

# In Chambers

The Official Publication of the Texas Center for the Judiciary

Volume 31, Number 1  
Spring 2004

## Inside this Issue

- "The Color of Justice" Project
- Designing Some Civility into Family Law Cases
- E-filing

## Plus Departments

- In Memoriam
- Judge Mentality
- Making News



# table|of contents

## features

"The Color of Justice" Project .....	3
Designing Some Civility Into Family Law Cases .....	4
The "New" Criminal Case Management System .....	6
Texas' Newest Administrators of Justice .....	10
And the Clerk of the Court Shall... ..	11
E-filing Article .....	12
Nominations Committee to Meet .....	12

## departments

In Memoriam .....	3
Judge Mentality <i>State &amp; Federal Laws Related to Assault Family Violence and the Right to Possess Firearms</i> ...	8
Making News .....	10
Ethics Opinions .....	13
Contributions and Memorials .....	15
Looking Ahead .....	16

Cover photography courtesy of Bill Reaves/Texas Department of Transportation.

*In Chambers* is the official publication of the Texas Center for the Judiciary. The magazine is published three times a year and funded by a grant from the Texas Court of Criminal Appeals.

The staff of *In Chambers* strives to provide current information about national and local judicial educational issues and course opportunities for Texas judges.

Readers are encouraged to write letters to the editor and submit questions, comments, or story ideas for *In Chambers*. Contact the Texas Center for the Judiciary's Publications Coordinator by calling 800-252-9232 or faxing 512-469-7664.

The Texas Center for the Judiciary is located at 1210 San Antonio, Suite 800, Austin, Texas 78701.

## In Chambers

Volume 31, Number 1  
Spring 2004

### Editorial Board

**Chief Justice (Ret.) Marilyn Aboussie**  
San Angelo

**Judge Susan P. Baker**  
Fredericksburg

**Judge Manuel Banales**  
105<sup>th</sup> District Court, Corpus Christi

**Justice Scott Brister**  
Texas Supreme Court, Austin

**Justice Molly Francis**  
5<sup>th</sup> Court of Appeals, Dallas

### Texas Center for the Judiciary Staff

**Mari Kay Bickett**  
Executive Director  
mkbickett@yourhonor.com

**Tana J. Petrich**  
Associate Director  
tpetrich@yourhonor.com

**Ann Blankenship**  
Program Attorney  
annb@yourhonor.com

**Carrie Gates**  
Administrative Assistant  
carrieg@yourhonor.com

**Shirley Irvin**  
Assistant to the Director  
shirleyi@yourhonor.com

**Lacy Jemmott**  
Registrar  
lacyj@yourhonor.com

**Christie Smith**  
Publications Coordinator  
christies@yourhonor.com

**Denise Seal**  
Financial Officer  
denises@yourhonor.com

# “The Color of Justice” Project

The Texas Bar Foundation awarded a \$10,000 grant to Texas members of the National Association of Women Judges, announced Judge Susan Criss. The grant will be used to produce a video for the “Color of Justice” project. Texas Young Lawyers awarded an additional grant of \$2,500 to the Galveston County Young Lawyers to help with the project.

The Color of Justice Project encourages minority junior high and high school students to consider the law and the judiciary as career goals. The program involves minority judges and lawyers participating in panel discussions and interactive forums with minority students.

The video will feature minority attorneys and judges of both trial and appellate courts explaining how they achieved their career goals and encouraging minority students to further impact the color of justice in Texas. Local bar associations will expand on this message by conducting programs that include personal interaction between minority students and local minority judges and attorneys.

The Color of Justice Program has been implemented in other states on a smaller scale. Texas will be the first state to use a video presentation. Texas is a big state with a large population. Consequently, Texas has a much higher population of minority school children than most states.

More than 59 percent of Texas school children are considered to be minority students. There are currently 1,160,825 minority children registered in grades six through twelve in Texas.

There are more than 3,000 sitting judges in Texas. A profile of Texas appel-

late and trial judges conducted in 2002 revealed that fewer than 300 of those judges are from minority populations. That disparity is even more dramatic if the visiting judge population is considered.

Since its inception in 1965, the Texas Bar Foundation has awarded more than \$6 million in grants to law-related programs. Supported by members of the State Bar of Texas, the Texas Bar Foundation is the nation’s largest charitably funded bar foundation.

The project will be supervised and promoted by Judge Susan Criss and Judge

Sue Kurita. Judge Criss is Deputy Director of District 11 of the NAWJ and judge of the 212<sup>th</sup> District Court of Galveston County. Judge Sue Kurita of County Court at Law #3 of El Paso County serves as Director of District 11. District 11 covers Texas, Oklahoma, and Arkansas. The idea to bring the Color of Justice project to Texas came from Justice Bea Ann Smith of the Third Court of Appeals in Austin. Justice Smith is the former president of NAWJ. The film will be produced by Ron Stone of Stonefilms of Texas. ♦

*A profile of Texas appellate and trial judges conducted in 2002 revealed that fewer than 300 of those judges are from minority populations.*

## in|memoriam

### For Those Who Served Our State Courts

*As of March 31, 2004*

**Honorable Jerry Dellana**

Judge (Retired)  
201<sup>st</sup> District Court, Austin

**Honorable A.D. Dyess, Jr.**

Justice (Former)  
1<sup>st</sup> Court of Appeals, Houston

**Honorable Dan Gibbs**

Judge (Retired)  
303<sup>rd</sup> District Court, Bullard

**Honorable Richard Johnson**

Judge  
303<sup>rd</sup> District Court, Dallas

**Honorable Edward “Jack” O’Neill**

Judge (Retired)  
152<sup>nd</sup> District Court, Houston

**Honorable Leslie Thomas**

Judge (Retired)  
46<sup>th</sup> District Court, Crowell

**Honorable Paul McCollum**

Judge (Former)  
8<sup>th</sup> Court of Appeals, Odessa

# Designing Some Civility Into Family Law Cases

By Hon. Randy Michel  
Judge, Brazos County Court at Law #1

Have you ever wished the parents of the children in the case before you would treat each other with some common courtesy and respect? Have you ever wished that mom and dad would use a little common sense in their dealings with one another that affect the children? A standing order in my court has always been that the parties must take a parenting course and watch the excellent *For Kids' Sake* video produced by the Dallas Bar Association prior to setting their case for a final hearing on the merits.

But the parents' follow-through after the divorce was entered or after a modification was entered seemed to be missing. Sometimes, I wondered if the parties slept through the video or simply retained little information after viewing it. Or, in some cases, the parties had never been ordered to watch the video. There had to be something that would stay with the parties more permanently.

I developed 15 principles to guide and direct the parties in their future dealings with one another and with their children. These principles were inspired by a classic response that appeared about ten years ago in Ann Landers' newspaper column, a copy of which I kept in a file.

A young woman who had grown up in a broken home wrote the response, listing several rules of behavior by which she wished all divorced mothers and fathers would abide. About three years ago, I decided to put her words to use. I modified, built upon, and polished what she said in the article and decided to

work these into some decrees and orders.

Where appropriate, I attach these "guidelines for parents with children" to or incorporate them into every decree, temporary order, or order modifying a prior decree. I admonish the parties that their ability or inability to abide by these guidelines will be a factor I consider in modifying or amending an order or decree or in sanctioning the conduct of one of the parties.

Seemingly, these admonitions have reduced dramatically the adult behavioral problems that used to plague my family law cases. I have had few, if any, problems with the parents in those cases in which these guidelines have been incorporated.

Hoping that these guidelines will help reduce the parental behavioral problems that pester or downright torment you in your family law cases, I share them with you.

## Guidelines for Parents

The following are guidelines for divorcing or divorced parents or parents in a parent-child relationship. They are a model of how to behave correctly toward one another and toward your children. Your ability or inability to comply with these guidelines will be a factor that the Court considers in modifying or changing the divorce decree now in place or the current orders affecting the parent-child relationship.

**1** Never discuss child support with your children. It is not their concern, regardless of the children's ages and of which parent is right or wrong.

**2** As a corollary to the first guideline, communicate directly with the other parent rather than using your children as messengers. Be the "grown up," and never place your children in the middle.

**3** Even when you think they are not listening, remember that children can hear you when you talk on the telephone. Do not discuss anything that makes your "ex" look bad. Do not ever tell your children negative things about your "ex" or give the impression that your "ex" is a bad person. Let your children come to their own conclusions. After your youngest child turns 18, you may cease all contact with your "ex." But remember, your "ex" will always and forever be your children's parent.

**4** Work together. If your child needs or requests something, discuss it openly as a family.

**5** If the custodial parent (managing conservator) has established certain rules in the house, the non-custodial parent (possessory conservator) parent should strive to enforce the same rules. This guideline is important because young children, especially, may become confused if their parents disagree about bedtimes, when to do homework, etc. Similarly, both parents should strive to

have the same punishment or discipline (for example, spanking, time-out, grounding, elimination of certain privileges, etc.) for a violation of the same rule.

**6** If there is a special occasion involving the non-custodial parent (possessory conservator), let your children visit, even if it is not the court-ordered visitation day. It hurts children if they are not allowed to attend Dad's award ceremony or visit Mom in the hospital following her surgery, simply because it is not the day the non-custodial parent is "supposed to" see the children. Be flexible. Be reasonable. Be courteous.

**7** Where geographical proximity permits, both parents should meet the children's friends and attend sports and school activities, including parent-teacher conferences. Attendance makes children feel as if both parents are actively involved. Whenever possible, attend functions together. It means more than you think when your children see you at graduation or awards ceremonies.

**8** If a major disciplinary problem arises—such as underage smoking, drinking, or drug use, to name just three—both parents should be involved in addressing the issue.

**9** Always discuss an upcoming marriage with your children. Your marriage is a major change in the children's lives. If a stepparent enters the picture, do not expect your children to love the stepparent immediately or call him/her "Dad" or "Mom." Be patient—it takes time for children to love a stepparent.

**10** If your child needs a ride to school, a friend's house, or the

doctor, do not be afraid to ask your "ex" for assistance. Similarly, if you have an obligation and your child needs a babysitter, do not hesitate to ask your "ex" for that assistance, either. The ex-spouse should do whatever is possible to accommodate the request. Your children will see that both parents love them enough to help each other.

**11** Except under extraordinary circumstances, and in some cases only with permission of this Court, one parent should not move halfway across the country (or the world). Children will wonder why the one parent does not care as much as the other, even if it is untrue.

**12** During your periods of possession, show up on time to pick up your children or call well in advance, even days—when and if possible—if you will not be able to have possession or will be late when picking up your children. It is unfair to your children and to your "ex" when the kids are excited to see you and you fail to show up. Not only does this potentially interfere with your "ex's" plans, but more importantly, it also places your "ex" in the difficult situation of trying to explain to your children why their parent "did not want to see them."

**13** Parents should remain in regular contact to update each other on simple things like school matters, report cards, activities, and the child's current interests.

**14** Both parents need to tell their children that they are loved. Children often blame themselves for the divorce. They need to hear directly from

you that it is not their fault and your love is unconditional.

**15** You can have either a positive or negative influence upon your children. I urge you to be a positive influence by acting courteously toward your "ex" and treating him/her with respect. That is simply normative behavior. Be a positive example and role model for your children—they are watching you more than you think. In your children's minds, you are modeling how a man treats a woman or vice versa. Ensure that your children view a positive image of how that interaction is played out in everyday life.

## Conclusion

No doubt, you will be able to improve upon these guidelines. You might even add some principles of your own. As I mentioned above, I hope these guidelines will reduce the parental behavioral problems that you must contend with in family law cases. Even more importantly, if we can cajole or goad—yes, even threaten—the parties to treat each other and their children with some civility, common courtesy, and respect, then this earth will be left in a little better condition than we found it. Surely, that is part of our mission as judges. ♦

*Although all submissions to In Chambers must be approved by the Editorial Board, publication is not an endorsement of the author's opinion. Each individual opinion, essay, review, analysis, signed column, or article represents solely the viewpoint of its author who is solely responsible for its content.*

# The “New” Criminal Case Management System

By Hon. Jim D. Lovett  
Judge, El Paso County Criminal Court #2

**T**he old system: The jury panel reports Monday at 8:00 a.m. as ordered. At 9:00 a.m., the panel waits while the Court considers seven defense motions filed a week ago.

Three motions are routine, one contains confusing shadings of several other requests, and another is a demand for the autopsy report in a theft case, evidencing that none of the attorneys nor their assistants read the motions. However, two motions require critical decisions.

At 9:30 a.m., the Court decides that fact hearings are required and adjourns the jury panel until 1:30 p.m. The fact hearings conclude at 4:30 p.m. The jury is sent home and instructed to return on Tuesday at 9:00 a.m. Sound familiar?

The new system: On Monday at 9:00 a.m., the jury panel that reported at 8:00 a.m. has been qualified and is ready for a trial. The panel is called into the courtroom. The jury is selected and seated, evidence taken, the verdict read, and by 4:30 p.m., the jury is discharged.

Which system do you use now? Which system sounds better?

## In General

Texas courts started using the “new” criminal case management system in 1997, although laws permitting its use had been in place for many years. In this system, arraignment is the appropriate time to initiate efficient criminal case management.<sup>1</sup> Under the new system, felonies and misdemeanors can be disposed of by trial, plea, or dismissal within four to six months.

Documents for the new criminal case management system appear in Chapter 3

of *Lovett’s Judicial Checklists* and can be used freely. The Lovett Publishing Group<sup>2</sup> does not claim a copyright or trademark on those particular forms and checklists.

## The System

Adoption of this new criminal case management system requires systematic and coordinated use of the following procedures:

**1. Criminal Information Sheet:** Soon after indictments are returned, complete the criminal information sheet to establish a control file for the court.

**2. Arraignment Docket:** Arraignment is the best time to institute standard case management. At this time, the defendant’s attorney is either confirmed or appointed, and the court enters a scheduling order and a standard discovery order. The arraignments checklist is found in Chapter 3 of *Lovett’s Judicial Checklists*. It accounts for the procedures utilized in the new criminal case management system.<sup>3</sup> Arraignment provides the launching mechanism for the procedures leading either to a plea, trial, or dismissal within four to six months. The availability of prosecutors and courtrooms is the main limiting factor.

**i. Standard Discovery Order:** At arraignment, the standard discovery order is entered. By eliminating the need for most of a defendant’s pretrial motions, the paperwork and workload for everyone in the system is reduced dramatically. Most cases are satisfied by the production of

materials provided by the standard discovery order. The defense attorney and the client are protected from questions of ineffective assistance of counsel. Court files are reduced from 50 pages to 10. For years, the federal courts have used standard discovery orders and scheduling orders—why shouldn’t Texas courts?

**ii. Scheduling Order:** The scheduling order is entered at arraignment, setting all future proceedings for final pretrial, plea-bargaining, and trial.

**iii. Interpreters:** In Texas, interpreter use is gaining importance. Arraignment notifies the court and staff of which defendants will need interpreters. In areas where they are needed regularly, interpreters should be provided as a standard part of arraignment. Mark the files of those defendants needing interpreters so arrangements can be made ahead of time to avoid delays.

**3. 28.01 Docket:** Set the 28.01 docket approximately 60 to 70 days after arraignment. Art. 28.01 C.C.P. waives all motions not filed within seven days before the 28.01 hearing, which help eliminate the last minute scramble to rule on defense motions. Art. 28.01 C.C.P. provides:

**a. Sec. 1.** Before any criminal case is set for trial upon its merits, the court may set a pretrial hearing and direct the defendant and his attorney, if any of record, and the State’s attorney, to appear before the court at the time and place stated in the court’s order for a conference and



hearing. The defendant must be present at the arraignment and his presence is *required during any pre-trial proceeding* (emphasis added).

**b. Sec. 2.** When a criminal case is set for such pretrial hearing, any such preliminary matters not raised or filed *seven days before the hearing* (emphasis added) will not thereafter be allowed to be raised or filed, except by permission of the court for good cause shown.

**i.** The 28.01 docket hearing allows the court to resolve most pretrial problems, usually without additional pleading filings on behalf of the defendant, other than the standard uncontested ones for 404(b) material, Gaskin materials, probation, and jury to set punishment. The original standard discovery order form included these four standard criminal pleadings, but later omitted them after anecdotal experience demonstrated that inclusion raised new and unnecessary problems.

**ii.** Defendant can waive the 28.01 hearing in a manner similar to a waiver of arraignment, except statements must be added in the waiver that “there are no motions pending and defendant announces ready for trial.”

**4. Plea Agreement Docket:** After the 28.01 docket pretrial is completed, the case moves to the plea agreement docket about 30 days later. The plea agreement docket facilitates direct, frank, and off-the-record communication among the defendant, defense attorney, and prosecutor to reach a mutually satisfactory settlement.

**a.** Some prosecutors like the plea agreement docket; others do not. Anecdotal

experience shows that this docket probably should be eliminated after a trial period if the prosecutors complain and misunderstand its significance.

**b.** While a defendant’s right to remain silent is fully protected, this docket allows the defendant and prosecutor to have a direct exchange.

**c.** The plea agreement docket eliminates need for the defense attorney to run messages between the defendant and the prosecutor and allows the defendant and the prosecutor to size up the other personally. This direct communication tends to moderate their positions and create a more realistic view for both sides.

**5. Trial Ready Docket:** If the case is not dismissed and no plea can be agreed, the case is placed upon the trial ready docket, from which it may be selected for trial at any time. The clerk maintains a list of cases that are trial ready, but does not issue any type of docket that indicates a ranking or position for trial.

**a.** Anecdotal evidence shows it is best not to publish a trial docket. Instead, notify each attorney by letter that the specific case is set for trial at the specified time.

**b.** Attorneys tend to expect a continuance when they see their case several places down from the top of a published docket. A letter to the attorney relating only to a specific case does not impart any such information. No one outside the judge, the prosecutor, and coordinator should know the probable order of cases for trial. Upon inquiry, defendants and defense

attorneys should be advised to “be ready since you are probably going to be number one.”

## The Results

These management procedures provide better control over criminal cases, assuring a higher quality of justice while minimizing unnecessary pleadings and trials, especially last minute motions with their accompanying maneuvers and waste. District court criminal files that were formerly filled with meaningless defense motions are reduced to ten pages of meaningful pleadings, and cases that seemed to stay on the trial docket for extended periods of time can be pleaded, tried, or dismissed within four to six months. The system saves time and expense for the counties, judges, prosecutors, defense attorneys, clerks, and jurors.

Consider:

\* This criminal case management system utilizes a minimum of records and, with modest training, the clerk can operate it, either with or without computers.

\* Demonstrable efficiency of the Texas judiciary’s funding from the Legislature draws closer. If federal criminal case management is the model, the most important statistic relating to efficiency will be an objective—not subjective—standard, i.e. number of cases disposed—not justice!

\* To maintain efficiency in this (or any other) system, there should be regularly scheduled jury panels or pools from which criminal juries can be picked. The certainty of trial ultimately causes the

*No one outside the judge, the prosecutor, and coordinator should know the probable order of cases for trial.*

*Case Management continued on page 14*

# State & Federal Laws Related to Assault Family Violence and the Right to Possess Firearms

*By Hon. Robert Anchondo  
Judge, El Paso County Criminal Court #2*

As part of our oath, we are sworn to uphold the law and to make sure that those who appear before the court know the consequences of their crimes. Sadly, I believe we may be failing this task if we do not inform defendants of all of the repercussions of their actions. An example of this is the misdemeanor crime of domestic violence and its effect on the right to carry firearms. Everyday, in criminal misdemeanor courts throughout the State of Texas, defendants plead guilty to domestic violence assault; yet they are not being advised of restrictions on their rights to possess firearms. In the process, are we as judges allowing defendants to remain ignorant of this fact, thereby allowing more crimes to be committed? As judges, we must not let such mistakes occur. By familiarizing ourselves with relevant laws, understanding their exceptions, and examining the constitutional questions surrounding those laws, we might better formulate a way to prevent those mistakes.

Currently, many plea agreement forms are standardized. Because assault in connection with domestic violence involves more consequences than other misdemeanor crimes, it is imperative that a separate plea form be drafted. Under the plea agreement forms reviewed in Cameron, Dallas, El Paso, Harris, Jefferson, Midland, Potter,

Tarrant, and Taylor Counties, only three penalties are listed:

1. A fine of not more than \$4,000;
2. Jail time of less than 1 year; and
3. If not a citizen of the United States, possible removal from this country, under federal law.

What is lacking in these standardized forms are state and federal laws that pertain to misdemeanor assault/family violence that prevent those convicted from possessing a firearm.

Under Texas law, a person who has been convicted of an offense under § 22.01 of the Texas Penal Code which involves a member of the person's family or household, commits an offense if this person possesses a firearm before the fifth anniversary of the later of either: (1) the date the person is released from confinement or (2) the date of the person's release from community supervision. Tex. Pen. Code Ann. § 46.04(b) (Vernon 2002).

Furthermore, federal law makes possession of a firearm illegal for a person convicted of misdemeanor domestic violence.

It shall be unlawful for any person who has been convicted in any court of a misdemeanor crime of domestic violence to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or

ammunition; or to receive any firearm or ammunition, which has been shipped or transported in interstate or foreign commerce.

18 U.S.C.A. § 922(g)(9) (West 2003). "Misdemeanor" includes any offense that is classified as a misdemeanor under federal or state law. In addition, the definition includes any state or local offense punishable only by a fine or by imprisonment for a term of one year or less.

18 U.S.C.A. § 922(d)(9); *Id.* § 922(g)(9). It is important to note that a person must be convicted of a State misdemeanor to be under firearms disabilities. Thus, if the State does not consider the person to be convicted, that person would not have federal firearms disabilities.

Although the statutes and their length of prohibition seem to be in conflict, both laws could be combined as follows: Once a person is convicted and finishes their punishment, under state law, that person cannot possess a firearm in Texas for five years, and under federal law, that person may never possess a firearm. If they are caught with a firearm, that person can be prosecuted under Texas law or federal law. After the five-year period is over, that person can fall under federal law only, unless the exceptions listed below are met.

Although the federal statute infers that the ban is permanent, there are



ways to get the restrictions removed. A person who is prohibited from possessing firearms may make an application to the Attorney General for relief from the disabilities imposed by Federal laws. 18 U.S.C.A § 925(c) (West 2003). The Attorney General may also grant relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of relief would not be contrary to the public safety. *Id.*

The Attorney General is not the only entity a person convicted of misdemeanor domestic violence can petition to get the prohibitions lifted. A person may also file a petition for judicial review with the United States district court for the district in which he resides. *Id.* Other processes are also available. For instance, if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had his civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense), the ban is removed. 18 U.S.C § 921(a)(33)(B)(ii) (West 2003). So although the federal ban appears to be permanent, there are procedures by which it may be lifted.

Questions arising from these laws have led to court hearings considering their constitutionality. Although the right to bear arms is noted in the Bill of Rights, federal courts have ruled that it is not a fundamental right. In *United States v. Barnes*, 295 F.3d 1354, 1368 (D.C. Cir. 2002), the court found that because domestic violence misdemeanants are not a suspect class for equal protection purposes and because

no "fundamental rights" are implicated, the classification would be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *Id.* at 1368. Because the class affected by the ban is not based on racial or gender categories, the federal courts examine the statute on a mere rationality review and usually find in favor of the statute and do not examine it under strict scrutiny.

Despite Constitutional questions, federal courts have upheld the law. In *United States v. Shelton*, 325 F.3d 553, 557 (5<sup>th</sup> Cir. 2003), the defendant was convicted in 1988 for misdemeanor assault pursuant to §22.01 (a)(1) of the Texas Penal Code. In 2000, the defendant was found to be in possession of a firearm—a violation of federal law. *Id.* at 556. Despite arguments about sufficiency of the evidence, a defective indictment, and the firearm's travels through interstate commerce, the Fifth Circuit affirmed the district court's conviction. *Id.* at 556, 563, 564. Interestingly enough, these two cases were decided when this country's think-

ing was geared towards absolute safety, even if that safety pried into our Constitutional rights. It will be interesting to see how future cases are decided, as this country's thinking seems to be

### *Despite Constitutional questions, federal courts have upheld the law.*

changing towards a more skeptical view about giving up rights guaranteed in our Constitution. It is

clear to me that more Constitutional questions remain to be answered.

Despite the Constitutional questions, this is our law, a law that we swore to uphold. It is our responsibility to inform defendants that by pleading guilty to misdemeanor domestic violence, they will lose their right to possess a firearm, temporarily or permanently. While this responsibility does not fall squarely on the shoulders of judges—defense counselors also have a duty to inform their clients—we nevertheless have an obligation to notify defendants of their loss. This could be achieved with new plea forms, specifically intended for assault/family violence, that list the applicable state and federal laws, as

*Judge Mentality* continued on page 14

**F**or further information concerning domestic violence and state and federal laws concerning this crime:

#### **NATIONAL & LOCAL VICTIM ASSISTANCE**

- Domestic Violence Hotline: 800-799-SAFE (7233)
- National Coalition Against Domestic Violence: 303-839-1852
- National Victim Center: 800-FYI-CALL (394-2255)
- Nat'l Organization for Victim Assistance: 800-TRY-NOVA (879-6682)

#### **TEXAS**

- Texas Council on Family Violence: 800-525-1978

## Honors & Achievements for Texas Judges

Texas Supreme Court JUSTICE DALE WAINWRIGHT was recently elected to the American Law Institute, a national organization whose purpose is “to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work.” The Institute’s bylaws authorize an elected membership of 3,000. This membership consists of judges, lawyers, and law professors, selected on the basis of professional achievement and demonstrated interest in the improvement of the law.

JUDGE RAYBURN M. “RIM” NALL recently joined 93 judges nationwide who have graduated with a master’s degree in judicial studies from the University of Nevada-Reno. The judicial studies program at the University of Nevada focuses on assisting students diagnose and analyze problems by studying social, behavioral, and natural sciences as well as humanities. Since first attending The National Judicial College in 1997, Judge Nall has completed an on-campus course of study including History and Theory of Jurisprudence, Judicial Writing, Science in the Law, Medical/Legal Issues, and Decision Making. The degree is conferred upon those who complete the required course of study and submit an approved thesis. Judge Nall’s thesis topic was “Development and Analysis of the State of Mind Exception to the Hearsay Rule in Texas.” Judge Nall has been the presiding judge of the 59<sup>th</sup> District Court since 1997.

On March 3, 2004, at a ceremony in Lublin, Poland, SENIOR JUDGE JOHN McCLELLAN MARSHALL (14<sup>th</sup> District Court, Dallas) became the first Honorary Professor of the University from the Faculty of Law at Marie Curie Sklodowska University. This title was conferred by the University Senate in recognition of Judge Marshall’s work at the University during the past ten years and allows him to be called “professor.” He is one of only four people to receive this unique recognition and the only American to be so honored to date at a Polish university.

CHIEF JUSTICE LINDA THOMAS of the Fifth District Court of Appeals has been selected as a 2004 recipient of Southern Methodist University’s Maura Award. The Maura Award, which will be presented April 15, is the Dallas-Fort Worth area’s most prestigious recognition of individuals and groups who have made significant contributions to improving the lives of women and girls.

Chief Thomas graduated from Southern Methodist University’s Dedman School of Law. She took the bench in 1979 as a judge in a newly-created family court. After eight years on the trial court, Chief Justice Thomas moved to the Court of Appeals in 1987. In 1995, she became the court’s first female chief justice. She is on the faculty of the National Judicial College and has lectured for trial and appellate judges across the country. She is past chair of the Board for the Texas Center and the Judicial Section. ♦

### ethics|opinions Questions & Answers

No new Ethics Opinions have been published since December 2003. To ask an ethics question, contact Justice Mack Kidd, Chair of the Judicial Section’s Committee on Judicial Ethics, (512-463-1686) or the State Commission on Judicial Conduct (877-228-5750). ♦

#### Committee on Judicial Ethics

Hon. Mack Kidd, *Chair*  
Hon. Thomas Bacus

Hon. Cathy Cochran  
Hon. Mackey K. Hancock  
Hon. Lora J. Livingston  
Hon. Emil Karl Prohl  
Hon. Mark Rusch  
Hon. Michael Schneider  
Hon. Juan Velasquez  
Hon. Kathleen Olivares, *Liaison*  
Hon. Mario Ramirez, *Liaison*  
Hon. Jay Robinson, *Ex-Officio*  
Hon. Steve Seider, *Ex-Officio*  
Mr. Amon Burton, *Reporter*

# And the Clerk of the Court Shall...

By Ms. Linda Uecker  
District Clerk, Kerr County

“...Keep custody of, and must maintain and arrange, all records relating to his office, or lawfully deposited in his office.” GOVERNMENT CODE 51.303.

TEXAS RULES OF COURT, RULE 75  
“All pleadings shall remain at all times in the clerk’s office or in court in custody of the clerk...”

Texas Jurisprudence, Clerk of Court—12 “The clerk of a court has custody of the records pertaining to that court, and they must not pass from his or her supervision,” Collins v. Box (1874) Tx. 190; Tarrant Co. v. Butler (1904) 35 Tex.Civ.App. 80 SW 656.

585 SW 2nd 678 “...this court has stated that an instrument is deemed filed when it is placed in the control and custody of the clerk.” Glidden Co. v. Aetna Casualty & Surety Co. 155 Tx. 591; 291 SW 2nd 315 (1956) which states: “A paper is deemed to have been filed when it is delivered into the custody of a proper official to be kept by him among the papers in his office subject to such inspection by interested parties as may be permitted by law.” Beal’s Adm’r v. Alexander 6 Tx. 531; Holman v. Chevallier’s Adm’r, 14 Tx. 337; Rowney v. Rauch, Tx.Civ.App. 258 SW 2nd 371 (writ ref.)

By common law, judicial records are open to the public for inspection and copying, unless sealed by the court or statute. Because the records are open to the public, the importance of the requirement that all court records remain in the office of the clerk is emphasized.

The clerk has the duty to provide access at all times to the public. However, it is difficult to provide public

access to a case or cases that are held for extended periods of time in the office of the judge or administrator.

The first problem is locating the case. More than one staff person may have to search for it, wasting valuable time. If the files are eventually found in the judge’s office, does the clerk have access to it? Not if the judge’s office is locked, closed for lunch, or otherwise inaccessible by the clerk.

The clerk must maintain the integrity of the court file. Many documents fail to find their way to the case file in which they belong. How can the clerk issue the requested and required date-sensitive writs, reports, and notices if the files are not returned to the officer who must issue that writ or make the report? This failing is frustrating and embarrassing to the clerk, the attorney, their clients, and the court.

Horror stories have surfaced about unfavorable actions that have been taken on a case because certain documents did not make their way to the case prior to hearing or a trial. Those documents relevant to the outcome of the case were in the clerk’s office,

awaiting the return of the file to the clerk.

Since clerks are by statute the official custodians and record keepers for the courts, they are potentially liable for an unfavorable outcome to a non-prevailing party because of the omission of certain documents available to the court. So, who is to blame? Not the court nor the court administrator who is appointed by and works for the court. Yes, the clerk is vulnerable and could be subject to a lawsuit. Fortunately, the court and staff enjoy judicial immunity; however, district clerks do not.

It is the clerk’s duty to control and manage public court records... “*You can’t manage what you don’t have.*” But it is important to establish an amicable case flow procedure between the courts, their administrators, and clerks.

The “custodian” is defined as “*the appointed or elected public officer who... is in charge of an office that creates or receives local government records.*” *Id. s 201.003(2). Custody of the records changes from an officer to his successor when his term ends. Id. s 201.006.* See opinion JM-1250. ♦

## Executive Director appointed

**M**ari Kay Bickett, Executive Director of the Texas Center for the Judiciary, has been appointed to serve as the representative for state judicial educators on the National Judicial Center Advisory Committee on Family Violence. The committee’s first meeting was held March 23–25 in San Francisco. The purpose of the committee is to develop ways to provide education opportunities to the many disciplines involved in domestic violence issues, from legislators, judges, and court staff to prosecutors, law enforcement, legal aid, CPS case workers, CASA Volunteers, and providers of batterers intervention programs.



# District Court Judge Pulls Double Duty

By Christie Smith,  
Publications Coordinator

Spending nearly a year in a war-torn country with little to no infrastructure, and working 16-18 hour days can help put a lot of things into perspective. Just ask 99<sup>th</sup> District Court Judge Mackey Hancock of Lubbock. He's just spent the last several months running a Coalition Joint Civilian-Military Task Force in Afghanistan.

Hancock, a colonel in the U.S. Army Reserve, returned in February from Afghanistan after nine months of heading up a civil affairs unit of 250 people. In addition to keeping track of his unit, he was also responsible for overseeing an artillery battalion that provided perimeter security.

"A lot of people think that I'm a judge in the Reserve, but I'm not. As a part of Civil Affairs, my job was to help with small reconstruction – drinking wells, medical clinics and schools, mostly. Right before I left, we were able to get started on small bridge and road reconstruction. Some of the roads could be greatly improved simply by grading them. Our mandate was to help extend the influence of the central government through a reconstruction team."

Civil Affairs soldiers typically work with the local population to restore gov-

ernment services – in effect, helping to provide stability.

Hancock, of the 321<sup>st</sup> Civil Affairs Brigade from Fort Sam Houston, San Antonio, worked with provincial, district and village governments. His command would meet with village elders to try to determine what their needs might be.

Then as head of the Task Force, he would ensure that the Task Force did their best to meet those needs. The Task Force included the 407<sup>th</sup> Civil Affairs Battalion from St. Paul, Minnesota as well.

"Coalition force work is always inter-

*"The Afghan people are very resilient and creative... They are tough people."*

---

## Nominations Committee to Meet

The Fiscal Year 2004 Nominations Committee will meet May 21, 2004, in Austin to slate officers and new members for the Fiscal Year 2005 Judicial Section Board of Directors and the Texas Center for the Judiciary Board of Directors.

If you are interested in serving on either of these boards or recommending a name for nomination, please notify Judge Stephen B. Ables, Chair of the Nominations Committee, in writing no later than May 18, 2004.

Judge Ables' address is: Honorable Stephen B. Ables, Presiding Judge 6<sup>th</sup> Administrative Region, 216<sup>th</sup> District Court, Kerr County Courthouse, Kerrville, Texas 78028. His fax number is (830) 792-2294. In addition, please provide the Texas Center with a copy of your interest letter (Attention: Mari Kay Bickett).

Three positions (two for a district judge and one for a county court at law judge) are open on the Judicial Section Board

of Directors. Terms are for three years. The chair-elect (position open to a county court at law judge) is nominated for a one-year term. The secretary/treasurer position on the Judicial Section Board is an appointed position.

Three positions (one for an appellate judge, one for a district judge, and one for a county court at law judge) are open on the Texas Center Board of Directors. Terms are for three years. The chair-elect nominee for the Judicial Section will also serve as the chair-elect of the Texas Center. The secretary/treasurer position on the Texas Center Board of Directors is an appointed position. ♦

### FY 2004 Nominations Committee Members

Hon. Stephen B. Ables, Chair	Hon. Homer Salinas
Hon. Kristin Wade	Hon. Tom Gossett
Hon. Dennis Watson	Hon. George Gallagher
Hon. Rick Morris	Hon. Paula Lanehart
Hon. Alma Lopez	

esting. We had a lot of interpreters – including some Americans originally from Afghanistan. One of the most frustrating elements is that the society is still tribal and ethnically-based. It made it a challenge to get the people to work together,” Hancock said.

One of the things that surprised Hancock about the country was its beauty. “It’s very austere, but the mountains are amazing to look at. Bagram Air Force Base, where I was, is at 5,500 feet, Kabul is at 6,000. So everything is high desert, and when the first snows fell and covered the tops of the mountains, it was very beautiful.”

He was also impressed with the Afghan people. “The Afghan people are very resilient and creative. Starting with the Soviet wars in the ‘80’s until now, they’ve been through the ringer and yet they are trying, and they’re able to do some amazing things. They are tough people, my goodness gracious, very tough people.”

Hancock has served previously in



*Army Col. Mackey Hancock (right), Coalition Joint Civil-Military Operations Task Force commander, joins Afghan dignitaries January 14 in cutting the ribbon to open the renovated Meanshakh High School in Meyan Shakh, Afghanistan. Photo by Staff Sgt. Johnny A. Thompson, U.S. Army.*

Bosnia in 1996-97 and in Desert Storm in 1991. However, the tour in Afghanistan will be his last, as he plans to retire from the Reserve with 31 years of service in May.

“Being back on the bench is pretty easy in comparison after all the long days in Afghanistan. I’m ready to let the younger folks take over,” he said chuckling. ♦

## Texas’ Newest Administrators of Justice

### *As of March 16, 2004*

**Hon. Ernest Aliseda**  
139<sup>th</sup> District Court, Hidalgo  
Succeeding Hon. Leticia Hinojosa

**Hon. David Jorge Bernal**  
281<sup>st</sup> District Court, Houston  
Succeeding Hon. Jane Bland

**Hon. Jane Nenninger Bland**  
1<sup>st</sup> Court of Appeals, Houston  
Succeeding Hon. Adele Hedges

**Hon. Todd A. Blomerth**  
421<sup>st</sup> District Court, Lockhart  
New Court

**Hon. Greg Brewer**  
County Ct. at Law #5, McKinney  
Succeeding Hon. Chris Oldner

**Hon. Marc C. Carter**  
228<sup>th</sup> District Court, Houston  
Succeeding Hon. Ted Poe

**Hon. B. Michael Chitty**  
422<sup>nd</sup> District Court, Terrell  
New Court

**Hon. David L. Evans**  
48<sup>th</sup> District Court, Fort Worth  
Succeeding Hon. Bob McCoy

**Hon. Tom Gray**  
10<sup>th</sup> Court of Appeals, Waco  
Succeeding Hon. Rex Davis

**Hon. Adele Hedges**  
14<sup>th</sup> Court of Appeals, Houston  
Succeeding Hon. Scott Brister

**Hon. Edwin “Ed” Klein**  
420<sup>th</sup> District Court, Nacogdoches  
New Court

**Hon. Lori Cliffe Massey**  
288<sup>th</sup> District Court, San Antonio  
Succeeding Hon. Frank Montalvo

**Hon. Leon F. Pesek, Jr.**  
202<sup>nd</sup> District Court, Texarkana  
Succeeding Hon. Bill Peek

**Hon. Graham Quisenberry**  
415<sup>th</sup> District Court, Aledo  
New Court

**Hon. Felipe Reyna**  
10<sup>th</sup> Court of Appeals, Waco  
Succeeding Hon. Tom Gray

disposal of criminal cases through pleas or dismissals.

\* The latest theoretical management philosophy advocates that the actual trial date not be set until there is a reasonable certainty the case will be tried. The opposing view, based upon practical experience, is that unless cases are set for trial several months ahead, there will be conflicts claimed by counsel with other courts. Take your pick.

\* A court that is prepared to accept negotiated pleas at any time before verdict will dispose of more cases than one that is not.

\* The five basic rules of criminal case management are:

1. Early and continuous flow of cases reduces backlog;

2. Every case is on the trial calendar with a purpose certain—no exceptions;

3. Immediacy of trial disposes of cases;

4. A court with open, available time disposes of more cases than a court in constant trial; the “square month” facilitates scheduling (i.e., cases are scheduled for the first four Mondays of each month, but not the fifth Monday. The fifth Monday is reserved for paper work and special cases. In rural areas where judges must share courtrooms, the “square month” also facilitates scheduling among multiple counties.)

5. A scheduled trial leads to preparation; preparation leads to settlement.

Try the new system—you will like it! ♦

## ENDNOTES

1. An even newer management system suggests beginning caseload management when a defendant is jailed. Why waste those days leading up to arraignment if they can be used to reduce dockets and workloads while still providing justice? Early release programs administered by the CSCD will probably gain popularity because they alleviate jail overcrowding (translating to \$35–75 saved daily per prisoner while in county jail—commissioners like that), encourage early plea dispositions and provide needed income for CSCD. The greatest challenges to the early release system’s use are the personalities and personal commitments of the prosecutors, law enforcement agencies, judges, and CSCD—not the law. A free copy of the early release forms can be found in Chapter 3 of *Lovett’s Judicial Checklists* (2003–04 edition) or requested as shown in the footnote below.

2. For the latest management forms you may request free copies from Lovett Publications Group, Route 4, Box 492, Clarksville, TX 75426 (e-mail: lovett@neto.com or fax: 903-427-2716). Or, copy them from *Lovett’s Judicial Checklists* 2003–04 edition or a later edition. Lovett Publishing Group does not claim copyright on those forms.

Due to a ruling concerning production of NCIC records, a change in the standard discovery order contained in the 2002–03 edition is necessitated. The FBI Programs

Support Section, Criminal Justice Information Services Division of the U. S. Department of Justice, Ralph Calvin Sieg, Acting Chief, ruled that they will not honor an order from a state court that requires prosecutors to acquire NCIC records for the defendant. Rather, the court must either order the prosecutors to produce only NCIC information that already exists in their files or issue an order directly to the Criminal Justice Information Services Division, Federal Bureau of Investigation, Attention: Special Correspondence Unit, Mod. D2, 1000 Custer Hollow Road, Clarksburg, WV 26306. The order must contain the judge’s complete name, mailing address, and originating agency identifier number. The CJISD responds directly to the judge who signed the order, providing the judge an opportunity to review the record for relevancy, admissibility, and whether the record applies to the particular defendant. According to the FBI’s reasoning, the court can then balance the need for disclosure against privacy interests. The author speculates that this option will take a year or longer!

3. The arraignment checklist is found in Chapter 2 of *Lovett’s Judicial Checklists* and reflects all the procedures required in this new criminal case management system. A free copy will be furnished upon request as reflected in the endnote above.

### *Judge Mentality* continued from page 9

well as oral statements made in court. With domestic violence being one of the compelling problems facing our society today, we need to inform all parties and agencies of these factors. ♦

For sample plea forms concerning misdemeanor assault/family violence (English and Spanish versions available), contact Judge Robert Anchondo by telephone: 915-834-8232 or e-mail: roanchondo@co.el-paso.tx.us.

*Special thanks to Mr. Nathan Brown, a 2<sup>nd</sup> year student at the University of Texas School of Law.*

*Judge Mentality permits judges an opportunity to present divergent viewpoints, personal opinions, commentary, and observations. Reviews, personal essays, and critical essays, regardless of whether or not they are favorable or unfavorable on a given topic, are permissible under the doctrine of fair comment and criticism. All submissions will be considered for publication by the In Chambers Editorial Board, and every reasonable effort will be made to provide space for writers with opposing viewpoints. Although all submissions must be approved by the Editorial Board, publication is not an endorsement of the author’s opinion. Each individual opinion, essay, review, analysis, signed column, or article represents solely the viewpoint of its author who is solely responsible for its content.*



# contributions|and memorials

## Thank You for Your Contributions

*Includes contributions received as of March 15, 2004*

### Contributions to the Texas Center

J. Robert Adamson  
R.H. Bielstein  
Joe Bridges  
Joe B. Brown

Linda Chew  
Joseph Connally  
Jaime Garza  
Mack Kidd

M. Sue Kurita  
Mark R. Luitjen  
Ed Magre  
John Hardy Morris

Jay Patterson  
Carter T. Schildknecht  
Harold Valderas  
Carlos Villa

Barbara L. Walther  
James T. Worthen

### Memorial Contributions

*Judge Dan Gibbs Memorial*  
Clyde R. Ashworth  
Harold Entz

*Judge Richard Johnson Memorial*  
Theo Bedard  
George Cowart  
Harold Entz  
Frances Harris  
Leonard E. Hoffman, Jr.  
James Morgan  
John Ovard  
Dean Rucker

*Judge Joe E. Kelly Memorial*  
Joseph P. Kelly

*Chief Justice Frank McDonald Memorial*  
George Allen

*Justice Connally McKay Memorial*  
Joseph P. Kelly

*Mrs. Nina Nye Memorial*  
Raleigh H. Brown

*Judge E. Jack O'Neill Memorial*  
Don Ritter  
Kathleen Stone

*Judge Perry D. Pickett Memorial*  
Solomon Casseb

*Judge Max Rogers Memorial*  
Carroll Wilborn

*Judge Byron Skelton Memorial*  
Judge and Mrs. James F. Clawson, Jr.

*Governor Preston Smith Memorial*  
Judge and Mrs. James F. Clawson, Jr.

*Judge Thomas Stovall Memorial*  
Carroll Wilborn

*Judge Jim Noble Thompson Memorial*  
John Ovard

### Contributions In Honor Of

*In Honor of Hon. Craig Enoch*  
Clyde R. Ashworth

*In Honor of Ms. Lacy Jemmott*  
R. Jack Cagle

*In Honor of Hon. John Ovard*  
Dan L. Wyde

## Contribution Card

Your generous support is sincerely appreciated and vital to the success of the Texas Center for the Judiciary's mission: **Judicial Excellence Through Education.**

Enclosed is a contribution for \$ \_\_\_\_\_ \* in support of the Texas Center for the Judiciary.

To make a contribution by credit card, complete the following:

AMEX     MasterCard     Visa     Discover

Credit Card #:

Expires:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Court: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, & Zip: \_\_\_\_\_

\*For memorial/in honor of contributions, indicate in whose memory/honor it is made: \_\_\_\_\_

*The Texas Center is a non-profit organization to which contributions are fully deductible.*

Mail your contribution to: Texas Center for the Judiciary, 1210 San Antonio, 8<sup>th</sup> Floor, Austin, TX 78701

# Judicial Conference Calendar

## 2004

**Texas College for Judicial Studies**  
April 25–30, 2004  
Austin

**Criminal Justice Conference**  
May 24–26, 2004  
Richardson

**Appellate Writing Program**  
June 3–4, 2004  
Austin

**Professional Development Program**  
June 21–25, 2004  
Austin

**Associate Judge Conference**  
July 7–9, 2004  
Austin

**You Asked For It, You Got It!**  
August 4–6, 2004  
San Antonio

**Judicial Section Annual Conference**  
September 12–15, 2004  
Dallas

**College for New Judges**  
December 5–10, 2004  
Austin

## 2005

**Regional Program (Regions 1, 3, 4, 5, & 8)**  
January 26–28, 2005  
Horseshoe Bay

**Regional Conference (Regions 2, 6, 7, & 9)**  
February 27–March 1, 2005  
Galveston

**Texas College for Judicial Studies**  
May 1–6, 2005  
Austin

**Judicial Section Annual Conference**  
September 18–21, 2005  
Austin

## 2006

**Texas College for Judicial Studies**  
April 23–28, 2006  
Austin

**College for New Judges**  
December 3–8, 2006  
Austin



**Texas Center for the Judiciary**  
1210 San Antonio, Suite 800  
Austin, TX 78701

First Class Mail  
U.S. Postage  
PAID  
Austin, TX  
Permit No. 1390