The Texas Prosecutor

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"The primary duty of an attorney representing the state ... is not to convict but to see that justice is done."
Art. 2A.101, Texas Code of Criminal Procedure

Training witnesses to testify in court

Never underestimate the value of a rock-solid witness. Competent, articulate testimony is often the key that opens the door to truth at trial.

By Mike Holley
(left) Chief Criminal Investigator, &
Robyn Beckham
(right) Criminal Trial Chief Prosecutor,
Kaufman County Criminal District Attorney's Office

Unfortunately, we sometimes find out the hard way that the wrong key, or one that is poorly crafted, prevents that door from opening at all.

Those of us who work in prosecutors' offices rely heavily on professional witnesses to present complex, technical, or specialized information to judges and juries. Medical professionals, forensic scientists, law enforcement officers, digital analysts, and other subject-matter experts frequently provide testimony that forms the backbone of a trial, shaping how factfinders understand the evidence and, ultimately, how they reach a verdict.

Despite the centrality of their role, many of these professionals testify infrequently and receive little formal preparation for the demands of courtroom testimony. Police officers with more than 20 years on the job may have testified only a handful of times; sexual assault nurse examiners (SANEs), emergency room nurses, Child Protective Services (CPS) caseworkers, firefighters, communications operators, forensic interviewers, counselors, and medical examiners may receive subpoenas regularly, yet rarely wind up in the courtroom.

When they do testify, their time on the stand is often brief. The vast majority simply do not testify often enough to develop the skills necessary to feel comfortable and confident on the stand. We nevertheless expect them to communicate clearly and persuasively to juries, while rarely providing them the tools to do so before trial. By the time we are free to offer feedback, they are already back at work. Their performance is armchair-quarterbacked at our watercoolers far more often than it is coached in our offices.

Which begs a pivotal question: Who is responsible for preparing these professionals to testify? Recognizing that prosecutor offices serve as the motherships of criminal justice for their counties and judicial districts, we all know the answer—the responsibility rests with us.

Structured witness training is a necessary, but often overlooked, component of effective prosecution. Drawing

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Texas District and County Attorneys Association

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About *The Texas Prosecutor*

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New year, who dis?

A new year means a new board of directors for TDCAA.

Here is your association leadership for 2026, as approved at our Annual Business Meeting in December:

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The officers and directors of our Board donate their time and talents to make sure our association is serving its members (read: *you*) efficiently and effectively. If any of them reaches out for information or assistance, please lend them a hand. Together, we can do great things!

By Shannon Edmonds
TDCAA Executive Director in Austin

(Honorary Life) Membership has its privileges

At last month's Elected Prosecutor Conference, we recognized three past TDCAA Presidents for their service to both our association and our profession by bestowing upon them an honorary life membership in TDCAA. Former Travis County CA **David Escamilla**, former 34th Judicial (El Paso) DA **Jaime Esparza**, and former Galveston County CDA **Jack Roady** joined a select list of 11 other ex-prosecutors who can call themselves "honorary life members" of TDCAA. Not only will their names be added to our wall of honor at TDCAA World Headquarters, but they also get free dues and free admission to our Annual Conference for life. We are grateful for their service, but also for their willingness to continue to patronize our CLEs and share in the excellence that they helped to build. We hope to see all three of them at our Annual Conference for years to come!

Know any rising stars?

TDCAA maintains a cherished list of award winners who have been recognized for their service to the association, our profession, and their local communities. Many of those recipients have long and distinguished careers in prosecution or government representation, and their praise is well-deserved. However, there are also young lawyers in our profession who are doing remarkable things across this state, and our Board of Directors would like your help in identifying and recognizing them as the future of prosecution in Texas. Keep an eye on this space in future issues

for details on how to nominate someone as one of our Rising Stars, an award specifically intended to recognize those TDCAA members with fewer than five years of service as prosecutors who are leaders in their offices or their communities. (And perhaps best of all, the winners will never be asked to place ads in the journal or buy themselves commemorative plaques or quarter-zips or other branded trinkets or tchotchkes!)

Prosecutor census

Everyone knows the federal government conducts a nationwide census every 10 years, but did you also know that the Department of Justice's Bureau of Justice Statistics (BJS) conducts an occasional prosecutor census? Well, that "occasional" bit will include 2026. Here's what we know so far.

If you fall into that felony category, you will be receiving a request from BJS to take part in the survey (which we have not seen yet). We will continue to update you as we receive notice of related events on this front.

The purpose of BJS's next national Census of Prosecutor Offices (CPO) is to gather statistics about local prosecutors' personnel, policies, and office activities to help policymakers better understand those prosecutors' resource needs. The results of the survey will supplement other prosecutor surveys conducted by BJS, the most recent of which was a limited survey taken in 2020. For more background on this project from BJS, visit https://bjs.ojp.gov/topics/courts/prosecution. The curious among you can also read the 2020 report, which was released in November 2024, at https://bjs.ojp.gov/document/psc20.pdf and the last full prosecutor census in 2007, published in December 2011, at https://bjs.ojp.gov/content/pub/pdf/psc07st.pdf.

So, what does this mean for TDCAA members? If you do not have adult felony jurisdiction, then the short answer is: nothing. The Feds are seeking information only from felony prosecutor offices. (Congratulations to most of our county attorney friends!) But if you do fall into that felony category, you will be receiving a request from BJS to take part in the survey (which we have not seen yet). We will continue to update you as we receive notice of related events on this front, but if you have questions, feel free to contact me and I can try to connect you to people in the know who can answer them.

Counting blessings

As we look back on 2025, there is much to be thankful for. Our 2025 Annual Criminal & Civil Law Conference at Round Rock's Kalahari Resort and Convention Center in September was the largest live CLE event we have ever hosted and was a rousing success. We also saw more than 2,700 people complete our Legislative Update course, we helped several thousand more of you complete your annual CLE and TCOLE obligations, we sold tens of thousands of publications to members and non-members alike, we saw a record number of new members join the Texas Prosecutor Society (see page 14 for more on that), and we provided you with top-notch material in this bimonthly journal throughout the year. That's a lot to be thankful for! But as the saying goes, "Time and tide wait for no man," and we have important things planned for 2026, so let's get to it! ❇

Why I love TDCAA

I love being a member of the Texas District and County Attorneys Association (TDCAA).

By Brian Middleton
TDCAA Board President &
District Attorney in Fort Bend County

When I show up to meetings, a sense of peace overcomes me, similar to the feeling you get when you arrive home after a long road trip or when you walk into a locker room with your teammates at halftime.

Abraham Maslow's theory of human motivation was based on a hierarchy of needs. According to Maslow, there are five sets of basic needs: 1) physiological, 2) safety, 3) love, 4) esteem, and 5) self-actualization. Maslow theorized that love required a sense of "belongingness." This sense of belonging is derived from a connection to others, resulting from receiving acceptance, respect, and love. TDCAA provides me with a sense of belonging. It allows me to interact with people who share my challenges, passion, and commitment.

I was raised in Houston. My father is a retired labor lawyer. I attended elementary school at the Edgar Allen Poe Fine Arts Academy, a public school. After fifth grade, my parents enrolled me in St. Matthew's Lutheran School for middle school. St. Matthew's was small, with around 50 students in each grade group. The environment was fun and loving, typical of a parochial school.

Between seventh and eighth grade, I had a tremendous growth spurt, to the point that many of my teachers did not recognize me when I returned after the summer break. I was much taller and slimmer. I changed my hairstyle from a fluffy afro to a short tapered fade.

At the end of my eighth-grade year, I decided to go back to public school. I enrolled at Lamar High School for my freshman year. I went from an eighth-grade class of 50 to a ninth-grade class of over 700.

It was challenging negotiating the new, non-Christian school environment. It felt like a war zone, and every day was about survival. There was a fellow freshman named John. He was a running back on the varsity football team. He had the physique and demeanor of Mike Tyson. John was the veritable "big man on campus."

One day, while I was ordering lunch in the cafeteria, John grabbed some food, walked to the front of the line, informed the cashier that I would pay for the items, and walked away. He never said a word to me during this process, and I pretended not to hear his conversation with the cashier. We were not friends, and I had not agreed to pay for his food. Nevertheless, the cashier charged me for the items. I was humiliated and regretted not speaking up for myself.

Standing up

Later that school year, John was walking around my classroom while the instructor was teaching. The instructor had no control over the class and allowed John to roam. I was seated in the front row as usual. Like a bully, John was being disruptive and annoying other students. Again, I pretended not to see his actions, but I felt him getting closer. I was tense, hoping he would not pick on me.

I was looking straight ahead and listening to my instructor, but I heard John's voice getting closer. Eventually, he stood right in front of me, blocking my view, and asked me to look at this new ring. When I glanced at his hand, the ring squirted water in my face. Other students, likely out of their own fear and relief that it was not happening to them, began to laugh. Still bothered by the fact that he snookered me into paying for his lunch and now humiliated, I jumped to my feet, knocking over my desk, and got in his face. With clenched fists, I screamed at him to leave me alone. I was taller than he was, but he probably outweighed me by 75 pounds. I could see shock in his eyes as he yelled insults back at me. His friends urged him to hit me. Shaking and

afraid, I did not utter another word, but I continued standing and staring him down. Eventually, he sat down and remained quiet for the rest of the class. I could tell he was angry and confused; however, he never bothered me again.

That day, I learned to stand up to bullies. Despite my fear, I stood up for myself (and probably everyone else in the classroom). My spirit of being a protector and my disdain for bullies were born.

I would go on to college at the University of Houston, where I majored in economics with the hopes of becoming an investment banker. During my freshman year of college, I encountered another bully on my way to school. At the time, I was driving a 1983 Nissan Sentra. The car was incredibly slow, probably taking five minutes to accelerate from 0 to 60 mph. That morning, I was scheduled to take an early morning exam. As I was driving down Wheeler Avenue next to campus, a blue Ford Thunderbird pulled out in front of me and was moving very slowly. I decided to pass the vehicle lawfully on the left. As I passed the Thunderbird, I noticed the driver was wearing a police uniform. As I re-entered the lane, that same Thunderbird zoomed around me like Starsky and Hutch, slammed on its brakes, and stopped at an angle, blocking my forward movement.

As district attorney, I have the statutory duty not to seek convictions but to see that justice is done, and I love my job. I get to protect my community from bullies and ensure due process.

I slammed on my brakes and waited nervously. A tall man in a blue police uniform emerged from the vehicle. With his hand on his gun and rage in his eyes, the officer exclaimed, "Boy, what is your problem? Did you see my uniform when you passed me?" As I scanned the area, I noticed a passenger in his vehicle who looked just as terrified as I was. The passenger appeared to be a construction worker who wanted nothing to do with what was happening. There were no other witnesses. I watched the officer grip his handgun as he continued to march toward me. My heart was pounding, my hands were shaking, and I began to sweat. Then I remembered my father's "talk" about police encounters—do not argue on the roadside, and live to tell the story. Nervously, I responded, "Sorry, officer, I did not realize that you were a police officer. I am running late to take an exam. I am sorry that I passed you." Satisfied with my nonaggressive response, the officer replied, "Well, at least you know how to apologize." Red-faced and still angry, the officer walked back to his vehicle and squealed his tires as he drove off.

Due to the trauma that I experienced, I eventually decided that I wanted to be in law enforcement. I wanted to protect people.

We're in this together

We have different experiences and reasons for choosing our careers. I chose the legal profession to protect people. As district attorney, I have the statutory duty not to seek convictions but to see that justice is done, and I love my job. I get to protect my community from bullies and ensure due process.

As the newly elected Board President of the Texas District & County Attorneys Association, I have the opportunity to lead an organization of individuals who share my goals, passion, and commitment to justice. Our jobs are often stressful, they require long hours, and much of our hard work is done behind closed doors so it goes unnoticed by the community. Yet we show up every day, committed to justice and to serving our communities. That is why I love TDCAA.

As Ryunosuka Satoro once said, "Individually, we are one drop. Together, we are an ocean." ❇

A gift from CCA regarding the electronic harassment statute

Happy New Year! Congratulations on getting through what is frequently the most stressful and expensive season.

By Richard Guerra
Assistant Criminal District Attorney in Bexar County

Here's hoping that—somewhere within a frantic end-of-year schedule—we all experienced some joy and maybe even a little peace.

Meanwhile, I'm writing from the past. The new year yet approaches. A holiday whirlwind cries cacophonous Christmas carols as it spreads across Texas, flinging baubles, mistletoe, and wrapping paper in all directions. It's beautiful.

Ah! But you might have left a gift behind! It was delivered last June. No, it's not from a department store (or Amazon). It's from the Court of Criminal Appeals. And although *Owens v. State* doesn't look like a present at first glance, it's a gift to prosecutors across Texas. Let's unwrap it together.

Background

It had been two years since Kevin Owens had any contact with his former psychologist. They had had 11 sessions. Dr. Lindsay Bira had been uncomfortable with Owens. She tried to refer him to another psychologist, but Owens refused. Instead, he stopped their sessions, cancelled the remainder, and told Dr. Bira to never contact him again. Owens emailed her professional email address after two years of silence:

> My life is just as hopeless as ever. Maybe if I had the genes that would allow me to consider a modeling career then my life would be better, but I didn't. You exploited, abused, and then abandoned me. I will never give you any more money, but if you wanted to talk to me then that would be possible. I'm sure you have better things to do though.[1]

Dr. Bira testified that the email was sickening and highly concerning. She didn't reply to Owens. Instead, she forwarded it to the San Antonio Police Department (SAPD). Officials there told her not to block him so that they could document whether the messages escalated. The emails that followed would ultimately lead to Owens's conviction of harassment under Texas Penal Code §42.07(a)(7), which criminalizes the sending of "repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another" with intent to harass, annoy, alarm, abuse, torment, embarrass, or offend.[2]

Owens's second email to Dr. Bira came about a month later. It was long. He rambled about Bira's personal and professional life. He had been looking her up online and reading her social media pages. He commented about Bira's family, childhood, boyfriends, and career. He indicated that he knew her personal phone number and home address. He referenced photos of her that he found on social media, including one from her "modeling days in a see-through top" and other photos from Bira's dating relationships. He called her "eye candy." He said he wouldn't be surprised if she were a prostitute. Bira did not respond. She

[1] *Owens v. State*, No. PD-0075-24, 2025 WL 1587690, at *4 (Tex. Crim. App. June 4, 2025), reh'g denied (July 30, 2025).

[2] *Id.*

testified that the email was "horrific and concerning."[3]

The messages continued. Owens indicated that he had been scouring Dr. Bira's public social media accounts and client website. He accused her of abusing, raping, and exploiting him. He called her a shitty therapist and a terrible person. He purported to revoke his agreement with Dr. Bira's practice, privacy, and consent policies. He repeatedly asked for a $1,785 refund for his 11 sessions from two years prior. His messages told Dr. Bira, "You are encouraging me to kill myself," and he said he was "raped every day." He told her that she violated his confidentiality and that she touched him "in a sexual and inappropriate way during therapy." Owens also asked her to find a girlfriend for him.[4]

In total, Owens sent 34 messages over more than three months to Dr. Bira's professional email address, social media, and office phone.

When asked whether she felt harassed by the repeated emails or by the emails' content, Dr. Bira responded that it was both. She "felt abused from the very first email. Highly harassed."

Dr. Bira replied to Owens as an "office manager" from an administrative email account that was used for handling risky patients. She advised him to call 911, go to an emergency room, or call a suicide hotline. Otherwise, on SAPD's advice, she did not respond. She sent all of Owens's emails to police. Additionally, SAPD and Dr. Bira's attorney sent Owens cease and desist letters. She eventually stopped seeing her patients in person and then moved away from Texas.

When asked whether she felt harassed by the repeated emails or by the emails' content, Dr. Bira responded that it was both. She "felt abused from the very first email. Highly harassed."

Throughout the trial, Owens objected to the emails' admission because they were constitutionally protected speech. The trial court overruled his objections, and the jury found him guilty.

On appeal, Owens raised a host of issues, but our primary concern is his "as applied" challenge to Penal Code §42.07(a)(7). He argued that he had been prosecuted for the content of his messages because it was the messages' content that caused Dr. Bira to feel harassed. Citing to *Ex parte Sanders*, the court of appeals reasoned that the First Amendment does not protect speech that is integral to criminal conduct. Thus, Owens's speech—which he used to harass Dr. Bira—fell outside of its protection.[5]

Kevin Owens appealed to the Court of Criminal Appeals, which reversed the appeals court and remanded the case to the trial court for dismissal of the indictment.

What the judges said

Judge Keel authored the Court of Criminal Appeals's (CCA) majority opinion, which four other judges joined. She begins by noting that the merits of an "as applied" constitutional challenge—in which the challenger must show that a statute was unconstitutionally applied to him—depends on the evidence. The Court recognized that "speech integral to criminal conduct" is a traditional category of speech for which content-based regulations are allowed. The court also observed that there is no "freewheeling authority to declare new categories of free speech outside the scope of the First Amendment."[6]

Next, the Court discussed content-based laws that affect speech, which are laws that target speech based on its communicative content. Put another way: Content-based laws distinguish favored speech from disfavored speech based on the ideas or views expressed. Therefore, a law that restricts speech because it offends or causes discomfort is content-based. Dissimilarly, a restriction on the time, place, or manner of speech in a public forum that does not consider its content is content-neutral. However, a content-neutral law becomes content-based if authorities must examine the message's content to determine whether there was a violation.[7]

The CCA discussed strict and intermediate scrutiny, reminding the reader that courts must apply strict scrutiny to content-based laws, which requires that the government prove the law is narrowly tailored to serve compelling state interests. Conversely, intermediate scrutiny applies to content-neutral laws that regulate the method or manner of speech but not the speech itself. Intermediate scrutiny requires that the law must further an important government interest

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[3] *Id.*

[4] *Id.* at *4–*6.

[5] *Id.* at *1.

[6] *Id.* at *1.–*2

[7] *Id.* at *2.

by means that are substantially related to that intertest.[8]

But what if a content-neutral statute is applied in a manner that regulates speech? Citing *Holder v. Humanitarian Law Project*,[9] the Court held that strict scrutiny applied. Moving on to Tex. Penal Code §42.07(a)(7), the Court recalled that it held the statute constitutional because it prohibits non-speech conduct. The statute's gravamen—sending repeated electronic communications in a manner reasonable likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another—required no speech. A crime was committed whether a person repeatedly sent communications containing expressive speech or no speech at all.[10]

With all this in mind, the CCA recognized that the government's ability to regulate speech depends on whether it can show that the speech invades "substantial privacy rights in an essentially intolerable manner."[11] The Court next identified two examples of when the Unites State Supreme Court had upheld a selective restriction of offensive speech:

1) there is a captive audience, and
2) there is an invasion of unwanted ideas into the home.[12]

The Court went on to acknowledge that "the right of a person to be left alone must be weighed against the right of others to communicate."[13]

The Court then applied this analysis the facts of the Owens case. In describing the facts, the Court acknowledged that Owens's harassment conviction stemmed from sending about three dozen electronic messages during a 15-week period. All of these messages, which were mostly emails, were sent to professional—not personal—accounts. At the start of its analysis, the Court immediately distinguished between the act of sending messages and the speech that the messages themselves contain. Here, the Court deduced that the message's content drove the prosecution, in large part because Dr. Bira called the police after receiving the first message instead of after receiving related messages. The Court determined that Owens would not have been prosecuted if his messages expressed a different tone or idea. For example, Dr. Bira would not have called the police if Owens had just said "good morning," or had been polite.[14]

Next, the Court identified three reasons why—when weighing Owens's right to free speech against Dr. Bira's right to privacy—the scale tips in favor of Owens's right to free speech.

First, Owens didn't send his messages to Dr. Bira's home or personal accounts. All his messages went to professional email addresses, office phone numbers, and public professional social media. Second, Dr. Bira was not a captive audience. She could have avoided Owens's messages by deleting them without reading them or by

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[8] In *Holder*, the plaintiffs sought a declaration that a federal law which prohibited "knowingly providing support or resources to a foreign terrorist organization" was unconstitutional as applied to them because they wanted to provide legal and political aid to two organizations designated as foreign terrorist groups. The United States Supreme Court held that the statute–which regulated conduct–regulated these plaintiffs' speech as applied to them. Consequently, the Supreme Court analyzed the case using strict scrutiny and upheld the statute as applied to the plaintiffs. *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28, 130 S.Ct. 2705, 2724, 177 L.Ed.2d 355 (2010).

[9] *Owens*, 2025 WL 1587690 at *3.

[10] *Id.* (citing *Cohen v. California*, 403 U.S. 15, 21, 91 S.Ct. 1780, 1786, 29 L.Ed.2d 284 (1971) ("The ability of government, consonant with the Constitution, to shut off discourse solely to protect others from hearing it is, in other words, dependent upon a showing that substantial privacy interests are being invaded in an essentially intolerable manner. Any broader view of this authority would effectively empower a majority to silence dissidents simply as a matter of personal predilections").

[11] *Id.* (citing *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 209, 95 S.Ct. 2268, 2272, 45 L.Ed.2d 125 (1975), Hill v. Colorado, 530 U.S. 703, 717, 120 S.Ct. 2480, 2490, 147 L.Ed.2d 597 (2000); *Rowan v. U.S. Post Office Dep't*, 397 U.S. 728, 736, 90 S.Ct. 1484, 1490, 25 L.Ed.2d 736 (1970)).

[12] *Id.*

[13] *Id.* at *7.

[14] *Id.*

blocking him. She did neither. Third, the Court emphasized that speech can be regulated only if there is "an invasion of *substantial* privacy rights and in an *essentially intolerable manner*." And the facts of this case—34 messages sent over more than three months to a willing listener's public accounts—do not constitute such an invasion.[15]

Because strict scrutiny applied, the State had to prove that it narrowly tailored its application of the statute to the defendant to serve compelling state interests. The State had argued that intermediate scrutiny applied under *U.S. v. O'Brien*, in which the defendant was prosecuted for burning his draft card. However, the Court distinguished this case from *O'Brien* because O'Brien could have been prosecuted for burning his draft card regardless of the message that he sent by doing it. Consequently, the Court held that the State failed to show that its application of §47.02(a)(7) survived strict scrutiny.[16]

The Court then cast aside the State's argument that invalidating Owens's conviction would invalidate the statute because admitting the messages' content was necessary to prove 1) Owens's intent to cause negative feelings and 2) the reasonable likelihood that that the messages would cause these feelings. The Court noted that it did not hold that the messages were inadmissible for any reason and then pointed to the fact that Owens conceded that the messages were admissible to show intent. But the trial court admitted the messages over objection and with no limiting instruction. The Court next focused on the text of the statute, which required the State to show that the *manner in which the messages were sent* must be reasonably likely to cause negative feelings instead of the messages themselves. Indeed, the messages' content are irrelevant to the manner of their sending.[17]

In summation, the Court ruled that Owens was not prosecuted for sending messages, but for what the messages said. And the only remedy for the State violating a defendant's First Amendment rights by its application of a statute is dismissal.

In summation, the Court ruled that Owens was not prosecuted for sending messages, but for what the messages said. And the only remedy for the State violating a defendant's First Amendment rights by its application of a statute is dismissal.

Judge Parker's concurrence

Judge Parker pointed out that this case's information had two counts. Count I contained the first three messages, which occurred about one month apart. Count II contained the rest of the messages, many of which were sent after Dr. Bira and SAPD sent letters to Owens. Accordingly, Count I could not be prosecuted without implicating speech. But Count II could be prosecuted without implicating speech. She noted that an "as applied" violation can result from an improper jury charge. She contended that Count II could have been remanded for jury charge error and a harm analysis. She also drew attention to the idea that a complainant like Dr. Bira could have suitable reasons for not blocking Owens's harassing messages. For example, continuing to read the messages could notify Dr. Bira if he becomes an imminent danger to her.[18]

Judge Yeary's dissent

According to Judge Yeary, the content of the messages is evidence of an accused's intent, which will be highly relevant in most prosecutions under §42.07(a)(7). But that doesn't mean that the accused is being prosecuted for the content of his communications. Judge Yeary criticized the Court's ruling as a statement that §42.07(a)(7) will infringe on the First Amendment "anytime the electronic communication involves—well, communication."[19]

The takeaway

Is it still possible to prosecute under §42.07(a)(7) without running afoul of the First Amendment? Almost certainly yes.

Remember—the State did not make a strict scrutiny argument to the Court. As such, this case does not demonstrate what a strict scrutiny analysis might look like when applied specifically to §42.07(a)(7).[20]

The Court's primary concern was that the method by which Owens was prosecuted implicated what he said more than the method by

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[15] *Id*. at *7–*8.

[16] *Id*. at *8.

[17] *Id*. at *8–*9 (Parker concurring and dissenting).

[18] *Id*. at *19–*20 (Yeary dissenting).

[19] Having read the record for this case, I'm fairly certain that this particular prosecution would not have survived a strict scrutiny analysis.

[20] See *Wilson v. State*, 448 S.W.3d 418 (Tex. Crim. App. 2014).

which he said it. After all, §42.07(a)(7)'s gravamen is the sending of repeated electronic communications in a manner reasonable likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another, which requires no speech. Mounting a successful prosecution under this statute requires the State to focus on the manner in which the messages were sent instead of their content. And this opinion presents the State with meaningful suggestions on how to do just that.

Prosecutors might consider asking for limiting instructions when introducing a defendant's communications into evidence, especially if the communications' content is offensive. For example, the State could ask the trial court to instruct the jury that the defendant is not being prosecuted for the offensiveness of his communications, but for the manner by which they were sent. Consequently, the jury cannot consider the communication's content—offensive or not—in determining whether a defendant sent repeated communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another. However, the jury can consider the communications' content to determine a defendant's intent.

Next, prosecutors should put facts into evidence that demonstrate that there was an invasion into the victim's home. Here, the Court found that there was no home invasion because Owens sent all his messages to Dr. Bira's professional and public accounts. However, in an era where so many people work from home, prosecutors should endeavor to show facts that blur or eliminate the line between work and home. Does the victim work at home? Does the victim's office phone forward to her personal phone? Does she have a work cell phone that she takes home? Does she respond to and use professional social media from home? Does the method by which the defendant sends communications to the victim overflow from work and flood into her home life in a substantial way? Is the victim capable of divorcing her professional work from her home life in a way that could eliminate harassing communications from reaching her home?

Moreover, I would focus on what makes a captive audience. Judge Parker's concurrence pointed out that the ability to block or delete messages without reading them does not necessarily mean an audience is not captive. A defendant can create his own captive audience by, among other things, the sheer volume of messages or by other interactions that could frighten or force the victim to read the messages. Blocking messages does little to prevent a victim from being a captive audience when a defendant constantly circumvents the blocks by using aliases and fake accounts. And the ability to block messages means little to a victim whom a defendant threatens into reading them. Prosecutors should elicit these facts from their witnesses if they exist.

In holding that Owens's messages did not substantially invade Dr. Bira's privacy rights in an essentially intolerable manner, the Court made mention that Dr. Bira was a willing listener. Consider showing the jury how a victim was not a willing listener, even if the victim was still listening. At bottom, we know that following police advice to not block a defendant does not make a listener unwilling. What about being afraid? Or the fact that he had compiled so much personal information about Dr. Bira? Or the volume of messages? Or blocking a defendant who then circumvents the block by sending messages in other ways? For example, did the defendant interact with the victim—outside of the communications for which the defendant is charged—in a manner that that frightened the victim into viewing his communications?

Consider showing the jury how a victim was not a willing listener, even if the victim was still listening. At bottom, we know that following police advice to not block a defendant does not make a listener unwilling. What about being afraid? Or the volume of messages? Or blocking a defendant who then circumvents the block by sending messages in other ways?

Appellate courts will likely evaluate some of these suggestions—and many others—over time. Although this seems dreadfully uncertain, Owens v. State is a gift to prosecutors because it makes clear that simply annoying or offending somebody with words cannot be prosecuted under §42.07(a)(7). While this was a rough result for this victim and it will force the State to have difficult conversations with a number of complainants about whether their situation is prosecutable, it also gives the State clear directions on if it *should* prosecute individuals under the statute. Ideologically, the line is clear: the State cannot use §42.07(a)(7) to prosecute people for what they say. The Court has eliminated a subset of prosecutions under this statute that were on the line of violating the First Amendment.

But with an ideologically clear line as a guide, attorneys must practically draw the lines through trial work and the appellate process that follows. If that isn't a gift for prosecutors, then I don't know what is. ❇

Looking to hire Texas law school students?

Do you have open positions in the office or are you interested in starting an internship program? This list of contacts at all the law schools in the state will be a big help.

By Joe Hooker
TDCAA Assistant Training Director in Austin

It has been updated with new contacts (names and emails) from last year, when a similar list was published in the journal. Each QR code will take you to that law school's Career Development page with information on posting jobs (which can be viewed both by law students and law school alumni), internships, externships, and career fairs. Also included is information on conducting on-campus interviews, many of which are done by Zoom now, which is a big help for those prosecutor offices far away from the nearest law school campus. ❇

Baylor Law School

Kristine Bridges, Assistant Dean of Career Development
Kristine_Bridges@baylor.edu
254/710-8537

Dedman School of Law at Southern Methodist University

Laura Burstein, Assistant Dean for Public Interest & Pro Bono
Lburstein@smu.edu
214/768-2567

South Texas College of Law Houston

Shantal Formia, Assistant Dean of Career Services
Sformia@stcl.edu
713/646-1866

St. Mary's University School of Law

Veronica Elizalde, Director of Employer Engagement
Velizalde@stmarytx.edu
210/436-3541

Texas A&M University School of Law

Melissa Davis, Director of Employer Relations & Development
Madavis@law.tamu.edu
817/212-4013

Texas Southern University Thurgood Marshall School of Law

Jamina Scippio-McFadden, Assistant Dean of Career Services
Jamina.McFadden@tsu.edu
713/313-7158

Texas Tech University School of Law

Kayla Wimberley, Assistant Dean of Career & Professional Development
Kayla.Wimberley@ttu.edu
806/834-3214

University of Houston Law Center

Bill Powers, Director, Judicial Clerkship & Externship Programs
Wapowers@central.uh.edu
713/743-0810

University of Texas School of Law

Ryan Gersovitz, Career Counselors Office
Ryan.Gersovitz@law.utexas.edu
512/232-1154

UNT Dallas College of Law

Courteney Harris, Assistant Dean for Career and Professional Development
Courteney.Harris@untsystem.edu
214/243-1780

Recent gifts to the Foundation*

Traci Bennett
Bill Bishop
Lauren Black
John Boone
Terese Buess
Kristin Burns
Michael Butera
Amy Davidson
Shane Deel
Erin Faseler
David Finney
Glen Fitzmartin
Chris Gatewood
Dan Hagood
Roger Haseman
Staley Heatly
Rob Kepple *in honor of Tony Fidelie*
Rob Kepple *in honor of Michael R. Holley*
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Dale Smith
Julie Solis
Kerry Spears
Johnny Sutton
Leslie Timmons
Jerry Varney
John Warren
Andrea Westerfeld
Hardy Wilkerson
Roe Wilson

* gifts received between October 4 and December 4, 2025

Welcome to the Texas Prosecutors Society's (TPS) Class of 2025

At the reception on December 3 in conjunction with the Elected Prosecutor Conference, we celebrated the induction of the Class of 2025 into the Texas Prosecutors Society (TPS).

By Rob Kepple
TDCAF Executive Director in Austin

It was the largest class yet at 34 new members! We are honored that so many people want to support the profession and are excited to add their names to this august group. (See the list of new members and some photos from the reception on the opposite page.)

The Texas Prosecutors Society was established in 2011 to bring together those who have demonstrated enduring support for the profession of prosecution. Nominees are asked to donate $2,500, or $250 over 10 years, to an endowment to support TDCAA training and programs. Nominations are accepted by the Foundation Board, whose members also seek nominations from the TDCAA Board. Nominees must have a minimum of five years' service as a prosecutor or other criminal justice professional and a significant and sustained contribution to the advancement of the profession and criminal justice in Texas. Invitations go out in May.

Questions? Give me a call.

Texas Bar Foundation funds online ethics training

The Foundation leadership is pleased to announce that it received a grant from the Texas Bar Foundation to support the production of a two-hour ethics training for Texas prosecutors. TDCAA is now offering that course on its website, www.tdcaa.com/training.

"The profession of prosecution is a challenging one, and continued ethics training is fundamental to justice in our courts," said Mindy Montford, TDCAF Board President. This online course focuses on common conflicts of interest faced by district and county attorneys and prosecutors' responsibilities to balance the public's right to know and the due process rights of a juvenile respondent or criminal defendant.

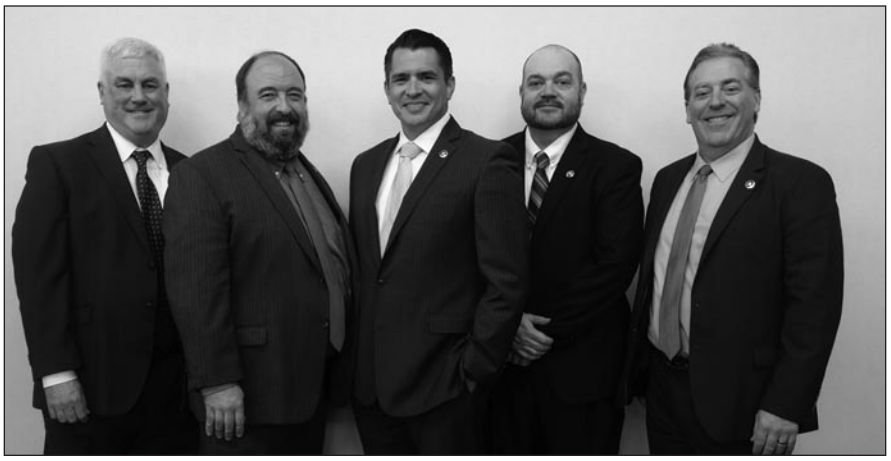
Since its inception in 1965, the Texas Bar Foundation has awarded more than $30 million in grants to law-related programs. Supported by members of the State Bar of Texas, the Texas Bar Foundation is the nation's largest charitably funded bar foundation.

Thanks to our Foundation leadership

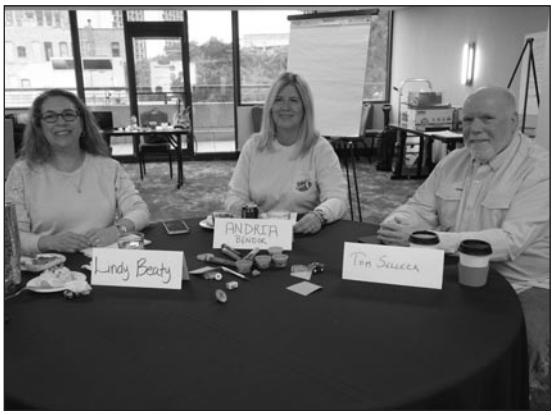
2025 was a busy year at the Foundation, and we enjoyed strong leadership from our Board. (See the photo of the Board below.) Thanks to our 2025 Chair, **Ken Magidson**, former DA in Harris County and U.S. Attorney for the Southern District of Texas, who has enthusiastically worked as part of the Executive Committee the last four years. We are happy to report that Ken will stay on the Board. Another big thank-you to our 2025 President, **Mindy Montford**, former head of the Attorney General's Cold Case and Missing Person's Unit, who guided us to a banner year of support to TDCAA. Finally, we welcome **Greg Willis**, CDA in Collin County, as our 2026 Board President. We have a lot to do this year, and I am looking forward to Greg's leadership. ❇

Texas Prosecutors Society (TPS) Class of 2025

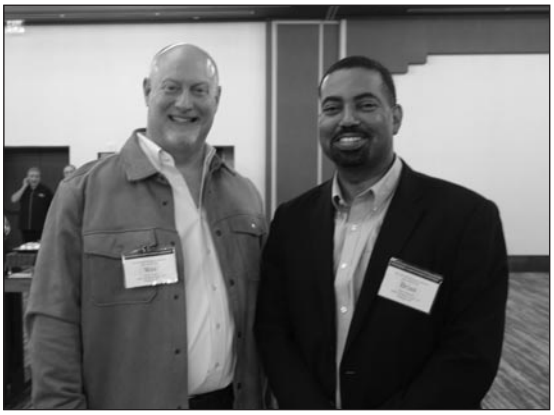
Devon Anderson
J. Kerye Ashmore
Lucas Babin
Alex Benavides
Bill Bishop
Lauren Black
John Boone
Trey Brown
Eric Carcerano
Shawn Connally
Shane Deel
Amy Derrick
Rob Drummond
Will Durham
Jessica Frazier
Luke Inman
Andrew James
Constance Filley Johnson
Libby Lange
Randy Leavitt
Tiffany McWilliams
Marc Moffitt
Bill Moore
Aaron Moncibaiz
Mark Pratt
Ballard Shapleigh
Kurt Sistrunk
Stacey Soule
Jeremy Sylestine
Wayln Thompson
Richard Vance Jr.
Michael West
Melinda Westmoreland
Aaron Wiley

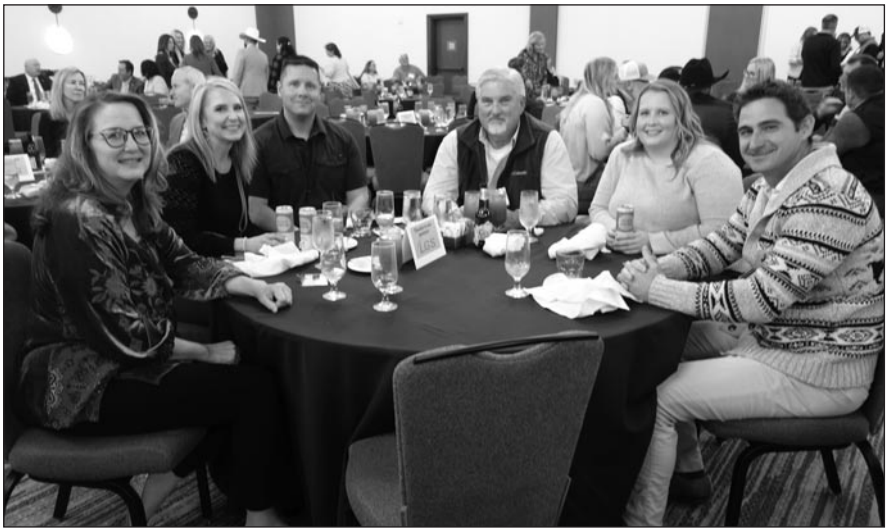


Photos from our PMI: Elected Edition Course

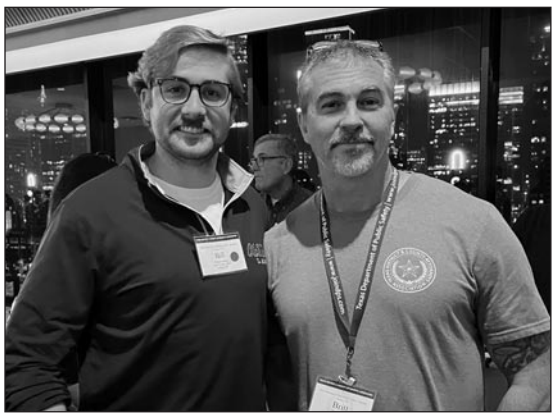


Photos from our Elected Conference





Photos from our Prosecutor Trial Skills Course in Austin



Training witnesses to testify in court (cont'd from the front cover)

on our experiences at the Kaufman County Criminal District Attorney's Office in providing training to our local partner agencies, this article outlines practical strategies for preparing witnesses to testify accurately, confidently, and ethically. By investing in witness training, district attorneys' offices can better support the professionals we rely on while enhancing the overall integrity and effectiveness of the trial process.

Training opportunities

Despite our best efforts to prepare witnesses on an ad hoc basis, our office has learned that there is simply no substitute for periodic, scheduled training sessions.[1] Brief, informal preparation immediately before trial, while sometimes unavoidable, cannot replicate the consistency, depth, and confidence-building benefits of structured instruction.

From a practical standpoint, scheduled trainings also save time. Delivering a unified message to a room full of professionals is far more efficient than repeating it one witness at a time. And if the thought of planning these sessions feels overwhelming, recall the frustration of poor testimony. That memory alone can provide all the motivation needed.

Through considerable trial and error (pun intended), we have developed what we consider a best-practice model for witness preparation. The following section outlines the training format that has proven most effective for our office and our partner agencies.

At the outset, we acknowledge that scheduling a single training for professionals across multiple disciplines is easier said than done. Nevertheless, our office has experienced significant success hosting multidisciplinary trainings several times a year on Friday mornings, typically from 8:00 a.m. to noon. Attendance remains strong, and participant evaluations consistently reflect high engagement and practical value.

Although we occasionally design trainings for specific professional groups, most sessions are open to any interested participants. Multidisciplinary trainings offer distinct advantages, including professional networking and cross-disciplinary learning. For example, we have repeatedly observed sexual assault nurse examiners gain valuable insights from forensic interviewers, and vice versa. These exchanges foster mutual understanding that ultimately strengthens testimony and collaboration in real cases.

Each training begins with a one-hour PowerPoint presentation covering courtroom fundamentals. This segment identifies the key players in a jury trial, explains the typical progression of a trial, and offers practical tips for preparing to testify. We also introduce a healthy dose of courtroom terminology to reduce confusion and anxiety when the witnesses encounter these terms on the stand. The presentation concludes with guidance on courtroom demeanor, decorum, appearance, and behavior in the presence of the judge and jury.

The next two and a half hours of the morning are devoted to a mock trial exercise. This portion consists of a carefully planned, scripted role-play conducted on a structured timeline. We typically choose a case that previously went to trial and involves witnesses from multiple disciplines represented in the audience. We redact any personal information of the victim from the case packet, then provide it to participants to review before the mock trial begins.[2] When attendance allows,

Our office has experienced significant success hosting multidisciplinary trainings several times a year on Friday mornings, typically from 8:00 a.m. to noon. Attendance remains strong, and participant evaluations consistently reflect high engagement and practical value.

[1] Without a doubt, there are individuals out there who are more receptive to individual training. We make every effort to address special circumstances personally and discreetly, especially when a trial preparation issue may be related to the special needs of a witness. A personal note from Mike Holley: I will never forget the late Mark Hasse, then the Chief Felony Prosecutor, making time to individually prepare me for testimony, knowing I would be entering the courtroom on crutches after a recent surgery. The individualized attention and care he showed me not only removed all my anxiety about that upcoming trial, but also motivated me to follow suit and offer the same care for others. Mark was murdered a short time later, and his sincere gesture impacted my career in a way I will never forget.

[2] An even better practice might be to give the packet out to attendees a day or two in advance so each person can delve into the material more closely. However, you can run the risk of the training feeling a bit too much like "homework," which might cause audience members to drop out when they realize they have to prepare ahead of time. So choose the approach carefully based on what you know about your target population.

participants are divided into breakout groups to ensure that each attendee has an opportunity to take the witness stand and experience both direct and cross-examination. Our prosecutors play the roles of prosecutors and defense attorneys, which provides the added benefit of allowing our attorneys to sharpen their own trial skills. This experiential component consistently proves to be the most impactful element of the training.

The final 30 minutes are reserved for questions and review. Setting aside this time ensures that the PowerPoint and mock trial remain on track and are not derailed by questions and comments that may not benefit all attendees. When possible, our staff stays after to answer additional questions and provide one-on-one interaction. Participants are also encouraged to exchange contact information with presenters to facilitate future communication and collaboration.

If you have ever served as a witness, how many times did you testify before you knew not to automatically answer a question after an objection was sustained? How long did it take to understand the difference between a fact witness and an expert witness?

"This meeting could have been a YouTube video"

Wouldn't it be convenient to simply press "play" on a pre-recorded training session and deliver identical instruction to multiple agencies? In theory, yes. In practice, prosecutors should proceed with caution. Recorded trainings created by a prosecutor's office carry risks. Once a video leaves our control, it can easily be exploited by the defense. For that reason, our practice is to use audio and video instructional materials only in supervised, controlled settings, and to avoid making them available for broader distribution. When we do incorporate recorded material, it is presented live, with prosecutors present to contextualize the content and immediately address questions or concerns. This approach allows us to reap the benefits of consistency without sacrificing control. Besides, effective witness training is not a passive exercise. In-person instruction allows us to gauge confusion, correct misconceptions in real time, and adapt the discussion based on the audience's experience level and discipline.

What should we teach?

You may be thinking, "Thanks for the training method tips, but what exactly are we trying to teach our witnesses to make their testimony more effective?" Great question! Let's do a deep dive into the mechanics of smooth, polished, powerful testimony. Below is an outline of the concepts we cover in our one-hour PowerPoint presentation, which your office might adopt and adapt based on local needs and resources.

Basic terminology and role identification. Never assume that witnesses, no matter how educated or experienced, are familiar with courtroom basics. Something as simple as identifying the key players in the room can dramatically improve their confidence. Sound like baby food? Then consider this: Is all that Latin and legal jargon spoken in the courtroom intuitive to those who don't live and breathe the law? If you have ever served as a witness, how many times did you testify before you knew not to automatically answer a question after an objection was sustained? How long did it take to understand the difference between a fact witness and an expert witness? Did you (as a witness) ever assume the prosecutor was "your attorney?" How many times did you, when testifying, attempt a non-verbal response on the stand, only to be instructed by the judge to answer audibly with a "yes" or "no?" Our witnesses often arrive with those same gaps.

Pretrial testimony preparation. For witnesses, preparation starts with a thorough review of the entire case file. Witnesses should understand not only their role but also the full scope of their agency's involvement. Rather than merely reading reports and supplements, witnesses should review pertinent videos and recordings as well. Ensuring all discovery has been provided and all evidence properly retained is another key component to testimony preparation.

Pre-trial meetings between witnesses, prosecutors, and investigators should be encouraged. Such meetings should include candid discussions about ideas and expectations, anticipated lines of questioning, and any demonstrative aids to be used. We even recommend role-playing with those demonstrative tools or in-court demonstrations to ensure a polished presentation in front of the jury. Expert witnesses should provide an updated CV (curriculum vitae) at this meeting, well in advance of the trial or hearing date.

Witnesses also benefit from understanding the structure of a jury trial. Review the mechanics of pretrial hearings, suppression motions, voir dire, arraignment, opening statements, the State's case-in-chief, defense cross-examination, defense case-in-chief, prosecution cross, rebuttal, jury charge, closing arguments, jury deliberations, and punishment. Witnesses often focus so intently on their own testimony that they forget to familiarize themselves with trial structure, an oversight that increases anxiety.

Courtroom terminology. Witnesses should avoid using legal jargon on the stand, unless they

are licensed to practice law. They should understand—but not use—terms such as sustained, overruled, relevance, hearsay, speculation, prejudicial vs. probative, and nonresponsive. They should also be familiar with general courtroom terms such as voir dire, invoking the Rule, mistrial, pro se, acquittal, Brady, Morton, motion to suppress, motion in limine, hung jury, and opening the door. Knowledge equips witnesses; jargon on the stand confuses jurors.

What happens on the day of court. Our role as DA investigators and prosecutors includes coaching witnesses on the basics: attire, demeanor, decorum, and punctuality. We should fight against the assumption that potential witnesses have a clear understanding of these elementary principles. They must be cautioned about interacting with the public at the courthouse. They should learn not to discuss the case with their colleagues during trial, especially in public spaces. (If we had a dollar for every mistrial caused by lunch-hour witness misconduct!) They need to think carefully about their conduct on social media prior to and during trial.

Even seasoned witnesses often do not know what to bring to court, where to go, or with whom to speak. They may have unrealistic expectations about timing or be unclear about whether they are excused after testifying. The invocation of "the Rule" routinely causes confusion. All these issues can be resolved with a few minutes of direct communication.

Establishing credibility in court. Another critical matter to address in witness training is how to establish their credibility in front of the jury. A personal note from Investigator Mike Holley: I have testified more times than I can count and was well trained by sharp prosecutors in one of the largest DA's offices in the state. Yet I once took the stand with a massive wad of bubblegum in my mouth, thinking I could hide it. I was wrong. When the judge ordered me to spit it into the bailiff's hand, the jury stopped listening. Instead, they snickered and whispered among themselves. My credibility vanished in an instant. Although this was not my most shining moment, I learned not to be so laser-focused on preparation for testimony that I overlook the essentials of proper decorum in the courtroom.

Witness credibility begins the moment they walk into the courtroom. Showing up unprepared (glasses forgotten in the car, improperly handling evidence, phone in hand, gum in mouth) damages credibility before a single word is spoken. A toe-tapping witness appears impatient; a slouching witness looks disinterested; an arms-crossed witness seems antagonistic. Witnesses should be coached on recognizing body language, managing anxiety, identifying nervous habits, avoiding distracting movements, and engaging in purposeful eye contact with jurors.

When coaching witnesses on speaking style, emphasize clarity, pace, and authenticity. We encourage witnesses to "be themselves" as a gesture of respect, while reminding them to bring their "best self" to the witness stand. They should answer truthfully, avoid robotic recitation, use plain language, and define acronyms. Do not assume they know to rise when the judge or jury enters or exits—spell it out for them.

Handling cross-examination. Remind them that defense counsel is not their enemy, just a professional doing their job. They must maintain composure under cross-examination, listen carefully, and respond only to the question asked. Encourage witnesses to maintain the same attitude and demeanor they had during direct examination when answering the defense attorney's questions on cross. Appearing argumentative is harmful; appearing overly agreeable and being baited into affirming the defense's narrative of the case can be equally damaging.

The most important takeaway. Before concluding our presentation, we always remind our attendees that, if they retain only one nugget of guidance from the entire morning, it should be this: their sole responsibility on the witness stand is *to tell the truth.* When a witness takes the oath before the jury, that moment matters. The oath isn't a formality. It is paramount. Throughout his testimony, everything else falls away in the face of honoring the oath and speaking truthfully. Effective witness preparation is about helping witnesses find the clearest, most compelling way to convey the truth they already know.

Final thoughts

Our witnesses come to court ready to help, but readiness alone is not enough. They need direction, coaching, and the kind of insider knowledge only we can provide. When we take ownership of their preparation and invest in their competence, their testimony improves, trials run smoothly, and juries receive clearer information. Let's take responsibility to equip witnesses not just with knowledge, but also with confidence, awareness, and courtroom savvy. If we don't, we may as well hand them the bubblegum ourselves. ❇

When coaching witnesses on speaking style, emphasize clarity, pace, and authenticity. I like to encourage witnesses to "be themselves" as a gesture of respect, while reminding them in the same breath to bring their "best self" to the witness stand.

Difficult conversations about domestic violence fatalities

Intimate partner violence homicides are tragic. And for prosecutors, they are downright demoralizing when we, as part of the criminal justice system, had the opportunity to help and failed.

By Kristin Burns
TDCAA Domestic Violence Resource Prosecutor in Austin

Even when a homicide investigation is airtight and the verdicts are just, there are always lingering questions: Was there a moment, somewhere in the history of this relationship, when we could have intervened more effectively? Could we have prevented this death?

Prosecutors in the Criminal District Attorney's Office in Tarrant County decided that these questions deserved to be answered. In 2017 they took the bull by the horns and created the Intimate Partner Fatality Review Team, a collaborative effort among prosecutors, medical partners, advocates, and law enforcement aimed at honest conversations to understand how these deaths happened and more importantly, how to prevent the next one. The team has been perfecting the model ever since.

I sat down with Assistant Criminal District Attorneys Allenna Bangs and Chase Payne (pictured at left) so they could explain what the team does and how it works. Allenna was part of the initial creation and Chase is the current leader, so their knowledge and insight is invaluable. The lessons they have learned can be implemented across the state, in offices big and small. Conversations about domestic violence fatalities are not easy—but in Tarrant County, they have been productive.

Chase Payne & Allenna Bangs in Tarrant County

What is an intimate partner violence homicide?

Let's start with the Tarrant County team's definition of "intimate partner violence (IPV) homicide" because it's different from the one used in the Texas Council on Family Violence's report, which tracks single instances of violence that would qualify under the Texas Family Code definition. In Tarrant County the definition is: "a killing that results from an ongoing pattern of abusive behavior, including physical violence, sexual violence, stalking, or psychological aggression between current or former intimate partners." A one-time violent event, even between individuals who meet the definition of family violence under the law, does not qualify as an intimate partner violence homicide. While one-time violent events are a reality, that's not the reality this team is trying to evaluate. The team is looking for evidence of power and control with possible prior interactions with law enforcement, medical staff, advocates, or prosecutors. The goal is to find gaps in the system by mining information across partner agencies to see where the system can improve. Explosive, one-time events do not help in that evaluation.

Teamwork makes the dream work

This group is different from a Domestic Violence High Risk Team (DVHRT) that includes probation officers, sexual assault advocates, and other supervision-focused groups. The goal of a DVHRT is to evaluate ongoing risk with a focus on preventing imminent harm to living victims. The fatality-review team evaluates harm that has already occurred, so the team's membership is different: prosecutors from the DA's office, advocates from The Archway (a domestic violence support and shelter organization), representatives from local hospitals including SANE nurses, the Medical Examiner's Office, emergency responders such as EMS personnel, law enforce-

ment agencies, members of the protective order division, and any other collaborating agency that was involved with that particular victim.

The Tarrant County team meets four times a year, and each meeting lasts as long as the conversation requires.

Members are required to sign a confidentiality agreement as part of the memorandum of understanding (MOU); this agreement becomes more important in instances of murder-suicide where there isn't a parallel criminal case. However, all of the team's conversations and documents are still subject to the Michael Morton Act and ongoing discovery and *Brady* requirements. The first intra-team training covers criminal discovery and how it impacts the team; discovery requires the production of documents and information produced in the team meetings, but the confidentiality agreement provides for more honest and in-depth evaluations—individual members' opinions are free to be developed and discussed. Everyone comes to the table knowing the system has possibly failed this victim, so they are to bring forth every bit of knowledge and documentation so the team can have a difficult but honest conversation. It is meant to save lives.

Evaluation

Cases are selected by team recommendations—any member can bring a case forward. Some cases are brought because of news reports and others in the more traditional way—from law enforcement, prosecutors, advocates, and medical personnel. Once a case is identified, then everyone who touched these lives (both the homicide itself and all prior interactions) are notified. Members then begin "mining" for records related to the individuals, not just the homicide. Police reports, interviews by police and Child Protective Services (CPS) caseworkers, digital evidence, medical files, CPS documents, protective order applications, BIPP (Battering Intervention and Prevention Program) records if the defendant had engaged in prior treatment, advocacy contacts, shelter documentation, etc. Every bit of information matters and that's why the team uses the phrase "mining for evidence." They search for interactions the parties had across systems.

A simple PowerPoint slide is then created identifying the victim, secondary victims, and anyone who had prior interactions with the victim and defendant. For example, if the victim had been seen by a local hospital and reported an "accident" prior to her death, which we now believe might have been a IPV event, that interaction with the hospital would be noted on the PowerPoint slide. Similarly, if law enforcement had been to the home in the past, that information would be on the slide as well. Each team member adds context to the conversation by supplementing facts while that slide is presented. It's a clear, respectful way to keep the review focused.

The team evaluates the specific facts listed in the Fatality Review Template. (A copy of this template is available on TDCAA's website; look for it as an attachment with this article.) Template questions include:

- type of relationship
- separation status at the time of death
- locations of relationship and final incident
- method of homicide or suicide
- sexual assault component
- documented substance abuse or mental health diagnosis
- history of previous strangulation
- previous criminal history (all parties)
- previous convictions (all parties)
- domestic violence shelter prior to death
- police department interaction prior to death
- gun ownership
- danger assessment score
- impact on children
- indications of a pattern of abuse
- trial status

Once these are answered, the team evaluates the big issues: Does this case meet the definition of IPV homicide? In other words, was there a pattern of abusive behavior motivated by the offender's desire for power and control over the victim? If so, then this is an IPV homicide. This is where honest conversations can be challenging. The team doesn't always agree if the case qualifies as an IPV homicide. The team doesn't always agree on the offender's motivation being based on power and control, and that's OK. The point is to have the conversation and identify where the system could be better.

Some of the most difficult conversations involve when women are charged as offenders, the role of substance abuse or mental health involvement, and if the relationship history is unclear. We must remember that intimate partner violence is a choice, and research suggests substance abuse or mental health diagnosis do not cause vi-

This is where honest conversations can be challenging. The team doesn't always agree if the case qualifies as an IPV homicide. The team doesn't always agree on the offender's motivation being based on power and control, and that's OK. The point is to have the conversation and identify where the system could be better.

olence.[1] That's not to say that those who treat offenders with substance abuse or mental health issues can't do more to prevent violence. These treatment providers' hands are not tied; they must help hold offenders accountable for their choices too.

Additional questions include: Where did the system fail? What policy suggestions are recommended? What systemic changes? What practice changes? Allenna told me, "The fatality review has served so many purposes in our fight against domestic violence. We have identified gaps in services and made meaningful progress in filling those gaps; we have forged relationships with community stakeholders so that we work together instead of place blame when we encounter failures; and we have ultimately recognized those individuals who lost their lives to domestic violence to raise awareness so we can do a better job of meeting our ultimate goal of seeing justice done in our community."

This retrospective review helped identify system gaps such as:

- cases that law enforcement never sent to the prosecutor's office,
- investigations stalled because the victims were labeled as uncooperative,
- prior DV history that wasn't known or clearly documented,
- the Domestic Violence Packet not being utilized by prosecution and law enforcement (a copy of this packet is on TDCAA's website; look for it as an attachment to this article),
- dismissal of cases that should have been identified as high-risk, and
- victims seeking help but ultimately feeling like the system failed them or that going to police was a greater risk than staying with the offender.

Victims are now separated from their partners during questioning, both in the emergency room and in the ob-gyn unit. A single DV victim changed the entire medical system.

System improvements

Tarrant County has had unexpected success throughout this process.

1) Local hospitals completely revamped the screening for IPV based on their employees' involvement with the Fatality Review Team. One homicide victim had been seen at three different hospitals for injuries disguised as accidents. That led hospitals to overhaul their screening process: Victims are now separated from their partners during questioning, both in the emergency room and in the ob-gyn unit. A single DV victim changed the entire medical system.

2) Strangulation was identified as a high risk for fatality. The number of homicide victims who also had prior instances of strangulation events was stark. This realization caused both law enforcement and The Archway to take a more hands-on approach with victims of strangulation. Now, specialized teams from both are deployed for all strangulation cases; they discuss with victims the dangers of this type of abuse and collect specific evidence.

3) Case evaluation is now vastly different at the DA's office. The phrase "first-time strangler" is no longer used in the IPV diversion unit. Those offenders are correctly identified as more lethal and therefore not eligible for the diversion court. Additionally, the use of guns in these homicides continues. That led to stricter scrutiny on unlawful possession of a firearm by a felon and the identification of offenders who had access to firearms. Surrendering these guns became a more strategic part of plea negotiations.

4) Law enforcement training is being developed by a university professor who is part of the team to help identify the primary aggressor. Too many times police identified the wrong person as the aggressor in these high-conflict situations. Victims were being wrongly arrested because in the heat of the moment, their panic was mislabeled as aggression. (As an aside, I can't wait to tell you more about this training when it's ready to deploy—stay tuned!)

5) A deeper pool of experts has been created for testifying. The medical examiner's office sends its Fellows to the team to help evaluate cases. These doctors are gaining knowledge about issues such as the lethality of strangulation, and their expert testimony in strangulation cases (with the knowledge they gained from evaluating homicide cases) is invaluable. Just think about it: By being part of this fatality review team, these doctors have seen women killed by strangulation without a single visible external injury. Such real-life experience, based on their education and training, is admissible in court. And because they work for the ME's office, their testimony is free. The same rationale applies to SANE nurses and advocates. Both groups are expanding their knowledge because of their participation in the team. Now they can talk about the lethality of strangulation, the dynamics of family

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[1] Bancroft, Lundy, *Why Does He Do That? Inside the Minds of Angry and Controlling Men*, Berkley Books, September 2003.

violence, recantation, victims returning to the offenders, and other aspects of intimate partner violence.

6) Better case building through stronger relationships, both within the DA's office and with law enforcement, is another result of the team. The review process created communication channels that were either nonexistent before or that needed improvement. There is now a better understanding of why investigations stalled, why victims were uncooperative, and why cases weren't forwarded to the DA's office. These realizations have resulted in earlier identification of high-risk offenders, more consistent evaluation of family violence history, better understanding of Code of Criminal Procedure Art. 38.371, extraneous victims, and adjusted plea decisions.

The report

Information and conclusions made by the team are presented to the public and the Tarrant County commissioners court. The Archway creates the Fatality Review Report utilizing its grant writers and creative brains to make a visually impressive document. This report includes the definition of IPV homicide, breaks down the annual statistics for that calendar year, compares them to prior years, and discusses the particulars of individual cases anonymously. (It's important to the team that the information about the victims remain anonymous to protect those who don't want the public to know their loved ones suffered in abusive relationships.) Additionally, the report identifies key points, such as the danger in leaving an abusive relationship, the history of abuse, methods of homicide, and the role of murder–suicide.

Every year, the DA's office presents the report to the commissioners court, which has resulted in additional funding for IPV units, strangulation training, and diversion courts. This report generates revenue and resources for the office and for high-risk victims! A copy is on the TDCAA website; look for it as an attachment to this article.

Building your own IPV homicide review team

I was absolutely gobsmacked when I learned that this team has cost the Tarrant County DA's office *nothing*. Zero dollars. This isn't a grant-funded operation; it's a group of committed professionals, across several disciplines, who refuse to let domestic violence deaths go unanalyzed. And you can implement something similar in your own jurisdiction.

Find volunteers who are passionate about domestic violence and use them. Good people will step up for a good cause when called upon, and this is such a cause. Tarrant County utilizes a professor to gather the information in a scientifically valid format, which is great but not required if you don't have that resource in your area. The data speaks for itself in most of these cases, and the team will be more than qualified to evaluate the information. Grant writers at The Archway create the report in a way that is visually appealing and worth the effort. I promise someone in your circle is artistic and will create an impressive report; think about local entities, city and county government, and nonprofits—there is likely a grant writer who will help. If all else fails, get your teenage daughter to teach you about Canva (an online graphic design tool) like mine had to teach me (it's an ongoing process).

Employees of the medical examiner's office and local hospitals volunteer their time to be part of the team and to testify as experts. Prosecutors are not paid overtime for their work, because being on the team is part of their job description.

People in your own community share this passion and will show up if called upon. You don't need perfection; you just need progress and commitment. Putting together such a group will begin hard conversations, and these hard conversations can save lives.

Editor's note: In December, Governor Greg Abbott appointed 21 people to the newly created Family Violence Criminal Homicide Prevention Task Force. Its purpose is similar to the team in Tarrant County: to analyze the top risk factors for family violence homicides and to provide resources to develop training for those who interact with victims of family violence. ❇

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Combatting motor vehicle crimes

This year, my grandmother passed away at the young age of 96. She married at 18 and had 10 children. She never attended a public school in her life.

By Yessenia Benavides
(left) Management Analyst, Motor Vehicle Crime Prevention Authority, &
Daniel Cleveland
(right) Assistant Criminal District Attorney in Tarrant County

As an adult, she taught herself to read using free prayer books she received as gifts. She knew hundreds of sayings, or *dichos*, which carried profound wisdom. An avid gardener and a master at life, she would often tell me, "If you don't tend to your garden, it will soon be overtaken by weeds, and before you know it, your beautiful garden will become a wilderness." In many ways, her wisdom mirrored that of many of the police chiefs I have had the privilege of meeting throughout my career. In both my grandmother and in these longtime police officers, their practical lived experiences combined with a dash of common sense often yield valuable insight.

How does all this relate to motor vehicle crimes?

In a recent meeting with a police chief from a major Texas city, a man with decades of law enforcement experience, he told me, "If you don't attack the small crimes, it gives the chance for the big crimes to grow." He was specifically referring to motor vehicle theft.

These offenses are not merely property crimes. Why? Criminals steal vehicles and then use those cars and trucks to commit additional offenses tied to cartel and terrorist organizations. They smuggle the vehicles across the U.S.–Mexico border, using them to deal arms, traffic drugs, traffic humans, and commit executions. Juveniles are financially enticed to steal the cars for what they perceive as a low-risk crime.

In recent years, motor vehicle crime has become a significant issue not only for law enforcement but also for vehicle manufacturers, insurance companies, and other public health organizations worldwide.

Criminal syndicates are becoming increasingly sophisticated, utilizing drones and technological tools to alter how they conduct their crimes and how they operate. A key difference in this evolving landscape is that they have virtually unlimited budgets and no regulatory constraints to follow. Law enforcement, both police and prosecutors, must adopt bold and creative strategies to disrupt these highly organized criminal networks. One such help in the fight is the Motor Vehicle Crime Prevention Authority (MVCPA).

The MVCPA

Established in 1991, the MVCPA is a resource for Texas law enforcement to combat motor vehicle crime. With annual losses exceeding $2.3 billion in Texas, the impact of these crimes is significant. To address it, MVCPA supports 31 law enforcement task forces composed of single and multiple jurisdictions, which include more than 330 grant-funded personnel. In addition to the task forces, MVCPA supports an additional 122 Texas law enforcement agencies with funding to detect and prevent catalytic converter theft. These grant-funded personnel consist of law enforcement investigators, analysts, administrative support, and most recently, prosecutors.

The newly created partnerships between task forces and district attorneys funded through grants is a new approach to addressing the complexities of motor vehicle crimes. With Texas having the second-highest number of auto thefts in the nation, this partnership reflects a growing commitment to decrease such criminal activities across our state. With enhanced resources and support from the state legislature, the MVCPA's goal is to improve public safety and strengthen prosecution efforts.

Daniel Cleveland, an ACDA in Tarrant County, is one such MVCPA-supported prosecu-

tor. Below, he offers additional insight into vehicle crime prosecution.

A prosecutor's perspective

According to the Texas Department of Public Safety, there are approximately 26 million registered motor vehicles in Texas, which include trucks, buses, and motorcycles. In 2024, 97,246 of these vehicles were reported stolen. The Tarrant Regional Auto Crimes Task Force (TRACTF) is a law enforcement unit in North Texas dedicated to investigating and preventing motor vehicle-related crimes, such as vehicle theft, burglary, and fraud.

Some key functions of the TRACTF include:

- **Investigations and enforcement.** The task force focuses on large-dollar losses, multijurisdictional cases, and organized criminal rings. Investigators specialize in vehicle identification and work to uncover complex criminal schemes. They regularly conduct inspections of businesses, such as dealerships, salvage yards, and repair shops, to identify and investigate illicit activities.
- **Inter-agency partnership.** The task force is a regional collaboration between 13 local law enforcement agencies encompassing a seven-county area (Tarrant, Parker, Hood, Jack, Palo Pinto, Somervell, and Wise Counties). Also included in the partnership are a special field intelligence investigator from the National Insurance Crime Bureau (NICB) and an embedded investigator from the Texas Department of Motor Vehicles (TxDMV).
- **Prevention and education.** The task force engages in community outreach initiatives, which feature vehicle identification number (VIN)-etching events, educational presentations, and the dissemination of public information through local media to prevent auto crimes.

TRACTF investigators routinely prepare cases for submission to the District Attorney's Intake Unit. Line prosecutors are already burdened with increasing caseloads that include the usual major crimes that are time-, victim-, and resource-intensive. As a result, property crimes are sometimes, out of practicality and in the pursuit of judicial economy, relegated to the back of the line. With the belief that every case is entitled to the attention needed to pursue it to its just end, a solution was formulated. To facilitate the prosecution of cases brought by TRACTF, the Motor Vehicle Crime Prevention Authority (MVCPA) awarded a grant to the Tarrant County Criminal District Attorney's Office, allocating some of those funds for the staffing of a dedicated prosecutor (me) to handle all TRACTF and participating agencies' auto crime cases.

I am embedded with the TRACTF, regularly attending staff, intel, and tactical meetings; assisting in warrant preparation; petitioning the court on establishing bond amounts and conditions; and answering general questions involving charging language. It all leads to more effective prosecutions.

In grant year 2024 alone, the TRACTF filed 226 auto crime cases for prosecution. These cases go through the standard court docketing process but are not added to the case load of line prosecutors; instead, they are assigned to me, which signals the defense bar that a TRACTF case will receive specialized attention.

Specific evidence issues that commonly occur in auto crime cases are like any complex crime involving multiple crime scenes, combinations of persons, and special knowledge of the subject matter. However, motor vehicles add another dimension as they are fungible items. Vehicles can be stolen, re-titled (forgery), and resold to innocent parties (who then become second victims). Vehicles can be dismantled and sold as parts that might even end up in your own car! Additionally, they can also be used to commit other crimes. All these offenses create specialized problems in prosecution that require the acquisition of some specialized knowledge. How does a VIN flip work? What is a Nader sticker? What is an AUTEL device? How do I identify the rightful owner of a transmission found on a chop shop floor? How about a dashboard or engine? What about a trailer or skid steer? How do you get General Motors (GM) to provide data from the Bluetooth device in its trucks? These are just a few of the issues facing prosectors in the broad category of auto crime cases.

Dedicated units, such as the TRACTF and the dedicated prosecutor, overcome these challenges by meticulously gathering evidence, coordinating efforts between agencies and business entities, and using expert analysis to build stronger cases. Being a dedicated prosecutor assigned to a specialized unit, I see the effort and attention to detail needed to work these cases for actionable evidence. I also see the frustration these detectives face when they feel (rightly or not) that their efforts are not appreciated, as evidenced in how their cases are handled at docket.

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My most recent and significant case in Tarrant County was an engaging in organized criminal activity (EOCA) offense involving the theft of multiple catalytic converters. This case was taken to jury trial and to the judge for punishment in November 2025, resulting in the conviction and 35-year prison sentence for a 27-year-old habitual offender. The case was notable as it was one of the first in Texas to be sentenced under the 2023 law (the Deputy Darren Almendarez Act) making the mere possession of a catalytic converter (with some limited exceptions) a state jail felony.

My colleague Colin Maloney from the White Collar Crimes Unit acted as the first chair, and he was assisted by Ryan Holland, one of the unit's investigators, all under my supervision. Colin (in his third felony trial and fresh out of six months in grand jury) put on all evidence for the State. True to the nature of EOCA cases, this trial involved multiple crime scenes, various law enforcement agencies, GPS data, numerous cell phones with cellphone detail records (CDR), "Flock" photographs (images from license plate readers with real-time alerts and vehicle details from cameras tied into a database that install anywhere, no wiring required) and testimony from eight victims and multiple detectives. The evidence revealed that the defendant, in cooperation with his driver also acting as his lookout, rented a vehicle from a "peer to peer" rental agency and failed to return the vehicle as promised. The owner reported the vehicle as stolen and disclosed it was equipped with a GPS system.

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Around the same time, there were multiple reports of catalytic converters stolen in the area. Thanks to timely detective work by the Grapevine Police Department, which "quarterbacked" multiple law enforcement agencies, officers used the GPS to locate the stolen rental vehicle and caught the defendants in the act. This led to a pursuit, which resulted in their capture and the recovery of important items, including a Sawzall and floor jack (tools associated with their activities), stolen catalytic converters, and most importantly, two cell phones. By analyzing data from the GPS and the CDR from the cell phones, detectives established that the two perpetrators were present at each of the crime scenes at the approximate time and date of the thefts. Moreover, the CDR revealed numerous text conversations, both before and after the offenses, in which they negotiated the sale price of the stolen catalytic converters to their "fence." With this new information, detectives identified this third party to the combination to make the EOCA case.

Another important function a dedicated prosecutor can perform is to engage with multiple jurisdictions and law enforcement agencies. In one instance, I consulted with federal authorities about a case involving transnational actors. I helped prosecute a Cuban organized crime ring specializing in high-end trucks and SUVs based in southwest Houston, which resulted in the federal indictment of multiple defendants involved in thefts at the Dallas–Fort Worth Airport. Collaborating with the local police departments and Texas Department of Public Safety (DPS), we uncovered a criminal conspiracy involving thefts across multiple jurisdictions, with vehicles predominantly stolen from major metropolitan airports and surrounding areas, including Las Vegas, Phoenix, Salt Lake City, Denver, Fort Lauderdale, Dallas–Fort Worth, and Houston.

In addition, I have petitioned courts to declare the bonds insufficient on several prolific defendants, raising the bond, and adding bond conditions (such as GPS) to assure they are deterred from reoffending while on bond.

I can provide real time information from Adult Probation to detectives on the whereabouts of a defendant on bond with an ankle monitor (GPS), facilitating the safe entry into a residence for warranted searches.

As education is a part of the TRACTF mandate, on an *ad hoc* basis, I can also educate other prosecutors on crimes involving motor vehicles and train auto theft crime detectives on warrant requirements under the Fifth Circuit's ruling in *Morton*.[1]

Conclusion

Property rights are fundamental to security and confidence in the legal and economic systems. Addressing property crimes demonstrates the significance of these rights and provides a sense of security among property owners, thereby maintaining social order and building trust in our neighbors and communities. Individuals must feel safe acquiring property without the fear of

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[1] *United States v. Morton*, 984 F.3d 421 (5th Cir. 2021) (ruling that the good-faith exception to the Fourth Amendment's exclusionary rule did not apply when the officers' reliance on defective warrants to search a defendant's cell phone had been objectively unreasonable).

losing it through theft and the additional fear that your property might be used in the furtherance of a crime. Through the years, we've come to learn that auto crimes are sometimes not a single isolated incident, but rather a critical entry point into a much larger web of criminal networks that create a significant risk to public safety and economic stability.

Beyond the usual arguments for deterrence, retribution, and punishment, it can most simply be said that "theft is a tax on the honest." I believe that as prosecutors, our job is to seek justice and to prevent this "tax" from increasing. With a dedicated prosecutor to assist in proper enforcement and just sentencing in the courts, the goal of minimizing these losses is within our reach. ❇

A compilation of recent milestones

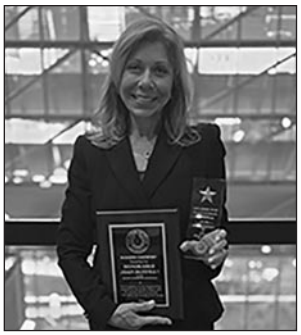
Appointments

Jennifer Tharp, Criminal District Attorney in Comal County, was appointed chair of the National Association of Counties's (NACo) Justice and Public Safety Steering Committee. There, she will shape policy priorities on criminal justice, law enforcement, emergency management, and other public safety issues. Tharp also serves on the Texas Association of Counties (TAC) Board of Directors. NACo represents the interest of the nation's 3,069 counties, parishes, and boroughs.

Staley Heatly, the County Attorney in Wilbarger County, and Jarvis Parsons, the District Attorney in Brazos County, were appointed by Governor Greg Abbott to the Family Violence Criminal Homicide Prevention Task Force. Its purpose is to analyze trends in family violence homicides and to develop policy recommendations to reduce such incidents statement.

Award

Senator Joan Huffman (R-Houston), pictured at right, was presented with TDCAA's Law & Order Award at our Elected Prosecutor Conference in December. Huffman, a former prosecutor and district judge, completed a successful legislative session that improved the Texas criminal justice system and pushed forward a pay raise for all elected prosecutors.



Senator Joan Huffman (R-Houston)

Retirement

Longtime prosecutor Kristi DeCluitt announced her retirement from the CDA's Office in McLennan County, effective in mid-February. She was hired at the DA's Office in 2000 and also served as an assistant city attorney and justice of the peace before rejoining the DA's Office in 2021.

Passing

Verna Lee Carr, founder of People Against Violent Crime and the Tree of Angels Ceremony, passed away in early December. She was a fierce and passionate advocate for crime victims, and she founded the Tree of Angels 35 years ago as a way to remember and cherish loved ones lost to crime. ❇

Understanding the caseworker mindset

As I follow-up my first journal article, "Bridging the islands: enhancing communication between CPS and criminal prosecutors,"[1] with a second one from the perspective of a Child Protective Services (CPS) prosecutor,

By Leslie Odom
Assistant County & District Attorney in Ellis County

it only makes sense that I shift the focus more internally into the CPS and child welfare world and onto our caseworkers. Let's be honest: Caseworkers have a focus different from that of prosecutors, and CPS is a different kind of client to work with.

My hope is by offering some insight into the day-to-day realities of caseworkers, prosecutors who represent CPS may identify additional strategies to enhance those relationships and their communication with caseworkers. In turn, this may lead to better case outcomes, or at the very least, a smoother process in working toward those outcomes.

What is the caseworker mindset?

If we are to improve our communication and working relationships with caseworkers, it is necessary to first understand the work from their perspective. What does a typical day look like for a caseworker?

DFPS has various programs and caseworkers assigned to those programs to address allegations of abuse and neglect from different approaches, including Child Protective Investigations (CPI) and CPS, as well as Family Based Safety Services (FBSS) and Adult Protective Services (APS).[2] CPS isn't just about removing children from their parents and homes. There is so much more to it. For instance, the DFPS website provides the following list of duties for a CPS caseworker:

- taking over cases from CPI caseworkers after children are removed from their homes and placed in care outside their homes,
- determining each child's needs and arranging for additional testing, evaluations, records, or further assessments,
- conducting home studies of family members or family friends (kinship providers) who might care for the child,
- making sure the people caring for the children have what they need and keeping them informed about the case,
- working with children, families, and communities to plan for a child's permanent living arrangement,
- finding potential permanent placements for the child by meeting with parents, family members, and other people important to the family,
- making sure families get services to keep their child safe and help them keep the child at home,
- meeting with children, parents, family friends, or foster homes in public as well as in their own homes,
- visiting children at least monthly to see if they feel safe at their placement and to ensure their needs are met,
- participating in court hearings. This includes preparing a family before the hearings, preparing court reports, and testifying in court

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[1] https://www.tdcaa.com/journal/bridging-the-islands-enhancing-communication-between-cps-and-criminal-prosecutors/

[2] For more information about the various duties of the caseworkers in these DFPS programs, please visit the following sites: regarding CPI, visit www.dfps.texas.gov/Jobs/CPS/cpi investigator specialist.asp; regarding CPS, visit www.dfps.texas.gov/Jobs/CPS/ cvs.asp; regarding FBSS, visit /www.dfps.texas.gov/Jobs/CPS/fbss.asp; and regarding APS, visit www.dfps.texas.gov/Jobs/APS/aps_caseworker.asp.

about a child's needs, the family's progress, and the Department's efforts to achieve permanency for the child,

- transitioning children back home and providing support to the family until the legal case is closed,
- documenting casework activity, and
- maintaining good working relationships between CPS staff and law enforcement, judicial officials, legal resources, medical professionals, and other community resources.[3]

On any given day in a caseworker's world, most of these duties are required, often many times over. Caseworkers are the coordinators of all the tasks the court orders families to complete. For example, they must timely make referrals for services so that the parents can't later blame their delay in participation back on CPS. They must enter documentation for the children properly so they can receive necessary medical exams. And they must be able to speak not only to parents, families, and children, but also with law enforcement and court personnel. The DFPS list is a long and realistic perspective on the ongoing and collaborative nature of their jobs.

However, the list is not exhaustive. It doesn't include, for example, a caseworker having to call a parent to inform him he has failed a drug test. It's a single phone call, yes, but it alters the path of the case for the entire family. Because it isn't just a failed drug test: It also means that the monitored return of his child, which the father had earned by months of effort and sobriety, will now end.[4] It means that his child will not be coming home from school to his father, but rather the caseworker will need to pick up the child from school, communicate this drastic change in his world to him, and deliver him to a foster home. Here's hoping it's one with which he is familiar and not another home of strangers.

And that is just one phone call.

A caseworker's job is not only time-consuming and documentation-heavy but emotionally taxing as well. One day, she could be talking to a mom and dad to explain why CPS's permanency goal has changed from family reunification to termination of their parental rights.[5] Another day, that same caseworker might attend the joyous adoption of a child, perhaps after a lengthy battle to secure his safety and stability.

Different perspectives

These duties and experiences shape the perspective through which caseworkers approach their responsibilities, clients, decision-making, and overall role within the child welfare system. They are operating in real time as daily events occur in their caseloads. In contrast, as prosecutors, we are generally focused on legal strategy and filing deadlines. Think of the difference as being at eye level with the activity (the caseworker) versus a bird's eye view of the situation (the prosecutor).

Sometimes, we prosecutors need to pull the caseworker up to our higher vantage point. For a hypothetical example, a CPS investigator calls me to staff a case she's been working for some time because she believes we should seek court intervention. She informs me that the family has a significant history of substance abuse dating back a number of years. There are concerns the mother is using methamphetamine again because she has twice failed to submit to requests for drug tests. The investigator has spoken with a neighbor, who observed erratic behavior and activity at odd hours at the family's home. While the investigator's experience is telling her there are safety concerns, sometimes what we believe is occurring is different from what we can prove in court. I have found myself in many legal staffings explaining just this. In such an instance, I would encourage further investigation and attempts to engage the family, and I would suggest speaking to other collaterals, such as the children's teachers or daycare providers. I would also spend the time with the investigator in discussion so he understands my perspective. Filing too soon based on speculation would ultimately undermine our credibility long term with the court, especially if we made a habit of it. That's the benefit of a prosecutor's broader perspective.

On other occasions, perhaps while caseworkers are experiencing a case's activity firsthand, they are not able to effectively put that activity

Think of the difference between CPS caseworkers and CPS prosecutors as being at eye level with the activity (the caseworker) versus a bird's eye view of the situation (the prosecutor).

[3] www.dfps.texas.gov/Jobs/CPS/cvs.asp

[4] Texas Family Code §263.403, Monitored Return of Child to Parent. A monitored return provides the court an avenue to return the child to his parent(s) while maintaining jurisdiction over the suit in order to continue to monitor child safety and provide services as determined necessary.

[5] Texas Family Code §263.3026, Permanency Goals; Limitation.

into words for the court. By way of illustration, we find ourselves in a legal case that has been pending for many months, and the parents have worked their way through their service plans. However, the caseworker is concerned about reunification because, as she phrases it, "They've only checked the boxes in their completion of services." To find out what she means, it's sometimes a matter of spending time to understand her concerns and helping articulate those concerns for the court. We prosecutors can assist caseworkers in framing their concerns in terms of legally relevant testimony about the lack of observable behavioral changes, for instance, that can then be supported by various expert opinions and risk assessments. But doing so requires that we make time to staff cases with them and allow caseworkers the opportunity to work those thoughts out. (And let's hope that caseworkers find the time to staff with us too.)

I was struck by the details the caseworker began providing–and with such sincerity and care. It wasn't the recitation of testimony I'd come to anticipate in felony court; it was human and unexpectedly tender.

Reminders and insights

It might be helpful to explain how I've gained this refreshed perspective. In 2021, after 13 years of CPS prosecution, I needed a hiatus from the caseload after COVID's adventures, as well as life throwing its personal and professional curveballs. Handling a caseload of felony drug possessions, aggravated assaults, and murders was a welcome relief at the time. I spent the next three years as a felony prosecutor before joining my current office in January 2025 to work with CPS again.

The difference was honestly a shock to the system. I had allowed myself to grow accustomed to the regularity of a criminal docket heavy with scripted pleas and hours in attorney workrooms negotiating over the terms of those pleas. Speaking regularly with law enforcement is a distinctly different experience from conversations with CPS folk. My return to the CPS world brought what seemed at the time like unnecessary and emotional details, and quite frankly, many extra words. Not to mention the variety of meetings—meetings to schedule the meetings for the planning of meetings. But more on that later.

I recall being in one of those first CPS dockets prepared with my line of questioning for the CPS caseworker. We were scheduled for a statutory permanency hearing. I was focused on providing the court with the evidence necessary for making its required findings, and I was prepared to elicit specific testimony regarding our permanency goal, the parents' compliance with the family service plans, and the safety and welfare of the child in his foster placement, among other things.

But I was struck by the details the caseworker began providing—and with such sincerity and care. "He's a happy, healthy boy who loves T-Rex and hamburgers," the caseworker reported. "He can be a sweet kid but also is a typical boy and rambunctious at times. He loves drawing, listening to music, and animals." This wasn't the recitation of testimony I'd come to anticipate in felony court; it was human and unexpectedly tender.

Later in the week, I was scheduled to attend permanency conferences. These are much less formal meetings outside the court setting, and they are meant to encourage the parents' collaboration and involvement in addressing their needs, to resolve safety concerns, and to amend their family service plans if warranted. For one particular case, it was the first such conference since the original filing and removal of the child from her parents. When the facilitator asked for an update about the child, the caseworker lit up and reported to the parties that the young girl in CPS care was "healthy, learning to crawl, and starting to pull up, but she has sensitive skin, so the foster family switched her brand of diapers in attempt to resolve the issue." The parents teared up.

Moments like those—and there were many—reminded me that the seemingly banal details are important too! Yes, these details extend beyond the statutory requirements and timeline benchmarks that we prosecutors must always keep in mind, but the value of this reminder—at least as I experienced it, and I hope you do as well—is its humanity. Such details can be essential in encouraging the parents of our CPS children. Afterall, they are not seeing their children every day (or as often) as they were prior to CPS involvement. Their relationship with their children has changed immensely, and those detailed updates become a small view back into their children's lives. It's important that they hear these details from the caseworkers who are guiding their family on a path toward reunification. Hearing these updates about their children may even encourage parents to engage more fully in the process.

For me, these moments kind of recalibrated my approach. Hearing the caseworkers speak with such care about how the children were doing forced me to slow down and reset my focus. I've now become more deliberate about giving caseworkers space to share these sorts of observations and not merely focusing on compliance

with service plans and such. There's something genuine about it from which the presentation of our legal cases can benefit, too. We might find ourselves detached from the traumatic nature of CPS cases over time (drug-exposed babies, children with unexplained broken bones, and homes in a state of squalor), but I think we should often remind ourselves that judges and juries do not necessarily come from that vantage point. Detailed testimony reflecting the child's daily life and individual needs or a parent's sincere progress and dedication to services (or stark lack thereof) can be so meaningful.

How can we best gather these details from our caseworkers? It isn't easily available to us if we just read the court reports or narratives. I'm reminded of times I would be in the CPS office during a scheduled parent-child visit. Witnessing for myself some of the visit is much different from reading a notation that the parent-child visit "was appropriate." Be present, when your schedule permits, at permanency conferences with caseworkers. Being in those moments with them allows us to experience the details in real time. We gain insight into the dynamics of the case and the caseworker's perspective and approach. From that experience, we can more effectively identify what testimony and evidence should be gathered and how it can be used later in the case.

Now, it does mean more meetings. Countless meetings will invade your calendar, and sometimes it will feel like you are having meetings to plan for the next meeting. As an example, if you are anticipating a contested permanency recommendation, such as changing the goal from reunification to termination and adoption, with announcement to occur at the next permanency conference, I suggest scheduling a quick meeting with the CPS team to discuss the reasoning for the decision before its presentation to the rest of the parties. Getting the team aligned will avoid the display of internal disagreement in front of everyone else. I also make time for monthly legal staffings with each caseworker and her supervisor when our caseload requires it. We plan a full day for the review of all our conservatorship cases. We discuss where we are in our legal timeline, we review our filings, and we set goals for next steps in each case. I find these can be particularly helpful for new caseworkers as well as those who've taken on a caseload new to them.

There are so many players in these cases: the caseworker and her supervisor (and sometimes the supervisor's supervisor), legal liaison, parents, their attorneys, children, their attorneys, a CASA (Court Appointed Special Advocate, an assigned volunteer), and her supervisor. In my practice with my team of caseworkers, I do find a great deal of benefit to the "meetings to plan the meetings." They assist in keeping us all on the same page—that's a lot of people with whom to communicate! Which is all the more reason for consistency in what CPS is saying regardless of which one of us is saying it.

Helping the change-makers

Over the past year back in the CPS fold, I've realized not only how much I missed the practice of child welfare law, but also something even more valuable: I've gained a refreshed and renewed perspective on the CPS world and the caseworkers who inhabit it every day. As attorneys, we often have a degree of separation from the human side of a caseworker's job. One particularly poignant moment for me occurred during a brief case staffing between court settings. I made a quick, judgmental remark about a parent, suggesting that she would likely return to substance use and fail at reunification. The hurt in the caseworker's eyes was almost unbearable—and it stopped me short. In that moment, I realized how completely I had overlooked the time, energy, and hope the caseworker herself had invested in supporting this parent's success. It was a powerful reminder to resist snap judgments, or at the very least, to express them with far greater care.

Please understand I am by no means suggesting that everything is sunshine and flowers in the CPS world and with our caseworkers right now. I know that many of us are struggling with caseworker turnover in numbers that make our heads spin. I know that privatization is bringing with it its own many challenges. Instead, I am suggesting that my refreshed perspective on the subject allows me to focus on the individual caseworker. The benefit is that I am fostering those individual working relationships and mutual respect. Only time will tell if this approach continues to be as productive as it has been so far.

In preparing to write this article, I stumbled across a video on the DFPS website titled "We are CPS."[6] If you have a few minutes to spare, I recommend watching it. In the video, an adoption

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[6] dfps.texas.gov/Jobs/CPS/default.asp

Continued on page 35 in the pink box

Holding a corporation accountable

On Saturday, October 23, 2021, two employees of D Guerra Construction LLC were working at the bottom of a 13-foot trench to complete a water line connection when one of the trench's walls collapsed.

By Stephanie Gharakhanian
Assistant District Attorney in Travis County

One of the employees was partially buried by the fallen dirt and debris, but his coworkers soon rescued him. The other employee, Juan José Galvan Batalla, was buried completely. He remained trapped underground for 20 minutes before first responders were able to extricate him from the trench.

Galvan Batalla was transported by helicopter to a local hospital and diagnosed with multiple crush-related injuries, including anoxic brain injury, a condition associated with the prolonged deprivation of oxygen to the brain. He succumbed to these injuries a week later, dying at the hospital on October 30. He was 24 years old.

The following Monday— two days after the incident—officials at the Occupational Safety and Health Administration (OSHA) learned of the trench collapse and commenced an investigation. Trench safety has long been an enforcement priority for the federal agency. Trenching and excavation are some of the most fatal operations associated with the construction industry. A cubic yard of soil can weigh up to 3,000 pounds and, as the agency likes to warn the public, "an unprotected trench can be an early grave."[1]

Although cave-ins can and too often do result in worker deaths, they are also preventable. For this reason, OSHA has established excavation standards intended to mitigate cave-in hazards and avert trench-related fatalities. Trenches deeper than 5 feet must have an "adequate protective system"—usually shoring or a "trench box"—so that employees inside of the trench are protected in the event of a cave-in.[2] Competent persons with specialized training must be on-site to supervise the work and conduct regular inspections of the trench and its protective system.[3] If the competent person identifies a hazard that could result in a possible cave-in or identifies a defect with the protective system, he or she is required to stop work and evacuate employees from the trench until the hazard is abated.[4]

In its investigation of the death of Galvan Batalla, OSHA determined that the 13-foot trench he was working in did not have a protective system in place. Moreover, OSHA learned that a wall of the same trench had collapsed earlier in the day. D Guerra Construction LLC had allowed employees to continue to work inside the trench anyway, even though the trench remained unprotected. In April 2022, OSHA cited the company for numerous willful violations and issued an initial penalty of $243,406, which is an unusually high penalty for the agency. [5] A few months later, OSHA referred the case to our office to be reviewed for criminal prosecution.

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[1] U.S. Dep't of Lab., Occupational Safety and Health Admin., OSHA 2226-10R, Trenching and Excavation Safety 1 (2015), www.osha.gov/sites/default/files/publications/osha2226.pdf.

[2] 29 C.F.R. §1926.652.

[3] 29 C.F.R. §1926.651(k)(1).

[4] 29 C.F.R. § 1926.651(k)(2).

[5] Press Release, U.S. Dep't of Lab., Occupational Health and Safety Admin., US Department of Labor Workplace Fatality Investigation Finds Contractor Sent 2 Workers Back Into Austin Trench After Partial Collapse (Apr. 21, 2022), www.osha.gov/news/newsreleases/region6/04212022.

The Economic Justice Enforcement Initiative

On Labor Day in 2021, about seven weeks before the fatal trench collapse that killed Galvan Batalla, Travis County District Attorney José Garza launched the Economic Justice Enforcement Initiative. This new effort seeks to prosecute crimes related to wage theft and serious workplace health or safety violations. It is part of a national movement amongst district attorneys and state attorneys general to reclaim the criminal justice system as an arena in which employers can and should be held accountable for egregious labor violations.[6]

Soon after launching the initiative, our office began connecting with state and local prosecutors from other parts of the country who also have units dedicated to the prosecution of work-related crimes. We formed relationships with local organizations that help workers advocate for their rights and various government agencies charged with enforcing worker protection laws. We identified criminal statutes in Texas law that were appropriate for the criminal conduct commonly seen in labor-related prosecutions and trained community allies and enforcement partners on these provisions. Because law enforcement agencies and prosecutors' offices had historically rejected work-related cases as "civil matters," we wanted community stakeholders to know that our office was committed to holding bad actors who commit criminal conduct accountable, regardless of whether their conduct occurred on the streets, in a home, or at a worksite. We asked stakeholders to refer cases to our office if they might fall under the purview of our jurisdiction, and we made sure they knew the appropriate points of contact inside of our office for labor-related prosecutions.

When OSHA reached out to us about the death of Mr. Galvan Batalla, we were prepared to review the case for potential criminal prosecution.

The history of workplace safety prosecutions

As we began our legal research, we could not find any recent examples of trench-related fatalities

caseworker with 13 years of experience reflects on her long-term relationships with the children on her caseload, including one teenager who has been in care since the girl was 8 or 9. The caseworker describes the "overwhelming" weight of helping join a child with a permanent family. "I try to be a change-maker—I'm out there making decisions on the front line," she explains. "At the end of the day, there's one question you have to ask yourself: Are the children safe?"

And that's it right there, folks. Her words capture not only why so many of the professionals we work alongside choose this calling, but also why *we* do. Her words remind us why it matters to strengthen how we communicate with and support caseworkers.

This practice is in its own world with its own language. But if we pause and remember who our audience is as we train, collaborate, and prepare for hearings and trials, we can meaningfully influence the quality of the work before us. We can improve both casework and case outcomes.

I hope by sharing my experience in returning to CPS prosecution, I've offered some insight—or perhaps a renewed perspective—into the caseworker's mindset. Whether you've practiced in this area for years, are considering stepping into it, or simply find yourself assigned to CPS prosecution, I hope I've encouraged you as you collaborate, train, and work with caseworkers—those on the front lines, the change-makers. ❇

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[6] See e.g., Terri Gerstein, How District Attorneys and State Attorneys General are Fighting Workplace Abuses, Econ. Policy Inst., 3-5 (May 17, 2021), https://files.epi.org/uploads/224957.pdf.

being prosecuted in Texas. However, we did uncover a series of such prosecutions in Travis County in the 1980s and early 1990s by then-Travis County Attorney Ken Oden.

Mr. Oden was the first Texas prosector to file criminal charges against a private corporation when he prosecuted Sabine Consolidated LLC in 1985.[7] On September 10, 1985, Juan Rodriguez and Benjamin Eatmon were buried in a 27-foot trench at a sewer installation site in East Austin. Their employer, Sabine Consolidated LLC, and the company's president, Joseph Tantillo, were convicted of criminally negligent homicide in 1987.[8] The State alleged that the defendants' failure to properly slope and shore the trench caused these employees' deaths. The defendants argued that the federal Occupational Health and Safety Act of 1970 preempted states from prosecuting worker fatality cases.[9] The Court of Criminal Appeals rejected the defendants' assertions of federal preemption in an opinion published in 1991.[10]

At the time, prosecutors in other parts of the country also began to prosecute corporations in worker fatality cases.

At the time, prosecutors in other parts of the country also began to prosecute corporations in worker fatality cases. Like Sabine Consolidated, these corporate defendants also raised preemption arguments on appeal. In those cases, appellate courts reached similar conclusions as the CCA: A state's criminal statutes were not preempted by OSHA and ought to apply to employers in the same way that they apply to anyone else.[11] As summarized in a 1989 opinion from the Supreme Court of Michigan:

> While OSHA is concerned with protecting employees as "workers" from specific safety and health hazards connected with their occupations, the state is concerned with protecting employees as "citizens" from criminal conduct. Whether the conduct occurs in public or in private, in the home or in the workplace, the state's interest in preventing it, and punishing it, is indeed both legitimate and substantial.[12]

During this era, some appellate courts went even further, acknowledging that the defendants' claims that OSHA shields America's employers from the application of state criminal laws was both absurd and dangerous.[13] The Supreme Court of Illinois remarked in a 1989 opinion that "[t]o adopt the defendants' interpretation of OSHA would, in effect, convert the statute, which was enacted to create a safe work environment for the nation's workers, into a grant of immunity for employers responsible for serious injuries or deaths of employees."[14]

After the *Sabine Consolidated* case, Oden prosecuted at least two other employers for criminally negligent homicide related to another fatal trench collapse in Austin in 1985 and a third fatal

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[7] Michael King & Jordan Smith, Naked City: Ken Oden Says Adieu, *Austin Chron.*, (Feb. 21, 2003), www.austinchronicle.com/news/naked-city-11714983.

[8] Jim Phillips, Court: Firms Can Be Charged in Work Deaths, *Austin American-Statesman*, Feb. 14, 1991, at B1.

[9] *Sabine Consol., Inc. v. State*, 756 S.W.2d 865, 866 (Tex. App.–Austin 1988), *rev'd*, 806 S.W.2d 553 (Tex. Crim. App. 1991).

[10] *Sabine Consol., Inc. v. State*, 806 S.W.2d 553 (Tex. Crim. App. 1991).

[11] *Id.* at 558 (stating, "The purpose of state criminal laws and criminally negligent homicide in particular … is to punish one for an illegal act as defined by the penal code, whether that act be done in the workplace or elsewhere"); *Id.* at 559-60 (citing cases where other states' courts have also held that OSHA does not preempt state criminal laws).

[12] *People v. Hegedus*, 443 N.W.2d 127, 134 (Mich. 1989).

[13] E.g. *Sabine Consol.*, 806 S.W.2d. at 559 (arguing that, if implied preemption applied to federal workplace safety laws, "an employer who caused the death of an employee by providing unsafe working conditions would be able to escape state criminal prosecution and suffer only the comparatively minor punishment provided by OSHA").

[14] *People v. Chicago Magnet Wire Corp.*, 534 N.E.2d 962, 969 (Ill. 1989).

trench collapse in 1987.[15] In a 1987 interview with *The New York Times* about these prosecutions, Oden opined that OSHA lacked the resources and the teeth to tackle the troubling frequency of trench-related fatalities on its own. Employers in his community continued to commit safety violations after numerous OSHA citations, he believed, because these employers regarded OSHA's fines as a "minor inconvenience."[16] The prosecution of worker fatality cases was therefore imperative. He told *The Times*, "The facts speak for themselves: We are killing people in my state at an epidemic rate."[17]

Forty years later, these prosecutions remain just as relevant and important as they were during the era of *Sabine Consolidated*. Labor enforcement agencies still have limited enforcement resources and inadequate authority to prevent worker abuse. In 2023, there were only 88 OSHA inspectors in Texas, a state that has over 13 million employees,[18] and the average total OSHA penalty imposed following a worker fatality investigation was only $25,832. Employees today face increased barriers to seek justice through civil courts,[19] and preventable worker fatalities continue. Texas consistently ranks as the state with the highest number of worker fatalities each year.[20]

In 2022, federal labor authorities cautioned that they were seeing an "alarming rise in trench-related fatalities."[21] At least 20 workers in Texas have died in trench collapses in the last decade, but as far as we can tell, no Texas employer had been prosecuted for these workers' deaths until our office began its prosecution related to the death of Juan José Galvan Batalla.[22]

Charging a corporation

A Travis County grand jury returned indictments for criminally negligent homicide against Galvan Batalla's superintendent, Carlos Alejandro Guerrero, and his employer, D Guerra Construction LLC, in September 2024.

Texas law allows for a corporation to be held criminally responsible for a felony in certain circumstances, including instances in which the commission of the offense is "authorized, requested, commanded, performed, or recklessly tolerated by ... a high managerial agent acting in behalf of the corporation ... and within the scope of the agent's office or employment."[23] A high managerial agent is defined as a partner or officer of a business entity or an agent of the company "who has duties of such responsibility that the agent's conduct reasonably may be assumed to represent the policy of the corporation, association, limited liability company, or other business entity."[24]

If a corporation is convicted under Texas law, no representative of the company can be arrested,[25] and the company cannot be sentenced to probation.[26] But the corporation can be fined substantially. One lesser-known fact about Ken

Texas law allows for a corporation to be held criminally responsible for a felony in certain circumstances, including instances in which the commission of the offense is "authorized, requested, commanded, performed, or recklessly tolerated by … a high managerial agent acting in behalf of the corporation … and within the scope of the agent's office or employment."

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[15] Phillips, supra note 8; Associated Press, Employer Indicted in Death, *Dallas Morning News*, July 29, 1987, at 22A.

[16] William Glaberson, Is OSHA Falling Down on the Job?, *New York Times*, (Aug. 2, 1987), www.nytimes.com/1987/08/02/business/is-osha-falling-down-on-the-job.html.

[17] *Id*.

[18] Rebecca L. Reindel, et al., Death on the Job: The Toll of Neglect, AFL-CIO, 132 (Apr. 23, 2025), https://aflcio.org/reports/dotj-2025.

[19] *Id*. at 198.

[20] Reindel, supra note 18, at 38-40 (Texas had 564 worker fatalities in 2023, followed by California (439), Florida (306), and New York (246)).

[21] Press Release, U.S. Dep't of Lab., Occupational Health and Safety Admin., Alarming Rise in Trench-Related Fatalities Spurs US Department of Labor to Announce Enhanced Nationwide Enforcement, Additional Oversight (July 14, 2022), https://content.govdelivery.com/accounts/USDOL/bulletins/3213baa.

[22] Josh Peck, What's Being Done to Help Protect Workers from Trench Collapses, Morning Edition, NPR, Aug. 29, 2024, www.npr.org/2024/08/29/nx-s1-5074657/whats-being-done-to-help-protect-workers-from-trench-collapses.

[23] Tex. Penal Code §7.22(b)(2).

[24] Tex. Penal Code §7.21(2).

[25] Tex. Code Crim. Proc. Art. 17A.03(b).

[26] Tex. Code Crim. Proc. Art. 17A.08.

Oden's legacy in the field of corporate prosecutions was his efforts to pass legislation increasing the financial penalties for corporate defendants under §12.51 of the Penal Code.[27] As a result of Oden's advocacy, when a corporation is convicted of a Class A misdemeanor or felony offense resulting in a serious bodily injury or death, the court may fine the defendant $50,000 or "double the amount gained or caused by the corporation or association to be lost or damaged, whichever is greater."[28] (To all the criminal practitioners reading this who are now scratching your heads wondering how on earth a court could quantify the amount that a corporation caused "to be lost" in a case involving a person's death, I offer the friendly reminder that these calculations happen in the civil context *all the time*.)

To all the criminal practitioners reading this who are now scratching your heads wondering how on earth a court could quantify the amount that a corporation caused "to be lost" in a case involving a person's death, I offer the friendly reminder that these calculations happen in the civil context all the time.

Apart from resulting in steep financial penalties, prosecutions of a corporate entity can also cause less measurable, but perhaps more significant, consequences for the defendant, such as negative publicity for its business and reputational harm to its brand. In some instances, a record of a corporate conviction may prevent the business from accessing certain contracting opportunities or qualifying for certain insurance products in the future. Moreover, the criminal prosecution of corporate entities can send a powerful message to other actors in the industry that similar conduct will not be tolerated. A 2020 study found that OSHA's publicity of its enforcement actions incentivized other employers to substantially improve their compliance with workplace safety and health regulations.[29] Corporate prosecutions, particularly those that garner media attention, are likely to have a similar deterrent effect.

Prosecution of corporate entities also offers the State a unique opportunity to address what is often the root causes a company's criminal conduct: its culture. Prosecutors have unique discretion to craft plea conditions tailored to prevent the corporation from committing similar violations in the future. For example, a plea agreement could require the company to implement new policies and procedures, undergo regular auditing or monitoring by an independent entity, or complete relevant training or certifications.

The Travis County case

When we began our work on the case relating to Juan José Galvan Batalla's death and had the chance to meet with his family, they said their greatest hope was that our prosecution would protect the safety of other workers in the future. Their wish guided our strategy in the prosecution of those responsible for Galvan Batalla's death.

On July 31 of last year, Daniel Guerra, the president and owner of D Guerra Construction LLC, appeared in open court on behalf of the company and pled guilty to assault causing bodily injury. The State and defense agreed to postpone D Guerra Construction LLC's sentencing for 15 months while the company implemented a series of "pre-sentencing conditions." These include requirements that all company employees on Travis County worksites receive basic safety training related to construction work and excavation safety; the company hire and retain qualified safety personnel; the company adopt additional safety policies and procedures to allow workers to report safety violations anonymously and without fear of retaliation; and the company contract with an independent third-party monitor for one year to conduct weekly safety inspections on Travis County worksites and prepare monthly reports for our office to track the company's compliance with the terms of the plea agreement.

If D Guerra Construction LLC successfully completes the pre-sentencing conditions detailed in the plea agreement, the State has agreed not to pursue any of the fines authorized by Texas Penal Code §12.51 during punishment. If the company does not comply with the plea agreement's pre-sentencing conditions, the State intends to advocate that the maximum fines allowed by §12.51 be assessed against the company at sentencing and plans to introduce expert testimony and other evidence during a punishment trial about the value of Juan José Galvan Batalla's life, to quantify the enormity of the loss caused by the company's criminal conduct. Relying on what we know from workers' compensation payments and other records obtained during the investigation, we believe that the application

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[27] E.g. H. Comm. on Crim. Juris., S.B. 1277 H. Comm. R., 70th R.S., (May 15, 1987) (noting Travis County Attorney Ken Oden testified in favor of the bill).

[28] Tex. Penal Code. §§12.51(b)(4)–(c).

[29] Mathew S. Johnson, Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws, 110 Am. Econ. Rev. 1866, 1883-93 (June 2020), www.aeaweb.org/articles?id=10.1257/aer.20180501.

of the doubling provision in §12.51(c) to this case could result in fines against the defendant that total more than $1 million.

After the plea, Galvan Batalla's mother wrote to us: "Dios los puso para que saliera la verdad y poder hacer cambios para proteger a más personas." She believed that God put us here so that she (and the world) would learn the truth about her son's death and so that we could make changes that would protect other workers in the future. Though she will always grieve her son's loss, she told a reporter that the plea agreement did provide her with a sense of justice. "It did comfort me a little that the company said, 'Yes, I'm guilty,' because they were guilty—for me—and now they're guilty before the law."[30]

We return to court for D Guerra Construction LLC's sentencing hearing in November 2026. ❇

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[30] Josh Peck, Texas Company Pleads Guilty to 2021 Construction Worker Trench Death, NPR, (Aug. 26, 2025), www.npr.org/2025/08/26/g-s1-85388/texas-company-pleads-guilty-to-2021-construction-worker-trench-death.

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