Municipal Court Recorder

Volume 12 DECEMBER 2002 No. 1

Motions in Limine

A Judge's Perspective

By Gordon Marcum II, Presiding Judge - Houston Municipal Court No. 13

Whether you are an attorney judge or a lay judge, you need to understand and set some proper guidelines when you are presented with written or oral motions in limine. Historically, the term "in limine" means on or at the threshold; at the very beginning; preliminary.[1] In the litigation context, motions in limine are those made even before the answer.[2] Some of the best definitions found were – "A pretrial motion requesting the court to prohibit opposing counsel from referring to or offering evidence on matters so highly prejudicial to the moving party that curative instructions cannot prevent 'predispositional' effect on a jury."[3] In a Texas case, the purpose of such a motion is to avoid injection into trial of matters, which are irrelevant, inadmissible, and prejudicial, and granting of the motion is not a ruling on the evidence and where properly drawn the granting of the motion cannot be error.[4] In line with these definitions, the so-called motion in limine has, through custom and usage, become exclusively identified with preliminary rulings on admissibility of evidence.

The term "motion in limine" may be used in a broad sense to refer to any motion – pretrial or trial – that is filed in attempt to exclude anticipated prejudicial evidence before the evidence is actually offered.[5] In its more common usage, the term refers to a motion filed at the time of trial that seeks to exclude anticipated evidence of the other party.

In Texas criminal practice, the motion has been long recognized though it has no specific root in the Code of Criminal Procedure. In fact, it has been held that the adoption of Article 28.01 of the Code of Criminal Procedure, which sets forth time requirements for the filing of pretrial motions, cannot be use to restrict the filing of motions in limine.[6]

Even though the adoption of the Texas

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Case Law and Attorney General Update

By Ryan Kellus Turner, TMCEC Program Attorney & Deputy Counsel

Summarizing cases handed down September 1, 2001 through September 31, 2002 (…and some noted cases overlooked from last year!)

I. THE UNITED STATES SUPREME COURT

A. Fourth Amendment; Search and Seizure

1. "Suspicious Activity"

United States v. Arvizu, 122 S.Ct. 747 (2002)

A court cannot hold as a matter of law that some facts are not suspicious as a matter of law. In this specific case, numerous circumstances justified the Border Patrol stop of a minivan on border-area back road to check for possible smuggling activity.

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AROUND THE STATE

Association Recognizes Outstanding Judge and Clerk

Municipal Judge Anne Remley of Caney City has been selected by the Texas Municipal Courts Association (TMCA) to receive the Association's Outstanding Judge Award for 2001-2002. Judge Remley was presented with the special judicial recognition award by TMCA President Joe Pirtle at the TMCA Annual Meeting on October 25, 2002 in Corpus aboard the *USS Lexington*.

TMCA President Joe Pirtle presents Judge Anne Remley with Outstanding Judge Award.

The Award recognizes Judge Anne Remley for her outstanding contributions to the fair and impartial administration of justice in her work in two small East Texas Municipal Courts. Serving first as the Judge in Caney City (1987), she was later also appointed Judge of the Malakoff Municipal Court in 1989. When not dividing her time between these two courts, she also serves as City Secretary for Caney City.

Judge Remley is on the Board of Directors for the Henderson County Teen Court, has served on the Board of CASA, and is active in community youth groups and her church. Each year Judge Remley organizes a prison trip for local youth as part of a program called *Outreach*. Organized through her church, over 250 young people have participated in this program.

TMCA President Joe Pirtle presents Jennifer Sullivan with Outstanding Clerk Award.

Katy Deputy Court Clerk Jennifer Sullivan was selected by the TMCA to receive the Association's Outstanding Judicial Award for Court Support Personnel for 2001-2002. Jennifer Sullivan was also presented with the special judicial recognition award by

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FROM THE GENERAL COUNSEL

W. Clay Abbott

Pretrial Hearings and Conferences

On page one in this newsletter there is an excellent article by Judge Gordon Marcum of Houston Municipal Court No. 13 on the topic of motions in limine. I will not repeat the judge's solid advice, but want to stress the importance and benefit of pretrial motion settings. Pretrial hearings are best accompanied by pretrial conferences between the prosecutor and the defendant or defense counsel. If you are not aware of the profound effort required to produce a jury panel, you need to have a sit-down with your clerk. If a procedure can result in a fair disposition of a case before the effort of holding a jury trial is made, it should receive serious consideration. In addition to avoiding trials, as the article on motions in limine indicates, pretrial motion hearings can help define, control, and streamline the trial itself.

Pretrials can resolve cases in many ways. Often, defendants want to raise issues that are not in fact defenses to the charge against them. For example, a defendant's ire may have been raised by perceived "rudeness" of the officer. Conducting a pretrial conference and hearing can allow the defendant to vent and then plead the case out. Many trials are requested because the defendant or defense counsel believes there is mitigating evidence, but does not want to surrender to the court's assessment of punishment unilaterally. The plea bargaining aspect of pretrial conferences also resolves many of these situations. Occasionally—I know my prosecutor bias is showing here—the defendant may have a real defense or may simply be not guilty. The pretrial conference is a far better place for the prosecutor to find this out than in front of a jury.

Nothing makes the trial of a case more exhausting than the constant removal of the jury during trial. This is often required so that the jury is not exposed to evidence that the court will rule inadmissible. Issues of admissibility and suppression should be heard before introduction of the evidence outside of the jury's hearing. Requiring that these issues be handled during a time specially set aside for them will speed up and simplify trials before the jury. Resolving evidentiary issues may also simplify the trial by narrowing and defining the contested issues at trial. Many pro se litigants' pretrial objections can be treated as motions in limine, and the fear of prosecutors overreaching can be allayed. An unrushed opportunity to be heard is also essential to the pro se defendant's perception of fairness in our courts. It is far easier to be patient and open when six citizens are not cramped in a small jury space.

New Magistrate Forms

In an effort to fully implement the requirements of SB 7, the Texas Task Force on Indigent Defense, led by former TMCEC General Counsel James D. Bethke, has developed a model 15.17 Magistrate's Warning form. A copy of that form is included in this newsletter on page 5. The task force has also developed a Magistrate's Juvenile Warnings form and an Attorney's Fee Voucher form. More forms and educational material should follow. You can find out about the task force and download forms at www.courts.state.tx.us/tfid. TMCEC is pleased that the task force staff is teaching for us at the 12-hour schools. Mr. Bethke asks me to let you know you can call the task force with questions concerning magistrate's warnings, appointment of counsel, and indigent defense at 512/936-6994.

The Federal Government, Commercial Drivers, and Deferred

Several courts have called concerned with federal regulations tied to the Commercial Motor Carrier Safety Assistance Program—a federal program that regulates commercial drivers and commercial driver's licenses. One such regulation has been interpreted to ban the use of deferred disposition or pretrial diversion for persons holding a CDL charged with traffic offenses in any vehicle. The regulation in issue is contained in 67 *Federal Register* 49742-01, Section 384.226. It reads:

> A State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law from appearing on the driver's record.

A Joint Explanatory Statement was issued by Congress that indicates the

state executive branch agencies should "work with" the state judicial branch to eliminate "masking" (145 Cong. Rec. H12870-12874, Nov. 18, 1999, and 145 Cong. Rec. S15207-15211, Nov. 19, 1999). Violations of this regulation may be enforced under Section 384.301, 384.307, and 384.401 by federal reviews of states, and findings of failure to substantially comply may result in withholding of federal grant funds for commercial driver programs.

So what does all this mean for municipal courts? We are being "encouraged" not to grant deferred disposition to CDL holders. These regulations, as the congressional statement indicates, do not have control over Texas statutes. Bowing to this "encouragement" could qualify as being "swayed by public clamor" in violation of Canon 3(B)(2) of the Code of Judicial Conduct. These federal requirements would have been made law under SB 730 passed in the last session, but that bill was vetoed due to an objectionable rider.

Art. 45.0511, Code of Criminal Procedure, controlling DSC does not apply to commercial drivers in commercial vehicles. Art. 45.051, Code of Criminal Procedure allows the court, in its discretion, to defer imposition in "a misdemeanor case punishable by fine only." This language clearly includes traffic violations by commercial license holders.

The federal regulations control DPS and its record gathering. Perhaps the solution can be found in DPS's reporting requirements, or better yet through legislative action like SB 730. Of course if the federal government really wanted control, it could preempt local judicial jurisdiction and pass traffic laws for commercial drivers to be enforced in federal court. Don't hold your breath. It is easier to threaten grant termination.

My final suggestion is that we follow the applicable law, until it is changed. Courts may want to consider whether deferred disposition is appropriate in the individual commercial driver's case. Courts should also be cautious in giving legal advice about the effect of deferred disposition on suspension of the CDL, in that we have no control over that system.

Awards continued from page 2

TMCA President Joe Pirtle on October 25, 2002 aboard the *USS Lexington*.

The Award recognizes Jennifer Sullivan for her many contributions in her work in Houston area municipal courts and in her leadership of and teaching of her peers across the state. Jennifer Sullivan has served as the Deputy Court Clerk in Katy since 2001. "She is conscientious about her work and possesses the kindness and consideration necessary for dealing with people who come into court expecting rudeness and instead receive compassion, understanding, and knowledge from Jennifer," says Elaine Brown, Court Administrator for Katy. Prior to working for Katy, Jennifer served eight years as the Court Administrator for the City of Sealy.

Jennifer is the first clerk in the State of Texas to receive full certification in the Texas Court Clerks Certification Program. She has also been actively involved in the Gulf Coast Chapter of the Texas Court Clerks Association, the State Chapter of the Texas Court Clerks Association, and the Texas Municipal Courts Education Center (TMCEC).

Jennifer Sullivan has served on the faculty of the Texas Municipal Courts Education Center since 1998 and as an active volunteer in the Texas Court Clerks Association. She serves as the newsletter editor for TCCA and on a court costs study committee. "Jennifer is always willing to go the extra mile to get the job done," said Leisa Hardin of Crowley, President of the Texas Court Clerks Association. "She is an exemplary role model for the municipal court profession."

Law Enforcement Agency:
Date of Arrest:
Time of Arrest:
Place of Arrest:

Court #:
County/State:
Warrant #, If Any:
Bail Set: $

HAS A PROBABLE CAUSE AFFIDAVIT BEEN FILED? ❑ YES ❑ NO

MAGISTRATE'S WARNING

THE STATE OF TEXAS §
COUNTY OF §

Before me, the undersigned magistrate of _____ County, Texas on the _____ day of_____, at _____ o'clock AM/PM, appeared _____. I gave said person the following warning:

- ❑ You are charged with the offense of _____ ❑ a felony ❑ a misdemeanor.
- ❑ You have a right to hire an attorney to represent you.
- ❑ You have the right to have an attorney present prior to and during any interview and questioning by peace officers or attorneys representing the State.
- ❑ You have the right to remain silent.
- ❑ You are not required to make a statement, and any statement you make can and may be used against you in court.
- ❑ You have the right to stop any interview or questioning at any time.
- ❑ You have the right to have an examining trial (felonies only).
- ❑ You have the right to request appointment of counsel if you cannot afford counsel.*

***THE MAGISTRATE SHALL ENSURE THAT THE PERSON IS INFORMED OF THE FOLLOWING PROCEDURES:**

a. That an application for a court appointed attorney must be completed to determine if he/she qualifies for a court appointed attorney;
b. That reasonable assistance will be provided to him/her when filling out the application for a court appointed attorney, if needed;
c. That a financial affidavit must be signed;
d. That an affidavit is a written or printed declaration or statement of facts made voluntarily and confirmed by oath before a person having authority to administer such oath;
e. That if he/she meets the indigence standards he/she will qualify for court appointed attorney; and
f. Attorney should attempt to contact him/her by the end of the first working day after appointment and to interview him/her as soon as practicable after appointment. If appointment is made when the accused is before the court, the accused will be given attorney's name, address, and phone number.

If you are not a United States citizen and you have been arrested or detained, you may be entitled to have us notify your country's consular representatives here in the United States. Do you want us to notify your country's consular officials?
❑ No. _____ ❑ Yes. _____
❑ If you responded "yes," what country?
If you are a citizen of a country that requires us to notify your country's consular representatives, we shall notify them as soon as possible.

THE ACCUSED DOES / DOES NOT WANT TO REQUEST COURT APPOINTED ATTORNEY.
Circle One

I acknowledge that I was given the above warning (This is NOT an admission of guilt)

Person warned

Magistrate

Place of warning:
Time:
Date:

Accused refused to sign acknowledgement of warning:

Witness (if any):
Name:
Address:

Magistrate:
Remarks

This hearing was interpreted by _____
(Name of Interpreter)

Adopted 10/23/02 – Task Force on Indigent Defense

Motions continued from page 1

Rules of Criminal Evidence failed to provide any explicit authority for the use of the motion, the rules do provide implicit support for using this type of motion. As an example, Texas Rules of Evidence 103(c) provides that proceedings should be conducted as to prevent inadmissible evidence from being revealed to the jury via statements, offers of proof, or asking questions. The U.S. Supreme Court has interpreted the corresponding federal rule giving the trial court the power to use motions in limine to manage the course of the trial.[7] Section 104(C) of the Texas Rules of Evidence provides that a hearing about the admissibility of confessions and other preliminary matters should be conducted out of the hearing of the jury, especially when the defendant is a witness. This rule may also be used as implicit authority to support a motion in limine about a subject upon which the defendant will testify.

As judges, we must remember that the basic purpose of the motion is to prevent the jury from being exposed to arguably inadmissible evidence. It is a method for raising an objection to an evidentiary matter before the evidence is placed in front of the jury through a question or jury argument or in any other fashion.[8] A true motion does not usually seek an immediate ruling from the court that the challenged evidence is inadmissible. Rather, its purpose is to obtain a ruling from the court ordering the holding of a hearing out of the jury's presence before any mention is made of the evidence. As judges, we must remember that it is inappropriate to allow either counsel to use a motion in limine to try to prevent the opposing party from offering evidence that the sponsor of the motion intends to offer on his or her own behalf.[9]

While not exhaustive, the following list demonstrates the types of evidentiary matters that you might see by way of motions in limine:

1. Defendant's prior convictions;[10]
2. Prior arrests of defendant;[11]
3. Extraneous offenses;[12]
4. Impeachment of defendant with prior testimony;[13] and
5. Restraint of prosecutor from using certain terms, *i.e.*, hippie.[14]

Here are some guidelines that will assist you in determining your rulings on the motions. The judge should look for some or all of these basic elements:

1. A statement of the specific evidentiary issue that will be raised by the circumstances of the case.
2. The specific item, testimony, or action, that the party seeks to exclude.
3. Is the evidence inadmissible or does it have a greater prejudicial effect versus probative value? (TRE 403)
4. Will the subject matter arouse the jury's passion or prejudice?
5. Will the jury's reaction be detrimental to a fair trial?
6. Is the only way to ensure a fair trial to rule on the admissibility of the evidence outside the presence of the jury?

As the judge, you should also remember that you can reconsider your ruling on the motion or motions.[15] Thus, if the facts change so the evidence becomes admissible, your earlier ruling is subject to change.[16]

What are your options as a judge if counsel is in violation of a motion in limine? The courts have held that a party may be entitled to relief, but any remedies available with respect to such violation lie within the discretion of the trial court. The trial court may apply the sanctions of contempt or take other appropriate action.[17] Counsel's attempt to circumvent the judge's ruling on motions in limine by discussing subjects in the presence of the jury can require reversal or mistrial.[18]

In conclusion, to the extent possible judges should encourage parties to make motions in limine in advance of trial and that they should be in writing. Finally, remember your concise rulings can be an enormous aid to the fair and efficient conduct of trials.

[1]*Blacks Law Dictionary* (5th Edition 1979); *Balentines Law Dictionary*, (3rd Edition). The Lawyers Cooperative Publishing Co., Rochester, N.Y. 1969.

[2]*Strudwick Funeral Home v. Crawford*, 34 So.2d 838 (Ct.App.La.1948).

[3]*Messler v. Simmons Gun Specialties*, 687 P.2d 121 (Okla. 1964).

[4]*Redding v. Ferguson*, 501 S.W.2d 719 (Tex.Civ.App.).

[5]*Luce v. United States*, 469 U.S. 38, 105 S.Ct. 460 (1984).

[6]*Barbee v. State*, 432 S.W.2d 78 (Tex.Crim.App. 1968) cert. denied, 395 U.S. 924 (1969).

[7]*Supra*, note 5.

[8]*Norman v. State*, 523 S.W.2d 669 (Tex.Crim.App. 1975) cert. denied, 423 U.S. 930 (1975).

[9]*New Jersey v. Portash*, 440 U.S. 450, 99 S.Ct. 1292, 59 L.Ed.2d 501 (1979).

[10]*Reyes v. Missouri Pac.R.Co.*, 589 F.2d 791, 793 (5th Cir.Tex. 1979).

[11]*Gonzales v. State*, 685 S.W.2d 47 (Tex.Crim.App. 1985) cert. denied, 472 U.S. 1009 (1985).

[12]*Stein v. State*, 492 S.W.2d 548 (Tex.Crim.App. 1973); *Blacklock v. State*, 681 S.W.2d 155, (Tex.Crim.App. – Houston 1984).

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Sending the Message with Amnesty Programs and Warrant Round-ups

By Susan Richmond, Carrollton

Courts inherently engage in a reactive method of doing business. A police officer or code enforcement officer issues a citation. The court receives the citation and can only process what it is given. The court, obviously, cannot actively solicit business. Amnesty programs and warrant round-ups offer the opportunity for the courts to be proactive in their case resolution while sending a message to defendants to take care of their business.

Amnesty programs allow a court to increase warrant clearance by promoting a period of time during which a warrant will have an amount discounted. Amnesty programs require coordination between numerous individuals to be successful. Once the suggestion is made to initiate an amnesty program, a meeting should be called with the judge, court administrator, city manager or representative, and a police department representative if your court does not have a marshal's office or assigned warrant officer. The judge is ultimately the person who will set the parameters of the program. Such details include:

- amount of the discount;
- dates of the program, which should be set far enough in the future to allow time for adequate advertising; and
- handling of persons who appear and do not meet the requirements of the program (should they be arrested or allowed to leave the building).

The court administrator will have to decide such issues as:

- whether to extend court hours or even open on Saturdays to accommodate the influx of citizens during the amnesty;
- whether overtime will be offered;
- how to set up financial records so that only fines will have the adjustment and not court costs; and
- if marshals or warrant officers will continue business as usual initiating field arrests or whether they should concentrate on making telephone calls to defendants to encourage them to come in during amnesty.

Once the guidelines are set, court personnel should be trained so they are aware of the program, the rules of the program, and how to apply the discount.

An amnesty program must be advertised to be successful. Several methods of media can be utilized. Local news stations, newspapers, and radio are useful sources. Newspapers will often run press releases at no charge. City websites, internally produced city newsletters, and flyers included with water bills can enhance notice. Additionally mailing notecards to all defendants in your warrant database is an excellent tool, although it can be time consuming. The benefits of doing this, however, will typically outweigh the costs. If a return address is requested, you have to update your address file, which provides a current address for warrant officers after the amnesty is over. Whatever method you use, get ready for telephone calls. This might be a good opportunity to utilize volunteers to assist answering telephones, such as citizen police academy graduates. Planning and knowing your resources are keys to successful amnesty programs.

Once amnesty is concluded, a warrant round-up should follow to complete the message to the public. The fact that an intensive warrant round-up will occur after amnesty ends should be conveyed in any literature the public reads. The public needs to know that while the court may be temporarily generous, it will definitely follow up with some teeth. The type of round-up will vary, depending on the size of your city and available resources. A warrant round-up also requires planning to be successful. The police department must be willing to cooperate because typically it is providing the jail space, jail personnel, and communications personnel. A warrant round-up can be targeted for one specific day with officers hitting the neighborhoods in mass, or it can be set up as a more sustained door-to-door campaign over a period of a week or two weeks. Available personnel will determine what can be realistically accomplished.

The first type of round-up has the advantage of allowing more agencies to be involved at one time, and the blitzkrieg effect can cause individuals to trickle into the court with money in hand after the round-up (especially on the first payday after the round-up). After meeting with the judge (who will need to be available to arraign out-of-county prisoners), police department, marshals/warrant officers, and the court administrator, set a date and times for the round-up. Notify area agencies, either by direct contact or through the Texas Marshal Association, to invite as many warrant officers as possible to attend. These officers are invited to serve their warrants as well as assist with your

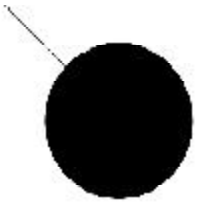
round-up. Write a press release for the media. It is not recommended that the date of the round-up be announced in any print media ahead of time. So, ask the media to withhold printing or announcing the date. News media will often attend the round-up and request to ride with a unit. Check your city's policies on speaking with news media. Most police departments will not allow filming in the secure areas of the jail. Additionally, case law prohibits media from entering a house in which a warrant is to be served without that homeowner's permission. Having the media enter without permission may violate that homeowner's Fourth Amendment rights (*Wilson v. Layne*, 526 US 603, 1999) and subject agencies involved to civil damages.

The second type of round-up can be accomplished with fewer personnel. Often, the marshals for that particular court will do the follow-up themselves, although it can be beneficial to send warrant lists to neighboring cities or solicit the help of patrol officers. Typically, this type of round-up is business as usual for a warrant officer; however, the officer will spend more time in the field with the specific purpose of arresting those with good addresses who failed to resolve their warrants during amnesty, rather than on the telephone contacting individuals to pay their warrants. This method can be particularly effective if you have mailed out notices with a return address requested. Addresses are then updated, so the marshal/ warrant officer has fresh information to work with.

Regardless of the type of round-up held, make sure every officer leaves a hang tag on the door of every residential attempt to contact. If places of employment were contacted, leave a business card with the defendant's supervisor. The message stating "We've been here, and we can come back" is a strong one. One of the purposes of amnesty programs and warrant round-ups is case resolution; however, another is to educate the public. Be cautious what your message is. Amnesty programs should not be conducted with any form of regularity. If they are, the public will hold out on taking care of their business waiting for that next amnesty, just as many of us hold out for that big sale at Foley's (mine

Amnesty continued on page 21

SAMPLE HANG TAG



WANTED PERSON:

Case No.: _____

DON'T GO TO JAIL

AVOID ARREST. PAY YOUR FINES IMMEDIATELY!!!!

THIS NOTICE IS TO INFORM YOU THAT THE MARSHAL WAS HERE TO PLACE YOU IN JAIL for warrants issued by the _____ Municipal Court. Officers will continue to return until you are arrested or have otherwise disposed of the cases pending against you.

Additionally, you may be arrested at your place of employment. The patrol officers assigned to this beat have been provided with your warrant information and the license number of your vehicle. You have been entered into the Wanted Persons Network and are subject to ARREST ON SIGHT.

_____

Marshal

IF YOU NEED INFORMATION REGARDING THE OFFENSES PENDING AGAINST YOU AND THE FINE AMOUNT, CALL:

City Name
Address _____
Telephone # _____

Checklist for Multi-Agency Round-Ups:

- ☐ Set up a planning meeting with the judge, court administrator, city manager, local and out-of-county police departments, and jail personnel.
- ☐ Set a date and procedures.
- ☐ Train court personnel.
- ☐ Issue press release; contact media.
- ☐ Set a deadline date for agencies who will be attending to RSVP, so that preparations can be made to accommodate the number attending, such as assigning local officers to ride with an out-of-county officer, making sure enough radios or cell phones are available, and developing forms that will contain such information as contact telephone numbers and round-up statistics (number of contacts, number of arrests, amount of money collected).
- ☐ Start early in the morning to catch as many people as possible at home before they leave for work, or even schedule for a weekend day.
- ☐ Assign two officers per unit, with a local radio. If not enough radios are available try to pair an officer with a cell phone to one who does not have one. One of the primary reasons for holding round-ups from an officer's viewpoint is the increased safety it offers by teaming up with other officers. During briefing, go over arrest procedures for your particular agency.
- ☐ Have a local officer assigned to the jail, so teams can bring in a prisoner and leave without having to complete the booking themselves.
- ☐ Make sure all warrants are confirmed before an arrest is made.
- ☐ At the conclusion of the round-up, each agency is responsible for transporting prisoners back to their respective agency.

Case Law continued from page 1

2. Peace Officer Warning of Right to Refuse

United States v. Drayton and Brown, Jr., 122 S.Ct. 2105 (2002)

Under some circumstances, the Fourth Amendment permits a peace officer to search bus passengers for drugs and weapons without advising the passengers their right to refuse to cooperate or consent.

3. Warrant Requirement

Kirk v. Louisiana, 122 S.Ct. 2458 (2002)

Warrantless police search of Defendant in his residence required exigent circumstances.

4. Drug Testing; Quid Pro Quo

Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls, 122 S.Ct. 2559 (2002)

Requirement that school children consent to drug tests before being permitted to participate in extracurricular activities did not violate Fourth Amendment.

B. First Amendment; Freedom of Speech

1. Municipal Regulation of Park

Thomas v. Chicago Park District, 122 S.Ct. 775 (2002)

Local park district's content-neutral ordinance requiring permits for large-scale events on parklands did not infringe on free speech rights. The First Amendment's free speech requirement guarantee did not require the municipal park agency to initiate litigation every time a permit for park use was denied or to specify a deadline for judicial review of a denied permit.

2. Municipal Regulation of Sexual Oriented Businesses

City of Los Angeles v. Alameda Books, Inc., 122 S.Ct. 1728 (2002)

City of Los Angeles' 1977 study showing connection between adult businesses and urban blight and crime may have justified city's ban on multiple sex-oriented businesses in same building.

3. Municipal Regulation of Door-to-Door Soliciting

Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 122 S.Ct. 2080 (2002)

Municipal ordinance requiring that door-to-door canvassers and religious proselytizers register in advance by name violated First Amendment rights.

4. First Amendment; Freedom of Speech; Judicial Candidates

Republican Party of Minnesota v. White, 122 S.Ct. 2528 (2002)

Rule prohibiting judicial candidates from stating views on disputed legal and political issues violated First Amendment.

C. Preemption; Federal Municipal Regulation of Towing

City of Columbus v. Ours Garage and Wrecker Service, Inc., 122 S.Ct. 2226 (2002)

Federal law does not bar a State from delegating to municipalities and other local units the State's authority to establish safety regulations governing motor carriers of property such as tow trucks.

II. THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

A. Preemption; Federal; State Authority to Regulate Railroads

Friberg v. Kansas City Southern Rail Road, 267 F.3d 439 (5th Cir. 2001)

Nothing in the Interstate Commerce Commission Termination Act of 1995 (ICCTA) provides authority for a state to impose operating limitations on a railroad like those imposed by the Texas Anti-Blocking Statute (Texas Transportation Code § 471.007(a)), nor does the all-encompassing language of the ICCTA's preemption clause permit the federal statute to be circumvented by allowing liability to accrue under state common law, where that liability arises from a railroad's economic decisions such as those pertaining to train length, speed, or scheduling. Thus, the Court held the Texas Anti-Blocking Statute, as well as the Appellant's common law claim of negligence, preempted by the ICCTA.

B. Fourth Amendment; Probable Cause; Transportation Code

U.S. v. Granado, 302 F.3d 421 (5th Cir. 2002)

Defendant was convicted in federal court of drug possession. On appeal, he asserted that trial court erred in denying his motion to suppress due to the fact the peace officer did not have probable cause to believe Appellant violated Transportation Code § 502.409 (wrong, fictitious, or unclean license plate). Relying on *United States v. Miller*, 146 F.3d 274, 279 (5th Cir.1998), the Court noted that the Texas Transportation Code is to be strictly construed. In this instance, the Court noted that there was no "sticker, decal, or other insignia" interfering with the readability of Appellant's license plate. Nor was there a "coating, covering, or protective material" disturbing angular visibility. There was only a license plate frame, and that alone does not violate Texas law. The statute is specific in what it prohibits and the district court erred in construing it more liberally. Thus, the Court held that the officer lacked probable cause to stop vehicle. Accordingly, the drugs found and incriminating statements made by the Appellant should have been suppressed. The case was reversed, vacated, and remanded with instructions.

III. THE TEXAS COURT OF CRIMINAL APPEALS

A. Fourth Amendment; Search and Seizure; Community Care Taking Exception; Transportation Code; Failure to Maintain a Single Lane

Corbin v. State, No. 094-01 (6/5/2002)

In evaluating whether an officer reasonably believes that a person needs help, courts may look to a list of four non-exclusive factors: (1) the nature and level of the distress exhibited by the individual; (2) the location of the individual; (3) whether or not the individual was alone and/or had access to assistance other than that offered by the officer; and (4) to what extent the individual, if not assisted, presented a danger to himself or others.

B. Substantive Law; Criminal Mischief

Santana v. State, 59 S.W.3d 187 (Tex.Crim.App. 2001)

The language of Texas Penal Code § 28.03(b)(3) allows a conviction for Class "A" misdemeanor criminal mischief upon a showing of pecuniary loss (more than $500 or less than $1,500), § 28.03(b)(3)(A), or, if the pecuniary loss is less than $1,500, there is substantial inconvenience of the type described in subsection (b)(3)(B).

C. Trial Procedure

1. Rules of Evidence; Suppression Hearings

Granados v. State, No. 73-525 (5/8/2002)

The Texas Rules of Evidence (except privileges) no longer apply to suppression hearings.

2. Judicial Enforcement; Subpoenas; Contempt

Ex parte Dotson, 76 S.W.3d 393 (Tex.Crim.App. 2002)

The penalty for failure to answer a subpoena in a criminal case is limited to the provisions of Article 24.05, Code of Criminal Procedure. Article 24.05 speaks only in terms of failure to answer a subpoena and does not speak in terms of contempt.

3. Voir Dire

Standefer v. State, 59 S.W.3d 177 (Tex.Crim.App. 2001)

The question "Would you presume someone guilty if he or she refused a breath test on their refusal alone?" is an improper commitment question.

4. Jury Selection; Peremptory Strikes

Guzman v. State, No. 1101-00 (5/22/2002)

When the motives behind a challenged peremptory strike are "mixed," *i.e.*, both impermissible (race or gender-based) and permissible (race and gender-neutral), if the striking party shows that he would have struck the juror based solely on the neutral reasons, then the strike does not violate the juror's 14th Amendment right to equal protection of the law.

5. Charging Instruments; Variance

Fuller v. State, 73 S.W.3d 250 (Tex.Crim.App. 2002)

State law does not define the victims name as a substantive element of the offense. Thus, the prosecution's failure to prove the victim's name exactly as alleged in the charging instrument did not make the evidence insufficient under *Gollihar*.

D. Appeals

1. Trial Procedure; Appeal by State

Medrano v. State, 67 S.W.3d 892 (Tex.Crim.App. 2002)

Under Article 44.01(a)(5), the State is entitled to appeal any adverse pretrial ruling that suppresses evidence, a confession or an admission, regardless of whether the Defendant alleges or the trial court holds that the evidence was illegally obtained.

2. Pre-Judgment Appeals

Ex parte Weise, 55 S.W.3d 617 (Tex.Crim.App 2001)

The issue of whether the illegal dumping statute requires a culpable mental state was not yet ripe for review. Appellant had not claimed that the illegal dumping statute was unconstitutional on its face. Nor did Appellant allege any deficiencies in the charging instrument that was cognizable on a pretrial writ for habeas corpus. Appealing the trial court's denial of the motion to quash provided Appellant with an adequate remedy at law. The judgment of the court of appeals was reversed.

E. Juvenile Confessions

1. Out of State Confessions; Magistrate's Presence; Family Code § 51.09; Exclusionary Rule

Vega v. State, No. 337-01 (6/26/2002)

Juvenile was arrested in Illinois for offenses alleged to have occurred in Texas. Juvenile was processed and a confession was obtained that, while complying with Illinois law, did not comply with Texas Family Code § 51.09. The court of appeals analysis should examine the effect of the absence of a magistrate on the admissibility of the challenged statement in a context of fairness to the parties, the State and Appellant, with the focus being on the purpose expressed in Texas Family Code § 51.01.

2. Parental Notificiation; Family Code § 52.02; Exclusionary Rule

Gonzales v. State, 67 *S.W.3d 910* (Tex.Crim.App. 2002)

Before a juvenile's written statement can be excluded, there must be a causal connection between the Family Code violation and the making of the statement.

3. Juvenile Processing; Family Code § 52.02; Exclusionary Rule

Roquemore v. State, 60 S.W.3d 862 (Tex.Crim.App. 2001)

Because the Appellant's oral statements were not the result of custodial interrogation and were made en route to a juvenile processing office, the trial court properly admitted testimony regarding the oral statements.

IV. THE TEXAS SUPREME COURT

Juvenile Confessions; "Out of the Bag" Statements; Family Code § 51.095

In the matter of RHJ, 79 S.W.3d 1 (Tex 2002)

A juvenile was a passenger in a vehicle that contained stolen property and marijuana when he was arrested. The juvenile made a written statement, in the presence of his father, while at the police station that he and his cousin stole the items from a residence. Later, the juvenile made several oral statements to an officer to change his written statement to state that his cousin did not participate. The Texas Supreme Court found that: (1) the admission of the juvenile's oral statements did not violate due process, because the officer's warnings to the juvenile satisfied the requirements of federal constitutional due process, even though the juvenile was not given the protections afforded juveniles by Family Code § 51.095(a); (2) the juvenile's later oral statements were not "fruit of the poisonous tree," because, for purposes of due process under the federal constitution, there was no poisonous tree; and (3) the juvenile was not in custody when he made the oral statements.

V. TEXAS COURT OF APPEALS

A. Substantive Law

1. Attempted DWI

Strong v. State, 2002 Tex. App. LEXIS 6978; 2002 WL 31159483 (Tex.App – Dallas September 30, 2002)

Defendant charged with misdemeanor driving while intoxicated (DWI) was convicted in the County Court at Law No. 1, Collin County, of Class C misdemeanor offense of attempted DWI and fined $300. Defendant appealed. The Court of Appeals held that: (1) by failing to file a notice of appeal, the State did not invoke the jurisdiction of the Court of Appeals under statute entitling it to appeal a ruling on a question of law, even though Defendant appealed judgment of conviction; (2) attempted DWI is not a legally cognizable criminal offense; and (3) trial court lacked jurisdiction to enter judgment against Defendant for attempted DWI as a lesser included offense of DWI because the offense of attempted DWI is not a legally cognizable criminal offense under Texas law.

2. Failure to Appear; Must An Affiant Have Personal Knowledge?

Brooks v. State, 76 S.W.3d 426 (Tex.App. – Houston [1^{4th} Dist.] 2002)

Appellant contended the trial court erred in denying his motion to suppress evidence obtained during his arrest. More specifically, Appellant argues that the police lacked probable cause to arrest and search him based on outstanding municipal arrest warrants. Specifically, he claimed that La Wanda Shelton, a Texas City municipal court clerk, acting as affiant, made conclusory statements and had no personal knowledge of the events leading up to Appellant's failure to appear. The appellate court noted that the record did not include any clerk's certificate, which is frequently used in FTA cases to provide factual information to show the underlying bases for the affiant's conclusions. None were believed to exist. Nevertheless, the court held that the clerk's affidavit and each complaint of Appellant's failure to appear were signed and stamped with the Seal of the State of Texas and that the clerk, as custodian of court records, issued them in her official capacity which authorizes her to issue oaths. Thus, the municipal warrants were deemed valid. The appellate court noted that FTA is a unique offense for the purposes of issuing an arrest warrant. By its very nature, a Defendant's failure to appear is typically within the court's personal knowledge. Whether the Defendant appears or fails to appear is an easily ascertainable, objective event - either the party is in court or he is not in court. The court stated that because FTA "is an offense which requires a lower threshold of proof and which can be readily determined" the municipal court issuing the warrant had sufficient information to support an independent judgment of probable cause. Thus, the subsequent arrest was lawful.

Other Notable FTA Cases:

Mavins v. State, 886 S.W.2d 378, 379 (Tex.App.— Houston [1st Dist.] 1994) (holding that arrest warrant for FTA was supported by probable cause where personal knowledge of judge and clerk was expressly set forth in warrant and clerk's certificate).

Kosanda v. State, 727 S.W.2d 783, 785 (Tex.App.—Houston [1st Dist.] 1987) (holding arrest warrant for FTA invalid because there was no evidence that the alleged FTA had occurred in the presence of the justice of the peace, and no authority that would allow the court to assume that the justice had such personal knowledge).

B. Transportation Code

1. Applicability of Exclusionary Rule; "Limitation on Local Authorities"; Transportation Code § 542.203

State v. Molegraff, 2002 Tex. App. LEXIS 6325; 2002 WL 1990576 (Austin – August 30, 2002)

Defendant was charged with driving while intoxicated (DWI). The trial court granted Defendant's motion to suppress evidence on the basis that the search was unlawful because local authorities had not obtained permission from the Texas Department of Transportation to place the barricades on a state highway as required by Transportation Code § 542.203(a) and therefore evidence obtained as the result of the stop had been unlawfully obtained under the Texas exclusionary rule, Article 38.23 of the Code of

Criminal Procedure. The appellate court held that the purpose of § 542.203(a) was to promote uniformity of traffic regulations throughout the state highway system and not to confer standing on a Defendant to complain about a local authority's failure to obtain the permission before erecting a traffic-control device on a state highway. The statute did not implement the First Amendment right to freedom of association or any constitutional right to travel or "to be left alone." Reversing and remanding, the appellate court held that the trial court erred in suppressing evidence of the stop based on an alleged violation of the statute.

2. Search and Seizure; Reasonable Suspicion; "Restrictions on Windows"; Transportation Code § 547.613

Exiga v. State, 71 S.W.3d 429 (Tex.App. – Corpus Christi 2002)

Can a traffic stop be predicated on illegal window tint?

It is a misdemeanor to attach to the windows of a motor vehicle "a transparent material that alters the color or reduces the light transmission," except as specifically allowed by statute (Transportation Code § 547.613(a) & (b)). These provisions, however, do not apply to a motor vehicle with a manufacturer's model year before 1988. The appellate court began its analysis by concluding that the Legislature intended to criminalize only the application of certain window tints to vehicles of a manufacturer's model year of 1988 and later. The question raised here is whether DPS had the authority to issue regulations forbidding certain window tints on pre-1988 vehicles when the enabling legislation clearly exempts those vehicles from having to comply with the statute. The appellate court held that DPS Administrative Rule 21.1(b) was inconsistent with the legislative mandate set forth in Chapter 547, and that DPS exceeded its rule-making authority with respect to vehicle window tint standards for pre-1988 vehicles. Accordingly, a valid traffic stop could not have been predicated on "illegal" window tint present on a 1985 vehicle. The trial courts order granting the motion to suppress was affirmed.

C. Municipal Courts

1. Warrants; Fourth Amendment; Search and Seizure

Green v. State, 78 S.W3d 604 (Tex.App. – Fort Worth 2002)

Are municipal court warrants sufficient for entry into a residence when the underlying facts suggest unrelated criminal activity?

Appellant claimed that the trial court erred in denying his motion to suppress because "[a] traffic ticket warrant for speeding and attendant failure to appear warrant from a municipal court is insufficient for entry into a residence where the underlying facts suggest a controlled substance or drug paraphernalia offense." Appellant did not challenge the validity of the misdemeanor warrants issued for his traffic violation and his failure to appear. Copies of the warrants admitted at trial showed that they were issued by a court with proper jurisdiction and signed by a municipal judge. The record reflected that the municipal judge found sufficient evidence of Appellant's participation in the aforementioned misdemeanors to conclude probable cause existed for his arrest. Although the judge's probable cause finding in this case spoke to the commission of offenses other than the offense charged (possession of methamphetamine), it nevertheless empowered the police to find and arrest the individual. In all criminal cases, misdemeanor and felony, Texas law requires warrants to be predicated upon a finding of probable cause. Accordingly, in light of the law's equal treatment of felony and misdemeanor warrants, the court held that the limited police authority to enter a suspect's residence to execute an arrest warrant when police reasonably believe the suspect to be home applies to the execution of both felony and misdemeanor warrants.

2. Jurisdiction; Jailable Ordinance Violations

Thompson v. State, 44 S.W.3d 171 (Tex.App. – Houston [14th Dist.] 2001)

Generally, a municipal court has exclusive original jurisdiction over all criminal matters arising under municipal ordinances. The exception is when state law authorizes municipalities to pass ordinances punishable by confinement in jail or imprisonment. In such cases, exclusive original jurisdiction lies with the county court at law. Because a violation of a municipal ordinance regulating sexually oriented businesses is a Class A misdemeanor punishable by fine or confinement, jurisdiction vests with the county criminal court at law and not the municipal court (Tex. Loc. Gov't Code § 243.010(b)).

3. Warrant Fees; Judicial Immunity

Kubosh v. City of Houston, 2 S.W3d 463 (Tex.App. – Houston [1st Dist.] 1999, Petition for Review Denied 2000)

The Appellant brought a declaratory judgment action against the City of Houston alleging the City assessed an unauthorized warrant fee. Both parties moved for summary judgment. The trial court denied the Appellant's motion and granted the City's motion. The Appellant complained the trial court erred in rendering summary judgment in the City's favor. The City was not shielded by sovereign immunity for its alleged unauthorized collection of warrant fees from arrestees who were not yet convicted. While judges enjoy absolute judicial immunity from liability for judicial acts, no matter how erroneous the act or how evil the motive, unless the act is performed in the clear absence of all jurisdiction, it is erroneous to presume that such judicial immunity extends to

the City. The City's imposition of the warrant fees was not a judicial function, such that it should be entitled to enjoy absolute judicial immunity from arrestees' suit for allegedly charging unauthorized warrant fees to arrestees who were not yet convicted. The appellate court reversed the summary judgment for the City and remanded the cause to the trial court.

D. Trial Procedure

1. Enhancements; Admonishment in Misdemeanor Cases

Villalpando v. State, 2002 Tex. App. LEXIS 5754; 2002 WL 1808712 (Waco – August 7, 2002)

It is unnecessary for a trial court to admonish a Defendant that a conviction on a plea of guilty could later be used for enhancement purposes. The admonishment provisions of Article 26.13, Code of Criminal Procedure apply to felony, not misdemeanor cases. Because a court is not required to admonish a felony Defendant that a conviction could be used to enhance a subsequent charge, neither is the court required to do so for a misdemeanor Defendant.

2. Jury Instructions; Right to Jury Nullification

Stefanoff v. State, 78 S.W.3d 496 (Tex.App. – Austin 2002)

Does the Texas Constitution guarantee the right to a jury nullification instruction?

Appellant cited the Texas Constitution for the proposition that a right to jury nullification does exist, specifically Tex. Const. Art. I, § 8. Specifically, he relied on the last clause of the last sentence, stating, "And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, *as in other cases*." Although jury nullification is a recognized part of our judicial system, the court held that there is no constitutional requirement that a trial judge instruct the jury on nullification.

3. Rules of Evidence; Judicial Notice; Municipal Ordinance

Flores v. State, 33 S.W.3d 907 (Tex.App. – Houston [14th Dist.] 2001)

Under the former rules of criminal evidence, Texas courts could not take judicial notice of the existence of city ordinances or their terms, even on their own motion. Under the current rule, any Texas court may, upon its own motion or the motion of a party, take judicial notice of a municipal ordinance, provided the party requesting notice furnishes the court with sufficient information to comply with the request and the court gives the opposing party an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. *See* TRE 204.

E. Appeals

1. Defunct Pro Se Appeal from Court of Record

Bush v. State, 80 S.W.3d 199 (Tex.App. – Waco 2002)

Following trial *de novo* from local trial court, the Defendant was convicted in the county court for driving his vehicle with an expired license plate. Defendant was assessed a $199 fine. Defendant appealed. Acting as his own attorney, Defendant timely filed a notice of appeal. Thereafter, his request for a free reporter's record was denied because he failed to meet the burden of proving indigence. The appellate court then notified Defendant that his brief was due in 30 days. Defendant subsequently failed to file an appellate brief. Defendant was notified that that he needed to file his brief or that the appellate court would dismiss the appeal under its inherent authority to avoid the waste of judicial resources where a party failed to comply with a court order or the rules of procedure. No brief or extension to file a brief was filed. The appellate court held Defendant's appeal was not taken with the intention of pursuing it to completion, but instead was taken for the purposes of delay; therefore, his failure to comply with its orders warranted a finding of failure to prosecute and involuntary dismissal.

2. Without Conviction

Saliba v. State, 45 S.W.3d 329 (Tex.App. – Dallas 2001)

The State successfully appealed an order of a municipal court granting Appellant's motion to quash her indictment. Appellant challenged the reversal, arguing the intermediate appellate court erred by reversing the municipal court's order. The State filed a motion to dismiss for want of jurisdiction prior to submission. The court held, generally, appellate courts could consider an appeal by a criminal Defendant only after a conviction. The court noted there were narrow exceptions to the rule requiring conviction before a criminal Defendant could appeal. The court held a Defendant could appeal (1) while on unadjudicated community supervision; (2) the denial of a motion to reduce bond; (3) the denial of a pretrial application for writ of habeas corpus alleging double jeopardy; and (4) the denial of habeas corpus relief in extradition cases. The court dismissed the appeal for a want of jurisdiction because the Appellant had neither been convicted nor did her case fall into any of the aforementioned exceptions.

F. Expunction

1. Effect of Prosecutor's Agreement; DPS; Chapter 55 Expunction Proceedings

Texas Department of Public Safety v. Woods, 68 S.W.3d 179 (Tex.App. – Houston [1st Dist.] 2002)

Despite the uniformity of interests shared by each person and agency possessing criminal records, the Legislature has authorized each agency possessing criminal records to appear separately to challenge expunction and to appeal expunction orders. Thus, the appellate court rejected the contention

that a prosecutor's agreement promising not to oppose expunction was binding on DPS or capable of rendering DPS's challenge to the sufficiency of the evidence irrelevant.

2. Class C Misdemeanors; Meaning of "Arrest"

Carson v. State, 65 S.W.3d 774 (Tex.App – Fort Worth 2001)

Former police officer was tried and convicted in the Arlington Municipal Court of assault by offensive and provocative physical contact. Upon rehearing, he was ultimately acquitted by County Criminal Court Number Five of Tarrant County. Appellant subsequently attempted to expunge his "arrest" in district court. The petition was denied on the basis that he was not subject to actual physical custodial detention. Appellant appealed the trial court's denial of his petition for expunction, claiming that the trial court erred by holding that issuance of a Class C misdemeanor citation by mail does not constitute an "arrest" for the purposes of Article 55.01 of the Code of Criminal Procedure. The court held that the mailing or receipt of a Class C misdemeanor citation did not constitute an "arrest" under expunction statute. However, the officer's actual submission to an assertion of authority by appearing at the time and place indicated on the citation to dispute the charges against did, for the purposes of Article 55.01, constitute an "arrest." Thus, the city could not complain on appeal that its records as officer's employer were not subject to expunction.

G. Juvenile Confession; School Officials; Custodial Interrogation

In the Matter of VP, 55 S.W.3d 25 (Tex.App. – Austin 2001)

Does questioning by school officials constitute custodial interrogation?

En route to school, Appellant hid a gun in a friend's backpack and retrieved it upon arriving at school. The friend told a police officer at the school that Appellant had a weapon. The officer and the hall monitor escorted Appellant to speak to an assistant principal. The officer left the room while the assistant principal interrogated Appellant. Appellant initially denied knowing anything about a weapon, and asked to speak to a lawyer. While the assistant principal was a representative of the State, he was not a law enforcement officer, and nor did his questioning constitute custodial interrogation by law enforcement. Because Appellant was not in official custody when questioned by the assistant principal, he did not have the right to remain silent or the right to speak to a lawyer. Appellant admitted bringing the weapon to school. Appellant was arrested by the officer, who took him to his office, designated under Family Code § 52.025 as the school's juvenile processing office, advised him of his Miranda rights, and called Appellant's mother. The appellate court affirmed Appellant's adjudication, as a delinquent child because his interrogation by an assistant principal did not invoke his Miranda rights, and statutory procedures for taking a juvenile into custody did not apply until Appellant was actually arrested by law enforcement.

H. Magistrates

1. Four Corners Doctrine

a. Going Beyond Content of the Affidavit; Informants

Ozuna v. State, 2002 Tex. App. LEXIS 518; 2002 WL 1625150 (Tex.App. – San Antonio July 24, 2002)

The police obtained a search warrant for Defendant's home based upon an affidavit from informants indicating that they had received information that Defendant traded stolen property for drugs and was known to carry heroin on his person. The police found heroin in the home. The trial court ruled that the affidavit did not contain probable cause to support the search for heroin. The court of appeals affirmed the trial courts finding that the affidavit presented to the magistrate was more than a "bare bones affidavit" as it stated certain suspicions, beliefs, and provided on its face underlying circumstances and factual basis of knowledge. However, the court held that the reviewing magistrate was required to look further into the totality of the circumstances. The magistrate must assess the credibility and basis of knowledge of the informant and weigh any other information. In this case, there was evidence suggesting that the magistrate did not receive information that would enable him to sufficiently examine the credibility of the informant and his basis of knowledge. Factors to support the informant as to the search for heroin are noticeably absent: there were no firsthand observations by the informant; no degree of detail provided; no corroboration of the informant's information by an officer's independent investigation; and no testimony from the informant at the probable cause hearing.

b. "Reasonable Inferences"

Duncan v. State, 72 S.W.3d 803 (Tex.App. – Fort Worth 2002)

Defendant, age 18, was charged with unlawful interception of electronic communications and four counts of possession of child pornography. The 158th District Court, Denton County, Texas, granted Defendant's motion to suppress and the State appealed. On appeal, the State contended the trial court erred because the allegations in the search warrant affidavit were sufficient to support the magistrate's probable cause finding that child pornography would be found in Defendant's residence. The affidavit in support of the search warrant stated that a 16-year-old girl told the officer that Defendant had called her and said that he had surreptitiously videotaped and photographed them having intercourse and was going to put them

on the Internet. The appellate court found that it was reasonable to infer that Defendant possessed the videotape and photos at his residence in light of his statement indicating that they had been made with hidden cameras. Considering the totality of the circumstances, the appellate court held that a substantial basis existed for the magistrate's determination that child pornography and related items would probably be found in Defendant's residence. The dissent noted that nothing in the affidavit contained information from which a magistrate could reasonably infer where the sexual activity could have occurred and the State did not explain why it was more reasonable to speculate that the consensual sexual activity occurred in the Appellant's home rather than in a friend's home, a motel, or even in the backseat of an automobile or the bed of a pickup truck.

c. "Hypertechnical" Analysis vs. "Substantial Basis"

Morris v. State, 62 S.W.3d 817 (Tex.App – Waco 2001)

In determining whether a search warrant is based on probable cause, the affidavit is interpreted in a common sense, realistic manner; hypertechnical analysis should be avoided. On appeal from conviction for aggravated sexual assault of a child, Appellant contends that the affidavit presented to the magistrate did not establish that he possessed child pornography in his home, because the informant said the photographs are of "nude children" and not "nude children" engaging in sexual activities. Furthermore, Appellant argued that the informant merely concluded that he possessed child pornography instead of providing the magistrate with facts that would support such a conclusion. The court disagreed with the interpretation and found it to be based on a "hypertechnical" analysis of the affidavit. The court emphasized that the information with which the magistrate is supplied may be hearsay. In this instance, the facts and circumstances submitted to the magistrate were within the "four corners" of the affidavit and provided a "substantial basis" for the magistrate's conclusion that child pornography would probably be found at Appellant's residence at the time the warrant was issued. Therefore, the affidavit was sufficient to establish probable cause.

2. Search Warrant Affidavits

a. Attacking the Search Warrant Affidavit

Clement v. State, 64 S.W.3d 588 (Tex.App. – Texarkana 2001)

Evidence at the hearing showed that the magistrate issued warrant at 10:25 p.m. on June 25, 1999, and the statement of the accomplice referred to in paragraph five of the affidavit, was not signed until after 11:15 p.m. The record shows that the accomplice began giving her written statement at 9:50 p.m. and that the peace officer had been told what the accomplice would be including in her written statement, but did not have the final written statement in hand at the time the affidavit was submitted to the magistrate. Appellant argued that this shows there was an untrue statement in the affidavit, that it was made deliberately or with reckless disregard for the truth, and that under *Franks* the search warrant should therefore be invalidated. In affirming the trial court, the appellate court held that Defendant failed to show that the alleged misrepresentation was intentionally or falsely misleading, and even if Defendant had met his burden on the misrepresentation prong, the information at issue was true, and that the alleged fabrication was not material to establishing probable cause.

b. Consequences of Misstatement in Search Warrant Affidavit

Moss v. State, 75 S.W.3d 132 (Tex.App. – San Antonio 2002)

A misstatement in a probable cause affidavit for a search warrant (specifically the addition of the word "the") does not invalidate the search if after exacting the misstatement sufficient probable cause exists.

3. Bonds; Split Bonds OK in Far West Texas

Frontier Insurance Company v. State, 64 S.W.3d 481 (Tex.App. – El Paso 2001).

Defendant posted "split bond" consisting of $20,000 personal recognizance bond and $20,000 surety bond. The trial court ordered forfeiture of the $20,000 surety bond, based on Defendant's failure to appear for trial. Surety appealed. The Court of Appeals held that the "split bond" was not invalid pursuant to statutory requirement that Defendant be allowed to make cash bond in lieu of surety bond.

4. Disposition of Cruelly Treated Animals

Hoog v. State, 2002 Tex. App. LEXIS 6214; WL 1970940 2002 (San Antonio – August 28, 2002).

After alleging that the Defendant, the purported owner, had cruelly treated 73 head of cattle, the State secured a warrant from a justice court and seized the animals pursuant to Chapter 821, Texas Health & Safety Code. The justice court found that the purported owner had cruelly treated the cattle and ordered divestiture of ownership and public sale of the cattle. The purported owner appealed. The appeals court held the evidence was legally insufficient to support the judgment. Because the purported owner was not the owner of the cattle, a forfeiture proceeding never should have been initiated against him. In rejecting a legal fiction, the appeals court held the purported owner was not the "special owner" of the cattle.

COURT SECURITY

Jo Dale Bearden

Metal/Weapon Detectors

Metal detectors do work, and typically work very well. Metal detectors are considered a trustworthy technology and can accurately detect the presence of most types of firearms and knives. Two types of metal detectors are standard in court security, the hand-held metal detector and the walk-through metal detector. If asked what a metal detector does and what property does it most detect, the average person would probably say that a metal detector only detects metal and at that it is more likely to detect metal with a heavier mass. These assumptions are incorrect. Metal detectors actually detect any conductive material—anything that conducts an electrical current. The mass size then is not significant because the electrical conductivity and magnetic properties are the characteristics that determine the metal detector reading. This being said, metal detectors do not work when the user is not aware of the machine's proper use and its limitations.

Hand-held Metal Detectors

Hand-held metal detectors are wand type scanners used to detect the presence of conductive material on a person. Operation of the hand-held metal detector is easy. With a sweeping motion over a scannee's clothing, the user can quickly determine the presence of a metallic substance. If a metallic substance is detected, the wand beeps or vibrates. The advantage of a hand-held metal detector is that it determines the exact location of the substance. Hand-held metal detectors are typically used as follow-up with walk-through metal detectors because the units can locate specific points on the person where metal is to be found after an alert from the walk-through. But, they can be used alone with a decrease in processing time. To detect firearms and explosives, a thorough screening may be necessary, but to detect smaller-edged weapons, an all-encompassing screening is required. Hand-held metal detectors should be purchased on a ratio basis, looking at the number of courtrooms and the number of screeners available. Prices on hand-held metal detectors range from $120 to $400 and can be purchased from any public safety equipment providers. Galls (www.galls.com) or GT Distributors (www.gtdist.com) are two commonly used companies.

Walk-through Metal Detectors

A walk-through metal detector, also called magnetometers or portal metal detectors, is a stand-alone structure that looks similar to a doorframe. In general, a walk-through detector is seven feet high, with a base that is three feet across and two feet deep. Placement is dictated by a detector's surroundings because the surroundings may interfere with magnetometer readings. Items such as a nearby elevator, metal table, or even metal stool may effect a detector's reading. It is important that the entire surrounding area be evaluated for optimal performance. For maximum security, a walk-through metal detector should be at any door that the public may enter. As this is not always possible in every city, the court may instead consider a walk-through metal detector at the courtroom door. One of the advantages of a walk-through metal detector is that it can handle high volume traffic areas. But, in considering space, the potential for a line to form should also be considered. Specifically that traffic flow is not being impeded, or that no one is waiting outside on a rainy day.

The majority of walk-through metal detectors do not indicate where the metal object is located on the person and/or article screened. Therefore, the use of a hand-held as follow-up is important as it confirms the exact location and often the size of the object. Many newer walk-through models, though, will provide the general and sometimes the exact location of the metal object. This is done through the use of Lighted Electronic Display (LED) on the side panel or through a computer monitor.

Walk-through metal detectors vary in price. On average a walk-through unit may cost from $2,000 to $5,000. Similar to hand-held units, walk-throughs can be purchased from any public safety equipment providers such as Galls (www.galls.com) or GT Distributors (www.gtdist.com).

Training and Procedures

Although most hand-held metal detectors work well, the hand-held metal detector is only as good as the operator using it. The units come with a user's guide that the user should

review and become proficient at. Many manufacturers even provide training in the use of their metal detectors. This training should include staff that may be called as backup operators.

Courts should also develop an internal procedure manual on proper usage, court policy on depth of scan, etc. The following are examples of such policies:

- The detector should be passed over the scannee's body at a distance of no more than three to four inches. Avoid touching the body or clothing with the detector.
- The detector should be set at the highest sensitivity, unless there is interference from metal reinforcing in the floor at the particular area.
- The body scan is to be performed each time in the same pattern. The operator will always know what part of the body still needs scanning.

Include also a sample routine from when the scannee walks into the building until the person is allowed full access to the building. Also, post instructions to the scannee. For example, "Welcome to Texas Municipal Court. For the safety of all who pass through our doors, our policies require that EVERY person be scanned to prevent weapons from entering our court."

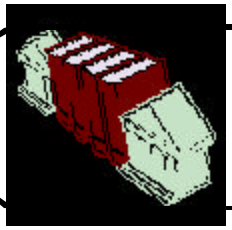
The National Institute of Justice has three guides relating to policies and usage of hand-held and walk-through metal detectors: NIJ Guide 600-00, NIJ Standard 0601.01, and NIJ Standard 0602.01.[1] These guides contain performance standards regarding detection sensitivity, speed of scan, repeatability of scan, discrimination, and throughput rate. In setting policies for a court, these guides should be reviewed.

Conclusion

Remember that not all items considered dangerous will always be detected by either type of metal detector. Wooden instruments, some plastic items, and even needles may not be detected. There are also exotic items, such as the .22-caliber cell phone gun,[2] that may be detected, but not recognized as dangerous by the scannee. Those in charge of court security must understand that good court security encompasses competent persons, training, procedures, and equipment. Only by incorporating all of these elements will courts begin to provide a safer court for court personnel and the public.

[1] These guides can be accessed at the National Criminal Justice Reference Service, www.ncjrs.org.

[2] Nielson, Eugene. "Handheld Metal Detection and the Law," *Law Enforcement Technology,* May 2002, 1992.



RESOURCES FOR YOUR COURT

NJC Offers Traffic Seminars

Traffic Issues in the 21st Century
When: May 5-9, 2003
Where: Reno, Nevada
Cost: $895 (Early Discount: $795 by 2/5/03); $200 Conference Fee

This course provides an overview of legal and evidentiary issues related to plea taking, searches, seizures, arrests, and confessions. The course also provides information on the role of the traffic court judge in the community; ethical judicial outreach and bridge building; new approaches to aggressive driving offenses; techniques in dealing with the aging driving population; racial profiling issues; pretextual traffic stops; and new challenges in commercial motor vehicle cases. Participants will analyze and discuss current and emerging issues in blood alcohol pharmacology and sobriety testing; scientific evidence in motor vehicle cases; and effective sentences, sanctions and dispositions, and addictive behavior. During the course, discussion groups participate in an interactive mock trial to provide proactive study. In addition, participants are encouraged to develop ideas for implementing successful partnerships with national, state, and community-based traffic safety entities.

NJC continued on page 21

2003 COURTS AND LOCAL GOVERNMENT TECHNOLOGY CONFERENCE

JANUARY 29-30, 2003

Austin Convention Center
500 East Cesar Chavez, Austin, Texas 78701

OVERVIEW

Held in conjunction with the prestigious *Government Technology Conference* (GTC) on Jan 27-31 at the Austin Convention Center, this event is essentially a conference within a conference. Attendees will receive training and information on technology topics of interest to courts and local government. In addition, the Government Technology Conference (GTC) will offer an unbiased forum for government professionals and the computer and telecommunications industry to openly discuss and develop technology solutions. Registration includes admission to the GTC exhibit show and general sessions featuring nationally recognized leaders in technology. A computer lab will be set-up for continuous training on on-line legal research, plus email, Internet and other technology. The fee for GTC alone is usually about $250 but by working together, we are able to offer this combined conference for only $50 if you register by Jan. 1.

WHO SHOULD ATTEND

- All court personnel and staff interested in technology
- Judges and staff from all courts in Texas
- County & local government information technology staff

OBJECTIVES

Courts staff will learn about:

- Current and future technology solutions
- E-filing on-line in Texas
- Integrated data exchange
- County Information Resource Agency's potential legislative solutions
- E-government web sites including TX on-line, online payment and other on-line services
- Government technology trends
- Public safety information integration
- Security & privacy issues and solutions

REGISTRATION FEE

Registration Fee is $50 before January 1 and $75 after January 1. Registrations are transferable. Requests for refunds must be received in writing by Jan. 1. After that date, requests will be subject to admin fee equal to one-half of registration fee.

KEYNOTE SPEAKERS

Wednesday, January 29, 8:30 am

Richard Marcinko, Former Navy SEAL and best-selling author of *Rogue Warrior*

One of the nation's most accomplished and recognizable special operations experts, Richard Marcinko has over 30 years experience in counter-terrorism, intelligence: and special operations. During a U.S. Naval career that spanned 30 years, Mr. Marcinko worked his way from enlisted man to the rank of commander. He is best known as the founder and first commanding officer of two of the military's premier counter-terrorist units: SEAL TEAM 6 and RED CELL. From operations in Vietnam, to planning at the Pentagon, Mr. Marcinko has proven his expertise at all levels of special operations, intelligence, and security.

Thursday, January 30, 8:30 am

Scott Charney, Chief Security Strategist, Microsoft Corporation

Charney has a wealth of experience in computer security in the private sector and government. Most recently, he was a principal for Pricewaterhouse Coopers where he led the firm's Cybercrime Prevention and Response Practice and provided computer security services to Fortune 500 companies and smaller enterprises. He is one of the best known attorneys in information security. He was chief of the Computer Crime and Intellectual Property Section in the Criminal Division at the U.S. Department of Justice. As the leading federal prosecutor for computer crimes, he helped prosecute nearly every major hacker case in the United States from 1991 to 1999.

ACCOMMODATIONS

The Radisson Hotel & Suites is located at 111 E. Cesar Chavez (1st) Street in Austin. For reservations call (512/473-1513) and request space in the "Texas Municipal Courts Education Center Room Block." The room rate of $103 single/$123 double is limited, make your reservation as soon as possible. The guaranteed reservation deadline is January 7, 2003. (Note: There is also a $8.00 charge for parking per day.)

AGENDA

Tuesday, January 28, 2003

5:00 – 8:00 Welcome Hospitality Suite for all attendees – Radisson Hotel

Wednesday, January 29, 2003 at the Austin Convention Center

8:30 – 10:00 GTC General Session
Richard Marcinko, Former Navy SEAL and best-selling author of *Rogue Warrior*

10:30 – 11:30 Introductory Remarks
Getting the Big Picture: Overview of Government Technology Trends and Legislative Issues
E-mail: Security and Public Information Issues

1:00 – 1:45 Security for Courts and Local Government Technology

1:45 - 2:30 Privacy for Courts and Local Government Technology

2:30 – 5:30 GTC Trade Show & GTC Reception

Thursday, January 30, 2003 at the Austin Convention Center

8:30 – 10:00 GTC General Session Scott Charney, Chief Security Strategist, Microsoft Corporation

10:30 – 12:00 General Session Texas Courts: electronic filing on-line Information Integration (XML) A new process that may be the future of seamless data integration.

2:00 – 3:30 General Session County Information Resources Agency legislative concepts and solutions to legislative issues
Moderated Panel - group discussion on technology issues and solutions for courts and local government
Municipal Break-Out: Video Magistration - Save time and reduce security risks by using closed circuit technology for 15.17 hearings.

3:30 Adjourn

Note: hands-on legal research training will be conducted all day Thursday. (Agenda subject to change)

- **Does not fulfill mandatory annual requirements for municipal judges for judicial education.**
- **Participants are responsible for all hotel and meal expenses.**

2003 COURTS AND LOCAL GOVERNMENT TECHNOLOGY CONFERENCE JAN.29-30, 2003
REGISTRATION FORM

Registration Fee : $50 / $75 after Jan. 1.

Name: _____
Title: _____
Court: _____
Address: _____
City: _____ Zip: _____
Telephone: _____ Fax: _____
E-mail: _____

(Please make checks payable to TMCEC)

Mail: 1609 Shoal Creek Blvd., Suite 302, Austin, Texas 78701 Fax: 512/435-6118

Co-sponsored by Texas Municipal Courts Education Center, Texas Association of Counties, Texas Center for the Judiciary, Texas Justice Court Training Center, and Judicial Committee on Information Technology.

FROM THE CENTER

Low Volume Seminar

Since 1999, TMCEC has offered a series of continuing judicial education programs for non-attorney judges and their clerks. Known as the Low Volume Court Program, these seminars offer an opportunity for judges and clerks to collectively examine issues and problems commonly experienced in smaller courts.

Judges can attend with more than one clerk, but teams may be limited to three persons per court, depending on the number of participants.

This year's program will address the following issues:

- *The Importance of Court Decorum and Improvement Strategies*
- *The Judge and Clerk Working as a Team*
- *Common Magistrate Questions*
- *Common Traffic Questions*
- *Common Juvenile Questions*

This program will require group participation. The faculty will be selected from full-time and part-time judges, from mid-size and low volume courts that have practical experience, and TMCEC staff members. There will be ample opportunity for questions and answers. Enrollment is limited to 40 at these sessions so that there can be more involvement by attendees. So come prepared to participate.

Just as with the regional 12-hour TMCEC programs, the low volume program begins at 8:00 a.m. on Day 1 and ends at 12:00 noon on Day 2.

Judges and Clerks
Low Volume Courts
January 7-8, 2003
Hilton Waco

Registration Fees Waived for City Prosecutors

TMCEC is hosting its 10th Annual Prosecutor Skills Seminar in Austin and Corpus Christi. This year no registration fees will be charged to municipal prosecutors. Others will be required to pay $150 to $300 depending on whether housing is needed. The program is funded by a grant from the Court of Criminal Appeals. Housing, course materials, two breakfasts, and a lunch will be provided. A registration form may be found in the TMCEC Academic Schedule which was mailed to all courts in early November.

10th Annual Prosecutor Program

December 2-4, 2002	**June 17-18, 2003**
Austin Radisson	**Corpus Omni Bayfront**

12-hours CLE credit

Bailiff/Warrant Officer Seminar

TMCEC is offering for TCLEOSE credit a specially designed program for bailiffs and warrant officers in Austin on December 2-4, 2002. Topics to be covered include: *Professionalism and Ethics, Investigating Forged Government Documents, Legal Aspects of Forged Government Documents, Warrant Round Ups and Amnesty Programs: A How To, Security Screening, Intelligence Gathering, Emergency Management, Developing a Court Security Manual, Identifying the Mentally Ill, Developing a Marshal's Office, Utilizing EPOs for Court Security, Terrorism and Bomb Threats*, and *Contempt and Other Arrestable Offenses.*

There is no registration fee. The program is funded by a grant from the Court of Criminal Appeals. Housing, course materials, two breakfasts, and a lunch will be provided. A registration form may be found in the TMCEC Academic Schedule which was mailed to all courts in early November.

December 2-4, 2002
Austin Radisson

and

March 18-19, 2003
Hilton Arlington

12-hours TCLEOSE credit
4-hours TCLEOSE credit for pre-conference (*Verbal Judo*)

Level III Assessment Clinic

To be certified at Level III, clerks and court administrators must attend a three-day assessment clinic sponsored by TMCEC. The clinic is a workshop emphasizing the development and practice of court management and human resource skills. The purpose of the clinic is to help clerks have confidence in their management skills and to be better prepared to provide efficient and effective oversight over court administration. Each program will have less than 30 clerks or court administrators and interaction is emphasized. The February 7-9, 2003 program begins at 9:00 a.m. on Friday and concludes at 4:00 p.m. on Sunday at the Del Lago Resort in Montgomery (north of Houston near Conroe). Night sessions are planned. Register by January 10, 2003.

The Municipal Court Clerks Certification Program is sponsored by the Texas Court Clerks Association, Texas Municipal Courts Association, and Texas Municipal Courts Education Center. For more information, contact Pennie Jack (817/459-6954) or Jo Dale Bearden (800/252-3718).

78th Legislature Dates of Interest

Monday, November 11, 2002: Prefiling of legislation for 78th Legislature begins

Tuesday, January 14, 2003: 78th Legislature convenes

Monday, June 2, 2003: Last day of 78th Regular Session

Motions continued from page 6

[13] *Supra*, note 9.

[14] *Stein v. State*, 292 S.W.2d 548 (Tex.Crim.App. 1973).

[15] *Supra*, note 8.

[16] *Garcia v. State*, 454 S.W.2d 400 (Tex.Crim.App. 1970).

[17] *Lewis v. State*, 627 S.W.2d 492 (Tex.Crim.App. 1983).

[18] *Blacklock v. State*, 681 S.W.2d 155 (Tex.Crim.App. – Houston 1984).

Amnesty continued from page 8

personally is Kohl's). A warrant round-up can be conducted just as often as practical with the message: "Take care of your business or we will take care of it for you."

Susan Richmond is the former chief city marshal of the City of Carrollton. She holds a master peace officer's license and is a TCLEOSE certified instructor. She may be reached at secretary@texasmarshal.org or craftsareme@att.net.

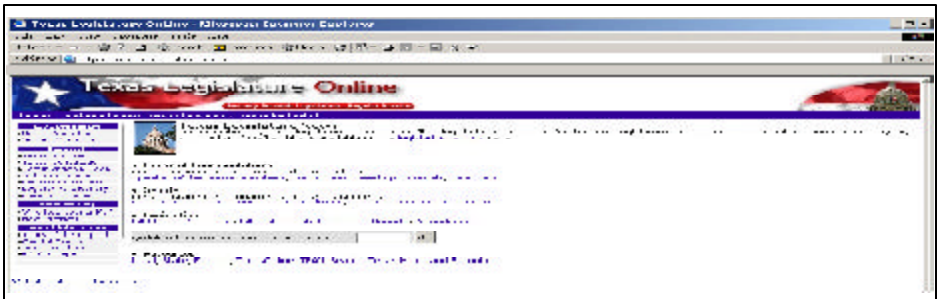
NJC continued from page 17

Sentencing Motor Vehicle Law Offenders

When: August 25-28, 2003
Where: Reno, Nevada
Cost $775 (Early Discount: $675 by 5/28/03); $180 Conference Fee

This course focuses on the objectives and philosophies of sentencing, such as basic due process law, rehabilitation, restitution, retribution, and deterrence. The history of probation is evaluated, as are innovative probation conditions such as mandated evaluation, treatment, community service, and the use of bumper stickers and zebra license tags. Participants analyze the right to counsel, double jeopardy, the use of prior convictions for enhancement, and judicial liability and immunity. The course also provides information on the appropriateness of sentencing options for older drivers, young drivers, and addicted drivers. Communication styles, personality types, and methods of dealing with the media in high-profile cases are explored and evaluated.

For further informatin about traffic safety courses, call theNJC Registrar at 800/25-JUDGE or 775/784-6747.



Finding Bills and Statutes

The Texas Legislature Online provides information about state officials and the legislative process. It offers copies of bills and downloadable versions of Texas statutes and the Texas Constitution. The revisions to the codes by the 77th Legislature are also available online. Links are provided to the Texas Register, Texas State Law Library, and Windows on State Government.

Access all this at:

www.capitol.state.tx.us

Academic Schedule

NEW, NON-ATTORNEY JUDGES:

12/9-12/13, 2002
32-Hour Judges/Clerks
Hyatt Regency Austin
208 Barton Springs
Austin, 78704
512/477-1234

7/21-7/25, 2003
32-Hour Judges/Clerks
Radisson Hotel & Suites Austin
111 East Cesar Chavez Street
Austin, 78701
512/478-9611
Registration due by: 6/27

JUDGES 12-HOUR:

1/23-1/24, 2003
12-Hour Judges/Clerks
Omni San Antonio
9821 Colonnade Blvd.
San Antonio, 78230
210/691-8888
Registration due by: 1/6

2/20-2/21, 2003
12-Hour Judges/Clerks
Adam's Mark Hotel & Resort
2900 Briarpark Drive
Houston, 77042
713/978-7400
Registration due by: 1/27

3/3-3/4, 2003
12-Hour Judges/Clerks
Omni Dallas Hotel Park West
1590 LBJ Freeway
Dallas, 75234
972/869-4300
Registration due by: 2/10

4/10-4/11, 2003
12-Hour Judges/Clerks
Holiday Inn Park Plaza Lubbock
3201 Loop 289
Lubbock, 79401
806/797-3241
Registration due by: 3/14

5/5-5/6, 2003
12-Hour Atty Judges
Radisson South Padre
500 Padre Blvd.
South Padre 78597
956/761-6511
Registration due by: 4/7

5/7-5/8, 2003
12-Hour Non-Atty Judges
Radisson South Padre
500 Padre Blvd.
South Padre 78597
956/761-6511
Registration due by: 4/7

6/5-6/6, 2003
12-Hour Judges/Clerks
Hilton Midland & Towers
117 West Wall Avenue
Midland, 79701
915/683-6131
Registration due by: 5/12

JUDGES 12-HOUR SPECIAL TOPIC:

5/21-5/22, 2003
Judges Special Topic: Evidence
Omni Southpark Austin
4140 Governor's Row
Austin, 78744
512/448-2222
Registration due by: 4/25

6/17-6/18, 2003
Court Administrators/Prosecutors & Judges Special Topic: Juveniles
Omni Bayfront Corpus Christi
900 N. Shoreline Boulevard
Corpus Christi, 78401
361/887-1600
Registration due by: 5/23

JUDGES AND CLERKS 12-HOUR LOW VOLUME COURTS:

1/7-1/8, 2003
Low Volume
Hilton Waco
113 S. University Parks Dr.
Waco, 76701
254/754-8484
Registration due by: 12/16

3/27-3/28, 2003
Low Volume
Embassy Suites Abilene
4250 Ridgemont Drive
Abilene, 79606
915/698-1234
Registration due by: 3/1

NEW CLERKS:

12/9-12/13, 2002
32-Hour Judges/Clerks
Hyatt Regency Austin
208 Barton Springs
Austin, 78704
512/477-1234

7/21-7/25, 2003
32-Hour Judges/Clerks
Radisson Hotel & Suites Austin
111 East Cesar Chavez Street
Austin, 78701
512/478-9611
Registration due by: 6/27

CLERKS 12-HOUR:

1/23-1/24, 2003
12-Hour Judges/Clerks
Omni San Antonio
9821 Colonnade Blvd.
San Antonio, 78230
210/691-8888
Registration due by: 1/6

2/20-2/21, 2003
12-Hour Judges/Clerks
Adam's Mark Hotel & Resort
2900 Briarpark Drive
Houston, 77042
713/978-7400
Registration due by: 1/27

3/3-3/4, 2003
12-Hour Judges/Clerks
Omni Dallas Hotel Park West
1590 LBJ Freeway
Dallas, 75234
972/869-4300
Registration due by: 2/10

4/10-4/11, 2003
12-Hour Judges/Clerks
Holiday Inn Park Plaza Lubbock
3201 Loop 289
Lubbock, 79401
806/797-3241
Registration due by: 3/14

5/1-5/2, 2003
12-Hour Clerks
Radisson South Padre
500 Padre Blvd.
South Padre 78597
956/761-6511
Registration due by: 4/7

PROSECUTORS:

12/3-12/4, 2002
Bailiffs/ Warrant Officers and Prosecutors
Radisson Hotel & Suites Austin
111 East Cesar Chavez Street
Austin, 78701
512/478-9611

6/17-6/18, 2003
Court Administrators/Prosecutors & Judges Special Topic: Juveniles
Omni Bayfront Corpus Christi
900 N. Shoreline Blvd.
Corpus Christi, 78401
361/887-1600
Registration due by: 5/23

COURT ADMINISTRATORS:

3/18-3/19, 2003
Bailiffs/ Warrant Officers and Court Administrators
Hilton Arlington
2401 East Lamar
Arlington, 76006
817/640-3322
Registration due by: 2/21

6/17-6/18, 2003
Court Administrators/Prosecutors & Judges Special Topic: Juveniles
Omni Bayfront Corpus Christi
900 N. Shoreline Blvd.
Corpus Christi, 78401
361/887-1600
Registration due by: 5/23

BAILIFFS & WARRANT OFFICERS

12/3-12/4, 2002
Bailiffs/ Warrant Officers and Prosecutors
Radisson Hotel & Suites Austin
111 East Cesar Chavez Street
Austin, 78701
512/478-9611

3/18-3/19, 2003
Bailiffs/ Warrant Officers and Court Administrators
Hilton Arlington
2401 East Lamar
Arlington, 76006
817/640-3322
Registration due by: 2/21

LEGISLATIVE UPDATES FOR JUDGES & ALL COURT PERSONNEL:

8/4, 2003
Legislative Update
Sofitel Houston
425 N. Sam Houston Parkway E.
Houston, 77060
281/445-9000
Registration due by: 6/11

8/8, 2003
Legislative Update
Omni Southpark Austin
4140 Governor's Row
Austin, 78744
512/448-2222
Registration due by: 6/11

A Reminder!

Please call TMCEC if your housing needs change. You will be billed $80 plus tax if you reserve a room and do not use it. If you need to change your arrival date, contact the TMCEC offices to cancel the room so that grant funds won't be wasted.

CLERK CERTIFICATION LEVEL III ASSESSMENT CLINICS:

2/7-2/9, 2003
Assessment Clinic
Del Lago Resort
600 Del Lago Blvd.
Montgomery, 77356
936/582-6100
Registration due by: 1/10

5/20-5/22, 2003
Assessment Clinic
Omni Southpark Austin
4140 Governor's Row
Austin, 78744
512/448-2222
Registration due by: 4/25

TMCEC 2002-2003 REGISTRATION FORM

Program Attending: _____ Program Dates: _____
[city]

❒ I also intend to attend the ***Mock Plea and Mock Trial Workshop*** or the ***Survey of the Rules of Evidence*** pre-conference class.

❒ 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: _____

Names also known by: _____ Male/Female: _____

Position held: _____

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

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 and two nights at the 12-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.

Date arriving: _____ Arriving by: ❒ Car ❒ Airplane ❒ Smoker ❒ Non-Smoker

COURT MAILING ADDRESS

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

Municipal Court of: _____ Mailing Address: _____
City: _____ Zip Code: _____ Email: _____
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
❒ Court Clerk ❒ Deputy Clerk ❒ Court Administrator ❒ Warrant Officer/Bailiff
❒ Prosecutor
❒ Assessment Clinic **(A registration fee of $100 must accompany registration form.)**
❒ Other: _____

****Warrant Officers/Bailiffs: Municipal judge's signature required to attend Warrant Officers/Bailiffs program:***

Judge's Signature _____ Date: _____

Municipal Court of _____

I certify that I am currently serving as a municipal 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 five (5) working days prior to the seminar. If I have requested a room, I certify that I live at least 30 miles from the seminar site and have read the cancellation and no show policies in the General Seminar Information section located on pages 17-18 in the Academic Schedule. Payment is required ONLY for the assessment clinics and legislative updates; payment is due with registration form. Participants in the assessment clinics and legislative updates must cancel in writing two weeks prior to seminar to receive refund.

_____ _____
Participant Signature **Date**

2003 LEGISLATIVE UPDATE SEMINARS
For Municipal Judges, Support Personnel, and Prosecutors

In FY 2003, TMCEC will again offer two important six-hour seminars covering new legislation enacted by the 78th Texas Legislature effecting municipal courts. Newly enacted statutes relevant to municipal court jurisdiction, procedures, sentencing, enforcement, and magistration will be analyzed and explained.

MCLE CREDIT
This seminar will be submitted for six hours of MCLE credit by the State Bar of Texas and by the Texas Board of Legal Specialization for credit towards the continuing legal education requirements for certification and re-certification in Criminal Law

JUDICIAL EDUCATION NOTE
The Legislative Update Seminar is not a substitute for the annual judicial education requirement. Judges must still satisfy the 12-hour annual judicial requirement. New, non-attorney judges must still satisfy the 32-hour judicial education requirement. Attendance at the Legislative Update seminar will <u>not</u> be considered full nor partial satisfaction of judicial requirements.

REGISTRATION FEE
Participants will be charged a registration fee of $50 to help offset the costs of the program, and the fee is due with the registration form. Space will be limited to a first-come, first-served basis, so get your registration form in quickly. THIS FEE DOES NOT INCLUDE HOUSING.

IMPORTANT HOUSING NOTE
Unlike our 12-, 24- and 32-hour seminars for judges, clerks and prosecutors, the Texas Municipal Courts Education Center will <u>not</u> provide any funding for housing at the Legislative Update seminar. Housing is <u>not</u> included in the registration fee. Participants requiring housing must make their own arrangements. The Education Center has negotiated a single room rate of $80. The number of rooms available at this rate is limited. If you wish to stay at the seminar hotel, contact the hotel directly. TMCEC will send you a hotel brochure upon receipt of your registration form.

☐ *August 4, 2003*
Houston
Sofitel Houston
425 North Sam Houston Parkway E.
Houston, TX 77060
Telephone Number: 281/445-9000
Register By: July 11, 2003

☐ *August 8, 2003*
Austin
Omni Southpark
4140 Governor's Row
Austin, TX 78744
Telephone Number: 512/448-2222
Register By: July 11, 2003

✓ the program you would like to attend & return completed form with a $50 registration fee to TMCEC.

Name *(please print legibly)*: _____

Street: _____ City: _____ Zip: _____

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

Primary City Served: _____ Other Cities Served: _____

E-mail address:

Check all that apply: ☐ Attorney ☐ Non-Attorney ☐ Full Time ☐ Part Time
☐ Presiding Judge ☐ Associate/Alternate Judge ☐ Justice of the Peace ☐ Mayor
☐ Court Clerk ☐ Deputy Clerk ☐ Court Administrator ☐ Bailiff/Warrant Officer
☐ Prosecutor ☐ Other:

I certify that I am currently serving as a municipal judge, city prosecutor, or court support personnel in the State of Texas. I understand that I will be responsible for housing at my own cost. I understand no payment is required for this program, but a $50 check with registration form is due. The $50 is refundable if the Center is notified of cancellation in writing two weeks prior to the seminar.

_____
Participant Signature Date

TECH CORNER

Jo Dale Bearden
TMCEC Program Coordinator

Using Videoconferencing for 15.17 Hearings[1]

Video 15.17 hearings (also called video "magistration") is made possible through videoconferencing technology—an interactive technology that sends video, voice, and data signals over a transmission circuit so that two or more parties can communicate with each other simultaneously using video monitors. In the magistrate's role, this is usually the magistrate in the courtroom or judge's chamber/office and the defendant in custody at the jail.

Video technology was first used in videophone bail hearings in an Illinois court in 1972. Two years later, a Philadelphia court began use of a closed-circuit television system for preliminary arraignments. Since then, approximately 150 court systems in 17 states have begun the use of videoconferencing systems, including municipal courts in Texas.[2]

Use of videoconferencing technology for 15.17 hearings has shown to be beneficial to courts, for both financial and security reasons. For example, video usage reduces the inherent risks in moving prisoners to and from the jail and court. This reduces the need for additional transfer staff, and reduces the likelihood of hostile confrontation with guards or officers that might lead to injury to prisoners, court staff, officers, or the public. Court security is immediately improved when persons in custody are no longer being brought into the court; instead the magistrate sees them via camera. Physical injury is not the only concern – the spread of germs and disease resulting in tuberculosis, AIDs, and dysentery must also be considered. Also, a lock-up room at court is no longer needed to detain defendants awaiting "magistration." Lastly, time is saved for all involved—the magistrate, for example, can use any time created by a delay at the jail to review warrants and other court documents.

Article 15.17(a), C.C.P. authorizes that "the arrested person may be taken before the magistrate in person or the image of the arrested person may be broadcast by closed circuit television to the magistrate." The statute also states that "a closed circuit television system may not be used under this subsection unless the system provides for a two-way communication of image and sound between the arrested person and the magistrate." Article 15.17(a). The proceedings are to be recorded and the recording shall be preserved until "(1) the date that the pre-trial hearing ends, or (2) the 91st date after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony." (Article 15.17(a), C.C.P.)

Municipal courts investigating the use of video 15.17 hearings should start by reviewing possible applications of the technology. There are a wide range of system options and uses available, but thorough assessment of present and future needs helps the court to decide quickly whether to move forward in implementation. The following questions should be answered[3]:

- How many different sites will be communicating?
- How many people will appear on camera at each site?
- What documents need to be transmitted between sites?
- Is a mechanism needed for confidential communication between sites?
- Is the media or public allowed access to either?
- How frequently will the equipment be used?
- What funding is available for a one-time equipment purchase?
- What future uses can be identified? Can the city, for example, use the equipment for staff training?
- What communication services do the local carriers offer?

In order to implement a videoconferencing system, courts typically need to deal with three types of vendors: equipment vendors, transport vendors, and systems integrators. Equipment vendors will provide the basic hardware needed, such as microphones, cameras, monitors (televisions), control keypad (to adjust and control microphones, cameras, and lighting), facsimile machines, and telephones. The

hardware needed will depend on the type of transport vendor, or communication link that the court decides to go with. In general, a court must decide whether to use a private network or a public network.

A private network, also called two-point video, consists of a network linking of multiple locations linked through coaxial or fiber optic cable. The court may install private lines or lease lines from a carrier, such as a dedicated (always on) or switched (available when needed) T-1 line. A public network refers to using digital technology, often over network lines, such as telephone lines or the Internet. Keep in mind though, that Article 15.17 C.C.P. refers specifically to "closed circuit video teleconferencing," the Internet is not often seen as closed. A systems integrator does all the hardware, design, and installation services, as well as connecting the communications links. Check with your city's technology or computer staff – depending on the resources in your municipality, one or all of these may be done in-house.

According to a court's needs and resources, there are four general types of systems. Custom or site-built rooms are permanent facilities with fixed systems, built into walls or tabletops. Custom-built systems are most appropriate if one courtroom and one courtroom only will be used for videoconferencing. Stand-alone units are stationary, cabinet-mounted systems. Stand-alone units hold most of the equipment required in it. The advantage of a stand-alone system is that there is more mobility than the custom-built. Roll-about units are self-contained systems on carts with room for storing peripherals, such as videotapes and microphones. The advantages of roll-about units are transportability and convenience. With the proper communication wiring, any courtroom or office could be used for videoconferencing. Tabletop or set-top units are smaller versions of stand-alone system. Tabletop systems are intended for use at desk or small meeting areas, and are not designed to be transported.[4] In deciding on a type of system, the court should discuss where the 15.17 hearing would take place, both at the courthouse and at the jail.

In deciding all of the above, cost is a factor, maybe the biggest factor. Costs vary according to what type of hardware, communication devices, location of facilities, vendors, etc. The more research done to investigate costs, the more the costs vary. On average, the hardware should cost between $1,000 and $4,000, varying if a simpler installation is used or if cameras tilt, zoom, rotate manually, or are voice activated. Cabinets and mobile carts may cost from $30,000 to $100,000 because they are self-sufficient and are typically custom-built. Initial start-up costs should be estimated to be substantial, but cost-benefit analysis shows that these costs are quickly offset by savings in personnel, transportation, and security costs involved with bringing a prisoner to the courtroom.[5] Keep in mind that video advances in the video industry are occurring daily; these advances expand the quality and types of applications available, while decreasing the cost.

At the San Angelo Municipal Court, a simple system was devised. The court decided to use cameras and monitors that were already set-up and being used for court security. Each of the two judges has a fixed camera in their office, which is connected to the county jail through a dedicated telephone line that is leased from their local phone company. Voice transmission is done over a conference telephone and recorded through a drop down microphone that records the voices directly into the VCR recording the proceedings. Judge Allen Gilbert states that video 15.17 hearings has drastically cut-down the time he and his marshals spend on 15.17 hearings. Prior to the installation of the present system, marshals would drive a van to the county jail, pick-up those awaiting 15.17 hearings, they would be seen by a magistrate at the court, loaded into the van, and returned to the county jail. This process would take an average of an hour and a half to magistrate seven to nine defendants. Post the installation of video conferencing, 15.17 hearings for seven to nine persons takes 15-20 minutes. They have also cut out the cost of the van used for transportation and removed all liabilities issues that may have arisen in transporting defendants.

During the implementation stage, several factors for success continue to emerge:

- Establish a users committee at the early stages to identify present and future usage. Include magistrates, jail administrator, clerk, court administrator, information technology director, district attorney or city prosecutor, a public defender, and an attorney in private practice.
- Adequate time and resources need to be prearranged for training in operations and new procedures.
- Courts should develop an understanding of staffing required to operate a videoconferencing system. According to the complexity of the system, this may be a full-time, part-time, or user operator.
- Include the storage of the videos in the court's records retention program. (See cite of Art. 15.17, C.C.P. above for specific statutorial time limits.)

In conclusion, using video technology for 15.17 hearings serve two main

purposes: improving court security and reducing the cost of "magistration" activity. But, videoconferencing should balance those gains with the potential impact on the dignity and fairness of court proceedings and the functionality of the court and the participants in the court proceedings. In order to accomplish all goals, the magistrate and all court and jail staff must give the defendants time to listen and ask questions according to the demands of due process, while increasing court security and the magistrate's time by using videoconferencing.

[1] Initial appearance before a magistrate to determine probable cause, set-bail, and request appointment of counsel, pursuant to Art. 15.17, Code of Criminal Procedure (C.C.P.)

[2] *Videoconferencing*, National Center for State Court Briefing Paper, www.ncsconline.org/D_Tech/Briefings/vc.htm

[3] Adapted from *Bridging the Distance, Implementing Videoconferencing in Wisconsin*, Planning and Policy Advisory Committee, June 1999.

[4] *Ibid.*

[5] See methodologies for conducting a cost/benefit analysis in *TeleJustice-Videoconferencing for the 21st Century*, Fifth National Court Technology Conference, National Center for State Courts.

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