



# THE *Voir Dire*

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

A Publication of The Ellis County & District Attorney's Office  
Patrick Wilson—County & District Attorney

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### Did You Know?

- Ellis County is part of the 12-county Dallas-Fort Worth-Arlington Metro Area (DFWAMA) -- one of the largest and fastest growing metro regions in the country.
- The DFWAMA has a population of more than 6.7 million.
- The U.S. Census Bureau estimates Ellis County's population to be 153,969.
- Ellis County's population grew by more than 34% from 2000 to 2010.

## Ann's Crusade Against Criminal Profiteering

I want to take this opportunity to remind law enforcement of the main goal of Chapter 59 of the Code of Criminal Proce-



dure: to deprive criminals of the profits and instrumentalities of crime in a manner that benefits law enforcement and the citizens of the State. *Blessing v.*

*State*, 927 S.W.2d 310 (Tex. App. – Houston [1<sup>st</sup> District.] 1996). A forfeiture petition is a civil action that must be filed by the 30th day after the date of the seizure of the property and contain an affidavit from law enforcement that is supported by probable cause. The affidavit must be turned into our office as soon as possible after seizure. Probable cause for the affidavit is a reasonable belief that a substantial connection exists between the property to be forfeited and the criminal activity defined by the statute. *Antrim v. State*, 868 S.W.2d 809 (Tex. App. – Austin 1993, no

writ). The State must prove by a preponderance of the evidence that the property is contraband and therefore subject to forfeiture. There are statutory defenses to forfeiture of property. Therefore, communication with our office is extremely important. I would welcome the opportunity to come to train with any departments.

~Ann Montgomery-Moran



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## Lee Auvenshine Designated as First Assistant

I am pleased to announce that I have designated Lee Auvenshine as my First Assistant County & District Attorney. To my knowledge, this office has never had a First Assistant.

Lee is a graduate of Baylor University and the Baylor Law School. He has been employed with our office since 2005. His knowledge of the business and administrative components of this office make him an excellent choice for First Assistant. Lee provides legal advice to Ellis County's elected officials



and department heads, and he represents the County and its officials in all types of litigation.

Lee is an active member of our community, serving in leadership positions for several civic organizations. Lee and his family are also active members of the First United Methodist Church of Waxahachie.

Lee is an asset to this office and an asset to our community. I'm proud to call him my First Assistant.

~Patrick Wilson

## Legal Update

**Wade v. State**, Court of Criminal Appeals overruling a 10th Court of Appeals decision (our court of appeals). A person's refusal to cooperate with a police request during a consensual encounter cannot, by itself, provide the basis for a detention or Terry frisk. Because appellant's refusal to cooperate was accompanied only by his extreme nervousness and a game warden's hunch he was up to no good, the warden's stop-and-frisk of appellant violated the Fourth Amendment.

**Sayers v. State**, Officers conducted an unconstitutional search

when, after arresting someone outside of a house, they stood in a flower bed and peered into a kitchen window to find someone to give the arrestee's keys, leading to the discovery of drug activity inside.

**Arguellez v. State**, officers did not have reasonable suspicion to stop the defendant's car based on a report from a city swimming pool manager that a suspicious person was taking photographs of pool patrons from a car whose description matched that of the defendant.



## Police Beat

**Kudos to Sheriff Johnny Brown for Funding the New Magistrates.** We owe Sheriff Johnny Brown a huge thanks for his contribution in making Ellis County a no refusal county. Sheriff Brown graciously offered to pay the newly contracted magistrates out of the Sheriff's forfeiture funds. Without Sheriff's Brown's generosity, the no refusal policy would not have come to fruition. Thank you Sheriff Johnny Brown.

**Kudos to Waxahachie PD for Purchasing Body Cameras.** Waxahachie Police Department is in the process of installing body cameras on all patrol officers and supervisors.

**Kudos to Midlothian PD for the Day in the Prosecutor's Office Program.** Midlothian Police Department implemented, as a part of their officer training program, a day in the prosecutor's office. New officers spend 8 hours in our office observing the prosecution side of law enforcement.

**Congratulations to Kevin Coffey for becoming the new Chief of Maypearl PD.**

**Congratulations to Garland Wolf, formerly of Midlothian PD, for being named the interim Chief of Red Oak PD.**

The Police Beat section is a continuing segment of The Voir Dire. If you or your department would like something included in this section, please submit the announcement to: [voir.dire@co.ellis.tx.us](mailto:voir.dire@co.ellis.tx.us).

## Congratulations to Marlena Pendley



Congratulations to Ellis County & District Attorney Investigator Marlena Pendley. Patrick Wilson proudly presented Marlena with the first annual Multi-Disciplinary Team Member of the Year award from the Gingerbread House (Ellis County Children's Advocacy Center). Marlena is a tireless investigator with a true passion for prosecuting crimes against children. We are proud to have her on our team.

The Gingerbread House provides a child-friendly environment that facilitates a coordinated intervention process reducing further trauma to the child. The goal of the Gingerbread House is to optimize the investigative and prosecution process while providing quality legal, psychological, social, and medical services to abused children. The Gingerbread House also seeks to heighten community awareness.

## Ellis County Becomes A No Refusal County

DWI offenders can no longer refuse to provide a specimen in Ellis County and avoid an analysis of their blood alcohol concentration. Ellis County is now a no refusal county. On November 25, 2013, the Commissioner's Court unanimously approved the Magistrate Services Contracts for Judge Scott Kurth and Judge Bill Scott to be on call outside of normal business hours, i.e. nights, weekends, and holidays, to determine whether sufficient facts justify the issuance of search warrants pertaining to certain alleged intoxication offenses. If the facts justify the issuance of a search warrant, then the magistrate will so issue and a qualified person can

draw the blood. The no refusal policy went into effect on December 1, 2013. During regular business hours, you must use the magistrates and judges already employed by the county or municipality. After-hours, you now have two judges that are incentivized to answer the call. Judge Kurth and Judge Scott will be paid for each affidavit reviewed, whether the warrant is granted or not.

To submit an affidavit for review, complete the electronic form affidavit that has been provided to all of the agencies or a LEADRS warrant affidavit. Have it executed and notarized. Call Judge Kurth or Judge Scott and tell them that

you are sending an affidavit. Email the affidavit to the magistrate. If approved, the judge will email the warrant back to the same address from which it was sent. Print the warrant and have the blood drawn by a qualified person. Be sure to bring an unexpired blood kit. Personnel are available at the Ellis County jail to draw blood. Below is the contact information for the magistrates:

Scott Kurth - 972-978-4225  
[scottkurth@gmail.com](mailto:scottkurth@gmail.com)

Bill Scott - 214-226-6886  
[bi@bjscottattorney.com](mailto:bi@bjscottattorney.com)

## Free TDCAA DWI Training

We are proud to host the **2014 DWI Regional Training Program** at the Waxahachie Civic Center on **April 2, 2014** from 8:30 a.m. to 4:30 p.m. This

is a free seminar providing 6 hours of TCOLE and CLE credit for peace officers and prosecutors. In addition to the excellent training and credit, each atten-

dee will receive two TDCAA publications: *DWI Investigation and Prosecution* and *Traffic Stops*. Save this date on your calendar. We will let you know when registration opens.

## Jokes of the Day

"You seem to be in some distress," said the kindly **judge** to the witness. "Is anything the matter?"

"Well, your Honor," said the **witness**, "I swore to tell the truth, the whole truth and nothing but the truth, but every time I try, some lawyer objects."

"I have good news and bad news," the defense lawyer says to his client.

"What's the bad news?" The lawyer says, "Your blood matches the DNA found at the murder scene."

"Oh, no!" cries the client. "What's the good news?"

"Well," the lawyer says, "Your cholesterol is down to 140." - *Comedy Central*

Q: What do a lawyer and a sperm have in common?

A: Both have about a one in 3 million chance of becoming a human being.

- *Comedy Central*

What do you call a nun who just passed her bar exam?

A sister-in-law. - *Comedy Central*.

## Recently Disposed

**Mahmod Qalawi** - Jury conviction and sentence, **5 yrs** TDC, Agg Assault with a Deadly Weapon.

**Archie Becks** - Jury conviction and sentence, **60 yrs** TDC, Agg Sexual Assault of a Child.

**Edwin Wallace** - Jury conviction and sentence, Interference with Public

duties, **23 days** in the county jail.

**Michele Schmid** - Hung Jury, Interference with Public Duties. **Schmid** pled guilty and received **deferred adjudication**.

**Christy Balistreri** - Jury conviction and sentence, Speeding (Traffic Appeal), **\$200**.

**Jeremy Castillo** - Jury conviction, Aggravated Assault, Agreed to **10 yrs** probated for **10 yrs**.

**Will Richardson, Jr.** - Pled guilty to Agg Assault w/Deadly Weapon/FV, Jury gave **10 yrs** probated for **10 yrs**.

**David Little** - Jury conviction, Fail to ID, **180 days** probated for **2 yrs**.

# Ellis County & District Attorney's Office

## Meet Our Staff

After 17 years of prosecutorial service to Ellis County, Don Maxfield retired as Chief Felony Prosecutor. With big shoes to fill, we are extremely excited about the hiring of Amy Lockhart as our new Chief Felony Prosecutor.

Amy's passion and enthusiasm for prosecution and justice are immediately evident upon your first meeting with her. Amy quickly moved through the ranks of the Hays County District Attorney's Office in San Marcos, working closely with the Hays County Narcotics Task Force and Gang Task Force. Amy found her calling in the Family Justice Division, specializing in felony family violence and crimes against children. Amy forged her reputation in the courtroom as a fearless and zealous advocate for all victims. In 5 years, Amy

tried 42 felony jury trials, losing only 1. Her trial experience includes all manner of felonies including capital murder, abusive infant head trauma, and child sexual abuse cases. One of her most famous jury trials was the conviction of Guru Shree Swami ji, for indecency with a child. Swami ji was considered a god among his followers at Barsana Dahm, a multi-million dollar cult-like sect of the Hindu religion. He was fiercely defended by a high profile defense team of no less than 14 lawyers, but justice prevailed. Although new to Ellis County, Amy is no stranger to North Texas. She grew up in Dallas and got her bachelor's degree from Austin College in Sherman. We are glad that she decided to come home.



Amy Lockhart  
Chief Felony Prosecutor  
972-825-5035  
[amy.lockhart@co.ellis.tx.us](mailto:amy.lockhart@co.ellis.tx.us)

## Merry Christmas!



As 2013 comes to a close and a new year approaches, I would like to thank everyone in law enforcement, your personnel, your families, and all those affected by your sacrifice, for making Ellis County a safe and secure place to live. Without your commitment, dedication and hard work, Ellis County would not be the wonderful county we know and love. I hope you and yours have safe holidays and enjoy the blessings of the times. For me and my family, the season's greeting is "Merry Christmas!" Whatever your faith I wish you the best during the season and look forward with grand expectations to a great and prosperous 2014.

~ Patrick Wilson

### Meaning of Success

"Success: To laugh often and much, to win the respect of intelligent people and the affection of children, to earn the appreciation of honest critics and endure the betrayal of false friends, to appreciate beauty, to find the best in others, to leave the world a bit better, whether by a healthy child, a garden patch, or a redeemed social condition; to know even one life has breathed easier because you have lived. This is to have succeeded!"

~ Ralph Waldo Emerson