

'How to make NY as progressive on criminal justice as Texas'

Wait—what?! Not used to seeing many positive things about Texas criminal justice in the *New York Times*, I was initially shocked to read the above headline and the article, which you can find here:

<https://www.nytimes.com/2019/01/15/opinion/new-york-texas-criminal-justice.html>. The issue is discovery. You may not know this, but many states, including New York, do not have broad discovery statutes akin to Texas's Michael Morton Act (MMA) that require pre-trial disclosure of offense reports and witness statements. So in an effort to support proposed legislative reforms, the *Times* highlighted the Michael Morton Act as an "industry leader."

Perhaps Texas prosecutors don't spend enough time talking to folks around the country about the programs and policies we are putting in place in discovery, victim services, mental health, drug diversion courts, and conviction integrity. Is it time we invite the *New York Times* down for a visit?

A reminder about mandatory *Brady* training

Speaking of the Michael Morton Act, just a quick reminder that as a prosecutor you must take mandatory *Brady* training within 180 days of starting work and take a refresher every four years. That free training is available now at www.tdcaa.com. And a new idea that is catching on: Some prosecutors are asking that their police officers watch the free training to better understand their discovery obligations. Great idea! Officers will not get any continuing education credits, I'm afraid, but I think they would better understand why you are asking for all that stuff from them if they knew more about prosecutors' discovery obligations under the MMA.



By Rob Kepple

TDCOA Executive Director in Austin

A new focus on mental health

Hats off to the folks at the Office of Mental Health Coordination in the Texas Health and Human Services Commission for recently making a bid for a grant to create a Criminal Justice Learning Collaborative, which would be focused on competency to stand trial and competency restoration. That all sounded suitably governmental grant-speak, of course, but the grant would allow the commission to aim resources at developing best practices for competency restoration programs with state and local participants. Indeed, Lubbock County CDA **Sunshine Stanek**, and Tarrant County CDA **Sharen Wilson** are already on board with their local mental health authorities to be part of the project. Good luck, and I'm looking forward to seeing the results of this work.

Cognitive bias training

I want to thank **Jarvis Parsons** (DA in Brazos County) and **Bill Wirsky** (First Assistant CDA in Collin County) for producing our first training on cognitive and implicit bias at our Prosecutor Trial Skills Course in January. How cognitive and implicit biases impact us as prosecutors is an important topic that has been the focus of attention of our Diversity, Recruitment, and Retention Committee (chaired by **Sharen Wilson**, CDA in Tarrant County). The committee's work led to ground-breaking roundtable discussions moderated by **Jeremy Sylestine** (ADA in Travis County) at the 2018 Annual and Elected Prosecutor Conferences.

Cognitive and implicit biases affect everyone, of course, but as prosecutors and ministers of justice, it is crucial that we are making decisions based on evidence and the circumstances of an individual case. In addition, it is important to understand how implicit bias may impact our office work environments. I am proud that Texas prosecutors are developing training geared toward prosecutors and that we have solid action items and insights into what steps we can take to recognize and guard against these biases. **Diane Beckham**, TDCAA Senior Staff Counsel, is heading this effort, so if your office has instituted policies and practices that address these issues, she would love to hear about it. Just email her at Diane.Beckham@tdcaa.com.

Welcome, Will Dixon

The governor has appointed **Will Dixon** as the Navarro County Criminal District Attorney. Will, an assistant CDA in that office, is filling the vacancy left by the late **Lowell Thompson** after Lowell's untimely passing. Good luck, Will! Let us know what we can do to help.

A Permian problem?

I am happy to welcome **Steve Simonsen** as the new Loving County Attorney. Happy in that as long as I have been at TDCAA (coming up on 29 years!), Loving County has never had a county attorney. That is probably because according to the latest Texas State Directory, it has only 81 residents. As of now, only three very small counties don't have a county attorney—Armstrong, Cottle, and Glasscock.

Here is a problem that Steve has (and I am wondering if this is also a challenge for other prosecutors in the Permian Basin and Eagle Ford shale play): There are thousands of itinerant workers camped out in the county committing crimes, but there aren't any jurors. If that is a problem for you as well as Steve, I'd love to hear about it. Can't say I have a solution, but it seems like a problem that needs to be addressed if it is widespread.

Thank you, David Hajek

I was saddened to learn of the passing of **David Hajek**. David served as the Baylor County Attorney in the 1980s before becoming a district judge for 20 years. I got to know him when he retired from the bench and became the 50th Judicial District Attorney, serving Baylor County again. David served with distinction on the TDCAA

board of directors, and when he retired, I was surprised to see that he had become the King County Attorney. David's career trajectory always struck me as backwards: being a district judge first, running for district attorney, and then capping off a great career as a county attorney. Isn't it supposed to go the other way?!

Thanks, David, for all you did in a great career of service. It was a pleasure to serve you.

TDCAA family makes good

It is always gratifying to watch as former TDCAA employees make waves in the world. I can report that two shining stars got their beginnings at our association. First, congratulations to **Dade Phelan**, who has started his third term as a state legislator out of Beaumont and who has just been appointed to his first chairmanship of the influential House State Affairs Committee. You can say, "I know him when ..." because you may have bought a TDCAA book from him back in 1999 and 2000.

Second, congratulations to our former research attorney **Markus Kypreos**, who has suspended his law practice in Fort Worth to start a new venture, Blackland Distillery. You can read about his new business here: www.fwweekly.com/2019/01/16/blackland-distillery-arrives. It is a departure from law to be sure, but those of you who know Markus understand that he is a man of many talents—from game show contestant and gambling expert to TV legal commentator and, well, distiller. The stories about Markus are too many and too long for this journal—you will just have to stop by his tap room and ask him yourself!

What motivates you?

A law professor and prodigious Twitter commentator recently published a law review article titled "Career Motivations for State Prosecutors." (You can read it here: www.nytimes.com/2019/01/15/opinion/new-york-texas-criminal-justice.html.) **Ron Wright** researched and wrote the article to explore who should be working in a prosecutor office if the elected prosecutor is seeking to reform office practices. It is an interesting read for line prosecutors, if only to engage in self-reflection about your motivations for being in the profession. Wright's research identified five motivators: identity (you like being a crime-fighter), trial experience, public service

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generally, public service to the defendant, and quality of life. The biggest motivator was public service, and Wright explores an interesting component to that: the notion that prosecutors are motivated not just by a desire to help victims of crime, but also a desire to be fair with respect to the defendant (I'm paraphrasing). Indeed, he notes that "the overall frequency of this narrative contrasts sharply with the common academic assertion that prosecutors rarely display compassion for defendants."

I can't say I am surprised by that twist he didn't see coming. My experience with Texas prosecutors is that first and foremost, you seek justice for victims and citizens, but you spend a good deal of time figuring out (along with the loyal opposition) what is best for the defendant. In other words, you take the job of "minister of justice" to heart. I'm proud to serve you. ❁

Noteworthy

Law & Order Award winner



State Rep. Joe Moody (D-El Paso) recently received his TDCAA Law & Order Award for the work he and his staff did last legislative session on criminal justice and public safety legislation. Moody, a former prosecutor who served as chairman of the House Criminal Jurisprudence Committee last session, remains on that committee this session but now also serves as House Speaker Pro Tem. Pictured at the award presentation in the state capitol are (from left to right): Travis County Asst. DA Amy Meredith, TDCAA Executive Director Rob Kepple, State Rep. Joe Moody, Montgomery County Asst. DA Tiana Sanford, TDCAA Director of Governmental Relations Shannon Edmonds, and Tarrant County Asst. CDA Vincent Giardino.