RECENT FEDERAL AND STATE CASES
2018 Tyler Roadshow

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FEDERAL

U.S. Supreme Court holds trial court must consider affidavit from juror regarding deliberations when it indicates another juror expressed anti-Hispanic bias during deliberations *Peña-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017).

- Normally, no court can inquiry into any jury deliberations
- When D approached by jurors who signed affidavit noting 1 juror expressed extreme racial bias
- Court held in such a situation, the court must consider the affidavit testimony, even though during deliberations

U.S. Supreme Court holds officers at scene were not required to believe innocent explanations of suspects.

- *District of Columbia, et al. v Wesby, et al,* 138 S.Ct. 577, — U.S. – (January 22, 2018).
- Officers Called out to vacant house from noise complaint
- Discovered makeshift strip-club going on inside
- All partygoers said “Peaches said we could do this”

Wesby

- Officers arrest EVERYONE
- Partygoers – officers should have known they were duped by
  Peaches
- US Supreme Court held – A lot of good stuff for LE and cities

Wesby

- The U.S. Constitution does not require the officers to believe the partygoers given the circumstances surrounding them.
- Probable cause "does not require officers to rule out a suspect's innocent explanation for suspicious facts."
- Totality of Circumstances controls – not individual explanations
- A factor viewed in isolation is often more "readily susceptible to an innocent explanation" than one viewed as part of a totality

U.S. Supreme Court holds officer entitled to qualified immunity after shooting woman walking towards roommate with a large knife

- Kisela v. Hughes, 138 S.Ct. 1148 (2018)
- Tucson PD dispatched to location (woman with knife)
- Arrived to see Hughs walking towards woman (knife in hand)
  - Told her to stop
  - Shot her

Kisela

- Excessive force is a fact specific analysis
- No perceived response to command
  - Dissent argues only waited a second or two
  - No registration
- Majority held officers entitled to qualified immunity

U.S. Supreme Court holds statutory deadlines are jurisdictional, court rule deadlines are not

- *Hamer v. Neighborhood Hous. Services of Chicago*, 138 S. Ct. 13, 199 L. Ed. 2d 249 (2017)
- Employment dispute – but not the focus of case
- Trial court granted MSJ for employer
- Hamer's attorney filed for 60 day extension to appeal (then withdraw)
- Employer asserted he can only extent appeal 30 days under FRCP (but did not raise until at COA)

Hamer

- Section 2107 of Title 28 of the U. S. Code, allowed different extensions, but none applicable to situation
- US Supreme Court - Seventh Circuit failed to grasp the distinction between jurisdictional appeal filing deadlines (from Congress)
- Vs. deadlines stated only in mandatory claim-processing rules (FRCP).
- Legislative deadlines are jurisdictional, FRCP are not
- Employer failed to preserve error for FRCP

U.S. 5th Circuit holds disabled individual did not request accommodation from officers performing field sobriety test so cannot sue for disability discrimination

- *Windham v. Harris County* 875 F.3d 229 (5th Cir. 2017)
- Windham was arrested on suspicion of driving while impaired after he rear-ended another car.
- Windham gave Dr. note showing cervical stenosis (which causes his head to dip forward abnormally).
- Was prescribed pain killers

Windham

- The deputy called a certified drug recognition expert – said not impaired enough to justify arrest
- 5th Cir. - critical component of failure to accommodate is proof "the disability and its consequential limitations were known by the [entity providing public services]."
- Mere knowledge of the disability is not enough; the service provider must also have understood "the limitations [the plaintiff] experienced . . . as a result of that disability."

Argued violation for the field tests

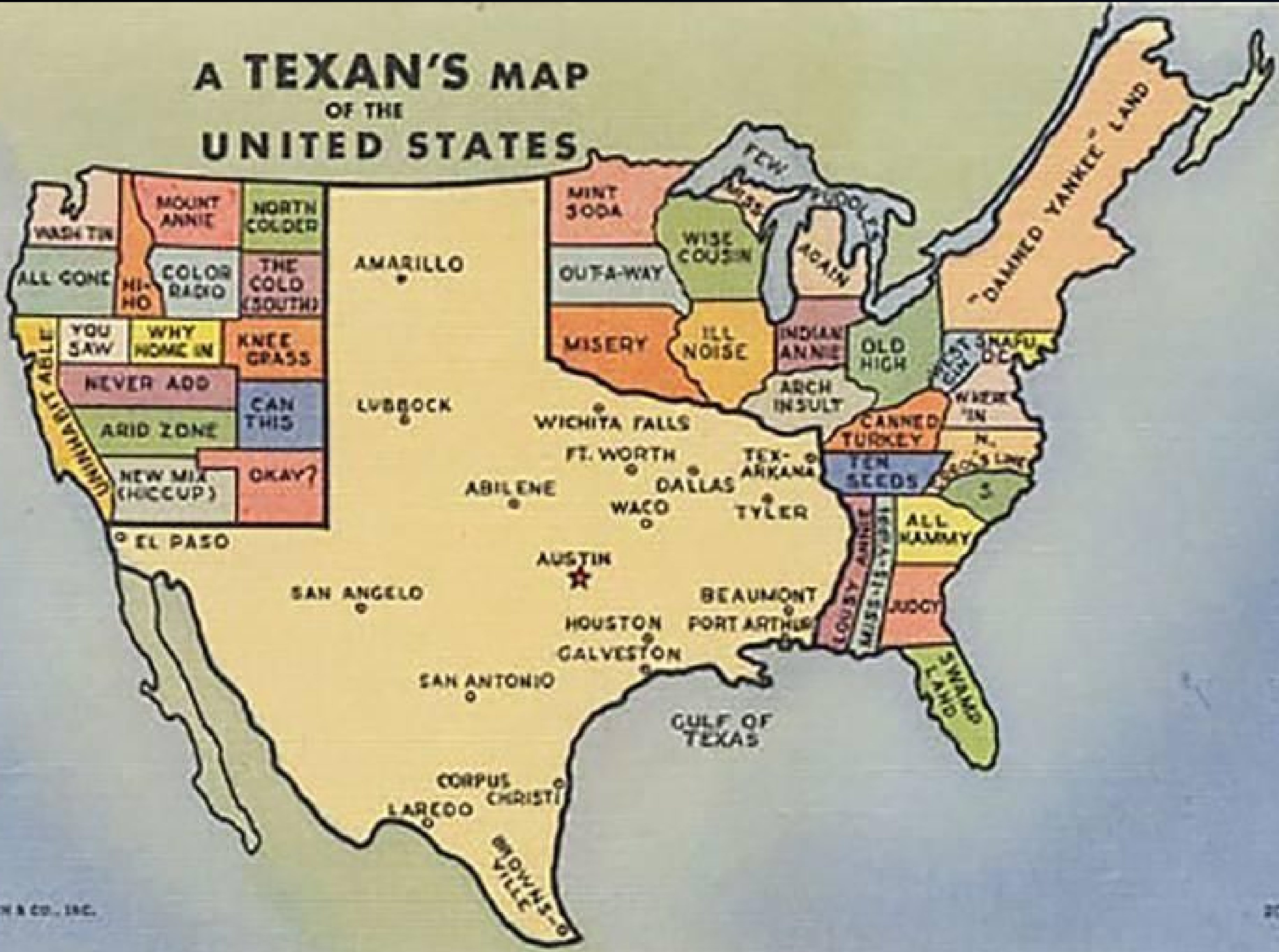
- Windham never directly requested an accommodation.
- His vague references he could do the test "… does not constitute the kind of clear and definite request for accommodations that would trigger the duty to accommodate under the ADA."

U.S. 5th Circuit holds IA and CID not required to share evidence

- *Alvarez v City of Brownsville*, 16-40772 (5th Cir. Sept. 18, 2018)
- §1983/jail altercation case
- During transfer to padded cell altercation occurred
  - Video
- IA reviewed video
- CID did not and did not request video

Alvarez

- Alvarez plead guilty to assault
- Later, found out video existed
  - Demanded *Brady* violation
- Court found no constitutional violation
- *Brady* = trial right
- Defeated by plea


TX-10
A TEXAN'S MAP OF THE UNITED STATES
WASH TIN
MOUNT ANNIE
NORTH COLDER
ALL GONE
HI-HO
COLOR RADIO
THE COLD (SOUTH)
YOU SAW
WHY HOME IN
KNEE GRASS
UNINHABITABLE
NEVER ADD
CAN THIS
ARID ZONE
NEW MIX (HICCUP)
OKAY?
EL PASO
AMARILLO
LUBBOCK
MINT SODA
OUT-A-WAY
MISERY
WISE COUSIN
ILL NOISE
FEW PUDDLES
MISS AGAIN
INDIAN ANNIE
OLD HIGH
ARCH INSULT
CANNED TURKEY
TEN SEEDS
"DAMNED YANKEE" LAND
SNAFU
DE
WHERE IN
ALL BAMMY
LOUSY ANNIE
MISSISSIPPI
JUDGY
SWAMP LAND
WICHITA FALLS
FT. WORTH
DALLAS
TEX-ARKANA
ABILENE
WACO
TYLER
AUSTIN
SAN ANGELO
BEAUMONT
HOUSTON
PORT ARTHUR
GALVESTON
SAN ANTONIO
GULF OF TEXAS
CORPUS CHRISTI
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Texas Supreme Court holds standards in same-sex discrimination cases are distinctly different than opposite-sex standards

- *Alamo Heights Independent School District v. Clark*, No. 16–0244, 2018 WL 1692367 (Tex. April 6, 2018).
- This is a workplace same-sex discrimination, harassment and retaliation case .
- Female co-coach was often rude, told stories of sexual escapades, would comment on Clark's body.
- Clark Complained
- Was later fired for poor performance

- The Court recognized same-sex discrimination cases = more complicated
- Types: 1) sexual desire, 2) general hostility to a particular gender , or 3) direct comparative evidence of treatment of both sexes.
- All require conduct to have more than offensive sexual connotations, but to be discriminatory <u>because of</u> the gender.

*Wasson Interests, Ltd. vs. City of Jacksonville,*17-0198, — S.W.3d. — 2018 WL 2449184 (Tex. June 1, 2018) = Gov vs. Prop: the focus belongs on the nature of the contract, not the nature of the breach.

- Long history
- Waterworks developed houses around lake, leased to Wassons
- Eviction issues
- 2016 opinion – Gov function and prop function in contracts
- This opinion

- 4 Part Test
  - (1) mandatory or discretionary,
  - (2) benefit the general public or the City's residents,
  - (3) State's behalf
  - (4) sufficiently related to a governmental function to render the act governmental even if it would otherwise have been proprietary.
- Here, Court held = Proprietary

Texas Supreme Court holds attorney/client privilege, by itself, is a compelling reason not to release under the PIA even if an entity blows a deadline. *Paxton v. City of Dallas*, 509 S.W.3d 247 (Tex. 2017)

- Favorite Case of the Year
- Dallas got PIA, but failed to follow AG procedure timely. Missed deadline by 15 days
- Attorney/client privileged info involved
- AG said tough luck, Dallas waived it
- Supreme Court held attorney/client privilege is so important, it qualifies as a compelling justification for exemption, even if deadlines are blown

Justice Guzman

- “[r]obotic perfection by a governmental body’s public information officer is a statutory ideal, not an absolute requirement. To err is human, but to conduct a City’s legal affairs without the occasional error would require divinity.”

City made a judicial admission by filing §101.106(e) motion to dismiss. Therefore, not entitled to jury question on course and scope.

- *Victor Ramos v. City of Laredo,* 04-17-00099-CV, 2018 WL 1511875 (Tex. App. – San Antonio, March 28, 2018, no pet. h).
- Ramos hit by another motorcyclist
- Said it was Guerra, PD motorcycle cop
- City first filed §101.106(e)
- Ramos dismissed Guerra

Ramos

- City got jury instruction Guerra was not in course and scope
- Guerra testified he was on leave
- Jury found no course and scope

Ramos

- By filing a §101.106(e) motion to dismiss, a governmental unit "effectively confirms the employee was acting within the scope of employment and that the government, not the employee, is the proper party."
- Justice Barnard wrote separately only to emphasize the 4th Court prognosticated this type of argument in 2011
- Warned not to flip/flop

Texarkana Court of Appeals holds county court at law has jurisdiction to hear PIA mandamus against city

- *Kenneth Craig Miller v. Gregg County*, , 06-17-00091-CV, 2018 WL 1386264 (Tex. App.—Texarkana Mar. 20, 2018, no pet. h.)
- Miller filed a suit under the PIA seeking a writ of mandamus in County Court at Law #2
- The PIA states "A suit filed by a requestor under this section must be filed in a district court for the county in which the main offices of the governmental body are located." TEX. GOV'T CODE ANN. § 552.321(b) (West 2017).
- After a statutory construction analysis, the Texarkana Court held §552.321(b) does not deprive a county court at law of its concurrent jurisdiction under §25.0003(a).

Fort Worth Court of Appeals holds candidate on ballot for two separate offices resigned second office by law, not the first, once taking oaths

- *City of Forest Hill, et al. v. Michielle Benson, et. al.*, 02-17-00346-CV (Tex. App. – Fort Worth, July 12, 2018).
- Benson on ballot for both City Council and Library Board at same time. Won both
- Incompatible offices, but which one controls
- Election Code §201.025 (1st office vacated) does not apply if elected on same day
- Election Code §141.033 - the invalidity of an application on ballot in same election control.

5th Court of Appeals holds mandatory third-party venue provision controls over TTCA venue provision

Pioneer Natural Resources USA, Inc. v. Texas Department of Transportation, 05-17-01245-CV (Tex. App. – Dallas, July 20, 2018).

- Car accident where Pioneer tractor involved.
- Pioneer brought third-party claims against TxDOT
- Did not sue in Travis
- Section 15.062(a) of the Civil Practice and Remedies Code notes mandatory venue for third-party claims, but §101.102(a) notes a form of mandatory venue for TTCA claims
- Court held §15.062(a) controls

Get You Affidavits Correct

- *City of Dallas v. Lamb*, 05-16-01506-CV, 2017 WL 5987777 (Tex. App.—Dallas Dec. 4, 2017, no pet.)
  - Intersection near building
- *City of San Antonio v. Torres*, 04-17-00309-CV, 2017 WL 5472537 (Tex. App.—San Antonio Nov. 15, 2017, no pet.)
  - Looking both ways before entering intersection after STOP!
    - Compare
- *City of San Antonio v. Reyes*, 04-16-00748-CV, 2017 WL 3701772 (Tex. App.—San Antonio Aug. 23, 2017, no pet.) (mem. op.). Good affidavit of approaching intersection = immunity

Honorable Mentions

- *State of Texas ex Rel. George Darrell Best v Paul Reed Harper*, 16-0647, — S.W.3d – (Tex. July 29, 2018) = **Removal statute subject to Tex. Citizen Participation Act.**
- *San Antonio Independent School District v. Maria Hale, et al.* 04-18-00102-CV (Tex. App. – San Antonio, June 27, 2018) = **Negligent maintenance of school bus is not negligent operation or use**
- *Univ. of Texas M.D. Anderson Cancer Ctr. v. McKenzie*, 529 S.W.3d 177 (Tex. App.—Houston [14th Dist.] 2017, pet. filed). **Administering drug is the "use" of tangible personal property for immunity purposes.**

- *City of Sealy v. Town Park Ctr., 01-17-00127-CV, 2017 WL 3634025 (Tex. App.—Houston [1st Dist.] Aug. 24, 2017, no pet.)* (per curiam) (mem. op.). ***Interlocutory appeal mooted by Plaintiff's non-suit, even though Plaintiff refiled similar suit directly after dismissal***

- *City of Donna v. Ramirez*, 548 S.W.3d 26 (Tex. App.—Corpus Christi 2017, pet. filed), reh'g denied (Dec. 4, 2017) **TOMA posting inside City Hall with a "cancelled" stamp on an agenda controlled, regardless of other agendas says 13th Court of Appeals**

- *Jesus Christ Open Altar Church, LLC v. City of Hawkins*, 12-17-00090-CV, 2017 WL 6523088 (Tex. App.—Tyler Dec. 21, 2017, no pet.), reh'g denied (Feb. 7, 2018). **Even though no street for 100 years, mere non-use of a dedicated road easement does not amount to abandonment.**

- *Delameter v. Beaumont Indep. Sch. Dist.*, 09-17-00045-CV, 2018 WL 651268 (Tex. App.—Beaumont Feb. 1, 2018, pet. filed) (mem. op.). **Failure to drive school bus to hospital instead of waiting for ambulance to assists non-responsive child deemed non-use of vehicle**
- *Rines v. City of Carrollton*, 05-15-01321-CV, 2018 WL 833367 (Tex. App.—Dallas Feb. 13, 2018, no pet. h.) (mem. op.). **City did not act in bad faith under PIA in cost estimate calculation - City established it produced all records discovered**
- *VIA Metropolitan Transit Authority v. Shantinia Reynolds*, 04-18-00083-CV (Tex. App. – San Antonio, July 18, 2018) **VIA bus system not immune from bus accident, notwithstanding common carrier heightened standard of care argument**

- TO BE CONTINUED…..