Municipal Court Recorder

Volume 11 DECEMBER 2001 No. 1

Federal and State Case Law Update

Compiled by Ryan K. Turner,
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I. United States Supreme Court

A. Does the Fourth Amendment's requirement of individualized suspicion prohibit peace officers from conducting vehicle checkpoints to root out drug offenders?

City of Indianapolis v. Edmonds, 121 S.Ct. 447 (2001)

Yes. Because a checkpoint program's primary purpose is indistinguishable from general interest in crime control, the checkpoints violate the 4th Amendment. The threat to public safety posed by illegal drugs is not immediate enough to place a roadblock designed primarily to detect drug offenses within the public safety exception to the general rule of individualized suspicion.

B. Does a police officer with a pressing or urgent law enforcement need violate a suspect's Fourth Amendment rights by preventing him from re-entering his home unaccompanied while the officer obtains a search warrant?

Illinois v. McArthur, 121 S.Ct. 946 (2001)

Police officer's refusal to allow defendant to enter residence without a police officer until a search warrant of residence was obtained, following statement by defendant's wife that husband had illegal drugs in residence, was a "reasonable seizure" that did not violate the Fourth Amendment. The officer had probable cause to believe that the defendant had illegal drugs in residence and reason to fear destruction of evidence, and restriction was limited in time and scope.

C. Were the urine tests of patients conducted by state hospital staff members, pursuant to hospital's drug abuse policy, "searches" within meaning of

Case Law Update continued on page 6

Taking the Stand: Testifying on Juvenile Magistration

Chapters 51 and 52 of the Texas Family Code outline the legal requirements and procedures for magistrates to follow when juveniles are in custody or under police interrogation. In FY 01, statistics from the Office of Court Administration indicate that as magistrates, municipal court judges issued 5,186 warnings to juveniles. Two municipal court judges have offered their insights on being called to testify about how they administer juvenile warnings.

Judge Deanna Burnett gives a very practical, hands-on treatment of the subject and Judge Robert Barfield gives well-researched, legal analysis. TMCEC expresses appreciation to Judge Burnett and Judge Barfield for sharing their practical experiences.

See Viewpoints on pages17 and 18

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AROUND THE STATE

2nd CMCC!

Connie Crenshaw, Court Clerk of Luling, Texas since 1996, has become the second clerk to be named Certified Municipal Court Clerk under the Texas Court Clerks Certification Program. Connie commented that it "feels really good" to have succeeded in the program and that "it was a challenge." She "learned a lot, especially from the court observation process," enjoying the "good support she got from the judge and from her family." To be certified at Level III, a clerk must achieve certification in Levels I and II, as well as complete a number of education hours, read a long list of assigned books, record an extensive court observation journal, and pass the Level III exam. The program, which started in 1997, tests a wide range of necessary knowledge and skills, for example collecting fines, case flow management, bond forfeitures, and ethics. **Jennifer Sullivan**, Municipal Court Clerk in Katy, Texas, was the first clerk in the state to master all three levels of the Texas Court Clerks Certification Program.

FYI

In Fiscal Year 01, TMCEC surveyed judges as part of the seminar certification process. Shown below are the responses to two questions that dealt with the employment relationship between judges and their cities.

Question: What financial support does your city offer you to support your continuing judicial education? Circle as many as apply.

Travel to seminar	**870**	**74.3%**
Meals to and at seminar	**772**	**65.9%**
Registration fees	**678**	**57.9%**
Paid leave time	**414**	**35.4%**
Law books and resource materials	**514**	**43.9%**
Email or Internet access	**247**	**21.1%**
None	**127**	**10.8%**

Question: Which phrase best describes the relationship between you and your city?

On salary	**631**	**53.9%**
On contract	**352**	**30.1%**
Work as volunteer	**112**	**9.6%**
No response	**76**	**6.5%**

Collect on Those Warrants

By Susan Richmond, City of Carrollton, Texas Marshal Association

Creative collection methods for outstanding warrants not only keep defendants guessing but also result in increased case disposition. Warrant round-ups and amnesty programs offer a change of pace from the normal methods of processing outstanding warrants. These two primary methods of resolving outstanding warrants can be productive but require sound planning to be successful.

Warrant round-ups can be held at various service area levels, primarily city and county-wide. Local round-ups utilize members of the police department in conjunction with marshals to serve warrants within the immediate area. On a larger scale, such as a county round-up, several agencies can coordinate to create a greater impact on the service area. Media coverage is a tremendous asset when larger round-ups are held. Regardless of the round-up size, planning is paramount to having a successful day. Coordination between the police department, court staff, and judge are the foundation of a widespread effort. Larger round-ups require that a host agency send notification to area agencies or statewide notification can be accomplished with the help of the Texas Marshal Association (TMA). While TMA has no official role in these activities, it does facilitate communications.

Typically, two-officer teams, comprised of an out-of-town marshal and a local officer armed with a map are assigned for safety and practical purposes. It is beneficial to assign a hosting agency radio to each team if intercity radio communications are not possible. This provides both officer safety and a communication link to confirm warrants, if an arrest is to be made. Additionally, coordination with the hosting agency's jail is crucial, along with access to a magistrate who can arraign prisoners that may need to be transferred out-of-county after the round-up. Adequate jail personnel and jail space are necessary to house any prisoners gathered along the way and to process their booking and release. At the conclusion of the round-up, each marshal/warrant officer is responsible for taking any remaining prisoners to their respective jurisdictions.

Amnesty programs offer another innovative method of warrant reduction and case disposition by reducing the amount a defendant must pay on his warrant for a specially designated period of time. An amnesty program is a largely an internal method in that coordination of the event typically involves court staff only. A meeting between the court clerks, marshals, judge, and prosecutor set the parameters of the program to include such decisions as how long the amnesty will last, how much is going to be discounted from the warrant amount, and what type of warrants will be discounted. Supervisory decisions include if the court will open on the weekend or extend hours to accommodate citizens. If so, will overtime or flex-time be offered to staff working during the program? As with warrant round-ups, advertising is essential. Amnesty programs work only if citizens are aware of their upcoming window of opportunity.

The Grand Prairie Marshal's Office has hosted both a warrant round-up and an amnesty program recently. The warrant round-up, which was coordinated through the Texas Marshal Association, was attended by 30 marshals/warrant officers representing 11 agencies. In an eight-hour day, 21 arrests were made, and 99 warrants worth over $26,000 were cleared. This does not include those individuals who came in after the round-up as a result of hang tags left on doors or contacts with family members or neighbors. An amnesty program conducted in August also cleared $26,000 during the designated two-week period. This was advertised through internally generated flyers and free publicity. A little imagination and planning can go a long way when it comes to warrant clearance and increased case disposition.

Susan Richmond has been in law enforcement since 1984, having worked for the Carrollton Police Department and the Flower Mound Police Department. She has worked with the Carrollton Municipal Court since 1994, becoming part of the Marshal's Office in 1996 and serving as the chief marshal since 1997. She is currently the vice-president and secretary for the Texas Marshal Association, Office Number: 972-466-3528, Email: srichmon@ci.carrollton.tx.us

INFORMATION ON THE MARSHAL ASSOCIATION

The Texas Marshal Association was created in 1997 by five marshals in the north Texas area who saw a need for specialized training that those who serve warrants and/or bailiff courts often need and seemed to be unavailable. Additionally, officer safety was a primary catalyst for creation of the Texas Marshal Association. Many officers who serve warrants do so by themselves. The Texas Marshal Association provides a source of networking whether it be to gather information on the subject of warrants or to request assistance from local marshals/warrant officers while serving warrants. Warrant round-ups are one such networking event which promote officer safety and public awareness. Since its inception, the Texas Marshal Association has grown to about 130 members representing 70 agencies. Membership is divided between "Active Members," who are comprised of sworn personnel and "Associate Members," who are comprised of support personnel such as clerks and judges. An annual conference is hosted in somewhere in the state and targets court security, warrant service, officer safety, and other issues which will benefit members. The 2002 conference is scheduled for April 21-24 in Addison. Anyone who is interested in joining the Texas Marshal Association, receiving conference information when it becomes available, or gathering information on how to organize a warrant round-up may call Susan Richmond at 972-466-3528 or email to srichmon@ci.carrollton.tx.us.

FROM THE GENERAL COUNSEL

W. Clay Abbott

IN THE REALM OF UNINTENDED CONSEQUENCES...

Out-of-County Magistration and Round-Ups

A new tool for out-of-county raids may have been inadvertently created by S.B. 219 and its amendments to Art. 15.18 and Art. 4.12, Code of Criminal Procedure. The act provides jurisdiction to a magistrate to hear a plea of guilty or no contest from a defendant who has out-of-county warrants from justice or municipal courts. A written plea must be entered, then the magistrate may assess fines, take payments, fix cost, and determine indigence, all at the local jail or detention facility. The magistrate has ten business days to send the papers and funds collected to the court issuing the warrant.

Courts entering agreements and exchanging information before a raid provides a helpful tool. No longer would transporting across county lines be as large of an issue. Transportation cost could be limited. Finally, a good number of people could dispose of cases without making a bond they might never appear on, and without a warrant officer setting fines or making other judicial decisions unethically. Communication and preparation are the keys to making these new provisions useful, as the article here repeatedly sets out.

"The Officer Took My Driver's License"

It is coming as a surprise to municipal courts, as well as a good number of defendants, that an arresting officer may now seize the driver's license of a suspect refusing to give a blood or breath specimen or a suspect failing the test. Passage of HB 63 by the 77th Legislature amended numerous provisions of the Transportation Code dealing with DWI investigations and driver's license suspensions. The changes were effective September 1, 2001 and apply to offenses committed on or after that date.

Formerly, the officer served a notice of suspension when a breath test was refused or the suspect tested over 0.08 B.A.C., as defined by the code, and after a later default or hearing the license was gathered up or ordered to be sent in. Needless to say compliance was less than stellar. Now, upon issuing the notice, the officer seizes any driver's license and the driver may get it back if they request and prevail at a hearing before an administrative law judge designated by DPS. The hearings and time periods have not changed. The seizing officer issues a temporary driving permit. It is effective until suspension or the 41st day after issuance. A temporary CDL is not effective until 24 hours after an arrest.

Periods of suspension under the statutory scheme were also increased. Sixty day periods were increased to 90 days for failing the test. Ninety day suspensions for refusals were increased to 180 days. This includes refusals in DUI investigations. Fees for reinstatement also increased.

This should not create any new procedures or change the actions of the municipal courts. Municipal judges acting as administrative hearing officers have hopefully already seen these changes. But, note that the issues still are not litigated as part of the DUI trial, but are handled administratively in DPS.

Sanctions continue to get tougher on violators and suspected violators of the State of Texas's drinking and driving laws.

New Reporting Requirement

Courts may need to take a second look at S.B. 1047, the racial profiling bill. A copy of the bill was included in the legislative update materials mailed to each court and was provided at both TMCEC Legislative Update seminars. Buried in Section 6 of the bill are amendments to Section 543.202, Transportation Code, the section detailing the requirements of the 30-day traffic conviction report to DPS. Along with the eight items previously required in that report, the court must now also report the race or ethnicity of each defendant (Caucasian, African-American, Hispanic, Asian, Native American, etc.), as well as whether there was a search and if the search was by consent. Obviously, it would be advantageous to have this information available on the citation. The effective date of this provision is less than clear. On a practical basis, courts need to be prepared to provide the information when the DPS is ready to receive it and designate the form of the report. It is my understanding that they have not yet addressed the issue.

TECH CORNER

Jo Dale Pavia

An Introduction to Court Technology

By Jo Dale Pavia
Program Coordinator
Texas Municipal Courts Education Center

All technologies are developed with the intent of saving the user time, making processes more expedient and in the long run, making things easier for the user. Court technology is no different. The courts can use technology not only to benefit the processes of the court, but more importantly to benefit those who access the courts, be it defendants, jurors or citizens. The old way no longer has to be the standard way of administering a court. Most of the technologies discussed in this article you may be using at home already; they are just used in a different way to benefit the courts.

Where does the funding come from for technology in the court? Article 102.0172, C.C.P. Court Costs; municipal court technology fund, states "the governing body of a municipality by ordinance may create a municipal court technology fund and may require a defendant convicted of a misdemeanor offense in a municipal court or municipal court of record to pay a technology fee not to exceed $4 as a cost of court." The article states in subsection (d) that the fund "may be used only to finance the purchase of technological enhancements for a municipal court." The article does list items such as computer systems, computer software, and imaging systems, but because the article states "including," which The Code Construction Act, Chapter 311, G.C., states is a term of enlargement and not of limitation, any technological enhancement may be purchased with the fund. Also, grant funds are often available for technological improvements for the courts and city government in general.

E-MAIL

E-mail, or electronic mail, is a small, fast way to send information from one person to another. E-mail can carry not only the original thoughts, but also attachments of documents, pictures, sound bytes, and other types of media that may assist in explaining that original thought. Two types of e-mail accounts can be used: internal for e-mail within the court or city and between court employees and external, or Internet e-mail, sent from or to a person outside the court. Internal e-mail requires only a Local Area Network server that links all the computers. In order to access external e-mail, a court needs an Internet Service Provider, ISP, which provides a connection and e-mail accounts. Free external e-mail accounts are available through internet sites, such as www.hotmail.com (MSN) or www.yahoo.com, if a connection can be made to the Internet (*i.e.*, libraries', schools', or friends' computers).

Internet e-mail can also be used as a learning tool, for instance, Listservs, Internet mailing lists, provide a means for court employees to share ideas and discuss problems through e-mail. TMCEC is in the developmental stages of a Judges Listserv. The Honorable Sharon Hatten, Judge, Midland Municipal Court conveys the importance of e-mail in her court by stating, "e-mail reduces the need to play phone tag and fosters communication by allowing an idea to be conceived, articulated and communicated in a matter of seconds."

ONLINE CHATTING

E-mail is undoubtedly faster than snail mail, Fed Ex, UPS, or even faxing, but there is an even faster way of communicating ideas, online chatting. Online chatting allows instantaneous written transfer of a message from you to the receiver. By setting up a list of contacts, the software that you use will alert you if a person is on-line and instantly display your message to them or vice versa. Many Internet Service Providers offer online chatting software bundled with their e-mail, AOL Instant Messenger, for example. Many of the search engines also offer free Online chatting software, MSN Messenger Service (www.msn.com), for example only requires that you register a username and password with www.msn.com, all for free. Online chatting allows judges to contact staff members while on the bench without ever interrupting court proceedings.

WEBSITE

Websites can be a benefit to the courts both by the court having a website and by the court utilizing the information on websites. Many courts have websites available as a tool for their communities. Courts may list their daily dockets, state contact information, hours of operation, juror information, or even allow defendants to make payments on-line. The Court Technology article in the December issue

of *The Recorder* will discuss websites: the pros and cons, information to post and not to post, so stay tuned!

Websites can also be a great source of information for courts. Legal research, for example, can be more timely and efficient when using www.lexis.com or www.westlaw.com, both "pay for" legal research services. Sites such as www.findlaw.com offer free case law searches, both national and state. Texas statutes are also easy to find on www.capitol.state.tx.us. Attorney General Opinions can be accessed through www.oag.state.tx.us. Court employees can see innovative programs that other courts are implementing when information is posted on that court's website. The World Wide Web is full of information waiting to be disseminated, if only the reader has the time to search for it.

VIDEO CONFERENCING

Videoconferencing refers to a wide range of situations from live video lecturing to large audiences, to a one-on-one desktop PC chats. Videoconferencing can be categorized by large and small scale. Large scale videoconferencing typically refers to interactive television where a studio is involved. Small scale videoconferencing, more commonly the type of videoconferencing used by magistrates, refers to compressed video for meetings between relatively few points for small meetings.

Videoconferencing in courts provides the ability for remote participants to be involved in magistrate procedures through the use of video cameras and monitors, allowing both sides to see and hear each other. Videoconferencing offers a practical alternative to the risk associated with the transport of unruly jailed defendants. The Houston Municipal Court magistrates have made use of videoconferencing technology by doing video arraignments. With two jails in the City of Houston, video arraignment allows the judges to stay in one location, but arraign defendants at both jails. Unfortunately, their system was damaged by the floods earlier this year and is presently down. The court intends for the system to be functional again in February 2002.

E-FILING

E-filing, electronic filing, allows court employees, judges, the public, or attorneys to access, print, file, or change electronic documents from a computer. An electronic filing system can easily be integrated into a case management system, if the court is presently using one. An integrated system allows for your present case management software to capture indexing information, automatically entering that information into the system, moving part of the data input burden outside of the court, eliminating much of the data entry previously used. Attorneys could be able to access their cases via the Internet using a password and ID. Other benefits of e-filing include, 24-hour, seven days a week access to court files for filing, viewing, and printing of documents, reduction in the volume of paper handled by the court, and a reduction in internal data entry errors. Presently, e-filing is being used in several county courts in Texas, but it remains a technological advance for the future of municipal courts.

These are just a few of the technologies available for courts to utilize. Technology can be used to improve the processes of court, whether it be to make the court more accessible to the public, or to process more cases in a shorter amount of time. Over the next year many of these technologies and others will be covered more in depth in the Tech Corner of *The Recorder*.

References:

"High Tech Times: Using computer technology can improve the judicial process in your court." Judge K. Michael Mays 410th District Court Montgomery County, *In Chambers*, Summer 2001, pg 6-9.

"Reflections on Technology in the Courts." *Court Technology Bulletin*, Vol 10 No 1, January/February 1998.

Clerk Study Guide Level II, Chapter 10 - Court Technology, TMCEC

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Fourth Amendment? (Did the patient undergoing diagnostic tests have a reasonable expectation that the results of those tests would not be disclosed to non-medical third parties?)

Ferguson v. City of Charleston, S.C., 121 S.Ct. 1281 (2001)

Yes. A state hospital's performance of a diagnostic test to obtain evidence of a patient's criminal conduct for law enforcement purposes is an unreasonable search if the patient has not consented to the procedure. The interest in using the threat of criminal sanctions to deter pregnant women from using cocaine cannot justify a departure from the general rule that an official nonconsensual search is unconstitutional if not authorized by a valid warrant.

D. Does the Fourth Amendment forbid a warrantless arrest for a minor criminal offense, such as a misdemeanor seatbelt violation punishable only by a fine?

Atwater v. City of Lago Vista, 121 S.Ct. 1536 (2001)

No. Atwater's arrest satisfied constitutional requirements. It is undisputed that Officer Turek had probable cause to believe that Atwater committed a crime in his presence.

Texas law makes it a misdemeanor, punishable only by a fine, either for a front-seat passenger in a car equipped with safety belts not to wear one or for the driver to fail to secure any small child riding in front. The warrantless arrest of anyone violating these provisions is expressly authorized by statute, but the police may issue citations in lieu of arrest. Because Atwater admits that neither she nor her children were wearing seat belts, Turek was authorized (though not required) to make a custodial arrest without balancing costs and benefits or determining whether Atwater's arrest was in some sense necessary. Nor was the arrest made in an extraordinary manner, unusually harmful to her privacy or physical interests. Whether a search or seizure is "extraordinary" turns, above all else, on the manner in which it is executed. Atwater's arrest and subsequent booking, though surely humiliating, were no more harmful to her interests than the normal custodial arrest.

E. May a Fourth Amendment challenge be made to an arrest based on the actual motivations of the peace officers?

Arkansas v. Sullivan, 121 S.Ct. 1876 (2001)

No. Any improper subjective motivation of police officer for stopping defendant's vehicle did not render arrest violative of Fourth Amendment. The Arkansas Supreme Court could not inquire into arresting officer's subjective motivation on theory that it could interpret United States Constitution more broadly than United States Supreme Court.

F. Does the warrantless use of a thermal imaging device to detect heat sources within a home constitute an unreasonable search and seizure under the Fourth Amendment?

Kyllo v. United States, 121 S.Ct. 2038 (2001)

Yes. Where, as here, the Government uses a device that is not in general public use, to explore details of a private home that would previously have been unknowable without physical intrusion, the surveillance is a Fourth Amendment "search," and is presumptively unreasonable without a warrant.

II. Fifth Circuit Court of Appeals

A. Is a warrant necessary when a municipality seizes property that has been declared a nuisance by means of established police power procedures?

Freeman v. City of Dallas, *242 F.3d 642 (5th Cir. 2001)*

No. The city's seizure of apartment buildings, through condemning them and demolishing them as "urban nuisances" based upon findings and order of panel of city's Urban Rehabilitation Standards Board (URSB), was not rendered per se unreasonable by city's failure to obtain warrant to enforce demolition order; building owners availed themselves of hearings that resulted in seizure decision, there remained possibility of state court review after hearings, and URSB could not operate with unbridled discretion.

B. Is a municipal ordinance prohibiting tow trucks from removing disabled vehicles from public streets without being directed to do so by city preempted under federal law?

Stucky v. City of San Antonio, 260 F.3d 424 (5th Cir. 2001)

Yes. The Court held that the ordinances involving consent towing could not escape federal preemption under the safety exemption of Section 14501(c)(2)(A) of the Interstate Commerce Commission Termination Act (ICCTA). The plain reading of the statute, supported by its legislative history, demonstrates Congress' clear and manifest intent not to include political subdivisions of the state within that exemption. This case involved the tow truck operations of a local towing company and contractual relationship with the City of San Antonio. In 1963, the San Antonio City Council passed Ordinance No. 31977, which prohibited tow trucks from removing disabled vehicles from public streets and ways without being directed to do so by the Chief of Police or his authorized representative. The ordinance was enacted to combat the acknowledged practice of tow truck operators monitoring police radios for reports of accidents and then racing to the scene of those accidents to obtain the business of towing the wrecked vehicles. The "lively competition" of the rival tow truck operators interfered with accident investigations and the provision of emergency care required at the scene. While the Court appeared to view the ordinance as being proper in the context of abandoned and other nonconsensual tows, it was outside the realm of the safety exception and thus preempted by the ICCTA as it related to consensual towing by vehicle owners.

III. Texas Court of Criminal Appeals

A. Does an officer exceed the scope of a search warrant where the defendant lives within a private residence within a larger building?

Amir v. State, 45 S.W.3d 88 (Tex. Crim. App. 2001)

No. The search of the defendant's claimed on-site residence did not exceed scope of warrant authorizing search of an apparel store for evidence including records pertaining to counterfeit merchandise, though defendant had placed numbers "5625" on door to living quarters and

warrant used a 5627 address to refer to premises to be searched. The claimed residence was connected by unlocked door to the 5627 address and was not connected to the 5625 address located in the other half of the building. Business records for store were found there, and the defendant gave 5627 as his address on his driver's license application.

B. Must a variance between the crime alleged and the evidence presented at trial be material in order for it to legally suffice as a fatal error upon appellate review?

Gollihar v. State, 46 S.W.3d 243 (Tex. Crim. App. 2001)

Yes. The appellant was charged with and convicted of stealing a go-cart, valued at less than $1,500.00. On appeal, appellant claimed the evidence was insufficient to support his conviction because the charging instrument and the jury charge alleged the model number of the stolen cart to be 136202, but the evidence at trial showed the model number to be 136203. The Court of Appeals agreed and ordered an acquittal. The Court of Criminal Appeals held that the Court of Appeals erred in holding the evidence insufficient. The court concluded that the variance between model number of go-cart alleged in indictment and model number actually proved was not material in prosecution for stealing that go-cart, and therefore that variance would be disregarded in a sufficiency of evidence review under a hypothetically correct jury charge.

Significance: For quite some time, leading legal commentators have contemplated the logic and continuing need for the surplusage doctrine. Practitioners long confounded by the intricacies and relationship between the fatal variance doctrine and surplusage law should take comfort (you are not alone). In this case, the Court acknowledges past inconsistent application of the fatal variance doctrine and explains that such discrepancies may have occasionally been due to surplusage doctrine and its exception. This opinion attempts to make case law consistent. In the process, it also raises some interesting questions involving the scope and application of the principles underlying the Court's decision in *Malik v. State*, 953 S.W.234 (Tex. Crim. App. 1997).

C. What standard of review is used in reviewing a lower courts ruling to suppress evidence?

State v. Ross, 32 S.W.3d 853 (Tex. Crim. App. 2000)

Defendant was arrested for public intoxication. Defense counsel moved to suppress all evidence on the basis that the arrest was made without probable cause. The trial court agreed and entered an order suppressing all evidence surrounding the arrest. The court was not asked to prepare a statement of facts. The State appealed. The Houston Court of Appeals affirmed. The Court of Criminal Appeals held that: (1) ''almost total deference" was proper standard of review, and (2) it was within trial court's discretion to grant motion to suppress, though state's uncontroverted evidence from arresting officer, if believed, established that initial investigative detention of defendant was justified and that officer had probable cause to arrest. Notably, three members of the Court in a concurring opinion stated that the failure to request findings of fact barred the appellate courts from reversing a ruling that could be reasonably based on adverse findings of fact.

D. Does the Education Code's "anti-hazing" statute violate the right against self-incrimination?

State v. Boyd, 38 S.W.3d 155 (Tex. Crim. App. 2001)

Defendants who were charged with failure to report a hazing incident at a state university moved to dismiss the indictment on the basis that the offense violated the defendant's right against self-incrimination. The trial court granted motion. The State appealed. The Houston Court of Appeals affirmed. In a unanimous decision the Court of Criminal Appeals held that anti-hazing statute did not violate the privilege against self-incrimination in light of the defendants' statutory immunity that might otherwise be incurred or imposed as a result of the report. The case was reversed and remanded.

E. Who can appeal on behalf of the State of Texas before the Court of Criminal Appeals?

Ex Parte Taylor, 36 S.W.3d 883 (Tex. Crim. App. 2001)

In a *per curiam* opinion (4-3 with two judges not participating), the Court held that controlling statutes authorize only one petition for discretionary review (PDR) to be filed by the State and that a PDR filed by the State Prosecuting Attorney is the petition for the State. Consequently, petitions for discretionary review from other prosecutors, including district or county attorneys, can only be received as amicus curiae briefs.

Significance: *Taylor*, along with recent cases such as *Aguirre v. State*, 22 S.W.3d 463 (Tex. Crim. App. 1999) (role of city attorneys in criminal appellate review before the Court of Criminal Appeals) and *Saldano v. State* (argued on February 28, 2001, addressing role of State Attorney General in criminal appellate review before the U.S. Supreme Court), highlight that the matter of who is entitled to represent the State of Texas for criminal appellate purposes is not as clear-cut as academics and practitioners once believed.

F. Must a peace officer have either probable cause or reasonable suspicion to inspect a vessel as authorized under the Parks and Wildlife Code?

State v. Schenekel, 30 S.W.3d 412 (Tex. Crim. App. 2000)

Neither probable cause nor reasonable suspicion is required. Section 31.124 of the Parks and Wildlife Code, allows an enforcement officer to stop and board a boat without probable cause or reasonable suspicion in order to perform a water safety check is valid under the Fourth Amendment. The State's interest in promoting recreational water safety, which can only realistically be promoted through random water safety checks, is strong. In comparison, the stop that involved a brief inspection, constituted a minimal intrusion.

G. Does a child looking out the back window of a truck create reasonable suspicion that the child is not wearing a seat belt?

Garcia v. State, 43 S.W.3d 527 (Tex. Crim. App. 2001)

The evidence is insufficient to establish reasonable suspicion for the stop based upon a child's failure to wear a seat belt, where the record shows only that the child "looked back" several times.

H. Subsequent to refusing to give a breath sample, does a defendant's failure to pay a driver's license reinstatement fee extend a statutorily mandated 90-day suspension period and thus arrest for DWLS?

Allen v. State, 48 S.W.3d 775 (Tex. Crim. App. 2001)

No. The 90-day suspension period for refusing to give breath specimen was not extended by driver's failure to pay statutorily required license reinstatement fee, and thus, such nonpayment did not warrant conviction for driving while license suspended (DWLS) after 90-day period expired; statute prescribed definite period of suspension (90 days), rather than continuing period of license suspension. When construing Transportation Code sections 724.035 and 724.046, courts are required to give weight to the interpretation given by the agency charged with enforcing the statute as long as that interpretation follows legislative intent.

IV. Texas Court of Appeals

A. Magistrate Functions

1. Warrants

- **If a magistrate issues a search warrant over materials that are subsequently the subject of a civil suit in district court, who has dominate jurisdiction of the property?**

In re Cornyn, 27 S.W.3d 327 (Tex. App [Houston – 1st Dist.] 2000)

A magistrate which issues a search warrants as part of criminal investigation has dominant jurisdiction over disposition of property seized during the execution of warrants under Chapter 18 of the Code of Criminal Procedure. The court held that the seizure of the property under warrant was a "suit" before the magistrate who first exercised judicial power over the property and that its disposition was subject to provisions of Article 18.12, C.C.P.

- **Is there a recent case that does a good job of summarizing the body of law of pertaining to the magistrate's duty to assess the sufficiency of the affidavit in support of an application for a search warrant?**

Why, yes there is!

Davis v. State, 27 S.W.3d 664 (Tex. App. Waco – 2000)

- **May a magistrate draw reasonable inferences from an affidavit for a search warrant in determining if content information is stale?**

Burke v. State, 27 S.W.3d 651 (Tex. App. Waco – 2000)

A magistrate issuing a search warrant is entitled to draw reasonable inferences from facts stated in an affidavit and the reviewing court is required to accord those inferences great deference. If a magistrate has a substantial basis for concluding that a search would uncover evidence of wrongdoing, the Fourth Amendment requires no more and the reviewing court should find the affidavit sufficient. In this particular case, the court concluded that the magistrate could have reasonably inferred from the police investigator's affidavit that the defendant had recent child pornography on his computer, so as to support issuance of warrant to search defendant's home despite the defendant's subsequent contention that facts alleged were stale.

- **Was the statement in the search warrant affidavit too general to support issuance of search warrant for the defendant's residence?**

Robuck v. State, 40 S.W.3d 650 (Tex. App. San Antonio – 2001)

Yes. The statement in the search warrant affidavit for the residence of addressee of express mail package (containing marijuana that quantities of currency and other evidence documents would be constantly maintained at addressee's residence given his long term involvement in drug trade) was too general to support issuance of search warrant for addressee's residence.

In conducting a de novo review of the trial court's ruling

on a motion to suppress based on improper issuance of a search warrant, the Court of Appeals does not determine the substantive issue that was before the magistrate de novo; instead, giving great deference to the magistrate's decision to issue the warrant, the Court determines whether, considering the totality of the circumstances, the magistrate had a substantial basis for concluding probable cause existed.

In a companion case, *Bradford v. State*, 40 S.W.3d 655 (Tex. App. San Antonio – 2001), the Court held that the affidavit supporting the magistrate's issuance of first search warrant for the delivery service box was valid, it did not provide the basis for a second search warrant for the residence.

- **Which party has the burden and what is required to challenging the legal authority of a judge to issue a search warrant for "mere evidence?"**

Zarychta v. State, 44 S.W.3d 155 (Tex. App [Houston – 1^{4th} Dist.] 2001)

When a defendant seeks to suppress evidence on the basis of an unlawful search or seizure, the burden of proof is initially on the defendant. Here, appellant voiced an objection that the judge's authority to sign warrant for "mere evidence" had not been established by the State. However, a naked objection such as the one advanced here does nothing to rebut the presumption of regularity. Without some evidence showing a judge's disqualification or lack of proper assignment, the State may rest on the presumption that the judge acted within his authority when he issued the warrant. Thus, some evidence showing the disqualification or want of a proper assignment must be tendered to rebut the presumption that the judge acted in the regular discharge of his duties.

Note: A petition for discretionary review with Court of Criminal Appeals filed on July 11, 2001.

2. What Constitutes "Reasonable Bail" under Article 17.15, C.C.P.?

In re Hulin, 31 S.W.3d 754 (Tex. App [Houston – 1st Dist.] 2000)

Pretrial bail of $150,000 for defendant charged with criminal solicitation of a minor, and sexual assault of him, was reasonable; evidence showed that defendant was a 31-year-old married woman who pursued and accomplished the repeated sexual molestation of a 15-year old boy, defendant's deceitfulness and the future safety of the victim were factors that weighed heavily against reducing bail, and setting high bail could not be said to be an instrument of oppression, as both defendant and victim were mentally instable. There is no precise standard for reviewing bail bond settings on appeal. It is the defendant's burden to show that bail is excessive. The primary factors to be considered in determining what constitutes reasonable bail are the punishment that can be imposed and the nature of the offense; other circumstances and factors to be considered in determining the amount of bail include: family ties, residency, ability to make bond, aggravating factors involved in the offense, the defendant's work history, prior criminal record, and previous outstanding bonds. The ability to make bail does not alone control the amount of the bail. The future safety of a victim and of the community shall be considered in determining what constitutes reasonable bail.

Ex parte Parker, 26 S.W.3d 711 (Tex. App. Waco – 2000)

It is not an abuse of discretion for a trial court to refuse to reduce defendant's bail to $15,000 as he requested, and in reducing bail from $75,000 to $50,000, even though defendant claimed he could not afford bail as reduced, given nature of offense charged, possible consequences of conviction, and defendant's history of leaving the state and avoiding contact with investigators. The defendant was charged with aggravated sexual assault of child under 14 years of age. The alleged victim was 13 years old, while the defendant was 19 years old. The defendant fled the state when he became aware of allegations against him and after he agreed to take polygraph examination. The defendant's mother declined to help investigators locate defendant. The defendant was known to have family and job prospects in another state. Additionally, he had charges pending against him in a third state.

3. What are the Consequences of Failing to Provide Prompt Notice that a Juvenile is in Custody?

Tuy Pham v. State, 36 S.W.3d 199 (Tex. App [Houston – 1st Dist.] 2001)

Defendant, a juvenile, was certified to stand trial as adult for murder stemming from a drive by shooting. Defendant appealed. The court held that: (1) notice from homicide officers at juvenile holding facility to juvenile's sister after almost six hours in custody, violated Section 52.02(b) of the Family Code requiring that the person taking the juvenile into custody give prompt notice to the juvenile's parents; (2) as a consequence, the confession, given two hours after the juveniles arrest was rendered inadmissible; and (3) improper admission of that confession was reversible error.

B. Reasonable Suspicion, Investigatory and Traffic Stops

- **Does failure to maintain a single lane of traffic, by itself, constitute reasonable suspicion justifying a**

traffic stop?

State v. Cerny, 28 S.W.3d 796 (Tex. App. Texarkana – 2000)

Unless able to prove all the elements of the suspected offense, an officer may not arrest a suspect without a warrant for an offense he reasonably suspects has occurred in his presence. In the instant case, the testimony establishes that the appellee was weaving somewhat within his lane of traffic. However, there is no evidence that his actions were unsafe. Accordingly, the court concluded the evidence does not support a finding that the officer had a reasonable belief that appellee violated Section 545.060 of the Transportation Code (requiring operators to drive within a single lane and not to move from the lane unless that movement can be made safely) Because the officer did not articulate any other justification for stopping the appellee there were insufficient facts to support a reasonable suspicion to detain appellee. The detention and warrantless arrest were therefore illegal.

- **When the record reflects a division between officer testimony and the trial court's observation of videotape footage, is it an abuse of discretion for the trial court to find no reasonable suspicion to stop the defendant's vehicle?**

State v. Wallett, 31 S.W.3d 239 (Tex. App. Amarillo – 2000)

While the decision of the court to grant the defendant's motion to suppress fell within the zone of reasonable disagreement, it was not an instance of abused discretion. Evidence supported the trial court's finding that officer did not have reasonable suspicion to stop defendant's vehicle for failure to drive in a single lane. Although the officer testified that he saw the vehicle weave, "jerk," and cross into turn lane, the videotape made by the officer depicted no jerking motion, multiple instances of weaving, or clear showing of the vehicle actually crossing over the center stripe.

- **Does the failure of a motorcycle operation to wear a helmet constitute reasonable suspicion to make a traffic stop?**

Burkhalter v. State, 38 S.W.3d 177 (Tex. App. Texarkana – 2001)

Appellant contended that the officer was not justified in making the stop because an officer cannot stop a motorcycle operator for failing to wear a helmet. However, Section 661.003, Transportation Code makes it an offense to operate a motorcycle on a public street or highway without protective headgear. The statute provides an exception for persons who (1) are at least twenty-one years old, and (2) have successfully completed a motorcycle operator training and safety course, or (3) are covered by a health insurance plan providing at least $10,000.00 in medical benefits for injuries incurred in an accident while operating a motorcycle. Such persons may apply for a sticker, which the Department of Public Safety must issue on proper application and evidence of compliance. A person displaying such a sticker is presumed to have successfully completed the motorcycle operator training and safety course or to have the required insurance coverage. The suppression hearing evidence shows that appellant did not have such a sticker.

- **Did the trial judge improperly take judicial notice in determining that radar was a valid basis of an investigatory stop?**

Icke v. State, 36 S.W.3d 913 (Tex. App [Houston – 1st Dist.] 2001)

Police officer had reasonable suspicion justifying stop of defendant, based on officer's observation of excessive speed, confirmed by radar. Although the question whether the trial judge could properly take judicial notice of the scientific reliability of the radar was deemed "interesting," the court did not reach it because it conclude that the officer had reasonable suspicion to stop appellant, making the ensuing warrantless arrest legal.

Note: in its analysis the *Icke* court noted that the El Paso Court of Appeals has concluded that "although radar is a familiar concept, it is based on a scientific theory and therefore subject to proof of reliability and relevance under *Kelly*." *Ochoa v. State,* 994 S.W.2d 283, 284 (Tex. App. – El Paso 1999, no pet.)."

- **Does the State have a burden to show at least reasonable suspicion that defendant was about to commit an offense to justify a traffic stop? (Does the *Terry* doctrine apply to traffic stops?)**

Richardson v. State, 39 S.W.3d 634 (Tex. App. Amarillo – 2001)

Yes. The Court held that the State had the burden to show at least reasonable suspicion that defendant had or was about to commit offense to justify traffic stop, and that officer did not have reasonable suspicion to believe that the defendant was either impeding traffic or driving while intoxicated. The *Terry* rule, which requires that a stop of a person be justified by reasonable suspicion that the person had or will soon be engaged in criminal activity, is applicable to traffic stops. Under the *Terry* doctrine, traffic stops and investigations must be

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Rules and Deadlines Created for Language Certified Court Interpreters

One of the most alarming new laws from the 77th Legislature was HB 2735 creating Chapter 57 of the Government Code, a comprehensive licensing and certification program for court interpreters. The act created two different licensing schemes: one for language interpreters and one for the deaf and hard of hearing. New administrative rules and certification deadlines under the language interpreter scheme have recently been created by the Texas Department of Licensing and Regulation.

The new Chapter 57, Government Code, requires certified and licensed court interpreters in courts located in counties with populations of at least 50,000. On page 20 of this newsletter is a list of all Texas counties identifying which counties have a population of at least 50,000. It is important to note that even the smaller counties must have interpreters that are qualified under the Texas Rules of Evidence.

Section 5 of HB 2735 made special provisions for interpreters who had or were already serving in courts. They are subject to registration, but not to examination. The act also created a board with administrative rule making authority for implementation of the registration, certification and testing schemes. The new administative rules begin on this page. Most notable is Rule 80.24, Administrative Rules of the Texas Department of Licensing and Regulation, which became effective October 18, 2001. That rule set a deadline of December 31, 2001 for any presently qualified and working court interpreter to submit an application and avoid examination. A copy of the application and an application checklist created by the Texas Department of Licensing and Regulation is also included. **TMCEC recommends that municipal courts in these counties consider applying for a waiver prior to January 1, 2002 for interpreters currently serving in their courts.**

The timely application must be accompanied by acceptable proof of the qualifications of the applicant. Several different avenues of proof are available, **including any one** of the following:

1. a written reference from an officer of a court, including administrative hearing proceedings, stating that the applicant has acted as a court interpreter in that court, and that the applicant has demonstrated proficiency interpreting in a specific language;

2. the results of an examination passed within the two years preceding the filing of the application; and

3. any other proof the Executive Director may deem appropriate.

The first option would include letters from a judge or administrator of a municipal court. The letter should identify the interpreter applicant, state that the applicant has previously served as a court interpreter, and that the applicant has demonstrated proficiency in the languages identified.

Previously qualified interpreters are still subject to a $200 application fee, a $100 renewal fee each year, and $50 change of information fee. Failure to make the end of the year deadline will cause interpreters to be subject to examinations and examination fees.

Licensed Court Interpreter Rules

Last revision October 26, 2001

Administrative Rules of the Texas Department of Licensing and Regulation 16 Texas Administrative Code, Chapter 80 (effective date - October 18, 2001)

Table of Contents

80.1. Authority. (Effective October 18th, 2001, 26 Tex Reg 8065)
These rules are promulgated under the authority of Title 2, Texas Government Code, Chapter 57, and Title 2, Texas Occupations Code, Chapter 51.

80.10. Definitions. (Effective October 18th, 2001, 26 Tex Reg 8065)
The following words and terms, when used in this chapter,

have the following meanings, unless the context clearly indicates otherwise.
1) Commissioner—As used in Title 2, Texas Government Code, Chapter 57, and in these rules, has the same meaning as Executive Director.
2) Dishonorable—Lacking in integrity, indicating an intent to deceive or take unfair advantage of another person, or bringing disrepute to the profession of court interpretation.
3) Executive Director—As used in Title 2, Texas Government Code, Chapter 57, and in these rules, has the same meaning as Commissioner.
4) Unethical—Conduct that does not conform to generally accepted standards of conduct for professional court interpreters.

80.20. Licensing Requirements - General. (Effective October 18th, 2001, 26 Tex Reg 8065)
a) Prior to performing court interpretation services, a person first must obtain a court interpreter license from the Department with a language endorsement for each language that the applicant will interpret.
b) A person seeking to be licensed as a court interpreter must file an application with the Department using Department forms for this purpose and must pay a non-refundable license application filing fee at the time the application is filed with the Department.

80.22. License Requirements - Examination. (Effective October 18th, 2001, 26 Tex Reg 8065)
Except as provided by §80.24 (relating to Licensing Requirements-Waiver of Examination Requirement), each applicant must pass all parts of a Department approved language examination before the applicant will be licensed as a court interpreter for that language.

80.24. License Requirements - Waiver of Examination Requirement. Effective October 18th, 2001, 26 Tex Reg 8065)
a) Upon acceptable proof of an applicant's qualifications, the Executive Director may waive the examination requirement of §80.22 of this title (relating to Licensing Requirements – Examination), if the application is submitted prior to January 1, 2002.
b) Acceptable proof of an applicant's qualifications may include any or all of the following:
1) a written reference from an officer of a court, including administrative hearing proceedings, stating that the applicant has acted as a court interpreter in that court, and that the applicant has demonstrated proficiency interpreting in a specific language;
2) the results of an examination passed within the two years preceding the filing of the application; and
3) any other proof the Executive Director may deem appropriate.

80.70. Responsibilities of Licensee - General. (Effective October 18th, 2001, 26 Tex Reg 8065)
a) A licensee must provide the following written notification to the court: "Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599." The notification shall also be included on all contracts and invoices for court interpreter services.
b) A licensee shall present their court interpreter license upon the request of a court or an officer of the court.
c) A licensee shall notify the Department, in writing, within thirty (30) days of any change in the licensee's name, address, or telephone number.

80.80. Fees. (Effective October 18th, 2001, 26 Tex Reg 8065)
a) All fees are non-refundable.
b) The original license application filing fee shall be $200.
c) The renewal application filing fee shall be $100.
d) The fee for obtaining a duplicate license, making a change in name or address, or obtaining an additional language endorsement shall be $50 each.
e) Each language examination shall have a separate fee of $60 for the written examination and $40 for the oral examination.

80.90. Sanctions - Administrative Sanctions/Penalties. (Effective October 18th, 2001, 26 Tex Reg 8065)
If a person violates any provision of Title 2, Texas Government Code, Chapter 57, any provision of 16 Texas Administrative Code, Chapter 80, or any provision of an order of the Executive Director or Commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Title 2, Texas Occupations Code, Chapter 51, or 16 Texas Administrative Code, Chapter 60 (relating to the Texas Department of Licensing and Regulation).

TDLR WEB SITE:

http://www.license.state.tx.us/default.htm

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reasonably related in scope to justify their initiation. If a traffic stop was illegal, then evidence obtained as a result of that stop must be excluded.

- **May a peace officer develop inherently reliable reasonable suspicion necessary to warrant an investigative stop based solely on the report of a taxi cab driver that observes a defendant driving in an unsafe manner?**

Fudge v. State, 42 S.W.3d 226 (Tex. App Austin – 2001)

Yes. The cab driver, which gave the officer unsolicited information in a face-to-face manner that he believed defendant was drunk and could not stay on the road, was inherently reliable. Thus, the officer had reasonable suspicion necessary to warrant an investigative stop of defendant, where information given by the cab driver was neither imprecise about the time of the criminal activity nor vague about the kind of criminal activity, even though the officer may not have known whether the area was a site of previous criminal activity.

In a notable dissent, Justice Patterson observed that he did not believe that the law provides that a person unknown to a police officer, who offers an unsolicited, uncorroborated "tip" in a face-to-face encounter is, without more, inherently reliable. In his opinion, the officer had only the quantum of information to *initiate* an investigation. The information the officer had at the time he stopped the appellee did not rise to the constitutionally necessary level of reasonable suspicion. Thus, Patterson would have held that there was an insufficient basis for a valid traffic stop.

- **Does a driver's failure to signal his turn at a yield sign justify a traffic stop?**

State v. Zeno, 44 S.W.3d 709 (Tex. App Beaumont – 2001)

Police officers had reasonable suspicion to stop defendant's vehicle on access road, regardless of whether the defendant signaled when he exited interstate highway, where after exiting highway defendant approached a yield sign which required him to make a 90-degree turn, and defendant failed to signal at yield sign when he turned.

C. Police Conduct

- **In the context of an automobile search, can a Spanish-speaking defendant freely give consent to a peace officer that does not speak Spanish proficiently?**

Mendoza v. State, 30 S.W.3d 528 (Tex. App. San Antonio – 2000)

The defendant freely and voluntarily consented to search of truck. The officer's belief that he had permission to search truck was objectively reasonable, even though officer's use of Spanish was somewhat broken and defendant claimed officer used a word that sounded similar to Spanish word for search, rather than actual word for search, where officer asked defendant in Spanish if he owned vehicle, defendant answered affirmatively, officer then sought consent to search vehicle, and defendant again answered affirmatively.

- **Did the undercover officer have consent to enter fraternity house without a warrant to investigate underage drinking?**

Lofgren v. State, 47 S.W.3d 167 (Tex. App. Austin – 2001)

Yes. The undercover officer disguised as a college student at Southwestern University in Georgetown was entitled to enter the Kappa Sigma fraternity house without a warrant to investigate information of underage drinking, and summon officers upon reasoning that underage drinking was taking place, where persons at the door of the house consented to officer's entry, absent showing that their consent was involuntary, or that officer saw and did anything inside the fraternity house that was not contemplated when he was invited to enter.

- **May an officer conducting a valid traffic stop outside his jurisdiction investigate any other offenses during the course of the initial stop?**

Bachick v. State, 30 S.W.3d 549 (Tex. App. Fort Worth – 2000)

A peace officer that conducts a valid traffic stop outside his jurisdiction after observing a traffic offense within his jurisdiction is authorized to extend the investigatory stop to investigate other offenses if he develops reasonable suspicion during the course of the initial stop. Article 14.03(d) of the Code of Criminal Procedure, requiring that a police officer making an arrest outside his or her jurisdiction notify law enforcement officials within the jurisdiction in which the arrest was made, is unrelated to the purpose of the exclusionary rule (Article 38.23, C.C.P). Accordingly, the arresting officer's failure to so inform law enforcement officials after his extra jurisdictional arrest did not require suppression of defendant's custodial statements to police.

D. Procedural Law

1. DUI License Suspension

Is an arrest for DUI required before Department of Public Safety may instigate a driver's license suspension?

Harris v. Texas Department of Public Safety, 33 S.W.3d 406 (Tex. App. Fort Worth – 2000)

No. The DPS was not required to prove that the motorist

had been arrested in order to suspend his driver's license for being a minor driving under the influence of alcohol. DPS only had to prove that the motorist had a detectable amount of alcohol in his system while operating a motor vehicle in a public place, that he was a minor, and that officer had a reasonable suspicion to stop or probable cause to arrest him. In this case, the Court of Appeals had jurisdiction under the Administrative Procedure Act (APA) to consider an appeal by the Department of Public Safety from a probate court ruling reversing an administrative license suspension.

2. Bond Forfeiture

- **In appealing a judgment nisi, if I.N.S. deports the defendant, must the surety still affirmatively show that the defendant's failure to appear for trial was through no fault of defendant?**

Reyes v. State, 31 S.W.3d 343 (Tex. App. Corpus Christ – 2000)

Yes. In such cases, the court must determine whether the defendant's deportation, which prevented him from appearing before the court, arose from no fault on his part. In this case, there was no evidence of why the I.N.S. took custody of defendant and why he was subsequently deported. Thus, the sureties have failed to make an adequate showing of no fault under Article 22.13(3), C.C.P. Because appellants did not establish that the defendant's failure to appear was due to an uncontrollable circumstance that arose from no fault on his part, the trial court did not err in refusing to exonerate appellants from liability under the bond.

- **Can parents, acting as a surety for their child complain for the first time on appeal about an alleged defect in the execution of the bond?**

Watson v. State, 32 S.W.3d 335 (Tex. App. San Antonio – 2000)

Parents executed bail bond as sureties for child. Following the child's failure to appear the court entered judgment nisi holding parents liable on bond. The parents appealed. The Court held that the parents, as sureties of bail bond for child, could not, for first time on appeal, complain about alleged defect in execution of bond, where they admitted they executed the bond to obtain peace of mind about the safety of their child and to make the child available to assist them in their daily needs.

3. Expunction

For the purposes of the article 55.01, C.C.P. (the Penal Code expunction statute), what constitutes a "final judgment?"

Travis County Attorney v. JSH, 37 S.W.3d 163 (Tex. App. – Austin 2001)

The court held that "final conviction," as used in article 55.01(a)(2)(B) of the Code of Criminal Procedure, requires that there have been an adjudication of guilt of the offense charged. Therefore, the admitted unadjudicated offenses considered by the trial courts in assessing appellants' punishments for adjudicated offenses in the proceedings conducted pursuant to Section 12.45 of the Penal Code may be expunged. In so holding, the court observed that "if it was not the intention of the legislature that unadjudicated offenses taken into account by a trial court in assessing punishment in section 12.45 proceedings be subject to expunction, it will be a simple matter for that body to amend article 55.01 of the Code of Criminal Procedure to so provide. The court overruled the State's issues and affirmed the judgments of the district courts.

4. Contempt

Is 24 hours an unreasonable time to detain a contemnor without the preparation of a commitment order?

In Re Butler, 45 S.W.3d 268 (Tex. App [Houston – 1st Dist.] 2001)

No. The court held that 24 hours was reasonable time to detain contemnor until commitment order was prepared and that the order holding father in contempt was specific.

E. Substantive Law
1. Ordinance Validity

Was the City of Houston's sexually oriented business ordinance requiring direct line of sight satisfied by the installation of video cameras?

Rosenblatt v. City of Houston, 31 S.W.3d 399 (Tex. App. Corpus Christ – 2000)

The Court held that a Houston ordinance requiring a direct line of sight from a manager's station into the arcades was not complied with by installing video cameras in the arcades. The court also held that *res judicata* barred consideration of claim that ordinance violated the First Amendment, that the applicant waived appellate review of adequacy of city's notice of permit denial; and a rehearing could be held after an initial hearing was conducted in which it was determined that permit denial was improper.

2. Breach of the Peace

Can a child be incited to breach the peace?

Ste-Marie v. State, 32 S.W.3d 446 (Tex. App [Houston 14th Dist] 2000)

Defendant's alleged utterance of profanity to 10-year-old child provided sufficient articulable facts upon which

officer could have formed reasonable belief that defendant engaged in disorderly conduct. Disorderly conduct statute applies to child victims as well as adult victims.

3. Homosexual Conduct

Does Section 21.06 of the Penal Code, prohibiting homosexual conduct, violate the equal protection clauses or the Texas Equal Rights Amendment?

Lawrence v. State, 41 S.W.3d 349 (Tex. App [Houston – 1st Dist.] 2001)

No. The statute making it a Class C misdemeanor for a person to engage in deviate sexual intercourse with another individual of the same sex did not punish persons on the basis of their sexual orientation in violation of equal protection clauses or Texas Equal Rights Amendment. The statute penalizes individuals who engage prohibited conduct without regard to gender of the offender.

Note: A petition for discretionary review was filed with the Court of Criminal Appeals on May 18, 2001. The Center shall keep you posted of further developments.

4. Lane Use Signs

Is Section 544.011 of the Transportation Code directing that the words "left lane for passing only" be used on a highway sign unconstitutionally vague?

Baker v. State, 50 S.W.3d 143 (Tex. App. – Eastland 2001)

No. The statute directing the words to be used on a "left lane for passing only" highway sign was not unconstitutionally vague, as people of ordinary intelligence would know from reading the sign that the left lane was for passing only. Such persons would not have to guess as to whether they were passing another vehicle and would know to move from the left lane if no longer passing a vehicle. It was obvious from the sign that if a person is not in the process of passing another vehicle, the person is not to be in the left lane.

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Municipal Bailiffs & Warrant Officers 12-Hour Seminar

Omni Hotel San Antonio 9821 Colonnade Blvd., San Antonio, TX 78230

Tentative Agenda

Tuesday, January 9, 2002

- Juvenile Issues
- Summons and Other Processes
- Warrant Service Field Techniques

TRACK A	*TRACK B*
Diversity Issues in Court Security (Part 1)	Collections from A – Z
Diversity Issues in Court Security (Part II)	Challenges & Pitfalls of Collections
Court Security Fund and Technology	Technology Tools: Cyber Assistance
Crowd Control	Warrant Round Ups and Amnesty Programs
	License Suspension as a Collection Tool

Wednesday, January 10, 2002

- How to Develop a Building Security Plan

TRACK A	*TRACK B*
Security Procedures	Credit Bureaus, Skip Tracing & People Finders

- Ethical Considerations & Collections

Bailiffs and warrant officers are essential resources for judges and clerks in maintaining courtroom security and assisting in fine collection and enforcement. In FY 2002, TMCEC is offering two 12 hour seminars for municipal bailiffs and warrant officers. The course s will be 12 hours in length and include segments on court security. This may allow for participants' travel to be paid for by local court security funds.

School Sites and Dates:

January 8-9, 2002 (T-W)	May 13-14, 2002 (M-T)
Omni San Antonio	Holiday Inn San Angelo
9821 Colonnade Blvd.	441 Rio Concho Drive
210/691-8888	915/658-2828

Due to the varied nature of the bailiff/warrant officer position, the two schools will vary in content. The January school will focus on higher volume courts' marshals and warrant officers. The May school will focus on smaller courts with less fine collection training and greater focus on bailiffs' duties and court security.

Courts may send more than one bailiff or warrant officer to each school if space permits. Priority will be given to bailiffs and warrant officers who work full-time for the municipal court. Grant funds will be used to provide all qualified participants with two nights lodging at the seminar hotel, two breakfasts, one lunch, and course materials. No lunch will be provided on the second day. The program will begin at 8:00 a.m. each day.

Attendance: The Board of Directors of the Texas Municipal Courts Association has adopted a policy requiring attendance and full participation during all hours of the seminar in order to receive credit. If you are unable to attend all sessions, you must reschedule. If you do not complete the seminar, you or your city will be billed $200 to $375 per program. The seminar will conclude promptly at 12:00 p.m.; **excuses to catch airport shuttles or taxis are not acceptable.** Please schedule a later flight.

TCLEOSE Credit: TMCEC is an approved TCLEOSE Training Provider and therefore will be awarding 12 hours of TCLEOSE credit to those participants successfully completing the 12 hours of training.

Viewpoint I

Taking the Stand: Testifying on Juvenile Magistration

By Judge Deanna Burnett
Carrollton Municipal Court

Of all the duties performed by municipal judges as a magistrate, the one most likely to require appearance in a higher court is the taking of a statement from a juvenile.

Dallas County procedures rarely involve a summons served by a constable. Most often, a prosecutor from the district attorney's office calls and asks that I be available (on call) for a certain date to testify in a case. I am most often a state's witness, called to prove-up the confession when a defendant's attorney is not willing to stipulate to the confession. This can be at a suppression hearing or in the trial itself.

- Many times the defendant's attorney has few, if any, questions, as long as I have adequately answered the prosecutor's questions. Other times cross-examination can be quite lengthy. Questions from the prosecutors are fairly routine. Some typical questions are:

  1) Were the warnings administered by you in a designated juvenile processing office? (You should bring to court with you the order from the juvenile judge in your county designating your area for taking statements as a juvenile processing office.)

  2) Was any peace officer or attorney representing the state present? (Remember, the law only allows an officer to be present in the event that you believe your safety is in jeopardy. Even then, the law prohibits the peace officer from carrying a firearm. You may be called upon to articulate specific facts on which you based the belief that your safety was in danger.)

  3) Were you fully convinced that the juvenile understood the nature and contents of the statement and that the juvenile knowingly, intelligently, and voluntarily waived his or her rights before making his or her statement?

- Generally, the goal of defense questioning is to get the statement ruled inadmissible or at least diminish its impact. Be prepared for some very specific questions regarding your procedure and what took place in the processing office. It is advisable to establish a basic routine procedure and follow it every time. If the juvenile asked questions, know what those questions were and how you answered them. Even if you have a good memory, make notes immediately following the procedure. Remember that the attorneys can view anything you use to refresh your memory prior to testimony. Some typical defense attorney questions I have encountered are:

  1) How do you know my client understood his or her rights?

  2) Did you just read the warnings or did you provide additional information? If so, what was that additional information?

  3) Did my client ask any questions? If so, what was your response?

- It is most important when acting as a magistrate that you at all times remain neutral. You must not encourage nor discourage the juvenile in any way. This is not always easy.

- In my opinion, the most difficult questions have to do with the requirement that we be "fully convinced" that the juvenile understood the nature and contents of the statement and that he or she knowingly, intelligently, and voluntarily waived his or her rights before making his or her statement. Encouraging the juvenile to ask questions is important. I also believe it is important to stop and ask the juvenile, "Do you understand?" After the sentences regarding the right to remain silent, I always stop and ask the juvenile, "Do you understand that you do not have to say or write anything at all, if you do not want to?" Because of this explanation, I rarely have a juvenile ask questions about their rights.

- In my experience, juveniles most frequently ask, "What should I do? Should I write a statement?" Because these questions are so often asked, I have a prepared answer I always use. I explain that to answer that question would be to give legal advice and I cannot give them legal advice because I am not their lawyer. I always ask

Viewpoint I continued on page 20

Viewpoint II
Taking the Stand: Testifying on Juvenile Magistration

By Judge Robert Barfield
Pasadena Municipal Court

if they want to stop so they can get an attorney who

Defense attorneys will often attack the manner in which a magistrate gives juvenile warnings. In my experience, the three most popular attacks are 1) The warning was not performed where required or how required, 2) The statement was not made voluntarily, and 3) The juvenile did not waive his or her rights.

WARNINGS

A juvenile's statement must be taken at an approved "Juvenile Processing Office" according to Section 52.025 of the Texas Family Code. This juvenile processing office must be approved by the juvenile board. Defense attorneys will attempt to show that where the magistrate warnings were given was not an approved juvenile processing office. There should be a letter on file in your jurisdiction designating certain places as juvenile processing offices. This document should indicate that the locations have been approved by the juvenile board. I would recommend that each magistrate have a folder containing this document to take to court when testifying. If the defense attorney questions the location, the document can then be produced.

Another tactic used by defense attorneys is to claim that the Parents were not present when the child was given the warnings. Under Section 52.025 of the Texas Family Code, "A child may not be left unattended in a juvenile processing office and is entitled to be accompanied by the child's parent, guardian, or other custodian or by the child's attorney." This does not mean, however, that the parents must be present when the warnings are given. *In re C.R.*, 995 S.W.2d 778 (Tex.App. – Austin 1999) I have found no authority for the claim that the parents must be present for an admissible statement to be taken – only that the police must notify the parents that their child is in custody.

Finally, defense attorneys will often questions whether any police officer was present during the warnings or signing of the statement. Remember that the juvenile must sign the statement in the presence of the magistrate but without any law enforcement personnel present, Section 51.09(B)(i), Family Code. If you have a bailiff or law enforcement personnel present, make sure they are not carrying a weapon and that on the stand, you can articulate the safety reasons making their presence necessary.

VOLUNTARINESS

Defense attorneys can claim that the juvenile statement was not made voluntarily due to statements made by the magistrate. One of the easiest grounds to establish is statements made after the magistrate gave wrong information regarding sentencing ranges. Providing information about the sentence one might receive is not required by Section 51.095 of the Texas Family Code. If additional incorrect information is given regarding the possible punishment, then the juvenile can claim that such information rendered the statement involuntary. [2001 WL 884139 citing *In re R.J.H.*, 28 S.W.3d 250, 254 (Tex.App.-Austin 2000) stating that actual coercive conduct is not required to make a juvenile's statement inadmissible, but rather it is the totality of the circumstances surrounding the statement which includes factors such as the appellant being a minor.]

Another often-used tactic is to bring in the juvenile's education records to show that he or she has a very low reading level. Defense attorneys will try to show that their client could not have understood the warnings given off the form. You should never assume the child understands the wording of the warnings straight off the form. Always state the warnings in a manner that allows them to be understood by the juvenile. Instead of stating that the juvenile may "terminate" the interview at any time the word "stop" may be a better substitute. Each warning will be different and the main concern is to make sure the juvenile understands his or her rights regardless of the language used. Typically, obtaining some form of "feedback" from the juvenile is also advisable.

WAIVER

It is not the magistrate's role or responsibility under the Family Code to find out whether an accused wishes to "give a statement." It is a magistrate's responsibility to ascertain if an accused juvenile wishes to waive his or her

constitutional rights *Hill v. State*, 2001 WL 493275 (Tex.App.-Tyler 2001) Defense attorneys will often claim that the magistrate did not ascertain if the juvenile waived his or her rights, but merely asked whether he or she wanted to give a statement. The following is an exchange between the magistrate and juvenile taken from *Hill v. State*.

MAGISTRATE: Edward, I am going to administer to you at this time your statutory warnings as a juvenile. We are here present at the Tyler Police Department. You are charged by law enforcement with the offense of capital murder, which is a capital felony. You have the right to remain silent, not make any statement at all, and any statement that you make, may be used in evidence against you. You have the right to have an attorney present to advise you either prior to or during any questioning. If you are unable to employ an attorney, you have a right to have an attorney appointed as counsel with you (sic) prior to or during any interviews with peace officers or attorneys representing the State. You have the right to terminate the interview at any time. Present in the room at this time is [sic] just you and I; is that right, Edward?

JUVENILE: Yes, sir.

MAGISTRATE: Law enforcement officers left when I began reading you the warnings. Have you listened carefully to and do you understand each of the above rights as they were read and explained to you by me?

JUVENILE: Yes, sir.

MAGISTRATE: Do you have any questions regarding any of these rights?

JUVENILE: No, sir.

MAGISTRATE: And do you at this time wish to voluntarily waive these rights?

JUVENILE: No, sir.

MAGISTRATE: Excuse me?

JUVENILE: No, sir.
[At this point, the magistrate appears to write on and initial the warnings form.]

MAGISTRATE: It is now 12:38 p.m. I'll ask you to sign the warnings where it says "signature of a juvenile."

[JUVENILE signs the warnings form as requested.]

Mr. Hill, do you understand what it means to waive any of these rights?

JUVENILE: No, sir.

MAGISTRATE: 'Waive' means, do you wish to at this time give up your right to remain silent and not make any statement at all? In other words, are you desiring to make a statement at this time.

[JUVENILE nods his head in the affirmative.]

MAGISTRATE: You don't understand what waive means, do you?

[JUVENILE shakes head in the negative.]

MAGISTRATE: Waive means that you give up a right, one of the rights that I just explained to you.

JUVENILE: No. [The videotape seems to show JUVENILE shaking his head in the negative about waiving his rights.]

MAGISTRATE: Now, I'm going to ask you—do you understand what waive means now?

JUVENILE: Yes, sir.

MAGISTRATE: I'm going to ask you, do you wish to waive your right to remain silent?

JUVENILE: No, sir.

MAGISTRATE: So do you want to remain silent at this time?

JUVENILE: Yes, sir.

MAGISTRATE: Do you wish to waive or give up your right to have an attorney present to advise you either prior to or during any questioning?

JUVENILE: No, sir.

MAGISTRATE: Do you understand you have the right to terminate this interview at any time?

JUVENILE: Yes, sir.

MAGISTRATE: Do you understand if you're unable to employ an attorney, you have the right to have an attorney appointed to counsel with you prior to or during any interviews with peace officers or attorneys representing the State.

JUVENILE: Yes, sir.

MAGISTRATE: Very well. That concludes the statutory warnings. My understanding from our conversation is, Edward, you are or you are not wanting to give a statement at this time?

JUVENILE: What do you mean by "statement?"

MAGISTRATE: If you want to give up your right to remain silent, your right to have an attorney present with you and go ahead and give a statement and in the interview, police officers, who are not in the room at this time, will come in here and interview you.

JUVENILE: Yes, sir.

MAGISTRATE: Do you want them to do that, or do you want to not do that?

JUVENILE: I want to do that.

MAGISTRATE: Okay. Now, in order for you to do that, you will have to give up your right to remain silent and not make any statement at all.

JUVENILE: Yes, sir.

MAGISTRATE: Do you want to give up that right?

JUVENILE: Yes, sir.

MAGISTRATE: Okay. Then you will have to give up your right to have an attorney present to advise you either prior to or during any questioning. Do you want to give up that right—

JUVENILE: Yes, sir.

MAGISTRATE:—and make a statement at this time?

JUVENILE: Yes, sir.

MAGISTRATE: I am making an amendment to the statutory warning of juvenile by magistrate. I, previously, under the answer, yes or no, put "no." I am scratching that, putting my initials next to it, and I am putting in place, "yes." Okay. So where I put, yes, there, you understand that you listened to and now you understand the above rights, that they were read and explained to you, and that you have asked questions, and you and I have discussed these rights and you understand them, and you voluntarily wish to give up those rights and proceed with an interview; is that correct?

[While the magistrate was saying this, he was amending the warnings form.]

JUVENILE: Yes, sir.

MAGISTRATE: Okay. That does conclude the statutory warnings by magistrate, and at this time I am going to ask the police officers to come back into the room and take your statement. Do you understand that, Edward?

JUVENILE: Yes, sir

The Court held that in the above exchange the juvenile unequivocally invoked his rights under the Fifth and Sixth Amendments at least six times. Because the child invoked his rights, the Court suppressed the child's statement, and reversed the case. If the juvenile invokes his rights, write it somewhere on the form and do not let the juvenile sign a statement.

Viewpoint I continued from page 17

can answer that question for them In my opinion, this is a proper neutral response. Again, it is most important that at all times you remain neutral.

- The decision to waive his or her rights and make a statement belongs solely to the juvenile. I have on several occasions had parents that want to be in the room when I take the statement. Texas Family Code 52.025 provides that a child "may not be left unattended in a juvenile processing office and is entitled to be accompanied by the child's parent, guardian, or other custodian." If a parent is present, you must be careful in the part they play. I talk to the parent first. Before we begin, I ask that they be there to observe only. A magistrate must guard against the danger that the parent may intimidate the child into making a statement. Take steps to protect the child against such influence.

TEXAS COUNTIES WITH POPULATIONS OF AT LEAST 50,000

See **Rules and Deadlines Created for Language Certified Court Intepreters** on page 12 in this newsletter.

Anderson	Collin	Galveston	Hunt	Nacogdoches	Tarrant
Angelina	Comal	Grayson	Jefferson	Nueces	Taylor
Bastrop	Coryell	Gregg	Johnson	Orange	Tom Green
Bell	Dallas	Guadalupe	Kaufman	Parker	Travis
Bexar	Denton	Harris	Liberty	Potter	Victoria
Bowie	Ector	Harrison	Lubbock	Randall	Walker
Brazoria	Ellis	Hays	Mclennan	San Patricio	Webb
Brazos	El Paso	Henderson	Midland	Smith	Wichita
Cameron	Fort Bend	Hidalgo	Montgomery	Starr	Williamson

FROM THE CENTER

TMCEC Hosts Listserv for Judges & Prosecutors

The Texas Municipal Courts Education Center (TMCEC) now sponsors two listservs for municipal court judges and prosecutors. Only persons employed in municipal courts in these capacities may participate. Judges and prosecutors who participate must agree to the Terms of Use (see below). There is no charge to subscribe, as the listserv is sponsored by Yahoo and contains a small amount of commercial advertising.

- For Judges: TMCEC Municipal Judges: TMCEC MuncipalJudges@yahoogroups.com
- For Prosecutors: Texas Municipal Prosecutors: texmunpros@yahoogroups.com

The purposes of these listservs are to (1) provide participants with up-to-date information on laws and procedures that effect the operations of Texas municipal courts; (2) allow participants to network, problem solve, and share with others what problems arise in your court; and (3) distribute information relevant to municipal courts, such as information on publications and seminars.

With a listserv, you can send an inquiry that will go to everyone's mailbox on the listserv and they can respond with a click of a button. There are currently dozens of members on each TMCEC listserv, so users must be careful to not send irrelevant messages as they will be blocked from participation.

To join the listserv, send your name, title, court name, telephone number, and email address to Hope Lochridge at TMCEC or email this information to her [hope@tmcec.com]. To remove your name from the listserv, just send a message to unsubscribe.

Please do not hesitate to call TMCEC (800/252-3718) if you have questions

WHAT IS A LISTSERV?

Listservs work like a mailing list of people who are interested in the same topics. One person can correspond with many people at once. Every message posted to the list is sent to all of the list subscribers by electronic mail received automatically.

TMCEC Judges Listserv: Terms of Use

The following terms are acknowledged and binding upon all judges using the TMCEC Listserv:

1. By participating, users claim that they are currently appointed or elected as a Texas municipal court judge.
2. Users agree that the primary purpose of the listserv is to provide a collegial forum for municipal court judges to share general legal information and thoughts pertaining to municipal court matters.
3. Users agree that they will not disclose specific information about pending cases, reveal confidential information, or make inappropriate comments in violation of the Canons of Judicial Conduct.
4. Users acknowledge that all electronic transmissions are neither confidential nor protected from public disclosure.
5. Users assume individual responsibility for their comments and agree that violation of the stated terms of use can result in their removal from the listserv and potential disciplinary action by the State Commission on Judicial Conduct.
6. While the listserv is sponsored by the Texas Municipal Courts Education Center, the comments expressed by users are solely those of the author and are not those of the Texas Municipal Courts Association Board of Directors or the staff of TMCEC.

TMCEC 2001-2002 SCHEDULE

JUDGES

January 17-18, 2002
San Antonio
Holiday Inn Riverwalk
217 N. St. Mary's Street
78205
210/224-2500
Registration Deadline: 12/5 (Call for availability)

February 4-5, 2002
Houston
Sofitel Houston
425 N. Sam Houston Pkwy. E.
77060
281/445-9000
Registration Deadline: 1/4

March 4-5, 2002
Dallas
Doubletree Hotel Lincoln Centre
5410 LBJ Freeway
75240
972/934-8400
Registration Deadline: 2/7

April 3-4, 2002
Amarillo
Ambassador Hotel
3100 I-40 West
79102
806/358-6161
Registration Deadline: 3/4

April 29-30, 2002
(Attorney Judges Only)
SPI
Radisson Hotel
500 Padre Boulevard
78597
956/761-6511
Registration Deadline: 3/27

May 1-2, 2002
(Non-Attorney Judges Only)
SPI
Radisson Hotel
500 Padre Boulevard
78597
956/761-6511
Registration Deadline: 3/27

July 2-3, 2002
El Paso
Hilton Camino Real
101 South El Paso St.
79901
915/534-3007
Registration Deadline: 6/5

SPECIAL TOPICS FOR JUDGES

March 20-23, 2002
Corpus Christi
Traffic Court Technology
Omni Marina Tower
900 North Shoreline Drive
78401
361/887-1600
Registration Deadline: 2/20

July 15-17, 2002
San Antonio
Joint Ethics Conference
Hotel to be determined
Registration Deadline: 6/17

JUDGES & CLERKS FROM LOW VOLUME COURTS

May 20-21, 2002
Denton
Radisson
2211 I-35 E. North
76205
940/565-8499
Registration Deadline: 5/1

June 24-25, 2002
Conroe
Del Lago Conference Center & Resort
600 Del Lago Boulevard
77356
936/582-6100
Registration Deadline: 5/23

NEW NON-ATTORNEY JUDGES AND CLERKS

July 21-25, 2002
Austin
Lakeway Inn
101 Lakeway Drive
78734
512/261-6600
Registration Deadline: 6/24

ORIENTATION FOR NEW NON-ATTORNEY JUDGES & CLERKS

January 30, 2002
March 27, 2002

CLERKS

January 17-18, 2002
San Antonio
Holiday Inn Riverwalk
217 N. St. Mary's Street
78205
210/224-2500
Registration Deadline: 12/5 (Call for availability

February 4-5, 2002
Houston
Sofitel Houston
425 N.
Sam Houston Pkwy. E.
77060
281/445-9000
Registration Deadline: 1/4

March 4-5, 2002
Dallas
Doubletree Hotel Lincoln Centre
5410 LBJ Freeway
75240
972/934-8400
Registration Deadline: 2/7

April 3-4, 2002

TMCEC Schedule continued on page 24

TEXAS MUNICIPAL COURTS EDUCATION CENTER
2001-2002 REGISTRATION FORM

Program Attending: _____ Program Dates: _____
[city] [date]

❒ Judge ❒ Clerk ❒ Court Administrator ❒ Bailiff/Warrant Officer ❒ Prosecutor

TMCEC computer data is updated from the information you provide. Please print legibly and fill out form completely.

Last Name: _____ First Name: _____ MI: ____

Date Appointed/Elected/Hired: _____ Years Experience: _____ Male/Female: _____

HOUSING INFORMATION

TMCEC will make all hotel reservations from the information you provide on this form. **TMCEC will pay for a single occupancy room at all seminars**: four nights at the 32-hour seminars, three nights at the 24-hour seminars/assessment clinics and two nights at the 12-hour and 16-hour seminars. To share with another seminar participant, you must indicate that person's name on this form.

❒ **I need a private, single-occupancy room.**
❒ **I need a room shared with a seminar participant.** [Please indicate roommate by entering seminar participant's name: _____ (Room will have 2 double beds.)]
❒ **I need a private double-occupancy room, but I'll be sharing with a guest.** [I will pay additional cost, if any, per night] **I will require: ❒ 1 king bed ❒ 2 double beds**
❒ **I do not need a room at the seminar.**

Arrival date: _____ ❒ Smoker ❒ Non-Smoker Mode of Transportation: _____

COURT MAILING ADDRESS

It is TMCEC's policy to mail all correspondence directly to the court address.

Street: _____ City: _____ Zip: _____

Office Telephone #: _____ Court #: _____ FAX: _____

Primary City Served: _____ Other Cities Served: _____

❒ Attorney ❒ Non-Attorney ❒ Full Time ❒ Part Time

Status: ❒ Presiding Judge ❒ Associate/Alternate Judge ❒ Justice of the Peace ❒ Mayor ❒ Bailiff
❒ Court Clerk ❒ Deputy Clerk ❒ Court Administrator ❒ Warrant Officer
❒ Prosecutor **(A registration fee of $250/$100 must accompany registration form.)**
❒ Other: _____

I certify that I am currently serving as a municipal court judge, city prosecutor or court support personnel in the State of Texas. I agree that I will be responsible for any costs incurred if I do not cancel ten (10) working days prior to the seminar. If I have requested a room, I certify that I live at least 30 miles from or must travel at least 30 minutes to the seminar site. Payment is required ONLY for the prosecutors' program, joint ethics conference, and assessment clinics; payment is due with registration form.

_____ _____
Participant Signature **Date**

TMCEC ∘ 1609 Shoal Creek Boulevard, Suite 302 ∘ Austin, TX 78701 ∘ FAX 512/435-6118

TMCEC Schedule Continued from page 22

Amarillo
Ambassador Hotel
3100 I-40 West
79102
806/358-6161
Registration Deadline: 3/4

April 25-26, 2002
SPI
Radisson Hotel
500 Padre Boulevard
78597
956/761-6511
Registration Deadline: 3/27

July 2-3, 2002
El Paso
Hilton Camino Real
101 South El Paso St.
79901
915/534-3007
Registration Deadline: 6/5

PROSECUTORS

February 14-15, 2002
Houston
Sheraton Brookhollow
3000 North Loop West
77092
713/688-0100
Registration Deadline: 1/21

June 3-4, 2002
Austin
Hilton Airport
9515 New Airport Drive
78719
512/385-6767
Registration Deadline: 5/6

COURT ADMINISTRATORS

February 14-15, 2002
Houston
Sheraton Brookhollow
3000 North Loop West
77092
713/688-0100
Registration Deadline: 1/21

June 3-4, 2002
Austin
Hilton Airport
9515 New Airport Drive
78719
512/385-6767
Registration Deadline: 5/6

WARRANT OFFICERS & BAILIFFS

January 8-9, 2002
San Antonio
Omni Hotel
9821 Colonnade Boulevard
78230
210/691-8888
Registration Deadline: 12/14
(Call for availability)

May 13-14, 2002
San Angelo
Holiday Inn
441 Rio Concho Drive
76903
915/658-2828
Registration Deadline: 4/15

TEXAS MUNICIPAL COURTS EDUCATION CENTER
1609 SHOAL CREEK BLVD., SUITE 302
AUSTIN, TX 78701
www.tmcec.com

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TMCEC MISSION STATEMENT

To provide high quality judicial education, technical assistance, and the necessary resource material to assist municipal court judges, court support personnel, and prosecutors in obtaining and maintaining professional competence.

Change Service Requested