

THE WOMEN'S ADVOCATE

A CATALYST FOR 2005

Women and the Law Section Newsletter
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Why Women and the Law?

The purpose of this section is to encourage and facilitate the active and effective participation of women in the legal profession and in the community, and to address the current needs and issues affecting women.

What we are hearing from women who are not members is "why now?" Women are leaders in many professional fields and in their communities. Does this organization provide a valid service to our community? The answer is a resounding YES and we invite you to join us in fulfilling our purpose and encouraging other to join us.

The Women and the Law Section (WAL) serves two main functions. First, to encourage and facilitate the active and effective participation of women in the legal profession and in the community. The WAL and its Counsel actively work with the State Bar of Texas on many issues giving voice to our membership by providing feedback to the SBOT on many issues. By monitoring SBOT issues and activities, the WAL provides a voice for its members and facilitates communication with the SBOT. The WAL also encourages women in the profession by recognizing two extraordinary lawyers who have been trailblazers in the profession, mentored women along the way, and given to their community. The Sarah T. Hughes Award and the Ma'at Justice Award are discussed in more detail in this newsletter, and we look forward to announcing this year's recipients at our annual meeting in June.

The WAL is additionally mandated to address the current needs and issues affecting women. Our membership works tirelessly to address these issues. At least once per year the WAL offers a free CLE covering current women's issues and the law. This seminar is offered every year at the SBOT annual meeting and is free to anyone who attends the annual meeting. You can read more about this year's CLE in this newsletter, and we invite and encourage you to join us. The WAL also has an annual book sale. Each year our members gather used books of all types. At the SBOT annual meeting attendees are able to purchase a bag and fill that bag to the brim with these books. All proceeds raised at this event are donated to the Women's Advocacy Project in Austin.

We look forward to seeing each of you at these events throughout the year and encourage you to invite your friends along. Please remember to renew your membership and invite a friend.

SPOTLIGHT: PATERNITY AND FAMILY LAW

Editor's Note: Attorney Robert D. Miller of Big Spring, Texas has taken his case through the state courts of appeal before petitioning the United States Supreme Court. In the intervening years, Mr. Miller has made countless personal and telephone interviews to media outlets throughout the country to discuss and debate the definition of family, paternity and the rights of parents and children. As food for thought addressing a set of legal dilemmas facing family law practitioners, Mr. Miller was kind enough to share his writings and legal discussions.

I filed a Petition for Writ of Certiorari in the Supreme Court of the United States in the style of Wise vs. Fryar seeking to set aside a divorce decree. In 1996, my client obtained a divorce wherein under oath his wife testified that she had never had any extra-marital affairs during their marriage relationship. In 1999 as a result of cystic fibrosis gene screening of one child, my client ascertained that his three sons were not his children. A Petition for Bill of Review was denied relief, and the Eastland Court of Appeals and Texas Supreme Court denied the Petition for Discretionary Review.

During the trial proceedings, I preserved all U.S. and Texas Constitutional rights concerning Equal Protection of the Law and Due Process of Law. Texas courts characterize the type of fraud exercised by the wife in the divorce proceedings as intrinsic fraud as it had to do with the establishment of the paternity of the children. In reality, the paternity of the children was never an issue in the 1996 divorce proceeding. However, Texas courts state that the husband had a chance to disclaim paternity during the divorce and his failure to do so bars him from later challenging the same. This is even in light of the fact that the wife has lied throughout the marriage relationship and lied during the divorce proceeding, perjured herself under oath and yet, the courts will protect the wife.

This result is not found in other states. In 1999, Tennessee recognized the right to terminate child support obligations based upon genetic testing and that the husband was entitled to post-judgment relief because it was no longer equitable that a legitimization order be given prospective application. Likewise, Wyoming's Supreme Court held that res judicata did not bar a trial court from granting relief from paternity. South Dakota likewise follows the concept of setting aside paternity as well as Nevada. Maryland has passed laws allowing DNA testing to be recognized in setting aside paternity.

Not only is this an injustice to a father who is required to pay child support to children that he did not father while the biological father is free from any obligations, but the children of a legal marriage also suffer. They are denied their right to their genetic history, right of inheritance, and other possible legal causes of action to which children of a

biological father are entitled. The courts have decreed that they are legitimate children of a marriage and thus have no cause of action.

The presumed legal father is denied due process as compared to a biological father who may intervene in a divorce proceeding for his biological children. There is a lack of equal protection of the laws affording DNA evidence to correct an improper judgment when the same may be used in a criminal proceeding. There is further taking of property without due process of law when the child support is being paid to the spouse who perjured herself in obtaining the divorce decree.

I recognize that many of our learned professors in family law disagree with my opinion and state that once a child is born of the marriage and there is a divorce then it should not be reopened for the sake of the children. If we are looking at the sake of the children or the sanctity of the family, it has already been destroyed prior to the divorce proceeding when the wife participated in her extra-marital affairs and plus the children will have knowledge of the lack of paternity by virtue of the disclosure of the DNA results. So, I do not understand what our learned professors are seeking to protect by putting arbitrary time limits upon which paternity may be established as well as not recognizing the fraud. Other states do not distinguish between extrinsic and intrinsic fraud and even the federal system likewise recognizes equity to be done.

From Mr. Miller's arguments above have come various legal questions which have yet to be answered and are worthy of consideration as they continue to face clients and practitioners: Should a biological father and a presumed father have equal standing before the courts? Is there a fiduciary relationship between husband and wife in the procreation of children? How else may such a judgment be attacked, other than through a bill of review? What are the rights of children through a next-of-friend to establish paternity? How are the rights of these children protected? Where are the reciprocal rights of a father to disestablish a legal relationship as opposed to a biological parent seeking to establish a relationship?

Mr. Miller is a board certified personal injury trial lawyer, certified by the Texas Board of Legal Specialization; Vice Chair, State Bar College; Member, National Board of Trial Advocacy.

REMEMBERING THE LEGACY OF SARAH T. HUGHES

Every year at the State Bar of Texas Annual Convention, the Women and Law Section confers two awards, the Ma'at Justice Award, which honors a special person who brings order out of chaos, and the Sarah T. Hughes Award. If you have spent any time at all as a woman attorney in Texas, then you have surely heard the name Sarah T. Hughes over and over. But who was she, really, and what did she stand for?

Admitted to the Texas bar in 1922, Hughes has been described by Molly Ivins as “one of Texas’s greatest freedom fighters.” She was a legislator, judge, political leader, and feminist who devoted her life to liberal causes.

“Her life set an example for women in public service,” said historian Darwin Payne, author of **Indomitable Sarah: The Life of Judge Sarah T. Hughes**.

Her career was one of firsts. Elected to the legislature in 1930, she championed the cause to dedicate oil royalties from public lands in West Texas to benefit public education. In 1935, Hughes was appointed the first woman to be a state district judge. She was one of the first champions of women lawyers, encouraging women to enter the profession. She spearheaded the campaign to get Texas women on juries, winning the debate in 1954 and doubling the available jury pool.

In 1961, President John F. Kennedy appointed her a federal district judge in Dallas. Hughes is best remembered as the woman who swore in Lyndon B. Johnson as president aboard Air Force One on November 22, 1963 after Kennedy was assassinated. In 1970, Hughes wrote a decision on

behalf of a three-judge panel overturning Texas abortion laws in a case known as *Roe v. Wade*.

Perhaps more than for her high profile in public life, Hughes is known for her indefatigable support of other women.

“She encouraged women and cheered women on and chastised them to encourage them to go even further,” Payne said.

Hughes became known as a critic of protective legislation seeking to restrict the late hours and difficult working conditions affecting some women. She realized that such protective legislation could jeopardize the existence of women in the workplace. Her position was that the way to ensure equality on the job was to free women, not “protect” them. During the Korean War, Hughes took a similar stance, advocating that women be drafted, as well as men. She was featured on national television and radio broadcasts, debating the issue. While Hughes was known for her spectacular successes, she is also known for being the first woman vice presidential nominee on the Democratic ticket in 1952, before withdrawing.

“She was way ahead of her time,” Payne said.

Darwin Payne is professor emeritus in Communications at Southern Methodist University. His biography of Sarah T. Hughes received the Liz Carpenter Award in 2004 by the Texas State Historical Association and is a finalist this year for the Carr P. Collins Award, presented by the Texas Institute of Letters.

DOUBLE T AT UT – WHAT A SITE

By Carolyn F. Moore

On April 2, 2004, Leo and Judy Ney, two friends of ours, accompanied Ralph H. Brock, my husband, and me on a walk through the UT campus, during the Forty Acres Fest, an all day outdoor festivity in Austin. For the event, student organizations set up booths around the campus mall to raise money and to publicize their existence and activities.

We enjoyed being outside on a lovely spring afternoon after attending a four-hour council meeting of the State Bar Women and the Law Section. Ralph was anxious to show Leo, a UT grad, that a Double T, for Texas Tech University, sits on top of the UT tower. While Ralph pointed out the Double T, I noticed a pained grimace go across Leo's face as he looked at the tower and I laughed when Judy, a good sport, exclaimed "Who put it there?" Ralph then confessed that the Double T was really a radio antenna that looks like a Double T.

The four of us, all over the age of 50 and the oldest people on campus that day, then continued walking around the mall and took pleasure in looking at many of the booths set up by student organizations. Students in many booths were selling food and drinks, with proceeds going to charitable organizations. Other booths offered onlookers the chance to pitch balls, have their fortune told, or even receive a kiss from attractive girls for a small sum of money. We were impressed that students were supporting causes to help poor people, victims of crime, as well as the environment.

Judy was the first of us to notice a booth sponsored by Minority Women Pursuing Law. She stopped to tell students that she, Ralph and I were lawyers and that Leo donated a lot of time and energy in collecting money for The Women's Advocacy Project, a group that provides legal assistance to victims of domestic violence. Anibeth Turcios, Vice-President of the student group encouraged us to purchase a wed-

ding ceremony for \$2.00 from the group. She said we could marry anyone – our pet, a friend, or even our current spouse. She and other students stated that the ceremony, conducted by Ms. Turcios, wearing a judges robe, would be under a canopy decorated with flowers and would include the following: a bouquet, to be used during the ceremony, a ring to be kept by the bride, a certificate saying the couple had been joined in Longhorn Matrimony, and the promise of a wedding picture to be delivered to an e-mail address.

I declared that I would marry Ralph again and had him pay the \$2.00 fee while I selected a ring so large that it looked like a baby's pacifier. Of course, Leo and Judy paid their fee, adding a tip for Ms. Turcios, for a ceremony the moment Ralph and I ended our kiss. After Judy and Leo's ceremony, the four of us walked from the booth to see other sites.

While we continued walking, I remembered my college days in the mid 1960s when students rioted to end the war in Vietnam and also dreaded getting demerits or other punishment for an ODA (obvious display of affection such as kissing) while on the campus grounds or in campus buildings. Life has and has not changed for students on campus in 2005: they no longer have to worry about the consequences of an ODA but still have the need to express their views on controversial subjects. The practical side of me kept thinking, how could the group make money by charging such a small sum for all that it provided?

Whether we agree or disagree with the students' ideas on marriage, we should congratulate them for having a good time, rather than having to riot, while expressing their views. With bright minds like theirs working on our problems, we should feel renewed faith in the future of our country.



Carolyn and Ralph Brock



Judy and Leo Ney

AROUND THE STATE

Texas Women Lawyers celebrated its 10-year anniversary at the Annual Meeting and CLE in Houston, Texas on February 19, 2005. The event took place at the Sam Houston Hotel in the recently renovated downtown district. The program topic, "Women and the Law – Then and Now", focused on the legal progression of women's issues during the past ten to twenty years. Additionally, speakers looked at where we are now and discussed the goals and expectations for the future.

On Wednesday April 20, 2005, the Travis County Women Lawyers Association hosted a general membership meeting, featuring Ally Ryan Crowley, of the Women's Advocacy Project, speaking on "When Friends, Family, or Clients are Faced With Family Violence: What Every Lawyer Should Know." The TCWLA will host its annual awards and charitable luncheon on June 30, 2005 at the Four Seasons Hotel. The luncheon will feature Dr. Betty Sue Flowers, Director of the LBJ Library and Museum. For more information, see www.tcwla.org

The two recipients of the Sandra Day O'Connor Award for Professional Excellence for 2005 are the Hon. Harriet E. Miers, White House Counsel for President George W. Bush, and Judge Mary Lou Robinson, US District Court, Northern District of Texas, Amarillo Division. The luncheon honoring these two fabulous exemplars is scheduled May 13, 2005, Austin Hilton Hotel.

The Association of Women Attorneys hosted a general meeting on April 28th [Special Event, RSVP required] at 5:30pm at the Holocaust Museum Houston, 5401 Caroline. Thomas R. Kline, Partner, Washington D.C. office of Andrews Kurth LLP, presented "Legal Issues in the Restitution of Art Looted by the Nazis or Otherwise Displaced During World War II." RSVP to Janet Schafer at janet.schafer@cityofhouston.net to attend. An optional tour of the museum preceding the meeting included.

The AWA Cattle Baron's Ball was held on April 30th. The Cattle Baron's Ball received a 2005 Mercedes Benz ML350 SUV from Mercedes Benz of Houston/Greenway and Mercedes Benz Houston/North. Nine hundred raffle tickets will be sold for the SUV at \$100 each. Proceeds will benefit the American Cancer Society and will be used to fight cancer in the Houston area.

The AWA was invited by the Texas Trial Lawyers Association to host a Joint Reception on Thursday, May 5th from

5:00-7:00pm at the Houston Club. For more information on AWA, visit www.awahouston.com.

AWA Book Club Meetings was held on Wed., May 18th 6:30pm at The Museum Tower, 4899 Montros Blvd., Houston 77006. The book to be discussed was *Metro Girl* by Janet Evanovich. For more information, contact Johnetta Lang, hostess, at johnettalang@aol.com

The AWA will host a Fashion Show on May 25th at Tootsie's in Highland Village, from 6:30 p.m. to 7:00 p.m. Refreshments available at 6:30 and style show beginning at 7:00.

The clothing is modeled by the Judiciary. Complimentary refreshments and prizes will be announced. For more information, contact Susie Rowley at susie_rowley@hctx.net

Join us at the State Bar Annual Meeting
June 23-24, 2005
Wyndham Anatole, Dallas, TX
for


Organ Donation and the Texas Anatomical Gift Act: Legal and Cultural Contexts

Friday, June 24
10:00am-11:20am

This CLE presentation will increase awareness about organ donation and the cultural, racial, ethnic and economic variables of participation among different communities. This program examines both how organ donation works and the underlying legal framework of the process. This will be a valuable program for all Texas attorneys and judges both personally and professionally, regardless of practice area.

A Joint Project co-sponsored by the following sections:

<p>African American Lawyers Section Thursday, June 23 10:00-11:20am Section Meeting and election of Officers 5:30-7:30pm Section Reception</p>	<p>Women & the Law Section Friday, June 24 8:15-9:45am Section Meeting and election of Officers Presentation of the Sarah T. Hughes Award and the Ma'At Justice Award</p>
<p>Individual Rights & Responsibilities Section Friday, June 24 9:15am Section Meeting and election of Officers</p>	<p>Health Law Section Friday, June 24 9:15am Section Meeting and election of Officers</p>
<p>Municipal Judges Section Thursday, June 23 11:30-1:30pm Section Luncheon includes Section meeting and election of Officers</p>	<p>American Indian Law Section Friday, June 24 9:15am Section Meeting and election of Officers</p>



Look for information on each Section and materials on organ donation at the entrance of the room. Join us for this exciting collaborative event!

ON THE MOVE

Women and Law Section Council Member Tonya Carter has opened her own law firm, handling personal injury and worker's compensation cases. She may be contacted at: Tonya D. Carter & Associates, PLLC, 7007 Gulf Freeway, Ste. 222, Houston, Texas 77087.

Lisa S. Graybill, graduate of Robert E. Lee High School in San Antonio, Texas will oversee the legal activities of the American Civil Liberties Union's Texas Chapter, headquartered in Austin, Texas. Ms. Graybill is a graduate of Smith College, Northampton, Massachusetts, where she double-majored in government and women's studies. Ms. Graybill worked in San Francisco and in-the-trenches as a public health specialist with Austin's health and human services department, providing AIDS and HIV outreach to at-risk populations. Enrolled at the University of Texas at Austin School of Law, Ms. Graybill graduated with honors in 1999. She also studied at the City University of New York School of Law at Queens College. As a legal assistant during a semester spent in Guatemala City, she worked with lawyers on a USAID-funded project, helping to bring the Guatemalan Congress into compliance with the 1996 Peace Accords. After graduation, Ms. Graybill worked as the outreach director for the Millennium March on Washington, a national event for gay, lesbian, bisexual and transgendered rights, before working as a clerk for a New Jersey federal judge. Most recently, Ms. Graybill worked for the Department of Justice in Washington, D.C. as a trial attorney.

Nancy B. Rapoport, dean of the University of Houston Law Center, has been inducted as a Fellow of the American College of Bankruptcy. Rapoport has also been selected to serve on the Library of Congress' Advisory Committee for its project, "The Birth of the Dot-com Era."

Women and Law Section President Teresa Oxford has moved from San Antonio, closing her practice and becoming in-house counsel for A I M Investments. She may be contacted at: A I M Management Group Inc., 11 Greenway Plaza, Suite 100, Houston, Texas 77046. Phone: (713) 214-7276. E-mail: teresa.oxford@aiminvestments.com

Women and Law Section Council Member Lisa R. Hernandez has opened her own practice and may be reached at: Hernandez & Qualls, 6136 Frisco Square Boulevard, Suite 200, Frisco, Texas 75034, v (214) 387-9056, f (214) 387-4910.

Carol E. Dinkins, a partner in the Houston office of Vinson and Elkins, L. L. P., was nominated to a three-year term as the woman member-at-large on the ABA Board of Governors, which oversees the administration and management of the association.

Michelle Coleman-Johnson has opened a law office, and she may be reached at P. O. Box 11968, Fort Worth 76110-8968.

Kim M. Munsinger and Harry L. Munsinger have opened an office for the practice of law, Munsinger & Munsinger, 745 E. Mulberry Ave., Ste. 777, San Antonio 78212.

Kara M. Fitts and Jennifer A. Castleman have opened an office for the practice of law, Fitts & Castleman, 1333 W. McDermott Dr., Ste. 200, Allen, Texas 75013.

Women and Law Council Member Carolyn Moore has been elected to serve as a medium size section representative to the Board of Directors of the State Bar of Texas.

SLATE FOR 2005-2006 WAL COUNCIL

Immediate Past-Chair:
Chair:
Chair-Elect:
Vice-Chair Membership:
Vice-Chair Newsletter:
Secretary:
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Council 2005-2007 Term

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2. Melissa Dorman (Dallas)
3. Chantell Crews (El Paso)
4. Susan Hightower (Austin)
5. Shannon Dacus (Tyler)

Teresa Oxford (Houston)
Mara Blatt (El Paso)
Carmen Samaniego (San Antonio)
Misty Ventura (Dallas)
Lisa Hernandez (Frisco)
Carolyn Moore (Lubbock)
Ralph Brock (Lubbock)
Kathy Cannon (Austin)

Council 2004-2006 Term

1. Ronnie Harrison (Houston)
 2. Sherry Wetsch (Houston)
 3. Tonya Carter (Houston)
 4. Terry Danish (Brownsville)
- Emeritus: Louise Raggio

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