



# LAW LIBRARY NEWS

a publication of the Fort Bend County Law Library

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## Attorney Lecture Series

The Law Library will be hosting an **Attorney Lecture Series** on Friday, **May 28 at 2 pm**. This class will be on **First Time Discovery**. Class will be taught by attorney Andrea Barr. This class will be virtual and taught over WebEx. Please register as spots will be limited. Go on to [www.fortbend.lib.tx.us](http://www.fortbend.lib.tx.us) to register. Registration will open in late April. For more information, contact the Law Library.

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## New & Updated Resources

### *O'Connor's Texas Series*

- *Causes of Action Pleadings*
- *Civil Appeals*
- *2021 Editions*

### *Texas Rules of Court*

- *State, Federal, & Local*
- *2021 Editions*

### *O'Connor's Federal Series*

- *Federal Employment Codes*
- *2021 Edition*

### *Texas Practice Series*

- *Handbook of Lawyer and Judicial Ethics*
- *2021 Edition*

### *Getting the Whole Truth: Interviewing Techniques...*

- *2020 Pub Date*



### *Own the Map: Marketing your Law Firm's Address*

- *2020 Pub Date*



### *The Family Lawyers Essential Toolkit*

- *2021 Edition*

### *Texas Family Law Practice and Procedure*

- *2021 Update*

## FBC Bar News

### **Fort Bend County Bar Association**

The Fort Bend County Bar Association may have another virtual CLE. Date and topic is TBD. Check their website for information.

### **Family Bar of Fort Bend County**

The Family Bar may have another virtual CLE. Date and topic is TBD. Check their website for information.

### **Fort Bend County Criminal Defense Attorneys Association**

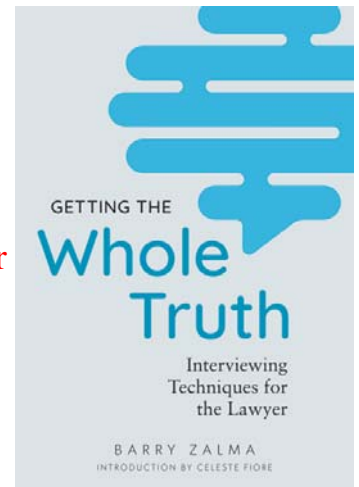
The Fort Bend County Criminal Defense Attorneys Association may have another virtual CLE. Date and topic is TBD. Check their website for information.



## Featured Resource: Lawyering Skills Collection

**By Andrew Bennett**

This month, we are featuring our **Lawyering Skills Collection**. This diverse set of books has books on topics in improve your legal practice. You can find this collection on our first row of books by the computers. These topics include client interviews, starting your own practice, LSAT study guides, business management, free legal resources on the web, marketing and advertising, and more. Most of the **books** in this collection are from the **American Bar Association, James Publishing, or the State Bar of Texas**. This collection also include the Continuing Legal Education course guides from the State Bar of Texas and University of Texas School of Law Continuing Legal Education courses. These course guides can be found along the side wall of the library to the left of the printers. Unfortunately, most of the books in this collection are only available in print. However, a few are available on our **Lexis Digital Library** where you can print and email portions of the book. Now that the library is open, you can also come in and make photocopies or PDF copies of the book that you can print or email for future viewing. I continue to provide new and updating material for this collection and if there is anything you feel needs to be added, please let me know. I will do my best to add it in the future. For more information, feel free to contact us by email at [llpublic@fortbend.lib.tx.us](mailto:llpublic@fortbend.lib.tx.us).



## Technology Corner: Update on Lexis Resources

**By Jonathan Briggs**

The Fort Bend County Law Library has a lot to offer its patrons, both attorneys and pro se parties: a place to work; ten computers; meeting rooms; copiers, fax machines; and so much more. But when it gets down to it, the essential function of a law library is to provide the public with access to relevant and complete legal reference materials. The Fort Bend County Law Library's collection is excellent. We are provided a good budget for our legal materials and we utilize it fully to give our patrons the access to the breadth and depth of up-to-date legal resources that they expect and need. In this column we are going to look at what we have from **Lexis**, with a focus on our online resources. In the Law Library on three of our computers we have **Lexis Advance**, one of our two primary online legal databases (the other being **Westlaw** which is on four of our public computers). Our **Lexis** subscription provides access to every case and statute of Texas, all the other States, and the Federal system. And *Shepard's* allows you to determine the subsequent history of these cases and statutes. Where **Lexis** really shines is in its secondary resources. Years ago **Lexis** acquired the Matthew Bender publishing company and along with that came the essential practice guides and treatises recognized as authoritative and indispensable to so many areas of practice: *Dorsaneo's Texas Litigation Guide*; *Texas Family Law: Practice and Procedure*; *the Texas Criminal Practice Guide*; *Texas Probate, Estate & Trust Administration*; *Texas Transaction Guide*; *Colliers on Bankruptcy*; and, many more. The vast array of materials from James Publishing are also found on **Lexis**. These publications provide crucial information and all manner of forms. Additionally, most of what we have available via **Lexis Advance** is also in our vast print collection. Further, you can access just about any article from the law reviews and journals of this country. There is also the **Lexis Digital Library** (an adjunct to our primary Lexis subscription primarily consisting of these secondary resources) is accessible via the Fort Bend County Library system's main website with your library card and pin # at: <https://lexisdl.com/welcome/login/fortbendco?origination=%2Flibrary%2Ffortbendco>. You can download or e-mail items from **Lexis** at no charge. Copies and black and white printing are 10 cents per page, color prints are \$1.00 per page. For more information, please contact the Law Library via phone or e-mail: 281-341-3718 and [llpublic@fortbend.lib.tx.us](mailto:llpublic@fortbend.lib.tx.us). We subscribe to Lexis so you don't have to!



Lexis Advance®



## Community News

- The **Fort Bend County Law Library** will host a **Lexis Advance CLE** on **June 18 at 2 pm** entitled **Email Best Practices for Legal Professionals: Avoiding Common Mistakes and Improving Effectiveness**. The program is approved for 1 hour CLE credit. Register online in late May.
- The **Texas State Law Library** has a lot of **digital resources** at your disposal. Please **create a digital library account** for access. For more information, visit their website at <https://www.sll.texas.gov/about-us/get-a-library-account/>.
- **Re:search TX** allows you to research case law from all 254 Texas counties. Some documents do require payment to access. Account set up is free. Go to <https://research.txcourts.gov/CourtRecordsSearch/Home>. Or you can check out Google Scholar for case law research at <http://scholar.google.com>.
- **E-File Texas** allows you to file your documents electronically to Fort Bend County courts or any other courts in the state of Texas. Go to <http://www.efiletexas.gov/>.
- **Harris County Law Library** is hosting a **Lexis Training on Time Management for Attorneys** on **May 27 at 2 pm**. Class is virtual. To register, visit their website at <https://www.harriscountylawlibrary.org/events>.



## Texas Lawyers

The State Bar of Texas offers confidential assistance to attorneys, judges, and law students who are facing substance abuse and mental health issues through its

[Lawyers Assistance Program](#).

Professional staff members are available 24/7 by phone to help with crisis counseling and referrals to local professionals and support groups. For assistance,

## To Include Items

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

## To Unsubscribe from

If you do not want to receive the Law Library newsletter, please send an email to [abennett@fortbend.lib.tx.us](mailto:abennett@fortbend.lib.tx.us) with “Unsubscribe” as the subject and include the email address to be removed.



## Texas Case Law Update

### Local Cases

- [In Re Team Industrial Services, Inc., et al.](#), No. 01-21-00212-CV (May 7, 2021): Pet. Writ. Mand. Granted. (4268h)
- [Baxter Construction Co., L.L.C. v. Senior Care Living VI, LLC.](#), No. 01-19-00728CV (May 13, 2021): Aff'd. TC Judgment. (400th)
- [In the Matter of J.A.A., Jr., v. The State of Texas](#), No. 14-20-00729-CV (April 20, 2021): Aff'd. TC Judgment. (CCL#4)
- [Precision-Hayes International, Inc. v. JDH Pacific, Inc.](#), No. 14-21-00061-CV (April 22, 2021): Appeal Dism'd. (400th)

### Criminal Law—Evidence from Cell Phone

*Dakota Z. Wright v. The State of Texas*, 618 S.W.3d 887 (Tex.App.-Fort Worth 2021, no pet. h.). Defendant/Appellant Wright was convicted of aggravated robbery and sentenced to 50 years for taking the victim's wallet and phone at gunpoint. At trial the State sought to introduce data from inculpatory text messages. They were admitted and Defendant challenges this on appeal. Wright challenged the reliability of the technique used by the police to extract data from the phone, which was a computer program called Cellebrite that copied materials on his phone such as images, texts, etc. Defendant contends that the State was required under *Kelly v. State* to prove the scientific reliability of this data extraction methods before evidence gathered from it could be introduced and given the fatally inadequate reliability predicate it was reversible error for these materials to be admitted as evidence. The Fort Worth Court of Appeals held that for such a basic technique of cell phone data extraction the State was not required to meet the *Kelly* standard, that the lay testimony of the officer was sufficient as per the *Washington v. State* case to establish the predicate necessary for admission of the items extracted from the phone. Affirmed.

### Criminal Law—Trial—Emergency Orders

*In Re The State of Texas Ex Rel. Kim Ogg, Relator*, 618 S.W.3d 361 (Tex.Crim.App. 2021). Defendant charged with assault and evading arrest sought to waive his right to jury trial and have a bench trial. In his argument to the trial court Defendant contended that the Texas Supreme Court's Emergency Order in response to COVID-19 gave the court the authority to override the State's refusal to consent to his waiver. The District Attorney did not consent to the waiver and disagreed that the Order gave the court that authority. Trial court granted the Defendant's motion for a bench trial. State filed an application for writ of mandamus arguing that the Order governs procedures and deadlines but does not give the courts "the discretion to selectively ignore the substantive rights and privileges of parties." The Court of Appeals denied the petition concluding that the Emergency Order "allows the trial court to modify any procedure subject only to constitutional limitations." Under a *de novo* standard the Texas Court of Criminal Appeals looked to determine whether the Court of Appeals erred in denying mandamus relief against the Harris County trial court. The first issue was quickly determined...the State has no adequate remedy on appeal. The second part of the standard to be applied is whether the relator is entitled to mandamus relief as the act sought to be compelled is purely ministerial? The Court held as follows: "Turning to the present case, we conclude that the consent requirement is not merely procedural, but implicates the trial court's authority to preside over a particular type of proceeding. We have indicated that a judgment obtained from a bench trial conducted without the State's consent in violation of 1.13 is a nullity for double-jeopardy purposes. The judge simply does not have the authority to conduct a bench trial when the State has not consented. He cannot use the Emergency Order's authorization to modify or suspend procedures to confer that authority upon himself. If he could, then he could do the same thing to a criminal defendant regarding his statutory right to a jury assessment of punishment (after being convicted by a jury at the guilt stage of trial). It seems—and is—patently absurd that a generically framed right to modify statutory deadlines and procedures would confer upon the trial court the power to abrogate a defendant's statutory right to a jury trial at punishment. It is equally absurd to think that this language would allow the trial court to do just that when the party insisting on a jury trial is the State. It is clear and indisputable that the Emergency Order did not confer upon the trial court the authority to conduct a bench trial without the State's consent. We conditionally grant mandamus relief. The writ of mandamus will issue only in the event that the court of appeals fails to comply with this opinion."

### Civil Litigation—Government Officials—Flood Control

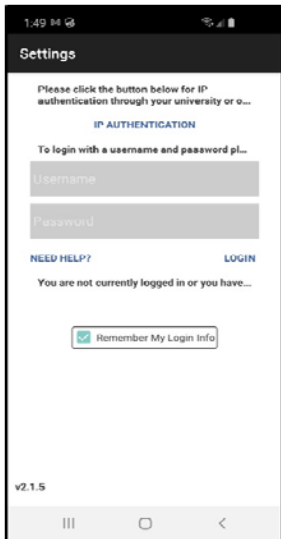
*Sylvester Turner, et al., v. James R. Jones, et al.*, 617 S.W.3d 894 (Tex.App.-Houston [14th Dist.] 2020, pet. filed). Plaintiffs are property owners in Houston who brought suit against the mayor and city council members related to expenditures by the city from the Dedicated Drainage and Street Renewal Fund that is funded through various sources including property taxes. (Formerly the City of Houston paid for drainage projects via the issuance of bonds/taking on of debt.) The City calculated that for 2020 the allocation of money to this fund would be \$47 million....the Plaintiffs asserted that the project was underfunded, that it should have been \$91 million, and sought a declaratory judgment and other relief to this effect. Defendants brought a plea to the jurisdiction challenging the standing of Plaintiffs to challenge this. The trial court denied the plea and interlocutory was brought. The 14th Court of Appeals found that "Because the plaintiffs have neither asserted a particularized injury nor sought to enjoin the illegal expenditure of public funds, we conclude that the plaintiffs lack standing to assert their challenge. We therefore reverse the trial court's order and render judgment dismissing the plaintiffs' case for want of jurisdiction." Reversed and rendered.





## Librarian Musings: Search Strategies in the HeinOnline App

By Andrew Bennett (republished from HALLmarks)



One of the advantages of HeinOnline is that it has an app that you can use with your subscription through the Law Library. Patrons can use it as well provided they are within the building in which the subscription is held. They must also be connected to the WiFi network that houses the approved IP addresses. For us it is “fbcguest” in the Justice Center. While Westlaw and Lexis have apps as well, theirs are tied to the individual subscriptions or users and do not allow patron access. HeinOnline is one that does, which makes it unique. Unfortunately, the ability access their database through your phone has some drawbacks.

To download the app, go to your Apple or Google play store. Simply search for “HeinOnline.” The app is free so go ahead and download it. Once you open the app, you will need to click on “settings.”

Next, click on “IP Authentication.” Make sure you are connected to the appropriate Wi-Fi network at your institution. Once authenticated, you will be presented with three options: Search, Browse by Category, and Browse by Name. All of these options have advantages and

drawbacks. I used all three and I will give you my thoughts on each and how I went about searching. Bear in mind, this is not like searching the website and can be a bit tricky. I first searched using the “Search” option. It does accept Boolean operators but I am not sure how effective they are. There is also no ability to narrow a search. My first search was “gift taxes” and probate.

As you can see, it did give me a lot of results. I was also not really sure how effective the quotation marks were; however, with the next search I did remove the quotation marks from gift taxes. Here’s the result and you can see it did change and I had quite a bit more.

Back to Boolean operators, it does automatically use “and” between keywords. To enter “or” or “but” or any other operator, you will need to enter it. It does also do multiple keywords separated by an operator.



Since there is no way to narrow, you have to click on each one individually and see if they pertain to what you want. Now, if you search for a specific article, it should find it as opposed to searching by keyword. I clicked on an article and was able to either download by clicking the “PDF” option or email the document. Clicking on email opens up whichever email service you have on your phone.

The other two search options allow you to narrow to a specific topic or source; however, you do have to scroll quite a bit to find what you need. For instance, looking for Texas Session Laws, I had to click on “Browse by Category,” then select “Session Laws Library” and finally scroll all the way down to “T” to find Texas.

I must point out that when the app means “Browse” it means browse. There is no way to search within results or to select a collection and then search it. This can make the two browsing options a bit time consuming especially with all the scrolling.

I would recommend using this app in conjunction with the website. The ability to have access through Wi-Fi is a handy tool, however, the amount of time using the app for searching by keyword or browsing is likely too time consuming to make it an app to use for research.

