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Voir Dire

Voir dire - "To speak the truth." Black's Law Dictionary

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Patrick Wilson—County & District Attorney

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DEATH STAT

As of this writing our office has murder or manslaughter charges pending against 13 individuals. That appears to be a record. In the past two decades our office has prosecuted an average of only one or two such cases per year.

Just Keeping it Legal



You are all well aware that the Ellis County and District Attorney's Office handles all criminal matters arising in Ellis County. However, the civil division of this Office also provides wide ranging representation and legal counsel to Ellis County and its elected officials and the State of Texas.

Some of this legal representation is quite familiar to most of you, as much of it relates to criminal cases. This includes asset forfeitures, bond forfeitures, seizures of gambling devices, expunctions and peti-

tions for non-disclosure. This also includes responses to subpoenas and open records requests which are related to criminal and civil matters.

Many of you are probably also very familiar with our handling of certain family matters. We oversee all matters pertaining to the alleged misconduct of juveniles, and we also handle civil cases involving the welfare of children and adults of diminished capacity.

Some of the aspects of the civil representation we provide may be unfamiliar to you. We provide general legal counsel and representation to Ellis County and its elected offi-

cial. This includes attendance at all meetings of the Ellis County Commissioners Court. This also includes the regular provision of legal advice to Ellis County's elected officials and department heads regarding matters related to purchasing, development, planning, human resources and many other areas related to the governmental functions of Ellis County. We also handle all types of civil and administrative litigation and appeals on behalf of Ellis County and its elected officials, which includes routine appearances in both state and federal courts and before administrative agencies.

- W. Lee Auvenshine

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US Supreme Court Case Requires Warrant for Blood Draw

In *MO. v. McNeely*, the U.S. Supreme Court held that the natural dissipation of alcohol concentration in the blood doesn't constitute an emergency exception to the 4th Amendment's warrant requirements. In this case, McNeely was pulled over for speeding and crossing over the center line. He had bloodshot eyes, slurred speech, and the smell of alco-

hol. He admitted to drinking a couple of beers. He appeared unsteady and performed badly on the S.F.S.T.s. He refused to provide a sample of breath or blood. The officer had blood drawn. His BAC was 0.154%. The results of the blood test were suppressed because there were no circumstances suggesting the officer faced an emergency in which he could not practica-

bly obtain a warrant. Both Missouri and U.S. Supreme Courts affirmed the decision. The U.S. Supreme Court held that in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant. The best rule of thumb is to get a warrant for the blood draw.

Legal Update

Who Can Draw Blood

An EMT is specifically not allowed to do blood draws by statute. But in this case an EMT-I (Intermediate) whose primary job was to do blood draws in a hospital setting, 50-100 blood draws a day, was a “qualified technician” under the statute. The EMT-I in this case, was in effect a phlebotomist. Drawing blood was her primary duty at the hospital and the draws were conducted in a nonemergency situation. In this particular case, the Court of Criminal Appeals held that the blood results should be admitted. The location where the blood draw occurs must be a sanitized setting and only done by a “qualified technician.” *Krause v. State.*

Not Enough to Enter Home Without Warrant

Probable cause to believe illegal drugs are in a home, coupled with odor of marijuana from home and a police officer making his presence known, doesn't justify a warrantless entry. *Turrubiate v. State.*

Ambiguous Statement Not an Invocation of Right to Remain Silent

After a defendant's arrest and receipt of *Miranda* warnings, his declaration, “[t]o tell you the truth, I really don't want to talk about it, but I mean...” was not an unambiguous invocation of his right to remain silent. Therefore, the police could ask him clarifying questions. *Kupferer v. State.*



Investigators Are Us

The DA's Office employs six investigators: Phillip Martin, Bob Allwardt, Mike Aman, Loretta Harper, Jeff Ward, and Marlena Pendley. These six investigators support sixteen attorneys, handling all types of cases. The DA's office has four civil attorneys handling all of the legal issues for



the County, which keeps the investigators busy with ongoing investigations and extensive service of process and subpoenas. The remaining attorneys handle all of the criminal matters for all of the county's courts. Each month every investigator prepares 5-15 separate cases for trial, not knowing which case will actually go. Their duties include: locating and interview-

ing witnesses, preparing witnesses for trial, making sure witnesses are present at the trial, and managing the witnesses during the trial. Additionally, the investigators have the same duties at every pretrial hearing where evidentiary motions are heard, including writ hearings, and during grand jury sessions. They also assist law enforcement agencies across the county.

Michael Morton Act

The Michael Morton Act goes into effect on January 1, 2014, for all offenses occurring on or after that date. Morton was wrongfully convicted of murdering his wife. He spent 25 years in prison before he was exonerated by DNA testing.

This law creates an open file policy for all prosecutors' offices throughout the state. The law demands broader discovery of potential evidence, with exceptions for items that would affect the security of a victim or witness.

The State must provide the following upon request: Any offense reports, documents or papers, written or recorded statements of the defendant or a witness, including law enforcement officers, and books, accounts, letters, photographs, or objects or other tangible things containing material evidence.

The disclosure requirements include all of the above in the possession, custody, or control of the State. As always, the State must disclose all exculpatory or mitigating evidence. The State's obliga-

tions remain in effect at all times before, during, or after a trial. As a practical matter, the Act only codifies longstanding case law, and makes official the practices already in place in virtually all prosecutors offices in the state, including ours.

Police officers must understand their obligation to provide all evidence to the State, so that we can comply with the law. If evidence is not provided to our office in a timely fashion we may not be able to use it, no matter what.

Ellis County's DNA Exoneration

Before DNA exonations became as commonplace as they appear to be today, the Ellis County and District Attorney's Office (ECDA) used DNA to exonerate a man who had spent sixteen years in prison for three violent crimes—aggravated robbery, aggravated kidnapping, and aggravated sexual assault, alleged to have been committed by him in 1985.

In early 2001, Victor Larue Thomas was serving three life sentences when he wrote a letter to the judge still claiming his innocence. Thomas had been

convicted after a jury trial on the strength of eyewitness testimony, simple blood tests, and hair analysis. His trial predated the use of DNA evidence to identify perpetrators in criminal cases.

The letter to the judge was forwarded to the ECDA, which began a search for any evidence that could be subjected to DNA testing. Evidence from the crimes was located at the Southwest Institute of Forensic Sciences, and the victim in the crimes cooperated by

providing a DNA sample. Once a sample was secured from Thomas, the evidence was tested and Thomas was excluded.

The DNA testing for Thomas was actually delayed when the Texas Legislature passed a new statute allowing for DNA testing in April 2001, because an attorney had to be appointed for Thomas at that point. But the process of seeking the truth was already underway in accordance with our duty to seek justice.

Five Rules for Testifying in Court

1. Always tell the truth, the whole truth and nothing but the truth. After all, that is what you swore to do just before you sat down.
2. Answer the question asked. When testifying, the answer to, "Did you see the Cowboys play last night?" is either "Yes" or "No." Nobody

asked for opinions on the officiating, Jerry Jones or Tony Romo.

3. It's perfectly acceptable to answer a question with, "I don't know." But that doesn't mean you can forget Rule #1.
4. Look at the jurors while speaking. They are the ones who need to hear

your story. Should they trust someone who won't even look at them? They're not playing Texas Hold 'Em.

5. Don't argue with the lawyers, no matter what. Think about people who argue with you when you write them a ticket. Does it help their cause?

Jokes of the Day

Judge: Your drug test came back positive for cocaine, pcp, and marijuana.
Defendant (gets mad): I didn't smoke no weed!!!

Attorney: What gear were you in at the moment of impact?
Witness: Gucci sweats and Reeboks.

Accused, Defending His Own Case: Did you get a good look at my face when I took your purse?

Recently Disposed

Brian Jones received a **life** sentence for evading arrest with a motor vehicle, enhanced by several prior convictions.

Perry Ford, found guilty of aggravated robbery and sentenced to **life** in prison.

Curbie Gibson, jury found guilty of Fictitious Inspection Sticker and sentenced to **180 days probated for two years with a \$1,500 fine.**

Brett Bralley found guilty of possession of marihuana < 2 oz and sentenced to **35 days** in the County Jail.

Jose Gomez found **not guilty** of the offense of injury to a child.

Cary Rattan, Theft of Money by Loss Prevention Officer at Wal-Mart, found guilty received **two years probated for five years with \$3,700 in restitution.** Defendant also plead guilty to **10 years probated for 10 years with \$51,951 in restitution on a Theft.**

James Butler found guilty of Theft \$1,500 to \$20,000, and sentenced to **ten years.**

Anna McEwen found guilty of resisting arrest (after calling 911 on the ECSO) and sentenced to **365 days probated for two years, \$500 fine.**

found **not guilty** of the offense of driving while intoxicated.

Elisha Martin found **not guilty** of possession of marihuana < 2 ounces.

Ellis County & District Attorney's Office

Meet Our Staff

Darin Jackson turned his love of computers into a career with the Ellis County and District Attorney's Office. From participating on the computer programming team during his junior year of high school, to his trying computer science as a minor at San Angelo State University, Darin has always had his hands in or on a computer. Darin ultimately graduated with a Bachelor of Science Degree in Mathematics with a second teaching field of Science. He then taught high school math and science for more than 4 years which brought him to this area from West and Southwest Texas.

Darin's love of computers and technology brought him to his current position which he has held for the last 6 years. We are

fortunate to have such an intelligent and dedicated assistant managing our technical affairs. If you ever have any questions in regards to the following areas, please do not hesitate to contact Darin:

- ◆ Audio/Video preparation and for trial.
- ◆ Assist defense attorneys in viewing digital evidence.
- ◆ Troubleshoot digital evidence issues.
- ◆ Digitize file folders and VHS/audio cassette tapes.
- ◆ Any other technological issues that arise throughout the office.



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Thank You



As we get ready to celebrate the 4th of July holiday, I would like to acknowledge all of the men and women in the Ellis County law enforcement community. I know that you are on the front lines for our citizens every day and every night. Yours is an often thankless job. Like family members, prosecutors and police often butt heads. But in the end we are all fighting for the same thing: a safer community for all. When I get frustrated I find inspiration in the words of one of our country's greatest patriots, Theodore Roosevelt. I want to share those words with you, in hopes that you will also find inspiration. Thank you for your work, and please have a safe and happy holiday.

- Patrick Wilson

It is not the critic who counts: not the man who points out how the strong man stumbles or where the doer of deeds could have done better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood, who strives valiantly, who errs and comes up short again and again, because there is no effort without error or shortcoming, but who knows the great enthusiasms, the great devotions, who spends himself for a worthy cause; who at the best, knows, in the end, the triumph of high achievement, and who at the worst, if he fails, at least he fails while daring greatly, so that his place shall never be with those cold and timid souls who knew neither victory nor defeat.

- Theodore Roosevelt