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Fighting Hate Violence by Taking Perpetrators to Court

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At about 10 p.m., Bruce Roy Lee dons a white mask, climbs up a small hill near the homes of several African American families, and burns a large wooden cross. Knowing the burning cross is a symbol of the Ku Klux Klan, Lee says he wants to make sure the families “take the message seriously and leave.” The place: Minnesota; the year: 1989.1

In the summer of 1992, after being taunted at a party about his Asian ancestry, Luyen Nguyen, a Vietnamese American premedical student, is beaten and killed in Coral Springs, FL by a gang of 15 white men who reportedly chased him down like a “wounded deer.”2

The Federal Bureau of Investigation (FBI), in its first year of collecting data on violent crimes committed because of the victim’s race, national origin, religion, or sexual orientation, reported a total of 4,558 crimes in 1991, a figure the FBI admits is based on incomplete data and is far below the actual number of incidents.3

Hate crimes — violent acts or threats committed because of a victim’s race, ethnicity, religion, sexual orientation, or other characteristics — have become a serious and growing societal problem. Ranging from vandalism and property damage to intimidation, assaults, and killings, hate crimes have become common not only in our nation’s cities but in suburbs and rural areas as well.4

Throughout U.S. history, people of color have been subjected to civil rights violations through racial violence. Assaults and beatings of African Americans are not just memories from the days of slavery and Jim Crow; they are ongoing problems. Other minorities — such as Hispanics, Asian Americans, and Arab Americans — also feel the sting of bias-motivated violence. All have experienced increases in hate crimes against them as their populations grow and anti-immigrant sentiment flourishes.5 Attacks against Jews, gay men, and lesbians have also increased.

Hate Crimes Legislation

Responding to the upsurge in crimes, Congress and state legislatures have enacted laws that monitor discriminatory violence and improve police response. The federal Hate Crimes Statistics Act of 19906 requires the FBI to collect and publish data on hate crimes from law enforcement agencies throughout the country.

Substantive criminal laws have been enacted to punish hate crimes and deter future discriminatory violence. Reconstruction-era laws prescribe conspiracies and forcible interference with civil rights.7

Many state and local governments have enacted statutes that specifically punish or enhance the punishment for acts of violence that target members of protected groups.8

Congress and numerous state legislatures have also enacted statutes that allow victims to sue the perpetrators of hate crimes. Victims’ civil rights laws, which typically allow civil penalties and punitive damages, can provide compensation for victims and serve as a deterrent to future violence.

Lawyers’ Role

Attorneys can play a key role in vindicating the civil rights of victims of hate crimes. As victims’ advocates in criminal proceedings, private attorneys can work with prosecutors to ensure that crimes are prosecuted as hate crimes, that sufficient evidence is brought out at trial to prove bias motivation, and that the public is made aware that hate crimes are intolerable.

Because constitutional challenges to many criminal hate crime laws make their future uncertain, an even more important role for private attorneys is as the victims’ advocate in civil litigation. Prosecutors may be reluctant to prosecute hate crimes because of the difficulty of proving bias motivation beyond a reasonable doubt. So civil litigation, with a lower burden of proof, may be the only way to prove discrimination through a violent act.

By representing plaintiffs in civil rights lawsuits, attorneys can ensure that victims get redress for their injuries. Even if the monetary recovery is relatively small, a judgment against a defendant can send a message to the public that acts of bias-motivated violence are treated as special harms to victims and their communities.

Reconstruction-era civil rights laws provide civil causes of action.
for victims of racial and ethnic violence committed by private individuals. For example, part of the Ku Klux Klan Act imposes civil liability on people who conspire to deprive another person of the equal protection of the laws.

In many states, private causes of action are part of a larger scheme of laws designed to deter and punish hate crimes.

Some state civil rights statutes establish general causes of action that remedy intentional interference with a person’s civil rights, including the right to be free from violence. Maine’s statute provides simply that in cases of discriminatory violence, a victim “may institute and prosecute in that person’s own name and on that person’s own behalf a civil action for legal or equitable relief.”

Other laws are more specific. For instance, Pennsylvania’s law states that a victim of ethnic intimidation may recover for (1) general and special damages, including damages for emotional distress; (2) punitive damages; (3) reasonable attorney fees and costs; (4) injunctive and equitable relief; and (5) any other relief that the court deems necessary and proper. California’s law is similar and provides for actual damages, exemplary damages, a civil penalty of $25,000 payable to the victim, and attorneys’ fees.

Most state civil rights statutes allow plaintiffs to get temporary restraining orders and injunctions to prevent future violence. Some states — including Illinois, Massachusetts, and Ohio — and the District of Columbia have statutes that hold parents and legal guardians liable for discriminatory violent acts committed by minor children.

In addition to statutory claims, plaintiffs can file common law claims for intentional torts against people or property. These are particularly useful in states without civil rights statutes, where common law claims may be the only redress for victims’ injuries. Potential causes of action include assault, battery, intentional infliction of emotional distress, trespass, and nuisance.

In addition to actual damages, plaintiffs can win punitive damages with proof of intent or wanton disregard for the victim’s rights. Negligence and personal injury actions may also be available, and temporary restraining orders and injunctions may be obtained to prevent further violence.

Elements of Proof
An act of violence against a person of another race, religion, ethnicity, or sexual orientation is not by itself a hate crime. As in other anti-discrimination cases, the challenge is providing sufficient evidence of discriminatory intent: How does one prove that a perpetrator committed a violent act because of bias?

Although criminal statutes require proof of discriminatory intent beyond a reasonable doubt, most civil rights laws require only a preponderance of the evidence to show this. A criminal conviction for the same incident is, of course, the most useful evidence in a civil case. Unfortunately, because of the higher standard of proof required in criminal cases, a defendant may not have been prosecuted.

A civil rights lawsuit may be the only forum in which bias motivation is raised as an issue. Attorneys should be prepared to introduce a wide variety of evidence to prove discriminatory intent. This will require counsel to investigate the facts, conduct discovery, and prepare lay and expert witnesses to testify.

To prove bias motivation for a violent act, counsel might rely on establishing the following:

- *Presumptively discriminatory acts.* Certain actions can often be presumed to be motivated by bias. For example, painting a swastika on the wall of a Jewish family’s home carries an unambiguous — and historically rooted — message of terrorism from which a jury can infer that a defendant deliberately intended to harass the family and not merely to commit a trespass.

- *Admissions.* Perpetrators of hate crimes occasionally make statements in which they admit — or even boast about — a bias motivation for the crime. For example, prior threats made against the victim can be used as admissions. Perpetrators have even made statements to police officers — although rarely — in which they admit that they committed the act because of bias.

- *Contemporaneous statements.* A defendant’s statements accompanying a violent act are often the most useful — and sometimes the only — evidence that can be used to infer discriminatory intent. Epithets aimed at the victim can be used for this purpose and may even form the basis for an independent cause of action like a claim for intentional infliction of emotional distress.

- *Statements to third parties.* A defendant’s statements made before and after the incident may be useful in proving intent. Although relevancy and hearsay issues may arise, counsel should try to introduce statements made to third parties that may indicate a defendant’s biases and predilections for committing specific violent acts.

- *Memberships and associations.* Membership in a hate group can also be used as evidence of discriminatory intent. Although most perpetrators of hate crimes do not belong to organized groups such as the Ku Klux Klan or the White Aryan Resistance, they may have affiliations with other groups from which a finder of fact could infer intent. Even a defendant’s appearance may provide significant evidence. For example, members of racist “skinhead” gangs often shave their scalps and dress in particular ways.

It is doubtful, however, that membership or association alone would constitute a sufficient basis for charging bias motivation. Most likely, a plaintiff would be required to introduce evidence that the specific act giving rise to the complaint was hate motivated.

- *Expert testimony.* Expert witnesses can play several roles in these cases. One is demonstrating the special harm that victims experience from bias-motivated violence. For example, an expert on history can be used to demonstrate the seriousness of a cross-burning and the psychological injury an African American can suffer by being threatened by a burning cross. An expert can also be used to prove a defendant’s intent. Psychological or sociological evidence can be introduced to show a defendant’s propensities for violence and bias.

Because little case law has been developed regarding this kind of litigation, a number of legal questions remain unanswered. For example, it is not entirely clear whether bias must be the sole motive for a defendant’s act, the primary motive, or only one of several. The Civil Rights Act of 1991 has made it clear that race need not be the defendant’s only motive for there to be employment discrimination liability under Title VII. Because state statutes are worded in a variety of ways, mixed-motive cases will have to be
resolved individually. As mentioned above, constitutional issues are also a consideration in litigation involving bias-motivated violence. Last year, the U.S. Supreme Court ruled that government cannot criminalize expressive conduct because of the content of the expression. But the court has also made clear that violent conduct falls outside the protection of the First Amendment.

State courts are divided over the constitutionality of hate crime statutes. Some have upheld laws that enhance criminal penalties or create new crimes for bias-motivated violence. Others have struck down hate crime laws as unconstitutional regulations of motive and thought.

Civil litigation statutes have not yet been formally challenged on constitutional grounds. However, to the extent that a defendant’s statements, memberships in organizations, and prior associations are used to prove liability, First Amendment challenges may arise.

Bigotry remains one of society’s most intractable problems, and the laws and their enforcement need to be strengthened to counter it. But laws can only go so far.

Education and improved human relations are just as important as strong hate crime laws in helping stem the tide of bias-motivated violence. Lawyers can play a part in the educational process by using the legal system to address hate crimes. Lawyers cannot eliminate hatred or violence, but they can play an active role in minimizing the effects of bigotry and ensuring that victims’ civil rights are vindicated.

5. See *e.g.*, U.S. Comm’n on Civil Rights, *Recent Activities Against Citizens and Residents of Asian Descent* (1986).
17. See Lee, 935 F.2d 952, 956 & n.5.

Angelo N. Ancheta is a staff attorney at the Asian Pacific American Legal Center of Southern California in Los Angeles.
Our cardinal rule of political and artistic discourse — the First Amendment — sets no limits on stupidity or meanness and few limits on abusiveness, trusting the free market of ideas to regulate itself. It does so imperfectly, and persons of my ethnicity — among many others — have been severely harmed by the failures of the invisible hand that theoretically keeps civilized people from dehumanizing others.

The remedy is not governmental coercion even if the First Amendment would permit it, at least not if we cherish the values the First Amendment is meant to protect or even see the utility in the kind of society the First Amendment tends to create. If we choose to define free speech in terms of political correctness instead of defining political correctness in terms of free speech, we will create a different, intellectually stagnant, society. Justice Douglas, dissenting in Beauharnais, described it this way:

The free trade in ideas which the Framers of the Constitution visualized disappears. In its place there is substituted a new orthodoxy — an orthodoxy that changes with the whims of the age or the day, an orthodoxy which the majority by solemn judgment proclaims to be essential to the safety, welfare, security, morality, or health of society. Free speech in the constitutional sense disappears. Limits are drawn — limits dictated by expediency, political opinion, prejudices, or some other desideratum of legislative action.3

He might have added that what Prof. Martha Minow has called "the door to the land of change"4 is closed, because the law takes away the words with which to imagine change.

There will always be an orthodoxy, a politically correct universe of public discourse. The purpose of self-imposed political correctness is to change that orthodoxy. As Minow wrote: "Talking differently, by itself, will not make things different. But unless we talk differently, we may never make things different."5

One of the greater ironies in the P.C. debate is that many who support the government's power to coerce correct speech see themselves as advocates of change. In the service of progressive goals, they would diminish the greatest engine of change known to politics and, in the end, bring progress to a dead halt.

Official coercion accomplishes nothing constructive in a society that struggles daily with what political correctness means and what it ought to mean. But there are legitimate means of fighting this battle that do not threaten the First Amendment. When my teenager begins to tell me about some "fine chick," I might interrupt to express surprise that he could be sexually attracted to poultry. I might refuse to sing "Hail to the Redskins!" while understanding that if I criticize those who do I will surely be labeled a P.C. stick-in-the-mud. Public discourse is in large part the aggregate of our private discourse, and is not subject to governmental control.

Our remedy for dehumanizing speech is to demand civilized discourse from ourselves so that we may demand it from others, to recognize the humanity of our opponents as a means of asserting our own. In other words, we should practice political correctness as it was understood before it was appropriated by rulemakers, liberated from oppressive verbal customs and unconstitutional policies alike. To forswear some word-weapons is not to abandon the battle, but to understand the terrain upon which the battle is fought: a nation of many voices, but one people.

1. 343 U.S. 250.
2. 343 U.S. at 286-7.
3. 343 U.S. at 285.
5. Id. at 1668.

Judge Steve Russell presides over Travis County Court at Law No. Two. He earned his masters in judicial studies from the University of Nevada this year and is a director of the Texas Indian Bar Association.
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...continued from page 1143 than at any other time in the 20th century, even rivaling the immigration wave of 1901 to 1910. The majority of the more than one million newcomers entering the U.S. legally every year are Asian and Hispanic; not surprisingly, these two minority groups are the fastest growing victim class of hate-motivated intimidation and assault.

More than half of all hate crimes are assaults typically committed by a group of young people looking for some excitement — who their victims are does not seem to be important as long as they are “different” and vulnerable. These thrill hate crimes, Levin said, are often the result of boredom, alcohol, and peer pressure.

He noted that most other hate crimes are “defensive” in nature and committed in reaction to a threatening event such as “Gay Pride Week.” The perpetrator sees himself as a victim protecting his culture. The rarest and most dangerous form of hate crime, Levin said, are “mission” hate crimes. These usually involve a homicide or mass killing where an individual or group try to rid the world of a perceived evil, such as the mass homicide at a Stockton elementary school in California. The perpetrator was looking specifically for Southeast Asians — and killed five children.

Though hate crimes have historically been cyclical, often escalating in times of economic crises, Levin believes this time is different.

“We are in a post-industrialist society, not just a normal business cycle,” he said. “It is not a matter of waiting it out for a year or two.”

Rice University historian Harold Hyman believes that the recent hate crime legislation passed in Texas will solve some problems, though he, like many others, foresees difficulty ahead.

“Just what is a hate crime?” he asked. “If you define it in a modern sense, can rape or abortion be considered a hate crime? We have a grimy historical record on defining such things. In fact, the whole question of civil rights was not dumped on the courts until the 20th century because federal civil rights were not considered to be jurisdictional. It wasn’t even taught in law schools.”

The law, he said, follows public awareness of an evil. For example, anti-lynching laws were not passed until the advent of photography. Heightened sensitivity to a public evil results in documentable evidence, laws, and ultimately, lawsuits.

“Sensitivity to distress has always been uneven and sloppy so the solution is uneven and sloppy,” he added. “But I’m delighted it is being considered at all.”

Lawyers can play a critical role in combating, and even deterring, hate crimes. Prosecutors can make an effort to identify crimes as hate crimes; these crimes are often especially vicious, said Dees, and usually include stomping and stabbing. Civil lawyers can file personal injury lawsuits on behalf of injured victims which can effectively punish — and deter — a perpetrator on a simple misdemeanor assault. Judges, he noted, can familiarize themselves with what constitutes a hate crime and sentence defendants accordingly, staying keenly aware that punishment sets examples for others. And finally, as members of the bar and community who help shape public opinion, lawyers can speak out against hate crimes.

Dees has successfully sued both the Klan and WAR in order to bankrupt the groups, expose their activities to public opinion, and garner restitution for families of slain victims. After an Oregon court ordered WAR to pay $12.5 million in damages to a victim’s family, leader Tom Metzger held a press conference concluding, “The movement will not be stopped in the puny town of Portland. We’re too deep. We’re in your colleges, we’re in your armies, we’re in your police forces. Stopping Tom Metzger is not going to change what’s going to happen in this country.”

Carolyn Thomas, 29, wife of the slain Donald Thomas, is bringing a civil suit against the three boys responsible for her husband’s murder, but she is not stopping there. She is also suing their parents, Chevron, the store clerk who sold alcohol to the
minors, and the beverage supplier. While many may charge that suing everyone possible is partly to blame for today's clogged judicial system, she believes that liquor was a contributing factor.

"I hold them all responsible, from the parents to the kids," she said quietly. "At their age [the kids] should know right from wrong. And their parents knew they had been drinking."

Thomas’ attorney, Bobbie Edmonds, said Thomas was even more devastated upon learning that the murder was racially motivated. "It was gruesome and malicious," she said. "He was selected simply because of his skin color. People are taught to hate and new laws won’t change that, but stiffer penalties are a way to discourage individuals from committing these kinds of crimes."

Christopher Brosky’s second trial began Nov. 1 in Galveston, this time for conspiracy to commit murder and organized crime. The defense argued that it was double jeopardy and since the D.A.’s office did not try the case in March with the murder charge it waived the right to bring it back using the same evidence. The court of appeals ruled that it was not double jeopardy; the conspiracy and organized crime charges were filed and pending at the same time as the murder charge. Brosky has been kept hidden under an assumed name while in jail for protection.

Brosky’s lawyer, who represented a black family in a cross-burning incident a couple of years ago, believes that the most Brosky is guilty of is idiocy.

“He should not have been found guilty because he wasn’t,” Ward Casey declared. “He didn’t pull the trigger; he was riding in the backseat. What skinheads stand for — they’re idiots. They are spoiled little white boys bored with having everything their own way so they have to make things ugly. He tells me and everyone else he feels bad, but who knows?”

Thomas has little faith that Brosky and his former pals are remorseful over killing her husband.

“[I] don’t think they are sorry for what they did,” she said. “I think they are just going along with the program to get out as fast as they can.”

Is a Christopher Brosky salvageable? According to experts, many of the seemingly hardened youth who commit hate crimes can be rehabilitated through creative sentencing. Levin says that while probation sends the wrong message and prison seals their beliefs permanently, he has seen the combination of education, victim restitution, and community service turn a lot of youngsters around. The trick is getting them to recognize their victims as human beings like themselves with the same hopes, the same frailties.

The key, of course, is teaching tolerance at an early age at home and at school. The same principles responsible for the rise in street gangs holds true for the roving bands of youth committing hate crimes: the traditional institutions of family, school, and religion no longer have moral authority, said Levin. Parents of these kids may not actively be preaching hate — in fact, they may not be teaching anything at all and that is when a child’s peer group becomes the collective conscience. According to Levin, often all it takes for a hate crime to be committed is one sadist and three kids afraid of rejection.

The Southern Poverty Law Center has developed educational materials for teachers to promote racial and ethnic harmony. The videos, text, and teachers’ guide are distributed free to any requesting class. The center also publishes a magazine twice a year featuring unique ways to teach tolerance.

There is hope for the future. The Anti-Defamation League has noted sharp decreases in Klan membership when its activity has been actively scrutinized by law enforcement. Perhaps, as experts imply, the combination of education, a crack down on hate crimes, and formation of multicultural coalitions to protest such crimes will serve in curtailing them. Much remains to be seen.

“If we can keep talking about it,” suggested Thomas, “keep it alive, then we can help someone. Then we are on the road to a great start.”
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DISCIPLINARY ACTIONS

RESIGNATIONS

On Aug. 17, the Texas Supreme Court accepted the resignation of James Edward Swicegood, 44, of Denton. The court found Swicegood failed to promptly deliver $525 in funds to the entitled recipient; knowingly made a false statement of material fact to the District 14-B Grievance Committee; failed to respond to two State Bar-initiated complaints after receiving proper notice; and engaged in conduct involving dishonesty, deceit, and misrepresentation when he failed to disclose the worthiness of a personal check at the time of utterance and testified that he, in fact, had disclosed the worthiness. His actions violated DRs 1.14(b), 8.04(a)(3), 3.03(a)(1), and 8.01(b).

On Aug. 17, the Texas Supreme Court accepted the resignation in lieu of discipline of former San Antonio attorney Charles T. Conaway, 56. In November 1992, Conaway was convicted of three counts of income tax evasion and structuring currency transactions to evade reporting requirements. He was sentenced to a 14-month prison term on each count, followed by a two-year supervised release, which will be followed by two years of probation.

The Texas Supreme Court accepted the resignation in lieu of discipline of Clarence Ed Keys, 67, of Odessa, on Sept. 9. The court found Keys neglected a client matter and failed to return a file demanded by a client, deducted attorneys’ fees from settlement proceeds of a personal injury case purportedly for representation in criminal matters for which the attorney had not been hired, and failed to follow the directives of a criminal client about whether to accept a plea bargain or testify. He intentionally neglected a legal matter which was dismissed for want of prosecution and thereafter failed to apprise the client of the dismissal, and prepared a deed which contained a defective property description, thereafter assuring the client that the mistake would be rectified. He accepted funds to be used in recording the necessary documents, but failed to do so or to return the money paid for expenses. His conduct violated DRs 1-102 (A)(4), (5), and (6), 2-110(A)(2), 6-101(A)(3), 7-101(A)(1) and (2), 9-102(B)(4), 2-106(A), 1.02(a)(3), 1.03(a) and (b), 1.01(b)(1), 8.04(a)(3), and 1.14(b).

On July 15, Dallas attorney Robert M. Burns, 41, accepted a three-month suspension fully probated for two years effective Aug. 31 under certain stringent conditions. The District 6-A Grievance Committee found that a client retained Burns to defend him in a case in county court, to file a countersuit, to represent him in a case in a personal injury lawsuit, and to obtain a temporary restraining order against a certain individual. Thereafter, Burns misrepresented to the client that he had obtained the temporary restraining order on behalf of the client, and failed to notify the client of two oral depositions and of a hear-

SUSPENSIONS

On May 13, Fort Worth attorney Mary Lou Enox, 47, accepted a probated six-month suspension. The District 7-A Grievance Committee found she allowed a nonlawyer to provide legal advice thereby failing to afford clients with competent and diligent representation. Enox also did not properly supervise nonlawyer assistants, allowed a nonlawyer to perform acts that constitute the practice of law; used letterhead that was misleading as to the identity of firm members; engaged in acts of barratry; and shared fees with a nonlawyer. She agreed to pay $500 in attorneys’ fees to the State Bar.

On July 20, Rowena Jenkins Daniels, 33, of Dallas accepted a one year probated suspension effective Oct. 1. In August 1992, the District 6-A Grievance Committee found Daniels and the complainant, a representative of an insurance company, reached a settlement agreement in a personal injury matter. Thereafter, Daniels engaged in conduct involving misrepresentation when she agreed, as a condition to settlement, to have her client execute a release and then failed to have her client do so, in violation of DRs 4.01(a) and 8.04(a)(3).

On July 16, Dallas attorney W. S. Carpenter, Jr., 64, accepted a three-month suspension, fully probated for one year, effective July 15. An evidentiary panel of the District 6-A Grievance Committee found that Carpenter was employed to represent the complainant’s son in two felony cases. Thereafter, Carpenter did not adequately investigate the cases and failed to keep the client reasonably informed about their status in violation of DRs 1.01(b)(1) and 1.03(a).

On Aug. 12, Dallas attorney James Richard Callahan, 42, accepted a six-month suspension, probated for five years. Probation terms include reporting to an attorney monitor, paying restitution, and returning certain client files. The District 6-A Grievance Committee found Callahan, on several different matters, failed to properly communicate with his clients and neglected his clients’ cases. His conduct violated DRs 1.01(b)(1) and (2), 1.03(a), 1.15(d), 8.01(b), and 8.04(a)(2) and (3).

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On Aug. 17, the Texas Supreme Court accepted the resignation in lieu of discipline of former San Antonio attorney Charles T. Conaway, 56. In November 1992, Conaway was convicted of three counts of income tax evasion and structuring currency transactions to evade reporting requirements. He was sentenced to a 14-month prison term on each count, followed by a two-year supervised release, which will be followed by two years of probation.

The Texas Supreme Court accepted the resignation in lieu of discipline of Clarence Ed Keys, 67, of Odessa, on Sept. 9. The court found Keys neglected a client matter and failed to return a file demanded by a client, deducted attorneys’ fees from settlement proceeds of a personal injury case purportedly for representation in criminal matters for which the attorney had not been hired, and failed to follow the directives of a criminal client about whether to accept a plea bargain or testify. He intentionally neglected a legal matter which was dismissed for want of prosecution and thereafter failed to apprise the client of the dismissal, and prepared a deed which contained a defective property description, thereafter assuring the client that the mistake would be rectified. He accepted funds to be used in recording the necessary documents, but failed to do so or to return the money paid for expenses. His conduct violated DRs 1-102 (A)(4), (5), and (6), 2-110(A)(2), 6-101(A)(3), 7-101(A)(1) and (2), 9-102(B)(4), 2-106(A), 1.02(a)(3), 1.03(a) and (b), 1.01(b)(1), 8.04(a)(3), and 1.14(b).

On May 13, Fort Worth attorney Mary Lou Enox, 47, accepted a probated six-month suspension. The District 7-A Grievance Committee found she allowed a nonlawyer to provide legal advice thereby failing to afford clients with competent and diligent representation. Enox also did not properly supervise nonlawyer assistants, allowed a nonlawyer to perform acts that constitute the practice of law; used letterhead that was misleading as to the identity of firm members; engaged in acts of barratry; and shared fees with a nonlawyer. She agreed to pay $500 in attorneys’ fees to the State Bar.

On July 20, Rowena Jenkins Daniels, 33, of Dallas accepted a one year probated suspension effective Oct. 1. In August 1992, the District 6-A Grievance Committee found Daniels and the complainant, a representative of an insurance company, reached a settlement agreement in a personal injury matter. Thereafter, Daniels engaged in conduct involving misrepresentation when she agreed, as a condition to settlement, to have her client execute a release and then failed to have her client do so, in violation of DRs 4.01(a) and 8.04(a)(3).

On July 16, Dallas attorney W. S. Carpenter, Jr., 64, accepted a three-month suspension, fully probated for one year, effective July 15. An evidentiary panel of the District 6-A Grievance Committee found that Carpenter was employed to represent the complainant’s son in two felony cases. Thereafter, Carpenter did not adequately investigate the cases and failed to keep the client reasonably informed about their status in violation of DRs 1.01(b)(1) and 1.03(a).

On Aug. 12, Dallas attorney James Richard Callahan, 42, accepted a six-month suspension, probated for five years. Probation terms include reporting to an attorney monitor, paying restitution, and returning certain client files. The District 6-A Grievance Committee found Callahan, on several different matters, failed to properly communicate with his clients and neglected his clients’ cases. His conduct violated DRs 1.01(b)(1) and (2), 1.03(a), 1.15(d), 8.01(b), and 8.04(a)(2) and (3).

On July 15, Dallas attorney Robert M. Burns, 41, accepted a three-month suspension fully probated for two years effective Aug. 31 under certain stringent conditions. The District 6-A Grievance Committee found that a client retained Burns to defend him in a case in county court, to file a countersuit, to represent him in a case in a personal injury lawsuit, and to obtain a temporary restraining order against a certain individual. Thereafter, Burns misrepresented to the client that he had obtained the temporary restraining order on behalf of the client, and failed to notify the client of two oral depositions and of a hear-
Butler Britt, 42, accepted a three-year suspending account in violation of DR 1.14(a).

In a separate matter, Britt accepted a public reprimand. The District 6-A Grievance Committee found that in May 1990, Bruder was employed to represent the complainant in a divorce matter. Thereafter, on July 7, 1992, the client delivered a cashier's check in the amount of $5,000 made payable to the complainant's wife and her attorney to Bruder. Bruder endorsed the check with the signatures of the complainant's wife and attorney and deposited it into his own operating account. His conduct violated DRs 1.14(a) and 8.04(a), and (b).

On July 9, the Texas Supreme Court Board of Disciplinary Appeals suspended Dallas attorney Donald Wayne Jenkins, 35, until Oct. 20, 1990. On Oct. 21, 1992. Jenkins pled nolo contendere to the charge of unlawful possession of cocaine in Dallas County and was sentenced to four years probation on deferred adjudication.

On May 5, the 200th District Court of Travis County suspended the law license of Austin attorney Robert A. Caine, 41, effective June 1 through Sept. 28, 1994. The first 120 days were actively served with the remaining 12 months probated subject to specific terms and conditions. The court further ordered Caine to pay $1,125 in restitution to a former client and to continue in the course of chemical dependency treatment, including mandatory attendance at meetings of a 12-step program at least four times a week. The court found Caine directed that verification be notarized and subsequently filed with the Travis County District Clerk's office.

On Aug. 24, Waco attorney David Butler Britt, 42, accepted a three-year suspenion, fully probated. The District 8-B Grievance Committee found the attorney neglected two clients in his representation. The committee found he failed to keep the clients informed; failed to comply with requests for information; failed to keep complete records of client funds coming into his possession; and failed to deliver the funds or keep separate any disputed amount until resolution. Britt failed to seek protective orders when needed; failed to withdraw when discharged; and failed to surrender papers and property to which clients were entitled. His conduct violated DRs 1.01(b)(1); 1.02(g); 1.03(a) and (b); 1.14(a), (b), and (c); 1.15(a)(3); and 1.15(d).

On Aug. 10, Arlington attorney Dennis E. Guffey, 43, accepted a partially probated suspension for six months beginning Aug. 1, with the final five months probated. The District 7-A evidentiary panel found that Guffey neglected to pursue the real estate issue he was hired by his client to handle.

He also failed to keep his client informed of developments in the matter, failed to return documents to the client, and failed to timely respond to notices sent by the State Bar regarding the grievance. His conduct violated DRs 1.01(b)(1), 1.03(a), 1.14(a), and 8.01(b).

PUBLIC REPRIMANDS

On July 19, Shamrock attorney James Calvin Fling, 50, accepted a public reprimand. The evidentiary panel of the District 13-A Grievance Committee found Fling directed his paralegal to draft a will in which Fling was a residuary beneficiary of the client. The panel concluded that though the violations were unintentional, he violated DRs 1.08(b), and 5.03(a) and (b).

On June 16, New Braunfels attorney Norman C. Dean, 41, accepted a public reprimand and agreed to pay $500 in attorneys' fees to the State Bar for violating DR 1.14(b). The District 15-C Grievance Committee found Dean was hired in May 1992 to represent a client in a personal injury case. In June and October of that same year, Dean received two PIP checks for his client in the amount of $2,500 and $2,198.15 respectively. Dean failed to promptly notify his client of the receipt of these funds and did not promptly disburse that portion of the funds to which his client was entitled.

On April 30, Dallas attorney Stephen R. Burnett, 40, accepted a public reprimand. The District 6-A Grievance Committee found the complainant retained Burnett to represent her in a property damage claim on an insurance company. He filed suit against the insurance company in July 1990. In April 1991, in an effort to avoid a summary judgment, he filed a motion for non-suit without his client's knowledge or consent. The complaint was not notified of the dismissal until August 1991. Burnett's conduct violated DRs 1.02(a)(1) and 1.03(a), and (b).

On July 9, Fort Worth attorney Weldon W. Brady, 54, accepted a public reprimand. The District 7-A Grievance Committee found Weldon W. Brady, 54, accepted a public reprimand. The District 7-A Grievance Committee
PRIVATE REPRIMANDS

On May 10, a Carrizo Springs attorney accepted a private reprimand from the District 12-C Grievance Committee. The committee found the attorney did not return his client's numerous telephone calls and failed to appear at a hearing where default judgment was entered against his client in violation of DR 1.03(a).

A Houston attorney accepted a private reprimand on May 26. The District 4-C Grievance Committee found the attorney was hired to represent a client in an auto injury case. The insurance carrier denied the complainant's claim due to the respondent's allowing the statute of limitations to run. The respondent failed to adequately communicate with the complainant by having no contact with her for approximately two and a half years, at which time she learned that the statute had run. Further, the respondent failed to adequately protect the complainant's interest by ensuring that she had reasonable notice of the respondent's alleged withdrawal, and by failing to return her file by certified mail rather than regular. This conduct violated DRs 1.01(b)(1), 1.03(a), and 1.15(d).

A Houston attorney accepted a private reprimand on May 1. The District 4-A Grievance Committee found the attorney knowingly failed to timely furnish information to the grievance committee in violation of DR 8.01(b). The attorney was ordered to pay $100 in attorneys' fees to the State Bar.

A San Antonio attorney accepted a private reprimand on March 29. The District 10-B Grievance Committee found the attorney failed to place a disclaimer of certification in targeted mail advertising sent to auto accident victims in violation of DR 7.01(b).

A Houston attorney accepted a private reprimand on May 11. The District 4-B Grievance Committee found the attorney was retained to represent the complainant in a child custody case. The respondent failed to timely respond to a request for admissions and failed to timely respond to a lawful request for information from the grievance committee, violating DRs 1.01(b)(1) and 8.01(b).

On June 1, a Houston attorney accepted a private reprimand for violation of DRs 7.01(a)(1), (2), (3); 7.01(c)(1) and (3); and 7.01(d). The District 11-A Grievance Committee found the attorney placed a yellow pages ad in the 1992-93 Corpus Christi phone book but the language in the advertisement created an unjustified expectation, failed to name the attorney responsible for the performance of the legal services, and failed to include the fee amount a client may be obligated to pay. In addition, the ad failed to list the proper disclaimer as specifically listed under the Texas Disciplinary Rules of Professional Conduct. The attorney was ordered to pay attorneys' fees in the amount of $250.

An Arlington attorney accepted a private reprimand on March 23. The District 7-A Grievance Committee found the attorney neglected a legal matter entrusted to him, i.e., inattentiveness resulting in dismissal of the case.

On March 8, an Edinburg attorney accepted a private reprimand from the District 12-B Grievance Committee and agreed to pay $255 in attorneys' fees and costs to the State Bar. The committee found he violated DRs 1.01(b)(1) and (2), and DR 1.03(a). The respondent was hired in 1983 to represent the complainant in a wrongful termination suit but did not file the suit within the one year statute of limitations due to the respondent's mistaken belief that this type of claim was under a two-year statute. In November 1988, the complainant learned that no suit had been filed. The respondent admitted he violated the disciplinary rules and made full restitution to the complainant, who later withdrew her complaint, all of which have been considered as mitigating factors.

On April 16, a Houston attorney accepted a private reprimand. The District 4-E Grievance Committee found the attorney failed to furnish information to the committee after being requested to do so in violation of DR 8.01(b). The attorney was ordered to pay $400 to the State Bar for attorneys' fees.

A San Antonio attorney accepted a private reprimand on March 10. The District 10-C Grievance Committee found the attorney was hired in February 1990 to file suit against a car dealership for the rescission of a purchase agreement. The attorney failed to take any actions to pursue the case for a period of more than two years in violation of DR 1.01(b)(1).

An El Paso attorney accepted a private reprimand on April 26. The District 17-A Grievance Committee found the attorney was employed to assist a client with an Internal Revenue Service matter. In an effort to protect money the client received from a sale of a house, the attorney advised the client to secure the funds by giving them as a loan. The attorney drafted a promissory note and signed it as a trustee and guarantor of the loan. The client was not given the opportunity to consult with other counsel prior to entering into this business transaction with the attorney. The attorney's conduct violated DRs 1.08(a)1 and 2.

On May 18, a Houston attorney accepted a private reprimand. The District 4-C Grievance Committee found the attorney was hired to represent the complainant in a divorce proceeding. The respondent filed an answer on behalf of the complainant but otherwise failed to represent the complainant's interest. The respondent failed to communicate hearing dates and failed to appear for court hearings, thus resulting in a default judgment being entered against the complainant. Further, the respondent failed to return calls and communicate with the complainant regarding the status of the case. The complainant's conduct violated DRs 1.01(b)(1), 1.02(a)(1) and 1.03(a)(b). The respondent was ordered to pay $50 in restitution to the complainant.

On April 1, a Houston attorney accepted a private reprimand. The District 4-D Grievance Committee found the attorney neglected a legal matter entrusted to him and failed to carry out obligations owed to the client; failed to keep the client informed of the case status; and failed to seek the lawful objectives of his client. The attorney was ordered to pay $200 in attorneys' fees to the State Bar.

On March 20, a Houston attorney accepted a private reprimand. The District 4-E Grievance Committee found the attorney knowingly failed to timely respond to the grievance committee in violation of 8.01(b).

On April 27, a Houston attorney accepted a private reprimand. The District 4-C Grievance Committee found the respondent was retained to handle a DTPA cause of action. The respondent and complainant
signed an employment contract for a contingency fee basis. At the time of the settlement, the respondent changed his fee to an hourly basis in violation of DR 1.04(a)(8).

On April 2, a Houston attorney accepted a private reprimand. The District 4-A Grievance Committee found the respondent was hired to represent the complainant in a personal injury case. Despite repeated attempts made by the complainant, the attorney did not return the complainant’s phone calls. This conduct violated DR 1.05(a).

On Feb. 10, a Houston attorney accepted a private reprimand. The District 4-B Grievance Committee found the respondent advertised in the Southwestern Bell Yellow Pages and failed to state that he is not board certified in those areas of law advertised, violating DR 7.01(c)(3).

On April 28, a Corpus Christi attorney accepted a private reprimand. The District 11-A Grievance Committee found the attorney was hired to represent his client in an estate matter but failed to do any substantive work on the case. It was not until nine months later that the attorney submitted a letter of representation to opposing counsel with a copy to the court clerk advising them of his appearance as the attorney of record. His conduct violated DR 1.01(b)(1).

On May 7, a Houston attorney accepted a private reprimand. The District 4-D Grievance Committee found the attorney knowingly failed to timely furnish information to the grievance committee after being requested to do so. The attorney was ordered to pay $200 in attorneys’ fees to the State Bar.

On Sept. 23, 1992, a Houston attorney accepted a private reprimand. The District 4-E Grievance Committee found the attorney routinely commingled attorney fees and client or third party funds by keeping the funds together in an IOLTA account in violation of DRs 9-102 and 1.14(a).

On March 13, a Houston attorney accepted a private reprimand. The District 3-B Grievance Committee found the attorney failed to answer a request for admissions prompted to his client. Further, the attorney withdrew from representation at a time that was detrimental to the client’s interest. His conduct violated DRs 1.01(b)(1) and 1.15(b)(1).

A Tyler attorney accepted a private reprimand on May 12. The District 2-A Grievance Committee found the attorney drafted and had executed a will and separate trust agreement appointing himself as trustee, and his secretary and wife as contingent trustees. The complainant had specifically requested certain charities be named as beneficiaries in her will and trust agreement and specifically requested that her son be provided for in the will. The respondent drew a will that through lack of communication did not name the specific charities and drew a trust agreement that failed to specifically provide for the complainant’s son. Neither the trust, the identity of the trustee, or the manner of payment of fees to the trustees was explained to the complainant. The attorney’s conduct violated DRs 1.02(a)(1) and 1.03(b).

On March 25, a Houston attorney accepted a private reprimand. The District 4-G Grievance Committee found the attorney failed to file an answer to an original petition for divorce filed against the complainant after being retained to do so in violation of DR 1.01(b)(1). The attorney was ordered to pay $200 in attorneys’ fees to the State Bar.

On May 14, a Houston attorney accepted a private reprimand. The District 4-J Grievance Committee found the attorney knowingly failed to timely respond to the grievance committee in violation of DR 8.01(b) and was ordered to pay $250 in attorneys’ fees to the State Bar.

On Dec. 22, 1992, a Houston attorney accepted a private reprimand. The District 4-D Grievance Committee found the attorney failed to take appropriate steps to protect the complainant’s interest while defending the complainant against a motion for summary judgment. Further, the respondent failed to notify one of the complainant’s creditors or a representative of the pendancy of the complainant’s bankruptcy, resulting in a dispute over whether the debt was ever discharged.

On March 3, a Houston attorney accepted a private reprimand. The District 4-A Grievance Committee found the attorney failed to respond to a lawful request for information from a disciplinary authority.

On March 22, a Houston attorney accepted a private reprimand for violation of DRs 1.01(a) and 1.01(b)(1) and (2). The District 4-E Grievance Committee found the attorney was retained for representation in a damage suit. Before the trial, the attorney was called out of state and failed to provide the complainant with substitute counsel. Further, after learning of the judgment taken against the complainant, the attorney failed to timely file a motion for new trial in that the attorney was unaware of the time constraints imposed in which to file the motion. The attorney was ordered to pay $200 in attorneys’ fees to the State Bar.

An Arlington attorney accepted a private reprimand on April 27. The District 7-A Grievance Committee found the attorney failed to explain the issue of a name change to the extent reasonably necessary to permit the client to make an informed decision in violation of DR 1.03(b).

On March 5, a Houston attorney accepted a private reprimand. The District 4-A Grievance Committee found the attorney was hired to file a default judgment which the attorney failed to file. Further, the attorney failed to follow up on a motion to retain which resulted in the complainant’s case being dismissed for want of prosecution. This conduct violated DR 1.01(b)(1).

On March 31, a Houston attorney accepted a private reprimand. The District 4-E Grievance Committee found the attorney violated DR 1.14(b) by failing to promptly notify the complainant, a third person with an interest in the funds, of his receipt of funds.

On April 1, a Houston attorney accepted a private reprimand. The District 4-B Grievance Committee found the attorney was retained to defend the complainant in a divorce action. The respondent failed to file an answer to an original petition for divorce, resulting in the rendition of a default judgment. The attorney was ordered to pay restitution to the complainant of $550.
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Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice
By Gerald P. Lopez

Author, Gerald P. Lopez, the Kenneth and Harle Montgomery Professor of Law at Stanford Law School, has written considerably on the topic of public interest law. He presents views derived from his background and experience: growing up in East Los Angeles, law school, law practice, and teaching. His ideas have been well received by the legal community, as can be noted by the many law reviews that have cited his previous works on this subject.

In his new work, Lopez offers a fresh perspective of being a public interest lawyer. The essence of this book describes how traditional "lawyering," or the "regnant" approach, has repeatedly failed to effectively solve the problems of the poor. In the regnant approach, the lawyer portrays him- or herself as the expert and largely dictates the strategies and solutions to the problem. In other words, the client's role is diminished.

Lopez argues that regnant lawyering, though many times brilliant with thorough representation achieved, has often been ineffective and even counterproductive. Alternatively, Lopez offers a "rebellious" approach. Here the lawyer and others, including the client, work collectively to provide the client with a full range of services and skills. To lawyer rebelliously, says Lopez, the lawyer must work with subordinate groups or groups that have been traditionally legally underrepresented. He or she must be able to effectively work with lay and professional individuals and groups and be able to approach situations from legal as well as nonlegal perspectives. At the heart of "rebellious lawyering" is the formation of a lawyer-client relationship that is collaborative in nature, where both are listening and working together as well as with others toward the same goal. These characteristics are illustrated throughout the book by the author's lengthy lawyer-client dialogues and file memoranda.

Lopez concedes that he is not likely to change the world, but notes that "...maybe this book will at least provide a new appreciation for what might be alternatives in approaching activist work." Written like a true activist!

The book contains a lengthy 43-page bibliography. It is highly recommended to law students, lawyers, and nonlawyers alike that are, have been, or want to be involved in activist endeavors.

Arturo L. Torres
Spokane, WA

Available For Review

If you are interested in reviewing one of the following titles for the Texas Bar Journal, please contact either Kristin A. Cheney or Mary Ann Nelson, "Book Appraisals" Editors, at The University of Texas, Joseph D. Jamail Center for Legal Research, Tarlton Law Library, 727 East 26th Street, Austin 78705, 512/471-7726.

Book reviews are generally written by Texas attorneys.


When A Child Kills: Abused Children Who Killed Their Parents
By Paul A. Mones

These "true story" accounts of children who kill their parents points out what is becoming more evident everyday to those in the child abuse field — that our judicial and administrative systems are not responding appropriately to children as victims. Throughout the book, Paul Mones makes his case that the tragedies could have been avoided if relatives, friends, teachers, neighbors, or even child protective specialists had intervened to help an abused child. Once a child commits homicide and enters the judicial system, he or she is usually not believed, is held to the same standard as a rational, nonabused adult, and usually does not receive mental health treatment.

Mones divides the stories into categories based on gender of the child and of the parent; i.e., boys who kill fathers, girls who kill fathers, boys who kill mothers, and girls who kill mothers. Each category contains details of one or two children who killed or attempted to kill one or both parents. For the most part, the stories are true but some facts have been changed and some composites have been made to protect identities. Mones was usually the consultant in these cases, having been called in by the child's defense attorney. He claims to be the only attorney in the country specializing in the defense of abused children who kill their parents.

When A Child Kills is not a technical legal manual, nor does it provide research material, but it does offer defense attorneys some suggestions on investigation and understanding of this type of case. Mones emphasizes that the attorney must convey to the jury the desperation and helplessness that the child felt, and to do
tack these children have with the judicial involved. Mones notes that the first con-
or their confidant does not want to get out, either because they are not believed
explains the inability of these children to escape, run away, or report their parents.
To the outside world, these parents may seem loving, nurturing, and safe.
Many times the system has failed to assist children when they have reached out, either because they are not believed or their confidant does not want to get involved. Mones notes that the first contact these children have with the judicial system occurs when they commit a crime that is not justified, considering the outward appearances of their family. The laws under which the children are indicted, convicted, and punished are designed for adults, not child victims of abuse, and do not provide suitable treatment or punishment for the child.

When A Child Kills is recommended to anyone dealing with abused or neglected children and their families. Attorneys often overlook the value of nontechnical, nonclinic resources that can assist them. Not only do we need technical knowledge of the law, but an understanding of the sociological basis for crimes can improve our ability to represent our clients.

Beecher Threatt
Austin

1990 Census Snapshot for all U.S. Places

With 1990 census documents now available from several sources, one resource stands out for its unique combination of coverage and ease of use. 1990 Census Snapshot for all U.S. Places brings together basic data for each of the 23,435 cities, towns, villages, boroughs, and census-designated places (CDPs) in the United States. Included in each entry is county location; total population; percentage breakdowns by race, Hispanic origin, and age; land area; median household income; and median home value.

Arranged alphabetically by state and place, this is a quick reference tool for checking a statistic or making comparisons without having to wade through reams of data. Its value is that it provides more than 400,000 pieces of information arranged in a print format that allows for location of any piece of information in seconds, making it useful for a national overview as well as for local statistics. Other census publications, both governmental and commercial, are either available only in electronic format, or else give extensive detailed information for a limited area. No other single document currently available presents the most frequently needed statistics for the entire nation.

Toucan Valley Publications has provided a valuable and timely resource at a reasonable price. An excellent purchase for every public, academic, law, and special library.

Roy M. Mersky
Austin

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Court Reporters Certification Board

Notice of Opportunity to Comment on Amendment to Rules for Court Reporters

The Supreme Court of Texas is providing an opportunity for written public comment on an amendment to Rule IV of the Standards and Rules for Certification of Certified Shorthand Reporters concerning the definition of unprofessional conduct for a Certified Shorthand Reporter (CSR). This amendment is proposed under the Government Code, Chapter 52, Sec. 52.002, which provides authorization for the Supreme Court of Texas to adopt rules consistent with this chapter including rules governing the certification and conduct of official and deputy court reporters and shorthand reporters.

Rule IV, Revocation of Certification, is amended by adding paragraph B as follows with the remaining rules renumbered accordingly:

B. For the purpose of Section 52.029(a)(9), of the Government Code, unprofessional conduct shall include, but not be limited to:

1. failing to deliver a transcript or statement of facts to a client or court in a timely manner as determined by statute or agreement;
2. delivering an incomplete or inaccurate transcript;
3. failing to disclose to the parties or their attorneys existing or past financial, business, professional, family, or social relationships which might reasonably create an appearance of partiality;
4. advertising or representing falsely the qualifications of a certified shorthand reporter or that an unlicensed individual is a certified shorthand reporter;
5. failing to charge all parties to an action the same price for an original transcript and failing to charge all parties the same price for a copy of a transcript;
6. failing to disclose in writing to all parties the rate being charged to all parties prior to the taking of a deposition;
7. reporting of any proceeding by any person who is a relative of a party;
8. reporting of any proceeding by any person who is financially interested in the action or who is associated with a firm who is financially interested in the action;
9. reporting of any proceeding by any person who has a reporting services contract with a party or person with an interest in the action;
10. reporting of any proceeding by any person who is associated with a firm or entity that has a reporting services contract with a party or person with an interest in the action; and
11. offering or participating in the offer of incentives to be hired to perform reporting services.

Comments may be submitted to John T. Adams, Clerk, The Supreme Court of Texas, P.O. Box 12248, Austin 78711, and must be received by 5:00 p.m. on Jan. 15, 1994. Comments may also be sent by facsimile machine to 512/463-1365. Peg Liedtke, executive secretary of the Court Reporters Certification Board is available to discuss the amendment at 512/463-1624; however, comments must be submitted in writing to be considered by the court.

Summary Annual Report:

State Bar of Texas Insurance Trust

This is a summary of the annual report of the State Bar of Texas Insurance Trust Program EIN 74-2168815, an insured welfare plan, for the 1992 calendar year. The annual report has been filed with the Internal Revenue Service as required under the Employee Retirement Income Security Act of 1974 (ERISA).

Insurance Information — The plan has contracts with Pruco Life Insurance Company to pay all death, disability and medical care claims incurred under the terms of the plan. The total premiums paid for the plan year ending June 30, 1992 was $22,535,319.

Because they are so called “experience-rated” contracts, the premium costs are affected by, among other things, the number and size of claims. Of the total insurance premiums paid for the plan year ending June 30, 1992, the premiums paid under such “experience-rated” contracts were $22,535,319 and the total of all benefit claims paid under these “experience-rated” contracts during the plan year was $20,614,457.

Basic Financial Statement — The value of plan assets, after subtracting liabilities of the plan, was $46,509 as of Dec. 31, 1992, compared to ($12,053) as of Jan. 1, 1992. During the plan year, the plan had total income of $25,393,593 including employer contributions of $25,393,564.

Plan expenses were $25,334,009. These expenses included $811,467 in administrative expenses and $24,522,542 in benefits paid to participants and beneficiaries.

Your Rights to Additional Information — Texas lawyers have the right to receive a copy of the full annual report, or any part thereof, on request. The items listed below are included in that report: an accountant’s report and insurance information (Schedule A). To obtain a copy of the full annual report, or any part thereof, write or call the office of the plan administrator, Brooks Davis at P.O. Box 12487, Austin 78711 or call 512/479-0941. The charge to cover copying costs is $2 for the full report, or 20 cents per page for any part thereof.

Lawyers/participants also have the right to receive from the plan administrator, on request and at no charge, a statement of the assets and liabilities of the plan and accompanying notes, or a statement of income and expenses of the plan and accompanying notes, or both. If a copy of the annual report is requested, these two reports are included as part of the report. The charge to cover copying presented above does not include a charge for the copying of these portions of the report because these portions are furnished at no cost.

Anyone so desiring has the legally protected right to examine the annual report at the main office of the plan at 1601 Rio Grande, Suite 331, Austin 78701 or at the U.S. Department of Labor in Washington, DC. The Department of Labor can provide a copy of the annual report for the cost of copying. Requests to the department should be addressed to the Public Disclosure Room, N5644, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20216.

1170 Texas Bar Journal December 1993

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#### NON-SMOKER RATES

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Other amounts available upon request. Premiums are standard rates based on applicant's age at issuance of policy. Premiums may be paid annually, semi-annually, and monthly bank draft only. (A no-cost medical exam may be required depending on age, health, or amount of coverage desired). Policies $100,000 and above, Policy Form No. L-ORD-5101-91 Graded Premium, Level Death Benefit to age 84. Premiums increase annually. Rates based on standard issue and reflect entry age only.

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Fort Worth, TX 76116

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**Application Request Form**  
The information you provide will be kept in strict confidence.
Continued from page 1149

us are satisfied with the language that got passed by the legislature. But it’s more important to have something on the books so that we can go back and clarify, then to not have anything,” he explained. “This is a significant step.”

According to the panel, only through increased education and communication would the bias and bigotry that leads to hate crimes end. “We have to start sensitizing people in our communities,” said Gary L. Bledsoe, special enforcement counsel, office of the attorney general, and president of the Texas chapter of the NAACP. “We have to have these people sit down and talk, and open up a dialogue.”

Briskman agreed saying that the ADL recommends implementing diversity and sensitivity training in public schools. “We want to train teachers and students in valuing and understanding diversity in their communities,” he said. “Until these programs are in place we will be dealing with this problem for 30 or 40 years in the future.”

During the next discussion, “Prosecuting and Legislating Against Hate Crimes,” several panelists pointed out the difficulties in prosecuting hate crimes.

“If there is no verbal exchange or no witnesses that can directly link this to being a hate crime, it’s very difficult for the prosecutors to prove bias,” said Marvin Collins, civil division chief, Tarrant County district attorney’s office.

“Another problem with this bill is that only on a few occasions are we as prosecutors able to prove beyond a reasonable doubt what the motivation for a crime was,” he said. “The best thing prosecutors can do is to vigorously prosecute those crimes to the full extent of the law.”

The main course of discussion in “Penalizing Hate Crimes: The Lingering Constitutional Challenges” revolved around two constitutional questions: Should motive be taken into account in enhancing punishment, and what evidence should be allowed to prove motive?

G. Sidney Buchanan, professor at the University of Houston Law Center, explained the constitutional framework surrounding these issues. “We have conflicting constitutional values, protecting freedom of expression on the one hand and eliminating class discrimination on the other, or free speech versus equality,” he explained. “It seems that in the area of penalty enhancement, the U.S. Supreme Court has given the greater weight to the equality side of the ledger.”

“The case, Wisconsin v. Mitchell, held that if a person commits a crime, let’s say murder, and intentionally selects a victim because of class bias, race, gender, or sexual orientation, then the penalty for the crime may be enhanced,” explained Buchanan.

He pointed out that in the unanimous decision, the U.S. Supreme Court focused on the fact that motive has historically been a constitutionally permissible basis for enhancing penalties.

Anthony P. Griffin, a Galveston attorney, suggested that this type of legislation opens a Pandora’s box of proof against a defendant’s character. “This statute allows the bringing in of any type of evidence if there is a bias or prejudice against a person or group. It doesn’t say anything about race, sex, or religion. It just says bias or prejudice, whatever that means. You don’t even get a good definition under the statute. After the prosecutor brings in anything and everything but the kitchen sink, anybody can be convicted under this kind of proof,” he said.

The next session was titled “Problems in Victims’ Reporting and Law Enforcement’s Investigation of Hate Crimes.”

Suzanne McDaniel, crime victim information officer, office of the attorney general, shed light on the difficulties victims have in reporting hate crimes committed against them. “The main problem with reporting is the issue of victim blame and the stigma associated with that victimization.” She added that law enforcement must make victims feel they are being taken seriously.
To improve reporting and investigation of these crimes, law enforcement agencies have to make advances in three areas, explained Joseph L. Auten, North Carolina Justice Academy instructor. He said that within agencies there must be better intelligence, particularly with respect to organized hate groups; participation in community efforts such as education on dealing with hate crimes; and improving relations with victims of bias-motivated crimes.

The final session of the conference was "The Media's Role: Inflaming or Reporting Prejudice?" The panelists agreed that the press has had a poor record of reporting on minorities and has failed to project a representative picture of them in society.

"We haven't done a very good job because to a great extent, they have been invisible to the American public, and I think that has to change," said Bill Brown, reporter for WFBA-TV in Dallas.

Mercedes Lynn de Uriarte, associate professor of journalism at The University of Texas, voiced the same opinion. "This oversight has become an entrenched system and is the reason we have so little knowledge of minority groups in this country," she said. "For this reason these groups are much more vulnerable to distortion, to omission, or to actual disinformation at the hands of the press."

She strongly suggested that press coverage in its ineptitude often becomes a form of hate speech. "This should concern us. This is done by repeatedly projecting negative and terrifying images of a group or an individual in that group. There is a form of denial on the part of the press that contributes to racial misunderstanding. In doing this the press helps allow hate speech and crimes to flourish."

One example de Uriarte used criticized the way African Americans are portrayed in the media. She questioned the high frequency that African Americans are shown being arrested for drug use on television news.

"The commentator fails to provide a representative picture of that black in society when he fails to tell us that, according to the Drug Enforcement Agency, blacks are responsible for only 22 percent of illicit drug use in this country. TV coverage of drug arrests do not give that impression because they fail to give you the information in context." She said the danger in this distortion is that it generates fear among others who see these people, who have been wrongly projected, as problem populations.

Brown contended that the press is making strides to end these misrepresentations. "We're trying not to cover just the drug busts or the cops talking to everyone. We are focusing more and more on the schools and what the kids are being taught and the social activities of the communities," he said. "We should be digging into communities and looking at underlying issues, instead of setting the cameras up and just taking pictures of violence."

Ralph Langer, Dallas Morning News senior vice president and executive editor, pointed out that there is a definite push in newsrooms across the country to provide a better representative picture of society by increasing the number of minority reporters and editors in the newsrooms.

Kenneth F. Bunting, Fort Worth Star-Telegram senior news editor, said that the media should stick to what it's supposed to do — report the facts. "The best thing we can do is present a picture of our communities, warts, blemishes and all," he said. "When we cover hate crimes and hate groups we may think too much. We should tell it like it is. The way things are."

Although much of the discussion dealt with Texas hate crime issues, Sessions pointed out that the event's impact would be widespread. "This conference will set the pattern for the whole country. It will certainly give food for thought to all Texans to be able to understand and recognize the importance of what we're dealing with in hate crimes in this state, in the country, and in the world."
C. W. Carlin

Charles William (C.W.) Carlin, 86, of Colorado Springs, CO, died of respiratory failure March 27. Born in St. Cloud, MN, Carlin received a B.S. from the University of Minnesota, M.A. from the University of Arizona, and J.D. from the University of Notre Dame. From 1956 to 1972, Carlin was a patent attorney for Dow Chemical Co. in Minnesota. He was admitted to the Texas Bar in 1971, and began a law practice in Clute in 1972. Carlin moved to Fort Davis where he continued to practice law until retirement. He is survived by his wife of 50 years, Marion F. Carlin of Colorado Springs, CO; son, J. Christopher Carlin; daughter, Yvonne Renee Carlin; and two grandchildren.

F. W. Thayer

Francis W. Thayer, 51, of Dallas died May 12. Born in Cleveland, OH, he graduated from Williams College in Williamstown, MA, and received a J.D. from The University of Texas School of Law in 1967. He was admitted to the Texas Bar the same year. From 1967 to 1991, he practiced law with the firm of Storey, Armstrong, Steger & Martin in Dallas, where he became a partner. In 1992, he became a partner in the Dallas firm of Vial, Hamilton, Koch & Knox. Thayer was a member of the Dallas Bar Association and served on the board of the Dallas Rehabilitation Center. He is survived by his mother, Anne Mallon; daughter, Elizabeth Anne Thayer; sons, Lance J. Thayer and Jonathan W. Thayer; brother, Stephen C. Thayer; and sister, Elise Patterson, all of Dallas.

J. H. Benckenstein

John H. Benckenstein, 88, of Beaumont, died of pneumonia June 1, 1992. Born in Detroit, MI, he received his bachelor of laws degree from the University of Virginia in 1928 and was admitted to the Texas Bar the same year. Benckenstein received a J.D. from the University of Virginia in 1970. He began practicing law in Beaumont in 1928 and was the founding member of the law firm of Benckenstein & Norvell. At the time of his death, he was of counsel to the law firm of Benckenstein, Norvell, Bernsen & Nathan. He is survived by his wife of nearly 56 years, Agnes M. Benckenstein of Beaumont; daughter, Mary Agnes Cain of Dallas; and two grandchildren.

G. D. Thompson

Guy Douglass Thompson, 67, of Corpus Christi, died Nov. 30, 1992. Born in Eden, he served in the U.S. Navy before receiving a B.A. from The University of Texas and J.D. from South Texas College of Law. Thompson was admitted to the Texas Bar in 1956. From 1970 until his death, he practiced law in the South Texas oil and gas industry. Survivors include his wife of 38 years, Barbara Sue Thompson of Corpus Christi; sons, Stephen Douglass Thompson of Corpus Christi and Grady Ross Thompson of Allen; and daughter, Janice Thompson Burckhardt of New York City.

R. K. McHenry, Jr.

R. Kingsley McHenry, Jr., 66, of Houston, died April 18. Born in Houston, he received a B.A. and law degree from The University of Texas; he was admitted to the Texas Bar in 1957. Following law school, McHenry received a doctorate in medicine from Baylor College of Medicine, and practiced dermatology. He also served as a Japanese interpreter in the U.S. Army during World War II. Survivors include his wife of 21 years, Aileen Townes McHenry of Houston; sons, George C. Peyton, Jr., and Matthew H. Peyton of Houston, David N. Peyton of Wimberley, Mark A. Peyton of Austin, and John C. Peyton of San Marcos; brother, Dr. John I. McHenry of Houston; and 11 grandchildren.

D. Ball, Jr.

David Ball, Jr., 70, of Houston, died of cancer Jan. 15. Born in Houston, he received his B.A. and LL.B from The University of Texas. Ball was admitted to the Texas Bar in 1951. From 1951 to 1957, he served as assistant district attorney of Harris County. Ball was engaged in the private practice of law in Houston and Conroe from 1957 until his death. He is survived by his wife, Judy Adams Ball of Boulder, CO; daughters, Betsy Ball of Denver, CO, Molly Dye of Sardis, MS, and Bonnie Ball of Middleburg, FL; son, David Ball, III, of Houston; sister, Dorothy Ball Pope of Abilene; and two grandchildren.

J. S. Lieb

James S. Lieb, 81, of Dallas, died June 4. Born in Sealy, he received his undergraduate and law degrees from Baylor University. Lieb was admitted to the Texas Bar in 1937 and practiced law in Dallas from 1949 until the time of his death. Lieb is survived by his wife of 56 years, Kathryn Lieb of Dallas; daughter, Kathy Sibley of Dallas; and two granddaughters.

D. D. Doty

Donald D. Doty, 73, of Boca Raton, FL, died of cancer Aug. 16, 1992. Born in St. Louis, MO, he received his undergraduate and law degrees from Southern Methodist University. Doty was admitted to the Texas Bar in 1954. Doty spent a long career as a patent attorney in the U.S. Navy before retiring in 1978.
L. W. Gray

Lee William (Bill) Gray, 70, of Austin, died of heart failure March 18. Born in Caldwell, he received a BBA and LL.B. from The University of Texas. He served in the U.S. Navy during World War II and was admitted to the Texas Bar in 1949. He returned to Caldwell to practice law until 1955. Gray was an assistant attorney general for two years before joining the Texas Association of Businesses in 1957. He became executive vice president of the association in 1970 and retired as president in 1986. Gray was president of the Texas Society of Association Executives and a board member of the Texas Historical Foundation. He was also an executive committee member of the National Industrial Council and Congress of State Manufacturing Associations. Gray is survived by his brother, James A. Gray of Caldwell.

B. Henderson

Bennie Henderson, 79, of Dallas, died of heart failure April 30. Born in Dallas, she attended Southern Methodist University and received a law degree from Jefferson University. Henderson was admitted to the Texas Bar in 1936. From 1936 to 1991, she was a solo practitioner in Dallas. Henderson is survived by his wife of 46 years, Edith Henderson of Dallas.

B. Y. Shapiro

Bernice Y. Shapiro, 64, of San Antonio, died of cancer Jan. 8. Born in Suffern, NY, she received her B.A. from Queens College in New York, M.A. from Eastern Michigan State University, and J.D. from St. Mary’s University School of Law. Shapiro was admitted to the Texas Bar in 1982. Shapiro maintained a private practice of law until her death, and volunteered for the Pro Bono Law Project of Bexar County Legal Aid. She was on the board of the Association for Retarded Citizens, and was a special education teacher with the Northeast Independent School District in San Antonio. Survivors include her husband of 42 years, David M. Shapiro of San Antonio; sons, Daniel B. Shapiro of Mandeville, LA, Jonathan L. Shapiro of Corpus Christi, and Michael J. Shapiro of San Antonio; parents, Rabbi Ascher and Edith Yager of New York City; and two grandchildren.

D. Corbett

Duncan Corbett, 78, of Richmond, died June 11. Born in Bay City, he attended Washington and Lee University and received a degree in geology from The University of Texas. Corbett received a law degree from the University of Houston Law Center and was admitted to the Texas Bar in 1939. After serving in the U.S. Army during World War II, he worked with Humble Oil and Refining and Hawn Bros. in Corpus Christi. In 1977, Corbett retired to Richmond. He is survived by his wife of nearly 50 years, Louise Wills Corbett of Richmond; son, Duncan Wills Corbett; daughter, Ginger C. Carrington; sister, Kitty King Powell; brother, James G. Corbett; and three grandchildren.

J. A. Black, Jr.

John A. Black, Jr., 77, of Houston, died of cancer April 28. Black received his undergraduate degree from the University of Kansas and J.D. from the University of Missouri. Black was admitted to the Texas Bar in 1943. He served in the U.S. Army during World War II and retired after 30 years as a colonel. Black worked as a private practitioner in Bellaire where he retired after 45 years. He was a member of the American Bar Association and served as president of the Bellaire Lions Club. Survivors include his wife of 17 years, Eileen M. Black of Houston; sons, John A. Black, III and Anthony B. Black; daughter, Sherryl B. Sellers; and six grandchildren.

J. R. Johnson

John R. Johnson, 51, of Dallas, died of cancer March 22. Born in Fayetteville, AR, he attended Harvard University and received his B.A. with honors from Southern Methodist University. Johnson received his LL.B. summa cum laude from SMU Law School, and was admitted to the Texas Bar in 1965. He was co-founder of the law firm of Johnson & Gibbs in Dallas. Johnson was on the executive committee of the Dallas Citizens Council, and served as chair of the Greater Dallas Chamber of Commerce. Survivors include his wife of 19 years, Jode Johnson of Dallas; sons, Randal Patrick Johnson, John Richard Johnson, II, Kenneth Buhat Johnson, all of Dallas, and David Goulet Johnson of Raleigh, NC; mother, Anne Marie Johnson of Dallas; sister, Diane Pipkin of Plano; and brothers, William B. Johnson of College Station and Thomas McGinness Johnson of Dallas.

A. L. López

Ana Laura López, 32, of Laredo, died of breast cancer May 27. Born in Laredo, she received her B.A. from The University of Texas in 1982 and J.D. from St. Mary’s University School of Law in 1990. López was admitted to the Texas Bar in 1991, and became associated with the law firm of Abe Wilson and Associates in Laredo. López is survived by her parents, Elmo and Consuelo López of Laredo; brothers, Elmo López, Jr. and Jose López; and sisters, Linda Howland and Cristina López.

C. B. Zuber, Jr.

Charles B. Zuber, Jr., 72, of Dallas, died of cancer March 20. Born in Dallas, he attended Southern Methodist University and received a law degree from The University of Texas School of Law. He was admitted to the Texas Bar in 1946, and practiced law for a short time in Dallas. From 1949 until his death, Zuber worked in the real estate and investment industry. He is survived by his wife of 48 years, Helen M. Zuber of Dallas; and sons, Cary McCormack Zuber and Roland Thomas Zuber.
J. L. McMicken

Jackie L. McMicken, 67, of Amarillo, died Dec. 4, 1992. Born in Pelly, he received his B.A. and law degree from The University of Texas. McMicken served in the U.S. Army during World War II and was admitted to the Texas Bar in 1951. From 1952 to 1989, he was a partner with the law firm of Mills, Shirley, McMicken & Eckel in Galveston. From 1964 to 1990, McMicken also served as general attorney for Santa Fe Railway. From 1989 until the time of his death, he was a solo practitioner in Amarillo. He is survived by his wife of 47 years, F. Marcille McMicken of Amarillo; son, Rand Harlan McMicken of Cedar Hill; daughters, Jacille L. Smith of Lubbock and Pamela K. Moeller of Topeka, KS; brothers, Dudley B. McMicken and Clinton J. McMicken, both of Baytown, and Stanley R. McMicken of Katy; and six grandchildren.

A. Palmros, II

Alexander Palmros, II, 55, of Plano, IL, died of cancer Aug. 8, 1992. Born in Rome, NY, he received his B.S. and LL.B. from The University of Texas. He was admitted to the Texas Bar in 1962. During his early career, Palmros was a special agent in the FBI, serving in San Diego and Chicago. In 1965, Palmros entered the life insurance and financial planning industry as an agent for Massachusetts Mutual Life Insurance Co. He is survived by his wife of seven years, Andrea Pickens Palmros of Plano, IL; son, Kevin Palmros; daughter, Kimberly Palmros; and brother, Eric Palmros, Jr.

J. C. Snyder

Jordan Charlton (Chuck) Snyder, 79, of Midland, died March 4, 1992. Born in Beaumont, he received his law degree from South Texas College of Law in 1936, and was admitted to the Texas Bar later that year. From 1936 to 1937, he was a claims adjuster for Hartford Accident & Indemnity Co. of Houston. From 1937 to 1945, Snyder worked for Sun Oil Co. in Houston and Beaumont. From 1945 to 1972, he worked in the legal departments of American Republics Corp., Sinclair Oil & Gas Co., and Atlantic Richfield Co. in Houston and Midland. Snyder worked for Tom Brown, Inc. from 1972 to 1980, creating a legal department for the company. He is survived by his wife of 51 years, Louise Weaver Snyder of Midland; daughter, Virginia L. Snyder Kohler of Odessa; and two grandchildren.

D. A. Grose

David A. Grose, 81, of Alice, died of congestive heart failure June 5. Born in Chicago, IL, he received his B.S. from Knox College and law degree from Southern Methodist University School of Law. Grose was admitted to the Texas Bar in 1940. During his early career, he served six years with the FBI. Grose spent the past 41 years serving as Alice city attorney. He was a member of the Illinois Bar Association and a director of the State Bar of Texas. Grose is survived by his wife of 33 years, Billee J. Grose of Alice; daughter, Susan Grose Waltrip of San Antonio; and two grandsons.

M. Pankratz

Martin Pankratz, 87, of San Antonio, died of a heart attack Feb. 15. Born in Comfort, he graduated from St. Mary’s University School of Law and was admitted to the Texas Bar in 1932. Pankratz served as an attorney for Stewart Title Co. in San Antonio for 45 years. In 1969, he retired as an executive vice president of the company, and continued to practice law until his death. Survivors include his daughter, Dorothy Bullock of Collegeville; sisters, Elsie Galm, Erna Brown, Margaret Gaudern, and Clara Kuppers, all of San Antonio; and two grandchildren.

A. P. Allison

Judge A. P. Allison, 88, of Kerrville, died of emphysema Oct. 31, 1992. Born in Granger, he received a bachelor’s degree from Baylor University in 1928 and law degree from The University of Texas School of Law in 1932. He was admitted to the Texas Bar the same year. Allison served as Kerrville city attorney and Kerr County attorney in the 1930s and 1940s. He also served as the attorney for the Homeowners Loan Corporation. From 1971 to 1978, Allison was judge of the 198th District Court. During the 1950s, he served on the State Bar of Texas Board of Directors. Allison is survived by his wife of 62 years, Irene Earl McClellan of Kerrville; son, Dr. Arthur P. Allison of San Antonio; daughters, Irene Allison Thomas of San Antonio and Nancy Allison Wallace of Kerrville; and six grandchildren.

A. D. Rice

Alonzo D. Rice, 74, of Houston, died of lung complications June 3. Born in El Paso, he received his B.A. and J.D. from The University of Texas, where he was editor of the law review. He was admitted to the Texas Bar in 1942. Rice served as a U.S. Navy officer during World War II. From 1945 to 1967, he was associated with the law firm of Vinson & Elkins and was a solo practitioner from 1967 to 1985. He is survived by his wife of 47 years, Jane G. Rice of Houston; sons, Ralph Douglas Rice and Paul Clifton Rice; daughter, Janet Rice Davis; and three grandchildren.

B. F. Ladon

Bernard Frank Ladon, 90, of San Antonio, died April 18. Born in Chicago, IL, he received his LL.B from Cumberland University School of Law in 1923 and was admitted to the Texas Bar in 1924. From 1928 to 1935, Ladon served as chief trial assistant prosecuting attorney for Bexar County and in 1937, he served as county clerk. He was a senior partner of the law firm of Lang, Ladon, Green, Coghlan & Fisher in San Antonio. Ladon was a member of the American College of Trial Lawyers. He is survived by his daughters, Elizabeth Ladon Kerry and Mary Sharlene Warden; sister, Deane Reichelderfer; and two granddaughters.
Bar Foundation Contributions

With a tax deductible gift, members of the legal profession, the public, business organizations, charitable trusts, or other foundations may create a memorial to a deceased person. Gifts may also be made in honor of someone, an anniversary, birthday, or any other occasion.

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