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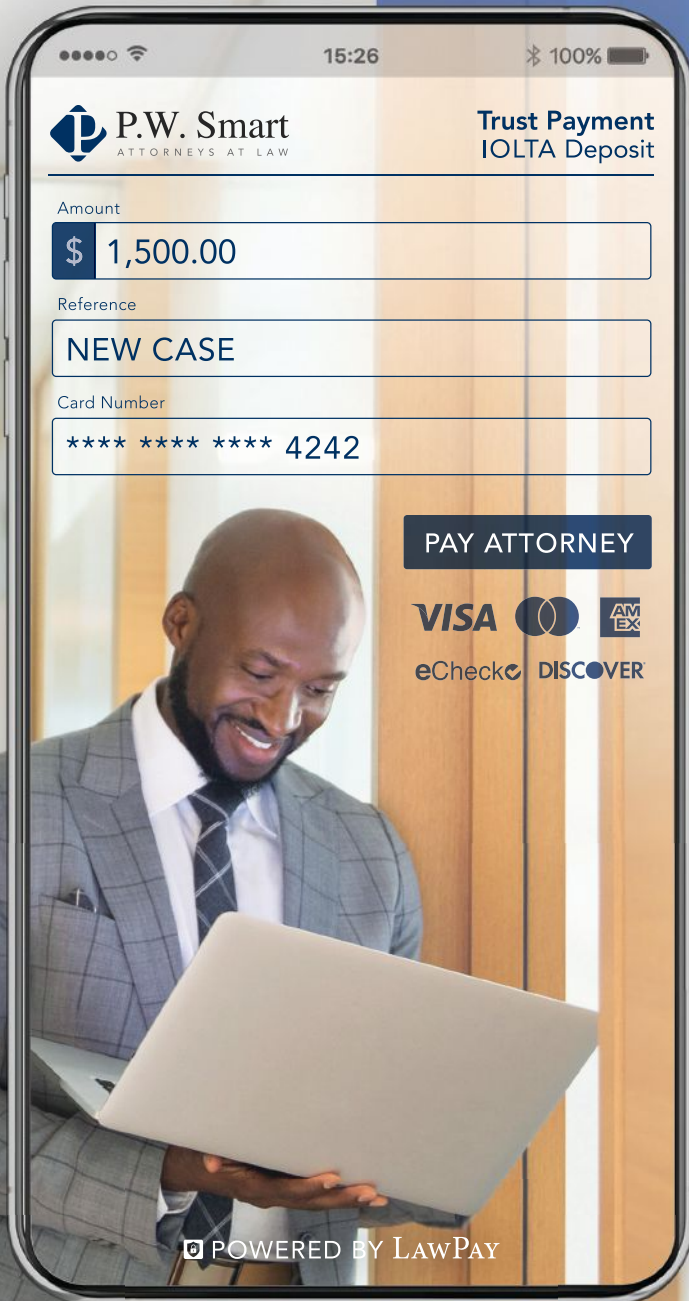
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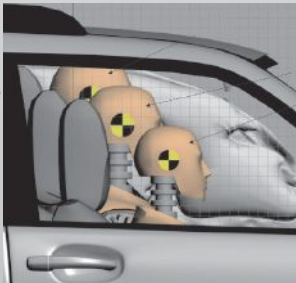
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A Year of Challenges, Service, **INNOVATION, AND GROWTH**

AS THE 2020-2021 BAR YEAR COMES TO A CLOSE, we end it in a vastly different place than when we started, and thankfully so. This time last year, we were just a few months into a shutdown designed to save lives and were preparing for a summer upswing in COVID-19 cases. This year, millions of Americans have been vaccinated, restrictions are loosening, and the future is looking brighter.

I'm proud to report the State Bar of Texas remained fully functional, with most of its departments and employees working remotely throughout the pandemic. When I look back at what the State Bar—its board of directors, volunteers, and employees—have accomplished for the legal profession, it's nothing short of a Herculean effort dedicated to keep the needs of Texas lawyers at the forefront of our efforts during this extremely difficult year.

We are grateful to the Texas Supreme Court, especially our court liaison, Justice Debra Lehrmann, and the Office of Court Administration for their superb leadership and assistance. The court issued 37 emergency orders during the pandemic providing instructions on everything from in-person and virtual court hearings, eviction rights and responsibilities, document service, and a host of other issues facing lawyers.

While 2020-2021 came with incredible challenges, the State Bar not only met them head on, but also continued to innovate and expand services for Texas lawyers in line with the bar's statutory purposes. Here are just some of those accomplishments:

- In light of the pandemic's financial impacts, the membership department worked with the Supreme Court to give lawyers two extra months to pay last year's membership fees, while the MCLE Department continues to extend deadlines to help lawyers comply with MCLE requirements.
- All departments, programs, and committees turned their in-person events virtual. TexasBarCLE increased its free offerings, providing \$5 million in free CLE events to all Texas lawyers, and offered an additional \$148,000 in scholarships to lawyers in financial need.
- The Texas Lawyers' Assistance Program continued its around-the-clock assistance to Texas lawyers, judges, and law students struggling with increased stress and anxiety due to the pandemic. The program developed monthly webinars on crucial well-being topics; amassed an online toolbox of resources at texasbar.com/tlpsupporttoolbox; and created a one-hour free CLE to educate on depression and suicide prevention, which can be found at tlphelps.org and on texasbarcle.com under "free online classes."
- The Committee on Disciplinary Rules and Referenda, aided by bar staff, successfully brought eight potential rule proposals to the membership for a vote. Texas lawyers overwhelmingly approved all the proposals. The Supreme Court held a hearing on the changes on May 4 and can now either accept or reject the proposals.
- The Law Practice Resources Division launched a new website—texasbarpractice.com, an umbrella platform where lawyers can find all the State Bar's law practice resources such as Texas Bar Books and the Law Practice Management Program.
- The Texas Opportunity and Justice Incubator transitioned to an entirely virtual format ahead of the pandemic, which allowed it to expand the program and cut costs.

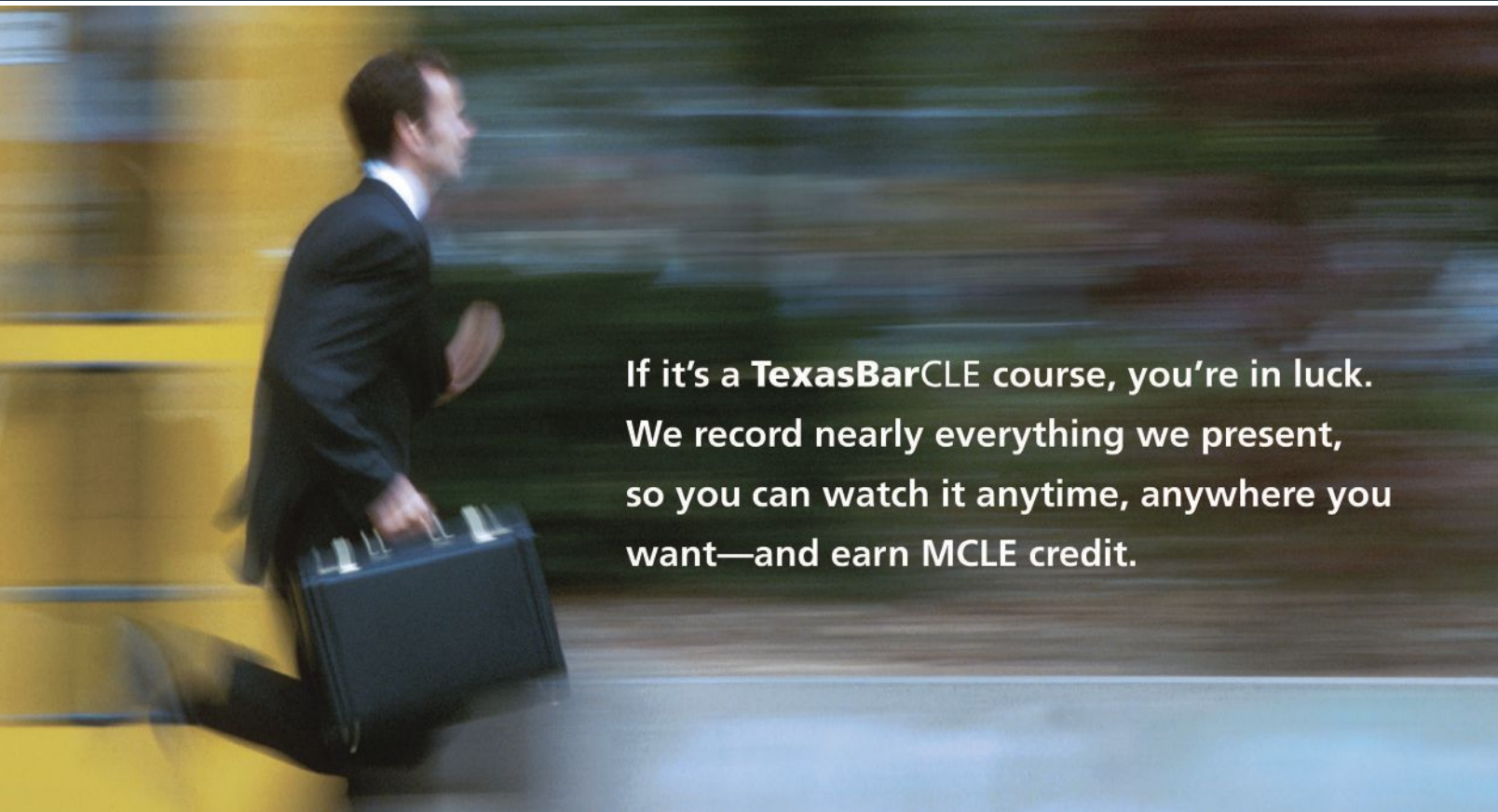
Last, but absolutely not least, the State Bar created a fiscally responsible, balanced 2021-2022 budget that accounts for the pandemic's financial challenges. As a result of management decisions made at every turn during the pandemic and sharp-eyed oversight by the board of directors, the bar is in excellent financial health and well positioned to continue serving Texas lawyers and the public into the new year.

Sincerely,

TREY APFFEL

Executive Director, State Bar of Texas
Editor-in-Chief, *Texas Bar Journal*

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IN RECESS



To Live and Die by the Sword

Cornelia Brandfield-Harvey's fencing experience carries over to the courtroom.

INTERVIEW BY ADAM FADEREWSKI

A MASK HIDES A FACE, and the only way to judge what method to use to counter your opponent is by reading his or her body language. Of course, you will have already researched your opponent, watching how he or she performs against others. What could easily be a description of a trial is actually quite similar to the strategy used when dueling an opponent with an epee. Cornelia Brandfield-Harvey, of Houston, followed in the footsteps of the famed Three Musketeers—Aramis, Athos, and Porthos. Over 15 years of fencing, she's even competed in the Musketeers' homeland of France (as well as many other nations around the world). While her competition days have slowed due to her workload, she still finds time to impart her love of fencing to low-income and high school students.

ABOVE: Cornelia Brandfield-Harvey has been fencing for over 15 years, including captaining her college team and dueling on the international stage. Today, she shares her love of fencing with high school and low-income students. PHOTO COURTESY OF CORNELIA BRANDFIELD-HARVEY

WHEN DID YOU FIRST GET INVOLVED IN FENCING? WHAT LED YOU TO CHOOSE FENCING?

I first became involved in fencing back in 2000 or 2001 when I was in fourth or fifth grade. What led me to choose fencing was the individual component of the sport. You live and die by the sword. It is just you out there and you really have to rely on yourself. But also I may have watched the *Three Musketeers* movie when I was a kid and that just looked really freaking cool.

HOW LONG HAVE YOU BEEN FENCING? OF THE THREE TYPES OF FENCING—EPEE, FOIL, AND SABRE—WHICH STYLE DO YOU PRACTICE?

I have been fencing for over 15 years now. I practice epee—the best of the three of course! I believe I decided on epee because there is much more freedom with the types of moves you can do. Also anywhere on the body is fair game so it makes the bout much more exciting and challenging. I tried foil early on but did not stick with it—no pun intended. When I tried epee, it just clicked.

WOULD YOU SAY THERE ARE SIGNIFICANT DIFFERENCES IN THE THREE OTHER THAN THE TYPE OF BLADE THAT IS USED?

Yes. For epee, you can hit anywhere on the body. For foil, you can only hit the chest area. For saber, you can only hit from the waist up. Also unlike epee and foil, you thrust and cut with the blade instead of using the point of the blade.

WHEN YOU FACE-OFF WITH AN OPPONENT IS THERE A SPECIFIC THING YOU'RE LOOKING FOR?

When I am facing off with an opponent, I do look for specific things. I watch to see how much they are moving around. Are they active on the strip or are they just standing there in one spot. Is their en garde stance accurate? That gives me a clue as to whether the opponent is a novice or an advanced fencer. Also I look to see how much they leave their body wide open for a touch. If they are waving their blade around a lot, it probably means they are only guarding their upper body—which means I can make a lunge down low for the leg or foot since they will be caught by surprise.

Body language is crucial because the masks hide our facial expressions so you really have to zero in on movement.

DO YOU STUDY YOUR OPPOSITION BEFORE YOU FACE THEM? IF SO, HOW DO YOU GO ABOUT DOING THAT?

Oh, yes! I usually watch tapes of the opponents from prior competitions or I watch them live at competitions as well. I research their competition results. This tactic is very similar to what we litigators do before a hearing, depositions, or trial. We study our opposing counsel. Just like the legal arena, fencing is a mental game.

WHAT ARE SOME OF YOUR PROUDEST ACHIEVEMENTS IN FENCING? WHERE HAVE YOU COMPETED?

One of my proudest achievements in fencing was winning the gold medal in a Division I team event at Summer National Championships in 2009—one of the toughest events at the competition. We were up against a slew of incredibly challenging players. We were behind in the final bout of the gold medal match. I was worn out from hours of competition, but somehow I found the strength to fight and come back from behind and win. I was so proud of myself for tapping into that mental



TOP: Cornelia Brandfield-Harvey scores a hit with the point of her epee into her opponent's torso. **BOTTOM:** Cornelia Brandfield-Harvey captained her Division I fencing team to a Summer National Championship in 2009. PHOTOS COURTESY OF CORNELIA BRANDFIELD-HARVEY

toughness. Further, it was the first team event with me as captain, so I had a huge responsibility on my shoulders to lead my team and lead my team to victory. I was afraid at first to be in a leadership position, but I then realized that it was a natural fit for me to be a leader. Another significant milestone for me that day. My team was an amazing group of women. We all supported each other. We all came together on that day as a team and pulled it out. We worked together to achieve a goal. Indescribable feeling.

I feel as though I have competed all over the world! I feel incredibly lucky to have had the type of exposure at such a young age. I have competed in France, Germany, Austria, Sweden, South Korea, Azerbaijan, Canada, U.S., Slovakia, Ireland, Spain, Cuba, Mexico, and Turkey.

YOU TEACH FENCING AS WELL. HOW OFTEN DO YOU TEACH AND IS THERE A SPECIFIC AGE GROUP OR TEAM THAT YOU DO THAT WITH?

I try to teach twice a month if I can on the weekends at the local clubs. There are also fencing clinics in which I participate via Zoom. I work specifically with high school students and specifically low-income students in inner-city neighborhoods. Many low-income students cannot afford the high cost of fencing so it is important to make sure fencing is accessible to everyone. We have donated some old equipment and uniforms in the past. I give them mentorship advice for career paths as well. I may be biased, but it is a natural transition from fencer to litigator. **TBJ**



What We **ACCOMPLISHED TOGETHER**

AS MY TERM AS YOUR PRESIDENT DRAWS TO A CLOSE, I am very proud of what we achieved together under less than ideal circumstances. Before I highlight some success stories, I want to thank everyone whose work made these accomplishments possible, including the members of the board of directors and my presidential task forces and workgroups. Thanks also to the staff for keeping State Bar operations going during the COVID-19 pandemic and keeping us within budget. Together, we made progress on issues important to Texas lawyers as they faced the year's unprecedented challenges.

Task Force on Criminal Court Proceedings

The recommendations of my Presidential Task Force on Criminal Court Proceedings were highly successful in easing our courts back to safe and secure in-person proceedings, particularly jury trials. The task force's recommendations were very well received by the Texas Supreme Court and the Office of Court Administration and greatly informed the OCA's recommendations to the court.

Workgroup on Texas Lawyer Needs

In April 2021, I formed a Workgroup on Texas Lawyer Needs Arising from the 2020 Pandemic and 2021 Winter Storm that surveyed members last month to identify areas where the State Bar can continue or expand efforts to help members consistent with the bar's statutory purposes. The workgroup is working to assemble disaster-relief and CLE resources and will have more to report soon.

Grievance Task Force

My Task Force on Public Protection, Grievance Review, and the Client Security Fund has been working hard for months to ensure the lawyer grievance system remains effective and fair to all parties. The task force will present its recommendations to the State Bar board on June 16. You can watch the board meeting starting at 9 a.m. CDT at youtube.com/statebaroftexas.

Courthouse Access Badge Workgroup

In 2018, the State Bar board created a Courthouse Access Badge Task Force to study the implementation of courthouse access badges in Texas. The Courthouse Access Badge Workgroup I created in September 2020 continued those efforts this year but again fell short. This remains a priority to me and many other Texas lawyers.

Together We Dine

Near the start of my term, I set the ambitious goal of inviting every Texas lawyer to participate in the Together We Dine initiative. A project of Dallas-based Project Unity, Together We Dine brings people of various backgrounds together for non-confrontational discussions about racism for the purpose of fostering unity. I'm proud to say that we accomplished my goal: Every lawyer licensed in Texas received an invitation to attend a CLE-accredited, virtual Together We Dine event. The feedback has been overwhelmingly positive. Thank you to everyone who participated and to the facilitators for making it happen.

Building Purchase

Another accomplishment is the recent purchase of the building and property at 1415 Lavaca Street in Austin, immediately west of and adjacent to the State Bar's headquarters at the Texas Law Center. The property will now undergo renovations to serve as meeting space for Texas lawyers and bar volunteers and additional office space for bar operations.

Ad Review Improvements

The State Bar is switching to an online submission process for the review of attorney advertisements, which should make getting approval easier and faster for lawyers.

New TLAP Position

And one of the most important accomplishments to me is the planned addition of another position in the Texas Lawyers' Assistance Program, a program that saves lives by providing help and hope to lawyers, judges, and law students struggling with substance use and other mental health issues.

Thank you for the honor of serving as your president. The trust you placed in me allowed us to accomplish the goals listed above, and it was an honor I shall never forget.

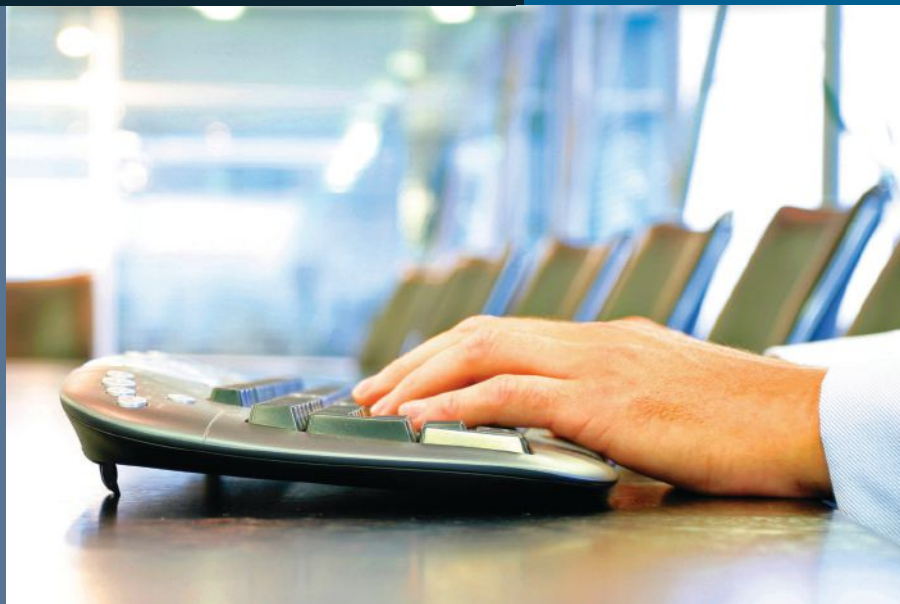
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TexasBarCLE is working towards holding some CLE events in-person in July with limited attendance and safety precautions in place. Please check TexasBarCLE.com for the most up-to-date information regarding CLE seminars.

19th Annual Collections and Creditors' Rights Course

REPLAY Jun 2-3 MCLE Credit: 12.75 hrs (includes 2 hrs ethics)

Marriage Dissolution 101

REPLAY Jun 7 MCLE Credit: 4.25 hrs (includes 1.25 hrs ethics)

43rd Annual Marriage Dissolution Institute

REPLAY Jun 8-9 MCLE Credit: 13.5 hrs (includes 4.75 hrs ethics)

16th Annual Soaking Up Some CLE: A South Texas Litigation Course

REPLAY Jun 8-9 MCLE Credit: 12.25 hrs (includes 2.5 hrs ethics)

Intermediate Estate Planning

LIVE Jun 8 MCLE Credit: 6.75 hrs (includes 1.75 hrs ethics)

45th Annual Advanced Estate Planning and Probate Course

LIVE Jun 9-11 MCLE Credit: 23.5 hrs (includes 4 hrs ethics)

33rd Annual Advanced Administrative Law Course

LIVE Jun 10-11 MCLE Credit: 13 hrs (includes 3.25 hrs ethics)

Special Education, Child Welfare, and the Juvenile Justice System Course

LIVE Jun 11 MCLE Credit: 7.25 hrs (includes 2.25 hrs ethics)

15th Annual Bill of Rights Course: Litigating the Constitution

REPLAY Jun 15 MCLE Credit: 6.5 hrs (includes 1.5 hrs ethics)

Legislative Update: Family Law

LIVE Jun 22 MCLE Credit: 3 hrs (includes .5 hr ethics)

34th Annual Advanced Evidence and Discovery Course

REPLAY Jun 23-24 MCLE Credit: 13.25 hrs (includes 2 hrs ethics)

19th Annual Choice, Governance & Acquisition of Entities in Texas Course

REPLAY Jun 25 MCLE Credit: 7 hrs (includes 2.5 hrs ethics)

Federal Court Practice

REPLAY Jun 25 MCLE Credit: 6.5 hrs (includes 1.5 hrs ethics)

Innovations: Breaking Boundaries in Custody Litigation

REPLAY Jun 29-30 MCLE Credit: 9 hrs (includes 2 hrs ethics)

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WRITTEN BY BRYAN HAYNES AND CHRISTIAN COWART

CREDIBILITY IS THE PARAMOUNT

FOUNDATION to successful arguments and persuasive evidence—regardless of the medium used to argue or present evidence. Remote proceedings and depositions pose new challenges for presenting credible arguments by counsel, testimony from witness, and information from evidence. The following concepts will help you increase or maintain the credibility of your arguments, your witnesses, and your exhibits.

Presenting Yourself

Your Attire. Your credibility is judged no less in a virtual hearing than it is at an in-person hearing. Dress as you would as if you were standing in front of the judge in the courtroom, including below the waist.

Your Video Stream. Empirical research in many fields, such as film and television and education (virtual classrooms), generally concludes that the subject speakers were rated as most trustworthy when videoed from eye-level, and that low- and high-camera angles were often associated with less trust.^{1,2} Before your remote Zoom proceeding begins, open the videoconferencing app and set the camera so that you are eye level with it—meaning that your *entire* face is captured evenly between the top-to-bottom and the right-to-left sides of the frame. If you cannot see your entire face, move the camera, or reposition your placement from the camera until you can see your entire face.

Your Video Background. What does the

background in your video feed say about you? After setting your camera angle and position, check the entire view *without you in it*. You will inevitably lean over to retrieve something or forget to turn off your camera before you get up during a break. Is that a recent political poster? Is that tree outside your window swaying in the spring wind? These are all distractions from you and your argument or examination.

Your Microphone. “Mute” by default does not generally work when examining witnesses or making lengthy arguments, so set a reminder on your monitor to mute your microphone once the examination or argument is completed.

Your Presentation. Place your camera on the top sector of your monitor, as close to the screen itself as practical. Before your argument begins, “pin”³ the judges’ video frame, which makes their video frame the largest on your screen. While not perfect, it allows a better opportunity for you to view the judge out of your peripheral vision while you are speaking to the camera. When examining witnesses, you should “pin” the witnesses’ video feed because your focus should primarily be on the witnesses and how they are responding to your questions.

Tips for Presenting a Witness With Credibility on a Zoom Hearing or Trial

Presenting Your Witness. The credibility of your witnesses is determined

generally by the judge and jury by the same standards that you are being judged. Their testimony is important, and you should instruct the witness to primarily focus on your video stream while answering your questions and on opposing counsel’s video stream while being cross-examined. Importantly, work with your witnesses on exhibits. For your examination, your witness should have a hard copy of every exhibit that you anticipate that you may discuss with them. Further, you should request that opposing counsel also provide at least electronic copies of the exhibits on which they anticipate cross-examining your witnesses.

Presenting Your Exhibits

The presentation of exhibits in a remote Zoom hearing, trial, or deposition will be one of your most difficult tasks—particularly if you have not prepared in advance.

The Hard Copies. Prior to the day of the Zoom hearing, trial, or deposition, you should have prepared a copy of all the documents you anticipate that you *could* use, including on rebuttal. You should have a hard copy, and you should—at a minimum—provide a hard copy of your exhibits, other than for rebuttal, to the court, the court reporter, and your witnesses. Local rules may require a copy be provided to opposing counsel, and professional courtesy requires doing so as well.

The Electronic Copies. All the exhibits which you anticipate that you *could* use should also be in electronic format on

your desktop. Preferably, these documents should be in one folder for that specific Zoom proceeding. Naming your exhibits is very important as well. Spending several minutes looking for an exhibit because every PDF file just has a random assigned bates number to it will irritate the court and jury—all of which will impact your credibility.

Shared Computer Backgrounds. The background on your computer also becomes important when exhibits will be shared on the screen through the Zoom or other videoconferencing application. Is the desktop background on your computer professional? Could the background distract from your presentation? If so, change it to something neutral for the hearing or trial.

There are numerous articles online with other concepts, hints, and recommendations about virtual proceedings and depositions. You should

consider what your weaknesses may be when presenting arguments and evidence virtually and search out other articles that may help you properly present yourself, your witnesses, and your exhibits. The more you look like you know what you are doing, the more credible you will be. **TBJ**

This article was originally published on the Klemchuk Ideate Blog and has been edited and reprinted with permission.

NOTES

1. Andreas Michael Baranowski & Heiko Hecht, *Effect of Camera Angle on Perception of Trust and Attractiveness* (paywall), 36 *Empirical Studies of the Arts* no. 1, at pp. 90–100 (Jan. 2018), https://edtechbooks.org/jaid_9_2/enhancing_instructor. “[A]ctors were rated as most trustworthy when filmed from eye-level ...” and “... [l]ow and high-camera angles were equally associated with less trust. *** The most likely explanation for this phenomenon is that participants perceive eye-level communication as the most even in terms of power distribution.” *Id.* at pp. 90–100.
2. Miguel Ramlatchan & Ginger S. Watson, *Enhancing Instructor Credibility and Immediacy in the Design of Distance Learning Systems and Virtual Classroom Environments*, *The Journal of Applied Instructional Design*, 9(2), at p. 12 (July 2020), https://edtechbooks.org/jaid_9_2/enhancing_instructor. “Students who viewed video created from the eye-level camera rated the instructor’s credibility and immediacy higher than

students who viewed video from the camera positioned above eye-level.” *Id.* at p. 6.

3. Pinning participants’ videos, Zoom, <https://support.zoom.us/hc/en-us/articles/201362743-Pinning-participants-videos>.



BRYAN HAYNES

is a partner in Klemchuk and a trial attorney who has, in his 29-plus years of practicing, tried more than 60 trials and arbitrations as lead counsel throughout Texas and across the

United States. Haynes draws on his broad experience in both state and federal courts to prosecute and defend cases involving complex commercial disputes, intellectual property matters, fiduciary duty issues, corporate “divorces,” commercial insurance coverage disputes, and officer and director litigation.



CHRISTIAN COWART

is an associate of Klemchuk, where he primarily focuses on trial and appellate matters, with his practice concentrating on the areas of intellectual property

litigation, business litigation, and civil appeals. Cowart represents both individuals and corporations on a diverse range of patent, trademark, trade secret, and complex commercial cases, including breach of contract and breach of fiduciary duty.



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BOARD APPROVES MCLE ACCREDITATION CHANGES, NEW WORKGROUP ON LAWYER NEEDS.

WRITTEN BY LOWELL BROWN

THE STATE BAR OF TEXAS BOARD OF DIRECTORS voted April 16 to approve amendments to the MCLE Accreditation Standards to allow courses on implicit and explicit bias, mental health, and substance use issues to qualify for ethics credit.

The board accepted the recommendation of the bar's Minimum Continuing Legal Education Committee, which leaves bias and wellness courses as voluntary options for Texas lawyers, who could count those courses toward their requirement of three ethics hours per year starting June 1.

Although the board's vote was unanimous, some directors said they believed more study was needed to determine whether the bar should make implicit bias courses mandatory for all Texas lawyers. President-elect Sylvia Borunda Firth said the board was reserving the right to revisit the issue of voluntary versus mandatory implicit bias training. As part of its action on April 16, the board asked its Administration Committee to study the matter and return to the full board with a recommendation. Separately, Borunda Firth's Task Force on Diversity, Equity, and Inclusion is also studying the issue.

New workgroup on lawyer needs. Meeting virtually by videoconference, the board also approved President Larry McDougal's request to create the Workgroup on Texas Lawyer Needs Arising From the 2020 Pandemic and 2021 Winter Storm. Former State Bar board chairs Roger Key and Cindy Tisdale will co-chair the 11-member workgroup, which will work to identify areas where the bar can continue or expand efforts to help members who are facing continued challenges, consistent with the bar's statutory purposes.

McDougal said many Texas lawyers have struggled financially, mentally, and physically due to challenges brought by the pandemic and winter storm. Since April 2020, the nonprofit Sheeran-Crowley Memorial Trust provided over \$246,000 in grants to 85 attorneys, almost doubling the amount of annual assistance provided to Texas lawyers in need, he said. The Texas Lawyers' Assistance Program refers attorneys to the trust when they demonstrate financial need and could benefit from mental health or substance use treatment. In addition to the workgroup, McDougal announced the bar would seek to help struggling lawyers by donating \$150,000 to the trust using unspent funds from the bar's 2020-2021 budget.

The board also heard updates from other bar task forces and workgroups on criminal court proceedings during the pandemic;

public protection and grievance review; diversity, equity, and inclusion; and bar standing committees.

Day of Civility resolution. Directors approved a resolution in support of the Texas Day of Civility in the Law on September 17. The Texas Supreme Court and Court of Criminal Appeals adopted similar resolutions. Local bars led by the Dallas Bar Association will host a virtual Day of Civility celebration on September 17 that will be open to lawyers statewide.

Finance and budget. The board voted to submit the proposed 2021-2022 fiscal year budget to the Supreme Court for review and approval. The proposed budget and other financial documents are available at texasbar.com/finances.

New board chair-elect. The board elected District 10, Place 2 Director Santos Vargas chair of the board for the 2021-2022 bar year. Vargas, a shareholder in Davis & Santos in San Antonio, is a former president of the San Antonio Bar Association and the San Antonio Young Lawyers Association and a past chair of the State Bar of Texas Local Bar Services Committee. He is a fellow of the Texas and San Antonio bar foundations and a member of the William S. Sessions American Inn of Court.

New at-large director. Kelly-Ann Clarke, assistant vice president and senior legal counsel to AT&T Services in Dallas, was appointed to an at-large director position. She will serve a three-year term starting in June.

Committee appointments. The board approved Borunda Firth's appointments to the bar's standing committees for 2021-2022.

Recognitions. McDougal presented a resolution honoring Waco lawyer Vic Feazell. Executive Director Trey Apffel presented Staff Excellence Awards to ethics attorneys Rita Alister and Ellen Pitluk, who answer the State Bar Ethics Helpline.

Looking ahead. The next scheduled board meetings will take place June 16-17. Comments can be emailed to boardofdirectors@texasbar.com. To find your district directors, go to texasbar.com/board and click on "Board Members." **TBJ**

FOR MORE INFORMATION

Go to youtube.com/statebaroftexas to watch the April 16 board meeting. Find meeting agendas and materials at texasbar.com/bodmaterials.

Michael K. HURST

HOMETOWN: DALLAS **POSITION:** NAME PARTNER IN LYNN PINKER HURST & SCHWEGMANN IN DALLAS **BOARD MEMBER:** DISTRICT 6, PLACE 1

INTERVIEW BY **ERIC QUITUGUA**
PHOTO COURTESY OF **MICHAEL K. HURST**



IN ADDITION TO ENCOURAGEMENT FROM MY PARENTS, I RESOLVED AT AN EARLY AGE

that I wanted to be an advocate and that I wanted to be in a venerable profession where I could achieve some profile.

AS CORNY AS IT SOUNDS, I REALLY DID SET OUT TO MAKE A DIFFERENCE.

While there are many times when I think I embraced those opportunities along the way with pro bono cases, bar service, and happy clients, there were two jury verdicts where I was overcome with emotion because I knew that I was truly helping to make a difference and was using my advocacy on high-profile cases where the high-profile verdicts on big stages would indeed have lasting impact. While these two verdicts have not been close to the

largest of which I have been a part, they provided me with the most realization that I am doing what I was supposed to do. In *Rideau v. Keller Independent School District*, my colleagues and I achieved a \$1 million jury verdict on behalf of a special needs child for abuse and mistreatment. While the verdict was later overturned by the U.S. Court of Appeals for the 5th Circuit, my good friend Breggett Rideau used this verdict to convince the Legislature to pass two bills requiring cameras in the classrooms of students with special needs. The other trial was a hard-fought multi-week trial on behalf of one of the business people I have most admired, Ray L. Hunt, and his company, Hunt Oil, where a jury came back with two counts of fraud against Honeywell related to defective aircraft engines. Ray was passionate about protecting his “work family” and taking on a Fortune 100 company to make sure that other consumers were safe and that Honeywell was held accountable. Ray trusting me with this important case and achieving this result with my team was my other aha! moment.

I AM NOW AT A SPECIAL PLACE IN MY CAREER WHERE I FEEL I CAN BE PRETTY SELECTIVE ABOUT WHAT CASES I TAKE AND WHICH CLIENTS I WILL REPRESENT.

The cases I take are generally of a certain magnitude or interest that it makes sense for me and my firm to handle. I look to represent clients that may be demanding but are respectful and with whom I make a good team. I always say, “Clients generally hire lawyers after their own image.”

I HAVE BEEN INVOLVED IN BAR VOLUNTEERING AND LEADERSHIP SINCE I WAS A VERY YOUNG LAWYER. MY HOPE IN BECOMING A STATE BAR DIRECTOR IS

that I can further my advocacy for pro bono service, mental health awareness and acceptance in our profession, equality in gender and racial opportunities in our profession, preserving civil jury trials, and community enhancement and justice.

THE TOUGHEST DECISION I HAVE HAD TO MAKE AS DIRECTOR IS determining what position our board should take and what healing solutions are available for our membership relative to statements our president made about Black Lives Matter prior to and during his State Bar leadership positions.

WE CAN ALWAYS DO MORE, AND BY ROTATING OUR DIRECTORS, it provides new blood for new ideas and programming.

I PLAN TO HELP RAISE AWARENESS AND SUPPORT FOR THE MENTAL STRESSES that always afflict our profession that have been greatly magnified during COVID-19.

I AM VERY PROUD OF THIS BOARD FOR

discussing new diversity, equity, and inclusion efforts to support the administration of justice and improve the quality of legal services and opportunities for all Texans. I believe we need a more racially diverse board—much more.

BEING A LAWYER PROVIDES US WITH EXPONENTIALLY MORE OPPORTUNITIES FOR ADVOCACY THAN ARE AVAILABLE TO THE GENERAL POPULATION.

We have unique access to the courts, companies, politicians, etc. Be aware of these avenues and embrace the opportunities to use our voices for advocacy and for betterment. **TBJ**

Pay Me Now, **PAY ME LATER**

ATTORNEY SAMUEL DOES COLLECTION WORK. While he can and does represent multiple clients, he has one large institutional client for whom he handles dozens of cases each month. He requires the client to provide a non-refundable retainer of \$5,000 before he undertakes work on a file. His fee agreement with his client specifies that the retainer is non-refundable because that is the minimum amount required for him to work on a file. Some cases would cost more on an hourly basis and some less, but the costs roughly even out.

In one case, a defendant files a large counterclaim against his client in response to a collection action he filed. It is clear to Samuel that defending the counterclaim will require considerable time on his part, far more than the \$5,000 flat fee. So he asks the client to renegotiate the fee on this particular case so that he has the resources to do the work necessary to properly litigate the claim. The client eventually agrees to an hourly arrangement for the additional work.

Which of Samuel's actions are potentially unethical?

- A. Charging a non-refundable retainer on each case.
- B. Attempting to change the terms of fee agreement after the case becomes more complicated than originally thought.
- C. Both A and B.
- D. Neither A nor B.



ABOUT THE CENTER

The Texas Center for Legal Ethics was created by three former chief justices of the Supreme Court of Texas to educate lawyers about ethics and professionalism. Lawyers can access the Texas Disciplinary Rules of Professional Conduct, the Texas Lawyer's Creed, and a variety of other online ethics resources by computer or smart device at legalethictexas.com.

DISCLAIMER

The information contained in Ethics Question of the Month is intended to illustrate an ethics issue of general interest in the Texas legal community; it is not intended to provide ethics advice that applies regardless of particular facts. For specific legal ethics advice, readers are urged to consult the Texas Disciplinary Rules of Professional Conduct (including the official comments) and other authorities and/or a qualified legal ethics adviser.

ANSWER: While attorneys often label their retainers as “non-refundable,” the only proper non-refundable retainers are those charged for the sole purpose of securing a lawyer's availability to represent a client. Any other retainer is refundable, regardless of what the lawyer calls it. A non-refundable retainer does not pay for any legal services, and the retainer must be earned and the fee must be reasonable under the circumstances, just like any other fee. *See* Ethics Opinion 611 (2011). Regardless of what he has called it, Samuel's retainer here is not non-refundable because it is not to secure his availability.

Ethics Opinion 679 (2018) holds that renegotiating a fee after the matter has commenced is permitted when the modification is fair to the client under the circumstances. The opinion specifically discusses and approves the situation presented here where the attorney and client have a longstanding relationship and “neither the lawyer nor the client could reasonably anticipate that the scope of work to be included in the flat-fee agreement would be so grossly underestimated.” The correct answer is A. For more analysis of this issue, go to legalethictexas.com/ethics-question-of-the-month.

2021 Election Results

Texas lawyers elected **Laura Gibson**, of Houston, as the 2021-2022 State Bar of Texas president-elect. **Michael J. Ritter**, of San Antonio, was elected president-elect of the Texas Young Lawyers Association. Results of those elections and the elections for directors of the State Bar and the Texas Young Lawyers Association are included here.

STATE BAR OF TEXAS

■ PRESIDENT-ELECT

Laura Gibson, Houston 10,200
Sara Dysart, San Antonio 9,994

■ DIRECTORS

DISTRICT 1

G. David Smith, Rockwall 657

DISTRICT 4, PLACE 3

Bill Kroger, Houston 2,702
Simone R. Bray, Houston 1,830

DISTRICT 4, PLACE 5

Nitin Sud, Houston 2,372
Andrew Bayley, Houston 1,977

DISTRICT 5

Lori M. Kern, Katy 494

DISTRICT 6, PLACE 2

Robert L. Tobey, Dallas 2,604

DISTRICT 7, PLACE 1

Kimberly M. Naylor, Fort Worth 947

DISTRICT 9, PLACE 3

Kenyon L. Wooten, Austin 1,855

DISTRICT 10, PLACE 1

Thomas A. Crosley, San Antonio 1,271
Enriqueta "Katie" Perez, San Antonio ... 913

DISTRICT 13

Audie Sciumbato, Hereford 171

DISTRICT 16

Dwight McDonald, Lubbock 328

TEXAS YOUNG LAWYERS ASSOCIATION

■ PRESIDENT-ELECT

Michael J. Ritter, San Antonio 1,838
Reginald Wilson, Houston 1,720

■ DIRECTORS

DISTRICT 1

David R. "Dave" Hagan, Longview 22

DISTRICT 3

Garrett Coutts, Lubbock 32

DISTRICT 5, PLACE 1

Cali M. Franks, Dallas 536

DISTRICT 6, PLACE 3

Miranda N. Caballero, Houston 827

DISTRICT 6, PLACE 5

Reginald Wilson, Houston 846

DISTRICT 7

Jefferson Fisher, Beaumont 24

DISTRICT 9

Mark Altman, China Spring 44

DISTRICT 10, PLACE 1

Andrea M. Palmer, Fort Worth 178

DISTRICT 11

William E. Johnson, Lewisville 28

DISTRICT 13

Eric D. Flores, Mission 59

DISTRICT 15

Tiffany Sheppard, San Angelo 34

DISTRICT 17

Naomi Cobb, Midland 29

DISTRICT 19

Alyson A. Martinez, Laredo 28

DISTRICT 21

Michael Hanson, Sugar Land 87



THE TEXAS DAY OF CIVILITY IN THE LAW

A day to remember our constant obligation to practice civility in the law.

WRITTEN BY KATHY S. MILLS

The Texas Day of Civility in the Law is proclaimed! What now?

The first step is acknowledging that civility does not denote defeat or victory; rather it embodies the very process by which great lawyers perform their work. With this foundation, one may celebrate the day through reflection, promotion, education, involvement, or simply by committing to focus on civility.

Reflect on your experiences. On the Texas Day of Civility, on September 17, reflect on your experience with the concept of civility and contemplate the applicable adages “no one’s perfect” and “it is always the right time to do the right thing.” Upon reflection, you will likely conclude that you and others fail at civility from time to time. When you or someone you are dealing with fails to be civil, the best thing to do is acknowledge it and move forward with renewed commitment. An extraordinary aspect of civility is that one’s commitment to the concept does not hinge on others’ action or inaction; you may begin implementing civility at any time. Let this reflection guide your desire to promote civility in a forward-thinking way.

Promote civility in the “virtual world.” Civility shall extend to “virtual” interactions; the concept is not limited by time or place. As we adapt to changing technology, the concepts of civility too have adapted. For example, civility comes easier in some ways, as conversations held in virtual forums are necessarily slower, with less “talking over” others. Civility in virtual proceedings is also more difficult in certain regards, as polite side-conversations are nearly impossible, hand shaking non-existent, and friendly smiles are hard to direct. Regardless of ease or existence of challenges, on the Texas Day of Civility, commit to promoting civility both in-person and remotely.

Get Involved. Many local bars are excitedly planning in-person and virtual programs. All are encouraged to attend these programs with an open mind, so we may all engage in an important dialogue on continuing efforts to maintain and enhance civility in our profession. If your local bar is not planning a formal event, consider holding an informal reading of the Texas Lawyer’s Creed, posting it online, or simply sending an email reminding others to act with civility to preserve our system of justice, as urged in the final paragraph of the proclamation.

Become better informed. Reading and reflecting on the proclamation of this celebrated day serves as a solid starting point; additionally, the proclamation repeatedly points to one other document that lawyers are urged to re-read, the Texas Lawyer’s Creed. While the Texas

Disciplinary Rules set out enforceable ways in which we must practice law, the creed is chock-full of tidbits on how, when, and to whom our civility must be extended. To participate in the spirit of the Texas Day of Civility fully, lawyers should re-read and re-affirm a commitment to the Texas Lawyer’s Creed.

In conclusion, like many of you, I see countless articles and news stories complaining of the decline of civility in the law and in general. As an idealistic, ever hopeful, “young” lawyer, I suggest that we are just as civil as we ever were, and we have simply begun paying greater attention to our failings. Whether you believe civility is on the rise or the decline, may the Texas Day of Civility in the Law serve as a reminder of our constant obligation to practice civility in the law. **TBJ**



Committee.

KATHY S. MILLS

serves as the clerk of the court for the 13th Court of Appeals in Corpus Christi. Prior to her appointment, she was the second assistant district attorney and child crimes prosecutor for the Nueces County District Attorney’s Office. Mills’ passion for civility in the law drives her service as a member of the State Bar of Texas Professionalism

PROCLAMATION OF THE TEXAS DAY OF CIVILITY IN THE LAW AS SEPTEMBER 17, 2021 BY THE TEXAS SUPREME COURT AND THE TEXAS COURT OF CRIMINAL APPEALS

In conjunction with the State Bar of Texas, we, the Supreme Court of Texas and the Texas Court of Criminal Appeals, jointly proclaim September 17, 2021 as *The Texas Day of Civility In The Law* in the State of Texas.

On that day, we urge all lawyers to participate in programs, whether virtually or in person, at bar associations around the State of Texas that will commemorate and focus upon the spirit and aspirations set forth in the Texas Lawyer's Creed.

Further, we urge all lawyers to conduct themselves and provide legal services with the utmost courtesy, professionalism, and civility toward their clients, judges, adversaries and opposing counsel, peers, and colleagues alike.

The Texas Lawyer's Creed was adopted by the Supreme Court of Texas and the Texas Court of Criminal Appeals by order of November 7, 1989, reaffirmed on March 26, 2013, and amendments were approved through February 1, 2016. In adopting the Creed, we reminded lawyers of the importance that they perform all their duties in an ethical, professional, and civil manner, when we said in part,

"The conduct of a lawyer should be characterized at all times by honesty, candor, and fairness. In fulfilling his or her primary duty to a client, a lawyer must be ever mindful of the profession's broader duty to the legal system."

Civility is at the heart of the Texas Lawyer's Creed and is the hallmark of a professional. "Civility" was adroitly described by Justice Anthony Kennedy of the United States Supreme Court in these words. "[Civility . . .] is not some bumper-sticker slogan, 'Have you hugged your adversary today?' Civility is the mark of an accomplished and superb professional, but it is even more than this. It is an end in itself. Civility has deep roots in the idea of respect for the individual." Justice Anthony Kennedy, 1997 Speech, ABA Annual Meeting.

We urge all lawyers to act with civility to preserve our system of justice and to embrace the principles espoused by the Texas Lawyer's Creed as they vigorously represent their clients. In these difficult and unprecedented times, civility and collegiality within the profession and the justice system are as meaningful and essential as ever before.

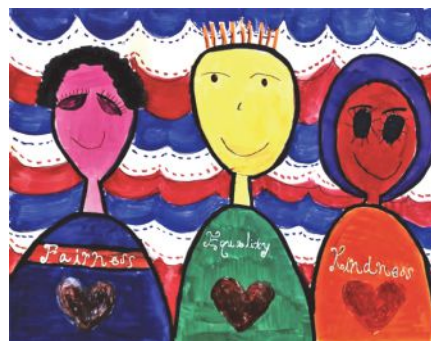
Signed this 5th day of February, 2021.

Nathan L. Hecht, Chief Justice
Eva M. Guzman, Justice
Debra H. Lehrmann, Justice
Jeffrey S. Boyd, Justice
John P. Devine, Justice
James D. Blacklock, Justice
J. Brett Busby, Justice
Jane N. Bland, Justice
Rebeca A. Huddle, Justice

Sharon Keller, Presiding Judge
Barbara Hervey, Judge
Bert Richardson, Judge
Kevin P. Yeary, Judge
David Newell, Judge
Mary Lou Keel, Judge
Scott Walker, Judge
Michelle M. Slaughter, Judge
Jesse F. McClure, III, Judge



CONTEST WINNERS



FIRST PLACE — KINDERGARTEN TO SECOND GRADE POSTER

Ryuki Hotta

*Austin Parkway Elementary School
(Missouri City)
Houston Bar Association*



FIRST PLACE — THIRD TO FIFTH GRADE POSTER

Logan C. Lyn

*iUniversity Prep (Houston)
Houston Bar Association*



FIRST PLACE — SIXTH TO EIGHTH GRADE POSTER

Shelby Morrison

*Willow Wood Junior High (Tomball)
Houston Bar Association*



FIRST PLACE — NINTH TO TWELFTH GRADE POSTER

Miamor Orozco

*Young Women's Leadership Academy
(San Antonio)
Bexar County Women's Bar Association*



FIRST PLACE — PHOTOGRAPHY

Amare'on Reyna

*G.W. Carver Magnet High School
(Houston)
Houston Bar Association*

Actions Speak Louder Than Words

WRITTEN BY ANGELICA SHARMA

“...one nation, under God, indivisible, with liberty and justice for all.” As the pledge comes to an end, I lower my hand to my sides and take my seat. The American flag, which was gracefully draped across my classroom’s wall, gleamed with pride. For the past 12 years, I realized, I have recited these same words verbatim. Every morning, I acknowledge that the United States of America guarantees liberty and justice for all.

But is this true? I pondered this question over the years as I involved myself more with the world around me and realized that our society was shamefully plagued with injustice and inequality. For instance, although African Americans were granted their full freedoms as individual citizens in 1863, they are still discriminated against today. Indeed, African Americans have the highest incarceration rates, struggle to find homes and jobs, and face violence, as seen by George Floyd’s death in May 2020. I also learned about the passing of the Civil Rights Act of 1964 57 years ago and how it intended to end discrimination in employment. Nevertheless, women today are generally paid lower wages than men and are largely underrepresented in the engineering and mathematics sector of our economy. As a woman entering the field of computer science, I will likely face this inequality.

Evidently, it is not the law but the rule of law that is weak. We can preach that our world is equal and rightfully use the Constitution as evidence, but if we do not take action by changing our rule of law, the way we implement these principles into our society, we will never reach this equality. Instead, we must improve the rule of law by administering laws that value equity over equality by giving those in need the same opportunities as those not in need.

Primarily, we should improve upon the rule of law by increasing the minimum wage. \$7.25 an hour is not nearly enough for an individual to survive, and it prohibits the poor from reaching their full potential simply because they have such an unfortunate background. Furthermore, we should introduce laws that make education accessible. Thousands of students across the country have to turn down quality education because of high college tuition rates they cannot afford. Education is what propels our society and it should be guaranteed to every child no matter their financial status. On a similar note, we should implement laws that provide widespread internet connection. Many underprivileged and rural areas do not have access to the internet, which has become a powerful source of education for many students as a result of the recent COVID-19 pandemic. Finally, we should administer laws that improve the affordability of healthcare. Even though every citizen is lawfully guaranteed the right of protection, the poor struggle to access healthcare because of their standing in society.

Actions speak louder than words, and we must take action to reduce inequality. Only then will our law be properly enforced and will our world become just. **TBJ**

Angelica Sharma, of Cinco Ranch High School in Katy, represented the Katy Bar Association in the Law Day editorial contest, which explored the theme of “Advancing the Rule of Law Now.” To see the full list of contest winners, go to texasbar.com/lawday.

Opinions expressed on the Texas Bar Blog and in the Texas Bar Journal are solely those of the authors. Have an opinion to share? Email us your letters to the editor or articles for consideration at tbj@texasbar.com. View our submission guidelines at texasbar.com/submissions.

CAPTAIN CALL, YOGI BERRA, AND OTHER PHILOSOPHERS

What their wise words can teach us about mediation.

WRITTEN BY SCOTT BAKER

"The wisdom of the wise, and the experience of ages, may be preserved by quotation." —Isaac Disraeli¹

This article offers quotations from philosophers with diverse perspectives—from politics to warfare, from literature to industry, and from the saddle to behind home plate. Mediation as we know it and today's complex technologies did not exist when they spoke their words. Nonetheless, their sage advice can be applied to resolving modern disputes through mediation just as to battles, geopolitical tensions, thriving in business, or reacquiring horses. "By three methods we may learn wisdom: first, by reflection, which is the noblest; second, by imitation, which is the easiest; and third by experience, which is the bitterest."² Consider taking Confucius' less bitter routes to learning about mediation through the hard-earned wisdom of others.

On whether to mediate:

"Let us never negotiate out of fear. But let us never fear to negotiate." —President John F. Kennedy³

Parties may be reluctant to propose or engage in mediation early in a case, or at all, for fear that openness to compromise negotiations signals weakness. But participating in mediation means only that a party recognizes that there may be a negotiated resolution that would be better for it than the alternative—litigation, with its attendant cost, risk, anxiety, and uncertainty. Because nearly all lawsuits are resolved through negotiation rather than trial, that recognition is hardly revelatory.

Moreover, mediation's promise of self-determination ensures that negotiation need not be out of weakness or desperation. A mediator cannot require a party to settle or to make or accept any term of compromise. Instead, a party remains in control of the terms that it is willing to offer and accept and maintains its freedom to walk away from the negotiations if they are not productive. A party who thoughtfully analyzes the risks and rewards of litigation can strongly, confidently, and without fear use mediation to try to achieve an efficient resolution for her client.

On when to mediate:

"There is no instance of a country having benefited from prolonged warfare . . . In war, then, let your great object be victory, not lengthy campaigns." —Sun Tzu⁴

The sooner litigation ends, the sooner parties can get on

with their businesses and lives. And, in general, the longer a dispute proceeds, the harder it can be to settle because the parties' positions will have hardened, and likely diverged, after they have fought and paid for them for so long. Therefore, waiting for a court-ordered deadline to mediate, which is typically very late in the dispute, may limit settlement opportunities. Consider opening a discussion as soon as the dispute is ripe for mediation because, as in war, the sooner a lawsuit is ended, the better for the combatants.

On negotiated resolutions being preferable to litigation:

"I was never ruined but twice: once when I lost a lawsuit and once when I won one." —Voltaire⁵

Similarly, President Abraham Lincoln cautioned that, in litigation, ". . . the nominal winner is often the real loser—in fees, expenses, and waste of time."⁶ Voltaire and Lincoln recognized that the hard costs of litigation can lessen or eliminate any benefit of resolving conflict through the courts. And they didn't even know about the enormous cost of e-discovery of data measured in terabytes.

But it is the "waste of time," that is, the opportunity cost of litigation, that can in many cases render trial an inefficient way to resolve conflict. Litigation distracts a company from running and growing its business. The estimated return on investment of litigation, if any, needs to be weighed against the benefit of fulfilling an organization's mission with the time, energy, and resources that would be consumed by litigation. For individuals, litigation prevents them from living without the additional anxiety, distraction, worry, and risk that lawsuits cause. And investing more resources than the suit is worth or ending up with an uncollectible judgment, not uncommon results, are certainly wastes of time. Trial may be necessary in a select few cases, but for most disputes, "[a] lean compromise is better than a fat lawsuit."⁷

On the importance of preparation for mediation:

"Success depends upon previous preparation, and without such preparation there is sure to be failure." —Confucius⁸

For hearings, depositions, witness interviews, trial, and all other aspects of the litigation process, preparation is necessary for success. While mediation is a less formal process, preparation is still critical.

Whether to present an opening statement, who gives it, to

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whom to direct it, and what to accomplish with it are things to carefully consider before the mediation. A short and tight opening that hits its target can be very effective, but it requires time and effort. President Woodrow Wilson is one of many who recognized that the shorter the presentation, the longer the preparation. “If it is a ten-minute speech it takes me all of two weeks to prepare it; if it is a half-hour speech it takes me a week; if I can talk as long as I want to it requires no preparation at all. I am ready now.”⁹

Carefully analyzing before mediation the best-case, worst-case, and reasonably anticipated litigation outcomes saves precious mediation time. Consider the various terms that would make a negotiated resolution better than those outcomes and strategies to get to those terms. “You got to be very careful if you don’t know where you’re going, because you might not get there.”¹⁰ Preparing clients to be receptive to revisiting its analyses based on information or input that it receives at mediation is another key for success at mediation.

Gathering important documents is a crucial part of mediation preparation. Having key contract provisions, emails, deposition excerpts, caselaw, and court rulings at the ready can be very helpful to a mediator and to a party’s persuasiveness. A settlement agreement, drafted before the mediation, can serve as a reminder of key terms to negotiate at mediation and can save substantial time, expense, and disputes that accompany the negotiation and execution of the “more formal settlement agreement” that is often called for in an abbreviated mediation term sheet.¹¹ While it takes time to anticipate, compile, and prepare each important document, it is definitely “[b]etter to have it and not need it than to need it and not have it.”¹²

On achieving your client’s goals by understanding your opponent’s needs:

“If there is any one secret of success, it lies in the ability to get the other person’s point of view and see things from that person’s angle as well as from your own.” —Henry Ford¹³

Mediating parties may distrust and even dislike each other. Each often believes that the other’s unreasonableness caused the litigation and is why it remains unresolved. But each party cannot obtain what it wants—peace through a negotiated resolution—without the other’s cooperation and agreement. Therefore, a party can help itself by understanding what is important to his opponent. Atticus Finch, the fictional patron saint to many a lawyer, counseled that “[y]ou never really understand a person until you consider things from his point of view—until you climb into his skin and walk around in it.”¹⁴ To do that, lawyers and parties may ask themselves: How would I react or advise my client if I were they and received the offer that we are about to make? Could or would I accept the terms that we are offering? If I were on that side, what would I ask for and need from an agreement that would make it better than litigation? Does our offer give the other side anything to lose by proceeding with litigation? When your client understands its opponent’s needs, it is better able to satisfy them.

This is not to suggest that a party should capitulate or sacrifice what it needs from an agreement. Rather, a party helps to achieve

its self-interest—getting an agreement that is better for her than litigation—when it helps its opponent achieve the same thing.

On overreach in negotiations:

“Striving to better, oft we mar what’s well.” —Albany (William Shakespeare)¹⁵

In theory, a party will settle a lawsuit when the terms of an agreement are better than its estimation of litigation’s return on investment. But even when a party has such a settlement within its grasp, it is natural to want to push for more to try to turn a beneficial deal into a great one. Tough negotiation is one thing. But parties squeezing so hard as to overreach and kill an advantageous resolution is another. In plain words, “pigs get fat and hogs get slaughtered.”¹⁶

For mediation, as with most other things, “[e]xperience is the best teacher, but the tuition is high.”¹⁷ Many smart people over the centuries left us wise words. Here’s to learning a thing or two from them about mediation. **TBJ**

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Local Bar Disaster Response

What you need to know to develop a successful plan.

WRITTEN BY RYAN V. COX AND SARAH DINGIVAN

When natural or human-made disasters strike, a variety of organizations—from the American Red Cross to local governments and businesses—will always step up to assist victims. However, the services available to those in need are often limited to their most basic human needs, like food and shelter. Time and again, disaster victims are left wondering how to piece together their lives once the relief dries up and public attention shifts away to the next crisis.

In looking at these larger and often long-term problems, there is often a mass of paperwork to complete, disputes about leases or insurance, confusion about eligibility for financial relief, family disputes over where children ought to be housed, lost identification documents, and much more. These are problems for which the bar is often the most qualified to provide assistance, and they create significant opportunities for local bar associations to develop and implement emergency pro bono programs and clinics that serve these specific needs in our

communities. It is our responsibility to use our privileged status as lawyers to take on these challenges within our communities, and the organized bar at all levels is often the best outlet to develop such response efforts. But, as many of us have learned through developing these responses, we must prepare in advance for their inevitability so that we can spring into action when the time comes.

From our most recent disaster in Winter Storm Uri, to the COVID-19 pandemic and Hurricane Harvey, to human-caused disasters like the Sutherland Springs shooting, the San Antonio Bar Association, the San Antonio Legal Services Association, Texas RioGrande Legal Aid, and the San Antonio Young Lawyers Association have developed significant experience in developing timely pro bono response programs for disasters to address the unmet legal needs of our communities. These are some of the lessons learned that can help local bars across the state to prepare for and develop their own programs.

Strike Quickly for Volunteer Recruitment

The fact is that, even within the bar, enthusiasm to support our communities in crisis will inevitably wane alongside the news coverage and general public outrage surrounding it. In developing a roster of attorney volunteers who are willing to assist disaster victims, our organizations must strike quickly. This was evident in 2017 as the Hurricane Harvey response clinics were developed. Within hours of landfall, a call for volunteers from the San Antonio Young Lawyers Association resulted in dozens and dozens of volunteers who were actively witnessing the storm's devastation. But within a couple weeks, as clinics were happening across South Texas, additional recruitment became more and more difficult. Our community was fortunate that the initial call was made close in time to the natural disaster and created a roster of volunteers available for future outreach, a tool that was leveraged to engage individual volunteers for the weeks and months that followed. As discussed below, it is often preferable to wait to provide services until life has calmed, but the opposite is true for volunteer recruitment; it must happen quickly to be most effective.

Have Patience in Allowing Legal Issues to Develop

When a disaster occurs, it often upends the community so profoundly that people do not even know what legal issues they will have for quite a while. It may take weeks or months to learn that insurance is underpaying, that a Federal Emergency Management Agency, or FEMA, claim is denied, or that a landlord is not bringing a home back to habitability. Our instinct is to act now, but this is often unproductive in the middle of a crisis when families are more concerned about finding clean water than whether they can replace their furniture. Of course, this does not mean that legal problems are less important to families in the long term. It does mean, however, that we need to be patient in providing our responses over time and not allow ourselves to forget that these disasters have lasting implications for our communities long after the news coverage has moved on and things appear from our privileged perspectives to be "back to normal."

ABOVE: Pro bono volunteers assist community members in Victoria in 2017 as part of a program for Hurricane Harvey relief in smaller communities. PHOTO COURTESY OF THE SAN ANTONIO BAR ASSOCIATION AND THE SAN ANTONIO YOUNG LAWYERS ASSOCIATION



LEFT: Clinics were held for evacuees in San Antonio, and locally in Victoria and Portland. They were a swift collaboration between the San Antonio Young Lawyers Association, San Antonio Community Justice Program, Victoria Bar Association, and the Corpus Christi Young Lawyers Association, with funding from the Texas Bar Foundation. **MIDDLE:** Remote pro bono volunteers assist front-line health care workers at University Health System in San Antonio with estate planning documents in response to the declared disaster for COVID-19, putting these individuals at high risk of infection in the summer of 2020. **RIGHT:** San Antonio Legal Services Association, or SALSA, Executive Director Sarah Dingivan (right) receives a State Bar of Texas Presidential Citation for her work in developing the pro bono legal clinic for survivors and families affected by the Sutherland Springs shooting. PHOTOS COURTESY OF THE SAN ANTONIO BAR ASSOCIATION AND THE SAN ANTONIO YOUNG LAWYERS ASSOCIATION

Collaborate

One of the most effective ways to create good disaster response legal programs is to collaborate far and wide. The best response efforts include partnerships between formal legal aid offices, pro bono organizations, and large- and small-umbrella local bar associations—including young lawyer affiliates, practice-specific sections, and bar associations in neighboring communities—as well as collaboration with local governments and funders like the Texas Bar Foundation. Working together will bring in the most volunteers and assist with getting the word out far and wide that services are available—a problem often as difficult as any other.

Publicize

Publicity of services offered is a significant challenge for the bar, even when there are more than enough volunteers. Local government and news outlets are often the best outlets if you can plan fast enough. Local news stations and newspapers are happy to publicize free services when it fits with their already planned coverage of the disaster. Reporting with “problem-impact-solution” is very common in these spaces, but this method becomes more difficult if the clinics or services are not planned quickly enough to naturally fit with existing news coverage. However, cold calls or emails to local news producers or individual reporters have been successful in the past, including in the San Antonio bar’s traveling response clinics in localities like Victoria and Portland after Hurricane Harvey. Local elected officials are also usually a good resource as they have large followings on social media and are enthusiastic about providing help to their constituents. Local bars may want to develop a publicity list well in advance of any local disaster to facilitate quick outreach and education, including contacts for local media and government officials.

Research Resources and Request Funding

To properly provide services to members of the community, we must be informed about the resources available. This means disaster response efforts must have locale-specific materials to allow interested volunteers to readily access information about FEMA eligibility, funding from local and state governments and the eligibility for it, and other resources provided in the wake of the disaster—for example, in response to Winter Storm Uri, the city of San Antonio has earmarked significant funding for a plumbing-repair program for individuals that meet certain income

requirements. Additionally, disaster relief legal clinics or pro bono programs themselves can often be funded in a variety of ways, allowing the bar to travel to underserved communities, providing guidebooks and other resources to community members, and paying other such expenses. The Texas Bar Foundation, for example, has historically been extremely responsive to these emergency needs.

Prepare to Train Volunteers

Legal volunteers in a disaster are almost always volunteering outside of their regular practice areas. Accordingly, in developing disaster response programs, bar organizations must work to anticipate what the likely issues to arise will be and to develop and accessibly maintain updated training materials for volunteers. Good sources for these materials include the Texas Young Lawyers Association, which has developed significant resources on landlord/tenant issues, FEMA claims, and many other issues (tyla.org/resources/), and the Pro Bono Texas website, which houses a comprehensive disaster response manual addressing dozens of common issues, leveraging the talents of legal aid organizations and advocates throughout Texas (probonotexas.org/disaster-manual).

While appropriate responsive actions will vary depending on the nature of the disaster, advance preparation and planning can ensure that our local bar associations are ready when the time comes. This is important work that makes a real difference in people’s lives, and we must heed the call to service and leverage our skills and knowledge to address these important problems in our communities. **TBJ**



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ARE YOU PREPARED?

Technology for disaster-proofing your practice.

WRITTEN BY JOHN G. BROWNING

Lawyers and law firms throughout Texas are no strangers to the challenge of coping with natural disasters. From Hurricane Harvey in 2017 to the statewide power outages of February’s “icepocalypse,” we’ve survived regular reminders from Mother Nature of how severe weather can threaten lives and impact business continuity. And while there are many resources to consider when it comes to disaster preparedness, having a plan is paramount and technology should be near the top of your list. In fact, according to the International Legal Technology Association’s 2020 Technology Survey, 75% of responding lawyers indicated that their firms have disaster plans in place; another 22% responded that they were working on such a disaster plan.

Preparing and adopting a disaster recovery plan is a top priority. Even a solo or small firm practice should have a comprehensive plan that covers everything from data protection, employee contingencies, safety and first aid, communication options, and maintaining the confidentiality of your client communications. If you’re unsure what to address in your disaster plan, there are helpful resources to consult, including the American Bar Association’s guide “Surviving a Disaster: A Lawyer’s Guide to Disaster Planning”

(prepared by the ABA Special Committee on Disaster Response and Preparedness and accessible along with other resources at www.americanbar.org/disaster). This guide addresses issues like alternate facilities, communications continuity, and vital records management. Another handy resource for planning ahead is the “Disaster Planning and Recovery” guide prepared by Lawyers Mutual Liability Insurance Company of North Carolina,¹ which includes some sample forms and checklists. Ideally, your plan should address who in your firm is responsible for critical tasks like emergency communications and IT data safety and recovery, and it should include cross-designations—just in case some people have lost communications or are physically prevented from performing their designated emergency preparedness task. If possible, always have a backup ready to step in.

Planning ahead and addressing the technology needed to help you cope in the event of a natural disaster isn’t just a practical necessity—it’s an ethical imperative as well. In September 2018, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Ethics Opinion 482, titled “Ethical Obligations Related to Disasters.”² In it, the ABA examined a number of topics, including practice by

lawyers displaced by a disaster and lawyer advertising directed to disaster victims. But it also reminds lawyers of their duty under Model Rules of Professional Conduct Rule 1.1 (Texas Disciplinary Rules of Professional Conduct Rule 1.01) to develop sufficient competence in technology to meet their ethical obligations after a disaster. These other ethical duties include our obligations to communicate with clients and to safeguard client property (including data) and funds. For the former, Opinion 482 reminds lawyers to

... evaluate in advance storing files electronically so that they will have access to those files via the [i]nternet if they have access to a working computer or smart device after a disaster. If [i]nternet access to files is provided through a cloud service, the lawyer should (i) choose a reputable company, and (ii) take reasonable steps to ensure that the confidentiality of client information is preserved, and that the information is readily accessible to the lawyer.³

So besides formulating a disaster plan and being aware of your ethical obligations, what other technology-related steps should you take to get your practice through a natural disaster? First, if you aren't already making use of cloud-based solutions to backup and store data, you should be. Onsite backup on network-attached storage (NAS) or a storage area network (SAN) may allow you to recover data more quickly because the local backup is in the same place as your original device, but unlike offsite backup in the cloud, it is vulnerable to natural disasters. There are many cloud-based options to store data and documents, including Carbonite, Google Drive, iCloud, One Drive, Dropbox, and more. Second, besides storing data in the cloud, you may wish to consider cloud-based practice management solutions, enabling you to not only access your data once you have an internet connection, but also to keep track of your calendar, court deadlines, document management and integration, timekeeping, and so on. There are many cloud-based practice management solutions out there that are user-friendly, including Clio, Rocket Matter, Amicus Attorney, and others.

What about email? Before disaster strikes, make sure you have an email service vendor that “spools” (retains) your email for delivery when power is restored or—even better—synchronizes with your mailbox and provides an alternate mail transport mechanism. Some vendors will not only provide this, but also features like encryption, spam filtering, and phishing prevention. Your service vendor may even be so seamless that your clients won't even know that your primary email technology was down. And be sure to have your system passwords encrypted in the cloud, since you may need them during the recovery phase. Visit with your IT specialist as soon as possible to get a handle on what is functional versus what's not, and what it will take to get all your systems up and running. And in the event that any of your lawyers and staff have lost laptops, iPads, or other mobile devices in the disaster event itself, be sure that you have the capability to “remote wipe” them to make sure the data on these devices doesn't fall into the wrong hands. What might have sounded like something out of a spy thriller just years ago is now a

standard feature for many law firms, not only on firm-issued laptops but also—thanks to the “Bring your own device” era—on personal devices that an individual attorney owns, such as iPhones.

There are even more basic concerns if you lose power (like so many did during the Winter Storm Uri). First, you should have surge protectors to protect your computer hardware; a storm surge or even quick flash can corrupt the data on your hard drives, making it impossible to retrieve a document you were working on just minutes before. Combined with cloud-based backup, a surge protector can be a lifesaver. You should also be prepared for power outages by having backup batteries for your computer, so that your practice can keep running even without electricity. Also known as “uninterruptible power supply” units, these backup batteries (which often feature built-in surge protectors) are fairly inexpensive. And when the grid goes down, that handy phone charger plugged into your home or office wall is useless. During the winter storm, my alternative was the phone charger that I could plug into my car (my car was our makeshift “warming station” as well). However, to save gas, I recommend having a portable phone charger (already powered up, of course); ZAGG, for example, makes one in the \$50 range. Or you could go “renewable,” with a solar-powered phone charger from companies like Anker. In any event, when your phone is your only working lifeline, you need to make sure its power lasts as long as possible. Quick tip: until you can get recharged using your car or a portable power bank, save battery life by turning off Bluetooth, Wi-Fi, GPS, and location services—all of which can quickly drain a smartphone's battery.

Finally, if you've got devices you can charge, but your home or office internet has gone out, consider using a mobile hotspot or a “Mi-Fi” device (portable broadband) to stay connected to the internet through your wireless cellular network. Handy during the best of times, such devices can be godsend when the local Starbucks has lost power just like you and the weather conditions make getting out for some “coffee shop Wi-Fi” a dangerous proposition.

In short, you don't have to be MacGyver to keep your practice going during the next natural disaster. But some prior planning when it comes to technology can go a long way. **TBJ**

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ARE YOU READY NOW?

Building a disaster plan for your law practice.

WRITTEN BY HANNAH DYAL

Editor's Note: This is an updated version of the article that was published in the September 2020 issue of the Texas Bar Journal.

The best time to prepare your firm for a disaster is now. The past year has highlighted the importance of flexible disaster preparedness plans nowhere more clearly than the legal field. While COVID-19 taught us to expect the unexpected, Winter Storm Uri reminded Texans that we must have an all-hazards approach to disaster. Preparing for the types of disasters that most often hit our area is not enough: We must be prepared for a variety of weather patterns.

Preparing a disaster plan takes time and effort and should be tailored to each practice's unique needs. Involve staff with different viewpoints and roles from within your firm to strengthen your planning process. Managing and associate attorneys, paralegals, legal secretaries, IT specialists, and accounting and human resource professionals are likely to spot different issues and potential solutions.

Put your plan in writing. Before an event, the plan is a tool to educate your staff so everyone knows what to expect. During an event, you and others will have something to consult in the process of evacuating or reopening.

Identify the key personnel that you rely on heavily to sustain your firm's operations. Decide who will provide backup for those individuals if they are unavailable; cross-train other staff as needed. Identify the critical functions of your firm so that if operations are disrupted, you know what operations of your office must come back online first and can plan accordingly.

As you are planning, consider how a disaster would impact some of the following elements: personnel, workspace and equipment, documents, and communication. Address each of these areas in your plan.

Examples of the questions you should consider are:

- Will your personnel have to evacuate and if so, what can they do remotely?

- How will you ensure that any hard files are secure? As attorneys, we have an ethical duty to ensure our clients' information is secure, even in a disaster.
- What tasks should each specific employee be responsible for handling during an evacuation?
- Are your client files backed up and protected online? Attorneys must remain proficient in relevant technology.
- How will clients reach you, and how will you reach each other? Make sure you have a plan for both internal and external communication.

Consider making pro bono work part of your disaster plan. Incorporating an intention to do this work into your disaster plan may make a tremendous difference in your community. You may be able to earn CLE credit, and it may expand your area of expertise and provide the opportunity to gain new clients.

Your disaster plan should be reevaluated at least annually in case information, personnel, office space, and/or technology have changed. If you have the time, you should do a practice run-through of your disaster plan with your employees to spot flaws in your plan.

Preparing a disaster plan that will be realistic and workable for your firm takes time and effort, but it must be done to ensure you are prepared for whatever may come. **TBJ**

This article was adapted from an earlier presentation by Texas RioGrande Legal Aid Disaster Assistance Group Coordinator Tracy Figueroa and has been edited and reprinted with permission.



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LAWYERS HELPING LAWYERS POST HURRICANE HARVEY

WRITTEN BY CHELSEA A. MIKULENCAK

When Hurricane Harvey made landfall on the Texas and Louisiana coasts in 2017, it caused catastrophic flooding and took nearly 100 lives. Over four days, Harvey dumped more than 60 inches of rain over much of our state and displaced at least 30,000 Texans.

In response, the Texas Bar Foundation established a relief fund to provide aid to Hurricane Harvey victims in Texas. In addition to making grants to local bar associations and other volunteer legal service organizations in the affected counties, the Texas Bar Foundation awarded \$100,000—its largest emergency grant to date—to the Jefferson County Bar Association/Foundation. This grant directly supported 49 struggling attorneys who lost their homes or offices (or both) and helped

them return to work. The Texas Bar Foundation's grants also helped provide pro bono legal assistance, supported Lone Star Legal Aid's efforts to address Harvey-related housing issues, and benefited programs to protect low-wage workers engaged in post-Harvey reconstruction work.

Thankfully, the Texas Bar Foundation has not been called to action for a natural disaster recently. But when the need arises, it's good to know the Texas Bar Foundation will be there. For more information, go to <https://txbf.org/emergency-disaster-relief/>.

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SHORT STORY

C O N T E S T

2021

THIS IS ONE ISSUE THAT WE—AND MANY OF OUR READERS—particularly look forward to. Storytelling is alive and well, and the *Texas Bar Journal* relishes the opportunity to share some of it with you. We'd like to extend an appreciative thank you to the 20 writers who submitted entries to the 2021 competition.

To keep the contest fair and impartial, author names were removed from each entry. Two panels of judges faced the challenging task of selecting the winners, and for each round, the same evaluation form was used for consistency. Nine entries advanced to the final round, which was judged by Pamela Buchmeyer, of Dallas and Jupiter, Florida; Mike Farris, of Dallas; and last year's winner, Brian Schmidt, of Athens.

The winner, "The Captive" by Mark Ratway, earned the highest number of points.

We have published the first-place, second-place, and third-place winning stories on the following pages. We hope you enjoy these creative short stories as much as we did.

FINALISTS

Please congratulate these attorney-authors for making it through the competitive first round of judging to the finals.

"THE CAPTIVE," by Mark Ratway (First Place)

"RETURNING THE FAVOR," by Caryn Carson (Second Place)

"A PUNCHER'S CHANCE," by Alexander G. Hughes (Third Place)

"SMALL DECISIONS," by Katherine Ho

"THE UPSIDE-DOWN SNOW GLOBE," by Dave Beran

"FORGETTING TO REMEMBER," by Victor H. Segura

"BEHIND CLOSED DOORS," by Luvenia Sanchez

"SOFT RAIN FALLS IN THE SPRING," by Paula J. Gaus

"NORMAL," by Shara Saget



The Captive

WRITTEN BY MARK RATWAY

February 12, 2021

The elevator opened onto a dark floor of the Leland C. Delaneux Federal Building. The elevator buttons flashed in strange combinations and sequences before going dim. Scarlett's heart began to race when she mashed the alarm button and it did not work. Though she thought her phone was charged, it would not power on. She felt the elevator lurch up and down a few times, and the doors began to close. Not wanting to be trapped, she stepped off.

Her heels clacked onto marble tile. The elevator doors shut behind her, dimming the room. All around her were what appeared to be empty, old-fashioned prison cells with vertical bars. A central aisle cut through them all and ended at

another larger cell. This cell was more modern—it had a heavy door with a narrow paned-glass viewport, as well as a numeric keypad. As Scarlett walked toward the cell, she noticed a warm yellow light coming from within. Scarlett's shadow retreated into the aisle as she approached the light within the cell.

When Scarlett peered through the viewport, she saw a round orb, chrome-gold and glowing, with a surface that shone like oil-slicked water and rippled as if disturbed by wind. It gyrated, like a globe, turning toward her—noticing her—and a flash of white-hot light engulfed her vision. The brightness seemed to become her, and she it.

A low voice rumbled.

<<YOU ARE NOT JUDGE HEIMHALTER. YOU ARE INTRUDING.>>

The voice seemed to come from within her own head. She lost all sensation of having a physical body.

“What is this?” Scarlett asked. “What ... where am I?”

<<IT SHOULD NOT BE POSSIBLE FOR YOU TO BE HERE. HMMMMM...>> And the voice was silent for some time before it rumbled again.

<<HE HAS INSTRUCTED ME TO RUN A MEMORY CHECK ON ANY INTRUDER. APOLOGIES, BUT I MUST TAKE YOU ... BACK ... FOR A MOMENT. IT HELPS IF YOU DON’T RESIST.>>

“What? Take me *back*?”

<<YES. INSTEAD OF YOU WASTING ALL YOUR BREATH TELLING ME WHO YOU ARE, AND HOW YOU GOT HERE, I AM SIMPLY GOING TO LOOK.>>

Then, the brightness intensified even more, and Scarlett felt like she was falling backward.

January 10, 2019

“Look, Scarlett, we would just like to see a bit more from you this upcoming year.” It is her first performance review. “Some of your peers are taking depositions already. Your written work is ... fine. But, we’d like to see what you can really give us.”

“I appreciate your guidance during my first year here,” Scarlett responds. “I promise you, everything I do is geared toward being a success here at Nelson Pitt.” After Scarlett says this last part, she thinks that she would do anything to make it.

The vision flashes momentarily.

February 11, 2021

Scarlett is up late again, working.

Her phone buzzes, and it is one of the partners, Helen, commanding Scarlett to go to the Del (that is what lawyers call the Leland C. Delaneaux Federal Building) in the morning to attend a “simple” hearing that Helen no longer can argue because of a client emergency.

Scarlett’s face is solemn but determined in the glow of her laptop screen, which suddenly flashes brightly...

February 12, 2021 (earlier)

Chief Judge Heimhalter fires salvo after salvo of questions at Scarlett. She scrambles for answers and knows they are unsatisfactory even as she mumbles them. He has read her client’s motion (that she did not draft) and seems to anticipate every argument, every road she could possibly lead him down. She feels mismatched against his terrible intellect, and she knows she will have to return to the office again in defeat after he rules against her client.

After the hearing, she heads to the elevator and presses the button for the parking garage. As she does, she dwells on Judge Heimhalter’s questions and the sting of her failure. She thinks of arguments she wishes she would have made. She sighs and closes her eyes for a moment, and the elevator descends deeper into the Del than most people have ever been.

February 12, 2021

These strange visions ended; Scarlett flashed back into the bright void.

<<HMMMMM...I SEE. HELLO, SCARLETT.>>

“What is this? What are you?” Scarlett asked.

<<I AM ... THE CAPTIVE.>>

“Captive? Who took you captive? What is this place?”

<<PERHAPS IT IS BEST TO SHOW YOU. I HAVE TO TAKE YOU BACK AGAIN. BACK BEFORE YOUR TIME.>>

There was a flash, and before she could object, Scarlett was falling again.

November 9, 1884

An amber meteor splits the sky in two, crashing into the old Del where Judge Otto Heimhalter is working late. Judge Otto stands over the holes in the second and first floors and stares down into the basement lockup. The meteor glows in a crater.

Suddenly, Scarlett can feel and see herself again as she materializes into this vision of the past. Next to her, the Captive is chrome-gold, amorphous and shifting, like a lava lamp. She realizes she is watching something that happened long ago.

“Are you Ghost-of-Christmas-Past-ing me or something?” she asks the Captive. The Captive ignores—or doesn’t get—her joke.

<<DO YOU RECOGNIZE HIM?>>

"He looks like Chief Judge Heimhalter." Scarlett sees him peer into the crater, which is glowing a white-yellow color as it smokes.

<<IT IS HIS GREAT-GRANDFATHER, OTTO. AND JUDGE OTTO HAS JUST MET ME FOR THE FIRST TIME. STAND BY, WE MUST MOVE FORWARD A YEAR.>>

December 19, 1885

<<YOU PROMISED YOU WOULD LET ME GO.>>
Scarlett sees the Captive talking to Judge Otto from a jail cell.

"But I need you. And I need you to take me forward again."

<<AND IF I DO THIS FOR YOU, YOU WILL LET ME OUT?>>

"Yes, yes...of course. Eventually. Now can you show me? Can you take me forward?"

<<I CANNOT TAKE YOU FORWARD UNLESS YOU DESCRIBE YOUR PROBLEM DISCREETLY.>>

"Truthfully, the hearing tomorrow will decide the fate of this city. This dispute is over an oil well on the edge of town. And ..." He looks down and shoves his hands in his pockets. "... I cannot decide. Can you show me?"

At this moment, the vision pauses. Everything stops. Judge Otto is frozen in place in front of the Captive's cell. The Captive—not the one in the vision, but the one from her present—is beside her and speaks to her.

<<I HAVE TO SHOW YOU WHAT I SHOWED HIM THEN.>> The Captive pauses. Scarlett senses its concern. <<I HAVE NEVER TAKEN SOMEONE BACK AND FORWARD AT THE SAME TIME. YOU MUST MAINTAIN YOUR SENSE OF SELF. I RECOMMEND YOU RECITE YOUR NAME A FEW TIMES.>>

"Scarlett, Scarlett, Scarlett, Scarlett ..." And she is falling in all directions at once.

Forward from December 20, 1885

At first Scarlett sees Judge Otto on the bench, and he is asking brilliant, probing questions about an oil well. He rules from the bench in favor of the oil company. Some people in the courtroom are happy.

Flash.

She sees an oil derrick tower above a work camp. The town square is prospering.

Flash.

She sees more derricks spring up around the first.

Flash.

Scarlett feels herself flash through moments in history—moments that were, never were, and could still be. She sees the town grow through the 20th century.

Flash.

The vision continues like this for Scarlett, with different futures flashing (e.g., versions where the oil well catches fire and takes half the town with it). She somehow begins to understand, like a warmth washing over her, that, despite all the possible outcomes, Judge Otto must permit the oil company to drill on the outskirts of town.

The Captive from her present speaks to her again. <<I MUST SHOW YOU ONE MORE THING.>>

Flash.

April 28, 2001

Scarlett sees the Chief Judge Heimhalter that she knows. He is in the same room where Scarlett found the Captive.

<<IT WAS PROMISED LONG AGO THAT I COULD LEAVE.>>

"We both know you cannot. And besides, if you leave, you'll reveal this basement to everyone in the courthouse. There will be ..." He looks at his fingernails. "... too many questions. And that will not do, will it?" Judge Heimhalter smiled into the cell, his eyes twinkling.

<<I WANT TO GO BACK.>>

"You cannot. You are needed here."

February 12, 2021

Again, Scarlett was yanked back into her present.

"This is insane, but I understand now," she said. "This is how Judge Heimhalter is always a step ahead. He has built his career off you. Off your power. The way you can take people forward."

<<I SUPPOSE SO.>>

"I see. Can you put me back into my body? I'm tired of this nothingness ..."

<<APOLOGIES. ONE MOMENT.>>

Scarlett felt herself phase back into her physical body. Her senses rushed back. She doubled over, sick.

<<MOMENTARY DISCOMFORT IS NORMAL.>> The Captive said. Its voice still seemed to come from within her head.

Scarlett noticed the keypad on the Captive's cell door. She looked at it through the glass viewport, and she remembered how the Captive twice begged for its freedom.

"This is no way to exist. How do I let you out?"

<< I CANNOT MOVE THROUGH MATTER, SO THE DOOR MUST BE OPENED. BUT YOU DO NOT HAVE THE PASSCODE FOR THE DOOR.>>

Scarlett stood, tapping her foot.

"Take me forward."

<<YOU NEED TO DESCRIBE THE ANSWER YOU NEED.>>

Behind Scarlett, the elevator dinged.

"Just take me forward! Hurry!"

<<STAND BY.>>

Flash.

Forward from February 12, 2021

Scarlett sifts through the branching versions of her future with one thought: rush to the version where she finds the key code. She fails to find it in many versions (usually getting arrested stalking Judge Heimhalter or raiding his home).

But then something happens that the Captive feared.

Like the Heimhalters, Scarlett sees the timelines where she does everything right. Where she takes clients from Helen. Where she starts her own firm. Where she succeeds.

Vacations in Italy.

A sports car.

And these versions tempt her for a long time before she finds

herself again—before she remembers she seeks the passcode.

Scarlett focuses with all her might on the passcode. Instead, all she sees are shards of twinkling broken glass and another surge of light. She senses that someone, somewhere, is yelling at her.

<<HE IS HERE>> The Captive says.

Flash.

February 12, 2021

Judge Heimhalter's eyes widened as he entered the basement and recognized one of the attorneys who had just argued before him standing at the door to the Captive's cell.

"STOP!!!" He screamed.

Scarlett turned around and reached her hand to the keypad.

"DON'T do it, *girl!*" he snarled. "Stop and think." He inched forward with his hand out, palm down, begging her not to. "I know what it showed you. You could be *great*. Think of what you could become."

Scarlett paused, thinking of the indisputable potential of her success. Vacations in Italy. A sports car. She thought of what she would give to make it and stared back into the Captive's cell.

Judge Heimhalter stepped toward her.

"I didn't learn the code," she said, now staring down at her feet.

Judge Heimhalter laughed.

"Of *course* you didn't. The keypad is fake. There is no way to unlock that door. Why would I ever let it out? You know what it can do."

"I didn't learn the code." She reached down and ripped off one of her heels. "But I did see this ..."

And as she smashed her heel tip through the glass viewport, the Captive burst forth in a stream of brilliant, golden light that danced on the walls deep in the courthouse. **TBJ**



MARK RATWAY

is an associate of Baker McKenzie in Dallas, where he specializes in intellectual property law. A native Texan, he attended Cistercian Preparatory School in Irving. Ratway went to the University of Oklahoma for his undergraduate studies and Baylor Law School for his J.D. In his free time, he enjoys reading, fishing, and trying new restaurants with his wife, Brittany.



Returning the Favor

WRITTEN BY CARYN L. CARSON

Mallory jabbed the poker among the last of the firewood her now ex-husband Gareth left behind when he moved last year. Gareth texted her last week to remind her to get some more firewood just in case, but her usual disdain for any and all suggestions from him made her double-down on optimism or self-reliance or maybe a little of both. She'd be just fine.

It was harder than she expected to rip out more than a couple of pages at a time from the *Federal Reporter* she held in her mittened hands.

"Goodbye 505 F.3d," she muttered under her breath. She ripped a few pages and tossed them in the fireplace. They crinkled and crackled and turned to ash.

Sitting cross-legged on the Persian rug in front of the fireplace, Mallory took in the sounds of her small Tudor house. Rather than the usual hum of the heater or the faint thump of clothes in the dryer, she only heard the drip drip drip of the kitchen faucet and the occasional pop from the fireplace. With a Vanderbilt hoodie, a pink wooly hat, and faux fur earmuffs covering her ears, it was hard to hear anything. Plus, if her mind was less fuzzy, she would have realized she hadn't actually heard the drip of the faucet since yesterday. How did it come to this?

* * *

When the power first went off 48 hours earlier on Monday

morning, she was leaning against her kitchen counter and nursing a hangover from a Valentine's Day spent alone with a bottle of pinot grigio and a sleeve of Ritz crackers. At least she got the coffee made first. She sipped her French roast and used her iPhone to dash off text messages to cancel the couple of clients with whom she had appointments that day. If her house had no power, she assumed the same was true for the She Shed/Law Office. She wasn't about to step outside and look; it was 7 degrees outside.

When the pandemic hit last year and the partners at Straker & Klayman started shedding of counsel like Mallory because they "no longer aligned with the firm's strategic vision" (read: she took on too many plaintiff's cases), Mallory decided it was for the best. She was a lone wolf and liked to do her own thing. She converted the backyard She Shed, as Gareth once called it, to a space to meet clients. She had plexiglass installed on her desk so she wouldn't have to be too close to her clients—for pandemic reasons, of course. She bought a handful of *Federal Reporters* from a furniture store going out of business and put them on the bookshelf to make it look lawyerly. She cleaned her late mother's Hummel figurines off a side table and added a clock and a weathered "Mallory Callaghan, Esquire" sign she bought on Etsy. She was back in business a week after leaving the firm with nothing more than her framed law license, a USB drive, and five bankers boxes full of files.

By Monday evening, after a day of pacing around the house in a puffer jacket, the power finally returned—for 49 minutes. That was enough time to reset the clock on the microwave, charge her phone to 60%, and down a melty pint of Häagen-Dazs mint chip ice cream. The thermostat in her house read 52 degrees. She regretted that ice cream as she climbed into her chilly bed, tucked her head under the added layers of covers, and scrolled through Facebook long enough to curse her friends' pictures of their dogs in the snow with captions like "Texas Winter Wonderland" or of the chicken divan they cooked in their ovens. "Must be nice to have electricity," she thought as she fell into a shivery, fitful sleep.

The welcome hum of the heater and a blinking alarm clock beside her bed woke Mallory at 4:05 a.m. on Tuesday. "Today's going to be a much better day," she thought and rolled over back to sleep. By 6:34 a.m., the house was again quiet, and the only light was the sunrise peeking through her bedroom window. "Not again," she mumbled as she fumbled for her phone. She had a text from her client, Landry Maxwell:

Mrs. C, can I still come talk to you today? The roads are terrible, but I'll make it there. I really need to talk to you if possible. I'll come around the side to your office in the back at 2:30. Thx.

Landry was such a needy client. She first took his water rights case through Legal Aid. His landlord cut off the water to his

trailer, and she got it turned back on after considerable time, expense, and, on one occasion, the appearance of a shotgun held by said landlord. But when Landry was in an accident in his 18-wheeler, he called Mallory, and she made a little in fees handling both his workers' comp case and his auto liability claim. After she left the firm, Landry did not seem to mind when she first asked him to come to her She Shed/Law Office by walking around the side yard rather than coming through her front door. She asked all her clients to do that because of the pandemic, of course. And she didn't want them to see how she lived. That too.

Her head ached with fatigue but she managed a quick reply to Landry.

Not today. Power out. I'll let you know.

Mallory wasn't sure how long she laid in bed after that. She couldn't remember from her Girl Scout days if you're supposed to lay quietly to conserve your energy when you're cold or if it is better to move around. It seemed easier to stay in bed.

With her phone battery down to 22%, Gareth texted her.

Don't forget to drip all the faucets.

She didn't reply.

Mallory, if your power is out, get somewhere warm.

You there?

That aggravation was enough to get Mallory out of bed. She shuffled to the bathroom and let a trickle out of the faucet. She forced a pair of jeans and two sweatshirts on over her pajamas. She stiffly wandered the house, looking for anything to layer on: a windbreaker, an itchy scarf, a Burberry poncho. She caught a glance of herself in the front hallway mirror. She looked ridiculous, but she was oddly proud. "I got this," she thought, "I'll warm up by a fire."

She pulled a pair of Ugg boots on over her three pairs of socks and strode confidently to the back patio door. The temperature was 17 degrees that late Tuesday afternoon, and the air stung her face as she stepped outside. There was less firewood than she remembered in the rack, but it would have to do. It took three trips and the realization that her suede boots were not, in fact, waterproof to get the wood inside. After rummaging through drawers in the dark kitchen for several minutes, she found the matches Gareth had left behind. After six attempts and three days' worth of the *Dallas Morning News*, she got a smoky fire going in the fireplace. She pulled off her boots to warm her damp socked feet and celebrated with a package of peanut butter crackers and a bottle of grape Gatorade.



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She must have fallen asleep for a few hours in front of the fire, which had dwindled down to a glowing heap of embers. It was almost pitch black in the house, and she was confused where she was when the phone rang and the screen lit up with Gareth's photo. She still hadn't removed that stupid picture of him holding a fish. She jammed her icy fingers on the screen until she finally sent the call to voicemail. With 8% battery remaining, she texted back instead.

It's all covered. I'm fine. Stop texting.

He did.

* * *

By daybreak on Wednesday, the thermostat read 40 degrees inside the house, the firewood was almost gone, and Mallory was still alone, shivering cold, and sitting on the floor in the front room of her house, swaddled in her mother's quilt and surrounded by books and open boxes with "Straker" printed on the side. At some point during that second night without electricity or heat, she had drifted out to the backyard to find things to burn in the fireplace. She found her way to the She Shed/Law Office and was impressed with just how much flammable material was inside.

With the sun rising in the sky outside, that 505 F.3d was meeting its demise in the fireplace. The heat it gave off was negligible, but a gauze of smoke hovered around Mallory. She reached into a box and found *O'Connor's Texas Rules * Civil Trials 2015*. She had grown tired of ripping pages out of books but found it equally cathartic to just throw the whole book into the fireplace. Few things are as satisfying as setting your past ablaze.

"Sorry Mr. O'Connor. I need to burn this. Who was Mr. O'Connor? Are we sure it wasn't Ms. O'Connor? Rules, rules, rules..." Mallory babbled on until she heard a faint tapping. Or was that just a drip? No, it was definitely a tap on the window.

She did a double take when she saw a man's face in the front window. Whoever he was, he was gesturing for her to go to the front door. She unsteadily rose to her feet, adjusted her earmuffs, and slowly opened the door just enough to see an older man dressed like he had just come from a dove hunt: Big parka, camo hunting hat with ear flaps, and those ugly brown Carhartt pants. Both of his hands were full with God knows what.

"Mrs. C?" The man looked Mallory up and down like he was sizing up a car wreck victim. "Are you alright?"

Mallory's lip trembled. She wiped her nose on her mitten.

"Ma'am, it's Landry. Landry Maxwell."

Mallory stepped back and opened the door a little wider. When he looked inside, Landry saw a little encampment of torn books, cracker wrappers, wet socks, and smoke. The smoke made his eyes water a little.

"Sorry to come to the front door, but I was worried when you didn't answer my texts last night or this morning."

"My phone is dead," Mallory weakly offered.

"You could be dead! I know you lawyers think you've got everything all figured out, but there's no fooling around with this cold."

He pushed inside and closed the door. "Sheesh," he muttered. "Let me guess—you've been burning paper, right?"

Mallory shrugged her shoulders.

"Well, that needs to stop right now," ordered Landry, in a commanding voice she hadn't heard before. He set down the camping generator he was holding in one hand and thrust a Pyrex dish towards Mallory. "The generator is from me. The breakfast casserole is from the wife."

As she stood in the middle of the room clutching the warm casserole against her chest, Landry was a whirl of activity. He hooked up the generator and got a couple of lights going. He emerged from the garage with a dusty space heater she did not know she owned, and he got that going too.

"Mrs. C, nobody should be going this alone. We're all in this crazy Texas weather together. Sorry, but you're stuck with me for a while. You've done right by me in the past, so let me return the favor."

Mallory realized only then that she really didn't have it all covered. She wasn't in control and didn't need to be right that minute. Still bundled up and looking like a deranged designer quilt lady, she collapsed on the couch near the space heater and truly relaxed a little for the first time in days.

"Now," Landry smiled. "Let me tell you about my new problem I need your help with." **TBJ**



CARYN L. CARSON

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A Puncher's Chance

WRITTEN BY ALEXANDER G. HUGHES

Jessica's mouth tastes like sour copper. Copper from her split lip. The sour notes from the lactic acid climbing her throat. She sits on the stool, blinking to regain her bearings as she breathes deep. In through her nose. Out through her mouth.

"Drink," her coach Sergio says, shoving a water bottle in her face.

Jessica drinks. She's lucky to make it to the final round. Her opponent—undefeated Houston women's bantamweight MMA champion Laura "Boa" Ochoa—was seconds away from choking Jessica unconscious when the bell rang, saving her. Jessica stepped in as a last-minute replacement when Boa's original challenger failed to make weight. She feels out of her depth.

Jessica's behind on the cards and needs a stoppage to win.

The spotlights above the cage burn down on her. The cold water douses her cottony tongue.

"Spit."

Jessica does. Pinkish liquid splashes in the bucket her cutman holds in front of her. He sets it down and goes to work mending the bloody gash in her lower lip. As he prods her with a medicated swab, Jessica stares across the cage at her opponent who looks more like she just finished a light jog than two rounds of no-holds-barred fighting.

"She's too good, coach," Jessica says. Her shoulders slump forward as her breathing slows to normal. She looks up at Sergio. "I can't beat her."

Jessica took up mixed martial arts as a way to stay in shape and blow off steam from her job as a public defender. What started as a lark became a passion, and she started fighting in

amateur competitions. She won more than she lost—but she didn't expect a championship fight so soon. Not on a day's notice.

Sergio drops to his knees and lifts Jessica's gloved hands.

"She's a human being just like you, champ," he says.

"Everyone can be beat. Just fight your fight and stick to your game plan."

He lowers her hands.

"But if your heart's not in it . . ." He taps her sternum with his index and middle fingers, ". . . you've already lost. If you don't believe you can go in there and beat the odds, you'll just get yourself hurt."

Sergio grabs the white towel out of his back pocket and looks into Jessica's eyes. "So do you believe you can do it?" He holds up the towel. "Or do I need to throw this in?"

"I'm gonna do it, coach."

"Good." Sergio wipes the sweat off Jessica's forehead with the towel. "Now keep her at a distance. Don't let her take you down. As long as you stay on your feet, you've got a puncher's chance."

"Yes, coach."

Sergio replaces Jessica's mouthguard and bumps her fists. She walks toward the cage's center. The referee stands between Jessica and Boa. His arms are raised at shoulder height. His palms open. Once the two fighters' teams are off the mat and relatch the cage, he turns to them.

"Ready?"

They nod in turn, then touch gloves.

"All right." The ref claps his hands together and steps back. "Fight!"

The fighters step forward. Jessica's hands are in a low guard—her right hand by her chin, her left extended a bit below her shoulder. She circles to the right, watching her opponent's hips. Waiting for an opportunity to strike.

Boa throws a kick aimed at Jessica's left knee. Jessica sees it coming and hops to safety. She throws a jab in response. It slices through the air, missing Boa by an arm's length.

Jessica keeps circling. She needs to get closer.

Boa controls the center of the ring. She bends forward in a wrestler's stance, moving her hands in big circles as she stalks Jessica.

Jessica kicks at Boa's midsection.

Boa steps back to avoid it and narrowly misses grabbing her foot. Boa flashes Jessica a devilish smile as she regains her stance.

She's toying with me.

Jessica throws another jab. This time Boa ducks under and shoots for a double-leg takedown. She gets her hands behind Jessica's legs.

Jessica sprawls—she can't get taken down again. She's too tired to fend off Boa's submission attempts for almost five more minutes. If this fight ends up on the ground again, Boa will choke Jessica out like her serpentine namesake.

Jessica pushes down on Boa's shoulders and scrambles backward. Boa's grip loosens as they near the cage.

Almost.

The champ keeps driving forward trying for the takedown. She turns her head to the left.

Seizing the opening, Jessica elbows her in the forehead. The blow stuns Boa and she lets go just enough for Jessica to pry free and move back to the center of the cage.

The crowd thunders. Jessica's corner shouts encouragement. She may not win, but at least she's making a fight of it.

Boa turns away from the cage and starts moving toward Jessica again. Getting elbowed erased her devilish smile. A bloodthirsty scowl takes its place.

The two pace in a circle just outside one another's reach. They probe for an opening.

Jessica delivers a snappy kick to Boa's inner thigh. Boa winces. Jessica closes the distance and throws a right cross. Boa partially parries it, absorbing the blow with the crown of her head. Jessica continues the combo and throws a left hook that connects with Boa's right cheek just below the eye.

Spit and sweat spatter into the air from the impact. Jessica lands a right uppercut to Boa's jaw, staggering her.

Jessica pursues, but Boa closes the distance and clinches before Jessica can hit her again. Boa tries for a hip throw, but Jessica adjusts her weight and stays on her feet. The two battle for inside position as they move across the cage.

Sensing the fence is near, Jessica pivots hard. The women slam against the cage with Boa taking the brunt. Shaking her arms free, Jessica pushes off and backpedals to the center.

Blood drips from Boa's nose. She reaches up and wipes it off. She creeps toward her opponent. Her movement is more constrained than before. All she needs to do is survive the round and she should win with the judges.

Boa's coach shouts for her to fight smart.

Jessica's confidence builds. A fight that felt impossible now feels winnable.

The crowd rises to their feet.

"Keep up the pace, Jess. Finish the fight!" Sergio yells from the corner.

Jessica swaggers toward the champ. She fires a right cross that tags Boa's lip.

Boa tries to clinch again. Jessica pushes her away and delivers an elbow to her brow, opening another cut. Blood spills from her face like a leaky levee straining to stay intact. She touches her face and shakes her head, peppering the canvas with crimson droplets.

After stepping back to regain space, Boa shoots for another takedown. She has to lunge because of the distance. It's sloppy and desperate.

Jessica sees it coming and reacts with a flying knee. As she bursts forward her right knee explodes into Boa's jaw.

The crowd erupts.

Boa falls to the ground, teetering on the precipice of lucidity.

Jessica pounces on her downed opponent and rains hammerfists until the ref intervenes to stop the fight.

While the arena medic tends to the now-former champ, Jessica drops to her knees, removes her mouthpiece, and roars. The crowd chants her name, punctuated with whistles and

hollers. Her team rushes into the cage to congratulate her.
She leaps into Sergio's arms.
"Always believed in you, champ."

* * *

Jessica sits on a flimsy plastic chair. The overhead light buzzes. Its fluorescent glow bathes the visitation room in a sickly artificial white. She doodles on her steno pad.

She waits.

Two sharp knocks snap her to attention. Jessica stands as the guards usher her client into the seat across the table from hers and remove his shackles. She thanks them and returns to her seat while they exit.

The August heat makes the 6-by-6-foot chamber even more stifling.

"Good to see you, Marcus."

"You too, Jess. Been a hot minute."

"Not long enough, man."

They both laugh.

The last time Jessica saw Marcus was when she pleaded him down to two years for possession about three years ago. He didn't waste much time getting back into the only business he knew when he got out.

Marcus leans over the table and wrings his hands together. Apprehension peeks around the edges of his brash façade.

"You gonna get me out? Work that magic again?"

Marcus got pulled over in a stolen car three nights ago and caught charges for grand theft auto, first-degree possession of cocaine with intent to distribute, and being a felon in possession of a firearm.

"Gotta be straight with you. Things don't look great."

The prosecutor wasn't offering a deal this time. Marcus was probably looking at about 20 years and the feds were waiting in the wings on the gun and drug charges.

The same butterflies that flitted around her stomach before her last round against Boa return.

Jessica sits up and cracks her neck.

"But you've got a puncher's chance." **TBJ**



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OF THE LANHAM TRADEMARK ACT

WRITTEN BY JOE CLEVELAND

The State Bar of Texas Intellectual Property Law Section celebrates the Lanham Trademark Act's history and importance.

The State Bar of Texas Intellectual Property Law Section, or IP Section, comprises over 2,200 prosecution, transactional, and litigation attorneys practicing in various areas of IP specialty. The mission of the IP Section is to educate, connect, and serve the Texas intellectual property community as well as their clients to encourage innovation and opportunities within the state of Texas.

Over the past four years, volunteer attorneys from the IP Section, in collaboration with the U.S. Patent and Trademark Office, or USPTO, and under the leadership of Texas Regional USPTO Director and former IP Section Chair Hope Shimabuku, have conducted the Pro Bono Tour, a statewide program to provide educational workshops on how to protect the intellectual capital of small-business owners, entrepreneurs, and inventors located in underserved communities throughout Texas.

This year, the USPTO and IP Section are hosting a special two-day event to celebrate the 75th anniversary of the Lanham Trademark Act and to honor former U.S. Rep. Fritz G. Lanham, of Texas, the father of the Lanham Act. This event, which will be held virtually on June 17-18, is an opportunity to learn about Lanham, the history of the Lanham Act, and the important role that the act plays in protecting American businesses and consumers.


On June 17, the program will include a "Nuts and Bolts" bootcamp for those interested in learning more about trademark law as well

as live hearings before the Trademark Trial and Appeal Board. On June 18, the morning program will feature a "State of the Office" interview with Drew Hirshfeld, who is performing the functions and duties of the director of the USPTO, and Shimabuku. Next, an all-women panel will provide a thought-provoking discussion about strategies for success in the world of intellectual property law. Moderated by Molly Buck Richard, the panel will include Lisa Blatt, who argued the *Bookings.com* case before the U.S. Supreme Court; Dorian Daley, of Oracle; former Commissioner for Trademarks Mary Boney Denison; Michelle Lee, of Amazon; Chief Judge Barbara M.G. Lynn, of the U.S. District Court for the Northern District of Texas; and Register of Copyrights Shira Perlmutter. Over lunch, Commissioner for Trademarks David Gooder will provide the keynote address. The program will also include special remarks from U.S. Rep. Kay Granger, of Texas; Chief Administrative Trademark Judge Gerard Rogers, of the Trademark Trial and Appeal Board; and Jennifer McDowell, of the International Trademark Association. The program will conclude with the world premiere of *75 Years of the Lanham Act*, a documentary film by the National Inventors Hall of Fame. For more information and to register, go to lanham75.org.



JOE CLEVELAND

is a partner with the Fort Worth firm of Brackett & Ellis, where his practice focuses on intellectual property litigation. Cleveland is the author of *Fritz Garland Lanham: Father of American Trademark Protection* published by the Texas Intellectual Property Law Foundation. He serves as vice chair of the Intellectual Property Law Section and was appointed by the Texas Supreme Court to the Texas Board of Disciplinary Appeals.



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Why Trademarks Matter

WRITTEN BY MARY BONEY DENISON

—From the Foreword to Fritz Garland Lanham—Father of American Trademark Protection, by Joe Cleveland

This year marks the 75th anniversary of the Lanham Trademark Act. During his decades of service in the U.S. Congress, Congressman Fritz G. Lanham worked tirelessly and spent enormous political capital championing a new trademark bill for the modern era. The Lanham Act—named in honor of its chief proponent—not only protects American consumers, it protects the goods and services produced by America’s businesses. To appreciate Congressman Lanham’s extraordinary gift to our country, one must first understand the history of trademark protection and the significance of trademarks to all Americans and to our national economy.

Today, it seems obvious that a business’s trademarks deserve protection under a nationwide trademark schema. But that has not always been the case. Before Congress enacted any federal trademark legislation, the right to adopt and use a symbol to distinguish a business’s goods and services was only recognized by American common law and by the statutes of some states. Indeed, the whole system of common law trademarks and the civil and equitable remedies for their protection existed long before any federal trademark legislation enacted by Congress and remains in full force today. This exclusive right to a trademark was not created by any act of Congress and does not depend upon any federal legislation for its enforcement.

As the United States embarked upon the industrial revolution at the turn of the century, Congress passed several federal trademark registration laws, but none was adequate to the task. In 1870 and again in 1905, Congress sought to enact uniform trademark laws, which provided for the registration of trademarks and remedies for their

infringement. But these civil remedies proved insufficient to prevent pirating a business’s trademarks. Additionally, while patents are specifically mentioned in the Constitution, trademarks are not. After all, trademarks recognized by the common law were generally based on use, rather than the notion of a new or novel invention. It was only after the U.S. Supreme Court held that the Congress could enact trademark protection under the Commerce Clause that the path to nationwide trademark protection became clear.

Meanwhile, state legislatures began considering trademark bills, which featured costly compulsory registration and significant ramifications to trademark owners for failure to register their marks in each state. With the prospect of various states enacting a patchwork of onerous state trademark laws, the American Bar Association, or ABA, began to study a new nationwide law for trademark protection but was unable to obtain adequate legislative support.

In the fall of 1937, Edward S. Rogers, the dean of the trademark bar, and Congressman Fritz Lanham, chair of House Subcommittee on Trademarks, met in Washington, D.C., to discuss the problem. As they discussed a potential solution, Mr. Rogers presented Congressman Lanham his draft notes from ABA meetings that had been ongoing to address the need for federal trademark legislation. After their meeting, Congressman Lanham undertook the momentous effort to craft and enact nationwide trademark legislation.

Although interrupted by World War II and a variety of other challenges, Congressman Lanham persisted. On July 5, 1946, President Harry S. Truman signed the Lanham Trademark Act into law, almost nine years after Congressman Lanham took up his gavel to begin championing the legislation in Congress.

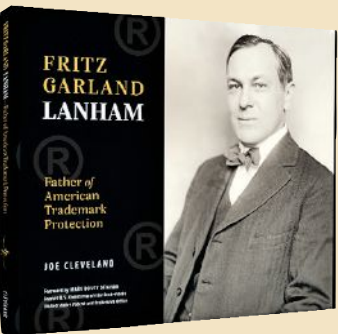
Over the past 75 years, the Lanham Act has stood the test of time. Since its enactment in 1946, it has been repeatedly challenged and reviewed by all levels of the federal judiciary, including the U.S. Supreme Court. It has been amended more than 20 times, and parts have been declared unconstitutional. Still, the Lanham Act remains the primary source of statutory protection for trademarks in this country.

From a practical standpoint, trademarks are critical to the day-to-day lives of each and every American. Trademarks play a vital role in helping consumers differentiate goods and services in commerce in the United States and indeed the entire world. Studies show that children recognize brands incredibly early in their childhood development. From my own personal experience, I know that to be true. My daughter—when she was only two years old—pointed to a VISA® trademark and to my surprise uttered the word VISA. She could not read; she could not use a credit card, but she knew the VISA® trademark and recognized its source. From early childhood until our twilight years, brands serve the essential role of helping us identify the source of goods and services. Trademarks permit us to distinguish quality and to understand what we are buying. And they protect us. They help us identify the goods and services we want, and they help us avoid fake or dangerous products or fraudulent services we don't want.

Counterfeiting has become an enormous global problem with a significant impact on the economy and the health and safety of all Americans. In addition, the sale of counterfeit products results in lost revenues to businesses and lost tax revenues to governments while generating enormous profits to traffickers who sell counterfeit goods. Frequently, these traffickers are associated with organized crime and terrorist groups. Trademarks protect the health and safety of the American consumer by helping them identify counterfeit products such as fake medicines, faulty airbags, self-igniting lithium-ion batteries, adulterated cosmetics, and a great many other dangerous products introduced into this country's stream of commerce.

Trademarks also have a significant economic impact. The U.S. Department of Commerce has studied the impact of intellectual property on U.S. jobs. The study found that in 2014 almost 24 million U.S. jobs were in trademark-intensive industries. Including supply-chain jobs, the number of jobs related to trademark-intensive industries surpass 40 million. Further, according to the study, the average weekly wage premium of workers in trademark intensive industries was close to 40% higher than those in non-intellectual property intensive industries.

Trademarks matter. They provide clear guideposts to consumers. They protect consumers and American businesses.



Fritz Garland Lanham: Father of American Trademark Protection
By Joe Cleveland
Bookhouse Group, Inc., \$40 (plus \$7.50 shipping and handling)

The Texas Intellectual Property Law Foundation commissioned a beautiful commemorative limited edition book about this important milestone in trademark protection with all proceeds funding a diversity scholarship program in Congressman Lanham's honor. To buy the book, go to www.lanham75.org.

And they promote the national economy.

Every American owes an enormous debt of gratitude to Congressman Lanham. He used old-fashioned charm and persistence to usher into law a landmark bill we now know as the Lanham Act. Because of Congressman Lanham's tenacity and perseverance, American consumers, American businesses, and American commerce have vital protections as we move forward into the 21st century. **TBJ**

This article, which was originally published in Fritz Garland Lanham: Father of American Trademark Protection, has been edited and reprinted with permission.

MARY BONEY DENISON

served as the commissioner for trademarks for the U.S. Patent and Trademark Office, or USPTO, from 2015 to 2019, where she oversaw all aspects of the Trademarks organization, including policy, operations and budget relating to trademark examination, registration, and maintenance. Prior to joining the USPTO in 2011, she practiced law in the area of trademark prosecution and litigation. A graduate of Duke University and the University of North Carolina School of Law, Denison retired from the USPTO in 2019 and pursues creative endeavors in North Carolina.



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Lanham Act 75th Anniversary

*The life and legacy of
Frederick “Fritz” G.
Lanham (1880-1965)—
Texan, author, editor,
playwright, lawyer,
congressman.*

WRITTEN BY CRAIG STONE

This is a portrait of Frederick “Fritz” Garland Lanham, one of the most notable U.S. congressmen and lawyers you have likely never come across unless you are a practicing attorney in the field of trademark law.

Even today, regular intellectual property practitioners are just now learning about the significant impact this individual had on the current federal trademark statute and primary vehicle brand owners continue to use today to secure protection and enforce their rights 75 years after the statute was enacted. Even if IP is not your primary practice area, as an in-house lawyer, you have undoubtedly handled or come across a trademark issue on behalf of your company. The importance of trademark protection for companies and brand owners cannot be understated. It provides the consuming public with confidence and assurance that the goods and services being sought are genuine, of a high quality, and have emanated from the legitimate source identified by the trademark or service mark. Recent figures place the value of intangible assets at an estimated 84% of the S&P 500’s total value, or more than \$20 trillion in value. Trademarks are the chief representation and embodiment of a company’s reputation and serve to create a powerful emotional relationship between brand owners and consumers. Quite literally, without trademarks and trademark protection, our economy and the ability to effectively and efficiently market and sell goods and services would not be possible.

Although a significant contributor across a wide scope of federal legislation and other notable projects, Lanham is most known for his influence in the field of U.S. federal trademark law, the primary statute of which bears his name, the “Lanham Act,” which Rep. Lanham championed for years until its adoption in 1946. This year marks the 75th anniversary of this significant piece of legislation that governs the way in which trademarks and the legal rights of brand owners are uniformly protected in our country under federal law. The Lanham Act governs federal trademark registration, trademark infringement, trademark dilution, and false advertising in the United States. This landmark piece of legislation enables consumers to confidently identify and differentiate between the hundreds of thousands of brands inundating the marketplace every day and to distinguish, with confidence, as to the nature and quality associated with the products and services we enjoy in our daily lives. The act was signed into law by President Harry S. Truman in 1946 and took effect on July 5, 1947. Today, the U.S. Patent and Trademark Office receives more than 500,000 applications annually and issues on average about 350,000 federal registrations each year. Since its enactment, the Lanham Act has been cited by the U.S. Supreme Court in 57 decisions and by federal and state courts across the country in over 34,000 decisions.

Before his illustrious career as a congressman, Lanham earned a bachelor’s degree from the University of Texas in 1900 and pursued graduate studies in law at the university until 1903. Although he never completed his law degree, Lanham was admitted to the Texas Bar in 1909, where he practiced in his hometown of Weatherford. While at Texas, Lanham was more than just a student; he became the first editor of *The Texan*, the school newspaper (now known as *The Daily Texan*) beginning in fall 1900 and held the job until early 1901. In his first editorial, Fritz said the paper’s goal should be “ultimately to please the student body.” While he acknowledged there were always two sides to every issue, he said *The Texan* should present only “the

proper one.” Lanham wrote most frequently about the extracurricular topic that was most important to the university community—football. Lanham wore many hats throughout his successful life as a student and alumnus. He was an author, newspaper editor, playwright, and founder of *The Alcalde*, the alumni publication of the University of Texas, one of the most successful and widely circulated publications of its kind today.

Lanham had deep ties to Texas history and politics. He was one of eight children of Samuel and Sara Lanham. His father served as governor of Texas and as a congressman from Texas. It was Samuel, while serving as Texas governor, who convinced him to take a year off prior to attending law school and serve as the governor’s personal secretary. This was Lanham’s introduction into the world of politics.

In 1919, Lanham won a special election to Congress in Texas’ 12th Congressional District (encompassing Fort Worth and Weatherford), succeeding fellow Democrat James Clifton Wilson, who resigned to accept a federal judgeship on the U.S. District Court for the Northern District of Texas. Lanham would go on to serve in Congress from 1919 to 1947. Lanham was a strong supporter of President Franklin D. Roosevelt and the New Deal. While in Congress, Lanham served on several committees, including the Committee on Patents. By the time he retired, not only had Lanham left an indelible mark on American commerce, but he also simultaneously oversaw the construction of numerous federal buildings across the country, including participating on the planning committee for the design and construction of the U.S. Supreme Court Building.

Although Lanham never practiced trademark law, he became convinced during his time in Congress that the nation’s trademark laws needed to be modernized and expanded to provide stronger protection for brand owners. Lanham introduced House Resolution 9041 in 1938, and over the next eight years, he worked tirelessly to accomplish what was called the “Herculean task” of convincing Congress to broaden trademark protection through passage of what we now call the Lanham Act—an effort that was strongly opposed by the Antitrust Division of the Department of Justice.

The Lanham Act resulted in the repealing of the previously enacted acts of 1881 (narrowly protecting federal trademark registrations of foreign nations and Indian tribes) and the acts of 1905 and 1920 (prohibiting willful or intentional misrepresentation of trademarks but often considered too restrictive to be useful). Passed on July 5, 1946, and effective one year later, this federal statute (now codified under Title 15 of the United States Code) has served as the primary vehicle by which brand owners have a federal right to more broadly and effectively protect their trademarks. The statute also sets out the actions and remedies available for registered and unregistered trademark infringement. In addition, this federal statute prohibits the importation of goods that infringe federally registered trademarks, the use of false designations or origin and trademark dilution, which protects brands with significant notoriety and fame. Most significantly, the Lanham Act allowed for additional causes of action for owners of unregistered marks. In addition, the act eliminated the requirement of “willfulness” or “intent to deceive” as a necessary element to prevail in a trademark action under federal law.

Shortly after his seminal accomplishment, Lanham retired from Congress and returned to Texas to live out his life doing the things he loved to do—reading, writing poetry, preaching on

Sundays as a lay minister in the Methodist Church, and entertaining children with magic tricks.

Lanham was reelected 13 times and served with distinction until his retirement in 1946. His congressional papers are maintained at the Dolph Briscoe Center for American History at the University of Texas. After his retirement from Congress, Lanham remained in Washington, D.C., to work as a lobbyist for the National Patent Council. Lanham died on July 31, 1965, at Seton Hospital in Austin. He is buried at City Greenwood Cemetery in Weatherford (due west of Fort Worth).

Lanham was truly loved by those who knew him—a consummate gentleman, a man of uncompromising standards and ethics, and a gifted politician. After Lanham’s death, the *Fort Worth Star-Telegram*, in a lead editorial titled “Lanham, Gentleman of the Golden Age,” wrote: “Classically educated, courtly, urbane and eloquent, Mr. Lanham was so much the gentleman that many thought this a handicap to his political career. It never appeared to be. He was a highly effective legislator and had a rare influence with his colleagues, who knew him to be unswervingly a man of his word.” Those who knew him are in complete agreement that Lanham was always a gentleman. The federal building in Fort Worth now bears his name to honor Lanham’s remarkable influence and legacy.

This year we take time to reflect and remember Lanham’s legacy and his great effort and support of this important milestone in trademark history and recognize the role and influence he had on directly shaping federal trademark law that still serves us today. Although the landscape in 2021 certainly has changed since the 1940s and Lanham could never have imagined how the economy and commerce would be impacted by the internet and the tiny handheld devices we carry with us throughout the day, it is a great testament to the elected officials who crafted a strong backbone of laws that still serve us well today in our globally connected and digitally driven economic universe.

Inspired by the 75th anniversary of the Lanham Act, and to help celebrate Lanham’s contributions and honor his legacy, a group of Texas lawyers recently founded a new nonprofit known as the Texas Intellectual Property Law Foundation. The aim of the foundation is to undertake initiatives and activities not permitted by the traditional section under the current rules and procedures of the State Bar of Texas.

The anniversary will be celebrated at the IP Section’s virtual Annual Meeting (June 17-18, 2021). Please go to the section’s website to catch up on all upcoming events occurring in 2021 to celebrate this milestone: www.lanham75.org. **TBJ**

This article was adapted from an article previously published in the International Trademark Association’s Bulletin in January 2021 and has been reprinted with permission.



CRAIG STONE

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University of Texas at Austin and Baylor University School of Law, and is serving a three-year term on the State Bar of Texas Intellectual Property Section Council following his role as chair of the Trademarks Committee.



IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 21-9050

THIRTY-SEVENTH EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER

ORDERED that:

1. Governor Abbott has declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic. This Order is issued pursuant to Section 22.0035(b) of the Texas Government Code.

2. The Thirty-Fifth Emergency Order (Misc. Dkt. No. 21-9015) is renewed as amended.

3. In consultation with Governor Abbott, who has directed federal funding from the CARES Act, Community Development Block Grant, and Emergency Solutions Grant to rental assistance and eviction diversion, and the Texas Department of Housing and Community Affairs, and in an effort to curb the possible surge of evictions due to the COVID-19 pandemic, assist Texas's most vulnerable tenants, and provide landlords with an alternative to eviction, the Court establishes the Texas Eviction Diversion Program and adopts the procedures set forth in this Order.

4. Eligibility for rental assistance under the Texas Eviction Diversion Program will be determined by the Texas Department of Housing and Community Affairs and its providers.

5. In any action for eviction to recover possession of residential property under Chapter 24 of the Texas Property Code and Rule 510 of the Texas Rules of Civil Procedure based, in whole or part, on the nonpayment of rent:

a. in addition to the contents required by Texas Rules of Civil Procedure 502.2 and 510.3, a sworn original, amended, or supplemental petition must state that the plaintiff has reviewed the information about the Texas Eviction Diversion Program available at www.txcourts.gov/eviction-diversion/;

b. in addition to the contents required by Texas Rule of Civil Procedure 510.4(a), the citation must include:

i. the following statement: "If you and your landlord agree to participate in the Texas Eviction Diversion Program, you may be able to have up to 15 months of the rent you owe paid and stop your

eviction. At your trial, the court will tell you about the Program and ask if you are interested in participating. Find out more about the Program in the attached brochure, titled State of Texas Eviction Diversion Program, at www.txcourts.gov/eviction-diversion/; and at <https://texaslawhelp.org/article/texas-eviction-diversion-program>. You may also call Texas Legal Services Center for assistance at 855-270-7655."; and

ii. the following Spanish translation of the statement in (i): "Si usted y el propietario están de acuerdo en participar en el Programa de Desvío de Desalojo del Estado de Texas, podrá ser elegible para recibir asistencia de hasta quince meses de pagos vencidos de su alquiler y detener su desalojo. En su audiencia de desalojo, el juez le dará información sobre este programa y le preguntará si desea participar en él. Encontrará más información sobre el programa en el folleto adjunto titulado Programa de Desvío de Desalojo del Estado de Texas. Puede visitar los siguientes enlaces para más información www.txcourts.gov/eviction-diversion o <https://texaslawhelp.org/article/texas-eviction-diversion-program>, o llamar al Centro de Servicios Legales de Texas (*en inglés, Texas Legal Services Center*) por teléfono al 855-270-7655."; and

iii. a copy of the informational brochure, titled State of Texas Eviction Diversion Program, prepared by the Texas Department of Housing and Community Affairs;

c. at the trial required by Texas Rules of Civil Procedure 510.6 and 510.7 or 510.10(c), the judge must:

i. discuss the Texas Eviction Diversion Program with the plaintiff and defendant;

ii. ask the plaintiff and defendant whether they are interested in participating in the Texas Eviction Diversion Program; and

iii. if the plaintiff and defendant both express an interest in participating in the Texas Eviction Diversion Program:

(A) abate the eviction action for 60 days;

(B) make all court records, files, and information—including information stored by electronic means—relating to the eviction action confidential to prohibit disclosure to the public; and

(C) inform the parties of the extension, reinstatement, and dismissal procedures outlined in Paragraphs 6, 7, and 8 of this Order; and

d. at the trial required by Texas Rule of Civil Procedure 510.10(c), if the plaintiff and defendant both express an interest in participating in the Texas Eviction Diversion Program, the judge must also instruct the justice court to make all court records, files, and information—including information stored by electronic means—relating to the eviction action confidential to prohibit disclosure to the public.

6. The judge may extend the 60-day abatement period under Paragraph 5(c)(iii) upon the plaintiff's request. Each extension must not exceed 60 days.

7. To reinstate an eviction action abated under Paragraph 5(c)(iii), the plaintiff must file a motion to reinstate with the court within the abatement period and serve a copy of the motion on the defendant. Upon the filing and service of the motion, the judge must sign and serve—in a method provided by Texas Rule of Civil Procedure 510.4—a written order that:

- a. reinstates the eviction action;
- b. sets the eviction action for trial as soon as practicable, but no later than 21 days after the date the order is signed;
- c. states the procedures for the action to proceed; and
- d. makes all court records, files, and information—including information stored by electronic means—relating to the eviction action non-confidential to allow disclosure to the public.

8. If the plaintiff does not file and serve a motion to reinstate an action abated under Paragraph 5(c)(iii) within the abatement period, the judge must dismiss the action, including any claims that do not involve the nonpayment of rent, with prejudice. All court records, files, and information—including information stored by electronic means—relating to the dismissed eviction action must remain confidential.

9. Paragraph 8 does not prohibit the plaintiff from filing an action for eviction based on future events or acts that

are an independent basis for eviction.

10. Even if the plaintiff and defendant do not express an interest in participating in the Texas Eviction Diversion Program at trial under Paragraph 5(c), they may later inform the judge of their interest in participating and, so long as a writ of possession has not issued, the judge must:

- a. set aside any judgment;
- b. make all court records, files, and information—including information stored by electronic means—relating to the eviction action confidential to prohibit disclosure to the public; and
- c. sign a written order stating the procedures that apply for reinstating the judgment or dismissing the eviction action.

11. The procedures for reinstating the judgment under Paragraph 10(c) must include making all court records, files, and information—including information stored by electronic means—relating to the eviction action non-confidential to allow disclosure to the public.

12. This Order is effective immediately and expires July 27, 2021, unless extended by the Chief Justice of the Supreme Court.

13. The Clerk of the Supreme Court is directed to:

- a. post a copy of this Order on www.txcourts.gov;
- b. file a copy of this Order with the Secretary of State; and
- c. send a copy of this Order to the Governor, the Attorney General, and each member of the Legislature.

14. The State Bar of Texas is directed to take all reasonable steps to notify members of the Texas bar of this Order.

Dated: April 28, 2021.

Nathan L. Hecht, Chief Justice
Eva M. Guzman, Justice
Debra H. Lehrmann, Justice
Jeffrey S. Boyd, Justice
John P. Devine, Justice
James D. Blacklock, Justice
J. Brett Busby, Justice
Jane N. Bland, Justice
Rebeca A. Huddle, Justice



What It Means to Be an **UNCOMMON LEADER**

IF I COULD SUM UP THIS BAR YEAR IN ONE WORD, it would be “resilience.” In this past year as president of the Texas Young Lawyers Association, I have witnessed our fellow attorneys gracefully navigate the difficulties imposed by the pandemic. Several of us lost loved ones, worked while monitoring the kiddos’ virtual schooling, survived having COVID-19, and experienced “SNOVID-19” in February yet managed to still serve the bar and the public. The board members of TYLA have truly exemplified what it means to be resilient.

I am sad that the new board members have never experienced the true camaraderie and the family that is formed while being on the TYLA board. We normally meet four times a year, sometimes five if attending the Annual Meeting in June. We work hard and spend time getting to know each other and our families. I am sad that the members who have been around for years but are ending their term of service did not get to say their goodbyes in person at our final meeting last month. Despite this, I have witnessed a board composed of members from across the state work together, support one another, and truly exemplify what it means to be an uncommon leader.

This year, the board surpassed what we set out to accomplish. There were times when we thought we might not be able to complete everything given the complications presented by the pandemic, but alas, the board came through! Due to the virtual nature of things, we were ultimately able to reach more people and spread the great work that TYLA has done. Our various TYLA Roadshows, which had record attendance numbers this year, were able to provide free CLE on topics varying from oil and gas, to how to advance from associate to partner, to a primer on the recent updates to the Texas Rules of Civil Procedure.

We gave young lawyers across the state the opportunity to speak on our new *Practice Areas 101* podcast as well as learned some valuable business development skills with the continuation of our *Young Gunners* series. For all the new litigators, we provided *Evidence and Predicates Guides* to serve as a quick reference tool. We also recently launched the *Leadership Toolkit*, which features a dynamic panel of leaders in our profession discussing the value of diversity in leadership.

At our final board meeting we virtually said goodbye to our fellow board members who ended their terms of service. We honored the board members who went above and beyond and exemplified the true meaning of an uncommon leader. We also awarded our fourth quarter champs, Hisham Masri, of Dallas, and Kirk Cooper, of El Paso, with the epic WWE-style wrestling belts for their outstanding contributions during one of the hardest times of the bar year.

**MASRI****COOPER**

As I conclude my last column as president, I want to thank every board member, our staff at the bar, and every person who assisted us this year. As we slowly come out of this pandemic and get back to “normal”—whatever that may look like—I am encouraged by the resilience I have seen this past year and know the best is yet to come. Farewell for now.

BRITNEY HARRISON

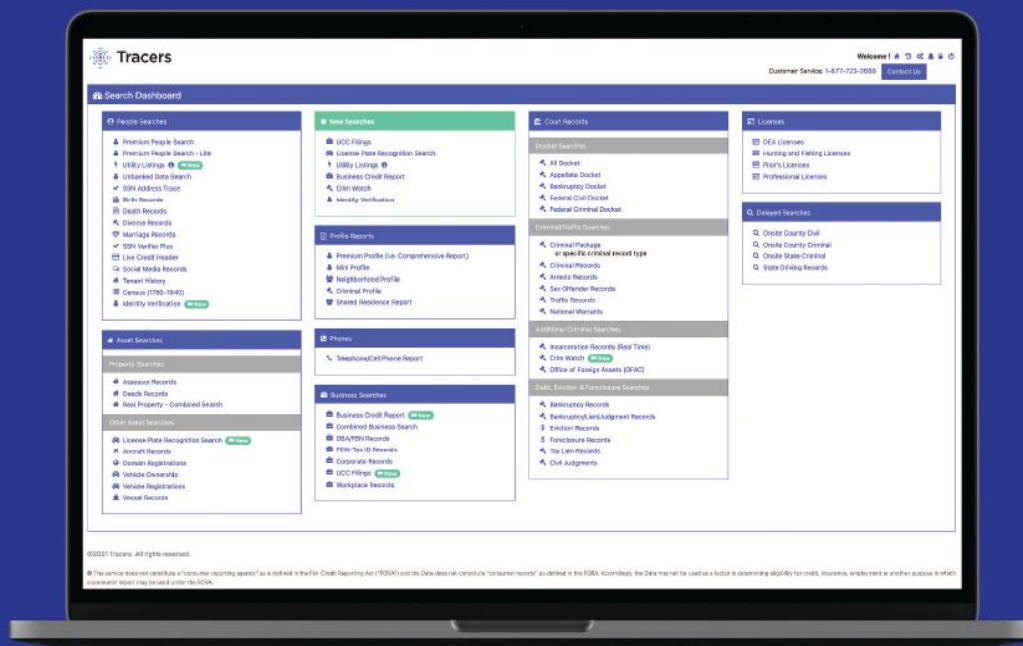
2020-2021 President, Texas Young Lawyers Association



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Essential MARKETING TRENDS IN 2021

BE PURPOSEFUL IN
YOUR CONTENT EFFORTS.

WRITTEN BY RUBY L. POWERS

2020 FOREVER CHANGED the practice of law and how to reach potential clients. Whether focusing on updating our firm's website, implementing a customer relationship management tool, or creating video content to better serve our clients, lawyers adapted. Here are a few essential marketing trends to follow in 2021.

Online Client Reviews

Client feedback in the form of online

reviews is more valuable than before for two reasons: Google weighs reviews more for search engine ranking than in years past and referrals have relied more on online reviews than word of mouth during COVID-19—not only for marketing purposes, but also to help improve the client experience. To ensure successful review collection, build systems to proactively collect client reviews on a regular basis and make the endeavor an entire firm-wide effort. Consider incentives for staff as well as procedures to include a request for review at least once before the case's end, if not before. Develop a Net Promoter Score system that regularly sends surveys to your clients to ask on a scale of 1-10 how likely they would recommend your firm to someone else. Depending on the results, keen clients can be sent a link for an online review and those who suggest room for improvement can be contacted to address concerns. Actively request reviews on various platforms, but Google, Facebook, Avvo, and LinkedIn have more value than others.

Online Video Content

With less in-person interaction, marketing trended more toward online video content in 2020, and now we can continue to refine it and grow our firm's audience. When deciding which outlet to project video content, you must consider your ideal client. Whether Facebook Live, YouTube, Instagram Live, LinkedIn, or TikTok, there are many options to choose from that best suit your target.

There are many formats to choose from: pre-planned topics in a webinar style, answering questions like a radio show, guest experts, and/or news updates or some combination of the above. You really can start with just a phone, tripod, and a free social media account that livestreams videos. Later, you can graduate to live streaming programs like StreamYard to take your videos to another level, post on multiple platforms at once, and add transcripts. With a paid Zoom account, you can even livestream on various platforms.

Make sure to be purposeful with your content and aim to funnel attention to your firm via the website, newsletter, and/or social media accounts to stay connected. Additionally, as with everything, calculate the return on investment and value add of the time and

work spent on the content creation and production.

Google My Business/Search Engine Optimization

Most firms by now have a Google My Business account. It's free and allows your firm to show up in search engine optimization, or SEO, results with all key information in one place (contact information, Google Map, website, reviews, hours of operation, and more). But don't let the simplicity fool you; make sure you either review it regularly or hire experts to optimize your account to fully engage with your potential clients and maximize your SEO potential.

SEO is always a moving target because search algorithms are constantly evolving. People are treating search engine experiences, be they web-based, mobile, or voice-activated, as conversational. They use layperson language, for inquiries like "Can I apply for a work visa if..." or "What do I need for the asylum application...". Make sure to stay updated on what your potential clients need to know and their frequently asked questions. Next, create content that answers those potential questions and use vocabulary clients use while searching.

Even though the last year has brought many changes to the expectations clients have for law practitioners, make an added focus on online client reviews, online video content, and maximizing your Google My Business and SEO potential in 2021! **TBJ**

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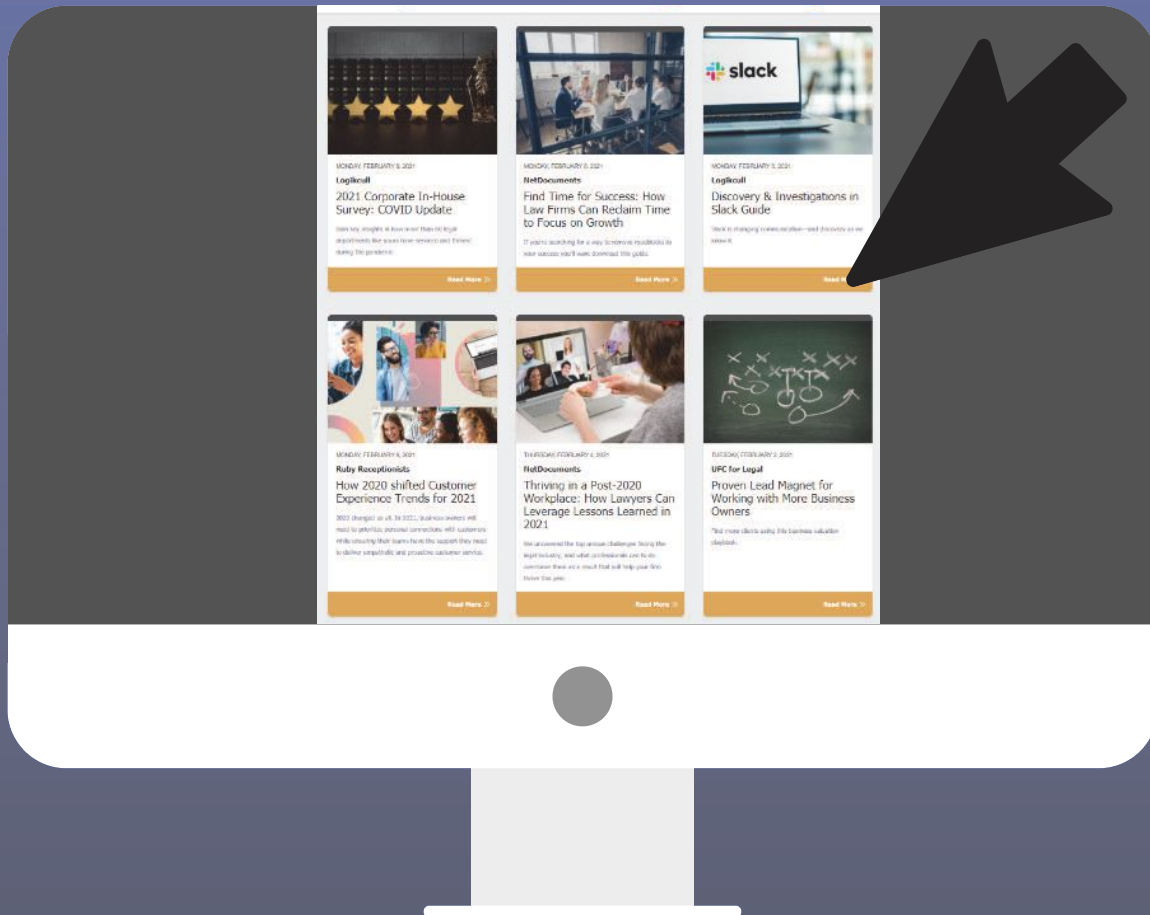
RUBY L. POWERS

is the founder of Powers Law Group, a Houston-based, full-service immigration law firm and is certified in immigration and nationality law by the Texas Board of Legal Specialization. She

authored the American Immigration Lawyers Association's *Build and Manage Your Successful Immigration Law Practice (Without Losing Your Mind)*. Powers is a law practice management consultant and coach with Powers Strategy Group (rubypowers.com). She has served as AILA's Law Practice Management chair and on the State Bar of Texas Law Practice Management Committee and the AILA Innovation Task Force. Powers currently serves on the Houston Bar Association Law Practice Management Section board and AILA Media Advocacy Committee. Connect with her at [linkedin.com/in/rubypowers/](https://www.linkedin.com/in/rubypowers/). Find more law practice management tips at [facebook.com/groups/poweruppractice](https://www.facebook.com/groups/poweruppractice).

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JUDICIAL ACTIONS

To read the entire public sanctions, go to scjc.texas.gov.

On April 9, 2021, the State Commission on Judicial Conduct issued a public reprimand and order of additional education to James Baldwin, justice of the peace, Precinct 1, Deanville, Burleson County.

On April 9, 2021, the State Commission on Judicial Conduct issued a public reprimand and order of additional education to Andy Isaacs, justice of the peace, Precinct 3, Rockdale, Milam County.

On April 9, 2021, the State Commission on Judicial Conduct issued a public warning and order of additional education to Fredericka Phillips, judge of the 61st District

Court, Houston, Harris County.

On May 4, 2021, the State Commission on Judicial Conduct issued an opinion on the Special Court of Review *In Re Inquiry Concerning The Honorable Lee Harper Wilson CJC Nos. 19-0755 & 19-0759*.

REINSTATEMENT

ALONZO RAMOS [#00797279], of Laredo, filed a petition in the 341st District Court of Webb County for reinstatement as a member of the State Bar of Texas.

DISBARMENTS

On March 22, 2021, **JOHN REX THOMPSON** [#19956150], of Tyler, was disbarred effective March 18, 2021. The District 2 Grievance Committee found that in September 2018, Thompson was hired for representation in a criminal matter. Thompson was paid \$1,800 on September 20, 2018, and \$700 on December 21, 2018. Thompson was actively suspended from practicing law on September 1, 2018, and has remained actively suspended since September 1, 2018, for failure to comply with a disciplinary judgment. On April 4, 2020, Thompson submitted a response to the grievance on letterhead that states, "Thompson Law Firm Rex Thompson, Attorney" even though Thompson was actively suspended and prohibited from using his name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer."

In April 2016, Thompson was hired for representation in two felony criminal matters pending in Smith County for a flat fee of \$7,500. In or about September 2016, Thompson stopped communicating with the client. Thompson failed to keep the client reasonably informed and failed to promptly comply with reasonable requests for information. On April 4, 2020, Thompson submitted a

response to the grievance on letterhead that states, "Thompson Law Firm Rex Thompson, Attorney" even though Thompson was actively suspended and prohibited from using his name, in any manner, in conjunction with the words "attorney at law," "attorney," "counselor at law," or "lawyer." In July 2014, Thompson was hired to sue a client's landlord. Thompson neglected to file suit until December 5, 2014, after the client sent certified mail to remind Thompson that the statute of limitations was going to expire. Thereafter, the case was dismissed for want of prosecution on March 3, 2015, because Thompson failed to notify the client of the trial date and failed to appear on the trial date. Further, on March 16, 2015, Thompson misrepresented to the client that Thompson would reinstate the lawsuit even though Thompson was on active suspension from January 1, 2015, until June 20, 2015. Despite being notified of the grievance, Thompson failed to submit a response to the grievance. In June 2017, Thompson was hired for representation in a criminal matter and was paid \$2,000. While representing the client, Thompson's law license was actively suspended and Thompson failed to notify the client that he could no longer practice law. On April 18, 2019, Thompson issued a refund check to the client that was returned due to insufficient funds. Despite being notified of the grievance, Thompson failed to submit a response to the grievance. Thompson neglected the legal matters entrusted to him and failed to keep his clients reasonably informed about the status of their legal matters. Thompson failed to hold client funds that were in Thompson's possession in connection with the representation separate from Thompson's own property, and upon termination of

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representation, Thompson failed to refund advance payments of fees that had not been earned. Thompson violated a disciplinary judgment and failed to respond to the grievances filed against him.

Thompson violated Rules 1.01(b)(1), 1.03(a), 1.14(a), 1.15(d), 8.04(a)(7), 8.04(a)(8), and 8.04(a)(11). He was ordered to pay \$2,000 in restitution and \$5,954.64 in attorneys' fees and direct expenses.

On March 10, 2021, **JOHN REX THOMPSON** [#19956150], of Tyler, was disbarred, effective March 2, 2021. The District 2 Grievance Committee found that on or about June 19, 2018, the complainant hired and paid Thompson \$1,738.26 to represent the complainant in connection with a criminal matter. Thompson made an appearance in the case on June 25, 2018, and withdrew on July 6, 2018, without providing any legal services or filing any substantive motions in the case. Upon termination of representation, Thompson failed to refund advance payments of the fee that had not been earned. Thompson failed to respond to the grievance.

Thompson violated Rules 1.15(d) and 8.04(a)(8). He was ordered to pay \$1,738.26 in restitution and \$3,837.50 in attorneys' fees and direct expenses.

RESIGNATIONS

On April 13, 2021, the Supreme Court of Texas accepted the resignation, in lieu of discipline, of **RICHARD E. JACKSON** [#10492980], of Coppell. At the time of Jackson's resignation, there was one pending matter against him alleging professional misconduct. Beginning in 1999, Jackson was the lead assistant district attorney assigned to prosecute Stanley Mozee and Dennis Allen for the murder of Rev. Jesse Borns Jr. Jackson failed to disclose evidence that tended to negate the guilt of Mozee and Allen to defense counsel,

including but not limited to, timely disclosure of details related to eyewitnesses' identification or description of Mozee and Allen or another alleged suspect.

Jackson allegedly violated Rule 3.09(d).

On April 13, 2021, the Supreme Court of Texas accepted the resignation, in lieu of discipline, of **WELDON RALPH PETTY JR.** [#15866500], of Midland. At the time of his resignation, Petty had three grievances pending alleging Petty represented opposing parties in the same related matter.

Petty violated Rule 1.06(b)(2).

SUSPENSIONS

On April 3, 2021, **JOE BEVERLY ABBEY** [#00789000], of Rowlett, received a 48-month partially probated suspension effective April 1, 2021, with the first 12 months actively served and the remainder probated. An investigatory panel of the District 6 Grievance Committee found that in January 2017, Abbey was hired to review documents relative to an international loan transaction and was wired \$30,696.97 to be held in escrow pending the closing of the loan. Thereafter, Abbey paid himself and other parties out of the escrow funds. When the loan transaction could not be completed and a dispute arose about the escrow funds, Abbey misrepresented that he was returning the funds when, in fact, Abbey paid the remaining funds to himself. Abbey failed to hold funds that were in Abbey's possession in connection with the representation separate from his own property and failed to keep the disputed funds separated until the dispute was resolved. Abbey knowingly failed to disclose a material fact and the disclosure was necessary to avoid making Abbey a party to a fraudulent act. Abbey engaged in conduct involving dishonesty, fraud, deceit, or

misrepresentation.

Abbey violated Rules 1.14(a), 1.14(c), 4.01(b), and 8.04(a)(3). He was ordered to pay \$30,696.97 in restitution and \$750 in attorneys' fees and direct expenses.

On March 31, 2021, **SCOTTIE ALLEN** [#01058020], of Dallas, agreed to a three-year fully probated suspension effective April 1, 2021. An investigatory panel of the District 6 Grievance Committee found that Allen represented the complainant in proceedings following a mistrial declared in a criminal matter. Upon termination of representation, Allen failed to surrender papers and property to which the complainant was entitled.

Allen violated Rule 1.15(d). He agreed to pay \$816 in attorneys' fees and direct expenses.

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On March 31, 2021, **YSIDRO DELUNA ARISMENDEZ III** [#24008750], of Beeville, agreed to a one-year fully probated suspension effective April 1, 2021. An evidentiary panel of the District 11 Grievance Committee found that Arismendez neglected a client's matter, failed to keep a client reasonably informed, and failed to return unearned fees.

Arismendez violated Rules 1.01(b)(1), 1.03(a), and 1.15(d).

On April 16, 2021, **KEITH BEST DUNBAR** [#24010802], of Texarkana, received a 24-month fully probated suspension beginning April 1, 2021, and ending on March 31, 2023. An investigatory panel of the District 1 Grievance Committee found that Dunbar was paid \$5,000 to represent a client in a child custody matter; thereafter, Dunbar failed to safeguard the client's funds, failed to render an

accounting of the funds, and failed to promptly refund the advance payment of fees that were not earned. Dunbar also represented another client in a divorce action and the client used a tax return refund to pay the retainer provided that Dunbar would return the remainder of the client's tax refund after he deducted his fees and expenses. Dunbar failed to render an accounting of the clients' funds and failed to promptly refund the advance payment of fees that were not earned.

Dunbar violated Rules 1.14(a), 1.14(b), and 1.15(d). He was ordered to pay \$2,625 in restitution to the first client and \$750 in attorneys' fees and direct expenses.

On March 29, 2021, **W. DAVID HOLLIDAY** [#09877300], of Dallas, received a fully probated suspension effective March 1, 2021, and ending

on May 31, 2021. An investigatory hearing panel of the District 6 Grievance Committee found that Holliday failed to hold client funds separate from his own property. Holliday had direct supervisory authority over his assistant and failed to make reasonable efforts to ensure that his assistant's conduct was compatible with the professional obligations of Holliday.

Holliday violated Rules 1.14(a) and 5.03(a). He was ordered to pay \$250 in attorneys' fees and direct expenses.

On April 2, 2021, **JAMIE TERENCE KATZEN** [#24065541], of Dallas, agreed to a 36-month fully probated suspension effective April 1, 2021. An investigatory panel of the District 6 Grievance Committee found that while representing a client, Katzen deliberately overbilled his client and misrepresented the reason for the overbilling. Katzen collected an unconscionable fee and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Katzen violated Rules 1.04(a) and 8.04(a)(3). He was ordered to pay \$500 in attorneys' fees and direct expenses.

On April 5, 2021, **JOHN JOSEPH KLEVENHAGEN III** [#90001652], of Houston, accepted a 12-month fully probated suspension effective April 5, 2021. An investigatory panel of the District 4 Grievance Committee found that Klevenhagen failed to keep his client reasonably informed about the status of her matter, failed to promptly deliver to the client funds that the client was entitled to receive, and failed to timely furnish to the Office of Chief Disciplinary Counsel a response or other information as required by the Texas Rules of Disciplinary Procedure.

Klevenhagen violated Rules 1.03(a),

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1.14(b), and 8.04(a)(8). He was ordered to pay \$500 in attorneys' fees and expenses.

On March 11, 2021, **PAMELA REGINA PARKER** [#11601950], of Easthampton, Massachusetts, accepted a three-year partially probated suspension [one year active and two years probated] effective May 1, 2021. An evidentiary panel of the District 9 Grievance Committee found that while representing a client in an employment matter, Parker failed to file her client's discrimination claim with the Equal Employment Opportunity Commission, or EEOC. Parker also failed to respond to her client's requests for information and explain the matter to the extent necessary for her client to make informed decisions. Additionally, Parker falsely represented to the client that she had filed an EEOC claim on the client's behalf. After the client discovered that Parker did not file her claim with the EEOC, Parker failed to timely refund the unearned portion of her fee and return the client's documents in her possession.

Parker violated Rule 1.01(b)(1), 1.03(a), 1.03(b), 1.14(b), 1.15(d), 8.01(a), and 8.04(a)(3). She was ordered to pay \$3,631.60 in attorneys' fees and direct expenses.

On February 24, 2021, **MANSEL C. TURTON** [#20345600], of San Antonio, received a 4-year partially probated suspension effective March 25, 2021, with the first six months actively served and the remainder probated. An evidentiary panel of the District 10 Grievance Committee found that Turton failed to hold the client's funds in a trust account separate from his own property and failed to promptly render a full account regarding the client's funds.

Turton violated Rules 1.14(a) and 1.14(b). He agreed to pay \$750 in

restitution and \$1,655 in attorneys' fees and direct expenses.

PUBLIC REPRIMANDS

On April 2, 2021, **ROBERT RAY FLORES** [#24071887], of Raymondville, accepted a public reprimand. An investigatory panel of the District 12 Grievance Committee found that Flores failed to timely file a response to a grievance.

Flores violated Rule 8.04(a)(8). He was ordered to pay \$800 in attorneys' fees and direct expenses.

On April 5, 2021, **JOHN JOSEPH KLEVENHAGEN III** [#90001652], of Houston, accepted a public reprimand effective April 5, 2021. An investigatory panel of the District 4 Grievance Committee found that Klevenhagen failed to promptly deliver to a third person funds that the third person was entitled to

receive and failed to timely furnish to the Office of Chief Disciplinary Counsel a response or other information as required by the Texas Rules of Disciplinary Procedure.

Klevenhagen violated Rules 1.14(b) and 8.04(a)(8). He was ordered to pay \$250 in attorneys' fees and expenses.

On March 24, 2021, **JUSTIN AVERY MOORE** [#24088906], of Dallas, agreed to a public reprimand. The District 6 Grievance Committee found that on or about February 16, 2018, the complainant hired Moore to file a defamation lawsuit. Moore was paid \$5,000 in advance legal fees. Upon termination of representation, Moore failed to refund advance payments of the fee that had not been earned.

Moore violated Rule 1.15(d). He was ordered to pay \$2,500 in

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JIM BURNHAM

Former Chairman of the State Bar
District 6 Grievance Committee

Former President of the Dallas Bar
Association

Former Dallas Assistant District
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Dallas Bar Association Trial Lawyer
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State Bar of Texas
Disciplinary Rules of Professional
Conduct Committee
Member, 1993-1996

Disciplinary
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Member, 1991-1992

Texas Bar Foundation, Fellow
State Bar of Texas, Member
Brazos County Bar Association, Member
Austin Bar Association, Member



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restitution and \$800 in attorneys' fees and direct expenses.

On April 1, 2021, **GAYLENE ROGERS** [#17166500], of Dallas, agreed to a public reprimand. An investigatory panel of the District 6 Grievance Committee found that in June 2019, Rogers was retained by the complainant to draw up a partnership agreement for a residential property. In representing the complainant, Rogers neglected the legal matter entrusted to her by failing to complete any legal work. Rogers failed to keep the complainant reasonably informed about the status of her legal matter and failed to promptly comply with reasonable requests for information from the complainant. In August 2017, Rogers, acting as an escrow officer, closed on a loan between the complainant's private lending

company and another company. Rogers maintained funds in her trust account that were to be used for title insurance, but Rogers failed to obtain the insurance.

Rogers violated Rules 1.01(b)(1), 1.03(a), and 1.14(b). She was ordered to pay \$3,000 in restitution and \$500 in attorneys' fees.

PRIVATE REPRIMANDS

Listed here is a breakdown of Texas Disciplinary Rules of Professional Conduct violations for six attorneys, with the number in parentheses indicating the frequency of the violation. Please note that an attorney may be reprimanded for more than one rule violation.

1.01(b)(1)—for neglecting a legal matter entrusted to the lawyer (2).

1.01(b)(2)—In representing a client, a lawyer shall not: Frequently fail to carry out completely the obligations

that the lawyer owes to a client or clients (2).


1.03(a)—for failing to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information (3).

1.03(b)—A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (1).

1.14(b)—Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property (1).

1.15(d)—Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payments of fees that have not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation (2).

8.04(a)(8)—A lawyer shall not fail to timely furnish to the Office of Chief Disciplinary Counsel or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so (6). **TBJ**




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CENTRAL

CAREY TROELL is now a partner in Locke Lord in Austin.

MARSHALL A. BOWEN is now an attorney with Butler Snow in Austin.

LEWIS J. TANDY is now an associate of Fritz, Byrne, Head & Gilstrap in Austin.

DARRYL W. PRUETT is now of counsel to Eichelbaum Wardell Hansen Powell & Muñoz in Austin.

ANDREA CUNHA, previously with Waller Lansden Dortch & Davis, is now a partner in K&L Gates in Austin.

CLINTON W. ALEXANDER is now a partner in and **EMILY R. YANG** is now an associate of Barnes Lipscomb Stewart & Ott in Austin.

BREE BUCHANAN is now president of the Institute for Well-Being in Law in Austin.

GULF

SAMUEL L. JOHNSON is now of counsel to Coats Rose in Houston.

JAY ALDIS is now a partner in and **JEREMY WALTER** and **DARIEN HARRIS** are now associates of Gray Reed & McGraw in Houston.

DONALD P. WALKER, previously with Texas Children's Hospital, is now a partner in K&L Gates in Houston.

CRAIG ESTLINBAUM, previously with the 130th District Court, is now of counsel to Wadler, Perches, Hundl & Kerlick in Bay City. **BRIAN C. BANKHEAD** is now an associate in the firm's Fulshear office.

CASEY KHAN is now counsel to Sidley Austin in Houston.

PEYTON B. HOPKINS and **CHRISTINE D. HERRON** are now of counsel to the Edwards Law Firm in Houston. Herron also received the Young Alumnus Award from South Texas College of Law Houston.

K. NICOLE VOYLES, previously with Tindall England, and **MARJORIE MAXWELL**, previously with the Maxwell Law Firm, are now senior attorneys with Laura Dale & Associates in Houston.

MATT STIRNEMAN is now senior counsel to Chamberlain, Hrdlicka, White, Williams & Aughtry in Houston.

RYAN HARTMAN is now a partner in Arnold & Porter Kaye Scholer in Houston.

JEREMY MOORE is now a partner in Baker McKenzie in Houston.

NEAL MANNE, of Susman Godfrey in Houston, received the John Minor Wisdom Public Service and Professionalism Award from the American Bar Association Litigation Section.

COURTNEY GAHM-OLDHAM, of Frost Brown Todd in Houston, was elected a Texas Bar Foundation fellow.

NORTH

WILLIAM G. "BILL" WHITEHILL, previously with the 5th Court of Appeals in Dallas, is now a member in Condon Tobin Sladek Thornton Nerenberg in Dallas.

JESSICA HAMMONS and **WESLEY P. WILLIAMS**, both previously with Thompson & Knight, are now partners in Akin Gump Strauss Hauer & Feld in Dallas and Fort Worth.

THOMAS RAYMOND EMMET is now a partner in Dankesreiter & Emmet in Flower Mound.

MARK G. DANIEL, of Fort Worth, was inducted in the Texas Criminal Defense Lawyers Association Hall of Fame.

KATHERINE E. SOLEY and **KELSEY N. LINENDOLL** are now associates of Padfield & Stout in Fort Worth.

KIRBY DRAKE is now founder and managing partner in Kirby Drake Law, 3904A Elm St., Dallas 75226.

ELIZABETH FITCH and **MARK PENDLETON** are now shareholders in Hallett & Perrin in Dallas.

JANE CHERRY is now an associate of Manning & Meyers in Dallas.

SOUTH

EMILY A. GEARHART and **MATTHEW J. MCGOWAN** are now associates of Santoyo Wehmeyer in San Antonio.

HOUSTON HARLLEE BERGER, previously with Golden Steves & Gordon, is now an attorney with Hornberger Fuller Garza & Cohen in San Antonio. **TBJ**



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Beth Hearn Owens
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Melissa Schreiber Hill
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NICK D. WOODALL

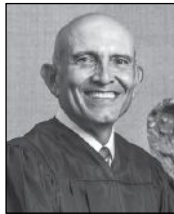
Woodall, 64, of Poetry, died May 21, 2020. He received his law degree from Baylor Law School and was admitted to the Texas Bar in 1981. Woodall

was an associate of Fanning & Harper from 1981 to 1982; an assistant district attorney in the Dallas County District Attorney's Office in 1982; served as district attorney of Rockwall County from 1982 to 1986, being the youngest elected prosecutor in Texas; a partner in Woodall & Short from 1986 to 1994; practiced financial planning from 1994 to 2007; and was a shareholder in various corporations related to oil and gas, real estate, and movie production from 2007 to 2020. He was a follower of Jesus Christ and an active member of Lakepointe Church. Woodall was a voracious reader and a Baylor University and Dallas Mavericks fan. He was a committed husband, father, grandfather, brother, son, and friend. Woodall is survived by his wife, attorney Nancy Griffin Woodall; daughter, Katherine Woodall Simonitch; sons, Thomas G. Woodall, Stephen A. Woodall, and Jonathan M. Woodall; mother, Vatona Woodall; brother, Gregg D. Woodall; and three grandchildren.

JAMIE C. BOYD

Boyd, 92, of Las Cruces, New Mexico, died February 5, 2021. He served in the U.S. Army Air Corps from 1946 to 1948. Boyd received his law degree

from the University of Texas School of Law and was admitted to the Texas Bar in 1958. He was an assistant city attorney with the city of Austin, assistant county attorney for El Paso County, state district attorney for the 13th Judicial District of Texas, was appointed U.S. district attorney for the U.S. District Court for the Western District of Texas by President Jimmy Carter, and served two terms as U.S. magistrate for the U.S. District Court for the Western District of Texas. Boyd is survived by his wife, Sue Boyd.

PHILIP R. MARTINEZ

Martinez, 63, of El Paso, died February 26, 2021. He received his law degree from Harvard Law School and was admitted to the Texas Bar in 1982.

Martinez was an attorney with Kemp, Smith, Duncan & Hammond in El Paso from 1983 to 1991, judge of El Paso County Court at Law 1 in El Paso from 1991 to 1994, judge of the 327th District Court in El Paso from 1994 to 2002, and judge of the U.S. District Court for the Western Division of Texas in El Paso from 2002 to 2021. He was named El Paso Young Lawyers Association Outstanding Jurist in 2002 and a University of Texas El Paso Distinguished Alumnus in 2002. Martinez served as chair of the American Bar Association National Conference of Federal Trial Judges in 2002. He was committed to the law with a passion for justice. Martinez was a firm believer in the power of education. He was an avid golfer and lover of music and playing the piano. Martinez is survived by his wife of 36 years, Mayela C. Martinez; daughters, attorney Jaclyn E. Martinez Resly and Lauren A. Martinez Supnet; father, Philip Martinez Sr.; mother, Evangelina Martinez; brothers, Richard, Roger, and Patrick Martinez; sister, Rebecca Martinez Sanchez; and one grandson.

JAMES R. HUNT

Hunt, 89, of Houston, died March 21, 2021. He received his law degree from South Texas College of Law and was admitted to the Texas Bar in 1963.

Hunt was an attorney with Adams & Granberry in Crockett; Trinity River Authority of Texas in Huntsville; Tillman, Pribilski & Hunt in Houston; and the Law Office of James R. Hunt. He enjoyed working on his ranch in Crockett and deer hunting. Hunt was an avid Dallas Cowboys fan. He is survived by his wife of 61 years, Gail Hunt; son, John Raleigh Hunt; daughters, Lora Anne Swonke and Jamie Elizabeth Yuna; and five grandchildren.

CHARLES L.H. STAUB

Staub, 33, of Houston, died December 31, 2020. He received his law degree from the University of Houston Law Center was admitted to the Texas

Bar in 2017. Staub was an attorney at Daspit Law Firm in Houston and MacIntyre, McCulloch & Stanfield in Houston. He was a marathon runner and enjoyed watching baseball and playing fantasy football. Staub was devoted to his golden retriever, Dakota, who he raised from a puppy in college. He is survived by his father, Charles L.H. Staub; mother, Dale DeSanto Staub; sisters, Dale Alexandra Staub and Jacqueline Reed Staub; and grandmother, Mabel DeSanto.

THOMAS MATTHEW BRANIFF

Braniff, 75, of Houston, died February 12, 2021. He received his law degree from St. Mary's University School of Law and was admitted to the Texas Bar in 1970.

Braniff was broker, shareholder, and general counsel to James J. Braniff & Company in the 1970s; he founded Texas Insurance Consulting in the 1980s; founded Braniff Attorneys | Counselors with his wife, son, and son-in-law in 2007; and formed Insurance Forensics with Robert Gaddis in 2010. Gov. Rick Perry appointed him to the Texas Windstorm Insurance Association Advisory Committee. Braniff served as president of the Independent Insurance Agents of Texas and seven terms as president of the American Association of Insurance Management Consultants. He received the Paige Iland Political Action Award from the Independent Insurance Agents of Texas. Braniff was known among family, friends, and colleagues for his sharp mind, quick wit, affection for blues music, and lifetime friendships. He is survived by his wife, attorney Wendall Braniff; son, attorney Rhett Braniff; daughter, Farrah Braniff; brothers, James J. Braniff III and John R. Braniff; sisters, Tenie Braniff and Ginny Braniff; and six grandchildren.

DANIEL W. DALY III

Daly, 78, of Houston, died January 15, 2021. He received his law degree from the University of Oklahoma College of Law and was

admitted to the Texas Bar in 1968. Daly was an estate tax attorney with the IRS from 1967 to 1969; an advanced underwriter at American General Insurance Company from 1969 to 1972; a partner in Chamberlain, Hrdlicka, White, Johnson & Williams from 1972 to 1987, where he served as co-head of the Estate Section and on the Executive Committee; managing attorney of Jenkins & Gilchrist from 1988 to 1991; partner in Brown McCarroll from 1991 to 2006; and managing partner in Oaks, Hartline & Daly from 2006 to 2021. He would light up the room with his larger-than-life personality and positive attitude. Daly loved to tell stories, entertain with friends, and travel the world with the love of his life, Paula, especially to Paris. He was kind, generous, and loving and will be deeply missed. Daly is survived by his wife of 25 years, Paula Muecke Daly; son, William Daly; daughters, Elizabeth Valdes and Sara Edgcomb; stepsons, David Perrin and Andrew Perrin; stepdaughter, Paige Perrin; brothers, David Daly and attorney Tom Daly; sister, Marcia McAndrew; and 10 grandchildren.

FRANK MADISON GILSTRAP

Gilstrap, 78, of Austin, died January 17, 2021. He received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1967. Gilstrap was an attorney for more than 40 years, handling over 200 appeals, and argued before the U.S. Supreme Court, Texas Supreme Court, five Federal Circuit Courts of Appeals, and 12 Texas Courts of Appeals. He had an unquenchable thirst for knowledge and loved reading, especially books about history. Gilstrap enjoyed spending holidays with his family and friends while football games

played in the background. He was an avid traveler and took many trips to Europe, where he was able to see and talk about the many cities, cathedrals, and battlefields that he had read so often about. Gilstrap is survived by his wife, Dorothy Gilstrap; daughters, Lessie Gilstrap and Alyse Freeman; brothers, David Gilstrap and Randy Gilstrap; and two grandchildren.

CECIL LADON "DON" STRONG

Strong, 86, of San Antonio, died July 30, 2020. He served in the U.S. Air Force from 1955 to 1957. Strong received his law degree from St. Mary's

University School of Law and was admitted to the Texas Bar in 1972. He was a claims attorney for Travelers Insurance in San Antonio from 1972 to 1992 and an associate of Flahive, Ogden & Latson in Austin from 1992 to 1997. Strong was a member of Coker United Methodist Church. He and his wife were Red Cross volunteers. Strong was a friendly, kind, and gentle husband, father, and grandfather. He is survived by his wife of 61 years, Arlene Strong; daughters, Nola Ostrowski and Lori Forrest; four grandchildren; and one great-granddaughter.

JOHN ROBERT LIVELY

Lively, 78, of Fort Worth, died March 2, 2021. He received his law degree from the University of Texas School of Law and was admitted to the Texas

Bar in 1968. Lively was an assistant city attorney in the Fort Worth City Attorney's Office from 1968 to 1970 and in private practice from 1970 to 2021, including working with his son, John Jr. He was a member of the Tarrant County Bar Association, including chairing the Fee Arbitration Committee; a Texas Bar Foundation life fellow; and was recognized as a 50-Year Lawyer in 2019. Lively was a member of the Fort Worth Airpower Council, THATT Syndicate, Fort Worth Stock Show Syndicate, Steeplechase Club, and the Ambassador Club in New Orleans. His passion for gardening was well known

as he constantly shared his produce with family and friends. Lively passed his knowledge and love of gardening to his grandsons whom he taught to plant, grow, and harvest vegetables. He got his most pleasure from spending summers in Colorado and at his house in the mountains of North Carolina. Lively is survived by his wife of 52 years, Brooke Kelly Lively; daughters, Brooke E. Lively and Lauren Lively Schmid; son, attorney John R. Lively Jr.; brother, James O. Lively; sister, Susanne Lively Gilmore; four grandchildren; and two step-grandchildren.

BRADFORD L. MOORE

Moore, 68, of Brownfield, died January 2, 2021. He received his law degree from Texas Tech University School of Law and was admitted

to the Texas Bar in 1978. Moore was an attorney with McGowan & McGowan in Brownfield from 1978 to 1990 and a solo practitioner in Brownfield from 1990 to 2021. He held various offices with the Brownfield Bar Association, was a Texas Bar Foundation fellow, and was a member of the West Texas Bankruptcy Bar Association. Moore composed and recorded Christian music. He enjoyed spending time with family and passing his fishing and carpentry skills to his children and grandchildren. Moore is survived by his wife of 49 years, Carmie Chaffin Moore; daughters, April Pier and Ashli Moore; brother, Bill R. Moore; sisters, Judy Davis and Pamela Oneal; and five grandchildren.

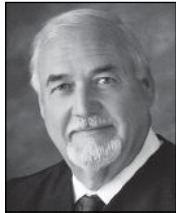
JAMES BERL CRAFT

Craft, 86, of Kyle, died February 9, 2021. He received his law degree from the University of Houston Law Center and was admitted to the Texas

Bar in 1973. Craft was admitted to practice in Colorado in 1982. He was an attorney with George Red Law Firm in Houston in 1974; a partner in Soap, Foster, Halla & Craft in Houston from 1975 to 1982; and vice president and in-house counsel to Guaranty National Insurance Company in Englewood,

Colorado, from 1982 to 1998. Craft was a trial lawyer and devoted much time to pro bono efforts. He was ombudsman for the Orange County (California) Council on Aging. Craft is survived by his wife of 53 years, Kay Carpenter Craft; daughters, Kelly Wilson, Heather Elliott, Elizabeth Jordan, and Kate Craft; and eight grandchildren.

DAVID EDWARD GARNER



Garner, 71, of League City, died January 18, 2021. He served in the U.S. Army Reserve from 1971 to 1979, being honorably discharged as a captain. Garner received his law degree from the University of Houston Law Center and was admitted to the Texas Bar in 1974. He was assistant criminal district attorney in the Galveston County District Attorney's Office from 1975 to 1980, in private practice in League City from 1980 to 1984, a partner in Garner, Walker, Froescher in League City and Galveston from 1985 to 1992, judge of the 10th Judicial District Court in Galveston from 1993 to 2012, and a senior judge from 2013 to 2021. Garner served on the Texas Young Lawyers Association Board of Directors, served as president of the Galveston County Bar Association, and was a Texas Bar Foundation fellow. He enjoyed traveling, reading, and golfing. Garner is survived by his wife of 50 years, Linda Longoria Garner; sons, Jason Matthew Garner and Daniel Edward Garner; daughter, Shannon Marie McClellen; brothers, Charles Garner Jr. and Nathan Garner; sisters, attorney Margaret Mirable, Katherine Vanya, and Natalie Sanders; and five grandchildren.

HAROLD EDWARD MOORE



Moore, 92, of Arlington, died November 4, 2020. He served in the U.S. Army and was honorably discharged as a second lieutenant. Moore received his law degree from the University of Texas School of Law and

was admitted to the Texas Bar in 1957. He was admitted to practice before the U.S. Supreme Court. Moore worked in the Texas Attorney General's Office in Austin before joining the Industrial Relations Department of General Dynamics in Fort Worth and was general manager of the North Texas Contractors Association. He taught labor relations at the University of Texas at Arlington for many years. Moore was certified in labor and employment law by the Texas Board of Legal Specialization and was certified by the Federal Mediation and Conciliation Service. He published arbitration opinions in 25 volumes of the *Labor Relations Reporter*, as well as in the *Bureau of National Affairs*. Moore was a member of the National Academy of Arbitrators and was an American Arbitration Association panel member. He was a member of the Knights of Columbus, Rotary Club, Sigma Alpha Epsilon fraternity, and an active member of his church, serving as an usher and leader of the men's discussion group. Moore is survived by his wife, Nona Aston Moore; daughters, Tracey Suzanne Hill and Marena LeMasters Gault; sister, Joan Kerr; and four grandchildren.

RUSSELL E. PAINTON



Painton, 80, of Rockport, died December 9, 2020. He received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1972. Painton was an associate of Brown, Maroney, Rose, Baker & Barber in Austin from 1972 to 1973; an associate of Childs Fortenbach Beck & Guyton in Houston in 1973; and vice president, corporate secretary, and general counsel to Tracor Inc. in Austin from 1974 to 1998. He received the American Jurisprudence Award in 1972 and was named Austin Legal Professionals Association Boss of the Year in 1981. Painton enjoyed sailing (racing and cruising), computers, and traveling. He is survived by his wife of 40 years, Mary Lynn Weber Painton; son, Todd E. Painton; brother, Gary M. Painton; and five grandchildren.

ROBERT MARK PAYNE



Payne, 63, of San Antonio, died February 27, 2021. He received his law degree from South Texas College of Law and was admitted to the Texas Bar in 1990. Payne was admitted to practice in Pennsylvania in 2010. He was an associate of Locke Liddell & Sapp in Houston from 1990 to 1991, a founding partner in Payne and James in Houston from 1992 to 2008, general counsel to Wagner Oil Company in Fort Worth from 2008 to 2009, and a partner in Burleson in San Antonio from 2009 to 2013. Payne was an artist in his spare time and loved hunting and fishing. He enjoyed watching football and Baylor sports. Payne is survived by his wife of 40 years, attorney Jana Payne; sons, attorney Clay Payne and Cole Payne; mother, Wanda Lu Alford Payne; sister, Sally Mitchell; and one grandson.

JOHN M. PINCKNEY III



Pinckney, 80, of San Antonio, died December 26, 2020. He served in the U.S. Marine Corps as an infantry officer from 1963 to 1967. Pinckney received his law degree from American University Washington College of Law and was admitted to the Texas Bar in 1971. He served in various positions in the federal government in Washington, D.C., including in the Office of Management and Budget and the Executive Office of the President from 1967 to 1972; was assistant U.S. attorney of the U.S. District Court for the Western District of Texas from 1973 to 1975 and first assistant U.S. attorney of the U.S. District Court for the Western District of Texas from 1975 to 1977; entered private practice in 1977, including time with Matthews, Nowlin, Macfarlane & Barrett; Matthews & Branscomb; Wells, Pinckney, McHugh; Strasburger & Price, and others until 2020; and was senior counsel to Clark Hill Strasburger in 2020. Pinckney served as chair of the State Bar of Texas 10-A

Grievance Committee. He was certified in criminal appellate law and civil trial law by the Texas Board of Legal Specialization and tried more than 150 jury cases to verdict. Pinckney was a competitor with a deep-seated sense of integrity and loyalty in life, family, and the practice of law. He was a University of Texas Longhorns baseball letterman. Pinckney was a handball player, a committed fan of University of Texas sports, and he enjoyed watching baseball, especially the Houston Astros. He was a storyteller, having an incredible memory; an avid reader, with a special interest in American history, the Constitution, and all things political. Pinckney is survived by his wife of 57 years, Janice A. Pinckney; son, John M. Pinckney IV; daughter, J. Kemper Pinckney; brother, Roger Pinckney; sister, Mary Sue Neptune; and four grandchildren.

WILLIAM THOMAS "TOM" McDONALD JR.



McDonald, 81, of Bryan, died February 17, 2021. He received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1965. McDonald was an assistant district attorney in the Travis County District Attorney's Office in Austin from 1966 to 1967, assistant county and assistant district attorney in the Brazos County District Attorney's Office in Bryan from 1967 to 1968, Brazos County attorney in Bryan from 1968 to 1977, judge of the 85th Judicial District Court in Bryan from 1978 to 1990, senior district judge of the 85th Judicial District Court in Bryan from 1991 to 2021, and a mediator/arbitrator in Bryan from 1991 to 2021. McDonald received the State Bar of Texas Criminal Justice Section Outstanding Jurist of the Year Award in 1987, the Texas Bar Foundation Samuel Pessarra Outstanding Jurist Award in 1995, and was recognized as a distinguished mediator by the Texas Mediator Credentialing Association in 2004. He had an unwavering commitment to addressing social issues. McDonald had an unquenchable interest in American history, politics, and the environment.

He was committed to his church, having a hand in most everything that went on at St. Andrew's Episcopal Church in Bryan. McDonald is survived by his wife of more than 50 years, Caroline Sweeney McDonald; sons, Scott McDonald and Don McDonald; sister, Lucy Sanders; and two grandchildren.

SYBIL BALASCO



Balasco, 97, of Houston, died April 2, 2021. She received her law degree from the University of Houston Law Center and was admitted to the Texas Bar in 1956. Balasco was an attorney with Seymour Lieberman and Bert Wheeler; founded Balasco & Balasco with her late husband, Ralph; was appointed as referee to the Houston courts by Texas Rep. William Marshall Elliott; and was an associate judge in the Harris County Domestic Relations Court before retiring in 1984. She traveled the world with her husband in retirement, from Russia and China to Scandinavia and France, Paris being a particularly special place to her. Balasco frequented Taos, New Mexico, where she and her husband developed an appetite for Southwestern art, including sculpture and pottery. Friendships were important to her and she maintained relationships with friends throughout her many years. Balasco is survived by her brother, Herschel Premack.

WILLIAM H. MONTGOMERY



Montgomery, 90, of McCall, Idaho, died December 26, 2019. He served in the U.S. Marine Corps during the Korean War and retired after 20 years in the Marine Corps Reserve as a major. Montgomery received his law degree from Seton Hall Law School and was admitted to the Texas Bar in 1980. He was admitted to practice in New Jersey in 1970, the U.S. Supreme Court in 1975, and the U.S. Patent and Trademark Court in 1984. Montgomery was a chemical engineer at Monsanto in Michigan and New Jersey; corporate counsel to Lummus Corporation in

Bloomfield, New Jersey, from 1970 to 1980; corporate counsel to CREST Engineering Services, Vetco Gray, and ABB in Houston from 1978 to 2006; and U.S. Patent Attorney Consulting in Houston from 1984 to 2008. He received chemical engineering and MBA degrees from the University of Michigan. Montgomery's interests included a passion for offshore sailing, small aircraft flying, traveling, and a lifelong love of learning. He is survived by his wife of 62 years, Shirley Montgomery; daughters, Ann Montgomery and Judy Montgomery; and two grandsons.

PAUL E. LOKEY



Lokey, 81, of Dallas, died December 20, 2020. He received his law degree from Baylor Law School and was admitted to the Texas Bar in 1964. Lokey was an attorney at various firms in Dallas from 1964 to 2014, including Paul E. Lokey & Co. from 1983 to 2014. He is survived by his wife of 37 years, Liz M. Lokey; son, Keith Paul Lokey; daughters, Tracey Lokey, Stephanie Lokey, and Kristi Lokey; nine grandchildren; and three great-grandchildren.

ROBERT JACKSON GRANT



Grant, 91, of Abilene, died February 16, 2021. He served in the U.S. armed forces from 1946 to 1948. Grant received his law degree from Southern Methodist University School of Law and was admitted to the Texas Bar in 1972. He was a lawyer with Jack Grant in Fort Worth from 1972 to 1978, first assistant district attorney in the Taylor County District Attorney's Office in Abilene from 1978 to 1988, and judge of Taylor County Court at Law #1 in Abilene from 1988 to 2002. Grant preached for 25 years and taught business law at Abilene Christian University. He is survived by his wife of 68 years, Betty Phillips Grant; sons, David and Glenn; daughter, Dianne Kirk; eight grandchildren; and 10 great-grandchildren.

EARLE P. MARTIN III

Martin, 65, of Houston, died December 31, 2020. He received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1980. Martin was an associate of Vinson & Elkins in Houston from 1980 to 1983. He is survived by his wife of 31 years, Deborah Martin; sons, Tom, Daniel, and Grant Martin; father, Earle P. Martin Jr.; brother, Grant Martin; and sister, Melinda Stubbs.

WALTER HUGH HARRELL

Harrell, 96, of Lubbock, died March 30, 2021. He served in the U.S. Army from 1944 to 1946. Harrell received his law degree and LL.M. from Baylor Law School and was admitted to the Texas Bar in 1950. He was a solo practitioner in Lubbock from 1951 to 2014 and in Longview from 2014 to 2020. Harrell was admitted to practice before the U.S. Supreme Court. He loved anything that was connected with Baylor University. Harrell enjoyed playing tennis, hunting, and fishing. He is survived by his wife of 65 years, Dorothy Harrell; sons, Gary Harrell and Stephen Harrell; daughter, Deborah Harrell Wasson; three grandchildren; and two great-grandchildren.

WILLIAM RANDOLPH "RANDY" SAVAGE

Savage, 76, of Meadowlakes, died February 7, 2021. He received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1969. Savage was an attorney with the Small Business Administration in Corpus Christi from 1970 to 1971, with Jake Jarmon in Corpus Christi from 1971 to 1972, and with the SBA in Wilkes-Barre, Pennsylvania, from 1972 to 1973; a solo practitioner in Marble Falls from 1973 to 2002; and judge of

Burnet County Court at Law in Burnet from 2002 to 2014. He was vice president of the Burnet County Bar Association and president of the Hill County Bar Association. Savage enjoyed traveling, camping, and family get-togethers. He is survived by his wife of 53 years, Kathryn Alger Savage; sons, Michael, Greg, Jeffrey, and Robert; sister, Mary Ann Savage Fletcher; and seven grandchildren.

STELLA ORTIZ KYLE

Kyle, 70, of San Antonio, died January 31, 2021. She received her law degree from St. Mary's University School of Law and was admitted to the Texas Bar in 1987. Kyle was an attorney in the San Antonio City Attorney's Office from 1987 to 1993, presiding judge of San Antonio Municipal Court from 1993 to 2002, a solo practitioner focusing on family law in San Antonio from 2002 to 2013, and judge of Cibolo Municipal Court from 2003 to 2010. She was the first female presiding judge of the San Antonio municipal court. Kyle served on the Texas Judicial Council from 1997 to 1999 and was president of the Texas Municipal Courts Association from 1998 to 1999. She enjoyed traveling, snow skiing, water skiing, and reading. Kyle had a Ph.D. in psychology from the University of Texas. She is survived by her sons, Peter Christopher Kyle III and Joshua Todd Kyle; mother, Irene Polanco Ortiz; brother, Manuel "Manny" Ortiz; and three grandchildren.

JEFFREY GARNER HAMILTON

Hamilton, 50, of Dallas, died October 5, 2020. He received his law degree from Emory University School of Law and was admitted to the Texas Bar in 1995. Hamilton was a briefing attorney for Judge Terry R. Means, of the U.S. District Court for the Northern District of Texas, in Fort Worth from 1995 to 1997; an associate of and partner in Jackson Walker in Dallas from 1997 to 2017; and a

partner in Calhoun, Bhella & Sechrest in Dallas from 2018 to 2020. He was the notes and comments editor for the *Emory Law Journal* and a member of the Order of the Coif. Hamilton was a sports fan and enjoyed snow skiing and spending time with his family. He is survived by his son, Cade William Hamilton; daughter, Claudia Elise Hamilton; father, David Morse; mother, Judy Hamilton Morse; brother, Bryan William Hamilton; and sisters, Lindsey Katherine Heinz and Ashley Brooke Morse.

DONNA RUTH THOMAS

Thomas, 88, of Pasadena, died January 14, 2021. She received her law degree from the University of Houston Law Center and was admitted to the Texas Bar in 1973. Thomas was in private practice in Deer Park and Shoreacres from 1973 to 1996, a judge for Morgan's Point from 1998 to 2008, in private mediation, and an adjunct faculty member in law for the University of Houston-Clear Lake from 1996 to 2009 and Legal Foundations of Education at Concordia University in 2009. She was a member of the American Bar Association, Houston Bar Association, and Pasadena Bar Association. Thomas was chair of the Deer Park Charter Review Committee from 1974 to 1975, a member of the Deer Park Chamber of Commerce from 1979 to 2009, a member of the Rotary Club from 1987 to 1996, and director of the Harris-Galveston Subsidence District from 1981 to 1988. She served as a Trustee on the Deer Park Independent School District Board from 1992 to 2016; the Texas Library Association Board of Trustees from 1964 to 1970, including as president from 1969 to 1970; and the American Library Trustees Association Legislative Committee from 1968 to 1970, including serving as chair from 1969 to 1970. Thomas is survived by her son, Anthony K. Thomas; daughter, Jane A. Henson; six grandchildren; and two great-grandchildren. **TBJ**

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The Judge's Daughter: **WHAT GUSTO!**

WRITTEN BY PAMELA BUCHMEYER

LEGENDARY U.S. SUPREME COURT JUSTICE OLIVER WENDELL HOLMES used the catchphrase “What gusto!” as a compliment for writers, orators, and poets. Justice Holmes was known for his legal acumen, wit, and pithy comments. All facts I learned from a slim volume written and published in a limited private run of 1,000 copies by a lawyer in 1970. Self-publishing existed and thrived long before the current advent of e-books and print-on-demand technology.

Only back then privately authored books were “passion projects,” clever volumes written by clever people about their hobbies, travels, experiences, and memories and hand-delivered or mailed to colleagues, family, and friends. *What Gusto: Stories and Anecdotes about Justice Oliver Wendell Holmes*, by Harry C. Shriver, is made even more charming, in my opinion, by Shriver’s several hand-marked corrections. The author’s inscription to my father says, “to another personage of great gusto,” and it’s marked in ink “Copy #538.”

JUDGE JERRY L. BUCHMEYER (1933-2009) grew up in Overton and served as a federal judge in the Northern District of Texas after being nominated in 1979 by President Jimmy Carter. His monthly legal humor column ran in the *Texas Bar Journal* from 1980 to 2008.

The *What Gusto* book is a real treasure, one of many I have found in the collection of dusty boxes and overstuffed storage better known as the Buchmeyer Vault. My late father, Judge Jerry Buchmeyer, collected multitudes of intriguing, odd books, along with anything and everything related to humor and lawyers. Dad also wrote a legal humor column for 28 years for the *Texas Bar Journal*.

Which brings me to today and this column packed full of gems from yesterday. I think these vignettes will make you smile and even return to the labor of the law, saying perhaps, “What gusto!” Thank you for your many heartwarming emails sent to me at pambuchmeyer@gmail.com. Be well.

Huh??

Did these things really happen during legal practice? Why yes, they did. From the Buchmeyer Vault, a collection of true stories. A sharp-eyed observer in Refugio sent in the following docket entry in criminal court:

Charge: Bail jumping and failure to appear.
Bond status: Personal recognizance.
Note: Hope springs eternal.

In Austin, an interrogatory question asked for the respondent’s name and address. Here’s the mind-numbing response:

“Objection to this interrogatory to the extent it apparently would apply to anyone other than myself as unduly burdensome and harassing, and in particular, to the extent it would apply to my attorney, the information about which would otherwise be subject to this interrogatory is irrelevant.”
[Note: It’s going to be a long, long case.]

From a customs law attorney in Houston, a special clause in a hazardous waste management manual published by the Environmental Protection Agency:

“This manual is intended to be used solely as a guide and may not be used to create a right or benefit, substantive or procedural, enforceable at law or *inequity* by any person.” [Emphasis added.]

Befuddlement Cont’d

From Dallas, an attorney telephoned opposing counsel to conduct a conference as required prior to a motion to compel discovery. In response, he received this two-sentence missive.

Dear Mr. Smith: any communication with this office needs to be in writing. If you have any question, please feel free to call our office.

In a wrongful termination lawsuit where an attorney was being deposed, we see the true tedium of the law. “Mr. R” is the attorney representing the deponent-lawyer.

Q: Did you foresee any potential problems with making the employee’s resignation a condition of settlement?

Attorneys: [lengthy objections, retorts, argument, and debate.]

Mr. R: Witness, you may answer the question.

A: I’m not sure of the question because there’s been a lot of interlude....

Q: ...we can have the court reporter read it back...in all the excitement, I forgot myself.

Mr. R: This isn’t very exciting.

Q: Strike that—move to strike that sidebar remark.

Mr. R [wisely]: Maybe I’m wrong. *Maybe for lawyers, this really is exciting.*

Mr. R states the depo would have concluded far more quickly and with the identical result if the attorneys had only stayed quiet.

But of course, when it comes to lawyers, that's asking far too much.

On the opposite side of the spectrum, this lighthearted exchange from a Fort Worth courtroom after counsel announced a settlement of the pending case.

Court: Counsel, forgive my interruption. These old ears have heard so much that they don't work real good and you're going to have to speak up loudly....

Counsel: Yes, your Honor...Occasionally I get accused of yelling at judges, and I don't want to be accused of doing so.

Court: Well, now is your chance with complete immunity.

Counsel: With pleasure, sir.

What Gusto!

Harry C. Shriver began his career as a teacher in a one-room schoolhouse in rural Pennsylvania, then became a government lawyer working for the Library of Congress, the Federal Trade Commission, and the War Shipping Administration among other agencies. He became enamored of Justice Holmes and self-published the first of his several books on the great jurist in 1936.

Justice Holmes was appointed to the U.S. Supreme Court in 1902 by President Theodore Roosevelt. Holmes was already 61, and deeply experienced as a judge, plus he'd recovered from bullet wounds received as a soldier in the Civil War. These experiences combined to create a judge known for his great character, enthusiasm for life, and imminently quotable witticisms. For example, in 1902, the Middlesex Bar Association hosted a goodbye dinner in Holmes' honor.

Admirer: "Now justice will be done in Washington."

Justice Holmes: "Don't be too sure. I am going there to administer the law."

Justice Holmes wrote most of his opinions at home while standing at a desk he'd inherited from his grandfather. One of his secretaries once asked him: "Why do you write your opinions standing up?"

Holmes: "It is very simple. If I sit down, I write a long opinion and I don't come to the point as quickly as I could. If I stand up, I write as long as my knees hold out. When they don't, I know it's time to stop."

On a final note, a message from Justice Holmes that holds special meaning today and perhaps explains the great judge's fondness for people who live with "gusto":

"This little artichoke of a life of ours. We pull off a leaf of 24 hours and after all the waste and dullness of eating and dressing and sleeping and working, there is at most a few hasty moments when we are there with both feet—at most no more than a taste." **TBJ**



PAMELA BUCHMEYER

is an attorney and award-winning writer who lives in Dallas and Jupiter, Florida. Her work-in-progress is a humorous murder mystery, *The Judge's Daughter*. She can be contacted at pambuchmeyer@gmail.com.

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Three Texas judges and one lawyer perform at ABA Hispanic Commission's Cinco de Música

Three Texas judges and a Texas lawyer performed songs as part of the American Bar Association Commission on Hispanic Legal Rights and Responsibilities' Cinco de Música on May 5. U.S. Magistrate Judge Miguel A. Torres, of the U.S. District Court for the Western District of Texas, and El Paso lawyer Karen Dykes performed one song. Another was performed by Judge Nicole Garza, of the 37th Civil District Court in Bexar County, and Judge Antonia "Toni" Arteaga, of the 57th Civil District Court in Bexar County, as part of the band Loitering at the PET (PET is short for the Paul Elizondo Tower, or the Bexar County Justice Center). The nationwide musical celebration raised awareness and support for the ABA Commission on Hispanic Legal Rights and Responsibilities, which is chaired by Betty Balli Torres, the executive director of the Texas Access to Justice Foundation. Grammy Award winner Emilio Estefan was the honorary chair of the event, which showcased five performances from lawyers and judges from across the nation.

TLAP DEBUTS NEW, FREE CLE TARGETING DEPRESSION AND SUICIDE AMONG LAWYERS

The Texas Lawyers' Assistance Program has created a one-hour video and educational program that seeks to educate the legal community about the signs that someone may be suffering from depression and vulnerable to suicide. Lawyers can earn one hour of free ethics continuing legal education credit for watching the film *Just Ask: How We Must Stop Minding Our Own Business in the Legal World*. It can be viewed by selecting the "Free Online Classes" link at texasbarcle.com. It can also be found along with other resources on TLAP's website, tlaphelps.org. TLAP hopes the film helps legal professionals understand when they or their colleagues might be suffering from depression and suicidal thoughts. The film includes personal stories from lawyers on how suicide and depression touched their lives and provides concrete ways to help colleagues or loved ones who may be struggling with suicidal thoughts. "There is no issue more important to TLAP or the State Bar of Texas than preventing suicides among our colleagues in the legal profession," TLAP Director Chris Ritter said. "We hope this program can help educate legal professionals about this critical issue." The film and accompanying educational project was made possible by a \$54,000 grant from the Texas Bar Foundation. The Texas Lawyers' Assistance Program provides confidential help for lawyers, law students, and judges who have substance use and/or mental health concerns. Call or text 800-343-TLAP (8527) to get help.

ST. MARY'S UNIVERSITY HOSTS 27TH ANNUAL PEOPLE'S LAW SCHOOL ONLINE FOR LAW DAY

St. Mary's University hosted its first virtual People's Law School via Zoom on May 1. On Law Day, St. Mary's University School of Law's Pro Bono Program and the San Antonio Bar Foundation offered a variety of presentations on topics from tenants' rights to immigration law. Speakers focused on the effects of the COVID-19 pandemic and Winter Storm Uri on residents' lives. For more information on the People's Law School, go to sanantoniobar.org/?pg=peopleslawschool.

STATE BAR AWARDED GRANT TO HELP EDUCATE STUDENTS, PUBLIC ABOUT JURY SERVICE

The Texas Bar Foundation awarded a \$20,000 grant to the State Bar of Texas Law-Related Education Department and Law Focused Education, Inc. to fund their newest project: *Jury Service: Your Call of Duty*. The project is designed to educate students and the public about the role of jury service in our democracy and will debut in spring 2022. The project will be located on the Texas Law-Related Education website—texaslre.org—and will be accessible in English and Spanish. *Jury Service: Your Call of Duty* is a project of the State Bar of Texas Law Focused Education and Jury Service committees. "LFEI thanks the Texas Bar Foundation for this grant," Daniel Hu, president of Law Focused Education, Inc., said. "Jury service is one of our most important civic duties and ensures a fair and just resolution of criminal cases and civil disputes. These materials will help ensure we have informed, educated jurors."

TARRANT COUNTY BAR HOSTS DISCUSSION ON DIVERSITY AND INCLUSION PROGRAMS

The Tarrant County Bar Association Diversity Committee hosted a discussion titled "Is Your Diversity & Inclusion Program Falling Short?" on April 29. Guest speakers Kenya Woodruff, a partner in and deputy general counsel to Katten Muchin Rosenman, and Brian Newby, managing partner in Cantey Hanger, led a discussion on measuring the effectiveness of diversity and inclusion in addressing racism and creating more equitable workplaces. Barriers to diversity and inclusion programs were discussed. The panel also explored affirmative action and other minority recruitment and promotion efforts in the profession and in education. The program is part of the Tarrant County Bar's SIDE (Striving for Inclusion, Diversity and Equity inside the Bar) Bar Conversations series and was co-hosted by the L. Clifford Davis Legal Association and Black Women Lawyers Association. For more information, go to tarrantbar.org. **TBJ**



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The State Bar of Texas, our co-sponsor, generously helps underwrite the 2021 Champions of Justice Gala Benefiting Veterans so that the proceeds directly support civil legal aid to low-income Texas Veterans. We also extend our appreciation to Sabrina Ellis and Sydney Pérez, of the Butler School of Music at the University of Texas in Austin.



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