



LAW LIBRARY NEWS

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Attorney Lecture Series

The Law Library is hosting another **Attorney Lecture Series** on Friday, **July 23 at 2 pm**. Attorney Rocky Pilgrim will be speaking at this program on the **Financial Aspects of Running a Law Practice**. She will be helping young attorneys and those starting out on their own, to be able to know what tips and strategies to know when managing the financial aspects including accounting and tax returns.

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New & Updated Resources

O'Connor's Texas Series

- *Texas Civil Forms*
- *2021 Edition*

Qualifying and Attacking Expert Witnesses

- *2021 Edition*

Texas Litigation Guide

- *June 2021 Update*

Federal Jury Practice & Instructions

- *Criminal Handbook*
- *2021 Edition*

Texas Practice Guide

- *Business Transactions*
- *2021 Edition*

Forensic DNA Evidence

- *2021 Update*

Texas Oil and Gas

- *2021 Update*

Defense of Drunk Driving Cases

- *2021 Update*

FBC Bar News

Fort Bend County Bar Association

The Fort Bend County Bar Association is having their monthly meeting and CLE on Thursday, **July 29 at noon**. The program topic is **Basic Content for Constant Contact Promo**. It will be presented by Erin Levine, the attorney founder of HelloDivorce.com. Register on the FBCBA website.

Family Bar of Fort Bend County

The Family Bar has restarted their monthly meetings. The next one is on September 1 at noon at Buena Vista Restaurant in Richmond.

Fort Bend County Criminal Defense Attorneys Association

The Fort Bend County Criminal Defense Attorneys Association has a CLE on Thursday, **July 29 at noon**. This is a 90 minute CLE. Topic is **Understanding Cell Phone Extraction Reports and Cell Tower Data** given by Jimmy Taylor. For more information, visit their website.



Featured Resource: Spanish Collection

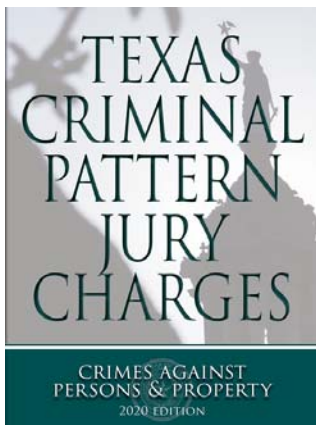
By Andrew Bennett

The Law Library has a small but comprehensive Spanish Collection as part of our library. The book range from simple guide-books on the American Law to more in-depth books on speaking Spanish at your law practice. Some books are on the history of law or a particular case. Most books in the collection though are general in scope. Books on American Law, and Texas law in particular, are pretty sparse but we try to acquire what we can to help those who speak Spanish and especially Pro Se litigants. The collection is located on the front side of our shelves near the first bank of computers. Additional books can be found in the Lawyering Skills section on the opposite end of the row. Copies of these books can be made for \$0.10 a page. For more information, visit the Law Library.



Technology Corner: Texas Pattern Jury Charges - Online

By Jonathan Briggs



It could be said that the jury charge is the framework upon which your trial, be it civil or criminal, is going to be decided. Early in my career a senior attorney gave me some pretty good advice: at the very outset of a case go look at the pattern jury charges (PJC) for the causes of action asserted as they will guide you in developing your evidence, defenses, etc; to know what both you and your adversary have to prove in asserting your claims or defenses to get the instructions and questions you need for the jury to consider. What you have to do to get across the finish line will help you determine how to run the race. That advice stuck with me and soon bore fruit. In one of my first jury trial trials I was able to get an inferential rebuttal jury instruction on “emergency.” Referencing the PJC early on as I learned the facts of my client’s case and using it in developing my evidence directly led to a verdict in his favor on the liability issue. That’s just one little “war story” that points up the value of the pattern jury charges. They help you learn the law and to properly focus your case. The Fort Bend County Law Library has always maintained in print the Texas Criminal Pattern Jury Charges and the Texas Civil Pattern Jury Charges, published by the State Bar. We also have them in PDF format via a folder on the desktop of all our public computers. However, you may not know that they are available via our Lexis legal database on three of our patron computers, easily our most user-friendly format of this resource. We have the full collection of up-to-date editions of the criminal volumes (General, Evidentiary & Ancillary Instructions; Criminal Defenses; Intoxication, Controlled Substances & Public Order Offenses; and, Crimes Against Persons & Property) and civil volumes (General Negligence, Intentional Personal Torts & Workers’ Compensation; Malpractice, Premises & Products; Business, Consumer, Insurance & Employment; Family & Probate; and, Oil & Gas). To access them via Lexis on the main page under the “Content” tab select “Jury Instructions” and you will see both of them listed under “State.” We can assist you. You can download or e-mail items from Lexis at no charge. Copies are 10 cents per page. For more information, visit us!



Community News

- The **Fort Bend County Law Library** will host an **Westlaw Training and CLE** on Wednesday, **July 21** at **10 am**. This class will focus on using the Westlaw database. For more information and registration, visit our website. CLE credit will be given to those attorneys in attendance. Register online here: <https://www.fortbend.lib.tx.us/event/live-westlaw-training-and-cle-1>.
- The **Texas State Law Library** has a lot of **digital resources** at your disposal. Please **create a digital library account** for access. For more information, visit their website at <https://www.sll.texas.gov/about-us/get-a-library-account/>.
- **Re:search TX** allows you to research case law from all 254 Texas counties. Some documents do require payment to access. Account set up is free. Go to <https://research.txcourts.gov/CourtRecordsSearch/Home>. Or you can check out Google Scholar for case law research at <http://scholar.google.com>.
- **Harris County Law Library** is now open by appointment. To sign up or find more information, visit their website here: <https://www.harriscountylawlibrary.org/reopening>.

Texas Lawyers

The State Bar of Texas offers confidential assistance to attorneys, judges, and law students who are facing substance abuse and mental health issues through its [Lawyers Assistance Program](#). Professional staff members are available 24/7 by phone to help with crisis counseling and referrals to local professionals and support groups. For assistance,

Contact

If you have any information on upcoming CLEs, conferences, etc. that you think would be useful to include in the newsletter, please send an email to abennett@fortbend.lib.tx.us with “Newsletter” as the subject. To unsubscribe, write “unsubscribe.”

Useful Articles and Links

- **Ransomware.** Texas Bar Journal, 2021. <https://www.texasbar.com/AM/Template.cfm?Section=articles&Template=/CM/HTMLDisplay.cfm&ContentID=53959>.
- **Biases. We All Have Them. What Are Yours?** Voice for the Defense, June 2021. <https://www.voiceforthedefenseonline.com/biases-we-all-have-them-what-are-yours/>.
- **Tips for Avoiding Lawyer Burnout.** Voice for the Defense, June 2021. <https://www.voiceforthedefenseonline.com/tips-for-avoiding-lawyer-burnout/>.
- **The Next Twenty Years: A Call for Continued Pro Bono Efforts.** The Houston Lawyer, May/June 2021. https://issuu.com/leosur/docs/thl_mayjun21?fr=sMGI5OTM4OTQ3NjI.



Texas Case Law Update

Local Cases

- [Lucy Salmeron v. Deutsche Bank National Trust Co.](#), No. 01-20-00172-CV (June 17, 2021): Aff'd. TC Judgment. (CCL#6)
- [Elevation Express, Inc. v. Allied World Surplus Lines, et al.](#), No. 01-20-00595-CV (June 22, 2021): Appeal Dism'd. (CCL#1)
- [Mahammad H. Rashid v. The State of Texas](#), No. 01-19-00826-CR (July 1, 2021): Aff'd. TC Judgment. (458th)
- [JDH Pacific, Inc. v. Precision-Hayes International, Inc.](#), No. 14-21-00027-CV (June 29 2021): Appeal Dism'd. (400th)
- [Precision-Hayes International, Inc. v. JDH Pacific, Inc.](#), No. 14-21-00115-CV (June 29 2021): Appeal Dism'd. (400th)
- [Advanced Technology Transfer and Intellectual Property Group LLC v. Tricia Krenek](#), No. 14-19-00459-CV (July 1, 2021): Aff'd. as Modified. (434th)
- [John T. Nguyen, MD, FACS, FICS v. Mary Lavigne](#), No. 14-20-00185-CV (July 6, 2021): Rev'd. and Rendered in Part and Remanded in Part. (400th)
- [SH Salon L.L.C. v. Midtown Market Missouri City, TX, L.L.C.](#), No. 14-20-00026-CV (July 8, 2021): Aff'd. TC Judgment. (434th)
- [Kennard Law, P.C. v. Lamar Texas Limited Partnership](#), No. 14-19-00819-CV (July 13, 2021): Aff'd. in Part and Rev'd. and Rem. in Part. (CCL#2)
- [Christopher Branch v. Fort Bend County](#), No. 14-19-00477-CV (July 15, 2021): Aff'd. TC Judgment. (434th)

Criminal Law—Evidence—Text Messages

William C. Cain v. The State of Texas, 621 S.W.3d 75 (Tex.App.-Fort Worth 2021, no pet. h.). Defendant/Appellant was convicted of continuous sexual abuse of a child and possession with the intent to promote child pornography and was sentenced to 27 years in prison. These crimes involved his stepdaughter beginning at age 11. At the time of trial she was 16 and testified against him. On appeal Cain claimed that the trial court erred by admitting text messages into evidence alleged to be between he and the victim as there was insufficient evidence that he was the author of the text messages the victim had received. The Court of Appeals first concluded that Cain did not preserve the error for review. While he made an objection at trial, his complaint on appeal did not "comport with the objection", i.e., his "trial objection is unrelated to the argument" he raised on appeal. However, the Court went on to look at the substantive nature of his appeal despite its fatal procedural failing. The Court of Appeals found that the trial court did not abuse its discretion by admitting the text messages into evidence. The Court looked into the issue of authenticity: is the proposed exhibit "authentically what its proponents claims it to be?" The trial court is merely the gatekeeper on authenticity by making a preliminary determination of authenticity, but ultimately authenticity is a question for the jury. Has the "proponent of the proffered evidence...supplied facts that are sufficient to support a reasonable jury determination that the evidence is authentic?" The Court of Appeals recognized some particular issues in the context of electronic messages: "authenticity includes a subsidiary issue: whether the messages were authored by the purported sender. Although the trial court's preliminary authenticity determination is a "low bar," evidence "that merely shows the association of a phone number with a purported sender—*alone*—might be too tenuous" to show authorship. To "bridge the logical gap" and permit an inference that the person associated with a specific cell phone number authored and sent the text messages at issue, the proponent is generally required to offer additional direct or circumstantial evidence—such as testimony from a witness with knowledge, contextual details indicating authorship, or distinctive content in the substance of the messages themselves." (citations omitted). The Fort Worth court went through a thorough analysis ultimately concluding: "[T]he State provided more than enough evidence to "bridge the logical gap" and allow a reasonable jury to conclude that Cain authored and sent the text messages purporting to be from him and contained in State's Exhibit 2. Even if Cain had preserved his current authenticity complaint for review, his complaint would fail." Affirmed. A long opinion but worth reading as the admission of electronic evidence is more and more an important issue.

Family Law—Conservatorship/Custody—Grandparent

In the Interest of T.D.L., a Child, 621 S.W.3d 346 (Tex.App.-San Antonio 2021, no pet. h.). Father of child passed away. Paternal grandmother filed an original Suit Affecting Parent-Child Relationship (SAPCR) seeking sole managing conservatorship. Grandmother had thus far been deeply involved in the care of the child and the child had lived in her home for most of his life. Mother filed a plea to the jurisdiction challenging the grandmother's standing to bring a suit for conservatorship, which the trial court granted. Grandmother appealed. The key issue on appeal was whether she had had custody of him for a sufficient period of time under the Family Code. When viewed in the light most favorable to the non-movant grandmother the evidence raises a fact question about whether she had "actual care, control, and possession" of the child for the requisite time. Thus, the order dismissing the SAPCR was reversed.

Librarian Musings: Review of the New Lexis+

By Andrew Bennett

At some point, the Law Library will receive the new version of the Lexis database. This database, titled Lexis+, has some improvements to the overall experience of using the database. It may take longer than we hope as our portals here at the Library are open to the public. This means that they are not only limited to a specific computer, but due to privacy issues, everything must be wiped after each session. Both Lexis and Westlaw want to keep your information private, and to do that securely, this takes time for them to implement a product that is safe. Once those issues are resolved, we will then get the upgrade to the new database. Recently, I was able to have a short introduction to it and I want to give you my thoughts.

Lexis+ is overall a beautiful database to look at. The color scheme between different sections of the database and the presentation are quite good. The “Legal Research” tab remains relatively the same as Lexis Advance. This includes being able to search statutes and codes, case law, secondary material, and more. But, some of the new additions include a new section called “Practical Guidance.” This section alone is worth the price of admission including some tips and tricks, practice notes, checklists, annotated forms and more to help you create professional forms for yourself. Not as complete as Pro-Doc or similar programs, this still gives the user a run-down on how to format and fill in forms while working on them. It is very similar to Westlaw’s Practical Law. .

Another new section is “Litigation Analytics.” This might be useful for a practitioner who wants to re-search a particular court or Judge and see how they might lean on past litigation history, damages awarded, and trends of the court. While mostly focusing on the federal level, they will be implementing the state and local levels as soon as practicable.

In the ‘Data Analytics’ tab, there is a brief and pleading upload tool in which the database analyzes your document for errors to citations and offers insight into whether that case is still good law using Shepard’s. The database also does not save your document as Lexis wants to ensure the privacy of your information. Once it finishes processing and you take a copy of the document with the analysis, the document will be deleted from their system.

Overall, this is a significant improvement over Lexis Advance. Due to patron access issues and privacy, it may have some features such as the “Data Analytics” portion that will likely not be used by our patrons, how-

ever, the “Practical Guidance” tab should be well used as it offers some areas of law that Westlaw’s Practical Law does not have and provides the same type of insight into creating documents. We hope we will receive this new version sooner than later!

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