



TEXAS CENTER  
FOR THE JUDICIARY

# Practical Aspects of Forensics in Judicial Education

Presented to the National Commission on Forensic Science

Judge Mark D. Atkinson

January, 2015

Washington, DC

# Forensics Curriculum

- Developing Curriculum
- Selecting Faculty
- Programs Presented

# Curriculum Committee

Diverse committee of judges of  
various jurisdictions, court  
types and geographic locations

# Curriculum Development

- Organic -- from the ground, up
- Topics that judges have seen, are seeing or anticipate seeing in their courts

# Faculty

- Judges
- Attorneys
- Policy Makers
- Other Professions (Medical, Technical, Scientific)
- Curriculum Committee Members' Conference Attendance, Personal Contacts and Recommendations from others

# Curriculum Delivery

- In Person – face to face, vs distance or online
- Lecture
- Conversational

# Forensics Defined

- Matters of substance: What topics constitute forensics?
- Matters of form: What procedures are necessary in the court case?

## COURSE DESCRIPTIONS

### MONDAY, MAY 7

5:00 PM – 6:00 PM, Registration

### TUESDAY, MAY 8

8:30 AM – 9:30 AM

**Electronic Evidence and Admissibility** – Join the discussion regarding electronic evidence and its predicates, objections and admissibility pitfalls.

Faculty: Mr. Peter Vogel

9:45 AM – 10:45 AM

**Eyewitness Identifications: Recent Case Law and Trends** – This session will provide an analysis of recent case law and developing trends in eyewitness identifications, line-ups, show-ups, and the use of experts.

Faculty: Mr. Gary Udashen and Ms. Darlina Crowder

11:00 a.m. – 12:00 Noon

**Practical Tools for Sentencing** - Hear an overview of the current state of the art screening and assessment tools for sentencing.

Faculty: Hon. John Creuzot

12:00 Noon – 1:00 p.m. – Working Lunch

**New Legislation: State Jail Diligent Participation Law** - House Bill 2649, passed in the 82nd Texas legislative session, allows some state jail offenders to be awarded diligent participation credit by their sentencing judge. Learn how this could affect you. (30 minute presentation, 12:15 p.m. - 12:45 p.m.)

Faculty: Ms. Joni White

### Specialty Tracks (Choose One)

#### DWI Technology Track

The sessions for this track include a balanced look from the state and defense perspective at the most common breathalyzer device licensed in the State of Texas, the Intoxilyzer 5000; a discussion of existing DWI technologies and what to expect in the future; and a scientific discussion on the reliability and limitations of alcohol monitoring technologies, primarily in relationship to interlock and transdermal technology.

1:00 p.m. – 2:00 p.m., **Back to Basics: Intoxilyzer 5000**

Faculty: Ms. Deandra Grant and Mr. Terry Robinson

2:15 p.m. - 3:15 p.m., **Alcohol Monitoring Technology – Today and Tomorrow**

Faculty: Ms. Sally Bridges, Mr. Terry Fair, Mr. Mike Fonseca

3:30 p.m. – 4:30 p.m., **Limitations of Alcohol Monitoring Technologies**

### Best Practices Track

Get expert answers and gain practical pointers to ensure you are fully compliant with the duties, rules, and decisions relating to writs, pleas and admonishments. Also, learn how to handle lawyers who misbehave in your courtroom and receive guidance for maintaining control. The final session will help you identify if and when an attorney is violating the ethics code, whether to intervene, and how to proceed once a violation has been made.

1:00 p.m. – 2:00 p.m., **Writs, Pleas, and Admonishments**

Faculty: Hon. Mike Keasler

2:15 p.m. - 3:15 p.m., **Control in the Courtroom**

Hon. Robin Malone Darr

3:30 p.m. – 4:30 p.m., **Recognizing Ethical Violations by Attorneys**

1.0 Ethics

Faculty: Mr. Paul Coggins

### Capital Murder Track

Since 1982, Texas has executed 479 offenders and currently has 399 offenders on death row awaiting the same fate. With these numbers among the highest in the nation, judges must proceed with the utmost caution in capital murder trials. Judge Cynthia Kent will give you an overview of the key issues with voir dire and mitigation evidence in capital murder cases. Jack Stoffregen and Jim Bethke will conclude the afternoon with a discussion of costs and attorneys' fees associated with indigent defendants and capital murder cases in general.

1:00 p.m. – 2:00 p.m., **Voir Dire**

Faculty: Hon. Cynthia Kent

2:15 p.m. - 3:15 p.m., **New Trends in Mitigation**

Faculty: Hon. Cynthia Kent

3:30 p.m. – 4:30 p.m., **What's Appropriate for Costs and Attorney's Fees?**

Faculty: Mr. Jim Bethke and Mr. Jack Stoffregen

### WEDNESDAY, MAY 9

Keep up-to-date on the precedents being set by the high courts. Join Judge Cathy Cochran and Professor Joseph Hoffmann for a discussion of recent significant decisions from the Texas Court of Criminal Appeals and Texas Supreme Court.

8:30 a.m. – 10:00 a.m., **Court of Criminal Appeals Update**

Faculty: Hon. Cathy Cochran

10:30 a.m. – 12:00 Noon, **U.S. Supreme Court Update**

Faculty: Prof. Joseph Hoffmann





## REGISTRATION

INFORMATION

### Register Now!

[www.yourhonor.com/  
conference/Actual  
Innocence2012](http://www.yourhonor.com/conference/ActualInnocence2012)

Hotel Reservation Deadline:  
April 23, 2012

Registration Deadline:  
April 23, 2012

Cancellation Deadline:  
April 30, 2012

## COURSE DESCRIPTIONS

### SUNDAY, MAY 6

4:00 PM - 5:00 PM, Registration

### MONDAY, MAY 7

8:30 AM - 12:00 PM, Understanding the  
Psychology of the Criminal Justice Process  
Faculty: Professor Dan Simon

Dan Simon is a professor at the University of Southern California (USC) and specializes in the field of Law & Psychology. He will begin the morning by examining the mental processes of key players in a criminal investigation and trial, such as police detectives, witnesses, suspects, and victims and the role that each can play in wrongful convictions. How did a witness misidentify the defendant? How did investigators end up with erroneous evidence? And most importantly - how can anyone make a false confession for a crime they did not commit? Understanding the psychology behind these events will help you evaluate evidence and testimony more critically. Professor Simon will not only familiarize you with the mental processes that lead to wrongful convictions, he will also offer practical strategies for improving your ability to recognize inaccuracies in the system and adjust judicial decision-making accordingly.

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12:00 PM - 1:00 PM, Lunch  
Lunch will be provided.

1:00 PM - 5:00 PM, Case Studies: An In-Depth Look  
at the Cases of Recent Exonerees

Faculty: Mr. Jason Kragg

Jason Kragg joins us from the renowned Innocence Project in New York, founded by Barry Scheck and Peter J. Neufeld in 1992. He will spend the afternoon analyzing three exoneration cases and identifying key points in the cases where something went wrong, exploring how and why it went wrong, and suggesting actions a judge could have taken to prevent the wrongful conviction. Each case will examine a different issue - misidentification of the defendant, erroneous evidence, or a false confession - and expose the reality of how well-meaning individuals can make mistakes that result in the wrong person being sent to prison or even death row. Hear the story of one wrongful conviction told directly from the exoneree himself, Mr. Chris Ochoa, who falsely confessed to an Austin murder he didn't commit and spent over a decade in prison. Another case will examine how 10 victims and witnesses misidentified Steven Phillips as a rapist, which led to a 30 year prison sentence for him despite the fact that he had an alibi. Mr. Phillips was finally exonerated using post-conviction DNA after serving 24 years. The third case study will be that of Kennedy Brewer from Mississippi. You will delve into questions of police and prosecution tunnel vision, effective representation by the defense, prosecutorial misconduct, identifying the actual perpetrator, and how solving one wrongful conviction can solve other unrelated crimes. The goal of this session is to make you aware of the weaknesses in the criminal justice system and identify how, sometimes, you have the power to save an innocent person from being a casualty of those weaknesses.

**Sunday, January 6**

4:00 p.m. – 5:00 p.m.

**Registration**

**Monday, January 7**

8:30 a.m. – 9:30 a.m.

**Social Media Evidentiary Issues**

Facebook has over 900 million users and growing. You might not be a user yourself but it doesn't mean you can ignore the power of social media. This session will explore the basics of Facebook and other social media sites including how users use the site to share news, broadcast messages and hold private chats. It will also cover the rules and procedures regarding the admissibility of social media evidence and other electronic evidence.

*Faculty: Ms. Emily Ann Miskel*

9:45 a.m. – 10:45 a.m.

**Courtroom Management and Decorum, 1.0 Ethics**

Canon 4B(4) requires judges to be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals with in an official capacity, and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control. Well, that second part can be much easier said than done. What should a judge do when those under his or her direction and control are impatient, undignified and discourteous? Join Judge Steve Smith for a discussion regarding best practices for navigating these sometimes dangerous waters.

*Faculty: Hon. Steve Smith*

11:00 a.m. – 12:00 noon

**The Effects of Immigration and Human Trafficking on State Courts, 1.0 FV §22.110(d)(3)-(5), (7)**

Dr. John Martin, Director of the State Justice Institute sponsored national Immigration and the State Courts Initiative for the Center For Public Policy Studies, will examine the complicated nexus of immigration status and human trafficking. He will review Texas as well as national efforts to address trafficking, including the important role state courts play in criminal, family, juvenile, and civil cases involving trafficking victims and traffickers.

*Faculty: Mr. John Martin*

**Breakout Sessions:**

**Judicial Problem-Solving**

In these interactive, peer-learning sessions, judges will be presented with practical fact scenarios and will work together in groups of 8-9 to problem solve and identify best practices. These sessions are designed to allow judges to share experiences, knowledge, and expertise on issues they face regularly. Topics include:

- **Criminal**, Hon. Dan Mills and Hon. Sam Medrano, 1:00 p.m. – 2:00 p.m. & 2:15 p.m. – 3:15 p.m.
- **Ethics**, Hon. Mike Kessler and Ms. Seana Willing, 1:00 p.m. – 2:00 p.m. & 3:30 p.m. – 4:30 p.m., **1.0 Ethics**
- **Family**, Hon. Judy Waine, 1:00 p.m. – 2:00 p.m. & 3:30 p.m. – 4:30 p.m., **0.5 FV §22.110(d)(2)-(4)**
- **Civil**, Hon. Ruben Reyes, 2:15 p.m. – 3:15 p.m. & 3:30 p.m. – 4:30 p.m.

1:00 p.m. – 2:00 p.m. & 2:15 p.m. – 3:15 p.m.

**Wrongful Convictions: Where We Are Today, 0.5 Ethics**

Although a tragic story, the Morin case did help raise public awareness in Texas on an issue that direly needed it. We cannot go a day without reading about the exoneration of someone who served many years in prison for a crime he or she did not commit. Mr. Kresag will provide you with an overview of where we are today with actual innocence cases.

*Faculty: Mr. Jason Kresag*

1:00 p.m. – 2:00 p.m.

**What's New With Blood Testing Discovery Orders?**

Texas judges are dealing with increasingly complex discovery requests in DWI cases relative to blood alcohol test results. Join Judge Gray as he answers frequently asked questions and discusses the steps that some jurisdictions are taking to create standard discovery orders.

*Faculty: Hon. Randy Gray*

2:15 p.m. – 3:15 p.m.

**Latest On Occupational Driver's License**

Ms. Palmer will discuss current law and practices regarding court orders for occupational licenses. Ms. Hibbs will describe the Department of Public Safety's review and issuance process, starting with the court order and ending with issuance of the license. Judges will leave the session with common templates for orders, useful forms and a greater understanding of the process.

*Faculty: Ms. Tracie Palmer and Ms. Rebekah Hibbs*

2:15 p.m. – 3:15 p.m. & 3:30 p.m. – 4:30 p.m.

**Judicial Security**

The National Center for Judicial Security was established in 2008 and is operated, staffed, and managed by employee and contractor staff from the U.S. Marshals Service, Judicial Security Division. These ARE the experts in judicial security. They utilize a robust and innovative protective methodology to mitigate threatening and potentially threatening behaviors to members of the judiciary.

*Faculty: Representative from the National Center for Judicial Security; U.S. Marshals Service*

3:30 p.m. – 4:30 p.m.

**Probate and Guardianship: The Fundamental Nuts and Bolts**

A discussion of fundamental handling of guardianship cases including discussion of the role of the court investigator and setting up a court visitor program. Review of accounting pitfalls for probate and guardianships. Get your answers to these questions and much more during this session!

*Faculty: Hon. Claude Laird*

4:30 p.m. – 5:30 p.m.

**Regional Business Meetings**

**Tuesday, January 8**

8:00 a.m. – 8:30 a.m.

**Legislative Priorities**

*Faculty: Hon. Alfonso Chelias*

Update and review of recent cases and significant decisions from Texas' appellate courts.

- **Family Law Update**, Hon. W.C. "Bud" Krentzel, 8:30 a.m. – 9:30 a.m., **0.5 FV §22.110(d)(3)**
- **Criminal Law Update**, Mr. Gerald Goldstein, 9:45 a.m. – 10:45 a.m.
- **Civil Law Update**, Hon. Harvey Brown, 11:00 a.m. – 12:00 noon

# CRIMINAL/JUVENILE CURRICULUM

THURSDAY, APRIL 11

Sessions will be held in Plumeria.

7:30 a.m. - 8:30 a.m. - Breakfast, Primrose C

8:30 a.m. - 9:30 a.m.

Indictments and Charges

Faculty: Hon. Chris Oldner

9:30 a.m. - 9:45 a.m. - Break

9:45 a.m. - 10:45 a.m.

Search and Seizure and Suppression Issues

Faculty: Mr. John Rolater

10:45 a.m. - 11:00 a.m. - Break

11:00 a.m. - 12:00 noon

Writs

Faculty: Hon. Michael Keasler

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12:00 Noon - 1:00 p.m. - Lunch, Primrose C

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(Join Family Track in Camellia)

1:00 p.m. - 2:30 p.m.

The Effects of Development and Trauma on a Child's Statement, 1.0 FV [§22.110(d)(1)-(2),(7)-(8)(11)]

Faculty: Dr. Sandeep Narang

2:30 p.m. - 3:00 p.m. - Break

3:00 p.m. - 4:30 p.m.

Irreconcilable Differences: Forensic and Therapeutic Relationships

Faculty: Dr. Edward Silverman

4:30 p.m. - 5:30 p.m.

Class of '13 Photo and Reception

FRIDAY, APRIL 12

Sessions will be held in Plumeria.

7:30 a.m. - 8:30 a.m. - Breakfast, Primrose Foyer

8:30 a.m. - 9:30 a.m.

The Psychology of Violence, 1.0 FV

Faculty: Dr. Keith R. Cruise and Dr. Barry Rosenfeld

9:30 a.m. - 9:45 a.m. - Break

9:45 a.m. - 10:45 a.m.

The Psychology of Violence

Faculty: Dr. Keith R. Cruise and

Dr. Barry Rosenfeld

10:45 a.m. - 11:00 a.m. - Break

11:00 a.m. - 12:00 noon

The Daubert Analysis of Shaken Baby Syndrome, 1.0 FV [§22.110(d)(11)-(12)]

Faculty: Dr. Sandeep Narang

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Conference Concludes

# SCHEDULE & COURSE DESCRIPTIONS

## THURSDAY, MAY 23

### 8:30 AM – 9:30 AM, *The 83rd Legislature's Contributions to the Ever-Expanding Penal Code*

Stay up to date on significant legislation from the 83rd Legislative Session and learn how these changes will impact criminal cases in your courtroom.

Faculty: Hon. Alfonso Charles

### 9:45 AM – 10:45 AM, *The Judge's Role in Meeting the Requirements of Brady 1.0 Ethics [Canon 3B(7)-(9)]*

*Brady* made it clear that evidence must be turned over to the defense when "there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would be different." But what role does a judge play in complying with *Brady*? Chip Wilkinson, author of *Brady Duties & The Pre-Trial Disclosure of Evidence*, will share his insights into what judges can do to ensure that prosecutors are following the law.

Faculty: Mr. Chip Wilkinson

### 11:00 AM – 12:00 PM, *Admissibility of Expert Testimony: Daubert and Beyond*

Expert testimony is both pervasive and, very often, determinative, in modern adjudication. In *Daubert* and parallel State court decisions, trial courts have been charged with the responsibility to be "gatekeepers," to ensure that the underlying basis for proffered expert opinion is reliable and valid. This session will cover the latest case law and best practices for applying the *Daubert* test to expert witness testimony, whether that testimony is based on "social," "forensic," or "other" scientific bases.

Faculty: Prof. David Faigman

### 12:00 PM – 1:00 PM, *Lunch*

## DWI TRACK

### 1:00 PM – 2:00 PM, *Understanding Alcohol Monitoring Technologies*

Have you ever wondered just how tamper-proof a continuously monitoring alcohol device is? What about a drug patch, how does it stay on? Join Ms. Hernandez-Haby as she discusses her hands-on experience personally testing these and other alcohol monitoring technologies.

Faculty: Ms. Bernadette Hernandez-Haby

### 2:15 PM – 3:15 PM, *CSCD Perspective on Alcohol Monitoring*

This workshop will provide a review of what research indicates is most effective when using technology to monitor alcohol/substance abuse defendants. Presenters will discuss matching the current technology to the defendant's risks and specific needs. What type of defendants, how long should they be on monitoring and what other kinds of services should be attached to help people be successful?

Faculty: Ms. Caroline Rickaway, Mr. Jeff Morrison and Dr. Greg Dillon

### 3:30 PM – 4:30 PM, *Blood Alcohol Analysis and Related Issues*

BAC (Blood Alcohol Concentration), we have all heard the term and seen the lab reports but where did that number come from? How are blood alcohol results determined? How do you know the result is accurate? Can the results be trusted? This talk will take a look at these questions and others by looking into a little science, a little math, and a little policy (but hopefully not too much).

Faculty: Mr. Scott Williams

## TRENDS TRACK

### 1:00 PM – 2:00 PM, *Designer Drugs*

Designer drugs are not new, but they do represent a challenge to criminal justice practitioners. This session will discuss the emergence of new designer drugs such as synthetic cannabinoids, "bath salts" and what's coming next. This presentation will provide facts about these designer drugs including information on their origin, their chemical composition, physical effects, their detection and the legal efforts to ban their sale.

Faculty: Mr. Paul Cary

### 2:15 PM – 3:15 PM, *Domestic Child Trafficking 1.0 FV [§22.110(d)(2)-(5)]*

Human trafficking continues to be the second largest criminal industry in the world, after the weapon and drug trades. Nationally, more than 200,000 American children are at risk for being lured into sex trafficking each year. This session will provide a brief overview of the human trafficking laws recently implemented in Texas, resources for children who are victims of trafficking, and policy priorities and recommendations that are being made to the legislature.

Faculty: Ms. Dawn Lew



Wednesday, May 14	Thursday, May 15			Friday, May 16
	<p>8:30 a.m. – 9:30 a.m. <i>Reflections on our Texas Criminal Justice System: Where We've Been and Where We're Going</i> Hon. Cathy Cochran</p> <p>9:45 a.m. – 10:45 a.m. <i>Birth of the 4<sup>th</sup> Amendment &amp; Where It Stands Today</i> Prof. James Viator</p> <p>11:00 a.m. – 12:00 noon <i>When to Step in to Avoid Reversal for Ineffective Assistance of Counsel</i> Hon. Cynthia Kent</p>			<p>8:30 a.m. – 10:00 a.m. <i>Court of Criminal Appeals Update</i> Hon. Bud Kirkendall</p> <p>10:30 a.m. – 12:00 noon <i>U. S. Supreme Court Update</i> Prof. Joseph Hoffmann</p>
	12:00 noon – 1:00 p.m. — Lunch			Conference Concludes
<p style="text-align: center;"><b>REGISTRATION</b> 4:00 p.m. – 5:00 p.m.</p>	<p><b>Hot Topics Track</b> 1:00 – 2:00 p.m. <i>The Michael Morton Act: How It's Working 5 Months In</i> Mr. Steve Reis and TBD</p> <p>2:15- 3:15 p.m. <i>Update on Indigent Defense</i> Mr. Jim Bethke and Hon. Sharon Keller</p> <p>3:30 p.m. – 4:30 p.m. <i>The Judicial Framework of a Family Violence Case 1.0 FV</i> Hon. Mike Denton</p>	<p><b>DWI Track</b> 1:00 – 2:00 p.m. <i>Fundamentals of Gas Chromatography</i> Dr. Robert Lanz and Judge Kelly Case</p> <p>2:15- 3:15 p.m. <i>Fundamentals of Gas Chromatography (cont.)</i> Dr. Robert Lanz and Judge Kelly Case</p> <p>3:30 p.m. – 4:30 p.m. <i>Pre-trial issues on Blood Warrants</i> Judge Randy Gray</p>	<p><b>Actual Innocence Track</b> 1:00 – 2:00 p.m. <i>Forensic Science: A Perspective Outside of the Echo Chamber</i> Mr. Jay Koehler</p> <p>2:15 - 3:15 p.m. <i>Forensic Science: A Perspective Outside of the Echo Chamber</i> Mr. Jay Koehler</p> <p>3:30 p.m. – 4:30 p.m. <i>Why Avoiding Daubert at the Trial Level Makes Problems at the Appellate Level</i> Prof. David Faigman</p>	

Actual Innocence

## **2012 Actual Innocence Conference**

**May 7, 2012**

**Omni Park West, Dallas**

*Understanding the Psychology of the Criminal Justice Process*

**Faculty:** Professor Dan Simon

8:30 a.m. – 12:00 p.m.

Dan Simon is a professor at the University of Southern California (USC) and specializes in the field of Law & Psychology. He will begin the morning by examining the mental processes of key players in a criminal investigation and trial, such as police detectives, witnesses, suspects, and victims and the role that each can play in wrongful convictions. How did a witness misidentify the defendant? How did investigators end up with erroneous evidence? And most importantly – how can anyone make a false confession for a crime they did not commit? Understanding the psychology behind these events will help you evaluate evidence and testimony more critically. Professor Simon will not only familiarize you with the mental processes that lead to wrongful convictions, he will also offer practical strategies for improving your ability to recognize inaccuracies in the system and adjust judicial decision-making accordingly.

*Case Studies: An In-Depth Look at the Cases of Recent Exonerees*

**Faculty:** Mr. Jason Kreag

1:00 p.m. – 5:00 p.m.

Jason Kreag joins us from the renowned Innocence Project in New York, founded by Barry Scheck and Peter J. Neufeld in 1992. He will spend the afternoon analyzing three exoneration cases. Mr. Kreag will identify key points in the cases where something went wrong, explore how and why it went wrong, and suggest actions a judge could have taken to prevent the wrongful conviction. Each case will examine a different issue - misidentification of the defendant, erroneous evidence, or a false confession - and expose the reality of how well-meaning individuals can make mistakes that result in the wrong person being sent to prison or even death row. Hear the story of one wrongful conviction told directly from the exoneree himself, Mr. Chris Ochoa, who falsely confessed to an Austin murder he didn't commit and spent over a decade in prison. Another case will examine how 10 victims and witnesses misidentified Steven Phillips as a rapist, which led to a 30 year prison sentence for him despite the fact that he had an alibi. Mr. Phillips was finally exonerated using post-conviction DNA after serving 24 years. The third case study will be that of Kennedy Brewer from Mississippi. You will delve into questions of police and prosecution tunnel vision, effective representation by the defense, prosecutorial misconduct, identifying the actual perpetrator, and how solving one wrongful conviction can solve other unrelated crimes. The goal of this session is to make you aware of the weaknesses in the criminal justice system and identify how, sometimes, you have the power to save an innocent person from being a casualty of those weaknesses.

## **2013 Winter Regional Conferences**

**January 7-8, 2013, Regions: 1, 2, 5 & 8**

**Hyatt Lost Pines – Lost Pines**

**February 7-8, 2013, Regions: 3, 4, 6, 7 & 9**

**Omni Hotel – Corpus Christi**

*Wrongful Convictions: Where We Are Today and We Can We Do To Prevent Them*

**Faculty: Mr. Jason Kreag**

1:00 p.m. – 2:00 p.m. & 2:15 p.m. – 3:15 p.m.

Although a tragic story, the Morton case did help raise public awareness in Texas on an issue the direly needed it. We cannot go a day without reading about the exoneration of someone who served many years in prison for a crime he or she did not commit. Mr. Kreag will provide you with an overview of where we are today with actual innocence cases and offer strategies for making sure a wrongful conviction does not happen in your courtroom.

## **2013 Criminal Justice Conference**

**May 23-24, 2013**

**Hilton Bella Harbor – Rockwall**

*Forensic Science*

Faculty: Prof. David Faigman

1:00 p.m. – 2:00 p.m., 2:15 p.m. – 3:15 p.m.

Forensic science has recently come under increased scrutiny and has been the subject of intense criticism, including by a recent report of the National Academy of Sciences. Professor Faigman will discuss general controversies surrounding the use of forensic evidence, with particular emphasis on areas such as fingerprints, firearm and toolmark identification, handwriting identification, and arson investigation. His presentation will focus, in particular, on how the erroneous use of such forensic evidence can lead to wrongful convictions.

*New Model Eye-Witness Identification Protocols*

Faculty: Dr. Phillip Lyons

3:30 p.m. – 4:30 p.m.

The LEMIT model eye-witness identification policy was drafted in response to § 3(b) of the Texas Code of Criminal Procedure, which required LEMIT to “develop, adopt, and disseminate to all law enforcement agencies in this state a model policy... regarding the administration of photograph and live lineup identification procedures.” The policy was finalized and released in December of 2011. Dr. Lyons will provide a detailed analysis of the procedures called for in the new policy and address any questions or concerns judges may have about how the new policy will affect criminal cases in their courtroom.



## **2014 Winter Regional Conferences**

**January 23-24, 2014, Regions: 1, 6, 7 & 9**

**Horseshoe Bay Hotel – Horseshoe Bay**

**February 20-21, 2014, Regions: 2, 3, 4, 5 & 8**

**Moody Gardens Hotel - Galveston**

*How to Satisfy the New Requirements of the Michael Morton Act*

Faculty: Hon. Alfonso Charles

2:15 p.m. – 3:15 p.m.

The Morton Discovery Act took effect January 1, 2014, which means judges need to ensure their courtroom procedures are in compliance. Using lecture, as well as interactive discussions, judges will hear how the Act is being implemented in different counties across Texas. They will also hear how the law affects discovery procedures in felony, misdemeanor and juvenile cases. The format of the session will provide an open forum for judges to share their experiences and concerns with other judges throughout the state, and develop best practices to bring back to their courtrooms.

After this presentation, the judge participant will be able to:

*How to Assess a Brady Claim*

Faculty: Mr. Chip Wilkinson

3:30 p.m. – 4:30 p.m.

*Brady* made it clear that evidence must be turned over to the defense when “there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would be different.” Chip Wilkinson, author of *Brady Duties & The Pre-Trial Disclosure of Evidence*, will share his insights into what judges can do to ensure that prosecutors are following the law.

## **2014 Texas College for Judicial Studies**

**May 5-9, 2014**

**Sheraton Capitol Hotel - Austin**

### **The Michael Morton Act and Other Discovery Issues**, 1 hr

Join us for a discussion of how the Michael Morton Discovery Act affects discovery procedures in felony, misdemeanor and juvenile cases, and how Texas courts can adjust their courtroom practices to ensure compliance. While most of this session will focus on the Morton Act, it will also include a review of innovative practices being utilized for general discovery procedures in criminal courts.

### **“It Didn’t Happen!” Post-Conviction Writs & Other Issues**, 1 hr

Post-conviction writs usually require enormous investigation and research and analysis of complicated procedural and substantive issues. This session will examine the grounds, hurdles and procedures relating to post-conviction writs.

## **2014 Criminal Justice Conference**

**May 15-16, 2014**

**Hilton Bella Harbor - Rockwall**

### **The Michael Morton Act: How It’s Working 5 Months In**, 1 hr

This session will utilize a team-teach approach - both a prosecutorial and defense perspective – to discuss the practicalities of dealing with the Morton Discovery Act requirements since it became effective on September 1. The speakers will address the difficulties facing both litigants and judges, as well as which practices seem to be working and which are not.

### **Forensic Science: A Perspective Outside of the Echo Chamber**, 2 hrs

Forensic sciences play an increasingly important role in the criminal justice system; judges and juries alike now rely heavily on testimony from forensic experts during criminal trials. This session will provide an overview of the types of forensic science, as well as their methods and admissibility standards, with a focus on DNA and fingerprint evidence.

### **Why Avoiding *Daubert* at the Trial Level Makes Problems at the Appellate Level**, 1 hr

Expert testimony is both pervasive and, very often, determinative, in modern adjudication. Trial courts have been charged with the responsibility to be "gatekeepers" to ensure that the underlying basis for proffered expert opinion is reliable and valid. However, this responsibility can be very complex and daunting for many trial judges, and they sometimes avoid the necessary analysis. Professor Faigman will lead the discussion on the relationship between the trial court’s gatekeeping task and the responsibilities, explicit and implicit, for appellate courts in this area.

# **2014 Annual Judicial Education Conference**

**September 7-10, 2014**

**Omni Hotel – Fort Worth**

## **The Michael Morton Act: 9 Months In**, 1 hr

This session will utilize a team-teach approach - both a prosecutorial and defense perspective – to discuss the practicalities of dealing with the Morton Discovery Act requirements since it became effective on January 1, 2014.

## **Post-Conviction Writs**, 1 hr

Post-conviction writs usually require enormous investigation and research and analysis of complicated procedural and substantive issues. This session will examine the grounds, hurdles and procedures relating to post-conviction writs.

# **Mental Health & Forensic Science Issues for Trial Judges**

**October 23-24, 2014**

**South Marriot Hotel - Austin**

## **Judicial Gatekeeping**, 1 hr

Expert testimony is both pervasive and, very often, determinative, in modern adjudication. In *Daubert* and parallel State court decisions, trial courts have been charged with the responsibility to be "gatekeepers" to ensure that the underlying basis for proffered expert opinion is reliable and valid. This session will cover the latest case law and best practices for judges when determining whether forensic science evidence should make it past the “gate.”

## **The Daubert Analysis of Child Abuse Injuries – Head & Body Trauma**, 2 hrs

Child abuses cases form one of the most contentious areas of medicolegal investigations. In the child abuse case in court, conflicting medical science will typically be offered by both parties to explain the etiology of an injury and courts are often asked to weigh complex, novel and controversial scientific evidence. This presentation will discuss appraisal of the published medical literature and evidence in the context of the rise in the denial in the field of Shaken Baby Syndrome. The broad strokes of Evidence-Based Medicine will be used to highlight the importance of medical literature appraisal. We will discuss the strengths and weaknesses of peer review and highlight some of the pitfalls and fallacies which can appear within the published reports. Specific examples of flawed studies and flawed analyses will be presented. The participant will learn how to critically read a paper and scrutinize the contents systematically. This session will also review work that is being done in Texas, as well as nationally, to improve the science and effective diagnosis of physical child abuse.



## WHY A FAKE ARTICLE TITLED "CUCKOO FOR COCOA PUFFS?" WAS ACCEPTED BY 17 MEDICAL JOURNALS

A HARVARD SCIENTIST WANTED TO SEE EXACTLY HOW EASY IT IS TO GET MEDICAL RESEARCH PUBLISHED. IN SOME CASES, \$500 IS PRETTY MUCH ALL IT TAKES.

BY ELIZABETH SEGRAN

As a medical researcher at Harvard, Mark Shrime gets a very special kind of spam in his inbox: every day, he receives at least one request from an open-access medical journal promising to publish his research if he would only pay \$500.

"You block one of them with your spam filter and immediately another one pops up," Shrime, an MD who is pursuing a PhD in health policy, tells me.

These emails are annoying, for sure, but Shrime was worried that there might be bigger issues at stake: What exactly are these journals publishing and who is taking these journals to be credible sources of medical information?

Shrime decided to see how easy it would be to publish an article. So he made one up. Like, he



Mark Shrime

# What is Medical Evidence?: Separating the Wheat from the Chaff

Christopher Spencer Greeley, MD, MS

Professor of Pediatrics

Center for Clinical Research and Evidence-Based Medicine

University of Texas Health Sciences Center

At Houston

# Disclaimer

- I have no financial connections with industry
- I am a full-time employee of the University of Texas at Houston
- Christopher.S.Greeley@uth.tmc.edu

# Purpose

- Appreciate how to distill good medical evidence from bad
- Understand how to think about the medical literature
- Review examples of Child Abuse literature to highlight gaps and emphasize strengths
- Understand common pitfalls in using medical literature

# Take Home Messages

- Be skeptical of everything you read
  - Published does not mean “True”
- Peer review is not fool proof
- Case reports have limited value
- Appreciate (?read) the methods section
- Appreciate the references
  - And the references’ references



# TCJ Forensic Science Courses

- Past two years, TCJ offered 17 courses related to forensic science.
- 20 hours of continuing education
- 520 judges attended at least one of these courses
- Speakers included prosecutors, defense attorneys, and judges, representatives from the Innocence Project, forensic science experts, and soon will include Michael Morton.

# Examples of Topics Presented:

- “Wrongful Convictions: Where We Are Today and What We Can We Do To Prevent Them?”
- ”The Judge’s Role in Meeting the Requirements of Brady”
- “Admissibility of Expert Testimony: Daubert and Beyond”
- “How to Satisfy the New Requirements of the Michael Morton Act”
- “Forensic Science: A Perspective Outside of the Echo Chamber
- “Forensic Science & Judicial Gatekeeping”

The End

*Thank you*

# Contact Information

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