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Cost: \$18.00 per person for members, \$23.00 per person for non-members if reserved by noon, Tuesday, November 13, 2007. Call the Bar Office at 883-4022 to RSVP or e-mail us at sgonzales@corpusbar.com. All reservations must be paid for. The cost at the door will be \$20.00 for members, \$25.00 for non-members.

CLE Credit: 0.75 hour Participatory,
ETHICS
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Speaker: James M. McCormack, Chair, Board of Directors,
Texas Center for Legal Ethics and Professionalism
Title: "Staff: How Far Can They Go?"

November Luncheon Meeting
Wednesday, November 14, 2007, 12:00 p.m.
Congressman Solomon Ortiz International Center
402 Harbor Drive



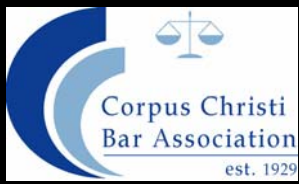
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Newsletter

November 2007

HNBA Names

Justice Gina M. Benavides Latina Judge of the Year

The Hispanic National Bar Association recently named the Honorable Gina M. Benavides of the 13th Court of Appeals as "Latina Judge of the Year." Justice Benavides received the award on Friday, October 5, 2007, at the HNBA's 2007 Annual Convention in San Juan, Puerto



Justice Gina M. Benavides receives plaque commemorating her selection as the Latina Judge of the Year by the Hispanic National Bar Association

Rico. The Hispanic National Bar Association is a national association representing the interests of over 33,000 Hispanic-American attorneys, judges, law professors, and law students in the United States and Puerto Rico.

Date for November Criminal Defense Luncheon Changed to 28th; Date for Holiday Party Set

The date for the November Criminal Defense Section has been moved to Wednesday, November 28th. It will be at 12:00 p.m. at Katz 21 Steaks and Spirits. This will be an important meet-

ing for the election of officers will be conducted and committees will be formed. Additionally, there will be no December luncheon meeting.

The Holiday Party has been set for Thursday, December 20th, at Katz 21 Steak and Spirits. Members will be admitted free. Non-members will be charged \$30.00.

Judge's Fish Fry Nov. 30th

IT'S BACK!! But unlike those who had to deal with the Terminator, all CCBA members are anxiously awaiting the return of the Judges' Fish Fry. It will be on Friday, November 30th, this year. Once again Doug Allison is graciously making his home and patio available as the site of the Fish Fry. As in the past, it will commence at 5:30 p.m. and end at 9:00 p.m. What better way to spend the last Friday evening in November than socializing with members of the local judiciary and your colleagues, eating great fish (Bob Spann's Special Recipe), and drinking some beer (wine for "sophisticated" non-hackers, tea for those trying to create a mature, responsible impression)? And who can beat the price — Judges and a spouse/guest are free; members pay only \$10.00 for themselves and \$10.00 for their spouses/guests. Non-members will pay \$15.00 for themselves and \$15.00 for their spouses/guests. **Reserve Friday, November 30th!!**

October Luncheon Cancelled

The CCBA October Luncheon was cancelled due to its time conflict with the funeral for Representative Abel Herrero's father, Ivan A. Herrero. The Legislative Update will be provided at a later Luncheon.

Dr. Gerard Wegemer, Ph.D. Guest Speaker for Red Mass



Dr. Gerard Wegemer, Ph.D., guest speaker, delivers his address at the Red Mass

Over 70 jurists, attorneys, and guests attended the Red Mass at the Corpus Christi Cathedral on Wednesday, October 17th. Dr. Gerard Wegemer, Ph.D., Director of the Center for Thomas More Studies at the University of Dallas, was the guest speaker. Following the Red Mass, Bishop Edmond Carmody hosted a reception for the attendees at his residence on Ocean Drive.

Adopt a Family Project Commences December 1st

We are once again sponsoring the "Adopt-a-Family Holiday Project." This is the 19th year that CCBA will be participating in this community project. It is conducted in cooperation with the Department of Human Services. They send us profiles of needy families with names, sizes, special needs, etc. A lawyer, legal professional, or a firm then "adopts" a family by pledging to meet the family's needs for clothing, toys, and food for a Holiday celebration. The clothing, toys, and food are then delivered to the family by the attorney, legal professional, or firm. Please participate in this community project if at all possible. You will find it quite rewarding. Jerry Guerra is coordinating this project with the help of Eric Perkins. If you can participate, please contact us at 883-4022 or e-mail us at sgonzales@corpusbar.com. If you have any questions, please call us: 883-4022.

Thirteenth Court of Appeals Seeks Applicants for Senior Attorney for Justice Dori Contreras Garza in the Edinburg Office

Deadline: Until Filled

Start Date: Negotiable

Classification: Graduate

Salary: \$72,500.00

For Application Process and more information go to www.13thcoa.courts.state.tx.us. Click "Employment" under the "About the Court" tab on the right hand side.

County Law Library Named for Justice Noah O. Kennedy, Jr.

At a special session of the Nueces County Court Commissioners on October 11th, the Nueces County Law Library



Jim Wray and Margaret "Peggy" Kennedy admire Justice Noah O. Kennedy, Jr.'s portrait as it was unveiled during the dedication ceremony.

was dedicated as the Honorable Noah O. Kennedy, Jr., Memorial Law Library. The courtroom overflowed as over 150 people witnessed the dedication.

NEW CCBA Member

We welcome the following new members:

Sheila O'Connor Allen, phone 876-3968

Craig A. Rogers, phone (210)269-8871

Tracy M. Smith, Welder Leshin, phone 561-8000

Susan M. Womble, Jordan, Hyden, Womble, Culbreth & Holzer, phone 884-5678

Appellate Law and Bankruptcy Seminars Early Next Year

On January 25th the Corpus Christi Bar Association will present an Advanced Civil Appellate Law Seminar. As with previous Advanced Civil Appellate Law Seminars, Audrey Vicknair and Greg Perkes will be the course directors. It should provide about 6 1/2 hours of CLE. The Corpus Christi Bar Association's

Bankruptcy Seminar will be resurrected on February 29th. It too will offer about 6 1/2 hours of CLE. Matt Rosenstein will once again be the course director. Stay tuned for further details.

CCYLA Continues Mentoring Program at TAMU-CC

The Mentoring Program took another step toward implementation of its mentoring program in conjunction with Texas A&M, Corpus Christi. They conducted a panel discussion before the University's Pre-Law Student Organization on October 18th. The discussion was led by Dabney Pettus and addressed areas such as preparing for and taking the LSAT, obtaining financial help, preparing and submitting application packages, studying for the bar examination, and means by which to make obtaining a position after graduation a little easier. Other members of the panel were Judge John B. Martinez, C. Lisa Huerta, Donald

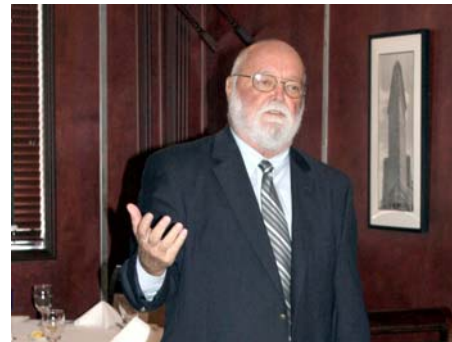


Ronald W. Dennis (Third from Right) responds to a question as Judge John B. Martinez, C. Lisa Huerta, Donald L. Jones, John J. Janssen, Jaime S. Rangel, Stephen McMains, and Dabney Welsh Pettus look on

L. Jones, John J. Janssen, Jaime S. Rangel, and Stephen McMains. CCYLA's goal is to provide mentoring to students at TAMUCC who are planning to attend law school.

Criminal Defense Hears about "Story Telling and the Opening Statement"

Doug Tinker was the speaker at the October Luncheon of the Criminal Defense Section. His topic was "Story Telling and



the Opening Statement." Mr. Tinker explained his philosophy with regard to opening statements and illustrated them with examples from his own practice. Over 30 were in attendance. They received credit for .75 hour of CLE.

CCYLA Holds Happy Hour at the Islander

The Corpus Christi Young Lawyers Association held a Happy Hour at the Islander Bar and Grill immediately follow-

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ing the mentoring program panel discussion at Texas A&M, Corpus Christi.



Sneha Patel and Steve McMains at the CCYLA Happy Hour at the Islander Bar and Grill

Approximately 25 attended and enjoyed the great view of Corpus Christi Bay, the comradery, and the pizza.

RETIREMENT. Is this a question or a statement?

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Family Law Seminar Held October 5th

The 2007 "Family Law Seminar" was presented Friday, October 5th, at the Ortiz International Convention Center. The seminar provided 7.5 hours of CLE, 1.25 hours of which were ethics. It provided specialization credit for Civil Trial

Law and Family Law. Approximately 40 lawyers attended. A special thanks to Gayle Nelson for a job well done.

Judge Mike Westergren's Recent Case Summaries

LYNDA MARIE KIRBY aka LYNDA DUNN V. STATE OF TEXAS, COURT OF APPEALS OF TEXAS, THIRD DISTRICT, AUSTIN, 208 S.W.3d 568, 2006 - No subsequent appellate history

Although highly probative, admission of evidence that defendant was a victim of child abuse was improper in a prosecution for child abuse .

IN RE ANETTE CARLISLE, RELATOR, SUPREME COURT OF TEXAS, 209 S.W.3d 93, 2006

Issue of what is a lucrative office came up when a school trustee wanted to run for the legislature. Court ruled that receipt of expense reimbursement did not make non-paid position lucrative.

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Web Page - www.michaelpobrienpc.com
Member of the College of the State Bar of Texas
Former Estate Tax Attorney with the IRS
Not certified by Texas Board of Legal Specialization

JASON WEBB v. CITY OF DALLAS, COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS, 211 S.W.3d 808, 2006 - No subsequent appellate history

If a city wants to fire a police officer, it should not claim that he was convicted when he successfully completes unadjudicated probation because there is no conviction.

BED, BATH & BEYOND, INC. v. RAFAEL URISTA, SUPREME COURT OF TEXAS, 211 S.W.3d 753, 2006

Inclusion of an erroneous instruction cannot be presumed harmful.

IN RE MARK DEAN HANCOCK, RELATOR, COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH, 212 S.W.3d 922, 2007 - No subsequent appellate history

State attempted to extend term of probation by prevailing upon a judge to enter a *nunc pro tunc* try-

ing to change the date at which probation ended. Fort Worth Court said that you cannot do that.

THE STATE OF TEXAS V. GINGER DEE ANNA FISHER, COURT OF APPEALS OF TEXAS, THIRD DISTRICT, AUSTIN, 212 S.W.3d 378, 2006 - Petition for discretionary review refused

State was not ready for trial due to non-appearance of key witness. Court made the case go forward and denied the state's request for a jury. State had the right to appeal because the court ruled that "even though a trial happened, jeopardy did not attach." It appears that the court meant that the state's right to appeal arose prior to jeopardy attaching and therefore the state's right to appeal survived even though a trial had been conducted.

Judge Mike Westergren's Recent Case Summaries Cont.

IN RE HEWLETT PACKARD, SCOTT BARTLOW, BRIAN THOME, AND BRANDON McLAMB, COURT OF APPEALS OF TEXAS, THIRD DISTRICT, AUSTIN, 212 S.W.3d 356, 2006 No subsequent appellate history

Rule 202 proceedings cannot be used to obtain trade secrets.

IN RE HONDO LANCE SLOAN, RELATOR, COURT OF APPEALS OF TEXAS, ELEVENTH DISTRICT, EASTLAND, 214 S.W.3d 217, 2007 No subsequent appellate history

Strict compliance with Rule 106(b) is required to support a finding of contempt in a divorce proceeding. Here the defendant was overseas and service was obtained in the usual manner by serving someone

over 16 years of age. The affidavit did not state the dates or the times when service was attempted, and it did not show that the address named in the affidavit was the individual's usual place of abode. The actual orders were entered before the citation was returned. Verbius satientibus satis.

SAN PATRICIO COUNTY v. NUECES COUNTY, COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS CHRISTI – EDINBURG, 214 S.W.3d 536, 2006 Petition for review may be pending but couldn't find it

Thought this might be of local interest. This case has been pending for decades. I was involved as Nueces County Attorney in 1977 and it had already been pending for at least ten years at that time.

IN THE INTEREST OF C.E.K. AND C.D.K., COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS, 214 S.W.3d 492, 2006 — No negative subsequent appellate history

Mother did everything requested of her by the State but ended up with a sparsely furnished apartment which the State found to be unacceptable. Appellate court disagreed and ordered the termination suit dismissed.

THE STATE OF TEXAS v. RONALD HERNDON, COURT OF CRIMINAL APPEALS OF TEXAS, 215 S.W.3d 901, 2007

13th Court of Appeals incorrectly overruled Judge Klager's right to grant a new trial in a DWI case. On remand the intermediate court is required to consider whether error about which the motion for new trial was granted affected a substantial right of the defendant. More to follow....

THOMAS EUGENE NORRIS, SR. AND KAREN LYNN NORRIS v. JOHNNY W. THOMAS, TRUSTEE, SUPREME COURT OF TEXAS, 215 S.W.3d 851, 2007

A yacht cannot be a homestead.

DAVID WOODALL v. THE STATE OF TEXAS, COURT OF APPEALS OF TEXAS, SIXTH DISTRICT, TEXARKANA, 216 S.W.3d 530, 2007 — Petition for review granted

We will have to await the final version of this, but at least this appellate court thinks that you should be able to fully cross-examine the breath test expert.

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THE STATE OF TEXAS v. CHARLES ZASCAVAGE, COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH, 216 S.W.3d 495; 2007 — Petition for review refused

Both the trial court and the appellate court found the hazing law in this case to be unconstitutional because it did not specify a particular person or class of persons whose duty it was to prevent hazing. I find it strange that the Court of Criminal Appeals did not wish to weigh in on this, but that's what it means to have discretionary review.

Summaries Continued on Next Page

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Judge Mike Westergren's Recent Case Summaries Cont.

IN RE PILL RAJA, M.D., COURT OF APPEALS OF TEXAS, ELEVENTH DISTRICT, EASTLAND, 216 S.W.3d 404, 2006 — Possible effort to obtain review of this ruling

Unlike a prior case reported in these notes, this case held that a Rule 202 proceeding does not trump the requirement that an expert report be filed before a doctor's deposition can be taken in malpractice case.

IN RE BALDEV PATEL D/B/A WHARTON INN AND JAYESH PATEL, COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS CHRISTI – EDINBURG, 218 S.W.3d 911, 2007 — No subsequent appellate history

Good example of how mandamus can be used to prevent a "fishing expedition" in discovery.

WILLIAM TRANTHAM v. BRUCE ISAACKS, COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH, 218 S.W.3d 750, January 25, 2007 — Petition for review denied

Filing a declaratory judgment action can be hazardous. Use of declaratory judgment action to head off likely slander suit resulted in sanction against plaintiff for \$7769.00 which was upheld by intermediate court.

IN THE INTEREST OF H.C.S., A CHILD, COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO, 219 S.W.3d 33, 2006 — No subsequent appellate history

Most men try to get out being held responsible as a father. This person is a sperm donor trying to establish visitation rights. The Court holds that he does not have standing absent compliance with certain statutes with which he did not

comply.

THE STATE OF TEXAS v. CRAIG HILL JOHNSON, COURT OF CRIMINAL APPEALS OF TEXAS, 219 S.W.3d 386, 2007

Arrest for D.W.I. upheld due to failure to comply with law requiring a clear view of license plate. Tex. Transp. Code Ann. Sec. 502.409(a)(7).

Ex parte SWANDA MARIE LEWIS, COURT OF CRIMINAL APPEALS OF TEXAS, 219 S.W.3d 335, 2007

The Court has changed the standard of when mistrial caused by the state will result in jeopardy. In doing so the Court overruled its decision in BAUDER V. STATE, 921 SW 2d 696 (Tex. Crim. App. 1996). Recklessness on the part of the state is no longer enough for jeopardy to attach. Now the conduct of the state must be intentional.

IN RE RICKY DERZAPF, RELATOR, SUPREME COURT OF TEXAS, 219 S.W.3d 327, 2007

Grandparents have not done very well of late — This is just another example. In this case the mother has died; and her mother and stepfather had access to the children for awhile; and then things went sour with the father. The trial court had granted temporary visitation to the grandparents, but the Supreme Court grants mandamus relief to the father. For one, a step grandfather had no standing, and the expert failed to testify that lack of contact with the grandmother would significantly impair the child's health.

JENNIFER EVANS v. The STATE OF TEXAS, COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO, 220 S.W.3d 54, 2006 — Petition for discretionary review refused

This is the fortune tellers' relief case. The defendant was convicted of theft by coercion. She had relieved several persons of a lot of cash by foretelling that loved ones were going to have terrible things happen, if her instructions were not

strictly followed, including the payment of money. The conviction was reversed and an acquittal ordered because: she never threatened anyone. Although she told victims that loved ones were going to get cancer, she never told them that she was going to inflict cancer or otherwise harm them; she never accused anyone of an offense; and she never threatened to expose anyone to hatred, contempt, or ridicule. Since her conduct did not fall within the statutory definition of coercion, her conviction could not be upheld.

DESIREE MARTINEZ v. CITY OF SAN ANTONIO, COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO, 220 S.W.3d 10, 2006 — No subsequent appellate history.

This case holds that a gang prevention program comes under the police powers of the city and is not a proprietary function, although the court concedes that the program doesn't fit the standard arrest and incarcerate procedure of law enforcement. Since the Plaintiff, a 14 year old female being supervised by a convicted sex offender, had not complied with notice requirements of Tex. Civ. Prac. & Rem. Code § 101.0215, she had no legal recourse.

IN RE ESTATE OF MARVIN NASH, DECEASED, SUPREME COURT OF TEXAS, 220 S.W.3d 914, 2007

Stepson cannot claim under a will where mother was divorced from testator. Under the will the then wife was the beneficiary with her son being the contingent beneficiary. Since the will was not changed after a divorce, the stepson was claiming under a strained construction of Section 69 of the Probate Code which both appellate courts rejected.

THE STATE OF TEXAS v. STEPHEN GREGORY BARBERNELL, COURT OF APPEALS OF TEXAS, NINTH DISTRICT, BEAUMONT, 221 S.W.3d 914, 2007 — No subsequent appellate history

The trial court granted motion to quash misdemeanor D.W.I. complaint because it didn't give a proper pleading of the definition of intoxication that the State was relying on. These definitions are contained in Penal Code Section 49.01 (2). Surprisingly, there was no effort to get the Court of Criminal Appeals to weigh in on the issue.

IN RE ALVIN GREEN, SUPREME COURT OF TEXAS, 221 S.W.3d 645, 2007

Contractual alimony did not support a contempt procedure.

KIMBERLY SUE AUSTIN v. THE STATE OF TEXAS, COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT, HOUSTON, 222 S.W.3d 801; 2007 No subsequent appellate history

The only reason I put this in is it involved a rare condition known as, Munchausen Syndrome by Proxy (MSBP). I was involved in a case of this nature in the '70's and it was very difficult to convince a judge that such a condition existed. The syndrome is more acceptable these days, as the conviction was upheld.

IN RE: GARY W. LEWIS, COURT OF APPEALS OF TEXAS, SIXTH DISTRICT, TEXARKANA, 223 S.W.3d 756, 2007 — No subsequent appellate history

Receivership is not available where such enforcement was not authorized by the decree.

IN THE INTEREST OF J.M.I., A Child, COURT OF APPEALS OF TEXAS, SEVENTH DISTRICT, AMARILLO, 223 S.W.3d 742, 2007

Substitute service did not comply with the rules, but subsequent service was obtained. The problem with the judgment rendered was that it occurred before the due date on the citation. The Court must wait until after the Monday next after the expiration of 20 days.