August 14, 2020

Course Directors:
Danny Easterling
Grant Scheiner
and Mark Thiessen

Topics

- Top 10 Trial Issues in Blood Test Cases | Marijuana Evidence in DWI Cases
- 10 Relatively Easy Ways to Suppress Blood | Trial Tactics from the Battlefield
- Ethics | Mock Trial - Jury Selection
- Mock Trial - Cross-Examination of the Officer
- Mock Trial - Cross-Examination of the Blood Analyst
- Mock Trial - Cross-Examination of the Technical Supervisor
- Mock Trial - Final Arguments

Member rate:
$150

Register online at TCDLA.com or by sending in the registration form on page 24

Watch the live webinar and a mock trial!
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Julie Hasdorff  
(210) 738-9060
Cynthia Hujar Orr  
(210) 226-1463
# TCDLA CLE & Meetings

Register online at www.tcdla.com or call (512) 478-2514

**Note:** Schedule and dates subject to change. Visit our website at www.tcdla.com for the most up-to-date information.

Texas Criminal Defense Lawyers Educational Institute offers scholarships to seminars for attorneys in need.

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TCDLEI provides scholarships for those with financial needs. Contact ejaramillo@tcdla.com.

Seminars sponsored by CDLP are funded by the Court of Criminal Appeals of Texas. Seminars are open to criminal defense attorneys; other professionals who support the defense of criminal cases may attend at cost. Law enforcement personnel and prosecutors are not eligible to attend.

TCDLA seminars are open only to criminal defense attorneys, mitigation specialists, defense investigators, or other professionals who support the defense of criminal cases. Law enforcement personnel and prosecutors are not eligible to attend unless noted “open to all.”
GRANT SCHEINER

Judges Push Jury Trials During the Pandemic

Only one group of people seem anxious to re-open courthouses and start criminal trials again. It isn’t us, and it isn’t prosecutors. In conversations with elected District Attorneys all over the state, I have learned that prosecutors don’t want to risk their health, the safety of their communities, or having convictions overturned due to constitutional violations.

The public isn’t banging down courthouse doors, either. Many prospective jurors are struggling with health concerns, unemployment, and the possibility that schools might partially or fully close this fall. Not to mention a growing unease as COVID-19 numbers bounce back and forth between disturbing and alarming.

It is not even the Texas Supreme Court, whose emergency orders regarding criminal matters reveal a granular misunderstanding of the differences between civil and criminal practice.

It is Texas trial judges.

True, there are many judges who recognize that the health and constitutional perils of jury trials during the pandemic far outweigh the benefit of appearing to get back to normal. If you see judges and their staffs postponing cases, waiving court appearances and otherwise acting responsibly, be sure to thank them. Good judges and staffs don’t get nearly enough positive feedback when they do the right thing.

But there is a rather large, vocal group of trial judges who are misreading their constituents and apparently have an inflated sense of self. Here is a harsh truth for them: Most voters don’t know who you are.

If you were to walk the voting line on Election Day and ask people to name three judges in their area, most couldn’t do it. Further, if you were to ask voters about the size of a particular judge’s trial docket, most people would have no idea what you were talking about. Too many judges are disconnected from what the public wants or even knows about them.

Perhaps most troubling is the false narrative that some judges are spreading to justify restarting trials. They claim it’s because their dockets are full of people — especially those languishing in jail — who are demanding trials because they want to have “their day in court.” With exceptions, that is mostly baloney. Prosecutors and defense attorneys agree that criminal cases tend to get weaker, not stronger, with the passage of time.

But if judges are pushing pandemic trials out of genuine concern for the speedy trial rights of the accused, there is a simple solution. Grant every defense request for a jury trial continuance during the pandemic. Lawyers with clients who really want a fast trial won’t ask for postponements. Also, if a defendant is bondable but trapped in jail due to a high bond or the unconstitutional GA-13 Order from Gov. Greg Abbott, reduce the bond and let the person out.

If there is a County or District Court judge anywhere in Texas who disagrees with what I’ve written and wants to talk about it, feel free to call my Houston office or the TCDLA home office at 512-478-2514 and ask for my cell number. Text me.

But to any judge who pushes forward with a pandemic jury trial over a defense lawyer’s objection: If something goes wrong, you will own this. You have the power to avoid disaster, and your constituents look to you for leadership.
There is just so much changing daily. We have the governor issuing so many executive orders, I can no longer keep up all of with them. As we continue with this new norm each day, we face how to continue with training, take part in court, and serve clients.

TCDLA is an organization of 3,400+, and we train more than 5,500 a year. Now is the time we need to have a strong united voice. We have several committees working on today’s current executive orders and the ongoing issues criminal defense attorneys face. We also have representatives meeting with the Supreme Court of Texas, OCA, and SBOT to fight for our member's rights and protect the Sixth Amendment. If you are facing any of these issues, contact our chairs below or visit our COVID website, which we are always updating.

COVID-19 RESPONSE TASK FORCE
Co-Chairs
Allison Barbara Clayton, allison@allisonclaytonlaw.com
Nicole DeBorde Hochglaube, Nicole@HoustonCriminalDefense.com

SUPREME COURT ORDERS ON PANDEMIC COURT PROCEEDINGS
Michael Gross, lawofcmg@gmail.com

We also have our lobbyists, Shea Place and Allen Place, fighting for our members. Shea regularly posts on the Legislative listserv. If you are not receiving the messages, contact TCDLA. The listserv is for informational purposes and not open for responses. You can email the Legislative team at legislative@tcdla.com.

Visit page 8. We are starting our second cohort for the Future Indigent Defense Leaders with partners Texas Indigent Defense Commission and the Harris County Public Defender’s Office. Reach out and welcome the new mentees to our TCDLA family.

Special thanks go to everyone who participated in our first-ever virtual Rusty Duncan. Kerri Anderson Donica and Course Directors John Convery, Deandra Grant, David Guinn, and Carmen Roe did an amazing job. I could not leave out your fabulous, hardworking staff – kudos! I was overwhelmed by the support and contributions our members gave to the Texas Criminal Defense Lawyers Educational Institute. Due to everyone’s generous support, we have scholarships available for our TCDLA seminars starting September 1, 2020. If you need more information for TCDLA seminar scholarships, email ejaramillo@tcdla.com or call 512.478.2514.

We are continuing with Mindful Mondays once a month. The programs are meant to reenergize and give invaluable tools during these times. Our next quarterly event will be September 24-25, 2020, in Arlington. It is two events – Family Violence and Telling a Trial Story – attend both. You can attend in person or virtually. We will have our board meeting Saturday, September 26, 2020, to continue discussing strategies to protect our members and clients.

If you need anything or have questions, contact our office and we will get you to the right person. Together, we will figure it out and make it through this!
Welcome to the New 2.0 FIDL Class!

FIDL is a selective program that aims to create the next generation of highly skilled, client-centered Texas attorneys to represent persons who cannot afford counsel. This partnership between the Texas Indigent Defense Commission (TIDC), the Texas Criminal Defense Lawyers Association (TCDLA), and the Harris County Public Defender’s Office (HCPDO) offers unparalleled indigent defense training, mentoring, and leadership opportunities. Selected through a competitive process, FIDL mentees become part of an exclusive statewide team dedicated to zealous representation. We are proud to announce the second class of FIDL mentees and mentors.

Welcome the FIDL members to become part of the community of Texan lawyers working to make their state a better place.

Congratulations to the new class of FIDL!

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<td>Yung</td>
<td>Rebecca</td>
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TCDLA Staff Spotlight
Miriam Duarte

Every month, TCDLA will feature a profile on one of our staff members in an attempt to make them more familiar to you, our members.

This month’s spotlight is on Database Director Miriam Duarte.

Where are you from originally?
Austin, born and raised.

Where did you go to college?
I attended the Austin Business College and received a legal assistant certificate.

How long have you been with TCDLA?
Fourteen years this July.

What brought you to TCDLA?
At the time, I was looking for a part-time position since I had two small children. I started at TCDLA as a seminar clerk.

What did you do before TCDLA?
Before TCDLA I worked temporarily for a year with the Austin Police Department as an administrative assistant. Prior to that, I was a supervisor and worked in retail for four years.

How have you changed throughout your time here?
During my time here at TCDLA, I have worked with great leadership, inspiring me to want to continue to grow in every way. Consequently, I have grown personally and professionally—from learning to work in a fast-paced environment to learning how to work as a team with different types of personalities, members, and staff.

What’s the best part of your life?
My family is the best part of my life! My four kids and my husband are my world. Everything I do is for them.

What do you like most about TCDLA?
I can honestly say I love my job. I love meeting our members and putting faces to names when I’m attending seminars. Our members are always so appreciative of staff. I enjoy having the opportunity to work with such talented hard-working individuals—I appreciate everything they stand for.
I was talking to a good friend and colleague recently about the impact of COVID-19 on our local court system and criminal defense community. We were lamenting that, on the whole, we, the criminal defense lawyers, seem to be the only moving part in the process – going to and from the jail and courthouse to facilitate pleas (even if doing pleas via Zoom). It was a role we undertook, understanding it placed us at risk, as we, and our clients, were largely the only live and in-person components of the criminal justice system. And now, as was inevitable, the jails are experiencing a rash of COVID-19 cases. The anxiety we are experiencing is real and palpable. The backdrop this pandemic is creating is just as real.

Consider the impact of this constant hum of worry on someone struggling with substance abuse, where the very “triggers” for use might well be the stress and anxiety that are now constants for all of us. The unintended hardship COVID-19 is creating in our communities, especially for those struggling with substance use disorder, is impossible to ignore: inability to attend in-person AA/NA meetings; loss of jobs; loss of housing; isolation; working in less-than-safe conditions; finding treatment facilities that are able to take new patients; and many, many more. Telehealth is an answer to many of these problems, but it's less than ideal given the importance of face-to-face connection, physical contact with others, and the role environment all play in therapeutic communication. As we all know and have experienced at this point, there is just no substitute for face-to-face connection – for actual eye contact with a person rather than staring at one's reflection and the two-dimensional faces of others on a screen.

Make no mistake, the economic and social conditions created by the pandemic are devastating, and the collateral impact of COVID-19 on those struggling with substance use disorder is real, and places serious impediments to the recovery of some. It is well-publicized that alcohol sales were up during the shut-down and have remained above normal. What we lack, presently, is data regarding illicit drug sales and drug use. It stands to reason though that drug use and sales have risen also in response to the uncertainty.

Thousands of people die each year in the US from drug overdose in a normal (re: non-pandemic) year. Over the last two decades, the number has grown close to 600,000 people who have been lost to drug overdose. The number of overdose deaths in the US for 2018 (the most recent year for which there are statistics) exceeds 67,000, according to the CDC. COVID-19 has far eclipsed that number but will-inevitably and directly increase the number of overdose-related deaths during this pandemic. The backdrop this pandemic is creating for those struggling with substance use disorder is real, and is scary.

August 31st is International Overdose Awareness Day. The goal of IOAD is to raise awareness of overdose and reduce the stigma of overdose deaths. It also acknowledges the grief felt by family and friends remembering those who have died or had a permanent injury as a result of drug overdose. That grief is real and should not be stigmatized. IOAD spreads the message that overdose death is entirely preventable. That is worth considering again: Unlike deaths from other diseases or viruses, deaths from drug overdose are 100 percent preventable.

Maybe we can all do our part, however small, to help prevent an overdose. Let's pick up the phone and call that client who may be struggling - not to talk about their case but just to talk to them, to check in with them and see if there is anything we can do to help them, to let them know you care. Talk to the client who has the state jail possession charge about their substance use. We all know odds are that it's not the first time that person has used. Know the substance abuse resources in your area. Let's be a lifeline to that person.
Congratulations to Those Who Have Been Licensed for 50 Years!

The individuals listed below have been licensed to practice criminal law in Texas for the past 50 years. Join TCDLA in congratulating them for this amazing feat!

Gordon Armstrong
Shirley Baccus-Lobel
Cecil Bain
Robert T. (Bob) Baskett
Jennifer Bassett
Jim Bearden
Kenneth Blassingame
Stephen Blythe
Alan Brown
Michael Brown
Stan Brown
Jim Burnham
Charles Campion
J.A. Tony Canales
Harold Comer
Richard J. Corbitt III
Dennis Croman
Jerald Crow
Dick DeGuerin
Gary Dennison
Blake Erskine
Tim Evans
Wallace Ferguson
F.R. Buck Files
John Fisher
Paul Fourt
Errol Friedman
G. Garza
Michael (Mike) Gibson
Victor Gillespie
Smith Gilley
Ronald Goranson
Dan Green
Lealand Greene
Frank Hale
Lynn Hardaway
Emmett Harris
Belvin R. (Bill) Harris
Joseph Hawthorn
Tom Henderson
R. Hoelscher
Clifton Holmes
Guy Hull
Lynn Ingalsbe
Tim James
Elizabeth Jandt
John Jones
Harolyn Keck
James Kittles
Paul Kratzig
James Kreimeyer
James Lane
John Lubben
Edward Mallett
Frank Maloney
Robert Markowitz
Edgar Mason
Richard Mayhan
Wayne Meissner
Ebb Mobley
Charles G. Morton Jr.
Stephen Orr
John Pettit
Jimmy Phillips
Tom L. Ragland
Gerald Ratliff
Robert Richardson
Grady Roberts
Allen Rudy
Philip Sanders
Eloy Sepulveda
Polk Shelton
Monte Sherrod
Don Smith
Buddy Stevens
Larry B. Sullivant
William Sullivant
Ronald Sutton
John Sweeney
Alex Tandy
William Trantham
Theodore F. (Ted) Trigg
John Trube
Robert Valdez
John Warner
Phillip Westergren
Charles F. Wetherbee
Norman Whitlow
Dain Whitworth
William K. (Bill) Wilder
Randy Wilson
Texas Rules of Disciplinary Conduct Rule 8.03(a) (2017-2018) obligates a knowing lawyer to do his/her duty and report an unethical prosecutor or that knowing lawyer will face “knowing withholding” charges, if caught. See In re Himmel, 125 Ill.2d 531, 533 N.E.2d 790 (1988) (caught lawyer's one-year suspension was not probated).

**Must A Lawyer Report Another Lawyer's Misconduct?**

Court's have spoken on that query. Regarding another "caught lawyer," in In re Brigandi, 843 So.2d 1083, 1085-1086, 1088-1089 (La. 2003), the court said:

"Based on evidence developed in this investigation, the ODC concluded respondent was deliberately evasive in his earlier voluntary sworn statement to the ODC. It further determined he failed to report Mr. Cuccia's misconduct."

[*1086] Following its investigation, the ODC instituted two counts of formal charges against respondent. In the first count, involving the Egana matter, the ODC primarily alleged a violation of Rules 1.5(f)(6) (failure to refund unearned advance fee and place disputed fees in trust), 1.15 (failure to promptly deliver client funds and make an accounting) and 1.16(d) (failure to protect client interests upon termination of representation by failing to surrender client papers and refund unearned advance fee) of the Rules of Professional Conduct. As to count two involving the Cuccia matter, the ODC asserted alleged violations of Rules 3.3(a) (lack of candor to tribunal), 3.4(c) (failure to comply with tribunal orders), 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.3 (failure to report professional misconduct), 8.4(a) (violating or attempting to violate the Rules of Professional Conduct), 8.4(c) [Pg 4] (engaging in conduct involving deceit, dishonesty, fraud, or misrepresentation), 8.4(d) (engaging in conduct prejudicial to the administration of justice) and 8.4(g) (failure to cooperate with the ODC) of the Rules of Professional Conduct.

In Count II, respondent’s actions may have caused no palpable harm to any clients, but violated the general duty imposed upon attorneys "to uphold the integrity of the bar.” Louisiana State Bar Ass’n v. Weysham, 307 So.2d 336 (La. 1975). Attorneys are often in the best position to witness the systemic harm to the legal profession from organized schemes of misconduct, such as solicitation, which might not be readily apparent to the general public. As a result, our professional rules impose an obligation on all members of the bar to report any misconduct they become aware of in the course of their practice. An attorney's [*1089] failure to do so must be viewed as a serious offense.

Laurel Fedder, Current Development 2009-2010: Obstacles to Maintaining the Integrity of the Profession: Rule 8.3’s Ambiguity and Disciplinary Board Complacency, 23 Geo. J. Legal Ethics 571, 572, 580-581 (2010), said:

"On first read, the first three elements of Model Rule 8.3(a) appear potentially confusing, but further consideration shows that these elements - the violation requirement, the knowledge requirement, and the integrity requirement - make perceptible stipulations. *** Alleged violations of the duty to report fellow attorney misconduct are rarely prosecuted absent allegations of additional misconduct propagated by the reporting attorney. In re Himmel, a 1988 case out of Illinois, represents the first instance of attorney sanctioning based solely on a violation of the duty to report [*581] fellow attorney misconduct. Unfortunately, Himmel did not generate a trend; in the ten years following Himmel, only a single instance of attorney reprimand solely for violating Rule 8.3(a) occurred. Since then, the practice of pursuing reporting violations only when additional violations are alleged has continued. The Riehlmann court held the defendant in violation of both Rule 8.3(a) and Rule 8.4(d), and the Rule 8.3(a) violation was one of twelve violations the Brigandi defendant was charged with. Disciplinary boards’ failure to pursue allegations of reporting violations unless coupled with another offense gives attorneys the impression that the Model Rule, and its state variants, are inconsequential, thus disincentivizing compliance. If disciplinary boards expect attorneys to fulfill their responsibility to report misconduct, then the boards should fulfill their responsibility to take those reports seriously. The statement of Arizona ethics counsel Patricia A. Sallen substantiates the assertion of inadequate disciplinary board action: ‘During my years as a bar counsel, I don't remember having even investigated an allegation that a lawyer violated Arizona's Ethical Rule 8.3, which closely tracks Model Rule 8.3. I know I never prosecuted one.’ If the reporting rule is to be effective, disciplinary boards need to increase the attention they give to reports of its violation so as to convey to attorneys the importance of adhering to it.”

*Thanks to Joseph Connors for this article.*
Nominations for TCDLA Awards (due March 1 at 5 pm)

The TCDLA Awards Luncheon honors these people each year at Rusty. Go online to www.tcdla.com for the form to make your nominations, to see criteria for the awards, or just to see past winners.

**TCDLA Hall of Fame**

The TCDLA Hall of Fame Award honors a qualified lawyer for membership in the Hall of Fame who meets the criteria.

The investigation of the nominee shall be under the direction of a director from the membership district in which the nominee resides. That director shall submit to the TCDLA Hall of Fame Committee a full investigation report at the committee meeting.

The Hall of Fame Committee shall, by unanimous decision, vote to submit a nomination to the Board of Directors. The Board of Directors by three-quarters majority of members present and voting at a board meeting may elect a nominee to the Hall of Fame.

**TCDLA Charles D. Butts Pro Bono Lawyer of the Year**

The Charles Butts Pro Bono Lawyer of the Year Award honors an individual attorney who has provided outstanding pro bono work. The recipient of the award must be a member in good standing of the Texas Criminal Defense Lawyers Association (TCDLA) and the State Bar of Texas.

The award is named after Charles D. (Charlie) Butts, president of TCDLA (1987–88) and member of TCDLA’s Hall of Fame, in recognition of his over 64 years of service as an attorney.

The legal work must have been done for free—though in extremely rare or exceptional cases it may apply to one who gets some money. Court appointments or reduced fees do not qualify.

This award is not required to be awarded annually.

**TCDLA Percy Foreman Lawyer of the Year**

The Percy Foreman Lawyer of the Year Award honors the individual attorney who has provided outstanding legal representation. The recipient must be a member in good standing of the Texas Criminal Defense Lawyers Association (TCDLA) and the State Bar of Texas.

The award is named after Percy Foreman, the renowned Criminal Defense Lawyer and TCDLA Charter Member with almost 60 years of service as an attorney.

**TCDLA Rodney Ellis Award**

The Rodney Ellis Award was named after Rodney Ellis for serving as the voice and/or advocate for TCDLA. The recipient is a non-attorney who has gone above and beyond in demonstrating and supporting TCDLA.

Nominations for all awards must be on the form found on the website and submitted to TCDLA by 5 pm on March 1.
On May 1, 2020, a panel of the United States Court of Appeals for the Fifth Circuit held that District Judge Amos L. Mazzant of the Eastern District of Texas, did not abuse his discretion in failing to hold an evidentiary hearing before granting the defendant’s motion for new trial; and, that the new trial was warranted. United States v. Jordan, 958 F.3d 331 (5th Cir. 2020) [Panel: Circuit Judges Elrod, Southwick and Haynes. (Opinion by Elrod)] This case was concerned with whether the comments of a Court Security Officer (CSO) had influenced a juror in arriving at her verdict. What makes the case unique is that Judge Mazzant’s three law clerks became, in essence, witnesses for the defendant.

Judge Elrod’s opinion reads, in part, as follows:

**The Background of the Case**

The Government charged Laura and Mark Jordan with conspiracy, honest services wire fraud, and bribery involving a federal program. The charges concerned Laura Jordan’s 2013–2015 tenure as mayor of Richardson, Texas. During that time, according to the Government, she accepted gifts and favors from real estate developer Mark Jordan in exchange for favorable votes on city rezoning measures. The two eventually married.

The charges were filed in 2018, and trial began in February 2019. Soon after deliberations started, the jury sent the district court the following note: ‘[Juror] No. 11 is very upset and feels they can’t continue. What can we do? She’s asking to be excused and can’t vote.’ The district court suggested that it conduct an ex parte interview with Juror #11 to discover what the issue was, and the parties agreed. In the interview, Juror #11 stated that she wanted to be excused because ‘[i]t [wa]s making [her] sick to [her] stomach to convict them and [she] just can’t.’ She also stated that sticking to her guns would produce ‘a hung jury.’ The district court responded with the following:

That’s a vote, so that—so what I’m saying is I’m not encouraging you one way or another, because what would happen is—well, you can’t worry about the consequences. Every juror should re-examine their own views is what I say in the charge, and if you have a firmly held conviction, whatever that conviction is, that’s up to you to decide. You have to make your own decision.

After the meeting was over, the district court relayed its essence to the parties in general terms. The Government asked that Juror #11 be excused, but the district court—in a second *ex parte* meeting—inform Juror #11 that it had decided not to excuse her. It reiterated to Juror #11 that ‘whatever your convictions are, those are your convictions, and each juror makes their own decision about what the evidence is and what the verdict should be, and so that’s up to you. Every juror is entitled to their opinion about the evidence and the result.’ A few hours later, the jury reached a verdict of guilty on almost every count.

The next day, at a detention hearing, the district judge had some troubling news for the parties. He told them that he had learned about a conversation that had taken place the previous afternoon—shortly after the verdict was rendered—between his law clerks and a Court Security Officer (CSO). According to the law clerks, the CSO had stated that he had spoken to a juror regarding the case about ‘30 to 45 minutes’ before the verdict was rendered. During a teleconference held the following week, the district judge also relayed that he had learned from his law clerks that the juror the CSO had spoken to was Juror #11. The Government asked whether the district court was intending to ‘hold any kind of hearing or get testimony from the juror,’ to which the district court responded that ‘that is fine in terms of the [CSO]’ but that it was ‘not going to subject [jurors] to examination on the witness stand.’ The district judge also noted that his law clerks had prepared a written memo detailing their recollections of the conversation.

A few days after the teleconference, the Government emailed the district court to ‘propose[ that] the Court instruct the CSO to answer targeted interrogatories about what precisely ... the CSO said to any juror.’ The same day, the district court filed the law clerk memo under seal. Law Clerk #1 reported that

[The CSO] indicated that while the jurors were on a break from deliberations, he observed [Juror #11]...
was particularly upset and even crying. He relayed to me and my fellow law clerks that he told her to put her emotions aside and to determine the outcome of the case without regard to emotions or the possible sentence in the case reminding her that her job was to determine whether the defendants were guilty or not guilty. He then indicated that the jury reached a verdict in this case within about 30-45 minutes of this conversation. (emphasis added)

Law Clerk #2 reported that the CSO ‘stated that he told this juror that she should vote based on her conscience without regard to the punishment that may be imposed on the Defendants.’ Law Clerk #2 added that

The next morning, Officer Collins told me that, when asked to confirm her decision before the Court, a juror had intended to state that her decision was made ‘with reservation.’ Officer Collins stated that the juror could not say that her decision was made ‘with reservation’ because her response would not be believed. I do not know if this was Officer Collins’ commentary to me on the matter or whether he told the juror this. He did tell the juror, however, that she should vote her conscience and that if she did not believe the defendants were guilty, she should vote not guilty. He also told her that she should not be concerned about any punishment the defendants may receive.

The identity of this latter juror is unknown. (emphasis added)

Law clerk #3 reported that

Officer Collins stated ... that he told the juror(s) they needed to set their emotion aside and determine whether the Defendants committed the crimes or not. Officer Collins continued, stating he told the juror(s) that if they thought the Defendants committed the crimes, they should find the Defendants guilty, and if they thought the Defendants did not commit the crimes, they should find the Defendants not guilty. (emphasis added)

The next day, the Jordans filed a motion for new trial under Federal Rule of Criminal Procedure 33. They argued that a new trial was warranted because (1) the CSO’s comments improperly influenced the jury, (2) the district court gave an improper ex parte instruction to Juror #11, and (3) Juror #11’s health, but accepted their argument that the CSO improperly influenced the jury. Relying on the law clerk memo for the substance of the CSO’s comments, the district court ruled that those comments contaminated jury deliberations to the point that the Jordans were denied their Sixth Amendment right to a fair trial.

The Government appeals.

The Court’s Standard of Review

‘We review only for abuse of discretion a court’s handling of complaints of outside influence on the jury.’ United States v. Mix, 791 F.3d 603, 608 (5th Cir. 2015) (quoting United States v. Smith, 354 F.3d 390, 394 (5th Cir. 2003)). ‘We review a district court’s grant of a new trial under Federal Rule of Criminal Procedure 33 using the same abuse-of-discretion standard.’ Id.

The Defendant’s and the Government’s Burdens of Proof

‘To be entitled to a new trial based on an extrinsic influence on the jury, a defendant must first show that the extrinsic influence likely caused prejudice.’ Id. ‘The government then bears the burden of proving the lack of prejudice.’ Id. ‘The government can do so by showing there is “no reasonable possibility that the jury’s verdict was influenced by the extrinsic evidence.”’ Id. (quoting United States v. Davis, 393 F.3d 540, 549 (5th Cir. 2004)).

The Government’s Argument Concerning the District Court’s Failure to Hold an Evidentiary Hearing and the Court’s Response

The Government argues that the district court abused its discretion by granting the motion for new trial without holding an evidentiary hearing. We conclude that the district court’s decision falls within its broad discretion in these matters.

The Government’s first argument is that our precedent creates a ‘bright-line rule’ that, when a district court is confronted with credible allegations of outside influence on a jury, it must hold an evidentiary hearing.

The Government cannot cite a single case in which we vacated a district court’s grant of new trial for failure to hold a
hearing. The quartet of cases it does cite for its alleged ‘bright-line rule’—in only one of which we actually remanded for a hearing at all—were cases in which the district court declined to grant a new trial.

Thus, to the extent there is any ‘bright-line rule’ applicable to allegations of outside influence on the jury, it is not one applicable to this case.

We analyze the district court’s exercise of its broad discretion not to hold a hearing in an outside-influence case only to ensure that the district court permissibly balanced the costs, benefits, and interests at stake.

In the unique circumstances of this case, the district court did not abuse its discretion by determining that the additional benefits of a hearing were too slim to overcome the ‘unnecessary attention’ and disruption a hearing would inject into this ‘high-profile case,’ given that it already had ‘sufficient’ documentation of outside influence to warrant a new trial. As the district court noted, the law clerks ‘have no personal interest in this case’ and ‘prepared the [memo] shortly after the events in question,’ adding to its reliability. Moreover, the district court made the memo available on the docket for the parties’ reference in briefing the motion for new trial.

In sum, the district court did not abuse its discretion in exercising its prerogative, ‘within broadly defined parameters, to handle [the allegation of outside influence] in the least disruptive manner possible’ in this unusual case.

The Government’s Argument Concerning the District Court’s Granting a New Trial and the Court’s Response

The Government’s final argument is that, even fully crediting the law clerk memo, the CSO’s statements did not merit a new trial because they were ‘innocuous, defense-friendly, and duplicative of the district court’s own instructions.’

We conclude that the district court did not abuse its discretion in granting a new trial in this case. In urging Juror #11—whose comments to the district court evinced her great distress at the prospect of conviction—to vote ‘without regard to the punishment that may be imposed,’ the CSO arguably conveyed a preference for a guilty verdict. The same goes for the CSO’s similar comment to the unidentified juror when that juror voiced an intention to vote ‘with reservation.’ Worse, the CSO’s statement that the jury should return a guilty verdict ‘if they thought the Defendants committed the crimes’ can be reasonably understood as urging a standard for conviction that is lower than the correct one, which ‘requires proof beyond a reasonable doubt.’ United States v. Fields, 932 F.3d 316, 321 (5th Cir. 2019). Finally, the CSO’s ‘official character ... as an officer of the court’ gave his comments a veneer of authority that could have ‘carri[ed] great weight with a jury.’ Parker v. Gladden, 385 U.S. 363, 365, 87 S.Ct. 468, 17 L.Ed.2d 420 (1966).

‘District judges have considerable discretion with respect to Rule 33 motions.’ United States v. Simmons, 714 F.2d 29, 31 (5th Cir. 1983). The district court permissibly concluded that this evidence showed a sufficient likelihood of prejudice to shift the burden to the Government, and further that the Government did not (and could not) show ‘no reasonable possibility that the jury’s verdict was influenced by’ the CSO’s comments. Mix, 791 F.3d at 608 (quoting Davis, 393 F.3d at 549).

For the reasons stated, the district court’s order granting a new trial is affirmed.

My Thoughts

- Anyone who has spent any time in a federal courthouse knows that there is a closeness between a judge and the members of the judge’s staff. There was simply no possibility that Judge Mazzant was going to ignore or give little weight to the statements of his law clerks.
- We have all been concerned about how the verbal or non-verbal communications of court personnel could influence a jury – to our client’s detriment. Judge Glenn Phillips of the 241st District Court in Tyler had a court coordinator who was never without one item of jewelry: A gold necklace with a small hangman’s noose on it that had been a present from her husband, a Tyler Police lieutenant. When it was necessary for her to be in the courtroom during a trial or to accompany jurors to a meal outside of the courthouse, I had a standard oral motion that I would present to the court requesting that Judge Phillips direct her to turn the necklace around in order that the jurors could not see the noose. The motion was always granted.

Buck Files is a member of TCDLA’s Hall of Fame and a former President of the State Bar of Texas. In May, 2016, TCDLA’s Board of Directors named Buck as the author transcendent of the Texas Criminal Defense Lawyers Association. This is his 243rd column or article. He practices in Tyler with the law firm of Bain, Files, Jarrett and Harrison, P.C., and can be reached at bfiles@bainfiles.com or (903) 595-3573.
Shout out to David Hall and Ariel Payan, who were jointly awarded the Warren Burnett Award by the State Bar of Texas for extraordinary contributions to improving the quality of criminal legal representation to indigent Texans. TCDLA is proud to have you both as members!

Congratulations to Dr. Andrew Davies, who was awarded the Michael K. Moore Award for Excellence in Research or Writing in the Area of Indigent Criminal Defense by the Texas Bar Association. Dr. Davies is the director of research at SMU’s Dedman School of Law’s Deason Criminal Justice Reform Center. Thank you, Dr. Davies, for your contributions to the knowledge and practices of the bench, bar, and scholarly communities!

Kudos to the Rackspace Legal Team, which was awarded the W. Frank Newton Award from the Texas State Bar. The award recognizes the pro bono contributions of attorney groups whose members have made an outstanding contribution to the provision of, or access to, legal services to the poor. The Rackspace Legal Team launched a legal service called “Adopt a Non-Profit Legal Team,” the aim of which is to increase the team's commitment to meet the CPBO Challenge initiative in which in-house legal teams across the country are challenged to perform pro-bono legal services. The Rackspace Legal Team, which is a branch of Rackspace Technology, “adopted” the in-house legal and compliance team at Haven for Hope of Bexar County, a San Antonio non-profit serving homeless individuals and families. The Rackspace Legal Team handled the legal and compliance issues for Haven of Hope. Thank you to the Rackspace Legal Team for setting an example of how corporate legal teams can contribute their expertise and resources to non-profits to benefit the poor and indigent. Congratulations!

To be featured in our shoutouts, email details to Billy Huntsman at bhuntsman@tcdla.com.
Thank You to Our TCDLEI Donors!

TCDLA would like to thank the individuals below for their generous donations to TCDLEI during the 33rd-annual Rusty Duncan Advanced Criminal Law Course:

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Cold Texting:
The New Wave of Barratry

By Ed McClees and Mark Thiessen

Recently, Harris County and other counties around that state have increased Personal Recognizance bonds. This bond paperwork then becomes public record. In this paperwork, people are requested to list their cell phone numbers, and some marketing companies and lawyers have started using this information to solicit new clients via text messages.

Rapidly evolving technology coupled with aggressive marketing tactics have created a new minefield for the uninformed lawyer. It’s been well settled that attorneys are not allowed to “cold call” potential new clients, whether it be for personal injury actions, criminal cases, or other legal work. Often referred to as “ambulance chasing,” which has been rampant in the personal injury world for years, we are faced with a new similar threat in the criminal world. Welcome to the world of cold calling or cold texting clients on their cell based off public information received from the district clerk or bond documents.

Unsolicited Text Messages Can Be Illegal

Texas Penal Code § 38.12(a) makes it a third-degree felony “if, with the intent to obtain an economic benefit the person…solicits employment, either in person or by telephone, for himself or another.” It is also a third-degree felony if a person “knowingly finances” or “invests funds the person believes are intended to further the commission” of act of barratry. Tex. Pen. Code § 38.12(b)(1-2). The Penal Code further prohibits a lawyer from knowingly accepting “employment within the scope of the person’s license … that results from the solicitation of employment in violation of [the barratry statute].” Tex. Pen. Code § 38.12(b)(3).


Depending on the facts surrounding the particular situation, a creative and aggressive prosecutor could even try to throw in a Money Laundering charge (Tex. Pen. Code § 34.01) for the amount of the fee that the client paid the lawyer who committed barratry.

The Texas Disciplinary Rules of Professional Conduct Frown Upon Unsolicited Text Messages

The Texas Disciplinary Rules of Professional Conduct recognize that “[i]n many situations, in-person, telephone, or other prohibited electronic solicitations by lawyers involve well-known opportunities for abuse of prospective clients.” Tex. Disc. R. of Prof. Cond. 7.03, com. 1. The “principal concerns presented by such contacts are that they can overbear the prospective client’s will, lead to hasty and ill-advised decisions concerning choice of counsel, and be very difficult to police.” Id.

1 Lawyers should be weary of lawyer referral services. See infra.
Texas Disciplinary Rule of Professional Conduct 7.03(a) says that a “lawyer shall not by in-person contact, or by regulated telephone contact or other electronic contact...seek professional employment concerning a matter arising out of a particular occurrence or event...from a prospective client or non-client who has not sought the lawyer's advice regarding employment...”

This same rule defines “regulated telephone contact” as “any electronic communication initiated by a lawyer or by any person acting on behalf of the lawyer...that will result in the person contacted communicating in a live, interactive manner with any other person by telephone or other electronic means.” Tex. Disc. R. of Prof. Cond. 7.03(f). Clearly, text messages fall under this definition.

Follow State Bar Rules for Advertisements

From the outset, when in doubt, follow the requirements of the State Bar of Texas Advertising Review Committee. Submit your advertisement or plan of attack to the Bar and ask for permission. Note: the Bar will never give a lawyer clearance over the phone. All advertisements must be submitted in writing, and if approved, will be approved by letter with a green stamp on it. Failure to have this written approval subjects the lawyer to defending their marketing tactic before the Bar. Rule of thumb if you have a “clever” new marketing idea: get it formally approved. Texas Disciplinary Rule of Professional Conduct 7.07 lays out the requirements for submitting your marketing idea to the State Bar for approval.

The State Bar has set very specific rules regarding unsolicited direct mail outs. See Tex. Disc. R. of Prof. Cond. 7.05. The font, color, and material must all be pre-approved by the State Bar. This is widely known and has been the case for over 20 years. However, with evolving technology, one could hypothetically reach potential clients faster than mail, by text, or direct phone call. The same rule that governs mail outs also governs electronic or digital solicitations. Id.

We are aware of only a single lawyer who received an approval letter from the State Bar of Texas Advertising Review Committee for the use of sending a text message to potential clients. It is important to note, however, that this opinion expressly stated that “[i]t does not address any unauthorized practice of law or ethics issues that may be present, which are beyond the scope of an advertising opinion.” Therefore, even if you get an approval from the State Bar of Texas Advertising Review Committee, you still face potential ethics issues, as discussed above, and liability issues, which are discussed in more detail below.

It should also be noted that the text message that received this approval stated “**ADVERTISEMENT**” in all capital letters at the top of the message and ended with “**PLS DO NOT REPLY TO THIS MESSAGE. REPLIES ARE NOT RECEIVED NOR [sic] RETURNED.**” Also, this text message only asks the recipient to call the number listed if the recipient did not already have an attorney. The fact that this was an automated message that lacked the ability for the lawyer to directly start a conversation with the potential client could have been an important factor that distinguishes this kind of message from interactive direct texting.

**Be Careful with Lawyer Referral Services**

Both the Texas Penal Code and the Texas Disciplinary Rules of Professional Conduct make it clear that a lawyer can get in trouble if that lawyer knowingly uses a lawyer referral service that breaks the rules. These services are regulated by the Texas Occupations Code, which defines a “lawyer referral service” as “a person or the service provided by the person that refers potential clients to lawyers regardless of whether the person uses the term ‘referral service’ to describe the service provided.” Tex. Occ. Code. § 952.003(1).

Many of the people operating lawyer referral services do not realize that a “person may not operate a lawyer referral service in this state unless the person holds a certificate issued” under the Occupations Code. Tex. Occ. Code § 952.101. Also, applicants for these certificates must be operated by a governmental entity, or a nonprofit entity. Tex. Occ. Code § 952.102.

So, be wary when your email box gets flooded with various lawyer referral services trying to get you to pay them for client referrals. Many of these businesses are not operating legally. If your marketing company directly texts potential clients on your behalf, you are the one who faces the legal consequences.

**Unsolicited Text Messages**

**Seeking Clients is Illegal and Subjects the Sender to Civil Liability**

There are several civil penalties that exist for directly soliciting clients via text message. Tex. Gov’t Code § 82.0651, for example, creates an aggressive civil penalty for barratry where the offending party must forfeit their attorney’s fees, pay a $10,000 fine, and pay the attorney’s fees of the party bringing an action.

Additionally, the Telephone Consumer protection Agency (TCPA) and Federal Communications Commission (FCC) regulations make it illegal for a company to send a text message unless the person receiving the text message gave consent to receive it, or if the message was sent for emergency purposes. While we all agree that getting new business is important, it falls well short of being an “emergency” under these regulations.

The bottom line is that any lawyer who directly or through a third party sends unsolicited text messages to people charged with a crime to solicit that person’s business risks significant criminal and civil liability. Lawyers should not cold call any number. The first contact, whether directly or through a legitimate lawyer referral service, needs to come from the potential client.

**Duty to Report**

As attorneys we have an affirmative ethical duty to report barratry. Tex. Disc. R. of Prof. Cond. 8.03.

However, if a text message mimics the requirements established in the Rules, would it be ethical? As of the date of this
writing, we have found no ethics opinion or court opinion that authorizes such conduct. Any lawyer who wishes to engage in this unscrupulous tactic should first seek State Bar Advertising Review Committee approval, but even that will not necessarily shield you from ethical consequences or civil or criminal liability.

While no lawyer wishes to “snitch” on a fellow lawyer, this affects us all and cheapens our profession. If we do not take action against this conduct, then we risk having a criminal bar that goes the way of the personal injury bar – where significant numbers of cases are illegally “run” by the criminal law version of the ambulance chaser in a cheap suit. This illegal and unethical conduct makes all of us look bad in a world where people already have a hard time trusting lawyers.

Some might suggest that an unsolicited text message is no different from mailouts, which have been approved and have been happening for years. Unsolicited text messages are distinguished from mailouts for several reasons:

1. Direct mailouts don’t cost the client anything. The United States Postal Service is a free service for receivers unlike cell phone or even landlines. Many subscribers must pay for call minutes or data used for texting. Many calls or texts are not free to a potential new client. Some clients work extremely hard just to keep their phone on; imagine if that client was then inundated with hundreds of unsolicited calls or texts from lawyers. The fees would become an extreme hardship and they should not have to pay them just because their information was placed on a bond or cross referenced via public data.

2. As stated above, lawyer marketing must be submitted to the State Bar for approval. If the marketing is approved, the State Bar will then send you a letter with its verification. This is a crucial step that must be taken by any lawyer who wishes to tread in these ethically murky waters.

3. A person’s cell phone is a greater invasion of privacy than a land line. In the past, municipalities provided phone books which gave specific addresses or names for landline numbers. Cell phone numbers are not freely given for a good reason. Cell phones are also no longer publicly attached to an address. Spam calling, and telemarketing are all allowed to be blocked for the protection of privacy. Attorneys should not be allowed to circumvent this privacy in the hopes of gaining a new client.

4. There is a delay with mailouts that provides a “cooling off” period for the potential client to avoid making a “hasty and ill-advised decision.” See Tex. Disc. R. of Prof. Cond. 7.03, comm. 1. An unsolicited text message can reach a prospective client literally the minute after they get out of jail when that client is particularly vulnerable.

5. Citizens are used to junk mail. While it is not unusual to get many pieces of junk mail in your mailbox, it is not as common to get direct calls or text messages. These texts or calls are personal and come with more physical, psychological, and legal pressure than direct mail outs. Calling or texting prospective clients the moment they are released from jail on potentially the most life-changing day of their lives creates alarmism that could cause that person to make rash decisions. Indeed, the Texas Penal Code creates a 30 day “no solicitation” period for personal injury or wrongful death cases. See Tex. Penal Code § 38.12(d)(2)(A). Shouldn’t people accused of crimes, with all the safeguards afforded by the constitution, be entitled to the same grace period?

No one likes to snitch on friends. However, the practice of unsolicited text messaging is unethical and illegal unless specifically allowed by the State Bar. This article is not intended to encourage grievances, prosecution, or civil lawsuits; rather, it is intended to educate those attorneys who think they or the company they hired found a cutting age way to market for new clients. Technology may be evolving, but the basics of law remain the same. Remember, pigs get fat, hogs get slaughtered. If you have a new way to market, get it approved. The State Bar will not tell your competitors, but this approval will vindicate you when your competitors take offense.

Ed McClees is the managing partner of McClees Law Firm, PLLC. He is the former Chief of the Organized Crime Section of the Harris County District Attorney’s Office, where he routinely provided advice to federal and state law enforcement agencies, including the FBI, IRS, Joint Counterterrorism Task Force, United States Secret Service, Houston Police Department, Harris County Sheriff’s Office, and many others. He currently represents individuals charged with various DWI and intoxication-related crimes, murder, sexual assault, white collar crimes, and others. He can be reached at ed@mccleeslaw.com or 713-322-9087.

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**Rusty Duncan Silent Auction**

Below is the list of items donated to the TCDLEI Silent Auction at Rusty Duncan, the names of those who donated the items, and the winners of the items. The TCDLEI Board and TCDLA members appreciate your generosity!

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<tr>
<th>Item</th>
<th>Donated by</th>
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<tr>
<td>State Fair Ferris Wheel</td>
<td>Efrain Sain</td>
<td>Deandra Grant</td>
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<td>Yellowstone Grand Prismatic</td>
<td>Efrain Sain</td>
<td>Christopher Lankford</td>
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<td>Yellowstone Bison Picture</td>
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<td>Bria Larson Wallace</td>
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<td>Gas Card</td>
<td>Michelle Ochoa</td>
<td>Rebbecca Yung</td>
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<td>McDonald’s Observatory and the Milky Way</td>
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<td>Hurtling Through the Night</td>
<td>Efrain Sain</td>
<td>Catherine Evans</td>
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<td>Colors: Sunrise From Big Bend Ranch State Park</td>
<td>Efrain Sain</td>
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<td>IW Marks Women’s Watch</td>
<td>Paul Tu</td>
<td>Trey Dunne</td>
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<td>The School House Gate signed book</td>
<td>Kerri Anderson Donica</td>
<td>Cheryl Sione</td>
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<td>John Grisham - Camino Winds signed book</td>
<td>Clay Steadman</td>
<td>Pat Metz</td>
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<td>Rusty Duncan Mouse Pad</td>
<td>Clay Steadman</td>
<td>Patricia Viera</td>
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<td>Rusty Duncan Mouse Pad</td>
<td>Clay Steadman</td>
<td>Michelle Ochoa</td>
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<td>Ruidoso, NM 3-night Stay with $100 Gas Card</td>
<td>Laurie Key Baker</td>
<td>Cris Estrada</td>
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<td>Stainless Steel 4-bottle Set</td>
<td>TCDLA</td>
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<td>Soup Dish 4-set</td>
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<td>Texas DWI Manual</td>
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*Colors: Sunrise from Big Bend Ranch State Park donated by Efrain Sain and won by Kyle Shaw.*
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Law in the Time of Coronavirus

This is the first installment in a planned series of personal stories from TCDLA members on how the coronavirus has affected their daily lives.

Editor’s note: We are all in this pandemic together as humans and criminal defense lawyers, but we each have our own experiences both personally and professionally. It’s clear this pandemic isn’t going anywhere anytime soon, and we are all continuing to adapt to a new normal. Thank you to some of our members and Judge Birmingham for sharing your own experiences. Please continue to share with us.

Juan Aguirre
Houston

I miss “normal” life. I miss going to work at the courthouse and seeing my friends and colleagues. I miss interacting with them on a daily basis. The Criminal Justice Center (CJC) has long been ill-equipped to handle the large daily dockets of bond and jail defendants—there is no way to operate a “normal” docket given the Centers for Disease Control’s social distancing regulations. On average, there are 70-80 bond cases and 15-20 jail cases every day for each of the 16 misdemeanor courts; and 40-50 bond cases and 15-20 jail cases every day for each of the 22 felony courts. Bail reform and compassionate judges and prosecutors have helped to relieve some of the jail population, but the tight living conditions and poor hygiene of jail has made it a hotbed for the coronavirus to spread.

They have not released new numbers in over a week, but at last count, almost 800 inmates and almost 300 jail staff had tested positive for the coronavirus. I am working as indigent counsel for one of the misdemeanor courts and take felony appointed cases as well. In misdemeanor court, most of the detained are because they have some kind of hold, whether it’s a felony, parole, immigration, or some other order.

I like to prepare in advance of having to physically go to the CJC—I will email or call the prosecutor and court and asked to be attached to a case so that I can look at the charge, allegations, bond, hold, available discovery, and see what needs to be addressed. A good number of judges will address this remotely via Zoom, emails, or phone calls. I will communicate with my clients via mail, phone, Zoom or secure. But sometimes I have to go down to the courthouse, so I mask up, glove up, take sanitizer, disinfectant wipes, and Lysol.

I don’t know when jury trials will resume because I really don’t know how many people will show up if sent a jury summons, knowing they will probably spend hours next to a number of strangers. So many people dodge jury service under normal conditions. This adds a huge wildcard into the mix.

I miss going to mass with my family and friends. I know that churches have opened up with limited capacity; however, I don’t feel safe being around crowds of people. Some people may, but we don’t—just yet. Our family last went to mass on March 14, 2020, but we have participated in virtual mass every Sunday, some daily masses, even a number of Pope Francis masses from the Vatican. We have continued online contributions to our church. We also pray the Rosary every day. I have even started to read a book on the history of the apostles. I pray daily for good health and protection from the coronavirus for our family, friends, colleagues, first responders, and the inmates in jail.
I miss visiting with the in-laws. My wife’s family is big on getting together to celebrate birthdays, holidays, and just any regular occasion. My mother-in-law often cooks for all—she usually says next time someone else can cook, but she mostly wants to do the cooking. My mother-in-law quit her job and has helped to look after my son Mateo since the day he was born. She absolutely adores him and I know he adores her too. We have seen them three times since mid-March—in their backyard, keeping our distance. I know she wants to hug her only daughter and her grandson.

I miss going out to eat. My wife, Ivonne, and I both work long days, so we often pick up something or go eat at a restaurant. But we have saved a lot and have had a lot of home-cooked meals and sit down to eat at the dinner table. Before, it was grabbing something on the way out the door in the morning or while watching TV in the evening. Now, we know what’s in our meals and even Mateo has taken on some cooking and baking.

I miss going to the movies. But I don’t miss paying high prices for tickets, snacks, and drinks. Now some of the new releases are being streamed online. Most are $19.99 or cheaper; and the popcorn, snacks, and drinks are cheaper at home. Plus, you get to pause the movie when you get up to go get more snacks or go to restroom.

I miss traveling. Those who know the Aguirres, even from just Facebook, know that we love to travel. If there was a cheap flight somewhere, we were right on that fare. Often people would say to me, “Can you take me with you? I’ll fit in your luggage!” or “Does Mateo need a nanny for this trip?” On average, we travelled five weeks per year. We have been blessed to have seen 21 of the 30 MLB stadiums; 34 of the 50 states; many places in Mexico; Cuba; and last year we were able to spend three weeks in Spain, Portugal, France, and England.

This March we were supposed to return to Rome with our son; but Italy was a hotbed for coronavirus. Right now, we are scheduled to go in August, but I really don’t see that happening. When we cancelled Rome, we booked Puerto Rico, but then the pandemic was declared and we cancelled that trip—at least United will keep our credit for future travel. We did take a brief trip to the Gulf Coast last week, but that was only for a few hours and we stayed away from people. Right now, I can’t see us getting on a plane with so many people, not knowing our exposure.

I miss going to Astros games with my family and friends. This year, we even splurged on getting season tickets, but coronavirus had other plans. However, I get to keep up with my friends via texts, phone calls, and Facebook memories. Plus, saving on not buying beer, food, and souvenirs at Minute Maid Park is an extra incentive. Sounds like we need to have a watch party with some of the Astros games that are available. Beer and snacks are cheaper at home too.

I see people out and about in normal routines, some with masks, some without. Some socially distance, others crowd together. As for me and my family, we will continue to work from home as much as we can; cook our meals at home; order curbside groceries; some takeout; “attend” mass online; pray the Rosary daily; watch movies online; and pray that doctors and scientists develop a vaccine/cure/treatment for the coronavirus. We will continue to wear masks and gloves in public and sanitize often.

Matthew Allen
San Antonio

I was content working endless hours each week to defend our clients and to uphold the Constitution. Looking at my calendar and seeing a different trial case every few days was the new normal. Running around the courthouse in the mornings, sometimes looking like I had no head, was my exercise routine. I heard about COVID-19 but wasn’t too concerned for my health or my business.

Then things got a little worse and I became obsessed with reading about the disease. I became part of the hysteria, wondering how 18 rolls of toilet paper was going to last us. How much toilet paper do we use? Why is everyone buying it? Do I need to buy more? I was still going into work and then my son’s daycare shut down. Suddenly I was “working” from home with a three-year-old coworker. I missed work and started worrying about where money would come from. My wife became the new breadwinner, which was quick to point out (jokingly and lovingly, of course). I became worried about money, the health and well-being of our son (is watching Frozen six times a day bad for kids?), and we had recently found out that my wife was pregnant! My sleepless nights worrying about cases turned into sleepless nights for other reasons.

But then I thought back to those crazy days of working all day and how I wished I had more time to do other things. I had to take advantage of this free time that I may never get again: We started exercising as a family and found out my son is more in shape than me; we started cooking dinner together again; and we were spending more quality time together as a family. We were playing Hot Wheels together and Zingo (like Bingo but with objects). My dad would come over a few times nights worrying about cases turned into sleepless nights for other reasons.

As things seem to start to get back to normal and these stressors turn back into our old stressors, I hope that we remember some of these new routines and incorporate them in our daily lives. I know that these times have been trying for many people, financially and emotionally, and I do not mean to say that I hope things stay the same. Many people have lost their lives and there is no greater tragedy. I only have my experience to speak from, and I know others have different thoughts. I know our clients, especially those incarcerated, have struggled and continue to struggle. I am saddened, yet inspired, by the persistence I see from defense attorneys. Even in a difficult situation, they have continued to fight for their clients and what is right. My dream is not for COVID-19 to continue to threaten lives and livelihoods or to stay at home for the rest of my life.

My dream is that we find a vaccine for COVID-19, the
murder hornets go away, and everyone gets back to doing what they love to do. I know this dream probably isn’t a reality, but I’m a criminal defense attorney— we dream big and do everything we can to make it a reality. I hope all of you, your families, your friends, and your clients are safe during this trying time.

Hon. Brandon Birmingham
Dallas

The rules in place to help end the COVID-19 pandemic have had profound impacts on our lives. We’ve learned new phrases like “shelter-in-place” and “social distancing.” Businesses are closed, causing many to lose their jobs. Restaurants are fighting for survival selling take-out, and retail shops are drying up. While the extent of the exact damage is nearly impossible to predict, we are surrounded by constant reminders that our economy is in significant distress.

It’s not just the necessities, either. There are the life experiences we’ll miss. We had to cancel my son’s 10th birthday party with his friends. High school seniors won’t be making lifelong memories at graduation or prom. If you’re like me, Sunday family dinners are now meals we share on FaceTime.

I’ll say something now I never thought I’d say: Professional sports have been canceled, too. All of them. Looks like we’ll all miss seeing Luka lead the Mavs to the first of at least a dozen NBA titles.

In the meantime, we are taking some significant steps toward modernizing the aging infrastructure of the criminal justice system in Dallas County. You deserve to know what’s happening in your courthouses, so I write today to bring you up to speed on some of the changes we are working on in Dallas County and the legacy they will leave.

Hearings like plea bargains and bond reviews must now be accomplished remotely so that all necessary parties—the prosecutor, the defense, the judge, the court reporter, the clerk, and the citizen accused—can be present, be heard, and be safe. The solution? Video conferencing. Courts are using video platforms like Microsoft Teams or Zoom, and all parties are calling in. Incarcerated individuals are brought into empty courtrooms. Courtrooms today consist of home offices, garages, kitchens, and dining room tables. We are also using Adobe Sign to validate and authenticate virtual signatures.

Our Constitution demands that proceedings in courthouses like mine be accessible to the public. The problem is that our courthouse is not open. The solution? Programs like Teams and Zoom broadcast the proceedings on YouTube for anybody to view. You’ll find the YouTube channels for all courts at the Texas Judicial Branch homepage. They span the entire state.

I am very hopeful that these solutions become permanent, outlasting this pandemic, for three reasons: systemic transparency, democratic accountability, and economic efficiency.

I encourage you to peruse these courts’ YouTube channels and see for yourself how things are done across Texas. Would you like to see what’s happening in a divorce court in Houston? Watch an oral argument in an appeals court in Austin? Watch a trial in Palo Pinto County? By viewing these courts, you can get an idea for how the system actually operates on a daily basis in real-time, unfiltered.

Perhaps you, the voter, would like to see how some of the people you elected in Dallas County, or your respective county, are doing in the job you gave them. Do they handle their business like you expect them to? Are they fulfilling their campaign promises? It’s all just a click away.

And if they aren’t, hold them accountable in the ballot box.

Finally, from an economic standpoint, the new systems are way too efficient and cost-effective to be temporary. Travel time to and from court takes time and money. Witnesses that might not have been otherwise available to spend all day away from work waiting on their turn to testify are now virtually available in a moment’s notice. Faraway friends, family, and supporters of loved ones involved in cases—whether the accused or the victim—can now be a part of the process.

We’re still at the beginning, but remote hearings have great potential. We’ve come a long way since mid-March and a time when I’d never heard of Microsoft Teams, or ever considered livestreaming my court. Though technology is changing the way we experience criminal cases, the logistical adaptations we’ve made in court leave us all better off than before.

This article originally appeared in the May 8 editorial section of The Dallas Examiner.

Cliff Duke
Dallas

I occasionally leave Post-It notes for my family when I head out in the morning for work. The one still hanging on our cabinet today reads, “Who is ready for some spring break!” We were headed to the lake that night for a week off work and some recharging. Due to COVID-19, that was the last time I left early in the morning to head into the courthouse. That was the middle of March, almost four months ago.

I’ve been lucky. The Dallas County Public Defender’s Office has the infrastructure and leadership that allowed us to shift to remote representation almost immediately. I work in a court with a progressive-thinking judge who started making the shift immediately, too. The district attorney’s office worked with me to PR Bond, or find alternate release options, for almost all of my clients to avoid the pandemic spread in the jail.

That’s not to say it was easy. I have been amazed finding out how many spinning wheels and cogs there are in our machine of criminal justice—substantially more than I recognized until they were all painfully brought to light. What was sad was how territorial and protective those wheels and cogs have been when they’re asked to do something even just a little different, let alone a little harder. That spring break at the lake I was looking forward to instead ended up being long hours figuring out new processes and converting documents to fillable PDFs. Remote work has ended up being a lot of hard work. And more often than not, it’s to find a workaround due to someone refusing to adapt “because we’ve always done it this way.”
Demanding adaptation is going to need to be part of representation in this brave new world. Our machine of justice needs to adapt and join the 21st Century. It’s going to be our fight to demand concessions and procedures that work for our clients. There is probably a lot of debate on what the right way to do things looks like. What I do know is that demanding our citizens accused to shoulder the complications is not acceptable. We must stay vigilant so that the core rights we are all entitled to aren’t eroded and should probably be expanded in a time of change.

And that means we cannot be one of those sticky cogs. Don’t get me wrong, I miss the court and the people that we work with. I miss the ease of being able to go from court to clerk without 16 emails to get things done. Remote hearings and procedures are not right for every situation, but they can be better in a lot of situations, too. I hear as many defense attorneys not wanting to embrace change as I hear clerks, probation officers, judges, and DAs complaining about some change. Like it or not, change is here.

So yes, it can be harder. Yes, it’s going to take some experimentation. But I’m excited about new options for our clients that may alleviate the burdens our criminal proceedings frequently put on them. Not taking days off every two weeks to pass a case means a lot to an hourly employee. Having judges up to speed with remote technology means more of my character witnesses may be able to be there. And until we can get our act together and get this pandemic under control, we need to protect our clients and protect each other by changing where we can.

And I can always look forward to spring break next year.

Joseph Hoelscher
San Antonio

The COVID-19 pandemic and associated chaos has been a mixed bag for me. I like that when I run to the neighborhood HEB in my “comfy clothes,” I can wear a mask and avoid being recognized. I dislike that the rules keep changing, forcing me to constantly change plans. On the whole, the biggest impact COVID has had on me is reminding me of the human side of the law and lawyering in dealing with colleagues, clients, and my family.

Before COVID, I used to see colleagues in court. There were plenty of chances to chitchat and catch up. Now, I know more about what their homes and offices look like from Zoom, but less about how they’re doing. I feel disconnected from folks I’ve known for years. I feel that disconnection even from the folks in my firm because we’re trying to work from home or socially distance. At first, I didn’t realize how that was affecting me. Over time, I realized that I was losing track of people I care about. Recently, I’ve been making an effort to reach out to friends just to check in. COVID has been a big reminder not to take people and relationships for granted.

In my office, before COVID, we worked hard to maintain good communication with our clients through office and jail visits. Now, communication is a struggle. Discovery review, in particular, is harder. We can’t get into many jails and detention facilities to share electronic discovery in a 39.14 compliant manner. We can’t have clients come to the office to sit down for hours going over discovery in complex criminal or family-law cases. As communication has become more difficult, the need has become greater, as we have to help clients use new technologies, such as Zoom. The normal stress of the legal process is compounded by the fact that our clients are isolated from their social-support systems and relying on us even more for emotional support. I feel, every day, my clients’ need for answers while feeling frustrated at our reduced ability to meet that need during this time of uncertainty. But I’ve also been surprised by how much concern our clients show for our wellbeing, too.

My family feels all the same strain that I feel. My wife, Melissa, and my kids have had their lives disrupted as much as anyone else. I feel like I’m in a ‘50s sitcom every time I come home and hear shouts of “Daddy’s home!” while getting swarmed for hugs. Unlike the ‘50s TV idyllic view of family, I have to tell my kids to hold off until I can wash my hands. Nevertheless, we’re spending more time together and finding ways to enjoy that time. Never before have my kids begged to come to my office on the weekends, just to get out of the house. As a result, I have homemade cards and drawings everywhere in my office, reminding me constantly why we, as criminal defense lawyers, fight for a better world.

COVID hasn’t been a happy time, but it has reminded me of the importance and strength of the three most important communities in my life: my colleagues, my clients, and my family. For that, I am immensely grateful. Their support makes it a lot easier to throw on a coat and tie over my pajama pants and go to court.
The Beginning of Lawyer-Assistance Programs

By Rick Wardroup

“My name’s Rick and I’m an alcoholic.” These words were the key to my first involvement with the Texas Lawyers Assistance Program, TLAP. By the time I said them at a TLAP function, I had become used to doing so at Alcoholics Anonymous meetings in and around Lubbock. I had a lawyer friend, though, who knew there were a group of lawyers in Texas who did what they could to support one another’s recovery and to help colleagues deal with the stress of the practice of law in pro-social ways in order to avoid the need for a program of recovery. Mike B. told me about a convention in Austin that combined training for TLAP volunteers, of which I was unaware, and meetings for Lawyers Concerned for Lawyers, a group very loosely related to TLAP but not part of the State Bar, who were in recovery from mental illnesses, alcoholism, addiction to substances, and suicidal ideation.

Those of you who know me know I felt right at home immediately! As it turned out, Mike wasn’t able to make it to the convention, so I was on my own to a greater or lesser degree. I met people there who had histories like mine and who were living lives happy, joyous and free, even in the practice of law. In fact, even if they weren’t practicing law right then due to grievance issues. I met people who had been disbarred and earned their way back into the profession, people who had voluntarily left the profession but kept active in the recovery of other lawyers, and those who weren’t sure whether or where they might fit in.

At the first convention, there were yoga classes in the morning, AA-type meetings of LCL members throughout the day, and speaker meetings a couple times a day. There was also training designed to help us help our brothers and sisters who struggled with the issues that got us there. This was the first time I realized what Quinn Bracket, a truly venerable Lubbock lawyer, had done for me a little over a year before. He knew what I needed to do and who I needed to know in order to survive the death spiral I had put my law practice into. He had a patience and depth of understanding that I needed to know in order to survive the death spiral I had put my law practice into. He had a patience and depth of understanding that I had only seen in a counselor whom I had paid for years to listen to me lie to her about my issues. Quinn was a stabilizing force in Lubbock for many lawyers who were trying to lose their way.

The Texas Lawyers’ Assistance Program (TLAP) has been an active program of the State Bar since 1989. Chris Ritter is the third director to head up the program. What follows is Chris’ compilation of the history of TLAP, edited for length.

Early Years

A flurry of articles and research in the late 1980s and early 1990s documented the secret that some already knew: the high incidence of substance abuse and mental health disorders in the legal profession. While generally accepted figures at that time estimated that 10 to 11 percent of the general population in this country suffered from the disease of substance dependence, surveys in Arizona, Washington, and Maryland indicated that the illness affected 15 to 18 percent of lawyers. A study by the Johns Hopkins University School of Medicine in 1990 found that, of all the professions surveyed, lawyers had the highest rate of clinical depression. A 1992 study by the National Institute for Occupational Safety and Health indicated that male lawyers in the United States were twice as likely to commit suicide than men in the general population. Unfortunately, many involved with lawyer assistance programs across the country anecdotally echoed that fact: suicide among lawyers was all too common.

Establishment of Lawyer Assistance Programs

Lawyer assistance programs in some form or another have been around for a long time. Many states report that independent, grassroots lawyers-concerned-for-lawyers groups have been operating discretely and effectively for 20 years. Grounded in the principles of service work and anonymity from Alcoholics Anonymous and other 12-step programs, these programs fashioned responses to the crisis of lawyers and colleagues in trouble with alcohol and drugs. TLAP credits the lawyer-support groups in Dallas and Houston as two of the longest-running grassroots organizations in the state. Both groups report a history of meetings dating back to the early 1980s. No doubt there were other such support groups in existence throughout the state.

In 1989, as part of the national movement toward instituting employee- and peer-assistance programs, the State Bar of Texas institutionalized outreach to lawyers by creating and funding TLAP. Mindful that the goal of the organization was to provide a safe and confidential place for lawyers to seek help for addiction and other disorders, TLAP was authorized as the approved peer-assistance program for lawyers in Texas; as such, it benefits from the statutory confidentiality and immunity protections afforded peer-assistance programs under the Texas Health and Safety Code. Texas was one of a handful of similar formal programs in the nation. In 1988, when the American Bar Association (ABA) created the Commission on Impaired Attorneys (it was renamed the Commission on Lawyer Assistance Programs in 1996), there were only four states that had formal statewide lawyer-assistance programs. Today, all 50 states, the Canadian provinces, and Great Britain have comprehensive assistance programs, most with paid directors and staff.

At their core, lawyer-assistance programs seek to provide outreach, support, peer assistance, and confidentiality for communications and information relating to actions taken by staff, volunteers, and participating lawyers, judges, and law students. Separation from the discipline authority for lawyers was identified as an early requisite for many lawyer-assistance programs and the Texas program was no exception. Agreements between the Texas disciplinary system and TLAP were hammered out long ago: TLAP staff and volunteers remain independent of the disciplinary process and do not advocate for or against a lawyer who finds him or herself in that system. The discipline system, in turn, respects and appreciates the confidentiality of all communications and actions of TLAP.
The Future of Lawyer-Assistance Programs

The nature of lawyer-assistance programs is changing. The 2002 ABA Commission on Lawyer Assistance Programs survey of lawyer-assistance programs indicates that a majority of lawyer-assistance programs have moved to provide outreach services for lawyers with mental health issues as well as the traditional outreach to those dealing with alcohol, drugs, or other addictions.

Texas has been at the forefront of this challenge. Since the mid-1990s, TLAP has offered its services to lawyers, judges, and law students who are challenged by mental health and substance abuse disorders. TLAP statistics indicate that once TLAP advertised that its outreach included mental health issues, the number of these cases increased to a 50/50 split between substance abuse disorders and mental health concerns. Today, a lawyer with complex, poly-substance abuse and mental health disorders is more the norm than the exception. While the number of cases increases yearly, pure addiction cases and pure mental health cases make up a smaller portion of the TLAP caseload. The response remains the same: crisis assistance and counseling, education, peer assistance, intervention, referral, and outreach.

If the future holds anything, it holds the promise of continued collaboration, connection, and innovation. Here are a few noteworthy developments:

- The ABA has adopted a 2004 Model Lawyer Assistance Program that speaks to the issues of concern: addictions, mental health disorders, and quality-of-life issues.
- More and more lawyer assistance programs are being asked to directly monitor lawyers or develop monitor programs for law firms, disciplinary systems, and boards of law examiners.
- The State Bar of California has produced an innovative outreach system that, in the words of Deputy Trial Counsel for the State Bar of California Cyndee Batchelor, “has produced astonishing changes in the lawyers’ professional and personal lives.”
- In 2003, the ABA Standing Committee on Ethics and Professional Responsibility issued two ethics opinions regarding a lawyer’s duty to report the misconduct of another lawyer and in doing so recognized the assistance of lawyer-assistance programs throughout the United States.
- The ABA National Legal Malpractice Conference has developed and presented a series of seminars related to law firms and impaired lawyers.

Until very recently, I attended the TLAP/LCL Convention every summer, only missing because of conflicting responsibilities. Until my last child moved out of the house, the kids accompanied me on the trip each year. It was a great way for me to celebrate recovery, share it and a trip with my children, and enjoy the friends I’ d made among whom I trudge the road to happy destiny. Maybe the single most personally changing thing that ever happened to me at these celebrations was meeting and getting to know Kelly Pace at depth. He was committed to the cause of TLAP and LCL, serving on both the State Bar Committee and the LCL Board of Directors. His example of a lawyer with a busy trial practice and the associated stresses and strains who stays above the fray with an eye always open for the colleague who is in need challenges me and informs me today. Kelly was honored with the Ralph Mock Award, the highest award given by TLAP and LCL, signifying incredible service to recovering lawyers for significant periods of time, in 2017. I now have the honor of serving on the State Bar Committee for Lawyers Assistance and the Board of Directors. I hope to share with others what Kelly and many at TLAP and LCL have freely given me.

Lubbock’s LCL group hosts a hybrid meeting each Friday during lunch. Our fearless leader, Bob N., has arranged for us to use a state bar conference line to include call-ins with those of us who can meet in person at his office. It is a weekly home for eight to 12 practicing lawyers, law students, and lawyers working to earn their licenses back, who share their experiences, strength, and hope with one another. There are very real reasons to be proud of our state bar, its Lawyers Assistance Program, and the grassroots LCL groups around the state!
Before country music lost its soul and moved to the suburbs, there existed a sub-genre of country music consisting of “prison songs” based on a myriad of bad decisions primarily having to do with whiskey, drugs, and women. These songs convey the pathos, hopelessness, and what Merle Haggard has called “the mental Hell that is jail.” There is an unbreakable bond between criminal misbehavior and “real” country music.

Johnny Cash and Merle Haggard are the most well-known of prison song troubadours, but before Cash and Haggard there was Vernon Dalhart, who took his name from two towns in Texas. In 1925, he recorded one of the most enduring prison tracks, “The Prisoner’s Song.”

I’ll be carried to the new jail tomorrow
Leaving my poor darling all alone
With the cold prison bars all around me
And my head on a pillow of stone.¹

Jimmie Rogers, the man many consider the father of country music, wrote his version of the traditional folk song “He’s in the Jailhouse Now” in 1928. A cautionary tale to a friend, the song was most famously covered by Webb Pierce in the 1950s.

I had a friend named Campbell
Who liked to drink, gamble and ramble,
Well I told him once or twice
To quit playing cards and shooting dice
He’s in the jailhouse now.²

Hank Williams, Sr., was the first superstar of country music. While a master of heartbroken misery, Williams recorded few or no prison songs except “A Picture from Life’s Other Side.”

Just a picture from life’s other side
Someone has fell by the way
A life has gone out with the tide
That might have been happy someday.³

Among the most enduring of prison songs is “The Long Black Veil,” with the most famous version sung by Corsicana native Lefty Frizzell. (Corsicana is also the birthplace of Billy Joe Shaver, who was successfully defended by Dick DeGuerin in an aggravated assault trial in Waco a few years back. “I’m A Wacko from Waco” is a song Billie Joe wrote about his Waco experience.)

Frizzell’s “Veil” has been covered by well over 100 artists and continues to be the leading exponent of the tearjerker ballad of a man betrayed by a faithless woman.

Now the judge said son, what is your alibi
If you were somewhere else, then you won’t have to die
But I said not a word, although it meant my life,
Cause I’d been laying the arms of my best friend’s wife.
Now the scaffold is high and eternity near
She stood there in the crowd and shed not one tear
But some sometimes at night, when the cold wind blows
In a long black veil, she cries o’er my bones.⁴

No discussion of prison songs would be complete without inclusion of the real deal—the late, great Johnny Paycheck. He had an arrest record ranging from aggravated assault to murder
and knew much more than the average rap star about spending time in prison. Paycheck died penniless in 2003, his headstone having been paid for by country music legend George Jones. Paycheck weighs in with the haunting and hair-raising “Pardon Me, I’ve Got Someone to Kill.”

I know you’ll excuse me if I say goodnight
I’ve got a promise to fulfill
Thank you for listening to my troubles
Pardon me, I’ve got someone to kill.
I warned him not to try and take her from me
He laughed and said if I can, you know I will
So tonight when they get home I’ll be waiting
Pardon me, I’ve got someone to kill. ²

You know his life just took a wrong turn, perhaps because—as Paycheck advises in another song—he failed to “Stay off the Cocaine Train.”

Yeah, the old white train costs a lot to ride
And it’ll damn sure forevermore please your brain
Take a little advice, stay away from the cocaine train.³

While on the subject of drugs and their effect on prison songs, “Cocaine Blues,” written by T.J. “Red” Arnall and recorded by Johnny Cash on Live at San Quentin in 1969, is perhaps one of the prime examples of drug abuse and bad behavior.

Early one morning while making my rounds
I took a shot of cocaine and I shot my woman down
I went back home and I went to bed
And stuck that lovin’ .44 beneath my head
Early next morning I picked up my gun
I took a shot of cocaine and away I run
I made a good run but I ran too slow
They caught up with me down in Juárez, Mexico.
Of course, they drag our hero back home, where he is held by 12 honest men and of course, as with many jury trials, it does not work out so well.

In about five minutes in walked a man
Holding the verdict in his right hand
The verdict said in the first degree
I shouted lordy, lordy have mercy on me
The judge he smiled as he picked up his pen
99 years in that San Quentin pen
99 years there beneath that ground
I can’t forget the day I shot that bad bitch down.
Come on you rounders and listen to me
Lay off that whiskey and let that cocaine be.⁴

Cash had many jail songs—a lot of good ones—but in my opinion the best of the best is a short, relatively obscure song called “The Wall,” which tells the story of a prisoner who spends his time trying to figure a way to escape and finally tries to escape from the walls of prison.

Well a year’s gone by since he made his try
And I can still recall
How hard he tried and the way he died
But he never made that wall
He never made that wall
There’s never been a man who shook this can
But I know the man that tried
The newspapers said it was a jailbreak plan

But I know it was suicide,
I know it was suicide.⁵

The late Porter Waggoner, a genuine country music legend, and a true aficionado of the flashy clothes known as “nudie Suits,” had a couple of really nice prison songs, such as “The Green, Green Grass of Home” and “The Cold Hard Facts of Life,” which is the story of a man who comes home from out of town early, stops to buy a bottle of champagne for his wife, and ends up inadvertently following his wife’s lover, also buying party supplies at the liquor store.

I left the store two steps behind the stranger
From there to my house his car stayed in sight
But it wasn’t till he turned into my drive that I learned
I was witnessing the cold hard facts of life.
I drove around the block till I was dizzy
Each time the noise came louder from within
And then I saw the bottle there beside me
And I drank a fifth of courage and walked in
Lord, you should’ve seen their frantic faces
They screamed and cried, please put away that knife
I guess I’ll go to hell or I’ll rot here in this cell
But who taught who the cold hard facts of life.⁶

Flatt and Scruggs, though primarily bluegrass artists, penned a wonderful song called “99 Years is Almost for Life,” which tells a story of not only bad choices but betrayal by both his woman and the presiding judge.

The courtroom was crowded the judge waited there
My mother was crying when I left my chair
The sentence were sharpful it cut like a knife
For ninety ninety-nine years boy is almost for life
I dreamed of the whistle I heard the bells ring
My sweetheart was coming some good news to bring
I knew that she loved me and that she’d be true
She said she would save me I’m guilty as you
She went for a pardon or else for parole
I know she’ll come back for she’s part of my soul
If she ever fails me I’d be mighty blue
(NOW, WAIT FOR IT.)
I just got a letter from Nashville town
And after I read it, my spirit broke down
It said that my sweetheart and the judge would be wed
And here in this jailhouse I wish I was dead.
No matter how right folks a man he may be
Bad company will sent him to prison like me
So take a good woman and make her your wife
For ninety-nine years boy is almost for life.⁷

Stonewall Jackson (his real name—no kidding) tells the sad, sad story of a man imprisoned for killing his best friend after a long night of drinking in “Life to Go.”

I went one night where the lights were bright just to see what I could see
I met up with an old friend who just thought the world of me
Well he bought me drinks and he took me to every honky tonk in town
But words were said and now he’s dead I just had to bring him down
Well it’s its been a long, long time now, since I’ve heard from
my wife
I know I’d be there with her yet if I hadn’t used the knife
Well I’ll bet that little girl of mine don’t realize or know
That I’ve been here 18 years, and still have life to go
Yes I still have life to go.11
It is impossible to pick only one prison song from the repertory of Merle Haggard. Haggard, who was in the audience when Cash played San Quentin, was doing time for a burglary of an open cafe. (I kid you not, look it up.) Haggard wrote some of the most iconic prison songs of all time, including "Branded Man," "I’m A Lonesome Fugitive," and "Mama Tried." However, perhaps the most poignant of all his prison songs is "Sing Me Back Home," which pays homage to a condemned prisoner’s last wish.

The warden led a prisoner, down the hallway to his doom
And I stood up, like all the rest to say goodbye.
And I hear him tell the warden, just before he left my cell
Let my guitar playing friend do my last request
Won’t you sing me back home, to the place I used to be
Make those old memories come alive
Sing me back home where I can hear my mama sing
Sing me back home before I die.12
While prison songs date back to the ‘50s, ‘60s and ‘70s, some notable exceptions to the trend away from real country (defined as “when you play a country record backwards, you get your dog, your wife, and your trailer”) still exist. Steve Earle, a passionate anti-death penalty advocate, penned a song for the movie Dead Man Walking, which portrays prison from another side, the guards working at Ellis Unit One, death row in Texas for many years. In “Ellis Unit One,” Earle vividly illustrates the effect death row has on one of the guards working there.

Well I’ve seen’ em fight like lions, boys
I’ve seen’ em go like lambs
And I’ve helped to drag’ em when they could not stand
And I’ve heard their mama’s cryin’, when they heard that big door slam
And I’ve seen the victim’s family holdin’ hands
Last night I dreamed that I woke up with straps across my chest
And something cold and black pullin’ through my lungs
And even Jesus couldn’t save me though I know he did his best
But he don’t live on Ellis Unit One.13
Marty Stuart, a man many consider the savior of traditional country music as well as having the coolest hair in country music, gives a 21st-century shout-out to Haggard in "Branded" and shows the cold, hard fact that a man never truly pays for his crime.

Well I’m branded, wherever I go
Trying to outrun a bad story everybody seems to know
Might as well be wearing a ball and chain
Cause everywhere I travel I see my picture
With a number by my name.14
Last but certainly not least, relative newcomer and another savior of traditional country music Jamey Johnson spins his cautionary tale of drug abuse in “The High Cost of Living.” My whole life went through my head, layin’ in that motel bed
Watchin’ as the cops kicked in the door
I had a job and a piece of land, my sweet wife was my best friend
But I traded that for cocaine and a whore.
With my new found sobriety, I’ve got the time to sit and think
Of all the things I had, and threw away
This prison is much colder than
The one that I was locked up in just yesterday
My life is just an old routine, every day the same damn thing
Hell I can’t even tell if I’m alive
I tell you, the high cost of livin’
Ain’t nothin’ like the cost of livin’ high.15
Country music is not everyone’s cup of tea, but I feel all of us who defend the citizen accused, the sick and imprisoned, can relate to some extent to the songs listed here. There are many among us who can personally relate to the effects of alcohol and substance abuse on our lives.

I suggest listening to good old-fashioned country music to reflect on your duties and to cure what ails you. If that does not work, the Texas Lawyer’s Assistance Program is a wonderful program that has helped many of us in the trenches.

Endnotes
1. Vernon Dalhart/Shapiro, Bernstein and Co.
2. Traditional—Public Domain
3. Traditional—Public Domain
4. Marijohn Wilkins and Danny Dill/Crown Music
5. Aubrey Mayhew and Johnny Paycheck/Dream City Music
6. Johnny Paycheck/publisher unknown
7. T.J. “Red” Arnall/Unichappell Music, Inc
8. Harlan Howard/Wilderness Music
10. Dave Evans/Sony (formerly Tree Publishing)
11. George Jones/publisher unknown
12. Merle Haggard/Tree Publishing
13. Steve Earle/Primary Wave Music Public
14. Marty Stuart/EMI Music
15. Jamey Johnson and James Slater/EMI Music

Charles Chambers is a 35-year attorney and longtime member of the Texas Criminal Defense Lawyers Association and the Lubbock Criminal Defense Lawyers Association. He has tried too many jury trials to count. He was honored and humbled to receive the Defender of Liberty Award at the 2019 LCDLA Prairie Dog Seminar (and got a nifty briefcase to boot as a door prize). In addition to practicing law, Charles breeds and races horses, gardens and serves on several boards of local civic organizations, including Literacy Lubbock and Grace Campus. He is on the Pro Bono Committee of the Lubbock Area Bar Association and was the recipient of the 2019 Pro Bono Lawyer of the Year by the Lubbock Area Bar Association. He can be reached at charleschambers_540@msn.com and 806-744-1278.
As of July 13, 2020, the TCDLA Committee on Supreme Court Orders on Pandemic Court Proceedings has placed on the TCDLA website a motion for continuance and objections to help you oppose resuming trials in person during this COVID-19 pandemic. This motion for continuance, including objections, is to be used when a trial court is attempting to make you conduct a trial in person during the pandemic.

We have also placed on the TCDLA website a motion for continuance and objections to help you oppose virtual trials during this pandemic. This motion for continuance, including objections, is to be used when a trial court is attempting to make you conduct a trial virtually such as by Zoom or some other platform.

Be sure to tailor the pertinent pleading to your case. Once you have done this, the pleading is ready for filing. I want to thank the following members of the subcommittee who put their valuable time and effort into the research and drafting of these pleadings: Allison Clayton, Kyle Therrian, David Botsford, Cynthia Orr, Sarah Roland, Betty Blackwell, David Moore, Nicole Hochglaube, and Chris Abel. Each of these pleadings will provide you with very valuable tools to address courts that attempt to force you to trial during the pandemic.

The names of these documents are:

- Motion for Continuance of In-Person Jury Trials
- Proposed Orders on the Motion for Continuance of In-Person Jury Trial
- Cheat sheet on Motion for Continuance of In-Person Jury Trial
- Motion for Continuance of Zoom Jury Trials
- Proposed Orders on the Motion for Continuance of Zoom Jury Trials
- Cheat sheet on Motion for Continuance of Zoom Jury Trials

Visit TCDLA’s COVID-19 Response Task Force page on TCDLA’s website. It has never been truer that when you need something done and done well, give it to a busy person. There may be no busier person in the state today than Kerri Anderson Donica. She pilots this organization, maintains a law practice and a personal life when there isn’t a catastrophe going on. The coronavirus emergency has put her into overdrive, and we are incredibly fortunate to have her at the helm during these challenging and changing times. It has been amazing to watch her bring calm to a stormy time and make the decisions, with appropriate consultation, that keep us vibrant and relevant.

Similarly, Clay Steadman chair our TCDLA COVID-19 Response Task Force. In addition to participating in numerous conference calls, he has directed the task force with a steady hand. He is another busy person stepping into the breach and delivering for the benefit of all who practice criminal defense law in Texas.

Vice chairs of the Task Force, Jeep Darnell, John Hunter Smith, and Nicole Deborde Hochglaube, contribute beautifully to the mix, bringing varying points of view and administrative strengths to the team. It is thanks to this team that we continue to provide what our members and other criminal defense lawyers need in this tumultuous time.

Contact: tcdla_covid_concerns@tcdla.com
Ethics Hotline: 512-646-2734
Michael Mowla

Please do not rely solely on the summaries set forth below. The reader is advised to read the full text of each opinion in addition to the brief synopses provided.

TCDLA thanks the Court of Criminal Appeals for graciously administering a grant which underwrites the majority of the costs of our Significant Decisions Report. We appreciate the Court's continued support of our efforts to keep lawyers informed of significant appellate court decisions from Texas, the United States Court of Appeals for the Fifth Circuit, and the Supreme Court of the United States. However, the decision as to which cases are reported lies exclusively with our Significant Decisions editor. Likewise, any and all editorial comments are a reflection of the editor's view of the case, and his alone.

Supreme Court of the United States

Andrus v. Texas, No. 18-9674, 2020 U.S.LEXIS 3250 (U.S. June 15, 2020) [IAC in mitigation cases of death penalty cases]

- Under Strickland v. Washington, 466 U.S. 668, 688, 694 (1984), to prevail on a Sixth Amendment claim of IAC, a defendant must show that trial counsel’s performance was deficient and prejudiced him. To show deficiency, a defendant must show that counsel’s representation fell below an objective standard of reasonableness. To establish prejudice, a defendant must show that there is a reasonable probability that, but-for the unprofessional errors, the result of the proceeding would have been different.

- Under Porter v. McCollum, 558 U.S. 30, 39 (2009), under prevailing professional norms, trial counsel must conduct a thorough investigation of the defendant’s background. Under Rompilla v. Beard, 545 U.S. 374, 385 (2005), counsel must make all reasonable efforts to learn what he can about the offenses the prosecution intends to present as aggravating evidence.

Facts:

- Andrus killed Diaz and Bui during a bungled carjacking. He was indicted and convicted of capital murder.

- At the guilt phase, trial counsel did not make an opening statement. After the State rested, trial counsel immediately rested. In his closing, trial counsel conceded Andrus’s guilt and told the jury that the trial would “boil down to the punishment phase.”

- During the punishment phase, trial counsel did not make an opening statement. The State presented evidence that Andrus was aggressive and hostile while in juvenile; had gang tattoos; had hit, kicked, and thrown excrement at prison officials pending trial, and committed an aggravated robbery of a dry-cleaning business. Trial counsel raised no material objections to the State’s evidence and cross-examined State witnesses briefly.

- Trial counsel called Andrus’s mother, who testified about Andrus’s basic biographical information but did not reveal difficult circumstances in Andrus’s childhood. Mom testified that Andrus had an “excellent” relationship with siblings and grandparents, didn’t have access to drugs in her home, and she would have counseled him had she learned he was using drugs.

- Andrus’s biological father Davis testified that Andrus had lived with him for a year when he was 15 and had behaved.

- Trial counsel then announced that he rests and did not intend to call more witnesses. After the court questioned trial counsel about this choice during a sidebar, trial counsel called Dr. John Roache as the expert witness and examined him.
on the general effects of drug use on developing adolescent brains. On cross, the State quizzed Roache about the relevance and purpose of his testimony, asking whether he "drove 3 hours to tell the jury that people change their behavior when they use drugs."

- Trial counsel called prison counselor Martins, who testified that Andrus "started having remorse" in the past 2 months and was "making progress."
- Andrus testified that his mother started selling drugs when he was 6 and he and his siblings were often home alone. He started using drugs regularly around 15. On cross, the State declared, "I have not heard one mitigating circumstance in your life."
- The jury sentenced Andrus to death. The conviction and sentence were affirmed on appeal.
- Andrus filed a state habeas application, alleging that trial counsel was ineffective for failing to investigate or present available mitigation evidence, including extreme neglect, violence, abuse, and deprivation during his childhood, growing up in neighborhood with frequent shootings, gang fights, and drug overdoses, and a mother who sold drugs, used drugs at home, and engaged in prostitution. Per his siblings, Andrus was a protective older brother who was caring. When he was about 10, he was diagnosed with affective psychosis. The trial court concluded that trial counsel had been ineffective for failing to investigate and present mitigating evidence regarding his abusive and neglectful childhood. The TCCA rejected the trial court's recommendation to grant habeas relief, finding that Andrus had failed to meet his burden under Strickland.

**Trial counsel provided constitutionally deficient performance under Strickland**

- Under *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984), to prevail on a Sixth Amendment claim of IAC, a defendant must show that trial counsel's performance was deficient and prejudiced him. To show deficiency, a defendant must show that counsel's representation fell below an objective standard of reasonableness. To establish prejudice, a defendant must show that there is a reasonable probability that, but-for the unprofessional errors, the result of the proceeding would have been different.
- Under *Porter v. McCollum*, 558 U.S. 30, 39 (2009), under prevailing professional norms, trial counsel must conduct a thorough investigation of the defendant's background. Under *Rompilla v. Beard*, 545 U.S. 374, 385 (2005), counsel must make all reasonable efforts to learn what he can about the offenses the prosecution intends to present as aggravating evidence.
- Under *Wiggins v. Smith*, 539 U.S. 510, 521 (2003), in a death-penalty case, trial counsel must make reasonable investigations or a reasonable decision that makes particular investigations unnecessary. To assess whether counsel exercised objectively reasonable judgment under prevailing professional standards, a court asks whether the investigation supporting the decision not to introduce mitigating evidence was itself reasonable. A decision not to investigate must be assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.
- Trial counsel fell short of his obligation because he: performed almost no mitigation investigation, overlooking vast mitigating evidence, due to his failure to investigate compelling mitigating evidence, what little evidence he presented backfired by bolstering the State's aggravation case, and failed adequately to investigate the State's aggravating evidence, forgoing critical opportunities to rebut the case in aggravation. Although counsel nominally put on mitigation, the record is clear that counsel's investigation to support that case was an empty exercise.
- The State presented Andrus's alleged commission of a robbery at a dry-cleaning business. Although Andrus told counsel he did not commit the offense and the State did not charge, counsel did not attempt to exclude or rebut the State's evidence. At the habeas hearing, it was shown that the only evidence tying Andrus to the crime was a witness statement later recanted. This is not the work of reasonable counsel. Under Tex. Code Crim. Proc. Art. 37.071 §2(b)(1), a jury cannot recommend a death sentence without unanimously finding future dangerousness to society. Only after a jury makes a finding of future dangerousness can it consider mitigating evidence. By failing to conduct even a marginally adequate investigation, counsel seriously compromised his opportunity to respond to a case for aggravation.
- Andrus showed deficient performance under the first prong of Strickland, and by its one-sen-
tence denial, it is unclear whether the TCCA considered prejudice at all. The judgment is vacated, and the case is remanded so the TCCA can address the prejudice prong of Strickland in a manner not inconsistent with this opinion.

United States Court of Appeals for the Fifth Circuit
- United States v. Diggles, 957 F.3d 551 (5th Cir. April 29, 2020) (en banc) [Pronouncement of required and discretionary conditions of supervised release per 18 U.S.C. § 3583(d)]

- The district court must orally pronounce a sentence to respect the defendant's right to be present. If the pronouncement differs from the judgment, the pronouncement controls. This rule applies to some supervised release conditions. Under U.S.S.G. § 5D1.3(b) & (d), pronouncement is not required for “mandatory” and “standard” conditions but required for “discretionary” and “special” conditions.

- Under United States v. Gagnon, 470 U.S. 522, 526 (1985) (per curiam), the right to be present at trial is per the Sixth Amendment's Confrontation Clause, while the right to be present at proceedings that lack testimony is per the Fifth Amendment's Due Process Clause. Under Snyder v. Massachusetts, 291 U.S. 97, 107-108 (1934), the defendant's presence is a condition of due process to the extent that a fair and just hearing is thwarted by his absence. The right turns on whether a defendant's presence has a reasonably substantial relation to the fullness of his opportunity to defend against the charge. Sentencing is a critical stage of a case.

- 18 U.S.C. § 3583(d) distinguishes between required and discretionary conditions. “Shall” conditions include not committing a crime or unlawfully possessing a controlled substance, cooperating in DNA-collection, and paying restitution. “May” conditions must be “reasonably related” to statutory sentencing factors. The pronouncement requirement should be tied to § 3583(d)'s line between required and discretionary conditions. If a condition is required—making an objection futile—the court need not pronounce it. If a condition is discretionary, the court must pronounce it to allow for an objection. A sentencing court pronounces supervision conditions when it orally adopts a document recommending those conditions.

- When a defendant fails to raise a pronouncement objection in the district court, review is for plain error if the defendant had notice of the conditions and an opportunity to object.

- To be entitled to a new trial under Fed. Rule Crim. Proc. 33 based on an extrinsic influence on the jury, a defendant must show that the influence likely caused prejudice. The government bears the burden of proving the lack of prejudice by showing there is no reasonable possibility that the jury’s verdict was influenced by the extrinsic evidence. Under Patterson v. Colorado, 205 U.S. 454, 462 (1907), courts must take allegations of outside influence seriously because the legal system requires that cases are decided only by evidence and argument in open court and not by any outside influence, whether private talk or public print.

- Under Remmer v. United States, 347 U.S. 227, 229 (1954), when faced with (1) credible allegations of prejudicial outside influence on the jury and (2) a record devoid of information on which to evaluate those allegations, a hearing in which all parties are permitted to participate is necessary.


- Under U.S.S.G. § 2K2.1(a)(4)(B)(i)(I), the base offense level for felon-in-possession is 20 if it involves a semiautomatic firearm capable of accepting a large capacity magazine, which is one that had attached to it, or was in close proximity to, a magazine or similar that could
accept more than 15 rounds.

• A sentencing judge may properly find sufficient reliability on a PSR based on the results of a police investigation.

• Under U.S.S.G. § 3E1.1(b), a defendant is eligible for one extra level for acceptance of responsibility if his offense level is at least 16 and the government files a motion stating that the defendant assisted in the investigation or prosecution of his misconduct by timely giving notice of intent to enter a plea of guilty, permitting the government to avoid preparing for trial and the government and the court to allocate their resources efficiently.

• The government may withhold filing a motion under U.S.S.G. § 3E1.1(b) if it must litigate a suppression motion.

Editor’s note: The U.S.S.G. defines a “high capacity magazine” as one that “can accept more than 15 rounds.” Under this logic, a magazine that accepts 16 rounds is so much more dangerous than one that accepts 15 that a felon in possession must spend at least 37-46 additional months in prison for that one round, the range for a crime with base offense level 20 and Criminal History I. Thus, one extra round = 37-46 extra months. It does not matter whether he intended to fire the round or even held the weapon. Its nearby proximity is enough. This illogical nonsense pervades most laws that purport to “protect” us from “gun violence.”


• The government seeking an obstruction enhancement—whether based on pre- or post-plea conduct—is consistent with its promise to not oppose an acceptance reduction.


• A district court errs if it assigns an incorrect criminal history to depart from the U.S.S.G. range rather than apply the factors under 18 U.S.C. § 3553 as the reasons for the departure.

• When the defendant does not object to error, plain error review applies. Under Fed. Rule Crim. Proc. 52(b), Molina-Martínez v. United States, 136 S.Ct. 1338 (2016) and United States v. Olano, 507 U.S. 725 (1993), a reviewing court may consider errors that are plain and affect substantial rights even though they are raised for the first time on appeal. The defendant must show that the error: (1) was not intentionally relinquished or abandoned; (2) is plain (clear or obvious); (3) affected substantial rights (must show a reasonable probability that but-for the error, the outcome of the proceeding would have been different); and (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings.

• Under Rosales-Mireles v. United States, 138 S.Ct. 1897, 1907 (2018), a U.S.S.G.-error that satisfies the first three Olano factors satisfies the fourth and warrants relief because the plain error establishes a reasonable probability that a defendant will serve a sentence that is more than necessary to fulfill the purposes of incarceration. Additional factors favoring correction are: (1) resentencing is easy; and (2) U.S.S.G.-miscalculations result from judicial error rather than a defendant’s strategy. Where the record is silent as to what the district court might have done had it considered the correct U.S.S.G.-range, the district court’s reliance on an incorrect range in most instances will suffice to show an effect on the defendant’s substantial rights.

Editor’s note: this is the relevant law on plain error review:

• To preserve error, a party must raise an objection that is sufficiently specific to: (1) alert the court to the nature of the error and; (2) provide an opportunity for correction. A party is not required to object in ultra-precise terms but must provide the court an opportunity to adjudicate the issue and cure any alleged breach.

• When the defendant does not object to error,
plain error review applies. Under Fed. Rule Crim. Proc. 52(b), Molina-Martinez v. United States, 136 S.Ct. 1338 (2016) and United States v. Olano, 507 U.S. 725 (1993), a reviewing court may consider errors that are plain and affect substantial rights even though they are raised for the first time on appeal. The defendant must show that the error: (1) was not intentionally relinquished or abandoned; (2) is plain (clear or obvious); (3) affected substantial rights (must show a reasonable probability that but-for the error, the outcome of the proceeding would have been different); and (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings.

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Taylor Lohmeyer Law Firm v. United States, 957 F.3d 505 (5th Cir. April 24, 2020) [Attorney-client privilege in an IRS summons]

- Under Reisman v. Caplin, 375 U.S. 440, 449 (1964), a district court order enforcing an IRS summons is an appealable final order. The challenge may be on any appropriate ground including the information sought is protected by the attorney-client privilege.

- Review with respect to the attorney-client privilege is limited. The application of the attorney-client privilege is a question of fact to be determined considering the purpose of the privilege. In evaluating a claim of attorney-client privilege, factual findings are reviewed for clear error and the application of the law de novo.

- For the attorney-client privilege to protect disclosure, an attorney must establish that the document contains a confidential communication with the client, made with the client’s primary purpose having been securing either a legal opinion or legal services. Because the attorney-client privilege withholds relevant information from the factfinder, it is interpreted narrowly and applies only where necessary to achieve its purpose. The party asserting privilege bears the burden of proof. Ambiguities about whether the elements of a privilege claim have been met are construed against the proponent. The privilege may not be tossed as a blanket over an undifferentiated group of documents but must be asserted to particular documents. Client identities and fee arrangements are not protected as privileged unless revealing them would reveal a confidential communication.

**Texas Court of Criminal Appeals**


- An appellate court reviewing a ruling in an Art. 11.072 proceeding must view the record evidence in the light most favorable to the ruling and uphold it absent an abuse of discretion. Almost total deference is given to factual and implied findings supported by the record, especially if based on credibility and demeanor. If the resolution of the ultimate question turns only on the application of law, review is de novo. The reviewing court upholds the ruling if it is correct under any theory of applicable law.

- Determining whether evidence was material as part of a claimed Brady violation is a mixed question of law and fact. Deference is given to a habeas court’s factual findings underlying its decision, and review of ultimate legal conclusions of materiality is de novo.

- In Art. 11.07 cases, the habeas court is
the original fact finder but the TCCA is the ultimate factfinder. The habeas court’s findings are not automatically binding upon the TCCA, although it usually accepts them if supported by the record. In Art. 11.072 cases, the trial judge is the sole factfinder and the appellate courts are truly appellate courts.

• To be entitled to relief because a Brady violation, a defendant must show that the: (1) State failed to disclose evidence, regardless of good or bad faith; (2) evidence is favorable; and (3) evidence is material. Favorable evidence is that which if disclosed and used effectively, may make a difference between conviction and acquittal. It includes exculpatory and impeachment evidence. Exculpatory evidence is that which may justify, excuse, or clear the defendant from fault, and impeachment evidence is that which disputes, disparages, denies, or contradicts other evidence. The nondisclosure of favorable evidence violates due process only if it is material to guilt or punishment. Evidence is material if there is a reasonable probability that had it been disclosed, the outcome of the trial would have been different. A “reasonable probability” is one sufficient to undermine confidence in the outcome. Materiality is determined by examining the alleged error in the context of the record and overall strength of the state’s case. The suppressed evidence is considered collectively, not item-by-item.

Facts:
• Deputy Bounds saw Diamond speed past him. Bounds pursued, during which Diamond made several unsafe lane changes without signaling, which caused other drivers to slam on their brakes.
• When Diamond stepped out of her vehicle, she staggered and could not keep balance. She appeared disoriented. She said that she was coming from a country club but was unable to identify it. She admitted she consumed three beers that day. There was one open can and two cold, unopened cans in her vehicle. She and her car smelled strongly of alcohol. She had red glassy eyes and slurred speech. She was unable to identify the medication she was taking. On the SFSTs, she showed 5 of 8 clues on the walk-and-turn and 4 of 4 clues on the one-leg-stand. Bounds determined she was intoxicated because she lost the normal use of her mental and physical faculties. Bounds arrested her for DWI. Diamond refused to give a sample of her breath or blood. Bounds secured a warrant to obtain a sample of her blood. A registered nurse drew it. The vials were delivered by Bounds to a secure lockbox at Houston PD.
• Andrea Gooden, Houston Police Department Crime Lab analyst, retrieved the sealed envelope with Diamond’s blood. There did not appear to be tampering with the envelope. It appeared to be properly labeled. The analysis revealed a BAC of 0.193.
• Diamond was convicted of DWI. The jury also found that Diamond’s BAC was 0.15 or more at the time of the analysis. Diamond was sentenced to 5 days in jail. She did not appeal.
• Gooden self-reported to the Texas Forensic Science Commission (TFSC) that the crime lab violated quality control and documentation protocols in an unrelated case.
• Diamond filed an application for a writ of habeas corpus under Tex. Code Crim. Proc. Art. 11.072, arguing that the State suppressed impeachment evidence in violation of her right to due process because it failed to disclose that before Gooden’s testimony: (1) Gooden certified a mislabeled lab report in an unrelated case; and (2) Gooden’s supervisor Arnold temporarily removed Gooden from her casework because he lacked confidence in her skills. Diamond argued that the evidence would have enabled her to impeach Gooden and excluded or discredited her, resulting in an acquittal, or hung jury.
• After hearing from Arnold and Gooden at the habeas hearing, the court denied Diamond’s writ application, finding that the undisclosed evidence was neither favorable nor material.
• The court of appeals reversed, finding that the undisclosed evidence was material because Gooden’s testimony was necessary for the jury to make an affirmative finding on the special issue of whether Diamond’s BAC level was 0.15 or more.

The undisclosed evidence was not material
• The habeas court was within its discretion to conclude that the undisclosed evidence was not material. There was overwhelming evidence of Diamond’s intoxication to support the guilty verdict regardless of Gooden’s testimony. The undisclosed evidence impeaching Gooden
would not have impeached the evidence of Diamond's intoxicated state.

- Gooden's error in the other case was a “protocol error” regarding the certification of the report as complete. It was not a mislabeling or analysis error. The officer—not Gooden—had mislabeled the submission form accompanying the blood. The correctness of Gooden’s analysis of it was not in question. Gooden’s certification only moved the report to the next stage of administrative and technical reviewed before it was released.

- The judgment of the court of appeals is reversed, and the habeas court’s ruling is affirmed.


- Under Tex. Penal Code § 8.05(a), it is an affirmative defense to prosecution that the actor engaged in the conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another. This affirmative defense is limited by the meaning of “compulsion,” exists only if the force or threat of force would render a person of reasonable firmness incapable of resisting the pressure. It is an objective standard that looks not at whether the defendant was rendered incapable of resisting the pressure, but the effect the pressure would have on a person of reasonable firmness, who is not someone who is more susceptible to coercion because of a traumatic event.


Facts:
- Timmins was on bond for two felonies. At a hearing, the judge revoked bond for testing positive for meth. Timmins pleaded with the judge to let him escort his elderly mother home before custody. The judge agreed, allowing him to turn himself in by 3:00 p.m. Timmins never reported.
- Timmins was indicted for Bail Jumping per Tex. Penal Code § 38.10(a). Timmins was convicted and sentenced to 20 years.

- On appeal, Timmins argued that his conduct did not meet the statutory definition of bail jumping or failure to appear because he “was not a person lawfully released from custody” and his failure to report to jail did not amount a failure to “appear.” The court of appeals rejected both arguments and affirmed the conviction.

The evidence was legally sufficient

- The judge’s order permitting Timmins to take his mother home was a furlough, not a “release.”
- Under Tex. Penal Code § 38.01, “custody” means being under arrest by a peace officer or under restraint by a public servant per a court order of this state or another state. A person may be in “custody” even if he is not under physical restraint. A reviewing court must look at the legal status of the individual to determine whether he was in custody at the time of the alleged offense.
- When he absconded, Timmins was a person lawfully released from custody. The evidence was legally sufficient. The judgment of the court of appeals is affirmed.


- A defendant who is confined after indictment—but not yet finally convicted—may file a writ of habeas corpus per Tex. Code Crim. Proc. Art. 11.08. If a trial court denies relief on the merits, the defendant may file an interlocutory appeal. Per Tex. Rule App. Proc. 31.1, the clerk must prepare and certify the clerk’s record and send it to the appellate court within 15 days after notice of appeal is filed.

- Under Tex. Const. Art. V § 5(b), the appeal of cases in which the death penalty is assessed is to the TCCA. The appeal of all other criminal cases is to the Courts of Appeal. This is a “jurisdictional distinction” based on whether the death penalty is assessed. A court of appeals has jurisdiction over a properly filed appeal of the denial of a capital murder defendant’s pretrial writ, not the TCCA.

(designated for publication) (Attempted Kidnapping)
[Nunc pro tunc orders; motion for new trial extends appellate filing deadlines]

- Under Tex. Rule App. Proc. 23, nunc pro tunc orders or judgments are for actions taken outside a trial court's plenary power, requiring the court to rely on its inherent authority to make the record reflect what actually occurred during its plenary power. A trial court may correct only clerical errors in a nunc pro tunc order or judgment because it lost plenary power and jurisdiction to correct judicial errors. A trial court may modify, correct, or set aside judgment and orders through motions for new trial, to arrest judgment, and judgment nunc pro tunc. Judgment nunc pro tunc—means "now for then"—may not be used to correct "judicial" errors, which are products of judicial reasoning or determination. Nunc pro tunc orders may be used only to correct clerical errors in which no judicial reasoning contributed to their entry and were not entered at the proper time.

- The trial court continued to have plenary power over its October 6 judgment when it entered the first and second nunc pro tunc orders. The trial court's two post-October 6 orders were not nunc pro tunc orders—despite being labeled as such—and were exercises of its plenary power over its judgment.

- Under Tex. Rule App. Proc. 26.2, a notice of appeal must be filed within 30 days after the day sentence is imposed or suspended in open court. A notice of appeal must be filed within 30 days after the day the trial court enters an appealable order. If a defendant files a motion for new trial, a notice of appeal must be filed within 90 days after the day sentence is imposed or suspended in open court.

Facts:

- Williams was indicted for Aggravated Kidnapping and Attempted Aggravated Kidnapping. He was convicted of the lesser-included Attempted Kidnapping, SJF and assessed a sentence of 2 years.
- On October 6, 2016, the sentence was imposed. The trial court informed Williams that he had a right to appeal and he could do so by filing a notice of appeal within 30 days. The trial court told Williams that he would not receive credit for time in jail.
- The judgment was signed on October 10, 2016. It did not include the time-credit and provided that sex offender registration did not apply and did not include the age of the victim at the time of the offense even though the evidence showed that she was 11.
- On October 13, 2016, Williams filed a Motion for New Punishment Trial and Motion in Arrest of Judgment in which he argued that the punishment was contrary to the law and the evidence and that he was entitled to time credit. On October 24, 2016, Williams filed a Motion for New Trial and a Motion for Judgment Nunc Pro Tunc, asserting in both time-credit and a business records affidavit from the sheriff showing the time spent in jail.
- On October 25, 2016, the trial court entered a Nunc Pro Tunc Order Correcting Minutes of the Court showing that the victim was under 14 at the time of the offense and sex-offender registration applied.
- On October 26, 2016, the State filed a Response to Motion for Judgment Nunc Pro Tunc, agreeing that Williams was entitled to time credit.
- On October 27, 2016, Williams filed a First Amended Motion for Judgment Nunc Pro Tunc again arguing for time-credit.
- On October 28, 2016, the trial court entered a Judgment Nunc Pro Tunc amending the judgment with the time-credit.
- On December 16, 2016, Williams filed a notice of appeal. The state argued that the notice of appeal was untimely. The court of appeals affirmed the judgment, including the nunc pro tunc orders. The State filed a PDR claiming that the notice of appeal was untimely.

The notice of appeal was timely

- The trial court imposed the sentence in open court on October 6. Williams filed his first motion for new trial on October 13 and second on October 24. Both were timely. Under Rule 26.2(a)(2), the 30-day deadline was extended to 90 days. Williams had until January 4, 2017, to file notice of appeal. The December 16 notice of appeal was timely.
- The judgment of the court of appeals is affirmed.

App. LEXIS 406 (Tex.Crim.App. June 10, 2020) (designated for publication) (Mandamus) [If requested by the defendant, a judge may assess punishment in a class C case after a guilty verdict by a jury without the State's approval]

- Mandamus lies when the: (1) relator has no other adequate legal remedy; and (2) act sought to be compelled is purely ministerial, which is one where the relator has a clear and indisputable right to the relief sought—the facts and circumstances dictate only one rational decision under unequivocal and clearly controlling legal principles.

- When asked to issue a writ of mandamus requiring a lower court to rescind its mandamus order, a reviewing court undertakes a de novo review of the lower court's application of the two-pronged test for mandamus.

- Under Tex. Code Crim. Proc. Art. 37.07 § 1(b), on a “not guilty” plea, a jury must return a verdict of guilty or not guilty. If it is guilty, except per § 2, the jury shall assess punishment if there is a range of punishment. Under § 2(a), juries decide guilt without reference to punishment in jailable cases. Bifurcation—dividing a trial into separate phases for guilt and punishment—is required for jailable offenses. § 2(b) states that if a defendant is found guilty of a noncapital crime, the judge shall assess punishment unless the defendant elected the jury to assess punishment. § 2(c) requires that punishment be assessed on each guilty count. Art. 37.07 does not clearly prohibit a judge from assessing punishment after a jury verdict of guilt on a not guilty plea in a Class C case.

Texas Courts of Appeals


- Tex. Penal Code § 21.15(b)(1) regulates conduct subject to First Amendment protection because photos and visual recordings are inherently expressive. It seeks to curtail nonsensual taking and dissemination of photos and visual recordings of another person's intimate area. The sexual subject matter sought to be proscribed renders the statute content based.

- Under Ex parte Lo, 424 S.W.3d 10, 13-14 (Tex. Crim.App. 2013) and Sable Communications of California, Inc. v. FCC, 492 U.S. 115, 126 (1989), a defendant may file a pretrial application for writ of habeas corpus to raise a facial challenge to the constitutionality of the charged statute. Whether a statute is facially unconstitutional is a question of law subject to de novo review. When the constitutionality of a statute is challenged, a court usually presumes that the statute is valid, and the legislature has not acted unreasonably or arbitrarily. Other than First Amendment challenges, a facial challenge will succeed only if the statute is unconstitutional in all of its applications. When the statute suppresses, disadvantages, or imposes differential burdens upon speech based on content, the presumption of constitutionality does not apply. Content-based regulations of protected speech are presumptively invalid, and the State bears the burden to rebut the presumption (strict scrutiny). Content-based laws—which target speech based on content—are presumptively unconstitutional and justified only if the government proves they are narrowly tailored to serve compelling state interests. The Government may regulate the content of constitutionally protected speech to promote a compelling interest if it chooses the least restrictive means. Under strict scrutiny, a regulation of expression is upheld only if it is narrowly drawn to serve a compelling government interest.

- Tex. Penal Code § 21.15(b)(1) regulates conduct subject to First Amendment protection because photos and visual recordings are inherently expressive. It seeks to curtail nonsensual taking and dissemination of photos and visual recordings of another person's intimate area. The sexual subject matter sought to be proscribed renders the statute content based.


- Under State v. Cortez, 543 S.W.3d 198, 203
(Tex.Crim.App. 2018), review of a trial court's ruling on a MTS is for an abuse of discretion. The record is viewed in the light most favorable to the trial court's ruling and the judgment is reversed only if it is outside the zone of reasonable disagreement.


- Under *Long v. State*, 132 S.W.3d 443, 448 (Tex. Crim.App. 2004), the scope of a search warrant is governed by the terms of the warrant, which includes spatial restrictions and items to be seized. A search under a warrant extends to the entire area covered by the warrant's description. When courts examine the description of the place to be searched to determine the scope, they follow a common sense and practical approach, not a “Procrustean” or overly technical one. When the scope is challenged based on the location of the search, the officer must show that he was properly in the place where the item was found either on the basis of the warrant or under an exception to the warrant requirement.

- Under *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990), what is generally demanded of factual determinations that must made by the magistrate issuing a warrant or the officer executing it is not that they always be correct but they be reasonable. There is no Fourth Amendment violation if an officer makes a warrantless search of apartment based on reasonable belief that he had valid consent even if he did not.

- Under *State v. Villarreal*, 475 S.W.3d 784, 795 (Tex.Crim.App. 2014), to comply with the Fourth Amendment, a search of a person per a criminal investigation: (1) requires a search warrant or a recognized exception to the warrant requirement, and (2) must be reasonable under the totality of the circumstances.

- Under *Ybarra v. Illinois*, 444 U.S. 85, 88 (1979), a premises warrant authorizes police to search any item that might contain the object of the search but does not authorize the search of a person it does not name because searches of a person involve a higher degree of intrusive-ness and require justification in addition to that provided by the probable cause that supports a premises warrant.

- Under Tex. Rule App. Proc. 44.2(a), *Williams v. State*, 958 S.W.2d 186, 194 n.9 (Tex.Crim. App. 1997), and *Chapman v. California*, 386 U.S. 18, 24 (1967), an appellate court must reverse a conviction unless it concludes beyond a reasonable doubt that the error did not contribute to the conviction or the punishment. The burden is on the State to prove that the error was harmless—did not contribute to the conviction or punishment.

- Under *Holmes v. State*, 323 S.W.3d 163, 173-174 (Tex.Crim.App. 2009), where a trial court’s failure to permit defendants to present a defense could not be determined beyond a reasonable doubt not to have contributed to decision to enter pleas, the conviction must be reversed.

Facts:

- G.P. (a minor) was trading sexually explicit Instagram messages with 43-year old Lamb. G.P. attempted suicide after her mother confronted her about the messages.

- Officer Massey of the Reno PD learned that G.P. told Lamb that she was 15. Lamb attempted to claim that his son sent the messages, but the
timing of the messages precluded that likelihood

• Massey executed an affidavit seeking a search warrant of Lamb's property, including outbuildings and motor vehicles: “120 County Road 12550, Lamar County that has a brown wooden shop with the east side painted beige with a white camper trailer parked beside it. The address is displayed in front of the home on the mailbox...probable cause... that occupants... [was/were] in possession of cellphones, computers, and digital media storage devices that may contain sexually explicit material and messages with a minor child.” A search warrant issued as Massey requested.

• Lamb filed a MTS two cellphones. At the hearing, Massey testified that no one was present when he and other officers arrived. Lamb arrived during the search, pulled off the road, and parked. Massey could not testify about the property line or say whether Lamb's vehicle was on the property described in the warrant.

• Lamb exited of his vehicle and asked the officers what was going on. Massey believed that Lamb was on the property described in the warrant and because Lamb parked his truck on the gravel, the truck was also on the premises. Although the search warrant did not authorize a search of Lamb's person and Massey was aware of this, Massey removed Lamb's cellphone from his pocket. Massey directed the other officers to search Lamb's vehicle, in which they seized a second cellphone.

• The trial court denied the MTS.

The trial court did not err by denying the MTS the seizure of the cellphone from Lamb's truck. The trial court erred by denying the MTS the seizure of the cellphone from Lamb's person, and Lamb was harmed

Editor's note: this is the standard for review of a MTS:

• Under State v. Cortez, 543 S.W.3d 198, 203 (Tex.Crim.App. 2018), review of a trial court's ruling on a MTS is for an abuse of discretion. The record is viewed in the light most favorable to the trial court's ruling and the judgment is reversed only if it is outside the zone of reasonable disagreement.


• The search warrant authorized the search of any and all motor vehicles located on the premises of 120 County Road 12550. Massey did not know where the surveyed property line was located, but he believed that Lamb left the roadway. Massey believed that Lamb's truck was on the premises or curtilage of his property. Even if Massey was mistaken in this belief, the search was valid because it was reasonable.

• The affidavit described Lamb as having a special connection with the premises because he was alleged to have been in control of it. Thus, Lamb was subject to detention incident to the execution of the search warrant. However, the warrant did not include authority to search Lamb. Lamb was not identified in the warrant as a subject of the search. The State had to prove the search occurred without a warrant. The State had to justify the warrantless search by proving an exception.

• The exceptions to the rule that a search must be based on a warrant are voluntary consent and exigent circumstances. There is no evidence that Lamb consented to the removal of his cellphone from his person. The cellphone was not in plain view.

• Because the State failed to carry its burden to prove that an exception to the requirement of a search warrant applies—and the record supports no such exception—the search of Lamb's person was constitutionally impermissible.

• Under Tex. Rule App. Proc. 44.2(a), Williams v.
State, 958 S.W.2d 186, 194 n.9 (Tex.Crim.App. 1997), and Chapman v. California, 386 U.S. 18, 24 (1967), an appellate court must reverse a conviction unless it concludes beyond a reasonable doubt that the error did not contribute to the conviction or the punishment. The burden is on the State to prove that the error was harmless—did not contribute to the conviction or punishment.

- The State had the burden to show that the trial court's error in failing to suppress this cellphone was harmless. The record does not disclose what evidence was contained on the cellphone. After the trial court denied the MTS, Lamb pleaded guilty.
- Under Holmes v. State, 323 S.W.3d 163, 173-174 (Tex.Crim.App. 2009), where a trial court's failure to permit defendants to present a defense could not be determined beyond a reasonable doubt not to have contributed to decision to enter pleas, the conviction must be reversed.
- Because the court of appeals cannot conclude beyond a reasonable doubt that the denial of the MTS did not contribute to Lamb's guilty plea, the trial court's judgment denial of the MTS is reversed.


- Under In re McCann, 422 S.W.3d 701, 704 (Tex. Crim.App. 2013) (orig. proceeding), to be entitled to mandamus relief, a relator must show (1) that the relator has no adequate remedy at law for obtaining the relief the relator seeks; and (2) what he seeks to compel is a ministerial act rather than a discretionary act. A ministerial act does not involve judicial discretion but must be positively commanded and so plainly prescribed under the law as to be free from doubt. The relator must have a clear right to the relief sought. To show a clear right to the relief sought, a relator must show that the facts and circumstances of the case dictate but one rational decision under unequivocal, well-settled and clearly controlling legal principles. Even if there is a remedy at law, the relator can show that no adequate legal remedy exists if the remedy is so uncertain, tedious, burdensome, slow, inappropriate, or ineffective as to be deemed inadequate.


- Under Tex. Disciplinary Rules Prof. Conduct 3.08(b), a lawyer shall not continue as an advocate in a pending adjudicatory proceeding if the lawyer believes that he will be compelled to furnish testimony that will be substantially adverse to the client unless the client consents after full disclosure. Comment 10 provides that a lawyer should not seek to disqualify opposing counsel under Rule 3.08 merely because the opposing lawyer's dual roles may involve an improper conflict of interest with the opposing lawyer's client because it is a matter to be resolved between lawyer and client or in a subsequent disciplinary proceeding. Rule 3.08 does not warrant disqualifying counsel unless his testimony is necessary to an essential fact; if so, the opposing party must show that it will be prejudiced if counsel is not removed. Mere allegations of unethical conduct or a remote possibility of a violation of the disciplinary rules do not merit disqualification.
tion. The fact that a lawyer serves as advocate and a witness does not by itself compel disqualification. Rule 3.08 is a disciplinary standard, not a procedural rule for attorney disqualification, but courts often reference it as a guideline when determining whether a lawyer should discontinue representation.

- Under Landers v. State, 256 S.W.3d 295, 303 (Tex.Crim.App. 2008), when the trial court disqualifies an attorney, review is for an abuse of discretion. When reviewing factual determinations, almost total deference is given to findings that the record supports, especially if they turn on evaluating credibility and demeanor. When reviewing how the trial court applied the law to the facts, review is de novo.

- Under United States v. Gonzalez-Lopez, 548 U.S. 140, 150 (2006), the erroneous deprivation of the right to counsel of choice, with consequences that are unquantifiable and indeterminate, is structural error. Under Gonzalez v. State, 117 S.W.3d at 831, 836-837 (Tex.Crim. App. 2003), although the right is not limitless, defendants have the right to choose retained counsel, and the State's burden in getting him removed is a heavy one. The State must demonstrate actual prejudice and showing only a possible future disciplinary-rule violation does not suffice. While a strong presumption favors a defendant's right to retain counsel of choice, the judicial process's integrity and fair and orderly administration may override the presumption.

- Under Fuentes v. State, 664 S.W.2d 333, 335 (Tex.Crim.App. [Panel Op.] 1984), the State may not strike at a defendant over the shoulders of his counsel or accuse counsel of bad faith.

A court cannot impose monetary sanctions for violations of Art. 39.14(h).


- Under State v. Ford, 537 S.W.3d 19 (Tex.Crim. App. 2017), a defendant can commit theft before leaving a store with the property. Placing items in a personal bag is appropriation and shows the requisite intent to deprive.

- Under State v. Martinez, 569 S.W.3d 621, 623-624 (Tex.Crim.App. 2019), when a defendant seeks to suppress evidence per a Fourth Amendment violation, the defendant initially bears the burden of proof, which is met by establishing that a search or seizure occurred without a warrant. The burden shifts to the State to show the reasonableness of the search or seizure.

- Under State v. Steelman, 93 S.W.3d 102, 107 (Tex.Crim.App. 2002), an officer may arrest without a warrant only if probable cause exists with respect to the suspect, and the arrest falls within one of the exceptions set out in Tex. Code Crim. Proc. Art. 14.01. The State must show compliance with one of the exceptions for a warrantless arrest in addition to support by probable cause. Probable cause may be based on an officer's prior knowledge and personal observations, and he may rely on reasonably trustworthy information provided by another in making the overall probable cause determination.


- Tex. Code Crim. Proc. Art. 39.14(h) does not provide for the imposition of monetary sanctions against prosecutors who violate it. Nor does it identify sanctions that can be imposed.
## TCDLA Family Violence • Telling a Trial Story Registration

### Contact Information

Name ___________________________ Bar Number ___________________________
Street Address ___________________________ Cell # ___________________________
City ___________________________ State ______ Zip ___________________________
Phone ___________________________ Fax ___________________________ Email ___________________________

### Early Registration (includes electronic materials; order by 9/11)

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<th>Telling a Trial Story</th>
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<td>$165</td>
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<td>Livestream</td>
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<table>
<thead>
<tr>
<th>Non-Member</th>
<th>Both ($SAVE $$$)</th>
<th>Family Violence</th>
<th>Telling a Trial Story</th>
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<tbody>
<tr>
<td>In-Person</td>
<td>$560</td>
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**Add On**
- BOOK - $60

### Registration After 9/11

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**Add On**
- BOOK - $60

### Not Attending

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<td>USB materials</td>
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<td>Books</td>
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### Join TCDLA

- **New Member** and Second-Year Member $100
- **Renew Membership** $180
- **Prefer Not to Participate in Auto Renewal**

For your convenience, TCDLA uses AUTO-RENEWAL for all membership dues, using your checking account or credit card. You will be automatically enrolled in the auto-renewal program, so you do not have to do anything while continuing to enjoy membership benefits every year! You can always opt out of auto-renewal anytime by simply emailing mrendon@tcdla.com or by checking the opt-out option above.

* **TCDLA New Membership**
To sign up as a new member you will need a nominating endorsement from a current TCDLA member.

**TCDLA endorser’s name (please print) ___________________________ TCDLA endorser’s signature ___________________________

### Payment Information

- **Check**
- **Credit Card**

<table>
<thead>
<tr>
<th>Credit Card Number</th>
<th>Expiration</th>
<th>Signature</th>
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**Tax Notice:** Dues to TCDLA are not deductible as a charitable contribution. As an ordinary business expense the non-deductible portion of membership dues is 25% in accordance with IRC sec. 6033.

A092420 and A092520_broch
Family Violence

Course Directors: Kristin Brown, Jeremy Rosenthal, and Greg Westfall

The Sheraton Arlington Hotel
Arlington, Texas
USB: $315
Add book: $60
$139 S/D
Cutoff date: 9/02/20, or when room block is full,
  whichever occurs first
Sheraton Arlington: 800-325-3535
TCDLA: 512-478-2514
Register online at www.TCDLA.com

Telling a Trial Story

September 25, 2020