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Derivatives of *Marbury v. Madison*

By Phillip M. Herr, Herr Legal Consulting, PLLC. Photos courtesy of Wikipedia.com.

Mathematical calculus teaches that the derivative of x^2 is $2x$. Have you ever wondered or considered the derivatives of Chief Justice John Marshall's opinion in *Marbury v. Madison*? In *Marbury*, the Supreme Court ruled that it lacked original jurisdiction to consider William Marbury's writ of mandamus, requesting the Court to compel James Madison (then Secretary of State) to deliver Marbury's commission as a justice of the peace. *Marbury v. Madison*, 5 U.S. (1 Cranch) 138 (1803). As a historical explanation to the citation, Judge William Cranch was the Second Reporter for the decisions of the United States Supreme Court from 1801 to 1815.

In the case, the Court analyzed the

constitutionality of Section 13 the Judicial Act of 1789 (Act), permitting the mandamus as original jurisdiction. The Court ruled Section 13 of the Act void. *Marbury*, 5 U.S. at 179. One of Justice Marshall's often cited quotes in the case is "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury*, 5 U.S. at 177.

Setting aside the issue of a strict constructionist or an original intent approach to constitutional interpretation, some legal scholars have suggested that, perhaps, Justice Marshall's rationale might have been derived from one of Alexander Hamilton's writings from the *Federalist Papers*. In *Federalist* 78, Alexander Hamilton wrote the

following:

The interpretation of the laws is the proper and peculiar province of the courts. A constitution is in fact, and must be, regarded by the judges as fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body.

Taking it one step further, what was the background of Alexander Hamilton's *Federalist* 78? Author Ron Chernow, who wrote a biography of Alexander Hamilton, explained that "[Hamilton] introduced an essential concept never made explicit in the Constitution: that the Supreme Court should be able to review and overturn legislation as unconstitutional." According to Chernow, at

Marbury v. Madison continued on page 3.

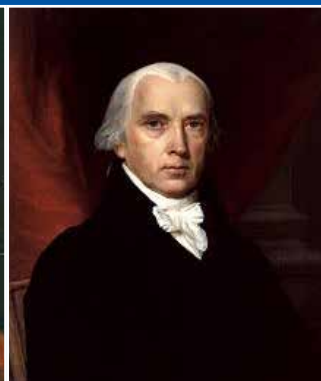
Chief Justice John Marshall



William Marbury



James Madison



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From the President

One of my fundamental goals is to help us better our society with the next generation. To quote the late Whitney Houston, "I believe that children are our future...."

Judge Kimberly McCary and Ken Metcalf recently took me on a tour through the juvenile holding center and discussed with me the special youth population housed there. About 35 children reside there on an average of six months. Most of these children do not know how our society is structured or what branches of government do what. They don't have a good basis to appreciate the rights we all have as citizens. Yet, they long to learn this, and it is crucial to learn it if they are to truly appreciate our great society and, more importantly, stay out of trouble and become a productive member of our treasured society.

Hence, we want these kids to return to class. Using the iCivics program, created and promoted by the foundation formed by retired Supreme Court Justice Sandra Day O'Connor, attorneys will volunteer to go through the games, instruction, and other interactive studies that iCivics has to offer. The programs are designed for school age children (and even adults) of all levels to experience and learn about our structured society and government.

This project will be a WIN (attorneys)-WIN (children)-WIN (society):

1. Attorneys can return their time to the community by

spending time with, and educating, children who have the potential to do good in their society;

2. These children will see and feel caring professionals and pillars of society actually interacting with them on a meaningful level; and
3. By planting the seed, these children will have a greater chance of success upon their release to be positive contributors to our society.

More to come about Return to Class as the program unfolds over the next couple of months. If you are compelled to work with me on this, please contact me over the next couple of weeks (ted@OMGsettle.com). Let's make a difference in our future!



Theodore D. Ogilvie, President

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DCBA Sections

• Trial Lawyer's Association

• Family Law Section

• Greater Denton County Young

Lawyers Association

• Real Estate, Trust, and Probate

Law Section

• Criminal Law

DCBA Membership

**Your DCBA Membership
includes**

- Free and discounted CLE programs
- Monthly luncheon & happy hour
- Networking opportunities
- Listing on the bar website, including photo, two practice areas, and a link to your website.

For more information see our website: www.dentonbar.com.

Section Announcements

REPTL Section Announcements

New officers were elected at the May 2013 REPTL meeting after longtime chair, Mark Sutherland, made good his threat to retire after ten years. Virginia Moore will schedule speakers, while Andrea Timmons will continue to serve as Vice Chair. Scott Bodkin will manage the books and records as Secretary Treasurer. The Fall lineup of speakers is going to be great. Please make plans to join us at Oakmont Country Club on the 4th Wednesday of each month (unless otherwise advised). An hour's worth of free CLE is available for the cost of a great lunch!

Fall Speakers

- September 25: Cynthia Bishop, "Environmental Issues in Real Estate and Probate"
- October 23: Jim Roberts, "Finding Your Way in the New Estates Code Taking Effect 2-1-2014"
- November 20: Scott Bodkin, "Advising Real Estate and Trust Clients on Minimizing the Effects of the 3.8% Tax of the Affordable Care Act of 2010"
- December 18: Robert Stack, "Updating Records Accessibility and Online Filing Requirements"

Membership applications are due on September 1, 2013 and can be obtained on the DCBA website. Dues are \$15.00.



Have you liked the DCBA page or joined our group on Facebook yet?

Come join your colleagues for up-to-the-minute information.

Like our PAGE: www.facebook.com/DentonBar
Join our GROUP: www.facebook.com/groups/DentonBar

Transitions to Practice Mentoring Program Announcements

Applications are available now for the 2013-2014 Transitions to Practice Mentoring Program. The inaugural year was a great success. Our program will continue to support and mentor new and transitioning lawyers, emphasizing setting up and managing a law practice, attracting and managing clients, and establishing relationships within the Denton County Bar, including with judges, court staff, and seasoned lawyers.

This year the program will also offer three substantive law tracks, one for probate, a second for CPS Ad Litem appointments and a third for criminal law. Many of the Denton County Judges are implementing a requirement for court appointments that a new or transitioning attorney work with a mentor and attend certain CLE programs, all of which will be offered by the Transitions Program.

Group meetings will be held on the 2nd Friday of each month from September 2013 through May 2014. Individual mentor-mentee get-togethers will be at the convenience of the parties throughout the year.

Membership applications are due on September 1, 2013 and can be obtained on the DCBA website.

Marbury v. Madison continued from page 1.

Philadelphia, delegates had concentrated on the question of state versus federal courts, not whether courts could invalidate legislation; whereas Hamilton was especially intent that the federal judiciary check any legislative abuses.

Regardless of whether Justice Marshall's rationale is derived from Hamilton's theory of the role of the judiciary, *Marbury v. Madison* is a landmark decision, establishing the authority of judicial review in U.S. jurisprudence.

Membership Application

Required Information (for directory, membership, and website use)

Name: _____ Texas Bar Number: _____
Business Phone: _____ Facsimile: _____
Firm/Company: _____
Business Address (including City & Zip Code): _____
Email/Web Address: _____
Texas Board Certifications (TBLS): _____
Law School/Graduation Date: _____
List All Other Degrees: _____

If you are younger than 37 years OR have practiced in Texas for less than 5 years, please check here ☐

Primary Areas of Practice* (select two):

** Having two areas of practice listed in the web directory is included in the fee for bar membership. If you would like three to five areas of practice listed, there is an additional \$75.00 posting fee. Choose from the following:*

- | | | | | |
|--------------------------------------------------|---------------------------------------------------|----------------------------------------------------|------------------------------------------------------|------------------------------------------------|
| <input type="checkbox"/> Administrative & Public | <input type="checkbox"/> Construction | <input type="checkbox"/> Family | <input type="checkbox"/> Juvenile | <input type="checkbox"/> Public Utility |
| <input type="checkbox"/> ADR | <input type="checkbox"/> Consumer | <input type="checkbox"/> Finance | <input type="checkbox"/> Labor-Employment | <input type="checkbox"/> Real Estate |
| <input type="checkbox"/> Antitrust | <input type="checkbox"/> Creditor-Debtor | <input type="checkbox"/> Government/Administrative | <input type="checkbox"/> Law Office Management | <input type="checkbox"/> School Law |
| <input type="checkbox"/> Appellate | <input type="checkbox"/> Criminal | <input type="checkbox"/> Health Care | <input type="checkbox"/> LGBT Law | <input type="checkbox"/> Securities Law |
| <input type="checkbox"/> Aviation | <input type="checkbox"/> Elder Law | <input type="checkbox"/> Immigration | <input type="checkbox"/> Litigation: Commercial | <input type="checkbox"/> Social Security Law |
| <input type="checkbox"/> Bankruptcy | <input type="checkbox"/> Entertainment | <input type="checkbox"/> Insurance | <input type="checkbox"/> Litigation: Personal Injury | <input type="checkbox"/> Taxation |
| <input type="checkbox"/> Business | <input type="checkbox"/> Environmental | <input type="checkbox"/> Intellectual Property | <input type="checkbox"/> Military | <input type="checkbox"/> Technology |
| <input type="checkbox"/> Collaborative Law | <input type="checkbox"/> Ethics-Legal Malpractice | <input type="checkbox"/> International | <input type="checkbox"/> Oil & Gas | <input type="checkbox"/> Wills-Trusts-Probate |
| | | | <input type="checkbox"/> Other | <input type="checkbox"/> Workers' Compensation |

Optional Information

Home Address: _____
Home Phone: _____ Birthdate: _____
Spouse's Name: _____ Number of Attorneys in Firm: _____
Date Licensed in Texas: _____
Other State Bar Admissions/Dates/License Numbers: _____
Do you speak a foreign language? _____ If yes, what language: _____

If you would like to post your photograph on the DCBA website, email your photo to Erin Manley at emanley@dentonbar.com. The website will be updated periodically throughout the membership year.

Application Certification

I, the undersigned, do hereby make application to the Denton County Bar Association for membership and, in making such application, I certify that I am validly licensed to practice law or am a law student of an accredited law school, that I promise to uphold and support the By-Laws of the Association and the Texas Disciplinary Rules of Professional Conduct in all respects and to the best of my personal and professional ability, that all information provided by me in this application is true and correct.

Signature of Applicant: _____ Date: _____

Application Submission

Please mail this application along with a check made payable to **Denton County Bar Association** in the amount of **\$195.00** or **\$150.00** (licensed in Texas less than two years) to DCBA at 512 W. Hickory, Suite 202, Denton, TX. 76201. Please DO NOT include Collaborative Law, Family Law, Criminal Law or Real Estate, Probate, and Trust Law Section dues with your DCBA payment. The DCBA membership year runs from May to May and dues are not pro-rated.

If you have any questions about the DCBA, please call the Denton County Bar Association at 940-320-1500. Visit our website at www.dentonbar.com/membership.shtml.

Adoption Day

Not everyone can adopt a child, but everyone can help a child!

Mark your Calendar!

Join us on November 1 to be a part of and witness an incredible event!

Denton County Adoption Day Needs Your Support



In November, children who have been removed from harmful environments will officially become a part of their new families as Denton County conducts its fifth annual Adoption Day. To show your support and change a child's life, please consider becoming a sponsor. Please contact Victor Rivera at victor@riveralegalgroup.com or 214-646-3236.

Gold Heart Sponsorship, \$2,500

- ♥ Acknowledgement in media publications & 1/4 page ad in the Denton County Lawyer
- ♥ Sponsor name printed on the official Adoption Day T-shirt
- ♥ Recognition and link to your website on our facebook page
- ♥ Recognition on signage at the event
- ♥ Banner presence at the event (please provide your banner)
- ♥ Booth at the event

Silver Heart Sponsorship, \$1,000

- ♥ Acknowledgement in media publications & 1/4 page ad in the Denton County Lawyer
- ♥ Sponsor name printed on the official Adoption Day T-shirt
- ♥ Recognition on signage at the event
- ♥ Banner presence at the event (please provide your banner)

Red Heart Sponsorship, \$500

- ♥ Sponsor name printed on the official Adoption Day T-shirt
- ♥ Recognition on signage at the event
- ♥ Recognition on our facebook page

Big Heart Sponsorship, \$250

- ♥ Recognition on signage at the event
- ♥ Recognition on our facebook page



Denton County Adoption Day is a combined community service project of the Denton County Bar Association, CASA, and CPS. www.facebook.com/dentoncountyadoptionday

Announcements & Events



.....
*File court documents anytime,
anywhere with TexFile, Texas'
secure, cost-effective e-filing system*
.....

E-filing will be mandatory in all non-juvenile civil cases in the district courts, statutory county courts, constitutional county courts, and statutory probate courts. Denton County's start date for mandatory e-filing is January 1, 2014.

There will be several training opportunities for attorneys and their staff, and the training schedule is already online at www.textfile.com. The schedule includes both filer and reviewer training. Attorneys and staff will need to use the filer training.

Sherri Adelstein and her staff will conduct a Q&A session in the Jury Assembly Room on Wednesday, August 28, 2013 at 4:30 p.m. (The Jury Assembly Room is located on the second floor at the Denton County Courthouse.) This is your chance to gain valuable information on TexFile and e-filing, in general.



SAVE THE DATE

Friday, November 1

If anyone is interested
in sponsoring or
volunteering, please
contact

Victor Rivera

Victor@riveralegalgroup.com.

35TH ANNUAL

TexasBarCLE

Advanced Real Estate Law

COURSE

Limited to the first 30 to register!

HIGHLIGHTS

- Texas Homestead Laws
- UCC Related Foreclosure Matters
- Involuntary Liens Against Real Estate
- Practical Aspects of Insurance: 10 Things You Wish You Had Known
- Technology Tips for the Real Estate Practitioner
- Annotated Leases: ACREL
- Tales from the Hinterlands: Really Weird Laws Affecting Real Estate
- Mechanics Liens Against Lease Hold Estates
- 1/2 Day Breakout Sessions on Lending Issues and Mineral Issues

Mail payment (payable to "Law Office of Ruth Brock") to
4880 Long Prairie Road, Suite 110, Flower Mound, TX 75028

Please provide your email address for future communication and
your preference of USB Drive or Hard-Copy (2 notebooks).

Lunch Box Sandwiches available for \$15 additional (includes tip
and delivery). You will be contacted via email before August 28th
for your order.

Only \$375

**August
28, 29, 30**

Sessions begin 8:30 am

Sponsored by the Denton County Bar Association.
Hosted by The Law Office of Ruth Brock

MCLE CREDIT | 17.5 HOURS (3.5 ETHICS)
MCLE No: 901259153

September Bar Luncheon

Date:

Friday, September 6

Location:

Oakmont Country Club

Program:

Yes, Your Clients Own Trademarks (and Copyrights, Patents, Trade Secrets): IP Issue Spotting

Speaker:

Tamera Bennett

CLE: Course Number: 90268793,
0.75 hours in IP

October Bar Luncheon

Date:

Friday, October 4

Location:

Oakmont Country Club

Program:

To be Announced

Speaker:

To be Announced

CLE: *To be Announced*

Upcoming Activities!

August 2013

DCAP Sign-up Party

September 2013

Chili Cook Off (Family Friendly)

October & November 2013

UNT Tailgates

December 2013

Tree Lighting & Holiday Party

February 2014

Court Staff Appreciation Day

March 2014

DCAP Thank You Party (Family Friendly)

April 2014

Bench Bar

Monthly Meetings

Collaborative Professionals

DCCP will meet at **12:00 PM** on Tuesday, **September 3**, at Oakmont Country Club, 1901 Oakmont Dr. in Corinth.

Family Law

The Family Law Section will meet at **12:00 PM** on Thursday, **August 15**, in the Central Jury Room, 1450 E. McKinney St. in Denton.

Paralegals

DCPA will meet at **12:00 PM** on Thursday, **August 22**, at Oakmont Country Club, 1901 Oakmont Dr. in Corinth.

DCYLA

DCYLA will gather for their monthly meetings on the first Thursday of each month. Contact Jill Jester at jjester@minorandjester.com for meeting times and location.

REPTL

The REPTL Section will not meet during the summer. The next meeting will be Wednesday, **September 25**.

Transitions to Practice

The Transitions group will not meet during the summer. Mentors and mentees are encouraged to sign up. The next meeting will be Friday, **September 13**. Contact Virginia Moore for more information.