

In Chambers

The Official Publication of the Texas Center for the Judiciary, Inc.
Vol. 31, No. 3, Winter 2004

Inside this Issue:

- Is There A Court That Can Make A Difference?
- Letter from the Chair
- The Stalker

Plus Departments:

- Ethics Opinions
- New Judges
- Making News

TABLE OF CONTENTS

Features

Address to the 2004 Judicial Section Annual Conference	3
Judge Mentality: Is There A Court That Can Make A Difference?	4
New Judiciary Leaders Elected	8
Jefferson Named Texas' Chief Justice	8
Correction	8
Thank You Texas Court Reporters	9
Texas Center 2004 - 05 Board & Committee Memberships	10
Judicial Section 2004 - 05 Board & Committee Memberships	11
Texas' Newest Administrators of Justice	13
The Stalker	14

Departments

In Memoriam	9
Conference Roundup	12
Ehtics Opinions	17
Making News	18
In The Library	18
Contributions and Memorials	19
Looking Ahead	20

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In Chambers

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Winter 2004

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LETTER FROM THE CHAIR

Address to the 2004 Judicial Section Annual Conference

From Judge Dean Rucker, Chair

My Fellow Judges:

I am honored by the confidence that you have shown by electing me as Chair of the Judicial Section and the Texas Center for the Judiciary. Being a judge has been the most satisfying calling I have ever undertaken. This is the icing on the cake.

Having the opportunity to be a voice for you around this State is a humbling and daunting task. You have my assurance that my door is always open to you. You have my promise that I will do the best job I know how to do. I am not afraid of hard work. Nor am I afraid to speak for this group because I know that you are the most highly principled, hardest working judges anywhere. It is a privilege to serve as your Chair.

We have a lot on our plate this coming year. The Texas Legislature goes into session next year. For the Judicial Section, our primary task will be shepherding our judicial funding priorities through the Legislature. Let me talk a little about that.

In 1999, I began to have some hope for a pay raise. The Legislature created the Judicial Compensation Commission, but the voters rejected that constitutional amendment later that year.

In 2001, I again hoped for a raise when the Legislature approved one, subject to many other items being funded before our pay raise. Then, Governor Perry vetoed the first half of the raise and the Comptroller eliminated the remainder when she could not find sufficient funding.

Faced with a state budget crisis last session, we could not even get off the starting block.



Judge Dean Rucker

I still hope for a pay raise and I know that each of you hope for one as well. But, as I heard General Tommy Franks say the other night...."I've learned that hope, while important, is NOT a strategy."

Our strategy is work, lots of it...hard work. We've already begun. Judge McCorkle, Justice Linda Thomas, Lynn Nabers and others have been working on our legislative issues since last fall. They have given the Legislature compelling data that clearly demonstrates how far Texas judges have fallen in compensation as compared to other states. We have fallen from one of ten highest paid judiciaries to near the bottom. I don't know about you, but I am not satisfied with being at the bottom of the barrel. Our service is honorable and we should be properly compensated.

We have other judicial funding priorities as well. From money for assigned judges, uniform pay for statutory county courts and improvement of our retirement plans, we are working harder than ever to get our message to the Legislature. Thus far, we have enjoyed

a good reception from the leadership. However, we must keep working even harder to foster good relationships with both the legislative and executive branches of government. That's where you come in. We need your help. If you have good relationships with key legislators, we need you to share that knowledge with us. If you are able to offer testimony as a resource, we need you to let us know. At the end of the day, we must be forthright and we must have confidence and credibility. We need not apologize for ourselves. Even more important, we must never fail to take the opportunity to remind the other branches of government that the judicial branch is a coequal branch of government.

As for the Texas Center, we will keep providing you with the high quality programming that you have come to expect over the years. But, we cannot rest on our laurels. We must take the challenge to explore new and creative ways of delivering the highest quality judicial training possible. I am thankful for our superb Curriculum Committee which, under the leadership of Barbara Walther of San Angelo, keeps turning out programs that receive consistently high evaluations. We are also fortunate to be served by Mari Kay Bickett, the finest Executive Director anywhere, as well as her loyal and hardworking staff. Without them, none of this would be possible. We are the premier and the primary provider of judicial education in Texas and we intend to remain so.

I look forward to the exciting year ahead and I look forward to working with you. Thank you again for your vote of confidence and for this opportunity to be of service to the Texas judiciary. ✍️



JUDGE MENTALITY

Is There a Court That Can Make a Difference?

by Judge K. Michael Mayes, 410th Judicial District Court

SCENE: CRIMINAL COURTROOM, 2004 (THIS IS A FICTIONAL SCENE TO EMPHASIZE A POINT)

“Are you John Cummings?” asks the crusty Judge, robed and long faced.

“Yes sir,” replies the Defendant. He is cuffed and shackled, unshaven and dirty.

“Do you have counsel with you today?”

“Yes, Your Honor.”

“Have you had an opportunity to discuss with your attorney what you are charged with and what all this means?”

“Yes, Your Honor.”

“You are charged with possession of a controlled substance, a 3rd degree felony, and your history reflects that this is your 5th time to be arrested and charged for a drug offense....is that correct?”

“Well, I don’t recall, Judge, but I’ve been there.”

“Been where?”

“Using drugs and all that.”

The scene is familiar to both of them as well as the rest of the Courtroom. The court staff has seen it many times, a drug case and a defendant meeting face to face with the Judge, and the defendant without answers to the most basic of questions. The Defendant has little hope, and even less reason to believe that there is any reason to expect any.

The Judge looks out over his gold rimmed reading glasses and sees the face of defeat, a face of agony that

blankets the entire expression of the man before him. This is a man beaten at his own game, lost in a world of poor choices, a world of submission to bad habits that ultimately ended with crimes that were more than simply minor offenses. This was the same face the Judge had seen before, so many times, and the frequency of it all made him ill. But his role as Judge precludes any overt reactions, and necessitates his remaining calm, patient and even fair.

“So what are we gonna do about

What is justice anyway, but The Golden Rule implemented in a Court of law?

you?” The Judge sounds exasperated. He is exasperated. He continues.

“You use drugs and commit crimes.

You use drugs and get arrested. You use drugs and your family leaves you. You use drugs and you lose. So here you are. What are we gonna do?”

“I don’t know,” says the pitiful man.

“You don’t know?” Pause. “Do you plead guilty to this charge?”

“Sure.”

“You have the right to a jury trial...”

“Yea, right.”

“Are you giving up that right?”

“Sure.”

“And you have the right to confront all the State’s witnesses, and have your attorney cross examine them.”

“Right. Sure.”

“You wanna give up all these constitutional rights?”

“I have to I suppose.”

“What ?”

“I have to, Judge. I got no choice.”

“You have a choice, Mr. Cummings.”

“No I don’t.”

Silence....the Judge continues the protocol.

“Well, what? You did this? You admit you possessed these drugs? You plead guilty?”

“Sure I do.”

“Tell me, do you plead guilty or not guilty?”

“I give up, Judge....I guess I just give up.”

“Give up...give up

what?”

“There is nothing else, Judge.”

“Nothing else?” Pause. Silence.

“Did you sign this stipulation admitting to all the facts of this offense?”

“Sure.”

“And you want to accept this plea bargain and go to prison?”

“I have no choice.”

“Then I find you guilty, and I assess your punishment at 10 years in the Texas Department of Criminal Justice, to be served from this date and with credit for all the days you have already spent in jail for this crime.”

Silence.

“Have you understood all that we have done? Do you have anything to say?”

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“I have nothing. There is nothing else, Your Honor.”



Is There A Choice?

Is there anything else for John Cummings? Is there another answer for John Cummings? Does John Cummings have another choice?

And, more to the point, do we as Judges have a choice? Do we have to live with this scenario, day in and day out, as it plays out every day in our courtrooms? Must we simply accept all this destruction and misery as our only alternative? Is that where we are as Judges? And is this who we are as a society?

These are not just rhetorical questions. These are questions that burn at the very heart of our judicial system and the very soul of our society. We can ignore them or we can address them. We can ignore them or we can challenge them. If we ignore them, then we will continue as we have, on the merry go round of arrests, convictions, probations, violations, prison, release and then start all over again.



My Humble Thesis

I would humbly suggest that we, as Judges, need not act as if we have no other choice. We need not accept as an unchangeable fact the erosion of individuals that we see in our courts due to the abuse of drugs and alcohol, an erosion that destroys a part of all of us. We are in a unique position to provide a positive alternative in our courts. It is a bold step, but one that we must take. By doing so, we can challenge the commonly held beliefs that people on drugs are not salvageable

and that this segment of our society is hopeless.

In the past, we have told the drug and alcohol users that it is their problem; we have been wrong. We have told them to do it alone; again, we have been wrong. The numbers tell us so. The costs we incur every year tell us we have been wrong. The misery we witness tells us we have been wrong.

These are not just rhetorical thoughts. They are not political ones either. Rather, they are real issues that we must deal with. The choice is ours as Judges. It is yours. It is mine. It is not the choice of the drug users, the criminals or the defendants. It is ours.

And our only real choice is to address in our courtrooms the epidemic of alcohol and drug addiction. To not do so is to admit we as a judiciary are weak and have no answers. To not do so is to admit we are a failure as a judicial system and ultimately as a society. To not do so is not only wrong; it is the very antithesis of what we call justice.



Drug & Alcohol Court/ Program: An Alternative

There are choices and one is the new phenomenon of Drug And Alcohol Court. This new type of Court has emerged as a radical but effective alternative to traditional courts. It offers a “positive” and “encouraging” approach to the age-old problem of drug and alcohol abuse. It deals with offenders as addicts and alcoholics that need an alternative way to view themselves, their life and their addiction. It says that given the right training, the right support and the right incentives, drug and alcohol addictions are manageable. In this Court the participants cheer for each other, the participants are given “kudos” for their

incremental successes and the graduates are given parties. This alternative Court says that the traditional approach of “lock’em up” is passé and outdated for several reasons. This Court says that the amount of money that we have spent on jails and prisons far outweighs the minimal benefits that we have seen in our traditional approach to individuals that abuse drugs and alcohol.

I created a Drug and Alcohol “Program” in the 410th District Court. It is called the Substance Abuse Program (SAP). Our program was based in part on the format of the “original” Drug Court in our County, but more so on what I observed about drug and alcohol defendants in court for 6 years as a Presiding Judge. Bottom line, jail time was good to wake them up and get their attention over the short haul, but it was utterly useless in stopping their use and changing them into productive members of our society.

There were, of course, some drug and alcohol offenders that did not fit this mold, like those that sold drugs for profit and those that injured others when using. But the vast majority of drug and alcohol users were simply people hurting themselves, and totally lacking in “knowledge” about their addiction and the skills necessary to overcome its stronghold over them.

Unlike our County’s original Drug Court, I did not want to limit our Program participants to 1st time offenders or non-DWI cases. I had seen many defendants that were not “qualified” for the original Drug Court due to their criminal histories, and I believed some of those were good candidates given the right program, structure and incentives.

The most important incentive was sobriety. Another was having the participant “invested” in his recovery,

continued on next page

meaning no free handouts. Not expensive, but not free. Our psychologist and counselor advise me that this “investment” approach is a significant and positive departure from many Drug Courts as it creates an atmosphere of ownership by the participant that they may not feel otherwise.

Lastly, many of these defendants wanted some type of hope for their criminal record; thus, most of our cases are deferred adjudications. Interestingly, however, we have learned that some defendants want sobriety so strongly that the carrot of no conviction is superfluous to them; they just want in the Program.

We created SAP without any money from any source. We simply relied upon our courtroom staff, the probation officers that handled the case loads anyway, a PhD psychologist that already worked with our Probation Department and a licensed counselor that was affiliated with the psychologist. In close conjunction with the psychologist and counselor, we drafted our treatment program. In conjunction with the probation officer and prosecutor, we drafted the overall requirements of the Program.

Next, to start the Program, we selected 2 or 3 defendants that “qualified” as candidates. Generally speaking, those accepted were (and continue to be) offenders that do not have too long a history, but we intentionally did not limit our selections to 1st time offenders or non-DWI cases. I set aside some time on our regular docket to talk to these defendants one on one and formally accept them into the Program. I have done this with all new participants. This is done in open court so that all other Defendants and their attorneys can see. This only takes a few minutes of Court time, but it is most worthwhile.



Requirements of the Program

If accepted into the SAP Program, a defendant is required to comply with all conditions and requirements of the SAP Phase Program. There are 5 phases or stages in the one year program. Each phase has a different level of supervision and treatment. The requirements of these five phases are outlined on the STABILITY, ACHIEVEMENT, & PROGRESS information sheet that is given and explained to them. See <http://www.co.montgomery.tx.us/410dc/sap.shtml>. These include intensive treatment group meetings, random and frequent UA's, attendance to NA or AA and all other probation conditions.

As a defendant successfully completes each phase, they move up and into the next phase. A participant has to prove their continued sobriety to move to the next phase. If they fall short, they start over at best and spend significant time in jail at worst. As they move up the phases, the “formal” treatment and “hands-on” supervision decreases; however, their responsibility to continue with what they have learned and to remain clean and sober increases.

Part of the Program protocol requires the defendant to “come see the Judge” in open court at certain intervals. This is not weekly, but varies depending on which phase the participant is in. This usually occurs when a defendant is moving up the phase ladder to a new level, which is a good and positive hearing. Unfortunately, a “meeting” also occurs after a participant has been arrested for a positive UA or other violation and after they have sat in jail anywhere from a few days to 30 days (more on this later). At the hearings where a participant is moving up, I

congratulate them, again in open court, and make a scene to be quite honest, for all to see; a scene of pride as I shake the defendant's hand and ask her what I can do to help her do even better. One wanted help finding a job, another wanted his occupational license, and another just wanted recognition for all her hard work. Each of these got what they wanted.



Consequences of a Violation?

When a participant violates with a positive UA or admitted relapse, I make a few judgment calls, but there is one consequence that happens to all participants. This consequence occurs whether the Defendant admits to using, tests positive for use or submits a diluted sample, and it occurs no matter what the excuse. They are arrested immediately. All our probation officers know I want the defendant arrested immediately if they have used.

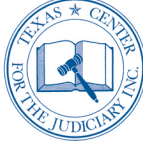
Immediate sanctions are critical for several reasons. One, it gets them off the streets if they are using so they will not use or get arrested for some new offense. Two, it gets them away from the friends or places they have frequented and that contributed to their relapse. Third, it is a consequence for their violation, as a sanction. Fourth, it tells them you mean business. Fifth, it gives them time away from their environment to think about how serious they are about sobriety.

The most important judgment call for me is when do I let them out of jail? A few get released after the weekend, some after a week and many more after 20-30 days. Remember, they volunteered for the program and sobriety is the paramount goal; nothing

more, nothing less. I always bring them before me before they are released and talk to them. I have their counselor and probation officer there. The prosecutor is there too. Many times the Courtroom is full.

I judge their attitude, whether they are remorseful and whether they are serious about being sober. I decide then whether I will even allow them to remain in the Program. I tell them all of this. I give them time in Court to tell me what they are thinking, what they have learned, what they want out of all this. I ask their Probation officer for her opinion. I ask the counselor for his. Many times I send the participant back to jail and tell them to write a letter to their Probation officer, or their spouse, or their kids, or me. In short, I simply listen and decide what is best for them and their sobriety.

The impact of these “Court meetings” cannot be overstated. They are powerful tools on the road to recovery for a defendant that has tried but relapsed. It is the trying that is so hard for addicts, especially out in the real world. These meetings are necessary to a successful recovery, in large part because the participant sees that you care, that you have acted immediately to stop their relapse, that their “relapse” does not equate to “failure,” and that you want to know what the SAP Team can do to help them prevent this from occurring again. They learn coping skills in the mere act of being called on the carpet and walking though “what they learned” with the Judge, the prosecutor, the counselor and the probation officer. What they have never done on their own, and what they are learning to do in their treatment



DOES THE TEXAS CENTER FOR THE JUDICIARY HAVE YOUR CURRENT E-MAIL ADDRESS?

The Texas Center frequently sends out important information via e-mail. To ensure you receive this information in a timely manner, please keep you e-mail current with us.

To submit or update your e-mail address, please contact Lacy Jemmott, Registrar, at (512) 482-8986 or lacyj@yourhonor.com.

and counseling, they now experience by walking through a “debriefing” with their Judge and the SAP Team.



Graduation Party

When a SAP Program participant successfully completes the Program, they will be clean and sober. That alone is the most important “happening” and is a tremendous accomplishment. It is not a guarantee that they will always be sober, but that they are at that moment and that they can stay sober if they use the skills they have learned and practiced while in the Program.

When we have a graduation, we have a graduation party at the 410th Courtroom with the Judge. I convinced our Commissioners to budget money for graduation cakes, and we decorate each cake with whatever the graduate wants; a horse, a fish, a guitar, a 1957 Chevy. The graduation ceremony tracks the American Native Indian ritual of standing in a circle, facing the graduate, and taking turns telling them what we think of their achievement.


The regular Court staff, the counselor, the probation officer, one or more deputies, one or more prosecutors, the participant’s family and others attend the graduation ceremony to honor and

congratulate the graduate. We present the graduate with a Certificate signed by the Judge, the prosecutor, the counselor and probation officer. It is a scene that brings tears to most eyes, including yours truly.



So Far, So Good

To date, we have accepted 24 defendants into the SAP Program and have had 6 graduations. We have only had a few participants pulled from the Program because of their inability to comply with the protocol. While the Program started slowly as I and the SAP Team got acquainted with each other and the logistics of the Program, in recent months we have accelerated our intake numbers as the prosecutors, defense attorneys and defendants realize the benefits of the Program and see the successes of its graduates.

I have no dreams that we will save the world with our Drug and Alcohol SAP Program, but if we help one defendant find their way to sobriety I am convinced that my time on the bench will be well served, not only for that individual but also for his or her family and friends. And I believe that our judicial system will have done its part in bringing justice to one. 

NEW JUDICIARY LEADERS ELECTED

Rucker and Weiser to Head Texas Center & Judicial Section

Judges attending the Judicial Section—State Bar of Texas’ 77th annual conference, held September 12–15 in Dallas, elected new leaders for the 2004–05 term. 318th District Court Judge Dean Rucker will serve as Judicial Section Chair, and Judge Laura Weiser of County Court at Law #1 Victoria will serve as Chair-Elect.


Formed in 1928, the Judicial Section promotes the objectives of the State Bar of Texas within the judiciary. Approximately 1,500 active and retired Texas judges compose the Judicial Section.

As Judicial Section Chair, Judge Rucker will preside at all Section and Board of Directors meetings; formulate and present a report of the Section’s work at the State Bar of Texas’ annual meeting; and perform other duties as pertain to the office.

Sitting on the family district court bench in Midland, Judge Dean Rucker is Board Certified in Family Law by the Texas Board of Legal Specialization. Judge Rucker also serves as Presiding Judge of the 7th Administrative Judicial Region. In 1997, Texas CASA recognized Judge Rucker as the Clayton E. Evans Judge of the Year. He is a member of the State Bar of Texas Family Law Section, the Texas Academy of Family Law Specialists, and the Midland County Bar Association. Judge Rucker has spoken at conferences for the Texas Center for the Judiciary, State Bar of Texas, and the Texas Academy of Family Law Specialists. He earned a B.S. from Trinity University and a J.D. from St. Mary’s University School of Law.

Judge Laura A. Weiser serves as judge of County Court at Law #1 in Victoria. Prior to taking the bench, she was an associate with Cole, Cole and Easley, a staff attorney with Costal Bend Legal Services, and an assistant criminal district attorney for Victoria County. Judge Weiser is a graduate of Houston Baptist University and the University of Houston Law Center. She also serves on the Advisory Board for the University of Houston—Victoria Criminal Justice Program and the Victoria College Police Academy. In 1998, she was named “South Texas Woman of the Year.” Judge Weiser serves as a resident adjunct professor at the University of Houston—Victoria Criminal Justice Program.

In addition to leading the Judicial Section, Judge Rucker and Judge Weiser were also elected to head the Texas Center for the Judiciary.

Judge Weiser will succeed Judge Rucker as Chair of the Judicial Section and Texas Center during the 2005–06 term. 




JEFFERSON NAMED CHIEF JUSTICE

On September 14th of this year, Justice Wallace B. Jefferson made history when Gov. Rick Perry promoted him to Chief Justice. Chief Justice Jefferson is the first African American to serve on the Texas Supreme Court, and now the first to lead it.


Chief Justice Jefferson was appointed by Perry to the court in 2001 and won election the next year. As Chief Justice, he will replace Chief Justice Tom Phillips, who retired in September after serving on the court since 1988. The appointment is subject to approval by congress.

Chief Justice Jefferson distinguished himself early in his career by winning two cases before the U.S. Supreme Court within 10 years of graduating from the University of Texas Law School in 1988.

Chief Justice Jefferson grew up in San Antonio, the son of a middle-class, hard-working military family that stressed education. He won a scholarship to an honors program at Michigan State University before attending UT Law School. Before becoming a judge, he worked as a lawyer in San Antonio for 13 years.

Jefferson was sworn in on November 11th at 1:00 p.m. in the House Chambers. Justice Antonin Scalia of the US Supreme Court did the honors. 

CORRECTION

Judge Jim Lovett was mistakenly omitted from the list of 2004 Texas College Graduates found on page 7 of the Summer 2004 issue of *In Chambers*. We apologize for the oversight and extend our congratulations to Judge Lovett for this achievement. 

IN MEMORIAM

For Those Who Served Our State Courts

As of November 12, 2004

Honorable Charles Spencer Carver, Jr.
Justice (Retired)
5th Court of Appeals, Dallas

Honorable Sam Houston Clinton
Judge (Retired)
Texas Court of Criminal Appeals, Austin

Honorable Walter "Bill" Dunham
Senior Judge (Retired)
28th District Court, Corpus Christi

Honorable James Evetts
Judge (Retired)
27th District Court, Belton

Honorable James "Jim" Farris
Senior District Judge
317th District Court, Beaumont

Honorable Guy Jones
Senior District Judge
202nd District Court, Texarkana

Honorable L.J. "Boots" Krueger
Senior Judge
County Court at Law, Mont Belvieu

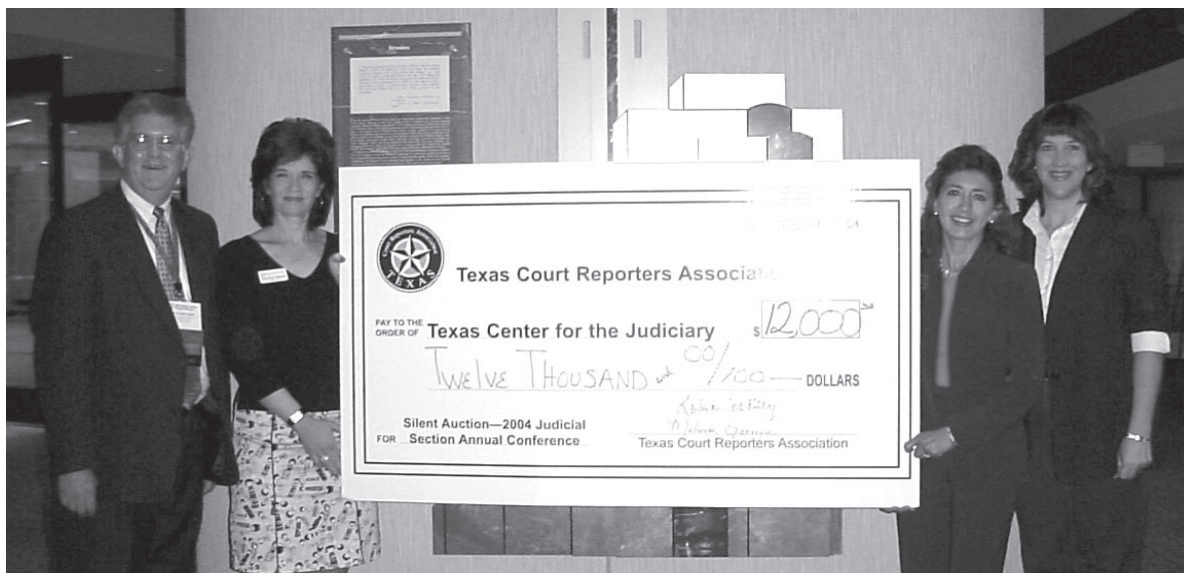
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157th District Court, Houston

Honorable Gary Watkins
Judge
244th District Court, Odessa

THANK YOU TEXAS COURT REPORTERS!



Sponsored by the Texas Court Reporters Association, the 2004 Judicial Section Annual Conference's Silent Auction was a huge success and raised \$12,000 for the Texas Center for the Judiciary. Thank you, Texas Court Reporters Association and to the following volunteers who made it possible: Shari Steen, David Langford, Gina Udall, Marcey Poeckes, Lara Polito, Velicia Dobbins, Marigay Black, Orlene Kitchens, Debbie Saenz, Pam Sumler, Lisa Morton, Luanne Rupp, Betty Helms, Robin Cooksey, Melinda Garriga, Judy Werlinger, Susan Simmons and Judy Miller.

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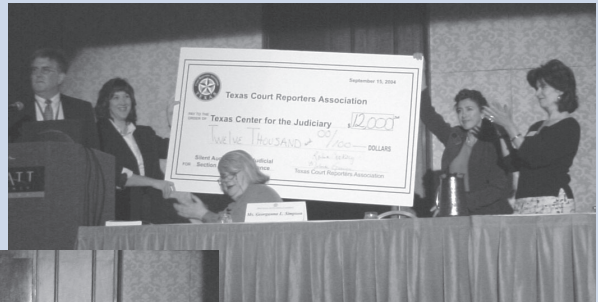
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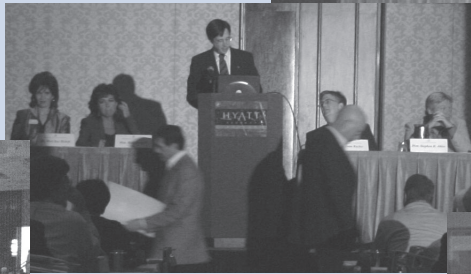
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The Stalker

Submitted by, Judy L. Jacobs, RN, MA, and Wayne D. Porter, MS



Stalking is an old behavior, but a new crime in the United States. Shakespeare wrote about the obsessive and murderous thoughts of Othello. Louisa May Alcott, an ardent believer in women's rights, wrote a novel about stalking in 1866 entitled *A Long Fatal Love Chase*. The film industry has released a plethora of stalking films, and the death of Princess Diana, in 1997, has been attributed to stalkerazzi: tenacious pursuers seeking proximity to a person who has no desire, most of the time to be photographed (Meloy, 1998). Through the media, we have learned about people who have stalked and attempted to enter the homes of rich and famous personalities such as Steven Spielberg, Madonna, and David Letterman, and the shooting deaths of actress Rebecca Schaeffer, and singer John Lennon. The primary motivation for stalking is not sexual, but is, instead, conscious anger or hostility toward the victim (Meloy, 1996). The most commonly perceived motivation for stalking by the victims is power and control (Tjaden & Thoennes, 1997).

The Definition

Stalking is a crime involving acts of pursuit of an individual over time that is threatening and potentially dangerous. The lawmakers of California have defined Stalking as "any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, of the safety

of his or her immediate family, is guilty of the crime of Stalking" (California Stalking Law, 1994).

There are now explicit stalking laws in all 50 states and the District of Columbia; and at the federal level, the crime of stalking was signed into law in 1996 as part of the Violence Against Women Act (title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322).

...every state in the union, as well as the federal government now have measures to protect the victims of Stalking.

Legal definitions of stalking vary from state to state, but generally have three elements to them:

- 1) a pattern (course of conduct) of behavioral intrusion upon another person that is unwanted;
- 2) an implicit or explicit threat that is evidenced in the pattern of behavioral intrusion; and
- 3) as a result of these behavioral intrusions, the person who is threatened experiences reasonable fear. (Meloy & Gothard, 1995, p. 258).

Incidence and Prevalence of Stalking

In 1997 the Center for Policy Research in Denver published a study indicating that 8% of adult American women and 2 % of adult American men

have been stalked sometime in their lives (lifetime risk); and an estimated 1 million adult women and 0.4 million adult men are stalked annually in the United States. This report also indicated that only half of all stalking victims report their stalking to the police, and only one-quarter of those result in an arrest. About 12% of all stalking cases result in criminal prosecution (Tjaden & Thoennes, 1997).

Types of Stalkers

While there have been several attempts to characterize the various stalking behaviors and relationships, the most fundamental aspect of these individuals is that they are portraying a behavior. These behaviors naturally result from the underlying psychiatric and psychological processes occurring in the stalker (Meloy, 1998, p. 69). We refer the reader to the book *The Psychology of Stalking* authored by Reid Meloy for further discussion about the psychiatric and psychological processes of the stalker.

While understanding stalkers in terms of diagnostic categories may be useful to some, researchers have developed the stalker/victim dyad to best understand the relationships between the two parties. The "Stalker-Victim Types" include:

- **Simple Obsessional** - consists of 47% of stalking cases where the victim and the stalker have some prior knowledge of one another. The cases that fall into this category are those

continued on next page

that may have involved prior intimate relationships (wife/husband, dating partner, etc.); non-intimate situations that often occur in the workplace, which may overlap the phenomenon of workplace violence; or other type of working relationships, such as doctor-patient, psychotherapist-client, business partners, etc. This stalker group has the highest rates of substance abuse and personality disorders (Zona, et al., 1996). These cases may also have the shortest duration of stalking, but are the most volatile in terms of property damage and physical harm, making this stalker type the most dangerous.

- **Love Obsessional** - consists of 43% of stalking cases characterized by the absence of an existing relationship between the perpetrator and victim. The stalker, usually focusing on a celebrity or public figure, is obsessed and mounts a campaign of harassment to make the target aware of the stalker's existence. A large number of these stalkers suffer from bi-polar disorder or schizophrenia.

- **Erotomaniac** - consists of 9.5% of stalking cases characterized by the stalker delusionally believing that the target, usually someone rich and famous, is in love with the stalker. The most unique feature of erotomaniac stalking cases is that the majority of suspects are female. The victims are often older men of higher socioeconomic status (Meloy, 1998).

Effects of Stalking on the Victim

Victims of stalking state the effects of stalking is akin to Psychological Terrorism. The ominous threats,

constant surveillance, and intrusion into the victim's lives, causes the victim to often be in a state of hyper-vigilance and fear, eventually leading to long term psychological trauma and perhaps Post Traumatic Stress Disorder. Stalker's behaviors run the gamut (see sidebar on page 16) from anonymous telephone calls in the middle of the night to sexual assault and kidnapping. "The alleged stalker's behavior, not motives, should be the most significant factor in determining whether to file charges" (Bureau of Justice Assistance, 1996, p. 4).

When a victim is being stalked, they should take the situation seriously. However, coping with a stalker's behaviors can be extremely difficult. Stalking victims should work closely with their local prosecutor, by explaining the problem comprehensively and have evidence on hand (LaRue, 2000). While we are all responsible for our own safety, there are certain steps victims can take to protect themselves against a stalker:

- Call police each time the stalker shows up and/or you feel threatened
- Give a description of the stalker and his/her vehicle to the police
- Stop all contact with the stalker
- Screen calls - don't use your voice on answering machine; use a phone service
- Consult/obtain Restraining Order
- Increase your sense of security by installing security devices at home and ask for extra security protection at work
- Save all evidence of stalking behaviors including letters and gifts
- Establish Distress Code with others
- Get support from family, friends, and co-workers, neighbors
- Document harassment (take videos/pictures, get witness statements)- keep a log
- Get a car phone or have a cell phone

available at all times

- Ask for police drive-by and free home security check
- Have an escape plan and kit ready just in case you need to leave quickly
- Change your regular routines frequently
- Join a support group

Other precautions to take include (LaRue, 2000):

- Have an unpublished and unlisted telephone number
- Utilize a post office box, rather than have mail sent to your home
- Alert credit card companies and your personal financial institutions to your situation to prevent the stalker from manipulating your accounts
- Cancel any magazine subscriptions that disclose your address
- Don't reveal your social security number on your checks; never give it out over the phone
- Don't reveal personal information on online computer services.

A Final Thought

Once a person is stalked, their lives will never be the same again. Often the victim feels unnecessary guilt and uncontrollable blame for their plight, while fearing for the loss of their safety, welfare and authority over their lives. Nonetheless, there is hope for the future. While the legal concept of Stalking is relatively new with the first law being enacted in California in 1990, every state in the union, as well as the federal government now have measures to protect the victims of Stalking. In addition to the laws being enacted, astute education and pointed law enforcement will combine against the criminal while advocating for the victim(s).

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For additional information on the topic of stalking refer to these resources:

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About the Authors

Judy L. Jacobs, RN, MA is President of Professional Health Care Systems, Inc.

Wayne D. Porter, MS, is a Special Agent for the Florida Department of Law Enforcement. They are the coauthors of the book titled: *The Workplace Violence in Healthcare Tool Kit: a Guide to Establishing a Prevention and Training Program,* published by McGraw Hill Corp. They are both nationally recognized speakers and

trainers, having provided programs for corporations, criminal justice groups and other healthcare organizations on various issues of Workplace Violence, Threat Management, and Critical Incident Management; as well as other corporate training programs, i.e., Creating Team Spirit, Empowering Work Groups through Celebrations, Conflict Management and Responding to Personal Stress. They can be contacted at: 248- 310-5973. ✍️

Sidebar: Stalking Behaviors

A recent study of stalkers conducted by Doris Hall, PhD and printed in *The Psychology of Stalking* (1998) indicated the following types of stalking behaviors:

Type of Contact Indicated	Incidents	%
Telephone calls	126	87
Surveillance of home	122	84
Followed	116	80
Drive by home	112	77
Appearing at workplace	78	54
Sent letters	73	50
Made other types of contact	71	49
Spread gossip	69	48
Property damage	63	43
Left things on property	62	43
Threatened to harm others	60	41
Broke into home	57	39
Sent unwanted gifts	56	39
Hit or beat victim	55	38
Sexual assault	32	22
Injured or killed pets	19	13
Kidnapping	11	8
Sent packages containing urine, semen, dead animals, blood or locks of hair	5	3
Arson	2	1
Other (behaviors not listed specifically in questionnaire)	71	49



ETHICS OPINIONS


Question & Answer

ETHICS OPINION #289

Referral to Private Law Firm for Pro Bono Representation

QUESTION: May a Judge refer a criminal defendant to a private law firm if the criminal defendant does not qualify as an indigent for purposes of a court appointed attorney, and the law firm would provide legal representation without a fee? The law firm would be part of a short list which includes a law school criminal defense clinic. The lawyers would be qualified and meet the minimum requirements for appointment as required by the Fair Defense Act.

ANSWER: No. Notwithstanding the fact that the representation would be pro bono, the Committee is of the opinion that the referral outlined in this question would constitute a recommendation of private counsel which is prohibited by Canon 2B which states, in part, “a judge shall not lend the prestige of judicial office to advance the private interests of the judge or others, nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.” By recommending a specific lawyer or private firm, the judge would be indicating support for the services of a particular lawyer or firm over others.

However, the Committee emphasizes that this opinion should not be interpreted to prohibit judges or court personnel from referring persons in need of legal assistance to departments, agencies, organizations or law school clinics which provide pro bono legal services, lawyer referral services, or lists of attorneys willing to assist the public in various areas of legal expertise. 

ETHICS OPINION #290

Appointment of Spouse of Court Personnel

QUESTION: May a County Court at Law Judge, who is assigned all of the probate cases for the county, appoint the spouse of one of the two probate assistants in the Judge’s office as an ad litem in guardianship and heirship cases? The spouse, who is an attorney and meets the requirements established by law to serve as an ad litem, would be one of approximately twenty qualified attorneys on the Judge’s appointment list.

ANSWER: Yes, provided certain procedural safeguards are taken. There is no express prohibition in the Code of Judicial Conduct that prevents the appointment of a qualified spouse of a court employee provided the appointment is made impartially and on the basis of merit. See Canon 3C(4).

However, the Committee expresses its concern that to avoid the appearance of impropriety, the court employee should not be involved in any aspect of the specific case to which his or her spouse is appointed and the judge should make full disclosure of the nature of the relationship to all parties. Furthermore, all court personnel should be cautioned about the danger of ex parte communications regarding those cases.

See Canon 3B(8). 

The Honorable Stephen B. Ables has been appointed Chair of the Ethics Committee for 2004-2005 term by Judge Dean Rucker, Chair of the Judicial Section. Judge Ables replaces Justice Mack Kidd, whose term on the committee and as Chair expired this year. However, Justice Kidd will continue to serve on the committee, as Judge Rucker appointed him to complete the unexpired term of Justice Michael Schneider who was appointed to the federal bench in October.

To ask an ethics question, contact Judge Stephen B. Ables (830.792.2290) or the State Commission on Judicial Conduct, 877.228.5750.

For a complete listing of the Judicial Section Committee members, please see page 11.



MAKING NEWS

Honors & achievements of Texas Judges

Judge Margaret E. Barnes of County Court at Law #2 in Denton County was awarded a scholarship by the State Justice Institute (SJI), a non-profit organization established by Federal law to award grants to improve the quality of justice in State courts nationwide, facilitate better coordination between State and Federal courts, and foster innovative, efficient solutions to common problems faced by all courts. Judge Barnes used the scholarship to attend an Alternative to Incarceration Conference in late September of this year. More information on the SJI is available at <http://www.statejustice.org>.



Judge Gladys Burwell, Probate Court of Galveston County, and **Judge Susan Criss**, 212th District Court, received honorary resolutions from the State Bar of Texas commending them for their outstanding contributions to their communities and the judicial system.

The resolutions were presented in Galveston in conjunction with the Board's quarterly meeting on September 17th and 18th.



Judge Carole Clark of the 321st District Court in Smith County was awarded an honorable mention for Judge of the Year from the Washington D.C.-based National Child Support Enforcement Association's 2004 Excellence Awards in recognition of her child support probation program. The program puts parents on regular probation, just like criminals, for failing to make child support payments. The program has collected \$3.5 million from 731 child support cases since it began in March 2002.



On March 4th, the El Paso County Law Library was re-named to honor **Judge Robert J. Galvan**. The change was made in recognition of Judge Galvan's service of 34 years

on the Library Committee, 20 of those as Chair. Judge Galvan retired in 1990 after 20 years on the bench at El Paso County Court at Law No. 1.



On October 10th, **Judge M. Sue Kurita** accepted the position of Vice President of Publications for the National Association of Women Judges. Judge Kurita is the presiding judge of El Paso County Court at Law #6 and has been a member of NAWJ since 2000. "I am very pleased that Judge Kurita has been elected and has agreed to serve this wonderful organization," said Justice Sandra Day O'Connor, Associate Justice of the United States Supreme Court.

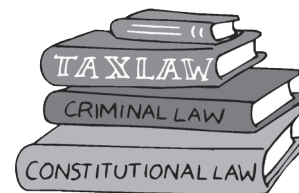


Judge Jennifer Rymell, of County Court at Law #2 in Fort Worth was named the Outstanding Young Lawyer of Texas by the Texas Young Lawyers Association. Judge Rymell was recognized for her outstanding contribution to the legal profession, the Bar and her community.

In The Library

This publication is now available from the Texas Center library. If you would like to check out these or other materials, please contact Staci Priest, Publications Coordinator, at 512-482-8986 or stacip@yourhonor.com.

- **National Association of State Judicial Educators**
Hardcore Drunk Driving Judicial Guide - A Resource Outlining Judicial Challenges, Effective Strategies, and Model Programs





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Judicial Conference Calendar

2004

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December 5–10, 2004
Austin

2005

Regional Conference (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

Family Violence Conference
April 4–6, 2005
Galveston

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

Criminal Justice Conference
May 22–24, 2005
Plano

PDP Professional Development Program
June 20–24, 2005
Austin

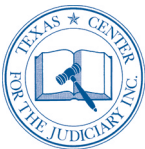
Judicial Section Annual Conference
September 18–21, 2005
Austin

2006

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

Judicial Section Annual Conference
September 10–13, 2006
Houston

College for New Judges
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