



The Texas Prosecutor

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



What prosecutors need to know about Texas CLR Connect’s launch

When the Texas District and County Attorneys Association (TDCAA) first introduced readers to the Texas Crime Lab Records (CLR) Connect initiative,¹

the project was still early in development. At the time, the Department of Public Safety (DPS), guided by the framework established by Senate Bill 991 (88th Legislative Session) and codified in Texas Government Code §§411.161–164, was preparing to design a statewide, centralized portal for managing crime laboratory discovery under Art. 39.14 of the Code of Criminal Procedure. That foundation remains unchanged, but the project has advanced significantly and is now approaching full implementation.

As the system moves into its final pre-launch phase, engagement from district and county attorney offices is crucial, particularly in identifying each office’s initial prosecution admin. This role will be central to onboarding, training, user management, and ensuring attorneys have proper access to discovery materials from day one. With the statewide rollout scheduled to begin in late August 2026, now is the time for prosecutor offices to prepare for the transition and understand what will be required during implementation.



By Kevin Callahan

Records Portal Program Supervisor, Department of Public Safety’s Crime Laboratory Division

What is Texas CLR Connect?

Texas CLR Connect (pronounced “Clear Connect”) is a secure, centralized, digital portal designed to streamline the request and transfer of crime laboratory records between laboratories, prosecutors, and other authorized parties involved in criminal discovery. The portal supports compliance with the Michael Morton Act, the *Brady* ruling, and Art. 39.14 obligations, ensuring that forensic records are accessible in a timely, consistent, and transparent manner across the state.

¹ www.tdcaa.com/journal/a-wealth-of-resources-on-dwi-and-intoxication-offenses.

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Association bylaws

Who doesn't love a good instruction manual or helpful "how to" YouTube video?

Those things help us work smarter, not harder. However, when it comes to running an association, YouTube influencers are not the people to consult for making decisions. Instead, we must rely on ... <insert blaring trumpets here> ... bylaws! But just like dusty old manuals or outdated videos, bylaws are not helpful if they are not regularly reviewed.

Our association operates under bylaws that were last amended in 2010, but the bulk of the content in our bylaws is even older than that; in fact, the language almost certainly pre-dates many of you who are reading this column. This disconnect has resulted in many current practices of the association no longer matching the actual rules for running this ship. In response, TDCAA President Brian Middleton appointed a Bylaw Revision Committee of experienced TDCAA members to bring our bylaws into the modern era, both in practice and in language. (So long, "wherefores," "hereins," and "whomsoever!")

That committee's work was approved by the Board of Directors at its summer meeting on June 26. The proposed new bylaws have been placed on our website at www.tdcaa.com/bylaws-revision-project. The final step will be approval by a majority of "regular members" of TDCAA (i.e., dues-paying elected and assistant prosecutors) who are present at the Annual Criminal and Civil Law Conference in Waco on Wednesday, September 16. For more details, refer to that webpage.

If you have any questions about these bylaw revisions, feel free to contact me for more information. Our hope is that if this process is done right, we won't have to repeat it for another 16 years!

Data reporting

The Data Committee of the Texas Judicial Council (TJC) has been working on proposed rules and procedures for the implementation of Government Code §71.0354 (Prosecuting Attorney Information), a new statute that takes effect on September 1, 2026. That law will require all county attorney and district attorney offices handling criminal matters to report to the TJC cer-



By Shannon Edmonds

TDCAA Executive Director in Austin

tain data about criminal caseloads, office personnel, and certain types of pretrial releases. TJC's Data Committee has consulted with a workgroup of prosecutors facilitated by TDCAA and should be publishing its proposed rules in the *Texas Register* in early July (so those may already be out by the time you read this). Those rules will then be subject to a public comment period, after which the TJC will finally adopt its rules for implementation no later than September 1, 2026. Please be sure to check our website for news and announcements related to this topic as things progress.

Yet more on membership

In previous issues, I dug through our association's membership rolls to determine the membership rates for elected prosecutors (94 percent) and assistant prosecutors (88 percent), both very laudable figures for a voluntary association. (And that is even more true if you subtract one large urban jurisdiction from that data, raising those statewide membership rates for assistant prosecutors to 97 percent.) One conclusion to draw from this data is that TDCAA maintains an enviable membership rate among the lawyers in our service group.

But what about the non-lawyers—those investigators, victim assistance coordinators (VACs), and key personnel who keep our local offices running day in and day out? We have the scoop on them in this issue.

Specifically, our Investigators Section is composed of 881 members out of a possible total of

These membership numbers for non-lawyers are, to be honest, more robust than I would've guessed. Yes, there is room for growth among the support staff members of our service group, but it's gratifying to see so many non-lawyer members participating in our association.

999 investigators employed by local prosecutors. That yields a membership rate of 88 percent (or 96 percent if you subtract one large urban jurisdiction from that equation). For our Key Personnel-Victim Services Section, we have 1,608 paid members out of a possible 2,144 employees, which yields a membership rate of 75 percent. That figure includes a membership rate of 80 percent for a smaller subset of personnel designated as VACs.

These membership numbers for non-lawyers are, to be honest, more robust than I would've guessed. Yes, there is room for growth among the support staff members of our service group, but it's gratifying to see so many non-lawyer members participating in our association, and I would encourage all of you who fall in that category to get more involved in the specific sections we have created with you in mind.

P.S. I could not have gathered this data without the help of our Membership Director, Kaylene Braden. Like many employees here at TDCAA, she is a former member herself, so she knows how important it is to provide good service to you, and we are blessed to have her on our team. Please be sure to thank her for all her hard work next time you talk or email with her!

Membership has its privileges

These robust membership rates are, we hope, a sign of satisfaction with the many products and services we provide our members. And we continue to add more benefits to that list. In the past year alone, we've launched a new weekly Round-Up news email that has more than 800 subscribers (sign up at www.tdcaa.com/sign-up-for-the-round-up if you are not one of them), created a new recruitment booklet (a sample of which is included in this issue), expanded our recognition of worthy members through new awards, and more—all while continuing to provide unique training and publications that our members can get only from TDCAA.

As the slogan goes: "Membership has its privileges." If you know someone who is not a member of TDCAA but should be, let them know how valuable it is to you! Let's see how high we can raise our membership rates—and with it, the professionalism and stature of our entire profession.

Annual Conference preview

With so many members in our association, it's no wonder that we throw one of the biggest prosecutor-related events in the country every year.

Our Annual Criminal & Civil Law Conferences routinely draw more than 1,000 participants every September for top-notch training, networking, and camaraderie. And this year we are taking that show to a new venue: Waco! We've successfully hosted smaller CLE events in Waco for years, but now we're ready to bring our biggest event to this centralized gathering place. Come to the Annual Conference for all your training needs, and when you aren't in class, check out Waco's revitalized downtown with its trendy restaurants, craft breweries, and boutiques, not to mention iconic Texas landmarks such as the Silos at Magnolia Market, Cameron Park Zoo, Dr Pepper Museum, and Texas Ranger Hall of Fame & Museum. It's going to be great detour from our traditional rotation of Annual Conference locations, so come join us! Visit www.tdcaa.com/training/annual-criminal-civil-law-conference-2026 for more details and to register for the conference.

More free CLE coming soon

TDCAA's free "Mandatory *Brady* Training" is currently being updated and refreshed for a relaunch later this fall. Meanwhile, the 2022–2026 version is still available online. Anyone required by law to take it before then can access the course and additional details at www.tdcaa.com/mandatory-brady-training-now-available-for-2022-2026-cycle.

Grand funds available

The Larry D. Morse II Commitment to Justice Award is a grant designed to provide financial assistance to applicants (individuals, offices, or agencies) that have demonstrated commitment to prosecution as a career. The application deadline is September 11. To access the application and for more information about the award, please visit www.karpelfoundation.com/larry-d-morse-award.html.

A look inside

This issue of our journal is full of great material, including articles on a new report on protective orders, how to handle uncooperative victims, and an essay following a prosecutor's first year in the office. I hope you enjoy them! And as always, if you ever have any questions about TDCAA or what we do, please don't hesitate to reach out for answers. We are here to serve you. ✱

Helping victims understand the criminal justice process

One of the most important responsibilities of a victim assistance coordinator (VAC) in a prosecutor's office is helping crime victims navigate the justice system,

which can feel overwhelming, confusing, and intimidating. For many victims, involvement in the criminal justice process is completely unfamiliar. They may not understand legal terminology; courtroom procedures; or the roles of the prosecutor, defense attorney, court personnel, or even prosecutor staff. As a result, uncertainty often becomes a significant source of stress.

Crime victims may ask questions such as: What happens next? How long will this take? Will I have to testify? Why was the court date postponed? Why did the defendant receive a plea agreement? They may request to speak to the DA right away, or they may be fearful of any interaction with the prosecutor's office.

While VACs cannot eliminate the challenges in the criminal justice process, we can reduce anxiety by providing clear information, realistic expectations, and consistent communication. Helping victims understand the process is not simply about sharing information; it is also about building rapport and a sense of trust so they can feel a little more in control during this difficult time.

Why understanding matters

Crime often leaves victims feeling powerless. The criminal justice process can unintentionally reinforce those feelings when victims do not understand what is happening or why decisions are being made.

During my experience as a VAC in a criminal district attorney's office, I consistently saw that victims who understood the criminal justice process were more likely to:

- feel respected and included,
- experience less anxiety and frustration,
- participate and cooperate,
- have greater confidence in our office, and
- after the case was disposed, regardless of the outcome, be satisfied our office had done the best we could.



By Jalayne Robinson, LMSW

TDCAA Victim Services Director

Understanding does not always make outcomes easier to accept, but it helps victims prepare for those outcomes and reduces the fear that often accompanies uncertainty.

Terminology

One of the most effective ways to help victims understand the criminal justice system is to become familiar with frequently used court terms and to educate victims on what to expect during their interaction with the justice system. Terms that prosecutors and court personnel use daily may be unfamiliar to victims: arraignment, indictment, continuance, disposition, enhancement, adjudication, and pre-trial diversion can create confusion if not explained in plain language.

If you are a new VAC, legal and court-related terms may feel unfamiliar to you too at first. When I began as a VAC, it was difficult to help others when I was still learning myself. I often tell new victim services staff that it took me about two years to feel confident helping others navigate the process. Do not get discouraged; it takes time.

One helpful resource is TDCAA's *Victim Assistance Manual*, a book written especially for VACs. Chapter 10 includes a glossary of frequently used court terms that can be a valuable reference as you learn the criminal justice system and your role within it. Your office may already have a copy of the manual. If not, it is available for purchase

Many victims struggle because they do not know what to expect next. Providing a general overview of the criminal justice process, such as a flowchart, early in the case can reduce confusion throughout the life of the case.

at www.tdcaa.com/product/victim-assistance-2023.

As a VAC, you can also find ways to translate this very foreign terminology into everyday language. For example:

- Rather than saying, “The case was continued,” say, “The hearing was postponed and rescheduled for a later date.”

- Rather than saying, “The defendant accepted a plea bargain,” tell victims, “The defendant agreed to plead guilty and accept a specific punishment without going to trial.”

- Rather than, “The grand jury returned an indictment,” explain, “A group of citizens called a grand jury has reviewed the case and decided there was enough information for the case to move forward. The grand jury’s decision is called a true bill.”

- For those of you whose counties have the Texas IVSS Counties court notifications, many times it is helpful to explain to crime victims in advance the terms used by the notification system and what to expect when they receive a text, email, or phone call from Texas IVSS Counties.

Clear communication helps victims feel informed rather than intimidated.

Provide a general overview

Many victims struggle because they do not know what to expect next. Providing a general overview of the criminal justice process, such as a flowchart, early in the case can reduce confusion throughout the life of the case. Felony and misdemeanor flowcharts are available at the Texas Judicial Branch website at www.txcourts.gov/publications-training/training-materials/criminal-process-flowcharts.

You might consider including a flowchart in your initial victim services packet you mail out, hand deliver, or email to crime victims. Victims simply need a basic understanding of where the case is in the process and what may happen next. When possible, explain that every case progresses differently and that delays are common. Setting realistic expectations at the beginning often prevents frustration later.

Explain the roles of criminal justice professionals

Victims often assume that everyone involved in the system serves the same function. Clarifying professional roles can reduce misunderstandings. Victims may benefit from learning that:

- the prosecutor represents the State; he or she is not the victim’s private attorney; and he or she does not represent the victim personally;

- defense attorneys represent the defendant;

- judges act as neutral decision-makers;

- law enforcement officers investigate crimes; and

- VACs provide support, information, referrals, and assistance throughout the process.

Helping victims understand these roles can prevent disappointment and confusion when legal decisions are made.

Preparing victims for court

Court appearances are among the most anxiety-producing aspects of the criminal justice process. Whenever possible, VACs should help victims understand:

- what the courtroom looks like,
- where they will sit,
- who will be present,
- that the defendant will be there too,
- how long proceedings may take,
- whether they may be asked to testify, and
- what types of questions they may hear.

Some offices provide courtroom tours or photographs of the courtroom in advance. Even a brief explanation of courtroom procedures can help reduce fear of the unknown.

As a VAC, I accompanied victims to court whenever possible. Before the hearing, I told them I would try to enter the courtroom with them and sit beside them throughout the proceeding. In some cases, family members had been subpoenaed and could not remain in the courtroom, making that support especially meaningful—many victims appreciated having someone with them. During the hearing, I explained each stage of the process as it occurred.

If you are a new VAC, ask your supervisor or prosecution team whether you may observe court proceedings before assisting crime victims so you can become familiar with the process. When victims understand what to expect, they often feel more confident and prepared.

The DA’s Office in Harris County offers wonderful suggestions for VACs who provide court accompaniment; these are on our website at www.tdcaa.com/wp-content/uploads/Suggestions-for-Court-Accompaniment-Sample-Harris-County.pdf.

Communication is key

Lack of communication frequently causes victims to feel forgotten or excluded from the process. While VACs often manage large case-loads, regular communication can significantly improve a victim's experience.

In high-profile cases, I never wanted victims to learn about movement in their case from the media before hearing from our office. I made it a priority to stay fully informed so I could notify victims directly. Even when there is little new information to share, brief updates can still be valuable:

- "The case is still pending."
- "No hearings are scheduled this month."
- "We are waiting on laboratory results."
- "The next court setting is docket call, and it is scheduled for next week. You are not required to come to docket call, but I wanted to let you know about the setting."

Silence often leads victims to assume that nothing is happening or that their case no longer matters.

Discuss delays before they occur

Consistent communication reassures victims that they have not been overlooked. One of the greatest frustrations is the length of time criminal cases often require. Many victims expect quick resolutions and are surprised to learn that cases can take months or even years to complete.

Early conversations about potential delays can help manage expectations. Victims should understand that postponements may occur because of:

- ongoing investigations,
- witness availability,
- evidence testing,
- court scheduling issues, and
- legal motions and hearings.

Preparing victims for the possibility of delays often reduces disappointment when delays occur.

Delivering outcomes

Sometimes the outcome a victim hopes for does not occur. This is a very difficult part of our job as VACs. Please discuss with your prosecution team how to proceed when delivering outcomes. Victims may not always agree with what happens, but they are more likely to feel respected when they understand the reasoning behind decisions.

Encourage questions

Victims may hesitate to ask questions because they fear appearing uninformed. Creating an environment where questions are welcomed helps reduce confusion and empowers victims to participate more fully. Simple queries, such as, "What questions do you have?" or "Is there anything that doesn't make sense right now?" can open important conversations.

The goal is not for victims to leave every interaction with complete certainty but to feel comfortable asking for clarification when they need it. As VACs, we want victims to know they have someone they can rely on throughout the process.

Regaining a sense of control

The criminal justice process can never erase the harm caused by crime. However, VACs play a vital role in helping victims navigate the journey that follows. By providing clear explanations, realistic expectations, consistent communication, and opportunities for meaningful participation, VACs help transform a process that often feels confusing and overwhelming into one that is more understandable and manageable.

Information alone does not eliminate trauma, but understanding can reduce anxiety. When victims know what to expect and feel included in the process, they are better equipped to move forward. For many victims, that understanding becomes an important step toward healing.

To every VAC reading this article: Thank you for the important work you do. Whether you serve in a small rural prosecutor's office or one of Texas's largest offices, your role is essential in helping victims feel supported, informed, and less alone.

Victim services consultations

As TDCAA's Victim Services Director my primary responsibility is to assist Texas prosecutors, VACs, and other prosecutor office staff in providing support services for crime victims in their jurisdictions. I am available to provide victim services training and technical assistance to you via phone, email, in person, or Zoom. The training and assistance are free of charge.

If you would like to host a group training in your county for prosecutors and staff or even a larger, regional training for surrounding counties, please reach out to me at Jalayne.Robinson@tdcaa.com. I can tailor the training to meet your specific needs. ✱

To every VAC reading this article: Thank you for the important work you do. Whether you serve in a small rural prosecutor's office or one of Texas's largest offices, your role is essential in helping victims feel supported, informed, and less alone.

Marijuana users can still own guns

The future has turned out much differently from what I was led to believe as a kid.

Telephones that we can carry in our pockets actually happened (it was a nice surprise), but I'm frankly disappointed that commercial space travel and vacations on the moon haven't gone down like I was told they would.

One thing that I didn't see coming was an opinion of the U.S. Supreme Court calmly discussing statistics of just how commonplace marijuana use has become. But here we are.

The case for this issue's column, *United States v. Hemani*,¹ involves the federal firearm possession statute as it applies to a regular user of marijuana, and in college I think I was the only person I knew who didn't indulge. As a prosecutor and an appellate attorney, I have never had fun, or been fun, a single day in my life. Nevertheless, *Hemani* is a U.S. Supreme Court opinion that will make every firearm-owning marijuana enthusiast I went to college with very happy.

Background

Ali Danial Hemani, a dual citizen of the United States and Pakistan, was suspected by the FBI (Federal Bureau of Investigation) of connections with the Iranian Revolutionary Guard Corps, which was designated a foreign terrorist organization (FTO) by the U.S. State Department. The FBI obtained a search warrant for his home and Hemani was cooperative, directing the agents to a Glock 9-mm pistol and 60 grams of marijuana. Hemani also consented to an interview in which he told the agents that he used marijuana "about every other day."

About six months after the search, he was indicted in the Eastern District of Texas under 18 U.S.C. §922(g)(3), which restricts firearms possession for anyone who is "an unlawful user of or addicted to any controlled substance." His indictment relied on the unlawful user prong rather than the "addicted to" prong. While his case was pending in district court, the United States Fifth Circuit issued an opinion in *United States v. Daniels*,² holding that §922(g)(3) was unconstitutional under *New York State Rifle & Pistol Ass'n*



By Britt Houston Lindsey

Chief Appellate Prosecutor in Taylor County

*v. Bruen*³ as applied to a non-intoxicated individual based solely on a history of drug use. Hemani's motion to dismiss the indictment was granted, the Fifth Circuit affirmed, and the United States Supreme Court granted certiorari.

Arguments before the Court

In the U.S. Supreme Court, the U.S. Solicitor General argued that §922(g)(3) has historical analogues under *Bruen* in the form of Founding-era "habitual drunkard" laws: vagrancy laws restraining the freedoms of "common drunkards," civil commitment laws committing "habitual drunkards" to asylums or placing them under guardianships, and surety laws that imposed temporary restrictions on drunkards' rights, including firearm ownership. Although vagrancy and civil commitment laws did not specifically prohibit the possession of firearms, the government noted that the Court recently held in *United States v. Rahimi* that "if imprisonment was permissible to respond" to the habitual use of intoxicating substances at the Founding, "then the lesser restriction of temporary disarmament" ... "is also permissible."⁴

³ 597 U.S. 1 (2022). For more discussion of *Bruen*, see the As the Judges Saw it column in *The Texas Prosecutor*, March–April 2023, Vol. 53 No. 2, "Get ready for the fallout from *U.S. v. Rahimi* and *Bruen*."

⁴ 602 U.S. 680, 699 (2024). For more discussion of *Rahimi*, see the As the Judges Saw it column in *The Texas Prosecutor*, November–December 2024, Vol. 54 No. 6, "A little post-*Bruen* clarity in *U.S. v. Rahimi*."

¹ 608 U.S. ____ (2026) (Slip. Op. No. 24-1234, June 18, 2026).

² 124 F.4th 967 (5th Cir. 2025).

Hemani responded with two arguments: that the “unlawful user” prong of §922(g)(3) was unconstitutionally vague and that the Second Amendment barred the government from applying §922(g)(3) to him. As to the “void for vagueness” argument, Hemani pointed out the government’s claim that the statute applies only to “habitual users” is unhelpful because the statute gives no guidance as to how often one must use the controlled substance, how much one uses, whether it matters what the substance is, and so on. Hemani cited the opinions of lower courts as evidence of the disarray surrounding attempts to define the statutory term and said that none of the approaches are grounded in the text of the statute; rather, they are “judicially created” efforts to provide fair notice of the conduct punished that Congress failed to provide.

The U.S. Solicitor General responded that Hemani’s “void for vagueness” claim was procedurally barred because it was not raised by or addressed in the lower court, Hemani did not raise it in his brief in opposition, and the Court had not granted certiorari on it. Even if properly raised, every federal circuit that has considered a vagueness challenge has rejected it.⁵

Regarding the Second Amendment, Hemani argued that “habitual drunkards” and regular users of marijuana are not analogous, observing that early legislatures prohibited carry or use of a firearm while intoxicated but did not prohibit anyone who regularly consumed alcohol from owning a firearm. He continued that “habitual drunkards” as a category closely analogous to “habitual drug users” was fundamentally flawed, as mere evidence that someone consumes marijuana a few times a week with no other informa-

tion about time spent using, amount used, or circumstances when used does not render the person analogous to a “habitual drunkard.” He argued that §922(g)(3) cannot be justified by historical analogue when it is considered that almost all Americans regularly consumed some form of alcohol at the time of the Founding, and that some studies now indicate that there are more regular users of marijuana than regular users of alcohol.

SCOTUS oral argument

At the March 2, 2026, oral argument, Chief Justice Roberts and Justice Alito both expressed concern over courts making individualized determinations about drug use and disarmament, such as the person’s dangerousness, how much has used, the concentration, the degree that daily functioning was impaired, etc., and asked whether the courts had a role in reweighing the determinations already made by Congress and the Executive in scheduling drugs under the Controlled Substances Act. Alito indicated that he believed Congress had already made the determination that scheduled drugs were a basis for disarmament in enacting §922(g)(3) and cross referencing the Act.

Justice Kagan appeared skeptical of this view, suggesting that the decisions made when scheduling drugs under the Act were not necessarily dependent on whether the user is dangerous when using the substance. Justice Barrett appeared to agree with Roberts and Alito that legislatures may make categorical judgments, but she also seemed receptive to Kagan’s view that the Controlled Substances Act did not reflect legislative judgments about whether each scheduled drug would make someone dangerous with a firearm.

Justice Sotomayor, Justice Kavanaugh, and Justice Thomas all questioned the breadth and applicability of the historical traditions cited by the government. Justice Sotomayor suggested that habitual drunkard laws were not about frequency of use, but rather how the substance impaired that person’s functioning in society (she was also the only justice to address Hemani’s “void for vagueness” argument). Justice Thomas questioned whether vagrancy laws and the like were more in line with public policy than public safety, and Justice Kavanaugh appeared to think that historical drunkard laws were more directed toward addicts than regular users.

Almost all Americans regularly consumed some form of alcohol at the time of the Founding, and some studies now indicate that there are more regular users of marijuana than regular users of alcohol.

⁵ Citing *United States v. Harris*, 144 F.4th 154, 166-167 (3d Cir. 2025), petition for cert. pending, No. 25-372 (filed Sept. 26, 2025); *United States v. Hasson*, 26 F.4th 610, 616-621 (4th Cir.), cert. denied, 143 S. Ct. 310 (2022); *United States v. Patterson*, 431 F.3d 832, 836 (5th Cir. 2005), cert. denied, 547 U.S. 1138 (2006); *United States v. Lundy*, No. 20-6323, 2021 WL 5190899, at *5-*6 (6th Cir. Nov. 9, 2021); *United States v. Cook*, 970 F.3d 866, 872-878 (7th Cir. 2020); *United States v. Baxter*, 127 F.4th 1087, 1091-1092 (8th Cir.), cert. denied, 146 S. Ct. 294 (2025); *United States v. Purdy*, 264 F.3d 809, 811-813 (9th Cir. 2001); *United States v. Morales-Lopez*, 92 F.4th 936, 940-946 (10th Cir.), cert. denied, 145 S. Ct. 241 (2024); *United States v. Monroe*, 233 Fed. Appx. 879, 881 (11th Cir. 2007) (per curiam).

A habitual drunkard at the time of the Founding and for decades after was someone "who for any considerable part of his time [was] intoxicated to such a degree as to deprive him of his ordinary reasoning faculties," which one court described a "man who [was] intoxicated or drunk one-half his time" and which a signer of the Declaration of Independence colorfully described in a medical treatise as a man who would walk through cannon fire to get to a keg of rum.

As the judges saw it

The opinion of the Court issued on June 18 unanimously affirming the Fifth Circuit in a 9–0 ruling. Writing for the Court, Justice Gorsuch begins by retracing the requirements of *Bruen* and *Rahimi*: The Second Amendment was designed to codify and guard a pre-existing individual right, and any modern regulation of that right must have a pre-existing “relevantly similar” parallel. Although the Court had not yet exhaustively examined the features that make a modern regulation “relatively similar” to a historical counterpart, Justice Gorsuch states that the Court had identified two that he refers to as the “why” and “how”: “The more closely a contemporary law mirrors a well-established historical analogue in purpose and operation, the more likely it is to be upheld. Conversely, the more a modern law diverges from traditional laws in purpose and operation, the less likely it is to survive review.” On that standard the Court found that the historical habitual drunkard laws “differ dramatically from §922(g)(3)’s unlawful user provision on every single metric the government invites us to consider: They targeted different kinds of people, did so for different purposes, and operated in different ways.”

First, a habitual drunkard at the time of the Founding and for decades after was someone “who for any considerable part of his time [was] intoxicated to such a degree as to deprive him of his ordinary reasoning faculties,” which one court described a “man who [was] intoxicated or drunk one-half his time” and which a signer of the Declaration of Independence colorfully described in a medical treatise as a man who would walk through cannon fire to get to a keg of rum.⁶ Noting just how many early Americans drank alcohol and how much, Justice Gorsuch traces through the drinking habits of Adams (tankard of hard cider at breakfast), Madison (a pint of whiskey daily, but he recommended wine), Washington (three glasses of madeira in the evening), and Jefferson (three or four glasses of wine at dinner), and observes that if habitual drunkard

laws applied to those who simply drank regularly, we would have disarmed many of the Founders.⁷ Habitual drunkard laws accordingly applied to those who drank not just frequently or even to excess on occasion, but to those whose drinking rendered them practically incapacitated and incapable of managing their affairs. There was no evidence that Hemani’s marijuana use reached that level: Although Hemani stated he used every other day, there was no evidence as to how much, what potency, or that it rendered him unable to manage his affairs or was a risk to his family.

Justice Gorsuch goes on to observe that the government’s argument that §922(g)(3) disarms unlawful drug users to protect the public from “unusually dangerous” individuals who will “misuse ... firearms” to commit “violent crime[s]” mischaracterizes the purposes of the vagrancy, civil commitment, and surety laws that the government cites. Vagrancy laws were directed at those who didn’t meet the societal expectations of work, and civil commitment laws were not so much directed at protecting the public from violence but rather protecting the habitual drunkard and his family from financial ruin. “Surety of the peace” laws were found to be a proper historical analogue in *Rahimi*, which dealt with possession of firearms by persons subject to domestic violence restraining orders under §922(g)(8), but merely being a habitual drunkard wouldn’t warrant a surety of the peace.

These laws also fail the “how” test, as they generally followed some sort of process before the deprivation, whereas §922(g)(3) automati-

⁶ Dr. Benjamin Rush, *Medical Inquiries and Observations, Upon the Diseases of the Mind*, 266 (1812).

⁷ Gorsuch also cites a fun anecdote you may have seen before regarding a farewell party for Washington at the Philadelphia City Tavern, which took place three days before the Constitution was signed. The bar tab from the party miraculously survived and shows for the 55 guests there were 54 bottles of madeira wine, 60 bottles of claret wine, 8 bottles of “old stock” (a colonial whiskey), 22 bottles of porter, eight bottles of cider, 12 bottles of beer, and seven large bowls of alcohol punch. Slip. Op. at 9 (citing National Park Service, C. Hershey, *Historic Furnishings Plan: City Tavern 64–65* (1974)). The total cost was 87 pounds, or approximately \$15,400 in today’s dollars. See “The Epic Bender to Celebrate Washington and the newly finished U.S. Constitution,” *The Washington Post*, Feb. 22, 2018. Had I been one of the Founding Fathers, I would have died at this party.

cally deprives the user of his Second Amendment right at the moment he begins using.

This returns Justice Gorsuch to the “why” problem with the government’s argument. §922(g)(3)’s unlawful user provision purports to disarm individuals who are, as a categorically “violent[t]” and “unusually dangerous,” but echoing Justice Kagan’s questioning during oral argument, he observes that a drug’s inclusion in the Controlled Substances Act may be for reasons of public health rather than their propensity to induce violence. Although the Court did not question that sometimes a person’s unlawful use of marijuana (or any drug) could render them dangerous, it was unwilling to “conclude that anyone who regularly uses marijuana is categorically violent and dangerous without any further showing.”

Justice Thomas concurred and joined with the opinion in full, but he wrote separately to address a different concern not actually raised by the parties: whether the criminal penalties in 18 U. S. C. §922(g) as a whole can be justified under the Commerce Clause in the first place. Justice Thomas reaffirmed his long-held belief first articulated in his concurrence in *U.S. v. Lopez*⁸ that the Commerce Clause gives Congress “no power to regulate activities wholly separate from business, such as gun possession.” He argued that both the Court and the lower courts should revisit the constitutionality of §922(g).

Justice Jackson also concurred, joined by Judge Sotomayor. Just as Justice Jackson did in *Rahimi*, she found that the Court’s opinion correctly applied the standard articulated in *Bruen* but wrote separately to express her disagreement with *Bruen*. She would return to the pre-*Bruen* “means-end scrutiny” approach, which she wryly noted the majority opinion was still utilizing in a backward way. She again noted, as she did in *Rahimi*, that *Bruen* provides no framework for

the lower courts to analyze the justification and operation of the modern regulation and historical analogue and repeated Justice Sotomayor’s dissenting concerns in *Rahimi* that the *Bruen* standard is divorced from modern realities.

Justice Alito also concurred in the judgment, joined by Justice Kagan, and appeared to lean more heavily on the “as applied” nature of the case in respect to this particular defendant. Justice Alito agreed with the Court that habitual drunkard laws were not “relatively similar” as applied to Hemani but would affirm on a different ground. As Justice Gorsuch explained, habitual drunkard laws did not allow the disarmament of those who “regularly used intoxicants” or even those who “sometimes used them to excess,” but instead only disarmed those whose intoxicant use “rendered them practically incapacitated and incapable of managing their affairs.” In Hemani’s case we only know the frequency of his use was “about every other day” but nothing about how much he used, the strength of the marijuana he used, how many times he used it in a day, the time of day when he used it, where he used it, or the degree to which this use affected his judgment and daily functioning. Justice Alito held that those historical analogues were too dissimilar to the allegations against Hemani to justify the application of §922(g)(3) to his case, and because that was sufficient to affirm, he would have gone no further in the analysis.

The takeaway

I was slightly surprised when the opinion was issued from a unanimous Court, but I really shouldn’t have been. The Court has always been skeptical of legislation and regulation that would categorically disarm large swaths of people. Gorsuch quotes the dissenting opinion of Justice Barrett to this effect in the pre-*Bruen* case *Kanter v. Barr*, made when she was still a judge of the U.S. Seventh Circuit: “The government could quickly swallow the right if it had broad power to designate any group as dangerous and thereby disqualify its members from having a gun.”⁹

As to how it affects us down here in the trenches, you’ll be relieved to hear that *Hemani* does not stand for the proposition that one may carry a firearm when one is stoned out of one’s

Continued on page 13 in the blue box

I was slightly surprised when the opinion was issued from a unanimous Court, but I really shouldn’t have been. The Court has always been skeptical of legislation and regulation that would categorically disarm large swaths of people.

⁸ 514 U.S. 549, 584 (1995) (Thomas, J., concurring). *Lopez* held that a federal firearm regulation, in that case the Gun-Free School Zones Act of 1990 (GFSZA), could not be justified under the Commerce Clause on the argument that firearms in the aggregate substantially affect interstate commerce. Congress’s workaround for GFSZA and other federal firearm laws was requiring a showing that the gun in question actually moved through interstate or foreign commerce, typically shown through serial numbers and the maker.

⁹ 919 F.3d 437, 465 (7th Cir. 2019).

Welcome, Buc-ee's!

The leadership of the Texas District & County Attorneys Foundation (TDCAF) would like to welcome a new anchor sponsor for TDCAA's Prosecutor Management Institute (PMI): Buc-ee's Ltd.

Buc-ee's was founded in Texas and now has dozens of stores across several states, and people there appreciate the need for solid management training. Like all Texans, Buc-ee's wants prosecutors and staff to be good at our jobs! I want to thank **Jeff Nadalo**, Buc-ee's General Counsel, for making the gift happen.

As you may know, PMI was established in 2016 to address a clear need for management training within our profession. Many prosecutors are promoted because of their trial work, but being a good trial lawyer doesn't automatically mean you can manage a team of lawyers and staff. The Foundation invested in the development of PMI's Fundamentals of Management course, and we are thankful that the Court of Criminal Appeals now supports these trainings within TDCAA's grant.

Demand for the course remains high, and having Buc-ee's as our great anchor sponsor means we can continue to offer it to everyone who needs it.

Twenty years of support for TDCAA

TDCAF will observe its 20th anniversary on August 21. Twenty years ago, TDCAA leadership recognized that to be our best, we often needed more support than what was offered through grant programs. By reaching out to the community and members of the association, we gained the flexibility to enhance programs and create new initiatives, such as the Victim Services Director position and the Prosecutor Management Institute. These programs began with Foundation funding and are now staples of TDCAA training. Other initiatives, such as the invaluable Advanced Trial Advocacy Courses, are faculty-intensive and needs additional resources to ensure excellence, and the Foundation has historically provided some of that.

I want to thank the Foundation leadership for always enthusiastically supporting our great profession.



By Rob Kepple

TDCAF Executive Director in Austin

Foundation leadership in the spotlight

We are fortunate to have a great Board of Trustees. The Foundation leadership has a wealth of experience, past and present, in criminal prosecution. For instance, keep an eye out for **Mindy Montford**, former Foundation Board President and assistant attorney general in the Cold Case and Missing Persons Unit. She and her team worked tirelessly until Austin's Yogurt Shop Murders were solved. (See this article about the case in the University of Texas School of Law's magazine: law.utexas.edu/magazine/2026/04/13/fighting-for-answers.) Even in her recent retirement from the AG's Office, she's not done: She has founded a new nonprofit, the National Cold Case Center, or NC3 for short, dedicated to bringing resources to bear to solve the thousands of cold cases across the country. It will be launching soon at nationalcoldcase.org.

Lawyers and friends in Austin recently honored **David Escamilla**, former County Attorney in Travis County and Honorary Life Member of TDCAA, with the dedication of a conference room in his honor at the CA's offices. It was a great ceremony so well attended that they probably should have doubled the size of the room!

Finally, for any college sports fans, you should catch "Summer of '83, Texas v. Tide," a documentary from SEC Storied about the College World Series featuring Foundation Board member **Johnny Keane Sutton**. Johnny played left field on the University of Texas's national championship baseball team.

You've got a great group making things happen at the Foundation! ❄️

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gourd. The holding of *Hemani* is pretty straightforward: There is no historical analogue to modern regulations on firearm ownership that would restrict someone from possessing a gun at home solely because he or she regularly uses marijuana, with no showing of incapacitation. The Court nonetheless left itself a lot of leeway: Justice Gorsuch very expressly stated that the Court's holding was narrow and bound to the facts of the case:

We do not address efforts to ban addicts, or those presently intoxicated, from possessing a firearm. We do not address other prophylactic laws Congress might adopt after determining that users of a particular drug pose a special risk of misusing firearms. We do not address 18 U. S. C. §922(g)(1)'s provision disarming individuals convicted of felonies (often including drug-related ones). We do not even address whether the government could bring a prosecution under §922(g)(3) accompanied by individualized proof that the defendant's use of marijuana (or any other drug) renders him a danger to himself or others. Or proof that a certain drug always renders its users dangerous because of its potency or for some other reason. None of those issues is before us and we do not pass on them either way.

One place I expect that we'll see *Hemani* argued is in unlawful carrying of a weapon cases where the defendant is intoxicated under Tex. Penal Code §46.02 (a-1), so remember that the Court was very careful not to go that far. To paraphrase Justice Gorsuch: Remember to prove impairment, and your case will be fine. For those rare few appellate prosecutors who find themselves arguing a *Bruen* challenge, *Hemani* gives you a roadmap to look at relevantly similar historical analogues and mind your whos, hows, and whys. ✨

Photos from our Fundamentals of Management Course I



Photos from our Fundamentals of Management Course II



Photos from our Civil Law Conference



Gerald Summerford Award winner



Bridgette Smith-Lawson, County Attorney in Fort Bend County (second from right), was named the Gerald Summerford Award winner. She is pictured with (left to right) Joe Hooker, TDCAA Assistant Training Director; Brian Klas, TDCAA Training Director; and Michelle Turner, First Assistant County Attorney in Fort Bend County. Congratulations!

What prosecutors need to know about Texas CLR Connect's launch (cont'd from the front cover)

The system addresses several longstanding issues in criminal discovery: inconsistent processes across laboratories, delays caused by manual requests, and challenges in tracking supplemental or updated lab reports. By standardizing how records are requested, reviewed, and delivered, CLR Connect aims to reduce administrative burden and to improve both efficiency and accountability in the discovery process.

All crime laboratories operating in Texas, as defined by CCP Art. 38.35, are required to participate. Out-of-state laboratories must participate as well if they perform forensic analysis in 300 or more cases annually in Texas; those below the threshold may request an exemption, although no exemption is automatic and must be approved by the Texas DPS Crime Laboratory Division through application.

CLR Connect launch timeline

CLR Connect has entered full user acceptance testing. Following this phase, the system will be deployed in a phased rollout beginning in late August, with the rollout expected to last six to eight weeks. This incremental approach is intended to ensure stability and provide tailored onboarding support to agencies statewide.

In preparation for launch, DPS has been distributing newsletters, infographics, and explainer materials; it is also hosting virtual townhall-style information sessions. The CLR Connect Newsletter² continues to serve as the main channel for updates, offering labs and attorneys regular insight into development progress, training opportunities, and expectations for implementation deadlines.

Prosecution roles

Since the first TDCAA article, one of the major advancements has been the formal definition of the prosecution user roles, which dictate how prosecutor offices will interact with the system. Understanding these roles is essential for selecting the right internal administrators and preparing offices for launch.

Prosecution Admin. Every prosecuting agency must designate at least one "Prosecution

Admin" during initial onboarding. This individual, who may be an attorney or non-attorney staff member, will serve as the office's primary contact with DPS during implementation and will manage all user access and office level functions within the portal.

Key responsibilities include of the prosecution admin include:

- creating and disabling prosecutor accounts,
- managing the office profile,
- assigning and removing defense counsel from cases,
- approving or denying defense access requests,
- performing bulk case assignments,
- managing user roles and permissions,
- communicating directly with laboratories,
- viewing all cases within an office's jurisdiction, and
- designating additional prosecution admins as needed within the office.

This is the broadest and most sensitive user role. Proper selection of this individual(s) will directly affect the office's readiness for go-live.

Prosecutor role. The standard "prosecutor" role equips attorneys with the tools needed for day-to-day casework. These users may search cases, view details and records, submit supplemental or manual requests for missing cases, assign themselves to cases, assign or remove defense counsel for cases they manage, and communicate with laboratories regarding case-specific issues.

Prosecutor (Limited). For offices seeking additional internal control, the "Prosecutor (Limited)" role allows attorneys to locate cases and view basic summaries but does *not* permit access to records until the Prosecution Admin assigns the case to them. Once assigned, the attorney's permissions mirror those of the standard Prosecutor role. This structure benefits offices that want tighter oversight on how and when attorneys access forensic records.

Prosecution experts. Outside experts retained by the State may be added to specific cases by any of the prosecution roles. Experts have access only to the cases to which they are assigned and have no office-wide visibility. This ensures secure, case-focused collaboration while pre-

² www.dps.texas.gov/section/crime-laboratory/texas-clr-connect-discovery-portal.

venting unnecessary exposure to unrelated records.

Identifying a Prosecution Admin is the highest priority

During implementation, district and county attorney offices are responsible for ensuring that attorneys representing the State—as well as authorized defense attorneys under Art. 39.14—have access to the records they need. None of this can happen until the office identifies its initial Prosecution Admin, who becomes the central figure in the onboarding process.

The Prosecution Admin will:

- participate in focused training on system functions and user management,
- coordinate with DPS on onboarding timelines,
- establish office-wide access controls,
- ensure that prosecutors and defense attorneys are connected to the correct cases, and
- prevent delays in record access during the rollout.

Without this designated individual, the office cannot be onboarded, which means prosecutors may lack timely access to lab records during the transition period. DPS is already contacting elected prosecutors and their existing points of contact to coordinate onboarding and will continue regular outreach as launch approaches.

Training, support, and outreach

DPS has committed to extensive communication and training efforts leading up to the statewide launch. These include:

- virtual information sessions with multiple time slot options;
- attendance at conferences, regional gatherings, and prosecutor-oriented meetings;
- infographics and videos explaining key functions of the system; and
- direct communication channels for questions and scheduling presentations.

What prosecutors should do right now

1) Designate your Prosecution Admin. This is the single most important step and determines when your office will be onboarded.

2) Provide DPS with the contact information for that admin. The information may be emailed to CLRConnect@dps.texas.gov. This ensures your office receives the correct training materials and is contacted during the appropriate rollout phase.

3) Attend training opportunities. Early participation reduces future delays and helps offices understand how to align their workflows with the new system.

4) Prepare internal processes. Offices should begin evaluating how they currently manage forensics-related discovery and plan transitions to the standardized CLR Connect process.

5) Monitor updates. The CLR Connect Newsletter and outreach channels will continue sharing critical development information through launch and beyond.

Conclusion

Texas CLR Connect represents one of the most significant statewide changes to forensic discovery in recent history. By centralizing and standardizing how crime laboratory records are requested and shared, the system will enhance efficiency, improve transparency, and support statutory compliance for prosecutors and defense attorneys alike. With the late-August launch approaching, the role of district and county attorney offices, particularly in selecting Prosecution Admins, has never been more important.

Texas is on the cusp of establishing a new statewide standard for how forensic discovery is managed. With early preparation and active engagement, prosecutors can help ensure that transition is smooth, secure, and beneficial for all participants in the criminal justice system. ❖

DPS is already contacting elected prosecutors and their existing points of contact to coordinate onboarding and will continue regular outreach as launch approaches.

New report on protective orders reveals a range of accessibility

For those of us who work with victims of family violence, protective orders are more than legal documents.

They are often the last line of defense between a victim and future harm. The authors of this article come to this topic from different perspectives, Bronwyn Blake from statewide victim advocacy and Staley Heatly from prosecution, but we share the common goal of ensuring that protective orders (POs) remain accessible to those who need them. Through our work, we have seen firsthand how protective orders can interrupt escalating violence, provide victims with a measure of security, and—in some cases—even save lives. This practical experience made us particularly interested in the findings of the Texas Advocacy Project's (TAP) recent protective order report.

The geography of safety

TAP's new report, "Protective Orders in Texas: 2025 Statewide Survey of County Policies and Practices," documents how prosecutor offices around the state support victims in obtaining protective orders and the protections they provide. This publication is an update to a 2013 report¹ allowing for comparisons both around the state and the evolution of those responses over time. The report reveals a large variation in how victims can (or cannot) access assistance from their local prosecutors. Despite the proven efficacy of these orders and meaningful improvements over the last decade, a "safety gap" exists across county lines. This report shows how counties can be supported in aligning local processes with existing legislative standards.

A snapshot of the survey

For the past decade, Texas Advocacy Project utilized volunteer law students to conduct annual surveys to determine how each of Texas's 254 counties implements policy and procedures for



By Bronwyn Blake

(left) Chief Legal Officer, Texas Advocacy Project (TAP), & Staley Heatly

County Attorney in Wilbarger County

filing protective orders for victims of abuse. TAP was founded in 1982, initially as the first statewide legal aid hotline. It has since expanded into a nonprofit law firm providing a full spectrum of free legal services for victims of domestic and dating violence, sexual assault, stalking, child abuse, and human trafficking. Its survey explored how prosecutor offices handle protective orders, including whether they provide assistance and under what conditions. It covered prosecutor-imposed eligibility requirements, such as the need for a police report, recent violence, or an active prosecution. It also asked whether the office offers support during ongoing criminal cases, prosecutes violations of protective orders, or assists with including children in protective orders. Additionally, the survey inquired about how victims can apply for assistance, whether a notification system is in place for them, and whether the office collaborates with local organizations for safety planning and support. TAP has used the survey to maintain an internal database, which provides critical information for its attorneys as they assist clients to obtain protective orders and navigate their local court systems. Now, with funding from the Texas Bar Foundation, TAP published its findings in this report. Of the 254 Texas counties TAP reached out to, 183 responded (a 72-percent response rate).

¹ www.texasadvocacyproject.org/sites/default/files/WEB%202025/Protective%20Orders%20in%20Texas.A%20State-Wide%20Study%20of%20Policies%20and%20Practices.pdf.

Protective orders work. Since 1979, they have been the primary tool available to protect abuse victims in Texas.

The risk is real

According to the University of Texas Institute on Domestic Violence and Sexual Assault, 1 in 3 Texans has experienced domestic violence.² The Department of Public Safety (DPS) reported 240,925 criminal offenses with a family violence indicator in 2025 in its annual *Crime in Texas* publication. While this is a 3.7-percent decrease from last year, zooming out reveals this figure maintains the troubling plateau from 2022 onward (after a steady rise year over year) and actually marks a 22.6-percent increase in just one decade. The Texas Council on Family Violence's most recent "Honoring Texas Victims" report details the stories of the 161 Texans killed in family violence incidents in 2024.³ This is an issue that spans ages, incomes, education levels, and rural-urban divides.

Why POs are necessary

Protective orders work. Since 1979, they have been the primary tool available to protect abuse victims in Texas. Research indicates that legal intervention is the only service that directly correlates with a decrease in domestic violence (DV), and a 2002 study in the *Journal of the American Medical Association* found that victims with permanent protective orders were 80 percent less likely to be re-victimized in the 12 months after a DV incident.⁴ Protective orders are not a "family law problem," but rather a core public safety tool.

Protective orders are far more than "just a piece of paper." Seminal research by Dr. T.K. Logan indicates that they significantly reduce abuse and increase feelings of safety, though their ultimate effectiveness heavily depends on systemic enforcement, the abuser's history, and the presence of stalking. In cases where victims had received a PO and the suspect had not violated it, 79.5 percent of study participants reported they

believed the offender had not violated the PO because he was afraid of going to jail.⁵

While the statutory scheme for protective orders was laid in place decades ago, there have been expansions of these protections over the years. Texas currently offers protective orders for victims of family violence (which includes dating violence and child abuse), sexual assault, stalking, and human trafficking—all offenses that we know are underreported to law enforcement.⁶ Protective orders remain an important civil remedy whether or not a police report is ever filed or whether or not enough evidence exists to support a criminal case.

The report's findings

1 Enforcement of protective order violations has improved. One hundred seventy-one of 183 responding counties confirmed that they enforced violations of protective orders in 2025 (versus fewer than 140 out of 229 responding counties in 2013). This is a marked improvement and correlates with improvements in tracking violations and an increase in punishments for these offenses. This is good news worth celebrating.

2 Recency requirements. Twenty-seven percent of counties report requiring recent violence before they will accept a protective order case, despite there being no statutory basis for such a requirement. Part of this might be judicially motivated. During its 2023 session, the Texas Legislature commissioned a report on the efficacy of protective orders and found that many judges also required police reports and a recency of family violence. In fact, 47 percent of district court judges and 86 percent of county court-at-law judges require some recency of violence finding to issue a protective order.⁷

To be sure, prosecutor hesitancy in these cases is understandable. Few lawyers are eager to

² <https://utexas.app.box.com/v/dv-prevalence>.

³ https://tcfv.org/wp-content/uploads/2024-HTV-Report_WEB.pdf.

⁴ Holt, Victoria L., PhD, MPH; Kernic, Mary A., PhD, MPH; Lumley, Thomas, PhD., et al, "Civil Protection Orders and Risk of Subsequent Police-Reported Violence, *Journal of American Medical Association*, August 7, 2002, accessed at <https://jamanetwork.com/journals/jama/fullarticle/195163> (last visited June 24, 2026).

⁵ T.K. Logan, Ph.D., et.al. (2009) The Kentucky Civil Protective Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, & Costs.

⁶ Other offenses eligible for a protective order include compelling prostitution, burglary, indecency with a child, indecent assault, and aggravated sexual assault. Tex. Code Crim. Proc. Art. 7B.001(a)(1) and (2).

⁷ https://www.txcourts.gov/media/1459189/2024_protective-order-report.pdf.

devote limited resources to a case they believe is likely to be denied based on the practices of their local court. Nevertheless, prosecutors should be cautious about adopting judicially created requirements as office policy. The Family Code contains no recency requirement, and victims may face significant danger even in the absence of recent physical violence.

One might infer that this “recency requirement” is being used to triage cases and determine how best to deploy limited resources. If that is true, an evidence-based tool such as Jaqueline Campbell’s Danger Assessment may better serve that purpose. The weakness of relying on recency alone is that it assumes recent violence is the best indicator of future danger. Research suggests the issue is more complicated than that.

The Danger Assessment helps to determine the level of danger of being killed by an intimate partner. It was developed in the mid- to late-1980s, and it is free and available to the public. The Danger Assessment asks several questions and weighs them holistically. While one question does ask if the violence has *increased* in severity or frequency over the last year, that question is not weighed in a vacuum.⁸ Instead, it is considered alongside numerous other risk factors associated with intimate partner homicide. Prosecutors interested in learning more about the assessment can easily find it online,⁹ and it may provide a useful framework for evaluating risk when deciding how to prioritize limited resources.

3 Police report requirements. Twenty-three percent of counties reported that they require a police report before they will assist with at least some protective order cases. We know that many victims never report these crimes to the police. While this may defy logic to the uninited, in reality, there are a host of reasons a victim may not have sought help.¹⁰

Recently, Staley handled the case of a woman who had suffered abuse at the hands of her husband for more than 20 years. The abuse was severe, and it included strangulation, broken ribs,

and lost teeth. The assaults were frequent and often brutal, sometimes including abuse of their children. Yet she never filed a police report. When she decided she had enough and sought a protective order, there were no police reports documenting the history of violence. There were, however, years of medical records in which she repeatedly reported that she had been injured “at work.” Those injuries had, in fact, been inflicted by her husband. With this victim, a police report requirement would not have screened out a weak case—it would have screened out a legitimate victim who was in danger. While a victim may have never sought help from police in the past, the very act of seeking a PO now could increase the necessity for one. The research tells us that most family violence-related homicides occur during or directly after separation. Women in abusive relationships are 3.6 times more likely to be killed in the period immediately after separation than any other time in the relationship.¹¹

Code of Criminal Procedure Art. 5.06(b) states: “A prosecuting attorney’s decision to file an application for a protective order under Chapter 71, Family Code, should be made without regard to whether a criminal complaint has been filed by the applicant. A prosecuting attorney may require the applicant to provide information for an offense report, relating to the facts alleged in the application, with a local law enforcement agency.”

4 Firearms. The presence of a firearm is one of the strongest lethality indicators in family violence cases, making it approximately five times more likely that a woman will be killed.¹² Texas law prohibits respondents subject to certain protective orders from possessing firearms. However, the law provides little guidance regarding

The presence of a firearm is one of the strongest lethality indicators in family violence cases, making it approximately five times more likely that a woman will be killed.

⁸ <https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:1ead12f8-c353-4577-abb8-4d2d0251ce3b>.

⁹ <https://www.safvic.org/wp-content/uploads/2017/05/Danger-Assessment.pdf>.

¹⁰ Sarah M. Buel’s “Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay.”

¹¹ Campbell, Jacqueline; Webster, Daniel; Koziol-McLain, Jane; et. al., “Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study” (2003), American Journal of Public Health, available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC1447915/> (last visited June 9, 2026).

¹² Campbell, J.C., et al., “Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study,” American Journal of Public Health 93, No.7 (2003): 1089–1097, available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC1447915/> (last visited June 9, 2026).

The Texas Family Code has placed the primary duty for family violence protective orders squarely on the shoulders of prosecutors.

how those firearms should be surrendered, stored, tracked, or ultimately returned.

This lack of uniformity is reflected in the survey results. One-quarter of counties reported that they do not have a firearm surrender protocol. That figure is perhaps less surprising when one considers that firearm surrender protocols are a relatively recent policy innovation rather than a traditional function of courts, prosecutor offices, or law enforcement agencies. Historically, courts issued orders and law enforcement enforced violations; neither was routinely tasked with creating and administering firearm surrender systems. As a result, jurisdictions seeking to implement firearm surrender protocols are often building entirely new processes with little statutory structure and few established models to follow. There is significant opportunity for improvement in this area, but there remains considerable uncertainty regarding what an effective and workable statewide model should look like. There is a big opportunity for improvement here, but few models to replicate.¹³

5 Standardized forms. Most counties have adopted the standardized protective order forms created by the Office of Court Administration (OCA),¹⁴ with only 14 percent of counties reporting that they are not yet using them. Standardized protective order forms were mandated by Senate Bill 48 from the 88th Texas Legislature in 2023. The bill requires the OCA to create uniform, standardized application and order forms for temporary *ex parte* orders, protective orders, and magistrate's orders for emergency protection. Failure to use the standardized form does not invalidate the order itself, but it does undermine the goals of increased access and better enforcement.

6 Seeking custody and/or child support. Texas Family Code §85.021 specifies that protective orders may include a number of provisions including child support and custody. When TAP asked prosecutor officers if they would include those provisions, only 15 percent of counties responded in the affirmative. While seeking these provisions is optional and it is up to the court's discretion whether to grant them, they can be the key to lasting safety and stability.

¹³ www.texastribune.org/2022/10/20/texas-domestic-violence-firearm-surrender-programs.

¹⁴ www.txcourts.gov/forms/standardized-protective-order-forms.

Many prosecutors may be reluctant to seek these provisions because they can introduce issues traditionally associated with family law litigation. Nevertheless, victims who return to abusive partners often cite financial reasons for doing so. Pursuing the remedies authorized by §85.021 can help ensure that victims have the financial support necessary to establish independence while separating from an abuser who may have exerted financial control as part of the abuse. Financial abuse occurs in 99 percent of domestic violence cases.¹⁵

Why this is a prosecutor's issue

The Texas Family Code has placed the primary duty for family violence protective orders squarely on the shoulders of prosecutors. The statute reads, "The county attorney or the criminal district attorney is the prosecuting attorney responsible for filing applications under this subtitle unless the district attorney assumes the responsibility by giving notice of that assumption to the county attorney."¹⁶ In 1995, the legislature added this line: "The prosecuting attorney responsible for filing an application under this chapter shall provide notice of that responsibility to all law enforcement agencies within the jurisdiction of the prosecuting attorney"¹⁷ based on a recommendation of the Interim Committee on Domestic Violence, which found that considerable confusion on this point had arisen. Thirty years later, this confusion unfortunately persists. Three counties reported to TAP that they do not assist with protective orders of any kind, and it is more than likely that similar responses would have been found among at least some of the 71 counties that did not respond at all.

Three things every prosecutor office can do

1 Audit your internal policies against the statutes and give critical attention to any requirements that have no legal basis. Certain policies may be justified by prosecutorial discretion or careful allocation of limited resources, but

¹⁵ Adams, Adrienne E. "Measuring the Effects of Domestic Violence on Women's Financial Well-Being." CFS Research Brief, 2011-5.6; <https://cfs.wisc.edu/wp-content/uploads/2015/04/adams2011.pdf>.

¹⁶ Tex. Fam. Code §81.007(a).

¹⁷ Tex. Fam. Code §81.007(b).

they may also create real barriers for victims seeking help. This is an opportunity to revisit those policies, examine the reasons behind them, and determine whether the same goals may be accomplished while improving access to protective orders.

2 Connect or reconnect with your local family violence center and Texas Advocacy Project. In the survey, 142 counties report active shelter or advocacy partnerships (up from about 120 in 2013). This is excellent progress. The Texas Council on Family Violence maintains a directory of local programs listed by county.¹⁸ Some counties benefit from co-located advocates, formal MOUs (memoranda of understanding) with shelters, and multi-agency coordination. It may be possible to collaborate on a coordinated intake, saving your office time while improving services to victims. TAP provides free legal services statewide and has agreements with several prosecutor offices to take referrals on certain cases (for example, those involving conflicts).

3 Check out your online presence. As part of this report, TAP performed an internet search for each county's online resources. Some have zero information; others have applications to make the process easier for victims to access their services. Search for the name of your county and "how to get a protective order" for a quick and dirty idea of where you stand on this spectrum.¹⁹

A shared obligation

We want all Texans to have equal access to the tools designed to keep them safe from future harm. Each prosecutor office is vital to that effort. The data in this report gives us a chance to have conversations and ultimately remove some of the barriers preventing victims from accessing safety. While resource constraints are real and no office can do everything, every office can make sure victims know where else they can turn for help. *

¹⁸ <https://tcfv.org/wp-content/uploads/2025-TCFV-Service-Directory.pdf>.

¹⁹ In the process of writing this article, Staley realized that his county has some work to do on this front.

Recent milestones of note

Appointments

Leslie Timmons was appointed as the District Attorney for the 31st Judicial District, which includes Gray, Hemphill, Lipscomb, Roberts, and Wheeler Counties. Her term is set to expire on December 31 or until a successor is elected and qualified. Timmons has served as the County Attorney in Wheeler County since 2013 and as the County Attorney in Roberts County before that.

Honors

Senator Lois Kolkhorst (R-Brenham), pictured on the right with TDCAA Executive Director Shannon Edmonds (left), was presented with TDCAA's Law and Order award for her efforts during the 89th Regular Session. Senator Kolkhorst helped pass SB 888, which allows the Texas Attorney General to represent local prosecutors in lawsuits concerning state laws. This law came from prosecutors in Smith and Burleson Counties, who notified Senator Kolkhorst of the need for this support. She also passed SB 745, which increased the penalty for intoxication manslaughter to a first degree felony if more than one person is killed. Senator Kolkhorst also continues to be a champion for protecting children in the CPS (Child Protective Services) system as Chair of the Health and Human Services Committee.



David Escamilla, former County Attorney in Travis County and one-time TDCAA Board President, was honored with the dedication of a conference room bearing his name at the CA's Office.

Neil Kucera, an assistant criminal district attorney in Hays County, received the Texas Environmental Excellent Award (individual category) from the Texas Commission on Environmental Quality (TCEQ). This award honors achievements in environmental preservation and protection and is the highest environmental honor awarded by the state of Texas. Kucera serves as his office's environmental attorney and leads the Environmental Enforcement Division.

Dayatra Rogers, TDCAA's Database Manager & Registrar, was recognized in at the end of June for her 20th year at the association. She is pictured on the right with Shannon Edmonds, TDCAA Executive Director. *



A list of TDCAA's online courses

Visit our website at www.tdcaa.com/training/#online-training for more information about any of these courses and to register for them.

2026 Ethics Update

This two-hour course features C. Scott Brumley, County Attorney in Potter County, and Ariane Flores, Assistant County Attorney in Williamson County. Scott takes us on a tour of our favorite ethical vacation retreat, Conflicts Island. He covers a wide range of situations and examples so that prosecutors—especially our civil practitioners—are ready in case they find themselves caught on Conflicts Island.

In the age of “right now” news, prosecutor offices are bombarded with media requests. While we may wish to keep our communities fully informed, Ariane explains the ethical concerns raised by speaking to the media about ongoing litigation and highlights the ethical duties that all prosecutors must follow in cases involving both criminal defendants and juveniles. Every attorney completing this online course will receive two hours of CLE ethics credit.

Diminishing Diminished Capacity

Defense arguments for diminished capacity happen every day in courtrooms across Texas, but knowing how to combat these arguments can be tough. Join Lauren Bard, Assistant District Attorney in Harris County, as she explains what diminished capacity is, what it isn't, and how to properly keep it out of your next trial. Viewers who complete the course will receive one hour of CLE.

Forensics in the Courtroom: DNA

When prosecutors ask in jury selection what sort of scientific evidence the jury expects the State to produce at trial, the first response is often “DNA.” But presenting DNA evidence to a jury can be intimidating. After all, we are attorneys, not scientists! If you've ever felt this way about presenting DNA evidence, please join Tiffany Larsen, Assistant District Attorney in Brazos County, as she walks through what prosecutors should understand about DNA and how to use this evidence in the courtroom. Tiffany breaks down DNA terminology, testing, and results and explains different ways to use those results in the courtroom. Viewers who complete the course will receive 1.75 hours of CLE.



Now available: TDCAA's prosecutor booklet

TDCAA is proud to present the 2026 update to our prosecutor booklet, which is meant to be an educational and a recruitment tool for those who might be interested in prosecution as a profession. It features input from several prosecutors from offices all over the state. We have included it in each copy of this issue of the journal so everyone in our

service group (prosecutors and prosecutor office staff) can see it. As a service to our members, TDCAA makes this booklet available *for free* to anyone in our service group who might want them for law school visits, public presentations, and the like. Simply send your request (how many copies you need) to the editor at Sarah.Halverson@tdcaa.com. *

Forensics in the Courtroom: Genetic Genealogy

In the last few years, genetic genealogy has swiftly transformed from an easy way to build a family tree to a cutting-edge tool for solving both cold cases and active investigations. Join Leighton D'Antoni, Assistant Criminal District Attorney in Dallas County, as he explains the emerging importance of genetic genealogy and how it can be used by law enforcement and prosecutors to bring justice to crime victims. If you need a DNA refresher, TDCAA recommends viewing "Forensics in the Courtroom: DNA" before moving on to this one. Viewers who complete this course will receive 0.75 hours of CLE.

Fundamentals of Child Welfare Law

Many Texas prosecutor offices have taken on the important responsibility of representing the Department of Family and Protective Services (DFPS) in legal proceedings related to child welfare in their jurisdictions. In this six-part video course presented by highly experienced Texas prosecutors and DFPS attorneys, you will learn the fundamental skills of child welfare law specifically designed for prosecutors that represent DFPS. This course provides 5.25 hours of CLE.

How Does a County Buy & Sell Property?

Great question! There is much to consider. Follow along as Jennifer Fox, Assistant County Attorney in Fort Bend County, explains the ins and outs of buying and selling county property. She covers what items should be included in a purchase agreement when the county buys land, the best method for selling public property, and what procedures must be followed for a successful transaction. This course is free of cost, and those who complete it will receive 0.75 hours of CLE.

Introduction to Juvenile Law

This course covers the fundamentals of juvenile law ranging from terminology all the way to juvenile trials and confidentiality. Our team of juvenile law experts come from across the state and give insight for prosecutors practicing in both rural and urban jurisdictions. The course will help prosecutors new to juvenile law as well as veteran prosecutors who would like to learn more about this often overlooked but crucial area of our justice system. Viewers who complete the course will receive 4 hours of CLE. This course is free of cost.

Mental Health Courts & Jail-Based Competency Restoration

This course is divided into three presentations. In the first, Jason Steans, Assistant County Attorney in Williamson County, discusses the recent emergence of jail-based competency restoration. This program allows defendants to remain in custody and receive treatment by mental health providers while in jail. Mr. Steans discusses the statutory authority for these programs as well as some of the benefits and challenges they present. The second presentation is by Jessica Frazier, Assistant Criminal District Attorney in Comal County, and Malori Martin, Assistant Criminal District Attorney in Walker County. Ms. Frazier walks through the statutory steps for establishing a mental health court. In the second part of the presentation, Ms. Frazier and Ms. Martin discuss not only the benefits of mental health courts but also what prosecutors can do in counties without mental health courts to make sure that defendants with mental health issues are being properly addressed. In the final presentation our presenters answer questions they have received in their role as mental health prosecutors.

Mandatory *Brady* Training (2022)

This is a free course on a prosecutor's duty to disclose exculpatory and mitigating evidence and information. It meets the requirements of Government Code §41.111 and has been approved by the Court of Criminal Appeals. All prosecutors must take this course at least once every four years. Those who complete it will receive 1.25 hours of CLE ethics credit.

Also note that TDCAA is in the process of updating this Brady course for 2026. Keep an eye on our website at www.tdcaa.com for its launch. *

Ensuring permanency after the trial has concluded

Let's pick up where we left off in my previous article: with its concluding sentiment of "Let's go to trial!"¹

Once trial is over, we should contemplate this: After all the time spent preparing for a termination trial, no one walks into the courtroom expecting the judgment to be reversed. Yet trial victory is often not the final chapter. Appeals are pursued, and reversals do occur.

A review of recent opinions from the Texas Supreme Court reminds us that termination judgments remain subject to careful appellate scrutiny.² And while a number of appellate issues can jeopardize a termination judgment, one finding deserves attention from the very beginning of the case: whether CPS made reasonable efforts to return the child to the parent.

Reasonable efforts are not simply proven at trial. They must be made, documented, and explained throughout the life of the case. The evidence to support that finding was developed throughout the case—or it does not exist.

As CPS (Child Protective Services) prosecutors, we must think as trial lawyers and appellate lawyers simultaneously. Every witness examination should be designed to not only persuade the trial court, but also to create a complete record. That record must establish the statutory grounds for termination, the child's best interest, and—central to this article—CPS's reasonable efforts throughout the life of the case. By intentionally developing that evidence throughout the case and ensuring it is reflected in the trial record, we increase the likelihood that a favorable judgment



By Leslie Odom

Assistant County & District Attorney in Ellis County

will withstand legal and factual sufficiency challenges on appeal and provide lasting permanency for the children involved.

This article focuses on creating that record through proving CPS's reasonable efforts.

Reasonable efforts

Texas Family Code §161.001 dictates how we achieve termination. While this article focuses primarily on CPS's reasonable efforts, CPS prosecutors should remember that a strong appellate record must address all three components outlined in §161.001, the first two being a record clearly establishing the statutory grounds supporting termination and the evidence demonstrating that termination is in the child's best interest.

Section 161.001 continues, however, and directs that CPS must provide a basis for the trial court to make a finding that, despite the efforts undertaken by CPS, reunification was not a viable option for the child.³ In other words, CPS made attempts toward reunification and those attempts and efforts proved unsuccessful, or it was too unsafe to even try.

However, "reasonable efforts" isn't a concept limited to CPS trials. It is a mandated, case-specific standard woven throughout various statutes guiding our efforts through the life of CPS cases.

¹ In the May–June 2026 issue of *The Texas Prosecutor* journal, "Trial preparation for termination of parental rights"; www.tdcaa.com/journal/trial-preparation-for-termination-of-parental-rights.

² See, e.g., four recent cases on termination issues issued by the Texas Supreme Court on the same day: *In the Interest of H.S., B.S., and M.S.*, No. 24-0307 (Tex. June 5, 2026); *In the Interest of K.N., K.L., K.L., and K.L.*, No. 24-0881 (Tex. June 5, 2026); *In the Interest of C.S. Jr. and Z.S.*, No. 25-0008 (Tex. June 5, 2026); *In re S.H.*, No. 26-0030 (Tex. June 5, 2026).

³ Tex. Family Code §161.001(f).

This recurring statutory requirement is instructive because it demonstrates that reasonable efforts are not confined to the termination trial; rather, these efforts are expected throughout a CPS case. From CPS's decisions during an investigation leading to a child's removal from his or her home, to the termination trial, and even into the court's review of the child's circumstances in CPS's permanent managing conservatorship (PMC), reasonable efforts are consistently being evaluated. This obligation falls on CPS, from investigators to caseworkers, and the record at trial, therefore, should not only reflect what efforts were made but also why those efforts were reasonable given the unique circumstances of that particular family.

You will not find a definition of this term because a stringent definition would be contrary to the intended purpose of its guidance; its intent is to create a case-by-case analysis, and therefore, no one definition would correctly serve us. CPS must be able to prove its efforts to prevent or eliminate the need to remove children from their homes. If a child must be removed, CPS must also be able to prove its consideration of all options, consistent with the child's safety, to enable the child's return. We also know that the child's health and safety must remain of utmost concern.⁴

How does this relate to trial and avoiding reversals of favorable judgments? I believe that if we, as counsel for CPS, encourage its embrace of meeting the reasonable efforts standard throughout each case, and CPS is consistently documenting those efforts from removal to trial, we prosecutors are then sure to have a healthy amount of evidence to present at trial.

A standard throughout the CPS case

The Children's Commission has created a Reasonable Efforts Findings Checklist, a helpful two-page resource.⁵ It outlines the court's findings to be made at each statutory CPS hearing. Consider the following appearances of "reasonable efforts" throughout the statutes that govern the various

hearings in a CPS case's life and the questions pertaining to this standard:

Ex parte emergency removal hearings: What efforts were made to prevent removal? Were the efforts reasonably based upon the child's and parent(s)' circumstances?⁶

Adversary hearings: What efforts has CPS made to enable possession of the child by a parent not involved in the removal, for instance? What efforts is CPS making that are consistent with the circumstances of this particular family to eliminate the need for removal of the child?⁷

Status hearings: Does the family service plan that CPS has created ensure reasonable efforts will be made to address the reasons for removal?⁸

Permanency hearings before final orders: In CPS's efforts to finalize permanency for the child, have we determined a path toward reunification or an alternative outcome? Can the child be returned home?⁹

Final hearing on the merits: What specific efforts have been made to return the child to the parents prior to seeking termination of parental rights?¹⁰

Permanency hearings after final orders: What reasonable efforts is CPS engaged in while ensuring permanency for the child?¹¹

In preparing my client to answer these types of questions, I have found regular legal staffings with my team—our legal liaison, caseworker supervisors, and caseworker—to be essential. As time permits (and admittedly, we occasionally miss a month!), we meet to review each case, assess the progress, and determine the appropriate path forward. We discuss whether service plans have been developed and reviewed with the parents, how the children are doing in their foster or fictive kin placements, whether we continue to identify and assess relatives for placement, and whether our permanency goals remain appropriate.

In preparing my client to answer these types of questions, I have found regular legal staffings with my team—our legal liaison, caseworker supervisors, and caseworker—to be essential.

⁴ Tex. Family Code §262.001.

⁵ You can find it at <https://texaschildrenscommission.gov/media/v4ibvcxl/08-reasonable-efforts-checklist-long.pdf>.

⁶ Tex. Family Code §§262.102(a)(6) and 262.107(a)(5).

⁷ Tex. Family Code §262.201(g)(2), (3), (g-1)(2).

⁸ Tex. Family Code §263.202(b)(1).

⁹ Tex. Family Code §§263.306(a-1)(5)(C) and 263.5031.

¹⁰ Tex. Family Code §161.001(f).

¹¹ Tex. Family Code §263.5031(a)(4)(E).

Simply because all of us in the courtroom know why the parents deserve to have their rights terminated, that it was most certainly in the child's best interest, we must be mindful that the courtroom isn't always our final audience.

During these staffings, I often ask not only whether a service was offered, but also how it was offered. Was transportation for services discussed? Was the parent's work schedule considered? Caselaw informs us that the creation of a family service plan is generally evidence of CPS's reasonable efforts to reunify the family,¹² but exploring the details of implementation of the plans helps caseworkers provide more persuasive testimony by explaining the specific efforts to assist the family, rather than relying on conclusory statements. These staffings do more than keep me informed about the status of our cases; they help caseworkers understand the importance of making, documenting, and being able to testify about the reasonable efforts they have made to assist the family. They also allow me to advise my client whether the evidence continues to support reunification efforts or whether the facts have shifted toward a recommendation of termination.

I also take every opportunity to train with my team to encourage their best casework, which includes assessment of the reasonable efforts being made during the case. Just the other day, I was training my investigations team on affidavit writing, and I reminded everyone of the importance of articulating reasonable efforts in those affidavits.¹³ It is easy to become complacent in writing affidavits because it represents their last task before closing a case, but I remind the affidavit writers that these affidavits in support of removal petitions are actually the *first* task in the creation of our legal cases! The reasonable effort require-

ment begins with decisions to remove children from their parents.

Developing the record for trial and appeal

As affidavit writers sometimes become complacent when writing removal affidavits, we prosecutors can also become so wrapped up in the reasons why termination is a just resolution to a CPS case that we might become complacent in our presentation of the case to the court. It's tempting: The case feels so fresh and familiar to us in the trial courtroom that we can find false comfort in assumed facts. After all, the judge on the bench is the same person who has heard the removal facts at the adversary hearing and ruled in our favor. He is also the same judge who has heard how CPS attempted a monitored return of the child, only for the parent to squander that opportunity and test positive for cocaine. That familiarity can be emotional for the CPS team and just might change how we present the case to the court at trial.

But this is where I need to remind myself (and perhaps you) that we CPS prosecutors cannot fall into the trap of assuming facts or abbreviating testimony because it all feels so familiar to us. Simply because all of us in the courtroom know why the parents deserve to have their rights terminated, and that it was most certainly in the child's best interest, we must be mindful that the courtroom isn't always our final audience. Facts that may be familiar to the trial judge are invisible to the appellate court—unless those facts are affirmatively developed in the record. The appellate court reviews the transcripts and exhibits, not institutional knowledge, docket history, or silent assumptions shared by the participants at trial.

We CPS prosecutors must create a solid trial record that can withstand the scrutiny of appellate courts.¹⁴ And the work that satisfies CPS's statutory obligations throughout the life of the legal case is often the same work that protects the judgment on appeal. We are not creating a record merely because an appeal may happen; we are creating a record because CPS's reasonable efforts are themselves a fact issue that should be affirmatively demonstrated. By the time the case

¹² *In the Interest of M.N.M.*, 708 S.W.3d 321 (Tex. App.—Eastland 2025, pet. denied).

¹³ Helpful tip No. 1: Assure attendance at trainings on important topics such as affidavit-writing by including the investigation unit program director in the scheduling and asking the program director to make attendance mandatory. Helpful tip No. 2: Detailed and thorough removal affidavits are not just beneficial for the casework and achieving removal but also assist at trial later. In those instances where an investigator is no longer employed by CPS when trial comes around, that person will be wholly reliant on the affidavit to review and prepare, as he will not have access to the narratives as he would've while employed. So you might receive some appreciation if you encourage detailed affidavits, if for no other reason than for this purpose.

¹⁴ If you doubt yourself in trial preparation, speak to your appellate counsel, and he or she will certainly (and kindly) remind you of the importance of this statement.

reaches a termination trial, CPS has spent months working with the family, identifying issues and facilitating services, ensuring parent-child visits occur, addressing barriers to reunification, and exploring less restrictive alternatives to termination. And likewise, when termination ultimately becomes the appropriate outcome, the record should tell that story clearly and completely. It should reflect not only why termination was necessary, but also the efforts to avoid it.

Appellate courts do not review the case that *could* have been presented; they review the record that was actually created. Consequently, a termination judgment is only as strong as the evidentiary record supporting it. Critical facts that are assumed to be understood by the court—but that are never fully developed through testimony or admitted exhibits—effectively do not exist for appellate purposes. Therefore, the trial record should answer these fundamental questions, among many others:

- Why was removal necessary?
- What safety concerns existed at the outset of the case?
- What services and interventions were offered to address those concerns? What reasonable efforts were made?
- How did CPS assist the parents in accessing and completing services?
- In cases where a parent is incarcerated, did we call the facility chaplain to coordinate services that were available for the parent? Are those particular services reflected in the family service plan? Were they discussed with and set up for the incarcerated parent?
- What progress, if any, was achieved in completion of services?
- What barriers prevented reunification?
- Why did CPS ultimately conclude that termination is necessary to protect the child?

When these questions are answered through detailed testimony and documentary evidence, the trial court's findings become firmly grounded in the record. Don't leave a void in the record about the service plan and its creation, which was tailored not only *with* the parents but also *for* their needs. Nor should we omit establishing details such as transportation offered for services or parent-child visits. The appellate court is then able to evaluate not only isolated incidents of parental conduct, but also the entire history of CPS's involvement and the extensive and reasonable efforts to achieve permanency. That is what is expected of CPS to terminate parental rights.

In conclusion

The reality of our practice as CPS prosecutors is that some of our most important audiences are not in the courtroom. The appellate justices reviewing a termination judgment will never meet the child, parents, caseworker, or investigator. They will not have the benefit of the countless conversations, staffings, and court settings that shaped the case. They will know only what we preserved in the record.

That reality should influence how we approach every stage of a CPS case. From the initial removal decision through final trial, CPS is repeatedly called upon to demonstrate its reasonable efforts to protect children, support families, and pursue permanency. When those efforts are documented, discussed, and developed throughout the life of the case, they become more than statutory obligations—they become the foundation of a record capable of sustaining the trial court's judgment on appeal. And those efforts should be made. Termination is intended to be a last resort.

So, yes—let's go to trial. But let's do so with the broader objective of building every case understanding that the record we create today may one day be the only voice speaking for the child before an appellate court. If we make and document reasonable efforts throughout the life of the case, we have done our best to ensure that trial victories are not only achieved but preserved. ✱

Appellate courts do not review the case that could have been presented; they review the record that was actually created. Consequently, a termination judgment is only as strong as the evidentiary record supporting it.

How *Leaders Eat Last* shaped my view on leadership

If you are a prosecutor, you likely serve in a leadership role, whether you realize it or not.

The role of prosecutor demands leadership regardless of one's assignment. On a daily basis we are in situations where people turn to us for guidance and direction. We are tasked with leading our work team: other prosecutors, victim assistance coordinators (VACs), investigators, and paralegals. Other times, we need to serve as leaders for witnesses, law enforcement, and even jurors (after we are tasked with guiding and influencing the jury as we argue our case).

A recent read of the book *Leaders Eat Last* by Simon Sinek both challenged me and helped me see leadership as an important quality in how I practice law. The book focuses on numerous case studies highlighting the importance and need for leadership in our lives. Its examples and lessons are applicable to prosecutors too—our profession is demanding and requires leadership and courage.

As I finished the book, I reflected on some of the general lessons that really spoke to me. These particular lessons were relevant to the challenges of being a leader and the practice of law: the value of competition, how to foster trust, and looking after your team.

Competition

Attorneys live, work, and even breathe competition. Prosecution teams are passionate about their cases and want to convince juries to return just verdicts. A poignant bit of caution that the book highlights is to not let the competitive spirit spread too much into our daily interactions with the team. How have I let Sinek's sage advice affect my practice of law? Every chance I get, I strive to remember that competition can be healthy as it drives us and inspires us to be better. However, competition should not color how we interact with colleagues. The moment it becomes the primary motivation in our daily work is when we lose sight of how to best achieve just outcomes in our cases.

How have I sought to implement these suggestions? When working with my team, I have found it useful to start off by asking for their input and ideas *before* I present mine. Eliciting



By Joshua Luke Sandoval

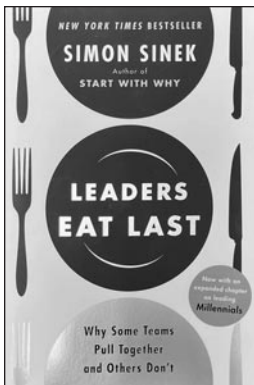
Assistant Criminal District Attorney in Bexar County

opinions from every person before I put in my two cents has really helped me to personally emphasize the team mentality and minimize the individual aspect of the job we do.

Foster trust

Teams work best when its members can trust one another and their leader. The type of trust that the book discusses is more than just believing what someone is saying. The trust that is necessary for true leadership is grounded in integrity and transparency. It is imperative that your team believes that you (as a leader) will be right there when the goal demands it. Leadership doesn't place you on a throne above toil in the trenches. Rather, true leadership is an obligation to work alongside every team member, no matter how long it takes or how hard it may be. This is how trust is earned: through work and sacrifice.

Trust sounds like a great idea in the abstract. It's easy to describe and most everyone will agree that it is a worthy endeavor. But how exactly do we take it from a concept and turn it into a daily practice? When I am acting as a leader with my team, trust is paramount. If my colleagues believe I am willing to undertake any task that they are doing, I am on a good road to establishing trust. Since reading Sinek's book, I have tried to be more cognizant of the tasks I take on and the tasks that I give to my team. Every day, I strive to make it known that no role or duty I ask of my team is one that I wouldn't willingly undertake myself. Trust needs action, not just words.



Look after your team

True leadership is service-oriented. Every member of a team possesses a valuable role. Simultaneously, each member is a normal person with real struggles and worries. Life is difficult enough without the harsh realities we see on a daily basis. Our job can take a toll on anyone. Keeping that in mind, try to create an atmosphere in which goals (both individual and team) are clear. Make sure those around you feel supported and know that their efforts are valued. Compliment team members when there is a job well done. When mistakes are made (as they invariably will be), be direct that a standard wasn't met and develop realistic methods to obtain different results in the future. If you want results, make them measurable and quantifiable.

Although it can be difficult to point out when someone has fallen short of expectations, leaders cannot run from their obligations. Leaders must step out of their comfort zone for the sake of the team and for the best results. Leaders stand up for their teams and offer positive feedback and constructive redirection when needed.

This is one of the most rewarding changes to incorporate into your leadership repertoire. Since reading Sinek's book, I have worked to radically improve this aspect of my leadership. Daily, I make sure team expectations are fair and clearly communicated. This is where the regular docket meeting can really come into play. Personally, I have found it useful to make progress inquiries with team members. If someone's pressing tasks have proven to be more laborious than anticipated, I pivot and reassign tasks or extend deadlines as needed. Just the other day, a list of potential witnesses to a violent offense uncovered exponentially more work than initially anticipated. As such, I had to change my initial expectation of how much effort that part of case preparation would require, and I stepped in and took on some work to even things out.

Actions like this (and re-evaluating the plan of attack) ensure the workload is equitably distributed. No one wants to see team members suffer from burnout or have to carry a disproportionate load. As a leader on a team, you must make certain that every person has just the right number of important tasks on their to-do list.

Conclusion

It's easy for me to look back at the formative years of my prosecutorial career and wish that I could

be half the ADA that some of my mentors were. If I had to wager, I'd say a lot of y'all might feel the same way. I have yet to meet a prosecutor who can't look back and fondly mention at least one mentor who helped form them into what and who they are today. Strive to be that type of mentor and a leader for those around you. Leadership is difficult, but it is beyond rewarding and in many ways is the glue that holds our profession together.

As Simon Sinek put it, "Leadership is not a license to do less; it is a responsibility to do more. And that's the trouble. Leadership takes work. It takes time and energy. The effects are not always easily measured, and they are not always immediate." ❀

Domestic violence prosecutions with uncooperative victims

Anyone who has spent any time prosecuting domestic violence cases knows that often, one of the biggest hurdles to winning the case at trial is the victim. Now, that feels like a terrible thing to say, but it is the truth.

Equally as true, however, is that victims often genuinely believe they have no other choice but to refuse to cooperate with us as we prosecute their abusers. Not only that, but uncooperative victims will also often feel, through victim blaming, minimization, and other forms of manipulation, that the assault was their fault and the only fair outcome in their abusers' cases is a dismissal.

However, much to the dismay of abusers, prosecutors don't automatically dismiss every case with an uncooperative victim. Our jobs would be a lot easier if we did, but we would also be violating our oath to do justice. Many cases with uncooperative victims will inevitably end in dismissal, but there is a careful calculus to be done in deciding whether to prosecute when a victim is uncooperative.

The case study in this article aims to serve as a guide for prosecutors in the difficult position of deciding whether to prosecute a defendant with an uncooperative victim and how to do so effectively. My first trial after joining the Special Victims Division in the Kaufman County District Attorney's Office was one such case with an uncooperative victim.

Facts of the offense

The defendant was Jimmy Don Thompson. He was charged with assault family violence (impeding breath). The charge was enhanced with two prior pen trips, making his punishment range 25 years to 99 years or life. Even further, Thompson, 42 years old at the time of offense, had four total pen trips and two more state jail stints on top of that.¹ At one point in a jail call with his victim, Thompson remarked that he had spent more

¹ Surprisingly, none of Thompson's felony history was assaultive.



By Jackson Heard

Assistant Criminal District Attorney in Kaufman County

time behind bars since turning 18 than he had spent in the free world.

On the night of October 15, 2024, he was at a friend's house with his common-law wife, Tabatha, and a group of others. Thompson was working on his truck, something he did seemingly compulsively (possibly due to the influence of drugs) when he got into an argument with another guest at the home. This verbal argument quickly escalated into a brawl, one that Thompson would lose. Tabatha got between the two men, but not before Thompson took some good licks to the face.

Enraged by this embarrassment, Thompson jumped into his truck and sped home, followed closely by Tabatha in a separate vehicle. Upon arriving home, Thompson kicked in his own door and barged into the house to clean his wounds. Tabatha entered shortly after and was welcomed with a familiar beratement. Thompson was angry with his wife about her role in the fight because she broke it up instead of picking up a steel pipe and whacking the other guy in the back of the head with it. Thompson told her that because this guy had messed up his face and because she didn't have his back, she had to take his gun and go kill his assailant. When Tabatha refused, Thompson threw her onto the bed, jumped on top of her, and used both hands to strangle her. He strangled her for so long and with such force that she couldn't keep her tongue in her mouth,

and she was no longer able to swallow. Thompson left handprints on each side of Tabatha's neck, and when he was done with her, he fled the scene, eventually crashing his truck in the next county over and having some friends pick him up.

Meanwhile, a friend of Tabatha's convinced her to go to the hospital and gave her a ride. Once there, the staff started treating her and called police. When Sergeant Sabrina Martinez with the Crandall Police Department arrived at the hospital, Tabatha reluctantly told her everything that had happened, but she stressed that she did not want Thompson prosecuted, that she just wanted protection. Sgt. Martinez took down everything she was told, safety-planned with Tabatha, and had another officer posted near their home in case Thompson came back.

Sgt. Martinez also informed Tabatha that, over her objection, she planned to charge Thompson for the strangulation and get a warrant for his arrest. Sgt. Martinez did just that. However, Thompson wouldn't be arrested on that warrant for almost a month. In that month, Thompson and Tabatha lived together the entire time and were able to discuss what they would say and do if and when he got arrested.

Affidavit of non-prosecution and its implications

Thompson eventually did get arrested. Within days of his arrest and before the agency even submitted the case to us, Tabatha came to our office to sign an affidavit of non-prosecution (ANP).² In her affidavit, Tabatha wrote that she did not want to pursue charges and that she only told the police that Thompson attacked her because she found out he was cheating on her and she was angry. She also wrote that she was actually attacked by the same man who fought Thompson.³ She said that while she was trying to break up the fight, the man grabbed her by the throat and as-

saulted her. Finally, she wrote that upon Thompson's release, they planned to pursue counseling.⁴

After signing the ANP, Tabatha called our office multiple times to see whether we had received the case and ask which prosecutor it was assigned to. Eventually, my predecessor received the case and, after reviewing it and speaking to Tabatha, decided to indict it and offer Thompson eight years in TDCJ (the Texas Department of Criminal Justice). I then inherited the case, and on my first setting with it, Thompson's attorney let me know that if the offer was prison time, Thompson wanted a trial. I stuck to the eight-year offer and returned to my office to figure out how to prove this case.

Body-worn camera

My first concern was figuring out how to get Tabatha's story out without violating the rule against hearsay or the Confrontation Clause. I did not expect her to show at trial, and even if she did, I didn't expect her to tell the truth, so I needed to find a way to get her original telling of the assault to the jury. The first break I got was that the officer in this case, Sgt. Martinez, responded to Tabatha's hospital room. While Sgt. Martinez was with Tabatha, the doctor came in, and Martinez stepped aside so the doctor could examine and speak with Tabatha. In the presence of Martinez, Tabatha told the doctor everything that had happened and detailed her injuries. The officer captured almost the entire interaction on her body-worn camera.

That video-recorded interaction between Tabatha and the doctor could come in at trial because her statements to the doctor were for the purpose of medical diagnosis and treatment⁵—they were not testimonial for the purposes of the Confrontation Clause because she was not making them to see Thompson prosecuted. Despite what defense attorneys will argue, the fact that a police officer was merely present during a statement made for the purpose of medical diagnosis or during a non-confrontational statement does not change the nature of the statement. There is

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² Prosecutor offices treat ANPs differently, whether they will accept them, and what the effect of an ANP is. Our office allows victims to complete ANPs in our office, and we consider them when making decisions about the case, but they have no set or binding effect on the case.

³ It's important to note that an ANP or any statement where the victim calls herself a liar or recants is *Brady* material that needs to be turned over to the defense.

⁴ Thompson had a parole hold that prevented him from bonding out while this case was pending.

⁵ Texas Rule of Evidence 803(4); *Murray v. State*, 597 S.W.3d 964 (Tex. App.—Austin 2020, pet. ref'd).

no rule that says a statement is confrontational just because a police officer is listening to it.⁶

Medical records

I acknowledge that it was a great stroke of luck to have a bodycam recording while my victim spoke to her doctor, but other documentation can work just as well. Medical records are often chock-full of useful information. A lot of times, a victim may describe the assault to a medical professional in the hospital who will then add those details to the victim's chart.

In this case, the medical records reflected what Tabatha had told the doctor: that earlier that night, her husband, Jimmy Don Thompson, strangled her in their home in Kaufman County, then he fled. Courts have routinely ruled that the details of an assault relayed to medical professionals, including statements identifying the assailant, are statements for the purposes of medical diagnosis and treatment and they are not considered hearsay under Texas Rule of Evidence 803(4).

If medical records from the hospital don't have what you need, find out how the victim got to the hospital. If she came by ambulance, get those records—they're often even better than in-hospital records because emergency medical personnel arrive on scene right after an assault has occurred, when the victim is solely focused on seeking help and hasn't yet considered that she needs to lie to protect an abuser.

Even if medical records don't have a smoking gun naming the defendant as the assailant, don't write them off. They can still help prove other elements of the crime. In addition to describing the victim's injuries, they generally include the date of the offense, where it occurred, and names of the members of the victim's family (often including the offender), all things prosecutors must prove to get a guilty verdict.

Now that I had figured out how I was going to get Tabatha's original statement in, my next task was figuring out how to corroborate it and convince the jury it was truthful.

Photos

The easiest corroborating evidence is photos of the victim and her injuries. In this case, Sgt. Martinez got great pictures, including one of the right

side of Tabatha's neck, showing as clear as day long red finger-shaped marks.

Even if there are no visible injuries, photos can still be the key to telling the story. Look at pictures of a victim from the night of the assault and see if they corroborate what she told police. What is her demeanor like? Has she been crying? Does she appear in shock or angry? Further, what does the scene look like? Is it torn apart? Hastily cleaned? Is there damaged property? My point is that pictures are not just for documenting injuries; they can also be strong evidence that a victim is telling the truth about the circumstances surrounding the offense.

Now that I could get my victim's statement into evidence with photos to corroborate it, I had a good foundation of a case-in-chief, but there was still much to be done. Although I roughly knew what Thompson was going to claim at trial, I was still largely in the dark.

But Tabatha wasn't.

Meeting with an uncooperative victim

In cases where you know victims are uncooperative, it's sometimes easy to brush them off. They've already made their wishes known; you may have already had a brief phone call with them or they've filed affidavits of non-prosecution, and you know they are going to come in and lie to you. *Please* resist the urge to blow off meeting such a victim in person. For one, having a heart-to-heart discussion, where you show this person you actually care and that you are going to go to bat for her, may change her mind and get her on your side. Second, and much more commonly, a victim may believe she can convince you of the story she and the defendant have cooked up and will lay it out for you in incredible detail. In this case, I had the latter kind of meeting.

As I said, after Tabatha signed her ANP, she called our office frequently to see if the case had been assigned to a prosecutor. Once it was assigned, she called often asking to meet with my predecessor. In Tabatha's own words, she was "a headache." My predecessor met with her once by phone to safety-plan and tell her that he believed he had enough evidence to move forward without her cooperation and that he would present the case to the grand jury. After that conversation and the case being indicted, Tabatha reached out much less frequently. That is, until she found out that my predecessor had left the office and I was the new prosecutor on the case. After that, my VAC, Kylie Conner, and I were bombarded with

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⁶ *Russell v. State*, 290 S.W.3d 387 (Tex. App.—Beaumont 2009, no pet.).

another flurry of calls and emails from her asking to meet with me. We set up a phone meeting so I could let her express her concerns, and I also scheduled a follow-up in-person meeting for after I had time to review the case in full.

At the in-person meeting a couple of weeks later, I, along with Kylie and my investigator, David Boykin, introduced ourselves, gave a brief overview of what to expect in the meeting, then just listened. I urge all of us to treat uncooperative victims this way, both for strategic reasons and because victims of domestic violence deserve respect even if they're trapped deep in the cycle of violence. Don't be dismissive or simply tell a victim how it's going to be. Try to keep an open mind and let a victim do as much of the talking as she is willing to. This is true when we expect a victim to be truthful, and it's especially true when we think a victim is lying. Remember: An uncooperative victim has likely coordinated this story with her abuser, so we want to hear as much of it as possible to grasp what the defendant's story will be at trial.

Meeting a victim who is covering for an abuser with a receptive attitude makes her feel like you may be buying her story. That prompts her to provide even more details than she otherwise would to try to convince you even further. This is why it is critical to have a VAC or an investigator (or preferably both) in the room for these meetings. As a victim speaks to you, she is not just telling a story; she is also tipping the defense's hand and locking in her testimony. If she takes the stand at trial and changes her story to something more believable, the investigator or VAC is on hand as an impeachment witness.

This approach worked well in the Thompson case. Tabatha spoke with us for probably an hour. She explained that she grew up in a household where domestic violence was present. She told us that Thompson had never hit her and explained in detail their version of events from the day of the assault. She provided us with photos of the injuries Thompson suffered in his fight and photos of his truck after he wrecked it that night. She insisted to us that those deep red marks on her neck came from the same man whom Thompson had fought the same evening. She told us that this other individual left those marks from grabbing her by the throat as she attempted to break up the fight, and that he didn't have a hold of her for very long. She either couldn't or wouldn't name this man, but she claimed it was he who had assaulted her, not Thompson. She also told us that while

Thompson was in the shower cleaning his wounds, she decided to go through his phone, discovered he was cheating, and in that moment decided, out of anger, she would tell the police that Thompson gave her those marks. Finally, she said that when she informed Thompson she was going to call police and claim he strangled her, he jumped in his truck and sped off.

There were several holes in this story and pieces that didn't make any sense, but we didn't stop her; we just let her keep talking because the more she talked, the clearer it was that her version of events was fabricated. Once she had said all she wanted to, we asked a few brief follow-up questions, safety-planned with her, and told her we would be in touch soon with an update.

Now that we knew what the defendant wanted to argue at trial, it was time to go about disproving the fabricated story.

Jail calls

What defendants say on jail calls can turn a coin-flip case into as close to a sure thing as we can get. That's exactly what happened in this case. My predecessor had requested Thompson's jail calls but didn't receive them before leaving.⁷ Once I got the calls, I knew we were headed for trial, so I dove in to see what I could find. It didn't take long to strike gold. On the third call Thompson made after being booked into the Kaufman County Jail, he was explaining to Tabatha how they could get his charges dropped, and it devolved into a heated argument where Thompson lashed out and yelled, "That's why I snatched you by the motherf—king throat!" Bingo! I immediately emailed Thompson's attorney to bring that call to her attention and revoke my offer of eight years TDCJ. I later followed up with a new offer of 35 years.

Now, this is not the norm for jail calls; to get a confession on a jail call is rare. However, you don't know if there's a confession on the jail calls if you don't listen to them. Second, jail calls are good for far more than just confessions. You may not get the smoking gun, but these calls will often set the scene of the victim's relationship with her abuser.

That was true in this case as well. In the six months that Thompson was in custody awaiting trial, he called Tabatha thousands of times. They

As a victim speaks to you, she is not just telling a story; she is also tipping the defense's hand and locking in her testimony.

⁷ In my office, we don't have direct access to jail calls. Instead, we request them from our sheriff's office.

A good expert has a way of making the jury comfortable with dynamics and ideas they may never have had to grapple with personally.

argued constantly, and throughout these arguments, Thompson would berate, belittle, blame, gaslight, and minimize. Although he could no longer physically abuse Tabatha, the verbal abuse and manipulation continued full speed ahead. Not only do these kinds of calls give prosecutors useful insight into a victim's current relationship with the defendant, but also this kind of verbal abuse is admissible in court under Art. 38.371 of the Code of Criminal Procedure to show the nature of the relationship.

Not only that, but jail calls can be rife with witness tampering. In this case, on one call, Thompson dictated Tabatha's affidavit of non-prosecution nearly word-for-word (including the part about counseling). On another, Thompson told her in detail what she needed to say in her meeting with me to get me to drop the charges. As we approached trial, he told her in yet another call that the only way for him to beat this case was for her not to come to court and to hide on the day of trial. These calls can be used to confront a victim if she takes the stand and decides to parrot the defendant's made-up story, but they can also be used for another purpose.

Forfeiture by wrongdoing

Forfeiture by wrongdoing is found in Art. 38.49 of the Code of Criminal Procedure. It says that a party in a criminal action may not benefit from the absence of a witness if that party wrongfully procured that absence. If prosecutors can show by a preponderance of the evidence that a party wrongfully procured the absence of a witness, then that party forfeits hearsay and Confrontation Clause objections regarding statements made by the missing witness. Because Thompson had instructed Tabatha not to come to court, I had prepared a forfeiture by wrongdoing motion and was ready with stacks of caselaw to argue my motion on the morning of trial.

But in a case with an uncooperative victim, we must be prepared for anything. As I stood up to urge it the morning of trial, I scanned the gallery, and there was Tabatha. We asked the judge to appoint Tabatha an attorney to discuss the criminal liability she would be exposed to for lying on the stand, and she elected to invoke her Fifth Amendment right against self-incrimination and not testify.

Now that I had all the evidence together that I was going to present at trial, I needed help polishing it and presenting it in a way that was easy for my jury to accept and understand.

Expert witnesses

Expert witnesses are excellent resources for presenting uncooperative victim cases to juries. A good expert has a way of making the jury comfortable with dynamics and ideas they may never have had to grapple with personally. In this case, I decided I needed both a medical expert and a family violence dynamics expert. I am thankful there is someone in our area, nurse practitioner Elizabeth Wolf, who is both a forensic nurse and an expert on abuse dynamics. Before trial, I had Wolf review Tabatha's medical records, the photos of her injuries, and the selection of abusive phone calls we planned to enter at trial.

On the medical side, Wolf explained the dangers of strangulation to the jury and laid out the complications that can come along with being strangled. She also told the jury that it is very common for strangulation not to leave any visible injuries, so the fact that a handprint was visible on Tabatha's neck was notable. Finally, and best of all, she testified that the marks on Tabatha's neck could not have been left from a quick grab but were most likely the result of sustained, long pressure that partially cut off the blood flow to Tabatha's head. She explained her conclusions and the facts that led to them in a way that was easy for the jury to digest and left little room for the defense to push back.

On the family violence side, Wolf clearly laid out the cycle of abuse and the power and control wheel⁸ and applied them to the facts of our case and to the behaviors she observed in the jail calls. Throughout the calls we played at trial, Thompson hit pretty much every slice of the power and control wheel, and Wolf explained each one and how it applied. She also spent a significant amount of time explaining why victims of domestic violence stay with their abusers and why they often don't want to prosecute. As with the complicated medical issues, she broke down the psychology of a victim who stands by her abuser in a way that was easy for the jury to grasp.

Elizabeth Wolf is a gem, and there are many other experts across the state who can explain

Continued on page 39 in the blue box

⁸ This article displays graphics of the cycle of abuse and the power and control wheel and explains them both: www.tdcaa.com/journal/surviving-the-storm-how-expert-witnesses-can-salvage-a-family-violence-case.

My journey to the world of Chinggis Khan

Chinggis Khan (sometimes spelled Genghis Khan), the first leader of the Mongolian Empire, is the person most Westerners think of when talking about Mongolia.

He reigned over the Mongol Empire from 1206 to 1227 and conquered expansive lands in Asia, eventually ruling over a territory larger than the continent of Africa.

For about two weeks in May, I joined a group of 18 members of the Spurlock Judicial Fund (SJF) on a training program to Mongolia. The SJF, which was formerly known as the Asian Judicial Institute, and the state of Texas have been steadfast partners with Mongolia for the past 30 years. The Spurlock Fund has a memorandum of understanding (MOU) with the Mongolian Lawyer Support Center NGO (non-governmental organization), Mongolian Judicial Association, and Mongolian Advocates Association to provide training on judicial independence, adversarial trials, protection of human rights, and court procedures. The SJF also has MOUs with the Mongolian Parliament Research Center and the Chimid Foundation.

The SJF founder, Judge Joe Spurlock II, was a member of the Texas House of Representatives, a district court judge, an appellate judge, and, perhaps most importantly, one of the three founders of the Texas A&M School of Law. In 1998 he was approached by Judge Ganzorig Gombosuren to help the Mongolian people in their move from single-party Communist rule to democracy. Since 1998, the SJF has worked with the Mongolian Supreme Court, Office of the Prosecutor General, and various ministries and NGOs to build democracy through judicial independence, the rule of law, and respect for human rights. Mongolia chose to model its newly created judicial system after the United States and specifically Texas, and these days, Mongolians consider the United States its third neighbor (with Russia and China as the other two).

Our delegation was led by Spurlock Director and State Bar Criminal Justice Section Member Judge Matthew Wright, and 66th Judicial District Judge Justin Lewis. Other Texas attorneys who served as lecturers were State Bar of Texas President Elect Sarah Keathley, Sharon Corsentino, Kristina Voorhies Legan, Karen Washington, and David Morrison. Our group also



By Chilo Alaniz

District Attorney in Webb & Zapata Counties

included eight students from Texas A&M Law School and Baylor University: two Spurlock Scholar recipients, Texas A&M Law School student Natasha Ferrerira and Baylor graduate Landon Lehane; plus Jeziah Cherian, Holly Enkhsetseg, Sarabeth Jarratt, Nate Lovas, Claire Nguyen, and Mallory Vickers. The students played critical roles in our presentations and a mock trial we conducted.

The invitation

On February 1, I received the invitation to travel to Ulaanbaatar, the Mongolian capital, to serve as the lead attorney representing prosecutors during the 2026 training delegation. The invitation was extended by Judge Gombosuren, retired Justice of the Mongolian Supreme Court; Judge Matthew Wright; and the board of directors of the SJF. Our delegation mission consisted of the following:

- train Mongolian lawyers in Texas adversarial trial procedures;
- provide expert consultation to Mongolian officials on U.S. and Texas constitutional law;
- train Mongolian judges on Texas discovery, witnesses, and rules of evidence;
- participate in panels and discussions with government officials on the rule of law and separation of powers;
- engage in cultural exchanges with the Mongolian people; and
- conduct a criminal mock trial with a Texas district court judge, criminal defense attorney and prosecutor (me!).

Preparation

The preparation for Mongolia was intense. From February through May we reported to Zoom planning workshops, language courses, and mock trial prep meetings. I learned that Mongolia is the world's most sparsely populated country. Horses outnumber humans 13 to 1 and livestock 35 to 1. Ulaanbaatar, a city of 1.7 million, is the coldest capital in the world. (While we were there in May, morning temperatures were in the 30s and 40s, and afternoon highs got into the 70s.) It is also home to the Gobi Desert, one of the coldest deserts in the world with the largest dinosaur fossil reserve on earth.

I also studied the Mongolian legal system. The democratic constitution was adopted in 1992. It created legislative, executive, and judicial branches. The legislative consists of the Parliament with representatives of five political parties; the executive consists of the President and Prime Minister; and the judiciary consists of the Supreme Court and constitutional courts. The Supreme Court has three chambers, one each for criminal, civil, and administrative law. The provincial courts handle appeals from district courts, felony criminal cases, and civil cases. District courts handle misdemeanor-type offenses and minor civil disputes. Recently established are a structure of specialty courts. Administrative courts handle disputes between citizens and public authorities; constitutional courts handle cases

involving constitutional laws and applicability, and the Judicial Council oversees judicial appointments and personnel matters. The key features of Mongolia's criminal justice system are the abolishment of the death penalty in 2017, no jury system but a court-appointed group of one to three citizens who give recommendations to the court, and a maximum sentence of 25 years' confinement for felonies.

The prosecution power is immense. The Prosecutor General oversees criminal investigations and prosecutions. There is very limited court oversight over search and arrest warrants. Discovery is virtually nonexistent, and there is little opportunity for the defense to suppress evidence. The Prosecutor General must approve any evidence gathered by the defense and can appeal acquittals. As you can see, the pathway from Communism to a democratic system is not an easy one.

Arriving in Mongolia

As I studied the blueprint designed by Judge Joe to make this transition possible, I saw three critical elements in play: trust, humility, and vision. With these three elements in mind, my adventure to Mongolia began on May 13. The flight from Dallas to Incheon, Korea, was 16 hours long. From Incheon to Ulaanbatar was another three hours. We arrived in the early afternoon on May 15. Our Mongolian hosts, led by Judge Ganzorig



and members from the Mongolia Bar Association, welcomed us with smiles, gift bags, and warm handshakes. It did not take long to immerse ourselves in the culture. The first traditional dinner included mutton stomach stuffed with broth and meat. Other dishes included *hushuur* (empanadas) and *tusivan* (noodles). Dinner was capped off with a toast (or “*salud*” as we call it in South Texas).

The rest of the weekend consisted of cultural tours to the Chinggis Khan statue, which is the largest equestrian statue in the world (40 meters tall!)—see the photo on the opposite page, far left. An excursion outside Ulaanbaatar found us in the open country with blue skies and surrounding mountain peaks. Here we experienced Mongolian horse rides, double hump camel rides (see the photos opposite page on the right), and an introduction to the majestic Mongolian golden eagle. The Chinggis Khan Museum transported us to the 12th-Century origins of the nation itself. The artifacts, artwork, weapons, horse tack, and early writings were an incredible view into early civilizations.

Monday was the first day of training. We broke up into two teams: a judicial team and one for family law. The entire day was dedicated to an overview of the two systems in Texas. The criminal justice audience consisted of district and appellate judges from Mongolia. The main objective in this presentation was the importance of the separation of powers; the exchange of discovery; the Fourth, Fifth, and Sixth Amendments; and an emphasis of the judicial branch’s involvement in the warrant process. As a district attorney for 18 years, I stressed that the integrity of the criminal justice system in Texas relied on the court’s review of a prosecutor’s warrant and the defendant’s right to challenge unconstitutional actions by the police. The Mongolian judges were engaged, receptive, and enthusiastic about moving toward a more balanced approach.

On May 19, the delegation visited the Mongolian Parliament where the delegation leadership testified on family law policies and practices. Another critical meeting that I, along with Judge Wright and Judge Lewis, had on this day was with the Prosecutor General’s Office. During this meeting we shared the mission objectives of our training and highlighted the differences between prosecutions in Texas and Mongolia. The Deputy Prosecutor General expressed interest in examining the strengths and weaknesses of the proce-

complex medical and psychological concepts in an easy-to-understand manner. If you’re having trouble finding one, check local crisis centers; they often have psychologists or people familiar with the psychology of abuse on staff who would be happy to testify. If there is a seasoned officer on your case who has experience with domestic violence victims and who is comfortable testifying, he can be your expert. For medical testimony, there is often a built-in expert. If the victim went to the hospital, she was most likely seen by a doctor who has the training to offer the medical opinions needed in court. Even if the doctor doesn’t have a specific memory of your case, you can still use him to parse through medical records and explain injuries on the stand. Having an expert like this can be what it takes to get a case across the finish line. If you don’t have such a person, it’s up to you to get the jury to understand these issues in the limited time allotted for closing arguments. While I’m sure many prosecutors can explain it, I went to law school instead of medical school for a reason. An expert in that field is much better at explaining it than I ever could be and will be much more convincing for a jury.

Wrapping up

Jimmy Don Thompson was ultimately found guilty at trial. He voluntarily absented himself from the punishment hearing where the jury heard from his ex-wife about the abuse she had suffered at his hand, his lengthy criminal history, and his association with the Peckewood white supremacist gang. After deliberation, the jury sentenced him to 45 years in prison.

This case went from a toss-up to a big win because of the evidence we found and the strategy we formulated based on that evidence. It’s easy to see a domestic violence case with an uncooperative victim and throw your hands up, but I urge you: If you have a case where you think the victim or the public is in danger and you believe in the case but are worried about proving it, try following the steps we took here. Get creative, talk to everyone, and look everywhere. Something may turn up that flips the case around and allows you to get justice and provide safety for the victim and your community. ❖

dural processes in Texas. A commitment to training was made.

The next day, our delegation visited the U.S. ambassador's residence, where we met with the Deputy Chief of Mission Neal Vermillion and members of his team. The U.S. Embassy thanked the delegation and recognized the critical contributions by the Spurlock Fund. The delegation then visited Shihihutug University Law School. This visit cemented the future of the Spurlock Fund with an MOU to continue the mission of future trainings and exchange trips. The same day, we met with Chief Justice Khosbayar of the Supreme Court and other justices of the court. We discussed topics such as the importance of the constitutional rights of the accused, the discovery process, and the judicial branch's involvement in the review of arrest and search warrants.

A criminal mock trial

The highlight of the training for me finally arrived a couple days later. For the first time in the 30-year partnership between the Spurlock Fund and the Mongolian judicial leadership, we conducted a criminal mock trial. The work for this trial began in early January with attorney David Morrison. He researched and designed a (mock) murder case that had the makings of a challenging fight. The style of the case was the *State of Texas v. Tobie Clark*.

Every case needs a theme, so we entitled this one "A Million Reasons to Kill." My team of prosecutors included lawyers Sharon Corsentino and Karen Washington. That Thursday morning, we entered the converted auditorium at the Cultural Center in Ulaanbaatar locked and loaded. With trial notebook prepared, witnesses assigned, State exhibit posters labeled, PowerPoint slides primed for display, and opposing counsel Steve Keathley and his defense team ready, we kicked things off. District Judge Justin Lewis began the trial with the familiar phrase. "Is the State ready? Defense ready? "The State will read the indictment How does the defendant plead?" "Not guilty, Your Honor."

For the next two days, the audience of Mongolian law students and practicing Mongolian attorneys witnessed an adversarial trial as done in Texas. Mongolian translators kept the audience on track with opening statements, direct and cross examination, a *Daubert* hearing, expert testimony, Rules of Evidence, objections, predicate questions, demonstrative evidence, introduction of evidence, directed verdict, and closing arguments. (That's me arguing in the photo at right.)

One aspect of trial that was surprising to the audience was the in-depth examinations of witnesses on direct and cross examinations.

On day two of the trial, both Steve Keathley and I were presented with traditional robes worn by prosecutors and defense. Although the court reserved its verdict, both sides claimed the victory! After the trial, I gifted my trial notebook to members of the Nomadix Law Firm and two TDCAA manuals to the Prosecutor General's Office (see the photo below).

The last weekend concluded with a traditional Mongolian celebration called a naadam, where we were treated to a Mongolian feast and the "three games of men": wrestling, horse racing, and archery. We wore the traditional deels (robes), toasted to democracy, and celebrated freedom.

Coming home

As the wheels on the plane lifted, taking me back to South Texas, I began to reflect on this amazing experience. I was encouraged by the enthusiasm, energy, and vision of the Mongolian judges, prosecutors, defense attorneys, and law school students. They chose democracy for a reason. Judge Joe put it best when he stated, "The ultimate goal of a democratic society should not be for subjects to exalt the state but for the state to protect individual citizens' rights." ✱



Wearing all the hats

In a smaller jurisdiction, titles rarely capture the full scope of what we do.

On paper, I am a paralegal in the 106th Judicial District Attorney's Office. In practice, I am also the office manager, victim assistance coordinator (VAC), second chair for jury trials, grant writer, problem-solver, scheduler, administrator, and—on many days—the glue that holds everything together.

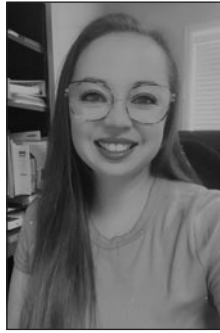
Working in a rural prosecutor's office means adaptability isn't just a skill; it's a requirement.

On any given morning, I may start by preparing cases for court, ensuring discovery is open, generating plea documents, and making sure our office's two attorneys have everything they need to walk into the courtroom, confident and prepared. Before I can finish, the phone rings. It could be a victim needing reassurance, an officer asking if evading is a crime, or a victim's family member trying to understand a criminal justice process that feels overwhelming and unfamiliar.

Then there's the operational side of the office. As office manager, I track deadlines, manage schedules, maintain records, coordinate communication, and ensure that the day-to-day functions of the office run smoothly. In a larger office, these responsibilities might be divided among multiple people, but here, they converge. At any given moment, I might be answering phones, coordinating a docket, or troubleshooting a printer that has decided it no longer believes in justice.

There are moments when all these roles collide at once: when court is in session, phones are ringing, emails are piling up, and someone is standing at the door needing immediate help. It's in those moments that the reality of "wearing all the hats" becomes most evident. But there is also a unique reward in this kind of work.

Being involved in every stage of the process, from intake to disposition, provides a perspective that is both comprehensive and meaningful. I see the behind-the-scenes effort that goes into each case, the coordination required between agencies, and the dedication of those working to see justice done for victims and the community. It also builds level of resilience and resourcefulness that cannot be taught in a classroom. You learn to prioritize quickly, communicate effectively, and adapt constantly. No task is too small, because every detail contributes to the larger mis-



By Jessica Ruiz

Paralegal in the 106th Judicial District Attorney's Office

sion. Most importantly, you learn the value of service.

How I keep it all together (most days)

With so many moving parts, people often ask how I stay organized. The honest answer is: a lot of systems, a little discipline, and a good sense of humor. I rely on what I think of as a "layered system." I don't trust just one method to keep me on track; I use several.

I am a big sticky note person. And when I say big, I mean there are days my desk looks like a crime investigation board. Sticky notes help me track immediate tasks, calls I need to return, documents I need to prepare, or quick reminders that I can't risk forgetting. There's something about physically writing things down that helps it stick in my brain. Plus, there's no better feeling than finishing a task and crumpling up that sticky note in a small victory.

For anything that stretches over a few days, I set reminders on my phone usually two days before a deadline. That cushion is intentional. In this line of work, something unexpected is always going to come up, so building in extra time helps me stay ahead instead of constantly playing catch-up. Nothing says "stress" like realizing something is due today ... in an hour ... and I just sat down with my first cup of coffee, only to smell it and forget about it because I'm having to scramble to get the work done.

Then there's my Outlook calendar, which is where all the major deadlines live: grant submissions, filings, and court settings. If it's important and time-sensitive, it goes on the calendar. No exceptions.

It may sound like a lot, but using multiple systems together is exactly what keeps things from slipping through the cracks.

Daily, weekly, and monthly habits

Beyond tools, I rely on routines.

On a daily basis, I review my sticky notes, check my calendar, and scan emails to figure out what absolutely must get done that day. I may not get to everything—but I make sure the priorities are handled.

On a weekly basis, I look ahead at upcoming court dates, deadlines, and ongoing cases. This gives me time to prepare instead of simply react.

On a monthly basis, I focus on larger deadlines such as grants, reporting requirements, and long-term projects to make sure nothing sneaks up on me unexpectedly. I've learned the hard way that "future me" does not appreciate when "present me" ignores something important.

These habits help create structure in a job that can otherwise feel unpredictable. Some of these habits have become second nature over time. Others are things I've learned through trial and error (occasionally learning things the hard way).

Prioritizing what matters most

Not every task carries the same urgency, and learning how to prioritize has been one of the most important skills in this role.

If a victim calls, I answer—or I return that call as quickly as possible. Those conversations matter, and often they can't wait. I never want someone to feel like they are just another item on a list.

At the same time, there are moments when I have to protect my focus. If I'm working on something that requires accuracy, such as preparing for trial or meeting a filing deadline, I will close my door or limit interruptions so I can give that task my full attention. I will also set my cell phone on the credenza on the other side of my desk so it doesn't tempt me. While I don't always have the luxury of uninterrupted time, when I do, I use it intentionally because sometimes the only way to get something done is to briefly disappear and hope no one notices until you're finished.

I've also learned not to live in my email inbox. I check it throughout the day, but I try not to let it completely dictate my workflow.

Small rules that make a big difference

One simple rule I follow is this: If a task will take five minutes or less to complete, I do it immedi-

ately. A quick phone call, a short email, a small task—it's easier to handle it right then than to track it and come back to it later. It's a small habit, but it prevents a lot of buildup.

Another rule is giving myself grace on the days when everything doesn't go according to plan—because those days will happen. More than you would like for them to happen, but they're inevitable. You are *still* awesome.

Teamwork and trial preparation

Working in a small office means teamwork is *essential*. Clear communication helps us divide responsibilities so we're not duplicating effort and can move cases forward efficiently. On busy days, especially trial days, preparation is everything. Having files ready, documents organized, and a clear plan going in makes a huge difference. It doesn't eliminate the chaos, but it makes it manageable.

Grace in the chaos

The truth is, no system is perfect. My system might not work for everybody—everyone has a different system that they need to use, and that's totally OK. Make it your own. Mine happens to include sticky notes, calendar alerts, reminders, lists, and a willingness to adjust when needed. And maybe a little caffeine. (OK, more than a little.)

There are still days when everything happens at once and phones are ringing, emails are coming in, people are needing help, and deadlines are all hitting at the same time. On those days, I remind myself to take it one task at a time, focus on what matters most, and keep moving forward. And sometimes, you have to laugh—because if you don't, you might cry (usually over a printer that picks the worst possible moment to stop working).

In a rural district attorney's office, we don't have the luxury of staying within clearly defined roles. Instead, we step into whatever role is needed at the moment. Whether it's organizing files, supporting victims, assisting attorneys, or managing the office, each responsibility plays a part in ensuring that justice is pursued with diligence and care.

Wearing all the hats isn't always easy, but it is always worth it. Because at the end of the day, the work we do matters, not just in a courtroom, but also in the lives of the people we serve. ✱

There are still days when everything happens at once and phones are ringing, emails are coming in, people are needing help, and deadlines are all hitting at the same time. On those days, I remind myself to take it one task at a time, focus on what matters most, and keep moving forward.

My rookie season as a new prosecutor

It's March 27, 2025, and I just left my interview with the County Attorney's Office in Colorado County.

This was my second interview of the day and my third with a District or County Attorney's Office. I walked out and immediately got my girlfriend and mom on the phone. I remember telling them, "I really hope I get this one." I enjoyed my conversations with the elected and first assistant, and out of all my interviews, I resonated most with their plans for me and how they ran the office. I was looking for somewhere to help me grow in my career, and as a young attorney, I was eager to get into the courtroom. The elected, Jay Johannes, made it very clear that if trial was what I wanted, trial was what I would get, and that was what they needed from me.

Up to this point, I was working as a family law lawyer in Colleyville while living in Fort Worth. My girlfriend (now wife) was a nurse in Denton. My family lives in Bellville. We really wanted to be closer to family, and criminal law was my passion—I'm grateful I had a boss at the family law firm who supported me moving on to chase that passion.

During law school at Texas A&M University, I interned with the District Attorney's Office in Dallas County, in Dallas County Criminal Court No. 7, and at a defense firm. With that experience, I could genuinely say I saw every side of the criminal justice system. But what I garnered from those internships was that being a prosecutor was the only job where I could "wear the white hat." In my time in private practice, I worked for whoever came to our office with money, and oftentimes I found myself with a client I really wished I could trade for a new one. I wanted to make a difference for the right reasons, and I knew prosecution was the job to do that.

On April 3, Jay sent me an email to formally offer me the job of Assistant County Attorney. I remember talking to my mom and girlfriend about how excited I was. I packed all my things, passed off my cases to my colleagues at the firm, and moved three and a half hours south. My start date was April 28.

When that day finally came around, I walked into one of the most beautiful courthouses in Texas, which I say with some bias. The stained glass dome above the district court wows anyone who sees it. The bar and jury box reminded me of



By Dawson Townsend

Assistant County & District Attorney in Colorado County

something straight out of the history books. It was truly mesmerizing, and I was so glad I got to call this my workplace.

The learning curve

My first month as a prosecutor was definitely a rollercoaster of learning. Coming from a family law firm in a big county, I was used to pretty busy dockets. But this was my first time participating in a large felony non-trial docket. I learned quickly that getting a plea deal done requires a ton of paperwork. Lucky for me, First Assistant Carolyn Olson, with her decades of experience, was extremely helpful in showing me the ropes for filling out a plea memorandum.

I learned that listening is more important than speaking. As young lawyers, I think it's easy for us to get excited, and we want to share what we know. For me, I had already tried a family law modification on my own and done a few temporary orders hearings. In my mind, I knew how this court thing works. Newsflash: Let the ink on your license dry a bit first! Oftentimes, it's the simplest things that reminded me just how much I had to learn. I'll never forget that I was filling out a plea memorandum on a felony case. I noticed the defendant's punishment was enhanced from a third-degree to a second-degree felony in a drug case. So I marked that he was being convicted of a second-degree felony. Well, as all my seasoned prosecutors know, that's not usually the case. I was shocked when Carolyn told me the conviction was still for a third-degree felony. "How can that be?" I thought. "The punishment here is two to 20 years." She kindly informed me

that the punishment was enhanced, not the offense level. That whole concept hurts my head a little to this day!

The takeaway? Listen more than you speak.

Practice

Colorado County is a small office; we have four lawyers, including the elected, to handle all the misdemeanor, felony, and civil work that comes in the door. In a small office, you can be working on one thing and then completely pivot to another. I remember Carolyn, who also serves as the Misdemeanor Chief, coming into my office and reminding me that we had a misdemeanor jury trial the next month. She asked me, “What part of it do you want to do?” In my mind, that’s a loaded question. Should I take a witness? Should I do voir dire? She then told me, “You don’t have to answer right now, but think about it.” I mulled over it and decided I wanted to take voir dire. I felt like that was a good way to get my feet wet by talking to potential jurors and working on my presentation skills. The No. 1 case on this docket was an assault family violence, with a self-defense claim from the defendant and very little physical injury to the victim. A tough case, to say the least.

Remember when I said prosecutors in small offices frequently have to pivot? Well, that’s what happened here. Carolyn came to me about a week later and asked, “Do you want to take this whole case? I don’t want to put too much on you too soon, but it would be helpful.” I went from being the voir dire man to first-chairing my first-ever jury trial. I was excited and nervous, but I felt ready to do it.

I interviewed the victim, prepared the police officer, and even drafted questions in case the defendant took the stand. I must have run through my opening at least 50 times. My poor family had to be fake panelists so I could practice my voir dire on them.

Game day

It’s trial day. I walked into the county courtroom, ready to rock, after spending hours preparing how I wanted my voir dire to look and sound. Trial started, I put my victim on the witness stand, and she recited the facts better than I expected. She was sweet, kind, and believable. I felt good. But as soon as I passed her to defense counsel, it was like a light switch. Her answers were short and somewhat argumentative, and they came with a slight attitude. I had talked to her

about this exact situation—I had told her to remain calm with defense counsel. But I learned one thing: All bets are off once a witness is on that stand. You truly cannot know how they will handle being questioned, and there is nothing you can do about it. What if the jurors judge her by her reaction? What if they see that attitude and think, well, maybe she is aggressive?

Ultimately, my police officer testified well, and defense counsel didn’t get anything out of the officer that helped his case. Then the defendant took the stand. As I later learned, that is not an everyday occurrence. I questioned him like a surgeon with a scalpel because I had watched his statement to police dozens of times. I remembered everything he said that night, and there was no way he knew it better than me. I eventually caught him in a lie to the jury, and I played the bodycam footage for jurors to see. I called him a liar, and over many objections for badgering and being argumentative, I was having the time of my life.

The jury deliberated for an hour and returned a guilty verdict. Hearing the word “guilty” was the biggest relief for me. My victim cried, asked if she could hug me, and told me, “Thank you for everything.” That was the moment I knew I was in the right career, when I could help a victim show the world what happened to her, and get her the justice she deserved.

Second inning

There is never time to waste in a prosecutor’s office. We had another trial scheduled in misdemeanor court, and this time I was doing something I never thought I would in this job: I was going to prosecute a local police officer for theft. The idea of facing an officer as the defendant was strange to me. I just helped a victim of domestic violence, and now I was looking to prosecute a cop and potentially take away his career. I had no trouble believing that what he did violated the law, but prosecuting an officer was still a tough concept to wrap my head around.

I prepared for the case just as I would for any other. I contacted my witnesses, including a man the defendant arrested on the date of the crime, and prepared them for trial. Again, even more with this case, I really needed my family as my fake jury panelists. Carolyn sat second chair with me, and we really fine-tuned my voir dire because trying a police officer was not just weird to me; we knew the jury would probably scrutinize us a bit harder, too. This was no ordinary theft. We were

I learned one thing: All bets are off once a witness is on that stand. You truly cannot know how they will handle being questioned, and there is nothing you can do about it.

alleging that the defendant stole drugs from the police department when he took them to his house and never returned them, rather than storing them in the evidence locker where they belonged. Ultimately, the jury found him guilty, I was relieved, and I felt pretty good about trial.

The major leagues

After successfully prosecuting this pair of tougher misdemeanors and defending a motion to suppress in felony court, Carolyn told me she thought I was ready for felonies. As a baseball fan, it felt like being called up to the majors from Triple-A. I was excited and nervous—but I also felt ready. Jay wanted me to get my feet wet in felony court with something relatively small, like a state-jail drug possession case. Except, as most prosecutors know, those almost never go to trial. That's the kind of case that pleads.

So, instead, why not try an indecency with a child enhanced to a first-degree felony? That's close enough, right? Indeed, some prosecutors in large offices will feel tense reading that this was my first felony trial, but it was. Not only that, I first-chaired the case. (Welcome to small county prosecution!) When Carolyn and I met with the victim, she felt that the complainant resonated more with me, so she wanted me to do the direct examination. This case was a delayed outcry where the date of the offense wasn't exactly clear, and I needed to get some extraneous offenses into evidence under Code of Criminal Procedure Art. 38.37. I studied 38.37 up and down so I would be ready to make my case for why these extraneous offenses should come in for the jury to consider. I prepped the victim twice, and I felt ready.

Trial came just seven months after my first day on the job, and I stepped back into that beautiful courtroom I saw on my first day as lead counsel on a first-degree felony. I was nervous, as I think anyone would be on his first felony trial, but I felt ready. My victim testified well, and she held up well on cross-examination. She was emotional, and I think she really placed the jurors in the shoes of the 14-year-old girl she was at the time of the offense.

Did I mention the defendant fled the jurisdiction before the second day of trial? (How's that for a first felony?) Defense counsel and I went round and round as I tried to get the defendant's flight into evidence. Ultimately, the judge let me mention his absence, but not that he was gone because of this trial. Good enough, I say! After he was found guilty and given his prior history, I

asked the jury for life in prison, and he was sentenced to 60 years in the Texas Department of Criminal Justice. (He was ultimately captured about a month later.) Giving the victim her day in court and making sure a predator could never harm another child is a feeling I don't think any other career could match. This is why I prosecute.

The strikeout

Up to this point, trials are going well for me, but I would be lying if I said every case led to the outcome I hoped for. Soon after that first felony trial, I was assigned a misdemeanor trial, and the offense was texting while driving,¹ a Class A misdemeanor that carries a sentence of up to one year if the defendant causes death or serious bodily injury to the victim.

I prepared for this case for a long time. This offense is not one that is regularly prosecuted, so there wasn't much guidance from court opinions. The victim was hurt pretty badly, and I felt for her situation. Ultimately, the jury found the defendant not guilty. That was the first time I heard those words uttered in a case I was tasked with handling, and I was filled with disbelief. I couldn't understand how the jury didn't see the facts the way I did. I replayed every step of that trial in my head, wondering where I'd gone wrong and what I should've done differently. Those thoughts played out in my head continuously across the next few days.

After the trial, my elected told me, "Learn what you can from the losses, and move on." I like that advice, as hard as it may have been to swallow, and I took it to heart. In this job, if you're trying cases that should be tried, losses will happen—it is the inevitable reality of prosecution. But we see justice done, not convictions. Justice means ensuring victims have their day in court and advocating for it every day, no matter the result.

World Series Game 7

One thing is for certain: In prosecution, you need to have short-term memory because the job must go on. In the year before I arrived in Colorado County, a man was convicted of capital murder. I'll never forget the day Jay told us oral argument was granted in the case. That always makes you pucker.

Continued on page 47 in the blue box

My boss wanted me to get my feet wet in felony court with something relatively small, like a state-jail drug possession case. Except, as most prosecutors know, those almost never go to trial. That's the kind of case that pleads. So, instead, why not try an indecency with a child enhanced to a first-degree felony?

¹ Tex. Transp. Code §545.4251(f).

A list of TDCAA's books and manuals

The newest editions of our manuals (below) include a short blurb to describe the contents.

Visit our website at www.tdcaa.com/books for more information on each publication and to order them.

Manuals

Expunctions & Nondisclosure (2026), \$38

With a significant rewrite of the law dealing with nondisclosures in the last several legislative sessions and changes to expunction laws in 2025 by the legislature, the 2026 edition of this book is essential. Appellate prosecutor Andrea Westerfeld (County & District Attorney's Office in Ellis County) has made the rules and procedures for expunction and nondisclosure easy to understand. Checklists, sample petitions, and orders (all included on a CD) help simplify the process. The 2026 edition incorporates new caselaw, the newest statutory requirements for expunctions, all types of nondisclosures, and caselaw updates for both.

Prosecutor Trial Notebook (2026–2028), \$89

Updated with the latest cases and statutes, the *Prosecutor Trial Notebook* covers every topic from arrest through closing argument and more—all with handy laminated sheets. The most relevant cases, cites to significant statutes and rules, lists, charts, and tips—all are at your fingertips in a single three-ring binder: 1) arrest and detention; 2) search and seizure; 3) confessions; 4) grand jury; 5) indictments/motions to quash; 6) *Brady*; 7) victims' rights; 8) pretrial hearings 9) bail bonds; 10) jury selection; 11) *Batson* challenges; 12) opening statements and continuances; 13) evidence: objections; 14) evidence: hearsay; 15) evidence: confrontation; 16) evidence: experts; 17) extraneous offenses; 18) closing argument; 19)–20) jury charges I & II; 21) defenses; 22) punishment evidence; 23) enhancements; 24) motions for new trial; 25) jeopardy, estoppel, and mistrial; 26) State's appeals; 27) asset forfeiture; 28) juveniles; 29) DWI; 30) murder; 31) domestic violence; 32) protective orders; 33) drug offenses; and new in 2026, 34) driver's license suspensions.

Offense Report Manual, \$34

The *Offense Report Manual*, written by Ken Sparks, former County & District Attorney in

Colorado County (retired), is intended primarily for patrol officers. The book includes the most common criminal offenses normally encountered by officers in alphabetical order. For each offense, the book lists the basic elements, necessary details to include in the report, and legal considerations relating to that offense. An appendix includes numerous helpful forms.

Punishment & Probation, \$40

Punishment & Probation, written by TDCAA Publications Director Diane Beckham, covers all the law relevant to sentencing. *Punishment & Probation*, first published in 2014, has been updated with the latest statutes (from the 2025 legislative session) and caselaw from the U.S. Supreme Court and Texas courts.

Complete with charts that spell out potential sentencing options for different types of offenses, the manual describes the application of Code of Criminal Procedure Chapter 42A for sentencing, community supervision, deferred adjudication, and pretrial diversion.

State's Appellate Manual (2025), \$120

The *State's Appellate Manual* is a comprehensive look at the State's side of criminal appeals. Starting with timelines all the way through motions for rehearing, the manual covers: Texas Rules of Appellate Procedure; motions for new trial; perfection of appeal; bail pending appeal; abatement; the record on appeal; preservation of error; standards of review; harmless error; oral argument; motions for rehearing; writing the State's brief; State's petitions for discretionary review; and State's appeals. Chapters were written and edited by Assistant District Attorneys Jessica Caird, Alan Curry, Andrew Fletcher, Heather Hudson, and Patricia McLean (in Harris County); Assistant State Prosecuting Attorney Emily Johnson-Liu; and Assistant Criminal District Attorney Britt Houston Lindsey (Taylor County).

Warrantless Search & Seizure (2025), \$45

Searching people, places, and vehicles is the starting point for this comprehensive look at warrantless searches and seizures written for prosecutors and officers. Written by TDCAA Publications Director Diane Beckham, it sets out the basics of Fourth Amendment law, then moves to more specific situations, including searches in cars, homes, offices, and schools, and the exclusionary rule—complete with handy reference

charts in each chapter. The 2025 edition includes the latest updates on searches of cell phones, curtilage, use of anonymous tips (especially in DWI stops), drones, hemp, and dog sniffs.

Child Sexual Abuse (2025), \$45

In the high-stakes world of prosecuting child sexual abuse, a prosecutor typically must work with little or no medical evidence, medical experts with varying degrees of expertise, a jury panel in need of education about the crime, and a victim who may (understandably) crumble on the stand. The 2025 edition of this helpful manual, updated by Sunni Mitchell (Assistant District Attorney in Fort Bend County) and Jamie Felicia (Assistant District Attorney in Williamson County), walks prosecutors of all experience levels through the case, from investigation to the punishment phase of trial.

Warrants Manual (2025), \$48

This edition of the *Warrants Manual* describes how officers and prosecutors can legally obtain different types of evidence: by warrant, by court order, via subpoena, or through a recognized warrantless exception. The chapters are organized into the type of evidence sought (DWI, vehicles, digital evidence, remotely stored electronic data, real-time data, contraband subject to forfeiture, and people, including DNA). Sample forms showing all types of warrants under Art. 18.02(a) are included with the book, along with the full text of Chapters 18, 18A, and 18B of the Code of Criminal Procedure. This edition includes the latest information about geofencing warrants, cell phones and digital evidence, and narcotics dog sniffs, along with other information.

Traffic Stops, \$33

From initial sighting of a car on the road through arrest, *Traffic Stops* leads officers and prosecutors through the permissible ways to approach a traffic stop. Written by TDCAA Publications Director Diane Beckham, *Traffic Stops* includes charts on the most common traffic offenses and important facts to know about each of them, easy-to-read tables on what officers can do at each step of a traffic stop, and plain-English summaries of what the courts have said about arrests, detentions, and searches related to cars, drivers, and passengers. The 2026 update includes information about how to handle blood draws (and establishing exigent circumstances) as well as im-

Continued on the back cover

The next question he posed to the office was, “Who is going to do the oral argument?” I definitely said, “I don’t care,” but the truth is, I absolutely cared—I wanted to do it. I loved oral argument from moot court in law school (just not the brief writing). But I also understood the importance of a capital murder case, and I did not want to overstep. But my wish was granted, and Jay decided to let me do the argument.

The issue was clear: Did the officer have a material omission in his search warrant affidavit such that it misled the court, and the court should have granted a motion to suppress? The law says that if no material omission exists, then analysis stops, and the court of appeals upholds the trial court’s ruling. However, if an omission exists, the court must add the omitted statement to the search warrant and conduct a de novo review of probable cause.

This was my Game 7. I read the facts of this case, I basically memorized the family tree of the victim and the defendant to be able to explain the facts, and I rehearsed my points numerous times. I think I was more familiar with the families than the families themselves!

I remember walking into the 14th Court of Appeals with all our prosecutors and our investigator, as we discussed additional issues and strategized about opposing counsel’s argument. Once it was my turn to speak, a calm washed over me, my preparation kicked in, and the good old glory days of moot court made me feel right at home. I was ready. There was nothing the court could ask that I could not answer. And with that, just a few weeks later, the judgment of the trial court was affirmed! I can confidently say reading that opinion was the highlight of my first year in prosecution.

Next season

As I’ve ventured into my second year of prosecution, I can say this is, without a doubt, the greatest job in the world. What we get to do as prosecutors is unlike anything else, and I am so glad this is my career. To all the veteran prosecutors reading this, I hope this retrospective of my rookie season is a reminder of why you joined the fight. And to all my fellow young prosecutors, enjoy the ride because it doesn’t get any better than this! ❄️

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portant updates from recent cases from the U.S. Supreme Court on dog sniffs, anonymous tips, cell phone searches, good faith, and consent.

Family Violence (2025), \$48

From investigation through trial, the second edition of *Family Violence* tells prosecutors, officers, and others in the criminal justice system everything they need to know about how to handle prosecution of family violence cases. Written by Staley Heatly, County Attorney in Wilbarger County, the book includes checklists, forms, and sample pleadings as well as a narrative that leads readers through every step of the process and offers common-sense tips. A CD that accompanies the book contains forms from the book as well as other helpful resources.

Grand Jury Handbook, \$6

Prosecutors can establish a strong relationship early with their grand jurors by providing them with this informative publication. *Grand Jury Handbook*, updated with current legislative changes, furnishes grand jurors with all the knowledge they need to have a successful term, including the history of the grand jury, the important role jurors play in our judicial system, how to conduct the business of a jury, and a brief rundown of criminal law in Texas.

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