



# The College Bulletin

News for Members of the College of the State Bar of Texas

Fall 2009

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## It's All About Service

As members of the College of the State Bar, we all have a great deal to be proud of. Only about 4,000 of the 75,000 Texas lawyers may claim the distinction of belonging to this honorary society. In addition to being committed to professionalism through education, the College and its members make a difference in communities across Texas in a way that only lawyers can – by doing pro bono work.

Why should we, as College members, be concerned about doing pro bono work? There are lots of reasons. Perhaps the most important is that our position as leaders in the profession gives us the opportunity – some might say the *responsibility* – to set an example for others through our dedication to continuing education and public service. In return, we are enriched by knowing that we have made an impact not only on the profession but on the lives of those in our communities who cannot afford desperately-needed legal services. As lawyers, we hold the keys to the courthouse. Without our assistance, the less fortunate in our communities might not have access to our legal system. And that is a situation no lawyer should countenance. As officers of the court and leaders in the profession, we have a duty to give back in a way that only we can. That is part of what it means to be a *professional*.

The American Bar Association Standing Committee on Pro Bono and Public Service has declared October 25th through 31st as National Pro Bono Week, celebrating the efforts and showcasing the difference that pro bono lawyers make in the nation, our system of justice, our communities, and the lives of the clients we serve. The ABA Committee chose to launch this important effort now because of the increasing need for pro bono

services throughout the country as a result of the national economic downturn. As a long-time pro bono volunteer, I applaud the ABA Committee for recognizing the efforts of lawyers who do pro bono work and the positive impact that the contribution of these lawyers has on the profession and the communities they serve.

The College has long supported the Texas Access-to-Justice initiative by offering scholarships to Legal Aid attorneys to attend the annual College Summer School Program in Galveston. Because of limited program budgets and low salaries, these attorneys often cannot attend high-quality CLE programs offered by the State Bar and the College. These scholarships represent the efforts of the College not only to support professionalism through education but also to support Legal Aid and the services it provides to indigent Texans. As you read in the Spring 2009 *College Bulletin*, the College also contributed \$10,000 to Lone Star Legal Aid for its disaster-recovery initiatives addressing the legal needs of victims of Hurricane Ike. Many individual College members also demonstrate a commitment to professionalism through service by doing pro bono work on a regular basis.

How will you celebrate National Pro Bono Week? Whether you are a regular pro bono volunteer or have been thinking about volunteering, you could participate in National Pro Bono Week by accepting a pro bono case or volunteering with your local or regional Legal Aid organization. Individually, each of us can make a small difference; together, all of us can make an enormous difference. ■

## From the Chair



Sally Crawford

# Motion Presentation in the Trial Court: Tips for Effective Oral Advocacy

By Chad Baruch



**I**N AN ERA OF DIMINISHING TRIALS, motion presentation assumes ever greater importance. Yet the quality of oral advocacy in trial court hearings often ranges from mediocre to horrific. Anyone who spends a day observing the motion docket in any trial court will be shocked by the lack of skill and preparation displayed by some lawyers. This article attempts to address this issue by presenting a few basic ideas for improving oral advocacy.

## Formulate your one-sentence summary.

In preparing for a motion hearing, reduce your core position to one short sentence. If it is your motion, be prepared to tell the court through that one sentence why the motion should be granted. If you are resisting a motion, be prepared to tell the court through that one sentence why the motion should be denied. In addition to preparing for a potential question by the court, this will force you to focus on the critical issues implicated by the motion.

## Narrow your issues.

A critical but common mistake in motion presentation is failure to narrow the issues. As James McElhaney explained repeatedly in his popular ABA litigation column, *an entire argument typically is evaluated by the quality of its weakest point*. Even strong arguments suffer by the addition of weak ones. Before presenting your motion, determine what you want, and narrow your argument to present the very best reasons you should get it. Stick to these critical arguments and avoid introducing weaker ones.

## Be professional.

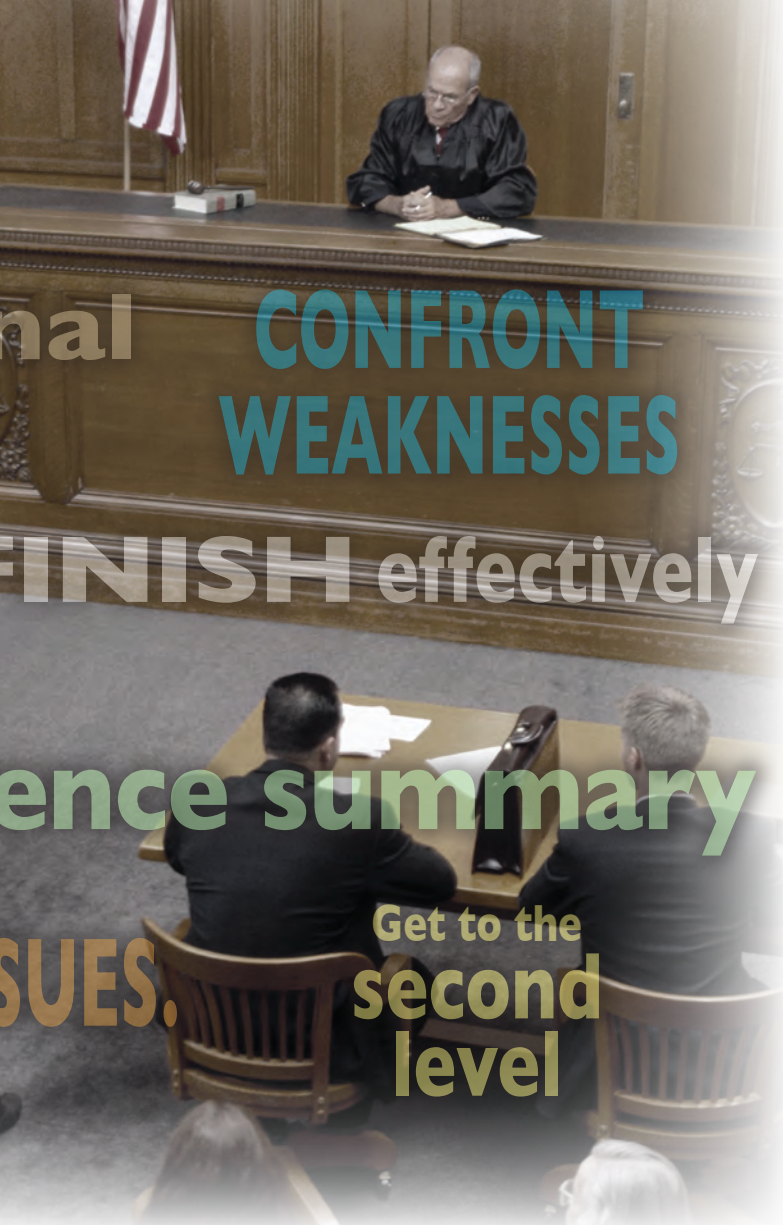
Winning motions is hard enough – don't handicap yourself by being unprofessional. Arrive on time to hearings. Be courteous to opposing counsel (even when – no, *especially* when – you are not receiving the same courtesy in return). Avoid visible reaction to the court's questions or rulings, or to opposing counsel. Don't roll your eyes or sigh deeply



when opposing counsel misstates the law or facts. Avoid shuffling through papers. Stand up straight, be still, and keep your hands out of your pockets (and definitely don't jingle your keys and change!).

## Start effectively.

All good oral presentations, including motion arguments, include a strong introduction. An introduction serves several purposes. First and foremost, it hooks the listener. A good introduction also provides a glimpse of the most important legal issues involved and frames the issues so their resolution is clear to the listener. In *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1 (2004), known popularly as the "Pledge of Allegiance case," atheist Michael Newdow sued his young daughter's school district alleging that daily recitation of the Pledge of Allegiance violated the Establishment Clause. Representing himself in the U.S. Supreme Court, Mr. Newdow began his argument with a very simple but terribly compelling introduction that went to the heart of his case:



nal **CONFRONT WEAKNESSES**  
**FINISH** effectively  
ence summary  
SUES. **Get to the second level**

I am an atheist. I don't believe in God. And every school morning, my child is asked to stand up, face the flag, put her hand over her heart, and say that her father is wrong.

PETER IRONS, *GOD ON TRIAL* 252 (2007). In three short sentences, Mr. Newdow presented the critical facts, summarized his argument (some might say presented his entire argument), and focused the court's attention not on an abstract legal issue but on a father and his young daughter.

Sometimes, of course, you approach the bench without knowing whether the court has read your brief. Never assume that a trial judge has read the briefs. If you are familiar with the judge and feel comfortable asking, it may be helpful simply to ask "Your honor, have you had a chance to read the brief, or would a brief summary of the facts be helpful?" If you don't know the judge, or don't feel comfortable asking this question, the safer practice is to begin with a brief summary of the case prefaced by a one-sentence statement of the motion before the court.

### **Finish effectively.**

"That's all I have, judge" is not an effective conclusion. Too often, the trial court knows a lawyer's argument is over only because the lawyer stops talking. An effective conclusion recaps the argument, and formulates for the court in a single sentence the reason the lawyer should prevail:

Your honor, because Mr. Jones failed to plead *res judicata* as an affirmative defense, and because the doctrine does not apply to a continuing course of conduct, we ask that the motion to compel discovery be granted. Thank you.

### **Get to the point!**

When it comes to lawyers, few stereotypes are more prevalent than the notion that lawyers love to hear themselves talk. If you ask judges what they would suggest for lawyers presenting motions, you are almost certain to hear "Get to the point!" Trial judges have very limited time to hear the plethora of motions crowding their dockets. Attorneys should be succinct in presenting motions.

### **Confront weaknesses in your case.**

If your case has a weakness, don't dance around it. This is one of the most common mistakes made by young lawyers in presenting motions. Successful litigators uniformly advise that weaknesses be confronted squarely and early during motion argument. Similarly, confront adverse authority head-on, explaining to the judge why you should prevail in spite of it. Not only is this candor required by ethical rules, it also increases your likelihood of success and enhances your reputation among judges – and don't kid yourself, they talk to each other about lawyers – for integrity and competence.

### **Get to the second level.**

Perhaps the most important difference between effective and ineffective motion presentation is the ability to reach the second level of argument – that is, to incorporate and refute your opponent's best arguments when presenting your motion. If you only present your arguments and do not address your opponent's likely responses, you have told the judge only half of the story. The better approach is to weave your opponent's best arguments into your own argument and refute them. In addition to being more persuasive, this approach has substantial tactical benefits. Opposing counsel may have prepared argument based on presenting counter-arguments rather than refuting your responses to those arguments. By addressing those arguments in your opening, you may disrupt opposing counsel's game plan and undermine the effectiveness of any response to your argument.



# Just-in-Time Learning

*From the Executive Director*



Pat Nester

**Q**UICK – CAN YOU RECITE THE PHONE NUMBERS of your five closest family members? Chances are you cannot. The reason? Just-in-time learning.

Ever since it became possible to delegate such tasks to our smart phones and other electronic devices, our memories have progressively been losing bits of useful information. More importantly, perhaps, we are losing our motivation to remember bits of useful information because we know we have these devices to help us.

So, modern times may be nibbling away at what we once considered an essential component of civilization: the individual's memorization and instant recall of a vast array of data—from the subject matter of the 7<sup>th</sup> Amendment, to your daughter's license plate number, to the names of your city council members, to the date of your next dental appointment.

In my work for TexasBarCLE, we found what we think is an important example of the just-in-time phenomenon that directly affects lawyers and law practice. As you may recall, the State Bar used to publish a civil and a criminal digest of recent appellate decisions. In the 1960's, lawyers considered staying abreast of case law so integral to legal practice that the Bar provided the digests free to all its members.

In the 1990's, the Bar decided to charge a small amount for subscriptions to the digests. About half the membership decided to continue subscribing. Since that time, the number of subscribers continued to decline, eventually bottoming out near 2,000—out of more than 80,000 Texas attorneys.

At this point, we interviewed lawyers about how they got information on the latest cases. Some reported getting the information from State Bar section newsletters or other special interest publications. Some depended on experienced colleagues to tell them about important cases. Some said they

went regularly to CLE programs to receive updates. Because of these new realities, the State Bar stopped publishing the State Bar digests at the end of July.\*

What most disturbed many of us about the interviews was that many lawyers really didn't have any answer about how they stay informed of current cases. While some of them mentioned Lexis, Westlaw, and the Bar's Casemaker service, we believe many of these lawyers no longer try to master or remember the subject matter of recent cases—at least not at the level that reading about them in the digests provided. They know that if and when they need it, the cases will always be available to them by going online. They can learn what they need to, just in time.

They're right of course. All that information is available online. But what is the effect of lawyers making no effort to keep that information in their heads? My favorite English professor championed the "vast collection of random facts" that he believed everyone should accumulate and carry around with them. It was, he thought, a sign of the educated person to be able to recall and plug into the immediate circumstance some relevant fact or opinion bequeathed to us by distinguished ancestors. But the 1968 liberal arts view of the world—and, perhaps, of lawyering—is being transformed. As long as our batteries are charged, we can depend on our electronic friends to put us into instant contact with far more data than we could ever remember.

Can't remember?  
As the ads say,  
"There's an  
app  
for that."



**S**uch just-in-time learning is infinitely better than no learning. We can just hope that the huge breadth of information now recoverable in short order substitutes for the wisdom that we once believed gradually precipitated from the knowledge and emotional experience that defines our lives. Obviously, there is no shortage of strong emotion still roaming around. It's the knowledge part that's the worry. ■

\* For the troglodytes like me still out there, you can subscribe for \$39.95 per year to a new and supercharged Texas digest service that Casemaker has launched. Check it out at <http://texas.casemakerdigest.com>.

# TEXAS, One and Indivisible

By  
Ralph H. Brock



**A**S EVERY TEXAN KNOWS, Texas joined the Union in 1845 with the right to divide itself into as many as four additional states. The so-called Annexation Resolution of March 1st of that year, incorporated by reference into the statehood resolution signed by the president on 29 Dec. 1845, provided in pertinent part:

*Third.* New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the federal Constitution.

Most people assume this provision vests the Texas Legislature with the power to divide Texas at its discretion, and several politicians have asked that it do so. In 1921 and 1930, Congressman John Nance Garner called on the Texas Legislature to execute the right-to-divide provision. In 1975, Congressman James M. Collins urged division to increase Texas's political clout against "Eastern liberals." Following Collins's lead, Democratic State Sen. Bob Gammage and Republican State Rep. Fred Agnich teamed up to introduce identical bills in the Texas Legislature calling for a non-binding referendum of the people on the question of division. Most recently, an op-ed piece in the *Wall Street Journal* urged the Texas Legislature to divide Texas so as to create "Ten Senators (hopefully all conservative Republicans ....)" (emphasis in the original).

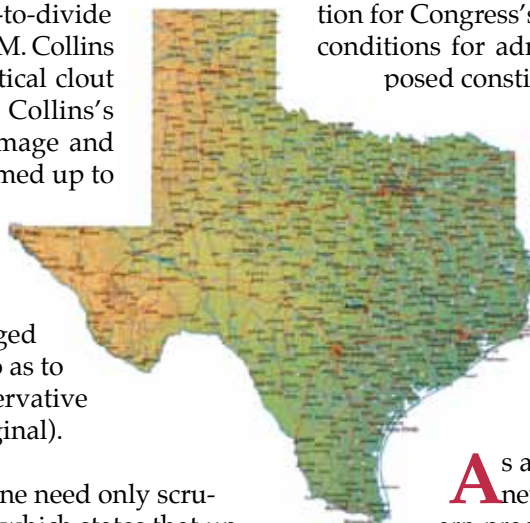
It's not that easy. To understand why, one need only scrutinize the 1845 Annexation Resolution, which states that up to four new states "shall be entitled to admission *under the provisions of the federal Constitution.*" (Emphasis added). An act of the Texas Legislature, without more, would not comply with the provisions of the federal Constitution. Not to put too fine a point on it, the federal Constitution does not permit a state to self-divide, and the Annexation Resolution would be unconstitutional if it provided otherwise.

So what *does* the Constitution provide? "New states may be admitted by the Congress ...." and no new state may be formed within the jurisdiction of any other state without congressional consent. It also requires Congress to guarantee each state a republican form of government. So the 1845 resolution notwithstanding, the consent of Congress is required to create any new Texas states, and an act of Congress is required to admit them. Some might argue that Congress gave its consent for Texas to divide in 1845, but nothing in the resolution or the Constitution suggests that Congress can pre-admit new states that may not ever come into being. Moreover, how could the 1845 Congress guarantee a republican form of government for yet-to-be-created Texas states if they could be admitted automatically by an act of the Texas Legislature?

Historically, a U.S. territory petitions Congress for admission to statehood. If Congress is willing, it passes an enabling act requiring the proposed state to submit a state constitution for Congress's approval. Congress can impose other conditions for admission, or can simply reject the proposed constitution. For example, Congress rejected

New Mexico's proposed constitution, which purported to define its boundary with Texas along the true 103rd meridian, when the United States and Texas had previously agreed to accept an 1859 survey boundary that runs west of the true meridian. That stunt delayed New Mexico's admission to statehood by about two years.

**A**s a practical matter the admission of four new Texas states is a moot issue. The modern practice is to admit states in pairs that will not upset the ideological makeup of Congress. Thus Alaska, which generally tended Republican, was admitted in January 1959, and Hawaii, which generally tended Democratic, was admitted in August of that same year. Politics and demographics being what they are, the ten Republican senators that the *Wall Street Journal* dreams of aren't going to happen. Texas is, and will remain, One and Indivisible. ■



# Social Media in the Jury Box

By John G. Browning



**A**NYONE WHO HAS BEEN CALLED FOR JURY DUTY recently has probably seen plenty of panelists pounding away at their Blackberrys, iPhones, and other web-enabled wireless devices. And while most of these prospective jurors were probably sending innocent, mundane messages about running late or having a spouse pick up the kids from soccer practice, who really knows what the others may be doing with the wealth of information at their fingertips?

As it turns out, curious jurors engaging in such digital digging is a problem with which courts all around the country are grappling. With the phenomenal growth in popularity of social networking sites like MySpace (over 150 million users), Facebook (which has surpassed 200 million users worldwide), and Twitter (the third most-used social network), jurors are more likely than ever to leave the privacy of the jury room for cyberspace. Consider these recent examples:

- In November 2008, a juror on a child abduction/sexual assault trial in Lancashire, England, was torn about how to vote. So she posted details of the case online for her Facebook “friends” and announced that she would be holding a poll. After the court was tipped off, the woman was dismissed from the jury.
- In March, 2009, an eight-week-long federal drug trial involving Internet pharmacies was disrupted by the revelation that a juror had been doing research online about the case, including looking into evidence that the court had specifically excluded. When U.S. District Judge William Zloch questioned other members of the jury, he was astonished to learn that eight other jurors had been doing the same thing, including running Google searches on the lawyers and the defendants, reading online media coverage of the case and consulting Wikipedia for definitions. After the judge declared a mistrial, defense attorney Peter Raben expressed his shock at the jurors’ online activities. “We were stunned”, he said. “It’s the first time modern technology struck us in that fashion, and it hit us right over the head.”

- In November 2007, the Supreme Court of Appeals of West Virginia reversed the conviction of Danny Cecil for felony sexual abuse of two teenage girls. Two members of the jury had looked up the MySpace profile of one of the alleged victims, and shared its contents with other jurors. Even though it found that the online sleuthing had not necessarily revealed anything relevant, the court held that “the mere fact that members of a jury in a serious felony case conducted any extrajudicial investigation on their own is gross juror misconduct which simply cannot be permitted.” As the court further noted, “Any challenge to the lack of the impartiality of a jury assaults the very heart of due process.”
- In the May 2009 case of *Zarzine Wardlaw v. State of Maryland*, Maryland’s Special Court of Appeals looked at the circumstances behind the conviction of a man charged with rape, child sexual abuse, and incest involving his 17-year-old daughter. During the trial, a therapeutic behavioral specialist had testified about working with the victim on behavioral issues such as anger management and had opined that the girl suffered from several psychological disorders, including ODD (oppositional defiant disorder). A juror took it upon herself to research ODD online, discovered that lying was a trait associated with the illness, and apparently shared this knowledge with the other jurors. Another member of the jury sent a note informing the judge about this development. After reading the note to counsel for both sides, the judge denied a defense motion for a mistrial and simply reminded the entire jury of his instructions not to research or investigate the case on their own “whether it’s on the Internet or in any other way.” The appellate court found that this was not enough, and that since the victim’s credibility was a crucial issue, the juror’s Internet research and reporting of her findings to the rest of the jury “constituted egregious misconduct” that could well have been “an undue influence on the rest of the jurors.” As a result, the appellate court reversed the conviction and granted a mistrial.

Controlling the flow of information into the jury room isn’t the only problem. Equally troubling is the flow of information leaving the jury box. In March 2009, during the federal corruption trial of former Pennsylvania state senator Vincent Fumo, a juror posted updates on the case on Twitter and Facebook, even hinting to readers of a “big announcement” before the verdict was issued. The judge denied the defendant’s motion for a mistrial, but after a guilty verdict was returned, Fumo’s lawyers announced plans to use the Internet postings as a basis for appeal.

Building materials company Stoam Holdings and its owner, Russell Wright, recently sought a motion for new

trial after an Arkansas jury entered a \$12.6 million verdict against them on Feb. 26, 2009. Wright was accused by two investors, Mark Deihl and William Nystrom, of defrauding them; Deihl’s lawyer, Greg Brown, described the building materials venture as “nothing more than a Ponzi scheme.”

Shortly after the verdict, Wright’s attorneys found out that a juror, Jonathan Powell, a 29-year-old manager at a Wal-Mart photo lab, had posted eight messages, or “tweets,” about the case on social networking site Twitter. Although several of the Twitter messages were sent during voir dire, the ones that attracted the most attention were those actually sent shortly before the verdict was announced.

In one such “tweet,” Powell wrote “Ooh and don’t buy Stoam. Its bad mojo and they’ll probably cease to exist, now that their wallet is 12m lighter.” In another, Powell said “I just gave away TWELVE MILLION DOLLARS of somebody else’s money.” One of the lawyers for Stoam and Wright maintained that the messages demonstrated not only that this juror was not impartial and had conducted outside research about the issues in the case, but also that Powell “was predisposed toward giving a verdict that would impress his audience.” The court disagreed, and denied the defense’s effort to set aside the verdict.

In an era in which nearly 60% of American Internet users have a profile on a social networking site, and where researching a patent claim or a medical disorder can be accomplished with a few keystrokes, what can judges do to adapt to the evolving legal landscape and combat the dangers of the online juror? One possible approach, advocated by a growing number of Texas judges, is to go beyond the current boilerplate instructions and specifically include references to the Internet and social media as part of the standard admonitions to jurors not to read about or do any outside research on the case they happen to be hearing. Faced with a situation in which technology has far outpaced the court rules, a number of states have actually changed their rules to address the problem of the online juror. Following a recent ruling by the Michigan Supreme Court, effective September 1, 2009, Michigan judges will be required for the first time to instruct jurors not to use any handheld device, such as iPhones or Blackberrys, while in the jury box or during deliberations. All electronic communications by jurors during trial – “tweets” on Twitter, text messages, Googling, etc. – will be banned. Similar measures have been proposed by courts in California and elsewhere.

**F**or our system of justice to function properly, and for the rights to due process and to confront adverse witnesses and evidence to be protected, we can’t allow jurors to consider Internet “evidence” that hasn’t been subjected to scrutiny by both sides, or to be influenced by the postings of Facebook “friends” or Twitter “followers.” Innovations like social media or the Blackberry may be a tremendous boon in our daily lives, but they can turn the jury box into Pandora’s box.





# A Window into the Office of the Solicitor General

By Susanna Dokupil

**T**HE OFFICE OF THE SOLICITOR GENERAL (OSG) recently marked the tenth anniversary of its creation. This division of the Texas Attorney General's office manages the most significant litigation on behalf of one of the nation's largest, most vibrant, and diverse states. OSG reviews the Attorney General's large docket of cases and identifies the cases with the most important constitutional or other precedent-setting questions for its lawyers to research, brief, and argue.

OSG was founded in January 1999 with a singular purpose in mind: to enhance the quality of appellate representation on behalf of the State of Texas. Not surprisingly, the two attorneys general who created and later strengthened OSG, John Cornyn and Greg Abbott, both previously served on the Texas Supreme Court.

The Solicitor General heads the division and is the chief appellate lawyer for the State of Texas. The office has 20 appellate specialists and a dedicated staff, responsible for supervising all civil and criminal appeals on behalf of the Attorney General, directly litigating matters of particular importance to the State, and counseling senior government officials on constitutional and other complex legal issues. The office is modeled on the U.S. Solicitor General's office in Washington, D.C.

Over the past ten years, 40 attorneys have served in OSG, including four who have served as Solicitor General. The office is comprised of experienced appellate practitioners, many of whom previously clerked on the U.S. Supreme Court, the Texas Supreme Court, and various federal and state appellate courts. Since 1999, OSG attorneys have presented 14 oral arguments in the U.S. Supreme Court and 59 in the Texas Supreme Court. OSG has also handled well over a hundred oral arguments in other state and federal appellate and trial courts—including 3 before the en banc panel of the U.S. Court of Appeals for the Fifth Circuit.

The docket of cases handled by the Solicitor General's office is as diverse as it is fascinating. OSG lawyers represent Texas universities and the State's school system. They defend the Secretary of State and other officials in the inevitable, and often last-minute, litigation that precedes and follows

each election cycle. They defend the State's criminal justice system, including its administration of capital punishment. Many of these efforts have resulted in some of the United States Supreme Court's most important precedents of the past ten years, including *Medellin v. Texas*, *Baze v. Rees*, *LULAC v. Perry*, and *Van Orden v. Perry*, to name just a few.

The office also litigates a substantial docket of business-related cases. OSG lawyers have handled numerous matters involving the regulation of alcohol and gaming; the protection of consumers against defective products and unfair business practices; and the defense of significant reforms of our civil justice system and other laws of interest to the business community. The office has argued a number of major First Amendment cases involving free speech, the Establishment Clause, and the free exercise of religion, and represented all fifty States as amicus in the United States Supreme Court.

Last February, the current Solicitor General, James C. Ho, presented oral argument before the Fifth Circuit in defense of the Texas moment-of-silence law, which requires all public schools to begin each day with a voluntary recitation of the pledge of allegiance to the U.S. and Texas flags, followed by a minute of silence. Just weeks earlier, a federal court had struck down Illinois's moment of silence law as a violation of the Establishment Clause. Other federal courts have previously invalidated similar laws in Alabama and New Jersey. But a Fifth Circuit panel voted *unanimously* to uphold Texas law only a month after oral argument.

Just eight days after his Fifth Circuit appearance, Mr. Ho presented argument in the Third Court of Appeals in defense of the State's \$5 per patron fee on nude dancing



Current Solicitor General **James C. Ho**

establishments that serve alcohol—dubbed the “pole” tax by the media, and invalidated by the trial court on First Amendment grounds. Imagine how jarring it must have been to spend day after day reviewing piles of judicial decisions about religion in schools, and then to switch gears and devote the entire following week to reading case after case about strip clubs.

Another OSG attorney appeared in the Court of Criminal Appeals that same month to defend a state criminal statute against constitutional attack—while a third argued an important insurance matter in the Texas Supreme Court just a few weeks later.

In other highlights this year, OSG successfully defended the insertion of the words “under God” into the state pledge in federal district court, submitted an amicus brief on behalf of 33 state attorneys general before the United States Supreme Court to defend the second amendment right to keep and bear arms, and successfully defended the University of Texas’s use of race in its admissions policy in federal district court. In a rare compliment, the district court’s order in the UT case quoted Mr. Ho’s characterization of the case in explaining its ultimate disposition.

OSG attorneys have also recently researched and briefed numerous other important and challenging cases. These efforts include defending Senate Bill 15 (the State’s landmark asbestos and silica liability reform legislation) against constitutional attack; successfully opposing two petitions for certiorari

against various State officials and agencies in the U.S. Supreme Court (one involving a jury that consulted the Bible during deliberations; the other defending a closely contested constitutional challenge to a Texas tax statute); responding to an invitation from the Texas Supreme Court to express the views of the State in a pending petition for review concerning civil forfeiture

laws; and analyzing the rights of prison inmates under the Texas Religious Freedom Restoration Act and the federal Religious Land Use and Institutionalized Persons Act (RLUIPA).

The pace in the Solicitor General’s office never lets up. In the coming month, Mr. Ho will face 25 judges in two weeks! On September 8, OSG will defend Texas A&M in the Supreme Court of Texas in litigation arising out of the 1999 bonfire collapse, and on September 24, it will defend the Texas Open Meetings Act against a First Amendment challenge before the en banc Fifth Circuit. In fact, OSG has no fewer than seven arguments scheduled before the Texas Supreme Court this fall, and it has two cases with pending certiorari petitions before the United States Supreme Court.

The Office of the Solicitor General has distinguished itself over its first ten years as a group of first-rate litigators winning landmark precedents in courts at every level. One can only imagine what it will accomplish in the next decade.



*Susanna Dokupil served as an Assistant Solicitor General from May 2006 to March 2009.*

The office has argued major  
**FIRST AMENDMENT**  
 cases involving  
 free speech,  
 the Establishment Clause,  
 and the  
 free exercise of religion,  
 and has represented  
**all fifty States**  
 as amicus in the  
**UNITED STATES  
 SUPREME COURT.**

# College Presents Annual Awards

This summer the College honored three of its own with the presentation of long-standing awards recognizing distinction in continuing legal education.

**Byron F. Egan** received the 2008 Franklin Jones, Jr. CLE Article Award for Outstanding Achievement in Continuing Legal Education. Named in honor of a co-founder of the State Bar College, the award is given each year by the College to recognize the author of an outstanding article presented in conjunction with a CLE program.

Mr. Egan's article was "Director Duties: Proces and Proof," written to accompany the TexasBarCLE webcast, "Corporate Minutes/Director Duties," presented on October 23, 2008. The article may be downloaded at no charge from the College's website: [http://www.texasbarcollege.com/Reports/DirectorDuties-ProcessandProof\\_ByronEgan.pdf](http://www.texasbarcollege.com/Reports/DirectorDuties-ProcessandProof_ByronEgan.pdf).

A partner in the Dallas office of Jackson Walker L.L.P., Mr. Egan is engaged in a corporate, partnership, securities, mergers and acquisitions, and financing practice.



College Chair Sally Crawford and honoree Byron Egan

## *A Half-Century as a Texas Lawyer*



College Board member **Bobby D. Dyess** was honored as a 50-year lawyer at a ceremony presided over by outgoing State Bar of Texas President Harper Estes at this summer's State Bar Annual Meeting in Dallas.

Mr. Dyess is of counsel to the Dallas firm of Payne & Blanchard, where he has been since 1983. Prior to that he rose to managing partner with the Dallas firm of Elliott, Churchill, Hansen, Dyess, Masfield & Gibbs. He also served as a director of the Combined American Insurance Company from 1975 to 1985 and the Chairman of Rainbow Sound, Inc. from 1972 to 1982. Born in Ellis County, he earned his B.A. from the University of North Texas and his J.D. from Southern Methodist University.

When contacted for a photo to accompany this piece, Mr. Dyess was willing to comply, adding, "I appreciate the thought, but isn't there something more newsworthy than aging?" While we understand his modesty, we assure him that being a 50-year lawyer is indeed cause for celebration!



**Honoree Charlie Wilson and  
College Executive Director Pat Nester**

**C**harles M. Wilson III received the 2008 Jim Bowmer Professionalism Award. Named in honor of the man who both originated the idea of the State Bar College and co-founded it, the award recognizes an outstanding College member based on achievement or contribution to professionalism. A plaque is given to the recipient and a cash award of \$5,000 is given to the Texas law school(s) of the recipient's choice in the name of the award recipient.

Board certified in family, personal injury trial law, and civil trial law, Mr. Wilson serves of counsel to the Addison firm of Bruneman, Lake, Griffin & Westhoff, PLLC.

**E**dward Frank Penak received the Steve Condos Award for Most CLE Hours in 2008 for an Initial Member. The award honors a College member who attended the most CLE that year, with not more than 25 hours counted for any one CLE course. The award is named for one of the original charter members of the College and who served as an influential and hardworking member of the first Board shortly before his untimely death.

A solo practitioner in Austin, Mr. Penak practices primarily in the areas of appellate, technology, criminal, family, wills-trusts-probate, immigration, and juvenile law.



**College Board Member Tim Sulak, honoree Edward Frank Penak,  
and College Secretary Tamara Kurtz**

## *A Reminder from the Managing Director*

**I**t's hard to believe, but we are nearing the end of the 2009 compliance year (2010 membership year). We greatly value your membership in the College and hope that you do as well. **To maintain it, be sure to complete 30 hours of MCLE by December 31, 2009.** Unsure of your total hours? Log on to **MyBarPage** at **TexasBar.com**, then click **View/Report Hours**. If you need additional hours, consider the live, video, webcast, and online offerings available through the Bar; browse them at **TexasBarCLE.com**. For a real bargain, click on **Seminars**, then search for **CLE Fifteen**. You'll find a discounted package of 15 hours of top-rated presentations across a range of practice areas. Watching it, you could earn all of your required MCLE credit for a year — for one affordable price. Don't need 15 hours? Carry over the extra hours for your next compliance year.

Remember that with your membership you gain free access to TexasBarCLE's **Online Library**, an ever-growing database of over 11,000 CLE course articles. An annual subscription is \$295, but **FREE** to College members! College members also receive a \$25 discount to all TexasBarCLE live and video seminar presentations!

Save time, paper, and postage: pay your annual College renewal fee online at **TexasBarCollege.org**. If you have questions about your College membership record, please contact our office at 800-204-2222, ext. 1819 or 512-427-1819, or contact me at [mgaston@texasbar.com](mailto:mgaston@texasbar.com).

*Merianne Gaston*

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## The Endowment Fund for Professionalism

The College of the State Bar of Texas P. O. Box 12487 Austin, Texas 78711-2487

**AS A MEMBER OF THE STATE BAR COLLEGE FOR FIVE CONSECUTIVE YEARS**, I hereby accept my invitation to The Endowment Fund for Professionalism. Enclosed is my contribution of \$1,000 to fulfill my commitment as an Honored Endowment Fund Scholar or my minimum initial contribution of \$200 as an Endowment Fund Scholar (exact amount indicated below). I recognize that my gift supports professionalism of lawyers through education and contributes to the betterment of the legal profession in Texas.

Please make my tax deductible contribution in  honor of or  memory of \_\_\_\_\_.

Amount of contribution:  \$1,000  \$200  Other \$ \_\_\_\_\_

Payment by enclosed  check payable to The Endowment Fund for Professionalism of The State Bar College.

Please charge my credit card  \$1,000  \$200 now, and annually \$200 for the next four years  Other \$ \_\_\_\_\_

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College Members who wish to contribute or pledge less than \$1,000 or who have not achieved five consecutive years of College membership and non-College members may make tax deductible contributions and become a Friend of the Endowment Fund for Professionalism by completing and returning this form.