

THE  
2019  
VOLUME 2

# DEFENDER

HARRIS COUNTY CRIMINAL LAWYERS ASSOCIATION

LEARN MORE ABOUT

*Jim Miller*

## THE BADDEST OUTLAW *of the West*

SEE PAGE 21



HCCLA'S 10TH ANNUAL READING  
OF THE DECLARATION OF INDEPENDENCE!  
SEE PAGE 10



# STAY UP TO DATE WITH HCCLA EVENTS



ANY QUESTIONS?  
Visit the calendar at [www.hccla.org](http://www.hccla.org)

@HCCLA\_ORG



follow us on  
**twitter**

WE LIKE YOU,  
DO YOU LIKE US?

Check out our  
Facebook Page  
for the latest on CLEs,  
Events, Fundraising,  
and Much More

Find us on  
**facebook**

# GRACE

a charity for the defense of the indigent

*Never another  
sleeping lawyer...*

What can you do to help?  
Visit our website at [www.gracelaw.org](http://www.gracelaw.org).



## An inheritance nobody wants.

Without intervention, 70% of children of prisoners will follow their parent into prison themselves.

One-to-one mentoring with children who have a parent or relative in prison can help break the cycle of incarceration.

Help us break the chain. Become a Big Brother or Big Sister today, or recommend us to the family of a child who needs a little guidance.



AMACHI TEXAS

[www.gobighouston.org](http://www.gobighouston.org)  
(713) 271-5683

# FROM THE EDITOR

Many good things have happened since our last issue. Robb Fickman, Mr. Declaration, organized the annual reading of the Declaration of Independence. Robb started this monumental event 10 years ago and since then there have been thousands of individuals reading the Declaration of Independence in Texas and other states and countries when our members were on foreign soil.

The recent banquet was a huge success. Judge/Congressman Ted Poe attended. Three very deserving individuals received the Richard "Racehorse" Haynes Lifetime Achievement Award: Terry Gaiser, Randy Schaffer, Mike DeGeurin. All three had excellent mentors in Racehorse Haynes, Percy Foreman, and Will Gray.

This issue has a wonderful article about my friend Jack Zimmermann, A Real Warrior on the Battlefield and in the Courtroom. Terri Zimmermann is also a Real Warrior and wrote this tribute to her Dad. While others were going to Canada, burning draftcards, or having bone spurs, many of us joined the military. Jack was sent into battle. He survived the rigors of war and became a successful lawyer and family man. Many were not so lucky. Many of us now use the tactics and skills learned in the military to fight for our clients. Jack has been very successful in doing this.

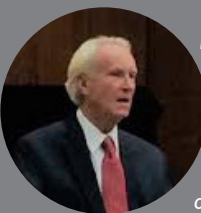
Joseph Connors, another real warrior who is also a Marine, has provided a great article.

Chuck Lanehart's article shows that there have always been mean, evil individuals in our world. Crime is nothing new.

We believe we have some excellent articles in this issue. If you are interested in having an article or practice tip published, please email me or Christina Appelt.

Robert Pelton: [rpeltonlawyer1@aol.com](mailto:rpeltonlawyer1@aol.com)  
Christina Appelt: [christina@hccla.org](mailto:christina@hccla.org)

HCCLA ETHICS HOTLINE - 713-518-1738



Robert Pelton is a Criminal Defense Lawyer with offices in Houston and Abilene, Texas. Mr. Pelton has been named "Top Lawyer for the People" and one of Marvin Zindler's "Marvin's Angels" by H-Texas Magazine (2007). He was the personal lawyer for Marvin Zindler for 31 years. He was also rated by Super Lawyers (2014-18). Mr. Pelton is a Past President of HCCLA (1985-86), Founder and Chairman of HCCLA and TCDLA Ethics Committees (since 2011), a recipient of the Jim Bowmer Award for Professionalism from the Texas Bar College (2012); HCCLA Richard "Racehorse" Haynes Lifetime Achievement Award (2016); TCDLA President's Awards (2011-18); and a United States Congress Proclamation from Congressman Ted Poe for his Zeal and Tenacious Defense of his Clients (2016). In the 1980s, Robert Pelton and Allen Isbell created Docket Call, which later became The Defender Magazine.

## CORRECTION NOTICE

HCCLA Ambassador (185th) is Rand Mintzer.  
(from The Defender, Issue 2019, Vol. 1, p 6)

<b>CLE FROM THE EDITOR</b>	<b>2</b>	
	<b>4</b>	<b>OFFICERS, BOARD OF DIRECTORS PAST PRESIDENTS</b>
<b>A WORD FROM YOUR OUTGOING PRESIDENT</b> BY DOUG MURPHY	<b>5</b>	
	<b>6</b>	<b>A WORD FROM YOUR INCOMING PRESIDENT</b> BY NEAL DAVIS
<b>UPCOMING CLE POZNER ON CROSS</b>	<b>9</b>	
	<b>10</b>	<b>HCCLA NEWS ROUND UP</b> WELCOME NEW MEMBERS FUTURE WARRIOR ANNOUNCEMENT 10TH ANNUAL DECLARATION READING
<b>2019 HCCLA BANQUET</b> PHOTOS BY BOB ROSENBERG	<b>12</b>	
	<b>14</b>	<b>RICHARD "RACEHORSE" HAYNES LIFETIME ACHIEVEMENT AWARDS</b> MIKE DEGEURIN, TERRY GAISER, & RANDY SCHAFER
<b>THE DEFENSE LAWYER</b> BY J. GARY TRICHTER	<b>17</b>	
	<b>21</b>	<b>THE BADDEST OUTLAW IN THE WEST</b> BY CHUCK LANEHART
<b>JACK B. ZIMMERMANN</b> BY TERRI R. ZIMMERMANN	<b>25</b>	
	<b>30</b>	<b>BEST DEFENSES: PART II</b> BY JOSEPH A. CONNORS III, WILLIAM RYAN, & EVARISTO GARCIA, JR.
<b>CONGRATS TCDLA ANNUAL AWARD WINNERS</b>	<b>38</b>	

# THE DEFENDER

## PUBLISHER

HCCLA

## EDITOR

ROBERT PELTON

## ADS & DISTRIBUTION

ROBERT PELTON  
CHRISTINA APPELT

## DESIGN & LAYOUT

BROCHURE BUILDERS  
BRANDI DELOACH  
WWW.BROCHUREBUILDERS.COM

# PAST PRESIDENTS

1971-2018

C. ANTHONY FRILOUX  
STUART KINARD  
GEORGE LUQUETTE  
MARVIN O. TEAGUE  
DICK DEGUERIN  
W.B. HOUSE, JR.  
DAVID R. BIRES  
WOODY DENSEN  
WILL GRAY  
EDWARD A. MALLET  
CAROLYN GARCIA  
JACK B. ZIMMERMANN  
CLYDE WILLIAMS  
ROBERT PELTON  
CANDELARIO ELIZONDO  
ALLEN C. ISBELL  
DAVID MITCHAM  
JIM E. LAVINE  
RICK BRASS  
MARY E. CONN  
KENT A. SCHAFER  
DAN COGDELL  
JIM SKELTON  
GEORGE J. PARNHAM  
GARLAND D. MCINNIS  
ROBERT A. MOEN  
LLOYD OLIVER  
DANNY EASTERLING  
WAYNE HILL  
RICHARD FRANKOFF  
W. TROY MCKINNEY  
CYNTHIA HENLEY  
STANLEY G. SCHNEIDER  
WENDELL A. ODOM, JR.  
ROBERT J. FICKMAN  
PATRICK F. MCCANN  
MARK BENNETT  
JOANNE MUSICK  
NICOLE DEBORDE  
EARL D. MUSICK  
CHRISTOPHER L. TRITICO  
T.B. TODD DUPONT, II  
CARMEN M. ROE  
JOANNE MUSICK  
TYLER FLOOD  
TUCKER GRAVES

2019-2020

# HCCLA OFFICERS & BOARD

## PRESIDENT

NEAL DAVIS

## PRESIDENT ELECT

MARK THIESSEN

## VICE-PRESIDENT

JOE VINAS

## SECRETARY

DAVID RYAN

## TREASURER

JUSTIN C HARRIS

## PAST PRESIDENT

DOUG MURPHY

## BOARD OF DIRECTORS

CORDT AKERS  
MATT ALFORD  
JIMMY ARDOIN  
STACI BIGGAR  
LORI BOTELLO  
CHRISTOPHER DOWNEY  
KATE FERRELL  
GEMAYEL HAYNES  
NATHAN HENNIGAN  
JORDAN LEWIS  
W. TROY MCKINNEY  
RAND MINTZER  
TODD OVERSTREET  
DAMON PARRISH II  
JED SILVERMAN  
J. JULIO VELA  
SARAH V. WOOD





## A WORD FROM YOUR OUTGOING PRESIDENT

*Doug Murphy*

**“Money can buy you a fine dog, but only love will make its tail wag.”**

It has been a great honor to serve for the past year as President of the Harris County Criminal Lawyers Association, the best and largest local criminal defense bar in the nation. I started and ended my presidency by discussing how the legacy of HCCLA was formed by the legacies of Percy Foreman and Richard “Racehorse” Haynes and their many proteges. The legal mentoring and experiences Percy and Race provided to their many proteges took root and spread to all lawyers in Harris County and throughout Texas. All of us are the lawyers we are today due to Percy and Race’s generational reach.

But what I have learned and observed over the past year is that there are so many impressive unsung heroes within HCCLA who fight the good fight valiantly every day. Harris County has the best criminal defense lawyers in the country. And I’m not just referring to the well-known retained criminal defense lawyers, but also the caring court appointed lawyers and the public defenders who quietly with grit and determination obtain incredible verdicts on a regular basis with little fanfare.

I’m proud to stand by my sisters and brothers of the criminal defense bar who care about fighting for the freedoms of the accused. Caring about our clients (yes, some clients are easier to care about than others) is paramount to our collective success. Jurors can tell when a lawyer cares about their client. Jurors will rarely, if ever, be impressed with how smart a lawyer is, but jurors can be, and often

are, impressed with how much a lawyer cares about their client. It takes a huge and happy heart to be a good criminal defense lawyer. Cicero taught that what reaches the mind also moves the heart. It’s not only about what you say; caring is demonstrated in how you say it and what you do in court. Caring is also demonstrated in your preparation. If a lawyer does not care for his/her client and demonstrate it to a jury, how can you expect the jury to care about your client?

At our annual banquet, we honored and celebrated lawyers Mike DeGeurin, Terry Gaiser and Randy Schaffer for their lifetime achievements as criminal defense lawyers. We also honored Rocket Rosen as an inspiring and unsung hero. All of these lawyers earned these accolades by being unsung and hard-working heroes for their clients day in and day out over the course of their careers. And these lawyers did it—and continue to do so—with huge hearts for their clients. A famous philosopher named Kinky Friedman once wrote: “Money can buy you a fine dog, but only love will make its tail wag.”

The future success of HCCLA will be determined by the future caring unsung heroes of HCCLA. I urge everyone to become more involved in this robust organization and help your new President, Neal Davis, and the HCCLA Board. It is incumbent upon the experienced lawyers to give back to the younger lawyers, and it is incumbent for the younger lawyers to throw their hats in the ring and get involved.

A lawyer will never improve themselves or those around them if they are watching from the sidelines.



# A WORD FROM YOUR INCOMING PRESIDENT

## WHITHER DEFENDERS OF THE CONSTITUTION?

In the early 1970s, composer and conductor Leonard Bernstein delivered a series of lectures centering on the question of “whither music?” He posed this question amid a schism between the ungrounded atonal music of the avant-garde and the tonality of traditional classic music. Put in the context of today’s music, it might be seen as the difference, say, of the classic pop of the melody-based Beatles and the Autotunes-driven, syncopated rhythms of Kanye West.

Similarly, we are facing a sea change in the criminal justice system. The question is—what does the future hold for us as defenders of the Constitution?

## IN THE BEGINNING . . .

When I became a criminal defense attorney over 20 years ago, our system, at least in Harris County, was adversarial and combative, and at times even personal. This was the era of Johnny Holmes. It had been that way for at least many decades.

Under this antiquated Manichaeian system, the prosecutors viewed defendants as scum, the goal of punishment was deterrence and retribution, not rehabilitation, and pre-trial diversion was almost never offered. There was a prosecutorial culture of win-at-all-costs. The standard offers were no more than invitations to trial. Remember prosecutor Ira Jones when he was handling drug cases?

“I’ll offer your criminal 40 years if he pleads today...” Reportedly there was even a “silver needle society” of prosecutors who sent defendants to death row.

Then, beginning with District Attorney Pat Lykos in 2008, things started changing. It was as if the criminal justice system of the 1800s, alive and kicking in the 1990s, finally got a major update. Call it Version 2.0.

## VERSION 2.0

Lykos ran against Kelly Siegler and used her as an example of an unethical prosecutor who put winning above justice. Siegler became the symbol of a District Attorney’s office was in disarray and corrupt.

When Lykos won and took office—and she was far from progressive or liberal—diversionary programs became more common. If a defendant was charged with shoplifting or marijuana, for example, he could often take a class and have the case dismissed.

Offenses involving property damage, such as criminal mischief, would routinely be dropped in exchange for restitution. Less-than-a-gram cases ceased being filed. The DIVERT DWI program was created. A Post-Conviction Review Section, in line with other District Attorney office, was established due to the rise in consciousness of actual innocence cases. And life without parole, instead of the death penalty, was frequently on the table in capital murder cases.



# Neal Davis



Specialty courts have also been created over the last several years. For example, Mental Health Court, DWI Court, STAR Drug Court for non-violent offenders, SAFE Court for prostitution cases, and Veteran's Court. Nowadays, about the only court, or diversionary program, that does not exist is for violent crimes, such as family violence, sex offenses, kidnapping, robbery, and homicides, or for large scale drug crimes or fraud.

Numerous factors gave rise to these programs. Some were philosophical—the criminal justice system had a disparate racial and economic impact. It led to a self-fulfilling prophecy where minorities, the poor, and low-level offenders were saddled with criminal histories and relegated to being second-class citizens without jobs or future prospects. The “The New Jim Crow” became a shorthand description of this disenfranchisement.

Other factors were practical—sending low level offenders to jail or prison was no more than warehousing and failed to treat them. Without supervision or treatment, these offenders became frequent fliers. They kept catching new charges instead of improving.

And still other factors were economic. The Harris County jail was too small to hold new arrestees, so the county had to pay to transfer them to jails in other counties. It made no sense to hold people in jail, merely because they could not post a bond, for low-level offenses. The jail was also not equipped to adequately address all of the mental health problems of its population.

This, in turn, led to bail reform, for which members of our organization, such as Robert Fickman, have fought for decades.

More changes are yet to come. Ticket-and-release for low-level jailable offenses; even easier access to diversionary programs (before or at an initial court appearance); and not filing certain types of cases (e.g., in Dallas where the District Attorney has announced he will not prosecute most low-level marijuana offenses or thefts of “personal items” valued at less than \$750).

## THE PUBLIC FINALLY IS FINALLY CATCHING UP

Along with these tectonic shifts, the public perception of our criminal justice system has radically changed.

Over the last decade, media reports abound on dirty cops, cheating prosecutors, and innocent defendants serving prison sentences. Social media, such as viral Youtube videos, has shown whites what minorities and the poor have known for decades—that cops profile, arrest, charge, harass, beat, and kill them without justification. And with the largest prison population in the world, it was only a matter of time before almost everyone knew someone close to them who had been charged with a crime, gone to jail, or was in prison.

For the first time since time immemorial, members of the public no longer routinely ask us, “How can you represent THOSE people?”



Many do not assume prosecutors wear the white hat, or that police are infallible. Even Kim Kardashian is trying to become licensed in law to fight for criminal justice reform and against mass incarceration.

As defenders, we have spent our careers putting our shoulders to the wheel, railing against the inhumanity of our criminal justice system, and raging against the corruption of police, prosecutors, and judges (who before the most recent election in Harris County were often nothing more than second-chair prosecutors). Finally, the public is waking up to what we have been struggling against all along.

## WHAT DO WE DO NOW?

We must not be Pollyannish or naïve about the motives of the District Attorney's Office or police when it comes to diversionary programs. The District Attorney, after all, is elected. The mayor, who is elected, appoints the chief of police. The Harris County Sheriff is elected. So are the County Commissioners. They are politicians first and foremost, and their survival depends on getting votes,

Diversionary programs politically allow these politicians to claim they are quickly resolving cases while giving defendants a second chance. But at what cost? One problem, of course, is "net-widening," where prosecutors are less inclined to dismiss weak or problematic cases because they can just offer pre-trial diversion. An even graver concern is that defense lawyers are cut out of the equation.

Imagine these examples: a cop stops a defendant for an unsafe lane change (which was not in fact unsafe), finds marijuana, and allows him to either be

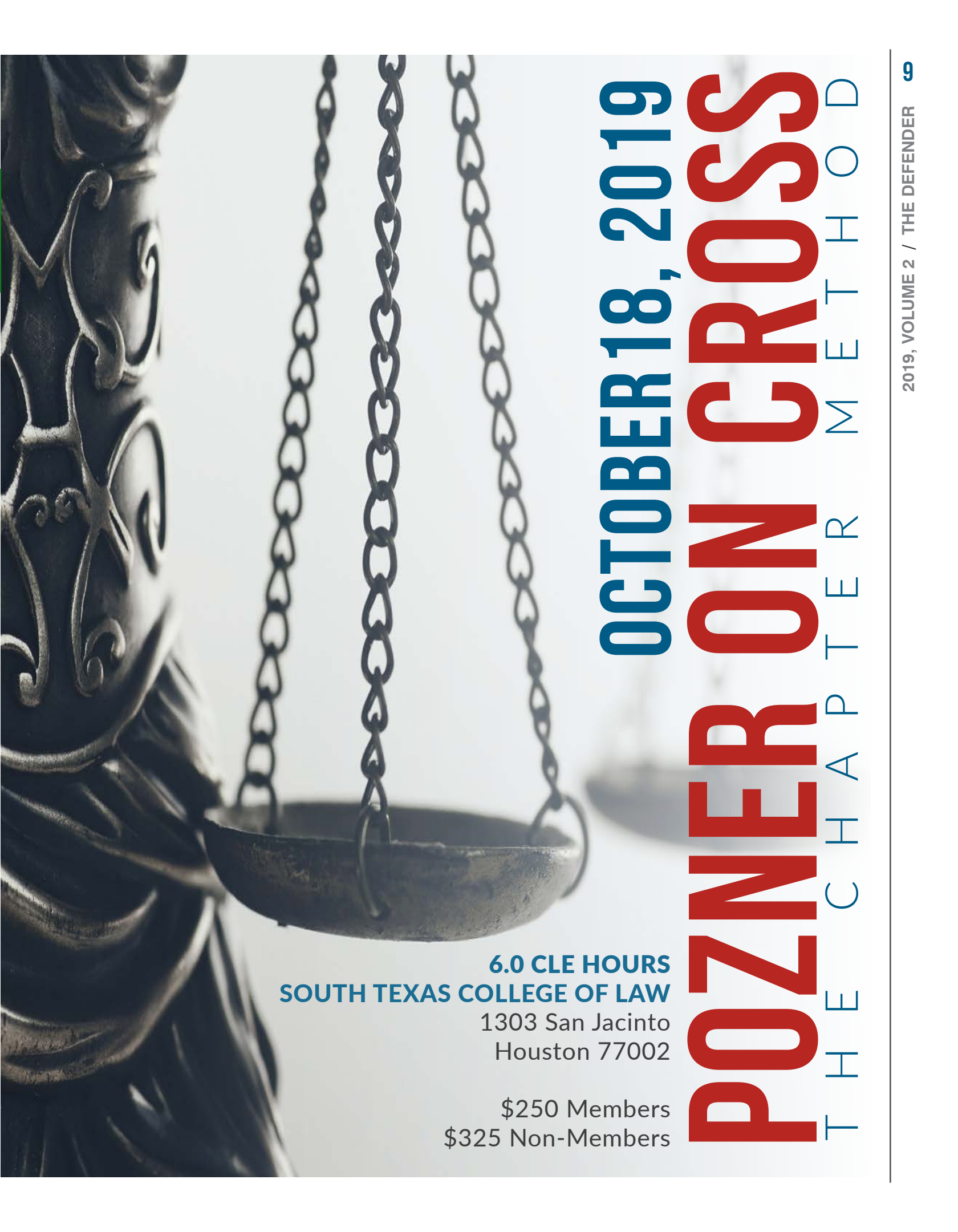
released if he signs a promise to take a class or be booked into jail. Or take a defendant charged with shoplifting (even though she had not gone beyond all points of sale when she was arrested). She shows up to an initial court appearance and the court staff tells her she can either take a class and the case will be dismissed or she will have to hire a lawyer.

Cops, courts, and prosecutors do not want defense lawyers involved because that slows things down. Imagine the audacity of having us there to grade their paper. But we are the only lawyers entrusted with seeking redress when the Constitution is violated. Cops do not protect it. Neither do prosecutors. Judges are umpires. They do not make calls unless we cry foul.

No doubt in these cases of illegal searches and seizures, or innocent people being arrested, will occur. We need to ensure that we are part of the process and that the Constitution is protected.

The Founding Fathers never intended our county and district courts to look like traffic courts where defendants are pressured into signing up for a bill of goods even if they are innocent or their rights were violated. Nor did the Founding Fathers expect an accused to make a roadside decision, without the benefit of counsel, on whether to challenge hisailable offense in court.

While diversionary programs are laudable, they risk creating the criminal justice version of the benevolent dictatorship. My job, as your President, first and foremost will be to fight against this. I will demand that we literally have a seat at the table. To do anything different would shirk our obligations to the Founding Fathers, the Constitution, and our noble profession.



**6.0 CLE HOURS**  
**SOUTH TEXAS COLLEGE OF LAW**  
1303 San Jacinto  
Houston 77002

\$250 Members  
\$325 Non-Members

**OCTOBER 18, 2019**

**POZNER ON CROSS**

**THE CHAPTER MEET HOD**



# HCCLA NEWS ROUNDUP

## WELCOME NEW HCCLA MEMBERS

### NEW MEMBERS

Charles Brodsky	Javier O. Martinez
Marc Carter	John Patrick Moody
Christopher Downey	Gerardo Pereira
Manuel Guerra	Pedro Ruiz
Robert Gutierrez	Gertrude Strassburger
Matthew J Hefti	Tressa L. Surratt
Christina Hoang	Elizabeth Uribe
Mona Kermani	Hunter White
Michael Kohler	

### NEW PARALEGAL MEMBERS

Whitney Laidlaw  
Justin C. Harris Law Firm

### NEW STUDENT MEMBERS

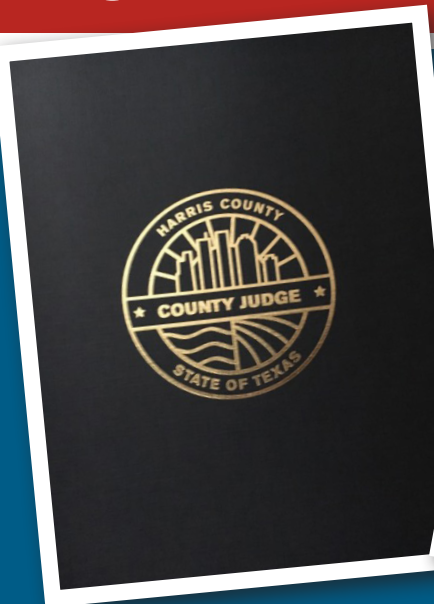
Porscha Ranise Allen

### NEW AFFILIATE MEMBERS

Private Investigator Jessica Saperstein  
Chameleon & Grey LLC



## 10th ANNUAL



Many thanks to Harris County Judge Lina Hidalgo and Kathryn Kase for the Proclamation honoring HCCLA's 10th Annual Reading of the Declaration of Independence







# DECLARATION READING





# 2019 HCCLA Banquet

## RICHARD "RACEHORSE" HAYNES LIFETIME ACHIEVEMENT

Mike DeGeurin  
Terry Gaiser  
Randy Schaffer

## LAWYER OF THE YEAR Gerald E. Bourque

TORCH OF LIBERTY  
Robert Fickman

## SHARON LEVINE UNSUNG HERO

Steven Rocket Rosen

MEMBER OF THE YEAR  
Patrick McCann

## MENTOR OF THE YEAR Danny Easterling

PHOTOS BY  
BOB ROSENBERG









# RICHARD "RACEHORSE" HAYNES LIFETIME ACHIEVEMENT Mike DeGeurin



Manikan  
"That's the way to get to the creek!"

Through  
Cesey's measurement  
were just an estimate  
Could not determine  
a "true line" from this  
measurement

12.6% of Average  
High Smack! would  
have run off beveled.

Diamond destructions - not  
sufficient - over 1-hour  
would not be noticeable

Leaf litter





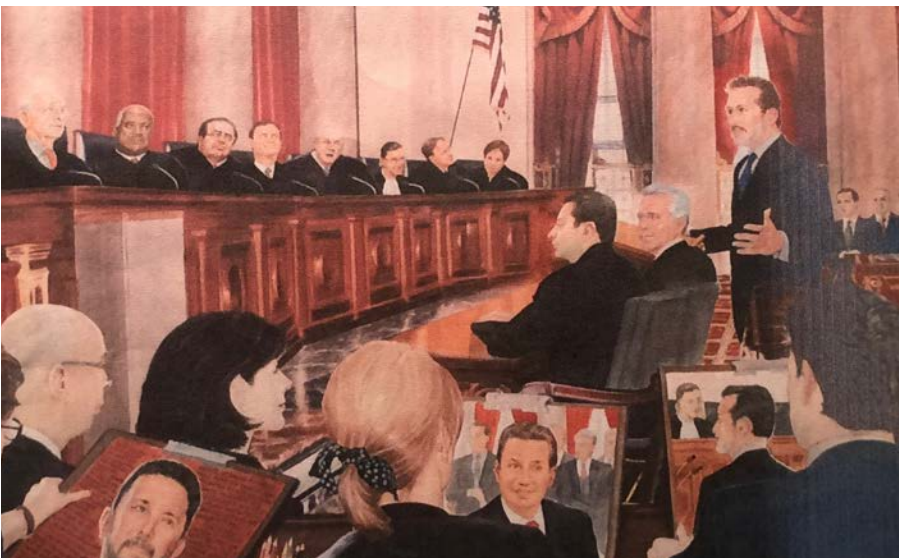
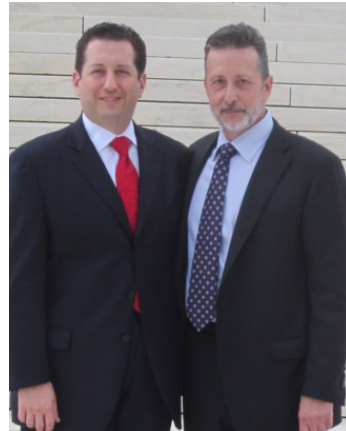
# RICHARD "RACEHORSE" HAYNES LIFETIME ACHIEVEMENT

# Terry Gaiser





# RICHARD "RACEHORSE" HAYNES LIFETIME ACHIEVEMENT Randy Schaffer





BY J. GARY TRICHTER

# THE DEFENSE LAWYER

## I. DUTY TO PROTECT RIGHTS

Probably one of the most misunderstood jobs in the American Culture is that of the criminal defense lawyer. To be blunt, its true role is not about making lots of money, ego in winning, getting a not guilty, getting a defendant off or about having a professional stature in the community. Rather, it is about being a part of a higher moral calling—one where a righteous and courageous person stands against all the forces of government and negative public opinion, and does so, for the sake of our history and in the names of justice and fairness.

The American Bar Associations (ABA) Criminal Justice Standards for the Defense Function, at Standard 4-1.2 (a), “Functions and Duties of Defense Counsel”, provides:

“

**DEFENSE COUNSEL  
IS ESSENTIAL TO THE  
ADMINISTRATION OF  
CRIMINAL JUSTICE.**

”

Well, to the ABA, “duh”! Indeed, without defense counsel, there can be no justice, and that’s because there cannot be justice if its administration is solely left up to the government. Like our Founding Fathers relied on “minute men” for protection during the Revolutionary War, so too do our citizens rely on defense lawyers for their protection from our own government! The defense lawyer is here to police our government!



## II. THE DEFENSE LAWYER JOB MISUNDERSTOOD

Most people, including judges, prosecutors and even most defense counsel, misunderstand the real role the defense lawyer plays in the criminal justice system. Mistakenly, most think that it is the defense lawyer's job to "get the defendant off" of the charge. While that might be a collateral consequence of good representation, that is not the primary role of the defense lawyer. Rather, it is the defense lawyer's primary goal to make sure that every single statutory, State and Federal Constitutional right is protected. Clearly, that duty is not only the role of the defense lawyer, but also, that of the prosecutor and the judge.

## III. THE PROSECUTOR'S PRIMARY STATUTORY DUTY

The Texas Code of Criminal Procedure, Article 2.01, actually spells out the primary duty for the prosecutor as "[i]t shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done."

## IV. THE DEFENSE LAWYER'S ETHICAL DUTY

The ABA Standard 4-1.2 (b), "Functions and Duties of Defense Counsel", provides:

"Defense counsel have the difficult task of serving both as officers of the court and as loyal and zealous advocates for their clients. The primary duties that defense counsel owe to their clients, to the administration of justice, and as officers of the court, are to serve as their clients' counselor and advocate with courage and devotion; to ensure that constitutional and other legal rights of their clients are protected; and to render effective, high-quality legal representation with integrity."

## V. THE DEFENSE LAWYER'S CONSTITUTIONAL DUTY

Probably the best and most accurate description can be found at the concurring opinion of Justice White from the case U.S. v. Wade, 388 U.S. 218, 256-258 (1967). In Wade, he wrote:

"Law enforcement officers have the obligation to convict the guilty and to make sure they do not convict the innocent. They must be dedicated to making the criminal trial a procedure for the ascertainment of the true facts surrounding the commission of the crime. To this extent, our so-called adversary system is not adversary at all; nor should it be. But defense counsel has no comparable obligation to ascertain or present the truth. Our system assigns him a different mission. He must

*Page 388 U. S. 257*

be and is interested in preventing the conviction of the innocent, but, absent a voluntary plea of guilty, we also insist that he defend his client whether he is innocent or guilty. The State has the obligation to present the evidence. Defense counsel need present nothing, even if he knows what the truth is. He need not furnish any witnesses to the police, or reveal any confidences of his client, or furnish any other information to help the prosecution's case. If he can confuse a witness, even a truthful one, or make him appear at a disadvantage, unsure or indecisive, that will be his normal course. Our interest in not convicting

*Page 388 U. S. 258*

the innocent permits counsel to put the State to its proof, to put the State's case in the worst possible light, regardless of what he thinks or knows to be the truth. Undoubtedly there are some limits which defense counsel must observe, but, more often than not, defense counsel will cross-examine a prosecution witness, and impeach him if he can, even if he thinks the witness is telling the truth, just as he will attempt to destroy a witness who he thinks is lying. In this respect, as part of our modified adversary system and as part of the duty imposed on the most honorable defense counsel, we countenance or require conduct which, in many instances, has little, if any, relation to the search for truth<sup>1</sup>

## A. COLLATERAL CONSEQUENCES ARE AS IMPORTANT TO CONSIDER AT STATUTORY PUNISHMENTS

Ideally, all the aforementioned players should not be holding out for one side or the other to win but for the system of justice to win. For the prosecutor, this would mean dismissing cases in the interest of justice even where a defendant was guilty. It also means that a guilty party is not to be over punished. This would include consideration by the prosecutor of any collateral consequences that would result from any prosecution. Here, it is the defense lawyer's job to make sure the prosecutor knows of those collateral consequences.

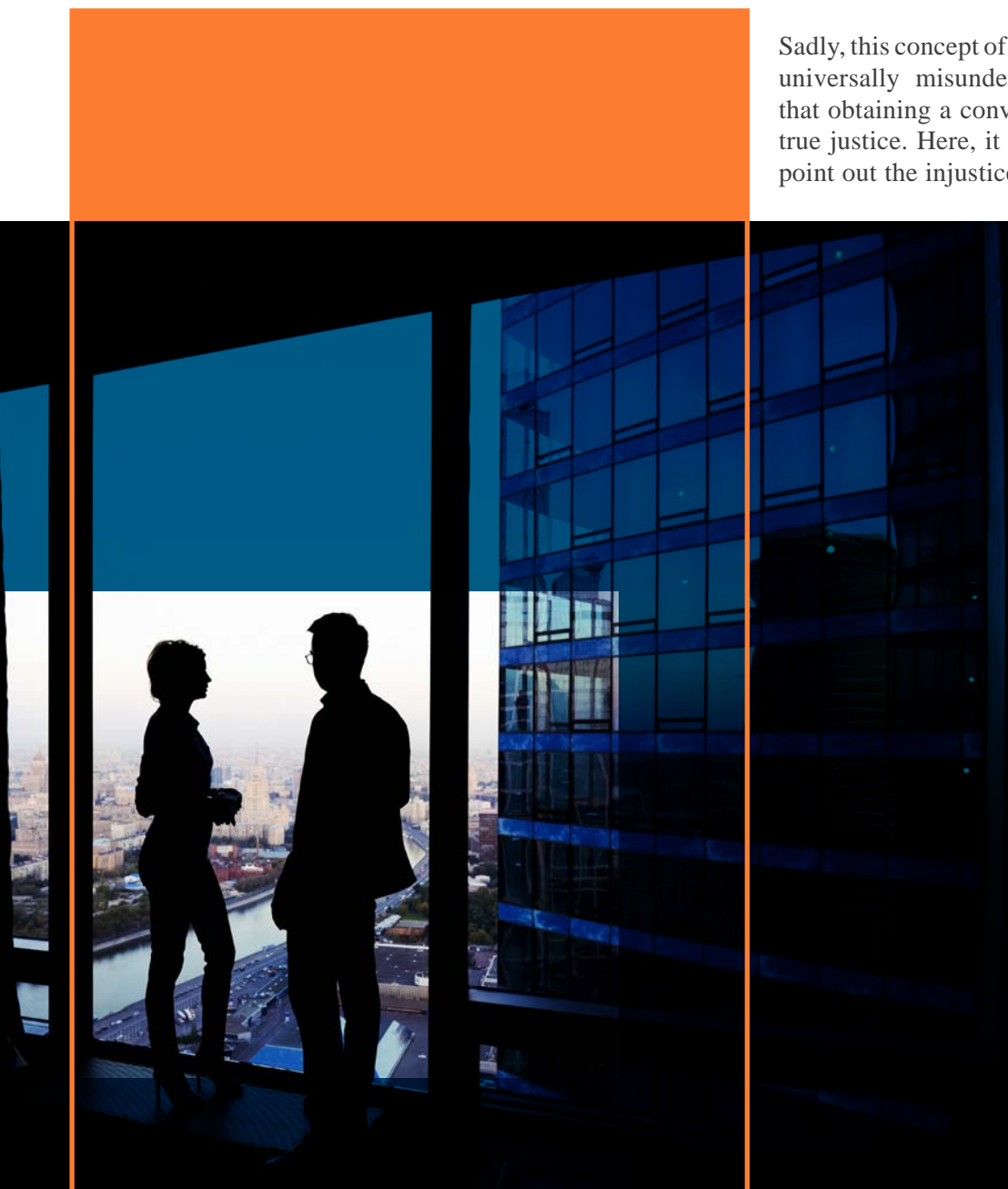
## B. POLICY CANNOT REPLACE COMMON SENSE OR REALITY

Clearly, from the prosecutor's perspective, treating everyone the same, in many instances, results in many being treated unfairly. For example, assessing a fine of \$10,000 for a billionaire and for a blue collar worker would not be the same justice. To the former, it will mean nothing, where as to the latter it could make the difference between whether or not a parent can provide for a college education for a child. Another example would be a DWI suspension of a driver's license for a half a year for a non-commercial driver who is employed as a computer programmer as opposed to a commercial airline pilot who would also suffer a suspension of his pilot's license even though the DWI was not related to flying.

Sadly, this concept of treating everyone the same is almost universally misunderstood by prosecutors who opine that obtaining a conviction label is more important than true justice. Here, it is the role of the defense lawyer to point out the injustice of a "treating all the same" policy and to remember the words of Thomas Jefferson, "[E]xperience hath shewn, that even under the best forms of government those entrusted with power have, in time, and by slow operations, perverted it into tyranny."

## C. UNDERSTANDING THE REAL ROLE OF THE DEFENSE LAWYER

Belonging to many lawyer list serves, I am dismayed by the numerous lawyers that celebrate when a guilty person is acquitted. While it would be proper to celebrate an acquittal due to insufficient evidence to establish proof beyond a reasonable doubt or because a motion to suppress evidence was granted because the government violated the person's rights, it would not generally be proper to celebrate a "not guilty" verdict of a truly guilty person for that sake and sake alone. We all win, including the innocent and





the guilty, when our system of justice works as intended. We all lose, including the innocent and the guilty, when a judge makes a wrong decision. This is especially true where it is based on cowardice to withstand any adverse publicity that would follow, where a guilty person is set free. Further, we all lose, both the innocent and the guilty, where a prosecutor, for political purposes to further a career, cheats to win so good publicity can be garnered to support a campaign. That said, it would be proper to celebrate a guilty person's wrongful acquittal where they had already been sufficiently punished and that any further punishment would be overkill, unjust, or would serve no purpose to society or the concept of rehabilitation.

#### **D. COURAGE NOT TO BACK UP & KEEP STANDING TALL**

Likewise, we all lose, where a defense lawyer does not give the client a 100% effort at protecting the rights of that citizen at every step of the process. ABA Standard 4-1.2 (b) spoke to the defense lawyers need for "courage", in truth, any defense lawyer that shows up to represent the client without 100% courage to do the right thing, is cheating both the client and the system. This is especially true where the person is factually guilty.

Anything less than 100% is not "effective assistance of counsel"! That said, the 100% needs to be aimed at the effort of protecting rights and not necessarily the result. Here, that 100% would also include protection from punishment that has already been netted out and would serve no purpose other than for the prosecutor to obtain a conviction label. Further, it would include protection from any overly harsh punishment.

#### **E. PATRIOTISM AS A CONSTITUTIONAL DEFENDER**

In conclusion, if the defense lawyer understands his/her true role, then that lawyer is nothing less than a patriot defending his/her country. Edmund Burke, a political philosopher, who inspired many of our Founding Fathers said, "[a]ll tyranny needs to gain a foothold is for people of good conscience to remain silent." As for this thought, because of what is riding on the shoulders of defense counsel, the good lawyer must never remain silent when he/she is on duty.

It is also wise to remember the sage words of warning by President James Madison, often called the Father of the Bill of Rights, when he said, "[i]f our nation is ever taken over, it will be taken over from within." To this end, the defense lawyer will become part of "from within" at any time he/she remains silent when the government has violated, or is violating the rights of a client. You cannot be a patriot lawyer if you are part of the "from within"! You cannot be a patriot lawyer if your only effort is 99%. Indeed, to be "effective" as the founders envisioned, the patriot lawyer must always give it his/her all.

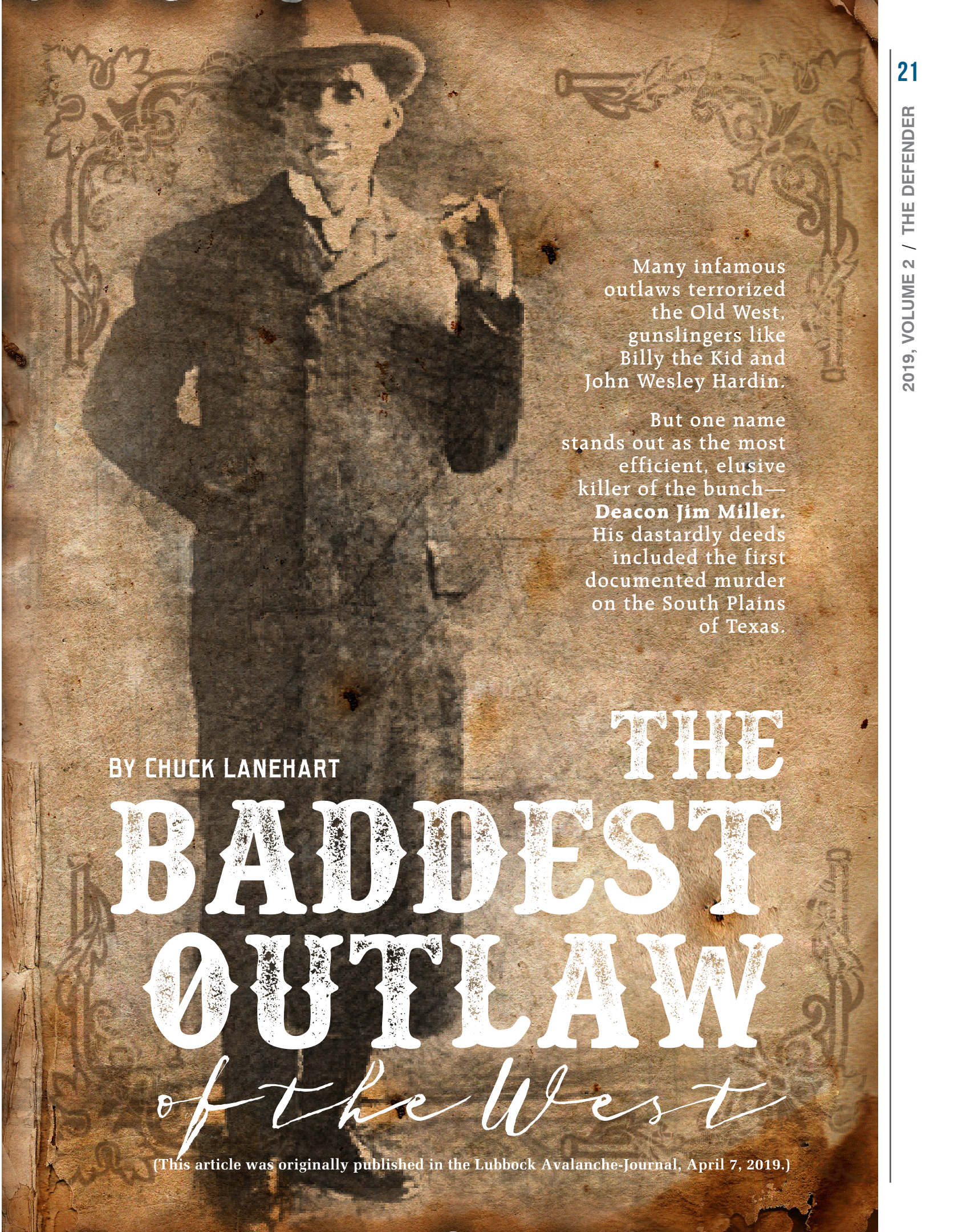
As a defense lawyer, there is a self-test for you to determine whether or not you are a Patriot Constitutional Defender. Here, take note that there were 56 signers to the Declaration of Independence. If those patriots returned today in search of a 57th patriot to join them, knowing how you defend your clients, would they ask you to join them? If the answer is "yes", then "thank you" for being a patriot! However, if the answer is "no", then perhaps you need to rethink why you want to be a defense lawyer, or alternatively, why you should find another area of law to practice.

- 
- 1 ABA Standard 4-7.7(b) "Defense counsel's belief or knowledge that a witness is telling the truth does not preclude vigorous cross-examination, even though defense counsel's cross-examination may cast doubt on the testimony."
- 



J. Gary Trichter is the senior lawyer with the Houston & Bandera, Texas Law Firm of Trichter & LeGrand, P.C. Known as "The Cowboy Pilot Lawyer", he has been in practice for approximately 40 years and represents clients throughout Texas. Gary is co-author of the two-volume treatise entitled *Texas Drunk Driving Law* (4th Edition) and is author of over forty journal articles ranging from DWI, grand jury, drug couriers, aviation, to the Star-Spangled Banner. Gary is "AV" rated by Martindale-Hubbell and has been voted by his peers the past 14 years as a Texas Monthly Magazine "Super Lawyer". He is also Board Certified as a DWI Specialist by the National College for DUI Defense whose rating has been approved by both the American Bar Association and Texas Board of Legal Specialization. Gary is Founder and Past President of Texas DWI Lawyers (formerly Texas DWI Defense Lawyers Association), Past President of the Texas Criminal Defense Lawyers Association and past Dean and Regent for the National College for DUI Defense. He is a former Director and former DWI Co-Chair for the DWI Committee for TCDLA and past Chairman of NACDL's Drunk Driving Committee.





Many infamous  
outlaws terrorized  
the Old West,  
gunslingers like  
Billy the Kid and  
John Wesley Hardin.

But one name  
stands out as the most  
efficient, elusive  
killer of the bunch—  
**Deacon Jim Miller.**  
His dastardly deeds  
included the first  
documented murder  
on the South Plains  
of Texas.

BY CHUCK LANEHART

# THE BADDEST OUTLAW *of the West*

(This article was originally published in the Lubbock Avalanche-Journal, April 7, 2019.)



## MILLER'S HOMICIDAL EXPLOITS FROM CENTRAL TEXAS TO NEW MEXICO TO WEST TEXAS TO INDIAN TERRITORY RESULTED IN THE DEATHS OF AS MANY AS 51 MEN, MILLER'S OWN COUNT.

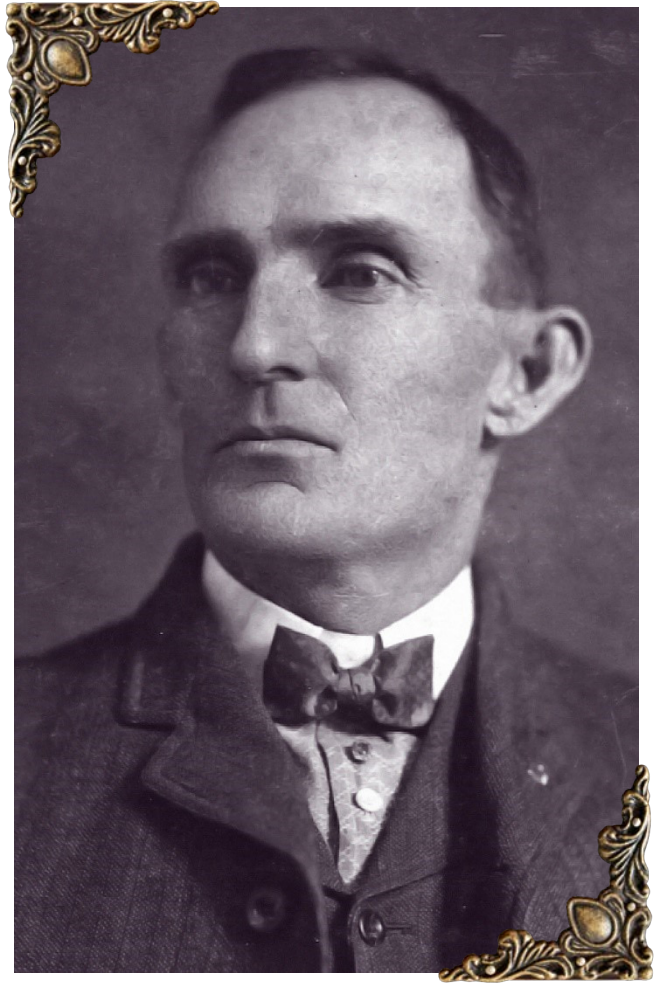
Soon after his 1861 birth in Arkansas, Miller's family moved to Central Texas. At age eight, Miller was suspected of murdering his grandparents, but the boy was too young to be prosecuted.

In 1884, he was indicted for the shotgun slaying of his brother-in-law, John Coop. A Coryell County jury sentenced Miller to life in prison, but the conviction was overturned on appeal.

He drifted through southeast New Mexico, bragging "I lost my notch stick on shearers I killed on the border."

By 1891, Miller was living in Pecos. Bad blood developed between Miller and the local sheriff, Bud Frazer. In 1896, Miller cornered Frazer in a saloon. As bystanders watched, he killed Frazer with two shotgun blasts.

The case was transferred to Eastland County. To prepare for trial, Miller moved to Eastland, where he lived peacefully with his family, attending church regularly.



**Deacon Jim Miller**, bragged of killing 51 men.

*Photo courtesy of Fred R. Maxey Jr.*

The community came to accept the Millers, and his churchgoing ways won him a paradoxical nickname: "Deacon" Jim Miller. An Eastland jury acquitted Miller of the Frazer murder on a plea of self-defense.

Miller stood six-feet-one, with black hair, grey eyes and dark complexion. He assumed the appearance of a pious Methodist, with ramrod-straight posture and impeccable attire. He didn't curse, nor did he smoke or drink.

## AT SOME POINT, MILLER CHANGED ROLES FROM A COMMON MURDERER TO A CONTRACT KILLER.





**Deacon Jim Miller**  
his family, c. 1890s  
*Photo courtesy of the  
Encyclopedia fo Arkansas*

In 1900, lawyer James Jarrott began recruiting Central Texas families to settle grassland west of Lubbock pursuant to the Four Sections Act.

The arrival of Jarrott's two dozen small agricultural families angered cattlemen who grazed livestock on the open range.

Powerful ranchers brought lawsuits against the "nesters." Among Jarrott's adversaries was Pap Brownfield, patriarch of an influential South Plains ranching family.

Jarrott prevailed in the litigation, legally establishing his clients on land in Hockley, Terry and Cochran Counties.

Meanwhile, Miller arrived on the South Plains, engaging in a shady real estate deal in Terry County, flipping land for a windfall profit. Miller was allied with the Brownfield family in the suspicious transaction, and the land soon became the City of Brownfield, named in Pap's honor.

On August 27, 1902, Jarrott was ambushed as he rode from Lubbock to his claim in Hockley County. His lifeless, bullet-ridden body was found in a pond near present-day Ropesville. Jarrott, 41, was the first recorded South Plains murder victim.

Miller later confessed to Jarrott's assassination, confirming he was paid \$500 to eliminate the tenacious Lubbock lawyer.

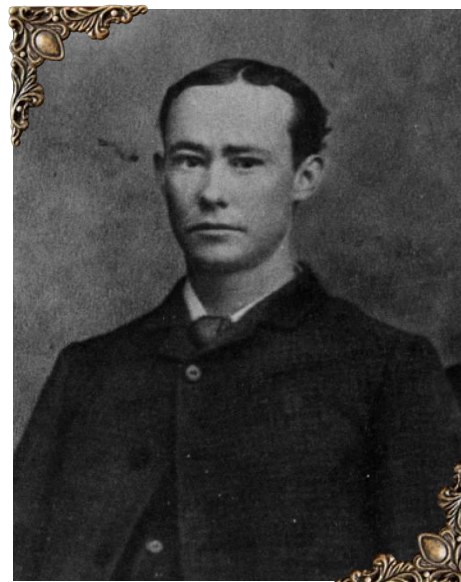


South Plains  
rancher **Pap  
Brownfield**,  
adversary of  
James Jarrott  
and associate  
of Deacon  
Jim Miller.  
*Photo courtesy  
of Terry County  
Heritage Mueuem*

## JARROTT PROVED TO BE "THE HARDEST MAN I EVER HAD TO KILL."

But he never named Brownfield or anyone else as his employer and died before charges could be brought.

In 1904, Miller lived in Fort Worth, where a mortgage company accused him of forgery. The company's investigator, Frank Fore, encountered Miller in the washroom of a Fort Worth hotel, and Fore was gunned down.



Lubbock  
attorney  
**James  
Jarrott**,  
victim of  
Deacon  
Jim Miller.  
*Photo courtesy  
of the Southwest  
Collection, Texas  
Tech University.*



Lynching of **Jim Miller**, left, and his gang, 1909, in Ada Oklahoma. *Public domain.*

At his trial, Miller produced a self-defense witness, Pap Brownfield, the same cattleman who had been aligned against slain Lubbock lawyer James Jarrott. The jury acquitted Miller of Fore's murder after 15 minutes of deliberation.

In Indian Territory, which would become Oklahoma, Clint Pruitt hired Miller to avenge the shooting of his brother by Deputy US Marshal Ben Collins.

In 1906, the marshal was assassinated by a shotgun blast. Miller was arrested and indicted for Collins' murder but was never tried. The case was pending at the time of Miller's death.

He was suspected of assassinating former lawman Pat Garrett—slayer of Billy the Kid—in Las Cruces in 1908, though historians question Miller's connection to the crime.

Early in 1909, Miller arrived in the bustling boom town of Ada, Oklahoma. A bitter feud had developed between saloon operators and former Deputy US Marshal Gus Bobbitt. The saloon owners employed Miller to settle the matter. Soon, Bobbitt was dead from a shotgun blast.

Miller and his co-conspirators were jailed, but Miller's reputation for beating murder raps alarmed Ada's citizenry. A mob dragged the prisoners into an abandoned livery stable.

Before he was hanged, Miller said,

**"I'VE KILLED 51 MEN."**

He asked that his diamond ring be left for his wife and his diamond shirt stud be given to a friendly jailer.

**HE REQUESTED HIS  
COAT AND HOLLERED,  
"LET 'ER RIP!"**

A photographer captured the aftermath of the grisly scene, and postcards of the lynching were proudly hawked by Ada merchants for decades. The baddest outlaw of the West was dead.



Chuck Lanehart is a shareholder in the Lubbock firm of Chappell, Lanehart & Stangl, PC, where he has practiced law since 1977. He is a charter member and former president of the Lubbock Criminal Defense Lawyers Association. Chuck served as director of the State Bar of Texas, District 16, and as president of the Lubbock Area Bar Association (LABA). He has chaired the LABA's

Courthouse Security Committee since its formation in 2012. He was the founding editor of LABA's official publication, *The Lubbock Law Notes*, in 1987. *Texas Monthly* magazine has named him a "Super Lawyer" in the field of criminal law.



A portrait of Colonel Jack B. Zimmermann, a man with grey hair, wearing a white cowboy hat, a dark suit, a white shirt, and a red and white striped tie. He is looking directly at the camera with a slight smile. The background is a red flag with a yellow and white emblem, possibly a Marine Corps flag. A dark red diagonal band runs across the bottom of the image, containing the text for the article.

# Jack B. Zimmermann

BY TERRI R. ZIMMERMANN

*A True Warrior on the Battlefield & in the Courtroom*

Colonel Jack B. Zimmermann, USMCR (Ret) exemplifies all of the qualities one expects to see in a “hero.” Not only has he served the Naval Academy, the Marine Corps, and the Department of the Navy in war and in peacetime, but also his local and the national communities and his family. His contributions to the development of our nation’s leaders and the legal community cannot be overstated. He has a long and proven history of leading with character and accountability in command, citizenship, and government. Above all else, he lives a life of integrity. People may not always agree with him, but they never, ever question his character or sincerity.

# zimme

## THE EARLY YEARS

Jack Zimmermann was born and raised with his two brothers and a sister in San Antonio, Texas. His dad, who immigrated to the US from the tiny North European country of Latvia as a toddler, owned an independent shoe store; his mother was a classic stay-at-home mom. In the days before computers and PlayStations, the kids spent their free time outside playing baseball and riding their bikes. As he got older, Jack also was active in his local youth social organization, serving as the president of the group. He did well in school and was the high school football star – earning all-district honors as a hard-nosed running back as a senior.

## NAVAL ACADEMY EXPERIENCE

Although his uncle had graduated in 1932, the Naval Academy was not familiar to Jack. However, one call from the Naval Academy football coach and he was hooked. During plebe summer, he won the class boxing championship in his weight class, defeating a Golden Gloves champion who had never before been knocked down. He went on to earn a varsity letter and N star as an all-conference running back as a First Classman on the Sprint football team.

During his First Class year, Midshipman Zimmermann was selected to be the Company Commander of 20th Company, and he led his company to within one point of winning the honor of being the Color Company during June Week, 1964. A natural leader, Zimmermann earned the respect of all he knew and led while at the Naval Academy, and that impression has lasted a lifetime.

Jack Zimmermann chose the Marine Corps on his service selection night and upon graduation, he was commissioned a Second Lieutenant. Shortly thereafter, he married the love of his life, Ilene, also from San Antonio. The two immediately headed to The Basic School in Quantico, Virginia, to begin their new life in the Marine Corps. After TBS graduation, he successfully completed the Artillery Officers Orientation Course.

## A HERO IN VIETNAM

Because he was near the top of his class, he was able to choose Hawaii as their first duty station, but the dream duty was short-lived. Ten days after arriving at Kaneohe Bay, Second Lieutenant Zimmermann's unit boarded ship to sail to Vietnam to be one of the first Marine ground units in country. He was tasked as an artillery forward observer with Battery "G," 3rd Battalion, 12th Marines, attached to Company "C," 1st Battalion, 4th Marines, in combat in Vietnam in 1965. In 1966, he served as Fire Direction Officer of Battery "W," 3rd Battalion, 12th Marines.

In July 1966, First Lieutenant Zimmermann was assigned to the joint service Defense Atomic Support Agency at Sandia Base, Albuquerque, New Mexico. He served as a course supervisor and platform instructor in several courses dealing with nuclear physics and nuclear weapons emergency team operations. Daughter Terri was born at this duty station.

In July 1968, Captain Zimmermann headed back to Vietnam and assumed command of Headquarters Battery, 1st Battalion, 13th Marines. He next commanded Battery K, 4th Battalion, 12th Marines along the Demilitarized Zone. Capt Zimmermann demonstrated his loyalty and courage every day he was in Vietnam. His valor and sacrifice were recognized when he was awarded two Bronze Star medals for heroism and a Purple Heart medal for actions in different units in different locations, but barely one month apart.

Former Marine Sergeant Armando Marrujo, his scout observer from his first combat tour, and Navy Corpsman "Doc" Wean from his second combat tour, travelled to Houston, Texas, from California and Illinois to participate in Col Zimmermann's retirement ceremony in 1994. Their speeches that day – and their very presence – were representative of the loyalty that enlisted personnel felt to Col Zimmermann because of the way he treated them as their leader.



# zimmermann

## NOTEWORTHY ACTIVE DUTY MARINE CORPS SERVICE

From August 1969 to August 1970, Capt Zimmermann attended the Krannert Graduate School of Management at Purdue University. During this tour, son David was born. Capt Zimmermann was awarded his Master of Science degree, and reported to Headquarters Marine Corps, where he served in the G-1 section, with responsibility for enlisted recruiting standards and the All-Volunteer Force.

From 1972 through 1975, Major Zimmermann attended the School of Law at the University of Texas at Austin, under the Excess Leave Program, obtaining a Doctor of Jurisprudence degree. During this tour, Maj Zimmermann served as the Assistant Inspector Instructor, Company B, 1st Battalion, 23rd Marines.

In October 1975, after graduation from the Naval Justice School at Newport, Rhode Island, Maj Zimmermann was assigned as Chief Defense Counsel, Force Troops, Atlantic at Camp Lejeune, North Carolina. In June 1976, Maj Zimmermann was transferred to the 2nd Marine Division, where he served as the Chief Prosecutor and Military Justice Officer. One of the judge advocates who trained directly under Maj Zimmermann during this time frame wrote a letter endorsing this nomination package. It is clear that Maj Zimmermann's leadership transferred during this tour from the battlefield to the combat zone of the courtroom; he positively affected each and every Marine with whom he worked.

Maj Zimmermann's last duty at Camp Lejeune was serving as a trial judge. During that period, Maj Zimmermann had invited the nation's leading and legendary criminal defense lawyer from Texas, Richard "Racehorse" Haynes, to speak at a training event. Mr. Haynes was so impressed with Maj Zimmermann that he guaranteed him a job as soon as his Marine Corps tour ended.

## INVALUABLE RESERVE MARINE CORPS SERVICE

On 1 July 1978, Maj Zimmermann resigned his regular commission. He accepted the invitation from Mr. Haynes and moved his wife and two children to Houston, Texas to begin life as a civilian lawyer. The same day, Maj Zimmermann accepted his commission in the United States Marine Corps Reserve. Despite a heavy caseload and adjusting to his new home and work situation, he served in multiple billets in a variety of fields. Some of the highlights of his Reserve career are:

- Executive Officer of an infantry battalion, 1st Battalion, 23rd Marines, including duty in Norway on Operation Teamwork-80 (1978-1981)
- Operations officer of MTU TX-5 in Houston, Texas (1981-1982)
- Executive Officer of Headquarters Detachment 6, 4th Marine Division (1982-1983)
- Commanding officer of the 1st Battalion, 23rd Marines (1983-1985). He served in this capacity during Annual Training Duty at Pohakuloa, Hawaii, in 1984, and at Camp Ripley, Minnesota, in 1985. In 1985, his infantry battalion underwent formal evaluation under simulated combat conditions, and the entire unit was rated "Combat Ready."
- MTU TX-5 in Houston, Texas, until October (1985-1986)
- Staff Judge Advocate of the 4th Marine Aircraft Wing in New Orleans, Louisiana (1986-1988)
- Deputy Chief Defense Counsel of the Marine Corps in Washington, D.C. (1988-1989)
- Commander of Headquarters Detachment 6, 4th Marine Division in Houston, Texas, with responsibility for inspecting the mobilization readiness of Marine Reserve ground units throughout the country, many of which were activated for Operation Desert Storm in the Persian Gulf (1989-1991)

- Group Inspector for the 4th Force Service Support Group in Atlanta, Georgia (1991-93)
- Reserve General Court-Martial Trial Judge in the Navy-Marine Corps Trial Judiciary, presiding at trials when assigned to active duty at Camp Lejeune, North Carolina, and the Naval Air Station, Pensacola, Florida (1993-1994)

Col Zimmermann's personal decorations and awards include two Bronze Star Medals with combat "V", Purple Heart Medal, Meritorious Service Medal, Joint Service Commendation Medal, Navy Commendation Medal with combat "V", Combat Action Ribbon, Presidential Unit Citation, two Meritorious Unit Commendations, and many service awards.

## UNPARALLELED CIVILIAN SUCCESS

His grueling Reserve schedule did not prevent Col Zimmermann from thriving in his new legal environment at the law firm in Houston. He became Racehorse Haynes' "right hand man" and they tried several high-profile cases together. Not long after he arrived, Col Zimmermann's leadership skills became so apparent that he was put in charge of all new hires – lawyers and non-lawyers alike. The firm's leadership recognized how much value that Col Zimmermann's character, especially in combination with his Marine Corps training, contributed to the firm's success.

In 1984, Jack decided to branch out on his own. He formed his own law firm and enjoyed continued success because of his intelligence, legal skills, and extraordinary ability to lead people. Soon thereafter, Jim Lavine left the Harris County District Attorney's Office and Zimmermann & Lavine, P.C. was born. Since then, Jack has had a tremendous career as a criminal defense lawyer at the trial and appellate levels. He is Board Certified in Criminal Law by National Board of Trial Advocacy and the Texas Board of Legal Specialization.

## A DEVOTED FAMILY

While Col Zimmermann is very proud of his accomplishments, he and his wife would tell you that they firmly believe their greatest achievement has been raising their daughter and son, and setting examples for four great grandchildren. Their daughter, Terri, is a criminal defense lawyer and a Colonel of Marines in the Reserve. Their son, David, is a Special Agent in the FBI, a former Naval Flight Officer in the Marine Corps, and a 1992 graduate of USNA. Each of their grandchildren is a scholar and wants to make the world a better place.

## UPHOLDING THE CONSTITUTION IN THE COURTROOM

Col Zimmermann has had tremendous success litigating cases throughout his career. This is due to his intelligence, hard work, thorough preparation, and outstanding ability to communicate effectively to people of all backgrounds and views. He is known throughout the country as a powerhouse of knowledge and skill. A complete list of his legal victories would violate the page restrictions of this document, but representative highlights include:

- State v. Vickie Daniel, acquitted of murder of her husband, former Speaker of the Texas House of Representatives. (Liberty, Texas 1981)
- State v. Patricia Latourette, acquitted by instructed verdict of murder of her husband, radiologist and former NFL star. (Houston, Texas 1984)
- State v. Clifford Henry Bowen, represented Mr. Bowen on appeal, three death sentences reversed; case dismissed upon re-trial. (Oklahoma City, Oklahoma 1981-1987)
- United States v. David Koresh, et al, represented Steve Schneider, chief negotiator for the Branch Davidian religious group during the stand-off with the FBI after ATF raid on Mt Carmel Center, which ended in tragic fire and loss of 80 lives; spent 2 days inside Center. Defense witness at trial of survivors; all acquitted of murder of federal agents. Testified before subsequent Congressional hearings into Waco matter. (Waco and San Antonio, Texas 1993-1994)
- State v. Jerry Watkins, murder case dismissed after District Attorney arrested for soliciting a bribe from Jerry Watkins. District Attorney served 2½ years in federal prison. (Athens, Texas 1993-1994)
- State v. Corporal Clemente Bañuelos and United States v. Corporal Clemente Bañuelos, represented active-duty Marine on anti-drug mission on U.S.-Mexican border who returned fire from a man on U.S. side, killing him. Two State grand juries and a Federal grand jury refused to indict. Military investigation found no crime. (Marfa and Pecos, Texas, and Camp Pendleton, California 1997-1998)
- United States v. LTC Robert Clinton Morris, Jr., represented active-duty Army officer in civilian federal court – acquitted in 45 minutes of conspiring to steal \$7,000,000.00 of equipment. (Dallas, Texas and Columbus, Georgia 2001-2002)



- United States v. LCpl Christian Hernandez, represented activated Marine reservist at Article 32 preliminary hearing. Accused of homicide of Saddam Hussein party official in Iraq. All charges dismissed. (Camp Pendleton, California 2004)
- Deputy Special Prosecutor – investigated judiciary, District Attorney’s office, criminal defense bar, and crime lab in “fake drug scandal.” (Dallas, Texas 2004-2005)
- United States v. LCpl Stephen Tatum, represented active duty Marine originally charged with murder of Iraqi civilians, withdrawn after Article 32 hearing; involuntary manslaughter, aggravated assault, and reckless endangerment charges dismissed with prejudice on first day of trial. (Camp Pendleton, California 2006-2008)

## DEVELOPING FUTURE LEADERS

Col Zimmermann has established himself as a true leader in both the military and civilian contexts. He led countless Marines during his accomplished military career, and even after retirement he continues to contribute by interviewing potential officer candidates in support of the local recruiting command and speaking at events such as Marine Corps Balls and other ceremonies. Not only does Col Zimmermann influence the people he sees daily, he also reaches out to the local, state, national, and even international communities to share his vast knowledge and experience in order to help others become better lawyers and people. He has appeared on national television, there are documentaries produced about some of his biggest cases, and he has published numerous articles and books that establish his place as a leader in the legal community.

Col Zimmermann also is an established leader in his personal and legal communities. He has experience serving as:

- Co-Chair, Military Law Committee, National Association of Criminal Defense Lawyers
- Current or Former Faculty Member of the National College of Advocacy, the Texas Criminal Trial Advocacy Institute, State Bar of Texas Advanced Criminal Law Course, and Marine Corps Trial Advocacy Course
- Examiner, National Board of Trial Advocacy
- Former Chairman, Harris County Judicial Qualifications Committee
- Former Chairman, Criminal Law Section, Association of Trial Lawyers of America
- Former Chairman, Military Law Section, Association of Trial Lawyers of America
- Former President, Texas Association of Board Certified Specialists in Criminal Law
- Former President, Harris County Criminal Lawyers Association
- Former Director, Texas Criminal Defense Lawyers Association
- Former Member, Penal Code and Criminal Procedure Committee of the State Bar of Texas
- Former and current President, Waterwood Improvement Association
- Former President, Post Oak Homeowners Association
- Former President, Bayou Bend Civic Association
- Former Member, Board of Governors, Marine Corps Association

Jack Zimmermann has touched many lives and improved the world around him. He serves as a great example of what it means to live a wholesome and meaningful life.



*Terri R. Zimmermann is a shareholder with Zimmermann Lavine & Zimmermann, P.C. in Houston, Texas. She is board certified in Criminal Law and Criminal Appellate Law by the Texas Board of Legal Specialization, and is a Board Certified Criminal Trial Advocate, National Board of Trial Advocacy. She practices primarily criminal defense and military law at the trial and appellate levels*

*in state, federal, and military courts nationwide. She graduated with a B.A. with Honors in Government from the University of Texas in 1989 and received her J.D. from Georgetown University Law Center in 1992. Ms. Zimmermann has been a member of the United States Marine Corps Reserve since 1989. During her active duty tour, she was a prosecutor. Currently, she is a Colonel. Her service includes three years as a Judge on the Navy-Marine Corps Court of Criminal Appeals, four years as the Reserve Chief Defense Counsel of the Marine Corps, and a year as the Branch Head for the Reserve Trial Services Office, responsible for training and mentoring all active duty and Reserve prosecutors in the Marine Corps. She joined the law firm in 1996, where she has proudly worked with her father, Jack Zimmermann, and Jim Lavine.*



# BEST DEFENSES

## PART 2

BY JOSEPH A. CONNORS III, WILLIAM RYAN AND EVARISTO GARCIA, JR.

For clients recently arrested, what tools exist to quickly gather relevant information? Must defense counsel await e-discovery compliance by the case prosecutor to a request under Article 39.14, Texas Code of Criminal Procedure (C.C.P.)?

For your accused client, consider particularizing the first letter below and send out your request addressed to the arresting agency or to the judicial official, who magistrate under Article 15.17, C.C.P.

### REQUESTING LETTER

May 30, 2019

#### REQUESTING LETTER

Pharr Police Department

ATTN: Officer for Public Information, Crime Records

1900 S. Cage Blvd

Pharr, Texas 78577

Re:	Name of Recorded Arrestee	:	Mr. X
	Offense	:	DWI
	Arresting Agency	:	Pharr Police Department
	County of Arrest	:	Hidalgo County, Texas
	Date & Approximate Time of Arrest	:	Approximately 8:30 p.m. on 04/01/2019
	Location of Recorded Arrest	:	In the North 1000 Block of Trump Street

Dear Sir/Madam:

I am a member of the public. Regarding the above incident I make the below information requests. I am the retained attorney for the above defendant Mr. X. I need you to send me a copy of all I am entitled to under the law, including all court-filed documents and all below described. I request a copy of all court-filed documents, including but not limited to magistrate's signed warrant to arrest and/or search, magistrate's order setting bail, magistrate's order accepting bond, probable cause statement, and each supporting affidavit/complaint to the above offense in court where the law enforcement agency or department processed the above accused, had a judge set bail for the above individual and/or received a bond consistent with each order by a court. I also request the jail booking information recorded at the time of detention at Pharr Police Department. Additionally I request a copy of all possessed by



the City of Pharr regarding the above incident, including the video/audio recording(s) by dashboard camera, body camera, surveillance equipment, municipal recorders or personal phone or personal recorder near or at the detention or arrest site that might be related to the incident report(s), and transcripts, documents, original and supplemental reports, prepared by any City of Pharr Police Department equipment, employee, all witnesses' statements, affidavits notarized by or for or prepared by or for any City of Pharr Police Department employee, and "basic information about an arrested person, an arrest, or a crime" under Tex. Government Code (GC) § 552.108( c), which includes, among other items, a sufficient portion of the narrative to include a detailed description of an offense.

Body worn cameras are subject to Tex. Occupations Code Chapter 1701. The "Re:" above complies with Occup. Code § 1701.661(a) and lists all that I must provide when submitting a written request to a law enforcement agency for information recorded by a body worn camera.

The legislative mandated that a person stopped or arrested on suspicion of an offense under Tex. Penal Code §§ 49.04, 49.045, 49.07 or 49.08, is entitled to receive a copy of any video made by or at the direction of the officer that contains any and all of the footage described in Tex. Crim. P. Code Article 2.1396. I so request a copy for my above client of all such statutory described videos.

Tex. Government Code (GC) § 552.022(a)(17) provides for required public disclosure of "information that is also contained in a public court record," unless the information is made confidential under the Act or other law. Common-law privacy is not applicable to information contained in public court records. See *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992). Court case records are open to the public in accordance with the principles established under the common law, statutory authority, and the mandates of the Texas Constitution which are consistent in that the public interests are best served by open courts and by an independent judiciary. Tex. Const. Art. 1, Sec. 13; *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978). My request for information seeks access to court case records for it pertains to the magistrate court's pre-adjudicative function regarding findings of probable cause, etc.

If a cash deposit is required under GC § 552.263, inform so I can pay reasonable charges incurred. See *Creel v. Sheriff of Medina County*, 751 S.W.2d 645 (Tex.App.—San Antonio 1988), *rev'd and remanded*, 818 S.W.2d 45 (Tex. 1991); GC §§ 552.221 (b)(2) and 552.261 et seq.

Pursuant to GC Chapter 552 and to duties and liabilities for official misconduct imposed under GC § 552.353, and pursuant to Texas Constitution Article 1, § 8, the U.S. Constitution's Amendments I and XIV, and *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex.App.—Houston [14th Dist.] 1975, writ ref'd n.r.e., 536 S.W.2d 559 (Tex. 1976), I believe Texas law provides me access to each above requested matter. Thus, please immediately notify me of the charge and release to me "police blotter, show-up sheet, and arrest sheet," which terms are defined at 531 S.W.2d at 179 and are public records disclosable on request and not excludable under any exclusion in the Texas Public Information Act. However, if your governmental department, agency, court, public information officer, lawyer or the Texas Attorney General decides any requested information need not be disclosed due to any statutory provision, please exercise your discretion and voluntarily release to me all above requested information that is not otherwise confidential by law. See GC § 552.007.

The Texas Supreme Court found no reversible error in the holding that disclosure to the press and the public of below designated parts of the police records was grounded upon Amendment I, U.S. Constitution, and Article I, § 8, Texas Constitution. Those laws entitle me to receive upon request certain police department items regarding the above arrestee.

Each above request is also made under Rule 12 of the Texas Rules of Judicial Administration.

GC § 552.0035 specifically provides that access to "judicial records" is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules. See Jud. Admin. Rule 12; see also, e.g., *Ashpole v. Millard*, 778 S.W.2d 169, 170 (Tex. App.—Houston [1st Dist.] 1989, no writ) (public has right to inspect and copy judicial records subject to court's inherent power to control public access to its records); Attorney General Opinion DM-166 (1992);



## REQUESTING LETTER

Open Records Decision No. 25 (1974).; see also Jud. Admin. Rule 12 Decision Nos. 00-001 & 00-003.

Jud. Admin. Rule 12.2(d) expressly states that a "[j]udicial record means a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case. A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record . . ."

Under all applicable laws, I repeat each above request. Please inform as records are ready for release.

Sincerely yours,

/s/ Joseph A. Connors III

JOSEPH A. CONNORS III

## RESPONSE FROM ARRESTING AGENCY

## RESPONSE FROM ARRESTING AGENCY

April 15, 2019

Ken Paxton

OFFICE OF THE TEXAS

ATTORNEY GENERAL

Open Records Division

Austin, Texas

RE: PUBLIC RECORDS REQUEST of April 30, 2019, Reference # P000800-043019

Dear Open Records Division:

The City of Pharr is requesting a decision from the Office of the Attorney General pursuant to Tex. Gov. Code §552.301 of the Texas Public Information Act regarding the City's authority to withhold certain information from public disclosure under the Public Information Act.

The requestor, attorney Joseph A. Connors III, has specifically asked for the following information:  
911 audio recording/ arrest report/ release report/cad or dash cam/ crime statistics/ incident report, offense report



## RESPONSE FROM ARRESTING AGENCY

33

2019, VOLUME 2 / THE DEFENDER

Location of event: 1725 W. Interstate Highway 2 Pharr Tx

Person involved: Mr. X

Officer name: Jorge Gonzalez #3248

Date of event: 4/01/2019

The City notes that responsive documents exist for this request.

Please advise of your interpretation and application of the legal provisions referred to above so that the requestor can obtain a response to its request. The City of Pharr believes that the responsive information is excepted from disclosure for the following reason:

Section 552.108 of the Government Code

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime

The responsive information contained in Exhibit B consists of records created and maintained by the City Police Department whose primary functions are to investigate crimes and enforce criminal laws. The Pharr Police Department has an open investigation into the incident and the release of the requested information would interfere with the investigation and potential criminal and administrative causes of action.

As a result of the confidential nature and ongoing investigations of the incident and the requested information the City of Pharr believes that responsive information should maintain its confidentiality, privilege, and exception to disclosure.

If you have any questions or wish to discuss this matter further, please do not hesitate to contact me. I will earnestly await your response.

Sincerely,

/s/ William Ryan

William Ryan

Pharr Police Department

Attachment

Cc: [Joseph A. Connors III]

[3219 N. McCOLL RD.]

[McALLEN] [TX] [78501]



## RESPONSE FROM ATTORNEY FOR MAGISTRATING JUDGE

January 22, 2019

via email: [connors@innocent.com](mailto:connors@innocent.com)

Mr. Joseph A. Connors III

Attorney and Counselor at Law

P.O. Box 5838

McAllen, Texas 78502-5838

Re:      Name:      Mr. Z

Offense: Criminal Trespass

Offense Date: December 31, 2018

Dear Mr. Connors,

I am in receipt of your correspondence dated January 6, 2019 emailed to the McAllen municipal court. The court has forwarded it to me and has requested that I respond on its behalf. It is my understanding that you are making a request for court case records from the municipal court for the following:

I need you to send me a copy of all I am entitled to under the law. I will also need a copy of magistrate's signed warrant to arrest and/or search, magistrate's order setting bail, magistrate's order accepting bond, and each's [sic] supporting affidavit/complaint to the above offense in court where the law enforcement agency or department processed the above accused, had a judge set bail for the above individual and/or received a bond consistent with each order by a court.

If this does not accurately reflect the information you seek, then please contact me as soon as possible so that we may discuss your request.

1. TEXAS PUBLIC INFORMATION ACT

Initially, I note that your request for court case records from the municipal court makes reference to certain provisions of the Public Information Act in section 552 of the Texas Government Code which is used for the purpose of giving the public the right to request information in the possession of the government.

The Public Information Act (“Act”) in Chapter 552 of the Government Code pertains to governmental entities.<sup>1</sup> The Act is applicable to information “written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body.”<sup>2</sup> However, section 552.003(1)(B) of the Government Code specifically excludes the judiciary from the definition of “governmental body.”<sup>3</sup> Information “collected, assembled, or maintained by or for the judiciary is not subject to the Act but, instead, is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.”<sup>4</sup>



# RESPONSE FROM ATTORNEY FOR MAGISTRATING JUDGE

The municipal court is part of the judiciary and any information responsive to your request to the municipal court is derived from records of the judiciary.<sup>5</sup> The requirements and provisions relating to public disclosure in the Act have not been triggered because the Act is not applicable to the municipal court.

## 2. RECORDS OF THE JUDICIARY

### A. JUDICIAL RECORDS

Section 552.0035 of the Government Code specifically provides that access to judicial records is governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules.<sup>6</sup> Public access to information in the judiciary is governed by Rule 12 of the Texas Rules of Judicial Administration. Upon careful review, your request seeks information from the municipal court that are not "judicial records" as that term is defined. Rule 12.2(d) expressly states that a "[j]udicial record means a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case. A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record . . ."

The information that you have requested pertains to the municipal court's adjudicative function. Therefore, I have determined that your request for information is exempted by the Public Access to Judicial Records Rules 12.2 and 12.3 of the Texas Rules of Judicial Administration.

Although this is not a request for a 'judicial record' as that term is defined, I am informing you of your right to appeal my determination in accordance with Rule 12.9 of the Texas Rules of Judicial Administration to the extent you believe that the information you seek are judicial records. If you wish to do so, then please direct your timely appeal to:

David Slayton, Administrative Director

Office of Court Administration

P.O. Box 12066

Austin, TX 78711-2066

Tel: (512) 463-1625

Fax: (512) 463-1648

### B. COURT CASE RECORDS

Despite my determination that neither the Texas Public Information Act or the Public Access to Judicial Records (Rule 12) are applicable to your request, you should be aware that court case records are open to the public in accordance with the principles established under the common law, statutory authority, and the mandates of the Texas Constitution which are consistent in that the public interests are best served by open courts and by an independent judiciary.<sup>7</sup> Your request for information seeks access to court case records because it pertains to the municipal court's adjudicative function. However, the court has supervisory power over its own records and files and the general public's right to access court case records is not absolute.<sup>8</sup> Access to court case records may be subject to confidentiality in accordance with common law privacy, any applicable statute or rule that controls access to a particular kind of court case record, and any information that the court may believe would become a vehicle for improper purposes if released.<sup>9</sup>



## RESPONSE FROM ATTORNEY FOR MAGISTRATING JUDGE

In this instance, the municipal court is disclosing court case records that is responsive to your request. Enclosed is the (1) Magistrate's Warning; (2) Complaint; (3) Probable Cause Statement; and, (4) Warrant of Arrest.<sup>10</sup> The court does not have any other information that is responsive to your request.

I hope you find this information helpful. Please feel free to contact me if you have any questions.

Sincerely,

/s/ Evaristo Gracia, Jr.

Evaristo Garcia, Jr.

Assistant City Attorney

CITY OF McALLEN

CITY ATTORNEY'S OFFICE

P.O. Box 220

McAllen, Texas 78505-0220

Telephone (956) 681-1090

Facsimile (956) 681-1099

E-Mail [egarcia1@mcallenpd.net](mailto:egarcia1@mcallenpd.net)

Website [www.mcallen.net](http://www.mcallen.net)

cc: municipal court

**CELEBRATE  
YOUR LOVE,  
& YOUR LIFE**

with custom designed  
wedding stationery  
+ more

the  
**printed  
bride**

  THE PRINTED BRIDE  
[THEPRINTEDBRIDE.COM](http://THEPRINTEDBRIDE.COM)



- 1 Gov't Code § 552.003.
- 2 Gov't Code § 552.002(a) (1).
- 3 Gov't Code § 552.003(1) (B).
- 4 Gov't Code § 552.0035(a).
- 5 Tex. Gov't Code § 29.002 (codifying Corporation Court Law of 1899; Act of April 1, 1899, 26th Leg., R.S., Ch. 33, 1899 Tex. Gen. Laws 40); *Ex Parte Wilbarger*, 55 S.W. 968 (Tex. Crim. App. 1900) (interpreting the Act to mean that municipal courts are state courts of limited jurisdiction); *see also Aguirre v. State*, 22 S.W.3d 463, 467 (Tex. Crim. App. 1999).
- 6 Gov't Code § 552.0035; *see* R. Jud. Admin. 12; *see also, e.g., Ashpole v. Millard*, 778 S.W.2d 169, 170 (Tex. App.—Houston [1st Dist.] 1989, no writ) (public has right to inspect and copy judicial records subject to court's inherent power to control public access to its records); Attorney General Opinion DM-166 (1992); Open Records Decision No. 25 (1974).
- 7 Tex. Const. Art. 1, Sec. 13; *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978); *See also Ashpole v. Millard*, 778 S.W.2d 169, 170 (Tex. App.—Houston [1st Dist.] 1989, no writ); *see also R. Jud. Admin.* 12 Decision Nos. 00-001 & 00-003.
- 8 *Nixon* at 598.
- 9 *See Id.*; *see also Industrial Foundation of the South v. Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976).
- 10 *See* Code of Criminal Procedure § 15.26 (statutory right of access to arrest warrant and probable cause affidavit).



Joseph A. Connors III practices solo criminal and appellate defense in McAllen, Hidalgo County, Texas. When judicially ordered to sit down, while making evidential objections before the jury, Mr. Connors complied. He immediately stood up but continued

obtaining adverse rulings on the numerous hearsay objections. In the 6-3 decision, *Schaffer v. State*, 777 S.W.2d 111 (Tex. Crim. App. 1989), the court held that the trial court should have sustained defendant's hearsay objection. Introduction of the hearsay affected "a substantial right" of defendant and mandated reversal of his conviction. That defendant's contention that he was an informant was essential to resolution of the case, and he was entitled to have that issue fairly litigated before the jury. The Court of Criminal Appeals affirmed the "back-door hearsay" analysis and opinion in *Schaffer v. State*, 721 S.W.2d 594, 597 (Tex.App.—Corpus Christi 1986), reversing defendant's conviction. Defendant was complaining of this question and answer:

**Q**

Without telling us what he told you, Officer Segovia, would you, at this time, ask the State to drop the charges against Mr. Schaffer?

**A**

No.

Three dissenting judges noted that "Appellant would appear to have had a valid objection on the basis of relevance, Tex.R.Civ.Evid. 401, and unfair prejudice, Tex.R.Civ.Evid. 403. Because appellant did not object on either of these grounds, he is barred from raising them on appeal. *Zillender v. State*, 557 S.W.2d 515, 517 (Tex.Cr.App. 1977)." *Id.*, 777 S.W.2d at 117 n.3.

Also contributing to this article were William Ryan, a Pharr Police Department Lieutenant and Evaristo Garcia, Jr., an Assistant McAllen City Attorney.



CONGRATULATIONS  
**TCDLA**  
THIRTY-FIRST ANNUAL  
BANQUET

HONORING

**HALL OF FAME**

VINCENT PERINI  
MAC SECREST  
BOB HINTON

**TCDLA RODNEY ELLIS AWARD**

REPRESENTATIVE SENFRONIA THOMPSON

**CHARLIE BUTTS PRO BONO AWARD**

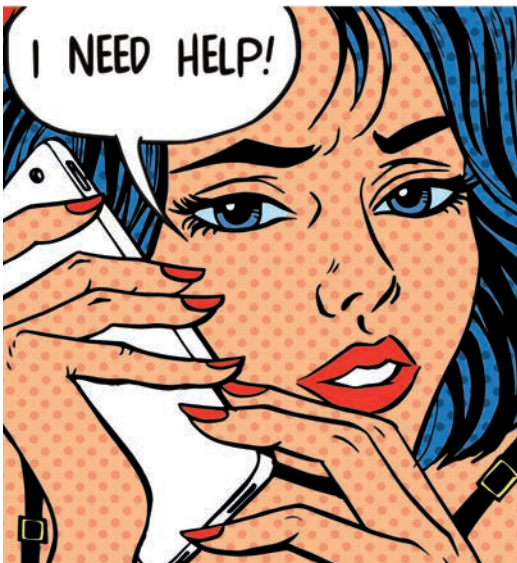
JESSICA SHAYE FREUD  
WALTER "SKIP" REAVES  
PAUL C. LOONEY

# HCCLA.ORG/MEDIA

ALL THINGS REASONABLE DOUBT | ALL THINGS JUSTICE

LIVE EVERY THURSDAY @ 8PM

STREAMING LIVE AT HOUSTON MEDIASOURCE - [WWW.HMSTV.ORG/HMSLIVE.ASPX](http://WWW.HMSTV.ORG/HMSLIVE.ASPX)  
OR ON COMCAST 17, AT&T U-VERSE 99, PHONOSCOPE 75, & SUDDEN LINK 99



**ETHICS  
HOTLINE  
CALL TODAY  
713-518-1738**

**ARE YOU A  
MEMBER?**

*Join Today!*  
*HCCLA Needs You!*



**TO PUBLISH AN ARTICLE, CONTACT ROBERT PELTON @**  
713-524-8471 • [rpeltonlawyer1@aol.com](mailto:rpeltonlawyer1@aol.com)

**TO PLACE AN AD, VISIT [HCCLA.ORG/DEFENDER](http://HCCLA.ORG/DEFENDER)**

Full Page Ad \$500/Issue - \$1800/YR • 1/2 Page Ad \$300/Issue - \$1080/YR  
1/4 Page Ad \$175/Issue - \$630/YR • Business Card AD \$99/Issue - \$356/YR

**DISTRIBUTION 1000 COPIES PER ISSUE / 4 ISSUES PER YEAR**



# DEFENDER

2019 / VOLUME 2

THE DEFENDER

PO Box 924523

Houston TX 77292-4523

PRESORTED STANDARD  
U.S. POSTAGE PAID  
HOUSTON, TEXAS  
PERMIT NO. 11500

# BLACKWOOD



## BAIL BONDING COMPANY

**EDD BLACKWOOD / LICENSE 77432**

Houston's Oldest Bail Bonding Company

Serving Houston, Harris County, All Texas Counties,  
& Nationwide Bail Bonds

**WE ALSO PROVIDE COURTROOM ASSISTANCE**

1002 N. SAN JACINTO / HOUSTON TX 77002

# 713.222.BAIL

(2245)