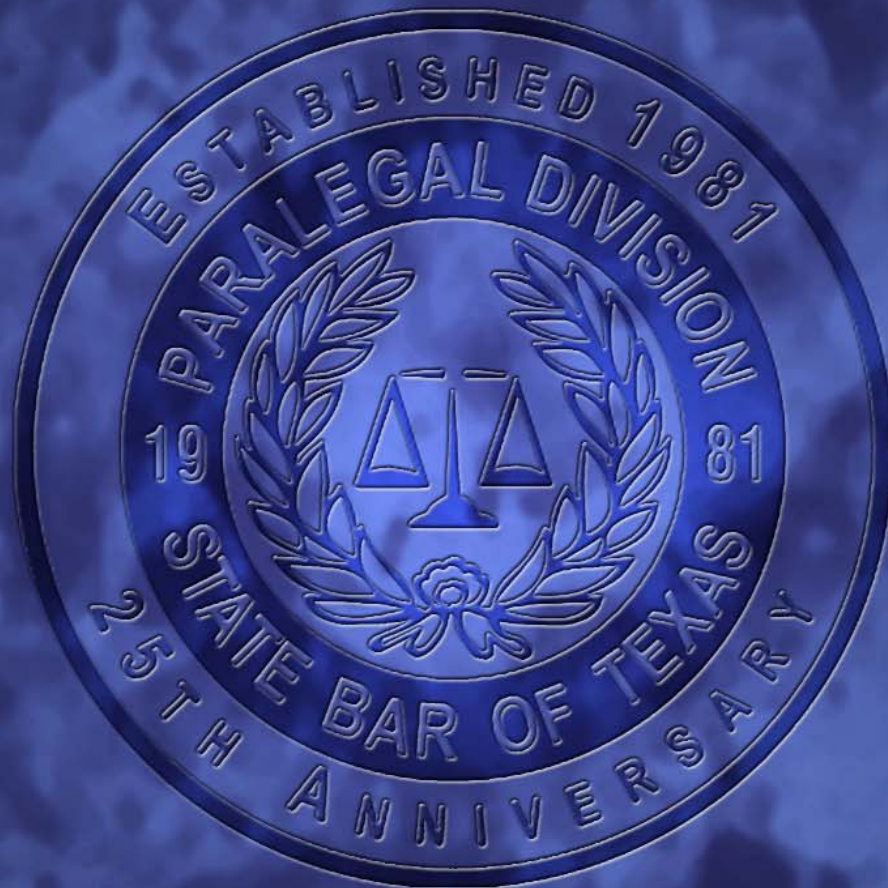


FALL 2006 VOL. 12 NO. 2

# TPIJ

## *Texas Paralegal Journal*

PARALEGALS:  
ADVANCING THE PROFESSION...



....AND EMPOWERING THE FUTURE

*Paralegal Division State Bar of Texas*

*Celebrating 25 Years*

*1981-2006*

# PRESIDENT'S *Message*

Javan Johnson, ACP, TBLS, Board Certified Legal Assistant, Civil Trial Law, Texas Board of Legal Specialization

**T**his is a very exciting time for the Paralegal Division. As you are receiving this Fall issue, the Texas Advanced Paralegal Seminar (TAPS) is being presented September 20–22, 2006, and is again an excellent seminar. Many of you may have attended, but if you have not, I encourage you to watch your next issue of this *TPJ* magazine for a report so you can see what you have been missing.

The Division has been celebrating its 25th anniversary throughout this past year, which is culminating with a final celebration, and a ‘toast’ to the next 25 years of growth and advancement for Texas paralegals. The past 25 years has seemingly blown past those of us who can remember when this Division was first formed. For those of you newer to the profession, and yet even newer to the Division, you may not have yet had the experience of seeing how far this paralegal profession has grown since 1981 when this Division was first formed by the State Bar of Texas.

October 23rd denotes our official “25th Anniversary” and is also **Paralegal Day** in the State of Texas. All across the state the Division leaders are organizing celebrations for this special day. Our hope is that you can join in this celebration by attending one of these events.

The goals for the Division for this year is based upon the theme “Advancing the Profession through Empowering Paralegals.” You may have seen the recent electronic e-mail blast which was sent out to all members regarding the new “Paralegal Standards” which have been approved by the State Bar of Texas Board of

Directors. If for some reason you missed that blast, the standards are printed for you in full text following this message. Also, you may visit and go to the top left corner “About PD,” and the drop down menu will show you the link to the new definition and standards.



Division.

We are embarking upon a campaign of educating the attorneys, legal administrators, paralegal schools, paralegals, and the judiciary as to these standards. If you have not yet read them, then please take time and do so now. Share them with every-

one you know who has a voice and who has any influence on your career. Also share with them your copy of this edition of the *TPJ* so others may learn about all the things going on with the Division. You may reach me anytime with any questions or concerns at

*Advance yourself* in this profession. By empowering yourself with these new standards, you will be the one to reap the rewards!

## What does this mean for our profession?

For the first time, attorneys are being given a guideline for both the hiring of paralegals, the utilization of paralegals, and the delegation of substantive legal work as that relates to billable time for paralegals in order to be able to recover same as a part of an award for attorneys fees. The standards also encourage attorneys to promote continuing legal education and certification for paralegals, as well as membership in the

## In Memoriam - Cathrue Savoie Benoit

It is with sadness that we report Cathrue Savoie Benoit from Beaumont, Texas, passed away August 21, 2006.

Cathrue was a Division Director from District 10 from 1984 to 1990, and served the Paralegal Division as Secretary (1984-1985), Chair Pro-Tem (1986-1988), and Chair - now titled "President-Elect" and "President" respectively (1988-1990). In addition, she was appointed to a term as Vice Chair of the Paralegal Committee of the State Bar of Texas.

Cathrue was the law firm administrator for Sheldon, Jordan & Dunham, L.L.P. from the formation of the firm in 1997 until 2003, and prior to that position had worked many years as a paralegal.

Cathrue Benoit will be remembered by all who worked with her as a professional dedicated to the Division and its work, who performed her duties with energy, enthusiasm, charm, humor and intelligence. She was a role model and mentor to many.

If you would like to make a monetary contribution to help Cat's family with her final expenses, an account has been set up at Port Arthur Teachers Federal Credit Union, Account #119630, 3001 Jimmy Johnson Blvd - Port Arthur, TX, 77642-6303, 409-729-3075 - [www.patfcu.org](http://www.patfcu.org), under the name of "Cure for Cat." To view information about Cat's funeral and to post an acknowledgement, please go to: [www.xanga.com/CathrueBenoit](http://www.xanga.com/CathrueBenoit)

## **NEW PARALEGAL DEFINITION AND STANDARDS** **ADOPTED BY THE STATE BAR OF TEXAS**

In 2005, the State Bar of Texas Board of Directors, and the Paralegal Division of the State Bar of Texas, adopted a new definition for "Paralegal:"

*A paralegal is a person, qualified through various combinations of education, training, or work experience, who is employed or engaged by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of a licensed attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal principles and procedures that, absent such person, an attorney would be required to perform the task.*

On April 21, 2006, the State Bar of Texas Board of Directors approved amending this definition by including the following standards, which are intended to assist the public in obtaining quality legal services, assist attorneys in their utilization of paralegals, and assist judges in determining whether paralegal work is a reimbursable cost when granting attorney fees:

### **A. Support for Education, Training, and Work Experience:**

1. Attorneys are encouraged to promote:
  - a. paralegal attendance at continuing legal education programs;
  - b. paralegal board certification through the Texas Board of Legal Specialization (TBLS);
  - c. certification through a national paralegal organization such as the National Association of Legal Assistants (NALA) or the National Federation of Paralegal Associations (NFPA); and
  - d. membership in the Paralegal Division of the State Bar and/or local paralegal organizations.
2. In hiring paralegals and determining whether they possess the requisite education, attorneys are encouraged to consider the following:
  - a. A specialty certification conferred by TBLS; or
  - b. A CLA/CP certification conferred by NALA.; or
  - c. A PACE certification conferred by NFPA; or
  - d. A bachelor's or higher degree in any field together with a minimum of one (1) year of employment experience performing substantive legal work under the direct supervision of a duly licensed attorney AND completion of 15 hours of Continuing Legal Education within that year; or

- e. A certificate of completion from an ABA-approved program of education and training for paralegals; or
- f. A certificate of completion from a paralegal program administered by any college or university accredited or approved by the Texas Higher Education Coordinating Board or its equivalent in another state.

3. Although it is desirable that an employer hire a paralegal who has received legal instruction from a formal education program, the State Bar recognizes that some paralegals are nevertheless qualified if they received their training through previous work experience. In the event an applicant does not meet the educational criteria, it is suggested that only those applicants who have obtained a minimum of four (4) years previous work experience in performing substantive legal work, as that term is defined below, be considered a paralegal.

#### **B. Delegation of Substantive Legal Work:**

"Substantive legal work" includes, but is not limited to, the following: conducting client interviews and maintaining general contact with the client; locating and interviewing witnesses; conducting investigations and statistical and documentary research; drafting documents, correspondence, and pleadings; summarizing depositions, interrogatories, and testimony; and attending executions of wills, real estate closings, depositions, court or administrative hearings, and trials with an attorney.

"Substantive legal work" does not include clerical or administrative work. Accordingly, a court may refuse to provide recovery of paralegal time for such nonsubstantive work. *Gill Sav. Ass'n v. Int'l Supply Co., Inc.*, 759 S.W.2d 697, 705 (Tex. App. Dallas 1988, writ denied).

#### **C. Consideration of Ethical Obligations** (See Note\* below):

1. Attorney. The employing attorney has the responsibility for ensuring that the conduct of the paralegal performing the services is compatible with the professional obligations of the attorney. It also remains the obligation of the employing or supervising attorney to fully inform a client as to whether a paralegal will work on the legal matter, what the paralegal's fee will be, and whether the client will be billed for any nonsubstantive work performed by the paralegal.

2. Paralegal. A paralegal is prohibited from engaging in the practice of law, providing legal advice, signing pleadings, negotiating settlement agreements, soliciting legal business on behalf of an attorney, setting a legal fee, accepting a case, or advertising or contracting with members of the general public for the performance of legal functions.

\*\*\*\*\*

**\*Note: a more expansive list is included in the "General Guidelines for the Utilization of the Services of Legal Assistants by Attorneys" approved by the Board of Directors of the State Bar of Texas, May, 1993.**



# TPIJ

## *Texas Paralegal Journal*

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# EDITOR'S *Note*

by Rhonda J. Brashears

In my opinion, this is a very exciting issue of the *Texas Paralegal Journal*. This issue focuses on the Division's continued celebration of its 25th anniversary. What an exciting milestone in the life of our association! Several things have changed since our inception, but at the same time several things have remained the same. One of the things that has remained the same is the Division's desire to continue to be the forerunner in advancement of the paralegal profession. With that in mind please pay special attention to President Javan Johnson's message and her article regarding the 25 years of the Division. Another exciting item in our magazine is the new "Paralegal Standards" (found on pages 2-3) recently approved by the State Bar of Texas Board of Directors; please take the time to read them.

I hope, like I am sure you do, that the next 25 years for the Division are as wonderful as the last.

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## Correction

In the article "A Child's Preference", previously published in the *Texas Paralegal Journal*, it was stated, in error, that in Texas, a child could choose a primary conservator at age 10. That is in error. Several years ago, the Texas legislators, wisely I believe, raised the age of choice to 12 years of age. I apologize for the error, which was an oversight.

J. Lindsey Short, Jr.

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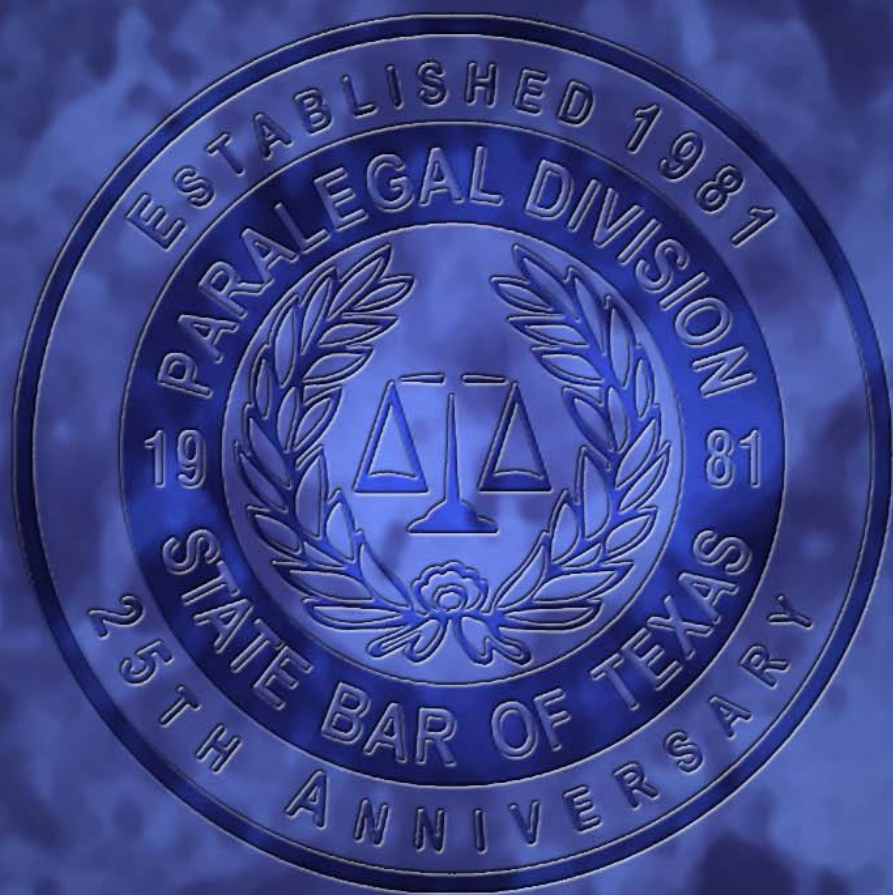
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### DEADLINE FOR SUBMISSION OF ARTICLES FOR THE WINTER ISSUE IS OCTOBER 15, 2006.

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# Paralegal Division Celebrates Its 25th Anniversary

Javan Johnson, ACP, President

Paralegal Division, State Bar of Texas



In October 23, 1981, the State Bar of Texas formed the first paralegal division of a state bar in the United States. That is the formal date the Paralegal Division (PD), formerly the Legal Assistants Division, was established. October 23, 2006 marks the 25th Anniversary of the Division. The official purpose for the PD is "To enhance paralegal's participation in the administration of justice, professional responsibility and public service in cooperation with the State Bar of Texas." PD has been a leader, and remains a leader in continuing to establish the parameters of professionalism issues facing our profession.

As is done for any milestone birthday, the Board of Directors of PD thought it appropriate to share a historical overview of the past 25 years for our members. We hope you enjoy seeing the growth and progress PD has made through those years. It is only the highlights – there was a lot more work going on that this history overview has time to reveal!

**1982** The Bylaws, Code of Ethics, letterhead, seal, membership cards and membership certificates were approved, as well as nine standing committees to conduct the work of the Division. Charter memberships were approved during that first year through June 29, 1982. PD had 1013 charter members as of that date. Charter members were given a nice certificate that bore the words "Charter Member" and the date June 1, 1982, and signed by the State Bar President at that time, Wayne Fisher. President Fisher delivered the luncheon address at the first annual meeting of the PD and shared these words:

Your presence here today confirms my belief that the time has come for the legal profession to recognize the paralegal profession and for us to move forward in cooperation and mutual support to provide better services to the public we serve... Let us assure you that the State Bar is not trying to impose anything on the paralegals in Texas, much less the paralegal profession throughout the country. We realize that what we are doing will have an impact, and for that reason we are just as concerned as others may be. We only ask that your Division be a chance to show what that impact will be. Active participation by the membership will have a direct effect on that impact. ...I challenge you to fight for what you believe in. ...

**1983** The first Board of Director elections were held. The Standing Rules were established that enhance the work of the Division as to the Bylaws. Questionnaires were mailed to paralegals regarding the issue of voluntary certification. Even at this early date, PD was looking into enhancing the professionalism of paralegals.





**1984** A second questionnaire was sent out to paralegals regarding voluntary certification. Education programs were reviewed and the first Division newsletter was published.

**1985** The public hearings regarding voluntary certification began. There were initially two proposals: (1) create a PD exam, or (2) utilize the CLA exam with a Texas substantive law section added. Membership grew to 1500 members. The second survey regarding voluntary certification was mailed.

**1986** A sustaining member category was added for law firms, corporations, and other individuals or entities supporting the Division. It was decided that more fact finding was needed regarding the voluntary certification issues. Public hearings on proposals for voluntary certification were held in seven major cities.

**1987** A Task Force for Voluntary Certification was established. The Board of Directors resolved to go forward with a Texas exam, although no definitive exam was discussed. Educational programs were created in a list format that offered paralegal training to be available to attorneys and paralegals. Mock grievance procedures were conducted by the Ethics Committee.

**1988** Funds were allocated for future implementation of a certification program. Membership increased to 1800. A special committee was formed to determine whether an executive director should be retained.

**1989** The necessity for hiring an Executive Director became apparent. A look at whether to allow PD to become a non-profit corporation was voted down. A special committee was formed to provide recommendations for processing membership applications.

**1990** An ad hoc committee was formed to digest the data on voluntary certification. A formal list of benefits was prepared and published to members. The State Bar agreed to keep track of continuing legal education hours and provide a transcript for \$5.00. Norma Hackler was hired as Executive Director. An indepth look was taken on the recommendations for processing membership applications, including "substantive" and "law related legal work" definitions.

**1991** The voluntary certification digest was released and the consensus was that PD would support a certification exam. A Voluntary Certification Task Force was created to work with PD. This was the year that student membership category was added. The Division's finances/bookkeeping totally separated from the Bar during this year to allow us to handle our own accounting. Governor Ann Richards officially proclaimed, for the first time, that October 23rd would be Legal Assistant's Day in Texas.

**1992** The official PD publication was formally named by Betsy Horn of Fort Worth as *Texas Paralegal Journal*. The Joint Task Force on Specialty Certification made significant advances toward establishing a plan toward certification exams for paralegals, and the first look was taken at the TBLS exams as that vehicle. Joint CLE seminars with local associations were sponsored in smaller areas.

**1993** The Concurrent Resolution No. 69 was signed by Bob Bullock, President of the Texas Senate, and Pete Laney, Speaker of the House, that October 23<sup>rd</sup> of each year would be Texas Legal Assistant's Day. Specialty certification exams were approved by the Texas Supreme Court on 5/18/93 to be given to paralegals by the Texas Board of Legal Specialization (TBLS).

**1994** The *Texas Bar Journal* January issue was dedicated to paralegals. The first specialty exams were given by TBLS on 3/26/94 to 157 paralegals.

**1995** The *Texas Paralegal Journal* became a full magazine. The Long Range Planning Task Force was formed to begin studying future professionalism issues.

**1996** The State Bar of Texas made its insurance programs available to PD members. Advanced seminars were planned to coincide with the TBLS speciality exams. A Continuing Legal Education committee was formed to assist local associations in providing CLE to their areas with help from PD. Budgeting was made available for the *Legally Speaking* programs to be taped working with the El Paso Community College.

**1997** The Long Range Planning Task Force (LRPTF) hosted the Fall TAPA meeting to share information regarding the professionalism issues and was charged with preparing a preliminary digest of information. The development of a video on how to utilize paralegals was first discussed.

**1998** The LRPTF held its first public hearing held in Corpus Christi at the annual meeting. It was determined that the production of tapes regarding the utilization of paralegals would proceed, targeted for law schools. The Executive Director's title changed to PD Coordinator.

**1999** This was the year "Legal Assistant University" (LAU) was first held in San Antonio with 270+ paralegals coming together for a three-day seminar covering a wide variety of topics. The March 2000 *Texas Bar Journal* issue was dedicated to paralegals. Public hearings were continued throughout the state

## SUSTAINING MEMBER PROFILE

### One Legal, Inc.

Mention the name One Legal to any California paralegal and you can rest assured that they will have good things to say. Maybe that's because over the past 16 1/2 years, One Legal, Inc. has filed more than 20 million pages of legal documents, advanced over \$50 million in court filing fees, and boasts a success rate of 99.9996% in meeting filing deadlines. With more than 15,000 law firms as customers and 45,000 individual users, One Legal has built a name for itself in same-day court filing and service of process. Now that the company offers electronic services in Texas through *eFiling for Courts*, it hopes to earn the same stellar reputation among the Texas paralegal market.

The company's history dates back to the days before the Internet was available and the fax machine was considered an innovation. When Bob Battaglia founded One Legal, Inc. in 1990 (then known as Fax & File), a single faxed page took more than 2 minutes to transmit to his office. A law firm would call to alert the company of their filing order, fax the document to the One Legal office, and a document specialist would review it for accuracy before delivering it to the courthouse. Time-consuming faxes didn't deter Bob from expanding his business into the largest "electronic" court filing service in California. In fact, the fax machine still provided a much faster, same-day alternative for law firms who previously had to mail their documents to the court, or find a courier who could deliver them on a last-minute basis. Little by little, law firms adopted faxing as a "better" way of filing court documents.

One Legal, Inc. which changed its name from 'Fax & File' in 2003, is now the largest provider of online court services in California with 17 company-owned branch offices and 172 courts served. As an innovator in the market, the company continued to invest in technology and was the first to offer online document submission through the Internet, changing the face of court filing forever.

In 2005, One Legal became certified as an EFSP in Texas through *eFiling for Courts*. In just one year, One Legal has attracted many satisfied customers in law firms throughout Houston, Dallas and other counties offering eServices. It is a proud member of the Paralegal Division of



David Lundberg

the State Bar of Texas as well as the Houston Metropolitan Paralegal Association, and participates in many of the local seminars and events.

According to Battaglia, the Texas market was attractive because the courts were very quick to adopt electronic filing and service of process. "In California, there are still just a few courts that can accept electronically submitted documents. But in Texas, we're able to use the latest technology in more counties. We've established a local presence in the market as

well, making it more convenient for paralegals to get training or other types of assistance whenever they need it."

What makes customers choose One Legal for their online court filing and service of process needs? In addition to its 16+ years of experience and unparalleled success, the company prides itself on being a customer-friendly company. "We hire only highly skilled, personable representatives with extensive knowledge of local court requirements. When a paralegal calls One Legal, they're going to get the assistance they need in a friendly and helpful manner," states Battaglia.

Plus, One Legal is the only service provider with open billing terms and no credit card fees. To register with One Legal, visit <https://lawplace.onelegal.com>, or contact your Texas Account Manager, David Lundberg at (713) 373-2082. You can email David at [dlundberg@onelegal.com](mailto:dlundberg@onelegal.com). For Customer Support, call (800) 938-8815, option 3. We hope to have the opportunity to provide you with professional, friendly and expert service very soon.



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by the LRPTF.

**2000** The public hearings were completed and the information was digested by the LRPTF. A Joint Task Force was formed with the Paralegal Committee to continue examining the issues of professionalism. The LAU Scholarship was named for Nancy McLaughlin, our TPJ editor who we lost in a car accident. LAU was held in Austin.

**2001** The State Bar College began offering Associate membership for paralegals. TYLA endorsed the "Profiling the Paralegal Profession" video. LAU was held in Austin. PD celebrated its 20th Anniversary beginning in 2001. LAU was held in Dallas.

**2002** Charter members of the PD were located to join in the 20th Anniversary celebration at annual meeting. LAU was held in Houston. The Joint Task Force sought clarification of the definition of "legal assistant." MytexasBar.com was made available to PD members for updating membership information.

**2003** A public relations ad was developed for PD. LAU was

held in San Antonio. An online survey was conducted by the Joint Task Force regarding the preferred term "legal assistant" or "paralegal." The online CLE program began being developed. A job bank was added to the PD website. The Joint Task Force proposed a new definition of "paralegal."

**2004** An emeritus membership category was added, and other categories were restructured. PD introduced the Ambassador program comprised of past presidents of PD to travel and speak on behalf of PD. LAU was held in San Fort Worth. The online CLE program was fully implemented, and mandatory CLE for membership in PD was also implemented.

**2005** A PD representative was appointed to serve on the Board of Directors of the State Bar College. PD made its first overseas travel to London. LAU was renamed the Texas Advanced Paralegal Seminar (TAPS), and was held in Austin. The State Bar approved the definition of "paralegal," and the Division changed its name to Paralegal Division. PD members were included for the first time in the Texas Legal Directory.

**2006** PD is celebrating its 25th anniversary. An online salary survey was conducted and the results tabulated. PD traveled to Paris in April. New "paralegal standards" were approved by the PD and the State Bar, and are currently being marketed. TAPS is being held in Dallas in September.

While the work of the Division has been vast over the past 25 years, this is a small sketch of what we have accomplished. We continue to grow and move forward, enabling Texas paralegals to stay *empowered*, and to continue to advance in the legal profession and be the leaders across the nation!

*Javan Johnson currently serves as the President of the Paralegal Division, and is a charter member of the Division. She is a NALA Advanced Certified Paralegal in Civil Litigation, and a Board Certified Paralegal in Civil Trial Law by the Texas Board of Legal Specialization. Javan is a freelance paralegal in Longview, and has over twenty-five years' experience in civil trial work. She has taught paralegals at Kilgore College since 1988. She is a frequent speaker on behalf of the Division.*

## Paralegals Traveling to Italy Spring 2007

The third annual Division trip is planned for April 2007 to Florence, Italy departing on a Saturday and returning on a Saturday. The trip will include six nights hotel, daily breakfast, two dinners, trip to the wine country in Chianti (wine tasting/dinner); journey to San Gimignano, and roundtrip airfare. Details of trip on website at [www.txpd.org](http://www.txpd.org) under the news category and CLE/Events.



# The Multimedia Trial

## How to Make the Most of Your Courtroom Presentation

By Ric Dexter<sup>1</sup> with J. David Rowe<sup>2</sup>  
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In the Fall of 2004, the Honorable John K. Dietz, District Court Judge for the 250th Judicial District of Travis County, Texas, presided over a month-long evidentiary hearing before ruling that Texas' school finance system is unconstitutional in the groundbreaking *West Orange-Cove Consolidated I.S.D. v. Neeley* case. To promote efficiency, Judge Dietz insisted that the parties present exhibits to the court in an electronic form:

IN THE 250TH JUDICIAL DISTRICT  
TRAVIS COUNTY, TEXAS  
TRIAL COURT CAUSE NO. GV-100528

WEST ORANGE-COVE  
CONSOLIDATED INDEPENDENT  
SCHOOL DISTRICT, ET AL  
VS.  
SHIRLEY NEELEY, TEXAS  
COMMISSIONER OF EDUCATION,  
ET AL

Volume 5, August 10, 2004

16 THE COURT: ...  
19 to the extent possible, this will be a  
paperless  
20 hearing. We do recognize that the  
appellate courts will  
21 need a paper record of the exhibits.  
22 Counsel for all parties and the Court  
have  
23 agreed that to the extent possible, we  
will admit those  
24 en masse at some point and to the  
extent that we use  
25 electronic exhibits during the hearing,  
they will be  
page 6

- 1 provisionally admitted and then will be fully admitted when
- 2 the paper record is admitted to the court reporter.

And by insist, we mean *insist*:

Volume 12, August 19, 2004

- 23 MS. DOVER: Your Honor, I'm going to be
- 24 referring back and forth between the bar graph and this chart,
- 25 and because of the difficulty, would it be okay if I give the

page 132

- 1 witness and you a copy of this chart so we don't have to keep
- 2 going back and forth?
- 3 THE COURT: You're going to ask us to use
- 4 paper?
- 5 MS. DOVER: I know it's against the rules.
- 6 THE COURT: After ten days of assiduous use of
- 7 electronics, you're going to hand me paper. I've got to take a
- 8 break.
- 9 MS. DOVER: Simply for convenience.
- 10 THE COURT: We're going to take a break. See
- 11 if you can't figure out something else.

While Judge Dietz's insistence that counsel use electronic means to display exhibits during the hearing may have been somewhat unusual, the actual use of technology

in the courtroom is far more ordinary than extraordinary. Not so very long ago, the question was whether you could get away with using technology in your trial: will the Court permit it? will it work? will it alienate the jury? The question today, however, is not whether, but how much: video depositions? PowerPoint for opening? digital display of exhibits?

The people who serve on juries, as well as the judges who preside over those trials, are accustomed to obtaining critical information from a computer/television screen. With few exceptions, computers are common in the workplace, and 68 percent of American households are connected to the internet.<sup>3</sup> Television viewers are inundated with news shows that use sophisticated graphics to display all sorts of models and documentary evidence. Who hasn't seen "60 Minutes" highlight the critical portions of voluminous documents on national TV to emphasize a point? Even the fake news cable program "The Daily Show with Jon Stewart" uses multi-media presentations to keep its audience entertained and tuned-in.

According to Ted Brooks, a California litigation technology vendor

"It is estimated that approximately one-third of our national jury pool is part of generations X (born 1965-1980) and Y (born after 1980). The remainder is made up of approximately 40 percent baby boomers (born 1946-1964), leaving only about one-fourth in the group least likely to have a high degree of familiarity and exposure to computers, multi-media, and the like."<sup>4</sup>

The average juror expects a multi-media presentation, and more and more lawyers are realizing that fact. And the better lawyers are figuring out how to use multi-media to their advantage. This article outlines some of the things that the authors have learned from their first-hand experience using multimedia in the courtroom.

### A LITTLE THEORY

No matter the size or scope of the trial or hearing, the advocate's job is as much teacher as anything. In many cases, your

jury—and even the Judge, in some instances—will have little experience with the specifics of your case. Experience shows that the audience in most cases is willing, even eager, to learn what the case is about so they can do their job—reach a decision. The audience is waiting for someone to teach them. Will it be you or your opponent?

Theories of learning are numerous, and a comprehensive discussion is beyond the scope of this article, not to mention the authors' grasp. We have, however, had success when applying the concepts of active learning theory to our multimedia trials.

The three elements of active learning are Selecting, Organizing and Integrating.<sup>5</sup> In the "Selecting" process the judge/jurors pick the key words and images they feel are important. The audience then "Organizes" the information by looking for concepts that tie the selected words and images together. Finally, those concepts are "Integrated" into the individual's own experience and world view.

Much has been written on the importance of developing case themes, which is absolutely essential. But the active learning model teaches that themes are only one piece of the puzzle—they help the audience "organize" information. Effective advocates understand that true teaching is a more complete and involved process. And the very best advocates use multimedia to their advantage when preparing their cases with the active learning model in mind so that the judge/jury "knows" at his/her core being what the "truth" is, days or even weeks later, when it is time to deliberate.

## THE TOOLS

The authors define "multimedia" as any method of combining images and narration for displaying an evidentiary asset. In trial or an evidentiary hearing, the counsel and witnesses provide the narration. The image can be trial boards, physical exhibits, or images projected on a screen. Any software that puts an image on the screen can be used for a multimedia presentation. Which program you use will largely depend on the how many and what kind of images you want to project, and

how those images will be used.

The three most commonly used tools for multimedia presentation are trial boards, linear presentation programs, and trial presentation programs. The better multimedia presentations will use all three of these, for different purposes.

For linear presentations, i.e., those designed to follow a specific script, such as opening statement or closing argument, the tool of choice is one of several popular presentation programs: Corel Presentation; Apple Keynote; Astound Presentation; and Microsoft PowerPoint.

The basics of these programs are simple to learn, and recent improvements make them useful tools. The addition of "Flash" movies or animated .GIF files can give them a more professional look and feel.

If you have something you want to leave in front of the jury for extended periods that will relate to multiple witnesses, a trial board is appropriate. This could be something like a timeline, a cast of characters or organizational chart, or even part of that "smoking gun" email you found during your electronic discovery.

During direct and cross-examination of witnesses you will need access to all your exhibits. For paper documents, there are several software programs designed for this purpose. Sanction II, Trial Director, Visionary, and Trial Pro are the most popular of this genre. With these programs you can easily call up documents, zoom in on a section of the document, and highlight key words or phrases.

For physical exhibits that are too small to be displayed without enhancement,<sup>6</sup> document cameras (sometimes called by the brand name "Elmo") are a good choice. These devices have cameras whose images are displayed electronically to the jury by monitor or projector. By placing the exhibit under the camera, you can enlarge and point out key characteristics of the exhibit. Document cameras may also be used to display documents, but the authors prefer not to use them for documents, except in unusual circumstances, because the zoom and focus features can be distracting and even downright dizzying.

Trial presentation software also allows you to use videotape depositions either to

present or to impeach a witness. Unlike playing a videotape on a VCR, if the video is properly digitized, trial presentation software allows you to call up segments of the deposition by page and line number. This means you (or your tech) can edit the deposition on the fly, or call up only small excerpts for impeachment. You can easily make changes in the edit of the deposition, and print out a transcript of the edited deposition for yourself, opposing counsel and the court reporter. It is also possible to make a copy of the edited video to send opposing counsel for review, or for the court record. Plus, if you synchronize the electronic version of the transcript with the digitized video, the software allows you to display the transcript that corresponds with the testimony.

Transcripts can also be shown to the jury using transcript management programs, such as Summation, LiveNote, and E-Trans. Although these tools are typically used to prepare for trial, they can also be useful during the trial itself if you need for some reason to search the deposition record to look for specific testimony and/or page/line references. You can also display to the Court or jury a portion of a deposition transcript that has not been digitized and/or synchronized. (This is an exception to the rule we will discuss later of not wanting to read the exact language on the screen.)

No matter what specific tool you are using you must always see the trial as an integrated whole. Don't look at the media used in opening as one thing separate from the media used in examination and cross examination separate from the media in your closing statement. With that consistency in mind, you begin to design your opening with an eye toward how your evidence will progress, toward the look and feel of your presentation, and toward the result you want to achieve.

## THE "RULES"

As M. Ethan Katch, law professor at the University of Massachusetts, observes "The high technology invasion of the legal process is in full swing."<sup>7</sup> Even so, there are few rules of evidence or procedure written specifically to address technology in the courtroom.<sup>8</sup> And there are even





fewer “rules” to help guide advocates in using effectively this flood of technology.

But fewer does not mean non-existent. Indeed, Edmund Tufte’s “Principles of Graphical Excellence” includes some very helpful principals for preparing excellent and honest graphical representations. Tufte says that graphical excellence is the well-designed presentation of interesting data – a matter of *substance*, of *statistics*, and of *design*. Tufte says that “graphical

excellence” requires the following:

complex ideas are communicated with clarity, precision, and efficiency; the greatest number of ideas are presented to the viewer in the shortest time with the least ink in the smallest space; multivariation; and telling the truth about the data.<sup>9</sup>

Tufte also posits certain “principles of

graphical integrity,” including the following:

The representation of numbers, as physically measured on the surface of the graphic itself, should be directly proportional to the numerical quantities represented. This is expressed in the “lie factor” of a graph.

Lie Factor = the size of an effect shown in graphic/size of effect in data.

Clear, detailed and through labeling should be used to defeat graphical distortion and ambiguity. Write out explanations of the data on the graphic itself. Label important events in the data. Show data variation, not design variation. In time-series display of money, deflated and standardized units of monetary measurement are nearly always better than nominal units. The number of information carrying (variable) dimensions depicted should not exceed the number of dimensions in the data. Graphs must not quote data out of context.<sup>10</sup>

#### THE OPENING STATEMENT

Opening statements lend themselves well to static displays (e.g., foam boards), presentation of physical exhibits, and use of slide show type program like PowerPoint. PowerPoint can be a powerful tool, but it can also be easily misused. It has become so ubiquitous and has such an easy learning curve that everyone who has access to it begins to feel like a pro within a few weeks. Confidence, however, is not synonymous with competence.

Clifford Stoll, in “The Plague of PowerPoint,” says “Imagine a boring slide show. Now add lots of generic, irrelevant, and pyrotechnic graphics. What have you got? A boring slide show, complete with irrelevant whiz bang graphics.”<sup>11</sup> And Tufte, in the conclusion of his article “Power Corrupts, PowerPoint Corrupts Absolutely,” states “PowerPoint is a competent slide manager and projector. But rather than supplementing a presentation, it has become a substitute for it.”<sup>12</sup>

For purposes of this article, we share the following observations about effective use of slide shows during trial:

Less is more.

Sentences bad—bullets good.

Cute little graphics add clutter, not information.

Avoid those busy background decorations. White/blank space is necessary, not wasteful.

Use animation if it helps, not because it's cool.

Use color to convey information; e.g., green is good, red is bad.

Use uniform color scheme throughout slide show.

Change font style and size sparingly, and only to convey information.

Slide transitions should be uniform, not random.

Use slides to emphasize or illustrate a point; don't read a slide to the jury.

And the number one rule in using PowerPoint: "Just because you can doesn't mean you should." All too often, because programmers make tricky animations and funny pictures available, people think they should use them. More often than not, these toys detract and distract. Evidence presented to a court should not remind you of a children's cartoon or a late night television commercial, unless the case involves late night television commercials, or children's cartoons.

The simplest design elements are often the most effective.

Multimedia used in any presentation should be used to enhance the presentation. When it begins to overwhelm the presentation, all of Tufte's and Brooks' criticisms are proven, and the common misinterpretation of "The medium is the message"<sup>13</sup> becomes true. You are no longer presenting evidence, you are staging a canine and equine extravaganza, a dog and pony show. Virgil, K.D. Lange, and Tufte all remind us that the first rule of speaking is "Respect your audience."

#### THE WITNESSES DIRECT EXAMINATION

As a general rule, the best method for presenting documents during examination of

a witness is by using trial presentation software. The most popular of these allow you to create files with images of each page of each exhibit, and to call them to the screen with a few keystrokes. Using trial presentation software, the operator can easily zoom in on a particular paragraph and highlight key language, allowing the jury to follow the message—essentially keeping all eyes on the same part of the same page.

When the situation calls for it you can put two or more documents on the screen to compare the language, to show the source of a statement, or clarify a cause and effect relationship.

Smaller, less complex cases may permit an attorney or legal assistant to operate the presentation program, but larger, more complex cases are better left to experienced technicians who can devote all their time and energy to "driving" during the trial. Omitting the trial technician theoretically saves the cost of another professional in the courtroom, but there are hidden costs that may offset the savings. No matter how basic the task, even a slight problem can distract the attorney presenting the case. During the Florida "hanging chad" hearings, more than one attorney tried to put a document on the screen to make a point, only to have nothing but a white wall in front of the judge, with other counsel and most of America watching.

As these very able attorneys struggled with the technology, their point was diminished, if not lost. Likewise, when a Legal Assistant is driving, s/he is not available to fulfill the normal jobs they have in court.

If you have a dedicated trial specialist operating the equipment, that person will be better prepared to solve any equipment problems that should arise. She is better trained and has more time to revise your presentation on the fly. She's also better prepared to solve any technical problems that may arise.

In advance of the trial, the advocate and technician must work together to identify, load, and label the documents so they will be readily available during the course of the trial. Document images are saved in files accessible through a database and can be called up by the exhibit num-

ber or the bates number. Other identifiers can be used to access documents. Your choices are limited only by your imagination—or the rules of evidence. You can call your favorite document "proof of their skullduggery" but you might get an objection every time you ask for it, and the appeals court might want to know the exhibit number. If the trial exhibits have been pre-marked and exchanged in advance, identifying the images by exhibit number is generally the best method. Whatever method you use, you should establish a consistent protocol before you set up your database.

The process of preparing for direct examination of your witness generally involves knowing which documents, and which part of those documents you want to show the jury. Sharing this list with your tech before the witness goes on the stand will make you both look more prepared.

A good communication protocol will let you call for the evidence you want to emphasize without having to fully describe it. For example, an awkward exchange may go something like this:

"Mr. Techguy, put Exhibit 23 on the screen. Now go to the page with section IV, now zoom on the second full paragraph and highlight the second sentence. Now Mr. Witness can you see that sentence?"

But a more prepared and practice protocol sounds more smooth:

"Mr. Witness, please look at Exhibit 23, page 7. I'd like to direct your attention to the second sentence in Section IV, and ask you...."

In addition to using the presentation software to display documents to the jury and witness, it's also possible to use more static exhibits that have been prepared in advance. For example, charts or graphs might be displayed on foam boards or on a PowerPoint slide. Likewise, spreadsheets, charts, and graphs can be displayed from a program like Microsoft Excel. Like everything else, of course, these types of exhibits require advance preparation and ideally rehearsal.

## THE WITNESSES CROSS EXAMINATION

Much of what we discussed in the "Direct Examination" section applies to cross examination. A big difference is that you are often less prepared to display the documents used during direct examination, unless there was a pretrial exchange of trial exhibits in time for them to have been properly imaged and loaded into your trial presentation database, which is the best way to get prepared for trial. If trial exhibits haven't been exchanged, then the next best option is to make sure that the entire universe of possible documents have been loaded into the database so they can be called up upon request. Another, less effective option, is to have a document camera and paper copies of all documents at the ready. If an advocate anticipates using a document camera, she should be sure to practice. Document cameras present their own challenges, particularly the zoom and focus features.

One of the biggest assets multimedia brings to the cross examination table is the ability to impeach a witness with contrary deposition testimony. As discussed above, if the video deposition has been properly digitized and synchronized, and the advocate has identified in advance for the trial tech all potential page and line references that may be needed, contrary testimony can be displayed very effectively. Few things are as dramatic as having a witness say X on the stand, and then sit, forced to watch herself say Y on video.

## THE WITNESSES BY VIDEOTAPE DEPOSITION

Most trial presentation programs will allow you to play all or edited excerpts of videotape deposition testimony with synchronized closed captions of the transcript, but only if the videos have been digitized and synchronized in advance. The editing should be done in advance, but unlike conventional analog media (i.e., video tapes and VCRs), changes are much easier and faster to make.

Indeed—most techs will hate us for telling you this part—edits can be made right up to the moment you begin to play. And if your tech is really skilled, it may

even be possible to edit the later clips during playback of the earlier clips. But no tech worth her salt would ever admit this, and no lawyer worth his salt would ever think to ask. But we've been told it's possible.

## CLOSING ARGUMENTS

An effective closing statement will summarize all the points you have made during trial and remind the jury of the facts that prove your case. The images you use will be the ones you have been using through-

out the trial. If your case is proven in the documents, show the documents. If you have had particularly compelling graphics, use them again.

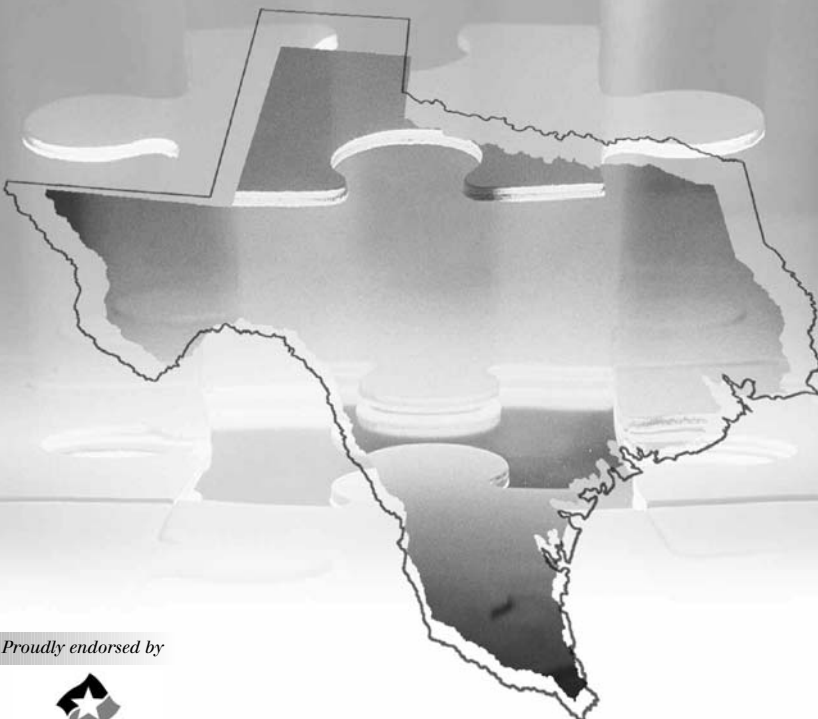
Meyer, in *Multimedia Learning* describes a Concise Narrated Animation.

### Features: Description


Multimedia: Includes corresponding narration and animation rather than animation alone

Integrated: Corresponding animation and narration are presented simultaneously

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rather than successively

Concise: Extraneous words, pictures, and sounds are excluded rather than included

Channeled: Words are presented as speech rather than on-screen text or both speech and on-screen text)

Structured: Includes series of narrated animation segments describing steps in the process (for cause and effect material)

Features listed above are those which showed in his studies to elicit the highest responses in the transfer and retention of information in a multimedia process.<sup>14</sup>

Remember also, it is not required that something be on the screen at all times. Good lawyers have known for decades that lowering one's voice can emphasize a point as much—or even more than—a raised voice can. Similarly, a black screen can serve to emphasize a dramatic point, or maybe just suggest nonverbally that the speaker is changing topics.

Many lawyers use some time in closing argument to go through the questions in the charge and suggest appropriate answers. Although we disfavor the document camera for most applications, this is a good time to use it. Handwriting the answers while the jury follows along is a powerful, none too subtle suggestion of how they should fill out the questions when they retire to deliberate. You can also display the questions in a text format, and type in the answers as they are suggested. Or, with the appropriate software, scanned images can be similarly appended.

## THE EQUIPMENT

Before any of the above can be done the courtroom will need to be set up. More and more courts, as mentioned earlier, have at least some type of equipment pre-installed. But there is no consistency in what you may find in the courtrooms. To find out what equipment is available, you can contact the court or go to [www.courtroominformationproject.net](http://www.courtroominformationproject.net)

When the courtroom has no (or limited) equipment installed, you will need to bring in your own, *after* you get permission from the court. We have yet to encounter a court which would not allow any equipment, but some do have certain

restrictions. Some courts have limited space and therefore restrict size and or placement of screens. Some older courthouses have limited power available, thereby limiting the available electrical load.

Our recommended list of equipment to have in the courtroom includes:

Computer with sufficient storage for all evidentiary assets

Backup computer

Projector (2700 lumen +) and a spare bulb  
6 to 8 foot screen for jury

Flat panel monitors for witness, judge, and counsel

Sound system

Switch and distribution amplifier

Document camera

Cables, floor guards and or Gaffer's tape  
(not duct tape)

A portable scanner

Easels, paper pads, markers

Optional equipment for the courtroom includes:

A laser pointer

An external communications channel

An internal communications channel

A printer

Because of security concerns you may have to get advance permission from the judge to bring the equipment into the courtroom. Being stopped at the door, sent to the loading dock, and waiting for the judge to arrive at the courthouse can cut down on the time you have available to set up the equipment. Because setting up, wiring, and testing the equipment could take up to two hours, it is best to set it up in the day before the first use. Most courts will lock up for the night, but will not take responsibility for your equipment. You should be aware of what kind of security you will have for your equipment. The judge may need to use the courtroom for other purposes. Your equipment should always be placed with the utmost consideration for the court, and in places where it can be discreetly removed.

## BEFORE THE TRIAL ADVANCE PREPARATION

All of what we have discussed requires

advance preparation.

Asking "how much in advance" is like asking "how long is a string?" Let's begin with how long each required task takes.

If you are going to use any images in the opening they need to be created. From concept to creation these take, well, however long they take. Organizing them into a presentation requires some sort of script or outline. The outline for the opening and closing are generally not done until hours, if not moments before they are needed. It is therefore important that charts and graphs, images and clips, documents and exhibits be prepared in advance of needing them.

To set up a case shell in the trial presentation software takes only a matter of minutes. But then you have to import the images, the database, the video, the synchronized transcripts and any other evidentiary assets you intend to use in trial.

Importing the images and database for the images into your trial presentation program could take from several minutes to several hours, depending on the volume of documents. In the *West Orange-Cove* case, there were more than a million and a half pages in the trial database and over 10 million pages in the universe of documents. It took 3 to 4 hours to download the images when connected directly to the server, and over 8 hours when connected remotely via the internet. The *BRA v. Ionics* case was smaller, and took less than an hour to download.

Importing the images and database can be done in less than a day. That is, assuming all the images are scanned and the database is completed. At our firm we scan and begin databasing images when we get them in discovery. From that point on any attorney can access the documents while preparing for any aspect of the case. This could include hearings, depositions, and delivery to experts, research, or any other purpose. If this hasn't been done in advance, you can add to that day whatever time it takes to get the documents imaged and the database built.

To import the video depositions into the trial presentation program it takes about 10 minutes for each hour to 2 hours of testimony. A trial with only a few witnesses on videotape can take less than an

hour. A trial with 70 witnesses on videotape averaging 6 hours per deposition would require about 70 hours. This is assuming you have already encoded the video (converted it from the tape to an electronic image). This process takes the length of the tape to accomplish. An hour of testimony takes an hour to convert; in our example above we had 420 hours of testimony. This also assumes the electronic media has been synchronized with the transcript. This process will take a little over the length of the deposition to complete. There are advances being made in programs that employ sound recognition algorithms. These programs can accomplish the task in less than half the time at half the cost, with a guaranteed accuracy of at least 85%. That means you can anticipate at least one out of seven clips will be wrong. Even with only a limited number of depositions, this process should be completed at least two weeks before trial. In our firm we have the depositions encoded when they are taken. When the video company has the capability of recording the disk simultaneously this reduces cost and improves the quality. We have the depositions synchronized when we determine to use the witness in trial.

Let's now assume that all the images, databases, videos, and transcripts are done in advance, that naming protocols are established and all the data is on an accessible and portable hard drive. All the downloading has been done and all that is necessary is to put the data into the program. All you have to do is get a trial specialist to hook up the drive and put the data into a presentation program. I guess we should also assume you have had the foresight to contact your trial specialist to be sure of availability.

A well trained tech can accomplish this in a few minutes.

Then all that needs to be done is QC the document database and images, and QC the video images and synchronizing product. The length of time this will take depends on how sure you want to be that when you call for an image in court, it is the right image.

That only leaves a couple of small tasks for the trial specialist to complete on the day before trial. S/he will need to arrange

for delivery and set up of the equipment, unless the court has equipment installed. In that case, the tech will need to make sure that the court's equipment is in working order and compatible with your equipment. The tech will also need to learn the controls of the court's equipment, and ensure that all the connections are live. The attorneys who plan to use the equipment should also familiarize themselves with the courtroom set up and the operation of any controls they may need to utilize during trial.

## CONCLUSION

The multimedia trial is no longer a thing of the future, it has become so inculcated into the practice of law that courts are demanding the funding to build the necessary equipment into the courtrooms. Judges are insisting on the use of multimedia because it has been proven to save time. If it is not already part of your trial practice it soon will be.

Like any tool used in any trade or profession, you will need to learn to use it correctly, and effectively. Multimedia learning is becoming a major field of study. The information is available to help you learn to make the most of your courtroom presentation. There is a growing body of Professional Trial Specialists to guide you through the process.

As legal professionals, attorneys, legal assistants, and litigation support staff, it is incumbent upon you to give your clients the best legal representation you can provide. To accomplish this end you must use the most effective, and cost effective means.

The most effective use of multimedia in trial is the use that allows you to teach the jury the facts they need to know to reach to a fair and just verdict.

<sup>1</sup> Ric Dexter is a trial support technician, who, for more than 25 years, has helped trial attorneys look good. Last year, he provided technical support to the team of lawyers who won the case in which the Texas school finance system was declared unconstitutional. More recently, he was a valuable member of the trial team that obtained a complete

defense verdict for a company accused of fraud in a case in which the plaintiff sought \$60 million. He is currently employed by Haynes and Boone, LLP. And the firm is damn lucky to have him.

<sup>2</sup> J. David Rowe is a trial lawyer formerly associated with Haynes and Boone, LLP and is currently a partner with DuBois, Bryant, Campbell & Schwartz, LLP. Mr. Rowe has successfully tried cases for both plaintiffs and defendants before judges, arbitrators, and juries. His most recent victory came as lead trial counsel for the trial team that obtained a complete defense verdict for a company accused of fraud in a case in which the plaintiff sought \$60 million. Mr. Rowe was damn lucky to have Mr. Dexter as part of the trial team.

<sup>3</sup> Law Office Computing: February/March 2005

<sup>4</sup> *Jupiter Research* cited in ClickZ News

<sup>5</sup> *Multimedia Learning* Richard E. Mayer, Cambridge University Press 2001

<sup>6</sup> If the exhibit is large enough—and the Court will allow it—one good option is to simply hold it up for everyone to see. Effective multimedia doesn't have to be electronic.

<sup>7</sup> *The Electronic Media and the Transformation of the LAW*, M. Ethan Kasch, Oxford University Press 1989.

<sup>8</sup> Neither the Federal nor Texas Rules of Evidence or Procedure have adopted provisions specifically to address technology in the courtroom, but some individual Courts have begun to incorporate such guidelines. See, e.g. Travis County File No. 121,012 – Amended Standing Pretrial Scheduling Order for Trial of Civil Jury Cases Including Use of Electronic Media, and Travis County E-Courtroom User Agreement.

<sup>9</sup> *The Visual Display of Quantitative Information* Edward R. Tufte, Graphics Press 1983

<sup>10</sup> *Id.*

<sup>11</sup> Clifford Stoll. *High-Tech Heretic: Reflections of a Computer Contrarian*. New York: Anchor, 1999/2000. pp. 179-84

<sup>12</sup> Edward Tufte. PowerPoint is Evil. *Wired Magazine* issue 11.9 September 2003

<sup>13</sup> Federman, M. (2004, July 23). *What is the Meaning of the Medium is the Message?*

<sup>14</sup> *Multimedia Learning*



# PD Traveled to Paris, 2006

by Mary K. La Rue C.P., El Paso, TX

In April of 2006, a group of members of the Paralegal Division of the State Bar of Texas traveled to Paris, France, the City of Light, to learn about the French legal/governmental system and to take in some of the sights. It was a wonderful trip. I think every one of us who went is ready to go back as soon as we get the chance.

## Part One: The French Legal System

Unlike the Common Law system we are so familiar with in our own country, France, like most of the rest of Europe, is a Civil Law or Civil Code country. Whereas the Common Law system we inherited from England is a legacy of the British Empire, the Civil Code system is a legacy of the Roman Empire. It has its origins in the law codes of the Romans, which were later modified by early Christian emperors and then by Napoleon, and further modified and updated by legislatures in the various countries that have this system. Laws in a Civil Code system are grouped together by topic, and they don't really have the concept of caselaw and precedent as we know them.

We in the U.S. are familiar with modern efforts to codify statutes in this country, like our Texas Civil Practices & Remedies Code, Texas Probate Code, Texas Family Code, etc. So we do have some familiarity with the basic concept of codes.

France has the familiar criminal/civil split like we do, and they have the familiar three-tier lower courts, appeals courts and "supreme" courts as we do. And they have specialty courts like we do, such as commercial courts. All French law is national law, since France does not have any states. France has a parliamentary political system, with a President who is elected by the voters, and he then appoints a Prime Minister, who works with the national legislature. I say "he" but France is maybe, for the first time, going to have a female

president soon. It will be interesting to see what happens in that regard in the next few years.

Judges in civil law countries are not elected or appointed. They are civil servants, and you have to choose if you want to be a lawyer or a judge. The number of judge students is regulated, so that there will not be too few or too many judges.

Unlike the adversarial system we have in our country, the French use the inquisitorial system. In this system, the judge works up the case more the way attorneys and paralegals do in our country, and makes his or her ruling based on his or her knowledge of the case. Juries are not used in most cases. Usually, written submissions, not examination and cross-examination of witnesses, is the way evidence comes before the judge. If you have ever seen the movie "Judgment at Nuremberg" about the trials of Nazi officials by the Allies after the end of World War II, then you have a fairly good idea of how the inquisitorial system works. We had the good fortune to be able to meet with two French lawyers who are members of the Paris Bar, and they told us about a trial or trials they had seen in the U.S. The surprise in their voices was very apparent when they talked about how active a role the attorneys in a U.S. courtroom take, how they perceived American lawyers to be in charge of running the trial. It is very different in a civil law system, where the Judges are much more in charge of things.

As in our country, French attorneys are largely self-regulating, once they graduate from law school and are licensed. And as in our country, they belong to the local bar, the Paris Bar being the largest. The Paris Bar has a beautiful building near the Palace of Justice which is where we were graciously welcomed by the two French attorneys, or "avocats," Ms. Beatrice Castellane and Mr. Oliver Cousi.

We learned that the concept of paralegals has not really caught on in France.

We were told that there are paralegals in U.S. firms with offices in France, but not really any French paralegals. The lawyers we met were familiar with what we did and seemed to be sold on the concept, but said that the use of younger people and students as assistants or apprentices is the way they do things there. After the recent street protests you might have heard about, I don't think that system is going to change anytime soon.

## Part Two: The Sightseeing

I have to agree with Henry James, who said, "Paris is the greatest temple ever built to material joys and the lust of the eyes." Indeed it is.

There is much to see and do in Paris, so we tried to fit in as much as we possibly could each day, but luckily, many of us had time for a walk along the banks of the Seine and for a stroll down the busy Champs Elysees, with its famous stores and cafes and the magnificent Arc de Triumph, where we could mingle with Parisians in the soft spring sunshine. Thousands were out to sip drinks, sail boats in ponds, walk their dogs, or to window shop - or "window lick" as they call it.

Paris is bursting with museums. The Louvre, of course, and the Orsay, and so many others. I think you could spend a month going from museum to museum every day and never run out of wonderful things to see. The Musee de Orsay is home to the Impressionists: Monet, Manet, Degas, Gauguin, and so many others. Every single wall is full of masterpieces. And the view of Paris from the top floor deck is wonderful.

The Louvre is truly overwhelming. We were told that there are 500,000 pieces in its collection, including of course, the Mona Lisa, the Venus de Milo and so much more. You have to just pick a few things to focus on that you really want to see because there is no way you can see everything. I was so overcome by the sight of the Winged Victory of Samothrace that I had to stay in her presence for as long as I could. There is just so much to savor, you need days to take it all in. And outside the Louvre are the beautiful flowerbeds, pools and gardens of the Tuileries. Paris is full of beautiful parks

and gardens.

Unlike all the other tourists, we got a personal tour of the Palace of Justice by the Chief Historian and Archivist of the Paris Bar, Mr. M. Yves Ozanam. His knowledge of the place was amazing and his English was delightful. The Palace of Justice is part of a very old complex of buildings on the Seine called the Conciergerie, some of which dates back to medieval times. Type that name into your search engine and try to find a photo of it – it's magnificent. He took us to the law library and to three beautiful main ceremonial courtrooms. We were shown the very courtroom where Marshall Petain, the head of the French government during the Nazi occupation, was judged after France was liberated. During the Revolution, some courtrooms were used by revolutionary tribunals to condemn those unfortunate enough to be brought before them, and the prison cells held them as they awaited their fate. The area where their hair was cut short and their clothing loosened around the neck and the small area where they were loaded into carts for the trip to the plaza where the guillotine was set up is still there, although it is now a café where *avocats* can grab something quick to eat when they have a break.

The Conciergerie was a royal palace when first built, and King Louis IX (St. Louis) had a chapel built there. Sainte-Chapelle is its name, and we visited it on the 758<sup>th</sup> anniversary of its dedication, which was on April 26, 1248. It is an ethereal place full of beautiful stained glass and delicate stone arches. Paris is full of churches, and we did not get to see all of them, but Sainte-Chapelle must certainly be one of the loveliest. One of those other churches is of course Notre Dame of Paris, and we joined the flood of tourists there to see her. She too is very beautiful, but larger and more imposing. We learned she is built on the site of an old Roman temple. Most of us also got to see the striking Basilica of Sacre Coeur in the area of Paris called Montmartre. Montmartre is the highest point in Paris, and thankfully, there is a small railway to get you to the top of the hill. Montmartre is full of crowded cafes, shops and artist's stalls. It is also one of the oldest parts of Paris,

some of it was part of the old Roman town that once existed where Paris now is.

We were taken through another one of the oldest neighborhoods in Paris, called St. Germain. The hotel where Oscar Wilde breathed his last is still there and also still standing nearby is the house where one of the women who played a role in the "affair of the necklace" lived. This was a sinister plot by some courtiers just before the Revolution, which entangled Marie Antoinette and helped bring about her downfall.

Our hotel was just a few minutes walk from the Eiffel Tower so we got to see a lot of it too, in its daytime garb and its shimmering nighttime dress as well. There is a restaurant and club inside it and some of our group were courageous enough to go all the way to the observation deck at the top. We learned that the Eiffel Tower was never meant to be permanent, and was hated by most people when it first went up and was almost torn down. Apparently a lot of Parisians hate the glass pyramid in front of the Louvre too.

And of course we went to Versailles, the royal palace of Louis the XVI and Marie Antoinette. It belongs to the people of France now, and much of it is open to the public. The acres of gardens and lawns are especially beautiful and the incredibly sumptuous residential rooms and halls apparently look much as they did in the 1780s. It was almost a trip back in time to be able to see the site so well preserved.

The shopping in Paris is wonderful. If you love to shop, this is your city! You can find everything from expensive famous designer items to cheap knock-offs and everything conceivable in between, like chocolate, wine, books, art, perfume, jewelry, and much more.

We also got to leave Paris for a day and travel to Normandy, on the coast. Here we walked among the quiet, solemn rows and rows, so many rows, of white crosses at the American cemetery at Omaha Beach. At a beautiful chapel there, the inscription reminded us not just to mourn the dead, but to remember their glorious spirit.

Near the beaches, in the city of Caen, is the Caen Peace Museum. Where the hideous violence of World War II once

drenched the land with blood, the Caen Peace Museum now stands dedicated to European and world peace. The museum's main permanent exhibit is a detailed audio/visual history of World War II and the events leading up to it. I'll never be able to forget the haunting photographs of a heartbreakingly young couple being casually strung up by a Nazi officer for passing out leaflets, or some such "crime." The whole exhibit was heartbreaking, really, some parts of it too awful to look at. I'm very glad the museum was on our itinerary, but it was hard to take.

Thanks to the dedicated hard work of Norma Hackler of the Paralegal Division of the State Bar of Texas and of Chris Relton, our wonderful ACIS Tour Manager, we had a marvelous trip. And thanks to Janice Baneux of ACIS for her help as well. And special thanks to the members and staff of the Paris Bar. We will never forget the time they graciously shared with us. We were so lucky to have everyone working together to make our trip so great.

Finally, just about everyone we met spoke at least some English and getting around on the Metro was so convenient and cheap, we didn't even need to use taxis. And you've probably heard that the French are "rude." I was treated with respect and kindness in Paris and I've been treated rudely in Dallas (I'm not picking on Dallas - just using a real-life example.) and other American cities, so I don't think they are any ruder than residents of any other major city besieged by tourists all the time. If you ever get the chance to go to Paris, don't you dare pass it up, even if it is for only a short visit. I think you will be as captivated by her as we were.

*Mary K. La Rue, C.P., is a full time paralegal at John M. Dickey & Associates in El Paso, primarily in the area of civil defense, and a part-time paralegal teacher at El Paso Community College. She is a member of the Paralegal Division of the State Bar of Texas, of the El Paso Paralegal Association, the National Association of Legal Assistants, and an Associate Member of the El Paso County Bar Association. Comments, questions invited!*  
mlarue@johnmdickey.com.

## 2006 Exceptional Pro Bono Award Recipient

Cecile Wiginton, CLA, Midland, winner of this year's Paralegal Division Exceptional Pro Bono Award, is certainly one of the most deserving paralegal volunteers that the Paralegal Division of the State Bar of Texas has ever had.

Cecile has worked with the Legal Aid of Northwest Texas Pro Bono Clinic held at Casa de Amigos in Midland, Texas for six (6) years and has been instrumental in recruiting other paralegals and attorneys to donate their time to the clinic as well. Casa de Amigos Legal Aid Clinic in Midland, Texas is run by Legal Aid of Northwest Texas ("LANWT") which is part of a statewide program funded by grants. LANWT adopted the 2006 Equal Justice Volunteer Program ("EJVP") work plan for its 114 county service area. The local office of LANWT serves a six-county area. The 2006 EJVP Plan is a collaborative partnership with bar associations and its members, law firms, law schools, community professionals and public service providers that combine resources to offer a full range of civil legal services to the indigent population. They enlist the volunteer services of local attorneys to assist clients who cannot otherwise pay for legal services. Cecile has worked at the clinic doing "intake" for the clients who schedule appointments for the second Tuesday evening of each month. On occasion, Cecile has helped raise money to meet requirements for matching grants and helped solicit contributions to defray costs of mandated CLE events. The intake process involves interviewing the prospective client to determine eligibility based on income and determining the exact legal service needed. The types of cases that LANWT accepts are bankruptcy, consumer law, debt harassment, family law, wills and probate, and other civil matters. However, no criminal cases are accepted.



The file is then taken by a volunteer attorney to do the work needed.

In 2005, Cecile was asked to serve on the Pro Bono Advisory Board for LANWT EJVP representing various charitable groups, such as Safe Place and Fairhaven, dedicated to helping those in need, and

including representatives from the local bar associations. The role of the Advisory Board is to promote private attorney participation, serve as a think-tank for existing and new pro bono programs, assist in the planning and coordination of seminars, clinics and CLE workshops; act as a

clearing house for pro bono promotion and media outreach. Seminars are presented to low income families regarding income tax, Medicare, and other items of concern.

Cecile says she was humbled when she volunteered one evening at the pro bono clinic. She was hooked – her heart went out to the “clients” seeking help, their sincere need of legal help and lack of resources to pay for same. Some worked two jobs, but at minimum wages, to make ends meet. She learned that some of our retail businesses would not allow them to work a full 40-hour work week, therefore, no benefits available like health insurance. Cecile realizes that she cannot solve their problems, but she can make them feel comfortable in the process, treat them with respect and hopefully convey a message that the legal world is not a scary one. Cecile believes the Legal Aid program serves a very real purpose in the community.

Cecile has also assisted with the Midland Teen Court program. The Teen Court program, which brings teen traffic offenders to a court-based program, uses youth participation as an alternative system of justice and educational opportunity, offering young offenders an opportunity to accept responsibility and make restitution for their offenses through community service, specialized classes and jury service, thus avoiding fines and sentences and keeping the offenses off their records. The Court is a hands-on educational opportunity that allows both offenders and teen volunteers to experience, thus better understand, the justice system. Cecile has been very impressed with the caliber of teen volunteers in this program, their dedication and quest for knowledge and the positive influence it has on many teenagers headed for trouble. Cecile has worked at several of these sessions and has solicited and coordinated volunteers among the paralegals in her community

for these sessions. The Teen Court program began in 1986 by the Junior League of Midland, Inc.

Cecile is a Charter member of Paralegal Association/Permian Basin f/k/a Legal Assistants of the Permian Basin (LAAPB), where she has served as President, Education Chairman, Programs Chairman and Pro Bono Chairman. Cecile is also a Charter member of the Paralegal Division, where she has served on the Membership, Public Relations and Elections Committees for District 11, as Director for District 11, as Treasurer and Continuing Education Committee.

Cecile is selfless and always steps up when it comes to legal aid. Never tiring, she volunteers to make the law available to all. Cecile is a great example to each of us.

Cecile is a NALA Certified Paralegal and works in Midland, Texas, as a paralegal for the law firm of Cotton, Bledsoe, Tighe & Dawson.

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## 2006-2007 EXECUTIVE COMMITTEE & BOARD OF DIRECTORS



*First Row, left to right: Deborah Hathaway, Patricia Giuliano, Javan Johnson, Mona Hart Chandler, Robert Soliz; Second Row, left to right: Cecile Wiginton, Stephanie Hawkes, Debbie House, Deirdre Trotter; Third Row, left to right: Deborah Skolaski, Page McCoy, Billy Hart, Kristy Ritchie, Debbie Oaks Guerra, Clara L. Buckland*

### Javan Johnson, ACP PRESIDENT



Javan Johnson, ACP, is a freelance paralegal who began her own business in Longview in February 1999, specializing

in civil trial litigation, after working 20 years for a sole practitioner. She has a bachelor's degree in Business Administration and Business Education from Baylor University. Javan obtained her CLA in 1990, earned the NALA Advanced Certified Paralegal designation in 1993, and became certified in Civil Trial Law by the Texas Board of Legal Specialization in 1996. Javan has served the Paralegal Division of the State Bar of Texas (PD) for many years as subchair and chair on various committees, served on the Board of Directors as District 14 Director, served as President in 2000-2001, and now serves as President for 2006-2007. She was the recipient of the Award of Excellence in

2004. In addition to being a charter member of PD, Javan is also a charter member of the Northeast Texas Association of Paralegals, Inc. (NTAP), in Longview, and has served that organization since its inception in 1988 in a number of different offices, including President. Javan participated in the start-up of the legal assistant program at Kilgore College in 1988, and has been an instructor in that program since that time. Javan has been married to her husband, Brett, for 20 years, and has one son, Cameron, age 18.

### Patricia J. Giuliano PRESIDENT-ELECT



Socials Sub-Committee of the LAU (now TAPS) Planning Committee, and then

Patti is your new President-Elect. She has gained a lot of experience serving PD since becoming a member in 2001. First, in 2003 she co-chaired the

served as Co-Chair of the Annual Meeting Planning Committee in 2004. Subsequent to the Annual Meeting she was elected to serve as director of District 5.

In addition to working with the Division, Patti has also been active on the Board for the Alamo Area Professional Legal Assistants, Inc. having served as the Professional Development Director in 2002-03, and was elected Treasurer for the 2003-04 Board year.

In addition to her paralegal organization affiliations Patti also serves as the Volunteer Coordinator for the San Antonio Bar Association's Community Justice Program, and has served on the San Antonio Bar Foundation's Courthouse Fun Run Committee since 2001.

Professionally speaking, Patti is an intellectual property paralegal with Cox Smith Matthews Incorporated, and has over eight years experience working in this field of law. Prior to her IP days, she worked in medical malpractice defense and did corporate and estate planning work that as well. All told, she has worked in the legal field for over 20 years.

Patti is married to Steve Giuliano and has two great kids and one beautiful granddaughter. Having traveled throughout the United States as a military wife (now retired), she has been fortunate



enough to gain experience with the legal process outside the state of Texas in such places as California, Indiana, and Ohio. She attended Indiana University in Bloomington, Indiana, and received her degree in paralegal studies from the ABA-approved program at Sinclair Community College in Dayton, Ohio.

## Mona Hart Chandler, CP

### SECRETARY



Mona serves the Division as Director of District 14, and is currently in her second two-year term in that position. She is a

NALA certified paralegal and earned her bachelor's degree from East Texas Baptist University in Marshall, where she also completed her legal assistant studies. She has been employed at Hill & Calk, P.C., in Longview for the past two and a half years under the supervision of James I. Calk. Prior to coming to Longview, she was employed by T. G. Davis in Carthage. Real estate and oil & gas have been the main areas of law for Mona for most of the 25 years she has been in the profession, although she also works with business entities, and in probate and estate planning.

The primary focus during Mona's terms of office has been to exert every effort to make CLE readily available to the members of District 14, and to put on CLE presentations around the District as much as possible. She gives credit to an excellent group of sub-chairs B Ann Lee (Membership), Carla Hemphill (Continuing Education), Cynthia Williams (Elections), and Andrea Brunson (Public Relations). Without their enthusiasm and hard work the Director's job would be impossible.

Mona is also serving her second term as Secretary of the Board of Directors of

the Paralegal Division and as President of the Northeast Texas Association of Paralegals (NTAP) in Longview. In her time away from the office, Mona is either spoiling grandchildren or working on her book.

## Deborah Hathaway

### TREASURER



Deborah serves as the Treasurer for the Paralegal Division and has been District 13 Director since February 2005.

A paralegal

with 20 years' experience working in the private, public, and government sectors, Deborah's resume ranges from working for sole practitioners to international megacorporation legal departments. She is currently Paralegal to the General Counsel for North America at Schlumberger Technology Corporation.

Deborah received her paralegal certification from Southwestern Paralegal Institute, Houston, Texas, holds membership in NALA and is a Charter Member of the Paralegal Division of the College of the State Bar of Texas.

Deborah is the proud mother of three daughters and one son who have blessed her with three fantastic grandchildren. Deborah has a wide variety of interests and talents and many friends and family with whom to share them. Travel is a favorite pastime, including an exceptional recent visit to Paris with the PD.

## Robert Soliz

### PARLIAMENTARIAN

Robert is a paralegal at the Victoria firm of Cole, Cole & Easley, P.C. where he has worked for the past five years, mainly



under the supervision of Rex L. Easley, Jr.

He assists in all phases of the firm's personal injury docket, including product defects, premise liability,

auto accidents, trucking accidents, oilfield accidents, construction accidents, and wrongful death cases, as well as the firms general civil litigation, probate litigation and maritime law practice. Prior to joining Cole, Cole and Easley, Robert assisted in other areas of law including appellate, bankruptcy (debtor and creditor), insurance defense, employment and family law.

Robert is currently obtaining his associates degree in web page designing and will earn a bachelor's degree in networking and troubleshooting, specializing in computer graphic animation for accident and injury reconstruction. He has been a member of the Division since 1996 and was District 8 Director for 2004-2006, with the members in his district re-electing him to another term. He was recently elected President of the local paralegal association, Crossroads Legal Association.

When Robert is not working at the law firm, he is very active in other civic and community organizations. He is a member of the Victoria Northside Rotary (Director 2003-2006 and Lane Chair in 2003), Victoria USBC Association (formally Victoria YABA) as past President, Vice-President and is currently a Director. In addition, Robert coaches approximately 20 to 30 youth bowlers ranging from 5 to 22 years of age. Robert is also a member of the Association of Trial Lawyers of America (ATLA) and the College of the State Bar of Texas. Robert is married to his wife Leslie for the last 16 years and they have two children — a son, Mackenzie, age 12 and a daughter, Devon age 9.

2006 Annual Meeting Paralegal Division

# From Path-Finders to Trail Blazers: 25 Years and Still Leading

Michele Boerder, CLA  
25th Anniversary Chair, Paralegal Division

Such was the theme for the Division's June Annual Meeting and 25th Anniversary celebration held in Austin in conjunction with the Annual Meeting of the Division and the State Bar of Texas. More than 160 persons attended the 2006 Annual Meeting Luncheon, and the program included reflections from the past with emphasis on "how far we've come."

Special guests included persons who were instrumental in creating the Division 25 years ago, including Tom Hanna (former Executive Director of the State Bar), who is credited with the initial idea of a Division; and Bob Towery (former Attorney with the State Bar), who is credited with the implementation of that idea. Both Messrs. Hanna and Towery gave presentations during the luncheon. They reminisced about the early days of the Division and shared their recollections about the beginning of the Division. Mr. Towery told the attendees that helping form the Division was one of the most memorable projects of his career.

The audience enjoyed many laughs and even shed a few tears as it took the path down memory lane, and was shown photographs set to the 1981 hit song "Chariots of Fire." (The Division was created by the State Bar in 1981.) Justice Linda Thomas, who was key to the implementation of Texas Board of Legal Specialization (TBLS) voluntary specialty examinations for paralegals, congratulated the Division and its' members on the number of TBLS

certified paralegals now in Texas. Sandy Hardin, former State Bar of Texas coordinator for the Division, also praised the Division for its progress and accomplishments of the past 25 years.

A number of past chairs/presidents attended the meeting and were recognized during the luncheon. Although not all could attend, all were recognized:

Kathryn King Richards (Coleman), Chair ~ 1982-1984  
Elaine Peeples, Chair ~ 1984-1986  
Cindy Mankus, Chair ~ 1986-1987  
Jan Soderman, Chair ~ 1987-1988  
Cathrue Benoit, Chair ~ 1988-1990  
Michele Boerder, Chair ~ 1990-1991  
Sharyn Aust Smith, Chair ~ 1991-1993  
Debra Crosby, Chair ~ 1993-1995  
Sally Andress, President ~ 1995-1996  
Melanie Villarreal, President ~ 1996  
Wendi Rogers, President ~ 1996-1998  
Jim Buchanan, President ~ 1998-1999  
Lisa Sprinkle, President ~ 1999-2000  
Javan Johnson, President ~ 2000-2001  
S. Kristine Farmer, President ~ 2001-2002  
Rhonda Brashears, President ~ 2002-2003  
Melissa Sherman, President ~ 2003-2004  
Kim J. Cantu, President ~ 2004-2005  
Ellen Lockwood, President ~ 2005-2006

The Division's first Chair (a predecessor to today's President position) Kathryn King Richards (Coleman) told the audience about the first Division Board of Directors, the first Annual Meeting, and the efforts to organize the new Division.

Ellen Lockwood, 2005-2006 President of the Paralegal Division, read the Purpose Statement of the Division: "The purpose of the Division shall be to enhance paralegals' participation in the administration of justice, professional responsibility, and public service in cooperation with the State Bar of Texas."

President Lockwood noted the accomplishments the Division has made that support its Purpose Statement, including:

- Financial responsibility;
- Name Change: Paralegal Division, State Bar of Texas;
- Change in the definition (approved by Division members and the State Bar Board in 2005);
- Amendments to the definition – to further define who is called a "paralegal" (Approved by the Bar Board in April, 2006);
- Continued publication of the *Texas Paralegal Journal* magazine;
- An informational website with resources and a searchable state-wide CLE calendar as well as the first online CLE offered by a paralegal association;
- Completion of a salary survey, including members of local paralegal organizations;
- The Division's *second* annual overseas trip, to Paris in 2006;
- Another successful CLE - Texas Advanced Paralegal Seminar, ("TAPS" – formerly "LAU");
- Live CLE in the Division districts and enhanced communication with Directors;
- Ambassador presentations across the state, at no cost to the associations to whom they made presentations;
- Leaders of the Division participation in the Bar's Council of Chairs meetings, serving on the Board of Directors of the College of the State Bar, and serving on the Supreme Court's Task Force to Expand Legal Services Delivery; and
- Division members may apply for associate membership in the Pro Bono College of the State Bar.

President Lockwood said, "The Division continues to lead our profession in Texas and throughout the nation. We

are proud to be a Division of the State Bar of Texas, and we are proud of our continued focus on ethics, professionalism, and knowledge of our field. We celebrate our past while looking forward to a future too fabulous to imagine. The Division leaders of the last 25 years have always set their sights high, never believing we could not accomplish our goals. All the Division is, all we have accomplished, and all we have yet to accomplish, is because of the utilization of our greatest resource: our volunteers. This is our strength and our purpose. The many volunteers who have gone before, the current volunteers, and those to come are what make our organization a success."

As part of the Annual Meeting, awards for the 2005-2006 Division year were presented to the following:

Cecile Wiginton, CLA (Midland):

Exceptional Pro Bono Award

Kim Cantu, CLA (Dallas): Award of Excellence

Patti Giuliano (San Antonio) and Carolyn

Goff (Galveston): Chair of the Year

Debra Crosby (San Antonio): Special Award

Caro Dubois, CP (Austin): Special Award

Thanks to **Legal Directories**

**Publishing**, and its sponsorship, a commemorative anniversary coffee mug with the Division logo was given to all luncheon attendees.

Also provided during the Division's Annual Meeting were two tracks of CLE. One track consisted of presentations to prepare for the NALA exam, and the other focused on electronic litigation including trial presentation, E-discovery rules and a case law update. The CLE presentations were provided to attendees on CDs, as were the Division's annual reports.

The conclusion of the Division's 25th Anniversary year celebration will take place during the Division's annual Texas Advanced Paralegal Seminar ("TAPS") scheduled for September 20-22, 2006 in Addison, Texas at the Crowne Plaza Hotel. The anniversary celebration will be concluded during the evening social on Wednesday, September 20, 2006 with a final toast to everyone who has been a part

of the Division for the past 25 years. The evening will be a traditional "Silver Anniversary" celebration held at The Delaney Vineyards in Grapevine, Texas.

**PD Annual Meeting 2006 – Austin, TX  
Thank you very much for your sponsorship of the Division's Annual Meeting  
Celebrating its 25th Anniversary!**

Below is a list of all of the sponsors of this great event:

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## BYLAW AMENDMENT FOR NOVEMBER 2006

The following bylaw amendment will be offered to the membership of the Paralegal Division for a vote by Active members in November 2006; notice of the Election will be mailed to the members on November 15, 2006.

Effective date of bylaw, if approved by the membership of the Paralegal Division, will be the date it is approved by the State Bar of Texas Board of Directors.

### **Article IX, Section 11 – Effective Date**

#### **Reason for the Amendment:**

In order for the Paralegal Division Bylaws to be in compliance with both the State Bar of Texas Paralegal Division Charter and Robert's Rules of Order.

#### **Current Bylaw:**

An amendment to the Bylaws and/or referendum adopted in accordance with Article IX, Section 8, of these Bylaws shall be effective as of the date so specified in the

Notice of Election for such amendment or referendum pursuant to Article IX, Section 2.c, 4.D of these Bylaws.

#### **Proposed Bylaws Revision:**

An amendment to the Bylaws and/or referendum adopted in accordance with Article IX, Section 8, of these Bylaws shall be effective as of the date of approval by the Board of Directors of the State Bar of Texas for such amendment or referendum pursuant to Article IX, Section 2.c, 4.D of these Bylaws.



[illegible]

# Scruples

## The Unauthorized Practice of Law in Texas

Laurie Borski,  
Chair, Professional Ethics Committee

**P**aralegals are prohibited from practicing law, to do otherwise is to engage in the unauthorized practice of law (UPL), which is illegal. Substantive legal work performed by a paralegal under the direction and supervision of an attorney who is licensed to practice law is not UPL.

To practice law in Texas means:

[T]he preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved

must be carefully determined.

The definition . . . is not exclusive and does not deprive the judicial branch of the power and authority . . . to determine whether other services and acts not enumerated may constitute the practice of law.<sup>1</sup>

Practicing law in Texas is limited to members of the State Bar and others who comply with the rules set forth by the Texas Supreme Court. Graduating from an approved law school and passing the bar examination are not the only prerequisites to practicing law. Qualified candidates must also undergo a character and fitness review by the Texas Board of Law Examiners. These are all safeguards put in place to ensure high standards for those that provide legal services. These safeguards also protect those who seek and receive legal services. As stated in the Texas Disciplinary Rules of Professional Conduct:

Courts generally have prohibited the unauthorized practice of law because of a perceived need to protect individuals and the public from the mistakes of the untrained and the schemes of the unscrupulous, who are not subject to the judicially imposed disciplinary standards of competence, responsibility and accountability.<sup>2</sup>

An example of activities that would involve UPL if independently performed by a paralegal who was not supervised by a





licensed attorney would be: interpreting statutes, decisions or legal documents; evaluating or speculating on the probable outcome of litigation or negotiations; outlining rights or obligations; or recommending a course of conduct or particular action in a legal matter.

Practicing law is further regulated by statute:

(a) [A] person . . . may not charge or receive, directly or indirectly, any compensation for all or any part of the preparation of a legal instrument affecting title to real property, including a deed, deed of trust, mortgage, and transfer or release of lien.<sup>3</sup>

The Texas Penal Code prohibits one who is not licensed to practice law from holding himself out to be a lawyer if it is done with intent to obtain economic benefit.<sup>4</sup> The Penal Code also states that certain

actions related to a personal injury claim are also prohibited if done with intent to obtain economic benefit.<sup>5</sup> The courts have held that contracting to represent persons regarding personal injury and property damage claims, preparing and sending demand letters, and settling personal injury and property damage claims with insurance companies constitutes the unauthorized practice of law if done by a non-lawyer with an intent to obtain economic benefit. See *Greene v. Unauthorized Practice of Law Committee*, 883 S.W. 2d 293 (Tex. App. – Dallas 1994, no writ). See also *Brown v. Unauthorized Practice of Law Committee*, 742 S.W. 2d 34 (Tex. App. — Dallas 1987, writ denied.)

The Unauthorized Practice of Law Committee (UPLC) is appointed by the Texas Supreme Court and is comprised of nine members, both lawyers and non-lawyers.<sup>6</sup> The UPLC is charged with

eliminating UPL and reporting to the Texas Supreme Court and the State Bar on its activities. Complaints of UPL received by the UPLC are investigated. If needed, civil lawsuits are filed to enjoin the unauthorized practice of law. Complaints can be made online or by mail.

*Laurie Borski is the Chair of the Professional Ethics Committee of the Paralegal Division. She has served on the Annual Meeting and Election Committees and is a past president of the Alamo Area Professional Legal Assistants in San Antonio. You can reach her at 210.250.6041 or laurie.borski@strasburger.com.*

<sup>1</sup> Tex. Gov. Code, §81.101.

<sup>2</sup> Texas Disciplinary Rules of Professional Conduct, Comment to Rule 5.05.

<sup>3</sup> Tex. Gov. Code, §83.001.

<sup>4</sup> Tex. Penal Code, §38.122.

<sup>5</sup> Tex. Penal Code, §38.123.

# Advanced

## PARALEGAL CERTIFICATION

NEW **A**CHIEVEMENT • NEW **P**ROCESS • NEW **C**REDENTIAL

### STILL THE UNSURPASSED CREDENTIAL FOR PARALEGALS SEEKING ADVANCED CERTIFICATION

The new Advanced Certified Paralegal (ACP) credential is replacing the venerable CLAS, which has established excellence in specialty certification for legal assistants since 1982. The new credential emphasizes learning in the certification process with Internet-based curricula and testing—no more grueling two-day examinations.

#### APC curricula are already available in:

- Contracts Administration/Contracts Management
- Social Security Disability
- Discovery

#### APC curricula planned before the end of 2006 are:

- Trial Practice
- Land Use
- Personal Injury
- Business Organizations

**Others to Come Soon • Log on to [www.nala.org](http://www.nala.org) for details**



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# IMPORTANT NEWS

## Continuing Legal Education

### ONLINE CLE

The Paralegal Division offers online CLE via the PD website. To participate in online CLE, please go to [www.txpd.org](http://www.txpd.org) and select CLE/Events.

### CLE REQUIREMENT

ACTIVE AND ASSOCIATE members of the Paralegal Division are required to obtain six (6) hours of CLE (2 of which can be self-study). CLE hours must be obtained between June 1 – May 31 of each year.

### CLE CALENDAR

A statewide CLE calendar can be found on the PD website at [www.txpd.org](http://www.txpd.org) under Upcoming Events/CLE. You can find a variety of CLE programs offered around the State. Please check the PD website often because the calendar is updated weekly.

## Membership Information

### CHANGES TO MEMBER INFORMATION

Paralegal Division members can now change their credentials, addresses, email addresses, preferred mailing address and/or phone numbers via the State Bar of Texas website. Go to [www.texasbar.com](http://www.texasbar.com); click on MyBarPage (top of home page). If you have never visited this page, you will need to set up a pin/password. Your password to set up your **NEW Pin/password** is the last four digits of your social security number (**if the State Bar does NOT have your social security number on file, you will not be able to use this area nor will you have access to MyBarPage**); once you set up the new pin/password, you will be able to enter this section of the website to update your member records. If you have any problem accessing this page, please contact the Membership Department at 1/800-204-2222, ext. 1840.

### MEMBERSHIP CERTIFICATE (Active Members Only)

Need to replace your membership certi-

cate? Please complete the order form found on [www.txpd.org](http://www.txpd.org) and follow instructions. The cost to replace an Active Membership Certificate is \$15.00.

### MEMBERSHIP CARD

Need to replace your membership card? Please send \$5.00 made payable to the Paralegal Division along with a letter requesting a new membership card to the Membership Department, State Bar of Texas, P. O. Box 12487, Austin, TX 78711.

Were you ever issued a membership card? If no, please contact the Membership Department of the State Bar of Texas at 1/800/204.2222, ext. 1840 or email at [jmartinez@texasbar.com](mailto:jmartinez@texasbar.com)

### DELL COMPUTER DISCOUNT

The number assigned to the Paralegal Division by Dell Computer Corp is: SS2453215. This is the number you should use to receive the 10% discount for purchase of computers. However, Dell **does not** have the 10% discount special continuously. Dell sends a notice when the discount is offered to our members at which time it is forwarded to the PD members via the PD E-group. You may try to use this number anytime, but there are no guarantees that you may receive the discount at the time of access. Notices will continue to be forwarded to the PD E-Group when the discount is offered by Dell Computer Corporation.

## PD Website Information

### MEMBER DIRECTORY ONLINE

A membership directory is set up on the PD website under the Members Only area. By default, your membership information is listed in the online membership directory. If you would like to suppress showing your listing to other members, go to the Members Only "Edit My Profile" function to display your listing and then uncheck the "publication" box. If you haven't already done so, you might want to include info about adding member specialties through the same interface. If you need changes made to the online membership directory, you must make those changes using the procedures set out in

the above CHANGES TO MEMBER INFORMATION procedures.

### MEMBERS ONLY AREA

The Members Only area of the PD website is for current members of PD only. If you are a member of the Paralegal Division and cannot access this area, please send an email to [pd@txpd.org](mailto:pd@txpd.org) with your particular problem. Access is automatically given to members of the Paralegal Division. Access to the members-only area is available within two weeks from the date of the acceptance notice mailed to the individual by the Paralegal Division Coordinator.

### PD E-GROUP

#### How do I sign up for the PD E-Group?

Going to trial in a "foreign" jurisdiction and want some tips from those who have gone before? Need a form but do not know where to turn? Then you need to sign up for the PD E-group! This is a members-only group and a benefit of being a member of the Paralegal Assistants Division (PD).

To sign up, go to [www.txpd.org](http://www.txpd.org), click on Members-Only and choose E-Group. There will be directions on how to sign up. **You will be required to respond to an email confirmation.** Once you have completed the signed up, you will begin receiving emails from the members of PD. For those who prefer not to be interrupted with email notifications, select "digest" for the PD email exchange. Emails are collected and distributed one time a day in one email.

#### How Do I change my PD E-group email address?

##### Instructions:

The PD E-Group created by the member is Password-protected, only the member has access to change a member's PD E-Group email. Go to [www.txpd.org](http://www.txpd.org), click on Members-Only (access by USER ID and Password), click on PD E-Group, enter your E-Group password, unsubscribe the current email address, and create a new email address where you want to receive your PD E-Group messages. **You will be required to respond to an email confirmation.**