

Municipal Court Recorder

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CASE LAW UPDATE

By Ryan Kellus Turner
Program Attorney, TMCEC

The following summaries of federal and state court opinions address issues of interest to municipal court judges and other state magistrates.

UNITED STATES SUPREME COURT

Bond v. U.S., No. 98-9349 (4/17/00) - Holding that police officers may not feel and squeeze a bus passenger's luggage to find out if drugs may be inside because such calculated manipulations of the passenger's luggage constitute an unreasonable search for Fourth Amendment purposes.

Illinois v. Wardlow, No. 98-1036 (1/12/00) - Holding that unprovoked flight from the police, when considered in conjunction with other factors can be an element of the "reasonable suspicion" required to conduct a brief investigatory stop.

FEDERAL COURTS

Figuroa v. Blackburn, No. 99-5252 (4/27/00) - Stemming from a case in which the appellant was summarily incarcerated for contempt by a New Jersey municipal court judge, the United States Court of Appeals for the Third Circuit held that judges of

courts of limited jurisdiction are afforded absolute immunity for their judicial acts. In his subsequent civil suit against the municipal court judge, the appellant alleged that judges of limited jurisdiction are not afforded the same judicial immunity given to judges of courts of general jurisdiction. Alternatively, the appellant claimed that due to the judge's failure to comply with procedural requirements, that the judge should not be afforded immunity. The court noted that, although the contempt citation was procedurally deficient, it was irrelevant to the issue of judicial immunity.

Relying on opinions issued by other federal circuit court of appeals (including the 5th Circuit) and recent U.S. Supreme Court cases, the court stated that "the role of a judge of a court of limited jurisdiction is 'functionally comparable' to that of a court of general jurisdiction." Accordingly, in terms of judicial immunity, the court ruled that there was no distinction between judges of courts of limited and general jurisdiction.

Atwater v. City of Lago Vista, No. 98-50302 (11/24/99) - Officer Bart Turek arrested Gail Atwater for failing to fasten her seat belt, failing to fasten her children in seat belts, driving without a license, and failing to provide proof of insurance. Although under Texas law Turek could have issued a traffic citation if she signed a promise to appear, he instead handcuffed Atwater and took her to jail where she spent approximately one hour. Subsequently, Atwater appeared

before a magistrate and was released after posting bond. Atwater challenged the reasonableness under the Fourth Amendment of her arrest for violation of the Texas seat belt law, alleged excessive force and punishment as well as a violation of her right to due process under the Fifth and Fourteenth Amendments. Vacating a previously published opinion, the Fifth Circuit Court of Appeals affirmed the district court's summary judgment. The court held that since Officer Turek had probable cause to arrest the appellant and did not conduct the arrest in an extraordinary manner that was unusually harmful to Atwater's privacy interests, Turek's arrest was reasonable under the Fourth Amendment.

TEXAS COURT OF CRIMINAL APPEALS

Rocha v. State, No 73-280 (4/12/00) - The appellant, a Mexican citizen, was not informed of his rights under the

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Center.

AROUND THE STATE

TMCA ANNUAL MEETING

The Texas Municipal Courts
Association Annual Meeting was held
at the Hyatt Regency in Austin on
June 16-17, 2000 (Friday-Saturday).
An interesting agenda was planned by
Conference Chairperson Robin
Smith, Municipal Court Judge in
Midland, and included sessions/
discussions on:

- *DSC Review and Case Law Update*
- *Austin's Downtown Community
Court*
- *Code Enforcement and Nuisance
Abatement*
- *Chapter 45 Update*
- *Strategies for Court Technology*
- *Court Costs*
- *Magistration, Consular Warnings and
the Vienna Convention*
- *New Approaches to Fine Collection*

Study sessions for Levels 1 and 2 of
the Clerks' Certification Program
were offered Friday afternoon in
conjunction with the Texas Court
Clerks Association. On Saturday, the
certification exams for all three levels
were offered, as well as the TMCA
Annual Business Meeting and a
legislative preview.

TMCEC GENERAL COUNSEL

TMCEC is pleased to announce that
Clay Abbott will join the Center as
General Counsel on June 1, 2000.

Mr. Abbott has served on the
TMCEC prosecutors' and judges'
faculty since the mid 1990s, teaching
a range of courses including *Search
and Arrest Warrants, Evidence, Trial
Tactics, Chapter 45 Update*, and
Advanced Code of Criminal Procedure.
He teaches in the field of criminal law
throughout the state for both the
Texas Municipal Courts Education
Center and the Texas District and
County Attorneys Association.

Since 1990, Mr. Abbot has also
served as an Adjunct Professor of Law
at Texas Tech School of Law, teaching
*Trial Advocacy, Texas Criminal
Procedure, Criminal Trial Advocacy,
Interviewing, Counseling &
Negotiation*, and *Criminal Practice
Skills*. He was a contributor to the
first edition of the TMCEC *Bench
Book* in 1996.

Mr. Abbott served as Deputy District
Attorney in Lubbock County from
1995 to May 2000. Before joining
the Lubbock District Attorney's
Office, he was in private practice in
Lubbock. He is a graduate of
Lubbock Christian University and
Texas Tech School of Law (1987). He
has one son, Jake, and is married to
Sheila Abbott, a social studies teacher
who plans to teach in the Austin area.

Please call and welcome Mr. Abbott
to the TMCEC program.



Vienna Convention on Consular Relations. The appellant contended that the trial court erred in not suppressing his oral confession under Texas' exclusionary rule, article 38.23 of the Code of Criminal Procedure, because law enforcement failed to give him warnings required by the Vienna Convention. The Vienna Convention grants a foreign national taken into custody a right to contact his consulate and requires government authorities to inform the suspect of this right without delay. The Court held that "laws" as set out in article 38.23 are limited to legislative enactments whereas treaties are contracts between foreign nations. Consequently, article 38.23 does not provide a remedy for violations of the Vienna Convention.

Cabala v. State, No. 1639-98 (12/8/99) - The purpose of the criminal justice system is to punish, prevent and suppress crime. The purpose of the bankruptcy system is to allow honest debtors to restart their lives. Accordingly, the Court held that a trial court may order restitution in a criminal case for an obligation based upon a debt that has been discharged in federal bankruptcy proceedings.

Perez v. State, 11 S.W.3d 218 (Tex. Crim. App. 2000) - Holding that felony driving while intoxicated (DWI) was not a "high crime" under Texas Constitution article 16, section 2 which prohibits persons convicted of bribery, forgery, perjury, or other high crimes from serving on juries.

Lacour v. State, 8 S.W.3d 670 (Tex. Crim. App. 2000) - The Court of Appeals overturned on legal sufficiency grounds a jury's verdict convicting appellant of disorderly conduct. Disorderly conduct, as defined in section 42.01(a)(12) of the Texas Penal Code, makes it a crime for a person to be naked in a "public place" if that person "is reckless about whether

another may be present who will be offended or alarmed by his act." The appellant and about 100 other nudists were naked on a public beach. The complainant was offended by this public nakedness when he took his family to the beach to fish and saw appellant and the other nudists. In reversing and remanding the case back to the intermediate appellate court, the Court held that a rational jury could have inferred the defendant's recklessness from the basic fact of his nakedness on a public beach. Thus, there was sufficient evidence to support conviction for disorderly conduct.

Aguirre v. State, No. 058-98 (9/29/99) - A city ordinance on adult businesses was held to require a culpable mental state even though the ordinance was silent as to the issue. Accordingly, an ordinance must contain a culpable mental state "unless the definition of the offense plainly dispenses with any mental element." Additionally, the Court held that the State Prosecuting Attorney had standing to file a PDR in this case, although the El Paso Courts Act states that convictions in municipal courts of record had to be prosecuted in the higher courts by the city or assistant city attorney.

Guerra v. Garza, 987 S.W.2d 593 (Tex. Crim. App. 1999) - In response to jail overcrowding, a county judge began holding "bail review hearings" where he changed the status of bonds from surety to personal. The bonds had previously been set by a municipal judge acting as magistrate. The Court of Criminal Appeals held that the county judge, despite the best of intentions, lacked jurisdiction to change status of the inmate's bonds and issued writs of mandamus and prohibition to remedy the situation.

Giesberg v. State, 984 S.W.2d 245 (Tex. Crim. App. 1998) - Defendants

are not entitled to a jury instruction on the defensive issue of alibi. That issue is included in the elements of the offense.

Dallas v. State, 983 S.W.2d 276 (Tex. Crim. App. 1998) - Upon conviction for misdemeanor of cruelty to animals, the trial court has the inherent power to impose conditions on an appellate bond that directly or indirectly related to the purpose of assuring the defendant's continued appearance. However, in this instance, the trial court abused its discretion by prohibiting defendant from engaging in the business of training and kenneling dogs as condition of bail pending his appeal.

COURT OF APPEALS

In utilizing case law from the intermediate appellate courts, remember that the issued opinions are only binding on the counties and municipalities within each court's designated district. Opinions from different intermediate appellate courts may vary. Additionally, note that opinions from the court of appeals can be appealed and reversed or affirmed by the Court of Criminal Appeals.

Martin v. State, 13 S.W.3d 133 (Tex. App. Dallas 2000) - Holding that neither the Irving Municipal Court of Record nor the use of the city attorney as a prosecutor violate the Texas Constitution. Additionally, the Court held that the district or county attorney need not attest to municipal court complaints and that the complaint need only sufficiently charge the appellant in "plain and intelligible words," as required by the Code of Criminal Procedure.

DeMoss v. State, 12 S.W.3d 553 (Tex. App. San Antonio 2000) - Holding that an off-duty police officer working for a private cable company had authority to execute a search warrant

for a suspected illegal cable box, and thus evidence of child pornography discovered during that and subsequent searches.

Tweedie v. State, 10 S.W.3d 346 (Tex. App. Dallas 2000) - Holding that an appeal was properly dismissed due to appellant/motorist's failure to perfect appeal within 31 days after receiving notice from the Plano Municipal Court, and that the Texas Rules of Appellate Procedure do not apply to appeals to county courts when the municipal court is not a court of record.

Rossano v. Townend, 9 S.W.3d 357 (Tex. App. [14th Dist.] 1999) - The Court of Appeals will construe city charter provisions according to rules governing interpretation of statutes generally.

Findlay v. State, 9 S.W.3d 397 (Tex. App. [14th Dist.] 1999) - Holding that the state could prosecute underage motorist for driving while intoxicated (DWI) rather than driving under the influence of alcohol by a minor (DUI).

Torres v. State, 7 S.W.3d 712 (Tex. App. [14th Dist.] 1999) - In an appeal stemming from an assault, the Court held that the defendant's evidence of apparent danger, and not just actual danger, entitled him to a self-defense jury instruction on apparent danger. Accordingly, an instruction permitting the jury to consider self-defense only if it found that the defendant was "under attack or attempted attack" was not sufficient to encompass self-defense on the ground of apparent danger.



FREQUENTLY ASKED QUESTIONS

By Ryan Kellus Turner
TMCEC Program Attorney and
Margaret Robbins
TMCEC Program Director

The following are samples of frequently asked questions and answers given on the TMCEC 800-line.

Q In the revision of Chapter 45 of the Code of Criminal Procedure, are small municipal courts required to have prosecutors?

A Yes. Regardless if a municipal court is located in an urban or rural area, Article 45.201 requires that all prosecutions be conducted by the city attorney of the municipality or by a deputy city attorney. Additionally, Article 45.201 permits the county attorney to prosecute in a municipal court. However, the county attorney may not receive additional fees or compensation.

While Article 45.201 has drawn a considerable amount of criticism, there are two points that deserve to be noted. First, Article 45.201 does not impose a new requirement upon municipalities. In fact, it is merely a recodification of former Article 45.03, which also required prosecutions to be conducted by the city attorney, a deputy or by a county attorney. Second, it should be emphasized that Article 45.201 only requires the designated attorneys to be present to conduct "prosecutions" at bench or jury trials. Even under the changes of Chapter 45, prosecutors are still not required to be present at docket calls or pretrial conferences.

Q Can a peace officer present the state's case at trial?

A No. While defendants have a constitutional right to represent themselves, a significant amount of Texas case law provides that an attorney must represent nonhuman entities (e.g., governments, corporations, and associations). Furthermore, Section 81.102 of the Government Code requires that persons practicing law be licensed by the Supreme Court of Texas and in good standing with the State Bar of Texas. Accordingly, while peace officers can be called as witnesses to testify, they cannot be used in a prosecutorial manner to present the state's case.

Q Can the judge still examine witnesses if counsel does not represent the state?

A No. Article 45.031, "Counsel for State Not Present" (formerly Article 45.36), no longer contains the provision allowing "the justice to examine the witness if the State is not represented by counsel." While many municipal courts utilized this provision to facilitate a trial without a prosecutor, a good argument can be made that this provision only applied to justice courts (who prior September 1, 1999 were not statutorily required to have a prosecutor at trial).

Q What options do rural courts that have been operating without a prosecutor have?

A Chapter 45 makes no distinction between the largest and smallest municipal courts. Just as all municipal courts are required to have judges, they are now required to have prosecutors at trial. Article 45.031 identifies what a judge

may do if no prosecutor is present to represent the state at trial. There are three options:

1. *Postpone the trial to a date certain;*
2. *[A]ppoint an attorney pro tem as provided by this code to represent the state* (Presumably this refers to article 2.07, C.C.P. Used in conjunction with the postpone-ment option, the appointment of an attorney pro tem may be a viable option for smaller courts who rarely hold trials.);
3. *Proceed to trial* (Presumably this option triggers article 45.032 that states if “upon a trial the state fails to prove a prima facie case of the offense alleged in the complaint, the defendant is entitled to a directed verdict of “not guilty.”

Q Can a judge’s signature be affixed to a document electronically or by use of a stamp?

A Yes. The Attorney General in Opinion JM-373 addressed this issue. That opinion stated that a judge may “sign” a document by allowing another person to do so but only in the judge’s presence and at his or her direction. That opinion and court decisions regarding this issue rely on *Stork v. State*, 23 S.W.2d 733 (Tex. Crim. App. 1929).

Letter Opinion LO 97-082 (1997) concluded that a judge could “sign” an arrest warrant by personally entering a computer graphic of his or her signature on the warrant in a computer system. Further, the opinion states that a magistrate may issue a warrant based upon a computer facsimile of an affiant’s signature, assuming that the affiant orally swore to the truth of the affidavits and signed the affidavit in the magistrate’s presence.

In 1999, the Legislature amended and recodified chapter 45 of the Code of Criminal Procedure. Now article 45.021(f) provides that when a statute requires that a document contain a signature, including that of a judge, clerk or defendant, the requirement is satisfied if the signature is one captured by an electronic device. Ostensibly, if the signature is “affixed” electronically, it must be done at the direction and in the presence of the person whose signature is being affixed.

Q Do municipal courts have jurisdiction over a person under the age of 17 charged with the offense of public intoxication (Sec. 49.02, P.C.)?

A No. Section 8.07 of the Penal Code defines the age affecting criminal responsibility. It identifies who may be prosecuted for or convicted of a criminal offense. Subsection (b) provides that a person under that age of 17 may not be prosecuted or convicted of a criminal offense except for traffic offenses and other fine-only offenses other than public intoxication.

Section 51.03 of the Family Code defines conduct in need of supervision and delinquent conduct over which the juvenile court has jurisdiction. The definition excludes fine-only offenses other than public intoxication. Section 51.02(2), of the Family Code defines child as a person between the ages of ten years and under the age of 17 or who is older than 17 and under age 18 if the person engaged in delinquent conduct or conduct in need of supervision before becoming 17 years of age.

Since the offense of public intoxication is included in the definition of conduct in need of supervision when the person charged is under the age of 17, the juvenile court has jurisdiction.

Q What is the difference between truancy and failure to attend school?

A Truancy is a civil offense filed in juvenile court. The juvenile court may waive its exclusive original jurisdiction over a child charged with truancy and transfer the child to an appropriate justice or municipal court with the permission of the court that the child is transferred to. The penalty for truancy includes sanctions only. There is no fine. Truancy may be charged when a person is between the ages of 10 and under the age of 17. (Sec. 54.021, F.C.)

Failure to attend school is a fine-only criminal offense. Justice or municipal courts have jurisdiction of this offense. This offense may be prosecuted in a justice court in the county in which the child resides or which the school is located or in a municipal court in the municipality in which the child resides or in which the school is located. It is a Class C misdemeanor, which means the maximum penalty is a fine of \$500. Also, the court may enter an order to include any of the sanctions under section 54.021 of the Family Code. Failure to attend school may be charged when a person is between the ages of six and under the age of 18 or when a person is younger than six if he or she has been previously enrolled in first grade. (Sec. 25.094, E.C.)

Both truancy and failure to attend school cover the same type of conduct but because one is a civil offense and the other is a criminal offense there are jurisdictional differences and they are processed differently. Not all of the differences are noted here in this short answer. However, the June issue of *The Recorder* newsletter will be devoted to juvenile issues. It will contain a chart detailing the differences. If a court

needs more information immediately, please call TMCEC (800/252-3718).

Q Which court has jurisdiction over the offense of displaying a suspended driver's license?

A County courts have jurisdiction. In 1999, the Legislature amended section 521.451 of the Transportation Code. The amendment changed the offense *displaying a suspended driver's license* along with others listed in that section from Class C misdemeanor to Class B misdemeanor.

Q Is the driver of a one-ton truck and its passengers required to wear a seatbelt?

A The driver is not required to wear a seatbelt. However, if the truck is equipped with safety belts, a passenger over the age of four years but younger than 15 years of age must wear a seatbelt. (Sec. 545.413(b), T.C.) If a person transports a child under two years of age in a one-ton truck, the child must be secured by a child passenger safety seat system and if the child is at least two but younger than four years old, the child must be secured in a child passenger safety seat system or by a safety belt. (Sec. 545.412, T.C.)

FROM THE CENTER COMPUTER TRAINING

TMCEC will offer a one day computer training program on Thursday, August 3, 2000 at Texas Tech Law School in Lubbock. The program is designed for municipal court judges who are already familiar with personal computers. The program will provide intermediate training in e-mail, electronic bench books, legal research skills using Lexis-Nexis, and Internet resources. There is a \$20 registration fee for the program and funds are available to pay for travel, lodging and food expenses. The program is funded by the Judicial Committee on Information Technology.

To register, contact Beatrice Flores at TMCEC (800/252-3718). Participation is limited to 15 judges and enrollment is based on a first-come-first-serve basis.

TMCEC Bench Book/Forms Book Order Form

Name of Court: _____

Address: _____

Telephone Number: _____

Yes, our court requests additional copies of the TMCEC Judge's *Bench Book* for the associate judges that work in our court. Please send us _____ copies that will be given to the judges named below. (Attach an additional sheet with names if more space is required.)

Name and Title

Yes, our court would like the following materials on CD-ROM or 3.5" diskette:

Qty	Check one
____ <i>Forms Book</i>	<input type="checkbox"/> CD-ROM <input type="checkbox"/> PC Diskette
____ <i>Bench Book</i>	<input type="checkbox"/> CD-ROM <input type="checkbox"/> PC Diskette

Name of Presiding Judge: (please print)

Signature of Presiding Judge: _____

Date: _____

Return by mail or fax to: TMCEC
1601 Rio Grande, Suite 550, Austin, TX 78701
FAX 512/435-6118

BENCH BOOK / FORMS BOOK

The Texas Municipal Courts Education Center (TMCEC) has sent every presiding municipal court judge in Texas a set of the latest versions of the TMCEC *Bench Book* and *Forms Book*. Please share these materials with the court support personnel in your court.

There is sufficient funding in the TMCEC grant this year to provide these at no charge. Additional copies

may be ordered from TMCEC for \$20 for the *Bench Book* and \$15 for the *Forms Book*, shipping included. Checks should be made payable to TMCEC.

Since many of the larger municipal courts have more than one judge, TMCEC is able to offer additional copies of the *Bench Book* to these associate judges at no charge. The presiding judge should return the



coupon shown on the prior page to order these additional books for associate judges and indicate their names and position.

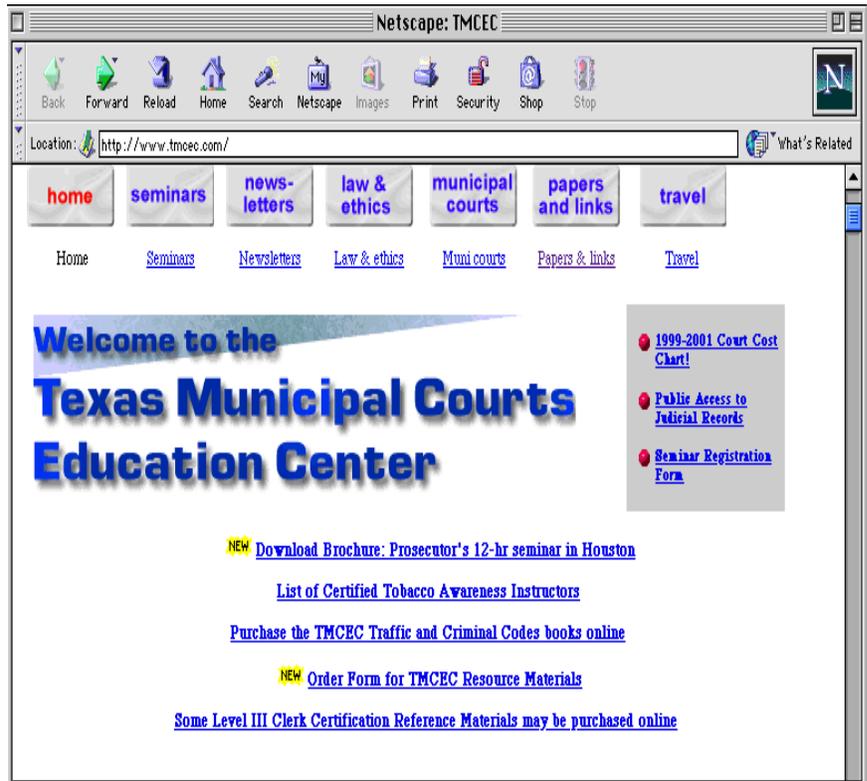
TMCEC will have this material available on CD-ROM and 3.5" diskette (in PC format only) in June 2000. Please use the return postcard on Page 6 to order these materials (one per court) at no charge. Both the CD-ROM version and the diskette are in Microsoft Word version '97. Please check the TMCEC web site [www.tmcec.com] in mid-summer for the online version of the *Bench Book*.

TMCEC WEB SITE

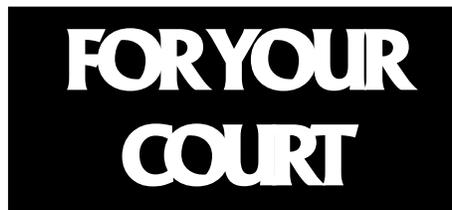
The TMCEC web site offers many resources helpful to judges, clerks, court managers and prosecutors. The site is found at www.tmcec.com. From the home page, a user can access the following materials:

- List of TMCEC seminars
- Current and past issues of the TMCEC newsletters
- Court cost charts
- Rule 12 and a sample response letter
- A.G. Opinions
- City Code and city web sites
- Order code books from Omni Publishers
- List of Certified Tobacco Awareness Instructors

Elsewhere on the site, maps to seminars, links to law libraries and appellate court decisions may be found. Next fall, participants in TMCEC training programs will be able to register online.



Over 400 users visit the site each week. Users of the web site are invited to submit favorite legal research sites to become links to the TMCEC page. Simply email the webmaster with your suggestions at webmaster@tmcec.com.



SJI SCHOLARSHIPS

The State Justice Institute (SJI) offers scholarships to full-time judges and court managers to attend out-of-state, court-related education programs within the United States. A SJI scholarship may cover the cost of tuition and transportation to and from an educational program up to a maximum total of \$1500 per scholar-

ship. Scholarships are awarded primarily on a first-come, first served basis. The deadlines are:

April 3 - June 1, 2000 for programs beginning between July 1 and September 30, 2000.

July 5 - September 1, 2000 for programs beginning between October 1 and December 31, 2000.

October 1 - December 31, 2000 for programs beginning between January 1 and March 31, 2001.

For additional information regarding selection criteria, eligible courses and eligible recipients and to obtain a copy of the required application forms, contact the State Justice Institute, Attn: Scholarship Program Coordinator, 1650 King Street, Suite 600, Alexandria, VA 22314 (713/684-6100). The SJI web site may be found at <http://www.statejustice.org>.

NACM CONFERENCE

Mark your calendar for the 15th Annual Conference of the National Association for Court Management to be offered August 13-18, 2000 in Atlanta, Georgia. Registration packets will be mailed out to NACM members in late May. For more information, call 757/259-1841.

TDCAA SUMMER REGIONAL SERIES

This summer, the Texas District & County Attorneys Association (TDCCA) is hitting the road with two acclaimed speakers on cutting-edge legal topics, featuring Kim Ogg on *GANGS* and John Bradley on *PLEAS, PROBATION & PUNISHMENT*. The series will be presented in Edinburg, Dallas, San Angelo, Lubbock, Houston, Fort Worth, El Paso, and San Antonio.

Once a big-city problem, gangs and their related criminal activities (such as drug dealing) have begun to infiltrate even small-town Texas. No matter what part you play in the criminal justice system, you need to hear about:

- How the new statewide gang database regulations that take effect September 1, 2000 will affect your investigation or prosecution;
- Tracking and deterring gang violence in your community;
- Gang members in the juvenile system;
- Victims of gang violence who may be gang members themselves; and
- Taking a gang case to trial from

charging to bond conditions to voir dire, evidence and punishment.

Kim Ogg, Executive Director of Crime Stoppers of Houston, is the former legal advisor on gangs to the Mayor of the City of Houston and a former Assistant District Attorney in Harris County. Her successful anti-gang strategies have been honored nationally.

The half-day TDCAA seminar on *GANGS* will be presented from 9:00 a.m. to noon in each location.

Are you ever confused by the statutes and caselaw on pleas, probation and punishment? If anyone can make sense of Texas' mind-boggling punishment laws, including the community supervision statute (article 42.12, C.C.P.) and translate it for everyone else, it's John Bradley. No one in the criminal justice community can afford to miss information about:

- How the information in an officer's report affects the offender's punishment and the charging decisions;
- How judges, prosecutors and defense lawyers can tailor a sentence to a particular offender's needs;
- How to put together a perfect plea bargain that will stand up on appeal; and
- How probation officers can monitor and enforce conditions of community supervision.

John Bradley, the first Assistant District Attorney in Williamson County, is a noted speaker on Texas sentencing and probation and author of three books on Texas criminal law. He also served as a consultant to the Texas Punishment Standards Commission and General Counsel to the Senate Criminal Justice Committee.

The half-day TDCAA seminar on *PLEAS, PROBATION & PUNISH-*

MENT will be presented from 1:30 - 4:30 p.m. in each location.

Please pre-register for these courses by registering online at <http://www.tdcaa.com> at least one week prior to the seminar. See the list of dates and sites on Page 12 of this newsletter. The cost is \$35 for a half day (either morning or afternoon session) or \$50 for a full day (both sessions). Registration will also be accepted at the door; however, due to limited space, no guarantee can be made for walk-in registrants. Continuing education credit is being sought for participants. This course is appropriate for prosecutors, judges, law enforcement, defense lawyers, probation officers, victim/witness coordinators, school district employees, and city, county and state government policy makers.

CRIME VICTIM SERVICES

The Texas Crime Victims' Compensation Fund helps innocent victims and their families when they have no other means of paying for the financial cost of crime. The Fund is administered by the Crime Victims' Compensation Program of the Office of the Attorney General. The money in the Fund comes from court costs and fines collected by the courts from convicted offenders. Not only are municipal courts collecting a large percentage of this court cost, but municipal courts are also an excellent source of information about the Fund in their communities. The article shown below and the chart found on Pages 10-11 of this newsletter are intended to help your staff answer questions by the public. It is recommended that the chart be used as a handout or posted on a community information bulletin board in your building.

In FY 1999, for example, the Fund collected \$80,011,892 and only dispersed \$40,796,499. In FY99, the excess of receipts over disbursements was approximately \$39 million. The A.G.'s Office has recently awarded (April 2000) over \$2 million dollars in funding for crime victim services to 48 agencies that serve 64 counties.

To qualify, the crime must occur in Texas to a Texas resident or a United States resident, or the crime must involve a Texas resident who becomes a victim in another state or country that does not have crime victims' compensation benefits for which the victim would be eligible. The crime must be reported to the appropriate law enforcement agency within a reasonable period of time, but not so late as to interfere with or hamper the investigation and prosecution of the crime. The application must be filed within three years from the date of the crime. The time may be extended for good cause, including the age of the victim or the physical or mental incapacity of the victim.

The following persons may qualify:

- an innocent victim of crime who suffers physical and/or emotional harm or death;
- an authorized individual acting on behalf of a victim;
- a person who legally assumes the obligations or voluntarily pays certain expenses related to the crime on behalf of the victim;
- a dependent of a victim;
- an immediate family member or household members related by blood or marriage who require psychiatric care or counseling as a result of the crime;
- an intervenor who goes to the aid of the victim or a peace officer; or
- a peace officer, fire fighter or individual whose employment includes the duty of protecting the public.

The Fund covers crimes involving "criminally injurious conduct," which is defined as conduct that occurs or is attempted, poses a substantial threat of personal injury or death and is, or would be, punishable by fine, imprisonment or death. This includes sex offenses, kidnapping, aggravated robbery, assaultive offenses, arson, homicide, and other violent crimes in which the victim suffers physical or emotional harm or death.

The following motor-vehicle-related crimes are also covered: Failure to Stop and Render Aid, DWI, Manslaughter, Criminally Negligent Homicide, Aggravated Assault, Intoxication Manslaughter, and Intoxication Assault.

Benefits may be reduced or denied if the behavior of the victim contributed to the crime. Benefits shall be denied if the victim or claimant:

- knowingly or willingly participated in the crime;
- is the offender or accomplice of the offender;
- was incarcerated in a penal institution or on probation or parole for a felony involving criminally injurious conduct at the time of the crime; and/or
- knowingly or intentionally submits false or forged information to the attorney general.

Claims may be approved for benefits up to a total of \$50,000 for crimes committed on or after 9/1/97. These funds may be paid to the victim/claimant or to service providers on behalf of the victim. The chart on Page 10-11 of this newsletter outlines the available benefits, limitations and requirements.

The Crime Victims' Compensation Fund is the "payer of last resort." It is a secondary source that pays for certain

out-of-pocket expenses the victim would be responsible for as a result of the crime. Any other available resources would have to pay before any payment by the Crime Victims' Compensation program.

Every law enforcement agency in Texas is required to provide victims of crime with information about the Crime Victims' Compensation program and an application. Applications are also available from prosecutors' offices. Their victim assistance coordinators are required to provide assistance to victims who ask for help filling out the form. Hospitals and medical centers may also have applications.

Applications are also available directly from the Crime Victims' Compensation Program in the Office of the Attorney General by calling 800/983-9933. Or, an application may be downloaded from the web site of the A.G.'s Office: www.oag.state.tx.us.

After receiving an application and related documentation, including a complete offense report, the Attorney General's Crime Victims' Compensation Program reviews the information to see if the crime, the victim and/or claimant are eligible for the program. A decision about whether the victim or claimant is eligible is usually made within 45 days. An appeal process is also in place.

For more information or for materials for distribution in your court: email: crimevictims@oag.state.tx.us. Or write to:

Crime Victim Services Division - CVC
Program
Office of the Attorney General
PO Box 12198
Austin, TX 78711-2548
Or Call: 800/983-9933 or
512/936-1200 (in Austin)
Or Fax: 512/320-8270

REMAINING TMCEC SEMINARS IN FISCAL YEAR 2000

- Houston Prosecutors/Court Administrators 12-Hour (June 26-27, 2000)
- Austin Judges 32-Hour (July 10-14,2000) / Clerks 24-Hour (July 11-14, 2000)

TDCCA SUMMER SEMINARS ON *GANGS AND PLEAS, PROBATION AND PUNISHMENT*

June 23	Edinburg	August 4	Houston
July 7	Dallas	August 11	Fort Worth
July 14	San Angelo	August 25	El Paso
July 28	Lubbock	September 8	San Antonio

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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.

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