government; and, insofar as I can determine, the most regulated judiciary in the nation.

Before coming to grips with some of the problems which have been encountered by the judiciary operating under the new Code, I think that it is worthwhile to consider the origin and development of the Code itself.[1]

Origin and Development

The origin of the Code has been explained by Judge Warren Cunningham of Houston, one of those singled out by Chief Justice Greenhill for praise as making "an outstanding contribution" to the judiciary of Texas.[2] As Chairman of the Judicial Section's Committee on Judicial Ethics, Judge Cunningham wrote to one Texas judge using these words:

> "The Code of Judicial Conduct, about which you inquire, was drafted by a committee appointed for two successive years by the Chairman of the Judicial Section of the State Bar of Texas. Several drafts of the proposed Code were circulated among all members of the Judicial Section for comments and suggestions. Many comments and suggestions were received and the draft was revised accordingly. After three successive drafts of the Code had been submitted and revised, the proposed Code was submitted to the members of the Judicial Section at the regular annual meeting in Amarillo in 1973, and the proposed Code was, by resolution, adopted overwhelmingly by the largest attendance ever to that date at the annual meeting of the Judicial Section. The Secretary informs me that he recorded only two negative votes. As part of the resolution the members of the Judicial Section recommended that the Supreme Court of Texas note its approval by adopting the Code formally and circulating it to all judges in Texas who are covered by the Code. With minor revisions, the Supreme Court, following the recommendation of the overwhelming majority of the judges of Texas, adopted the Code effective as of September 1, 1974, and a copy of the Code as adopted with the covering letter signed by the Chief Justice was forwarded to every judge in Texas who is subject to the Code. In answer to your question, we can only say that the Supreme Court adopted the Code by authority of an overwhelming majority of the judges of Texas whose conduct it purports to regulate."[3]

The Committee on Judicial Ethics has steadfastly refused to enter into any consideration of the authority, *vel non*, of the Supreme Court to promulgate such Code, taking the position that such is a matter beyond the competency of the Committee.

From my service on the Committee, as well as conversations with judges over the State, it is my opinion that the Code, generally speaking, has received a favorable reception. Of course, with a fiercely independent judiciary composed of able and respected judges, any prior restraint upon personal activities is not readily acceptable. To some, it seems that we are the most regulated branch of the government; and, I say in passing, that I know of no other state which requires any official or judge to report in the great detail spelled out in Canon 6 C.

However, no one can fault the goal of the framers of the Code. We occupy an extremely important position in our government and we must, and should, conduct our activities in such manner that we are above suspicion.

Part-Time Judges

One of the more troublesome questions which surfaced since the promulgation of the Code is that of part-time judges. In several of the counties the Legislature has seen the need for the creation of County Courts at Law, the entire cost of which is borne by the county. These laws, in some instances, place a relatively low ceiling upon the compensation of the judge. Everyone concerned, the Legislature, the Commissioners Courts, the lawyers, and the potential judges recognize that no competent lawyer of appointment or election could accept such a position if he were required to support his family on the salary provided.

As adopted by the Judicial Section, the Compliance provision permitted the practice of law by a part-time judge in accordance with the Standards of the American Bar Canons of Judicial Ethics. This was followed in the *first* promulgation of the Code by our Supreme Court. However, due to a "mix-up" in transcription, this was withdrawn and the Code was made applicable to specifically named judicial posts; and, as relates to this subject, removed the Part-Time provision found in the original version. The Ethics Committee ruled, as indeed it was required to under the Code as amended, that judges of the County Courts at Law were subject thereto and could not engage in part-time practice. This Committee then formulated an amendment to the Code to substitute the ABA canon as applied to part-time judges and such recommendation was adopted by the Judicial Section at its meeting in Waco in 1975 and forwarded to the Supreme Court.

Supreme Court Ruling

However, the amendment was not adopted by the Supreme Court. Some of the reasons for declining to amend the Code as suggested by the Judicial Section were articulated by Associate Justice Jack Pope:

> "The court has declined to make the amendment. A number of concerns prompted the court's decision, and among them is the possibility that judges of all county courts at law would become subject to exemption from the Code. Moreover, the practices forbidden by the Code are either ethical or not, and so long as the Code prohibits those practices as unethical, it is with difficulty that they can be deemed ethical depending upon the amount of compensation paid the judge. The court also believes that legislative authorization for a county court at law carries with it a need which justifies full pay instead of part-time pay."[4]

Political Activity

The reference to the legislature in Judge Pope's comment serves to lead me into the next area of discontent with the Code: political activity of judges. Those of us in the out-lying areas of the State know the value of participation in party affairs. While we are all lawyers, it is generally well known that the lawyers do not *elect* judges—only the people do that and this is done largely within the context of party nominations.

We must stand for election and, when we do so, we desire and need help from party regulars; but, we cannot help the party except in a limited way and then only when we are upon the ballot. We cannot attend functions put on by—or for—our legislators; yet, at each session we must approach those same legislators—with hat in hand—seeking their help in maintaining our standard of living in the face of continual erosion through inflation.

Some have commented, with more than a modicum of truth, that judges must fight their battle of survival (politically and economically) with one hand tied behind their backs. While I recognize the validity of such complaints, I do not subscribe to the theory that a judicial office should be a license to engage in politics without restraint. On the whole, I am in favor of the Code as presently written. Your Committee has undertaken to interpret the Code as narrowly as possible in favor of the judges participating in politics.

(Continued on Page 4)

CONDUCT CODE REVISITED

(Continued from Page 3)

For instance, in one of our earlier opinions, we advised a district judge that in our opinion a "Texas judge would not violate the Code of Judicial Conduct by privately introducing candidates for judicial office to his friends and recommending that such friends vote for such candidates."[5] By an opinion to be released this month [See page 2], we have expanded this ruling to include "candidates for *public* office" rather than the more restrictive "judicial" office mentioned in the cited opinion. In our later opinion, we express the view that this would not permit the active management of a campaign for non-judicial office by another person, service upon a strategy group, etc., since this would amount to engaging in "other political activity" contrary to Canon 7 A (4).

While we may be termed "political eunuchs," judges still have their First Amendment rights but such must be exercised within the recognized parameters of the Code. We must not, and properly should not, use our judicial influence in the political arena. To do so will lessen the respect which the judiciary as a whole must have in order to accomplish its mission.

Knowing the judges of Texas as I do, I am not led to believe that we are a hopeless bunch of political cripples at the mercy of any individual or group which chooses to thwart the independence of the judiciary. If we are to achieve our stated purpose, we must learn to live within the framework of the Code as presently structured.

'Outside Business'

Strangely, there has been a minimum of complaint about the so-called "outside business" activities of our judges. The Code is rather explicit as to what can and cannot be done within the reach of the Canons and I am happy to report that apparently most of our judges have been able to accommodate their business activities to the proscriptions found therein. This is as it should be for, in my view, the task of administering justice should be a full-time occupation and not a sideline to business pursuits.[6]

Canon 3 A (7)

There are those in the judiciary who feel ill at ease with the proscription against broadcasting, television, and picture taking in the courtroom during the trial of cases. Canon 3 A (7) reads:

> "A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas adjacent thereto during sessions of court or recesses between sessions *(Estes vs. Texas,* 381 U.S. 532; *Sheppard vs. Maxwell,* 384 U.S. 333), except that a judge may authorize: [and here follows several immaterial exceptions.]"

The Committee has not faced this question directly since the authority of the Committee is limited to opinions which interpret the Canons. Here, the prohibition is complete, unambiguous, and clear. However, I have heard complaints that neither *Estes* nor *Sheppard* requires the *complete* prohibition of such activities over such a large area.

This is another instance in which I am in complete agreement with the Code as written. It is also one of the rare occasions when I agree with the late Justice William O. Douglas of the Supreme Court of the United States. He was known for his long and arduous toil to remove all restraint upon rights granted by the First Amendment. Yet, when it came to choosing a position on this subject, he was one who accepted limitations upon the First Amendment.

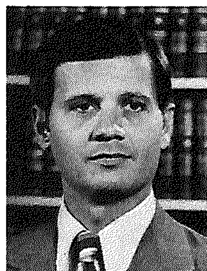
In a thoughtful article published in 1960,[7] Justice Douglas discussed the many reasons why the freedom of press clause in the First Amendment was required to give way to right of a public and fair trial guaranteed to the accused under the Sixth Amendment. In the administration of justice, the "public" trial constitutionally guaranteed is for the benefit of the accused, not the press.

The problem was examined carefully by a distinguished committee of the American Bar Association and the results published in a pamphlet entitled "The Rights of Fair Trial and Free Press."[8] The resulting compromise between the two fundamental rights has been resolved, to my satisfaction at least, and I favor no modification of the present Code in this respect.

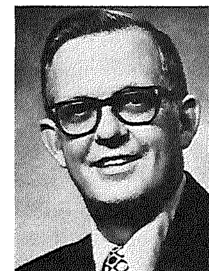
You will note that in this visit to the Code, I have expressed my opinions somewhat freely. It should not be understood, however, that I am critical of the Code in its entirety. It is and must continue to be a guideline for the members of the judiciary. It expresses the consensus of the members of the judiciary; and, it is entitled to the support of all those members. If there is dissatisfaction with any particular Canon or its construction, there is an orderly method of attempting an adjustment. Until changed, it must govern the conduct of each of us in our daily professional life; and, I might add, each should follow the spirit and not just the letter of the Code.

Committee on Judicial Ethics

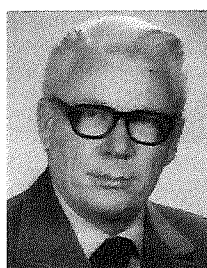
Chairman
Quentin Keith



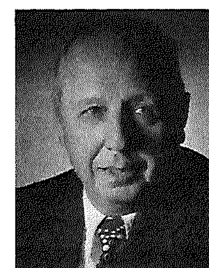
Max Bennett
Corpus Christi



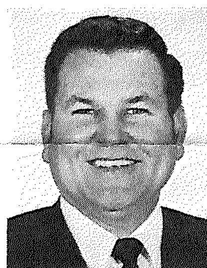
Donald Carroll
Tyler



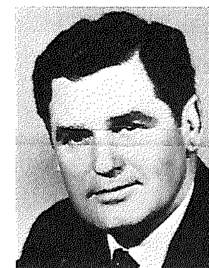
Jerome Chamberlain
Dallas



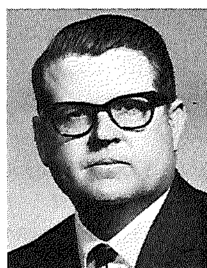
Wm. Ralph Elliott
Sherman



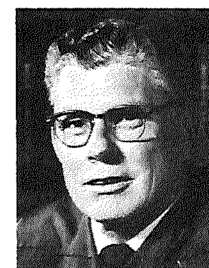
Donald Nicholson
Corsicana



Stephen F. Preslar
El Paso



William Shaver
Lubbock



Jackson B. Smith
Houston

FOOTNOTES

1. Although I have been a member of the Committee on Judicial Ethics of the Judicial Section of the State Bar of Texas since its inception in December, 1974, and am presently serving as Chairman of the Committee, the views herein expressed are my own. The statements herein do not in any manner constitute an expression of an opinion of the Committee which can only speak as a whole—and not through one member.

2. Judge Cunningham, then Chairman, Committee on Judicial Ethics of the National Conference of State Trial Judges, had considerable impact in the formulation of the American Bar Association Code of Judicial Conduct adopted by the House of Delegates of the ABA in 1972. See, E. Wayne Thode, *Reporter's Notes to Code of Judicial Conduct (ABA, 1973)*, p. 42. The work of the ABA committee was promulgated by ABA under the title "Canons of Judicial Ethics."

3. Excerpted from a letter from Judge Cunningham to a District Judge of Texas, the letter being dated March 19, 1975, which is in the files of the Committee on Judicial Ethics. The name of the recipient of the letter is not disclosed for reasons of propriety.

4. Excerpted from a letter from Associate Justice Pope to Judge Cunningham dated December 15, 1975, in the files of the Ethics Committee.

5. "In Chambers," Vol. 3, No. 3, p. 3 (August, 1975).

6. There are some of us who still serve as directors of banks and other publicly owned corporations under what I term the "Lewis Dickson" grandfather clause permitting such activities until August 31, 1978. New judges, however, are not afforded any options—such service is clearly prohibited.

7. William O. Douglas, "The Public Trial and the Free Press," 46 A.B.A.J. 840 (August, 1960).

8. A.B.A., 1969.

Members of the Juvenile Court Judges CJD Liaison Committee are: seated, l-r, William C. Martin, Domestic Relations Court, Longview; and Jerry J. Garrett, County Court at Law, Victoria. Standing, l-r, are: John Boyd, 64th District Court, Plainview; Scott Moore, chairman, Domestic Relations Court, Fort Worth; and E. W. Patteson, 2nd 25th District Court, Gonzales. Not pictured: Carl Periman, Domestic Relations Court, Amarillo; and M. C. Ledbetter, 121st District Court, Morton.

'DEINSTITUTIONALIZATION' OF STATUS OFFENDERS

—CONCERNS AND SUGGESTIONS

(EDITOR'S NOTE: The following is an abridged version of a paper prepared by the Juvenile Court Judges CJD Liaison Subcommittee and adopted by the Juvenile Court Judges Committee, Judicial Section, State Bar of Texas.)

Section 223 (a) (12) of the Juvenile Justice and Delinquency Prevention Act of 1974 requires as a prerequisite to participation in Federal funds that the State Plan: "provide within two years after submission of the plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities."

We understand that in order to receive federal funds for our community-based corrections programs, we must show good faith in meeting this goal at every stage of planning and implementation of our community and regional plans and our state plan and must achieve "deinstitutionalization" of status offenders within two years from September 1, 1975, to the *de minimus* level.

***

'Status vs. 'Criminal-Type'

One of our underlying concerns in the implementation of "deinstitutionalization" is that rigid distinctions between the treatment of "status" offenders and "criminal-type" offenders will result in a general tendency to upgrade charges. The trend has been in the other direction.

Since the Act refers to State penal code for a determination of what constitutes "criminal-type" conduct, and since much "criminal-type" conduct, so-defined, has nothing to do with the level of violence or serious destructiveness that would necessitate secure detention, we regard the distinction drawn in the statute as inartful. We do not believe that it tends to accomplish the policy objectives we share with the Congress.

***

Another tendency we anticipate with alarm is for law enforcement and correctional personnel at the contact level to ignore the plight of the "status" offender until the youth is in more serious trouble. We view this attitude with repugnance as a failure to meet statutory responsibilities but in our experience with implementing minimal physical restraint policies, it is a definite factor to be dealt with.

***

Another concern we share is the tendency for violent or escapist behavior of "status" offenders to be viewed as necessarily symptomatic of mental illness or acute emotional disturbance, even in the absence of any disorientation as to time, place or person. An easy out would be to "hospitalize for observation" those status offenders who resist care and services. In the absence of a real manifestation of mental disease or defect or a legitimate concern for the health of the youth, we believe that the presumption should be that the youth is in need of correction rather than hospitalization and psychiatric treatment.

***

We mention these concerns, not because they can be directly addressed by LEAA in the administration of the Act, but because they are the constraints within which we must all work if the system is to become less irrational and prone to individual injustices.

Our specific concerns which LEAA can address in the administration of the Act, fall into two broad categories:

1. What kind of physical restraint on a youth's liberty might be either permitted by the Act or viewed by LEAA as *de minimus;* and

2. Specific types of "status" offenders and how they may be handled.

So far as we can discover, neither the Act nor the regulations spell out what is meant by "detention" as forbidden by the Act. We hope that LEAA will be looking at program and practice rather than physical structures or labels. The question is the kind and degree of restraint forbidden. We conceive of "detention" under the prohibition of the Act as restraint imposed by confinement in a secure room or building without regard to the present observed behavior of the child. We propose a policy of contingent restraint. Under this approach, a youth would be restricted to his or her room only for behavior occurring at or after intake and only for the length of time necessary for the youth to check misbehavior and contract for acceptable behavior. The rules for imposition of restraint would be subject to judicial regulation and approval under present law. *** The programs should be subject to inspection to see that the procedure is followed once approved. We feel that this approach is a fair construction of the Act and that, properly administered, it best serves the youth and our communities. ***

Physical Restraint

The categories of youth we see as difficult to serve without some form of contingent physical restraint are as follows:

a. Some youth cannot be identified and will not cooperate in identifying themselves. *** We know nothing of these youth when they come into care except that they have come to our attention because of their association with an infraction of law. To make a "criminal-type" charge would be easy. To do so would be a step backward. To place the youth automatically into totally open shelter care is irresponsible. ***

b. Out of state runaways may be identifiable, but it takes time to make arrangements for their return through the interstate compact. *** In order to serve the youth, we have to know that the youth will be present. Again some contingent restraint may be necessary. However, even this restraint could be minimized by effecting the legislative and administrative changes necessary to enable local receiving authorities to coordinate return supervision expenses subject to reimbursement through the interstate compact authorities and possible recovery of expense from the youth's family.

c. Some youth are infectious carriers of venereal disease. *** It is usually not necessary to restrain youth in this condition. Often they will cooperate, either at home or in open placement. Moreover, it has been the policy to handle these children on status offense charges whenever possible. We are reluctant to further "criminalize" consensual sexual behavior among youth, even with the sealing of juvenile records and restrictions of record keeping, because of the risk of blackmail after adulthood.

d. The juvenile judges are most concerned about the youth who reacts to totally open pre-trial care by absconding or by being combative, destructive, or seriously threatening destruction or physical harm to staff or other children. This is due to the risk or threat posed to other youth in care and the adults responsible for the shelter or foster home.

Our solution to the above problems will involve some contingent restraint on a youth's liberty without resort to any attempted enhancement or charges of "criminalization" of behavior that is not now designated as criminal. We prefer to handle the matter on that basis.

A less desirable solution, if LEAA views all physical restraint of "status" offenders as prescribed by the Act, is to "criminalize" the youth's behavior so that the youth can be restrained.

***

At present, these matters of a youth's response to intake and pre-trial care are seldom the subject of a separate charge in Juvenile Court unless they persist up to time of trial. They are most effectively dealt with by appropriate on-the-spot sanctions and restraint consequences and are regarded as relatively routine.

***

We agree that sometimes the juvenile justice system does a youth more harm than good. We have provided every option for keeping youth out of the system when it would do them more harm than good. We are unable to commit ourselves to simply leaving "status" offenders alone because of their susceptibility to exploitation and physical and emotional harm.

Certainly the Juvenile Court Judges Committee is supportive of voluntary services and programs such as those funded under the Runaway Youth Act. We fully support furnishing such services and care on a voluntary basis whenever possible, but we are aware that many youth will not come forward voluntarily because of age, disability, fear, and lack of sophistication.

JUDICIAL CALENDAR

May 5-7
Criminal Justice Conference Huntsville
Special Committee Meetings at Huntsville, Sam Houston Inn

May 5
Administrative Judges, 9:30 a.m.
Judges Liability Insurance Feasibility Committee, 3 p.m.
CLE Committee, 3:30 p.m.

May 6
Ethics Committee, 9:30 a.m.

May 7
Executive Committee, Judicial Section, 7:30 a.m.

September 21-24
Annual Judicial Section Conference, Tyler

JUDICIAL NOTICES

• *Morrison Resigns; Gupton Appointed* •

W. A. Morrison, Court of Criminal Appeals judge since 1951, resigned effective March 31, 1976. Gov. Dolph Briscoe appointed as Morrison's replacement Angleton District Judge Thurman M. Gupton, who was sworn-in at ceremonies April 1 in the Court of Criminal Appeals.

Morrison's career in public office, in addition to his 25 years on the appellate bench, includes service as Cameron city attorney, district attorney and 20th District Court judge.

• *Walter, Hester Named to Commission* •

Esco Walter, Eastland Court of Civil Appeals chief justice, and Darrell Hester, Harlingen district judge, have been appointed to the Judicial Qualifications Commission by Texas Supreme Court Chief Justice Joe Greenhill.

The new appointees replace Justice Homer Stephenson of Beaumont Court of Civil Appeals and District Judge Howard Davison of Lubbock.

• *CLE Committee Officers* •

New officers of the Continuing Legal Education Committee of the Judicial Section, State Bar, were elected at a December meeting in Austin.

Noah Kennedy, Corpus Christi district judge and CLE vice chairman, was elected chairman. New vice chairman is David Walker, Lufkin district judge.

• *TCJ Advisors Appointed* •

The State Bar Board of Directors recently appointed advisors to each of the criminal justice grants administered by the Bar.

Lawyers chosen to serve as board advisors to the Texas Center for the Judiciary were Gerald P. Coley of Houston and Beale Dean of Fort Worth.

• *TCJ Receives Grant* •

A grant to the State Bar has been made by the Criminal Justice Division of the Governor's Office to cover the operation of the Texas Center for the Judiciary for calendar year 1976.

JUDICIAL EDUCATORS MEET IN SAN ANTONIO

The second annual meeting of the State Judicial Educators Association (SJEA) was held March 24-26 in San Antonio with some 20 persons in attendance.

Jack H. Dillard, executive director of the Texas Center for the Judiciary and SJEA vice-president, was host for the meeting. Associate Director William S. Nail also attended.

The keynote address was delivered by Judge Ernst John Watts, dean of the National College of the State Judiciary in Reno, Nevada.

Other speakers were Paul M. Li, director of the California Center for Judicial Education and Research, Berkeley; Harvey Solomon, executive director of the Institute for Court Management in Denver, Colorado; and Sofron B. Nedilsky, SJEA president and director of Wisconsin Judicial Education, Madison.

Members of the SJEA, a national organization seeking to improve the quality of judicial education, discussed a variety of topics at the San Antonio meeting, Dillard said.

Subjects under consideration were the roles of national, state and local organizations; mandatory judicial education; management training for court personnel; orientation training for new judges; grantsmanship and modern methods of adult education.

Criminal Justice Conference

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also will be provided at Holiday Inn.

Carl E. F. Dally, Court of Criminal Appeals commissioner, chaired the 20-member Conference planning committee.

The annual meeting is sponsored by the Texas Center for the Judiciary under the auspices of the Texas Court of Criminal Appeals and in cooperation with the Texas Department of Corrections and the Institute of Contemporary Corrections and the Behavioral Sciences, Sam Houston State University.

LAREDO CONFERENCE
The annual Mid-Winter South Texas Judicial Conference was held in Laredo, March 11-14. Some 170 persons attended.

ABOVE: **Charles W. Barrow, chief justice of the San Antonio Court of Civil Appeals, left, and Paul W. Nye, chief justice of the Corpus Christi Court of Civil Appeals, were program co-chairmen.**

RIGHT:
TOP—**Peter Michael Curry, presiding judge in San Antonio.**
BOTTOM—**Reynaldo Garza, U. S. District Court judge in Brownsville, who spoke to Conference banquet.**

LEFT: **Supreme Court Justice Tom Reavley, who spoke at the prayer breakfast.**

IN MEMORIAM

Bracewell. Reginald S. Bracewell, judge of the 12th District Court in Huntsville from 1965 to 1971, died in Houston Oct. 17, 1975. He was 71.

Connally. Ben C. Connally, retired U. S. District Court judge, died Dec. 2, 1975. A resident of Houston, he was 65.

Crawford. Richard E. Crawford, El Paso County Court at Law #2 judge from 1955 to 1974, died in El Paso Oct. 20, 1975, at age 73.

Ratliff. L. D. Ratliff, judge of the 110th District Court from 1957 to 1976, died Jan. 24, 1976, at age 67. A resident of Spur, he died while holding court in Matador.

Stanford. Richard Stanford, 19th District Court judge from 1936 to 1960, died in Lubbock Nov. 3, 1975. He was 80.

Werlein. Ewing Werlein, associate justice of the First Court of Civil Appeals in Houston from 1957 to 1967, and 157th District Court judge in 1957, died Nov. 27, 1975, in Houston. He was 86.