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"Together, attorneys can improve our family courts!"

Please forward this e-mail newsletter to everyone who cares about our family courts!

[Click here](#) for an archive of past issues of *The Mongoose*.



[Click here](#) to download a preliminary chart of the Harris County Family Courts as of January 1 with all of the new judges and courtroom locations. The county still has not assigned new phone numbers to the 308th and 311th courts, which are moving next week to the 8th floor of the Civil Courthouse. I will provide an updated chart with those phone numbers and the court coordinators before my BIG day on December 19 (55th birthday and).



Effective January 1, 2015 All phone numbers are (713) area code

| HARRIS COUNTY FAMILY COURTS - 2015 | | | | |
|------------------------------------|--------------------|-------|----------|--------------------|
| Court | Judge | Floor | Phone | Associate Judge |
| 245th | Roy L. Moore | 15th | 368-5900 | James "Jim" Cooper |
| 246th | Charley Prine | 16th | 274-4500 | Chelsie Ramos |
| 247th | John Schmude | 15th | 368-6570 | Paula Vlahakos |
| 257th | Judy Warne | 16th | 274-4560 | Deborah Patterson |
| 280th | Lynn Bradshaw-Hull | 15th | 368-6420 | No A.J. |
| 308th | James Lombardino | 8th | | Alyssa Lemkuil |
| 309th | Sheri Y. Dean | 16th | 274-4520 | Beverly Malazzo |
| 310th | Lisa Millard | 15th | 368-6550 | Conrad Moren |
| 311th | Alicia Franklin | 8th | | Meca Walker |
| 312th | David Farr | 16th | 274-4540 | Eileen Gaffney |

All family courts are in the Civil Courthouse, 201 Caroline, Houston, TX

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Lawyer work this time of year takes a back seat to preparing for and enjoying Christmas or Festivus (making our lists of grievances and practicing feats of strength) or the Winter Solstice or Hanukkah.

It is a time of miracles, as evidenced by me speaking to the Cypress Tea

Party. My talk on reforming family courts was well received by that super conservative group, which invited me to speak despite the "I'm Ready for Hillary" sticker on my eco-friendly car.

This issue focuses on good news in the spirit of the holidays. We all should consider major upgrades in security around the courthouse complex as good news. [Click here](#) to read the story in yesterday's *Chronicle* about new security measures and read quotes from your's truly on the subject.

Here is some great news: the disgusting, unfair, politically tainted case which inspired me to start writing this newsletter finally ended after three years. Things went from terrible to pretty darn good for my sweet client who suffered so much at the hands of attorneys with connections and judicial decisions driven by who the lawyers were instead of fairness or the law. I may soon be able to write about this case once my client and her kids have resided for six months in another county.

Good news worth sharing is that influential Republicans agree with me on the "Polland Problem." [Click here](#) to read Ed Hubbard's blog in "Big Jolly Politics" that says in part:

Whether [Polland's] conduct rises to the level of being criminal, as at least one local attorney believes, is really beside the point: there was a time when we would have cared enough to say it was wrong, and to call on him to respect us-and the judges he professes to support-enough to stop it; to call on those judges who have enabled Polland's behavior to follow Judge Farr's lead and change their appointment practices to end this appearance of impropriety; and to call on ourselves to stop enabling Polland by stopping the underwriting and use of his for-profit slate mailer during our primaries. If his desire for more and more money is so strong that he won't respect us enough to avoid this appearance of impropriety, and its potential impact on our party and its elected officials and candidates, why should any of us continue to respect his conduct and endorsements?

The word "Judge" was suddenly deleted from the various attorney listings for Beverly Malazzo right after the last *Mongoose* was issued. The good news is that Ms. Malazzo will finally be able to ethically call herself "Judge" as of January 1 when she is sworn in as Sheri Y. Dean's Associate Judge. I can't wait to meet her in person!

I do need to make one important correction to a story in the prior issue of this newsletter. Bobby Newman e-mailed me to demand this correction: he OWNS his jet and does not lease it, as I falsely reported. I apologize for that error and any damage I have done to Mr. Newman's reputation.

Several readers who are judges were unhappy with my article about the civil war in Galveston County between the judges and commissioner's court and specifically my quote from an e-mail about a judicial applicant who allegedly had sex on a picnic table at a county Christmas party. My article never mentioned any name in connection to the alleged picnic table incident. However, the *Houston Press* picked up my story and got a former judge (who I never believed was involved any way) to provide a very interesting denial. [Click here](#) to read the *Press* story and then ponder if a denial about activity on a park bench means one did not get funky on a picnic table.

In my prior issue, I discussed the recent *Reddick* case from the Houston First Court of Appeals on intentional under-employment. [Click here](#) to read the opinion. I failed to give a brilliant attorney, **Matt Waldrop**, credit for winning that appeal and reversing some judge named Pratt. [Click here](#) to read Matt's persuasive brief.

I hope all of my readers take some time off work to enjoy the holidays. I plan to enjoy my grandson's first Christmas, get to know the horse my family just bought (after I find an XXL size 10 gallon cowboy hat) and finish a short article for *The Baker Street Journal* pointing out that Jefferson Hope could not possibly have become a London cabbie so quickly in *A Study in Scarlet*. Even in 1881, it took well over a year to study for and pass "the Knowledge," the hideously difficult test of every road, route and landmark in London that was required to get a license to operate a cab.

The *Mongoose* will return in January with a vengeance! Does anyone recall me griping about spouses practicing in the courts where their loved ones are the judge? My next issue will be an eye opener!

Really Good News: Meca Walker to be Judge Franklin's A.J.

Judge Alicia Franklin gave the Family Bar an early Christmas present by announcing she has selected Meca Walker to replace Bob Newey as Associate Judge in the 311th. Franklin is generally getting really good reviews for her work as a judge and her selection of M.L. Walker is a brilliant choice.



Judge Walker has served as Associate Judge for Judges Rynd, Dean and Hellums. It is great news that her experience and superb judicial demeanor will continue to serve the families of Harris County.

I have given Franklin grief over her outrageous billing as a CPS attorney before she was appointed judge, but I will give her credit for making a really great selection as A.J. to replace Bob Newey. I know Commissioner Cagle is thrilled, but this decision smells more like a "what is good for the court and the families and attorneys we serve" sort of pick instead of the purely political selection some were dreading. Way to go Alicia!



Good News: Most Heavy Drinkers Are Not Alcoholics!

[Click here](#) to read more about a U.S. Centers for Disease Control and Prevention study which found that 90% of heavy drinkers fell short of the criteria for alcoholism. Women who have eight or more drinks per week and men who have 15 or more are considered heavy drinkers. Signs of alcoholism include an inability to stop or reduce drinking, continuing to drink even after it causes problems with family or work, and excessive time spent drinking each day. Judges need to realize that heavy drinkers are not necessarily alcoholics.



Only a third of those who admitted binge drinking 10 or more times in the previous month were alcoholics, the study found. The CDC defines binge drinking as consuming four drinks for women and five drinks for men in a single occasion. This study should be sobering news for those "alcohol addiction specialists" who consider almost every regular drinker an alcoholic. I can imagine a great cross-examination of someone like Vicki Longwell based on this government sponsored study.

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.

**Greg Enos
The Enos Law Firm**



Thank You Judge Yarbrough

We say "good bye" to many fine judges who are retiring and leaving the bench on December 31. We will all miss the friendly and hard working Judge Jim York, even as he passes his mantle of the most pro-mother judge in custody cases on the planet to Galveston County Associate Judge Steve Baker.

Bonnie Hellums was an amazing breath of fresh air and reform when she was first elected in the 1994 Republican sweep that knocked off all of the Democratic incumbent judges. It was revolutionary then to think that a family court judge would rule based on the law and the facts and what was best for children instead of who the lawyers were. Now, thanks to judges like Bonnie Hellums, that is the least we expect in our family courts.

Harris County is also losing some amazing associate judges: Robert Newey and Michael Hay.

The family judge that has meant the most to my life and professional career has been Galveston County Family District Judge Jan Yarbrough, who is retiring after twelve years as a district judge and eight years before that as an associate judge. Judge Yarbrough never had an opponent in a primary or general election, even as Galveston County became 100% Republican. That is an amazing tribute to how universally respected Judge Yarbrough has always been.

Yarbrough heard cases involving my children back when it was still fairly unusual for a young father like me to win and keep custody. My very first family law case where I represented someone other than myself was before Judge Yarbrough. We have worked together on politics, seminars, local rules and forms and we have occasionally disagreed. However, no child and no parent could ever ask for a more fair, smart and caring judge than Judge Jan. Unlike some, Judge Yarbrough always lived up to her campaign slogan, "Put Kids First."

Should We Celebrate "Black Friday" in August?

Anyone who has attended seminary school and truly studied the Bible has had their faith tested by archeology, history, the contradictions between the gospels and the various translations of the Good Book. [Click here](#) to read an eye-opening 2010 study on Christian pastors who are non-believers even as they are still working in churches. This study describes the role that seminary placed in their skepticism. Nothing tests faith like facts.



Most seminary students at some point learn about the widely held suspicion that the birth of Christ (which was not even celebrated until about 400 years after his death), probably took place in early Fall, rather than on December 25. The 25th of December was the date of the Roman holiday of *Dies Natalis Solis Invicti* (Birth of the Unconquered Sun). The extremely popular, and much older, Roman holiday of *Saturnalia* ended usually about December 23.



Sculptors leave behind marble statues and architects are outlived by the buildings they design, but the legacies of family judges are found in the children whose lives they profoundly changed and the thousands of rulings they made, big and small, which meant so much to the families who came to them seeking justice and resolution of their disputes. Jan Yarbrough leaves a legacy of caring, intelligence, efficiency, common sense and 100% honesty. Almost every day I get to see a daughter whose life was immeasurably changed by this wonderful judge. As much as I occasionally irritated Judge Yarbrough, she may not miss me, but I am going to miss her like crazy.

Every lawyer who has practiced in the 306th in the last decade will also miss Coordinator Danna Henderson and Court Reporter, Ron Vella. Those two were major contributors to Judge Yarbrough's success and they were always pleasant, professional folks to deal. It is just not going to be the same without them.



Illegal Electronic Evidence and Family Law Part 1: Attorney Beware!

Lawyers can be sued, arrested and sent to prison and disbarred for mishandling illegal electronic evidence, such as recordings, e-mails and text messages. This article is the first in a series on what makes electronic evidence illegal, the many ways that electronic evidence is being obtained illegally these days, how law firms and clients can safeguard their computers and phones and what can happen to clients and lawyers who break the law. **This first article focuses on what attorneys should never do with illegally obtained evidence.**

An attorney can face personal, criminal and civil liability for using or disclosing an illegal recording or illegally intercepted electronic communication (e-mail or text message) provided to the attorney by a client. For example, the following can be separate and independent federal and state wiretap act violations: (1) a client's disclosure to an attorney of an illegally obtained e-mail, (2) the attorney's disclosure to his staff, co-counsel or expert of the e-mail or its contents, (3) an attorney's use of information obtained from the illegal evidence in pleadings, (4) an attorney's use of the illegal evidence as attachments to pleadings and affidavits, (5) a lawyer's use of information obtained from the illegal evidence when questioning a witness, (6) a lawyer's use of the illegally obtained recording or communication as evidence in

Both Roman holidays were replaced by Christmas.



Few modern Christians know that in the Middle East, Shepherds would not be "abiding in the field, keeping watch over their flock by night" in late December. The shepherds always brought their flocks from the mountainsides and fields and corralled them by mid-October, to protect them from the cold, rainy season that followed that date (see Song of Solomon 2:11, and Ezra 10:9, and 13). Shepherds in the Middle East send out their sheep to the fields and deserts about the time of Passover (early Spring) and bring them home at the time of the first rain in October.



[Click here](#) to read an article that says all of the above is wrong and December 25 really was Christ's birthday. [Click here](#) to read an article that suggests the Romans invented Christmas. **You will learn some history and stretch your mind if you read both articles!**



Book Review: The Secret History of Wonder Woman

Any woman lawyer at the end of 2014 might have a hard time imagining a time in America when women could not vote, when the few women with college degrees seldom could find jobs and people were sent to prison for selling contraceptives. The struggle of women to be treated as equal citizens is just one of the many stories told in "The Secret History of Wonder Woman" by Jill Lepore.

court or a deposition.

Each separate illegal use or disclosure of intercepted communication can be a federal or state felony and can result in a \$10,000 civil penalty (plus actual damages and attorney's fees).

Consider this example from criminal defense attorney Mark Bennett's excellent blog ([click here](#) to read his entire post):

Just before Duke's first unsupervised visit, Dianna bought a small digital recorder online. Dianna unstitched a bit of her daughter's favorite teddy bear-known as "Little Bear"-and stuck the recorder inside, stitching the animal back up afterwards. The recorder never left the bear's guts after this, except when the animal was washed. With no voice activation feature, the gadget simply recorded everything that happened in its presence, and Dianna periodically unstitched the bear just enough to insert a USB cable and download the audio recordings to her computer.

*.....
All of this material was then turned over to Dianna's lawyers, who submitted it to the state court and waited for a ruling on its legality. In the summer of 2008, the state judge decided that the recordings were not admissible as evidence in the custody trial, since they violated the Nebraska Telecommunications Consumer Privacy Protection Act and were therefore obtained illegally.*

Then, in a federal civil lawsuit by the people whose oral communications had been illegally recorded, the clients got dinged for \$60,000 each plus attorney's fees for violating the Federal Wiretap Act, 18 USC Section 2511.

The court found that their lawyer had violated the Act by revealing the recordings to other lawyers in the case, but did not enter a judgment against him:

The court has carefully considered Mr. Bianco's role in this matter and finds that damages should not be awarded against Mr. Bianco. Bianco did not solicit or advise the Divingzzos to intercept the plaintiffs' oral communications. While he disclosed the illegally-obtained materials to advance his client's position in the Custody Case, the court did not consider the materials. The other recipients returned the materials unread or maintained the confidentiality of the communications.

The lawyer, who could easily have been ordered to pay \$60,000 as well, got lucky in part because "the other recipients...maintained the confidentiality of the communications"-something entirely out of his control (and not, strictly speaking, a legal defense).

Moreover, both the lawyer and his clients got majorly lucky in another way: by not getting indicted. If the Divingzzos or Bianco had popped up on the radar of the U.S. Attorney for the District of Nebraska, they could easily have been facing zero-to-five-year felony wiretap charges.

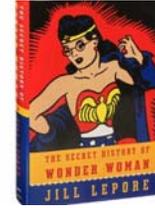
The Federal Wiretap Act (which applies to interception of phone, voice and electronic communications) can make a lawyer a criminal if she:

(c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

18 U.S.C. ♦ 2511(1)(c), (d).

The Texas Wiretap Act is basically the same as the federal law except a lawyer can commit a crime if she is **reckless** in using an illegal recording or communication (which is a much broader standard of liability than "knows or has reason to know

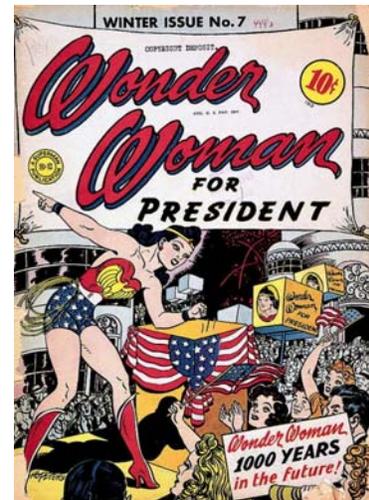


This book is a biography of William Moulton Marston, Wonder Woman's creator, but it is also the tale of the struggle for women's rights in the early 20th Century. Beginning in his undergraduate years at Harvard, Marston was influenced by early suffragists and feminists, which is why they play such a prominent role in the book.

Marston was a lawyer, pioneer psychologist, Hollywood screenwriter and inventor of the polygraph machine. The seminal 1923 U.S. Supreme Court case of *Frye v. U.S.*, which held that expert testimony must be based on scientific methods that are sufficiently established and accepted, involved a polygraph test administered by Marston and his testimony, which the trial judge excluded.

Family lawyers, with our prurient interests, will be fascinated to learn that in the 1920s, Marston and his wife, Sadie Elizabeth Holloway, brought into their home Olive Byrne, Marston's young lover and the niece of Margaret Sanger, one of the most influential feminists of the twentieth century. Young Olive fell in love with Marston when he was her professor and she lived with the Marstons for decades in a shared relationship that yielded four children.

Marston's wife, Sadie, was college educated, and she agreed for her husband's young lover to live in her house only on the condition that she would be the nanny to the Marston children so that Sadie could continue her career in publishing. The two women wrote a regular column for *Family Circle* magazine celebrating conventional family life, even as they secretly enjoyed a most unconventional lifestyle sharing Mr. Marston.



Marston invented the cartoon character, Wonder Woman, and he cleverly worked his feminist beliefs into the pages of the Wonder Woman comic books.

This is a fun book to read and a fascinating history of American life a century ago that most know nothing about. I highly recommend this book!

the information was obtained through [an illegal] interception..."). Under the Texas law, a person commits a crime if she...

(2) intentionally discloses or endeavors to disclose to another person the contents of a wire, oral, or electronic communication if the person knows or has reason to know the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(3) intentionally uses or endeavors to use the contents of a wire, oral, or electronic communication if the person knows or is **reckless** about whether the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

Tex. Penal Code ♦ 16.02(b).

The Austin law firm Noelke English Maples St. Leger Blair, LLP has provided excellent guidance for attorneys that we all should follow:

DO: Advise your clients that they cannot delete, destroy, remove, or otherwise edit electronic data.

DON'T: Take possession of illegally obtained material. If you have it in your possession, read it or listen to it, you may be committing a crime by using it in the preparation of your case.

DO: Advise your clients on the law of intercepting email and other forms of communication. The best policy is to advise your clients NOT to access their spouse's email accounts at all, even if they think they have consent to do so.

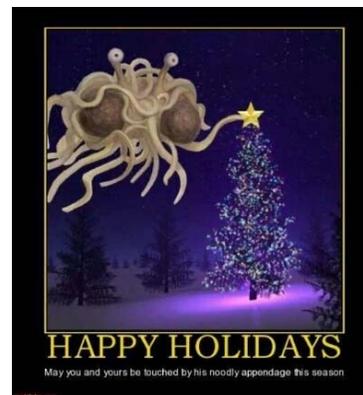
DON'T: Represent a person who has illegally obtained electronic material. Period. It is not worth the risk.

DO: Advise your clients to change all of their passwords. And if you suspect that spyware has been installed, have the computer or phone inspected by an expert.

DON'T: If you have illegally obtained discovery in your possession, don't produce it in discovery without the advice of a criminal defense attorney.

DON'T: Turn over your client's cell phone or computer for copying without a written agreement in place as to how it will be searched. There may be privileged or non-discoverable data on these devices that does not need to be produced.

The next article in this series will describe the most common methods of illegally intercepting or obtaining electronic evidence and what laws are being violated. For example, is it a crime for a husband to guess his wife's g-mail password and printout her e-mails with her boyfriend? Can the lawyer go to jail if she uses or shares those emails? **This is stuff we all need to know and we need to educate our staffs and our clients about these laws, so we all can stay out of trouble.**



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.



Attorney Greg Enos

