Dallas Bar Association
HEADNOTES

January 2025 | Volume 50 | Number 1 | Focus | Intellectual Property/Science & Technology Law

Vicki Blanton: DBA's 116th President

BY GRACEN DANIEL

The Dallas Bar Association proudly welcomes its 2025 President, **Vicki Blanton**. Blanton is poised to lead the DBA as the first in-house counsel, second Black female, and third Black president in the DBA's 152-year history. Blanton's presidential vision is summarized by her motto for this year: "Simply the Best." Under Blanton's leadership, DBA members will benefit from her established professional and community leadership as Blanton looks to highlight the "best" of the DBA.

Blanton's current role as Senior Legal Counsel for AT&T Inc. makes her the first in-house counsel to serve as DBA President. Blanton counsels primarily in AT&T's retirement benefit plans (approximately $90 billion in total assets), severance plans, and ERISA litigation. Blanton earned a Bachelor of Journalism from the University of Texas at Austin (where she became a member of Alpha Kappa Alpha Sorority, Inc.), a Juris Doctorate from Southern Methodist University Dedman School of Law, and a Certificate of Study at Georgetown University's Executive Development Program at the London School of Economics.

A third-generation Dallasite and graduate of Skyline High School, Blanton cites her Daniel Webster Elementary School Principal, Joe R. Cobb, as a lifelong influence by his lessons instilled in her. "The room that is never full is the room for improvement," she recalls Cobb telling an elementary-aged Blanton. She plans on continuing to apply this lesson to the DBA presidency through her inclusive leadership style.

Blanton recounts that her interest in the DBA stemmed from the J.L. Turner Legal Association where Blanton became a member of the DBA Board of Directors, following in the footsteps of her mentor **Rhonda Hunter**, the first Black female DBA president, who Blanton describes as "someone I could not do this without." Blanton was encouraged to seek the DBA presidency by **Barry Sorrels**, **Mark Sales**, and **Frank Stevenson**, who Blanton says made her realize, "Yeah, I can do that." For this realization, the DBA is in for a real treat with Vicki Blanton as its 116th President.

Among Blanton's staunchest supporters is none other than Judge **Irma Carrillo Ramirez**, United States Circuit Judge for the Fifth Circuit Court of Appeals. "Vicki Blanton is, and always has been, the most fabulous woman I know," Judge Ramirez said about her law school classmate turned lifelong friend. "She just excels in everything she does, and makes it seem effortless." When asked what she wished DBA members knew of Blanton, Judge Ramirez responded, "How much Vicki cares about people and her community, and how hard she works at everything she does."

Vicki Blanton is ready to get to work for the DBA. Although it is common for DBA presidents to launch major new projects during their tenure, Blanton is excited to build on many existing projects with renewed focus. In her signature style, Blanton says she looks forward to putting "her own little taste and flavor" on existing DBA programs. "The Dallas Bar does so many things at such a level of excellence," Blanton said. "I plan to build on the greatness of what we have." Blanton describes her presidential initiatives by three guiding pillars.

Vicki Blanton

The Privilege

Blanton's first pillar, "The Privilege," is meant to share her experience as in-house counsel with current DBA members, largely comprised of litigators who do not have the privilege of a client-side perspective. "As in-house counsel, I get to see what happens with my legal advice and how it gets implemented," Blanton contrasts. Blanton believes one of the biggest challenges she faces is her desire to convert more in-house attorneys to active DBA membership and hopes that this pillar will bring more in-house attorneys to the DBA.

"I think she really brings a fresh perspective as in-house counsel," Judge Ramirez said. "She is a visionary, long-range planner, and she has been assessing the DBA's needs for some time."

Allyship for All

Blanton's second pillar speaks to her passion for diversity and intersectionality through collaboration with the Allied Bars. "What I see in Allyship for All," Blanton said, "is in developing people so that everyone is at their best. If everyone is at their best ability, everyone should have the opportunity to engage."

Through opportunities and allyship to position members to be their best, "rising tides will lift all boats," Blanton said. With Allyship for All programming, Blanton plans to highlight her passions for arts and culture in unique and engaging ways for

continued on page 14

Judge L. Clifford Davis to Receive 2025 MLK Justice Award

BY JAMES A. DEETS

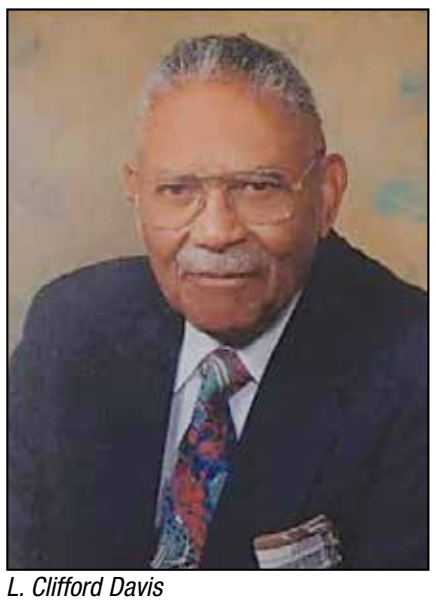
The Rev. Dr. Martin Luther King once famously said, "Injustice anywhere is a threat to justice everywhere." When he was young, the Honorable **L. Clifford Davis** aspired to be a railroad engineer—but at the time, African Americans were not allowed to serve in that position. Since he could not be a railroad engineer, Davis became a social engineer for justice. His life and legacy reflect the pursuit of justice for all that emulates those of Dr. King. For this reason, the Dallas Bar Association is proud to name Davis as this year's recipient of the Martin Luther King, Jr. Justice Award.

Davis was born in Wilton, Arkansas, on October 12, 1924. The youngest of seven children, he was raised on a farm amid the Great Depression. Racial discrimination and segregation were the norm, and Davis was often pelted with rocks and ridiculed by white children on his way to school. While he wanted to fight, he instead developed a tolerance and determination that allowed him to sustain himself through difficult situations.

Because educational opportunities for Black students in his hometown were limited, his parents allowed him to move to Little Rock for high school, where he graduated from Dunbar High. Davis went on to attend Philander Smith College, graduating in 1945 with a business degree. He subsequently attended Howard University, receiving his law degree in 1949. Thereafter, Davis returned to Arkansas where he passed the Bar and was admitted to practice.

Davis had a successful criminal defense and civil rights practice in Arkansas. In one matter involving a death penalty conviction against a Black man accused of raping a white woman, Davis argued appeals before the Arkansas Supreme Court and got the conviction reversed, not once, but twice. Davis also successfully sued to desegregate public schools in Bearden, Arkansas.

In 1952, Davis moved to Waco, Texas, and worked at Paul Quinn College. He passed the Texas Bar and was admitted to practice on July 4, 1954, after which he moved to Fort Worth and opened the first Black law firm in Tarrant County. Thereafter, he collaborated with



L. Clifford Davis

then-attorney **Thurgood Marshall** on the 1954 case that became *Brown v. Board of Education*, the landmark U.S. Supreme Court case holding that state laws establishing racial segregation in public schools are unconstitutional.

Following Brown, Davis and Marshall again joined forces in 1955 and successfully sued to desegregate schools in Mansfield, Texas. The resulting integration prompted great resistance and violence; the Texas Governor called in the Texas Rangers to protect three Black students who faced a mob of angry white protestors while trying to attend their school. Davis received many threats during this time.

Being on a roll for justice, Davis filed another lawsuit in 1960 to elect school board trustees by district within Fort Worth ISD. In 1962, Davis and Attorney **W.L. Durham** filed a lawsuit to desegregate the Fort Worth ISD, a case that continued for more than 20 years. He also filed suit to integrate the faculties within the school district, and another to open wider employment opportunities for African Americans at General Dynamics. In 2002, the trustees of the Fort Worth ISD built a school in his honor, L. Clifford Davis Elementary.

Despite his success as a civil rights litigator, Davis was denied membership in the Tarrant County Bar Association because of his race. Undeterred, Davis joined forces with a number of other Black Tarrant County lawyers and in 1977, organized the Fort Worth

continued on page 26

Inside

Calendar | January Events

Programs in green are Virtual Only programs. All in person programs are at the Arts District Mansion unless otherwise noted. Visit www.dallasbar.org for updates.

WEDNESDAY WORKSHOPS

JANUARY 15
Noon *"Austin Watch: What to expect from the 2025 legislative session," John Turner, Jason Villalba, and moderator Rich Glass.* (MCLE 1.00)*

WEDNESDAY, JANUARY 1

DBA Offices closed in observance of New Year's holiday

THURSDAY, JANUARY 2

No DBA events scheduled

FRIDAY, JANUARY 3

No DBA Events Scheduled

MONDAY, JANUARY 6

Noon **Tax Law Section**
Topic Not Yet Available

TUESDAY, JANUARY 7

Noon **Tort & Insurance Practice Section**
Topic Not Yet Available

Judiciary Committee. *Virtual only*

5:00 p.m. **Hearsay Speakeasy**
Simply the Best Kept Secret. Join your fellow DBA members for a speakeasy style social hour with drinks and hors d'oeuvres at the Arts District Mansion. Password found on page 4.

6:00 p.m. DAYL Board of Directors

WEDNESDAY, JANUARY 8

Noon **Bankruptcy & Commercial Law Section**
Topic Not Yet Available

Employee Benefits & Executive Compensation Law Section
Topic Not Yet Available

Family Law Section
"AI Integration in Family Law," Chris Meuse. (MCLE 1.00, Ethics 0.50)* ***In person only***

Solo & Small Firm Section
"Heading Malpractice Claims Off at the Pass," Robert Tobey. (Ethics 1.00)*

Allied Bars Equality Committee. *Virtual only*

Public Forum Committee. *Virtual only*

4:00 p.m. LegalLine E-Clinic. *Volunteers needed. Contact mmejia@dallasbar.org.*

THURSDAY, JANUARY 9

Noon **Alternative Dispute Resolution Section**
"ADR Case Law Update," Frances Smith. (MCLE 1.00)* *Virtual only*

Construction Law Section
"Legal & Ethical Issues in Cybersecurity, AI, and Cloud Computing," Peter Vogel. (MCLE 1.00, Ethics 0.50)* ***In person only***

CLE Committee. *Virtual only*

Publications Committee. *Virtual only*

FRIDAY, JANUARY 10

Noon **Trial Skills Section**
Topic Not Yet Available

3:30 p.m. **Judicial Investiture of Hon. Kim Bailey Phipps**
At the Arts District Mansion, 2101 Ross Avenue

MONDAY, JANUARY 13

Noon **Corporate Counsel Section**
"Rules All In-House Lawyers Should Live By," Jane McBride and Sterling Miller. (MCLE 1.00, Ethics 0.50)*

Real Property Law Section
Case Law Update," David Weatherbie. (MCLE 1.00, Ethics 0.25)*

Attorney Wellness Committee

TUESDAY, JANUARY 14

Noon **Business Litigation Section**
"The Beatles Breakup," Andres Correa and Chris Patton. (MCLE 1.00)* ***In person only***

Mergers & Acquisitions Section
Topic Not Yet Available

Courthouse Committee. *Virtual only*

Home Project Committee. *Virtual only*

Legal Ethics Committee. *Virtual only*

5:00 p.m. **Hearsay Speakeasy**
Simply the Best Kept Secret. Join your fellow DBA members for a speakeasy style social hour with drinks and hors d'oeuvres at the Arts District Mansion. Password found on page 4.

6:00 p.m. Dallas LGBT Board of Directors

WEDNESDAY, JANUARY 15

Noon **Energy Law Section**
"Drafting Renewable Energy Leases to Accommodate Mineral Estate and Surface Estate Interests," Garrett Couts. (MCLE 1.00)* ***In person only***

Health Law Section
"False Claims Act – 2024 Year in Review," Neil Issar, Taryn McDonald, and Bill Morrison. (MCLE 1.00)* ***In person only***

Wednesday Workshop
"Austin Watch: What to expect from the 2025 legislative session," John Turner, Jason Villalba, and moderator Rich Glass. (MCLE 1.00)*

Law in the School & Community Committee. *Virtual only*

Pro Bono Activities Committee. *Virtual only*

4:00 p.m. LegalLine E-Clinic. *Volunteers needed. Contact mmejia@dallasbar.org.*

THURSDAY, JANUARY 16

Noon **Appellate Law Section**
"Fifth Circuit Court of Appeals Panel," Hon. Catharina Haynes, Hon. James Ho, and Hon. Irma Ramirez. (MCLE 1.00)* ***In person only***

New Member Welcome Lunch. RSVP sbush@dallasbar.org

4:00 p.m. DBA Board of Directors Meeting

FRIDAY, JANUARY 17

No DBA Events Scheduled

MONDAY, JANUARY 20

No DBA Events Scheduled

TUESDAY, JANUARY 21

Noon **Antitrust & Trade Regulation Section**
Topic Not Yet Available

Education Law Section
"Equal Pay Act Issues in Education Settings," Sandra Lauro. (MCLE 1.00)*

Immigration Law Section
"The New Administration, What to Expect, and How to Move Forward," Belinda Arroyo and Nubia Torres. (MCLE 1.00)* ***In person only***

International Law Section
Topic Not Yet Available

Community Involvement Committee. *Virtual only*

Entertainment Committee. ***In person only***

WEDNESDAY, JANUARY 22

Noon **Collaborative Law Section**
"Mediating Collaboratively - Using Collaborative Techniques in Mediation," Darren Gringas and Jemma Thomas. (MCLE 1.00)* *Virtual only*

Entertainment, Art & Sports Law Section
Section planning meeting. ***In person only***

4:00 p.m. LegalLine E-Clinic. *Volunteers needed. Contact mmejia@dallasbar.org.*

THURSDAY, JANUARY 23

Noon **Criminal Law Section**
Topic Not Yet Available

Environmental Law Section
Topic Not Yet Available

Minority Participation Committee. *Virtual only*

STEER Mentoring Program

FRIDAY, JANUARY 24

No DBA Events Scheduled

SATURDAY, JANUARY 25

6:00 p.m. Inaugural of DBA President Vicki Blanton. *Tickets available online at www.dallasbar.org.*

MONDAY, JANUARY 27

Noon **Government Law Section**
Section planning meeting. ***In person only***

Labor & Employment Law Section
"Helping the Impaired Employee or Client," Skip Simpson. (Ethics 1.00)* *Virtual only*

Science & Technology Law Section
"Stop! Investigate and Litigate," Amanda Harvey and Kayleigh Watson. (MCLE 1.00)* ***In person only***

Securities Section
Topic Not Yet Available

Golf Tournament Committee. ***In person only***

Senior Lawyers Committee. *Virtual only*

3:30 p.m. **Judicial Investiture of Hon. Elizabeth Davis Frizell**
At the Arts District Mansion, 2101 Ross Avenue

TUESDAY, JANUARY 28

Noon **Living Legends Program**
Erleigh Wiley, interviewed by Jade Jackson. (Ethics 1.00)* *Virtual only*

Franchise & Distribution Law Section
"Current Trends in Texas Real Estate Law, Clay Mills. (MCLE 1.00)* *Virtual only*

Probate, Trusts & Estates Law Section
"Probate Practice War Stories," Julie K. Blankenship, David Pyke, P. Keith Staubus, Scott Weber, and Donna Yarborough. (MCLE 1.00, Ethics 0.25)* ***In person only***

WEDNESDAY, JANUARY 29

Noon **Martin Luther King, Jr. Justice Award Luncheon**
Recipient: Hon. L. Clifford Davis. Register online at www.dallasbar.org. ***In person only***

4:00 p.m. LegalLine E-Clinic. *Volunteers needed. Contact mmejia@dallasbar.org.*

THURSDAY, JANUARY 30

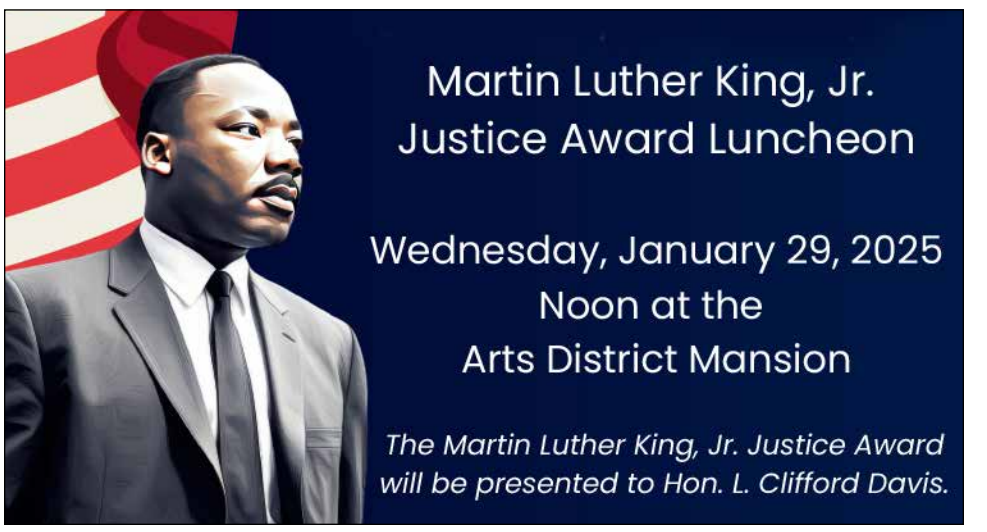
Noon **Intellectual Property Law Section**
"The Rise of Domaining: Identifying Cybersquatters and Enforcing Trademark Rights on the Internet," Matthew W. Cornelia and Jordyn Hendrix. (MCLE 1.00)*

FRIDAY, JANUARY 31

No DBA Events Scheduled

Thank You Donors!

Thank you to all of our Equal Access to Justice Campaign sponsors who attended the Bachendorf's Reception. And thank you to Bachendorf's for their continued support of the EAJ Campaign.



If special arrangements are required for a person with disabilities to attend a particular seminar, please contact Alicia Hernandez at (214) 220-7401 as soon as possible and no later than two business days before the seminar.

All Continuing Legal Education Programs Co-Sponsored by the DALLAS BAR FOUNDATION.

For confirmation of State Bar of Texas MCLE approval, please call the DBA office at (214) 220-7447.

President's Column

Simply the Best*

BY VICKI D. BLANTON

January always signals new beginnings and fresh starts. In fact, the month of January is named for the Roman deity Janus, the god of beginnings. He is often depicted with two faces, simultaneously looking both forward and backwards. Thus, he is considered the guardian of transition—beginning and end, entrances and exits, gateways, and doorways. This is further symbolized by the key he holds in his right hand and a scepter in his other hand, signifying his authority over the passageway between realms, even time itself.

The Dallas Bar Association, likewise, experiences transition and change in the month of January, as we move into this new calendar year of the Dallas Bar Association. As I prepared to step into this role as the 116th President of this august organization, I have had the opportunity to travel worldwide, fortunate to be under the canopy of the great reputation which carries forth with the DBA. Similar to an ancient Roman citizen, when I traveled internationally, nationally, and statewide as a representative of the Dallas Bar Association, the stellar reputation that preceded me allowing me to enjoy the admiration of DBA membership.

The DBA's mission is to foster great relations between the lawyers, the judiciary, and community.

The privileges of membership include many aspects. The DBA's mission is to foster great relations among the lawyers, the judiciary, and community. The Dallas Bar Association allows for member engagement through its 32 substantive sections. You can teach a CLE, write a substantive legal article, and network directly with your Bar colleagues, developing both business and personal connections. Having just completed judicial elections this past Fall, there are opportunities to meet and greet the judges in a far less formal fashion than in a court proceeding, as various DBA activities and events afford interactions between the Bench and the Bar. We welcome you to join us at the various investiture ceremonies to be held during the beginning of the year, as we congratulate those who newly ascend to the bench.

Probably one of the most important aspects of Roman citizenry was the individual sense of duty to the greater community. Much of the American system of civic engagement and respect for the Rule of Law is based on this Roman duty. Again, the DBA embraces this ancient tradition through its variety of philanthropic committees and pro bono opportunities. For example, a member can provide pro bono legal services with the Dallas Volunteer Attorney Program or monthly LegalLine telephone clinics. Or, a member can help a family build its future home, as the DBA is the longest running whole-house sponsor of the Dallas Area Habitat for Humanity, with our 38th home this year. Members can display their special artistic talents in the annual Bar None show, raising scholarships for local law school students.

The spirit of Janus is further exemplified in the selection of the Hon. **L. Clifford Davis** as the 2025 Martin Luther King, Jr. Justice Award recipient. The DBA will honor Judge Davis at the annual luncheon on January 29, 2025, rescheduled due to the U.S. Presidential Inauguration on MLK Day. Judge Davis, a centenarian in his 75th year of practicing law, currently of counsel with Johnson, Vaughn & Heiskell, is truly a living legend, having walked alongside many whom most only know from history books, including Dr. King himself. He also worked with Thurgood Marshall on the historic *Brown v. Board* case. His recognition is especially befitting now as 2025 marks the 70th anniversary of the Brown II opinion issued in 1955 ordering states to desegregate public schools "with all deliberate speed." Judge Davis was one of the few front-line attorneys who desegregated the public schools of Fort Worth and Mansfield, after having had to fight, *pro se* as a law student, for the right to attend law school for himself.

With so many advantages, let's proudly proclaim that we are DBA members, just as the ancient Romans proudly proclaimed their citizenship. Let's demonstrate our renewed commitment as we both look back at the rich 151-year history and embrace the transition of a new year. Above all, let's continue to move forward positively into this new bar year, appreciating the privilege of membership, and embracing our responsibilities of civic engagement as those closest to uplifting, demonstrating, and protecting the respect for the Rule of Law binding this great nation. I personally invite you to join me as part of the nearly 12,000 members of the Dallas Bar Association, experiencing all the rights, privileges, and responsibilities. The North Texas community is counting on us as we continue the long tenured legacy of being Simply the Best!

**Speakeasy password – Simply the Best*

Vicki

DBA Represented at Paris Bar Opening Ceremony

DBA President Vicki Blanton attended the Rentrée du Barreau de Paris (Ordre des avocats de Paris) - Opening Ceremony of the 34,000 member Paris Bar, which included speeches by the Bâtonnier Pierre Hoffman, the Vice-Bâtonnière Vanessa Bousardo and the Minister of Justice Didier Migaud.

HEADNOTES
Published by:
DALLAS BAR ASSOCIATION

2101 Ross Avenue
Dallas, Texas 75201
Phone: (214) 220-7400
Fax: (214) 220-7465
Website: www.dallasbar.org
Established 1873

The DBA's purpose is to serve and support the legal profession in Dallas and to promote good relations among lawyers, the judiciary, and the community.

Headnotes serves the membership of the DBA and, as such, editorial submissions from members are welcome. The Executive Editor, Editor, and Publications Committee reserve the right to select editorial content to be published. Please submit article text via e-mail to jsmith@dallasbar.org (Communications Director) at least 45 days in advance of publication. Feature articles should be no longer than 800 words. DISCLAIMER: All legal content appearing in Headnotes is for informational and educational purposes and is not intended as legal advice. Opinions expressed in articles are not necessarily those of the Dallas Bar Association.

All advertising shall be placed in Dallas Bar Association Headnotes at the Dallas Bar Association's sole discretion.

Headnotes (ISSN 1057-0144) is published monthly by the Dallas Bar Association, 2101 Ross Ave., Dallas, TX 75201. Non-member subscription rate is $30 per year. Single copy price is $2.50, including handling. Periodicals postage paid at Dallas, Texas 75260.
POSTMASTER: Send address changes to Headnotes, 2101 Ross Ave., Dallas, TX 75201.

Oncor Powers Pro Bono

BY MICHELLE ALDEN

The Dallas Bar Association is pleased to announce that Oncor Electric Delivery Company is supporting this year's Equal Access to Justice Campaign with a generous contribution of $25,500, making a total of $31,000 donated by the company since 2023. The Equal Access to Justice Campaign is the annual fundraising campaign that supports the activities of the Dallas Volunteer Attorney Program (DVAP).

Oncor's gift makes it possible for DVAP to continue to provide and enhance legal aid to low-income people in Dallas, keeping the doors to the courthouse and our overall justice system open to many more people in our community. Since 1982, DVAP has provided, recruited, and trained pro bono lawyers to provide free legal aid to low-income people in Dallas.

Matt Henry

Oncor is a regulated electricity transmission and distribution company that provides the essential service of delivering safe, reliable, and economical electricity to its 13 million customers across the Lone Star State. Oncor operates the largest transmission and distribution system in Texas, delivering electricity to more than 4 million homes and businesses at some of the lowest rates in the state. The company also operates more than 143,000 circuit miles of transmission and distribution lines, with transmission and distribution assets in over 120 counties and more than 400 incorporated municipalities. For more than 100 years, Oncor has built a reputation as a company that cares about the communities it serves. Today, Oncor, as well as its approximately 5,000 dedicated employees, works hand-in-hand with communities, non-profits, businesses, and government representatives to help build a better Texas.

Matt Henry, Senior Vice President, General Counsel, and Secretary at Oncor, is currently serving, along with **Tim Newman** and **Lauren Black**, as a Co-Chair of this year's EAJ Campaign.

"As the largest electric utility in Texas, Oncor has facilities in over 400 cities and towns that connect to over four million homes and businesses. Partnering with the communities and customers we serve is at the very core of what we do, and supporting the EAJ Campaign is one more way we can give back. Ensuring that people have access to quality legal services regardless of their economic status is entirely consistent with Oncor's mission of supporting our communities in a holistic way. I appreciate Oncor stepping up and supporting this noble effort. And on behalf of myself, our management, and our entire legal team, I want to thank the team that manages DVAP, my co-chairs, and other volunteers who are raising money for this great cause, as well as all of the donors, and the great attorneys who volunteer their time to ensure that justice is available to all in the Dallas area," said Matt.

The justice gap in Dallas County is daunting. In a country based on justice for all and access to our court system, over 25 percent of Dallas County residents live near the poverty level, and 42 percent have a slim hope of being able to afford an attorney. With annual poverty incomes of $39,000 for a family of four, justice is a luxury for low and moderate income families.

DVAP continues to assist the most vulnerable among us with their civil legal needs, including Roberta, a recent client. Her sister, Mindy, passed away, leaving Roberta and her brother, Steve, as the only heirs. Mindy was not married at the time of her death, and her only child predeceased her. She left behind a broken-down car and a bank account with an unknown amount of money. Roberta came to DVAP for assistance in gaining access to her sister's bank account. Volunteer attorney **Foster Ford**, of Foley & Lardner LLP, accepted the case and filed a Small Estate Affidavit. When the Court approved the affidavit, Roberta and Steve learned that Mindy left $68,878 in her bank account for them to split equally, providing substantial relief from their current challenging financial circumstances.

About DVAP

DVAP is a joint pro bono program of the DBA and Legal Aid of NorthWest Texas. The program is the only one of its kind in Texas and brings together the volunteer resources of a major metropolitan bar association with the legal aid expertise of the largest and oldest civil legal aid program in North Texas. For more information or to donate, visit www.dallasvolunteerattorneyprogram.org. **HN**

Michelle Alden is the Director of the Dallas Volunteer Attorney Program. She can be reached at aldenm@lanwt.org.

Focus | *Intellectual Property/Science & Technology Law*

Understanding the Limitations of Federal Trademark Registration

BY JOSHUA YUN
AND ANJIE VICHAYANONDA

For many business owners (and even some attorneys), the ® symbol carries an almost mythical status—seen as an impenetrable shield protecting a mark from all potential threats in the marketplace. While a federal trademark registration certainly provides significant advantages, misunderstanding its limitations can leave registration owners (and accused infringers) vulnerable. This vulnerability stems from common misperceptions about the scope and power of trademark registration. Both businesses and their counsel should take heed of the most common misconceptions surrounding federal trademark registrations.

Misconception #1: Registration Automatically Prevents All Similar Uses

Perhaps the most common misconception is that federal registration automatically prevents others from using similar marks. In reality, however, registration only provides the *right* to enforce the mark. There is no "federal trademark police" that actively seeks out and penalizes infringement. While the United States Patent and Trademark Office (USPTO) serves as the national trademark registration authority—examining applications, granting registrations, and maintaining the federal trademark register—its role essentially ends after registration. The USPTO does not monitor the marketplace for infringement, and it will not notify owners of potential infringement. Although the USPTO may refuse applications for marks that are likely to cause confusion with prior-filed applications and registrations, these refusals do not prevent the applicant from using the mark.

Moreover, trademark registrations do not provide a broad umbrella of protection covering all products and services. When a trademark owner files an application for registration, they must identify exactly which goods and services are covered by the mark, and provide proof they are using the mark for those goods and services before the application can proceed to registration. Unless the mark is declared famous, the trademark owner is generally only able to enforce the mark against similar marks that cover related goods and services. Famous marks are afforded a broader scope of protection.

Thus, the burden of monitoring and enforcement remains with the trademark owner and their counsel. Not only should mark owners pay special attention to defining the scope of their trademarks and their potential future uses, but they should also keep a vigilant eye on new trademark applications filed with the USPTO, watch the marketplace, monitor social media platforms, review industry publications and websites, and track activities of their competitors for potential infringing use.

Misconception #2: Registration Grants Absolute Priority

The belief that federal registration automatically grants superior rights over all other users is an oversimplification. Trademark rights accrue from regularly using the mark, not from registering it. Thus, some unregistered marks hold common-law priority over other registered marks, at least within the geographic scope of the prior use.

This "remote, good-faith user doctrine" allows a junior user who adopts a mark in good faith (without knowledge of the senior user's prior use) and operates in a geographically remote area to establish valid trademark rights in that location, even against a senior user who later receives federal registration. If, for example, a business in Dallas started using a mark without knowing a business in New York was already using it, and the New York business later federally registered the mark, the Dallas business (the junior user) might be able to continue using the mark in its local area. The junior user's rights, however, are typically "frozen" as of the senior user's registration date, barring further expansion beyond the junior user's existing territory at that time, while the senior user's federal registration allows them to expand into all unused territories.

Misconception #3: Registration Guarantees Validity

Registration creates only a presumption of validity, which can be challenged. While registration constitutes prima facie evidence of the ownership of the mark, validity of the mark, the exclusive right to use the mark, and continuous use of the mark from the registration date, these presumptions can be rebutted on various statutory or substantive grounds. When a trademark owner attempts to enforce its trademark rights, the adverse party may attack the validity of the mark by raising flaws in the registration, abandonment, genericide, or other grounds.

Conclusion

Federal trademark registration remains a valuable tool in brand protection, but it is just one component of a comprehensive brand strategy. Understanding the limitations of registration helps attorneys better serve their clients and avoid costly assumptions. The ® symbol represents important rights, but those rights require active management and enforcement. Just as a deed to a property does not prevent one from trespassing without security measures, a trademark registration does not prevent infringement without vigilance. Success in trademark protection requires understanding of both the power and the limitations of federal registration. **HN**

Joshua Yun is an Associate and Anjie Vichayanonda is Counsel at Griffith Barbee PLLC. They may be reached at joshua.yun@griffithbarbee.com and anjie.v@griffithbarbee.com, respectively.

Focus | *Intellectual Property/Science & Technology Law*

Foreign Damages in Patent Litigation Cases

BY VLADA WENDEL

As companies become more globalized, foreign damages in patent litigation pose a greater risk to defendants and a greater opportunity to plaintiffs. It has been reported that last year alone Apple had $73 billion in sales from the Greater China region, which accounted for 19 percent of the company's total sales. Courts have responded to this increasingly globalized nature of businesses by expanding the ability of patent owners to claim foreign damages for direct infringement under 35 U.S.C. § 271(a) and for supplying components under 35 U.S.C. § 271(f).

The expansion of foreign damages began with a landmark 2018 decision. That year, the Supreme Court in *WesternGeco* held that a patent owner can recover damages from lost foreign profits due to domestic patent infringement under 35 U.S.C. § 271(f)(2)—a provision covering the export of components specifically intended for combination abroad in a manner that would infringe the patent. *WesternGeco LLC v. ION Geophysical Corp.*, 585 U.S. 407 (2018). The Supreme Court explained that the "overriding purpose" of patent damages under 35 U.S.C. § 284 is to "'affor[d] patent owners complete compensation' for infringements," and the regulated conduct under § 271(f)(2) "is the domestic act of 'suppl[ying] in or from the United States.'" Because the statute's focus is on the act of exporting components, and the infringing act occurred domestically, the Supreme Court permitted awarding lost foreign profits to WesternGeco as a "domestic application of § 284." In a footnote of the majority opinion in *WesternGeco*, however, Justice Thomas wrote that the majority declines to "address the extent to which other doctrines, such as proximate cause, could limit or preclude damages in particular cases."

In 2024, the Federal Circuit in *Brumfield* expanded *WesternGeco's* framework to foreign sales under § 271(a). *Brumfield v. IBG LLC*, 97 F.4th 854 (Fed. Cir. 2024). The Federal Circuit held that a patent owner can get a reasonable royalty award—compensation based on hypothetical licensing negotiations—based on foreign activity by establishing a causal relationship between a domestic act of infringement and foreign conduct. The Federal Circuit explained that "[i]f the exporting covered by § 271(f)(2) is a domestic act for purposes of the extraterritoriality analysis, as *WesternGeco* held, so too are the § 271(a)-covered acts at issue in this case." The *WesternGeco* extraterritoriality framework for damages under § 284 may therefore apply to infringement under § 271(a). And "[a]lthough the damages at issue in *WesternGeco* were lost-profits damages," the Supreme Court's statutory analysis "did not distinguish the forms of damages."

To calculate a reasonable royalty based on foreign activity, "the patentee must, at the very least, show why that foreign conduct increases the value of the domestic infringement itself" to tie in foreign activity to the incremental value of the invention during a hypothetical negotiation, "while respecting the apportionment limit that excludes values beyond that of practicing the patent." Proximate causation is therefore required, but the Federal Circuit did not address whether the "reasonable, objective foreseeability" standard in lost profits under *Rite-Hite* (i.e., if an injury was or should have been reasonably foreseeable by an infringing competitor, then that injury is generally compensable) applies equally to a reasonable royalty analysis.

A key question remains regarding software patents: Can software be considered a "component" under § 271(f)? In 2007, the Supreme Court held that software in the abstract cannot be a component under § 271(f). *Microsoft Corp. v. AT & T Corp.*, 550 U.S. 437 (2007). "Abstract software code is an idea without physical embodiment, and as such, it does not match § 271(f)'s categorization: 'components' amenable to 'combination.'" A full decade later, the Eastern District of Texas in *Realtime Data* held that software electronically transmitted from the United States to a foreign computer, which is expressed in a form capable of interfacing with the receiving foreign computer, may be properly considered a component under Section 271(f)." *Realtime Data LLC v. EchoStar Corp.*, No. 6:17-cv-00084-JDL, 2018 WL 11335572 (E.D. Tex. Oct. 26, 2018).

The *Realtime Data* Court found "no requirement that software must be supplied via a physical tangible medium to qualify as a component under Section 271(f)" because the Supreme Court in *Microsoft* "declined to address whether a component must be tangible." Additionally, "[t]he Supreme Court has already recognized that once installed on a computer, software may be considered a component of the computer system," and "when software is electronically transmitted to the computer installing or executing the software from a server located within the United States," that "software component is supplied from the United States." The Court, therefore, held that electronically transmitted system software could qualify as a component under § 271(f)(1).

As globalization continues to rise, courts will likely continue to expand the traditional legal frameworks in response. **HN**

Vlada Wendel is an Intellectual Property Associate at Norton Rose Fulbright US LLP. She can be reached at vlada.wendel@nortonrosefulbright.com.

DBA/DAYL Moms in Law

Being a working mom can be challenging. Being a working lawyer mom can be a different ballgame with its own unique challenges. Moms in Law is a no pressure, no commitment, informal, fun, support group for lawyer moms.

Join Moms in Law for lunch Thursday, January 23, at noon
True Food (8383 Preston Center Plaza #100, Dallas)

RSVP to Kelly Bryan at kelly.bryan01@gmail.com
Email cpleatherberry@gmail.com to join the Moms in Law email listserv.

Focus | Intellectual Property/Science & Technology Law

IP Protection for Digital Art in the Age of NFTs

BY ABDULLAH SALEM ALFAIDI

Non-fungible tokens (NFTs) have transformed digital art ownership and commercialization. While NFTs allow artists to monetize digital works through blockchain-verified ownership, the decentralized nature of blockchain technology creates unprecedented challenges for traditional IP frameworks. A common misconception among NFT purchasers is that acquiring a token transfers complete rights to the underlying digital asset. This article examines complexities surrounding copyright law, smart contracts, and the challenges of cross-border enforcement.

NFTs and Copyright Law: The Ownership Dilemma

Although copyright legislation under frameworks such as the Berne Convention seeks to safeguard creators, its application to NFTs remains problematic. NFT purchases typically acquire only the token, not the underlying copyright. In *Roc-A-Fella Records Inc. v. Dash*, the court underscored that possession of an NFT does not imply ownership of copyright, necessitating explicit contractual wording in NFT transactional documents to prevent conflicts.

Practitioners should thus advise clients to explicitly state copyright transfer terms in NFT transactions. In addition, smart contracts should clearly delineate the rights and obligations of both purchasers and creators, particularly regarding copyright ownership and licensing terms.

Decentralization and Copyright Enforcement

Blockchain's decentralized nature undermines conventional copyright enforcement methods, such as removal and takedown notices. Copyright infringement on a pseudonymous blockchain often proves difficult to detect and remedy, limiting the copyright holders' enforcement options. Recent cases demonstrate that artists have faced challenges pursuing legal claims for unlicensed NFTs in several jurisdictions.

Addressing Opposing Viewpoints

Some contend that current intellectual property regulations are sufficient and that smart contracts can proficiently oversee licensing. Although smart contracts facilitate the automation of royalty payments and licensing agreements, they exhibit a deficiency in flexibility. Legal academics, such as Professor Jane C. Ginsburg, contend that exclusive reliance on current intellectual property regimes is inadequate in this evolving technological landscape, as the intersection of digital innovation and copyright presents both opportunities and uncertainties.

Smart Contracts and Licensing: Legal Innovation or Risk?

Smart contracts integrated inside NFTs provide possible mechanisms for automating royalties; however, they present concerns stemming from their rigidity. Once implemented, these contracts are difficult to amend, leading to possible legal disputes. Artists seeking to modify or rescind license agreements may encounter limitations due to the immutable nature of blockchain. A 2021 report from the European Parliamentary Research Service warns that, without legislative updates, smart contracts may introduce substantial risks for artists (*Blockchain-based Smart Contracts: Legal Perspectives*, European Parliamentary Research Service, 2021).

To alleviate these concerns, smart contracts should incorporate inherent "escape clauses" that permit alterations under certain situations. Another issue is that many current legal systems do not acknowledge these smart contracts.

Cross-Border IP Protection

NFTs are used ubiquitously, complicating enforcement efforts across different jurisdictions. The pseudonymous characteristic of blockchain especially complicates artists' efforts to prosecute infringers internationally. For example, Texas artists may encounter difficulties in enforcing their rights against offenders operating through foreign blockchain platforms.

Industry-led initiatives and international cooperation between blockchain platforms could help establish consistent standards for IP protection.

Regulatory Challenges and Policy Recommendations

The rapid growth of NFTs necessitates adaptive regulatory frameworks. State and federal legislation will need to evolve to address the decentralized characteristics of blockchain technology. Several jurisdictions, including Texas through its Uniform Electronic Transactions Act, now recognize smart contracts as legally binding instruments.

Conclusion

NFTs have generated novel opportunities for digital artists while revealing substantial deficiencies in existing intellectual property systems. Practitioners should focus on leveraging blockchain's inherent capabilities while carefully structuring NFT transactions and developing robust smart contract provisions that protect their clients' interests. **HN**

Abdullah Salem Alfaidi is a Saudi transactional attorney and tax consultant, currently a Doctor of Juridical Science (S.J.D.) candidate at SMU Dedman School of Law. He can be reached at asflawyer@yahoo.com.

Focus | Intellectual Property/Science & Technology Law

Crypto, It's in the Game

BY JUAN ANTONIO SOLIS

The evolution of video games has been nothing short of remarkable, ever since a British doctoral student created a digital version of tic-tac-toe in 1952. Long gone are the old-school arcade games like Galaga and Pac-Man that epitomized the 1980; so too the 8-bit graphics of Super Mario Bros. After all, why go to an arcade when you can play a more sophisticated game at home? Home consoles have made online gaming and multiplayer experiences mainstream, but a new era of gaming has arrived as virtual reality, artificial intelligence, and blockchain technology rapidly push the boundaries of interactivity and immersion.

Cryptocurrency, in particular, has reshaped how players engage with virtual worlds, introducing innovative economic models and altering the concept of ownership. At the heart of this transformation is blockchain technology—the backbone for cryptocurrencies—which permits direct, peer-to-peer transactions on a decentralized digital ledger. Although this technology has now been deployed in many other industries, it is particularly appealing in gaming, where it allows in-game assets to be represented as non-fungible tokens (NFTs), enabling true ownership. Players can also buy, sell, or trade NFTs and other in-game items for other cryptocurrencies, creating a semblance of a real economic system.

Among the most significant developments is the emergence of play-to-earn (P2E) models, popularized by Axie Infinity, Decentraland, and others. In P2E games, players earn cryptocurrency for participating in the game or adding value to it. Both Axie Infinity and Decentraland feature native tokens that can be used to transact within virtual worlds. These token can also be traded on other cryptocurrency exchanges for fiat currency.

As these virtual economies develop, traditional financial products are joining the fold. A number of programs have started allowing players to take out loans against their in-game crypto assets—including loans to purchase digital land in games that became known as the first "mortgages" of the metaverse. The emergence of NFTs has also fundamentally changed the concept of ownership, permitting players to buy and sell unique in-game items, including "skins" (character gear), weapons, and digital land in blockchain-supported marketplaces.

These developments have led to thriving secondary markets where in-game items can reach exorbitant prices and players treat them the way they would real-world assets. This fosters a sense of ownership that traditional gaming models could not provide.

The exciting potential of cryptocurrency in gaming is not without challenges or legal uncertainty. As regulators try to wrap their arms around the integration of cryptocurrency in gaming, a legal framework is starting to take shape, bringing with it higher expectations for gaming publishers.

Consumer protection is central to any regulatory concerns. The Consumer Financial Protection Bureau issued multiple reports and consumer advisories in 2024 to address the growth of financial transactions in video games. According to these reports, video games are increasingly resembling traditional banking and payment systems that, through virtual currencies, are susceptible to fraud, theft, and scams. As the value of in-game assets rises, regulators may demand that publishers increase their efforts to secure accounts, safeguard virtual assets, and provide recourse for players who suffer losses.

Regulators have also warned that gaming markets can facilitate money laundering, prompting stricter rules for money transmission licensing. It has been more than a decade since the Treasury Department announced that administrators of centralized repositories that facilitate the transfer of convertible virtual currency (which includes "value that substitutes for currency") are considered money transmitters under federal law. Since then, states have enacted their own crypto-specific transmitter regulations, such as New York's BitLicense for virtual currency business activity. In general, this has required cryptocurrency exchanges—which mirror aspects of gaming platforms to the extent they permit the transfer of cryptocurrency—to register as money transmitters, maintain an AML/KYC program, and monitor for and report suspicious activity.

The gaming industry is in the bullseye of those concerned about companies collecting personal and behavioral data regarding their customers. With cryptocurrency fueling the virtual economies created by these games, publishers can collect players' financial data, purchasing patterns, and spending behavior. Using generative AI, publishers can generate real-time, unique content based on this data. To address concerns about the dissemination or misuse of this information, the Federal Trade Commission recently proposed changes to the Children's Online Privacy Protection Act (COPPA) to place new restrictions on the use and disclosure of children's personal information. States have also enacted their own comprehensive privacy laws to regulate the use of personal information.

The incorporation of cryptocurrency in gaming marks a revolutionary shift in how human beings interact with digital worlds. Looking ahead, as blockchain technology continues to evolve, game publishers will continue to find ways to integrate cryptocurrency in their games. The full scope of legal challenges to those applications largely remains a hypothetical, but likely not for long. **HN**

Juan Antonio Solis is an Associate at O'Melveny & Myers LLP. He can be reached at jasolis@omm.com.

Vicki Blanton: DBA's 116th President

CONTINUED FROM PAGE 1

DBA members to participate in.

"Vicki plans to grow the DBA and make it accessible," Judge Ramirez added. "The more voices and perspectives we have, the stronger we are together."

The Pursuit of Happiness

Blanton's third pillar focuses on changing the mindset of legal professionals to help DBA members find their passions in furtherance of attorney wellness. Noting the numerous mental health resources available to attorneys, Blanton wants to focus on different questions. "What if we changed the mindset to ask why we want to be a lawyer?" Blanton poses DBA members to answer. "Let's focus on retraining our minds to lean into what we are really good at and ask what makes us happy." With this in mind, Blanton wants to help DBA members find what they enjoy in the legal profession—ranging from performing complicated closings to drafting indemnification clauses—in the pursuit of finding and furthering their happiness.

Judge Ramirez noted that part of Blanton's leadership style is "listening, learning, and caring" in a way that will meet DBA members in the present moment. "We're all going to be blown away," Judge Ramirez said, then quickly corrected herself. "Actually, *you* all are going to be blown away, and I'll just say that's Vicki, blowing me away again."

While the title of DBA President may be new to Blanton, she is no stranger to bar leadership or community involvement. Before becoming President, Blanton served as President-Elect of the DBA, having been formerly elected to various positions on the DBA Board of Directors. "She's grown up in the DBA," Judge Ramirez said. "There's an intentionality about her presidency and she's been laying the foundation and doing the work for years."

Notably, Blanton is a past Chair of the J.L. Turner Legal Association Foundation Board, and a past Co-Chair of the record-setting Equal Access to Justice Campaign, benefiting DVAP. Blanton's philanthropic endeavors include the Village Giving Circle, Broadway Dallas, and numerous others.

While Blanton prepares to bring out "Simply the Best" in the DBA, there are many who look forward to seeing Blanton's excellence on display. "Just when I thought she couldn't get any better because Vicki's simply the best, she gives something her best and surprises me again," Judge Ramirez said. "The best is a moving target for Vicki Blanton."

Congratulations and best wishes to our incoming President. Join us in celebrating 2025 Dallas Bar Association President Vicki Blanton at her Inaugural on January 25, 2025. Tickets are available at www.dallasbar.org. **HN**

Gracen Daniel is an Associate at Crawford, Wishnew & Lang PLLC. She may be reached at gdaniel@cwl.law.

THANK YOU, DALLAS COMMUNITY, FOR GIVING BACK!

Dear Citizens of Dallas:

The Equal Access to Justice Campaign is an annual fundraising drive benefiting the Dallas Volunteer Attorney Program. The Dallas Volunteer Attorney Program, or DVAP, is a free, civil legal aid program of the Dallas Bar Association and Legal Aid of NorthWest Texas. Through DVAP, over 1,200 volunteers donate their time and legal skills to help low-income people in Dallas resolve their legal problems. Those who have bravely served our country, innocent children, the elderly, and the disabled are some of the many people DVAP helps every day. The support of our donors is more important now than ever. Over 800,000 people in Dallas County already qualify for DVAP's help, while the number of people living in poverty continues to grow. Please join us in thanking our generous donors for their support of access to justice for all.

Vicki Blanton
DBA President

Jonathan Childers
DBA President-Elect

Lauren Black
Campaign Co-Chair

Matt Henry
Campaign Co-Chair

Tim Newman
Campaign Co-Chair

CHAMPION OF JUSTICE ($40,500)
King & Spalding

CHAIRMAN'S COUNCIL ($25,500)
Burke Bogdanowicz PLLC
John DeWitt Gregory Charitable Trust
Haynes and Boone Foundation
Oncor Electric Delivery Company
Sheppard Mullin Richter & Hampton LLP
Sidley Austin Foundation

CHAIRMAN'S COUNCIL ($25,500)
Vinson & Elkins LLP

GOLD PATRON ($20,000)
Capital One
E. Leon & Debra Carter
Margaret & Jaime Spellings

DIAMOND ($15,500)
Akin Gump Strauss Hauer & Feld LLP
BakerHostetler

DIAMOND ($15,500)
Ann Bruder
Gibson Dunn & Crutcher LLP
Katten Muchin Rosenman LLP

PLATINUM ($10,500)
AT&T
Business Litigation Section
Chrysta Castaneda
Jackson Walker LLP
Kastl Law, P.C.

PLATINUM ($10,500)
Locke Lord LLP
Lynn Pinker Hurst & Schwegmann LLP
Mike A. Myers Foundation
Nelson Mullins Riley & Scarborough
Rosewood Foundation
Simon Greenstone Panatier PC
Toyota
Vistra Corp.
Amy K. Witherite

GOLD ($5,500)
Kate & Art Anderson Family Charitable Fund
ArentFox Schiff LLP
Baker Botts L.L.P.
Baker McKenzie
Balch & Bingham
Condon Tobin Sladek Thornton Nerenberg PLLC
Dallas Association of Young Lawyers Foundation
DLA Piper LLP US
Enoch Kever PLLC
Faegre Drinker
Ellen Farrell
Gary Fowler
Paul R. Genender
Greenberg Traurig, LLP
Hamilton Wingo, LLP
Holland & Knight LLP
Hunton Andrews Kurth LLP
Husch Blackwell LLP
Kilpatrick Townsend & Stockton LLP
Latham & Watkins LLP
McGuireWoods LLP
Mike McKool
Kip A. Petroff
Probate, Trusts & Estates Section
Real Property Law Section
Seyfarth Shaw LLP
Nancy & John Solana
Tax Law Section
Waters Kraus Paul Siegel

SILVER ($2,750)
Aldous \ Walker LLP
Alston & Bird LLP
Kim J. Askew
Roger Bivans & Sarah Donch
Bradley Arant Boult Cummings LLP
Ted Brizzolara & Kate Hopkins
Construction Law Section
Nina Cortell
Diane Pearlstone Couchman

SILVER ($2,750)
Dallas Women Lawyers Association Foundation
Haseena J. Enu & Randy Hulme
Fish & Richardson P.C.
Frost
Hon. Royal Furgeson & Marcellene Malouf Furgeson
Shaquille Grant
Hon. Mark Greenberg
Hewlett Packard Enterprise
Matt Henry
Hilgers Graben PLLC
In Memory of Vester T. Hughes, Jr.
Kathleen Irvin
Rachel Khirallah
John & Lacy Lawrence
Norton Rose Fulbright US LLP
Reed Smith
Robert L. Tobey
Spencer Fane LLP
St. John Knits, Inc.
Stewart Law Group PLLC
Julie Ungerman
Robb L. Voyles
Winston & Strawn LLP
Zelle LLP

BRONZE ($1,500)
Susan Aldridge
Anonymous
Lauren Black
Vicki D. Blanton
Jonathan & Katie Childers
Bill Cobb
Computer Law Section
Amanda Cottrell
Timothy S. Durst
Employee Benefits & Executive Compensation Section
Sara J. Evans
David Haley
Sean & Gina Hamada

BRONZE ($1,500)
John Mark Hollingsworth
Jack Jacobsen
Dan & Kim Kelly
Mark Kleinman
Lewis LeClair
Jeffrey S. Levinger/Levinger PC
Linebarger Goggan Blair & Sampson, LLP
Elizabeth Mack & David Allen
Bill & Sondi Mateja
McBride & Associates at Merrill Lynch Wealth Management
Rachel Morgan
Cheryl Camin Murray/Katten Muchin Rosenman LLP
Emily A. Parker
The Phoenix Insurance
Brent Rosenthal
Will Russ
Science & Technology Law Section
Daniel Sheehan
Kristen Sherwin
Darryl Silvera
Helen & Frank Stevenson Fund of the Dallas Foundation
Ross W. Stoddard, III, Attorney-Mediator
Texas Capital Bank
Jeffrey M. Trinklein
J.L. Turner Legal Association
Joel & Terilyn Winful
Angela Zambrano

SPONSORS ($1,000)
Wes Alost
Anna Alvarado
Arcadi Jackson, LLP
Asian Pacific Interest Section of the State Bar of Texas
Bankruptcy & Commercial Law Section
Lisa Blue Baron
Carmen Blankenship
Deborah Coldwell
Katie & David Coligado

Olesja L. Cormney

SPONSORS ($1,000)
Brenda T. Cubbage
Stephanie Gause Culpepper
John C. Eichman
Gary Fish
The Law Offices of Domingo A. Garcia, PC
Glast, Phillips & Murray, P.C.
Hon. David & Beverly Godbey
Beverly Goulet
Robert Hallam
Krista Hanvey
Health Law Section
Bryan Henderson
Higier Allen & Lautin, P.C.
Rick Hilliard
Ladd A. Hirsch
Michael Hurst
Intellectual Property Law Section
Karos Law
David C. Kent
Jennifer & Mike King
Kwon Family
Jacob Marshall
John H. Martin
Mr. & Mrs. David R. McAtee
McCullough Mediation
Harriet Miers, in Honor of Bill Mateja
Retta Miller
Robert Mowrey
Senior Justice Mary L. Murphy (Retired)
Leslie & Tim Newman
Patterson + Sheridan, LLP
Phillips Murrah PC
RegitzMauck
Julie & Paul Rogers
Jan Sanders, in Memory of Ed Cloutman
Miles Schulze
Britta Stanton
Sandra & Richard Stewart
Phillip Umphres

Donors as of December 9, 2024

To donate to the campaign, visit www.dvapcampaign.org. To learn more about DVAP, visit www.dallasvolunteerattorneyprogram.org. For more information contact Michelle Alden at aldenm@lanwt.org or (214) 243-2234.

DBA Launches The 10 Minute Mind: A Simple, Effective Tool for Legal Professionals

BY MONIQUE RHODES

The legal profession is often described as one of the most rewarding and challenging careers. Yet, the very qualities that make it fulfilling—high-pressure cases, demanding workloads, and a relentless need for precision—can lead to significant stress and burnout.

To address these challenges, the Dallas Bar Association is proud to partner with **Monique Rhodes** to launch *The 10 Minute Mind*, a groundbreaking mindfulness program tailored specifically to help its members build resilience, sharpen focus, and improve their overall well-being. This innovative initiative is offered free of charge to all members, making it an accessible and practical tool for managing the unique demands of legal work.

What Is The 10 Minute Mind?

The 10 Minute Mind is a user-friendly online mindfulness training program designed to fit seamlessly into even the busiest schedules. The program offers guided mindfulness sessions that take just 10 minutes a day, helping participants develop critical tools for stress management, mental clarity, and emotional resilience.

No prior experience with mindfulness is necessary, and the program's straightforward approach makes it ideal for legal professionals looking for practical strategies to enhance their performance and well-being. Already a proven success in high-pressure environments like universities worldwide, *The 10 Minute Mind* is now available to members of the Dallas Bar Association.

Why Mindfulness Matters for Lawyers

The legal profession's demands—tight deadlines, difficult clients, and high stakes—contribute to stress levels that are among the highest of any career. Studies consistently show that chronic stress impacts cognitive performance, emotional regulation, and overall health. Mindfulness provides a scientifically supported way to address these challenges by changing how we respond to stress rather than attempting to eliminate it.

Research has demonstrated that mindfulness can:

- **Reduce Stress:** Mindfulness lowers cortisol levels, helping you feel calmer and more centered.
- **Enhance Cognitive Clarity:** Regular practice improves focus and decision-making, which are critical in complex legal work.
- **Build Emotional Resilience:** Mindfulness teaches you to navigate high-pressure situations with composure and confidence.
- **Improve Overall Well-Being:** Mindfulness leads to better sleep, stronger relationships, and a more balanced personal and professional life.

By adopting mindfulness, legal professionals can not only cope with the demands of their careers but also thrive within them.

What Makes The 10 Minute Mind Unique?

Here's why *The 10 Minute Mind* is the ideal mindfulness solution for lawyers:

- **Time-Efficient:** With sessions lasting just 10 minutes, the program fits easily into your day, whether it's during your morning routine or a midday break.
- **Scientifically Proven:** The techniques used in *The 10 Minute Mind* are grounded in research, showing measurable improvements in stress reduction and mental focus.
- **Completely Online:** The program is accessible anytime, anywhere. Whether you're in the office, at home, or on the go, you can tap into its benefits at your convenience.

How to Access The 10 Minute Mind

Getting started with *The 10 Minute Mind* is simple, thanks to the Dallas Bar Association's commitment to supporting its members' wellness:

1. Visit the sign-up page here: moniquerhodes.com/dba.
2. Follow the easy instructions to register for the program.
3. Begin your mindfulness journey and experience the difference just 10 minutes a day can make.

This program is free for all Dallas Bar Association members, making it an accessible and valuable resource for every legal professional.

Why You Should Join

Imagine starting your day with a clear mind, handling challenges with resilience, and ending your day with a sense of calm. That's the transformative potential of mindfulness. In just 10 minutes a day, you can create a foundation of mental clarity and emotional balance that enhances your career and improves your quality of life.

By joining *The 10 Minute Mind* initiative, you'll also contribute to a broader cultural shift within the Dallas Bar Association, one that prioritizes the mental and emotional health of its members. Together, we can redefine what it means to thrive as a legal professional.

A Message from the Dallas Bar Association

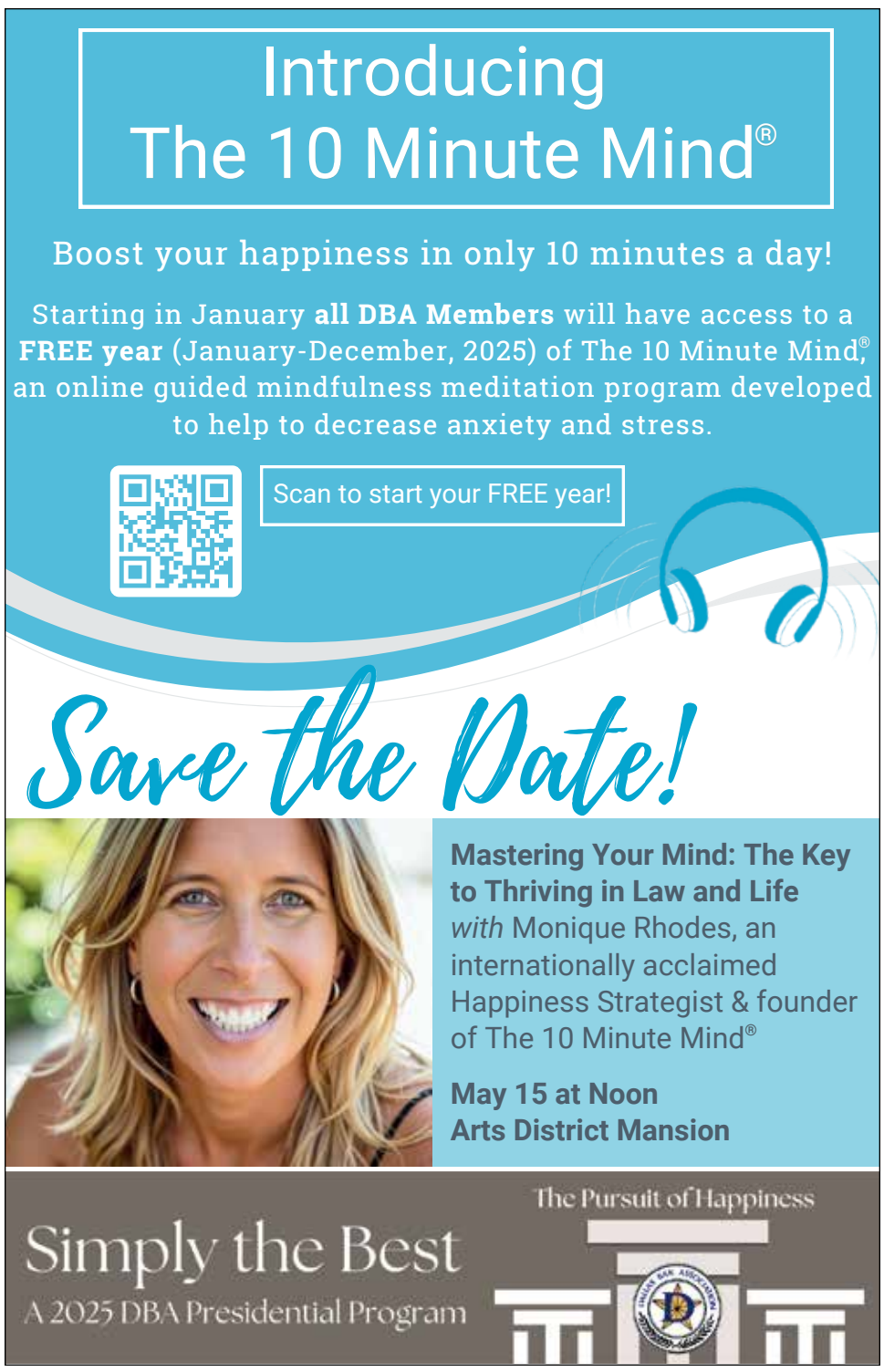
The DBA is proud to partner with **Monique Rhodes** and implement one of DBA President **Vicki Blanton's** signature programs in 2025.

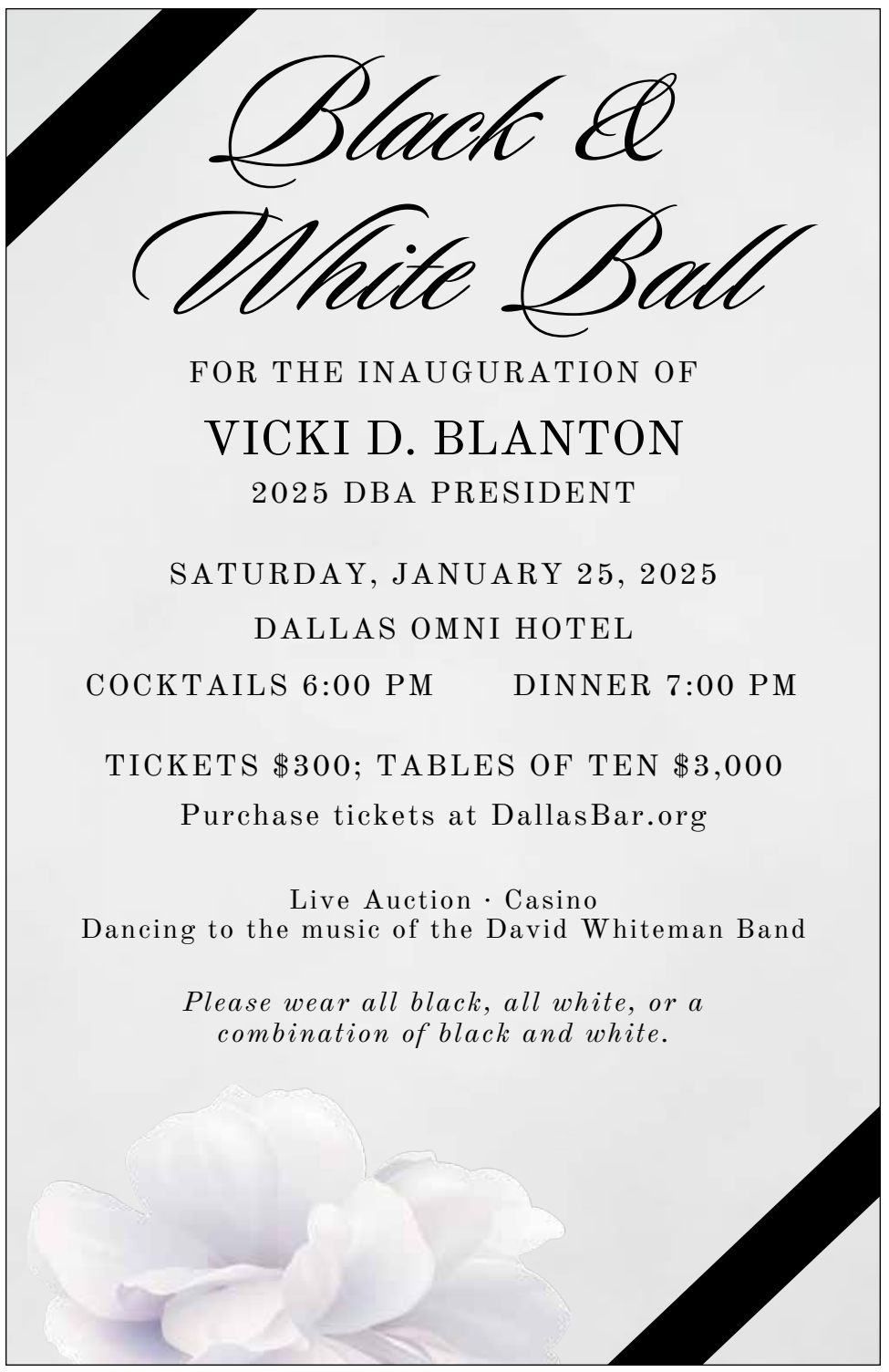
Monique is an internationally acclaimed Happiness Strategist. She has introduced countless individuals to the art of mindfulness meditation. Her signature program, *The 10 Minute Mind*®, has reached over 70 esteemed institutions globally, ensuring staff and students reap the benefits.

The DBA is committed to leading the way in fostering resilience, focus, and well-being among its members. With *The 10 Minute Mind*, we're providing an accessible, effective tool to help you navigate the challenges of legal work while enhancing your quality of life.

We invite you to join us on this journey. Start your mindfulness practice today and discover the benefits for yourself. Visit moniquerhodes.com/dallasbar to sign up and take the first step toward a brighter, more balanced future in the legal profession. **HN**

Monique Rhodes is an internationally acclaimed Happiness Strategist & founder of The 10 Minute Mind®.





Focus | *Intellectual Property/Science & Technology Law*

Mastering AI Governance Amid Heightened Regulation

BY DIANAH BROWN, CRAIG CARPENTER, AND NICOLA HOBEICHE

As in-house counsel, we are expected to help our businesses thrive while navigating industry-specific guardrails and new technologies. Managing these responsibilities requires strong, collaborative relationships, including partnerships with outside counsel and internal business teams. When facing new technological frontiers, the priority should be to cultivate partnerships across the business—ready to play a crucial role in advancing company initiatives. This principle holds especially true as companies evaluate and integrate AI into their operations.

Proactive Engagement: Staying Ahead of AI Trends

When it comes to embracing new challenges and opportunities, such as those brought on by AI, in-house counsel should engage proactively regarding their business needs. This enables internal teams to vet, establish processes, and implement policies before issues arise. A proactive approach allows you to tailor policies and procedures to your business's requirements, preparing you for both evolving business demands and a rapidly shifting regulatory environment with a governance program that is more than just another document.

Steps for AI Governance Readiness

To prepare your business as AI becomes more widespread, consider the following key steps to building a robust governance framework:

1. Vendor Risk Assessment: Start by incorporating AI considerations into your vendor review process. This process is an excellent time to discuss how the business will use a vendor, with a particular focus on AI capabilities. Consider establishing a specific intake process for AI-related vendor reviews. Here, you can ask critical questions upfront: What data will the AI system process? Will inputs train the AI or influence automated decision-making? What are the vendor's rights regarding outputs? If the AI tool is used for marketing or branding, clarify the business's expectations concerning IP. This diligence can prevent unexpected risks.

2. Contract Provisions: Leverage contractual language to address AI-specific issues. Incorporate clauses into your standard templates to govern AI usage by vendors, ensuring that these provisions are ready when needed. Additionally, keep a record of approved AI tools and use cases, as not all use cases may be covered. Share the approved list with the business to streamline compliance and provide clear guidance on permissible uses.

3. Draft an AI Policy: A focused, business-specific AI policy is crucial for both internal and external AI applications. This policy should define the various types of AI your organization uses (e.g., predictive, text- or code-generating, or image-generating AI) and outline best practices. With the increasing prevalence of public AI tools, such as ChatGPT, it is essential to establish clear guidelines on usage. Soliciting input from business stakeholders in drafting this policy ensures its relevance and practicality.

4. Update Relevant Terms: Ensure that your service terms and privacy notices reflect any AI components of your operations. This will provide transparency for clients and align with legal requirements as regulations evolve.

5. Consider Internal AI Solutions: Evaluate the feasibility of developing or purchasing an internal or enterprise AI tool. Proprietary systems can mitigate many of the risks associated with external tools, offering you greater control.

Navigating the Regulatory Landscape of AI

It is critical to address the above steps carefully, as AI technologies come with considerable risk. While many AI-related risks—such as copyright infringement, confidentiality breaches, fraud, and bias—are known, the regulatory environment is evolving, requiring internal and external teams to be even more vigilant and aware of current developments. In the U.S., there is no comprehensive federal regulation governing AI yet. Although certain areas, such as deepfakes, have been subject to regulatory attempts, the U.S. remains far from adopting an overarching framework like the European Union's AI Act. However, states and cities have begun crafting their own rules (e.g., the Colorado AI Act, California Consumer Privacy Act's "Automated Decision-Making" provisions, and NYC's AI regulations), and federal entities like the DOJ, SEC, and FTC have issued warnings about AI use and marketing.

In fact, in September 2024, the FTC launched "Operation AI Comply," enforcing actions against several service providers for making bogus AI product claims. More recently, the Texas Responsible AI Governance Act was proposed and slated for the 89th legislative session, to address high-risk AI systems. This regulatory momentum reflects a growing skepticism from both lawmakers and consumers.

Balancing Risk and Innovation in AI Governance

As AI continues to evolve, governance teams must carefully balance risk and innovation. A conservative approach may stifle business innovation and lead to unauthorized or undisclosed AI use, while a permissive stance may expose the business to serious legal and reputational harm. An informed, flexible governance framework can help you strike this balance, maximizing AI's benefits while minimizing its risks. Achieving these goals requires active collaboration with outside counsel and ongoing engagement with your business teams. This will minimize the risk of the business backtracking on development work or having to make significant pivots late in the process, allowing for a smoother and more proactive integration of AI technologies. **HN**

Dianah Brown, of Dianah Brown LLC, can be reached at dianah@dblegalsolution.com. Craig Carpenter is a Partner at BakerHostetler and can be reached at ccarpenter@bakerlaw.com. Nicola Hobeiche is VP of Legal Affairs at TaxAct and Drake Software and can be reached at hobeiche@gmail.com.

Focus | *Intellectual Property/Science & Technology Law*

An Overview of Artificial Intelligence Bias in Health Care

BY CHRISTINE CHASSE

Medical providers are increasingly using health care algorithms (computations often based on statistical or mathematical models) and artificial intelligence (AI) to assist with treatment, including diagnostics, predicting health risks, and reading X-rays.

Given AI's actual (and future) potential in health care, the U.S. Department of Health and Human Services (HHS) established an AI Office in March 2021 to "promote the use of trustworthy AI" (Executive Order 13960). But as excitement grows, there is also a risk: These powerful new tools can perpetuate longstanding racial and gender inequities in care delivery.

The medical field is no stranger to bias, which is both difficult to quantify and detect. Bias can be defined statistically and socially. *Statistical bias* is when the distribution of a data set fails to truly reflect the population. Most AI algorithms are built with machine learning, finding patterns in large data sets like billing information and test results. However, if the data misrepresents population variability, then AI reinforces that bias and adverse outcomes. This leads to *social bias*, inequities resulting in suboptimal outcomes for certain groups.

Research indicates clinicians often provide different care to white patients than to patients of color. Those differences are immortalized in data used to train algorithms, creating erroneous clinical decisions unsupported by evidence. This has been observed across various specialties including cardiac surgery, kidney transplantation, and vaginal birth after cesarean delivery (VBAC). In the VBAC model, the algorithm caused more Black patients to get cesareans than necessary. The algorithm was then changed to no longer consider race or ethnicity.

In 2019, it was discovered that an algorithm predicting health care needs for more than 100 million people was biased against Black patients. The algorithm used health care spending to make the predictions and falsely concluded that Black patients are healthier than equally sick white patients because they spent less money. As a result, algorithms prioritized white patients' illnesses although Black patients have higher severity indexes. As a result, Black patients had to be much sicker before the algorithm recommended additional care.

Algorithmic bias is not exclusive to race, as gender inequalities also can be exacerbated by imbalanced algorithms. For example, heart attacks are overwhelmingly misdiagnosed in women. Nevertheless, prediction models claiming to predict heart attacks five years before they happen were trained with predominantly male data sets. More generally, if AI is used in patients who are invisible in the data sets, there could be issues diagnosing or treating entire patient groups such as ethnic and gender minorities, immigrants, children, the elderly, and people with disabilities. These failures can be hard to recognize during the early phases of AI deployment unless specifically sought after. For example, it is often unclear if an individual is LGBTQ+ in their medical records.

HHS proposed regulations forbidding clinicians, hospitals, and insurers from discriminating "through the use of clinical algorithms." However, without clear guidance, providers and hospitals may struggle with compliance as there is currently nothing at the regulatory or policy level mandating action. Some may outright refuse to use AI in their practice altogether.

HHS' Office of the National Coordinator for Health Information Technology's Final Rule requires algorithm transparency, requiring developers to share with clinicians more information on what data was used to build algorithms. The hope is that with more transparency, providers may better determine if an algorithm is unbiased enough to safely use on patients.

Another question lacking guidance is: What level of bias is acceptable for an AI algorithm? It seems unlikely to expect a completely bias-free algorithm before its implementation. Another issue is whether AI algorithms should be locked or adaptive. If adaptive, the AI model could be updated continuously as it learns new data. However, continuous learning possesses the risk of bias if biased new data is introduced.

The Treatment Plan for Bias

Certain best practices may minimize bias in algorithms include:

- Promoting health care equity during all phases of algorithm creation;
- Ensuring algorithms and their use are transparent and explainable;
- Authentically engaging with patients and communities;
- Identifying algorithmic fairness issues and tradeoffs;
- Having a diverse body of people to review and supervise algorithms creation;
- Using methods to manage situations where there is not enough information available, like synthetic data;
- Introducing algorithms gradually instead of all at once; and
- Creating ways for people to provide feedback and improve algorithms over time.

Health care is being transformed by the growing number of data sources constantly shared, collected, and implemented into AI. Algorithmic and human bias, along with information gaps and lack of data standards, pose the biggest threats toward fair AI. Implementing the principles of open science into AI design and evaluation could strengthen the burgeoning collaboration between AI and medicine. **HN**

Christine Chasse JD, MSN, RN, CIPP/US, NE-C, is a Health Care and Compliance Associate at Spencer Fane. She can be reached at cchasse@spencerfane.com.

2024 DBA President Recognized

On behalf of the Board, Stephanie G. Culpepper (right), Chair of the Board, presented Bill Mateja, DBA's 2024 President, with an oil painting by Texas artist Jerral Derryberry. Mr. Derryberry's work is currently represented and sold in fine art galleries and national exhibitions. More of his work can be seen at www.jerralderryberry.com.

Focus | *Intellectual Property/Science & Technology Law*

FemTech: Does it Pay to be a Woman and Other Legal Questions

BY SHANNON CHAPMAN AND SHEREEN EL DOMEIRI

Yes, it can pay to be a woman. The term "FemTech" was coined in 2016 by the woman founder of Clue, to define a group of technologies designed to support and advance women's health care. Since then, the FemTech industry has continued to grow despite being confronted with discrimination, bias, and concerns relating to misuse of these technologies and sensitive personal data collected by them.

FemTech focuses on products and services that support and encompass all women's health issues, including, but not limited to puberty, menstruation, sexual health, perimenopause, menopause, fertility, mental health, cancer, auto-immune diseases, and cardiovascular health. FemTech is expected to be a $50 billion industry by 2025, and a $60 billion industry by 2027, with studies showing women are likely to spend 29 percent more per capita on health care needs than men. That is a phenomenal growth projection.

The trajectory and pace of FemTech growth has acutely highlighted several challenges, including gender bias in funding and health care data, censorship of advertising, and the treatment and protection of data collected by these technologies. Participants in the industry may interact with several different regulatory agencies and frameworks depending on how they are categorized and with whom they are collecting information.

Funding Gap Bias

FemTech companies currently only represent less than 2 percent of venture capital (VC) fund grants. A recent study suggests that women's health tech is less likely to get funding if a woman is on the founding team. As of 2022, women-founded startups comprised 1.9 percent of VC fund grants, down from 2.4 percent in 2021. However, VC funds created exclusively for women founders and women founders of color have faced legal challenges under laws protecting against gender and racial discrimination. Start-up attorneys need to be aware of these challenges and work with FemTech clients to resolve the barriers to raising capital, including through better entity structures and investor agreements. Providing education and advocacy to private equity and seed financing companies on the financial benefits women-led and women-centric business have to offer is also needed to alleviate the disparity in funding available to FemTech companies.

Health Care Data Bias

Until the early 1990s, women were categorically excluded from medical clinical trials and females (including female mice) were excluded from medical research. It has been less than a decade since NIH-funded researchers were required to collect data on biological sex differences in preclinical research and animal testing, analyze the data, and report on differences in the findings. A lack of women's health data has not only historically caused disparity in health care treatment and outcomes, but it continues to remain a concern in the health-tech and FemTech sectors. The inherent bias that may result through use of untailored health data remains of particular concern as AI and automated automated-decision-making programs are using such data, which could perpetuate treatment disparities and even improper profiling in the future.

Advertising Censorship

A majority of FemTech companies are experiencing censorship online through major social media sites like Instagram, TikTok, LinkedIn, and Facebook due to the terminology required to describe FemTech products. FemTech advertisements using words like "pelvic floor", "vagina", "breasts", and "endometriosis" are frequently rejected, blocked, removed, or banned as inappropriate and for violating the "adult product" policies. It should be noted that similar products and services that use anatomical or health diagnosis terms aimed at men do not experience this same censorship on social media (looking at you little blue pill). This practice prompted several U.S. Senators to ask the Federal Trade Commission to investigate whether such practices constitute unfair and deceptive practices under the FTC Act. Until such practices are corrected, attorneys can assist FemTech clients in advocating against this type of censorship on social media platforms or in crafting creative solutions to advertise within the current limited systems.

Data Privacy & Protection

Since FemTech providers collect personal health information (PHI) from consumers, compliance with applicable data privacy and protection laws is a central focus area. FemTech providers are generally not covered by the requirements of the Health Insurance Portability and Accountability Act (HIPAA) due to that statute's limited scope. However, FemTech companies are subject to regulation by state comprehensive privacy laws.

Recently, the FTC brought an enforcement action against Flo Health for failing to disclose how its period tracking app was sharing information with third parties. There are additional concerns following the Supreme Court's *Dobbs* decision about how information collected by FemTech providers could be accessed and used in prosecutions of anti-abortion laws. Together, these developments require FemTech companies to invest in strong data privacy and protection programs to ensure the sensitive data collected is not misused or shared without appropriate disclosures and consents.

FemTech is an industry ripe for proving it can pay to be a woman. Lawyers serving the industry have an opportunity to provide the right guidance at the right time in a burgeoning area of the law. **HN**

Shannon Chapman and Shereen El Domeiri are Partners of Fulton Jeang PLLC. They can be reached at schapman@fultonjeang.com and seldomeiri@fultonjeang.com, respectively.

Focus | *Intellectual Property/Science & Technology Law*

USPTO Weighs in: New Guidance for AI-Assisted Inventions

BY KEITH DAVIS, RAJKUMAR VINNAKOTA, TANNER WADSWORTH, AND ARJUN PADMANABHAN

This year, the U.S. Patent and Trademark Office (USPTO) issued two guidance documents on an important question: Who can patent inventions conceived with the help of generative artificial intelligence (AI)? In February 2024, the USPTO sought to clarify how much AI involvement is acceptable before an invention becomes unpatentable. In August 2024, it provided further guidance on subject matter eligibility for AI inventions. These documents represent a major step forward, but they leave some concerns unresolved.

Establishing Human Control

Courts historically rejected attempts to patent inventions conceived by AI. The USPTO's February 2024 Guidance maintained that position, but clarified the role of AI as a tool under human control. The guidance serves as a response to stakeholder warnings that, unless AI-generated properties can be owned by humans, innovation could be stunted and economic value lost. The guidance attempts to balance these concerns against the risk that, given too much leeway, unscrupulous actors could mine AI systems for patentable ideas, locking down whole industries with serial patents for innovations they do not even understand.

The February guidance cracks open the door for human ownership of AI-generated properties without throwing it open too wide. It provides that, although AI systems cannot be listed as inventors on patent applications, AI can be used like any other tool in an inventor's toolbox, so long as a human controls the invention's blueprint. The guidance requires that each named inventor must significantly contribute to the conception of the invention, and at least one of the applicants must recognize and appreciate the invention for what it is.

To that end, the Guidance allows patent examiners to solicit follow-up information from applicants who may not have made significant contributions to their claimed inventions. The document also provides factors to consider in determining whether a human's contribution is significant enough. For example, examiners consider: (1) the quality of the prompt the inventor used to guide the AI to the result; (2) the importance of the component the natural person contributed to the invention; and (3) whether the inventor significantly contributed to the conception of the invention, or merely owned and controlled the AI system—which is not enough.

Determining Patentable Subject Matter

The Supreme Court has long held that abstract ideas, laws of nature, and natural phenomena cannot be patented. In keeping with this rule, the August 2024 Guidance Update explained how the USPTO determines whether the subject matter of AI-assisted inventions is patentable.

The Guidance Update instructed examiners to distinguish between claims that simply *recite* an abstract idea from those that *incorporate* or are *based on* abstract ideas. It also provided examples of what impermissibly abstract inventions might look like in certain categories that implicate the way AI works, including mathematical concepts, methods of organizing human activity, and mental processes. The Guidance Update summarized key Federal Circuit opinions to help examiners apply the right concreteness standard.

The Guidance Update directed examiners to consider a claim as a whole when evaluating the patentability of its subject matter.

Additionally, the Guidance Update instructed examiners not to consider the involvement of AI when determining an invention's subject matter eligibility. The Update provided three new subject matter eligibility examples pertaining to AI inventions:

- First, AI-related claims can be eligible if they contemplate specific hardware uses or leverage abstract ideas to improve technological functionality;
- Second, an ineligible claim can be eligible if it provides specifics about how the AI is trained and leveraged, thereby demonstrating an improvement to technology; and
- Third, claims that contain precise technical adaptations of AI models in practical applications with "meaningful limits" can be eligible.

These examples suggest that AI-related claims exhibiting specific technical advancements or practical applications of AI are better positioned for a favorable 35 U.S.C. § 101 eligibility finding.

Stakeholder Takeaways

These guidance documents provide insights for stakeholders working to tap the potential of AI-driven innovation. But initial feedback has been mixed. Some stakeholders, like Amazon, worry that patents claiming AI or neural network elements risk preempting technological innovation. Others, like the Pharmaceutical Research and Manufacturers of America, agree that AI involvement does not implicate subject matter eligibility. Ultimately, the patentability of AI-generated inventions is a policy issue that requires balancing complex and competing interests. For patent practitioners, these developments present both opportunities and challenges in advising clients on AI-related patent applications. Further legislative action may be appropriate to fully resolve these issues.

In conclusion, the USPTO's latest guidance supports the viability of AI as a tool for conceiving patentable inventions and subject matter. Stakeholders interested in capitalizing on AI should analyze the guidance and learn the extent to which they can harness the power of generative AI to innovate without compromising the patentability of their inventions. **HN**

Keith Davis is a Partner at Jones Day and Tanner Wadsworth is an Associate at the firm. They can be reached at kbdavis@jonesday.com, and twadsworth@jonesday.com, respectively. Rajkumar Vinnakota is a Partner at Cole Schotz P.C. and Arjun Padmanabhan is an Associate at the firm. They can be reached at kvinnakota@coleschotz.com and apadmanabhan@coleschotz.com, respectively.

Focus | *Intellectual Property/Science & Technology Law*

An Analysis of Standing in Texas Data Breach Class Actions

BY AMANDA HARVEY AND KAYLEIGH WATSON

Federal courts throughout the country have issued divergent rulings on whether the mere compromise of personal information and actions taken in response to a security incident establish standing absent identity theft. This split has created significant uncertainty for practitioners handling data breach litigation. Standing is a threshold issue as to whether a plaintiff has met the requirements to pursue a cause of action against another party in a court of law. Article III of the U.S. Constitution restricts the exercise of jurisdiction of the federal courts to actual cases or controversies. Standing to sue under Article III requires the showing of an injury-in-fact that is "actual or imminent, not conjectural or hypothetical." *Spokeo, Inc. v. Robins*, 278 U.S. 330, 339 (2016).

When the U.S. Supreme Court decided *TransUnion v. Ramirez* in 2021, it appeared to clarify the standard to establish standing on the basis of a potential future injury. In assessing whether the risk of future harm can constitute an injury-in-fact under Article III, the Supreme Court distinguished between claims seeking injunctive relief and claims seeking monetary damages. When seeking injunctive relief, a plaintiff may rely on a potential future injury to establish standing "at least so long as the risk of harm is sufficiently imminent and substantial." In a suit for damages, however, the mere risk of future harm, without more, cannot qualify as a concrete harm sufficient to establish standing. The court reasoned that a plaintiff must show that the harm actually materialized or that the plaintiff was "independently harmed by… exposure to the risk itself." Ultimately, the Court determined "[n]o concrete harm, no standing."

Prior to *TransUnion*, district courts within the Fifth Circuit found the mere risk of future identity theft insufficient to establish standing in a data breach class action. This summer, the Southern District of Texas decided a data breach case granting the defendant's motion to dismiss for a lack of subject matter jurisdiction on similar grounds. *Logan v. Marker Group, Inc.*, No. 4:22-cv-00174 (S.D. Tex. July 18, 2024).

The *Logan* court held that two of the three named plaintiffs, Logan and Baxter, lacked Article III standing because they did not allege any concrete injury. Both Logan and Baxter's primary allegations of harm stemmed from the receipt of spam messages. The court held that no harm resulted from the receipt of spam messages and relied on other court decisions finding that similar spam allegations do not "plausibly suggest" that any actual misuse of Plaintiff's personal identifying information occurred. The court further found that Logan and Baxter failed to establish standing on a speculative risk of current or future identity theft and that their purported mitigation efforts were insufficient to confer standing. The court also rejected Logan and Baxter's argument for diminution in the value of their personally identifiable information.

Last month, the Western District of Texas declined to adopt its sister court's "concrete injury" analysis articulated in *Logan*. In *Bruno*, the plaintiff alleged injuries in the form of a potential increased risk of identity theft and diminution in value of personal information. The court concluded that the plaintiff in a data breach case "alleged sufficient facts to allow the Court to draw a reasonable inference that there is a substantial risk the identity theft harm will occur to satisfy the injury in fact requirement." *Bruno v. Robert Donohoe, as Trustee of the Texas Medical Liability Trust*, No. 1:23-cv-01183-DAE (S.D. Tex. October 25, 2024). The Western District, in arriving at its decision, reviewed opinions from the United States Court of Appeals for the First, Second, Third, Sixth, Seventh, and District of Columbia Circuits.

Until the Fifth Circuit weighs in, litigants in Texas will not be certain if an allegation of future risk of harm will stand strong or fall short. The current split among district courts emphasizes the importance of carefully crafting allegations of concrete harm in data breach litigation. **HN**

Amanda Harvey and Kayleigh Waston are Attorneys at Mullen Coughlin and can be reached at aharvey@mullen.law and kwatson@mullen.law, respectively.

Judge L. Clifford Davis to Receive 2025 MLK Justice Award

CONTINUED FROM PAGE 1

Black Bar, which is now known as the L. Clifford Davis Legal Association.

In 1983, Governor Mark White appointed Davis as judge of Tarrant County District Criminal Court No. 2, where he served until 1988. He later served as a visiting district judge and senior district judge until 2004.

In addition to the Martin Luther King, Jr. Justice Award, Davis has received numerous other awards including the Blackstone Award (the Tarrant County Bar Association's most prestigious award), the Silver Gavel Award, the NAACP William Robert Ming Advocacy Award, the Tarrant County Bar Foundation's Lifetime Community Service Award, the Distinguished Lawyer Achievement Award by *Texas Lawyer Magazine*, and the Multicultural Alliance Award. Davis has also been inducted into the National Bar Association Hall of Fame, among many other honors and recognitions.

Now 100 years old, his legal career has spanned over seven decades. During his induction as a Legal Legend by the Litigation Section of the Texas State Bar in April of 2024, Davis reflected on his legal career. "Having practiced law since 1949, I've developed my homemade definition of civil responsibility," he said. "We have the civil responsibility—individually and collectively—to treat all persons with whom we have contact with decency, courtesy, respect, and integrity. And practice and advocate for freedom, justice, and equality for the general welfare of the total environment."

Davis emulates the ideals, beliefs, actions, and aspirations that were intrinsic in Dr. King. He lived out his passion to eliminate injustice anywhere he could find it, to ensure justice everywhere.

Please join the DBA in celebrating and congratulating Hon. L. Clifford Davis at the 2025 Martin Luther King, Jr. Justice Award Luncheon at noon on Wednesday, January 29, at the Arts District Mansion. For specific details, visit www.dallasbar.org and watch for special announcements by email. **HN**

James A. Deets is a Senior Director at Alvarez & Marsal and is a past Chair of the Publications Committee. He can be reached at jdeets@alvarezandmarsal.com.

Focus | *Intellectual Property/Science & Technology Law*

Contracting in Artificial Intelligence (AI) Agreements

BY SAMUEL GEE

As the field of artificial intelligence (AI) advances, companies of all sizes are faced with evolving issues regarding intellectual property (IP) and data ownership. Where an organization, such as Company X, elects to utilize technology developed by third parties, it can expect to face questions regarding IP and data ownership that need to be addressed under a comprehensive strategy. This article addresses three common examples: confidential disclosure agreements, software as a service (SaaS) agreements, and joint- or partner-enabled development agreements.

Non-Disclosure Agreements (NDAs), or confidential disclosure agreements, are put in place to protect the exchange of confidential information between parties. There are three variations, each of which is treated slightly differently. A one-way NDA may be structured with Company X as either the receiving party or the disclosing party, whereas a two-way NDA contemplates a third party and Company X each potentially disclosing confidential information to the other. Regardless of the variation, IP and data ownership are rarely major considerations in negotiations of an NDA, as no IP is created by either party and no data ownership is contemplated because no data is exchanged.

Company X may utilize a **SaaS agreement** by electing to purchase software from a third-party supplier with no, or limited, modifications to the software that are specific to Company X. Company X will use the software by inputting data, which may be confidential and personal, and receiving outputs that are generated by the software. In this situation, the third-party supplier has likely already expended considerable time and resources to develop its software, which often contains one or more AI models, and may have IP protections in place prior to engaging with customers.

Due to this, the third-party supplier will anticipate retaining the IP rights in its existing model. However, there are differing schools of thought on the ownership of the data used as inputs and generated as outputs. The first approach favors the customer, Company X. Company X may push to own the data that was used as the inputs and the outputs that are generated by the model, arguing that all of the data should be treated as confidential data owned by Company X. This approach is particularly likely to be favored by customers which may be using the software to analyze confidential information, and are less willing to negotiate this point the more business-critical or personal the input data is. The second approach favors the third-party supplier, which may push to own the outputs generated by the model it owns and, in some instances, the data used as the input as well. This approach will be more agreeable to Company X if the data used as the input is not confidential or personal.

Company X is likely not only concerned with the ownership but the use of the inputs and outputs as well. The third-party supplier may, depending on the type of AI model they have developed, desire to use the inputs and outputs to further train its model(s). On the other hand, Company X will likely push back on this point, arguing that their confidential information should not be used to train a model it does not own and may be used later to give a competitor an advantage.

Finally, in **joint development agreements**, IP and data ownership are likely to be issues at the forefront of the agreement. Joint development comes in multiple forms, each of which has its own advantages and limitations. Consider Company X as it works with a third party to develop a model for use by Company X.

Company X may negotiate a "behind the firewall" version of otherwise off-the-shelf software that is specific to Company X or trained specifically to be used by Company X. Here, Company X is likely to own the inputs and outputs. Company X may also own the model, or it may be owned by the third party but with exclusivity terms that prevent the model from being shared with other clients.

Company X may also retain the third party in a more traditional work-for-hire arrangement, where the third party retains the IP in its existing software, but the model, data, and IP resulting from the agreement are owned by Company X.

Finally, in a true joint development relationship where the parties jointly develop software including an AI model, the third party maintains their IP in pre-existing software and the resulting model is jointly owned. **HN**

Samuel Gee is Senior Patent Counsel at Kenvue. He can be reached at sgee01@kenvue.com.

You are Invited to the following Judicial Investitures:

Hon. Kim Bailey Phipps, 162nd Civil District Court
Friday, January 10, 3:30 p.m. at the Arts District Mansion

•••

Hon. Elizabeth Davis Frizell, Dallas County Criminal District Court 2
Monday, January 27, 3:30 p.m. at the Arts District Mansion

Meet Your Allied Bar Presidents for 2025

BY GRIFFIN S. RUBIN

As the Dallas Bar Association gears up for 2025, it is time to welcome the incoming presidents of our Allied Bar Associations. The DBA looks forward to working with these outstanding leaders as they advance the goals of their organizations and work to serve their members in the coming year.

Chelsea Hilliard will serve as President of the Dallas Women Lawyers Association (DWLA). She is a partner at McGuireWoods, where she represents clients in high-stakes litigation and corporate-governance matters. Among her many accolades, Hilliard has been recognized *by D Magazine* as a "Best Lawyer Under 40" since 2018 and as a "Best Lawyer in Dallas" from 2023-2024. She earned her undergraduate degree *summa cum laude* from Southern Methodist University and her J.D. *cum laude* from the SMU Dedman School of Law.

Thomas McMillian will serve as President of the Dallas LGBT Bar Association. He currently serves as an Assistant District Attorney in the Civil Division of the Dallas County District Attorney's Office. He previously served as an Assistant City Attorney for the Cities of North Richland Hills and Amarillo, Staff Attorney for Chief Justice Brian Quinn of the 7th Court of Appeals, Assistant District Attorney for the 47th District Attorney's Office and Assistant County Attorney at the Potter County Attorney's Office. Mr. McMillian is a Texas Bar Foundation Fellow and was named Young Lawyer of the Year by the Amarillo Area Young Lawyers Association in 2018. He earned his B.B.A. in Economics from Texas Tech University in 2004 and his J.D. from St. Mary's University School of Law in 2008.

Berenice Medellin Pruettiangkura will serve as President of the Dallas Hispanic Bar Association (DHBA). She is an associate at Galloway Johnson Tompkins Burr & Smith, where she litigates cases involving construction defects, creditor's rights, foreclosure and mortgage litigation, premises liability, medical liability, and insurance coverage and defense. Pruettiangkura has been recognized by Best Lawyers as a "One to Watch" in the area of construction law since 2021. She earned her undergraduate degrees from the University of Texas at Austin and her J.D. from the University of Texas School of Law.

Elizabeth "BB" Sanford will serve as President of the Dallas Association of Young Lawyers (DAYL). She is a trial lawyer at the Sanford Firm, which specializes in employee-side employment-law matters and disputes. Among other accolades, Sanford has been recognized by *D Magazine* as a "Best Lawyer Under 40" from 2023–2024 and by The National Trial Lawyers as one of the "Top 40 Under 40" from 2022–2023. She earned her undergraduate degree from Baylor University, her master's degree from Baylor University's George W. Truett Theological Seminary, and her J.D. from Baylor University School of Law.

Kandace Walter will serve as President of the J.L. Turner Legal Association (JLTLA). She is currently an Associate Clinical Professor and Director of the Small Business and Trademark Clinic at the SMU Dedman School of Law. She is also a registered patent attorney and owner of Walter Legal PLLC, where she utilizes her legal experience to satisfy the business and intellectual property needs of her clients. Walter's legal background includes her early work as an Assistant District Attorney in the Dallas County District Attorney's Office and Community Prosecutor/Assistant City Attorney with Dallas City Attorney's Office. Walter earned her undergraduate degree from Florida A&M University (B.S. Chemistry, 2001) and her J.D. from the University of Texas School of Law (2004).


Chelsea Hilliard


Thomas McMillian


Berenice Medellin Pruettiangkura


Elizabeth "BB" Sanford


Kandace Walter


Ashley Yen

Ashley Yen will serve as President of the Dallas Asian American Bar Association (DAABA). Yen works as Assistant General Counsel at Methodist Health System. She earned her undergraduate degree from Rice University and her J.D. from the SMU Dedman School of Law. Outside of DAABA, Yen enjoys snowboarding, wedding coordinating, and traveling.

The DBA wishes the Presidents of the Allied Bars nothing but success in the coming year! **HN**

Griffin S. Rubin is a Senior Associate at Sbaiti & Company PLLC and can be reached at Griffin S. Rubin gsr@sbaitilaw.com

Focus | *Intellectual Property/Science & Technology Law*

Adapting "Reasonable Measures" to Protect Trade Secrets

BY SHARON HISE

Trade secret theft costs the U.S. economy an estimated $225 to $600 billion annually. Beyond the short-term economic impact, a cybersecurity breach involving trade secrets can seriously undermine a company's strategic position and reputation in the marketplace. Legally, trade secrets are protected if their owners take "reasonable measures" to maintain confidentiality. As threats to a company's valuable data become more sophisticated, trade secret owners must improve their defenses for those measures to still be considered reasonable.

Trade secrets are a unique type of intellectual property in that they derive their value from being secret, placing a substantial burden on owners to protect them. Trade secrets can protect a wide variety of information like technical or scientific data, source code, designs, customer lists, and complex manufacturing processes. To qualify as a trade secret under most state and federal laws, the information must meet a two-part legal standard: 1) it must derive independent economic value because of its secrecy, and 2) it must be protected by "reasonable measures" to prevent disclosure.

The Karakurt is a group of hackers known for infiltrating organizations, stealing sensitive data, and holding it for ransom. But unlike typical ransomware attacks where the data is returned to the company, Karakurt threatens public disclosure of the data or sale to competitors. The group often gains access by purchasing stolen login credentials or exploiting vulnerabilities in compromised security systems. Their typical ransom note demonstrates the severity of these threats: "We exfiltrated anything we wanted… (including Private & Confidential Information, Intellectual Property, Customer Information and most important Your TRADE SECRETS)." Understanding how to prevent such attacks requires examining what constitutes adequate protection in today's digital environment.

Courts across jurisdictions have established that "reasonable measures" include, at a minimum, basic protections like password security, data encryption, non-disclosure agreements, and physical security safeguards. Courts also tend to require heightened protective measures as the value of the information increases. However, given today's advanced cybersecurity threats, basic precautions like passwords and data encryption often fall short.

To protect their trade secrets, companies should adopt a layered approach to security, implementing strategies that go beyond the bare minimum. To start, sensitive information should be compartmentalized within the organization, to which only those employees with a legitimate need to know have access. Companies can also reduce risk by minimizing the digitization of trade secrets and storing any sensitive data across separate, secure locations.

Multi-factor authentication (MFA) is another important measure. MFA controls access by providing an added layer of identity verification. In secure areas, restricting the use of personal digital devices can prevent unauthorized data sharing. Additionally, managed file transfer (MFT) solutions offer greater control and tracking than standard secure file transfer protocols (SFTP), improving data handling and security. Regular security reviews and employee training are necessary to help identify and avoid threats. Importantly, companies may want to rethink disclosing the existence of trade secrets publicly, such as in SEC filings. A recent study suggests a positive association between public disclosure of the existence of trade secrets and an increased risk of cyberattacks.

A comprehensive and widely recognized security framework available today is the Systems and Organization Controls 2 (SOC 2) compliance standard. Developed by the American Institute of Certified Public Accountants (AICPA), this framework encompasses five trust service criteria that touch on trade secret protection concerns: security principles protect information from unauthorized access; availability principles ensure that employees and clients can access the systems they need; processing integrity principles ensure a company's systems operate accurately and efficiently; and confidentiality and privacy principles ensure sensitive information is protected, remains confidential, and is used in compliance with relevant laws.

Achieving SOC 2 compliance requires implementing many of the security measures. Companies may also benefit from consulting qualified cybersecurity experts. These experts can provide valuable insights by assessing the company's security framework, identifying potential vulnerabilities, and recommending targeted solutions.

The disclosure of a trade secret creates two consequences: the immediate loss of its economic value and potentially irreversible damage to the company's reputation. Implementing stronger protective measures, diligently monitoring threats, and ongoing employee training help organizations protect their most valuable assets. As cyberthreats become more sophisticated, the best defense is to continually assume that your "reasonable measures" must improve to stay ahead of evolving risks. **HN**

Sharon Hise is an Associate at Carstens, Allen & Gourley, LLP. She can be reached at hise@caglaw.com.

Focus | *Intellectual Property/Science & Technology Law*

Code Nicking Cases on the Rise? A Brief Intro

BY JASPAL SINGH HARE

Cases involving "code nicking"—a British term for stealing—seem to be on the rise. You may not have heard much about them because these cases are often litigated in confidential arbitration proceedings. A quintessential case involves a company hiring a computer programmer from a competitor, with allegations that the programmer took confidential information upon their departure. Sometimes the programmers bring source code with them to the new employer. Other times the programmers leave with nothing tangible but their technical knowledge.

When the original employer believes its confidential information has been stolen, it may file suit asserting misappropriation of trade secrets, copyright infringement, and breach of nondisclosure agreements (NDAs), among other things. A number of questions frequently arise: What was stolen? How is the stolen data being used by the programmer with his or her new employer? Is the stolen information proprietary or just generic knowledge? What are the underlying contractual obligations of the parties? What kind of damages can be shown? Every case is unique and fact dependent. Below are some considerations.

By far the biggest issues is what information was taken (exfil) and how that information was then used (infil). Hence, conducting a proper forensic investigation is important. Once a company becomes aware that its trade secrets may be at risk, it should start an investigation and begin collecting and preserving evidence. Typically, this will include a forensic collection of data from laptops as well as mobile devices of the departing programmers. The company will also want to investigate its source code repositories, network logs, servers, and the like for unusual activity. Often, there will be evidence of exfiltration, such as, programmers emailing code to themselves, copying files onto USB devices, or FTP transfers. Discoveries of encrypted or hidden communications may indicate programmers taking efforts to conceal an exfil.

The programmers' new employer might not even hear of a potential problem until it is contacted or sued. In such instances, the respondent company will want to conduct its own forensic investigation. This may include a review of emails and communications of the suspect programmers, projects they worked on, and the potential scope of infiltration of any protected information. In the event that source code is found to have been infiltrated, it is important for the company to evaluate the nature of any code that it received. For example, is the code proprietary or open source, or is it generic with little economic value? Has the information been disclosed at trade shows or conferences? In cases involving no code exfiltration, the new employer should also investigate whether any proprietary system designs and architecture may have been brought over in a programmer's memory and could have been misappropriately used by the programmer in building new systems for the company. The new employer will benefit if it has a story showing a "normal" systems development lifecycle unaided by any misappropriation of trade secrets.

Assuming an action is filed, discovery is important. The claimant is usually required to provide a description of its trade secrets. Care must be given to that the disclosure has sufficient detail to describe the trade secret. An overly high-level description of the trade secret may be shown to be generic and publicly known, thus losing trade secret protection. This disclosure is also important to shape the scope of discovery.

The parties will also want to give consideration to damages issues. The claimant will want to show the amount of time and money it invested in developing the trade secrets and moneys derived from at-issue systems. On the other hand, the respondent may seek to show that any infiltration saved them little to no time and money.

In sum, it is important to start with knowing the facts and then establishing a good plan of attack early in the case. Early case investigation is key. **HN**

Jaspal Singh Hare is an Attorney and former Java programmer. He is currently a director in FTI Consulting's Technology Dispute and Advisory Services (TDAS) group and can be reached at Jaspal.Hare@fticonsulting.com.

Join the Texas UPL Committee

The **Unauthorized Practice of Law Committee** (UPLC) is comprised of nine volunteers who are appointed for three-year terms. The UPLC is authorized to investigate and eliminate the unauthorized practice of law. Members of the UPLC volunteer to help with cease-and-desist letters and injunction lawsuits. Serving on this committee is an excellent opportunity to get involved, network, meet people, and develop business.

Sign up at https://buff.ly/3E8qadk

Hire a high school intern!

Any projects that keep getting put off around the office? Need some inexpensive help during the summer? Want to make a difference in the life of a Dallas ISD student?

Scan here to sign up

Become an employer for the 2025 Summer Law Internship Program!

Questions? Contact Melissa Perez at mperez@dallasbar.org

ECL ATTORNEY SPOTLIGHT

KRISTIN MIJARES

In September 2024, **Kristin Mijares** founded Mijares Law, PLLC, a law firm dedicated to providing affordable, high-quality legal services in Labor and Employment law. Kristin helps employers anticipate and avoid potential issues while guiding employees to understand their potential claims and how to gather evidence to support them. She offers counsel on a wide range of employment matters, including discrimination, retaliation, policy drafting, and contract negotiation. Her practice is designed to meet the needs of the Dallas-Fort Worth (DFW) community while allowing flexibility to balance her family commitments.

Kristin earned her law degree cum laude from SMU Dedman School of Law. Over the course of her career, she worked with a variety of law firms before deciding to open her own practice. This transition was motivated by Kristin's passion for offering affordable, accessible legal services to clients in need while fostering long-term relationships as she helps them navigate and resolve their most challenging employment issues.

ECL ENTREPRENEURS IN COMMUNITY LAWYERING
A program of the Dallas Bar Association

Focus | *Intellectual Property/Science & Technology Law*

Texas Vies for Leading Privacy Enforcement Role

BY GAVIN GEORGE AND TIM NEWMAN

When one thinks of "privacy enforcer," Texas may not initially come to mind. But recent enforcement activity and announcements from the Texas Office of the Attorney General (OAG) require a second look. Companies doing business in Texas should take note of the OAG's focus on enforcing privacy and consumer protection laws, and its particular focus on tech companies and artificial intelligence products.

On June 4, 2024, the OAG announced a major initiative to "protect Texans' sensitive data from illegal exploitation by Tech, AI, and Other Companies." As part of this initiative, the OAG established an enforcement team within its Consumer Protection Division tasked with enforcing the new Texas Data Privacy and Security Act (TDPSA) along with a host of other privacy and consumer protection laws already on the books in Texas. As of September 2024, this new privacy enforcement team was already about ten lawyers strong, and it is expected to grow.

The OAG's June announcement has been followed by a flurry of enforcement activity. In July, the OAG announced a $1.4 billion settlement with Meta arising from allegations that its Facebook "Tag Suggestions" feature violated the Texas Capture or Use of Biometric Identifier Act (CUBI) and the Texas Deceptive Trade Practices Act (DTPA). The settlement was touted as the largest ever obtained from an action by a single state and the largest privacy settlement ever secured by an attorney general. Meta denied any wrongdoing in the settlement.

In August, the OAG sued General Motors and OnStar alleging they illegally collected, used, and sold driver data, including date, start time, end time, vehicle speed, seatbelt status, distance driven, and other driving metrics. At least two of the companies who received the data allegedly used it to calculate "Driving Scores" and sold those scores to insurance companies for underwriting decisions. The OAG alleged that General Motors engaged in deceptive practices to secure customers' enrollment in the data collection process and never disclosed it would sell that data to others, all in violation of the DTPA. The defendants have denied wrongdoing, and litigation is ongoing in Montgomery County.

In October, the OAG announced a settlement with a technology company offering a product that leveraged generative AI to summarize patient charts and draft clinical notes for healthcare facilities. The OAG alleged the company's statements regarding the "hallucination rate" of its product may have been false, misleading, or deceptive in violation of the DTPA. The company denied liability but agreed to an assurance of voluntary compliance that required clear and conspicuous disclosures in its advertising.

The OAG also sued TikTok in October, alleging violations of Texas' new Securing Children Online Through Parental Empowerment (SCOPE) Act. The SCOPE Act prohibits digital service providers (e.g., social media platforms) from sharing or selling a minor's personal information without parental consent and requires those providers to offer parental controls over minors' accounts. Litigation is ongoing in Galveston County.

Finally, litigation continues between the OAG and Google in Midland County. In a lawsuit filed in October 2022, the OAG alleges that Google's collection and use of facial geometry and voiceprints for its products violates CUBI and the DTPA.

Amidst this enforcement activity, Texas' new comprehensive privacy law came online in July 2024. The TDPSA establishes consumer rights similar to other state privacy laws and subjects businesses to new data security and consumer notification requirements. The OAG has already received hundreds of consumer complaints related to the TDPSA and is already engaged in notice and cure discussions with numerous companies.

In a recent public speech, OAG leadership highlighted a special litigation team within the Consumer Protection Division and touted a "litigation first" strategy, stating a preference for filing cases and getting discovery rolling, rather than relying on the more traditional approach of gathering information through civil investigative demands. Leadership also shared it will likely continue filing cases outside Travis and other urban counties based on a perceived bias against cases filed by the OAG in those counties.

What can we glean from these developments? One could dismiss much of the OAG's recent enforcement activity as "follow-on" activity in light of similar litigation filed against many of these same defendants. But there is more to the story. The OAG is now laser-focused on privacy and consumer protection, especially when big tech companies or AI are involved. It's committing resources to the effort, it won't shy away from litigation—often filing suit early and in less traditional venues—and it will leverage statutory authority to seek sizeable penalties. Finally, the DTPA will continue to be a valuable enforcement tool for the OAG, especially when allegations may not fit squarely within the prohibitions of a privacy law.

For businesses that handle Texas consumer data, especially those offering technology or AI products and services, now is the time to review compliance with Texas law to make sure your business stays out of the OAG's crosshairs. **HN**

Gavin George and Tim Newman are Partners at Haynes Boone. They can be reached at gavin.george@haynesboone.com and timothy.newman@haynesboone.com, respectively.