

#LiveLearnLubbock



Welcome to Lubbock!

**2017 TALP
Fall Educational Conference**





2017 Texas ALP Fall Educational Conference

SCHEDULE OF EVENTS



Friday, September 22, 2017

8:00 am—10:45 am—Registration
9:00 am—9:30 am—Texas ALP Committee Meetings
9:45 am—10:30 am—Open Forum/PYI Workshop
10:45 am—11:45 am—SWIFT Court, Steve Henderson
12:00 pm—1:30 pm—Welcome Luncheon
1:45 pm—2:45 pm—Wind Law, Cal Huffaker
2:45 pm—3:00 pm—Break
3:00 pm—4:00 pm—Legislative Updates, Curtis Parrish
4:00 pm—5:00 pm—Brendan Dassey Appeal, Brandon Beck
7:00 pm—10:00 pm—Optional Event—Fiesta Dinner



Saturday, September 23, 2017

9:00 am—10:00 am—Wine Law, Elizabeth Hill
10:00 am—10:15 am—Break
10:15 am—11:15 am—Ethics, Rusty Gunter
11:30 am—1:00 pm—Professional Development Luncheon, Jodie Billingsley
1:15 pm—2:15 pm—Tips for Texas Lottery Winner, Levi Siebenlist
2:15 pm—2:30 pm—Break
2:30 pm—3:30 pm—Homicide Investigation, Rey Martinez
3:30 pm—Credentials Check-in
3:45 pm—Presentation to Women's Protective Services
3:45 pm – 4:45 pm – Board Meeting
Raffle to immediately follow the Board Meeting





DANIEL M. POPE
Mayor

Dear Texas Association of Legal Professionals Conference Attendees:

It's Always A Great Day in Lubbock, Texas!

It is my pleasure to welcome you to the 2017 Texas Association of Legal Professionals Fall Conference. The Lubbock Legal Professionals Association is to be commended for hosting this annual meeting and conference, and for making available valuable CLE courses. I admire and appreciate your continuing dedication to update and enhance the critical knowledge and skills you possess, as well as the services you provide to the legal profession and to your communities. We are extremely proud to be the host city this year, and we hope you have an enjoyable stay here in Lubbock.

Lubbock has numerous museums, wineries, art galleries, sporting events, recreational opportunities, golf, live music, great restaurants, retail shopping, and great weather to enjoy these amenities. Buddy Holly is Lubbock's favorite son, and the Buddy Holly Center preserves the legacy of this legendary rock and roll pioneer while providing cultural programs and exhibitions for the public. We hope you have the opportunity to visit these, and many more of our places of interest, during your stay in our city.

Lubbock residents are among the friendliest in the world, and we are proud of our West Texas hospitality. If there is anything we can do to make your visit more enjoyable, please let us know. Again, welcome to Lubbock.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel M. Pope". The signature is fluid and cursive, with a prominent peak in the middle.

Daniel M. Pope
Mayor



THIS IS WEST TEXAS

Sep. 22, 2017

Welcome Texas Association of Legal Professionals!

I would like to extend a warm welcome to you on behalf of Visit Lubbock and the many generous sponsors of this event. Lubbock is truly honored to host the Texas Association of Legal Professionals 2017 Fall Conference, Live Learn Lubbock.

Lubbock takes great pride in being considered as a premier destination for hosting top quality industry events, such as this one. We hope you find the Lubbock community friendly and hospitable during your stay. While here, take some time to enjoy and experience the following:

- From world-class barbecue to authentic Mexican cuisine, there are nearly 1,000 restaurants to choose from in Lubbock.
- West Texas is responsible for 90 percent of the state's total wine grape production. We hope you will enjoy the fruit of our labor by visiting our six award-winning wineries.
- Lubbock is the birth place of Rock 'n' Roll legend, Buddy Holly. Lubbock's musical heritage inspires talent in every genre, and you can find live music almost every night of the week.
- Lubbock was named the No. 1 Western Town in the U.S. by *True West Magazine* in 2016. Experience the rich history of the National Ranching Heritage Center or the wonder of the world's largest windmill museum.
- Known as the cultural capital of West Texas, our city was one of the first Cultural Districts recognized by the State of Texas. With more than 2,300 events each year, we invite you to feed your creative spirit.

While you're out exploring, snap a picture and share with #LiveLoveLubbock or #VisitLubbock on Facebook, Twitter and Instagram to join the conversation. If you have any questions for us, we're just one post, tweet or comment away!

To find more information about local events, attractions and dining options, visit our website at visitlubbock.org. We wish you a memorable and fun time in Lubbock.

Sincerely,

The Visit Lubbock Team



Dear Texas ALP Member,

Welcome to the Ashmore Inn & Suites. We are committed to providing you with the high level of service you have come to expect. The Ashmore Inn & Suites pledge to do our “Personal Best” to make your stay an enjoyable one.

To maintain a reputation of excellent customer service and commitment to quality, please contact me or our manager on duty by calling the operator to discuss any comments, suggestions, or concerns you may have.

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Sincerely,

Victoria Braun
Director of Sales

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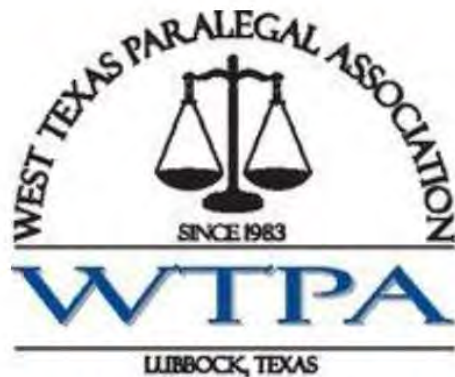
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**West Texas Paralegal Association
welcomes
Texas Association of Legal
Professionals
to Lubbock, Texas,**

Visit us online at www.westtexasparalegalassociation.org



The West Texas Paralegal Association ("WTPA") was organized on October 8, 1983, as the West Texas Association of Legal Assistants ("WTALA"). WTPA was formed to promote the paralegal profession in West Texas, and to provide access to continuing legal education for paralegals/legal assistants. WTPA is a voluntary organization that cannot function without the time, abilities, goals, and plans of its members. *All members are valued. The sharing of ideas to promote viable programs is encouraged, all while enjoying fellowship, professional development, prestige, and networking.*

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LUBBOCK LEGAL PROFESSIONALS ASSOCIATION
has chosen
WOMEN'S PROTECTIVE SERVICES



as the recipient of the
\$250 TALP charitable donation
TALP Fall Educational Conference



Lubbock LPA will also be collecting:

Monetary donations
Hygiene items (travel size is great)
School supplies

Shower curtains and rods
Linens (all beds are twin size)
Towels and washcloths

DONATIONS WILL BE ACCEPTED AT THE CONFERENCE IN LUBBOCK

Please contact Lola Smith-Gentry at lgentry@hkwwlaw.com or 806-632-7464 with questions

Lubbock Legal Professionals Association
Received this beautiful donation from Kendra Scott

Drawing
September 23, 2017
TALP Fall Educational Conference
(Need not be present to win)



Kendra Scott
Necklace and Bracelet Set

All money collected will be donated to
Women's Protective Services, Lubbock, Texas.

Purchase your tickets between now and September 23, 2017

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Contact Lola Smith-Gentry for tickets

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SPECIALTY COURTS

STEVE HENDERSON

Steven Henderson has served as the Director of the Lubbock-Crosby County CSCD since 2003. He earned bachelors and masters degrees at East Texas State University (now Texas A&M at Commerce), and a masters degree from Harvard University. He began his career in the field of criminal justice as a volunteer tutor at the maximum security prison in Walpole, Massachusetts, and then became a corrections counselor at a pre-release center in Boston. Over the past 28 years, he has worked in Texas as a probation officer in Dallas and McLennan Counties, as the CSCD Director in Tom Green County, and is now the CSCD Director in Lubbock County. In the middle of those stops, he worked at Community Justice Assistance Division of the Texas Department of Criminal Justice for nine years, where he helped start the SAFPF program and was the first Residential Services Director. In Lubbock, he has initiated the creation of a number of specialized caseloads as well as the Drug Court, the DWI Court, two Re-Entry Courts, and the SWIFT Court.

SWIFT Court in Lubbock County



Steven Henderson, Director
Lubbock-Crosby County CSCD

with appreciation to
The Honorable Judge Milice Westfall, 37th Judicial District Court, Tarrant County & The Honorable Judge William Eichman, 38th Judicial District Court, Lubbock County



**SWIFT Court
Another Alternative
to Probation Revocation**



- The basic purposes of probation (*community supervision*)
- SWIFT Court Components
- Overview of research outcomes for the program

How does SWIFT Court fit into adult probation?

- Two theories on probation
- But what if they don't behave?
 - Deterrence theory
- Principles of EBP





I. Overview of SWIFT Court

Implementation &
Program Components


Creation of Lubbock SWIFT Court

- Hawaii Hope Court
- Tarrant County
- Lubbock County
 - Assemble implementation team with variety of vested stakeholders.
 - Judges/Courts
 - DA's Office
 - Community Supervision & Corrections Dept.

Creation of SWIFT Court

- Review the research, incorporate evidence-based practices
 - Assess Risk/Need
- Target interventions (risk principle, need principle, responsivity principle)
 - Enhance motivation to change
 - Skill train with directed practice
 - Increase positive reinforcement
- Measure relevant processes & practices
 - Measurement Feedback/Evaluation



SWIFT Court Eligibility Requirements

- Originally it was only felonies, but have admitted misdemeanors.
- Not on disability
- No sex offenders
- No persons w/ significant mental illness
- Reside in the jurisdiction
- Have at least 30 days of jail time as condition of probation remaining
- At least one year of supervision remaining

SWIFT Court Components

- Appropriate population
- Surveillance
- Random urinalysis (call-in system)
- Frequent direct interaction with the Judge
 - Warning hearings
 - Regular dockets for violation hearings
 - Appropriate sanctions
 - Swift, consistent & proportionate - every time
 - Deferred treatment (after 3 positives)
- Team Meetings

Creation of SWIFT Court

- Surveillance & Monitoring tools
 - Hair testing
 - ETG/K2 testing
 - SCRAM (Continuous Alcohol Monitoring)
 - GPS
 - Reduced caseload for officer
 - Collaboration with service providers
 - Facebook/Social Media (more valuable than we expected)

SWIFT vs. Hawaii HOPE Program

- SWIFT
 - Violations are addressed by a Judge BEFORE a sanction is imposed (next day arrest)
 - Cognitive Behavioral component
 - More treatment interventions & education
 - Multiple opportunities for success
 - Organic and adaptable to measurement feedback & research

II. Tarrant County SWIFT Outcomes



SWIFT Pilot

- Pre-test/Post-test design
- (N=60), Avg. offender was a single, white, undereducated, unemployed male between 17-25 yrs. old.
- Offenders experienced an average of a -19.27% decrease in technical violations.
- Removing failure to pay from analysis yields an average -51.10% reduction in technical violations
- Positive drug tests decreased 73.52% after being placed in SWIFT.

Outcome Evaluation, 2013

by Kelli Martin

Secondary Data Analysis & Survey of Participants

Offense Category	SWIFT Court Offenders (n=60)	General Probation Offenders (n=244)
Alcohol Consumption	10	25
Child Abuse	0	1
Child Neglect	0	1
Child Sexual Abuse	0	1
Child Sexual Abuse - 1st Degree	0	1
Child Sexual Abuse - 2nd Degree	0	1
Child Sexual Abuse - 3rd Degree	0	1
Child Sexual Abuse - 4th Degree	0	1
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Child Sexual Abuse - 99th Degree	0	1
Child Sexual Abuse - 100th Degree	0	1

Key Findings

- 83 % retention rate
- 17 % of offenders were unsuccessfully discharged
- Of the total revocations (N=86)
 - 54 offenders were revoked for new offenses
 - 32 offenders for technical violations only

Key Findings (cont'd)

- Over 80% of offenders reported SWIFT has made them stop violating probation
- 56% reported random UAs helped them stop using on their own
- 68% feel program has helped them
- 45% are concerned with their health

Analysis of Gang Offenders in SWIFT Outcomes

Scott Marley, Dr. Lenore Grooms & Dr. Jennifer Wauson

Analysis of Gang Offenders in SWIFT



Key Findings

- Short-term jail sanctions had desired effect on SWIFT Gang offenders.
- Gang offenders **not in** SWIFT were 3x more likely than SWIFT Gang offenders to have probation revoked, controlling for all else.
- Gang offenders **not in** were significantly more likely to have high rates of technical violations than SWIFT gang offenders.

Key Findings

- Short-term jail sanctions had desired effect on SWIFT Gang offenders.
- Gang offenders **not in** SWIFT were 3x more likely than SWIFT Gang offenders to have probation revoked, controlling for all else.
- Gang offenders **not in** were significantly more likely to have high rates of technical violations than SWIFT gang offenders.

Key Findings

- Gang offenders **not in** with more low severity technical violations were more likely to have their probation revoked than SWIFT Gang offenders with low severity violations.
- Those who received more jail sanctions were significantly less likely to have a new arrest or arrest charge while on supervision.

Key Findings

- Offenders with more high severity technical violations were at significantly greater odds of having a new arrest while on supervision.

WIND LAW

W. CALLOWAY HUFFAKER

P.O. Box 968
Tahoka, Texas 79373

806-561-5055 Home

806-998-4863 Office

806-549-6879 Mobile

wch@huffaker-law.com

Date of Birth: September 19, 1960

Marital Status: Married to Gretchen Huffaker

OCCUPATION:

Attorney	Licensed in 1988	Practice of Law/mediation
Agri-business	Huffaker Farms, L.C. P.O. Box 1626, Tahoka, Texas 79373	Cotton Farming 3000 Acres
Business	Lynn County Abstract & Title, Inc. P.O. Box 968, Tahoka, Texas 79373	Land Titles
Business	Walker & Solomon Agency, Inc. P.O. Box 639, Tahoka, Texas 79373	Insurance
Business	Antler Storage, LLC	Storage Buildings

EDUCATION:

Juris Doctor	St. Mary's University School of Law Student Bar Association Senator	1988
Bachelor of Science	Texas Tech University Major, Mechanized Agriculture Minor, Agriculture Economics	1983
Certified Insurance Counselor	The National Alliance for Insurance Education	2004

PROFESSIONAL EXPERIENCE:

W. Calloway Huffaker, Attorney at Law, P.L.L.C.	Managing Member of Law Firm	2003 – present
Huffaker Furlow P.L.L.C.	Partnership formed for the practice of law	1999 – 2003
W. Calloway Huffaker	Attorney sole practitioner	1998 – 1999
Huffaker, Green & Huffaker	Attorney	1988 – 1998
National Cotton Council Memphis, Tennessee	Field Representative for East and South Texas Raised in excess of \$450,000.00 Distinguished service award, 1984	1983 – 1985

PROFESSIONAL ACTIVITIES:

Texas Bar Association	Member	1988 – present
Texas Bar Foundation	Life Fellow	1999 – present
Texas Bar Grievance Committee	Member	2005 – 2008
Texas Trial Lawyers	Member	2002
T.A.L.L.	Texas Agricultural Lifetime Leadership Graduate	1996
Texas Bar Pro-Bono College		2002 – present
Texas Rural Communities	Board Member	2006 – 2010

COMMUNITY ACTIVITIES:

Lynn County Hospital District	Board Member, currently Vice-Chairman	2005 – present
Lynn County Jaycees	President	1989 – 1991
Tahoka Rotary Club	Numerous Service Positions	1986 – present

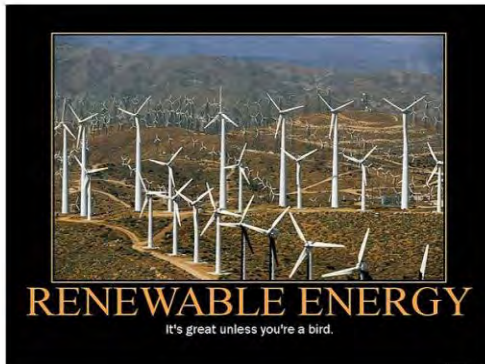
Lynn County Pioneers (senior citizen's center)	Board Member, currently Vice-Chairman	1990 – present
Tahoka Housing Authority	Board Member Currently Chairman, Board of Directors	1989 – present
Boy Scouts of America Quanah Parker District	Chairman SME Campaign Member, Board of Directors	1991 1989
Lynn County Child Welfare Board	Member	1989 – 2004
West-Tex R.C. & D.	Resource, Conservation and Development Area V.P.	1995 – 1998
Lynn County Harvest Festival Committee	Vice Chairman	1989 – present
Lynn County Hospital Auxiliary Auction, Fun and Food Festival	Master of Ceremonies for annual fund raiser	1995 – present
American Cancer Society	Cattle Baron's Ball Committee Member	1999 – 2000
First United Methodist Church Tahoka, Texas	Numerous Service Positions	1989 – present
Life Enrichment Center	Steering Committee Member that built the Community Center and Library in City of Tahoka Landscape Chairman	1997
Texas Tech University	Saddle Tramps, "Raider Red"- Texas Tech Mascot Ag Engineering Association Texas Special Olympics	

AWARDS:

Friend of 4-H	Lynn County –Award	1999
Outstanding Community Service Award	City of Tahoka Rotary Club	1996 – 1997
Man of the Year	City of Tahoka	1995
Volunteer of the Year	American Cowboy Culture Association	2010

PERSONAL STATEMENT:

I am a practicing rural attorney, and customarily handle family law, estate planning, real estate and agricultural litigation. My brother, Ralph Huffaker, and I farm approximately three thousand (3000) acres of cotton and some grain. He and I are the fourth generation to farm in Lynn County and I am the third generation to practice law. I also manage and own, along with my brother, Lynn County Abstract & Title, Inc., a small abstract and title company handling all types of real estate transactions. Lastly, I am majority owner in Walker & Solomon Insurance Agency, a property and casualty insurance agency handling all types of insurance including personal, commercial, life and crop. I am active in my community, my church and Llano Estacado Emmaus.



Surface Use

- Surface grants: Wind vs. Oil & Gas
- Stay away from blanket grants
- Property uses
- Protection: Ranch land vs. Farm land
- Recreational activities
- Road provisions
- Pipelines, electric lines, and other cable type lines
- Fees
- Compensation for turbine lay down yards, maintenance & operation buildings
- Does your client understand long term effects?
- Drafting: what was, is, and could be



Decommission of the Wind Farm

- Tons of scrap...literally
- Removal bond
- It could be worse, look back 50 years ago



Taxes

- Ad Valorem tax
- Indemnity: be specific and draft with certainty



Indemnification and Insurance

- Protect the landowner
- The more inclusive, the better
- Landowner = Not liable for lessee's actions, equipment, or the combination of the two
- What will the neighbors think?
- The sky is the limit on "freak-accidents"
- Insurance provisions



Parting Thoughts and Advice

- Beware of the "Bank Blindness"
- You know you got it right when everyone at the table feels like they have been taken advantage of.
- Remember, the next best wind energy lease contract could be sitting on your desk!



Presented:

2011 Permian Basin Oil and Gas Law

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Midland, Texas

Representing Land Owners in Negotiation of Leases

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Representing Landowners in Negotiation of Leases

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Introduction: Property Rights and Why they Matter

The acquisition of property, and the rights that come along with that property, has always been paramount of man's desire throughout history. Land is no exception; in fact, land and the bundle of rights that come with it has been the object of controversy between men for ages. Such controversy has ranged from territorial disputes resulting in war since biblical times, to that of wind, oil, and gas leases in our current society.

Texans have a long and storied history of land ownership dating back before our independence as a Republic up to our present place in the United States. Landowners in Texas have enjoyed the right to build on and develop land, to utilize land for the cultivation of various crops, to nourish and raise many forms of livestock, and to harvest other commodities from the land whether that is oil, gas, water, minerals, or wind. A landowner with the fee simple absolute has the right to use his land in whatever way he sees fit; this includes the right to lease out his land. Leasing of land for a variety of purposes has been the focus of much case law and many legislative decisions. Because there has been so much controversy in this area, it is imperative that landowners know their rights and we as attorneys convey those rights to our landowning clients when negotiating various leases.

Today's presentation will focus primarily on the landowner's perspective while negotiating wind energy leases, though many of the principles apply in oil, gas, mineral, and other types of leases. Surface leases granting the use of the surface to harvest the energy of the wind are common contracts utilized today in the wind energy industry. These contracts rely upon early trends in oil and gas leases when you examine the origins of wind energy leases, but we must keep in mind that an oil & gas lease and a wind lease are distinctly different.

Wind Energy Leases

Though dating back to the 18th century, Blackstone's principle of property law, *Cuius est solum, eius est usque ad coelum et ad inferos* or *for whoever owns the soil, it is theirs up to Heaven and down to Hell*, still rings true today. This is apparent when viewing mineral, water, oil and gas rights. However, legal issues concerning the area above the land have been relatively untouched. The Texas wind industry is very similar to the oil and gas industry as it was in the early 1900's; wind and the law surrounding it, is in its infancy. The leases that are being drafted today will be the basis of a great body of law fifty years from now. But for now, the lease language being utilized is being drafted by attorneys, wind companies, and landowners as they go. Wind leases in the last ten years have taken huge leaps forward from their meager beginnings.

Even so, in representing landowners in regard to a wind lease, it is imperative to stress to the landowner the lack of judicial and legislative safeguards in wind energy leases in order to negotiate such leases to apply to any current or future concerns of the landowner.

When looking at the rights to property, it is easiest to view those rights as a bundle of sticks. I know this might take some of you back to those dreaded law school classrooms with a professor in front of you explaining the different characteristics of property, but bear with me for

a bit. Let's say you have a landowner, and his rights to that land are represented by a bundle of sticks. These rights can include mineral rights, surface rights, water rights, etc. The landowner can decide if he wants to keep all of his sticks or give them out in exchange for some type of consideration. This is the idea of leasing or the contractual granting of rights. The lease in its basic form is a grant or contract for the use and benefit of land for a specific purpose and time.

Wind leases, are relatively new and unexplored, and this creates problems concerning the bundle of sticks. Take for example the landowner that sells the surface rights to his land, but retains the mineral rights in hopes of future oil and gas exploration and development. Let's say that a landowner sells off his surface rights but wants to retain the right to harvest the energy of the wind for potential future exploration and development. The question becomes, "who owns the wind?" Before this question can be answered, we must answer the question of whether there is a stick, i.e., is this a severable right that comes along with land ownership?

It is well-settled that the surface owner has the right to lease the surface of the land. However, is there an independent right to sever the right to harvest the energy of the wind for the production of electricity from the surface? There is nothing in statute or case law specifically granting a landowner such a right.

The method that has developed for the severance of the right to harvest the wind for its energy is of the right to lease the surface. Contractually it is being done all over Texas. The lease of the surface for the production of electricity from the harvest of wind necessarily includes the grant of the use of the surface of the land for turbines, access roads, transmission lines, substations and other facilities. However, as is the case with oil and gas leases, the right to use as much of the surface as is necessary to the extraction, is not included in the grant of surface for the harvest of wind for the production of energy. The surface is not subservient to the air space

above. The lease must specifically grant the uses necessary for the harvest of wind for energy. There is not a reasonable use doctrine as is provided for in the production of oil and gas. Thus, the lease for the production of wind energy must include a grant for each and every use that is required to utilize the surface of the land for the production of energy from the harvest of wind.

While negotiating wind leases, landowners normally do not stand separate and apart from their neighbors. Wind farms often require anywhere from 15,000 to 30,000 acres, and unless the landowner has significant contiguous land holdings, there must be cooperation between neighboring landowners due to the large acreage required for wind farms. Consequently, the neighboring landowners must be considered in advising your client landowner.

If you have ever driven through one of the various wind farms in the state during the evening hours, you might have found yourself surrounded by countless blinking red lights hovering hundreds of feet off the ground. You might have even thought you were in a scene from H.G. Well's "War of the Worlds". Many people feel or have felt that same way and believe that these wind farms mar the appearance of the land. This common concern among landowners stems from the aesthetic change of the land due to the giant wind turbines. Concerns of sight pollution and light pollution are additional concerns that lead to the idea that neighboring landowners need to facilitate cooperation with one another. When landowners fail to work with one another, the issue of nuisance may arise.

Law of Wind

There is a very small body of law specifically targeted to wind in Texas. This area of legislative and case law will continue to grow substantially in the future, and I am sure will rival that of oil and gas someday.

To date, Texas case law has been primarily focused on the location of wind turbines, in the context of a nuisance suit from surrounding neighbors of a wind farm. *See e.g., Rankin v. FPL Energy LLC*, 266 S.W.3d 506 (Tex.App. – Eastland 2008, pet. denied). While determining the potential nuisance caused by a wind farm, the Rankin opinion turns to Texas jurisprudence’s definition of “nuisance”. The Court relied on the opinion in *Schneider Nat’l Carriers, Inc. v. Bates*, which defined nuisance as, “a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities.” 147 S.W.3d 264, 269 (Tex.2004).

When looking from the perspective of the plaintiff landowners, a wind farm with multiple massive 400 ft. tall turbines looming on the horizon just across your fence could reasonably interfere with a person’s use and enjoyment of land if the primary purpose of that land was for relaxation or for the aesthetic value of the wide open spaces. The court in *Rankin* rejected such an idea because that was a case of nuisance-in-fact rather than nuisance per se. The following describes the difference between the two theories.

Per se: An act, occupation, or structure that is a nuisance at all times, under any circumstances, and in any location.

In fact: An act, occupation, or structure that becomes a nuisance by reason of its circumstances or surroundings.

Rankin, 266 S.W. 3d at 511, citing, *Freedman v. Briarcroft Prop. Owners, Inc.*, 776 S.W.2d 212, 216 (Tex.App.-Houston [14th Dist.] 1989, writ denied).

The *Rankin* Court found no specific authority from case law or elsewhere establishing a nuisance-in-fact cause of action “based on fear, apprehension, or other emotional reaction resulting from the lawful operation of industry.” *Rankin* at 512. For the stated reason, the Court

found that the plaintiff's emotional response to wind company's lawful activity of a wind farm was insufficient to establish a cause of action.

The Contents of the Lease

There are various provisions that you and your client should be aware of when negotiating a wind lease. The wind lease is a document the formation of which seems to continually grow with time and use, and no two are alike. A wind lease is significantly longer than a typical oil and gas lease, although some of the provisions are similar and some are not. Provisions in a wind lease typically cover the following components, but in no way is a wind lease limited to these provisions, nor will all wind leases include provisions addressing the same issues.

1. **The Grant:** The lease of the surface for the harvest of wind for the production of electric power does not include the implied right of reasonable use, thus the grant of use must include all aspects of the use. The uses for a wind farm are similar to the surface protections you see quite often in an oil and gas lease rider. The granting of the surface for the production of electric energy through the harvest of wind will normally include various uses construction of roads, power lines, turbines, substations, and maintenance and operating buildings. The right to use the surface should be specific for each intended use. The more specific the rights granted, the better. This is to avoid disputes and litigation over the use of the surface for the harvest of wind. Do not grant an unrestricted right to use the surface, rather, place restraints upon these uses. Considerations of ingress and egress upon the surface such as width of roads, materials to be used upon roads, maintenance and location are all things to address in the lease. A wind farm requires

transmission lines to transport the electricity generated to locations of final utilization of the power. Transmission lines above ground and below should be addressed.

Transmission lines are normally buried within the wind farm and are above ground from the point of the substation on. Consideration as to location, depth, and double ditching are also items to be addressed. The landowners use of the surface, including but not limited to agricultural use provisions, proximity to houses, water wells, and other improvements.

In granting the itemized uses to the wind developer, consideration must be given to the effect the wind lease will have on other tenants to whom portions of the land have been leased. Such leases include cell towers, meteorological towers, CRP, grazing, farming, billboards and oil and gas.

Other items of course need to be included, and this is not by any means a complete list of matters of concern to drafting a thorough lease. Things to watch for in a wind lease include the granting of use of water, caliche, or other materials in conjunction with the construction of the wind farm.

It is imperative to look at what your client actually is leasing to the wind development company, i.e., which of the landowners' bundle of sticks is he allowing the wind company to hold.

2. The Term. Typical wind leases have two portions dealing with duration. The first is what is predominantly referred to as the "development term." This is the time allowed under the lease to develop the property for a wind farm, and typically is for a term from three to ten years. During the development term, wind data is collected from meteorological towers installed in various areas of the proposed wind farm. Studies are done concerning environment and the condition of the property. Environmental, archeological and wildlife

studies are completed to determine the suitability of the property for use as a wind farm. The development term is the time when transmission routes, turbine locations, substation determination and siting permits are obtained and construction plans start forming. These, along with many other items, are completed during this initial stage, and if information proves to be positive and suitable for operations, then construction will begin based on the data collected during the development term..

Once the wind farm actually enters into electric generation, the operation term begins. This period of years is the time granted under the lease for the commercial production of electricity from the harvest of wind. Typical periods are from twenty to thirty years, with options to extend for additional terms of similar time periods. Resultantly, the lease being presented to the landowner is for time frames spanning several generations if not more. The typical wind lease does however, have a date when it will eventually terminate (unlike the language seen in oil and gas leases “for so long as oil and gas is produced”). Despite the eventual termination, the long duration is of great concern in the negotiation of wind leases, because it will have potential effects on later generations of landowners. These reasons emphasize the importance of knowing your clients’ wishes and the landowners’ long-term plans of use for the land.

3. Payment: In the negotiation of wind leases, and oil and gas leases, clients seem to be virtually blind to all lease provisions but for the payment clauses. It is important to stress to the Client that not only should they care about the check at the end of the day, but the rest of the lease terms. The payment terms may be the most important thing to the Client, but considering the long term duration of the wind lease, the possible adverse effects of

other uses, and possible surface damage, advising the landowner as to all aspects of the lease is of utmost importance.

Payments under a wind lease consist of payment during the development term of the lease, surface damage payments, and payment during the operation term of the lease. Each item of payment requires consideration.

Surface damage payments are similar in nature to those you will find in an oil and gas lease, and are commonly stated in dollars per event, dollars per acre or other measurement such as foot or rod. These payments are one time payments which do not normally reoccur. "Installation fees," "surface damage fees," and "disturbance payments" are what these types of payments are termed. Fees for such payments are negotiated sums, and are paid to the landowner upon the identified occurrence or within a specified time of the occurrence. Surface damage payments are generally tied to the easements granted in the wind development lease. Such easements can include the right to travel to and from facilities on the property; installation, use, repair, replacement, and removal of such facilities; any overhang of the turbines on neighboring properties; and turbine shadow flicker, light pollution, view, audio, turbulence, electromagnetic, etc. types of easements. In some cases, the wind developer will attempt to include a standalone easement for the landowner's adjacent property, but generally a landowner would be better advised not to commit his unleased land for such a purpose.

The development term payment is typically an amount per year per acre, or a onetime lump sum. Rarely are these payments of any real significance to the landowner's income, and are only important to maintain the lease in effect. Some development term payments do however reach high enough to warrant interest if the wind farm is in a

location which is highly desirable because of wind quality, location to other wind farms, or location as to transmission.

Payments during the production term more often than not are based upon a minimum per acre annual payment, or a minimum per megawatt amount, or a percentage royalty of the income from the sale of electricity from the wind farm.

The per acre minimum payments are a base rent amount necessary to hold the lease in place and compensate the landowner who typically does not have a wind turbine on his property. There are cases, however, of pooling of landowners' interests to share in the total overall production of the wind farm among all landowners included in the wind farm; this pooling however would not include any surface damage payments to be pooled. This base rent is also paid if the royalty from the turbine is less than the base rent. This minimum annual payment is paid to the landowner regardless of the effectiveness of electricity generation that year, and ensures that the landowner is compensated for the encumbrance of the wind technology and other improvements upon his land even if the wind does not blow or because of mechanical issues.

The next form of payment is the "royalty payment." Royalties are the most substantial landowner payment, as well as long-term payment available to the landowner and other wind right owners. These payments are received according to the lease contract on a monthly, or less often, period and are calculated as a percentage of gross sales of electricity generated on the property each month. The percentage amount is negotiable in the wind lease, but typically range from 3% to 10%. The standard wind lease usually has a beginning royalty rate that escalates over the term of the contract in intervals of years either annually or a term of years, such as every five years, with the maximum royalty

rate being paid at the end of the lease term. This payment is a function of a formula of the gross revenue generated for the entire wind farm to the total of turbines or megawatts upon the landowner's property. Particular attention in the lease contract should be given to the definition of gross revenue or royalty, as this could significantly affect the payment to the landowner.

4. Assignment: In almost all wind leases there is included the right to assign the rights either granted or reserved. Both the lessor and the lessee have the independent right to assign their rights under the lease to another. However, for the most part these provisions are for the benefit of the lessee, because it common practice for the wind developer to assign its rights to another company to develop, own, or operate the wind farm. Language allowing the assignment should require the assignee to assume all rights and duties of the assignor, and additionally require that the assignment must be done only after notice to the landowner. Additionally, the assignment should not release the original lessee from liability from any duty under the lease if at all possible. The wind lease almost always has extensive financing provisions included. These provisions quite often include assignment clauses, which are necessary to obtain financing for these capital-intensive projects. Some provisions allow for the lending institution to be an assignee either voluntarily or by foreclosure and limit its liability. Particular attention should be directed to this language to determine the obligations of the assignee to the landowner upon such occurrence.
5. Surface Use: Additional clauses included in the wind lease cover the use of the surface. As previously stated in the "Grant" section above, the use of the surface in a wind lease is not the same as in an oil and gas lease. Whereas in the oil and gas lease the surface is

subservient to the mineral estate, the wind has no such privilege. The use of the surface for the harvesting of wind for the production of electricity is one of grant. Specific language needs to be included to grant each specific use, and not allow a blanket grant for the wind developer to use the entire surface necessary or reasonable for the intended use of the harvest of wind. The language utilized can be broad and creative as the drafter can imagine in negotiation of the terms of the lease. In agricultural areas, normally the land targeted for wind development, specific attention needs to be given to the current, intended and long term use of the property. Land used primarily for grazing of livestock has one set of concerns such as reseeding and reclamation of disturbed areas, fencing, animal injury or death, and water runoff and availability. Farmland has a complete other set of requirements, including but not limited to crop and soil damages, water effects on both surface and subsurface, the used of chemicals, use of agricultural equipment for irrigation and otherwise. As stated previously, other leases of the property should be identified and addressed in the negotiation of the wind lease. Additionally there should be provisions included to allow activities of humans upon the leased property not only conducting agricultural operations, but also recreational activities such as hunting, hiking, off road use, and others.

Typically, fees are associated with each grant of use of the surface. Some of the typical use fees included in the wind lease are fees to place roads, pipelines, electric lines, turbines, lay down yards, substations, and maintenance and operating buildings. Each intended use has fees associated with it. Fees are based upon some negotiated sum that is paid according to location, amount, or distance.

Typical road provisions will allow roads to be placed in locations agreed to by the landowner and developer, at a rate usually paid on the number of feet, rods, or other measurement. It is not uncommon for the road provisions to include different width requirements during construction and after construction; this is because the large equipment needs wider roads during construction, and after construction, the lease will often require the road to be narrowed to a certain width, normally just enough to allow a single vehicle to travel. Materials used to construct the road are of importance to many landowners and is more acute in farmland because of interference with farm equipment. Particular language for the road material should be included, such as gravel, caliche that is crushed and not pit run, or specify the size of the aggregate used. Attention should be given to whether the lease includes or excludes use of such materials existing on the property, and additional payment for the use of materials.

Pipelines, electric lines and other cable type lines are almost always required to be buried within the wind farm itself, meaning between turbine and turbine until such line exits the wind farm. Burial should be completed using a double ditch method to prevent unwanted subsoil particles being left on the surface, and the surface is to be returned to as close to prior use condition as possible. Once the power generated leaves the wind farm, above ground construction methods are common. This is accomplished by poles or other above ground structures being utilized to transport the energy away to distant markets. Almost always the compensation to the landowner is by a onetime payment based upon a negotiated fee. Provision should be made if possible for the fees set in the contract to have some predetermined escalation to allow for increase over the extensive term of wind lease contracts. Additionally, attempts have been made (with only marginal success) to

negotiate fees for transmission lines based upon use. For instance a fee based upon a percentage of the electrical power traveling the transmission route over the landowners' property. This concept has been met with resistance to say the least; however, realistically this is the most equitable payment structure since it compensates the landowner for the amount of use and continues from landowner to landowner over the term of the contract. Perhaps, with time, this will become a more common practice in the industry.

Compensation for items such as turbines, lay down yards, and maintenance and operation buildings are more often than not a flat fee for each item. Consideration should be given to the amount of land allowed to be used. A provision setting the fee for each, with a limitation of the number of acres that may be utilized, is frequently used, and may have an annual reoccurring fee. It seems that the more a fee is requested to continue past one initial payment for surface damage, it is resisted with a zealous attitude. In representing landowners, great consideration should be given to the long term effect of the wind energy lease in these provisions, as one time payments may not, and quite often do not, adequately compensate the landowner for the continued use and disturbance of the property.

It is important to understand that the continued use of the surface for the production of electrical power may change over a period of fifty to seventy years. Provisions covering surface damage should require compensation for any and all surface damage, regardless of when they occur. The damages we contemplate today may or may not be of consequence years after the original parties to the contract are long gone. When considering surface provisions, it is important to contemplate that this lease will continue

for decades; the language we use will more than likely be looked at, reviewed, and interpreted long after you the advisor, and the landowner are gone. No pressure of course, just that the provisions drafted today need to include what was, what is, and what could be concerning the use of the surface for today and tomorrow.

6. Decommission of Wind Farm. When the wind energy lease is complete, or perhaps when wind turbines are no longer economically feasible, there is a presence of literally tons of equipment and structures left on the property. Each turbine consists of approximately 225 tons of steel, 28.8 tons of fiberglass propellers (which are non-biodegradable), 850 gallons of contaminated oil, and a concrete pad sufficient to carry the weight of and anchor the wind turbine. With current suitable crane rentals at \$10,000 to \$25,000 per day, the typical landowner will not be able to remove the equipment. A much debated and fought-over provision found in wind leases, not found in oil and gas leases, is a clause dealing with the removal of the wind turbines, and other improvements made upon the property after the useful life of the wind power facility has come to an end. The most common provision used to date is to require the developer to obtain a removal bond to insure that there are sufficient monies available at the time to remove the equipment. These bonds are required to be put into place after the wind farm is actually in operation, not at the time of construction. This is of concern in advising landowners, as it is a contractual obligation that is to be performed in the future and is only as good as the financial stability of the wind farm owner at the time such bond is required. The reality of such a bond is yet to be determined and the availability and cost is something still being discussed and planned. The security for such removal is not beneficial to the landowner in the current lease environment. Time will tell the result of provisions included for the

ultimate decommission of the wind farm and its related equipment. The one good thing about provisions such as these is that it is at least being included in the lease negotiations – unlike the oil and gas leases drafted forty to fifty years ago, which are so very difficult to deal with today.

7. Taxes. The payment of ad valorem tax should be addressed in each wind lease. The increase in tax payments required upon the property because of the improvements made due the wind energy development is the responsibility of the wind farm developer. Provision should be included in the wind lease to make sure this is covered, and indemnity for the payment of these taxes also needs to be covered with certainty.
8. Indemnification and Insurance. Great amount of thought should be given to the indemnification provisions included in the wind energy lease contract so as to provide as much protection for the landowner as possible. As the advisor negotiator, you should include the most inclusive indemnification you can. The possible liability for occurrences on the property is endless, and the landowner should not take on, nor be responsible for, any liability that may be created from the use of the wind energy development of the property. As discussed earlier in this paper, there are some people that see wind farms as a nuisance or an eye-sore. This means that there is possibility of neighboring landowners suing landowners with wind development on their land. There are also problems with migratory birds being affected by the turbines and the potential for liability in that area. The sky is the limit on “freak-accident” injuries that occur from the construction of wind farms. Your landowner client should be sure that the wind developer will take responsibility for any legal action resulting from their presence. Indemnification for the landowner as broad as possible should be included.

Concomitantly, strong insurance provisions need to be included to provide adequate protections with limits per occurrence and aggregate increasing over the term of the contract if at all possible. It has been the practice within the industry to negotiate limits based upon current limits, but the length of these contracts necessitates long term planning of the insurance requirements included in each lease contract.

Conclusion

The most difficult position in advising a landowner in the negotiation of a wind energy lease contract, oil and gas contract, or other lease where the landowner has the potential to receive large amounts of compensation for the use of the land, is what I refer to as “bank blindness”. Almost all of the landowners who come into my office look at these contracts not as to the ultimate affect it will have upon the land and their operations, but only what they individually will take to the bank. Oil and gas for years, and now wind has the mystique of wealth. The landowners commonly fall to the promise of great wealth and hastily execute a wind energy lease or oil and gas lease that promises to fulfill every dream, only to turn into a bad dream for them, their children and generations to follow.

A good lease is one where both sides of the bargaining table feel they have given more than they got. The best lease for the landowner is one that protects the landowners right of use for years to come, and affords the most return from the land from as many revenue streams as possible.

It seems that there will come a time that the person or entity seeking such leases will be better served by the purchase of the land instead of the temporary lease. But that is for another discussion and another paper.

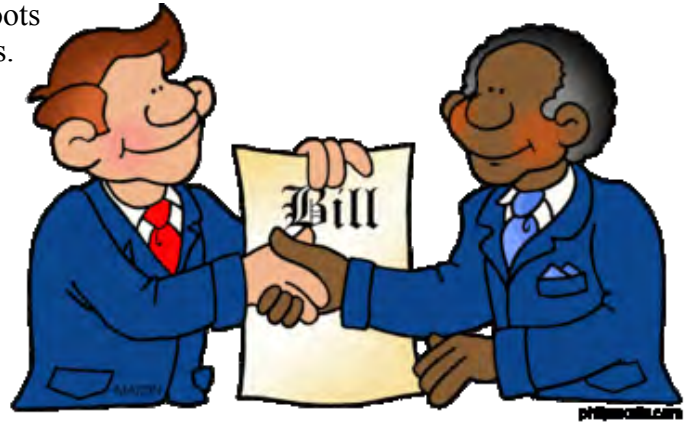
Entering into a lease, be it for wind energy production or oil and gas is a long-term relationship. In any such relationship it is best for the landowner to know intimately the party with whom he is contracting; the paper is as only as good as the party who stands behind it. Legal knowledge, foresight, and common sense are paramount in the negotiation of leases, especially wind energy leases because it is such a relatively young industry.

This discussion is intended to cover some of the many topics of importance to the landowner in negotiating an energy contract, but in no way covers the entire waterfront. The changes occurring in technology, use of energy, political policy and a host of other factors require us as practitioners to constantly update and learn more of this fast changing facet of representing our landowner clients. The next best wind energy lease contract may just be sitting on your desk.

LEGISLATIVE UPDATE

CURTIS ALLEN PARRISH has family roots running deep in the cotton fields of West Texas. He is a fifth generation West Texan. His great-great-grandfather came to West Texas after the Civil War to capture and break wild mustangs.

Curtis attended Lubbock Christian University and Texas Tech University, where he graduated Magna Cum Laude with a bachelor's degree in Political Science and is a graduate of the Texas Tech School of Law. He is licensed to practice law by the Supreme Court of Texas.



His law practice specializes in wills and probates, guardianships, contracts, oil and gas, business, public, and constitutional law.

He is the co-host of “West Texas Today” on AM950/100.7FM, and is the legal analyst for Fox34 News at Nine.

Prior to law school, Curtis worked in Lubbock media for over 16 years as an assistant news director and chief photographer. Following his career in media, Curtis pursued his interest in legislature, working for Texas Senator Robert Duncan as a legislative aide, and as the committee clerk for the Juvenile Justice and Family Issues Committee of the Texas House of Representatives.

Curtis has always been active in the Lubbock community, having worked with and served on the boards of several organizations, including Civic Lubbock, Inc.; Lubbock United Neighborhood Association; and The Salvation Army of Lubbock. He also had an active part in establishing the Buddy Holly Museum and was an integral part of the Buddy Holly Walk of Fame for many years.

Curtis will begin his 18th season as the public address announcer for Red Raider Football this fall. He also announces numerous other Red Raider sports, including baseball, basketball, and soccer.

Curtis and his wife, Brenda, have four children. They are members of the Broadway Church of Christ, where Curtis serves as an Elder and where he and his family are active in the youth and family ministries. Curtis also sings with the Praise and Worship team.

NO PAPER OR PRESENTATION SUBMITTED

The Innocence Revolution: Increasing Public Awareness of the Treatment of People Accused of a Crime

BRANDON BECK is an appellate attorney with the Federal Public Defender's Office in Lubbock, Texas. He frequently teaches other lawyers about current issues in federal sentencing law and constitutional criminal procedure. He has also taught legal research and writing at the Texas Tech University School of Law. He is a graduate of the University of Texas at Austin, Boston University, and Texas Tech University School of Law.





What went wrong for Brendan Dassey?

- (1) His confession
- (2) The way his confession was presented to the jury
- (3) Inconsistent prosecutorial theories



Confession Law

Bram v. United States, 168 U.S. 532 (1897)

Spano v. New York, 360 U.S. 315 (1959)

Colorado v. Connelly, 479 U.S. 157 (1986)

***Bram v. United States*, 168 U.S. 532, 542-43 (1897)**

"[A] confession, in order to be admissible, must be free and voluntary; that it must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence."

***Spano v. New York*, 360 U.S. 315 (1959)**

"Confessions must be the product of a free and unconstrained choice when the suspect's will was not overborne."

"Confessions are essential to society's compelling interest in finding, convicting, and punishing those who violate the law."

***Spano v. New York*, 360 U.S. 315, 320-21 (1959)**

"The abhorrence of society to the use of involuntary confessions does not turn alone on their inherent untrustworthiness. It also turns on the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves."

***Colorado v. Connelly*, 479 U.S. 157, 167 (1986)**

"We hold that coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment."

Connelly's two-part test: Coercion — Voluntariness

Factors: Coercion



- Threats
- Promises
- Interrogation Techniques?

Factors: Voluntariness



Interrogation:

- Length
- Location
- Continuity

Subject:

- Maturity
- Education
- Physical condition
- Mental health

Was the suspect advised:

- Right to remain silent?
- Right to have counsel present?

Prognosis

Did Brendan Dassey win his motion to suppress? No.
Can Brendan Dassey win a motion to suppress? Probably not.
Is his confession reliable? Probably not.

Problem #2: The Confession's Presentation to the Jury



Dassey trial: April 20, 2007

ATTORNEY FALLON: Your Honor, I believe we've agreed that the remainder of the, um, discussion does not contain pertinent questioning of the defendant and I think we agreed to, um, stop the tape at this particular point.

THE COURT: And to the defense, is that true?

ATTORNEY EDELSTEIN: It is, Your Honor.

THE COURT: All right.

Prognosis

Did Brendan Dassey prevail on a claim of IAC? No.
Can Brendan Dassey win a claim of IAC? Probably not.
Was his counsel effective? Probably not.

Problem #3: Inconsistent Prosecutorial Theories



<p>Avery trial</p> <p>"Defense argued that there was no child abuse in the trial. Since Texas wasn't held to the higher, more stringent standard."</p> <p>John Fritz, March 15, 2007</p>	<p>Dassey trial</p> <p>"They go back to the bedroom. Steven Avery asks her to fix a lamp. He hands her knife to the defendant [Brandon Dassey]. Says, hand it to her. ... He says, He helps kill her. He rapes her. He cuts her throat."</p> <p>—Tom Fallon, April 25, 2007</p>
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Judicial Estoppel (estoppel by inconsistent positions)

Common law doctrine first noted by U.S. Supreme Court in 1895 in *Jos. Davis v. Wallace*, 156 U.S. 660 (1895).

"It may be laid down as a general proposition that, where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply to secure his interest, take a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him."

Most recently applied by Supreme Court in 2001, in *New Hampshire v. Maine*, 532 U.S. 742 (2001).

Factors to consider (elements)

1. a party's later position must be "clearly inconsistent" with its earlier position;
2. whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create "the perception that either the first or the second court was misled";
3. whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

What about the criminal context?

Judicial estoppel has only been mentioned three times by the Texas Court of Criminal Appeals:

- 1. *Schmidt v. State*, 278 S.W.3d 353 (Tex. Crim. App. 2009)
- 2. *Vaizel v. State*, No. AP-76-051, 2012 Tex. Crim. App. Unpub. LEXIS 607 (Tex. Crim. App. June 13, 2012)
- 3. *Ex parte Alexander*, No. WR-93,764-01, 2015 Tex. Crim. App. Unpub. LEXIS 672 (Tex. Crim. App. Oct. 7, 2015)

Smith v. Groose, 205 F.3d 1045 (8th Cir. 2000)

The major case on judicial estoppel in the criminal context:

Quoted by 25 states and all federal appellate courts except for the F.D. Circuit and Federal Circuit.

Smith v. Groose, 205 F.3d 1045 (8th Cir. 2000)

"In short, what the State claimed to be true in Smith's case it rejected in Cunningham's case, and vice versa. The State points out in its brief that "there is no question that the victims were killed during the burglary either before or after the positions began to participate." This is precisely the point—the State argued in one case, "before," and in another case, "after," in its successful attempt to prove beyond a reasonable doubt that the Chamborses were murdered at two different times."

Smith v. Groose, 205 F.3d 1045 (8th Cir. 2000)

"We do not hold that prosecutors must present precisely the same evidence and theories in trials for different defendants. Rather, we held only that the use of inherently factually contradictory theories violates the principles of due process. For example, the passage of time between trials, such as the four months' time between Smith's trial and Cunningham's, may be a legitimate excuse for minor variations in testimony or defects in memory, as seems to have occurred in *Albanese*. In Smith's case, however, the relevant variation was neither minor nor found in the testimony at trial."



WINE LAW

Elizabeth G. Hill

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Elizabeth Geary Hill practices in the areas of commercial/civil litigation, appellate law and agricultural law in both state and federal court. Elizabeth assists clients with a wide range of litigation and appellate issues, as well as transactional business and agricultural needs, including vineyard and winery law. Elizabeth has handled multiple appellate cases and has had the distinct honor of arguing before the Texas Supreme Court, the United States Fifth Circuit Court of Appeals and the Amarillo Court of Appeals. Elizabeth recently successfully defended against a petition for writ of certiorari before the United States Supreme Court. Elizabeth teaches Vineyard & Winery Law at the Texas Tech School of Law as an Adjunct Professor. Elizabeth was recently presented with the “GOLD” Award (Graduate of the Last Decade) from the Texas Tech School of Law and was named a 2017 Super Lawyers Rising Star in Commercial Litigation.

A *summa cum laude* graduate of Texas Tech School of Law, Elizabeth remains highly involved as a volunteer advocacy coach for the law school. During her time at Tech Law, Elizabeth was a two-time national champion in intercollegiate moot court competitions, including the American College of Trial Lawyers’ National Moot Court Competition in 2012. Elizabeth and her team defeated 190 other law schools to emerge with both the best brief and best oral argument in the nation. While studying for the bar exam during the summer of 2012, Elizabeth was named the Best Advocate in Texas by the Texas Young Lawyers Association in conjunction with the State Moot Court Championships. Elizabeth now volunteers as a coach for Tech Law and assisted in coaching the Tech Law national championship team of the ABA National Appellate Advocacy Competition in 2013 and Tech Law national championship team of the National Pretrial Competition in 2015. In addition to her involvement in advocacy, Elizabeth served on the Law Review and was awarded a Best Student Article Award for her published comment discussing agricultural law. While attending law school, Elizabeth worked as a judicial intern to Federal Judge, Sam Cummings.

Other Awards and Honors:

- Order of the Coif
- National Order of Barristers
- National Champion and Best Advocate, National Entertainment Law Moot Court Competition; 2010

Professional Associations and Community Involvement:

- Leadership State Bar of Texas; Class of 2013-14
- State Bar of Texas Jury Service Committee
- Texas Association of Defense Counsel, Young Lawyer’s Committee
- Volunteer Coach for the Texas Tech School of Law Advocacy Program

- Risk Management Advisor, Kappa Kappa Gamma – Texas Tech Chapter
- American Inns of Court, Associate Member
- President, 2014-15; Lubbock County Women Lawyers
- President-Elect, 2015-16; President, 2016-17; Lubbock Junior Women’s Club
- Director, 2014-15; Lubbock County Young Lawyer’s Association
- Board Member, 2014-2019; YWCA of Lubbock

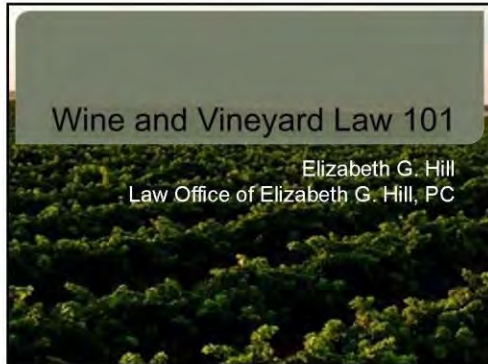
Publications and Presentations:

Nature’s Harvest or Man’s Profit: Environmental Shortcuts in the (De)Regulation of Genetically Modified Crops, 44 TEX. TECH L. REV. 353 (2012).



Growing Texas Wine: A Primer for the Practitioner and a Challenge to the Legislature, 47 TEX. TECH. L. REV. 635 (2015).

Wine and Vineyard Law 101

Elizabeth G. Hill
Law Office of Elizabeth G. Hill, PC



Attorney at Law & Winery Owner and Vineyard Family



Wine is Different

- Settlers and colonial governments encouraged development of a wine tradition in America
- Wine was a part of colonial way of life
 - "The wine is from God, but the Drunkard is from the Devil"
 - Increase Mather, minister of Boston's Old North Church and later president of Harvard University
- Wine was considered an agricultural product removed from the culture of public drunkenness and tavern brawls

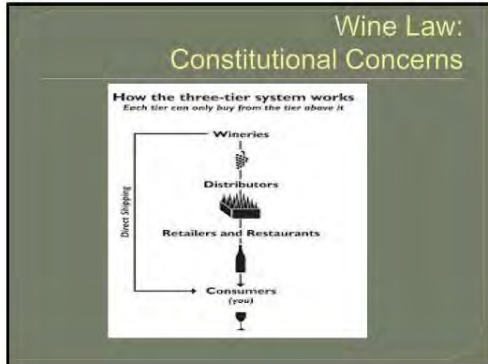
Campaign for Prohibition



- As part of his campaign for President, Franklin Roosevelt endorsed the Democratic party platform calling for the immediate legalization of manufacturing and selling beer and other alcoholic beverages. His election was considered a mandate for repeal.

21st Amendment

- In 1935, the 21st Amendment repealed prohibition (18th Amendment).
- Delegated authority to the states
- Texas adopted the Three Tier System
 - Enacted for the purpose of being a "checks and balances" system
 - Also for the stated purpose of preventing anti-competitive practices, such as the creation of a "tied house"



May, 2005 – Supreme Court Ruling in *Granholm v. Heald*

- States can “regulate”, but they can’t “discriminate”
- Any geographical or “site based” discrimination is likely to be unconstitutional
- In-state and out-of-state wineries must have an equal playing field
- Cited 1980’s cases for the proposition that “state regulation of alcohol is limited by the nondiscrimination principle of the Commerce Clause.”



Skipping the middle man

- Direct to Consumer Shipping Laws
- Texas allows direct shipper’s permits
- Winery permits allow direct consumption on the winery premises or in sealed containers not to exceed 35,000 gallons total annually
- 1 ton of grapes typically makes 750 bottles of wine

Alcohol and Tobacco Trade and Tax Bureau (“TTB”)

- Federal branch that oversees all aspects of the industry
- Requires label approval to prevent consumer deception and use of misleading statements on labels
- TTB promulgates the rules on AVA, labeling requirements, etc.

Texas Alcoholic Beverage Commission

- ⦿ “Regulates every phase of the business relating to alcoholic beverages, including manufacture, sale, purchase, transportation, storage, distribution, labeling, etc.
- ⦿ A business may apply to be either a retailer OR a distributor (3 tier system)
- ⦿ Since 2000, the TABC has shifted its role to focus more on “public safety”

Texas Department of Agriculture

- ⦿ Oversees the Go Texan program (as well as other funding for winery and vineyard development)
- ⦿ Dispute over whether it would be TABC or TDA – TDA was selected.

History of the Texas Industry

- In 2000 – 40 wineries in Texas
- In 2010 – 157 wineries in Texas
- In 2014 – 275 wineries in Texas
- In 2017 – over 400
- In 2006 – 3,200 acres of wine grapes
- In 2015 – about 7,000 acres, 4,000 bearing grapes – This number is increasing, but is not readily known
- The demand for Texas wine grapes currently far exceeds the supply—but may be flipping this year due to the 70% rule for labeling.

Wine Law: Go Texan

- ⦿ Go Texan label – under fire
 - No requirement that the bottle of wine actually contain Texas grapes, UNTIL this year
 - Designation had been satisfied if produced in Texas
 - Shortage of Texas grapes to blame
 - California has a 100% requirement
 - As of July 13, 2015, the Go Texan label requires 75% Texas grapes.
 - Agricultural Commissioner oversees

GO TEXAN. Program

- ⦿ Texas ranks 5th in the nation
- ⦿ Advocacy: Go Texan and the Department of Agriculture



Wine Labels

- AVA – defined under the Code of Federal Regulations, defined area with similar soil and climate conditions
- Only 70% must come from Texas to be labeled Texas wine – HUGE controversy
- 85% if the grapes must come from the AVA to garner the label
- Vintage – the year the grapes were harvested
- 95% must come from the vintage to garner the label
- Must include other information, such as sulfites and alcohol content

AVA – American Viticultural Area

- Fredericksburg is in the Hill Country AVA
- Second largest in the country: spans 9 million acres



High Plains AVA: 3rd largest



Unique Considerations for Vineyards

- Tax Implications
- Business Entity Selection
- Contracts
- Employment Issues
- Inherent Risks
- Specialty Crop Treatment
- Wine Law
- Crop Insurance
- Farm Bill

Texas Vineyards

- 80% have 100 acres or less
- 40% have 20 acres or less
- Impact: high production costs

Tax Treatment

- Can I catch a break? A “capital intensive” industry
 - The pre-productive period: treated as a long-term investment.
 - *Commissioner v. Idaho Power Co.*, 418 U.S. 1 (1974)
 - Commercially harvestable crop?
 - Three years typically in the wine grape industry as opposed to one year in most other crops (cotton, alfalfa, corn)

Tax Treatment

- Equipment and Development Costs



Tax Treatment

<p>LAND IMPROVEMENT</p> <ul style="list-style-type: none"> • Drip Irrigation System • Vines (associated costs) • Buildings • Other land improvements 	<p>EQUIPMENT</p> <ul style="list-style-type: none"> • Trellis System* • Tractors • Sprayers • Harvesters
--	---

* *Trentadue v. Commissioner*, 128 T.C. 91 (2007)

Whiteco Factors

- (1) whether property is capable of being moved;
- (2) Property is designed or constructed to remain permanently in place;
- (3) Circumstances that tend to show the expected or intended length of affixation;
- (4) How substantial a job is removal of the property – how time consuming.

Entity Selections

- **Dual entities**
 - Deferral of tax payments determined improper
 - *Oakcross Vineyards, Ltd. v. Commissioner*, 142 F.3d 444 (9th Cir. 1998)
- **Brother-Sister Entities**
 - Solution to allow wineries and vineyards to operate together
 - Deferred intercompany transaction

Contracts

- Typically written contracts exchanged
- Length is multi-year – no payment until harvest
- Fixed price per tonnage with incentives or bonuses for quality variables
- Prices fluctuate with varieties and with the vineyard's history and reputation
- Negotiated pricing terms – not typical for Texas

Contracts

- **Payment Terms**
 - Should clearly delineate payment plan – 30-, 60-, 90-day increments or set deadline
- **Miscellaneous Terms**
 - License for use of vineyard name
 - Grape growing and harvesting practices
 - Dispute resolution

Employment Issues

- **Migrant Workers**
 - Often needed in Texas due to the labor intensive nature of growing wine grapes
 - Napa Valley has an undeniable reliance on migrant workers
 - Vineyard owners must ensure compliance with immigration control, including the H-2A worker visa program specifically for migrant workers
 - Could lead to criminal liability for failure to comply

Crop Insurance: Challenges for Specialty Crops

- ⦿ Lags behind the commodity crop industry significantly
- ⦿ Establishing revenue history is greatest challenge
 - In Texas, governmental budgets cuts have eliminated the annual report in recent years.
 - Actual Production History – in early years is limited for the three year production average
 - California prices are significantly less in most occasions

Late Spring Freezes



Crush Report

- ⦿ California industry publishes an annual crush report
 - Total tons per acre
 - Varietal break downs
 - Price per ton
 - Variety
 - County
 - Other variables

2014 Farm Bill – Wine Grape Industry Treatment

- ⦿ Specialty Crop funding increased by 55%
 - Specialty Crop Research Initiative to receive permanent budgeting
 - Funding distributed directly through states
 - Could allow Texas to ensure an annual crush report each year
 - Organization needs adopt the project
 - Could supplement viticulture expert consulting

Potential Future Issues

- ⦿ 2019 – Sunset for TABC
- ⦿ Labeling issues – 70% rule will be challenged again
- ⦿ Continued issues with crop insurance
- ⦿ Herbicide/pesticide exposure as vineyard growth continues
- ⦿ Contracting leverage between growers and wineries to ensure specific provisions that would be beneficial to growers
- ⦿ Changes in Wine Law

Questions



**LESSONS NOT LEARNED IN LAW
SCHOOL**

**ETHICS
RUSTY GUNTER**

Lessons Not Learned in Law School

LAWYERS



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(With assistance from the esteemed Jeff Kearney)

DO NOT RAISE CLIENT EXPECTATIONS



Conduct a thorough investigation



DO NOT TALK TO CLIENTS ABOUT THE FACTS IN THE PRESENCE OF OTHERS



Always, Always Get a Signed Contract



Be Candid

It's Pronounced "Loy-er" not "Liar"



Maintain Communication with Client



Make Client Aware of Ancillary Repercussions



Do Not Let the Client Dictate How the Defense is Presented



Take Responsibility

It's not my fault that I don't take responsibility for my own actions...



someecards.com



The time is always right to do what is right.

-Martin Luther King Jr.





Creating a positive work culture ... even if you're not in charge

JODIE L. BILLINGSLEY—the speaker for the Professional Development Luncheon is a human resources professional with over 15 years of experience in leadership positions for both public and private sectors. Currently, Jodie is employed by Texas Tech University as the Assistant Vice President for Human Resources. In this role, she is responsible for leading strategic and functional human resource initiatives that support the University's mission and goals and embraces a people-first philosophy. Additionally, Jodie represents the University by serving on various committees within the campus and local communities. Prior to joining Texas Tech University, Jodie held the position of Senior Vice President of Human Resources for the American Bank of Commerce.

Jodie is a graduate of Texas Tech University and holds nationally recognized professional certifications, including designation as a Senior Professional in Human Resources (SPHR) from the Human Resources Certification Institute and as a Senior Certified Professional (SHRM-SCP) from the Society for Human Resource Management.

As the Assistant Vice President for Human Resources at Texas Tech University, she oversees a staff of 35 employees and supports over 5,000 full-time employees and 6,500 part-time and student employees. Her team is responsible for all areas of human resources, including talent acquisition, talent management, talent development, employee benefits, employee compensation, and human resources, IT applications and systems. They embrace a people-first philosophy by developing and fostering collaborative partnerships with administration, faculty, and staff to find innovative solutions in an academic environment.

Working for a large public institution, it is imperative that she stay informed and up-to-date on all current and proposed human resource related laws and regulations and that she organize and lead committees to develop and implement appropriate solutions accordingly. She serves on various committees related to other university matters such as Title IX, strategic planning, information technology, leadership, and compliance.

Two examples of Jodie's leadership experience are initiating and serving as the chairperson for the Fair Labor Standards Act (FLSA) committee and employee development.

TTU is a large employer so it is imperative to plan ahead. In October 2015, preparations began for the proposed December 1, 2016 FLSA changes. Jodie formed a committee with representatives from three component institutions and several departments to design an implementation plan. For TTU, she delivered over 26 FLSA presentations customized for each specific audience.

Jodie teaches the Human Resources Leadership module during the President's Leadership Institute. She has received positive feedback on content and presentation of this 4-hour class presented to an audience of faculty and staff. She supports the professional development and recognition of all employees. As a result, human resources employees have earned college degrees, professional certifications, promotions, distinguished staff awards, and service excellence awards.

Texas Association of Legal Professionals Fall Conference

Creating a Positive Culture ... *Even When You're Not in Charge*

Jodie L. Billingsley SPHR, SHRM-SCP

Creating a Positive Work Culture

Purpose and Disclaimer

The purpose of this presentation is to provide ideas and resources to the Texas Association of Legal Professionals in a manner that may be useful to you in your specific role within your organization.

Sources are cited to give credit to the author and to serve as resource document for continued development.

Creating a Positive Work Culture

Overview

- Leadership
- 3 Spheres of Control
- Receiving Feedback
- Making Decisions
- Demonstrating Accountability
- Benefits of a Positive Work Culture

Leadership

Boss or Leader?

Happy Boss's Day to the person whose job I never, ever, ever want!

"I LOVE my boss-in fact I'm filing her under 'Awesome Bosses' right now!"

Happy Boss's Day!

A Gallup Poll released in April 2015 found about half of the 7,200 adults it surveyed had left a job to get away from their manager.

Bayler, B. (2015, April 10). Half Of 13 Billion Quit Our Job Because of a Bad Boss. Retrieved September 13, 2017, from <http://www.cnn.com/2015/04/09/quit/index.html>

Leadership

Co-Workers?

Happy Co-worker's Day to the person whose job I never, ever, ever want!

"I LOVE my Co-worker-in fact I'm filing her under 'Awesome Co-Workers' right now!"

Happy Co-worker's Day!

Gallup research finds that a positive relationship with coworkers is one of the 12 characteristics of an Employer of Choice.

Harshbarger, J. M. (n.d.). Are You an Employer that Employees Will Choose? Retrieved September 13, 2017, from <http://www.dailymotion.com/video/x1111111>

Leadership

The Titanic – A Tragic Love Story?

Leadership


The Titanic – A Tragic Leadership Story.



Employees have personal agendas.
 Some bosses are so frantic they are frantic.
 No one is ever concerned about the employees escaping in the life rafts. Can they be saved or are there plenty more waiting to take their place?
 The captain is always looking ahead, his back is to the iceberg. He never looks back to see if he is being followed. He never looks back to see if he is being followed.


Leadership

The Titanic – A Tragic Leadership Story



Creating a Positive Work Culture

Who is responsible for sailing the ship?



Creating a Positive Work Culture

But ...


- I'm not in charge
- I'm new / I'm part-time
- It's not my job / I just do my job
- I tried, it didn't work
- I'm too busy
- _____
- _____

Creating a Positive Work Culture

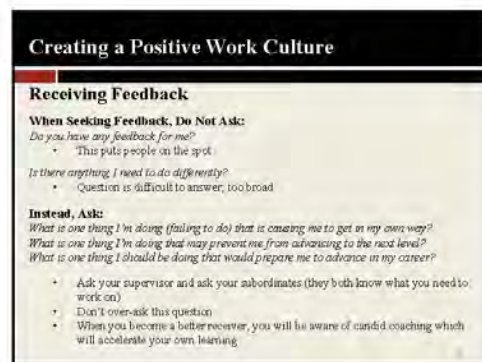
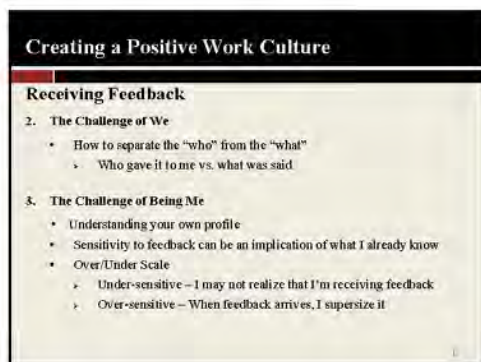
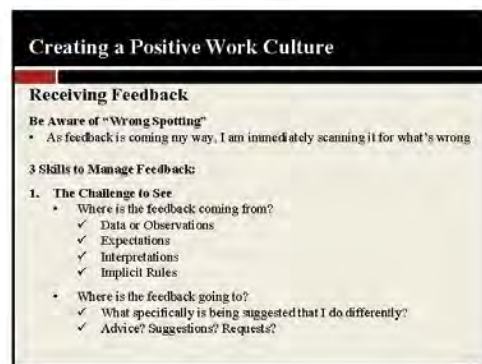
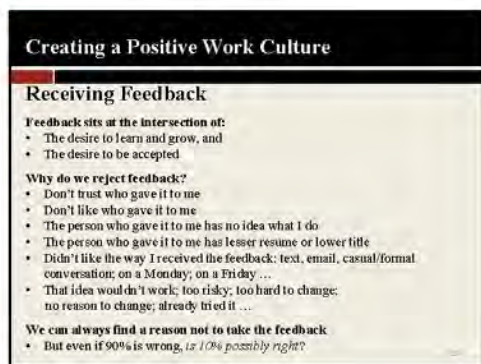


Creating a Positive Work Culture

The 3 Spheres of Control



For additional reading, Stephen R. Covey's book, *The 7 Habits of Highly Effective People* discusses Circle of Concern and Circle of Influence. *The graphic shown above is not from Covey's book.



Creating a Positive Work Culture

5 Questions You Should Ask Yourself Before Making a Final Decision

1. Will what I'm about to say or do improve the situation?
2. Will this decision move the university forward?
3. Who will be happy about this decision?
4. Who will be unhappy about this decision?
5. Is it still the right decision?

Creating a Positive Work Culture

Demonstrate Accountability

Accountability Killers

1. Showing up late and missing deadlines
2. Saying you'll do it, but not doing it
3. Being offended by the truth
4. Covering up mistakes
5. Blaming others
6. Asking others to cover for you
7. Doing the bare minimum
8. Ignoring others' bad behavior
9. Communicating in an immature manner
10. Failing to take or give feedback
11. Expecting others to remind you to act
12. Expecting an "A" for effort
13. Being a victim instead of a solution finder
14. Having a "me first" attitude

Model and Content's Responsibility is Inspiring Accountability Culture in Work

Creating a Positive Work Culture

Why It Matters ... Benefits of a Positive Work Culture

1. Positive people live longer.
2. Positive leaders are able to make better decisions under pressure.
3. Positive people who regularly express positive emotions are more resilient when facing stress, challenges, and adversity.
4. Positive people are able to maintain a broader perspective and see the big picture which helps in identifying solutions.
5. Positive environments foster high performing employees.
6. Positive environments experience increased sales.
7. Positive emotions such as gratitude and appreciation contribute to employees performing at a higher level.
8. Positive leaders are more likely to garner support of others and achieve greater success in the workplace.



Tips for the Texas Lottery Winner

LEVI T. SIEBENLIST

Field, Manning, Stone, Hawthorne & Aycock, P.C., Lubbock, Texas (2010 – Current)

Primary Areas of Practice: Tax Law; Business and Commercial Law; Estate Planning and Probate; Wills & Trusts; Estate and Trust Administration; Mergers and Acquisitions

Certifications: Board Certified in Tax Law, Texas Board of Legal Specialization

Admitted to Practice: Texas; United States Tax Court

Education:

Bachelor of Business Administration, Accounting, from the University of Texas, 2005;
Doctor of Jurisprudence from Texas Tech University School of Law, 2009;
LL.M. Masters of Laws in Taxation from the University of Houston Law Center, 2010

Awards:

Outstanding Young Lawyer of the Year – Lubbock Area Bar Association – 2016
Volunteer of the Year – Volunteer Income Tax Assistance - 2009

Civic:

Past Director & President of the Lubbock County Young Lawyers Association, May 2015 - May 2016;
Past Director of the Lubbock Area Bar Foundation, May 2015 -May 2016;
President and Director of the South Plains Trust and Estate Council, 2016;
President-Elect and Director of the West Texas Chapter of the Texas Epilepsy Foundation, 2016;
Director of Coalition of Community Assistance Volunteers, 2015-2016;
Transition Team Committee Member at Lakeridge United Methodist Church, 2015-2016

Background: USAF Veteran, Dyess AFB, Texas 1997-2001; Wife is Traci D. Siebenlist, attorney at Crenshaw, Dupree & Milam, LLP in Lubbock, Texas; Children are Caleb (age 2) and Kate (newborn)

Email: levi@lubbocklawfirm.com

NO PAPER OR PRESENTATION SUBMITTED

HOMICIDE INVESTIGATION

REY MARTINEZ is a 36-year law enforcement veteran. He currently serves as a Criminal Investigation Specialist for the Lubbock Criminal District Attorney's office. He served 34 years with the Lubbock Police Department, with 32 years as a detective in the Robbery/Homicide unit. Investigator Rey Martinez has conducted thousands of investigations in violent major crimes such as homicides, sexual assaults, kidnapping, bank robberies, and narcotics investigations. He has also conducted successful foreign extraditions from Mexico.



Investigator Rey Martinez has received numerous awards and commendations, such as the Texas State Peace Officer of the Year award, Distinguished Service Award, and the Headliner Award and has been recognized by the United States Attorney General for his investigative expertise. Investigator Rey Martinez has also been featured on national television shows such as *See No Evil*, *Dateline 20/20*, and *The Paula Zahn Show*.

Investigator Rey Martinez assists and advises other law enforcement agencies on criminal investigations involving major violent crimes. His expertise and success in interview and interrogation has been utilized by multiple jurisdictions to obtain confessions and closure in cases involving major crimes.

NO PAPER OR PRESENTATION SUBMITTED



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