NON-CIRCULATING

TRUE BILL

THE NEWSLETTER OF THE PROSECUTOR COUNCIL
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Advisory Committee's Sub-Committees Take Action

At the June 22nd meeting of the Advisory Committee of the Prosecutor Council five sub-committees were directed to various concerns (see TRUE BILL, Vol. 4, No. 3, June-July, 1983). The sub-committees have further defined their goals and made some recommendations.

Services Sub-Committee

(1) Publications. This sub-committee is in the process of reviewing the Council's Elements Manual, a popular publication listing the necessary elements of various crimes. Also under review is the Council's Handbook for Grand Jurors, an orientation manual.

(2) Audio Visual Loan Library. The sub-committee viewed the public information programs available through the Council's Audio-Visual Loan Library (see page 21). Members found the materials very useful and informative for the public, but felt that most prosecutors are unfamiliar with the programs and thus not putting them to use. They recommend that the library tapes be on continuous display at a place convenient to those attending the T.D.C.A.A. Annual Criminal Law Update in Fort Worth September 28-30. Due to the popularity of the Trial Advocacy audio tapes, it was recommended that a second set of the cassettes be purchased for check-out. Members suggested other public information topics for the library: Plea Bargaining, Problems of Prosecutors, Grand Jury Orientation (perhaps a slide/tape show), Juvenile Justice, and Responsibilities of the Community and the Criminal Justice System. These areas, it was thought, are often unclear to the public.

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The Director's Corner

by Andy Shuval

The Council is beginning the "Sunset process." In 1985, the Legislature will determine whether or not to renew the agency's charter. You, the prosecutor, are a key element in that decision.

A periodic Sunset process is good because it allows an agency and the people it serves (the public and the prosecutors in this case) an oportunity to determine what kind of job is being done and how it can be improved. This agency is fairly new, having been created in 1977, but an evaluation of its need and effectiveness is useful to determine if it is moving in the right directions.

During the coming year you will be asked to evaluate the Council's services and programs. In addition, if you have any comments or suggestions I would like to hear from you. At the bottom of this column you will find a list of the members of the Sunset Advisory Commission. If you are personally acquainted with any of them, please let me know. Your assistance and support is much appreciated.

SUNSET ADVISORY COMMISSION:

Rep. Elton Bomer, Chairman
Rep. Patricia Hill
Rep. Bruce Givson
Rep. Gary Thompson
Mr. Harry J. Stone, Jr., Public Member

Sen. Kent Caperton, Vice Chairman
Sen. Bill Sarpalius
Sen. Chet Edwards
Sen. John Sharp
Mr. Jess M. Irwin, Jr., Public Member

Andy

(3) Future Programs. The sub-committee is looking into plans for a Search & Seizure workshop for peace officers and a possible brochure on Witness Information for prosecutors to give out.

Operation and Management Sub-Committee

(1) Prosecutor Stress Management and Burn-Out. Statistics are necessary to understand the extent of and reasons for this problem; the sub-committee is looking into sources for more information.

(2) Management of the Office. The sub-committee determined that information should be made available to prosecutors similar to that available through the National College's Executive Prosecutor Course. Techniques covering personnel and time management are to be developed; resource information is being sought.

(3) Computer Applications. The sub-committee wants to study the applicabality of computer operations to a prosecutor's office in several areas: cost, software/hardware availability, savings experienced by computer use, and labor intensiveness of a computerized prosecutor's office.

(4) Money Issues. The sub-committee concluded that statistics are needed in order to develop recommendations in the areas of salary, retirement benefits, supplements, travel and office budgets.

(5) Media Management. Media and public relations were recognized as important functions of the local prosecutor; information needs to be made available to help the prosecutor become adept at winning media confrontations.

(6) Docket Systems and Control. The sub-committee determined that all prosecutors should be aware of the resources for systemizing any size office and the sub-committee will attempt to make those resources available.

Technical Assistance Sub-Committee

(1) Telephone Assistance. The sub-committee suggested that a survey be

conducted on a regional basis to determine which officers, personnel, and areas of expertise could be called upon for technical assistance by use of the telephone. A questionnaire is being drafted for mailing to all of the prosecutor's offices in the state. The information will be compiled and maintained in the Prosecutor Council offices. The names and areas of expertise of personnel would be distributed to all offices.

(2) On-Site Assistance. The sub-committee agreed to review the current procedures for acquiring such assistance and report any recommended changes to the Council.

(3) Regional Network. The sub-committee is considering a regional network of prosecutor assistance. Steps will be taken to add persons from regions 1 and 2 to the sub-committee so that all regions may be represented.

(4) Indictment Manual. Upon completion of its form the sub-committee will review and report any suggested changes to the Council.

(5) Civil Manual. The sub-committee does not see itself as having the expertise to review this publication upon its completion. The Advisory Committee determined that someone with the proper expertise would be asked to evaluate the manual.

(6) Appellant Review Coordination. The sub-committee believes it would be beneficial to maintain a brief bank in Austin; the filing of amicus briefs in many important cases would be of benefit to prosecutors. The chairman agreed to contact Mr. Robert Hutash and Mr. Alfred Walker, the State's Prosecuting Attorney and Assistant Attorney, respectively, to discuss this possibility with them.

Ethics Sub-Committee

(1) Guidelines. Despite the diversity of offices in the state, the sub-committee feels a need to disseminate overall ethical suggestions to prosecutors in general. Suggestions could take the form of how to handle particular situations with the public, for example. The sub-committee recognized that a large number of complaints against prosecutors deal with prosecutorial discretion. Steps might be taken to help the public understand this concept.

(2) Grievances. The sub-committee suggests a closer working between the

TRUE BILL is published bi-monthly by The Prosecutor Council as an information medium for prosecutors throughout the State of Texas. Articles, inquiries, and suggestions are always welcome.

Council, the State Bar, and the Texas Supreme Court in an effort to educate grievance committees throughout the state that there is a state agency that oversees prosecutorial misconduct. Work will be started with Mr. Jerry Zunker, General Counsel of the State Bar, to formulate guidelines in this regard.

(3) Research. The sub-committee recommends research into several areas. For example, what have other states and bar associations determined to be "unethical conduct?" What has been the outcome of civil suits against prosecutors who have allegedly abused their office? What of cases where prosecutors have acted outside the scope of their authority? This kind of information needs to be made available.

Education Sub-Committee

(1) Travel Reimbursement. The sub-committee concluded that some limitations on out-of-state travel would be necessary, as travel funds are limited. However, the Council chose to end reimbursement for out-of-state travel to attend professional development courses (see article, pg. 23, and proposed new travel policy, pg. 24).

(2) Courses. The sub-committee recognized the need for input from prosecutors state-wide regarding the types of courses and content they would like to see produced. A survey will be mailed by the Council staff to all elected prosecutor's offices.

COUNCIL ELECTION COMING UP

Two prosecutor positions on the Council will be filled by elections this fall.

One is the County Attorney spot which was previously filled by George Rodriguez, former County Attorney of El Paso County, and the other is the position currently held by Tim Curry, Chairman of the Council and Criminal District Attorney of Tarrant County.

Notices of the election together with nominating petitions will go out to all **elected prosecutors** by September 1st.

Should you have any questions, please call Andy Shuval.

NDAA CONCERNED OVER BILL

In July the U.S. Senate Committee on the Judiciary reported favorably on Sen. Spector's Armed Career Criminal Act of 1983 (S.52). In a letter to Sen. James Abdnor, Jack Yelverton, Executive Director of the National District Attorneys Association, voiced NDAA's opposition to the bill. The act, which is essentially the same as a version proposed in 1982, would create a federal offense for third and subsequent robberies and burglaries while armed.

"Local agencies are better equipped to investigate and prosecute these cases than are the federal agencies," Mr. Yelverton wrote. "Further, the federal system cannot adequately meet the burden of investigating and prosecuting crimes presently within its jurisdiction. . . It is ludicrous to create a new federal crime for burglary and robbery when the U.S. Attorneys cannot cope with their present serious federal caseload."

Mr. Yelverton quoted the report of the Attorney General's Task Force on Violent Crime to show that this problem is not the type that demands federal action. "Indeed, this expansion of federal jurisdiction in the absence of compelling reasons threatens the delicate balance between federal and local governments."

Lastly, Mr. Yelverton expressed concern that the act "holds out to Americans besieged by crime the false hope that the federal government is riding to the rescue. . ."

Copies of S.52 are available from David Kroll at the Council office.

Trial Reference Series

The sheet opposite is designed to be cut out and inserted into a trial notebook for your handy reference.

CUT HERE

Exhibit Chart

	People	OFFERED	IN EVIDENCE	Defense	OFFERED	IN EVIDENCE
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						

Exhibit Chart

	People	OFFERED	IN EVIDENCE	Defense	OFFERED	IN EVIDENCE
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						

CUT HERE

Technical Assistance

Attorney General Opinions

During the past two months there were no Attorney General Opinions which directly affect prosecutors. However, two opinions should be noted due to rulings which may have an effect wider than the original question raised.

Attorney General Opinion JM-45

It was determined that the nepotism statute [Art. 5996(a) V.T.C.S.] was applicable whether the person in question was deemed to be an employee or an independent contractor. The nepotism statute "sought, in other words, to make it clear that nepotism questions should not turn on technical distinctions between 'employee' and 'independent contractor'; instead the relevant question should be whether the governmental body employed the individual in question to perform some service for it."

Attorney General Opinion JM-48

The Attorney General made it clear that a request for information applies only to information then in existence. There is no such thing as a continuing request. A governmental agency is not required to provide information which may become available at a future time, absent an additional request.

Attorney General Opinion JM-51

County Attorneys may wish to advise their commissioners court that they may now authorize the constable to charge the Industrial Accident Board for delivering subpeonas for its administrative hearing. This reversed Attorney General Opinion MW-209 which had been based on Art. 3933(a) V.T.C.S. which has, since Opinion MW-209 was handed down, been repealed and replaced by Art. 3926(a) V.T.C.S.

Currently pending in the Attorney General's Office is the question of whether or not the new DWI law, which makes it illegal to drive while having a blood alcohol concentration of .10% or more, is constitutional. That opinion should be out by the publication of our next TRUE BILL.

Open Records Decisions

There have been several Open Records Decisions handed down which have direct bearing on prosecutors.

Open Records Decision #389

In this decision, police reports regarding the investigation into the death of a child were deemed to be exempt from disclosure because of a protective order issued by a district court judge. Thus, so long as the protective order was in effect the reports were to be considered as exempt under Section 3(a)(1) as "information deemed confidential by law."

Open Records Decision #391

This decision provides that persons making complaints to the Texas Air Control Board were confidential pursuant to the informer's privilege recognized by Section 3(a)(1) of the Open Records Act. Attorney General Opinion H-276 (1974) had previously held that such information was public information pursuant to Section 2.13 of Article 4477-5, V.T.C.S., the Texas Clean Air Act. Now however, individuals may file complaints with the Air Control Board without fear that the parties complained of will be able to discover who made the complaint.

Open Record Decision #393

An inmate doing time in TDC for sexual abuse of a child requested a copy of the Sheriff's report of the investigation into the crime. Pursuant to the common law right of privacy recognized as an exemption to disclosure under Section 3(a)(1), disclosure of reports related to sexual attacks "would be 'highly objectionable to a person of ordinary sensibilities' " [citing a similar request which was denied in Open Record Decision #339(1982)]. While there was "a strong public

interest in knowing that a crime has been committed, we do not believe that such interest requires the disclosure of the names of the victims. Furthermore, certain other information, such as the location of the crime, might furnish a basis for identification of the victim." Thus, the Attorney General decided to deny the request in its entirety since release of any part of the report could tend to identify the victim. The opinion ignored the question of whether the requesting party would be constitutionally entitled to the information under the right-to-confrontation clause of the Sixth Amendment, presumably because this question is outside the scope of the Open Records Act. However, the balancing test as applied in these sexual assault cases is very relevant to the next decision.

Open Record Decision #394

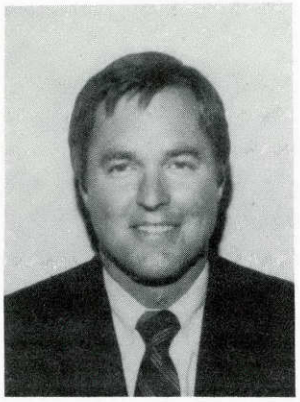
The local news media requested the local police department to furnish the showup or arrest sheets showing all those arrested in a 24- hour period. The information in these reports showed the arrestee's name, race, age, address, place of arrest, names of arresting officers, and charges. The decision cites Open Record Decision #127 and declares this material not exempt pursuant to Section 3(a)(8) (records of law enforcement agencies exemption). Discussing the common law right to privacy, it was stated that while the release of this information to the public might be embarrassing to the arrestee, the items requested were "indisputably of legitimate concern to the public." The same result occurred in regard to the media's request for the jail roster.

There was a slightly different problem regarding the question of release of radio logs or radio cards. While the radio logs or cards are "ordinarily not exempted from public disclosure... an exception might arise in instances in which the withholding of names of, or identifying information pertaining to (emphasis added), complaints or informants would be justified." An argument can certainly be made that the release of a victim's name to the public would be highly objectionable to a person of ordinary sensibilities, and likewise the release of the address of a complainant or the location of a crime if it be a person's home. An argument could be made that where a crime takes place in a home, the public's interest in knowing that a crime was committed extends only to the general area of the crime or perhaps even a specific block. Who among us wants the newspaper to publish how our homes were burglarized and thus invite more trouble? It must be asked: how is the public interest served by such a disclosure? Requests for such personal information, and whether the requests should be honored, noted the Attorney General, must be made on a case-by-case basis by the relevant agency under the Open Records Act. In the event of a formal request, the Attorney General has the statutory authority to be final arbiter. When dealing with requests for information of this nature, it might behoove all agencies to consent to release that information which is of legitimate public concern while protecting the privacy rights of crime victims to the greatest extent allowed by law.

Open Record Decision #395

Lastly, this decision involved a request for various information related to the pediatric department of Medical Center Hospital in San Antonio. As you might be aware, there is a pending criminal investigation into the deaths of several infants at the hospital, as well as published threats of possible lawsuits against the hospital and its employees. While no lawsuits, civil or criminal, are currently pending, the Attorney General felt that "litigation may reasonably be expected." In trying to determine whether the information requested could be related to the anticipated litigation, it was noted that it would be difficult to predict what the full scope of the litigation would be. The Attorney General's Office apparently adopted the standard that the requested information would be released only if they could conclude that the material sought would definitely not concern matters that might arise in the anticipated litigation.

Summaries of Attorney General Opinions and Open Record Decisions are edited for TRUE BILL by the Prosecutor Council's legal counselor, Scott Kilppel. If you desire more information please contact him through the Council office.



From Your Fellow Prosecutor:

Taking an Electronically Recorded Oral Statement

by Travis B. Bryan, III

With this issue TRUE BILL begins a new section, "From Your Fellow Prosecutor," designed to be available to prosecutors who wish to share information, insights, or techniques.

Our appreciation goes to Travis B. Bryan, III, District Attorney for Brazos County, for his contribution.

The following is a step-by-step guide for a police officer taking an oral confession pursuant to Article 38.22, Sec. 3, T.C.C.P.

1. Test the tape recorder to make sure it is functioning properly. Try to use an extra power source as batteries tend to run out of juice during statement. In an abundance of caution, you might want to use two tape recorders in case one fails to function during the statement.
2. Position it so that it will pick up all the voices in the room, particularly the voice of the suspect.
3. Start the tape and state the following, **"The time is _____. The date is _____. I am a detective with the _____ police department. I am here to take a statement from** (defendant's name) **concerning a case involving** (briefly state enough to identify the case). **This statement is being tape recorded on** (here state the type, model, and number of the recorder used). **At this time I would like for all persons in the room to identify their voices by stating their name and position** (allow all parties in the room to identify themselves). **At this time I would like for** (defendant's name) **to identify himself by stating his name.** (Let defendant state his name).

   At this time I will advise you of your constitutional rights:

   - **You have the right to remain silent and not make any statement at all and any statement you make may be used against you at your trial;**
   - **Any statement you make may be used as evidence against you in court;**
   - **You have the right to have a lawyer present to advise you prior to and during any questioning;**
   - **If you are unable to employ a lawyer, you have the right to have a lawyer appointed to advise you prior to and during any questioning; and**
   - **You have the right to terminate the interview at any time.**
4. **Do you understand your rights?** (Explain further any rights the defendant does not understand). **Now realizing your rights, do you wish to waive or give up those rights and talk to me?** (Wait until he answers out loud affirmatively. Don't accept head nods or shakes. Get him to answer yes or no out loud enough for the tape to pick up. This is very important).
5. This step is optional, but could help in cases where the defendant later claims he did not make a knowing, voluntary statement. Ask the defendant questions to determine his mental capacity and his ability to give a knowing, voluntary statement. Suggested questions are as follows:

   - **Are you of sound mind?**
   - **Have you ever been in a mental institution?**
   - **Have you recently used drugs or alcohol? How long ago? What kind? How much?**
   - **Do you feel alright? What's wrong?**
   - **When was the last time you slept?**

- **When was the last time you had anything to eat or drink?**
- **Has anyone threatened you or used physical force on you to get you to make this statement?**
- **Has anyone promised you anything to get you to make this statement?**

6. Again, tell him, **"This statement is being tape recorded".**

7. Take the defendant's statement. I suggest letting the defendant tell the whole story in his own words. After he completes his entire account, then go back and ask pertinent questions. Be careful to cover all of the elements of any and all offenses involved.

   Remember as you talk to the defendant that everything said by you or the other officers will be played for the jury exactly as is.

   If you have to stop the tape for any reason, state the time stopped and for what reason. When restarting the tape, give the time and account for what happened while the recorder was off. Get the defendant to agree on tape that this was the reason the tape was started and stopped and that this is all that happened while the recorder was off. This will keep him from later claiming that you beat him, threatened him, or promised him something while the tape was off. If the other officers wish to question the defendant after you are finished, get them to again identify themselves prior to beginning their questioning. You will find that the tape recorded confession will allow you much flexibility in exploring critical areas that a written confession does not allow. Carefully explore any acts, words, and deeds that go to show the defendant's culpable mental state at the time of the offense and/or lack of remorse, premeditation, or motivation.

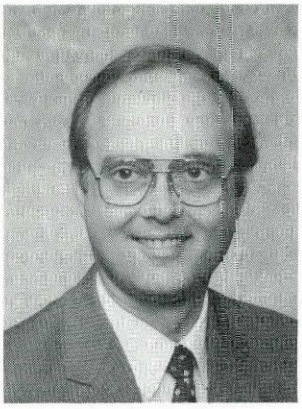
8. Upon completion of the interrogation, state what time the statement is completed and then turn off the tape recorder.

9. Knock out the tabs on the back of the tape cassette to insure it cannot be altered. Let the witnesses initial the cassette. Place your initials or mark on the cassette (not the container), date it, and place on it the defendant's name and place it in your evidence locker preserving and noting the chain of custody. This allows the State to later prove that the tape has not been altered under Article 38.22, Section 3(a) (3).

10. **OPTIONAL** - Reduce the oral taped statement to writing and get the defendant to sign it using the same procedure you have always used in taking written statements. The written confession is needed for backup if the oral statement is suppressed for any reason. The oral tape recorded confession is also excellent to back up a written statement you have already taken.

CHECKLIST FOR TAPING ORAL CONFESSIONS

1. ☐ Check tape recorder, make sure microphones are positioned to pick up all voices.
2. Put preliminaries on the tape:
   - ☐ Date, time and location.
   - ☐ Your name and rank.
   - ☐ Defendant's name and crime under investigation.
   - ☐ Identify type, model and number of recorder.
   - ☐ Have all parties present identify themselves.
   - ☐ Have the defendant identify self.
3. ☐ Advise the defendant of his Miranda rights and explain those he doesn't understand.
4. ☐ Have the defendant orally state he understands his rights, and orally state he waives them and agrees to talk to the police.
5. ☐ Ask optional questions regarding the defendant's mental condition and voluntary nature of the statement.
6. ☐ Again remind the defendant the statement is being recorded.
7. ☐ Take defendant's statement; remember **EVERYTHING EVERYONE SAYS IS BEING RECORDED.**
8. ☐ At the end of statement, state the time.
9. ☐ Have all witnesses initial the cassette; knock out tabs; preserve your chain of custody.
10. ☐ If defendant is willing, have him sign a written statement using the same format you normally would use.



As The Judges Saw It:

Significant Decisions of the Court of Criminal Appeals

by C. Chris Marshall

C. Chris Marshall is currently the Assistant District Attorney and Chief of the Appellate Section of the Tarrant County District Attorney's Office in his home town of Fort Worth.

This column covers the Court's decisions from June 8, 1983, through the last hand-down of the summer on July 20, 1983.

The comments I have received indicate that people like the "pop quiz" part of the column, and I certainly enjoy writing those questions. So I thought I'd start with a short quiz on the significant U.S. Supreme Court decisions of last term. Answers appear at the end of the column.

1. If the affidavit for a warrant is based on the tip of an anonymous informant, do we look to the "totality of the circumstances" stated or to the satisfaction of the Aguilar-Spinelli tests to determine if probable cause is reflected in the affidavit?
   ___ Totality of the circumstances.
   ___ Aguilar-Spinellitests.

2. If a warrant is issued, does a court which is reviewing the sufficiency of the affidavit conduct a de novo review of the affidavit to decide for itself if probable cause was stated, or does it decide only if there was a substantial basis for the magistrate's decision that probable cause was stated?
   ___ De novo review of p.c.
   ___ Whether substantial basis existed.

3. If an officer has "reasonable suspicion" to fear that he may be in danger from weapons inside a vehicle which he has lawfully stopped, does Terry v. Ohio permit him to make a "frisk of the passenger compartment" for weapons?
   ___ yes ___ no

4. Assuming for the purposes of argument that the officer could "frisk the auto," could he do so even if the occupants were isolated outside the vehicle at the time so that they could not get back to the car?
   ___ yes ___ no

5. Texas v. Brown allows officers to make warrantless seizures of objects in "plain view" based on probable cause. If the object seized is a container, may the police as a general rule open that container without a warrant?
   ___ yes ___ no

6. As the police are booking a lawfully arrested person into jail, may they inventory his personal effects, including going inside any "container" that the person might be carrying?
   ___ yes ___ no

7. If an officer has "reasonable suspicion" that an object may be contraband or constitute evidence of a crime, may he temporarily detain it for investigative purposes, a la Terry v. Ohio?
   ___ yes ___ no

8. Is exposing a suspected inanimate object to a trained "sniffer dog" a "search" at all within the Fourth Amendment?
   ___ yes ___ no

9. If the police lawfully come across contraband in packages that have been opened in transit and then reseal them and let them proceed to their destination, is a warrant needed to reopen the package if there is no substantial likelihood that its contents have been altered?
   ___ yes ___ no

10. Does introduction of the fact that a suspect refused to submit to a blood-alcohol test violate his Fifth Amendment rights against self-incrimination?
___ yes ___ no

RECENT DECISIONS

Hernandez v. State
#845-82; delivered 6/8/83.

As mentioned in the previous column, Judge Clinton wrote a concurring opinion on original submission of this rape of a child case, arguing that art. 38.07, C.C.P., was passed by the legislature to make it easier to obtain convictions in sexual assault cases where the victim was an adult; hence such convictions were authorized on the victim's testimony alone if she made outcry within six months. Judge Clinton cited prior cases to show that corroboration has never been required of a minor victim of a sex offense, meaning that art. 38.07 was not meant to apply to such situations because it would have been supplying a remedy for a non-existent evil. By a per curiam opinion delivered on June 8, the Court has adopted Judge Clinton's opinion as the majority opinion of the court.

The result is that no corroboration is required for the testimony of a minor victim of a sex offense, with one important qualification. Senate Bill 838, effective September 1, 1983, amends art. 38.07 to provide that the outcry provision does not apply if the victim of the sex offense was younger than 14 years. Apparently the legislature feared there was an evil to be remedied, and the result appears to be that as of September 1st, art. 38.07 will again impose harsher requirements for corroborating minor sex offense victims than the Court of Criminal Appeals would have required. Conceivably one might try to argue that the legislature was only responding to what it thought the court decisions were requiring with regard to corroboration of minor victims and that once the Court of Criminal Appeals clarified what the law was, and showed that no legislative response was necessary, the amendatory provision ought to be disregarded. Though that has some common sense appeal, I don't know if one can actually persuade a court to disregard clear legislative language in such circumstances.

Buford v. State
#1010-82; delivered 6/8/83.

In order to be ready for trial under the Speedy Trial Act, the State must, within the applicable time limit, have on file an indictment or information, unless it can excuse the failure to have a pleading on file by placing itself within a statutory period of excludable time. The fact that the grand jury in the county of prosecution normally met only twice a year was not enough to show any exceptional circumstance; the State could have asked the judge to recall the grand jury during its term.

Brown v. State
#66,109-110; delivered 6/8/83.

In an assault case where the accused testifies that he was attacked by the complainant and other persons, he is entitled to an instruction that he has a right to defend himself against a joint attack, and it is reversible error to charge only on his right to defend himself against an attack by the complainant. The jury must be instructed that he has a right to defend himself against either or both of the attackers.

King v. State
#67,652; delivered 6/8/83.(rehearing pending).

At the punishment stage of a capital murder case, the State is not permitted to introduce an oral confession of a crime if that oral statement did not comply with art. 38.22, C.C.P.

The oral statement at issue was one in which the defendant admitted to a Florida crime committed in 1974. The statement apparently was made to a Florida officer in Florida. Although the majority did not discuss the issue at all, its implicit assumption was that officers from other states, investigating crimes in their own states and taking confessions in their own states, must comply with Texas confession rules if those statements are ever to be admissible in a Texas criminal proceeding. (Note that in Robin Lee v. State , #60,722, the Court issued an opinion on 2/10/82, saying that the legality of arrests by non-Texas officers in other states was governed by the laws of that state.

That opinion was withdrawn when reversal was required on other grounds, but it may shed light on this issue.) The majority also said that the admissibility of the confession turns on the law in effect at the time of trial, though I think you can find many amendments to art. 38.22 in which the statute itself says that the law in effect at the time the statement was taken controls its admissibility.

Gordon v. State
#68,414; delivered 6/8/83.

Where the accused testified at the punishment stage and admitted his guilt, he waived the claim of error in the guilt/innocence stage that the State improperly impeached him with a prior conviction over 10 years old. For other evidentiary matters waived by admissions of guilt at punishment, see Brown v. State, 617 S.W.2d 234.

Webber v. State
#68,505; delivered 6/8/83.

When the jury has not separated, or has only momentarily separated and is still in the presence of the court and it appears that no one has talked to the jurors about the case, the court may recall the jurors to correct their verdict. Here the judge had read the punishment verdict assessing four years in T.D.C. and excused the jurors. Shortly thereafter he read the portion of the verdict form recommending probation and asked if that was the jury's verdict. The foreman replied that it was not. The judge let the jury correct their verdict, and the Court affirmed because the jurors had not actually separated and had not been out of the presence of the court before they were reconvened to correct the verdict.

Banks v. State
#066-82; delivered 6/15/83.

Once a charge on self-defense is limited by a charge on provoking the difficulty (the latter essentially being a reminder that an accused cannot set up the victim for a killing by provoking him into doing something that will give the accused an excuse to attack him), the trial court is obligated to charge also on the defendant's right to carry arms to the scene of the difficulty to seek an explanation of the misunderstanding between the parties. Judge McCormick has an excellend dissent on why this "right to arm yourself to seek an explanation" charge is an anachronism in Texas law.

Aston v. State
#199-82; delivered 6/15/83.

Where the accused calls a witness who was a party to the crime and whose testimony implicates the accused, that witness is not an "accomplice witness" within the meaninig of art. 38.14, C.C.P., and his testimony does not have to be corroborated. Art. 38.14 does not require the corroboration of a witness called by the defense.

Note also that the trial judge had charged that the witness called by the defense was an accomplice witness as a matter of law. The Court of Criminal Appeals said this was error against the State and that the witness did not in fact have to be corroborated. This is one of those rare situations where the State was able to correct error against it and in effect argue that the trial court's charge was erroneous, so that the State was not bound by it.

Spriggs v. State
#974-82; delivered 6/15/83.

The general rule is that a pending indictment is not relevant to impeach a witness. Art. 38.29, C.C.P. However, that rule may give way when the pendency of the indictment is offered not for general impeachment, but specifically to show bias, motive, or animus on the part of the witness—e.g., that the witness for the State might be testifying favorably because he thinks it would help him in his own case. But in Spriggs it was held sufficient to let the defense establish that the State's witness had an indictment pending against him; the trial judge did not have to go farther and permit the defense to show that the State could add an enhancement count to that indictment based on a prior felony conviction. (The prior felony conviction was itself too remote to be generally admissible for impeachment.)

Stark v. State
#991-82; delivered 6/15/83.

The accused has the right, under art. 35.11, C.C.P., to demand a jury shuffle after he has

seen the panel seated in the courtroom. In Travis County the clerk, at the State's request, apparently shuffled the names of each jury panel between the time the jurors left a central jury room and the time they reached the courtroom. This was held insufficient.

Jaycon v. State
#60,514; delivered 6/15/83.

If a proper request or objection is made, the trial judge must apply the law of parties to the facts of the case in his charge to the jury. However, if no request or objection is made, the failure to apply the law of parties to the facts is not fundamental error.

Owen v. State
#66,973; delivered 6/15/83.

The accused testified at the guilt/innocence stage of the trial and claimed that he had killed in self-defense. He was convicted of Voluntary Manslaughter. He did not testify on punishment. In punishment arguments the prosecutor argued that probation should not be granted because the accused had not expressed any remorse or sorrow for the crime. The Court held that this was an improper comment on the defendant's exercise of his right not to testify at the punishment stage of the trial.

Townsley v. State
#583-82; delivered 6/22/83.

This was an interesting murder case in which the suspect voluntarily came to police headquarters for questioning. At that time the police discovered that the murder suspect had outstanding traffic warrants, and they considered him under arrest at that point because of those warrants. Late in the afternoon the suspect produced the money to pay off his traffic fines, but the police kept him in custody for "investigation of homicide" even though they apparently agreed they did not have probable cause on the murder case yet. Probable cause on the murder arose late in the evening, and a confession was given. The suspect claimed that his arrest was illegal and that the confession was thereby tainted.

First, the Court held that the initial detention of the suspect was valid in light of the traffic warrants; that the police were primarily interested in him for the murder did not alter their right to detain him for the warrants. The detention became illegal when the traffic fines were paid off since no probable cause for murder yet existed. However, the detention became lawful again when probable cause for the murder arose, the Court having concluded that none of the matters that went to probable cause were discoverd as a result of the illegal part of the detention. Applying the usual Brown v. Illinois factors, the Court found that there was no taint on the confession flowing from the illegal period of detention. I suppose what this case shows is that a very careful analysis of each step in the development of a case can save what at first blush might appear to be an unwinnable prosecution.

Gibbons v. State
#62,553; delivered 6/22/83.

The word "abduct" has two statutory meanings under the kidnapping statutes, Penal Code sec. 20.01(2): (1) to restrain with intent to prevent liberation, by secreting or holding in a place where victim is not likely to be found; or (2) to restrain with intent to prevent liberation, by using or threatening the use of deadly force. If the accused files a motion to quash, he is entitled to have pled the variation(s) of that term the State intends to rely on.

Bryant v. State
#65,277; delivered 6/22/83.

The net effect of this case is to relax the requirements for the issuance of an arrest warrant for a parole violator. The judge who issued the warrant had a conclusory affidavit from a Texas officer saying that the accused was wanted by New York authorities for parole violation.

Hynson v. State
#902-82; delivered 6/29/83;
Hardesty v. State
#65,718; delivered 6/29/83.

Hynson involved a probation revocation based on Receiving Stolen Property, Penal Code sec. 31.03(b)(2). Hardesty involved a conviction for Theft $200 - 10,000. In both situations the Court held that mere possession of recently stolen property is insufficient evidence to prove the offense, overruling many prior cases.

In the theft case the Court said that one must look to all the evidence to see if there are sufficient facts to justify the conviction in addition to the inference which arises from the possession of recently stolen property. In the receiving stolen property case the court likewise says we must look for other evidence to support the conviction besides the inference from recent possession, but that this additional evidence must show "other significant circumstances" to justify the inference that the accused knew that the property was stolen. Presumably the use of the word "significant" means that even more in the way of additional evidence is required in a receiving case than in a straight theft case (or presumably than in a burglary or robbery case where recent possession is the backbone of the State's case). Apparently the additional evidence must be quite a lot because the finding of receiving stolen property didn't survive appellate review in the revocation case, where the State was worrying only with a preponderance standard of proof.

Duplechin v. State
#378-83; delivered 6/29/83.

Where the accused claims that a fundamentally defective indictment underlay a prior conviction used for enhancement, he can raise that claim to set aside the current enhanced conviction even though he made no trial objection asserting that the prior conviction was void because of a bad indictment.

On the other hand, if the accused wants to attack a conviction because the prior conviction used for enhancement was obtained when the accused had no counsel, he must make a trial objection asserting the lack of counsel at the time the prior conviction is offered for enhancement purposes. Hill v. State, 633 S.W.2d 520. (I personally find it difficult to reconcile these decisions other than by recognizing the extent to which the claim of a fundamentally defective indictment causes the Court to close its eyes to reality. Surely there is in fact more reason to think a prior conviction is suspect, and unworthy of use for enhancement, if it was obtained without the accused having the advice of counsel than if that prior conviction had been based on a fundamentally defective indictment.)

Rico v. State
#68,637; delivered 6/29/83.

If the indictment or information expressly alleges that the accused is liable only under a "parties" theory, then it is fundamental error to charge the jury that it can also convict on proof that the accused committed the offense by his own conduct. However, if the indictment had not alleged liability under the law of parties, but had pled the case as though the accused had committed the crime by his own conduct, then, if raised by the evidence, the judge could have charged on both primary liability and liability under the law of parties. Pitts v. State, 569 S.W.2d 898; English v. State, 592 S.W.2d 949.

Ex parte Marek
#69,104; delivered 6/29/83.

A person cannot be jailed for violation of a grand jury subpoena duces tecum. Art. 20.15, C.C.P., which would allow the jailing of a witness who refuses to testify, does not apply when mere disobedience of a subpoena duces tecum is involved. Art. 24.05, C.C.P., is the applicable provision, and it allows only a fine.

Duncan v. Evans
#69,113; delivered 6/29/83.

Where appointed counsel refuses to file a brief for the defendant on appeal, the only remedy which the Courts of Appeals may pursue is that provided for in the contempt statute, art. 1911a, V.A.C.S. Alternatively, the appeal can be abated to the trial court, which can then impose any of the sanctions listed in Guillory v. State, 557 S.W.2d 119, such as removing counsel and appointing new counsel.

Woods v. State
#62,427; delivered 7/6/83.

In cases such as Evans v. State, 606 S.W.2d 880, and Hill v. State, 640 S.W.2d 879, the Court held that an aggravated robbery jury charge was fundamentally defective if the judge chose to set out all the elements of theft (rather than simply alleging "in the course of committing theft"), but omitted one of the theft elements (the lack of the owner's effective consent). The Court now overrules those cases, adopting Judge Clinton's theory

that omission of the consent element of the theft is not error at all because the allegations in a robbery case in effect take consent out of the case.

Milton v. State,
#66,373; delivered 7/6/83.

The accused was charged with theft in the usual language alleging that she unlawfully appropriated the property. No attack was made on the indictment. She claimed that because the evidence showed that the theft was accomplished by deception, the jury charge should set out the method and means of deception when it applied the law to the facts. The Court rejects this argument, pointing out that the manner or means by which property is appropriated are not elements of theft. It is not clear if this contention was being raised as a claim of fundamental error.

Rodriguez v. State
#66,816-820; delivered 7/6/83.

The residents of an apartment brought out a quantity of marijuana and started weighing it out in the presence of an apartment maintenance man they had summoned to work on the lock to the apartment door. The maintenance man reported this, and the police were summoned. The police went up to the door of the apartment and knocked, shouting "police officer." The occupants opened the door, exposing the marijuana to view and smell. The officers then went in and seized the marijuana.

The Court, in an opinion by Judge Clinton, finds that the entry was not only lawful; it did not constitute a "search" at all within the Fourth Amendment. Since the occupants knowingly exposed the marijuana to the maintenance man, they showed they did not have even a subjective expectation of privacy in the apartment. The Court also says that police officers have the right to ask questions of citizens and knock politely on any closed doors they wish to. Though they can't compel people to answer their questions or open their doors, if the people do voluntarily open the door, they surrender any expectation of privacy in whatever may be seen or smelled by a person standing outside the doorway. The officers were entitled to enter this apartment because once the door was opened, an offense was being commited in their view. Art. 14.01(b), C.C.P.

Kutner v. Russel
#69,136; delivered 7/6/83.

A defendant accused of a traffic violation may not invoke his right to take a defensive driving couse (art 6701d, sec. 143A V.A.C.S.), at the trial de novo in the county court. He must invoke that right in the justice court or municipal court.

Brown v. State
#63,688; delivered 7/13/83.

The defendant was charged with incest. The evidence showed that the victim was forced to engage in the incestuous intercourse. Where a woman is compelled by force, threat, fraud, or undue influence to engage in incestuous acts, she is not an accomplice witness and need not be corroborated. If the female voluntarily engages in incestuous intercouse, she is an accomplice and must be corroborated.

Dykes v. State
#68,519; delivered 7/13/83.

General encouragement to cooperate will not constitute illegal inducements that would render a confession inadmissible. Such permissible encouragement has included the officer's statement that (1) it would be best to tell the truth; (2) it would be best to go ahead and make a statement; and (3) it would be better to get your business straight.

Pearson v. State
#68,519; delivered 7/13/83.

Officers received a detailed tip from a reliable informant that he had just been with a certain individual in a bar who had tinfoil packets of heroin in his vest pocket. The officers arrived at the bar within 15 minutes of receiving the tip, found the individual described in the tip, arrested him without a warrant, and find the heroin exactly where the tipster said it would be. The arrest was invalidated because there was no showing that the suspect was "about to escape," so a warrantless arrest was not authorized under art. 14.04, C.C.P. See Hardison v. State, 597 S.W.2d 335.

Query: Given the freshness of the tip, why shouldn't this have been seen as probable cause to believe that an offense was being committed in the officer's presence? Compare Boyd v. State, 621 S.W.2d 616.

Wilson v. State, #072-82;
Freeman v. State, #63,863;
Carlsen v. State, #63,987;
Denby v. State, #62,561;
all delivered 7/20/83.

In the joint opinion in these cases, the Court concludes that both direct evidence cases and circumsantial evidence cases are subject to the same ultimate test on appellate review of the sufficiency of the evidence: Could any rational trier of fact have found the essential elements of the crime proven beyond a reasonable doubt? Jackson v. Virginia, 443 U.S. 307. Presumably this also means that the evidence is to be reviewed in the light most favorable to the verdict, since Judge Clinton's opinion for the Court specifically repudiates language in prior cases saying that in circumstantial evidence cases the evidence was to be reviewed in light of the presumption of innocence. The opinions are still rather unclear, however, because the judges insist on saying that one way of looking at the sufficiency in a circumstantial evidence case is whether the evidence excludes every other hypothesis except guilt, but at least the Court omits the "to a moral certainty" language in this area.

Hunter v. State
#63,261; delivered 7/20/83.

This panel opinion applies the above rules, but it sheds better light on them by saying that in a circumstantial evidence case there will be an outstanding reasonable hypothesis of guilt only if the same evidence relied on to show guilt could reasonably support an hypothesis of innocence. The opinion also says that credibility choices are still for the jury, so that the existence of credibility choices in a circumstantial evidence case would normally preclude an appellate finding of insufficient evidence. If the above were not true, then any time the accused put on plausible defense witnesses there would be a reasonable hypothesis of guilt, if his witnesses were believed. So we apparently disregard the evidence favorable to the accused and see if the remaining evidence — the incriminating evidence — could reasonably support an hypothesis of innocence.

Abdnor v. Ovard
#705-82; delivered 7/20/83.

The Court suggests that the only way an appellant can attack the trial judge's finding that he was not indigent and not entitled to a free statement of facts on appeal is to raise the matter as a ground of error on appeal. Previously the Court had been allowing this to be raised in original mandamus proceedings.

Garrett v. State
#872-82, and #873-82, delivered 7/30/83.

The State played a tape-recording of a conversation between the accused and an undercover agent. While the tape was being played the jurors were allowed to read along on a written transcript which the undercover agent had sworn to be an accurate rendition of the recorded conversation. The jury was instructed at that time that the tape was only an aid to their listening, that it had been prepared by the State, and that the contents of the tape would control if the jury thought they detected any discrepancy between the tape and the transcription. The transcript was not introduced into evidence and was not available to the jury during deliberations.

The Court held that it was proper to use the written transcript in such a manner. Its use was not bolstering. Properly understood, "bolstering" refers to the introduction of prior consistent statements and the like. The transcript did not provide evidence of a later report of the recorded conversation to a third person. Using the transcript was no more objectionable than letting the undercover officer restate from the witness stand the words that were spoken in the recorded conversation.

Bellah v. State
#936-82; delivered 7/20/83.

In this case the Court applied the recent Supreme Court decision in Illinois v. Gates to uphold an arrest warrant affidavit. The Court did not state whether Texas might adhere to the Aguilar-Spinelli tests as a matter of state

law, since the accused invoked only federal law.

For those of you litigating contentions that Art. I, Sec. 9 of the Texas Constitution provides greater protection than the federal Fourth Amendment, I would point out that in Crowell v. State, 180 S.W.2d 343, 346 (Tex. Crim. App. 1944), the Court said: "Art. I, Sec. 9, of the Constitution of this State, and the 4th Amendment to the Federal Constitution are, in all material aspects, the same." Texas v. Brown is currently under submission to the Court on remand from the Supreme Court, and I have argued that Crowell is one reason why Texas can't go back and create some special state plain view doctrine under the Texas Constitution.

Jones v. State
#118-83; delivered 7/20/83.

When the trial court charges on a statutory presumption, it is fundamental error not to charge the jury on section 2.05 of the Penal Code (which essentially says that such presumptions are not mandatory). This may be the first time that fundamental error has been found in a part of the charge other than that applying the law to the facts. Judge McCormick has a great dissent.

COMMENTS FROM READERS

R.K. Weaver of the Dallas County District Attorney's Office wrote me to offer a different way to analyze the effect of the State's introduction of partially exculpatory, but self-contradictory, statements of the accused. His comment was: "I must take exception to your reading of the Coleman [v. State, 643 S.W.2d 947 (Tex. Crim. App. 1982)] case [the TRUE BILL, Vol 4, No. 3, pg. 19]. You indicate that it stands for the proposition that the State is not bound by exculpatory statements made by a defendant. I submit that the case holds that the general rule is that the State is bound by such exculpatory statements unless the statements are in some way rebutted. In that case the statements were such that they rebutted themselves. Obviously they could also be rebutted by other testimony. However, if the statement is not rebutted in some manner, the State would be bound by them and the jury would be so instructed!"

ANSWERS

1. Totality of the circumstances. Illinois v. Gates, #81-430; decided 6/8/83. 33 Criminal Law Reporter 3109. (But the Aguilar-Spinelli tests are still highly relevant.)
2. Whether substantial basis existed. Illinois v. Gates.
3. Yes. Michigan v. Long, #82-256; decided 7/6/83. 33 Crim.LawRptr. 3317.
4. Yes. Michigan v. Long.
5. No. Unless an independent exception to the warrant requirement exists, such as consent, a warrant would be needed to open the container, with the further proviso that a warrantless opening might be permissible if there was a "virtual certainty" that the contents were seizable. Texas v. Brown, 103 S.Ct. 1535, and expecially Justice Stevens' concurring opinion.
6. Yes. Illinois v. Lafayette, #81-1859; decided 6/20/83. 33 Crim.LawRptr. 3183. Accord: Stewart v. State, 611 S.W.2d 434.
7. Yes. United States v. Place, #81-1617; decided 6/20/83. 33 Crim.LawRptr. 3186. (But a 90-minute detention was held improper on the facts.)
8. No. U.S. v. Place. Exposing a person to a sniffer dog may require some degree of suspicion, according to the Fifth Circuit's decision in the Goose Creek Independent School District case, Horton v. Goose Creek I.S.D., 690 F.2d 470 [5th Cir. 1982]. (However, this may not be the last word as a petition for certiorari was filed with the U.S. Supreme Court).
9. No, but the case deals only with opening the package; it might take a warrant to seize the package in the first place, such as where an entry into a home was required. Illinois v. Andraes, #81-1843; decided 7/5/83. 33 Crim.LawRptr. 3296.
10. No. South Dakota v. Neville, #81-1453; decided 2/22/83. 32 Crim.LawRptr. 3047. It's not entirely clear if the Court of Criminal Appeals would interpret art. 38.22, C.C.P., differently. In any event, the new DWI law will expressly make refusal of the breath test admissible.

Ethics

Addressing the Issues

Unlike the weather, a subject that everyone talks about, legal ethics is a subject most attorneys don't want to discuss.

Fortunately, this is not true among prosecutors. During the Basic Prosecution Course, one of the Council courses presented under contract by T.D.C.A.A., the Prosecutor Council handled directly that part dealing with prosecutorial ethics. Four elected prosecutors ran discussion groups and participated in a panel discussion. These participants were the Honorable Tom Bridges, District Attorney, 36th Judicial District; the Honorable Steve Cross, District Attorney, 84th Judicial District; the Honorable Tom Lee, District Attorney, 63rd Judicial District; and the Honorable Joe Thigpen, District Attorney, 39th Judicial District.

The Council is very grateful for the efforts these men. In addition, each has agreed to prepare an ethics article for a future issue of TRUE BILL.

These articles are not official positions of the Prosecutor Council, but reasoned discussion by the prosecutors themselves. Many of the questions raised at the course have no clear answers. In several instances prosecutors disagreed as to how they would handle certain situations. Furthermore, situations which prosecutors actually face will differ from any hypothetical examples. The changing of even small facts can greatly alter the outcome.

Additionally, not all segments of the bar necessarily agree on the proper outcome of ethical problems. Many prosecutors disagree with State Bar Opinion 399, which was drafted by civil attorneys, many of whom have no experience with criminal practice. The opinion states that if a prosecutor is called **by the State** during a criminal trial, the entire prosecutor's office is disqualified from participating and a special prosecutor must be appointed. Many prosecutors feel this opinion is poor and argue, among other things, that no other state follows that rule. (For a copy of Opinion 399, see the February 1981 Bar Journal or call the Council.)

Ethical problems continue to be addressed by the Advisory Committee through its Sub-Committee on Ethics chaired by the Honorable Tim Eyssen, Assistant District Attorney, 90th Judicial District. Give Tim your input. **Differing viewpoints are welcome and encouraged.**

For this issue, I'd like to point out a recent opinion by the Court of Criminal Appeals. Tamminen v. State, ___ S.W.2d ___, (Tx. Cr. App. decided 7/20/83) deals with **Disciplinary Rule 7-110(B):**

"In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

1. **In the course of official proceedings in the cause.**
2. **In writing if he promptly delivers a copy of the writing to opposing counsel or to the adverse party if he is not represented by a lawyer.**
3. **Orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.**
4. **As otherwise authorized by law.**

In Tamminen, the prosecutor gave the judge a report compiled by DPS on the Bandidos motorcycle gang. The defendant was a member of the gang. The report was not public and the defense attorney was not allowed to see it. The Court of Criminal Appeals joined the Court of Appeals (Tamminen v. State, 644 S.W. 2d 209) in condemning this as prosecutorial misconduct. Nor did the judge remain unscathed, in that the "ex parte acceptance of the DPS compilation by the trial judge is conduct that 'cannot be tolerated' in the criminal justice system." The judges were also curious as to why the defense attorneys were in the judge's chambers to discuss sentencing without a prosecutor being present.

The problem of ex parte conversations with judges arises again and again. As this is the subject of a future article, I won't explore it further, except to note that if you are alone with the trial judge you should not discuss the "merits of the cause."

Educating ourselves to ethical problems is a task that all must address. It will only be through everyone's efforts that we can meet our responsibilities regarding the ethical prosecution of persons charged with violations of the law.

Audio Visual Loan Library

The Council's audio-visual materials are available upon request at no charge to prosecutors except for return postage and insurance. Requestors are asked to return materials borrowed within two weeks, and are responsible for damage or loss while the material is in their possession.

Professional Development Training

COURTROOM DEMEANOR - Focuses on the do's and don'ts of testifying in court and the tactics of cross-examination. Especially useful for all law enforcement personnel who are called upon to testify. Presentation by James Barklow, former Assistant District Attorney in Dallas County. Length: 57minutes. Available in 3/4" U-Matic, 1/2" Beta or VHS Video Tape.

REPORT WRITING - Useful for anyone involved in the process of writing or reviewing police reports. Motivates the writer to produce clear and accurate reports and teaches him how to do so. Consequences of unclear writing are shown through incorrect prosecutor interpretation. Includes a classroom exercise. Length: 27 minutes. Available in 16 mm film or 1/2" VHS Video.

TRIAL ADVOCACY FOR PROSECUTORS - This series of audio cassettes is an ideal tool for prosecutor training programs as well as an excellent review for individuals. Experienced trial experts share successful techniques and skills that can be applied immediately. Produced by the National College of District Attorneys.

Jury Selection - Norman Early
Jury Selection - Murder and Death Penalty Cases - Richard Huffman
Real, Documentary and Demonstrative Evidence - Christopher Munch
Opening Statement - Michael Ficaro
Direct Examination and Witness Interview - S.M. "Buddy" Fallis
Closing Argument - Rebuttal to Defense Stock Arguments - Munch & Roll
Cross-Examination - S.M. "Buddy" Fallis
Meeting the Insanity Defense - John M. Roll

Public Information Programs

CRIME PREVENTION: THE ROLE OF CITIZENS - Stresses the importance of every individual's assuming responsibility for his own personal safety and that of his property. Focuses on the removal of the opportunity for crime. Simple measures are suggested for "crimeproofing" the home, car, family, and individual. Designed to reach age groups nine to ninety. Length: 11 minutes. Available in color slides and audio cassette.

RURAL CRIME - Points out the special vulnerability of rural property and the common-sense steps that people who live and work in sparsely populated areas can take to minimize the opportunity for crime. Includes security of home, barns, tools, machinery and tractors. Length: 18 minutes. Available in color slides and audio cassette.

FRAUD AND OTHER CON GAMES - Covers the common street swindles and tips on how to avoid them. Included are these frauds: The Bank Examiner, the Pigeon Drop, The City Inspector, The Contract Man, The Home Improvement Racket, and The Medical Machine. Especially effective for showing to senior citizens groups. Length: 15 minutes. Available in color slides and audio cassette.

BEATING THE BURGLAR - Crime prevention techniques to use at home that reduce criminal opportunity. Provides suggestions on what to do when you are away, proper locks for doors and windows, identification of property, lighting and many other security recommendations. Useful for all age groups. Available in color slides and audio cassette.

THE MYTHS OF SHOPLIFTING - Covers the six myths of shoplifting, facts on shoplifting, reasons often given for shoplifting, and common measures used by stores to catch shoplifters or deter them. Useful for showing to all age groups, but particularly teenagers. Length: 12 minutes. Available in 1/2" VHS video tape.

VICTIM RIGHTS - Shows the numerous victims and effects that emerge from the following criminal scenarios: Aggravated Burglary, Murder, Rape and Child Abuse. Produced by the National District Attorneys Association and narrated by Arthur Hill. Length: 14 minutes. Available in 1/2" VHS video tape.

RAPE: VICTIM OR VICTOR - Through a series of vignettes, this film shows a range of both passive and active tactics women can use to protect themselves and to reduce the risk of being raped. Some preventive measures presented include keeping car doors locked, never opening doors to strangers, avoiding walking alone in the dark, deserted places, not picking up hitchhikers, and more. Length: 17 minutes. Available in 1/2" VHS video tape.

HOT CHECKS - Tailored expecially for presentations to merchants and clerks to help deter criminal check activity. Topics covered are personal checks, commercial checks, travelers checks, identification cards, bad checks, other instruments, and check cashing procedures. Length: Approximately 45 minutes. Available in color slides and accompanying audio cassette.

Council Publications

ELEMENTS MANUAL - Provides a breakdown of the elements the prosecutor must prove to establish a conviction. It is designed for use by peace officers and grand jurors. Price: $2.00.

GRAND JURY PACKET - A portfolio of materials designed to acquaint grand jurors with their duties and to provide them with information with which to meet their responsibilities. It can also be used to inform grand jurors of problems facing law enforcement. Contents include: Handbook for Grand Jurors, Elements Manual, Crime in Texas, and various information bulletins covering plea bargaining and the politics of crime. Price: $3.00.

GUIDE TO REPORT WRITING - A booklet for use by law enforcement officers to ensure that reports better meet the requirements of prosecutors. It is being sold to prosecutors and law enforcement agencies for distribution to officers. Price: 1-25 at $1.75 each, 26-99 at $1.65 each, 100 plus at $1.50 each.

HOT CHECK MANUAL - Provides the laws and forms for collecting checks and trying check cases. There is a special section on the Hot Check Fee Statutes (Article 53.08 C.C.P.). It includes a resource section listing additional sources of information and services. Price: $7.00.

HOT CHECK PAMPHLET - This is a foldout pamphlet to be distributed by prosecutors to merchants and others who receive bad checks. It gives clues for detecting bad checks, the procedure to follow when taking a check and the procedure to follow when a bad check is received. Space is provided for an imprint. Price: $5.00 per 50.

INVESTIGATORS DESK MANUAL - Designed to provide information and resources to assist the investigator in the field. Includes investigative techniques, information sources, evidence, investigative and administrative forms, bibliography, and glossary. Price: $25.00.

RECIPROCAL CHILD SUPPORT MANUAL - Provides the laws, procedure and forms for setting up and operating a RCS section in a prosecutor's office. Price $3.00.

Note: All publications listed above are prepared by The Prosecutor Council. All prices include postage and handling.

----------CUT ALONG DOTTED LINE----------

	Quantity	Price
Elements Manual	_____	_____
Grand Jury Packet	_____	_____
Guide to Report Writing	_____	_____
Hot Check Manual	_____	_____
Hot Check Pamphlet	_____	_____
Investigators Desk Manual	_____	_____
Reciprocal Child Support	_____	_____

Name_____ Office_____

Address_____ City_____ State_____ Zip_____

BILL MY OFFICE

BILL: (Provide complete information.)

_____

_____

CAR RENTAL AGREEMENTS

The State of Texas currently has discount agreements on car rentals with Americar/Airways, Avis, Budget, Dollar, Hertz, and National.

A summary of these agreements and the effective rates on April 1, 1983 are as follows:

Daily Rates	Americar/ Airways	Avis	Budget	Dollar	Hertz	National
Sub-Compact	$22.95	$32.00	$29.00	$28.00	$35.00	$30.50
Compact	22.95	33.00	29.00	29.00	36.00	31.50
Intermediate	22.95	34.00	29.00	31.00	37.00	32.50
Standard	28.95	35.00	29.00	34.00	39.00	33.50

All rates are with unlimited mileage and are valid for state business or personal travel. For reservations or more information, call the companies at the following numbers:

	Americar/ Airways	Avis	Budget	Dollar	Hertz	National
Dial Toll Free 1-800 PLUS:	292-5700	331-1212	527-0700	421-6868	654-3131	328-4567
Discount:	Corp Rate	A/A425490	Gold Corp. Rate	Gold Key Rate	#CDP-ID 65800	#5002069

LAW ENFORCEMENT WORKSHOPS TO BE SCHEDULED

Elected prosecutors are encouraged to make their requests now for settings of the Council's Law Enforcement Workshops in the months to come.

The Law Enforcement Workshop is designed to increase communication and cooperation between law enforcement officers and prosecutors. It is a one-day workshop given on two successive days (usually Wednesday and Thursday) in order to provide all officers an opportunity to attend. Topics covered include report writing, elements of a crime, and testifying in court.

The workshop has been a part of the Council's service for nearly three years, although not always in its present form. Each day of the workshop should accommodate no more than 100 attendees, with 50 to 60 being an appropriate goal. Packet materials are given out as part of the course, and credit is available from Texas Commission on Law Enforcement Officer Standards and Education toward satisfaction of the education and training requirements for peace officers.

If you wish more information, or you wish to request a workshop for your area, contact David Kroll at the Council office.

WORLD PROSECUTORS SECTION

The World Prosecutors Section is associated with the World Association of Lawyers which was created by the World Peace Through Law Center. The Center sponsors international conferences every two years.

The next conference will be held in Cairo, Egypt from September 25 to September 30, 1983. (The Prosecutor Council will not pay travel expenses.) The World Prosecutors Section meets at each conference and during the interim periods conducts its business through correspondence.

The following topics will be discussed:

(1) prosecution as a lifetime career,

(2) circumstances for and against prosecution of a particular case,

(3) international cooperation between prosecutors, and

(4) assisting victims of criminal activity.

For additional information, please contact:

Harry B. Sondheim
Chairman for the Americas
World Prosecutors Section
c/o Office of the District Attorney
849 South Broadway, 11th Floor
Los Angeles, California 90014-3296
Telephone: (213) 974-5911

COUNCIL ENDS OUT-OF-STATE TRAVEL FOR PROFESSIONAL DEVELOPMENT TRAINING

At its meeting July 15th, the Council voted to stop reimbursing out-of-state travel for professional development courses. This action was taken after reviewing the report of the Education Subcommittee of the Advisory Committee.

The Council expressed appreciation for the hard work of Ed Walsh and his committee. Their suggestions for limiting out-of-state travel were practical and could have been used had there been sufficient funds available. Unfortunately, the Council felt that there would not be sufficient travel funds to cover both in-state and out-of-state professional development travel. It determined that in-state travel needs should be met first.

As you may know, travel funds from the Criminal Justice Division, which have been distributed to prosecutors through TDCAA, have been effectively eliminated. The evaluation of the out-of-state courses submitted by the attendees also played a part. The Council felt that many of the courses were just not worth the cost. (It costs about $800.00 to send a person out-of-state as opposed to $250.00 per person for an in-state course.)

The Council is making every effort to ensure that prosecutors have the travel funds they need to meet the educational needs of their staffs. If you have any questions, please contact the staff.

PARTICIPANTS EVALUATE OUT-OF-STATE COURSES

The following summaries of out-of-state professional development courses are based on reports to the Council by persons who attended.

Trial Advocacy Course (NCDA)
Phoenix, Arizona, October 3-7, 1982

This course has been recommended for its strong speakers and useful written materials. However, some of the subjects were rather "dry," and one topic, "Meeting the Insanity Defense," was thought to be outside the concern of most prosecutors. Most of the other topics were found to be very pertinent and well-presented.

Tenth National Conference on Juvenile Justice (NDAA)
Hilton Head, South Carolina, February 20-24, 1983.

The course had some good, knowledgeable speakers, and was often inspirational and entertaining. However, it seemed not to contain enough "nuts and bolts" information useful to prosecutors. Instead, many topics were covered rather generally, even philosophically. Although many interesting-sounding topics were offered (often in overlapping or simultaneous slots), failure to give good synopses of the topics resulted in at least one participant choosing to attend topics that in fact were of little use to her. The best benefit of the couse seemed to be the interaction with others in the criminal justice system and the insight gained into their problems.

Mid-Winter Conference (NDAA)
Reno, Nevada, March 6-11, 1983.

The topics were often enjoyable, but not always helpful. For example, the lectures on how to deal with the press were very applicable to prosecutors from larger metropolitan areas, but less useful to some from smaller communities. Nonetheless, the conference covered a variety of topics and provided a good opportunity to interact with other prosecutors.

Trial Advocacy Course (NCDA)
Chicago, Illinois, April 17-21, 1983.

This course is highly recommended. Again, the speakers were very strong and the presentations well thought out.

Civil Responsibilities of a Prosecutor's Office (TDCAA)
Austin, Texas, May 2-4, 1983.

With minor misgivings, participants recommend this couse. The topics are interesting, relevant, and well-taught. The forms provided were very appreciated. The criticisms were usually that not enough time was spent on a particular topic, too much on another. Overall, the course offered good educational and practical knowledge.

NEW TRAVEL POLICY PROPOSED

The Council promulgates rules for reimbursement of expenses to attend professional development courses. Due to budget limitations some policy changes are necessary. (See related article re: out-of-state travel, page 23).

The draft below reflects changes contemplated by the Education Sub-Committee of the Advisory Committee and the Council itself, as well as a re-organization of old policy into a more coherent outline. The substantive changes are shaded.

The Council expects to adopt the proposed draft at the next meeting September 27 in Fort Worth. Your comments prior to adoption are welcome.

PROSECUTOR COUNCIL
POLICY FOR REIMBURSEMENT FOR PROSECUTORS AND STAFF

This policy conforms to State regulations set out by the Appropriations Act, the Comptroller of Public Accounts and The Prosecutor Council.

I. TRANSPORTATION EXPENSES

A. LOCAL TRAVEL.
No reimbursement can be paid when the course or meeting to be attended is in attendee's home town.

B. IN-STATE TRAVEL.

1. Road Travel.

a. Private Car.
Mileage at 23 cents a mile will be paid calculated from the Official State Mileage Guide. If more than one person is traveling from the same office to the same destination, maximum utilization must be made to accomodate up to 4 passengers per vehicle. Receipts are not needed.

b. Rental Car.
Rental cars will be reimbursed only with prior written approval. RECEIPTS ARE NEEDED.

c. Taxi, Bus, or Limousine Fares.
Such fares will be paid from terminal to meeting place and return. RECEIPTS ARE NEEDED.

d. Parking Fees.
The actual cost will be reimbursed. RECEIPTS ARE NEEDED.

2. Air Travel.

a. Personal Airplane.
If a private airplane is used, mileage will be paid at 30 cents per highway mile for single-engine aircraft and 40 cents per highway mile for twin-engine for travel within the State of Texas. A receipt is not needed.

b. **Commercial Airlines (Coach Fare).**
"Air transportation shall not exceed the next lowest available airline fare below first class unless such is not available." (Appropriations Act) Notation should be made on the airline ticket that no fares below first class are available—if such is the case. THE ACTUAL AIRLINE RECEIPT MUST BE ATTACHED.

C. **OUT-OF-STATE TRAVEL.**
No out-of-state travel to attend professional development courses will be reimbursed. In the event of an extraordinary situation the Council may grant an exception. For further information contact the Council's executive director.

II. FOOD/LODGING EXPENSES

A. **ACTUAL EXPENSES FOR LODGING.**
If it is impractical or impossible to secure lodging for $25.00 per day or less, the person may be reimbursed for the actual cost of lodging, not to exceed $45.00 per day, in addition to a flat per diem rate for meals, not to exceed $15.00 per day (total $60.00). THE ACTUAL RECEIPT FOR LODGING IS NEEDED, together with a statement that cheaper lodging was unavailable or impractical. (i.e., "conference in this hotel", "cheaper rates in this hotel unavailable", or "cheapest respectable room available".) If two or more persons occupy a room, a statement must be made by the hotel/motel on the receipt showing the "single" rate for the lodging. If room and board are offered and actually available as part of a course, reimbursement for food and lodging will only be for as much as the price of such room and board, regardless of what actual expenses were incurred. Receipts for meals are not needed.

B. **SUBSISTENCE REIMBURSEMENT METHOD.**
Per diem not exceeding $40 per day will be paid in leiu of actual expenses. Per diem is calculated on a quarter basis. If travel time includes 2 hours or more into the quarter, the full amount for the quarter will be paid. If it is not necessary to stay overnight and you are gone from your headquarters more than 6 consecutive hours, partial per diem not exceeding $15 will be paid. Receipts are not needed when claiming per diem.

III. GENERAL REQUIREMENTS FOR REIMBURSEMENT

A. **WHO CAN BE REIMBURSED.**
Reimbursement may be had by prosecutors, assistant prosecutors, and prosecutor's investigators, but by no more than four persons from each office per course.

B. **PROSECUTOR APPROVAL.**
Before reimbursement for travel for professional development courses may be had by an assistant or investigator, the person must obtain written approval from the prosecutor. The prosecutor may designate another person to approve travel vouchers by notifying the Council of the name of that person in writing.

C. **FORMS.**
The applicant must submit a signed Travel Expense Reimbursement Request to the Council when requesting reimbursement. In addition, a State of Texas Travel Voucher is needed. The applicant may sign the State voucher in blank and authorize the Council's Financial Officer to transfer the information from the Council's Reimbursement Request to the State voucher correcting any errors or mistakes. Otherwise, the Financial Officer will fill out the State voucher when he reviews the Reimbursement Request and send the State Comptroller form to the applicant for his signature.

Calendar

NOTE: The courses listed below and printed in **dark type** are Council approved professional development courses. The reference below each approved course indicates which Newsletter gave a synopsis of this course. All courses not in dark type or out of state will need prior Council approval for reimbursement of travel expenses.

SEPTEMBER

11-14	**Prosecution of the Violent Juvenile Offender (NCDA)** (Ref. Newsletter, April-May, 1983, pg. 13)	**Houston**
14-15	Criminal Law Institute (UTL)	Austin
25-29	**Prosecution of Violent Crime (NCDA)** (Ref. Newsletter, Nov. Dec. 1981, pg. 7)	**New Orleans**
25-30	World Prosecutors Conference (Ref. this TRUE BILL, page 23)	Cairo, Egypt
27-28	Management by Objectives (UTI)	Austin
28-30	**Annual Criminal Law Update (TDCAA)** (Ref. Newsletter, July - Aug. 1982, p. 9)	**Fort Worth**

OCTOBER

10-14	Criminal Investigators School (DPS)	Austin
12-13	**Law Enforcement Workshop (TPC)** (Ref. Newsletter, Nov.-Dec. 1981, pg. 11)	**Midland**
14	Special Criminal Law Institute: DWI Defense (CDLP)	San Antonio
13	Effective Time Management (TTU)	Corpus Christi
14	"	Beaumont
17	"	Waco
19	"	Abilene
20	"	El Paso
31-Nov. 4	**Investigation & Prosecution:** **The Prosecutor's Dual Role (NCDA)** (Ref. Newsletter, Nov. Dec. 1981, pg. 11)	**San Francisco**
31-Nov. 4	Investigation of Assault & Death School (DPS)	Austin

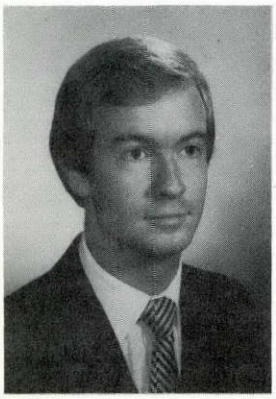
NOVEMBER

1-2	Supervising Management (Basic)(UTI)	Austin
13-17	**Trial Advocacy for Prosecutors (NCDA)** (Ref. Newsletter, Nov. Dec. 1981, pg. 7)	**Denver**
14	Effective Time Management (TTU)	Fort Worth
18	"	Houston

CDLP - Criminal Defense Lawyers Project
NCDA - National College of District Attorneys
SBT - State Bar of Texas
TDCAA - Texas District and County Attorneys Association
TTU - Texas Tech University Center for Professional Development
DPS - Department of Public Safety
NDAA - National District Attorneys Association
TCPA - Texas Crime Prevention Association
TPC - The Prosecutor Council
UTL - UT School of Law
UTI - UT Industrial Education Department

Features

Prosecutor Profile



NICK D. WOODALL

On January 1, 1983, Nick D. Woodall set a new record. At the tender age of 26 he became the youngest elected prosecutor in the state.

Graduating from high school in Mesquite, Texas, in 1974, Nick then attended East Texas State University, Texas Tech University, and finally Baylor University. At Baylor he received his B.B.A. in 1979 and his J.D. in 1980. In Dallas he became an associate with the firm of Fanning, Harper, Wilson, Martinson & Fanning, P.C. Soon he worked for a while as Assistant District Attorney for Dallas County, then returned to the firm until his election this year as Criminal District Attorney for Rockwall County.

Nick's office consists only of himself, his investigator Jack Ritchey, and his secretary Patti Griffin. Nonetheless, under his direction the number of cases handled by his office has increased dramatically. Efforts to collect hot checks have been particularly effective, and last June the office purchased a new Apple computer solely from hot check revenues.

In law school Nick was elected President of his Mid-Law Class and of the Student Bar Association. A recipient of the Leighton B. Dawson Award, he also served as Secretary of the Moot Court Society and as a member of Delta Theta Phi Fraternity. His participation in the Christian Legal Society continues today.

Nick maintains membership in the American Bar Association and the T.D.C.A.A. He is on the State Bar of Texas Committee for Public Access to Lawyers. He is an ex-officio member of Rockwall County's Committee on Aging, a board director for Rockwall County's Friends of the Library, and the Secretary of the Rockwall County Republican Men. A member of the First Baptist Church, Nick teaches 9th and 10th grade Sunday school, as well as assisting with various youth projects in the community.

Nick is married to Nancy Griffin Woodall, a lawyer with the Dallas firm of Johnson, Bromberg & Leeds. An avid Republican, Nick counts Ronald Reagan as one of his heroes. His interests include reading politics, travel, financial markets, entreprenurial activities, construction, and architecture.

The Sherlockers

YOLANDA GUERRA

Yolanda has been an investigator with the Criminal District Attorney's office in Dallas since 1978. She lists herself as an "Aquarian, year withheld."

After graduating from Roy Miller High School in her home town of Corpus Christi, Yolanda worked for two years as an Inhalation Therapy Technician at Baylor Hospital. Then she worked 4 1/2 years as a Claims Supervisor with Blue Cross. She left that position to resume her education. In Dallas she attended Eastfield Junior College, then the University of Texas, graduating with a B.A.

An active member of the Texas District and County Attorney's Association, she has served on the Legislative and Membership Committees, among others. She is presently serving her second year as Secretary - Treasurer of the Board of Directors of the T.D.C.A.A.'s Investigator's section.

Of course, all work and no play could make for a dull investigator, but never fear: Yolanda has her hobbies. She enjoys cooking, sewing, racquetball, and (hold your breath) hang-gliding!

Council Staff Profiles

ANDY SHUVAL

Andy Shuval became the Executive Director of the Prosecutor Council over five years ago. After graduation from Texas A&M, he attended the University of Texas Law School. He was admitted to the Texas Bar in May 1965 and opened a private practice in Hereford, Texas, specializing in criminal law and trial work. He served Deaf Smith County from 1970 to 1971 as County Attorney, and from 1971 to 1978 as Criminal District Attorney. He resigned as C.D.A. to accept his current position on July 1, 1978.

Andy has been a board certified criminal law specialist since the designation was first recognized. He is a former Secretary/Treasurer and Director on the board of the Texas District and County Attorneys Association. He teaches Criminal Law and Procedure at Austin Community College.

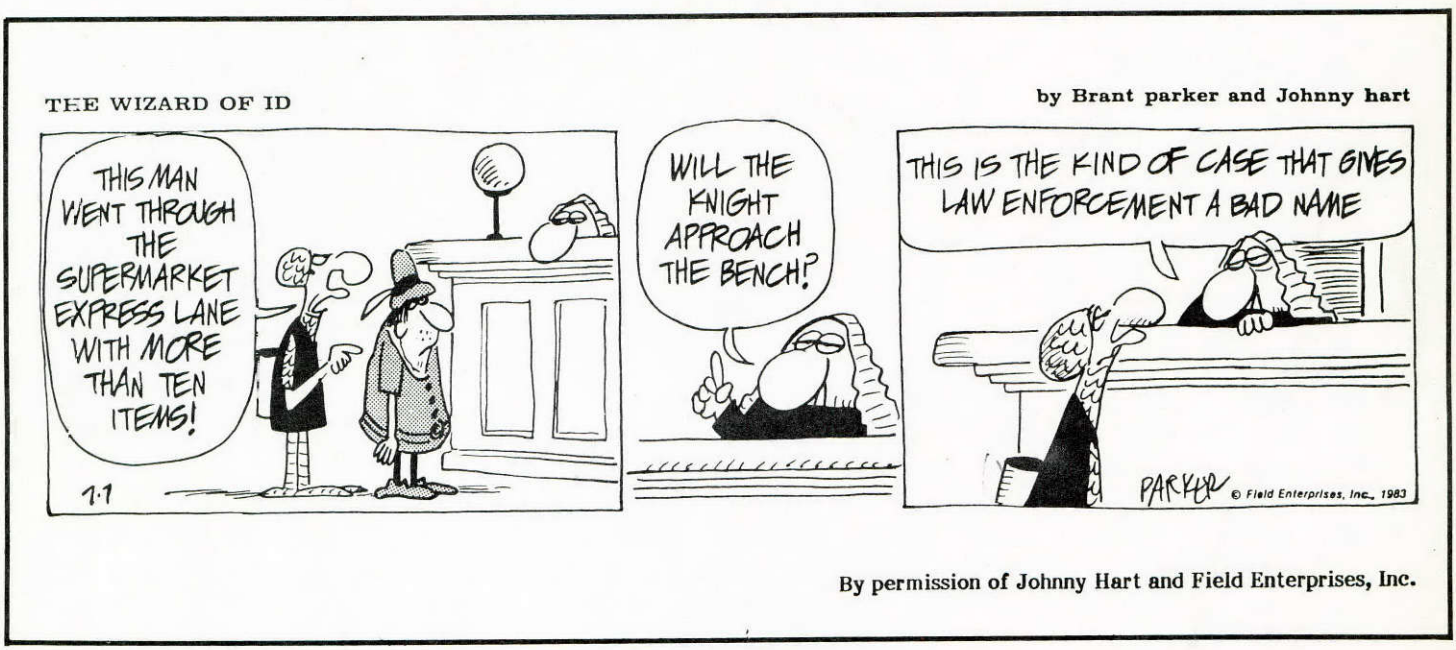
Born in Meknes, Morocco, Andy came to the U.S. at the age of three and is a naturalized citizen. He married the former Betty Walterscheid of Hereford, Texas. They have one boy (Kevin) and four girls (Sonia, Elena, and the twins Nina and Lisa).

KATHRYN ANN GIVENS

Kathy joined the staff in May as the Office Manager. She has two major responsibilities: (1) keeping track of the names and locations of all of the elected prosecutors, their assistants, and investigators in the state, and (2) keeping track of the Executive Director and his many projects. Kathy is looking forward to the installation of the Council's new computer, which will make her job a little easier. Now if only she could program Andy Shuval into the memory banks...!

Kathy is not a native Texan, but close enough; she's lived in the state since she was five. Actually, she's an Oakie with a heritage going back to the Miami Indian Tribe. (Still, she doesn't mind missing a cowboys-and-Indians movie.) She attended Texas Tech University and the University of Houston.

When not at work, Kathy prefers swimming, camping, cooking, reading a good book, or landscaping with Japanese influence.



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