

In Chambers

THE OFFICIAL PUBLICATION OF THE TEXAS CENTER FOR THE JUDICIARY

SUMMER 2017

Bond Conditions, Reform

When Intuition Fails

Texas Appellate E-Filing

Reissuing Subpoenas
Necessary?

Plus more inside!



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In Chambers

The official publication of the Texas Center for the Judiciary

Summer 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.



Cover photo by: Debra Malkiewicz

LETTER FROM THE CEO

When I was first selected to serve as the Texas Center's Chief Executive Officer, I knew little about the IRC 501(c)(3) non-profit world. Realizing that TJC is a potentially high profile, primarily government-funded institution, the membership of which was comprised entirely by elected officials, I knew that I had some quick learning to do.

Most of my knowledge and experience with governance came from my years in the courthouse, both in the courtroom and in committee service, little or none of which involved corporate risk management, non-profit tax implications, or executive management. I was to be taking on duties new to me, such as signing large hotel and database contracts, determining employee benefits, obtaining director and officer insurance policies and more. Added to that were the strict requirements of our funding grants, both state and federal, amounting to millions of dollars. Thankfully, our talented and hard-working staff kept the place functioning at a high level of performance as I did what amounted to on-the-job training.

At a board of directors' orientation meeting, a retired CEO, serving as a facilitator, suggested that I be encouraged to seek a certain certification in executive management. This would involve study and the taking and passing of a lengthy exam. If I passed, I would be awarded the designation of Certified Association Executive. I decided to pursue it. Before I could even register for the exam, I had to have a) been serving as a CEO for no less than three years, and b) attended 100

hours of learning through conferences, working luncheons and webinars.

Once eligible, I registered to take the exam and began attending weekly study groups, as well as reading thick textbooks. I soon began to ask myself if this was really such a good idea. About 70% of those taking the exam

passed. Some CEOs were said to have failed because they answered exam questions as if they were in their own organizations, as opposed to the principles taught in the study materials.

I don't remember ever studying so hard, certainly since the Bar Exam. The texts I read were devoted to association law and to association management theories and practices.

I came across some very foreign things, such as the term "glocalization." Now you probably are familiar with the term, but I had never heard of it before. If you're not familiar with it, I'll go ahead and give you the Wikipedia definition: glocalization: a *portmanteau* of globalization and localization. (Great — there's another word for me to look up.)

I came across a news article claiming that memory was enhanced when the scent of rosemary was present — go ahead, Google it. So, my wife returned from the store with a little device called a personal fan diffuser. You were to put a couple of drops of rosemary oil into the device and turn it on. The resulting effect was to fill my home office with an very strong fragrance. Right off the bat, I noticed effects. I became congested and nauseated.

I took the four-hour, 200 multiple-choice-question, exam one Friday morning with six other people. To my surprise, the questions were more about situational responses and less about laws and regulations. As I handed the test in, I decided that I would not take it



again if I failed, because I would not know how to prepare any differently a second time.

Six weeks later, I received my results in the mail. I was traveling and reluctantly asked my wife to read the results. I had passed and was therefore awarded the designation of Certified Association Executive from the American Society of Association Executives.

So, how could this be of value to TCJ? The answer is that, from the study materials, I learned about strategic management; identity and branding; financial management; strategic planning and thinking; governance; volunteer leadership development; member engagement; ethics; development of programs, products and services; fundraising, sponsorship and development programs; meetings and events; certification, accreditation and licensure; affinity programs; professional development programs and delivery systems; general leadership; diversity; interpersonal skills and group facilitation; negotiating; human resources; technology; legal and risk management; vendor and supplier management; business planning; knowledge management; research, evaluation and statistics; public policy; government relations; coalition building; marketing; and publications, media, and messaging.

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!

I learned that employees should find their workplace a productive and happy place to be each day, that members decide to contribute to associations because they believe in and support the place rather than simply shore up funds, and that diversity should be an ingrained value, throughout the membership, voluntary leaders, and staff.

When you think about it though, aren't they pretty similar to the values we have as judges?

I would like to express my deep appreciation to the board for encouraging and supporting me in this effort. I hope it will help me to serve our members in the best ways possible. I'll be glad to discuss any of this and the knowledge I gleaned, any place and any time; but, please — please — don't ask me to talk about globalization.

So, just this one time, please allow me to sign this:



Judge Mark D. Atkinson JD, CEO, CAE

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Memorial Luncheon

at the Annual Judicial Education Conference
September 7 | 12 - 1:30 p.m. | \$50

Keynote Speaker: Gilbert Tuhabonye
Register Online at www.yourhonor.com

Gilbert Tuhabonye is an accomplished runner, genocide survivor and philanthropist. He is the author of *This Voice in My Heart: A Genocide Survivor's Story of Escape, Faith, and Forgiveness* (HarperCollins Publishing, 2006), the harrowing tale of his courageous escape from one of the massacres in the long Tutsi-Hutu war of Burundi. In October of 1993, members of the Hutu tribe invaded Tuhabonye's high school and captured hundreds of Tutsi children and teachers. Most of the captives were killed with machetes; the rest were burned alive. After spending nearly nine hours hidden beneath the burning corpses of his classmates and suffering burns over much of his body, Tuhabonye managed to be the only one to escape. Hospitalized for months with 3rd degree burns, he was told he would never run again. Tuhabonye proved them all wrong. He persevered and, by 1996, his running skills took him to the United States as part of an Olympic training program. He obtained a track scholarship at Abilene Christian University and was a national champion runner. Now a U.S. Citizen, Tuhabonye is the award-winning coach of Gilbert's Gazelles Training Group in Austin, Texas. In 2006, he cofounded the Gazelle Foundation, a non-profit organization whose mission is to improve life for people in Burundi without regard to tribal affiliations. While Tuhabonye's story is one that includes great tragedy, it is also one of faith, hope, and resilience. He is living proof that one person can make the world a better, more compassionate place, and that love really does conquer all evil.



feature

Bond Conditions, Bond Reform Legislation and TCIC

By: Judge Chad Bridges



Multiple bills were filed in the 85th Legislature to transition our use of monetary bonds in favor of PR bonds issued after risk based assessments. None of these bills removed our duty to protect society while cases are pending on our dockets. Although all the proposed bond reform legislation failed to reach the Governor's desk, one issue involving our use of pre-trial bonds still can (and should be) addressed. That issue involves conditions of bond. Thoughtfully crafted bond conditions can often ensure safety better than large monetary bonds. However, there is a fatal flaw in how our conditions of bond are disseminated to law enforcement. Two years ago, the Legislature passed HB 2455.¹ HB 2455 created a task force and commissioned a study ("the Study") to gather recommendations for collecting and reporting data involving bond conditions and violent offenses. The Study was completed last September and is available on the Office of Court Administration's website.² The Study recommended bond condition information be reported via the Texas Crime Information Center ("TCIC") with the same level of detail DPS uses to disseminate protective order information to law enforcement:

Legislation should be passed to mandate that conditions of bond in cases involving family violence, sexual assault, and human trafficking be entered into the Texas Crime Information Center (TCIC) as a stand-alone record, instead of being attached to protective order re-

ords. The Texas Department of Public Safety should be required to update the existing TCIC database, forms, and procedures to support such a change.

The TCIC mentioned above is a database controlled by DPS. It is a first line tool for patrol officers to gain information about anyone they encounter. Per DPS' website TCIC: (P)rovides immediate access 24 hours a day, 7 days a week ... protective order status of persons. TCIC is accessed via the Texas Law Enforcement Telecommunications System (TLETS) resulting in responses within 12 seconds to inquiries from police departments, sheriffs' offices, and other criminal justice users.³

As mentioned above, Protective Order information is already entered into TCIC. Chapter 86 of the Texas Family Code requires Protective Order information be uploaded by local law enforcement into TCIC within three business days. DPS has a Protective Order entry form that includes many detailed data fields.⁴ In contrast, the Study noted that TCIC has only a single free text field at the end of the protective order section for dissemination of bond conditions. The field is neither searchable, structured, nor uniformly used by local law enforcement. Additionally, that field only exists if a protective order has already been issued. DPS has the authority to do more but hasn't.

The Study notes that four years ago the 83rd Legislature failed to adequately address the issue in SB 893.⁵ SB 893 required the Investigative Bureau of the Texas

Department of Public Safety to collect information regarding conditions of bond (in addition to other criminal law matters) and gave DPS the authority to make reasonable rules about disseminating that information in DPS databases. It is difficult to understand the reason for differentiating the amount of protective order information available via TCIC versus what is available for bond conditions (particularly bond conditions in family violence cases).⁶ The enforcement statute for violations of bond conditions and protective orders are the same - Section 25.07 of the Texas Penal Code. There is no differentiation in the level of offense for violating either kind of court order. The danger the legislature sought to deter is the same. The Study explained the risk of keeping the status quo this way:

In application, SB 893 did not address the issue of accessible information for law enforcement on conditions of bond in its entirety and, as a result, victims, officers, and the community remain at risk while offenders are not held accountable. Law enforcement officers cannot enforce protective orders or bond conditions that they cannot verify, and victims cannot inform officers since there is no requirement for the victim to be notified of bond conditions.

So how can the Study's recommendations be implemented? The Study's recommendations should be included in any future bond reform legislation. If not, DPS still has the ability to implement these changes on their own and right now. And we should be supportive of DPS making these changes. The judiciary should be encouraging efforts to keep our communities safe. Furthermore, and almost as important, we should encourage efforts that keep our orders from being hidden or ignored.

(Endnotes)

1. H.B. 2455, 2015 Leg., 84th Reg. Sess. (Tex. 2015), available at www.legis.state.tx.us/tlodocs/84R/billtext/pdf/HB02455F.pdf#navpanes=0
2. <http://www.txcourts.gov/media/11436043/hb-2455-final-report-september-2016.pdf>.
3. http://www.dps.texas.gov/administration/crime_records/tcic/
4. <http://www.txcourts.gov/media/524144/protectiveorderdataentryform.pdf>.
5. S.B. 893, 2103 Leg., 83rd Reg. Sess. (Tex. 2013), available at <http://www.legis.state.tx.us/tlodocs/83R/billtext/pdf/SB00893F.pdf#navpanes=0>
6. Perhaps they differentiate because Texas is a participant in the Uniform Interstate Enforcement of Protective Orders Act as codified in Chapter 88 of the Texas Family Code. But the compact's definition of protective order can be read to include what a bond condition is: "an injunction or other order, issued by a tribunal under the domestic violence or family violence laws or another law of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassing, contacting or communicating with, or being in physical proximity to another individual."

UPCOMING CONFERENCES

Impaired Driving Symposium

July 24-25, 2017
Hyatt, Lost Pines

Annual Judicial Education Conference

September 5-8, 2017
Marriott Marquis, Houston

Child Welfare

November 13-15, 2017
Hyatt, Lost Pines

College for New Judges

December 10-13, 2017
Sheraton Capitol, Austin

Family Justice Conference

January 22-23, 2018
Hyatt, Lost Pines

DWI Court Team Basic & Advanced Training

February 5-9, 2018
Sheraton Capitol, Austin

Criminal Justice Conference

February 26-27, 2018
Sheraton Capitol, Austin

Civil Justice Conference

March 26-27, 2018
Sheraton Capitol, Austin

Spring Regional A

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

Spring Regional B

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

Professional Development Program

June 10-15, 2018
Embassy Suites, San Marcos

Annual Judicial Education Conference

September 4-7, 2018
Marriott Marquis, Houston

College for New Judges

December 9-13, 2018
Sheraton Capitol, Austin

feature



When Intuition Fails: Mental Shortcuts and Unconscious Bias

By: Kristi Taylor

This past December, the Supreme Court of Texas and the Texas Court of Criminal Appeals sponsored the Beyond the Bench: Law, Justice, and Communities Summit (Summit) to address issues of unconscious bias and strengthen trust and confidence in the courts. The idea for the Summit began with research from the National Center for State Courts that showed only 32 percent of African Americans polled believe that state courts provide equal justice to all.¹ Chief Justice Nathan Hecht and Justice Eva Guzman spearheaded the Summit and brought in Dr. Jeffrey J. Rachlinski, Cornell law professor and psychologist, to present his compelling research on how unconscious associations can lead to errors in decision-making.

At the Summit, the high courts and over 200 participants set out to explore the origins of the divergent perceptions of fairness in our justice system. During the most highly-ranked session at the Summit, Dr. Rachlinski led participants through several examples of how intuition can fail us with psychological phenomena such as the contrast effect, anchoring, in-group bias, and implicit associations. Most importantly, Dr. Rachlinski highlighted what judges can do to prevent unconscious associations from influencing their decision-making. Dr. Rachlinski gave several suggestions and participants submitted their big ideas for combatting bias at the conclusion of the Summit.²

Why Study Mental Shortcuts and Unconscious Bias?

Dr. Rachlinski began his talk with a striking statistic about the incarceration of young people for marijuana possession, consumption, or distribution. While the rate of committing the crimes is constant among all races for young adults ages 18-25, the rate of incarceration is between 6 to 8 times greater for African American youth than for Caucasian youth.³

We know that judges are highly educated, experienced, and especially committed to egalitarian norms. How, then, do we explain the disconnect between good intentions and uneven results? At least one explanation is found in the research on unconscious bias.⁴ Instances of overt bias are rare, leading social psychologists to study what lies in the background that affects judgment.

Dr. Rachlinski explained that in ordinary life, people use two systems when making judgments. The first system is intuitive and uses association for fast but somewhat unconscious choices. The second system is deliberate, rule-based, deductive, slow, and cautious. Both systems are necessary in life, but differ in important ways. System 2 is more reliable and accurate. System 1 is confident and convinces you that it is right, creating cognitive illusions that manifest in several types of predictable errors.

Contrast Effect

One study of the contrast effect asked Cornell business school students to complete a task for a prize. On the first day of the study, students had their choice of a mug or pen set. About 50% of the students chose the mug and the other half chose the pen set.



On the second day of the study, the students were offered three choices for their task: a mug, a pen set, or an old, chewed up, disposable pen.



None of the students chose the old disposable pen, however, after introducing the disposable pen as a choice, about 75% of the students chose the pen set as compared to the 50% who chose the pen set on the first day. The students' behavior changed significantly by adding the contrast of the undesirable disposable pen to the choices.

Anchoring

Anchoring is relying on numeric reference points to make numeric judgments. The mental processes that create anchors make sense most of the time. For example, when haggling for a car, the sticker price serves as an anchor and the buyer and seller adjust their negotiations from that point. Often, the anchor is logical and sensible. However, sometimes the anchor is completely misleading and irrelevant but still influences judgment.

One study in Texas asked judges to fine a roadhouse for violations of a municipal noise ordinance the first week it was open.⁵ Under the municipal ordinance, the fine must reflect the degree of disruption to deter



further offenses. The researchers told half the judges the name of the business was **Roadhouse 58** and the other half that it was **Roadhouse 11,866**. The median fine for Roadhouse 58 was \$500, and the median fine for the latter was \$1,500. Two judges actually fined the business \$11,866!⁶ If something as subtle as the name of the business can triple the median fine, it seems important to consider how other irrelevant factors might influence judgment.

In-Group Bias

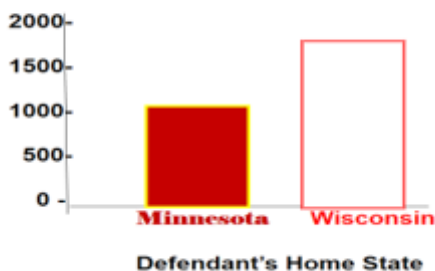
Another common form of mental shortcut is favoritism for the “in” group. One study measured whether judges favored in-state litigants. Two similar groups of Minnesota judges were told:

- Defendant pollutes a lake and downstream waters by dumping toxic chemicals;
- Plaintiff swims in the lake and suffers arsenic poisoning;
- Plaintiff loses kidney, suffers nausea, headaches, and facial disfigurement; and

Compensatory damages are already settled; the only remaining issue is amount of punitive damages, if any.

The first group of judges was told that the defendant was from Minnesota, and the second group was told the defendant was from Wisconsin. When the fact pattern described a Minnesota defendant, the median punitive damages award was about \$1 million. When the fact pattern was varied to make the defendant from neighboring Wisconsin, the median award rose to \$1.75 million.

In State Bias: Results
(Median Award, in \$1,000s)



Dr. Rachlinski noted that research shows the amount of punitive damages awarded is directly related to the outrage and disgust over the act. This particular study

showed that the violation was somehow more outrageous and more disgusting when committed by an outsider. This is not a failing of morality but simply how the brain works.

Gender and Race

Implicit associations have been shown to extend to gender and race. The Implicit Association Test (IAT) measures the degree of associations people make between different categories. The IAT is administered by asking study participants to perform a standard computer task to sort faces and items into categories. By measuring response time in milliseconds, researchers can determine unconscious associations. For example, the IAT shows that most adults more easily associate male faces and concepts with career, and female faces and concepts with home and family. Similarly, 80% of white adults more readily associate white faces with good and black faces with bad.⁷

From the IAT research, Dr. Rachlinski’s conclusions are:

- People harbor a variety of invidious associations.
- These associations sometimes influence judgment.
- Knowing when to suppress intuition is essential to sound judgment.

What Can a Judge Do to Avoid Implicit Associations?

Dr. Rachlinski and Summit participants offered a few solutions to prevent implicit associations from affecting decisions. Counting outcomes, using tools to engage deliberate thinking, training and judicial leadership can all counterbalance the bias which is frequently inherent in our intuition.

Counting

The simple acts of counting and sharing outcomes by race can have positive effects. For example, in professional baseball, umpires were told that video playback revealed a smaller strike zone when the umpire was white, the batter was white, and the pitcher was Latino. Sharing this information with the umpires eliminated the problem without any further action. Once the umpires became aware of the disparity, they self-corrected.

Stopping and Thinking

As simple as it sounds, stopping and thinking has been shown to improve outcomes. When study participants know they are being tested for bias and are on guard, researchers do not see the same disparities in decision-making. By engaging deliberate functions, people can circumvent the automatic bias in their associations.⁸

Tools like the Courts Catalyzing Change Bench Card⁹, written by the NCJFCJ for use in child welfare cases, prompt judges to ask questions of themselves before taking the bench. The idea is to engage System 2 thinking and promote more conscious decisions.

Training and Leadership

After exploring the interplay between intuition and decision-making, participants at the Summit were asked to offer ideas for a practical first step to bring about change in their community, profession, organization, or agency. Training emerged as a key theme in the participants' responses. Another main theme focused on judicial leadership. One judge participant committed to counting sentencing and punishment by race. Another participant suggested judicially-led community meetings to discuss planning, data, and desired outcomes. Through deliberation and community engagement, judges can lead by example, checking intuition and preventing unconscious bias in judgments.

(Endnotes)

1. Lorri Montgomery, Judges Team up with PBS's Tavis Smiley for "Listening Tour," NCSC News Release (June 16, 2016) available at <http://www.ncsc.org/Newsroom/News-Releases/2016/Listening-Tour.aspx>.
2. Jeffrey J. Rachlinski, Presentation available at <http://www.txcourts.gov/publications-training/training-materials/beyond-the-bench-law-justice-and-communities-summit/>. For more information on Professor Rachlinski's research, visit http://works.bepress.com/jeffrey_rachlinski/.
3. *Id.*
4. Nat'l Center for State Courts, *Helping Courts Address Implicit Bias* (2012) available at <http://ncsc.contentdm.oclc.org/cdm/ref/collection/accessfair/id/246>
5. Rachlinski Presentation, *supra* note 2.
6. Rachlinski Presentation, *supra* note 2.
7. The Implicit Association Test, at <https://implicit.harvard.edu/implicit/takeatest.html>. Other research has found that about 40% of black adults favor white associations. Terry Carter, *Implicit Bias is a Challenge Even for Judges*, *American Bar Association Journal* (Aug. 2016) available at http://www.abajournal.com/news/article/implicit_bias_is_a_challenge_even_for_judges.
8. Rachlinski Presentation, *supra* note 2.
9. Nat'l Center for Juvenile and Family Court Judges, *Courts Catalyzing Change Bench Card* available at <http://www.ncjfcj.org/sites/default/files/CCC%20Bench%20Card%20Insertsfinal.pdf>.

RAFFLE!

SMART Home Package:
Ring Wi-Fi Enabled Video Doorbell, Nest Learning Thermostat, Amazon Echo, TP-Link Smart Plug Mini (2-Pack), Alexa Voice Remote, Amazon Echo Dot, Wi-Fi Home Video Monitoring Security Cameras (3).
Approximate package value = **\$893.00**

Drawing
September 8, 2017
9:30 am



Winner does not need to be present to win.
All proceeds benefit the Texas Center for the Judiciary.

feature



From Band to Bench: A Profile of Judge Steve Smith

Reprinted with permission from the National Judicial College¹

When he first started in private practice in 1977, Steve Smith called himself an “accidental lawyer.”

Smith had originally enrolled in Abilene Christian University to study music and become a band director. The self-described “fair” French horn player did receive his music education degree, but he was encouraged by a friend to attend law school. That led to him earning a law degree from the University of Texas School of Law. He went into private practice and, ultimately, landed on the bench.

Accidental his legal career may have been, but Smith has been intentional in advancing the cause of the judiciary ever since.

He has served the past 20 years on the bench of the 361st District Court in Bryan, Texas. After studying at the NJC, he joined the College’s faculty in 2003. He just completed his service as a *General Jurisdiction* representative on the Faculty Council, and he served as the council’s chair in 2016.

His commitment to the judiciary goes beyond teaching, too. In 2016 he created an endowment to fund scholarships for Texas judges to attend the NJC.

“The judiciary is often the forgotten branch of government, yet it is so important to the freedoms that we enjoy,” he says. “I want us to have the best judges we can. An entity like the NJC helps ensure that we will have well-educated, competent and fair judges in all the courts in our country.”

Despite the demands of the bench, Smith still finds time for his musical passion. He occasionally leads worship music at his church and has conducted the Brazos Valley Symphony Orchestra on a few occasions.

(Endnotes)

1. National Judicial College. (2016). *Annual Report to Stakeholders, 2016*. Retrieved from <http://www.judges.org/annual-reports/>.

In Memory...

Hon. R.H. "Sandy" Bielstein
Fort Bend County Court at Law No. 4
Richmond

Hon. John Bradshaw
90th District Court
Wichita Falls

Hon. Robert Cheshire
377th District Court
Victoria

Hon. John Fostel
271st District Court
Decatur

Hon. James McNicholas
9th Court of Appeals
Beaumont

Hon. Jack Miller
64th District Court
Austin

Hon. Jack Pope
Supreme Court of Texas
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Hon. Don Ritter
246th District Court
Houston

Hon. George Thurmond
63rd District Court
Del Rio

Hon. Clyde Whiteside
97th District Court
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Hon. Robert Brotherton

In Honor of Mark and the Staff

Hon. Jay Karahan

In Honor of Judge Neel Richardson

Hon. Carolyn Marks Johnson

In Honor of Retired Chief Justice Linda Thomas

Contributions in Memory

Hon. Chad Bridges

In Memory of Judge Thomas R. Culver, III

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Hon. Joseph Gibson

In Memory of Judge CV Milburn

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In Memory of Lavern D. Harris

Hon. Leslie Hatch

In Memory of Judge John T. Forbis

Hon. Bonnie Hellums

In Memory of Judge Linda Motheral

Ms. Tracy Kemp

In Memory of Judge John Bradshaw on behalf of Judges and Administrative Assistant of the 8th Administrative Judicial Region

Hon. Tom Lee

In Memory of Judge George M. Thurmond

Hon. Janet Littlejohn

In Memory of Hon. W. Rachel Littlejohn

Hon. Bob McGregor Jr.

In Memory of Chief Justice Frank G. McDonald

Hon. Michael Mery

In Memory of Chief Justice Jack Pope

Hon. Donald Metcalfe

In Memory Judge James Zimmermann

Hon. John Morris

In Memory of Judge Rusty Ladd

Hon. Bonnie Hellums

In Memory of Judge Linda Motheral

Hon. Carmen Rivera-Worley

In Memory of Sarah Elisabeth Worley

Hon. Dean Rucker

In Memory of Judge George Thurmond

Hon. William Sowder

In Memory of my Dad Judge Madison Sowder

Hon. Gus Strauss

In Memory of Judge Clarence Stevenson

Hon. Laura Weiser

In Memory of Judge Robert Cheshire

Hon. James York

In Memory of Judge Don Ritter

Contributors

as of 6/1/17

NEW Judges

as of 6/1/17

Hon. Harriett Haag
Taylor County Court at Law No. 2
Judge

Hon. Ursula Hall
165th District Court
Judge

Hon. Nikita Harmon
176th District Court
Judge

Hon. Kristen Hawkins
11th District Court
Judge

Hon. Clyde Herrington
Angelina County Court at Law No. 2
Judge

Hon. Leticia Hinojosa
13th Court of Appeals
Justice

Hon. Terrence Holmes
Jefferson County Court at Law No. 2
Judge

Hon. Kevin Jewell
14th Court of Appeals
Justice

Hon. Angelica Jimenez
408th District Court
Judge

Hon. Kelli Johnson
178th District Court
Judge

Hon. Lynn Marie Johnson
Parker County Court at Law No. 2
Judge

Hon. Jessica Crawford
2nd 25th District Court
Judge

Hon. Chris Day
2nd District Court
Judge

Hon. Vikram Deivanayagam
McLennan County Court at Law No. 1
Judge

Hon. Andrew Dornburg
Fort Bend Associate County Court at
Law
Associate Judge

Hon. James Eidson
42nd District Court
Judge

Hon. Jim Evans
507th District Court
Associate Judge

Hon. Darlene Ewing
254th District Court
Judge

Hon. Jeff Fletcher
402nd District Court
Judge

Hon. Ramona Franklin
338th District Court
Judge

Hon. Sheila Garcia Bence
Cameron County Court at Law No.
4
Judge

Hon. Hector Garza
195th District Court
Judge

Hon. Norma Gonzales
131st District Court
Judge

Hon. Brad Goodwin
391st District Court
Judge

Hon. Cindy Aguirre
505th District Court
Associate Judge

Hon. Keli Aiken
354th District Court
Judge

Hon. Brooke Allen
Tarrant County Probate Court No. 2
Judge

Hon. Rosemarie Alvarado
438th District Court
Judge

Hon. George Barnstone
Harris County Civil Court at Law No. 1
Judge

Hon. Patricia Bennett
360th District Court
Judge

Hon. Jason Boatright
5th Court of Appeals
Justice

Hon. Curt Brancheau
84th District Court
Judge

Hon. Jerry Bussell
Fort Bend County Court at Law No. 4
Judge

Hon. Jaime Carrillo
Kleberg County Court at Law
Judge

Hon. Frank Castro
399th District Court
Judge

Hon. Estela Chavez Vasquez
Cameron County Court at Law No. 5
Judge

Hon. Ronald Cohen
Fort Bend County Court at Law No. 5
Judge

Hon. Robert Johnson
177th District Court
Judge

Hon. Hazel Jones
174th District Court
Judge

Hon. Darrell Jordan
Harris County Criminal Court at
Law No. 16
Judge

Hon. Meg Jordan
Court #39
Associate Judge

Hon. Lynn Kelly
Tarrant County Probate Court No. 2
Associate Judge

Hon. Nancy Kennedy
Dallas Criminal District Court No. 2
Judge

Hon. Elizabeth Kerr
2nd Court of Appeals
Justice

Hon. Nolan Kinsey
440th District Court
Judge

Hon. Steven Kirkland
334th District Court
Judge

Hon. Inna Klein
214th District Court
Judge

Hon. Nereida Lopez-Singleterry
Court #26
Associate Judge

Hon. Julia Maldonado
507th District Court
Judge

Hon. Scott McKee
392nd District Court
Judge

Hon. Daryl Moore
333rd District Court
Judge

Hon. Maricela Moore
162nd District Court
Judge

Hon. Tamara Needles
427th District Court
Judge

Hon. Scharlene Overstreet
418th District Court
Associate Judge

Hon. Gina Palafox
8th Court of Appeals
Justice

Hon. Fredericka Phillips
61st District Court
Judge

Hon. Kent Phillips
Gregg County Court at Law No. 1
Judge

Hon. George Powell
351st District Court
Judge



Congratulations to the 2016 graduates of the College for New Judges

New Judges (cont).

Hon. LeAnn Rafferty

123rd District Court
Judge

Hon. Matthew Riek

360th District Court
Associate Judge

Hon. Gloria Rincones

445th District Court
Judge

Hon. Irene Rios

4th Court of Appeals
Justice

Hon. Herb Ritchie

337th District Court
Judge

Hon. Renee Rodriguez- Betancourt

449th District Court
Judge

Hon. Randy Roll

179th District Court
Judge

Hon. Justin Sanderson

60th District Court
Judge

Hon. Frederick Schneider

421st District Court
Judge

Hon. Jan Soifer

345th District Court
Judge

Hon. Misty Swan

Felony Associate Court
Associate Judge

Hon. Andrea Stroh Thompson

416th District Court
Judge

Hon. John Tidwell

202nd District Court
Judge

Hon. Catherine Torres-Stahl

175th District Court
Judge

Hon. Arcelia Trevino

386th District Court
Judge

Hon. Brad Urrutia

450th District Court
Judge

Hon. Keno Vasquez

Master Court #2
Judge

Hon. Victor Villarreal

Webb County Court at Law No. 2
Judge

Hon. Scott Walker

Court of Criminal Appeals
Judge

Hon. Mike Wallach

348th District Court
Judge

Hon. Baylor Wortham

136th District Court
Judge

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Chancellor William H. McRaven

Chancellor of The University of Texas System and retired four-star admiral and former Commander of U.S. Special Operations Command

Tough Decision-Making When Duty Calls

Before becoming Chancellor of the University of Texas, Admiral McRaven dedicated his life to serving in the U.S. military. He oversaw both the mission that captured Saddam Hussein and the mission that led to the death of Osama bin Laden. He has faced some of the most difficult national security situations with determination and courage. He will spend the hour offering judges advice and encouragement for facing cases that call for making tough decisions, and remind judges to never give up even in the most challenging of times.



Mr. Troy Vincent

Executive Vice-President of NFL Operations and former NFL player

Taking a Stand Against Domestic Violence: Leadership Over Violence

For Troy Vincent, being a voice against domestic violence is both business and personal. As Executive Vice-President of Football Operations in the NFL, he advocates an increase in awareness and education regarding the issue within the League and among its athletes. Mr. Vincent's advocacy to end domestic violence, sexual assault and child abuse has earned him recognition as a national voice in leadership over violence. A survivor of domestic violence as a young man, Mr. Vincent visits shelters, speaks to men's groups, and participates with many organizations and educational institutions in the national campaign to end domestic violence in local communities. He will speak about the effects of growing up in an abusive home and its impact on his life, and how this led to his outreach efforts in addressing the matter in the NFL.



feature



Promoting Jury Appreciation Week

By: Judge Eddie Northcutt¹

Serving on a jury — few understand the fundamental importance of jury service more than trial judges and appellate justices. But, how well do we communicate the significance or express our appreciation for those who are answering the summons to serve?

With “Jury Appreciation Week” having just passed, now is a good time to remind ourselves the importance of thanking the citizens who serve, so that if you hadn’t given it proper due this year, plans can be made for next year.

As the Texas Uniform Jury Handbook states, “The United States Constitution and the Texas Constitution guarantee all people, regardless of race, religion, sex, national origin, or economic status, the right to trial by an impartial jury. Justice ultimately depends to a large measure upon the quality of the jurors who serve in our courts.”² When members of the venire leave the courthouse, are we adequately helping them understand the importance and solemnity of the judicial proceedings in which they participated?

In 2015, the Texas Legislature passed a bill creating “Jury Appreciation Week” to be celebrated the first week of May. The bill’s author, Sen. Royce West, filed this statement of intent with the bill:

The fundamental importance of a trial by jury in our system of justice is demonstrated by its enshrinement in the 6th and 7th Amendments to the Constitution of the United States, along with Article I of the Constitution of Texas, our state bill of rights. The work of juries is extremely important to the function of our democracy and without it many of the liberties and freedoms we have as a society could be in jeopardy. To serve on a jury is to serve one of the most important civic duties in both our state and our nation. A juror’s work is an often tough, tiring, and thankless job. However, without it, one of the foundations of our democracy, the judicial system that ensures a safe and free society, would crumble. The first week in May is designated as Jury Appreciation Week to express to those who have served or are currently serving on juries of all kinds that their work is noted and appreciated.³

The statute states, “The first seven days in May are Jury Appreciation Week in recognition of the outstanding and important contributions made by Texas citizens who serve as jurors.”⁴

The week corresponds with Law Day on May 1st, proclaimed by President Eisenhower, and later codified as a special day of celebration by the people of the United States in appreciation of their liberties and ideals of

“The work of juries is extremely important to the function of our democracy and without it many of the liberties and freedoms we have as a society could be in jeopardy.”

equality and justice under law and for the cultivation of the respect for law that is so vital to the democratic way of life.

Jury Appreciation Week is dedicated to honoring those citizens who give of their time to participate in the judicial system. And, although Jury Appreciation Week is designated to occur during the first week in May, it can be scheduled during any week that jurors are empaneled, as not every county tries a case to a jury during the month of May, much less the first week. The important thing is to make an effort to be intentional in expressing appreciation for our citizens' participation in the judicial branch of government.

This year was the second year of this effort to celebrate the jurors for their service. The primary effort thus far has been two-fold: (1) communicating with county and district clerks about the week, providing them with toolkits containing resources that will aid them in promoting the week, and (2) providing information and resources on the State Bar of Texas' Jury Service Committee website. The website has many resources for judges, including a sample "thank you" letter to send to jurors selected for service on a jury.

The State Bar of Texas Jury Service Committee is dedicated to developing and implementing programs to ensure broad citizen participation and support of jury service. Visit the Committee's website for additional resources, including public service announcements, educational pamphlets, and articles of interest. Links to all of the Jury Service Committee resources are available [here](#).

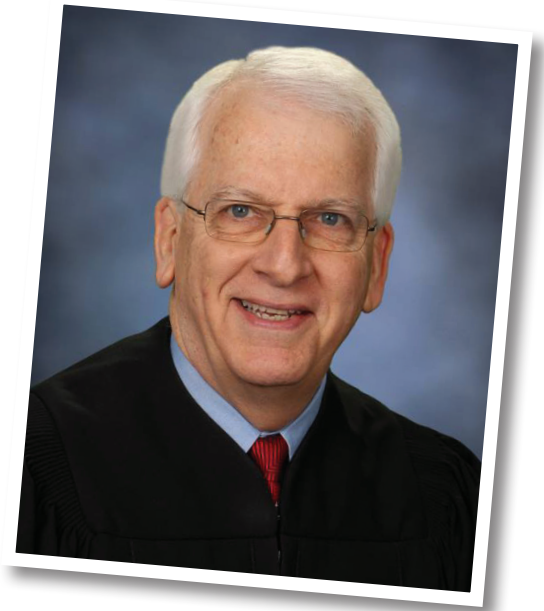
Judges are, among other things, leaders. Leadership in promoting the effort to raise awareness, provide information, and express appreciation for our jurors can, and should, start with the judges who summon jurors for service. We can work in collaboration with our clerks and local bar associations to formulate plans that work well for the courts we serve.

By small, intentional, consistent acts of appreciation, jurors will better understand their critical role in our system of justice and truly feel our gratitude.

(Endnotes)

1. Judge Northcutt serves as the judge of the 8th Judicial District and has recently started his second term.
2. https://www.texasbar.com/AM/Template.cfm?Section=Jury_Information&Template=/CMI/ContentDisplay.cfm&ContentID=23435.
3. <http://www.capitol.state.tx.us/tlodocs/84R/analysis/pdf/SB00565F.pdf#navpanes=0>
4. Tex. Gov't Code § 662.155 (West 2015).

feature



Texas Appellate E-Filing

By: Chief Justice Josh R. Morris, III

“Every branch of Texas government, particularly the judiciary, is committed to applying technology that enables everyone access to our justice system.”
– Nathan Hecht, Chief Justice, Supreme Court of Texas

Imagine a stack of paper two and one-half miles tall. That would have been the amount of paper used if all of 2016 Texas e-filings had, instead, been filed in paper form.

Historically, things pertaining to the law have been paper-intensive. Those of us who have been around the law for a while have lived with rooms full of paper — some rooms dedicated to shelving paper in the form of law books, other rooms dedicated to keeping paper in the form of files of ongoing or past work by lawyers, judges, clerks, reporters, and other “paper-pushers” required to keep the justice system functioning. In recent decades, legal libraries and the legal publishing business have both undergone significant change with the onset and pervasive use of on-line legal research. The legal file rooms and their paper contents, however, have persisted more tenaciously. But now, change has come to the legal file room, even in the Texas appellate courts.

For many years, Texas has been working to develop and put into full service what is called Texas Appeals Management and E-filing System (TAMES), a state-wide effort to harness technology to empower litigants and courts alike, to control costs, and to improve the speed

and accuracy of justice in Texas. The path to general use and acceptance of e-filing in the Texas courts has been long and winding, in large measure due to the complexity of the Texas judicial system and of the task at hand, as well as the cost of the project. With 2,722 trial courts scattered over 254 usually rural counties, 14 intermediate appellate courts regionally distributed in appellate districts across the state, and two high courts — one with civil jurisdiction, the other with criminal — and with increasing incidence of pro se filings and indigent parties, the challenge has been daunting.

But, in September 2015, under the oversight of the Texas Supreme Court, Texas’ e-filing, implementation was successfully completed nine months ahead of schedule on civil matters. Nine months later, the Texas Court of Criminal Appeals mandated e-filing on a progressive schedule that provides an ultimate deadline of January 1, 2020, in criminal matters. By January 2017, seventy-four of Texas’ 254 counties had implemented criminal e-filing, with the rest — including the smallest and poorest counties — to become operational by the first day of business in 2020.

While the project has not proven easy, cheap, problem-free, or even universally popular, courts are seeing tangible benefits. Particularly, the state appellate courts.

One appellate court was alerted late on a Friday that a petition for a writ of mandamus would be electronically filed later that evening or early Saturday morning. The following morning, the Clerk of the Court checked the e-filing portal and found that a petition seeking mandamus relief had been filed seeking to require a city council to certify the votes in the most recent election before

the Saturday-midnight deadline, which was just hours away. The petition alleged that the members of the city council had met Friday evening and refused to certify the votes in spite of legal counsel advising them of the certification requirement and of the midnight deadline. The Clerk of the Court immediately notified the judges and staff attorney involved. After reviewing the petition and the law, the court ordered that the members of the city council could file a response within about 5 hours. When no response was filed, the court ordered the city council to convene and certify the votes before midnight. As a result, the city council met Saturday evening and certified the votes, and the new members of the city council were sworn into office on a timely basis. All this was accomplished on a weekend and in less than a day, because of e-filing.

Another court of appeals received an emergency motion mid-week, seeking to stay a hearing that was scheduled for early the following week. With the old paper-based system, that would have posed real logistical problems and might have required a stay just to cover the logistics of processing the motion. With e-filing, how-



ever, the court was able to ask for a response from the opposing party, to receive it e-filed that very afternoon, and to rule within hours, giving plenty of time to allow the previously scheduled hearing to continue unabated. With e-filing, the parties received their resolution quickly, without delaying their trial proceedings.

Texas appellate judges generally agree that having computerized desktop access to the entire appellate file in each case is a huge boost to the judges' and staffers' ability to do their work without having to manually retrieve and search through paper records and without being forced to wait for a co-worker to finish working on the file. This aspect of the system has proven to be very valuable, especially when a panel of three justices and multiple attorneys and support staffers are all sharing the only copy of the paper record to process the appeal. Since all documents in the TAMES system take the form of searchable PDF files, finding just what you are seeking is immeasurably easier and, now, almost instantaneous. Electronically copying excerpts from the briefs or the trial transcripts also makes the work easier.

Court staff no longer must lift often heavy and sometimes filthy casefiles or boxes full of paper to use, care for, or manage them. Attorneys that once had to come to the court to check out the paper record to prepare their briefs — thus draining valuable attorney work hours as well as consuming scarce clerk’s office time — now can remotely access the information electronically.

Many of our courts of appeals use electronic circulation of draft opinions, a feature of TAMES and another benefit of e-filing. At least one Court of Appeals was able to add specially tailored circulation timelines based on the court’s internal operating rules. Now when electronically circulating opinions, users visually see three indicators; the due date, number of days until due, and

the files. Courts now send a very high percentage of required notices electronically, cutting the cost of paper, envelopes, postcards, and postage.

Litigants are benefitting, too. For practicing attorneys, our courts are now practically accessible 24 hours a day, 365 days a year. Attorneys can file their documents electronically before midnight to receive a same-day file stamp — if filed after midnight on Friday, the document is stamped the next business day.

Attorneys are no longer required to prepare and file an original paper copy and numerous duplicates, thereby reducing the cost for paper, binding, parking, shipping, and delivery fees. Attorneys receive electronic notices immediately or within hours instead of waiting for “snail” mail. In emergency situations, getting notices within minutes can be a real benefit, and the resulting quicker turnaround of filings makes swifter justice the norm.

Ready accessibility can be a two-edged sword, though. We now have the danger that sensitive personal information might, by mistake, be opened up to the web. That has happened once or twice, though without any known release of sensitive information. Out of an abundance of caution, some of our courts are specially restricting what is made available on the web.

Some users report that the Texas e-filing system has not yet become as easy to use as the federal e-filing system. Any e-filing system requires fairly strict adherence to the filing specifications. Fortunately, for most, Texas e-filing can be relatively simple and routine once the user becomes familiar with it.

Collectively, the Texas appellate judiciary is thinking happy thoughts about TAMES and believes that, as the tool matures, e-filing and e-management will get even easier and safer and will result in an increasingly effective appellate judiciary, in particular, and a more just system, generally.

For more information, please see these links:

[EFileTexas Home Page.](#)

[Media Kit](#) from EFileTexas.

Answers to [Frequently Asked Questions](#) about Texas E-Filing.

[January 2017 Status Report](#) Presentation in PDF format.

“No longer must courts purchase case jackets, number stickers or file folders to accommodate paper filings.”

a status light (green is future, yellow current, and red is late). Electronic circulation is valuable, particularly to the larger courts of appeals, for tracking and moving orders and opinions efficiently and without the risk of “losing” them on someone’s desk.

TAMES has also turned out to be a money-saver on supplies and other expenses. No longer must courts purchase case jackets, number stickers, or file folders to accommodate paper filings. No longer are the intermediate courts required to purchase expensive special jackets previously required to forward appeals filed in the higher courts or pay the shipping fees to transfer



Many thanks to those who have recently contributed to the Texas Center. We have received more than \$18,000 in donations since April. We are a member-driven organization and your generosity supports our mission to provide high quality judicial education to the judges of the State of Texas.

feature



Photo: Douglas Norma (left), David Jakubowski (right)

Reissuing Subpoenas Due To Continuances: Is It Necessary?

By Douglas K. Norman and David Jakubowski¹

Article 24.01 of the Code of Criminal Procedure provides, in pertinent part, that “A subpoena may summon one or more persons to appear: (1) before a court to testify in a criminal action at a specified term of the court or on a specified day.”²

Article 24.06 of the Code of Criminal Procedure provides, in pertinent part, that “It shall be held that a witness refuses to obey a subpoena: 1. If he is not in attendance on the court on the day set apart for taking up the criminal docket or on any day subsequent thereto and *before the final disposition or continuance of the particular case in which he is a witness.*”³

The articles in question were passed as a part of the 1965 Code of Criminal Procedure and the pertinent language has remained unchanged. Accordingly, under the clear terms of Article 24.06, continuance of a case effectively nullifies the subpoenas issued therein and requires the parties to reissue those subpoenas before the new date on which trial is to begin.⁴

However, although the Code of Criminal Procedure does not specifically define “continuance,” Texas cases have long maintained a distinction between a *postponement* within the same term of court, and a *continuance* spanning two terms of court, and this distinction is confirmed by other articles in the Code which indirectly suggest that a continuance does in fact delay trial from one term to the next. In *Ex parte Davis*, the Texas Court of Criminal Appeals explained this distinction as follows:

The terms “postponement” and “continuance” are frequently used interchangeably, but strictly speaking, a postponement is a delay of a trial until a later day of the same term whereas a continuance is the adjournment of the case until a subsequent term of the court.⁵

“With this distinction in mind, only a true continuance of the case from one term to another should trigger Article 24.06 and nullify the subpoenas...”

In earlier cases, the Court of Criminal Appeals alluded to the same distinction:

We perceive no sort of difference, in so far as the necessity of showing diligence, materiality, etc., are concerned, between an application for postponement and one for continuance. In the one case the absent testimony, if such be the ground of the application, can in the opinion of the applicant be had during the current term of court; in the other it cannot.⁶

The following articles in Chapter 29 of the Texas Code of Criminal Procedure also strongly support the idea that continuances cross to the next term of court, while postponements delay proceedings within a single term of court:

Criminal actions are continued by operation of law if: ... (3) There is not sufficient time for trial *at that term of court*.⁷ On any subsequent motion for a continuance by the State, for the want of a witness, the motion, in addition to the requisites in the preceding Article, must

show: ... 2. That the applicant expects to be able to procure the attendance of the witness *at the next term of the court*; and 3. That the testimony cannot be procured from any other source *during the present term of the court*.⁸

In the first motion by the defendant for a continuance, it shall be necessary, if the same be on account of the absence of a witness, to state: ... 6. That there is no reasonable expectation that attendance of the witness can be secured *during the present term of court by a postponement of the trial to some future day of said term*.⁹

Subsequent motions for continuance on the part of the defendant shall, in addition to the requisites in the preceding Article, state also: ... 2. That the defendant has reasonable expectation of procuring the same *at the next term of the court*.¹⁰

Virtually identical language had been carried over from Articles 538 – 544 of the 1925 Texas Code of Criminal Procedure.

With this distinction in mind, only a true continuance of the case from one term to another should trigger Article 24.06 and nullify the subpoenas, while a mere postponement within the same term should leave those subpoenas binding on the witnesses.

(Endnotes)

1. Douglas K. Norman and David Jacobowski serve as Assistant District Attorneys in Nueces County District Attorney's Office.
2. Tex. Code Crim. Proc. Ann. art. 24.01 (a)(1) (West 2009).
3. Tex. Code Crim. Proc. Ann. art. 24.06 (1) (West 2009) (emphasis added).
4. See Gentry v. State, 770 S.W.2d 780, 785-86 (Tex. Crim. App. 1988) (a plurality opinion often cited for the proposition that a witness is no longer subject to a subpoena after the case has been continued).
5. 574 S.W.2d 166, 170 (Tex. Crim. App. 1978) (citing 12 Tex.Jur.2d, Continuance, § 1, pp. 542-543, and Tarver v. State, 124 Tex.Cr.R. 485, 63 S.W.2d 554 (1933)).
6. O'Neal v. State, 111 Tex. Crim. 315, 317, 712 S.W.2d 800 (Tex. Crim. App. 1929) (on rehearing). Civil cases in Texas also recognize this distinction, See Supreme Forest Woodmen Circle v. Litchfield, 35 S.W.2d 765, 765-66 (Tex. Civ. App.—Texarkana 1931, no writ); Dennis v. Brown, 293 S.W. 858 (Tex. Civ. App.—Eastland 1927, no writ); 13 Tex. Jur. 3d Continuance § 1; 3 McDonald & Carlson Tex. Civ. Prac. § 17:29 n.534 (2d. ed.), as do nationally recognized authorities. See 17 CJS, Continuances § 2 n.4 (“Continuance” and “postponement” distinguished: A motion for continuance generally implies a request that the case go over to another term, while the word “postponement” implies a request that the case be adjourned to a later time during the same term.).
7. Tex. Code Crim. Proc. Ann. art. 29.01 (West 2006).
8. Tex. Code Crim. Proc. Ann. art. 29.05 (West 2006).
9. Tex. Code Crim. Proc. Ann. art. 29.06 (West 2006).
10. Tex. Code Crim. Proc. Ann. art. 29.07 (West 2006).

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