In Chambers

The Official Publication of the Texas Center for the Judiciary

FALL 2017

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Collegiality

Jury Selection

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Cover photo by: Hon. Bert Richardson

In Chambers

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FALL 2017

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This is the the official publication of Texas Center for the Judiciary. The magazine is funded in part by a grant from the Texas Court of Criminal Appeals. In Chambers strives to provide the most current information about national and local judicial educational issues and course opportunities available for Texas judges. We keep the Texas Center's mission of "Judicial Excellence Through Education" as our guiding premise. Readers are encouraged to write letters and submit questions, comments, or story ideas for In Chambers. To do so, please contact Courtney Gilason, Curriculum Director, at 512.482.8986 or toll free at 888.785.8986, or via email at courtneyg@yourhonor.com. Articles subject to editing for clarity or space availability. Layout and design by Christie Smith. The Texas Center for the Judiciary is located at 1210 San Antonio Street, Suite 800, Austin, TX 78701.

LETTER FROM THE CHAIR

Dear Judges,

It is a humbling honor to serve as your Board Chair for the Texas Center for the upcoming year. We have an outstanding Board of Directors filled by exceptional judges from across our State. I would like to welcome our new board members who have begun their service this year. I am so excited to get to work with each of you!

Elected

Place 1: Hon. Jeffrey Brown, Supreme Court of Texas, Austin

Place 3: Hon. Dan Hinde, 269th District Court, Houston

Place 8: Hon. Tina Yoo Clinton, Dallas County Criminal Court No. 8, Dallas

Place 10: Hon. Kelly Moore, Presiding Judge, 9th Administrative Judicial Region, Lubbock

Appointed

Place 4: Hon. Hazel Jones, 174th Criminal District Court, Houston

I also want to thank everyone for their understanding with the cancellation of the Annual Conference and I pray everyone is well and getting back on their feet!

This year, the Legislature made mental health in our legal system one of their biggest priorities. As I was recently discussing these changes with a retired judge, he mentioned how important it is for judges to also take care of their own health. As judges, we see and hear tragedies that most people thankfully never experience. Although we may think we are great at compartmentalizing our daily work lives, it eventually will take a toll on our own health. I encourage each of you to make your own health a priority and figure out what helps relieve the stress we are under so that we can continue to be the best judges we can be.

Lastly, as you all are aware, Judge Atkinson and his remarkable team keep the Texas Center running effectively and efficiently. As Judge Atkinson always says, "There is no other place in the world where judicial education is done like this!" What a true statement! From my first time meeting everyone at the College for New Judges, I was amazed and intrigued at how the Texas Center operated and the many judges who helped shape the future of the judiciary. I knew from that first meeting that I wanted to be a bigger part of such an impressive organization. I encourage any of you who would like to also be a bigger part of this organization, to please reach out to me or any of the Center's staff. I, along with the Board of Directors and staff of the Texas Center, will work hard this year to continue providing cutting edge education for the best judiciary in the world!

Best Regards,

Amanda D. Putman, Chair
Navarro County Court at Law

SIDE BAR

UPCOMING CONFERENCES

College for New Judges
December 10-13, 2017
Sheraton Capitol, Austin

Family Justice Conference
January 22-23, 2018
Hyatt Lost Pines, Lost Pines

DWI Court Team Basic & Advanced Training
February 5-9, 2018
Sheraton Capitol, Austin

Criminal Justice Conference
Feburary 26-27, 2018
Sheraton Capitol, Austin

Mental Health Conference
February 27-28, 2018
Sheraton Capitol, Austin

Civil Justice Conference
March 26-27, 2018
Sheraton Capitol, Austin

Regional A Conference
(Regions 2, 5, 6, 7,9, 11)
April 16-17, 2018
San Luis, Galveston

Regional B Conference
(Regions 1, 3, 4, 8, 10)
May 10-11, 2018
San Luis, Galveston

Professional Development Program
June 10-15, 2018
Embassy Suites, San Marcos

Impaired Driving Symposium
August 2-3, 2018
Horseshoe Bay Resort

Annual Judicial Education Conference
September 4-7, 2018
Marriott Marquis, Houston

College for New Judges
December 9-13, 2018
Sheraton Capitol, Austin

Family Justice Conference
January 14-15, 2018
Sheraton Capitol, Austin

NEW Judges

as of 10/31/17

Hon. Phillip Arrien
Court #17
Associate Judge

Hon. Susan Barclay
Court #24
Associate Judge

Hon. Joshua Burgess
352nd District Court
Judge

Hon. Kenneth Cannata
458th District Court
Judge

Hon. Jennifer Caughey
1st Court of Appeals
Justice

Hon. Jose Contreras
187th District Court
Judge

Hon. Michael Davis
369th District Court
Judge

Hon. Kathy Elder
Bexar County Probate Court No. 1
Associate Judge

Hon. Stephanie Fargo
Dallas Criminal District Court No. 7
Judge

Hon. Livia Francis
283rd District Court
Judge

Hon. Angelina Gooden
280th District Court
Judge

Hon. Wendy Hencerling
Family Law Associate Court
Associate Judge

Hon. Tuck McLain
Grimes County Court at Law No. 1
Judge

Hon. April Propst
326th District Court
Associate Judge

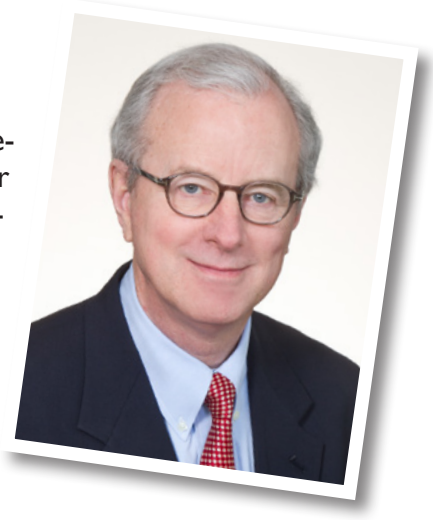
Hon. Brock Smith
271st District Court
Judge

Hon. Louis Sorola
445th District Court
Associate Judge

feature

Toward the Legal History of Texas: *An Evaluation of Death on the Lonely Llano Estacado* by Bill Neal

by Josiah M. Daniel, III[1]



In many ways, law *is* history. As a professor of law and history once remarked, "there is a close relationship between law and history." Another commentator observed "a fairly close relationship between the day-to-day methodology of the judicial process and that of historical scholarship."[2] Moreover, legal history is important for legal education[3] because "law students can come to understand better the legal system of which they are to be a part. . . . they will thereby also acquire a healthy respect for the past—which is the beginning of wisdom."[4] Another author adds that legal history explores "the rather unique and sensitive role of American lawyers . . . as they have attempted to respond to conflicting demands of clients, courts, and the sovereign people."[5] Other legal historians and law professors have noted in different ways the benefits of a study of legal history.[6] Legal history—which I broadly conceive to be the history of law, lawyers, and courts—is thus important to read and to know not only for the law student and the practicing lawyer,[7] but also for the judge.

Among Texas lawyers today, no one has plowed the field of Texas legal history more earnestly than Bill Neal, a veteran criminal lawyer of Abilene. In books such as *Getting Away with Murder on the Texas Frontier: Notorious Killings and Celebrated Trials*[8] and *From Guns to Gavels: How Justice Grew Up in the Outlaw West*,[9] among others,[10] Neal has applied his skills and experience to analyze rather ancient facts he has excavated from old court records, newspapers, and other archival sources, as well as from available secondary accounts, to solve and then to robustly write up cold cases and sensational, unsolved crimes of the 19th and early 20th centuries.

In his newest book, *Death on the Lonely Llano Estacado*,[11] Neal solves the unredressed murder of J.W. Jarrott, a 40-year-old Texas lawyer who in 1901-1902 put together a group of 54 tenant-farming families near Fort Worth to move westward several hundred miles to claim and settle homesteads within "The Strip" of the South Plains. That was the name for a "vacancy" or gap between prior official state surveys of a portion of the Llano Estacado, the semi-arid tableland that runs northward through much of the Great Plains. The Strip stretched for a length of 60 miles and a width of up to five miles, running from west of the nascent town of Lubbock to the boundary with New Mexico. On a tip from the Texas Land Commissioner, Charles Rogan, Jarrott learned of the gap and of Rogan's intent to have it surveyed and opened to settlement. Without charging any fee, he recruited the farm families and served as their attorney in the legal work for each to acquire homesteads within The Gap under the "Four Sections Law" of 1895. That statute permitted individuals to purchase up to four sections, or 2,560 acres, of the state's public-domain land for a nominal amount.

Of course, the land was not completely "vacant" in its usage. For several decades, ranchers had grazed cattle herds on the same land in the belief that they held leases from the state; and they naturally opposed any enclosure of the range by the "nesters." The resolution of the dispute occurred in two ways. First, the ranchers' attorneys filed challenges with the General Land Office and then trespass-to-try-title lawsuits against the settlers, all of which Jarrott successfully defended. Second, and extra-legally, their cowboys threatened the "sodbusters" with violence and cut their fences. Then on August 27, 1902, a hidden rifleman shot and killed Jarrott as he returned to his own homestead. Efforts over the next several years to determine and prosecute the responsible party were fruitless. But the settlers were not frightened away. They drilled wells into the Ogallala aquifer and began to farm the land; and over the following decades they and many others developed the dry and treeless South Plains into a highly productive irrigated-agricultural zone.[12]

> From this distance we may see Jarrott's work as a remarkable instance of 'lawyering'."

Neal reviews all the sources he can find and assigns the blame to a contract "hit man" named Jim Miller, whom he characterizes as "the most prolific killer and con artist in the state."[13] Miller seems to have been a cold-blooded killer who, often posing as a "deacon," was acquitted through perjured testimony numerous times for murders and other crimes until, in 1908, he was jailed for the murder of a deputy US marshal in Oklahoma, and a lynch mob hanged him. In this book, Neal finds that Miller actually confessed the murder of Jarrott—confidentially—to another US marshal who had arrested Miller for an earlier murder in 1906, but the lawman promised not to reveal the confession and lived up to his promise until 1933. Neal then pulls together multiple strands of strong circumstantial evidence to identify the man who hired Miller to "assassinate" Jarrott, a rancher named Marion Virgil "Pap" Brownfield, for whom the town of Brownfield is, ironically, named.

It is a great story, and Neal deserves praise for his careful work to accord this forgotten lawyer a measure of posthumous justice. The book could have been strengthened if it had been more tightly edited, and the author might have more explicitly tied into one of the broad themes of Texas and even Western American history to which this story pertains, such as the closing of the frontier and the thirst of Americans of that era for free or inexpensive land,[14] as well as the economic and social development of Texas, and law enforcement generally. Additionally, the 56 murders for which Neal finds Miller to have had responsibility, and his repeated acquittals when occasionally placed on trial, might connect to the question whether "the west," including Texas, was or was not more lawless than "the east" at the same time.[15] *Death on the Lonely Llano Estacado* is, nonetheless, a solid accomplishment in the tracking down, after so many years, of both Jarrott's killer and his employer, as well as in the chronicling of west Texas and its South Plains sub-area at the turn of the 20th century.

Furthermore, this book is a useful step in the development of the legal history of Texas. In this regard, judges and attorneys may particularly appreciate the portions of the book that discuss Jarrott as a lawyer. Why Jarrott obtained the tip about The Strip from the Land Commissioner is unclear—both Rogan and Jarrott had for one term served together in the Legislature, so they were at least acquainted—and the ranchers of course complained later about his having "inside" information. And Jarrott did obtain the first copy of the official survey of The Strip in an unusual manner: he loaned part of the cost of the surveyors' work to the Commissioner, and he received with his loan's repayment the very first copy of the survey document, well before it became available to the public. With that information, he then solicited and organized the 54 families of tenant farmers quietly, and he staged them outside The Strip to be able to move immediately into The Strip as soon as the Commissioner opened it for homestead claims. As noted, Jarrott prepared and filed their homestead applications and defended the legal challenges of the ranchers. Why he did all of this for no fee is not revealed, and if Neal could not find the answer, we will probably never know; but everything Jarrott did for his clients was vindicated and survived those attacks inside the legal system. From this distance we may see Jarrott's work as a remarkable instance of "lawyering."[16]

From this book, the reader will learn not only about the murder of J.W. Jarrott, whom the author calls a "forgotten hero," but also may come to appreciate that there is a great deal more Texas legal history yet to be uncovered and published, and that the effort of Texas lawyers such as Neal to do so is both interesting and worthwhile. As a great writer put it:

"The past is never dead. It's not even past."

-William Faulkner[17]

(Endnotes)

1. Of Counsel, Restructuring and Reorganization Practice Group, Vinson & Elkins, Dallas, Texas office; Chair, Legal History Group, Dallas Bar Ass'n; J.D. & M.A., Univ. of Texas at Austin. The views and ideas expressed in this essay do not necessarily represent those of the law firm or its clients.
2. Alfred Kelly, *Clio and the Court*, 1965 Sup. Ct. Rev. 119, 121.
3. Gregory F. Jacob, *Using History to Teach Students How to Be Lawyers,* 53 Am. J. Legal Hist. 493 (2013).
4. Calvin Woodward, History, *Legal History and Legal Education*, 53 Va. L. Rev. 89, 120 (1967).
5. Stephen B. Presser, *Law and Jurisprudence in American History* (1995) at xii.
6. David W. Raack, *Some Reflections on the Role of Legal History in Legal Education,* 26 Duquesne L. Rev. 893, 907-08 (1988) ("The legal profession... needs to be aware of its past, to understand what has been and what it has done, its successes and its failures."). See also William M. Wiecek, *Clio as Hostage: The United States Supreme Court and the Uses of History,* 24 Cal. W. L. Rev. 227-268 (1988); Gordon Morris Bakken, *Promise of American History in Law*, 24 Cal. W. L. Rev. 277-286 (1988); Peter Irons, *Clio on the Stand: The Promise and Perils of Historical Review*, 24 Cal. W. L. Rev. 337-354 (1988); Neil M. Richards, *Clio and the Court: A Reassessment of the Supreme Court's Uses of History*, 13 J. Law & Politics 809-892 (1997).
7. Robert M. Jarvis, *Legal History: Teaching Skills Practicing Lawyers Need*, 53 Am. J. Legal Hist. 498 (2013).
8. Bill Neal, *Getting Away with Murder on the Texas Frontier: Notorious Killings and Celebrated Trials* (2006).
9. *Id., From Guns to Gavels: How Justice Grew Up in the Outlaw West* (2008).
10. *Id., Vengeance Is Mine: The Scandalous Love Triangle That Triggered the Boyce-Sneed Feud* (2011); id., S*ex, Murder, and the Unwritten Law: Courting Judicial Mayhem, Texas Style* (2009).
11. Bill Neal, *Death On The Lonely Llano Estacado: The Assassination Of J.W. Jarrott, A Forgotten Hero* (2017). Neal's newest book is published by the University of North Texas Press.
12. *See,* generally, Donald E. Green, *Land of the Underground Rain: Irrigation on the Texas High Plains*, 1910-1970 (1973).
13. *Id.* at 88.
14. *See*, e.g., *Henry Nash Smith, Virgin Land: the American West as Symbol and Myth* (1970).
15. *See* Richard Prassel, *The Western Peace Officer: A Legacy of Law and Order (1972); id., The Great American Outlaw: A Legacy of Fact and Fiction* (1996).
16. The term "lawyering" has skyrocketed into the vocabulary of lawyers, judges and scholars over the past 50 years. The author's definition is: "Lawyering" is the work of a lawyer who "invokes and manipulates, or advises about, the dispute-resolving or transaction-effectuating processes of the legal system for the purpose of solving a problem or causing a desired change in, or preserving, the status quo" for a client. Josiah M. Daniel, III, *A Proposed Definition of the Term "Lawyering,"* 101 Law Libr. J. 207, 215 (2009). In its newest edition, the leading legal dictionary has adopted substantially the author's definition. Black's Law Dictionary 1022 (10th ed. 2014) (defining "lawyering").
17. William Faulkner, *Requiem for a Nun 73* (1950).

Judicial Resource Liaison Honored

Judge Laura Weiser was honored with the MADD Judiciary Services Award at Travis County's Law Enforcement Recognition Event on Friday, September 22, 2017. She received the award for her dedication to reducing the number of impaired driving crashes and fatalities on Texas roadways.

Civil Law and Procedure

HB 1066—Effective 6/15/17 (applies to any judgment, regardless of date rendered). Eliminates a requirement that a judgment creditor must show the debtor's property cannot be attached or levied by ordinary legal process to seek injunctive relief or other judicial assistance in reaching that property to satisfy the judgment. *See* Civ. Prac. & Rem. Code § 31.002(a).

HB 1463—Effective 9/1/17 (applicability to pending claims is unclear). Revises procedures governing certain disability discrimination claims brought under section 121.003 of the Human Resources Code, requiring the claimant to provide written notice of the alleged violations at least 60 days before making a settlement demand or filing suit. Allows respondent to avoid liability by correcting the alleged violations during that time. *See* Hum. Res. Code § 121.0041.

HB 1774—Effective 9/1/17 (applicability to pending claims and suits varies). Revises procedures governing first-party insurance claims arising from loss of or damage to property, requiring 60-day pre-suit notice of any possible claims. Changes the method for calculating the attorney's fees recoverable by a claimant, making fee recovery a function of the alleged damages and the damages awarded by the factfinder. Prohibits recovery of any attorney's fees if the claimant fails to provide the required pre-suit notice, if the claimant's legal representation results from barratry, or if the damages awarded are less than 20% of the damages alleged. Limits personal liability of insurance agents by allowing the insurer to accept liability for the acts or omissions of its agents. *See* Ins. Code ch. 542A.

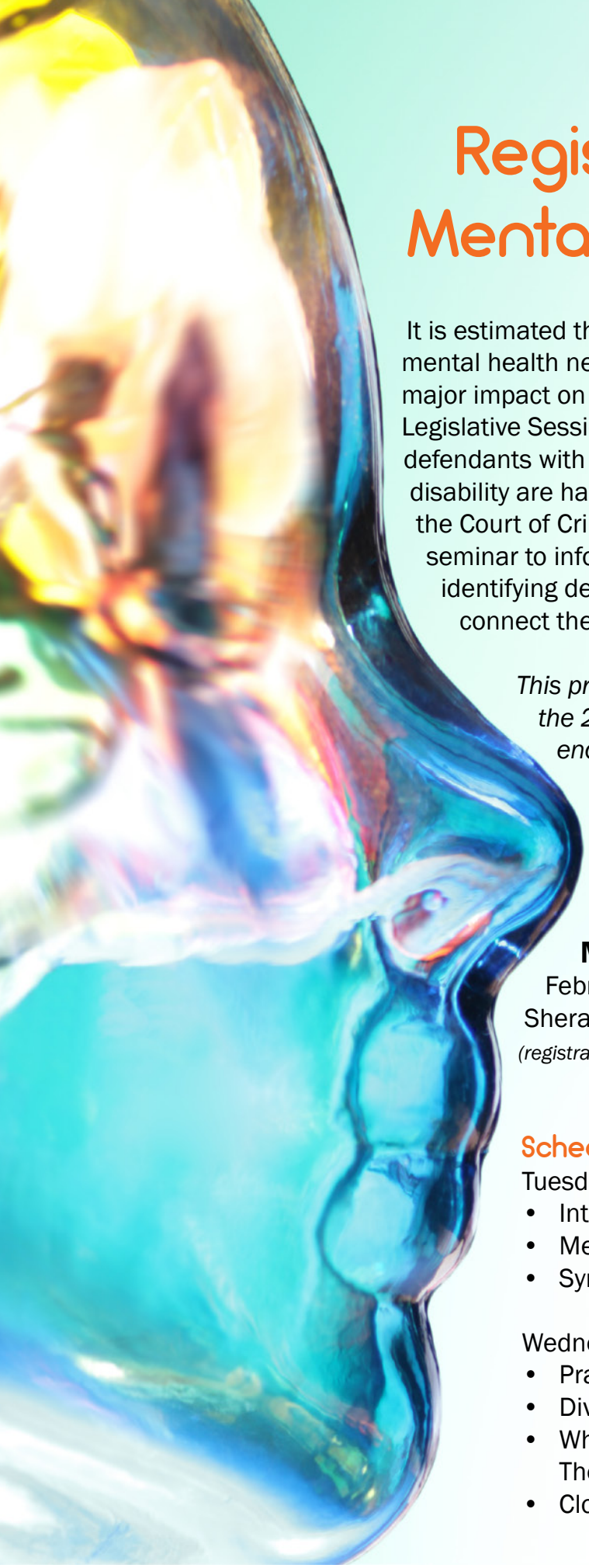
HB 3107—Effective 9/1/17 (applies to requests received on or after that date). Revises provisions governing public information requests, clarifying response timelines and circumstances under which requests may be considered withdrawn or combined. Provides that requests need not be completed if a previous request by the same requestor remains unpaid and has not been withdrawn. Allows a requestor to file a complaint with the Attorney General if the requester has filed a complaint with the district or county attorney and the district or county attorney has not brought an action. *See* Gov't Code §§ 552.221, 552.261, 552.275, 552.3215.

SB 807—Effective 9/1/17 (applies to contracts executed on or after that date). Amends chapter 272 of the Business and Commerce Code, which renders voidable certain venue and choice-oflaw contract provisions, to make the chapter applicable to any construction contract concerning real property located in Texas and to certain collateral contracts; outlines circumstances to which the chapter does not apply. *See* Bus. & Com. Code § 272.001-002.

SB 944—Effective 6/1/17 (applies to all suits involving foreign judgments, regardless of date). Adopts the Uniform Foreign-Country Money Judgments Recognition Act to establish procedures for the recognition, interpretation, and enforcement of judgments rendered by the courts and tribunals of foreign nations. *See* Civ. Prac. & Rem. Code ch. 36A.

LEGISLATIVE UPDATE

Reprinted from Tex. Jud. Council, Tex. Off. of Ct Admin., 85th Legislative Update (2017). Only select legislation has been included. To see full list of bills passed during 85th Legislative Session, visit: http://www.txcourts.gov/media/1438072/85th-legislative-report.pdf



Register NOW for the Mental Health Conference

It is estimated that over 20% of the Texas inmate population has a mental health need. The numbers are staggering and are having a major impact on the criminal justice system in Texas. During the 85th Legislative Session, expansive efforts were made to improve how defendants with a mental illness or intellectual or developmental disability are handled in the justice system. Through a grant from the Court of Criminal Appeals, the Texas Center will offer a 6.5 hour seminar to inform judges of legislative changes, provide tools for identifying defendants with a mental illness, and find ways to connect them with appropriate treatment.

This program will begin directly after the conclusion of the 2018 Criminal Justice Conference and judges are encouraged to attend both.

2018 Criminal Justice Conference
February 26-27
Sheraton at the Capitol, Austin

Mental Health Conference
February 27-28
Sheraton at the Capitol, Austin – LIMITED SPACE
(registration fee waived for attendees of Criminal Justice Conference)

Schedule At A Glance:

Tuesday, February 27, 1:00 – 4:45 p.m.

- Introduction to the program
- Mental Health Legislative Update
- Symptoms, Diagnoses & Treatment Options

Wednesday, February 28, 8:00 a.m. – 12:15 p.m.

- Practical Implementation of Mental Health Procedures
- Diversions for Special Populations
- What Resources Are Out There & How Can Judges Use Them?
- Closing Remarks

feature

Jury Selection and the One Witness Rule

By Judge Kerry L. Neves[1]

Background

During jury selection, the attorney for the State tells the panel that in Texas, a jury can convict on the testimony of only one witness. The State then asks the panel a hypothetical question about following that part of the law. A member of the panel says he could not convict on the testimony of only one witness. The State moves to strike him for cause. The defense objects, saying he has only indicated he has a higher definition of proof beyond a reasonable doubt. Your Honor, what is your ruling?

The first step is to recognize that Article 35.16(b)(3) of the Code of Criminal Procedure allows a challenge for cause by the State when a prospective juror has a bias or prejudice against any phase of the law upon which the State is entitled to rely for conviction or punishment.[2] But how do you determine the situation here? The answer is found in the wording of the question by the State.

Case Law

In *Castillo v. State*, a defendant who appealed his conviction argued the trial court erred by striking a venireman who said he could not convict on the testimony of just one witness.[3] The Court of Appeals affirmed, based on *Caldwell v. State* from the Court of Criminal Appeals in 1991.[4] *Caldwell* was a capital case in which the venireman was struck after saying he could not convict on the testimony of only one witness.[5] The Court of Criminal Appeals affirmed, holding the venireman showed a bias against a phase of the law upon which the State would rely.[6]

However, the Court of Criminal Appeals in 1993 reversed a capital conviction in which a venireman was struck after saying he could not answer the second special issue at the punishment phase based only on the evidence of the offense itself.[7] The court in *Garrett v. State* held:

"[T]hat the law permits jurors to find future dangerousness in some cases on the facts of the offense alone does not mean *all* jurors must do so, or even consider doing so. A particular juror's understanding of proof beyond a reasonable doubt may lead him to require more than the legal threshold of sufficient evidence to answer the second special issue affirmatively. There is nothing unlawful about that; in fact quite the opposite."[8]

The Court of Criminal Appeals sought to explain and reconcile these two seemingly inconsistent opinions when *Castillo* was appealed to it. Before that court, the defendant argued the venireman did nothing more than set his threshold for reasonable doubt higher than the legal minimum.[9]

The Court of Criminal Appeals reviewed both *Caldwell* and *Garrett*, and found they could not be reconciled. Therefore, the Court stated:

"…We now hold that a venireman who categorically refuses to render a guilty verdict on the basis of only one witness is not challengeable for cause on that account so long as his refusal is predicated on his reasonable understanding of what constitutes proof beyond a reasonable doubt. To the extent it conflicts with this holding, we overrule *Caldwell*."[10]

However, the Court then explained when a venireman could be struck for cause in the one witness context: That would be when the person said he would not convict even if he believed the one witness and the testimony convinced him beyond a reasonable doubt of the defendant's guilt.[11] That person:

"…really does not hold the State to a higher burden of proof than the law allows. He has an agenda of his own for conviction, but one which bears no relation to the law."[12]

The test for the trial court is that it must be demonstrated that the refusal of the venireman to convict based on the testimony of a single witness is predicated on something other than his understanding of proof beyond a reasonable doubt.[13]

Ironically, while the Court overruled *Caldwell* on that point, it nevertheless said the "ready example" of a prospective juror who could be challenged for cause was the person in that case.[14] That venireman said even if he heard one eyewitness and he believed the witness beyond a reasonable doubt and the eyewitness' testimony proved the indictment beyond a reasonable doubt, he would still require additional evidence before he could return a verdict of guilty.[15]

The issue seemed to have been settled until an appeal of an indecency with a child conviction in 2004. The defendant argued at the Court of Appeals that this was an improper commitment question: "Could you reach a guilty verdict based on the testimony of one witness who you believed beyond a reasonable doubt?"[16] The Court held it was a proper question, based on the three-pronged test which the Court of Criminal Appeals established in *Standefer v. State* in 2001: (1) Is it a commitment question, (2) Does is give rise to a valid challenge for cause, and (3) Does it contain only the facts necessary to determine if the venierman is challengeable for cause.[17]

The Court of Appeals then cited *Castillo* for the holding that a prospective juror could be struck for cause if he could not convict "…*even if…"* he believed the witness beyond a reasonable doubt.[18]

On appeal to the Court of Criminal Appeals, the defendant argued the *Standefer* ruling had "outlawed" the one witness rule and the Court of Appeals had "resurrected" it.[19] The basis for that was a footnote in *Standefer* responding to a dissent, in which the author of the majority opinion conceded "Could you find someone guilty on the testimony of one witness?" was an improper question.[20] The Court of Appeals rejected that argument, stating that Castillo had set forth the rule:

"If these jurors were challenged for cause simply because they needed more than one witness to convict, then they were invalidly challenged for cause. If they were challenged for cause because they could not convict based upon one witness whom they believed beyond a reasonable doubt, and whose testimony proved every element of the indictment beyond a reasonable doubt, they were validly challenged for cause."[21]

Trial Court Actions

The Trial Court should make it clear before the start of jury selection what the law allows with respect to the one witness rule, and that the burden is on the State to establish the grounds for a motion to strike for cause.

The State must be clear and concise in expressing the hypothetical question to the venire panel or individual veniremen, and the question must include the elements set forth in the rule established by *Castillo*. If phrased correctly, strikes for cause should be fairly easy to handle. There will obviously be some veniremen whose answers may require further inquiry, but the rule itself is straightforward in application. As with any trial, the Trial Judge must be prepared to listen carefully.

This article was prompted by an indecency with a child case, in which the defense attorney used an article from a defense bar publication in which the language from *Castillo* quoted above was used to argue against strikes for cause on the one witness rule. It did not, however, contain the language immediately after that in which the Court referred to the venireman having an "agenda of his own." Therefore, be careful in relying on articles, and always read the actual case law.

The *Lee* case was directly on point, and coincidentally was also an indecency with a child case, and was also a case from the 10th District Court, tried by my predecessor, the Honorable David Garner.

Endnotes

1. Kerry Neves serves as Judge of the10th District Court in Galveston County, Texas.
2. Tex. Crim. Proc. Code Ann. art. 36.16(b)(3) (Vernon 2006).
3. *Castillo v. State*, 867 S.W.2d 817 (Tex. App. – Dallas 1993).
4. *Id.* at 823.
5. *Caldwell v. State*, 818 S.W.2d 790, 797 (Tex. Crim. App. 1991).
6. *Id.* at 797.
7. *Garrett v. State,* 851 S.W.2d 853, 860 (Tex. Crim. App. 1993).
8. *Id.* at 859 (italics in original).
9. *Castillo v. State*, 913 S.W.2d 529, 533 (Tex. Crim. App. 1995).
10. *Id.* at 533
11. *Id.* at 533.
12. *Id.* at 533-534.
13. *Id.* at 534.
14. *Id.* at 534.
15. *Id.* at 534.
16. *Lee v. State,* 176 S.W.3d 452, 459 (Tex. App. – Houston [1st Dist.] 2004), *aff'd*, 206 S.W.3d 620 (Tex. Crim. App. 2006).
17. *Id.* at 459, citing *Standefer v. State*, 59 S.W.3d 177, 181-183 (Tex. Crim. App. 2001).
18. *Id.* at 460 (italics in original).
19. *Lee v. State,* 206 S.W.3d 620, 622 (Tex. Crim. App. 2006).
20. *Id.* at 622, citing *Standefer, supra* at n. 28.
21. *Id.* at 623, citing *Castillo, supra* at 533-534.

LEGISLATIVE UPDATE

Reprinted from Tex. Jud. Council, Tex. Off. of Ct Admin., 85th Legislative Update (2017). Only select legislation has been included. To see full list of bills passed during 85th Legislative Session, visit: http://www.txcourts.gov/media/1438072/85th-legislative-report.pdf

Costs, Fees, Fines, and Collections

SB 42—Effective 9/1/17. Requires the collection of a $5 fee at the filing of any civil action or proceeding requiring a fee, with the funds collected to be used to improve security; prohibits the addition of any service fee to this fee. *See* Gov't Code § 51.971. *See also* Courthouse Security and Judicial Privacy.

SB 527—Effective 9/1/17. Allows a court to order a defendant to pay all or part of the cost of legal services at any time during the defendant's confinement, placement on community supervision, or period of deferred adjudication, if the court determines the defendant has the financial resources necessary to pay for all or part of those services; allows the court to amend an order as necessary in light of changed circumstances. *See* Code Crim. Proc. art. 26.05(g-1).

SB 1913—Effective 9/1/17 (applicability to pending cases varies by provision). Revises procedures governing imposition of costs, fines, and fees associated with criminal proceedings, significantly increasing judicial discretion over alternatives to payment:

- Requires citations, complaints, and other notices to include information regarding payment alternatives for those unable to pay the full amount.
- Allows imposition of a bail bond requirement in a fine-only misdemeanor case only if the defendant fails to make the initial appearance and the judge finds the defendant has sufficient resources to post that bond and the bond is necessary to secure appearance.
- Requires the court to notify a defendant before issuing an arrest warrant for failure to appear at the initial court setting.
- Requires the judge to ask, in open court, whether the defendant has sufficient resources or income to immediately pay all or part of the fine and costs.
- Provides a presumption of indigence for homeless children, unaccompanied alien children, and children in the conservatorship of the Department of Family and Protective Services.
- Allows the court, upon a determination that the defendant does not have sufficient resources or income to immediately pay in full, to specify a payment plan, to order discharge by confinement or the performance of community service, and/or to waive all fines and costs.
- Increases, from $50 per day to $100 per day, the credit provided to defendants who satisfy payment through confinement or community service; expands the categories of work and other programs that may satisfy a community service requirement.
- Requires a court, before issuing a *capias pro* fine, to hold a hearing on the defendant's failure to pay; allows issuance if the defendant fails to appear, if the court determines the failure to pay has been willful, or if the court otherwise determines the capias pro fine should issue based on the evidence presented at the hearing.
- Requires the court to recall the *capias pro* fine if the defendant voluntarily appears to resolve the matter and pays any amount owed.

Court Security

HB 776—Effective 6/15/17 (applies to all statements, regardless of filing date). Requires the Texas Ethics Commission to remove the telephone number and the names of any dependent children from any personal financial statements before making those statements available to the public or posting such statements to the Commission's website. *See* Gov't Code § 572.032(a-1).

SB 42—Effective 9/1/17 (compliance deadlines vary). Requires the presiding judge of a municipality to create a court security committee to establish policies and procedures necessary to provide adequate security; requires each local administrative judge to establish a similar committee. Requires the collection of a $5 fee at the filing of any civil action or proceeding requiring a fee, with the funds collected to be used to improve security; prohibits the addition of any service fee to this fee. Requires the Court of Criminal Appeals to grant funds to professional associations and other entities to provide training. Requires the Office of Court Administration to establish a judicial security division to provide guidance and to establish best practices. Requires a person to obtain a court security certification issued by the Texas Commission on Law Enforcement before serving as a court security officer. Establishes procedures for redacting certain personal identifying and/or contact information from financial statements, voter lists, drivers' licenses, property deeds, appraisal records, and any records made available under the public information statute.

SB 510—Effective 5/27/17. Adds current and former employees of federal and state judges to the list of property owners whose appraisal records must remain confidential and available only for official use. *See* Tax Code § 25.025.

Juvenile Justice

HB 678—Effective 9/1/17 (applies to conduct occurring on or after that date). Allows a referee or associate judge, when the state and a child who is subject to a determinate sentence agree to the disposition of the case, wholly or partly, to hold a hearing to allow the child to enter a plea or stipulation of evidence; requires the referee or associate judge to make and transfer written findings and recommendations to the juvenile court judge, who may accept or reject the plea or stipulation. *See* Fam. Code § 54.10(e)-(f).

HB 1204—Effective 9/1/17 (applies to conduct occurring on or after that date). Requires the preliminary investigator to refer children under twelve accused of certain non-violent offenses to community service providers as an alternative to adjudication. Requires a probation officer to create and coordinate a service plan or system of care with the consent of the child and the child's parent, guardian, or custodian. Requires each juvenile board to develop associated policies, and requires the Office of Court Administration to conduct a related study. *See* Fam. Code §§ 53.01, 53.011.

SB 1548—Effective 9/1/17. Allows a juvenile board or probation department to provide post-discharge services, including counseling, mentoring, educational, and vocational services, for up to six months following discharge from probation, regardless of age at discharge. *See* Hum. Res. Code § 142.007.

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feature

The Ten Commandments of Judicial Collegiality

By Judge Eric Moyé, with editing by Judge Maricella Moore

We all have our own ideas about what is "Collegiality." As former Supreme Court Justice Potter Stewart famously observed in *Jacobellis vs. Ohio* (then speaking of obscenity), "I may not be able to describe it, but we know it when we see it." Without question, your colleagues are your greatest resource. Your courthouse is a treasure trove of resources, just within the chambers of your colleagues. Consider the judges who surround you. How many years collectively do they have on the bench? How many hundreds of trials and many thousands of motions have they completed?

Of course, collegiality cannot happen in a vacuum. Consulting with your colleagues cannot happen if you don't discuss things with them. You cannot discuss things unless you TALK. The Canons embody and endorse this practice. The rules contemplate this. Prohibitions which apply to others do not apply to jurists. The cloistered environment in which we are now is too often not conducive to speaking with one another. You must first recognize this very real peril of our position, and THEN, you must work to defeat this.

The Ten Commandments for maximizing collegiality with your colleagues:

Give them the benefit of the doubt.

Always assume that like yourself, your colleagues have the purest of motives. Start from the proposition that they are doing all that they do because they wish to do justice. And without absolute, clear, and unequivocal evidence that some less honorable motivation is in play, your irrefutable presumption ought to be that your colleagues are trying to do the right thing. Support that effort to do right in all your interactions with your colleagues.

Check with your colleagues before increasing or decreasing their workload.

Often, an opportunity will present itself to pass a case on to a colleague. For example, the Dallas Civil Courts have a Local Rule requiring transfer of a new case when it is substantively related to another pending case. Always check with another judge before sending a case her way, and explain why you think the case

ought to go. It will take 15 seconds in the elevator or a parking lot.

Likewise, it should go without saying that you should NEVER take a case from a colleague without explaining why to him or her, regardless of the right to do so.

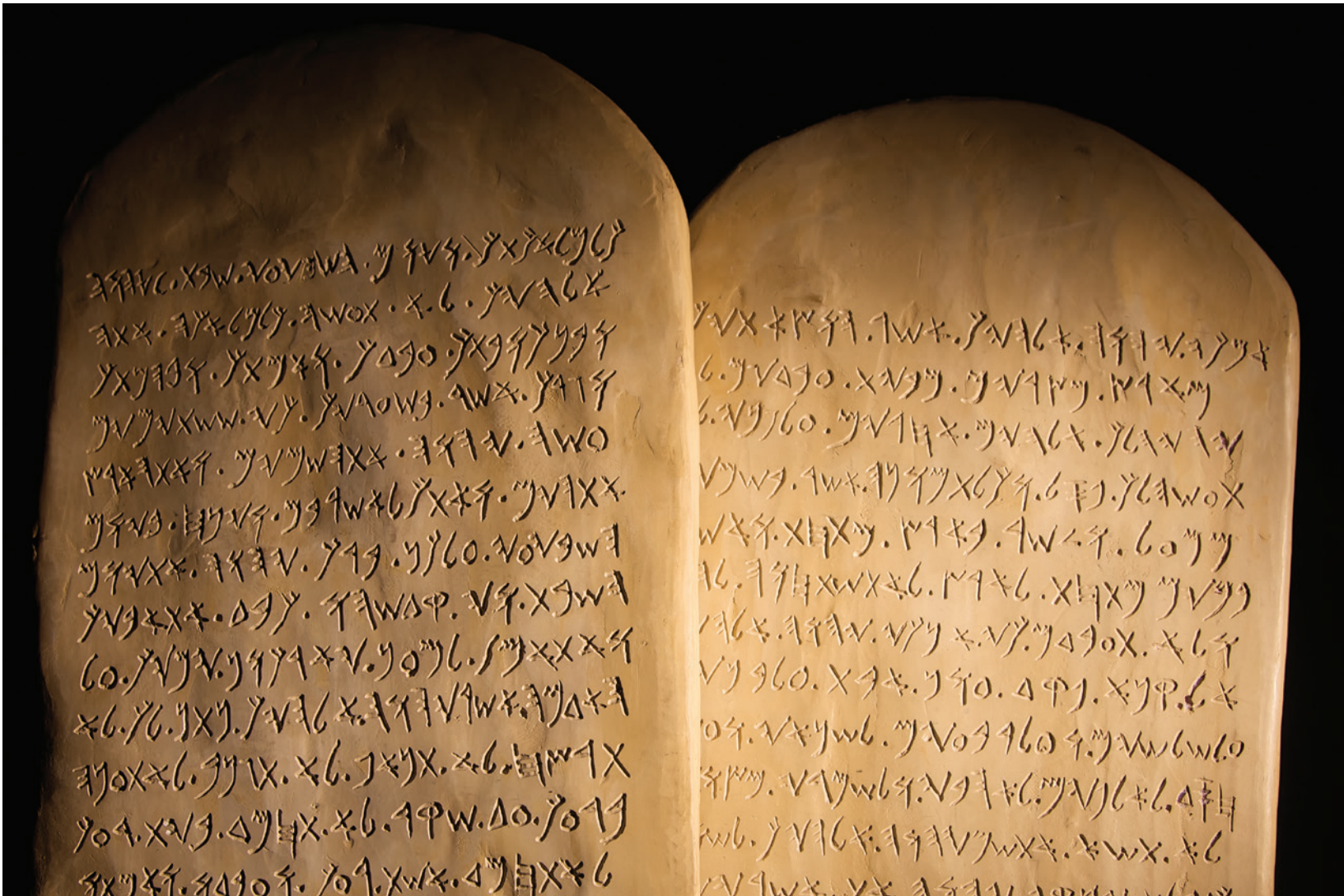
If your courts have dockets which rotate differing substantive areas of the law – criminal, family, civil, probate and the like - you must do the same. Discuss allocations. Do not assume that what you think is best is what your colleagues will also seek. Just because you are board certified in criminal law, you should not decide to pass every domestic relations case to some colleague who exclusively did that work. Easiest way to avoid an issue – CONVERSE!

Always defend, and NEVER disparage decisions made by a colleague.

The Canons of Ethics and the Texas Lawyer's Creed both start by recognizing the special place lawyers have in defending our system of justice, and the role lawyers have in preserving the quality of justice, including its image and perception. They require lawyers to NOT make disparaging statements concerning the integrity of a judge or the judicial process. When someone denigrates a decision made by one of your colleagues, stop that lawyer immediately! It is a good idea to remind any moaning lawyers of their obligation not to disparage under the Canons. Presume that like yours, your colleagues' rulings are all meticulously reasoned and solidly grounded in the law.

Never be reticent about asking for help.

There were a thousand things you already knew when you became a judge. There were a thousand and one things that you did not know. This was the same for your predecessors and will be the same for those who will follow in your footsteps. They did need, or will need, your help. If you understand this, it makes it easier for even the most independent to seek the assistance of others. It is a sign of wisdom, not weakness.



Be generous with your ability to give help.

We all find times when we need to be somewhere else. Like taking a child to the doctor or speaking at a conference in Maui. Your colleagues are like you in this. When someone is out, either for an afternoon, or for a week, offer to pick up their slack. It may be taking an additional hearing or three. It may be as simple as taking 10 minutes for the signing of ministerial orders like agreed dismissals every day for a week. It may be offering to take up a TRO hearing while someone else is in the middle of a month-long trial. But when you have the time or can make the time, offer to do it.

Let someone else keep the score, and resist the urge to report it.

In most counties, the district clerk keeps (or even publishes) productivity statistics; like number of hearings held, number of appointments made or number of cases resolved, and cost per case. If you have numbers reflecting less productivity than your colleagues, don't grouse about how they dismiss cases faster, transfer cases, or deny continuances that you invariably grant. Similarly, when you have better numbers than some colleague, there is no need to raise that fact with them. They already know! However, again, if someone is disproportionately out of the norm, just offer to help. If you see a stack of orders which need attention, like agreed dispositions which do not require hearings, lend the hand (and your pen).

Don't take things personally.

Just like in the context of recusal, it is easy to take offense when someone suggests that you should transfer a case or accept a case. A decision to take or move a case, or to accept an appointment is almost never about you as an individual. In fact, there are virtually NO decisions which your colleagues make which are driven because of yourself. Do not make it so.

Blow your colleagues' horn, not your own.

We all like to see our names in the lights, and we all want our accolades to be announced. But even the most charitable of us do not appreciate hearing someone else saying, "Hey, I just wanted to let you know that the committee of the Bar gave ME an award." Don't be this guy.

When you receive accolades, rest assured that they will not be kept secret for long. People will know. YOU don't need to the be the person to tell. In both small towns and in large cities, word travels fast of your successes.

Similarly, then, when you find out that a colleague is about to be honored, check with her first and THEN publish kudos to the other local judges. When you do that for others, you will find out just how quickly and certainly they will reciprocate.

Rather than always saying "Yes" or "No", suggest a colleague.

We like to be put in positions to expand our visibility. But don't "hog the ball." When asked to take on something, think first if you have a colleague who would be better suited for the task. For example, if asked about sitting on a Bar committee to consider revisions to the PJC, when you have had a practice which didn't expose you to this area, figure out who might have a more experientially-based skill set, and suggest that person. When asked to speak, consider if a colleague would appreciate the opportunity as well, or even more. Of course, ask first (and it goes without saying that this does not apply to a conference in Paris, Hong Kong, or Tahiti).

When in doubt, refer to the first Commandment.

Always – ALWAYS give your colleagues the benefit of the doubt.

Just as with your knowledge: there are things you can control. There are more that you cannot. But at the end of the day, the only thing which you can control is yourself. Being able to master this is no guarantee, but makes it more likely than not that, most other things will fall into place.

The **2018 Impaired Driving Symposium** is scheduled for August 2-3, 2018 at the Horseshoe Bay Resort.

The Impaired Driving Symposium is a special conference hosted jointly by the Texas Center for the Judiciary, the Texas Association of Counties, the Texas Justice Court Training Center, and the Texas Municipal Courts Education Center. This seminar gives judges the opportunity to converse and network with judges from other levels of the judiciary with the goal of streamlining impaired driving cases from arrest to disposition.

This conference features vibrant speakers on a wide range of impaired driving related topics and an exhibit area with vendors and exhibitors offering services to help prevent impaired driving and increase traffic safety in your community. It will count for eight hours of judicial education credit.

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Texas Department of Transportation
www.tmcec.com

TEXAS CENTER FOR THE JUDICIARY

Spotlight on Success

Do you know of a DWI Court that has been extraordinarily successful in implementing the DWI Court Guiding Principles or would like to recognize a team member that goes above and beyond the call of duty? Nominate them to be honored at the 2018 DWI Court Team Advanced Conference! (Self-nominations are welcome for the Team award.) The awards will be presented at lunch on Thursday, February 8. Please email your nominations to hollyd@yourhonor.com with a brief explanation as to why you are nominating the team and/or person.

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Criminal Law and Procedure

HB 29—Effective 9/1/17 (applicability to pending cases varies). Extensively revises substantive and procedural provisions governing trafficking and sexual offenses. Provides that a "fee," for the purposes of a prostitution-related transaction, includes the exchange of money or any other benefit. Provides that a defendant need not have known the age of the victim to have committed certain sexual offenses against a child. Clarifies the court's authority to issue subpoenas, search warrants, and other court orders with respect to criminal investigations into online service providers. Expands the scope of civil remedies related to racketeering and human trafficking. Revises the elements of the sex offender registration form and increases public access to certain registration information. *See, inter alia*, Civ. Prac. & Rem. Code §§ 140A.051-.064; Code Crim. Proc. art. 24A.0015, 62.001(5), 62.005(b), 62.051(c), 62.101(a); Penal Code §§ 20A.02(b) 1.02(b)21.11(a) 22.011(a) 22.021(a) 43.01-.05.

HB 34—Effective 9/1/17 (applicability to pending cases varies). Implements recommendations of the Timothy Cole Exoneration Review Commission. Requires prosecutor's offices to track testimony and to record custodial interrogations related to certain felonies. Requires the state to make certain disclosures to a defendant before trial if it intends to introduce statements made by the defendant to a fellow inmate. Addresses the admissibility of confessions, line-up identifications, and prior offenses committed by certain witnesses. *See, inter alia*, Code Crim. Proc. art. 2.023, 2.32, 38.075, 38.20, 38.22, 39.14.

HB 1266—Effective 9/1/17 (applies to all cases pending on or after that date). Requires a trial court to grant a continuance of a hearing or trial on oral or written motion of the state or the defendant if the trial court sets a hearing or trial without providing at least three business days' notice; provides that the requirement does not apply during the period between the commencement of the trial and final judgment. *See* Code Crim. Proc. art. 29.035.

HB 1442—Effective 9/1/17 (applicability to existing convictions and pending pleadings is unclear). Requires the court, pending the disposition of a motion for new trial or the resolution of the defendant's appeal of a misdemeanor conviction, to order the release of a defendant after the completion of any sentence of confinement imposed for the conviction. Allows the court to require personal bond; prohibits the imposition of any conditions with the personal bond and the requirement of any other form of bond or security. *See* Code of Crim. Proc. art. 44.04(i).

HB 1507—Effective 9/1/17 (applies to plea, placement, and discharge adjudicated on or after 1/1/18). Requires the court, before accepting a plea of guilty or nolo contendere, to inform the defendant that satisfactory completion of any term of community supervision, along with all the conditions thereof, may result in release from the penalties and disabilities resulting from the charged offense. Requires a judge, before placing a defendant on community supervision to inform the defendant of that possibility in writing on a form prescribed by the Office of Court Administration. Clarifies that failure to substantially comply with the notice requirement at entry of the plea will not serve as grounds to set aside the conviction, plea, or sentence. *See* Code Crim. Proc. art. 26.13(6), 42A.058, 42A.701.

HB 3130—Effective 9/1/17 (applies to sentences received on or after 1/1/19). Establishes an educational and vocational training pilot program for state-jail felony defendants, allowing certain judges, when imposing punishment for eligible defendants, to suspend the imposition of the sentence and place the defendant on community supervision with the condition that the defendant submit to an initial term of confinement for 90 days and then participate in the pilot program. Requires the Texas Department of Criminal Justice to promulgate eligibility criteria, to identify sites for the program, and to develop and implement the program. *See* Code Crim. Proc. art. 42A.562; Gov't Code §§ 507.007.

HB 3872—Effective 6/15/17 (applicable to prior cases where statutory criteria satisfied). Provides habeas relief from convictions based in part on DNA evidence tested by certain laboratories audited by the Texas Forensic Science Commission, allowing relief where the convicted person shows DNA evidence presented at trial was tested by a laboratory that subsequently ceased DNA testing after an audit revealed faulting testing practices, if that evidence was tested during the period involving faulty testing practices. Requires the person seeking habeas relief to show, by a preponderance of the evidence, that he or she would not have been convicted if the DNA evidence had not been presented at trial. Stipulates that, as a matter of law, this issue could not have been raised in previous applications for relief. *See* Code Crim. Proc. §§ 11.0731, 64.01(b).

SB 179—Effective 9/1/17 (applies to conduct occurring on or after that date). Expands the scope of certain criminal offenses to reach the bullying of minors. Allows the victim of cyberbullying or the parent of such a victim to seek injunctive relief against the perpetrator or a parent of the perpetrator; authorizes temporary or permanent relief, as appropriate, and appears to authorize ex parte emergency relief without a showing of likely irreparable harm. Requires the Supreme Court to promulgate forms plaintiffs can use to seek relief in English or in Spanish. *See, inter alia*, Civ. Prac. & Rem. Code ch. 129A; Penal Code § 42.07(c).

SB 1253—Effective 9/1/17 (applies to interrogations occurring on or after 3/1/18). Requires law enforcement agencies to make a complete, contemporaneous electronic recording of custodial interrogations occurring at a detention facility if the subject of the interrogation is suspected of a felony or certain violent or sexual misdemeanors. Renders any statements made by the subject inadmissible unless law enforcement complies with the recording requirement or good cause rendered recording infeasible. *See* Code Crim. Proc. art. 2.32, 38.22(9).

SB 1584—Effective 9/1/17 (applies to defendants placed on community supervision on or after that date). Requires any conditions of community supervision to be based on the results of a risk and needs assessment conducted using an instrument validated that purpose. Instructs the judge, for each condition, to impose the least restrictive condition necessary to achieve the purpose for which that condition is imposed, requiring the judge to consider the extent to which each condition might affect the defendant's work, education, community service, and financial obligations. Restricts the use of state-funded substance abuse treatment programs to defendants for whom an evaluation indicates the extent of the dependency and the appropriate type and level of treatment. *See* Code Crim. Proc. art. 42A.301(a), (c).

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as of 10/31/17

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Family Law

HB 7—Effective 5/31/17 (applicability of some provisions depends on filing dates and hearing dates). Revises procedures governing suits to terminate parental rights and suits to intervene in the parent-child relationship. Limits the court's authority to enter findings of fact, prohibiting the use of homeschooling, reasonable disciplinary measures, economic status, vaccination history, and certain other family circumstances as justification for terminating the relationship. Increases the opportunities for a parent to testify and to request continuance of hearings and filing deadlines. Strengthens the procedural protections afforded to foster parents and grandparents. Imposes new obligations on court-appointed guardians ad litem. Allows the entry of temporary ex parte orders to protect a child from abuse or neglect. Provides for the automatic dismissal of certain cases pending for more than a year. *See, inter alia*, Fam. Code ch. 262, 263; Hum. Res. Code ch. 42.

HB 2048—Effective 9/1/17 (applies to suits filed on or after that date). Allows an associate judge to hear and render an order on any matter to be decided in connection with Title IV-D services, including suits affecting the parent-child relationship and suits for modification under Chapter 156 of the Family Code, in addition to all matters allowed under current law. Provides that an agreed child support review order is considered confirmed by operation of law on the expiration of the third day after filing, regardless of whether the order is signed by the court. *See* Fam. Code §§ 201.104, 231.118, 233.024.

HB 2703—Effective 9/1/17. Requires the court, no later than the seventh day after the appointment of a receiver in a suit for dissolution of a marriage, to render findings of fact and conclusions of law in support of that appointment, and to include findings supporting any decision not to require the issuance of a bond between the spouses. *See* Fam. Code § 6.502(c).

SB 77—Effective 9/1/17 (applies to suits filed on or after that date). Allows the court to terminate the parent-child relationship if the court finds by clear and convincing evidence that the parent has been convicted of the sexual assault of the other parent or that the parent has been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under Penal Code section 22.011 or 22.021, or under a substantially similar state or federal law. Authorizes the court to order such a parent, even after the termination of rights, to pay child support. *See* Fam. Code §§ 154.001(a-1), 161.001(b)(1).

SB 257—Effective 9/1/17 (applies to protective orders rendered on or after that date). Limits the respondent on a protective order with an effective period of more than two years to one subsequent motion for review of the order; clarifies that the subsequent motion may not be filed earlier than the first anniversary of the date of the order disposing of the previous motion for review. Provides that the review restriction does not apply to orders issued pursuant to chapter 7A of the Code of Criminal Procedure, which provides protection for victims of sexual assault, sexual abuse, stalking, and trafficking. Repeals article 7A.07(c), which allows the automatic extension of certain protective orders. *See* Fam. Code § 85.025.

SB 712—Effective 9/1/17 (applies to protective order applications filed on or after that date). Allows a court to render a protective order for a period that exceeds two years if the court finds the subject of the protective order has committed a felony involving family violence against the applicant or a member of the applicant's family or household, regardless of whether the person has been charged with or convicted of the felony. *See* Fam. Code § 85.025(a-1).

SB 999—Effective 9/1/17 (applies to suits filed on or after that date). Requires a governmental entity filing an original SAPCR after taking possession of a child without a court order to file an affidavit stating that, based on personal knowledge, one of a number of delineated circumstances was present and that (1) continuation of the child in the home would have been contrary to the child's welfare, (2) there was no time for a full adversarial hearing, and (3) reasonable efforts, consistent with the circumstances, were made to prevent or eliminate the need for removal. Outlines circumstances under which a court is exempt from the requirement to order the return of a child at the initial hearing. Eliminates the requirement that a person taking a child into possession without a court order ask the court to appoint an attorney ad litem. Revises procedures governing hearings in a suit filed by a governmental entity requesting possession of a child who has not yet been taken into possession, making the procedures more consistent with those governing a full adversarial hearing regarding a child already taken into possession. *See* Fam. Code ch. 262.

SB 1237—Effective 9/1/17 (applicability varies by date and contents of order). Removes deadline for the court to render temporary orders pending appeal in a suit for dissolution of marriage, making such an order equitable in nature and affording the court broad discretion to offer relief, with the order subject only to mandamus review. Requires additional findings of fact regarding the division of the estate and regarding the frivolous filing of suits for modification. Provides that a temporary order enjoining a party from molesting or disturbing a child need not identify any specific risk of injury and may be rendered without any bond or affidavit that might otherwise be required by law, with such an order subject only to mandamus review. Clarifies that appeals from child custody orders are subject to the accelerated timeline set forth in the Rules of Civil Procedure and Rules of Appellate Procedure. *See* Fam. Code §§ 6.709, 6.711(a), 9.007(c), 109.001-.003, 152.314, 153.258, 154.130, 156.005.

SB 1242—Effective 9/1/17 (applies to applications filed on or after that date). Establishes procedures by which a court can maintain the confidentiality of the mailing address of an applicant for a protective order. *See* Fam. Code §§ 82.011, 85.007.

SB 1705—Effective 9/1/17 (applies to an application for a marriage license filed on or after that date). Eliminates provisions requiring parental consent or a court order authorizing the marriage of a minor; instead requires any person under 18 years of age to obtain a court order removing the disabilities of minority status for general purposes. Renders void any marriage if either party to the marriage is younger than 18 years of age and has failed to obtain the requisite order. *See* Fam. Code § 2.003.

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LEGISLATIVE UPDATE

Mental Health

SB 1326—Effective 9/1/17 (applies to defendants accused of offenses committed on or after that date). Establishes procedures to facilitate the early identification and treatment of pre-trial detainees with mental illness or intellectual disability:

- Requires a sheriff or custodial agent with custody of a person suspected of a Class B or higher offense to transmit any information indicating the person might have a mental illness or an intellectual disability to a magistrate within 12 hours of receipt; requires the magistrate to evaluate the information and, upon finding reasonable cause to believe the suspect has a mental illness or an intellectual disability, to order an assessment by a local mental health authority, a local intellectual and developmental disability authority, or another qualified expert.
- Requires any written mental health assessment ordered by a judge to be provided to the magistrate within 96 hours if the suspect is in custody or within 30 days if the suspect has been released.
- Authorizes the magistrate, in the event a suspect fails or refuses to submit to the assessment as ordered, to order the person to submit to an examination in a jail or another appropriate place of confinement for a reasonable period not to exceed 72 hours.
- Requires the magistrate, upon a determination that a defendant charged with a Class B misdemeanor or higher is incompetent to stand trial, to order the defendant to participate in a jail-based competency restoration program or to seek treatment at an in-patient mental health facility or residential care facility. Allows the magistrate to order out-patient treatment for a period of up to 60 days where the defendant is not a danger to others and may be safely treated in that manner.
- Provides that a magistrate must release from custody, notwithstanding a locally adopted bond schedule or other standing order, defendants not charged with a violent offense or previously convicted of a violent offense determined to have a mental illness or an intellectual disability if the assessment reveals appropriate treatment is available in the community and release will reasonably ensure the defendant's appearance in court and the safety of the community and the victim of the alleged defense.
- Allows the magistrate to use the results of the assessment to refer the defendant to a specialty court, as appropriate.
- Addresses the availability of prescribed medications for suspects and defendants in custody.
- Requires each magistrate to report the number of mental health assessments to the Office of Court Administration (OCA).
- Requires the specialty courts to report cases and outcomes to OCA. *See* Code of Crim. Proc. art. 15.17, art. 16.22, ch. 46B.

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SB 1576—Effective 9/1/17 (applicability varies by provision). Revises various sections of code to address the commitment of certain sex offenders. As pertains to the courts, requires certain appearances and hearings related to commitment, upon motion by the state attorney, to be conducted by closed-circuit video teleconferencing; instructs the court to make and preserve a recording. Prohibits a magistrate from releasing on personal bond an otherwise eligible defendant who, at the time of the commission of the charged offense, was civilly committed as a violent sex offender. Expands the scope of certain criminal offenses and enhancements to reach civil commitment facilities and individuals committed to those facilities. Makes it an offense for any person to provide or intend to provide alcohol, controlled substances, dangerous drugs, or deadly weapons to a person in the custody of a civil commitment facility, or to possess a deadly weapon while in a civil commitment facility. *See* Code of Crim. Proc. art. 17.03(b-1); Health & Safety Code ch. 841; Penal Code §§ 22.01(b-1), 22.11(a), 38.11, 46.035(b).

SB 1849—Effective 9/1/17 (compliance deadlines vary). Known as the Sandra Bland Act, requires law enforcement agencies to make a good-faith effort to divert persons suffering a mental health crisis or the effects of substance abuse to appropriate treatment centers.3 Requires each county to develop and publicize a plan to efficiently use resources to attempt to divert appropriate persons from jails or other detention centers and to develop or expand community collaboratives where possible. Requires various agencies to promulgate rules regarding jailer training, confinement safety standards, incident investigations, and minimum medical treatment standards for persons in confinement. Requires the sheriff of each county to file a monthly report outlining any serious health or safety incidents. Addresses racial profiling by law enforcement. *See, inter alia*, Code of Crim. Proc. art. 16.23; Gov't Code §§ 511.019-021, 539.002, 539.0051.

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Guardianship Law

SB 39—Effective 9/1/17 (applicability to guardianships and proceedings varies by provision). Revises procedures governing guardianships for incapacitated persons and adults with disabilities. Allows a court, on its own motion, to remove an independent executor if the executor fails to timely file the affidavit or certificates required by section 308.004 of the Estates Code. Clarifies the notice requirements associated with the sua sponte removal of a guardian for good cause. Revises the rights and responsibilities of the attorney in fact and the procedures for removal of an attorney in fact. Allows a court, after providing certain notices and a hearing (if requested), to transfer guardianship proceedings to another county if the ward is residing in the county to which the transfer is made. Establishes mandatory disclosure language to be included in supported decision-making agreements for adults with disabilities; addresses possible conflicts of interest arising from those agreements. *See* Estates Code ch. 751, 752, 753, §§ 1055.003, 1101.002, 1357.052-.056.

SB 1710—Effective 9/1/17 (application to pending letters and applications varies). Prohibits a court from requiring the appointment of a new guardian before considering a ward's application for modification or complete restoration if the prior guardian resigns, is removed, or has died. Clarifies that the physician's letter required for modification or restoration is not required to appoint a court investigator or guardian ad litem to investigate a modification or restoration requested by the ward by informal letter. Requires the court to reply by certified mail within 30 days of receipt such a letter. *See* Estates Code §§ 1202.051, 1202.054.

SB 46—Effective 9/1/17. Allows a judge, before polling a jury, to assign each juror an identification number to use in place of the juror's name. *See* Code Crim. Proc. art. 37.05.

SB 259—Effective 9/1/17 (applies to summons sent on or after that date). Allows the court to include with a jury summons, in lieu of a copy of the summons questionnaire, instructions on how to access the questionnaire online if the county judges have adopted a plan for electronic jury selection pursuant to section 62.011 of the Government Code. *See* Gov't Code §§ 62.0132(b) and (d).

SB 1298—Effective 9/1/17 (applies to grand juries impaneled on or after that date). Allows the district judge to direct the selection and summons of whatever number of prospective grand jurors the judge considers necessary for the case, eliminating the limit of 125 prospective grand jurors. Modifies the qualifications for grand jury service, requiring a juror to be at least 18 years of age, a citizen of the United States, and a resident of the county in which the grand jury is sitting, regardless of voter registration. *See* Code Crim. Proc. art. 19.01, 1908.

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