



The College Bulletin

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

Spring 2012

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The Practice of Law & Professionalism



From
the
Chair



Tamara Kurtz

WHAT MAKES A GREAT LAWYER? The response "work, work, work!" is attributed to lawyer Abraham Lincoln. No doubt, the practice of law has changed since Lincoln's time. But we know that Abraham Lincoln's words ring true today. Becoming an excellent lawyer *does* take work and time to develop lawyer-to-client skills, and to master areas of law.

For recent law school graduates, it may be difficult to get the work experience required to become a proficient lawyer given the weak job market for new lawyers. In June, 2011, the Association for Legal Career Professionals (NALP) published the Employment Report and Salary Survey for the Class of 2010. In this annual report, the NALP measured the employment rate of graduates from accredited law schools as of February 15, 2011, or nine months after a May graduation. The report cited the 87.6% overall employment rate of graduates from law schools is the lowest it has been since 1996, when the rate stood at 87.4%.

As College members, we demonstrate our commitment to professionalism in the legal profession through education. It makes sense that we extend this commitment to new, unemployed members of the Bar. With outreach activities, we can educate them about the practice of law and professionalism. Ways to accomplish this include:

- Mentoring a new lawyer through periodic meetings (whether on the telephone or at lunch);
- Taking a new lawyer to a local bar association legal seminar luncheon and introducing him or her to others;

- Encouraging a new lawyer to participate in a local bar association or Texas Young Lawyer Association sponsored legal aid clinic. Some bar associations provide free legal training for lawyers who will volunteer at the clinic;

- If you volunteer for a legal aid clinic, take the new lawyer with you; and

- Providing the new lawyer with a scholarship to attend the College of the State Bar Summer School

Course in Galveston on July 19-21. The seminar registration fee is almost half-off for lawyers licensed 5 years or less. The course brochure for this outstanding legal education program is available at <http://texasbarcollege.com/Download/12-Summer-School.pdf>. (We encourage you to attend as well, of course.)

Through our outreach efforts, we will be educating new, unemployed lawyers about the importance of legal professionalism. At the same time, the new lawyer may find employment due to better networking and knowledge about the legal profession.





Judges

Should Embrace, Not Fear, Their Humanity!

By Judge Oscar G. Gabaldón, Jr., CWLS

TO BECOME TRULY GREAT, ONE HAS TO STAND WITH PEOPLE, NOT ABOVE THEM.” The French politician and philosopher, Charles de Montesquieu (1698-1755), spoke these words centuries ago to impress upon us the idea that our nobility is based on our willingness to embrace our fellow men and women as equals; that we are making our journey on earth in communion with others, and with the recognition that the greatest beauty is in the service of others.

During the years that I have been gifted with the opportunity to serve as the judge of the child protection court and preservation family drug court, my eyes have seen and my ears have heard desperation and hope, sadness and exhilaration, sarcasm and humility, tears and smiles, laughter and silence. My heart, my mind, and my soul at its core have sighed so often, sometimes in joy, but at other times in sorrow. Life is what it is. Life entails a rainbow of human experiences with varied dimensions. Each of us is part of that reality, willingly or not. I often ponder these things. I wonder whether I even touch, much less make a dent, in the hearts of others. Do I even reach my own heart, or do I put a wall around it so as to block not only myself, but also the reach of others? Is my focus me, myself, and I? If so, that is such a sad state of affairs. There is perhaps nothing more pathetic than self-indulgence. There is perhaps nothing nobler than the desire to pursue the best interests of others before oneself. These may be pleasant and maybe even poetic words, but that is all they are. It is action that brings life to those words. It is the actual living according to those ideals that makes our human nobility real, one with substance.

I remember times during my judicial tenure when I have been afforded opportunities to humanize my judicial disposition without in any way taking away from the respect and solemnity particular. I was presiding over what is referred to as an adversarial hearing. The hearing was to determine whether or not I would grant the state the temporary custody of a child alleged to have been abused. After hearing the evidence, I found the state’s request to be meritorious, and I granted its request. I proceeded to speak with the child’s mother in open court. I let her know that she was accountable for her choices and the

sole owner of those decisions. I also wanted her to know, as I tell other parents in similar circumstances, that she is a good person and that she has the power to change her circumstances, but that in her humanity, she has stumbled as we all do. Her body language clearly indicated to me that she regarded herself not worthy of any trust, and that she was a failure as a human being and as a mother. No matter how I re-directed my comments to give her hope for a better tomorrow, it was not working. She did not seem to believe how much I believed in her. Then I remembered something. I had forgotten to wear my socks that morning. So, I got off the bench and walked up to this mother, who was seated with her attorney at counsel table, and I raised my robe to expose my bare leg to her, and I told her: “Ma’am, I forgot to wear my socks. This morning, I rushed out of my home with my tie and coat and everything but my socks. I made a mistake.” Now, I had eye contact from this mother. Now I could see hope in her eyes. Yes, I had to make a quick decision. I had to decide whether I would risk becoming the butt of jokes among lawyers and others in the courthouse. But, it was not about me. It was about this woman, who had more goodness in her than she gave herself credit for.

I also remember that court hearing, known as a Permanency Hearing, when a kindly therapist was testifying on the witness stand. He was stressed so much by the behavior of some parents that would frequently promise the world to their three young children, only to fail in their promises over and over again, devastating their children’s tiny little hearts. He talked about how the parents had recently promised their children that they would be going back home within a few days. The children, on the day promised to them by their parents to be delivered from their foster care placement, happily went about gathering their small

belongings, their little stuffed teddy bears, toys, and other trinkets. After all, they were going home. Alas, this joy quickly turned into emotional and mental tragedy when the children had to be told by their foster parent that going home was not to be.

“God send me a teaching moment!” I looked at the clock in the back of the court room and noticed it was about 11:30 a.m., and all of the sudden I realized that I had to do something very important. I had to make a telephone call. Excusing myself from the bench, I went to my chambers to place that important telephone call. Upon my return to the bench, I told everyone in the court room that I wanted to come clean about the interruption of the hearing. I told everyone in the court room that I had stopped the court hearing momentarily in order to call in a pizza for my daughter and her friends at their high school. I explained to those present in the court room that early in the morning, before I left my home, I had “promised” my daughter that I would not forget to call in the pizza. I had to keep my word to her. I had to keep the promise. Failing to keep the promise would have a hurtful impact on my relationship with my daughter, and it would also have a negative impact on her relationship with her friends, who were also relying on her promise to them that she would make the arrangements to have the pizza brought to the school at lunch time. Breaking the promise would risk breaking the trust that existed in the relationships between my daughter and I, as well as between my daughter and her friends; breaking the promise may even result in several young girls losing out on their lunch altogether. The parents listened attentively to my words. I then proceeded to speak with them about their false promises to their young children and the hurtful and negative fallout that comes with broken promises.

We must sometimes be willing to sacrifice our “egos” for the sake of others. Yes, it is very hard to do at times. After all, we are human. We are proud. We care a lot about our image. Still, because we are human, we are also endowed with the ability to rise above our human frailties and shortcomings. I remember being tested once with a situation that challenged my pride in court. A foster mother was testifying about a foster youth’s problem with “peeing on the bed.” The youth, a high school boy, was present, and yes, extremely embarrassed in the midst of such testimony. Adding to his distress was the presence of others, including other high school youth. The foster mother described the “large pee stains” on the sheets, that this was a daily problem which entailed a lot of washing of sheets and clothes, and so on and on. The boy had his head held down, and he dared not look up. Upon the foster parent finishing her testimony I felt I had some duty or some kind of responsibility to not let this boy’s court room experience remain unaltered. Should

I just have the child protective services prosecutor call the next witness? What should I do? What is the right thing to do? God, please give me something!

I told the boy in open court that when I was a fourth and fifth grade student at Cooley Elementary, I “peed” in my pants. I told my story to him, and about how the other kids snickered and made fun of me as I was led out of the classroom with my pee-stained pants. As I shared this experience with him, and I guess with everyone in the court room, I also realized that this boy probably was thinking, “Yeah Judge, thanks for trying to help me here, but a fourth or fifth grader may get away with an experience like this, but it’s a different story for a high school kid to pee in his pants.” I paused. I took a deep breath, and then I said. “You know, I peed in my clothes three months into my marriage. I was a newlywed, and I had a dream that I was urinating in a urinal. The dream was so real, that I was actually urinating in the bed. I remember I could not find the words to let my bride know that her husband,

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a grown man, had wet the bed “big time!” I kept stalling, telling her that we should relax. After all, it was a Saturday, and we had some free time to lounge around. I did not know how to get out of bed and expose my dilemma and the “pee pee” lake on the bed. As I looked at the boy in the court room, I saw the boy sitting up straight, apparently no longer embarrassed. I then told him, “I bet you that many of these people in this court room have probably experienced something similar as you and I. We just don’t know about it.” I could sense in the air that some in the court room wanted to raise their hands and say, “You know, I too had something like that happen to me.”

I T IS WHAT IT IS. We are all going through a temporal experience, a journey if you will, in our earthly lives. When it comes to serving others with charity, time is of the essence, for people truly are the most important realities in our lives. Nothing more important and sacred exists than the human being. It is humility above everything else that allows us to embrace and not fear our humanity. Thomas Merton (1915-1968), the American and Trappist Monk of Our Lady of Gethsemani Abbey in Trappist, Kentucky, definitely saw the raw truth in this when he observed, “Pride makes us artificial and hummility makes us real.”



JUDGE OSCAR G. GALBALDÓN, JR.,
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ANATOMY of a HEART ATTACK

and How It Saved My Life

By Bill Connolly

COME BY MY WISDOM HONESTLY. PAIN IS A GREAT MOTIVATOR.

Whether it is physical, emotional or psychological, most of my knowledge comes from a self awareness which is generated from a soul searching. The soul searching usually stems from the painful consequences of ignoring the reality of my current factual circumstances. Coupled with denial and a gullible, almost self effacing feeling of invulnerability, pain has a way of getting my attention when nothing else works. I am not sure where the denial comes from or why I have had to be smacked in the head or heart to learn and relearn the same basic lessons of life.

I hold a core belief that hard work, diligent effort, practice and perseverance will provide true success most of the time. However, sometimes the price tag is too high. The practice of law is an honorable, but stressful profession. Whether it is negotiation, documentation, litigation or mediation, preparation is the key to success. The practice of law is also time-consuming and demanding on the body and psyche. Changing focus and methodologies is also very stressful. As a creature of habit, I have a sense of what works for me and I resist change. I find out what methods I prefer and keep doing it. I do the same thing with shoes, i.e., I find a pair that is really comfortable and use them until they wear out. I have historically resisted and ignored any suggestions on how to change my life and my approach to the practice of law. I just resist change. I have always been this way. I am hardheaded and will resist even when someone shows me another easier way.

UNTIL I HAD MY HEART ATTACK, I could belt out at least one hundred articulate reasons why I had to stay up and prepare and not go to bed (sleep deprivation) or could not make time to exercise (hypertension and weight gain) or quickly rationalize and wolf down a bacon, lettuce and tomato sandwich or a donut at the court house cafe (high cholesterol, weight gain and hypertension) or found myself forgoing prayer and meditation (emotional stress and exhaustion) in order to jump into or stay into the demands of the day. Some of us just routinely and naturally seek and find balance. Many of us apparently have great struggles on this issue. As a litigator, I look to facts and evidence to prove my case. As a human being endeavoring to live a rewarding and successful life, I am focused and serious when handling the intricate and

extremely important matters for my clients. Personally, I have historically ignored all the facts and evidence about living in balance. As a detail cop, dedicated to stringent preparation, I do so at the expense of meaningful “present” moments. While preparation has served me well, there have been times when I have cared more about the projected outcome of a matter than the client or the impact that the preparation time had on my significant relationships. The consequence of this trap is cumulative and destructive. It includes such things as missed family events, checking out, growing apart, separation and divorce.

In the 10-year period preceding my heart attack, my diet regimen collapsed, my weight and belt size grew dramatically, my blood pressure increased significantly and the average amount of time I slept each night reduced each year. I became out of sync and out of touch with how I was feeling. I became very defensive to suggestions of anyone who cared about me that maybe I should examine what I was doing. Like it or not, there was no way for me to successfully cram 200 plus hours of living into the 168 hours of every week. As a result of both genetics and a self imposed lifestyle, on October 15, 2011 I experienced a rupture in the plaque in the arteries of my heart. My immune system sent blood clotting agents to fix the perceived threat. I ended up with a complete blockage of two arteries and having an acute myocardial infarction (major heart attack). After a stent and a couple of days in ICU, I began to have a transformational or spiritual experience. My life as I knew it had become displaced, rearranged and reorganized. From the moment I entered the emergency clinic and the hospital, I experienced a complete acceptance, a profound “presence,” a significant and disruptive awareness of

just how important the “moments” are. Priorities shifted immediately and without question. Different life decisions were made as a matter of course. Resistance to the lessons and experience of others lessened and people began to relate and share their own experiences, both as a patients or bystanders. My awareness of the pervasiveness of heart disease and hypertension became magnified by the sheer number of people who began to relate to me in a completely different way. I became more intuitive and open to the suggestions of others. I gratefully take medications, which I strongly resisted in prior years. I resisted even the discussion of medications.

In the three months that have elapsed since my heart attack, I have cut down on my pro bono case load, attended cardio rehab 3 times a week, increased my sleeping time, and changed my diet dramatically. I still eat what I want but I am conscious about everything I ingest. I am more balanced between work, play and social commitments. Since that time my blood pressure has dropped to its lowest level in 30 years and my annual physical yielded nothing but good news. I’ve lost 25 pounds, am looking into alterations and finding a new “old” wardrobe in the back of the closet. Everything fits better, I feel better, and I’m stronger and healthier than I have been in years. I am more in touch with how I feel emotionally and how my body feels physically. What I perceived as allergies virtually went away after I eliminated certain foods from my diet. I am clearer of thought, more present and have become a better husband, better boss, better man, and better lawyer.

It would be disingenuous to not stop and discuss the concepts of intrusion and erosion. The real world experience has a way of clouding judgment and disturbing plans. People have different perceptions and take different paths as a result of those perceptions. Conflicts can and do occur. As I began to feel better and as I took back more and more responsibility, I found that I quickly began to misplace some of my new found vigilance. I have tried hard to remain conscious of these intrusions of thought and action and the erosion of bits and pieces of the easy resolve that followed my heart attack. After all I experienced and put my wife and family through, it is easier than I thought it would be to let minimizations and rationalizations eat away at the prior certitude of lifestyle change. The commitment to seven hours plus sleep a night has found its way to six. The pressures of time deadlines and financial realities of overhead have allowed me to skip rehab. An exception here and there to the diet regimen has occurred. You begin to wonder how long you can remain conscious and if it is possible to fall off the beam entirely. If I am not careful, it could be similar to the resolve of new year’s resolutions or commitments to diets. If it is only about resolve and intention it is unlikely to last. It takes more than desire and more than willpower. The commitment must carry with it an acceptance that

I could easily fall back into a place where I end up last on my list of importance and hurt myself and my family all over again.

sears itself to the bones. To be successful over the long term, I need a daily and sometimes moment to moment reminder of the consequences of not being persistent, i.e. , the heart attack. I have a new respect for balance and self care. It still has the highest of priorities but I worry about the day when it doesn’t. A few years ago a friend of mine went through a very painful death from cancer. It spread from his prostate throughout his body. He was a very smart, creative, masterful and successful guy. He had prostate cancer surgery eight years before he died. He never followed up for seven years. He is a reminder to me that I could easily fall back into a place where I end up last on my list of importance and hurt myself and my family all over again. I have met men in cardio rehab who have gone through the program more than once.

In ICU recovery I was engaged in conversation with a nurse about the “5 best calls of our respective lives.” There was another conversation with my wife about “When is it a good day to die?” I found some amazing insights which I am continuing to explore. In the mundane and everyday tasks of being a lawyer, it is so easy for me to get caught up into details that I do not take enough time to evaluate the significance of what I am doing. There is a new awareness of faith and purpose. I am grateful for each day and revel in the opportunities that I have been given through grace and gift to chance the world for the better.

MY HEART ATTACK SAVED MY LIFE. As a result of it, I have a new intentionality and carry awareness that I have done good works for others and lived well but it is not yet time to pack it in. In other words, there is more to do and if I intend to do it, I will need to take care of myself.

Before, when there was no time for balance. I was closed and would not listen. Most of the time, I am now open and life is unfolding. I am grateful to be alive and to be present. While a heart attack is not the recommended or preferable path to wellness, it is what occurred with me. In a lot of ways, I wish I had listened to the others who cared, who talked with me about balance, diet, exercise, sleep. I wish I could have what they demonstrated. I wish that I innately had a better sense of my limitations. It would be nice if my first choice would be to learn from the experience, strength and hope of others. Having been hardheaded almost to the grave, I would like to think that I have fully learned this lesson. Only time will tell. ■



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College Thanks Members of the Endowment Fund

THE ENDOWMENT FUND FOR PROFESSIONALISM was established by the College to underwrite projects and services that contribute to higher standards of education and performance among lawyers. After five continuous years of College membership, a lawyer becomes eligible to join the Fund. Levels of membership vary according to the lawyer's financial commitment. The College is proud to publish the names of members of the Fund.

Charter Honored Endowment Fund Scholars

Each of these Scholars made at least a \$200 contribution as a first-year member of the Endowment Fund and has now reached the \$1,000 contribution level.

R. W. Calloway, Dallas
Steven Clary, Dallas
Sally L. Crawford, Dallas
John J. Donovan, Houston
Jeannine C. Flynn, Houston
Tina Green, Texarkana
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Baynetta Jordan, Lubbock
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Mark Laney, Plainview
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William B. Short, Jr., Dallas
Marilyn Sims, Houston
Carson Smith, Amarillo
Larriet E. Thomas, Irving
Scott Valby, Houston
David Smilie Watkins, Irving

Sustaining Endowment Fund Scholars

Each of these Honored Scholars continues to make annual contributions of \$200 per year.

Sally L. Crawford, Dallas

Honored Endowment Fund Scholars

These Scholars have each reached the \$1,000 contribution level.

Morgan Broaddus, El Paso
Kurt Noell, Tyler
Russell D. Hunt, Sr., Waco
Hon. Rose Reyna, Edinburg
Benjamin H. Schleider, Houston

Endowment Fund Scholars

Each Scholar below has committed to at least a \$1,000 contribution which may be paid out at \$200 per year for 5 years.

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Chad Baruch, Rowlett
James C. Boone, Palestine
Warren Cole, Houston
Robert L. Collins, Houston
Edward A. Copley, Dallas
Bobby D. Dyess, Waxahachie
Laura Franze, Dallas
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Friends of the Endowment Fund

Friends are College members that do not yet have the 5 years of membership required to be a Scholar, but have made at least a \$200 contribution to the Fund.

Patsy Yung Micale, Dallas

Consider becoming a Scholar or Friend of the Endowment Fund today. See the back page for an application form.

College Helps Students Attend Benefit for Texas Access to Justice Foundation

The College sponsored a table at a benefit dinner for the Texas Access to Justice Foundation hosted by the Yavneh Academy's Uniting Students of Dallas, where College board member Chad Baruch is Assistant Principal. The College's sponsorship permitted several area public high school students to attend the dinner. The January 11 event featured keynote speaker Former U.S. Attorney Paul Coggins, as well as State Bar of Texas Immediate Past-President Terry Tottenham and Texas Young Lawyers Association President-Elect C.E. Rhodes, Jr.

"One person can make a difference in a community and as I look around this room, there are many who will, and who are now, even as teens, doing just that," Coggins said. "I am so excited to see the pursuit of justice as a passion for each of you."



Yavneh's Uniting Students of Dallas's Texas Access to Justice Foundation event brought the total raised by the group to \$45,000. (left to right) Terry Tottenham, Ben Romaner, Jori Epstein, Emily Rohan, Paul Coggins, Mina Pulitzer, Chad Baruch, C.E. Rhodes Jr., Jordan Prescott, and Jake Greif. Photos by Deb Silverthorn.

"I am proud to work with this board who has grown to appreciate legal aid, not as charity, but as an act of justice," said Baruch. "They are dynamic young people who have learned that the essence of a Jewish person, and of a Jewish heart, is one who speaks for those who speak for themselves."

"Legal aid ensures that the scales of justice are balanced," said Tottenham, who thanked the students for their help on behalf of the more than 90,000 attorneys in the State of Texas. "Our attorneys have provided 2.5 million volunteer hours, and with more than six million people living under the poverty line in this state, many, unfortunately, might still not receive the assistance we all deserve. The efforts of Uniting Students of Dallas and its supporters, has done much to ensure the rule of law, the cornerstone of our great democracy."

"Lawyers are the agents of change in society," said C.E. Rhodes. "We look to your generation, to those like the

students who have made this cause a priority, to commit to servicing the elderly, the poor, and all who seek justice."

"These students are improving the lives of families who are suffering the effects of domestic violence, veterans who are wrongly denied their rightful benefits, and many others struggling during these tough economic times," said Betty Balli Torres, Executive Director of the Texas Access to Justice Foundation. "We congratulate the student led efforts at Yavneh Academy and the administrators who have made the annual dinner benefiting the Texas Access to Justice Foundation an outstanding example of what our future leaders can accomplish."

Created by the Supreme Court of Texas in 1984, the Texas Access to Justice Foundation is now the largest source of funding for civil legal aid, providing the funding to assist more than 100,000 Texans each year in attaining access to the civil justice system. ■



Technology and the Modern Lawyer

By Peter S. Vogel

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THE INTERNET HAS CHANGED THE WAY HUMANS USE INFORMATION. With the Internet there are no boundaries of time and geography. As a result of the explosion of Internet information social and legal changes have changed the practice of law forever.

A recent Pew Research report revealed that 92% of all adults use search engines on the Internet every day which means lawyers are included in this number. There are estimates that more than 95% of all information today is electronic and as a result, every lawyer must utilize computer technology as an integral part of practicing law. Furthermore, there are estimates that each day there are more than 350 billion emails and more than 230 million tweets on Twitter, and last year more than 4.5 trillion text messages. As a result it is essential that every lawyer now rely on the Internet to practice law.

Clearly, social media have transformed societies around the world, which of course impact laws and lawyers. For instance, at the time this article was written Facebook claimed 800+ million users with only 30% in the U.S., and LinkedIn claimed 135 million business users. As a result it is likely that the use of the Internet will only increase in the future.

Social media site Wikipedia is a public encyclopedia that allows anyone to post information, but its growth of information is astonishing. In the past 11 years since Wikipedia started, it now has more than 17 million articles in 270 languages, including almost 4 million in English alone. More than 400 million unique visitors view Wikipedia each month. To put its size in perspective, the Encyclopedia Britannica was started in 1768 and has 250,000 articles in 1 language. The Smithsonian Institute joined with Wikipedia as a research resource, which is an endorsement of the value of the information of Wikipedia.

This article will describe technology strategies and how they impact clients.

Cell Phones - Computers That Also Manage the Universe

There are few things as ubiquitous as cell phones in 2012, and it is unlikely that any lawyer can practice law today or in the future without a cell phone (or whatever it may be called in the future)—not just for placing and receiving telephone calls and messages, but because the cell phone is the lawyer's access to the Internet and social media.

So the bigger question is: which cell device is best for you? Of course there is no simple answer to that question and here's why: human personality traits may drive you or your friends to be brand loyal to handset providers or cell carriers. Since human nature is what it is, there is not much we can say in this article to change your thinking; however, generally these devices fall into neat categories:

- **Apple iPhone**
- **Android phones**
- **Blackberry phone**
- **Other**

Of course this summary is very tongue-in-cheek and it's likely that within 6 months something radical will modify your idea about what is the best phone to use.

For many years I used the Blackberry device, which has been very popular with lawyers as it has a really great keyboard. As a matter of history I have also owned Nokia and Palm phones over the years, and even a pager dating back to 1980.

As a matter of fact, many loyal Blackberry customers say the primary reason they like the Blackberry is because of the keyboard. The most recent version I used was the Torch (Model 9800), which also has a touch screen and allows the download of applications (apps) just like the iPhone and Android devices.

But alas—as I will discuss below—I recently fell victim to the iPad and after 6 months of use I concluded that it made much more sense for me to switch to the iPhone 4S.

The iPhone devices are very nice and self-intuitive so they do not require training. At the time of writing this I am very happy with the iPhone, but I also keep an open mind about what's next.

Google developed the Android operating system that runs on many different cell phones, and as far as I can tell, each version is a little different. Every person I know who uses the Android device loves the technology that has the apps like the Blackberry and iPhone. However, not all apps are the same and different versions of operating systems may not work the same.

My impression is that because of the variety in different versions of the Android products, there appear to be many standards. Many Information Technology (IT) experts complain that the lack of standards makes for a set of problems for security and standardization. However, given the important role that Google has in the Internet world, it is more likely than not that the Android operating system will be around for some time. But that depends on whether we are counting in dog years (7 years for each calendar year) or not, since the phone/cell market continues to be volatile.

Tablets Are Not New, But the iPad Changed the Dynamics

Let's see a show of hands – how many people reading this column use an iPad? Wow, most of you have already migrated to the iPad, which is not much of a surprise given the overall popularity.

Without belaboring the point, iPads are not the only tablets on the market, and actually the tablet is not really a new technology as tablets have been on the market since about 2000. What is different is that before the iPad came out the operating systems on the tablets were not very different than on desktops (or laptops) using a version of Windows (or Linux) with some extra special feature that would allow users to write on the screen and magically the tablet could transform the writing into data within the computer and use that data with traditional software.

When Apple introduced the iPad, the tablet world changed because one could download apps, as well as access email and the Internet. But creating content was not so easy, nor was it the point of the iPad. And of course the biggest game changer about the iPad was that it was totally intuitive; no training is necessary whether you are a young lawyer, senior lawyer, or 5-year-old.

Many lawyers quickly migrated from personal computers and laptops to work exclusively on iPads, and as new apps were available, more users joined the iPad world.

Along the way it seemed to me the iPad2 was the time for me to get on board since that product had all the features of the iPad1, but also a camera/video function. Not that the camera/video function was critical to my life, but it seemed to make sense and I wanted to see if the iPad2 would work for my practice.

Right out of the box the iPad2 required no mental energy to use, and many of my friends who are not very techno-savvy went to the Apple Store where Apple offers tutors to get the iPads set up and download apps.

Generally my use of the iPad2 is limited to email management, Internet/Google searches, Google

maps, and reading my daily dose of news from the New York Times, Washington Post, Dallas News—you get the idea.

After a while I stopped carrying a yellow pad around my office or going to visit clients and now merely carry my iPad2. When I want to take notes I merely send myself an email of what I need to know and accordingly I can always find my email notes after I record the information.

I have many friends who use tablets other than iPads, most of which use a version of the Android, and of course Microsoft would also like to be a big player in the tablet business since so many people have migrated from desktops and laptops to tablets. So stay tuned for Microsoft to stay competitive in the tablet arena.

Thank Goodness for the State Bar Law Practice Management Program

In the early 1980s I was Vice Chair of the Professional Efficiency and Economic Research Committee (PEER now the Law Practice Management Committee - LPM) which was charged with helping lawyers with technology. Today the State Bar has great resources for lawyers to learn more about technology. So without belaboring the obvious I recommend that you visit the LPM site to learn more: <http://texasbarcle.com/CLE/LMHome.asp>



In 1990 I was honored to serve as the founding Chair of the State Bar of Texas Computer & Technology Section (<http://www.sbot.org>) which provides great resources to its Section members and actually anyone who wants to know. I encourage all readers to join the Computer & Technology Section and attend the Section conferences to keep up.

The National Resource for Technology is the American Bar Association Law Practice Management Section (LPM)

As I write this paper, the LPM Section is being led by a Texas lawyer, Tom Mighell. Like many before Tom—such as J. Harris Morgan (of Greenville) and Jimmy Brill (Houston)—Texas lawyers have always had leadership roles at the ABA LPM. http://www.americanbar.org/groups/law_practice_management.html

The LPM website has great information (and many books and periodicals) available about technology, but the annual Technology Conference every year has been a roaring success. <http://www2.americanbar.org/calendar/TECHSHOW/Pages/default.aspx>. Actually, the first such conference was co-sponsored by the State Bar PEER Committee in 1985 at the InfoMart in Dallas.

Every other month the LPM Section publishes a magazine full of great technology information. You can access archives for the magazine back to 2006 and here are some links to recent issues for your information:

November-December 2011 Cover Story: Law Firm Marketing: What's the ROI? http://www.americanbar.org/publications/law_practice_magazine/2011/november_december.html

January-February 2012 Cover Story: Social Media Networking for Lawyers: A Practical Guide to Facebook, LinkedIn, Twitter and Blogging http://www.americanbar.org/publications/law_practice_magazine/2012/january_february.html

Future of Technology

All lawyers will need more and more information about current trends and technology, so please continue to rely on the State Bar of Texas to help lead you through the changes. Please continue to use materials found on the State Bar CLE website: <http://www.texasbarcle.com>.



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College Charter Member and Texas Supreme Court Justice Eugene Cook Receives George Washington Medal



EUGENE COOK, one of the original 13 Charter Members of the State Bar College and a former Justice for the Texas Supreme Court, received the George Washington Medal, the highest award given by the Freedoms Foundation at Valley Forge National Awards Program, at a ceremony in November of last year.

Awards recipients are selected by a distinguished, independent National Awards jury of state Supreme Court justices, officers from national patriotic, service and civic clubs, veterans and educational organizations. The jury looks favorably on current programs and projects of each of the candidates. The prestigious group of past recipients includes Chief Justice William Rehnquist, Walt Disney and John Wayne.

Governor William P. Clements appointed Cook to the Texas Supreme Court in 1988. Cook won a statewide election that same year and served on the high court from 1988-92. While on the court he served as chairman of the professionalism committee and was the principle architect of Texas Lawyer's Creed, leading Texas to become the first state in the nation to adopt a creed to govern its lawyers.

In 1992, he joined Bracewell & Giuliani as a senior partner, where he led the firm's appellate group until his retirement in 2002.

Justice Cook earned his J.D. from the University of Houston Law Center and an LL.M. from the University of Virginia Law School.

Cook lives in College Station, Texas with Sondra, his wife of 43 years. He has a history of volunteering, particularly with the Special Olympics Texas, that helps over 40,000 intellectually challenged athletes, where he has volunteered for 29 years. In 1994 he served as chair for the Board of Directors for Texas. These athletes have been an inspiration to Justice Cook and their inspirational behavior keeps him moving forward to help everyone around him whenever he can. ■



Texas Adopts Anti-SLAPP Statute

By Chad Baruch

Effective June 17, 2011, the Texas Legislature adopted the Texas Citizens Participation Act providing substantial procedural protections for victims of SLAPP (Strategic Lawsuit Against Public Participation) suits. The Act will be codified as Chapter 27 of the Texas Civil Practice and Remedies Code.

The past 25 years have seen a troubling litigation trend with dangerous implications for the exercise of First Amendment rights. SLAPPs are lawsuits filed against individuals who communicate with or try to influence the government. They differ from other lawsuits in that they are a reaction to political action, an attempt to deter public activism like testifying against real estate development at a local zoning hearing or complaining to a school board about unfit teachers.

Virtually all activity targeted by SLAPPs is protected by the First Amendment. But while the First Amendment may guarantee citizens the right to petition their government for a redress of grievances, experience demonstrates that SLAPPs chill these activities by subjecting citizens to the fear and expense of retaliatory litigation. SLAPPs are particularly common in the land use arena, where developers used them to stifle public protest against proposed building projects. As one court summed it up: "Short of a gun to the head, a greater threat to First Amendment expression can scarcely be imagined." *Gordon v. Marrone*, 590 N.Y.S.2d 649, 656 (1992).

In response to the proliferation of SLAPPs, a number of states began exploring the possibility of enacting anti-SLAPP statutes. The first of these anti-SLAPP laws was enacted in Washington, and several other states—including New York, California, and Massachusetts—followed with their own laws over a period of several years. After several unsuccessful attempts, Texas supporters of an anti-SLAPP statute finally succeeded in gaining passage and signature by Governor Perry during the 2011 legislative session.

The Texas Citizens Participation Act provides extra protection for the exercise of First Amendment freedoms and communications with government officials. It protects communications "made in connection with a matter of public concern," which it defines to mean issues related to health or safety, environmental, economic, or community well-being,



the government, a public official or public figure, or any good, product, or service in the marketplace. As a result, the Act provides powerful protection for online comments concerning the consumer marketplace.

The Act provides a special motion to dismiss for legal actions relating to the exercise of First Amendment freedoms. Within sixty days after being served with a

SLAPP, the target may file a motion to dismiss that stays all discovery until the court rules upon it. The court must set a hearing on the motion to dismiss within 30 days after service (unless the court's docket necessitates a later hearing), and must rule on the motion within 30 days of the hearing. The court must dismiss the action if it is based on, relates to, or is in response to the targeted party's exercise of the right to free speech, petition, or association, unless the party bringing the legal action establishes by clear and specific evidence a prima facie case for each essential element of the claim in question. If the court fails to rule on the motion as required, it will be considered denied and the moving party may appeal; any such appeal is expedited. Perhaps most important, if the court orders dismissal of a legal action under the Act, the moving party is entitled to court costs and attorney's fees, as well as sanctions against the party who brought the action in an amount sufficient to deter the party from bringing similar actions in the future.

The Act provides powerful and much-needed protections to ensure Texas citizens can be confident in exercising their First Amendment freedoms. With its expansive definition of "matter of public concern," and its grant of an expedited hearing, stay of discovery, mandatory fee shifting, and expedited appeal, the Act provides a powerful mechanism to assist targets of SLAPP suits in resolving them quickly and expeditiously—and in deterring their filing in the first place. ■



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