The Texas

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"It shall be the primary duty of all prosecuting attorneys ... not to convict, but to see that justice is done."
Art. 2.01, Texas Code of Criminal Procedure

Take a stand against suicide

It's after 10:30 p.m. on Palm Sunday, 1995.

By Terry Bentley Hill
Chair of the Peer Assistance Committee for the Dallas Bar Association and a TLAP volunteer

News crews with their live trucks are parked in my front yard and have interrupted regular TV programming to report that my husband, Danny Hill, the 47th Judicial District Attorney, had taken his life in our family home.

Years of struggling with alcoholism and depression overwhelmed his higher thoughts, his reasonable thoughts, his clear thoughts, and led him into a black hole of hopelessness and anger. It fueled his horrible decision to walk into our bedroom with a gun to end his suffering and pain. In his suicide notes, he wrote that I would be better off without him and that I would find a better father for our children.

A super-lawyer

Danny's 1973 Texas Tech Law School class could be considered the breeding ground for elected district attorneys. In the Panhandle alone, four alumni held the position of top prosecutor. By the time Danny ran for the post of the 47th Judicial District Attorney (Potter and Randall Counties), he had already served two terms in the Texas House of Representatives for the 86th District. At 34, he was the youngest DA in the state.

Whip smart and charismatic, he demanded a lot of himself. He tried many cases, and juries never returned a two-word verdict. He created the Special Crimes Unit, which investigated serious criminal offenses, and founded the Victim Assistance Program, which a majority of Texas DA's offices imitated and implemented. Nine months before he died, he was named State Bar Prosecutor of the Year.

Danny had the heart of a prosecutor. In fact, he invested all of himself in the job after a life-changing event that occurred months after receiving his law license. Danny's first job was with a criminal defense firm in Lubbock. As a brand-new attorney, he represented a defendant for aggravated robbery, and the man was found not guilty. Two days after the verdict, the man shot and killed a cashier at a fast food restaurant, and it devastated Danny. He promptly resigned from his firm and dedicated his life to service as a prosecutor. He joined the Texas District and County Attorneys Association (TDCAA) and served on legislative committees and the executive board and finally as Board President. In 1994, he ran for President of the National District Attorneys Association and lost by only six votes.

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Texas District and County Attorneys Association

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About *The Texas Prosecutor*

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A gift in memory of someone special

I have had the privilege of serving with and getting to know many legends in our profession.

So many people have dedicated themselves to doing justice as prosecutors, and I like to think we walk on a path that they paved with their dedication to a cause. When one of those folks passes, I choose to honor them with a modest gift to the foundation in their memory. To me, it is a way to continue to build on the legacy of those who have toiled in the courthouses before us, for the betterment of future generations of prosecutors.

Train the Trainer

With the support of the Foundation, TDCAA produced another successful Train the Trainer in Fredericksburg. This time we trained 37 people, which included eight Traffic Safety Resource Prosecutors from other states. We were able to bring these folks in thanks to a mini-grant from the National Association of Prosecutor Coordinators. See some photos from it on page 16.

This training continues to be a cornerstone of our success. We have so many subject matter experts in our profession, and once you give our experts the tools to pass on their knowledge, great trainings follow. Thanks to the Foundation for continuing to support this vital program! ❊

By Rob Kepple
TDCAF and TDCAA Executive Director in Austin

Recent gifts to the Foundation*

Richard Alpert
James Chapman
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* gifts received between April 7 and June 1, 2018

Hurricane Harvey regional training

When Hurricane Harvey ravaged our coastline, it was great to see Texas prosecutors reach out and help those who lost so much.

By Rob Kepple
TDCAA Executive Director in Austin

Meeting those immediate needs was important to everyone. In the months that followed, it became apparent that something else got wiped out: the training budgets for offices along the coast. The good news is that training is what TDCAA does, and our TDCAA leadership is dedicated to meeting a need in our membership.

To that end, on June 6, 7, and 8, three teams of trainers toured around Beaumont, Houston, and Victoria to offer regional training to those in offices who are strapped because of Hurricane Harvey's devastation. The national acts were **Pat Muscat** from Detroit (he spoke on "The Visual Trial"), **Ron Clark** from Seattle (cross examination), and **German Gomez** from Washington, D.C. (implicit bias). I want to give a special thanks to **Jack Roady**, CDA in Galveston County, who spoke on forensic science, **Jack Choate**, Executive Director of the Special Prosecution unit, who presented on the Texas Department of Criminal Justice, and **Stacey Soule**, the State Prosecuting Attorney, who gave an update on the Supreme Court and Court of Criminal Appeals. These speakers were terrific, and we hope to bring these presentations to all Texas prosecutors in the near future.

I want to thank Harris County DA Investigator **Paul Smithers** and Key Personnel **Wendy Strong**, Victoria County CDA Investigator **Bob Bianchi**, and Jefferson County Assistant CDA **Wayln Thompson** for being our "away team" and helping with logistics. Finally, thank you to the **Court of Criminal Appeals** for supplying additional funding for this effort, and **Jennifer Tharp**, the Comal County CDA and current TDCAA President, for making a generous donation to the Foundation to support the training.

Update on the SBOT disciplinary rules committee

In the last edition of *The Texas Prosecutor*, I wrote about the new State Bar of Texas Committee on Disciplinary Rules and Referenda. I expressed concern that there were no prosecutors on the committee and that we were unclear about our ability to get in the room for the meetings.

I still can't tell you that we will be allowed in the room, but the Bar has offered some information about the committee's work online and has established a conference call line so interested people can listen in to the committee's meetings.

Can you actually attend the meetings at the bar building and get an advance reading of potential rule changes that could impact prosecutors? Good question—for which I don't have an answer today. But, if you are concerned and interested, I encourage you to keep an eye on the meeting schedule and call in next time the group gathers.

OfŢces publish 2017 Annual Reports

In the past, I have lauded the **Tarrant County CDAŐs OfŢce** Annual Report, a great publication that offers good insights into the work of CDA **Sharen Wilson**'s office. The 2017 report highlights the office's work in intimate partner violence and elder fraud, and it includes what is now my favorite section: the "year in review" highlight reel of their major cases. You can read the report online at our website; just search for this Executive Director's Report.

At the end of 2017, the Travis County DA, **Margaret Moore**, issued her first annual report. It is an intriguing peek into the office. For instance, there is a great graphic on just how they are spending their valuable jury trial time. No

surprise, the report reveals an office priority on trying child abuse, murder, robbery, assault, and domestic violence cases. Margaret also uses the report to highlight important initiatives: conviction integrity, the civil rights unit, and training. You can read the report on our website, too.

As you know, prosecutor offices are getting quite a bit of attention these days. That is a very healthy thing—the more your community knows about your work, the more confidence they will have in our justice system. So any time you can tell your story, whether it be by an annual report, an "animal club" lunch talk, a website, a tweet, or a Facebook post, it is to the benefit of the profession.

Judicial Commission on Mental Health

In early January, the Texas Supreme Court and the Court of Criminal Appeals held a joint hearing to gather input on the need for and the priorities of a statewide judicial commission on mental health. On the heels of that hearing, the courts established the Judicial Commission on Mental Health to develop, implement, and coordinate policy initiatives designed to improve the courts' interaction with—and the administration of justice for—children, adults, and families with mental health needs.

The first meeting took place on May 15. There is one prosecutor on the 37-member commission, Harris County ADA **Denise Oncken**. Denise is the Chief of the Harris County DA's Mental Health Bureau. The commission is in the early stages of its work, where it will develop a mission statement and strategic plan and explore opportunities for alignment with the goals and strategies of other stakeholders. The commission has its next meeting in Austin on August 10, and it has penciled in a summit in Houston October 22–23. If you want to follow the commission's work, go to www.txcourts .gov/jcmh.

The dean(s) of Texas investigators

In the past I have mentioned our longest-serving prosecutors and called them "deans" of the profession. It's a completely honorary title, of course, but it is good to recognize people who have dedicated so much of their professional lives to doing justice in a prosecutor office.

So, it is my privilege to recognize the dean of Texas investigators: **O.J. Hale**, Chief Investigator of the 49th Judicial District Attorney's Office in Laredo. O.J. has 45 years as an investigator at that office, as well as earlier service as a police officer and detective at the local PD. I must hedge a little bit, though, because I have also known **Ted Crow**, an investigator at the Lavaca County and District Attorney's Office, for as long as I have been at the association. When I spoke with Ted about his tenure, he was a little hazy on his start date, but his years of service is in the 40s as well. Both O.J. and Ted should be rightfully proud of their service to the profession and to justice, and I am honored to be working for them! One question though: Have I missed someone with more than 45 years of service? Let me know! ❇

Reluctantly liking *The Articulate Advocate*

When I began to read *The Articulate Advocate*, I expected to hate it.

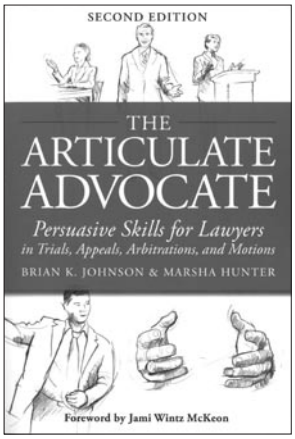
By Brian Klas
TDCAA Training Director in Austin

There is no shortage of books that promise to reveal the secrets of body language and tricks for increased persuasiveness. I believe those books mostly trot out the same tired advice we've all seen regarding public speaking: Did you know that eye contact is important? Have you ever heard about this thing called nonverbal communication? And I know that no one reading this has ever heard that it is important to appear confident—that said, always be yourself! Ugh. Yes, all of those are things—but they are not things that merit an entire book. I believe almost all of the valuable information contained in most "Lawyerin' for Lawyers" books could be edited down to a three- or four-page article or even condensed into some sort of "faculty handbook" nonsense.[1]

In *The Articulate Advocate*, authors Brian K. Johnson and Marsha Hunter initially cover a lot of the same ground you might have seen in those other books. There are the usual drawings of lawyers in suits standing in a variety of positions and moving their hands all kinds of ways (none of them obscene). The depth of the authors' coverage, however, turns what would otherwise be clichéd garbage into meaningful guidance on perfecting your persuasive skills. This is more than a list of dos and don'ts. Here, Johnson and Hunter take presentation errors, discuss the underlying causes, and then give practical methods to prevent making those mistakes.

I particularly enjoyed reading the authors' early direction on appearing natural. Even though I've advised speakers to "just be natural" many times, I can't help but what wonder who has ever benefited from that advice. (Does anyone think appearing *unnatural* is a good way to convince a jury to return with a guilty verdict?) Here, the authors make the point that the most natural thing in the world is *poor advocacy.* Think about it: We have adrenaline pumping through our veins, we are conscious of everything we are doing, and we are desperately trying to control all of it. With all that going on, of course we look inhuman. I for one have a bad habit of just starting to speak without any warm-up—I'm amped and excited to be in front of an audience. Sometimes it works out fine, and sometimes I fumble for a couple of minutes until everything comes together. But from now on, I am going to absolutely adopt a performance ritual as discussed in the book. Like a batter who religiously taps his cleats, straightens his helmet, rolls his shoulders, takes a deep breath, and finally takes the same number of practice swings before stepping into the box for every pitch, I can develop a consistent pattern of pre-talk behavior to increase focus and control breathing. By approaching the start of a presentation thoughtfully and with purpose, I can work to avoid future bouts of beginning bungling.

You will *definitely* see things in this book that you have seen before, but think of it like a travel guide. If you are going to Bora Bora, every book you read is going to tell you that your flight will land in Motu Mute Airport. But you can't bring every book with you. You want to bring the most complete, most helpful book with you. *The Articulate Advocate* is a complete, helpful book. The authors address every ridiculous thing I've done while speaking and the things I've overlooked. If you say "OK" after every answer you receive from a witness, that is discussed. If you are monotone, if you pace, or if you can't speak while seated (that's me), it is covered in this book. And it is covered by authors who have an expertise in persuasive speaking that is apparent in every bit of guidance offered. Even the most accomplished advocates—and skeptical ones, like me—will find something to like in this book. ❇



The Articulate Advocate: Persuasive Skills for Lawyers in Trials, Appeals, Arbitrations, and Motions *by Brian K. Johnson & Marsha Hunter, published by Crown King Books, 2016.*

A prior conviction in DWI-2nd is an enhancement, not an element

In 2005, a ride in a little red Corvette led to a relatively straightforward test for determining whether an extraneous offense was an element that needed to be proved up at the guilt-innocence phase or an enhancement that was proved only at punishment.[1]

By Andrea L. Westerfeld
Assistant County & District Attorney in Ellis County

But parties still debated how that rule applied to DWI-2nd cases: Was the prior conviction an enhancement or an element? In *Oliva v. State*, the Court of Criminal Appeals finally resolved that issue definitively,[2] but in doing so, it left the test more ambiguous than before.

The *Calton* test

In *Calton v. State*, the defendant evaded police officers in his infamous little red Corvette and was ultimately charged with evading arrest as a habitual offender.[3] The State presented evidence of his prior evading conviction only during the punishment phase. Calton later argued that the prior conviction was an essential element of the crime, and he was convicted only of misdemeanor evading. The CCA agreed. It concluded that an enhancement increases the punishment range for an offense, but it does not change the offense or degree of the offense of conviction.[4]

One key factor in the *Calton* analysis was that the evading arrest statute states that the offense "is" a third-degree felony if the defendant has a prior conviction for the same offense.[5] The *Calton* Court concluded that this wording was unambiguous, and the prior conviction was therefore an element of the offense of felony evading. It rejected the State's argument that only jurisdictional priors must be proved at guilt-innocence, noting that jurisdiction is not an element of the offense.[6]

Different levels of DWI

A standard DWI is a Class B misdemeanor.[7] However, the law allows for enhancements if the person has prior intoxication offenses. Section 49.09 provides that the offense is a Class A misdemeanor if the person has one prior intoxication conviction, and it's a third-degree felony if the person has two priors. Under the *Calton* test, when the statute provides that an offense "is" a higher-degree offense rather than "is punished as" a higher degree, then the enhancement becomes an element of the offense. The Court of Criminal Appeals agreed regarding felony DWIs, holding in 2015 that the two prior convictions elevating a DWI to a felony are elements that must be proved at the guilt-innocence phase.[8] The CCA described the two prior convictions as "specific attendant circumstances that serve to define, in part, the forbidden conduct of the crime of felony driving while intoxicated."[9]

But the statute uses identical language to elevate a DWI to a Class A misdemeanor with a single conviction. Because it "is" a Class A misdemeanor, then under *Calton*, the single prior would also be an element that the State must prove at guilt-innocence. In *Oliva*, the intermediate court of appeals agreed and found the evidence legally insufficient because the State had not proved the prior conviction at guilt-innocence.[10] On PDR, the State and defense both agreed that the prior conviction was an element.

But the CCA decided to go a new direction.

Oliva v. State

The CCA's holding in *Oliva* turns on a conclusion that the statute is ambiguous—despite its conclusion in *Calton* that "there is nothing ambiguous about" nearly identical language in the evading arrest statute.[11] It lists a number of factors to consider in the statutory language. In *Calton*, the case turned on the fact that the statute stated the offense "is" a felony if the person has a prior conviction, not simply that it is "punished as" a felony.[12]

But in *Oliva*, the CCA dismissed that language as mere dicta because it was broader than necessary to resolve the case, even though it was the primary factor the court previously depended on in resolving the case.[13] Rather, it concluded that a fact that increases the degree of the offense might be *either* an element or a punishment issue.[14]

Instead of whether the enhancement changed the degree of offense or merely increased the punishment, the *Oliva* Court instead focused on the language "if it is shown on the trial of."[15] In the DWI statute, an offense is raised to the next degree "if it is shown at the trial" that the defendant had a prior conviction.[16] By contrast, the evading arrest statute simply states that the offense "is" a felony if he was previously convicted.[17] The *Oliva* Court concluded that this indicated "something that is in addition to an element of the offense."[18] It did, however, acknowledge that the DWI-3rd offense also includes the phrasing "if it is shown on the trial of," but the court has still determined that is an element of the offense. It suggested that the difference between the two is that DWI-3rd contains a jurisdictional prior whereas DWI-2nd does not.[19] The *Calton* Court, however, had previously rejected this precise claim and concluded that "whether something is an element of an offense is a completely separate inquiry from whether it is jurisdictionally required."[20]

In contrast, the *Oliva* Court concluded that the language of the statute is ambiguous. It therefore turned to extra-textual factors. Primarily, it looked at Art. 36.01 of the Code of Criminal Procedure, which holds that when prior convictions "are alleged for the purposes of enhancement only and are not jurisdictional," they are not read until the punishment phase.[21] This reflects the policy considerations in not informing a jury about prior convictions during the guilt-innocence stage, and this policy weighs toward finding a prior conviction to be a punishment enhancement rather than an element of the offense.[22]

Of course, the CCA in *Calton* rejected the State's argument that Art. 36.01 should be the deciding factor.[23] Rather than overturning this notion, the *Oliva* Court instead concluded that Art. 36.01 is not a conclusive factor and "can be outweighed by other factors."[24] Because the evading arrest statute provided that the offense "is" a state-jail felony if the defendant used a vehicle and "is" a third-degree felony if the defendant used a vehicle and had a prior conviction, the CCA held that the prior conviction is an element.[25]

Finally, the *Oliva* Court looked at the title of the relevant statutes. Section 49.09 is entitled "Enhanced Offenses and Penalties." The CCA concluded that the word "enhanced" rather than "aggravated" indicates that the Legislature considered it merely a punishment issue rather than an element of the offense.[26] Thus, only jurisdictional priors in the section would be considered elements.

Considering all of these factors, the *Oliva* Court concluded that the prior conviction in a DWI-2nd is a punishment issue and is not to be proved at the guilt-innocence phase.[27]

On PDR, the State and defense both agreed that the prior conviction was an element. But the CCA decided to go a new direction.

Going forward

The ruling on DWI-2nds is the primary takeaway on *Oliva*. But it leaves the law in a confusing jumble on what *other* prior-offense enhancements are elements of the offense, as opposed to mere punishment enhancements. *Calton*'s relatively straightforward test is replaced with a series of factors that must all be balanced together, without any solid indication of which factors outweigh the others. Combing through the case reveals three factors that seem to be the most important in the Court's calculus:

1 **Whether the statute reads Ňif it is shown at trial that ÉÓ** This language—which is included in the DWI statutes but not the evading arrest statute—suggests that the prior conviction is a punishment-phase enhancement;

2 **Whether the prior conviction is jurisdictional.** Two prior convictions are required to elevate a DWI to district court, and thus they are

The ruling on DWI-2nds is the primary takeaway on Oliva. *But it leaves the law in a confusing jumble on what* other *prior-offense enhancements are elements of the offense, as opposed to mere punishment enhancements.*

jurisdictional and *must* be proven at the guilt-innocence phase. Non-jurisdictional priors merely *might* need to be proven at guilt-innocence; and

3 Whether the enhancement is in the body of the offenseŐs statute or in a separate section. Again, this is one of the few distinctions between the DWI and evading arrest statutes. The prior conviction enhancement is found in the main body of §38.04, but for DWIs, the offense is described in §49.04 while the prior conviction enhancements are found in a separate section, §49.09. And this section is labeled "enhanced" offenses rather than "aggravated" ones.

Whether these factors will continue to be the ones the CCA focuses on in the future is, unfortunately, anyone's guess. The CCA's focus seemed to be on the policy considerations of not informing a jury about prior convictions in the guilt-innocence stage. Indeed, the concurrence joined with the majority based solely on that factor.[28] This seems to indicate that court will look askance at any interpretations that involve proving a prior conviction before the punishment phase. Only if the statute specifically states that it is a guilt-innocence phase issue or the element is jurisdictional will the CCA approve of an earlier introduction.

Oliva did not overrule *Calton* or other prior cases finding that certain offenses do or do not require the proof of a prior conviction at the guilt-innocence phase. But for any offense that has not already been expressly decided, expect new litigation on the matter. Let's hope the CCA will clarify the test in a future proceeding, but for now, it leaves a great deal of uncertainty. ❇

Endnotes

[1] *Calton v. State*, 176 S.W.3d 231 (Tex. Crim. App. 2005).

[2] *Oliva v. State*, No. PD-0398-17, slip op. (Tex. Crim. App. May 23, 2018).

[3] *Calton*, 176 S.W.3d at 232.

[4] *Id*. at 233.

[5] *Id*. at 234, citing Tex. Penal Code §38.04(b)(2).

[6] *Id*. at 234-35.

[7] Tex. Penal Code §49.04(b).

[8] *Ex parte Benson*, 459 S.W.3d 67, 75-76 (Tex. Crim. App. 2015).

[9] *Id*. at 75.

[10] *Oliva v. State*, 525 S.W.3d 286, 292-93 (Tex. App.–Houston [14th Dist.] 2017).

[11] Compare *Oliva*, slip op. at 6, with *Calton*, 176 S.W.3d at 234.

[12] *Calton*, 176 S.W.3d at 234.

[13] *Oliva,* slip op. at 10-11.

[14] *Id*., slip op. at 13.

[15] *Id*., slip op. at 15-16.

[16] Tex. Penal Code §49.04(b).

[17] Tex. Penal Code §38.04(b).

[18] *Oliva*, slip op. at 16.

[19] *Id.*, slip op. at 17-18.

[20] *Calton*, 176 S.W.3d at 234-35.

[21] Tex. Code Crim. Proc. Art. 36.01(a)(1).

[22] *Oliva*, slip op. at 19-20.

[23] *Calton*, 176 S.W.3d at 235-36.

[24] *Oliva*, slip op. at 20.

National Crime Victims' Rights Week across Texas

During the week of April 8–14, communities across the U.S. observed National Crime Victims' Rights Week (NCVRW).

By Jalayne Robinson, LMSW
TDCAA Victims Services Director

This year's theme, "Expand the Circle: Reach All Victims," emphasized the importance of inclusion in victim services. The theme addressed how the services field can better ensure that every crime victim has access to support and how professionals, organizations, and communities can work in tandem to reach all victims.

The Office for Victims of Crime offers a resource guide each year that includes everything needed to host an event in your area. Numerous communities across Texas observed National Crime Victims' Rights Week, and here, we share photos and stories submitted by a few of our members.

Liliana Z. Mendez Victim Assistance Program Coordinator in the Cameron County Criminal District AttorneyŐs OfŢce

This year we celebrated our 13th Annual Crime Victims' Rights Resource Expo. This year our program was a recipient of $5,000 through the National Crime Victims' Rights Week Community Awareness Project, which is managed by the National Association of VOCA Assistance Administrators (NAVAA) under a cooperative agreement with the Office for Victims of Crime (OVC), Office of Justice Programs (OJP), and U.S. Department of Justice. NAVAA is a nonprofit organization whose members are the agencies in every state designated to administer VOCA grants.

Our expo was a free event and open to the public. There were more than 55 community agencies disseminating information helpful to victims. We estimated that over 400 people filtered in throughout the event. A balloon release while sounding the sirens took place in memory of all victims of crime.

TOP PHOTO: Community Education Specialist Yvette Vela, Advocate Ruth Medina, Victim Assistance Coordinator Liliana Z. Mendez, Cameron County District Attorney Luis V. Saenz, Advocate Michael Reyes, First Assistant District Attorney Edward Sandoval, and Advocates Norma Vallejo and Jose H. Ruiz, all from Cameron County. BOTTOM: Attendees receiving tote bags, pens, fans, shirts, and cups with the National Crime Victims' Rights Week logo and theme. Items were purchased through the NCVRW

Cynthia L. Jahn, CLA, PVAC Director of Victim Services in the Bexar County Criminal District AttorneyŐs OfŢce

The Bexar County Criminal District Attorney's Office was privileged to collaborate with 40 different agencies this year to plan and participate

TOP PHOTO: The proclamation about NCVRW in Bexar County commissioners court. SECOND FROM TOP: Lighting a victims' flame in honor of crime victims and survivors. SECOND FROM BOTTOM: Unveiling the "Cardboard Kids" program, where cardboard cutouts shaped like children bring awareness to child abuse.BOTTOM PHOTO: Laying wreaths to honor victims and service providers.

in National Crime Victims' Rights Week. During the week, organizations that assist and serve crime victims in Bexar County joined together to honor victims of crime and promote greater public awareness about the rights and needs of crime victims.

We kicked the week off on Monday with a "Call-in Victim Hotline" sponsored by our local ABC affiliate, KSAT-12. The public was given an opportunity to call in for information concerning the criminal justice system and referrals for victim services. We were able to assist nearly 150 callers.

On Tuesday, we all gathered in commissioners court to receive a proclamation dedicating this special week to victim's rights and services. It was an honor for the agencies present to receive a heartfelt thank-you for a job well done by our county's leadership.

Thursday was a busy day for us as more than 45 agencies gathered for our annual Victims' Tribute. This is a very special service dedicated to victims of crime and includes a memorial wreath- laying ceremony and the lighting of our victims' flame. The event was held in front of the historic Bexar County Courthouse where we were honored to hear from Dr. Marian Sokol, Executive Director of the Children's Bereavement Center of South Texas. We were also extremely honored to have Pastor Frank Pomeroy and his wife Sherri from the First Baptist Church of Sutherland Springs. The tragedy in Sutherland Springs touched so many, and the Bexar County community of victim service providers have been available and willing to serve our sister community.

As part of our Victims' Tribute, 45 wreaths were presented in honor of victims and victim service providers as our San Antonio Police Department and Bexar County Sheriff's Office Honor Guards stood at attention. A candle was lit by the family of a young victim of homicide in both his honor and in honor of all victims of crime in Bexar County. The release of 16 white doves was a beautiful moment. Four special doves were released by four people representing a portion of the criminal justice system: a victim; prosecution and law enforcement; social services; and the medical community. The event was concluded with a moment of silence, a special 21-bike salute from Bikers Against Child Abuse, and a peaceful adjournment as bagpipers played "Amazing Grace." This is always an extremely solemn but uplifting event.

Other events throughout this special week and the month of April included events for children within our local shelters; the "Cardboard Kids" campaign where over 100,000 cardboard cutouts shaped like children were revealed to bring awareness to child abuse in our community; National Denim Day; and various other agency events highlighting specific crimes such as DWI, domestic violence, child abuse, and sex-

ual assault.

Although all this activity can be exhausting, I know it was worth all of the effort. Not only is it such a special time to honor victims, but the planning and events really succeed in bringing all the participating service providers together, allowing us to work as a cohesive unit. Is it hard work coordinating and planning NCVRW? It can be—but at the same time we know that this week has truly made a positive impact on our community! So don't sit by next year and watch National Crime Victims' Rights Week pass you by—reach out and make a statement, honor victims, and say thank you to your community's service providers!

TOP PHOTO: Attending Galveston County's candlelight vigil for crime victims. MIDDLE: Jack Roady, Galveston County Criminal District Attorney, speaking at the candlelight vigil. BOTTOM: A balloon release in honor of crime victims.

TOP PHOTO: Kaufman County CDA Erleigh Wiley with ACDA Jason Miller. BOTTOM: Bill Wirskye, First Assistant Criminal District Attorney in Collin County, who spoke at the Kaufman County Crime Victims breakfast; Chief Investigator Mike Holley, Victim Assistance Coordinator Shirley Bruner, CDA Erleigh Wiley, and Special Agent

Linda Telfah
Chief of the Victim Assistance Unit in the Galveston County Criminal District AttorneyŐs OfŢce

Below are some photos from our NCVRW events.

Ashley Cook
Paralegal in the Kaufman County

Above, from left: Chan Buckner, Deputy Manager of HCAO Compliance and lead attorney on Crime Victims' Assistance, Andy Kahan, Victims' Advocate for the City of Houston, Guilly Puente, Paralegal working on Crime Victims' Assistance; Dominique Patterson, Houston Area Regional Coordinator/Crime Victim Services with the Office of the Attorney General, and Mimi Han, Manager of Compliance Practice Group.

Criminal District AttorneyŐs OfŢce

Robert Soard

First Assistant County Attorney in the Harris County AttorneyŐs OfŢce

The Harris County Attorney's Office was part of the City of Houston's recognition on Tuesday, April 10, of National Crime Victims' Rights Week. Last year our office collected over $4.8 million on behalf of victims of crime in Harris County.

Rosie Martinez

Victims Unit Director in the Hidalgo County Criminal District AttorneyŐs OfŢce

The Hidalgo County Criminal District Attorney's Office hosted, collaborated on, and coordinated several events for National Crime Victims' Rights Week. We collaborated with the 229th Judicial District Attorney's Office in their observances of NCVRW, and we have established a regional victim services effort to serve victims of crime in the Rio Grande Valley region.

Melissa Barragan

Legal Assistant in the 79th Judicial District AttorneyŐs OfŢce

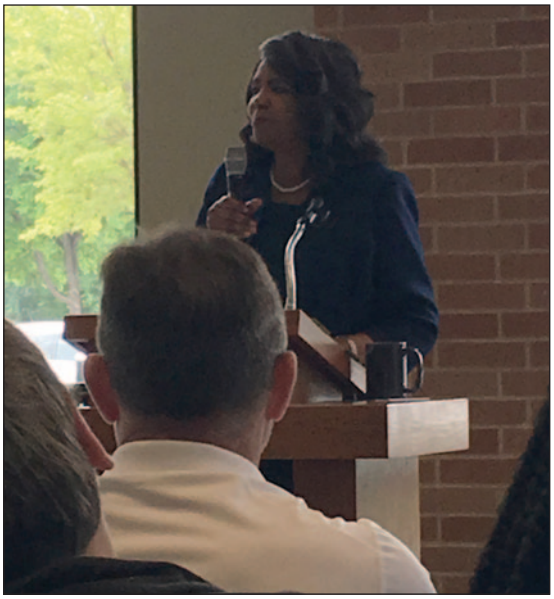
The 79th Judicial District Attorney's Office held a Crime Victims' Rights Walk. It was a success for it being our first event to host and put together. The overwhelming response from our community was amazing.

Our office had a walk around the court-

TOP PHOTO, from left: Laura Garcia, Assistant District Attorney; Chief Joel Rivera, Weslaco Police Department; Evonne Garcia, SANE nurse; and Ricardo Rodriguez Jr., Hidalgo County Criminal District Attorney. MIDDLE: Rosie Martinez, Victims Unit Director for the Hidalgo County Criminal District Attorney's Office, was a guest speaker for the 229th Judicial District Attorney's Office NCVRW event in Starr County. BOTTOM, from left: Hefziba Benitez, Laura Ramos, and Aida Perez, Victim Assistance Coordinators in the 229th Judicial District Attorney's Office; and Rosie Martinez, Victims Unit Director in the

TOP PHOTO: Pete Trevino, County Judge; Ventura Garcia, County Commissioner; Carlos O. Garcia, District Attorney; and Jolene B. Vanover, Mayor, all in Jim Wells County, walking on behalf of crime victims. ABOVE: Carlos O. Garcia, District Attorney, and J. Michael

house, and as we walked around we had our local police department, sheriff's department, fire department, and EMS drive alongside us. After the walk, we gathered to release doves in memory of our victims and to honor survivors. We had vendors come out with information for counseling services in the community or assistance to anyone who had questions or who is in need of help. Words cannot express how amazing it was, and we will continue to bring awareness to this cause and all causes that affect our community.



TOP PHOTO, from left: Maribel Gonzales, Claudia Arnick, Jessica Caudillo, Erica Craig, Lorjon Ali, Sumer Wassef, Marilyn Walsh, and Chris Jenkins, all in Dallas County. ABOVE: Dallas County CDA Faith

Claudia Arnick
Victim Assistance Coordinator in the Dallas County Criminal District AttorneyÓs OfŢce

We had a great program on April 12, which was presented and sponsored by the Dallas County Crime Victims Council. Our guest speaker was our own Dallas County Criminal District Attorney Faith Johnson, and she was fabulous!

These sweet ladies with the Crime Victims Council put together our program. The council is made up of persons and agencies across the state and county who work with victims of crime.

In-ofŢce visits

TDCAA's Victim Services Project is available to

offer in-office support to your victim services programs. We at TDCAA realize the majority of victim assistance coordinators (VACs) in prosecutor offices are the only people in their offices responsible for developing victim services programs and compiling information to send to crime victims as required by Chapter 56 of the Code of Criminal Procedure. VACs may not have anyone to turn to locally for advice and at times could use assistance or moral support. This project is especially helpful to new VACs.

My travels across Texas have recently taken me to Hill and Rockwall Counties. (See some photos, below and below right.) Thanks to each of these offices for allowing me to support your victim services programs! I thoroughly enjoy my job and realize how nice it is to have someone to turn to when questions surface.

If you are a new VAC and would like to schedule an in-office, one-one-one visit, please email me at

BELOW: Katie Cole, VAC in the Hill County Attorney's Office. BELOW LEFT, from left: VACs Brittni Stevens and Mackenzie Lozano and CDA Kenda Culpepper, all in the Rockwall County Criminal District Attorney's Office, and me, Jalayne Robinson, TDCAA

Photos from our Train the Trainer course

Photos from Crimes Against Children

Photos from our Civil Law Seminar

Award winners

ABOVE: Andrea Westerfeld, Assistant County & District Attorney in Ellis County (on the right), was named the Gerald Summerford Civil Practitioner of the Year at our Civil Law Seminar. John Dodson, Uvalde County Attorney and Chair of TDCAA's Civil Law Section (at left), presented her with the award.
BELOW: State Sen. Juan "Chuy" Hinojosa (D-McAllen)(center) was an honored guest at TDCAA's recent Civil Law Seminar in Corpus Christi, where he received a Law & Order Award for his work during the 85th Regular Session (2017). Senator Hinojosa, who is vice-chairman of the Senate Finance Committee, was recognized for his work on border prosecution issues, forensic science legislation, and related funding issues. The award was presented by TDCAA Executive Director Rob Kepple (left)

Photos from our Hurricane Harvey regional training

A roundup of notable quotables

ŇMy jobs have required me to study cops for 37 years. IŐve worked with them. IŐve played ball with them. IŐve drunk beer with them. IŐve laughed with them, IŐve cried with them, IŐve celebrated with them, and IŐve suffered with them, but I have never for a single moment understood them. I cannot imagine what kind of person does all the things they do for a society of strangers, three million of us in this county who they will never meet, but for whom they are always committed. Always there. Always ready.Ó

—Honorable William W. Bedsworth, an associate justice on the Fourth District Court of Appeals, in a speech at the grand opening of Golden West College's Criminal Justice Training Center (CJTC) in Huntington Beach, California, in April. http://behindthebadgeoc.com/cities//appellate-justice-makes-case-for-how-tough-it-is-for-police-officers

"Traditionally when there are handwritten letters in my in-box, people in my position don't really like those. But I could tell from the shape of it, it must have been nice."

—Ellis County & District Attorney Patrick Wilson, of a thank-you note he received from a crime victim. In 2005, Wilson tried a defendant for sexually assaulting a 9-year-old girl (the man was convicted), and just this past May, that little girl—all grown up, graduating from college, and planning to go into social work—wrote him a letter to thank him for helping her. www.nbcdfw.com/news/local/Graduation-Announcement-Brings-District-Attorney-to-

"Dogs are man's best friend and, as the defendant is about to learn, we are drug dealers' worst enemy."

—New York U.S. Attorney Richard Donoghue, in an Associated Press article about a veterinarian, Andres Lopez Elorza, who pled not guilty in a federal court in Brooklyn to drug trafficking charges. It is alleged that Elorza stitched packets of liquid heroin into the bodies of puppies, which were then sent on commercial flights to New York City, where the drugs were cut out of them. www.mrt.com/news/crime/article/US-Vet-implanted-heroin-

"When your client wants To insist he's not guilty You have to let him"

—Twitter user @SupremeHaiku (Supreme Court Haiku) on May's decision in *McCoy v. Louisiana*

"'In every good marriage, it helps to be a little deaf.' I have followed that advice assiduously, and not only at home through 56 years of marital partnership. I have employed it as well in every workplace, including the Supreme Court. When a thoughtless or unkind word is spoken, best to tune it out. Reacting in anger or annoyance will not advance one's ability to persuade."

—U.S. Supreme Court Justice Ruth Bader Ginsberg, relaying advice she received from her mother-in-law on her wedding day, in an op-ed piece she wrote for *The New York Times* in 2016. The same quote appears in a new documentary on her life, called *RBG*, which hit theaters in early May.

"Something was telling me to go back to this area."

—Cpt. Darryl Wormuth of the Prince George County (Maryland) Police Department, after he'd answered a call about a man lying face-down in the grass near an apartment complex. Cpt. Wormuth went with medics to drop the man at a hospital and finished his shift three hours later—but he felt a tug to return to the apartment complex. There, in a remote corner of the parking lot, he found an SUV, engine running, with a toddler strapped in a car seat by herself, and it was a hot day—she was the daughter of the man Wormuth had taken to the hospital, and she'd been left alone in the hot car for hours. The officer was able to rouse her, though, and she was fine after having some water and chicken nuggets. Whew! www.washingtonpost.com/local/public-safety/please-god-let-this-child-be-alive-officer-discovers-child-alone-in-car-on-hot-day/2018/05/03/76420ddc-4e52-11e8-84a0-458a1aa9ac0a_story.html

Take a stand against suicide (cont'd)

A deadly combination

Danny took his first drink of alcohol his senior year of high school, and it was that drink, not the last drink, that killed him. That's because alcoholism is a progressive disease. Untreated, it can be fatal. It is cunning, baffling, and powerful. It interferes with relationships, vocations, hopes, and dreams. It destroys the drinker, and it destroys his family. Everybody gets sick. Couple the alcoholism with depression, as in Danny's case, and the combination is deadly.

No one really knows the secrets that lurk behind closed doors, but the secrets kept us sick—kept the whole family sick. Shame kept us isolated and silent. We never confided in or consulted friends or family about our problems. The notion of public exposure, scorn, and judgment so repulsed Danny that even car wrecks, chaos, marital discord, violence, and a removal suit did not stop his substance abuse. Eventually he chose death over life.

When a person dies by suicide, statistics show at least 18 people are directly affected. Suicide is the most complicated death to grieve. Oftentimes the last words spoken are not ones of love and affection, and survivors are left reeling with the burden of responsibility and self-blame. Ten days after Danny died, I walked into my bathroom, looked at myself in the mirror, and did not recognize the person staring at me. I glanced at the TV as a special news report from Oklahoma City showed a collapsed building billowing in smoke—a federal building had been bombed earlier that day, 168 people were killed, and hundreds more were injured—and when I glanced back at myself, I realized that building represented my life. Part of me died with Danny that night. I had so many questions, so many whys, but none that he could answer, and because of the public nature of Danny's life (and his death), I had nowhere to hide. I quickly realized that my four daughters and I needed a shelter of anonymity to begin the healing process, so I moved back home to Dallas, where our family and friends could surround us with support while we learned to live one day at a time.

In 1998, a few years after Danny's death, the PBS station in the Panhandle produced an Edward R. Murrow Award-winning documentary called *Danny Hill: Public Image, Private Pain*.[1] In it, I spoke of our life together and the battle with addiction: the denial, the failed attempts to hide and control the illness, and the fear that if we sought help, Danny's legal and political career would suffer. Rather than continuing to live in the hidden isolation of addiction, I decided that sharing my experiences may encourage others to step out of their own shadows.

TDCAA asked me to present the video and tell my story at its annual conference—the association's leadership bravely faced the undeniable fact that the stressors of the legal profession were taking a toll on its members. When I presented, the room was packed with elected and assistant district attorneys, many of whom knew Danny when he served as President. After they heard from me, they also heard from two other attorneys, an Austin lawyer and the Chief Justice of the 13th Court of Appeals, who told their stories of recovery. Both were volunteers with the Texas Lawyers Assistance Program (TLAP). As I listened to their brutally honest stories, I wished that Danny could have heard them. Maybe they would have given him the courage to face his issues—after all, they were highly successful lawyers and not ashamed of their struggles.

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Collateral damage

At the age of 47, I accomplished a long-term goal: I entered law school. The desire to practice law began while covering the courthouse as a news reporter 25 years earlier. As a reporter, I had been a passive participant, but now I wanted to step inside the Bar and become an active player in the justice system. Two weeks into classes, on a Wednesday evening, my phone rang with news that shattered my heart: I lost my 14-year-old daughter to depression. She too had committed suicide. Hallie was the youngest of my four girls, and like her sisters, she was heartbroken and traumatized when her father died. What Danny did not know is that his suicide would open a door that his children might walk through themselves. When a parent suicides, the odds that a child will also die by suicide increase dramatically.

After Hallie died, I withdrew from school and went to therapy twice a week for nine months, took medication to boost depleted serotonin and dopamine, and joined support groups. That July, I had to decide whether to re-enroll in law school and resume my education. Grief had shattered my confidence, and it had affected

my concentration, memory retention, and focus. After I shared my fears during a therapy session, my counselor spoke some words that changed my life. She told me, "I'm not in the business of telling my patients what to do, but I am telling you: You are going to law school. You are going to take it one semester at a time, and in three years when you walk across the stage and receive your hood and diploma, you will know there is nothing you cannot accomplish." Her words were just what I needed to hear. I re-enrolled in school, and three years later, I walked across the stage to receive my diploma. The loudest cheers came from my three daughters in the audience.

What Danny did not know is that his suicide would open a door that his children might walk through themselves. When a parent suicides, the odds that a child will also die by suicide increase dramatically.

After receiving my bar results, the first call I made was to TLAP—I remembered those two brave attorneys I met years before at TDCAA's Annual, and they had inspired me to volunteer. I have learned that Danny's story is not unique. Attorneys experience depression, anxiety, and stress more than any other professionals. Substance and alcohol abuse is alarmingly common, especially for young attorneys in their first 10 years of practice. Suicides and suicidal ideation are on the rise. Every aspect of the sufferer's life is affected by these illnesses: Work, relationships, parenting, and friendships become secondary to the obsessive energy and focus it takes to "manage" the problems. It is the fear of exposure, the inability to pierce the veil of silence, a culture of perfectionism, and the threat of economic consequences that drive our colleagues away from help and toward desperate measures. Prosecutors who daily experience the emotionally charged world of crime victims and pressure as the conduit to justice are particularly susceptible to stressors and secondary post-traumatic stress disorder. I recall how the autopsy of a 6-year-old girl haunted Danny and contributed to his depression and self-medication. As a mental health advocate and board member of the Suicide Crisis Center of North Texas, my purpose is to acknowledge the unique demands of prosecutors and to offer solutions and hope.

Mental illness and substance abuse are treatable conditions. Help is available to any Texas attorney through the Texas Lawyers Assistance Program, Lawyers Concerned for Lawyers, and the Confidential Depressive Group for Attorneys. Studies show that the most effective recovery from mental illness and addiction is like a three-legged stool where medicine, cognitive therapy, and peer support are each a leg, and each is dependent on the other. When you do

Newswor-

Photos from our Forensic Evidence Seminar

Lawyers are at special risk for suicide

Albert was a detail-oriented perfectionist.[1] He always had been, and that's why he was so successful in law school.

By Tracy Franklin Squires
Assistant Criminal District Attorney in Bexar County

When I first met him—I'm going to be honest—he struck me as overly anxious. He was a law student interning at the District Attorney's Office during his last semester. He planned to stay on through the bar exam and await the results, hoping to land a job as a prosecutor once he passed the bar. He asked more questions than anyone I'd ever heard, and he did not seem terribly satisfied with the answers—he remained anxious. He was a friendly guy, though, and he was married and had a toddler.

Al had started drinking quite a bit in law school to control the stress. It was easy to get into that habit because the law school hosted happy hours every Friday in the courtyard with six kegs of beer. That was just a warm-up for the 1Ls, who went out to the bars afterward. By his third year of law school, Al and most of his class had graduated to drinking at home alone every night.

Al passed the bar and was hired on at the DA's office. A few years in, he was a very successful trial attorney. He had actually never lost a trial and was on a 7-of-7 winning streak. But Al had a very tough caseload (he worked on child pornography cases) and viewed those images day in and day out for four years. Such a caseload left him with uncontrollable feelings of helplessness, rage, and guilt. Al began to see himself as the only person who could help these children, yet he felt guilty about the numbness he had eventually developed toward the images. He had to prioritize the cases somehow, and he loathed himself for seeing some victims' horrific circumstances as "not that bad." His perfectionism gave him an over-developed sense of control, so when cases didn't go as planned (e.g., he didn't get the sentence he wanted), he blamed himself and considered himself a failure.

Al stopped hanging out with colleagues outside of work, was having at least six drinks a night, and stayed up late playing video games. He was willing to sacrifice sleep and healthy habits to meet the unrealistic expectation of never losing a case, but it came at a great cost. He was also taking medication for anxiety and depression and had become addicted to Xanax, but we didn't find that out until later.

At one point, Albert was preparing for a big jury trial, and as it was looming, he suffered from feelings of inadequacy, fatigue, and muscle tension; he had difficulty concentrating and sleeping; and he was plagued with worry and a sense of impending danger. Then his wife had a miscarriage, which he took very hard.

The big trial was set for a Monday morning, but Al was not at the office early that day to prepare, as he would've normally been, nor was he in court when trial was ready to start. Our office got the call around 10:00 a.m. from Al's mother-in-law that he had died by suicide the day before. He was only 27 years old.

The next day, the DA's office provided counselors for two one-hour group sessions. In these sessions, we could express our emotions over losing Al and ask questions about mental health and suicide. It was a great resource provided to the other staff and attorneys in a time of great need. We learned that the warning signs we saw in Albert were real and that we might have been able to help him (if he would have accepted it).

The purpose of this article is to educate prosecutor office staff—especially attorneys, who have a higher risk of suicide than non-lawyers—on the risk factors and warning signs of mental illness, as well as what professional help is available to those with alcohol or substance-abuse problems. I first became involved in mental health and suicide prevention awareness in 2009, when my family lost my brother, Donald William Elster III, to suicide. He was not

a lawyer, but I am, and I use the information I now have about these topics to educate other attorneys so that they can look for warning signs and risk factors in their colleagues, family, friends, and clients. I have been on the Board of the Texas Lawyers Assistance Program (TLAP) since 2016. I also represent TLAP on the Board of the Texas Suicide Prevention Council (TSPC). TSPC is the result of a collaborative effort throughout the state of Texas of community-based organizations, state and local agencies, academic institutions, and many others who work together to reduce suicides in Texas.

Read on to find out how to help someone in need, even if that someone is you.

What the numbers say

Statistics show that suicide is the 10th leading cause of death, and that each year, 44,965 Americans die by suicide. White men accounted for seven of 10 suicides in 2016. The rate of suicide is highest in middle age and for white men in particular. Also, firearms accounted for 51 percent of all suicides in 2016.[2]

New, attorney-specific research released by the American Bar Association Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation[3] found that the most common mental health conditions reported were anxiety (61.1 percent), followed by depression (45.7 percent), social anxiety (16.1 percent), attention deficit hyperactivity disorder (8.0 percent), and bipolar disorder (2.4 percent). Also, 11.5 percent of participants reported suicidal thoughts at some point during their career, 2.9 percent reported self-injurious behaviors, and 0.7 percent reported at least one prior suicide attempt. Another alarming statistic from the study is that 20.6 percent of attorney participants scored at a level consistent with problematic drinking (defined as hazardous, harmful, or otherwise consistent with alcohol-use disorders). This is a much higher rate than other professions. The study finds "the significantly higher prevalence of problematic alcohol use among attorneys to be compelling and suggestive of the need for tailored, profession-informed services," including a need for "specialized treatment services and profession-specific guidelines for recovery management."[4]

In addition to these statistics, lawyers are three times more likely than any other professional to suffer from depression,[5] they are at least twice as likely as the average person to die by suicide,[6] and the third-leading cause of death among attorneys is suicide, after only cancer and heart disease.[7] Disturbingly, there is a six-fold increase in suicide rates for those who suffer from alcohol- and substance-use disorders.[8]

There is help

Please know that there is help for people who need it. Currently, approximately half of all assistance provided by the Texas Lawyers Assistance Program (TLAP) is directed toward attorneys suffering from anxiety, depression, or burnout. TLAP's staff consists of experienced attorneys who can be trusted: Their confidentiality is established under Chapter 467 of the Texas Health and Safety Code. The statutes ensure all communications by any person with the program (including staff, volunteers, and committee

Risk factors for suicide[1]

- *mental illness diagnosis*
- *substance abuse (drugs and/or alcohol)*
- *trauma, abuse, or bullying*
- *LGBTQA*
- *major physical illness*
- *advanced age*
- *obesity*
- *gifted and talented*
- *family history of suicide*
- *previous suicide attempt*
- *impulsiveness and aggression*
- *access to lethal means (guns or medications)*
- *isolation and lack of social support*
- *stigma to seeking help (men, living in rural community, in the military, in law enforcement, in a counselling profession)*
- *barriers to health and mental health care*
- *ability to inflict or tolerate pain*
- *cultural or religious beliefs that normalize suicide*
- *loss (of job, relationship, health, reputation, or freedom)*
- *exposure to clusters of suicide (defined as "a group of suicides or suicide attempts or both that occur closer together in time and space than would normally be expected in a given community")[2]*

Endnotes

[1] According to the Centers for Disease Control, www.cdc.gov.

[2] https://www.cdc.gov/mmwr/preview/mmwrhtml/00001755.htm.

members) and all records received or maintained by the program are strictly protected from disclosure. TLAP does not report lawyers for discipline. Furthermore, Texas Health & Safety Code §467.005(b) states that "a person who is required by law to report an impaired professional to a licensing or disciplinary authority satisfies that requirement if the person reports the professional to an approved peer assistance program." Any person who "in good faith reports information or takes action in connection with a peer assistance program is immune from civil liability for reporting the information or taking action."[9]

Once an attorney contacts TLAP, resources are provided directly to that person, and it ranges from:

- direct peer support (from TLAP staff attorneys or trained peer-support attorneys who have overcome a particular problem and have signed a confidentiality agreement);
- self-help information;
- information about attorney-only support groups, such as Lawyers Concerned for Lawyers (LCL), which provides weekly meetings for alcohol, drugs, depression, etc.;
- monthly wellness groups with professional speakers on various wellness topics in lecture format;
- referrals to lawyer-friendly and experienced therapists, medical professionals, and treatment centers; and
- assistance with financial resources to get help, such as the Sheeran-Crowley Memorial Trust, which is available for attorneys in financial need to defray the costs of mental health or substance abuse care.

If you are the person who needs help, please ask for it. Visit one of the resources listed below to get information and find a treatment provider. If you believe a coworker to be suicidal, ask the person directly if he is planning to kill himself. Research shows that asking someone if he is suicidal does not put the idea in that person's head—it is either already there or it is not.[10] Asking simply shows the person that you noticed his pain and opens the door to sharing that pain with another. When you ask, seek a private area to talk, and be open, gentle, validating, concerned, and willing to listen. If you discover the person is indeed suicidal, contact the resources listed below, or drive the person to the nearest emergency room. Always take all threats of suicide and self-harm seriously.[11]

Warning signs of suicide

- *increased substance abuse (including starting to smoke)*
- *dramatic mood changes (high and low)*
- *withdrawal from friends, family, or society*
- *anxiety or agitation*
- *anger, rage, or revenge-seeking behaviors*
- *recklessness and risky activities*
- *feelings of hopelessness, purposelessness, worthlessness, or powerlessness*
- *shame, guilt, self-hatred, or inadequacy*
- *feeling trapped*
- *inability to sleep or sleeping all the time*
- *deterioration of hygiene*
- *repeatedly asking for extensions for assignments or work*
- *sudden constant illness*
- *disinterest in former activities, hobbies, and relationships*
- *flat affect, disorganized speech, lack of eye contact*
- *sleeping in court*
- *suddenly skipping appearances, hearings, or trials*
- *declining performance and interest in work*
- *rapid weight gain or loss*
- *threatening to or talking about hurting or killing oneself*
- *attempting to gain access to lethal means (guns or pills)*[1]

Endnote

[1] See https://www.sprc.org/about-suicide/warning-signs and https://www.sprc.org/about-suicide/risk-protective-factors, see also http://www.texassuicideprevention.org/how-you-can-help/how-to-help-know-the-signs/ and https://afsp.org/about-suicide/risk-factors-and-warning-signs/ and http://www.suicidology.org/resources/warning-signs and Ask About Suicide to Save a Life. ASK Video Training, Lessons and PowerPoint available at http://www.texassuicideprevention.org/training/video-training-lessons-guides/.

Additional resources

National Suicide Prevention Hotline
800/273-TALK (8255)
suicidepreventionlifeline.org
A national phone line network of local crisis centers, free, 100-percent confidential, available 24 hours a day, seven days a week, with support, prevention, and crisis resources.

Crisis Text Line

Text "CONNECT" to 741741
www.crisistextline.org/textline
A national, free, 24-7 text phone line connected to live, trained volunteer counselors who help people in crisis.

The Trevor Project

Trevor Lifeline: 866/488-7386
TrevorText: Text "Trevor" to 202/304-1200 (M–F, 3-10 p.m. EST)
www.thetrevorproject.org/get-help-now
The Trevor Project is the leading national organization providing crisis intervention and suicide prevention services to lesbian, gay, bisexual, transgender, and questioning youth. The Lifeline is a 24-7, national crisis intervention and suicide prevention phone line.

Texas Lawyers Assistance Program (TLAP)

800/343-TLAP (8255)
www.tlaphelps.org
A free, 100-percent confidential phone line for law students, lawyers, judges, legal employers, young lawyers, and aging lawyers with support for wellness, stress, anxiety, depression, bipolar disorder, suicide prevention, substance abuse, and cognitive decline with support and referrals, peer assistance, CLE and education, mandated monitoring, and volunteer opportunities.

Substance Abuse and Mental Health Services Association (SAMHSA)

www.samhsa.gov
SAMHSA is the agency within the U.S. Department of Health and Human Services that leads public health efforts to advance the behavioral health of the nation. SAMHSA's mission is to reduce the impact of substance abuse and mental illness on America's communities. Help and treatment locations can be found on the website.

Lawyers With Depression

www.lawyerswithdepression.com
This website was created by Dan Lukasik (a personal injury attorney in Buffalo, New York) and is dedicated to helping lawyers overcome depression.

American Foundation for Suicide Prevention (AFSP)

afsp.org
AFSP raises awareness, funds scientific research, and provides resources and aid to those affected by suicide. ❇

Endnotes

[1] "Albert" is based on two prosecutors I know, but identifying information has been changed.

[2] Centers for Disease Control and Prevention (CDC) Data & Statistics Fatal Injury Report for 2016, www.cdc.gov/injury/wisqars/fatal.html.

[3] See Patrick Krill, Ryan Johnson, and Linda Albert, The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys, *Journal of Addiction Medicine*, Feb. 2016, Vol. 10, Issue 1, Pp. 50, http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/0200/The_Prevalance_of_Substance_Use_and_Other_Mental.8.asp.

[4] *Id*.

[5] See Ted David, Can Lawyers Learn to be Happy?, 57 No. 4 Prac. Law 29 (2011).

[6] A 1992 OSHA report found that male lawyers in the U.S. are two times more likely to die by suicide than men in the general population. See www.lawpeopleblog.com/2008/09/the-depression-demon-coming out-of-the-legal-closet/.

[7] See C. Stuart Mauney, The Lawyers' Epedemic: Depression, Suicide, and Substance Abuse; www.scbar.org/Portals/0/Outline%20for%20Laywers'%20Epidemic.pdf.

[8] Center for Substance Abuse Treatment, Substance Abuse and Suicide Prevention: Evidence and Implications–A White Paper, DHHS Pub. No. SMA-08-4352, Rockville, MD: Substance Abuse and Mental Health Services Administration, 2008, https://store.samhsa.gov/shin/content/SMA08-4352/SMA08-4352.pdf.

[9] Tex. Health & Safety Code §467.008(a).

[10] See T. Dazzi, R. Gribble, S. Wessely and N.T, Fear (2014). Does asking about suicide and related behaviours induce suicidal ideation? What is the evidence? *Psychological Medicine*, 44 pp.

Taking a leap—by taking the board specialization exam

It is a rather unnerving task to write an article about the Texas Board of Legal Specialization in Criminal Law for a bunch of reasons.

By Ryan W. Hill
Assistant Criminal District Attorney in Tarrant County

The most concerning of them all is that I have no idea how I did on this test. I don't know if I aced it straight away, or if I got lucky and the examiner fell asleep grading my essays only to snap out of it one pencil mark shy of a failing grade. With both possibilities in mind, this article is not intended to be some "BarBri how-to" for board specialization—rather, my goals are simply to demystify the process and give those of you thinking of taking this test some tools for your toolbox.

Why get board certified?

There seem to be plenty of reasons *not* to. Most of us who had to sit through the bar exam seem to have a passionate dislike for the word "test." And some prosecutors are so far along in their careers that messing with certification just doesn't make any sense to them. I also hear attorneys ask, "What's the big deal? I try cases against So-And-So Attorney who's board-certified, and I don't see what all the fuss is about." These are all fair statements when people are deciding whether to jump into the Texas Board of Legal Specialization (TBLS) application waters. Board certification certainly isn't for everyone. But for those who are interested, there are some great reasons to go ahead and take that leap.

Passing a test doesn't magically transform anyone into Gerry Spence or Racehorse Haynes, but extensive study and preparation for the board certification exam can play a major role in taking that next step as a professional criminal attorney. Like many prosecutors, I swore that the bar exam would be the last test I would ever take, and this vow was not quickly compromised. But I continued to see respected peers taking and passing this test. They seemed more knowledgeable about current legal issues, and they came across as more confident. While not all board-certified attorneys are fantastic litigators, a good majority of the trial attorneys I aspire to emulate are board-certified.

Finally, being board-certified is a credential that lasts for the rest of your career. It comes with a certain distinction. It tells peers, coworkers, judges, and the public that you are serious about your profession and that you are dedicated to improving the competency of the local and state bar. TBLS allowing an attorney to sit for this test, by itself, is a testament to that attorney's career accomplishments, ethical character, and respect among peers. There are only so many attorneys in certain areas who have the proper credentials to sit for this test, much less the desire to study for months and then submit themselves to a grueling exam. According to the TLBS statistics, 25 attorneys were certified after passing the 2017 board examination, and there are only 861 total board-certified criminal attorneys in Texas as of 2018. So while being board certified isn't everything, it is a distinction that can help an attorney stand out in a field of great prosecutors. Toss in an incentive from my office that it would pay for test fees and board dues if we pass—and that was really all the extra incentive I needed to go ahead and jump in to these somewhat choppy waters.

What are the requirements for board certification?

If you are federal-illiterate like I was, find yourself a prosecutor or defense attorney with federal chops and bribe them to break it down for you. Once I had a basic understanding of how the federal system worked and the purpose of the guidelines, the U.S. Code and sentencing manuals made a lot more sense.

To be considered to sit for the Criminal Specialization exam, attorneys must have been practicing for five years, with at least 25 percent of their time spent practicing criminal law in Texas during the three years preceding an application. Attorneys must also have been lead counsel for the requisite number and combination of felony, misdemeanor, federal, and appellate cases. (A link to the attorney standards for certification in criminal law can be found at www.tbls.org/cert/AttyStandards.aspx.)

A common combination for state prosecutors without federal experience is five felony jury trials, plus either 10 misdemeanor jury trials or five more felony jury trials, along with five appeals. Depending on your office, appeals may be a part of your life, or you may have never touched a brief. For this reason, TBLS allows applicants to submit other significant, relevant experience as a substitute for deficits in their credentials, and it will consider the nature, complexity, and duration of the issues the applicant has handled when evaluating this experience. I myself had only written three appeals when I applied, so in my application I also offered examples of trial briefs and other complicated litigation I had handled to supplement my missing appeals.

In addition to these requirements, applicants must provide the number of trials, proceedings, and other matters they have participated in over the last three years. This part of the application can be quite tedious and time-consuming. This is especially true for those of us who have worked in multiple counties through our careers. Tallying trials was easy because I kept track of them; however, I had not kept track of every plea I had ever done. Some offices can run numbers based on cases assigned for a time period, but for smaller counties, one suggestion is to ask for the numbers of pled and disposed cases for a relevant time period, then look at some old dockets and guestimate based on the data. Most peers I consulted suggested that giving a conservative guestimate is very much acceptable, but you should check with the people at TBLS to be sure. They are very helpful.

In addition, applicants must submit names of attorneys and judges who can attest to their competence in a specialty area in accordance with the standards. These references must have dealt with the applicant in the last three years, be familiar with their work, and affirm that an applicant should be certified in a specialty area. The TBLS may also randomly solicit additional attorneys and/or judges to attest to the applicant's competence.

After filling out all of this information, an attorney must certify that he meets the qualifications and that he has the required qualifying CLE credits, and then he can turn in the application by the deadline. At that point it is a waiting game. TBLS notifies candidates if they are accepted to sit for the exam sometime in the summer. I suggest moving forward with your study and preparation as if you will be accepted. I was not notified of my acceptance until the middle of July while sitting in the Advanced Criminal Law CLE Course in Houston. With the test in October, I was glad I had already started reading.

Study materials

Topics include search and seizure, state and federal constitutional issues, pleas, federal and state criminal procedure, confessions, jury selection, federal and state rules of evidence, jury charges, punishment, federal sentencing guidelines, motions for new trial, federal and state appeals, post-conviction issues, probation and parole, death penalty, and even juvenile law, among others. (The whole list of what the exam covers is at http://content.tbls .org/pdf/attstdcr.pdf/.)

Because of the overwhelming amount of information on this test, I found it extremely helpful to start by talking to people who had already taken it. Jim Hudson, my chief at the time, was more than happy to share some tips on how he juggled studying and case work and even provided me with his study materials. Even though it had been a while since he had taken the test, his materials contained some great information and practice tests. But most importantly, having an encouraging senior attorney like Jim to bounce information off of during my studying was indispensable.

Additionally, Matt Smid, a friend and colleague, preached a simple, tried-and-true method of reading the codes as many times as possible. He also advocated the benefits of O'Connor's

code books, and I must say that using the O'Connor Federal and Texas Criminal Codes made a lot of sense. While my TDCAA books are indispensable in my office and in trial, the defense attorneys and judges that help write the test seem to incorporate examples and formulate questions directly from the case summaries in the O'Connor books. (There is nothing like seeing a test question straight out of a case summary you are familiar with!) Plus, I find the O'Connor codes a welcome addition to my growing collection of TDCAA books.

Being "Smid-like" in my preparation seems to have paid off for me. For that reason, I too advocate reading in full:

- the Code of Criminal Procedure (both federal and Texas, including case summaries);
- the Texas Penal Code;
- the federal and Texas Rules of Evidence. You might make a "cheat sheet" of the differences between the two, as distinctions between the federal and state Rules of Evidence seemed to be favorite topics for the multiple-choice questions on my exam; and
- the federal and Texas Rules of Appellate Procedure.

When you are ready to study the federal substantive laws and the federal sentencing guidelines, O'Connor's is still useful. There are also guides, manuals, and charts available for download from the U.S. Department of Justice website. If you are federal-illiterate like I was, find yourself a prosecutor or defense attorney with federal chops and bribe them to break it down for you. Once I had a basic understanding of how the federal system worked and the purpose of the guidelines, the U.S. Code and sentencing manuals made a lot more sense.

In addition to gathering codes and indenturing friends, I suggest getting your paws on Judge David Newell's "Supreme Court and CCA significant decisions" papers for the last three to four years. If you are unfamiliar, Judge Newell is a judge on the Texas Court of Criminal Appeals. These papers come right from the source, are really well-summarized, and are written in an approachable tone. They can probably be harvested from various Advanced Criminal Law Course binders stashed in various corners of your office, but I suggest going straight to Judge Newell's executive assistant, Nichole Reedy (email her at Nichole.Reedy@txcourts.gov). Sometimes the papers are a work in progress until after the Advanced Course, and Nichole can send you the final and complete version. If I were a TBLS test writer, recent and significant evolutions in caselaw from the past few years would be in my wheelhouse for use in the exam.

In addition to these papers, get a hold of the Advanced Criminal Law Course binders for the last couple of years and rummage through them for other helpful papers. I looked through them myself and created a "frankenbinder" of papers on various topics from 2014 to 2017. I collected anything that looked interesting or involved a subject in which I was weak. There are some really good primers on federal sentencing, reviews of evidence, search and seizure updates, etc.

While we are on the topic of the Advanced Criminal Law CLE Course, I found that attending that course prior to ramping up my studies for the exam was very useful—it is always a good immersion into the latest evolutions of Texas criminal law. Attendees usually receive a copy of Judge Newell's paper, as well as digital or hard copies of the most recent Advanced Criminal Law papers written by experts from all over the state. There is also usually a panel discussion with past and present test writers to discuss preparation for and taking the examination. This session can be really helpful depending on the questions. Susan Anderson, whose outline for the TBLS criminal certification exam is discussed below, was on the discussion panel last year, and I found her input very informative.

Next, I suggest downloading the Texas Disciplinary Rules of Professional Conduct and a copy of the Texas Lawyers Creed from the "ethics resources" of the State Bar website. These rules seem to be a favorite for the multiple-choice portion of the exam. In fact, there is a set or two of practice multiple-choice questions on the rules floating around. They are older, but they still seem to be relevant—and quite difficult. (I believe I fell victim to a professional conduct question in one of the essays, in fact.) Though the State Bar is revising the Disciplinary Rules this year, the 2016 rules are still up on the Bar website. At this rate, it doesn't seem like the changes will be completed in time to incorporate them, but that may be a question to ask the panel at the Advanced Criminal Law Course. And while we are on the topic of the Disciplinary Rules, you might re-read *Schultz v. Commission*

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for Lawyer Discipline of the State Bar of Texas if you haven't looked at it in a while.

Finally, the Texas Criminal Defense Lawyers Association (TCDLA) has Susan Anderson's Study Guide for the Criminal Law Board Certification Exam for sale on its website. The CD runs about $40 for TCDLA members and $100 for nonmembers. (If you can wait until the Advanced Criminal Law Course in the summer, I believe the guides were sold for about $30, regardless of membership.) As the title suggests, this is a study guide in outline form that thoroughly covers the topics on the test. From listening to other test-takers, I found that this outline has been a heavily used tool since it was published in 2008. The guide is in its fifth edition, which seems to indicate that it is updated frequently.

Life is going to get in the way of preparing for this test. It's just a matter of what you are willing to do and sacrifice for it.

I mention this outline last because it was a double-edged sword for me. It is a fantastic resource in the way the volumes of information and topics are organized; however, I found some small sections of material to be outdated and possibly inaccurate. But overall I found the outline extremely useful after I had read the codes for myself and made my own notes on certain topics. Reading the codes first helped me catch items in my outline that needed updating and provided a fast and organized way to review the mountains of information in the weeks leading up to the test.

Life getting in the way

The year before I took the test, time commitments and fear of taking a test for the first time in a decade were both significant roadblocks to certification for me. I had watched well-respected prosecutors and attorneys take the test without enough time to study or without being prepared for their first written test in 25 years. The subject matter clearly wasn't the problem for these attorneys, but re-learning how to take a test was difficult. Nonetheless, for many reasons, I committed to take the Board Certification in April 2017.

By mid-2017, I hadn't started reading with purpose, thinking I had plenty of time, but then in July a pop-up twister hit our home in Fort Worth. A large tree snapped in half, and it was thrown through our roof, destroying seven rafters, filling our house with water, and starting an electrical fire. That was a very hard time. My wife, Stefani, and I and our two small children packed up and moved into extra bedrooms in my in-laws' home. It was actually a lot of fun living as a big family, but it was hardly conducive to studying. I couldn't very well tell my father-in-law to get out of his own living room or to keep the noise down, so I would wait until everyone was in bed to cram in some reading late at night. I would get up early most mornings too, including Saturday and Sunday, and I would stay late at the office or go in on the weekends to study.

All of that is to say that life is going to get in the way of preparing for this test. It's just a matter of what you are willing to do and sacrifice for it.

The test itself

The test is a one-day affair in Austin. (This year the test is on Monday, October 15.) There are two three-hour sessions, one in the morning and one in the afternoon. One session includes 100 multiple-choice questions worth two points each, and the other consists of three essays worth 100 points each (although the 100 points may be distributed in different ways depending on the essay).

The AT&T Executive Education and Conference Center is where the test has been administered the past few years. It's a nice facility and good hotel that serves a pretty decent burger at midnight when you're cramming. TBLS has a room block at the hotel with a discounted rate, and calling the hotel to book at that rate seemed a little more efficient than booking online. If you can't book this hotel, there are a few others within walking distance.

My suggestion is to take the test with a buddy, even though I actually had no intention of doing so. I had a bad cough from lack of sleep and allergies, and little did I know that my soon-to-be court partner, Tracey Kapsidelis, would sit down right next to me with snacks, Kleenex, pencils, scratch paper, and even ear plugs to share. She wasn't having any of my coughing, either, and she began shoving cough drops down my throat so my coughs wouldn't bother her or those around us. Tracey brought a new meaning to "clutch" that day. And if she hadn't answered three hours' worth of multiple-choice questions in less than two hours like a test maniac, it would have been perfect. When she got up to leave, I thought I had messed up my timing and nearly had a heart attack. (But thanks, Tracey.

Test buddies rock!) A driving buddy to keep you awake and alert during the trek home after the test is also a decent idea. My court partner, Molly Davis, was my driving partner back from Austin, and she was a lot of help.

The aftermath: relief and celebration

The feeling after taking this test was a similar to how I felt after the bar exam. I could immediately think of things I missed and some things I got right. However, I had absolutely no idea how I had done. I wouldn't have been surprised to find out I failed, but I thought I answered some things really well. Some advice I received from one of our court chiefs was to refrain from talking about the test after I had taken it. It was good advice. No one wants to talk about it, very few people I spoke with felt confident in how they had done, and there was nothing I could do about my answers anyway. All I could do was wait.

It takes three to four months to find out if you passed. These were long months for me. I had a debate with myself daily about my ability to take this test again if I failed. TBLS sends the results via email and U.S. mail. I received an email with my results while I was banished to work on the grand jury docket for my court team. I was buried in one of the million drug cases on the docket when I saw the TBLS email pop up. I tried not to look so I could prepare myself for bad news, but I saw the "Congratulations" greeting before I could hide the message. The most intense emotion I can remember feeling was relief. I did *not* have to take that test again! The relief was followed by joy and the desire to share the good news with my wife, but that didn't go quite as I had expected. Stefani answered the phone and immediately started telling me what happened that morning, what trouble *my* child had gotten into at school, and that she had to go because a client was calling—all before I could say a word. I am pretty sure that what I was saying didn't register with her on the phone,

Involuntary mental health commitments

In the book *The Biological Origin of Human Values,* George Edgin Pugh wrote, "If the human brain were so simple that we could understand it, we would be so simple that we could not."

By Zack Wavrusa
Assistant County & District Attorney in Rusk County

While the human mind is still in many ways a mystery, our understanding of it has greatly increased in the approximately 40 years since Mr. Pugh published his book.

The increased understanding of our minds and how they operate has led to a number of significant changes across all aspects of our society. The legal system is no exception. Currently, some of the best and brightest minds in the legal profession agree that the criminal justice system is the primary means of dealing with individuals suffering from mental health issues.[1] Local jail costs related to mental illness exceed $50 million per year for some counties.[2] Almost no one is happy with the system the way it is.

Recently, there were two very good signs that change might be coming. One, the 85th Legislature passed the Sandra Bland Act, which made a number of sweeping changes to jail standards and law enforcement training in mental health, and two, the Supreme Court of Texas and Court of Criminal Appeals jointly formed the Judicial Commission on Mental Health. That said, no one can today can say what new recommendations the two high courts' judicial commission might make, and the 86th Legislature is equally unpredictable. Who knows what new legislation be passed and whether the state or local government will be required to fund it?

With so much uncertainty on the horizon, it's important that the many fine attorneys for the State of Texas (that's you) be familiar with the mental health tools we have available. As it stands today, the biggest tool in our toolbox is the involuntary mental health commitment. Like all things in our line of work, larger, urban counties will deal with involuntary mental health commitments much more frequently than rural counties. The differences in resources between urban and rural can mean a lot when it comes to how effectively and efficiently authorities can respond to a mental health crisis. However, the legal requirements for an involuntary commitment are the same whether your county is large or small. While the process can be intimidating for the uninitiated, it is generally pretty predictable and will become second nature with a little bit of practice.

Where to start?

The journey of a thousand miles begins with a single step, or so I have been told. When I get asked a question about how to conduct legal research, I tell people the first step is always the Constitution and the second is always the Code. Except that's not what I'm telling you today. The first step in understanding involuntary mental health commitments is to find out who the mental health gurus are in your local sheriff's office.

For a rural county like mine, it might be the patrol lieutenant or someone in jail administration. In a larger, urban county, you will probably speak with a really cool group of specially trained individuals, often called a Crisis Intervention and Response Team (CIRT), who specialize in mental health issues.[3] Whoever your guru is, get him to walk you through the policies and procedures from initial call or contact forward. After the guru has told you everything, get him to direct you to the mental health authority for your area.[4] From the mental health authority, you will want to make time to speak with the county clerk's office and the probate court

that handles involuntary civil commitments. Take the time and get every one of those people to tell you "everything."

Why go through all this trouble? Why not just pore over the Health and Safety Code yourself? Why not call a colleague in the next county and see how she does it? It is important to spend time learning from the mental health stakeholders in your area for a number of reasons, the biggest being that, while the statutory requirements for every county are the same, everybody seems to handle commitments just a little bit differently. The lingo is going to fluctuate from county to county. The available resources from one county to the next can vary wildly.[5] The simple fact is that nobody is going to know the ins and outs of your county's mental health system better than the people who work in the system every single day. Your local experts can paint you a picture of the whole process, from beginning to end, that you just won't be able to replicate by simply reading the statute. Moreover, the information that mental health stakeholders in your county provide will help in understanding the requirements of the Health and Safety Code itself.

Initial encounter

To the surprise of no one reading this article, the first call about someone experiencing a mental health crisis is usually to 911. If you are in a county with the resources, a specialized unit (such as a CIRT team) will be dispatched to the person's location. If you are in a more rural jurisdiction, the closest police department or sheriff's office unit should be dispatched.

Whoever arrives at the scene will ultimately have to decide if the person has a mental illness[6] and whether, because of that mental illness, there is a substantial risk of serious harm to that person or a third party unless that person is immediately restrained. The Health and Safety Code states that a substantial risk of serious harm can be determined by:

1) the person's behavior or

2) evidence of severe emotional distress and deterioration in the person's mental condition.[7]

Officers don't have to observe this behavior themselves. They can form the belief that the person requires apprehension based on information provided by a credible third party, the person's own conduct, or the circumstances under which the person is found.[8]

Once the officer determines the person meets the criteria for apprehension, the Health and Safety Code authorizes him to take the person into custody immediately, so long as there is not sufficient time to obtain a warrant before taking the person into custody.[9] This will be the case most of the time. By the time a person's behavior has destabilized enough that someone calls 911, time will be of the essence. A peace officer who takes a person into custody under Health and Safety Code §573.001 is required to immediately transport him to the nearest appropriate mental health facility[10]—a jail or other detention facility will be suitable only in an extreme emergency.[11] What facility someone goes to will vary on a county-by-county basis. This is a prime example of why it is good to talk to the mental health stakeholders about your local process for handling mental health crises.

When a peace officer makes a warrantless apprehension as described above, he is required to file a notification of detention. The Health and Safety Code provides the exact form for this notification,[12] and it must be filed with the mental health facility. Generally, this form requires the officer to lay out the specific facts giving rise to the detention under §573.001.[13] Mental health facilities must accept this form and can't require peace officers to complete any additional form. After the peace officer has delivered the person to a mental health facility, he must notify the probate court with jurisdiction no later than the next business day.

Once detained, the mental health facility must do a preliminary examination. The facility may not keep the person in custody for more than 48 hours unless an order for protective custody is obtained.[14] This 48-hour window includes any time the person spends waiting for medical care before the preliminary examination. The physician assigned to conduct this preliminary examination must do so as soon as possible but no later than 12 hours after the person is apprehended by the peace officer.[15]

For the person to be admitted to the facility for an emergency detention, the physician conducting the preliminary examination must essentially make findings analogous to the peace officer's requirements to do a warrantless apprehension:[16] The physician must find that the per-

Why not just pore over the Health and Safety Code myself? Why not call a colleague in the next county and see how she does it? It is important to spend time learning from the mental health stakeholders in your area for a number of reasons, the biggest being that, while the statutory requirements for every county are the same, everybody seems to handle commitments just a little bit differently.

Many people detained under Chapter 573 will be released without any work on the part of a prosecutor's office. The physicians attending them will prescribe new medications or, just as likely, get them back on medications they have been previously been prescribed and send them on their way to live calm, productive lives (let's hope). Some people will not be so lucky, and that is where you come in.

son has a mental illness, that there is a substantial risk of harm to himself or others, and that emergency detention is the least restrictive means by which the necessary restraint can be accomplished. This report must include a description of the nature of the person's mental illness and a specific description of the risk of harm the person evidences.

If the physician does not make all of the findings required by §573.022, the person is to be released at the conclusion of the preliminary examination.[17] If the person is detained under §573.022 and, at any point during the emergency detention, his condition improves and one of the requirements of §573.022 is no longer applicable, the person must be released.

Court-ordered mental health services

Many people detained under Chapter 573 will be released without any work on the part of a prosecutor's office. The physicians attending them will prescribe new medications or, just as likely, get them back on medications they have been previously been prescribed and send them on their way to live calm, productive lives (let's hope). Some people will not be so lucky, and that is where you come in.

County or district attorneys can file an application for court-ordered mental health services in the probate court of the county where the proposed patient 1) resides, 2) is found, or 3) is receiving mental health services as a result of a peace officer's apprehension.[18] There are some very specific requirements for the form of the application set out by §574.002. Double-check the application to make sure it meets the requirements. It's been my experience that neither the county clerk nor mental health facilities will shy away from rejecting documents for error. Don't let your mistake be the reason an ill person's treatment is delayed.

A hearing on this application must be set within 14 days of its filing. Before the hearing, there must be two certificates of medical examination on file with the court.[19] Each physician must have examined the proposed patient in the past 30 days and at least one of the physicians must be a psychiatrist (if a psychiatrist is available in the county). The requirements for these certificates are in §574.011.

After the application for court-ordered mental health services is filed, a motion for protective custody may be filed in the same court.[20] The county or district attorney may file it, but it may also be filed on the court's own motion. This motion must be accompanied by a medical certificate prepared by a physician who has examined the proposed patient within the past three days, even the physician who conducted the individual's preliminary examination.

Within 72 hours of the proposed patient being taken into custody, the court must hold a hearing to determine if there is probable cause to believe that a patient under a protective custody order presents a substantial risk of serious harm to himself or others to the extent that he can't remain free while the hearing on court-ordered mental health services is still pending.[21] The court must also find that a physician has stated her opinion that the person has a mental illness, along with the detailed reasons for that opinion. The State can prove its case by way of the certificate of medical examination attached to its initial motion. If the court finds probable cause to believe the proposed patient presents a substantial risk of harm to himself or others to the extent the proposed patient can't remain free, the court will issue an order for continued detention. The exact language of this order is specified by statute.[22] If the court does not find that probable cause exists, the proposed patient must be immediately released.[23]

Final hearing

As mentioned before, the final hearing must be set within 14 days of the application for court-ordered mental health treatment being filed.[24] All of the rules governing the hearing can be found in Subchapter C of Chapter 574, but I'll touch on some of the big ones here. The proposed patient has a right to be present at the hearing and to have a jury trial, but these rights may be waived by the patient or the patient's attorney.[25] The hearing is open to the public, but the proposed patient or the patient's attorney can request it be closed so long as the judge determines that there is good cause to close the hearing. The Rules of Evidence apply unless they are inconsistent with Chapter 574, and the State must prove each element of the criteria by clear and convincing evidence.

A judge may enter an order for the proposed patient to receive court-ordered *inpatient* mental health treatment if the fact-finder finds by clear and convincing evidence that the proposed pa-

tient has a mental illness and as a result of that mental illness:

- the patient is likely to cause serious harm to himself;
- the patient is likely to cause serious harm to someone else; *or*
- the proposed patient is:

1) suffering from severe and abnormal mental, emotional, or physical distress;

2) experiencing substantial mental or physical deterioration of his ability to function independently, which is exhibited by an inability to provide for basic needs (food, clothing, health, and safety); *and*

3) unable to make a rational and informed decision as to whether or not to submit to treatment.[26]

A judge may enter an order for the proposed patient to receive court-ordered *outpatient* mental health treatment if the fact-finder finds, by clear and convincing evidence, that appropriate mental health services are available to the proposed patient, and that the proposed patient has a mental illness and;

- the nature of the mental illness is severe and persistent;
- as a result of the mental illness, the proposed patient will, if not treated, continue to:

1) suffer severe and abnormal mental, emotional, or physical distress; and

2) experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services; and

3) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

- any of the proposed patient's actions occurring within the two-year period immediately precedes the hearing; or
- specific characteristics of the proposed patient's clinical condition that make impossible a rational and informed decision whether to submit to voluntary outpatient treatment.[27]

To prove its case, the State (typically) will introduce the two medical certificates into evidence. Next, the State will put on a doctor who has examined the patient to prove the elements for either inpatient or outpatient treatment. The State must put on competent medical or psychiatric testimony.[28] It's good practice to call the officer who swore out the affidavit supporting the original application for detention as well. Between the doctor and the peace officer, you should be able to cover all of the elements required. The *ad litem* attorney for the proposed patient will have the opportunity to cross-examine these witnesses and any others the State feels are necessary.

The order signed by the judge at the conclusion of the proceeding shall state that the treatment is authorized for not longer than 45 days,[29] though the court may order a period not to exceed 90 days if necessary. This restriction applies to orders for temporary inpatient and temporary outpatient mental health services alike.

Extended mental health services are available under §574.035. The State's burden in a hearing for extended court-ordered mental health services is very similar to its burden at the initial hearing. The key difference is that, in the case of both inpatient and outpatient treatment, the person's condition is likely to persist for at least 90 days and the person has already received court-ordered mental health treatment for 60 or more days over the preceding 12 months.[30] To meet the clear and convincing evidentiary standard, the evidence must include expert testimony and evidence of a recent overt act or pattern of behavior. Live witnesses are required. Under §574.035(h), an order for inpatient or outpatient services must state that the treatment is authorized for "not longer than 12 months"—the court is not allowed to specify a shorter period.

It's been my experience that neither the county clerk nor mental health facilities will shy away from rejecting documents for error. Don't let your mistake be the reason an ill person's treatment is delayed.

Conclusion

Mental health commitments can seem daunting for the uninitiated. However, a few attentive conversations with the right people in your county and a little bit of study on the topic will go a long way. Once you understand the underlying law, an involuntary mental health commitment is no different from any other contested hearing a prosecutor's office handles. Know the underlying facts, prepare your witnesses, and understand what you are required to prove, and you will be all set. ❇

Endnotes

[1] Order Establishing Judicial Commission on Mental Health, Supreme Court Misc. Docket No. 18-9025, Court of Criminal Appeals Misc. Docket No. 18-004 (Feb. 13, 2018).

[2] *Id*.

[3] If you have one of these teams know that 1) I'm incredibly jealous and 2) your group could be called something wildly different than the Crisis Intervention and Response Team. From the outside looking in, it seems that every county with a group like this calls them something different.

[4] For example, a large swath of rural East Texas will get referred to Community Healthcore. A number of counties in the Dallas area will be referred to the North Texas Behavioral Health Authority.

[5] For example, Harris County is experimenting with a pilot "tele-psychiatry" program where individuals who are experiencing a mental health crisis are given an iPad that allows them to have a 20-minute, face-to-face therapy session with a licensed psychiatrist. That psychiatrist can then prescribe medication and, if necessary, recommend the person be taken to an appropriate mental health facility.

[6] As opposed to someone whose aberrant behavior is being caused by something else (for example, voluntary intoxication).

[7] Tex. Health and Safety Code §573.001(b).

[8] Tex. Health and Safety Code §573.001(c).

[9] Tex. Health and Safety Code §573.001(a).

[10] Tex. Health and Safety Code §573.001(d).

[11] Tex. Health and Safety Code §573.001(e).

[12] Tex. Health and Safety Code §573.002(d).

[13] Tex. Health and Safety Code §573.002(b)(1)–(6).

[14] Tex. Health and Safety Code §573.021(b).

[15] Tex. Health and Safety Code §573.021(c).

[16] Tex. Health and Safety Code §573.022.

[17] Tex. Health and Safety Code §573.023(a).

[18] Tex. Health and Safety Code §574.001(a)–(b).

[19] Tex. Health and Safety Code §574.009(a).

[20] Tex. Health and Safety Code §574.021.

[21] Tex. Health and Safety Code §574.025(a)(1).

[22] Tex. Health and Safety Code §574.026(d).

[23] Tex. Health and Safety Code §574.028.

[24] Tex. Health and Safety Code §574.005.

TDCAA's upcoming seminar schedule

Prosecutor Trial Skills Course, July 8–13, at the Holiday Inn Riverwalk in San Antonio. Room rates are $119 plus tax and include high-speed Internet and self-parking. Call 888/465-4329 to make reservations; mention TDCAA to get the group rate, which is good until June 17 or the block is sold out, whichever is first.

Advanced Trial Advocacy Course, July 23–27, in Waco.

Annual Criminal & Civil Law Update, September 19–21, at the Moody Gardens Hotel & Convention Center in Galveston. Because our room block is sold out, we contracted with other hotels for rooms:

- **Holiday Inn Resort**; call 800/465-4329 to make reservations.
- **Springhill Suites**; call 409/740-9443 to make reservations.
- **Four Points Sheraton**; call 866/716-8133 to make reservations.

Key Personnel & Victim Assistance Coordinator Seminar, November 7–9, at Inn of the Hills in Kerrville. Room rates are $119 plus tax and include self-parking and guest-room Internet access. Call 800/292-5690 for reservations, and mention this seminar to get the group rate, which is good until October 16 or the block is sold out, whichever comes first.

Elected Prosecutor Conference, November 28–30, at the Embassy Suites in San Marcos. Room rates are $139 plus tax and include hot breakfast and daily happy hour. Call 800/362-2779 for reservations, and mention TDCAA to get the group rate, which is good until November 6 or the block is sold out, whichever is first. ❇

Mastering photos with a point-and-shoot camera

Investigators in prosecutor offices may be called to photograph any number of scenes or subjects.

By Larry L. Melton
District Attorney's Investigator in Montgomery County

You may need to document evidence received via a search warrant or use a video-capable camera to record a witness's statement. And depending on the size of your office, you may be involved in active crime scenes. My office, for example, sends an investigator-and-prosecutor team to the scene of major crimes, vehicular homicides, and officer-involved shootings.

Whatever the scene or subject, I hope this article will provide a better understanding about the average point-and-shoot camera's functions and capabilities—which are greater than you might think. My advice won't make you into a crime scene investigator (CSI) or forensic photographer—those disciplines require many hours of study as well as experience in the field—but the next time prosecutors ask you to take follow-up photos for a case they are preparing for court, you'll be ready.

As an aside, this article addresses only consumer-grade point-and-shoot (P&S) cameras (Figure A). High-end point-and-shoots (called DSLRs, Digital Single Lens Reflex, as in Figure B) are normally too expensive for a county budget (they start around $500 but can quickly balloon to $1,000 with all of the gear). Also, this article will examine only digital cameras. While someone out there may still be using film, most people use digital.

Figure A

Figure B

What P&S cameras can do

P&S cameras are normally compact, lightweight, and easy to use. Virtually anyone can use a P&S with very little training. Their processors are designed to view the scene and automatically set the proper shutter, aperture, and ISO (called the exposure triangle) to properly expose said scene. The lens is not removable, and the flash, though tiny, is suitable for illuminating subjects at reasonable distances. Some P&S cameras even have decent video capability.

As good as modern P&S cameras are, though, they work best for medium-range photos in a well-lit environment. As soon as you wade into poor lighting or need to shoot extreme close-ups or extreme telephotos (faraway shots), the P&S automatic functions are not as useful.

That said, the average P&S has more features than you would imagine, providing you know a few tricks that will fool your P&S into thinking it is a much bigger camera. It's just a matter of knowing what settings to change given the scene or situation and how you can assist the camera with its shortcomings.

Before you can become effective using a P&S, you must learn how your camera works. If you received an operating manual for your camera, get it out, dust it off, and read it cover to cover with the camera in hand. If you don't

have or can't find the manual, a quick Google search will usually pull up a PDF version which can then be printed off. If you can't find one or don't have time to read it, I feel your pain. Cameras are so sophisticated nowadays that the accompanying manual resembles an encyclopedia—but that's exactly why you need to read it!

P&S camera manufacturers began using easy-to-understand icons that help with common scenes. Do you need to photograph a bloody knife close-up or snap a wide view of the scene of a homicide? How about photographing a scene at night? Set the P&S camera on the appropriate icon setting, and the camera will select the settings that are best for that subject or scene. Check your manual to see what settings are available. If a manual is not available, then consult the chart (Figure 1), which depicts typical camera symbols and will guide you to the proper selections. You can find it or something similar by pressing your menu button and working your way down the menu.

Figure 1: Camera symbols and what they mean

auto	***Auto:*** *Completely automatic photography where the camera analyzes the scene and chooses settings*
	Auto Flash Off: *Same as Automatic but with the flash disabled.*
	Portrait: *Designed to produce softly focused backgrounds for flattering portraits.*
	Close-Up: *Produces softly focused backgrounds especially suitable for close-up of flowers and other nature subjects.*
	Landscape: *Designed to keep both near and distant subjects in sharp focus.*
	Landscape Low Light: *Same as Landscape but with flash mode set to Slow Sync, resulting in softer lighting and brighter backgrounds.*
	Sport: *Selects faster shutter speed to capture moving subjects without blur. The symbol can sometimes be a child or pet instead of a runner.*

It is important to know where the controls are that allow you to change camera functions. There are two basic layouts. There might be a control wheel on the top of the camera body that allows you to access the more advanced features (see Figure 2). If the controls are not on the top, then look on the back and you will find a small

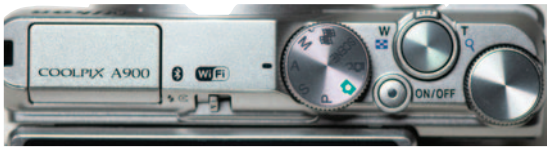


Figure 3

control wheel and a menu button (as in Figure 3). The functions you can access differ by camera brand and even model, but most follow a general pattern. Again, this is where the manual is handy.

Once you have a general sense of your camera's controls, you can overcome many of the difficulties of P&S photography. Here are some of the most common.

Problem: Photographing a subject that's too close to the lens, resulting in a blurred photograph.

Solution: Most P&S cameras have a close-up

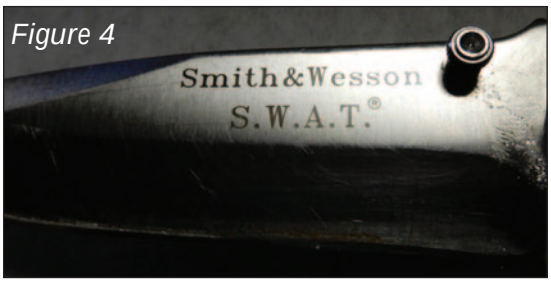


Figure 4

feature that will allow you to focus much closer. It might be an enlarged flower symbol or perhaps a face. Figure 4 shows a tight photo taken with the close-up setting that captures every detail of the knife. Just don't forget to change back to normal after your close-up is done.

Problem: A too-bright or too-dim flash that loses details. Most investigators have seen photographs where you can't discern a crime victim's injuries or bruises because the flash was too close to the subject, washing out and blurring the details, as with the knife photo in Figure 5. Standing farther away so the flash is not as overwhelming isn't the answer, as details fade with distance.

Figure 5

Solution: In addition to using the close-up feature, I utilize a trick from one of my photography teachers: I hold some type of translucent filter over the flash. It doesn't have to be an expensive commercial accessory—one can use a handkerchief, Kleenex, or sheet of plain white copy paper. Be sure and use only white filters, as anything other than white can throw a color cast on your subject. The filter can either be taped onto the camera or simply held over the flash with your other hand (see Figures 6 and 7)—just be sure you are not covering the lens with your filter. This method will reduce the intensity of the flash and catch the details (see Figure 8).

Figure 6

Figure 7

Figure 8

Problem: Because the small size of a P&S makes it difficult to hold steady, taking good photographs in poor light normally results in an out-of-focus photograph.

Solution: Some P&S cameras have an image stabilization feature you can activate. This feature helps with camera shake with internal gyros that stabilize the lens. If your camera has this feature, take advantage of it. However, if you place the camera on a tripod, turn this feature off. Due to the physics of how image stabilization works, using a tripod with this feature on will actually result in blurry photographs.

In some situations, a tripod will be helpful. When do you need a tripod? When the camera's lens is set to telephoto (especially extreme magnification), extreme close-ups, and shooting in low light without flash. If you have a smooth-moving tripod that functions for both still photos and video, then mounting the camera prior to shooting video is recommended.

Problem: Nighttime photos that are too dark.

Solutions: There are lots of things you can do to improve the quality of nighttime photos. Some P&S cameras have a "scene" function for shooting at night. This almost always requires a tripod. If your flash is adjustable, set it on "SLOW SYNC." When you take your flash picture in low light, the flash will illuminate your subject, and then the shutter stays open longer to expose the background. Photographers call this "dragging the shutter" or "burning in the background."

It is possible to properly expose a scene in almost complete dark conditions, such as in Fig-

Figure 9

If you can't find your camera's manual or don't have time to read it, I feel your pain. Cameras are so sophisticated nowadays that the accompanying manual resembles an encyclopedia–but that's exactly why you need to read it!

ure 9 (that's a house, believe it or not). Your camera needs the ability to adjust the shutter speed. For illumination, you can use a bright flashlight; you can also use a cheap external flash or strobe. External flash units can be picked up used at local camera stores or pawn shops for very little money. The flash does not have to be the same brand as your camera—it is only necessary that the flash has a manual test button.


Figure 10


Figure 11

If you are called to a full-blown crime scene, always begin with the first exposure being an identifying number written on a sheet of note paper. That may be the agency case number or your own internal tracking number. You do this job long enough, and scenes start looking similar.

Set the camera on a tripod and adjust the shutter to stay open the maximum time. The camera may not focus by itself in the dark; you have to help it by shining a bright flashlight on your subject. Set the timer for two seconds, and when the shutter opens, move the flashlight back and forth over the subject as if you were painting it with light. (That's what I did with Figures 10 and 11. It's the same house as in Figure 9!) If using an external flash, after the initial flash, quickly step about 10 feet in a semi-circle to the right or left and pop another flash at the subject. Again, quickly move around to the opposite side and repeat flashes. With the shutter open during this time, accumulated flashes will light the scene as if in daylight.

Be careful not to trip or knock over your camera in the dark, and don't stand between the lens and your subject or in front of your light source. If your camera has a multi-exposure feature, then you have the ability to extend the time your shutter is opened, so long as you don't move your camera during the process. Experiment a bit with this technique, and you'll find that with practice, you can completely bathe a subject in light during nighttime conditions. This is especially helpful to illuminate nighttime traffic crashes.

Problem: P&S cameras tend to be knocked around and left in places that accumulate dirt and debris. Wear and tear from normal use can compromise a camera's picture quality.
Solutions: Always store the camera in a case designed for it. Keep the lens and monitor clean. Do not use alcohol, thinner, or other volatile chemicals to clean the lens and monitor. Yes, that means no glass cleaners, as they frequently contain ammonia.

Also, don't wipe with a paper towel or Kleenex. Paper is nothing more than smashed-up wood fibers, so don't clean easily-scratched glass with a pulped tree trunk. Use a soft cloth, such as those that are designed for cleaning eyeglasses. Microfiber cloths are good, and in a pinch a clean T-shirt will suffice.

Keep the camera dry and avoid sudden changes in temperature. There is nothing more frustrating than having the lens fog up at the very moment you need to take a picture. Lens fogging can happen when the camera goes from a heated or air-conditioned location into temperatures that are the opposite—say a hot car into winter cold or an air-conditioned office into the summer heat. To prevent fogging, leave the camera bag open and the lens cap off while you are traveling to the scene. This will allow the temperature inside the camera to stabilize.

Keep away from strong magnetic fields, and don't point the lens at a strong light source for extended periods. Also, before removing the memory card, be sure to turn off the power supply.

Tips for shooting a crime scene

There are many suggestions for how to take photographs that may be used in court, but there are some basics that everyone agrees with.

Take your time and shoot as many photographs as you can, from many different viewpoints. Remember, you are shooting digital, so there is no cost for film or processing. You are limited only by the capacity of your memory card. I don't suggest buying the high-capacity memory cards, either, unless you plan on shooting video. A 16-gigabyte card is more than suf-

ficient to capture a scene. They are cheap and readily available.

Before you begin taking photographs, make sure the area is secure and that your presence will not contaminate the scene. If we are assisting a local agency, I normally will locate the lead detective and coordinate my activities with him. If the crime lab shows up, I do the same with the lead CSI.

Sometimes you may not think a subject or object is important to the scene, only to learn later that it was. A picture not taken is an opportunity lost, and you have only one chance to document a scene as it was when you were present. If possible, shoot around all points of the compass: north, south, east, and west. Don't forget to look up and down when appropriate. I once almost missed photographing significant blood spatter in a dimly lit room, because it was above my line of sight and the lower portion of the wall had been washed by the perp. The perp did not have time to get a chair or stepstool to clean the higher blood spatter, and he figured we'd never see the spatter higher up. Had I not turned prior to leaving the room and swept my flashlight toward the ceiling, the perp would have been right.

If you are called to a full-blown crime scene, always begin with the first exposure being an identifying number written on a sheet of note paper. That may be the agency case number or your own internal tracking number. You do this job long enough, and scenes start looking similar.

Begin your documentation with "establishing shots." I begin with a photograph of a street sign or other object that identifies the location (see Figure 12), and then I photograph the area leading up to the scene (Figures 13 and 14). Before I switch to a medium point of view (POV), I'll try to photograph the address on the mailbox or side of the house (Figure 15), then the front entrance (Figure 16). At an auto fatality, frame the entire area of the collision, which could include one car, two, or more.

After you have established where you are and what objects are generally involved, you can now switch to a tighter POV to document what you are seeing as you move through the scene.

Don't forget to look up and down when appropriate. I once almost missed photographing significant blood spatter in a dimly lit room, because it was above my line of sight and the lower portion of the wall had been washed by the perp.

Figure 12

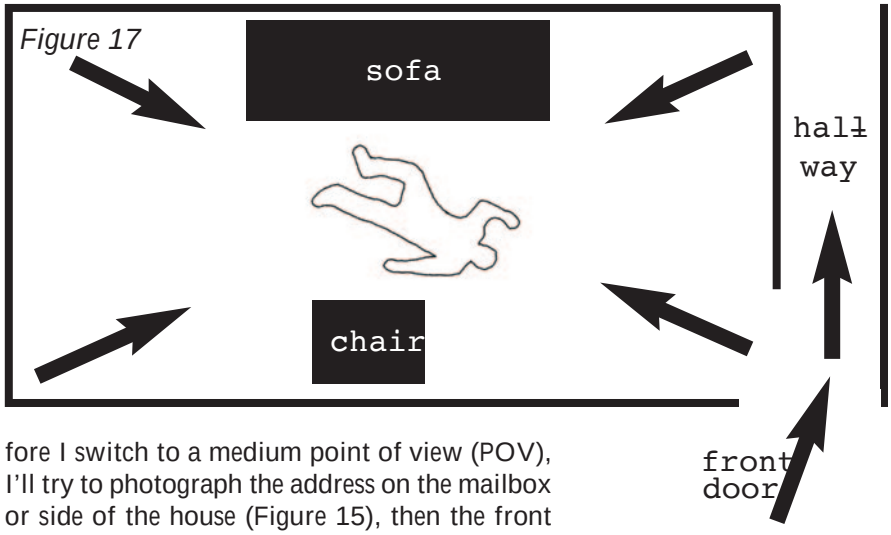
Figure 13

Figure 14

Figure 15

Figure 16

Figure 17



Do not delete photographs either in camera or after your download, even if a photograph did not turn out. If all of the exposures are accounted for, the defense can't say that a missing photograph was the one that exonerates their client.

Shooting a scene this way allows someone not present to see the scene as you see it. If you are in a house, photograph the interior beginning at the front door's threshold and again from each corner of the room facing inward. Establish the layout of the room (as in Figure 17) before you begin to document close-ups of evidence.

Once you have finished with all photographs, download them to a storage medium, such as a thumb drive. Do not delete photographs either in camera or after your download, even if a photograph did not turn out. It is important that there is no gap in the numbers that the camera assigned to each photograph. If all of the exposures are accounted for, the defense can't say that a missing photograph was the one that exonerates their client.

Also, scene photographs are not the place for Photoshop. Keep the originals on disk, a thumb drive, or other permanent storage. If the prosecutors ask that you "enhance" a photograph, always have the original ready to show the before and after.

A few words on discovery

Be sure, with these photos, that you are in compliance with your office's discovery policies. I normally shoot photographs or video to support our internal reports or at the request of a prosecutor for additional scene detail. However, since the Michael Morton Act, how we retain media is important to the discovery process. Gone are the days when the State could decide what is important and what is not. Basically, any evidence that is generated during the investigation of a case is considered discoverable.

I don't pretend to speak for your office, your bosses, or their policies; I only provide you an example of how my workplace handles media. We take the position that any photographs or video related to an open case that is obtained by one of our investigators is considered evidence and subject to discovery. Therefore, media must be retained in a manner that is conducive to the discovery process. When I create media (photographs or video), I download the original media onto a disk, which I label with tracking information. All of our media is stored in a designated location and managed by our media clerks. The tracking info and information about the disks' contents are entered into the part of our database that is available to the defense, and therefore it is available for discovery.

Investigator Sec-

Applications for Investigator Section awards and scholarship now online

Updated applications for 2018's PCI certificates, Chuck Dennis Award, Oscar Sherrell Award, and the Investigator Section scholarship, are now posted on the TDCAA website. Please use these forms, and do not use any old forms you might have. Applications must be postmarked by the deadline date or they will not be accepted.

- The Professional Criminal Investigator (PCI) is open to district, county, and criminal district attorney investigators with a minimum of eight years of full-time employment in a prosecutor's office (if holding an Advanced Certificate with TCOLE) or five years of full-time employment (if holding a Masters Certificate with TCOLE).
- The Chuck Dennis Investigator of the Year Award is given annually to a prosecutor's investigator who exemplifies the commitment of the law enforcement community to serving others, serving his or her office and remaining active with TDCAA.
- The Oscar Sherrell Service to TDCAA Award is given to recognize those enthusiastic investigators who excel in TDCAA work. This award may recognize a specific activity that has benefited or improved TDCAA, or may recognize a body of work that has improved the service that TDCAA provides to the profession.
- The TDCAA scholarship program was initiated in 2002 by the Investigator Section Board of Directors with the objective of encouraging our future through the support of our present. Two $1,000 scholarships are awarded each year, one at the Annual Conference in September and one at the Investigator Conference in February. Funding for these scholarships is currently provided through the sales of TDCAA merchandise and Board fundraisers held at approved training conferences. ❇

Lessons for the *Next Generation Leader*

If you are an elected prosecutor, lead prosecutor, section chief, or manager of a unit within the office, *Next Generation Leader* is a must-read.

By Bill Helwig
Criminal District Attorney in Yoakum County

Author Andy Stanley provides not only a challenge to view your style of leadership but also a refresher course in how to do it.

Written by the son of a nationally recognized evangelical leader, the book is dissected into five components: competence, courage, clarity, coaching, and character. Stanley dedicates an entire section to each component and includes clear and inspiring stories and examples to prove his points. He resists the temptation to make it only a religious book, providing both secular and faith-based support for the five components of leadership.

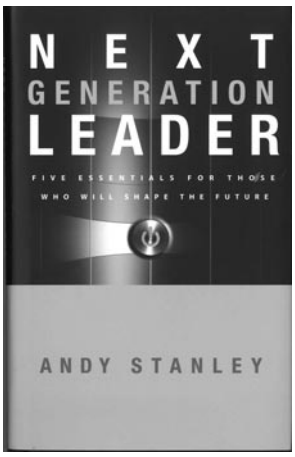
While a central theme is the duty to train the next generation of leaders—that is, our younger colleagues—it is notable that we are directed to "do less" and focus more on our leadership. Current leaders cannot and should not "do it all." Stanley asserts that we should focus on what each individual can do best and delegate more to subordinates—with this caveat: Both what we do and what we delegate should be done with courage in the face of all types of adversity; our delegation also requires clarity and specificity. That way, subordinate colleagues see us leading by example and know the specific expectations of a clearly defined mission. Following this practice means that new leaders in an office are identified and given the chance to shine at a given task—they might even do something better than their leaders!

The "coaching" component especially spoke to me. As I read the section, memories were stirred and appreciation renewed as I recalled those great prosecutors who took time and interest to offer tips and recommendations in my early years, as well as now. Certainly, much can be gained through having a personal coach or mentor. While it may be challenging to get the commissioners court to approve such a line item in the budget, mentors within our prosecutorial community can be easily found (and often for free!). Usually all it takes is a request, a reciprocal friendship, and availability.

Using many personal examples in his evolution as a church pastor, including leading a mega-church, Stanley builds a strong case for a leader to create an environment of mentors (or "constructive critics," as he calls them) who can be frank, honest, and forthright with those around them. "Get a coach and you will never stop improving. Become a coach and ensure the improvement of those around you," he writes—such a strong quote has stuck with me. Not only do I understand the good and proper duty to coach, but I was very much renewed in the personal satisfaction of growing through benevolent criticism and coaching.

Perhaps most importantly, *Next Generation Leader* contrasts "leadership by authority" with "leadership by character." Those who are leaders by authority exist purely by position, rank, or elected office, and there are plenty such leaders. But the authority or power to lead is a far cry from *moral* authority to lead—moral authority has to do with a leader's character. The book's last chapter tackles the fifth component, character, and reminds readers of the pitfalls of power and how we may diminish, erode, and destroy our leadership authority through character lapse or compromise. We've all seen it happen, and this captivating chapter is a good reminder of how it happens. Reading, studying, and committing to the principles of this chapter can help us all avoid the trap and destruction caused by failures in character. This thought-provoking section alone is worth the time and money invested in buying and reading the book.

Next Generation Leader should be positioned near your desk so that you can pick it up at least once a quarter to review and reconsider its significant points. The lessons and reminders in this book do not lose value over time. In fact,



Next Generation Leader *by Andy Stanley, Published by Multnomah,*

A primer on the parole process

Before offenders are released to supervision in Texas, they undergo careful review which, for those not familiar with the process, might be difficult to understand.

By Mary McCaffity
Deputy Director, Victim Services Division, Texas Department of Criminal Justice

This article seeks to correct common misconceptions about the parole review process and provide accurate information about crime victims' rights, post-conviction.

Who is responsible for parole activities?

The Texas Board of Pardons and Paroles (BPP) is responsible for considering eligible offenders for release, either to parole or discretionary mandatory supervision (more on those in a minute), the imposition of appropriate conditions of release, and the determination of revocation or other appropriate sanctions for offenders who violate the terms of release. BPP members are appointed by the governor for six-year terms, pending Texas Senate approval. Parole commissioners assist the board with parole and revocation decisions. The 14 commissioners are appointed by the BPP chair.

The Texas Department of Criminal Justice (TDCJ) Parole Division is responsible for pre-release planning and for supervising parolees and mandatory supervision offenders after they are released to the community.

WhatŐs the difference between parole and mandatory supervision?

See the chart on the opposite page for a side-by-side comparison of these two forms of release.

Under the law in effect until August 31, 1996, release to mandatory supervision was automatic, with no board decision involved. All offenders serving time for offenses committed prior to August 31, 1996, and classified as eligible for mandatory supervision must be released on their projected release date when calendar time served and accrued "good time" add up to equal their entire sentence. "Calendar time" is the actual time an offender has served, and "good time" is time credited for good behavior and participation in work and rehabilitation programs while incarcerated. For many offenders, "good time" credits may be added to "calendar time" when calculating their eligibility for parole or mandatory supervision.

The 74th Legislature gave the BPP authority to review scheduled mandatory supervision releases for offenders with offenses committed on or after September 1, 1996. The Board may deny mandatory supervision releases on a case-by-case basis if the panel determines that an offender's good conduct time does not accurately reflect the potential for rehabilitation and that the offender's release would endanger the public.

How does an offender become eligible for release to supervision?

Consideration for discretionary mandatory supervision is determined by both the offense and when the estimate of good time plus calendar time equals the offender's complete sentence. This estimated date becomes the offender's "projected release date." In discretionary mandatory cases, the BPP may choose to release or not release prior to the projected release date.

Parole eligibility dates are calculated by the TDCJ Correctional Institutions Division's Classification and Records Office. The percentage of a sentence that must be served to reach eligibility is determined by statute and the nature of the offense. The parole eligibility date may change based on good conduct time. A chart of parole and mandatory supervision eligibility is included in the Parole in Texas publication located on the Board website at www.tdcj.texas.gov/bpp/publications/PIT_ 2017_Eng.pdf (starting on page 50). The chart, which is also available on TDCAA's website, is a great resource for anyone

trying to learn how the date and type of offense and the laws in effect at the time will affect parole eligibility.

An affirmative finding of the use of a deadly weapon is an important factor affecting an offender's eligibility for parole. Offenders with an affirmative finding on the judgment and sentence are not eligible for release on parole until the actual calendar time served, without consideration of good conduct time, equals one-half of the sentence imposed or 30 calendar years, whichever is less. Under no circumstances will an offender with a deadly weapon finding be eligible for release on parole in less than two calendar years.[1]

For example, let's say offender John Doe committed a first-degree aggravated assault on May 1, 2017, and he was sentenced to 40 years in prison.

- Offender Doe will not be eligible for mandatory supervision because commission of that offense on that date is not eligible under law.[2]
- If his judgment and sentence *does not* include an affirmative deadly weapon finding, he will be eligible for parole when his calendar time plus his good time equal one-fourth of his sentence or 15 years, whichever is less. Because he has a 40-year sentence, Doe will be eligible when calendar time (including credit for time served in county jail) plus good time equals 10 years (one-fourth of 40 years).
- However, if there *is* an affirmative finding of a deadly weapon, he will not be eligible for parole until he serves *half* of his sentence or a maximum of 30 years, regardless of good time. With a 40-year sentence, he will be eligible after serving 20 years' flat time (including time served in county jail), which is half of 40.

How does the parole review process work?

The review process begins several months before an offender's parole eligibility date. Information on the case is gathered and provided to the BPP for consideration. The panel is composed of three voters with at least one board member and any combination of board members and parole commissioners. The offender may or may not be interviewed by one of the panel members before the final panel vote, and two of the three panelists must vote in favor of parole before it can be granted. Certain cases, as defined in Government Code §§508.046 and 508.141, may be paroled only upon a two-thirds majority vote of the entire seven-member Board.

Parole

- Offenders can be eligible for both parole and discretionary mandatory review.
- Parole is discretionary and always involves a decision by the BPP. Parole is a privilege an offender has to earn—it is not a right.
- Offenders are paroled only if they receive approval from the Board and have served enough of their sentence to be eligible by law for parole.
- Paroled offenders serve the remainder of their sentence in the community under supervision.
- Like those released on mandatory supervision, parolees are subject to conditions of release as determined by the BPP.
- Paroled offenders must report to parole officers and are subject to arrest and re-incarceration if they violate conditions of release.

Mandatory supervision release

- Offenders can be eligible for both parole and discretionary mandatory review.
- As the name says, mandatory supervision release is mandatory once certain offenders accrue enough combined "calendar time" and "good time" to qualify by law for release prior to completion of their entire sentence.
- Offenders *not* eligible for mandatory supervision are those serving a sentence for a violent offense listed in §508.149(a) of the Texas Government Code.
- Those released are obligated to complete the remaining portion of their sentences under parole supervision in the community.
- Like parolees, those released on mandatory supervision are subject to conditions of release as determined by the BPP.
- Those released must report to parole officers and are subject to arrest and re-incarceration if they violate conditions of release.

When voting cases, the parole panel considers factors which include:

- seriousness of the offense(s);
- letters of support and protest;
- sentence length and the amount of time served;
- criminal history and other arrests, probation, parole;
- number of prison incarcerations;
- juvenile history;
- institutional adjustment; and
- the offender's age.

How often are offenders reviewed?

Offenders, except those convicted of an offense under Government Code §508.149(a), receive an annual review. If the offender is denied parole—also called a "set-off"—the board will set the next review date. The review process will begin again a few months prior to the next review date.

What are the voting options for the BPP?

Approval and denial vote options are listed in the sidebar below.

What rights do crime victims have during the parole review process?

The rights of crime victims, including the statutory definition of a crime victim, can be found in the Code of Criminal Procedure Chapter 56 and Government Code Chapter 508. These

Parole Board voting options

The voting panels of the Board do not vote just "yes" or "no" on parole cases; there are a number of voting options for parole approval. The Board may withdraw an approval vote at any time if new information is received.[1]

Approval votes

FI-1 (Further Investigation): Release the offender when eligible.
FI-2: Release on a specified future date.
FI-3R: Transfer to a TDCJ rehabilitation program and release to parole only after program completion and not earlier than three months from specified date. The required TDCJ program may be CHANGES/Lifeskills, Voyager, Segovia Pre-Release Center (Segovia PRC), or any other approved tier program.
FI-4R: Transfer to a TDCJ rehabilitation program and release to parole only after completion of the Sex Offender Education Program (SOEP), and not earlier than four months from specified date.
FI-5: Transfer to an In-Prison Therapeutic Community Program (IPTC), with release to an aftercare component.
FI-6: Transfer to a DWI Program and release to continuum of care program.
FI-6R: Transfer to a TDCJ rehabilitation program and release to parole only after program completion and no earlier than six months from specified date. The required TDCJ program may be the Pre-Release Therapeutic Community (PRTC), Pre-Release Substance Abuse Program (PRSAP), In-Prison Therapeutic Community Program (IPTC), or any other approved tier program.
FI-7R: Transfer to a TDCJ rehabilitation program and release to parole only after completion of the Serious and Violent Offender Reentry Initiative (SVORI) program, and not earlier than seven months from the specified date.
FI-9R: Transfer to a TDCJ rehabilitation program and release to parole only after completion of the Sex Offender Treatment Program (SOTP-9), and not earlier than nine months from specified date.
FI-18R: Transfer to a TDCJ rehabilitation treatment program and release to parole only after completion of either the Sex Offender Treatment Program (SOTP-18), or the InnerChange Freedom Initiative (IFI), and no earlier than 18 months from the specified date.
CU-FI: Designates the date an offender serving consecutive sentences would have been eligible for parole if he had been convicted of a single sentence.
RMS: Release to mandatory supervision.

Denial votes

NR: (Next Review): Deny parole and set time for next parole consideration. State law requires annual reviews except for certain violent or sexual cases.
SA: (Serve All): Deny parole with no regular subsequent review, requiring offender to serve the balance of the sentence.
CU-NR: Deny favorable action and set next review in consecutive sentence case.
CU-SA: Require offender to serve all of current sentence in consecutive sentence case.
DMS: Deny Mandatory Supervision (and sets next review date) because offender's accrued good conduct time does not accurately reflect potential for rehabilitation, and offender's release would endanger the public.

Endnote

[1] Parole in Texas: Answers to Common Questions, produced by the Texas Board of Pardons and Paroles and the Texas Department of Criminal Justice Parole Division, available at http://www.tdcj.texas.gov/bpp/publications/PIT_2017_Eng.pdf.

rights include:

- receiving information about the parole process and parole proceedings,
- an opportunity to provide information to the Board in writing and in person,
- notification of the defendant's release, and
- the ability to complete and have the Victim Impact Statement considered by the Board before an offender is released on parole.

It is extremely important to note that a victim must register with TDCJ Victim Services to receive notifications and information, as well as to request a meeting with the Board during the review process. Victims may do so by calling 800/848-4284 or emailing victim.svc@tdcj.texas.gov.

Can prosecutors provide information during parole review?

Prosecutors and other trial officials will be notified when offenders convicted in their county enter the review process.[3] Information can be provided to the parole panel by email at bpp_pio@tdcj.texas.gov or mail at Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, TX 78711-3401.

What are some common misconceptions about parole?

The TDCJ Victim Services Division is a point of contact and works with victims during the parole review process. Below are some common misconceptions relayed to VSD from crime victims.

"I was told he would have to serve 90 percent of his time before he would be released on parole!"

In fact, the state legislature sets the requirements for parole eligibility. At this time, there are no statutes in place that would require an offender to serve 90 percent of his sentence before becoming eligible for parole.

"They told me he would never see the light of day! They said he would die in prison!"

There are actually very few offenses that do not include eventual parole eligibility.

"No one told me he would be considered for parole so soon after the trial."

It is important for all involved parties to understand the long-term, post-conviction effects of decisions made during plea bargaining and trial.

What happens to victims during the parole review process?

Every victim goes through a unique experience during an offender's review. For example, it may have been a very long (or very short) time since the offender was convicted and sentenced. Receiving notice that the offender is under consideration for release from prison might trigger stress in some victims, and notifications may coincide with the anniversary of the crime or a loved one's birth date. Some victims find it difficult to write about the impact of the crime on their lives but may feel obligated to do so. Others experience pain but are grateful for the opportunity to have their voices heard.

In the event of a one-year set-off, an offender could re-enter the review process only a few months after the last board vote. This means that victims participating in the parole review process will receive another notification and begin their protesting all over again (if they choose to exercise that right). Often victims feel that protesting an offender's parole requires their full and constant attention and they never get a break.

Victims may choose to exercise their right to provide information to the Board during review. For some this choice is an easy one, and for others it is very difficult. Each victim is unique, and their motivations for participating in the review process vary greatly. We must not assume to understand or know what a victim will think or feel about actions taken in the criminal justice system.

The TDCJ Victim Services Division works to inform victims about their rights and helps them exercise those rights. We are available to explain the process, accompany victims to Board meetings, assist with writing protest letters, or listen to their story. In addition, we can assist you as criminal justice professionals in increasing understanding of the parole process and serving victims of crime. We encourage you to refer victims to our office to verify their registration for notification and to provide additional services.

The Board also has a Victim Liaison program to assist victims during the parole review process. Elizabeth Hamilton is the Victim Liaison at the Board and can be reached at 512/406-

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Understanding emotional intelligence

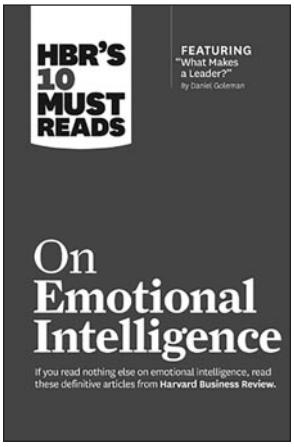
I first heard the term "emotional intelligence" during an episode of *The Bachelor.*

By Marisa Dunagan
Assistant Criminal District Attorney in Collin County

Like many others watching, I believed that emotional intelligence was not actually a thing and that the contestant made it up. Imagine my surprise a few months later when I saw the book *HBR's 10 Must Reads on Emotional Intelligence* sitting on the coffee table at my in-laws' house. Turns out, emotional intelligence is one of the single most important factors in determining if someone will make a great leader. More importantly, unlike many of the various attributes of great leaders, emotional intelligence can be learned.

Emotional intelligence consists of five key areas: self-awareness, self-regulation, motivation, empathy, and social skill. These skills maximize our own performance in the workplace and help others do the same. While the book focuses on how this applies to businesses, it is also applicable to prosecution.

The book is a compilation of 10 essays about emotional intelligence in the workplace and how it leads to positive change on a personal and team level. Each essay in the book offers insight on how to develop your emotional intelligence and become a more effective leader. There are numerous takeaways from this book—these are my top four.



Harvard Business Review's 10 Must Reads on Emotional Intelligence *published by Harvard Business School Publishing Corporation, 2015.*

1 A positive mood affects everyone. In the essay *Primal Leadership*, the authors discuss how a leader's mood influences performance. Many prosecutors assume this to mean they must put on a game face, but that is not the case. As my first assistant preaches, "Happiness is an attitude, not a mood." This phrase perfectly describes the authors' basic premise: Effective leaders recognize that their mood drives everyone else's mood, and the leader is capable of adjusting his behavior accordingly.

We've all had days where something in our personal life is weighing on us as we drive to work, or perhaps the stress of trials, victims, or defense attorneys has thrown us off-kilter. Nevertheless, a leader recognizes his mood and makes adjustments. A negative mood is toxic in the workplace, but when a leader is happy, those around him are more positive, efficient, and effective at their jobs.

2 Recognizing biases allows for more effective leadership. Another important takeaway is recognizing your own biases—for instance, knowing when you have become too emotionally invested in a case. While we all care about our workload, the inability to step back and effectively evaluate a case can have grave consequences. In practice, this emotional intelligence may translate to having a few trusted peers to discuss the facts of the case and what it's worth, or on a larger scale, having a pitch session with prosecutors of varying experience levels to evaluate the strengths and weaknesses of the case.

3 Communication is a process worth investing in. The ability to effectively communicate is ever-present in our jobs. The essay *Why It's So Hard to be Fair* focuses on process fairness. The process of making decisions involves three main components: input, implementation, and behavior. On a prosecutorial level, this can mean seeking input from victims, coworkers, and law enforcement; using the most accurate information and minimizing biases; and communicating to other parties why you made a decision while respecting and actively listening to their concerns and points of view.

Practically, process fairness may translate to keeping open lines of communication with law enforcement on cases where an alternative resolution is sought or explaining to a victim ahead of time the case's weaknesses and why a lesser charge or plea offer is more appropriate. By utilizing process fairness, we allow others to express their feelings regarding a decision—they

feel included in the process rather than shocked by the outcome.

4 Emotional intelligence is best learned through feedback. The ability to strengthen your emotional intelligence through practice, feedback, and diligence sets it apart from the other hallmark qualities of leadership. The key to truly maximizing emotional intelligence is feedback from other people. Individuals must be willing to ask supervisors and coworkers at all levels for constructive evaluations of their performance. Performance does not merely include how well they do their job, but rather how they communicate with others, respond to difficult situations, and process their emotions. The essays *The Price of Incivility* and *Fear of Feedback* are tremendously informative in this respect. Seeking out and receiving constructive feedback aids in increasing your emotional intelligence because it allows you to better understand and respond to situations and others.

Conclusion

If you want to be an effective leader, then this is definitely a book worth reading. Emotional intelligence is unlike IQ because emotional intelligence can be learned. Whether you are new to the office or a senior chief, there are valuable points that apply to all levels within a prosecutor office. After all, as people who work in prosecu-

Legislative Award

Law & Order Award winner

State Rep. Carol Alvarado (D-Houston)(second from right) received a TDCAA Law & Order Award for her successful passage of several criminal justice and public safety bills during the 85th Regular Session (2017), including measures proposed by prosecutors from Harris and Montgomery Counties. The award was presented during our Hurricane Harvey regional ethics training in Houston by TDCAA Executive Director Rob Kepple (left), Harris County Attorney Vince Ryan (second from left), and Harris County District Attorney Kim Ogg (right).

How to evaluate a competency report

As one of two prosecutors in the Lubbock County Criminal District Attorney's Office who handles competency or mental health related issues, Ashley Davis (one of this article's co-authors) has seen a variety of competency evaluations for cases ranging from Class B misdemeanors up to capital murder.

By Ashley D. Davis
Assistant Criminal District Attorney in Lubbock County, and

Floyd L. Jennings, J.D., Ph.D.
Chief of the Mental Health Division, Harris County Public Defender's Office

Like any offense or expert report, they should be scrutinized for quality and content. The quality of reports can range from a comprehensive and thorough description of an examiner's interactions with the defendant and an investigation into the defendant's mental history, to simple reports that discuss only what the defendant told the examiner or information that conflicts with the examiner's opinion.

When reviewing a competency report, a prosecutor must first determine whether the report addresses what is required by Texas Code of Criminal Procedure Chapter 46B and then ask if it is written in a way that assists the court in understanding the examiner's opinion and how he arrived at that opinion. Both authors can say, however, that we see great variance in reports that come across our desks—and, from conversations with courts (and examiners in CE events)—across the state. Being subject to public scrutiny helps: For example, Harris County has a county competency/sanity unit, conceptualized as a court-related function, staffed by contractual relationship with the local mental health authority—but as a vendor and not as a mental health authority endeavor. This unit has an oversight committee representing both the district and county courts that establishes policy, reviews data, and has created a site (now in beta testing) to allow immediate queries as to the status of reports. In many parts of the state, courts may not be attentive to the training requirements for examiners, and "independent examiners" lacking such training produce reports lacking essential elements. Or, either movants or courts are not aware of the necessity for specific training in conducting competency examinations (not to say that a provider treating a defendant is precluded from such evaluations.[1]

Therefore, following are a series of simple tips for prosecutor to identify if a competency evaluation of a defendant meets reasonable quality standards. An evaluation done using these tips would not assess whether the examiner is dead wrong in his opinion but only whether he took on the task and executed it as required by statutes and applicable caselaw.

1. It should include a description of the examinerŐs qualiȚcations.

The statutory definitions of qualifications for examiners[2] boil down to the following:

(1) qualification by licensure (either psychologists or psychologists licensed to practice in Texas), *and*

(2) board certification in forensic matters (i.e., the American Board of Neurology and Psychiatry for psychiatrists or the American Board of Professional Psychology in Forensic Psychology for psychologists). These two are the only legitimate, nationally recognized professional boards. However, there are several "vanity" boards that sound like they provide a legitimate board certification but, in fact, are not of the caliber of these two in that they lack practice samples and both written and oral examinations.
or

(3) training, consisting of:

• at least 24 hours of specialized forensic training relating to competency or insanity evaluations; *and*

• at least eight hours of continuing education relating to forensic evaluations completed in the 12 months preceding the appointment.

Note that either psychologists or psychiatrists may complete these evaluations, though licensure itself is a necessary (but insufficient by itself) criterion for appointment. But be very suspicious of an examiner who requires more pages to describe his substantial achievements in his professional life than he devotes to the examination of the defendant. The authors can recall seeing reports with 20–30 pages of wonderfully written descriptions of the examiner's training and various awards but only four pages devoted to the examination. We could do without the preceding 20–30, as it says more about the examiner's narcissism than the defendant's mental state! Also ask the examiner if he has documentation for the required training, especially any that are more recent.

2. Be sure the examiner relies upon the proper standard.

The standard for incompetency is stated in Art. 46B.003:

(a) A person is incompetent to stand trial if the person does not have:

(1) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding, or

(2) a rational as well as factual understanding of the proceedings against the person.

(b) A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence.[3]

In regard to evaluation reports, examiners often fail to follow these statutory standards in two ways. First, examiners may fail to address both prongs of the competency standard. In the series of Turner opinions,[4] one issue related to competency was simply that four examiners addressed competency and placed virtually all the emphasis on the rational and factual knowledge prong but did not fully address the defendant's capacity to relate to counsel with a reasonable degree of rational understanding. To be sure, there were other issues, such as whether a retrospective examination could be done, but the point is simply that a defendant's failure on either prong—lacking a rational and factual knowledge of the proceedings OR being unable to relate to counsel—requires a finding of incompetency.

Second, the statute contains a presumption issue that is relevant to an examiner's report. Ordinarily, as stated in Art. 46B.003, a defendant is presumed competent. Consequently, the examiner must report on evidence of *incompetency* rather than evidence of competency. In addition, the standard of evidence for such a finding is a preponderance (although "preponderance" is a legal conclusion, not a clinical one). Thus, the examiner must have more than general knowledge of how much evidence is required to offer an opinion.

The presumption changes, however, once a defendant has been found incompetent. In Manning v. State,[5] if, in a previous case, the defendant was found incompetent and not ever found by a court to be restored to competency, then she is considered to be in a state of "an unvacated adjudication of incompetency." At this point, the burden changes to require the State to prove competency *beyond a reasonable doubt*. The holding of this case is based on the precedential value of judicial findings; that is, a defendant is considered to be in whatever condition she was most recently found until a court with jurisdiction rules otherwise. Thus, if in the defendant's most recent case she was found incompetent and not restored, then in succeeding cases she must be presumed incompetent.

We will note that a re-evaluation between cases is certainly appropriate, though generally it should only be performed if a reasonable amount of time has passed between evaluations. Because competency can be a very fleeting condition, a few months is reasonable. Re-evaluation could also be reasonable following a significant change in the defendant's clinical condition.

So in a re-evaluation following a finding of a defendant's incompetence, the focus of attention for an examiner is the opposite of an ordinary evaluation. Given that a defendant in a *Manning* circumstance is presumed incompetent, it makes little logical sense for an examiner to look for evidence of incompetency. Instead, the examiner should focus on as much evidence for competency as can be found, because any credible evidence tending to support incompetency would affirm the initial presumption (i.e., that the defendant remains incompetent).[6] In this way, *Manning* evaluations have a much different

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focus from a conventional competency appraisal.

Note an exception to the *Manning* rule occurs when a judge finds a person incompetent but likely to be restored and sends the person for restoration, and the *facility* concludes that the person has been restored. A facility's evaluation and opinion are conducted using a different standard, and if the court affirms the facility's opinion, that evaluation and opinion establish a rebuttable presumption in favor of the facility's opinion. This presumption will determine any finding regarding the defendant's competency unless the opposing party presents contrary evidence that is persuasive under the preponderance of the evidence standard.[7]

If this sound confusing, it is, as the competency area is procedurally complex. Nonetheless, there are two evidentiary standards for competency—preponderance and beyond a reasonable doubt—and it's important that the examiner knows which one applies.

3. Ensure that the report addresses all issues mandated by statute.

While the competency standard is two pronged—whether the defendant has a rational and factual knowledge of the proceedings and is able to relate to counsel with a reasonable degree of rational understanding—Tex. Code Crim. Proc. Arts. 46B.024 and .025 delineate sub-components that must be addressed in any competency report. Those issues are:

(1) the capacity of the defendant during criminal proceedings to:

(A) rationally understand the charges against him and the potential consequences of the pending criminal proceedings;

(B) disclose to counsel pertinent facts, events, and states of mind;

(C) engage in a reasoned choice of legal strategies and options;

(D) understand the adversarial nature of criminal proceedings;

(E) exhibit appropriate courtroom behavior; and

(F) testify;

(2) as supported by current indications and the defendant's personal history, whether the defendant:

(A) is a person with mental illness; or

(B) is a person with an intellectual disability;

(3) whether the identified condition has lasted or is expected to last continuously for at least one year;

(4) the degree of impairment resulting from the mental illness or intellectual disability, if existent, and the specific impact on the defendant's capacity to engage with counsel in a reasonable and rational manner; and

(5) if the defendant is taking psychoactive or other medication:

(A) whether the medication is necessary to maintain the defendant's competency; and

(B) the effect, if any, of the medication on the defendant's appearance, demeanor, or ability to participate in the proceedings.

It is not necessary that the examiner enumerate each item, but there are few examiners who can weave together all the requisite items in a fashion that is lucid as well as fluid. Outside of the small number of examiners who have this ability, it is better that a report includes an enumeration of each of the items.

Art. 46B.025 lists several other required issues. An expert's report must:

(1) identify and address specific issues referred to the expert for evaluation;

(2) document that the expert explained to the defendant the purpose of the evaluation, the persons to whom a report on the evaluation is provided, and the limits on rules of confidentiality applying to the relationship between the expert and the defendant;

(3) in specific terms, describe procedures, techniques, and tests used in the examination, the purpose of each procedure, technique, or test, and the conclusions reached; and

(4) state the expert's clinical observations, findings, and opinions on each specific issue referred to the expert by the court, state the specific criteria supporting the expert's diagnosis, and state specifically any issues on which the expert could not provide an opinion.

The expert's opinion on the defendant's competency or incompetency may not be based solely on the defendant's refusal to communicate during the examination.

If an expert appointed under Article 46B.021 believes the defendant is incompetent to proceed, the expert must state in the report:

(1) the symptoms, exact nature, severity, and expected duration of the deficits resulting from the defendant's mental illness or intellectual disability, if any, and the impact of the identified condition on the factors listed in Article 46B.024;

(2) an estimate of the period needed to restore

the defendant's competency, including whether the defendant is likely to be restored to competency in the foreseeable future; and
(3) prospective treatment options, if any, appropriate for the defendant.

An expert's report may not state the expert's opinion on the defendant's sanity at the time of the alleged offense, if the expert believes the defendant is incompetent to proceed.

It is also important that the examiner clearly identify the sources upon which he has relied in conducting an evaluation. It would be proper, for example, to list the number of pages in medical records, the length of the offense report, any conversations with people having direct knowledge (such as family members or correctional officers), and the like. Be wary of an examiner who makes a long list of things he reviewed but seems to have taken everything the defendant said at face value and has provided no qualifiers.

One area examiners often give short shrift is discussion of psychoactive medications prescribed to defendants, especially whether the medications, in fact, target the evident symptoms. For example, a common scenario is that a defendant displays loss of contact with realty (psychosis) but has either refused medications or is prescribed only an antidepressant that would not target the illness. If the examiner knows about this, he should say so.

Further, historically in Texas, competency reports have been sadly limited in terms of the bases of the expert's opinion. Some years ago, the Vernon State Hospital conducted a survey of competency reports accompanying defendants sent for restoration and discovered that a large percentage were one-page documents, which stated that the defendant was mentally ill and the examiner's opinion is that the defendant was incompetent—but had no other detailed information (which Chapter 46B now requires). With this historical base, it is even more important that examiners follow the statute as to what should be included in a competency report.

4. Ensure that the examiner includes only relevant material.

Examiners often provide clinical information about the patient that is irrelevant and—even if relevant—written in jargon that might be understood in the clinical world but is largely uninterpretable, if not incomprehensible, to a non-clinical audience. For example, a mental status examination may say that "the defendant is oriented in all spheres, though with tangential or circumstantial thinking, and ideas of reference." If you read such a sentence in a report, demand that the examiner re-phrase it in less technical terms—for example: "The defendant was able to provide basic information such as his name and date and place of birth, and he was aware of the purposes of the evaluation, where he was being evaluated, the date, and time. However, his speech continually drifted off into areas unrelated, and he appeared to harbor thoughts that acts or behaviors of others applied to him, however bizarre they sounded. He said he knew that the television reporter was referring to him in news broadcasts." Note that this is a much longer statement, but it also avoids reliance upon technical language and is understandable to non-psychiatrists.

A competency evaluation should not include any statements a defendant makes about details of the offense. While information gained in the course of a competency evaluation cannot be used in any other criminal proceeding (unless the defense opens the door[8]), the examiner should nonetheless adhere to firm boundaries in conducting an examination so that he does not assume the role of either defense counsel or the prosecution. For example, an examiner could state that a defendant provided a description of the crime's events in a logical and sequential manner that was generally consistent with the offense report.

Further, as noted earlier, the report should not include voluminous details about the examiner's professional history or accomplishments. It is worth repeating.

5. Examine the report for simplistic conclusions.

While these tips largely address procedural issues, attorneys must always be cautious with regard to an examiner's conclusions. For example, as stated in Turner, the mere presence of mental illness does not equate to incompetency.[9] Turner further held: "Nor does the simple fact that he obstinately refuses to cooperate with his trial counsel. Indeed, even a mentally ill defendant who resists cooperating with his counsel may nevertheless be found competent if the manifestations of his particular mental illness are not shown to be the engine of his obstinacy. However, when a defendant's mental illness operates in such a way as to prevent him from rationally

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understanding the proceedings against him or engaging rationally with counsel in the pursuit of his own best interests, he cannot be forced to stand trial, which is consistent with due process considerations. Evidence that raises this possibility necessitates an informal inquiry, and if that inquiry reveals that the possibility is substantial, a formal competency trial is required."[10]

Similarly, simply because a defendant has an intellectual disability does not mean that she is incompetent. Moreover, the examiner is not required to conduct a formal determination of intellectual disability as defined in the Tex. Health & Safety Code §§592.018 and 593.005 to conclude that a defendant is incompetent to stand trial.

6. Ensure that the report is timely.

Tex. Code Crim. Proc. Art. 46B.026(a) requires that the report be submitted to the court and both parties not later than 31 days after the court ordered the examination. Extensions may be granted for good cause. A county might consider limiting the number of examinations assigned to an examiner who regularly cannot meet the 30-day deadline. At the very least, there is no reason to be bashful about advising the examiners of the necessity to adhere to the statutory deadline. It is generally wise to have a hearing as soon as possible after a report is provided or after the person returns from a facility, and Tex. Code Crim. Proc. Art. 32A.01(c) gives preference to defendants restored to competency over most other matters before the court.[11]

Summary

We have discussed only some of the issues pertaining to the quality of reports—reviewing the examiner's qualifications, ensuring the evaluation has applied the proper standard, that the contents include all the items enumerated in Arts. 46B.024 and .025, that the report contains only relevant information, that the conclusions are not simplistic, and that the report is timely. But these particular issues are of great importance, and evaluating them will go a long way toward ensuring a competency report does its job well. ❇

Endnotes

[1] Tex. Code Crim. Proc. art. 46B.021.

[2] Tex. Code Crim. Proc. Art. 46B.022.

[3] This standard is a codification of *Dusky v. United States*, 362 U.S. 402 (1960).

[4] The principal opinion is *Turner v. State*, 422 S.W.3d 676 (Tex. Crim. App. 2013).

[5] 730 S.W.2d 744 (Tex. Crim. App. 1987).

[6] As an aside, Tex. Code Crim. Proc. Chapter 46B contemplates this alternative, which is why civil commitments by criminal courts–with charges yet pending–are permitted. Tex. Code Crim. Proc. Arts. 46B.102–.103.

[7] See *Moralez v. State*, 450 S.W.3d 553 (Tex. App.–Houston [14th Dist.] 2014, pet. ref'd).

[8] See Tex. Code Crim. Proc. Art. 46B.007.

[9] See *Battle v. United States*, 419 F.3d 1292 (11th Cir. 2005); *United States v. Mitchell*, 709 F.3d 436 (5th Cir 2013) ("There is no specific threshold or quantum of evidence that requires the district court to order a competency hearing. Instead, the United States Court of Appeals for the Fifth Circuit considers three factors: (1) the existence of a history of irrational behavior, (2) the defendant's demeanor at trial, and (3) prior medical opinion on competency. Significantly, the presence or absence of mental illness or brain disorder is not dispositive as to competency.").

[10] *Turner*, 422 S.W.3d at 691.

[11] The only proceedings that take precedence over those in which

Prosecutors are needed for CACs' long game

It all started with a prosecutor.

By Joy Hughes Rauls
(at left) Chief Executive Officer, and
Catherine Bass
(at right) Chief Strategy Officer, Children's Advocacy Centers of Texas

Bud Cramer, former prosecutor and Alabama Congressman, pioneered the first children's advocacy center (CAC) in 1985. Today, there are 800 CACs in the United States and many more across the globe. Texas is the proud home of 71, the largest number of CACs in any state.

As the oldest CACs in Texas begin to turn 30, we are contemplating the longevity of our movement. Starting that conversation with the profession that helped start it all, prosecutors, seems like the natural step. To be direct, we are coming to you asking for support for a core piece of CACs' long-term strategic plan: sustainability.

This year, CACs in Texas will partner with more than 1,000 law enforcement agencies, 230 district and county attorney's offices, every Department of Family and Protective Services (DFPS) region, every children's hospital, and countless medical and mental health providers. Our network of 71 CACs, which officially serve 201 counties, are on track to serve over 52,000 children. That is 52,000 children who will benefit from the promise an MDT (multidisciplinary team) approach seeks to deliver—restoration.

The definition of restoration is to return something to a former condition. What a powerful aspiration in the context of crimes against children! To think that we might be able to set a child's life back on the unmarred trajectory upon which they were born—one full of hope, possibility, and promise—before someone decided to subvert it through their actions. We believe restoration is achievable when three equally significant components are delivered: safety, justice, and healing.

That was Bud Cramer's vision, that the various state, county, municipal, and private entities, both civil and criminal, that intersect in a case with a child victim would work in collaboration. By doing so, Cramer accurately hypothesized that each entity would not only achieve its individual mandate more successfully, but would also work in contemplation of one another to ensure that each of the collective components of restoration are achieved. This collaboration, known formally as an MDT, is housed under the umbrella of a neutral, nonprofit entity, known to each of you as a CAC.

As every reader of this journal knows, the goals and aspirations outlined above are much more marathon than sprint. In the fight to protect and bring justice to child victims and ultimately deliver restoration, endurance is required. We believe the answers to our quest for longevity are within the answers to the below questions, and we openly request your participation in dialogue as we seek the answers.

- How do we protect the contours of our model, which were so artfully designed through the lenses of prosecutors, detectives, and caseworkers while also balancing the desire to advance our work? How does this inform our response to external requests to take on new initiatives that push on those contours?
- How do we ensure our relevance and value with our partner agencies?
- How do we better support our partner agencies when they are faced with limited resources?
- How do we work in contemplation of new requirements and considerations that bear down on the partner agencies we work to support?
- How do we articulate and communicate the "why" behind our model to new generations of prosecutors, detectives, and caseworkers so that they reap its benefits?

As we pondered these questions, two themes became apparent. We must revive our roots to

As every reader of this journal knows, the goals and aspirations outlined above are much more marathon than sprint. In the fight to protect and bring justice to child victims and ultimately deliver restoration, endurance is required. We believe the answers to our quest for longevity are within the answers to the below questions, and we openly request your participation in dialogue as we seek the answers.

ensure relevance and value, and we must advance and evolve while protecting the architecture of our model, carefully crafted by the hands of prosecutors, throughout that journey.

Reviving our roots

While CACs are often known as service providers delivering a host of investigative, case management, and healing services, the facilitation and coordination of the MDT is the heart and soul of the CAC model. Yes, CACs provide forensic interviews. Yes, CACs have facilities that are welcoming for families. Yes, CACs provide breakfast tacos and other tasty treats at meetings. CACs have become buildings where child abuse professionals go to get services.

However, the cornerstone of the model that Bud Cramer laid out was to have a neutral party bring together the various disciplines that impact a child who has been abused to harmonize their work, as dictated by the participant-driven protocols. This allows each entity to stay focused on the nuances and critical work of its agency while sleeping well at the end of the day knowing that the restoration equation is being calculated. Quite simply, Cramer's work was a bold statement about the humanity of each professional working in this field—that as a professional, each is charged with seeking either safety, justice, and healing, and as humans we care about all three.

To survive and thrive, we must collectively put the MDT component front and center for the next generation. Here are ways prosecutors can help:

1 **Champion the CAC MDT approach.** As a prosecutor, you want as much information as you can get to help make your case. The MDT approach, if worked effectively, gets you the totality of the information that can be collected through diversity of perspective, approach, expertise, and opinion. Prosecutors are MDT leaders, and when your offices are engaged and championing the MDT response, it deepens and enriches the participation of other child abuse professionals. This includes advocating that the entire MDT response is important and necessary for successful outcomes. The forensic interview is only a piece of the MDT response. Coordinated investigations, medical evaluations, case reviews, family advocacy, and healing services are also key to making the best possible case for you and putting a child back on the path to restoration.

2 **Engage in the CACŐs MDT working protocol review and revision process.** This document contains the rules that govern the MDT response. It outlines case criteria, roles of each partner agency, and protocols for investigative coordination and service provision. MDT working protocols have received more attention recently due to the passage of Senate Bill 1806 by the 85th Texas Legislature, which created a new statutory mandate to reinforce the importance of the MDT response outlined in the MDT working protocols.

3 **Actively participate in CAC MDT case review meetings.** These meetings should be an important opportunity for the MDT to discuss cases, share and hear all perspectives, and make the best decisions for children and cases. If you are not seeing value in these meetings, let the CAC leadership know and work with them to fix what might be broken.

Protecting the CAC model

To achieve the goals above, the CAC model, unlike any other nonprofit victim service agency, has been invited into the criminal justice and civil systems by the MDT partners entrusted with seeking justice and safety. This hardwiring of CACs into the criminal justice and civil systems necessitates that our actions, operations, culture, and record keeping practices contemplate the highly sensitive, high stakes work of our partner agencies, namely prosecution, law enforcement, and DFPS. Our unique positioning within these systems must inform how our programs operate if we are to remain relevant and effective.

To do this accurately and fully, CACs need the input of representatives of these systems. State statute emphasizes this by statutorily requiring the signature of partner agencies on the CAC memorandum of understanding (MOU) for the CAC to exist and by including a requirement that representatives from each discipline have a seat on CAC governing boards.

Here are ways prosecutors can help protect the integrity of the CAC model:

1 **Actively participate on the CAC Board of Directors.** The Texas Legislature recognized that it was a groundbreaking concept to let a nonprofit in on the front end of investigations for some of the most serious crimes in the Penal Code. It was therefore important to put into statute that the agencies charged with these investigations should also have a role in the gov-

ernance of CACs, which ensures that the decisions contemplate the impact on prosecution, law enforcement, and DFPS.

2 **Know and understand what records the CAC retains.** While the CAC record that most think about is the actual forensic interview recording, prosecutors should be aware of other records the CAC keeps and be well-versed in statutory protections and considerations surrounding these records, including Family Code §264.408 and Code of Criminal Procedure Art. 39.14.

3 **Understand the contours of the CAC model and advocate for their protection.** Use your voice on the MDT and CAC Board of Directors when either are asked to take on new programs that could require modifications to the intended operation, purpose, membership, or working protocols of the MDT. Modifications have the potential to dilute and/or detract from the purpose of the CAC model and must be met with careful and intentional consideration to ensure fidelity and efficacy, and thereby our longevity.

4 **Actively lend the credibility of your voice to the promotion of the CAC MDT to external audiences.** Decision-makers and community leaders hold prosecutors in high regard. There is no substitute for the validation your voice gives to this approach when resources and policy decisions are made. It has unquestionably come to our aid during numerous turning points in our 30-year history. If you feel deep value to your work with the CAC MDT, please continue to advocate and share that experience.

Conclusion

There is little about our model and movement that doesn't have the fingerprints of prosecutorial legends and giants on it. It is undeniable how we have benefitted from that guidance in Texas. Our state leads the nation in this movement and always has. We intend to set the pace for the next 30 years and know we can do it by taking a page from our foundational days—working hand-in-hand with the partner agencies that breathe wisdom, credibility, and heart into our

Seeking student loan forgiveness

While being a Texas prosecutor is one of the best jobs possible,[1] it has been known to come with a drawback or two.

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The high cost of legal education coupled with relatively low salaries often makes our commitment to serve justice a financial challenge, which all too often causes prosecutors to leave the profession for more lucrative pastures. To encourage new graduates with student loan debt to enter and remain in public service professions, Congress created the Public Service Loan Forgiveness (PSLF) program in 2007, which offers forgiveness of outstanding student loan debt after 10 years of public service.[2] However, as with most things involving government programs, there are some restrictions and a lot of hoops to jump through to qualify. To obtain loan forgiveness, you have to make the right kind of payments on the right type of loans while working in the right sort of job.

Right kind of payments

The first requirement is the one that has tripped up most borrowers working toward forgiveness. An applicant has to have made 120 separate monthly payments within 15 days of the scheduled due dates for the full scheduled installment amount under one of certain repayment plans. Qualifying repayment plans include the Income Based Repayment, Income Contingent Repayment, Pay As You Earn, the Revised Pay As You Earn, and the standard repayment plans.[3] Payments under a graduated or extended payment plan do *not* qualify, nor do lump sum payments, with the exception of certain AmeriCorps and Department of Defense loan repayment programs.

For most of us, there are a few key points here. First, we want to make sure we are in one of the qualifying payment plans. Most of them offer reduced payments based on a borrower's income, so we would probably be interested in them anyway. Second, we need to ensure timely payments; late ones run the risk of not qualifying. Third, there is no benefit to paying ahead or paying extra if we are working towards forgiveness.

Right type of loans

Once we have the right kind of payment plan, we then need to make sure that we have the right type of loans. Four loan programs qualify for forgiveness:

- Direct Subsidized Loans,
- Direct Unsubsidized Loans,
- Direct PLUS Loans, and
- Direct Consolidation Loans.

Private loans and Federal Family Education Loans[4] (FFEL) do not qualify. Most current borrowers receive funding through the Direct Loan program; however, there are still borrowers who have FFEL loans in repayment as those were the primary student loans offered until 2010. Once someone is in a qualifying loan program, trying to consolidate or refinance may be perilous. Direct Loans don't offer a refinancing option, and other lenders offering refinancing will not qualify for loan forgiveness. Consolidating will likely mean forfeiting any previous qualifying payments, because the consolidation loan is a new one, even though it might be from the same lender.

Right sort of job

This requirement is usually the easiest for prosecutors to meet. To qualify, you have to be an employee of a public service organization. Federal, state, local, and tribal governments are specifically listed as being public service organizations. The requirement to be an employee in-

dicates that elected service does not qualify, especially because the definition of employee is one *hired* and paid by a public service organization. Certain other 501(c)(3) organizations qualify as well. With non-profit organizations, the devil is in the details. Most reports involving a borrower who thought he qualified for forgiveness only to find out his employer didn't qualify involve non-profits that are not 501(c)(3) organizations—501(c)(6) seems to be a habitual offender in this regard.

While applicants have to make 120 qualifying payments, they don't have to be made consecutively or with the same employer. This allows borrowers to move between jobs or have breaks from qualifying employment without losing any progress they have made toward forgiveness. Even with the ability for multiple periods of employment to combine for qualification, forgiveness remains an all-or-nothing proposition; borrowers can receive full forgiveness after 120 payments and absolutely nothing for 119.

Papers, please

Naturally, no government program is complete without a healthy dose of paperwork, and PSLF is hardly the exception. Even once we have ensured that we are making the right payments on the right loans, we still have to submit an application and employer certification showing that we have met all the requirements. Fortunately, the federal government has done two things to help us with the process.

First, although we don't receive any forgiveness until the full 120 qualifying payments have been made, we may submit certification forms for smaller blocks of time. The Employer Certification Form (ECF) requires the borrower to fill out some basic administrative information and then have an authorized official from her employer sign it to verify the employment. Authorized officials will vary from office to office, depending on local practice. Larger offices may have a human resources division that handles such forms, while the elected prosecutor might personally verify employment in a smaller office.

Once completed, the ECF is sent to FedLoan Servicing, one of the government's several loan servicers. FedLoan Servicing has been designated to handle all PSLF loans and paperwork, which is the second thing that helps with the process. Once FedLoan Servicing receives the ECF, authorities there will review it and certify any applicable period. If they certify any of a borrower's employment, the loans are transferred from whichever servicer was handling them to FedLoan Servicing (if they are not already handled there). When the employment is certified, FedLoan Servicing currently issues two letters to the borrower. The first simply states the employer and qualifying time period that was certified. The second is a cumulative roll-up of all qualifying employers, time periods, and payments made. It also includes an estimated eligibility date for forgiveness.

Practical matters

There is no set or required schedule for when to submit ECFs; in fact, the forgiveness application even allows a borrower to submit all of her employment information at once. However, a borrower who does that may be taking a risk, as she may be in a non-qualifying loan or payment plan and not realize it. Submitting an ECF as soon as a payment is made while working as a prosecutor (or in another qualifying job) will help confirm that everything is in order before years of payments have gone by. Once the first certification comes back with everything in order, go ahead and submit a new one every year to continue updating your forgiveness status. Delaying sending in the first ECF can also cause processing delays. Because FedLoan Servicing has to sift through other servicers' records to verify payments, the longer the payment history, the longer the processing time. In some cases, this can lead to a borrower needing to work with FedLoan Servicing's customer service to track down all previous qualifying payments. This extra legwork can be minimized by submitting the first ECF early, which then triggers the servicing transfer to FedLoan Servicing. When leaving a qualifying job, whether for a break in public service or simply moving between offices, try to obtain a final ECF that covers your employment through your final day. That will avoid any gap in documentation and will be easier than trying to get one completed some time after the fact.[5]

For the financially savvy prosecutor,[6] financial and tax planning may provide opportunities to reduce the monthly payment under an income-driven repayment plan. Because income-driven repayment amounts are calculated based on family size and adjusted gross income, boosting retirement savings (a good thing) could also

Naturally, no government program is complete without a healthy dose of paperwork to complete, and PSLF is hardly the exception.

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reduce monthly loan payments (also a good thing). As with any financial and tax planning, consult with a financial or tax advisor.[7]

Oops, I made the wrong payments

Some borrowers who recently applied for forgiveness were unpleasantly surprised to learn that while their employment and loans qualified, they were in graduated or extended repayment plans that did not qualify. To address this problem, Congress included a one-time, $350 million pool of money known as Temporary Expanded PSLF. Borrowers who were denied forgiveness due to the wrong repayment plan may apply for reconsideration under Temporary Expanded PSLF. This funding is available on a first-come, first-serve basis, and the program will end once funding is exhausted.

Conclusion

The Public Service Loan Forgiveness program offers a significant benefit for long-term public servants, but it requires effort and attention to get the most out of it. Careful preparation and planning early on can save a new prosecutor a great deal of money over the years, all while making it easier for us to stay in the profession we love. ❇

Endnotes

[1] Commanding a Field Artillery battery in the U.S. Army is objectively the best job ever; Texas prosecutor is a close second.

[2] See the College Cost Reduction and Access Act of 2007, Pub. Law 110-84.

[3] For a rundown of these plans, see https://studentaid.ed.gov/sa/repay-loans/understand/plans.

[4] FFEL were loans made by private lenders but backed by the federal government; the program was terminated in 2010 with all federally backed student loans shifted to the Direct loan