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International Journal on the Reform of Family Courts

The Mongoose

Together, family law attorneys can reform our family courts!

Published by attorney Greg Enos

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Greetings!

A grand jury "no billed" Judge Denise Pratt and declined to bring criminal charges against her arising from my complaint about the apparent backdating of court orders. Click here to read a *Houston Chronicle* story about this turn of events. I am actually happy in a way for Judge Pratt, because I truly do not want to see her in trouble. I just want her off the bench because of the harm she is doing to families and children every day.

Judge Pratt and her criminal defense attorney, Terry Yates, held an press conference on Friday after the grand jury's decision was announced. Click here for ABC13's footage of their press conference (this is not what was run as part of the 20 second story at 5:00 p.m. on ABC13). See if you think the press conference went so well for Judge Pratt. You will notice that Pratt would not answer the question about her long delays in making rulings and how those delays effect families. Instead her attorney interrupted with an comment about how crowded all of the courts are.

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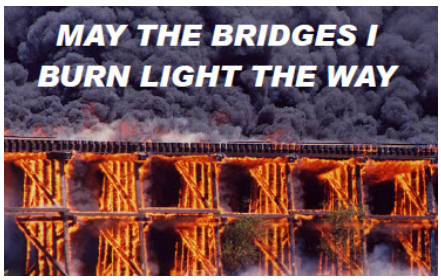

What Does Pratt's No Bill Mean To The Family Bar?

My complaint to the District Attorney asking her to investigate Judge Pratt for apparently backdating court orders

(photograph from Houston Chronicle)

Yates and Pratt failed to mention at her press conference what Pratt was in the middle of doing that very day. Pratt on Monday had over 150 cases on her trial docket and she made all those cases that were not resolved on Monday to appear for "trial" on Friday. So, on Friday, attorneys and parties in over 130 cases appeared and Pratt announced she would dismiss all the cases that were not resolved that day. These were cases that were set for trial, not on a dismissal for want of prosecution docket. Sadly, people who had waited for their days in court saw their cases unconstitutionally dismissed on the very day a grand jury concluded Pratt had not committed a crime. To everyone's amusement however, one attorney at Pratt's docket call Friday said that the parties had reached an agreement but Pratt had appointed an amicus attorney. The only problem was that there were no children involved in the case. Even Judge Pratt had a hard time explaining that one.

Judge Pratt was recused on nine cases earlier in the same week she was no billed. Click here to read the Houston Chronicle stories about the recusal of Pratt in my law firm's case. Click here to read about the recusal of Pratt in eight other cases. The cases involving Matt Waldrop and David Brown involved a totally new allegation of a backdated court order that has never even been given to the District Attorney.

I do not expect to win every case. I just want an efficient system in which my client gets a fair hearing before a judge who works hard, knows the law, and does not play favorites. I also expect judges to appoint qualified amicus attorneys who zealously look after children (and actually visit the kids in their homes). Is that asking too much? Stay tuned.

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Check our web site and blog!

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Merry Christmas and Happy Holidays!

generated lot of media attention and courthouse gossip, brought out four primary opponents and a Democrat to run against Pratt and got a long term employee of the District Clerk forcibly retired. Other than making sure all future orders are timely date stamped from now on in the 311th and getting up the hopes of a lot of lawyers and family court litigants, I am not sure I accomplished much.

In fact, my criminal complaint may have been counterproductive because it distracted from the real problem with Pratt. The real problem with Judge Pratt is the way she does not follow the law, ignores parents' constitutional Due Process rights and the rules of civil procedure, tries constantly to override the decisions of loving parents who actually know their children and favors political cronies. All of that is a moral crime and a blight on our family justice system, but it is not a violation of the Penal Code.

A judge should not refuse to accept an agreement made by loving parents who know their children except in very unusual circumstances. Pratt does it all the time and appoints her select few cronies as amicus attorneys over and over to further interfere with the parents' decision-making and to greatly increase the legal costs. A judge should not award $10,000 in amicus fees without a hearing or evidence or agreement and should not sign an order submitted by the amicus that the other attorneys never saw or had a chance to oppose. A judge should not take away a mother's custody in the middle of a temporary orders hearing in a modification suit without even hearing the mother's case.

A judge should not hear attorney's comments at a short bench conference supposedly to discuss when a hearing will be held in a private modification case and then shock everyone by unilaterally ordering that the three children be immediately taken from both parents and placed in foster care without evidence or even hearing from the parents and then a few days later return the children to their mother after interviewing the children in chambers, Judge Pratt in that same case should not issue temporary orders changing the father's visitation without even conducting an evidentiary hearing!

This amazing judicial misbehavior by Judge Pratt happens all the time and it is simply wrong and the family attorneys and the other judges in Harris County know it. **Any truly conservative, religious, hard core Republican would be offended by a judge ignoring the law, the constitution and common sense in the way Pratt does almost every day.**

We were all hoping that Pratt would be quickly removed because of an indictment, but that is apparently not going to happen.

Not all of my press clippings involve judicial reform. I was proud to serve as the Chair of the annual Interfaith Caring Ministries "Festival of Trees" fundraiser this month. My work with ICM as President of the Board and as a volunteer has been one of the most rewarding activities of my life. ICM is the largest charity helping the poor in the Clear Lake area and was founded 28 years ago by local churches. ICM operates a large food pantry and provides financial assistance to families facing eviction or loss of utilities. The annual Christmas Store this month provided brand new toys and Christmas presents to hundreds of families. **I urge everyone to get involved in a charity and make a difference!**

Sherlock Holmes and the Case of the Curiously Dated Order

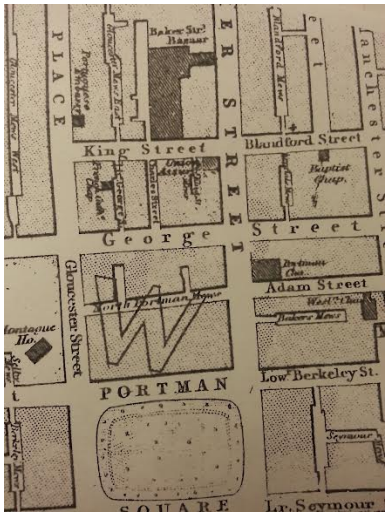
The cab ride from Heathrow to Marylebone in the heart of London was long but at least warm as I peered out the window at traffic and buildings flashing past on a gray, wet, bitterly cold December afternoon. I had flown to London in Bruce Baughman's private jet (he thought he was helping me permanently move to another country and was thus more than happy to allow me to use his aircraft). The cab drove briefly on Baker Street past the former locations of such well known landmarks as the Marylebone Work House, the Baker Street Bazaar and Madame Tussaud's Exhibition before turning on to small side street, now known as Robert Adam Street. I paid the cabbie and stepped into the frigid early evening and peered up at the address known as 221 Adam Street in the 1880's (I had long known that Dr. Watson had intentionally changed the street name of the most famous address in London to deter unwanted visitors and protect his landlady's sanity).

It is very unlikely that the Texas Judicial Conduct Commission will ever do anything to Pratt, although every attorney should send in a separate complaint describing each misdeed. A few lawyers have had their motions to recuse granted but the law and Judge Olen Underwood's strict interpretation of the recusal statute are going to make it hard for most attorneys to get Pratt removed from their cases.

The political process will take time and even if Pratt is defeated in the GOP primary or in the November 2014 General Election, she will be in office until December 31, 2014.

So what does the family bar do now about Pratt?

- We maintain our unity of purpose and our new willingness to stand up for what is right. We cannot lose that spirit that caused so many prominent attorneys to sign the joint letter calling on Pratt to be removed or to resign.
- Every single legal outrage by Judge Pratt needs to be reported publicly and to the Judicial Conduct Commission.
- The District Attorney, when she called me to let me know Pratt had been no billed, said they would look at any new evidence or new cases of potential misconduct. Attorneys with real evidence of potential criminal behavior, including ex parte communications with amicus attorneys, should file criminal complaints or send their information to me and I will do it (if the facts seem to actually support an accusation).
- **We need to call on District Attorney Devon Anderson to seek an independent, special prosecutor to re-examine the evidence I presented and to consider taking those cases to a different grand jury.**
- We all need to work on informing our clients, GOP activists, voters and the media about Pratt's terrible and very unconservative judicial behavior.
- We need to unite behind one of the Republicans running against Pratt to make sure she is defeated in the primary.
- We need to organize respectful and



The door was answered by a pleasantly efficient woman who was clearly used to visitors at all times of day and night. I was lead up the famous 17 stairs and shown into the sitting room on the first floor (second floor to us Americans). For a moment, I held my breathe as I took in a familiar scene I had visited so many times in my mind. The curtained bay window, fireplace, bookshelves and chairs appeared just as I had envisioned from my readings. Most breathtaking of all, there, slouched in a red velvet chair with a violin case at his feet, was the man with the one singular mind who could unravel the mystery of Judge Pratt's curiously dated orders -- Mr. Sherlock Holmes. His companion, John Watson, stood with one elbow on the mantle lighting a pipe and observing Holmes and his latest, nervous client, as he had done so many times before.

A long silence ensued during which I felt as if Holmes' piercing eyes were scanning me and deducing my innermost secrets and thoughts. Finally, the doctor interrupted the awkward quiet by asking,"You are attorney Enos from Webster, Texas who sent Holmes the documents on your errant Judge?"

"Yes, yes, none other," Holmes finally spoke as he waved me over to a stuffed chair near the fireplace. "I trust your sick dog is going to survive your absence."

"How could you possibly deduce the man has an ill dog?" stammered Watson.

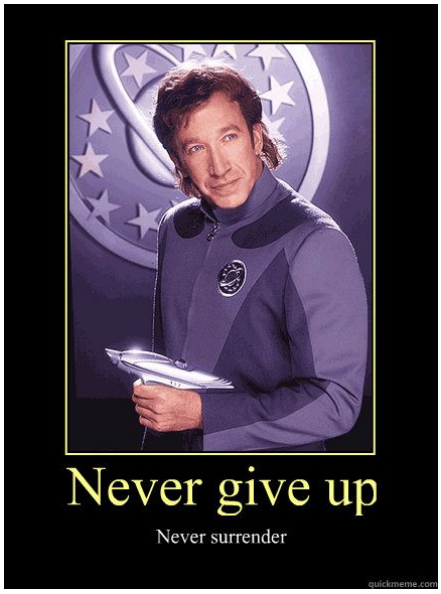
Holmes smiled but did not speak and instead pointed toward a laptop computer on a small side table. My Facebook profile was open on the laptop, as was my recent posting about my sick German Shepard. I chuckled and relaxed immeasurably as I sat on a somewhat lumpy chair just feet from the great detective.

Holmes picked up a stack of documents, which I recognized as the papers I had sent him by Fed Ex as soon as the grand jury's "No Bill" of Judge Pratt was announced. "Why did you send me just documentation of the *Bishop* case when there are many others that caused you to believe this Judge Pratt may have backdated her orders?," Holmes asked.

"I thought the *Bishop* case was sadly illustrative of all of the cases where it appears orders were backdated," I replied.

"This is the case where Judge Pratt switched custody of the children on temporary orders mid-way through the hearing without even hearing the mother's case and the appropriate demonstrations and acts of civil disobedience to bring attention to what Pratt is doing.

So, we need to stand together and continue to fight for what we all know is right and not let this set back discourage us. There is plenty more we can do. In the end, Harris County families and our family court system will be so much better off because of our efforts. Just remember what we all learned from the classic movie *Galaxy Quest*: **"Never give up. Never surrender!"**



Pratt is probably going to feel empowered by this "no bill" and I predict things will just get worse in her court. I also predict a backlash against those who have stood up to Pratt. **I know that the flying monkeys are coming for me**, but I always saw that as the inevitable price I would surely pay for sticking my neck out and calling attention to what is not right in the Land of Oz.

"Fly my pretties, fly! Take your army to Webster and bring me that lawyer and his dogs. Do what you want with the others, but I want him alive and unharmed."

one where she awarded the Amicus Attorney $10,000 in fees without hearing evidence and signed an order for those fees presented by the amicus outside the presence of the other attorneys?" asked Watson. I nodded and he continued. "Surely there is some recourse when a judge so totally ignores proper procedure and due process?"

This time I shook my head. "Sadly, such behavior can only be addressed on an appeal or mandamus action, which most parents in such cases cannot afford. That behavior is not even usually grounds for recusing the judge, as bad as it is," I said.

"Very well," Holmes interrupted. "Let us review the facts." I explained the *Bishop* case (no. 2003-55818) was (and still is) a very contentious child custody modification case in Judge Pratt's court.

Two of the attorneys involved in the *Bishop* case had told me stories of the sort so often told about Judge Pratt. The temporary orders hearing in this case was heard over several days because Judge Pratt would show up late and stop the proceedings early, so the parents and lawyers had to return on later days to resume the hearing. One attorney told me that everyone involved in this case appeared at one of the hearing dates at the time set by Judge Pratt, but waited over two hours for the judge to appear. At one point, the lawyer overheard the clerks saying that the judge was in the back watching tennis on the television.

Pratt heard evidence in the case on January 15, 2013, February 1, 2013, March 1, 2013, April 1, 2013 and April 2, 2013 according to an order signed by Judge Pratt on April 4, 2013. On March 1, Judge Pratt had orally ordered that custody of the children would be switched from the mother to the father and that the mother would only have visitation through the SAFE supervised visitation program. This ruling was made in the middle of the hearing before the mother had presented her case. The mother's attorney told me she checked regularly with the Court Coordinator between April 2 and May 7, calling or going to the court several times a week to see if Judge Pratt had signed an order that said what she had orally ruled on March 1. Each time, the attorney was told that the judge had not yet signed an order.

On May 7, 2013, the Amicus Attorney was sent a signed order entitled "Interim Orders" via fax from Judge Pratt's court dated and signed by Judge Pratt,"April 1, 2013." The first page of that order sent by fax does not have a file stamp on it. The District Clerk's web site displays a version of the same order that is file stamped "April 1, 2013" and is initialed by a deputy clerk. That clerk did not start working in Judge Pratt's court until April 24, 2013.

The parties and attorneys were in front of Judge Pratt on April 1 and apparently April 2, 2013, yet Judge Pratt did not tell them that she had supposedly signed an order on April 1 nor was a copy of that order given to the parties and attorneys on either day. The mother's attorney on April 3 filed a motion to switch the children back to the mother and a motion to prevent the amicus attorney from being present when the judge interviewed the children in chambers. Judge Pratt on April 4 signed the order about the amicus and signed an order partially granting the mother's motion filed April 3 as to counseling and injunctions but not as to switching the children back to the mother (Pratt hand wrote changes on the order the mother's attorney had submitted). Again, Pratt did not inform the attorneys that she had supposedly signed the Interim Orders on April 1.

It should also be noted that on May 31, 2013 (according to the District Clerk's web site), Judge Pratt signed an order awarding the Amicus Attorney another $10,000.00 in attorney's fees without a hearing or evidence. That order is signed only by the Amicus Attorney "approved as to form only" and there are not even signature blocks for the other attorneys. Oddly, that order is hand dated and signed by Judge Pratt

Speculation on Why Judge Pratt Was Not Indicted

Pratt's no true bill by the grand jury means that the grand jury did not find probable cause for an indictment of a crime, in this case tampering with a government record. Double jeopardy does not attach to a no bill and Pratt could still be charged.

It appears that the District Attorney's Public Integrity Unit talked to a lot of attorneys, but their efforts were cloaked in secrecy and so it is impossible to know what the DA's office did or how hard they really tried. Many attorneys are already buying in to the conspiracy theory that "the fix was in" based on these facts:

- A Republican D.A. was asked to investigate a Republican judge.
- The D.A. and judge share the same political consultant.
- Pratt's former clerk, Marilyn Epps, was not offered an immunity deal in exchange for her testimony.
- Generally, D.A.'s are almost always able to get indictments from grand juries if the D.A. really wants one.
- The D.A. largely controls what evidence the grand jury hears and what the grand jury is told the law is.
- We do not know what was actually presented to the grand jury, but I know I was not called as a witness and I am the person who filed the complaint. I could have explained the chronology of events and talked about why no reasonable attorney would ever believe Pratt actually signed those orders when she claimed to.

It appears that Pratt's defense was predicated on blaming her clerks. Apparently, Pratt claimed she actually signed court orders on time, gave them to her clerks and then the clerks waited months to enter the orders in the system and inform attorneys that orders had been issued. Unless the Grand Jury was explained how paper work is handled in the 311th and shown a detailed chronology of events, the Grand Jury may have decided it was all the clerks' fault or at least that there was not enough evidence that Pratt backdated her orders. My attempt at creative writing in this issue shows how the greatest logician of all time would explain why a grand jury could legitimately find it lacked proof of a crime in this case.

I myself am willing to believe the DA's Public Integrity Unit <u>does have integrity</u> and really did all it could to investigate Pratt. I do not think "the fix was in." However, I do believe that D.A. Anderson should have considered asking for a special prosecutor under the circumstances, for the very reasons that so many now doubt just how

"May 16, 2013" but is file stamped "March 8, 2013" and initialed by the same clerk who did not start work in Pratt's Court until April 24, 2013. No date of hearing is filled in on the order presumably because no hearing was held. It is not clear how Judge Pratt could legally sign this order without notice to the parents, a hearing and evidence. It is also not clear how this order came to be filed and signed only by the Amicus Attorney. It is very unusual that the order was prepared without signature blocks for the attorneys representing the parents. That same Amicus Attorney hosted a fundraiser for Judge Pratt at the Wedge Restaurant in August 2013.

Holmes then inquired about the procedure followed when court orders are signed. I explained that the judge signs the orders at her bench or in her chambers and, at that time, a hand written docket entry was made by the judge (they are now typed into the computer system). The signed order then went to the clerks who: (1) entered information about the order in the computer, and (2) sent the order to be scanned before it is returned to the court's paper file.

Holmes sat in silence for several long moments slowly drawing on the pipe Watson had lit and handed him while I had summarized the case. Holmes' eyes were closed and his forefinger tapped slowly on his forehead. Finally, his eyes flew open and he delivered his logical analysis:

- It is unlikely that Judge Pratt would sign an order on April 1 if the hearing did not finish until April 2, yet two orders signed by Judge Pratt on April 4 say the hearing concluded on April 2. However, perhaps there was a typo and no hearing was held on April 2 or perhaps Pratt signed the order on April 2 and accidentally wrote April 1. When discussing Judge Pratt, it seems a waste of time to discuss what a judge would normally do. The point is what this unusual judge did and when.
- If the parties and attorneys were in front of Judge Pratt on April 1 and April 2, one would have expected the judge to have informed the parties that she was signing an order. Likewise, if Judge Pratt signed two additional orders involving this case on April 4, one would have assumed that would have been opportunity to inform the lawyers that the very important "Interim Orders" had been signed on April 1. However, expecting logical or proper behavior from this judge is apparently a little too much to ask for. While Pratt should have told the attorneys she had signed an order, the fact that Pratt acted oddly and did not tell them does not necessarily prove when she signed the order.
- If Judge Pratt really signed the order on "Interim Orders" on April 1, 2013, why was it not faxed to the Amicus Attorney until May 7, 2013? Presumably, Judge Pratt does not do her own faxing. Perhaps she gave the order to a clerk and the clerk set it aside and did not get to it until five weeks later. While it may be sloppy work, the delay in faxing the order is not itself proof of when the order was signed.

- How could it possibly be that the version of the order on "Interim Orders" faxed to the Amicus Attorney on May 7, 2013 does not have the clerk's file stamp that says "April 1, 2013" and yet the version of this order imaged by the District Clerk clearly has the April 1 file stamp on it? If the order was file stamped on April 1, then it would have had the file stamp on it when it was faxed on May 7. But, perhaps, a copy of the signed order was given to the clerk to fax and the file stamped order was not faxed. If one assumes the the clerk rolled back her stamp and did not really stamp "April 1" on the order until after it was faxed on May 7, then the lack of a file stamp on the fax is explained.
- If the deputy clerk who initialed that file stamp on the order on "Interim Orders" did not start working in the 311th until April 24, 2013, how could she have file stamped it on April 1? Presumably, the clerk rolled back her file

seriously the DA was going after Pratt. The experienced family law attorneys who read my detailed criminal complaint and who know how the court system works, simply cannot believe Pratt was not charged with a crime.

Judge Lisa Millard to Determine If U.S. Constitution Applies in Texas

My colleague Jared Woodfill is both a smart politician and a smart lawyer. Woodfill is the Harris County Republican Party Chair and he faces an opponent in the GOP primary. It thus makes sense for Woodfill to throw his party base some bloody red meat and attack any hint that gay marriage will be tolerated in our Bible thumping, intolerant state which will surely soon make the Duck Dynasty patriarch our official State Philosopher.

Jared Woodfill, Republican visionary defending us all from the gay menace.

Woodfill filed a lawsuit seeking to stop the City of Houston from providing insurance benefits to same sex "spouses" married to city employees in states which recognize gay marriage. Woodfill cited the Texas Family Code Sec. 6.204, the Texas Constitution Art. I, Sec. 32, and the City of Houston Charter. **Click here** to see the lawsuit filed by Woodfill. **Click here** to read the TRO signed by Judge Lisa Millard.

The case was assigned to a family district court because Woodfill cleverly alleged violation of Family Code Sec. 6.204, which is the Texas Defense of Marriage Act. Woodfill's lawsuit does not explain how the U.S. Supreme Court's decision striking down the federal Defense of Marriage Act would not override state law or the state's constitution, as is usually the case (even in Texas).

Judge Millard is going to have to address whether Woodfill's clients have standing to attack the City of Houston policy. If the plaintiffs have standing, Judge Millard will then have to decide the issue the U.S. Supreme Court did not address when it struck down DOMA and determine if a state's refusal to recognize same sex marriages violates the Equal Protection Clause of the U.S. Constitution. This case is in the good hands of a wise judge who has no opponents and faces no political pressures.

stamp and that is why she was forced to resign. The question is when did the clerk do her stamping and why did she violate clear protocol and roll her stamp back? Did the judge ask her to do so or did the clerk do it on her own thinking her file stamp needed to match the handwritten date the judge had put on the order? If the signed order was found in some neglected stack of documents the clerks had missed or ignored, could that explain why the clerk rolled back the date stamp to "cover up" for a clerk's error?

"But Holmes," cried Watson,"Surely all of this evidence shows that more likely than not that Judge Pratt backdated this order, particularly when one considers all of the other cases with similar circumstances which all seemed to have occurred at roughly the same time! Could these extraordinary series of mistakes and coincidences have happened over and over in the same court?"

Holmes coolly dismissed Watson's emotional outburst with a wave of his hand. "Logically, my dear chap, it could have happened in a way that did not involve backdating. Judge Pratt, signed the order but did not tell anyone (including her own court coordinator) and either kept the signed order or gave it to the clerk and the order did not come to light until 5 weeks later, it was faxed and then file stamped by a clerk who improperly rolled back the file stamp to April 1. Without proof that some other scenario occurred, that sequence of events, however extraordinarily unlikely, is entirely possible and thus there was no proof beyond a reasonable doubt the judge committed the crime of tampering with a government document. The very questionable behavior involving the order for the amicus fees does not itself prove that the judge backdated another order in the same case."

"Surely, it is all proof of improper and unethical and incompetent conduct by the judge,"blustered Watson.

"Indeed it is," I sighed in resignation,"But, in Texas it is not a crime for a judge to be lazy, to not follow the law or procedures, to delay rulings, to run a disorganized courtroom or to award large fees to her campaign contributors without hearing evidence."

Holmes was still not finished however. "The key would be the clerks who handled these orders and perhaps what was written on the court's docket sheet. Bring me those clerks and the docket sheet and perhaps I will have a different answer for you."

I shrugged in frustration. "I do not know if any or all of the clerks testified to the grand jury and I assume the clerk who initialed the false file stamp and had to resign asserted her Fifth Amendment rights and did not testify. I understand that no immunity offer was made by the D.A. to that clerk and I am at a loss to understand why. We simply do not know what the clerks know and what, if anything, they told the grand jury."

"So I assumed," muttered Holmes. "Let us ask good Mrs. Watson to bring us some tea and we can discuss why an independent prosecutor was not sought given that the District Attorney is of the same political party as Judge Pratt and utilizes the same political consultant as Pratt in her re-election campaign." And so our discussion on the case of the curiously dated court order left the realm of logic and headed into more philosophic areas of how the world should be, not how it is.

**** THE END ***

Notes:

1. This fictional exercise in logical analysis shows how a grand jury which really was presented all of the available evidence and provided a detailed explanation of how family courts handle orders, could decide that there was not enough proof to justify charging a judge with a crime. I wrote this for the conspiracy theorists who are so sure the D.A. did not really try to get Pratt indicted. The great unknown of course is what exactly was presented to the grand jury, which clerks testified, what were they asked and how was the paper work flow in the 311th explained. Given grand jury secrecy, we will never know the answers to those questions. **I filed my complaint with the District Attorney because the evidence certainly made it appear that Judge Pratt had backdated court orders and I knew the D.A. was far more capable of investigating and getting to the truth than I am.** If Pratt really did not commit a crime, then she deserved to be no billed and not charged.

2. The order in question in the *Bishop* case supposedly signed on April 1, 2013 is now on the District Clerk web site in two forms: the version with the clerk's

Federal Judge Costa Appointed to Fifth Circuit

The relatively new federal judge for Texas' Southern District Court in Galveston, Gregg Costa, has been appointed by President Barack Obama to serve on the 5th Circuit Court of Appeals. The White House announced the nomination late Thursday.

Attorney Greg Enos has been through his own divorce and child custody battle (he won) and understands what his clients are going through. Enos graduated from the University of Texas Law School and was a very successful personal injury attorney in Texas City before he decided his true calling was to help families in divorce and child custody cases. Greg Enos is active in politics and in Clear Lake area charities. He has served as President of the Bay Area Bar Association and President of the Board of Interfaith Caring Ministries.

file stamp that clearly was not stamped on April 1 and a different version without the file stamp and with fax confirmation pages. It is as if after my complaint, that someone found the version of the order without a bogus file stamp and then somehow filed that with the District Clerk. It is not clear to me how the District Clerk would accept for filing a document that is not file stamped and which was added seven months after it was supposedly signed. A curious case just got curiouser!

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