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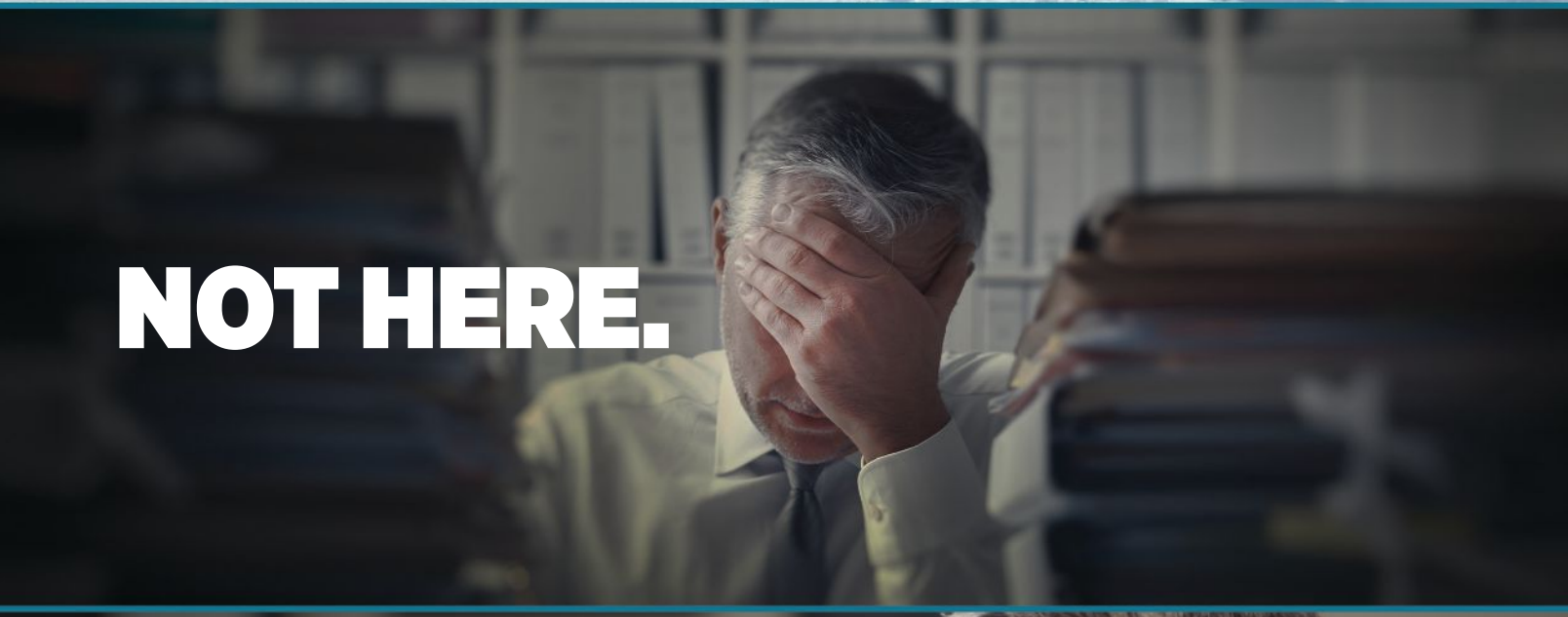

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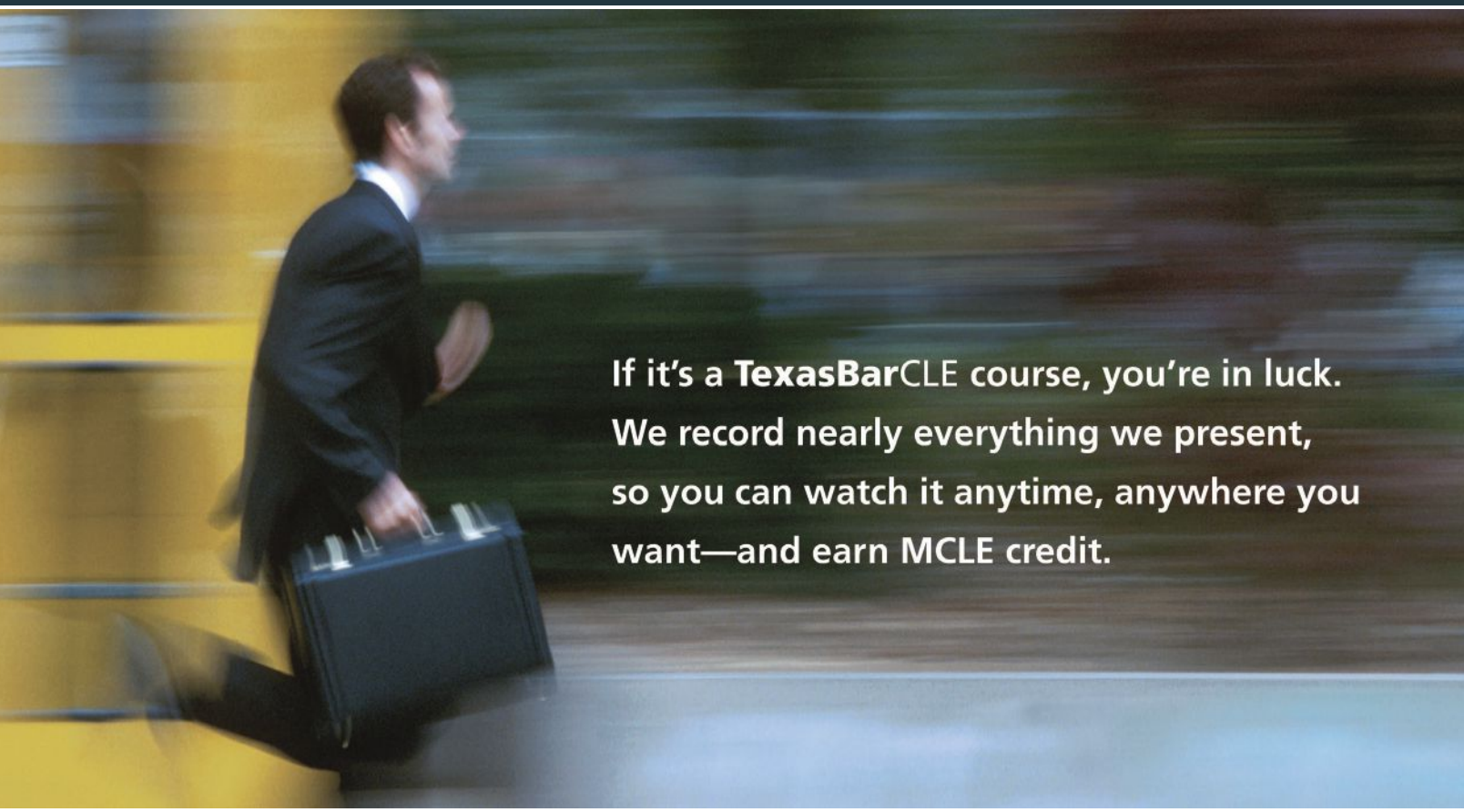
Features

961

Miscellany

954

Can't make it to that course?



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Online Portal Brings Advertising Review FULLY INTO DIGITAL AGE

THIS MONTH, I'M EXCITED TO INTRODUCE YOU TO A NEW TOOL designed to make it faster and more convenient for our members to submit advertisements and solicitation communications for State Bar of Texas review and approval.

Lawyers can launch the bar's new Advertising Review Portal from their My Bar Page at texasbar.com to easily complete an advertising review application, upload media files, pay fees, check the status of recent submissions, and receive status notifications from the bar.

The new portal is the result of months of hard work by State Bar leadership and staff and reflects input from dozens of lawyers and law firms who shared ideas on how to improve the process. "This is very innovative for advertising review and will make it easier to send information and media and receive notifications and approvals quicker," said Gene Major, the bar's attorney compliance division director, who helped oversee the portal's development.

The bar's Advertising Review Department is responsible for reviewing attorney and law firm advertisements and solicitation communications as required by Part VII of the Texas Disciplinary Rules of Professional Conduct. In the past, the process has involved mail or email submissions and a series of follow-up communications by mail or email. Lawyers are still free to submit advertisements to the bar the old-fashioned way, but those who use the portal will enjoy a streamlined process and a central repository for all information and communications related to their applications.

The portal's homepage provides a "how to" video and a detailed user guide. Once logged in, lawyers can submit an advertising review application using a guided application that takes them step by step through the submission process. All forms of digital media are accepted, including documents, images, audio recordings, and video files.

After filing a submission, lawyers can return to the portal anytime to view the status of their applications. If the bar identifies a violation of the disciplinary rules, the lawyer will receive an electronic notification explaining the violation and how to correct it.

The Advertising Review Portal is another example of the State Bar of Texas' commitment to continuous improvement. Early user feedback has been positive, and I hope everyone who uses the portal will find it beneficial. As always, your feedback is welcome!

Sincerely,

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

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Live Austin Dec 9 Texas LawCenter
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32nd Annual Estate Planning and Probate Drafting Course
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Live San Antonio Dec 9-10 JW Marriott Hill Country Resort & Spa
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Beyond Wellness: Finding and Maintaining Attorney Wellness
Live Austin Dec 10 Texas Law Center
Webcast Dec 10 from 8:55 am to 4:00 pm CT
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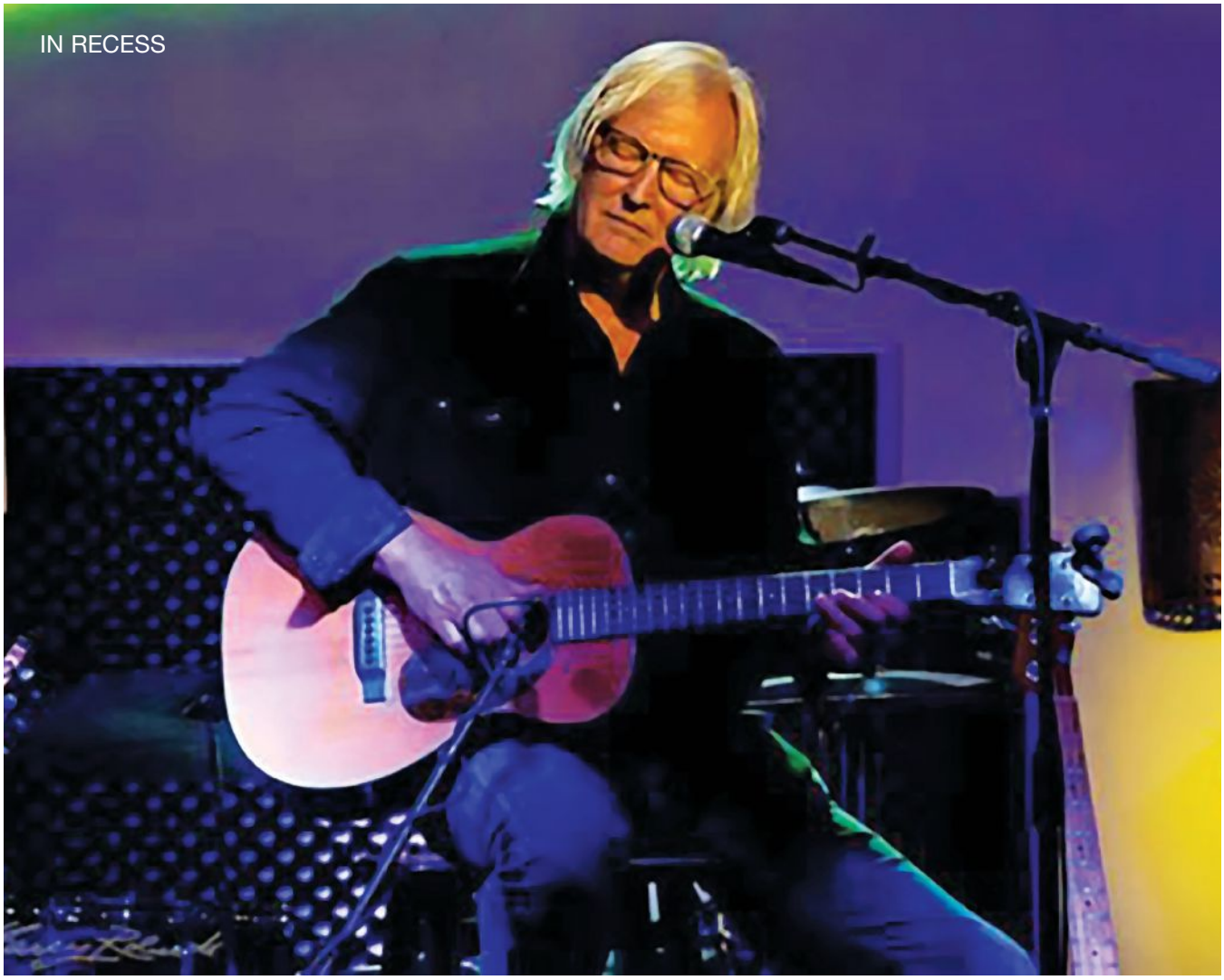
Video Austin Dec 14 Texas Law Center
MCLE Credit: 6 hrs (includes 1 hr ethics)

22nd Annual Advanced Guardianship Law Course
Video Austin Dec 15 Texas Law Center
MCLE Credit: 6.25 hrs (includes .75 hr ethics)

Law Practice Management Course
Webcast Replay Dec 17 from 8:55 am to 3:15 pm CT
MCLE Credit: 5.25 hrs (includes 2.5 hrs ethics)

22nd Annual Advanced Elder Law Course
Webcast Replay Dec 28 from 8:55 am to 4:00 pm CT
MCLE Credit: 6 hrs (includes 1 hr ethics)

22nd Annual Advanced Guardianship Law Course
Webcast Replay Dec 29 from 8:55 am to 4:15 pm CT
MCLE Credit: 6.25 hrs (includes .75 hr ethics)



Live Like a River

A Houston attorney's trip from the 1970s L.A. music scene to entertainment law in Texas.

INTERVIEW BY **ERIC QUITUGUA**
PHOTO COURTESY OF AL STAEHELY

AFTER PLAYING IN COVER BANDS IN AUSTIN IN THE 1960S, then-recent law graduate Al Staehely carved out a life as a musician in 1970s Los Angeles, meshing his brand of swinging Southern rock with L.A.'s airy folk pop. Staehely briefly fronted psychedelic rockers Spirit alongside his brother John and played in other bands, touring the world. Today he is a unicorn in his field of law, having the clout and connections of an artist and the legal skills to navigate intellectual property issues as an entertainment lawyer in Houston. With an album of back catalog material [*Post Spirit Vol. 1 (1974-1978)*] recently released, Staehely has a new album recorded in Marfa in the wings.

ABOVE: After earning a law degreee in 1970, Al Staehely left Texas for Los Angeles, where he soon joined psych rockers Spirit as the chief songwriter and became enmeshed in a life of music A-listers, major movie soundtracks, and world tours. His life as a musician informs his practice as an entertainment lawyer in Houston today.

GROWING UP IN AUSTIN, WERE THERE CERTAIN SOUNDS YOU WERE EXPECTED TO PLAY?

It was cover band stuff. In the late '60s, there were acts like the 13th Floor Elevators, who were doing original stuff. There was a great band called Krackerjack that was really popular doing mostly original stuff. But most of the bands, including ours, were doing covers. It was all over the place—we might do a Rolling Stones song or a Led Zeppelin song. Whatever was popular on the radio. In those days, you were always expected to know a little bit of everything. We'd do a couple country songs, a couple blues-oriented songs. The marketing hadn't been subdivided into hard rock, metal, soft rock—all these categories that came to be in the '70s when radio programming went in that direction.

HOW DID YOU END UP IN CALIFORNIA?

I got out of law school when I was 24 and took the bar. I looked like I was about 19, and I thought, *Nobody's going to trust me to be their lawyer anyway—I look like a kid.* The drummer in the last band I was in during law school went to L.A. and joined up with two guys who were leaving Spirit to form a band called Jo Jo Gunne. I knew a girl named Patti Dahlstrom from college who at the time was a songwriter for Motown. And I knew Don Henley because his band used to play in Austin. They were all saying come to L.A. So I went to L.A. and visited Don's, and he had some guy over at his apartment named Jackson Browne who I hadn't heard of. Don was still playing in Linda Ronstadt's band but was in the process of forming the Eagles. In fact, I remember when he called me one day and said, "I think we got a name for the band but I don't know if I like it." Seems to have worked out OK. Anyway, because my drummer had joined the two guys who left Spirit, I met them and they introduced me to the remaining members of Spirit. I had some rehearsals with them, and they asked me to join the group as lead singer, bass player, and, as it turned out, when we did an album some months later, I wrote some of the songs.

I THINK OF THAT BAND BEING MORE ON THE PSYCHEDELIC SIDE. *FEEDBACK* HAS A LITTLE OF THAT, BUT IT ALSO HAS A SOUTHERN ROCK THING GOING. ESPECIALLY ON "CADILLAC COWBOYS."

Which is kind of natural because I came from Texas and injected that. But John Locke, the keyboard player, wrote those couple of instrumentals on *Feedback,* which I really like. It was an interesting band because the drummer and the keyboard player have more jazz roots and then my roots and my brother's were more rock-oriented. That was true before we joined but probably even more so after we joined. The juxtaposition of rock and jazz was good.

HOW DID YOU LIKE KEITH MOON'S VERSION OF "CRAZY LIKE A FOX"?

The whole thing was quite an experience. I went down to a Jo Jo Gunne recording session, and by this time, Spirit had broken up and my brother had joined Jo Jo Gunne when their guitar player left. Their engineer said he was about to start a Keith Moon album [produced by former Beatles roadie Mal Evans]. He said, "Come down to the Record Plant on Wednesday and I'll introduce you to Mal." I played him "Crazy Like a Fox." He said, "Yeah, I can hear Keith doing this. We'll cut it on Friday." I said, "Well, of course I know the song but my brother knows it." Mal said, "Why don't we get all of Jo Jo Gunne to play on it?" We all went down there. They had called Spencer Davis and guitarist Jesse Ed Davis. We did the basic tracks. I had the lyrics written out and put on the music stand and had headphones. And I got up there with Keith to cue him when to come in because he wasn't that familiar with the songs. He's not really a singer so you can't say, "Oh, that was a wonderful vocal performance." He was just hoping to put his personality on the record, you know? They started calling me back to do some other sessions, so I ended up playing on about half the record and got to know Keith a little bit.

HOW LONG WERE YOU IN L.A. BEFORE YOU CAME BACK TO TEXAS?

I was in L.A. in the summer of '79. I had finally gotten a solo deal. Quite a few songs were to be a part of an album [*Post Spirit Vol. 1 (1974-1978),* released in 2021]. I signed a deal; got started on the record; had Steve Cropper, Pete Sears, Gary Mallaber, and all these people playing on it; and we had gotten halfway into the record, and the record company went out of business. That's why some of these have never been out. I came back just to visit my parents for a couple weeks in Austin, and I ran into a friend of mine from L.A. who was Stevie Wonder's recording engineer and was visiting his girlfriend. He told me a mutual friend of ours was a music supervisor on a movie that was about to start in Houston called *Urban Cowboy* with John Travolta. Knowing it was probably going to be a big deal because *Saturday Night Fever* had been such a big deal—this was kind of like *Saturday Night Fever* country style—I called my friend who said to bring some songs. I also made some deals to represent some songs from other Austin writers. There was interest in some songs and ultimately one I was representing by Rusty Wier called "Don't It Make You Wanna Dance?" Bonnie Raitt did it. I had also called my friend Mike Hinton, who had been my drummer and one of the guys who talked me into going to law school, and asked him if I could stay with him in Houston for a few days. While I was there, Mike said, "Did you ever take the bar exam?" I said, "Yeah, I'm paying my dues every year. I'm a lawyer. I just haven't practiced." He said, "Well, do you have a suit?" He took me to the courthouse and said, "That's my old pal Al Staehely. We used to be in a rock and roll band in law school." Because I was with Mike, who was a well-known criminal lawyer, they started giving me felony criminal cases right off the bat. I had never practiced law before. So, I'm running back to the office, saying, "OK, I got this arson case—what do I do now?"

HOW HAVE YOUR EXPERIENCES OVER THE YEARS INFORMED YOUR LAW PRACTICE?

Even though I started off doing criminal law, I knew I didn't want to do it long term. I wanted to get into entertainment law. It took me a while to build an entertainment law practice. My background, of course, was very relevant. Although I hadn't been an entertainment lawyer before, I had experiences that few entertainment lawyers had—writing songs, making records, doing tours. A lot of clients have commented they appreciate that I do have those experiences.

SO YOU HAVE A NEW ALBUM ON THE WAY?

Last August we spent the month in Marathon, about 40 minutes from Marfa. I was sitting out there thinking, *I've got all these songs I keep saying I'm going to record, and I haven't done them.* There's one recording studio in Marfa and I know two good musicians there: Fran Christina, who was the drummer with the Fabulous Thunderbirds, and Scrappy Jud Newcomb, who is a well-known Austin guitar player who relocated to Marfa. I called them, and they got Chris Marsh on board to play bass. I wasn't even thinking of doing an album. I was just thinking about getting some of these songs recorded—maybe just demos to see how I liked it. About six weeks later, I went back and now I've got an album's worth of stuff I'm excited about. **TBJ**

Sylvia Borunda Firth can be reached by email at sylvia.firth@texasbar.com.

Achieving a Truly EQUAL OUTCOME

BEFORE I LAUNCH INTO MY MESSAGE REGARDING *EQUITY*—THE "E" IN R.I.D.E., I want to acknowledge the beginning of the holiday season and the end of yet another calendar year. The pandemic made us more aware of how small the world really is and how interdependent we are. Time with family and friends is much more precious. We have heightened appreciation for the frontline workers in health care, public safety, truck drivers, grocery store personnel, and others who showed up every day so we could have the things we needed. As a profession we have demonstrated resilience and continued to serve our clients, communities, and the rule of law.

Now it is time to celebrate and look forward to better days. We are strengthened by the trials and tribulations we have endured as we step forward into 2022. We are ready to meet new challenges and to make the world a little better for those who come after us.

Which brings us back to the topic at hand—*equity*. From the correspondence I have received in response to my earlier columns, I know the concept of equity needs explanation.

Some emailers espoused the view that as a community of professionals, we should strive for equality, not equity. Those lawyers are exactly right. Equality—treating everyone equally—is the ultimate goal. But to stop the conversation there assumes that everyone is starting out on equal footing. As much as we want that to be true, we know that is not the case.

Equality provides everyone with the same resources, regardless of their circumstances and the barriers they may have to access those resources.

Equity realizes that people have different circumstances and allocates resources and opportunities necessary to achieve a truly equal outcome.

One real-world example to help illustrate the difference comes from sports. There is a reason the starting lines on an oval racetrack are staggered. If every runner started at the same line, some would have to run farther and faster to have a chance at winning. Can those starting at a disadvantage overcome and achieve greatness? Absolutely. Some exceptional individuals might be able to overcome the deficit. But if our goal is equality, why would we require someone to be exemplary only to achieve what another is afforded by being average?

Why should lawyers be concerned about finding a way to level the playing field? As we strive for more diversity in the profession, we need to consider the additional challenges and burdens individuals who come from other than "mainstream" backgrounds face when they undertake to study law, or practice at a firm or in a community where they will be in the minority for one reason or another. We should want to find ways to create opportunities for them to be successful. This will not only assist the individuals directly involved, but by promoting diversity, it will also help build and maintain the public's trust in the profession.

I am pleased to report law schools around the state have embraced the concept of equity. For example, St. Mary's University School of Law held a boot camp for students who are the first in their family to study law. Students were provided with access to additional resources to support them as they began their studies. I could not help but be a little envious. I did not even know a lawyer to ask for advice when I decided to go to law school.

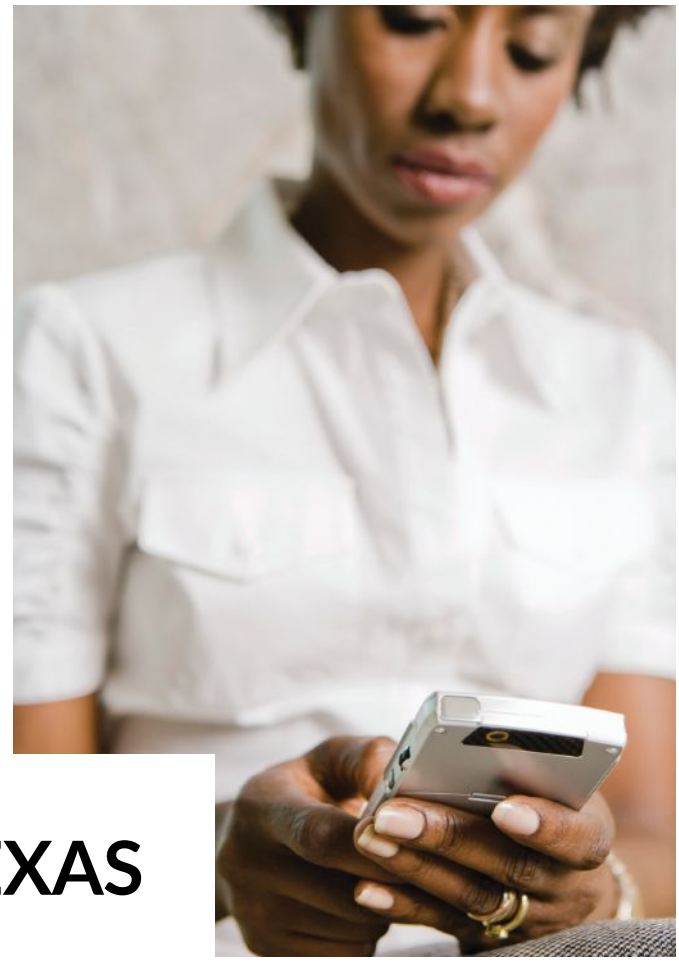
I have watched with great interest as my friends and colleagues have sent their children off to law schools armed with the confidence and knowledge that comes from having a mom who is a judge or hanging out at your dad's law office after school. I have also enjoyed hearing about the phone calls from those same students to their parents with questions about first-year law school cases and legal concepts. That kind of support is priceless.

Programs to assist first-generation law students bridge the gap that exists because they do not have the same life experiences or someone to call—that is *equity.*

Many of us have been able to run a little faster and harder to reach the same finish line on the oval track, but why should we have to when, with a little effort, our chances at success are equalized? If we want more diversity in the profession, we must continue to find ways to level the playing field.

I wish you all the blessings of the holiday season and good health, joy, and prosperity in 2022.

SYLVIA BORUNDA FIRTH
President, 2021-2022
State Bar of Texas



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Big BROTHER?

AERIAL SURVEILLANCE REQUIRES A WARRANT.

WRITTEN BY **PIERRE GROSDIDIER**

IN *LEADERS OF A BEAUTIFUL STRUGGLE V. BALTIMORE POLICE DEPARTMENT,* the U.S. Court of Appeals for the 4th Circuit reversed a trial court decision and enjoined the Baltimore Police Department, or BPD, from proceeding with its pilot Aerial Investigation Research, or AIR, surveillance program.[1] The court held that because the program enabled authorities "to deduce from the whole of individuals' movements," accessing its data was a Fourth Amendment search that required a warrant.[2]

Under the AIR program, planes flying circles over Baltimore used powerful cameras to capture 32 square miles of the city "per image per second" during daytime, weather allowing. The imagery allowed the program's users to build a report of people and vehicle locations and movements before and after serious crimes. The imagery could be integrated with ground surveillance systems such as security cameras and license plate readers. The program intended to retain imagery for 45 days and investigative reports for as long as necessary.[3] Baltimore area grassroots community advocates who frequented crime scenes sued the BPD shortly before the pilot program started.[4]

Plaintiffs challenged the AIR program under the Fourth Amendment and asked the trial court to enjoin the BPD from proceeding with it. The trial court denied injunctive relief and the court of appeals affirmed in a split decision, but then granted an en banc rehearing. In the meantime, the pilot AIR program ended, and the BPD deleted all but 14.2% of the captured imagery, which was linked to live criminal investigations.

As an initial matter, the court denied the city's motion to dismiss on mootness grounds.[5] Even though the program had terminated, the BPD retained millions of photographs linked to opened investigations. Plaintiffs, who were likely to frequent crime scenes, might appear in the imagery and, therefore, retained a concrete personal interest in the dispute.[6]

The court then focused on the first of the four *Winter v. Natural Resources Defense Council* elements that a plaintiff must establish to obtain injunctive relief, namely the likelihood of success on the merits of the Fourth Amendment claim.[7]

The Fourth Amendment historically protected against unreasonable—and unwarranted—searches and seizures of homes and personal effects.[8] In its landmark 1967 *Katz v. United States* decision, in response to technology's encroachment into private lives, the U.S. Supreme Court extended the Fourth Amendment's aegis to situations where a person has a subjective expectation of privacy that society is willing to recognize as reasonable.[9] Under *Katz,* the court held that the police needed a warrant to record the private conversation of a person in a phone booth. Applying *Katz,* the U.S. Supreme Court recently held in *Carpenter v. United States* that obtaining cell-site location information, or CSLI, required a warrant because its ability to reconstruct a person's past movement through his or her phone signals invaded the person's reasonable expectation of privacy.[10]

The 4th Circuit held that "*Carpenter* applies squarely to this case" because "the AIR program 'tracks every movement' of every person outside in Baltimore," from which one may deduce more about the person's personal life than one ever could by observing individual trips.[11] These deductions, the court added, "go to the privacies of life, the epitome of information expected to be beyond the warrantless reach of the government."[12] These intrusions into a person's "associations and activities" infringe on the person's reasonable expectation of privacy.[13] The court held that because the AIR program tracked people much as CSLI does, accessing its data was a search and the program's warrantless operation violated the Fourth Amendment.[14] After briefly reviewing the other three *Winter* factors, the court concluded that plaintiffs' Fourth Amendment claim was likely to succeed on the merits, and it reversed and remanded. **TBJ**

NOTES

1. 2 F.4th 330, 333 (4th Cir. 2021) (en banc).
2. *Id.*
3. In practice, the AIR program retained most imagery indefinitely. *Id.* at 335–36 n.4.
4. *Id.* at 335.
5. *Id.* at 336.
6. *Id.* at 337.
7. *Id.* at 339; *Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7 (2008). The other factors being the risk of irreparable harm absent relief, whether the balance of the equities favors relief, and whether relief is in the public's interest.
8. *Id.* at 339–40.
9. *Id.* at 340; *see Katz v. United States,* 389 U.S. 347 (1967).
10. *Id.* at 341 (citing *Carpenter v. United States,* --- U.S. ---, 138 S. Ct. 2206, 2213–23 (2018)).
11. *Id.*
12. *Id.* at 342.
13. *Id.* at 342, 346.
14. *Id.* at 346.

PIERRE GROSDIDIER is an attorney in Houston. He belongs to the first group of attorneys certified in construction law by the Texas Board of Legal Specialization in 2017. Grosdidier's practice also includes data privacy and unauthorized computer access issues and litigation. Prior to practicing law, he worked in the process control industry. Grosdidier holds a Ph.D. from Caltech and a J.D. from the University of Texas. He is a member of the State Bar of Texas, an AAA Panelist, a registered P.E. in Texas (inactive), a member of the Texas Bar Foundation, a fellow of the American Bar Foundation, and the State Bar of Texas Computer & Technology Section chair-elect for 2021-2022.

D. Todd SMITH

HOMETOWN: AUSTIN **POSITION:** ATTORNEY AT BUTLER SNOW IN AUSTIN **BOARD MEMBER:** DISTRICT 9, PLACE 1

INTERVIEW BY **ERIC QUITUGUA**
PHOTO BY **BUTLER SNOW**

I'M THE ONLY LAWYER IN MY FAMILY, SO LAW SCHOOL WASN'T SOMETHING I FELL INTO.
I first thought about becoming a lawyer during my senior year of high school. A teacher recruited some of us to participate in University Interscholastic League speech and debate competitions, and my partner and I wound up making the state tournament in standard debate. That experience taught me how to argue both sides of an issue, so the foundation was laid. When I got serious about law school years later, as I was finishing a master's degree while working full time, my dad tried to talk me out of going. Just this once, not following his advice was the right call.

GETTING UP TO SPEED QUICKLY ON A NEW SUBSTANTIVE AREA IS SOMETHING I ENJOY,
but I gravitate toward commercial, real estate, and tort cases or those involving procedural issues. I love parachuting in to help get a case ready for trial and then guiding trial counsel with the assumption that one party or the other will appeal. That puts me in a great position to handle the appeal and gets me involved at a point where I can make a difference.

IF YOU KNOW WHAT YOU WANT TO DO, DON'T LET SOMEONE ELSE PICK YOUR PATH.
Bet on yourself and do what it takes to get there. To put this in context, I decided early on that I wanted to be a Texas appellate lawyer, and I pursued opportunities that made it happen. When I started my own appellate boutique, even some close friends doubted I would make it. Prepare yourself well, and don't be deterred. Having the right mindset is everything.

MY INITIAL INVOLVEMENT WITH THE STATE BAR WAS TIED TO MY DESIRE TO DEVELOP AS AN APPELLATE LAWYER.
When I first went into private practice, I joined the Appellate Section and later got on the editorial board for its quarterly publication, *The Appellate Advocate*. From there I worked my way up to editor and then served on the section's council. A few years later, I was appointed to serve on the Pattern Jury Charge Committee for the commercial volume. Both the Appellate Section and the PJC Committee provided great opportunities to connect with appellate lawyers and judges and work on projects important to the bar.

DIRECTORS MUST UNDERSTAND THE PROCESS THE BOARD FOLLOWS WHEN MAKING DECISIONS. IF YOU EVER WONDER WHY *ROBERT'S RULES OF ORDER* EXISTS, TUNE IN TO ONE OF OUR MEETINGS.
The State Bar board meets on a quarterly basis, and our agendas and meetings are long. Productive discussion is important and encouraged, but we have to stay on track to finish our scheduled business. Airing grievances with questionable connections to the agenda that don't advance the discussion is counterproductive and harmful. And personal attacks have no place.

LIKE MANY OTHER THINGS IN LIFE, BAR MEMBERSHIP IS LARGELY WHAT YOU MAKE OF IT. THE GOOD NEWS IS THAT OPPORTUNITIES TO GET INVOLVED ARE ABUNDANT.
As a starting point, I would encourage lawyers unsure about what the State Bar does for them to join and become active in sections relevant to their practice area. Section and standing committee work is very rewarding and is one of the best ways to make meaningful connections within the bar.

WE'RE FACING SEVERAL CRITICAL ISSUES, INCLUDING THE U.S. COURT OF APPEALS FOR THE 5TH CIRCUIT'S *MCDONALD V. LONGLEY* DECISION AND A BACKLOG OF JURY TRIALS IN THE WAKE OF THE PANDEMIC. BUT I'D PUT LAWYER WELL-BEING AT THE TOP OF THE LIST.
The sheer number of lawyers facing addiction and mental-health issues is staggering. We already have the excellent Texas Lawyers' Assistance Program in place, but we need to continue talking about these issues to break the stigma and encourage lawyers facing these difficulties to seek help.

THE STATE BAR HAS WEATHERED THE PANDEMIC WITHOUT ANY SIGNIFICANT DECLINE IN SERVICES.
As the world continues to open up, we look forward to more in-person events, including traditional CLE programs. Rather than fight aspects of the *McDonald* decision that didn't go our way, the board approved a comprehensive plan for addressing those issues so the State Bar and its members can move forward. The future will present new challenges, but the board is well prepared to serve Texas lawyers and will continue to do so with integrity.

I WOULD ENCOURAGE LAWYERS INTERESTED IN HAVING THE BOARD ADDRESS SPECIFIC ISSUES TO CONTACT THEIR DISTRICT REPRESENTATIVES.
Although our constituents have many different viewpoints, we want to understand your concerns. On specific agenda items, the board invites public comment during our meetings. There's no better way to weigh in on an issue you care about than addressing the board yourself. **TBJ**

Be Careful WHAT YOU ASK FOR

THE XYZ LAW FIRM IS UPDATING ITS WEBSITE and wants to add a feature to allow users to directly email the firm's lawyers through the website. The firm wants to make contacting its lawyers by email as easy as possible but is concerned about clients providing the firm with confidential information that could inadvertently cause the firm to be conflicted out of current or future representations.

Some of the firm's partners want to include the following statement:

> **WARNING**: Do not send or include any information you wish to keep confidential in any email generated through this website. By submitting information by email or other method in response to this website, you agree that: (1) the communication does not create a lawyer-client relationship between you and the law firm and its lawyers, (2) any information you submit is not confidential or privileged, and (3) any information that you do submit will not be treated by XYZ Law Firm as confidential unless and until XYZ subsequently agrees to enter into a lawyer-client relationship with you.

These partners also want to include a feature that requires those contacting the firm through the website to specifically acknowledge and agree to this statement before any email information can be submitted.

Other partners think that this warning/waiver is too cumbersome and that it may put off those who are already mistrustful of lawyers and the legal system. They would prefer not to have any statement or acknowledgment because: (1) they believe the chance of an actual conflict arising from a prospective client's disclosure is very small, and (2) this language might send potential clients to competitors who don't have such a requirement. As the firm assesses its options, which of the following is most accurate?

A. Because the firm is inviting the potential client to submit an email on its website, a statement warning the prospective client not to submit confidential information is required under the solicitation rules.
B. The proposed statement is not required, but it would permit the firm to utilize any information provided by a prospective client against it if the firm is hired by a party who is adverse to the prospective client.
C. The proposed statement is not required, but whether the firm would be conflicted from an adverse representation involving the confidential information would depend on other factors.
D. The law firm cannot be conflicted by unsolicited information provided by a potential client unless the website requests specific information beyond a non-client's identity because doing so would allow non-clients to intentionally create a conflict to prevent an opposing party from hiring that firm.

ANSWER: Email and the internet have created new hazards for lawyers trying to stay within the bounds of confidentiality and conflicts rules that were written long before anyone could even conceive of these features of the information age. How can lawyers protect themselves in this situation? In Ethics Opinion 651 (2015),[1] the Texas Committee on Professional Ethics determined that requiring the prospective client to accept a statement like the one here before accessing the email portal would allow it to utilize any confidential information that the potential client then provides. However, the committee did not find that a statement like this is mandated. The committee also found that the failure to include a similar statement would not necessarily preclude use of that information but would create a risk of a conflict that would preclude representation. The best answer is B. For further analysis, go to legalethicstexas.com/ethics-question-of-the-month.

NOTES
1. https://www.legalethicstexas.com/Ethics-Resources/Opinions/Opinion-651.

The Grand Waltz

The 2021 Texas Capitol ornament pays homage to musical traditions.

WRITTEN BY **ADAM FADEREWSKI**

During the official Texas State Capitol dedication ball on May 18, 1888, Gov. Lawrence Sullivan Ross and First Lady Elizabeth Tinsley Ross led the march into the Senate and House chambers as the newly composed "Texas State Capitol Grand Waltz" was performed from the second floor.

The task of creating a musical piece for the dedication ball fell upon Leonora Rives, who in 1885 composed the "New Administration Grand March," dedicated to President Grover Cleveland. Rives, then a resident of Mission Valley, had 10,000 copies of the waltz printed in the *Austin Daily Statesman* as souvenirs for the event—selling out before noon.

Holiday performances by Texas musical groups of all ages at the Capitol began in the early 20th century. On December 21, 1914, the *Austin American* noted school children and church choirs accompanied by a local orchestra were set to carol that evening on the Capitol South Grounds. The 2021 Texas Capitol ornament pays tributes to these traditions.

The ornament adopts the style of a snow globe filled with sparkling snowflakes cascading upon Victorian-era carolers gathered in front of the Capitol. Flitting through the air behind the Capitol dome are the notes from Rives' "Texas State Capitol Grand Waltz."

The ornament program was established in 1996 by the late Nelda Laney, wife of then-Speaker of the House Pete Laney. To date, the program has raised over $21 million, making it the largest state ornament program in the country. All proceeds from ornament sales go toward the preservation and maintenance of the Texas Capitol, Capitol Extension, the 1857 General Land Office Building, other designated buildings, and their contents and grounds. Funds also go toward preserving the Texas Governor's Mansion and to operating costs for the Bullock Texas State History Museum and the Texas State Cemetery.

For more information and to purchase an ornament, go to texascapitolgiftshop.com. **TBJ**

Texas Bar College Celebrates Four Decades of Excellence

Setting the standard of professionalism through education.

WRITTEN BY **DYLAN O. DRUMMOND**

December 14, 2021, marks the 40th anniversary of the date the Texas Supreme Court formally established the State Bar of Texas' first and only professional society of legal scholars—the Texas Bar College. In the four decades since, members of the college have been consistent champions of legal education committed to high ethical standards and improved training for all legal professionals.

During the late 1970s, none other than U.S. Supreme Court Chief Justice Warren E. Burger raised concerns regarding attorney competency throughout America. His public admonition led directly to the idea for the college's creation. But the college largely owes its existence to the monumental efforts of two men, both of whom led the State Bar as president. It was Jim Bowmer (1972-1973) who first conceived the college in response to the concerns raised by the chief justice. In turn, Franklin Jones Jr. (1980-1981) appointed Bowmer to chair a committee tasked with exploring whether Bowmer's vision could be brought to life.

Texas Bar College
A Professional Society of Legal Scholars

Bowmer, who also served as the college's first chair, noted in the March 1982 issue of the *Texas Bar Journal* that although the "… College [is] without a campus, … it has the finest student body in the world." Evidence of this fact are the stringent requirements to become a member:

- For their initial membership year, applicants must demonstrate that they have either:
- Accumulated at least *80 hours* of accredited CLE within the preceding three calendar-year period; or
- Accumulated at least *45 hours* of accredited CLE in the current calendar year—triple that required by the MCLE rules; and
- For each successive year of membership, members must demonstrate that they have accumulated at least *30 hours* of accredited CLE in the current calendar year—double that required by the MCLE rules.

As part of its educational mission, the college provides scholarships to legal aid program attorneys to attend live CLE courses so that these attorneys are the first to learn of vital developments and changes in their practice areas.

To this end, the college established the Endowment Fund in 2005 to support educational projects that help improve the lives and practices of all Texas attorneys so that they may better serve their clients, including:

- Operating a CLE subsidy grant program to assist local and minority bar associations and pro bono organizations that have limited resources in bringing quality CLE activities to their area;
- Providing funding for the *Oyez, Oyez, Oh Yay!* education project maintained by the State Bar Law-Related Education Department to ensure Texas students and teachers have the resources they need to fully explore the important role of the judicial system in our country and state;
- Funding projects that provide direct support for substance use and mental health recovery needs of Texas lawyers through the Texas Lawyers' Assistance Program; and
- Donating to the Houston Volunteer Lawyers program and Lone Star Legal Aid in the literal wake of the devastation wrought by Hurricane Harvey in 2017 to fund projects that provided direct legal services for low-income Texans coping with storm-related legal issues.

Since its founding, the college has set the standard of professionalism through education. Now more than 4,800 members strong, the college has established a proven track record as well as a solid foundation upon which to build its next four decades of excellence. Come celebrate our anniversary with us at texasbarcollege.com/40th! **TBJ**

DYLAN O. DRUMMOND
is an appellate litigator with Gray Reed & McGraw in Dallas. He currently serves as chair of the Texas Bar Appellate Section and is both a former chair of the Texas Bar College and president of the Texas Supreme Court Historical Society.

WHAT DO ATTORNEYS NEED *NOW* TO SUCCEED?

An overview of responses from a survey conducted by the State Bar of Texas Women in the Profession Committee.

WRITTEN BY **KATHERINE KUNZ**

"More time to be able to focus on health … having the option to work from home when needed was a huge relief on my physical and mental health."
—2021 State Bar of Texas Lawyer Needs Survey respondent

The State Bar of Texas Women in the Profession Committee was formed more than 30 years ago to, among other goals, assess the status of women in the legal profession and identify barriers that prevent women lawyers from full participation in the work, responsibilities, and rewards of the profession. Needless to say, the COVID-19 pandemic and its changes over the past 18 months have destabilized the status of many Texas women attorneys, causing them to consider leaving the profession (or to leave outright), modify their hours, struggle with feelings of being overwhelmed or unfocused, or simply be unable to complete everything that needs to get done in a single day.

Our committee wanted to understand more directly the impact of the pandemic on women attorneys in Texas and accordingly worked with the State Bar to survey a representative sample of both male and female State Bar members. I encourage you to read all the results at texasbar.com/lawyerneedssurvey but wanted to make note of some particularly important findings at the outset:

- The State Bar population's current median age for female attorneys is nine years younger than that of male attorneys (44 versus 53), meaning the female attorney population overall is younger than that of male attorneys. However, only about one-third of the bar's attorney population is women.
- Female attorneys reported a disproportionate impact in their inability to disconnect from work, increased workload and personal responsibilities, and trouble focusing on work tasks.
- Women attorneys were more than four times as likely as men attorneys to consider leaving the workforce to care for their families full time and were nearly twice as likely to report feeling like they had to choose between caregiving and their job.
- By far the most requested workplace recommendation by all survey respondents was for remote work and flexibility in work location and scheduling to continue post-pandemic.

Our survey data suggests that the pandemic presents an extraordinary opportunity to pivot to address these issues at this critical juncture while our profession is finding its way back to "normal" but before we collectively fall back into our old routines. Now is the time for employers to consider the equity of their workplace policies to increase the number of female attorneys and attorneys of color in the profession. Now is the time to dismantle systemic barriers that may overtly or implicitly dissuade female attorneys and attorneys of color from advancement in the profession. Now is the time to address attorney needs, especially mental health needs. Employers who take advantage of this opportunity to reimagine what a post-pandemic legal office looks like will do so by providing lawyers with technology, flexibility, and options for remote work. These employers will introduce innovative and progressive solutions for attorneys who are also caregivers and support attorney well-being, which will attract and retain happier, healthier attorneys.

The Women in the Profession Committee intends to offer support to affected attorneys, particularly those who may be seeking a job or struggling with ongoing caregiving responsibilities. We plan to develop programming to advise law firms and other employers how best to retain women attorney talent as well as (re)hire attorneys whose careers were derailed by the pandemic, either by choice or by default due to financial cuts or caregiving obligations. These efforts will not only benefit attorneys and firms, but will also improve the quality of legal services offered to the public. Finally, we hope that simply by noting the differences in male and female attorneys' survey results, we can emphasize that a one-size-fits-all approach is simply not going to be sufficient to address and improve on the variety of pandemic-related concerns men and women attorneys alike have expressed in their survey responses.

Having these survey results is an essential first step in our committee's efforts to mitigate the negative effects of the pandemic on women attorneys, but the key will be to take this knowledge beyond the pages of this survey and into actionable results in the weeks, months, and years to come. **TBJ**

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is senior counsel to Gibbs & Bruns and practices commercial civil litigation in state and federal courts. She is chair of the State Bar of Texas Women in the Profession Committee and co-chair of the Houston Bar Association's Gender Fairness Committee.

VIRTUAL [TO] REALITY

A transitional—and successful—year for LeadershipSBOT.

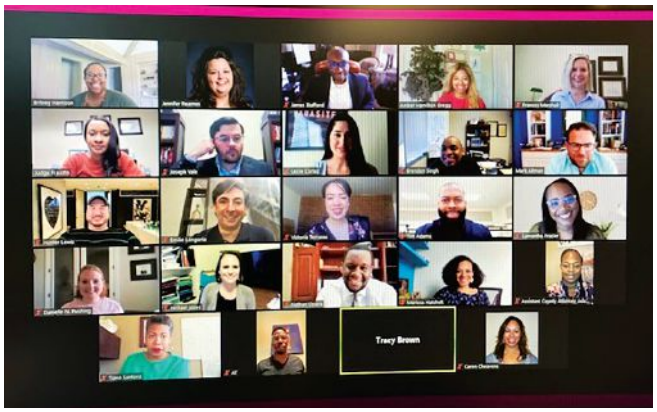
WRITTEN BY **ANDREW D. TINGAN**

As we all know too well by now, our new normal has forced us all to adapt. The most recent LeadershipSBOT class was no exception. Created in 2008 under the leadership of then-State Bar President Harper Estes, LeadershipSBOT, or LSBOT, was designed to increase the quality of leadership within the legal community through the nomination of lawyers who possess both the desire and the potential to assume leadership roles. Central to the program's mission is ensuring that participant demographics represent the diversity of the state of Texas.

The yearlong program equips approximately 20 carefully selected attorneys with the tools to develop and transition into leadership roles in their firms, communities, and the State Bar of Texas. Until 2020, the program's quarterly meetings took place in a live setting in various locations throughout the state. These meetings served as an opportunity for the class to foster meaningful relationships as a group, interact with current leaders, and discover how to best engage in public involvement to be effective in the profession and in the community.

2020 ushered in the first all-virtual LSBOT class, and with it the uncertainty of whether the class would be able to connect in the same manner as years past. Throughout their Zoom-filled year, members of the 2020-2021 class found ways to both connect and make a lasting impact around the state. For their capstone project, members leveraged their virtual reach by presenting the Texas Young Lawyers Association-sponsored program *Your Voice Now!* to at least one school in each of Texas' 20 Education Service Center districts. Through the presentations, elementary school students were introduced to the concept of student speech and the general protections provided by the Bill of Rights. For many of the students,

ABOVE LEFT: Texas Young Lawyers Association Immediate Past President Britney E. Harrison (Dallas), center, with LSBOT members, from left, Mark Altman (Spring), Samantha Frazier (Houston), Glenda Duru (Houston), and Hunter Lewis (Dallas). **ABOVE RIGHT:** LSBOT members during an event hosted by Tran Singh in Houston; from left, Samantha Frazier, Emilio Longoria (Houston), Glenda Duru, Brendan Singh (Houston), and Andrew Tingan (Austin).
PHOTOS COURTESY OF ANDREW D. TINGAN



ABOVE TOP: LSBOT members and SBOT staff during a training session.
ABOVE BOTTOM: LSBOT members Tim Adams (Houston) and Brendon Singh.
ABOVE TOP PHOTO COURTESY OF JENNIFER REAMES
ABOVE BOTTOM PHOTO COURTESY OF ANDREW D. TINGAN

some of whom had never met a lawyer before, these presentations provided a unique opportunity to engage with a diverse group of attorneys.

For a class that accomplished so much, surprisingly none of the members had met in person. With restrictions slowly easing, recent months have provided opportunities for in-person meetings, and the 2020-2021 class has taken advantage of opportunities to support each other in real life. Most recently, several members of the class were able to convene in Houston to attend an annual barbecue hosted by Tran Singh, where fellow classmate, Brendon Singh, is a founding partner.

Resilience may have been the true lesson during what was a trying year for the entire world. Fortunately, this year's LSBOT class rose to the occasion with innovation and left no doubt that a virtual alternative could be just as successful as its live counterpart, albeit not quite as enjoyable. **TBJ**

ANDREW D. TINGAN
is an attorney with Butler Snow. He is a member of the firm's Commercial Litigation Practice Group.

RECENT DEVELOPMENTS IN EQUAL-PROTECTION LITIGATION FOR TRANSGENDER PEOPLE

A look at *Bostock v. Clayton County* and *Grimm v. Gloucester County School Board.*

WRITTEN BY **JANE LANGDELL ROBINSON**

Eighteen months ago, the U.S. Supreme Court reshaped employment law by holding, in *Bostock v. Clayton County,* that Title VII prohibits firing an employee because of the employee's status as gay or transgender.[1] Although the court emphasized that *Bostock* was a statutory-construction decision limited to Title VII,[2] its effects beyond Title VII—and particularly in equal-protection litigation for transgender plaintiffs—were immediate and unmistakable.

But while *Bostock* had an important effect on equal-protection litigation, change was already brewing. This article examines the rapidly developing area of equal-protection litigation for transgender people and *Bostock*'s role in that development.

Bostock: "Because of Sex"

Bostock addressed three cases brought by plaintiffs fired for being gay or transgender.[3] The question the court presented was, Does Title VII's prohibition against firing someone "because of" that person's sex prohibit the firing of someone for their status as gay or transgender?[4] The court's holding was "simple and momentous."[5] In a majority opinion authored by Justice Neil Gorsuch, the court determined that "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."[6]

The court focused on two issues. First, the court noted that Title VII emphasized the experience of an individual, rather than a group.[7] Therefore, the court rejected the idea that a gender-identity discrimination policy that discriminated equally between transgender men and transgender women would "balance out" because both men and women were generally treated the same; the question was not whether groups were treated fairly overall, but whether the individual plaintiff was treated fairly.[8]

Second, the court viewed sexual-orientation and gender-identity discrimination as rooted in an intolerance for traits or behaviors in one gender that would be accepted in another.[9] This is true, the court noted, regardless of whether the employer perceives its discrimination to be sex-based.[10]

In a spirited and lengthy dissent, Justice Samuel Alito (joined by Justice Clarence Thomas) criticized the reasoning of the court's decision.[11] Alito also expressed concern about its scope. He said that "the Court's decision may exert a gravitational pull in constitutional cases," particularly equal-protection cases.[12]

Alito's prediction that *Bostock* may affect future equal-protection claims for transgender people proved true.[13] Yet a closer look reveals that *Bostock* was only part of a story already being written.

The Underlying Equal-Protection Framework

In evaluating a claim under the Equal Protection Clause of the 14th Amendment[14]—i.e., an attack on a law because it treats similarly situated people differently—the pivotal question is the level of scrutiny applied to the law at issue.[15] Most classifications are considered benign and are upheld as long as they are rationally related to a legitimate state interest.[16] Race-based classifications, by contrast, are "inherently suspect," must be "strictly scrutinized," and typically fail equal-protection challenge.[17]

Classifications based on gender, considered a "quasi-suspect" class, fall somewhere in between, and are subject to a "heightened scrutiny" or "intermediate scrutiny" standard.[18] This standard requires that the law be substantially related to a sufficiently important governmental interest to survive.[19]

Given that *Bostock* held discrimination against transgender people to be sex-based, it is easy to understand why Alito said the court's holding may be expanded to the equal-protection context. But the next case on this topic, *Grimm v. Gloucester County,* painted a more complex picture.

Grimm v. Gloucester County School Board: Heightened Scrutiny Without *Bostock*

Just two months after *Bostock,* the U.S. Court of Appeals for the 4th Circuit issued its opinion in *Grimm v. Gloucester County School Board.*[20] The court affirmed summary judgment granted for Gavin Grimm, a transgender boy who sued his local school board over its school-restroom policy (requiring students to use restrooms according to the gender assigned them at birth) and its refusal to amend his school records to reflect the gender shown on his amended birth certificate.[21]

The 4th Circuit held that the board's policy failed heightened scrutiny under the Equal Protection Clause and that it violated Title IX by discriminating against Grimm on the basis of sex.[22]

But while *Grimm* considered *Bostock* in its opinion, it applied *Bostock* to Grimm's statutory Title IX claims *only*.[23] The 4th Circuit found that heightened scrutiny applied to Grimm's equal-protection claims for two independent reasons—neither of which depended on *Bostock.*

First, the court concluded that the board's actions created sex-based classifications because they necessarily referred to gender for their application, both by referring to the gender marker on Grimm's original birth certificate to determine how he should be

treated, and also because the board treated Grimm differently because "he was viewed as failing to conform to the sex stereotype propagated by the Policy."[24] In so doing, the court cited a long line of cases from across the country that had reached similar conclusions.[25]

Second, the court alternatively concluded that heightened scrutiny applied because transgender people constitute a suspect or quasi-suspect class.[26] The court evaluated whether transgender people as a class: (1) have historically been subject to discrimination; (2) possess a defining characteristic that does not relate to their ability to perform or contribute to society; (3) may be defined as a discrete group by obvious, immutable, or distinguishing characteristics; and (4) constitute a minority lacking political power.[27]

The court held transgender people satisfy all four factors, independently justifying the application of heightened scrutiny.[28] Under that standard, the court concluded that the board's restroom policy was not substantially related to its important interest in protecting students' privacy, and that its refusal to update Grimm's school file was not substantially related to its important interest in maintaining the accuracy of school records.[29]

A Simpler Analysis: *Bostock* = Heightened Scrutiny?

While *Grimm* and other courts have concluded that transgender individuals independently qualify as a quasi-suspect class entitled to heightened scrutiny, other post-*Bostock* courts have adopted the analysis Alito predicted: that because *Bostock* held that discrimination based on transgender status is sex-based discrimination for purposes of Title VII, it is also discrimination subject to heightened scrutiny under the Equal Protection Clause.

For example, in *N.H. v. Anoka-Hennepin School District No. 11,* a transgender boy challenged a school requirement that he use a separate area of the boys' locker room under the equal-protection clause of the Minnesota Constitution.[30] Although the court rejected the boy's argument that his claim should be governed by a strict-scrutiny standard, it noted that the *Bostock* decision "equated transgender discrimination with sex discrimination," and therefore intermediate scrutiny should apply.[31]

Other courts rely on both lines of cases. In *Hecox v. Little,* transgender and cisgender female athletes challenged an Idaho law that barred transgender women from participating in women's sports teams, established a dispute process that would require students to undergo a potentially invasive sex verification process, and created a private cause of action against schools for any student who was harmed or deprived of athletic opportunity due to the participation of transgender women on a women's team.[32]

In assessing which standard to apply, the court relied both on district precedent determining that transgender people qualify as a quasi-suspect class and *Bostock*'s determination that "it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex."[33]

Conclusion

Alito predicted that courts may extend *Bostock* beyond its statutory-construction origins. But *Grimm* and its predecessors make clear that change was already in progress before *Bostock*. And although the court denied review of *Grimm,* it will have other opportunities to review the application of heightened scrutiny to transgender people. What it will decide then is anyone's guess. **TBJ**

NOTES

1. *Bostock v. Clayton Cty., Ga.,* 140 S. Ct. 1731 (2020) (citing 42 U.S.C. §§ 2000e–2(a)(1)).
2. *Id.* at 1753.
3. *Id.* at 1737.
4. *Id.* at 1738–39.
5. *Id.* at 1741.
6. *Id.*
7. *Id.* at 1740.
8. *See id.* at 1741.
9. *Id.*
10. *Id.* at 1742.
11. *See id.* at 1754–1822 (Alito, J. dissenting).
12. *Id.* at 1783.
13. *See id.* (citing, inter alia, *Grimm v. Gloucester Cty. Sch. Bd.,* No. 19–1952 (4th Cir. Nov. 18, 2019) and Complaint in *Hecox,* No. 1:20-CV-00184, both discussed *infra*).
14. U.S. Const. amend. XIV, § 1.
15. *See Grimm v. Gloucester Cty. Sch. Bd.,* 972 F.3d 586, 606–07 (4th Cir. 2020), *cert. denied,* 2021 WL 2637992 (U.S. Jun. 28, 2021).
16. *Id.*
17. *See id.*
18. *Id.* at 607–08.
19. *Id.* at 608.
20. *See supra* n. 15.
21. *Id.* at 593–94.
22. *Id.* at 616.
23. *See id.*
24. *Id.* at 608.
25. *Id.* at 608–09.
26. *Id.* at 610.
27. *Id.* at 611–13 (citing *Bowen v. Gilliard,* 483 U.S. 587 (1987) and *City of Cleburne v. Cleburne Living Center,* 473 U.S. 432 (1985)).
28. *Id.* Several other courts have reached the same conclusion. *See, e.g., Brandt v. Rutledge,* 4:21CV00450 JM, ___ F. Supp. 3d ___, 2021 WL 3292057 at *2 (E.D. Ark. Aug. 2, 2021), appeal filed; *Ray v. McCloud,* 507 F. Supp. 3d 925, 937 (S.D. Ohio 2020); *F.V. v. Barron,* 286 F. Supp. 3d 1131, 1144–45 (D. Idaho 2018); *Evancho v. Pine-Richland Sch. Dist.,* 237 F. Supp. 3d 267, 288–89 (W.D. Pa. 2017); *Adkins v. City of New York,* 143 F. Supp. 3d 134, 139–40 (S.D.N.Y. 2015).
29. 972 F. 3d at 614–15.
30. 950 N.W.2d 553 (Minn. Ct. App. 2020).
31. *Id.* at 570. *See also Taking Offense v. State,* 66 Cal. App. 5th 696, 281 Cal. Rptr. 3d 298, 322 (Cal. Ct. App. July 16, 2021) (reaching same conclusion under California and U.S. Constitutions), appeal filed.
32. 479 F. Supp. 3d 930 (D. Idaho 2020), appeal filed.
33. *Id.* at 973–74 (citing *Barron,* 286 F. Supp. 3d at 1143–45 and *Karnoski v. Trump,* 926 F.3d 1180, 1201 (9th Cir. 2019), and quoting *Bostock,* 140 S. Ct. at 1741). *See also Boston Alliance of Gay, Lesbian, Bisexual and Transgender Youth (BAGLY) v. U.S. Dep't of Health and Human Services,* No. 20-11297-PBS, __ F. Supp. 3d __, 2021 WL 3667760 at *15 (D. Mass. Aug. 18, 2021) (interpreting Fifth Amendment).

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leads the appellate practice group at trial boutique Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing. She is certified in civil appellate law by the Texas Board of Legal Specialization and handles a variety of civil appellate matters in state and federal courts. Robinson has been a co-author of *O'Connor's Texas Rules * Civil Trials* since 2018.

PROTECTING A STUDENT'S RIGHT TO BE 'SNAPPY'

The First Amendment and student speech outside of school.

WRITTEN BY **CHRISTOPHER A. BROWN**

A Snapchat caption using profanity before the words "school," "softball," "cheer," and "everything" resulted in B.L., a Mahanoy Area High School student, getting suspended from her school's cheerleading squad for a year. The U.S. Supreme Court held that in suspending B.L. for the statements made in her Snapchat, the school district violated B.L.'s First Amendment rights.

The case of *Mahanoy Area School District v. B.L.,* decided in June 2021, arises from Mahanoy Area High School, a public school in Mahanoy City, Pennsylvania. The case was the high court's first student free speech case of the internet era involving schools regulating student speech outside of school.

Facts

At the end of her freshman year, B.L. tried out to be a varsity cheerleader but failed to make the squad and was offered a spot on the junior varsity. That weekend, B.L. visited the Cocoa Hut, a local convenience store, and used her smartphone to post the profanity-laced snap. Importantly, the

speech took place outside of school hours and away from the school's campus. The snap was viewed and shared by hundreds of people culminating in it getting forwarded to the school's cheerleading coaches.

The coaches suspended B.L. from the junior varsity cheerleading squad for the upcoming year because they decided that the profanity-ridden snap violated team and school rules. School officials and the school board backed the coaches' decision. B.L., together with her parents, filed suit arguing that punishing B.L. for her speech violated the First Amendment. The district court sided with B.L. as did the U.S. Court of Appeals for the 3rd Circuit.

The U.S. Supreme Court granted the petition for certiorari asking whether schools can regulate student speech that occurs off campus.

History of School Speech Regulations

The significance of the U.S. Supreme Court taking this case is that it is the first case in which the court has considered the constitutionality of a public school's attempt to regulate true off-premises student speech.[1]

Regulation of student speech at school is commonplace. While students do not "shed their constitutional rights to freedom of speech or expression," even "at the schoolhouse gate,"[2] courts must apply the First Amendment "in light of the special characteristics of the school environment."[3]

It is axiomatic that the First Amendment allows free speech rights of public-school students to be restricted because the "special characteristics of the school environment" justify special rules.[4] In his concurrence, Justice Neil Gorsuch writes, as a practical matter, that it is impossible to see how a school could function if administrators and teachers could not regulate on-premises student speech. Gorsuch then lists various examples of schools imposing content-based restrictions in the classroom including: 1) in a math class the teacher can insist that students talk about math, not some other subject; 2) when a teacher asks a question, the teacher must have the authority to insist that the student respond to that question and not some other question; and 3) a teacher must also have the authority to speak without interruption and to demand that students refrain from interrupting one another.

However, outside of these mundane day-to-day regulations that allow schools to functionally operate, the U.S. Supreme Court previously outlined specific categories of student speech that schools may regulate in certain circumstances, including: (1) "indecent," "lewd," or "vulgar" speech uttered during a school assembly on school grounds,[5] (2) speech, uttered during a class trip, that promotes "illegal drug use,"[6] (3) speech that others may reasonably perceive as "bear[ing] the imprimatur of the school," such as that appearing in a school-sponsored newspaper,[7] and (4) speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others."[8]

Analysis of the Court

In an 8-1 decision, the Supreme Court explicitly declined to issue "a broad, highly general rule" or bright-line test for whether schools may regulate speech that takes place off campus. Writing for the nearly unanimous court, Justice Stephen Breyer said it would be improper to give schools unfettered permission to police student speech both on and off campus.

The court analyzes three "features" of off-campus speech that may distinguish a school's efforts to regulate off-campus speech from regulations of on-campus speech.

First, the doctrine of in loco parentis treats school administrators as standing in the place of students' parents under circumstances where the children's actual parents cannot protect, guide, and discipline them. The court stated that a school, in relation to off-campus speech, will rarely stand in loco parentis, thus diminishing the strength of any school regulation of off-campus speech.

Second, if regulations of off-campus speech are coupled with regulations of on-campus speech, then the regulations on a student are present 24 hours a day. Given that regulation of off-campus speech could produce a hyper-regulatory environment, the court noted that courts must be more skeptical of a school's efforts to regulate off-campus speech, particularly when it comes to political or religious speech that occurs outside school or a school program or activity.

Third, a student's unpopular expression, especially when the expression takes place off campus, warrants an interest in protection from the school as the court reasoned that representative democracy only works if the marketplace of ideas is protected.

The school identified its interests in regulating B.L.'s speech to include teaching good manners, avoiding classroom disruptions, and preserving team morale. The court weighed these interests against the three factors described above and found them lacking. First, B.L. spoke under circumstances where the school did not stand in loco parentis as there is no reason to believe B.L.'s parents had delegated to school officials their own control of B.L.'s behavior at the Cocoa Hut. Second, B.L. spoke outside of school on her own time, and there was no evidence in the record of a "substantial disruption" of school. Third, while acknowledging that it "might be tempting to dismiss B.L.'s words as unworthy" of First Amendment protections, it is sometimes "necessary to protect the superfluous in order to preserve the necessary."[9]

Impact of *Mahanoy*

While the court decided that the school infringed on B.L.'s First Amendment rights in regulating her off-campus speech, it stopped short of saying a school could never regulate off-campus speech. If the court will not provide a bright-line rule, what can we take away from the ruling?

1) The First Amendment permits public schools to regulate *some* student speech that does not occur on school premises during the regular school day, but this authority is more limited than the authority that schools exercise with respect to on-premises speech, and courts should be skeptical about the constitutionality of the regulation of off-premises speech.

2) Some potential instances identified by the court where off-premises speech could potentially be regulated includes speech involving serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices, including material maintained within school computers.

3) Public school students have the right to express unpopular ideas on public issues, even when those ideas are expressed in language that some find inappropriate or hurtful.

4) Public schools have the duty to teach students that freedom of speech, including unpopular speech, is essential to our form of self-government.

5) A school district risks violating a student's First Amendment rights if it punishes a student for social media postings on their own time and away from school premises. **TBJ**

NOTES

1. *Mahanoy Area Sch. Dist. v. B. L. by & through Levy,* 141 S. Ct. 2038, 2048, 210 L. Ed. 2d 403 (2021) (Gorsuch, J., concurring in judgment).
2. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.,* 393 U.S. 503, 506, 89 S. Ct. 733, 736, 21 L. Ed. 2d 731 (1969).
3. *Hazelwood Sch. Dist. v. Kuhlmeier,* 484 U.S. 260, 266, 108 S.Ct. 562, 98 L.Ed.2d 592 (1988).
4. *Morse v. Frederick,* 551 U.S. 393, 397, 403, 405, 406, n. 2, 408, 127 S.Ct. 2618, 168 L.Ed.2d 290 (2007).
5. *See Bethel Sch. Dist. No. 403 v. Fraser,* 478 U.S. 675, 685, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986).
6. See *Morse v. Frederick,* 551 U.S. 393, 409, 127 S.Ct. 2618, 168 L.Ed.2d 290 (2007).
7. *Hazelwood Sch. Dist. v. Kuhlmeier,* 484 U.S. 260, 266, 108 S.Ct. 562, 98 L.Ed.2d 592 (1988).
8. *Tinker,* 393 U.S., at 513, 89 S. Ct. 733.
9. See *Tyson & Brother v. Banton,* 273 U.S. 418, 447, 47 S.Ct. 426, 71 L.Ed. 718 (1927) (Holmes, J., dissenting).

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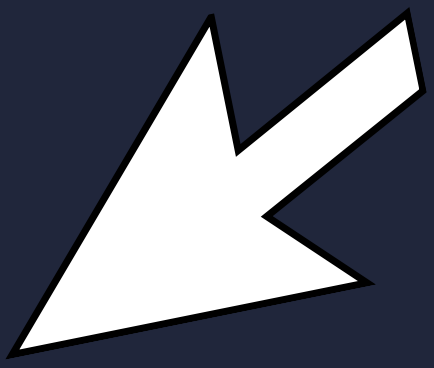

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HOME IS WHERE WE UNITE

A look at a classic Fourth Amendment issue.

WRITTEN BY **LEO YU**

In the 2020-2021 term, the U.S. Supreme Court issued two unanimous opinions regarding a classic Fourth Amendment issue—warrantless entry of a home. The court ruled against the government in both of the cases and declined to recognize more exceptions that may justify warrantless home entry. The two cases here once again reaffirmed the court's historical prudent position toward the Fourth Amendment's application to a home.

Caniglia v. Strom is a case regarding law enforcement's authority in "community caretaking" tasks.[1] Edward Caniglia's wife asked the police to conduct a welfare check on her husband. The police arrived at Caniglia's house with an ambulance and found Caniglia on the porch, alive. Caniglia denied that he was suicidal but admitted that he had a heated argument with his wife, during which he asked his wife to shoot him. He agreed to leave the house to receive a psychiatric evaluation, on the condition that the police would not confiscate his guns. However, after Caniglia left with the ambulance, the police went into the house and took two guns.

Caniglia sued, arguing that the state violated his Fourth Amendment right when the police entered his home and seized his firearms without a warrant. The district court ruled against Caniglia, and the U.S. Court of Appeals for the 1st Circuit affirmed. The 1st Circuit held that in *Cady v. Dombrowski,* the Supreme Court found that a warrantless search during a community welfare check did not violate the Fourth Amendment.[2]

In a unanimous opinion, the Supreme Court reversed the 1st Circuit's ruling. Justice Clarence Thomas wrote for the court and declined to extend the *Cady* exception to this case. Thomas found that the *Cady* court did not create a "freestanding" exception to allow the police to enter a person's home without a warrant for a welfare check. First, *Cady* dealt with a warrantless search of an impounded vehicle. Although the court created an exception to allow the police to search the vehicle without a warrant, the court specifically recognized that a vehicle should not be treated equally with a person's home, as the Constitution provides a higher level of protection to the latter.[3] Second, the court in *Cady* simply mentioned "community caretaking" in passing and recognized that the police regularly conducted such tasks.[4] Nowhere in the *Cady* ruling did the court indicate that it intended to allow the police to enter a citizen's home without a warrant simply because the police were conducting a community caretaking task.[5]

In *Lange v. California,* the court was presented with a more complicated question: Does a hot pursuit of a misdemeanant constitute an exigent circumstance that justifies the police's warrantless entry of a home?[6]

In this case, Arthur Lange gained the attention of a California Highway Patrol officer by playing loud music and repeatedly honking his horn without a reason. The patrol officer started to follow Lange, and after several blocks, the officer decided to activate his overhead lights to pull over Lange. It turned out that Lange was only about a hundred feet away from his house at that point. Instead of stopping his car, Lange drove right into his attached garage. The patrol officer went into the garage and questioned Lange. Observing signs of intoxication, the patrol officer arrested Lange.

Lange was indeed drunk, and was charged with state misdemeanors. Lange sought to suppress all evidence obtained in his garage, arguing that the warrantless search violated his Fourth Amendment right. The state trial court denied Lange's suppression motion. The California Court of Appeals affirmed and ruled that as long as the police have initiated an arrest in the public, a "hot pursuit" is established and a criminal suspect, including a misdemeanant, cannot defeat the arrest by retreating to his home. The California Supreme Court declined to grant certiorari.

The Supreme Court, in another unanimous ruling, reversed the state court's ruling. Justice Elena Kagan wrote for the court.

Kagan recognized that this case presented a circuit split. Several jurisdictions, such as California, adopt a "categorical rule," which *always* permits an officer to enter a home without a warrant in pursuit of a fleeing misdemeanant. Other jurisdictions follow a "case by case" approach, which requires the showing of exigency in each instance when an officer attempts to enter a home warrantlessly.[7] The court rejected the categorical rule and held that the Fourth Amendment requires a case-by-case analysis.

Kagan found the court has shown a consistent commitment to protecting a person's home from unreasonable search, which is the "very core" of the Fourth Amendment.[8] Indeed, the court has recognized several exigent circumstances that justify warrantless entry, such as rendering assistance to a person being injured, preventing the destruction of evidence, or stopping a suspect from fleeing. However, these exceptions do not in any way overshadow the court's general jurisprudence that the protection of a person's home is a matter of constitutional interest.[9]

Kagan held that the court did not create a categorical rule for misdemeanors in *United States v. Santana,* in which the court found that the police's warrantless home entry during a pursuit of a fleeing felon did not violate the Fourth Amendment.[10] Kagan did not further clarify the court's position in *Santana* but concluded that even assuming *Santana* created a categorical rule, that rule would only apply to the hot pursuit of fleeing *felons* and the court never indicated that such rule would apply to the pursuit of fleeing *misdemeanants*.[11]

Kagan observed that misdemeanors "run the gamut of seriousness": the majority of them are minor offenses, but some of them involve violence.[12] Applying a categorical rule would put all misdemeanants, whether they are violent or not, into the same category.[13] This approach runs afoul of *Welsh v. Wisconsin,*[14] in which the court held that when a minor offense is involved, police officers do not usually face the kind of emergency that can justify a warrantless home entry.[15] Thus, a case-by-case approach is the most suitable approach in dealing with fleeing misdemeanants: a police officer may enter a home warrantlessly, but he or she can only do so when the totality of the circumstances—such as imminent injury, destruction of evidence, or escape from home—present an exigency.[16]

These two cases reaffirmed the court's strong consensus against unreasonable governmental intrusion of a person's home. People's right to retreat into their homes stands at the core of the Fourth Amendment. This Fourth Amendment right has a strong common law foundation. Thus, the court "[is] not eager—more the reverse—to print a new permission slip for entering the home without a warrant."[17] The court's interpretation of its own precedents—*Cady* and *Santana*—further demonstrates the court does not feel compelled to recognize more exceptions to justify warrantless entries. On the contrary, Thomas and Kagan both warned that the court said what needs to be said in its Fourth Amendment cases regarding warrantless entry; therefore, any broad reading of those cases will receive careful and rigorous scrutiny from the court.

However, there is one issue the court did not resolve: whether a hot pursuit of a fleeing felon categorically constitutes an exigent circumstance that may justify warrantless home entry. In his concurring opinion, Justice Brett M. Kavanaugh argued that the court in *Santana* has established that the hot pursuit of a felon itself constitutes an exigent circumstance, and Chief Justice John G. Roberts Jr. shared similar arguments in his concurrence.[18] Nevertheless, this argument did not gain the majority support of the court, and Kagan pushed back this line of argument by simply stating that "we see no need to consider [the] counterargument that *Santana* did not establish any categorical rule—even one for fleeing felons."[19] Thus, it is still unclear as to whether a hot pursuit of a felon constitutes a per se exigent circumstance.

The two cases here were the first several criminal procedure cases presented to the newest justice on the bench, Justice Amy Coney Barrett. Barrett participated in both the oral argument and opinion consideration phases. She joined the authoring justices' opinions and did not write or join any other conservative justices' concurrences. Her silence might indicate that as a former clerk to the late Justice Antonin Scalia, she shares Scalia's Fourth Amendment jurisprudence, which heavily relies on the Fourth Amendment's well-documented common law foundation that can be traced back to the founding era. Such an approach often leads to pro-defendant rulings. However, it is also possible that her silence is just a result of workload management. As the newest justice who took the bench shortly before the oral argument, it is not practical for her or her clerks to gather all the information and conduct comprehensive research to address a complex constitutional issue in such a short period of time.

With all the changes to the Supreme Court's components, it is quite rare to see multiple unanimous rulings on a single constitutional issue from the same term. Despite ideological differences, all justices agree that the protection of the sanctity of a home is unequivocally the most vital value the Founding Fathers intended to vest into the Fourth Amendment. Looking at the Constitution as a whole, the Fourth Amendment's application to a home is perhaps one of the few constitutional issues that can unite the court. **TBJ**

NOTES

1. *Caniglia v. Strom,* 141 S. Ct. 1596 (2021).
2. *Cady v. Dombrowski,* 413 U. S. 433 (1973).
3. *See Caniglia* at 1599-60.
4. *See id.* at 1600.
5. *See id.*
6. *Lange v. Calif.,* 141 S. Ct. 2011 (2021).
7. *Id.* at 2017.
8. *Id.* at 2018.
9. *See id.* at 2018-19.
10. *U.S. v. Santana,* 427 U. S. 38 (1976).
11. *See Lange* at 2019-20.
12. *Id.* at 2020.
13. *Id.* at 2021.
14. *Welsh v. Wisc.,* 466 U. S. 740 (1984).
15. *See Lange* at 2020.
16. *Id.* at 2021-22.
17. *Id.* at 2019.
18. *Id.* at 2025, 2029-30.
19. *Id.* at 2019.

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IN THEIR BEST INTERESTS

Are guardianships toxic to constitutional rights?

WRITTEN BY **JULIE BALOVICH**

When Britney Spears was able to speak directly to the judge who oversees her conservatorship and her speech went viral, it was the first time that many people heard the firsthand experience of a person living under guardianship.[1] What Spears described was disturbing. She said she was forced to take psychoactive medication that made her feel "drunk." She was compelled to obtain therapy with someone she did not trust. She was not allowed to remove a contraceptive device when she wanted a child. Spears summarized her complaints with devastating simplicity: "I just want my life back."[2]

Spears' story is extraordinary because of who she is (an international pop star, for those who eschew pop culture/live under a rock), but the essence of her story is not unusual. On a routine basis in our country and in our state, persons with varied mental conditions become subject to court orders that strip their control over their own lives. As described by the Texas Supreme Court, guardianships are a "court-sanctioned infringement of an incapacitated person's right to control her own property, liberty, and life in order to promote and protect [her] well-being."[3] A form of "civil death" as that term has been used in jurisprudence,[4] guardianships can terminate an adult's constitutional rights, including the right to vote,[5] marry,[6] and possess guns.[7] Adults under guardianship lose the right to make the ordinary everyday choices that are core to our concept of personal liberty.[8]

The legal justification for guardianships is the ancient doctrine of parens patriae—that the state has an obligation to be a protector for its citizens who cannot take care of themselves.[9] This concept makes sense intuitively. If a person cannot access food, clothing, shelter, medical care, or manage his or her property because he or she lacks capacity to do so, society should step in. The rights-based justification for a guardianship is that a guardianship ensures equal protection for these individuals under the law. The guardian is the person with authority to ensure the ability to access essentials for the incapacitated adult, and the court has oversight to ensure that the dependent adult is not harmed.

But rights extend beyond access to tangible essentials—to agency, autonomy, and self-expression. In the American conception of civil rights, liberty is fundamental. This includes the liberty to make mistakes. Viewed in this context, guardianships should be a measure of last resort and should be narrowly tailored. In practice, the human impulse to protect the most vulnerable in our society tilts the scales in favor of full guardianships that provide maximum protection against the harm of potential bad choices.

For years, Texas courts have acknowledged that the liberty interests implicated in guardianship proceedings necessitate "'uniform, strict procedural safeguards to protect a person's

liberty and property interests before a court may take the drastic action of removing' a person's ability to make his or her own legal decisions."[10] Those safeguards include a heightened burden of proof as to the person's incapacity and the necessity for a guardianship.[11] Further, Texas law expressly requires a finding that the appointment of a guardianship will protect the rights or property of a person.[12] The Legislature has adopted a policy statement of guardianships restraint by providing that authority should be granted "as indicated by the incapacitated person's *actual* mental or physical limitations and *only as necessary* to promote and protect the well-being of the incapacitated person."[13]

At the national level, a movement spurred by disability rights and elder law advocates has resulted in legislative reform in many states and the development of practical resources for practitioners who represent persons with diminished capacity.[14] In 2015, the work of a committee of stakeholders in Texas resulted in omnibus legislation including the requirement that alternatives to guardianship be considered.[15] Texas became the first state to codify supported decision-making, a process that supports and affirms the rights of persons with disabilities to make their own choices with the help of persons they trust.[16] The legislation intended to reduce unnecessary and overly restrictive guardianships and provide better oversight of guardians.[17]

Has it worked? It is hard to know how many guardianships have not been filed or have not been granted as a result of the new pleading and proof requirements.[18] But even with heightened procedural due process protections, the law still permits a guardianship proceeding to do more than what is actually necessary to protect a person's rights at the time the guardianship is sought. As one example, a researcher found that 90% of guardianships in Texas terminate the right of the person to vote.[19] What evidence do courts rely upon to make that determination? Is termination of all fundamental rights a necessary outcome of a guardianship?

These questions were presented recently in *In the Guardianship of N.P.,* a case from the 2nd Court of Appeals in Fort Worth.[20] In *N.P.,* a statutory probate court granted a limited guardianship to the parents of an 18-year-old woman who had a mild intellectual disability and autism after findings that the young woman lacked capacity to make personal decisions regarding medical care, employment, and her residence based upon an uncontroverted doctor's affidavit, a court investigator report, and her parents' testimony.[21] N.P. participated in the hearing.[22] She testified that she attended school and took part in activities with people her own age and without other adult supervision.[23] She worked in a grocery store and wanted to attend community college, and she expressed her appreciation for her parents' help and guidance.[24] She was not asked about marriage, voting, or driving.[25] In denying a full guardianship, the trial court found insufficient evidence that N.P. lacked capacity to make decisions regarding marriage, voting, and operating a motor vehicle and also found there were alternatives to removing the right to operate a motor vehicle because she would have to fulfill requirements of Texas law to obtain a driver license.[26]

The parents appealed the order granting a limited guardianship, and the court of appeals reversed, holding that there was no countervailing evidence that N.P. was "capable of making significant decisions about voting, driving, and marriage" and therefore it was an abuse of discretion for the court to fail to find she was totally incapacitated.[27] The court did not discuss how the record conclusively negated that N.P. would ever be able to express a choice in a presidential or local election, nor what factors a court should consider in deciding whether a person has capacity to make such a choice.[28]

The fact that a person has rights under the law does not mean he or she is ready to exercise them. People are often still in high school when they become adults; most will continue to rely upon their parents for a place to live, financial support, and guidance on significant decisions. But many families seek guardianships over children with disabilities when they reach the age of majority simply so they can continue to make medical and educational decisions—decisions they are otherwise barred from making because of federal and state law which confer these rights to adults. If families seek guardianship for these limited reasons, under the reasoning of *N.P.,* it may be an all-or-nothing proposition.

The guardianship structure allows violations of ordinary civil liberties. A person under guardianship has rights, including the right to be treated with respect for their personal preferences; how a person who is dependent upon a guardian enforces those rights is murky.[29] For instance, a person under guardianship may visit persons of his or her choice, unless a guardian determines it would cause substantial harm.[30] No procedure is required to deny access. If the guardian makes that determination, the person under guardianship must figure out how to request a hearing to remove those restrictions.[31] There is no review process that a person under guardianship is automatically entitled to participate in where he or she could express dissatisfaction directly to the court regarding how he or she is being treated.[32] And if he or she did, the court's prior finding that he or she is incapacitated and in need of protection may prejudice his or her ask. Decisions made under the guise of best interest are difficult to overcome, even when they violate a person's dignity of choice.

Guardianships are necessary in many cases to protect the rights of persons who cannot protect themselves. But if questions remain whether guardianships must be scrutinized for overreach, Spears' case shows that even a person with exceptional resources and an outsized media platform can be disempowered under a court-monitored situation designed to protect her. **TBJ**

The author would like to thank her colleagues Gabriel Sanchez, Hannah Samson, Erin Shahinfar, and Hannah Cramer for their valuable contributions to this article.

NOTES

1. A conservatorship in California is the same legal structure as a guardianship in Texas. https://www.courts.ca.gov/selfhelp-conservatorship.htm?rdeLocaleAttr=en.
2. Julia Jacobs & Sarah Bahr, *The Britney Spears Transcript, Annotated: "Hear What I Have to Say,"* New York Times (Jun. 24, 2001), https://www.nytimes.com/2021/06/24/arts/music/britney-spears-transcript.html.
3. *In re Thetford,* 574 S.W.3d 362, 364 (Tex. 2019) (internal quotations omitted).
4. *Texas & P. Ry. Co. v. Bailey,* 18 S.W. 481, 482, 83 Tex. 19, 23-24 ("Civil death is that change in a person's legal and civil condition which deprives him of civil rights and judical capacities and qualifications, as natural death extinguishes his natural condition.").
5. *Reynolds v. Sims,* 377 U.S. 533, 555 (1964) ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society.").
6. *Obergefell v. Hodges,* 576 U.S. 644, 645 (2015) ("[T]he Court has long held the right to marry is protected by the Constitution.").
7. Tex. Const. art. 1, § 23 ("Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State. . . .").
8. *Union Pac. Ry. Co. v. Botsford,* 141 US 250, 251 ("No right is held more sacred or is more carefully guarded by the common law than the right of every individual to the possession and control of his own person, free from all restraint or interference of others unless by clear and unquestionable authority of law.").
9. Mary F. Radford, *"History of guardianship and national guardianship reform,"* Ga. Guardianship and Conservatorship § 1.1 (describing English common law history as "probable origin of American guardianship laws").
10. *In re Guardianship of Hahn,* 276 S.W.3d 515, 518 (Tex. App.—San Antonio 2008, no pet.); *Saldarriaga v. Saldarriaga,* 121 S.W.3d 493, 499 (Tex. App.—Austin 2003, no pet.)
11. To appoint a guardian, a court must find by clear and convincing evidence that: (A) the proposed ward is an incapacitated person; (B) it is in the proposed ward's best interest to have the court appoint a person as the proposed ward's guardian; (C) the proposed ward's rights or property will be protected by the appointment of a guardian; (D) alternatives to guardianship that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and (E) supports and services available to the proposed ward that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible. Tex. Estates Code § 1101.101(a).
12. *Id.* § 1101.101(a)(C).
13. Tex. Estates Code § 1001.001(a) (emphasis added).
14. Guardianship and Supported Decision-Making, Amer. Bar Ass'n (Aug. 16, 2021), https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/.
15. Tex. H.B. 39, 84th Leg., R.S. (2015); Tex. Estates Code § 1101.001(b)(3-a), (3-b) (an applicant for guardianship must aver whether alternatives to guardianship were considered); Tex. Estates Code § 1101.101(a)(1)(D), (E) (court must find by clear and convincing evidence that alternatives and supports and services that would avoid the need for appointment of a guardian were determined to be not feasible).
16. Tex. Estates Code ch. 1357. The National Resource Center for Supported Decision Making is a comprehensive resource on supported decision making, including legislative initiatives (accessed at http://www.supporteddecisionmaking.org/).
17. Texas Guardianship Reform: Protecting the Elderly and Incapacitated, Jan. 2019, p. 2 (accessed at https://www.txcourts.gov/media/1443314/texas-guardianship-reform_jan-2019.pdf).
18. Since 2015, my law firm, law school clinical programs at the University of Texas School of Law and St. Mary's University School of Law, and Disability Rights Texas have offered free guardianship alternative clinics to persons with disabilities and their families, often in partnership with special education and school transition programs. We know anecdotally that many families who attend the clinics would have pursued guardianships because they otherwise would not have known another option.
19. Dustin Rynders, *Supporting Adults with Disabilities to Avoid Unnecessary Guardianship,* Hous. Law., January/February 2018, at 26-27.
20. *In the Guardianship of N.P.,* No. 02-19-00233-CV, 2020 WL 7252322 (Tex. App.—Fort Worth 2021, pet. denied) (mem. op.).
21. *Id.* at *13.
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.* at *2 n.3. Most statutory probate courts promulgate their preferred version of this form on their website. *See, e.g.,* https://www.traviscountytx.gov/images/probate/Docs/Physicians_Certificate_Medical_Examination.pdf.
28. The Texas Election Code defines a qualified voter as one who has not been determined by a final judgment of a court exercising probate jurisdiction to be "totally mentally incapacitated or partially mentally incapacitated without the right to vote." Tex. Elec. Code § 11.002 (West). The form "Physician Certificate of Medical Examination" requires a doctor to check off a box answering yes or no whether the proposed ward is able to "initiate and make responsible decisions concerning himself or herself" as to an itemized list of activities including "vote in a public election."
29. Tex. Estates Code § 1151.351 "Bill of Rights for Wards."
30. *Id.* § 1151.351(b)(16).
31. *Id.*
32. *Id.* Ch. 1163 (setting forth the annual reporting process, which does not require a hearing and may be satisfied based upon a sworn statement by the guardian).

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manages the guardianship practice at Texas RioGrande Legal Aid.

BY THE NUMBERS 2020-2021

The State Bar of Texas collects the following information pursuant to section 81.0215 of the Texas Government Code chapter 81 (the State Bar Act), which requires the State Bar to adopt a strategic plan every two years that includes measureable goals and a system of performance measures. The State Bar Act further requires the bar to report to the Texas Supreme Court the outcomes of these strategic plan performance measures.

As the basis of its current strategic plan, the State Bar identified six broad strategic categories guiding its goals and performance measures: 1) Service to the Public; 2) Service to Members; 3) Protection of the Public; 4) Access to Justice; 5) Sound Administration and Resources; and 6) Financial Management. The following data reflect results and outcomes of State Bar core services for the 2020-2021 bar year.

SERVICE TO THE PUBLIC

Distribution of information regarding legal issues of interest to the public: **10,069** pamphlets or printed materials

Distribution of multimedia information regarding legal issues and topics of particular relevance to the public: **37** news releases, media advisories, and op-eds

Visits to page on State Bar website relating to disaster recovery resources for the public: **5,998** page views

Visits to page on State Bar website relating to disaster recovery resources for attorneys: **1,134** page views

Visits to pages on State Bar-related websites containing legal information on issues of importance to the public: **23,647** pamphlets page hits, **4,474** downloads of pamphlets, **21,842** downloads of articles, **1,028** media page hits, **21,119,238** total hits to the SBOT website, and **15,696,316** unique page views

Traffic to Texas Bar Blog on legal issues of importance to the public: **185,883** page views

Traffic to State Bar social media sites on legal issues of importance to the public: **270,797** engagements, **25,067** clicks, and **4,406,367** impressions

Courses provided to teachers by the Law-Related Education Department: **44** Law-Focused Education teacher training sessions and **1,382** participants trained by LRE

Degree of satisfaction: **99%** would recommend LRE training to other teachers

Students taught by LRE-trained teachers: **131,032** students impacted by teacher training sessions

Traffic to LRE/LFEI website and related sites and social media: **312,891** visits

Traffic to the After the Bar Exam *online resource:* **7,622** watched segments; **2,679** downloaded segments

Traffic to the TYLA Ten Minute Mentor *online resource:* **55,307** watched segments; **29,996** downloaded segments

Traffic to the TYLA Ten Minute Mentor Goes to Law School *online resource:* **4,522** watched segments; **1,687** downloaded segments

Number of TYLA presentations given at law schools: **5** virtual law school orientation presentations

Number of TYLA presentations by attorneys and judges in public schools: **0** presentations due to COVID-19

Distribution of TYLA resources and information regarding legal issues of interest to the public through community service and education: **720** project distributions

Number of those helped by Texas Lawyers for Texas Veterans: Since 2010, over **11,000** volunteer attorneys, paralegals, and law students have assisted more than **32,000** veterans through local bar associations and other attorney volunteer organizations

Number of people who received a referral through the Lawyer Referral and Information Service: **49,735** calls answered and **54,393** referrals made

SERVICE TO MEMBERS

Attendance for TexasBarCLE webcasts: Offerings—**146**, Attendance—**13,294**

Attendance for TexasBarCLE online CLE: Offerings—**894**, Attendance—**238,137**

Attendance for TexasBarCLE video courses: Offerings—**89**, Attendance—**4,584**

Attendance for TexasBarCLE live courses: Offerings—**98**, Attendance—**18,137**

Number of registrants for TexasBarCLE free 1/2-hour online classes: **39,541**

Number of low-cost offerings: **34**

Number of publications offered by TexasBarCLE: **250** course book titles for sale

Number of CLE scholarships given to members: **385**

Sales of books by Texas Bar Books: **26,842** print, electronic, DVD, and online subscription sales

Number of CLE ethics publications offered by Texas Bar Books: **21** Texas Bar Books publications that include ethics topics; **157** Law Practice Management CLEs with most of them having an ethics component

Diversity of SBOT membership: **63%** male and **37%** female; **78%** White, **10%** Hispanic/Latino, **6%** Black/African American, **4%** Asian/Pacific Islander, less than **1%** American Indian/Alaska Native, and **2%** all others (numbers may not sum to 100% due to rounding)

Diversity of SBOT section membership: **61%** male and **39%** female; **79%** White, **10%** Hispanic/Latino, **6%** Black/African American, **3%** Asian/Pacific Islander, less than **1%** American Indian/Alaska Native, and **2%** all others (numbers may not sum to 100% due to rounding)

Diversity of SBOT committee membership: **56%** male and **44%** female; **72%** White, **13%** Hispanic/Latino, **8%** Black/African American, **3%** Asian/Pacific Islander, less than **1%** American Indian/Alaska Native, and **3%** all others (numbers may not sum to 100% due to rounding)

The State Bar remains committed to offering its members unique access to resources, goods, and services to help them in their professional as well as personal lives. In the 2020-2021 bar year, a total of **46** contracted benefits were offered through the State Bar Member Benefits Program. Goods and services offered include lawyer-specific programs, financial services, travel discounts, car rentals, office supplies, health insurance through the Texas Bar Private Insurance Exchange, and professional liability insurance through TLIE.

Statistics related to the aging lawyer population: The median age of Texas attorneys increased from **48** to **49** between 2010 and 2020; during that same period, attorneys 65 and older went from making up **11%** of the attorney population to **19%**

Visits to SBOT Member Benefits homepage: **60,176** page views

Visits to Texas Bar Private Insurance Exchange website: **91,083** page views

Number of members enrolled in one or more insurance products through the Texas Bar Private Insurance Exchange: **20,864**

Number of members enrolled in major medical insurance: **13,648**

Number of attorneys, law firms, and legal departments attending and participating in the Texas Minority Attorney Program: **99**

Number of attorneys, law firms, and legal departments attending and participating in the Texas Minority Counsel Program: **453** attendees, **19** interviewing corporations, and **43** sponsoring firms/organizations

Attendee satisfaction with the Texas Minority Counsel Program: Through a conference evaluation survey, the overall course was given a positive rating of **97%**; **100**% of respondents stated they are likely to recommend the conference to others

Attendee satisfaction with the Texas Minority Attorney Program: Evaluation form results show an overall event rating of **3.7** out of **4.0**

The Texas Lawyers' Assistance Program handled a total of **845** consultations—**64%** were related to mental health, **33%** were related to substance use, and **3%** were related to cognitive issues. TLAP's website—tlaphelps.org—garnered **34,511** users and **41,906** page views. TLAP made **125** educational outreach presentations, including at law schools.

Number of distributed publications: **5** articles written by TLAP have been distributed

Number of views of TLAP videos via the website: **1,326** page views of TLAP video page that houses *Courage, Hope, Help—TLAP Is There,* the four-minute excerpt of *Courage, Hope, Help—TLAP Is There,* the short TLAP promo, *Practicing From the Shadows, Practicing Law and Wellness, It's Good to Get Help, Stories of Recovery,* and the *Trauma of Harvey: Identifying PTSD in Yourself and Others*

Number of attorneys and volunteers/mentors participating in the Texas Opportunity & Justice Incubator, or TOJI: **109** volunteers/mentors, including **77** lawyers

Number of TOJI-created resources shared with the State Bar membership at large: TOJI made **7** public presentations with supplemental materials

Number of hours of training to TOJI participants: **144.5**

Number of users and page views to TOJI website: **3,090** users and **7,353** page views

Number of counties served by participants: With the 2020 expansion to a statewide virtual program, TOJI has served clients in **125** of Texas' **254** counties

Number of page views to the Law Practice Management Program webpage: **9,944**

Number of lawyers who attended live, video, webcast, or online CLE courses on law practice management topics: **16,216**

Number of phone calls and emails the Law Practice Management Program responded to: **135** phone calls and **88** emails

Number who voted in the 2021 SBOT elections: **20,518** (**19.19%** of the **106,943** ballots sent)

Visits to page on State Bar's website related to lawyer succession planning: **4,351** page views

Visits to pages on State Bar of Texas Law Practice Management Program's website related to lawyer succession planning: **3,280** on the Law Practice Management Program website, **4,479** visits to the Succession Planning portal on the State Bar website, and **3,122** views of Closing a Practice materials on the State Bar website

Number of advanced designations of custodian attorneys received by the State Bar: **203**

PROTECTION OF THE PUBLIC

Contacts the Client-Attorney Assistance Program, or CAAP, received: **22,664** via mail, email, and phone

Dispute resolutions conducted by CAAP: **911**, with productive communication successfully reestablished in **87%** of the cases

Number of referrals by the Office of Chief Disciplinary Counsel to the CAAP program: **331**

Number of submissions reviewed by the Advertising Review Committee: more than **2,693**

ATTORNEY DISCIPLINE SYSTEM (CHIEF DISCIPLINARY COUNSEL)

Information regarding disciplinary trends: The number of barratry-related grievances filed with CDC increased by more than **48%**

Number of barratry-related complaints filed: **16** (number includes grievances that were pending classification at the end of the bar year)

Number of grievances filed: **7,007**

Number of grievances classified as complaints: **1,946**

Number of grievances dismissed as inquiries: **4,870**

Number of investigatory hearings held by CDC: **354**

BAR YEAR 2020-2021

Total Complaints Resolved	**459**
Total Sanctions	**372**
Disbarments	**18**
Resignations	**15**
Suspensions	**123**
Public Reprimands	**36**
Private Reprimands	**100**
Grievance Referral Program	**80**

Eligible applications considered by the Client Security Fund: **135**

Eligible applications approved by the Client Security Fund: **79**

Total amount of grants approved by the Client Security Fund: **$483,699.91**

Efforts to publicize the Client Security Fund to eligible recipients and to discourage theft of clients' funds by their attorneys: CDC continues to provide information on the Client Security Fund to complainants who have filed attorney grievances and to publicize the fund via the media

The ethics attorneys on the Ethics Helpline returned about **5,000** calls.

Number of continuing legal education ethics offerings: TexasBarCLE programs provided **4,966** total MCLE hours and of those hours, **1,185** hours (**24%**) were for ethics credit

Number of ethics publications by Texas Bar Books: **1** devoted solely to ethics and **20** that contain ethics topics

ACCESS TO JUSTICE

Legal aid and pro bono attorneys using free legal research: **475** attorneys; **90** paralegals

Legal aid referrals made by the State Bar of Texas Legal Access Division staff to members of the public and to inmates: **1,446**

Legal aid and pro bono attorneys using the Texas Legal Services Network Malpractice Insurance Program offered through the State Bar of Texas Legal Access Division: **7,518** attorneys; **64** different organizations

Legal aid and pro bono attorneys who used the joint TexasBarCLE and Legal Access Division tuition waiver program: **68**

Legal aid and pro bono attorneys who participated in the Language Access Fund: **12,661** interpreted phone calls; **52** translated documents; **47** on-site interpreter reimbursements; served clients speaking **70** languages

Texas attorneys who participated in the Communication Access Fund: **18** attorneys

For 2020-2021, the Texas Student Loan Repayment Assistance Program approved **55** legal aid lawyers for up to **$6,000** a year in repayment support.

Attendees at Legal Access Division annual seminars: **610** attended the Poverty Law Conference; **85** attended the Pro Bono Coordinators Retreat pre-conference only

Number of those helped by Texas Lawyers for Texas Veterans: Since 2010, over **11,000** attorneys, paralegals, and law students have assisted more than **32,000** veterans through local bar associations and other attorney volunteer organizations

Number of sections that have pro bono initiatives: **18** sections have pro bono initiatives, which include grants, CLE scholarships for legal aid providers or attorneys who agree to undertake a pro bono case, internships with legal aid providers, or other programs that support access to justice initiatives

Number of lawyers and law students participating in pro bono initiatives (including grants, CLE scholarships, and internships): Due to COVID-19, there were no scholarships awarded

Total voluntary ATJ contributions through membership fee statements: **$1,471,744** from **10,869** attorneys

Number of pro bono contributions by non-lawyer professionals: **4** paralegals are members of the Pro Bono College in which members must complete at least **50** hours of pro bono services annually and **16** paralegals reported **1,022** hours of pro bono services through the MyBarPage pro bono reporting portal

Number of access to justice presentations made to attorneys and groups: **5**

Number of pro bono legal clinic resources, such as toolkits, provided by the Legal Access Division and the Texas Access to Justice Commission: **297** Limited Scope Representation Toolkits; **686** Texas Transfer Toolkits

State legislative funding in support of legal services to the poor: **$18,780,784** in general revenue over the biennium in basic civil legal services funds; **$6 million** in general revenue over the biennium to provide legal services to veterans and their immediate families; **$10 million** in general revenue over the biennium for the Legal Aid for Survivors of Sexual Assault (LASSA) Program

Federal funding to Legal Services Corporation in support of legal services to the poor in Texas: **$39,221,467** to the Legal Services Corporation

Total donated by lawyers in support of legal services to the poor as reported by lawyers through bi-annual pro bono survey: In 2020, lawyers contributed **$1,471,744** through the Justice for All ATJ Contribution Campaign in conjunction with the dues statement; lawyers also contributed **$14.2 million** in out-of-pocket expenses handling pro bono cases and **$9.7 million** in direct donations to legal aid and pro bono organizations

Publicity received for attorney volunteer efforts in Texas: **11** articles about the State Bar of Texas' pro bono efforts

Traffic to and usage of probonotexas.org: **20,554** users; **39,854** page views

Participation in New Opportunities Volunteer Attorney (NOVA) Pro Bono Program: **60** participants

Types of services and number of hours of legal services provided to low-income and modest means persons by participants in the Texas Opportunity & Justice Incubator: TOJI lawyers represented **2,561** clients in **35** areas of law, including **296** pro bono clients and **381** modest-income clients, which equates to **4,929** modest-income hours and **2,072** pro bono hours (saving Texans **$907,295** in legal fees)

Visits to page on State Bar website relating to disaster preparation and recovery resources for the public: **5,998** page views

Utilization of online disaster preparation and recovery resources on texasbarcle.com: **53,910** (includes all free pandemic-related CLE)

SOUND ADMINISTRATION AND RESOURCES

Trainings provided to staff: Mandatory EEO/harassment training for all new hires; employees offered extensive online training through the Employees Assistance Program service; assistance offered to staff for professional development in current or future positions at the State Bar; new managers received **3** days of management development training; **5** full staff meetings were held

Statistics regarding staff retention and attrition: **7.5%** turnover rate

Number of customer service complaints received via the "Contact Us" page on the SBOT website: **20** and **20** resolved successfully

Implementation of disaster preparedness plan to assure continuity of State Bar administration and services in the event of any disaster affecting the State Bar: The State Bar makes every effort to stress test the approved Disaster Recovery and Communications plan

Effectiveness of disaster preparedness plan: The State Bar can be at normal operations in **24** hours

Number of periodic tests conducted of disaster preparedness plan and results of such test: Biannual tests prove all major systems can be operational in **24** hours

Ethnic and gender diversity of SBOT staff: **212** (**73.9%**) female and **75** (**26.1%**) male; **167** (**58.1%**) White, **82** (**28.6%**) Hispanic/Latino, **28** (**9.8%**) Black/African American, **5** (**1.7%**) Asian/Pacific Islander, **1** (**.4%**) American Indian/Alaska Native, and **4** (**1.4%**) Other

FINANCIAL MANAGEMENT

Financial audit: The result of the most recent financial audit (FY2020) resulted in an unmodified opinion on the State Bar's Annual Financial Report for the year ended May 31, 2020—this opinion level is considered the best audit result available; the FY2021 financial audit began June 2021

This audit's purpose is to provide assurance that the annual financial report presents the financial position of the State Bar fairly; in other words, the statements are free of material misstatements. To provide an opinion on the financial statements, the auditors test controls over financial operations and target financial areas that generate a significant amount of revenue or expense and review asset liability controls and reporting. The auditors concluded that the financial statements comply with accounting principles generally accepted in the United States.

Annual internal control audit: The annual internal control audit examined attorney discipline processes, internal controls within sections, and investment processes. The auditors issued **3** internal audit reports, which concluded that controls over operations were generally effective to provide reasonable assurance that risks are being managed and objectives should be met—the detailed reports, recommendations, and management responses can be viewed at any time at texasbar.com/finances

Amount SBOT has set aside in general fund reserves: **$9,140,350**, which represents **2.5** months of operating expenditures

Success of cost-saving measures implemented by the State Bar: The State Bar's submitted budget for FY2022 contained **$986,374** in budget reductions primarily from controlling salaries and benefits costs

Expenditure Protest Policy

The purpose of the State Bar of Texas is to engage in those activities enumerated at § 81.012 of the State Bar Act. The expenditure of funds by the State Bar of Texas is limited as set forth at § 81.034 of the State Bar Act and in *Keller v. State Bar of California,* 496 U.S. 1 (1990), and *McDonald v. Longley,* 4 F.4th 229 (5th Cir. 2021). If any member has a reasonable belief that any actual or proposed expenditure is not within such purposes of, or limitations on, the State Bar, then such member may object thereto and seek a refund of a *pro rata* portion of his or her dues expended, plus interest, by filing a written objection with the Executive Director. The objection must be made in writing, on the official State Bar Fees Objection Form, addressed to the Executive Director of the State Bar, P.O. Box 12487, Austin, TX 78711, or by email to objections@texasbar.com. The objection must be submitted no later than 60 calendar days after the annual audit of the State Bar for the fiscal year in which the transaction objected to occurred is published on the State Bar website. A copy of the State Bar Fees Objection Form may be obtained by written or in person request to the Executive Director or from the State Bar website at www.texasbar.com/objections.

Upon receipt of a member's objection, the Executive Director shall within 60 calendar days review such objection together with the allocation of dues monies spent on the challenged activity and, in consultation with the President, shall have the discretion to resolve the objection, including refunding a *pro rata* portion of the member's dues, plus interest. If the objecting member contests the Executive Director's determination of the member's claim, the objecting member may, within 30 calendar days of notice of the Executive Director's determination, invoke the objection procedures set forth in Section 3.14 of the State Bar of Texas Board of Directors Policy Manual, which include an opportunity for the objection to be decided by an impartial decisionmaker. Any refund of a *pro rata* share of the member's dues shall not be construed as an admission by the State Bar that the challenged activity was not or would not have been within the purposes of or limitations on the State Bar.

SUPREME COURT OF TEXAS

Misc. Docket No. 21-9122

ORDER AMENDING ARTICLES I AND II OF THE STATE BAR RULES

ORDERED that:

1. On September 30, 2021, the State Bar of Texas submitted a Petition for Order to Amend the State Bar Rules ("Petition"). The Petition is attached as Exhibit 1 to this Order.

2. Articles I and II of the State Bar Rules are amended as set forth in this Order.

3. The amendments are effective immediately.

4. The Clerk is directed to:

   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of the Order for publication in the *Texas Register*.

Dated: October 12, 2021.

Nathan L. Hecht, Chief 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

ARTICLE I
DEFINITIONS

The following words shall have the meaning set out below, unless a different meaning is apparent from the context:

***

13. **"Member"** means a ~~member of the State Bar of Texas~~person licensed to practice law in Texas. *See* TEX. GOV'T CODE § 81.051(a).

14. **"Enrollment"** means the act of registering with the Clerk as a person licensed to practice law in Texas. *See* TEX. GOV'T CODE § 81.051(b).

ARTICLE II
GENERAL PROVISIONS

***

Section 13. Spokesman for the Bar

The president of the State Bar or, in the absence of the president, the president-elect, shall be the public representative of the State Bar and shall enunciate the policies of the State Bar as promulgated by the board, except that the Board or the president may delegate such authority under such conditions as the board may prescribe. The board may authorize sections and committees, and those properly authorized by such sections and committees, to publicly represent the views of a section or committee. In no event shall a public representative of the State Bar or its sections or committees purport to speak on behalf of all State Bar members or to represent that all State Bar members support the message that the representative is conveying.

***

EXHIBIT 1

IN THE SUPREME COURT OF TEXAS

IN RE: PETITION OF THE	§	
STATE BAR OF TEXAS	§	**MISC. DOCKET NO._____**
FOR ORDER AMENDING	§	
STATE BAR RULES	§	

PETITION FOR ORDER
TO AMEND THE STATE BAR RULES

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF SAID COURT:

COMES NOW the State Bar of Texas ("Petitioner") and respectfully petitions this Court for an Order amending Articles I and II of the State Bar Rules. In support thereof, Petitioner would show:

I.

In response to *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021), Petitioner's Board of Directors ("Board of Directors"), during its regularly called meeting on September 24, 2021, at which meeting a quorum was present, resolved by a majority vote to approve the proposed amendments to the State Bar Rules set forth in Exhibit "A."

II.

The proposed amendments: (1) clarify the definition of "Member;" (2) add a definition for "Enrollment;" and (3) specifically provide that, "In no event shall a public representative of the State Bar or its sections or committees purport to speak on behalf of all State Bar members or to represent that all State Bar members support the message that the representative is conveying."

WHEREFORE, Petitioner respectfully requests the Court adopt the proposed amendments to Articles I and II of the State Bar Rules as set out in Exhibit "A," effective immediately, and to further order that the amendments be published in the *Texas Bar Journal.*

Respectfully submitted,

Trey Apffel
Executive Director
State Bar of Texas
State Bar No. 00000091
P.O. Box 12487
Austin, Texas 78711

Santos Vargas
Chair of the Board of Directors
State Bar of Texas
State Bar No. 24047026
P.O. Box 12487
Austin, Texas 78711

EXHIBIT A

Proposed Amendments to the State Bar Rules
As Approved by the State Bar of Texas Board of Directors
At its September 24, 2021, Meeting

- Art. I, § 13: "'**Member**' means a person licensed to practice law in Texas ~~a member of the State Bar of Texas~~. *See* Tex. Gov't Code Ann. § 81.051(a)."
- Add a new § 14 to Art. I: "'**Enrollment**' means the act of registering with the Clerk as a person licensed to practice law in Texas. *See* Tex. Gov't Code Ann. § 81.051(b)."
- Add at the end of Art. II, § 13 ("Spokesman for the Bar"): "In no event shall a public representative of the State Bar or its sections or committees purport to speak on behalf of all State Bar members or to represent that all State Bar members support the message that the representative is conveying."

SUPREME COURT OF TEXAS

Misc. Docket No. 21-9123

RENEWED EMERGENCY ORDER REGARDING INDIGENT DEFENSE AND THE BORDER SECURITY STATE OF DISASTER

ORDERED that:

1. Governor Abbott has declared a state of disaster concerning border security in 47 counties in the State of Texas. This Order is issued pursuant to Section 22.0035(b) of the Texas Government Code.

2. The Emergency Order Regarding Indigent Defense and the Border Security State of Disaster (Misc. Dkt. No. 21-9104) is renewed as follows.

3. To protect the constitutionally and statutorily guaranteed right to counsel of indigent criminal defendants, the following provisions of the Code of Criminal Procedure are modified in the counties affected by the state of disaster concerning border security ("affected counties") for individuals arrested under Operation Lone Star launched by Governor Abbott on March 6, 2021, and who are brought before magistrates for proceedings under Article 15.17 in facilities designated by the Office of Court Administration ("OCA").

a. Article 26.04(a) is modified to authorize the Executive Director of the Texas Indigent Defense Commission ("TIDC") to approve procedures for appointing counsel that differ from an affected county's procedures, but TIDC may not approve procedures inconsistent with Articles 26.04, 1.051, 15.17, 15.18, 26.05, and 26.052, unless otherwise provided in this Order.

b. Articles 15.17(a) and 26.04(b), (c), and (h) are modified to authorize a magistrate to appoint counsel for an indigent defendant upon request received at a proceeding under Article 15.17.

c. Articles 26.04(a), (d), and (e) are modified to waive the requirements to maintain a public appointment list and to appoint only from that list if an alternative appointment list is established by TIDC or its designee, and appointments may be made to attorneys from an appointment list established by TIDC or its designee.

d. Articles 26.04(g) and (h) are modified to authorize TIDC to approve and establish an alternative program for appointing counsel.

e. Article 26.04(i) is modified to authorize the appointment of an attorney from any Texas county to represent a felony defendant.

f. Article 26.04(k) is modified to authorize TIDC or its designee to remove any attorney from consideration for an appointment for any reason.

g. Article 26.044 is modified to authorize TIDC as an additional entity permitted to designate an existing governmental entity or nonprofit corporation operating as a public defender's office to provide counsel.

h. Article 26.047 is modified to authorize TIDC as an additional entity permitted to appoint an existing governmental entity, nonprofit corporation, or bar association operating as a managed assigned counsel program to appoint counsel.

i. Should the costs for compensation of court-appointed counsel, investigators, defense interpreters, or experts be paid or reimbursed by the state, Article 26.05 is modified to authorize TIDC to adopt a fee schedule that differs from an affected county's schedule, to authorize TIDC or its designee to approve payments, and to remove any attorney from consideration who is shown to have submitted a claim for legal services not performed by the attorney, and to authorize OCA or TIDC or its designee to make payments.

4. OCA must post in a prominent place on its website the designated facilities in which this Order applies.

5. This Order expires on January 1, 2022, unless extended by the Chief Justice of the Supreme Court. This is an interim Order. The affected counties should move swiftly to modify any procedures necessary to provide for indigent defense in response to Operation Lone Star. An affected county may request to be exempted from this Order before it expires.

6. 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.

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

Dated: October 12, 2021

Nathan L. Hecht, Chief Justice

SUPREME COURT OF TEXAS

Misc. Docket No. 21-9128

ORDER AMENDING STANDARDS FOR ATTORNEY CERTIFICATION IN CIVIL TRIAL LAW

ORDERED that:

1. The Court approves the following amendments to the Standards for Attorney Certification by the Texas Board of Legal Specialization in Civil Trial Law.

2. The amendments are effective November 1, 2021.

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

   a. file a copy of this Order with the Secretary of State;

   b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the Texas Bar Journal;

   c. send a copy of this Order to each elected member of the Legislature; and

   d. submit a copy of the Order for publication in the *Texas Register*.

Dated: October 22, 2021.

Nathan L. Hecht, Chief 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

TEXAS BOARD OF LEGAL SPECIALIZATION
STANDARDS FOR ATTORNEY CERTIFICATION

***

PART II
SPECIFIC AREA REQUIREMENTS

These are specific requirements that apply to the specialty area listed below. The specific requirements include the definitions, substantial involvement, references, and other certification and recertification requirements for the specialty area. You will also need to refer to the Standards for Attorney Certification, Part I – General Requirements for requirements that apply to all specialty areas.

***

SECTION V
CIVIL TRIAL LAW
(Area ID: CT / Year Started: 1978)

A. DEFINITIONS.

1. Civil trial law is the practice of law dealing with litigation of civil controversies in all areas of substantive law before state and federal courts of record.
2. A trial is a contested proceeding in a court of record within the judicial branch of government that involves the submission of testimonial evidence to a court or jury in support or defense of claims for relief submitted by the parties. A trial commences on the initial presentation of evidence to the court or jury. Summary judgment proceedings, other pretrial proceedings, default judgments, and civil appeals are not trials within the meaning of these standards.
3. Lead counsel is the lawyer who takes primary responsibility for the representation of the client in the case. In a jury case, to be considered lead counsel, applicant must, at a minimum, have made an opening statement or closing argument and conducted significant direct or cross-examination of live witnesses at trial.

B. SUBSTANTIAL INVOLVEMENT. To demonstrate substantial involvement and special competence in Texas civil trial law practice, applicant must, at a minimum, meet the following requirements.

1. **Certification.**
   a. Percentage of Practice Requirement. Applicant must have devoted a minimum of ~~35%~~30% of

his or her time practicing civil trial law in Texas during each year of the three years immediately preceding the application.

b. Task Requirements. Applicant must provide information as required by TBLS concerning specific tasks he or she has performed in Texas civil trial law. In evaluating experience, TBLS may take into consideration the nature, complexity, and duration of the tasks handled by applicant.

(1) Applicant must have tried at least ~~20~~15 civil trials in a court of record in Texas or in federal court that involved an amount in controversy in excess of $25,000 or significant nonmonetary claims. Of these trials:

i. at least seven must be jury trials that were conducted by applicant as lead counsel and submitted to the jury;

ii. no more than ~~seven~~five may be personal injury cases;

iii. no more than ~~seven~~five may be family law cases; and

iv. in at least five trials, applicant must have played a significant role in conducting jury selection.

(2) The following types of proceedings may be substituted for three of the other ~~13~~8 civil trials.

i. A civil jury trial conducted by applicant as lead counsel in a state court of record ***outside*** of Texas, but within the United States, where the case was submitted to the jury for decision. The amount in controversy must have exceed $25,000, or the case must have involved significant nonmonetary claims. Formal rules of evidence and procedure must have applied in the case.

ii. A civil trial conducted by applicant as lead counsel that concluded before submission to either a jury or the court (in a bench trial) in a court of record in Texas or in federal court. The trial must have concluded: (a) after voir dire, opening statements, and the examination of witnesses in a jury trial; or (b) after opening statements and the examination of witnesses in a bench trial. The amount in controversy must have exceeded $25,000, or the case must have involved significant nonmonetary claims.

iii. An arbitration conducted to a final decision by applicant as lead counsel in which formal rules of evidence and procedure governed the proceeding. The amount in controversy must have exceeded $25,000, or the case must have involved significant nonmonetary claims.

iv. A criminal jury trial conducted by applicant as lead counsel that resulted in a final verdict in a court of record in Texas or in federal court.

v. A contested administrative proceeding conducted by applicant as lead counsel for a party before a Texas or federal agency. The matter must have been resolved after a hearing on the merits in which witnesses were examined by direct and cross-examination, and a final order must have been issued by the agency. The amount in controversy must have exceeded $25,000, or the case must have involved significant nonmonetary claims.

vi. A temporary or preliminary injunction hearing conducted by applicant as lead counsel that resulted in a final decision on the temporary or preliminary injunction request. In the hearing, applicant must have presented an opening and closing statement and conducted live direct and cross-examination of witnesses. The amount in controversy must have exceeded $25,000, or the case must have involved significant nonmonetary claims.

2. **Recertification.** Applicant must have devoted a minimum of ~~35%~~30% of his or her time practicing civil trial law in Texas during each year of the five-year period of certification unless applicant meets the exception in Part I–General Requirements, Section VI, C,1(b).

C. REFERENCE REQUIREMENTS. Applicant must submit a minimum of five names and addresses of persons to be contacted as references to attest to his or her competence in civil trial law. These persons must be substantially involved in civil trial law and be familiar with applicant's civil trial law practice.

1. **Certification.** Applicant must submit names of persons with whom he or she has had dealings involving civil trial law matters within the three years immediately preceding application.
2. **Recertification.** Applicant must submit names of persons with whom he or she has had dealings involving civil trial law matters since certification or the most recent recertification.
3. **Reference Types.** Applicant must submit the following types of references:
   a. Four Texas attorneys who are substantially involved in civil trial law. Applicant must have tried a civil trial law matter with or against one of these attorneys.
   b. One judge of any court of record in Texas whom applicant has appeared before as an advocate in a civil trial law matter.

Opinion No. 692, October 2021

QUESTION PRESENTED

Does a lawyer have a duty under the Texas Disciplinary Rules of Professional Conduct to correct false statements made by his client in response to questioning by the opposing party's counsel during a deposition?

STATEMENT OF FACTS

A lawyer represented an individual defendant in a case arising from a car crash. A key issue in the case was whether the defendant-driver was looking down at his cellphone when the crash occurred. In an early meeting with his lawyer, the defendant admitted that he had been looking down at his phone when the accident happened but argued that the crash was the plaintiff's fault because the plaintiff was driving erratically. When the plaintiff asked for the defendant's deposition, the defendant's lawyer counseled his client to testify truthfully if asked about whether he had been looking at his phone. The defendant agreed to do so.

But during the deposition, in response to questions by the opposing lawyer, the defendant lied, testifying that he was not looking at his phone at the time of the crash. At the next break, the defendant's lawyer urged the client to correct the falsehood, but the client refused and instructed his lawyer to remain silent and do nothing to correct the falsehood. The lawyer returned to the deposition, and the issue did not come up again. When the plaintiff's lawyer passed the witness, the defendant's lawyer declined to ask any questions.

DISCUSSION

Questions such as this "present very difficult issues" because the Texas Disciplinary Rules of Professional Conduct "attempt to balance, on the one hand, a lawyer's duty of candor to the court and, on the other hand, a lawyer's duty of loyalty to and zealousness on behalf of a client, along with a duty to maintain confidential client information." Professional Ethics Committee Opinion 504 (July 1995); *see also* Comment 1 to Rule 3.03. Balancing these competing obligations is often a fact-specific inquiry. Opinion 504.

Rule 3.03 provides some baseline duties in this balance between a lawyer's duty of candor and duties to the client. It states:

> (a) A lawyer shall not knowingly:
>
> (1) make a false statement of material fact or law to a tribunal;
>
> (2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act; [or]
>
> . . .
>
> (5) offer or use evidence that the lawyer knows to be false.
>
> (b) If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall make a good faith effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence. If such efforts are unsuccessful, the lawyer shall take reasonable remedial measures, including disclosure of the true facts.
>
> (c) The duties stated in paragraphs (a) and (b) continue until remedial legal measures are no longer reasonably possible.

In addition to providing standards of conduct for Texas lawyers, this Rule serves as an exception to the duty to maintain client confidentiality under Rule 1.05, and, in certain circumstances, may require the lawyer to undertake "reasonable remedial measures" to correct false statements, "including disclosure of the true facts." Rule 3.03(b); *see also* Rule 1.05(f); Opinion 504.

Under the facts above, Rule 3.03(a)(1) is not implicated. The defendant's lawyer has not knowingly made any false statement of fact or law—only the client has lied.

Rule 3.03(a)(5) is also not implicated as long as the lawyer does not offer or use the false deposition testimony (by submitting the deposition testimony as summary judgment evidence, for instance). Comment 13 to Rule 3.03 specifically applies to this situation, providing that:

> A lawyer may have introduced the testimony of a client or other witness who testified truthfully under direct examination but who offered false testimony or other evidence during examination by another party. Although the lawyer should urge that the false evidence be corrected or withdrawn, the full range of obligation imposed by paragraphs (a)(5) and (b) of this Rule do not apply to such situations. A subsequent use of that false testimony or other evidence by the lawyer in support of the client's case, however, would violate paragraph (a)(5).

Especially in light of comment 13, the lawyer did not violate Rule 3.03(a)(5) on these facts, assuming he does not attempt to use the testimony as summary judgment evidence at a hearing, during trial, or at any other time. Here, the false testimony was elicited by opposing counsel while cross-examining the defendant in a deposition that opposing counsel had noticed. The defendant's lawyer did not question his client during the deposition. This Committee has previously interpreted comment 13 to say that silence by a lawyer when the client lies on cross-examination should not be deemed to be "use" of false testimony under Rule 3.03(a)(5). Opinion 504.

So that leaves Rule 3.03(a)(2), which provides that a lawyer shall not knowingly "fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act." This Committee has not previously examined whether a lawyer's silence in these

circumstances would amount to "assisting a criminal or fraudulent act." But, based in part on the expectations created by comment 13, the Committee believes that, under the Rules as currently drafted, the lawyer's silence under these circumstances is not a violation of Rule 3.03(a)(2).

Ethics opinions in other jurisdictions are divided on whether a lawyer's silence in the face of cross-examination perjury constitutes "assisting" a criminal or fraudulent act. *Compare* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 93-376 at 5 (1993) ("The Lawyer's Obligation Where a Client Lies in Response to Discovery Requests") (concluding that, even though the lawyer was not aware of her client's perjury until after the perjury occurred, once the lawyer learned of the perjury, her "[c]ontinued participation . . . in the matter without rectification or disclosure would assist the client in committing a crime or fraud" in violation of ABA Model Rule 3.3(a)(2) that was in effect at the time) *with* Philadelphia Bar Association Prof'l Guidance Comm., Ethics Op. 95-3 (1995) ("Despite the laudable purpose underlying the ABA Opinion, this Committee believes that such a broad view of the term *assistance* fails to adhere to the plain meaning of the Rule. In the view of this Committee, silence and inaction do not amount to *assistance* . . .").

This Committee agrees with the latter view that "assisting" a client's criminal or fraudulent act—at least in these circumstances—requires more than mere silence or inaction. Although the term "assisting" is not defined in the Rules, the ordinary legal meaning of that term implies some kind of affirmative and knowing participation in the client's lie. By way of example, "assisting" crimes generally require proof that the defendant solicited, encouraged, directed, aided, or attempted to aid another person in the commission of the offense. See TEX. PENAL CODE § 7.02(a)(2); *see also Rodriguez v. MumboJumbo, L.L.C.,* 347 S.W.3d 924 (Tex. App.—Dallas 2011, no pet.). *Rodriguez* involved allegations that a lawyer had suborned perjury by failing "to clarify or pull back" allegedly false testimony. 347 S.W.3d at 926-27. But, the court noted, "[f]or subornation of perjury to occur, the suborner must act with the intent to promote or assist the witness in providing false testimony." *Id.* at 927. "One does not suborn perjury merely because one knows it has occurred and fails to disclose it." *Id.* In other words, a lawyer's failure to "clarify or pull back" a client's false testimony is not the same as promoting or assisting a client in providing false testimony as required for the crime of suborning perjury. In the same way, this Committee concludes that a lawyer does not "assist" in the client's false testimony under Rule 3.03(a)(2) by passively witnessing that testimony on cross-examination and remaining silent. Comment 13 is consistent with this interpretation of Rule 3.03(a)(2).

Although the Committee does not take lightly the damaging effect that false testimony can have on the judicial process (*see* ABA Opinion 93-376 at 4), the Committee cannot ignore the

expectations created by comment 13 to Rule 3.03. A lawyer reading and relying on this comment could reasonably believe that he or she has no obligation to disclose false testimony that the lawyer did not encourage, elicit, or use. Unlike the Rules, which "are imperatives, cast in terms of shall or shall not," the comments to the Rules are "permissive, defining areas in which the lawyer has professional discretion." *See* Preamble to Rules, paragraph 10. "When a lawyer exercises such discretion, whether by acting or not acting, no disciplinary action may be taken." *Id.* While comment 13 is arguably directed to section 3.03(a)(5) alone—not to the lawyer's separate obligations under section 3.03(a)(2)—the Committee believes that is too fine a distinction on which to impose discipline. *But see* Schuwerk & Sutton, *A Guide to the Texas Disciplinary Rules of Professional Conduct,* 27A Houston Law Review 232, 266 (October 1990) (stating that comment 13 "does not affect a lawyer's duties to the tribunal under paragraph (a)(2) of this Rule").

Unless the comments or the Rules are rewritten to make clear that a lawyer's silence after cross-examination perjury could constitute "assisting" a criminal or fraudulent act, the Committee believes that Rule 3.03(a)(2) is not violated under the facts above. By way of comparison, ABA Model Rule 3.3(b) specifically provides:

> A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

Without similar specific guidance in the Texas Rules to outweigh the expectations created by comment 13, this Committee does not believe that mere silence or inaction in the face of cross-examination perjury violates Rule 3.03(a)(2).

The Committee acknowledges that some of its earlier opinions may suggest a broader reading of Rule 3.03(a)(2). *See* Opinion 473 (May 1992), Opinion 480 (July 1993), and Opinion 504. But Opinions 473 and 480 do not address comment 13, perhaps because they do not involve cross-examination perjury. Opinion 504 concludes that, on the facts presented, no perjury was committed and the lawyer was required to remain silent. Opinion 504 does discuss comment 13, generally stating that a lawyer's silence in the face of client perjury "will have the effect of corroborating or assisting fraudulent misstatements made by a client" and that the lawyer must disclose the true facts if the client does not. However, the opinion does not specify whether the "perjury" referenced there occurred on cross-examination or direct examination; if it occurred on direct examination, the mandatory disclosure obligations of Rule 3.03(b) *would* be triggered. Given comment 13, the Committee believes the disclosure requirements imposed by these opinions must be limited to circumstances in which a client commits perjury on direct examination or commits some other kind of criminal or fraudulent act.

Although Rule 3.03 does not require the lawyer in these circumstances to disclose the client's cross-examination perjury, that does not mean the lawyer should do nothing. As comment 13 states, the lawyer should urge that the false evidence be corrected or withdrawn. *See also* Opinion 504. The lawyer should also alert the client to the potential civil and criminal implications of his false testimony. If the client refuses to correct the false testimony, the lawyer is not obligated to disclose the true facts, but he may have professional discretion to do so if one of the provisions in Rule 1.05(c) is satisfied. Whether or not the lawyer is permitted to disclose the true facts, he may also seek to withdraw in accordance with the Rules (though he is not required to). In any event, the lawyer may not use the false deposition testimony to advance the client's case in any way.

This opinion leaves for another day an additional issue potentially implicated by the discussion above: whether Rule 3.03 even applies to false statements made during a deposition. Rule 3.03 is titled "Candor Toward the Tribunal," and depositions are not typically conducted before a "Tribunal" as that term is defined in the Rules. Depositions are, however, conducted pursuant to a tribunal's authority. Texas has not adopted comment 1 to the corresponding ABA Model Rule, which states specifically that duties of candor toward the "tribunal" also apply "when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition." Comment 1 to ABA Model Rule 3.3.

That difference between the Texas Rule and the Model Rules may suggest that Texas Rule 4.01 controls in the deposition context. Rule 4.01 is titled "Truthfulness in Statements to Others" and is framed in terms of a lawyer's duties "to a third person," which may include the opposing party and counsel who observed the deposition or will review the transcript. Ultimately, there is no need to resolve whether Rule 3.03 or Rule 4.01 applies in the deposition context for purposes of the question presented because the result is the same either way. Like Rule 3.03, Rule 4.01 provides that a lawyer shall not knowingly "fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a criminal act or knowingly assisting a fraudulent act perpetrated by a client." For the reasons discussed above, a lawyer does not assist a criminal or fraudulent act under Rule 4.01 (if it applies) by remaining silent in the face of false deposition testimony that is elicited by opposing counsel on cross-examination.

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer does not have a duty to correct intentionally false statements made by the client while being cross-examined by the opposing party's counsel during a deposition. Nevertheless, the lawyer should urge the client to correct the false statements, including by explaining the potential civil and criminal ramifications of false testimony. If the client refuses, the lawyer may (but is not required to) withdraw from the client representation if permitted by the Rules. If the lawyer does not withdraw, the lawyer is not required to disclose the true facts but may not use the false deposition testimony in any way to advance the client's case. **TBJ**

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Life Isn't Always Picture Perfect

AND THAT'S OK

AS I WAS FINISHING THIS ARTICLE, I got distracted by wondering if I could put my winter and Christmas decorations up this week. With friends and family—aka "framily"—visiting for the Baylor football game this weekend, I'm sure I would get mixed reactions to our green and gold Christmas tree since several of them will be cheering for the opposing team. Speaking of distraction, I'm trying to channel this straightforward and powerful advice found on the Work/Life Balance section of the Texas Young Lawyers Association's Attorney Wellness Hub:

> **Wherever you are, be there.** When you're at work, focus on your work. Maximize your time and be efficient. When you're home, unplug and step away from your work. Spend time with your family or friends or do whatever brings you happiness.

This season is packed with travel, delicious food, festivities with framily, more food, and a general expectation to be happy. So why do we need resources like texaslawyercare.tyla.org now? For one thing, I've found wellness is rarely achieved by speaking it into existence, especially if I'm feeling pressured to be happy or festive. November 1 looks like the herald of all things "Grateful" and "Joyous" in stores, but it's not a magic switch that makes everything perfect in life. Family lawyers know the holidays don't make anything easier for spouses and parents. Making a big life change like divorce is daunting, but it isn't the end of happy family celebrations. In my favorite *You've Got Mail* scene, Kathleen Kelly (played by Meg Ryan) tells her friends that she is closing her store. Her maternal-figure friend tells her:

> Closing the store is the brave thing to do. You are daring to imagine that you could have a different life. Oh, I know it doesn't feel like that. You feel like a big fat failure now. But you're not. You are marching into the unknown armed with ... nothing. Have a sandwich.

This is the mantra I want my family law clients to take to heart. Their lives and families are changing, but change means opportunities, adventures, and space for making new memories and traditions. Our court system has created new ways to serve Texans in the midst of great tribulations. Our TYLA board has embraced new traditions and found energy and creativity in the face of challenges. My family's holiday plans have changed when we faced new circumstances, when we lost family members, when our family grew, and during the pandemic. I've stopped trying to make anything look social-media perfect. I've learned that joy is about the people you love, not about the places, the things, or the traditions. Brené Brown beautifully tells us, "You are imperfect. You are wired for struggle, but you are worthy of love and belonging."

I hope you know that you aren't marching into the unknown armed with nothing. You have so much support from all of us at the Texas Lawyers' Assistance Program, TYLA, and the State Bar of Texas. You are an integral member of our bar and you are valued. For more information, go to tlaphelps.org and texaslawyercare.tyla.org.

To recap as we look forward to the holidays, we have advice to be present, a reminder that life isn't (and doesn't need to be) perfect, and something about a sandwich. From Stephen, Khaleesi, and me to you and your family, we wish you great joy.

JEANINE NOVOSAD RISPOLI
2021-2022 President, Texas Young Lawyers Association

Wrapping Up 2021

HOW TO PREPARE YOUR LAW FIRM FOR THE NEW YEAR.

WRITTEN BY **RUBY L. POWERS**

BEFORE CLOSING OUT 2021, LAW FIRM owners should apply these five tips to prepare their firms for the New Year.

Audit Key Cylinders

First, audit the key functions of the firm by reviewing the systems/operations, technology, staffing and labor, marketing, and financial cylinders. Upon conducting the audit, assess which cylinders are running successfully and which require more attention in 2022. Review key performance indicators and prior departmental initiatives. For optimal success in the audit, have the relevant employees in charge of overseeing each cylinder report their findings and discuss improvement in light of their successes.

Effectively Align With Your Firm's Mission and Vision

Second, identify the firm's core values and align it with the firm's mission and vision. Much like New Year's resolutions require reflection, goal setting, and realistic steps for achievement, firm owners should remain mindful of their firm's mission and vision. If a mission and vision were never established in writing and set forth as part of the firm's culture and ethos, this is the first step. Next, determine if this mission and vision still identify the essence, core values, and goals of the firm. A strong mission and vision emanates a solid culture and lodestar for decisions, goals, and success for years to come.

Review Goals for 2021 and Set Goals for 2022

Third, review 2021 goals and set SMART goals for 2022. Goals must be specific, measurable, attainable, relevant, and time-bound for optimal success, hence SMART.[1] For some, goal setting is a natural and routine process. For others, goals are happenstance and vague. Goal setting, however, is crucial for all areas of the firm and for all staff members.[2] Goal setting provides owners with an outline to assess the firm's achievements and strive for new accomplishments as a team.

Year-end Housekeeping

Next, run through the firm's year-end housekeeping checklist. Make sure your finances are in order, regularly reconciled and ready for tax season. Apply for the Paycheck Protection Program forgiveness if you haven't already. If you have a shortage of funds and qualify, consider applying for the COVID-19 Economic Injury Disaster Loan or an increase in your prior loan disbursement. Additionally, review your firm's benefits packages and consider adding new benefits to help attract and retain staff during this labor shortage. While the usual benefits such as health, dental, vision, and life insurance might be the standard, explore 529 college savings fund programs, simple IRAs or retirement plans, and tuition reimbursement. Before the deadline of December 31, 2021, explore if your firm is leaving thousands of dollars on the table and might qualify for the employee tax retention credit.[3] This credit could potentially be a significant source of funding for employers who kept employees on payroll during parts of 2020-2021. Review your finances and explore your options for potential raises and/or bonuses for staff or even a longer holiday break. Talk to your CPA, CFO, and/or financial adviser for recommendations.

Hold a Year-end Law Firm Retreat

Last, a great way to implement the tips above and reflect on the year-end information at a high level is to hold a law firm leadership retreat. An ideal retreat is planned a few weeks in advance to allow adequate preparation. Homework for the retreat and reports to be shared in advance allow for sufficient time to plan, discuss, and reflect at the retreat. Whether it's a half-day, full day, or more, structure and planning are essential for success. This includes having a realistic agenda and timekeeper. Consider hiring a business consultant or coach to help guide and moderate the discussions to maximize the time.

The past two years in business have been challenging, but we are at the forefront of a new era of law practice management. This is the time to use proven tools to wrap up the year and build a strong foundation to enter 2022 with gusto. Happy New Year! **TBJ**

NOTES

1. *SMART Goals: How to Make Your Goals Achievable,* MindTools, https://www.mindtools.com/pages/article/smart-goals.htm.
2. Ruby L. Powers, Build and Manage Your Successful Immigration Law Practice (Without Losing Your Mind) (2019), https://tinyurl.com/rsstvkd3.
3. FAQS: Employee Retention Credit under the CARES Act, IRS, https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act (last updated Aug. 20, 2021).

RUBY L. POWERS is the founder and managing attorney of Powers Law Group. Located in Houston, the firm focuses solely on immigration law. She is certified in immigration and nationality law by the Texas Board of Legal Specialization. She authored AILA's book *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 served as the AILA LPM Committee and HBA LPMS chair and currently serves on the American Bar Association Future Initiatives, Book Publishing, and Women Rainmakers committees.

Contact the Office of Chief Disciplinary Counsel at 877-953-5535, the Board of Disciplinary Appeals at 512-427-1578 or txboda.org, or the State Commission on Judicial Conduct at 512-463-5533.

JUDICIAL ACTIONS

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

On October 20, 2021, **JOSIE FERNANDEZ,** justice of the peace, Precinct 4, Freer, Duval County, signed a voluntary agreement to resign from judicial office in lieu of disciplinary action, which was issued by the State Commission on Judicial Conduct.

REINSTATEMENT

ROGELIO "ROGER" VARGAS [#00791848], of San Antonio, filed a petition in the 131st Civil District Court of Bexar County for reinstatement as a member of the State Bar of Texas.

RESIGNATIONS

On October 12, 2021, the Supreme Court of Texas accepted the resignation, in lieu of discipline, of **BRIAN ANTHONY HAMNER** [#24041050], of San Antonio.

At the time of his resignation, Hamner had one grievance pending alleging Hamner failed to return unearned fees and failed to comply with cessation of practice rules and practiced law while his license was suspended.

Hamner violated Rules 1.15(d), 8.04(a)(7), and 8.04(a)(10).

On October 12, 2021, the Supreme Court of Texas accepted the resignation, in lieu of discipline, of **OMAR WEAVER ROSALES** [#24053450], of Harlingen. At the time of Rosales' resignation, multiple disciplinary cases were pending against him alleging professional misconduct related to demand letters Rosales sent to various medical providers, claiming that the providers' websites were not ADA compliant. In addition, the U.S. District Court for the Western District of Texas determined that Rosales violated multiple disciplinary rules while representing a client in ADA matters, including filing multiple frivolous pleadings, fabricating evidence offered as an exhibit to a pleading, and misrepresenting the location of his residence. Rosales also failed to disclose to New York Bar officials that he was the subject of disciplinary proceedings, as required on his application for admission to the New York Bar in 2017. After he was admitted to practice law in New York, Rosales failed to report that he received a three-year suspension from the practice of law before the U.S. District Court for the Western District of Texas as required by the New York rules for attorney discipline. The Supreme Court of the State of New York revoked Rosales' law license because he had made a false statement on his New York Bar application and failed to report a disciplinary sanction. Rosales violated Rules 3.01, 4.04(b)(1), 8.04(a)(3), 8.04(a)(5), and 7.01(a).

On October 12, 2021, the Supreme Court of Texas accepted the resignation, in lieu of discipline, of **BRENT N. WHITELEY** [#21361800], of Houston. At the time of Whiteley's resignation, Whiteley pleaded guilty in Case No. 1:20-cr-00534-GHW-2, styled *United States of America v. Brent Whiteley,* in the U.S. District Court for the Southern District of New York, to one count of conspiracy to commit securities fraud (Title 18, U.S.C. § 371), one count of securities fraud (Title 15, U.S.C. §§ 78j (b) and 78ff; Title 17, Code of Federal Regulations § 240.10b-5; and Title 18, U.S.C. § 2), one count of conspiracy to commit wire fraud (Title 18, U.S.C. § 1349), two counts of wire fraud (Title 18, U.S.C. §§ 1343 and 2), and one count of obstruction of the SEC's Investigation (Title 18, U.S. C. § 981 (a) (1) (C); Title 21, U.S.C. § 853(p); Title 28, U.S.C. § 2461).

Whiteley violated Rules 1.14(a), 8.04(a)(2), and 8.04(a)(3).

SUSPENSIONS

On October 19, 2021, **RANDALL BARRERA** [#00792349], of Corpus Christi, agreed to a two-year fully probated suspension effective November 1, 2021. An evidentiary panel of the District 11 Grievance Committee found that Barrera failed to hold funds in trust and separate from his own property, failed to promptly notify and deliver funds to parties entitled to receive funds, and failed to respond to the grievance.

Barrera violated Rules 1.14(a), 1.14(b), 1.14(c), and 8.04(a)(8). He was ordered to pay $40,728.75 in restitution and $2,000 in attorneys' fees and direct expenses.

On September 24, 2021, **RICHARD DOUGLAS PARKER** [#15496450], 63, of Houston, accepted an agreed judgment of fully probated suspension. An investigatory panel of the District 4 Grievance Committee found that Parker neglected a legal matter entrusted to him. Parker further failed to supervise a non-lawyer or make reasonable efforts to ensure that a non-lawyer's conduct was compatible with the professional obligations of a lawyer and because of this failure, the non-lawyer and Parker engaged in conduct encouraging, or permitting, the conduct involved.

Parker violated Rules 1.01(b)(1), 5.03(a), and 5.03(b)(1). He was ordered to pay $1,000 in attorneys' fees and direct expenses.

On September 20, 2021, **ROY LEE REEVES** [#24027770], of Amarillo, received a six-month fully probated suspension effective October 1, 2021. An evidentiary panel of the District 1 Grievance Committee found that on or about April 27, 2018, the complainant hired Reeves to represent her in a divorce matter. Reeves was paid $5,000 for the legal representation. In representing the client, Reeves neglected the legal matter entrusted to him. Reeves failed to keep his client reasonably informed about the status of her divorce matter and failed to promptly comply with reasonable requests for information from the client about her divorce matter. Upon request by the client, Reeves failed to promptly render a full accounting regarding the funds paid by the client. Upon termination of representation, Reeves failed to refund advance payments of the fee that had not been earned. Reeves also failed to provide a response to the grievance.

Reeves violated Rules 1.01(b)(1), 1.03(a), 1.14(b), 1.15(d), and 8.04(a)(8). He was ordered to pay $5,000 in restitution and $2,400 in attorneys' fees and direct expenses.

On September 30, 2021, **JANE SUNHA SHIN** [#24075475], of McAllen, accepted a two-month fully probated suspension effective March 1, 2022. An investigatory panel of the District 12 Grievance Committee found that Shin neglected clients' matters and failed to respond to her clients' requests for information.

Shin violated Rules 1.01(b)(1) and 1.03(a). She agreed to pay $800 in attorneys' fees and direct expenses.

On October 11, 2021, **BLAKE DANIEL ALLRED** [#24069292], of Bayou Vista, accepted a five-year partially probated suspension effective October 15, 2021, with the first three years actively suspended. An evidentiary panel of the District 4 Grievance Committee found that Allred neglected a legal matter, failed to keep his client reasonably informed about the status of the case, and further failed to refund advance payments of fees that had not been earned. Additionally, Allred failed to timely respond to the grievance.

Allred violated Rules 1.01(b)(1), 1.03(a), 1.15(d), and 8.04(a)(8). He was ordered to pay $3,200 in restitution and $1,220 in attorneys' fees and direct expenses.

On October 12, 2021, **BLAKE DANIEL ALLRED** [#24069292], of Bayou Vista, accepted a five-year partially probated suspension effective October 15, 2021, with the first three years actively suspended. An evidentiary panel of the District 4 Grievance Committee found that Allred neglected a legal matter, failed to keep his client reasonably informed about the status of the case, and further failed to refund advance payments of fees that had not been earned. Additionally, Allred failed to timely respond to the grievance.

Allred violated Rules 1.01(b)(1), 1.03(a), 1.15(d), and 8.04(a)(8). He was ordered to pay $1,157.54 in attorneys' fees and direct expenses.

On October 12, 2021, **BLAKE DANIEL ALLRED** [#24069292], of Bayou Vista, accepted a five-year partially probated suspension effective October 15, 2021, with the first three years actively suspended. An evidentiary panel of the District 4 Grievance Committee found that Allred neglected a legal matter, failed to keep his client reasonably informed about the status of the case, and further failed to refund advance payments of fees that had not been earned. Additionally, Allred failed to timely respond to the grievance.

Allred violated Rules 1.01(b)(1), 1.03(a), 1.15(d), and 8.04(a)(8). He was ordered to pay $2,000 in restitution and $1,919.54 in attorneys' fees and direct expenses.

On October 12, 2021, **BLAKE DANIEL ALLRED** [#24069292], of Bayou Vista, accepted a five-year partially probated suspension effective October 15, 2021, with the first three years actively suspended. An evidentiary panel of the District 4 Grievance Committee found that Allred neglected a legal matter, failed to keep his client reasonably informed about the status of the case, and further failed to refund advance payments of fees that had not been earned. Additionally, Allred failed to timely respond to the grievance.

Allred violated Rules 1.01(b)(1), 1.03(a), 1.15(d), and 8.04(a)(8). He was ordered to pay $900 in restitution and $2,574.54 in attorneys' fees and direct expenses.

On October 11, 2021, **BLAKE DANIEL ALLRED** [#24069292], of Bayou Vista, accepted a five-year partially probated suspension effective October 15, 2021, with the first three years actively suspended. An evidentiary panel of the District 4 Grievance Committee found that Allred neglected a legal matter, failed to keep his client reasonably informed about the status of the case, and further failed to refund advance payments of fees that had not been earned. Additionally, Allred failed to timely respond to the grievance.

Allred violated Rules 1.01(b)(1), 1.03(a), 1.15(d), and 8.04(a)(8). He was ordered to pay $700 in restitution and $2,323.99 in attorneys' fees and direct expenses.

On October 11, 2021, **BLAKE DANIEL ALLRED** [#24069292], of Bayou Vista, accepted a five-year partially probated suspension effective October 15, 2021, with the first three years actively suspended. An evidentiary panel of the District 4 Grievance Committee found that Allred failed to abide by his client's decisions concerning the objectives and general methods of representation, failed to keep his client reasonably informed about the status of the case, and further failed to refund advance payments of fees that had not been earned. Additionally, Allred failed to timely respond to the grievance.

Allred violated Rules 1.02(a)(1), 1.03(a), 1.15(d), and 8.04(a)(8). He was ordered to pay $2,500 in restitution and $1,990.45 in attorneys' fees and direct expenses.

On October 12, 2021, **BLAKE DANIEL ALLRED** [#24069292], of Bayou Vista, accepted a five-year partially probated suspension effective October 15, 2021, with the first three years actively suspended. An evidentiary panel of the District 4 Grievance Committee found that Allred neglected a legal matter, failed to keep his client reasonably informed about the status of the case, and further failed to refund advance payments of fees that had not been earned. Additionally, Allred failed to timely respond to the grievance.

Allred violated Rules 1.01(b)(1), 1.03(a), 1.15(d), and 8.04(a)(8). He was ordered to pay $2,000 in restitution and $1,424.45 in attorneys' fees and direct expenses.

On October 12, 2021, **BLAKE DANIEL ALLRED** [#24069292], of Bayou Vista, accepted a five-year partially probated suspension effective October 15, 2021, with the first three years actively suspended. An evidentiary panel of the District 4 Grievance Committee found that Allred neglected a legal matter, failed to keep his client reasonably informed about the status of the case, and further failed to refund advance payments of fees that had not been earned. Additionally, Allred failed to timely respond to the grievance.

Allred violated Rules 1.01(b)(1), 1.03(a), 1.15(d), and 8.04(a)(8). He was ordered to pay $2,000 in restitution and $1,080 in attorneys' fees and direct expenses.

On October 11, 2021, **BLAKE DANIEL ALLRED** [#24069292], of Bayou Vista, accepted a five-year partially probated suspension effective October 15, 2021, with the first three years actively suspended. An evidentiary panel of the District 4 Grievance Committee found that Allred neglected a legal matter, failed to keep his client reasonably informed about the status of the case, and further failed to refund advance payments of fees that had not been earned. Additionally, Allred engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. Allred also failed to timely respond to the grievance.

Allred violated Rules 1.01(b)(1), 1.03(a), 1.15(d), 8.04(a)(3), and 8.04(a)(8). He was ordered to pay $2,500 in restitution and $1,130 in attorneys' fees and direct expenses.

On October 11, 2021, **BLAKE DANIEL ALLRED** [#24069292], of Bayou Vista, accepted a five-year partially probated suspension effective October 15, 2021, with the first three years actively suspended. An evidentiary panel of the District 4 Grievance Committee found that Allred neglected a legal matter, failed to keep his client reasonably informed about the status of the case, and further failed to refund advance payments of fees that had not been earned. Additionally, Allred engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. Allred also failed to timely respond to the grievance.

Allred violated Rules 1.01(b)(1), 1.03(a), 1.15(d), 8.04(a)(3), and 8.04(a)(8). He was ordered to pay $2,500 in restitution and $880 in attorneys' fees and direct expenses.

On October 12, 2021, **BLAKE DANIEL ALLRED** [#24069292], of Bayou Vista, accepted a five-year partially probated suspension effective October 15, 2021, with the first three years actively suspended. An evidentiary panel of the District 4 Grievance Committee found that Allred neglected a legal matter, failed to keep his client reasonably informed about the status of the case, and further failed to refund advance payments of fees that had not been earned. Additionally, Allred failed to timely respond to the grievance.

Allred violated Rules 1.01(b)(1), 1.03(a), 1.15(d), and 8.04(a)(8). He was ordered to pay $2,500 in restitution and $875 in attorneys' fees and direct expenses.

On October 5, 2021, **CHARLES W. MEDLIN** [#13895900], of Houston, accepted an agreed judgment of partially probated suspension. The 334th District Court of Harris County found that Medlin violated Rule 5.03(a) [a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer], Rule 5.03(b)(1) [a lawyer shall be subject to discipline for the conduct of such a person that would be a violation of these rules if engaged in by a lawyer if the

lawyer orders, encourages, or permits the conduct involved], and 8.04(a)(3) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation] of the Texas Disciplinary Rules of Professional Conduct, Article X, Section 9, of the State Bar Rules.

Medlin was ordered to pay $2,000 in attorneys' fees and direct expenses.

On September 28, 2021, **PATRICK PHILLIP ROBERTSON** [#00792804], of Austin, received a five-year partially probated suspension effective September 16, 2021, with the first three years actively served and the remainder probated. An evidentiary panel of the District 6 Grievance Committee found that on or about December 17, 2018, the complainant hired Robertson to assist her in a pending lawsuit and paid Robertson $350 in advance legal fees. In representing the complainant, Robertson neglected the legal matter entrusted to him. Robertson failed to keep the complainant's funds in a separate trust account. Upon termination of representation, Robertson failed to refund advance payments of the fee that had not been earned.

Robertson violated Rules 1.01(b)(1), 1.14(a), and 1.15(d). He was ordered to pay $350 in restitution and $1,665 in attorneys' fees and direct expenses.

On August 18, 2021, **JOSHUA REED BRINKLEY** [#24049974], of Valley View, received a 24-month active suspension effective September 15, 2021. The District 14 Grievance Committee found that on or about June 17, 2016, the complainant retained Brinkley to defend him in a civil lawsuit. Thereafter, Brinkley neglected the complainant's case and failed to timely file an answer to the petition served, resulting in a default judgment being entered against the complainant. Brinkley filed a petition for a bill of review to obtain a new trial on the complainant's behalf. However, Brinkley non-suited the petition for a bill of review on or about June 19, 2019, without consulting or obtaining permission to do so from the complainant. On or about November 13, 2017, Brinkley filed a defamation lawsuit on the complainant's behalf. Thereafter, Brinkley neglected the matter and failed to depose the defendants in the lawsuit despite the complainant's specific request that he do so. In August 2019, Brinkley signed an agreement with the defendants dismissing the defamation case with prejudice. Brinkley did not consult with the complainant regarding the dismissal of his case, nor did he receive permission from the complainant to dismiss his case. Brinkley misled the complainant regarding the status of his legal matter and never informed the complainant that he had agreed to dismiss his cases. On or about January 22, 2020, the complainant terminated Brinkley's representation and requested his file. Brinkley failed to return the file to the complainant.

Brinkley violated Rules 1.01(b)(1), 1.02(a)(1), 1.02(a)(2), 1.03(a), 1.03(b), 1.15(d), and 8.04(a)(3). He was ordered to pay $1,200 in attorneys' fees and direct expenses.

On September 30, 2021, **THOMAS PAINE HAYES IV** [#09280160], of Pearland, accepted a one-year active suspension effective October 1, 2021. An evidentiary panel of the District 4 Grievance Committee found that Hayes committed a serious crime that reflected adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects.

Hayes violated Rule 8.04(a)(2).

On October 22, 2021, **PRESTON JAMES PARK** [#24066763], of Rockwall, agreed to a six-month active suspension effective November 1, 2021. An investigatory panel of the District 1 Grievance Committee found in March 2017, the complainant hired Park for a family law matter. In representing his client, Park frequently failed to carry out completely the obligations Park owed to the client. Park failed to keep his client reasonably informed about the status of the case and failed to promptly comply with reasonable requests for information. Park also failed to file a response to the grievance.

Park violated Rules 1.01(b)(2), 1.03(a), and 8.04(a)(8). He was ordered to pay $250 in attorneys' fees.

PUBLIC REPRIMANDS

On October 26, 2021, **CHARSALYNN GERSAN MITCHELL** [#24067771], of Dallas, agreed to a public reprimand. An investigatory panel of the District 6 Grievance Committee found that on August 20, 2019, the complainant hired Mitchell to represent her in a family law case. Mitchell failed to hold funds belonging in whole or in part to the complainant that was in Mitchell's possession in connection with the representation separate from Mitchell's own property.

Mitchell violated Rule 1.14(a). She was ordered to pay $675 in attorneys' fees and direct expenses.

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 (1).

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 (2).

1.04(d)—A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (c) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined. If there is to be a differentiation in the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal, the percentage for each shall be stated. The agreement shall state the litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement describing the outcome of the matter and, if there is recovery, showing the remittance to the client and the method of its determination (1).

1.04(f)—A division or arrangement for division of a fee between lawyers who are not in the same firm may be made only if (1) the divisions is: (i) in proportion to the professional services performed by each lawyer; or (ii) made between lawyers who assume joint responsibility for the representation; and (2) the client consents in writing to the terms of the arrangement prior to the time of the association or referral proposed, including: (i) the identity of all lawyers or law firms who will participate in the fee-sharing agreement, and (ii) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and (iii) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made; and (3) the aggregate fee does not violate paragraph (a) (1).

1.04(g)—Every agreement that allows a lawyer or law firm to associate other counsel in the representation of a person, or to refer the person to other counsel for such representation, and that result in such an association with or referral to a different law firm or a lawyer in such a different firm, shall be confirmed by an agreement conforming to paragraph (i). Consent by a client or a prospective client without knowledge of the information specified in a subparagraph (f)(2) does not constitute a confirmation within the meaning of this rule. No attorney shall collect or seek to collect fees or expenses in connection with any such agreement that is not confirmed in that way, except for: (1) the reasonable value of legal services provided to that person; and (2) the reasonable and necessary expenses actually incurred on behalf of that person (1).

1.14(a)—A lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection

with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a "trust" or "escrow" account, maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other client property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation (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 (1).

4.02(a)—In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person, organization, or entity of government the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so (1).

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 (1). **TBJ**

For more information or to submit a listing, go to texasbar.com/moversandshakers or email tbj@texasbar.com.

CENTRAL

KIRBY CRONIN is now a shareholder in the newly established Austin office of FBFK, 4301 Westbank Dr., Bldg. B., Ste. 270, 78746. **JILL CRONIN** and **ALLISON COPELAND** are now attorneys with the firm.

MARCOS A. MENDOZA, of the Texas Association of School Boards in Austin, received the Steven S. Goldberg Award for Distinguished Scholarship in Education Law from the Education Law Association.

CHRIS GRAFF is now a partner in K&L Gates in Austin.

JEFF LILLY, previously with Gordon Rees Scully Mansukhani, is now a partner in Latitude in Austin.

ANNEMARIE MCCOMB is now an associate of the Snell Law Firm in Austin.

EAST

WILLIAM L. "BILL" DURHAM, previously with Davis, Durham & Haggard in Huntsville, retired from the practice of law after more than 60 years as a practicing lawyer.

GULF

BENNY AGOSTO JR., of Abraham, Watkins, Nichols, Agosto, Aziz & Stogner in Houston, was named an honorary chair of the UNCF "A Mind Is …" Gala. **SOROUSH MONTAZARI** is now an associate of the firm.

ANTHONY C. PEJERREY is now an associate of the Weaver Law Firm in Houston.

MARIANNE G. ROBAK is now a partner in McCathern in Houston.

NED GILL III is now a partner in the newly established Gill Law, 3355 W. Alabama St., Ste. 1240, Houston 77098. **CARLEY COVERT** is now an associate of the firm.

KAMY SCHIFFMAN is now senior counsel to Thompson, Coe, Cousins & Irons in Houston.

COLLEEN MIGL, previously with Kilmer, Crosby & Quadros, is now a shareholder in Quadros, Migl & Crosby in Houston.

JOHN A. CASTON is now a partner in Tilton & Tilton in Houston.

PETER K. TAAFFE, previously with the Buzbee Law Firm, is now owner/mediator of Resolve ADR, 3120 SW Fwy., Ste. 620, Houston 77098.

KAMI D'OLIVE is now underwriting counsel to Agents National Title Insurance Company in Houston.

HON. KYLE CARTER, judge of the 125th Civil Court in Harris County, received the Public Service and Outstanding Judicial Leadership awards from South Texas College of Law Houston.

NORTH

AMY LAVALLE is now a partner in Munck Wilson Mandala in Dallas.

EMILY CHOU is now a partner in Forshey Prostok in Fort Worth.

J. NICHOLAS "NICK" BUNCH, previously with the U.S. Attorneys' Office, is now a partner in Haynes and Boone in Dallas.

DEBRA CRAFTON is now a partner in Walker & Doepfner in Addison.

NATE J. CHRISTENSEN, previously with Hunt Consolidated, is now managing director and general counsel to HN Capital Partners in Dallas.

J. TAYLOR SHAW is now an associate of the Law Offices of Thomas E. Shaw in Dallas.

DANIEL J. HYVL is now of counsel to Baker Moran Doggett Ma & Dobbs in Plano.

BRADLEY K. MAHANAY, previously with Wick Phillips Gould & Martin, is now a partner in Jackson Walker in Dallas.

HON. JOHN MCCLELLAN MARSHALL, of Dallas, was elected as an honorary member of the Polish Judges Association.

AMY M. STEWART, of Stewart Law Group in Dallas, joined the International Association of Defense Counsel.

JONATHAN JAMES is now an associate of Goranson Bain Ausley in Plano.

ARLENE S. STEINFIELD, previously with Dykema Gossett, is now principal in the newly formed Steinfield Employment Law, 11603 High Forest Dr., Dallas 75230.

HON. RHONDA HUNTER, judge of the 303rd District Court in Dallas, was named president of the Annette Stewart American Inn of Court.

WYNDHAM HUBBARD is now a transactional associate attorney with Bourland, Wall & Wenzel in Fort Worth. **ALLISON SKEES** is now a litigation associate attorney with the firm.

NATHANIEL A. PLEMONS, previously with the U.S. District Court for the Northern District of Texas, is now an associate attorney with Lynn Pinker Hurst & Schwegmann in Dallas.

LARRY M. THOMPSON, previously with Acclaim Physician Group in Fort Worth, has retired from the practice of law after 44 years as a practicing lawyer.

MARTHA HARDWICK HOFMEISTER, of Shackelford, Bowen, McKinley & Norton in Dallas, received the Eleanor Roosevelt Humanitarian Award from Altrusa International.

SOUTH

VICTOR FLORES, of the city of Brownsville, was elected to the Texas City Attorneys Association.

RICHARD R. ORSINGER, of Orsinger, Nelson, Downing & Anderson in San Antonio, was inducted into the State Bar of Texas Family Law Hall of Legends.

MELINDA VIDAURRI is now an associate attorney with the Law Offices of Rudy Santos in Laredo.

MICHAEL J. RITTER is now senior counsel to Schmoyer Reinhard in San Antonio.

SARAH VINES HANSEN is now assistant vice president of and trust adviser to Broadway Bank in San Antonio.

BRAD A. ALLEN, previously with USAA, is now a partner in Martin, Disiere, Jefferson & Wisdom in San Antonio.

JIM GOLDSMITH, previously with Brock Guerra Strandmo Dimaline Jones, is now a partner in the Lanza Law Firm in San Antonio.

WEST

JIM DARNELL, of Jim Darnell, P.C. in El Paso, was selected to the Texas Criminal Defense Lawyers Association Hall of Fame.

OUT OF STATE

ANGELA R. HOYT is now vice president of human resources and labor relations at Cabrillo Community College District in Aptos, California. **TBJ**

BAILEY C. MOSELEY

Moseley, 77, of Marshall, died September 13, 2021. He received his law degree from the University of Houston Law Center and was admitted to the Texas Bar in 1970. Moseley was an assistant district attorney in the Harrison County District Attorney's Office in 1970; a partner with his brother, Sam, in Moseley & Moseley from 1971 to 1986 and in Moseley & Davis from 1987 to 1991; a solo practitioner, focusing on commercial and real estate litigation from 1992 to 2007; and a justice on the 6th Court of Appeals in Texarkana from 2007 to 2019. His retirement was marked in Marshall with Justice Bailey Moseley Day. He was a member and former president of the Harrison County Bar Association. Moseley was a member of the State Bar of Texas Real Estate, Probate and Trust Law Section Governing Council. He was a Texas College of Real Estate Attorneys director. Moseley's proudest achievements and happiest moments were those shared with his wife, Kay, and their children, Chris and Meredith, and their three beloved granddaughters. A fifth-generation East Texan, Moseley enjoyed woodworking, coaching soccer, camping trips, mountain adventures, and RV debacles. He is survived by his son, Chris Moseley; daughter, Meredith Moseley-Bennett; brother, attorney Sam Moseley; and three granddaughters.

ABELARDO FLORES

Flores, 85, of Dallas, died May 28, 2020. He served in the U.S. Army from 1959 to 1961. Flores received his law degree from Baylor Law School and was admitted to the Texas Bar in 1971. He was in private practice from 1971 to 2020, working alongside his wife, Carmen, primarily serving the Latino community while being an inspiration and mentor to countless professionals. Flores was instrumental in the success of Zarape Records, providing financial consultation and marketing ideas to the record label focusing on Tejano music. He and his wife also started ACAR Income Tax & Bookkeeping Service, which enabled him to finish law school while supporting his wife and children and saving for his children's college education. Flores is survived by his wife of 61 years, Carmen Flores; sons, attorney Paul Flores, John Flores, Steven Flores, and Abe Flores; daughters, Arlene Gonzalez and Judy Rios; brothers, Leonard Flores, Louis Flores, and Esau Flores; sister, Aurora Flores; 22 grandchildren; and five great-grandchildren.

WALTER PAUL WOLFRAM SR.

Wolfram, 89, of Amarillo, died September 1, 2021. He served in the U.S. Air Force Reserve from 1953 to 1956. Wolfram received his law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1956. He was an attorney for Wolfram Law Firm from 1984 to 2021. Wolfram was past president of the TEX-ABOTA Amarillo Chapter. He wrote "A Strategic Grasp of the DTPA" presented at the State Bar of Texas 1993 Advanced DTPA/Insurance/Consumer Law Course. Wolfram was awarded the Professional Development Program of the State Bar of Texas 1993 Outstanding Seminar Article, was the recipient of the Texas Bar College 1993 Outstanding Achievement in Continuing Education Award, and the recipient of the Texas Panhandle Trial Lawyers Association 2013 Temple Houston Award. He founded a Boy Scouts of America museum, the First Baptist Amarillo Bible Museum, and was working on the Potter County Railroad Museum at the time of his death. Wolfram established the Nora Neal Wolfram Nursing Scholarship Fund to provide scholarships for nursing students in honor of his late wife, Nora Belle. He was bus minister at Hillcrest Baptist Church in Amarillo and, with his wife, served as Sunday school department directors at San Jacinto Baptist Church in Amarillo. Wolfram is survived by his sons, Walter Wolfram Jr. and attorney Frederic "Eric" Wolfram; daughters, Katherine Wolfram, Genny George, attorney Carol Lynn Wolfram, and Nora Esther Martin; brother, attorney David Sheppard; 12 grandchildren; and 15 great- and great-great grandchildren.

RICHARD R. MORRISON III

Morrison, 82, of Austin, died October 2, 2021. He received his law degree from Baylor Law School and was admitted to the Texas Bar in 1965. Morrison was admitted to practice before the U.S. District Courts for the Eastern and Southern Districts of Texas and the U.S. Courts of Appeals for the 5th and 11th Circuits. He was an associate of Wellborn & Houston in Henderson from 1965 to 1968, a partner in Daniel & Morrison in Liberty from 1968 to 1976, a partner in Gray, Roche, Burch & Morrison in Houston from 1976 to 1978, a partner in Krist, Gunn, Weller, Neumann & Morrison in Clear Lake from 1978 to 2000, and an attorney at the Law Office of Richard R. Morrison III in Kemah from 2000 to 2010. Morrison was a member of the Texas Trial Lawyers Association Board of Directors from 1986 to 1987. He was a member of the Association of Trial Lawyers of America and the American Board of Trial Advocates Million Dollar Forum and a Texas Parks & Wildlife commissioner from 1983 to 1989. Morrison enjoyed the outdoors with his kids and grandkids, was an advocate for the conservation of the Texas coast, and loved the state of Texas. Morrison is survived by his wife, Ann Morrison; sons, attorney Richard Morrison IV, Jim Morrison, and Jake Morrison; daughter, Paige Morrison; sister, Charlotte Morrison; and seven grandchildren.

ZOLLIE CARLTON STEAKLEY

Steakley, 44, of Waco, died November 5, 2020. He received his law degree from Baylor Law School and was admitted to the Texas Bar in 2001. Steakley was an attorney with Harrison Davis Steakley Morrison Jones. He was an adjunct professor for the Baylor Law School Advocacy Program. Steakley was a member of the Texas Trial Lawyers Association. He received the Texas Trial Lawyers Association Reich Chandler Outstanding Advocate Award. Steakley enjoyed hunting, fishing, and golfing. Steakley is survived by his daughters, Anna Christine, Carlton "Carly" Grace, and Margaret "Maggie" Ruth; father, attorney Zollie Carl Steakley; mother, Pamela Haynes Bouche; and sister, Scarlett Ruth Steakley Mercer.

SUSAN J. HANEY

Haney, 66, of Austin, died August 12, 2021. She received her law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1987. Haney was an associate of Scanlan, Buckle & Fleckman in Austin from 1987 to 1988, a partner in von Kreisler & Swanson in Austin from 1988 to 2000, and managing partner in the Haney Law Firm in Austin from 2000 to 2021. She was named one *Austin Monthly Magazine*'s Top Lawyers in 2020. Haney enjoyed scuba diving, traveling, and activism. She is survived by her son, Benjamin Haney; daughters, Amber Haney and attorney Caitlin Haney Johnston; sister, Beverly Levens; and four grandchildren.

CYNTHIA GRINSTEAD CRAFT

Craft, 62, of Houston, died June 11, 2021. She received her law degree from the University of Texas School of Law and was admitted to the Texas Bar in 1985. Craft practiced tax and estate planning for Andrews Kurth in Houston from 1984 to 1992. She was a member of the Order of the Coif and the *Texas Law Review*. Craft's entire life was a force of good. With humility and kindness, she was constantly focused on helping others. Craft's greatest joy in life was being a loving mother to her family. She is survived by her husband of 31 years, attorney George Sullivan Craft; daughter, Catherine Elizabeth Craft; stepson, attorney George Sullivan Craft Jr.; mother, Linda Rowe Grinstead; brother, William Carter Grinstead III; and five grandchildren.

L. DAVID TRAPNELL

Trapnell, 88, of Georgetown, died October 2, 2021. He served in the U.S. Army. Trapnell received his law degree from the University of Oklahoma College of Law and was admitted to the Texas Bar in 1964. He was admitted to the Oklahoma Bar in 1956. Trapnell was counsel to Continental Oil Company, general counsel to Occidental Oil & Gas Corporation in Houston, and a partner in Liddell, Sapp & Zivley in Houston, which is Locke Lord today. He was a member of the Texas Bar for more than 50 years. Trapnell loved traveling, playing golf, and various artistic pursuits. He is survived by his life partner, Katherine Stevens; sons, Roger D. Trapnell and Andrew L. Trapnell; brother, Don Trapnell; sister, Louise Mueller; and five grandchildren.

MICHAEL ALLEN PETERS

Peters, 76, of Prescott, Arizona, died July 23, 2021. He served in the U.S. Army from 1967 to 1970. Peters received his law degree from the University of Houston Law Center and was admitted to the Texas Bar in 1973. He was in private practice in Houston from 1974 to 1991 and was justice of Harris County Criminal Court No. 2 from 1991 to 2006. Peters was a man of faith, dedicated to making a difference in the lives of the people he encountered. He served as a volunteer for many church, community, and Veterans Affairs positions. Peters was an avid golfer and authored an anthology of poems. He will be remembered for his humor, wit, compassion, and creative dress. Peters is survived by his wife of 25 years, Lynne Peters; daughters, Angele' Anderfuren and Rosale' Duffey; sister, Cyndie Peters; and five grandchildren.

MARK JOHNSON

Johnson, 71, of Colleyville, died October 14, 2021. He received his law degree from the University of Houston Law Center and was admitted to the Texas Bar in 1983. Johnson was an attorney at Southwestern Bell Telephone Company, an attorney and later manager of benefits compliance at American Airlines, and founder and owner of ERISA Benefits Consulting Inc. He was a longtime member of the Colleyville Citizens Fire Academy Alumni Association. Johnson served his community as president of the Colleyville Chamber of Commerce Board of Directors and the Mill Creek Homeowners Association. He enjoyed model railroading, running, military history, travel, anything Disney, and Star Wars. Johnson is survived by his wife of 29 years, Patricia Ballenger; brothers, Gilbert Johnson, Michael Johnson, and Jeffrey Johnson; and sister, Kaaren O'Neil.

CARROLL GENE HIX JR.

Hix, 70, of Bryan, died June 11, 2021. He received his law degree from Baylor Law School and was admitted to the Texas Bar in 1979. Hix was a corporate attorney for State Farm Insurance. He was a licensed ship captain. Hix enjoyed music and songwriting. He is survived by his son, Ryan Hix; mother, Martha Hix; brother, Tom Hix; and sister, Susan Miller. **TBJ**

Pricing and submission instructions are available at texasbar.com/classifieds, 512-427-1834, or tbj@texasbar.com. Deadline is one month before publication.

OFFICE SPACE

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ADVERTISER INDEX

Déjà Vu, ALL OVER AGAIN

WRITTEN BY **JOHN G. BROWNING**

WITH ALL DUE APOLOGIES to the master of the malapropism, Yogi Berra, he's not the only one to experience a sense of "déjà vu all over again." Sometimes federal judges feel like they've seen and heard the same thing from counsel appearing before them—over and over again. And some aren't shy about calling lawyers on it—with an assist from Bill Murray.

Take Judge John M. Gallagher, of the Eastern District of Pennsylvania, for instance. Gallagher was presiding over a lawsuit resulting from a fire allegedly caused by the failure of an indoor insect trap designed and sold by a company called Dynamic Solutions Worldwide, or DSW. Joseph and Joan Holoman had purchased this bug trap through QVC in July 2019, and it supposedly caused an electrical fire at their home on July 18, 2019. The Holomans' insurance carrier, Allstate, paid for the fire loss and then brought a subrogation lawsuit against DSW and QVC. The litigation was marked by a repeated failure by DSW to meet the court's discovery deadlines and to timely provide its expert report. After multiple chances and the imposition of lesser sanctions, the plaintiff had enough and moved to exclude the defendant's electrical expert.

In a May 7, 2021, memorandum opinion, Gallagher excluded the expert, noting his repeated acquiescence in giving the defense more time and ominously saying that "when the Court runs out of carrots, sometimes it must reach for a stick." Observing that the case "presents a repeated, flagrant disregard of the Court's discovery orders," Gallagher broke out the pop culture wisdom:

> However, today is not "Groundhog Day," and the Court is not Bill Murray. Unlike the comedic film, a civil litigant cannot expect a redo of the deadlines every time the alarm clock sounds their expiration . . .

Ouch! In fairness, however, Gallagher is not the first federal judge to reference the Murray comedy classic. In 2018, Judge Mark Walker, of the U.S. District Court for the Northern District of Florida, also gave a shoutout to *Groundhog Day.* In ruling that 32 counties across Florida had violated the Voting Rights Act by denying Puerto Ricans (who had been displaced by Hurricane Maria and were now living in Florida) access to Spanish-language ballots, Walker characterized the repeated election law violations as a case of "what's old is new again." Walker wrote:

> Here we go again. The clock hits 6:00 a.m. Sonny and Cher's "I Got You Babe" starts playing. Denizens of and visitors to Punxsutawney, Pennsylvania eagerly await the groundhog's prediction. And the state of Florida is alleged to violate federal law in its handling of elections.

Of course, if there's one thing you can count on besides judges making pop culture references, it's Zoom mishaps. And few judges have witnessed more Zoom weirdness than Michigan's Judge Jeffrey Middleton. Middleton's virtual courtroom has already included a Zoom appearance in a driving with a suspended license case by a defendant who was behind the wheel yet again (with no license), as well as a domestic violence case where the defendant—despite a no contact order—appeared for his hearing from the victim's house! The latest virtual snafu before Middleton came in early May when defendant Nathaniel Saxton logged into his arraignment hearing with an X-rated screen name. Middleton didn't mince words with Saxton, calling him a "yo-ho" and saying "What kind of idiot logs into court like that?" The embarrassed defendant apologized, explaining that his sister had set up his account and used that screen name as a joke. Middleton was not amused, telling Saxton that his sister almost cost him jail for contempt of court, before ultimately fining Saxton $200 for possession of drug paraphernalia. Pro tip: always check your screen name before logging into a Zoom hearing or meeting—oh, and check for cat filters, too.

You should also check your Zoom backgrounds, as Ohio state Sen. Andrew Brenner can attest. The senator was attending a May Zoom meeting of the Ohio Controlling Board to discuss some pending legislation and was repeatedly turning his camera off and tinkering with his glitchy "home office" virtual background. Other attendees on the call could see Brenner wearing a seatbelt, holding his hands as if gripping a steering wheel, and trying to adjust his background as scenery rushes by. Yes, it became painfully obvious to everyone that Brenner was attending the Zoom call from his car while driving, and he later admitted that he regularly attends such calls while driving while denying being distracted.

Oh, and the subject of the bill that was discussed during this Zoom call? Distracted driving. I can't make this stuff up. **TBJ**

JOHN G. BROWNING is a former justice of the 5th Court of Appeals in Dallas. He is the immediate past chair of the State Bar of Texas Computer & Technology Section. The author of five books and numerous articles on social media and the law, Browning is a nationally recognized thought leader in technology and the law.

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The **ACA Health Insurance Open Enrollment Period** for 2022 plans is **November 1, 2021** to **December 15, 2021**. Need new coverage? Questions about renewal? Want to find out if you qualify for reduced premiums through the American Rescue Plan? The Texas Bar Private Insurance Exchange is here to help.

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Gov. Greg Abbott appoints Evan Young to Texas Supreme Court

Gov. Greg Abbott announced Evan Young as his appointment to the Texas Supreme Court on November 1 to fill the seat vacated by Justice Eva Guzman when she resigned in June. "Evan Young is a proven legal scholar and public servant, making him an ideal pick for the Supreme Court of Texas," Abbott said in a press release. "Evan's extensive background in private practice and public service will be a fantastic addition to the bench, and I am confident that he will faithfully defend the Constitution and uphold the rule of law for the people of Texas." Young is a partner in Baker Botts in Austin. He clerked for U.S. Supreme Court Justice Antonin Scalia and served as counsel to the attorney general of the U.S. Department of Justice. Young is a former chair of the Texas Regional Office of the National Center for Missing and Exploited Children, a member of the Supreme Court Advisory Committee, an elected member of the American Law Institute, and an adjunct professor at the University of Texas School of Law. He has served as a member of the Texas Judicial Council since 2017. "Evan Young has already made outstanding contributions to the Texas justice system as a member of the Judicial Council, the judiciary's policymaking body, and the Supreme Court Rules Advisory Committee, which advises the court on procedural and administrative matters for all Texas courts," Texas Supreme Court Chief Justice Nathan L. Hecht said in a press release. "He will continue to serve the people of Texas with distinction, and the court is proud to have him join us."

TEXAS CITY ATTORNEYS ASSOCIATION BOARD OF DIRECTORS ELECTS VICTOR FLORES

The Texas City Attorneys Association, or TCAA, elected Victor A. Flores, Brownsville city attorney, to serve on its board of directors at the association's meeting on October 7 in Houston. Flores is one of only two attorneys to serve on the board from the Rio Grande Valley since the organization was founded in 1928. TCCA, which has a membership of over 400 attorneys, is an affiliate of the Texas Municipal League, which encourages the professional development of municipal attorneys throughout Texas. Flores is a past president of the Texas Young Lawyers Association and a member of the Texas Bar Journal Board of Editors. "Victor Flores' longtime contributions to the study and practice of law at a municipal level, as well as this recent appointment to the TCAA Board of Directors, reiterates his dedication to our organization's vision and long-term goals," Brownsville City Manager Noel Bernal said in a press release. "It's a great honor and privilege to represent the city of Brownsville amongst many other incredible cities," Flores said in a press release. "I hope to share, with my fellow colleagues across Texas, all of the amazing things that are happening in our local community, from cutting-edge technologies to aerospace developments."

TEXAS ACCESS TO JUSTICE COMMISSION NAMES BECK REDDEN AS CHAMPION OF JUSTICE FIRM

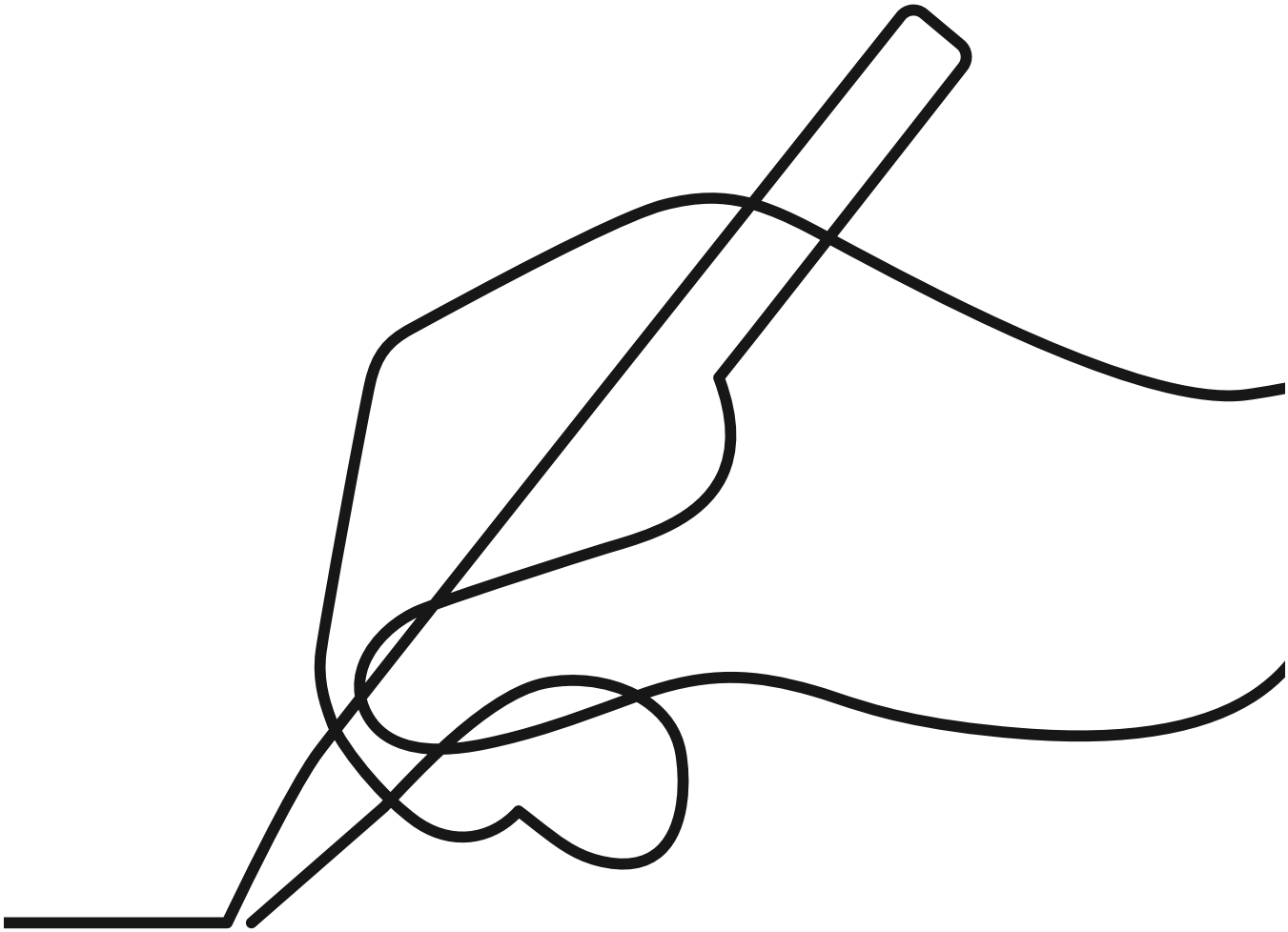
The Texas Access to Justice Commission named Beck Redden as the winner for the highest level of participation and highest amount raised in the medium-size firm category of the Champions of Justice Firm Competition. The numbers are based on Texas Access to Justice Commission contributions made by the firms' attorneys in support of the statewide Justice for All Campaign. Campaign funds go to civil legal aid organizations across Texas. In 2020, more than 10,500 attorneys made a contribution and the Justice for All Campaign raised over $1.4 million—the highest amount ever raised. For more information about the Texas Access to Justice Commission, go to texasatj.org.

TEXAS LAWYER RECEIVES AWARD FOR LEGAL WRITING

Texas lawyer John G. Browning has been named this year's recipient of the Oklahoma Bar Association's top legal writing award, the Maurice Merrill Golden Quill Award. Named for a longtime Oklahoma University College of Law professor and author, the award is presented annually to the author of the best written article published in the *Oklahoma Bar Journal*. Browning, a partner in the Plano office of Spencer Fane, former justice on Texas' 5th District Court of Appeals in Dallas, and member of both the Texas and Oklahoma bars, won for his article in the May 2021 issue, "Blazing the Trail: Oklahoma Pioneer African American Attorneys." The issue, published to mark the 100th anniversary of the Tulsa race massacre, had a special focus on African American legal history in Oklahoma and featured five articles on different aspects of that history (two of which were written by Browning). The award was presented by Oklahoma Bar Association President Michael Mordy at the OBA's Annual Meeting on November 12 in Oklahoma City.

TEXAS APPLESEED HONORS JENNIFER AND PETER ALTABEF AND LATHAM & WATKINS WITH AWARDS

Texas Appleseed honored Jennifer and Peter Altabef, of Dallas, and Latham & Watkins at its annual Good Apple Dinner gala on November 10 in Austin. The Altabefs received the nonprofit's highest honor, the J. Chrys Dougherty Good Apple Award. Jennifer is chair of the Dallas Theater Center Board of Trustees and of Southern Methodist University's Meadows School of the Arts Executive Board. She is a member of the SMU Board of Trustees and practiced law in Dallas for 28 years before devoting herself to civic and philanthropic involvement. Peter is chair of the board and CEO of Unisys Corporation, a member of the NiSource Board of Directors, and serves on President Joe Biden's National Security Telecommunications Advisory Committee. He is a Committee for Economic Development trustee and serves as co-chair of its Technology and Innovation Committee. Latham & Watkins received the Pro Bono Leadership Award. The firm volunteered more than 1,600 hours spanning more than 10 Texas Appleseed projects. Honorees are selected by the Texas Appleseed Board of Directors. For more information about Texas Appleseed, go to TexasAppleseed.org. **TBJ**



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SORRELS LAW

$352,772,000 Record Verdict for Injured Worker

Partners Randy Sorrels and Alex Farias-Sorrels just secured the largest injured worker jury verdict in Texas history for actual damages (no punitive damages) on behalf of a United Airlines employee. This is the second major jury trial victory for Sorrels Law in 2021 - the firm's inaugural year - the first being *Clemens v. Concrete Cowboy*.

The Defendants were represented by famed Houston attorney Rusty Hardin in Cause No. 2019-81830 in the 127th District Court of Harris County, Texas. The Plaintiff was catastrophically injured with past and future medical bills and loss of earnings of almost $35 million. More on the case can be seen at: https://vimeo.com/641238287.

Sorrels Law accepts referrals of personal injury, medical malpractice and commercial litigation cases, paying generous referral fees. Sorrels Law joint ventures cases with other law firms as well. Call any of their lawyers.

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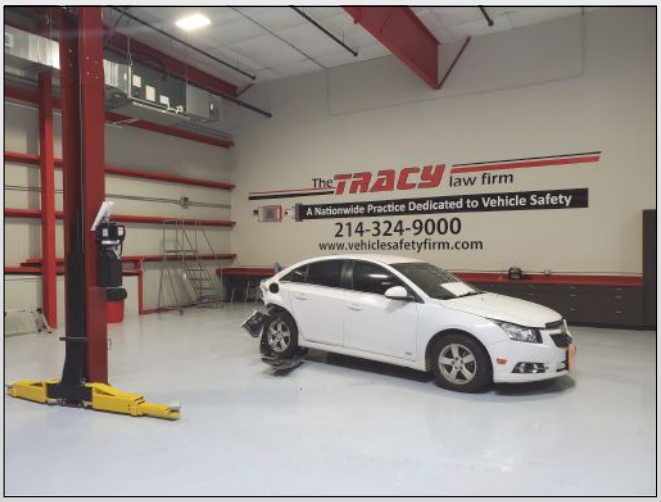

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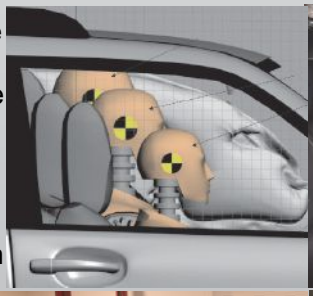

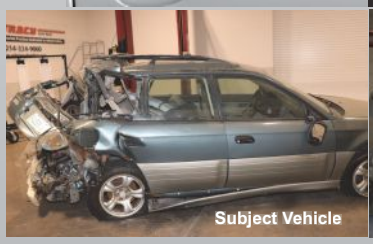

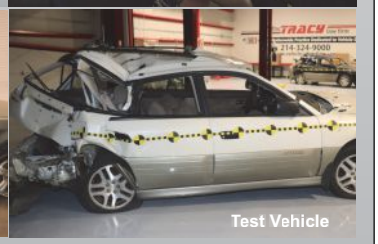

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