

‘HE WAS A GREAT JUDGE. I WILL MISS HIM.’

By Judge Charles Spain*
Former briefing attorney

What a privilege it was to know C.L. Ray.



Perhaps there never was an age of “great judges,” merely judges who appeared that way to us when we were young and just starting out. But Judge Ray did appear that way to me—and with good cause. He served his country in the Air Force in Korea, honed his skills for years as a country lawyer, and served two terms in the Texas House of Representatives and eventually twenty years on the bench – a decade on the Texarkana Court of Civil Appeals and a decade on the Supreme Court of Texas.

And he was a Scoutmaster, with the wise and gentle prodding that encouraged his Scouts—young and old—to dare to succeed. Few of us have met a Distinguished Eagle Scout, but knowing Judge Ray sure gave you a good idea of what the Boy Scouts of America should be looking for when picking a recipient of that high honor. He always had an encouraging word, a funny story, or a gentle reproach that made you want to be a better person.

He was a father who loved his children and talked about them often.

He was an expert in oil and gas law, an absolute necessity for a court that has a long history of jurisprudence on that subject.

He also had a pragmatic sense of what was right, which by itself is no substitute for learned explanations of the common law, but is always a jumping-off point for refining the issues and researching the law for opinions that explain the policy behind the common law. For Judge Ray it was never enough to find cases that stated a proposition; the cases had to explain why. They also had to make sense.

Judge Ray knew how to write those opinions himself. He spoke fondly of his days on the Texarkana Court when the justices had the privilege of a caseload that allowed them to do all the work themselves, a world that – for better or worse – is long gone.

He had the trial lawyer’s mastery of procedure, a respect for due process, and a dislike of arcane rules. Concurrences offer a judge the freedom to say things majority opinions do not, and in his *Donwerth* concurrence, Judge Ray foreshadowed a major change in appellate practice:

“This court has labored long and hard to remove as many procedural traps from our rules as possible. Litigants are entitled to have their disputes resolved on the merits, not on unnecessary and arcane points that can sneak up on even the most diligent of attorneys. The court’s decision in this cause is another step in achieving this goal. However, the simplicity of our holding still belies the intricacies and troubling inconsistencies in our rules for perfecting appeals in other contexts.

Judge Spain is a Houston municipal court judge and becomes a justice on Houston’s 14th Court of Appeals in January.

“I believe it is time to adopt a single, consistent procedure for perfection of appeals in Texas courts. . . . My point is simply that our justice system would be well served by a simple, consistent, comprehensive, easily applied set of rules applicable in all appeals.

“We cannot, of course, attempt to formulate such rules in the context of the simple facts of this cause. We can, however, consider this problem in our continuing study and revision of the Texas Rules of Appellate Procedure.”

Donwerth v. Preston II Chrysler-Dodge, 775 S.W.2d 634, 640–44 (Tex. 1989) (Ray, J., concurring). The opinion is full of examples of numbing procedural pitfalls, but the point Judge Ray made wasn’t political in the slightest – it was about making the law accessible and promoting justice. This philosophy eventually was embraced in the 1997 revision of the appellate rules that form the basis of our current practice.

Others will talk about the turbulent times in which he served. Certainly Judge Ray was one of the last men standing of that generation of the Texas Supreme Court. Justices Kilgarlin, Mauzy, Robertson, and Spears have all left us, and now so has Justice Ray. Whether they took the court from the jurisprudence that developed with the dawn of railroads to the then-prevailing mainstream of American jurisprudence, or to something else, is a matter for historians and law professors to debate. Certainly they will.

For those of us who had the privilege to know him, Judge Ray cared deeply about the law, about justice, and about people. And he always had great stories. You were lucky to be his friend.

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