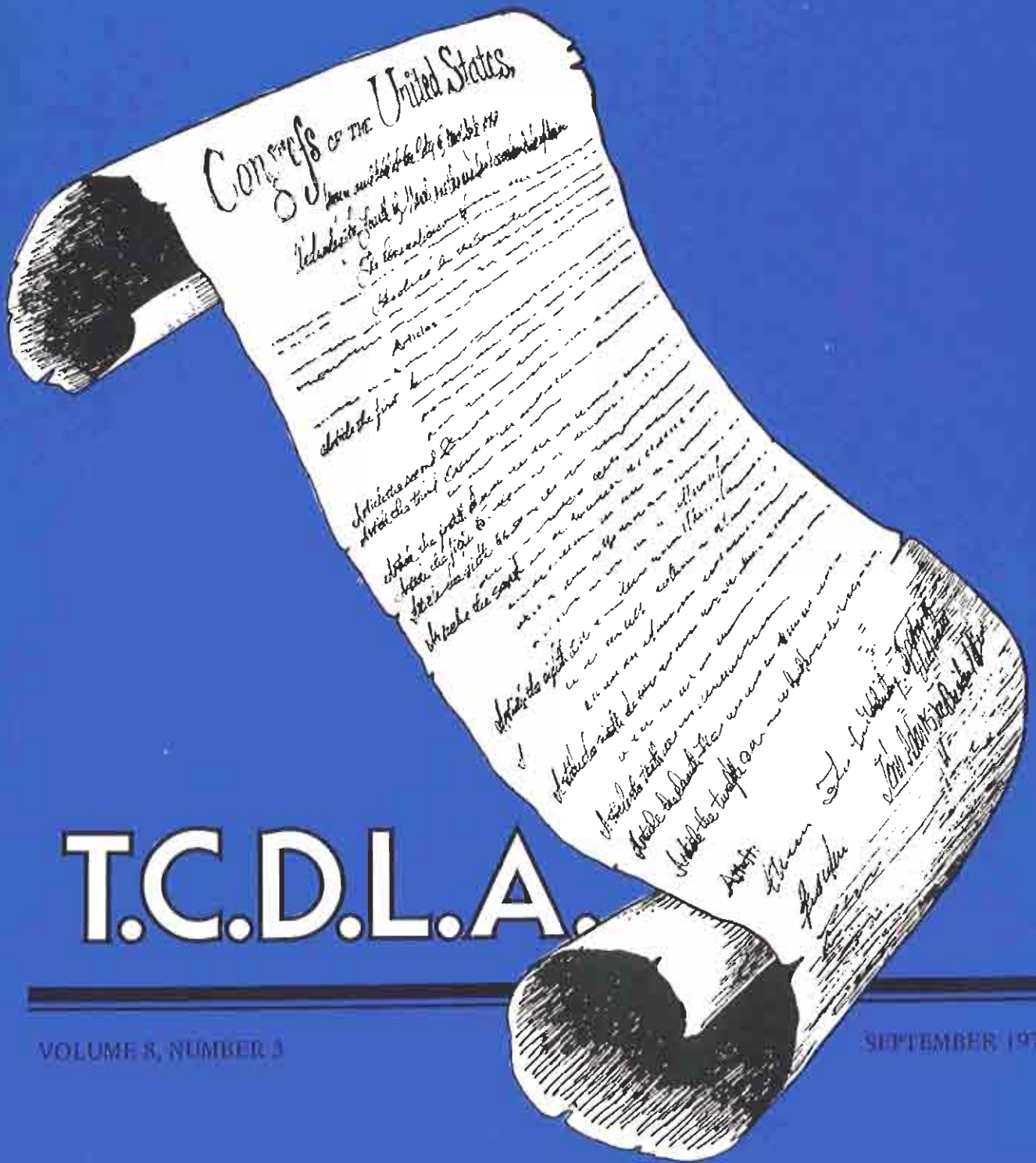
VOICE for the DEFENSE



T.C.D.L.A.

VOLUME 8, NUMBER 3

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REGULAR FEATURES

NEWS

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Texas
Criminal Defense Lawyers
Association

SEPTEMBER 1978

OUTLINE:
PROPER PREDICATE FOR INTRODUCTION OF EVIDENCE

F. R. "Buck" Files, Jr., Tyler

I. THE "INCORPORATION BY REFERENCE" STATUTES
- A. Article 38.01 VACCP
  Rules of evidence known to the common law. . . .
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- B. Article 38.02 VACCP
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II. STATUTES AS A BASIS FOR "GETTING IT IN"
- A. 38.22 VACCP – Confessions
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- C. 38.27 VACCP – Handwriting
- D. 38.13 VACCP – Judge as witness
- E. 38.20 VACCP – Dying declarations
- F. 38.24 VACCP – Part of "anything"
- G. 31.08 (c) TAPC – Value

III. CASES AS A BASIS FOR "GETTING IT IN"
- A. *All* opinion evidence: *Hopkins v. State*, 480 S.W.(2d.)212(1972)
- B. Photographs: *Walker v. State*, 60 S.W.(2d.)455(1933)
- C. Motion Pictures: *Standard Motor Company v. Blood*, 380 S.W.(2d.)651(1964)
- D. Diagrams: *Overton v. State*, 490 S.W.(2d.)556(1973)
- E. DWI/DUID: *Smithhart v. State*, 503 S.W.(2d.)283(1974)
- F. Breathalyzer results: *French v. State*, 484 S.W.(2d.)716(1972)
- G. Radar: *Wilson v. State*, 328 S.W.(2d.)311(1959)
- H. Firearms (type and angle at which fired): *Craig v. State*, 347 S.W.(2d.)255(1961)
- I. Insanity (lay opinion): *Smith v. State*, 502 S.W.(2d.)814(1973)
- J. Fingerprints: *Todd v. State*, 342 S.W.(2d.)575(1961)
- K. Sound recordings: *Edwards v. State*, 551 S.W.(2d.)(1977)
- L. Telephone conversations (recorded): *Schwartz v. State*, 246 S.W.(2d.)174(1952)

IV. YOU CAN'T "GET IT IN"
- A. Statutory: 38.23 VACCP
- B. Case: Polygraph – *Lewis v. State*, 500 S.W.(2d.)167(1973)

Clif Holmes

I think it can be said, without fear of contradiction, that our present leader is not confused about where he believes this association ought to be going. His missives thus far in the *Voice*, his statements to the board, and his *actions* make clear his intent. Much has been said in the past, by various officers and members of TCDLA (including yours truly) about getting the association "on the grow." George Luquette has begun doing something about it. His belief in fiscal responsibility is demonstrated by the austere budget he has suggested for his administration. His faith in the ability of the rank and file of the criminal bar to recognize and understand their needs is shown by his constant drive for expanded membership. I'm confident TCDLA will have a banner year under George Luquette... IF:

1. You get behind him and the Board of Directors in their management of the association.
2. You let your officers and directors know what problems you face as a criminal law practitioner.
3. You become a spokesman in your area for the criminal defense bar's viewpoint on matters affecting our criminal justice system.
4. You accept your membership in TCDLA as a professional responsibility, and conduct your affairs accordingly (e.g., pay your dues, seek out new members, provide assistance to your officers and directors in managing the affairs of the association. . .in a word, get *active*).

Your association is a mere seven years old, and, "we've come a long way, baby." We've got a long way left to go, though, and it'll take all our efforts to make the trip. TCDLA has become a recognized and respected specialty bar, looked to by all in this state to state the case for the criminal defense bar on matters affecting the criminal justice system. Without your active participation we can't be sure your views are considered. We need you. The criminal justice system needs you. . .and, I believe, you need TCDLA.

. . .and George, we all need you (and, I believe, that's the first time in history a Tea-sip ever admitted needing an Aggie for anything!!).

A Letter

Dear Mr. Holmes:

I was amazed at the strident and virulent letter from Martha McCabe which appeared in the June edition of the *Voice* concerning the harmless Bancroft-Whitney ad on page 19 of the April edition. Mrs. McCabe states, "There are a number of reasons why the scenario portrayed in the advertisement is reprehensible," but she fails to state any cogent reasons. She cannot be complaining that the ad suggests that most criminal lawyers are men because she admits that that is true. Surely she is not complaining that the ad suggests that most criminal lawyers are married as that is also obviously true.

Perhaps the reason most people do not take seriously the women's movement is that the last quarter of the 20th century, most movements are taken over by the lunatic fringe. This fringe is amply demonstrated by letters such as those from Ms. McCabe which demonstrate a shrill, hypersensitivity and a tendency to take offense at the most innocent presentation. As General McAuliffe said at the seige of Bastogne, "Nuts!"

Very truly yours,
Don W. King, Jr.
San Antonio, Texas

cc: Bancroft-Whitney Co.

MINUTES OF BOARD OF DIRECTORS MEETING

TEXAS CRIMINAL DEFENSE LAWYERS ASSOCIATION
BOARD OF DIRECTORS MEETING
HOUSTON, TEXAS
JULY 15, 1978

10:05 a.m.	President Luquette called the meeting to order. The roll was called. A quorum was present.
MEMBERS PRESENT:	George Luquette, Vincent Perini, Harry Nass, Robert Jones, Charles McDonald, Gerald Goldstein, David Bires, Charles Butts, Tony Cantu, Louis Dugas, Michael Gibson, Grant Hardeway, Jan Hemphill, Edward Mallett, Pat Priest, Richard Thornton, Doug Tinker, Stanley Topek, Stanley Weinberg, Bennie House, Richard Anderson, Richard Harrison, Robin Pearcy, Larry Sauer, James Bobo, C. David Evans, C. Anthony Friloux.
EXCUSED ABSENCES:	Jack Beech, Russell Busby, Gene DeBullet, W. V. Dunnam, Buck Files, Kerry FitzGerald, Clif Holmes, Thomas Sharpe, Rodger Zimmerman, Ronald Zipp, Charles Burton, Emmett Colvin, Frank Maloney, Phil Burleson, George Gilkerson, Weldon Holcomb, Oliver Heard, Jr.
UNEXCUSED ABSENCES:	Clifford Brown, Raymond Caballero, David Carlock, Waggoner Carr, Allen Cazier, Stuart Kinard, Boots Krueger, Charles Rittenberry, Robert Salinas, Pete Torres, Francis Williams, Willis Taylor, Keith Alaniz, R. L. Whitehead, Michael Thomas.
GUEST SPEAKER	Discussion by Dr. Paul Rothaus, Ph.D., noted Prac. Clin. Pathologist in adult group therapy. Discussed the effects of long use of marijuana and other drugs, and the physical and emotional reactions to these.
BUSINESS	Steve Capelle, Executive Director, discussed his resignation that would become effective this date, and commented on the prior

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President's Report

A Success Story?

How many times has it been said that we are *the products of our own thoughts*, or in other words, we are what we think about? Volumes have been written espousing an individual's capacity for success in terms of mental attitudes or thought processes. We have all been deluged with programs, techniques, methods and formulas for achieving success. But what have they done for you?

Certainly your dreams, goals and ambitions are important to your destiny, but only to the extent that you *act* to realize them.

Have you ever been stimulated by an inspiring speaker? Come away from a meeting or seminar, skill course, or a "how to" speech with the conviction that you were going to move in a new direction; that you were going to change your way of life? But, did you find that those convictions were rapidly diluted by negative thoughts or daily pressures? Did *all that new-found motivation and enthusiasm* soon disappear?

The big question: How can you sustain these feelings of motivation? We must nurture our thoughts and focus so clearly on what we want to achieve that we overcome inertia (commonly called motivation inertia). Once you do, you will be amazed at how much less energy it takes to keep moving toward your goals than it took to get started. There are many things you can do to get started, but four of the more common ones are:

1. Select the goal you want to achieve.
2. Gather information about how others have achieved the same or similar goals.
3. Think about your goal constantly so as to focus sufficient attention to it.
4. Act on achieving your goal.

Remember, the toughest part is to get started!

The officers and executive committee have set a goal for TCDLA this year—200 additional members who are either new or are reinstated by January 1, 1979. Impossible? In the past two weeks there have been obtained from the great city of San Antonio approximately 45 additional members, either new or reinstated. Houston and Dallas are next.

We followed the formula in San Antonio and it worked beautifully.

We are now asking each and every member to *act* and help keep our momentum going. We are striving to get these new members. We need them—they need us.

Each one of your officers and members of the board of directors of TCDLA has voluntarily pledged three new members before September 23, 1978, the date of our next board meeting. We ask that you carry one of our membership applications around with you *at all times*. As you meet with your fellow lawyers, be it in court or at the coffee shop, share the TCDLA experience with them, ask them to become members. Remember, it's only 145 more shopping days from September 1, 1978, until Christmas, at which time I hope TCDLA's success story will really have begun.

Until then.

George Luquette

RESOLUTION RE: FEDERAL NO-FAULT

STATE BAR OF TEXAS

BE IT RESOLVED THAT the Board of Directors of the State Bar of Texas in a regular meeting held on July 1, 1978, in Fort Worth, Texas, expresses opposition to *S. 1381* and *H.R. 13048* now pending in the Congress of the United States and which have as their subject matter a savings from the proposed federal insurance. The basic reasons for such opposition include, but are not limited to:

(1) Texas, like the majority of states, has never, as a matter of public policy, compelled people by law to buy insurance or any other product or commodity.

(2) The proposed legislation would abolish long-standing concepts of right and wrong forming what is called tort law. Under tort law, a person may act and use his property essentially as he wishes except that he may not wrongfully injure the person or property of others. A person wrongfully injuring or damaging another becomes liable for damages he causes. Under "no-fault" plans, tort law is repealed totally under some plans and partially under others. Under "no-fault" plans, the fundamental premise of individual responsibility is ignored. "No-fault" insurance plans seek to change our laws and concepts to create a no-fault, no-responsibility society.

(3) "No-fault" plans eliminate or limit by arbitrary restrictions the right to citizens to seek justice and enforcement of legal rights in the courts through trial by jury. The State Bar Board of Directors believes that the right of people to trial by jury in both civil and criminal cases is a safeguard to liberty and should be retained.

(5) The directors believe that the states, not the federal government, should regulate the insurance industry and enact such reform as needed in automobile accident reparations laws. The directors finally oppose enactment of a federal "no-fault" law which would probably lead to a bureau-administered reparation system.

(6) Based upon a new statistical study, the Board of Directors of the State Bar believes there is no basis for projecting premium reductions and cost savings from the proposed federal "no-fault" bills. The Congress of the United States and the members thereof are respectfully urged to reject *S. 1381* and *H.R. 13048*.

(7) BE IT FURTHER RESOLVED that a copy of this resolution be mailed to members of the Texas delegation in Congress and that they be respectfully requested to contact other members of Congress to vote against any form of federal "no-fault" legislation.

Done this the 1st day of July, 1978, at Fort Worth, Texas.

Cullen Smith
President
State Bar of Texas

ATTEST:

Tom Hanna
Executive Director
State Bar of Texas

ABA STUDY SAYS FEDERAL NO-FAULT BILL BORDERS ON IRRESPONSIBLE-IS UNSOUND

For the most part, no-fault auto insurance plans are not working as expected, have generally resulted in higher insurance premium costs, and may lead to more careless driving, according to a study released today by the American Bar Association.

The five-month study of state experience with no-fault furthermore found no justification for federal intervention and warned that a federal no-fault bill would be irresponsible, inequitable and would seriously retard state reform efforts.

"Automobile No-Fault Insurance," prepared by the ABA's Special Committee on Automobile Insurance Legislation, takes an in-depth look at available studies and statistical information on how no-fault has worked.

The study notes that proponents of no-fault claim it will reduce cost, ease court congestion, and do a better job of deterring accidents than the fault system.

However, the study found that in states with strong no-fault plans, which severely limit the right to sue, these goals have not been achieved.

The report notes that:

—The number of accident cases that go to trial have doubled in Massachusetts since its no-fault plan went into operation.

—A total auto insurance package would cost a driver in East Boston, Massachusetts, $542.24 in 1970. In 1977, after six years of no-fault, the same coverage would cost $1,219—an increase of about 125 percent.

—In Florida, under a no-fault plan that went into effect in 1972, bodily injury insurance rates are up 84 percent with some companies reporting increases as high as 210 percent. As a result, in some parts of the state 30% to 40% of the drivers are uninsured.

—In Florida, crashes per registered vehicle increased by about 29 percent under no-fault.

The committee's findings repudiate much of the often-quoted June 1977 Department of Transportation study. The

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CHECKLIST FOR COURT-APPOINTED LAWYERS

Michael D. Matheny, Beaumont

The following is a step by step procedure for court-appointed attorneys. This material was previously published in the *Texas Bar Journal.*

1. Start a file as soon as you receive the letter appointing you as counsel for the defendant. Remember that the defendant normally will also receive this letter. If appointment is in open court, and not by letter, dictate a letter acknowledging the appointment, with a copy to the defendant.

2. Go to the District Clerk's office and obtain a copy of the indictment or other written accusation against the defendant.

3. Go to the library and find the exact criminal statute the defendant is charged with. Photostat this statute and put it in your file.

4. Run the annotation of the criminal statute down until you find a recent Court of Criminal Appeals case that contains the exact elements necessary to be shown by the State to prove this criminal offense. Put this in your file.

5. Attempt to talk to the Assistant District Attorney who is handling the file and see if he will give you a shorthand rendition of the facts that are relied upon by the State. (Don't be discouraged. Stay after the District Attorney until you get the information you need.)

6. Go to the indigent defendant (all of these steps should be taken immediately or as soon as practicable after your appointment as the court-appointed attorney) and tell him you have been appointed to represent him. Bring your file with you and go through each step that you have taken, showing him what the elements of the offense are and that you are interested in helping him. Find out from the defendant his version of what has happened. Do not talk to the defendant about the possibility of any type of plea of guilty at the time of your first interview. If you do, nine chances out of ten he will peg you as a "cop-out man," and your task will be ten times more difficult. Tell the defendant to write out in his own handwriting a short history of himself and what he knows of the occurrence he is charged with. Be sure that this is given to you on your next visit to the jail.

7. Compare the defendant's version of the facts with the State's version and the applicable law, etc. Find out from the defendant if he has ever been hospitalized or treated for any type of mental trouble. If so, get a medical authorization from the defendant and obtain a report of this past mental history.

8. Obtain from the defendant any witnesses who he feels would be favorable to him, whether on character, punishment, guilt, or innocence.

9. If the defendant is insistent upon a certain defense, such as alibi, personally track that defense down immediately. Request that the Court appoint you a court-appointed investigator, and follow through on any defenses that this defendant raises from the very beginning. The prompt contradiction or affirmation of such facts will help to gain you the immediate confidence of your client.

10. Determine whether or not a pre-trial hearing will be necessary, or if the State will more or less show you what specifics you need to know about their file. After you have thoroughly interviewed the defendant, and reviewed the applicable law and the facts of the case, and have reviewed the State's charging papers to determine that the offense has been alleged correctly, you should find out what the State is going to recommend and make a determination as to what course you should pursue. This should be done only after a thorough investigation of all the facts and the law. The recommendation of the District Attorney should then be presented to the defendant. It should be thoroughly explained to the defendant and he should make a decision. Tell the defendant to think about it awhile and come back the next day, if possible, to talk to him about his wishes. If the defendant does not wish to accept the recommendation of the State, and if you feel that the recommendation of the State is a fair disposition of the file, write up such a memorandum (see Exhibits A and B) and have the defendant sign it. The defendant should state that he knows that the State will recommend "X" and he does not wish to receive this and wishes to go to trial, that he has given you the name of "A" and "B" as witnesses, and that you have interviewed him on several occasions and explained the law and the facts to him, and that he does not have any further suggestions as to any further investigation or additional witnesses known to him, and that he demands a trial. Then request that the case be set down for trial and try it.

11. Call upon attorneys who regularly handle this type of matter and ask for their counsel and advice. Unlike most other areas of specialized law, most attorneys who defend criminal cases will assist their fellow lawyers.

12. After the case is disposed of, retain the file. Maintain some sort of chronological log showing the time spent on researching the law, and the exact dates when you conferred with the defendant, dates of court hearings, etc.

Make a final entry into the file as to the date of the trial or guilty plea, etc., and the sentence the defendant received.

There have been many, many papers written on discovery techniques, objections at trial, etc. I will not attempt to go into all of these areas. Textbooks, papers, reference books, *Bar Journal* articles, *Law Review* articles are available to anyone who will take the trouble to read them. As a speaker at a recent institute indicated, most lawyers don't really need to attend institutes, because they are only practicing law one-half as well as they know how anyway.

The lawyer must never forget that the individual client whom he represents, whether high-paying or court-appointed, deserves his undivided attention. The lawyer cannot forget this and cannot be a mere instrument of the State in obtaining a guilty plea. By the same token, the lawyer can ethically take advantage of the tremendous size of the State's docket, and can use this to the advantage of the defendant in obtaining a more compassionate punishment in those cases where the defendant has obviously been caught and properly proceeded against.

It is often said that the State cannot try all of its cases. That may be true, but the State can and will try any one case; this could be the case on which you are appointed.

EXHIBIT A

THE STATE OF TEXAS)
)
COUNTY OF JEFFERSON)

My name is Miss Understood Jones. I am the defendant in The State of Texas vs. Miss Understood Jones, Nos. 27,468; 28,720; and 28,722. Mr. Michael D. Matheny of Beaumont, Texas, is my court-appointed lawyer. He has conferred with me about my case and has explained to me that the sheriff's office and the District Attorney will allow me to plead guilty on all of these cases for a total of twenty-five (25) years. That this twenty-five (25) year sentence would have to be served consecutively after the completion of the eight (8) year sentence that I am under. I know this means stacked on top of the eight year sentence I am serving now.

I have instructed my attorney that I do not wish to plead guilty for this amount of time and wish to try all of my cases. I understand that if I am found guilty that I may receive as much as life in prison. That is my choice and election and I refuse to plead guilty.

Mr. Matheny has showed me the various motions that he has filed on my behalf and has asked me if I have any additional motions or suggestions that would help me in my defense, but I have none.

Mr. Matheny has asked me for the name and address of any witnesses that might be of help to me in the defense of my cases, and I have none.

Signed on this the _____ day of _____, 197____.

_____
MISS UNDERSTOOD JONES

EXHIBIT B

THE STATE OF TEXAS }
}
COUNTY OF JEFFERSON }

My name is Miss Understood Jones. I am the defendant in the following cases. My attorney, Michael D. Matheny, has explained to me the proposal of the office of the District Attorney of Jefferson County, Texas, as to the disposition of my three pending criminal cases, and I am agreeable to this disposition of these cases, and wish to plead guilty on these cases and receive the punishment as is set forth below. I am pleading guilty to two of these cases because I am guilty of these offenses.

No. 27,468 - State vs. Miss Understood Jones
Robbery by Firearms - dismissed

No. 28,720 - State vs. Miss Understood Jones
Robbery by Assault - plead guilty -
received ten (10) years

No. 28,722 - State vs. Miss Understood Jones
Escape w/charged w/felony - guilty -
received five (5) years

I realize that the ten (10) year sentence and the five (5) year sentence will run concurrently, but they will also run consecutively after I have served the eight (8) year sentence that I am currently serving. I wish to plead guilty and receive this punishment.

Signed on this the _____ day of _____, 197 _____.

_____
MISS UNDERSTOOD JONES

COUNTERING PSYCHIATRIC SUPPORT FOR THE DEATH PENALTY —A CLINICAL NOTE

Martin Blinder, M.D.

Dr. Blinder is Asst. Professor of Psychiatry, University of California in San Francisco, and Asst. Professor of Law (Adjunct), University of California Hastings College of the Law, San Francisco.

Assuming other conditions are met, the current Texas Criminal Code requires the death penalty if there is "a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society. . . ." Juries are frequently persuaded that such a condition obtains by psychiatrists apparently willing to testify that *their knowledge of psychopathology enables them to predict to a reasonable degree of medical certainty whether or not a particular defendant constitutes a significant future danger.*

Speaking as a forensic psychiatrist who has worked extensively with the courts and with prosecutors and defense attorneys, and who has examined hundreds of killers, I can tell you: *They cannot.*

What a competent psychiatrist *can* do is place someone into a clinical diagnostic category, e.g. schizophrenia, character disorder: and then give very general *statistical* predictions about the behavior of that group as a whole. Thus, with a modest degree of confidence he can say, for example, that of a hundred paranoid schizophrenics who have suffered two or more hospitalizations for psychotic episodes in the past five years, one-half[1] will have to be rehospitalized within the next five years and half will not. He cannot say, however, *which* 50 schizophrenics go into the first group and *which* go into the second. That is, though he knows that each of the 100 are at statistical risk, unless the psychiatrist be clairvoyant he cannot tell those who will actually fall ill from those who will remain in remission.

Even a psychiatrist's *statistical predictions* suffer from the lack of a constant—there are no hard, objective criteria by which one may select a hundred schizophrenics with an illness of equal severity. Mere visibility of symptoms is an unreliable predictive measure of the malignancy of the psychotic process in a particular individual. (For example, the disorder afflicting the less dramatically ill individual often runs a more destructive and relentless course than that afflicting one exhibiting acute and florid psychotic symptoms.)

Predictions of violence are especially fraught with difficulty. To begin with, most people who kill, kill but once. Of all offenders, killers have the lowest recidivism rate. When imprisoned, they are most likely to be the "model prisoner." Their offense has usually resulted from a unique confluence of special circumstances not likely to be repeated.[2] Even those killers whose chronic antisocial behavior, past predilection for violence, poor response to punishment and an inability to identify with others earns them the diagnosis of sociopathic character disorder, i.e. psychopath, are still statistically more likely to be antisocial in nonviolent (thefts, marital irresponsibility, alcohol abuse) than violent ways.

Studies have shown that psychiatrists tend to overpredict the incidence of future violence, perhaps as an unconscious mechanism for coping with the uncertainties inherent in their work and an understandable wish to play it safe—a hundred harmless men unnecessarily confined present no problem to the community, but the psychiatrist can expect to hear much about the one man he deems harmless but who goes on to commit violence upon release.

The recidivism rate of certain nonviolent offenders is quite high. About 80% of exhibitionists under the age of 30, for example, will reoffend. Thus, the psychiatrist who confidently predicts a second arrest of a 25-year-old flasher will have a good batting average, however arbitrary his judgment. Predictions of future *violence*, however, are far more likely to be in error.

In summary, from the clinician's view, a criminal code which bases its decision to put a man to death on the predictability of his future proclivity for criminal violence imposes upon both the jury and the psychiatric consultant who would advise them an impossible task.

[1] If left untreated.

[2] This factor has bearing on another issue considered by the jury—whether or not the conduct of the defendant in killing the deceased was unreasonable in response to the provocation. Most killers respond to provocation which may appear minimal to the outside observer, but which had unique, profound and symbolic significance to the killer, and for him, proved overwhelming. Such special circumstances, so unlikely to elicit sympathy for the killer from the jury, are unlikely to recur in the killer's life.

ABA STUDY from page 6

ABA report concludes that DOT's study is "deeply flawed" and "seriously misleading."

The report also examines and evaluates proposed national no-fault legislation and concludes that a federal no-fault bill is unnecessary and potentially costly.

In addition, it says, "imposition of a uniform plan throughout a nation that has widely varying conditions (and needs) can be extremely harmful."

It points out there is an abundant and wide variety of state experimentation in the no-fault area.

"At this time, 24 states, accounting for some 53 percent of the nation's population, have adopted no-fault legislation in one form or another," the study reports. Yet, it states, "experts are poles apart" and there is no consensus on what the best form of no-fault is.

The report continues: "The point has not yet been reached in the evolution of automobile compensation policy where Congress can formulate a good uniform no-fault plan for the entire nation.

"Imposition of a federal no-fault scheme would prematurely and unnecessarily terminate a period of state experimentation with alternative solutions to disparate and dissimilar problems.

"A better approach would be to let the states themselves respond to their particular needs by handling auto insurance in their own way, free of federal interference. Proposals for imposing a tort-restrictive, national, no-fault scheme border on the irresponsible."

To assist states in their reform efforts, the study says there is a need for an "independent, rigorous, empirical study, never before attempted" of the seven years of state experience to assess the impact of no-fault on:

—accident rates or motor vehicle death and injury rates;

(Continued on page 11)

MINUTES OF BOARD MEETING from page 4

meeting with Charles McDonald, Bob Jones and George Luquette in which he discussed alternatives to the budget. President Luquette thanked Steve for his good work and presented him with a plaque of appreciation. Plaques of appreciation were also presented to Marvin Teague, for his work on Significant Decisions, and to Joe Keegans, Ned Wade and Charlie Orsburn for their past work on the board. At this time President Luquette appointed Charles Butts to the Executive Committee.

A report was given concerning the staff changes that were made at the July 8th Executive Committee meeting that was held in Austin. It was stated that Cindy Mason was terminated, because of the financial problems, and that Stephen Capelle was not to be replaced as Executive Director. It was determined to maintain the Austin office as it presently stood.

BUDGET

Steve Capelle gave a report on the financial status. After discussion and explanation of the budget procedures, other discussion followed from the floor. In the 1977-78 year it cost approximately $11,437.28 per month to run the office. 38-40% of this amount was salary expense. With the changes in staff made, the monthly operating expense would be $6,679.16.

A report on the Houston membership drive was given. Stanley Topek, David Bires, Vincent Perini and George Luquette were able to obtain four new members. Another membership drive was discussed, to be headed by David Evans in San Antonio. Discussion centered around the existing loan at the Austin National Bank. President Luquette stated that during Emmett Colvin's tenure as president $55,000 had been spent that should have been available to finance his administration for 1979-1980. Discussion followed in regard to the reasons for the present financial difficulty.

MOTION

Richard Thornton moved to assess the board. George Luquette stated he was in favor of the motion, but that he would rather place this on a voluntary basis for now to either pledge $300.00 or three new members. Tony Friloux said the National Criminal Defense Lawyers Association had been in a similar condition financially, and they had pulled out of it with the hard work of their directors. President Luquette stated to keep the association running, we must have active participation of all directors in the membership drives. He continued by saying that directors who did not work should not be allowed for renomination. The budget should be based on 800 to 1,000 members, and we should not commit ourselves to projects unless we could afford them. At this time Charles McDonald again moved to assess the board $300.00 each; it was seconded by Richard Harris. The motion was tabled, at the suggestion of David Evans to see where we stand financially at the next board meeting. This was seconded by Doug Tinker.

Discussion followed on the problem involved in obtaining Ray Moses books for resale.

There being no further business, Doug Tinker moved to adjourn at 12:55.

Respectfully submitted,
Judy Bolander
Executive Assistant to the President

ABA STUDY from page 10

–insurance companies, practices and the problem of obtaining insurance;

–the courts and the legal profession;

–the injured accident victims.

The committee added:

"We live in a period of increasing, and increasingly justified, skepticism concerning hasty and ambitious programs of social reform implemented through massive federal action.

"With the states active in experimenting with a wide variety of reforms in the automobile compensation area, the federal government can afford to stay its hand to enable a responsible study of the state experience to be conducted and evaluated."

The study also looked at more moderate plans such as Oregon's, which requires drivers to purchase no-fault insurance, but does not restrict their right to sue.

Comparisons of the effectiveness of the different plans led the report to conclude that "there is no evidence that retention of a tort right critically impairs the effectiveness of no-fault legislation. . .especially when the accident victim is not allowed to duplicate his mandatory first party insurance benefits with common law damages."

In fact, a study of the first 36 months of the Oregon plan's operation reveals that while there had been a 16 percent increase in automobile registrations in that period, there was a 33.4 percent decline in the frequency of auto claims. Furthermore, auto suit court cases decreased. Also, while insurance premiums in Oregon increased, the rate of increase was substantially less than the increases in insurance premiums in such states as tort-restrictive Florida.

"The experience in Oregon demonstrates that the traditional right to sue in tort to seek compensation for harm inflicted by a wrongdoer need not be sacrificed in order to achieve a workable first party auto insurance system which provides benefits for all auto accident victims," the study said.

The ABA study, however, did recommend two areas where uniform state action might be appropriate. It suggested a law to remove confusion over disputes involving an interstate traveler and to clarify which state's laws apply in an automobile accident case.

Also, it urged states to consider requiring all drivers to purchase insurance that will pay them for injuries they suffer in an accident.

Copies of the report are available from the ABA Governmental Relations Office, 1800 M Street, N.W., Washington, D.C., 20036, at $5.00 per copy.

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