

## Submission Texas Law Review Online -draft 2/5/2023

[pending application]

Response

Texas Writs: It's not a book, It's a weapon! A Response to Tippet and Alexander et alia, *Does Lawyering Matter? Predicting Judicial Decisions...*\*

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### I. Swinging a Pickaxe

In '[Does Lawyering Matter? Predicting Judicial Decisions from Legal Briefs, and What That Means for Access to Justice](#)', Tippet et alia call for: "a freely available, computationally enabled citation identification and brief bank tool, which would extend to all litigants the benefits of good lawyering and open up access to justice." Such a thing they call a 'tool' even as the vocabulary of data science seems to obscure its practicality as an implement for those novices toiling in some field of the common law. Their focus is on ploughing the loam of employment law, while others are confined to wielding a pick axe in the calcareous environs of the Texas criminal courts.

Consider then the legal context of a prisoner beyond appeal, incarcerated, indigent, and typically without the professional skills of an employment law litigant. She may have limited access to the resources of the prison library. She has no right to indigent counsel in swinging a habeas corpus writ. And not infrequently, she may face the aridity of the bars while pursuing claims of *Strickland* incompetence and *Brady* misconduct. The Tippet tool would indeed be a useful implement and perhaps, in some cases, her only means to access to justice, for even the best of pled facts may be overcome by a drought of legal argument.

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\* Elizabeth Chika [Tippet](#), [Alexander](#) et al., [Does Lawyering Matter? Predicting Judicial Decisions from Legal Briefs, and What That Means for Access to Justice](#), 100 Texas Law Review (2022), (last visited Jan 7, 2023).

† Edward Stetson, Writs Data Project. [Legal-ProSe.net](#), papers: bail [reform](#) common law of [writs](#).

The Tool augmented as suggested in this response is not of mere predictive interest. ‘Wat that means for access’ in the fight for justice is that, ‘It is not just a book. It’s a weapon.’<sup>3</sup>

This response proposes a sharpening of the Tippet ‘Tool,’ The response charts a reconceptualization of the problem based on practitioner and theoretical formulations of the common law. Based on this reconceptualization, It introduces an independently developed ‘Heuristic’ that could augment the Tool, providing several advantages., Its application is illustrated in results from Habeas Corpus writs of the Texas Court of Criminal Appeals.

The Heuristic has three major advantages that may help the authors extend their tool’s applicability namely: 1) parsimony in data and focus, 2) factual contextualization, and 3) recognition of the time dynamics of the common law. The heuristic may be then characterized as a supplement to the more formal ‘intelligent’, ‘machine learning’ methods described by the authors literature review and in Salib, Huang<sup>4</sup>.

In Part I the response proposes a justification for our (and Tippet’s) formalization of precedent as a vector of citations with context. In Part II it charts a different conceptualization of the data driven decision problem of the Tool’ solution. Along the way it distinguishes it from the author’s approach and delineate its advantages and weaknesses. In Part III, it focuses on the applicability of the model to the dynamics of the common law, recognizing that a data driven static model is unlikely to be useful to litigants operating on a changing legal landscape.<sup>5</sup> The appendix provides Heuristic results for some of the top citation case clusters the method has identified. In itself, the appendix can serve as an example of Tippet’s “computationally enabled citation identification ... bank tool.” There we suggest further research required for its implementation as a practical application in ‘good lawyering’.

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<sup>3</sup>THE BOOK OF ELI #5 [MOVIE CLIP](#) - THE BOOK IS A WEAPON (2010) HD, (2011), (last visited Jan 28, 2023).

<sup>4</sup> Peter N. Salib, [Artificially Intelligent Class Actions](#) | *Texas Law Review*, 100 TEXAS LAW REVIEW (2022), (last visited Jan 7, 2023)., Zihan [Huang](#) et al., [Context-Aware Legal Citation Recommendation using Deep Learning](#), in PROCEEDINGS OF THE EIGHTEENTH INTERNATIONAL CONFERENCE ON ARTIFICIAL INTELLIGENCE AND LAW 79 (2021), (last visited Jan 28, 2023).

<sup>5</sup> Of course, a static model’s recommendation would be worse than useless when a past legal rule has become effectively null. Scientific rules may also change, [Valena E. Beety, Changed Science Writs and State Habeas Relief](#), 57 HOUS. L. REV. 483 (2019).

## I. Dog Law

The Heuristic follows Schauer's reformulation of the dynamics of the common law:

Jeremy Bentham, history's most famous critic of the common law, notoriously referred to the common law as "dog law": When your dog does anything you want to break him of, you wait till he does it, and then beat him for it. This is the way you make laws for your dog; and this is the way judges make laws for you and me" ...

Bentham's suspicions notwithstanding ... the common law appears resistant to erroneous results. If a preexisting common-law rule seems to produce a bad result in a particular case, then it must be because the preexisting rule is not yet as "pure" as it could and should be and thus stands in need of modification. And the impetus for this modification will be a court's determination that a result is "bad" in light of the full range of considerations of principle and policy that the court would otherwise use to evaluate the wisdom of outcomes or decisions, or to make decisions under circumstances in which there were no rules at all or in which the particular case was at the fringe and not the center of an existing rule.<sup>6</sup>

Under this reformulation, a rule is a cluster(vector) of applicable. citation precedents with authority. It applies because the fact pattern fits the decision in question. It is further applicable because the legal context fits the precedents'. The citations have authority because they apply and are not abrogated nor qualified.

When a case following this rule results in a bad outcome it becomes a bad case that disturbs the court. The disturbance may result in legal change, that is, the rule is modified to some extent. This may be judicially controversial, as indicated by concurrences and dissents, or by an observed increase in citations and frequency. These writs of controversy signal legal change in the time series of decisions. Most decisions are not controversial and we often observe few citations as there is little need to justify a simple application of a stable rule.<sup>7</sup>

Both uncontroversial and controversial decisions then have authoritative citations that apply. We can describe this in terms of data as a cluster or vector of citations and contextual keywords or key phrases. This is the bank Tool. Given a factual or legal context,, it answers the question, what is the set of citations that is salient to the Court in granting relief? Yet the practitioner avoids the dilemma of Bentham's dog, kin to that of the

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<sup>6</sup> FREDERICK [SCHAUER](#), [THINKING LIKE A LAWYER](#): A NEW INTRODUCTION TO LEGAL REASONING (2009)

<sup>7</sup> Public opinion as reflected in pending legislative action can affect legal change, Anita S. Krishnakumar, [The Common Law as Statutory Backdrop](#), (last visited Feb 4, 2023), often as a "constrained substitute" for a PDR, exempt from jurisdictional preclusion, Jonathan R. Siegel, [Habeas, History, and Hermeneutics](#), 64 ARIZ. L. REV. 505 (2022). e

prisoner facing the machine in Kafka's Penal Colony. We need not discover the rule through punishment, dismissal. Instead we learn the rule from the experience of the long line of dogs that precede us in the machine./

## II. The Converse Conceptualization

The Tool begins with a conceptualization that is basically the question, can we train a tool to identify explanatory factors that predict legal success?

The Tool proposition estimated is: If these Factors, then Success.

The Heuristic proceeds along the converse: If Success, then these factors.

Both the Tool and Heuristic share citations as explanatory factors. The Tool's domain is a set of employment law briefs the vast majority of which are unsuccessful. . The Heuristic's domain is a set of successful writ decisions. The tool also has style factors while the Heuristic employs keyword, often factual, context. The tool may lack predictive power because it omits factual context. For example, a brief may fail not because the legal argument was invalid but as a result of a mismatch between the facts of a case and the arguments asserted. The argument may be valid, but the rule (a citation cluster) does not apply.

Moreover a shotgun splatter of citations offered in the data of unsuccessful briefs yields little information on what cluster rule is salient to the court. Decisions, not lawyer briefs, evidence judicial salience. Practitioners, if not data scientists, know this. They have internalized a method of applying rules to context evolved from decades of experience, some of this wisdom having been bequeathed by their more senior associates. To explicate, return to the hard landscape of Texas writs practice. Walk over the practitioners' paths. As this response intuits, they did not idle in the pedestrian flats but in the high places of Schauer's 'hard cases', peaks of high citation frequency, as illustrated below.

### The Writs Landscape

In our data set of habeas corpus writ appeals in the Texas Court of Criminal Appeals, we have identified 801 successful writs from Jan. 2018 to Nov. 2022. For each decision we have parsed citations and keyword groups and their frequency. We have truncated citations to those 425 occurring more than once, and restricted keywords to those 587 occurring more than ten times. This defines explanatory dictionaries of unique citations and keywords ordered by total frequency in the decision domain. This defines a surface, or two dimensional matrix of decisions (801 rows) and the 425 columns of citation frequency and 587 columns of keyword frequency

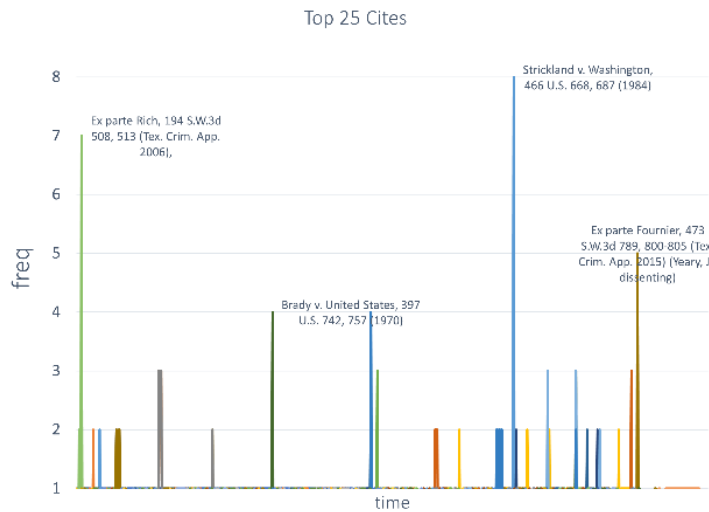


Figure 1-The citation skyline

Looking east over the data landscape from the west boundary with the left right axis corresponding to timed decision observations, we observe a skyline of spikes where a citation with a vertical frequency has been observed (Figure 1). Note that zero (not shown) is the most frequent occurrence, with single citations the more frequent, with very few citations with frequency over two. These usually involve a more considered discussion of the cited by the court.

Looking down at the landscape from the east (in this chart, only 75 court decisions and 25 citation frequency columns), we observe mostly single citation occurrences with occasional double cites, and in this subset a single peak with a frequency over two (Figure 2). The left right axis corresponds to the Tool citation vector.

We may also note in the entire success court decision domain only a small set of the citations are used often as indicated by their total column sum count (Figure 3). Only 40 key citations have a total domain frequency count greater than 15.<sup>8</sup> This is consistent with the Tool authors conclusion that very few citations are actually predictive of success.<sup>9</sup>

<sup>8</sup> The most common citation, [Ex parte Young](#), 418 SW 2d 824 - Tex: Court of Criminal Appeals 1967, (last visited Jan 8, 2023). , is authoritative, “Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for writ of habeas corpus”. Tippet, page 1175-1176

<sup>9</sup> “any given brief’s particular citation frequency vector was only modestly predictive of a summary judgment win ... we also identified a subset of citations that, when present in a brief’s citation frequency vector, increased the probability of summary judgment win. We include the presence of the top 100 of these “information gain” citations in Table 3, associated with a near-tripling of the MCC score. Information gain here refers to the contribution of those particular features, or variables, to the predictive

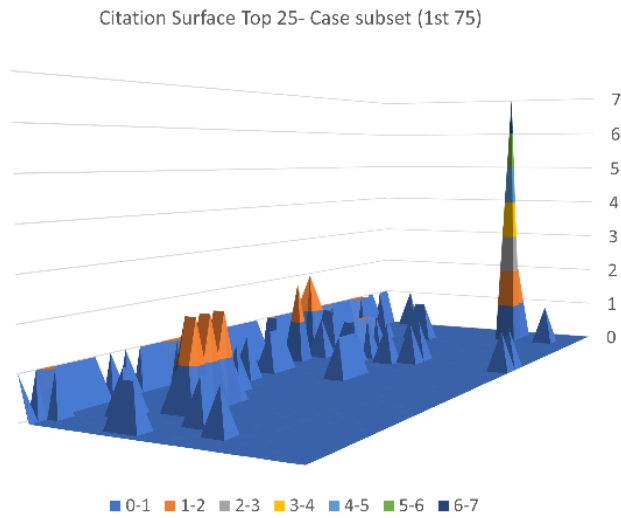


Figure 2 Citation Topography Sample

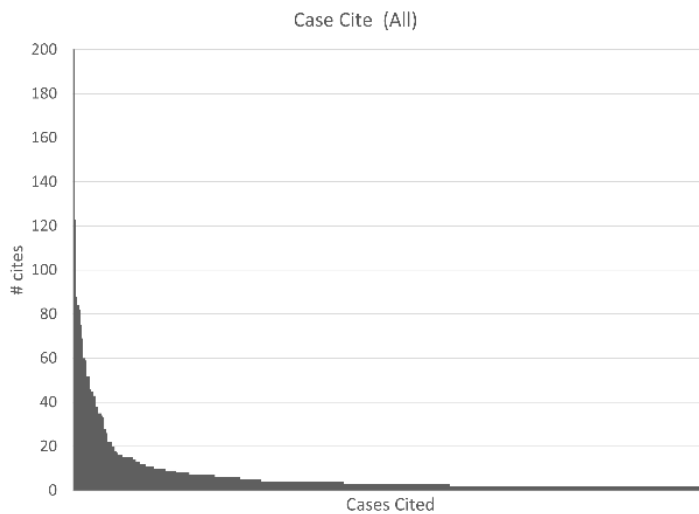


Figure 3 Citation Frequency Histogram

Successful writs follow a path of collateral attack with well-known citation justification. Appeals off the beaten path must use more obscure citations but their success is evidently less likely. The practitioners tread along these frequency peaks.

Correlation of Citations and Keywords

We have described judicial precedent as a surface of citation and keyword

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performance of the model”, Tippet et al., *supra* note 1.

columns and decision rows. Then the questions become: 1) How are these columns related to each other. In successful writs, does a given citation often appear together with other citations, 2) Do factual keywords often appear together, and 3) Does the factual or legal issue keyword imply a citation ,or a set of citations?

The relationship between explanatory variables is measured here with correlation, charted in figure 5 for the top 25 citations. Moderate correlation is common. Higher correlations imply a relationship. We can rank order cross correlations for a given citation or keyword, and this, as in Tippett and Alexander, defines a group, or 'cluster', of related explanatory variables. The constant value of one is of course the diagonal of a correlation matrix. We might add that the authors embed our conceptualization to some extent in their network cluster analysis. By focusing in that section on citations present in winning briefs, they have both discarded implicitly the losing data, as we do, and, shifted from predictive modeling to conditional expectations given success. A disadvantage here is doing this as a sub-algorithm of the larger predictive model. It is not parsimonious. Moreover, are they constructing variables based on success in a predictive model of success? Is this a kind of circular embedding that will over estimate their model's validity?

In any case, are approach independently reaches their conclusion to that section:

[We] measured the winningness of each brief's network "neighborhood," or cluster of briefs defined by the presence of at least one citation in common. Here again, the graph suggests that winning briefs share common citations, and that good lawyering, to some extent, may boil down to the ability to identify winning citations to precedent

To which we may add, only if the facts fit the rule, as decided by the Court.

Now for illustrative purposes consider the example of two frequent habeas attack simple clusters. Cluster 1 identifies three correlated citations on the legal rule of Ineffective Assistance of Counsel. Cluster 2 identifies two correlated citations on the duty to provide a notice of appeal. If we chart the citations stacked frequency we can see that the correlation captures how these citations often appear together through time (decisions) as illustrated in Figure 5. The appeals yellows often stack together as do the IATC blues, as predicted by the computed correlations. One can validate a computed cluster by inspecting each citation's content.

<sup>10</sup> A weakness of this initial Heuristic approach is that membership in a

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<sup>10</sup>Example of a Simple Correlation Cluster Validation of the cases in Figure 5: We merely compare how the computed cases are cited, If topical they remain in the cluster.

cluster depends on pairwise relationships. Ideally, the Tool's multivariate approach might be better, albeit if less intuitive. This example is a simplification, the Heuristic in general finds a larger set of citations and keywords that define a rule

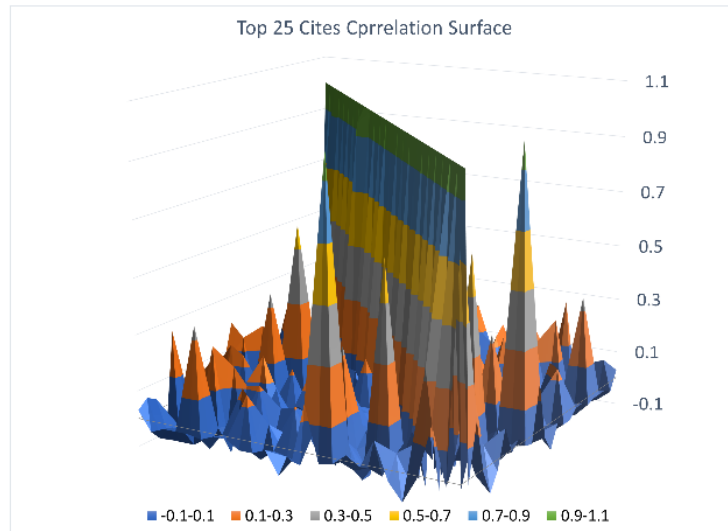


Figure 4 Correlation Topography

The Brady case has particularly high correlates in our data set. Keywords are part of the data landscape. Many of these suggest legal phrases such as 'actual innocence' or 'false testimony.' But others relate to the factual context of the case as in 'scientific' evidence disputes or in the crime of 'robbery', Other citations appear and are included in a rule case cluster. (See Table 1).

#### *Cluster 1-Ineffective Assistance*

[Strickland v. Washington \(1984\)](#) quote: To [prevail](#) on a claim of ineffective assistance of counsel, a petitioner must show that (1) his counsel's performance was deficient, and (2) the deficient performance prejudiced his defense.

[Ex parte Saenz](#) quote: In [reviewing](#) claims of ineffective assistance of counsel, we must decide whether Applicant has demonstrated by a preponderance of the evidence that his counsel's representation fell below an objective standard of reasonableness

[Ex parte Morrow](#) quote: Applicant [contends](#) that his guilty plea was involuntary due to the ineffective assistance of his trial counsel

#### *Cluster 2-Notice of Appeal*

[Ex parte Axel](#) quote: Applicant [contends](#) that his trial counsel rendered ineffective assistance by failing to file a notice of appeal.

[Jones v. State](#) quote: The Texas Court of Criminal Appeals has [held](#) that a trial counsel's duties do not end upon sentencing, but rather, include advising a client concerning the right to appeal and "taking other steps to pursue an appeal

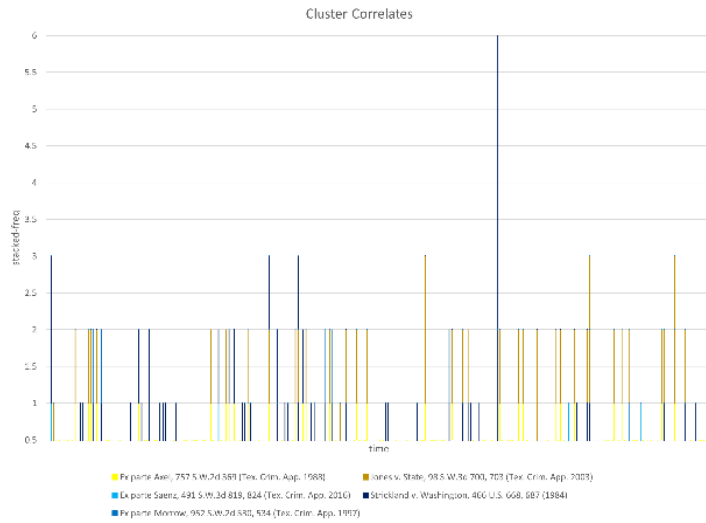


Figure 5 Stacked cluster frequency observations

<b><i>Brady v. Maryland, 373 U.S. 83 (1963) Correlates</i></b>	
exculpatory	0.86
withheld	0.86
EX PARTE CHILDERS (Tex. Crim. App. 2018)	0.86
Kyles v. Whitley, 514 U.S. 419 (1995)	0.86
materials	0.85
violation	0.58
robbery	0.54
elizondo	0.50
Ex parte Weinstein, (Tex. Crim. App. 2014)	0.49
scientific	0.49
falsehood	0.43
testimony	0.42
actual	0.33
innocent	0.32

Table 1 Brady Ranked Correlates

### III. Dog Dynamics

In an earlier [working paper](#) first exploring writs data, we focused on legal change in habeas corpus related to improper sentencing enhancement.<sup>11</sup> We detailed the progression of a rule (a cluster of citations) through time. We showed, following Schauer, how new rules are a response to a ‘bad

<sup>11</sup> Edward Stetson, *The Story of Judge Yearry and the Forty Writs*, 1 WRITS DATA PROJECT TEXAS,

case'. They may abrogate or restrict, embellish or expand, and in this sequence, embroider. By embroider we mean expand or restrict past authorities' application to specific qualifying exemptions or entitlements. In that study, originally, *Garcia/Ramirez* was controlling with regard to improper sentence enhancement upon appeal. Then under *Clay* a new entitlement is allowed in a writ of habeas corpus. Subsequently, *Pue* and *Westerman* clarify this decision with regard to retroactivity, latches delay, and the finality of a conviction under Texas law (dynamics described in Figure 6), the green shadow shows a shift in authority weight through time (depending on the context). This is somewhat of a simplification of course. The opinions, concurrences, and dissents address a variety of legal contexts in which the rule may or may not apply. It is these 'Dog Law' dynamics which require further augmentation of the Tippet Tool, perhaps in a regime-change specification.<sup>12</sup>

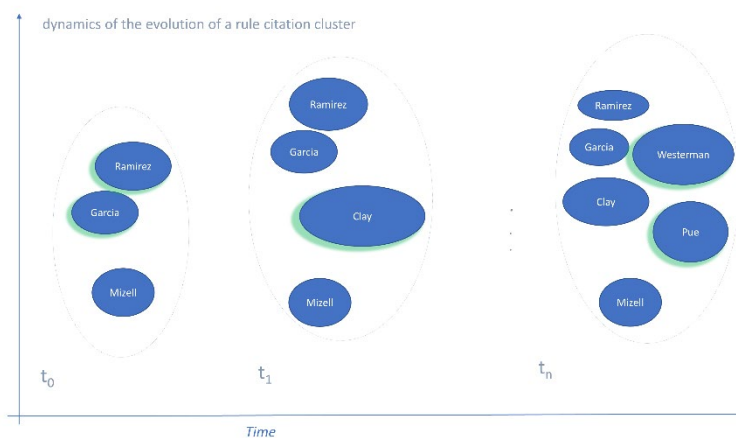


Figure 6

So, in this example, legal change may result in innovation with subsequent clarification or redaction. Although we could formalize this further, it suffices to say that the Tibbett conceptualization does not perhaps sufficiently recognize the time dependence of authorities, and the dependence of this authoritativeness on the factual and legal context. Our suggested augmentation of the MITRE<sup>13</sup> methodology is to make this explicit, as we do in this heuristic.<sup>14</sup>

<sup>12</sup> Philipp Singer et al., [Detecting Memory and Structure in Human Navigation Patterns Using Markov Chain Models of Varying Order](#), 9 PLOS ONE e102070 (2014)., for a Hamilton specification see Richard Breen, Kristian Bernt Karlson & Anders Holm, [Interpreting and Understanding Logits, Probits, and Other Nonlinear Probability Models](#), 44 ANNUAL REVIEW OF SOCIOLOGY 39 (2018).

<sup>13</sup> The MITRE Corporation (authors Branting, Morawski, Balhana, Pfeifer, and Bayer), [video](#)

<sup>14</sup> The conditional expectation becomes time index as in a Markov chain with memory, as above,  $E(x(t)_i | Y = 1, C^- = x(t-1)B)$ . Intuitively, a case presents with a given factual and legal context. The obvious optimal citation vector is the previous vector used in a successful attack with the same or similar context. In our opinion, a time series specification would be overly specific, one would have to specify memory lags, especially at the state wide level with a limited sample size, see Singer et al., *supra* note

Legal change is highlighted in our sample by decision citation vector length and frequency magnitude often with concurrences and dissent. As in the court data, cases with multiple opinions have a higher weight. Both Tippet's tool and the Heuristic need to make data weighting more explicit in the model, perhaps by weighting more highly cited cases or keywords greater than those obscure cases with low citation frequency? This is implicit in coefficients of a predictive model as in the Tool, suggesting that a multi-stage model learning might begin with a Heuristic identification of clusters to be followed with weight estimation on the category of cluster membership.

Finally, recognition of dog law dynamics includes the implication that the book of citations and keywords is a weapon, an arrow in the quiver of good lawyering. But more than that, there is some malleability in how the tool is sharpened and fit. We see this in Schauer's bad case example of improper enhancement The fact pattern and its resolution in the courts according to the rule was incongruous with the court's perception of justice. Consequently, it broadened Mizell's applicability. A well pled writ may be more effective than a well-researched one.

A judge can make the book say what she wants it to say.

#### REDRIDGE

And what if this book don't work?

What if it don't say what you want it to say?

#### CARNEGIE

Oh, it'll say what I want, I can promise you that. Because I'm going to rewrite it. I'll keep the parts that work for me and make the rest whatever I need it to be<sup>15</sup>.

### Next Steps

This response suggests an augmentation of the Tippet tool with a Heuristic that may sharpen its effectiveness as an implement improving access to justice.

#### Advantages

**Parsimony in data**-we need not consider legal brief failures but merely court decisions given success

- **Parsimony in focus**-Of the possible thousands of citations used in legal Texas Writs briefs we find that less than one hundred are demonstrably important in successful Texas writ court decisions.

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<sup>15</sup> Gary Whitta, [The Book of Eli](#), (2007), (last visited Jan 28, 2023).

Moreover, far fewer cover the range of possible collateral attacks.

- **Ease of Implementation**-It is likely that all court decisions of every state are available online in pdf or html format, and then can be parsed for citations and keywords without reliance on any private data banks, commercial or academic; It can therefore be generalized to all jurisdictions and subject areas.
- **Contextualization**- rather than using formal clustering or network methods, we can simply identify citation and keyword cluster groups using intuitive rank ordered correlations truncated by reference to frequency count. This heuristic is then validated by inspection of legal and factual keyword content, which then points to additional clusters (rule and factual contextualization).
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#### Doubts

The heuristic described here identifies cases that are important along given dimensions. Five of these dimension clusters are detailed in the appendix. But being careful to remove data overload means we have to truncate the information. This in turn requires some fairly arbitrary thresholds of salience. Consider two cases that share only a single citation that is merely procedural. Even though these cases would have correlation one, they may have nothing to do with each other. Or consider a case that has a high correlation with a target dimension but it is very lightly cited by subsequent cases. A different case with broader coverage but lower correlation may be more salient. Good lawyering means here using human judgement in deciding which cases and citations are extraneous.

Secondly, clusters share case citations. Dimensions overlap. cognizability restrictions require petitioners to pursue a multivariate collateral attack. See Figure 7. For example, an involuntary plea may be to an improper enhancement (*Garcia* is an intersection).

*Westerman* is important along three dimensions, “Applicant argues that the repeat-felon enhancement was improper, that trial counsel was ineffective for failing to investigate it, and that his guilty plea was involuntary.” Similarly *Dotson* intersects IATC and Enhancement, *Salim* Involuntary pleas and IARC, *Mallet* new evidence and enhancement. Along with *Westerman*, *Salcedo* intersects three cluster dimension sets, as do arguably others

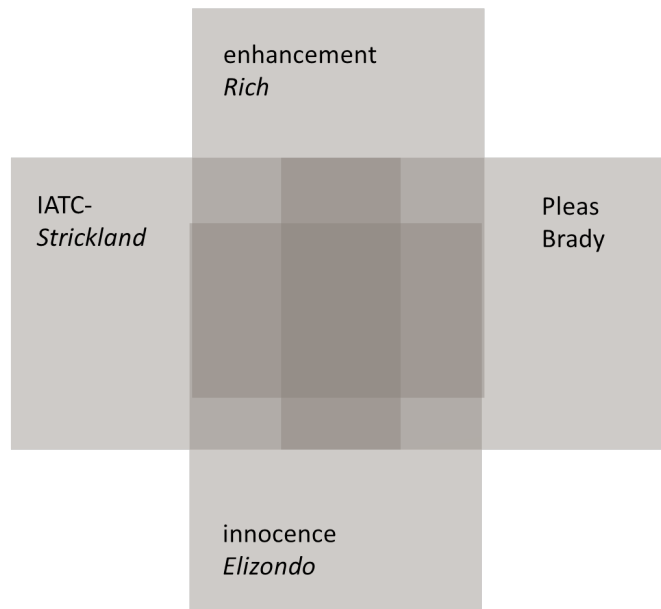


Figure 7

The Court has recognized some of this as tactical. Issues not raised in the trial court or upon appeal cannot be cognizable without resort to the *Bradys*, IATC, or another avenue of collateral attack. <sup>16</sup> Again, the multivariate nature of the landscape argues more for the Tippet approach than the Heuristic. Although there is a remedy perhaps in refining the keyword context to extended into coded key phrases. Clusters could then be conditioned in membership in multiple citation dimension sets. <sup>17 18</sup>

<sup>16</sup> IATC now through latches has an effective statute of limitations where counsel may suppress evidence of attorney error, “witnesses critical to the substantiation of a defendant’s claims may be impossible to contact, or corroborative evidence may be tainted, lost, or destroyed”, Alejandra S. Alvarez, [Habeas Mentem: Revisiting Sufficiency-of-Counsel Standards in Post-AEDPA Habeas Corpus Proceedings](#), 71 FLA. L. REV. 1481 (2019). If the Bar will not enforce retention of records by the trial courts and by counsel, IATC issues may spill over into Mandamus and Civil actions? Judicial Hot Potato: [An Analysis of Bifurcated Courts of Last Resort in Texas](#) and Oklahoma, 12 TENNESSEE JOURNAL OF LAW AND POLICY (2018), Edward Stetson, [Is Poverty Immutable for the County Judge | Reference Case Study](#), writs data project, LEGAL-PROSE.NET.

<sup>17</sup> Ex Parte [Garcia](#), 624 SW 3d 921 (2021), Ex Parte [Dotson](#), (2Tex: Court of Criminal Appeals 2022),, Ex parte [Salim](#), 595 SW 3d 844 (Tex: Court of Appeals, 2nd Dist. 2020020), Ex Parte [Mallet](#), (Tex: Court of Criminal Appeals ,2020), Ex Parte [Westerman](#), Order, (Tex: Court of Criminal Appeals, 2018), Ex parte Westerman, Yeary [Dissent](#), 570 SW 3d 731 (Tex: Court of Criminal Appeals, 2019), Ex parte [Saucedo](#), concurrence, 576 SW 3d 712 (Tex: Court of Criminal Appeals,2019),

<sup>18</sup> On innocence, see, In re [Lester](#), 602 SW 3d 469 (Tex: Court of Criminal Appeals,2020),. And Ex parte [Tuley](#), 109 SW 3d 388 (Tex: Court of Criminal Appeals,2002),, and lessor included, “Mable did not explain any of this. Consistent with Wilson, we should not have simply rejected Mable’s claim of actual innocence and then proceeded to address a due-process defect that Mable never complained about. Instead, we should have construed Mable’s claim of actual innocence as a claim that he was “guilty only of” a lesser-included offense or that he was factually “ineligible for” the punishment he received. Under either of these theories, Mable’s claim was self-evidently meritorious., Keasler, Ex parte [Saucedo](#), concurrence, 576 SW 3d 712 (Tex: Court of Criminal Appeals 2019),

## Intuition

This response charts a survey of the landscape of Texas Writ opinions and their relevant citations and keywords. It has illustrated the histogram density of citations and their correlation structure. The surface of citations shows peak intensities related to judicial controversy and legal change. The skyline of citation peaks is consistent with these densities and cluster element covariation. The landscape survey motivates a citation cluster identification methodology heuristic that simply finds correlated cites and keywords and ranks them according to coverage in the data and correlation. Validation is easily done by inspection. The appendix gives results of the Heuristic identifying the top clusters for pursuit of Habeas Corpus relief in the Texas Criminal Court of Appeals. This in itself is a useful reference for scholars and practitioners alike in the law of Texas writs. Our cluster results are validated by the wisdom of experienced Habeas attorneys<sup>19</sup>, namely petitioners should focus on PDRs and appeals lost, Strickland Ineffective Assistance of Trial Counsel (IATC), Brady evidence and Mooney false testimony violations, Brady involuntary pleas, and constitutionality of statutes.

## Future Research

In our initial exploration we have identified many citation and keyword clusters. There should be a methodology to remove intersections of sets (redundant information overlap).

In analytic footnotes, we suggest refinement of the Tippett tool with specifications that recognize conditional expectations with the addition of dynamics and regime change. Identification of Writs of Controversy where legal change occurs may be used to identify opportunities for novel legal argument.

Finally, a mobile application that returns relevant citation clusters to users based upon a legal or factual inquiry should not be difficult to develop and deploy. This would be the computationally based legal research tool suggested by Tippett et alia.

## Practitioner Appendices

As an aid to Pro Se litigants and Texas Habeas novices, we have provided the forty most important explanatory factors (linked citations) found by our Heuristic. We have also given five key clusters. Each cluster has ten correlates with breadth (non-trivial citation) and up to ten citing case observations. We hope that this appendix in itself, absent the suggestions above, is a standalone useful information portal reference for attorneys and their clients.

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<sup>19</sup> Thank you for scholarship, leadership, and inspiration: Michael Falkenberg, [Article 11.07 Habeas Corpus](#), (2022), Carmen Roe. (2022). Advanced Appellate Tips. UT 2022, [Carmen Roe Law Firm](#), PLLC - Houston, TX; research support [Kim J Simpson](#), UT Law, Audrey Banda, TX CCA

## Appendix -Top Writ Case Citation Clusters

## Top 40 Citations

<a href="#">1. 364, Ex parte Young, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967)</a>	11.07 authority	<a href="#">11. 52, Brady v. Maryland, 373 U.S. 83 (1963)</a>	Brady suppression
<a href="#">2. 123, Ex parte Wilson, 956 S.W.2d 25 (Tex. Crim. App. 1997)</a>	Right to file a PDR	<a href="#">12. 46, Brady v. United States, 397 U.S. 742, 757 (1970)</a>	Brady involuntary pleas
<a href="#">3. 88, Ex parte Axel, 757 S.W.2d 369 (Tex. Crim. App. 1988)</a>	Right to direct appeal	<a href="#">13. 45, Ex parte Torres, 943 S.W.2d 469 (Tex. Crim. App. 1997)</a>	HC denial, dismissal merits
<a href="#">4. 84, Jones v. State, 98 S.W.3d 700, 703 (Tex. Crim. App. 2003)</a>	Right to appeal	<a href="#">14. 45, Dulin v. State, ___ S.W.3d ___, Nos. PD-0856-19 &amp; PD-1857-19, 2021 WL 1202400 (Tex. Crim. App. Mar. 31, 2021),</a>	133.103 (b) and (d) facial unconstitutionality
<a href="#">5. 82, Strickland v. Washington, 466 U.S. 668, 687 (1984)</a>	Effective counsel IATC	<a href="#">15. 43, Ex parte Rodriguez, 334 S.W.2d 294, 294 (Tex. Crim. App. 1960),</a>	trial court remand
<a href="#">6. 75, Ex parte Riley, 193 S.W.3d 900 (Tex. Crim. App. 2006)</a>	Right to file a PDR	<a href="#">16. 38, Ex parte Mable, 443 S.W.3d 129 (Tex. Crim. App. 2014)</a>	pleas voluntary, intelligent
<a href="#">7. 69, Ex parte Elizondo, 947 S.W.2d 202 (Tex. Crim. App. 1996),</a>	New evidence, actual innocence	<a href="#">17. 38, Ex parte Palmberg, 491 S.W.3d 804, 808 (Tex. Crim. App. 2016)</a>	pleas misapprehensions
<a href="#">8. 60, Ex parte Crow, 180 S.W.3d 135 (Tex. Crim. App. 2005)</a>	PDR IATC	<a href="#">18. 35, Ex parte Rich, 194 S.W.3d 508, 513 (Tex. Crim. App. 2006),</a>	<b>improper enhancement</b>
<a href="#">9. 59, Ex parte Lo, 424 S.W.3d 10 (Tex. Crim. App. 2013)</a>	Constitutionality	<a href="#">19. 35, State v. Wilson, 324 S.W.3d 595, 598 (Tex. Crim. App. 2010)</a>	involuntary plea, Brady, actual innocence
<a href="#">10. 52, Ex parte Fournier, 473 S.W.3d 789, 800-805 (Tex. Crim. App. 2015) (Yeary, J., dissenting)</a>	33.021(b)	<a href="#">20. 34, Ex parte Brown, 205 S.W.3d 538, 544 (Tex. Crim. App. 2006)</a>	newly discovered evidence and actual innocence

<a href="#">21, 33, Ex parte Tuley, 109 S.W.3d 388, 392 (Tex. Crim. App. 2002)</a>	new evidence plea, innocence Herrera Schlup ( <a href="#">Elizondo</a> )	<a href="#">31, 16, Hill v. State, 633 S.W.2d 520 (Tex. Crim. App. 1982)</a>	contemporaneous trial objections improper enhancement
<a href="#">22, 28, Ex parte Parrott, 396 S.W.3d 531, 536-37 (Tex. Crim. App. 2013)</a>	harm in improper enhancement	<a href="#">32, 16, Ex parte Smith, 444 S.W.3d 661, 667 (Tex. Crim. App. 2014)</a>	plea IATC deportation, latches
<a href="#">23, 26, Ex parte Broussard, 517 S.W.3d 814, 816 (Tex. Crim. App. 2017)</a>	plea, misapprehension, Palmberg, Mable, Ruiz	<a href="#">33, 16, Atkins v. Virginia, 536 U.S. 304 (2002)</a>	death penalty mental disability
<a href="#">24, 22, Ex parte Patterson, 993 S.W.2d 114, 115 (Tex. Crim. App. 1999)</a>	plea, IATC improper enhancement	<a href="#">34, 15, Ex parte Carter, 521 S.W.3d 344, 347-48 (Tex. Crim. App. 2017)</a>	improper cumulation error forfeited in direct appeal
<a href="#">25, 22, Ex parte Huerta, 692 S.W.2d 681 (Tex. Crim. App. 1985)</a>	plea, sentencing, concurrence	<a href="#">35, 15, Jackson v. Virginia Jackson v Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)</a>	evidence sufficiency
<a href="#">26, 22, Ex parte Saucedo, 576 S.W.3d 712, 714-20 (Tex. Crim. App. 2019) (Keasler, J., concurring, joined by Hervey and Yeary, JJ.)</a>	plea, Wilson guilty only of a lesser-included Elizondo claim	<a href="#">36, 15, Ex parte Chance, 439 S.W.3d 918 (Tex. Crim. App. 2014)</a>	unconstitutionality, void statute, appeal
<a href="#">27, 20, Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed. 2d 203 (1985)</a>	plea involuntary Strickland test	<a href="#">37, 15, Kyles v. Whitley, 514 U.S. 419 (1995)</a>	Brady evidence materiality
<a href="#">28, 20, Ex parte Reed, 271 S.W.3d 698, 727 (Tex. Crim. App. 2008)</a>	ultimate fact finder	<a href="#">38, 15, Ex parte Pue, 552 S.W.3d 226, 243 (Tex. Crim. App. 2018) (Yeary, J., dissenting)</a>	improper enhancement, finality, excessive sentence
<a href="#">29, 18, Ex parte Perez, 398 S.W.3d 206, 213 (Tex. Crim. App. 2013)</a>	common law 5 years latches	<a href="#">39, 15, Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967)</a>	frivolous appeal withdrawal
<a href="#">30, 17, Mizell v. State, 119 S.W.3d 804, 806 (Tex. Crim. App. 2003)</a>	illegal sentence	<a href="#">40, 15, Carpenter v. United States, ___ U.S. ___, 138 S.Ct. 2206, 201 L.Ed.2d 507 (2018)</a>	cell-site location 4th Amendment

*Five Important Case Clusters-Correlates and Citing Observations with Breadth*

<b><u>5, 82, Strickland v. Washington, 466 U.S. 668, 687 (1984)</u></b>	
<a href="#">Ex parte Rodriguez, 334 S.W.2d 294, 294 (Tex. Crim. App. 1960), (43, 0.43)</a>	<a href="#">Ex parte Westerman, 570 SW 3d 731 (Tex. Crim. App. 2019) (4, 1)</a>
<a href="#">Ex parte Patterson, 993 S.W.2d 114, 115 (Tex. Crim. App. 1999) (22, 0.35)</a>	<a href="#">EX PARTE REED (Tex. Crim. App. 2022) (2, 1)</a>
<a href="#">Ex parte Reed, 271 S.W.3d 698, 727 (Tex. Crim. App. 2008) (20, 0.3)</a>	<a href="#">EX PARTE AHMED (Tex. Crim. App. 2018) (1, 1)</a>
<a href="#">Penry v. Lynaugh, 492 U.S. 302, 328 (1989) (12, 0.35)</a>	<b><a href="#">Ex parte Garza, 620 SW 3d 801 (Tex. Crim. App. 2021) (1, 8)</a></b>
<a href="#">Ex parte Weinstein, 421 S.W.3d 656 (Tex. Crim. App. 2014) (11, 0.19)</a>	<a href="#">EX PARTE KELLEY (Tex. Crim. App. 2019) (1, 1)</a>
<b><a href="#">Ex parte Maldonado, 688 S.W.2d 114, 116 (Tex. Crim. App. 1985) (9, 0.44)</a></b>	<a href="#">EX PARTE KOLHOFF (Tex. Crim. App. 2020) (1, 1)</a>
<a href="#">Wiggins v. Smith, 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003) (9, 0.72)</a>	<a href="#">EX PARTE VAUGHN (Tex. Crim. App. 2020) (1, 1)</a>
<b><a href="#">Ex parte Gonzales, 204 S.W.3d 391, 394 (Tex. Crim. App. 2006) (7, 0.72)</a></b>	<a href="#">EX PARTE SHIFLETT (Tex. Crim. App. 2020) (1, 1)</a>
<a href="#">Ex parte Morrow, 952 S.W.2d 530, 534 (Tex. Crim. App. 1997) (6, 0.17)</a>	<a href="#">Ex parte McEwen, 602 SW 3d 586 (Tex. Crim. App. 2020) (1, 1)</a>
<a href="#">Ex parte Nelson, 137 S.W.3d 666 (Tex. Crim. App. 2004), (5, 0.26)</a>	<a href="#">EX PARTE BALL (Tex. Crim. App. 2020) (1, 1)</a>

<b><u>7, 69, Ex parte Elizondo, 947 S.W.2d 202 (Tex. Crim. App. 1996),</u></b>	
<a href="#">Brady v. United States, 397 U.S. 742, 757 (1970) (46, 0.35)</a>	<b><a href="#">Ex parte Saucedo, 576 SW 3d 712 (Tex. Crim. App. 2019) (22, 3)</a></b>
<b><a href="#">State v. Wilson, 324 S.W.3d 595, 598 (Tex. Crim. App. 2010) (35, 0.51)</a></b>	<a href="#">Ex parte Warfield, 618 SW 3d 69 (Tex. Crim. App. 2021) (12, 1)</a>
<a href="#">Ex parte Brown, 205 S.W.3d 538, 544 (Tex. Crim. App. 2006) (34, 0.45)</a>	<a href="#">Ex parte Kussmaul, 548 SW 3d 606 (Tex. Crim. App. 2018) (10, 1)</a>
<b><a href="#">Ex parte Tuley, 109 S.W.3d 388, 392 (Tex. Crim. App. 2002) (33, 0.54)</a></b>	<a href="#">Ex parte Chaney, 563 SW 3d 239 (Tex. Crim. App. 2018) (10, 1)</a>
<b><a href="#">Ex parte Broussard, 517 S.W.3d 814, 816 (Tex. Crim. App. 2017) (26, 0.42)</a></b>	<a href="#">Ex parte Mallet, 602 SW 3d 922 (Tex. Crim. App. 2020) (3, 1)</a>
<a href="#">Ex Parte Miles, 359 S.W.3d 647, 671 (Tex. Crim. App. 2012) (13, 0.36)</a>	<a href="#">EX PARTE ALONZO (Tex. Crim. App. 2019) (3, 1)</a>
<a href="#">Ex parte Cacy, 543 S.W.3d 802 (Tex. Crim. App. 2016) (Yeary, J., concurring) (12, 0.38)</a>	<a href="#">EX PARTE GARCIA (Tex. Crim. App. 2021) (2, 1)</a>
<a href="#">Ex parte Kussmaul, 548 S.W.3d 606, 636-37 (Tex. Crim. App. 2018) (10, 0.41)</a>	<a href="#">Ex parte Grant, 622 SW 3d 392 (Tex. Crim. App. 2021) (2, 1)</a>
<a href="#">McMann v. Richardson, 397 U.S. 759, 770, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970) (7, 0.41)</a>	<a href="#">EX PARTE MALLETT (Tex. Crim. App. 2020) (2, 1)</a>
<a href="#">Ex parte Reyes, 474 S.W.3d 677, 681 (Tex. Crim. App. 2015) (6, 0.41)</a>	<a href="#">EX PARTE GARCIA, 624 SW 3d 921 (Tex. Crim. App. 2021) (2, 1)</a>

<b><u>11, 52, Brady v. Maryland, 373 U.S. 83 (1963)</u></b>	
<a href="#">Ex parte Palmberg, 491 S.W.3d 804, 808 (Tex. Crim. App. 2016) (38, 0.34)</a>	<b><a href="#">Ex parte Chaney, 563 SW 3d 239 (Tex. Crim. App. 2018) (10, 1)</a></b>
<b><a href="#">Kyles v. Whitley, 514 U.S. 419 (1995) (15, 0.39)</a></b>	<a href="#">Ex parte Mallet, 602 SW 3d 922 (Tex. Crim. App. 2020) (3, 1)</a>
<b><a href="#">Harm v. State, 183 S.W.3d 403, 408 (Tex. Crim. App. 2006) (14, 0.38)</a></b>	<a href="#">EX PARTE NICHOLSON, 634 SW 3d 743 (Tex. Crim. App. 2021) (3, 1)</a>
<a href="#">United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985) (11, 0.29)</a>	<a href="#">EX PARTE CHILDERS (Tex. Crim. App. 2018) (3, 1)</a>

<a href="#">Ex parte Harleston, 431 S.W.3d 67, 89 (Tex. Crim. App. 2014) (8, 0.31)</a>	<a href="#">EX PARTE NICHOLSON (Tex. Crim. App. 2021) (2, 1)</a>
<a href="#">Estrada v. State, 313 S.W.3d 274, 281 n.3 (Tex. Crim. App. 2010) (7, 0.29)</a>	<a href="#">EX PARTE MALLETT (Tex. Crim. App. 2020) (2, 1)</a>
<a href="#">Saldano v. State, 70 S.W.3d 873, 884 (Tex. Crim. App. 2002) (7, 0.29)</a>	<a href="#">EX PARTE COLONE (Tex. Crim. App. 2022) (1, 2)</a>
<a href="#">Ex parte Chabot, 300 S.W.3d 768 (Tex. Crim. App. 2009) (7, 0.29)</a>	<a href="#">EX PARTE YEARLING (Tex. Crim. App. 2022) (1, 2)</a>
<a href="#">Ex parte Mayhugh, 512 S.W.3d 285, 298 (Tex. Crim. App. 2016) (6, 0.31)</a>	<a href="#">EX PARTE AUSTIN (Tex. Crim. App. 2020) (1, 1)</a>
<a href="#">Britain v. State, 412 S.W.3d 518, 520 (Tex. Crim. App. 2013) (5, 0.35)</a>	<a href="#">EX PARTE JAILE (Tex. Crim. App. 2019) (1, 1)</a>

### **12, 46, Brady v. United States, 397 U.S. 742, 757 (1970)**

<a href="#">Ex parte Elizondo, 947 S.W.2d 202 (Tex. Crim. App. 1996), (69, 0.35)</a>	<a href="#">Ex parte Saucedo, 576 SW 3d 712 (Tex. Crim. App. 2019) (22, 4)</a>
<a href="#">Ex parte Mable, 443 S.W.3d 129 (Tex. Crim. App. 2014) (38, 0.38)</a>	<a href="#">EX PARTE Mackley (Tex. Crim. App. 2020) (2, 1)</a>
<a href="#">Ex parte Palmberg, 491 S.W.3d 804, 808 (Tex. Crim. App. 2016) (38, 0.47)</a>	<a href="#">EX PARTE GARCIA (Tex. Crim. App. 2021) (2, 1)</a>
<a href="#">State v. Wilson, 324 S.W.3d 595, 598 (Tex. Crim. App. 2010) (35, 0.26)</a>	<a href="#">EX PARTE REYNA (Tex. Crim. App. 2021) (2, 1)</a>
<a href="#">Ex parte Broussard, 517 S.W.3d 814, 816 (Tex. Crim. App. 2017) (26, 0.39)</a>	<a href="#">EX PARTE JOSEPH (Tex. Crim. App. 2019) (1, 1)</a>
<a href="#">Ex parte Kimes, 872 S.W.2d 700, 703 (Tex. Crim. App. 1993) (10, 0.2)</a>	<a href="#">EX PARTE THOMPSON (Tex. Crim. App. 2019) (1, 1)</a>
<a href="#">Ex parte Barnaby, 475 S.W.3d 316, 325 (Tex. Crim. App. 2015) (8, 0.32)</a>	<a href="#">EX PARTE DIXON (Tex. Crim. App. 2020) (1, 1)</a>
<a href="#">Ex parte Moussazadeh, 361 S.W.3d 684, 690 (Tex. Crim. App. 2012) (7, 0.34)</a>	<a href="#">EX PARTE HICKS, 640 SW 3d 232 (Tex. Crim. App. 2022) (1, 3)</a>
<a href="#">McMann v. Richardson, 397 U.S. 759, 770, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970) (7, 0.55)</a>	<a href="#">EX PARTE CAPE (Tex. Crim. App. 2021) (1, 1)</a>
<a href="#">Ex parte Reyes, 474 S.W.3d 677, 681 (Tex. Crim. App. 2015) (6, 0.26)</a>	<a href="#">EX PARTE WESTERMAN, 592 SW 3d 441 (Tex. Crim. App. 2019) (1, 1)</a>

### **18, 35, Ex parte Rich, 194 S.W.3d 508, 513 (Tex. Crim. App. 2006),**

<a href="#">Mizell v. State, 119 S.W.3d 804, 806 (Tex. Crim. App. 2003) (17, 0.61)</a>	<a href="#">Ex parte Saucedo, 576 SW 3d 712 (Tex. Crim. App. 2019) (22, 1)</a>
<a href="#">Hill v. State, 633 S.W.2d 520 (Tex. Crim. App. 1982) (16, 0.62)</a>	<a href="#">Ex parte Pue, 552 SW 3d 226 (Tex. Crim. App. 2018) (15, 7)</a>
<a href="#">Ex parte Clay, 539 S.W.3d at 289 (Yearly, J., dissenting) (9, 0.62)</a>	<a href="#">Ex parte Clay, 539 SW 3d 285 (Tex. Crim. App. 2018) (9, 2)</a>
<a href="#">Ex parte White, 659 S.W.2d 434, 435-36 (Tex. Crim. App. 1983) (7, 0.7)</a>	<a href="#">Ex parte Hill, 632 SW 3d 547 (Tex. Crim. App. 2021) (4, 1)</a>
<a href="#">Ex parte Cashman, 671 S.W.2d 510, 512 (Tex. Crim. App. 1984) (7, 0.54)</a>	<a href="#">EX PARTE PHILLIPS (Tex. Crim. App. 2022) (2, 1)</a>
<a href="#">Ex parte Townsend, 137 S.W.3d 79 (Tex. Crim. App. 2004), (6, 0.54)</a>	<a href="#">EX PARTE PRINGLER (Tex. Crim. App. 2020) (1, 1)</a>
<a href="#">Ex parte Nivens, 619 S.W.2d 184, 185 (Tex. Crim. App. 1981) (6, 0.76)</a>	<a href="#">EX PARTE RENDON (Tex. Crim. App. 2021) (1, 1)</a>
<a href="#">Ex parte Perales, 215 S.W.3d 418, 419 (Tex. Crim. App. 2007) (5, 0.56)</a>	<a href="#">EX PARTE COKER (Tex. Crim. App. 2018) (1, 1)</a>
<a href="#">Ex parte Langley, 833 S.W.2d 141 (Tex. Crim. App. 1992) (5, 0.8)</a>	<a href="#">EX PARTE ORTIZ (Tex. Crim. App. 2021) (1, 1)</a>
<a href="#">Ex parte Nelson, 137 S.W.3d 666 (Tex. Crim. App. 2004), (5, 0.82)</a>	<a href="#">EX PARTE SKIPPER (Tex. Crim. App. 2021) (1, 1)</a>