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ALL THESE EXES LIVE IN TEXAS

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In January's *Recorder*, we told you about a list of over 100 important cases that the Texas Municipal Courts Education Center maintains on our website. These cases can be found on our website under programs > judges > case law. Previously, we discussed three important cases. In continuing this exploration of important municipal case law, we want to draw your attention to a handful of the many *ex parte* decisions that have impacted municipal courts.

*Ex parte Aldridge*¹

While direct contempt must occur in the presence of the court, the phrase "in the presence of the court" does not necessarily mean in the immediate presence of the court. The court is present whenever any of its constituent parts (including the judge, the courtroom, the jury, and the jury room) are engaged in the business of the court.

In *Aldridge*, a publication was circulated among, and placed in, the immediate presence of prospective jurors in the corridors of the courthouse where they had been assigned to wait. The Court found that "presence of the court" extended to and included the prospective jurors

and the place assigned to them to wait.

*Ex parte Clear*²

All magistrates have co-equal jurisdiction with all other magistrates within the county and their jurisdiction is co-extensive within the limits of the county. In *Clear*, a district judge was found to have exceeded his authority when he doubled a defendant's bail that had been imposed by a justice of the peace who was acting as a magistrate pursuant to statute.

*Ex parte Deaton*³

A magistrate cannot require a defendant to post bail in cash only. A district court attempted to require a \$15,000 cash bond, but the language of the statute providing that a defendant may deposit money in lieu of having a surety gives the defendant the option or privilege of posting cash. The statute does not grant the court the authority to deny a defendant the right of posting a surety bond in aailable case.

*Ex parte King*⁴

The continuance of a criminal trial on the basis that the defense attorney was

a legislator and in actual attendance at a legislative session did not constitute good cause to revoke bail or to increase the amount of bail. Only when a trial judge in whose court the action is pending finds that the bond is defective, excessive, or insufficient in amount, or that the sureties are not acceptable, or for any other good and sufficient cause, may a new bail bond be required.

*Ex parte Knable*⁵

The trial court's authority to punish contemptuous conduct summarily

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AROUND THE STATE

CLERK RECOGNIZED



Lynda Kilgore, Court Administrator for the La Porte Municipal Court, has been named 2008 Manager of the Year by the City of La Porte. Ms. Kilgore was recognized for her outstanding work in changing the court’s administrative software, participating in the Great Texas Warrant Round-Up, sponsoring of local Municipal Court Week activities, and effectively researching and using technology in the La Porte Municipal Court (voice messaging system and handheld ticket writers). Kilgore found time to implement these innovations in spite of the court’s caseload which doubled in the last year. Kilgore deserves such recognition for “the managerial skill she used to create a professional municipal court environment with an upbeat, positive, can-do staff striving to become one of the best municipal courts in Harris County, Texas,” said Denise Mitrano, the Presiding Judge.

TMCA ANNUAL MEETING

The Annual Meeting of the Texas Municipal Courts Association will be held in San Antonio, June 11-13, 2009 at the Drury Inn & Suites Riverwalk (210.212.5200). There will be educational sessions for judges and clerks beginning Thursday at 1:30 pm through Friday at 4:00 pm. Although *not* approved for credit toward mandatory judicial education for municipal judges, the program will offer CLE credit for attorneys and certification credit for court clerks. The annual business meeting will be held at 9:00 am on Saturday, June 13th. Register by May 25, 2009. For more information, contact Judge Steve Williamson, TMCA 1st Vice President (steven.williamson@fortworthgov.org), or Judge Sharon Hatten, TMCA Annual Meeting Co-Chair (shatten2018@yahoo.com).



RETROSPECTION AND NEW OBSERVATIONS ON THE MOTOR CARRIER SAFETY IMPROVEMENT ACT:

Can the “Show Me” State Provide Texas Courts with Insight on Masking?

Ryan Kellus Turner

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Nothing challenges your understanding of a complex topic like having to talk about it for five hours to an audience of judges, clerks, and prosecutors. Needless to say, I learned a lot while preparing for our one-day clinic, *Commercial Driver’s Licenses: Masking and Traffic Safety* (held in Austin at TMCEC on March 13, 2009). Until the clinic, I will confess that I did not fully understand the historical context in which the Motor Carrier Safety Improvement Act (MCSIA) came to exist. (If I had, it would have been easier to explain the enactments of the Legislature to judges and prosecutors in 2004.) Prior to the clinic, I had never taken the time to study in detail Chapter 522 of the Transportation Code, which governs commercial driver’s licenses. (Every municipal judge and prosecutor ought to take the time to read it; especially the broad definition of “conviction” in Section 522.003(7).) After nearly a week of preparation and a great day with clinic participants, I better understand why the law exists, why the law came to exist, and the role municipal and justice courts play in the “big picture.” Here is the twist. While professionally I am more committed to assisting judges and prosecutors to accomplish the objectives of the MCSIA, to be candid, I have made some discoveries that are likely to reignite some old debates and possibly start some new ones.

Recap: How Did We Get Here?

It has been nearly six years since the State of Texas joined most other states in enacting laws that prohibited commercial driver’s license (CDL) holders from concealing violations of state law or motor vehicle ordinances relating to motor vehicle control by means of either a driving safety course or deferred disposition.¹

The initial reaction of some to the Legislature’s denial of probation to CDL holders accused of motor vehicle control offenses paralleled the Five Stages of Grief: (1) Denial, (2) Anger, (3) Bargaining, (4) Depression, and (5) Acceptance.²

In past issues of *The Recorder*, John Vasquez explained the policy behind the MCSIA in an effort to counter “denial” with increased awareness and address the “anger” of those who did not believe that the law as applied to drivers in their personal motor vehicles was fair.³ Ross Fischer and I have both written about the ways that CDL holders and their attorneys may attempt to “bargain” (e.g., pre-trial diversion or the now classic ditty known to some as “FTA Fraud”) and the ethical traps for prosecutors and judges.⁴ Finally, many judges and prosecutors have expressed frustration, if not depression, that the Legislature has yet to preclude “leap-frog appeals” of CDL holders from either a municipal or justice

court (where probation is expressly prohibited) to county court (where such defendants have the possibility of getting probation).⁵

While most courts and prosecutors in Texas have gradually come to “accept” the MCSIA and related Texas laws, most of us came to acceptance without understanding the kind of human tragedies that brought about the MCSIA or how the federal requirements make each state an equal stakeholder in traffic safety.

It does not matter that the CDL holder was in their personal motor vehicle at the time of the offense.

Why should a CDL holder who is convicted twice within three years of reckless driving in his 1979 Volkswagen Sirocco be entrusted to operate either an 18 wheeler or his company’s Dodge minivan when both are used to transport highly toxic tanks of chlorine gas and flammable ammonium nitrite? Why should a CDL holder in their 1984 Honda Civic CRX who is convicted of an offense involving a railroad grade crossing be entrusted to operate a school bus that carries our children to and from home?

The government has a compelling governmental interest in accruing as much data about the driving behavior of commercial drivers, regardless of whether the driver is in a personal

motor vehicle or a “big rig.” As a matter of public policy, the holder of a CDL should not necessarily be allowed to operate a commercial motor vehicle if while driving their own personal motor vehicle (be it a Chevy Cavalier or other make and model) they choose to drive in a cavalier manner which violates traffic laws.

By choosing to be a CDL holder, a person consents to regulation by the Federal Motor Carrier Safety Administration and state and local governments, in essence, consenting to creation of a dossier on every dimension of their driving behavior (regardless of what kind of vehicle the holder is operating) and agreeing that all data collected will be shared among the states. Data sharing requires that all stakeholders (law enforcement, prosecutors, and courts) do their part to ensure that conviction data is collected and shared with other states in a timely manner so that each state can be proactive in getting certain CDL holders off the road (or at least off the road in a commercial motor vehicle). In the interest of public safety, the MCSIA stands for the proposition that public safety on our roadways necessitates more than merely waiting for the worst to happen before taking action against CDL holders who make bad decisions.

When such CDL holders are “disqualified” under Section 522.081 of the Transportation Code, the period of disqualification is typically either 60 or 120 days. Lifetime disqualification is reserved for CDL holders convicted of felonies involving drugs or for refusing to provide a blood, breath, or alcohol sample.

In each hypothetical above, the maximum period of disqualification for the CDL holder would be

60 days. During the period of disqualification, both CDL holders would be prohibited from operating a commercial motor vehicle, however, each could, respectively, continue to drive the Sirocco and CRX.

When a CDL holder “leap frog appeals” from a municipal court, does granting deferred adjudication in county court constitute “masking?”

What exactly is “masking?” Texas law contains no definition. Specifically, 49 C.F.R. §384.226 states:

The 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 (except a parking violation) from appearing on the driver’s record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State (emphasis added).

This regulation clearly prohibits any process that would result in a deferral of judgment or concealment of conviction. Because the goal of the MCSIA is to ensure that a complete snapshot of the CDL holder driving conduct is made part of a driving record that states can see, there is no reason to believe that it should not matter in which court the CDL holder’s “bad conduct” is adjudicated. Otherwise it would be impossible to have a complete picture of the CDL holder’s conduct while behind the wheel. This is the fundamental premise behind the argument that county judges in Texas who grant deferred adjudication to CDL holders accused of traffic offenses are violating the federal “masking”

prohibition.

Such an argument seems nearly irrefutable, until you read the federal definition of “conviction” in 49 C.F.R. §383.5:

Conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a *court of original jurisdiction* or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person’s appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated (emphasis added).

Combined, these two regulations provide ample ammunition for strict constructionists to assert that the granting of deferred adjudication in county court is not “masking.”

First, in the context of CDL holders accused of Class C misdemeanors, county courts are not “courts of original jurisdiction.” The authority of a county trial court of limited jurisdiction to exercise authority over local trial courts of limited jurisdiction (municipal and justice courts) is known as “incidental appellate jurisdiction.” According to U.S. Department of Justice, Texas is one of only six states in the nation to utilize incidental appellate jurisdiction among its courts of limited jurisdiction.⁷

Second, once appeals are perfected to county court, the underlying convictions in justice courts and non-record municipal courts are, in effect, vacated (See, Articles 44.17 and 45.043, Code of Criminal Procedure).

Could this be the reason that the Texas Legislature has not closed what many of us believe to be a loop-hole in Texas law that allows CDL holders to thwart the intent of the MCSIA? Maybe, but I believe it unlikely, in light of the fact that the Texas definition of “conviction” (Section 522.003, Transportation Code) is more restrictive than the federal definition in that it omits the reference to “court of original jurisdiction.”

Clearly, the federal government is not familiar with the interrelationship between local trial courts and county trial courts. The one size fits all approach utilized by the MCSIA is not exactly a perfect fit in the scheme of the Texas judicial system.

Should the State of Texas ask the Federal Motor Carrier Safety Administration for guidance as to what constitutes “masking?”

The State of Missouri did (specifically the Missouri Department of Revenue). Scenarios were addressed and responses published on March 20, 2006. I do not know how it came about, and was surprised to learn that the Federal Motor Carrier Safety Administration would respond in writing to questions posed by a state. I am curious which political official has standing to submit additional questions on behalf of the State of Texas (the Governor, the Lieutenant Governor, the Chair of TxDOT, or State Attorney General)? I appreciate Dallas County Criminal Court of Appeals Number 1, Judge Kristin Wade for sharing the Missouri FAQs with us. It is certain to spark a lot of discussion.

The answers given to the “Show Me” State are also likely to make many judges and prosecutors question their fundamental understanding of “masking” and “diversion.” While it still remains evident that “masking”

and “diversion” pose serious ethical questions for both judges and prosecutors, after having considered the Missouri FAQs, it appears that Administration’s focus is exclusively on process. In other words, do not expect the answers in the Missouri FAQs to delve into either judicial or prosecutorial ethics. Just because the Administration does not believe an act constitutes “masking or diversion,” it does not make that act ethical or authorized by law.

The Missouri FAQs affirms that the MCSIA is not intended, nor should it be construed, to limit the authority of prosecutors to plea bargain or amend charges. By the same token, the MCSIA should not be construed as a license for prosecutors to cut deals that fly up in the face of state laws or the rules of professional conduct. First, prosecutors should ask themselves if the course of action being contemplated is “masking” or “deferral?” If the answer is “no,” then ask if the course of action being contemplated complies with state law. If yes, then ask if it is ethical.

One thing that the Missouri FAQs does not call into question is the notion, that without a prosecutor playing an active role in charging decisions, judges and clerks are, for the most part, passive participants. ➔

The URL to the “Frequently Asked Questions posed by the Missouri Department of Revenue” is: <http://dor.mo.gov/mvdl/drivers/faq/mcsia.htm>.

Does granting a CDL holder (in personal motor vehicle) a driving safety course constitute an illegal sentence that can be appealed by the prosecution? While a Texas appellate court has yet to address the issue, the issue has been decided in Tennessee.

See, *Metropolitan Government of Nashville and Davidson County v. Stark*, 2008 WL 276005 (Tenn. Ct.App.)

URL: <http://www.tsc.state.tn.us/OPINIONS/TCA/PDF/081/starkdOPN.pdf>.

¹ Tex. Sen. 631, 78th Reg. Sess. (September 1, 2003).

² Elizabeth Kubler-Ross, *On Death and Dying* (Routledge 1973).

³ John Vasquez, *The Ethics of CDL Masking*, 15 Municipal Court Recorder 1 (August 2006).

⁴ Ross Fischer, *Contemporary Prosecutorial Ethical Dilemmas*, 14 Municipal Court Recorder 1 (June 2005); Ryan Kellus Turner, *Pretrial Distraction*, 14 Municipal Court Recorder 3 (December 2004)

⁵ Ryan Kellus Turner, *Coming to Terms with the 80th Regular Legislature*, 16 The Recorder 3 (Summer 2007).

⁶ Ryan Kellus Turner, *Waiver of Right to Appeal in Local Trial Courts of Limited Jurisdiction*, 4 Municipal Court Recorder 1 (May 2003); Steve Fagan, *Appeals from Municipal Court Judgments*, 14 Municipal Court Recorder (October 2004).

⁷ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *State Court Organization* (1998).

requires an act which occurs in the judge's presence and under circumstances that require the judge to act immediately to maintain order. Although the defendant did misrepresent that he was an attorney in the presence of the judge, the court did not discover the misrepresentation until about 20 days later when the contemnor was no longer in the courtroom. Because the contemnor could have been afforded due process protections without disrupting the orderly trial process, the Due Process Clause of the Fourteenth Amendment mandates that the contemnor should have been afforded these protections.

Ex parte Krupps⁶

A pro se defendant and six spectators refused to rise when the judge entered the courtroom after they were advised of the requirement and the consequences of failing to do so. The judge held them in contempt and sentenced them to 30 days in jail. The Court of Criminal Appeals held that the refusal to rise was proper ground for criminal contempt.

Ex parte Minjares⁷

A defendant was convicted of seven traffic offenses and was assessed a total of over \$800 of fines and costs. The defendant contended that the fines were intended to be discharged concurrently. The Court declined to hold that fines assessed by a municipal court may run concurrently, saying that if it were it to do so, a defendant would have a means of avoiding the satisfaction of many judgments by discharging the largest of the fines against him or her.

Ex parte Smith⁸

A *capias pro fine* cannot be issued prior to either a complaint or a

warrant and subsequently a valid judgment. In this case, a justice of the peace accused a young man of vagrancy when he found him in a car with a girl. No complaint was filed and no warrant was issued. The Court of Criminal Appeals found that the judgment was without authority of law, and that any writ issued to enforce the judgment must fail for lack of authority.

Ex parte Super⁹

A guilty plea is void when it is not entered by or authorized by the defendant. A justice of the peace testified that the mother of the defendant appeared before him and entered a plea of guilty for the defendant. The justice of the peace entered judgment in favor of the state. The Court of Criminal Appeals found that a plea of guilty by the defendant's mother, who was not an attorney, made out of his presence would not support conviction. ↗

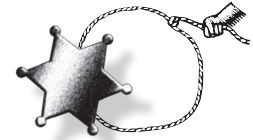
¹ 334 S.W.2d 161 (Tex. Crim. App. 1959)
² 573 S.W.2d 224 (Tex. Crim. App. 1978)
³ 582 S.W.2d 151 (Tex. Crim. App. 1979)
⁴ 613 S.W.2d 503 (Tex. Crim. App. 1981)

You've Been Served!

2009 Great Texas Warrant Round-Up a Success

The 2009 Great Texas Warrant Round-Up happened March 7-16, with 225 agencies signed up to participate. Figures from the 178 reporting agencies show the Round-Up was a success. A total of 207,025 warrants were cleared, bringing in a gross collection of just under \$20,900,000! Thank-you to Don McKinley and Rebecca Stark at the Austin Municipal Court for compiling these figures, and a big thank-you to all the entities that participated in and reported on this year's Warrant Round-Up.

Note: Figures updated as of April 16, 2009.



⁵ 818 S.W.2d 811 (Tex. Crim. App. 1991)
⁶ 712 S.W.2d 144 (Tex. Crim. App. 1986).
⁷ 582 S.W.2d 105 (Tex. Crim. App. 1978).
⁸ 582 S.W.2d 105 (Tex. Crim. App. 1978).
⁹ 175 S.W. 697 (Tex. Crim. App. 1915).



DOES THE TEXAS MUNICIPAL COURTS EDUCATION CENTER HAVE YOUR CURRENT EMAIL ADDRESS?

The Texas Municipal Courts Education Center frequently sends out important information via e-mail. To ensure you receive this information in a timely manner, please keep your e-mail address current with us. To submit or update your e-mail information, please contact Pat Ek, Registration Coordinator, at 512.320.8274, or ek@tmcec.com



ETHICS UPDATE

EXAMPLES OF IMPROPER JUDICIAL CONDUCT

The following are examples of judicial misconduct that resulted in disciplinary action by the Commission on Judicial Conduct in fiscal year 2008. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission in fiscal year 2008. The summaries below are listed in relation to specific violations of the Texas Code of Judicial Conduct, the Texas Constitution, and other statutes or rules. They are also listed in descending order of the severity of the disciplinary action imposed, and may involve more than one violation. The full text of any public sanction is published on the Commission website. [www.scjc.state.tx.us]

These sanction summaries are provided with the intent to educate and inform the judiciary and the public regarding misconduct that the Commission found to warrant disciplinary action in fiscal year 2008. The reader should note that the summaries provide only general information and omit mitigating or aggravating facts that the Commission considered when determining the level of sanction to be imposed. Additionally, the reader should not make any inferences from the fact situations provided in these summaries. It is the Commission's sincere desire that providing this information will protect and preserve the public's confidence in the integrity, impartiality, and independence of the judiciary and further assist the judiciary in establishing, maintaining, and enforcing the highest standards of judicial and personal conduct.

CANON 2B: A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.

- During the course of a traffic stop after which he was arrested for DWI, the judge repeatedly identified himself as a judicial officer in an unsuccessful effort to dissuade the law enforcement officer from arresting him. [Violation of Canon 2B of the Texas Code of Judicial Conduct and Article V, section 1-a(6)A of the Texas Constitution.] *Public Admonition of a Justice of the Peace* (04/07/08).
- After learning that his nephew had been arrested, the judge went to the jail, rescinded the bond set by the magistrate, and ordered the release of his nephew from jail on a personal recognizance (PR) bond without first reviewing the probable cause affidavit supporting his nephew's arrest. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace* (05/05/08).
- After her vehicle was repossessed, a neighbor asked the judge to become personally involved in her dispute with the seller. On the neighbor's behalf, the judge wrote a letter, on judicial letterhead, stating that the seller had "illegally removed" the neighbor's automobile, even

though no case was pending and no court had made such a finding. In the letter, the judge represented that the dispute was a "pending matter" and that any questions could be directed to the judge. The neighbor was allowed to use the judge's letter to persuade the towing company to release the automobile to her. [Violation of Canons 2A, 2B, 3B(2), and 3B(10) of the Texas Code of Judicial Conduct.] *Private Warning of a Justice of the Peace* (05/29/08).

CANON 3B(1): A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

- The judge abdicated official judicial duties by relinquishing control of the court's criminal docket to the county attorney, whose office was unable to handle the volume of work due to staff shortages. In doing so, the judge failed to ensure that the criminal cases filed were set for hearings and trials in a timely manner, which jeopardized the due process rights of defendants and left the public's interests likewise unprotected. [Violation of Canons 3B(1) and 3B(8) of the Texas Code of Criminal Procedure, Article V, Section 1-a(6)A of the Texas Constitution, and Section 33.001(b)(1) of the Texas Government Code.] *Private Warning and Order of Additional Education of a County Judge* (04/07/08).
- The judge failed to comply with well-established procedures regarding how to handle a situation or relationship that might require his recusal or full

disclosure to litigants so that they might make an informed decision about whether the judge was capable of fairly and impartially deciding a custody case. [Violation of Canons 2A, 2B, and 3B(1) of the Texas Code of Judicial Conduct.] *Private Warning of a County Court at Law Judge* (08/15/08).

CANON 3B(2): A judge should be faithful to the law and shall maintain professional competence in it.

- The judge failed to obtain the mandatory judicial education hours during fiscal year 2006. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace*. (10/02/07).
- The judge issued an arrest warrant for an individual based on information provided to her by a private citizen rather than by law enforcement. The judge then magisterated the individual the day after assisting the complaining citizen in securing belongings from the individual's home, and released the individual on a PR bond in violation of Article 17.03(b)(1)(E) of the Texas Code of Criminal Procedure. The judge further failed to notify the individual of the date and time of his appearance in court, as required by Articles 17.04 and 17.08 of the Texas Code of Criminal Procedure. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace* (07/21/08).

CANON 3B(4): A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

- The judge's conduct toward certain female detention officers with whom he worked in his official capacity, which conduct included inappropriate comments of a sexual nature and unwanted physical contact, lacked the dignity and courtesy required of a judicial official and was clearly inconsistent with the proper performance of his duties. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct and Article V, section 1-a(6)A of the Texas Constitution.] *Public Warning of a Municipal Judge* (08/29/08).
- The judge violated city policy by permitting offensive flyers to be posted in public areas in and around the courthouse where the city prosecutor, who was the target of the flyers, and her colleagues would observe them. The judge's treatment of the city prosecutor, an attorney who

regularly appeared in his courtroom, lacked dignity and was perceived as offensive, disrespectful, and discourteous to the attorney and others. [Violation of Canons 2A and 3B(4) of the Texas Code of Judicial Conduct.] *Public Admonition of a Municipal Judge* (04/03/08).

- In one case, the judge allowed his frustration with the behavior of certain litigants to manifest itself in a lack of patience, dignity, and courtesy. The judge further failed to allow the parties an opportunity to be heard regarding the terms of an attorney's employment contract, despite objections that the judge may have received the contract and a motion to award the attorney a disputed amount of interest in real property in an improper ex parte manner. In a separate matter, the judge criticized an attorney and her paralegal at a social function and informed that attorney's client that he intended to find the attorney in contempt of court at an upcoming hearing. The judge further failed to notify the attorney that the upcoming hearing would involve contempt charges. [Violation of Canons 3B(4) and 3B(8) of the Texas Code of Judicial Conduct.] *Private Warning of a District Judge* (03/06/08).

CANON 3B(5): A judge shall perform judicial duties without bias or prejudice.

- The judge ordered a criminal defendant to remain incarcerated without bond prior to his trial after *sua sponte* finding that his surety bond was insufficient. The judge further engaged in conduct that caused at least two jurors to believe that she had a disqualifying bias or prejudice against the criminal defendant and his attorney. [Violations of Canons 2A, 3B(2), and 3B(5) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Judge* (01/14/08).

CANON 3B(6): A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

- Prior to the commencement of trial, the judge made an inartful and insensitive attempt to engage plaintiff's counsel, who is African-American, in a discussion about slavery, the Middle Passage, and the possible effect of that event on today's African-Americans. The incident received widespread media attention, causing some members of the public to reach the conclusion, perhaps mistakenly, that the judge harbored a bias or prejudice against the attorney on the basis of his race. Although the

judge insisted that he did not intend his comments to be racially insensitive or offensive, it is clear that his remarks were inappropriate in the setting in which they occurred, and that they could easily be misinterpreted by anyone unfamiliar with the Judge. [Violations of Canons 3B(5), 3B(6), and 3B(8) of the Texas Code of Judicial Conduct and Article V, Section 1-a(6)A of the Texas Constitution.] *Public Warning and Order of Additional Education of a County Court at Law Judge* (05/14/08).

CANON 3C(4): A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

- The judge favored his court investigator and his personal accountant with court appointments to a guardianship matter pending in his court. The judge continued to preside over the probate matter during his brief marriage to his court investigator, and signed an order approving an award of fees to his wife's attorney during this time. [Violations of Canons 2A, 3B(1), 3C(4), and 4D(1) of the Texas Code of Judicial Conduct and Article V, Section 1-a(6) of the Texas Constitution.] *Private Admonition of a County Probate Judge* (05/05/08).

CANON 4C(2): A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, but may be listed as an officer, director, delegate, or trustee of such an organization, and may be a speaker or a guest of honor at an organization's fund raising events.

- The judge found an out of town attorney in constructive contempt of court without affording him certain due process rights. In lieu of serving time in jail, the attorney was offered the opportunity to donate large sums of money to several charitable organizations, one to which the judge had a close connection. [Violations of Canons 2A, 2B, 3B(2), and 4C(2) of the Texas Code of Judicial Conduct.] *Private Reprimand of a County Court at Law Judge*. (02/04/08).

CANON 6C(2): A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding.

- The judge engaged in improper *ex parte* communications and improperly delegated his role as fact-finder by approaching a private accountant to act as

an "expert witness" in determining whether the plaintiff had proven his case. Although the judge obtained the consent of the parties before involving the accountant, the judge did not provide the parties with the opportunity to review or challenge the accountant's findings in court. [Violation of Canons 2A, 3B(2), and 6C(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace*. (10/09/07).

Texas Constitution, Article V, Section 1-a(6)A. Any Justice or Judge of the courts established by this Constitution or created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice. Any person holding such office may be disciplined or censured, in lieu of removal from office, as provided by this section.

- The judge was observed by witnesses at a Christmas party patting the buttocks of a female attorney who practiced before his court. Several guests who observed the intimate contact found the behavior to be undignified and offensive. The incident was discussed with other members of the legal community in the days and weeks following the party. [Violation of Article V, Section 1-a(6) of the Texas Constitution.] *Public Warning and Order of Additional Education of a District Judge*. (05/14/08).

Examples of improper conduct and the charts on p. 10 of *The Recorder* are excerpts from the *Annual Report of the State Commission in Judicial Conduct 2008*.

Used with permission. www.scjc.state.tx.us

TMCEC t-shirts, totes, caps, books, videos, and ties may now be purchased by mail. An order form may be downloaded from the TMCEC web site: www.tmcec.com/products.htm.

Fig. 1 Total Number of Texas Judges*

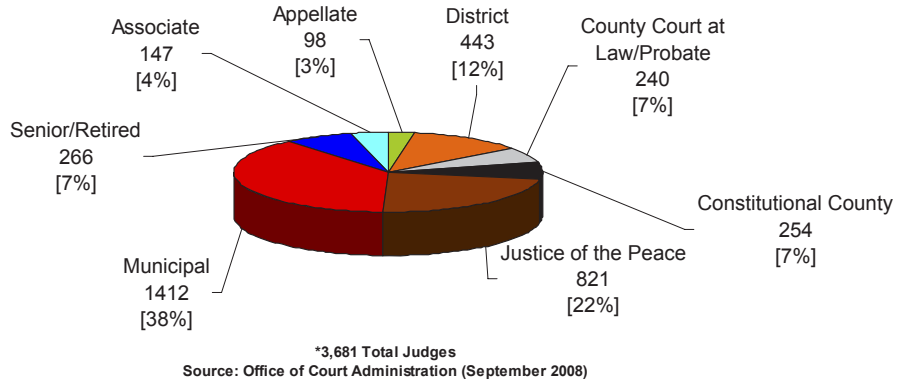


Fig. 2 Number and Percentage of Cases filed by Judge Type*

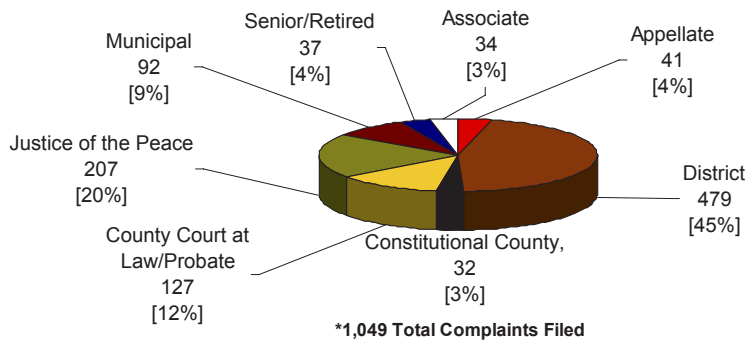
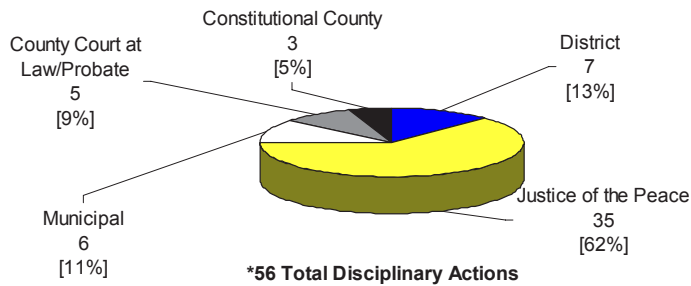


Fig. 3 Number and Percentage of Disciplinary Actions by Judge Type*





FROM THE CENTER

16TH ANNUAL MUNICIPAL PROSECUTORS SEMINAR

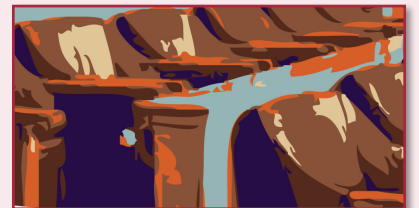
Texas law provides that prosecutions in a municipal court shall be conducted by the city attorney or by a deputy city attorney. Such prosecutors have an ethical and legal obligation to not only represent the State of Texas, but to see that justice is done. In light of specific dilemmas that are unique to municipal and justice courts, ethical and educated prosecutors are essential to the successful administration of justice in our communities. Presentations will focus on ethics, as well as on procedural, substantive, and case law. Currently, this is the only training for prosecutors who conduct prosecutions in courts governed by Chapter 45 of the Code of Criminal Procedure.

CLE Credit—This seminar has been submitted for CLE credit by the State Bar of Texas for up to 14.75 hours of CLE (3.25 ethics). The pre-conference offers three hours of the 14.75 CLE credit and will address legislation of interest from the 81st Legislature. The TMCA Board adopted the \$100 fee that applies only to attorney judges and prosecutors who wish to receive CLE credit for their attendance at TMCEC programs. The fee is **voluntary** and is used for expenditures not allowed by the Texas Court of Criminal Appeals (membership services, salary

supplements, food, and refreshments). If you do not wish to seek CLE credit from TMCA, you can obtain it from another provider.

Registration Fee—Housing, two breakfasts, one lunch, and course materials are included with the fee. The registration fee is \$300 (\$400 with CLE) if housing is requested. Municipal prosecutors who do not need housing at the conference hotel pay a \$150 registration fee (\$250 with CLE). **Prosecutors who must cancel for any reason will be charged a \$100 cancellation fee if notice of cancellation is not received at least five working days prior to the seminar.** A registration fee of \$350 (\$450 with CLE) will be charged for non-municipal prosecutors or attorneys, such as misdemeanor prosecutors from county and criminal district courts.

Austin
June 29-July 1, 2009
Omni Downtown
700 San Jacinto
78701
512.476.3700
Register by: 5/29/09



Traffic Safety Awards

TMCEC is pleased to announce the 2009 winners of the Traffic Safety Awards. The purpose of this program, funded by a grant from the Texas Department of Transportation, is to recognize those who work in cities that have made outstanding contributions to their communities in efforts to increase traffic safety. The award winners will be recognized at the Municipal Traffic Safety Initiatives Conference to be held May 27-29, 2009 in Austin at the Omni Southpark Hotel.

High Volume Courts: Austin, El Paso, and Irving (Exemplary)

Mid-Size Courts: Conroe, Corpus Christi, Killeen, and La Porte

Low Volume Courts: Burnet, Lakeway (Exemplary), Mount Enterprise, Shenandoah, and West North Village

Future issues of *The Recorder* will include an article on the activities of these award winners.



LEGISLATIVE UPDATES

TMCEC Legislative Update August 2009

The registration fee is \$100 (plus \$50 for CLE). The fee covers the course materials, a continental breakfast, and lunch on the day of the program. Participants are responsible for making and paying for their own hotel reservations.

August 4, 2009: Lubbock, Holiday Inn Hotel & Towers - 806.763.1200

August 10, 2009: Houston, Omni Hotel Houston (off Riverway) - 713.871.8181

August 14, 2009: Austin, Doubletree (IH 35 and 2222) - 512.454.3737

Municipal Traffic Safety Initiatives Conference (MTSI)

The TMCEC Municipal Traffic Safety Initiatives Conference (MTSI) will be held on May 27-29, 2009 in Austin at the Omni Southpark Hotel. Space is limited so be sure to send in your reservation form today. For more information, please visit the TMCEC MTSI website, www.tmcec.com, and click on *Municipal Traffic Safety Initiatives*. There are many benefits in attending this conference; however, one of the main benefits is bringing together a variety of people, such as judges and city officials, to see how each person's role is important in addressing the seriousness of traffic safety. Topics will include: *Blood Warrants, Booster Seats/Child Safety Seats, How Municipal Courts Can Make a Difference, Red Light Cameras & Enforcement, OMNI Base Failure to Appear, Community or Problem Solving Courts, Aggressive Drivers, Young Drivers, DUI, Distracted Driving, and Judges in the Classroom*. For more information, contact Lisa Robinson, TMCEC TxDOT Grant Administrator at robinson@tmcec.com or 800.252.3718.

NOTICE

TMCEC Housing Policy

Effective September 1, 2008, TMCEC can only offer housing at grant expense to those judges and court support personnel whose court is located 30 or more miles from the hotel site. In the past, TMCEC has honored a 30-minute drive rule, but TMCEC is no longer able to do so.

Participants whose courts are within 30 miles MAY opt to pay for the housing themselves. Please contact the TMCEC Registration Coordinator, Pat Ek (ek@tmcec.com) to set this up. It is called an "IPO"—(Individual Portfolio or Individual Pays Own) charge—rather than a charge to the TMCEC master account. A credit card will be needed to hold the room. There is an IPO form on the TMCEC website.

Also, several hotels are now charging a 24-72 hour cancellation policy. If you cancel within that window and TMCEC is billed for your room, TMCEC will bill you for the charge. While we will make every effort to use the room, it is not always possible. The charge is \$85 plus tax. Also, if you change your mind, you have requested a room, yet you decide not to arrive at the seminar until the next morning (drive in the morning the seminar begins), you may be charged a "no-show" fee. TMCEC will bill you for this, as well.





PUBLIC OUTREACH: TRAFFIC SAFETY

JUDGES IN THE CLASSROOM

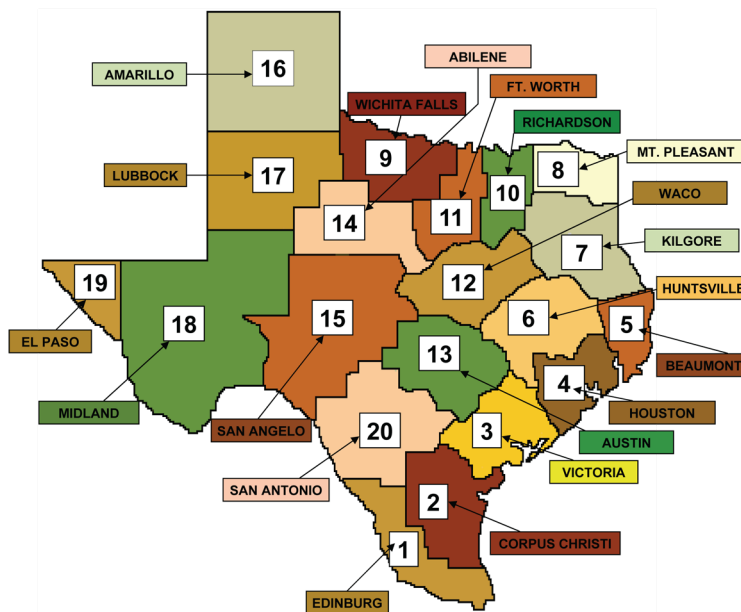
Judges in the Classroom, taught by Judge Lester Rorick, Pasadena Municipal Court, is offered at the judges 12-hour schools to introduce judges and court personnel to the *Driving on the Right Side of the Road* (DRSR) program. This is a wonderful opportunity to understand your judicial role in community outreach and have fun playing the Pick Six game as well as identifying safe and unsafe behavior on the Our Town map.

Judge Rorick recently attended the TMCEC Train-the-Trainer program for teacher trainers from the 20 Education Service Center (ESC) regions in Texas. Teacher trainers will in turn provide training on the *DRSR* to teachers in their region this summer. Judges and court personnel are needed in each region to assist teacher trainers as resource persons at the workshops. The Education Service Center (ESC) map, shown below, illustrates how the state is divided into the 20 ESC regions.

Dates of Regional Teacher Training

1-Edinburg	June 2, 2009
1-Edinburg	June 29, 2009
2-Corpus Christi	July 24, 2009
3-Victoria	May 19, 2009
4-Houston	July 15, 2009
5-Silsbee	June 25, 2009
6-Huntsville	July 17, 2009
7-Kilgore	July 23, 2009
8-Mt. Pleasant	July 23, 2009
9-Wichita Falls	July 22, 2009
10-Richardson	June 8, 2009
11-Fort Worth	July 8, 2009
12-Waco	June 8, 2009
13-Austin	July 7, 2009
14-Abilene	July 16, 2009
15-San Angelo	August 5, 2009
16-Amarillo	May 8, 2009
17-Lubbock	June 12, 2009
18-Midland	June 17, 2009
19-El Paso	July 9, 2009
20-San Antonio	June 13, 2009

TEXAS EDUCATION SERVICE CENTERS



Judges and court personnel are also needed to work with their local school districts during the school year while teachers are using the *DRSR* teaching materials to educate children of all ages on the importance of traffic safety. These materials incorporate a lot of hands on activities such as mock trials, games, computer based learning, and more!

For more information on the *Driving on the Right Side of the Road* program, visit the TMCEC website at www.tmcec.com or contact Lisa Robinson, Traffic Safety Grant Administrator, at robinson@tmcec.com or 512.320.8274.

Add Me to the TMCEC's Speakers' Bureau

Name: _____
 Court: _____
 Tel. # _____
 Email: _____

Fax to: 512.435.6118

WHY TEXAS NEEDS A BOOSTER SEAT LAW

Bev Kellner, Program Manager
Texas Agri Life Extension Service, Passenger Safety

Motor vehicle crashes continue to be the leading cause of death for children ages three and up. Child safety seats, including boosters, have been proven to be effective in preventing injuries and deaths, yet among those children who were fatally injured, almost half were unrestrained. Studies by the Partners for Child Passenger Safety (PCPS) at the Children's Hospital of Philadelphia have shown that booster seats can reduce the risk of injury by 59 percent for children ages 4-7, but children in this age group are the least likely to be properly restrained. While the National Highway Traffic Safety Administration (NHTSA) reported that 41 percent of 4-7 year olds were using booster seats on a national level, surveys conducted in Texas in 2007 found that only 33.4 percent of our 5- to 9-year-olds were using boosters. Increased booster seat use would help to protect children in this age group from needless injuries and deaths.

Many parents are under the impression that a child can be moved to the vehicle safety belt system when they have outgrown the weight limits of their child safety seat. Most conventional forward-facing child safety seats have a 5-point harness system that can be used up to 40 pounds. However, most children weigh 40 pounds long before they are tall enough to fit in the vehicle lap/shoulder belt. These children, usually ages 4-8, do not fit well in the vehicle lap/shoulder belts that were designed for adults at least 4 feet 9 inches tall. Instead of fitting properly over the lower hips, the lap belt rides over the soft tissues of the abdomen and can cause severe injury or death in a crash. The shoulder portion of the belt hits the child's neck or face

instead of laying flat across the chest. This causes many children to place the shoulder belt behind their back, leaving them with no upper body protection. A booster seat "boosts" the child up so the lap/shoulder belt will fit correctly and provide protection in a crash.

Children do not fit properly in the lap/shoulder belt system until they reach 4 feet 9 inches tall. Correctly using a booster seat can protect a child from being thrown around the vehicle or being totally ejected in a crash. In a crash, children who are incorrectly restrained by a lap/shoulder belt are likely to sustain serious injuries

that improperly restrained children ages 4-8 were three times more likely to sustain an abdominal injury than properly restrained children in that age group.

In 2007, 179 Texas children of booster-seat age died in motor vehicle crashes; 60 of these children were unrestrained; 77 were in a safety belt; 13 had unknown restraint use; and only 29 were in a child safety seat. The Texas EMS and Trauma Registry report that vehicle crashes involving 4- to 7-year-olds resulted in more than \$16.7 million in hospital charges. Thirty-five percent of the hospitalizations were charged to



to internal organs as well as the head and spinal cord. In fact, these abdominal and spinal injuries are medically referred to as "Seat Belt Syndrome." Researchers from the PCPS examined abdominal injuries in over 200,000 child occupants in motor vehicle crashes and reported

Medicaid/Children's Health Insurance Program, and another 20 percent to uninsured families. Booster seats are an affordable solution to protecting children in the 4-8 age group. The cost of booster seats is low—generally between \$15-\$40. For low-income families, assistance is available

through the Texas Department of State Health Services Safe Riders Program, as well as through National Safe Kids Coalitions and other state agencies. Safe Kids Worldwide estimates that a \$30 booster seat generates \$2,000 in benefit to society from reduced health-care expenses. Booster seats are a low-cost solution to a high-cost problem.

Clearly, there is a need for more child passenger safety education and awareness campaigns to promote booster seat use in Texas. Municipal judges have an important role to play in improving the lives of their constituents and can help to make sure that parents have the knowledge they need to protect their children from injuries and deaths in motor

vehicle crashes. Working together, we can protect our youngest citizens and reduce health care costs for Texas by getting out the message that booster seats save lives.



ONLINE ALCOHOL AWARENESS CLASSES

Cathy Riedel

Program Director, TMCEC



The Center has received several calls to its legal line inquiring about an online alcohol awareness program. Does it exist? Does the online class satisfy the statutory requirements? It depends.

Classes that are mandated pursuant to the Alcoholic Beverage Code (ABC) for offenses such as MIP's and MIC's are regulated by the Texas Commission on Alcohol and Drug Abuse (TCADA).

Section 106.115 of the ABC provides that when a minor is placed on deferred disposition for public intoxication or other alcohol-related offenses, such as Minor in Possession or Consumption of Alcohol by a Minor, the court shall require the defendant to attend an alcohol awareness program approved by the Texas Commission on Alcohol and Drug Abuse (TCADA).

TCADA, which is now part of the Department of State Health Services (DSHS) Mental Health and Substance Abuse Division (MHSA), monitors, coordinates, and provides training

to the instructors of the alcohol awareness program. Information regarding the Offender Education Program, including the locations of certified alcohol awareness programs, can be found at www.dshs.state.tx.us/offendered.

At this time, the TCADA has not approved an online course.

The Texas Education Agency (TEA) has approved an online class for alcohol awareness. This newly-created program, Drug Alcohol Driving Awareness Program (DADAP), was authorized in the last legislative session and is codified in Chapter 469 of the Health and Safety Code. Through this program, the TEA has approved an online alcohol awareness course. The link to this course can be found on the TEA website at <http://ritter.tea.state.tx/drive/dadapfaq1.html>. This class is available as a resource in municipal courts pursuant to Article 45.051(a) of the Texas Code of Criminal Procedure, which provides that the judge, at his or her discretion, may order the defendant to participate in

an alcohol or drug abuse treatment or education program.

So, judges, if you have placed a defendant on deferred disposition for purchase of alcohol by a minor (106.02), attempt to purchase alcohol by a minor (106.025), consumption of alcohol by a minor (106.04), driving under the influence (106.041), misrepresentation of age by a minor (106.07), possession of alcohol by a minor (106.05), or public intoxication under the Penal Code, Section 106.115 of the ABC requires you to order the defendant to attend a program approved by the TCADA.

If, on the other hand, you have placed a defendant on deferred disposition for an offense, other than those listed above, you may require the defendant to take an alcohol awareness class as a condition of probation. When you do order such a class, pursuant to your authority under Article 45.051 of the Texas Code of Criminal Procedure, you may allow a defendant to take the online course available through DADAP.



COLLECTIONS CORNER

THE USE OF AUTOMATIC LICENSE PLATE RECOGNITION CAMERAS IN MUNICIPAL COURT WARRANT SERVICE

Katie Tefft

Program Attorney, TMCEC

Security cameras. Red-light cameras. Toll-road cameras. Look out people – there’s a new camera in town.

Mobile automatic license plate recognition cameras (commonly referred to as “ALPR”) are being used by law enforcement around the world. Developed in the United Kingdom in 1992 to combat terrorism and introduced by the Royal Canadian Mounted Police in 2006,¹ ALPR cameras can now be found in over 29 states in the United States,² including many Texas cities.

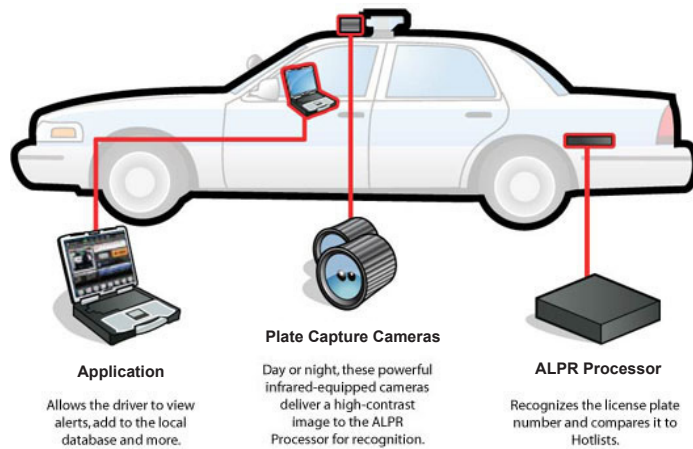
What exactly is ALPR, and what can it do? The ALPR system consists of high-tech infrared cameras coupled with advanced software that reads license plates. The cameras are mounted on a vehicle, the software is often installed in the vehicle’s trunk, and both are connected to a mobile terminal in the car – usually the officer’s existing computer terminal. Most efficient is the four-camera system allowing one camera to be mounted facing the front, back, and each side of the car. The cameras snap photos of license plates as they pass, at speeds of up to 120 miles per hour,³ in whatever weather conditions at any time of day. How many license plates can be read depends on the number of cameras used and the system manufacturer. Estimates range from up to 3,000 plates per hour⁴ to up to 3,000 plates per minute.⁵ Either way, it is a lot

more than an officer could manually check. And it’s safer—the officer can keep hand on the wheel and eyes on the road.

The software then processes the images to isolate the plate number, using optical-character-recognition technology originally developed for high-speed mail sorting.⁶ The computer runs the plate numbers against any database that has been uploaded into the system and simultaneously records the vehicle’s

Mesquite Police Department was the first to use another manufacturer’s system, and the Austin City Council recently approved a grant for the police department to purchase three readers for patrol cars. ALPR readers are used for locating suspects, stolen vehicles, and missing persons. But “the possibility is whatever you want to do,” said Cam McCabe, Court Administrator for Tyler Municipal Court.

The Tyler Municipal Court is the



identification, photos, GPS location, and the timestamp for every vehicle.⁷ If there is a hit, the system audibly alerts the officer – pings or beeps or chirps - so the officer can visually confirm the plate number.

The Houston Police Department, according to one system manufacturer, has one of the largest single-agency deployments in the United States and was the first agency in Texas to use its system in 2006.

first court in Texas to use ALPR readers solely for warrant service. In August, 2008, the Tyler Municipal Court purchased a four-camera system to equip each of its five city marshal vehicles at a total cost of \$125,000. They were paid for out of the Court Technology Fund. The software was connected to the city network allowing the database of vehicles of interest to be updated every few minutes. “Literally, you have a warrant, get it signed, and

an hour later, you can be arrested,” said McCabe. The marshals also use the ALPR readers to enforce parking ordinances and place boots on vehicles with outstanding parking tickets. Although the Tyler Police Department does not have its own cameras, the court gives the department access. In fact, according to McCabe, within 48 hours of getting the ALPR readers, police were able to locate a missing person when a camera captured the victim’s vehicle and recorded the location with timestamp.

Of course, we all know technology isn’t perfect. There are inconsistencies in license plate designs, novelty frames may block portions of the plate needed for the software to recognize a number, and people have certainly tried spray blockers to keep red-light cameras from reading their plate numbers – despite the fact that Section 502.409 of the Transportation Code makes it a Class C misdemeanor to use or attach anything to a license plate that obscures, impairs, or distorts the readability of the number. (And it

is a Class B if the owner knowingly altered or made illegible the letters, numbers, or other identification marks.) However, McCabe said the Tyler city marshals have not had any problems with people obscuring their plates to avoid the ALPR cameras or with the technology itself. She said there has been one complaint based on invasion of privacy, but for the most part, there has been a very positive citizen reaction. “When [someone] gets arrested and realizes it was the camera [that caught them], they’re just so fascinated,” said McCabe.

Based on hits from the cameras, as of February 28, 2009, the Tyler Municipal Court has cleared 908 warrants for 345 people valuing over \$273,000. The court has collected over \$94,000 in cash – which means the ALPR systems can potentially pay for themselves within six months.

Port Arthur Police Department has also had success with ALPR in Class C warrant service. For two weekdays this past January, Officer Chuck Cobb had a demonstration unit on his

patrol car. In those 16 hours, Officer Cobb cleared \$76,000 of outstanding Class C warrants (along with 124 traffic stops and 72 arrests). But Officer Cobb said it was the residual effect the ALPR system had that was most impressive. “Word got out that we had a tool, [and] in the next four days, the municipal court was swamped with people coming in to pay warrants.”

On the heels of the 2009 Great Texas Warrant Round-up, ALPR may be one way for your courts to increase warrant service and collections year-round. ➤

¹Norm Gaumont & Dave Babineau, *The Role of Automatic License Plate Recognition Technology in Policing: Results from the Lower Mainland of British Columbia*, The Police Chief 50 (November 2008)

²J. Douglas Walker, *Information Technology Advances Push the Privacy Boundaries Again*, 41 (Nat. Ctr. For St. Courts 2008)

³*Id.*

⁴Gaumont & Babineau

⁵Walker

⁶J. Vlahos, *Surveillance Society: New High-Tech Cameras Are Watching You*, *Popular Mechanics* (January 2008)

⁷Walker



Best Practices Summit for Texas Court Operations

June 24, 2009 • George R. Brown Convention Center, Houston, Texas

Sponsored by the Municipal Courts Administration Department, City of Houston

Speakers include:

Greg Gray, *Motivational Speaker*

David Slayton, *Director of Court Administration at Lubbock County*

Jim Lehman, *OCA Collections Program Manager*

Chuck Ericksen, *NCSC Consultant*

Topics include:

- Customer Service Excellence
- Performance Measurement
- Collections
- Future Trends in Court Operations

There will also be round table discussion topics and opportunities to talk with colleagues and give-and-take ideas for court operations. Cost for the day will be \$50 (up to May 31st) and \$75 (up to June 24th), which includes lunch and materials. You can reserve room(s) at the Hilton Americas, located next door to the George R. Brown Convention Center, at a discounted rate. Contact Mary.Sloan-Hammond@cityofhouston.net if you have any questions.

COURT SECURITY

BEHIND A PLATE GLASS WALL:

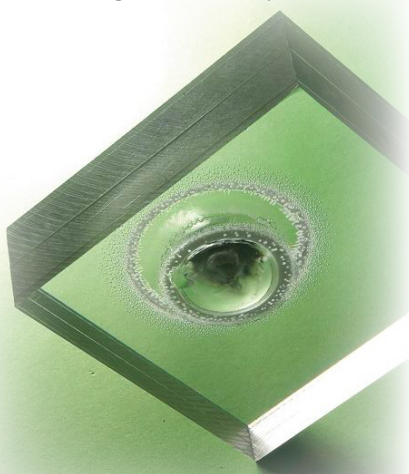
THE IMPORTANCE OF PROTECTIVE GLASS AT THE CLERK'S WINDOW

Katie Tefft

Program Attorney

Court clerks strive to provide good customer service to the millions of defendants who collectively come through Texas municipal courts each year. However, most clerks would agree these defendants are not always the nicest, happiest, or most respectful customers. Protective glass at the clerk's window is essential to a clerk's physical safety and the court's financial operations.

Although courthouse violence is rare, it can be deadly, and any precaution that can be taken to reduce the risk to court personnel is a precaution worth taking. A protective glass wall offers peace of mind in dealing with the enraged defendant. Protective glass is a deterrent against violence and protects clerks from bullets, knives, or other weapons, and from other human beings. And in response to the many courts that have asked, money from the Court Security Fund, for those cities that have adopted the



fund, can go to purchase protective glass windows. See Section 102.017(d) of the Code of Criminal Procedure, which provides a list, by way of example and not limitation, of acceptable expenditures, and includes the purchase or repair of bullet-proof glass.

In addition to providing security

from physical violence, a protective glass wall also reduces health risks. Common colds, other viruses, not to mention the Swine flu, pass by contact, and the thin layer of glass can protect court personnel from germs. After all, who has not been in a room with a person who is hacking, sneezing, and throat-clearing. A sick employee is not a very productive employee. Finally, with the sheer number of cases in municipal courts and the potential for vast fines and costs, municipal court clerks collectively handle a lot of money. An unattended desk or money drawer can be quite enticing, but a protective glass window can deter – or make it impossible for - old sticky fingers.

Whatever the rationale, protective glass windows protect both court personnel and court operations. A safe, relaxed, healthy clerk can still provide outstanding customer service – even behind a glass wall.

Certification Renewal

All clerks and court administrators who are certified at Level I and II are reminded to submit to TMCEC a renewal application with the certificates showing at least 12 hours of continuing education in 08-09. Those certified at Level III must submit documentation showing 20 hours of education each academic year. The renewal application may be downloaded from www.tmcec.com/tmcec/public/files/file/clerks.

**TEXAS MUNICIPAL COURTS EDUCATION CENTER
2009 REGISTRATION FORM**

Conference Date: _____
Conference Site: _____

Check one:

- | | | |
|--|---|--|
| <input type="checkbox"/> New, Non-Attorney Judge or Clerk at 32-hour program (\$100) | <input type="checkbox"/> Traffic Safety Conference-Judges & Clerks (\$50) | <input type="checkbox"/> Bailiff/Warrant Officer* (\$100 fee) |
| <input type="checkbox"/> Non-Attorney Judge (\$50) | <input type="checkbox"/> Clerk/Court Administrator (\$50) | <input type="checkbox"/> Prosecutor not seeking CLE credit (\$300) |
| <input type="checkbox"/> Attorney Judge not seeking CLE credit (\$50) | <input type="checkbox"/> Legislative Update (\$100 fee) | <input type="checkbox"/> Prosecutor seeking credit CLE (\$400) |
| <input type="checkbox"/> Attorney Judge seeking CLE credit (\$150) | <input type="checkbox"/> Legislative Update CLE (\$50 fee) | <input type="checkbox"/> Prosecutor not seeking CLE/no room (\$150) |
| | | <input type="checkbox"/> Prosecutor seeking CLE/no room (\$250) |

By choosing TMCEC as your CLE provider, attorney-judges and prosecutors help TMCA pay for expenses not covered by the Court of Criminal Appeals grant. Your voluntary support is appreciated. (For more information, see the TMCEC Academic Schedule).

Name (please print legibly): Last Name: _____ First Name: _____ MI: _____
Names you prefer to be called (if different): _____ Female Male
Position held: _____ Date appointed/Hired/Elected: _____ Years experience: _____
Emergency contact: _____

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 most seminars: four nights at the 32-hour seminars, three nights at the 24-hour seminars/assessment clinics, two nights at the 12-hour seminars, and one night at the 8-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 non-registered guest. [I will pay additional costs, if any per night] I will require: 1 king bed 2 double beds
 I do not need a room at the seminar.
Arrival date: _____ Smoker Non-Smoker

Municipal Court of: _____ Email Address: _____
Court Mailing Address: _____ City: _____ Zip: _____
Office Telephone #: _____ Court #: _____ Fax: _____
Primary City Served: _____ Other Cities Served: _____

STATUS (Check all that apply):

- | | | |
|---|---|---|
| <input type="checkbox"/> Municipal Judge | <input type="checkbox"/> Court Clerk | <input type="checkbox"/> Mayor (ex officio Judge) |
| <input type="checkbox"/> Court Administrator | <input type="checkbox"/> Prosecutor | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Bailiff/Warrant Officer/Marshal* | <input type="checkbox"/> Justice of the Peace | |
| <input type="checkbox"/> Attorney <input type="checkbox"/> Non-Attorney | <input type="checkbox"/> Deputy Court Clerk | |

***Bailiffs/Warrant Officers/Marshals:** Municipal judge's signature required to attend Bailiff/Warrant Officer/Marshal programs.

Judge's Signature: _____ Date: _____
Municipal Court of: _____

I certify that I am currently serving as a municipal judge, 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 conference. I will first try to cancel by calling the TMCEC office in Austin. If I must cancel on the day before or day of the seminar due to an emergency, I will call the TMCEC registration desk at the conference site IF I have been unable to reach a staff member at the TMCEC office in Austin. If I do not attend the program, TMCEC reserves the right to invoice me or my city for meal expenses, course materials and, if applicable, housing (\$85 plus tax per night). I understand that I will be responsible for the housing expense if I do not cancel or use my room. If I have requested a room, I certify that my court is located at least 30 miles from the conference site. Participants in the Assessment Clinics must cancel in writing two weeks prior to the seminar to receive a refund. **Payment is due with the registration form. Registration shall be confirmed only upon receipt of registration form and payment.**

Participant Signature (may only be signed by participant)

Date

PAYMENT INFORMATION:

- Check Enclosed (Make checks payable to TMCEC.)
 Credit Card (Complete the following; \$2.00 will be added for each registration/ payment made with credit card payment.)
Credit Card Payment:

Credit card type:	Amount to Charge:	Credit Card Number	Expiration Date
<input type="checkbox"/> MasterCard	\$ _____	_____	_____
<input type="checkbox"/> Visa		Name as it appears on card (print clearly): _____	
		Authorized Signature: _____	

Please return completed form with payment to TMCEC at 1609 Shoal Creek Boulevard, Suite 302, Austin, TX 78701, or fax to 512/435-6118.

2008 - 2009 TMCEC Academic Schedule At-A-Glance

Seminar	Date(s)	City	Hotel Information
Traffic Safety Conference	May 27-29, 2009	Austin	Omni Southpark 4140 Governor's Row, Austin, TX
Clinic: Essential Spanish	June 8, 2009	Austin	TMCEC Offices (<i>wait list</i>)
12-Hour Regional Judges and Clerks Seminar	June 23-25, 2009	Odessa	MCM Elegante 5200 East University, Odessa, TX
12-Hour Regional Court Administrator Seminar	June 29-July 1, 2009	Austin	Omni Austin Hotel at Downtown 700 San Jacinto, Austin, TX (<i>wait list</i>)
12-Hour Municipal Prosecutors Conference	June 29-July 1, 2009	Austin	Omni Austin Hotel at Downtown 700 San Jacinto, Austin, TX
32-Hour New Judges and Clerks Seminar	July 13-17, 2009	Austin	Crowne Plaza (<i>wait list - Clerks</i>) 6120 North IH-35, Austin, TX
Legislative Update - Lubbock	August 4, 2009	Lubbock	Holiday Inn Towers 801 Ave. Q, Lubbock, TX
Legislative Update - Houston	August 10, 2009	Houston	Omni Hotel Houston 4 Riverway, Houston, TX
Legislative Update - Austin	August 14, 2009	Austin	Doubletree Hotel 6505 North IH 35, Austin, TX

**TEXAS MUNICIPAL COURTS
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TMCEC MISSION STATEMENT

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

Change Service Requested