Dallas Bar Association

HEADNOTES

May 2011 | Volume 36 | Number 5 | Focus | Criminal Law

Dallas Minority Attorney Program

On April 1, the Dallas Minority Attorney Program presented its annual program, which is designed to meet the unique challenges facing the minority or female attorneys practicing in a small firm or as a solo practitioner. In attendance were (left to right) Michele Wong Krause, event organizer; Betty Balli Torres, speaker and Executive Director of the Texas Access to Justice Foundation; Pablo Almaguer, speaker and Chair of the Board State Bar of Texas; and organizer Rhonda Hunter.

As part of the day-long program, two judicial panels were presented. Some of the participating judges included (left to right) Hon. Ken Tapscott, Hon. D'Metria Benson, Hon. Carlos Cortez, Hon. Brenda Thompson, Hon. Tena Callahan, Hon. Jim Jordan and Hon. David Lopez.

Sarah Saldana, of the U.S. Attorney's Office, started the day with a review of "Ethics in the Courtroom."

Attendees at the free event were able to meet and mingle with attorneys from a variety of practice areas and backgrounds.

Focus | Criminal Law

Losing Your Guns: Collateral Consequences

BY KEVIN B. ROSS

A person charged with a criminal offense will often ask about the potential consequences they face. Will they go to prison or jail? Are they eligible for probation? What type of conditions of probation would be imposed? What will the fines and court costs be? But they tend to overlook the collateral consequences they face if they are convicted or receive deferred adjudication probation or ordinary probation for certain types of criminal offenses.

One potential collateral consequence for certain criminal convictions is the loss of the right to possess firearms. People have and use guns for a variety of reasons, but three of the most common reasons are: (1) recreation (i.e., hunting and target shooting); (2) protection (i.e., in the home or on their person); and (3) collection(i.e. antique guns, rare guns, family heirlooms, etc.). But when can they lose their right to possess a firearm and can the right ever be restored?

At both the state and federal levels, certain criminal convictions can affect the right of a person to possess firearms. In Texas, a person convicted of any felony offense may not possess a firearm for five years after release from confinement, community supervision or parole, whichever is later. Texas Penal Code § 46.04(a). Moreover, a person convicted of an offense under section 22.01 of the Texas Penal Code (Assault–Family Violence), punishable as a Class A misdemeanor and involving a member of the person's family or household, may not legally possess a firearm before the fifth anniversary of the later of the date of the person's release from confinement or community supervision. TPC §46.04(b).

Federal laws are also important to understand. Under 18 U.S.C. § 922(g)(1), no person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year may possess, ship, receive, or transport a firearm or ammunition. A sentence exceeding

CONTINUED ON PAGE 8

Criminal Appeals Seminar at Belo

(Above) Participants in the March 18 Criminal Appellate & Post-Conviction Seminar, hosted by the Criminal Law Section and the CLE Committee, included (left to right): Hector Garza, Criminal Law Section Vice Chair, Stephanie Luce, Robert Udashen, DBA President Barry Sorrels, Criminal Law Section Treasurer Cynthia Garza, Criminal Law Section Chair Gary Udashen and Bruce Anton.

(Right) Included in the day's events was a session from the Appellate Justices' Perspective and included Justices Molly Francis, Kerry FitzGerald and Lana Myers.

Inside

Calendar | May Events

Visit www.dallasbar.org for updates on Friday Clinics and other CLEs.

FRIDAY CLINICS

MAY 6 – BELO
Noon *"Mandamus Proceedings at Fifth District Court of Appeals," Marilyn Houghtalin and Elizabeth Stepp.* (MCLE 1.00)*

MAY 13 – NORTH DALLAS**
Noon *"Practicing Law and Wellness," Dan Garrigan. At Two Lincoln Centre, 5420 Lyndon B. Johnson Frwy, Suite 240, Dallas, TX 75240. Parking is available in the Visitor's Lot in front of the entrance to Two and Three Lincoln Centre. There are several delis within the building; food is allowed inside the conference room. Thank you to our sponsor Griffith Nixon Davison, P.C.* (Ethics 1.00)*

MAY 20 – BELO
Noon *"Jury Selection and Communication Techniques," Lisa Blue.* (MCLE 1.00)*

MONDAY, MAY 2

Noon **Tax Section**
"*Canal Corp: Tax Opinions and Penalties," Bill Bowers.* (MCLE 1.00)*

Peer Assistance Committee

5:30 p.m. Bar None Production Company Rehearsal

TUESDAY, MAY 3

Noon **Corporate Counsel Section**
"*Your Executive Under Oath," Dan Gus.* (MCLE 1.00)*

Government Law Section
"Bankruptcy Basis for Governmental Entities," Misti L. Beanland and Christen C. Paquin. (MCLE 1.00)*

Tort and Insurance Practice Section
"*Stower's Discussion Update: Plaintiff and Defendant's Perspective,"Chris Martin, Paul Gold and Mike Huddleston, moderator.* (Ethics 1.00)*

Morris Harrell Professionalism Committee

5:30 p.m. Bar None Production Company Rehearsals

WEDNESDAY, MAY 4

Noon **Employee Benefits/Executive Compensation Section**
"Form 5500 Reporting, Audit, Compliance and Enforcement," Stefan Smith and Louise Duble. (MCLE 1.00)*

Solo & Small Firm Section
"*Preparing Your Witness for Deposition," Andrew Sommerman and George "Tex" Quesada.* (MCLE 1.00, including Ethics 0.15)*

Public Forum Committee

DAYL Judiciary Committee

5:00 p.m. **Bankruptcy and Commercial Law Section**
"From the Pitch to the Hit: Hot Topics in Pitching and Representing Creditors' Committees," Brian Kilmer and Matt Okin. (MCLE 1.00)*

5:30 p.m. Bar None Production Company Rehearsals

THURSDAY, MAY 5

Noon **Construction Law Section**
"*Design Professional Liability; Part 2: the Professional's Perspective," Richard Capshaw.* (MCLE 1.00)*

Legal History Discussion Group
"Pro-Slavery and Anti-Slavery Interpretations of the 'Privileges and Immunities of Citizens'," Prof. David Upham. (MCLE 1.00)*

Judiciary Committee
"Meet Your Judges: A Conversation With the Newly Elected Civil & Probate Judges," Hon. Tonya Parker, Hon. Brenda Thompson, Hon. Dale Tillery, Hon. Chris Wilmoth and Hon. Craig Smith, moderator. (MCLE 1.00)*

DAYL CLE Committee

Family Law Section Board Meeting

St. Thomas More Society

1:30 p.m. DBA Golf Tournament at Cowboys Golf Club, Grapevine, TX

5:30 p.m. Bar None Production Company Rehearsals

FRIDAY, MAY 6

8:15 a.m. **Juvenile Delinquency Seminar**
Sponsored by the Juvenile Justice Committee. To register contact ahernandez@dallasbar.org. (MCLE 7.25, Ethics 1.00)*

Noon **Friday Clinic – Belo**
"Mandamus Proceedings at Fifth District Court of Appeals," Marilyn Houghtalin and Elizabeth Stepp. (MCLE 1.00)*

Lawyer Referral Service Committee

SUNDAY, MAY 8

10:30 a.m. Mother's Day Brunch at Belo.
Adults: $39, Children 6-12: $13. RSVP to Linda Werner at (214) 220-7470 by May 6.

MONDAY, MAY 9

Noon **Alternative Dispute Resolution Section**
"ADR With Recently Elected Judges," Judges Tonya Parker, Brenda Hull Thompson, Dale Tillery and Chris Wilmoth. (MCLE 1.00)*

Real Property Law Section
"Insurance Issues Relating to Real Estate," Aaron Johnston. (MCLE 1.00)*

5:30 p.m. Bar None Production Company Rehearsals

TUESDAY, MAY 10

Noon **Business Litigation Section**
"Proving and Defending Lost Profits Damages," Hon. Martin Lowy. (MCLE 1.00)*

Mergers and Acquisitions Section
"In-House M&A Counsel Roundtable: Effective Partnering Between Inside & Outside on M&A Deals," David Babin. (MCLE 1.00)*

Admissions & Membership Committee

Entertainment Committee

DAYL Equal Access to Justice Committee

5: 30 p.m. Bar None Production Company Rehearsals

6 p.m. Home Project Committee

DAYL Board of Directors

WEDNESDAY, MAY 11

7:45 a.m. Dallas Area Real Estate Lawyers Discussion Group

Noon **Family Law Section**
"Psychiatric Diagnoses on the Stand: a DSM-IV Primer," Dr. John Zervopolous. (MCLE 1.00)*

House Committee Walk Through

5:15 p.m. LegalLine—Volunteers welcome. Second floor Belo.

5:30 p.m. Bar None Production Company Rehearsals

THURSDAY, MAY 12

11:30 a.m. DAYL Barristers for Babies

Noon CLE Committee

Publications Committee

Dallas Asian American Bar Association

Christian Lawyers Fellowship

DAYL Rangers CLE. *For more information, contact Cherie Harris at cherieh@dayl.com.*

Local Rules Working Group

5:30 p.m. **Annual Evening Ethics Fest**
Registration deadline: March 2, 5:00 p.m. Pricing: $65 DBA members/$135 non-member. Contact Alicia Hernandez at (214) 220-7499. (Ethics 3.00)*

Bar None Production Company Rehearsals

6 p.m. J.L. Turner Legal Association

FRIDAY, MAY 13

11:45 a.m. **Annual Law Day Luncheon**
Keynote speaker: Hon. Sidney Fitzwater. To purchase tickets, visit www.dallasbar.org, or contact mdilda@dallasbar.org.

Noon **Friday Clinic – North Dallas****
"*Practicing Law and Wellness," Dan Garrigan. At Two Lincoln Centre, 5420 Lyndon B. Johnson Frwy, Suite 240, Dallas, TX 75240. Parking is available in the Visitor's Lot in front of the entrance to Two and Three Lincoln Centre. There are several delis within the building; food is allowed inside the conference room. Thank you to our sponsor Griffith Nixon Davison, P.C.* (Ethics 1.00)*

Trial Skills Section
"The Art of Cross Examination," Brian Hail. (MCLE 1.00)*

MONDAY, MAY 16

8:00 a.m. **Lights! Camera! Courtroom!**
An exciting FREE legal media training program, brought to you by Androvett Legal Media & Marketing and the DBA Media Relations Committee. Speakers: Mike Androvett, Mark Annick and Mary Flood. (MCLE 3.50, including Ethics .50)* *RSVP to jsmith@dallasbar.org*

Noon **Labor & Employment Law Section**
"Woeful Tales of Tax Withholding" Helping Your Client Avoid IRS Employment Tax Issues," Anthony Daddino. (MCLE 1.00)*

5:30 p.m. Bar None Production Company Rehearsals

TUESDAY, MAY 17

Noon **Antitrust & Trade Regulation Section**
"Defending the Criminal Antitrust Case," Paul Coggins. (MCLE 1.00)*

International Law Section
"Latin American Energy Developments for 2011," Larry B. Pascal. (MCLE 1.00)*

Community Involvement Committee

Law in the Schools and Community Committee

Speakers Committee

DAYL Animal Welfare Committee

DAYL Elder Law Committee

5:30 p.m. Bar None Production Company Rehearsals

WEDNESDAY, MAY 18

Noon **Energy Law Section**
"Receivorship," Travis Booher. (MCLE 1.00)*

Health Law Section
"Hospital Acquisitions of Physician Practices: A Legal and Valuation Analysis," Cheryl S. Camin, Lew Lefko and Don Barbo. (MCLE 1.00)*

Law Day Committee

Pro Bono Activities Committee

Municipal Justice Bar Association

Non-Profit Law Study Group

DAYL Lunch & Learn CLE. *For more information, contact Cherie Harris at cherieh@dayl.com.*

5:15 p.m. LegalLine—Volunteers welcome. Second floor Belo.

5:30 p.m. Bar None Production Company Rehearsals

THURSDAY, MAY 19

Noon **Appellate Law Section**
"Recent Changes to the Texas Pattern Jury Instructions: What Every Trial and Appellate Lawyer Needs to Know," Leane Capps Medford. (MCLE 1.00)*

Media Relations Committee

Minority Participation Committee

Summer Law Intern Program Committee

Christian Legal Society

Dallas Gay & Lesbian Bar Association

DAYL Freedom Run Committee

UPL Subcommittee

3:30 p.m. DBA Board of Directors

5:30 p.m. Bar None Production Company Rehearsals

DAYL Dinner & Dialogue. *For more information, contact Cherie Harris at cherieh@dayl.com.*

FRIDAY, MAY 20

Noon **Friday Clinic – Belo**
"*Jury Selection and Communication Techniques," Lisa Blue.* (MCLE 1.00)*

Transition to Law Practice Committee

MONDAY, MAY 23

Noon **Computer Law Section**
"Legal Issues in the Historical Development of the Internet: The Five Big Bang Theory," Peter S. Vogel. (MCLE 1.00)*

Securities Section
"*Application of Broker and 'Pay to Play' Rules to In-House and Third Party Marketers," George Lee.* (MCLE 1.00)*

Criminal Justice Committee

Golf Tournament Committee

DAYL Solo & Small Firm

5:30 p.m. Bar None Production Company Rehearsals

TUESDAY, MAY 24

Noon **Probate, Trusts & Estates Section**
"Tax Law Update," Prof. Stanley Johansen (MCLE 1.00)*

Courthouse Committee

American Immigration Lawyers Association

3:30 p.m. DAYL Swearing–In Ceremony

5:30 p.m. Bar None Production Company Rehearsals

WEDNESDAY, MAY 25

7:45 a.m. Dallas Area Real Estate Lawyers Discussion Group

Noon **Sports & Entertainment Law Section**
"Protecting an Artist's Legacy Through Estate Planning, Probate and Post-Death Administration of an Artist's Rights," Tamera Bennett and Ken Pajak. (MCLE 1.00)*

Juvenile Justice Committee

Legal Ethics Committee

DVAP New Lawyers Luncheon. RSVP to Chris Reed-Brown at reed-brownc@lanwt.org.

5:30 p.m. Bar None Production Company Rehearsals

THURSDAY, MAY 26

Noon **Collaborative Law Section**
"The Power of Neutrality in the Collaborative Process," David Brunson. (MCLE 1.00)*

Criminal Law Section
"Conviction Integrity Unit," Dallas DA Craig Watkins. (MCLE 1.00)*

Environmental Law Section
"Frac Attack in Your Backyard: Environmental Legal Issues Around Hydraulic Fracturing," Sarah K. Walls. (MCLE 1.00)*

Community Service Fund Board

DVAP Guardianship Ad Litem Certification Course. (MCLE 3.00)* For more information, reed-brownc@lanwt.org.

Senior Lawyers Committee

5:30 p.m. Bar None Production Company Rehearsals

FRIDAY, MAY 27

Noon **Intellectual Property Law Section**
"The Supreme Court's Review of the Federal Circuit: The Ninth Circuit of the Twenty-First Century?" John Elwood. (MCLE 1.00)*

DAYL Leadership Steering Committee

MONDAY, MAY 30

DBA offices closed in observance of Memorial Day.

TUESDAY, May 31

5:30 p.m. Bar None Production Company Rehearsals

6:00 p.m. **Road to Executive Leadership Program.** MCLE 1.00. Sponsored by the Minority Participation Committee. RSVP to ahernandez@dallasbar.org.

Dallas Hispanic Bar Association

Bar None presents "Bleep My Lawyer Says"

June 15-18 at the Greer Garson Theatre on the SMU Campus
All proceeds benefit the Sarah T. Hughes Diversity Scholarships.

To buy tickets, visit www.barnoneshow.com or contact Elizabeth Philipp at (214) 220-7487 or ephilipp@dallasbar.org.

If special arrangements are required for a person with disabilities to attend a particular seminar, please contact Cathy Maher at 214/220-7401 as soon as possible and no later than two business days before the seminar.
All Continuing Legal Education Programs Co-Sponsored by the DALLAS BAR FOUNDATION.
For confirmation of State Bar of Texas MCLE approval, please call Teddi Rivas at the DBA office at 214/220-7447.
****For information on the location of this month's North Dallas Friday Clinic, contact KZack@dallasbar.org.***

President's Column

Honoring the Profession

BY BARRY SORRELS

Do Your Part, Go Local

In Dallas right now, there is a movement that makes me very proud. I see it when I go to grocery stores, farmer's markets, restaurants, art and film festivals, neighborhood shops, and live entertainment venues. I am sure you are familiar with it, too. There is an increased focus on buying local food, using local ingredients, supporting local artists, and shopping at local stores. The people of Dallas and surrounding areas want to encourage the development of a sustainable, diverse, unique community in their own hometown. They believe the best way to do that is to support the local talent, products, and businesses, and I agree with them.

I believe that the same logic which causes people to "go local" within the community applies to their bar association as well. The Dallas Bar Association is your local bar association. Our programs and charities are for the benefit of the citizens of Dallas and our local legal community. When you give to the Dallas Bar Association—be it a donation of time, money, or expertise—that donation goes directly into your neighborhood and your city. With your generosity, we send lawyers to local schools to teach and mentor our youth about the law, we hold public forums to raise awareness about local issues within the community, we provide continuing legal education to our members, we build houses in our neighborhoods, and perhaps most importantly, our Dallas Volunteer Attorney Program provides legal advice and representation to the poor, disenfranchised members of our community who would otherwise not have access to our system of justice.

We cannot do these things without you and your support. It is because we have a membership, both large and involved, that we are able to concentrate our efforts and impact the community in significant ways. Whether you are a solo practitioner out of Irving or a partner at a firm actually headquartered in Washington D.C., you are a lawyer practicing in Dallas, Texas, and I encourage you to "go local" when you volunteer your time or donate your money to a charity. Dallas is our home. Let's do our part to support the schools, lawyers, and community that will surround us throughout our careers.

Upcoming events that primarily benefit our Dallas Volunteer Attorney Program are Law Jam, a Battle-of-the-Bands event at the highly regarded Granada Theater on August 20; the Pro Bono Golf Tournament, held at Cowboys Golf Club on May 5; and Bar None, a variety show with law-related song and dance ,will be held June 15-18 and benefits the Hughes Scholarship. These are three fun events that ultimately support great local causes. Please participate, volunteer, or sponsor these events. If you are interested, please contact Cathy Maher at cmaher@dallasbar.org.

Law Day

The month of May marks one of our signature events at the Dallas Bar Association. Law Day is observed every year in schools and bar associations across the United States in celebration of our nation's commitment to the rule of law. This year, **Kirby Drake,** of Klemchuk Kubasta, and **James Holmes**, of The Schmidt Firm, have once again done an excellent job co-chairing the Law Day committee. I asked them to stay in these positions for an extra year, and I am so grateful to them for agreeing to do so and for what they have accomplished. They work hand-in-hand with the schools to administer the Law Day art, photo, and essay competitions in the Dallas ISD and present a mock voir dire demonstration to the students in **Judges Martin Hoffman's** and **Kenneth Molberg's** Civil District Courts. Participating attorneys include **Lisa Blue**, of Baron & Blue, and **Richard Sayles**, of Sayles Werbner, P.C., just to name a few. It is so important in the development of these kids to give them opportunities to learn and reinforce their knowledge of justice using creative methods.

Their hard work culminates at the Law Day Luncheon on May 13 at the Belo Mansion. We are honored to celebrate Law Day with a keynote speech from Chief Judge of the Northern District of Texas, **Judge Sidney Fitzwater**, who will be introduced by **Tim Mountz** of Baker Botts. The luncheon will also celebrate the winners of the school competitions, and we will present the DAYL awards. It will be a day that makes you feel proud to be a lawyer in this great nation, and I hope that you will join us.

Media Training

Also in May, the Dallas Bar Association is offering the first of two seminars on Media Training. It will be a half-day morning seminar on Monday, May 16. This session, "Lights! Camera! Courtroom!" will be presented by **Mike Androvett**, **Mark Annick**, and **Mary Flood** of Androvett Legal Media. All three of these presenters have over 20 years of experience working in the media, and Mr. Androvett and Ms. Flood are also licensed attorneys. Their program will teach you about the world of editors and reporters in print and broadcast journalism and demonstrate for you how to interact effectively as a lawyer when the media wants to talk to you.

I believe the most important service the Dallas Bar provides its members is free continuing legal education. This is one of those special opportunities to attend a highly specialized, and normally very expensive, seminar for free. Thank you to the Androvett Legal Media team, and I look forward to seeing you there. Thank you also to Media Relations Committee Chairs **Lindsay Hedrick**, of Jones Day, and **Shannon Teicher**, of Jackson Walker.

Dragon Boat, Kite and Lantern Festival

A fun and family friendly experience is the Dragon Boat, Kite, and Lantern Festival in Las Colinas on Sunday, May 15. Our sister bar, the Dallas Asian American Bar Association has put together a team for the Dragon Boat Race and will compete against a team comprised of DBA Board of Directors and our other sister bars. Even if you aren't a member of the boat team, it would be a great opportunity to come out and support the DBA and its sister bars. Check it out at www.dfwdragonboatfestival.com.

Thank you

To all of the board of directors, as well as chairs and vice-chairs of committees and sections who have already successfully completed a number seminars, events, programs, and initiatives, I appreciate all of your hard work. Keep up the good work as we move on through the year. Thank you for the extra effort!

Board of Directors Roundup

Brad Weber, Chair, called the March 24 meeting to order and welcomed and introduced guests. He then introduced Veletta Lill, Executive Director of the Dallas Arts District, who gave an update on the current projects in the district, including the McKinney Avenue Trolley, City Performance Hall and the Woodall Rogers Park.

Kirby Drake, Co-Chair of the Law Day Committee, reported that the committee had received over 150 essays for the annual DISD Essay Contest. She encouraged everyone to be a part of the Lawyers in the Classrooms program and the Law Day Luncheon.

Co-Chairs of the Summer Law Intern Program, **Erin Peirce** and **Ryan McFarlin**, urged the Board to participate in the intern program and stated that 19 law firms had already signed up, but more were needed.

Aaron Davidson, Chair of the Antitrust Law Section, reported that his Section is doing well and recently donated $1,000 to the Pro Bono Golf Tournament.

Chair of the Real Property Law Section, **Peggy Heller**, stated that theirs is the second-largest Section with 900 members and that they will be providing a scholarship at SMU for the Real Property Estate Transaction Class.

Nelson Akinrinade, Co-Chair of the Golf Tournament Committee, reported that registration for this year's tournament is going well, but sponsorships are still needed. He also issued the annual Director's Challenge, asking the Board to commit to pay $1.00 for every tee shot that remains on the green of one par-three.

Justice Douglas Lang, ABA Delegate, briefed the Board on the ABA Mid-Year Meeting, reporting that matters such as uniform Collaborative Law and the decline in funding for legal services were hot topics.

Giving the final report on the Campaign for Equal Access to Justice**, Jerry Alexander** announced the record number of pledges totaled $713,606.76. The Board then adopted a resolution supporting funding for civil legal services to the poor.

In his President's Report, **Barry Sorrels** reported that the DBA has provided much service to the community so far this year, including helping 1,300 people through DVAP, 274 callers via Legalline and 5,279 people through the Lawyer Referral Service.

There being no further business, the meeting was adjourned.

HEADNOTES

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DALLAS BAR ASSOCIATION

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The DBA's purpose is to serve and support the legal profession in Dallas and to promote good relations among lawyers, the judiciary, and the community.

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DBA Sporting Clay Shoot

BY WES ALOST

On Saturday, April 2, DBA members and guests participated in the first Dallas Bar Association Sporting Clays event at Elm Fork Shooting Sports in Dallas. The event was organized and hosted by the DBA Entertainment Committee, chaired by **Jennifer King**, of Burford & Ryburn, L.L.P. Sporting Clays has been a popular activity at the DBA Bench/Bar Conference for several years. The April event, however, was the first DBA Sporting Clays event held in the DFW area. Proposed by DBA President **Barry Sorrels**, the event presented another opportunity for DBA members to network or simply socialize with peers, clients and family members.

For those unfamiliar with the activity, Sporting Clays has been referred to as "golf with a shotgun." Like golf courses, no two sporting clays courses are alike, and targets are presented in a variety of challenging ways. Rather than having clay targets thrown at consistent distances and angles as with other shooting activities, sporting clays courses are designed to simulate actual hunting conditions. Elm Fork Shooting Sports features two sporting clays courses, as well as skeet and trap facilities, and ranges for pistol, rifle and archery practice. **Scott Doggett**, of Burford & Ryburn, L.L.P., said the event was "a great opportunity to entertain clients and colleagues at a location that is 20 minutes from downtown Dallas, but seems hours away." **Todd Ramsey**, of the Payne-Mitchell Law Group, agreed: "It was a great opportunity for lawyers, clients and friends to enjoy each other's company, network together and take pleasure in the outdoors."

While the competition was friendly, high scorers were recognized. Mr. Doggett achieved the highest men's score, Ms. King achieved the highest women's score and **Julie Reedy**, of the Law Office of Julie C. Reedy, achieved the highest score for a beginner. **Todd Groves**, a guest of DBA member **Michael Hurst**, **Jim Rea** of McGuire, Craddock & Strother, P.C. and **Larry Flournoy** of Jordan, Houser & Flournoy, LLP, were also recognized as high scorers.

Based upon the positive feedback, the Sporting Clays event is expected to become an annual occurrence. If you would like to receive special notice of future DBA Sporting Clays events in the Dallas area, please email Rhonda Thornton at rthornton@dallasbar.org or **Wes Alost**, of Jones Carr McGoldrick, LLP, at wes.alost@jcmfirm.com. **HN**

Wesley S. Alost is a partner with Jones Carr McGoldrick, LLP practicing in the areas of products liability and commercial litigation. He can be reached at wes.alost@jcmfirm.com.

Focus | Criminal Law

The Do's and Don'ts In Taking Federal Criminal Appointments

BY RICHARD ANDERSON

The Do's

1. How to Get on the List

In Dallas, joining the list of attorneys eligible for criminal appointments is voluntary. The CJA panel attorneys list is administered by a committee appointed by the Chief Judge. Committee members consider an attorney's past federal court experience and if that attorney has been licensed in federal court for at least three years. The committee also considers indicators, such as prior extensive state criminal law experience and whether the attorney is in a firm or office-sharing arrangement with experienced federal criminal practitioners who can advise and work with the attorney.

There is also a mentoring program for those individuals who desire to be on the panel, but lack extensive federal criminal law experience, and a small stipend for the attorney going through this mentoring process.

2. Know Your Resources

The mission of the Federal Public Defender's Office is to provide assistance and education to court-appointed attorneys who are assigned federal criminal cases.

The best 24/7 resource for federal criminal practice issues is www.fd.org, the website for the Federal Defender Service. This website has an amazing breadth of information, including articles on current issues in sentencing and statistical information from the U.S. Sentencing Commission. For those appointed to a complicated case, there is a litigation support page at www.fd.org/odstb_litigationsupport.htm.

Our District's website, txn.fd.org, has links to the 12th Edition of Introduction to Federal Sentencing, covering the basics of federal sentencing. There are also links to the 5th Circuit blogs, the Supreme Court blogs, Sentencing Policy Blog and a list of every federal criminal case that has ever been reversed (and why). There are also links to CJA forms for handling an appointment.

3. Know Your Courts

The federal criminal practice is deadline-driven. The U.S. District Courts website lets you search for a link to your particular district to find the local rules. [www.uscourts.gov/Court_Locator.aspx] Many federal judges will also issue a scheduling order simultaneously with arraignment.

When in doubt, contact the courtroom deputy.

4. Be Aware of the Fee Structure

There are case maximums concerning both your fees and any investigative or expert witness fees. You need prior approval from the court for the compensation to exceed the maximum compensation allowed. You may be required to prepare a trial budget to submit to the court, ex parte, for approval before incurring the expense. The Northern District of Texas has online voucher forms to automatically calculate your compensation request.

5. See the Client Early

The initial interview is critical to establish trust and form an attorney-client bond that will be the basis for the important decisions to be made in the case.

The client needs to know that the federal system treats certain crimes much differently than do the state courts. The harsh reality of the federal system is that there is a higher probability of significant penitentiary time. All sentencing in federal courts is done by the judge using the Federal Sentencing Guidelines as a basis for the sentence imposed.

Before the initial interview, look at the guidelines for the particular offense and offender. Significant inquiry into your client's past criminal history is necessary, as career offender status, armed career offender status and other statutory enhancements to the sentence might apply.

6. Explain the Risk/Reward Options

The guidelines reward an individual for not going to trial. Your independent analysis of the guideline calculations is essential.

7. Be Diligent on Discovery

In preparing for trial or a plea, it is important to determine the quality of the information in the government's case. A request for discovery, whether made by letter or e-mail, should be documented early. You may need to attach that to a motion to compel to get the discovery that you believe you are entitled to, but do not file a form discovery motion. The judges are going to want specific requests for discovery.

8. Scrutinize the Plea Agreement and Factual Resume

Carefully review the language in the plea agreement and the factual resume. Explain to the client the ramifications of each document. Admitting facts in the factual resume that were not included in the indictment may result in a longer sentence based on sentencing guideline enhancements. The client must fully understand paragraphs in the plea agreement, such as waiver of appeal.

9. Always Go to the Presentence Report Interview with the Client

Unchallenged assertions in the presentence report set in stone the basis for guideline calculations and enhancements. Get a copy of the Form-1 probation interview in advance and go over it with your client. Remember, in the presentence interview, you are a lawyer, not a facilitator.

10. Objections Memorandums

If your client has a prior criminal history, pull the documents to determine if the prior indictment and guilty plea support any sentencing enhancements based on criminal history.

Objections to the presentence report go to guideline calculations, and any recommended sentencing enhancements, or departures. The sentencing memorandum serves a different purpose, allowing you to argue outside the guidelines about why a sentence different than that recommended by the guidelines is appropriate for your client.

It is the use of the sentencing memorandum and intelligent arguments for variances that allows the court to untether itself from the guidelines and formulate a sentence for both the offense and the offender.

The Don'ts

1. Do not take the AUSA's Guideline calculations as the gospel.

2. Do not fail to close the discovery/Brady loop before advising your client on taking a case to trial or entering into a plea.

3. Do not ever be afraid to ask an Assistant Federal Public Defender or an experienced federal criminal practitioner for help. **HN**

Richard A. Anderson was appointed by the Fifth Circuit to be the Federal Public Defender for the Northern District of Texas in 2006. He is a past-president of both the Dallas (1983) and Texas (1991) Criminal Defense Lawyers Associations, and past chairman (1986) of the Criminal Law Section of the State Bar. He can be reached at Richard_Anderson@fd.org.

But Aren't We Your Parents?

BY LORI ASHMORE PETERS AND GARY ASHMORE

Consider the following true story. A child leaves his parents' Texas home to attend college in Florida. When he is 19 years old and still attending school in Florida he is in a serious car accident, requiring a Care Flight to the nearest trauma center. His parents are notified by a school friend and immediately leave Texas for Florida.

Upon arriving at the hospital in Florida, the doctors will tell the parents nothing about the status of their child's condition or injuries. After several days in recovery, the hospital will not release the child upon the parents' request to relocate him to a rehabilitation facility in Texas. The child's landlord will not allow the parents to break the child's lease. The parents return home to institute a very costly and, at this point, a time-consuming, guardianship proceeding. They return to Florida with their stack of court papers, collect their child, take care of his lease arrangement and return home to Texas for months of physical therapy and rehabilitation.

What happened? Weren't they his parents? Couldn't they speak for their own child? Legally, the answer is "no." While the thought of something happening to our children that might leave them unable to speak for themselves is a difficult topic to consider, much less fully discuss with them, we think it is an important topic to address—before your children leave home.

Consider this: your child is away at college and has his identity stolen and needs help dealing with the financial institutions or credit card companies. Without the proper documents in place, the financial institutions cannot authorize you to access the bank account or credit card account in an attempt to manage or reconcile the problem. What can you do?

The legal age of majority in Texas, and in many other states, is 18. While most of us who have long surpassed the age of 18 still consider an individual of this age to be a "child"… legally, that "child" is an adult who is responsible for his or her own decision-making. Absent proper estate planning, there is no legal right for parents to make decisions for their children after they attain the legal age of majority.

When we think of "estate planning," we often think of death and dying and things you take care of later in life. However, estate planning involves not only death-time planning, but also lifetime planning for incapacity or disability.

For example, parents of college-aged or unmarried children should also plan for an emergency event in which it may be necessary to step in as "mom and dad" because of a disability or other incapacity—whether temporary or permanent. Estate planning for these types of situations should include statutory Durable Power of Attorney, medical Power of Attorney, HIPAA Authorization, and Advance Directive to Physicians ("Living Will"). **HN**

Lori Ashmore Peters and Gary Ashmore, owners of The Ashmore Law Firm, P.C., handle Probate and Estate Planning matters. They can be reached through their website at www.ashmorelaw.com or via e-mail at lpeters@ashmorelaw.com and gashmore@ashmorelaw.com, respectively.

Collateral Consequences

CONTINUED FROM PAGE 1

one year imprisonment is classified as a felony. Therefore, under federal law, it is unlawful for a person convicted of any felony offense, at any time, to possess a firearm.

Another statute, 18 U.S.C. § 922(g)(9), also makes it a federal offense for a person to possess, ship, receive or transport a firearm or ammunition if the person has been convicted in any court of a misdemeanor crime of domestic violence. Thus, a person simply possessing a firearm, if convicted of a Class C misdemeanor assault involving domestic violence, would be committing a federal crime.

Federal law, 18 U.S.C. § 922(n), makes it unlawful for a person to ship, transport or receive any firearm or ammunition while under indictment for a crime punishable by imprisonment exceeding one year. This is significant because a person placed on felony deferred adjudication under Texas Code of Criminal Procedure art. 42.12 §5 is still technically under a pending indictment.

Can a person who has been convicted of a felony offense ever have their right to possess a firearm restored? That's a tricky question. If a person is convicted and serves prison time, then for federal law purposes, they would always be considered a felon, even if state law allowed them to possess a firearm after the prescribed five-year period in TPC § 46.04. The state laws, in that situation, do not trump the federal law.

On the other hand, if a person was convicted of a felony and placed on community supervision, their right to possess firearms could be restored if the convicting court entered an order discharging the person from community supervision and specifically set forth in the order that the verdict is set aside or the guilty plea is withdrawn, dismisses the indictment and specifically releases the person from all penalties and disabilities resulting from the offense or crime of which the defendant was convicted or to which the defendant pleaded guilty. Tex. Code Crim. Proc. Art. 42.12 § 20. If the order does not specifically recite this statutory language, then the person would still run afoul of federal law. *See U.S. v. Sauseda*, 2001 WL 694490 (W.D. Tex., Jan. 10, 2001); *cf. Cuellar v. State*, 40 S.W.3d 724 (Tex. App. -- San Antonio, 2001); 18 U.S.C. § 921(a)(20). The other alternative is for the person to receive a pardon; those, however, are very hard to come by.

In summary, if a person has firearms and has been convicted of a felony offense or a misdemeanor offense involving domestic violence, they must be made aware of both the federal and state statutes regarding their ability to possess a firearm so they do not put themselves in further jeopardy of committing a new criminal offense. **HN**

Kevin B. Ross is a partner at Sorrels, Udashen & Anton. His practice focuses exclusively on State and Federal criminal offenses at both the trial and appellate level. He can be reached at kbr@sualaw.com.

Dedication of DBA's Habitat for Humanity House

Saturday, May 21, 10:00 a.m. at 6654 Cool Morn, Dallas, TX
Please join us as we turn over the keys to the homeowner.

DBA Home Project Wrap Party

Wednesday, May 25, 6:00 p.m.
St. Pete's Dancing Marlin, 2730 Commerce Street

Still Need to Make Your Donation?

The DBA's Home Project is building its 20th house for Habitat for Humanity, and your contributions are needed. To donate, log on to www.dbahp.com or make checks payable to Dallas Area Habitat for Humanity and mail to Teddi Rivas, c/o DBA, 2101 Ross Ave., Dallas, TX 75201.

JOIN THE DBA 100 CLUB
Membership is Now Open!

DALLAS BAR ASSOCIATION 100 CLUB

The Dallas Bar Association 100 Club is a special membership recognition category that reflects a commitment to the advancement of the legal profession and the betterment of the community. To become a member of the DBA 100 Club, every attorney in your Dallas office must be a member of the Dallas Bar Association. Firms, government agencies, law schools and corporate legal departments with two or more lawyers that become a DBA 100 Club member will be listed in Headnotes and in the 2012 DBA Pictorial Directory, receive a Certificate of Appreciation as well as recognition at our Annual Meeting in November.

This is the perfect time to encourage your newly hired attorneys to join the DBA and take advantage of our many member benefits—such as 400 FREE CLE programs offered each year, 29 substantive law Sections, numerous networking opportunities and community projects, plus many other member benefits as well as the opportunity to qualify for the DBA 100 Club.

The DBA 100 Club is open for renewal annually to every firm. We do not automatically renew a firm's membership due to changes in firm rosters from year to year. Please submit a request to our Membership Department for consideration.

To become a 2011 DBA 100 Club member, please submit your request via email including a list of all lawyers in your Dallas office to Kim Watson, kwatson@dallasbar.org. We will verify your list with our membership records and once approved, your firm will be added to the 2011 DBA 100 Club membership list!

If we receive your list by May 1, your firm will be included in the June, July and August DBA 100 Club listing in our Headnotes publication.

Send in your list TODAY!

Don't Miss Out on this Great Opportunity!

Focus | *Criminal Law*

Avoiding Criminal Tax Problems: Voluntary Disclosure

BY JOEL N. CROUCH

The federal tax system is a voluntary system that relies on taxpayers to completely and accurately report their income and deductions and pay their taxes. Taxpayers who intentionally underreport their income or over report their deductions risk significant criminal penalties. For taxpayers who have a guilty conscience or second thoughts, the *Internal Revenue Manual* has a voluntary disclosure practice that allows taxpayers to come forward to reduce the chance of a criminal investigation and prosecution.

Although an IRS voluntary disclosure does not automatically guarantee immunity from prosecution, historically the IRS has not pursued criminal charges against taxpayers who meet the requirements of the voluntary disclosure practice. A voluntary disclosure occurs when a taxpayer truthfully, timely and completely notifies the IRS of issues on tax returns or other documents filed with the IRS. In addition, a taxpayer must agree to cooperate with the IRS in determining his or her correct tax liability and make good faith arrangements with the IRS to pay in full any tax, interest and penalties determined by the IRS to be applicable.

Timeliness is the most important for a voluntary disclosure. A disclosure is timely if it is made before the IRS has initiated a civil examination or criminal investigation of the taxpayer, or before the IRS has notified the taxpayer that it intends to commence a civil examination or criminal investigation. A disclosure is not timely if it is made after the IRS receives information from either a third party alerting the IRS to the taxpayer's noncompliance or a criminal enforcement action, such as a search warrant or grand jury subpoena.

A taxpayer who is concerned that a third party, such as a former spouse, disgruntled employee or former business partner, may provide information to the IRS should consider making a voluntary disclosure before the third party contacts to the IRS. In these situations, establishing the day, and even the time, a disclosure was made to the IRS can be critical.

The IRS has publicly announced that it does not consider a "quiet disclosure" to be a voluntary disclosure as defined by the *Internal Revenue Manual*. A "quiet disclosure" is when a taxpayer files amended returns and does not notify the IRS or agree to cooperate and pay any resulting tax, penalty and interest in full. As a result, a taxpayer making a quiet disclosure risks exposure to a criminal investigation and possible prosecution.

In 2009, the IRS introduced a special variation of its voluntary disclosure practice, known as the Offshore Voluntary Disclosure Initiative (OVDI). The 2009 OVDI allowed taxpayers who had failed to disclose to the IRS offshore activities, such as offshore bank accounts and interests in foreign entities, to disclose this information to the IRS and thereby avoid potential criminal penalties and reduce potential civil penalties. Although the 2009 OVDI was available to all taxpayers, the genesis of the initiative was the agreement between the U.S. and Switzerland releasing 4450 names of U.S. persons with accounts at the Swiss bank, UBS.

Approximately 15,000 taxpayers, with bank accounts in more than 60 countries, came forward to participate in the 2009 OVDI, agreeing to pay additional tax for the years 2003 through 2008, a 20 percent penalty and interest on the additional tax due, and a penalty equal to 20 percent of the highest account balance during the years 2003 through 2008. Since the 2009 OVDI concluded on October 15, 2009, approximately 3,000 additional taxpayers have come forward to disclose their foreign activities to the IRS. The IRS has collected millions of dollars of taxes, penalties and interest from taxpayers who participated in the 2009 OVDI, making it, by far, the most successful IRS voluntary disclosure program.

In the wake of the focus on foreign activity, the IRS has investigated and prosecuted more than 30 cases and has obtained indictments and guilty pleas from taxpayers who did not participate in the 2009 OVDI and the professionals who advised the taxpayers. In addition, the IRS has continued its efforts to obtain information from foreign banks, including banks in Hong Kong, Israel and other jurisdictions beyond Switzerland. Hoping to duplicate the success of the 2009 OVDI, on February 8, 2011, the IRS announced the 2011 OVDI. The 2011 OVDI is similar to the 2009 OVDI, but with more restrictive terms and higher civil penalties. The deadline for participating in the 2011 OVDI and submitting all necessary information, including all amended tax returns, is August 31, 2011. **HN**

Joel Crouch, a partner at Meadows, Collier, Reed, Cousins, Crouch & Ungerman, L.L.P. is Board Certified in Tax Law and handles civil and criminal tax controversies. He can be reached at jcrouch@meadowscollier.com.

Eight Essentials for Guardianship

BY DONNA J. YARBOROUGH

The guardianship suit presents what is often uncharted territory for the newcomer including where there are special courts (the Probate Courts) and special statutes found in the Texas Probate Code. The key issue in a guardianship case is proving to the court that a proposed ward is "incapacitated" so that the court will step in and appoint a qualified person to act on the ward's behalf. The eight essentials which follow are key points about guardianship litigation that the unwary newcomer may overlook.

1. **Determine if your client is qualified to serve**. When considering a potential guardianship case, is your client—the person seeking to be appointed as guardian—"qualified" to serve? TPC § 681. The statutory disqualifications would be triggered if your client owes the proposed ward money, has an adverse claim against the proposed ward or for any other good reason is incapable of properly or prudently managing and controlling a ward or a ward's estate. Even if you feel your client is qualified, always state in your application for guardianship that in the alternative you want a qualified third party to be appointed as the guardian in the event your client does not get appointed by the court.

2. **Decide what type of guardianship you are seeking**. Two types of guardianships are available in Texas courts. One is the "guardian of the person" and the other is "guardian of the estate." You can seek either type of guardianship individually, or you can seek both types together in your application. Read the definition of "incapacity" in the Code carefully and determine what type of guardianship you are seeking. TPC § 3(p).

3. **Find out if your client qualifies for a bond**. Once you have determined that your client is qualified, determine if he or she can qualify for a bond. A bond is required in every guardianship over a person's estate. Contact a bonding company and get your client pre-approved so that there are no problems later after he or she is appointed by the court.

4. **Get a doctor's certification letter**. Before the court will appoint a guardian, the applicant for guardianship must file a Doctor's Certification Letter. TPC § 687. The local Probate Courts now use a specific form for these letters, so be sure you provide the correct form to the doctor to fill out. The Doctor's Certification Letter must be prepared by the physician not earlier than 120 days prior to the guardianship application being filed.

5. **Get medical proof in contested cases**. If the guardianship is contested by any party, then the Doctor's Certification Letter you have filed is hearsay. You will need to get the physician who prepared the report or another doctor familiar with the proposed ward's situation to appear at the hearing to testify about the proposed ward's incapacity.

6. **Call the proposed ward to testify at the hearing.** Always call the proposed ward to testify if you want your application to be granted. Subpoena the proposed ward through his or her attorney if you have to. If you have a lengthy guardianship proceeding, take the proposed ward's deposition to establish additional evidence.

7. **Get evidence of incapacity in the last six months.** Pursuant to TPC 684(c), a determination of incapacity must be evidenced by recurring acts or occurrences within the preceding six-month period and not by isolated instances of negligence or bad judgment. Get your proof in line, including witnesses who have seen the proposed ward in the preceding six months and have knowledge of these "recurring acts."

8. **Give the required statutory notice.** One of the easiest rules to miss in guardianship litigation is the Section 633 Notice. This statute requires that the attorney for the applicant give notice to all of the persons listed in TPC 633(d) and then file a notice with the court. Additionally, under TPC 633(f), a court cannot act on an application for guardianship until the Monday following the expiration of the 10-day period beginning on the date of service of notice and citation. Any guardianship created prior to the end of that 10-day notice period is void.

If you read the Probate Code sections carefully and follow the eight essentials listed above, you should be able to navigate through the world of guardianship law. The Probate Code also provides for a temporary guardianship under Section 875. This is a guardianship that is filed on an emergency basis. Temporary guardianships have their own deadlines and if you file one, be sure to review its specific requirements. **HN**

Donna J. Yarborough is an attorney at Staubus & Randall, L.L.P. Her practice focus includes guardianships, will contests, trust and fiduciary litigation and estate administration. She can be reached at djy@srllp.com.

Focus | *Criminal Law*

Law Enforcement Access to Your Client's Business Records

BY TED STEINKE

When agencies like the FBI, Secret Service, State Securities Board or the Dallas Police Department's Financial Crimes Unit want your client company's business records, here's how they'll probably get them:

Subpoena

Subpoenas duces tecum are the most widely used, primarily because they are easy to get. Probable cause is not required, and in the case of grand jury subpoenas, there is very little, if any, judicial oversight. On the other hand, records that are sought late in the game, i.e. after indictment and right before trial, must be obtained by court-ordered subpoena, which offers slightly greater protection.

As a general rule, a properly limited subpoena does not constitute an unreasonable search and seizure. So your client's Fourth Amendment rights are not ordinarily impacted. In addition, the United States Supreme Court has ruled that a subpoena for bank records is not barred by the Fourth Amendment, since those records belong to the bank, and not the customer. Said another way, your client has no standing to object to the bank's compliance with a grand jury subpoena duces tecum.

The Supreme Court has also held that a corporation has no Fifth Amendment privilege in the contents of its business records. A corporation is a "creature of the State," and the State retains "visitorial power" to investigate the corporation's activities. In addition, these records are normally created voluntarily and without government compulsion, and the Fifth Amendment protects only against compelled self-incrimination.

This is known as the "Collective Entity Rule" and has even been applied to unincorporated associations and partnerships. Bottom line . . . if your client voluntarily created the document, the fact that it is incriminating will not protect it from being subpoenaed. The Collective Entity Rule also applies to the contents of a sole proprietor's business records, even though they may be "personal" to the owner. Likewise, the corporate "custodian of the records" cannot claim a Fifth Amendment privilege, even though the records may incriminate that individual personally.

Finally, documents in possession of third parties, such as attorneys, are generally not protected by the Fifth Amendment, unless the client himself could have successfully asserted the Fifth. Thus, if the documents were originally obtainable from your client, not even the attorney-client privilege will protect them while in the attorney's hands. This rule has also been applied to accountants and bankruptcy trustees.

A subpoena, however, must be reasonable, i.e., (1) the documents sought must be relevant to the inquiry, (2) they must be adequately described and (3) the time period covered must be reasonable. A subpoena may be quashed or modified (either by the court overseeing the grand jury or the trial court) if compliance would be unreasonable or oppressive, or if it is overbroad or too indefinite. Courts have wide discretion, however, and the Supreme Court has held that a grand jury subpoena issued through normal channels is presumed reasonable, with the burden of proving otherwise resting with your client.

Search Warrant

The second method to obtain corporate records is by evidentiary search warrant. The long-standing rule is that there is no special sanctity in papers, as opposed to other types of evidence (drugs, guns, bloody clothes, etc.), that renders them immune from search and seizure. Both state and federal law authorize search warrants to be issued for property constituting evidence of criminal conduct, and the definition of "property" includes documents, books, papers and other tangible objects.

Since the Fifth Amendment adheres to the person, and not the incriminating information, it will not prevent the search of your client's corporate offices. However, the Fourth Amendment definitely is in play, and "general exploratory rummaging in a person's belongings" is frowned upon. As a result, search warrants have been ruled too broad when they seek "any and all" records of a target's business. But if the property is sufficiently described, or if a precise description is not possible, then the warrant will generally be approved.

Voluntary Production

The third way law enforcement could get your client's records is by voluntary production, i.e., former or current employees turning them over. Generally, as long as the documents were not stolen (i.e., the employee had a right to be on the premises with legitimate access to the records), they will be admissible against your client. **HN**

Ted Steinke spent 18 years in the Dallas DA's Office, primarily investigating and prosecuting white collar crime cases, before opening a solo criminal trial practice in 1994. He can be reached at ts@tedsteinke.com.

LAW DAY 2011

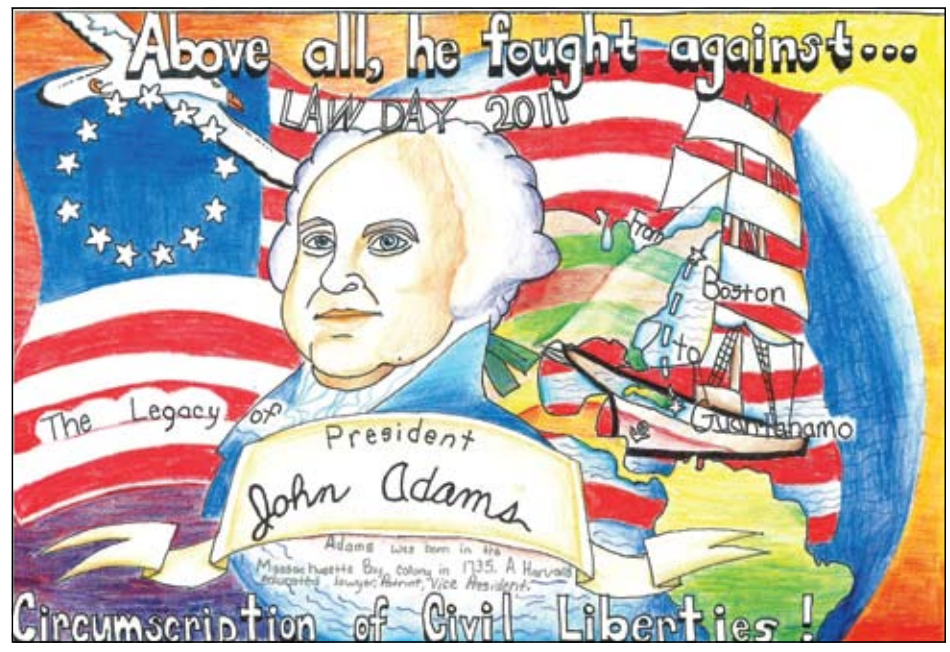
The Legacy of John Adams, From Boston to Guantanamo

Each year, the American Bar Association sponsors Law Day, and regional bar associations, including the Dallas Bar Association, host various events, programs and contests to commemorate the chosen theme. Law Day not only educates students and citizens about our government, but also the legal system itself. One of its main goals is to focus students' attention on important constitutional principles.

As part of the DBA's Law Day celebration, the association sponsors essay, art and photography competitions for Dallas ISD students in grades K-12. This year's winners depicted the Law Day theme of "The Legacy of John Adams, From Boston to Guantanamo." Here are some of this year's winning entries. You can see all the entries at the Law Day Luncheon on Friday, May 13, at the Belo Mansion with keynote speaker ***Hon. Sidney Fitzwater****, where the DBA will honor our judiciary and recognize the winners of this year's Law Day contests.*

Kirby Drake and James Holmes
Co-Chairs, DBA Law Day Committee

Alanna Mumphrey, 11th Grade
First-Place Winner
H. Grady Spruce High School



Daylon Franklin, 5th Grade
First-Place Winner
R.C. Burleson Elementary

The Legal System—to Have an Attorney or Not

Throughout history, people have been arrested and accused of severe crimes. Some have been guilty and some have been innocent. Should our legal system allow these accused people to have a lawyer fight for them? Should they even have the right to an attorney?

Some people would argue that people accused of severe crimes should not have a right to a lawyer because the accused knows they did something wrong and wants someone to fight for them and prove them not guilty. People believe the accused shouldn't have the right to a lawyer because, if the lawyer does prove them not guilty, they don't get the punishment that they should if they were really guilty.

Other people argue that everyone, regardless of the crime they are accused of, has the right to an attorney. Everyone is innocent until proven guilty. This is a right that is given to everyone living in the United States.

I believe that the legal system should provide a lawyer to the accused. If a person is falsely accused of a crime and they are actually innocent, a lawyer will fight for them to prove them innocent. Then they will be set free. But at the same time, innocent people are charged with a crime and found to be guilty.

The argument for or against a person having a lawyer can be a very emotional one. For instance, if someone killed my mother, and they were caught, I would not want them to have a lawyer. I would be very angry and sad and I would want that person to be executed. I just don't know what I would do if the person who killed my mother was found not guilty and got to go free.

Then there is the opposite situation where an innocent person, like me or a friend, could be accused of a severe crime, yet we are innocent. This is the best time to have a lawyer because they will be able to hopefully prove our innocence. However, if an innocent person is found guilty; one good thing about our legal system is that if a person is falsely charged of a crime, they can file an appeal against the person who falsely accused them.

Theis debate has been going on since John Adams defended the soldiers in the Boston Massacre. As I mentioned earlier, the legal system in the U.S. is not perfect and probably never will be. But I wouldn't want to live anywhere else.

Kaitlin Dinkle, 7th grade
First-Place Winner
T.C. Marsh Middle School

Focus | Criminal Law

Crimes Committed in the Law Office

BY HEATHER J. BARBIERI

Many of our seemingly innocent in-office activities can lead to ethical complaints, civil liability, and in some instances, criminal charges. Here, we will discuss those actions that can end in criminal charges. Even in cases where an individual is unaware that their actions constitute a crime, in the State of Texas, it is no defense to prosecution that the actor was ignorant of the provisions of any law once the law has taken effect. Texas Penal Code § 8.03.

Keep Your Hands To Yourself

Simply put, physical contact in the office can be dangerous. Obvious examples of assault are striking, kissing, or fondling another person, without their consent. But there are less obvious contacts that can be criminal. In Texas, a person commits Assault by Contact by intentionally or knowingly causing physical contact with another when the person knows, or should reasonably believe, that the other will regard the contact as offensive or provocative. TPC § 22.01(3).

Hugging, putting your arm around another person, and even a brief pat or massage, can be deemed an assault. Even if the actor did not realize the person would be offended, it will come down to whether the actor should have reasonably believed that the person would be. So the next time the urge comes to hug a fellow employee, or even a client, consider whether this gesture could offend the other party. If so, refraining from the contact would be prudent.

Computer Access Denied

When parting ways with an employer, some employees feel entitled to download files, motions, and other data stored on the firm's computer. However, without permission from the owner, that is a crime in Texas. It is a Breach of Computer Security to knowingly access, **or delete files from**, a computer, computer network or computer system without the effective consent of the owner. TPC § 33.02. An owner is simply a person who has title to the property, possession of the property, or a greater right to possession of the property than the actor. TPC § 1.07(35). This type of an offense can range from a Class B Misdemeanor up to a First Degree Felony, depending on the value of the benefit. The most effective way to avoid criminal liability is to obtain permission from the owner before downloading or deleting any firm files.

Surprisingly, even simply accessing another's computer to check a calendar, or double-check the status of a case, can constitute a Breach of Computer Security. Though probably a common occurrence, regardless of one's innocent intent, the act of knowingly accessing the other's computer without consent makes it a crime. This type of crime can be avoided through a written office policy or first obtaining permission.

Being Safe Can Be Criminal

Late night work hours, office location and even the fear of a client or an opposing party may cause some employees to want to carry protection. However, in Texas, it is a Class A misdemeanor to intentionally, knowingly or recklessly carry on, or about, one's person, a handgun, illegal knife or club. There is an exception if the actor is on his own premises or on premises under his control. But if an office, for instance, is not under the actor's control, the possession of a weapon therein is unlawful, and carries a punishment of up to one year in county jail and up to a $4,000 fine.

A Suspended License Is No License

Occasionally, and for numerous reasons, law licenses may be temporarily suspended. But if one is not a licensed attorney in good standing with the State Bar or licensing authority of the state, it is a crime to hold oneself out as a lawyer. If done with the intent to obtain an economic benefit, it is a third degree felony, punishable by up to 10 years in prison, and up to a $10,000 fine.

Thus, it is a crime to act as a lawyer while one's license is suspended, even briefly. In fact, it has been held that "the retroactive effect of the payment of State Bar dues had no effect on appellant's conviction for falsely holding himself out as an attorney while not in good standing with the State Bar." *Satterwhite v. State*. So, for the sake of caution, regardless of economic benefit, do not provide legal advice or act as an attorney, for any purposes, while not in good standing with the State Bar.

Read Before Signing

It is oftentimes referred to as "mispleading." But filing a document containing false information can easily lead to a charge of Tampering With a Governmental Record. It is an offense to "make, present, or use a governmental record with knowledge of its falsity." TPC § 37.10(5). It is not uncommon for such cases to be pursued by prosecutors. Since a filemarked motion, pleading or document is a governmental record, it is critical that all statements in it be true. Before signing a pleading, read it thoroughly to avoid the nightmare some attorneys have faced trying to avoid a felony conviction.

Unfortunately, there are many other possible crimes that people might commit without knowing the offenses exist. But fortunately, most offenses are more obvious, ensuring that the real crimes occur outside the office. **HN**

Heather J. Barbieri is a Board-Certified Criminal Defense Attorney. She can be reached at hbarbieri@barbierilawfirm.com.

Juvenile Delinquency Advanced Topics Spring Seminar

May 6, 2011 8:15 a.m. – 4:30 p.m., The Pavilion at the Belo Mansion

7.25 Hours Credit (including 1.0 ethics)

For rates and registration information, log on to

www2.dallasbar.org/events/register/jdseminar_signup.asp

Presented by the DBA Juvenile Justice Committee

Charles Matthews Receives Fellows Award

On March 30, the Dallas Bar Foundation presented Charles W. Matthews with the Fellows Award. In attendance were (left to right) Rob Roby, Chair; Harriet O'Neil, former Texas Supreme Court Justice, who introduced Mr. Matthews; Mr. Matthews; and Dallas Bar Association President Barry Sorrels.

DVAP's Finest

Nicola Shiels

Nicola Shiels is an associate at Patton Boggs, LLP. Since 2002, Nicola has actively volunteered with DVAP by representing individuals in cases involving family law, collections and estate planning, and serving as an intake attorney at the South Dallas and East Dallas clinics. Nicola's DVAP cases over the past nine years have included divorces, adoptions, wills, powers of attorney and suits in state court asserting violations of the Texas Deceptive Trade Practices Act, Texas Debt Collection Practices Act and breach of contract. In the past two years, the majority of Nicola's volunteer hours aided clients in divorces, half of which involved minor children. Thank you for all you do, Nicola!

Pro Bono: *It's Like Billable Hours for Your Soul.*

To volunteer or make a donation, call 214/748-1234, x2243.

DVAP
Dallas Volunteer Attorney Program

Law Day 2011

LAW DAY LUNCHEON

~ Honoring our State & Local Judiciary ~

Keynote Speaker: Honorable Sidney Fitzwater

Friday, May 13 at noon (doors open at 11:45 a.m.)

Tickets: $35. Tables of 10 are $350. Must be purchased in advance. For more information, visit www.dallasbar.org or contact Michelle Dilda at mdilda@dallasbar.org.

CALLING ALL VOLUNTEERS!

The U.S. District Court for the Northern District of Texas is seeking attorneys willing to accept appointments to represent pro se indigent parties in civil cases. This effort is part of a project to provide lawyers with opportunities to gain valuable experience by appearing in court for hearings and trials on a wide range of cases, including employment discrimination, civil rights, and a variety of diversity jurisdiction cases. Although appointed lawyers represent their clients pro bono, some funding is available to pay eligible expenses upon request. Plans are also in the works to provide free training for attorneys volunteering for the project as well as mentors to guide them through the system. Volunteering to appear on behalf of these litigants also provides an invaluable service to the court. Interested firms and attorneys may sign up on the Court's website at www.txnd.uscourts.gov.

In the News | May

FROM THE DAIS

Cyndi L. Watson, of Glast, Phillips & Murray, PC, spoke at the Senior Issues Forum sponsored by FirstMentors of the First United Methodist Church.

Trey Cousins, of Meadows, Collier, Reed, Cousins, Crouch & Ungerman, L.L.P., spoke to the San Antonio Estate Planning Council in San Antonio. **Chuck Meadows**, of the firm, spoke at the 2011 ABA White Collar Crime National Institute in San Diego, CA. **Charles Pulman** spoke to the DFW Financial Planning Association in Addison and **Josh Ungerman** addressed the American Association of Attorneys-Certified Pubic Accounts, Inc. in Dallas.

KUDOS

Suzanne Mann Duvall, of Burdin Mediations,was elected national President of the Association of Attorney-Mediators at its annual meeting in New Orleans. She also spoke at the 25th Annual Meeting of the Texas Association of Mediators in Austin.

Sharon Alice Pouzar, of Suzanne I. Calvert & Associates, has been certified by the Texas Board of Legal Specialization in Personal Injury law.

Sally Crawford, of Jones Day, was presented a Distinguished Alumni Award by the University of Texas at Dallas.

Veronica M. Bates, with Hermes Sargent Bates, LLP, has been elected to join The American Law Institute.

Kevin Chumney, **Michael Dubner**, and **Michael Peay**, of Gardere Wynne Sewell LLP, have been elected partners of the Dallas office.

ON THE MOVE

Alyson Gregory Richter has joined Taber Estes Thorne & Carr PLLC as Associate.

Zachery Z. Annable and **Edward L. Vishnevetsky** have joined Munsch Hardt Kopf & Harr, P.C.

Christopher A. Brown has joined Winstead P.C. as Associate.

Rachel D. Ziolkowski has joined Gruber Hurst Johansen & Hail as Senior Counsel.

Susan Hays, **Carolyn Raines**, and **Aimee Williams** have joined Godwin Ronquillo PC as Partners. **Sam Joiner** has joined the firm as a Senior Attorney.

Anthony Lowenberg has joined Goldfarb Branham, LLP.

Sean R. Cox has joined Kelly, Durham & Pittard, LLP as Of Counsel.

Kyle G. Basinger and **Jeffrey H. Shore** have joined the newly formed firm Basinger, Leggett, Clemons, Bowling, Shore & Crouch, PLLC, located at Granite Park Two, 5700 Granite Parkway, Suite 950, Plano, TX 75024.

Tresi Moore Weeks has formed The Weeks Law Firm, PLLC located at 2201 N. Central Expy., Suite 225, Richardson, TX 75080; phone (214) 269-4290.

Stephanie D. Curtis of The Curtis Law Firm, PC, has made **Mark A. Castillo** a Shareholder and changed the firm name to Curtis Castillo PC.

Judicial Investitures at Belo

The Judicial Investitures for Criminal Court Judges Teresa Hawthorne, Julia Hayes and Tina Yoo were held March 31 at Belo. In attendance were (left to right) Judge Lorraine Raggio, who performed the swearing-in ceremonies, Judge Hayes, Dallas Bar Association President Barry Sorrels, Judge Hawthorne and Judge Yoo.

Annual Evening Ethics Fest

Thursday, May 12, The Pavilion at the Belo Mansion
Check-In and Dinner begins at 4:45 p.m. Program begins at 5:30 p.m. (3.00 Ethics)

$65 DBA member early registration/$95 DBA member late registration
$135 non-member early registration/ $155 non-member late registration

Speakers include Justice Phil Johnson of the Texas Supreme Court, as well as local Dallas County Judges.

Early registration deadline: March 2, 5:00 p.m.

Mix and Mingle with your fellow Ethics Fest participants and speakers from 5:00-5:30 p.m.

For more information, log on to www.dallasbar.org or contact Alicia Hernandez at (214) 220-7499 or AHernandez@dallasbar.org.

Sponsored by the DBA Legal Ethics Committee

Classifieds | May

OFFICE SPACE

Galleria area. Located at Spring Valley and Dallas Parkway. 14 x 14 and 10 x 14 window offices available. Receptionist, telephone system, Internet, copier, two large conference rooms, kitchen, covered parking. Call Lilo (972) 490-0808.

Window offices at Premier Place, with elevator exposure. Reception area, conference room, kitchen, Internet and telephone system. Share space with real estate and business law practice. $1,800/month or $2,000/month for large office. Contact Robert McTaggart (214) 265-1914 or Robert@McTaggartLaw.com.

Time is Money! 3 miles from County Courthouse – 2 miles to downtown! Quality office space at lower than market prices – $18/sf. Includes electricity and free garage parking. 9 miles to Love Field Airport. Minutes to DART rail, Baylor University Medical Center, Dallas Arts District, SMU, Oak Lawn, West Village. Centrally located on major thoroughfares. Uptown Tower. 4144 N. Central Expressway. (972) 490-7348.

Walnut Glen Tower (Walnut Hill/Central) Beautiful, new, spacious offices in Class A building with views of downtown over lake with fountains. Lobby with glass elevators, 18-story atrium, waterfall, trees and true outdoors feeling indoors. Practice in a relaxed yet professional 4-lawyer environment which includes administrative stations, conference room, kitchen, copier, phone system, DSL, reserved garage parking, on-site restaurant and other amenities. Why not have quality of life while you practice? Please call (214) 750-1600 for details.

High-rise views at low-rise rates. Panoramic views from 63rd floor. Class-A downtown space close to courthouse, AV-rated law firm. Access to large conference room, library, kitchen. Secretarial, clerical, reception available. Offices available with very nice secretarial stations. Negotiable. Call Kay (214) 761-6463.

3 Months Free Rent. Executive or private offices available in Preston Tower. Shared amenities (kitchen, conference room, reception area, bathroom). Secretarial and paralegal assistance available. Near Preston Center, 10 minutes from courthouse. Call (214) 369-1171 or email herbhooks @aol.com.

Office space available within small real estate law firm located at 4054 McKinney Avenue. Shared conference and break room, furniture, copier, DSL & phone equipment are available if needed. No long term commitment and a total monthly rate of $550.00. For inquiry, please call (214) 520-0600.

Three adjacent corner offices on 41st Floor in high rise Class-A building near state and federal courthouses downtown. Includes secretarial station and conference room. Also, access to receptionist, phone system, Internet, copier, kitchen. Please call (214) 722-7110 for details.

POSITION AVAILABLE

Well established Texas law firm with offices throughout the state seeks commercial litigators and transactional attorneys, or practice groups, with 10+ years of experience. These positions are located principally in our Dallas and Houston offices. Mail resume, in confidence, to D Loyd Legal Recruiting, P.O. Box 251, Addison, Texas 75001, or email your response to dloyd@dloydlegalrecruiting.com.

Well-established Dallas family law firm interested in adding an attorney with family law experience, board certified or interested in future board certification and with the desire and ability to generate business. Send your confidential inquiries to wholmes@texfamlaw.com.

Downtown Dallas law firm focusing on risk management solutions, civil defense litigation, personal injury, transportation, employment claims, insurance coverage and commercial litigation seeks an attorney who wants the opportunity to control their own development and be recognized and rewarded for effective performance. We believe the ideal candidate would have a minimum of 4 years' experience and the ability to write, demonstrating effective analysis, creative problem solving, and communication skills. Send resume to monica.sharpless@whitecolaw.com.

In connection with our expansion, Helms & Greene is seeking an employment litigation partner for its offices in Houston, Dallas or San Antonio. A minimum of fifteen years' experience is required handling employment matters for management clients. Candidates should manage client relationships with carriers and corporations comparable to the organizations supported by the Firm. Compensation package will reward skills, relationships and experience. We would consider an employment litigation team. Additional Firm information may be obtained by visiting www.helmsgreene.com. Feel free to contact Steve Greene at sgreene@helmsgreene.com or (770) 206-3371.

Trust and Estate Advisor. Lawyer position open at Comerica Bank Wealth Management in Dallas in Estate Administration Dept. Will handle all aspects of settling decedent's trusts and estates, including legal issues, probate, taxes and distributions. High client contact. Apply online at comericajobs.com.

The Dallas office of Alston & Bird has an immediate opening for a Global Finance & Debt Products associate with 3-5 years' experience. Experience in syndicated lending, secured transactions and other commercial finance transactions is required. The ideal candidate will have excellent academic credentials and strong interpersonal skills. To apply, please submit your cover letter, resume and transcript to Jennifer Beaver, Firm-Wide Attorney Hiring Coordinator, by email to jennifer.beaver@alston.com or by fax to (404) 253-8143.

The Blum Firm, P.C., has immediate openings in the Dallas/Fort Worth area for experienced Legal Assistants. Candidates must possess strong time-management skills, receive client calls, support attorneys, and draft business correspondence and legal documents with minimal direction. The ideal candidate will be an excellent communicator, both verbal and written, extremely well organized and possess an exceptional eye for detail. Positive can-do attitude a must. We offer a highly professional environment within a team-oriented atmosphere. Salary commensurate with experience. Please email your resume with cover letter to: HR@theblumfirm.com

POSITION WANTED

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