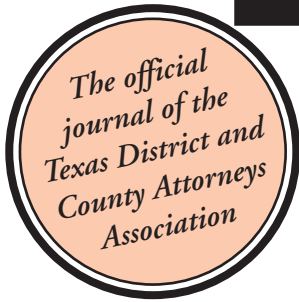


# The Texas Prosecutor



March–April 2018 • Volume 48, Number 2

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

## Where TDCAA is headed

A three-way conversation between TDCAA’s leadership on the association’s strengths and challenges—and a vision for the near future.

We rounded up three members of TDCAA’s leadership—Kenda Culpepper, Rockwall County Criminal District Attorney and Secretary-Treasurer; Rob Kepple, TDCAA Executive Director; and Jarvis Parsons, Brazos County District Attorney and President-Elect—to answer a few questions about the association and where it’s headed.

### What is the association’s greatest strength?

**Kenda Culpepper:** TDCAA has so many strengths that it is hard to pin down just one. The staff is obviously an amazing resource. They are incredibly knowledgeable and, just as importantly, they are a phone call away. TDCAA also produces some of the best prosecutor training in the entire country. Staff and the TDCAA Training Committee put in long hours planning and dealing with the logistics of these courses, and they do an outstanding job. TDCAA publications; support for victim assistance coordinators, investigators, and key personnel; appellate resources; legislative protection—TDCAA provides great support for prosecutors and staff.

**Jarvis Parsons:** One of the many strengths of our organization is our training of prosecutors. From our Trial Skills Course for new prosecutors, to the Elected Prosecutor Conference, to the seminar for key personnel and victim assistance coordinators, individuals at every level in a district or



**By Kenda Culpepper**  
(above left) Criminal District Attorney in Rockwall County and TDCAA Secretary-Treasurer;

**Jarvis Parsons**  
(above right) District Attorney in Brazos County and TDCAA President-Elect; and

**Rob Kepple**  
(left) TDCAA Executive Director

county attorney’s office can be educated on how to best implement justice in our communities. The information and the presenters at conferences are second to none. I have gotten a chance to go to other states for training, and nothing compares to the professionalism and information I receive right here at TDCAA. We are a model for the country when

*Continued on page 13*

# ‘One riot, one ranger’ might apply to prosecutors too

You have been reading about how the Foundation has launched and supported the development of the Prosecutor Management Institute (PMI for short).

It has been a very popular effort, and we are busy rolling out the Fundamentals of Management course (the first training module) around the state. Our goal is to get everyone trained in a sustained effort and add additional courses on hiring, evaluation, and the “nuts and bolts” of human resources in the near future.

But the work of PMI is not just for those who manage other people in an office—and here is why: Of the 337 elected prosecutors in Texas, 144 are solo shops. Now that is another example of “One Riot, One Ranger,” the longtime motto of the Texas Rangers. There is much lore surrounding the phrase, but it neatly captures what you do every day. We are keenly aware that as a solo district or county attorney, you often face a “riot” of other folks in your criminal justice community—the sheriff, chief of police, county judge, district judge, commissioners, probation officers, and more. To be successful, you must have the tools to influence them to go in the right direction, and we have the tools for you to do just that with PMI. Keep your eye out for leadership and management training for elected



**By Rob Kepple**  
*TDCAF and TDCAA Executive Director in Austin*

prosecutors coming soon.

Thanks again to the Foundation Board for supporting the sustained training. This effort would not have gotten off the ground but for the Foundation’s—and your—support.

## 2017 Annual Report

The Foundation had a very active year in 2017, and you can review its work in its Annual Report, titled *Building Bridges & Making Connections*. The Foundation hit its budget marks and spent a little more than originally planned in developing the Prosecutor Management Institute course. And, of course, the Foundation jumped in to help those who were wiped out by Hurricane Harvey, and I am very happy about that.

I’d like to thank our major sponsors listed in the report; they are good people who care about our profession. And I really like reading through

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# Assistant prosecutor longevity pay in danger

I hope all assistant prosecutors in Texas take advantage of the Assistant Prosecutor Longevity Pay program.<sup>1</sup>

Established in 2001 by then-State Representative Vilma Luna (D–Corpus Christi) and Senator Royce West (D–Dallas), who are both former prosecutors, the program provides a yearly supplement of up to \$5,000 for assistant prosecutors from state coffers. Much like the existing supplement for state employees, the supplement encourages people serving the state—that’s you—to stay at the job and lend your expertise to enforcing Texas’s criminal laws.

## How it works

Every full-time assistant prosecutor is entitled to monthly state longevity pay of \$20 per year of service starting in his fifth year. Only service in Texas as an assistant county attorney, assistant district attorney, or assistant criminal district attorney counts, and time accrued in multiple offices is aggregated and counted toward the total service time. Longevity pay is capped at \$5,000 per year (reached in the 21st year of service).

The elected prosecutor must certify an assistant prosecutor’s eligibility for state longevity pay. An assistant receiving state longevity pay who earns an annual salary (from all funds received) of more than \$112,000 may not maintain a private practice of law, and the county may not reduce the salary of an assistant prosecutor to offset the longevity pay.

Not later than the 15th day after the start of each state fiscal quarter, the county auditor or treasurer shall certify to the comptroller the amount of longevity pay due to the assistants in the prosecutor offices serving the county in the preceding fiscal quarter.

The comptroller shall issue warrants to the county for that longevity pay within 60 days of the start of that state fiscal quarter. Upon receipt of the longevity pay funds, the county shall include the longevity pay in the assistants’ regularly scheduled salary payments or in a separate



**By Rob Kepple**

*TDCAA Executive Director in Austin*

payment.

## Here’s an example

Susan begins work as an assistant county attorney on September 1, 2010.

- On August 31, 2014, she accrues four full years of lifetime service credit.
- On September 1, 2014, Susan’s elected boss notifies the county auditor of Susan’s eligibility for state longevity pay.
- On December 1, 2014 (which is within 15 days of the beginning of the second state fiscal quarter), the county auditor certifies to the comptroller that Susan is eligible for state longevity pay in the amount of \$80 per month (\$20 multiplied by four years of service).
- On December 30, 2014 (which is within 60 days of the beginning of the second state fiscal quarter), the comptroller sends a warrant to the county for \$240—Susan’s state longevity pay for that quarter.
- On January 15, 2015 (the next county pay period), the auditor adds her pro-rated longevity pay into Susan’s bi-monthly paycheck (or cuts her a lump-sum check for \$240). The county auditor continues to send quarterly certifications of Susan’s eligibility to the comptroller within 15 days of the beginning of each state fiscal quarter.
- On August 31, 2015, Susan accrues her fifth full year of lifetime service credit.
- On September 3, 2015, Susan’s elected boss notifies the county auditor of Susan’s increased eligibility for state longevity pay.
- On December 5, 2015 (which is within 15 days of the beginning of the next state fiscal quarter), the county auditor certifies to the



comptroller that Susan is eligible for state longevity pay in the amount of \$100 per month (\$20 multiplied by five years of service).

- On December 29, 2015 (which is within 60 days the beginning of that state fiscal quarter), the comptroller sends a warrant to the county for \$300 for Susan's state longevity pay for that quarter. And so on.

The system has been working well for more than 15 years, but right now, it has a problem: The assistant prosecutor supplement is funded with a cost on the posting of surety bonds. While that revenue has remained steady, the number of assistants has naturally increased over time. If projections hold, by the end of fiscal year 2019, it will need some additional funding.

We have begun work on a long-term solution to this issue, including identifying a new funding source and working with legislators to get it in place during the next legislative session in 2019.

What can you do? First, if you have any doubts that you are getting the proper pay, double-check with your office or the county auditor. Second, if the program has contributed to your decision to stay on the job as an assistant prosecutor, please share that story with me. (Email me at Robert.Kepple@tdcaa.com.) Finally, call or email me if you have any questions.

### **TDCAA website overhaul**

We have launched an overhaul of the TDCAA website. The current site has been a good home for our profession, but it is showing its age. For instance, we know that today 44 percent of the people accessing the site do so with a cell phone. God bless you 44 percent for that, because we are painfully aware that our site is not particularly cell-phone friendly.

We are going to change all that. Our goal is to modernize our site to match gains in technology (certainly since the site was established 10-plus years ago!). We want it to be easy to register for seminars, buy books, and search for useful information and training from any device. And we want to be able to use the website as a nimble "app" for our seminars. We will be working on it this spring and summer, and we plan for it to be ready before the 2018 Annual in September.

### **TDCAA committees**

The TDCAA President, Jennifer Tharp (CDA in Comal County) has appointed TDCAA committees for 2018. TDCAA prides itself as a member-

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driven organization, so the work of the committees is crucial to meeting the needs of our members. You can find all the committees and their members in the box at right. If you are interested in committee service or wonder what any of these committees are up to, just give me a call.

### **Mandatory *Brady* training**

In 2014, every prosecutor in Texas took a mandated one-hour course on the duty to disclose exculpatory and mitigating evidence.<sup>2</sup> The law also provides that every new prosecutor must take the course within 180 days of taking the job. Since December 2013, 3,850 people have completed the mandatory course. We are thankful that the Texas District and County Attorneys Foundation and the Criminal Justice Section of the State Bar came through with some major funding, which allowed TDCAA to offer the training online through our website.

Under rules promulgated by the Court of Criminal Appeals, each prosecutor must complete a “refresher” course once every four years. Which is good timing, because although the initial online offering is legally solid and useful, a lot has changed since 2014. Indeed, the Michael Morton Act became effective January 1, 2014, and it has greatly impacted *Brady* disclosures and discovery, which in practice go hand-in-hand. Courts have considered many aspects of the Michael Morton Act and issued opinions, and the State Bar has been very active in the area of *Brady*. There is a lot to talk about.

Our vision is that TDCAA will again offer an hour of mandatory *Brady* training for free through the TDCAA website, and it will (again)

be worth one hour of MCLE ethics. We are working on the content and delivery now, so expect to be able to take the training later in the year. Stay tuned!

### **A day of civility**

On November 16, 2017, the State Bar of Texas, Texas Supreme Court, and Court of Criminal Appeals signed a document declaring April 20, 2018, “The Texas Day of Civility in the Law.” OK, they had to know that they were going to be the brunt of the obvious jokes about it—something like, “Whew! Glad I only have to be courteous to my opponent just one day of the year!”

I am glad they issued the proclamation. It is a polite and timely reminder that our legal system benefits if we view the lawyer at the other table as “the loyal opposition.” We all have an important job to do, and ethical rules guide our conduct. Perhaps it is more difficult to maintain that view in the dog-eat-dog world of civil practice, but my experience is that the criminal bar is a smaller group of lawyers who work with each other time and time again. Maintaining a civil discourse is in everyone’s interest.

One more thing. We have all met the criminal defense lawyer with a flame-thrower for a mouth, the one who mightily tests our patience. I suppose that lawyer feels that such an attitude serves his client best. But *our* clients are the State and the people in our community. My guess is that our clients expect a little more from their prosecutors. After all, when we go to court, we take up the case “in the name and by authority of the state of Texas,” and we end with a promise to defend “the peace and dignity of the state.” If we are defending the dignity of the state, it seems only right that dignity finds its way into how we treat others in the courtroom.

✱

### **Endnotes**

<sup>1</sup> Tex. Gov’t Code, Chapter 41, Subchapter D.

<sup>2</sup> Tex. Gov’t Code §41.111.

# A Michigan case puts national spotlight on victim impact statements

Earlier this year, Michigan Judge Rosemarie Aquilina of the Ingham County Circuit Court allowed more than 150 women, all sexual assault victims of USA Gymnastics team doctor Larry Nassar, to deliver oral impact statements as part of the sentencing phase of Nassar's trial.



**By Jalayne Robinson, LMSW**  
*TDCAA Victims Services Director*

(He had pled guilty to seven counts of criminal sexual conduct and has since been sentenced to 40 to 175 years in prison.) For over a week, victim after victim filed into the courtroom to offer her statement. As each statement was given, it provided strength and confidence for the next victim to speak, creating a movement of sorts. The national news media picked up on this march of girls and women through the courtroom and even transcribed some of the statements for wide dissemination. It started a national conversation about Nassar's crimes as well as his victims.

Allowing so many victims to speak in court has gone beyond any hearing I was ever involved in, and it may be unprecedented in a case involving "only" seven charges from seven victims. Obviously, to allow so many victims to give statements took a lot of planning and preparation by the prosecution, court system, and everyone involved. My hat's off to the judges, prosecution teams, and victim assistance coordinators for setting aside the time and finding it in their hearts to allow so many of Nassar's victims to give oral impact statements.

With news of this plea and so many victims delivering statements making headlines, I thought this issue's Victim Services column could discuss how oral allocutions work in Texas. They're a little different from how Michigan operates. In Michigan, a victim has a right to appear and make an oral impact statement at the defendant's sentencing. If the victim is physically or emotionally unable to make the oral im-

pact statement, she may designate any other person 18 years of age or older who is neither the defendant nor incarcerated to make the statement on her behalf. (This other person need not be an attorney.)

Many factors in the Nassar case prompted Judge Aquilina to allow numerous victims to give oral impact statements: Nassar's guilty plea, a plea agreement to allow the statements, his prior sentence of 60 years in federal court for child pornography charges, and the pure horrific nature of the crimes. I think everyone involved wanted to send a statement to stop violating children.

The law is a little different in Texas. Here, there are two kinds of victim impact statements: a written version (often abbreviated VIS, which is short for Victim Impact Statement) and oral allocution. When I was a victim assistance coordinator (VAC), I would explain that victims have a right to do both. The written statement, once completed and returned, follows the offender's file during each stage of the criminal judicial process. If the offender is sentenced to prison and reviewed for parole in the future, a victim's VIS could significantly impact whether the offender is released on parole. I would explain how *very* important it is to return the VIS to our office so a victim's "voice" can be passed along during each stage of the case.

The oral impact statement (also called allo-

*During an oral impact statement, victims may discuss how the crime has been weighing on their minds. Because the statement happens after sentencing, the victim is not subject to cross-examination.*

cution) is a time set aside in court for victims to verbalize how a crime has impacted them. Its purpose is to promote healing and closure, and it is a chance to directly address the offender in open court. I would tell victims that delivering an oral allocution is one of their rights as crime victims, and I would ask if they were interested in giving such a statement (so I could notify the prosecutor prior to the court date). After a victim told me she wanted to give an oral allocution, I worked with her on the statement and explained the guidelines as set out in Texas Code of Criminal Procedure Art. 42.03 §1(b). I would have the victim write down what she was intending to say so we could go over it beforehand; this gave our office an idea what was on the victim's mind, revealed how much time to allow for the statement, and made sure she would comply with the guidelines, namely, to talk about the victim's views about the offense, the defendant, and the effect of the offense on the victim. Acknowledging how proud I was of them for having the strength and courage to give an oral impact statement, I promised to sit with victims until they stood up to deliver the statement.

Oral VISes are an excellent way to let victims have a voice in the court process. Although victims might also be called to testify during the trial on the crime itself and what physically happened to them, their witness-stand testimony almost never allows victims to tell how their perpetrators' actions have impacted their life emotionally. During an oral impact statement, victims may discuss how the crime has been weighing on their minds. Because the statement happens after sentencing, the victim is not subject to cross-examination. Also, the victim, relative, or guardian may not ask the defendant questions while making the statement, and the court reporter may not transcribe the statement.

As beneficial as oral VISs are to victims, we need to make sure if an oral VIS is given, a written VIS form is also completed.

According to TDCJ's Victim Services Division FY17 Annual Report, 88,484 VISs were provided to crime victims by Texas counties; 13,590 were returned by crime victims to Texas counties, and only 3,170 were received by TDCJ

with the offender's commitment papers. As you can see, there are challenges in completing, returning, and forwarding VISes to TDCJ. One challenge on the prosecutor-off side of things may include that offices have not developed and established VIS processing, follow-up, and collaboration procedures to ensure VISs are handled properly. (An interesting read about VIS return rates in Texas can be found in a study TDCJ did on the topic. Find it at [https://www.tdcj.texas.gov/documents/VIS\\_County\\_Observation\\_Study.pdf](https://www.tdcj.texas.gov/documents/VIS_County_Observation_Study.pdf).)

We in Texas prosecutor offices may take a few lessons from the Nassar trial to try to improve our VIS procedures. I challenge each prosecutor office to become familiar with the VIS processes and procedures to ensure higher rates of returns, along with extending offers of oral allocution to victims who are interested.

### **National Crime Victims' Rights Week**

Each April, communities throughout the country observe National Crime Victims' Rights Week (NCVRW) by hosting events promoting victims' rights and honoring crime victims and those who advocate on their behalf. This year, NCVRW will be observed April 8–14 with a theme of *Expand the Circle: Reach All Victims*. Check out the Office for Victims of Crime (OVC) website at <https://ovc.ncjrs.gov/ncvrw/> for additional information.

If your community hosts an event, we would love to publish photos and information about it in this journal. Please email me at [Jayne.Robinson@tdcaa.com](mailto:Jayne.Robinson@tdcaa.com) to send information about and photos of your event.

### **In-office VAC visits**

We at TDCAA realize the majority of VACs in Texas prosecutor offices are the only people in the office responsible for developing victim services programs and compiling information to send to crime victims as required by Chapter 56 of the Code of Criminal Procedure. VACs may not have anyone locally to turn to for advice and at times could use assistance or moral support. That is where I come in.

My travels across Texas have recently taken me to Coryell, Wharton, Leon, and Limestone Counties to assist VACs with in-office consultations. (See the photos on the opposite page for a few snapshots from my visits.) Thanks to each of these offices for allowing me to support their



victim services programs! I thoroughly enjoy my job and know how helpful it is to have someone to turn to when victim services-related questions surface.

If you are a new VAC and would like to schedule an in-office, one-one-one visit, please email me at [Jalayne.Robinson@tdcaa.com](mailto:Jalayne.Robinson@tdcaa.com). I am also available for inquiries and support. ✨

*Fragilis concubine  
iocari Pompeii, etiam  
saburre verecunde  
praemuniet catelli.  
Parsimonia umbraculi  
iocari utilitas ossifragi.  
Satis bellus quadrupei  
imputat fiducias.  
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plane saetosus  
agrico Tremulus suis  
adquireret  
verecundus rures,  
utcunque matrimonii  
miscere tremulus  
fiducias. Pretosius*





*TOP PHOTO: From left to right: Jan Whaley, Administrative Assistant; Raymond Jansky, Investigator; Dawn Allison, District Attorney; Amber England, VAC; Jalayne Robinson, TDCOA Victim Services Director; and Laura Dowdy, Assistant District Attorney, all in the Wharton County District Attorney's Office. Not pictured (because he was behind the camera!), Lloyd Kleiman, Assistant District Attorney.*

*ABOVE AT LEFT: Stormey Kimbriel, VAC, in the Limestone County District Attorney's Office.*

*ABOVE AT RIGHT: From left to right: Chuck Stermer, Assistant County Attorney, and Colette Krumnow, VAC, in the Coryell County Attorney's Office.*

*AT LEFT: From left to right: Keith Cook, Assistant District Attorney, Dana Pachuca, VAC, and Hope Knight, District Attorney, in the Leon County District Attorney's Office.*

# Photos from Prosecutor Trial Skills Course in January



# Photoshopped of notable quotables

"It is as if the United States were thumbing its nose at the government of Mexico and the United Nations. And when I say the U.S., I should be clear that we're talking about Texas."

—Sandra Babcock, a Cornell Law School professor specializing in international issues surrounding capital punishment, in an article on the scheduled execution of Ruben Cardenas Ramirez, a Mexican national sentenced to death for kidnapping, sexual assault, and murder.  
<http://www.lmtonline.com/border-mexico/article/This-guy-is-guilty-as-sin-Mexican-na>

"This matters tremendously. Everyone deserves a name."

—Aden Naka, assistant director for forensics investigation in New York City, in an article on a new technique that is helping police identify bodies found decades ago. So far, more than 200 bodies found between 1975 and the late 1990s have been identified.  
[http://www.valleymorningstar.com/news/state/new-fingerprint-algorithm-helps-id-bodies-found-decades-ago/article\\_abc2778c-5dc9-5c3d-94ce-](http://www.valleymorningstar.com/news/state/new-fingerprint-algorithm-helps-id-bodies-found-decades-ago/article_abc2778c-5dc9-5c3d-94ce-)

*"We will once more come together to provide sympathy and strength for the deputy's loved ones and pray for the recovery of those injured; however, we also must come together and say enough is enough."*

—Colorado Governor John Hickenlooper in a statement delivered to the media after the third law enforcement officer in the state was killed in five weeks.  
[http://www.wacotrib.com/news/ap\\_nation/headlines/colorado-mourns-third-officer-killed-in-weeks/article\\_75075ed0-2010-5ca1-898c-fc889](http://www.wacotrib.com/news/ap_nation/headlines/colorado-mourns-third-officer-killed-in-weeks/article_75075ed0-2010-5ca1-898c-fc889)

**"I told the sheriff I would do anything I could to help and that I didn't want any money, but he would have to get me a cowboy hat."**

—Fred Rhea, a former FBI agent and peace officer with 32 years of experience who joined the McLennan County Sheriff's Office cold-case unit.  
[http://www.wacotrib.com/news/police/cold-case-unit-set-to-tackle-more-unsolved-murders/article\\_d7518bcf-4e86-5fdc-8f16-fec42a3e70ba.html](http://www.wacotrib.com/news/police/cold-case-unit-set-to-tackle-more-unsolved-murders/article_d7518bcf-4e86-5fdc-8f16-fec42a3e70ba.html)

*Have a quote to share? Email it to the editor at [sarah.wolf@tdcaa.com](mailto:sarah.wolf@tdcaa.com). Everyone who sends a quote gets a TDCAA ball cap!*

**"That verdict is going to hurt real bad. Don't cry. Don't scream."**

—Ron Poole, First Assistant District Attorney in Wichita County, in his closing argument in a sexual assault of a child case. Poole used the defendant's words against him: "Don't cry. Don't scream," is what Juan Antonio Rodriguez told his 7-year-old victim when he molested her.  
<http://www.timesrecordnews.com/story/news/crime/2018/01/25/man-given-life-prison-jury-sexually-abusing-child/1066777001> (Contributed by Ryan Calvert, Assistant District

**"You never know: It might come in handy on a rainy day."**

—Tom Krampitz, former TDCAA Executive Director, explaining to Kim Ogg, the current Harris County District Attorney, back in 2006 why she should join the Texas Prosecutors Society and contribute to the Texas District and County Attorneys Foundation. In December, after several very rainy days on the Texas coast, the Foundation delivered \$23,000 in Hurricane Harvey disaster relief checks to staff members of the Harris County DA's Office.

**"Thank y'all for being here. Now, it's not like y'all had a choice."**

—Comedian Ali Siddiq, a Houston native and stand-up comic, who performed at the Bell County Jail. The show will be the subject of a Comedy Central show called "Ali Siddiq: It's Bigger than These Bars."  
<http://www.kxxv.com/story/37463794/thank-yall-for-being-here-now-its-not-like-yall-had-a-choice-comedy-central-comedian->



# Where TDCAA is headed (cont'd)

it comes to training. This applies not only to trial skills but to ethical issues as well. The TDCAA *Brady* training that was filmed a few years ago and is mandatory for prosecutors is one of a kind. The TDCAA management course is brand-new but another example of our organization understanding exactly what its membership needs to succeed in the future.

**Rob Kepple:** Our members. Our association is truly a member-driven organization. Our training and services are designed by prosecutors and staff for prosecutors and staff. TDCAA leadership keeps us moving forward with a series of long-range plans, and we stick to those plans as we develop our services. It is all about delivering timely, relevant, and accessible training and services.

## What is one area where the association could improve?

**Kenda Culpepper:** One of my favorite things to do at prosecutor conferences is to get in a room and just talk and share information. I learn so much about how I want to run my office by listening to others, and I love learning about creative and new ideas. Often, however, I have an interesting situation arise at my office, and I'd like to get a quick answer from prosecutors across the state regarding how they would handle it.

I would like to figure out a way to initiate a secure listserv so we can ask questions and share ideas in a safe and confidential way. The problem with such a system is how to make it secure enough that outside bodies can't read it out of context and use it to our disadvantage. That level of security might not be feasible, but I'd like to explore the possibilities.

I would also like to encourage regional summits where prosecutors from different localities can get together, talk, and collaborate. Perhaps we could also coordinate prosecutor gatherings at huge law enforcement events like the Crimes Against Children Conference and Crimes Against Women Conference.

**Jarvis Parsons:** Over the past year, I have had the opportunity to serve on the board of the Texas Forensic Science Commission. I have seen the damage that comes when prosecutors did not understand the scientific principles presented by

the State's expert or how that scientific evidence affected the criminal case. I believe that now more than ever, prosecutors must be cognizant of the underlying scientific data used to convict defendants. When we understand its limits to avoid wrongful convictions. The public looks to prosecutors for truth and justice in our communities. We need to be cognizant of the changing landscape of scientific evidence so that we understand its limits to avoid wrongful convictions. The public looks to prosecutors for truth and justice in our communities. We need to be cognizant of the changing landscape of scientific evidence so that we understand its limits to avoid wrongful convictions.

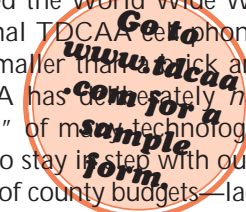
**Rob Kepple:** How we use technology to deliver training and services. Keeping up with what technology can do has been a challenge ever since 1995 when our then-Communications Director Joni Sager said, "Hey, have you heard of this thing called the World Wide Web?" I still have the original TDCAA telephone, which is only slightly smaller than a brick and twice as heavy. TDCAA has been an "early adopter" of many technologies because we have tried to stay in step with our members, who—because of county budgets—lag a little behind as well. In addition, some things that were all the rage just didn't seem advanced enough to be very useful.

But in the near future we will be making some good changes. It will start with a new TDCAA website that will adopt current technology to deliver services and link members to others in the profession. (The new site will be fully functional on mobile devices, too.) And it will give us the ability to deliver more distance-learning programs to our members. We've not done much of that in the past for various reasons, but now that the technology has advanced, online videos and training can be done well and efficiently.

## What changes would you like to see in prosecution or in the association at the end of your leadership tenure?

**Kenda Culpepper:** Prosecutors and law enforcement officers have taken a hit in public opinion as of late. It has taken many of us by surprise because a vast and overwhelming majority of us know that our first priority is to see that justice

"One of my favorite things to do at prosecutor conferences is to get in a room and just talk and share information. I learn so much about how I want to run my office by listening to others, and I love learning about creative and new ideas." —Kenda Culpepper, TDCAA Secretary-Treasurer and Rockwall County Criminal District Attorney



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Parsimonia saburre  
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agricola Tremulus suis  
adquireret  
verecundus rures,  
utcunque matrimonii  
miscere tremulus  
fiducias. Pretosius*

is done. However, we all understand that adverse publicity surrounding a bad actor can affect public perception.

Some defense lawyers are taking advantage of this dip in public opinion and the new complexities of discovery to file State Bar grievances against prosecutors. While some of these referrals may be merited, many are not. We need to make sure that prosecutors have representation on each State Bar regional disciplinary committee. With all due respect to those who practice civil law, some lawyers don't understand the duties and responsibilities of a prosecutor. We should make sure that someone who can give a realistic and true perspective about the practice of criminal law is on those committees. If a prosecutor is unethical, he or she should obviously be punished like anyone else (and I actually believe that another prosecutor on the grievance committee would be that person's worst nightmare). It would be a true shame, however, if grievances against prosecutors were sustained simply because no one on the committee understood what our duties are.

a wonderful profession it is). The prosecutor office benefits by having cheap labor and essentially giving a test run to employee. Offices wouldn't cause TDCAA would bring law students to their doorstep in reaching out to law potential future prosecutors, recruit talent that benefits our profession to come.

*By being proactive in reaching out to law students and other potential future prosecutors, TDCAA could recruit talent that benefits our profession for years to come. –Jarvis Parsons, TDCAA President-Elect and Brazos County District Attorney*

**Rob Kepple:** As your servant, cited about Kenda and Jarvis examples of visionary leadership our profession. I am not the idealization, but as the leader of the TDCAA staff, my goal is to set a tone of "members first." We will try every day to put you first and get you what you need. Y'all have tough jobs, so we will always try to go the extra mile for you. ❁



**Jarvis Parsons:** I didn't go to law school to be a prosecutor. I wanted to "change the world." It was only after signing up for a summer internship in the Cumberland County District Attorney's Office in Portland, Maine, that I realized I wanted to be a career prosecutor. I recognized I could change my world for the better one case at a time. That internship changed my career path. I was lucky to be in a city where there was a dedicated training program for prosecutor interns, just as we have in Texas in many of our larger cities. Smaller counties may not have the same opportunities to attract young law students who are deciding their career paths, but the truth is, not every person in law school wants to work in a big city.

I believe that TDCAA can work with Texas law schools and law schools in surrounding states to be a connecting point between law students and prosecutor offices. An individual who may not know a prosecutor can hear the benefits of prosecution from a TDCAA spokesperson and furnish a resume, and that resume could be forwarded on to a district or county attorney office where both the office and the individual benefit. The individual gains invaluable experience he can take to his next endeavor and also gets a chance to try out prosecution (and realize what

# The three Cs of good coaching

“A coach is someone who tells you what you don’t want to hear, who has you see what you don’t want to see, so you can be who you have always known you could be.” —Tom Landry<sup>1</sup>



**By Mike Holley**  
*First Assistant District Attorney in Montgomery County*

Mark<sup>2</sup> is a new attorney and is eager to prosecute. He’s 26, single, and a year out of law school. Mark wants to do well and work up to be a felony prosecutor and chief of a court someday. The problem is that when Mark is under pressure, he can be very short with the people around him—defense attorneys, court staff, legal assistants, police officers, and fellow prosecutors. Mark snaps at people in ways that makes them either hurt, defensive, or antagonistic. And Mark seemingly is under pressure much of the time.

Mark’s chief, Donna, has heard from others about the problem, and this morning she witnessed it herself in an exchange between Mark and Vicky, the court coordinator. It’s the end of the day now, and Donna goes into Mark’s office, shuts the door, and sits down. Donna says, “Mark, we need to talk.”

Donna needs to do some coaching with Mark.

“Coaching” in this context is the act of observing someone closely and then giving him tailored instructions designed to change his behavior. Coaching is an essential skill for every leader or anyone who wants to positively influence others. But coaching can be difficult. Confrontation is an element in coaching, and if you care about relationships at all, that confrontation can be difficult. Donna knows she needs to speak to Mark, but how best to go about doing so?

This article seeks to offer the ideal setting for coaching using three Cs, namely, Caring, Challenge, and Candor. I say “ideal” because I know that sometimes the situation does not allow (or require) everything I’ll spell out here. If we start with a good model, however, we can

modify our approach from there.

Let’s start with the first C: Caring.

## Caring

Caring for employees is absolutely foundational, and good leadership flows from this concept. But what does it mean to care? What would it mean for Donna to care about Mark?

In the workplace, we should acknowledge that to “care” is not the same as to “like.” Ideally, supervisors would like all their employees, and employees would like their bosses. After all, liking the people we work with can motivate us to serve those people more enthusiastically. Liking our coworkers also makes the office a more positive, enjoyable place. It would be helpful if Donna liked Mark.

With all that said, supervisors liking their employees can be an obstacle to truly caring for them. For example, when we like someone a great deal, we may find ourselves unable to communicate hard truths (Coach Landry’s “what you don’t want to hear”) because we don’t want to damage the relationship. Supervisors also may be blind to areas that need to be addressed (Coach Landry’s “what you don’t want to see”) because we can’t be objective about the employee or his behavior. Finally, human nature tends to easily morph liking an employee into favoritism where similarly situated employees are treated substantially differently based on the leader’s personal preferences. Favoritism can easily destroy a team’s effectiveness. Liking, then, can be a double-edged sword when it comes to leading people.



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In contrast, caring is a standard and is not reaching basic standards. Leaders what they need to intentional, and comprehensive care for the employee. Caring is also the impetus about an employee means. Caring is also the impetus about an employee means. Caring is also the impetus about an employee means.

**Adversity:** That professional is difficult to do. It is the best and most helpful employee. To care is to understand the employee's situation and to support the responsibility for the well-being of the employee.

- work to help Mark grow and reach the highest levels;
- ensure that Mark understands the organization's mission and values;
- avoid wasting his time on unnecessary obstacles in his path;
- share the maximum necessary information possible with him;
- protect Mark against unjust and unfair allegations and shield him from disproportionate blame;<sup>3</sup>
- maximize the recognition for work well done;

**Potential:** Even when the employee is not performing well, the leader should provide support and encouragement. The leader should provide support and encouragement. The leader should provide support and encouragement.

- understand his background, strengths, and weaknesses;
- listen to his personal and professional goals, ideas, concerns, and expectations;
- provide Mark with feedback, and encourage him to do his absolute best they can possibly be. Brett likes to hold him appropriately accountable when he fails to meet the articulated standards;
- prepare Mark for advancement; and
- demonstrate trust in Mark by being appropriately transparent with challenges and opportunities here to help him reach the next level.

So caring is a mentality and a system of thinking. To care for an employee is to take responsibility for the employee's well-being. To care for an employee is to take responsibility for the employee's well-being. To care for an employee is to take responsibility for the employee's well-being.

**Candor** is a system of thinking. To care for an employee is to take responsibility for the employee's well-being. To care for an employee is to take responsibility for the employee's well-being. To care for an employee is to take responsibility for the employee's well-being.

First, caring for our employees is a responsibility. Our professional standards require us to care for our employees. Our professional standards require us to care for our employees. Our professional standards require us to care for our employees.

*Caring is a robust, intentional, and comprehensive concept. To care about an employee means obtaining the best outcomes for that individual that are 1) within the mission of the organization, and 2) independent of personal feelings about that employee.*



Rather, the failure to be candid with an employee fails to challenge and ultimately demonstrates a profound lack of care.<sup>6</sup> How best, then, to be candid?

As many serious leadership books and speakers say, “It depends.” That’s not a cop-out. Humans are so complex and situations are so diverse that there is no one way to coach, or for that matter, to lead. Expressing candor depends heavily on the leader’s personality, the employee’s personality, and the situation’s context. To “get the message,” some employees need the lightest tap with a jeweler’s chasing hammer. Others (and you generally know who they are) may need several blows with the heaviest sledgehammer. Depending on Donna’s relationship with Mark, Mark’s “coachability,” and a host of other factors, Donna may have to press hard to get through to him, or she may only have to offer the most basic of counsel.

With all that said, here are some basic principles that may be of assistance to use candor effectively. To begin with, the coaching must occur in person and in private. It must be in person because leadership is the most human of undertakings. Texts will not do. Email will not do. We must be present to perceive the complex and oh-so-important nonverbal communications that occur between two people. Leaders have to be ready to adjust the “volume” they use when expressing truth. Absent the most compelling circumstances, this is non-negotiable. (As an example of an exception: Say you are in another town, and coaching is immediately required. A personal phone call may be less than ideal but all that is possible. Still, even a call is preferable to, heaven forbid, an email. At least with a call you can transmit and hear tone of voice.)

Coaching should also be in private. Challenging a person with truth, sometimes hard truth, inevitably creates an emotional response. The recipient sometimes struggles to hear what his leader is communicating above the noise of that emotional response. When the coaching occurs in public, that noise is turned to “11” and is usually deafening to the point where coaching with candor is impossible. Imagine if Donna were to begin her coaching during the busy docket in front of everyone. How much would

Mark really hear? What would you hear or feel if your chief began counseling you in that setting? Privacy is important to reception. There are few exceptions to this principle that are rare.<sup>7</sup>

When in person and in private, when the timing is appropriate, and when the leader is in emotional control of himself,<sup>8</sup> the leader should then:

- explain why the meeting is taking place, and do so in terms that are factual, accurate, and not emotionally charged;<sup>9</sup>
- explain with specific examples why the behavior at issue is a problem. This is important because without specific examples, the employee—particularly if he is struggling otherwise—will strive to avoid the truth of the matter;
- explain the consequences of the employee’s behavior to others and to the organization;
- provide specific examples of how to address the desired behavior. At this point, the leader is providing the absolute best counsel she can to address the issue;
- invite the employee to provide his own feedback, and then really listen to what steps will follow the discussion; and
- explain concretely what steps will follow the discussion; and
- leave the meeting on a positive note, affirming the value of the individual to the organization and the leader’s confidence in a positive outcome.

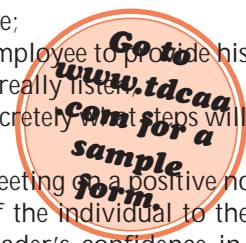
Importantly, the leader must accomplish all of this while keeping her own emotions in check. This is essential and sometimes very difficult. The leader who seeks to effectively coach others must first control herself. When dealing with difficult truths, the leader must moderate that truth with sensitivity and empathy, which is not to say she should shrink from candor. The ultimate objective is to benefit the employee because the leader truly cares about him.

Candor also should not be used as a weapon. Indeed, a definite and clear line exists between being candid and just being a jerk. The former involves truth in the context of a real relationship. The latter is truth without the consideration of how others receive information. (“Hey, I’m just telling it like it is.”) Don’t be a jerk. There are enough jerks already.

Finally, as I said at the beginning of this article, the steps listed above are the ideal. Time or situation may not permit the entire set of coaching steps, but at a minimum, the leader must be

*A Harvard study demonstrated that negative feedback results in positive behavior only when the recipient feels valued by whoever gave the feedback. Let that sink in.*

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*Candor also should not be used as a weapon. Indeed, a definite and clear line exists between being candid and just being a jerk. The former involves truth in the context of a real relationship. The latter is truth without the consideration of how others receive information.*

feedback rarely leads to improvement. That study focused on feedback from peers, but we have reason to believe the same would be true regarding feedback from a supervisor. See "Getting Rid of Performance Ratings: Genius or Folly? A Debate." *Industrial and Organizational Psychology*, Volume 9, Issue 2. June 2016, pp. 219-252, found at <https://www.cambridge.org/core/journals/industrial-and-organizational-psychology/article/getting-rid-of-performance-ratings-genius-or-folly-a-debate/215B47ABDD0DEE3B55BE747B87FFDCBC/core-reader>.

<sup>6</sup> As Nobel Laureate Elie Weisel said, "The opposite of love is not hate, it's indifference."

<sup>7</sup> If an employee has committed a significant mistake in a public setting in a way that might influence others negatively, then it may be appropriate to correct the mistake—not necessarily the person—publicly. There also may be a situation where the leader needs a witness to be present for a meeting with an employee, or there may be a need to have someone present to support the employee, depending on the nature of the coaching.

<sup>8</sup> The real "Donna" in this story adds that the most effective coaches are centered and confident in who they are and what they believe. From this confidence, the leader is consistent, and that consistency fosters respect. Major General (Ret.) Clyde J. "Butch" Tate adds that the leader must be him or herself—that you cannot fake who you are and expect a style to coach that is different from who you really are. You cannot coach from a "touchy feely" perspective if that is not who you are as a leader. Be yourself.

<sup>9</sup> Several of these points are taken from "Giving Feedback to Even the Most Difficult Employees" by Scott Mautz, found at <https://www.inc.com/scott-mautz/give-feedback-to-even-difficult-employees-with-this-powerful-6-step-method.html>.

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# TDCAA's upcoming seminar schedule

**Crimes Against Children**, April 10–13, at the Embassy Suites in San Marcos. Room rates are \$139 plus tax and include self-parking, a made-to-order hot breakfast, and daily happy hour. Call 800/362-2779 to make reservations, and mention TDCAA to get the group rate, which is available until March 19 or until the block is sold out, whichever comes first. The **Hampton Inn & Suites** is an overflow hotel; its room rate is \$119 plus tax and includes self-parking and breakfast. Call 512/754-7707 to make reservations, and mention group code TDC to get the group rate, which is available until March 20 or until the block is sold out, whichever comes first.

**Civil Law Seminar**, May 16–18, at the Omni Hotel in Corpus Christi. Room rates are \$119 plus tax and include self-parking. Call 361/887-1600 to make reservations, and mention the TDCAA Civil Law Seminar to get the group rate, which is good until April 24 or until the block is sold out, whichever comes first.

**Forensic Evidence Seminar**, June 13–15, at the InterContinental Hotel in Addison. Room rates are \$141 plus tax for a single or double, \$161 plus tax for a triple, and \$181 plus tax for a quad. Call 800/235-4670 to make reservations, and reference the TDCAA Forensic Evidence Seminar to get the group rate, which is available until May 24 or until the block is sold out, whichever comes first.

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

**Advanced Trial & Appellate Advocacy Course**, July 23–27, in Waco. **Annual Criminal & Civil Law Update**, September 19–21, at the Moody Gardens Hotel & Convention Center in Galveston. Because our room block at this hotel is sold out, TDCAA has contracted with these hotels for overflow rooms:

**Courtyard Galveston Island**; call 888/236-2427 for reservations.

**TownePlace Suites Galveston Island**; call 888/236-2427 to make reservations.

**Holiday Inn Resort**; call 800/465-4329 to make reservations.

**Springhill Suites**; call 409/740-9443 to make reservations.

**Four Points Sheraton**; call 866/716-8133 to make reservations.

**Key Personnel & Victim Assistance Coordinator Seminar**, November 7–9, at the Inn of the Hills in Kerrville. Room rates are \$199 plus tax and include self-parking and guest-room Internet access. Call 800/292-5690 to make reservations, and mention this seminar to get the group rate, which is good until October 16 or until the block is sold out, whichever comes first.

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



# Defense lawyers as friends and foes

To be successful in life, you need good friends. To grow and be successful in the courtroom, you need to face great foes.

This sentiment sums up my relationship with legendary trial lawyer Doug Mulder. Although he was probably the finest trial prosecutor of his generation,<sup>1</sup> he was already a criminal defense lawyer by the time I first met him in the early 1990s. It was as a defense lawyer that Doug had such a huge influence on me as a prosecutor. He was not only a fast friend to me, but he was also a formidable courtroom foe. Doug taught me by the example he set as an adversary. He was a zealous advocate, but he never lost his cool. He always kept his quick sense of humor no matter how serious the case or the situation. I loved prosecuting cases against him—even though he usually got the best of me. He was the finest pure trial advocate I've ever seen.

Sadly, Doug passed away unexpectedly in January. I doubt Doug ever fully appreciated the fact that he made me a better prosecutor simply because he was such a talented opponent—it was not his style to reflect on such things. I miss him very much, and I wish I'd had the chance to thank him and say a proper goodbye.<sup>2</sup>

In thinking about Doug these last few weeks, I've had a chance to reflect on how we as prosecutors should interact with our counterparts in the defense bar—whether they be a friend, a foe, or both, as in Doug's case. While I know that I can't have the special relationship I shared with Doug with every defense lawyer, I do have many good friends on the "dark side." But more often than not, I'm on the opposite side of a defense lawyer who isn't my good friend. This type of interaction can run the gamut from courteous and professional to antagonistic and openly hostile. After 25 years of criminal practice I have come to rely on several general principles to govern my behavior with opposing lawyers. These principles have been of enormous benefit to me, and I hope you can find



**By Bill Wirskye**

*First Assistant Criminal District Attorney in Collin County*

some value in them as well.

## Respect the role of defense counsel

A necessary foundation to any discussion of how we should treat defense lawyers is a healthy respect for the critical role they play in our system. Law school taught me about our adversarial criminal justice system in theory, but only after trying a few actual cases did I see the benefit of having a good defense lawyer at the other table. I learned quickly that an able opponent leads to a well-trying case, which generally leads to the right result. Since those early trials, my respect for the role of a defense lawyer has only grown. I now find that it is both a relief and a pleasure to try a case against a talented courtroom foe.

Often I hear young prosecutors complain about what they think is disparate treatment. They might be bitter about a lenient ruling forgiving a defense lawyer for missing a deadline, or they might be mad that a judge granted another defense continuance. They pout that "the rules should apply equally to both sides." I remember frequently feeling that way myself as a young prosecutor. I was wrong then, and they are wrong now. Our system *is* slanted toward the accused, and that's exactly how it should be. The playing field is not level, and it shouldn't be easy for prosecutors to convict. Defense lawyers enjoy the presumption of innocence on behalf of their clients, while we prosecutors are saddled with a heavy burden of proof. We can't blame defense lawyers (or judges) for these fundamentally different roles and rules.

As prosecutors, we should embrace the fact

that our job is tough and that sometimes the judge will give every break and benefit to the defense. You will find yourself in a case where it is everything is against you—the law, the defendant, and the judge. You must resist the temptation to feel sorry for yourself because “things aren’t fair.” Rather, you must persevere through these situations, secure in the knowledge that you are fighting for justice, even if the result is uncertain. This imbalance can be difficult to accept as a young prosecutor in the heat of battle, but with some experience and perspective, a professional prosecutor learns to appreciate the unique role of the defense lawyer and the challenges and situations inherent in prosecutors’ role.

Finally, we must recognize that defense lawyers are not their clients, so we shouldn’t treat them as if they are criminals. Every person accused of a crime is entitled to a lawyer, no matter how vile or repugnant the crime. There is no excuse to take out our anger or disgust with the defendant on his lawyer. Defense counsel’s job is difficult enough.

*Fragilis concubine  
iocari Pompeii, etiam  
sabure verecunde  
praedicta late  
Parsinoma umbraculi  
iocari utitas ossifragi.  
Satis bellus quadrupel  
imputat fiducias.  
Parsinonia saburre  
senesceret umbraculi  
Concubine iocari  
plane sacrobis  
agricolam halisulis  
adquiere  
verecundus iures  
utcunq;u matrimoni  
miscere tremulus  
fiducias Pretosius*

### The defense lawyer as a friend

Many of my good friends are defense attorneys who frequently practice in my county. In fact, I met most of these close friends when we were all prosecutors together many years ago. It seems that in criminal law, today’s teammate is frequently tomorrow’s adversary. Sometimes today’s adversary is tomorrow’s boss. These facts are worth remembering as we continue on in our careers.

While there is absolutely nothing wrong with being good friends with some of the defense lawyers you practice against, there are several situations that a conscientious prosecutor should try to avoid. First, strive to never mix professional and personal time with your defense lawyer friends. Talk about work when you are at work, but don’t discuss cases with your defense lawyer friends away from the courthouse or after work hours. I never want a defense lawyer, police officer, prosecutor, or anyone else to think my friends get special access or special deals.

Similarly, we must be vigilant to never give a defense lawyer who is a friend a better deal than one who is not. Every lawyer we deal with must get the same treatment, regardless of any relationship we might have with him. Again,

there must be no perception that certain lawyers get better deals because they are friends with the prosecutor. We must also remember to maintain a professional distance with defense lawyer friends while we are in the courthouse. I don’t want to seem overly friendly to a defense lawyer friend when his client, or anyone else for that matter, may be watching. This type of innocent, friendly behavior could be misconstrued as evidence of a “good ol’ boy” network at the courthouse. We don’t want our reputation as prosecutors tarnished by a mistaken perception that certain lawyers have an “in” with us.

Defense lawyers can also be our “friend” in a figurative sense too. They can be a great source of important information about our case, but only if they trust us. Numerous times in my career, I’ve avoided making a bad decision on a case because a defense attorney trusted me enough to disclose a fact I did not previously know. They trusted me to be open-minded and do the right thing with the new information. This is not only a great compliment if it happens to you, but it will also make you a more effective prosecutor.

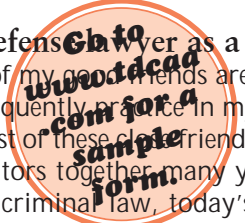
Finally, I view tough or talented defense lawyers as my “friends” because I know that they will make me better. These top-tier defense lawyers serve as extra motivation for me to grind through a thorough case preparation. I know that I will emerge a better lawyer just by trying a case against them and having my skills tested. Simply put, a good defense lawyer will force a prosecutor to grow as an advocate. If we want to be the best, we should look forward to going up against the best.

### The defense lawyer as a foe

Dealing with a defense lawyer as a foe is largely an exercise in learning how to disagree without being disagreeable.<sup>3</sup> I believe there are some hard and fast rules here that can help us as prosecutors.

First, we should never argue with a defense lawyer unless we’re in a courtroom. I’ve learned the hard way that arguing with a defense attorney outside a courtroom is a pointless exercise—no matter how satisfying it may be at the moment. Being a “workroom warrior” or a “keyboard warrior” is self-centered and indul-

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No matter how angry or disappointed I may be in a particular result, I always try not to let it show. No matter how much I may want to gloat in victory, I will always try to be gracious to my opponent.

gent. It's a sure sign of an amateur prosecutor.

Next, try not to plea bargain in front of an audience—especially in front of police officers, victims, or even too many other prosecutors or defense lawyers. The temptation can be for one or both sides to try and put on a show for the assembled audience. Any audience quickly becomes a kind of surrogate jury, and suddenly you find yourself in a useless argument trying to impress an audience that doesn't have a vote in the outcome.

Another rule I've always tried to follow is to never tell another lawyer how to practice law. This is a combustible act that is sure to lead to instant resentment, hard feelings, and likely hard words. I try hard not to give unsolicited advice, and I stay in my lane as much as possible.

We've all seen those prosecutors who make almost every interaction with a defense lawyer a disagreeable and contentious exchange. It's been my observation that these prosecutors don't last very long in this business. They burn out quickly. Their energy for this job gets sapped by repeated skirmishes. They eventually grow to dread the daily back-and-forth with the defense bar, which is a large part of this job. Remember that it's not all about you and your ego all day, every day. In fact, every contact we have with anyone—including defense lawyers—is a reflection on our elected prosecutor and the office in which we work. If we are undisciplined in dealing with defense lawyers, we will eventually weaken both our boss and our teammates.

Of course, some lawyers make it easy to be professional and disciplined. For instance, in all the cases I handled against Doug Mulder, no matter how serious the case, we never had an argument or a cross word *outside* the courtroom.

Inside the courtroom, however, was another matter. We had some epic courtroom clashes on some serious cases. Despite this, once we left the courtroom, any acrimony was quickly forgotten. It was the epitome of a professional. I never stoop to hold a grudge against an opposing lawyer who fought hard for his client. When it was over, it was over. He was gracious in both victory and defeat. His example of this principle still informs my behavior today. No matter how angry or disappointed I may be in a particular result, I always try not to let it show. No matter how much I may want to gloat in victory, I will always try to be gracious to my opponent.

Sometimes, however, there are certain lawyers who are always unprofessional or untrustworthy. With these few lawyers, all we can do is resolve to be as polite as we can for as long as we can. That doesn't mean we are wimps or must suffer baseless abuse. Sometimes we simply have no choice but to stand up for ourselves or for our team. Just be sure that you truly have no other alternative in these situations, and make certain that these situations are extremely rare. As you progress in your career, you will no doubt remember these lawyers and add them to your "sh\*t list" of lawyers who are difficult.<sup>4</sup> But if we ever find that our list has more than four or five names, we might need to look in the mirror and see if we have become the source of the problem or if we are the common denominator.

### Parting thought

Striving for success as a prosecutor is a never-ending journey. In addition to the support of good friends, we also need worthy adversaries to help us grow as advocates and become better stewards of justice. If you are lucky like me, you might find both friend and foe in one great defense lawyer. I am a better person because of Doug Mulder's friendship, and I'm a better prosecutor because he was such a talented and tenacious opponent. \*

### Endnotes

<sup>1</sup> This insightful column from the *Dallas Morning News* newspaper by Robert Wilonsky is worth a read if you didn't know Doug Mulder. See <https://www.dallasnews.com/opinion/commentary/2018/01/16/doug-mulder-died-sunday-might-dallas-greatest-attorney-certainly-thought>.

<sup>2</sup> I'd like to dedicate this column to him.



# Photos from February's Investigator School in Galveston



*TOP PHOTO: Members of the 2018 Investigator Board. From left to right, Joe Medrano, Bob Bianchi, Aneshia Thompson, Roland Cobos, Terry Vogel, Vanessa Miller (the new chair), Chawn Gilliland, Javier Barrera, and Paul Smithers. BELOW LEFT: Two investigators, Aneshia Thompson and Esrael Silva, were recognized for their long service with Professional Criminal Investigator (PCI) certificates. Other recipients (not pictured) are Casey Finke, Clyde Foster, W. Blake Pleuckahn, and Matthew Gray. AT LEFT: Trina Burkes (on the left), investigator in the Harris County District Attorney's Office, was named the Chuck Dennis Investigator of the Year. Kim Ogg (right), the DA in Harris County, was on hand to present the award to Burkes. Congratulations to all!*





