


# How to be a real life Municipal Gladiator

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# Headlines

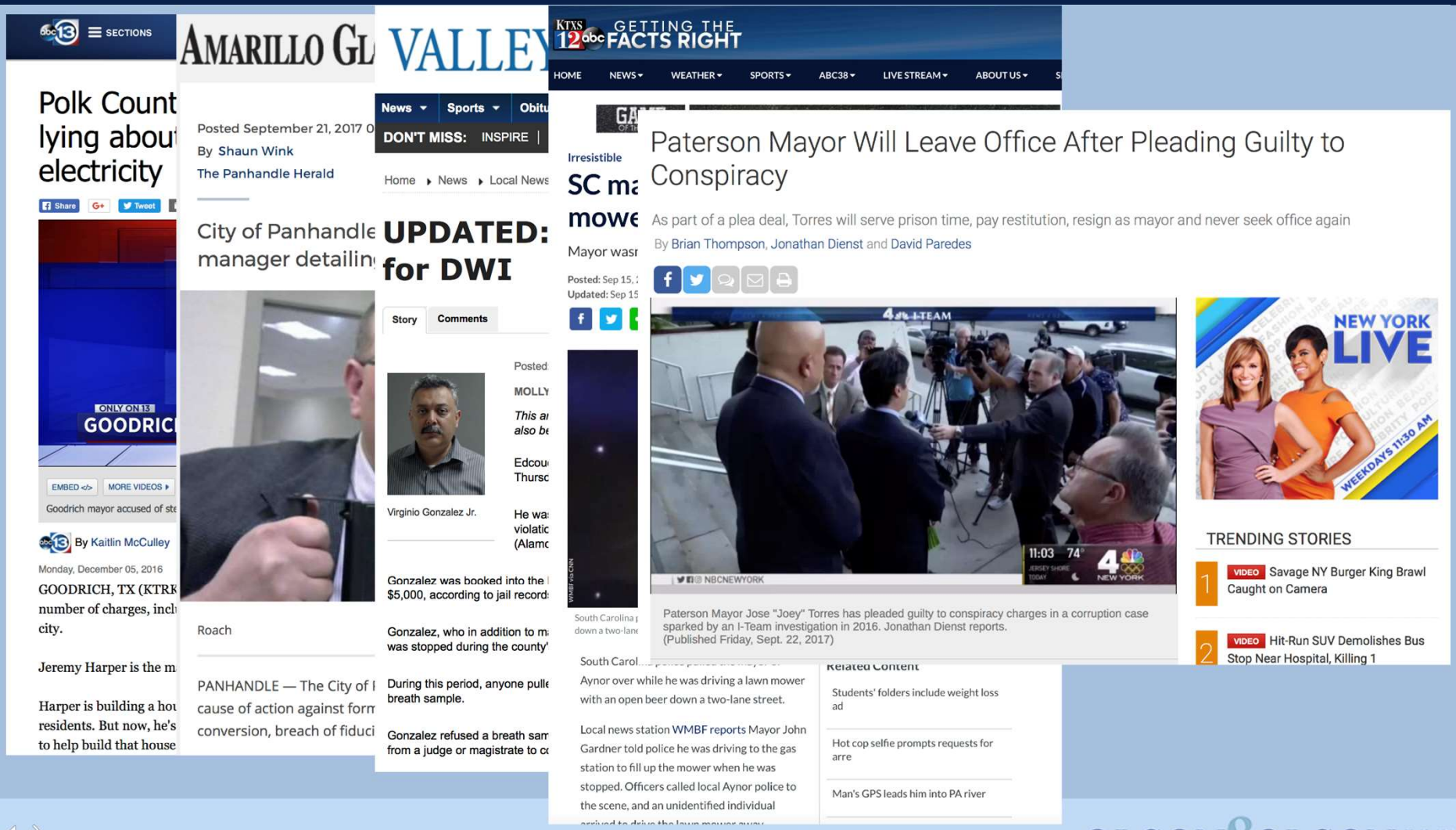
**"Bell, Calif. City manager gets 12 years prison for $6 million corruption scheme"**




**"Stockton Mayor arrested, accused of playing strip poker with a minor and giving them alcohol"**



# Headlines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By Kaitlin McCulley
Monday, December 05, 2016
GOODRICH, TX (KTRK
number of charges, incl
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Jeremy Harper is the m
Harper is building a hou
residents. But now, he's
to help build that house
AMARILLO GL
Posted September 21, 2017 0
By Shaun Wink
The Panhandle Herald
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Posted: Sep 15,
Updated: Sep 15
South Carolina
down a two-lane
South Carol
Aynor over while he was driving a lawn mower
with an open beer down a two-lane street.
Local news station WMBF reports Mayor John
Gardner told police he was driving to the gas
station to fill up the mower when he was
stopped. Officers called local Aynor police to
the scene, and an unidentified individual
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As part of a plea deal, Torres will serve prison time, pay restitution, resign as mayor and never seek office again
By Brian Thompson, Jonathan Dienst and David Paredes
4 I-TEAM
11:03 74°
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Paterson Mayor Jose "Joey" Torres has pleaded guilty to conspiracy charges in a corruption case sparked by an I-Team investigation in 2016. Jonathan Dienst reports.
(Published Friday, Sept. 22, 2017)
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1
VIDEO
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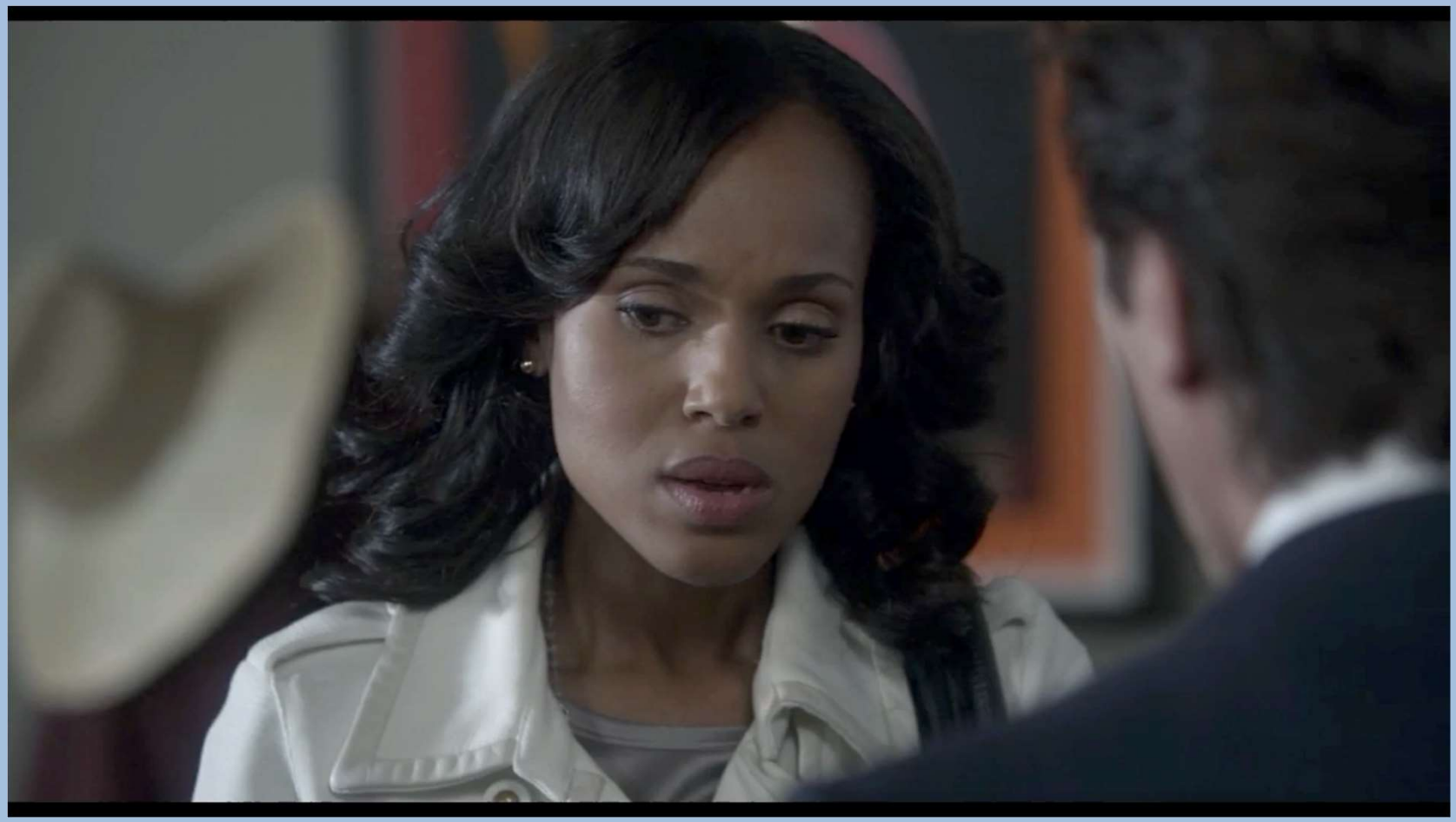
Stop Near Hospital, Killing 1

# When the job calls for Municipal Gladiators



# When the job calls for Municipal Gladiators



# What would a Gladiator do?

- Mayor McSketchy has been in a heated battle with a group of citizens who are now threatening to get him out of office.
- Word begins to spread that the District Attorney is investigating the Mayor for undisclosed illegal activities.
- The City receives a grand jury subpoena asking for any and all evidence related to the mayor's dealings on the Shady Park Project.



# What would a Gladiator do?



# What would a Gladiator do?



# Steps in the Criminal Process

- **Investigation**
- **Formal Charges**
- **Plea Bargaining**
- **Trial**
- **Final Disposition**



# Handling a grand jury subpoena

## Grand Jury Authority Generally

- **Code of Criminal Procedure or Penal Code**
  - Texas CCP Chapters 19-21; 24
- **Investigative body** (NY, TX, FL, CA, IL, FED)
  - Texas CCP Article 20.09
- **Authority to Indict** (NY, TX, FL, CA, IL, FED)
  - CCP Article 21.01
- **Proceedings are secret** (NY, TX, FL, CA, IL, FED)
  - Texas CCP Article 20.02

## Grand Jury Subpoena- Duces Tecum

- **Authority to issue subpoenas** (NY, TX, FL, CA, IL, FED)
  - Texas CCP Article 24 generally; 24.02, 24.01

# Handling a grand jury subpoena



# Handling a grand jury subpoena

## Grand Jury Subpoena- Witness Testimony

- Authority to call/ subpoena witnesses (NY, TX, FL, CA, IL, FED)
  - (Texas CCP Article 20 generally; 20.18 and 20.04; Article 24.01)
- City Attorney cannot be in the room (NY, TX, FL, CA, IL, FED)
  - (Texas CCP Article 20.011)

## Texas Specific Rights of Witnesses

- Witness must be advised when investigation turns towards them (Texas CCP Article 20.17)
- Witness who becomes a target, can consult attorney outside the room (Texas CCP Article 20.17(c)(4) and (6))
- Regardless of jurisdiction 5th and 6th amendment rights must be considered

# What would a Gladiator do?

- After the grand jury concludes its investigation, the D.A. formally indicts Mayor McSketchy with official oppression, theft by a public servant, and bribery.
- The Mayor asks for your advice on how to fight the case.



# A Lawyer's Responsibility

*"A lawyer is a representative of his clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice."*

Model Rules of Professional Conduct: Preamble

# Who is the Client?

| American Bar Association Model Rules of Professional Conduct | Texas Disciplinary Rules of Professional Conduct |
|---|---|
| ➢ Rule 1.13: Organization as a Client<br>➢ Rule 1.1: Competence | ➢ Rule 1.12: Organization as a Client<br>➢ Rule 1.01: Competent and diligent representation |

# Who Is the Client?

| American Bar Association Model Rules of Professional Conduct | Texas Disciplinary Rules of Professional Conduct |
|---|---|
| ➢ Rule 107(a)(1) - (2) Conflict of Interest: Current Clients<br>➢ (a)(1) Directly Adverse Interest<br>➢ (a)(2) Materially Limiting Representation | ➢ Rule 106: Conflict of Interest: General Rule<br>➢ Rule 106(b): Conflict of Interest: Related Matters or Adversely Limiting |

# Who Protects “The Republic”?



# Conflict of Interest

## Likely no conflict if the City Attorney:

- Specifically advised Council of its legal obligations
- Reviewed agenda item and expenditure before the vote
- Made sure the election was properly conducted

## Potential conflicts

- Charges of official oppression or misconduct
- Charges of bribery or theft by public servant
- Charges regarding improper campaign expenditures

# What would a Gladiator do?

- **After Mayor McSketchy is officially indicted, your voice mail and email is flooded with requests from local and national reporters.**
- **They media wants to know the city's response to the indictment.**



# What would a Gladiator do?



# Going Public

## Attorney-Client Relationship

- Statement should represent the organization's interest
- Don't step into the defense attorney's role

## Trial Publicity

- **Rule 3.07 -Texas Disciplinary Rules of Professional Conduct and Rule 3.6 –ABA Model Rules of Professional Conduct**
  - **Improper**: public, extrajudicial statements lawyer knows or should know will be substantially likely to materially prejudice proceeding
  - **Proper**: Statements of Fact which are in the public domain; specifics regarding the arrest, accused, investigation status

# Going Public

## Official statement or Opening statement:

- "The city council action in authorizing this purchase was completely legal, done in an open meeting, well within their authority, and was the implementation of excellent public policy."
- "Additionally, I have some thoughts about the archaic grand jury process."
- "This whole two-week effort has been a calculated and orchestrated political hit, fueled with apparent pent-up anger about President Trump and the 2016 election … revenge on behalf of the Clintons, and millions of dollars in money from outside left-wing opposition groups."

# Going Public



# What would a Gladiator do?

- **After the Mayor's indictments, the cases are set for trial and many of your employees are subpoenaed to testify as fact witnesses in their capacity as City employees.**
- **They all come to you for advice.**



# Preparing for Litigation

## Witness preparation

- **First Rule: Tell the truth**
- **Review potential questions and documents**
- **Inform about their right to outside counsel**
- **Explain representation of the organization**

# Preparing for Litigation



# Preparing for Litigation



# Preparing for Litigation

## Witness Tampering

- **Texas Penal Code §36.05; 18 U.S. Code §1512**
- Offer, confer or agree to confer any benefit
- With intent to influence testimony, appearance or evidence

## Tampering with Physical Evidence or Records

- **Texas Penal Code §37.09; 18 U.S. Code §1519**
- Alter, destroy, conceal or make false entry
- With intent to impair verity, legibility, or availability **[Texas];** with intent to impede, obstruct or influence **[Federal]**
- Investigation/ Official Proceeding pending or in progress

## Perjury/ Subornation of Perjury

- **Texas Penal Code §37.02; 18 U.S. §§1621-1623**
- Material false information under oath before the court or Grand Jury

# What would a Gladiator do?

- After the case is set for trial, the pressure starts to mount for Mayor McSketchy to resign. The Council can't seem to get anything done with this distraction.
- Council member I. M. Bitter asks if the Mayor can be removed.

# What would a Gladiator do?



# Can the public official remain in office?

**Potential Grounds for Removal:**

- Gross ignorance of official duties
- Gross carelessness in the discharge of official duties
- Official misconduct
- Alcohol Intoxication on or off duty
- Felony or misdemeanor involving official misconduct operates as an immediate removal
- Incompetency

# Can the public official remain in office?

## General Incompetency Grounds

- Inability or unfitness to promptly and properly discharge official duties because of a **serious mental or physical defect** that did not exist at the time of the officer's election

# Can the public official remain in office?



# Can the public official remain in office?



# Can the public official remain in office?

## Petition and Recall

- **Voters can force a recall pursuant to a Charter**
- **Petition and recall authority**



# What would a Gladiator do?

**Put your Municipal Gladiator skills to the test:**

**What would you do if the Mayor is investigated for an offense like…**

# What would a Gladiator do?






**Contact us at:**

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