Bailiff/Warrant Officer Conference

2005-2006

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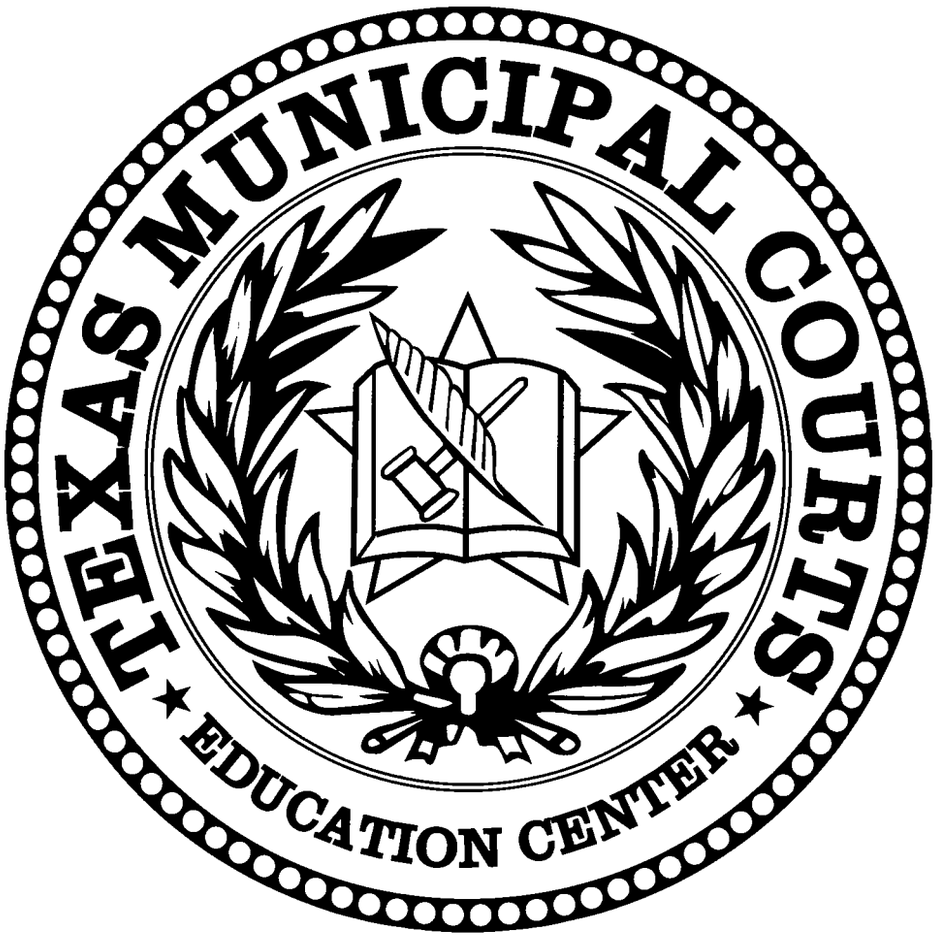
Texas Municipal Courts Education Center



TEXAS MUNICIPAL COURTS EDUCATION CENTER

COURSE MATERIAL
Irving
Bailiffs/Warrant Officers Seminar
February 8-9, 2006

1609 Shoal Creek Boulevard, Suite 302 Austin, TX 78701
Telephone (512) 320-8274
1 (800) 252-3718
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Email: tmcec@tmcec.com
Web Page: www.tmcec.com

Funded by a grant from the Texas Court of Criminal Appeals

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12-Hour Bailiff/Warrant Officer Seminar
Irving February 8-9, 2006

TMCEC expresses its appreciation to the following persons for their assistance in planning the FY06 Bailiffs/Warrant Officers Program.

Andy Kerstens—Bailiff, City of Webster
Al Rogers—Deputy Marshal, City of Dallas
Ruben Saucedo—Marshal, City of Leon Valley
Peter Yong—Warrant Officer, City of Killeen

Also, we appreciate the help of the Dallas Police Training Academy and Judge C. Victor Lander (Dallas Municipal Court) for assistance in recruiting speakers for this program.

Bailiff/Warrant Officer Conference

Irving

Harvey Hotel DFW
4545 West John Carpenter Freeway
Irving, TX 75063
972.929.4500

TUESDAY | FEBRUARY 7, 2006

1:00 – 5:00 p.m. **Pre-Conference (Optional for 4 hours TCLEOSE credit)**
CPR/AED – Basic Life Support/Healthcare Provider Level
Thomas Cellio, Emergency Medical Training Services, Plano

3:00 – 5:00 p.m. **Registration**

WEDNESDAY | FEBRUARY 8, 2006

6:45 – 8:00 a.m. **Registration and Breakfast**

8:00 a.m. **Welcome and Announcements**
Course Director: Andy Kerstens, Bailiff, Webster

8:00 – 9:30 a.m. **Legal Update**
Ryan Kellus Turner, General Counsel, TMCEC, Austin

9:30 – 9:45 a.m. **Break and Networking**

9:45 – 10:45 a.m. **Ethics & Professionalism**
W. Clay Abbott, DUI Resource Prosecutor, Texas District and County Attorneys Association, Austin

10:45 – 11:00 a.m. **Break and Networking**

11:00 – 12:00 p.m. **Court Security Update**
Allen Gilbert, Presiding Judge, San Angelo

12:00 – 1:00 p.m. **Lunch**

1:00 – 2:15 p.m.	**Bailiff Briefings: Communications** Peter Yong, Warrant Officer, Killeen	**In-house Collection Plans** Jim Lehman, Collections Specialist, Office of Court Administration, Austin	**TCLEOSE Core Course: Identity Theft** Detective L. Tanney, Dallas Police Department, Forgery Squad

Break & Networking			**TCLEOSE Core Course: Identity Theft** continued
2:30 – 3:45 p.m.	**Bailiffs Duties during Trial** Andy Kerstens, Bailiff, Webster	**Warrant Roundups & Amnesty Programs** Rebecca Stark, Court Administrator, Austin & Ron White, City Marshal, White Settlement	
Break & Networking			
4:00 – 5:00 p.m.	**Security Screenings** Al Rogers, Deputy Marshal, Dallas	**Starting a Marshal's Office** Ruben Saucedo, City Marshal, Leon Valley	

THURSDAY | FEBRUARY 9, 2006

6:45 – 8:00 a.m. **Breakfast**

8:00 – 9:30 a.m.	**Court Security Q&A** T.J. Carpenter, Bailiff, Magnolia & Jim Oswalt, Marshal, Lubbock, Allen Gilbert, Presiding Judge, San Angelo	**Identifying Forged Government Documents** Sgt. Stephen Berkley, Texas Department of Public Safety, Fort Worth	**TCLEOSE Core Course: Racial Profiling** Sgt. David Welch, Dallas Police Training Academy, Dallas
Break & Networking			
9:45 – 10:45 a.m.	**Developing a Court Security Manual** Allen Gilbert, Presiding Judge, San Angelo & Randy Leverich, Marshal, Abilene	**Successful Collection Programs & Issues of Concern Q&A** Peter Yong, Warrant Officer, Killeen, Charlie Rogers, Marshal, LaMarque & Margaret Robbins, Program Director, TMCEC, Austin	
Break & Networking			
11:00 – 12:00 p.m.	**Handling Difficult People** Tony Wooley, Marshal, De Soto	**Drug Recognition Testing** Detective Charles Avery, Drug Recognition Expert, Dallas Police Department	

12:00 – 12:15 p.m. **Exam**

12:15 p.m. **Adjourn Seminar**

ANNOUNCEMENTS
FOR
Bailiff/Warrant Officer Seminar Attendees

I

Welcome to the Seminar

II

Notices to Attendees

The viewpoints of the instructors for this program do not necessarily express the opinions of the Texas Municipal Courts Education Center, its Board or Committees.

Federal and state statutes prohibit employment discrimination on the basis of disability, age, race, color, religion, sex, or national origin. Sexual harassment is included among the prohibitions. The TMCEC strongly disapproves of any form of discrimination or harassment at its seminars, meetings or within its work environment. Employees, participants, faculty and volunteers who have experienced or observed any acts that they believe may be prohibited by federal, state or common law, should report the incident to the TMCEC Executive Director immediately. All such alleged acts will be investigated and consideration given to the appropriate action, if any, to be taken.

The Texas Municipal Courts Education Center and the Texas Municipal Courts Association, as grantee, do not endorse, recommend or imply approval of any or all vendors represented in person or by materials/displays at or near TMCEC/TMCA sponsored meetings and seminars.

The Texas Municipal Courts Education Center and the Texas Municipal Courts Association, as grantee, do not endorse, recommend or imply approval of any or all vendors represented in person or by materials/displays at or near TMCEC/TMCA sponsored meetings and seminars.

Attendance

The Texas Municipal Courts Association Board of Directors has adopted the following policy: **All participants at the TMCEC seminars must attend and fully participate during all hours as designated by the schedule. TCLEOSE hours will not be awarded to any participant missing any part of the seminar.**

Your badge is proof of identification. Please wear it at all times during the seminar. The badge also serves as your ticket to enter the room where the breakfasts and lunches are served.

Concurrent Sessions

During the seminar, there may be concurrent sessions offered giving you a choice of presentations taught at the same time. If requested by TMCEC staff, please indicate your choice for each concurrent session on the selection sheet provided at the registration tables. An announcement will be made giving more details about these sessions at a later time.

Program Materials

Your binder is provided to you by the Center and consists of all necessary documents you will need throughout the seminar. You will be provided with a different binder for each seminar you attend every year.

There is also provided a faculty evaluation form that you are asked to fill in as the seminar progresses. Please write your comments fully and remember to add your thoughts for program improvement next year at the end of the form.

Breaks

You will be given several 15-minute breaks throughout the morning and afternoon sessions. This will allow you to smoke (outside) as there is no smoking permitted in the classrooms, dining rooms or areas adjoining the classrooms at any time. Refreshments will be provided in the designated area once each morning and afternoon.

Messages

There is a message board provided near the registration table. Please check it periodically. You should provide your office with the telephone number and extension.

Rooms

The Center pays for the cost of single rooms or double sleeping rooms for participants sharing a room with another participant and is direct billed for such. However, you must pay for all incidentals, including telephone charges, movies, room service, and cleaning. By the provisions of the grant, the Center **CANNOT** pay for these expenses. Please do not put us in any precarious position regarding this matter.

The hotel may or may not charge extra for your rooming guest. Please check with the hotel at the time of check-in. If there is any extra charge, you must pay this expense at checkout.

Smoking

The Texas Municipal Courts Association Board of Directors has adopted the following policy: **No one shall smoke in any classroom, dining rooms or any area adjacent to the classrooms during the TMCEC seminars. Smoking will be permitted only outside the hotel or other common areas away from the meeting rooms and break areas.**

Meals

Once the sessions begin, breakfast and lunch on Day 1 and breakfast on Day 2 are provided by the Center. Because of budget restrictions, the dinner meal is not provided at TMCEC cost.

Shuttle

The hotel offers a complimentary shuttle to and from the airport. Contact the front desk to make arrangements.

Check Out

The hotel has a set check out time of 12:30 p.m. Please insure that you do not go beyond this time. Extra-day charges imposed by the hotel will be your responsibility.

TEXAS MUNICIPAL COURTS EDUCATION CENTER
FACULTY ROSTER

Prosecutors and Bailiffs/Warrant Officers Seminars
Harvey Hotel DFW – Irving

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Killeen, TX 76540
(254) 501-7851
(254) 526-5615 (f)

ABOUT THE SPEAKERS

W. CLAY ABBOTT

Clay Abbott is DWI Resource Prosecutor for the TDCAA. He grew up in Boulder, Colorado and then attended Lubbock Christian University where he received a BA in History. He went on to receive his Doctor of Jurisprudence from the Texas Tech School of Law, *cum laude*. He was inducted into Order of the Coif in December 1986.

Mr. Abbott served as an Assistant District Attorney in Lubbock County before going into private practice for five years. In 1995 he returned to prosecution as the Chief Deputy for the Lubbock County District Attorney's office. He served TMCEC as General Counsel from 2000 to 2004. With Ryan Kellus Turner, he is the author of TMCEC's *Judges Book*.

Mr. Abbott served as an Adjunct Professor at the Texas Tech School of Law for nine years and is a frequent presenter for TMCEC, TDCAA, and others.

CHARLES AVERY

Detective Charles Avery has been with the Dallas Police Department since November 1985. Since becoming a police officer, Detective Avery has served as a patrol officer in the departments Central Patrol Division, the Traffic Sections/DWI Squad, Southwest Patrol as a Field Training Officer, Northeast Patrol as a Crime Prevention Specialist/Community Relations Officer and the Traffic Section as an Accident Investigator. Currently, Detective Avery is assigned to the Vice Section/Alcohol Enforcement Unit.

In 1988, Detective Avery attended and completed the *DWI Detection and Standardized Field Sobriety Testing (SFST)*-training program. Since the completion of this curriculum, Detective Avery has arrested thousands of individuals for Driving While Intoxicated and has been called by several Dallas County Courts to testify as an expert witness as to the effects of alcohol on the body.

In 1990, Detective Avery attended and became certified as a *Drug Recognition Expert (DRE)* through the National Highway Traffic Safety Administrations *Drug Evaluation and Classification Program (DECP)*. In 1991, he became an instructor in both SFST and the DEC Programs. Since becoming a DRE instructor, Detective Avery has trained, and certified, officers from across the State of Texas, Oklahoma, Louisiana, North Carolina, Florida, Iowa, Maryland, Wisconsin, as well as officers from the Washington, D.C. area. He has also been involved in training other certified DRE's in becoming certified as DRE Instructors.

Detective Avery helped to develop the Dallas Police Departments' Standard Operating Procedures that are used with the DECP and is currently working on other procedures so that the program can be expanded throughout the department. He has also helped to educate prosecutors from Dallas, Denton, Collin, and Lubbock Counties. In 1993, Detective Avery assisted Texas A&M University's Law Enforcement Extension with the production of a multi-media presentation that would aid prosecutors in the prosecution of drug-impaired drivers. In 1997, Detective Avery became the Northeast Texas Regional Coordinator for the DEC Program. In 1999, Det. Avery became an instructor in the *Drug Impairment Training for Educational Professionals (DITEP)* program and has

helped conduct training across the state of Texas as well as in the states of New Jersey, Iowa, Minnesota, Wisconsin, Idaho, Alaska, Hawaii and New Mexico. He has given presentations on DITEP at the *Lifesavers* Conferences in San Diego, CA, Charlotte, North Carolina and the *IACP DUI Summit* in Alexandria, VA. Detective Avery is currently the Region 1A coordinator for the DITEP program.

STEPHEN BERKLEY

Stephen Berkley is a Sergeant with the Texas Department of Public Safety. He has held his current position for almost 16 of the 27 years he's been with DPS. Sergeant Berkley has an Associates degree in Business. He is an AAMVA Fraudulent Document Recognition Instructor since February 2005.

DEANNA BURNETT

Deanna Burnett is currently Municipal Judge in Carrollton, a position she has held since 1988. Additionally, she has served as Municipal Judge in Farmers Branch, Plano, and Coppell, Texas. She received her Bachelor of Arts from the University of Texas at Dallas and Juris Doctorate from Texas Tech School of Law, Lubbock. Judge Burnett has been a member of the State Bar of Texas since 1982.

T.J. CARPENTER

T.J. Carpenter has been with the City of Marshal since October 1990, and has served as a Patrol/Warrant Officer since 1995. Prior to that, she was employed with the Tomball Police Department on CISD Patrol. Officer Carpenter graduated from the Harris County Sheriff's Department Academy and has an Advanced Law Enforcement Certification. She is a member of the Victims Advocate Member's Association and is a Region II Director for the Texas Marshals Association. She received the Presidential Patriotism Award in March 1997.

TOM CELLIO

Tom Cellio has been a Regional Faculty member of the American Heart Association for five years in the Dallas area. Mr. Cellio is also a state approved EMS education coordinator. He has been in EMS since 1990, starting in Denver, CO and moving to Texas in 1994.

CANDACE CHAPPELL

Candace Chappell grew up in Lubbock, Texas. She is a graduate of Texas Tech University where she earned her Bachelors Degree, Masters Degree and Juris Doctor. She worked in the Dallas Criminal District Attorney's Office, the El Paso County District Attorney's Office, and as an Assistant City Attorney for the City of El Paso.

In 1995, Ms. Chappell went to work for the City of Irving, the year the city became a court of record. She was presently employed in Irving as a Senior Prosecutor and City Attorney II where she performed both prosecutorial and supervisory duties.

ARTHUR C. (CAPPY) EADS

Cappy Eads is currently the Municipal Judge for the Village of Salado. Prior to that, Judge Eads was elected District Attorney for the 27th Judicial District of Texas from 1976-2000. From 1975-1976, he served as a County Attorney for Bell County, Texas, and from 1972-1975 as an Assistant District Attorney with the 27th Judicial District. Between 1975 and 1987, Cappy Eads served on the State of Texas Counsel of several capital murder trials that resulted in death sentences, including *vs. Larry Joe Ross*, *vs. Selwynn B. Gholson*, *vs. Bernard Ferguson*, *vs. Thomas Barefoot*, and *vs. Jerry "Animal" McFadden*.

Among several honors awarded to Judge Eads are the Outstanding Texas Leader Award (1998), the Governor's Distinguished Service Award (1995), and the Advocate for Justice Award-State (1993). Judge Eads belongs to the State Bar of Texas (having served as Chair of the Criminal Law Section in 1983-1984), American Bar Association, Texas District & County Attorneys Association (having served as President in 1987), National District Attorneys Association (having served as President in 1986), and the National College of District Attorneys.

Judge Eads received his B.B.A. in 1965 from Southern Methodist University and his law degree in 1970 from Baylor Law School. He served in the U.S. Marine Corp from 1959-1967.

ALLEN GILBERT

Judge Allen Gilbert has served as Municipal Judge for the City of San Angelo since 1975. Judge Gilbert began teaching judges in 1977 through Texas Tech School of Law and has taught municipal court judges ever since. Judge Gilbert currently sits on the Juvenile Committee for Tom Green County. He has served on the Board of the Texas Municipal Courts Association for six years, is a past Vice-President of the Texas Municipal Courts Association, and has served on that Association's Legislative Committee. Judge Gilbert has also served on the Supreme Court Education Committee. In 2005, the Texas Municipal Courts Association awarded Judge Gilbert with the Outstanding Judge Award.

BONNIE LEE GOLDSTEIN

In 1990, Bonnie Goldstein began her legal career and over the course of her 15 years has practiced in the areas of state and local government law, government contracts and construction litigation, among others. In 2003, she opened her law office practicing predominantly in the areas of state and local government law. Since 1994, Judge Goldstein has served as the Assistant City Attorney for the Town of Flower Mound, City of McKinney, Texas, among others. She is currently the City Attorney for the City of Princeton and City of Italy. She routinely represents and advises local governments including contracts, procurement, construction, employment, code enforcement, land use, planning and zoning issues, variances, and municipal court.

Judge Goldstein received her Bachelor of Arts degree at Hood College, Frederick Maryland in 1984, and her law degree in 1990 from George Washington University, the National Law Center, in Washington, D.C. She has authored and presented papers to various groups, including the Texas Municipal League, the North Central Texas Council of Governments and Police Training Academy and the Texas Municipal Courts Education Center. Judge Goldstein is fluent in Spanish and was named Legal Counselor to the Mexican Consulate in Houston on March 20, 1998. In February of 2003 she was appointed the Presiding Judge for the City of Cockrell Hill and August 2004, she was appointed as an Associate Judge for the City of Dallas.

ANDY KERSTENS

Andy Kerstens has been in law enforcement for fourteen years. He is presently employed with the Webster Municipal Court where he has been the warrant officer and bailiff for six years. Prior to that, Mr. Kerstens was employed for eight years with the Galveston County Sheriff's Office where he served in the Jail, Patrol, and Crime Scene Investigations Divisions.

Mr. Kerstens has been a TCLEOSE instructor since 1991. He has taught impact weapons, self-defense for office personnel, crime scene investigation, and special investigative topics. He is currently an active instructor for the Webster Citizens Police Academy, teaching crime scenes, fingerprinting and warrants.

Mr. Kerstens' hobbies include woodworking and motorcycle riding.

JIM LEHMAN

Jim Lehman is currently the Collections Specialist for the Research & Court Services Section of the Office of Court Administration. He joined OCA in January of 1998. Prior to OCA, Mr. Lehman was the Collections Manager for the Dallas County Criminal Courts and is largely responsible for successfully implementing that county's fine collection program. Mr. Lehman spent over 20 years in the private sector finance/collections industry prior to joining Dallas County.

Mr. Lehman holds a Bachelor of Arts degree from Central State University at Edmond, Oklahoma, where he studied Public Administration and Business Administration. He currently serves as Executive Director of the Governmental Collectors Association of Texas.

Mr. Lehman is the recipient of the Justice Achievement Award from the NCSC, and has been published in various publications including *County Progress Magazine, Courts Today,* and *GCAT Newsletter.*

RANDY LEVERICH

Randy Leverich has been a Marshal with the City of Abilene since December 1997. Prior to that, Marshal Leverich served on the Gorman Police Department for two and a half years, the Snyder Police Department for three years, and the Scurry County Sheriff's Office for three and a half years.

JAMES OSWALT

James Oswalt has been involved in Law Enforcement for 20 years. He has worked for the City of Lubbock since 1995, and is currently a Marshal for the City. Marshal Oswalt has been a member of the Texas Marshals Association since 1999.

ROBIN A. RAMSAY

Robin Ramsay is currently a licensed attorney and the Presiding Municipal Judge for the City of Denton. Mr. Ramsay received his undergraduate degree from Southern Methodist University in Dallas and his law degree from Texas Tech University in Lubbock.

Prior to becoming a judge, Mr. Ramsay served as Students' Attorney for the University of North Texas and as an Adjunct Professor of Business Law. After leaving the University of North Texas and prior to his current appointment, Mr. Ramsay practiced law with the Hammerle Law Firm with offices in Lewisville and Denton.

Mr. Ramsay has received his accreditation for the American Academy of Attorney Mediators and currently acts as a Mediator for both pre-litigation and litigated matters by assignment of Court and at the request of the parties or their attorneys. Mr. Ramsay also serves as alternate Mental Health Magistrate for Denton County at the assignment of the Denton County Probate Court.

MARGARET ROBBINS

Margaret Robbins is the Program Director for the Texas Municipal Courts Education Center, a position she has held since 1986.

Before joining the TMCEC staff, Ms. Robbins was Court Clerk for three years and then Municipal Court Judge for four years for the City of Cedar Park. Ms. Robbins has served as author and editor to numerous publications including the TMCEC newsletter, TMCEC *Clerks' Procedures Manual,* and the Clerks' Certification Study Guides.

AL ROGERS

Al Rogers has worked for the City of Dallas since February 1972. His tenure includes three years as a Bailiff/Warrant Officer and almost 22 years as a Chief Deputy Marshal/Chief Bailiff with the City. Marshal Rogers earned his Associates degree in Criminal Justice. He is the recipient of various department awards including TCLEOSE Master Peace Officer. Marshal Rogers is a 1968 Vietnam Veteran, and he set up the City's first security check point.

CHARLIE ROGERS

Charlie Rogers has been in law enforcement for over 25 years. He served as a police officer with the City of Deer Park, in Harris County, from August 1980 until January 2002, at which time he retired to accept the position of City Marshal for the City of La Marque, in Galveston County. Mr. Rogers has over eight years of experience as a City Marshal/Warrant Officer and Court Bailiff. He has been involved with the Texas Marshal Association since it's founding. He has served as Region 2 Director, Vice President and is currently serving as Acting President of the TMA. Mr. Rogers has been married for 34 years and has two adult children, and a poodle named Ginger. They enjoy traveling in their RV and am currently seeking certification from the American Canoe Association as a Kayak Instructor in flat-water touring.

RYAN KELLUS TURNER

Ryan Kellus Turner is General Counsel for the Texas Municipal Courts Education Center. Prior to joining the Center, he served as Briefing Attorney for Judge Sharon Keller at the Texas Court of Criminal Appeals. Mr. Turner obtained his juris doctorate from Southern Methodist University School of Law, Dallas, Texas. He received his bachelor's degree in psychology from St. Edward's University, Austin, Texas, where he now teaches as an adjunct faculty member in the School of Behavioral and Social Sciences. In 2004 he received the School's Adjunct Teaching Excellence Award. Mr. Turner is currently Deputy City Attorney for the City of Dripping Springs and previously served as a Special Assistant County Attorney for Kendall County.

A native Texan, Mr. Turner was raised in the north Texas town of Vernon. He is the co-author of the book *Lone Star Justice: A Comprehensive Overview of the Texas Criminal Justice System.*

RON WHITE

Ron White was appointed as City Marshal for the Town Of Westlake on April 1, 2002. Prior to that time he served as the Warrant Officer for the Trophy Club-Westlake Department of Public Safety since April 1999. While there he created and formed a Warrant Officer program for two separate towns and courts. When the Department of Public Safety was dissolved, the Town of Westlake realized the need for a City Marshal and appointed Marshal White as City Marshal. Marshal White accepted the challenge of creating and setting up a brand new agency.

Marshal White has been in law enforcement for 12 years. In 1990, he began his career with the Tarrant County Sheriff's Office. In 1998, Marshal White received the Purple Heart award from the American Police Hall of Fame for injuries received in the line of duty.

Marshal White serves as the President for the Texas Marshal Association. He is also a TCLEOSE Certified Instructor.

PETER H. YONG

Peter Yong is a Deputy Marshal for the City of Killeen since 2001. Previously, he had served as a Patrol Officer for five years, including one year on Bicycle Patrol. Marshal Yong has an Associates degree and a Bachelor of Science degree in Police Administration. He is currently attending graduate school at Tarleton State University.

Marshal Yong is a Master Peace Officer, recipient of the TCLEOSE Academic Achievement Award, member of the Texas Municipal Police Association and Fraternity Order of Police, and a Texas Marshal Association Director for Region 6.

In 2005, Marshal Yong was selected to represent the USA at the World Bench Press Competition held in Zlin, Czech Republic, and then again in 2006 for the Miami, Florida competition. Currently, he is also a Certified Personal Trainer for a Killeen health club.

WELCOME!

TEXAS MUNICIPAL COURTS ASSOCIATION
TEXAS MUNICIPAL COURTS EDUCATION CENTER
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Legal Update

Presented by

Ryan Kellus Turner
General Counsel
TMCEC
Austin

By the end of the session, students will be able to:

1. Identify how recent federal and state court decisions affect procedural and substantive legal issues in municipal courts.
2. Describe Texas Attorney General opinions of interest to bailiffs in municipal courts.
3. Describe recent legislative changes of interest to bailiffs in municipal court.

Case Law & Attorney General Opinion Update
Academic Year 2005–2006

Ryan Kellus Turner
General Counsel
TMCEC

Except where otherwise noted, the following case law and opinions were handed down August 31, 2004 through October 1, 2005.

I. Search & Seizure

A. Arrest Warrants

Does the Exclusionary Rule Apply Where a Defendant is Arrested on Warrants for Traffic Offenses Lacking a Magistrate's Signature or Proof that Probable Cause had been Determined?

Ray v. State, 148 S.W.3d 218 (Tex. App. - Texarakana 2004).

A police officer stopped a vehicle after observing the seat belt hanging out the door. The officer took the driver and defendant, the front seat passenger, into custody after determining that they did not possess a valid driver's license and had outstanding warrants for their arrest. The officer then discovered drug paraphernalia in defendant's purse and a small bottle containing eight rocks of cocaine which was stuck between the passenger's seat, and the center console. The court of appeals agreed with defendant that the arrest warrants for traffic offenses were wholly lacking in that they were not signed by the magistrate, the officer's return was blank, there was no affidavit attached, and neither warrant set out probable cause. Accordingly, all of the evidence could be suppresed pursuant to the exclusionary rule contained in Article 38.23 of the Code of Criminal Procedure. However, in this particular case, suppression was not required because of (1) the lawful arrest of the driver, together with (2) the officer's ascertainment that the only passenger possessed no valid driver's license. The two factors provided a basis for the officer to inventory the car. Accordingly, the evidence was sufficient to support defendant's conviction because officers testified that the items in defendant's purse could be used to dilute or cut crack cocaine for delivery or sales purposes.

Note: This case was granted PDR by the Texas Court of Criminal Appeals on March 9, 2005. TMCEC will keep you posted to future developments.

B. Search Warrants

1. Did the Pornographic Images of Children on the Defendant's Hard Drive Constitute "Personal Writings?"

Mullican v. State, 157 S.W.3d 870 (Tex. App. – Fort Worth 2005)

Defendant argued that the trial court should have suppressed the pornographic images of children taken from his computer because they were "personal writings" not subject to seizure with an evidentiary search warrant under Article 18.02(10) of the Code of Criminal Procedure. The State responded that pornographic images of children did not constitute personal writings and that, even if they did, the personal writing exception would not have applied because the search warrant was not "evidentiary" (a warrant for "mere evidence." The court of appeals noted that a search warrant could be issued under

Article 18.02(10) to search for and seize property or items "constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense" and that the child pornography was such evidence. "Personal writings", referred to diaries, memos, and journals that were not intended by the writer to be published to third parties, and personal, non-business letters. Judgment affirmed.

2. Did the Trial Court Err by Not Giving Deference to the Magistrate's Determination that Probable Cause Existed to Issue the Search Warrant?

State v. Delagarza, 158 S.W.3d 25 (Tex. App. – Austin 2005)

On review, the State contended the district court erred in granting defendant's motion to suppress evidence of contraband. The court of appeals agreed, finding that the affidavit, when read in a common sense and realistic manner, gave the issuing magistrate a reasonable basis for concluding that contraband could be found at the residence. From the four corners of the affidavit, the magistrate learned that the officer's attention was drawn to the residence by a tip received from an anonymous informer of unknown reliability. The informer described activities that led both the informer and the officer to suspect that drug dealing was taking place. These suspicions were confirmed by four different searches of the trash at that location, in each of which considerable evidence of drug dealing and use was discovered. In light of this preference for the warrant process, and giving the magistrate's probable cause determination the deference it was due, the appellate court held that the magistrate had a substantial basis for concluding that probable cause to search existed. As such, the district court erred by granting defendant's motion to suppress. The suppression order was reversed and the case was remanded for further proceedings.

C. Exceptions

1. Did Exigent Circumstances Exist that Supported the Warrantless Search of a Residence?

Estrada v. State, 154 S.W.3d 604 (Tex. Crim. App. 2005)

The State argued that the officer had probable cause to conduct a warrantless search of defendant's house. The Court of Criminal Appeals, reversing the court of appeals, agreed. In addition to the odor of marijuana, the officer observed minors under the influence of alcoholic beverages. They told the officer that they and other minors had been consuming alcohol and smoking marijuana inside defendant's house. That evidence, in addition to the smell of marijuana on defendant and emanating from the house was enough to establish that there was probable cause for the officer to believe that a crime had been or was being committed. The court of appeals failed to take into account the trial court's finding that there was evidence from the witnesses that it believed established exigent circumstances for a warrantless search.

2. Was Inventory of Defendant's Vehicle After Arrest for Traffic Violations Lawful?

Richards v. State, 150 S.W.3d 762 (Tex. App Houston [1st Dist.] 2004)

Defendant was arrested upon being observed committing multiple fine-only traffic violation (running a stop sign, failing to signal a turn, speeding, and running a stop light). Subsequent to his arrest, contraband was discovered in his automobile while conducting an inventory of its contents. Defendant appealed his conviction of possessing the

contraband. Defendant argued that he should have been given alternatives to having his car impounded. The court found that none of the alternatives to impoundment argued by defendant were available and therefore that the impoundment of his car was permissible. Police were not required to offer the option of moving the car closer to the curb so that it would be legally parked, because, at the time, they did not know who owned the car. They were not required to release the car to defendant's passengers, who were juveniles and unable to take possession of the car due to the fact that the juveniles were all under arrest for criminal mischief and curfew violations.

3. Does Erratic Driving Constitute a Breach of the Peace?

Taylor v. State, 152 S.W.3d 749 (Tex. App Houston [1st Dist.] 2004)

On appeal defendant contended that the evidence seized subsequent to arrest needed to be suppressed, as the arrest was made by a deputy sheriff who was outside of his jurisdiction when he observed defendant driving erratically. The court held that the arrest was proper, because defendant's erratic driving behavior amounted to a breach of the peace. The deputy had authority under Article 14.03(d) of the Code of Criminal Procedure to arrest defendant, regardless of jurisdictional boundaries, when the deputy observed defendant driving so erratically that the behavior could be considered a breach of the peace. Affirming the decision of the trial court, the court of appeals held that the deputy had the authority to arrest defendant, the arrest was not illegal and the evidence seized pursuant to the arrest did not need to be suppressed.

Note: The import of this case should be construed in light of recent legislative changes giving peace officers countywide authority to enforce traffic laws.

II. Consequences of Refusal to Sign Citation

Does a Defendant who Refuses to Sign a Citation "Interfere with a Public Duties?"

Compare: *Berrett v. State*, 152 S.W.3d 600 (Tex. App. Houston [1st Dist.] 2004)

Defendant argued the evidence was insufficient to sustain his conviction for interference with public duties (Section 38.15, Penal Code). The court of appeals disagreed. After being stopped for failure to wear a seat belt, defendant became belligerent with the officer. Defendant began filming the stop on a video camera and voluntarily kept filming and moving his arm out of the officer's reach in an effort to prevent the officer from placing him in handcuffs. On more than 15 occasions, the officer told defendant to put his right arm behind his back, but each time, defendant moved his arm out of the officer's reach and continued to film the encounter in a manner that precluded his arrest. The court held that such conduct, in those circumstances, constituted voluntary action, not a mere omission to act. As a result, the State did not have to prove that defendant had a duty to submit to the arrest. Furthermore, defendant's actions in repeatedly pulling away from the officer and filming the encounter in such a way as to interfere with the arrest were more than "mere speech." Therefore, the evidence was sufficient to sustain the conviction.

Note: Defendant also asserted that he was entitled to a jury charge stating that he was not required to sign a promise to appear in order to obtain his release after receiving such a citation. The court of appeals held that such was an incorrect statement of the law. Accordingly the trial court did not err by refusing to place the requested instruction in the charge.

Contrast: *Barnes v. State*, 166 S.W.3d 416 (Tex. App. – Austin 2005)

On appeal, defendant contended that the evidence was insufficient to sustain her conviction. The appellate court found that defendant's prosecution rested on her lack of cooperation with the

officer as he attempted to cite her for speeding. The appellate court held that defendant, who directly or indirectly refused citation in violation of Sections 543.001- .005, could not also be prosecuted under Section 38.15 of the Penal Code. Moreover, on this record, no rational trier of fact could have found beyond a reasonable doubt that defendant negligently interrupted, disrupted, impeded, or otherwise interfered with her detention or arrest by directing her minor child to leave her vehicle and run in an area near fast-moving traffic, by driving her vehicle forward while she was lawfully detained, or by continuously refusing to obey orders regarding officer safety. There was no basis in the record for concluding that the need to repeatedly order defendant to keep her hands visible interfered with either her detention or her arrest. The court of appeals concluded that the evidence was legally insufficient to sustain the conviction. The judgment was reversed, and a judgment of acquittal was rendered.

III. Malicious Prosecution/Prosecuctor Misconduct

A. Did City's Prosecution for Simple Assault Constitute Malicious Prosecution?

Fazio v. City of Dallas, 2005 Tex. App. LEXIS 1230 (Tex. App. – Dallas 2005)

While at a dinner party, the petitioner grabbed hold of a child's arm to stop the child from running. The child told the investigating officer that she was playing tag with another child when the claimant grabbed her by the arm and told her to sit down. The child's parent filed a complaint alleging assault by contact (Section 22.01, Penal Code). Petitioner was prosecuted by the city attorney's office in the Dallas Municipal Court. Subsequent to being not found guilty at trial, the petitioner filed a malicious prosecution lawsuit against the City of Dallas. The court of appeals ruled that there was no evidence to support the petitioner's argument that the City acted without probable cause or with malice in pursuing a prosecution for assault. Petitioner presented no evidence that the City lacked probable cause. In fact, all parties agreed that the petitioner touched the child, though they characterized that touching differently. Because there was no evidence of malicious prosecution, there was no deprivation of a constitutional magnitude entitling the petitioner to a remedy under 42 U.S.C. § 1983 (deprivation of rights) or by extension 42 U.S.C. § 1985 (conspiracy to interfere with civil rights).

B. After a Mistrial is Brought About by Prosecutor Misconduct, When is a Retrial Barred by Double Jeopardy?

Ex Parte Wheeler, 146 S.W.3d 238 (Tex. App. Fort Worth 2004) – Prosecutor's misconduct (violation of Rule of Evidence 411) resulted in mistrial. Upon second prosecution, defendant's motion to dismiss with prejudice was denied. In utilizing the three prong test recently promulgated by the Texas Court of Criminal Appeals in *Ex Parte Peterson*, 117 S.W.3d 804 (Tex. Crim. App. 2003) the court of appeals held that the prohibition against double jeopardy barred a second prosecution.

All judges and prosecutors should be familiar with the *Peterson* three-prong test for determining if jeopardy would attach:

1) Did manifestly improper prosecutorial misconduct provoke the mistrial?

2) Was the mistrial required because the prejudice produced from that misconduct could not be cured by an instruction to disregard?

3) Did the prosecutor engage in that conduct with the intent to goad the defendant into requesting a mistrial or with conscious disregard for a substantial risk that the trial court would be required to declare a mistrial?

C. Should Prosecutors Call Defense Counsel to the Witness Stand?

Flores v. State, 155 S.W.3d 344 (Tex. Crim. App. 2004)

Permitting the State to call defense counsel as a witness in a criminal trial undermines the adversarial process and inevitably confuses the distinction between advocate & witness and argument & testimony. It is only allowed if required by a compelling legitimate need.

D. Should Prosecutors during Trial Call Themselves to Testify as Witnesses?

Ramon v. State, 159 S.W.3d 927 (Tex. Crim. App. 2004)

During defendant's trial, the trial court allowed the prosecutor to take the stand and testify about a collateral matter, over defense objection. The defense was not permitted to cross-examine the prosecutor, and after a sidebar discussion, the trial court sustained the defense motion to strike the prosecutor's testimony. The trial court instructed the jury to disregard the prosecutor's testimony, but denied the defense request for a mistrial. The prosecutor continued to prosecute the case and made reference to the subject of her testimony during closing arguments. Review was granted to determine whether the appellate court erred in finding no harmful error. The reviewing court held that given the strength of the evidence against defendant, the trial court's instruction to the jury to disregard the prosecutor's testimony, and the tangential nature of that testimony, it did not find an abuse of discretion in the trial court's failure to declare a mistrial.

While, in light of the overwhelming weight of the evidence, the Court affirmed the decision of the court of appeals, the Court stated that permitting the prosecutor to testify was not only error, but also a violation of Rule 3.08(a) of the Texas Disciplinary Rules of Professional Conduct. It then noted that this was the second time in one year that the prosecutor's misconduct was brought to the attention of the Court of Criminal Appeals (see, above, *Flores v. State*, 155 S.W.3d 344 (Tex. Crim. App. 2004)).

IV. Education Code: In Pari Materia Arguments

A. Are "Criminal Trespass" and "Trespass-on School-Grounds" *in Pari Materia*?

In re JMR, 149 S.W.3d 289 (Tex. App. – Austin 2004)

Appellant, a child, was charged with criminal trespass when he returned to his former campus, after having been officially removed and enrolled in an alternative-learning center. He argued that the trespass-on-school-grounds statute, (Section 37.105, Education Code) was subsumed by the general criminal trespass statute (Section 30.05, Penal Code) and that therefore the *in pari materia* doctrine required the State to charge him with that offense, as it more specifically described his conduct. (Defendant also challenged the district court's jurisdiction to hear a Class C Misdemeanor, even though the district court was designated as a juvenile court). The court disagreed, finding that § 37.105 and Tex. Penal Code § 30.05 were not *in pari materia*. The criminal-trespass and trespass-on-school-grounds statutes effectively operated independently because their objectives were complementary: One protected a property interest; the other guarded the safety of people authorized to be on school grounds. In addition, the two statutes were contained in different legislative acts and required different elements of proof. The court also found that the petition sufficiently informed appellant of the crime with which he was charged and allowed him to prepare an adequate defense, despite the State's failure to list the correct first name of the principal, who testified as the owner of the property.

B. Are Aggravated Assult and Hazing *in Pari Materia*?

Ex parte Smith, 152 S.W.3d 170 (Tex. App. – Dallas 2004)

Defendant was a member of the Alpha Phi Alpha fraternity at Southern Methodist University (SMU). He, along with several others, required Braylan Curry, another SMU student who was pledging Alpha Phi Alpha, to consume large quantities of water as part of Curry's initiation. As the result of drinking the large amount of water, Curry suffered convulsions and was hospitalized in intensive care. Smith was charged by indictment with the felony offense of aggravated assault causing serious bodily injury. By pretrial writ of habeas corpus, appellant challenged the district court's jurisdiction over the prosecution. Appellant claimed the charge arose out of a hazing incident, and because hazing (Section 37.152, Education Code) is more specific, prosecution should be brought under it. Because hazing is a misdemeanor, appellant argued, the district court has no jurisdiction over the prosecution. Following a hearing, the trial court denied appellant's requested relief. The court of appeals held that the appellant's *in pari materia* claim is not cognizable by pretrial writ of habeas corpus. In affirming the trial courts order, the court of appeals opined that habeas corpus should not be used against a valid statute or ordinance to test the validity of a criminal complaint. It should only be used when the defendant is entitled to release.

Note: This case was granted PDR by the Texas Court of Criminal Appeals on June 29, 2005. TMCEC will keep you posted to future developments.

V. Attorney Pro Tem Issues

A. Is a Prosecutor, Mistakenly Labeled a "Special Prosecutor," without the Authority to Appeal a Pre-Trial Ruling?

State v. Ford, 158 S.W.3d 374 (Tex. App. – San Antonio 2005)

Though mislabled a "special proseuctor" the attorney was properly appointed as an attorney pro tem and thus had all of the prosecutor's lawful powers, including the authorities to appeal the pretrial ruling. Citing *State v. Rosenbaum*, 852 S.W.2d 525, 525-30 (Tex. Crim. App. 1993), the court of appeals explained that there is a difference between "special prosecutors" and "attorneys *pro tem*." A special prosecutor is *permitted* to participate in a particular case to the extent allowed by the prosecuting attorney, without being required to take the constitutional oath of office. An attorney pro tem is *appointed by the court*, and after taking the oath of office assumes the duties of the attorney and in effect replaces the prosecuting attorney. (Noting the distinctions between these terms, the Court of Criminal Appeals cautioned courts in using the terms synonymously.)

While the the attorney improperly labeled a "special prosecutor" did not take the oath required of attorneys pro tem, the defendant waived the issue by not raising it prior to the appeal.

B. Was the Attorney Pro Tem "Competent" to Represent the State?

Shea v. State, 167 S.W.3d 98 (Tex. App. – Waco 2005)

Attorney pro tem appointed to prosecute pursuant to Article 2.07 of the Code of Criminal Procedure was "competent" to represent the State though he was on federal probation for misprision of felony. Because the term "competent" is not defined by statute, the court of appeals used the plain meaning of the term (i.e., "legally qualified and adequate"). Thus, the court looked to the State Bar to determine if attorney was in good standing to practice law. Section 81.102 of the State Bar Act provides that only members of the State Bar may practice law in Texas, with some exceptions. The State Bar Rules define a "member in good standing" as a member of the State Bar who is not in default in payment of dues and who is not under

suspension from practice. As attorney was in good standing, the court of appeals found that he was "qualified" as require by the statute.

VI. Transportation Code

A. What Constitutes "Reasonable Suspicion" for Following to Closely?

Ford v. State, 158 S.W.3d 488 (Tex. Crim. App. 2005)

A peace officer pulled defendant's vehicle over for following another car too closely, in violation of Section 545.062(a) of the Transportation Code. When defendant lowered his passenger-side window, the officer noticed a strong odor of marijuana. A search of the car produced codeine and marijuana. The Texas Court of Criminal Appeals held that the court of appeals erred in holding that the evidence presented at the suppression hearing supported the trial court's finding of reasonable suspicion. The officer only testified that he saw defendant's car following another car at a distance that the officer believed was insufficient. Without specific, articulable facts, the court had no means in assessing whether the officer's opinion was objectively reasonable. Reliance on the officer's special training was insufficient to establish reasonable suspicion absent objective factual support. The peace officer's testimony was conclusory in character and thus wholly inadequate. The court reversed the judgment of the court of appeals and remanded the case to the trial court.

B. Is a Turn Signal Required When Turning Out of a Parking Lot?

State v. Ballman, 157 S.W.3d 65 (Tex. App. – Fort Worth 2004)

The prosecution argued that the trial court erred in granting defendant's motion to suppress, as officer had probable cause to stop defendant when the defendant committed a traffic violation by failing to use his turn signal (Section 542.001, Transportation Code). Affirming the judgment of the trial court, the court of appeals concluded that, as the parking lot was not a highway, but a privately maintained place, the signaling requirement did not apply to defendant's turn. Furthermore, the officer did not have reasonable suspicion to stop the vehicle, because the officer had no identifying information on the driver of the vehicle at the time a concerned citizen saw the vehicle being driven erratically. Therefore, the trial court properly applied the law to the facts and correctly granted defendant's motion to suppress.

C. Did the Record Support the Trial Court's Conclusion that 3.2 Miles Before Executing a Traffic Stop was Unreasonable?

State v. Dixon, 151 S.W.3d 271 (Tex. App. - Texarkana 2004)

After being stopped for failure to use turn signal (Section 545.104, Transportation Code) police found contraband on defendant's passenger. Defendant was charged and filed a motion to suppress, which the trial court granted. On appeal, the court affirmed. The State presented no argument in support of one point and admitted that the law allowed the trial court to decide the pretrial motion to suppress without hearing testimony. The State's lack of briefing on the matter waived the issue. The trial court suppressed the contraband seized subsequent to the alleged traffic violation because it found that a 3.2-mile delay between the officers' claimed observation of a traffic offense and the ultimate stop was not within a reasonable time or a reasonable distance after the alleged violation. Nothing interfered with the officer's ability to stop the vehicle sooner. The record supported the trial court's findings.

Note: This case was granted PDR by the Texas Court of Criminal Appeals on April 27, 2005. TMCEC will keep you posted to future developments.

D. Was the Warrantless Search of the Defendant's Car Following a Traffic Accident Justifed Under the Community Caretaking Doctrine?

Weide v. State, 163 S.W.3d 239 (Tex. App. - Austin 2005).

Defendant contended that the trial court erred by admitting the contraband into evidence. The court of appeals reversed, noting that the Fourth Amendment applied to vehicles, and that the history of the statute authorizing the investigation of a peace officer (Section 550.041, Transportation Code) suggested that the provision was intended merely to clarify a peace officer's authority to investigate some traffic accidents which occur on private property rather than on the public roadways. The court also held that the circumstances presented at the suppression hearing did not demonstrate that the unidentified officer had probable cause to believe that defendant's vehicle contained evidence of a crime. (The prosecution was unable to even identify the officer who conducted the search and there is nothing in the record establishing any officer's knowledge that plastic bags were ordinarily used to contain drugs). Furthermore, the record did not suggest that there were suspicious circumstances that would lead an officer to believe that the defendant was in possession of contraband. Also, the search was not justified under the emergency doctrine because it was admitted that it was conducted as part of a criminal investigation.

VII. Ordinance Issues

A. Is the Bedford Sound Ordinance Constitutional?

State v. Holcombe, 145 S.W.3d 246 (Tex. App. Fort Worth – 2004)

Defendant was pulled over for playing his car radio too loudly and was subsequently arrested for driving while intoxicated. The trial court granted defendant's motion to suppress on the basis that the noise ordinance, Bedford, Tex., Code of Ordinances, ch. 54, art. II, § 36 (2002), was overbroad. The State appealed. The Court of Appeals concluded that the ordinance prohibited noise that unreasonably disturbed or interfered with the peace, comfort, and repose of "neighboring persons of ordinary sensibilities," unless a permit of variance was first obtained. Accordingly, the statute was neither overbroad nor vague. In response to the allegation that such an ordinance is too broad in scope, the court concluded that it was neutral regarding content and location. Thus, it did not reach a substantial amount of First Amendment activity (because it regulated only the volume of expression). As to terms defined in the ordinace, the court held that were adequately defined and provided sufficent notice under the objective reasonable person standard. The court reversed the trial court's judgment and remanded the case for a trial on the merits.

Note: This case was granted PDR by the Texas Court of Criminal Appeals on April 27, 2005. TMCEC will keep you posted to future developments.

B. Was the Private Driveway a Nuisance that Justified Use of Police Powers?

City of San Antonio v. TPLP Office Park, 155 S.W.3d 365 (Tex. App. - San Antonio 2004)

District court determined that the City's decision to close a private driveway was an invalid exercise of the City's police power and a substantial impairment of access to a business park. On review, the court of appeals held that the trial court acted within its discretion in disposing of all

claims. There was more than a scintilla of evidence to show the traffic entering and leaving the business park did not create a safety hazard or a nuisance, and that the closure of the private driveway would not promote the public interest.

C. Does an Ordinance Criminalizing Smoking in an Enclosed Public Place Constitute an Unlawful Use of Police Powers?

Ex parte Woodall, 154 S.W.3d 698 (Tex. App. – El Paso 2004)

In 2001, the City of El Paso adopted El Paso, Tex., Code § 9.50.030(7), an ordinance which prohibited smoking in all enclosed public places within the city, including food establishments, nightclubs, and bars. The petitioner, co-owner of the Naked Harem Nightclub was smoking in the club when an officer asked her to extinguish the cigarette. When she refused, the officer issued her a citation ordering her to appear in municipal court. The owner petitioned the district court for pre-trial habeas relief claiming that the anti-smoking ordinance violated Tex. Const. art. 1, § 17 by restricting her use of her private property. The court of appeals upheld the ordinance as a valid exercise of the city's police powers. The appellate court lacked jurisdiction over the bar owner's takings claim, because it was not ripe for review at the pretrial stage. The district court order denying habeas corpus relief was affirmed.

D. Is it Constitutional to Delegate the Authority to Create Jailable Sexually Oriented Businesses Ordinances to Municipalities?

Ex parte Smalley, 156 S.W.3d 608 (Tex. App. - Dallas 2004).

Chance Renee Smalley, a dancer at an adult cabaret called Baby Dolls, was charged by information with recklessly touching a customer by rubbing her buttocks against the clothed genitals of the customer while appellant was exposing a portion of her breast, in violation of section 41A-18.1(a) of the Dallas City Code. Appellant filed a pretrial application for writ of habeas corpus challenging the validity of section 41A-18.1. She contended that Section 243.010(b) of the Local Government Code making any violation of a municipal ordinance related to sexually oriented businesses punishable as a Class A misdemeanor is an unconstitutional delegation of authority from the legislature to municipalities because the statute is undefined and grants unlimited authority to municipalities. Following a hearing, the district court denied appellant relief.

The court of appeals concluded that because Chapter 243 permits municipalities to regulate employee/customer conduct and punish violations as Class A misdemeanors and such is not an unconstitutional delegation of authority, that section 41A-18.1(a) of the Dallas City Code was not void. Therefore, the district court did not abuse its discretion in denying appellant the relief sought by her application for writ of habeas corpus.

E. Did the District Court Err in Granting Summary Judgment for the City in Non-Conforming Land Use Case?

Baird v. City of Melissa, 2005 Tex. App. LEXIS 7132. (Tex App. – Dallas 2005)

Trial court did not err in ordering a recreational vehicle (RV) park owner to remove RVs from her property as the plain language of the City of Melissa Comprehensive Zoning Ordinance prohibited uses that were not specified as "permitted" under the schedule, and which did not list "RV park" as a permitted use.

Note: This case is a good reminder that habitual violation of local ordinances, even if they carry criminal penalties, sometimes requires the use of civil litigation.

VIII. Substantive Law Matters

A. Did the State Violate the Law of Trespass in its Efforts to Crack Down on the Sale of Alcohol to Minors?

Phillips v. State, 161 S.W.3d 511 (Tex. Crim. App. 2005).

Defendant pled nolo contendere to selling alcohol to a minor. Finding that the trial court erred in denying defendant's motion to suppress, the court of appeals remanded the case for further proceedings. The State appealed. The court of appeals held that the minor was a trespasser and was not an authorized representative of the Texas Alcoholic Beverage Commission (TABC) under Section 101.04 of the Alcoholic Beverage Code. On appeal to the Texas Court of Criminal Appeals, the State argued that suppression was improper as the minor was an authorized representative of the TABC and, therefore, was statutorily authorized to enter the premises. The Court of Criminal Appeals agreed, finding that because minors in this situation acted at the specific request of TABC officers and on behalf of the TABC to enforce the provisions of the TABC Code through sting operations, they should not be considered trespassers even in the face of a no trespassing sign. Further, by accepting a license or permit to sell alcohol, the bar consented to inspection by TABC agents. The minor was recruited by and under the immediate supervision of a TABC agent to help conduct a sting operation that was expressly contemplated by the legislature. Therefore, the minor was not a criminal trespasser. Since police officers, TABC agents, or the minor violated no laws, the trial judge did not err in denying defendant's motion to suppress. The decision of the appellate court was reversed, and the ruling of the trial court denying the motion to suppress was upheld.

B. When a Defendant is Lawfully Arrested, may the Defendant Assert a Necessity Defense?

Bowen v. State, 162 S.W.3d 226 (Tex. Crim. App. 2005)

Necessity defense under Section 9.22(3) of the Penal Code was available on a charge of resisting arrest, notwithstanding the restriction on the use of self defense, because a legislative purpose to exclude the necessity did not plainly appear in the Penal Code. Defendant's knowledge that she was being placed under arrest was irrelevant to the necessity instruction.

C. Is the Texas Criminal Justice System Ready for the 21st Century, Threats Via E-Mail?

Messimo v. State, 144 S.W.3d 210 (Tex. App.- Fort Worth 2004)

Defendant and the victim had a disagreement, leading to a physical altercation. Shortly thereafter, the victim began receiving threatening e-mails. Defendant was subsequently charged with harassment by electronic communication (Section 42.07(a)(2), Penal Code). Defendant claimed that the victim had stolen defendant's e-mail password and was sending threatening messages to herself. A jury found defendant guilty. The court affirmed, rejecting defendant's contention that the trial court erred in overruling her motion to dismiss and to prevent the prosecution from introducing evidence that the State failed to disclose pursuant to a discovery order. The contested evidence consisted of e-mails that were provided to defense counsel on the

day of trial. The court of appeals stated that it was apparent from a verbal exchange between the trial judge and defense counsel that the judge expected defense counsel to pick up the documents, but counsel failed to do so. Additionally, the trial court did not abuse its discretion in admitting certain e-mails over a lack-of-authentication objection pursuant to Texas Rule of Evidence 901. For example, e-mail was sent to the victim's e-mail address shortly after she and defendant had a physical altercation, and the e-mail referenced that altercation. Additionally, the victim recognized defendant's e-mail account address. The court affirmed the judgment.

D. When a Defendant is Voluntarily Absent from the State, Does that Toll the Statute of Limitations for Bail Jumping or Failure to Appear?

Ex parte Martin, 159 S.W.3d 262 (Tex. App. – Beaumont 2005)

Pursuant to Article 12.05 of the Code of Criminal Procedure, absence from the state after failing to appear or bail jumping tolls the statute of limitations for the underlying offense but does not toll the limitation period as to bail jumping or failing to appear (Section 38.10, Penal Code).

E. May a Business that holds an On-Premises Alcoholic Beverage Permit host a Poker Tournament?

Opinion No. *GA-0335* (6/20/05)

A holder of an on-premises alcoholic beverage permit may not, without violating both section 47.04(a) of the Penal Code and Rule 35.31 of the Alcoholic Beverage Commission, host a poker tournament in which participants risk money or any other thing of value for the opportunity to win a prize. A holder of an on-premises alcoholic beverage permit may, without violating either section 47.04(a) of the Penal Code or Rule 35.31 of the Alcoholic Beverage Commission, host a poker tournament in which participants do not risk money or any other thing of value for the opportunity to win a prize.

IX. Juvenile Law Issues

A. Once a Minor is Accused of Driving Under the Influence of Alcohol, is the Statute Allowing DPS to Administratively Suspend the Minor's Driver's License Unconstitutionally Vague?

Zaborac v. Texas Department of Public Safety, 168 S.W.3d 222 (Tex. App. – Forth Worth 2005)

A police officer responded to an intoxicated driver call and saw a truck matching the vehicle's description. The truck left a parking lot at a high rate of speed and fishtailed at an intersection before turning onto another street. The truck drove across the front yard of a residence to avoid a roadblock. The truck then drove across a field before finally coming to a stop. The officer smelled alcohol on the 17-year-old driver's breath and noticed that his eyes were bloodshot and watery. The officer performed a horizontal gaze nystagmus test on the driver and observed four clues that suggested the driver was intoxicated. In addition, he found 11 cans of beer in the vehicle. The defendant was arrested for driving under the influence of alcohol (Article 106.041, Alcoholic Beverage Code), a Class C misdemeanor, prohibiting a minor with any detectable amount of alcohol from operating a motor vehicle. The defendant's driver's license was suspended pursuant to Section 524.012 of the Transportation Code. On appeal, defendant challenged the constitutionality of the statute, claiming that it was void for vagueness. The court of appeals held that the statute in question gave the driver fair notice of the type of conduct that would result in license suspension. The word "detectable" had a plain and ordinary meaning that

could be understood by a person of ordinary intelligence. Given the totality of the circumstances, the officer did not arbitrarily detect alcohol in the driver's system but articulated several factors indicating he had alcohol in his system, which were all also commonly cited in driving while intoxicated cases. The court of appeals affirmed the trial court's judgment.

B. During the "Taking" of a Juvenile Statement 16 Year-Old Murder Suspect Invoke is 5th Amendment Right?

In re H.V., 2005 Tex. App. LEXIS 2088 (Tex. App. – Fort Worth 2005)

Defendant juvenile was charged with murder. District court suppressed defendant's statement to police, finding that defendant had invoked his Fifth Amendment right to have counsel present. The juvenile court also suppressed defendant's gun as the fruit of his statement. The State appealed.

The State argued that the trial court was incorrect as a matter of law when it found that defendant unambiguously invoked his right to counsel during an interview with a municipal judge acting as a magistrate at a juvenile processing office. The court of appeals disagreed, finding that 16-year-old defendant invoked his 5th Amendment right to counsel with sufficient clarity, as interrogation should have ceased. Defendant asked to call his mother and wanted her to ask for an attorney. In response to a comment from the magistrate that he could request an attorney, he responded that he was only 16. His gun was also properly suppressed as the fruit of the subsequent improper police interrogation because all interrogation should have ceased prior to his statement regarding where he had hid the gun. Thus, the statement could not be other than the product of compulsion, subtle or otherwise; case law regarding "unwarned" statements did not apply.

X. Tow Hearings

Is There Any Point in Even Having a Tow Hearing?

AJ's Wrecker Service of Dallas v. Salazar, 165 S.W.3d 444 (Tex. App. – Dallas 2005)

Salazar was driving home from a doctor's appointment. She saw an elderly woman carrying groceries and offered to drive the woman home. When they got to the woman's apartment, Salazar parked her car, with the handicap placard properly displayed. Although Salazar did not park her car in a fire lane, it was not parked in a marked parking space. Salazar helped the woman carry her groceries into her apartment. Approximately twenty minutes later, Salazar left the apartment and discovered her car was gone.

AJ's Wrecker Service notified Salazar by mail that it had possession of her car. After several failed attempts to retrieve her car, Salazar went to court and requested a magistrate's tow hearing. The justice of the peace conducting the hearing determined that AJ's did not have probable cause to remove Salazar's car. AJ's defied two court orders. Finally, with the intervention and presence of a Dallas County Constable, Salazar obtained her car from AJ's. AJ's had possession of Salazar's car for approximately sixty days.

Salazar filed suit alleging causes of action for violations of the transportation code and city ordinances, negligence per se, promissory estoppel, negligent hiring, waiver, abuse of process, equitable estoppel, conversion, civil theft, and trespass to chattel.

The court of appeals held that all of Salazar's civil causes of action were pre-empted by the Interstate Commerce Commission Termination Act.

Note: In direct response to an Attorney General Opinion (No. *GA-0316*), in which the Arlington Municipal Court concluded that there was no probable cause to tow and that a tow hearing is not an appealable matter, the tow industry successfully lobbied the Legislature to eliminate the general authority of magistrates and municipal courts in cities with a population of 1.9 million

(i.e., Houston) to conduct tow hearings. Now such hearings can only occur in a justice court. In the event of an unfavorable ruling by the justice court, tow operators can appeal the courts decision without posting bond. While municipal judges, in their magistrate capacity (and the Houston Municipal Court), will no longer have the authority to conducting tow hearings, all municipal courts retain jurisdiction to hear the criminal offense of illegal towing (Section 684.085, Transportation Code). In fact, the Legislature raised the maximum fine from $500 to $1,500 per offense. City attorneys are reminded that in these cases, and all other cases, restitution is limited to either $500 upon conviction (Article 45.041(b)(2) Code of Criminal Procedure) or an amount *not to exceed the fine assessed* in cases resulting in deferred disposition (Article 45.051(b)(2) Code of Criminal Procedure).

This is not the first time that municipal courts have been impacted by the Interstate Commerce Commission Termination Act (ICCTA). The City of San Antonio had one of its local towing ordinances pre-empted under the ICCTA in 2001 *See, Stuckey v. City of San Antonio*, 260 F.3d 424 (5th Cir. 2001). In 1999 the Legislature made it a criminal offense for a railway company to obstruct a railroad crossing (Section 471.007, Transportation Code). In the appeal of a civil law suit, the U.S. Court of Appeals for the Fifth Circuit concluded that the ICCTA expressly preempted Section 471.007 of the Transportation Code. *See Friberg v. Kansas City S. Ry. Co.*, 267 F.3d 439, 444 (5th Cir. 2001). Believing the statute to essentially be dead in the water, most local governments have stopped attempting to utilize Section 471.007. In June, the Office of the Attorney General in *Opinion No. GA-0331* reiterated what most of us already believed was settled in *Friberg*; specifically, Article 471.007 is pre-empted by federal law.

Could the criminal penalty for illegal towing be next on the pre-emption chopping block? No doubt that the attorneys for the tow operator will argue that such criminal laws should be deemed pre-empted by the ICCTA. In considering such arguments, city attorneys and municipal judges should keep in mind that in 2002 the U.S. Supreme Court ruled that the ICCTA does not bar a state from delegating to municipalities the authority to establish "safety regulations" to tow trucks. (See, *City of Columbus v. Ours Garage and Wrecker Service*, Inc. 122 S.Ct. 226 (2002). Hence, it appears that ICCTA is intended only to prohibit unauthorized economic regulation, not the passage of laws relating to the accepted use of local police powers.

XI. Procedural Law Issues

A. At Trial, Is the Defendant Entitled to Formal Notice that the State is Seeking an Affirmative Finding of Family Violence?

Thomas v. State, 150 S.W.3d 887 (Tex. App. – Dallas 2004)

Defendant argued that the trial court erred by entering an affirmative finding of family violence, as he was provided no notice that the State was seeking such a finding. The appellate court initially noted that the State did not attempt to prove that defendant had previously been convicted of an assault involving family violence, as the evidence before the trial court simply showed the single family-violence assault alleged in the information. The appellate court found that the State sufficiently notified defendant it intended to seek a family violence finding, because, in the information, the State alleged that defendant assaulted a family member; therefore, the trial court had no discretion in entering a family violence finding once it determined the offense involved family violence. The court of appeals concluded that, because defendant could not avoid the legal reality of his familial relationship with the victim, a more formal notice from the State would not have changed the outcome of his case.

B. Can a Defendant's Pleaing Guilty to Theft in Municipal Court Come Back to Haunt Them?

U.S. v. Lamm, 392 F.3d 130 (5th Cir. 2004)

Firearm possession defendant's prior Texas theft conviction, for shoplifting item valued less than $50, was not sufficiently similar to insufficient funds check offense listed in Sentencing Guidelines as excludable when determining criminal history score, and thus was includable; although offenses were subject to similar punishment, theft offense involved heightened risk of physical confrontation and harm to others.

C. Was the Failure of the State to Prove Venue Harmless Error?

State v. Blankenship, 2005 Tex. App. LEXIS 5083 (Tex. App. – Austin 2005).

The State challenged the judgment of the County Court at Law No. 1 of Travis County, Texas, reversing defendant's judgments of conviction in the Austin Municipal Court, a court of record. The court of appeals initially held that it did not have jurisdiction to hear the appeal because it was not filed by the county attorney but rather by the city attorney with the county attorney's permission. The Texas Court of Criminal Appeals reversed holding the city's assertion in the notice of appeal was a written express personal authorization by the county attorney and found that the assertion simultaneously complied with Articles 44.01 (as to the notice of appeal) and Article 45.201(c) of the Code of Criminal Procedure (as to authorizing the city attorney to prosecute the appeal). The case was remanded to the court of appeals for consideration in light of the Court of Criminal Appeals decision.

Thirteen complaints were filed against defendant in the municipal court alleging violations of certain city ordinances, and each complaint alleged that the offense occurred in the territorial limits of the City of Austin as required by Article 45.019(c) of the Code of Criminal Procedure. Defendant was found guilty of five offenses of developing or changing the use of property without first obtaining a site plan approval and release by the City, and found guilty of three offenses of failing to observe a stop-work order posted at the site of the property involved.

The issue on appeal was the consequence of the failure of the prosecution to prove venue as laid under the particular circumstances of the cases. The court of appeals ruled that there was error in the failure to prove venue as laid, but the non-constitutional error was harmless pursuant to Texas Rule of Appellate Procedure 44.2(b) (defects, irregularity, or variance that does not affect substantial rights must be disregarded.). There was no showing that defendant was prevented from presenting a defense. The description placed the property outside the City limits but within the extraterritorial area of the City over which geographical area the municipal court had sole criminal jurisdiction to try violations of certain city ordinances. The judgments of the County Court at Law were reversed and the causes remanded to that court for consideration of Blankenship's other points of error.

XII. Pre-Trial Motions

A. Is a Pre-trial Motion to Suppress an Appropriate Vehicle to Challenge an Element of an Offense?

Wood v. State, 153 S.W.413 (Tex. Crim. App. 2005)

Defendant argued that the arresting police officer had no reasonable suspicion to detain him; therefore, his detention was illegal, and his arrest for evading arrest or detention (Sec. 38.04, Penal Code) should have been suppressed. The court of appeals reversed the trial court's ruling, stating that there were no specific, articulable facts leading to a reasonable suspicion on the part

of the officer that would have made the detention lawful. The State appealed, arguing that the court of appeals misapplied Texas law in failing to find that specific, articulable facts, coupled with the rational inferences from the facts, in light of the officer's knowledge, reasonably warranted the officer's detention of defendant for further investigation. The Texas Court of Criminal Appeals held that by asking for the trial judge to suppress the arrest, and the details of his flight and evasion of the detention by the officer, defendant was in effect asking the trial judge to rule on whether or not an offense had actually been committed. The Court further held that because the issue was improperly raised in a pre-trial motion to suppress, the court of appeals erred in reversing the trial court's ruling.

B. At Trial, If the Court Grants a Motion to Dismiss On Constitutional Grounds May the State Appeal?

State v. Stanley, 2005 Tex. App. LEXIS 5935 (Tex. App. – Waco 2005).

Following a bench trial, the trial court granted defendant's motion to dismiss the charge against her on the grounds that the municipal ordinance on which the charge was based is unconstitutional. The State appealed under Article 44.01 of the Code of Criminal Procedure. Defendant filed a motion to dismiss the appeal contending that the State has the right to appeal only the pretrial dismissal of an indictment, information, or complaint. The court of appeals granted the motion and dismissed the appeal holding that Article 44.01 does not allow the State to appeal the granting of a dismissal motion once the trial on the merits commences because jeopardy has attached.

C. Who has Jurisdiction to Hear State's Appeal of a Motion to Quash Granted in a Non-Record Trial Court?

State v. Alley, 158 S.W.3d 485 (Tex. Crim. App. 2005)

The complaints accused defendants of separate offenses of failure to stop at a stop sign. The court of appeals dismissed the State's appeal for lack of jurisdiction, finding that State should have brought its appeals to the county courts. In affirming the court of appeals, the Texas Court of Criminal Appeals held that Article 44.01(f) of the Code of Criminal Procedure spoke only to the precedence of appeals of which the court of appeals had jurisdiction. It could not be read to create jurisdiction or to assume the existence of a jurisdiction that was not elsewhere granted. Article 44.01(a) allowed the State to appeal certain orders. Articles 4.08 and 45.042 of the Code of Criminal Procedure provide that appeals from a justice court had to be taken to the county court.

D. Can a Motion to Quash be Successfully Raised in County Court after a Trial De Novo?

Casas v. State, 2004 Tex. App. LEXIS 9352 (Tex. App. Houston [1st Dist.] 2004)

In his sole issue on appeal, defendant argued that the county court erred in denying his motion to quash because neither the citation, nor the affidavit on the back of the citation, stated an offense. The notice of violation served as the charging instrument. Specifically, defendant contended that, because the word paraphernalia was misspelled as "pheraphalia" on the citation and improperly abbreviated as "phera" on the accompanying affidavit, the complaint did not state an offense for which he could prepare a defense. The court of appeals, citing Article 44.181 of the Code of Criminal Procedure, concluded that a county court conducting a *trial de novo* based on an appeal from a justice court or non-record municipal court could dismiss a cause because of a defect in the complaint only if the defendant objected to the defect before the trial began in the justice or municipal court. In this instance, the record did not reflect that defendant objected to the

complaint's defect until after the trial in the justice court had already concluded and the cause was on appeal in the county court. Accordingly, the county court did not abuse its discretion in denying the motion to quash.

XIII. Trial Issues

A. Did the Judge's Refusal to Recuse Deny Defendant the Right to Election of Punishment?

Roman v. State, 145 S.W.3d 316 (Tex. App. Houston [14th Dist.] 2004)

On appeal defendant challenged the denial of his motion to recuse the trial court judge. Defendant contended that because his motion to recuse was wrongly denied, he was forced to go to the jury for punishment rather than have the choice between the trial court judge and the jury. In affirming the denial of the recusal motion, the court of appeals held that the evidence presented showed that the judge conducted a fair and impartial trial and that he limited the range of punishment because of an opinion he formed based on the specific facts of defendant's case. The statements regarding punishment were not arbitrary. Nothing at the hearing on the recusal motion rebutted the presumption of a neutral and detached judge. The judge's comments represented opinions formed on the basis of facts occurring in the course of the current proceedings, or of prior proceedings, and were the type of opinions that case law had held nearly exempt from causing recusal. The judge's opinions were based on his knowledge of the case from having tried defendant's co-defendant, and he had no improper bias. Any alleged bias was not prejudicial in nature, nor did it deny defendant due process of law.

Note: Though municipal courts are criminal courts, remember that the recusal provisions contained in Rule 18 of the Rules of Civil Procedure govern all Texas trial courts.

B. Does the Excited Utterance Exception to the Hearsay Rule apply to Statements Conveyed by Translators?

Cassidy v. State, 149 S.W.3d 712 (Tex. App. – Austin 2004)

Defendant contended the trial court erroneously admitted double hearsay and, by so doing, violated his Sixth Amendment confrontation right. His point of error concerned the admission of the officer's testimony recounting the victim's statements at the hospital. Defendant asserted the testimony was double hearsay: first from the victim to the interpreter, and then from the interpreter to the officer. Defendant did not challenge the trial court's ruling that the victim's statements were excited utterances pursuant to Texas Rule of Evidence 803(2) He argued, however, that this exception applied only to the victim's statements to the interpreter, and the trial court erred by not requiring the State to demonstrate that a second exception applied to the interpreter's statements to the officer. Under the circumstances shown by the record, the trial court correctly treated the interpreter as a language conduit who did not add an additional level of hearsay. The admission of the victim's excited utterances to the officer did not violate the Sixth Amendment. If the admission was error, it was harmless.

C. May an Attorney Waive a Defendant's Right to a Licensed Language Interpreter?

Fonseca v. State, 163 S.W.3d 98 (Tex. App. – Fort Worth 2005)

Although the defendant did not personally waiver his right to an interpreter at the "plea docket," his attorney waived the right by stating that he could interpret. The rule that an attorney acts on behalf of the client was deemed applicable by the court of appeals.

Note: While the Court of Criminal Appeals denied the PDR on this case, it is surprising that the court of appeals seems to rest its reasoning on only two prior cases. One of the two decisions was overruled. The other decision is an unpublished opinion about the waiver of the right to a jury trial in municipal court.

D. May a Justice of the Peace establish a Standing Pool of Qualified Volunteers to serve for Jury Duty?

Opinion No. GA-0336 (6/28/05)

Chapter 62 of the Government Code provides broadly for summoning juries for trial in a justice court. Articles 45.027 and 45.028 of the Code of Criminal Procedure additionally provide for summoning a jury for a criminal trial in a justice court. For the trial of a criminal matter, a justice court may utilize the procedures in either chapter 62 of the Government Code or articles 45.027 and 45.028 of the Code of Criminal Procedure. While articles 45.027 and 45.028 do not prohibit utilizing a pool of volunteers for empaneling a venire, such a method must guard against a due process challenge that it systematically excludes a distinctive group in the community from the venire.

XIV. Judgments

Is an Irregularity in a Judgment Following a Trial De Novo From Municipal Court Correctable *Nunc Pro Tunc*?

Modica v. State, 151 S.W.3d 716 (Tex. App. - Beaumont 2004)

The alleged assault occurred while defendant was inspecting a cosmetology school for violations. Defendant was convicted of assault in the Beaumont Municipal Court and appealed. On trial de novo, in county court, defendant was once again convicted. On appeal to the court of appeals, defendant argued that the trial court erred by holding in its judgment that defendant was convicted of "City Appeal-Other," which is not an offense under Texas law. Therefore, the judgment was void, and defendant was entitled to appropriate relief.

The opinion of the court of appeals is a rare and refreshing review of the case law relating to judgments. In reforming the judgment of the trial court, substituting the properly-worded offense "assault" for the improperly worded term "city appeal - other" wherever necessary, the court affirmed stating that "a judgment is void only in very rare situations, usually due to a lack of jurisdiction." Examples of when a judgment of conviction for a crime is void are when (1) the document purporting to be a charging instrument (i.e. indictment, information, or complaint) does not satisfy the constitutional requisites of a charging instrument, thus the trial court has no jurisdiction over the defendant, (2) the trial court lacks subject matter jurisdiction over the offense charged, such as when a misdemeanor involving official misconduct is tried in a county court at law, (3) the record reflects that there is no evidence to support the conviction, or (4) an indigent defendant is required to face criminal trial proceedings without appointed counsel, when such has not been waived. "The written judgment is not itself the conviction but evidence, among other things, that a conviction has occurred. And while it is true that an appeal may not be taken until a written judgment has been entered, it is not the signing of the judgment that constitutes the "appealable event"; it is the pronouncement of sentence in open court that is the appealable event."

Note: This case also addressed the authority of someone to prosecute as an attorney pro tem. The trial court appointed a criminal district attorney pro tem to prosecute defendant, but the oath of office portion of the order did not appear to have been executed. The court of appeals held that Article 2.07(c) of the Code of Criminal Procedure was not the type of evidentiary or procedural

rule that belonged to an accused and that had to be protected unless expressly waived. Because defendant failed to complain in the trial court, the issue was not preserved for appellate review.

XV. *Pro Se* Issues

What are the Responsibilities of Pro Se Defendants on Appeal?

Gleason v Isbell, 145 S.W.3d 354 (Tex. App. Houston [14th Dist.] 2004)

In a nutshell, Michael Gleason is apparently not a big fan of the City of Pasadena. Subsequent, to an unsatisfactory encounter with the city that included being prosecuted in municipal court, Mr. Gleason attempted to file a lawsuit against a wide range of city officials (including the municipal judge and city attorney) in their official and personal capacities. Subsequent to the district court granting summary judgment against Mr. Gleason he appealed. The opinion by the court of appeals is important, not in that it sets forth any new precedent, but in the way it illustrates that even appellate courts face the difficulties of adjudicating individuals appearing *pro se*. Excerpts of Gleason's rhetoric, reveal him to be disrespectful. The court's published decision reads, at times, like a warning to anyone who thinks that those who proceed without counsel are immune from discipline. To this end, it is evident why the court opted to publish this opinion.

XVI. Expunctions

A. Did the City have Standing to Oppose Employee's Expunction?

City of Fort Worth v. Tuckness, 165 S.W.3d 425 (Tex. App. – Fort Worth 2005)

After a misdemeanor assault charge against appellee, a Fort Worth police officer was dismissed in Parker county, he successfully petitioned to have the dismissed charge expunged. The officer then requested a hearing to recover back pay; his employer, appellant City of Fort Worth, moved to set aside the order of expunction because the city was entitled to notice of the officer's petition for expunction pursuant to Article 55.02, § 2(b)(8), (c) of the Code of Criminal Procedure. The court of appeals disagreed, finding that because the city was not a party to the expunction proceedings, was not bound by the expunction order's mandate to destroy records or to return them, and would not suffer, by virtue of the expunction order, any peculiar injury not suffered by the public generally, that the city lacked standing to challenge the order of expunction. The judgment was affirmed.

B. Was Evidence Sufficient to Grant Expunction Arising From Arrest for Misdemeanor Assault?

Collin County District Attorney's Office v. Dobson, 167 S.W.3d 625 (Tex. App. – Dallas 2005)

Defendant accused of misdemeanor assault was not entitled to expunction due to insufficiency of evidence. Defendant has not established that the alleged offense was outside of the two-year statute of limitations or that the charge against her was the product of mistake, false information, or lack of probable cause.

XVII. Mandaumus of a Municipal Court

A. Does a Court of Appeals Have the Authority to Mandamus a Municipal Judge?

In re Chang, 2004 Tex. App. LEXIS 9945 (Tex. App. [Houston] 1st Dist 2004)

Applicant for writ of mandamus in court of appeals requested that the municipal judge be ordered to: "remove each defendant's case from the jury trial docket, provide each defendant with a copy of the complaint, and reschedule each case to a pre-trial hearing not less than seventeen (17) days to, at the very least, arraign each defendant and to allow each defendant to file pleadings and raise exceptions to the form or substance of the complaint; . . .." In dismissing the petition for lack of jurisdiction the court explained that its mandamus jurisdiction is governed by Section 22.221 of the Government Code and that Section 22.221 expressly limits the court or appeals mandamus jurisdiction to: (1) writs against a district court judge or county court judge in the court of appeals' district, and (2) all writs necessary to enforce the court of appeals' jurisdiction. As it was not asserted that issuance of the writ was necessary for the court of appeals to enforce its jurisdiction, the court ruled that it has no authority to issue a writ of mandamus against a municipal judge.

Note: The Houston Court of Appeals was not the only court or appeals to hear the exact same issue in the last three year. The same issue was considered by the Dallas Court of Appeals and the San Antonio Court of Appeals in unpublished decisions.

B. Does a District Court have the Authority to Mandamus a Municipal or Justice Court?

Thompson v. Velsaquez, 155 S.W.3d 551(Tex. App. – San Antonio 2004)

Under Article V, Section 8 of the Texas Consitution, the district court has jurisdiction to hear an individual's mandamus petition filed against justices of the peace concerning municipal misdemeanor convictions. The court of appeals ruled that the district court erred in dismissing the petition. It remanded the case for further consideration consistant with its ruling.

Note: Not to take issue with the holding that a district court has jurisdiction to mandamus a justice or municipal court, but the following excerpt from the decision requires clarification that is unfortunately not provided in the opinion: "Thompson filed a petition for writ of mandamus in district court seeking mandamus relief in relation to two municipal court misdemeanor convictions. The *justices of the peace in the two municipal courts* filed an answer and a motion to dismiss. After a hearing, the trial court dismissed the petition finding that it had no jurisdiction."(Emphasis added) *Thompson* at 552.

XVIII. Court Administration

A. Did a Former Sanitarian Alleging a "Ticket Fixing" Scheme by the City Health Department, Warrant Whistleblower Protection?

City of Houston v. Cotton, 2005 Tex. App. LEXIS 5831 (Tex. App. [Houston] 14th Dist. 2005)

Cotton alleged the City of Houston terminated her employment as a sanitarian in retaliation for her having reported violations of law by two of her superiors. She had written citations involving a food store and a restaurant. She was later told that the citations would be destroyed. On appeal, the City alleged that the evidence was insufficient. Indeed, the court of appeals agreed that the employee failed to show that destroying the tickets was a violation of law (for reasons set forth below). Further, the facts did not show that the employee's managers were accepting bribes.

Also, reporting certain behaviors of the restaurant owners was not the same as reporting incriminating behavior on the part of the employee's manager. The court of appeals reversed the judgment and rendered judgment that the employee takes nothing from the City.

Note: TMCEC is aware of at least three instances in the last year where individuals directly or indirectly associated with municipal courts have been investigated or formally accused of tampering with a governmental document. In light of this troubling trend, local governmental employees, public officials, and legal advisors are urged to not misconstrue the court's opinion in *Cotton*. First, this is not a criminal case; it is an employment law case. Nevertheless, the allegations addressed in the opinion are relevant to municipal court operations. By no means should the holding of *Cotton* be construed as authorizing, excusing, or justifying the destruction of citations. The court of appeals makes it clear that its decision in the civil matter pivoted on the fact that the former employee in claiming whistleblower protection failed to provide substantial proof that a violation of the law occurred (and that subsequently she was terminated for reporting it). The court further explains that if Cotton's supervisor destroyed, tore up, or threw away a citation before it was in the municipal court system, there would have been no violation of the law. If, however, the supervisor or any other person destroyed a citation once it was "in the system," there would have been a violation of the law. One witness testified, and the court did not disagree, that a document was officially designated a "government document" once "it goes through the system." Accordingly, under the unambiguous language of Section 37.10 of the Penal Code (tampering with a governmental document), if managers in the City of Houston Health Department, in the course of their official duties, marked citations as void or decided not to pursue them further, without destroying, concealing, removing, or otherwise impairing the verity, legibility, or availability of the citations, their conduct would not violate Section 37.10.

B. May a County Commissioners Court compel a Justice of the Peace to use a Vendor under Contract with the County to Collect Court Fines, Fees, and Costs?

Opinion No. *GA-0313* (3/21/05)

A defendant in a matter described in section 706.002 of the Transportation Code who has failed to pay court-ordered fines or costs must pay both (1) a 30% fee if the county has contracted with a collection agent under Code of Criminal Procedure article 103.0031(g) and (2) a $30 fee if the county has entered a contract under Transportation Code section 706.002.

Under articles 103.003 and 103.0031 of the Code of Criminal Procedure, a county commissioners court may contract with a private collection agent to collect delinquent fines and court costs that were imposed by a justice court. The commissioners court may not thereby abrogate the justice court's authority to collect or otherwise dispose of the fines and costs, however.

Whether a collection agent may collect a 30% collection fee under article 103.0031(b) of the Code of Criminal Procedure on the $30 administrative fee levied under section 706.006 of the Transportation Code will depend on whether the $30 fee is 60 days past due.

C. What is the Authority of a Court without General Civil Jurisdiction to Entertain a Petition for an Order of Nondisclosure?

Opinion No. *GA-0330* (6/10/05)

Only a court that has the authority to place a person on deferred adjudication community supervision has jurisdiction to entertain the person's petition for nondisclosure under section 411.081(d).

D. Is Frustration with the Escalating Rate of Court Costs, Limited Only to Judges in Texas?

Greater New Orleans Expressway Commision v. Oliver, 892 So.2d 570 (La. 2005)

Parish judges who refused to collect additional five dollar courts cost relating to motor vehicle violations committed on the Huey P. Long Bridge, or the Lake Pontchartrain Causeway Bridge, or on approaches to and from the bridges were deemed to have no standing to challenge the constitutionality of the court cost.

XIX. Dual Office Holding

A. Is a Provision of a Home-Rule City Charter Regulating Dual Office Holding Inconsistent with the Texas Constitution to the Extent it Prohibits a Municipal Judge from Serving as Justice of the Peace?

Opinion No. *GA-0362* (10/3/05)

A provision of a home-rule city charter regulating dual office holding that prohibits a municipal judge from serving as justice of the peace is not inconsistent with article XVI, section 40 of the Texas Constitution.

B. May a County Commissioner Simultaneously hold the Position of Municipal Judge of a City Located within his County?

Opinion No. *GA-0348* (8/19/05)

Neither Article XVI, section 40, nor Article II, section 1 of the Texas Constitution prohibits a county commissioner from simultaneously serving as a municipal judge for a municipality within the county. Similarly, the common-law doctrine of incompatibility does not bar the contemplated dual service. While Canons 5(3) and 4H of the State Code of Judicial Conduct do not prevent a municipal judge from holding the office of county commissioner, other canons might, and the question as to whether other canons preclude such service is a matter for the State Commission on Judicial Conduct.

LEXSEE

IN THE MATTER OF H.V.

NO. 2-04-029-CV

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

2005 Tex. App. LEXIS 2088

March 17, 2005, Delivered

PRIOR HISTORY: [*1] FROM THE 323RD DISTRICT COURT OF TARRANT COUNTY.

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant juvenile was charged with murder. The 323rd District Court of Tarrant County, Texas, suppressed defendant's statement to police, finding that defendant had invoked his Fifth Amendment right to have counsel present. The juvenile court also suppressed defendant's gun as the fruit of his statement. The State appealed.

OVERVIEW: The State argued that the trial court was incorrect as a matter of law when it found that defendant unambiguously invoked his right to counsel during an interview with a judge magistrate at a juvenile processing office. The court disagreed, finding that defendant's statement to police was properly suppressed because he had articulated with sufficient clarity his desire to have counsel present. A reasonable magistrate judge would have understood the 16-year-old defendant's request to call his mother to be an unambiguous request for an attorney when that request was followed by his statement that he wanted his mother to ask for an attorney and by his exclamation, in response to the magistrate judge's comment that he could ask for an attorney, that he was only 16. His gun was also properly suppressed as the fruit of the subsequent improper police interrogation because all interrogation should have ceased prior to his statement regarding where he had hid the gun. Thus, the statement could not be other than the product of compulsion, subtle or otherwise; case law regarding "unwarned" statements did not apply.

OUTCOME: The court affirmed the order suppressing the statement and the gun obtained as a result of the statement.

CORE TERMS: juvenile, gun, written statement, right to counsel, causal connection, interrogation, Fifth Amendment, invocation, detective, motion to suppress, warning, suppressed, fruit, totality, suppression, patrol car, unambiguous, confession, minutes, custodial interrogation, suppress, taint, invoked, talk, court of appeals, processing, attenuation, credibility, arraignment, firearm

LexisNexis(R) Headnotes

Criminal Law & Procedure > Appeals > Standards of Review > Clearly Erroneous Review
Criminal Law & Procedure > Appeals > Standards of Review > De Novo Review
Criminal Law & Procedure > Pretrial Motions > Suppression of Evidence
[HN1] The court reviews a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review. In reviewing the trial court's decision, the court does not engage in its own factual review. At a suppression hearing, the trial judge is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony. Therefore, the court gives almost total deference to the trial court's rulings on (1) questions of historical fact and (2) application-of-law-to-fact questions that turn on an evaluation of credibility and demeanor. However, the court reviews de novo a trial court's rulings on mixed questions of law and fact if they do not turn on the credibility and demeanor of witnesses.

Criminal Law & Procedure > Interrogation > Miranda Rights > Notice & Warning
Criminal Law & Procedure > Interrogation > Miranda Rights > Right to Counsel During Questioning
Criminal Law & Procedure > Juvenile Offenders > Statements
[HN2] Prior to a custodial interrogation, a suspect must be advised that he has a right to consult with an attorney.

Interrogation must cease immediately if the suspect states that he wants an attorney. A request for counsel must be unambiguous, meaning the suspect must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. This standard, applied to adult suspects, also applies to juvenile suspects.

Criminal Law & Procedure > Interrogation > Miranda Rights > Voluntary Waiver

[HN3] As explained in Miranda, a suspect may waive his rights, including his right to counsel. But a valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained. Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which shows, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver. The question whether the accused waived his rights is not one of form, but rather whether the defendant in fact knowingly and voluntarily waived the rights delineated in Miranda. Thus, the determination whether statements obtained during custodial interrogation are admissible against the accused is to be made upon an inquiry into the totality of the circumstances surrounding the interrogation to ascertain whether the accused in fact knowingly and voluntarily decided to forego his right to remain silent and to have the assistance of counsel.

Criminal Law & Procedure > Interrogation > Miranda Rights > Voluntary Waiver
Criminal Law & Procedure > Juvenile Offenders > Statements

[HN4] The United States Supreme Court, in holding that the totality-of-the-circumstances approach is adequate to determine whether there has been a waiver of Miranda rights even when interrogation of juveniles is involved, has explained: There is no reason to assume that such courts--especially juvenile courts, with their special expertise in this area--will be unable to apply the totality-of-the-circumstances analysis so as to take into account those special concerns that are present when young persons, often with limited experience and education and with immature judgment, are involved. Where the age and experience of a juvenile indicate that his request for his probation officer or his parents is, in fact, an invocation of his right to remain silent, the totality approach will allow the court the necessary flexibility to take this into account in making a waiver determination. At the same time, that approach refrains from imposing rigid restraints on police and courts in dealing with an experienced older juvenile with an extensive prior record who knowingly and intelligently waives his Fifth Amendment rights and voluntarily consents to interrogation. This test includes an evaluation of the juvenile's age, experience, education, background, and intelligence.

Criminal Law & Procedure > Interrogation > Miranda Rights > Right to Counsel During Questioning

[HN5] The rule in Miranda is based on the critical position lawyers occupy in our legal system because of a lawyer's unique ability to protect the Fifth Amendment rights of a client undergoing custodial interrogation. Because of a lawyer's special ability to help the client preserve his Fifth Amendment rights once the client becomes enmeshed in the adversary process, the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege.

Criminal Law & Procedure > Pretrial Motions > Suppression of Evidence
Criminal Law & Procedure > Witnesses > Credibility

[HN6] At a hearing on a motion to suppress evidence, the trial court is the sole judge of the credibility of the witnesses and the weight of their testimony.

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Counsel > Constitutional Right

[HN7] The Sixth Amendment right to counsel does not attach until a prosecution is commenced, that is, at or after the initiation of adversary judicial proceedings against the defendant.

Criminal Law & Procedure > Interrogation > Miranda Rights > Right to Counsel During Questioning

[HN8] Once an accused in custody has requested the assistance of an attorney, officers must terminate all interrogation until counsel is made available or the accused voluntarily reinitiates communication. An accused's request for an attorney is per se an invocation of his Fifth Amendment rights, requiring that all interrogation cease. The presence of counsel insures the process of police interrogation conforms to the dictates of the Fifth Amendment privilege by insuring that an accused's statements made in a government-established atmosphere are not the product of compulsion. Any statement taken after a person invokes his Fifth Amendment privilege cannot be other than the product of compulsion, subtle or otherwise.

Criminal Law & Procedure > Interrogation > Miranda Rights > Right to Counsel During Questioning
Criminal Law & Procedure > Search & Seizure > Exclusionary Rule

[HN9] U.S. Supreme Court case law articulates the need for close fit between Fifth Amendment privilege and exclusionary rule implemented to protect it and recog-

nizes that a strong deterrence-based argument exists for exclusion of fruits obtained through a violation of constitutional rights.

Criminal Law & Procedure > Search & Seizure > Exclusionary Rule Exceptions > Inevitable Discovery
[HN10] Texas does not recognize the inevitable discovery doctrine.

Criminal Law & Procedure > Search & Seizure > Exclusionary Rule
[HN11] Under Tex. Fam. Code Ann. § 54.03(e) (Supp. 2004-05), evidence illegally seized or obtained is inadmissible in an adjudication hearing.

COUNSEL: For APPELLANT: Tim Curry, CRIM. D.A., Charles M. Mallin, ASST. CRIM. D.A. and CHIEF of the APPELLATE DIVISION, Anna Swenson, David M. Curl, Jim Hudson, ASST. CRIM. D.As., Fort Worth, TX.

For APPELLEE: M. Shawn Matlock, LANDRITH & KULESZ, L.L.P., Arlington, TX.

JUDGES: PANEL B. HOLMAN, WALKER, and MCCOY, JJ. HOLMAN, J. filed a dissenting opinion.

OPINIONBY: SUE WALKER

OPINION:

I. INTRODUCTION

This is an interlocutory appeal by the State from the juvenile court's order granting a motion to suppress a confession and a gun obtained as a result of that confession. n1 In three points, the State contends that (1) Appellee H.V.'s second written statement should not have been suppressed because H.V. did not make an unequivocal request for counsel, (2) there was no justification for suppression of the firearm as alleged "fruit" of H.V.'s second written statement, and (3) section 52.02 of the Texas Family Code did not provide a basis to suppress either H.V.'s second written statement or the fruit of that statement. We will affirm.

> n1 H.V. also requested that the trial court suppress his first written statement given on the morning of September 12, 2003, all evidence listed in the search warrant return (i.e., swabs, carpet, couch sample, carpet tack, shower curtain and rod, door handle, spray bottle, rag, t-shirt, towels, lint from dryer, shorts, briefs, plastic cover, cell phone, carpet sample from 1999 Honda Accord, seat sample from 1999 Honda Accord, camera from 1999 Honda Accord, 2 HP computers, blue trash bin, and brown trash bin), any evidence seized from his computer pursuant to the search warrant, and his spontaneous statements made while under arrest the afternoon of September 12, 2003. The trial court denied H.V.'s motion to suppress his first written statement, the evidence seized pursuant to the search warrants, the spontaneous statements H.V. made at the patrol car, and any statement H.V. made without being warned of his rights under the Vienna Convention. These rulings are not at issue here.

[*2]

II. FACTUAL AND PROCEDURAL BACKGROUND

On September 10, 2003, police began investigating the death of Daniel Oltmanns, a North Crowley High School student, whose body was found at a construction site. Daniel's wounds revealed that he had been shot in the head with a small caliber gun.

The next day, police and school administrators began interviewing students at North Crowley High School about the incident. A student at another high school notified the police that H.V. had purchased a gun a few days before the victim was shot. n2 On September 12, 2003, an officer questioned H.V. at the high school, and he stated that he thought that Daniel might have owed somebody money for drugs and that this debt may have caused his death.

> n2 During the week following the initial investigation, the police spoke to witnesses who saw H.V. purchase the gun.

Detective Cheryl Johnson said that she wanted to take H.V. from school to the Youth Division and question him, and he agreed to go. Upon arrival, Municipal Judge [*3] Alicia Johnson read H.V. the *Miranda n3* warnings. H.V.'s only concern was that his parents did not know where he was, so Detective Johnson made an effort to contact H.V.'s parents. Detective Johnson interviewed H.V. regarding the gun or his knowledge of the gun. H.V. admitted having bought a gun but said that he had returned it to the seller before Daniel's body was found. Detective Johnson did not believe H.V.'s statement and suspected that the gun was at H.V.'s house. After H.V. and Judge Johnson signed H.V.'s statement, Detective Johnson took H.V. back to North Crowley High School and then drove to H.V.'s house, where she had requested that Officer Petrovic meet her. n4

n3 _*Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

n4 Detective Johnson requested Officer Petrovic's presence because she knew that H.V. had moved to the United States from Bosnia when he was in the fifth grade and suspected that she might need a translator when speaking with H.V.'s parents.

[*4]

By the time the police arrived at H.V.'s house, H.V. was home from school, and H.V.'s father was home also. n5 Police asked for consent to search the home. Officer Petrovic translated for Detective Johnson as she introduced herself to H.V.'s father, explained that she was investigating the murder of Daniel Oltmanns, stated that officers had spoken with H.V. that morning and that he admitted to having bought a weapon, and said that she would like to search the house for the weapon. H.V.'s father initially gave his consent but then spoke to his wife by phone and withdrew his permission to search the house. The police secured the residence while Detective Johnson went to obtain a search warrant.

n5 H.V. made a phone call after Detective Johnson returned him to the school, and then he left campus.

The officers securing the house told H.V. and his father that they could not reenter the house. Despite this instruction, H.V. and his father tried a couple of times to gain access to the house but then left in a pickup [*5] truck. Later, an off-duty officer, who lived near H.V., spotted H.V. jumping over H.V.'s backyard fence. H.V. was carrying a rolled-up piece of carpet, and the off-duty officer told H.V. to drop the carpet and return to the front yard. n6 H.V. complied. The officers securing the house noticed that the carpet appeared to have blood on it. They arrested H.V. for tampering with evidence, handcuffing him and placing him in the back of a patrol unit. H.V. spent approximately ninety minutes in the patrol car before he arrived at the juvenile processing office downtown. Before being transported to the juvenile processing office, H.V. made a spontaneous statement: "I didn't kill anyone. He shot himself with my gun." n7

n6 Officers did not see H.V. enter the house; the off-duty officer spotted him as he was leaving the residence.

n7 The trial court did not suppress this statement.

After H.V. arrived at the juvenile processing office, he was interviewed by Municipal Judge Bendslev around 7:30 p.m. and was given [*6] *Miranda* warnings. Judge Bendslev appeared as a witness at the hearing on H.V.'s motion to suppress. She testified as follows:

Q. Okay, and at this point, you read him his rights: He had the right to remain silent, right to an attorney, okay?

A. (Nods affirmatively).

Q. And it's at this point when he said he didn't know; he would have to call his mom?

. . . .

A. He said, *I want to call my mother.*

Q. Okay.

A. *I want her to ask for an attorney.*

Q. Okay, and you said that he could not call his mother?

A. I said at that point I was in the process of giving him his magistrate warnings, and that calling his mother was not an option at that time.

Q. Okay, and you again advised him that he could ask for an attorney, make a statement, or not make a statement?

A. That's correct.

Q. And it's at this point that he said, but I'm only 16?

A. That's correct.

Q. As in, I'm only 16; I don't know how to contact an attorney?

A. No, I think he - - I'm not sure what he meant when he said that. I mean, my impression was that he thought because of his age that he wasn't allowed to ask for an attorney, and I indicated to him that that was not a problem, that he was 16 and he [*7] could ask for an attorney if he wanted to ask for an attorney.

Q. And is it possible that he simply did not know the manner in which one goes about contacting an attorney?

A. It's possible. [Emphasis added.]

Judge Bendslev testified that, after H.V. said he wanted to talk to his mother; he wanted her to ask for an attorney,

I told him, we also had a brief conversation, he asked, well, I explained to him that if he chose not to make a statement at that time, that was fine, that he was currently being held in custody for tampering with physical evidence, and that he was being under investigation for murder, and that if he wanted to speak to his mother, that he would be taken back down to the Juvenile facility at that time. I said, I don't know what timeframe would be involved as far as your being able to see your mother.

Thereafter, H.V. agreed to make a statement, and Detective Carroll sat down to talk with H.V. about Daniel's death. H.V. inquired about the "worst-case scenario" of what could happen to him, and Detective Carroll said that was for the court to decide. H.V. then gave his version of the events surrounding Daniel's death, stating that it was an accident and [*8] that Daniel had shot himself. H.V. drew a diagram of where he had disposed of the gun, and police subsequently located it. After H.V. signed his statement, along with the judge, police secured a warrant to arrest him for murder.

Based on the above testimony, the trial court made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On September 12, 2003, Fort Worth Police officers attempted to secure a search warrant for the Respondent's residence. During that time, the Respondent and his father were advised not to reenter the residence pending the search. Respondent was arrested after exiting his residence with a rug.

2. Respondent was placed in the back of a patrol car for approximately one hour. He was later taken out to remove his handcuffs. The Respondent was then placed back into the patrol car for approximately another thirty minutes before being transported to the Fort Worth Police Department to be interviewed by Detective Carroll. At no point while Respondent was in the patrol car was any attempt made by Fort Worth Police to contact Respondent's parents as required by Texas Family Code Section 52.02.

3. Upon arrival, Fort Worth Magistrate [*9] Judge Gabrielle Bendslev interviewed the Respondent, and advised him of the warning required by Texas Family Code Section 51.095.

4. *In response to questioning by Judge Bendslev regarding an attorney, the Respondent advised that he was only sixteen, that he did not know how to obtain an attorney, and that he wanted to contact his mother because he "wanted his mother to ask for an attorney."*

5. Judge Bendslev advised the Respondent that he was not entitled to contact his mother at that time.

6. Following this, Respondent indicated that he would speak with police.

7. Respondent made a written statement, Exhibit 4, that among other things, indicated the location of the firearm involved in the death of Daniel Oltmanns. The police were able to locate the weapon.

CONCLUSIONS OF LAW

. . . .

3. *The Respondent's request to speak to his mother was an unambiguous request for counsel.*

4. *Because of the foregoing conclusions of law, and considering the totality of the circumstances, the statement made by Respondent, Exhibit 4, following his arrest was obtained improperly and is inadmissible in trial.*

5. The firearm recovered by the Fort Worth Police Department was [*10] only obtained as a result of improper questioning of Respondent, and therefore, is a "fruit of the poisonous tree" and is likewise inadmissible. [Emphasis added.]

III. INVOCATION OF RIGHT TO COUNSEL

In its first point, the State contends that the trial court erred by concluding that H.V.'s comments to Judge Bendslev constituted an unequivocal invocation of counsel. Specifically, the State argues that the trial court misapplied the law to the facts when it suppressed H.V.'s second written statement because its conclusion--that

H.V. unambiguously invoked his right to counsel--is incorrect as a matter of law. H.V. responds that the trial court properly concluded that he made an unambiguous request for counsel, which should have ended the interview, when H.V. requested to speak to his mother so that she could ask for an attorney.

A. Standard of Review for Motion to Suppress

[HN1] We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review. *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). In reviewing the trial court's [*11] decision, we do not engage in our own factual review. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990); *Best v. State*, 118 S.W.3d 857, 861 (Tex. App.--Fort Worth 2003, no pet.). At a suppression hearing, the trial judge is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony. *Ross v. State*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000). Therefore, we give almost total deference to the trial court's rulings on (1) questions of historical fact and (2) application-of-law-to-fact questions that turn on an evaluation of credibility and demeanor. *Johnson v. State*, 68 S.W.3d 644, 652-53 (Tex. Crim. App. 2002); *Best*, 118 S.W.3d at 861-62. However, we review de novo a trial court's rulings on mixed questions of law and fact if they do not turn on the credibility and demeanor of witnesses. *Johnson*, 68 S.W.3d at 652-53.

B. Law Regarding Unambiguous Request for Counsel

[HN2] Prior to a custodial interrogation, a suspect must be advised that he has a right to consult with an attorney. *Miranda*, 384 U.S. at 467-68, 86 S. Ct. at 1624-25. [*12] Interrogation must cease immediately if the suspect states that he wants an attorney. *Id.* at 474, 86 S. Ct. at 1628; *see also Edwards v. Arizona*, 451 U.S. 477, 485, 101 S. Ct. 1880, 1885, 68 L. Ed. 2d 378 (1981); *McCarthy v. State*, 65 S.W.3d 47, 51 (Tex. Crim. App. 2001), *cert. denied*, 536 U.S. 972, 153 L. Ed. 2d 862, 122 S. Ct. 2693 (2002); *Dinkins v. State*, 894 S.W.2d 330, 350 (Tex. Crim. App. 1995), *cert denied*, 516 U.S. 832, 133 L. Ed. 2d 59, 116 S. Ct. 106 (1995). A request for counsel must be unambiguous, meaning the suspect must "articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." *Davis v. United States*, 512 U.S. 452, 459, 114 S. Ct. 2350, 2355, 129 L. Ed. 2d 362 (1994). This standard, applied to adult suspects, also applies to juvenile suspects. *Fare v. Michael C.*, 442 U.S. 707, 725, 99 S. Ct. 2560, 2572, 61 L. Ed. 2d 197 (1979).

[HN3] As explained in *Miranda*, a suspect may waive his rights, including his right to counsel. 384 U.S. at 467-68, 86 S. Ct. at 1624-25. [*13] But a valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained. *Id.* at 475, 86 S. Ct. at 1628. Presuming waiver from a silent record is impermissible. *Id.* The record must show, or there must be an allegation and evidence which shows, that an accused was offered counsel but intelligently and understandingly rejected the offer. *Id.* Anything less is not waiver. *Id.* The question whether the accused waived his rights is not one of form, but rather whether the defendant in fact knowingly and voluntarily waived the rights delineated in the *Miranda* case. *Fare*, 442 U.S. at 724-25, 99 S. Ct. at 2571-72. Thus, the determination whether statements obtained during custodial interrogation are admissible against the accused is to be made upon an inquiry into the totality of the circumstances surrounding the interrogation to ascertain whether the accused in fact knowingly and voluntarily decided to forego his right to remain silent and to have the assistance of counsel. *Id.* (citing *Miranda*, 384 U.S. at 475-77, 86 S. Ct. at 1628-29); [*14] *see also Lucas v. State*, 791 S.W.2d 35, 45-46 (Tex. Crim. App. 1989) (holding court must look at totality of circumstances surrounding the interrogation and the alleged invocation of right to counsel to determine whether right to counsel was invoked).

[HN4] The United States Supreme Court, in holding that the totality-of-the-circumstances approach is adequate to determine whether there has been a waiver even when interrogation of juveniles is involved, explained,

> There is no reason to assume that such courts--especially juvenile courts, with their special expertise in this area--will be unable to apply the totality-of-the-circumstances analysis so as to take into account those special concerns that are present when young persons, often with limited experience and education and with immature judgment, are involved. *Where the age and experience of a juvenile indicate that his request for his probation officer or his parents is, in fact, an invocation of his right to remain silent, the totality approach will allow the court the necessary flexibility to take this into account in making a waiver determination.* At the same time, that approach refrains from imposing [*15] rigid restraints on police and courts in dealing with an experienced older juvenile with an extensive prior re-

> cord who knowingly and intelligently waives his Fifth Amendment rights and voluntarily consents to interrogation.

Fare, 442 U.S. at 725-26, 99 S. Ct. at 2572 (emphasis added). This test includes an evaluation of the juvenile's age, experience, education, background, and intelligence. *Id.* at 725, 99 S. Ct. at 2572; *In re R.D.*, 627 S.W.2d 803, 806-07 (Tex. App.--Tyler 1982, no writ).

C. Totality of the Circumstances

Here, the trial court heard live testimony from seven witnesses, and H.V. was present throughout the hearing, allowing the trial court to view his demeanor. The trial court found that before police transported H.V. to the police department where he made his second statement, he was detained for approximately one hour and thirty minutes in the back of a patrol car and was handcuffed for the majority of that time. H.V. was arrested and placed in the patrol car at approximately 4:30 p.m. At approximately 7:30 p.m., Judge Bendslev arrived to provide warnings to H.V., and she spent approximately ten [*16] minutes with him before she turned him over to police for interrogation. During H.V.'s ten minutes with Judge Bendslev, he stated that he wanted to talk to his mother; he wanted her to ask for an attorney; he was only sixteen. Judge Bendslev did not inform police that H.V. had asked to speak with his mother. She told police that "she did advise [H.V.] of his rights at that point, he had no questions, and he was agreeing to talk with [officers] at that point."

Thereafter, police began questioning H.V. Police spoke to H.V. "for probably over an hour, 45 minutes to an hour, before the statement was actually taken." Detective Carroll testified, "We talked about things such as soccer [and] the number of languages he spoke." At approximately 9:50 p.m., Detective Carroll began typing H.V.'s statement, and he finished at 10:35 p.m. Judge Bendslev reviewed the statement with H.V. at approximately 11:00 p.m.

The totality of the circumstances surrounding the interrogation reflects that H.V. was a sixteen-year-old junior in high school. H.V. is from Bosnia; he had lived in the United States fewer than six years when he was arrested. There is no evidence that H.V. had been in trouble before [*17] or had any prior juvenile record that would have familiarized him with the criminal justice system. n8 H.V. was in custody for more than four hours before he made the statement, was handcuffed for one hour, and had no prior juvenile record. During the ten minutes that he received warnings from Judge Bendslev, he specifically asked to talk with his mother and said he wanted her to ask for an attorney. Judge Bendslev told him that he could not talk to his mother; if he did not want to talk to police, he would be returned to the juvenile facility, and she did not know what the timeframe was for H.V. to be able to speak to his mother. When Judge Bendslev tried to explain to H.V. that he himself could ask for an attorney, he said, "But I am only sixteen," clearly indicating that he did not understand how a sixteen-year-old person could ask for and go about contacting an attorney. n9 Judge Bendslev did not testify that H.V. affirmatively indicated that he did not want an attorney. Nor did she indicate that H.V. affirmatively stated that he wanted to talk to police despite his right to an attorney. *Cf. Dewberry v. State*, 4 S.W.3d 735, 747 (Tex. Crim. App. 1999) (holding trial [*18] court properly denied motion to suppress confession when defendant was advised of right to counsel and responded by stating he had not "done anything wrong. I don't need a lawyer."), *cert. denied*, 529 U.S. 1131, 146 L. Ed. 2d 958, 120 S. Ct. 2008 (2000). Police chatted with H.V. for forty-five minutes to an hour before moving to the issue of the disappearance of Daniel Oltmanns.

> n8 The State points to H.V.'s initial contact with the magistrate judge on the morning of September 12, 2003 to show that he was familiar with the magistrate warning process. The trial court as sole trier of the facts and judge of the credibility of the witnesses, however, was free to determine the weight to be accorded this fact in light of the totality of the circumstances. *See Ross*, 32 S.W.3d at 855.
>
> n9 The trial court heard the witnesses, including Judge Bendslev, testify and the trial court interpreted H.V.'s statement that he was only sixteen as meaning, "that he did not know how to ask for an attorney." *See* Finding of Fact Number 4.

[*19]

The record demonstrates that H.V. articulated his desire to have counsel present sufficiently clearly that a reasonable magistrate judge in the circumstances would understand H.V.'s request to call his mother to be an unambiguous request for an attorney when such request was followed by his statement that he wanted his mother to ask for an attorney and his exclamation that he was only sixteen in response to Judge Bendslev's comment that he could ask for an attorney. *See Davis*, 512 U.S. at 459, 114 S. Ct. at 2355. This is not a situation in which the juvenile requested only to speak with his mother. *Compare R.D.*, 627 S.W.2d at 806-07 (applying totality-of-circumstances test to hold that in light of defendant's juvenile record and experience on probation, psycholo-

gist's report indicating defendant was functioning in average cognitive range, and lack of evidence juvenile was worn down by improper interrogation tactics or lengthy questions, juvenile's statement that "he wanted to talk to his mother" standing alone was not invocation of right to counsel). The undisputed evidence establishes that H.V. said, "I want to call my mother. I want her to ask for [*20] an attorney." When H.V. was told that he could ask for an attorney, he said, "But I am only sixteen." Consequently, this is more than a situation in which the defendant, with regard to hiring an attorney, equivocally says, "I want to talk to my mother *about whether to hire* an attorney"; this is a situation in which H.V. unequivocally indicated that he wanted an attorney--he wanted to call his mother; he wanted her to ask for an attorney. *Accord _Loredo v. State*, 130 S.W.3d 275, 284 (Tex. App.--Houston [14th Dist.] 2004, pet. ref'd) (holding appellant's question of whether he could ask for a lawyer, followed by a police officer's comment that he could and that if he did the interrogation would cease, did not constitute an unambiguous invocation of the right to counsel when appellant thereafter continued to speak with the officer).

Moreover, the totality of the circumstances surrounding the interrogation supports the trial court's determination that H.V. invoked his right to counsel. The facts at bar are the type of facts contemplated by the United States Supreme Court in _*Fare*. 442 U.S. at 724-25, 99 S. Ct. at 2571-72. Here, H.V.'s age and [*21] lack of experience indicate that his request to call his mother, coupled with his statement that he wanted her to ask for an attorney and his exclamation that he was only sixteen, was in fact an invocation of his right to counsel, and the totality-of-the-circumstances approach allows the juvenile court the necessary flexibility to take this into account in making a waiver determination. *See id.*

The cases relied upon by the State are distinguishable. The State cites _*State v. Hyatt*, 355 N.C. 642, 566 S.E.2d 61 (N.C. 2002), *cert. denied*, 537 U.S. 1133, 154 L. Ed. 2d 823, 123 S. Ct. 916 (2003). But in *Hyatt*, evidence at the suppression hearing conclusively established that the defendant "whispered" to his father that he wanted his father to get an attorney for him. _*Id.* at 70-71. In *Hyatt*, both officers testified that they did not hear the defendant ask his father to obtain an attorney, and the trial court made a specific finding of fact that "neither Agent Shook nor Detective Benjamin heard defendant's alleged invocation of his right to counsel." *Id.* Here, there is no question that Judge Bendslev heard H.V. state that he wanted to call his mother, [*22] he wanted her to ask for a lawyer, he was only sixteen.

The State also relies upon _*Fare*. 442 U.S. at 719-20, 99 S. Ct. at 2569. But in *Fare*, the juvenile did not state that he wanted to call his mother because he wanted her to ask for a lawyer; the juvenile said he wanted to call his probation officer. *Id.* The United States Supreme Court held that [HN5] the rule in *Miranda* is based on the critical position lawyers occupy in our legal system because of a lawyer's unique ability to protect the Fifth Amendment rights of a client undergoing custodial interrogation. *Id.* Because of a lawyer's special ability to help the client preserve his Fifth Amendment rights once the client becomes enmeshed in the adversary process, "the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege." *Id.* (quoting _*Miranda*, 384 U.S. at 469, 86 S. Ct. at 1625). Here, H.V. specifically indicated that he wanted to talk to his mother; he wanted her to ask for a lawyer. Through this request, H.V. sought a lawyer's unique ability and assistance, not simply the assistance of his mother or a probation officer. [*23] The State also cites *Flamer v. Delaware*, 68 F.3d 710, 725 (3d Cir. 1995), *cert. denied*, 516 U.S. 1088, 133 L. Ed. 2d 754, 116 S. Ct. 807 (1996). *Flamer* involved a twenty-five-year-old adult suspect. _*Id.* at 719. At his arraignment hearing, Flamer asked permission to call his mother "to inquire about bail and possible representation by counsel." _*Id.* at 725. The Third Circuit held that "a request for an attorney at arraignment is, in itself, insufficient to invoke the Fifth Amendment right to counsel at subsequent custodial interrogation." _*Id.* at 726. Here, H.V. did not request an attorney at arraignment; he indicated he wanted his mother to ask for an attorney prior to custodial interrogation.

Because [HN6] the trial court is the sole judge of the credibility of the witnesses and the weight of their testimony, we hold that the trial court's findings and conclusions are supported by the record. _*Ross*, 32 S.W.3d at 855. Viewing the totality of the circumstances, we hold that the trial court did not abuse its discretion in suppressing H.V.'s second written statement when it properly determined that H.V. [*24] 's request to talk to his mother because he wanted her to hire an attorney was a request for counsel. n10 *Compare _R.D.*, 627 S.W.2d at 805-07 (applying totality of the circumstances and holding that bare request to talk to mother, without more, was not request for counsel). We overrule the State's first point.

n10 The dissent, in our view, reweighs the testimony and evidence to support suppressing H.V.'s second statement instead of giving deference to the historical facts set forth in the trial court's findings of fact, including finding of fact number four.

IV. SUPPRESSION OF WEAPON

In its second point, the State argues that even if H.V.'s second written statement is suppressed, the trial court erred by suppressing the firearm as the alleged "fruit" of H.V.'s second written statement. H.V. responds that the violation of his Fifth Amendment right to counsel mandates the suppression of not only his second statement but also the derivative evidence obtained from that statement. n11 [*25]

> n11 [HN7] The Sixth Amendment right to counsel does not attach until a prosecution is commenced, that is, "at or after the initiation of adversary judicial proceedings against the defendant." _*Green v. State*, 934 S.W.2d 92, 97 (Tex. Crim. App. 1996) (quoting _*United States v. Gouveia*, 467 U.S. 180, 187, 104 S. Ct. 2292, 2297, 81 L. Ed. 2d 146 (1984)), *cert. denied*, 520 U.S. 1200, 137 L. Ed. 2d 707, 117 S. Ct. 1561 (1997). In this case, no charges had been brought against H.V. prior to the custodial interrogation at issue. Accordingly, we analyze the issue under the Fifth Amendment.

In his second statement, which the trial court suppressed, H.V. explained that he "threw the gun in the gutter close to [his] house." n12 At the suppression hearing, Detective Carroll indicated that, as a result of H.V.'s second statement, police located the gun. During Detective Carroll's questioning, he said that H.V. told him that he took the gun and placed it in a sewer near his house, that H.V. drew a diagram of the gun's [*26] location, and that police found the gun.

> n12 In H.V.'s first statement, which was not suppressed, he admitted purchasing a gun from a friend and identified the individuals present when he purchased it as well as the individuals to whom he subsequently showed the gun. In this first statement, H.V. claimed that he returned the gun to the seller because he decided he did not want it.

[HN8] Once an accused in custody has requested the assistance of an attorney, officers must terminate all interrogation until counsel is made available or the accused voluntarily reinitiates communication. *See Minnick v. Mississippi*, 498 U.S. 146, 153, 111 S. Ct. 486, 491, 112 L. Ed. 2d 489 (1990); _*Edwards*, 451 U.S. at 484-85, 101 S. Ct. at 1885; _*Cross v. State*, 144 S.W.3d 521, 526 (Tex. Crim. App. 2004). An accused's request for an attorney is per se an invocation of his Fifth Amendment rights, requiring that all interrogation cease. *Edwards*, 451 U.S. at 485, 101 S. Ct. at 1885; [*27] *Fare*, 442 U.S. at 719, 99 S. Ct. at 2569; _*Rhode Island v. Innis*, 446 U.S. 291, 298, 100 S. Ct. 1682, 1688, 64 L. Ed. 2d 297 (1980). The presence of counsel insures the process of police interrogation conforms to the dictates of the Fifth Amendment privilege by insuring that an accused's statements made in a government-established atmosphere are not the product of compulsion. _*Miranda*, 384 U.S. at 466, 86 S. Ct. at 1623; *see also* _*Fare*, 442 U.S. at 719, 99 S. Ct. at 2569. Any statement taken after a person invokes his Fifth Amendment privilege "cannot be other than the product of compulsion, subtle or otherwise." _*Fare*, 442 U.S. at 717, 99 S. Ct. at 2568. Here, the trial court found that H.V. invoked his right to counsel. Deferring, as we must, to the historical facts found by the trial court and not challenged by the State, we have held that the trial court did not abuse its discretion by concluding that H.V. invoked his Fifth Amendment right to counsel. Consequently, all interrogation should have ceased. _*Edwards*, 451 U.S. at 485, 101 S. Ct. at 1885; _*Fare*, 442 U.S. at 719, 99 S. Ct. at 2569; [*28] *Innis*, 446 U.S. at 298, 100 S. Ct. at 1688. H.V.'s subsequent statement, "cannot be other than the product of compulsion, subtle or otherwise." _*Fare*, 442 U.S. at 717, 99 S. Ct. at 2568. The remaining question is whether our holdings that H.V.'s statement disclosing the location of the gun was compelled in violation of his invoked Fifth Amendment privilege mandates suppression of the gun as determined by the trial court.

The State points out, and we agree, that the "fruit of the poisonous tree" doctrine articulated in *Wong Sun* n13 does not apply to a mere failure to provide *Miranda* warnings to a suspect prior to custodial interrogation when the suspect makes a voluntary statement: while the statement must be suppressed, other evidence subsequently obtained as a result of that unwarned statement, that is the "fruit" of the statement, need not be suppressed. _*United States. v. Patane*, 542 U.S. 630, 159 L. Ed. 2d 667, 124 S. Ct. 2620, 2628 (2004) (holding failure to give suspect *Miranda* warnings did not require suppression of physical fruits of suspect's unwarned but voluntary statement); _*Oregon v. Elstad*, 470 U.S. 298, 307, 105 S. Ct. 1285, 1292, 84 L. Ed. 2d 222 (1985) [*29] (holding uncompelled statements taken without *Miranda* warnings may be used to impeach defendant's testimony at trial); *see also* _*Michigan v. Tucker*, 417 U.S. 433, 452, 94 S. Ct. 2357, 2368, 41 L. Ed. 2d 182 (1974); _*Baker v. State*, 956 S.W.2d 19, 22 (Tex. Crim. App. 1997). Here, however, H.V.'s second statement was not simply an "unwarned" statement; H.V. invoked his right to counsel. Because H.V.'s post-invocation-of-counsel statement was

the product of compulsion, subtle or otherwise, n14 the cases cited by the State--holding that the fruit-of-the-poisonous-tree doctrine does not apply to cases in which *Miranda* warnings are not given and the accused makes an "uncompelled" statement--do not apply. _*Patane,* 124 S. Ct. at 2628; _*Elstad*, 470 U.S. at 314, 105 S. Ct. at 1296; _*Marsh v. State*, 115 S.W.3d 709, 715 (Tex. App.--Austin 2003, no pet.) (involving allegation of post-arrest interrogation before receiving *Miranda* warnings); _*Montemayor v. State*, 55 S.W.3d 78, 90 (Tex. App.--Austin 2001, pet. ref'd) (same). Nor was evidence introduced at the suppression hearing that the gun [*30] would have been, n15 or was, discovered by means sufficiently distinguishable to be purged of the violation of H.V.'s Fifth Amendment privilege. *Compare* _*Thornton v. State*, 145 S.W.3d 228, 233-34 (Tex. Crim. App. 2004) (holding sufficient attenuating factors existed dissipating taint of illegal arrest from derivative evidence obtained as a result of arrest). And finally, the "fit" between H.V.'s invocation of his Fifth Amendment privilege and suppression of the gun is a proper "fit" between the violation of H.V.'s Fifth Amendment constitutional right and an exclusionary rule to protect it. *Accord* _*Patane*, 124 S. Ct. at 2628 [HN9] (articulating need for close fit between Fifth Amendment privilege and exclusionary rule implemented to protect it and recognizing that strong deterrence-based argument exists for exclusion of fruits obtained through violation of constitutional rights).

n13 _*Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).

n14 *See* _*Fare*, 442 U.S. at 717, 99 S. Ct. at 2568.

n15 [HN10] Texas does not recognize the inevitable discovery doctrine. __*State v. Daugherty*, 931 S.W.2d 268, 269 (Tex. Crim. App. 1996); *see also* _*Roquemore v. State*, 60 S.W.3d 862, 870 n.12 (Tex. Crim. App. 2001) (same).

[*31]

For these reasons, we hold that the trial court did not abuse its discretion by granting H.V.'s motion to suppress the gun located by police as a result of his second statement. *See also* TEX. FAM. CODE ANN. § 54.03(e) (Vernon Supp. 2004-05) (stating that [HN11] evidence illegally seized or obtained is inadmissible in an adjudication hearing). We overrule the State's second point. n16

n16 In its third point, the State contends that the violation of Texas Family Code section 52.02 found by the trial court does not provide a basis for suppressing H.V.'s statement or the fruit of that statement. Because we have upheld the trial court's suppression rulings as set forth above, we need not address this argument. *See* TEX. R. APP. P. 47.1.

V. CONCLUSION

Having overruled all of the State's points, we affirm the trial court's order suppressing H.V.'s second written statement and the gun obtained as a result of that statement.

SUE WALKER

JUSTICE

DISSENTBY: DIXON W. HOLMAN

DISSENT:

DISSENTING OPINION

I respectfully [*32] dissent. I would reverse the trial court's decision to grant Appellee's motion to suppress and would render judgment denying the relief requested in the motion to suppress.

INVOCATION OF RIGHT TO COUNSEL

The State argues that Appellee's second written statement should not have been suppressed on the basis of a failure to honor an invocation of the right to counsel because Appellee did not make an unambiguous request for counsel prior to giving his second written statement.

As stated by the majority, when a suspect indicates his desire to speak with an attorney or to have an attorney present during questioning, he is deemed to have invoked his right to counsel. _*Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S. Ct. 1880, 1885, 68 L. Ed. 2d 378 (1981). The State relies on a federal case that held a suspect's request to call his mother to inquire about possible legal representation is not an unambiguous invocation of the right to counsel. _*Flamer v. Delaware*, 68 F.3d 710, 725 (3d Cir. 1995). I agree with the opinion in *Flamer*. The majority states and Appellee argues that the State's reliance on *Flamer* is distinguishable [*33] because the invocation of counsel in *Flamer* was at the arraignment and not during interrogation. Although the court in *Flamer* did not address the difference between invocation of counsel during interrogation versus during arraignment, the court clearly held that "Flamer's request to call his mother 'to inquire about possible . . . representa-

tion'" is insufficient to trigger *Edwards*. *Id.* (holding *Edwards* only applies if a defendant unambiguously requests counsel). Moreover, two Texas appellate courts have held that a request to speak to a parent during custodial interrogation is not a per se invocation of Fifth Amendment rights. *See* _*Randall v. State*, 712 S.W.2d 631, 632 (Tex. App.--Beaumont 1986, pet. ref'd) (requesting to speak to father not invocation of right to counsel); _*In re R.D.*, 627 S.W.2d 803, 806 (Tex. App.--Tyler 1982, no writ) (requesting to talk to mother did not per se invoke Fifth Amendment rights); *see also* _*United States v. Posada-Rios*, 158 F.3d 832, 867 (5th Cir. 1998) (holding statement to mother that suspect "needed a lawyer" was not unambiguous request for counsel).

The question in this case [*34] is whether Appellee's request to speak to his mother so she could hire an attorney was an unambiguous request for counsel. The magistrate read and explained to Appellee his right to have an attorney or to have one appointed for him. When Appellee continued to ask for his mother, the magistrate explained to him two more times that he had the option of asking for an attorney, making a statement, or not making any statement. At that point, Appellee decided to speak to the detective.

The magistrate testified that Appellee was articulate and appeared well educated; he was aware of the circumstances and charges; and he read and understood the English language. Furthermore, Appellee was only three months shy of his seventeenth birthday, and he had already been through the magistrate warning process earlier that same day. Although as mentioned by the majority, this is not a situation where Appellee only requested to speak to his mother, it is a situation where he requested to speak to a third party, who was not an attorney, in order to have the third party request an attorney on his behalf. Appellee made this request despite undergoing the magistrate warning process earlier that same day, [*35] and being told twice before giving his second written statement that he could request an attorney himself. I would not hold that a juvenile's request for a parent must never be construed as a request for counsel or as an invocation of his Fifth Amendment privilege; rather, I believe that the proper characterization of such a request militates in favor of a case-by-case approach. *See Chaney v. Wainwright*, 561 F.2d 1129 (5th Cir. 1977) (holding that a seventeen-year-old street-wise defendant's request to speak to his mother was not a request for counsel where the defendant knew he had a right to counsel but did not request an attorney), *cert. denied*, 443 U.S. 904, 61 L. Ed. 2d 871, 99 S. Ct. 3095 (1979). Independent and older juveniles must be distinguished from younger ones. *See id.* Because the Supreme Court's perception is that there are no persuasive reasons for adopting a different test for juveniles than for adults, *Fare v. Michael C.*, 442 U.S. 707, 725, 99 S. Ct. 2560, 2572, 61 L. Ed. 2d 197 (1979); _*R.D.*, 627 S.W.2d at 806 (interpreting *Fare* as holding that there are no persuasive reasons for adopting a different test [*36] for juveniles than for adults) the facts of this case support reversing the trial court's granting of the motion to suppress Appellee's second written statement.

After reviewing the dialogue between Appellee and the magistrate with deference and applying the totality of the circumstances test, I would hold that Appellee's request to speak to his mother was not an unambiguous invocation of his right to counsel and that the trial court erred in granting Appellee's motion to suppress his second written statement. I would sustain the State's first point.

SUPPRESSION OF GUN

Because we should hold that the second written statement was improperly suppressed on constitutional grounds, we should also hold that the suppression of the gun recovered as a fruit of that statement was improper and sustain the State's second point.

SECTION 52.02 FAMILY CODE VIOLATION

The State contends that section 52.02 of the family code did not provide a basis to suppress Appellee's statement, and that the trial court specifically rejected section 52.02 as a basis for suppression of the statement. *See* TEX. FAM. CODE ANN. § 52.02 (Vernon Supp. 2004-05). I agree. The order suppressing [*37] Appellee's second written statement and gun suppresses them on constitutional grounds, which we have previously addressed, and expressly denies suppression on all other grounds. The order states:

> 1) The Court suppresses Respondent's second written police statement. This written statement was obtained after Respondent [H.V.] was warned of his rights by Municipal Court Judge Gabrielle Bendslev and Respondent [H.V.] then unambiguously asserted his right to counsel by telling Judge Benslev that he "wanted his mother to ask for an attorney."
>
> 2) The Court suppresses the firearm recovered as a fruit of the above-discussed improperly obtained written police statement.
>
> 3) *All other grounds seeking suppression of evidence (listed above or otherwise) are hereby DENIED.* [Emphasis added.]

In reviewing a trial court's decision on a motion to suppress, appellate courts must affirm the decision if it is correct on any theory of law that finds support in the record. _*Roquemore v. State*, 60 S.W.3d 862, 866 (Tex. Crim. App. 2001); _*Pettigrew v. State*, 908 S.W.2d 563, 567 (Tex. App.--Fort Worth 1995, pet. ref'd). This principle applies even [*38] when the trial judge gives the wrong reason for his or her decision. *See* _*Salas v. State*, 629 S.W.2d 796, 799 (Tex. App.--Houston [14th Dist.] 1981, no pet.).

Section 52.02(b) of the family code provides that "[a] person taking a child into custody shall promptly give notice of the person's action and a statement of the reason for taking the child into custody, to . . . the child's parent, guardian, or custodian." TEX. FAM. CODE ANN. § 52.02(b). The trial court's written findings of fact and conclusions of law state that law enforcement officers failed to promptly notify Appellee's parents that he was in custody and unnecessarily delayed transporting him to the juvenile processing office downtown, violating family code section 52.02. *See id.* The State concedes that the trial court found violations of section 52.02, n1 but I believe that the record plainly shows that no causal connection exists between those alleged violations and the confession obtained from Appellee. Therefore, his confession should not have been suppressed. The State also contends that even if Appellee had carried his burden and had shown a causal connection, any taint was attenuated prior [*39] to Appellee giving his confession. I agree. The State cites *Gonzales v. State* and *Pham v. State* in support of its argument. _*Gonzales*, 125 S.W.3d 616, 618 (Tex. App.--Houston [1st Dist.] 2003, pet. granted); _*Pham*, 125 S.W.3d 622, 626 (Tex. App.--Houston [1st Dist.] 2003, pet. granted) (en banc).

n1 The trial court's finding of fact number 2 states the following:

> Respondent was placed in the back of a patrol car for approximately one hour. He was later taken out to remove his handcuffs. The Respondent was then placed back into the patrol car for approximately another thirty minutes before being transported to the Fort Worth Police Department to be interviewed by Detective Carroll. At no point while Respondent was in the patrol car was any attempt made by Fort Worth Police to contact Respondent's parents as required by Texas Family Code Section 52.02.

The defendant in *Gonzales* was fifteen years old when he shot and killed a convenience store clerk. He [*40] was subsequently arrested and given *Miranda* warnings in the police car en route to a designated juvenile processing office. His parents were notified five to six hours after the arrest. The defendant filed a motion to suppress his statement, contending that suppression was proper because his parents were not promptly notified as required under the family code. The trial court denied the motion to suppress. The court of appeals held that the trial court erred in denying the motion to suppress and that the statement was automatically inadmissible due to the violation of section 52.02(b). _*Gonzales v. State*, 9 S.W.3d 267, 271 (Tex. App.--Houston [1st. Dist.] 1999, pet. granted), *vacated by* 67 S.W.3d 910 (Tex. Crim. App. 2002). n2 In its brief to the court of criminal appeals, the State argued that a juvenile's written statement should not be suppressed without some showing of a causal connection between the failure to notify the parents and the concession. _*Gonzales*, 67 S.W.3d at 912. The court of criminal appeals eventually held that a juvenile's written statement obtained after a violation of section 52.02(b) is not automatically [*41] inadmissible, and if evidence is to be excluded, article 38.28 of the code of criminal procedure n3 is the proper mechanism for excluding evidence obtained in violation of the family code. *Id.* Following its prior decisions, the court of criminal appeals held that evidence is not obtained in violation of a provision of law if there is no causal connection between the illegal conduct and the acquisition of evidence. *Id.*; *see* _*Roquemore*, 60 S.W.3d at 870; *Comer v. State*, 776 S.W.2d 191, 197 (Tex. Crim. App. 1989). The court of criminal appeals reversed and remanded *Gonzales* to the court of appeals for consideration of whether a causal connection existed between the statutory violation requirement for police to promptly notify parents and the taking of the juvenile's statement. *Gonzales*, 67 S.W.3d at 913-14. On remand, the court of appeals held that no causal connection existed. _*Gonzales*, 125 S.W.3d at 618-19. n4

n2 The previous explanation of the events in the *Gonzales* case reference the prior history of *Gonzales*.

[*42]

n3 Article 38.23(a) provides that "no evidence obtained by an officer or other person in

violation of any provisions of the Constitution or laws of the State of Texas . . . shall be admitted in evidence. . . ." TEX. CODE CRIM. PROC. ANN. art. 38.23(a) (Vernon Supp. 2004-05).

n4 The Texas Court of Criminal Appeals has granted petition for discretionary review on the following issue: "Did the court of appeals adopt the wrong standard by which a causal connection must be established under art. 38.23 to justify suppression of evidence seized in violation of the family code?" *Gonzales v. State*, 125 S.W.3d 616 (Tex. App.--Houston [1st Dist.] 2003, pet. granted).

Similar to *Gonzales* and the appeal of the present matter, the *Pham* case involved a sixteen-year-old and a drive-by shooting. *Pham*, 125 S.W.3d at 624. n5 The court of appeals in *Pham* reversed the conviction and held that the trial court erred in admitting appellant's confession because of a violation of section 52.02(b) of the family code. *Pham v. State*, 36 S.W.3d 199, 203-05 [*43] (Tex. App.--Houston [1st Dist.] 2000), *vacated by* 72 S.W.3d 346 (Tex. Crim. App. 2002). The Texas Court of Criminal Appeals vacated the judgment and remanded the cause for consideration in light of *Gonzales*. *Pham*, 72 S.W.3d at 346; *Gonzales*, 67 S.W.3d at 910. On remand the court of appeals held that: 1) there were separate analyses for causal connection and attenuation of the taint; 2) the burden is on the juvenile to show a causal connection; and 3) there was no causal connection. *Pham*, 125 S.W.3d at 627-28.

n5 The Texas Court of Criminal Appeals has granted petition for discretionary review on the following issues: 1) " Did the court of appeals err in holding causal connection and attenuation of the taint constitute separate analyses?" 2) "Did the court of appeals err by requiring appellant to prove a casual connection between the violation of section 52.02(b) of the Texas Family Code and appellant's confession?" *Pham v. State*, 125 S.W.3d 622 (Tex. App.--Houston [1st Dist.] 2003, pet. granted).

[*44]

Pham specifically set out separate analyses for causal connection and attenuation of the taint. *Id.* Using the *Roquemore* decision, the court of appeals concluded that a causal connection must exist before proceeding to attenuation of the taint analysis. *Id.* at 625-26. While the court of appeals concedes in *Pham* that there is no direct authority on who has the burden to prove the causal connection, the court cites cases with analogous situations in concluding that the burden properly lies with the juvenile to show some evidence of a causal connection. *Id.* at 627; *see Boyd v. State*, 811 S.W.2d 105, 124 (Tex. Crim. App.) (holding the accused is generally expected to make showing of a causal connection between the failure to take accused before magistrate and accused's ensuing confession), *cert. denied*, 502 U.S. 971, 116 L. Ed. 2d 466, 112 S. Ct. 448 (1991); *Schultz v. State*, 510 S.W.2d 940, 943 (Tex. Crim. App. 1974) (same); *Shadrick v. State*, 491 S.W.2d 681, 684 (Tex. Crim. App. 1973) (same). On the other hand, the court held that it is "more reasonable to place the burden on the State [*45] to show attenuation of the taint because the State has control of the detention and interrogation process so that it may engage in conduct that dissipates and neutralizes the taint from any unlawful police conduct." *Pham*, 125 S.W.3d at 627.

If Appellee's statement in the instant case is to be excluded on statutory violations alone, both the State and Appellee agree that there must be a causal connection between law enforcement's violation of section 52.02(b) and the making of a statement by Appellee. *See Roquemore*, 60 S.W.3d at 870; *see also Pham*, 125 S.W.3d at 628; *Gonzales*, 125 S.W.3d at 618. Here, the record contains nothing to indicate whether Appellee's parents would have obtained an attorney for him. At the hearing on the motion to suppress, there is no evidence to support any causal connection between the family code violations and Appellee's second written statement. Therefore, I cannot speculate what Appellee's parents would or would not have done had they been contacted. Neither can I speculate that if Appellee had been transported more speedily to the juvenile processing office, he would not have given [*46] his second written statement. I conclude that the evidence did not establish a causal connection between the family code violations and Appellee's second written statement. Thus, neither the second written statement nor the gun should have been suppressed because of violations of section 52.02. Therefore, I would sustain the State's third point.

CONCLUSION

I dissent and would hold that the trial court erred in granting the motion to suppress Appellee's second written statement and the gun that was recovered as a result of that statement. I would render judgment denying the relief requested in the motion to suppress.

DIXON W. HOLMAN JUSTICE

Citation #2
State v. Blankenship, 2005 Tex. App. LEXIS 5083

LEXSEE

The State of Texas, Appellant v. Robert Blankenship, Appellee

NO. 03-03-00287-CR, NO. 03-03-00288-CR, NO. 03-03-00289-CR, NO. 03-03-00290-CR, NO. 03-03-00291-CR, NO. 03-03-00292-CR, NO. 03-03-00293-CR, NO. 03-03-00294-CR

COURT OF APPEALS OF TEXAS, THIRD DISTRICT, AUSTIN

170 S.W.3d 676; 2005 Tex. App. LEXIS 5083

June 29, 2005, Filed

SUBSEQUENT HISTORY: [*1] Rehearing overruled by State v. Blankenship, 2005 Tex. App. LEXIS 8180 (Tex. App. Austin, Sept. 30, 2005)
Released for Publication September 30, 2005.

PRIOR HISTORY: FROM THE COUNTY COURT AT LAW NO. 1 OF TRAVIS COUNTY. NOS. 624903, 624904, 624905, 624906, 624907, 624908, 624909 & 624910. HONORABLE J. DAVID PHILLIPS, JUDGE PRESIDING.
State v. Blankenship, 146 S.W.3d 218, 2004 Tex. Crim. App. LEXIS 1651 (Tex. Crim. App., 2004)

DISPOSITION: Reversed and Remanded.

CASE SUMMARY:

PROCEDURAL POSTURE: The State challenged the judgment of the County Court at Law No. 1 of Travis County, Texas, reversing defendant's judgments of conviction in the municipal court of record of the City of Austin.

OVERVIEW: Thirteen complaints were filed against defendant in the municipal court alleging violations of certain city ordinances, and each complaint alleged that the offense occurred in the territorial limits of the City of Austin as required by Tex. Code Crim. Proc. Ann. art. 45.019(c) (Supp. 2004-2005). Defendant was found guilty of five offenses of developing or changing the use of property without first obtaining a site plan approval and release by the City, and found guilty of three offenses of failing to observe a stop-work order posted at the site of the property involved. The issue on appeal was the consequence of the failure of the prosecution to prove venue as laid under the particular circumstances of the cases. The appellate court ruled that there was error in the failure to prove venue as laid, but the non-constitutional error was harmless, Tex. R. App. P. 44.2(b). There was no showing that defendant was prevented from presenting a defense. The description placed the property outside the City limits but within the extraterritorial area of the City over which geographical area the municipal court had sole criminal jurisdiction to try violations of certain city ordinances.

OUTCOME: The judgment was reversed and remanded.

CORE TERMS: venue, territorial, municipal, county attorney, ordinance, reversal, prosecuting attorney, notice of appeal, extraterritorial, city limits, non-constitutional, variance, notice, criminal jurisdiction, municipality, proven, city attorney, motions to quash, reversible error, harmless error, vicinage, geographical area, harmless, harmless error analysis, district attorney, legal description, criminal case, general law, preponderance, constituent

LexisNexis(R) Headnotes

Criminal Law & Procedure > Appeals > Right to Appeal > Government

[HN1] Tex. Code Crim. Proc. Ann. art. 44.01 was amended to grant the State an extremely limited right of appeal in certain designated circumstances, including when a court order "arrests or modifies a judgment." Tex. Code Crim. Proc. Ann. art. 44.01(a)(2) (Supp. 2004-05). The statute provides that the "prosecuting attorney" may not "make" an appeal later than the 15th day after the date on which the court's order, ruling, or sentence is entered. Tex. Code Crim. Proc. Ann. art. 44.01(d).

Criminal Law & Procedure > Appeals > Right to Appeal > Government
[HN2] See Tex. Code Crim. Proc. Ann. art. 44.01(i) (Supp. 2004-05).

Criminal Law & Procedure > Appeals > Reviewability > Notice of Appeal
Criminal Law & Procedure > Appeals > Right to Appeal > Government
[HN3] It is clear from Tex. Code Crim. Proc. Ann. art. 44.01 (Supp. 2004-05) that a duly authorized subordinate of the "prosecuting attorney" may not "make" an appeal. In order for a State's notice of appeal to invoke the court of appeals' jurisdiction, it must be timely, it must be in writing, and it must be "made" by the elected prosecuting attorney.

Criminal Law & Procedure > Appeals > Right to Appeal > Government
[HN4] See Tex. Code Crim. Proc. Ann. art. 45.201 (Supp. 2004-05).

Criminal Law & Procedure > Appeals > Right to Appeal > Government
[HN5] Tex. Code Crim. Proc. Ann. art. 45.201(c) (Supp. 2004-05) permits the city attorney to prosecute appeals from municipal court only "with the consent of the county attorney." The statute has no time limitations and does not require the request or consent to be in writing. It appears to apply to appeals that have been perfected.

Criminal Law & Procedure > Accusatory Instruments > Complaints
[HN6] See Tex. Code Crim. Proc. Ann. art. 45.019(c) (Supp. 2004-05).

Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction
Criminal Law & Procedure > Jurisdiction & Venue > Venue
[HN7] Venue is distinct from jurisdiction. The terms are not synonymous. Jurisdiction is the authority or power conferred upon a court by the constitution and laws of the State that allows a court to hear and try a case. Venue means the place where the case may be tried. At common law, venue meant the neighborhood, place, or county in which the injury is declared to have been done or in fact declared to have happened. Venue denotes locality, and its prevailing meaning is the place of trial, the geographical location in which an action or proceeding should be brought to trial.

Criminal Law & Procedure > Jurisdiction & Venue > Venue
[HN8] When venue is not a constituent element of the offense charged, venue must be proved only by a preponderance of the evidence. Tex. Code Crim. Proc. Ann. art. 13.17 (2005). The failure of proof of venue by the prosecution does not negate the guilt of the accused. It is presumed that venue is proved at trial unless disputed at trial or the record affirmatively shows the contrary. Tex. R. App. 44.2(c)(1). It must be remembered, however, that if the issue of venue is timely raised, reversible error may result from the failure to prove venue as laid in the charging instrument.

Criminal Law & Procedure > Appeals > Standards of Review > Substantial Evidence
Evidence > Criminal Evidence > Weight & Sufficiency
Criminal Law & Procedure > Jurisdiction & Venue > Venue
[HN9] Normally, venue variance claims are treated as sufficiency of the evidence problems. A state review of the sufficiency of the evidence is measured by the elements of the offense as defined by the hypothetically correct charge for the case. This test is also applicable to non-jury or bench trials.

Criminal Law & Procedure > Jurisdiction & Venue > Venue
[HN10] When venue is not a constituent element of the offense, it need only be proved by the preponderance of the evidence, and the failure to prove venue does not negate the guilt of the defendant.

Criminal Law & Procedure > Appeals > Standards of Review > Harmless & Invited Errors
[HN11] See Tex. R. App. P. 44.2(a) and (b).

Criminal Law & Procedure > Appeals > Standards of Review > Harmless & Invited Errors
[HN12] Except for certain federal constitutional errors labeled by the United States Supreme Court as "structural," no error, whether it relates to jurisdiction, voluntariness of a plea, or any other mandatory requirement, is categorically immune to a harmless error analysis. Appellate courts should not automatically foreclose the application of the harmless error test to certain categories of error. Where an error is shown to be harmless, it is not a ground for reversal, regardless of the category or label attached to that particular error.

Criminal Law & Procedure > Appeals > Standards of Review > Harmless & Invited Errors
Criminal Law & Procedure > Jurisdiction & Venue > Venue
[HN13] It is clear that the failure to prove venue when the issue is raised at trial is now subject to a harm analysis rather than an automatic reversal of the conviction.

Constitutional Law > Criminal Process > Compulsory Process
Criminal Law & Procedure > Jurisdiction & Venue > Venue
[HN14] The "vicinage" provision of the Sixth Amendment stipulates that in all criminal prosecutions, the accused shall be tried by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law. U. S. Const. amend. VI. Neither federal nor state authorities, however, currently require application of this clause to state prosecutions.

Criminal Law & Procedure > Jurisdiction & Venue > Venue
[HN15] "Vicinage" means vincinity, proximity. The place where the crime is committed, or a trial is held; the place from which jurors are to be drawn for trial use, the locale from which the accused is entitled to have jurors selected.

Criminal Law & Procedure > Appeals > Standards of Review > Harmless & Invited Errors
[HN16] The appellate court must determine the harm of the non-constitutional error on the basis of whether it affects a defendant's substantial rights. Tex. R. App. P. 44.2(b). A substantial right is affected when the error has a substantial and injurious effect or influence in determining the jury's verdict or the fact-finder's decision. A criminal conviction should not be overturned for non-constitutional error if the reviewing court, after examining the record as a whole, has a fair assurance that the error did not influence the fact-finder, or had slight effect.

Criminal Law & Procedure > Double Jeopardy > Attachment Jeopardy
Criminal Law & Procedure > Jurisdiction & Venue > Venue
[HN17] The issue of venue falls outside the protection of the Double Jeopardy Clause. If there is a reversal for the failure to prove venue as alleged, no prohibition exists against reprosecution.

COUNSEL: For APPELLANT: Ms. Gaye Lynn Brewer, Austin, TX.

For APPELLEE: Mr. Terrence L, Irion, Ms. Anatole R. Barnstone, THE LAW OFFICE of TERRENCE L. IRION, Austin, TX.

JUDGES: Before Chief Justice Law, Justices Puryear and Onion *.

> * Before John F. Onion, Jr., Presiding Judge (retired), Court of Criminal Appeals, sitting by assignment. See Tex. Gov't Code Ann. § 74.003(b) (West 1998).

OPINIONBY: John F. Onion, Jr.

OPINION: ON REMAND

This appeal by the State of Texas involves eight judgments, nos. 624903 through 624910, entered in the County Court at Law No. 1 of Travis County, each of which reversed a judgment of conviction in the municipal court of record of the City of Austin.

On original submission, this Court concluded that it was confronted with a jurisdictional question in light of the amended notice of appeal filed by an assistant city attorney. Prior to November 1987, there was a traditional prohibition against the State's right to appeal in a criminal case. *See Pittman v. State*, 829 S.W.2d 897, 898 [*2] (Tex. App.--

Austin 1992, no pet.). In 1987, the citizens of Texas voted to amend the State Constitution to read: "The State is entitled to appeal in criminal cases as authorized by general law." Tex. Const. art. V, § 26. [HN1] Article 44.01 of the Code of Criminal Procedure was amended to grant the State an extremely limited right of appeal in certain designated circumstances, including when a court order "arrests or modifies a judgment." Tex. Code Crim. Proc. Ann. art. 44.01(a)(2) (West Supp. 2004-05). The statute provided that the "prosecuting attorney" may not "make" an appeal later than the 15th day after the date on which the court's order, ruling, or sentence was entered. Art. 44.01(d).

The statute further provides:

> [HN2] (i) In this article, "prosecuting attorney" means the county attorney, district attorney, or criminal district attorney who has the primary responsibility of prosecuting cases in the court hearing the case and does not include an assistant prosecuting attorney.

Tex. Code Crim. Proc. Ann. art. 44.01(i) (West Supp. 2004-05).

[HN3] It is clear from the statute [*3] that a duly authorized subordinate of the "prosecuting attorney" may not "make" an appeal. And we know that "in order for a State's notice of appeal to invoke the Court of Appeals' jurisdiction, it must be timely, **n1** it must be in writing, **n2** and it must be 'made' by the elected prosecuting attorney.**n3** *State v. Rieiue*, 13 S.W.3d 408, 411 (Tex. Crim. App. 2000).

> **n1** *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996).
>
> **n2** *Shute v. State*, 744 S.W.2d 96, 97 (Tex. Crim. App. 1988).

n3 *State v. Muller*, 829 S.W.2d 805, 811-12 (Tex. Crim. App. 1992).

The notice of appeal in the instant case was signed and executed by an assistant city attorney and contained the following:

IV.

The County Attorney has consented to the City Attorney prosecuting this appeal under article 45.201 of the Code of Criminal Procedure. n4

> **n4** Article 45.201 provides:
>
> > [HN4] (a) All prosecutions in a municipal court shall be conducted by the city attorney of the municipality or by a deputy city attorney.
> >
> > (b) The county attorney of the county in which the municipality is situated may, if the county attorney so desires, also represent the state in such prosecutions. In such cases, the county attorney is not entitled to receive any fees or other compensation for those services.
> >
> > (c) With the consent of the county attorney, appeals from municipal court to a county court, county court at law, or any appellate court may be prosecuted by the city attorney or a deputy city attorney.
> >
> > (d) It is the primary duty of a municipal prosecutor not to convict, but to see that justice is done.
>
> Tex. Code Crim. Proc. Ann. art. 45.201 (West Supp. 2004-05).

COURT SECURITY GUIDE

National Association for Court Management

June 2005

National Association for Court Management

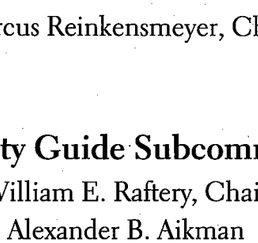

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Table of Contents

1. Introduction

On Friday, March 11, 2005, an in-custody defendant on trial in Atlanta, Georgia, on several felony charges, including aggravated rape, was reported to have wrested a gun from a female deputy sheriff who was escorting him by herself to the courtroom. He shot her, wounding her critically, then traversed an above-grade bridge to the trial courtroom, where he shot and killed the judge and his court reporter. While exiting the building, he shot and killed another deputy sheriff. The previous day, he had been caught with two home-made "shivs" in his shoe, prompting the judge to ask for extra courtroom security for the balance of the trial. This incident followed the recent in-home killing of a Chicago federal judge's husband and mother by a litigant in a medical malpractice case who thought the judge's dismissal of his case was wrong and had ruined him.[1] He had snuck into the judge's home, whose address was posted on a Web site maintained by a group associated with another case involving the judge, to kill her, but left before she returned home.

Both incidents are highly unusual in the annals of court security risks. Their viciousness, their proximity in time, and the issues they have raised about court security have given fresh impetus to all court leaders to review and, as necessary, upgrade court security, including the security of judicial officers when they are not in the courthouse. These incidents reinforced the long-standing awareness of court officials, particularly those in large urban jurisdictions, of the importance of court security; they also reinforced the concerns generated following the horrors of September 11, 2001, and the enhanced understanding caused by that event of a need for greater vigilance against many security threats to government institutions, including courts

A comprehensive security plan and program for a court helps ensure an atmosphere of relative comfort and safety in which to conduct judicial business. Although the county sheriff or other law enforcement agency normally is vested with overall court security, everyone involved in the court's business, including judges, staff, attorneys, litigants, and the general public, has a role. This role in security is exercised through cooperation, alertness to potential dangers, and knowledge of the security plan. Security plans can be envisioned as an umbrella covering perimeter, facility, and internal security measures plus a coordinated response to security incidents and treats.

Security plans and measures attempt to strike a balance between the rights of citizens in our open and democratic society and ensuring appropriate levels of security. "Security" as used in this guide, means "the safety or safeguarding of (the interests of) a state, organization, person, etc., against danger . . . the exercise of measures to this end" (*Oxford English Dictionary*, 2nd Edition). Court security is neither disaster recovery (although the two can overlap) nor department specific.[2] It is an ongoing responsibility as well as a duty to all working in and using a court. It addresses the need to prevent disturbances and acts of violence that can impede the administration of justice. Court disturbances threaten an orderly system of justice by interrupting the adjudication process and making

1. The judge whose family was killed on February 28, 2005, was the last of three judges who had dismissed the litigant's claim; she was doing so pursuant to an order of the Court of Appeals for the Seventh Circuit. At least one attorney involved in the litigation said the judge probably treated the litigant more humanely than any of the other judicial officers in the case, but apparently he did not see it that way.

2. The National Association for Court Management will be producing a complementary mini-guide within a year of publication of this guide that will cover assuring and restoring organization continuity, i.e., "disaster recovery."

it difficult for a defendant in a criminal case or a party in a civil matter to obtain a fair resolution of their case. Disturbances also undermine public confidence in the court as an institution and respect for the legal process.

Although awareness of security issues currently is high, this level of awareness can fade with the passage of time and changes in personnel. Part of the responsibility of a court's leadership is to assure that neither the awareness nor the precautions slacken.

Court security includes the procedures, technology, security personnel, and architectural features needed to ensure the safety of people and property within the courthouse and nearby grounds and to protect the integrity of the judicial process. Court security is more than a modern building with the latest equipment, however. It encompasses an understanding of the role court security plays in the justice system, an evaluation of threats to that system, and plans for an effective response to those threats. By taking a few precautions, security can be maintained in court buildings and court-based activities in outside facilities such as probation offices and mental health hospitals. Even if no incidents have occurred to date, every jurisdiction should undertake security planning and preparation and establish a comprehensive security system.

What is the court's proper role in administering a security program, particularly where, in many courts, executive branch agencies have legitimate responsibility for various facets of security? Further, many courts are located in "shared' government facilities that also house nonjudicial agencies, which can further complicate security management. This guide is premised upon the concept of strong judicial branch leadership and ownership of the court's security program. Throughout the guide, however, there also is an emphasis on collaborative planning and on a partnership between the court, security officials, and law enforcement agencies.

This mini guide, produced by the National Association for Court Management, updates the June 1995 publication, "Court Security Guide." What has changed in the last 10 years? For one thing, there has been a national and even global increase in awareness of and in concern about security due to international and domestic terrorism. Gang activity, organized crime, and tragic incidents across the nation arising out of family disputes also have heightened awareness that security must be a concern daily and not merely a response to a specific special event or incident. Over this past decade, security technology has advanced dramatically, from video monitoring to electronic locks and biometric identification systems. Technology is only one element of security, of course. The other components are personnel and procedures. All must work together to be effective. This guide outlines the factors to take into consideration and some possible responses.

This guide is more checklist than blueprint. It identifies issues and suggests approaches; each court then must develop its own specific blueprint in accordance with its local environment, culture, and needs. The best security is ever vigilant, comprehensive, only partially visible, and never taken for granted. This guide is offered to assist courts in meeting those goals.

II. Responsibility

The responsibility for securing courthouses is both focused and general. The ultimate responsibility for courthouse security usually is focused by law or practice on one person. Either way, it is best that one person have the final responsibility. Whether the chief judge, the sheriff, or the court administrator, this person's mission is three-fold: to match resources with need; to set policy goals and monitor the degree to which those goals are met; and to create awareness on the part of all those working in and entering the courts about the need to maintain a secure facility.

	Are you aware of any security incident at a nearby court in the past five years?			
		Yes	No	Unsure
Has your court dealt with an incident relating to security in the past five years?*	Yes	34.76% (81)	20.17% (47)	11.59% (27)
	No	7.73% (18)	18.03% (42)	1.29% (3)
	Unsure	1.72% (4)	2.58% (6)	2.15% (5)

* Based on 233 responses received in 2004.

In some jurisdictions, security is the legal responsibility of a sheriff or local police department but the judges and court employees expect the court administrator to be knowledgeable and involved, at least at the policy level. In such cases, the administrator should establish regular communication with the legally responsible entity and expect an equal role in setting policy and approving the security plan. Large courts often appoint a security liaison to interface with the security agency daily.

Courts often share facilities with other government agencies. In these circumstances, building-wide security may be possible, but it may not be. In the latter instance, security for the court's portion of a building has to be provided within the context of a building that is not secure. The ultimate responsibility for court security would not change, but the approach needs an additional element. A coordinating committee consisting of representatives of all entities in the building is essential for effective security. This committee can assist in developing and overseeing the security plan and also assure that other tenants in the building are aware of the court's needs and plans. It also allows the other entities to develop their plans in the event that a security incident in the court impacts other parts of the building.

Operational responsibility rests on security personnel, be they deputy sheriffs, marshals, or private security personnel. They must have the requisite training and daily responsibility for implementing the security plan. Lines of communication between these personnel, their supervisors, court personnel, the court administrator, and the person with final responsibility within the court, if that is not the administrator, have to be delineated and understood by all involved.

All court employees share responsibility for security. Employees know what is common and uncommon, they observe public and work areas that may not be monitored by security personnel, they may be in the best position to see suspicious behavior by visitors or litigants, and they may be immediately affected by a security incident. It should be reasonably easy, therefore, to get staff's support and assistance.

Placing the burden on staff has potential pitfalls, however. First, complacency may set in. If security is everyone's concern, it may become no one's concern, as each person becomes convinced

another will do the job. Equally risky, if there are no incidents over months or even years, staff may come to believe that none will occur; the institution might be most vulnerable when staff come to believe security is unneeded. Also, employees may not feel comfortable with the idea that they bear some burden for security, feeling it should rest with trained professionals. The issue of consciously or unconsciously deferring responsibility to others should be addressed through training programs involving both court management and trained security personnel. The training must emphasize that responsibility for a secure environment is shared with those in law enforcement or protection management and that only constant vigilance, even in extended times of quiet, assures security.

Those who enter the courthouse on a regular basis (such as attorneys), from time to time (law enforcement, social service agency personnel, a variety of others), or even rarely (general public) also can assist with security. Their responsibility and the capacity to inform or educate them, however, are limited. Security personnel and employees can create an atmosphere indicating security consciousness that sensitizes the public. The "atmosphere" can be reinforced by signs asking people who see a suspicious package to contact security or a member of the court's staff or in the relatively simple placement of a secure phone and contact numbers throughout the building. For the Bar, letters from the chief administrative judge and/or occasional comments at Bar meetings can reinforce the need for all to be alert.

III. A Security Plan

What is a security plan?

Many states by statute or court rule require the development of a security plan. A security plan has two purposes: a plan and general guide for staff and policy makers and an operations manual for security personnel. It addresses how the court will address specific issues, particularly those discussed in this guide. A security plan need not be massive. Instead, in the most concise manner possible, it should advise staff and judicial officers how to prevent security incidents and what to do should they occur. A second volume or appendices can provide the myriad details for scenarios that the court's security department would need to know but staff would not.

The plan should addresses three elements of securing the court and those who use it.

- Daily, general securing of the facility
- Procedures for handling continuing security concerns such as prisoner transport, the theft of documents or personal items, and minor medical emergencies
- Contingency plans for major security concerns such as hostage situations, weapons use, bomb threats, fights, demonstrations, major medical conditions, fires, and special high-security defendants and notorious cases

Within these three elements, there are three areas to consider:

- Operations
- Technology
- Architecture

Operations includes policies, procedures, and personnel. Personnel embraces both the number and type of security personnel and assuring that all other court staff have familiarity with security plans that might affect them. Technology helps to detect security threats and to take preventive actions. Often you want the technology to be apparent, such as fire alarms, electronic locks on doors, and magnetometers, while other technology is not visible, such as motion detectors and possibly closed circuit TV. Architectural elements involve both the exterior of the building – protecting it from vehicles and other external threats – and space planning and security materials (e.g., laminated, shatter-proof glass and fire-rated stairwells and corridors) that limit damage inside. Following 9/11, several groups have reviewed technological and, especially, architectural codes and standards. If you are designing a new building or a major addition, or merely upgrading a portion of an existing building, you may wish to ensure that you or your architect consults:

- U.S. General Services Administration
- United States Marshal Service
- National Sheriff's Association
- New York City Department of Buildings
- Art Commission of New York City (for how art can be used to enhance, particularly, exterior security)
- National Capital Planning Commission (in D.C.) and
- Local engineering and architectural associations regarding local codes and standards

A written statement of policy and procedures provides security personnel as well as both new and veteran court staff with clear directions regarding their responsibilities and how to deal with the numerous situations that may arise. It also serves as a handy reference when a contingency or emergency situation occurs.

The creation of a security policy should be of primary concern and immediate importance. Obtaining copies of plans from other courts that already have such plans may ease the development process. Courts with multiple locations and constituencies may require more effort and time to produce a plan, as the planning committee would be larger and certain factors may have to be addressed separately for each facility. The time required should not lower the importance of the task, however. A security breach is never acceptable after the fact; often only advance planning will enable a court to avoid such a breach. Consideration also should be given to keeping people in nearby buildings informed.

	Has your court dealt with an incident relating to security in the past five years?*			
		Yes	No	Unsure
Does your court have written security policies?	Yes	43.4% (101)	15.9% (37)	7.3% (17)
	No	9.4% (22)	11.6% (37)	6.0% (14)
	Unsure	2.6% (6)	1.7% (4)	2.2% (5)

* Based on 233 responses received in 2004.

Developing the plan

Developing a plan involves several steps:

1. Establish a court security management planning committee.
2. Set objectives and goals, both short- and long-term. For example, one broad goal may be to protect life, property, and the judicial process. Each broad goal would have deliverables, target dates, and quantifiable statements about how you will know if the goal is being achieved.
3. Identify known problems.
4. Conduct a staff, equipment, and facility audit to identify and clarify problems.
5. Prepare a written report.
6. Develop an action plan to resolve problems.
7. Develop written policy and procedure statements.
8. Document and distribute the plan.
9. Conduct appropriate training.

There are three groups almost universally included on the planning committee: law enforcement (usually sheriffs), the chief judge(s) in each court facility, and the court administrator and clerk of court. It also is wise to include the prosecutor, public defender, and local bar associations. Many courts also include members of the legislative body responsible for authorizing funding for the plan, court staff, one or more senior managers, and even members of the general public. If representatives of fire and emergency services are not part of the drafting committee, they at least should be consulted while the plan is being developed. Courts housed within private buildings or buildings that are home to other government agencies should seek input from building management and fellow building tenants; as major security incidents also can affect all tenants, failure to include their representatives may cause hard feelings and even could put their staff and customers at risk when the time comes to execute contingency plans.

Judicial input and support for the plan is critical to ensure not only that judges understand and adhere to the policies, but that there is backing for required funding. Law enforcement agencies have access to funds that may not be readily apparent to those within the courts. The attorney members of the planning committee may be able to press the local bar into accepting elements of the plan that impact attorneys and may even help during budget negotiations. Finally, by including public input and concerns in the planning, it becomes that much easier to seek their support for financing and executing the plan.

In the process of developing the plan itself, the committee can prioritize security needs and expenditures, foster public support for increased security, and help the court to obtain the funding associated with any suggested changes.

Plans should be reviewed yearly, along with a security survey or audit. Such a review could be done as part of the yearly budget request process, so if there are new security needs, additional resource needs can be tied directly to appropriations requests.

Audit/Review

An audit is needed at two points: when the plan initially is being developed and periodically thereafter, preferably annually.

In what year was the last audit or review of security for your courthouse and/or courtrooms made?*

2004	2003	2002	2001	2000	Prior to 2000	Never	Unsure	Multiple Answers
15.45%	19.74%	9.44%	3.00%	1.29%	14.16%	11.16%	23.61%	2.15%

* Based on 233 responses received in 2004.

The initial audit should cover the court grounds plus all external and internal building spaces. A survey instrument or checklist should be used to ensure that no areas are overlooked. (See Appendix A for a list of areas to consider in the survey.) Two surveys are needed: a written survey and an on-site, walk-through survey. A written survey is important because it allows staff to make anonymous comments and gives them an opportunity to think about the issues. For some elements of the on-site survey, it can be helpful to use people from outside the court who have no connection with staff so they bring a fresh eye to the facility and you can determine how staff responds to strangers who might breach security. When the on-site survey is conducted:

1. Do not announce it to staff before the survey is started.
2. Carry a notebook to record your observations.
3. Walk around and open doors. Find out what really happens. Talk to staff, as some security incidents may not be documented or reported.
4. Watch how staff operates. Observe if they are attentive. See how many prisoners are being supervised by how many guards.
5. Determine how the lights and telephone system are controlled in the courtroom, staff offices, hallways, etc. Members of the public should not be able to turn out the lights or turn off the phone system.
6. Assure that utility closets are locked.
7. Review operation of the public address system and emergency-exit lighting
8. Evaluate whether the emergency generator(s) will function for as long as may be needed or, if the court does not have such a generator, whether one should be installed.
9. Establish how far an unknown person can go into a restricted area without being challenged.
10. Determine if judges allow unrestricted access to their chambers and/or the corridor along which their chambers are located.
11. If the court has video surveillance equipment, is the person who monitors it attentive at all times or does he or she have other duties?[3]

The results of the initial audit should be documented. The report should cover strengths as well as concerns and offer options and recommendations for improvement. Past security incidents should be mentioned in the report. The report then can expand from actual incidents to "what

[3] In the Atlanta situation cited at the beginning of this guide, it has been reported that surveillance cameras caught the overpowering of the deputy sheriff, but the image was not monitored, so aid could not be dispatched in a timely manner.

if" possibilities: What if the defendant had taken a hostage rather than just run away? What if the thief had taken some court records or cash from the drawer at the counter rather than a purse? Use the goals and objectives set in the plan to prioritize responses if all identified concerns cannot be addressed right away within the current budget.

Because security needs are easily forgotten and because circumstances change, the plan should be reviewed annually. Review of implementation need not wait for an audit or the annual review, however. Targeted, unannounced audits can be conducted. One way to conduct a targeted check is simply to take a single random target from the security plan and conduct a walk through of the court to determine if the goals of that particular area are being met. These mini-audits are limited, but a useful device for reminding staff of the importance of security concerns. They also assure, without waiting an entire year, that complacency, broken equipment, or some unforeseen circumstance has not arisen since the last check.

Keeping staff aware of the plan and emergency procedures

There are various ways in which to keep staff aware of the plan. The "snap audits" are one way. Another is to reduce the key points to a card that can be placed in the desks of all employees. If nothing else is provided, all staff should have emergency telephone numbers and three or four outlined steps to follow for the most likely scenarios they could face, such as bomb threats, fire, medical emergencies, and incidents of violence. A quick reference of this sort can easily be used in case of emergency as well as serve as a refresher. Some courts put basic security information on the back of all ID cards, either as stickers or part of the card itself.

IV. Security Zones of Daily Concern

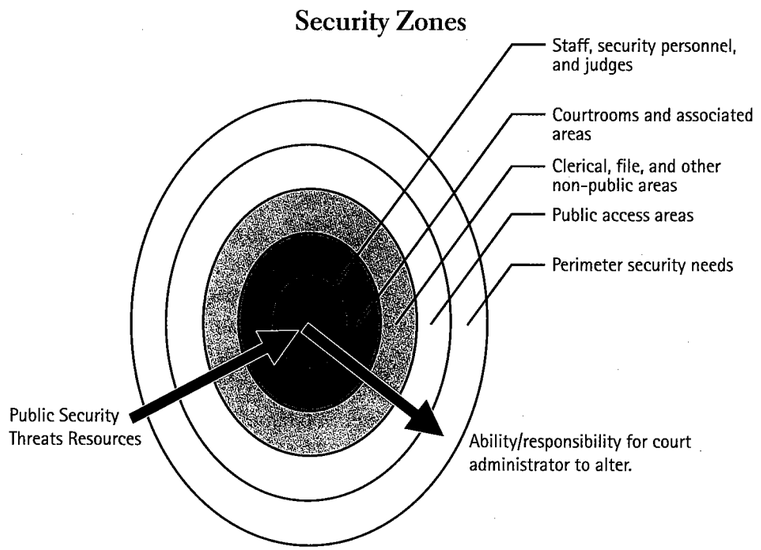
A court's security needs can be thought of as a series of concentric circles, starting with perimeter security needs, then moving to public access areas within the courthouse, then to clerical, file, and other non-public areas, then the courtrooms and associated areas, and in the center, the staff, security personnel, and judges upon whom all the policies and procedures depend. This section addresses each of the security zones.

The "systems approach" to security requires that policy and procedures work together to achieve a unified effort. Administrators can assume that the court's stakeholders want a safe and hospitable environment while in and near the courthouse. Recognizing different zones that present different security issues and challenges, yet also recognizing that the zones are dependent and not independent of each other, may help to create and sustain the system approach.

A. Courthouse Perimeter and Entry

Architecture

The need for security in recent years has prompted a number of trends in courthouse design. Some architectural plans have been developed to include fewer entranceways and windows. Newer



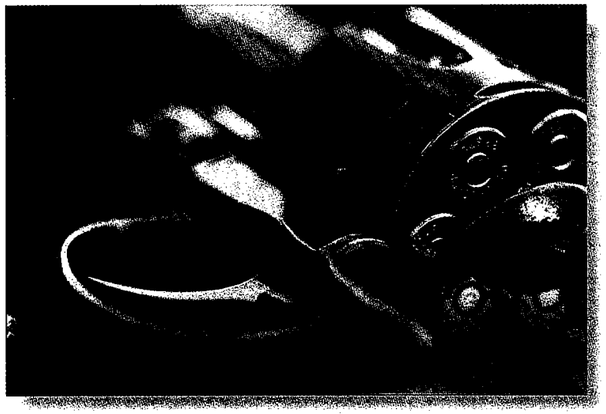
As people approach the courthouse, understanding of the court grows. As the focus shifts away from the internal working of the court, the ability of a court administrator to impact security declines.

designs have also included the use of barricades, with perimeter barriers appearing to be part of the landscaping, or even using outdoor benches or planters. For instance, large, heavy pots containing flowers and trees can serve to prevent vehicles from entering certain areas. Some city planners have eschewed subtlety and begun using barriers that are more obvious, such as garbage trucks full of sand to block streets and concrete posts to surround a court.

Advances in security technology have not been as emphasized as other more traditional approaches. This is partly due to its limited applicability to older courthouses and the overall culture of the court environment. In view of technology's cost effectiveness, courts should consider some of these contemporary alternatives. Closed circuit television and sensors are two examples that can be incorporated into the architecture but do not compromise the aesthetics of the building. To the extent feasible, courts should be designed and modified to integrate new technologies as they become available. Security plans, therefore, should be reviewed periodically to determine if any technical innovations should be added.

Parking

Parking is easily overlooked as a security concern. Some basic security measures include separating public, staff, and judicial officer parking and having police officers park in public parking lots. The presence of police vehicles and the movement of police officers in the parking lot provide the appearance of high court security. If an off-site parking lot is used, consider a shuttle service or security escort service, especially when it is dark. If a trial is anticipated to run late, recess court to allow jurors, staff, and other participants to move their cars to one central location. This will make



it easier for court security officers to escort court participants to their vehicles after hours.

Be sure to have adequate lighting in parking lots and on the walkways to and from the courthouse. To get the most from your outdoor lighting investment, it is important to select the right light bulb for the job. This decision should be made in consultation with the responsible security agency.

Other considerations related to parking are:

- Never designate parking by "Judge" or other title/name; instead, use a generic sign such as "Reserved Parking" or "Space XX."
- A booth at the entrance of a parking lot can serve as an initial security contact point.
- If possible, install controlled-access gates around staff parking lots and carefully monitor the access cards and codes used to enter these areas; consider parking decals for staff cars, although if you use these, you also have to be alert to retrieve the decal or deactivate the code upon separation of a staff member.
- Also consider CCTV surveillance cameras around the reserved parking area or at least at the entrance to reserved parking areas.
- Install emergency telephones in lots and parking structures that are visible from considerable distances and connected directly to security personnel.

Perimeter

Courts should be in regular communication with their state and local authorities to keep abreast of any developments related to public safety. Court officials should work in concert with local government officials. This may be particularly useful when a courthouse is in close proximity to other government buildings, which may create a heightened threat.

Monitoring the court's perimeter through the appropriate use of cameras is an option to supplement regular patrols by security personnel. Trees or shrubbery that obscure views or provide hiding places should be removed.

Entrances

Most older courthouses have multiple public entrances; closing some other than for use as emergency exits often can facilitate controlled access and limit the cost of entry security. To protect the courthouse against breaking and entering, consider constructing doors and frames of heavy gauge steel, equipping windows with opaque blinds and drapes, and protecting windows with security glazing and alarms. Visitor movement within the building can be controlled through directories, floor plans, receptionists, and special screening, if necessary.

An entrance should be able to accommodate the typical volume of people entering the court on a daily basis. Entrances should be staffed with a sufficient number of personnel to screen individuals. They

should also be trained in crowd control and alternate duties so that they do not become complacent in their responsibilities. Incidents of workplace violence warrant all individuals, including staff, judges, and attorneys, to be subject to the same screening processes as visitors and litigants. Entrances should be equipped with various screening technologies such as magnetometers, handheld metal detectors, cameras, identification scanning, etc. A sample court order can be found in Appendix B.

Only personnel authorized to carry a weapon within the court should carry firearms into the courthouse. Depositories to temporarily store firearms of other law enforcement officers should be readily available within the court. The area should be secured and maintained by the court's security staff. Weaponry found on non-law enforcement people should be confiscated and eventually destroyed. The court may also consider storage of other non-lethal items restricted from the court such as cameras and recording devices. The appropriate security personnel should likewise manage these items. Court personnel should always be prepared to address advancements in technology that can compromise the security and integrity of the court, such as camera phones.

Percentage of Courts Allowing Individuals to Bypass Security Screening*	
Employee with Court Badge/ID	28.3%
Attorney with Bypass Badge	13.3%
Others	12.5%
Others with Court-issued ID	12.0%
Elected Officials with ID	8.6%
Frequent Visitors (ie. contractors) with Court-issued ID	7.3%
Law Enforcement Officers	3.0%
* Based on 233 responses received in 2004.	

When developing policies for building entrances and key control, these points should be addressed:

- Adjacent roofs, walls, and trees may provide a hiding place and should be checked.
- Secure manholes, sewers, fire escapes, skylights, grates, heating and air conditioning vents and ducts to prevent unauthorized access into the courthouse.
- Determine who has authority over the key system or access system. Tightly control the distribution of master keys.
- Consider whether the janitorial service will have unrestricted access without supervision and whether personnel can access an alarm switch.
- Determine where deliveries are made. Consider using a central location outside of a secured area and have each delivery inspected (and x-rayed) by a security officer. (Note: Currently, this practice is rarely used in state trial courts.)
- Be aware that staff often allow unsupervised access to secure areas by people wearing delivery/construction uniforms. Audit this practice to discourage it from occurring.
- Do not use "Post-It Notes" to note alarm codes, computer passwords, etc.
- The responsibilities of persons opening and closing the building should be determined. Follow standard procedures for searching the building.

- Consider who may use judicial facilities after hours and how, e.g., law library, community meetings, mock trials. Sign-in procedures should be developed.
- Due consideration must be given to court security when staff or others use the courthouse after regular business hours. There is always the possibility of introducing such things as weapons and explosives for use at a later time if entrance security is relaxed, not to mention the real possibility of theft and vandalism. Electronic and video surveillance should be used to keep track of people entering the building during off-hours.

A universal problem in court systems is key control and access management. Keys that are lost or stolen, or that remain in the possession of discharged employees, provide unauthorized individuals with access. Additionally, if a card, combination, or even a personnel identification number activates a lock, there is no assurance that the person using the device is the person to whom the authorization was issued. One solution to this problem is to change codes and cards every 90 days. Another solution is to use biometric input devices, specialized equipment that compares the physical characteristics of a person entering a protected area with a prerecorded template of those characteristics for the authorized person. If those characteristics do not match, access is denied. Several devices are available and suitable to courthouse applications, including fingerprint and thumbprint readers, systems that can record and compare blood vessel patterns, facial features, hand geometry, and retinal eye scanning.

Non-Court Law Enforcement

Law enforcement officers may appear in court as witnesses in their official capacity or to participate in cases in which they are a party. A policy allowing officers appearing as witnesses in their official capacity to carry their service weapons into the courthouse and bypass routine security should only be considered after assessing the specific impact of such a policy on that court. A registration procedure to locate these officers within the courthouse is advisable. Law enforcement agencies may wish to maintain a courthouse liaison office (usually the court's security department) where such officers can register.

Officers appearing as participants in cases of a personal nature, which may include civil, criminal, or family court matters, should be required to submit to the same security measures as all members of the public. Coordination with local law enforcement may be necessary to assure that officers appearing for personal matters do not appear while on duty or in uniform. In these instances, they should not carry their service weapons. Courthouse security officers may monitor this by requiring officers appearing in uniform and/or armed to produce a subpoena before being allowed to enter the courthouse.

Alternatively, implementing a policy whereby no officer, other than court security officers, may be armed within the confines of the courthouse may resolve these issues. Coordination with local law enforcement to ensure that this mandate does not conflict with departmental policy is advisable. A more prohibitive policy, however, would require the court to establish a secure location for storing weapons.

The court security committee should develop a weapons policy and address the following points. (Remember, no deterrent is foolproof.)

- Set a policy on carrying weapons into court. For example, only court security personnel on duty, with identification and proper training, may carry weapons. Department policy or court rule should determine whether or not law enforcement personnel who are witnesses can be armed.

- The type of ammunition that can be carried in the building should be determined to prevent injury and excessive damage.
- Screen everyone entering the courthouse. If exceptions are made, security personnel may become lax.
- Define "weapon." Guns, knives, and mace sprays are weapons that should clearly be barred from court facilities. Check local and state statutes and rules for the definition of the term "weapon." Note, too, that guns and knives can be disguised in cell phones, PDAs, and beepers.
- If an unauthorized weapon is found, decide how to handle and disarm the person carrying it.
- Develop a maintenance schedule for screening machines and back-up procedures in the event of machine failure.

Although the public is not allowed to carry weapons in the courthouse, perpetrators may be able to find an object that can be used as a makeshift weapon. For example, in the courtroom, a person may be able to throw a chair or a microphone at the judge or may have access to scissors on a desk. Precautions should be taken to secure as much furniture in the courtroom as feasible, and employees need to be constantly aware of objects that can be used as weapons.

The legality of searching everyone entering the courthouse was decided in a 1934 case by the Ohio Court of Appeals (*Pierpont v. State*, 195 N.E. 264, 267-268). Since then, other cases have had similar outcomes. See Appendix E for a list of case cites and a synopsis of what occurred. A sample court order for weapons screening is included in Appendix B.

B. Public Areas

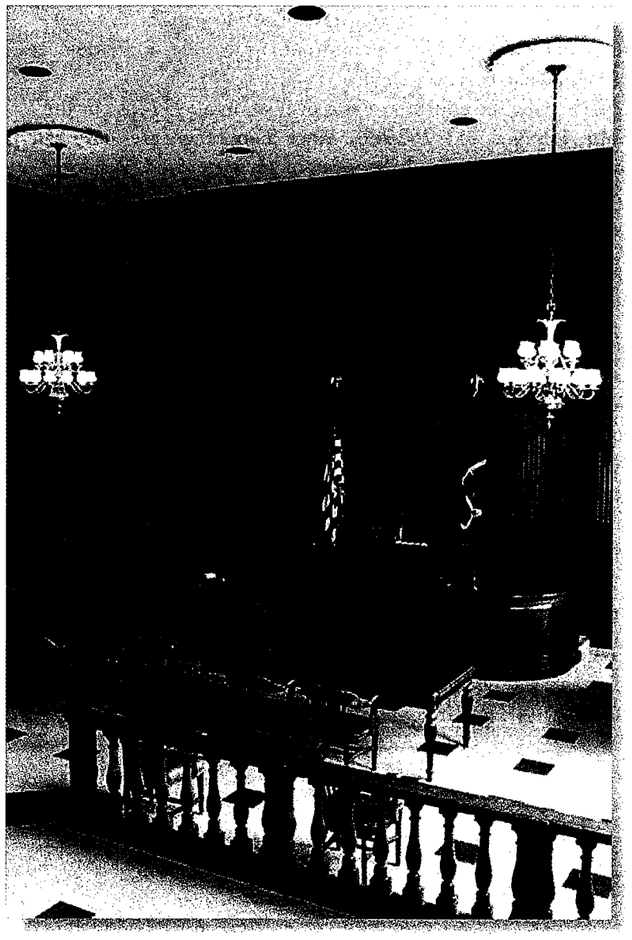
Hallways and Passageways

Passageways within a courthouse are related to security in three ways. First, they have varying levels of activity; therefore, some areas may be more vulnerable to security concerns. Electronic monitoring systems, particularly motion sensors in conjunction with cameras, help ensure that activity is monitored at all times. Second, hallways are typically areas of gathering and discussion. To this end, courts should be aware of "high traffic" areas and take precautionary measures to contain incidents in the event of an emergency. Third, hallways provide direct access to secure areas such as holding facilities, judges' chambers, and personal and confidential information, as well as the personal property of staff. Circulation patterns should be designed so that prisoners can be transported without interacting with the public. This will aid in securing both the public and prisoner. Corridors restricted to judges, employees, or police officers are other measures the court could consider to bolster security. If the building's current design does not allow for separated corridors, accommodations need to be made such as more security personnel to move prisoners around the courthouse. An inability to provide secure corridors may add weight to the need for video surveillance of corridors, particularly those used by prisoners and especially if judges, staff, jurors, and prisoners must use the same corridors.[4]

[4] See note 3, *supra*.

The public has wide access inside most courthouses, including lobbies, public cafeterias, public restrooms, cashiering areas, courtrooms, and the clerk's office. These areas should be well lit, have proper signage, and be supervised or monitored with surveillance equipment. All light switches in public access areas should be key controlled or locked. Staff offices receiving a lot of public use should be grouped close together near the public entrance. This helps to promote security and facilitates the use of a limited portion of the building during off-hours. Public areas should be separated from employee offices with a wall or counter. If money or documents are exchanged over a counter, a bulletproof, pass-through partition may be installed. Speech reinforcement systems may be needed in noisy areas (and/or to conform with ADA requirements).

The distinction between public and non-public areas denotes a security transition. Transition points present two prevailing challenges. The first is termed "piggybacking" and occurs when an authorized person allows another party to enter the area while they are entering or exiting the location. The second is known as the "wave through" and occurs at checkpoints when individuals are allowed to bypass security channels. Courts should strictly enforce the implementation of policy and procedures that bar these practices.



Non-public areas often are distinguished by doors and additional checkpoints. These areas should be designed and operated to prevent those not authorized from entering. Biometric systems, which scan an employee's hand or fingerprint, are becoming more commonplace in government buildings. Another security measure the court could consider is the use of identification cards to access electronically operated doors. This measure also reinforces policy to staff regarding restrictive access.

Limiting the number of potential hiding places for weapons and bombs is an important consideration in the design of public areas, including hallways, lobbies, restrooms, and waiting areas. These areas should be brightly lit and should ideally have high ceilings. The additional construction costs associated with high ceilings may be prohibitive in some facilities. Suspended ceilings in public areas of new buildings can be constructed of

plaster or other monolithic material, however, rather than removable panels. Any necessary access panels in these ceilings can be fitted with locks. If the configuration of the building includes corners, cul-de-sacs, or other potential hiding places, or if direct observation is impossible, these areas may be fitted with security mirrors or monitoring equipment.

Libraries

Courts can secure their library holdings in several ways. Some measures in deterring theft include making all materials non-circulating, requiring identification, signing a guest register, escorting users, screening briefcases and other baggage, and posting warnings and penalties against the stealing or alteration of documents. Radio Frequency Identification (RFID) tags, sometimes referred to as "smart tags," are postage-stamp-sized computer chips that can be embedded in a book to monitor its location. A chip's miniature antenna can communicate with a receiver to locate missing books, as well as trigger an alarm if the book is removed from an area without authorization. The cost disparity between RFID tags and conventional devices may be reduced in the near future and therefore may serve as a realistic alternative for court law libraries. Nationally, court book collections are being reduced with the advent of Internet and other electronic legal research options. Nonetheless, the remaining books represent a significant investment.

C. Clerical, Filing, and Areas Not Associated with Courtrooms

Clerk's Office/Staff Areas

Clerks of court and their staff play a vital role in the security of the courthouse because of their frequent interaction with the public. Given that staff areas are frequently accessible to the public, it is important that staff are appropriately trained in securing their workspace. Some training points include how to report a security problem, steps to follow in an emergency evacuation, the location and use of emergency equipment, mail handling, understanding and knowledge of courthouse security plans, and safeguarding personal belongings such as purses. Court staff members should acknowledge visitors as they enter and ensure that they have legitimate business and proper identification. Visitors who are not carrying identification or who are behaving suspiciously should be reported to security. Clerks should also be made responsible for their workspace equipment and be guided in how to safeguard it from unauthorized use. Visitors should be limited to public areas only. Clerical areas should be equipped with doors that lock so that they may be secured when court personnel are away. The areas where clerks handle money should include counters and partitions for added security. These areas should also be equipped with a safe and a duress alarm.

Staff should not be permitted to log on to any coworker's PC or computer terminal nor should they linger at other workstations unless the responsible staff person is present. Staff areas should be designated as only for employees working within that area. Members of the public should have an escort in non-public areas and should always display a visitor's pass when accompanied. Depending on the number of staff, all areas should have at least one first-aid kit. One or more staff members should be designated as fire marshal and deputy fire marshal, with responsibility for handling the equipment in the event of an emergency or evacuation. Public access computers may be considered by the court to reduce staff time devoted to addressing inquiries and processing public records. These computers, however, must be monitored against vandalism and unauthorized use. Many courts now have appropriate applications and documents available to the public through the Internet, which can simultaneously reduce staff time and eliminate the need for citizens to come to the courthouse.

Records Areas

Court records are also susceptible to threats, such as fire and flood damage. Confidential records should be stored in locked cabinets or, at a minimum, behind a locked barrier in restricted-access areas. A comprehensive records management program is the best way to protect court records. The elements include facilities, equipment, and procedures. Facilities should be appropriate for their purpose, be it active filing systems, inactive records storage, or archives. Filing systems and records storage equipment should have the appropriate capacity to hold the court's records. This prevents the piling up of boxes in a disorganized manner. Procedures and standards for records start with case processing procedures to ensure timely data entry and filing. They also should include:

- file control procedures, so that all files both active and closed can be located;
- access control, so that only authorized people are in the records areas and public access policies;
- regular records inventories and diagrams of records areas;
- application of the records retention schedule to ensure that timely disposition is made of unneeded records;
- the appropriate application of records conversion technologies such as microfilm for long-term storage and digital recording where it can improve operations of the court.

The procedures and techniques applied will vary depending on the case type and recording media such as paper, microfilm, audio or videotape, or digital media of various types.

Access to court records should be limited to only those people authorized by the court. Given the confidentiality of some court records, automated file control using bar codes, securing points of entry, and radio frequency identification (RFID) tags are possible options to be explored.

Court Administrator's Office

The court administrator's office should be secured from public access and equipped with a direct line of communication to the security department. As with staff areas, the administrator's office should also have the basic equipment necessary for an emergency. Court administrators and security personnel should meet regularly to discuss security-relevant issues. This serves to ensure that security plans and arrangements are both timely and effective in handling the concerns of the court. Security equipment, including monitoring devices, alarms, and other emergency equipment, should be inspected and tested periodically. Equipment failures should be reported and documented, with damaged equipment repaired or replaced.

Contractors/Outside Services

Contractors and those hired by the court to perform outsourcing functions should conform to the court's responsibility for securing its facilities. These individuals should display their identification at all times and be screened upon entering the court.

Vulnerability of Computers to Outside Attack

Consider the following measures to protect computers from illicit activity, vandalism, and accidental damage:

- Restrict access to areas housing network equipment and computer servers;
- Purchase a backup power supply (also known as an uninterruptible power supply or UPS);

- Define an orderly, automated, emergency shut-off plan for computers to minimize data loss;
- Require that computer back-up files be kept off site in a fireproof room or safe;
- Restrict access by using passwords that change at least every 90 days;
- Prohibit personal use of court computers and software;
- Require computers to run an automatic daily virus detection program;
- Have computer users log out of the systems when they are away from their workstations, or program the PCs to revert automatically to a password-protected screen saver after a set number of minutes.

The nearly total reliance on computers and the push toward electronic courts and filing has created new challenges. A risk assessment as part of the annual security plan review will determine which data and resources are critical to the court's mission. The risk assessment will tell what constitutes an acceptable loss of data and help determine what is needed in terms of a backup procedure to ensure that the amount of data during downloading is within the acceptable range. Data should be transferred routinely to an offsite, secure location. Access to information systems should also be restricted through the use of firewalls, antivirus software, private IP addresses, and restricted services. A policy defining acceptable use of email, the Internet, portable data/resources, and permissible software will prevent viruses and other problems from entering into the court's systems. The policy should state that court resources are for court work only. Computer security updates and "patches" should be installed as often as needed. Finally, the secure court must develop and enforce an organization-wide password policy.

D. Courtrooms and Associated Areas and Individuals

Courtrooms

Courtrooms should be designed so that they are accessible to the public but are also functional for the protection of trial participants. The public entry points and main passageways should be designed so that they do not disrupt the trial's progress. Security personnel should be positioned so that they can view the public, who should be seated at all times. Depending on the nature of the trial, an additional security checkpoint may be needed outside the courtroom. All points of egress should be kept clear of obstructions so security is not impeded when responding to an emergency. Each courtroom should be wired with an alarm that connects to the main security office. Only the designated, responsible staff should operate computer terminals located within the courtroom. To the extent feasible, courtroom furniture should be affixed to the floor so that it cannot be used as a weapon against trial participants. Courts may also wish to separate the defendant and other trial participants from the public with bulletproof barriers. Bulletproof glass, in particular, allows for protection of participants while also granting the public access to the trial's events. One officer should be designated on each side of the barrier to maintain decorum. At a minimum, a railing should be installed between the trial area and the spectators. Most courtrooms have a rail separating public seating from the litigation area for security reasons. Proper separation and distance must be maintained between the courtroom participants and the public. If the court allows public seating in the front row of the courtroom, consider reserving the seats for members of the press. Notorious and

high-profile trials may warrant additional security measures such as limiting the number of people in the courtroom, sequestering the jury, appropriating additional staff, restricting movement within the courtroom, and collaborating with the press. Arrange seating for reporters, family members, and the public so you can separate people who may be disruptive.

The judge should have an unobstructed view of litigants, lawyers, and witnesses from the bench. The judge should be able to access an exit door located near the bench into a secure hallway or chamber. The door should have a peephole and contain a lock on the chamber or hallway side. The door should be unlocked when the judge is on the bench, but be sure other doors into the judge's chambers are locked. Securing chambers can present unique challenges for court administrators because of their isolated location. While the number of doors and corridors leading to a judge's chambers can make it restrictive to intruders, they could also lengthen security's response time in the event of an emergency. Staff in these areas should be trained in procedures for emergencies requiring security. Duress buttons also should be installed in these areas.

Procedures for courtroom operations should be clearly defined and outlined in a one-or-two-page notice approved by judicial officers. This notice can be posted at the main entrance and other selected locations in the courthouse. The notice should contain information on required behavior in the courtroom, including dress, decorum and forms of address, behaviors that are unacceptable in the courtroom, and who will enforce the rules. Statutory citations or court rules should be included in the notice.

Procedures for judicial staff and security personnel should be developed. Be sure to include procedures for dealing with disruptive people and securing courtrooms when courts are not in session. As a matter of standard operating procedure, staff should search the courtroom and related areas before court convenes and after court is finished.

Jury Rooms

Grand Jury. Most counties have a civil grand jury that reviews all aspects of county operations then files an annual report to the citizenry. Virtually all jurisdictions also provide for criminal grand juries; the degree to which they are used by prosecutors as charging bodies varies across the country.

If the court is responsible for the civil grand jury, it requires a room of its own with a separate, locked entrance. Because civil grand juries often meet outside regular court hours, an exterior entrance to their room is advisable. Filing cabinets within the room also must be lockable. Access to the room should be limited to only the grand jurors, witnesses they invite, and any staff assigned by the court to support the grand jury. The grand jury should advise the security service if and when security personnel are needed.

Criminal grand jury operations should take place with security staff nearby; it often helps if a specific court security officer is assigned to assist during all proceedings. Ensuring that jury units are centrally located will improve management control issues. In view of the secrecy of proceedings, grand jury rooms should be in separate assembly areas away from the public. Rooms reserved for a grand jury should also be located in the proximity of a holding cell for instances when inmates are subpoenaed to testify. In order to prevent an escape, prisoners must be shackled and consistently accompanied by a qualified guard.

Petit Jury/Deliberations. Considerations specific to jurors will be based on the circumstances surrounding a particular trial. Some of the factors include media publicity, background of litigants, threats to the jury, and party volatility demonstrated in prior courtroom proceedings. Along with the judge's bench and witness stand, the jury box should be constructed of bullet-absorptive material. During a trial, the court's assigned security officer may stand between the jury box and the seating

assigned to the public to preclude juror tampering. While in transit to and from the courtroom and deliberation room, jurors should not be permitted to wander the court's hallways or leave the building unless allowed or directed to by the court. Deliberation rooms should be inspected daily and secured when not in use. When the court is in recess, jurors must be instructed to gather in a private area away from the public. Following the closing arguments of the attorneys, the judge should instruct the jury and place them in the charge of the court security officer, who should be provided with guidelines regarding serving and instructing petit jurors during the deliberation process.

Jurors

For many citizens, their first experience with the court will be as a juror. The court should endeavor to maintain the public's confidence in the judicial system by providing jurors with a safe and hospitable environment. When summoning prospective jurors, a questionnaire/summons should be forwarded describing, among other things, the court's security provisions. Some of the notations could include building hours, jury control contact numbers, directions, and parking facilities. When screening jurors, be aware that the presence of elaborate security precautions may have a negative impact on their interest in serving on the jury. If possible, try to make security unobtrusive, at least during preliminary juror selection.

Jurors should be directed to park their vehicles in designated areas, preferably separated from court employee, litigant, and attorney parking. A juror-specific entry point is particularly important when summoning a pool for a high-profile case. Monitoring juror activity should not be exclusive to the court's interior. Security officers should conduct periodic patrols of outside areas where jurors may gather during recess periods.

Jurors should be asked to display their juror badge/identification at all times. In addition to verbally advising jurors, the court can post signs warning against the possession of contraband as well as noting that individuals are subject to search. Depending on the anticipated volume of jurors, additional security personnel could be required.

Judges or court staff may want to address safety and security during juror orientation on the first day of service.

- Advise jurors not to converse with non-jurors about a trial or speak with other jurors about a trial while in public places, because this identifies them as jurors and may affect their safety.
- Inform the jurors about the possibility of sequestration.
- Discuss general measures to ensure juror security.
- Establish emergency evacuation routes and types of building alarms.
- Indicate who will direct the jurors in an emergency situation.
- Discuss how to proceed in the event of an illness or a personal emergency.
- Discuss how to proceed in the event of bad weather or building closures.

In the event that a jury must leave the courthouse to view a crime scene or piece of evidence, members of the jury should be escorted by security personnel and a court-appointed administrator. Communication should be restricted while not in the courtroom. Security and transportation arrangements to have the jury view a crime scene should be scheduled in advance to avoid disruptions to the trial. When transporting jurors, be sure to inform state, county, or local officials who may have to provide additional security on the road. If jurors are transported, use unmarked vans and blacked

out windows to protect their identification. Transport vehicles should be searched in advance for materials such as newspapers; the radio in the transport van should not be tuned to a commercial radio station, which may broadcast information about the trial.

Juror safety can also be assured by controlling access to the jury list and the information contained on the list. The court can provide an extra level of security for jurors by substituting numbers for names on their juror badges. Written instructions and training should be developed regarding the handling of juries under normal circumstances and when sequestered. These instructions should be available to designated court staff, including judicial officers. If jurors need to be evacuated during a court session, the bailiff in charge of juror management in the courtroom should move them to a predetermined location (where they should remain until ordered to return to the court or moved to another safe location). During this time, advise jurors not to discuss the case or speculate on why they were evacuated.

Sequestration. Jury sequestration occurs when a judge orders the separation or isolation of the jury from the public during the course of a trial in cases of great notoriety, such as those involving gang activity, organized crime, or a celebrity. In keeping with the right to a fair and impartial jury, the court should develop a policy and procedures manual addressing juror sequestration. The general plan should address juror decorum, transportation, hotel security, visits from jurors' families, restrictions on watching television or reading newspapers, and responses to possible threats and violence against the jurors. When sequestration is considered, the judge should collaborate with the attorneys involved, court administrators, and security personnel of the court. Particularities of the case may warrant minor changes in procedures. Use of personnel actively engaged in law enforcement for escorting and assisting jurors during sequestration is discouraged; court security personnel should fill this role. People assigned to the jury should interact with jurors for the exclusive purpose of maintaining sequestration objectives. Finally, instances such as medical emergencies that require deviation from conventional practice should be communicated to the judge and court management without delay. A sample court order can be found in Appendix C.

Holding Facilities and Prisoners/Detainees

Holding facilities secure prisoners while they wait to be transported to and from court. When possible, prisoners being transported should be monitored by cameras and tracking devices. Prisoners being held in holding facilities, including "bull pen" areas, prior to their court appearance should be separated by gender. Members of rival gangs also should be kept apart. The proximity of these areas to the courtroom should be carefully considered, in that distance to the courtroom can impact transport problems. Decisions will vary by court and should be considered on the basis of case volume and overall need. Determinations must also be made as to the responsibility over prisoners being transported. Corrections officers, court security, and non-security court staff should all be made aware of their specific role and accountability.

Procedures for taking an individual into custody in court are highly advisable. If possible, alert security staff in advance if a defendant may be sentenced and taken into custody. If there is an active warrant for someone's arrest, notify security personnel in advance before serving the warrant. Do not allow any contact between a prisoner and the public or family members in the courthouse. Items in the litigation area, such as pens, water pitchers, and evidence, should be secure so a trial participant cannot use them as weapons.

All prisoner or detainee movement should be made through separate and secure areas. These areas include hallways, stairwells, and elevators. Hallways should allow movement to a central holding area or courtroom holding facility. Prisoners should be transported to and from the court through

a separate entrance not accessible to individuals other than security personnel. Efforts also should be made to ensure that adult and juvenile prisoners are separated within holding facilities and while in transit. Prisoners being transported within the courthouse should be restrained with handcuffs. Depending on the nature of the charges and defendant, other restraints can be considered.

There should be a policy on the type of restraints that can be used, when and where restraints may be placed and removed, and emergency guidelines. Remember that excessive restraints on a prisoner may prejudice a jury. Unobtrusive restraints, such as leg braces, are available. One system consists of an elastic belt that is placed around the defendant's waist and contains a radio-activated stun device. During an emergency or another security incident, the escorting officer(s) should remain with the detainee at all times.

The National Sheriff's Association recommends that security personnel not carry weapons when handling detainees and that a single officer never moves more than one prisoner at a time. Most escape attempts are spontaneous and triggered by apparent weaknesses in the security system. Be aware of potentially serious problems that may develop between detainees if hostile factions are not segregated in the holding areas. Courts should also be made aware of any gang involvement before ordering detainees to court.

The court should afford defendants and their counsel with adequate space to discuss the case and its proceedings. Defendants should be monitored during interviews and discussion in a way that does not interfere with the attorney-client privilege. Teleconferencing some of the proceedings is one way the court could reduce the time and cost associated with prisoner transportation. Communication lines should be routinely checked for networking problems.

Witnesses

In order to maintain the integrity of the judicial process, witnesses should be safeguarded before, during, and after their testimony. At least one witness room should be designated for the state or plaintiff's witnesses and for the defendant's witnesses and, if possible, should be adjacent to the courtroom. Witnesses should enter and exit the court through a secured access point and be escorted by the appropriate security personnel responsible for their protection. Courts should assess their courtrooms to ensure that resources are in accord with the issues posed by cases on their calendar.

Family Members/Interested Parties

Security personnel should be alerted to the nature of a trial. Cases involving family or criminal matters can become emotionally charged environments. Individuals with different interests in the outcome of the case should be seated separately. The judge should set the level of expectation at the onset of proceedings indicating that outbursts by either party will not be tolerated and will be handled in accordance with the law and court policies. A hallmark of the U.S. justice system is its public trial. Spectators must be

secured to prevent or minimize their ability to impact the proceedings. The public should be made aware of the court's policies and the consequences of not following its practices.

E. Staff and Security Personnel

Judges

Judges should try to eliminate references to their status from license plates, car stickers, checking accounts, etc. They should also consider having an unpublished telephone number and home address. Judges who carry a firearm should not make this fact known. Whenever possible, they should alternate their route of commuting to and from the court. Judges should not open suspicious parcels, and they should report any "hate mail" to law enforcement. Assigned parking spaces for judges should be in the least visible area to the public and in close proximity to the court. Reserved spaces should not be identified by person or employment status. The Chicago incident cited in the Introduction caused the federal courts to revisit the issue of appropriate on-going home security for judges, such as video cameras and court-supplied alarm systems.

Court Staff

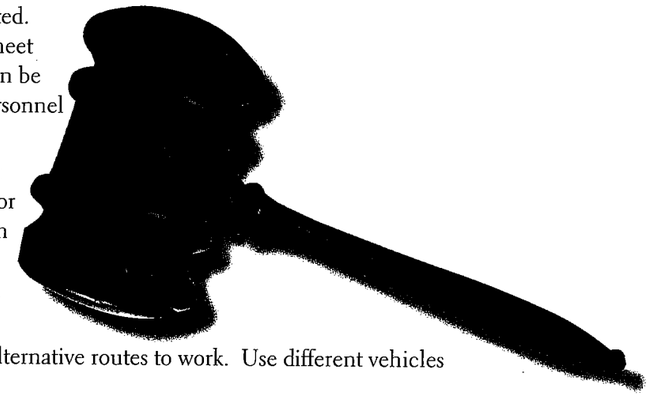
Proper staffing is the key to a secure court facility. Equipment is seldom a complete substitute for security personnel. In fact, the use of some security equipment may create the need to hire additional security personnel. For instance, alarm systems require a security force response, and a closed circuit camera is of little value if no one is available to monitor it and respond when necessary.[5] Similarly, security staff are needed to run x-ray and screening equipment. Among other things, personnel must know:

- How to report an emergency
- How to recognize emergency signals
- Their specific duties in each type of emergency
- The location of emergency equipment.

It is important to train front line staff about how to defuse hostile situations so matters do not escalate. Other training subjects to consider include:

- an overview of court security, civil liability, laws of arrest, search and seizure, unarmed self-defense and physical force (i.e., the minimum amount needed to control a situation)
- first aid/medical care/CPR
- evidence handling
- emergency plans
- judicial protection
- high-profile trials
- weapons training

5 See note 3, *supra.*



All training should be documented. It is also recommended that a safety sheet that includes the following information be developed and distributed to court personnel and judicial officers.

1. Keep a low profile. Do not openly talk about your job or volunteer information when you are around strangers. When making reservations, do not use your title.
2. Avoid routines. Establish alternative routes to work. Use different vehicles during high-profile trials.
3. Pay attention to vehicle security-locking gas caps/hoods, mobile telephones, alarms.
4. Devise a code system, something simple to alert others that there is a problem.
5. Have an unlisted telephone number, but be sure it is listed in the emergency plans maintained by court officials.
6. Have a home security plan and make sure that family members are apprised of the plan. The court's security officer should have information on children's schools, spouses' employment, etc.
7. In the event of a problem:
   a. Stay calm
   b. Pay close attention
   c. Cooperate - do not throw your weight around
   d. Stall for time
   e. Do not compromise an assailant's body space.

Security Officers

Court security officers serve three distinct roles. First, they serve to protect the courthouse in general. In this role, the officers may be designated to patrol halls, observe monitoring cameras, or serve at the entrances to operate scanning equipment. Second, they serve to protect a specific courtroom. In this capacity, the officers should generally position themselves in the courtroom to permit unobstructed observation of the trial participants and the public. The distance between the court officer and people in the courtroom should be reasonable to the officer's ability to respond to an altercation or incident. They should be trained to recognize suspicious activity. Individuals who carry bags, boxes, or packages into the courtroom, change their seat to obtain a position in closer proximity to a trial participant, wear a coat or other garment that could conceal a weapon, or who appear to be on the verge of making a sudden movement toward the bench are some examples of what an officer should learn to notice and handle. The officer should be alerted if a defendant has engaged in a suicidal act and should be trained in procedures to handle a suicide attempt. Court security officers may also serve outside of the courthouse and should likewise be trained in these functions. Some of these responsibilities include patrolling the court's perimeter and safeguarding judges and sequestered jurors.

V. Special Situations

Several extraordinary or emergency events or circumstances can occur for which the court should have a plan in advance. These include notorious cases, high-security cases, demonstrations, and emergency situations requiring evacuation, such as workplace violence, fire, bomb threats, and hostage situations. Mail safety and terrorist threats also should be addressed in advance.

To ensure that emergencies are handled in a calm and efficient manner, the court should hold periodic drills. The plans should include service to and for disabled people. Emergency policies also should consider who is responsible for witnesses, jurors, counsel, and the public, in addition to the safety of staff and judicial officers. It also should address possible conflicts between fire safety regulations and security policies; a review of the plan by the fire marshal is prudent.

A. Notorious Cases

A high-profile ("notorious") case is like lightening: it can occur at any time and normally arises without warning. When one occurs, a court has only a couple of days to respond in a responsible way and to protect its staff and building from being overwhelmed. Accordingly, an advance plan can be very helpful.

One study in Houston, Texas, suggested the following characteristics that seem to be associated with notorious cases so far as newspapers are concerned:

- the presence of multiple victims,
- incidents involving female victims and multiple offenders,
- homicides that involve intimates and family relationships, and
- Celebrated and feature articles were more likely to cover incidents involving statistically rare victims (female, white, Asian, young, or affluent victims or multiple-victim incidents) . . . .[6]

Nationally notorious cases over the years suggest that the celebrity status of a criminal defendant and child victims also may be important predictors of national television interest.

A high-profile case will increase public flow into and out of the courthouse and also may include more witnesses, counsel, and other trial-necessary people than in ordinary cases. By definition, there also will be many media representatives: print and electronic reporters, producers for electronic media outlets, camera operators, and possibly sketch artists, depending on whether or not case proceedings are televised live. The use of a separate "media room" for remote broadcast and viewing of proceedings by reporters and electronic media producers may be needed, even if a

6 Based on a summary of an article by Derek J. Paulsen that appeared in the November/December 2003 National Criminal Justice Reference Service Catalog, page 13: "Murder in Black and White: The Newspaper Coverage of Homicide in Houston," in *Homicide Studies*, vol. 7, no. 3, pages 289-317 (August 2003).

television broadcast of proceedings is allowed. Such a room may or may not raise security issues; at a minimum, protection of equipment may be needed. Procedures at secured entrances should be reviewed to take into consideration higher numbers and the possibility of longer search times and lines. Some recent trials also suggest that the court should plan for the public gathering immediately outside the court when there are notorious witnesses and when the verdict and sentence (if a criminal trial) are announced. A security plan, therefore, needs to address not only what will happen in the courthouse but also on the grounds and streets adjacent to the courthouse. It is essential that the court administrator, court security officers, and the judge assigned to the case establish early and constant contact with local law enforcement. If your court does not have both a media-management plan and a related security plan when it starts to deal with a notorious case, the National Center for State Courts' Knowledge and Information Services office can quickly direct you to relevant and useful information.

B. High Security Cases

Even before 9/11, terror-related cases posed security problems for courts; post-9/11, the security issues are clearer. Cases involving certain types of criminal charges or defendants[7] also may pose special security challenges. These challenges likely will involve additional security personnel, both uniformed and plain clothes, in the courtroom and probably in the courthouse, plus perimeter security. Special arrangements for protecting jurors and witnesses also may be needed. The court's security plan should address the general issues for this type of case; security personnel, the assigned judge, and counsel for the parties then have to address specifics involving the courtroom and possibly the courthouse after the case is initiated. Other cases and activities throughout the court may be impacted, so a plan to minimize this possible effect is prudent.

This type of situation is not one solely for large urban courts. Today's mobile society and former witness-protection program participants scattered around the country might bring such cases to smaller, even rural courts. Thinking about how to handle such cases in advance costs a little time, but the plan might save much anxiety and some mistakes should such cases ever occur in your court.

C. Demonstrations

A court's security response to a demonstration will be directly related to the location and demeanor of the demonstration. Demonstrations of any sort inside a courtroom or the courthouse generally are prohibited, but a paper order does not assure they will not occur. Demonstrations immediately outside courthouses may by court order be limited in time and size, either as part of the court's security plan or by an order in a particular case. In any event, coordination with local law enforcement, both in advance and during a demonstration, is essential. Should a demonstration occur inside a courthouse, evacuation procedures (see below) may have to be initiated.

7 E.g., some gang-related cases, notorious, high-volume drug dealers, and organized crime cases.

D. Medical

Medical emergencies pose several security-related concerns. Often a medical situation will require the intervention of outside emergency personnel, requiring a bypass of security checkpoints to and from the person needing emergency care. A pre-existing agreement with local emergency services should be in place to handle such situations. Court employees should have a list of emergency numbers, with certain staff assigned first-response responsibility for contacting security and, if appropriate, family members. Because of possible security implications and also to focus responsibility, staff should first contact their internal security personnel and not necessarily outside emergency services. Many courts require their security staff to have attended courses in first aid and CPR.

Two additional policies may be implemented. Some courts are introducing specific instructions for common medical emergencies, including instructions on CPR, into their security manuals. Second, courts are making medical equipment a mandatory portion of their court's security department. At a minimum, a first-aid kit should be on hand as a matter of policy. Some courts have gone further, adding defibrillators.

Do not overlook the possibility of court staff operating outside their areas of expertise and training in medical emergencies, possibly raising liability issues. For that reason, even trained security personnel often provide the best service by immediately contacting the proper outside medical providers.

E. Evacuation

Evacuation of a courthouse or a portion of a courthouse can be occasioned by multiple causes: fire, bomb threat, hostage situation, or natural disaster such as a hurricane, tornado, earthquake, or flood. Managing evacuations requires an equal balance of two factors: speed and safety. Evacuations may be from one part of a courthouse to another or of the entire building. Both scenarios should be addressed in advance. While it is important to remove personnel from the threatened area as quickly as possible, the evacuation of both court personnel and all visitors must be orderly and practiced. Planning and practice will help identify and eliminate hazards in the evacuation process and instruct staff on their responsibilities.

An evacuation plan should cover the following:

- Emergency telephone numbers for fire, police, medical, utilities, and relief agencies
- Building floor plans
- A list of personnel and agencies to be notified
- A list of floor (or work section) monitors, identification of an outside assembly point or points, a process for floor monitors to report once the building has been cleared, and a process for notifying everyone when it is appropriate to return to the building
- Prompt and safe evacuation for the physically impaired, both staff and members of the public
- Procedures for prisoners and jurors
- Procedures for maintaining the integrity of evidence

- A checklist of areas to be secured and people responsible for safes, vaults, cash on hand, file rooms, files being worked on at desks, computer servers, and any weapons that might be in the building
- Instructions for staff and judicial officers about removing personal effects

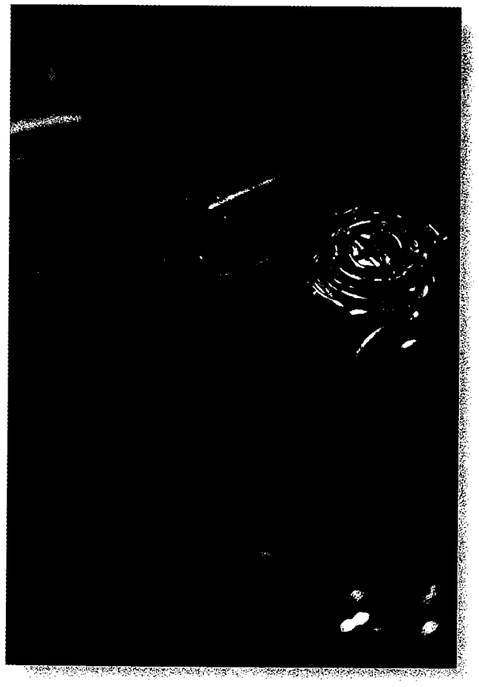
Communication control is also important; crowded radio channels can prevent important information from reaching key decision makers, evaluators, and rescuers. Downed telephone lines may affect the ability to communicate, and even cell phone usage may be affected in some circumstances, so some thought should be given to alternative means of notification. Finally, all such evacuation plans should be subject to a yearly audit/review as part of the overall security plan.

The next four sections deal with specific threats associated with evacuations.

F. Workplace Violence

The epitome of workplace violence is the homicides that all too frequently appear on the news, often involving disgruntled current or former employees. Family violence involving an employee also may spill into a courthouse. Government and private sector organizations, including courts, have increasingly adopted formal workplace violence policies. Such policies normally articulate zero tolerance for incidents of workplace violence. This sample policy could serve as a guide for any court in developing a policy on workplace violence:

It is the policy of this court that violence or threats of violence against or by its employees, contractors, vendors, members of the public, or anyone while in the course of being served or present at a court-controlled workplace, shall not be tolerated. Nor will the judiciary tolerate any violence or threats of violence against any court property or installation. Also, management, at the request of an employee or at its own discretion, may prohibit individuals, including an employee's family members, from visiting an employee at the employee's assigned work location for reasons other than transaction of court business. This particularly applies in cases where the employee believes that an act of violence may result from an encounter with the individual. Management may also temporarily delay services to members of the public displaying threatening behavior. In keeping with this policy, the court will respond to all acts of workplace violence, physical or verbal, which are brought to the attention of management.



The workplace can be broadly defined as the physical area of operations, including buildings, grounds, and parking lots provided for court activities. It also includes any field locations or site at which a court employee is engaged, or authorized to engage, in work activity, including travel between sites, and includes court programs occurring during or after normal work hours.

In addition to the policy statement, procedures need to be developed along the lines of other incident reporting procedures, including reporting forms, lines of authority, and consequences for those who commit workplace violence. Consequences can include:

- Court employees may be subject to disciplinary action up to and including termination.
- Law enforcement will be contacted as necessary.
- In addition to any other applicable civil or criminal penalty, any employee convicted of a crime or offense that was committed at the workplace shall be subject to "forfeiture of public office."
- Any instance of violence in the workplace involving individuals who are not employees of the court will be investigated immediately. Appropriate action will be taken, which may include the offender being removed from the premises as quickly as safety permits and, pending investigation of the incident, being required to remain off the premises and not being permitted to reenter. The court may temporarily delay providing any requested services or benefits to an offender.
- Following an act of workplace violence, management may require an employee to submit to medical or psychological evaluation.

G. Fire

Security policies on fire should first include how to report a fire and who to contact. It also requires contact with and periodic inspection by the local fire department and providing the fire department with current floor plans, including where flammable materials are stored. Periodic inspections may be coupled with a yearly audit/review of the security plan itself. All staff should be advised how to activate alarms, including what to do in the event of a power or telephone failure. Staff designated as floor or area fire wardens must be familiar with fire extinguishing equipment that should be easily accessible, visible, and properly maintained.

Practice drills and evacuations make staff aware of exit paths, procedures, and fire exits, where to gather outside the building, and how to conduct themselves once outside. Staff must be advised that no fire alarm should be ignored because they think it might be a false alarm.

H. Hostage

A hostage might be anyone: a judicial officer, an employee, a security officer, a party in family litigation, a child involved in a family dispute, and/or a member of the public who just happened to be convenient. In every case, these are highly sensitive and potentially dangerous situations that normally involve weapons. The hostage-taker may threaten not only the hostage(s) but others in the area if the situation is not managed professionally. Consequently, only professionally trained

personnel should handle these situations, normally a professional from your local law enforcement agency or agencies.

Arrangements should be in place with the appropriate agency(ies) to alert them immediately when a situation arises. Court security and other court personnel should have instructions on what to do pending arrival of the hostage negotiators as well as how to respond with people in the immediate area and in nearby areas of the courthouse. The possibility of a secure exit path identified in advance for judicial officers should be investigated, as judicial officers could be targets of pre-planned takings or, as likely, a very visible shield identified as the hostage-taker is panicking and seeking extra "protection."

When the response team arrives, staff should be prepared to tell them the number of hostages and hostage-takers, the exact location of the incident, and the content of any communications with the hostage-taker(s).

Staff and judicial officers should be provided guidance on what to do if taken hostage:

- Be patient and expect a long wait; remember that time is a key ingredient in the hostage negotiation process.
- Comply with the captor's requests to the best of your ability. Don't be argumentative. Do not volunteer to do anything for the hostage-taker and never make suggestions. If a suggestion fails, it may have dire consequences.
- Judges, used to being in control in the courtroom, should take extra care to be demure and blend in with other hostages.
- Remain silent if instructed to do so. Otherwise, try to talk to the hostage-taker. Do not discuss the hostage event. Be friendly but not phony.
- Try to rest whenever possible. This helps eliminate tension and helps pass time.
- Remember that a response plan is in effect even if you cannot hear or see anything.
- Only attempt to escape if it is totally safe. Being a "hero" may result in your death and the death of others.
- Inform your captors if another hostage needs medical attention. Do not attempt to help another hostage unless your captor gives you permission.
- Be prepared to speak with law enforcement officials after the event.

If law enforcement makes a rescue attempt, follow these guidelines:

- Do not make any fast or sudden moves. You might be mistaken for a captor by the rescuers.
- Be alert for any signals from the outside.
- Stay on the floor.
- If a chemical agent is used, do not panic. Close your eyes and do not rub them; let the tears run freely and take short, light breaths.

Normally, the law enforcement agency will have public relations officers who also can handle press relations during the situation. The court administrator or a pre-designated person should be prepared, to deal with the media upon conclusion of the immediate crisis. See also the NACM Media Guide, June 1994, for more information on court media relations.

I. Bomb

Courts seem to be particular objects of bomb threats and, occasionally, of bombs. Of the 233 courts that responded to the Security Guide Survey, 36 named bombs or bomb threats as a security concern they have confronted in the last five years, and 17 were able to identify nearby courts that had dealt with similar circumstances. When a bomb threat is called in, the staff who receive such calls should try to find out as much information as possible from the caller and about the device and under no circumstances shrug off the threat as a joke. Because so many telephoned bomb threats are hoaxes, there is a tendency to down-play them; that tendency should be guarded against as much as humanly possible, not only by management, but by staff. Some courts provide staff with a checklist of questions or steps to take should they receive a bomb threat.

The following procedures should be followed if an employee receives a telephone call that involves a threat of violence or a bomb threat:

- If a caller appears ready to hang up without giving vital information, the employee should try gently but persuasively to obtain it. The employee should encourage the caller to continue talking and not to hang up.
- The employee should write down certain information while on the phone, including the time, the caller's exact words, background noises, gender of the caller, tone of voice (calm or excited), age, and accent and/or speech impediments.
- Try to get the caller to identify the location of the bomb and the time the event will occur.
- Consider installing a caller ID system on your telephone system or tracing telephone calls by the phone company upon court order.

A bomb threat checklist is provided in Appendix D.

If a suspicious package or other item is left unattended and there is a chance it may be an explosive device, staff needs to contact security immediately. Under no circumstances should they attempt to move the item. The person who finds the package or device should leave the area as quickly as possible and provide security with as much detail as possible about the package and its location. (See below regarding mail bombs.)

Contacts with local bomb squads should be a standing priority in dealing with the communications between court security and outside law enforcement. Newer screening devices designed for building entrances and for mail can "sniff" locations, people, and packages to detect explosives. Most courts should not need such devices, but some might benefit from the investment.

J. Mail

Mail threats may come in many forms: words, a dangerous chemical or biological agent, or even a bomb. Procedures for screening for potential mailed threats should be established for all personnel receiving or handling mail. Incoming mail should be x-rayed or otherwise inspected in the court's mailroom. When a written threat is received, staff should immediately report the threat to their security department and supervisor. They should save all materials, including any envelope or container; every possible effort should be made to preserve evidence. Because bombs and chemical or biological agents may be delivered to the intended victims by mail or hand delivery, all employees

should be cognizant of ways to identify and handle suspicious letters and packages. The following characteristics may indicate the presence of a mail bomb:

- Fictitious or no return address
- Foreign or special delivery mail
- Poorly typed or handwritten addresses
- Addressed to a high-ranking official
- Job titles are incorrect
- Misspelling of common words
- Restrictive endorsements, including "private," "confidential," personal," "registered," "certified," "special," and "to be opened by addressee only"
- Excessive postage (usually postage stamps)
- The postmark is foreign or from some unusual place
- Oily stains, discolorations, or a peculiar odor
- Evidence of opening and resealing
- Wires, strings, screws, or other metal parts sticking out
- Excessive or uneven weight distribution
- Thickness is that of a small book or greater than one inch
- Excessive binding material
- Masking, electric, or strapping tape, string twine
- A feeling of springiness on the sides, bottom, or top
- A feeling of rigidity beyond normal, especially in the center.

Chemical agents may possess extraordinary toxicity in small amounts, and some odorless nerve agents can kill rapidly. Biological agents are living organisms or material derived from them that cause disease or harm. As such, tying this issue into the court's plan for medical emergencies would be prudent.

K. Terrorism

The very nature of terrorism makes it difficult to plan for. Terrorists may use any of the previously mentioned methods or entirely new ones. The focus on a terrorist act is to instill fear into a court or a community in general, typically by threatening to harm or actually harming as many people as possible. The end result is to suggest a lack of safety, a perpetual state of feeling out of control and unsafe. For the court administrator concerned about security, then, the focus should be on what can be controlled and dealt with for staff and the court. Just as with the other special situations discussed above, the best defense is a careful plan developed in conjunction with the court security officers plus local law enforcement about what to do during a terrorist incident. The plan also should address how to follow up to assure that judicial officers, staff, and any courthouse visitors are safe and that the court is able to return to normal functioning as soon after the event as possible.

Appendix A
Areas of Concern in a Security Survey

Facilities

Exterior

- Perimeter (e.g., fences, gates)
- Lights
- Parking areas
- Access roads
- Landscaping

Building

- Doors, windows, other openings
- Ceilings, walls
- Interior lights (including switches and fuses)
- Emergency power system
- Alarm systems
- Safes and vaults
- Fire protection
- Utility control points
- Attics, basements, crawl spaces, air-conditioning and heating ducts
- Elevators, stairways
- Storage areas for arms and dangerous substances
- Communications areas
- Records storage areas
- Conference rooms
- Offices handling money
- Food service areas
- Non-court offices
- Restrooms

Courtrooms and related areas

- Courtrooms
  - Location
  - Doors, windows, other openings
  - Lights
  - Furnishings
- Chambers and related offices
- Clerk of the court
- Witness waiting rooms

- Attorney-client conference rooms
- Jury deliberation rooms
- Grand jury room
- Prisoner reception area
- Restricted and secure passageways
- Temporary holding areas
- Security equipment storage areas

Procedural

- Emergency plans (fire, evacuation, bomb threat)
- Visitor control
  - Courthouse
  - Courtroom
- Separate circulation routes for prisoners, court staff and general public
- Alarm response
- General court security procedures
- Night court requirements
- Building security procedures
- Building fire and safety codes
- Key and lock control
- Employee security orientation and training
- Shipping, receiving, and trash disposal
- Cash transfer
- Package inspection
- Tenant activity requirements (hours, number of visitors, etc.)
- Exhibit security and disposal

Administrative/Personnel

- Employment process
- Contractual process
- Training
- Monitoring staff, accountability

Appendix B

Courtroom or Courthouse Security Order

(COURT CAPTION)

(CASE CITE)

ORDER RE: SECURITY

This court has received information from investigative and public sources that the potential exists for the disruption of orderly proceedings in this (case) (courthouse).

IT IS THE ORDER OF THIS COURT that the sheriff of (INSERT NAME OF COUNTY) shall initiate the following security measures immediately until rescinded by further order of this court, in and around designated security areas in the (INSERT LOCATION).

1. All persons entering the (courtroom) (courthouse) shall be searched for weapons including their person, briefcases, packages, and containers of all description. Failure to submit to search shall result in denial of entry into the (courtroom) (courthouse). Body searches may only be conducted by same-sex officers.

2. Bags, packages, or containers of unreasonable size shall be excluded from the (courtroom) (courthouse).

3. All persons entering the (courtroom) (courthouse) during proceedings must show valid and satisfactory identification upon demand by the sheriff. Failure to produce identification upon demand will result in denial of entry into the courtroom.

4. The sheriff shall provide adequate personnel to ensure a proper level of security in the security areas.

DATED:

_____

Judge

Appendix C

SAMPLE COURT ORDER FOR SEQUESTERED JURIES

(COURT CAPTION)

(CASE CITE)

ORDER

It is ORDERED beginning on (INSERT DATE) the jurors and alternate jurors in this case shall be sequestered and kept in the custody of the sheriff of (INSERT COUNTY) for the duration of this trial or until further notice from this court.

It is further ORDERED:

1. The Sheriff shall make arrangements for appropriate accommodations for the jury during the trial and shall provide adequate security in the jurors' quarters beginning on (INSERT DATE).

2. The Sheriff shall make satisfactory arrangements to assist the jurors in securing apparel and personal items from their homes.

3. The Sheriff shall make appropriate arrangements for the furnishing of vehicles (including the hiring of vehicles, if necessary) for the transportation of jurors between their place of lodging and the county courthouse.

4. During the period of sequestration, the Sheriff shall provide to each of the jurors and alternate jurors so sequestered, breakfast, lunch, and dinner, and a maximum of two cocktails during or following the evening meal if they are not to return to the courthouse following the meal.

5. The Sheriff shall maintain appropriate records during the trial providing:
   a. A record of deputies' assignments to shifts and duty stations.
   b. A record of jurors' quarters.
   c. A record of persons entering the area of the jurors' quarters.
   d. A record of telephone calls to and from jurors' quarters.

6. Sheriff's personnel shall make certain that no member of the jury:
   a. Has any unauthorized contact with any outside person.
   b. Reads newspapers, magazines, periodicals, or listens to radio or television newscasts or bulletins pertaining to the trial or programs where the theme resembles the case being adjudicated.

c. Has any discussion of the case with other jurors before the case is submitted for deliberation.

d. Has any discussion with any outside person pertaining to the case.

e. Has written or telephone communications with any person, except under the direct supervision of the assigned Deputy Sheriff, on matters not pertaining to the case.

f. Uses a computer, telephone, or any other electronic device to obtain Internet access that results in any electronic communication through the Internet with any outside person or entity pertaining to this case.

g. Any communication with the court shall be made in writing and placed in a sealed envelope by the jury or individual juror and upon being turned over to the sheriff's personnel will be promptly delivered to the court.

7. The Sheriff shall make arrangements to provide, at county expense, a nonalcoholic beverage (coffee, tea, milk, soda) on court days during the morning and afternoon recess and also at the place of lodging after the evening meal.

8. Mail and packages to and from jurors shall be censored to ensure that no information about the trial is transmitted.

9. The Sheriff, if necessary, shall provide laundry services to the jurors at county expense.

10. The Sheriff shall make provision to transport any juror who has previously made such arrangements with the court to medical doctors whose names the jurors shall furnish to the Sheriff.

11. The Sheriff shall make provision for the videotaping of television programs that will subsequently be shown to the jurors, thereby eliminating the possibility of hearing or seeing news bulletins.

12. The Sheriff shall make appropriate arrangements for suitable recreation for the jury.

13. The Sheriff shall, to the extent feasible, make suitable arrangements for jurors to attend religious services if attendance can be made with custodial supervision.

14. The Sheriff shall make satisfactory arrangements for barber shop and/or beauty salon services for the jurors, but always under proper custodial supervision.

Appendix D

Bomb Threat Checklist

Photocopy and Place By Your Telephone

Instructions: Be calm and courteous. Do not interrupt the caller. Notify your supervisor/security officer by using a prearranged signal while the caller is on the line.

Exact words of person placing the call:

Questions to ask

When is the bomb going to explode?
Where is it right now?
What does it look like?
What kind of bomb is it?
What will cause it to explode?
Did you place the bomb?
Why?
What is your address?
What is your name?

Note the following:

Sex of the caller

Probable race

Probable age

Callers' Voice

___Calm
___Angry
___Excited
___Slow
___Rapid
___Soft
___Loud
___Laughter
___Crying
___Normal
___Distinct
___Slurred
___Familiar (who did it sound like?)
___Nasal
___Stutter
___Lisp
___Raspy
___Deep
___Ragged
___Clearing throat
___Deep breathing
___Cracking voice
___Disguised
___Accent (what kind?)
___Whispered

(Continued on the back)

Background Sounds

___Street noise
___Voices
___PA system
___House noises
___Motor
___Office machinery
___Factory machinery
___Clear
___Local call
___Long distance
___Phone booth
___Animal noises

Threat Language

___Well-spoken
___Foul
___Irrational
___Incoherent
___Taped
___Read

Remarks: _____

_____

Number at which the call was received: _____

Time: _____ Date: _____

Person receiving the call: _____

Appendix E

Case Law Applicable to Court Security

4th Amendment: right against unreasonable searches and seizures

6th Amendment: right to a speedy and public trial

Bell v. Wolfish, 441 U.S. 520 (1979)
Reaffirmed right to custodial searches by holding that a detainee has a diminished expectation of privacy after commitment to a custodial facility.

U.S. v. Kobli, 172 F2d 919 (3d Cir., 1949)
Court held that general exclusion of public is a denial of the right to a public trial. However, a trial may be "public" even though not all citizens are permitted to attend.

Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1967)
Inspection is determined by balancing the need to search against the invasion which the search entails.

Barrett v. Kunzing, 331 F Supp 266 (D. Tenn., 1971)
Governments substantiated interest in conducting the cursory inspection outweighs the personal inconvenience suffered by the individual.

Pierpoint v. State, 195 N.E. 264 (Ohio Ct. App., 1934)
Searching all persons entering the courtroom and requiring them to register does not amount to excluding the public.

Adderly v. Florida, 385 U.S. 39 (1966)
Court may control use of its facilities.

State v. Shelton, 270 S. Ct. 577
The 4th Amendment protection against unreasonable searches is inapplicable to a courtroom in the exercise of the trial judge's authority and duty to preserve security and order.
The key seems to be the judge's willingness to go on record and issue an order about what the judge wants in court.

Block v. Rutherford, 468 U.S. 576 (1984)
Challenged jail policy which denied pre-trial contact visits with spouses, relatives, children, and friends. Burger wrote opinion of court and relied on Bell v. Wolfish to say prison security rights outweighed personal rights.

Illinois v. Allen, 397 U.S. 337 (1970)
Binding and gagging supported in extreme situations.

Holbrook et al v. Flynn, 475 U.S. 560 (1986)
Allowed for uniformed officers directly behind defendant. Court said such a practice was not inherently prejudicial. No threats preceded action.

NATIONAL ASSOCIATION FOR COURT MANAGEMENT

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Item	Price	Quantity	Total
Mini Guides:	Members: $5 each (20 or more copies-$3 each) Nonmembers: $8 each (20 or more copies-$5 each)		
Community Creativity Collaboration: A Community Dialogue for the Courts (2001)		_____	_____
Core Competency Curriculum Guidelines (2004)		_____	_____
Core Competency Curriculum Guidelines: Applications and Users (2004)		_____	_____
Court Administrator: A Manual (2003)		_____	_____
Courts' Response to Domestic Violence (1997)		_____	_____
Court Security Guide (2005)		_____	_____
Developing Public Information Programs for Courts (1996)		_____	_____
Disaster Recovery Planning for Courts (2000)		_____	_____
Holding Courts Accountable: Counting What Counts (1999)		_____	_____
Media Guide (1994)		_____	_____
Trial Court Financial Management Guide	$150 each plus $5.50 postage and handling	_____	_____
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1-800-252-3718
FAX (512) 435-6118

Identifying Forged Government Documents

Presented by

Sergeant Stephen Berkley
Department of Public Safety
Fort Worth
&
Debi Pitzer, DL Technician
Department of Public Safety
Fort Worth

By the end of the session, students will be able to:

1. Define questioned document, forgery, government record, tampering with government record, false statement to obtain credit, and false report to a peace officer.
2. Identify court documents that may become questioned documents.

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Racial Profiling

Presented by

Sergeant David Welch
Dallas Police Training Academy
Dallas

By the end of the session, students will be able to:

1. Identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.
2. Identify Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.
3. Identify logical and social arguments against racial profiling.
4. Identify elements of a racially-motivated traffic stop.
5. Identify elements of a traffic stop that would constitute reasonable suspicion of drug courier activity. Identify elements of a traffic stop that could constitute reasonable suspicion of criminal activity.

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Developing a Court Security Manual

Presented by

Allen Gilbert
Presiding Judge
San Angelo
&
Randy Leverich
Marshal
Abilene

By the end of the session, students will be able to:

1. Identify need for a court security manual.
2. Define items needed in a court security manual including: physical security, security procedures, proceedings procedures, staff and office security, contingency plans, judicial threats, security personnel, and security equipment.
3. Develop a security plan outline.

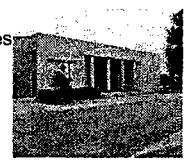
COURT SECURITY MANUAL

COURT SECURITY

POLICY:

Protect the integrity of court procedures

Maintain the decorum of the court



PURPOSE:

Provide a safe and orderly environment to the court

MANUAL: This manual shall serve to advise, guide and regulate the various positions within the task of court security

JOB DESCRIPTIONS & POSITION RESPONSIBILITIES

PURPOSE: Outline job duties, responsibilities and tasks of a marshal

DESCRIPTIONS AND RESPONSIBILITIES:

Chief Marshal –

Supervises activities of marshals

Supervisor designated by Chief Marshal –

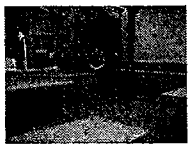
Ensures properly trained staff & coordinates in-service training

Courtroom Marshals-

Take immediate action & control of any disruptions in court

Managing Jurors -
Securing the jurors , not just physically

Marshals at Building Entrance -
Follow policies & procedures in manual

PRISONER CONTROL AND HOLDING FACILITY

POLICY :

To sustain rights of individuals, decorum of court, deter violent action against the court, provide safe and secure holding facility for prisoners

PROCEDURES:

Marshal must accompany any inmate being transported to or from court


PRISONER TRANSPORTATION

POLICY: Safe and effective transportation of prisoners

PROCEDURES: Search
Handcuff
Secure

SPECIAL TRANSPORT SITUATIONS

RESTRAINING DEVICES

VEHICLE EQUIPMENT AND MODIFICATION

IDENTIFICATION AND DOCUMENTATION FOR PRISONERS

COURTROOM SEARCHES

POLICY:

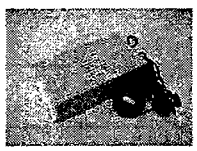
Conduct search of courtroom prior to each court session for safety of all persons

PURPOSE:

Marshals responsibility to conduct searches prior to each courtroom session

HAND CARRIED ARTICLES & SCREENING PROCEDURES

No packages or items which may disrupt or disturb normal court business shall be allowed in courtroom unless being used for evidence in a case



FACILITY EVACUATION PLAN

POLICY:

Evacuation plan in case of smoke, fire, natural disaster or other exigent circumstance

PURPOSE:

To ensure safe and orderly evacuation of the building

POSSIBLE REASONS TO HAVE EVACUATION PLAN:

Fire alarm system activation, weather emergency, gas leak, bomb threat, etc.

MARSHAL RESPONSIBILITY:

Evacuate building in safe and orderly manner

BOMB THREAT

IN CASE OF BOMB THREAT:

- Under no circumstances attempt to move it—LEAVE IT IN ITS ORIGINAL CONDITION AND LOCATION
- Do not use or attempt to transmit on radio
- Secure and Evacuate the immediate area
- The Chief Marshal or his designee shall notify the Police Department Communication Center to request the assistance of the Fire Department and notify the Chief of Police
- Marshal to remain at location to advise specialized personnel as they arrive

HOSTAGE PLAN

POLICY: Containment and evacuation in the event of a hostage situation

PURPOSE: To ensure prompt, safe and decisive response in event of hostage situation

CHIEF MARSHAL RESPONSIBILITIES:

- Isolate the incident and establish a perimeter
- Evacuate all non-essential persons from the perimeter
- Contact Police Department Communications Center and request assistance from Special Operations & Patrol Division
- Coordinate efforts with all responding agencies

CROWD CONTROL

POLICY: Preserve the dignity and decorum of the judicial system

PURPOSE: To protect against disturbance, obstructing or interference with the judicial process of courts

MARSHAL DUTIES:

- Knowledge of preventing and handling demonstrations or disturbances
- Be aware of any upcoming cases on court docket that may be highly publicized

EMERGENCY MEDICAL PLAN

INITIAL RESPONSE:

Responding marshal shall radio headquarters of the situation and request ambulance if necessary

If properly trained in first aid, administer if needed

Have contact person at main entrance to meet and direct paramedics

PHYSICAL SECURITY PLAN

DEFINITION:

Security of the physical aspects of an area, structure or areas within a structure designed to protect all facilities

VARIABLES:

Perimeter Lighting	Parking Areas
Exterior Doors	Windows
Interior Doors	Interior Hallway Lighting
Interior Room Lighting	Alarms (Duress and Intrusion)
Communications	Evacuation Routes
Fire Detection	Auxiliary Power
Security Cameras	

INCIDENT REPORTS

POLICY: Maintain written documentation relating to criminal and non-criminal incidents occurring within the facilities which relate specifically to the task of court security and the members assigned to this function

EXAMPLES OF TYPE OF ACTIVITY TO BE WRITTEN ON COURT SECURITY REPORTS:

- Disruptive Behavior - criminal and non-criminal
- Medical Assistance - requested or rendered
- Duress Alarm Activations – including false alarms
- Discovered Contraband and/or Currency – property shall be forwarded to Property Control with a copy of report
- Escorts Of Civilians To Their Cars When Requested
- Warrant Arrests
- Assistance Rendered To Other Court Users

Court Process-Servicing Warrants

Establish list of outstanding warrants
Develop procedure to serve
- Divide by city (areas, zip-codes, etc.)
- Number of warrants to be notified

Establish record system
- Cards left at residence
- Calls made
- Person notified, moved, wrong address

If defendant is found-
- Notified
- Arrested
- Collected

If officer collects monies, establish proper method of collection-
- Receipts
- Accounting for clearing of warrants
- Balancing of daily collection

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Successful Collection Programs and Issues of Concern

Presented by

Peter Yong, Warrant Officer
Killeen

Charlie Rogers, Marshal
LaMarque

Margaret Robbins, Program Director
TMCEC, Austin

By the end of the session, students will be able to:

1. Describe successful practices for locating defendants.
2. Explain how DPS/FTA program works.
3. Identify the role that regional databases plan in law enforcement pre- and post-9/11.
4. Describe the two main regional databases used in Texas: Dallas County Juvenile Information System and Harris County Justice Information Management System.

Q&A

This session is designed to provide you with a forum to discuss problems, solutions, and experiences within the designated topic. It is an opportunity for you to share their questions with the audience and an opportunity for the audience to collectively attempt to answer questions.

In the space below, you are encouraged to submit a question for group discussion. Please submit your question(s) with your breakout selection sheet. All questions must be received prior to lunch.

The facilitator for each session will sort through the questions submitted and will choose topics for group discussion. In addition to questions from the audience, participants and panelists will discuss questions derived from the TMCEC 800 line.

In the event that neither the audience nor the facilitator can shed satisfactory light on the subject, feel free to submit it to the Center. Some questions require research. Questions that can be answered will be addressed either on-line or in a future issue of the *TMCEC Recorder*.

TEXAS DEPARTMENT OF PUBLIC SAFETY

FAILURE TO APPEAR PROGRAM

FTA Program Highlights

- **Authorized by Legislature - Traffic violations after Sept. 1, 1995.**
  Expanded to include all Class C misdemeanors after Sept. 1, 1999.
  Failure to Pay or Satisfy Judgements after Sept. 1, 2001
  Expanded to include all County courts/offenses after June 18, 2003

- **Tool to assist cities/counties in collection of violations**

- **Voluntary program to compliment other local enforcement programs**

- **Cities/counties contract with DPS - No cost to participate but requires computers and staff to enter offenses and collection of $30 FTA fee**

- **Statute provides immunity for state and political subdivision**

- **Jurisdiction controls disposition of cases and collects the proceeds**

- **Warrants - Does not require nor prohibit use of warrants**

- **OmniBase Services was vendor selected by DPS to administer FTA**

  OmniBase provides:
  software for database entry - free of charge
  automated database of violators
  letter to violator within 24 hours of DPS acceptance
  800 numbers and operator assistance for offenders
  maintains database for 5 years and indefinitely for non-clears
  monthly training in Austin for RES users

Contracted jurisdictions – 793 - Cities – 584 - Counties – 209

Database Totals Since Program Inception (Oct. 10, 1996 – May 31, 2005)
Total Offenses Entered – 3,724,680
Total Offenses Cleared – 1,776,012
Clearance Rate – 47.7%

FTA Database Process

City/county transmits new offenses to OmniBase

OmniBase notifies DPS to flag violator's driver license record

OmniBase notifies violator of restriction upon renewal of license

OmniBase assists violators in resolving open offenses

Violator contacts city/county and resolves offense

City/county collects fine, court costs and the $30 FTA fee

City/county notifies OmniBase of disposition of offense

OmniBase notifies DPS to remove restriction on driver license

City/county keeps any fines collected and $4 of the FTA fee

City/county sends FTA fee quarterly - $20 to State - $6 to OmniBase

For additional information, visit our web site at www.omnibase.com or call our office at 512/346-6511

TEXAS DEPARTMENT OF PUBLIC SAFETY

FAILURE TO APPEAR (FTA) PROGRAM

As a result of nonpayment of fines associated with certain violations, political subdivisions and the State of Texas have encountered a significant loss of revenue.

The TDPS offers a solution to serve the political subdivisions by denying the renewal of a driver license for failure to appear or failure to pay or satisfy a judgment ordered by a court. It is estimated that between 95 and 98 percent of the FTA offenders will comply with the political subdivisions that contract with the Department.

The intent of the Failure to Appear Program is directed toward a system that requires the violator to appear before the originating court for a final disposition. This pamphlet identifies the sequence of events designed to bring both traffic and non-traffic violators to justice.

During the 74th Legislative Session, Senate Bill 1504, Texas Transportation Code, Chapter 706 (formerly Vernon's Civil Statute, 6687d), authorized the Department to contract with political subdivisions to deny the renewal of an individual's driver license for failure to appear on certain traffic violations on or after September 1, 1995.

In the 76th Legislative Session, House Bill 2802 amended the Texas Transportation Code, Chapter 706, to include all offenses for which the violator fails to appear, that are within the jurisdiction of the court. The main provisions of the bill are as follows:

- Authorizes the Department to contract with a private vendor to implement the system.
- Requires the political subdivision to compensate the private vendor for service delivered under the provisions of this bill (prohibits the use of state funds to compensate a private vendor).
- Provides for an administrative fee of $30.00 for each offense.
- Establishes immunity from suit and damages for the state and political subdivisions.
- Authorizes the Department to adopt rules to implement the provisions of the bill.
- Requires the peace officer to give notice of the sanction at the time a citation is written.
- Applies to offenses that occur on or after September 1, 1999.

During the 77th Legislative Session, Senate Bill 1371 further amended the Texas Transportation Code to include offenses for which an individual fails to pay or satisfy the judgment of a court order. This amendment expands the scope of the program and gives the court greater flexibility. These provisions were effective September 1, 2001.

During the 78th Legislative Session, Senate Bill 782 further amended the Texas Transportation Code to include any offense that a court has jurisdiction of under Chapter 4, Code of Criminal Procedure. This provision was effective June 18, 2003.

Chapter 706 of the Texas Transportation Code applies to all offenses that fall within the municipal or county court's jurisdiction, including both ***traffic*** and ***non-traffic*** violations. ***Traffic violations*** regulate a driver's conduct or condition while operating a motor vehicle, or the condition of a motor vehicle while it is being operated on a street, road or highway. ***Non-traffic violations*** are those usually found in the Penal Code of Texas and associated state laws and city ordinance.

Required Warning on Citations for Traffic Law Violations:

A peace officer authorized to issue citations within the jurisdiction of the local political subdivision shall issue a written warning to each person to whom the officer issues a citation for a traffic law violation. This warning shall be provided in addition to any other warnings required by law. The warning must state in substance that if the person fails to appear in court for the prosecution of the offense, or fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court, the person may be denied renewal of the person's driver license. The written warning may be printed on the citation or on a separate document.

Warrants:

It is currently estimated that as few as 25 percent of warrants issued are brought to final disposition. This means that over one and three quarter million offenders are ultimately not brought to justice.

The FTA Program does not require a warrant to be issued in response to a person's failure to appear. Whether a political subdivision issues a warrant or not is irrelevant to an offense being accepted into the FTA system. It is the opinion of the political subdivision whether or not to continue issuing warrants. However, the warrant fee can only be enforced if a warrant is issued. Some courts have decided to issue a warrant in addition to entering an individual into the FTA system, while others have stated they will no longer issue warrants.

Program Summary

Court Requirements:

A contract between the Texas Department of Public Safety and a political subdivision must be in effect to implement the provisions of Texas Transportation Code, Chapter 706. The Contract shall automatically renew on a yearly basis, absent notification of non-renewal. However, either party may terminate this Contract by notifying the other in writing thirty (30) days prior to the expiration date of intentions not to renew the Contract. After termination, the local political subdivision has a continuing obligation to report final dispositions and collect fees for all violators in the FTA system at the time of termination.

In order to have a violator entered into the FTA system, political subdivisions must electronically send a FTA report with the following information:

- Name of the political subdivision submitting the report
- Name and date of birth
- Texas Driver License number (Texas Identification Card number unacceptable)
- Address
- Offense(s) and date(s)
- Brief description of the alleged violation
- Fine amount
- Docket number and jurisdiction
- Statement that the person failed to appear or failed to pay or satisfy a judgement
- Date that the person failed to appear or failed to pay or satisfy a judgement

The $30.00 administrative fee should be included in the reported court fee in order to provide accurate fine information to the violator.

It is the responsibility of all political subdivisions to provide accurate, complete and non-duplicative information.

Vendor Services:

The Texas Department of Public Safety has contracted with OmniBase Services of Texas, LP to assist with the automation of the FTA Program. OmniBase will be utilized as the source database of original FTA record entries from the political subdivisions. This automated information system accurately stores and accesses records that will be made available to the Department.

OmniBase will maintain records on each person after compliance for five years and indefinitely on those who do not comply. This contractor will also maintain accessible customer support services, including a toll-free telephone line to answer and resolve questions from persons who are subject to denial of their driver license.

OmniBase will provide and maintain complete and accurate records on all transactions with political subdivisions and the Department. Data collected from any political subdivision, including the Department, shall be considered confidential and such data shall be used only for the purposes established in the contract.

OmniBase will provide the necessary protocol for using electronic methods and software to the political subdivisions at no cost.

OmniBase will mail the initial letter to the offender on modified Department letterhead. It lists the court name, offense date, docket number, outstanding offense description, fines, costs, and fee amount.

the originating court's address and telephone number, a toll-free number for inquiries, as well as sanctions for non-compliance.

Clearance Requirements:

Within 5 business days, an originating court should provide clearance information on the reported violator to the Vendor. All information will be entered on a computer and uploaded to the Vendor. If final disposition is received, it should be provided in the following manner:

- Name
- Texas Driver License number
- Docket number
- Plea
- Disposition
- Penalty

All clearance information must be transmitted within 5 business days of the time and date that the originating court receives compliance or other information that satisfies the individual's obligation to appear in the originating court.

A $30.00 administrative fee will apply to each FTA offense. Twenty dollars ($20.00) of each fee collected will be sent to the State Comptroller's office on or before the last day of the month following the end of the calendar quarter. The local political subdivision must pay the Vendor a fee of six dollars ($6.00) for each offense that has been reported to the Vendor. The remaining four dollars ($4.00) will be retained by the political subdivision.

In the event that the individual is acquitted of the underlying charge, then no payment will be made to the State or the Vendor. In the event that court costs and fees are not received by the local political subdivision (e.g. if the court rules an individual as indigent or the individual dies) then no payment will be made to the State or the Vendor. If an individual is ordered to pay court costs and fees, but is not assessed a fine, payment to the Vendor is still required.

Timely payment must be made by the local political subdivision to the Vendor no later than the last day of the month following the close of the calendar quarter in which the payment was received by the local political subdivision.

DPS Services:

Once information has been transmitted to the Vendor, a data cartridge tape is produced and delivered to DPS. The tape contains all entries as well as final dispositions that have occurred since the previously delivered tape.

Upon receipt at DPS, the FTA data cartridge is downloaded into the mainframe computer. The Department will perform an edit against all driver records and all erroneous data will be rejected and returned to the political subdivision for correction. All accepted data will automatically turn on a FTA flag for the appropriate driver record.

In lieu of a driver license renewal notice, the Department will notify FTA offenders by letter and inform the offender that the renewal of his/her license will be denied. In addition, the letter will provide the toll-free number for compliance information and will inform the offender of the consequences of driving while license invalid (DWLI). (See Transportation Code §521.457.)

If the FTA offender should go to the Driver License office to renew their license, after receiving notice of denial, they will be issued a sixty day temporary permit. If the offender inquires about outstanding FTA citations, the clerk will refer the offender to the toll-free number provided by the vendor.

Upon receipt at DPS headquarters, renewal requests with outstanding FTA citations will be withheld from the license manufacturing process. The renewal request is updated on the basic screen and the driver record is marked, "DENY RENEWAL LTR #2-FTA".

The Department will generate a second letter to the FTA offender that will inform the offender that his/her driver license will not be renewed because of outstanding FTA citations. In addition, the letter will inform the offender that upon the expiration of the temporary permit, all driving privileges will be denied. The letter will provide the toll-free number for compliance information; inform the offender of the driving while license invalid (DWLI)

consequences, and inform him/her that upon compliance, the driver license will be produced and mailed.

After compliance is received, an automated process will be utilized to produce a driver license and the record will reflect "COMPLIANCE RECEIVED-FTA". The driver license is then mailed to the individual.

If a person does not comply and/or the person does not attempt to renew their license (including offenders who attempt to renew their license up to one year prior to the expiration), upon sixty days after the expiration of the driver license or the issuance of a temporary permit, whichever comes first, a third letter will be generated to notify the individual that he/she is officially denied renewal of his/her driver license. The Department will simultaneously update the driver record to reflect "DENY RENEWAL-FTA". The FTA offender will then fall under the existing DWLI statutes if found operating a vehicle.

Technical Overview

Equipment and Software Requirements:

Participation in the FTA program requires the participating jurisdiction to have an appropriate computer. For other than a few large jurisdictions, participation requires a Windows 95, Windows 98, Windows NT, or later version of a Windows operating system, and an IBM PC or compatible with a minimum 486 processor, 16 megabytes of Random Access Memory, 500 megabyte or larger hard drive, and a compatible modem. The Vendor will provide the software necessary for the jurisdiction to participate in the FTA Program, at no charge. The software is referred to as Remote Entry System (RES) software.

If the jurisdiction uses a third-party court software vendor, (i.e., OCA, CSI, HCS, etc.) the court software vendor's application will manage the database, do the reporting of offenses, make corrections on denied/rejected records and export them to RES. Accordingly, the jurisdiction may be able to avoid the double entry of violations and only use RES for the transmission of the offenses to the Vendor.

The jurisdiction will use its computer to upload data through a modem to the Vendor's server. Each business day, the Vendor will download the data received from jurisdictions and export the data to a 3480 data tape. The tape is delivered to DPS daily where it is processed against driver license records. After processing, DPS provides confirmation or a rejected status of the records that were transmitted the previous day. The Vendor retrieves the daily tapes and processes the confirmations and rejections into the Vendor database server for the jurisdiction to download the next time the jurisdiction transmits.

RES will report all records rejected by DPS. The jurisdiction may correct and retransmit the records that were rejected.

An alternative means of transmission may be available to large jurisdictions that have a mainframe or server and are expecting to transmit a large volume of cases each day. These systems may either use the RES system or transmit records directly to the Vendor server by modem or the Internet. This alternative would probably require special programming by the jurisdiction and would be at the jurisdiction's own expense.

This summary is intended to provide a general description of the technical application of the Failure to Appear Program. For more specific information on the technical systems, jurisdictions may contact the vendor, OmniBase Services of Texas, LP, at (512) 346-6511.

Interlocal Cooperation Contract

STATE OF TEXAS §
§
COUNTY OF _____ §

I. Parties

This Interlocal Cooperation Contract ("Contract") is made and entered into between the Texas Department of Public Safety ("TDPS"), a political subdivision of the State of Texas, and the _____ of _____, a local political subdivision of the State of Texas.

II. Overview

The purpose of this Contract is to implement the provisions of Texas Transportation Code Chapter 706. A local political subdivision may contract with the TDPS to provide information necessary to deny renewal of the driver license of a person who fails to appear for a complaint or citation or fails to pay or satisfy a judgment ordering payment of a fine and cost in the manner ordered by the court in a matter involving any offense that a court has jurisdiction of under Chapter 4, Code of Criminal Procedure.

The TDPS has authority to contract with a private vendor ("Vendor") pursuant to Texas Transportation Code §706.008. The Vendor will provide the necessary goods and services to establish an automated system ("FTA System") whereby information regarding violators subject to the provisions of Texas Transportation Code Chapter 706 may be accurately stored and accessed by the TDPS. Utilizing the FTA System as a source of information, the TDPS may deny renewal of a driver license to a person who is the subject of an FTA System entry.

Each local political subdivision contracting with the TDPS will pay monies to the Vendor based on a fee certain established by this Contract. The TDPS will make no direct or indirect payments to the Vendor. The Vendor will ensure that accurate information is available to the TDPS, political subdivisions and persons seeking to clear their licenses at all reasonable times.

III. Definitions

"Complaint" means notice of an offense as defined in Article 27.14(d) or Article 45.019, Code of Criminal Procedure.

"Department" or "TDPS" means the Texas Department of Public Safety.

"Failure to Appear Program" or "FTA Program" refers to the implementation efforts of all parties, including those system components provided by the TDPS, local political subdivisions and the Vendor, including the FTA System.

"Failure to Appear System" or "FTA System" refers to the goods and services, including all hardware, software, consulting services, telephone and related support services, supplied by the Vendor.

"FTA Software" refers to computer software developed or maintained now or in the future by the Vendor to support the FTA System.

"Originating Court" refers to the court in which an applicable violation has been filed for which a person has failed to appear or failed to pay or satisfy a judgment and which has submitted an appropriate FTA Report.

"State" refers to the State of Texas.

"Local political subdivision" refers to a city or county of the State of Texas.

Unless otherwise defined, terms used herein shall have the meaning assigned by Texas Transportation Code Chapter 706 or other relevant statute. Terms not defined in this Contract or by other relevant statutes shall be given their ordinary meanings.

IV. Governing Law

This Contract is entered into pursuant to Texas Government Code Chapter 791 and is subject to the laws and jurisdiction of the State of Texas and shall be construed and interpreted accordingly.

V. Venue

The parties agree that this contract is deemed performable in Travis County, Texas, and that venue for any suit arising from the interpretation or enforcement of this Contract shall lie in Travis County, Texas.

VI. Application and Scope of Contract

This Contract applies to each FTA Report submitted to and accepted by the TDPS or the Vendor by the local political subdivision pursuant to the authority of Texas Transportation Code Chapter 706.

VII. Required Warning on Citation for Traffic Law Violations

A peace officer authorized to issue citations within the jurisdiction of the local political subdivision shall issue a written warning to each person to whom the officer issues a citation for a traffic law violation. This warning shall be provided in addition to any other warnings required by law. The warning must state in substance that if the person fails to appear in court for the prosecution of the offense or if the person fails to pay or satisfy a judgment ordering the payment of a fine and cost in the manner ordered by the court, the person may be denied renewal of the person's driver license. The written warning may be printed on the citation or on a separate instrument.

VIII. FTA Report

If the person fails to appear or fails to pay or satisfy a judgment as required by law, the local political subdivision may submit an FTA Report containing the following information:

(1) the jurisdiction in which the alleged offense occurred;
(2) the name of the local political subdivision submitting the report;
(3) the name, date of birth and Texas driver license number of the person who failed to appear or failed to pay or satisfy a judgment;
(4) the date of the alleged violation;
(5) a brief description of the alleged violation;
(6) a statement that the person failed to appear or failed to pay or satisfy a judgment as required by law;
(7) the date that the person failed to appear or failed to pay or satisfy a judgment; and
(8) any other information required by the TDPS.

There is no requirement that a criminal warrant be issued in response to the person's failure to appear. The local political subdivision must make reasonable efforts to ensure that all FTA Reports are accurate, complete and non-duplicative.

IX. Clearance Reports

The originating court that files the FTA Report has a continuing obligation to review the report and promptly submit appropriate additional information or reports to the Vendor or the TDPS. The clearance report shall identify the person, state whether or not a fee was required, advise the TDPS to lift the denial of renewal and state the grounds for the action. All clearance reports must be submitted within five business days of the time and date that the originating court receives appropriate payment or other information that satisfies the citizen's obligation to that court.

To the extent that a local political subdivision utilizes the FTA Program by submitting an FTA Report, there is a corresponding obligation to collect the statutorily required $30.00 administrative fee. If the person is acquitted of the underlying offense for which the original FTA Report was filed, the originating court shall not require payment of the administrative fee. The local political subdivision shall submit a clearance report within five business days advising the TDPS to lift the denial of renewal and identifying the grounds for the action.

The local political subdivision must promptly file a clearance report upon payment of the administrative fee and:

(1) the perfection of an appeal of the case for which the warrant of arrest was issued or judgment arose;
(2) the dismissal of the charge for which the warrant of arrest was issued or judgment arose;
(3) the posting of a bond or the giving of other security to reinstate the charge for which the warrant was issued;
(4) the payment or discharge of the fine and cost owed on an outstanding judgment of the court; or
(5) other suitable arrangement to pay the fine and cost within the court's discretion.

The TDPS will not continue to deny renewal of the person's driver license after receiving notice from the local political subdivision that the FTA Report was submitted in error or has been destroyed in accordance with the local political subdivision's record retention policy.

X. Compliance with Law

The local political subdivision understands and agrees that it will comply with all local, state and federal laws in the performance of this Contract, including administrative rules adopted by the TDPS.

XI. Accounting Procedures

An officer collecting fees pursuant to Texas Transportation Code §706.006 shall keep separate records of the funds and shall deposit the funds in the appropriate municipal or county treasury. The custodian of the municipal or county treasury may deposit such fees in an interest-bearing account and retain the interest earned thereon for the local political subdivision. The custodian shall keep accurate and complete records of funds received and disbursed in accordance with this Contract and the governing statutes.

The custodian shall remit $20.00 of each fee collected pursuant to Texas Transportation Code §706.006 to the Comptroller on or before the last day of each calendar quarter and retain $10.00 of each fee for payment to the Vendor and credit to the general fund of the municipal or county treasury.

XII. Payments to Vendor

The TDPS has contracted with OmniBase Services of Texas ("Vendor"), a corporation organized and incorporated under the laws of the State of Texas, with its principal place of business in Austin, Texas, to assist with the implementation of the FTA Program.

Correspondence to the Vendor may be addressed as follows:

OmniBase Services of Texas
7320 North Mo Pac Expressway, Suite 310
Austin, Texas 78731
(512) 346-6511 ext. 100; (512) 346-9312 (fax)

The local political subdivision must pay the Vendor a fee of $6.00 per person for each violation which has been reported to the Vendor and for which the local political subdivision has subsequently collected the statutorily required $30.00 administrative fee. In the event that the person has been acquitted of the underlying charge, no payment will be made to the Vendor or required of the local political subdivision.

The parties agree that payment shall be made by the local political subdivision to the Vendor no later than the last day of the month following the close of the calendar quarter in which the payment was received by the local political subdivision.

XIII. Litigation and Indemnity

In the event that the local political subdivision is aware of litigation in which this Contract or Texas Transportation Code Chapter 706 is subject to constitutional, statutory, or common-law challenge, or is struck down by judicial decision, the local political subdivision shall make a good faith effort to notify the TDPS immediately.

Each party may participate in the defense of a claim or suit affecting the FTA Program, but no costs or expenses shall be incurred for any party by the other party without written consent.

To the extent authorized by law, the local political subdivision agrees to indemnify and hold harmless the TDPS against any claims, suits, actions, damages and costs of every nature or description arising out of or resulting from the performance of this Contract, and the local political subdivision further agrees to satisfy any final judgment awarded against the local political subdivision or the TDPS arising from the performance of this Contract, provided said claim, suit, action, damage, judgment or related cost is not attributed by the judgment of a court of competent jurisdiction to the sole negligence of the TDPS.

It is the agreement of the parties that any litigation involving the parties to this Contract may not be compromised or settled without the express consent of the TDPS, unless such litigation does not name the TDPS as a party.

This section is subject to the statutory rights and duties of the Attorney General for the State of Texas.

XIV. Contract Modification

No modifications, amendments or supplements to, or waivers of, any provision of this Contract shall be valid unless made in writing and executed in the same manner as this Contract.

XV. Severability

If any provision of this Contract is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable. This Contract shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance therefrom.

XVI. Multiple Counterparts

This agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitutes, collectively, one agreement. But, in making proof of this agreement, it shall not be necessary to produce or account for more than one such counterpart.

XVII. Effective Date of Contract

This contract shall be in effect from and after the date that the final signature is set forth below. This contract shall automatically renew on a yearly basis.

However, either party may terminate this agreement upon thirty days written notice to the other party. Notice may be given at the following addresses:

Local Political Subdivision

_____
_____
_____
_____

Texas Department of Public Safety
Safety Project Administrator, FTA Program
5805 North Lamar Boulevard
Austin, Texas 78773-0001
(512) 424-5948 [fax]

Notice is effective upon receipt or three days after deposit in the U. S. mail, whichever occurs first. After termination, the local political subdivision has a continuing obligation to report dispositions and collect fees for all violators in the FTA System at the time of termination.

TEXAS DEPARTMENT OF PUBLIC SAFETY

_____
Oscar Ybarra
Chief of Finance

_____
Date

LOCAL POLITICALSUBDIVISION*

_____
Authorized Signature

_____
Title

_____
Date

*An additional page may be attached if more than one signature is required to execute this Contract on behalf of the local political subdivision. Each signature block must contain the person's title and date.

TEXAS DEPARTMENT OF PUBLIC SAFETY

1 (800) 686-0570

SAMPLE

NOTICE OF DENIAL OF RENEWAL OF TEXAS DRIVER LICENSE

Acting under contract with theTexas Department of Public Safety, OmniBase has received a report that you have been cited for an offense under the jurisdiction of the court listed below and have subsequently violated a promise to appear in court or failed to pay or satisfy the judgement for the violation.

Pursuant to Chapter 706 of the Texas Transportation Code, the Department of Public Safety will deny renewal of your driver license until the originating court identified below has electronically cleared the following offense(s) from the database:

City Or County	Offense Date	Docket Number	Offense Description	Fines, Cost and Fees

ORIGINATING COURT

In the event renewal of your driver license is denied, you would then be prohibited from operating a motor vehicle on a public street or highway in this state. Violation would constitute a misdemeanor punishable by a fine of up to $500.00 and/or confinement for up to six months. Please note that the Department of Public Safety will not clear your driver record or renew your driver license without authorization from the court(s) identified at the left.

You must resolve the outstanding violations before the Department of Public Safety will be able to renew your license. **You should contact the court listed to confirm the amount of the fines, costs, and fees and verify that a court appearance is not required** If you want to contest the above report, or if you desire to request trial on the charge(s) filed against you, you should call or write the court listed above. You may retain an attorney at your own expense.

An offense will be cleared from the failure to appear or pay database within three (3) business days from the date payment is secured and reported to OmniBase by the originating court. For information on how to contact the court, you may call either of the following numbers:

(800) 686-0570 (toll free), or
(512) 342-0915 in Austin

COURTESY – SERVICE - PROTECTION

AVISO DE NEGACION DE RENOVAR LA LICENCIA DE MANEJAR DE TEXAS

Actuando bajo contracto con el Departamento de Seguridad Publica del Estado de Texas, OmniBase ha recibido uno o mas reportes de la corte(s) que ha sido usted citado por una violacion y que ademas fallo de Presentarse en la corte.

Segun el Capitulo 706 de los codigos de Transportacion de Texas, o sea, leyes estatales, el Departamento de Seguridad Publica, se niega en renovarle su licencia de manejar hasta que la corte originadora haya aclarado las ofensas identificadas al reverso de esta pagina.

En caso de que la renovacion de su licencia sea negada, se le prohibira, conducir un automovil en las calles o carreteras de este estado. Violar esta ley constituira una falla menor que lleva un castigo de multa hasta $500 y/o carcel hasta seis (6) meses. El Departamento de Seguridad Publica no puede aclarar su archivo de manejar o renovar su licencia de manejar sin autorizacion de la corte(s).

Tiene que resolver la ofensa(s) antes de que el Departamento le pueda renovar su licencia de manejar. Si usted quiere apelar el porque no se presento en la corte, o si usted desea pedir un juicio sobre el cargo que se archivo en contra de usted, debe de communicarse con la corte en la ciudad o condado en donde el cargo se archivo o para confirmar las deudas. Puede obtener un abogado a su costo.

La ofensa sera aclarada de su archivo dentro de tres (3) dias de trabajo excluyendo el fin de semana desde la fecha en que la corte recibe su pago y aclara el archivo con OmniBase. Para informacion en como communicarse con la corte puede llamar a cualquiera de los siguientes numeros de telefono.

(800) 686-0570 (gratis) o
(512) 342-0912 (en Austin)

Texas Transportation Code

CHAPTER 706. DENIAL OF RENEWAL OF LICENSE FOR FAILURE TO APPEAR

Sec. 706.001. Definitions. In this chapter:

(1) "Complaint" means a notice of an offense as described by Article 27.14(d) or 45.019, Code of Criminal Procedure.

(2) "Department" means the Department of Public Safety.

(3) "Driver's license" has the meaning assigned by Section 521.001.

(4) "Highway or street" has the meaning assigned by Section 541.302.

(5) "Motor vehicle" has the meaning assigned by Section 541.201.

(6) "Operator" has the meaning assigned by Section 541.001.

(7) "Political subdivision" means a municipality or county.

(8) "Public place" has the meaning assigned by Section 1.07, Penal Code.

(9) "Traffic law" means a statute or ordinance, a violation of which is a misdemeanor punishable by a fine in an amount not to exceed $1,000, that:

(a) regulates an operator's conduct or condition while operating a motor vehicle on a highway or street or in a public place;

(b) regulates the condition of a motor vehicle while it is being operated on a highway or street;

(c) relates to the driver's license status of an operator while operating a motor vehicle on a highway or street; or

(d) relates to the registration status of a motor vehicle while it is being operated on a highway or street.

Sec. 706.002. Contract With Department.

(a) A political subdivision may contract with the department to provide information necessary for the department to deny renewal of the driver's license of a person who fails to appear for a complaint or citation or fails to pay or satisfy a judgement ordering payment of a fine and cost in the manner ordered by the court in a matter involving any offense that a court has jurisdiction of under Chapter 4, Code of Criminal Procedure.

(b) A contract under this section:

(1) must be made in accordance with Chapter 791, Government Code; and

(2) is subject to the ability of the parties to provide or pay for the services required under the contract.

Sec. 706.003. Warning; Citation.

(a) If a political subdivision has contracted with the department, a peace officer authorized to issue a citation in the jurisdiction of the political subdivision shall issue a written warning to each person to whom the officer issues a citation for a violation of a traffic law in the jurisdiction of the political subdivision.

(b) The warning under Subsection (a):

(1) is in addition to any other warning required by law;

(2) must state in substance that if the person fails to appear in court as provided by law for the prosecution of the offense or if the person fails to pay or satisfy a judgement ordering the payment of a fine and cost in the manner ordered by the court, the person may be denied renewal of the person's driver's license; and

(3) may be printed on the same instrument as the citation.

Sec. 706.004. Denial of Renewal of Driver's License.

(a) If a political subdivision has contracted with the department, on receiving the necessary information from the political subdivision the department may deny renewal of the person's driver's license for failure to appear based on a complaint or citation or failure to pay or satisfy a judgement ordering the payment of a fine and cost in the manner ordered by the court in a matter involving an offense described by Section 706.002 (a).

(b)The information must include:

(1) the name, date of birth, and driver's license number of the person;

(2) the nature and date of the alleged violation;

(3) a statement that the person failed to appear as required by law or failed to satisfy a judgement ordering the payment of a fine and cost in the manner ordered by the court in a matter involving an offense described by Section 706.002 (a); and

(4) any other information required by the department.

Sec. 706.005. Clearance Notice to Department.

(a) A political subdivision shall notify the department that there is no cause to continue to deny renewal of a person's driver's license based on the person's previous failure to appear or failure to pay or satisfy a judgement ordering the payment of a fine and cost in the manner ordered by the court in a matter involving an offense described by Section 706.002(a), on payment of a fee as provided by Section 706.006 and:

(1) the perfection of an appeal of the case for which the warrant of arrest was issued or judgement arose;

(2) the dismissal of the charge for which the warrant of arrest was issued or judgement arose;

(3) the posting of bond or the giving of other security to reinstate the charge for which the warrant was issued;

(4) the payment or discharge of the fine and cost owed on an outstanding judgement of the court; or

(5) other suitable arrangements to pay the fine and cost within the court's discretion.

(b) The department may not continue to deny the renewal of the person's drivers license under this chapter after the department receives notice:

(1) under Subsection (a);

(2) that the person was acquitted of the charge on which the person failed to appear; or

(3) from the political subdivision that the failure to appear report or court order to pay a fine or cost relating to the person:

(a) was sent to the department in error; or

(b) has been destroyed in accordance with the political subdivision's records retention policy.

Sec. 706.006. Payment of Administrative Fee.

(a) A person who fails to appear for a complaint or citation for an offense described by Section 706.002 (a) shall be required to pay an administrative fee of $30 for each violation for which the person failed to appear, unless the person is acquitted of the charges for which the person failed to appear. The person shall pay the fee when:

(1) the court enters judgement on the underlying offense reported to the department;

(2) the underlying offense is dismissed; or

(3) bond or other security is posted to reinstate the charge for which the warrant was issued.

(b) A person who fails to pay or satisfy a judgement ordering the payment of a fine and cost in the manner the court orders shall be required to pay an administrative fee of $30.

(c) The department may deny renewal of the drivers license of a person who does not pay a fee due under this section until the fee is paid. The fee required by this section is in addition to any other fee required by law.

Sec. 706.007. Records Relating to Fees; Disposition of Fees.

(a) An officer collecting a fee under Section 706.006 shall:

(1) keep separate records of the money; and

(2) deposit the money in the appropriate municipal or county treasury.

(b) The custodian of the municipal or county treasury may:

(1) deposit each fee collected under Section 706.006 in an interest-bearing account; and

(2) retain for the municipality or county the interest earned on money in the account.

(c) The custodian shall keep records of money received and disbursed under this section and shall provide an annual report, in the form approved by the comptroller, of all money received and disbursed under this section to:

(1) the comptroller;

(2) the department; and

(3) another entity as provided by interlocal contract.

(d) Of each fee collected under Section 706.006, the custodian of a municipal or county treasury shall:

(1) send $20 to the comptroller on or before the last day of each calendar quarter; and

(2) deposit the remainder to the credit of the general fund of the municipality or county.

(e) Of each $20 received by the comptroller, the comptroller shall deposit $10 to the credit of the department to implement this chapter.

Sec. 706.008. Contract With Private Vendor; Compensation.

(a) The department may contract with a private vendor to implement this chapter.

(b) The vendor performing the contract may be compensated by each political subdivision that has contracted with the department.

(c) Except for an action based on a citation issued by a peace officer employed by the department, the vendor may not be compensated with state money.

Sec. 706.009. Vendor to Provide Customer Support Services.

(a) A vendor must establish and maintain customer support services as directed by the department, including a toll-free telephone service line to answer and resolve questions from persons who are denied renewal of a driver's license under this chapter.

(b) The vendor shall comply with terms, policies, and rules adopted by the department to administer this chapter.

Sec. 706.010. Use of Information Collected by Vendor.

Information collected under this chapter by a vendor may not be used by a person other than the department, the political subdivision, or a vendor as provided by this chapter.

Sec. 706.011. Liability of State or Political Subdivision.

(a) An action for damages may not be brought against the state or a political subdivision based on an act or omission under this chapter, including the denial of renewal of a driver's license.

(b) The state or a political subdivision may not be held liable in damages based on an act or omission under this chapter, including the denial of renewal of a driver's license.

Sec. 706.012. Rules.

The department may adopt rules to implement this chapter.

Current @ September 18, 2003

TEXAS DEPARTMENT OF PUBLIC SAFETY
TITLE 37 TEXAS ADMINISTRATIVE CODE

Chapter 15 Drivers License Rules
FAILURE TO APPEAR
(Effective – January 10, 2002)

DENIAL OF RENEWAL OF DRIVER'S LICENSE FOR FAILURE TO APPEAR FOR TRAFFIC VIOLATION

§15.111. Purpose and Scope. This subchapter applies to denial of license renewal for failure to appear or failure to pay or satisfy a judgment ordering payment of a fine or cost reported to the department under authority of Texas Transportation Code, Chapter 706.

§15.112. Authority To Enter Interlocal Contract. A local political subdivision may contract with the department to provide information necessary for the department to deny renewal of the driver license of a person who fails to appear for a complaint or citation or fails to pay or satisfy a judgment ordering payment of a fine or cost in the manner ordered by the court in a matter involving any offense within the jurisdiction of the justice or municipal court. A contract under this section must be made in accordance with Texas Government Code, Chapter 791. Such contract is subject to the ability of the parties to provide or pay for the services required under the contract.

§15.113. Contract with Private Vendor. The department has contracted with a private vendor to implement the provisions of Texas Transportation Code, Chapter 706. The vendor shall be the primary custodian of all failure to appear violator records and will receive and process reports from contracting local political subdivisions. The vendor will also maintain readily accessible customer support services, including a toll-free telephone service, to advise license holders on how to contact the court in which the failure to appear report originated.

§15.114. Originating Court To File Failure To Appear Report. If a person fails to appear or fails to pay or satisfy a judgment as provided in Texas Transportation Code, Chapter 706, a local political subdivision may submit a failure to appear report to the department. The local political subdivision shall make reasonable efforts to ensure that each report is accurate, complete, and nonduplicative. The report shall include the following information:

(1) the name of the political subdivision submitting the report;
(2) the jurisdiction in which the alleged offense occurred;
(3) the name, date of birth, and the Texas driver license number of the person alleged to have failed to appear or failed to pay or satisfy a judgment;
(4) the date of the alleged violation;
(5) a brief description of the alleged violation;
(6) a statement that the person failed to appear or failed to pay or satisfy a judgment;
(7) the date that the person failed to appear or failed to pay or satisfy a judgment; and
(8) any other information required by the department.

§15.115. Criminal Charge Not Required. It is neither required nor prohibited that a criminal charge be filed or a warrant be issued based on the person's violation of a promise to appear or failure to pay or satisfy a judgment ordering the payment of a fine or a cost in the manner provided by the court.

§15.116. Local Ordinances. If the offense alleged is a violation of local ordinance, but not state law, the department may require the political subdivision to provide the department with a copy of the local ordinance alleged to have been violated. Upon such request, the political subdivision shall certify that the ordinance is currently in effect, and shall provide any other information required by the department. The department shall determine whether the local ordinance meets the statutory criteria for enforcement under this section.

§15.117. When Denial May Be Imposed. On receipt of the necessary information from the local political subdivision, the department may deny renewal of the person's driver license. For purposes of this section, the department may deny renewal of an applicant's driver license at any time before mailing the completed driver license document.

§15.118. Clearance Report. The local political subdivision shall file a clearance report when there is no cause to continue to deny renewal of a person's driver license. In all cases when a clearance report is required, the political subdivision shall notify the department or the department's designee within a reasonable time not to exceed five business days. The clearance report shall identify the person, state whether or not a fee was required, advise the department to lift the denial of renewal and state the grounds for the action.

§15.119. Clearance Report When No Fee Is Required. If the person is acquitted of the underlying charge for which the failure to appear report was filed, the court shall file an appropriate clearance report without requiring the license holder to pay the statutorily required $30 administrative fee. Acquittal means an official fact-finding made in the context of the adversary proceeding by an individual or group of individuals with the legal authority to decide the question of guilt or innocence. For purposes of this section, acquittal also includes a discharge by the court upon proof of actual innocence. A person is not considered to have been acquitted if the court imposes any conditions upon discharge of the offense, such as penalties, court costs, educational programs, a period of probation, or any other sanction. For purposes of this section, a person is not considered to have been acquitted, and the prescribed administrative fee shall apply, in all cases that are dismissed under the suspension of sentence or deferred disposition procedures outlined in Texas Code of Criminal Procedure, Article 45.

TECH CORNER

COURT TECHNOLOGY

Regional Databases - Not Just a Warrant List

By Charlie Rogers, City Marshal, City of La Marque/Acting President, Texas Marshal Association

Regional databases are often considered warrant depositories—a place for cities to list outstanding warrants in hopes that officers in adjoining jurisdictions would check the violators with whom they came into contact.

My court, for example, lists our warrants in the Harris County Justice Information System Southeast Texas Crime Information Center database, commonly referred to as SETCIC. (The formal title is too hard to say, much less remember!) Member agencies are divided into two categories: full-service and inquiry-only. Full-service agencies enter their warrants in the database and, therefore, are charged an annual fee, plus monthly charges based on their level of activity—such as number of warrants added and number of warrants cleared. Inquiry-only agencies are restricted to just inquiry—checking subjects for warrants listed in the database. However, there are no fees for inquiry-only agencies. As of September 2000, there were over 40 full-service agencies and over 80 inquiry-only agencies. This includes all of the surrounding county jails, the DPS and the FBI. Entering my warrants into SETCIC has extended my reach as a warrant officer, especially with all the inquiry-only agencies having access to my warrant list.

The process works like this:

- As new warrants are issued by the court, they are entered into the database. The wanted person's name, address, date of birth, physical descriptors, and at least one unique numerical identifier (such as a driver's license number, DPS identification number, social security number or alien registration number) are listed. In addition, the charges cited in the warrant are listed. The wanting agency and telephone number is identified.
- Agencies inquiring the database typically utilize a modification to the Texas Crime Information Center and National Crime Information Center (TCIC/NCIC) wanted person inquiry on Texas Law Enforcement Telecommunications System (TLETS).
- Once a hit is obtained, the unique numerical identifiers are used to ascertain that the person contacted is the person listed in the database.
- Direct contact via telephone or teletype is then made with the agency issuing the warrant to confirm it and arrange transportation for the subject. Quite often in the case of adjoining jurisdictions where the agency initially arresting the wanted person has no other charges against him/her, the two agencies will agree to meet somewhere midway and exchange custody of the subject.
- The arresting agency then places a "locate" tag on the warrant in the database so that, if the subject posts bond or is otherwise released from custody prior to the originating agency's opportunity to clear the warrant from the database, he or she is not subject to being re-arrested on the same warrant.

I see SETCIC hits resulting from three types of inquiries.

1. Traffic Stops – At a traffic stop, the officer has the dispatcher check a violator's driver's license through TLETS, and the hit shows up.
2. Jails (Release) – When jails check the subject through TLETS prior to his/her release from jail on other charges.
3. Jails (Visitors) – When jails check inmate visitor's identification through TLETS.

Personally, SETCIC has been priceless. I have located and arrested subjects I had warrants on by studying the information contained in the entries of other agencies that also had warrants listed in the database on the subject. I have even had probation officers from other counties call me for copies of my warrants to utilize in revocation hearings to prove unauthorized travel outside of the probationer's home county. The emphasis prior to 9/11 was on the warrant aspect of the databases. Post 9/11, more attention is being placed on the wealth of intelligence and identification information contained in the database entries.

For more information on Harris County Justice Information Management Systems, they are located at 406 Caroline, Suite 210, Houston, TX 77002, telephone 713/755-6929 and fax 713/755-8895.

For information on the Dallas County Juvenile Information System (JIS) see "Justice Information Systems," *The Recorder*, March 2002, pgs. 30-31 or visit www.jisinformation.dallascounty.org.

Justice Information Systems

by Jo Dale Bearden

Database sharing, information-sharing, collaboration, cities working together, however your phrase it, sharing information within and between justice agencies is constructive. In a state as large as Texas, the use of information-sharing technology is essential.

The sharing of information technology is generally defined as the utilization of computers and software in a cooperative, harmonizing fashion to improve efficiency, to coordinate computerized functions, and to increase the production of information. The focus of information sharing through the electronic exchange of information is to ensure that justice personnel will make the best decisions. Making better decisions improves the fair administration of justice and results in the efficient use of public resources. Having the right information at the right place and at the right time results in better outcomes. The integration of information systems is what enables the delivery of that information.

The Dallas/Ft. Worth area has recently developed a regional information-sharing system, the Dallas County Juvenile Information System (JIS). The JIS system involves the electronic access and exchange of information throughout the Dallas/Ft. Worth justice community, including public safety agencies, prosecutors, public defenders, courts, correction agencies, probation and parole departments, and schools involved in the juvenile justice process. According to the Dallas County JIS website, JIS was designed to provide:

> A quick and cost-effective means of sharing and retrieving juvenile information, a method of getting juveniles into diversionary and treatment programs before they become habitual offenders, and an efficient process which maximizes time and resources of law enforcement agencies and judicial agencies.

The Dallas County Juvenile Information Systems allows participating agencies to access and share juvenile information through a secure centralized database. What does this mean? It means that all 40 agencies have access through the Internet to a juvenile's information when needed. Of the 40 agencies involved, eight are municipal courts, including: Carrollton, Dallas, Duncanville, Garland, Grand Prairie, Irving, Mesquite, and Richardson. These municipal courts are benefiting from the system because for each juvenile who is processed through the municipal court, the prosecutor can easily pull a status report on the juvenile, stating any citations, violations, etc. from all cities involved in the information system. Armed with more thorough information, the prosecutor can make a better, well-informed decision regarding the case.

Carrollton Municipal Court, for example, recently had a juvenile who had been issued a citation. A report on the juvenile was pulled from the database. The report showed that this juvenile was wanted for questioning in a neighboring city. The neighboring city was contacted and given the juvenile's court date. The juvenile did appear for court, as did an officer from the neighboring city. Once the court processes were completed, the juvenile was taken into custody by the officer. The database lived up to its goal of information sharing and having an impact on juvenile crime in Dallas County.

How did this all start in Dallas County? Dallas area officials came together in 1998 by forming a committee—a committee aware of the growing juvenile population and the problems with processing juveniles. The committee began and continues to be led by Dallas County Commissioner Mike Cantrell. Funds for the program were made available from the Juvenile Accountability Incentive Block Grant (JAIBG), administered by the Criminal Justice Division of the Governor's Office. In this case, multiple agencies agreed to combine resources to fund the design, develop, deploy, and maintain the Juvenile Information System. The JIS Executive Committee is comprised of representatives from participating agencies (www.jisinformation.dallascounty.org/excom.html lists the 2001 JIS Executive Committee members).

The implementation of the system was divided into two phases. During Phase I, the preliminary system design was developed and 19 more agencies were added. In Phase II, the committee worked closely with the

information system designers to maintain the developed system, complete Phase I and II training, add 35 new agencies to the system, expand the help desk, and add enhancements to the system. In the future, the JIS Executive Committee hopes to integrate the system into state and federal databases.

What is needed for successful integration? Of course, as with all projects, the successful incorporation of a shared information system requires careful planning and effective organization. Once a strategic planning committee or group is formed, the following steps should be taken:

- articulate a vision;
- identify the scope and objectives;
- recruit sponsors and participants;
- secure funding; and
- develop a detailed, comprehensive plan, which includes technical guidelines.

Many committees, that have completed integration, suggest the use of subcommittees to assist in developing and implementing the plan, such as a technology task force or a federal funding work group. Sample integration standards and planning models can be found on the Office of Justice Programs Information Technology Initiatives and Justice Integration home page: www.it.ojp.gov.

What problems will be encountered? As with all technology, this type of system is costly, securing enough funds to see the project through can be difficult. Technology itself can be the problem. Agencies may have very different computers, networks, or databases that may not be compatible. Many integrated systems are accessed over the Internet, making security of the data important. Lastly, it is necessary to build cooperation and collaboration between autonomous groups. Recruiting diverse agencies and building trust can be complicated.

Beyond the application segment, it is important that the project is seen until the end, including looking at long-term funding, examining privacy, confidentiality and security issues, identifying the potential of changes in management in each of the organizations, and including program evaluation (both formative and summative) at all stages of the project.

If your area agencies are interested in forming an information-sharing information system, visit www.jisinformation.dallascounty.org or www.it.ojp.gov for more information.

By John C. Hermansen

Name your suspect

One of the most difficult database problems facing law enforcement officials today is the one that causes the most database havoc in general: personal names. While a department can find programs and services to "clean up" addresses, telephone numbers and other data fields, until recently there were no such tools for helping with bad name data — and that has presented problems.

When an officer enters a "foreign" witness or suspect's name into the computer database, it's not uncommon for there to be spelling mistakes or difficulty figuring out which part of the name goes into which field. When these errors are entered into the records system, the record can be lost forever inside the database. More importantly, these kinds of issues can put officers or others in harm's way if they fail to match that person against a list of known offenders.

The ability of local law enforcement officials to analyze names will become even more critical as they access the State Department's database of 50 million overseas applications for U.S. visas. The State Department hopes that by providing easier links to this information, local law enforcement agencies will be better equipped to track individuals whose names appear on the government's anti-terrorism watch lists.

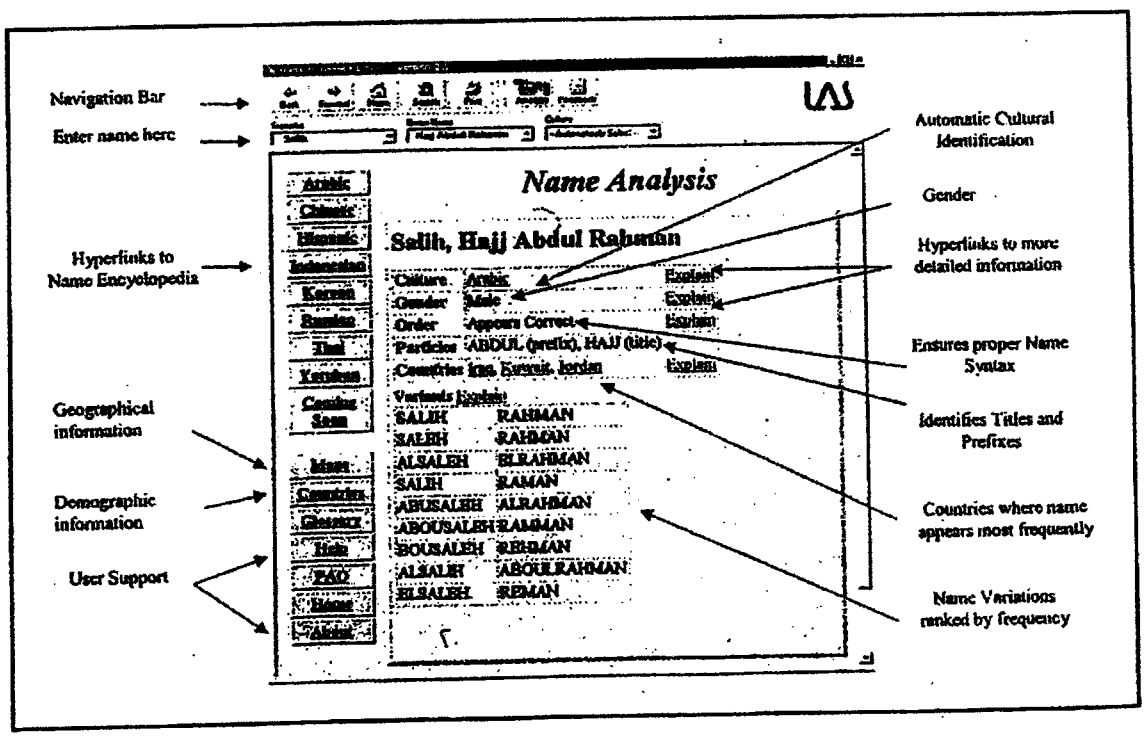
The trouble with names

Why do we have these problems with people's names? A lot of complexities arise when transliterating names into the Roman alphabet from other writing systems, such as Arabic, Chinese or Thai.

It is more than just the spelling that can cause database headaches. People's names are actually complex data elements that cannot be looked up in a dictionary or table for the proper spelling or parsing — especially with names from cultures that are unfamiliar. These names often suffer significant damage during data entry.

The number of possible variations can be massive, depending on the culture that a name comes from. It becomes very difficult for local law enforcement officials to quickly make intelligent decisions about which name variants match which records in the many different databases and federal watch lists officers now have access to. Where more familiar names might have two or three components, the names these local law enforcement agencies are attempting to track may have up to eight components.

The problem for local law enforcement is that they are on the frontlines, performing critical analysis with systems that frequently use very antiquated techniques to search personal names. This often leads to relevant information being missed.



Language Analysis Systems' Name Reference Library (NRL) enhances searches by instantly displaying name variations. The NRL also helps officers sort names into correct name fields.

While the person of interest may be contained in one of many databases within the scope of the search, matching the name precisely can be extremely difficult.

Name recognition

The most effective way to improve local law enforcement's ability to deal with matching names in an ethnically diverse environment would be to upgrade all law enforcement systems with multicultural name searching such as that from Language Analysis Systems. The Herndon, Virginia-based company has created a software tool that will help provide multicultural name recognition. This tool goes beyond simplistic Soundex (a coded surname index based on the way a surname sounds — rather than the way it is spelled) and key-based approaches to solve a multitude of name-related problems. With this software, when an officer pulls over a driver with an unfamiliar-looking name, the program can show legitimate variations of that name. The database can then be checked for alternate spellings as well.

Federal authorities have used this technology to track the 9/11 terrorists to Florida, and this software continues to be used today in the war on terrorism by U.S. intelligence and border protection agencies.

But since this technology only recently became available outside the federal government, it could be several years before it filters down to local departments. In the meantime, LAS's training and decision-support software are viable alternatives available to first responders right now. Until the systems that law enforcement personnel use every day are upgraded with the most modern name searching technology, hands-on education about how to better use today's systems is the only option for improving the effectiveness of this critical counter-terrorism requirement.

LAS has studied multicultural names for 20 years and has developed many technologies and training programs designed to guide officers in real time. One of the recent beneficiaries of these solutions has been the New England State Police Information Network (NESPIN).

"Wanted suspects may go undetected because the officer simply does not know the variations of the suspect's name."

— Rick Flood, NESPIN

Over the last few years, LAS has provided NESPIN, which is part of the U.S. Department of Justice's Regional Information Sharing Systems (RISS) program, with name recognition training, software and certification on some of the most significant multicultural name problems.

By entering names into a database improperly, it is very likely they may never be seen again.

A major success of the NESPIN-LAS partnership has been its training seminars. Rick Flood, NESPIN training coordinator, says the LAS training seminars were the first in the greater New England area to directly educate local and regional law enforcement officials on the use of this effective counter-terrorism tool.

In the LAS training courses, NESPIN law enforcement officials learned to identify and better search Arabic, Korean and Chinese names using LAS's Name Reference Library (NRL), a tool that instantly displays name variations that can be used to enhance searches. For investigative work, the NRL also provides a wealth of information about the origins and usage of names from a dozen major cultures. This reference library also helps officers sort names into the correct name fields.

"NESPIN participants soon discovered that the Anglo-centric name search, generally used by most law enforcement agencies, is not always effective when dealing with names in languages like Arabic, Chinese and Korean," Flood says. "Wanted suspects may go undetected because the officer simply does not know the variations of the suspect's name."

This is where LAS's unique expertise with multicultural names comes in. Local and regional first responders in the New England area learned how names from multiple cultures differ from the typical "first, middle, last" naming structure of most Anglo-based names.

What's in a name?

Shown below are a few examples of names that might be found in a database. How would you split these names in order to put the proper elements in the first-name field and the last-name field?

Maria del Carmen Bustamante de la Fuente
Hisham Abu Ali Quereshi Noor Eldin
Chang Wen Ying
Nadezhda Ivanovna Ovtsyuk
William Martin Smith-Bagby Jr.
Kees Andries Van Der Merve

Compare your answers to the set of names below, shown in the correct "last name, first name" order.

Bustamante de la Fuente, Maria del Carmen
Quereshi Noor Eldin, Hisham Abu Ali
Chang, Wen Ying
Ovtsyuk, Nadezhda Ivanovna
Smith-Bagby Jr., William Martin
Van Der Merve, Kees Andries

More than just a name

The personal and legal risks of not enhancing and protecting the quality of personal name data will only grow as databases become more international in scope. State and local governments lacking the vision and commitment to insist on clean name data and advanced name processing tools place their law enforcement organizations at great peril.

By entering names into a database improperly, it is very likely they may never be seen again. Law enforcement officials need to know how to enter names into a computer system effectively and know how to access the correct name in the database, and LAS can teach them how to do that. ■

John C. Hermansen is the co-founder and chief executive officer of Language Analysis Systems, a Herndon, Virginia-based maker of name recognition software. Hermansen can be reached at jack@las-inc.com.

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Handling Difficult People

Presented by

Tony Wooley
Marshal
De Soto

By the end of the session, students will be able to:

1. Describe internal verbal techniques to exert external control.
2. Identify the characteristics of potentially difficult people.
3. Describe a five-step approach to handling difficult people.

VERBAL JUDO

Tony Wooley, Marshal, DeSoto

What is verbal judo?

- The art of speaking without causing or escalating conflict.
- The art of getting people to cooperate even when they don't want to.

The Gentle Way

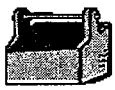
- *Ju* – means gentle
- *Do* – means way

Therefore, judo is the gentle way.

Why learn verbal judo?

Verbal Judo is a Toolbox

- Learn a tool.
- Practice that tool.
- Add a new tool.
- Practice using the previous two tools.
- Add a new tool.
- Etc.

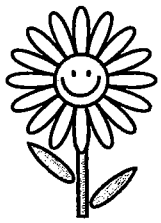


First Tool

The Nice, the Difficult, and the Wimp

The Nice

- Nice people do what you ask them to do – the first time.
- Tell a nice person to mail a payment in – he/she does on-time.
- Respect the nice people.



The Difficult

- They will not do what you ask them to do the first time you ask (sometimes not the second).
- They will ask "why" or "what for".
- They order off the menu, but change the order completely.

Dealing with the Difficult

- DO NOT RESIST YOUR OPPONENT
- Move with the difficult person.
- Redirect that energy.
- To answer why - - answer with a what's in it for them statement.
- Use the opportunity to inform, not belittle.

The Wimp

- To your face, they agree with you.
- When you turn your back, they do everything you told them not to do.
- This group doesn't like authority, but doesn't have the guts to challenge it.
- They make snide remarks under their breath.
- Surprise! They leave negative comments on evaluations that surprise you.

Dealing with the Wimp

- Do not ignore them.
- Do not snipe back at them.
- Confront them honestly.

Practice — Round 1

A few more nuts and bolts...

EMPATHY

EMPATHY

To understand what it is like to be in another's shoes.

11 Things Never to Say to Anyone

"COME HERE!"

INSTEAD:
"Could I talk to you for a second?"

"You wouldn't understand."

INSTEAD: "Let me try to explain."

"Because those are the rules."

INSTEAD: Try explaining the rule you are enforcing and even why that rule is in place.

"It's none of your business."

INSTEAD: Explain why the information cannot be revealed or that you are uncomfortable sharing the information.

"What do you want me to do about it."

INSTEAD: Be concerned. Try to help. If it isn't in your area of knowledge, walk them to someone who can help.

"Calm down."

INSTEAD: "It's going to be all right. Talk to me. What's the trouble."

"What's your problem."

INSTEAD: "What's the matter." or "How can I help you."

"You never... or You always..."

INSTEAD: Generalizations are bad. Try to use specific situations to make a point.

"I'm not going to say this again."

INSTEAD: "It's important you understand this, so let me say it again and listen carefully."

"I'm doing this for your own good."

INSTEAD: State the specific reasons the person is benefiting from the situation.

"Why don't you be reasonable."

INSTEAD: "Let me see if I understand your position."

Practice — Round 2

Second Tool

Five-Step Approach

Five-Step Approach

1. Ask
2. Set context
3. Present options
4. Confirm
5. Act

Practice – Round 3

A few more nuts and bolts...

Paraphrasing

Paraphrasing

- Put another person's meaning in your own words and deliver it back to that person.
- Proper paraphrasing incorporates empathy.
- Other benefits include:
  - The other person stops talking to listen to you.
  - You've taken control.
  - You avoid misunderstandings.
  - Clarifies for all those around you.

Paraphrasing

TWO STEP PROCESS

1. Start with "sword of insertion" (like Whoa!)
2. Then use a phrase like, "Let me make sure that I've heard you."

Third Tool

The Great
Communication Arts

1st Communication Art – Representation

Who do you represent?

2nd Great Communication Art

Translation

3rd Great Communication Art

MEDIATION

Put it all together:

1. You represent the court.
2. Translate the message into terms that person understands.
3. Get that person to see his/her experience in a way that will alter their behavior.

Practice – Round 4

Fourth Tool

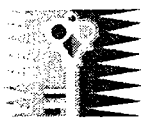
LEAP

LEAP

- Listen
- Empathize
- Ask
- Paraphrase
- Summarize

Practice – Round 5

Key Phrases to remember



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Drug Recognition Testing

Presented by

Detective Charles Avery
Drug Recognition Expert
Dallas Police Department

By the end of the session, students will be able to:

1. Recognize situations in which a drug evaluation assessment is needed.
2. Identify the seven categories of drugs.
3. Describe the steps taken in a drug evaluation assessment.

The Drug Evaluation and Classification Program

The Science and It's Application

Detective Charles Avery
Dallas Police Department

Three Step Process

- Step One: Verify that the suspect is impaired and the impairment is not consistent with the BAC.
- Determine if the impairment is drug or medically related.
- Use proven diagnostic procedures to determine the category(ies) causing the impairment

Specimen vs. Assessment

- The request should be based on the strongest articulable evidence of drugs that is available.
- The suspect may refuse the test.
- Chemical tests only disclose recent usage.
- Chemical analysis can be expensive.
- The impairment may be caused by illness or injury.

What is a Drug?

- Any substance which when taken into the human body, can impair the ability of the person to operate a vehicle safely

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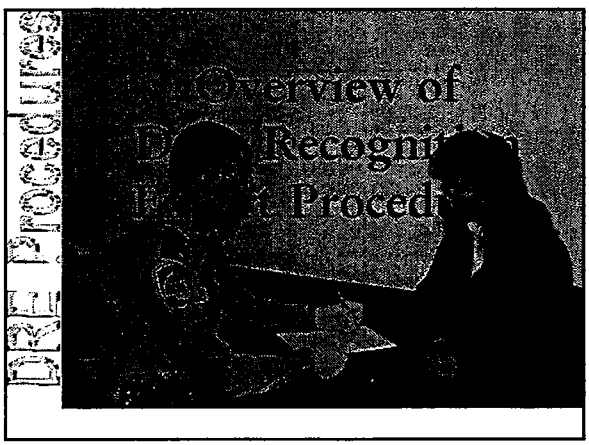
- Diagnostic and Statistical Manual of Mental Disorders, (Third Ed, Revised), American Psychiatric Association 1987

Seven Categories of Drugs

- Central Nervous System Depressants
- Central Nervous System Stimulants
- Hallucinogens
- PCP
- Narcotic Analgesics
- Inhalants
- Cannabis



The Drug Evaluation:

A standardized and systematic process

DRE PROCEDURES

Drug Evaluation Steps

1. The breath alcohol test

DRE PROCEDURES

Drug Evaluation Steps
(continued)

2. Interview of the arresting officer

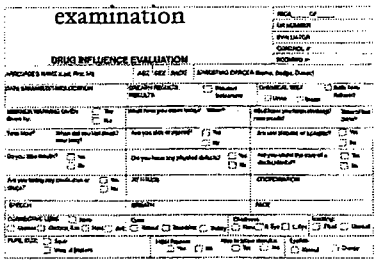
DRE PROCEDURES

Drug Evaluation Steps
(continued)

3. The preliminary examination

Drug Evaluation Steps
(continued)

3. The preliminary examination



Drug Evaluation Steps
(continued)

4. Examination of the

Drug Evaluation Steps
(continued)

4. Examination of the eyes

HGN:	Right Eye	Left Eye	Vertical Nystagmus? ☐ Yes ☐ No
Lack of Smooth Pursuit			Convergence
Max. Deviation			Right Eye / Left Eye
Angle of Onset			

DRE Procedures

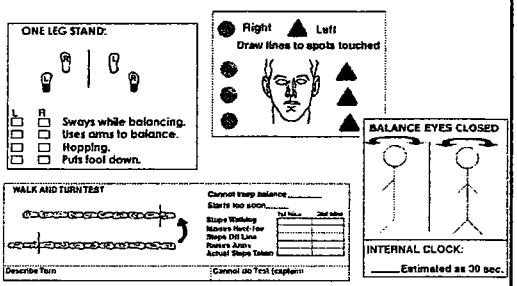
Drug Evaluation Steps
(continued)

5. Divided attention tests

DRE Procedures

Drug Evaluation Steps
(continued)

5. Divided attention tests



DRE Procedures

Drug Evaluation Steps
(continued)

6. Examination of vital signs

Drug Evaluation Steps
(continued)

6. Examination of vital signs

PULSE & TIME
1. ____/____
2. ____/____
3. ____/____

BLOOD PRESSURE:	TEMP
____/____	____ °

Drug Evaluation Steps
(continued)

7. Dark room examinations

Drug Evaluation Steps
(continued)

7. Dark room examinations

PUPIL SIZE	Room Light	Darkness	Indirect	Direct	NASAL AREA
Left Eye					
Right Eye					ORAL CAVITY
HIPPUS ☐ Yes ☐ No		REBOUND DILATION ☐ Yes ☐ No			Reaction to Light

DRE PROCEDURES

Drug Evaluation Steps
(continued)

8. Examination of muscle tone

DRE PROCEDURES

Drug Evaluation Steps
(continued)

8. Examination of muscle tone

MUSCLE TONE:
☐ Near Normal ☐ Flaccid ☐ Rigid
Comments

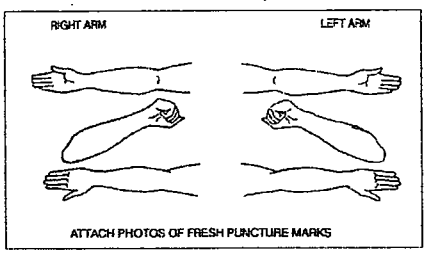
DRE PROCEDURES

Drug Evaluation Steps
(continued)

9. Examination for injection sites

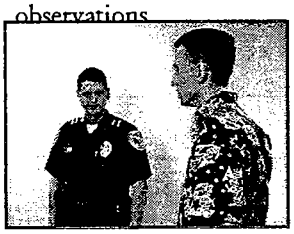
Drug Evaluation Steps
(continued)

9. Examination for injection



Drug Evaluation Steps
(continued)

10. Suspect's statements and other observations



Drug Evaluation Steps
(continued)

10. Suspect's statements and other observations

DRE PROCEDURES

Drug Evaluation Steps
(continued)

11. The opinion of the evaluator

DRE PROCEDURES

Drug Evaluation Steps
(continued)

12. The toxicological examination