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# The College Bulletin

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

Fall 2012



## Staying Balanced in the Law and in Life

From  
the  
Chair



Leta Parks

We often hear of the importance of “balance” in our lives. In the media, it is usually in reference to mothers who work outside the home. Can they “have it all?” Certainly these women face more challenges than many of us who aren’t raising young children while holding down a demanding job. But really – isn’t living a “balanced” life a challenge for all of us?

I’m honored to serve as this year’s Chair of the College of the State Bar. I have decided the theme for my chairmanship is the concept of “balance.”

Practicing law, in and of itself, is a very demanding profession. If that was all that one did, it would take a large portion of one’s life. But we are called to do more – spend time with and nurture our families, contribute to the community, maintain our spiritual lives through a faith community or other path, engage in a social life, take care of our health and give more to the legal profession than just representing our clients or giving advice. We are supposed to do our share of pro bono work, mentor other lawyers, be involved in organizations that help improve the profession, and on and on. Members of the College of the State Bar are clearly in the group of lawyers who go above and beyond the minimal requirements. We voluntarily complete at least twice the minimum CLE requirements. What does that say about us? Well – we take education seriously. We want to do more than an adequate job of representing our clients – we want to excel. I suspect that as a group, members of the College do more than our share of volunteer work in other ways too.

How can we do all of this? Are we trying to do too much? Can we successfully balance the demands we put on ourselves as lawyers

who excel with all the other demands on our time?

My personal belief is that the more we diversify our activities beyond just our “job” of practicing law or dispensing justice in other ways, the more balanced we become. The more involved we are with our families and our communities, the happier and healthier we are. But I want to hear about your beliefs and practices.

I am asking you, as a member of the College, to write and tell us how you maintain balance in your life. What are your secrets to success? What do you struggle with? Where do you put the greatest emphasis outside of your law practice? What are your priorities, and have those priorities changed over the years? It isn’t necessary to write an article, just an email will do. Of course if you are inspired to write an article we are happy to consider it for publication.

Each time we publish a *Bulletin* I will address one of the areas of life that we are supposed to keep in balance and incorporate some of your comments.

I’m looking forward to the coming year and I hope to hear from many of you.



# The Way to Serenity and Happiness in Our Professional and Personal Lives

by Judge Oscar G. Gabaldón, Jr., CWLS

**A** FOOL DREAMS OF WEALTH; A WISE MAN, OF HAPPINESS." This Turkish proverb suggests that, if we are indeed wise, we will seek to pursue unadulterated and unblemished happiness in our personal and professional lives rather than pursue a false happiness through affluence, opulence, possessions, riches, and such kinds of secular fortunes. The attainment of happiness in its purest form brings to us a state of serenity. Serenity, however, does not necessarily mean enjoying a life free from conflict and adversity. Instead, serenity entails something more elevated. "Serenity is not freedom from the storm, but peace amid the storm" (unknown author). Let us examine how this "peace amid the storm" is to be found and embraced.

Disciples and lovers of wisdom have long recognized that in our human condition we are frequently exposed to all sorts of temptations that test the fiber of our moral and ethical compass. Some of the most recurrent of these temptations are the moral and ethical offenses known as pride, anger, envy, and avarice. These are mentioned and discussed in Dante Alighieri's famous 14<sup>th</sup> century epic poem, *Divine Comedy*, as being part of the list of offenses known in some circles as the cardinal or deadly sins. Of these offenses, perhaps most would agree that pride is the most fundamental, and is at the core of the other offenses. Pride is, in essence, the sovereign of most, if not all, ethical and moral transgressions.

Most people think of pride in one of two ways. There is positive pride, which is the kind of pride we may feel when we do the honest and right thing in a given situation, or when a loved one accomplishes a certain goal in life, such as graduating from college or being promoted at work. We may feel pride when our sports team wins a game. This type of pride creates a sense of solidarity and togetherness. Pride, however, can be negative, and that sort of pride is destructive to one's well-being and all too often towards the well-being of others.

Pride, in its negative context, involves a sense of bloated or exaggerated self-perception of status and achievement. It is a focus on "me, myself, and I." When we feel insulted or we somehow feel threatened by someone, sometimes our pride unleashes our anger. The anger, in turn, quickly, and sometimes indiscriminately, seeks out someone to devour.

Moreover, if we feel someone has achieved something better than us, our pride allows the Pandora's Box of envy to emerge. Envy consistently resents what the other has achieved or obtained. If another person has had some good fortune in life, we want it too, and so envy together with its cousin, avarice, will sneak out like a slithering serpent

and will greedily try and have it too, all the while hoping to possess what the other has, while lamenting every moment that it is unable to also possess what the other enjoys. Avarice thrives on excess, it wants it all. The more, the better, for its hunger cannot be satisfied.

These ethical and moral maladies often enslave us and bind us with heavy chains, obstructing our ability to bring peace, and therefore, serenity to our hearts and minds. A "tranquility of being" ensues from the ability to curtail and control those afflictions. Without doing this, true happiness remains a yet-to-be-realized ethereal dream. The question remains: How do we control these afflictions we call pride, envy, anger, and avarice? We do it by working on developing and strengthening their opposites; that is, by bringing life to the virtues that serve as antidotes to those venomous monsters.

The antidote for pride is humility. Just as pride is at the center of virtually all moral and ethical infirmities, so humility is at the core of all virtues. Sir Thomas Moore (1478-1535), the Tudor Renaissance English author of *Utopia*, clearly recognized the superior nobility of humility when he exclaimed, "Humility, that low, sweet root from which all heavenly virtues shoot." But let us be vigilant and careful not to be fooled by false humility. William Temple (1881-1944), Archbishop of Canterbury, describes genuine humility in this way: "Humility does not mean thinking less of yourself than of other people, nor does it mean having a low opinion of your own gifts. It means freedom from thinking about yourself at all." The force of humility, therefore, shatters pride; it humbles pride to its knees.

Anger, on the other hand, is tempered with patience. "Patience is waiting. Not passively waiting. That is laziness. But to keep going when the going is hard and slow – that is patience" (unknown author). Hence, patience involves the



ability to control oneself; it is a virtue of forbearance. Brian Adams brings a noteworthy perspective on this virtue. He says "Learn the art of patience. Apply discipline to your thoughts when they become anxious over the outcome of a goal. Impatience breeds anxiety, fear, discouragement and failure. Patience creates confidence, decisiveness, and a rational outlook, which eventually leads to success."

As for envy, it is subdued by kindness. Often times, we demonstrate kindness through words. In these respects, Mother Teresa of Calcutta (1910-1997) observed that "Kind words can be short and easy to speak, but their echoes are truly endless." Kindness transcends barriers. American author Mark Twain (1835-1910), like Mother Teresa, also observed the transcendence of kindness when he stated that "Kindness is a language the deaf can hear and the blind can see." Kindness knows no limits. It has no borders. It is always focused on doing well towards others.

Avarice breaks down against the amazing power of charity. The Swedish scientist, philosopher, and theologian, Emanuel Swedenborg (1688-1772), describes charity in this way: "True charity is the desire to be useful to others without the thought of recompense." Charity, like kindness, therefore, is other-oriented and is usually associated with love. It is love for others, even at the cost of losing ourselves. St. Basil the Great reminds us of our obligation to be charitable. He says "The bread in your cupboard belongs to the hungry man; the coat hanging unused in your closet belongs to the man

who needs it; the shoes rotting in your closet belong to the man who has none; the money which you hoard in the bank belongs to the poor. You do wrong to everyone you could help, but fail to help."

Only when we make a thoughtful and persistent effort to master the virtues of humility, patience, kindness, and charity do we come closer to finding serenity in our professional and personal lives. Once our pride, anger, envy and avarice are kept in check, under lock and key, we will be better able to let our sense of serenity become one with our sense of happiness. While achieving a state of happiness is not an attainment of perfection, it is undoubtedly a desirable state of human existence we all aspire to. "Being happy does not mean that everything is perfect. It means that you've decided to look beyond the imperfections" (unknown author). Happiness is the prime objective of every man and woman. That is our heaven on earth. The Greek philosopher, Aristotle, affirms that idea by declaring that "Happiness is the meaning and the purpose of life, the whole aim and the end of human existence." There is nothing more precious in life than this – to be happy. ■



**JUDGE OSCAR G. GALBALDÓN, JR.,**  
*CWLS is an Associate Judge with the 65th  
Judicial District Court in El Paso.*

## Mark Your Calendar for a Vacation and CLE!

# State Bar College Summer School

### Galveston Moody Gardens July 18-20, 2013



**Be sure to visit Galveston Island's Historic Pleasure Pier!**





# The College Supports Diversity Programs

**O**n September 10, 2012, the College co-sponsored the **Dallas Diversity Task Force Flash Mob on Diversity: 7th Annual Law Firm Survey Results** luncheon held at the Belo Mansion. The Diversity Task Force comprises representatives from the Dallas Asian American Bar Association, the Dallas Hispanic Bar Association, and the J.L. Turner Legal Association (the African-American bar association of Dallas County). Its annual Report presents a snapshot of the racial and ethnic diversity of lawyers practicing at the 20 largest law firms in Dallas County. During the luncheon, Former College Chair Sally Crawford provided remarks on The College to a full house of 80 attorneys. Ms. Crawford emphasized The College's support of diversity initiatives through its Minority Involvement Committee and its commitment to recruit minority attorneys who qualify for College membership. The College previously co-sponsored the Houston Lawyers Association's (the African-American bar association in Houston) reception for newly licensed attorneys in November 2011, as another outreach effort to minority attorneys. The College may be coming soon to your city for future events. ■



DDTF Chair Hope Shimabuku looked on as former College Chair Sally Crawford spoke.



ABOVE: The luncheon at the Belo Mansion was well-attended. BELOW: Sally Crawford (far left) and Patsy Yung Micale (far right) joined colleagues to commemorate the report of the Diversity Task Force.





## College Board Members Assist with Service Project

In conjunction with the annual College Summer School seminar at Moody Gardens in Galveston, College board members had a service project at Ball High School to assist parents and teachers of children with special needs. Board members raised funds for the distribution of hundreds of TYLA booklets **"Peace of Mind—A Guide to Supporting Special Kids with Special Needs"** and gave a presentation to parents and teachers at the school covering legal issues and resources. ■



ABOVE, FROM LEFT: Kurt Noell, John Grace, and Morgan Broaddus took turns addressing the audience. BELOW: College board members that participated in the project included (from left) Tamara Kurtz, John Grace, Kurt Noell, Veronica Jacobs and (back row, far right) Morgan Broaddus. (Not pictured: Hon. Rose Reyna.)



# APP SYNERGY IN LAW PRACTICE

## or How to Integrate an iDevice Into Your Law Practice

by George White LawOfficeofGeorgeWhite.com



**H**ave you ever attended a CLE on how to use apps in your practice? Maybe you arrive, excited to learn something, and then wind up confused as to how to implement the software, or the software you hear about isn't really pertinent? I've been there. If I am lucky I walk away with one or two tidbits relevant to my work. This piece intends to take a deeper look into how to fully integrate mobile applications to actually help you in your practice.

I'm George White, a 37-year trial lawyer with a family and criminal practice in Irving. Until a year ago I was an iDummy. I had never owned an iPhone, iPod, or iPad and I looked on with amazement at those that would extoll the virtues of such devices. I told myself, "I don't need all that." Sound familiar? How many of us have said exactly that to the young new lawyers that have all the gadgets? Well, for the record: I was wrong.

There ARE aids out there that can make our lives easier. With them we can do what we do faster, easier, and with higher quality. Let me bring you up to speed and take you on my journey to electronic bliss.

We all have been to seminars where in 30 or 60 minutes a lawyer covers 60 apps and a dozen concepts. Afterwards, we have a headache and very little else that sticks with us. If we leave with one new idea we feel good – like we have succeeded. But going to a seminar like that just once a year is not enough; we're left behind before we even get on board. Not to mention the fact that we can never seem to get someone to explain everything in terms we understand.

Remember the commercial, "If I can do it, anyone can." I discovered that's true, but only if someone explains it in a way I can understand. I have always liked articles that included pictures of the steps involved. This *Bulletin* probably does not have enough space but I will set up a portion of my website where the article is reprinted and has photos of steps, screens, and products. Between those two resources, you, your secretary / paralegal, and your partners should be able to get on the same page. And of course you can access my website from anywhere. (I always put the *Bulletin* away, then forget about what's in it.) You can bookmark the website,

read the article at your leisure, refer back to it, show it to your new secretary or associate, and get up to speed quickly.

You can't escape Apple's iPad/iPhone, so you might as well learn to use them. There are Android apps that do the same things as the iPad/iPhone versions, so if a particular app has a counterpart I will endeavor to tell you. As I said, until last year, I only accessed the Internet from my desktop with Windows XP. I now also use a Windows 7 computer and an iPad3. Many apps have desktop equivalents that can sync with the iPad/iPhone version or some ability to interface with existing desktop programs. We need this since most of us still do the bulk of our work on the desktop, often in a network environment. The iPad/iPhone can be integrated into this environment to work together. Integration is an area largely ignored by the speakers I have heard. We need to have that integration; otherwise, the iPad/iPhone has limited usage – or is just a toy.

Mechanical integration. It's a fancy term for the systems that work for us, keeping our files and documents straight. Most are manual, with some sort of storage like a hard copy file, an electronic server, or hard disk. We also have input devices – another fancy term that for many of us means "secretaries." An iPad in this case is nothing more than a fancy computer -- one with limitless flexible uses -- one that works differently but has enough similarity to what we use for most of us to feel comfortable. It's limitless because the only limit is your imagination in how to use it for a particular task.

The iPad has completely changed the way we interact with our computers. The days of only using a keyboard to input data will soon give way to a swipe here and a pinch there. With the introduction of Siri, Apple's voice-operated software,



we can expect further dissolution of traditional computer input devices. (Sounds like *Star Trek*, doesn't it?) I am typing this article on a Bluetooth keyboard. Yes, I have had one for years on my XP, but the iPad adds a new twist. On the bottom row of keys there is a microphone key. I could push it and just dictate this article. Did we have it before? Sure, the dictaphone. With Dragon software, naturally speaking. This is just an easier, faster, efficient, and fancier way.

You have heard the phrase of this latest generation: "There's an app for that." It's true. You need only think of what you want to do, then research a bit and you will probably find an app that does it now or will very soon. And for us cheapskates who remember the large amount of funds we dedicated for upgrades of software in the past, let me point out that many apps are free or just \$.99. So with that in mind let's think of integration, or as I like to put it: Synergy.

Synergy is making the new and old work together for smoother, more efficient, better-quality work to give the lawyer more quality time. You can do it now by merging the iPad and its apps with the current system you presently have for that purpose. Email is just one area that the iPad can help you with.

All of us have to deal with tons of emails. All of us have desktops. Whether we use Gmail, AOL, whatever, the desktop has a certain speed. It never seems fast enough, but the iPad is. I open my emails on my iPad, in front of my desktop. Why? It's fast. The time it takes to get to the desktop screen, to open the email, to read, to delete, to send to storage, to respond is so much faster with the iPad than a desktop. The screen is also closer to my eyes so I see it better. I can process the information faster. I can take a document directly to my secretary to look at instead of waiting while she pulls it up on her computer... with me standing nearby, annoying her.

On our desktops when we have deleted the junk mail, and read the email, what now? Well, it depends: what do you want to do with it? Some we don't need to keep. We leave or delete them. Others we need to keep with our clients' files. As it is now, you likely print them out on the printer attached to your desktop and give them to your secretary to file in the hard file. There are not many apps (in Windows we'd call them programs) that allow us to save the email in an electronic file with other documents. Outlook lets us create a file and somewhat allows automatic filing (under strict rules), but still it's not in my ProDoc file. Most of us use ProDoc or something similar. Some lawyers copy the email, paste it to a page in Word or WordPerfect, and then save the page as a document. Ugh – that's clumsy and time-consuming.

Now that we narrowed down the mass to what we need to keep, how do we quickly finish up? That's where the apps come in. And we have many choices. There will be one that YOU will feel comfortable with. That's the key. Find one you like. Mine are not the only answer, only places to start.

Try using a program like Evernote. Evernote started out as a note-taking program. It still is. But its abilities allow it other uses -- ones that work for our needs. Making abilities work for us. Remember: limitless flexibility.

First, it's FREE. I like that word. Warning: Evernote has a huge learning curve, much like Word did when we started. But once you get through that curve and the app is working for you, here is what you find and can do with it. It's universal or "cross-platform." Fancy words again. Simply put, you can use the same program on any computer or phone, Windows, Mac or Android. *The same program.* You put something in from one computer and it appears on all. Sync-ability automatically, or not, your choice.

So you could forward the email from your iPad quickly to your Evernote account, label it in the subject blank to a file associated with the client, marked as email with the date or other identifier (however you mark your docs for easy finding) and it goes directly to that place in Evernote. You could have an electronic file identical to one on your hard drive in your server or desktop. Now it's in a place you or your secretary could always get it immediately.

There are other ways to save the emails to even your iPad. Since you can put Evernote on the iPad you push your finger on the email, your iPad will ask if you want to copy. It allows you to select all or part with a touch. The iPad started a new way to do things. The advent of gesture-based actions has revolutionized the field. Pinch your fingers to make it smaller on the screen, swipe right or left to change the page, push the screen to make something happen. These actions were normal to the new generation, not to me. Continuing, select all so you want to save, get the header etc, and copy. It goes to the clipboard. Open Evernote, new note, paste, label and done.

Now open a program like PrinterPro by Readdle. It has a clipboard reading function also. Push the clipboard label on the app and there it is. Push print and you can print it to any computer on your network, whether an air printer or not. Now you can add a printed copy to your paper file.

Open it in another program that lets you save on your iPad in a file tree system like Windows. There are many that can do this. One is PDF Expert. But PDF Expert has another facility that gives it an advantage over others. PDF Expert can mount as another drive to your desktop computer and ergo your server, if you have one. Long story short: you can see what's in PDF Expert on your iPad like an external drive, wirelessly, while working on your Windows desktop and drag and drop it to the Windows client's file on your computer or server.

Now you've printed it for your files, kept it on your iPad (which is always with you), and put it on the server with the rest of the client's file. If you don't use a server, then it can be wherever you keep the documents you created for the client. Some of you use offsite cloud storage like Dropbox or Boxnet. Cloud storage is simply a fancy term for a hard drive

off premises accessed through the internet (the cloud).

The more things an app does that you need, the less apps you need, and the more time you save. That's why I like PDF Expert. It allows you to annotate the email (or PDF, and anything in it) add text, notes or highlights and even fill in blanks on forms or add a signature. It has a deep search function so you can find just the one email or document you want without knowing the date or label. Just know a word in it and it will find it, tell you where, and take you to it, highlighting the word. And it's quick. Handy little program.

So you can save the original everywhere. Search to find the one you need. Mark up a copy with instructions to send to your secretary. Again, making time work for you. And all while your watching your favorite show or lounging on your patio.

Did a bell just go off? Yes, you can do that with more than just emails. Any PDF made from whatever source, documents, photos, whatever.

Emails are no longer a lost or clunky item to deal with. They should be either in your file, on your computer, or iPad. Now you can use or find them quickly and easily. Especially when you get that call from a client at home telling you he sent some information to you by email and has not heard from you. You don't remember it. Within seconds you can find it, if there, or you will know to tell him, "You just thought you sent it. Try again and call me in the morning."

My email box gets about a hundred or more emails per day. Most are junk as I have not found a good spam filter for us individuals yet. I envy those large firms with those great spam filters on their system. However, the iPad and two programs will allow you to optimize the time you do spend on emails.

First, when we respond we always end with a valediction—a fancy word for "closing." We all use one, usually it's your name/address/phone/etc. And all of us have something like this for important emails:

*This email message and any attachments are for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message and any attachments.*

We all know computers have clipboard functions. That's where we copy something and paste it somewhere else. We are used to that in Word or WordPerfect.

Imagine you get an email, you push "reply," and the computer opens a reply email. You fill in the subject and type your response. In the iPad double-click the button at the bottom and it opens up a bar with programs currently open. Click on the Clipboard App and find the phrase,

picture, or URL you want in your email and touch it. It's automatically in the clipboard. Double-click the bottom button again. Your email program will be on your left in the bar; touch it and you're back to where you started in the email. Push and hold where you want the item copied on the clipboard inserted and the choice to paste comes up. Push "paste" and—zip!—it's there. Nine total pushes and maybe 5 seconds. Repeat for any additional inserts. Clipboard has separate sections for text, images, and URLs for those pesky URLs you always mistype. Plus, Clipboard also copies to its program whatever was on the clipboard when you open Clipboard. An easy way to load the program. Or you can type right into a screen in the program what you want remembered. I guarantee it will save you time.

Now for the other solution. You get an email and don't have time to respond right then or want to give it some thought. You forward it to your secretary to handle and are going to follow up when you get in or have time. How often do you forget to do exactly that? Usually I remember later that day on my last cup of coffee or when my secretary is leaving, only to have to remember to follow up again the next day. "Sorry, I have to go, I will get to it first thing tomorrow." Sound familiar? Well, another nifty service can help; Nudgemail. And it's not even something you have to download. Just try this!

When you get that email on your phone, iPad, desktop, or whatever device, and you think to yourself, "I don't have time now but I will when I get to the office" or "I will have time in an hour or I want to see it first thing in the morning," Nudgemail will resend the email to you. No registration, sign up, or anything—and it's free. (The program is still in Beta but has been for a long while). Just click "forward," type in the forward "TO: slot 1hr@nudgemail.com" or "tomorrow@nudgemail.com" or whenever you want to see the email again and send. BAM! It's done. It will reappear in your emails at the appointed time or day. Quick and easy. After you use it once, Nudgemail will send you instructions to program Nudgemail to deliver all forwards labeled "tomorrow" at a specific time or just put in the date and time you desire. How easy is that?

Between these two solutions a lot of your work can be easier, stay on schedule, and look more professional. Take a little time to discover this "electronic bliss" and you'll be glad you did. Spend more time with your spouse and kids -- or in my case, ride the Hill country on my Harley.

Feel free to email me at GWhitepc@aol.com with your suggestions, questions, comments, complaints, or kudos. ■



**GEORGE WHITE** has been assisting clients for more than 35 years in the areas of family law, criminal law, and wills & probate. He has completed over 7500 cases since 1980, with 85% of his business coming from referrals.



## College Honors CLE Article Award Winner



The College honored **John G. Browning** with the Franklin Jones, Jr. CLE Article Award for Outstanding Achievement in Continuing Legal Education for his article, "Social Media in the Jury Box," which accompanied his speech at TexasBarCLE's 34th Annual Advanced Civil Trial Course in 2011. College Board member **Patricia Alvarez** (above, with Browning) presented the award during TexasBarCLE's 35th Annual Civil Trial Course in San Antonio on July 25-27.

John is the managing partner of the Dallas office of Lewis Brisbois Bisgaard & Smith, LLP. Some of his honors include being rated "AV," the highest commendation issued by Martindale-Hubbell for legal ability, ethics, and professionalism; selected as a "Super Lawyer" in the field of Civil Litigation Defense; inducted as a Charter Fellow of the Litigation Counsel of America, and elected to the American Law Institute.

A frequent contributor to legal publications, he writes a respected weekly syndicated newspaper column, "Legally Speaking." His book, *The Lawyer's Guide to Social Networking: Understanding Social Media's Impact on the Law*, was published in 2010. A member of the Texas Association of Defense Counsel and the International Association of Defense Counsel, he also serves as an adjunct professor at SMU Dedman School of Law, where he teaches "Social Media and the Law." ■

## Spotlight on a New College Board Member



### Justice Jim Moseley

serves on the Fifth District Court of Appeals in Dallas. He was first appointed to the court in 1996, and has stood for election three times. His current term ends in 2012. He is running for re-election.

Justice Moseley received a B.A. degree from Baylor University and a J.D. degree (1978) from Baylor University School of Law. During law school he served as a Notes & Comments editor for the Baylor Law Review. Upon

graduation, he practiced with the Odessa, Texas firm of Shafer, Gilliland, Davis, Bunton & McCollum.

From 1983 to 1987, Justice Moseley served as Regional Director for the Federal Trade Commission, where he was responsible for enforcing federal antitrust and consumer protection laws in Texas, New Mexico, Oklahoma, Arkansas, and Louisiana. From 1987 to 1996, he practiced law in Dallas with the firm of Locke Purnell Rain Harrell.

Besides being a current member of the Board of the College, Justice Moseley has served as Chair of the State Bar's Antitrust & Business Litigation Section and as a Director of the Dallas Bar Association.

Justice Moseley is an elected member of the American Law Institute and a founding member of the Dallas Lawyers chapter of The Federalist Society for Law & Public Policy Studies. For several years he authored a regular column on legal writing for the DBA's publication, *Headnotes*. He now writes "A View From the Bench," a regular column for The Texas Lawyer, an ALM Media publication.

Justice Moseley is married to the former Marian Bentley (J.D., University of Texas 1976). They reside in Coppell, where Marian serves as municipal judge. (Please drive slowly there.) ■



# UNITED STATES SUPREME COURT U • P • D • A • T • E

By Chad Baruch

**P**OLITICS WAS THE WATCHWORD for the U.S. Supreme Court's October 2011 term. Despite deciding only 65 cases after briefing and oral argument—the lowest total in years—the Court's term hardly lacked for drama. With a docket including national health care, Texas redistricting, state immigration enforcement, and even the political question doctrine itself, the Court was in the thick of several “hot-button” political issues.

For the record, of course, the Court upheld the national health care law, reversed and remanded the decision rejecting the proposed Texas redistricting plan, struck down almost all of the challenged Arizona immigration law under the preemption doctrine, and held that the political question doctrine does not bar judicial consideration of the constitutionality of the Foreign Relations Authorization Act, permitting U.S. citizens born in Jerusalem to request that their passports list “Israel” as their place of birth. The Court also decided several cases that received far less media attention but may have profound implications for Texas practitioners.

## CRIMINAL LAW

### **Wood v. Milyard**

No. 10-9995 (April 24, 2012)

A unanimous Court held that a state waives its statute of limitations defense in a habeas proceeding by failing to raise it in the court of first instance. A court of appeals, like a district court, has the discretion to raise timeliness on its own initiative. But this discretion does not apply where the state knows of a limitations defense and chooses not to rely on it.

### **Lafler v. Cooper**

No. 10-209 (March 21, 2012)

In a 5-4 decision, the Court held that a criminal defendant may challenge a conviction under the Sixth and Fourteenth Amendments where the defendant would have accepted a plea offer but for the deficient advice of counsel (so long as the deficient advice meets the established standard for ineffective

assistance of counsel). The Court held the appropriate remedy was to compel the state to reoffer the plea agreement and permit the trial court to exercise its discretion whether to vacate the conviction.

### **Missouri v. Frye**

No. 10-444 (March 21, 2012)

In a closely-related case, also decided 5-4, the Court held that a criminal defendant may under limited circumstances challenge a conviction by guilty plea on the basis that the defendant would have entered a plea on more favorable terms but for counsel's failure to communicate the other offer. The Court held the defendant in such instances must show a reasonable probability that he would have accepted the offer, and that it would have been entered without the state canceling it or the trial court refusing to accept it. In combination with *Lafler v. Cooper*, this decision likely will result in a number of jurisdictions mandating that all plea offers be put in writing.



## **United States v. Jones**

No. 10-1259 (January 23, 2012)

A unanimous Court held that the government's installation of a GPS device on a target's vehicle and subsequent use of that device to track the target's movements constitute a search under the Fourth Amendment.

## **Setser v. United States**

No. 10-7387 (March 28, 2012)

The Court held 6-3 that a federal judge has the authority to decide whether a federal criminal sentence should run concurrently with or consecutively to an anticipated but as yet unimposed state-court sentence.

## **Florence v. Bd. of Chosen Freeholders of the County of Burlington**

No. 10-945 (April 2, 2012)

In perhaps the most scrutinized civil rights case of the term, the Court held 5-4 that a detention facility may permissibly conduct a strip search of every individual arrested and placed in its custody. The Court held that neither the Fourth nor the Fourteenth Amendments requires any suspicion or other basis for such a search, and that the policy need not be limited to individuals arrested for major crimes.

## **Perry v. New Hampshire**

No. 10-8974 (January 11, 2012)

In an 8-1 decision, the Court held that due process does not require blanket preliminary judicial inquiry into the reliability of eyewitness identifications. Rather, such inquiry is required only where the identification was procured under unnecessarily suggestive circumstances arranged by law enforcement.

## **FIRST AMENDMENT**

### **Hosanna-Tabor Evangelical Lutheran Church v. EEOC**

No. 10-553 (January 11, 2012)

A unanimous Court held that the "ministerial exemption" founded in the First Amendment's religious clauses barred an employment discrimination suit by a Lutheran school teacher. Though the teacher's duties consisted principally of teaching secular subjects, she was what the school termed a "called" teacher and "commissioned minister," whose teaching involved an underlying religious mission.

## **United States v. Alvarez**

No. 11-210 (June 28, 2012)

In a 6-3 decision, the Court held that the Stolen Valor Act violates the free speech guarantee of the First Amendment.

## **IMMUNITY**

### **Filarsky v. Delia**

No. 10-1018 (April 17, 2012)

A unanimous Court held that an individual temporarily retained by the government to carry out governmental work may assert qualified immunity under Section 1983.

### **Rehberg v. Paulk**

No. 10-788 (April 2, 2012)

A unanimous Court held that grand jury witnesses are entitled to the same absolute immunity for their testimony as trial witnesses.



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