



March 2017

Vol. 34, No. 3

# THE DICTA

## The Docket

March 1 (Wednesday)

DAYL Judiciary Committee Meeting  
Noon, Belo Mansion

March 1 (Wednesday)

DAYL Dallas Ripple Committee Meeting  
6:00 p.m., Manny's Uptown (Oak Grove location)

March 1 (Wednesday)

DAYL Law Student Assistance Committee Meeting  
6:30 p.m., Manny's Uptown (Oak Grove location)

March 3 (Friday)

DAYL Assisting Lawyers in Transition Committee Meeting  
Noon, Desperado's

March 6 (Monday)

DAYL Social Committee Meeting  
6:00 p.m., HG Sply Co.

March 6 (Monday)

DAYL Young In-House Counsel Committee Meeting  
6:30 p.m., Simon | Paschal Law Firm

March 8 & 9 (Wednesday and Thursday)

DAYL Mock Interview Program  
5:30 p.m., Belo Mansion

March 9 (Thursday)

DAYL Pro Bono Partners Committee Meeting  
Noon, Belo Mansion

March 9 (Thursday)

DAYL CLE: How to Pick a Jury Part II: Educate the Jurors  
Noon, Belo Mansion

March 13 (Monday)

DAYL Awards Deadline  
5:00 p.m.

March 13 (Monday)

DAYL Charity Ball Committee Meeting  
6:30 p.m., Duffee + Eitzen

March 14 (Tuesday)

DAYL Board of Directors Meeting  
6:00 p.m., Belo Mansion

March 15 (Wednesday)

DAYL Beyond the Book Club Meeting  
6:30 p.m.

March 16 (Thursday)

DAYL Animal Welfare Committee Meeting  
Noon, Belo Mansion

March 21 (Tuesday)

DAYL Politically Aware Committee Meeting  
6:30 p.m., KoonsFuller

March 17 (Friday)

DAYL Lawyers Against Domestic Violence Committee Meeting  
Noon, Belo Mansion

March 21 (Tuesday)

DAYL Elder Law Committee Meeting  
Noon, Belo Mansion

## DAYL Social with the Judges

**T**he DAYL Judiciary and Social Committees invite you to attend their annual Social with the Judges on **Thursday, March 30, 2017**, beginning at 5:30 p.m. The event will be held on the rooftop of **NYLO Southside**, located at 1325 South Lamar Street in the South

Lamar / Cedars neighborhood.

The DAYL Judiciary Committee has invited members of our esteemed judiciary to attend this event and is looking forward to providing an opportunity for young lawyers to meet and mingle with the attending judges. We hope to see you there!

## How to Pick a Jury - Educate the Jurors

**J**oin the DAYL for the second installment of "*How to Pick a Jury*." The first installment, held in December 2016, emphasized the importance of building a rapport with your potential jurors. Part II of this program will focus on how to educate those jurors on your case and your burden of proof during voir dire.

The DAYL CLE Committee has rounded up another all-star cast to impart their wealth of knowledge and well-honed strategies for educating your potential jurors:

- **Nicole Knox** (Law Office of Nicole Knox);
- **Andy Sommerman** (Sommerman, McCaffity & Quesada); and
- **Trey Cox** (Lynn Pinker Cox & Hurst, LLP).

The one-hour CLE will take place on **Thursday, March 9, 2017** at noon at the Belo Mansion. There is no charge for DAYL members to attend. Non-members may attend for \$10. Parking is available at the Belo Mansion and lunch is available for purchase.

RSVP here.

## SAVE THE DATE

**DAYL Trial Skills Boot Camp**  
**Opening Statements and**  
**Closing Arguments**  
**June 10, 2017**  
**8:30 a.m. - 1:30 p.m.**  
**Awards Brunch to Follow**

**DAYL Solo & Small Firm Summit**  
**April 29, 2017**  
**8:30 a.m. - 3:00 p.m.**  
**Happy Hour to Follow**

March 21 (Tuesday)

DAYL Mock Interview Program  
11:45 a.m. - 12:45 p.m. and 5:30 - 7:30 p.m.,  
UNT Dallas College of Law

March 21 (Tuesday)

DAYL Aid to the Homeless Committee Meeting  
6:00 p.m., Belo Mansion

March 22 (Wednesday)

DAYL Equal Access to Justice Committee Meeting  
Noon, Belo Mansion

March 23 (Thursday)

DAYL CLE Committee Meeting  
Noon, Belo Mansion

March 27 (Monday)

DAYL Membership Committee Meeting  
Noon, Belo Mansion

March 28 (Tuesday)

DAYL Lawyers Promoting Diversity Committee Meeting  
Noon, Belo Mansion

March 30 (Thursday)

DAYL Coffee with the Court of Appeals  
8:00 a.m., George Allen Courthouse

March 30 (Thursday)

DAYL Social with the Judges  
5:30 p.m., NYLO Southside

# THE DICTA

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Copy Deadline for April Issue:

**March 15, 2017**

**Alex Bolton**

Email: [abolton@duffee-eitzen.com](mailto:abolton@duffee-eitzen.com)

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## From the President

# A Call to Service



Paul W. Simon

**S**tarting April 1 (no fooling), the **2016 DAYL Leadership Class** kicks off its class project, **DAYL April Adventures**. DAYL April Adventures is a service-oriented competition designed to help Dallas young professionals connect with and serve organizations in various areas of need throughout the city that align with their passions. There are more details about the project on page 3 of this month's *Dicta*, but the general idea is that over four weekends in April, DAYL members are encouraged to volunteer in the community. Members will be exposed to the numerous volunteer opportunities Dallas provides in the areas of youth, education, social services, and health.

Bucking the somewhat recent trend of leadership classes hosting fundraising events, the 2016 DAYL Leadership Class brings back the old school mentality of rolling up your sleeves and getting to work. One of the stated purposes of the Dallas Association of Young Lawyers is to improve the community. What better way to improve the community than volunteering for DAYL April Adventures?

DAYL April Adventures comes on the heels of one of the more inspirational demonstrations of service that I have witnessed in a long time. As you likely know, President Trump signed an executive order at the end of January that locally resulted in the detention of numerous people flying from specific Middle Eastern countries to DFW Airport. Concerned with ensuring these detained individuals' legal rights were known and protected, numerous DAYL members and other Dallas attorneys spent their weekend and the following weeks at DFW

Airport providing pro bono legal services. Politics aside, these lawyers' servant mentality is commendable and my wish for DAYL is that we serve every day with the same passion and willingness as those who went to DFW Airport.

In addition to DAYL April Adventures, DAYL has several committees that organize and provide opportunities to serve and make the community better. The **Generation Generosity** committee has community service opportunities planned at the Community Partners – Back to School Drive, Dallas Ramp Project, and Mosaic. More information on those opportunities will follow in subsequent *Dicta* publications, as well as e-mail. The **Animal Welfare** and **Lawyers Against Domestic Violence** committees are exploring an initiative to build animal shelters to temporarily house pets of domestic violence victims. Studies show that domestic violence victims often refuse to leave their domestic situation because many shelters do not allow the victims' pets to accompany them. More details will follow on this initiative as well.

As the year ramps up, I encourage you to roll up your sleeves and help improve our community.

*Paul W. Simon is a Founding Partner at Simon Paschal PLLC practicing in Labor & Employment Law.*

## DAYL ONE TO WATCH

**Andrea Perez** has been selected as the March 2017 DAYL One to Watch! To find out why, visit [www.dayl.com](http://www.dayl.com).

## DAYL 2016 Leadership Class Presents: April Adventures!

**T**he DAYL Leadership Class of 2016 is very excited to present DAYL April Adventures! April Adventures is a service-oriented competition designed to help Dallas young professionals connect and serve with organizations in various areas of need throughout the city that align with their passions and with which we hope volunteers will form long-lasting relationships. Four core volunteering sectors have been selected -- youth, education, social services, and health, but volunteers are encouraged to volunteer everywhere and anywhere during the month of April to earn points!

Register for the competition and volunteer either by yourself, with your friends,

or with your co-workers. Participants can form their own team or can join an existing team.

Time spent volunteering at April Adventures' approved events on Saturdays during April (April 1, April 8, April 22, and April 29) will earn the most points, but participating in 'bonus' volunteer events during April will rack up even more points. In the first week of May 2017, the Leadership Class will host a fun celebration to honor those who volunteered and recognize the highest-scoring teams and individuals who helped keep Dallas #StrongerTogether!

For more information about April Adventures, find us on Facebook or email **Cherie Harris** ([cherieh@dayl.com](mailto:cherieh@dayl.com)).



## DAYL's Lawyer on Loan Program Accepting New Round of Applications

**W**ant courtroom experience? Want to pick a jury? If you don't already have these opportunities, please consider applying for DAYL's Lawyer on Loan Program. Lawyer on Loan helps young lawyers gain valuable courtroom and trial experience. Lawyers selected to participate will be supervised by experienced prosecutors and have the opportunity to try minor criminal offenses to juries and to judges. Participants will

be responsible for reviewing case files set for trial, selecting a jury, giving opening statements, examining the witnesses, preparing jury charges, and making closing arguments and will work under the supervision of a city prosecutor. Lawyers must commit a minimum of one day a week for this four-month rotation with one of the participating cities or counties.

Applications are now available for the May - August 2017 rotation with the City

of Dallas, City of Plano, or County of Rockwall. Applications are due no later than March 31, 2017 at 5:00 p.m., and can be found at [www.dayl.com](http://www.dayl.com).

Future 2017 opportunities include: (1) July - December 2017 rotation with the City of Carrollton or Royse City; and (2) September - December 2017 with the City of Dallas, City of Plano, or County of Rockwall. Be on the lookout for those announcements later in the year!

The Texas Young Lawyers Association (TYLA) needs judges for this year's National Trial Competition finals to be held in Fort Worth on March 23-24. Each year, TYLA and the American College of Trial Lawyers (ACTL) jointly plan and host the National Trial Competition. It is the nation's largest and most prestigious mock trial competition with over 300 law student teams competing in 14 regions across the country. The top 2 teams of each region – 28 teams total – are invited to compete in the national finals. TYLA is looking for lawyers with trial and litigation experience to judge the preliminary rounds, scheduled as follows:

- ROUND 1: 8:15 a.m. to 12:00 p.m. on Thursday, March 23, 2017;
- ROUND 2: 1:15 p.m. to 5:00 p.m. on Thursday, March 23, 2017; and
- ROUND 3: 8:15 a.m. to 12:00 p.m. on Friday, March 24, 2017.

All necessary materials will be provided prior to the round. Additionally, each attorney can also receive 3 hours of CLE self-study credit for being a judge. If you're interested in judging, please sign up directly at [www.SignUpGenius.com/go/5080D49ACA92DA7FC1-preliminary](http://www.SignUpGenius.com/go/5080D49ACA92DA7FC1-preliminary) or email [ntcjjudges2017@gmail.com](mailto:ntcjjudges2017@gmail.com), and TYLA will add you to any round (or rounds) that works for your schedule.

# DAYL Calls for Nominations for Prestigious Awards

- **Outstanding Young Lawyer Award** - Recognizing a young lawyer who is 36 years of age or younger as of June 1, 2016 and who is licensed in Texas in good standing with the State Bar. The DAYL Awards Committee will consider all outstanding qualities of a nominee, including (1) exemplified professional proficiency; (2) service to the profession; and (3) service to the community.
- **Liberty Bell Award** - Recognizing a non-lawyer of any age who has made a selfless contribution to the community by strengthening the effectiveness of the American system of justice. Criteria to be considered include someone who: (1) promotes a better understanding of our form of government, especially the Bill of Rights; (2) encourages greater respect for the law and the courts; (3) stimulates a deeper sense of individual responsibility; (4) contributes to the effective functioning of our institutes of government; and (5) instills a better understanding and appreciation of the rule of law.
- **Outstanding Mentor Award** - Recognizing a lawyer in Dallas who has consistently demonstrated a commitment to mentoring young lawyers. Nominees must be licensed to practice law in Texas and in good standing with the State Bar. Criteria to be considered include: (1) service as a role model to young lawyers; (2) fostering the development of young lawyers; and (3) significant contributions to the profession and/or the community.

Nominations may be made by individuals, groups of individuals, or organizations. The nomination deadline for each award is **March 13, 2017** and nomination forms are located at <http://dayl.com/awards/>. Questions? Email **Jennifer Ryback** ([jryback@mcsllaw.com](mailto:jryback@mcsllaw.com)).

## DAYL Coffee with the Court of Appeals

DAYL presents Coffee with the Court with the **Honorable Craig Stoddart**, Justice of the Court of Appeals for the Fifth District of Texas at Dallas. The DAYL Judiciary Committee welcomes DAYL members to join Justice Stoddart and several briefing attorneys on **Thursday, March 30**, at 8:00 a.m. at the Fifth District Court of Appeals to discuss practical advice for appearing before the court. You will not want to miss this opportunity to join a Dallas native, seasoned appellate attorney, and now Place-5 appellate judge for a discussion focused on appellate practice as well as dos and don'ts for the Dallas Court of Appeals.

This program is scheduled to be an hour in length and attendees will receive CLE credit. Space is limited. RSVP to **Cherie Harris** ([cherieh@dayl.com](mailto:cherieh@dayl.com)).

## Work/Life Balance: Myth or Reality?

For working lawyer moms, is there a such thing as work-life balance or it is just a myth that defies reality? The DAYL Moms in Law committee will examine this elusive quest for happiness at home and work as they host a program on **Thursday, April 20th** at noon at the Belo Mansion.

Join us to hear from a panel of experienced "moms in law" at the top of their careers who seem to have it all figured out (or at least make it work). They'll be sharing advice, funny anecdotes, and time management tips. Don't miss out on this chance to feel connected and learn some life hacks – whether you're a mom of six, one, or a mom-to-be.

RSVP to **Cherie Harris** ([cherieh@dayl.com](mailto:cherieh@dayl.com))

The DAYL Law Student Assistance Committee is seeking volunteers to conduct mock interviews with law students at Texas A&M School of Law and UNT Dallas College of Law. By serving as a mock interviewer, you will be helping law students prepare for their upcoming interviews for summer internships and clerkships. The interviews will be held as follows (click the link to sign up):

A&M Mock Interviews at the Belo Mansion (March 8 & 9, 5:30 – 7:30 p.m.):  
[www.SignUpGenius.com/go/20F094BAAA923A2F94-texas](http://www.SignUpGenius.com/go/20F094BAAA923A2F94-texas)

UNT Dallas Mock Interviews (March 21, 11:45 a.m. – 12:45 p.m. & 4:45 p.m. – 5:50 p.m.):  
[https://unt.az1.qualtrics.com/SE/?SID=SV\\_9WyX4nb6GCPqccZ](https://unt.az1.qualtrics.com/SE/?SID=SV_9WyX4nb6GCPqccZ)

# Tools for Property Owners in Defending Personal Injury Litigation: Use of the Texas Recreational Use Statute

by David A. Johnson

**S**everal decades ago, in order to encourage landowners to allow others to perform recreational activities on their land, the Texas Legislature enacted legislation that would protect those landowners from lawsuits filed by individuals injured while engaged in recreation on their property. The statute, commonly called the Texas Recreational Use Statute (“TRUS”), is contained within Chapter 75 of the Texas Civil Practice & Remedies Code and has been amended many times over the years to broaden the scope and protections afforded to property owners under the law.

The TRUS states that “[i]f an owner, lessee, or occupant of real property other than agricultural land gives permission to another to enter the premises for recreation, the owner, lessee, or occupant, by giving the permission, does not: (1) assure that the premises are safe for that purpose; [or] (2) owe to the person to whom permission is granted a greater degree of care than is owed to a trespasser on the premises.” TEX. CIV. PRAC. & REM. CODE § 75.002(c)(1)-(2). Of course, the language of this statute raises several questions, amongst them: (1) who is covered under the statute?; (2) what is considered “recreation” under the statute?; and (3) how do the courts apply the elevated standard addressed in § 75.002(c)(2). This article will address these three questions.

## • Who is Covered Under the Statute?

The purpose of the statute is to encourage public recreation on private property. As stated by the Texas courts, “[t]he legislature enacted the statute to encourage a possessor of land to allow persons whom he would not otherwise invite as social guests to enter his land for recreational purposes free of charge. The recreational user’s price for this new right of entry is the acceptance of a lower standard of care.” *Lipton v. White*, 902 S.W.2d 598 (Tex. App.—Houston [1st Dist.] 1995, no pet.).

The TRUS therefore specifically states that it only applies to recreational use properties when the property owner (1) does not charge for entry to the premises; (2) charges for entry to the premises, but whose total charges collected in the previous calendar year for all recreational use of the entire premises of the owner, lessee, or occupant are not more than 20 times the total amount of ad valorem taxes imposed

on the premises for the previous calendar year; or (3) has liability insurance coverage in effect on an act or omission described by Section 75.004(a) and in the amounts equal to or greater than those provided by that section. TEX. CIV. PRAC. & REM. CODE § 75.003(c).

## • What is Considered “Recreation” Under the TRUS?

Under § 75.001(3), the Legislature has set forth a laundry list of activities that would be considered “recreation” under the statute. Among these activities are many that you would expect: hunting, fishing, camping, hiking, etc. The Legislature has also expanded the list to include some activities that may not jump to mind when thinking of “recreation” in Texas: radio control flying, disc golf and cave exploration. In addition to these specifically enumerated “recreational” activities, the Legislature has included a catch-all provision in the definition of “recreation,” stating that “recreation” encompasses “any other activity associated with enjoying nature or the outdoors.”

As can be imagined, it is this “catch-all” definition that has received the most attention in the courts. Generally speaking, the courts have applied a relatively liberal interpretation of the catch-all provision in order to give credence to the statute’s purpose of encouraging property owners to allow public recreational use on their properties. For example, the following activities are all covered under the catch-all definition of “recreation”: playing on and watching children play on playground equipment, *Kopplin v. City of Garland*, 869 S.W.2d 433, 441 (Tex. App.—Dallas 1993); playing beach volleyball on outdoor sand court, *Unin. of Tex. Health Sci. Ctr. at Houston v. Garcia*, 346 S.W.2d 220 (Tex. App.—Houston [14th Dist. 2011, no pet.); walking from clubhouse after round of golf, *City of Plano v. Homoky*, 294 S.W.3d 809 (Tex. App.—Dallas 2009, no pet.). However, in a rare set-back for the liberal interpretation of this definition, the Texas Supreme Court recently held that the TRUS did not apply to a plaintiff who was injured while waiting for her daughter after watching the daughter compete in an outdoor soccer match. *Unin. of Tex. at Arlington v. Williams*, 459 S.W.3d 48 (Tex. 2015). In a split decision, the Court’s majority found that the act of watching competitive soccer was not “enjoying nature,” as contemplated by the

statute; therefore, TRUS did not apply to plaintiff’s claims.

## • How do the Courts Apply the Elevated Standard Addressed in § 75.002(c)(2)?

As referenced above, the TRUS states that property owners only “owe to the person to whom permission is granted a greater degree of care than is owed to a trespasser on the premises.” TEX. CIV. PRAC. & REM. CODE § 75.002(c)(2). The statute is silent, however, on how to interpret and apply this standard. Therefore, the courts have consistently held that the same standard that would apply to trespassers under established Texas common law applies under the statute.

Under Texas common law, a landowner “is not liable for injury to trespassers caused by his failure to exercise reasonable care to put his land in a safe condition for them, or to carry on his activities in a manner which does not endanger them.” *State v. Shumake*, 199 S.W.3d 279, 285 (Tex. 2006) (quoting W. Page Keeton Et Al., *Prosser And Keeton On The Law Of Torts* § 58 at 393-94 (5th ed. 1984)). Therefore, a landowner only owes a duty “to refrain from injuring the trespasser willfully, wantonly, or through gross negligence.” *Id.* (internal quotation omitted). In Texas, “gross negligence” involves an act or omission involving subjective awareness of an extreme degree of risk, indicating conscious indifference to the rights, safety or welfare of others.

Obviously, this provision contains the real bite of the statute, as it forces plaintiffs to obtain a finding of gross negligence (or willful/wanton conduct) by the landowner in order to impose liability for injuries sustained on the property. And needless to say, the decisions from the various appellate courts in Texas apply an inordinately high standard of evidence for plaintiffs to obtain a finding in premises liability cases in Texas. Therefore, with the application of this elevated standard, the TRUS affords owners of publicly-accessed, recreational property with a significant weapon to contest litigation associated with individuals claiming injury on their property.

*David A. Johnson is a shareholder at Cowles & Thompson, P.C., where he practices civil defense litigation.*



*A great group of volunteers showed up in numbers at Promise House for DAYL's Generation Generosity and Aid to the Homeless Committee volunteer event in February. The volunteers and the children celebrated Valentine's Day with cupcake decorating, Valentine's Day trivia, origami, and some fun balloon games. Thank you to everyone who participated.*



*DAYL's Politically Aware Committee held the first of a multi-part series, entitled *Discussing Dallas*, on February 28 at the Belo Mansion. The panelists were Rogers Healy (Rogers Healy and Associates), Brian McCauley (Fairway Independent Mortgage Colleyville), and Candace Carlisle (Dallas Business Journal).*