2022
VOLUME 1

THE DEFENDER

HARRIS COUNTY CRIMINAL LAWYERS ASSOCIATION

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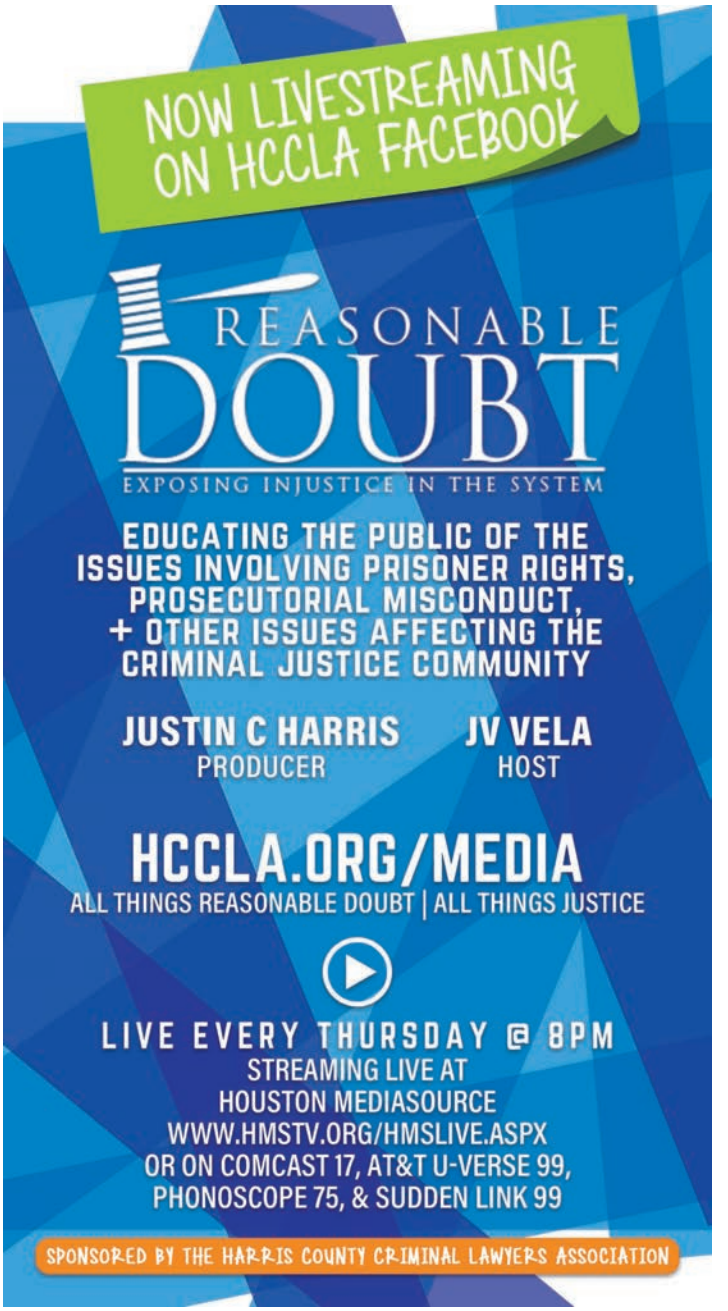

WHAT'S INSIDE 2022, VOLUME 1

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A WORD FROM YOUR PRESIDENT

Joe Vinas

In the early morning, pre-dawn hours of August 28, 2016, Jacob Johnson sat inside his vehicle in a 24-hour park-and-ride parking lot. His presence at the lot was not illegal, nor was his car the only one in the lot. The Brazoria County Sheriff's Office was on patrol and spotted Mr. Johnson's vehicle. BCSO Sgt. Cox parked near Mr. Johnson's car, shined his spotlight inside the vehicle, and activated his own emergency lights. Sgt. Cox approached Mr. Johnson's vehicle and smelled the odor of marijuana. Mr. Johnson was arrested and charged for possession of marijuana.

At a suppression hearing held on August 2, 2017, the trial court found that the encounter that resulted in Mr. Johnson's arrest was actually a consensual encounter and Sgt. Cox needed no probable cause nor even reasonable suspicion to order Mr. Johnson to roll down his window.

Enter Jonathan Landers and William Demond, appellate lawyers extraordinaire. The issue at hand was: whether a 24-hour park-and-ride that was, by definition, open for business at the time of the detention and had "three or four calls for service in the past several months" qualifies as a "high crime area" for Fourth Amendment purposes. Because of Jonathan and William's excellent work, the 14th Court of Appeals (correctly ?) reversed the trial court's denial of the Motion to Suppress.

As you have probably guessed by now, dear reader, the Court of Criminal Appeals reversed the 14th Court of Appeals and upheld the trial court's decision.

That didn't stop our stalwart heroes, though. Landers and Demond filed a Writ of Certiorari in the United States Supreme Court and petitioned the nation's highest court to hear the critical Constitutional question at issue. You can find the petition here: https://www.supremecourt.gov/DocketPDF/21/21-532/195815/20211007151549169_Johnson%20 pet.%20 for%20cert..pdf

Because this issue has such far reaching potential, the Harris County Public Defender's Office and HCCLA joined forces to sponsor an amicus brief supporting Mr. Johnson's case. By joining forces, I mean that the great Allison Mathis took on the task single-handedly. In addition to her caseload assigned by the HCPDO, Allison wrote a great brief illustrating why the high crime "definition" relied upon by law enforcement has caused the pendulum to swing too far away from the Framers' intent when they authored the Fourth Amendment. In addition to what Johnathan Landers and William Demond filed, Allison's brief pointed out how absurd the State's position really was: if a location with "three or four" calls for service in a several month period is considered "high crime," then just about everywhere in America is, too. A link to Allison's brief can be found here: https://www.supremecourt.gov/ DocketPDF/ 21/21-532/199699/ 20211112084517011_ HCTX_Amicus%20 Main%20E%20FILE%20Nov%2011%2021.pdf

Ultimately, SCOTUS denied the Writ of Certiorari, and let the Court of Criminal Appeals' decision stand…for now. Although they may not feel the issue is ripe at this point, I am sure there were many cases before Arizona v. Gant professing that the automobile exception to the search warrant requirement had gone too far. Or, before California v. Riley, how many defendants protested law enforcement searching their phones with no authority more than a court order. These great lawyers – and, by no coincidence, HCCLA members – championed the great cause of fighting law enforcement over reach that has consistently eroded individual liberty. The issue will eventually become ripe under the right circumstances. Until then, we know that Jonathan, William, Allison, and the organizations who supported their efforts are on the right side of history.

SUMMER LUAU

JULY 22, 2021

PHOTOS BY

BOB ROSENBERG

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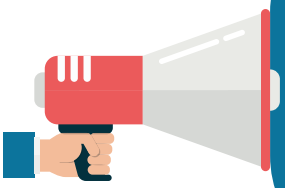

YOUR VOTE. YOUR VOICE.

MAKE SURE YOU ARE HEARD!

★ A GUIDE TO THE PRIMARY ELECTION ★

FAQ

WHAT IS A PRIMARY ELECTION?

In Texas, primary elections are conducted by the major political parties to determine their nominees for a given elective office in advance of a general election.

WHO IS ELIGIBLE TO VOTE IN A PRIMARY ELECTION IN HARRIS COUNTY?

Any person that is registered to vote in Harris County may vote in either the Republican Primary Election or the Democratic Primary Election (NOT both). In Texas, a person must register to vote 30 days before Election Day, if never registered to vote.

WHAT CONTESTS ARE ON THE PRIMARY BALLOT?

Typically, Federal, State and County contests appear on the Primary Election ballot. Political Parties may also offer nonbinding propositions.

MAKE IT COUNT

DON'T FORGET

YOUR VOTE MATTERS

IMPORTANT DATES

02/14 — FIRST DAY OF EARLY VOTING BY PERSONAL APPEARANCE

02/18 — LAST DAY TO APPLY FOR BALLOT BY MAIL, RECEIVED, NOT POSTMARKED

02/25 — LAST DAY OF EARLY VOTING BY PERSONAL APPEARANCE

03/01 — LAST DAY TO RECEIVE BALLOT BY MAIL

At 7:00 p.m. if carrier envelope is not postmarked, OR Thursday, March 3, 2022 (next business day* after Election Day) at 5:00 p.m. if carrier envelope is postmarked by 7:00 p.m. at the location of the election on Election Day (unless overseas or military voter deadlines apply)

*First business day after Texas Independence Day

WHERE CAN I VOTE?

Find your local polling location at www.HarrisVotes.com or scan this QR code with your phone.

HCCLA NEWS ROUNDUP

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HCCLA NEWS ROUNDUP

declaration of independence

2020 & 2021 READINGS

Even during the most challenging times, criminal defense lawyers across Texas continued the annual tradition of reading the Declaration of Independence to celebrate the 4th of July.

2020 READERS (ALPHABETICALLY): Windi Akins Pastorini, Staci Biggar, Inger Chandler, Jay Cohen, Mary Conn, John Shannon Davis, Neal Davis III, Nicole DeBorde, Todd Dupont II, Danny Easterling, Robert Fickman, Tyler Flood, Steven Halpert, Justin C. Harris, Cynthia Henley, Jennifer Jenkins, Robert K. Loper, Doug Murphy, Murray Newman, Robert Pelton, Thomas Radosevich, Mark Thiessen, Joseph Vinas, Vikram Vij

HCCLA NEWS ROUNDUP

2020 TOGETHER APART

HCCLA made every effort to slow the spread of Covid-19 and keep its members and the community safe throughout the pandemic. To ensure the safety of everyone involved, we held our 11th Annual Reading of the Declaration of Independence via ZOOM in July 2020.

2021 TOGETHER AGAIN!

As Covid-19 cases steadily declined and vaccination rates increased, HCCLA members gathered in person again for the 12th Annual Reading. Since the Criminal Justice Center was ***still*** under construction—nearly 4 years after Hurricane Harvey—we held the reading in front of the Family Law Center on July 2, 2021.

Both readings were livestreamed on Facebook and HCCLA Reasonable Doubt's YouTube channel.

The Declaration contains within its text these fundamental truths—***that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.***

"Our annual reading of the Declaration comes at a critical time in our nation's history. Our reading is a reminder that as Americans we cherish liberty, and we reject tyranny in any form," said Robert Fickman, event founder and HCCLA Past President.

HCCLA President Joe Vinas said, ***"It serves as a reminder to all about the sacred rights our founders fought and died for when establishing this great nation. Because of HCCLA leaders like Robb Fickman, this honored tradition has spread to all 254 counties in Texas, across the nation, and in some foreign countries around the world."***

Members of the Texas Criminal Defense Lawyers Association (TCDLA) also held readings across the state. TCDLA then-President Grant Scheiner said, ***"TCDLA recognizes the Declaration of Independence as a bedrock document that not only liberated the colonies but eventually led to the United States Constitution, the Bill of Rights and the American rule of law—concepts criminal defense lawyers use every day to protect individual liberties in courthouses across the land."***

SPECIAL THANKS

Robert Fickman (HCCLA President, 2006-2007) for starting this defense bar tradition in 2010; Joe Vinas (HCCLA President, 2021-2022) and Mark Thiessen (HCCLA President, 2020-2021) for leading the readings during their terms; Christina Appelt for hosting the event on Zoom in 2020; and Bob Rosenberg for photographing the event in 2021. We especially thank all of the readers who participated as well as everyone who watched online or attended in person, including Hon. Marilyn Burgess (Harris County District Clerk), Judge Danny Lacayo (182nd District Court) and Judge Raúl Rodríguez (Harris County Criminal Court at Law #13).

2021 READERS (ALPHABETICALLY): Marcos Adrogué (and daughter Alessandra), Christina Appelt, Alex Bunin, Shelby Burns, Jacquelyn Carpenter, Jay Cohen, Todd Dupont, Danny Easterling, Kate Ferrell, Robert Fickman (and sons Sam and Daniel), Martin Flores, Steven Halpert, Justin C. Harris, Gemayel Haynes, Brittany Carroll Lacayo, Brent Mayr, Troy McKinney, Nathaniel Munier, Doug Murphy, Carlos Ortiz, Damon Parrish II, Robert Pelton, Bob Rosenberg, Sara Smitherman, Roger Tavira, J. Julio Vela, Joe Vinas, Larry Williams

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12|9|21 @ KIRBY ICE HOUSE

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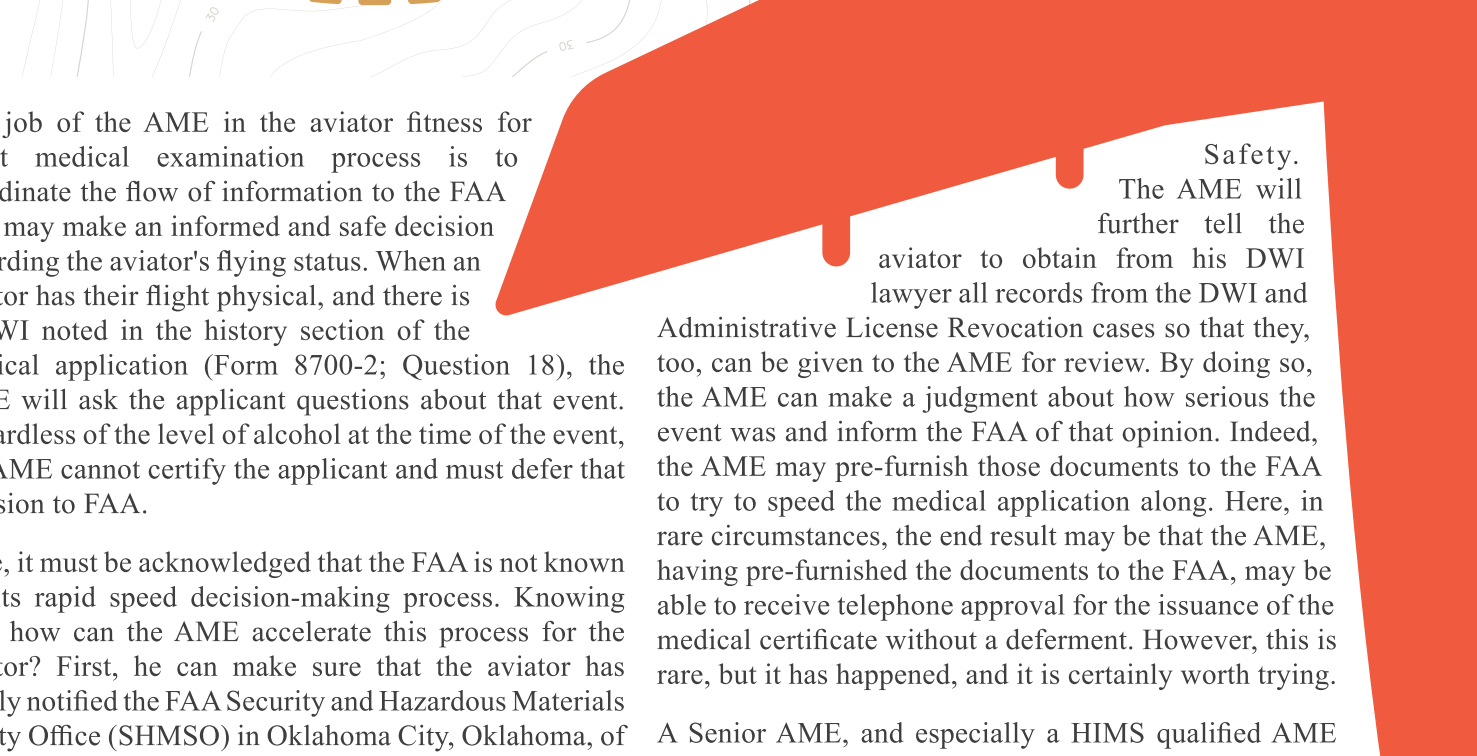
WHAT PILOTS CHARGED WITH DWI NEED TO KNOW



The job of the AME in the aviator fitness for flight medical examination process is to coordinate the flow of information to the FAA so it may make an informed and safe decision regarding the aviator's flying status. When an aviator has their flight physical, and there is a DWI noted in the history section of the medical application (Form 8700-2; Question 18), the AME will ask the applicant questions about that event. Regardless of the level of alcohol at the time of the event, the AME cannot certify the applicant and must defer that decision to FAA.

Here, it must be acknowledged that the FAA is not known for its rapid speed decision-making process. Knowing that, how can the AME accelerate this process for the aviator? First, he can make sure that the aviator has timely notified the FAA Security and Hazardous Materials Safety Office (SHMSO) in Oklahoma City, Oklahoma, of the DWI and/or license suspension event, as the aviator has 60 days after the event to notify SHMSO. Should that 60-day window be missed, it is still better to report the event late then not at all. Normally, if late but still reported, the FAA response is to keep a memo in the file about the failure to report, and there after expunge it. Second, the AME will remind the aviator to request their driving record from the Texas Department of Public Safety. The AME will further tell the aviator to obtain from his DWI lawyer all records from the DWI and Administrative License Revocation cases so that they, too, can be given to the AME for review. By doing so, the AME can make a judgment about how serious the event was and inform the FAA of that opinion. Indeed, the AME may pre-furnish those documents to the FAA to try to speed the medical application along. Here, in rare circumstances, the end result may be that the AME, having pre-furnished the documents to the FAA, may be able to receive telephone approval for the issuance of the medical certificate without a deferment. However, this is rare, but it has happened, and it is certainly worth trying.

A Senior AME, and especially a HIMS qualified AME (These AME's have additional training and certification and the acronym stands for Human Interventional Motivational Study-- a study that clinically and scientifically showed that aviators were very motivated to return to flying and could remain abstinent from drugs and/or alcohol -- will not let the matter rest with mere submission of the flight physical exam). Those AMEs will contact the FAA and try to determine

ABOUT HOW THEIR AME CAN HELP THEM GET BACK TO FLYING

BY DR. ARTHUR T. HADLEY, M.D.
& J. GARY TRICHTER, J.D.

what the FAA's decisions are regarding the specific applicant and what will be the rehabilitation requirements to get the pilot back flying. That conversation will likely be with the FAA's HIMS qualified AME.

Regarding proving sobriety to fly, the aviator should prepare themselves for frequent and random drug/alcohol tests, and at least quarterly visits to their AME of record. Here, it is presumed that the aviator will hire the AME to represent and guide through this FAA reapplication process. Of course, the aviator should be sure they have a comfortable and trusting working relationship with their AME because the process will likely take at least one year or more. Note, this process is fluid, and there are no guarantees that it will be successful, and accordingly, it is often the case that the aviator will become frustrated with the process. Notwithstanding, with unceasing dedication and hard work by the aviator and the AME, the light at the end of the tunnel can most often be seen.

Focusing on whether there will be a medical deferment because of a DWI arrest, it does not matter what BAC level resulted from an Intoxilyzer or blood test, a deferment is the default FAA position. Moreover, any result at, or above 0.15%, is a red flag presumption to the FAA that the aviator has a substance abuse and/or addiction problem. Understanding this, the aviator can expect that the FAA will want, in addition to the above, evaluations showing that there is no dependence on drugs and/or alcohol. In this instance, the aviator will be counseled that the cause would be better served if a licensed professional counselor (LPC) is hired to make that determination. Better yet the hiring of a psychiatrist or an addiction medicine specialist will make the aviator's case to get back flying more persuasive. If money is not an object, or if the aviator wants to increase the chances of success, the aviator can create a team by hiring the licensed professional counselor, a psychiatrist, an addiction medicine specialist, and an attorney who is very experienced in FAA matters. From the FAA's view, the more qualified the medical evaluators are, the more weight will be given to their opinions. Also, in almost all cases, the FAA will require that the aviator participate an out-patient sobriety program such as Alcoholics Anonymous (AA) meetings. Here, it is important that the aviator have a log which can be signed by the individual

running each meeting to prove their attendance. Also, it is a good idea for the aviator to keep a journal of what was discussed and learned at each meeting so both the log and the journal can be produced to the FAA as part of its evaluation. It is here, by gathering, organizing, and assembling your sobriety and low risk to aviation safety proof, that the experienced aviation lawyer can be of great assistance.

Turning now to the type of medical application sought, if the aviator is a applying for a First or Second Class Medical Certificate, and the applicant is flying for an airline that has its own HIMS Program (generally these are national or international airlines that have their own regulations and specifications that have been HIMS approved, such as the Southwest Airlines program which is available to view on the web). Nevertheless, all First or Second Class Medical Certificates are certified in Washington DC. History has shown that in some cases the process takes 14-16 months just to make the initial decision. That being the case, if the aviator is not flying for one of these large commercial airlines or not flying commercially, many Senior AMEs will recommend that the aviator apply only for a Third Class Medical Certificate because that decision will not be made in Washington DC, but rather, the FAA in Oklahoma City makes that "okay to return to flying" decision and does so with much less delay- about a year or more. Here, it must be remembered that a deferment only means that the pilot can no longer act as pilot in command. The pilot can still fly with a certified flight instructor.

So, what advice do Senior AME's give to their pilot applicants? To be blunt, never drink and drive. Being charged with a DWI, even if you are innocent, is not worth the risk of losing your flying privileges, and from a commercial pilot's perspective, your career, and your future. While it is legal in Texas to drink and drive while not intoxicated, it is far safer to use a designated driver, Uber or taxi, and if none are available, to show good judgment, and simply not drive if you are drinking or don't drink if you must drive.

CONTINUED : WHAT PILOTS CHARGED WITH DWI NEED TO KNOW

Here are just two examples of the collateral dangers of drinking and driving to the aviator. First example, there was an aviator who was erratically driving in a church parking lot and was arrested for DWI. It took five years of sobriety proof for that aviator to be returned to a flying status. The second example involved an aviator who was speeding to escape the threat of a sexual assault and was arrested for DWI. Her reinstatement took over a year of sobriety proof before she could be returned to flying status. These two examples hopefully clearly show that an aviator should not drink and drive no matter what the reason. Incidentally, even where the aviator is found to be not guilty of a DWI, the FAA still takes a presumptive guilt position until there is substantial proof of continued sobriety.

Our final advice to the aviator charged with DWI, wishing to continue in aviation, is that they should wisely choose their AME and aviation lawyer. Again, the aviator needs to be very comfortable in the choices made during this process, because they will be working with that AME and lawyer for an extended period of time. Moreover, when thinking about drinking before driving, to first think about the cost of a bond to get out of jail, the cost of getting your vehicle from the tow truck yard, the cost of a good DWI and license suspension lawyer, a good lawyer experienced in FAA matters. You should also be thinking about the cost of a licensed professional counselor, a psychiatrist, and an addiction medicine specialist. Thinking in terms of a defense team, it is important to remember that the FAA Medical Certification Division decision-makers will only speak to physicians. To be clear, we are not talking about the enforcement process where your lawyer would be speaking to the FAA, but medical fitness, which is solely the jurisdiction of the Medical Certification Division.

Accordingly, from an aviation medical perspective, the AME is critical in knowing where the aviator's case stands with the FAA. Having this knowledge, allows the AME to guide you and your sobriety team to the best path to have your flying privileges reinstated. In closing, the best defense against losing your flying privileges is by pre-deciding to NEVER drink and drive. However, if you do, the best medicine to overcome a medical deferment is to hire both an AME who is experienced and cares, and a lawyer experienced in FAA matters!

Arthur T. Hadley, III, MD, is an Aviation Medical Examiner (AME) and a pilot. He has been a practicing physician since 1972 and is a 1978 graduate of the United States Airforce School of Aeromedicine. His primary practice is Preventive Medicine, but Aerospace Medicine is a favorite sub-specialty. He has been honored to have been elected as a Fellow to Aerospace Medical Association and was an astronaut candidate and a NASA flight surgeon. Dr. Hadley has been practicing medicine from 2008 to the present at the Arthur Hadley Medicine Clinic www.fitslim.com. Dr. Hadley can be contacted by telephone at (281) 597-1010 and by e-mail at arthurhadley@hadleymd.com.

J. Gary Trichter is the senior lawyer with the Houston & Bandera, Texas Law Firm of Trichter & LeGrand, P.C. Known as "The Cowboy Pilot Lawyer", he has been in practice for approximately 40 years and represents clients throughout Texas. Gary is the former co-author of the two-volume treatise entitled Texas Drunk Driving Law (1s through 4th Editions) and is author of over forty journal articles ranging from DWI, grand jury, drug couriers, aviation, to the Star-Spangled Banner.

Gary is "AV" rated by Martindale-Hubbell and has been voted by his peers the past 14 years as a Texas Monthly Magazine "Super Lawyer". He is also "Board Certified" as a DWI Specialist. This rating comes from the National College for DUI Defense whose rating has been approved by the American Bar Association and accepted by the Texas Board of Legal Specialization. Gary is Founder and Past-President of Texas DWI Lawyers (formerly Texas DWI Defense Lawyers Association), past President of the Texas Criminal Defense Lawyers Association and past Dean and Regent for the National College for DUI Defense. He is a former Director and former DWI co-chair for the DWI Committee for the Texas Criminal Defense Lawyers Association and past chairman of NACDL's Drunk Driving Committee.

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RUTH BADER GINSBURG +

THE LEGACY OF THE LADY LAWYERS BEFORE HER

by Shreya Gulamali

INSPIRING.

Whether it's her workout sessions, her masterfully chosen words in her dissents, or even her enduring love story with Marty, Ruth Bader Ginsburg inspires even those who disagree with her politics. Her unabashed, relentless defense of women's rights in American history, however, is something that all people (male and female) should applaud. History tells us the path paved by RBG started with so many other women who happened to be from a different era.

It wasn't long ago that a woman couldn't do much of anything outside her home less we forget. For decades, American women were denied the most basic civil rights. Women could not work without her husband's consent, and if allowed the privilege of working, she surely could not control the money she earned from her work. Women could not enter into contracts. Now let me be clear – it wasn't technically all women who were denied these rights. A single woman could enjoy these basic civil liberties, but once a woman was married, those rights belonged to her husband. So, the natural question arose – how could a woman become a lawyer if certain classes of women (married) couldn't even enter into a simple contract by themselves?

LET'S START WITH TEXAS ON THAT ISSUE.

The Texas Congress adopted the common law practice of prohibiting married women from entering into contracts back in 1840.[i] In fact, all states held that view, or at least until women came in to challenge those laws. In 1870, Ada Kepley, the first woman to graduate from law school in America, was denied a law license. She summed up her frustration by saying, "America, which boasted to the rest of the world to be 'the land of the free and the home of the brave'…. gave no freedom to women. I work as hard as a man, I earn money like a man, and am robbed as a woman! I have no voice in anything or in saying how my money, which I have earned, shall be spent. The men … run their hands in my pockets, take my hard-earned money, and say impertinently, 'What are you going to do about it?'"[ii] In 1873, the United States Supreme Court in Bradwell answered that question by, well frankly, doing nothing and declaring to all that the right for women to practice law was left up to each individual state.[iii]

SLOWLY, STATE BY STATE, WOMEN FOUGHT BACK IN THE LATE 1800'S.

THESE INITIAL LADY LAWYERS DIDN'T HAVE IT EASY THOUGH.

Trailblazers like Charlotte Fraim (the first African American Woman Lawyer in 1872) had to enroll at Howard University's Law School under a disguised name of C.E. Fraim to hide her gender.[iv] Despite her success, her law degree and D.C. bar admission meant little. Like so many other women of that time, lady lawyers had had difficulty attracting clients, and surely being a minority lawyer didn't help either. So, she took her hustle elsewhere and in 1879 became a teacher at Brooklyn public schools.

Clara Foltz was another relentless leader for lady lawyers. Clara's husband left her during a financial depression in 1876 with 5 kids to support.[v] She evaluated the deck that life had dealt her and did what most women do best – hustle. She authored a bill so she could become the first female lawyer on the west coast in 1878. As a female criminal defense trial attorney at one of her first trials, the DA argued to the jury that her sex rendered her "incapable of reason."[vi] Despite her hurdles, Clara birthed the idea of a public defender which she presented at the 1893 Chicago World's Fair, 80 years before Gideon v. Wainwright in 1963.

In 1911, the Texas legislature moved a tiny inch by allowing married women who work to enter into contracts, but only if her husband allowed it.[vii] This small gain paved the way for female Texans like Hortense Sparks, who in 1910 became the first female lawyer in Texas[viii] after working as a Harris County court reporter.[ix] Hortense went on to help women gain control over their own bank accounts in 1913 and then became the first woman in Harris County to register to vote in 1918 (two years before the U.S. Constitution's 19th Amendment).[x]

BY 1940, HOUSTON HAD A WHOPPING TWENTY-ONE LADY LAWYERS IN THE CITY![xi]

While women could not even serve on juries until 1954,[xii] the 1950's was the stirring of a female revolution. In the climate of Rosa Parks in 1955, Ruth Bader Ginsburg enrolled in Harvard Law in 1956 as one of only 9 women in her class of 500 men. She later transferred to Columbia Law when her husband took a job in New York City, and she was the first woman to be on two major law reviews. She graduated tied for first in her class in 1959.

At this same time, our Texas Bar welcomed Jo Keegans in 1957 after she graduated from South Texas Law.

Jo later became the first woman to serve as a criminal district court judge in Texas in 1977 in a field of all male judges![xiii] Meanwhile, Ruby Sondock laid the groundwork for women at The University of Houston Law Center by graduating as Valedictorian of her 1962 Class and later garnering many firsts, such as the first female appointed as a state District Judge in Harris County and the first female to serve on the Texas Supreme Court.[xiv] Every step these ladies took was unlike their male counterparts, but these icons paved the way with class and ridiculous talent.

IMAGINE TAKING THE BAR EXAM IN THE 1950'S AUSTIN HEAT WITH YOUR TYPEWRITER IN HAND WEARING A GIRDLE, PANTY HOSE, AND HIGH HEELS.[xv]

It took until 1967 for Texas to recognize women's equal legal rights through the Texas Marital Property Bill.[xvi] 1967. Let that settle in. Before then, women could enjoy civil liberties with an asterisk of "if her husband allows it" or "only if her husband controls her money." After 1967, Texas women could freely and independently work as lawyers, just like men had been doing for nearly 200 years. All the while during this time of new independent female lawyers, RBG was fighting for women's rights as general counsel for the ACLU in 1973 and arguing six gender discrimination cases before the Supreme Court. She won five out of those six cases.

SINCE THEN, WOMEN STEPPED UP AND HAVE HELPED EACH OTHER CHIP AWAY AT THE BLOCK OF GENDER DISCRIMINATION.

RBG once gave credit by saying, "I would not hold the good job I have today if it were not for Barbara [Babcock]", who was a criminal law professor at Stanford Law and helped appoint more women and minorities to benches as head of the U.S. Department of Justice's Civil Division in the late 1970s. Ruth Bader Ginsburg was appointed to the U.S. Supreme Court by President Bill Clinton in 1993, and between 1994 – 2020, RBG has interpreted the Equal Protection Clause of the Constitution to fight laws relying on the outdated ideas of the legal, social, and economic inferiority of women. During RBG's tenure as Justice from 1994 – 2020, lady lawyers who used to represent only 20% of the Texas Bar have grown to represent 37% of the Texas legal field in 2020.[xvii]

RBG used her voice on the Court to fight for women's right to access safe and legal abortions[xviii], for voting rights[xix], and for a strict separation of church and state[xx], but perhaps her strongest advocacy for women's right to excel was in 1996 as she struck down an all-male admission school policy for being "presumptively invalid ... a law or official policy that denies to women, simply because they are women, equal opportunity to aspire, achieve, participate in, and contribute to society, based upon what they can do."[xxi] In 2007, she went on to fight for women's rights to equal pay by crafting a brilliant dissent in Ledbetter v. Goodyear, but sadly as late as 2018, lady lawyers only earn 80% of their male attorney counterparts in America.[xxii]

RBG AND THE LADY LAWYERS BEFORE HER AREN'T MERE NOTATIONS IN A HISTORY BOOK; THEIR LEGACY IS BEING CREATED EVERY DAY NOW IN OUR COURTS.

The stories evolution of strong, brilliant lady lawyers, and dare I say – of female criminal defense attorneys, are no brighter anywhere else than in Harris County, Texas. I still remember interning for Justice Tim Taft

of the First Court of Appeals in the summer of 2004 during law school and walking past Judge Elsa Alcala's office, not realizing that she would soon become the first Latina Texan to serve on our Texas Criminal Court of Appeals in 2011. And once upon a time when I started my criminal career as a prosecutor, I thought the notion of a female Harris County District Attorney was quite unlikely, but then came Pat Lykos in 2009. Whether you agree or disagree with the political views held by these women, they are undeniably part of the history we are living. Every time we walk through the CJC, there are women creating history, pushing boundaries, and questioning the norms.

Despite the heavy sadness that weighed on me after RBG passed, I look back at her legacy and am left with one last thought. I simply cannot wait to see the inspirational women who will pick up her torch and shake up our legal world next! So, to all the lady lawyers out there who have been called "honey" or "assistant" in court, just remember RBG's words "women belong in all places where decisions are being made."

IN CLASSIC RBG STYLE, SHAKE IT OFF AND BRING IT ON! HELL HATH NO FURY LIKE A WOMAN FIGHTING FOR JUSTICE IN THE TRENCHES OF A COURTROOM!

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i https://www.tshaonline.org/handbook/entries/women-and-the-law

ii See https://www.womenhistoryblog.com/2014/07/ada-kepley.html for excerpt of Ada Kepley's Kepley's statement when she resigned from the Prohibition Party because the women's suffrage plank was eliminated.

iii *Bradwell v. State of Illinois,* 83 U.S. 130 (1873). Please note in1879: A law was enacted allowing qualified female attorneys to practice in any federal court in the United States, and Belva Lockwood became the first woman to argue before the United States Supreme Court.

iv https://www.attorneys-advantage.com/Risk-Management/Americas-First-Women-in-Law

v Barbara Allen Babcock, Inventing the Public Defender, 43 American Criminal Law Review 1267 (2006).

vi Clara Shortridge Foltz, Struggles and Triumphs of a Woman

vii https://www.tshaonline.org/handbook/entries/women-and-the-law

viii There is some evidence that Joyce M. Burg was the first female lawyer in Houston after graduating from the University of Texas Law School in 1926. But history revealed Mrs. Burg couldn't find work in Texas so left for New York, only to return in 1933. See https://www.endowments.giving.utexas.edu/joyce-m-burg-class-of-1926-endowed-presidential-scholarship-in-law/

ix https://www.houstonchronicle.com/local/gray-matters/article/hortense-sparks-ward-first-woman-vote-houston-13027766.php

x https://www.houstonchronicle.com/local/gray-matters/article/hortense-sparks-ward-first-woman-vote-houston-13027766.php

xi Rough Road to Justice: The Journey of Women Lawyers in Texas. By: Betty Trapp Chapman. 2008.

xii "Women Were Kept Off Texas Juries Until 1954" By: Chris Daniels in Houston Chronicle August 11, 2014.

xiii http://www.stcl.edu/library/archive-images/state-district-court-judge-nettie-joe-kegans/

xiv https://legacy.lib.utexas.edu/taro/uhsc/00160/00160-P.html

xv Rough Road to Justice: The Journey of Women Lawyers in Texas. By: Betty Trapp Chapman. 2008.

xvi 1967 Marital Property Act

xvii https://www.texasbar.com/AM/Template.cfm?Section=Demographic_and_ Economic_Trends

xviii See *Hellerstedt*. 136 S. Ct. 2292. 2016.

xix See *Holder*, 557 U. S. 193. 2013.

xx See *Humanist* Society,139 S. Ct. 2067. 2019. See dissent.

xxi RBG struck down the all-male admission system of Virginia Military Institute in U.S. v. Virginia see https://www.usatoday.com/story/news/politics/2020/09/18/i-dissent-justice-ruth-bader-ginsburgs-most-memorable-opinions/2661426002/

xxii A Current Glance at the Women in the Law, April 2019, American Bar Association.https://www.americanbar.org/groups/diversity/women/resources/statistics/

Shreya Gulamali is criminal defense attorney in Harris County, Texas. She has actively been involved in criminal law in Harris County since graduating from the University of Houston Law Center in 2006. Mrs. Gulamali served as an Assistant District Attorney for Harris County from 2007 through 2011. Since 2011, Mrs. Gulamali has zealously been advocating for her clients, with an emphasis on indigent defense in Harris County, Texas. Mrs. Gulamali is also a wife and mother of twin seven year old daughters.

by Jay Freeman

AN OLD RULE *is New Again*

Hello, my name is Jay Freeman and I have spent the last forty or so years of my life as an insurance agent specializing in the issuance of the Texas SR-22. As a practice, my agency makes it a point to personally speak with every SR-22 client in order to answer any questions they might have. This often puts us in the unique position to identify procedural changes before they become common knowledge. Recently the Texas Department of Public Safety has begun to heavily enforce a requirement that has been around for at least seventeen years, but was rarely enforced in the past.

If you have a client that has been convicted of a Driving While License is Invalid charge, a Driving While Intoxicated charge or a Drug Possession charge that carries the possibility of a license suspension, they are required to maintain an SR-22 for two years from the date of the conviction or their driver license will be administratively suspended. The authority for this requirement can be found at 37 Texas Administrative Code, § 25.6 (d)(2)(2004). This requirement is mentioned in the Order of Suspension Letter that the Texas Department of Public Safety mails to the client in addition to being published on the TDPS website and in their Frequently Asked Questions page.

Although this two-year requirement has been around since at least 2004, in the past it was *seldom enforced* (and then primarily on drug or DWLI cases). **Recently we have seen a noticeable spike in the enforcement of this requirement in DWI cases, so it would be prudent to advise your client of its existence and suggest that they maintain the SR-22 for the two years following conviction.** In the past, if TDPS determined that a driver was not in compliance with a requirement needed to maintain their driving privileges, **they would send a warning letter giving those drivers 21 days to meet that requirement. Few of the people we have spoken with have received any sort of additional warning letter, so apparently that procedure has changed.**

It now seems that if the Texas DPS determines that your client does not have an SR-22 on file, they are suspending the license without any additional notice to your client. If the client's driver license is suspended, they will be required to pay another Reinstatement Fee to the Department before they can legally drive.

Sadly, the lucky people discover that their driver license has been suspended while doing something like registering their vehicle or renewing their license. The unfortunate ones find out about the suspension when they get pulled over for some other reason and suddenly find themselves facing an entirely new set of problems ranging from arrest, impoundment, possible revocation of probation or a Driving While License Invalid charge (which would start the whole two year requirement all over again).

While the wording in the Administrative Code seems a bit confusing, there is absolutely no confusion as to the intent on the TDPS website or their FAQ page. **The information is however quite difficult to find as it has been moved numerous times in just the last few years (in fact, the location changed again shortly before this article was written).**

CURRENTLY, TO NAVIGATE TO THE INFORMATION FROM THE TDPS HOMEPAGE YOU MUST:

- Click on the Driver License & IDs link at the top of the page
- Toward the bottom of this next page, click the tab titled Suspensions & Reinstatements
- On the Suspensions & Reinstatements page there is a list of blue links on the left side of the page, click on the Suspension Notifications link
- Under the paragraph titled Suspensions & Withdrawals, there are three tabs labeled:
  - Driving While License is Invalid (DWLI) Suspension
  - Alcohol Related Offences
  - Drug Related Offences

Each of these three links contains exactly the same wording:

Obtain a Financial Responsibility Insurance Certificate (SR-22) from an authorized insurance company (an SR-22 must be maintained for two years from the date of conviction).

All of these tabs also contain links to the Frequently Asked Questions page where this requirement is also discussed.

Perhaps the most disturbing aspect of this situation was that until only very recently it appeared that many of the clerks at TDPS were completely unaware of this requirement.

I have personally had a clerk argue with me that this requirement does not exist even after I explained that it is clearly stated on the TDPS website. I have also had several clients tell me that a DPS clerk advised them to cancel their SR-22 because it was no longer required after they reinstated their driver license (even though they were still within the two year window on their conviction), only to have their driver license suspended once again. I am happy to report that I have had several clients recently tell me that the DPS clerks they spoke with did inform them about this rule (unfortunately this occurred while they were speaking to the clerk in an attempt to find out why their driver license was again suspended).

I also believe that part of this confusion is due to the way a driver's status is displayed on the DPS website. Because it is so difficult for the client to actually speak with a clerk from DPS, many will go to the website to check their driver license status for themselves.

This in itself can create problems. *For example, if a driver is required to maintain an SR-22 and has the form on file with DPS, the website will show that there are no requirements (while it should show that the requirement has been met).* This leads the driver to the false conclusion that they have met all areas of compliance, so they cancel the SR-22, then the requirement pops back up on their status again and their license is suspended. If your client's license is suspended solely under this requirement, they will not need to obtain another Occupational Driver License. They will be able to reinstate their license by filing the SR-22 and paying any required fees to the Department.

Because the people at the Department of Public Safety have only recently begun alerting our clients of this requirement, it is impossible at this point to determine how many drivers are being affected. What I can say with complete confidence is this: three years ago, we very rarely dealt with clients needing an SR-22 to meet this two-year requirement while today we are seeing it on a weekly (if not daily) basis. And, we are only one of the many SR-22 providers in Texas. My fear is that sometime in the future, DPS might follow the same path in these cases as they did a few years ago with those people convicted in drug possession cases. They contacted those who had received and pled to traffic violations during the period of suspension following their drug conviction and assessed the surcharges and penalties for DWLI. Though the surcharges are a thing of the past, might the DWLI two-year requirement be enforced in these situations?

In conclusion, my suggestion at this point is to at least make your clients aware of this requirement and explain to them the seriousness of a DWLI charge. One of the common statements we hear from our SR-22 clients who find themselves in this situation is: "why didn't my attorney warn me about this?"

Jay Freeman is a licensed Texas insurance agent with over 40 years of experience, specializing in the issuance and placement of the Texas SR-22. He is the owner of ConceptSR22.com and Accurate Concept Insurance in Dallas, Texas. In addition to his insurance career, he is also an accredited Texas State Bar Sponsor and regularly presents CLE courses for Criminal Defense Groups and Bar Associations around the state. Jay is a proud member of Texas Criminal Defense Lawyers Association and the 2020 recipient of TCDLA's Rodney Ellis Award. He is also a member of DUI Defense Lawyers Association, Louisiana Association of Criminal Defense Lawyers and Dallas Criminal Defense Lawyers Association.

Author's Note.....

While on the subject of SR-22s, I recently wrote an article titled A Consumer's Guide to the Texas SR-22. This is not an advertisement for me or my company, it is simply a guide to assist those clients in need of an SR-22 and give them the tools to make the proper decision for their unique circumstance.

The guide is divided into five parts:

1. What is a Texas SR-22 and why do I need it?
2. Should I tell my insurance company about the SR-22?
3. I don't want to get the SR-22 from my company, now what do I do?
4. Will my insurance company know about the SR-22?
5. Should I get the SR-22 through the State Pool?

Many of my friends have made this guide a part of their Client Packets and if you would like to see it, I will be happy to send you a copy. Just drop me a line to jayfree55@hotmail.com and I'll get one to you, or you can find it at ConceptsSR22.com/latest-news.html, or use your phone to scan this QR Code to take a look at the guide.

A Consumer's Guide to the Texas SR-22

CONTINUED : AN OLD RULE IS NEW AGAIN

COLD TEXTING

THE NEW WAVE OF BARRATRY

BY ED MCCLEES & MARK THIESSEN

Recently, Harris County and other counties around that state have increased Personal Recognizance bonds. This bond paperwork then becomes public record. In this paperwork, people are requested to list their cell phone numbers. Just because you can find the information online doesn't give you the authority to contact them via that information.

Rapidly evolving technology coupled with aggressive marketing tactics have created a new minefield for the uninformed lawyer. It's been well settled that attorneys are not allowed to "cold call" potential new clients, whether it be for personal injury actions, criminal cases, or other legal work. Often referred to as "ambulance chasing," which has been rampant in the personal injury world for years, we are faced with a new similar threat in the criminal world. Welcome to the world of cold calling or cold texting clients on their cell based off public information received from the district clerk or bond documents.

UNSOLICITED TEXT MESSAGES CAN BE ILLEGAL

Texas Penal Code § 38.12(a) makes it a third-degree felony "if, with the intent to obtain an economic benefit the person…solicits employment, either in person **or by telephone**, for himself or another." It is also a third-degree felony if a person "knowingly finances" or "invests funds the person believes are intended to further the commission" of act of barratry. Tex. Pen. Code § 38.12(b)(1-2). The Penal Code further prohibits a lawyer from knowingly accepting "employment within the scope of the person's license … that results from the solicitation of employment in violation of [the barratry statute]." Tex. Pen. Code § 38.12(b)(3).[1]

A person convicted of barratry faces severe penalties from the State Bar because a "[f]inal conviction of felony barratry is a serious crime for all purposes and acts, specifically including the State Bar Rules and the Texas Rules of Disciplinary Procedure." Tex. Pen. Code § 38.12(i).

Depending on the facts surrounding the particular situation, a creative and aggressive prosecutor could even try to throw in a Money Laundering charge (Tex. Pen. Code § 34.01) for the amount of fee that the client paid the lawyer who committed barratry.

THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT FROWN UPON UNSOLICITED TEXT MESSAGES

The Texas Disciplinary Rules of Professional Conduct recognize that "[i]n many situations, in-person, telephone, or other prohibited electronic solicitations by lawyers involve well-known opportunities for abuse of prospective clients." Tex. Disc. R. of Prof. Cond. 7.03, com. 1. The "principal concerns presented by such contacts are that they can overbear the prospective client's will, lead to hasty and ill-advised decisions concerning choice of counsel, and be very difficult to police."*Id.*

Texas Disciplinary Rule of Professional Conduct 7.03(a) says that a "lawyer shall not by in-person contact, or by regulated telephone contact or other electronic contact … seek professional employment concerning a matter arising out of a particular occurrence or event … from a prospective client or non-client who has not sought the lawyer's advice regarding employment…"

This same rule defines "regulated telephone contact" as "any electronic communication initiated by a lawyer or by any person acting on behalf of the lawyer…that will result in the person contacted communicating in a live, interactive manner with any other person by telephone or other electronic means." Tex. Disc. R. of Prof. Cond. 7.03(f). Clearly, text messages fall under this definition.

FOLLOW STATE BAR RULES FOR ADVERTISEMENTS

There is a simple way to ensure that you do not run afoul of the barratry statute or the disciplinary rules. From the outset, when in doubt, follow the requirements of the State Bar of Texas Advertising Review Committee. Submit your advertisement or plan of attack to the Bar and ask for permission. Note, the Bar will never give a lawyer clearance over the phone. All advertisements must be submitted in writing and if approved will be approved by letter with a green stamp on it. Failure to have this written approval subjects the lawyer to defending their marketing tactic before the Bar. Rule of thumb if you have a "clever" new marketing idea: get it formally approved. Texas Disciplinary Rule of Professional Conduct 7.07 lays out the requirements for submitting your marketing idea to the State Bar for approval.

The State Bar has set very specific rules regarding unsolicited direct mail outs. See Tex. Disc. R. of Prof. Cond. 7.05. The font, color, and material must all be pre-approved by the State Bar. This is widely known and has been the case for over 20 years. However, with evolving technology, one could hypothetically reach potential clients faster than mail, by text or direct phone call. The same rule that governs mail outs also governs electronic or digital solicitations. *Id.*

We have yet to see a letter from the State Bar approving unsolicited direct text messaging. Remember, lawyers who either directly or through a third party send unsolicited text messages to potential clients may find that they have run afoul of Texas Disciplinary Rules of Professional Conduct.

BE CAREFUL WITH LAWYER REFERRAL SERVICES

Both the Texas Penal Code and the Texas Disciplinary Rules of Professional Conduct make it clear that a lawyer can get in trouble if that lawyer knowingly uses a lawyer referral service that breaks the rules. These services are regulated by the Texas Occupations Code, which defines a "lawyer referral service" as "a person or the service provided by the person that refers potential clients to lawyers regardless of whether the person uses the term 'referral service' to describe the service provided." Tex. Occ. Code. § 952.003(1).

Many of the people operating lawyer referral services do not realize that a "person may not operate a lawyer referral service in this state unless the person holds a certificate issued" under the Occupations Code. Tex. Occ. Code § 952.101. Also, applicants for these certificates must be operated by a governmental entity, or a nonprofit entity. Tex. Occ. Code § 952.102.

So, be weary when your email box gets flooded with various lawyer referral services trying to get you to pay them for client referrals. Many of these businesses are not operating legally.

UNSOLICITED TEXT MESSAGES SEEKING CLIENTS IS ILLEGAL AND SUBJECTS THE SENDER TO CIVIL LIABILITY

There are several civil penalties that exist for directly soliciting clients via text message. Tex. Gov't Code § 82.0651, for example, creates an aggressive civil penalty for barratry where the offending party must forfeit their attorney's fees, pay a $10,000 fine, and the attorney's fees of the party bringing an action.

Additionally, the Telephone Consumer protection Agency (TCPA) and Federal Communications Commission (FCC) regulations make it illegal for a company to send a text message unless the person receiving the text message gave consent to receive it, or if the message was sent for emergency purposes. While we all agree that getting new business is important, it falls well short of being an "emergency" under these regulations.

CONTINUED : COLD TEXTING

The bottom line is that any lawyer who directly, or through a third party, sends unsolicited text messages to people charged with a crime in order to solicit that person's business risks significant criminal and civil liability. Lawyers MUST NOT cold call any number that has not contacted you first or asked you through some sort of submission, to contact you.

DUTY TO REPORT

As attorneys we have an affirmative ethical duty to report barratry. Tex. Disc. R. of Prof. Cond. 8.03.

However, if a text was to mimic the requirements established in the Rules, would it be ethical? As of the date of this writing, we have found no ethics opinion or court opinion that authorizes such conduct.

Any lawyer who wishes to engage in this unscrupulous tactic should first seek State Bar approval.

While no lawyer wishes to "snitch" on a fellow lawyer, this affects us all and cheapens our profession. If we do not take action against this conduct, then we risk having a criminal bar that goes the way of the personal injury bar – where significant numbers of cases are illegally "run" by the criminal law version of the ambulance chaser in a cheap suit.

This illegal conduct makes all of us look bad in a world where people already have a hard time trusting lawyers.

Some might suggest that an unsolicited text message is no different from mailouts, which have been approved and have been happening for years. Unsolicited texts messages are distinguished from mailouts for several reasons:

1 Direct Mail Outs don't cost the client anything. The United States Postal Service is a free service for receivers unlike cell phone or even land lines. Many subscribers must pay for call minutes or data used for texting. Many calls or texts are not free to a potential new client. Some clients work extremely hard just to pay to keep their phone on; imagine if that client was then inundated with hundreds of unsolicited calls or texts from lawyers. The fees would become an extreme hardship, and they should not have to pay them just because their information was placed on a bond or cross referenced via public data.

2 As of the date of this writing, the use of unsolicited text messages to solicit new clients has not been approved by the State Bar. As stated above, lawyer marketing must be submitted to the State Bar for approval. If the marketing is approved, the State Bar will then send you a letter with its verification.

3 A person's cell phone is a greater invasion of privacy than a land line. In the past, municipalities provided phone books which gave specific addresses or names for landline numbers. Cell phone numbers are not freely given for a good reason. Cell phones are also no longer publicly attached to an address. Spam calling and telemarketing are all allowed to be blocked for the protection of privacy. Attorneys should not be allowed to circumvent this privacy in the hopes of gaining a new client.

4 There is a delay with mailouts that provides a "cooling off" period for the potential client to avoid making a "hasty and ill-advised decision." See Tex. Disc. R. of Prof. Cond. 7.03, comm. 1. An unsolicited text message can reach a prospective client literally the minute after they get out of jail, when that client is particularly vulnerable.

5 Citizens are used to junk mail. While it is not unusual to get many pieces of junk mail in your mailbox, it is not as common to get direct calls or text messages. These texts or calls are personal and come with more physical, psychological, and legal pressure than direct mail outs. Calling or texting prospective clients the moment they are released from jail on potentially the most life-changing day of their lives creates alarmism that could cause that person to make rash decisions. Indeed, the Texas Penal Code creates a 30 day "no solicitation" period for personal injury or wrongful death cases. See Tex. Penal Code § 38.12(d)(2)(A). Shouldn't people accused of crimes, with all of the safeguards afforded by the Constitution, be entitled to the same grace period?

No one likes to snitch on friends. However, the practice of unsolicited text messaging is unethical and illegal unless specifically allowed by the State Bar. This article is not intended to encourage grievances, prosecution, or civil lawsuits; rather, it is intended to educate those attorneys who think they or the company they hired found a cutting age way to market for new clients. Technology may be evolving, but the basics of law remain the same. Remember, pigs get fed, hogs get slaughtered. If you have a new way to market, get it approved. The State Bar will not tell your competitors, but this approval will vindicate you when your competitors take offense.

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1 Lawyers should be weary of lawyer referral services, which is discussed in more detail in another section.

2 So far, none of the attorneys we have approached regarding their text message solicitation have provided this verification, which is likely because none exists.

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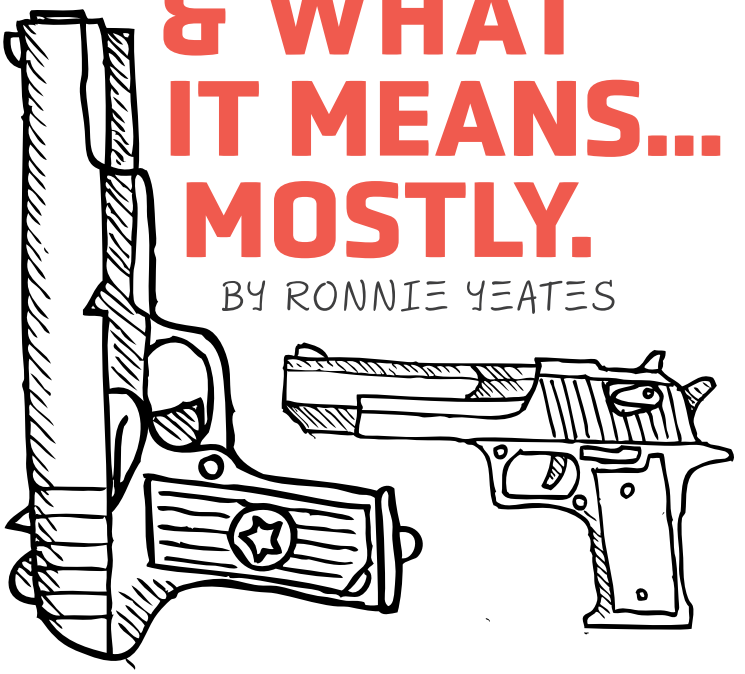
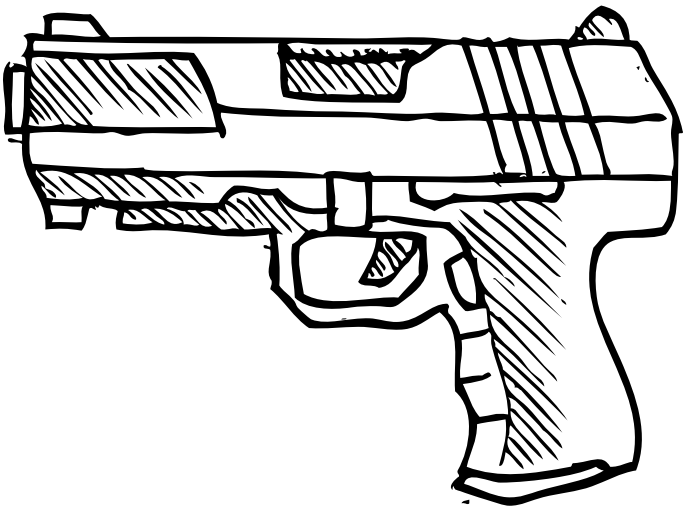
NEW HANDGUN LAWS IN TEXAS & WHAT IT MEANS... MOSTLY.

BY RONNIE YEATES





THAT'S A LOT OF BILLS!

Wow! I have received quite a few questions over the past few months from lawyers, weapons dealers, friends, and strangers regarding the new gun laws the Texas Legislature passed and went into effect just over a month ago. I will explain some of the changes, cover the laws now, and how different ones affect individuals. This is by no means an exhaustive treatise. In September of this year, several bills went into effect including HB1927, the "Constitutional Carry" or "Permit-less" Carry Bill, HB 957 affecting Silencers, HB1069 adding defenses for certain classes of individuals, HB2112 and SB550 dealing holsters, HB1920 affecting areas, HB1407 changing the offense of display of a weapon (which was superseded by HB1927 repealed by 1927 and therefore moot and was duplicated by HB1927 in another section). So, as usual, the Legislature made some drastic changes all over the place, and HB1927 changed roughly 30 different code sections in 10 different areas. It was far-reaching. So, let's cover quite a bit of it.

Effective September 1, 2021, the bulk of HB927 affected Texas Penal Code, hereinafter referred to as TPC, Chapter 46, and amended it to allow certain persons to carry a handgun, under certain potential restrictions, on their person without a license. This change was designed to treat handguns somewhat similarly to long guns – which traditionally had fewer restrictions. Generally, permit-less carry means if a person is not otherwise prohibited from owning a firearm, they should be able to carry a handgun openly or concealed without fear they'll be prosecuted for exercising a Constitutional right. So, what all did the wise legislators do?

WHAT'S A HANDGUN, OPEN CARRY OR CONCEALED?

Since we are discussing changes in Licenses to Carry (LTC) and the new permit-less carrying of handguns, we need to know what a handgun is. Handguns are defined in both state and federal law. The Definitions are identical. A handgun is defined in §46.01(5) as "any firearm that is designed, made, or adapted to be fired with one hand." As before, the new law allows specific individuals to carry a handgun on their person in one of two ways, concealed or open. Concealed carry means hidden, and no part of the handgun is visible in regular use. §46.035 was repealed and parts are now included in §46.03. According to §46.03 and §46.02(a-1), a handgun must be in a holster if carried openly. As an aside, there is growing popularity with pistols made from an AR15 receiver, which is legal, but the most recent changes still govern it.

IF ONE DOES HAVE AN AR PISTOL, THE CARRYING RESTRICTIONS IN A MOTOR VEHICLE OR ON ONE'S PERSON STILL APPLY REGARDING CONCEALMENT AND OPEN CARRY.

WHO CAN'T CARRY A HANDGUN?

So, who qualifies to carry a handgun without an LTC? If someone wants to carry a handgun using the authority granted them in Texas' new permit-less carry law (HB1927), they must be at least 21, cannot be a prohibited person under State and federal law from possessing/carrying a firearm, and they can't be prohibited from possessing a firearm in a public place in Texas.

As to the second requirement, it is essential to understand who is a "prohibited person" when possessing a firearm in a public place in Texas. The following groups are prohibited under State and federal law from possessing a weapon:

1. persons who have been convicted of a felony. (TPC §12.04 & §46.04(a) See also 18 U.S.C. §922(g)(1));
2. persons who have been convicted of a misdemeanor crime of assault involving a family or household member before the 5th anniversary or release from confinement or community supervision (whichever is later). (TPC §46.04(b) (effective September 1, 2021); 18 U.S.C. §922(g)(9) states it is "unlawful" for anyone "convicted in any court of a misdemeanor crime of domestic violence" to possess a weapon, regardless of the time since the conviction);
3. persons, other than a peace officer, who are subject to a protective order, who received notice of the order and before the order's expiration. TPC §46.04(c); in U.S.C. §922(g)(8), there is no carve-out for a peace officer;
4. persons who have been convicted (a final judgment of guilt) within the past five years (more on this later):
   - A. of an Assault Causing Bodily Injury TPC §22.01(a)(1) & §46.02(a)(2)(B)),
   - B. Deadly Conduct, TPC §22.05 & TPC §46.02(a)(2)(B),
   - C. Terroristic Threat, TPC §22.07 & TPC §46.02(a)(2)(B),
   - D. Disorderly Conduct-Discharging a Firearm, TPC§ 42.01(a)(7) & TPC §46.02(a)(2)(B), and
   - E. Disorderly Conduct-Displaying a Firearm, TPC §42.01(a)(8) & TPC §46.02(a)(2)(B));
5. someone who is a fugitive from justice. 18 U.S.C. §922(g)(2);
6. someone who unlawfully uses or is addicted to a controlled substance. 18 U.S.C. §922(g)(3);
7. someone "who has been adjudicated as a mental defective or who has been committed to a mental institution." 18 U.S.C. §922(g)(4);
8. an alien illegally in the United States or who has been admitted into the United States under a nonimmigrant visa. 18 U.S.C. §922(g)(5);
9. anyone who "has been discharged from the Armed Forces under dishonorable condition." 18 U.S.C. §922(g)(6);
10. and anyone who was a citizen of the United States but has renounced his or her citizenship. 18 U.S.C. §922(g)(7).

REMEMBER WHEN I SAID MORE ON THAT LATER...

Well, HB1927 also made changes to TPC §46.02 wherein the Unlawful Carrying of a Weapon (Handgun) in subsection (a) for carrying in a place other than one's home, vehicle, or boat is now limited to a person younger than 21 years of age OR to someone of any age who has been convicted of one of the following offenses;

1. TPC §22.01(a)(1) Assault Bodily Injury,
2. TPC §22.05 Deadly Conduct,
3. TPC §22.07 Terroristic Threat,

CONTINUED : NEW HANDGUN LAWS IN TEXAS

4. TCP §42.01(a)(7) or (8) Disorderly Conduct Involving a Firearm

But, since the charge requires a "conviction" and is not explicitly defined, **it requires a "final conviction," meaning paid a fine or did time**. Deferred doesn't count. And, just like the DWI superfines, probation doesn't count as a "final conviction" either. Also, the five-year period is based on the commission date of the previous offense, not the conviction date.

HOW AND WHERE CAN I CARRY?

Ok, now we have the reasoning and some definitions, let's move to the changes. As stated earlier, a person openly carrying a handgun MUST keep the handgun holstered. There is no holster definition in the code, and HB1927, HB2112, and SB550 removed the "shoulder or belt" modifiers from the code altogether. So, those magnetic under dash mounts I previously told everyone not to use may now work as a holster in Texas. A person should never draw their weapon from their holster unless acting in one of the justified defenses listed in Chapter 9 of the TPC or another lawful activity. A person cannot flash or "brandish" a weapon to alarm or threaten someone as the person could be charged with Disorderly or Deadly Conduct.

SOME OF THE NEW CHANGES ARE:

1. TPC § 46.02(a-1)(1) If one is allowed to carry, the person may not openly carry a handgun in plain view under Texas' new gun laws while in a motor vehicle or watercraft under the person's ownership or control, unless the person is 21 years of age or older or has an LTC, and the handgun is in a holster.
2. TPC § 46.02(a-1)(2) A person may not carry, in plain view or otherwise, a handgun in a motor vehicle or watercraft under the person's ownership or control if the person is engaged in criminal activity, prohibited by law from possessing a firearm. (or a member of a criminal street gang has been moved to TPC §46.04(a-1).
3. TPC§46.02(a-5) A person commits an offense if they intentionally display a handgun in a public place and not in a holster.
4. TPC § 46.02(a-6) A person commits an offense if they carry a handgun while intoxicated AND
   - A. The person isn't on their own property or property under their control or on private property with the consent of the owner of the property, or inside or directly en route to a motor vehicle or watercraft:
     - i. that is owned by the person or under their control; or
     - ii. with the consent of the owner or operator of the vehicle or watercraft.

UNDER TEXAS' NEW GUN LAW, THERE IS NO REQUIREMENT THAT A PERSON CARRYING A HANDGUN BE A TEXAS RESIDENT.

WHERE CAN SOMEONE WHO CAN LEGALLY CARRY A HANDGUN, WELL, CARRY IT?

Generally speaking, a person can carry a handgun in non-prohibited, public areas or a public place without "effective" notice given.

WHAT ARE SOME OF THE FORBODEN LOCATIONS FOR HANDGUNS WHERE NOTICE IS NOT NEEDED FOR PROHIBITION TO CARRY?

There are several listed in the TPC. There need not be a sign or any markers, and the possession of a firearm is specifically disallowed…except for specific individuals like law enforcement. They are as follows:

1. Schools or educational institutions, a transportation vehicle of the school or educational institution, or the grounds where a school sponsored activity is taking place, TPC 46.03(a)(1) (Third Degree);
2. Polling places including places offering early voting, TPC §46.03 (a)(2) (Third Degree);
3. Courts or offices utilized by a court, TPC §46.03(a)(3) (Third Degree);
4. Racetracks where pari-mutuel wagering takes place (horse or dog racing), TPC §46.03(a)(4) (Third Degree);
5. The secured areas of an airport. TPC §46.03(a)(5) (Third Degree);

6. Within 1,000 feet of locations designated by TDCJ as a place of execution on the day a death sentence is to be imposed (does not include a person's home or place of employment), TPC §46.03(a)(6) (Third Degree);

7. **NEW** Locations deriving more than 51% of their income from the sale of alcohol for on site consumption, TPC §46.03(a)(7) (Third Degree);

   A. **NEW** Defense if LTC and no effective notice TPC §46.15(p)

8. **NEW** Highschool, Collegiate, or Professional sporting events, TPC §46.03(a)(8) (Class A);

   A. **NEW** Defense if LTC and no effective notice TPC §46.15(q)

9. **NEW** Correctional facilities, TPC §46.03(a)(9) (Third Degree);

10. Civil commitment facilities, TPC §46.03(a)(10) (Class A);

11. **NEW** Hospitals or nursing homes, TPC §46.03(a)(11) (Class A);

    A. **NEW** Defense if LTC and no effective notice TPC §46.15(p)

12. **NEW** Mental hospitals, TPC §46.03 (a)(12) (Third Degree);

13. **NEW** Amusement parks, TPC §46.03 (a)(13) (Third Degree);

    A. **NEW** Defense if LTC and no effective notice TPC §46.15(p)

14. **NEW** A room or rooms of an open meeting of a governmental entity. TPC §46.03(a)(14) (Third Degree)

A. It doesn't apply to LTC holders under TPC §46.15(b)(6) **BIG CHANGE**

B. A felony for an unlicensed person to carry

Oh, and now that all the restrictions in the now repealed TPC §46.035 (UCW by LTC) have been moved to TPC§46.03 (Places Weapons Prohibited), the restrictions are now **APPLICABLE** to long guns where they previously were not. **HUGE CHANGE.**

NOTICE?

What is notice? Persons who wish to prevent licensed or permit-less individuals from carrying a handgun on their premises must issue warnings. The ultimate warning is a verbal one issued by the owner or someone with authority to deny the entrance. There are now three different signs an owner can display. These all carry the same punishment… If a person enters the property and is found out and told to leave, it is a Class C offense if they do. If they don't, the offense is a Class A under the following:

1. The original TPC §30.06(c)(3), which prohibits the entry of LTC holders from entering with a concealed handgun

2. TPC §30.07(c)(3) prohibiting entry of an LTC holder from entering with an openly carried handgun.

3. Now, we have a third option in TPC §30.05(c) stating "a person may not enter this property with a handgun."

There is another sign most have seen…It is the big red "51%" sign prominently displayed at bars and other places making 51% or more of their income from location consumable alcohol sales. This last one is a third-degree felony (remember it is a prohibited place under TPC §46.03(7)), and only an LTC holder could use the defense if they did not receive effective notice (meaning no signage was posted) …the defense is not applicable for a permit-less carrier.

Building on notice, HB1927 gave us TCP §46.15(m), a defense to carry a handgun on premises or other property where prohibited under §46.03 if the person leaves when they personally receive notice from the owner or someone acting with apparent authority for the owner. However, HB1927 also provided section (n) of the same code where the defense is not applicable if clear, proper signage is posted at **EACH** entrance.

EXTRAS!

That's quite a lot to take in. But, I will give you a little more from some other bills and their changes elsewhere in the code.

1. HB957 removed silencers from the definitions of a prohibited weapon in TPC §46.05. So even though silencers are no longer prohibited weapons under Texas law, the items still are regulated under federal law and have to be registered with the ATF. However, this bill also allows Texas to withhold state funds for enacting rules or laws to help the feds enforce any federal statute regarding silencers. This subject is a whole other paper.

2. SB162 added a state offense in TPC §46.06(a)(7) for a prohibited person to lie on federal forms (4473) to get a gun where it was only a federal offense before. It is a State Jail Felony.

3 HB1927 struck the concealed modifier to handgun in subsection (e-1) and (e-2) 's reference to LTC carrying in certain parts of airports. The defense now applies to open carry, too.

4 HB1927 enhanced possession penalties

- **A** Convicted felon (except the at home condition) is now a 2nd-degree felony with a five-year minimum (TPC §46.04(a))
- **B** Class A FV conviction is now a 3rd-degree felony (TPC §46.04(b))
- **C** Subject to FV protective orders, magistrate's orders for emergency protection, dissolution protective order, or an out-of-state FV protective order are 3rd-degree felonies. (TPC §46.04(c))

5 HB1927 changed expunction law regarding UCW (TPC §46.02) **HUGE CHANGE.**

- **A** If a person was/is convicted of Unlawfully Carrying a Weapon under the prior TPC §46.02(a)(1)(A), the conviction can be expunged. If someone was tried and convicted, pleaded guilty, etc., to the charge alleged to **HAVE BEEN COMMITTED BEFORE** September 1, 2021, it can be wiped from their record. (Texas CCP §55.01(a)(1)(iii))

WELL, THESE ARE MOST OF THE CHANGES IN HB1927 & MORE FROM OTHER BILLS.

It is apparent the Legislature was throwing things together and hoping it would all sort itself out. Keep a close eye out when you see a handgun charge, as the law probably changed September 1.

Ronnie Yeates is a criminal defense lawyer in Houston, Texas. Ronnie completed his undergraduate at Sam Houston State University with a Bachelor's in Criminal Justice in Law Enforcement – Police Science, and he received his Juris Doctor at South Texas College of Law. Ronnie retired from the Grimes County District Attorney's Office in 2018 after more than 16 years as a prosecutor. Before joining the Thiessen Law Firm in 2019, Ronnie became a member of the Texas State Bar College and received the Texas Criminal Defense Lawyers Association's DWI Trial Warrior award. Ronnie is a Type 07 Federal Firearms Licensee with a Class 2 SOT designation, which means he is a manufacturer and dealer in both Title I (regular) firearms and Title II (machine gun, silencers, short-barreled weapons) firearms.

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