

THE JUDICIARY COMMITTEE REPORT
AS AMENDED ON SECOND READING

ARTICLE V
THE JUDICIARY

1 Sec. 1. JUDICIAL POWER. The judicial power of the state is vested in the
2 judicial branch. The state unified judicial system is composed of a supreme
3 court, courts of appeals, district courts, and circuit courts. All courts have
4 jurisdiction as provided by law, but jurisdiction of courts of the same level in
5 the unified judicial system must be uniform throughout the state.

6 Sherman et al substitute
 6/12/74

7 119 yeas, 44 nays

8 Sec. 2. SUPREME COURT. (a) The supreme court shall be the highest court
9 of the state and shall consist of the Chief Justice of Texas and at least eight
10 other justices [~~3-of-whom-a-majority-shall-be-necessary-to-decide-a-case~~]. The
11 court may sit en banc or in sections of not less than five justices, and the con-
12 currence of a majority of the justices sitting is necessary to decide a case.
13 The court has [~~It-shall-have~~] such jurisdiction and administrative and rule-
14 making authority as provided in this article or by law.

15 Sherman et al substitute
 6/12/74

16 119 yeas, 44 nays

17 (b) The legislature may grant jurisdiction to the supreme court to receive
18 and answer questions of state law certified from federal courts.

 Sec. 3. COURTS OF APPEALS. There shall be one or more courts of appeals as
provided by law, each consisting of a chief judge and at least two other judges

1 ~~[7-of-whom-a-majority-shall-be-necessary-to-decide-a-case]~~¹ The legislature may
2 authorize the court to sit in sections. The concurrence of a majority of the
3 judges sitting is necessary to decide a case.²

4 ¹Amendment by Creighton
5 5/13/74
6 Voice vote

7 ²Amendment by Coleman
8 5/22/74
9 Non-record vote

10 Sec. 4. DISTRICT COURTS. The state shall be divided into judicial dis-
11 tricts as now or hereafter provided by law. In each district there shall be one
12 district court with one or more district judges.

13 Sec. 5. CIRCUIT COURTS. The legislature may provide by law for circuit
14 courts and shall from time to time determine the number and location of such
15 courts¹ ~~[shall-establish-in-each-judicial-district, now-or-hereafter-provided-by~~
16 ~~law, a-circuit-court-with-one-or-more-judges]~~. A circuit court may serve one or
17 more counties, but no county shall have more than one circuit court. Each cir-
18 cuit court shall have one or more judges and such other officials as provided
19 by law.²

20 ¹Sherman et al substitute
21 6/12/74
22 119 yeas, 44 nays

23 ²Amendment by Hale
24 5/16/74
25 77 yeas, 61 nays

26 ~~[See: 6---COUNTY-JUDGE---The-county-judge-provided-for-in-Article-IX, Sec-~~
27 ~~tion-3(a)-of-this-constitution-has-judicial-functions-as-now-or-hereafter-pro-~~
28 ~~vided-by-law.]~~

Sherman et al substitute
6/12/74
119 yeas, 44 nays

1
2
3 Sec. 6 [7]. OTHER COURTS. (a) The constitutional county courts in exist-
4 ence at the time of the adoption of this constitution are continued in effect un-
5 less otherwise provided by law and shall have such jurisdiction as now or here-
6 after provided by law. The county judge provided for in Article IX, Section 3(a)
7 of this constitution presides over the county court and has judicial functions
8 as now or hereafter provided by law.

9 Sherman et al substitute
10 6/12/74
11 119 yeas, 44 nays

12 (b) [~~a~~] The county commission in each county shall divide the county
13 from time to time into justice precincts, not less than four nor more than
14 eight.

15 (c) [~~b~~] The county commission in each county shall establish and main-
16 tain one or more justice courts in the county with each court to exercise juris-
17 diction in one or more precincts in the manner provided by law.

18 (d) [~~e~~] Municipal courts may be established by law or by charter as
19 authorized by law and shall have such jurisdiction as provided by law.

20 Sec. 7 [8]. QUALIFICATIONS OF JUDGES. No person may serve as a justice,
21 judge, or justice of the peace unless the person is a United States citizen and
22 a resident of this state and has other qualifications prescribed by law. No
23 person may serve as justice or judge in the unified judicial system unless
24 licensed to practice law in this state.

 Sec. 8 [9]. ELECTION OF JUDGES. (a) The Chief Justice of Texas and other
justices of the supreme court are elected by the qualified voters of the state
every six years in the manner provided by law. Judges of the courts of appeals

1 are elected by the qualified voters of their respective districts every six
2 years in the manner provided by law.

3 (b) District and circuit judges are elected by the qualified voters of
4 their respective districts every four years in the manner provided by law.

5 (c) Vacancies in the offices of justices of the supreme court and judges
6 of the courts of appeals, district courts, and circuit courts are filled by
7 the governor, with the advice and consent of the senate, until the next succeed-
8 ing general election.

9 (d) Justices of the peace are elected by the qualified voters of the county
0 or precinct every four years in the manner provided by law. Vacancies in the
1 office of justice of the peace are filled by the county commission until the
2 next succeeding general election.

3 (e) Municipal judges are selected in the manner provided by law or by
4 charter as authorized by law.

5 Amendment by Kaster
6 5/14/74

Non-record vote

7 Sec. 9 [10]. QUALIFICATIONS COMMISSION; REMOVAL OF JUDGES. (a) There
8 shall be a judicial qualifications commission with such authority and functions
9 as provided by law.

0 (b) A justice of the supreme court may be removed by the governor on the
1 address of two-thirds of each house of the legislature for willful neglect of
2 duty, incompetency, oppression in office, or other reasonable cause not a suffi-
3 cient ground for impeachment.

4 (c) Any justice of the supreme court, ~~or any~~ judge, or justice of the

1 ~~peace [other-judicial-officer]~~ may be removed, suspended, or censured as pro-
2 vided by law.

3 Amendment by Hendricks
4 5/14/74
Non-record vote

5 Sec. 10 [11]. COURT ADMINISTRATION. (a) (1) The supreme court shall pro-
6 vide for the efficient operation of the judicial system. The court may direct
7 the transfer of cases from one court to another within each level of the judicial
8 system and may assign judges within or between levels. The court may delegate
9 responsibility for administration to the chief justice and administrative judges
10 provided for in Subsection (a) (2) of this section.

11 (2) Each court of appeals district within the state constitutes an adminis-
12 trative district for purposes of trial court management. Within each district,
13 the Chief Justice of Texas, with the advice and consent of the senate, shall de-
14 signate a judge to serve as administrative judge of the district.

15 (3) The legislature may establish an agency of the judicial branch [There
16 ~~shall-be-a-judicial-council~~] having such membership as provided by law to
17 [which-shall] prescribe rules of administration for the unified judicial system
18 not inconsistent with general law or rules of procedure, and perform such other
19 duties as shall be provided by law. Rules of administration promulgated by the
20 agency shall not become effective until approved by the supreme court.

21 Amendment by Lary, et al
22 5/22/74
Non-record vote

23 (b) The supreme court may promulgate rules of civil procedure not incon-
24 sistent with the laws of the state, for all courts, to expedite the dispatch of

1 business therein. Any rule of procedure expressly disapproved by the legislature
2 shall have no effect thereafter. ~~[The supreme court may prescribe rules of civil~~
3 ~~procedure not inconsistent with this article or the laws of this state for the~~
4 ~~government of the courts. Any rule of procedure expressly disapproved by re-~~
5 ~~solution of either house of the legislature is thereby repealed. No rule of pro-~~
6 ~~cedure may take effect until the legislature has the opportunity to disapprove~~
7 ~~it at a regular session.]~~

8 Minority Report No. 1
9 as Amended by Mauzy
10 5/15/74
102 yeas, 24 nays

11 Sec. 11 [12]. DISTRICT CLERKS; COUNTY CLERKS. (a) A district clerk, who
12 serves as clerk of the district and circuit courts of the county, is elected by
13 the qualified voters of each county for a term of four years. The clerk may be
14 removed from office upon a jury finding of incompetence, official misconduct, or
15 other cause defined by law. Vacancies in the office of district clerk shall be
16 filled by the judges of the district and circuit courts in the county until the
17 next general election. Each clerk may have a deputy or deputies and other per-
18 sonnel authorized by law.

19 (b) The county clerk, who serves as clerk of the county commission and re-
20 corder of the county, is elected by the qualified voters of each county for a
21 term of four years. The legislature shall prescribe the duties, perquisites,
22 and fees of the office. A vacancy in the office shall be filled by the county
23 commission until the next general election.

24 (c) The legislature may provide by law for the election of a single clerk

1 of this constitution, the state may appeal in criminal cases only:

2 (a) from a trial court decision holding a law unconstitutional; or

3 (b) from an appeals court decision to the supreme court at the discretion
4 of the supreme court, unless otherwise provided by law. [~~The state may not appeal~~
5 ~~in criminal cases.~~]

6 Sherman et al substitute

7 6/12/74

8 119 yeas, 44 nays

9 Sec. 15 [16]. APPEAL BY ACCUSED. (a) The accused shall have the right of
10 appeal to the appellate court having jurisdiction, specifically including the
11 right of appeal granted by Article I, Section 11a of this constitution.

12 (b) Appeal to the supreme court in criminal cases¹ shall be at the discre-
13 tion of the supreme² court, unless otherwise provided by law.

14 ¹Amendment by Hudson

15 5/16/74

16 Non-record vote

17 ²Sherman et al substitute

18 6/12/74

19 119 yeas, 44 nays

20 Sec. 16 [17]. APPEALS FROM ADMINISTRATIVE ACTION. Notwithstanding any
21 other provision of the constitution, the legislature may provide by law for the
22 method of appeal to the courts from actions, rulings, or decisions of adminis-
23 trative agencies and executive departments of the state or any of its sub-
24 divisions.

25 Sec. 17 [18]. DISTRICT ATTORNEYS; COUNTY ATTORNEYS. (a) The state shall
26 be represented in each county by a district attorney as now or hereafter pro-
27 vided by law. The district attorneys shall be elected by the qualified voters
28 of their respective districts, and shall serve for a term of four years and
29 until their successors have qualified. The state shall provide for the basic

1 to perform the duties of both a county clerk and a district clerk. [The legisla-
2 ture may authorize counties with populations below a level prescribed by law to
3 elect a single clerk to serve as district and county clerk.]

4 Amendment by McDonald of Hidalgo
5 5/15/74
Non-record vote

6 Sec. 12 [13]. JURIES. (a) A grand jury in the district court consists of
7 12 persons, of whom nine constitute a quorum and must concur in a bill of indict-
8 ment.

9 (b) The legislature shall provide by law for trial juries.

10 (c) A party has the right to a jury trial upon demand made in the manner
11 prescribed by law.

12 (d) Jury verdicts must be unanimous, except that the legislature, or the
13 supreme court pursuant to its rule-making authority, may authorize jury verdicts
14 in civil cases rendered by not less than three-fourths of the jurors sitting in
15 a case.

16 (e) The legislature may provide by law for alternate jurors.

17 Sec. 13 [14]. SENTENCING AND PROBATION. Subject to regulation by law,
18 courts [Courts] having original jurisdiction of criminal cases shall have power
19 to suspend the imposition or execution of sentence and place a defendant on pro-
20 bation; and as authorized by law, such courts shall have further power to modify,
21 set aside, or reimpose sentence [~~subject to regulation by law~~].

22 Sherman et al substitute
23 6/12/74
119 yeas, 44 nays

24 Sec. 14 [15]. APPEAL BY STATE. Subject to the guarantees of Article I of

1 compensation of district attorneys.

2 Amendment by Baker
3 5/16/74
Non-record vote

4 (b) With such exceptions as now or hereafter provided by law, county attor-
5 neys shall be elected by the qualified voters of each county and shall hold
6 office for a term of four years and until their successors have qualified.

7 (c) Each district and county attorney shall be licensed to practice law in
8 this state. Other qualifications, duties, and functions of district and county
9 attorneys and the grounds and procedure for disqualification, suspension, re-
10 moval, and filling of vacancies shall be as provided by law.

11 Sec. 18 [19]. COMPENSATION. The state shall pay the basic salaries of all
12 justices and judges of the unified judicial system and shall pay such other ex-
13 penses of the system as provided by law. [~~Funds collected by the courts may not~~
14 ~~be used to support the unified judicial system except to the extent of reimburse-~~
15 ~~ment of salaries and other expenses.~~]

16 Amendment by Hale, Clower
17 5/21/74
Non-record vote

18 [~~See: 20: JUDICIAL RETIREMENT: (a) The legislature may prescribe by law~~
19 ~~the mandatory retirement age of a justice or judge in the unified judicial~~
20 ~~system.~~

21 [~~(b) Notwithstanding any other provision of this constitution, the system of~~
22 ~~retirement, disability, and survivors' benefits established in the constitution~~
23 ~~or by law for justices, judges, and commissioners of the appellate courts and~~
24 ~~judges of the district and criminal district courts and in effect at the time of~~

1 adoption-hereof-shall-be-continued.--The-legislature-shall-provide-for-inclusion
2 in-the-system-of-judges-of-all-courts-in-the-unified-judicial-system-and-such-
3 other-elected-state-officials-as-now-or-hereafter-provided-by-law-

4 (c)--General-administration-of-the-Judicial-Retirement-System-of-Texas
5 shall-be-by-the-Board-of-Trustees-of-the-Employees-Retirement-System-of-Texas
6 under-such-regulations-as-may-be-provided-by-law-]

7 Sherman et al substitute
8 6/12/74
9 119 yeas, 44 nays

9 TRANSITION SCHEDULE

10 (a) SUPREME COURT; COURT OF CRIMINAL APPEALS. On the effective date of
11 Article V, the chief justice of the supreme court becomes the Chief Justice of
12 Texas. The presiding judge and the other judges of the court of criminal
13 appeals and associate justices of the supreme court become justices of the
14 supreme court. Each commissioner of the court of criminal appeals becomes a
15 commissioner of the supreme court, but that position exists only as long as it
16 continues to be held by the commissioner in office on the effective date of
17 Article V. Except for the office of chief justice, the offices of the first
18 five justices who cease to be members of the supreme court by reason of death,
19 removal, resignation, or retirement after the effective date of Article V cease
20 to exist. The death, removal, resignation, or retirement of an incumbent
21 justice after having been defeated at a primary or general election does not
22 terminate the office.

23 [(b)--SUPREME-COURT-DIVISIONS.--After-the-effective-date-of-Article-V-and
24 before-the-total-membership-of-the-supreme-court-is-reduced-to-nine-or-such-

1 other-number-as-provided-by-law,-the-court-may-sit-in-civil-and-criminal-divi-
2 sions.--Notwithstanding-the-provisions-of-Article-V,-Section-2(a),-the-con-
3 currence-of-a-majority-of-a-division-is-necessary-to-decide-a-case-]

4 Sherman et al substitute
5 6/12/74
119 yeas, 44 nays

6 (b) [~~e~~] COURTS OF APPEALS JUSTICES. Chief justices of the courts of
7 civil appeals become chief judges of courts of appeals. Justices of courts of
8 civil appeals become judges of courts of appeals.

9 (c) [~~d~~] DISTRICT AND CIRCUIT JUDGES. Each district judge or judge of a
10 criminal district court, domestic relations court, special juvenile court, or
11 special probate court becomes a district court judge. Each judge of a county
12 court at law, county civil court at law, county criminal court, county criminal
13 court at law, county criminal court of appeals, or other county court created by
14 statute becomes a judge of a circuit court. Until otherwise provided by law,
15 municipal court judges and justices of the peace remain as they exist at the time
16 of adoption of Article V.

17 (d) [~~e~~] JUDICIAL DISTRICTS. Until otherwise provided by law, the
18 judicial districts of the state remain the judicial districts authorized at the
19 time of adoption of Article V, including any judicial districts authorized by
20 law taking effect after the date of adoption of Article V.

21 (e) COUNTY COURT; COUNTY JUDGE. Unless otherwise provided by law, county
22 courts created in Article V, Section 15 of the Constitution of 1876, as amended,
23 continue in effect as the courts authorized in Section 6(a) of this constitution
24 and the judges of those courts remain as county court judges and as presiding

1 officers of the county commission as provided in Article IX, Section 3(a) of
2 this constitution. [~~(f)~~--COUNTY-COURT-JUDGES--Judges-of-the-county-court
3 electd-pursuant-to-Article-V, Section-15-of-the-Constitution-of-1876, as
4 amended, remain-as-presiding-officers-of-the-county-commission-as-provided
5 in-Article-IX, Section-3(a)-of-this-constitution.] However, a judge of the
6 county court who is licensed to practice law, by written notice to the governor
7 filed with the secretary of state within 30 days after the effective date
8 of Article V, may elect instead to become a judge of the circuit court
9 established pursuant to Article V, Section 5, in the event there is no circuit
10 court judge provided for such district under the provisions of Subsection (c)
11 [~~(d)~~] above. In the latter event, the office of county judge becomes vacant
12 and is filled by the county commission until the next general election.
13 Should more than one judge of the county court within the same circuit court
14 district file such written notice, the governor shall select the one to become
15 judge of the circuit court.

16 Sherman et al substitute
17 6/12/74

18 (f) [~~(g)~~] TRANSFER OF PROCEEDINGS AND RECORDS. All courts, except those
19 authorized by Article V, are hereby abolished and all matters pending before
20 them are transferred to the appropriate successor courts authorized by Article
21 V. The courts into which the matters are transferred assume full jurisdiction
22 of the matters and have full authority to dispose of them and to execute or
23 otherwise give effect to all orders, judgments, and decrees issued by their
24 predecessor courts. Courts authorized by Article V succeed to all records and

1 property of courts abolished by this subsection.

2 Sherman et al substitute
3 6/12/74

4 (g) [~~h~~] JUDICIAL OFFICE TRANSITION. No judicial office is
5 abolished until the expiration of the term of the person who held
6 the office on the effective date of Article V, or until that person
7 ceases to hold the office, whichever occurs first.

8 (h) [~~i~~] INITIAL JUDICIAL TERMS. The initial justices, judges, and
9 justices of the peace in the judicial branch established by Article V serve for
10 the remainder of the terms for which elected and thereafter serve for the terms
11 provided in Article V.

12 (i) [~~j~~] LAWS AND RULES CONTINUED. Except to the extent inconsistent
13 with the provisions of Article V, all laws and rules of court in force on the
14 effective date of Article V continue in effect until superseded as authorized
15 by law.

16 (j) [~~k~~] TRANSFERS FROM COURT OF CRIMINAL APPEALS. All matters filed in
17 or docketed, but not heard, by the court of criminal appeals on the effective
18 date of Article V are transferred to the court of appeals to which the matters
19 would have been docketed were they civil in nature and the court of appeals
20 still a court of civil appeals. Until the legislature or supreme court makes
21 provisions for the appeal of criminal cases from the courts of appeals, the
22 rules presently in force for appeals from courts of civil appeals also apply to
23 the appeal of criminal cases.

24 (k) [~~l~~] QUALIFICATIONS COMMISSION. Members of the judicial qualifica-

1 tions commission shall continue in office and perform the duties of the commis-
2 sion established by Article V, Section 1-a(2) of the 1876 Constitution, as
3 amended, until a commission is established pursuant to Article V, Section 9
4 [10](a) of this constitution.

5 Sherman et al substitute
6 6/12/74
119 yeas, 44 nays

7 [~~m~~]-JUDICIAL-COUNCIL--Until-otherwise-provided-by-law,-the-judicial
8 council-provided-for-in-Article-V,-Section-11(a)-(3)-is-composed-of-the-following
9 members,-each-of-whom-serves-a-two-year-term:-the-Chief-Justice-of-Texas,-who
10 serves-as-chairman,-two-judges-of-the-courts-of-appeals,-three-trial-judges,-and
11 one-district-clerk,-each-appointed-by-the-supreme-court,-four-members-of-the
12 State-Bar-of-Texas,-each-appointed-by-its-board-of-directors,-and-two-members
13 of-each-house-of-the-legislature,-each-appointed-by-their-respective-houses.]

14 Amendment by Hoestenbach
15 5/22/74
Non-record vote

16 (1) [~~n~~] PROSECUTORS. All laws pertaining to the office of district
17 attorney, criminal district attorney, or county attorney which are in effect on
18 the effective date of Article V remain in effect until changed by law.

19 [~~e~~]-RETIREMENT-FUND-TRANSFERS:--Any-participant-in-a-county-retirement,
20 disability,-and-death-compensation-fund-who-becomes,-pursuant-to-Article-V-or
21 this-transition-schedule,-a-judge-of-a-district-or-circuit-court-has-the-option
22 of-continuing-to-participate-in-the-county-fund-or-of-transferring-membership-and
23 accrued-service-credit-and-contributions-to-the-state-judicial-retirement-system-
24 under-such-regulations-as-provided-by-law.]

1 Sherman et al substitute
2 6/12/74
3 119 yeas, 44 nays

4 (m) CLERKS. All laws pertaining to the office of district clerk or county
5 clerk which are in effect on the effective date of Article V, and which are con-
6 sistent with the provisions hereof, remain in effect until changed by law.

7 Amendment by Gene Jones
8 5/22/74
9 Non-record vote

10 (n) [p] OTHER PROVISIONS. In the event a transfer or transition has not
11 been provided for by this section or by law, the supreme court shall provide by
12 rule for the orderly transfer or transition.

13 Sherman et al substitute
14 6/12/74
15 119 yeas, 44 nays

16 (o) [q] EFFECTIVE DATE: Article V of this constitution takes effect
17 January 1, 1976.

June 24, 1974

Proposed Changes to
Judiciary Article
(Staff Draft of June 23)

1. Sec. 5, page 17, revise first and second sentences to read:

The legislature by law may provide for circuit courts, each with one or more judges, and shall determine from time to time the number and location of such courts.

2. Sec. 6, page 17

- (a) line 15, delete "discharges" and reinsert "has"
- (b) line 16, delete "other"
- (c) line 19, delete "fewer" and reinsert "less"
- (d) line 23, delete "prescribed" and reinsert "provided"

3. Sec. 7, page 21

- (a) line 10, insert period after "branch" and delete remainder of sentence. Insert new sentence at end of subsection:

"The supreme court may exercise other administrative authority as provided by law."

- (b) line 14, delete "only"
- (c) line 16, delete "but" and insert "or"
- (d) line 16, add "justices or" after the word "assign"
- (e) line 22, delete "within the district"

4. Sec. 7, page 22, line 6.

Delete "discharge" and insert "perform"

5. Sec. 8, page 24, line 18.

Restate the first sentence in a positive manner, such as:

"A person may serve as a justice, judge, or justice of the peace if a citizen of the United States, a resident of this state, etc . . ."

6. Sec. 9, page 25,

(a) Suggest a sentence to make it explicit that judges are to have staggered terms of office.

(b) line 22, delete "or" and insert "and"

7. Sec. 9, page 26, line 19

Delete "prescribed" and insert "provided."

8. Sec. 12, page 34, line 9

Insert "in the manner provided by law" after the word "county."

9. Sec. 13, page 35, line 24

Delete "the regulation of"

10. Sec. 14, page 37, line 8

Revise Subsection (b) to read as follows:

(b) A person denied bail under ~~the provisions of~~ Article I, Section 11a of this constitution or convicted of a criminal offense is entitled to an appeal to a court of competent jurisdiction.

11. Sec. 15, page 39, line 17

Revise sentence to eliminate reference to salary supplementation.

For example:

"The state shall pay the basic compensation of justices and judges of the unified judicial system and district attorneys as provided by law."

Judiciary 2 June 11, 1974-Hunter

A **FULL***time judiciary whose members qualify to practice law in Texas. NO

Integration of Justice of the Peace Court functions into courts of record. NO

Merit Selection-NO Non-partisan elections would have been an improvement but we will continue with partisan elections.

Does this add up to an effective judicial structure for Texas?

The LWV started with some very high principles--We compromised some to support the Calvert Task Force proposal; compromised some more to support SJR 8 and HJR9 -the legislature's version of Calvert's proposal; we compromised some more to support the Constitutional Revision Commission version; we compromised even more to support the Judicial committee report; and now what is left?

I know some people did not agree with our statement about the legislature prescribing rules of administration for the judiciary being in violation of the separation of power. Allowing the legislature to prescribe the rules of criminal procedure for the judicial may not be a violation of the separation of powers either (I still think so) but with 3/4 of our legislators being lawyers do we not now have the lawyers making the rules for the courts?

I'll get off my soap box now. Thanks for listening!!!!

June 10, 1974

To: Cragon, Con Con Of., Connor, Anderson, SO
From: Hunter
Re: Judicial Article

Henrietta; After our telephone conversation about the tentative proposal by Sullivan, Earle, et al and the fact that LWV has no position on the Supreme Court sitting in sections or State right to appeal, I again studied the sections that have so far passed the convention and I feel I have to comment.

We spoke of LWV positions- I realize that we will have to consider the article as a whole and that we will have to compromise but we must not forget LWV positions. We must look at those positions and decide just how much we can compromise and where we draw the line and stick to our principles.

Please remember that I have lived and breathed this article for some time now; that I have very strong feelings about it; and that I am prejudiced.

LWV POSITION: Support of an effective judicial structure for Texas. A single system of centrally administered courts with a uniform fiscal policy.

When the LWV reached this position we used studies and recommendations made by the American Judicature Society, Bar Associations, Judges and National Municipal League. In every study and recommendation is for a unified judicial system: a three-tier system (Supreme Court, Appeals courts, and trial courts) all under the state government and none as units of local government. The proposed article "titles" the system unified; then provides for JPs and County courts.

Henrietta, Grace, Betty C.; Have you been able to find out how the transition would be made for circuit courts and county courts-at-law? Will the present specialized county-courts-at-law become circuit courts ~~xxxxxxx~~ by simply changing their "title" and the constitutional county courts remain the same? That's the way it looks to me.

The Legislature is to create an agency of the judicial branch to prescribe rules of administration. This is better than the Lary amendment but it can only apply to state courts, not the JPs and county court. The fees and fines collected at county court level to ~~remain~~ remain in the county does not conform to a "uniform fiscal policy".

The Supreme Court and Court of Criminal Appeals will be merged--but When? The last transitions schedule I saw proposed that the courts remain the same until ~~the~~ by resignation, retirement or death the number of judges in the two courts reduce to nine. That could take 10 or 15 years.

A uniform code of civil and criminal procedure formulated by the Supreme Court, with legislative approval.

The Supreme Court will have only civil rule making power; the legislature retains the criminal rule making power.

Assignment of judges according to special training and docket needs.

This is provided for. Although it is not in the 1876 constitution we do now have reassignment of judges in some cases where the need is greatest. (I sat on a jury presided over by a judge from Montgomery County, to help ease the caseload in Harris County)

Memo

June 25, 1974

TO: Jean, Helen, Henrietta, and Grace

FROM: Susan Reid

Re: S&D draft of Judiciary Article

The Judiciary Art. may come to the floor as early as Thursday. Jud. Committee is meeting this afternoon to discuss S&D tentative draft. Ben Grant, the Jud. Com. representative on S&D voted no on the draft. They are talking about a 48-hour rule now instead of 72hours?????? S&D plans to note (flag) an inconsistency in the Supreme Ct.'s rule making authority. Mauzy placed an amendment on Sec. 7 that would prohibit the Sup. Ct. from promulgating rules of Criminal Procedure. He did nothing to Sec. 2, however, and in Sec. 2 there was the sentence, "The court has such jurisdiction and administrative and rule making authority as provided in this article or by law." When S&D moved this last sentence into Sec. 7 which deals with rule making authority, it reads like this:

(S&D version)

Sec. 7 (d) The supreme court may promulgate rules of civil procedure ~~not inconsistent with the laws of the state~~, for all courts, ~~and may promulgate other procedural rules as provided by law to expedite the dispatch of business therein.~~ A Any rule of civil procedure expressly promulgated disapproved by the court legislature may not be inconsistent with general law and has shall have no effect if expressly disapproved by the legislature thereafter.

(The struck language has been removed by S&D and the underlined language has been added by S&D)

This new Sec.7(d) with the sentence added from Sec. 2 might be read to give the Sup. Ct. criminal rule making authority if the legislature should grant it. This was not Mauzy's intent, but there is an arguable inconsistency since he didn't delete the sentence in Sec. 2, and he was on the Jud. Com. and presumably knew the article.

Anyway, this will be a flag item, and since we do have a position on this, I wanted to let you know the issue will come up again and can be settled on a majority vote.

The only other major item of contention was that S&D added a sentence in Sec. 1 defining the judicial branch. "The judicial branch is composed of the courts and agencies authorized by this article." The sentence is meant to ~~preclude~~ preclude the legislature from creating any new courts. Ben Grant argued that the committee was evenly split on whether this should be left open to the legislature. S&D committee members felt that the intention of the convention had been to preclude the legislature, and so S&D voted to leave this sentence in, but the issue will no doubt be brought up on the floor.

I'm not pressing you to act, but if you want to do anything about the "inconsistency" in the rule-making section, we should do it tomorrow (Wed., June 26).

THE JUDICIARY COMMITTEE
OFFICIAL SECOND READING ADOPTION - ARTICLE V

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF TEXAS,

That there be a new article on the judiciary to read as follows:

ARTICLE V

THE JUDICIARY

1 Sec. 1. JUDICIAL POWER. The judicial power of the state
2 is vested in the judicial branch. The state unified judicial
3 system is composed of a supreme court, courts of appeals, district
4 courts, and circuit courts. All courts have jurisdiction as
5 provided by law, but jurisdiction of courts of the same level in
6 the unified judicial system must be uniform throughout the state.

7 Sec. 2. SUPREME COURT. (a) The supreme court shall be
8 the highest court of the state and shall consist of the Chief
9 Justice of Texas and at least eight other justices. The court
10 may sit en banc or in sections of not less than five justices,
11 and the concurrence of a majority of the justices sitting is
12 necessary to decide a case. The court has such jurisdiction and
13 administrative and rule-making authority as provided in this
14 article or by law.

15 (b) The legislature may grant jurisdiction to the supreme
16 court to receive and answer questions of state law certified from
17 federal courts.

18 Sec. 3. COURTS OF APPEALS. There shall be one or more
19 courts of appeals as provided by law, each consisting of a chief
20 judge and at least two other judges. The legislature may authorize
21 the court to sit in sections. The concurrence of a majority of
22 the judges sitting is necessary to decide a case.

23 Sec. 4. DISTRICT COURTS. The state shall be divided into
24 judicial districts as now or hereafter provided by law. In each
25 district there shall be one district court with one or more
26 district judges.

27 Sec. 5. CIRCUIT COURTS. The legislature may provide by
28 law for circuit courts and shall from time to time determine the
29 number and location of such courts. A circuit court may serve
30 one or more counties, but no county shall have more than one
31 circuit court. Each circuit court shall have one or more judges
32 and such other officials as provided by law.

33 Sec. 6. OTHER COURTS. (a) The constitutional county
34 courts in existence at the time of the adoption of this
35 constitution are continued in effect unless otherwise provided
36 by law and shall have such jurisdiction as now or hereafter

1 provided by law. The county judge provided for in Article IX,
2 Section 3(a) of this constitution presides over the county court
3 and has judicial functions as now or hereafter provided by law.

4 (b) The county commission in each county shall divide the
5 county from time to time into justice precincts, not less than
6 four nor more than eight.

7 (c) The county commission in each county shall establish
8 and maintain one or more justice courts in the county with each
9 court to exercise jurisdiction in one or more precincts in the
10 manner provided by law.

11 (d) Municipal courts may be established by law or by charter
12 as authorized by law and shall have such jurisdiction as provided
13 by law.

14 Sec. 7. QUALIFICATIONS OF JUDGES. No person may serve as
15 a justice, judge, or justice of the peace unless the person is
16 a United States citizen and a resident of this state and has other
17 qualifications prescribed by law. No person may serve as justice
18 or judge in the unified judicial system unless licensed to practice
19 law in this state.

20 Sec. 8. ELECTION OF JUDGES. (a) The Chief Justice of
21 Texas and other justices of the supreme court are elected by the
22 qualified voters of the state every six years in the manner
23 provided by law. Judges of the courts of appeals are elected by
24 the qualified voters of their respective districts every six years
25 in the manner provided by law.

26 (b) District and circuit judges are elected by the qualified
27 voters of their respective districts every four years in the
28 manner provided by law.

29 (c) Vacancies in the offices of justices of the supreme
30 court and judges of the courts of appeals, district courts, and
31 circuit courts are filled by the governor, with the advice and
32 consent of the senate, until the next succeeding general election.

33 (d) Justices of the peace are elected by the qualified
34 voters of the county or precinct every four years in the manner
35 provided by law. Vacancies in the office of justice of the peace
36 are filled by the county commission until the next succeeding
37 general election.

38 (e) Municipal judges are selected in the manner provided
39 by law or by charter as authorized by law.

40 Sec. 9. QUALIFICATIONS COMMISSION; REMOVAL OF JUDGES. (a)
41 There shall be a judicial qualifications commission with such
42 authority and functions as provided by law.

43 (b) A justice of the supreme court may be removed by the
44 governor on the address of two-thirds of each house of the
45 legislature for willful neglect of duty, incompetency, oppression
46 in office, or other reasonable cause not a sufficient ground for
47 impeachment.

48 (c) Any justice of the supreme court, judge, or justice

1 of the peace may be removed, suspended, or censured as provided
2 by law.

3 Sec. 10. COURT ADMINISTRATION. (a) (1) The supreme court
4 shall provide for the efficient operation of the judicial system.
5 The court may direct the transfer of cases from one court to
6 another within each level of the judicial system and may assign
7 judges within or between levels. The court may delegate
8 responsibility for administration to the chief justice and
9 administrative judges provided for in Subsection (a)(2) of this
10 section.

11 (2) Each court of appeals district within the state
12 constitutes an administrative district for purposes of trial court
13 management. Within each district, the Chief Justice of Texas,
14 with the advice and consent of the senate, shall designate a judge
15 to serve as administrative judge of the district.

16 (3) The legislature may establish an agency of the
17 judicial branch having such membership as provided by law to
18 prescribe rules of administration for the unified judicial system
19 not inconsistent with general law or rules of procedure, and
20 perform such other duties as shall be provided by law. Rules of
21 administration promulgated by the agency shall not become effective
22 until approved by the supreme court.

23 (b) The supreme court may promulgate rules of civil
24 procedure not inconsistent with the laws of the state, for all
25 courts, to expedite the dispatch of business therein. Any rule
26 of procedure expressly disapproved by the legislature shall have
27 no effect thereafter.

28 Sec. 11. DISTRICT CLERKS; COUNTY CLERKS. (a) A district
29 clerk, who serves as clerk of the district and circuit courts of
30 the county, is elected by the qualified voters of each county for
31 a term of four years. The clerk may be removed from office upon
32 a jury finding of incompetence, official misconduct, or other
33 cause defined by law. Vacancies in the office of district clerk
34 shall be filled by the judges of the district and circuit courts
35 in the county until the next general election. Each clerk may
36 have a deputy or deputies and other personnel authorized by law.

37 (b) The county clerk, who serves as clerk of the county
38 commission and recorder of the county, is elected by the qualified
39 voters of each county for a term of four years. The legislature
40 shall prescribe the duties, perquisites, and fees of the office.
41 A vacancy in the office shall be filled by the county commission
42 until the next general election.

43 (c) The legislature may provide by law for the election
44 of a single clerk to perform the duties of both a county clerk
45 and a district clerk.

46 Sec. 12. JURIES. (a) A grand jury in the district court
47 consists of 12 persons, of whom nine constitute a quorum and must
48 concur in a bill of indictment.

1 (b) The legislature shall provide by law for trial juries.

2 (c) A party has the right to a jury trial upon demand made
3 in the manner prescribed by law.

4 (d) Jury verdicts must be unanimous, except that the
5 legislature, or the supreme court pursuant to its rule-making
6 authority, may authorize jury verdicts in civil cases rendered
7 by not less than three-fourths of the jurors sitting in a case.

8 (e) The legislature may provide by law for alternate jurors.

9 Sec. 13. SENTENCING AND PROBATION. Subject to regulation
10 by law, courts having original jurisdiction of criminal cases
11 shall have power to suspend the imposition or execution of sentence
12 and place a defendant on probation; and as authorized by law,
13 such courts shall have further power to modify, set aside, or
14 reimpose sentence.

15 Sec. 14. APPEAL BY STATE. Subject to the guarantees of
16 Article I of this constitution, the state may appeal in criminal
17 cases only:

18 (a) from a trial court decision holding a law
19 unconstitutional; or

20 (b) from an appeals court decision to the supreme court
21 at the discretion of the supreme court, unless otherwise provided
22 by law.

23 Sec. 15. APPEAL BY ACCUSED. (a) The accused shall have
24 the right of appeal to the appellate court having jurisdiction,
25 specifically including the right of appeal granted by Article I,
26 Section 11a of this constitution.

27 (b) Appeal to the supreme court in criminal cases shall
28 be at the discretion of the supreme court, unless otherwise
29 provided by law.

30 Sec. 16. APPEALS FROM ADMINISTRATIVE ACTION.
31 Notwithstanding any other provision of the constitution, the
32 legislature may provide by law for the method of appeal to the
33 courts from actions, rulings, or decisions of administrative
34 agencies and executive departments of the state or any of its
35 subdivisions.

36 Sec. 17. DISTRICT ATTORNEYS; COUNTY ATTORNEYS. (a) The
37 state shall be represented in each county by a district attorney
38 as now or hereafter provided by law. The district attorneys shall
39 be elected by the qualified voters of their respective districts,
40 and shall serve for a term of four years and until their successors
41 have qualified. The state shall provide for the basic compensation
42 of district attorneys.

43 (b) With such exceptions as now or hereafter provided by
44 law, county attorneys shall be elected by the qualified voters
45 of each county and shall hold office for a term of four years and
46 until their successors have qualified.

47 (c) Each district and county attorney shall be licensed
48 to practice law in this state. Other qualifications, duties, and

1 functions of district and county attorneys and the grounds and
2 procedure for disqualification, suspension, removal, and filling
3 of vacancies shall be as provided by law.
4 Sec. 18. COMPENSATION. The state shall pay the basic
5 salaries of all justices and judges of the unified judicial system
6 and shall pay such other expenses of the system as provided by
7 law.

TRANSITION SCHEDULE

(a) SUPREME COURT; COURT OF CRIMINAL APPEALS. On the effective date of Article V, the chief justice of the supreme court becomes the Chief Justice of Texas. The presiding judge and the other judges of the court of criminal appeals and associate justices of the supreme court become justices of the supreme court. Each commissioner of the court of criminal appeals becomes a commissioner of the supreme court, but that position exists only as long as it continues to be held by the commissioner in office on the effective date of Article V. Except for the office of chief justice, the offices of the first five justices who cease to be members of the supreme court by reason of death, removal, resignation, or retirement after the effective date of Article V cease to exist. The death, removal, resignation, or retirement of an incumbent justice after having been defeated at a primary or general election does not terminate the office.

(b) COURTS OF APPEALS JUSTICES. Chief justices of the courts of civil appeals become chief judges of courts of appeals. Justices of courts of civil appeals become judges of courts of appeals.

(c) DISTRICT AND CIRCUIT JUDGES. Each district judge or judge of a criminal district court, domestic relations court, special juvenile court, or special probate court becomes a district court judge. Each judge of a county court at law, county civil court at law, county criminal court, county criminal court at law, county criminal court of appeals, or other county court created by statute becomes a judge of a circuit court. Until otherwise provided by law, municipal court judges and justices of the peace remain as they exist at the time of adoption of Article V.

(d) JUDICIAL DISTRICTS. Until otherwise provided by law, the judicial districts of the state remain the judicial districts authorized at the time of adoption of Article V, including any judicial districts authorized by law taking effect after the date of adoption of Article V.

(e) COUNTY COURT; COUNTY JUDGE. Unless otherwise provided by law, county courts created in Article V, Section 15 of the Constitution of 1876, as amended, continue in effect as the courts authorized in Section 6(a) of this constitution and the judges of those courts remain as county court judges and as presiding officers of the county commission as provided in Article IX, Section 3(a) of this constitution. However, a judge of the county court who is licensed to practice law, by written notice to the governor filed with the secretary of state within 30 days after the effective date of Article V, may elect instead to become a judge of the circuit court established pursuant to Article V, Section 5, in the event there is no circuit court judge provided for such district under the provisions of Subsection (c) above.

1 In the latter event, the office of county judge becomes vacant
2 and is filled by the county commission until the next general
3 election. Should more than one judge of the county court within
4 the same circuit court district file such written notice, the
5 governor shall select the one to become judge of the circuit
6 court.

7 (f) TRANSFER OF PROCEEDINGS AND RECORDS. All courts,
8 except those authorized by Article V, are hereby abolished and
9 all matters pending before them are transferred to the appropriate
10 successor courts authorized by Article V. The courts into which
11 the matters are transferred assume full jurisdiction of the matters
12 and have full authority to dispose of them and to execute or
13 otherwise give effect to all orders, judgments, and decrees issued
14 by their predecessor courts. Courts authorized by Article V
15 succeed to all records and property of courts abolished by this
16 subsection.

17 (g) JUDICIAL OFFICE TRANSITION. No judicial office is
18 abolished until the expiration of the term of the person who held
19 the office on the effective date of Article V, or until that
20 person ceases to hold the office, whichever occurs first.

21 (h) INITIAL JUDICIAL TERMS. The initial justices, judges,
22 and justices of the peace in the judicial branch established by
23 Article V serve for the remainder of the terms for which elected
24 and thereafter serve for the terms provided in Article V.

25 (i) LAWS AND RULES CONTINUED. Except to the extent
26 inconsistent with the provisions of Article V, all laws and rules
27 of court in force on the effective date of Article V continue in
28 effect until superseded as authorized by law.

29 (j) TRANSFERS FROM COURT OF CRIMINAL APPEALS. All matters
30 filed in or docketed, but not heard, by the court of criminal
31 appeals on the effective date of Article V are transferred to the
32 court of appeals to which the matters would have been docketed
33 were they civil in nature and the court of appeals still a court
34 of civil appeals. Until the legislature or supreme court makes
35 provisions for the appeal of criminal cases from the courts of
36 appeals, the rules presently in force for appeals from courts of
37 civil appeals also apply to the appeal of criminal cases.

38 (k) QUALIFICATIONS COMMISSION. Members of the judicial
39 qualifications commission shall continue in office and perform
40 the duties of the commission established by Article V, Section
41 1-a(2) of the 1876 Constitution, as amended, until a commission
42 is established pursuant to Article V, Section 9(a) of this
43 constitution.

44 (l) PROSECUTORS. All laws pertaining to the office of
45 district attorney, criminal district attorney, or county attorney
46 which are in effect on the effective date of Article V remain in
47 effect until changed by law.

48 (m) CLERKS. All laws pertaining to the office of district

1 clerk or county clerk which are in effect on the effective date
2 of Article V, and which are consistent with the provisions hereof,
3 remain in effect until changed by law.
4 (n) OTHER PROVISIONS. In the event a transfer or transition
5 has not been provided for by this section or by law, the supreme
6 court shall provide by rule for the orderly transfer or transition.
7 (o) EFFECTIVE DATE. Article V of this constitution takes
8 effect January 1, 1976.

I hereby certify that Article V was passed on Second Reading
by the Constitutional Convention on June 12, 1974, by the following
vote: Yeas 117, Nays 45, and 1 present not voting.

Charles Schnabel

Secretary

Judiciary

Convention Office
308 W. 15th St. Rm 305
Austin, Tx 78701

FOR IMMEDIATE RELEASE
May 28, 1974

The League of Women Voters of Texas is disappointed and discouraged that the Judiciary Article is becoming the victim of special interests. League members across the state have been encouraged to contact their local county judges as well as their convention delegates to prevent the circuit courts from being aborted.

Many counties of the state will have non-professional, non-lawyer judges if the circuit courts are not mandatory throughout the state. The county judges have been well protected in this new constitution, now it is time to protect the right of the citizens of Texas to equal justice.

cc: Anderson, Conner, Hunter, Cragon, SO, ConO

Delegates to hear Louisianan

Post State Capital Bureau

AUSTIN — Texas' top elected officials and Constitutional Convention delegates are expected to hear some tips Monday on how to write and sell a new state constitution to the voters.

Gov. Edwin Edwards, the Louisiana Democrat who campaigned hard and got his state's new constitution accepted by the voters recently, and Louisiana House Speaker E. L. "Bubba" Henry will address the constitutional convention Tuesday afternoon at President Price Daniel Jr. and the convention's invitation.

Henry was chairman of the convention that wrote the Louisiana constitution.

While in Austin, they will be the guests at a coffee hosted by Lt. Gov. Bill Hobby in the Capitol and at a reception given by Gov. Dolph Briscoe in the governor's mansion.

• League pounces

The Texas League of Women Voters pounced quickly on a decision by the Constitutional Convention to let the legislature prescribe rules of internal administration for the state's court system.

"This amendment is in direct violation of the principle of separation of powers," said League President Mrs. Darwin M. Winick, announcing that LWV chapters throughout the state were contacting

delegates to reverse the decision and leave such rule-making to the judicial branch.

• Date conflicts

State political party conventions in Texas, set by law on Sept. 17 this year, will conflict with Rosh Hashanah, the

Dateline Austin

Jewish New Year and one of the high holy days.

State Democratic party chairman Calvin Guest is looking for a legal way to postpone the convention so Jews can attend.

One possibility: he may notify Democrats to stay home on the 17th and come the next day. As chairman, he could perhaps call the convention to order, then recess it one day due to lack of a quorum.

• Backers chuckle

Backers of Rep. Fred Head D-Troup, for speaker of the Texas House of Representatives were chuckling last week at what they considered an abrupt about-face on the part of Rep. Ed J. Harris, D-Galveston.

In a letter sent to his colleagues late in April, Harris called for the election of Rep. Carl Parker, D-Port Arthur, as the next speaker, saying that if the House is to with-

stand attacks by special interests against recent reforms, "it must be led by a forceful, courageous and proven speaker."

Head supporters were distributing copies of Harris' letter together with copies of an Aug. 1, 1971, newspaper column written by the Galveston lawmaker in which he blasted Parker for supporting former speaker Gus F. Mutscher, Jr., who resigned and later was convicted in connection with the Sharpstown scandals.

Asked about this change of heart, Harris said he considers Parker the best candidate in the race.

"I have differed with Carl, but I have even differed with my brother and he's a Methodist minister," Harris continued. "Carl is a person that is staunch and courageous."

• Funds discussed

The Texas Republican party leadership went through the motions of kissing and making up at the statutory meeting of the State Republican Executive Committee last week, but there was some tough, behind-the-scenes talk about finances.

Gubernatorial nominee Jim Granberry's forces were on hand to talk money — between \$800,000 and \$1 million — to tackle Democrat Gov. Dolph Briscoe in the November election, and indications are they came away assured the funds would be available.

Several on Granberry's

staff were working for Paul Eggers in 1968 and 1970 when he unsuccessfully opposed Democrat Preston Smith for governor, and they recall painfully how party promises of money to Eggers suddenly evaporated. Money in 1968 was siphoned off by the Nixon campaign for president, and two years later, all available funds were poured into George Bush's losing race for the U.S. Senate against Democrat Lloyd M. Bentsen Jr.

"We don't have any national campaign competing with us for money this year," said a confident Granberry campaign official.

Eggers, who made a good showing against Smith, got 1,600 contributions in 1970; the aide continued, and "Granberry has more than 4,000 as of now."

The aide denied the rumor that the party would turn its back on Granberry because of Briscoe's landslide victory in the Democratic primary over three opponents, including Frances "Sissy" Farenthold.

Word circulating in Austin was that the party would focus its attention and finances on former Army Maj. James N. Rowe, who escaped from the Viet Cong after five years' captivity. Rowe faces former Texas Secretary of State Bob Bullock for comptroller of public accounts, and the GOP's thinking is that Bullock is the most vulnerable of the Democratic candidates.

Don't like 'inconsistency'
The use of the term is prejudicial - nobody wants to
vote for "an inconsistency".

How about

Exceptions to the provisions of sec 3 & 8 may
be made if the voters so indicate at the
time they adopt their home rule charter

Question the phrase "vote separately". This could
mean a completely separate election

This would be an unnecessary

an defeating

requirement

Dutchisen

by George

Bradley

Sec. ____ COUNTY HOME-RULE AUTHORITY. (a) ✓ Counties, by a
majority vote of the qualified voters voting on the question, may
adopt, amend, or repeal home-rule charters in the manner prescribed
by law. No provision of a charter may be inconsistent with either
Section 3 or Section 8 of this article unless the qualified voters
vote separately on the question of whether they approve the incon-
sistency. ✓ No charter may require the appointment of the county
governing body or change the method of selection or term of office of a
constitutional county officer who performs constitutionally authorized
duties as a judge in the judicial branch. ✓ No charter or ordinance may
be inconsistent with any other provision of the constitution or with
the laws of the state.

(b) ✓ If a charter provision or ordinance conflicts with an ordinance
of an incorporated city or town, the municipal ordinance prevails
within its jurisdiction as defined by law.

AMENDMENT NO. _____

BY _____
Mengden

Amend the Amendment to the Separate Submission to the
Voters by striking the present language and substituting the follow-
ing in lieu thereof:

"A charter which creates additional offices, eliminates
offices, changes the term of offices, combines the duties and func-
tions of offices, or permits the appointment of offices, including
offices previously elected, may be considered consistent with this
Constitution."

Con office
Balliant proposal - Tentative

COMPROMISE DEVELOPED AT OPEN MEETING IN MEMBERS' LOUNGE ON
JUNE 4, 1974

ARTICLE V
THE JUDICIARY

Sec. 1. JUDICIAL POWER. The judicial power of the state is vested in the judicial branch. The state unified judicial system is composed of a supreme court, courts of appeals, district courts, and circuit courts. All courts have jurisdiction as provided by law, but jurisdiction of courts of the same level in the unified judicial system must be uniform throughout the state.

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(b) The county commission in each county shall divide the county from time to time into justice precincts, not less than four nor more than eight.

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17 the qualified voters of their respective districts every six years
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20 voters of their respective districts every four years in the
21 manner provided by law.

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24 circuit courts are filled by the governor, with the advice and
25 consent of the senate, until the next succeeding general election.

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11 prescribe rules of administration for the unified judicial system
12 not inconsistent with general law or rules of procedure, and
13 perform such other duties as shall be provided by law. Rules of
14 administration promulgated by the agency shall not become effective
15 until approved by the supreme court.

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26 cause defined by law. Vacancies in the office of district clerk
27 shall be filled by the judges of the district and circuit courts
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33 shall prescribe the duties, perquisites, and fees of the office.
34 A vacancy in the office shall be filled by the county commission
35 until the next general election.

36 (c) The legislature may provide by law for the election
37 of a single clerk to perform the duties of both a county clerk
38 and a district clerk.

39 Sec. 12. JURIES. (a) A grand jury in the district court
40 consists of 12 persons, of whom nine constitute a quorum and must
41 concur in a bill of indictment.

42 (b) The legislature shall provide by law for trial juries.

43 (c) A party has the right to a jury trial upon demand made
44 in the manner prescribed by law.

45 (d) Jury verdicts must be unanimous, except that the
46 legislature, or the supreme court pursuant to its rule-making
47 authority, may authorize jury verdicts in civil cases rendered
48 by not less than three-fourths of the jurors sitting in a case.

 (e) The legislature may provide by law for alternate jurors.

Sec. 13. SENTENCING AND PROBATION. Courts having original jurisdiction of criminal cases shall have power to suspend the imposition or execution of sentence and place a defendant on probation; and subject to regulation by law, such courts shall have further power to modify, set aside, or reimpose sentence. Except as authorized by law, such courts may not modify, set aside, or reimpose a sentence rendered by a jury.

Sec. 14. APPEAL BY STATE. Subject to the guarantees of Article I of this Constitution, the state may appeal in criminal cases only:

- (a) from a trial court decision holding a law unconstitutional; or
- (b) from an appeals court decision to the supreme court at the discretion of the court, unless otherwise provided by law.

10 Sec. 15. APPEAL BY ACCUSED. (a) The accused shall have
11 the right of appeal to the appellate court having jurisdiction,
12 specifically including the right of appeal granted by Article I,
13 Section 11a of this constitution.

14 (b) Appeal to the supreme court in criminal cases shall
15 be at the discretion of the court, unless otherwise provided by
16 law.

17 Sec. 16. APPEALS FROM ADMINISTRATIVE ACTION.
18 Notwithstanding any other provision of the constitution, the
19 legislature may provide by law for the method of appeal to the
20 courts from actions, rulings, or decisions of administrative
21 agencies and executive departments of the state or any of its
22 subdivisions.

23 Sec. 17. DISTRICT ATTORNEYS; COUNTY ATTORNEYS. (a) The
24 state shall be represented in each county by a district attorney
25 as now or hereafter provided by law. The district attorneys shall
26 be elected by the qualified voters of their respective districts,
27 and shall serve for a term of four years and until their successors
28 have qualified. The state shall provide for the basic compensation
29 of district attorneys.

30 (b) With such exceptions as now or hereafter provided by
31 law, county attorneys shall be elected by the qualified voters
32 of each county and shall hold office for a term of four years and
33 until their successors have qualified.

34 (c) Each district and county attorney shall be licensed
35 to practice law in this state. Other qualifications, duties, and
36 functions of district and county attorneys and the grounds and
37 procedure for disqualification, suspension, removal, and filling
38 of vacancies shall be as provided by law.

39 Sec. 18. COMPENSATION. The state shall pay the basic
40 salaries of all justices and judges of the unified judicial system
41 and shall pay such other expenses of the system as provided by
42 law.

43 Sec. 19. JUDICIAL RETIREMENT. (a) The legislature may
44 prescribe by law the mandatory retirement age of a justice or
45 judge in the unified judicial system.

(b) Notwithstanding any other provision of this constitution, the system of retirement, disability, and survivors benefits heretofore established in the Constitution for justices, judges, and commissioners of the appellate courts and judges of the district and criminal district courts is continued in effect as now or hereafter provided by law. The legislature shall provide for inclusion in the system of judges of all courts in the unified judicial system.

(c) General administration of the Judicial Retirement System of Texas shall be by the Board of Trustees of the Employees Retirement System of Texas under such regulations as may be provided by law.

State Convention office

Sent to Harris County representatives Reyes, Hall, Washington, Blythe, Leland, and Whitmire, all of whom voted for the Lary amendment.

May 18, 1974

The Honorable Craig Washington
Texas Constitutional Convention
P. O. Box 13286 - Capitol Station
Austin, Texas 78711

Dear Representative Washington:

The Houston League of Women Voters is disappointed in your vote favoring the Lary amendment to the judiciary section of the proposed constitution.

We strongly feel this amendment, letting the legislature prescribe rules for the judicial system, violates the principle of separation of powers.

We hope you will reconsider your stand.

Sincerely,

Mrs. Laura Keever
President

LK/bt

Cont

SUBSTITUTE FOR THE NABERS AMENDMENT

Amend the Nabers amendment to Article V by substituting in
lieu thereof the following:

BY: McLennan - Bill Clayton
Hale Geiger Kendall
Witt Sullivan Pepper Earle
Meloney Higginson Bowers Redhead
Kulick Doyle Baker Henderson
 ARTICLE V Caldwell Grant Glavin
 THE JUDICIARY Hutcheson Olson Landis
Finney Carl Walker Edwards Hall Walt Munn

Sec. 1. JUDICIAL POWER. The judicial power of the state is vested in the judicial branch. The state unified judicial system is composed of a supreme court, courts of appeals, district courts, and circuit courts. All courts have jurisdiction as provided by law, but jurisdiction of courts of the same level in the unified judicial system must be uniform throughout the state.

Sec. 2. SUPREME COURT. (a) The supreme court shall be the highest court of the state and shall consist of the Chief Justice of Texas and at least eight other justices. The court may sit en banc or in sections of not less than five justices, and the concurrence of a majority of the justices sitting is necessary to decide a case. The court has such jurisdiction and administrative and rule-making authority as provided in this article or by law.

(b) The legislature may grant jurisdiction to the supreme court to receive and answer questions of state law certified from federal courts.

Sec. 3. COURTS OF APPEALS. There shall be one or more courts of appeals as provided by law, each consisting of a chief judge and at least two other judges. The legislature may authorize the court to sit in sections. The concurrence of a majority of the judges sitting is necessary to decide a case.

Sec. 4. DISTRICT COURTS. The state shall be divided into judicial districts as now or hereafter provided by law. In each district there shall be one district court with one or more district judges.

Sec. 5. CIRCUIT COURTS. The legislature may provide by law for circuit courts and shall from time to time determine the number and

location of such courts. A circuit court may serve one or more counties, but no county shall have more than one circuit court. Each circuit court shall have one or more judges and such other officials as provided by law.

Sec. 6. OTHER COURTS. (a) The constitutional county courts in existence at the time of the adoption of this constitution are continued in effect unless otherwise provided by law and shall have such jurisdiction as now or hereafter provided by law. The county judge provided for in Article IX, Section 3 (a) of this constitution presides over the county court and has judicial functions as now or hereafter provided by law.

(b) The county commission in each county shall divide the county from time to time into justice precincts, not less than four nor more than eight.

(c) The county commission in each county shall establish and maintain one or more justice courts in the county with each court to exercise jurisdiction in one or more precincts in the manner provided by law.

(d) Municipal courts may be established by law or by charter as authorized by law and shall have such jurisdiction as provided by law.

Sec. 7. QUALIFICATIONS OF JUDGES. No person may serve as a justice, judge, or justice of the peace unless the person is a United States citizen and a resident of this state and has other qualifications prescribed by law. No person may serve as justice or judge in the unified judicial system unless licensed to practice law in this state.

Sec. 8. ELECTION OF JUDGES. (a) The Chief Justice of Texas and other justices of the supreme court are elected by the qualified voters of the state every six years in the manner provided by law. Judges of the courts of appeals are elected by the qualified voters of their respective districts every six years in the manner provided by law.

(b) District and circuit judges are elected by the qualified voters of their respective districts every four years in the manner provided by law.

(c) Vacancies in the offices of justices of the supreme court and judges of the courts of appeals, district courts, and circuit courts are filled by the governor, with the advice and consent of the senate, until the next succeeding general election.

(d) Justices of the peace are elected by the qualified voters of the county or precinct every four years in the manner provided by law. Vacancies in the office of justice of the peace are filled by the county commission until the next succeeding general election.

(e) Municipal judges are selected in the manner provided by law or by charter as authorized by law. (2)

Sec. 9 . QUALIFICATIONS COMMISSION; REMOVAL OF JUDGES.

(a) There shall be a judicial qualifications commission with such authority and functions as provided by law.

(b) A justice of the supreme court may be removed by the governor on the address of two-thirds of each house of the legislature for willful neglect of duty, incompetency, oppression in office, or other reasonable cause not a sufficient ground for impeachment.

(c) Any justice of the supreme court, judge, or justice of the peace may be removed, suspended, or censured as provided by law.

Sec.10 . COURT ADMINISTRATION. (a) (1) The supreme court shall provide for the efficient operation of the judicial system. The court may direct the transfer of cases from one court to another within each level of the judicial system and may assign judges within or between levels. The court may delegate responsibility for administration to the chief justice and administrative judges provided for in Subsection (a)(2) of this section.

(2) Each court of appeals district within the state constitutes an administrative district for purposes of trial court management. Within each district, the Chief Justice of Texas, with the advice and consent of the senate, shall designate a judge to serve as administrative judge of the district.

(3) The legislature may establish an agency of the judicial branch having such membership as provided by law to prescribe rules of administration for the unified judicial system not inconsistent with general law or rules of procedure, and perform such other duties as shall be provided by law. Rules of administration promulgated by the agency shall not become effective until approved by the supreme court.

(b) The supreme court may promulgate rules of civil procedure not inconsistent with the laws of the state, for all courts, to expedite the dispatch of business therein. Any rule of procedure expressly disapproved by the legislature shall have no effect thereafter.

Sec.11 . DISTRICT CLERKS; COUNTY CLERKS. (a) A district clerk, who serves as clerk of the district and circuit courts of the county, is elected by the qualified voters of each county for a term of four years. The clerk may be removed from office upon a jury finding of incompetence, official misconduct, or other cause defined by law. Vacancies in the office of district clerk shall be filled by the judges of the district and circuit courts in the county until the next general election. Each clerk may have a deputy or deputies and other personnel authorized by law.

(b) The county clerk, who serves as clerk of the county commission and recorder of the county, is elected by the qualified voters of each county for a term of four years. The legislature shall prescribe the duties, perquisites, and fees of the office. A vacancy in the office shall be filled by the county commission until the next general election.

(c) The legislature may provide by law for the election of a single clerk to perform the duties of both a county clerk and a district clerk.

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(b) With such exceptions as now or hereafter provided by law, county attorneys shall be elected by the qualified voters of each county and shall hold office for a term of four years and until their successors have qualified.

(c) Each district and county attorney shall be licensed to practice law in this state. Other qualifications, duties, and functions of district and county attorneys and the grounds and procedure for disqualification, suspension, removal, and filling of vacancies shall be as provided by law.

Sec. 18. COMPENSATION. The state shall pay the basic salaries of all justices and judges of the unified judicial system and shall pay such other expenses of the system as provided by law.

TRANSITION SCHEDULE

(a) SUPREME COURT; COURT OF CRIMINAL APPEALS. On the effective date of Article V, the chief justice of the supreme court becomes the Chief Justice of Texas. The presiding judge and the other judges of the court of criminal appeals and associate justices of the supreme court become justices of the supreme court. Each commissioner of the court of criminal appeals becomes a commissioner of the supreme court, but that position exists only as long as it continues to be held by the commissioner in office on the effective date of Article V. Except for the office of chief justice, the offices of the first five justices who cease to be members of the supreme court by reason of death, removal, resignation, or retirement after the effective date of Article V cease to exist. The death, removal, resignation, or retirement of an incumbent justice after having been defeated at a primary or general election does not terminate the office.

(b) COURTS OF APPEALS JUSTICES. Chief justices of the courts of civil appeals become chief judges of courts of appeals. Justices of courts of civil appeals become judges of courts of appeals.

(c) DISTRICT AND CIRCUIT JUDGES. Each district judge or judge of a criminal district court, domestic relations court, special juvenile court, or special probate court becomes a district court judge. Each judge of a county court at law, county civil court at law, county criminal court, county criminal court at law, county criminal court of appeals, or other county court created by statute becomes a judge of a circuit court. Until otherwise provided by law, municipal court judges and justices of the peace remain as they exist at the time of adoption of

(d) JUDICIAL DISTRICTS. Until otherwise provided by law, the judicial districts of the state remain the judicial districts authorized at the time of adoption of Article V, including any judicial districts authorized by law taking effect after the date of adoption of Article V.

(e) COUNTY COURT; COUNTY JUDGE. Unless otherwise provided by law, county courts created in Article V, Section 15 of the Constitution of 1876, as amended, continue in effect as the courts authorized in Section 6 (a) of this constitution and the judges of those courts remain as county court judges and as presiding officers of the county commission as provided in Article IX, Section 3 (a) of this constitution. However, a judge of the county court who is licensed to practice law, by written notice to the governor filed with the secretary of state within 30 days after the effective date of Article V, may elect instead to become a judge of the circuit court established pursuant to Article V, Section 5, in the event there is no circuit court judge provided for such district under the provisions of Subsection (c) above. In the latter event, the office of county judge becomes vacant and is filled by the county commission until the next general election. Should more than one judge of the county court within the same circuit court district file such written notice, the governor shall select the one to become judge of the circuit court.

(f) TRANSFER OF PROCEEDINGS AND RECORDS. All courts, except those authorized by Article V, are hereby abolished and all matters pending before them are transferred to the appropriate successor courts authorized by Article V. The courts into which the matters are transferred assume full jurisdiction of the matters and have full authority to dispose of them and to execute or otherwise give effect to all orders, judgments, and decrees issued by their predecessor courts. Courts authorized by Article V succeed to all records and property of courts abolished by this subsection.

(g) JUDICIAL OFFICE TRANSITION. No judicial office is abolished until the expiration of the term of the person who held the office on the effective date of Article V, or until that person ceases to hold the office, whichever occurs first.

(h) INITIAL JUDICIAL TERMS. The initial justices, judges, and justices of the peace in the judicial branch established by Article V serve for the remainder of the terms for which elected and thereafter serve for the terms provided in Article V.

(i) LAWS AND RULES CONTINUED. Except to the extent inconsistent with the provisions of Article V, all laws and rules of court in force on the effective date of Article V continue in effect until superseded as authorized by law.

(j) TRANSFERS FROM COURT OF CRIMINAL APPEALS. All matters filed in or docketed, but not heard, by the court of criminal appeals on the effective date of Article V are transferred to the court of appeals to which the matters would have been docketed were they civil in nature and the court of appeals still a court of civil appeals. Until the legislature or supreme court makes provisions for the appeal of criminal cases from the courts of appeals, the rules presently in force for appeals from courts of civil appeals also apply to the appeal of criminal cases.

(k) QUALIFICATIONS COMMISSION. Members of the judicial qualifications commission shall continue in office and perform the duties of the commission established by Article V, Section 1-a(2) of the 1876 Constitution, as amended, until a commission is established pursuant to Article V, Section 9(a) of this constitution.

(l) PROSECUTORS. All laws pertaining to the office of district attorney, criminal district attorney, or county attorney which are in effect on the effective date of Article V remain in effect until changed by law.

(m) CLERKS. All laws pertaining to the office of district clerk or county clerk which are in effect on the effective date of Article V, and which are consistent with the provisions hereof, remain in effect until changed by law.

(n) OTHER PROVISIONS. In the event a transfer or transition has not been provided for by this section or by law, the supreme court shall provide by rule for the orderly transfer or transition.

(o) EFFECTIVE DATE. Article V of this constitution takes effect January 1, 1976.

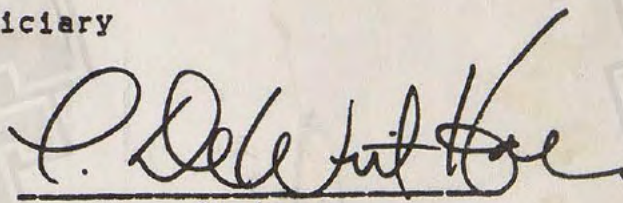
Con office

THE JUDICIARY
OFFICIAL COMMITTEE REPORT - ARTICLE V

TEXAS CONSTITUTIONAL CONVENTION

REPORT
OF THE
COMMITTEE ON THE JUDICIARY

Article V
The Judiciary


Chairman

THE JUDICIARY
OFFICIAL COMMITTEE REPORT - ARTICLE V

May 6, 1974

THE HONORABLE PRICE DANIEL, JR., President
Constitutional Convention of 1974

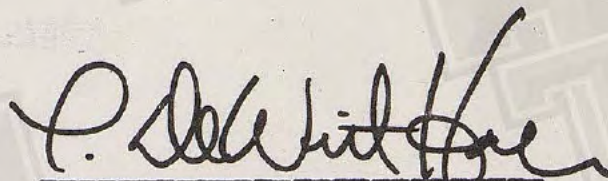
Sir:

We, your Committee on the Judiciary, to whom was referred Article V of Constitutional Convention Proposal 1, have had the same under consideration and beg to report back with the recommendation that it do pass in the form attached.

The proposal was reported from
committee by the following
record vote:

Respectfully submitted,

12	yeas
4	nays
0	present, not voting


L. DeWitt Hale, Chairman

(January 11, 1974, filed; January 14, 1974, referred to Committee on the Judiciary; May 6, 1974, reported favorably by a vote of 12 yeas and 4 nays, with minority reports attached; May 7, 1974, sent to printer.)

May 6, 1974

The Honorable Price Daniel, Jr.
President, Texas Constitutional Convention

The Committee on the Judiciary submits herewith its report. The report contains recommended text, with commentary, for a wholly new Article V. It also contains minority statements on courts of appeals (Section 3) and promulgation of rules of procedure (Section 11).

In the process of its deliberations, the committee met 49 times, heard nearly 100 witnesses, and had over 75 record votes. Utilizing Constitutional Convention Proposal Number 1-d as a working model, the committee first compiled a "tentative draft" of the proposed article. Section-by-section amendments to the semifinal draft and a detailed transition schedule and commentary were adopted.

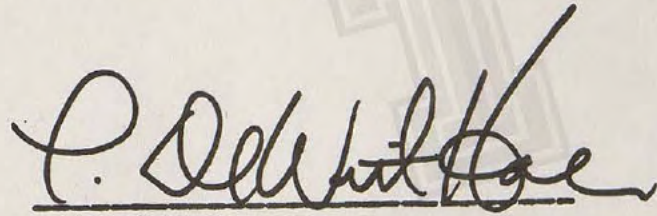
The recommended article provides for a supreme court and intermediate courts of appeals, both having general jurisdiction. A state-financed, two-level system of district courts and circuit courts is provided. County judges may be given judicial functions, and justices of the peace and municipal judges are retained. A system of court administration, under control of the supreme court and judicial council, is established.

The proposed article eliminates much of the detail of the present Judiciary Article and thus enhances legislative flexibility to respond to changing problems in judicial administration. This new article is organized into 20 sections and reduces a text of 8,037 words to 1,762 words.

There were considerable divisions of opinion among committee members on several issues, including retention of dual criminal and civil appellate court systems. These were debated extensively throughout the preparation of the three drafts of the committee report. It is the belief of the committee that its proposal provides for a much improved constitutional framework for the judicial branch of government. The committee urges its adoption by the convention.

During its work the committee utilized the services of the following staff members: Robert Strauser, chief counsel; David Frederick, counsel; Carnegie Mims, research associate; Shirley Hejl, secretary; Kirk Kimball, intern; and Cal Varner, clerk. The committee also wishes to express its appreciation for assistance given it by: Scott Henderson, administrative assistant to Senator Oscar Mauzy; Jim Hutcheson, counsel to the Civil Judicial Council; Nancy Sutton, Legislative Council staff attorney; Lawrence Wells, counsel to the House Criminal Jurisprudence

Committee; and Jean Woodmansee, administrative assistant to the
chairman.

A handwritten signature in dark ink, appearing to read "L. DeWitt Hale", written over a horizontal line.

L. DeWitt Hale, Chairman

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BE IT PROPOSED BY THE COMMITTEE ON THE JUDICIARY,

That there be a new article on the judiciary to read as follows:

ARTICLE V

THE JUDICIARY

1 Sec. 1. JUDICIAL POWER. The judicial power of the state
2 is vested in the judicial branch. The state unified judicial
3 system is composed of a supreme court, courts of appeals, district
4 courts, and circuit courts. All courts have jurisdiction as
5 provided by law, but jurisdiction of courts of the same level
6 must be uniform throughout the state.

7 Sec. 2. SUPREME COURT. (a) The supreme court shall be
8 the highest court of the state and shall consist of the Chief
9 Justice of Texas and at least eight other justices, of whom a
10 majority shall be necessary to decide a case. It shall have such
11 jurisdiction and administrative and rule-making authority as
12 provided in this article or by law.

13 (b) The legislature may grant jurisdiction to the supreme
14 court to receive and answer questions of state law certified from
15 federal courts.

16 Sec. 3. COURTS OF APPEALS. There shall be one or more
17 courts of appeals as provided by law, each consisting of a chief
18 judge and at least two other judges, of whom a majority shall be
19 necessary to decide a case.

20 Sec. 4. DISTRICT COURTS. The state shall be divided into
21 judicial districts as now or hereafter provided by law. In each
22 district there shall be one district court with one or more
23 district judges.

24 Sec. 5. CIRCUIT COURTS. The legislature shall establish
25 in each judicial district, now or hereafter provided by law, a
26 circuit court with one or more judges. A circuit court may serve
27 one or more counties, but no county shall have more than one
28 circuit court.

29 Sec. 6. COUNTY JUDGE. The county judge provided for in
30 Article IX, Section 3(a) of this constitution has judicial
31 functions as now or hereafter provided by law.

32 Sec. 7. OTHER COURTS. (a) The county commission in each
33 county shall divide the county from time to time into justice
34 precincts, not less than four nor more than eight.

35 (b) The county commission in each county shall establish
36 and maintain one or more justice courts in the county with each

1 court to exercise jurisdiction in one or more precincts in the
2 manner provided by law.

3 (c) Municipal courts may be established by law or by charter
4 as authorized by law and shall have such jurisdiction as provided
5 by law.

6 Sec. 8. QUALIFICATIONS OF JUDGES. No person may serve as
7 a justice, judge, or justice of the peace unless the person is
8 a United States citizen and a resident of this state and has other
9 qualifications prescribed by law. No person may serve as justice
10 or judge in the unified judicial system unless licensed to practice
11 law in this state.

12 Sec. 9. ELECTION OF JUDGES. (a) The Chief Justice of
13 Texas and other justices of the supreme court are elected by the
14 qualified voters of the state every six years in the manner
15 provided by law. Judges of the courts of appeals are elected by
16 the qualified voters of their respective districts every six years
17 in the manner provided by law.

18 (b) District and circuit judges are elected by the qualified
19 voters of their respective districts every four years in the
20 manner provided by law.

21 (c) Vacancies in the offices of justices of the supreme
22 court and judges of the courts of appeals, district courts, and
23 circuit courts are filled by the governor, with the advice and
24 consent of the senate, until the next succeeding general election.

25 (d) Justices of the peace are elected by the qualified
26 voters of the county or precinct every four years in the manner
27 provided by law. Vacancies in the office of justice of the peace
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29 general election.

30 (e) Municipal judges are selected in the manner provided
31 by law.

32 Sec. 10. QUALIFICATIONS COMMISSION; REMOVAL OF JUDGES.
33 (a) There shall be a judicial qualifications commission with such
34 authority and functions as provided by law.

35 (b) A justice of the supreme court may be removed by the
36 governor on the address of two-thirds of each house of the
37 legislature for willful neglect of duty, incompetency, oppression
38 in office, or other reasonable cause not a sufficient ground for
39 impeachment.

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41 judicial officer may be removed, suspended, or censured as provided
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Sec 1

Maryland Amend I - to preserve bifurcated Court system
Criminal appeals & Civil appeals handled by
different courts.
appeal to C.A. in right Would create intermediate
court 1 H. then to Sup. Court of H.P. Thinks that
& intermediate C.A. would be necessary.

Only 2 states have bifurcated court of last resort
Early - we currently have 56 appellate judges
most table 110 Y 50 N passed

Maryland Amend 2 Retain as present

1 court to exercise jurisdiction in one or more precincts in the
2 manner provided by law.

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48 responsibility for administration to the chief justice and

1 administrative judges provided for in Subsection (a)(2) of this
2 section.

3 (2) Each court of appeals district within the state
4 constitutes an administrative district for purposes of trial court
5 management. Within each district, the Chief Justice of Texas,
6 with the advice and consent of the senate, shall designate a judge
7 to serve as administrative judge of the district.

8 (3) There shall be a judicial council having such
9 membership as provided by law which shall prescribe rules of
10 administration for the unified judicial system and perform such
11 other duties as shall be provided by law. Rules of administration
12 shall not become effective until approved by the supreme court.

13 (b) The supreme court may prescribe rules of civil procedure
14 not inconsistent with this article or the laws of this state for
15 the government of the courts. Any rule of procedure expressly
16 disapproved by resolution of either house of the legislature is
17 thereby repealed. No rule of procedure may take effect until the
18 legislature has the opportunity to disapprove it at a regular
19 session.

20 Sec. 12. DISTRICT CLERKS; COUNTY CLERKS. (a) A district
21 clerk, who serves as clerk of the district and circuit courts of
22 the county, is elected by the qualified voters of each county for
23 a term of four years. The clerk may be removed from office upon
24 a jury finding of incompetence, official misconduct, or other
25 cause defined by law. Vacancies in the office of district clerk
26 shall be filled by the judges of the district and circuit courts
27 in the county until the next general election. Each clerk may
28 have a deputy or deputies and other personnel authorized by law.

29 (b) The county clerk, who serves as clerk of the county
30 commission and recorder of the county, is elected by the qualified
31 voters of each county for a term of four years. The legislature
32 shall prescribe the duties, perquisites, and fees of the office.
33 A vacancy in the office shall be filled by the county commission
34 until the next general election.

35 (c) The legislature may authorize counties with populations
36 below a level prescribed by law to elect a single clerk to serve
37 as district and county clerk.

38 Sec. 13. JURIES. (a) A grand jury in the district court
39 consists of 12 persons, of whom nine constitute a quorum and must
40 concur in a bill of indictment.

41 (b) The legislature shall provide by law for trial juries.

42 (c) A party has the right to a jury trial upon demand made
43 in the manner prescribed by law.

44 (d) Jury verdicts must be unanimous, except that the
45 legislature, or the supreme court pursuant to its rule-making
46 authority, may authorize jury verdicts in civil cases rendered
47 by not less than three-fourths of the jurors sitting in a case.

48 (e) The legislature may provide by law for alternate jurors.

1 Sec. 14. SENTENCING AND PROBATION. Courts having original
2 jurisdiction of criminal cases shall have power to suspend the
3 imposition or execution of sentence and place a defendant on
4 probation; and shall have further power to modify, set aside, or
5 reimpose sentence, subject to regulation by law.

6 Sec. 15. APPEAL BY STATE. The state may not appeal in
7 criminal cases.

8 Sec. 16. APPEAL BY ACCUSED. (a) The accused shall have
9 the right of appeal to the appellate court having jurisdiction,
10 specifically including the right of appeal granted by Article I,
11 Section 11a of this constitution.

12 (b) Appeal to the supreme court shall be at the discretion
13 of the court, unless otherwise provided by law.

14 Sec. 17. APPEALS FROM ADMINISTRATIVE ACTION.

15 Notwithstanding any other provision of the constitution, the
16 legislature may provide by law for the method of appeal to the
17 courts from actions, rulings, or decisions of administrative
18 agencies and executive departments of the state or any of its
19 subdivisions.

20 Sec. 18. DISTRICT ATTORNEYS; COUNTY ATTORNEYS. (a) The
21 state shall be represented in each county by a district attorney
22 as now or hereafter provided by law. The district attorneys shall
23 be elected by the qualified voters of their respective districts,
24 and shall serve for a term of four years and until their successors
25 have qualified. The state shall provide for the compensation of
26 district attorneys.

27 (b) With such exceptions as now or hereafter provided by
28 law, county attorneys shall be elected by the qualified voters
29 of each county and shall hold office for a term of four years and
30 until their successors have qualified.

31 (c) Each district and county attorney shall be licensed
32 to practice law in this state. Other qualifications, duties, and
33 functions of district and county attorneys and the grounds and
34 procedure for disqualification, suspension, removal, and filling
35 of vacancies shall be as provided by law.

36 Sec. 19. COMPENSATION. The state shall pay the basic
37 salaries of all justices and judges of the unified judicial system
38 and shall pay such other expenses of the system as provided by
39 law. Funds collected by the courts may not be used to support
40 the unified judicial system except to the extent of reimbursement
41 of salaries and other expenses.

42 Sec. 20. JUDICIAL RETIREMENT. (a) The legislature may
43 prescribe by law the mandatory retirement age of a justice or
44 judge in the unified judicial system.

45 (b) Notwithstanding any other provision of this
46 constitution, the system of retirement, disability, and survivors'
47 benefits established in the constitution or by law for justices,
48 judges, and commissioners of the appellate courts and judges of

1 the district and criminal district courts and in effect at the
2 time of adoption hereof shall be continued. The legislature shall
3 provide for inclusion in the system of judges of all courts in
4 the unified judicial system and such other elected state officials
5 as now or hereafter provided by law.

6 (c) General administration of the Judicial Retirement
7 System of Texas shall be by the Board of Trustees of the Employees
8 Retirement System of Texas under such regulations as may be
9 provided by law.

10 TRANSITION SCHEDULE

11 (a) SUPREME COURT; COURT OF CRIMINAL APPEALS. On the
12 effective date of Article V, the chief justice of the supreme
13 court becomes the Chief Justice of Texas. The presiding judge
14 and the other judges of the court of criminal appeals and associate
15 justices of the supreme court become justices of the supreme
16 court. Each commissioner of the court of criminal appeals becomes
17 a commissioner of the supreme court, but that position exists
18 only as long as it continues to be held by the commissioner in
19 office on the effective date of Article V. Except for the office
20 of chief justice, the offices of the first five justices who cease
21 to be members of the supreme court by reason of death, removal,
22 resignation, or retirement after the effective date of Article
23 V cease to exist. The death, removal, resignation, or retirement
24 of an incumbent justice after having been defeated at a primary
25 or general election does not terminate the office.

26 (b) SUPREME COURT DIVISIONS. After the effective date of
27 Article V and before the total membership of the supreme court
28 is reduced to nine or such other number as provided by law, the
29 court may sit in civil and criminal divisions. Notwithstanding
30 the provisions of Article V, Section 2(a), the concurrence of a
31 majority of a division is necessary to decide a case.

32 (c) COURTS OF APPEALS JUSTICES. Chief justices of the
33 courts of civil appeals become chief judges of courts of appeals.
34 Justices of courts of civil appeals become judges of courts of
35 appeals.

36 (d) DISTRICT AND CIRCUIT JUDGES. Each district judge or
37 judge of a criminal district court, domestic relations court,
38 special juvenile court, or special probate court becomes a district
39 court judge. Each judge of a county court at law, county civil
40 court at law, county criminal court, county criminal court at
41 law, county criminal court of appeals, or other county court
42 created by statute becomes a judge of a circuit court. Until
43 otherwise provided by law, municipal court judges and justices

1 of the peace remain as they exist at the time of adoption of
2 Article V.

3 (e) JUDICIAL DISTRICTS. Until otherwise provided by law,
4 the judicial districts of the state remain the judicial districts
5 authorized at the time of adoption of Article V, including any
6 judicial districts authorized by law taking effect after the date
7 of adoption of Article V.

8 (f) COUNTY COURT JUDGES. Judges of the county court elected
9 pursuant to Article V, Section 15 of the Constitution of 1876,
10 as amended, remain as presiding officers of the county commission
11 as provided in Article IX, Section 3(a) of this constitution.
12 However, a judge of the county court who is licensed to practice
13 law, by written notice to the governor filed with the secretary
14 of state within 30 days after the effective date of Article V,
15 may elect instead to become a judge of the circuit court
16 established pursuant to Article V, Section 5, in the event there
17 is no circuit court judge provided for such district under the
18 provisions of Subsection (d) above. In the latter event, the
19 office of county judge becomes vacant and is filled by the county
20 commission until the next general election. Should more than one
21 judge of the county court within the same circuit court district
22 file such written notice, the governor shall select the one to
23 become judge of the circuit court.

24 (g) TRANSFER OF PROCEEDINGS AND RECORDS. All courts,
25 except those authorized by Article V, are abolished and all matters
26 pending before them are transferred to the appropriate successor
27 courts authorized by Article V. The courts into which the matters
28 are transferred assume full jurisdiction of the matters and have
29 full authority to dispose of them and to execute or otherwise
30 give effect to all orders, judgments, and decrees issued by their
31 predecessor courts. Courts authorized by Article V succeed to
32 all records and property of courts abolished by this subsection.

33 (h) JUDICIAL OFFICE TRANSITION. No judicial office is
34 abolished until the expiration of the term of the person who held
35 the office on the effective date of Article V, or until that
36 person ceases to hold the office, whichever occurs first.

37 (i) INITIAL JUDICIAL TERMS. The initial justices, judges,
38 and justices of the peace in the judicial branch established by
39 Article V serve for the remainder of the terms for which elected
40 and thereafter serve for the terms provided in Article V.

41 (j) LAWS AND RULES CONTINUED. Except to the extent
42 inconsistent with the provisions of Article V, all laws and rules
43 of court in force on the effective date of Article V continue in
44 effect until superseded as authorized by law.

45 (k) TRANSFERS FROM COURT OF CRIMINAL APPEALS. All matters
46 filed in or docketed, but not heard, by the court of criminal
47 appeals on the effective date of Article V are transferred to the
48 court of appeals to which the matters would have been docketed

1 were they civil in nature and the court of appeals still a court
2 of civil appeals. Until the legislature or supreme court makes
3 provisions for the appeal of criminal cases from the courts of
4 appeals, the rules presently in force for appeals from courts of
5 civil appeals also apply to the appeal of criminal cases.

6 (l) QUALIFICATIONS COMMISSION. Members of the judicial
7 qualifications commission shall continue in office and perform
8 the duties of the commission established by Article V, Section
9 1-a(2) of the 1876 Constitution, as amended, until a commission
10 is established pursuant to Article V, Section 10(a) of this
11 constitution.

12 (m) JUDICIAL COUNCIL. Until otherwise provided by law,
13 the judicial council provided for in Article V, Section 11(a)(3)
14 is composed of the following members, each of whom serves a
15 two-year term: the Chief Justice of Texas, who serves as chairman;
16 two judges of the courts of appeals, three trial judges, and one
17 district clerk, each appointed by the supreme court; four members
18 of the State Bar of Texas, each appointed by its board of
19 directors; and two members of each house of the legislature, each
20 appointed by their respective houses.

21 (n) PROSECUTORS. All laws pertaining to the office of
22 district attorney, criminal district attorney, or county attorney
23 which are in effect on the effective date of Article V remain in
24 effect until changed by law.

25 (o) RETIREMENT FUND TRANSFERS. Any participant in a county
26 retirement, disability, and death compensation fund who becomes,
27 pursuant to Article V or this transition schedule, a judge of a
28 district or circuit court has the option of continuing to
29 participate in the county fund or of transferring membership and
30 accrued service credit and contributions to the state judicial
31 retirement system under such regulations as provided by law.

32 (p) OTHER PROVISIONS. In the event a transfer or transition
33 has not been provided for by this section or by law, the supreme
34 court shall provide by rule for the orderly transfer or transition.

35 (q) EFFECTIVE DATE. Article V of this constitution takes
36 effect January 1, 1976.

SECTION-BY-SECTION ANALYSIS
OF COMMITTEE REPORT

A. Introduction

(1) Summary of committee action

The committee began its work by hearing extensive witness testimony concerning introduced proposals and the issues to be considered in court reorganization. After hearing this testimony and studying the proposals, the committee proceeded to compile a preliminary draft of the proposed judiciary article. Utilizing Constitutional Convention Proposal Number 1 as an organizational model, a section-by-section comparison of proposals was prepared, and the committee voted its preference among proposals for each section to arrive at a working draft.

On review of this draft, there was extensive intracommittee discussion and the presentation of section-by-section amendments. The work product of this process was the "semifinal draft" of the proposed Article V, which was forwarded to the staff of the Style and Drafting Committee for further study.

In the preparation of the final draft of the article, section-by-section amendments were again offered, and record votes were taken. Numerous stylistic changes and some structural modifications resulted from this process.

Section 1 vests the judicial power of the state, defines the unified judicial system, and provides for uniform jurisdiction of courts of the same level.

Section 2 creates the supreme court and permits the legislature to grant power to the court to answer certified questions from federal courts.

Section 3 provides for intermediate courts of appeals.

Section 4 creates district courts and provides for their organization.

Section 5 directs the establishment of a lower-level trial court system.

Section 6 permits county judges to be given judicial functions.

Section 7 provides for justice courts and precincts and authorizes municipal courts.

Section 8 makes provision for judicial qualifications.

Section 9 provides for the election and terms of office of judges and the filling of vacancies.

Section 10 directs the creation of a qualifications commission and provides for the removal of judges.

Section 11 establishes a system of court administration, directs the creation of a judicial council, and provides for judicial rule-making.

Section 12 provides for district and county clerks.

Section 13 provides for juries.

Section 14 governs judicial power in regard to sentence suspension and probation.

Section 15 denies the state a right of appeal in criminal cases.

Section 16 makes provision for the accused's right of appeal and gives the supreme court discretionary authority to hear appeals.

Section 17 authorizes the legislature to prescribe the method of appeal from administrative action.

Section 18 provides for district and county attorneys.

Section 19 provides for state financing of the unified judicial system.

Section 20 provides for judicial retirement.

(2) Historical background

The pattern of judicial institutions in Texas has evolved through six separate constitutions, culminating in the 1876 version of Article V. The first attempt to make major revisions in this structure occurred less than two years after its adoption and was unsuccessful. In 1891, the article was substantially revised. An attempt was made in that revision to relieve overcrowding of the supreme court docket by creating intermediate courts of civil appeals to hear most civil appeals and by creating the first specialized criminal appellate court in the state's history. Another important aspect of the 1891 amendment was the authorization for the legislature to create courts other than those specifically named in the constitution.

Since 1876, a total of 21 amendments have been proposed to the judiciary article, and 13 have been adopted. As a result of these changes, the present judicial branch consists of two courts of last resort, the supreme court and the court of criminal appeals. There are 14 intermediate courts of civil appeals, having three justices each; 227 district courts; 10 criminal district courts; 254 county courts (with the county judge also serving as presiding officer of the commissioners court); 26 special domestic relations courts; 6 special juvenile courts exercising parts of district court jurisdiction; 6 special probate courts; 62 other variants of "county courts at law" exercising parts of county court and district court jurisdiction; approximately 925 justice of the peace courts; and approximately 1,000 municipal courts. Funding for these courts and supporting staff comes from a variety of federal, state, county, and municipal sources.

Since 1905, repeated proposals have been made to implement a unified judicial system in Texas. Although these measures have varied widely, the essence of each is the creation of a state-financed, simplified court structure amenable to a coordinated management effort. Those proposals are extensively reviewed in the report of the Texas House Judiciary Committee

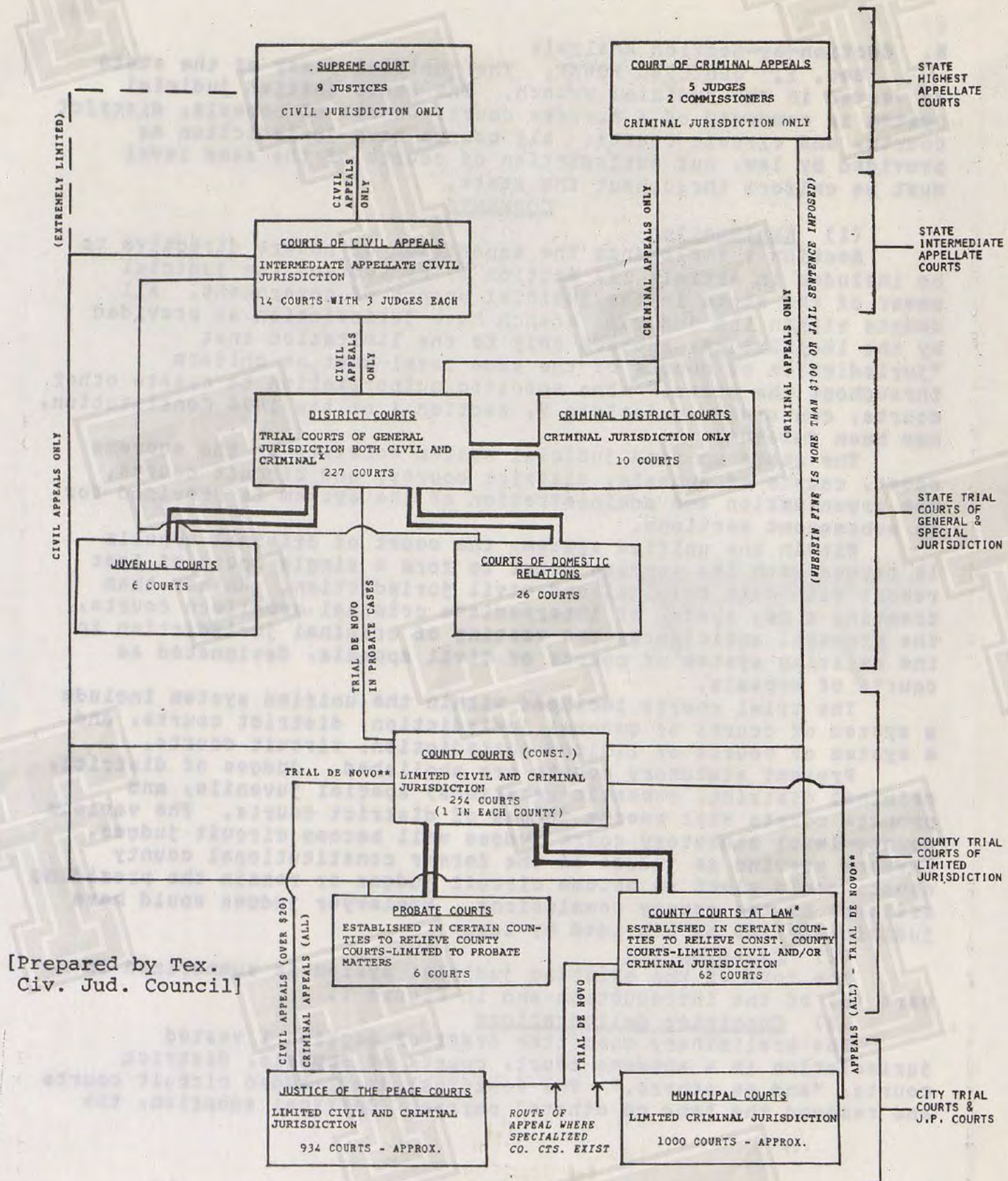
entitled Streamlining the Texas Judiciary: Continuity With Change, a copy of which has been given to each delegate.

The proposed judiciary article, in common with the Constitutional Revision Commission proposal, creates one supreme court and directs the creation of one or more intermediate courts of appeals, both having jurisdiction as provided by law. A two-level trial court system including district and circuit courts completes the state-financed "unified system." Outside of this system, county judges presiding over the county commissions may be given judicial functions. Justices of the peace (one or more per county) are required, and municipal courts may be created. Both types of courts are outside the unified system. Election of all justices and judges is retained, as in the present constitution.

THE JUDICIAL SYSTEM OF TEXAS

(1974)

Figure 1



* SOME DISTRICT COURTS ARE REQUIRED BY STATUTE TO GIVE PREFERENCE TO CRIMINAL CASES.

* SOME COUNTIES HAVE SEPARATE CIVIL & CRIMINAL COUNTY COURTS AT LAW: (42 COUNTY COURTS AT LAW, 8 COUNTY CRIMINAL COURTS, 7 COUNTY CRIMINAL COURTS AT LAW, 3 COUNTY CIVIL COURTS AT LAW, 1 COUNTY CRIMINAL COURT OF APPEALS, 1 "COUNTY COURT").

** APPEALS FROM SOME JUSTICE OF THE PEACE AND MUNICIPAL COURTS ARE TO THE DISTRICT COURT RATHER THAN THE COUNTY COURT.

B. Section-by-Section Analysis

Sec. 1. JUDICIAL POWER. The judicial power of the state is vested in the judicial branch. The state unified judicial system is composed of a supreme court, courts of appeals, district courts, and circuit courts. All courts have jurisdiction as provided by law, but jurisdiction of courts of the same level must be uniform throughout the state.

COMMENTS

(1) Explanation

Section 1 implements the separation of powers directive to be included in Article II, Section 1, by vesting the judicial power of the state in the judicial branch of government. All courts within the judicial branch have jurisdiction as provided by the legislature, subject only to the limitation that "jurisdiction of courts of the same level must be uniform throughout the state." The specific authorization to create other courts, contained in Article V, Section 1 of the 1876 Constitution, has been deleted.

The state unified judicial system consists of the supreme court, courts of appeals, district courts, and circuit courts. The organization and administration of the system is provided for in subsequent sections.

Within the unified system, the court of criminal appeals is merged with the supreme court to form a single court of last resort with both criminal and civil jurisdiction. Rather than creating a new system of intermediate criminal appellate courts, the proposal anticipates the vesting of criminal jurisdiction in the existing system of courts of civil appeals, designated as courts of appeals.

The trial courts included within the unified system include a system of courts of general jurisdiction, district courts, and a system of courts of limited jurisdiction, circuit courts.

Present statutory courts are abolished. Judges of district, criminal district, domestic relations, special juvenile, and probate courts will become judges of district courts. The various county-level statutory court judges will become circuit judges. Lawyers serving as judges of the former constitutional county courts could elect to become circuit judges or remain the presiding officers of the county commissions. Nonlawyer judges would have judicial duties as provided by law.

(2) Existing law

The form of the existing judicial system is summarized in part (2) of the introduction and in Figure 1.

(3) Committee deliberations

The preliminary committee draft of Section 1 vested jurisdiction in a supreme court, courts of appeals, district courts, "and no others." The semifinal draft added circuit courts and removed the "and no others" phrase. On final adoption, the

committee voted 10-9-1 for the language in the report. It failed to reinsert the phrase "and no others" by vote of 9-10-1.

(4) Commentary

The premise underlying court unification is that only through management of judicial resources can speedy and fair administration of justice be attained. The achievement of this end requires implementation of a court system amenable to management.

At the trial court level, unification demands elimination of overlapping jurisdiction, establishment of uniform jurisdiction for all courts at each level, and state financing of all costs of operating a unified judicial system. Local financing of trial courts has resulted from a failure of the state to meet its financial obligations, and the consequence has been a hodgepodge of special courts at the trial level with varying limitations on jurisdiction.

Outside the unified judicial system, the committee report provides specifically for justices of the peace and municipal courts. Provision is made for these courts in Section 7. In addition, the constitutional county judge, who continues to preside over the county commission, has judicial functions as provided by law.

Sec. 2. SUPREME COURT. (a) The supreme court shall be the highest court of the state and shall consist of the Chief Justice of Texas and at least eight other justices, of whom a majority shall be necessary to decide a case. It shall have such jurisdiction and administrative and rule-making authority as provided in this article or by law.

(b) The legislature may grant jurisdiction to the supreme court to receive and answer questions of state law certified from federal courts.

COMMENTS

(1) Explanation

Section 2 carries forward many of the provisions of Article V, Section 2 of the 1876 Constitution. The supreme court is instituted as the highest court of the state with both civil and criminal jurisdiction. Because of the possibility that the addition of criminal jurisdiction may necessitate more than the present nine justices, the court can be expanded above that number to the size necessary to conduct its business.

The election and terms of supreme court justices are governed by Section 9 of the new article. Qualifications of justices are covered by Section 8, and removal is the subject of Section 10. Administrative and rule-making authority is delineated in Section 11.

The detailed jurisdictional provisions of the present Article V are not retained, nor are provisions relating to court sessions

and the court clerk. Although reference to court sections (presently authorized but not utilized) is deleted, the requirement that a majority of the court decide a case is retained.

Section 2 further authorizes the court to answer questions of state law certified by federal courts hearing matters of state law in the exercise of diversity jurisdiction, if the legislature authorizes this jurisdiction. The provision effectively overrules the decision of the Texas Supreme Court in United Service Life Insurance Co. v. Delaney, 396 S.W.2d 855 (Tex. 1965). That decision held that utilizing a declaratory judgment proceeding for the purpose of advising a federal court on Texas law was an advisory proceeding and beyond the constitutional power of Texas courts. To date, nine states have adopted a procedure similar to that recommended in Section 2. See 60 A.B.A.J. 336 (March, 1974) and testimony of Circuit Judge John R. Brown before the committee.

(2) Existing law

The present supreme court has been expanded from three to nine members since 1876. The court may sit in sections, but the concurrence of five members is necessary to decide a case. Since 1891, the court has had appellate jurisdiction of appeals from the courts of civil appeals, as presently delineated in Article 1728, Vernon's Texas Civil Statutes. It may hear certain injunction cases appealed directly from trial courts, as provided in Section 3-b of Article V of the present constitution. Provision is made in the present judiciary article for the court's jurisdiction to issue writs of quo warranto, mandamus, and habeas corpus. Section 3 of the present article also vests writ authority necessary for the enforcement of the court's jurisdiction.

Sections 4 and 5 of the present Article V establish the present court of criminal appeals. The court now consists of five judges. It has jurisdiction as provided by law in criminal matters. Milligan v. State, 145 Tex. Crim. 195, 167 S.W.2d 188 (1942).

(3) Committee deliberations

The preliminary committee draft established the supreme court as the high court of the state and set its size at a minimum of nine justices. All other aspects of the court were left to law. The semifinal draft added a majority requirement for the decision of a case and certified question authority. The committee adopted Section 2 of the final report by vote of 14-6.

(4) Commentary

There are several reasons for merger of the two courts of last resort. Most importantly, the essence of a unified judicial system is internal management, and the retention of two courts of last resort frustrates that goal. Stated most simply, a system of trial courts cannot serve two masters, each having parallel but independent administrative hierarchies. In recognition of

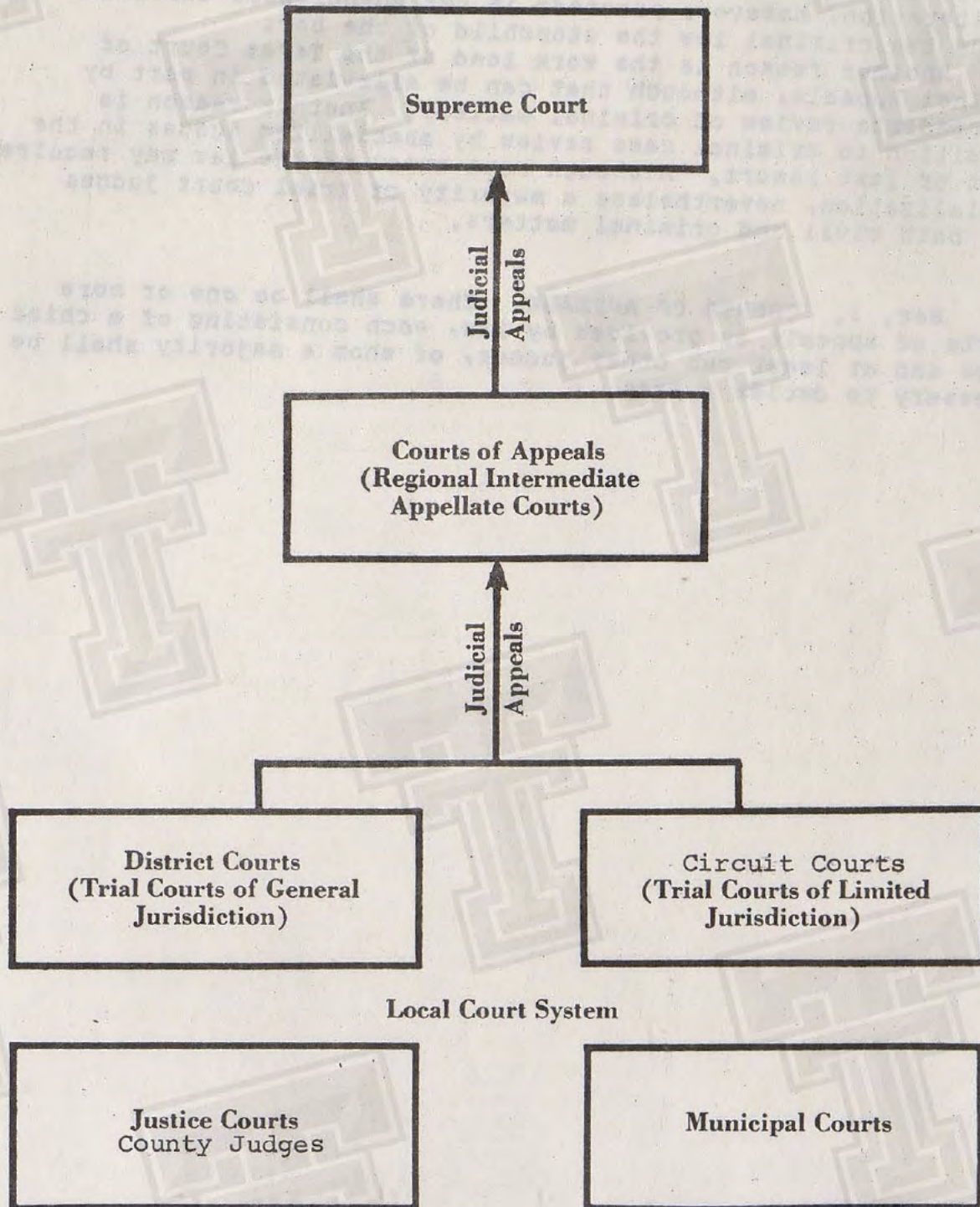
this reality, Oklahoma, the only other jurisdiction having bifurcated courts of last resort, has made its court of criminal appeals the administrative inferior of the supreme court. Such an alteration, however, proceeds in the unwholesome direction of making the criminal law the stepchild of the bar.

Another reason is the work load of the Texas Court of Criminal Appeals, although that can be alleviated in part by intermediate review of criminal matters. Another reason is opposition to criminal case review by specialized judges in the court of last resort. Although some areas of the law may require specialization, nevertheless a majority of trial court judges hear both civil and criminal matters.

Sec. 3. COURTS OF APPEALS. There shall be one or more courts of appeals as provided by law, each consisting of a chief judge and at least two other judges, of whom a majority shall be necessary to decide a case.

Figure 2
Proposed Judicial System
of Texas

State Unified Judicial System



COMMENTS

(1) Explanation

Section 3 establishes the state's intermediate appellate court system, mandates three or more judges per court, and requires a majority of the court for the decision of a case.

(2) Existing law

In common with most populous jurisdictions, Texas has long utilized intermediate appellate courts. Since 1891, a network of regional courts of civil appeals has handled civil case review in the state. They are constitutionally restricted in size to three judges. Presently, 14 of these courts are organized in 13 geographic districts. (The district including Harris County constitutes both the First and Fourteenth Courts of Civil Appeals.) The judgments of these courts are final in some instances, while in others a writ application may be made to the supreme court.

While the courts of civil appeals operate largely as autonomous courts within their respective districts, the supreme court does exercise statutory authority to equalize the work load of the 14 courts. Justices of the court to which a proceeding is transferred travel to the district in which the appeal is filed in order to hear the matter. In 1972, the average number of written opinions per justice was 32. This compared with an average of 210 opinions per judge on the court of criminal appeals.

(3) Committee deliberations

As adopted in the preliminary committee draft, Section 3 mandated courts of appeals, each having three or more judges; a majority of a court was required for a decision. Minor style changes were adopted in the semifinal draft, and the same language was adopted for the committee report by a vote of 17-2.

(4) Commentary

With the adoption of Section 3, the committee is continuing the system of intermediate appellate review in civil matters and extending it to criminal cases. While separate courts could have been created for this purpose, it was felt that the better course was to utilize the existing framework of courts of civil appeals and place criminal jurisdiction in that system.

With 56 state appellate judges, Texas already has by far the largest number of any jurisdiction. Testimony from civil appeals justices appearing before the committee indicated that the additional criminal work which would be vested in the 42-judge intermediate appellate system could be absorbed. By removal of the size limitation on the courts, they may be expanded, if needed, for the additional work. In addition, the provisions of Section 11 permit the temporary assignment of additional judges to the courts.

The concern was expressed in committee hearings that during the transition phase of the new system, civil law specialists would have difficulty adjusting to the highly specialized criminal

law field. Three mitigating factors should help allay this concern.

First of all, the proposed court administration system permits trial and appellate judges, many of whom have extensive criminal law experience, to be assigned temporarily to the courts of appeals. Second, some civil appeals judges are currently being utilized by the present court of criminal appeals as commissioners and are thereby gaining experience in criminal case review. Finally, decisions of the courts of appeals will be subject to supreme court review and, during the transition phase, the high court will include all the criminal law specialists currently serving on the court of criminal appeals. If deemed expedient during the transition, the court is authorized to sit in criminal and civil divisions.

Figure 3. WORK LOAD OF APPELLATE COURTS

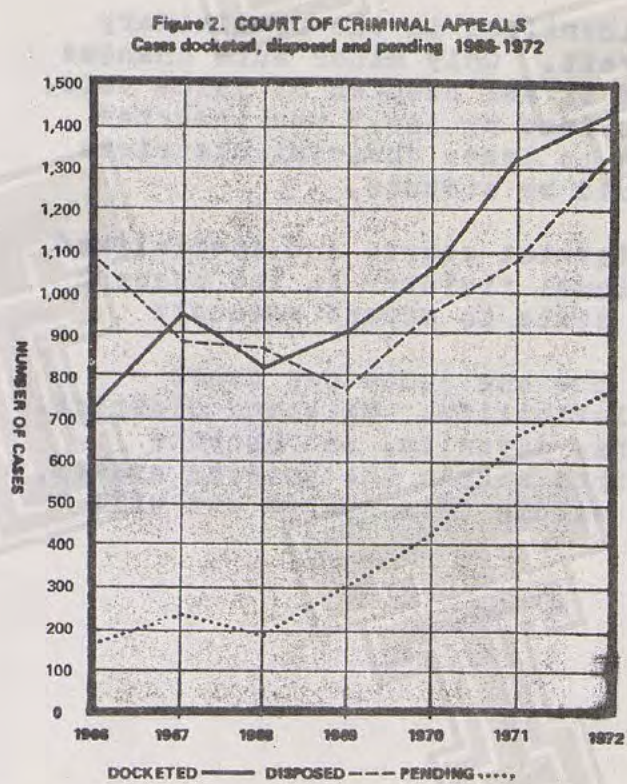
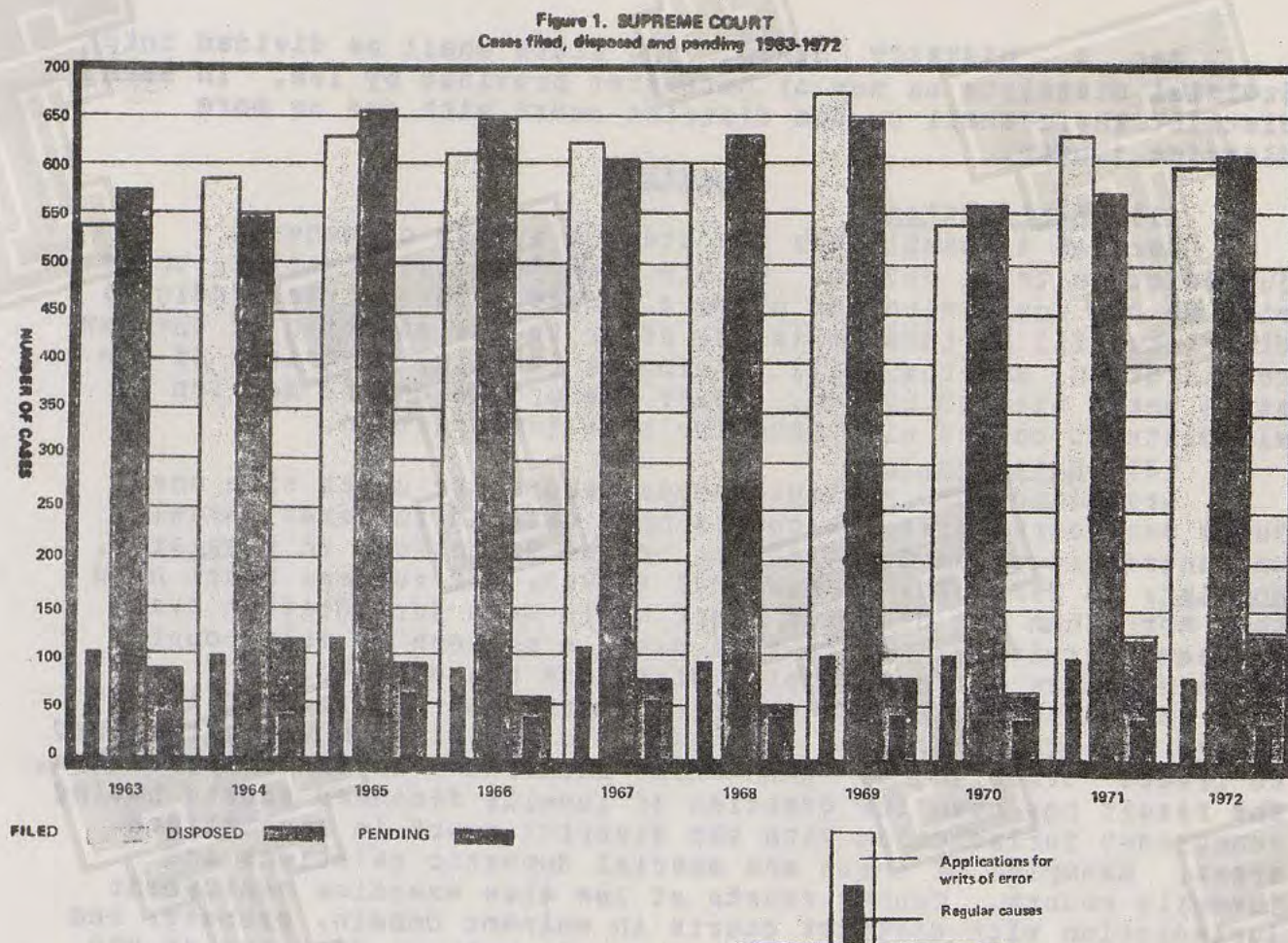
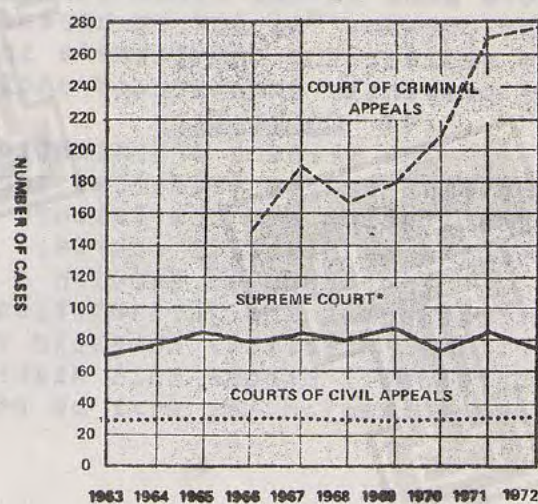


Figure 3. APPELLATE COURTS
Average number of cases filed per justice 1963-1972



*"Regular Causes" and Applications for Writs of Error.

TEX. CIVIL JUD. COUNCIL,
44th Ann. Rep., pp ii,iii, iv

Sec. 4. DISTRICT COURTS. The state shall be divided into judicial districts as now or hereafter provided by law. In each district there shall be one district court with one or more district judges.

COMMENTS

(1) Explanation

Section 4 establishes the state's system of general jurisdiction trial courts. Within each judicial district, there will be one court with one or more judges. The initial judicial districts will be those existing prior to the adoption of the new constitution, and they will remain the judicial districts of the state until altered by law. Under the provisions of Section 1, all district courts will have the same jurisdiction.

(2) Existing law

Organized into semiautonomous geographic units with one judge per court, district courts have existed in Texas largely unchanged since the Constitution of the Republic. In Wheeler v. Wheeler, 76 Tex. 489, 13 S.W. 305 (1890), the supreme court held that more than one district court could have jurisdiction over the same territory. Since that date, a pattern of multicourt urban counties and overlapping districts has evolved.

The jurisdiction of district courts was detailed at length in the 1876 Constitution. In 1891, the legislature was authorized to create "other courts" than those enumerated in the constitution. The result has been the creation of locally financed courts having concurrent jurisdiction with the district court in specialized areas. Examples of these are special domestic relations and juvenile courts. County courts at law also exercise concurrent jurisdiction with district courts in eminent domain, probate, and cases where the amount in controversy is between \$500 and \$5,000 (and in some instances to \$10,000).

(3) Committee deliberations

The wording of Section 4 was identical in the preliminary committee draft and the semifinal draft. Only minor word changes were made in the final language, and it was adopted by voice vote. The phrase, "as now or hereafter provided by law," was inserted to reflect the committee's intention to leave judicial districts as presently constituted until altered by statute.

(4) Commentary

The present organization of district courts and specialized district courts evidences jurisdictional rigidity in the present constitution and the failure of the state to create adequate numbers of district courts.

The proposed Section 4 avoids the one judge per court straitjacket and jurisdictional inflexibility. Existing district, criminal district, domestic relations, juvenile, and probate courts will become full district courts within the unified system. Specialization may well be retained within this system but will

be an administrative device rather than a jurisdictional barrier.

Sec. 5. CIRCUIT COURTS. The legislature shall establish in each judicial district, now or hereafter provided by law, a circuit court with one or more judges. A circuit court may serve one or more counties, but no county shall have more than one circuit court.

COMMENTS

(1) Explanation

Section 5 directs the creation of a lower-level trial court system as a part of the state unified judiciary. The legislature is directed to create one circuit court in each judicial district and staff it with one or more judges. Under the provisions of Section 8, judges of this court are required to be lawyers. This system of courts would absorb existing county court and county court at law jurisdiction, presently exercised by 254 county judges and 62 judges of county courts at law. Judges of the county courts at law would become circuit judges, and a lawyer-judge of a constitutional county court could elect to become a circuit judge or remain as presiding officer of the county commission.

(2) Existing law

Presently, there are 254 county courts and 62 variants of county courts at law. All of these courts are financed at the county level. County courts are created constitutionally, and county courts at law are created legislatively on authority of Article V, Section 1 of the 1876 Constitution, as amended. County courts have probate jurisdiction, appellate jurisdiction from justice of the peace and municipal courts, and original civil jurisdiction from \$200 to \$1,000. Since 1971, county courts at law, in addition to county court jurisdiction, have had additional jurisdiction in civil matters from \$1,000 to \$5,000 (and in some instances to \$10,000).

(3) Committee deliberations

As adopted in the preliminary committee draft, Section 5 was identical to the county court provision of the Constitutional Revision Commission. In the semifinal draft, the court was not altered, but the name was changed to "circuit court." In the final committee proposal, circuit courts are organized within judicial districts. The final version was adopted by vote of 12-5.

(4) Commentary

Under the 1876 Constitution, each county is entitled to a county court, but only one judge may sit on a court. Section 5 permits greater flexibility by permitting a lower-level trial court to serve more than one county and to have more than one judge. The multicounty concept should be useful for rural areas

having too few lawyers or too little litigation to warrant one court per county; the multijudge provision is designed for urban court administration where litigation demands more than one judge.

The committee proposal for a lower-level trial court system does not differ substantially from the Constitutional Revision Commission's "county court" system. Because of the decision to retain the title "county judge" in Article IX for the presiding officer of the county commission, the term "circuit court" was chosen for the second trial court in the unified system to avoid confusion.

Sec. 6. COUNTY JUDGE. The county judge provided for in Article IX, Section 3(a) of this constitution has judicial functions as now or hereafter provided by law.

COMMENTS

(1) Explanation

Section 6 authorizes the legislature to give judicial functions "as now or hereafter provided by law" to county judges created in Article IX, Section 3(a).

(2) Existing law

County judges presently preside over the commissioners court and the county court. The jurisdiction of the county court, discussed in the commentary to Section 5, has been detailed constitutionally in Section 16 of Article V. Section 15 requires that each judge be "well informed in the law of the State."

(3) Committee deliberations

The provisions of Section 6 appeared for the first time in the semifinal committee draft. Only style changes were adopted in the final draft, except for the addition of the phrase "as now or hereafter provided by law." Section 6 was finally adopted by vote of 11-7.

(4) Commentary

Changes in the social and economic structure of the state during the past 140 years have severely undermined the rationale for our present county court system. This system had its genesis in the agrarian Texas of the 1830s. At that time, various factors—sparse population, transportation difficulties, and a marginal economy—probably justified the use of a local executive official in a judicial capacity. All state constitutions since 1836 have provided for this arrangement, and the present one provides for it in great detail.

However, not only have the original justifications largely vanished in contemporary Texas, but countervailing considerations have also appeared. The sophisticated problems of today's local government require more than part-time attention from the principal county official. Likewise, the number and complexity of judicial issues confronting a county judge have greatly escalated since

the 1830s.

This section acknowledges the desirability of substantial change in the judicial role of county judges. It is anticipated that circuit courts in rural areas, and circuit and/or district courts in urban areas, will handle the bulk of the matters presently handled by county courts. Present county judges who are licensed to practice law (66 of the 254) may elect to become circuit judges. The remaining county judges, and all future ones, can be given judicial authority to handle truly local matters of which summary disposition is possible (as, for example, probate matters, pleas of guilty, lunacy hearings, and other uncontested matters).

Sec. 7. OTHER COURTS. (a) The county commission in each county shall divide the county from time to time into justice precincts, not less than four nor more than eight.

(b) The county commission in each county shall establish and maintain one or more justice courts in the county with each court to exercise jurisdiction in one or more precincts in the manner provided by law.

(c) Municipal courts may be established by law or by charter as authorized by law and shall have such jurisdiction as provided by law.

COMMENTS

(1) Explanation

Section 7 recognizes courts outside the state unified judicial system. It acknowledges the possibility of municipal courts, but leaves all details of their operation to the discretion of the legislature. It requires each county commission to establish at least one justice court in the county, and further requires each county commission to divide the county into not fewer than four nor more than eight justice precincts.

(2) Existing law

No mention is made of municipal courts in the 1876 Constitution. Article V, Section 18 requires four to eight precincts in each county with one justice court in each, except that precincts including municipalities of 8,000 or more population have two justices of the peace. By directive of Article V, Section 19, justice courts have civil and criminal jurisdiction up to \$200.

(3) Committee deliberations

The preliminary committee draft included the Constitutional Revision Commission justice court provision mandating one or more courts per county. The semifinal draft permitted one or more justice of the peace courts per county but did not require them; the recognition of municipal courts became Subsection (c) of the section. On final adoption, the permissive approach for justice

courts was tabled by vote of 9-8, and the final form of the section was adopted by vote of 13-3-2.

(4) Commentary

There are widely differing views as to what form the local trial court level in the state should take. In part, this is because the citizenry of the state live in areas which range from very rural to very urban in character, and any system is strained to meet the needs of citizens at either extreme.

The present justice court system originated in the 1830s and has continued to the present with only slight modification. The municipal court system, though of more recent development, is similar and exhibits the same strengths and weaknesses. These courts are generally a community asset. They are accessible and are presided over by judges familiar with community needs. They are therefore able to perform a number of desirable quasi-judicial functions, such as informal counselling in domestic relations disputes. The procedures in the courts are sufficiently informal that litigants are not intimidated as they might be in other forums. Costs of litigation in these courts are low, making them attractive to litigants with small claims.

There are obvious disadvantages to the present system. Texas has only one municipal court and no justice courts which are courts of record. The absence of a record in justice and municipal courts means that appeal must be by trial de novo. Litigants who appeal are faced with significant delay and expense. Further, justices of the peace and municipal court judges need not be attorneys under the present system. While this is a definite advantage to those areas in which no attorney lives, it also means that the presiding officer of the only court most litigants ever see is likely to lack formal legal training. The use of part-time judges in these courts leads to potential conflicts of interest and otherwise undermines the dignity of the office.

The Texas Justices of the Peace and Constables Association inaugurated a legal education program, with statutory authorization, in 1971, for the benefit of justices of the peace and municipal court judges. While the impact of this program is not yet clear, it could have a very desirable effect on the quality of justice in those courts.

Section 7 is flexible enough to allow the continuance of inexpensive local courts in an enhanced posture. Two significant changes are made regarding justice courts. First, their jurisdiction is not frozen in the constitution, which will allow the legislature to upgrade their jurisdiction and, hence, the dignity of the office. Second, the present one court per precinct requirement is removed. Each county commission will now be able to regulate the number of courts and the number of judges per court to meet the needs of the county. These two changes should

decrease the number of part-time justices of the peace and also make the office more attractive to people with legal training.

Clearly, the legislature will have the authority under the proposed article to prescribe the qualifications of justices of the peace, authority on which the present constitution is silent.

Municipal courts are given constitutional status as a matter of consistency. Jurisdiction and method of operation of such courts will continue to be determined by general law.

No change was made in the present justice precinct structure because the precincts have developed considerable significance as units for local-option liquor elections. (See Article XVI, Section 20 of the Constitution of 1876 and Article X, Section 17 of the Constitutional Revision Commission draft.)

Sec. 8. QUALIFICATIONS OF JUDGES. No person may serve as a justice, judge, or justice of the peace unless the person is a United States citizen and a resident of this state and has other qualifications prescribed by law. No person may serve as justice or judge in the unified judicial system unless licensed to practice law in this state.

COMMENTS

(1) Explanation

Section 8 provides the qualifications to be required for justices and judges of the courts of the state.

(2) Existing law

Qualifications for judicial office, frequently detailed in nature, are found in Sections 2, 6, 7, and 15 of the 1876 Constitution. Often the courts have given a narrow construction to these detailed prescriptions and held that the legislature may make no alteration in them. See Dickson v. Strickland, 114 Tex. 176, 265 S.W. 1012 (1924). No qualifications are prescribed in the 1876 Constitution for justices of the peace and municipal judges. County judges are required only to be "well informed in the law."

(3) Committee deliberations

Only stylistic changes were made in the text of Section 8 after its inclusion in the preliminary draft. The final language was adopted by vote of 14-3.

(4) Commentary

Except for citizenship and residency in the state, the proposed Section 8 leaves the prescription of general qualifications for judicial office to legislation. Justices and judges within the unified system, however, are required to be licensed to practice law in the state.

With the exception of residence and legal training, the committee feels there are no universal principles of enduring quality associated with qualifications for judicial office.

Detailed constitutional directives concerning this matter thus are not included.

The principal departure from existing law in the proposed Section 8 is the making available of a lawyer-judge of a lower-level trial court for all citizens of the state. Presently, such judges with legal training are generally available only in urban areas having locally financed county courts at law.

Sec. 9. ELECTION OF JUDGES. (a) The Chief Justice of Texas and other justices of the supreme court are elected by the qualified voters of the state every six years in the manner provided by law. Judges of the courts of appeals are elected by the qualified voters of their respective districts every six years in the manner provided by law.

(b) District and circuit judges are elected by the qualified voters of their respective districts every four years in the manner provided by law.

(c) Vacancies in the offices of justices of the supreme court and judges of the courts of appeals, district courts, and circuit courts are filled by the governor, with the advice and consent of the senate, until the next succeeding general election.

(d) Justices of the peace are elected by the qualified voters of the county or precinct every four years in the manner provided by law. Vacancies in the office of justice of the peace are filled by the county commission until the next succeeding general election.

(e) Municipal judges are selected in the manner provided by law.

COMMENTS

(1) Explanation

Section 9 provides for the election of appellate justices and judges for six-year terms and for the election of district and circuit judges for four-year terms. Selection may be by either partisan or nonpartisan election, as provided by law. Vacancies within the unified system are filled by the governor with advice and consent of the senate, until the next general election.

Justices of the peace are elected for four-year terms, and vacancies are filled until the next general election by the county commission. Municipal judges are to be selected in the manner provided by law.

(2) Existing law

Section 9 represents no basic change in present constitutional and statutory law. The selection of municipal judges is not governed by the present constitution. In home-rule cities, municipal judges are now appointed or elected as provided by charter, and in "general law" cities, the elected mayor serves

as ex officio municipal judge.

(3) Committee deliberations

The section adopted in the preliminary draft governed only the justices and judges in the unified system. The semifinal draft retained the same form but provided for regional election districts for supreme court justices. On final adoption, regional election was tabled by a vote of 10-8, and the final language was adopted by the same vote.

(4) Commentary

Basically, the terms and manner of selection of judges remain as presently provided. The expression "elected...in the manner provided by law" is intended to permit broad statutory flexibility in prescribing the manner of election and should permit the legislature to prescribe either partisan or nonpartisan elections. The selection of municipal judges, not mentioned in the 1876 Constitution, is wholly within legislative discretion.

The selection of judges by popular election first gained national favor over 120 years ago. From 1846 until 1958, all states entering the Union came with an elective judiciary, and four of the original states changed from appointment to election of judges. In 1971, 25 states retained the elective method as the dominant selection process. Fifteen of these, including Texas, had partisan elections at that time.

The committee believes that the interest of citizens in their courts should be encouraged by retention of the elective system. A judge who desires extended tenure and who must periodically face the electorate must be even-handed and careful of his record, desirable traits for any public official. In Texas, qualified judges are normally reelected without difficulty, usually without opposition, and no drastic change in the system need be instituted to assure a high retention ratio.

The committee is aware that elective judges, in either a partisan or nonpartisan elective system, face a campaign problem in communicating with their electorate about the issues in a judicial race. Among appellate judges, whose work is more distant from and less intelligible to the general public, the problem is even more acute. In addition, the necessity for extensive campaign financing may at times threaten the independence of the judicial decision-making process. These problems are not peculiar to the judiciary, however, but are shared by elected officials in other branches of government. The committee feels that such burdens are part of the price we must pay in order to keep our judiciary close to the people and responsive to their needs.

While judges are not advocates for a constituency in the same manner as the other two branches of government, the committee feels that the judiciary should be broadly representative of the citizens it serves. No system better assures this end than the continued election of judges.

Rather than removing judges from politics, an appointive or "merit" system merely exchanges one type of politics for another. While a "merit" system of selection and retention sounds appealing, it is hardly consistent with democratic tradition to take from the people their ultimate right to determine those persons who are to exercise governmental power.

Sec. 10. QUALIFICATIONS COMMISSION; REMOVAL OF JUDGES.

(a) There shall be a judicial qualifications commission with such authority and functions as provided by law.

(b) A justice of the supreme court may be removed by the governor on the address of two-thirds of each house of the legislature for willful neglect of duty, incompetency, oppression in office, or other reasonable cause not a sufficient ground for impeachment.

(c) Any justice of the supreme court or any judge or other judicial officer may be removed, suspended, or censured as provided by law.

COMMENTS

(1) Explanation

Section 10 mandates a judicial qualifications commission and prescribes a method for the removal of supreme court justices for less than impeachable offenses. It also empowers the legislature to provide by law for the removal, suspension, or censure of all justices, judges, and other officers in the judicial branch.

(2) Existing law

Article V, Section 1-a was added to the present constitution by an amendment in 1965. It established a judicial qualifications commission composed of nine members (four judges, two attorneys, and three laymen) which was empowered to investigate complaints directed against appellate and district judges. If the commission found merit in a complaint, it recommended to the supreme court that the judge in question be removed from office. The supreme court could accept or reject the commission's recommendation but had no authority to mete out intermediate forms of punishment, such as suspension, censure, or reprimand.

The 1965 version of the judicial disciplinary machinery had two significant weaknesses. First, the qualifications commission had no jurisdiction over trial court judges other than those at the district court level. Second, there was only one possible sanction for all degrees of judicial misconduct, and this sanction was so harsh that it did not act as a credible deterrent to "minor" offenses.

A 1970 constitutional amendment, under which the present qualifications commission functions, corrected the obvious shortcomings of the judicial disciplinary machinery. The judicial

qualifications commission now has jurisdiction over all judges and justices in the state. It may, after a hearing, publicly or privately censure or suspend the justice or judge in question. If, after the hearing, the qualifications commission decides removal is the proper sanction, it refers the case to the supreme court. The supreme court reviews the hearing record and decides whether to dismiss the case, or to censure or remove the judge or justice in question.

In addition to Section 1-a of the present constitution, there are several constitutional means of removing judges. The "address" method in Subsection (b) is presently in Article XV, Section 9; impeachment of supreme court and court of appeals justices and district judges is authorized in Article XV, Section 2 (retained in the new legislative article for supreme court justices only); Article V, Section 24 presently authorizes district judges to remove county judges; and Article XV, Section 6 authorizes the supreme court to remove any justice or judge.

(3) Committee deliberations

In the preliminary draft, the committee adopted the removal provisions (Section 11) of the Constitutional Revision Commission draft. The semifinal draft mandated a qualifications commission and nothing more. On final adoption, the Constitutional Revision Commission proposal (with style changes) was tabled by vote of 10-5, and the final section was adopted by vote of 14-0.

(4) Commentary

Because of the doctrine of separation of powers, it is prudent to include in the constitution a well-defined method, short of impeachment, for the removal of the highest members of the judiciary. Section 10 accomplishes this and also permits the legislature to devise, if necessary, additional methods.

The legislature may provide by law for the methods of removal, suspension, or censure of all justices and judges. The judicial disciplinary machinery established by Article V, Section 1-a of the present constitution will be preserved in statutory form under this section.

Sec. 11. COURT ADMINISTRATION. (a) (1) The supreme court shall provide for the efficient operation of the judicial system. The court may direct the transfer of cases from one court to another within each level of the judicial system and may assign judges within or between levels. The court may delegate responsibility for administration to the chief justice and administrative judges provided for in Subsection (a)(2) of this section.

(2) Each court of appeals district within the state constitutes an administrative district for purposes of trial court management. Within each district, the Chief Justice of Texas,

with the advice and consent of the senate, shall designate a judge to serve as administrative judge of the district.

(3) There shall be a judicial council having such membership as provided by law which shall prescribe rules of administration for the unified judicial system and perform such other duties as shall be provided by law. Rules of administration shall not become effective until approved by the supreme court.

(b) The supreme court may prescribe rules of civil procedure not inconsistent with this article or the laws of this state for the government of the courts. Any rule of procedure expressly disapproved by resolution of either house of the legislature is thereby repealed. No rule of procedure may take effect until the legislature has the opportunity to disapprove it at a regular session.

Figure 4

COURT ADMINISTRATION ACTIVITIES - 1974

AGENCY	ACTIVITY	AUTHORITY	FUNDING SOURCE
Supreme Court	Equalize Civil Appeals Court dockets	Article 1738, Vernon's Civil Statutes	State Appropriation
	rule-making for "Government" of the courts	Article V, Section 25, Constitution Article 1731a, Vernon's Civil Statutes	
Chief Justice	Assign District Judges where needed between Administrative Districts	Article 200a, Vernon's Civil Statutes	State Appropriation
Court of Criminal Appeals Commissioners and supporting staff	Management of caseload	Section 7, Article 6228b and Article 1811e, Vernon's Civil Statutes	Federal (LEAA); State Appropriation
Civil Judicial Council	Data Collection; Continuing study of Court system	Article 2328a, Vernon's Civil Statutes	State Appropriation; Federal (LEAA)
Administrative Judicial District Judges	Assign District Judges where needed within Administrative District	Article 200a, Vernon's Civil Statutes	State Appropriation
Presiding Judges in certain counties	Local docket management	Article 200b, Vernon's Civil Statutes	
Criminal Court Co-ordinators	Administrative assistance to Criminal Trial Courts in certain counties	Crime Control Act, 1973. PL-9383	Federal (LEAA); Counties
Texas Center for the Judiciary (State Bar)	Judicial Training Seminars		Federal (LEAA)
Governor's Office, Criminal Justice Division	Research and technical assistance for Court Administration	Crime Control Act, 1973. PL-9383	Federal (LEAA) and Criminal Justice Planning Fund

COMMENTS

(1) Explanation

Section 11 provides for a system of court administration and rule-making authority for the judicial branch of government. Subsection (a)(1) places a duty on the supreme court to provide for the efficient operation of the judiciary and authorizes it to transfer cases within each level of the system. The court may assign judges within or between levels of the system. While the responsibility for management is vested in the supreme court, this may be delegated to the chief justice or administrative judges.

Subsection (a)(2) designates court of appeals districts as administrative units within the state. With senate approval, the chief justice designates an administrative judge in each district. Subsection (a)(3) mandates a judicial council to prescribe rules of administration, subject to supreme court approval, and perform other assigned duties.

Subsection (b) vests in the supreme court procedural rule-making power in civil matters. Rules may not conflict with the constitution or laws of this state, and no rule can take effect if "vetoed" by either house of the legislature.

(2) Existing law

There is no parallel in existing law for the administrative duty vested by Subsection (a)(1) in the supreme court. Since 1927 the chief justice has been authorized to assign district judges between courts under authority of Article 200a, Vernon's Texas Civil Statutes. That article further divides the state into administrative districts, as is provided in Subsection (a)(2). Administrative judges, however, are now appointed by the governor rather than the chief justice.

Although Article 2328a, Vernon's Texas Civil Statutes, has provided for an advisory civil judicial council since 1929, that body is only roughly comparable to the council mandated in Subsection (a)(3). The current council is responsible for the collection of judicial statistics and the conduct of continuing studies of the judicial system. It does not have constitutional stature and does not have the central court administration role anticipated in Section 11.

Subsection (b) alters the current provisions of Article V, Section 25 of the constitution. As originally enacted in 1876, Section 25 authorized the court to enact rules governing itself and the other courts of the state. In 1891, the section was amended to require that rules not be inconsistent with law. In 1939, the legislature delegated rule-making power to the supreme court in civil cases and authorized the court to repeal conflicting statutes. Pursuant thereto, the Texas Rules of Civil Procedure were adopted by the supreme court. Rules remain in effect until disapproved by the legislature. Subsection (b) limits rule-making

power constitutionally to civil rules, permits either house of the legislature to veto a rule, and mandates that a rule not go into effect until the legislature has an opportunity to reject it.

(3) Committee deliberations

In its preliminary draft, the committee left administrative and rule-making authority of the judiciary entirely to legislation. The semifinal draft included a section substantially like Section 11 in the final report. With stylistic changes, the section was finally adopted by vote of 12-6.

(4) Commentary

As evidenced by the court administration activities summarized in Figure 4, there is considerable recognition in Texas of the need for management of judicial resources. Despite this recognition, there is no coordination of the management effort. Internal administration of judicial business, coordinated from the top of the system, is the principal tenet of court unification.

Within the framework provided by Section 11, those instrumentalities of government charged with administering judicial institutions and personnel are brought together and enabled to pursue a common goal under unified direction. Only through such a course of action can future piecemeal government-by-crisis in the management of the courts be avoided.

Sec. 12. DISTRICT CLERKS; COUNTY CLERKS. (a) A district clerk, who serves as clerk of the district and circuit courts of the county, is elected by the qualified voters of each county for a term of four years. The clerk may be removed from office upon a jury finding of incompetence, official misconduct, or other cause defined by law. Vacancies in the office of district clerk shall be filled by the judges of the district and circuit courts in the county until the next general election. Each clerk may have a deputy or deputies and other personnel authorized by law.

(b) The county clerk, who serves as clerk of the county commission and recorder of the county, is elected by the qualified voters of each county for a term of four years. The legislature shall prescribe the duties, perquisites, and fees of the office. A vacancy in the office shall be filled by the county commission until the next general election.

(c) The legislature may authorize counties with populations below a level prescribed by law to elect a single clerk to serve as district and county clerk.

COMMENTS

(1) Explanation

Section 12 provides for district clerks and county clerks, and authorizes one clerk to fill both offices in certain counties. The district clerk would serve the trial courts in the unified

judicial system, and the county clerk would serve as county recorder and clerk of the county commission. Both officers are elected for four-year terms. The section further speaks to the removal of district clerks and the filling of vacancies in both offices.

(2) Existing law

Present law concerning these officials is found in Sections 9 and 20 of the 1876 Article V, and their removal is governed generally by Section 24 of that article. Presently, a district clerk serves the district courts in each county, and a county clerk serves the county court and commissioners court in each county. In regard to statutory courts, the legislation creating each court directs which clerk will serve the respective court.

By a 1954 amendment to Section 20, counties with a population of less than 8,000 persons may elect to have a single clerk to serve as both district and county clerk. The essence of this provision is retained, although the population figure is removed; the legislature could fix any population level and authorize all counties below that level to combine the two offices.

(3) Committee deliberations

The committee preliminary draft was carried forward in the semifinal draft. With stylistic changes, the section was finally adopted by vote of 10-7.

(4) Commentary

Trial court clerks provide valuable administrative assistance to trial judges and compile and report data on court activity essential for judicial management decisions. With the institution of a unified court system and professional management, it will become increasingly necessary to have accurate reports from all courts to guide administrators in assessing the week-to-week need for judges throughout the state.

The principal departure from existing law in the proposed section is provision for a single clerk for the trial courts within the unified judicial system in each county. The office of clerk is "unified" in order to permit greater economy and standardization in preparing data input necessary for effective court management. Such unification will facilitate the implementation of the administrative system under Section 11(a)(1).

Sec. 13. JURIES. (a) A grand jury in the district court consists of 12 persons, of whom nine constitute a quorum and must concur in a bill of indictment.

(b) The legislature shall provide by law for trial juries.

(c) A party has the right to a jury trial upon demand made in the manner prescribed by law.

(d) Jury verdicts must be unanimous, except that the legislature, or the supreme court pursuant to its rule-making

authority, may authorize jury verdicts in civil cases rendered by not less than three-fourths of the jurors sitting in a case.

(e) The legislature may provide by law for alternate jurors.

COMMENTS

(1) Explanation

Section 13 requires 12-member grand juries and demands the concurrence of nine of those members in the issuance of a bill of indictment. The section preserves a party's right to jury trial upon demand, but leaves the jury size and the manner of demand to the discretion of the legislature. The section also permits a civil verdict based on the concurrence of three-fourths of the participating jurors and allows the legislature to provide by law for alternate jurors.

(2) Existing law

Jury provisions are found in Sections 10, 13, 17, and 29 of Article V of the present constitution. Juries in the district court consist of 12 persons, while county court juries consist of six persons. Verdicts may be returned in civil cases in the district court by vote of 10-2.

Ostensibly, the right to trial by jury is guaranteed in Article I, Section 15 of the 1876 Constitution. However, the cases of White v. White, 108 Tex. 570, 196 S.W. 508 (1917) and Hickman v. Smith, 238 S.W.2d 838 (Tex. Civ. App.—Austin 1951, writ ref'd) have held that the right of trial by jury guaranteed in the Bill of Rights is limited to the right as it existed at common law or as provided for by statutes when the constitution was adopted in 1876.

On the other hand, the cases of Tolle v. Tolle, 101 Tex. 33, 104 S.W. 1049 (1907) and Hatten v. City of Houston, 373 S.W.2d 525 (Tex. Civ. App.—Houston 1963, writ ref'd n.r.e.) have held that the right of trial by jury guaranteed in Article V, Section 10 of the 1876 Constitution is not dependent on the existence of the right at the time the constitution was adopted in 1876. The guarantee extends to any "cause" instituted in the district court. A "cause" is defined as a suit or action concerning any question, civil or criminal, contested before a court of justice.

(3) Committee deliberations

The language adopted originally by the committee was carried forward without change in the semifinal draft. On final adoption, minor style changes were made, the phrase "sitting in a case" was added at the end of Subsection (d), and Subsection (e) on alternate jurors was added. The section was adopted by vote of 14-4.

(4) Commentary

Although Subsection (a) in no way changes the present constitutional posture of grand juries, it does clarify the requirement that nine members concur in any indictment issued by the grand jury. The direction of grand juries remains in the province of the district courts.

Subsection (b) represents a significant change from the present constitutional limits on the size of trial juries. Unless one or more jurors are dismissed because of a disability, 12-person juries are presently required in district court cases and six-person juries in county court cases. Some states permit six-person juries in all civil and misdemeanor cases. Florida, Louisiana, and Utah use six-person juries in felony cases, and the United States Supreme Court has sanctioned this practice. Williams v. Florida, 399 U.S. 78 (1970).

Various speakers before the committee, notably retired United States Supreme Court Justice Tom Clark, advocated smaller juries and expressed the belief that 12-person juries are not required by the dictates of justice. Subsection (b) does not change the present law, but it does allow the legislature to do so in whatever manner it deems prudent.

The only change made by Subsection (c) is to remove from the constitution the procedural details of making a demand for jury trial.

Subsection (d) allows continuance of the present rule on nonunanimous jury verdicts in civil cases. The subsection applies to juries of fewer than 12 persons. The present constitution would allow a 9-3 verdict in civil cases in the district court, although 10-2 is the current provision. Subsection (d) does make one change in present verdict requirements, at least in the district courts, in that three-fourths of the jurors who actually participate in the decision may render the verdict. This provision is directed to the situation where one or more jurors become disabled or otherwise incompetent before the verdict is rendered.

Felony and misdemeanor cases must be decided by a unanimous jury under Subsection (d). This is a continuance of the present status as to felony verdicts, but represents a departure from present constitutional, but not statutory, requirements in misdemeanor cases.

Subsection (e) makes express the legislature's authority to provide for alternate jurors. This subsection gives the legislature greater flexibility in providing for trial juries.

Section 13 attempts to strike a balance between assurance of right to trial by jury and permitting legislative flexibility in administration of that right. Unanimous verdicts are required in all criminal matters, since no rational linedrawing can be accomplished in distinguishing serious misdemeanors and less serious felonies.

Sec. 14. SENTENCING AND PROBATION. Courts having original jurisdiction of criminal cases shall have power to suspend the imposition or execution of sentence and place a defendant on probation; and shall have further power to modify, set aside, or

reimpose sentence, subject to regulation by law.

COMMENTS

(1) Explanation

This section rewords and expands the authority of the courts to suspend the imposition or execution of sentence after conviction.

(2) Existing law

Section 14 is based on Article IV, Section 11A of the 1876 Constitution, as added in 1935. In 1911, the legislature enacted a Suspended Sentence Act which was declared unconstitutional as an invasion of executive power to pardon and commute sentence. Snodgrass v. State, 67 Tex. Crim. 615, 150 S.W. 162 (1912). Subsequently, Section 11A was adopted. In State ex rel. Smith v. Blackwell, 500 S.W.2d 97 (Tex. Crim. 1973), a statutory provision permitting resentencing of convicted drug offenders was declared unconstitutional as an infringement of the executive power to pardon and commute sentences granted in Article IV, Section 11.

(3) Committee deliberations

Section 14 remained substantially unchanged through all three committee drafts. Before final passage, the caption was altered from "SUSPENSION OF SENTENCE AND PROBATION" to "SENTENCING AND PROBATION," to reflect the committee's action in giving broad judicial authority, in part concurrent with executive power, in this area and effectively overruling the Blackwell decision. The final language was adopted by unanimous voice vote.

(4) Commentary

The power of the courts to suspend the imposition or execution of sentence, after conviction, is assured by Section 14. In addition, by inclusion of the phrase "modify, set aside, or reimpose" in the text of the section, the restraint imposed by the Blackwell decision over judicial power to pardon and commute sentences is eliminated.

Sec. 15. APPEAL BY STATE. The state may not appeal in criminal cases.

COMMENTS

(1) Explanation

The provisions of this section deny the prosecution any right of appeal in criminal cases.

(2) Existing law

Article IV, Section 3 of the 1845 Constitution permitted the legislature to grant the state a limited right of appeal in criminal cases, which it did in 1856. However, Article V, Section 26 of the 1876 Constitution expressly denied this right. Only Texas, among the 51 American jurisdictions (including all states and the United States), absolutely denies the state a right of

appeal.

(3) Committee deliberations

All three committee drafts included substantially the same provision denying the right of appeal to the state. On final adoption by voice vote, the committee made minor style changes in the section. Prior to adoption, an amendment granting a limited appeal was tabled by vote of 13-4. Another amendment authorizing the legislature to grant a limited right of appeal was tabled by vote of 12-4-1.

(4) Commentary

The continued prohibition to the state of a right of appeal in criminal cases reflects the committee's view that such appeals may impose economic hardship upon defendants and may be used as an instrument of oppression.

Sec. 16. APPEAL BY ACCUSED. (a) The accused shall have the right of appeal to the appellate court having jurisdiction, specifically including the right of appeal granted by Article I, Section 11a of this constitution.

(b) Appeal to the supreme court shall be at the discretion of the court, unless otherwise provided by law.

COMMENTS

(1) Explanation

Section 16(a) guarantees an accused at least one appeal. An appeal of a twice-convicted felon from an order denying him bail upon subsequent arrest is authorized by Article I, Section 11a of the 1876 Constitution and is directed by this section to the appropriate appellate court.

Section 16(b) provides for direct appeal to the supreme court. Direct appeal is discretionary with the court, unless otherwise provided by law.

(2) Existing law

Only the defendant in a criminal case can appeal. The state is prohibited from appealing by Article V, Section 26 of the 1876 Constitution. Presently, the accused has the right to appeal to the court of criminal appeals. However, not all criminal cases are appealable to that court. Article 4.03 of the Code of Criminal Procedure vests appellate jurisdiction in the court of criminal appeals of all criminal cases except misdemeanors which have been appealed to a county court, a county criminal court, or a county court at law, in which the fine imposed does not exceed \$100.

Section 11a of Article I of the 1876 Constitution, added in 1956, also confers appellate jurisdiction in the court of criminal appeals to review orders denying bail to an accused convicted twice before of a felony.

Civil appeals are usually to the intermediate courts of civil appeals. However, Section 3-b of Article V of the present

constitution authorizes direct appeal to the supreme court from a trial court order which grants or denies an interlocutory or permanent injunction on the basis that a statute or administrative order is valid or invalid. See Article 1731a, Vernon's Texas Civil Statutes.

(3) Committee deliberations

The preliminary committee draft and the semifinal draft were concerned only with the right of an accused to appeal an order of the trial court denying bail, presently authorized in Section 11a, Article I of the 1876 Constitution. The language finally adopted appeared for the first time at the time of adoption of the final version of Section 16. The committee adopted the section by vote of 15-2.

(4) Commentary

The present constitutional provision which grants an accused the right to appeal an order denying bail is ambiguous because the provision specifically confers jurisdiction in the court of criminal appeals, the only court which can presently review such an appeal. It is not known whether the provision grants the accused only a right to appeal or whether it grants an additional right to appeal to the highest court. To resolve such ambiguity, the committee has granted the supreme court discretionary authority to hear direct appeals until the legislature provides otherwise. The Constitutional Revision Commission recommended the appeal be made direct to the supreme court.

Since the new judiciary article does not enumerate jurisdiction of the courts as the present constitution does, the committee recognizes in Section 16 the traditional and fundamental right of a defendant in a criminal case to have the right to at least one appeal. For that reason, Section 16 was expanded on final adoption.

Sec. 17. APPEALS FROM ADMINISTRATIVE ACTION.

Notwithstanding any other provision of the constitution, the legislature may provide by law for the method of appeal to the courts from actions, rulings, or decisions of administrative agencies and executive departments of the state or any of its subdivisions.

COMMENTS

(1) Explanation

Section 17 authorizes the legislature to prescribe the method of judicial review from actions of administrative agencies and executive departments of the state or its subdivisions.

(2) Existing law

Statutes directing appeals to the courts from actions of administrative agencies to be by complete new trial (trial de novo) have not found favor with the Texas Supreme Court. Such

statutes have been held to empower the courts to determine legislative questions, and hence such review is violative of the separation of powers provision in Article II, Section 1 of the 1876 Constitution. See, e.g., Southern Canal Co. v. State Board of Water Engineers, 159 Tex. 227, 318 S.W.2d 619 (Tex. 1958); Davis v. City of Lubbock, 160 Tex. 38, 326 S.W.2d 699 (Tex. 1959). H.J.R. No. 32, 57th Legislature, Regular Session (1961) proposed that the legislature could prescribe the manner of appeal to the courts, including de novo appeal. The resolution was not approved by the voters.

(3) Committee deliberations

The preliminary draft of the committee included a section identical to H.J.R. No. 32. That version was shortened in the semifinal draft merely to permit the legislature to prescribe any method of appeal (de novo was not specifically enumerated). On final adoption, the restriction that the legislature act only by general law was removed, and the section was adopted by voice vote.

(4) Commentary

Section 17 is not self-enacting but merely permits legislative flexibility in determining the manner of appeal from administrative action. Conceivably de novo appeal might be prescribed in some instances as a judicial check on abuse of power by an administrative agency. Because of decisions of the Texas Supreme Court, if this flexibility is to lie with the legislature, specific constitutional authority is necessary.

Sec. 18. DISTRICT ATTORNEYS; COUNTY ATTORNEYS. (a) The state shall be represented in each county by a district attorney as now or hereafter provided by law. The district attorneys shall be elected by the qualified voters of their respective districts, and shall serve for a term of four years and until their successors have qualified. The state shall provide for the compensation of district attorneys.

(b) With such exceptions as now or hereafter provided by law, county attorneys shall be elected by the qualified voters of each county and shall hold office for a term of four years and until their successors have qualified.

(c) Each district and county attorney shall be licensed to practice law in this state. Other qualifications, duties, and functions of district and county attorneys and the grounds and procedure for disqualification, suspension, removal, and filling of vacancies shall be as provided by law.

COMMENTS

(1) Explanation

Section 18 provides for county and district attorneys. District attorneys serve four-year terms, and they are elected

by the qualified voters of their respective districts. County attorneys serve four-year terms, and they are elected by the qualified voters of each county. Each county and district attorney must be licensed to practice law in this state. The legislature is authorized to prescribe other qualifications and duties of each office, including procedures for disqualification, suspension, removal, and filling of vacancies. Each county shall be served by a district attorney.

(2) Existing law

Section 21 of Article V of the 1876 Constitution requires the election of county attorneys and assumes the existence of district and criminal district attorneys. Section 21 of the present constitution requires a county attorney "for counties in which there is not a resident Criminal District Attorney." Although the office of criminal district attorney served the criminal district courts in Harris and Galveston Counties before these courts were abolished, the office has also been established to serve general jurisdiction district courts in approximately twenty-three counties. In those counties there is no county attorney and the criminal district attorney also serves as county attorney. Article 321, Vernon's Texas Civil Statutes, et seq.; Neal v. Shepherd, 209 S.W.2d 388 (Tex. Civ. App.—Texarkana 1948, writ ref'd).

Sections 21 and 30 of Article V of the 1876 Constitution provide four-year terms for district attorneys, criminal district attorneys, and county attorneys. Section 21 authorizes the legislature to provide for the compensation of district and county attorneys. The state pays the basic salaries of the district attorneys and of six criminal district attorneys. Several counties supplement the salaries paid by the state. See Article 321, Vernon's Texas Civil Statutes, et seq. The county pays the basic salaries of county attorneys and those criminal district attorneys not paid by the state. The state reimburses the county pro rata for the time the county attorney represents the state. Section 13(b), Chapter 465, Acts of the 44th Legislature, 2nd Called Session and Chapter 398, Acts of the 60th Legislature, Regular Session.

Section 21 also provides that the county attorney shall represent the state in all cases in the district and inferior courts in each county; but if any county is represented by a district attorney, then the respective duties of district and county attorneys shall be prescribed by law for each county. The legislature has provided that the district attorney shall represent the state in criminal cases in the district courts, and the county attorney shall represent the state in criminal cases in courts below the district level. County attorneys also represent the county in civil matters. Article 332, Vernon's Texas Civil Statutes requires county and district attorneys to be licensed

to practice law.

(3) Committee deliberations

Section 18 was placed in the preliminary draft in its present form. The section was finally adopted, without change, by voice vote.

(4) Commentary

The district attorney has been provided for in the judiciary article in every constitution since 1836. The county attorney has been provided for since 1866. The committee decided early during its deliberations to continue that tradition. As officers of the courts, county and district attorneys play a very important role in the jurisprudence of this state. The state relies on these public prosecutors to determine criminal violations and to prosecute the guilty.

Sec. 19. COMPENSATION. The state shall pay the basic salaries of all justices and judges of the unified judicial system and shall pay such other expenses of the system as provided by law. Funds collected by the courts may not be used to support the unified judicial system except to the extent of reimbursement of salaries and other expenses.

COMMENTS

(1) Explanation

Section 19 continues the state's responsibility to pay basic salaries of justices and judges of the supreme court, courts of appeals, and district courts. The section neither prohibits nor authorizes counties to continue the practice of supplementing salaries of judges. Since circuit courts are included in the unified court system, Section 19 also requires the state to pay the salaries of circuit judges.

Section 19 further requires the state to pay the expenses of the unified court system. The legislature will determine what expenses the state will assume; the section places a limitation of the legislature's right to retain funds collected by the courts. The state is entitled to be reimbursed only for actual expenses of the courts.

(2) Existing law

For the fiscal year ending August 31, 1974, justices and judges of the state court system receive from the state the following salaries:

1. Supreme Court
 - Chief Justice, \$40,500
 - 8 Associate Justices, \$40,000
2. Court of Criminal Appeals
 - Presiding Judge, \$40,500
 - 4 Judges, \$40,000
 - 2 Commissioners, \$40,000

3. Courts of Civil Appeals

14 Chief Justices, \$35,500

28 Justices, \$35,000

4. District and Criminal District Courts

217 District Judges, \$25,000

In addition to the basic salaries received from the state, several justices and judges of the courts of civil appeals and district courts receive salary supplements from counties within their judicial districts. In 1972, these salary supplements for judges of courts of civil appeals ranged from \$5,000, the highest (1st, 5th, and 14th Supreme Judicial Districts), to \$1,193.07, the lowest (13th Supreme Judicial District); for district judges, the salary supplements ranged from \$12,000, the highest (Harris and Dallas Counties), to \$300, the lowest (Austin, Fayette, Waller). The appropriations bill adopted by the 63rd Legislature provided that total salaries received by district judges could not exceed \$1,000 less than the salary received by civil appeals justices in each respective district. Similarly, civil appeals justices cannot receive more than \$1,000 less than the salary paid to supreme court justices.

(3) Committee deliberations

The impetus for adding a finance provision was to compel the state to finance the operation of its court system. Salary supplementation was prohibited in the preliminary draft, but such provision was deleted in the semifinal draft. Section 19, as finally adopted on voice vote, is silent on salary supplementation.

(4) Commentary

The committee realizes that the legislature can finance the court system without constitutional authorization. However, the committee feels that reform of the judicial system is incomplete without specific direction in the new article for the state to assume the costs of the unified court system.

The proposed section does not disturb the way courts below the circuit courts are financed. Counties will retain the responsibility to provide for justice courts, and incorporated cities will retain the responsibility of providing for municipal courts.

Since the constitutional county courts and all the statutory courts will be merged into the unified court system, the county commissions are relieved of the responsibility of providing for the various county courts at law, special district courts, and the constitutional county courts.

Presently, fees and fines collected by the state and county level trial courts are retained by the counties burdened with the expense of that court. The legislature has permitted the practice to continue. Since the expenses of these courts will be borne by the state, the funds should logically be placed in the state treasury. But the committee did not want the state to view courts

as revenue-generating agencies. For that reason, Section 19 specifically limits the state's use of the funds to reimbursement for the expenses of these courts.

The Constitutional Revision Commission constitutionally authorized salary supplementation. The present constitution is silent on the subject. As noted, the original committee draft specifically prohibited such supplements. Rather than freeze the prohibition in the constitution or authorize the practice in the charter, the committee has left a decision in this regard to the legislature.

Sec. 20. JUDICIAL RETIREMENT. (a) The legislature may prescribe by law the mandatory retirement age of a justice or judge in the unified judicial system.

(b) Notwithstanding any other provision of this constitution, the system of retirement, disability, and survivors' benefits established in the constitution or by law for justices, judges, and commissioners of the appellate courts and judges of the district and criminal district courts and in effect at the time of adoption hereof shall be continued. The legislature shall provide for inclusion in the system of judges of all courts in the unified judicial system and such other elected state officials as now or hereafter provided by law.

(c) General administration of the Judicial Retirement System of Texas shall be by the Board of Trustees of the Employees Retirement System of Texas under such regulations as may be provided by law.

COMMENTS

(1) Explanation

The provisions of this section permit the legislature to establish a mandatory retirement age. The section continues the system of retirement, disability, and survivors' benefits presently existing for justices and judges paid by the state.

(2) Existing law

Article V, Section 1-a of the present constitution, added in 1948, directs the legislature to provide for a retirement system for state judges. The amendment was necessary because Article III, Section 51 of the 1876 Constitution forbade the granting of public money to individuals. Article 6228b, Vernon's Texas Civil Statutes establishes the retirement system.

(3) Committee deliberations

Neither the preliminary draft nor the semifinal draft of the committee included a provision on judicial retirement, although the provisions of Subsection (a) on mandatory retirement did appear in both drafts. The language in the final draft was adopted by voice vote.

(4) Commentary

The committee felt that the retention of the present mandatory retirement prescription of Article V, Section 1-a (75 years of age or an earlier age, not less than 70, as prescribed by law) was unwise. Constitutional silence on the subject, however, might well tie the hands of the legislature and prevent any mandatory retirement age because of the principle of separation of powers.

In regard to a system of retirement, disability, and survivors' benefits, there is no dispute as to the constitutional propriety of this subject. Current officeholders and retired judges rightly expect a continuation of the system of retirement compensation promised as an inducement for their service. Without the continuation of such a system Texas cannot expect to continue attracting from the private practice of law the quality of judicial talent desired and needed for the effective administration of justice.

SUPPLEMENTAL TO JUDICIARY COMMITTEE REPORT

ARTICLE V

MINORITY REPORT NUMBER 1

MINORITY REPORT NUMBER 2

MINORITY REPORT NUMBER 3

JUDICIARY COMMITTEE
Minority Report Number 1

BE IT PROPOSED,

That the following be substituted for Article V,
Section 11(b) of the majority proposal:

ARTICLE V

THE JUDICIARY

(b) The supreme court may promulgate rules of procedure not inconsistent with the laws of the state, for all courts, to expedite the dispatch of business therein. Any rule of procedure expressly disapproved by the legislature shall have no effect thereafter.

EXPLANATION

Subsection (b) of Section 11 of the majority proposal restricts the supreme court to civil rule-making power, provides that no rule may take effect until the legislature has the opportunity to reject it, and further provides that either house of the legislature may reject a rule.

This minority proposal, on the other hand, would retain the present provisions of Article V, Section 25 of the constitution. The supreme court could promulgate procedural rules not inconsistent with laws. The legislature could expressly disapprove a rule, authority now included in Article 1731a, Vernon's Texas Civil Statutes.

COMMENTS

The majority report restricts the long-standing, general rule-making power presently granted the supreme court in Article V, Section 25. It does so at the same time the administrative power of the court is being strengthened and the jurisdiction of the court is being broadened.

Between 1891 and 1939, procedural rules were written by the legislature. Judicially promulgated rules could not conflict with statutes, and the court could not act since the legislature "occupied the field" with procedural codes.

In 1939, the legislature relinquished civil rule-making initiative to the court; this was not a grant of new authority, since the court possessed authority to write rules not inconsistent

1 with laws before the 1939 statute. Rather, the action was a
2 statutory accommodation between the legislature and judiciary
3 concerning power constitutionally granted to both branches. Since
4 the legislature retained authority to pass laws inconsistent with
5 rules or to reject a court-passed rule, the action was a
6 relinquishment of initiative and not of authority. See Few v.
7 Charter Oak Fire Insurance Co., 463 S.W.2d 424 (Tex. 1971).
8 Presently, this accommodation could be extended to criminal rules,
9 but it has not been so extended by the legislature. The minority
10 proposal preserves this status quo and provides an express method
11 in the constitution for direct legislative rejection of a rule.
12 On the other hand, the majority proposal departs from this
13 status quo by removing from the legislature the flexibility to
14 place criminal rule-making authority in the high court. Another
15 important departure of the majority proposal is that it permits
16 one legislative house to overrule another branch of government.
17 This latter change is offensive to the principle of separation
18 of powers.
19 Proponents of the majority position assert that rule-making
20 is essentially a legislative activity and that if the court is
21 writing statutes, its work product should meet the approval of
22 each legislative house. This position lays aside the long-standing
23 Texas tradition that judicial rules are not purely a legislative
24 concern and should not be, if judicial self-management is to be
25 effective. If the Texas Senate or the Texas House of
26 Representatives, acting alone, is the superior of the judicial
27 branch of government in this important aspect of judicial
28 administration, then the principle of separation of powers has
29 indeed been severely eroded.

JUDICIARY COMMITTEE
Minority Report Number 2

BE IT PROPOSED,

That the following be substituted for Article V,
Section 3 of the majority proposal:

ARTICLE V

THE JUDICIARY

Sec. 3. COURTS OF APPEALS. There shall be one or more courts of appeals as provided by law, each consisting of a chief judge and at least two other judges. Not fewer than three judges shall sit in any case.

EXPLANATION

Section 3 of the majority proposal provides that courts of appeals have three or more judges and requires a majority of a court for the decision of a case. The minority proposal retains the language on court size, removes the majority requirement, and adds a new sentence requiring at least three judges to sit in any case.

COMMENTS

The requirement of concurrence of a majority of a court to a decision would have the effect of requiring the entire court to sit in each case because each judge would have to vote on the disposition of the case. This would defeat the purpose of the wise provision for enlarging some of the courts of appeals. It would be unnecessary, uneconomic, and inefficient in use of judicial manpower, would serve no useful purpose, and would be less desirable than creation of additional three-judge courts.

With each increase of the membership of the court, the number of dispositive opinions written by each judge would be substantially reduced, as more time would necessarily be spent in reviewing the work of other judges, in internal conferences, and in writing dissenting and concurring opinions. Thus a greater number of judges would be required to decide the same volume of appeals, and additional appropriation of tax funds would be required for the salaries of judges and supporting personnel and court facilities. In short, with no sacrifice in the quality of decisions, greater efficiency, economy, and flexibility of the

- 1 appellate court system can be achieved by a relatively small
- 2 number of intermediate courts, each with as many judges as needed,
- 3 but these advantages would be nullified by requiring a majority
- 4 of each court to decide each case.

1

Respectfully submitted,

2

Ronald Earle

John Powers

3

Delia McDonald

Joe Spaulding

4

R. J. Grant

5

Wayne Lewis

1

Respectfully submitted,

2

Ronald Earle

Herefore

3

Woody Denson

Anthony J. Baker

4

Ben R. Grant

Pete Powers

5

Jack Caff

JUDICIARY COMMITTEE
Minority Report Number 3

BE IT PROPOSED,

That the following be substituted for Article V,
Section 9(a) of the majority proposal:

ARTICLE V

THE JUDICIARY

1 Sec. 9(a). The legislature shall divide the state into
2 judicial election districts equal in number to the number of
3 justices on the supreme court. Each district must be composed
4 of compact and contiguous territory and contain as nearly as
5 practicable an equal number of inhabitants. One justice of the
6 supreme court is elected every six years by the qualified voters
7 of each judicial election district. The Chief Justice of Texas
8 is elected every six years by the qualified voters of the state.

9 EXPLANATION

10 Under the majority proposal, justices of the supreme court
11 are selected in statewide elections. Under this proposal, justices
12 are elected from regional election districts, and the chief justice
13 is elected statewide.

14 COMMENTS

15 The minority proposal would assure that the state's high
16 court would be composed of judges from the various geographical
17 regions of the state, thereby assuring a variety of opinion and
18 philosophy on the court and representation of all areas of the
19 state. At the same time, election costs of justices would be
20 reduced dramatically.

21 Regional election has proven very workable and has enjoyed
22 wide public support in several jurisdictions. For example,
23 Louisiana carried over this system from its old constitution to
24 the one adopted in April of this year. The system brings closer
25 to the electorate the "third branch of government" and thereby
26 makes it more intelligible and responsive to the citizens of
27 Texas.

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Respectfully submitted,

Ronald D. Cohen Ernest Peters
Ben F. Grant Charles Truitt
Joe Spurlock
W. S. Heath

1974

TEXAS CONSTITUTIONAL CONVENTION

YEA N-V NAY

Mr. President
Adams, D. Beaumont ①
Adams, H.
Agnich
Aikin
Allen, Joe
Allen, John ②
Allred Wichita Falls
Andujar Tarrant Co. ③
Atwell Richardson ④
Bailey
Baker
Bales Austin ⑤
Barnhart
Bigham
Bird
Blake no league
Blanchard Lubbock ⑥
Blythe Houston ⑦
Bock no league
Boone
Bowers
Braecklein Spring ⑧
Brooks Bayless ⑨
Bynum
Caldwell
Calhoun Cibola ⑩
Canales no league
Cates no league
Clark Pasadena ⑪
Clayton no league
Clower
Cobb no league
Cole Dent Co. ⑫
Coleman El Paso
Coody no league
Cooke no league
Craddick Midland ⑬
Creighton Denton ⑭
Daniel
Davis
Denson Houston ⑮
Denton Waco X
Doggett
Donaldson
Doran no league

YEA N-V NAY

Doyle Beaumont
Dramberger San Antonio ①
Earle
Edwards
Evans Tarrant Co. ②
Finnell Wichita Falls
Finney Tarrant Co. ③
Foreman
Fox
Gammag Pasadena
Garcia San Antonio
Gaston
Geiger
Grant
Green, F.
Green, R. II
Hale
Hall, A. Houston ④
Hall, W.
Hanna no league
Harrington
Harris, E.
Harris, O. Dallas ⑤
Head
Heatly no league
Henderson
Hendricks
Hernandez San Antonio
Hightower Wichita Falls
Hilliard
Hoestenbach Odessa ⑥
Hollowell no league
Howard
Hubenak no league
Hudson Dallas ⑦
Hutchison
Johnson Dallas ⑧
Jones, Gene
Jones, Grant
Jones, L.
Kaster El Paso ⑨
Korioth
Kothmann San Antonio
Kubiak
Laney Lubbock ⑩
Lary

YEA N-V NAY

Lee no league
Leland Houston ①
Lewis
Lombardino San Antonio
Longoria Harlingen ②
McAlister Lubbock ③
McDonald, F.
McDonald, T. Dallas ④
McKinnon Corpus Christi ⑤
McKnight Tyler ⑥
Madla San Antonio ⑦
Maloney
Martin no league
Massey
Mattox Dallas ⑧
Mauzy Richardson ⑨
Meier
LAUHOFF
Mengden
Miller
Montoya no league
Moore Brazos County ⑩
Munson
Murray
Nabers no league
Newton no league
Nichols Houston ⑪
Nowlin
Nugent no league
Ogg
Olson Waco X
Parker, C. So. Jeff. Co. ⑫
Parker, W.
Patman
Pentony
Peveto
Poerner San Marcos ⑬
Poff Amarillo ⑭
Powers
Presnal Brazos Co. ⑮
Preston Lamar Co. ⑯
Ragsdale Dallas ⑰
Reyes Houston ⑱
Reynolds Richardson ⑲
Rodriguez Ed-Mellie ⑳
Rosson no league X-EXCLUDED ABSENCE

YEA N-V NAY

Russell
Sage
Salem
Sanchez Brownsville ㉑
Santiesteban El Paso ①
Schieffer Tarrant Co. ②
Schwartz Houston ③
Scoggins El Paso ④
Semos
Sherman, M. Mills ⑤
Sherman, W. Tarrant Co. ⑥
Short no league
Simmons San Antonio ⑦
Slack Odessa ⑧
Snelson Midland ⑨
Spurlock
Sullivan
Sutton San Antonio ⑩
Tarbox Lubbock ⑪
Temple no league
Thompson Houston ⑫
Traeger San Antonio ⑬
Truan Corpus Christi ⑭
Tupper
Uher no league
Vale San Antonio ⑮
Vecchio Spring ⑯
Vick
Von Dohlen no league
Wallace Houston ⑰
Washington Houston ⑱
Waters Houston ⑲
Watson Deer Park ㉑
Weddington
Whitehead
Whitmire Houston ㉒
Wieting
Williams
Williamson Tyler ㉓
Willis
Wilson no league
Wolff San Antonio ㉔
Wyatt Victoria ㉕
Bryant

RECORD # 8 ADDITION OF F, AS AMENDED

This vote defeated the Judiciary Article, how did your delegate vote?

Let him know you know how he voted!!!

5-22-74

YEA-74

TOTALS MAY-81

PNV

NU-19

ARTICLE

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SECTION
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AUG 6
SEP 7
OCT 8
NOV 9
DEC 0

MAY 24 1974

Σ Σ

Con Office
Amended

BE IT PROPOSED BY THE COMMITTEE ON THE JUDICIARY,

That there be a new article on the judiciary to read as follows:

ARTICLE V
THE JUDICIARY

1 Sec. 1. JUDICIAL POWER. The judicial power of the state
2 is vested in the judicial branch. The state unified judicial
3 system is composed of a supreme court, courts of appeals, district
4 courts, and circuit courts. All courts have jurisdiction as
5 provided by law, but jurisdiction of courts of the same level
6 must be uniform throughout the state.

7 Sec. 2. SUPREME COURT. (a) The supreme court shall be
8 the highest court of the state and shall consist of the Chief
9 Justice of Texas and at least eight other justices, of whom a
10 majority shall be necessary to decide a case. It shall have such
11 jurisdiction and administrative and rule-making authority as
12 provided in this article or by law.

13 (b) The legislature may grant jurisdiction to the supreme
14 court to receive and answer questions of state law certified from
15 federal courts.

16 Sec. 3. COURTS OF APPEALS. There shall be one or more
17 courts of appeals as provided by law, each consisting of a chief
18 judge and at least two other judges. The legislature may authorize

1 the court to sit in sections. The concurrence of a majority of
2 the judges sitting is necessary to decide a case.

3 Sec. 4. DISTRICT COURTS. The state shall be divided into
4 judicial districts as now or hereafter provided by law. In each
5 district there shall be one district court with one or more
6 district judges.

7 Sec. 5. CIRCUIT COURTS. The legislature shall provide by
8 law for circuit courts. A circuit court may serve one or more
9 counties, but no county shall have more than one circuit court.
10 Each circuit court shall have one or more judges and such other
11 officials as provided by law.

12 Sec. 6. COUNTY JUDGE. The county judge provided for in
13 Article IX, Section 3(a) of this constitution has judicial
14 functions as now or hereafter provided by law.

15 Sec. 7. OTHER COURTS. (a) The county commission in each
16 county shall divide the county from time to time into justice
17 precincts, not less than four nor more than eight.

18 (b) The county commission in each county shall establish
19 and maintain one or more justice courts in the county with each
20 court to exercise jurisdiction in one or more precincts in the
21 manner provided by law.

22 (c) Municipal courts may be established by law or by charter
23 as authorized by law and shall have such jurisdiction as provided
24 by law.

1 Sec. 8. QUALIFICATIONS OF JUDGES. No person may serve as
2 a justice, judge, or justice of the peace unless the person is
3 a United States citizen and a resident of this state and has other
4 qualifications prescribed by law. No person may serve as justice
5 or judge in the unified judicial system unless licensed to practice
6 law in this state.

7 Sec. 9. ELECTION OF JUDGES. (a) The Chief Justice of
8 Texas and other justices of the supreme court are elected by the
9 qualified voters of the state every six years in the manner
10 provided by law. Judges of the courts of appeals are elected by
11 the qualified voters of their respective districts every six years
12 in the manner provided by law.

13 (b) District and circuit judges are elected by the qualified
14 voters of their respective districts every four years in the
15 manner provided by law.

16 (c) Vacancies in the offices of justices of the supreme
17 court and judges of the courts of appeals, district courts, and
18 circuit courts are filled by the governor, with the advice and
19 consent of the senate, until the next succeeding general election.

20 (d) Justices of the peace are elected by the qualified
21 voters of the county or precinct every four years in the manner
22 provided by law. Vacancies in the office of justice of the peace
23 are filled by the county commission until the next succeeding
24 general election.

1 (e) Municipal judges are selected in the manner provided
2 by law or by charter as authorized by law.

3 Sec. 10. QUALIFICATIONS COMMISSION; REMOVAL OF JUDGES.

4 (a) There shall be a judicial qualifications commission with such
5 authority and functions as provided by law.

6 (b) A justice of the supreme court may be removed by the
7 governor on the address of two-thirds of each house of the
8 legislature for willful neglect of duty, incompetency, oppression
9 in office, or other reasonable cause not a sufficient ground for
10 impeachment.

11 (c) Any justice of the supreme court, judge, or justice
12 of the peace may be removed, suspended, or censured as provided
13 by law.

14 Sec. 11. COURT ADMINISTRATION. (a) (1) The supreme court
15 shall provide for the efficient operation of the judicial system.
16 The court may direct the transfer of cases from one court to
17 another within each level of the judicial system and may assign
18 judges within or between levels. The court may delegate
19 responsibility for administration to the chief justice and
20 administrative judges provided for in Subsection (a)(2) of this
21 section.

22 (2) Each court of appeals district within the state
23 constitutes an administrative district for purposes of trial court
24 management. Within each district, the Chief Justice of Texas,

1 with the advice and consent of the senate, shall designate a judge
2 to serve as administrative judge of the district.

3 (3) The legislature may establish an agency of the
4 judicial branch having such membership as provided by law to
5 prescribe rules of administration for the unified judicial system
6 not inconsistent with general law or rules of procedure, and
7 perform such other duties as shall be provided by law. Rules of
8 administration promulgated by the agency shall not become effective
9 until approved by the supreme court.

10 (b) The supreme court may promulgate rules of civil
11 procedure not inconsistent with the laws of the state, for all
12 courts, to expedite the dispatch of business therein. Any rule
13 of procedure expressly disapproved by the legislature shall have
14 no effect thereafter.

15 Sec. 12. DISTRICT CLERKS; COUNTY CLERKS. (a) A district
16 clerk, who serves as clerk of the district and circuit courts of
17 the county, is elected by the qualified voters of each county for
18 a term of four years. The clerk may be removed from office upon
19 a jury finding of incompetence, official misconduct, or other
20 cause defined by law. Vacancies in the office of district clerk
21 shall be filled by the judges of the district and circuit courts
22 in the county until the next general election. Each clerk may
23 have a deputy or deputies and other personnel authorized by law.

24 (b) The county clerk, who serves as clerk of the county

1 commission and recorder of the county, is elected by the qualified
2 voters of each county for a term of four years. The legislature
3 shall prescribe the duties, perquisites, and fees of the office.
4 A vacancy in the office shall be filled by the county commission
5 until the next general election.

6 (c) The legislature may provide by law for the election
7 of a single clerk to perform the duties of both a county clerk
8 and a district clerk.

9 Sec. 13. JURIES. (a) A grand jury in the district court
10 consists of 12 persons, of whom nine constitute a quorum and must
11 concur in a bill of indictment.

12 (b) The legislature shall provide by law for trial juries.

13 (c) A party has the right to a jury trial upon demand made
14 in the manner prescribed by law.

15 (d) Jury verdicts must be unanimous, except that the
16 legislature, or the supreme court pursuant to its rule-making
17 authority, may authorize jury verdicts in civil cases rendered
18 by not less than three-fourths of the jurors sitting in a case.

19 (e) The legislature may provide by law for alternate jurors.

20 Sec. 14. SENTENCING AND PROBATION. Courts having original
21 jurisdiction of criminal cases shall have power to suspend the
22 imposition or execution of sentence and place a defendant on
23 probation; and shall have further power to modify, set aside, or
24 reimpose sentence, subject to regulation by law.

1 Sec. 15. APPEAL BY STATE. The state may not appeal in
2 criminal cases except on matters of law as provided by the
3 legislature.

4 Sec. 16. APPEAL BY ACCUSED. (a) The accused shall have
5 the right of appeal to the appellate court having jurisdiction,
6 specifically including the right of appeal granted by Article I,
7 Section 11a of this constitution.

8 (b) Appeal to the supreme court in criminal cases shall
9 be at the discretion of the court, unless otherwise provided by
10 law.

11 Sec. 17. APPEALS FROM ADMINISTRATIVE ACTION.
12 Notwithstanding any other provision of the constitution, the
13 legislature may provide by law for the method of appeal to the
14 courts from actions, rulings, or decisions of administrative
15 agencies and executive departments of the state or any of its
16 subdivisions.

17 Sec. 18. DISTRICT ATTORNEYS; COUNTY ATTORNEYS. (a) The
18 state shall be represented in each county by a district attorney
19 as now or hereafter provided by law. The district attorneys shall
20 be elected by the qualified voters of their respective districts,
21 and shall serve for a term of four years and until their successors
22 have qualified. The state shall provide for the basic compensation
23 of district attorneys.

24 (b) With such exceptions as now or hereafter provided by

1 law, county attorneys shall be elected by the qualified voters
2 of each county and shall hold office for a term of four years and
3 until their successors have qualified.

4 (c) Each district and county attorney shall be licensed
5 to practice law in this state. Other qualifications, duties, and
6 functions of district and county attorneys and the grounds and
7 procedure for disqualification, suspension, removal, and filling
8 of vacancies shall be as provided by law.

9 Sec. 19. COMPENSATION. The state shall pay the basic
10 salaries of all justices and judges of the unified judicial system
11 and shall pay such other expenses of the system as provided by
12 law.

13 Sec. 20. JUDICIAL RETIREMENT. (a) The legislature may
14 prescribe by law the mandatory retirement age of a justice or
15 judge in the unified judicial system.

16 (b) Notwithstanding any other provision of this
17 constitution, the system of retirement, disability, and survivors'
18 benefits established in the constitution or by law for justices,
19 judges, and commissioners of the appellate courts and judges of
20 the district and criminal district courts and in effect at the
21 time of adoption hereof shall be continued. The legislature shall
22 provide for inclusion in the system of judges of all courts in
23 the unified judicial system and such other elected state officials
24 as now or hereafter provided by law.

1 court may sit in civil and criminal divisions. Notwithstanding
2 the provisions of Article V, Section 2(a), the concurrence of a
3 majority of a division is necessary to decide a case.

4 (c) COURTS OF APPEALS JUSTICES. Chief justices of the
5 courts of civil appeals become chief judges of courts of appeals.
6 Justices of courts of civil appeals become judges of courts of
7 appeals.

8 (d) DISTRICT AND CIRCUIT JUDGES. Each district judge or
9 judge of a criminal district court, domestic relations court,
10 special juvenile court, or special probate court becomes a district
11 court judge. Each judge of a county court at law, county civil
12 court at law, county criminal court, county criminal court at
13 law, county criminal court of appeals, or other county court
14 created by statute becomes a judge of a circuit court. Until
15 otherwise provided by law, municipal court judges and justices
16 of the peace remain as they exist at the time of adoption of
17 Article V.

18 (e) JUDICIAL DISTRICTS. Until otherwise provided by law,
19 the judicial districts of the state remain the judicial districts
20 authorized at the time of adoption of Article V, including any
21 judicial districts authorized by law taking effect after the date
22 of adoption of Article V.

23 (f) COUNTY COURT JUDGES. Judges of the county court elected
24 pursuant to Article V, Section 15 of the Constitution of 1876,

1 jurisdiction of the matters and have full authority to dispose
2 of them and to execute or otherwise give effect to all orders,
3 judgments, and decrees issued by their predecessor courts. Courts
4 authorized by Article V succeed to all records and property of
5 courts abolished by this subsection.

6 (h) JUDICIAL OFFICE TRANSITION. No judicial office is
7 abolished until the expiration of the term of the person who held
8 the office on the effective date of Article V, or until that
9 person ceases to hold the office, whichever occurs first.

10 (i) INITIAL JUDICIAL TERMS. The initial justices, judges,
11 and justices of the peace in the judicial branch established by
12 Article V serve for the remainder of the terms for which elected
13 and thereafter serve for the terms provided in Article V.

14 (j) LAWS AND RULES CONTINUED. Except to the extent
15 inconsistent with the provisions of Article V, all laws and rules
16 of court in force on the effective date of Article V continue in
17 effect until superseded as authorized by law.

18 (k) TRANSFERS FROM COURT OF CRIMINAL APPEALS. All matters
19 filed in or docketed, but not heard, by the court of criminal
20 appeals on the effective date of Article V are transferred to the
21 court of appeals to which the matters would have been docketed
22 were they civil in nature and the court of appeals still a court
23 of civil appeals. Until the legislature or supreme court makes
24 provisions for the appeal of criminal cases from the courts of

1 jurisdiction of the matters and have full authority to dispose
2 of them and to execute or otherwise give effect to all orders,
3 judgments, and decrees issued by their predecessor courts. Courts
4 authorized by Article V succeed to all records and property of
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19 filed in or docketed, but not heard, by the court of criminal
20 appeals on the effective date of Article V are transferred to the
21 court of appeals to which the matters would have been docketed
22 were they civil in nature and the court of appeals still a court
23 of civil appeals. Until the legislature or supreme court makes
24 provisions for the appeal of criminal cases from the courts of

1 appeals, the rules presently in force for appeals from courts of
2 civil appeals also apply to the appeal of criminal cases.

3 (1) QUALIFICATIONS COMMISSION. Members of the judicial
4 qualifications commission shall continue in office and perform
5 the duties of the commission established by Article V, Section
6 1-a(2) of the 1876 Constitution, as amended, until a commission
7 is established pursuant to Article V, Section 10(a) of this
8 constitution.

9 (m) PROSECUTORS. All laws pertaining to the office of
10 district attorney, criminal district attorney, or county attorney
11 which are in effect on the effective date of Article V remain in
12 effect until changed by law.

13 (n) CLERKS. All laws pertaining to the office of district
14 clerk or county clerk which are in effect on the effective date
15 of Article V, and which are consistent with the provisions hereof,
16 remain in effect until changed by law.

17 (o) RETIREMENT FUND TRANSFERS. Any participant in a county
18 retirement, disability, and death compensation fund who becomes
19 a judge, officer, or employee of the unified court system pursuant
20 to Article V, this transition schedule, or legislative enactment
21 pursuant thereto, has the option of continuing to participate in
22 the county fund or of transferring membership and accrued service
23 credit and contributions to a state retirement system under such
24 regulations as provided by law, as follows: (1) if such

1 participant becomes a judge, to the Judicial Retirement System
2 of Texas, or (2) if such participant becomes an officer and
3 employee other than a judge, to the Employees Retirement System
4 of Texas.

5 (p) OTHER PROVISIONS. In the event a transfer or transition
6 has not been provided for by this section or by law, the supreme
7 court shall provide by rule for the orderly transfer or transition.

8 (q) EFFECTIVE DATE. Article V of this constitution takes
9 effect January 1, 1976,

MEMORANDUM FROM:

League of Women Voters of Texas

DICKINSON PLAZA CENTER • DICKINSON, TEXAS 77539

TO: LOCAL LEAGUE PRESIDENTS DAVIES, HARRIS, KEEVER, OLEASON, BROWN
CC: CRAGON, ANDERSON, CONVENTION OFFICE, STATE OFFICE
FROM: CONNER, TCR CHAIRMAN
RE: ACTION ON JUDICIAL ARTICLE OF THE CONSTITUTION

I have talked this morning with Judge Ray Helbrook of Galveston County, who supports the Judiciary Committee's report on the Judicial article and is an ardent supporter of modernizing the Judiciary, the unified system, etc. He is writing a letter to the Galveston delegates urging support of the committee report and to write a judicial article that would serve the best interests of Texas and not cater to the interests of some county judges. One of the delegates will be asked to release this letter to the press. The same letter will be sent to Price Daniels with a note stating that Helbrook would be willing to have Daniels reproduce the letter and distribute it to the convention. Three cheers--one county judge who doesn't have his head buried in the sand.

Helbrook suggested that the following county judges were also concerned about the Judicial article and if contacted might agree to make a statement to the press or write a letter to the

League of Women Voters of Texas



DICKINSON PLAZA SHOPPING CENTER • DICKINSON, TEXAS 77539 • PH. 713-337-1722

MRS. DARVIN M. WINICK, PRESIDENT

Convention Office
308 W. 15th St. Rm 305
Austin, Tx 78701

FOR IMMEDIATE RELEASE
May 28, 1974

The League of Women Voters of Texas is disappointed and discouraged that the Judiciary Article is becoming the victim of special interests. League members across the state have been encouraged to contact their local county judges as well as their convention delegates to prevent the circuit courts from being aborted.

Many counties of the state will have non-professional, non-lawyer judges if the circuit courts are not mandatory throughout the state. The county judges have been well protected in this new constitution, now it is time to protect the right of the citizens of Texas to equal justice.

MEMORANDUM FROM:

League of Women Voters of Texas

DICKINSON PLAZA CENTER • DICKINSON, TEXAS 77539

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1974

TEXAS CONSTITUTIONAL CONVENTION

YEA N-V NAY

Mr. President _____
 Adams, D. _____
 Adams, H. _____
 Agnich _____
 Aikin _____
 Allen, Joe _____
 Allen, John _____
 Allred _____
 Andujar _____
 Atwell _____
 Bailey _____
 Baker _____
 Bales _____
 Barnhart _____
 Bigham _____
 Bird _____
 Blake _____
 Blanchard _____
 Blythe _____
 Bock _____
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 Bowers _____
 Braecklein _____
 Brooks _____
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 Caldwell _____
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 Canales _____
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 Clark _____
 Clayton _____
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 Cobb _____
 Cole _____
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 Coody _____
 Cooke _____
 Craddick _____
 Creighton _____
 Daniel _____
 Davis _____
 Denson _____
 Denton _____
 Doggett _____
 Donaldson _____
 Doran _____

YEA N-V NAY

Doyle _____
 Dramberger _____
 Earle _____
 Edwards _____
 Evans _____
 Finnell _____
 Finney _____
 Foreman _____
 Fox _____
 Gammage _____
 Garcia _____
 Gaston _____
 Geiger _____
 Grant _____
 Green, F. _____
 Green, R. _____
 Hale _____
 Hall, A. _____
 Hall, W. _____
 Hanna _____
 Harrington _____
 Harris, E. _____
 Harris, G. _____
 Head _____
 Heatly _____
 Henderson _____
 Hendricks _____
 Hernandez _____
 Hightower _____
 Hilliard _____
 Hoestenbach _____
 Hollowell _____
 Howard _____
 Hubenak _____
 Hudson _____
 Hutchison _____
 Johnson _____
 Jones, Gene _____
 Jones, Grant _____
 Jones, L. _____
 Kaster _____
 Koriath _____
 Kothmann _____
 Kubiak _____
 Laney _____
 Lary _____

YEA N-V NAY

Lee _____
 Leland _____
 Lewis _____
 Lombardino _____
 Longoria _____
 McAlister _____
 McDonald, F. _____
 McDonald, T. _____
 McKinnon _____
 McKnight _____
 Madla _____
 Maloney _____
 Martin _____
 Massey _____
 Mattox _____
 Mauzy _____
 Meier _____
 LAULHOFF _____
 Mengden _____
 Miller _____
 Montoya _____
 Moore _____
 Munson _____
 Murray _____
 Nabers _____
 Newton _____
 Nichols _____
 Nowlin _____
 Nugent _____
 Ogg _____
 Olson _____
 Parker, C. _____
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 Powers _____
 Presnal _____
 Preston _____
 Ragsdale _____
 Reyes _____
 Reynolds _____
 Rodriguez _____
 Rosson _____

YEA N-V NAY

Russell _____
 Sage _____
 Salem _____
 Sanchez _____
 Santiesteban _____
 Schieffer _____
 Schwartz _____
 Scoggins _____
 Semos _____
 Sherman, M. _____
 Sherman, W. _____
 Short _____
 Simmons _____
 Slack _____
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 Spurlock _____
 Sullivant _____
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 Tarbox _____
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 Traeger _____
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 Vale _____
 Vecchio _____
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 Von Dohlen _____
 Wallace _____
 Washington _____
 Waters _____
 Watson _____
 Weddington _____
 Whitehead _____
 Whitmire _____
 Wieting _____
 Williams _____
 Williamson _____
 Willis _____
 Wilson _____
 Wolff _____
 Wyatt _____
 Bryant _____

X-EXCUSED ABSENCE

RECORD # 8 ADOPTION OF F, AS AMENDED

This vote defeated the Judiciary Article, how did your delegate vote?

Let him know you know how he voted!!!

5-22-74

MEMORANDUM FROM:

convention delegates.
Blair Reeves - Bexar County
Bob Barnes - Corpus Christi
Judge Elliott - Houston
Chester Young - Beaumont
Howard Green - Tarrant County

Please contact your county judge and see if he would be willing to lobby for the Judicial article. Support from county officials is badly needed to counter the negatism of some county judges and keep the circuit courts as part of the unified system.

1974

TEXAS CONSTITUTIONAL CONVENTION

YEA N-V NAY

Mr. President _____
 Adams, D. _____
 Adams, H. _____
 Agnich _____
 Aikin _____
 Allen, Joe _____
 Allen, John _____
 Allred _____
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 Bailey _____
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 Creighton _____
 Daniel _____
 Davis _____
 Denson _____
 Denton _____
 Doggett _____
 Donaldson _____
 Doran _____

YEA N-V NAY

Doyle _____
 Dramberger _____
 Earle _____
 Edwards _____
 Evans _____
 Fennell _____
 Finney _____
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 Fox _____
 Gammage _____
 Garcia _____
 Gaston _____
 Geiger _____
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 Green, F. _____
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 Hendricks _____
 Hernandez _____
 Hightower _____
 Hilliard _____
 Hoestenbach _____
 Hollowell _____
 Howard _____
 Hubenak _____
 Hudson _____
 Hutchison _____
 Johnson _____
 Jones, Gene _____
 Jones, Grant _____
 Jones, L. _____
 Kaster _____
 Koriath _____
 Kothmann _____
 Kubiak _____
 Laney _____
 Lary _____

YEA N-V NAY

Lee _____
 Leland _____
 Lewis _____
 Lombardino _____
 Longoria _____
 McAlister _____
 McDonald, F. _____
 McDonald, T. _____
 McKinnon _____
 McKnight _____
 Madla _____
 Maloney _____
 Martin _____
 Massey _____
 Mattox _____
 Mauzy _____
 Meier _____
 LALLHOFF _____
 Mengden _____
 Miller _____
 Montoya _____
 Moore _____
 Munson _____
 Murray _____
 Nabers _____
 Newton _____
 Nichols _____
 Nowlin _____
 Nugent _____
 Ogg _____
 Olson _____
 Parker, C. _____
 Parker, W. _____
 Patman _____
 Pentony _____
 Peveto _____
 Poerner _____
 Poff _____
 Powers _____
 Presnal _____
 Preston _____
 Ragsdale _____
 Reyes _____
 Reynolds _____
 Rodriguez _____
 Rosson _____

YEA N-V NAY

Russell _____
 Sage _____
 Salem _____
 Sanchez _____
 Santiesteban _____
 Schieffer _____
 Schwartz _____
 Scoggins _____
 Semos _____
 Sherman, M. _____
 Sherman, W. _____
 Short _____
 Simmons _____
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 Snelson _____
 Spurlock _____
 Sullivant _____
 Sutton _____
 Tarbox _____
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 Von Dohlen _____
 Wallace _____
 Washington _____
 Waters _____
 Watson _____
 Weddington _____
 Whitehead _____
 Whitmire _____
 Wieting _____
 Williams _____
 Williamson _____
 Willis _____
 Wilson _____
 Wolff _____
 Wyatt _____
 Bryant _____

X-EXCLUDED ABSENCE

RECORD # 8 ADOPTION OF F, AS AMENDED

This vote defeated the Judiciary Article, how did your delegate vote?

Let him know you know how he voted!!!

5-22-74

May 31, 1974

The Honorable H.J. Blanchard
The Senate, Capitol Station
Austin, Texas 78701

Dear Senator Blanchard,

The League of Women Voters of Lubbock has been following with interest the activities of the Constitutional Convention since its reconvening after the primaries. We noticed that your vote was one of the 'nay' votes in the defeat of the judicial article.

When the Constitutional Convention reconsiders this article, we urge you to help retain the unified court system and the accompanying unified administration. Equal justice for all is surely more important than special interests. It is possible to incorporate the county court system and, at the same time, provide protection for the many non-lawyer county judges we have here in west Texas.

We realize that this was not the only reason contributing to the defeat of this particular article. We would appreciate it, however, if you could give the unified court system careful consideration; we believe that this is vital to the future of justice in Texas.

Sincerely,

Alison J. Davidow
Chairman, Texas Constitutional
Revision Committee

May 31, 1974

The Honorable James Laney
House of Representatives
Capitol Station
Austin, Texas 78701

Dear Representative Laney,

The League of Women Voters of Lubbock has been following with interest the activities of the Constitutional Convention since its reconvening after the primaries. We noticed that your vote was one of the 'nay' votes in the defeat of the judicial article.

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Alison J. Davidow
Chairman, Texas Constitutional
Revision Committee

May 31, 1974

The Honorable Elmer Tarbox
House of Representatives
Capitol Station
Austin, Texas 78701

Dear Mr. Tarbox,

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Chairman, Texas Constitutional
Revision Committee

May 31, 1974

The Honorable R.B. McAlister
House of Representatives
Capitol Station
Austin, Texas 78701

Dear Mr. McAlister,

The League of Women Voters of Lubbock has been following with interest the activities of the Constitutional Convention since its reconvening after the primaries. We noticed that your vote was one of the 'nay' votes in the defeat of the judicial article.

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Sincerely,

Alison J. Davidow
Chairman, Texas Constitutional
Revision Committee

Special meeting on Judicial Article

5-28-74

Presiding - Sullivan

new rep. from Hartford.

Bill Mier, Bill Clayton, Bill Sullivan, Max Sherman

Present - Grant, Earle, Powers, Bob Strauss, Nabers, ~~Daniel~~

Grant Jones - Bob Maloney, D. Hale, Terry Doyle

Question - county get all the money from circuit courts - may be used to support that court? only that court.

Criminal courts pay for themselves 3 & 4 times over.

Rosson wants it to go to the state -

Powers - leave it silent & let leg. deal with it, (Rosson)
but I was mislead.

Clower wants to leave it silent -

Bill Clayton - if State going to pick up tab, it ought to get the income.

Nabers Sec. 2 - Court may sit in sections - Criminal & Civil - ^{not less than 5 sections.}
Nabers - if I remove Crime & Civil - lose 10 votes -
also - ^{don't want to} look into Federal system -

Nabers - some folks want bifurcated system - fear of sitting as a panel.

Bill - used to operate in sections in Hickman's Court, but abandoned because inconvenient.

Earle Nabers - his substitute - only with amendments but not as an alternate -

Earle - give a little on city judges & right of appeal for eliminating criminal civil.

Earle:

Williams go along with just sections -

Mozzy not go for anything other than total bifurcated ~~Fair~~ System -

Washington not changed on his stand.

~~Cons. 81009~~

Nabes - Terry makes more sense to limit right of appeal.

Nabes - Rather be silent than just say "sit in sections"

Impasse -

Hale - Sec. 5 - Circuit Courts -

by law -
shall provide for circuit courts and legislature
to determine from time to time number and
location of courts -

The county courts at law only become circuit
courts; County courts remain the same.

§

Sec. 6 - City courts continued in effect until
otherwise provided by law - and have jurisdiction
as provided by law -

Grant Jones - isn't that the same thing we're doing now.

Bill - only difference will be who pays:
state pays ~~the~~ circuit

Nabes - allows abolishment of county court - nothing
left to do - (draw their salary!)

Powers - main difference between Nabes & Hale
Sec. 6 - is "is hereby established."

Clarke what difference between actual effort -

Two systems can co-exist under Hale amendment -
Nabes - leave it up to local people.

What's wrong with my language on Sec. 5

Nier - Doesn't mandate ~~county~~ ^{conflict} courts -
Nabers - Legislature can pass a law.
Maloney - conflict under unified system.

^(deflected)
~~Now~~ Hele - County Judges got upset over
comment by staff in commentary - came
to me said "abolishing county judges" - conceded
~~and~~ want something more.

Mur - take what they offer and use it to
your advantage.

Hele - lobby control act. ? County Judges.

"Now or hereafter" added by Healey & Nabers.

Nabers -

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF TEXAS,

That there be a new article on the judiciary to read as follows:

ARTICLE V
THE JUDICIARY

Sec. 1. JUDICIAL POWER. The judicial power of the state is vested in the judicial branch. The state unified judicial system is composed of a supreme court, courts of appeals, district courts, and circuit courts. All courts have jurisdiction as provided by law, but jurisdiction of courts of the same level must be uniform throughout the state.

Sec. 2. SUPREME COURT. (a) The supreme court shall be the highest court of the state and shall consist of the Chief Justice of Texas and at least eight other justices. The court may sit in criminal and civil sections. The concurrence of a majority of the judges sitting in each section is necessary to decide a case. It shall have such jurisdiction and administrative and rule-making authority as provided in this article or by law.

(b) The legislature may grant jurisdiction to the supreme court to receive and answer questions of state law certified from federal courts.

Sec. 3. COURTS OF APPEALS. There shall be one or more courts of appeals as provided by law, each consisting of a chief judge and at least two other judges. The legislature may authorize

the court to sit in sections. The concurrence of a majority of the judges sitting is necessary to decide a case.

Sec. 4. DISTRICT COURTS. The state shall be divided into judicial districts as now or hereafter provided by law. In each district there shall be one district court with one or more district judges.

Sec. 5. CIRCUIT COURTS. The legislature may establish by law circuit courts with one or more judges. Funds collected by the circuit courts of the unified judicial system may be used to support such courts.

Sec. 6. OTHER COURTS. (a) A county court, presided over by the county judge, provided for in Article IX, Section 3(a) of this constitution is hereby established, with such jurisdiction as now or hereafter provided by law.

(b) The county commission in each county shall divide the county from time to time into justice precincts, not less than four nor more than eight.

(c) The county commission in each county shall establish and maintain one or more justice courts in the county with each court to exercise jurisdiction in one or more precincts in the manner provided by law.

(d) Municipal courts may be established by law or by charter as authorized by law and shall have such jurisdiction as provided by law.

1 Sec. 7. QUALIFICATIONS OF JUDGES. No person may serve as
2 a justice, judge, or justice of the peace unless the person is
3 a United States citizen and a resident of this state and has other
4 qualifications prescribed by law. No person may serve as justice
5 or judge in the unified judicial system unless licensed to practice
6 law in this state.

7 Sec. 8. ELECTION OF JUDGES. (a) The Chief Justice of
8 Texas and other justices of the supreme court are elected by the
9 qualified voters of the state every six years in the manner
10 provided by law. Judges of the courts of appeals are elected by
11 the qualified voters of their respective districts every six years
12 in the manner provided by law.

13 (b) District and circuit judges are elected by the qualified
14 voters of their respective districts every four years in the
15 manner provided by law.

16 (c) Vacancies in the offices of justices of the supreme
17 court and judges of the courts of appeals, district courts, and
18 circuit courts are filled by the governor, with the advice and
19 consent of the senate, until the next succeeding general election.

20 (d) Justices of the peace are elected by the qualified
21 voters of the county or precinct every four years in the manner
22 provided by law. Vacancies in the office of justice of the peace
23 are filled by the county commission until the next succeeding
24 general election.

1 (e) Municipal judges are selected in the manner provided
2 by law or by charter as authorized by law.

3 Sec. 9. QUALIFICATIONS COMMISSION; REMOVAL OF JUDGES.

4 (a) There shall be a judicial qualifications commission with such
5 authority and functions as provided by law.

6 (b) A justice of the supreme court may be removed by the
7 governor on the address of two-thirds of each house of the
8 legislature for willful neglect of duty, incompetency, oppression
9 in office, or other reasonable cause not a sufficient ground for
10 impeachment.

11 (c) Any justice of the supreme court, judge, or justice
12 of the peace may be removed, suspended, or censured as provided
13 by law.

14 Sec. 10. COURT ADMINISTRATION. (a) (1) The supreme court
15 shall provide for the efficient operation of the judicial system.
16 The court may direct the transfer of cases from one court to
17 another within each level of the judicial system and may assign
18 judges within or between levels. The court may delegate
19 responsibility for administration to the chief justice and
20 administrative judges provided for in Subsection (a)(2) of this
21 section.

22 (2) Each court of appeals district within the state
23 constitutes an administrative district for purposes of trial court
24 management. Within each district, the Chief Justice of Texas,

1 with the advice and consent of the senate, shall designate a judge
2 to serve as administrative judge of the district.

3 (3) The legislature may establish an agency of the
4 judicial branch having such membership as provided by law to
5 prescribe rules of administration for the unified judicial system
6 not inconsistent with general law or rules of procedure, and
7 perform such other duties as shall be provided by law. Rules of
8 administration promulgated by the agency shall not become effective
9 until approved by the supreme court.

10 (b) The supreme court may promulgate rules of civil
11 procedure not inconsistent with the laws of the state, for all
12 courts, to expedite the dispatch of business therein. Any rule
13 of procedure expressly disapproved by the legislature shall have
14 no effect thereafter.

15 Sec. 11. DISTRICT CLERKS; COUNTY CLERKS. (a) A district
16 clerk, who serves as clerk of the district and circuit courts of
17 the county, is elected by the qualified voters of each county for
18 a term of four years. The clerk may be removed from office upon
19 a jury finding of incompetence, official misconduct, or other
20 cause defined by law. Vacancies in the office of district clerk
21 shall be filled by the judges of the district and circuit courts
22 in the county until the next general election. Each clerk may
23 have a deputy or deputies and other personnel authorized by law.

24 (b) The county clerk, who serves as clerk of the county

1 commission and recorder of the county, is elected by the qualified
2 voters of each county for a term of four years. The legislature
3 shall prescribe the duties, perquisites, and fees of the office.
4 A vacancy in the office shall be filled by the county commission
5 until the next general election.

6 (c) The legislature may provide by law for the election
7 of a single clerk to perform the duties of both a county clerk
8 and a district clerk.

9 Sec. 12. JURIES. (a) A grand jury in the district court
10 consists of 12 persons, of whom nine constitute a quorum and must
11 concur in a bill of indictment.

12 (b) The legislature shall provide by law for trial juries.

13 (c) A party has the right to a jury trial upon demand made
14 in the manner prescribed by law.

15 (d) Jury verdicts must be unanimous, except that the
16 legislature, or the supreme court pursuant to its rule-making
17 authority, may authorize jury verdicts in civil cases rendered
18 by not less than three-fourths of the jurors sitting in a case.

19 (e) The legislature may provide by law for alternate jurors.

20 Sec. 13. SENTENCING AND PROBATION. Courts having original
21 jurisdiction of criminal cases shall have power to suspend the
22 imposition or execution of sentence and place a defendant on
23 probation; and shall have further power to modify, set aside, or
24 reimpose sentence, subject to regulation by law.

Sec. 14. APPEAL BY STATE. The right of the State to appeal shall be limited to:

(a) a trial court decision which rules a law unconstitutional.

(b) A Court of Appeals decision which is in conflict with another Court of Appeals decision and only for the purpose of clarification; however, a defendant may not be tried again for the same offense.

Sec. 15. APPEAL BY ACCUSED. (a) The accused shall have the right of appeal to the appellate court having jurisdiction, specifically including the right of appeal granted by Article I, Section 11a of this constitution.

(b) Appeal to the supreme court in criminal cases shall be at the discretion of the court, unless otherwise provided by law.

Sec. 16. APPEALS FROM ADMINISTRATIVE ACTION. Notwithstanding any other provision of the constitution, the legislature may provide by law for the method of appeal to the courts from actions, rulings, or decisions of administrative agencies and executive departments of the state or any of its subdivisions.

Sec. 17. DISTRICT ATTORNEYS; COUNTY ATTORNEYS. (a) The state shall be represented in each county by a district attorney as now or hereafter provided by law. The district attorneys shall be elected by the qualified voters of their respective districts, and shall serve for a term of four years and until their successors have qualified. The state shall provide for the basic compensation of district attorneys.

(b) With such exceptions as now or hereafter provided by
1 law, county attorneys shall be elected by the qualified voters
2 of each county and shall hold office for a term of four years and
3 until their successors have qualified.

4 (c) Each district and county attorney shall be licensed
5 to practice law in this state. Other qualifications, duties, and
6 functions of district and county attorneys and the grounds and
7 procedure for disqualification, suspension, removal, and filling
8 of vacancies shall be as provided by law.

9 Sec. 17. COMPENSATION. The state shall pay the basic
10 salaries of all justices and judges of the unified judicial system
11 and shall pay such other expenses of the system as provided by
12 law.

13 Sec. 18. JUDICIAL RETIREMENT. (a) The legislature may
14 prescribe by law the mandatory retirement age of a justice or
15 judge in the unified judicial system.

16 (b) Notwithstanding any other provision of this
17 constitution, the system of retirement, disability, and survivors'
18 benefits established in the constitution or by law for justices,
19 judges, and commissioners of the appellate courts and judges of
20 the district and criminal district courts and in effect at the
21 time of adoption hereof shall be continued. The legislature shall
22 provide for inclusion in the system of judges of all courts in
23 the unified judicial system and such other elected state officials
24 as now or hereafter provided by law.

1 (c) General administration of the Judicial Retirement
2 System of Texas shall be by the Board of Trustees of the Employees
3 Retirement System of Texas under such regulations as may be
4 provided by law.

5 **TRANSITION SCHEDULE**

6 (a) SUPREME COURT; COURT OF CRIMINAL APPEALS. On the
7 effective date of Article V, the chief justice of the supreme
8 court becomes the Chief Justice of Texas. The presiding judge
9 and the other judges of the court of criminal appeals and associate
10 justices of the supreme court become justices of the supreme
11 court. Each commissioner of the court of criminal appeals becomes
12 a commissioner of the supreme court, but that position exists
13 only as long as it continues to be held by the commissioner in
14 office on the effective date of Article V. Except for the office
15 of chief justice, the offices of the first five justices who cease
16 to be members of the supreme court by reason of death, removal,
17 resignation, or retirement after the effective date of Article
18 V cease to exist. The death, removal, resignation, or retirement
19 of an incumbent justice after having been defeated at a primary
20 or general election does not terminate the office.

21 (b) SUPREME COURT DIVISIONS. After the effective date of
22 Article V and before the total membership of the supreme court
23 is reduced to nine or such other number as provided by law, the

Hale -

Section 6. OTHER COURTS. (a) The county courts are continued in effect until otherwise provided by law and shall have such jurisdiction as provided by law. The county judge provided for in Article IX, Section 3(a) of this Constitution presides over the county court and has judicial functions as now or hereafter provided by law.

(b) The county commission in each county shall divide the county from time to time into justice precincts, not less than four nor more than eight.

(c) The county commission in each county shall establish and maintain one or more justice courts in the county with each court to exercise jurisdiction in one or more precincts in the manner provided by law.

(d) Municipal courts may be established by law or by charter as authorized by law and shall have such jurisdiction as provided by law.

Hale

Section 5. CIRCUIT COURTS. The Legislature shall provide by law for circuit courts and shall from time to time determine the number and location of such courts. A circuit court may serve one or more counties, but no county shall have more than one circuit court. Each circuit court shall have one or more judges and such other officials as provided by law.

Judiciary

League of Women Voters of Texas



DICKINSON PLAZA SHOPPING CENTER • DICKINSON, TEXAS 77539 • PH. 713-337-1722

Convention Office
308 W. 15th St. Rm 305
Austin, Tx 78701

MRS. DARVIN M. WINICK, PRESIDENT

May 28, 1974

To the Delegates of the Constitutional Convention:

The LWV of Texas is disappointed and discouraged that the Judiciary Article is becoming the victim of special interests. We are aware of the many hours of work that went into producing the Committee report. We thought it was a vast improvement over our current antiquated system.

Obviously some compromise was necessary, but we are fearful that the unified court system is about to be gutted. We are particularly concerned that the unified court system, especially the merger of the courts, the circuit courts and the unified administrative structure, be retained.

We believe that the circuit courts are an integral part of the unified system. The county judges have been well protected in this new constitution, now it is time to protect the right of the citizens of Texas to equal justice.

Very cordially yours,

Darvin Winick

Mrs. Darvin Winick, President

cc:DeWitt Hale

Anderson, Conner, Hunter, Cragon, SO., ConO.

League of Women Voters of Texas



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Constitutional Convention Office
308 West 15th Street, Rm. 305
Austin, Texas 78701

MRS. DARVIN M. WINICK, PRESIDENT

May 17, 1974

Price Daniel, Jr., President
Constitutional Convention
Capitol Station
Austin, Texas 78711

Dear Price:

The LWV of Texas has carefully reviewed the Judicial article that is now being considered by the Convention. We consider it a vast and badly needed improvement of our judicial system.

We are especially pleased with the merger of the courts, the unified administrative system, and the upgrading of the courts at the county level.

However, the League is deeply concerned about Thursday's action adding an amendment to Section 11 a 4 which pertains to the Legislature prescribing rules of general administration for the Judiciary.

We feel that the amendment is in direct violation of the principle of separation of powers. We strongly urge the Convention to vote for reconsideration of this amendment and to try to reach some suitable compromise.

Sincerely,

Veta Winick

Mrs. Darvin M. Winick, President
League of Women Voters of Texas

cc: DeWitt Hale
Conner, Hunter, Anderson, Cragon
State Office
Convention Office ✓

Constitutional Convention Office
306 West 15th Street, Room 305
Austin, Texas 78701

May 24, 1974

Price Daniel, Jr., President
Constitutional Convention
State Capitol Station
Austin, Texas 78711

Dear Price:

The LNV of Texas is disappointed in the action taken by the Convention on the Judicial Article. We are aware of the many hours of dedicated effort put forth by the Judicial Committee to provide an article that would update our antiquated court system. We thought the article produced by the Committee was a vast improvement.

We are contacting our delegates to urge them to produce an Article that will benefit all citizens of Texas and not just the special interests. We are particularly concerned that the unified court system, especially the circuit courts and the unified administrative structure, be retained in the Article.

We appreciate your efforts and want you to know that you have the full support of the LNV of Texas in this worthy cause.

Sincerely,

Mrs. Darvin M. Winick, President
League of Women Voters of Texas

cc: DeWitt Hale
Conner, Hunter, Anderson, Cragon
State Office
Convention Office

*Con Off
Judiciary*

TRANSITION SCHEDULE

(a) SUPREME COURT; COURT OF CRIMINAL APPEALS. On the effective date of Article V, the chief justice of the supreme court becomes the Chief Justice of Texas. The presiding judge and the other judges of the court of criminal appeals and associate justices of the supreme court become justices of the supreme court. Each commissioner of the court of criminal appeals becomes a commissioner of the supreme court, but that position exists only as long as it continues to be held by the commissioner in office on the effective date of Article V. Except for the office of chief justice, the offices of the first five justices who cease to be members of the supreme court by reason of death, removal, resignation, or retirement after the effective date of Article V cease to exist. The death, removal, resignation, or retirement of an incumbent justice after having been defeated at a primary or general election does not terminate the office.

(b) SUPREME COURT DIVISIONS. After the effective date of Article V and before the total membership of the supreme court is reduced to nine, the court may sit in civil and criminal divisions. Notwithstanding the provisions of Article V, Section 2 (a), the concurrence of a majority of a division is necessary to decide a case.

(c) COURTS OF APPEALS JUSTICES. Chief justices of the courts of civil appeals become chief judges of courts of appeals. Justices of courts of civil appeals become judges of courts of appeals.

(d) DISTRICT COURT JUDGES. Each district judge or judge of a criminal district court, domestic relations court, special juvenile court, or special probate court becomes a district court judge. Each judge of a county court at law, county civil court at law, county court for criminal cases, county criminal court, or county court of criminal appeals becomes a circuit court judge. Until otherwise provided by law, municipal court judges and justices of the peace remain as they exist prior to the adoption of Article V.

(e) JUDICIAL DISTRICTS. Until altered by law, the judicial districts of the state remain the judicial districts in effect prior to the adoption of Article V.

(f) JUDICIAL SALARIES. No initial justice or judge in the unified judicial system may be compensated at a salary less than that received by the justice or judge prior to the effective date of Article V.

(g) COUNTY COURT JUDGES. Judges of the county court elected pursuant to Article V, Section 15 of the constitution of 1876 remain as presiding officers of the county commission as provided in Article IX, Section 3 (a) of this constitution. However, a judge of the county court who is licensed to practice law, by written notice to the governor filed with the secretary of state within 30 days after the effective date of Article V, may elect instead to become a judge of the circuit court established pursuant to Article V, Section 5. In the latter event, the office of county judge becomes vacant and is filled by the county commission until the next general election.

(h) TRANSFER OF PROCEEDINGS AND RECORDS. All courts, except those authorized by Article V, are abolished and all matters pending

before them are transferred to courts authorized by Article V. The courts into which the matters are transferred assume full jurisdiction of the matters and have full authority to dispose of them and to execute or otherwise give effect to all orders, judgments, and decrees issued by their predecessor courts. Courts authorized by Article V succeed to all records and property of courts abolished by this subsection.

(i) JUDICIAL OFFICE TRANSITION. No judicial office is abolished until the expiration of the term of the person who held the office of the effective date of Article V, or until that person ceases to hold the office, whichever occurs first.

(j) INITIAL JUDICIAL TERMS. The initial justices and judges in the judicial branch serve for the remainder of the terms for which elected and thereafter serve for the terms provided in Article V.

(k) LAWS AND RULES CONTINUED. Except to the extent inconsistent with the provisions of Article V, all laws and rules of court in force on the effective date of Article V continue in effect until superseded as authorized by law.

(l) TRANSFERS FROM COURT OF CRIMINAL APPEALS. All matters filed in or docketed, but not heard, by the court of criminal appeals on the effective date of Article V are transferred to the court of appeals to which the matters would have been docketed were they civil in nature and the court of appeals still a court of civil appeals. Until the legislature or supreme court makes provisions for the appeal of criminal cases from the courts of appeals, the rules presently in force for appeals from courts of civil appeals also apply to the appeal of criminal cases.

(m) QUALIFICATIONS COMMISSION. Members of the judicial qualifications commission on the effective date of Article V of this constitution continue in office and serve as a commission under Article V, Section 10 until a commission is established pursuant to that section.

(n) JUDICIAL COUNCIL. Until otherwise provided by law, the judicial council created by Article V, Section 11 (a) (3) is composed of the following members, each of whom serves a two-year term: the Chief Justice of Texas, who serves as chairman; two judges of the courts of appeals and three trial judges, each appointed by the supreme court; one district clerk and one county clerk, each appointed by the governor; four members of the State Bar of Texas, each appointed by its board of directors; and two members of each house of the legislature, each appointed by their respective houses. Unless otherwise provided by law, vacancies are filled by the appointing authority of the remainder of the term.

(o) PROSECUTORS. All laws pertaining to the office of district attorney, criminal district attorney, or county attorney which are in effect on the effective date of Article V remain in effect until changed by law.

(p) RETIREMENT FUND TRANSFERS. Any participant in a county retirement, disability and death compensation fund who becomes, pursuant to Article V or Subsection (d) of this section, a judge or other employee of a district or circuit court has the option of continuing to participate in the county fund or of transferring membership and accrued service credit and contributions to the

state judicial retirement system under such regulations as provided by law.

(q) OTHER PROVISIONS. In the event a transfer or transition has not been provided for by this section or by law, the supreme court shall provide by rule for the orderly transfer or transition.

Con Office

In the final draft of the judicial article which will be approved or disapproved in ~~XXXX~~ record votes next week, there are several issues which could use additional explanation.

1. The question of financing the judiciary was taken completely out of the constitution on an amendment offered by Gene Jones. In discussion, the question of supplementation was debated, with Coleman advocating uniform state fiscal policy and Jones saying supplementation in larger cities is necessary because of caseload differentials. In an informal talk with Jones, the following rationale for his amendment (which had support of Heatly to Earle) was offered: If the unified system is put into effect and the caseload equalized, supplementation could be removed by law and judges with previously greater caseloads would have little ground upon which to demand supplementation. Hale's amendment would have established a graduated fiscal policy, and he seemed very perplexed that his amendment failed. From hearing the debate and seeing the detail in the Hale amendment, the Jones amendment may well have been the best course for success of a progressive judicial article.
2. Section 11 on court administration and the judicial council was a compromise amendment by Blanchard. Earle had proposed an amendment which gave the chief justice administrative control and spelled out members of the judicial council; McDonald's amendment would have left most detail to statute. The key areas of opposition to the Blanchard amendment as expressed by Jim Hutcheson (counsel for the Texas Civil Judicial Council) in an interview are: a) chief justice is not specified as head of the council; b) section on judicial council not tied in with first sections; and c) in 3b rules of procedure may be disapproved by either house. The Chief Justice task force Sec. 2c gives rule making power to Supreme Court with disapproval by Legislature. Another objection is found in the Judiciary committee report which states that rule changes cannot be effectuated until the leg. has the opportunity to disapprove them. However, at the same time Hutcheson indicated that this compromise was still a step forward. Earle's comments are much the same as Hutcheson's.

In view of our position for uniform rules of administration and legislative safeguards on rules of procedure this section with its imperfections doesn't scare me too much. What do you think? I might could change votes here if you think it necessary.

[Several committee members ask me what I think and "how to vote" and I am continually reiteration League positions but not specifically saying "1" or "2"-- Is that what I am supposed to do?]

3. Under Sec. 9 (Election of Judges) the Coleman amendment which was incorporated into the final draft provides for single member judicial districts. Obviously the argument supported by Grant, Mauzy, Heatly, and others was that the problem of not knowing those on the ballot would be diminished. Hudson supported it because it might guarantee a minority group justice! Bales, Denson, Baker vehemently oppose as they see the process as being too close to the people and too prone to corrupting the administration of justice. (Interesting, since Bales is opposed to merit selection on basis that judges should be close to people!) Our position is for merit selection but this really could be a dangerous development if passes next week. Pulse of the committee is that it will fail as several "progressives" were absent when the vote was taken initially. Should we act here at all?

4. Then there is Section 17 or the "Mauzy statutes" which were adopted with the help of the progressives (except Power and Baker). Section dealing with insurance companies is the crucial one which gives people right to sue companies directly. The reason for support of the "Mauzy statutes" is as follows: Mauzy is against right to work in constitution and he intends to use this section as bargaining tool to get right to work removed; he'll pull his down if they will. Strategy seems shaky to me.
5. It will be interesting to see if Sec. 7 on JP courts keeps the wording "...county may establish....justice courts." I- the debate Earle in jest said "Everybody knows JP's can't read and write" which was picked up and carried by AP in some state papers. Earle as well as Baker and Hale have been really been getting pressure from JP's.

In general I feel the article is an improvement over present constitution, especially sections 1 and 2. Hopefully the votes for these sections will still be there next week.

After the complete article is approved, Hale will entertain motions for alternate submission of merit selection. Denson promised to submit the proposal and we may get the votes yet.

League of Women Voters of Texas



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Constitutional Convention Office
308 West 15th Street, Rm. 305
Austin, Texas 78701

MRS. DARVIN M. WINICK, PRESIDENT

For Immediate Release
May 17, 1974

The LWV of Texas is urging the Constitutional Convention to reconsider their action on Section 11, a⁴ which pertains to the Legislature prescribing rules of administration for the Judiciary.

Mrs. Darvin M. Winick, Dickinson, State League President, stated, "This amendment is in direct violation of the principle of separation of powers."

Local leagues throughout the state are contacting their delegates to urge them to reconsider this action and to let the Judicial branch make their own rules.

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Con Office

MAR 12 1974

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ALIO V. WATSON, II
Beaumont
WALTER W. WILLIAMS
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Corpus Christi—1968-69
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San Antonio—1967-68
HERMAN WRIGHT
Houston—1966-67
SCOTT BALDWIN
Marshall—1965-66
RUDY RICE
San Antonio—1964-65
BOB HUFF
Lubbock—1963-64
TOM H. DAVIS
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Dallas—1961-62
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El Campo—1958-59
WARNER F. BROCK
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Cleveland—1956-57
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Houston—1955-56
C. F. SULLIVANT
Gainesville—1954-55
FRANKLIN JONES, SR.
Marshall—1953-54
W. A. COMBS
Houston—1952-53
JOE H. TONAHILL
Jasper—1951-52
JOHN J. WATTS
Odessa—1950-51
R. GUY CARTER
Dallas—1949-50

March 11, 1974

To The Honorable Members of the Judicial Section
of the Constitutional Convention

The members of the Texas Trial Lawyers Association, being dedicated to the improvement of the judicial system, are involved in a constant effort toward that end. In consonance with that concept, our Board of Directors, meeting recently in Austin, determined, from further study and additional evidence, that a prior position opposing a merger of the Court of Criminal Appeals with the Supreme Court might not have been in the best interest of the entire judicial system.

The result of our continuing deliberations is attached to this note in the form of a resolution which was adopted by the Texas Trial Lawyers Association Board of Directors on March 2, 1974.

We hope and trust the members of the Judicial Section of the Constitutional Convention will equate our actions on this issue with the same purview which they have so often demonstrated in the past. That range of vision and understanding has been, in part, responsible for the respect and admiration which the Judicial Section of the Convention enjoys.

No individuals anywhere in Texas are more acutely aware of the need for judicial reform than are the members of the Judicial Section. Likewise, you are keenly aware of the many different views regarding changes you are contemplating. It is all together possible that many members of this Section may have changed some of their views as new evidence has been presented. Those individuals will certainly understand and appreciate the position in which this action has placed TTLA.

Page Two

To those members of the Section who have not changed their positions on any issue, we ask your forbearance. Hopefully, you will rest more comfortably over our actions with the knowledge that, although painful, we will admit to errors of judgment when convinced.

Respectfully,

Jack Banner

Jack Banner
President

Wayne Fisher

Wayne Fisher
President-Elect

attachment

Be it known that the Texas Trial Lawyers Association, acting by and through the action of its Board of Directors, meeting in Austin, Texas at the Sheraton-Crest Hotel on Saturday, March 2, 1974, made and passed the following Resolution:

RESOLVED that the Texas Trial Lawyers Association supports the merger of the Texas Civil and Criminal Trial and Appellate Court System with the full administration of the judicial system to be vested in the Supreme Court of Texas. The Texas Trial Lawyers Association further supports and urges the Constitutional Convention to provide for automatic increases in the number of courts as population increases in specified areas.

The Texas Trial Lawyers Association further RESOLVES that the Constitutional Convention be urged that the basic right of the people to select all members of the Judiciary by free and unrestricted elections on a non-partisan basis be specifically included in definitive language in any Constitution of the State of Texas.

March 5, 1974

Judge W. St. John Garwood
[REDACTED]

Dear Judge Garwood:

I did receive your message and spoke immediately to Mrs. John Hunter, the Judicial chairman for the League of Women Voters of Texas. She also is quite disappointed in the proposed Judicial article as it not stands.

She would like very much to be in on the Press Conference providing she can make travel arrangements. Helen is not only a gracious person but quite knowledgeable and can present the League's viewpoint most capably.

I have forwarded all your material on to her and would be most appreciative if you would inform her as soon as possible as to when and where the Press Conference is being held. Her home phone number is [REDACTED] and her address is [REDACTED].

Thank you for affording us this opportunity.

Cordially,

Mrs. Darvin M. Minick, President
League of Women Voters of Texas

VW/ag

cc: Judge Robert W. Calvert

bc: Hunter, Convention Office, Conner, Anderson

W. ST. JOHN GARWOOD

LAWYER

FOR AUSTIN NATIONAL BANK BUILDING

AUSTIN, TEXAS 78701

March 6, 1974

Honorable Sarah Weddington
The Texas Constitutional Convention
Post Office Box 13286
Capitol Station
Austin, Texas 78711

Dear Delegate Ms. Weddington,

Many thanks for yours of March 4th in connection with my article in the Texas Tech LAW REVIEW on merit selection. I am sure the Texas League of Women Voters will be as happy as I am that you favor this very desirable system.

As you know, a majority of the Judiciary Committee has, in effect, voted against the system thus far, although the Committee still has opportunity to recommend giving the voters the chance to express their preference between merit selection and the existing or other systems which the Committee may favor. From my own contact with this subject over the past twenty years, which has been rather broad, I believe the people will choose merit selection. Very probably the editorial policy of practically all of the leading newspapers of the state will favor it, as, indeed, many of them have already done in their editorial columns.

As to the length of terms for district judges, I strongly favor making these six years instead of the present four. Although it probably is true that, in many areas, the process of selecting district judges is less burdensome, expensive and unpopular than in the case of appellate judges, I don't think this difference in conditions is such as to require the shorter term for district judges. I think it would be simpler and otherwise better to give the district judges the same length of term as appellate judges. The CORC has so recommended, as has also the "Task Force" of some years back headed by Chief Justice Calvert.

I appreciate your taking the trouble to read my article and hope you will do what you can for merit selection of at least our appellate judges.

Sincerely,

W. St. John Garwood

W. ST. JOHN CARWOOD

LAWYER

601 E. 10TH NATIONAL BANK BUILDING

AUSTIN, TEXAS 78701

March 6, 1974

Honorable Sarah Weddington
The Texas Constitutional Convention
Post Office Box 13286
Capital Station
Austin, Texas 78711

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As to the length of terms for district judges, I strongly favor making these six years instead of the present four. Although it probably is true that, in many areas, the present four-year term is a disadvantage, district judges are less burdensome, expensive and unreliable than are the case of appellate judges. I don't think this difference in conditions is such as to require the shorter term for district judges. I think it would be simpler and otherwise better to give the district judges the same length of term as appellate judges. The OSCRC has so recommended, as has also the "Blue Ribbon" of some years back headed by Chief Justice Warren.

I appreciate your taking the trouble to read my article and hope you will do what you can for merit selection of all district and appellate judges.

Sincerely,

W. St. John Carwood
W. St. John Carwood
601 E. 10th

JUDICIARY COMMITTEE REPORT

Section 1. JUDICIAL POWER. The judicial power of the state is vested in the judicial branch. The state unified judicial system is composed of a supreme court, courts of appeals, district courts, and circuit courts. All courts have jurisdiction as provided by law, but jurisdiction of courts of the same level must be uniform throughout the state. (adopted by vote of 10-9-1; motion to reconsider and table adopted by voice vote)

Section 2. SUPREME COURT. (a) The supreme court shall be the highest court of the state and shall consist of the Chief Justice of Texas and at least eight other justices, of whom a majority shall be necessary to decide a case. It shall have such jurisdiction and administrative and rule-making authority as shall be provided by law.

(b) The legislature may grant the supreme court jurisdiction to receive and answer questions of state law certified to it from federal courts.

(adopted by vote of 15-5; motion to reconsider and table adopted by voice vote).

Section 3. COURTS OF APPEALS. There shall be one or more courts of appeals as provided by law, each consisting of a chief judge and at least two other judges, of whom a majority shall be necessary to decide a case.

(adopted by vote of 17-2; motion to reconsider and table adopted by voice vote).

Section 4. DISTRICT COURT. The state shall be divided into judicial districts as now or hereafter provided by law. In each district there shall be one district court with one or more district judges.
(adopted by voice vote; motion to reconsider and table adopted by voice vote).

Section 5. CIRCUIT COURT. The legislature shall establish in each judicial district, now or hereafter provided by law, a circuit court with one or more judges. A circuit court may serve one or more counties, but no county shall have more than one circuit court.
(adopted by vote of 12-5; motion to reconsider and table adopted by voice vote).

Section 6. COUNTY JUDGE. The county judge provided for in Article IX, Section 3 (a) of this constitution has judicial functions as now or hereafter provided by law.
(adopted by vote of 11-7; motion to reconsider and table adopted by voice vote)

Section 7. OTHER COURTS. (a) The governing body of each county shall divide the county from time to time into justice precincts, not less than four nor more than eight.

(b) The governing body in each county shall establish and maintain one or more justice courts in such county with each such court to exercise jurisdiction in one or more precincts in the manner provided by law.

(c) Municipal courts may be established by law or by charter as authorized by law and shall have such jurisdiction as provided by law.

(adopted by vote of 13-3; motion to reconsider and table adopted by vote of 8-7)

Section 8. QUALIFICATIONS OF JUDGES. No person may serve as a justice, judge, or justice of the peace unless the person is

a United States citizen and a resident of this state and has other qualifications prescribed by law. No person may serve as justice or judge in the unified judicial system unless licensed to practice law in this state.

(adopted by vote of 14-3; motion to reconsider and table adopted by voice vote)

Section 9. ELECTION OF JUDGES. (a) The chief justice and justices of the supreme court are elected by the qualified voters of the state every six years in the manner provided by law. Judges of the courts of appeals are elected by the qualified voters of their respective districts every six years in the manner provided by law.

(b) District and circuit judges are elected by the qualified voters of their respective districts every four years in the manner provided by law.

(c) Vacancies in the offices of justices of the supreme court and judges of the courts of appeals, district courts, and circuit courts are filled by the governor, with the advice and consent of the senate, until the next succeeding general election.

(d) Justices of the peace are elected by the qualified voters of the county or precinct every four years in the manner provided by law. Vacancies in the office of justice of the peace are filled by the county commission until the next succeeding general election.

(e) Municipal judges are selected in the manner provided by law.

(adopted by vote of 10-8; motion to reconsider and table adopted by voice vote)

Section 10. QUALIFICATIONS COMMISSION; REMOVAL OF JUDGES. (a) There shall be a judicial qualifications commission with such authority and functions as shall be provided by law.

(b) A justice of the supreme court may be removed by the governor on the address of two-thirds of each house of the legislature for willful neglect of duty, incompetency, oppression in office or other reasonable cause not a sufficient ground for impeachment.

(c) Any justice of the supreme court or any judge or other judicial officer may be removed, suspended, or censured as provided by law.

(adopted by vote of 14-0)

Section 11. COURT ADMINISTRATION. (a) (1) The supreme court shall provide for the efficient operation of the judicial system. The court may direct the transfer of cases from one court to another within each level of the judicial system and may assign judges within or between levels. The court may delegate responsibility for administration to the chief justice and administrative judges provided for in Subsection (a) (2).

(2) Each court of appeals district within the state constitutes an administrative district for purposes of trial court management. Within each district, the Chief Justice of Texas with the advice and consent of the senate, shall designate a judge to serve as administrative judge of the district.

(3) There shall be a judicial council having such membership as provided by law which shall prescribe rules of administration for the unified judicial system and perform such other duties as shall be provided by law. Rules of administration shall not become effective until approved by the supreme court.

(b) The supreme court may prescribe rules of civil procedure not inconsistent with this article or the laws of this state for the government of the courts. Any rule of procedure expressly disapproved by resolution of either house of the legislature is thereby repealed. No rule of procedure may take effect until the legislature has the opportunity to disapprove it at a regular session.

(adopted by vote of 12-6; motion to reconsider and table adopted by voice vote).

Section 12. DISTRICT CLERKS; COUNTY CLERKS. (a) A district clerk, who serves as clerk of the district and circuit courts of the county, is elected by the qualified voters of each county for a term of four years. The clerk may be removed from office upon a jury finding of incompetence, official misconduct, or other cause defined by law. Vacancies in the office of district clerk shall be filled by the judges of the district and circuit courts in the county until the next general election. Each clerk may have a deputy or deputies and other personnel authorized by law.

(b) The county clerk, who serves as clerk of the county commission and recorder of the county, is elected by the qualified voters of each county for a term of four years. The legislature shall prescribe the duties, perquisites, and fees of the office. A vacancy in the office shall be filled by the county commission until the next general election.

(c) The legislature may authorize counties with populations below a level prescribed by law to elect a single clerk to serve as district and county clerk.

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Section 13. JURIES. (a) A grand jury in the district court consists of 12 persons, of whom nine constitute a quorum and must concur in a bill of indictment.

(b) The legislature shall provide by law for trial juries.

(c) A party has the right to a jury trial upon demand made in the manner prescribed by law.

(d) Jury verdicts must be unanimous, except that the legislature, or the supreme court pursuant to its rule-making authority, may authorize jury verdicts in civil cases rendered by not less than three-fourths of the jurors sitting in a case.

(e) The legislature may provide by law for alternate jurors. (adopted by vote of 14-4; motion to reconsider and table adopted by voice vote).

Section 14. SENTENCING AND PROBATION. Courts having original jurisdiction of criminal cases shall have power to suspend the imposition or execution of sentence and place a defendant on probation; and shall have further power to modify, set aside, or reimpose sentence, subject to regulation by law.

(adopted by voice vote; motion to reconsider and table adopted by voice vote)

Section 15. APPEAL BY STATE. The state may not appeal in criminal cases.

(adopted by voice vote; motion to reconsider and table adopted by voice vote)

Section 16. APPEAL BY ACCUSED. (a) The accused shall have the right of appeal to the appellate court having jurisdiction, specifically including the right of appeal granted by Article I, Section 11a of this constitution.

(b) Appeal to the supreme court shall be at the discretion of the court, unless otherwise provided by law.

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Section 18. DISTRICT ATTORNEYS; COUNTY ATTORNEYS. (a) The state shall be represented in each county by a district attorney as now or hereafter provided by law. The district attorneys

shall be elected by the qualified voters of their respective districts, and shall serve for a term of four years and until their successors have qualified. The state shall provide for the compensation of district attorneys.

(b) With such exceptions as now or hereafter provided by law, county attorneys shall be elected by the qualified voters of each county and shall hold office for a term of four years and until their successors have qualified.

(c) Each district and county attorney shall be licensed to practice law in this state. Other qualifications, duties, and functions of district and county attorneys and the grounds and procedure for disqualification, suspension, removal, and filling of vacancies shall be as provided by law.

(adopted by voice vote; motion to reconsider and table adopted by voice vote)

Section 19. COMPENSATION. The state shall pay the basic salaries of all justices and judges of the unified judicial system and shall pay such other expenses of the system as provided by law. Funds collected by the courts may not be used to support the unified judicial system except to the extent of reimbursement of salaries and other expenses.

(adopted by voice vote; motion to reconsider and table adopted by voice vote)

Section 20. JUDICIAL RETIREMENT. (a) The legislature may prescribe by law the mandatory retirement age of a justice or judge in the unified judicial system.

(b) Notwithstanding any other provision of this constitution, the system of retirement, disability, and survivors' benefits established in the constitution or by law for justices, judges, and commissioners of the appellate courts and judges of the district and criminal district courts and in effect at the time of adoption hereof shall be continued. The legislature shall provide for inclusion in the system of judges of all courts in the unified judicial system and such other elected state officials as now or hereafter provided by law.

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of Texas under such regulations as may be provided by law.

(adopted by voice vote)

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shall be elected by the qualified voters of their respective districts, and shall serve for a term of four years and until their successors have qualified. The state shall provide for the compensation of district attorneys.

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(c) Each district and county attorney shall be licensed to practice law in this state. Other qualifications, duties, and functions of district and county attorneys and the grounds and procedure for disqualification, suspension, removal, and filling of vacancies shall be as provided by law.

(adopted by voice vote; motion to reconsider and table adopted by voice vote)

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(b) Notwithstanding any other provision of this constitution, the system of retirement, disability, and survivors' benefits established in the constitution or by law for justices, judges, and commissioners of the appellate courts and judges of the district and criminal district courts and in effect at the time of adoption hereof shall be continued. The legislature shall provide for inclusion in the system of judges of all courts in the unified judicial system and such other elected state officials as now or hereafter provided by law.

(c) General administration of the Judicial Retirement System shall be by the Board of Trustees of the Employees Retirement System

of Texas under such regulations as may be provided by law.

(adopted by voice vote)

COMMITTEE AMENDMENT NO. _____ BY _____

Amend the Baker amendment proposing alternative submission of "Merit Selection and Nonpartisan Election" by striking Subsection (d) and substituting the following:

1 "(d) When a vacancy occurs in the office of the Chief
2 Justice of Texas, a supreme court justice, or a court of appeals
3 judge, the vacancy shall be filled by the governor, with the
4 advice and consent of the legislature in the manner provided by
5 law, from a list of three nominees submitted by the commission
6 within forty-five days after the vacancy occurs. In selecting
7 nominees, the commission shall consider only those who are well
8 qualified from experience and knowledge of the law. If the
9 governor fails to make the appointment within sixty days after
10 receiving the list of nominees, the lieutenant governor shall
11 make the appointment from the list. A justice or judge appointed
12 pursuant to this subsection is subject to review by the legisla-
13 ture, in the manner prescribed by law, for reconfirmation or
14 rejection every sixth year thereafter at the first regular session
15 of the legislature after the end of the sixth year.

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CONSTITUTIONAL CONVENTION 1974

[illegible]

March 7, 1974

File in

Mr. Bob Hendricks
Room 354
State Capitol Building
Austin, Texas

Dear Mr. Hendricks:

Grace Jones - I corrected my typos before mailing this. I do hope it helps. I'll send you a copy if I get a reply. Meg

The two days I spent last week at the Constitutional Convention were interesting, even exciting at times, but, as usual, I didn't find enough time to do all the things I had planned. If you had been able to join me and the other League members for dinner at the Driskill (and it's my fault for not getting an invitation to you sooner) I could probably have talked with you about several matters that concern me.

I did not feel I should take time during your committee breaks to mention these points that are worrying me, at any rate, Mr. Haleddenvened your meeting just as I was ready to launch into it all. The matters I wanted to discuss were:

First, I'm concerned that, unless there emerges from the convention some kind of unified court system Chief Justice Calvert's prediction may come true. In his "Justice at the Crossroads" he said, "Texas has reached the point where its antiquated court structure could develop into a retarding influence on business and social progress. In the criminal area, the cumbersome court system may already be a contributing factor in the rising crime rates." Our present court system has huge caseleads, unbalanced distribution of cases in relation to judges, clogged criminal dockets, overlapping jurisdictions, widely varying procedures, widely varying quality in judicial personnel, and widely varying budgets. All this seems to result in delayed justice because there seems to be no "system" in our system in Texas.

If your committee can present to the convention a plan which would provide general standards for personnel, a unified budget plan, reliable court statistics, and an effective guarantee of able, competent, trained judges, you would truly be serving the needs of all Texans. I think the action your committee takes will have the most important long-range effects in Texas justice.

Second, I'm concerned that the present method of electing judges on the partisan ballot is not likely to provide the best person for the job, in addition to being probably the most expensive method of selecting a judge. A good judge should have such qualities as calmness, patience, fairness, intelligence, ability, and of course, training. These traits are not necessarily appealing to the electorate. You and I both have watched enough elections to know that the voters are often apathetic, frequently ill-informed about these elective offices not filled by the charismatic candidate with political flair. In my opinion, and I think in the public opinion, a judge needs such attributes as I mentioned above rather than political acumen. In short, I don't think election of judges is the way to get the best judges. A merit selection method seems more likely to provide a person with these qualities.

A

Third, I am concerned that the Justice of the Peace courts are not currently part of the Texas judicial system. I would like our revised constitution to bring these so-called "minor courts" into the system for two reasons:

- 1/ The indefensible and costly repeating of court proceedings, our present system of trial de novo, could be eliminated by making these lower courts courts of record.
- 2/ The "JP" court is often the only contact a citizen has with our justice system. People are more likely to find justice that is fair, careful, and scholarly if these courts are courts of record and are presided over by a judge with a law degree.

I fully understand your reasons for supporting the present JP court system in rural areas and small towns. I'm sure there is a dearth of lawyers who are willing to take such a post. I submit, though, that these lower court posts could become higher-paid, well-thought-of, status positions with some of the funds saved under a unified court budget. I also submit that part-time courts held by judges who do not have adequate training for the post are not going to improve the administration of justice in the twentieth century in Texas.

During our conversation in Austin last week you indicated you support giving the electorate these options when they vote on a revised constitution. I would like to see your committee go a step further and, with your knowledge of our judicial system, recommend to the convention three things:
A unified court system of centrally administered statewide courts.
A merit selection system for judges.
A court system which makes all lower courts, courts of record, with a full-time presiding judge well-qualified in the law.

Thank you for considering these comments during your deliberations, and I hope to see you in Austin again soon. Perhaps the next time we can manage a bit more time to talk.

Sincerely,

Mrs. Donald Titus
Mrs. Donald Titus
Box 116C Route 2
Pleano, Texas 75074

Office

JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting Committee for informal review)

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Section 1. JUDICIAL POWER. The judicial power of the state is vested in the judicial branch. The state unified judicial system ~~shall be~~ ^{is} composed of a supreme court, courts of appeals, district courts, and circuit courts. All courts ~~shall~~ have jurisdiction as provided by law, but jurisdiction of courts of the same level ~~shall~~ ^{must} be uniform throughout the state.

**Grant Amdmt passed
10-9**

~~THE~~

JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting
Committee for informal review)

Section 2. SUPREME COURT. (a) The supreme court shall be the highest court of the state and shall consist of the Chief Justice of Texas and at least eight other justices, of whom a majority shall be necessary to decide a case. It shall have such jurisdiction and administrative and rule-making authority as shall be provided by law.

(b) The legislature may grant the supreme court jurisdiction to receive and answer questions of state law certified to it from federal courts.

Accepted

15-5
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JUDICIARY COMMITTEE DRAFT (referred to Committee on Style and
Drafting for informal review)

1 Section 3. COURTS OF APPEALS. There shall be one or more courts
2 of appeals, as provided by law, each consisting of a chief judge
3 and at least two other judges, of whom a majority shall be
4 necessary to decide a case.
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Accepted

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JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting
Committee for informal review)

1 Section 4. DISTRICT COURT. The state shall be divided
2 into ~~geographical~~ judicial districts as now or hereafter provided
3 by law. In each district there shall be one district court
4 with one or more district judges and ~~such other officials as~~
5 ~~provided in this article or by law.~~

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JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting
Committee for informal review)

1 Section 5. CIRCUIT COURT. The legislature shall provide
2 by law for circuit courts. A circuit court may serve one or
3 more counties, but no county shall have more than one circuit
4 court. Each circuit court shall have one or more judges and
5 such other officials as provided by law.
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JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting
Committee for informal review)

1 Section 6. COUNTY JUDGE. The county judge shall serve as
2 presiding officer of the county commission and shall perform
3 such judicial duties and functions as now or hereafter may be
4 provided by law.
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JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting
Committee for informal review)

1 Section 7. JUSTICE COURTS AND MUNICIPAL COURTS. (a) The
2 governing body of each county may establish and maintain one or
3 more justice courts and if more than one, shall divide the county
4 into justice precincts and provide a justice court for each
5 precinct.

6 (b) Municipal courts may be established by law or
7 charter and shall have such jurisdiction as provided by law.
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1 Section 8. QUALIFICATIONS OF JUDGES; MANDATORY
2 RETIREMENT. (a) All justices and judges shall be citizens of
3 this state and shall have such other qualifications as provided
4 by law. Each justice and judge in the unified judicial system
5 shall be licensed to practice law in this state.

6 (b) The mandatory retirement age of each justice and
7 judge in the unified judicial system shall be as provided by law.
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Early amendment passed

JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting Committee for informal review)

The chief justice

1 Section 9. ELECTION OF JUDGES. (a) The state shall be
2 divided into a number of judicial election districts, which
3 number shall be equal to the number of associate justices of
4 the supreme court. As nearly as possible, each judicial election
5 district shall be compact and contain an equal number of
6 inhabitants. The qualified voters of each judicial election
7 district shall be entitled to elect one associate justice to the
8 supreme court; the qualified voters of the state shall be
9 entitled to elect the chief justice of the supreme court.

10 Chief justice elected by law courts appeals
11 (b) Appellate justices and judges shall be elected every
12 six years in a manner provided by law.

13 (c) Judges of district and circuit courts shall be elected
14 every four years as provided by law.

15 (d) Vacancies on the appellate, district, and circuit
16 court level shall be filled by the governor with advice and
17 consent of the senate. Vacancies in other courts shall be
18 filled as provided by law. Vacancies shall be filled until the
19 next succeeding election.

20 shall be elected in manner
21 2 states & 50 has single member -
22 Judges not elected to represent people -
23 Coleman: people know who they'll vote for -
24 more opposition more politics

provided by law

JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting
Committee for informal review)

1 Section 10. JUDICIAL QUALIFICATIONS COMMISSION. There
2 shall be a judicial qualifications commission with such authority
3 and functions as shall be provided by law.

4 ~~Ogg Amendment~~

5 Maury amendment passed
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JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting Committee for informal review)

1 Section 11. COURT ADMINISTRATION. (a) (1) The supreme
2 court shall provide for the efficient operation of the judicial
3 system. The court may direct the transfer of cases from one court
4 to another within each level of the judicial system and may
5 assign judges within or between levels. The court may delegate
6 responsibility to administrative judges provided for in Subsection
7 (a) (2).

8 (2) Each court of appeals district within the state con-
9 stitutes an administrative district for purposes of trial court
10 management. Within each district, the Chief Justice of Texas,
11 with the advice and consent of the senate, shall designate
12 a judge to serve as administrative judge of the district.

13 (3) There shall be a judicial council having such member-
14 ship as provided by law which shall prescribe rules of adminis-
15 tration for the unified judicial system and perform such other
16 duties as shall be provided by law.

17 (b) The supreme court may prescribe rules of civil pro-
18 cedure not inconsistent with this article or the laws of this
19 state for the government of the courts. Any rule of procedure
20 expressly disapproved by resolution of either house of the
21 legislature is thereby repealed. No rule of procedure may take
22 effect until the legislature has the opportunity to disapprove it
23 at a regular session.

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JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting
Committee for informal review)

1 Section 12. DISTRICT CLERKS; COUNTY CLERKS. (a) There
2 shall be a district clerk of the circuit court and district court
3 of each county. The clerk shall be elected by the qualified
4 voters for state and county officers. The clerk shall hold
5 office for four years, subject to removal from office upon a
6 jury finding of incompetence, official misconduct, or other
7 causes defined by law. In case of vacancy, the judges of the
8 district court and circuit court in the division in which the
9 county is located shall have power to appoint a clerk to serve
10 until the next general election. Each clerk shall have such
11 deputies and other personnel as authorized by law.

12 (b) There shall be elected for each county, by the qualified
13 voters, a county clerk, who shall hold office for a term of four
14 years. The county clerk shall be clerk of the county commission
15 and recorder of the county. The duties, perquisites, and fees
16 of the office shall be prescribed by the legislature. A vacancy
17 in the office of county clerk shall be filled by the county
18 commission until the next general election. The legislature may
19 authorize combining the offices of county clerk and district
20 clerk in all counties having less than a certain population level
21 as fixed by law.
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JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting Committee
for informal review)

1 . Section 13. JURIES. (a) Grand juries in the district
2 court shall consist of 12 persons, nine of whom shall be
3 required to present a bill of indictment.

4 (b) There shall be trial juries as provided by law.

5 (c) A party shall have a right to a jury trial upon
6 demand, as provided by law.

7 (d) In all civil and criminal matters, jury verdicts shall
8 be unanimous, except that the Legislature or the Supreme Court,
9 pursuant to its rule-making power, may provide that a verdict
10 may be rendered in civil cases by less than the unanimous vote
11 of the jurors but not fewer than three-fourths of them.
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JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting Committee
for informal review)

1 Section 14 . SUSPENSION OF SENTENCE AND PROBATION. Courts
2 having original jurisdiction of criminal cases shall have power
3 to suspend the imposition or execution of sentence and place
4 a defendant on probation; and shall have further power to modify,
5 set aside, or reimpose sentence, subject to regulation by law.
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JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting Committee
for informal review)

1 Section 15. APPEAL BY STATE. The state shall have no right of
2 appeal in criminal cases.

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JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting Committee
for informal review)

1 Section 16. APPEAL BY ACCUSED. The right of appeal granted to
2 an accused by Article I, Section 11a of this constitution shall
3 be directed to the appellate court having jurisdiction thereof.
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JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting Committee
for informal review)

1 Section 17. GENERAL CHARGE; WRONGFUL DEATH; DIRECT
2 ACTION. (a) In all actions for damages the court shall submit
3 the issue to the jury in a general charge, which shall read
4 either, "We find for the plaintiff in the amount of _____ dollars"
5 or "We find for the defendant."

6 (b) In litigation involving the wrongful death of a
7 minor child, mental pain and anguish suffered by a parent of the
8 child as a result of the child's death shall be considered in
9 determining the amount of damages to be awarded.

10 (c) In civil litigation in which an insurance company
11 is a real party in interest, the injured party shall have a right
12 of direct action against the insurance company and suit may
13 be brought against the insured alone or against the insured and
14 the insurer jointly, at the option of the injured party.
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JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting Committee
for informal review)

1 Section 18. APPEALS FROM ADMINISTRATIVE ACTION. Notwithstanding
2 any other provision of the constitution, the legislature may pro-
3 vide, by general law, for the method of appeal to the courts from
4 actions, rulings, or decisions of administrative agencies and
5 executive departments of the state or any of its subdivisions.
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JUDICIARY COMMITTEE DRAFT (referred to Style and Drafting Committee
for informal review)

1 Section 19. DISTRICT ATTORNEYS; COUNTY ATTORNEYS. (a) The
2 State shall be represented in each county by a district
3 attorney as now or hereafter provided by law. The district
4 attorneys shall be elected by the qualified voters of their
5 respective districts, and shall serve for a term of four
6 years and until their successors have qualified. The State
7 shall provide for the compensation of district attorneys.

8 (b) With such exceptions as may be provided by law,
9 county attorneys shall be elected by the qualified voters
10 of each county, and shall hold office for a term of four
11 years and until their successors have qualified.

12 (c) Each district and county attorney shall be licensed
13 to practice law in this state. Other qualifications, duties,
14 and functions of district and county attorneys and the
15 grounds and procedure for disqualification, suspension, re-
16 moval, and filling of vacancies shall be as provided by law.
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THE DALLAS TIMES HERALD EDITORIALS

2-B****

Tues., Feb. 12, 1974

Court reform needed

THE ISSUE: Proposals for including reform of the Texas court system in the new constitution.

AN ARTICLE in this newspaper Sunday noted that "Texas justice is riddled with paradoxes and horror stories." These stories, reported staff writer David Montgomery, tell of long waits by prisoners on appeals decisions because of overloaded courts, the uneven distribution of cases through the courts, and unfair decisions by prejudiced judges.

The stories are compelling arguments for extensive reform of Texas' outdated court system. Proposals for improvements in the system is one of the most important issues before the Texas Constitutional Convention.

Recommendations for reform submitted by the Constitutional Revision Commission call for two major changes. One would provide a unified, streamlined system with the merger of several courts.

The present Supreme Court, which now has jurisdiction over civil cases only, and Court of Criminal Appeals would be merged into a single court of last resort with jurisdiction over both civil and criminal cases. In addition, the present courts of civil appeals would also handle criminal appeals, thus materially speeding up this process. At present with only one court handling criminal appeals, often as long as two years elapse before final decisions are made in criminal cases. That is far from the ideal of swift justice, either for or against defendants.

The other major change provides alternatives for the appointment of appellate judges or their election on a nonpartisan ballot and the nonpartisan election of lower court judges. This change would do much to eliminate politics in the selection of judges.

As we have said previously, we believe these reforms are vital to provide a court system more fully capable of serving our modern, complex society.

FEB 25 1974



CITY OF PASADENA

JOHN RAY HARRISON
MAYOR

State Representative Ronald Earle
House of Representatives
State Capital
Austin, Texas

February 21, 1974

Dear Ronnie;

Enclosed is a copy of the Resolution passed by the
Jaycees at the State Convention in Austin on May 12, 1973.
Thought you might like a copy.

Sincerely,

Arthur Oswald
Immediate Past President
Texas Jaycees

AO/nd

Industrial Center of the Southwest

**we know you will put the
best interests of the
people of texas above all
other consideration.**



League of Women Voters of Texas

In the best interest of Texas we urge
your support of a unified judiciary
through:

- * Merger of Supreme Court and
Court of Criminal Appeals
- * Administration by Supreme
Court or Judicial Council; transfer
of cases due to workload
- * procedural rules formulated
by top Court with legislative
check, not control

RESOLUTION

WHEREAS, the Texas Jaycees, through involvement in the civic affairs of their communities and their State are aware of the critical overcrowding in our courts; and

WHEREAS, Texas Jaycees realize that the most effective deterrent to crime is a speedy trial, which is difficult to guarantee in the present Texas court system;

NOW, THEREFORE, BE IT RESOLVED that the Texas Jaycees support the following measures to improve the judicial system of Texas:

- Consolidate all trial courts - JP, Municipal, County, District and others -- into one state trial court of general jurisdiction with multiple, specialized divisions where necessary. Retain specialized judges but abolish specialized courts. Allow judges to transfer temporarily according to court needs, either between functional divisions (traffic, probate, criminal, etc.) or between geographic districts.
- Provide that all courts be courts of record.
- Create a single Court of Appeals to hear both civil and criminal cases. This would increase the number of judges who could hear the initial appeal of a criminal case from 5 to 42 without adding any judges to the present number.
- Unify our 2 courts of last resort into a single Supreme Court.
- Establish an administrative system for the courts, adequately funded, to relieve judges of non-judicial burdens and to help coordinate all court business.

(Approved by the Texas Jaycees at its State Convention in Austin on May 12, 1973)

MEMORANDUM FROM:

League of Women Voters of Texas

DICKINSON PLAZA CENTER • DICKINSON, TEXAS 77539

February 19, 1974

The League of Women Voters of Texas believes most strongly that a unified court system is essential. We are concerned over the closeness of the vote taken today by the committee. We urge that you reconsider your vote and support the concept of merging the courts and unification of the system.

Cordially yours,

Betty Conner
Betty Conner, State Chairman
Constitutional Revision

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Con Office

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DICKINSON PLAZA CENTER • DICKINSON, TEXAS 77539

February 19, 1974

Dear De

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Cordially yours,

Betty Conner, State Chairman
Constitutional Revision

Mauszy Dec 1
info from Ogg ~~10-9~~ 9-8
has noted
no merge of hygiene
Court.
Wants to spell out

Review And Now Action
before calling -
note in AM

Hudson needs lobbying

Perito - debated first
proposal would have
setup 2 courts.

Earle's amended his own
proposal
call for unified system
with the Ct of Appeals
Current Ct. 2 tier system

against

✓ Funnell
(hopeless - stupid)

Wichita Falls

Heath

no league

* Colman

El Paso

had just talked to him - hopeless

Nahm

no league

Hendrick

no league

Blanchard

* Mays

Dallas

* Beeto

- So Jeff C. League

Beaumont, Port Arthur, Orange

~~Hickman~~

Curtis C. charged to Circuit CP

712
Jones
Pleasant
McKenna
Ogg
Powers
Cook
Earle
Baker
Grant

Bals Deeploch about
Dudson not note present

MEMORANDUM FROM:

Con Office

League of Women Voters of Texas

DICKINSON PLAZA CENTER • DICKINSON, TEXAS 77539

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Cordially yours,

Betty Conner, State Chairman
Constitutional Revision



1607 Broadway
Lubbock, Texas 79401
763-1045 A.C. 806

H. J. "DOC" BLANCHARD
State Senator
District 28

State Capitol
Austin, Texas 78711
475-4177 A.C. 512

February 4, 1974

Louise T. Commins, Pres.
Alison J. Davidow, TCR Chairman
League of Women Voters of Lubbock
6511 Peoria
Lubbock, Texas

Dear Ladies:

Thank you for your letter and I am pleased to be on the Judiciary Committee. We have been holding hearings daily for some three weeks and more are scheduled in the days ahead. We have been privileged to hear many eminent jurists and attorneys who are of course vitally interested in the final draft of Article V. We have even been fortunate enough to have the Chief Judge of the 5th U.S. Circuit Court in New Orleans, and Mr. Justice Tom Clark, retired, of the Supreme Court of the United States.

Tuesday, February 6, 1974, we will hear from the Honorable Leon Jaworski, now special Watergate prosecutor, so you can see that we have the benefit of considerable experience and expertise.

We have not yet begun the process of writing Article V, but will begin to do so within a few days. The work product is now a great question mark, but as it takes form, I hope we can have the benefit of your thoughtful consideration and views.

I look forward to your visit and hope you will set aside some time to help us with our project of writing the history of the Constitutional Convention of 1974. The League has played a most important role in bringing us to this point so I would like a taped interview so that when it is over, historians can use it as a source of information. We plan to give the entire work product to Texas Tech University so it may be preserved.

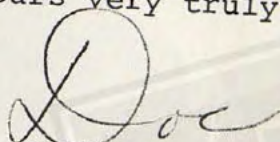
*Don't let
Doc's letter fool
you. He is running
with opposition and is
trying to be nice to
everyone. Louise*

Louise T. Commins
Alison J. Davidow

page 2

Please let me know if I can be of help to you or the League.

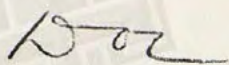
Yours very truly,



H. J. "DOC" BLANCHARD

HJB:mgg

Janice May of the CRC testified
today and was so nice she gave us
a nice taped interview -



Mr. Chairman and Members of the Committee

I am here to give you my ideas as a police officer, on the need for revising the judiciary in order to develop a more unified and effective court system. While I am authorized to speak for no organization or any other individual, I feel that many police officers share my views.

Before addressing any need for change in the courts, I think it is essential to examine briefly the entire Criminal Justice System - that is - the police, the courts, and the jails and prisons. These different components of the Criminal Justice System have a common goal. If the system is to be successful, each part of it must be effective, each fulfilling its own particular responsibility, each component working in concert to compliment the other. These components work almost entirely independently of each other, yet the success of each, and therefore the success of the entire system is dependent upon the effectiveness of each part. Any significant change in one part of the system will affect the other parts.

Technological progress, greater knowledge in the fields of management and the social sciences and generally changing social conditions necessitate changes in each part of the system. Because the police are the most visible, the most exposed to public scrutiny and criticism, we are generally the first to receive the demand for change.

The social turbulence of the 1960's focused public attention on the police. We sometimes suffered unjustly from this attention - but we, and the country as a whole, also benefited. The public became more acutely aware of the fact that the police occupy a very significant position in our system of justice. It also became painfully apparent that we were not adequately equipped, trained nor educated to meet our responsibilities.

This public attention and the subsequent exposure of police deficiencies greatly accelerated the pace at which changes were being made. While these changes have affected every phase of the police function, the most dramatic and the most important have occurred in the field of police education. In 1967, there was only one college

in the State of Texas that offered a BA degree in law enforcement. The latest survey conducted by the Texas Commission on Law Enforcement Officer Standards and Education indicates that as of January 1, 1974:

1 college has a Doctoral Degree program in law enforcement,

7 colleges have a Master's Degree program,

26 colleges have a BA Degree program, and

46 junior colleges have a 2 year associate degree program.

Over 4,000 Texas police officers are enrolled in these programs. Since 1970 all newly appointed police officers in the State of Texas have been required, by law, to meet certain minimum standards. Those who fail to meet these standards are eliminated.

The up-grading of the police service still has a long way to go. We are just now starting in the right direction. Now I realize that the members of this committee are not directly concerned with the police function. I outline recent changes in the police service simply to emphasize that no corresponding progressive changes have been made in the lower court system.

I call to your attention the fact that the statutory minimum requirements for a police officer are today higher than the statutory minimum qualifications for a Justice of the Peace, a Municipal Court Judge, or a County Court Judge. This is no credit to the police officer, but is, in my opinion, a grave discredit to the judiciary.

Any person acting in a judicial capacity, at any level, is required to make complicated legal decisions which affect the property, the rights, and the liberty of our citizens. No person without legal training should be asked, nor allowed, to make such decisions. The untrained and uneducated judge is at least as detrimental to the Criminal Justice System as is the untrained policeman.

In the larger police agencies 80 to 90% or more of those who seek to enter the service are rejected as being unfit. The Police selection process is far from perfect

yet our screening process, with all its imperfections, is generally superior to the selection process for justices of the peace who may run without opposition or may force the voters to blindly choose from among two or more unqualified candidates. I feel that all judges should be subject to a screening process at least as effectively as are police applicants. Selecting judges solely on the basis of popular election is almost as ineffective as it would be to decide who should practice medicine by the same method.

Over the years, I have known and worked with a considerable number of municipal court judges and justices of the peace. With very few exceptions, they have been honorable and competent men; but, each has had his own ideas of what the law is and how it should be interpreted and enforced. Each lower court judge is almost totally autonomous. Such diversity of opinion and policy can only be counter-productive to the criminal justice system. The existing system, without any type of centralized management and administrative leadership is inefficient and unresponsive to the needs of the community or the Criminal Justice System as a whole. The judges are held accountable only to an uninformed electorate which encourages them to try cases and administer justice in a manner calculated to promote their own causes and political careers.

The present system invites those who wish to initiate a legal procedure, civil or criminal, to shop around until he finds a judge he knows is likely to be sympathetic to his cause.

Gentlemen, I am proud of the progressive steps being made to improve the police service. You are aware that the Texas Prison System is being closely studied by the current legislature. It is reasonable to expect some needed changes in this area will be made. I hope to see comparable changes made in the court system so that the people of this State may have a criminal justice system equal to its tremendous task.

#

Bay Hale

A PROPOSAL
FOR INCORPORATION

Proposal No. 9

IN THE CONSTITUTION OF TEXAS

providing for a complete revision of the
judiciary of Texas and the suggested text
for language for an Article V of the new
Constitution of Texas.

BE IT PROPOSED BY THE CONSTITUTIONAL CONVENTION OF TEXAS:

3 Section 1. That Article V of the Texas Constitution be amended
4 to read as follows:

5 "Section 1. JUDICIAL POWER. (a) The judicial power of the state
6 shall be vested in a unified judicial system, which shall include one
7 supreme court, courts of appeals, district courts, circuit courts, and
8 such other courts as authorized by this article. No other courts may be
9 established by the state, any political subdivision, or any municipality.
10 All courts in the judicial system shall have jurisdiction as provided by
11 general law.

12 "(b) The jurisdiction of the courts within each level of the
13 system shall be uniform throughout the state. Except for the supreme
14 court and courts of appeals, all courts may be divided into geographic
15 divisions and functional subdivisions as provided by law not inconsis-
16 tent with this article or by judicial rules not inconsistent with law.

17 "Section 2. SUPREME COURT. The supreme court shall be the highest
18 court of the state. The court shall consist of the chief justice of
19 Texas and eight other justices. It may sit in sections of not less than
20 three justices.

21 "Section 3. COURT ADMINISTRATION. (a) The supreme court shall
22 have the duty and authority to provide for the efficient and just
23 operation of the judicial system. With the approval of the supreme court
24 the chief justice shall appoint an administrative director of the courts
25 and such deputies and assistants as authorized by law. In accordance
26 with rules of administration, the court may supervise and direct the

1 transfer of cases and assignment of active or retired judges from
2 one court or division thereof to another in order to facilitate the
3 prompt disposition of judicial business. By the assignment of judges,
4 the membership of any court may be temporarily increased.

5 "(b) The administrative director shall assist the supreme court
6 in the performance of its administrative duties and shall serve as
7 director of the judicial council and judicial qualifications commission.

8 "(c) There is hereby created a judicial council, which shall
9 have such membership as provided by law. The council shall promulgate
10 rules of administration, which become effective upon approval by the
11 supreme court. The council shall perform such other duties as provided
12 by law.

13 "Section 4. JUDICIAL CONDUCT. (a) All justices and judges shall
13 devote full time to judicial duties. They shall not, while in office,
14 engage in the practice of law or other gainful employment. They shall
15 not hold any other public office under the United States, this state, or
16 a subdivision thereof. If any justice or judge files as a candidate for
17 any elective nonjudicial office, his judicial office shall immediately
18 become vacant. No justice or judge may, directly or indirectly, make any
19 contribution to, or hold any office in, a political party or organization.

20 "(b) Any justice or judge of any court in the state may be
21 removed from office, suspended, or censured by the supreme court for wilful
22 or persistent conduct which is clearly inconsistent with the proper
23 performance of his duties or which casts public discredit upon the
24 judiciary or the administration of justice. Any justice or judge may be
25 involuntarily retired by the supreme court for disability seriously
26 interfering with the performance of his duties, which is, or is likely to
27 become, permanent in nature.

1 "(c) There is hereby established a judicial qualifications
2 commission, which shall have such membership as provided by law.
3 The commission shall operate under rules promulgated by the supreme
4 court and shall have the power to issue a private reprimand or an
5 order of public censure and to recommend to the supreme court sus-
6 pension, removal, or retirement of any justice, judge, or other
7 judicial officer.

8 "(d) All papers filed with and proceedings before the
9 commission shall be confidential, and the filing of papers with,
10 and the giving of testimony before, the commission or the supreme
11 court shall be privileged. Upon being filed in the supreme court,
12 the record shall lose its confidential character.

13 "Section 5. PROCEDURAL RULES. The Supreme Court may pre-
14 scribe rules of procedure not inconsistent with this article or the
15 laws of this state. Any rule of procedure expressly disapproved
16 by either house of the legislature shall have no effect. Under
17 regulations which shall be provided by law, no rule of procedure
18 may take effect until the legislature has the opportunity to dis-*negative*
19 approve it.

20 "Section 6. JUDICIAL DISTRICTS. The state shall be divided
21 by law, or by an agency acting under the authority of law, into
22 geographical judicial districts consisting of one or more counties.
23 Each county may be included in only one district. Within each
24 district, there shall be one court of appeals, one district court,
25 and one circuit court.

26 "Section 7. COURTS OF APPEALS. Each court of appeals shall
27 consist of three or more judges, elected within the respective judi-
28 cial district, of whom not less than three shall sit in any case.
29 The chief justice of Texas shall designate the chief judge of each
30 court from among the elected members of the court.

1 "Section 8. TRIAL COURT DIVISIONS. Each judicial district shall
2 be divided by law, or by an agency acting under authority of law, into
3 trial court divisions consisting of one or more counties. Each county
4 may be included in only one division. Within each division, there shall
5 be elected one or more circuit court judges and one or more district
6 court judges, as provided by law.

7 "Section 9. SELECTION AND TENURE OF JUSTICES AND JUDGES. (a)
8 Each justice of the supreme court and each judge of the courts of appeals
9 shall be elected for a six-year term.

10 "(b) Each judge of a district court or a circuit court shall
11 be elected for a four-year term.

12 "(c) Each justice or judge shall be a citizen of this state, shall
13 be licensed to practice law in this state, and shall have such other
14 qualifications as provided by law.

15 "(d) The legislature shall provide benefits for retired justices
16 and judges and may provide for the payment of benefits upon the death of
17 active or retired justices and judges.

18 "(e) The office of any justice or judge shall become vacant
19 when he reaches the age of seventy-five years or such earlier age as may
20 be provided by law.

21 "(f) Any vacancy in the office of a justice or judge shall be
22 filled by appointment of the governor until the next general election.

23 "Section 10. PROSECUTING ATTORNEYS. (a) With such exceptions as
24 may be provided by law, a county attorney shall be elected by the
25 qualified voters of each county. Each county attorney shall be commis-
26 sioned by the governor and hold his office for a term of four years. In
27 case of vacancy, the county commission of the county shall have the power
28 to appoint a county attorney until the next general election. The
29 county attorneys shall represent the state in all cases in the district and
30 inferior courts in their respective counties; but if any county is

1 included in a trial court division in which there is a district attorney,
2 the respective duties of district attorneys and county attorneys in such
3 counties shall be regulated by the legislature.

4 " (b) The legislature may provide for the election of district
5 attorneys in such trial court divisions as may be deemed necessary and
6 make provision for the compensation of district attorneys and county
7 attorneys. District attorneys shall hold office for a term of four
8 years and until their successors have qualified.

9 "Section 11. DISTRICT CLERKS. There shall be a district clerk
10 of the circuit court and district court of each county. The clerk
11 shall be elected by the qualified voters for state and county officers.
12 The clerk shall hold office for four years, subject to removal by infor-
13 mation, or by indictment of a grand jury, and conviction of a petit jury.
14 In case of vacancy, the judges of the district court and circuit court
15 in the division in which the county is located shall have power to
16 appoint a clerk to serve until the next general election. Each clerk shall
17 have such deputies and other personnel as authorized by law.

18 "Section 12. FINANCING. The state shall pay the salaries of
19 the justices, judges, and other personnel of the supreme court, courts
20 of appeals, district courts, and circuit courts. Those officials and
21 employees shall be paid exclusively by the state and may receive no other
22 compensation from any political subdivision or municipality. The state
23 shall pay such other expenses of the judicial system as provided by law,
24 and the legislature may provide for reimbursement to the state for all
25 or part of such expense from funds collected by courts.

1 "Section 13. COUNTY GOVERNMENT. (a) The qualified voters of
2 each county shall elect a chairman of the county commission, who may
3 be directed by general law to perform magisterial functions under the
4 supervision of the circuit court. Each county shall be divided into
5 four commissioners precincts, and the qualified voters of each precinct
6 shall elect one county commissioner. The chairman and the four
7 commissioners shall compose the county commission, which shall exercise
8 such powers and jurisdiction over all county business as conferred by
9 the constitution and laws of this state. The chairman and commissioners
10 shall hold office for four years and until their successors are elected
11 and qualified.

12 "(b) There shall be elected by the qualified voters of each
13 county a sheriff, who shall hold his office for a term of four years,
14 whose duties and perquisites and fees of office shall be prescribed by
15 the legislature. Vacancies in the office of sheriff shall be filled
16 by the county commission until the next general election.

17 "(c) There shall be elected for each county, by the qualified
18 voters, a county clerk, who shall hold office for a term of four years.
19 The county clerk shall be clerk of the county commission and recorder
20 of the county. The duties, perquisites, and fees of the office shall
21 be prescribed by the legislature. A vacancy in the office of county
22 clerk shall be filled by the county commission until the next general
23 election. The legislature may authorize combining the offices of county
24 clerk and district clerk in all counties having less than a certain
25 population level as fixed by law.

26 "(d) The county commission of each county, from time to time,
27 may divide the county into one or more precincts for the election of
28 justices of the peace and constables. In each precinct there shall be
29 elected one or more justices of the peace and one or more constables,
30 each of whom shall hold his office for a term of four years and until
31 a successor is elected and qualified.

1 "(e) Justices of the peace shall have such jurisdiction as
2 provided by general law. They shall be ex officio notaries public
3 and shall hold their courts at such times and places as may be
4 provided by law. With such exceptions as may be provided by law,
5 they shall be subject to the provisions of Section 4 of this Article.

6 "(f) The officers enumerated in this section may be removed
7 from office for such causes and in such manner as may be provided by
8 law.

9 "Section 14. MUNICIPAL COURTS. By general law, the legislature
10 may authorize municipal corporations to establish and maintain municipal
11 courts having jurisdiction throughout the corporate limits of the
12 municipality. The courts shall have jurisdiction prescribed by general
13 law. The judges of the courts shall be elected for terms equal to the
14 term of the chief executive officer of the municipal corporation.
15 Vacancies in the office of municipal judge shall be filled by the
16 governing body of the municipal corporation until the next regular
17 election. With such exceptions as may be provided by law, the judges
18 shall be subject to the provisions of Section 4 of this article.

19 "Section 15. TRANSITIONAL PROVISIONS. (a) The transitional
20 provisions enumerated in this section shall take effect on the dates
21 specified in Subsection (1).

22 "(b) The chief justice of the supreme court shall become the
23 chief justice of Texas. The presiding judge and other judges of the
24 court of criminal appeals and associate justices of the supreme court
25 shall become justices of the supreme court. Each commissioner of the
26 court of criminal appeals shall become a commissioner of the supreme
27 court, but when he ceases to hold that position, it shall cease to exist.
28 The offices of the first five justices, other than the chief justice,
29 who cease to be members of the supreme court by reason of death,
30 removal, resignation, or retirement after the effective date of this

1 article shall cease to exist; provided, however, the death, removal,
2 resignation, or retirement of an incumbent after having been defeated
3 at a primary or general election shall not terminate the office.

4 "(c) Chief justices of the courts of civil appeals shall become
5 chief judges of the courts of appeals for the remainder of the terms
6 for which elected; justices of the courts of civil appeals shall
7 become judges of the courts of appeals for the remainder of the terms
8 for which elected; each district judge or judge of a criminal district
9 court, domestic relations court, or special juvenile court shall become
10 a judge of a district court for the remainder of the term for which
11 elected; each judge of a county court at law, county civil court at
12 law, county court for criminal cases, county criminal court, county
13 court for criminal appeals, and county probate court shall become a
14 judge of a circuit court for the remainder of the term for which elected.

15 "(d) Any participant in a county retirement, disability and
16 death compensation fund who becomes a circuit court or district court
17 judge pursuant to Subsection (c) of this section shall have the option
18 of continuing his participation in the county fund or transferring his
19 membership, service credit, and contributions to the state judicial
20 retirement system. Any other participant in a county retirement,
21 disability and death compensation fund who becomes a state official or
22 employee, receiving a salary from the state, shall have the option of
23 continuing his participation in the county fund or transferring his
24 membership, service credit, and contributions to the state employees
25 retirement system.

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1 "(e) Each judge of a county court shall become chairman of
2 the respective county commission for the remainder of the term for
3 which elected, except that a county judge licensed to practice law
4 may elect to become a judge of the circuit court in the trial court
5 division in which he resides, under regulations provided by law.
6 In the event of such an election, the office of chairman of the
7 county commission shall be vacant and shall be filled by the
8 commission until the next succeeding general election.

9 "(f) All courts, except those authorized by this article,
10 are hereby abolished, and all matters pending therein shall be
11 transferred to the courts created by or pursuant to this article.
12 The courts into which such matters are transferred shall assume
13 full jurisdiction of such matters and shall have full power and
14 authority to dispose of them and to execute or otherwise to give
15 effect to all orders, judgments, and decrees issued by the
16 predecessor courts. The courts created pursuant to this article
17 shall succeed to all records and property of the courts abolished
18 hereby.

19 "(g) Except to the extent inconsistent with the provisions
20 of this article, all laws and rules of court in force on the
21 effective date of this article shall continue in effect until super-
22 seded as authorized by law.

23 "(h) In the event a transfer or transition has not been
24 provided for by this article or by law, the supreme court shall by
25 rule provide for the orderly transfer or transition.

26 "(i) Members of the judicial qualifications commission on the
27 effective date of this article shall become members of the judicial
28 qualifications commission created by this article, and the latter
29 commission shall succeed to all functions, powers, duties, and
30 property of its predecessor.

1 "(j) Until otherwise provided by law, or unless otherwise
2 expressly provided in this article, the jurisdiction of all courts,
3 and the qualifications, selection, and tenure of judges of all
4 courts and of other officials shall be the same as provided by law
5 prior to the effective date of this article.

6 "(k) Notwithstanding any other provision of this article,
7 the initial trial court divisions of the state shall be the
8 judicial districts in effect on the effective date of this article,
9 and the initial judicial districts of the state shall be the
10 supreme judicial districts in effect on the effective date of
11 this article. These divisions and districts shall remain in
12 effect until otherwise provided by law.

13 "(l) (1) The legislature shall adopt legislation implement-
14 ing the provisions of this article to take effect on September 1,
15 1975. Legislation enacted in anticipation of the adoption of
16 this amendment shall not be invalid by reason of its anticipatory
17 nature.

18 "(2) Except for the provisions of this subsection, which
19 take effect upon adoption of this amendment, this article shall
20 take effect on September 1, 1975.

21 "(m) When any subsection of these transitional provisions
22 has been executed, the supreme court shall certify that fact to
23 the secretary of state and thereafter that subsection shall no
24 longer be part of this constitution."

Albert Lee testimony
2-1-73

HISTORY AND DUTIES OF JUSTICE COURT

Prepared by
Wayne LeCroy
Justice of the Peace
Precinct 6
Lubbock County, Texas

The office of Justice of the Peace was established in 1360 by Edward III, in England, to "keep the Peace" and to "try the felonies". Three or four of the "most worthy men" in the counties were selected for this duty. Duties of the Justices of the Peace were gradually enlarged until they became the most important factors in administering local government.

The Justice of the Peace Courts were so important that they were the only courts brought to America and set up practically without change in Colonial America. Every state in the union at one time provided for Justice Courts either by statutory or constitutional provision.

Justices of the Peace have, for many years, served the people well, especially the poor and under-privileged people that cannot pay huge attorney fees for matters that come within our jurisdiction. These same people cannot represent themselves in other courts simply because they cannot comprehend the maze of legal technicalities involved. They must have somewhere to go for help and Justice Courts have long filled that need. Many attorneys advise people who come to them on minor civil or criminal matters, to go to the Justice of the Peace rather than charge them large fees for representing them. Most attorneys know that Justice Courts are needed and they support us, but during the last twenty-five

years the Justice Courts have been under constant attack by a small number of attorneys in every state. They have succeeded in having these courts abolished in at least fifteen states. In others, the jurisdiction and authority has been reduced to less than that of a notary public. An effort was begun in Texas about twenty years ago to abolish Justice Courts and replace them with the magistrate court system. The judges would be lawyers named by appointment rather than by election. The Justices of the Peace of Texas felt that the people should have the right to elect their own Justices of the Peace, and to be able to choose a non-lawyer if they so desire. The result of this was the formation of the Justices of the Peace and Constables Association of Texas. This association has prevented the abolishment of the Justice of the Peace system in Texas, and as a result we still have a prominent position in the court system of the state.

SOME OF THE DUTIES OF JUSTICES OF THE PEACE

Small Claims Court-\$150.00 limit or \$200.00 if the suit is for wages.

Civil suits not to exceed \$200.00 plus interest and court costs.

Forcible detainer or forcible entry and detainer suits-commonly referred to as "eviction suits".

All criminal and traffic misdemeanor (Class "C") cases of which the punishment is by fine only, not to exceed \$200.00.

Peace bonds-to prevent a person from causing an injury to himself or to the person or property of another.

Drivers license suspension-for habitual violators or refusal to take chemical breath test.

Expunge liquor law violations when defendant becomes 21 (now 18) years old.

Issue warrants of arrest on felony and Justice Court criminal and traffic cases, and, in some counties for county court cases.

Make certified report and file with district clerk prior to each term of district court, of all criminal cases examined or tried since last term of district court. (Art. 45.14)

Set bonds on felony cases (also county cases in some counties) take and approve personal and cash bonds. Security bonds are approved by sheriff and constable and then forwarded to Justice of the Peace.

Either mail or have sheriff or constable serve summons on cases in which a warrant is not desirable, such as failure to send a child to school. A summons can be used in any case if you feel the defendant will appear as ordered without being arrested with warrant.

Set bonds on fugitives from other states.

Issue search warrants.

Issue warrants for obscene material.

Issue burial permits and permits for removal out of county.

Record births and deaths occurring in your precinct, outside the city (some counties only. In many counties, these are recorded by city-county health department.)

Hold inquests on all suspected homicides, suicides and other deaths occurring while deceased was not under a physicians care.

Order autopsy when need is indicated.

Supervise and conduct daily business of office. This should be done in an orderly and dignified manner. Records should be efficiently maintained. Reports should be made promptly and accurately. Cash receipts should be handled in a business like manner. We are trusted by the people of our county to safeguard their money. When one Justice of the Peace violates this trust, nine hundred others are injured.

Ch. 240 62nd LEGISLATURE—REGULAR SESSION

Passed by the House on April 23, 1971, by a non-record vote; and that the House concurred in Senate amendments on May 6, 1971, by a non-record vote; passed by the Senate, as amended, on May 6, 1971, by a viva-voce vote.

Approved May 17, 1971.

Effective 90 days after date of adjournment.

JUSTICES OF THE PEACE—REMOVAL—EXEMPTIONS

CHAPTER 241

H. B. No. 168

An Act relating to the removal of justices of the peace with certain exemptions; amending Article 5972, Revised Civil Statutes of Texas, 1925; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. Article 5972, Revised Civil Statutes of Texas, 1925, is amended⁶⁵ to read as follows:

"Art. 5972. 'Incompetency.'

"(a) By 'incompetency' as used herein is meant gross ignorance of official duties, or gross carelessness in the discharge of them; or an officer may be found to be incompetent when, by reason of some serious physical or mental defect, not existing at the time of his election, he has become unfit or unable to discharge promptly and properly the duties of his office.

"(b) In the case of a justice of the peace who is not a licensed attorney, 'incompetency' also includes the failure to successfully complete within one year from the date he is first elected, or if he is in office on the effective date of this Act, one year from the effective date of this Act, a forty-hour course in the performance of his duties; said course to be completed in any accredited state-supported school of higher education."

Sec. 2.⁶⁶ Persons having served two terms or more as a duly elected justice of the peace are exempted from provisions of subsection (b) of this Act.

Sec. 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 21, 1971, by a non-record vote; passed by the Senate on May 12, 1971, by a viva-voce vote.

Approved May 17, 1971.

Effective 90 days after date of adjournment.

⁶⁵. Vernon's Ann.Civ.St. art. 5972.

⁶⁶. Vernon's Ann.Civ.St. art. 5972 note.

TEXAS JUSTICE OF THE PEACE TRAINING CENTER

FORTY HOUR SEMINAR

January 27-February 1, 1974

San Marcos, Texas

SUNDAY - January 27, 1974

2:00-5:00 PM

Registration - Lobby Holiday Inn - I-35

6:00 PM

Dinner

Introduction & Orientation – Ronald D. Champion
Executive Director

Texas Justice Court – An Overview

Judge Wayne LeCroy

Justice of the Peace (7 Years)

Lubbock, Texas

MONDAY - January 28

7:00-8:00 AM

Breakfast (Holiday Inn)

(Classes will be held at Inn entire day.)

8:00 AM

Introduction - Ronald D. Champion, Executive Director

Donald Harrelson - Director - Department of Law Enforcement

8:30 AM

Judicial Ethics

Judge Joe B. Brown, Jr.*

Justice of the Peace (11 Years)

Dallas, Texas

10:00 AM

Reports

Bruce Todd

Texas Civil Judicial Council

Austin, Texas

10:30 AM

Bond Settings

Judge Joe B. Brown, Jr.*

Justice of the Peace (11 Years)

Dallas, Texas

12 Noon

Lunch (Holiday Inn)

1:00 PM

Rules of Evidence

Judge Wayne LeCroy

Justice of the Peace (7 Years)

Lubbock, Texas

* Indicates Justice of the Peace with Law Degree.

MONDAY - January 28 (Continued)

Page 2

3:00 PM

Examining Trial

George Gilkerson
President-Elect, Texas Criminal Trial
Lawyers Association

6:00 PM

Dinner (Holiday Inn)

(Directly after dinner)

Film: "The Eye of the Beholder"

TUESDAY - January 29

7:00-7:45 AM

Breakfast (Holiday Inn)

7:45 AM

Board bus for 5 minute trip to Southwest Texas State University
11th Floor Library/Administration Bldg.

8:00 AM

Welcome to Southwest Texas State University

Dr. Oscar Dorsey - Dean, College of Professional
School

8:10 AM

Traffic Laws

Lt. Dudley Thomas
Texas Department of Public Safety
Austin, Texas

9:20 AM

Coffee

9:35 AM

Writ of Garnishment

Bill Lee
Assistant County Attorney
Houston, Texas

11:45 AM

Board bus to return to Holiday Inn

12 Noon

Lunch (Holiday Inn)

12:45 AM

Board bus to return to Southwest Texas State University

1:00 PM

Search Warrants; Examples; Practical Exercises

Charles Yett
Assistant District Attorney
Dallas, Texas

4:30 PM

Judicial Qualifications

Maurice S. Pipkin
Executive Director
Judicial Qualifications Commission
Austin, Texas

5:00 PM Board bus to return to Holiday Inn

6:00 PM Dinner (Holiday Inn)
(Directly after dinner)
Film: "Future Shock"

WEDNESDAY - January 30

7:00-7:45 AM Breakfast (Holiday Inn)

7:45 AM Board bus for 10 minute trip to Gary Job Corps Center

8:00 AM Complaints; Examples; Practical Exercises
Jim Johnson
Assistant District Attorney
Dallas, Texas

10:30 AM Truancy
Judge Albert Lee
Justice of the Peace (15 Years)
Humble, Texas

12 Noon Lunch (Gary Job Corps Center)

1:00 PM Inquests
Judge Charles Cashell
Justice of the Peace (7 Years)
Longview, Texas

2:00 PM Justice Court Trial
Cast: Judge - Hon. John Forbes
Justice of the Peace
Arlington, Texas
Prosecutor - Ira Scott
Chief of Police Training Division
Texas A & M University
Defense Attorney - Hon. Albert Lee
Justice of the Peace
Humble, Texas
Defendent - Hon. Charles Cashell
Justice of the Peace
Longview, Texas

Critique: Tom Bullington
Assistant Attorney General
Chief of Crime Prevention
Austin, Texas

WEDNESDAY - January 30 (Continued)

Page 4

4:00 PM Practical Aspects of Justice Court (Civil)
 Judge John M. Forbes
 Justice of the Peace (11 Years)
 Arlington, Texas

5:00 PM Board bus for return trip to Holiday Inn

6:00 PM Dinner (Holiday Inn)

7:00 PM Prerelease & Personal Recognizance Bonds
 Chuck Fawns
 Assistant Director
 Pre-Trial Release
 Dallas, Texas

THURSDAY - January 31

7:00-8:00 AM Breakfast (Holiday Inn)
 (Classes will be held at Inn all day.)

8:00 AM Practical Aspects of Justice Court (Criminal)
 Judge John M. Forbes
 Justice of the Peace (11 Years)
 Arlington, Texas

9:00 AM Administrative Hearing
 Judge Cliff Roberts
 Justice of the Peace (15 Years)
 Amarillo, Texas

10:00 AM Peace Bonds
 Judge John M. Forbes
 Justice of the Peace (11 Years)
 Arlington, Texas

11:00 AM Attorney General's Opinions
 Thomas W. Bullington
 Assistant Attorney General
 Chief of Crime Prevention
 Austin, Texas

12 Noon Lunch (Holiday Inn)

1:00 PM Filing of Civil Suit thru Judgment & Appeal of Suit
 Judge Charles Reynolds
 7th Court of Civil Appeals
 Amarillo, Texas

3:00 PM Arrest With & With Warrants
Judge Kyle Reeves
Justice of the Peace (2 Years)
Silsbee, Texas

6:00 PM Dinner (Holiday Inn)

(Directly after dinner)
Film: "Testimony & Courtroom Demeanor"

FRIDAY - February 1

7:00-7:45 AM Breakfast

7:45 AM Board bus for 5 minute trip to Southwest Texas State University

8:00 AM Forcibles, Writ of Restitution & Distress Warrants
Judge J. Paul McNeill*
Justice of the Peace (6 Years)
Beaumont, Texas

9:00 AM Game Laws

Dexter Harris
Supervisor
Law Enforcement Division
Texas Parks & Wildlife Department

10:00 AM Writ of Attachment, Abstracts, Execution & Sequestration
Judge Charles Reynolds
7th Court of Civil Appeals
Amarillo, Texas

11:45 AM Board bus for return trip to Holiday Inn

12 Noon Lunch (Holiday Inn)

1:00 PM Panel Discussion

3:00 PM Conclusion of Seminar

* Indicates Justice of the Peace with Law Degree.

AN ACT

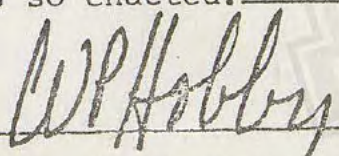
relating to the removal of justices of the peace by amending the definition of "incompetency"; amending Subsection (b), Article 5972, Revised Civil Statutes of Texas, 1925, as amended; and declaring an emergency.


BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:-----

Section 1. Subsection (b), Article 5972, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:-----

"(b) In the case of a justice of the peace who is not a licensed attorney, 'incompetency' also includes the failure to successfully complete within one year from the date he is first elected, or if he is in office on the effective date of this Act, one year from the effective date of this Act, a forty-hour course in the performance of his duties and a twenty-hour course each year thereafter; said course to be completed in any accredited state-supported school of higher education."-----

Sec. 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.


President of the Senate


Speaker of the House

H.B. No. 81

I hereby certify that H.B. No. 81 was passed by the House
on February 28, 1973, by a non-record vote.

Dorothy Hallman
Chief Clerk of the House

I hereby certify that H.B. No. 81 was passed by the Senate
on May 17, 1973, by the following vote: Yeas 31; Nays 0.

Harold Schnabel
Secretary of the Senate

APPROVED: June 16, 1973
Date

W. Lee Smith
Governor

FILED IN THE
4:30 pm
JUN 16 1973
McL. H. Smith
Secretary of State

TEXAS JUSTICE OF THE PEACE TRAINING CENTER

TWENTY HOUR SEMINAR

San Antonio, Texas

January 15-18, 1974

TUESDAY

2:00-5:00 PM Registration Lobby, Sheraton Inn

6:00 PM Dinner and Orientation

WEDNESDAY

7:00-7:45 AM Breakfast

8:00 AM Introduction: Ronald D. Champion
Executive Director

8:30 AM Penal Code: Titles 1 & 3
Jim Burnham
Assistant District Attorney
Dallas County

Titles 2 & 4
Charles Yett
Assistant District Attorney
Dallas County

12 Noon Lunch

1:00 PM New Laws Affecting Justice Court
Tom Bullington
Chief of Crime Prevention
Assistant Attorney General
Austin, Texas

3:00 PM Search Warrants As Revised
Douglas Mulder
First Assistant District Attorney
Dallas County

4:00 PM License & Weight
Sergeant Marvin Harrison
Texas Department of Public Safety
San Antonio, Texas

6:00 PM Dinner

Evening free for interpersonal discussions.

THURSDAY

7:00-7:45 AM

Breakfast

8:00 AM

Penal Code: Titles 5-10
Vic Driscoll
Assistant District Attorney
Harris County

12 Noon

Lunch

1:00 PM

Attorney General's Opinions
Tom Bullington
Chief of Crime Prevention
Assistant Attorney General
Austin, Texas

3:00 PM

Traffic Laws

Lieutenant Charles Gunn
Texas Department of Public Safety

6:00 PM

Dinner

Evening Free for interpersonal discussions.

FRIDAY

7:00-7:45 AM

Breakfast

8:00 AM

Rules of Evidence

Marshall Hines
Assistant District Attorney
Tarrant County

9:00 AM

Reporting Forms

Bruce Todd
Texas Civil Judicial Council
Austin, Texas

9:30 AM

Magistrate Detention Hearings

Judge Charles Smith
Justice of the Peace
Lubbock County

10:30 AM

Non-Jury Trials

Judge Joe B. Brown, Jr.
Justice of the Peace
Dallas County

11:30 AM

Critique of Seminar

12 Noon

Lunch

End of Seminar

TEXAS CRIMINAL JUSTICE COUNCIL



APPLICATION FOR GRANT

Project Plan and Supporting Data

This section constitutes the heart of the grant application. It is the applicant's detailed statement of the project—its aims, precisely what will be done, who will be involved, and what is expected to result. With the project budget, it constitutes primary evidence to CJC of the soundness of the project, the care and planning that has gone into its formulation, and the responsibility and qualifications of the applicant and others who will be involved in carrying it out.

This section consists of two parts: the summary and the detailed project description.

Summary

In the space below, write a brief summary of total project not to exceed 200 words.

Project is designed to offer in-service training for all Justices of the Peace in Texas. The training will coincide with House Bill No. 168 as passed by the 62nd State Legislature and House Bill No. 81 as passed by the 63rd State Legislature regarding training in the performance of their duties as Justices of the Peace.

The Project will offer ten twenty hour regional training schools and one forty hour school. The training schools will provide Justices of the Peace in Texas with a medium for further expansion of their knowledge of the duties and responsibilities as a Justice of the Peace. The seminar training technique will be used to present lectures from individuals knowledgeable in the duties of a Justice of the Peace while offering a forum for the mutual exchange of ideas between the lecturer and the seminar participants.

The course content of the forty hour school will be primarily directed for the advantage of those judges who have been in office for less than one year while the content of the twenty hour school will be primarily directed for those judges with greater experience.

Members of the Advisory Committee and/or consultants will monitor training programs and judicial systems in and out of the state. Thus, they will be able to provide valuable input designed to improve this training program and our judicial system.

The Training Center will maintain an open line of communications with Justices of the Peace in Texas by offering such services as additions to the J.P. Deskbook, information on training schools, compilation of requested information and the establishment of a standard cassette library lecture series and visual aids. The Training Center will also serve as a center for the compilation and dissemination of information on the

Justice Court System in Texas.

Detailed Project Description

Organize the remainder of this section under the following headings: A. Goals, B. Methods, C. Resources, D. Results, and E. Evaluation. See Section IIID, Application Instructions, of the CJC Action Grant Policies and Procedures Guide for detailed instructions concerning this item.

Insert after this sheet as many additional pages as may be needed to complete the description of the Project Plan and Supporting Data. If the applicant wishes to append documents that cannot be readily placed on continuation sheets, these documents should be listed on the last page of the Project Plan and copies furnished with the application for staff review.

A. GOALS OF PROJECT

1. Nature of the Problem.

Prior to the inception of this grant program, the Justices of the Peace in Texas, whose numbers exceed 900, had no organized method of receiving in-service training. The justice court in Texas is essentially a lay court. Although the Justices of the Peace in most major metropolitan areas are licensed attorneys, their state wide numbers are less than thirty. The remaining Justices of the Peace, whose numbers represent the vast majority, had limited access to legal training from which to administer justice prior to the inception of this program. Although the justice derived from most justice courts is fair and equitable, in this day and time of complicated rules of procedure it is imperative that the Justices of the Peace in Texas be given detailed and qualified instructions on the areas of law with which they deal.

a. Specific need to be met:

Provide detailed and qualified instruction to all Justices of the Peace in Texas in areas of law and administrative procedure which would lead to a continued improvement of the justice court system.

2. Target Groups

The immediate section of our criminal justice system to be affected would be the Justices of the Peace in Texas. As the justice court system is an integral working part in the overall criminal justice plan in Texas, the continued in-service instruction to Justices of the Peace would have many positive and far reaching affects on the entire criminal justice system.

3. Goals and Objectives:

Project Goal: Continue to offer both basic and advanced in-service instruction and information on the proper maintenance and operation of a justice court to all Justices of the Peace in Texas.

Specific Objectives:

- a. Provide regional, in-service advanced training to all Justices of the Peace.
- b. Provide basic instruction to all new Justices of the Peace.

- c. Develop a library of standard cassette taped lectures and visual aids dealing with law and justice court operation to be made available to judges on request.
- d. Provide updated additions of the J.P. deskbook as well as other written materials of interest to the justice court.

Non-Quantified Objectives:

- 1. Establish more unified justice court procedures and policies throughout Texas.
- 2. Enhance state wide cooperation between the justice court system and the other phases of the judiciary as well as the entire criminal justice system.
- 3. Develop a clearinghouse system to obtain and disseminate information on the justice court system of Texas to all interested parties.
- 4. Hold at least 10 Regional Advanced in-service Justice of the Peace training schools through the state.
- 5. Hold at least 1 Basic in-service Justice of the Peace training school for new judges.

B. METHODS

- 1. As a training center was established under a previous grant (72-E1-1035), the approval of this grant application would lead to a smooth transition and continued operation of this statewide training program.
- 2. Ten twenty hour Advanced in-service training seminars will be held throughout the state.
- 3. At least one forty hour basic in-service training seminar will be held for new Justices of the Peace. Justices of the Peace who have been in office for more than one year and have not completed the basic course and would like to do so, will also be admitted to the basic seminar.
- 4. The twenty hour curriculum will center around that which has been approved for our 1973-1974 twenty hour school. That curriculum includes instructions on: New Penal Code, New Laws Affecting Justice Courts, Search Warrant Rules As Revised, License & Weight, Attorney General's Opinions, Traffic Laws, Administrative Hearings, Game Laws, Magistrate Detention Hearings, Rules of Evidence and other subjects dealing with the duties and responsibilities of a justice court.

5. The forty hour curriculum will remain similar to that which has been approved in the past, with additions and modifications as required. The curriculum includes instruction on: Judicial Ethics, Rules of Evidence, Justice Court Trial, Bond Settings Inquests, Truancy Laws, Complaints, Search Warrants, Examining Trial, Arrest With and Without Warrant, Peace Bonds, Administrative Practices as well as other duties and responsibilities of the justice court.
6. Volunteer guest instructors will be utilized to present the lecture materials. The instructors will be recruited from the Attorney General's Office, District and County Attorneys Offices, Judges from both the justice court level as well as from courts of greater jurisdiction, attorneys in private practice, representatives from law enforcement agencies, as well as other individuals proficient in the law which is applicable to the Justice Court and it's administration.
7. Lecture material will generally be supplied by the instructor with a copy to be included in the course material book to be issued to each seminar participant.
8. Utilizing current data, it is estimated that at least fifty Justices of the Peace will attend each twenty hour advanced seminar and between fifty and one hundred Justices of the Peace will attend the forty hour basic seminar.
9. The seminar format will be in accordance with recognized behavioral management optimal information comprehension procedures.

This continuation grant application is concerned in the twenty hour advanced seminars with building upon the foundation that has already been laid in the previous basic and advanced schools. Moreover, the basic instruction will attempt to insure that the succeeding generations of Justices of the Peace will be properly trained to execute their duties and responsibilities.

C. RESOURCES

1. Facilities: The office for the coordination and administration of Justice of the Peace training will be located on campus at Southwest Texas State University.
2. Staff and Organization: The staff consists of the Project Director, an Office Manager and a Secretarial Assistant whose services will only be utilized while the Office Manager is on vacation.

Ronald D. Champion -- Project Director, effective 10-1-72.

University of Houston B.B.A., Administrative Assistant National College of District Attorneys, Research Assistant The Institute for Court Management, Project Coordinator Justice of the Peace in-service training Lamar University, Executive Director, Justice of the Peace in-service training Southwest Texas State University; member of various organizations involved in education and improvement of criminal justice system; widely acquainted with Justices of the Peace, Prosecutors, Peace Officers, and others involved in the criminal justice system.

As Project Director he is in daily working contact with Justices of the Peace in Texas. He coordinates and administrates the regional in-service seminars while maintaining an office at Southwest Texas State University.

Mrs. Betty Jo Mason -- Office Manager, effective 7-23-73

Twenty years secretarial experience; expertise in office management, shorthand and statistical computation and analysis. Specialized abilities include: IBM Executive typewriter skills, cassette transcribing skills and 240 Electronic Calculator skills. The Office Manager duties include: General secretarial duties and responsibilities, maintain normal work and information flow from training center while Project Director is involved in field operations, maintain financial records and carryout all special projects as requested by the Project Director.

Advisory Committee:

The Advisory Committee is comprised of grantee, subgrantee and advisory members. The Advisory Committee is responsible for setting operational policy and furthering the goals of the project.

Advisory Chairman:

Judge Albert Lee, Justice of the Peace, Harris County, 15 yrs.

Advisory Members:

Judge John M. Forbes, Justice of the Peace, Tarrant County, 11 yrs.

Judge Wayne LeCroy, Justice of the Peace, Lubbock County, 7 yrs.

Judge Joe B. Brown, Jr., Justice of the Peace, Dallas County, 11 yrs.

Judge Cliff Roberts, Justice of the Peace, Potter County, 15 yrs.

Judge Kyle Reeves, Justice of the Peace, Hardin County, 1 yr.

Donald Harrelson, Chairman, Southwest Texas State University Representative, San Marcos, Texas

Ex. Officio Members:

Constable Charlie Jones, President, Justice of the Peace & Constables Association of Texas, Austin, Texas.

Thomas Bullington, Chief of Crime Prevention, Assistant Attorney General, Austin, Texas

Consultants:

Willis Whatley, Director Judicial Processes & Law Reform,
Criminal Justice Council, Austin, Texas

Tom Bullington, Chief of Crime Prevention, Assistant Attorney
General, Austin, Texas

Douglas Mulder, First Assistant District Attorney, Dallas
County, Dallas, Texas

Robert Burdette, Assistant District Attorney, Harris County,
Houston, Texas

Dain P. Whitworth, Executive Director, Texas District & County
Attorneys Association, Austin, Texas.

Maurice S. Pipkin, Executive Director, Texas Judicial
Qualifications Commission, Austin, Texas

Dexter Harris, Director Law Enforcement, Texas Parks &
Wildlife Department, Austin, Texas

Captain W. J. McLean, Traffic Law Enforcement, Texas
Department of Public Safety, Austin, Texas

George E. Gilkerson, President-Elect, Texas Criminal Trial
Lawyers Association, Lubbock, Texas

William G. Reid, Executive Director, Texas Criminal Defense
Lawyers Association, Austin, Texas

D. RESULTS:

This project has the enthusiastic support of the membership of the
Justice of the Peace & Constables Association of Texas as well as
the West Texas Justice of the Peace Association.

The summary of this project's quantifiable results is as follows:

Completed Requirements	Basic (40 hr)	Advanced (20 hr)
1971-72	479	Not Offered
1972-73	132	264
Extension of 1972-73 Grant for 3 months		
Anticipated enrollment based on preregistration, advanced seminars	Not offered	240
Projected 1974 enrollment	75	600

Registration for two seminars and preregistration for another seminar for the Fall of 1973 indicates that an average of sixty judges will participate in the Advanced twenty hour seminars.

Ten advanced seminars are anticipated for 1974 with an average participation of sixty judges per seminar. One basic seminar is also scheduled for 1974 with a second to be scheduled if necessary. The number of judges anticipated to complete basic training in 1974 is estimated to be seventy five.

A certified list of judges who completed a basic or advanced training course, along with their mailing address will be made available to:

Texas Judicial Qualifications Commission
Texas Criminal Justice Council
Project Director, Attorney General's Crime Prevention Newsletter
Texas Civil Judicial Council

The updated list of J.P.'s. will aid in information gathering and dissemination by the above agencies.

Data collection on justice courts will be carried out by the training center.

The chief anticipated result of this project is to upgrade the Justice Court system of Texas through education and awareness.

E. EVALUATION:

1. The Project Director is making a narrative progress report quarterly to the Criminal Justice Council.
2. Each judge attending the seminars will submit a written evaluation of the speakers, content, course materials and accommodations.
3. The Advisory Committee will provide monthly analysis and evaluation of the seminars.
4. The Advisory Committee will consult with the Criminal Justice Council in selecting outside evaluation for the project.

TEXAS JUSTICE OF THE PEACE TRAINING CENTER
SOUTHWEST TEXAS STATE UNIVERSITY
SAN MARCOS, TEXAS 78666
(512) 245-2340

Name _____ Mailing Address _____
_____, Texas _____
County _____ City _____ Zip Code _____
Precinct _____, Place _____ Office Telephone No. () _____
A/C _____

1. Education Years (No.) Graduated

High School	Yes _____	No _____	Yes _____	No _____
College	Yes _____	No _____	Yes _____	No _____
Graduate School	Yes _____	No _____	Yes _____	No _____
Law School	Yes _____	No _____	Yes _____	No _____

Completed J.P. 40 hr. school Yes _____ No _____ If yes, when _____
Year _____

Completed J.P. 20 hr. schools Yes _____ No _____ If yes, when _____
Year _____

2. Date assumed office _____
Month _____ Year _____

3. J.P. job full time _____ Part time _____

Average number of hours per week spent on J.P. work _____

4. Number of full time employees _____

Number of part time employees _____

5. Does your county provide you with an office? Yes _____ No _____

Does your county provide you with a courtroom? Yes _____ No _____

If no, do you have access to a courtroom? Yes _____ No _____

Does your county provide you with office furniture? Yes _____ No _____

If your county provides you with a courtroom, does it provide courtroom furniture?
Yes _____ No _____

Do you have a jury room? Yes _____ No _____

6. Does your county provide you with forms and supplies? Yes _____ No _____

If no, does your county provide you with funds (other than your salary) to purchase
forms and supplies? Yes _____ No _____

Data Obtained by:

THE TEXAS CIVIL JUDICIAL COUNCIL
June, 1973 - December, 1973

I. EDUCATION

Reponse: 717 77.3%

A. Graduated High School

Yes	495	70%
No	222	30%

B. Of those who did not graduate from High School

3 Yrs.	26	26%
2 Yrs.	41	18%
1 Yr.	21	10%
0 Yr.	<u>102</u>	46%
	222	

C. College

Graduated	81	11%
Did not attend	483	

D. Law School

Graduated	40	6%
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E. J.P. Training School

609 Responded 65.6%

1. Basic

Yes	441	72%
No	168	

2. Advanced 459 75%

II. SALARY

Full time Median \$5,400.00

III. YEARS IN OFFICE

722 Responded 77.8%

Less 1 Yr.	57	8%
Less 5 Yrs.	313	43%
5-10 Yrs.	154	21%
10-20 Yrs.	163	23%
More 20 Yrs.	35	5%

&

Less than 53 Yrs.

Median years in office 4 Yrs. 5 mos.

Less than 8 years	497	69%
Greater than 8 years	225	31%

7. Does your county provide you with proper office equipment? Yes _____ No _____

8. Does your county provide you with a copy of the Black Statutes? Yes _____ No _____

If no, do you have access to a copy? Yes _____ No _____

9. Do you have a copy of:

Texas Rules of Civil Procedure Yes _____ No _____

Texas Code of Criminal Procedure Yes _____ No _____

10. Approximate annual salary:

Judge _____

Employees (Average) _____

11. Approximately what percentage of your time is spent in the following areas:

Civil _____ %

Criminal _____ % Traffic _____ %

Non-judicial Assistance _____ %

12. Approximately how many jury trials will you have in a year:

Civil _____

Criminal _____ Traffic _____

13. Who represents the State in your court:

County Attorney (or Assistant) _____

District Attorney (or Assistant) _____

Law Enforcement Officer _____

14. In what order do you call upon the following for legal advice?
(Most often 1, least often 6)

Attorney General's Office _____

County Attorney (or Assistant) _____

District Attorney (or Assistant) _____

Other Justices of the Peace _____

Other Judges _____

Attorneys-at-Law _____

IV. COURTROOM
 Response: 715 77.1%
 Yes 407 57%
 No 308 43%

V. HAS REQUIRED SUPPLIES
 Response: 713
 Yes 537 75%
 No 176 25%

Hours	Nos.	%	Avg. Salary	Mo/Salary
			\$ 894	\$ 75
1-4	37	5	2391	200
5-9	54	8	2076	173
10-14	50	7	2082	173
15-19	23	3	3045	254
20-24	49	7	3658	304
25-29	15	2	3236	270
30-34	38	6	3467	290
35-39	14	2	6384	532
40	397	60		

RECOMMENDATIONS OF THE JUSTICE OF THE PEACE
AND CONSTABLES ASSOCIATION OF TEXAS

TO:

THE CONSTITUTIONAL REVISION COMMISSION

1. The justice courts should be retained with some changes.
2. Justice courts should be financed and operated by the county (as they are now).
3. Justice courts should be presided over by non-lawyers with required training or licensed attorneys.
4. The civil jurisdiction should be raised to \$500.00
5. For civil cases, justice courts should not be a court of record
6. Appeals of civil cases should be by trial de novo (as they are now).
7. Criminal jurisdiction of Justice Courts should be raised.
8. For criminal cases, the justice courts should not be courts of record.
9. Appeals of criminal cases should be a trial de novo (as they are now).

- 9
10. We wish to remain in the Judiciary Section of the Constitution.
 11. We believe Justice of the Peace and Constables office are inseparable and that the constables should remain in constitutional offices.
 12. The Board of Directors of Justice of the Peace and Constables Association at annual convention in Austin on June 27, 1973 passed a unanimous resolution recommending annual session of the Legislature and approval of recommended pay raises for members of the Legislature.

January 9, 1974

RECOMMENDED WORDING OF THE NEW TEXAS CONSTITUTION BY THE JUSTICES OF
THE PEACE AND CONSTABLES ASSOCIATION OF TEXAS REFERENCE THEIR
RESPECTIVE OFFICES

Justice of the Peace

1. We recommend that the new Constitution reference Justices of the Peace be worded as follows:

The governing body of each county shall establish and maintain one or more justice courts and, if more than one, shall divide the county into justice precincts and provide a justice court for each precinct. Justices of the Peace shall have jurisdiction in criminal matters of all cases where the penalty or fine to be imposed by law may not be more than for \$200.00, and in civil matters of all cases where the amount in controversy is \$500.00 or less, exclusive of interest, of which exclusive original jurisdiction is not given to the District or County Courts and such other jurisdiction, criminal and civil, as may be provided by law, under such regulations as may be prescribed by law, and appeals to the County Courts shall be allowed in all cases decided in Justices' Courts where the judgment is for more than \$50.00 exclusive of costs and in all criminal cases under such regulations as may be prescribed by law. And the Justices of the Peace shall be ex-officio notaries public; and they shall hold their courts at such times and places as may be provided by law.

The first sentence of this proposed wording is exactly as proposed by the Constitutional Revision Commission. The wording following the first sentence is exactly as our present Constitution, except that our civil jurisdiction is raised to \$500.00 and the amount for appeal to be perfected is raised from \$20.00 to \$50.00. We feel that our jurisdiction should be specifically spelled out in the new Constitution as it is in our present Constitution. We also feel that we should have a four year elective terms as specified in our present Constitution.

Constable

2. We recommend that the wording in the new Constitution reference Constables be worded as follows:

The County Commission may provide for the election of one or more Constables in each county of less than 50,000 population and shall provide for the election of one or more Constables in a county of 50,000 population or more to correspond with each justice precinct.

You will notice that this wording leaves the office of Constable discretionary with the County Commission in counties of less than

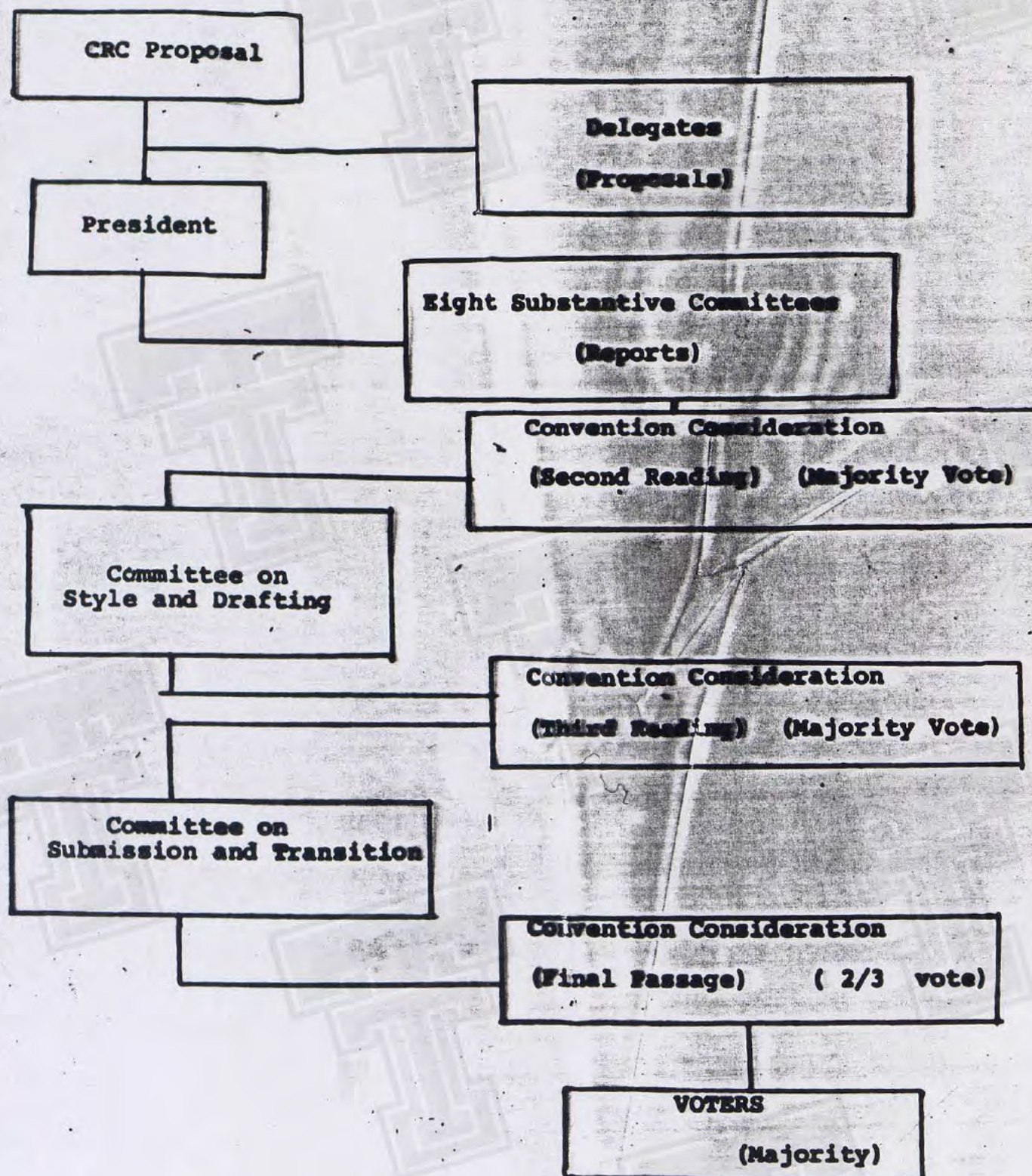
50,000, but makes the office of Constable mandatory in all counties of 50,000 or more to conform with each justice precinct. We also feel that we should have a four year elective terms as specified in our present Constitution.

Respectfully,

Albert L. Lee

Judge Albert Lee
Legislative Chairman

PROCEDURE OF CONSTITUTIONAL CONVENTION-1974



Proposed Judicial System of Texas

State Unified Judicial System

