



In Chambers

THE OFFICIAL PUBLICATION OF THE TEXAS CENTER FOR THE JUDICIARY

FALL 2018

Legislative
Preview
Liability After
Harvey?

Court Safety





4



9



In Chambers

The official publication of the Texas Center for the Judiciary

FALL 2018

STAFF

- Chief Executive Officer**
Judge Mark D. Atkinson
- Conference Coordinator**
Gail Bell
- TxDOT Program Director**
Holly Doran
- Information / Technology Director**
Christie Doto
- CJA Program Assistant**
Steve Geiser
- Curriculum Director**
Courtney Gilason, JD
- Registrar**
Aaron Gutierrez
- Executive Assistant**
Shirley Irvin
- Director of Finance**
Bruce Lawrence
- Senior Accountant**
Debra Malkiewicz
- CJA Program Director**
Heidi Penix
- Judicial Resource Liaison**
Judge Laura Weiser

EDITORIAL COMMITTEE

- Hon. Lee Gabriel
- Hon. Cliff Brown
- Hon. Robert Ramirez
- Hon. Laura Strathmann
- Hon. Ben Woodward

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 Doto. The Texas Center for the Judiciary is located at 1210 San Antonio Street, Suite 800, Austin, TX 78701.



Cover photo by: Hon. Bert Richardson

Features

- Legislative Preview:
What the 2019 Legislative Session Has in Store for the Judiciary by Judge Alfonso Charles 4
- New Report from Texas A&M School of Law Considers Possible Liability for Dam and Reservoir Operators Following Hurricane Harvey by Prof. Gabriel Eckstein..... 9
- Every Victim, Every Witness:
12 Safety Considerations for Juvenile and Family Court Systems by John F. Muffler 13

Departments

- | | | | |
|-----------------------------|-------|----------------------------|--------|
| Letter from the Chair | 3 | Contributors | 17 |
| Pre-Order Bench Book | 6 | In Memoriam..... | 19 |
| Letter from TCRA | 7 | New Judges..... | 21 |
| Upcoming Conferences | 8 | Amazon Shopping Link | 21 |
| Conference App | 8 | Annual Photos..... | 22, 23 |
| Award Winners..... | 12,20 | | |

LETTER FROM THE CHAIR

Dear Judges,
The mission of the Texas Center for The Judiciary is *Judicial Excellence Through Education*. The Center is a unique and remarkable organization. No other state has a Center for Judicial Education like TCJ, and few states provide the resources that Texas provides TCJ. Our biggest resource is you, the judges, who lend your ideas for curriculum, and present topics at conferences.

The TCJ produces great conferences. Five hundred fifty-six judges attended the Annual Judicial Education Conference in Houston this year. The Center will present the Child Welfare Judges Conference in November, and in December, we expect to educate more new judges at the College for New Judges than in any previous year. Every new judge appointed or elected this year should attend. Please encourage the new judges you know to attend this premier orientation for their new roles, provided by the state's most experienced judges.

Winter and spring are full of education opportunities. The Family Justice Conference is in January, and in February, we have the Criminal Justice Conference followed immediately by our second Mental Health Conference. This conference will focus on issues facing County Court at Law and District Judges who have cases with defendants and litigants affected by mental illnesses. We also will present two Regional Conferences, DWI Court Team Training, the Professional Development Program for our court staff, and many other specialty conferences. Then, back to the Annual Judicial Education Conference in San Antonio, in September 2019.

While providing this education, the Center protects the independence of the third branch of government. The curriculum is designed by judges. The Curriculum Committee strives to provide topics about the law and trends you may see in your courtroom. Our speakers focus on what judges need – the law and information

about those trends. To further protect your security and independence, TCJ policy provides that with few exceptions, attendance at our conferences is limited to registered judges, TCJ Staff, and faculty at their particular session. We strive to create an atmosphere where judges can learn and, consistent with the Rules of Judicial Conduct, speak openly about the challenges in their courtrooms and the difficult issues they face.

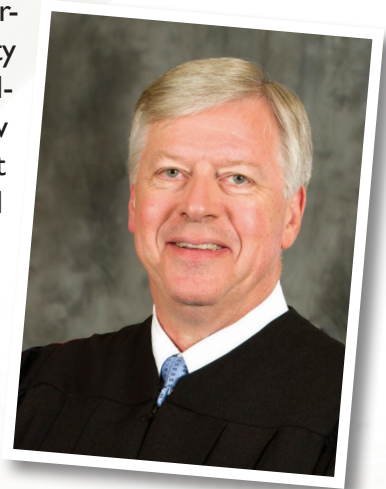
I hope you enjoy this issue of *In Chambers*. I always learn from the publication and many times see a new perspective on old problems. I encourage you to support the Texas Center with your presence at Texas Center Conferences, your participation with ideas and evaluations, and your donations. And, these conferences provide a short and welcome respite from the daily demands of our positions.

Thank you for giving me the honor to serve as Chair of this brilliant organization. While working with the Curriculum Committee and the Board, I have had the pleasure to work with dedicated judges, working to help their colleagues be excellent judges. I also see first-hand how fortunate we are to have professional, smart, committed employees of the Texas Center.

Judges, we are indeed fortunate to have this resource.



Hon. Ben Woodward, Chair



feature

Legislative Preview: What the 2019 Legislative Session Has in Store for the Judiciary



By Judge Alfonso Charles¹

When the 86th Legislature is gavelled in on January 8, 2019, it promises to be one of the most intriguing sessions in recent history. While “pay raise, pay raise, pay raise” may be the rallying cry for the judiciary, judicial compensation is far from the only issue that will pertain to the judiciary this session. Several pieces of unfinished business from the 2017 session will return. Cleanup of the unintended consequences of bills passed last session will also play a role. Then there will be several new pieces of legislation that will be filed. It promises to be a busy session for the judiciary.

When the session starts in January, the Senate appears to be relatively stable. Before anything can happen in the House of Representatives, they will have to select a new Speaker of the House. In October, that looked like a daunting task that could take some time, as there were seven announced candidates in the speaker’s race: Republicans Travis Clardy of Nacogdoches, Drew Darby of San Angelo, Phil King of Weatherford, Tan Parker of Flower Mound, John Zerwas of Richmond, Walter T. “Four” Price IV of Amarillo, and Democrat Eric John-

son of Dallas. In early November, Rep. Dennis Bonnen of Angleton entered the race. By November 12, the other members had dropped out of the race for speaker and he announced that he had the support of 109 members of the House, more than enough to secure the election as speaker. If that is the case, he will be elected speaker at the start of the session and be in a position to appoint committees and committee chairs relatively quickly. Then the House will be ready to hit the ground running alongside the Senate.

Of critical importance to the judiciary is judicial compensation. The judiciary of the State of Texas has had only two pay increases since 2000. The 2017 legislative session ended without judicial compensation being addressed by the legislature. While the judiciary was not successful in getting a pay raise last session, the voices of the judges were heard with over 300 phone calls and emails to the legislators at the end to the 2017 session. As a direct result of those calls and emails, the legislature passed a resolution calling for a joint interim committee to meet and discuss judicial compensation.

“Judges and open meetings will likely be the subject of some bills this session.”

In the interim, the Judicial Compensation Commission, (JCC), always a strong voice for the judiciary, issued a very supportive report including a strong recommendation of a 15 percent increase in judicial compensation and changes to longevity pay.

The Joint Interim Committee to Study State Judicial Salaries met on September 28, 2018 in Austin. It was a very positive hearing. Committee co-chair Senator Joan Huffman told those in attendance that there was a commitment to addressing judicial salaries this session. Legislators heard from Chief Justice Nathan Hecht, David Slayton, the Judicial Compensation Commission and other judges. While the hearing was very positive for the judiciary, it was clear that legislative retirement being linked to a district judge salary is still an issue that needs to be addressed in some manner.

Finally, it is not just judges that will be advocating for a judicial pay raise this session. Several organizations will be helping advocate for a judicial pay raise. The State Bar of Texas, the Texas Trial Lawyers Association, the Texas Association of Defense Council, the Texas Criminal Defense Lawyers Association, the Texas Civil Justice League, and Texans for Lawsuit Reform (TLR) have all testified at hearings on this issue. TLR has made increased pay for Texas judges one of their legislative priorities for 2019.

But working on a pay raise is not the only issue facing the judiciary this coming session. Several criminal, civil, family, and guardianship law bills probably await the judges of the state of Texas.

In 2017, the legislature addressed many high profile matters concerning criminal law. But very few of these measures passed. One of the legislative priorities last session and one that promises to be a priority this session is bail reform. With the lawsuit in Harris County and other counties pending, this issue will be back. Last session's bills called for increased use of personal recognizance bonds and pre-trial release bonds, rather than setting surety or cash bonds for individuals accused of an offense, especially in misdemeanor cases.

The bills encouraged judges to use pre-trial assessments to help determine the individual's flight risk and risk of reoffending in setting bonds.

Obviously, one of the main opponents of this legislation was the bonding industry. It is expected that several bills on this issue will be filed and for some type of bail reform to pass this session.

Legislators will also be looking at proposals to move the age of criminal responsibility from 17 to 18. Last session, the house passed HB 122. This bill would have raised the age of criminal responsibility to 18. While the bill did not get a hearing in the Senate, it had a lot of support. Proponents are planning on filing similar bills this session.

Last session, lawmakers passed SB 1584. This bill changed Art. 42A.301 of the Code of Criminal Procedure to read “the judge of the court having jurisdiction of the case shall determine the conditions of community supervision after considering the results of a risk and needs assessment conducted with respect to the defendant. The assessment must be conducted using an instrument that is validated for the purpose of assessing the risks and needs of a defendant placed on community supervision”. The legislation did not make an exception for misdemeanors. So, to comply with the statute, judges must either make sure a validated risk and needs assessment is completed prior to imposing conditions of community supervision, or have the defendant execute a waiver. Currently, the only “validated” risk and needs assessment for the purposes of the statute is the Texas Risk Assessment System (TRAS). There will be a push to make changes to this article. Proponents of the change would at least like to see misdemeanor offenses excluded from the mandate of the risk and needs assessment prior to implementing conditions of probation.

There will also be bills proposed concerning restrictions on firearms due to recent school shootings. Some of these “Red Flag” laws would allow law enforcement, a

(continued on next page)

(continued from previous page)

family member, school employee, or a district attorney to file a petition seeking the removal of firearms from a potentially dangerous person after legal due process is provided. This obviously would involve the court hearings and legal determinations by judges. This is an issue that the judiciary will be following very closely.

Business court legislation will be back this session in some form. It is not, however, expected to go to the extreme that Rep. Villalba's attempts to create chancery courts did. The proposal put forth by the judicial council, calls for any creation of business courts to be within the current court structure. It calls for the Supreme Court to create business court for complex litigation by rule. It further recommends the Supreme Court implement a pilot program and establish qualifications for who can be designated a business court judge.

Judges and open meetings will likely be the subject of some bills this session. Last session, SB 1452 was filed. It would have added "a gathering of two or more district judges performing any management or administrative function that does not involve the adjudication

of an individual case" to the definition of governmental body for the purposes of open meetings. While this bill did not pass last session, it is expected that a similar bill will be filed this session.

Obviously, this is not an exhaustive list of the bills we will see this session. Each session, the legislative committee tracks over 1,000 bills that could potentially affect the judiciary. This session promises to be the same. The legislative committee will attempt to monitor the bills that are important to the judges of the State of Texas. It promises to be an interesting session to say the least.

Endnotes

1. Judge Alfonso Charles is judge of the 124th District Court and the Presiding Judge of the 10th Administrative Judicial Region. He has served as judge of the 124th District Court in Gregg County since December, 2009. He served as judge of the County Court at Law 2 from 2003 to 2009. He has been active in legislative matters concerning the judiciary for several years. He was Chair of the Judicial Section of the State Bar of Texas from 2012-2013 and has been chair of the Legislative Committee for the Judicial Section since 2014.

Pre-Order Your Copy of the 2018 Bench Book Now!

The updated Texas Bench Book is [now online](#) and up to date in the LawBox app. These are as always free for you to access.

If you'd like a hard copy of the Bench Book, please place your order for a printed version [here](#). Hard copies are \$55 and will be mailed in December.

TEXAS BENCH BOOK

Published by the Texas Center for the Judiciary



TEXAS CENTER
FOR THE JUDICIARY

Revised 2016

Texas Court Reporters Association's Response To Court Reporter Shortage

For more than 79 years, the Texas Court Reporters Association (TCRA) has been leading, promoting, and protecting the court reporting industry in Texas. Judges may have heard that there is a shortage of court reporters nationwide, or they may have felt the pinch of not having a court reporter available when one was needed. Current market conditions indicate that there is more demand than supply for court reporters. The Texas Court Reporters Association is well aware of this issue and has been working to recruit more students into the field for the past several years, along with proposing other new ways in which to help alleviate the problem.

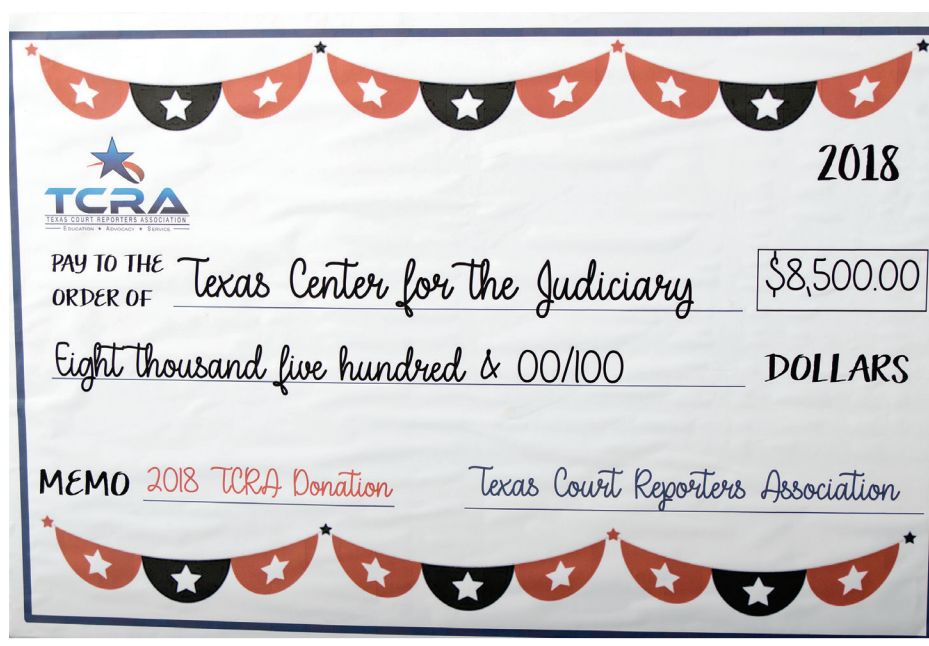
In 2015, for instance, TCRA appointed a Student Recruitment Task Force (SRTF). That task force immediately began recruiting efforts and is now working diligently to increase the number of students in our court reporting schools across Texas. To date, the TCRA task force has attended 166 recruiting events across Texas. There have been several newspaper articles and television interviews with TCRA members across the state on the court reporting shortage and recruitment efforts. Enrollment in Texas court reporting schools has increased considerably because of the efforts of the SRTF.

In addition, TCRA has also committed to seek legislative action, as and when needed, to make the market for court reporting services work for the litigants, lawyers and judges that court reporters serve. TCRA will be offering specific solutions in that regard, informed by the extent to which current legal authority is being effectively applied. As an example, TCRA is making efforts to recruit licensed and qualified reporters from other states who use a test that is substantially equivalent to the Texas CSR, to move to Texas. A legislative approach takes time and requires help.

The Texas Court Reporters Association and its members have heard judges' concerns and we are working to resolve these issues as quickly as possible. We appreciate the judges' allowing us the honor of presenting the Texas Center for the Judiciary with our \$8,500 contribution at the 2018 Annual Judicial Education Conference. We look forward to working with the judges in the future.

Should you have any questions and/or concerns, please feel free to contact Brooke Ingram our Executive Director at (903) 675-1806.

Respectfully,
Shari J. Krieger, CSR, TMR, RMR
Tarrant County
Official Court Reporter, CCL#3
President - Texas Court Reporters Association



UPCOMING CONFERENCES

(log in for exact dates and places)

College for New Judges

December 2018

DWI Court Team Basic Training and Advanced Conference

January 2019

Family Justice Conference

January 2019

Criminal Justice Conference

February 2019

Mental Health Conference

February 2019

Regional A Conference

(Regions 1, 2, 8, 10, 11)
April 2019

Regional B Conference

(Regions 3, 4, 5, 6, 7, 9)
May 2019

Professional Development Program

June 2019

Annual Judicial Education Conference

September 2019

Civil Justice Conference

October 2019

Regional A Conference

(Regions 2, 6, 7, 9, 11)
April 2020

Regional B Conference

(Regions 1, 3, 4, 5, 8, 10)
May 2020

CONFERENCE APP

Download the conference app from the Apple App or Google Play stores by searching “Texas Center for the Judiciary.” Use your e-mail address as your username and the password “tcj1210” to log in to the app. Using the app you can:

- View the conference schedule
- See who else is attending
- Download conference materials
- Fill out session evaluations
- Fill out the overall evaluation
- Ask a question of the presenter during sessions!



feature

New Report from Texas A&M School of Law Considers Possible Liability for Dam and Reservoir Operators Following Hurricane Harvey



By Gabriel Eckstein¹

When Hurricane Harvey hit the Texas coast as a category 4 hurricane on August 25, 2017, it resulted in \$125 billion in damage, rivaling only Hurricane Katrina in the amount of damage caused. It also resulted in the deaths of 88 people and destroyed or damaged 135,000 homes. Much of that devastation was the result of flooding. The storm dumped over 27 trillion gallons of rain over Texas in a matter of days. Some parts of Houston received over 50 inches of rainfall.

The potential liability that dam and reservoir operators may face for decisions they make during storm and flooding events has become a major concern for Texas citizens and its elected officials. Following Hurricane Harvey, lawsuits were instituted against the federal government for its operation of two flood control reservoirs, as well as against the San Jacinto River Authority for its operation of a water supply reservoir. Moreover, the issues and concerns have been placed on the agenda of a number of committees preparing for the 2019 Texas legislative session.

A report recently issued by Texas A&M University School of Law reviews current dam and reservoir operations in Texas and examines the potential liability that such operators may face for actions and decisions taken in response to storm and flooding events. The report begins by briefly reviewing dam gate operations and differentiating between water supply reservoirs and flood control reservoirs. It notes that water supply reservoirs are intentionally designed to maintain specific volumes of water at a certain elevation to ensure a consistently available water supply, especially during drought. In contrast, during normal climatic conditions, water in a flood control reservoir is maintained well below the reservoir's capacity to allow operators to impound high flows during times of heavy rainfall. As a result, water supply reservoirs do not provide effective flood storage while flood control reservoirs are designed to mitigate some of the downstream flooding that can occur during storm events. The report also considers pre-release options and explains why such actions are

(continued on next page)



U.S. Army photo by 1st Lt. Zachary West

strongly disfavored by both reservoir operators and the Texas Commission on Environmental Quality, which provides very general oversight of certain dam operation procedures.

In addition, the report evaluates liabilities and defenses applicable to dam and reservoir operators. It notes that under the Texas Tort Claims Act, the state legislature has waived such immunity in only three scenarios: (1) property damage, personal injury, or death arising from the wrongful act, omission, or negligence related to a government employee operating a motor driven vehicle or other piece of equipment; (2) personal injury caused by the condition or use of tangible personal property, and (3) personal injury or death caused by the condition or use of real property. Hence, the report concludes that governmental immunity significantly limits the exposure of state and federally-run dam and reservoir facilities in monetary damage claims.

The report also discusses how such entities could be subject to claims of inverse condemnation, which generally are not subject to governmental immunity under both Texas and federal law. Under Texas law, a “taking”

can occur through inverse condemnation where the landowner establishes that: (1) the governmental entity acted intentionally in the exercise of its lawful authority; (2) the act resulted in the taking, damaging, or destroying of property; and (3) the act was for public use. While the public purpose of a dam and reservoir may be the easier element to establish, the report explains that the other two can be more challenging. The intent element must be established by showing that the government either knew that its action caused an identifiable harm or that the damage is substantially certain to result from an authorized government action, while causation can be achieved only where the government’s actions is shown to be the proximate cause of an alleged physical appropriation or invasion of property, or unreasonable interference with a landowner’s right to use and enjoy the property. This latter element is especially difficult to establish in the context of a water supply reservoir where the dam operator releases the same volume of water that naturally enters the reservoir, and the release flows directly into the river rather than a claimant’s property.

Under federal takings law, a plaintiff must establish the existence of (1) a protectable property interest under state law, (2) that is backed by reasonable-investment backed expectations, (3) that the flooding event was directly caused by the governmental action, and (4) that the flooding was frequent and severe. The report asserts that while protectable property interest in land may not be difficult for a landowner to establish, the other elements may be more challenging. Since flooded lands are often within a floodplain, investment backed expectations may not be reasonable in relation to such flooding events. Moreover, direct causation is a very fact-specific analysis that requires a showing that the damage caused was the foreseeable or predictable results of the government's action. Finally, temporary government-induced flooding is not per se exempt from takings liability; the flooding must be "inevitably recurring" due to the actions of the government. Accordingly, the report concludes that unless hurricanes and other large storms occurred more frequently and severely as to incur flooding damage on a regular basis, it is unlikely that plaintiffs will be able to assert any flooding-related federal takings claims against government entities.

In addition, the report discusses negligence and nuisance claims and concludes that plaintiffs asserting either or both of these claims will have difficulty presenting successful arguments for flooding-related damage and harm against operators who act reasonably in the face of storm-related precipitation. To maintain a claim for negligence, a plaintiff must prove that a government entity owed the claimant a duty, that the entity breached that duty, that breach caused the flooding damage on the claimant's land, and that the claimant sustained actual damage from that flooding. However, Texas law does not generally grant property owners the right to keep floodwaters from their properties, especially floodwaters resulting from a hurricane as severe as Hurricane Harvey. Moreover, if the dam operations mitigate the flooding effects of a hurricane, it is unlikely that a court would find that the operator acted negligently because that operator in fact caused less damage than what could have occurred had the dam not been there.

With regard to nuisance claims, a nuisance is a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities attempting to use and enjoy it. The reports notes that under Texas law, if the release of water from a reservoir or

flood control dam is reasonable, reservoir and dam operators generally will not be held liable for nuisance, even in cases of intentional release. Moreover, it asserts that a nuisance claim would likely succeed only where it is shown that the nuisance

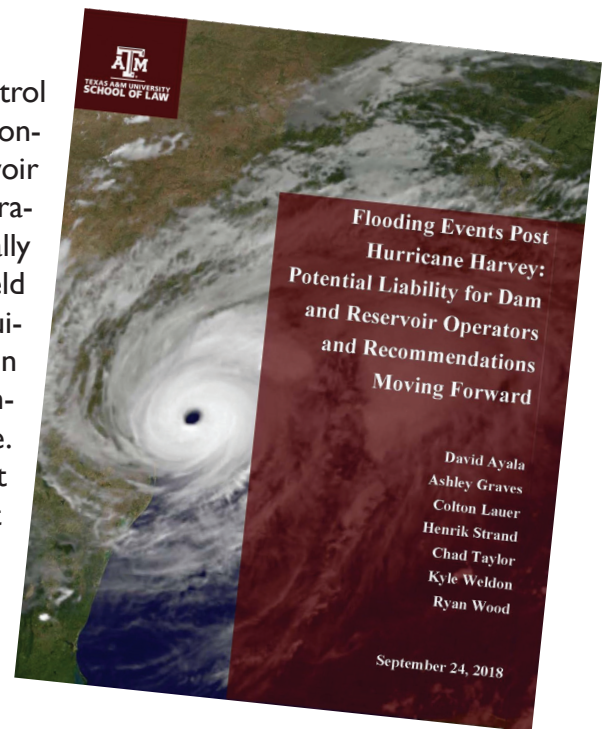
is permanent, or recurring in certain intervals or based on some irregular force such as rain; a single, isolated incident is unlikely to be accepted by the courts.

In its final section, the report offers recommendations for dam and reservoir operators to engage and educate the public and thereby reduce the potential for disputes and litigation. Specifically, the report highlights the need for expanded community outreach efforts to engage with municipalities, private land owners, and the business community in flood-prone neighborhoods both below and above a dam. It also recommends implementation of proactive flood notification procedures as a way of reaching and alerting as many people as possible of potential and imminent flooding events. Finally, the report proposes implementation of a dispute prevention and minimization mechanism and offers recommendations for the design and execution of such a program.

The report, which can be downloaded at <http://www.law.tamu.edu/flooding>, is the work product of students enrolled in the Natural Resources Systems Capstone Seminar at Texas A&M University School of Law. The students were supervised by Gabriel Eckstein, Professor of Law and Director of the TAMU Law Program in Natural Resources Systems, and Howard S. Slobodin, Adjunct Professor of Law and General Counsel of the Trinity River Authority of Texas.

Endnotes

1. Gabriel Eckstein is Professor and Director, TAMU law Program in Natural Resources Systems, Texas A&M University School of Law.



of note... 



Judge Diane Bull Receives 2018 Kevin E. Quilan Award for Excellence in Traffic Safety



Justice Lee Gabriel (above left) and R. Paul Yetter (above right) Named "Friends of the Judiciary" by the Judicial Section of the State Bar of Texas



TCJ Presents 2017-2018 Excellence in Education Awards



Judicial Excellence Through Education Award: Judge Linda Chew



Exemplary Judicial Faculty: Judge Brent Carr



Exemplary Non-Judicial Faculty: Dean Erwin Chemerinsky

feature



Every Victim, Every Witness: 12 Safety Considerations for the Juvenile and Family Court System

By John F. Muffler, M.S.¹

The health and well-being of each child, victim, and witness is paramount to the administration of justice. The affected come to our attention stemming from various abuses. Many times, the abuse that brings the victim to our attention is not the first time, just the latest; sometimes the latest being the last straw. This already fragile human being teeters at an emotional abyss of confusion, helplessness, rage, guilt, and fear. While in such a state of despair it is our duty to provide them, and those responsible for their well-being and testimony, safe harbor and proper care.

Day-to-day victim-witness safety at any level of the criminal justice system is notably different from the iconic federal witness protection program. From drug kingpins to stone-cold killers, I protected these people, gave them safe harbor, a new identity, and a place to live. During testimony they would receive a protective detail not unlike what you would see around a U.S. Supreme Court Justice—dark suited guardians in ballistic vests, sunglasses and ear pieces, perhaps shuttled around in an unmarked vehicle. Procedures like this are put in place to ensure the safety of the witness. Their testimony a keystone in high-profile criminal matters with the goal of eradicating a societal monster, a continuing criminal enterprise.

But thousands of victims and witnesses take the stand each day across the country completely unprotected, frightened, alone, and intimidated. They drive or take mass transit themselves from the very homes and neighborhoods in which the trauma was experienced and return afterwards even more vulnerable. In many ways, they are their own protectors against a very personal monster, their abuser.

One of the most important steps in handling the traumatized is allowing their voice to be heard. It may help lessen their victimization and also protect their community. For example, domestic violence is treated by some institutions, and let's face it even some victim's families, as "something that happens in private," meaning to overlook it. This type of violence is a public health issue as well. The impact of domestic violence on communities can also be seen in new research related to mass casualty attacks. In 2017 alone, one-third of the 28 mass violence attackers had a domestic violence history, according to a new United States Secret Service Study on the subject.

(continued on next page)

The greatest predictor of future violence is past violence. A conviction of domestic violence stands alone at the apex of predicting future violent crime. Period. The Center for Disease Control reports that over half of the women killed in America from 2003- 2014 were related to intimate partner violence. In 93 percent of these cases a former or current romantic partner was the killer.

...serving agencies to ensure cooperation among all parts of the juvenile court system, identify needed resources to serve families experiencing domestic violence, and develop strategies to obtain these resources.” As the ship’s captain, so-to-speak, giving a verbal warning before each proceeding about intimidation, cellphone/camera use, etc., can set the right tone. In a recent class on active threat mitigation techniques, one judge

“As with all court matters,
the judge becomes the focal
point for all.”

A goal of the criminal justice system is prosecution and that may hinge solely on testimony. That may also be the victim’s goal, but their more immediate need often is to simply stop the abuse. Law enforcement, health care providers, and the court systems handling of such cases from the outset is vital. Having solid and reliable evidence and testimony is but one step in the healing process and a first step towards victim and community safety.

The following practices, as applicable to their role, can and should be employed by advocates, counsel, court security, law enforcement, child welfare and domestic violence service providers, judges and staff, as well as the victim or witness themselves. NCJFCJ has a publication called *EFFECTIVE INTERVENTIONS IN DOMESTIC VIOLENCE AND CHILD MALTREATMENT CASES: GUIDELINES FOR POLICY AND PRACTICE* (commonly referred to as the Greenbook), and you will notice that some Greenbook practice recommendations are included with these recommendations. As emphasized in the Greenbook, coordination between judicial, child welfare, and domestic violence workers can help prevent victim re-traumatization and help communities respond more effectively to keep victims and children safer.

JUDICIAL LEADERSHIP

As with all court matters, the judge becomes the focal point for all. Principle XV, Recommendation 53 of the Greenbook states “The juvenile court should take a leadership role within the court system and with court-

mentioned she reminded a particular plaintiff, who was getting agitated toward a witness, of the positive things in his life, from a stable job to family support, both positive inhibitors. These are important aspects of behavior to recognize and act upon before it gets too late.

THE DIGNITY DOMINO

Conveying empathy, learning de-escalation techniques and treating subjects, to include the defendant, with respect will “ensure the ‘dignity domino’ remains upright,” according to Ted Calhoun and Stephen Weston’s book, *Threat Assessment and Management Strategies-Identifying the Hunters and Howlers*. As recommended in the Greenbook in Principle IV, child protection services, domestic violence agencies, and juvenile courts should treat all people who come before them with respect and dignity. That domino is the last one in a line of inhibitors, once toppled the potential for violence greatly increases. Loss of dignity, perceived or real, is a common attribution to workplace violence, school shootings, and judicial attacks, as well as in domestic violence situations.

COURTROOM LAYOUT

To enhance safety and security within the courtroom, authorities should divide the gallery in half placing opposing parties on either side. This will limit the chance of an intermixing of negative reactions. Keeping the first row or two empty or placing counsel assistants, court personnel, law enforcement, and/ or vetted members of the



press here will provide a limited barrier between the well of the court and family members who have experienced violence. While not foolproof, it allows for the slightest of distance and time to react in order to defend oneself.

OTHER ROOM LAYOUTS

For in-camera hearings, while not encouraged, the same ideas apply to the courtroom, the difference here is the small size of the setting—proximity matters in successful attacks. Putting opposing parties in such a location increases risk, and precautions should be made to secure any potential weapon (pen, scissors, etc.). The victim-witness should be nearer to an exit and as far from the suspect as possible. Provide a private and secure room for the victim-witness during court proceedings. This will add to their safety and mental well-being, decreasing the opportunity to be re-victimized by family and abuser, during a highly stressful time.

SEPARATION ORDERS

Those defendants and victim-witnesses that are in custody in the same case need to be separated, through court orders. This can be challenging for the criminal justice system with a lack of jails, holding facilities, bed space, and guard services. But precautions should be made to avoid the ease of intimidation that occurs when in the same institution or, as I have seen, on the same transport to court.

ACCESS CONTROL

The public should have access to certain spaces, like hallways, bathrooms, and lobbies. Restricted access is for court personnel only and victim-witnesses, their advocates and counsel. Secure access is strictly for prisoner, security, and judicial movement, but concessions can and should be made for the victim-witness, too. This is a simple way of enhancing overall facility security and directly influences victim-witness welfare. Keeping parties separated within court facilities will decrease the chance of an emotional, possibly violent, encounter. This can be done by employing three basic tenets of building circulation: public, restricted, and secure. If these are not already built in to the design of the courthouse they can be created, especially in older facilities, using passive (requesting ID to enter the building, stanchions, signs) and active barriers (security personnel, barricades, locked doorways).

VIDEO CONFERENCING

One of the best ways to avoid a physical confrontation is to not be in the same room. This would not limit a perpetrator, who knows the victim's fears best, from being able to intimidate, but it can go a long way in diminishing the control an abuser has over a victim.

(continued on next page)

ADVOCATES AS A RESOURCE

These trained professionals help assist the victim-witness whether offering emotional support, handling court paperwork, contacting social services, creating safety plans, or acting as a go-between in bridging those insurmountable barriers mentioned earlier. Advocates can also act as eyes and ears, looking out for safety and security vulnerabilities at and near the court and be a liaison in coordinating with security personnel.

ACTIVE LISTENING

“An investigator’s job is to obtain accurate and reliable information, whether it be from a victim, witness or suspect. The interview itself is a dynamic, interactive process and the ability to lucidly recall and draw upon memories, of oftentimes traumatic events, can be affected by the actions of the interviewer, setting and conditions of the environment the person is interviewed in and even other events and/or interactions on the way to the interview,” says Mark Fallon, Director of Club-Fed, LLC, who is an international expert on interviewing techniques. “Successful interviewers know this process is not about questioning, but listening,” he states.

MANDATORY TRAVEL MOVEMENT AWARENESS

A key aspect of providing any at-risk individual protection is being less predictable traveling from one location to another. Stagger departure and arrival times to/from home, court/hearing/other known locations. This includes arriving/leaving court at the same time each day. Advocates should work with security in coordinating different entry and exit points, mixing in different times coming and going, and changing parking locations. The more predictable the pattern the greater likelihood of being re-victimized and putting the case in jeopardy. (Since most judges are their own protectors too this tip is always recommended for them.) In the courtroom, with the premise that there are security officers in place, it is best to move the victim-witness into a safe location, and away from the abuser and their supporters, first. Those present for either side can then be dismissed one side at a time. The idea is to minimize a clash of emotions in a public space.

CODE WORDS

Whether in a courtroom or in private, family code words are valuable when there is an early indication of something out of place, that something wrong could

possibly happen. An agreed upon code word or phrase allows court personnel and families to take action and decide what to do and where to go. Moving off the X, or the bullseye, being first and foremost.

EMERGENCY APPS

Free web and mobile-based apps in which a simple covert touch of a phone icon will automatically dial your emergency contact list, then 911, can open your Wi-Fi and GPS and stream real-time to responding officers, is life-saving. Friends, family, and advocates should be programmed into that contact list. In life and death situations time is of the essence. The simplicity of this technology cuts out the delay of dialing and identifying oneself and can make all the difference. This is also a great safety tool for judges and in a school environment.

Aequitas, the Latin term for justice, fairness, and equity is a cornerstone of our democracy and thus must be protected for all parties. From advocates to judges and all who are touched by the hand of violence along the way, the legal system balances on those who care, those who make decisions impartially and without fear or favor. I hope this article helps in your day-to-day work within the juvenile and family court system. You matter.

Reprinted with permission of the National Council of Juvenile and Family Court Judges.² This version of the article has been slightly edited from the original that appeared in NCJFCJ’s Fall Issue of In Session.

(Endnotes)

1. John F. Muffler, U.S. Marshals Chief Inspector (Ret.), was the Administrator of the National Center for Judicial Security, a national program that researched, trained and assessed security measures and countermeasures for the global judicial community. A member of the NCJFCJ faculty, his professional affiliations include the International Association of Chiefs of Police, National Sheriffs’ Association, and The Association of Threat Assessment Professionals, to name a few; he serves on the advisory board for Blue HELP and has done so in the past for the National Center for State Courts. Accepted into the Department of State’s Fulbright Specialist Program, he has lectured globally on judicial security and threat management strategies. He has authored publications for the legal, homeland security, and law enforcement communities; he has a master’s degree from St. Joseph’s University and is an alum of the Naval Postgraduate School’s Executive Leaders Program. As Principal of *Aequitas Global Security Solutions, LLC*, he takes pride in assessing, educating and inspiring all on safety and security and has volunteered services for victims and families of violence. John F. Muffler, M.S., is NCJFCJ Faculty and Chief Inspector (Ret.), United States Marshals Service.
2. Muffler, John F, *Every Victim, Every Witness: 12 Safety Considerations for the Juvenile and Family Court System*, In Session, Fall 2018, at 33. In Session is a [National Council of Juvenile and Family Court Judges](#) (NCJFCJ) membership publication. To receive the full issue or future issues of In Session, click [here](#) to become a member of the NCJFCJ.

Lifetime Jurist

Hon. Amado Abascal
 Hon. Leonel Alejandro
 Hon. J. Manuel Banales
 Hon. Nancy Berger
 Hon. David Canales
 Hon. Linda Chew
 Hon. Bud Childers
 Hon. Randy Clapp
 Hon. Lonnie Cox
 Hon. Tom Culver
 Hon. Vickers Cunningham
 Hon. Paul Davis
 Hon. Rudy Delgado
 Hon. Travis Ernst
 Hon. David Evans
 Hon. Bobby Flores
 Hon. Tom Fuller
 Hon. Tiffany Haertling
 Hon. Mackey Hancock
 Hon. Robert Kern
 Hon. Lamar McCorkle
 Hon. Margaret Mirabal
 Hon. Cynthia Muniz
 Hon. Kerry Neves
 Hon. Gladys Oakley
 Hon. Bob Perkins
 Hon. Bob Pfeuffer
 Hon. Sherry Radack
 Hon. Israel Ramon
 Hon. Bonnie Robison
 Hon. Doug Robison
 Hon. Peter Sakai
 Hon. David Sanchez
 Hon. Mike Schneider
 Hon. Steve Smith
 Hon. Kathy Stone
 Hon. Ralph Strother
 Hon. Stephani Walsh
 Hon. Mike Willson
 Hon. Bob Wortham

Diamond

Hon. Brock Thomas
 Hon. Phil Vanderpool

Platinum

Hon. Jean Spradling

Gold

Hon. Mark Atkinson
 Hon. Charlie Barnard
 Hon. Bob Barton
 Hon. Lynn Bradshaw-Hull
 Hon. John Delaney
 Hon. Danielle Diaz
 Hon. Enrique Fernandez
 Hon. John Gauntt
 Hon. Gary Harger
 Hon. Sylvia Matthews
 Hon. Mario Ramirez
 Hon. Bob Schaffer
 Hon. Brock Smith
 Hon. Laura Strathmann
 Hon. Duncan Thomas
 Hon. Mark Woerner
 Hon. Ben Woodward

Silver

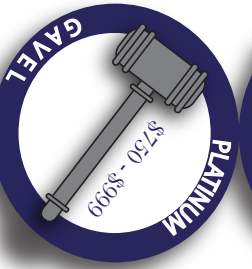
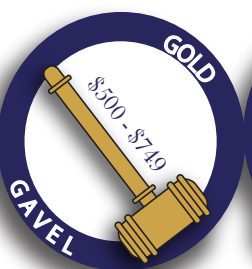
Hon. Bob Brotherton
 Hon. Ralph Burgess
 Hon. Tena Callahan
 Hon. Sol Casseb
 Hon. Alfonso Charles
 Hon. Bonner Dorsey
 Hon. Catherine Evans
 Hon. Drue Farmer
 Hon. Donald Floyd
 Hon. Robert Garza
 Hon. Dan Gilliam
 Hon. Harriett Haag
 Hon. O.J. Hale, Jr.
 Hon. Phil Johnson

Hon. Hazel Jones
 Hon. Monte Lawlis
 Hon. Kelly Moore
 Hon. John Morris
 Hon. Rick Morris
 Hon. Jeanne Parker
 Hon. Judy Parker
 Hon. James Rush
 Hon. John Specia
 Hon. Scott Wisch
 Hon. Todd Wong

Bronze

Hon. Steve Ables
 Hon. Gordon Adams
 Hon. Paul Banner
 Hon. Wayne Bridewell
 Hon. Don Burgess
 Hon. Bobby Burnett
 Hon. Carson Campbell
 Hon. Joe Carroll
 Hon. Sarah Tunnell Clark
 Hon. Kit Cooke
 Hon. Weldon Copeland
 Hon. Christopher Duggan
 Hon. Molly Francis
 Hon. George Gallagher
 Hon. Gonzalo Garcia
 Hon. Sheila Garcia Bence
 Hon. Buddie Hahn
 Hon. Lee Hamilton
 Hon. Sid Harle
 Hon. Susan Harris
 Hon. Maria Jackson
 Hon. Joel Johnson
 Hon. Don Jones
 Hon. Jay Karahan
 Hon. Jim Keeshan
 Hon. Brenda Kennedy
 Hon. Greg King
 Hon. Bud Kirkendall
 Hon. Gracie Lewis

Hon. David Lindemood
 Hon. Susan Lowery
 Hon. Marty Lowy
 Hon. Buddy McCaig
 Hon. Vicki Menard
 Hon. Don Metcalfe
 Hon. Lisa Millard
 Hon. Bill Miller
 Hon. James Morgan
 Hon. Nancy Mulder
 Hon. Joe Parnell
 Hon. Kent Phillips
 Hon. Don Pierson
 Hon. Sue Pirtle
 Hon. Cecil Puryear
 Hon. Amanda Putman
 Hon. Charles Ramsay
 Hon. Neel Richardson
 Hon. Hal Ridley
 Hon. Renee Rodriguez-Betancourt
 Hon. Jennifer Rymell
 Hon. Dan Schaap
 Hon. Kitty Schild
 Hon. Rebecca Simmons
 Hon. Tracy Sorensen
 Hon. Jeff Steinhauer
 Ms. Ouida Stevens
 Hon. Janice Stone
 Hon. Stacy Trotter
 Hon. Lori Valenzuela
 Hon. Ralph Walton
 Hon. Laura Weiser
 Hon. Mandy White-Rogers
 Hon. John Wooldridge



Contributions in Honor

Hon. Robert Brotherton

In Honor of Judge Roger Towery

Hon. Susan F. Harris

In Honor of Lavern D. Harris

Hon. Molly Francis

In Honor of Chief Justice Carolyn Wright

Hon. Donald Jones

In Honor of Judge Don Leonard

Hon. Judy C. Parker

In Honor of Justice Mackey Hancock. Thank you for your service to the 7th District Court of Appeals.

Hon. Garland Benton Woodward

In Honor of Staff of TCJ

Hon. John T. Wooldridge

In Honor of Judge Caroline Baker, 295th District Court, for her dedicated service to her State and Country.

Contributions in Memory

Hon. Robert Barton

In Memory of Judge John Onion

Hon. Nancy Berger

In Memory of Judges Jerry Woodlock, John Hyde, Roger Towery and William Brigham

Hon. Sarah Tunnell Clark

In Memory of Judge John Koslstad, who served as a Judge and a lawyer with all of his heart. We will miss him.

Hon. John Gauntt

In Memory Judge William C. Black

Hon. Buddie Hahn

In Memory of Judge Jim Farris

Hon. W.C. Kirkendall

In Memory of Judge John Onion

Hon. Kelly Moore

In Memory of Judge Roger Towery

Hon. James Morgan

In Memory of Judges Don Leonard and Roger Towery

Hon. John Hardy Morris

In Memory of Judges Jerry Woodlock, John Fostel, Roger Towery

Hon. Gladys Oakley

In Memory of Judge Naomi Harney

Ms. Ouida Stevens

In Memory of Judges Jerry Woodlock, Don Leonard and Roger Towery

Hon. Scott Wisch

In Memory of Judges Don Leonard, Roger Towery and Jerry Woodlock

Hon. Garland Woodward

In Memory of Judge Roger Towery

In Memory...

Hon. Naomi Harney
251st District Court
Amarillo

Hon. John Kolstad
Anderson County Court at Law
Palestine

Hon. Don Leonard
Tarrant County Criminal Court No. 3
Kingsland

Hon. John Onion
Court of Criminal Appeals
Austin

Hon. Leon F. Pesek, Jr.
202nd District Court
Texarkana

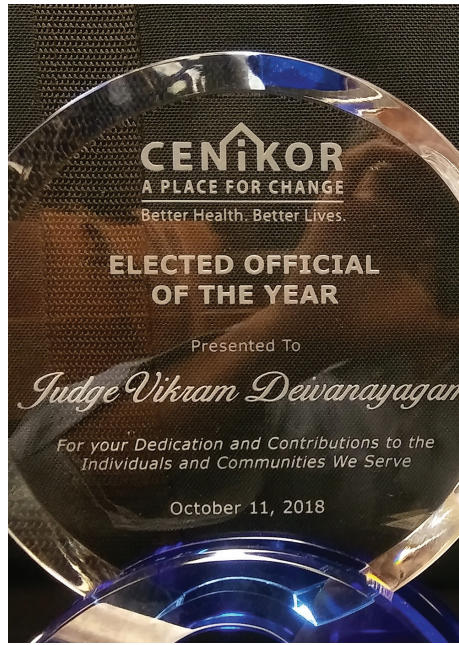
Hon. Roger Towery
97th District Court
Nocona

Hon. Kerry Dan Woodson
76th District Court
Mount Pleasant

of note...



Texas Bar Foundation's Samuel Pessarra Outstanding Jurist Award Presented to Justice Phil Johnson



Judge Vik Deivanayagam Honored with Waco Cenikor Family's 2018 Elected Office of the Year Award



Judge Bob McGregor Honored with TCJ Chair's Award, by Judge Amanda Putman



Judicial Section of the State Bar of Texas Honors Chief Justice Carolyn Wright with Lifetime Achievement Award

Have you gotten an award lately? How about an idea for an article for the next In Chambers issue? Email courtneyg@yourhonor.com with your award details or for feature article guidelines.

NEW Judges

as of 10/31/18

Hon. Etta J. Mullin

Dallas County Criminal Court No. 10
Judge

Hon. Jamie Rawlinson

Harris County Child Protection Court
Associate Judge

Hon. Helen Petry Stowe

Bexar County Court at Law No. 1
Judge

Hon. Michael Toth

3rd Court of Appeals
Justice

Hon. Christopher Wolfe

213th District Court
Judge

One of the ways the Texas Center for the Judiciary is able to operate is through your generous donations. We're always pleased to receive donations, and now we've come up with a way to make them even more effortless. By shopping at Amazon through this link: <https://smile.amazon.com/ch/74-2131161> any time you purchase what you normally would, .05% of your purchase is donated to the Center. While it's not a lot, every little bit adds up. Please consider shopping through this link whenever you make an Amazon purchase. Thank you!

Support Texas Center for the Judiciary

When you shop at smile.amazon.com,
Amazon donates.

[Go to smile.amazon.com](https://smile.amazon.com)

[amazon](https://smile.amazon.com)smile

GUESS WHAT?

Miss the days when magazines came by mail rather than email? When you could dog-ear important pages or make notes in the margins? Beginning this Fall, the Texas Center will be offering a subscription option to *In Chambers* for those that would like to receive printed copies. Subscriptions are \$27/year for three issues.

You can subscribe [here](#).



{conference photos}

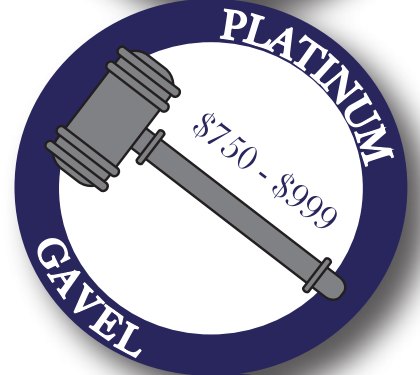


{ conference photos }



SUPPORT

the
TEXAS
CENTER
for the



JUDICIARY

*Judicial Excellence
Through Education*

*To help the Texas Center for
the Judiciary meet its mission
of providing outstanding
continuing judicial education
for the judges of Texas, please
consider donating at one of
these levels.*

