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Docket Call

For June has

been CANCELLED

due to a scheduling conflict. It will be rescheduled. Please stay tuned for the details. We apologize for any inconvenience we have caused.

THERE WILL BE NO JUNE LUNCHEON
The July Luncheon will be Wednesday, July 11th

James W. Wray, Jr. Named Recipient of Judge Nye Award

The Judge Paul W. Nye Professionalism Award honors the local attorney who best meets the qualities for which Judge Nye is known, i.e., the attorney who is well-respected not only for his/her legal knowledge but also for his/her professionalism, honesty, integrity, kindness, fair play, and respect for others. It is awarded annually. This year's recipient is James W. Wray, Jr., Of Counsel, Chaves, Resendez & Rivero, L.L.P.



James W. Wray, Jr., acknowledges receipt of Judge Paul Nye Professionalism Award as Bar President Doug Mann looks on

Lance Andrew Watt CCYLA's Outstanding Young Lawyer

The Corpus Christi Young Lawyers Association has chosen its Outstanding Young Lawyer of the Year. Awarded annually, the Outstanding Young Lawyer Award recognizes one young lawyer who has demonstrated exemplary professional proficiency, service to the profession, and service to the community. In order to be eligible, the attorney must be licensed to practice law in Texas, be a member of the Corpus Christi Young Lawyers Association, be a member in

good standing of the State Bar of Texas, and have been 36 years of age or younger on June 1, 2006. This year the recipient of Outstanding Young Lawyer award is Lance Andrew Watt of the Nueces County District Attorney's Office.



Lance Andrew Watt acknowledges receipt of the Corpus Christi Young Lawyers Association's Outstanding Young Lawyer Award

Patricia Barber-Wendell CCYLA's Liberty Bell Award Recipient

The Corpus Christi Young Lawyers Association presents the Liberty Bell Award annually. It recognizes an outstanding non-lawyer who has made selfless contributions to our community to strengthen the effectiveness of the American system of justice by instilling a better understanding and appreciation of the law. The Award recognizes community service that promotes a better understanding of government, especially the Bill of Rights, encourages greater respect for the law and the courts, stimulates a deeper sense of individual responsibility so that citizens recognize their duties and their rights, contributes to the effective functioning of our institutions of government, and instills a better understanding and appreciation of the law. This year's recipient is Patricia Barber-Wendell, a legal assistant with Hartline, Dacus, Barger, Dreyer and

Kern, L.L.P.



Patricia Barber-Wendell expresses appreciation for Liberty Bell Award as Ann Hennis looks on holding the sculpture symbolizing the award

Robert C. Hilliard Named CCALP Boss of the Year

The Corpus Christi Association of Legal Professionals has named Robert C. Hilliard of Hilliard and Munoz the Boss of the Year.

CCALP Names Priscilla Garcia Legal Professional of the Year

Priscilla Garcia of the Watts Law Firm is the Corpus Christi Association of Legal Professionals Legal Professional of the year.

Judge Carl E. Stewart of the Fifth Circuit Law Day Speaker

The guest speaker at this year's Law Day Luncheon was the Honorable Carl E. Stewart, Circuit Judge, the United States Court of Appeals, Fifth Judicial Circuit. The over 180 in attendance were treated



The Honorable Carl E. Stewart addresses the Law Day Luncheon

to an inspiring presentation urging all to take action when they believe change is required and emphasizing the Law Day theme that youth should not be deterred from acting because of their age.

Baseball with the Bench

The Corpus Christi Young Lawyers Association's annual "Baseball with the Bench" will be Thursday, June 21st. The event will begin in the Federal Courthouse Jury Room at 3:30 p.m. with a two-hour trial tactics CLE. Immediately following the CLE all will adjourn to the Hooks "Party Porch" for comradery with jurists and colleagues, food, libation, and baseball watching the Hooks beat the Frisco Roughriders. The cost will be \$85.00 for members, \$100.00 for non-members.

Members can purchase additional tickets for the game for \$45.00; non-members can do so for \$55.00. In order to reserve your place, please use the form at the bottom of the flyer or the e-mailed flyer or go to the CCBA website, cobar.com, and download the form. Submission instructions are also located there.

The jurists who have indicated they will participate are the Honorable Janis Graham Jack, the Honorable Richard S. Schmidt, the Honorable Brian Owsley, the Honorable Bobby Galvan, the Honorable Sandra Watts, the Honorable Marisela Saldana, the Honorable Joel B. Johnson, the Honorable Jose Longoria, the Honorable John B. Martinez, the Honorable James E. Klager, and the Honorable Carl E. Lewis.

If you have any questions, please call us at 883-4022 or e-mail us at sgonzales@corpusbar.com.

Miller High Student Named Flynn Scholarship Recipient

Adan "Ace" Zamora has been named the Captain Dan and Barney Flynn Scholarship winner for this year. Mr. Zamora attends Roy Miller High School.

OFLA May Meeting

The Old Fellows/Folks [depending on your political correctness] Lawyers Association (We are told that there are other



Jim Wray and Eugene Coffey at the May meeting of the OFLA

interpretations of the acronym.) is an informal organization comprised of very experienced lawyers from the Corpus Christi area. They meet almost monthly at the Ancient Mariner Restaurant (We are told that this is just a coincidence — the name had nothing to do with the

choice of meeting place). Stories are exchanged, the current status of other very experienced lawyers who practiced in the area is related, and sports, politics, weather, and even a little law are often discussed. Dewitt Hale came all the way from Austin for the May meeting.

Criminal Law Seminar Held Friday May 18th

The "2007 Advanced Criminal Law Seminar" was presented Friday, May 19th, at the Ortiz International Convention Center. It was the first presented by the Criminal Defense Lawyers Section. The seminar provided 6.75 hours of CLE with specialization credit for Criminal Law and Juvenile Law. Over 60 attorneys attended. **A special thanks to Jerry Dorsey for a job well done.**

Donald M. Feferman, J.D., C.P.A. Attorney At Law

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Time to Pay 2007 — 2008 Membership Dues

Don't forget — Membership dues for 2007 — 2008 are due on or before July 1st. Statements were sent the week of May 14th. If you have any questions, please call us at 883-4022.

Judge Mike Westergren's Recent Case Summaries

MARY JANE NEALY v. SOUTHLAWN PALMS APARTMENTS, COURT OF APPEALS OF TEXAS, FIRST DISTRICT, HOUSTON, 196 S.W.3d 386; 2006 - No subsequent appellate history.

The tenant prevails in an eviction appeal due to failure to supplement discovery and, I am not making this up, incident of "mooning" did not constitute proper grounds for eviction. This case also involves the requirement a landlord must satisfy when leasing under section 8 of the Housing Act of 1927.

MARIA JOCSON, M.D. AND WOMAN'S HOSPITAL OF TEXAS, INC. v. JOE CRABB, COURT OF APPEALS OF TEXAS, FIRST DISTRICT, HOUSTON, 196 S.W.3d 302; 2006

Appellate court reduces *ad litem* fee from \$120,077 to \$14,300. The *ad litem* can only be compensated for evaluating the fairness of the settlement and it's fairness to the child.

SABRINA YONKO v. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES, COURT OF APPEALS OF TEXAS, FIRST DISTRICT, HOUSTON, 196 S.W.3d 236; 2006 - No subsequent appellate history

Termination of mother's parental rights was reversed due factual insufficiency. Guardian *ad litem* had recommended against termination. Mother had failed to abide by her conditions of probation resulting in her incarceration; and child had engaged in some mischievous acts, like stealing cookies from a leasing company, etc.; but it was not enough to terminate

according to the Court.

JOSHUA LEE BURKETT v. THE STATE OF TEXAS, COURT OF APPEALS OF TEXAS, SIXTH DISTRICT, TEXARKANA, 196 S.W.3d 892; 2006 - No subsequent appellate history

In a prosecution for terroristic threats against a judge, that same judge can have no part whatsoever in the trial of the case including even selection of the jury to decide punishment after a plea of guilty.

MARK D. LARSON, M.D., P.A. AND MARK D. LARSON, M.D., v. MARY MARTHA DOWNING, SUPREME COURT OF TEXAS, 197 S.W.3d 303; 2006

Supreme Court upheld the trial court's exclusion of an expert medical witness who had not performed the surgery in question for over 15 years. The trial court is to consider whether the expert was actively practicing medicine and rendering medical care services relevant to the claim.

DREW WAYNE ODOM v. THE STATE OF TEXAS, COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS CHRISTI, 200 S.W.3d 333; 2006 - No subsequent appellate history

Motion to suppress evidence in a drug prosecution should have been granted when permission to search had been given by the defendant's brother in law. There were, of course, no exigent circumstances.

DAVID STERLING v. THE STATE OF TEXAS, COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS CHRISTI, 200 S.W.3d 842; 2006 - No subsequent appellate history

Mere possession of drug in a house is not sufficient to seize the house under the forfeiture statutes. There was no evidence that the house was being used to sell drugs or other unlawful purposes other than habitual use of drugs.

(Continued Next Page)

Judge Westergren's Summaries Cont'd
BILLY RAY SCOGGINS v. YOLANDA
TREVINO, COURT OF APPEALS OF
TEXAS, THIRTEENTH DISTRICT,
CORPUS CHRISTI, 200 S.W.3d 832,
2006 - No subsequent appellate history

Appellate court allows the changing of
child's name to that of the unwed father
over his objection, since it was found to
be in the best interest of the child. Fa-
ther's argument that it would cause dis-
card with his current wife and as a con-
sequence his relationship with the sub-
ject child was rejected by the court since
the current wife already knew about the
child.

IN THE INTEREST OF T.C. AND G.C.,
COURT OF APPEALS OF TEXAS,
SECOND DISTRICT, FORT WORTH,
200 S.W.3d 788, 2006

Although it may appear to some an ex-

ample of the fox guarding the henhouse,
a trial judge is empowered to make a
finding of frivolousness, and according to
this case it matters not whether it is a
DHS or private case or whether the par-
ties are indigent or non-indigent.

GRADY LEWIS WARNER v. THE STATE
OF TEXAS, COURT OF APPEALS OF
TEXAS, FOURTEENTH DISTRICT,
HOUSTON, 201 S.W.3d 197, 2006 -
Petition for discretionary review granted

There can be no escape without a com-
pleted act of arrest. Here the officer at-
tempted to arrest defendant but he got
away. Appellate court acknowledges that
this is a bad law as it encourages crime
but that it was bound by prior precedent.
It will be interesting to see what the Court
of Criminal Appeals does.

Cont'd Next Page

Judge Westergren's Summaries Cont'd
EX PARTE ANGEL AVILA, COURT OF
APPEALS OF TEXAS, TENTH DIS-
TRICT, WACO, 201 S.W.3d 824, 2006
No subsequent appellate history

Appellate court required trial court to
release defendant on a personal recogni-
zance bond where there was substantial
delay in going to trial and defendant was
unable to make any amount of bond.
The Court cited Article 17.151 CCP.
This defendant was not homeless before
his incarceration but by virtue of that
incarceration was unable now to make
bond. Presumably this ruling would re-
quire that the defendant have some roots
in the community.

DANIEL JOHN SHEEHAN v. THE
STATE OF TEXAS, COURT OF AP-
PEALS OF TEXAS, TENTH DISTRICT,
WACO, 201 S.W.3d 820, 2006 - No
subsequent appellate history

Passive non-cooperation will not support
a conviction for resisting arrest. How-
ever, if any harm to the officer results
from act of non-cooperation a different
result can be expected.

LMB, LTD. v. ROSA MARIA MORENO,
ET AL., SUPREME COURT OF TEXAS,
201 S.W.3d 686, 2006

The 13th Court of Appeal had reversed a
summary judgment in favor of a property
owner due to an affidavit filed by the
treating physician. The Supreme Court
reasoned that the physician's affidavit did
not contain competent summary judg-
ment evidence of either cause-in-fact or
foreseeability.

IN RE THE HONORABLE ERLINDA
CASTILLO, JUSTICE, THE COURT OF
APPEALS FOR THE THIRTEENTH DIS-
TRICT OF TEXAS, IN HER OFFICIAL
CAPACITY, RELATOR, SUPREME
COURT OF TEXAS, 201 S.W.3d 682,
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Speaking of the 13th Court of Appeal, I
cite this case as there maybe local inter-
est. Apparently the Court toned down its
initial ruling concerning lame duck Jus-
tice which resulted in the denial of ex-
traordinary relief by the Supreme Court.
**I must commend Ruth Kollman for
her willingness to take such a case.
We should all be willing to do this on
occasion.**

DEBRA TIJERINA v. THE STATE OF
TEXAS, COURT OF APPEALS OF
TEXAS, SECOND DISTRICT, FORT
WORTH, 202 S.W.3d 299, 2006 - Peti-
tion for discretionary review refused

Not allowing the defendant to ask
whether prospective jurors could believe
anything that a convicted felon had to
say was error.

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Judge Westergren's Summaries Cont'd
TUAN AHN DANG v. THE STATE OF TEXAS, COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT, HOUSTON, 202 S.W.3d 278, 2006 - No subsequent appellate history

I may have missed this in the Court of Criminal appeals, but apparently it had previously ruled that 20 minutes was insufficient time for closing argument in a capital murder prosecution. The highest court remanded to the intermediate court for a harm analysis which it found and remanded for a new trial.

TEDDY OWENS v. THE STATE OF TEXAS, COURT OF APPEALS OF TEXAS, SEVENTH DISTRICT, AMARILLO, 202 S.W.3d 276, 2006 - Petition for discretionary review refused

The interesting thing about this case is that I think one of my colleagues did the same thing in the late 90's and was reversed. Here the trial judge excused a juror who had a special needs child and was not able to make provision for his care during the trial. Juror insisted that she would not be able to focus on the trial. Judge's finding that she was disabled and therefore excused her was upheld.

HEATH MATTHEW HERRING v. THE STATE OF TEXAS, COURT OF CRIMINAL APPEALS OF TEXAS, 202 S.W.3d 764, 2006

Statement to victim that defendant had a knife coupled with threat to kill and taking money was sufficient to establish crime. Fact that victim never saw the knife, in the Court of Criminal Appeals opinion, is irrelevant.

ROBERT J. SIMON v. THE STATE OF TEXAS, COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT, HOUSTON, 203 S.W.3d 581, 2006 - No subsequent appellate history

D.W.I. conviction reversed due to com-

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ment on the weight of the evidence. Trial court's comments regarding the differences between the Intoxilyzer used on the defendant and the newer model, as well as the reasons the police didn't have the newer model were directly related to a material issue. It is important to note that the evidence against the defendant was not deemed to be overwhelming.

IN RE GENERAL ELECTRIC CAPITAL CORPORATION, RELATOR, SUPREME COURT OF TEXAS, 203 S.W.3d 314, 2006

Trial court's refusal to take case off the jury docket resulted in mandamus by the Supreme Court requiring him to place case on non-jury docket because of a waiver of jury contained in the promissory note.