

The Texas Prosecutor



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



Likelihood ratios for lawyers

As a New York State prosecutor for more than 15 years, it has been my experience that many prosecutors are uncomfortable with scientific evidence.

Knowing this, I wrote an article for the *WIRE Interdisciplinary Journal*, where members of the Texas Forensic Science Commission read (and apparently liked!) it. It was then recommended that Texas prosecutors consider the following discussion to ensure fairness when using statistics applied to forensic evidence. This article highlights the issues prosecutors have faced in New York State, but the general principles cross jurisdictional borders.¹

‘I didn’t go to law school for statistics!’

With the proliferation of probabilistic genotyping software in forensic DNA analysis, prosecutors are faced with the challenge of understanding complex statistical conclusions and their corresponding meanings. Unlike many scientists, lawyers rarely learn statistics in college or law school; statistics are neither a subject on state bar examinations nor a topic in any core continuing legal education course. Therefore, when faced with complicated DNA comparison statistics, prosecutors may unknowingly present misleading—or even incorrect—arguments to the fact-finder. In this primer, I explain how to fairly argue probabilistic genotyping statistics in forensic DNA analysis.

At the conclusion of a trial, before a jury evaluates the evidence, the prosecutor presents a closing argument. In the



By Raymond Valerio

*Chief of the Forensic Science Unit, Bronx County (New York)
District Attorney's Office*

closing argument, the prosecutor persuasively marshals the evidence and is permitted to make reasonable inferences based on facts adduced during the trial.

To illustrate the significance of appropriate prosecutorial argument, an example helps. On December 11, 2012, Jennifer Ramsaran went missing in Chenango County, New York. After her body was discovered in February 2013, her husband, Ganesh Ramsaran, was charged with murder. During the trial, the prosecution elicited testimony that the defendant filed a missing person report on December 11, the day of his wife’s disappearance. Trial testimony highlighted the defendant’s whereabouts before and after the missing person report.

Continued on page 19



2019 Annual Report just released

The Texas District and County Attorneys Foundation has published its 2019 Annual Report, and it's entitled "Turning the Corner."

That's because after years of steady growth, we have some exciting events planned for 2020. I'll let you read the report yourself for the specifics (it's at www.tdcaa.com), but it has to do with new offerings from the Prosecutor Management Institute (PMI).

The Foundation was created in 2006 to support the training efforts of TDCAA, and since that time it has provided valuable support for advanced advocacy training, victim services, and most recently PMI. Most importantly, the Foundation has served as an organization that can devote funding to special projects that need development, such as the online *Brady* training, our soon-to-be-filmed victim assistance coordinator video, implicit bias training modules, and of course PMI's courses. These are the kind of projects that desperately need "seed"



By Rob Kepple
TDCAF & TDCAA Executive Director in Austin



money to get off the ground, and the Foundation has been there to provide it.

It is gratifying to see the support that the Foundation has from you, Texas prosecutors. Including the growing endowment fund, the Foundation topped a million dollars of available funds. Thanks for your support of the profession, and go check out 2019's Annual Report to find out what the Foundation has been up to. ✱

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Replicating the success of problem-solving courts

A childhood friend of mine grew up to be a scientist who works in pharmaceuticals.

He has an amazing career with a big company, but he isn't doing what one stereotypically thinks a Big Pharma chemist would do—he isn't inventing great new drugs. Instead, he is doing something harder: He is designing the chemistry and processes that allow the new wonder drugs to be effectively replicated so that they are available to everyone at an affordable price.

I immediately thought of him when I read a recent law review article on the efficacy of specialty courts. A Virginia law professor published a provocative piece about the proliferation of “problem-solving courts” as a means to address crime and behavioral issues, such as drug addiction and mental illness. The professor argues that the effectiveness of these courts is underwhelming, inconclusive, or altogether lacking. An article about the professor's treatise with a link to the work can be found at <https://thecrimereport.org/2019/12/16/765835>.

The question about the effectiveness of individual courts notwithstanding, I wondered about replicating success. What is successful, and how can it be replicated in a cost-effective way? We have all heard the call for reform and for a more effective criminal justice system, and it would be a shame if all we do is create some siloed programs that don't have widespread application. Like the discovery of a new wonder drug, it doesn't do that much good if we can't replicate it at a price we can all afford.

Thanks to 2019 TDCAA leaders

I want to take a moment to thank the TDCAA Board members who finished their service at the end of 2019. Our board is very active and keeps this organization moving forward. I am very proud to have worked with these excellent leaders: Comal County CDA **Jennifer Tharp**; Coryell County DA **Dusty Boyd**; Taylor County CDA **Jim Hicks**; and Ellis County and District Attorney **Patrick Wilson**, all of whom concluded their board service at the end of the year. Well done!



By Rob Kepple

TDCAA Executive Director in Austin

And welcome to our leaders in 2020

TDCAA held its annual business meeting in December and elected new leadership. It is a great group. Congratulations to the following folks, and thanks for stepping up: Galveston County CDA and Secretary/Treasurer **Jack Roady**; Washington County DA and District Attorney at-Large **Julie Renken**; Fisher, Mitchell, and Nolan County DA and Region 3 Director **Ricky Thompson**; Jefferson County CDA and Region 5 Director **Bob Wortham**; and Bosque County Attorney and Region 8 Director **Natalie Cobb Koehler**.

TDCAA committees

Our association is truly member-driven. That is especially true of our training and publications. We count on our active committee members to tell us what is needed, how it should be delivered, and who are the best presenters for the job. The four key committees for our training and publications are the Training Committee (designing most TDCAA seminars), Civil Committee (creating the Civil Seminar and the civil track at the Annual), Publications Committee (guiding and assisting **Diane Beckham** in selecting and writing TDCAA publications), and the Editorial Committee (assisting **Sarah Halverson** in producing this journal, *The Texas Prosecutor*). On the opposite page is a list of everyone serving on these committees in 2020—thanks in advance for the work you will be doing this year!

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Our hosts for the Rural Prosecutor Forum at our Annual Criminal & Civil Law Update, Mike Fouts (DA in Haskell County) and Mike Criswell (C&DA in Swisher County), invite everyone to reflect on whether they are truly rural prosecutors, as measured by things such as whether the Dairy Queen is the fine dining choice in town.

Are you a rural prosecutor?

Hundreds of prosecutors attend the Rural Prosecutor Forum each year at the TDCAA's annual conference in September. Our hosts for the forum, **Mike Fouts** (DA in Haskell County) and **Mike Criswell** (C&DA in Swisher County), invite everyone to reflect on whether they are truly rural prosecutors, as measured by things such as whether the Dairy Queen is the fine dining choice in town. Indeed, the issue of rural criminal justice has garnered increased attention by advocacy groups, as evidenced by the Southern Methodist University Deason Criminal Justice Reform Cen-

ter having recently hosted two forums on rural issues and the criminal justice system.

But what is truly rural in Texas? At the last Deason Center session, there were folks from other parts of the country who apparently thought the cut-off was around 100,000 people, but no one had a solid figure in mind. Enter Texas Association of Counties (TAC). In the November-December 2019 edition of its magazine, *County*, there is a fascinating discussion of Texas: Is it urban or rural? (Read it at [*Continued on page 7 in the pink box*](http://www.county.org/County-Magazine/Nov-Dec-2019/Is-Texas-</p></div><div data-bbox=)

Spotlight on the TDCAA staff

TDCAA staff. In a word, they are amazing. They're also smart, funny, dedicated, and passionate about what they do.

Led by Executive Director Rob Kepple, they spend countless hours supporting prosecutor offices in their mission to see that justice is done. And they do it often with little accolade, allowing us, their membership, to reap the benefits of their labor. But who are they exactly?

This month, I've asked them to share some fun facts about themselves so you can get to know them a little better. Just as importantly, though, I want you to learn about the great work that is being done at TDCAA and whom you can contact if you want to get involved.

Clay Abbott

How long have you worked at TDCAA? 15 years (since October 2004)

What are your main job duties? I'm a resource on DWI issues, I do regional DWI training, I assist the training director on TDCAA schools, and (not in my official job description) I'm the TDCAA bouncer.

What do you like about the Association? 1) It is a job that matters. What prosecutors do is very important, and helping them do that very demanding job better is very satisfying. 2) Great management that lets you succeed. 3) Fantastic people to work with.

What's a fun fact about you? My most expensive clothing is actually a pirate outfit.

What's something people may not know about TDCAA? We are not actually a bookstore.

How could members get involved with the Association? Two simple answers: Show up. Ask.

Diane Beckham

How long have you worked at TDCAA? Since September 1996, when my first day on the job involved getting on a plane and flying to South Padre for the Annual conference

What are your main job duties? Writing, editing, and formatting TDCAA books. We produced a TDCAA record high of 20 books in 2019. I also supervise employees involved with victim services and other publications-related activities, in-



By Kenda Culpepper

TDCAA President & Criminal District Attorney in Rockwall County

cluding this journal, and provide staff support for miscellaneous other projects, such as our Diversity, Recruitment, & Retention Committee, and an ad hoc group working on creating cognitive bias training and resources.

What do you like about the Association? Appreciative, fun members who have helped us build a community of prosecutors

What's a fun fact about you? I went to law school to become a sports agent (in my former journalist life, I was a sports reporter and editor). But first-year contracts class bored me to pieces, and I wasn't good at it, so I finished law school and passed the bar exam, but more or less went back to writing afterward.

What's something people may not know about TDCAA? We thrive on member involvement and feedback. Every activity we undertake (choosing which books to publish, which seminars to offer, and which issues in the legislature to focus on) depends on us finding out what our members need. If a member has an idea about any of these things, we would love to hear from you any time. All these ideas go through boards and committees made up of prosecutor-office employees, and those boards and committees help direct our staff of 16 in choosing the ideas that will help the greatest number of prosecutor-office employees.

How could members get involved with the Association? Call or email anyone at TDCAA any time. Talk to any one of us at a conference. Better yet, express interest in serving on one of our committees through the TDCAA office or the current president of the TDCAA board of directors (that's Kenda Culpepper, CDA in Rockwall County). We love having input from members of varied back-

grounds and experience levels to ensure we're providing services that are actually helpful.

Shannon Edmonds

How long have you worked at TDCAA? Since 2002

What are your main job duties? Keeping TDCAA members up to speed on political and policy issues that impact their offices, helping prosecutors navigate the shoals of the legislative process, assisting with our training and publications efforts as needed, and answering legal questions.

What do you like about the Association? The staff is small, but we are all aligned in support of the same mission: helping local prosecutors serve their communities.

What's a fun fact about you? First Lady Laura Bush once baked me cookies. (OK, sure, at the time she was "just" the First Lady of Texas, and the cookies were for me and several of my co-workers in the Governor's Office who had driven from Austin to Crawford and were waiting to go over some state business with then-Governor George W. Bush, who was running for president at the time, but who cares about the details—wasn't that a wonderfully thoughtful gesture by her? And yes, the cookies were delicious.)

What's something people may not know about TDCAA? It's more than 110 years old and it's the largest statewide association of prosecutors in the country.

How could members get involved with the Association? Volunteer for a committee! We are a member-driven association, and we can succeed in our mission to strengthen and improve our profession only if our members participate.

Sarah Halverson

(but I'll still answer to Wolf, my maiden name)

How long have you worked at TDCAA? Since 2002

What are your main job duties? Producing this journal six times a year takes up most of my time, but I also do the graphic design for conference brochures, signage, and materials for our Foundation. Randomly, I'm also the staff calligrapher.

What do you like about the Association? I learn something new every day in this job, and it has changed me in some fundamental ways. I've also met the smartest, most generous, saltiest people working here.

Rural-or-Urban.) Spoiler alert: TAC doesn't offer a definition of "rural" either, but the article graphically depicts how population in Texas has shifted over time and where population is concentrated. It turns out that 18 state agencies have their own definition of what is rural.

But take a look at the maps in the article, and you will agree that if you live west of the I-35 corridor, you are probably in a rural jurisdiction. And according to 2018 data, 83.8 percent of Texans live in just 40 counties, and the sparsest 200 counties account for just 12 percent of the population. That's a lot of open space!

Congratulations to Erleigh Wiley

Congratulations to Kaufman County CDA **Erleigh Wiley** on her appointment to the board of the Crime Victims' Institute. The Institute, housed at Sam Houston State University, was created by the legislature in 1995 to research the impact of crime on victims and to enhance the services available for them. Finally, part of its mission is to help give victims of crime a voice. You can read more about the Institute at www.crimevictimsinstitute.org.

State Bar Criminal Justice Section scholarships

As you all know, the State Bar Criminal Justice Section has been a great supporter of TDCAA. The Section has been instrumental in the production of our two online *Brady* courses and has supported prosecutor training with scholarships. Again this year, the Section is offering up to \$15,000 in scholarships to various criminal law conferences, including the TDCAA Annual Criminal and Civil Law Update. Scholarships can be used for both registration and travel expenses. Find out more at www.txbar-cjs.org/scholarships. The application deadline is Wednesday, April 15, so don't wait if you are in need of funds to attend training. ❄️

What's a fun fact about you? Two houses I've lived in were featured in a design magazine. It's way less glamorous than it looks, believe me.

What's something people may not know about TDCAA? We're a much smaller ship than our members might think. I've fielded calls from people who ask to speak to someone in "the book department"—well, the book department is two people! We're lean 'n' mean up in these parts.

How could members get involved with the Association? I am always on the lookout for people who want to write for the journal. I mean, all y'all are experts in something—share what you know with the rest of us. It's my job is to make you look good while doing it.

Jordan Kazmann

How long have you worked at TDCAA? I have worked for TDCAA as a full-time employee for almost six years.

What are your main job duties? My job duties include the sales and shipments of our different publications. I am also our building manager, responsible for maintaining our building and four other tenants who occupy the second floor.

What do you like about the Association? I enjoy the friendly environment of our Association and our excellent management team.

What's a fun fact about you? A couple of fun facts about me are I am a former professional soccer player, and my wife and I run a successful volleyball club.

Rob Kepple

How long have you worked at TDCAA? I am in my 30th year at TDCAA. Prosecution has been my career, and I have been honored to be able to serve our profession as the general counsel and now director of our professional home.

What are your main job duties? As the director of the association, my job is to give the TDCAA staff the tools they need to serve you—then get out of their way. I am amazed at what the TDCAA team has been able to accomplish and how our profession has grown during my tenure here.

What do you like about the Association? Our members. Texas prosecutors are the friendliest people I have ever met and are so appreciative of what we try to do. It is very fulfilling to support you and get you what you need.

What's a fun fact about you? In 2020 I will be the president of the National Association of Prosecutor Coordinators.

What's something people may not know about TDCAA? Out of 1,500 MCLE training organizations in Texas, TDCAA annually ranks fourth or fifth in the number of MCLE training hours provided (behind only the State Bar training entities and the Dallas Bar Association). In Fiscal Year 2019, we produced 71,376 MCLE hours of training.

How could members get involved with the Association? TDCAA thrives because we are a member-driven organization. Want to get involved in publications or training? Just give me a call!

Brian Klas

How long have you worked at TDCAA? Since 2016

What are your main job duties? As training director, I supervise the development and implementation of TDCAA's training initiatives.

What do you like about the Association? Unlike some professional associations or training entities, TDCAA does not exist only to keep itself in existence. We work hard to meet the needs of our members through training, legislative support, and individual direct assistance. If it isn't in the interest of our membership, we don't do it. Because of that, as long as you are seeing justice done, we are too.

What's a fun fact about you? I never won a bike during Bozo's Grand Prize Game.

What's something people may not know about TDCAA? The men's bathroom code is 19777.

How could members get involved with the Association? If you want to get involved in training, just shoot me an email or talk to me at a conference. I'm super friendly and there is at least a 65-percent chance you will enjoy the interaction. Those are good odds.

Monica Mendoza

How long have you worked at TDCAA? I have been with TDCAA for about five months. I joined the team shortly after I took the Texas bar exam.

What are your main job duties? My main duties include writing the weekly case summaries and assisting prosecutors with legal research questions.

What do you like about the Association? All the people who make up TDCAA. Every member I have met is always willing to share their story, knowledge, and experience as a prosecutor. On top of all the great members, the staff is also extraordinary. Since I have joined TDCAA, I have

"I am amazed at what the TDCAA team has been able to accomplish and how our profession has grown during my tenure here."

*—Executive Director
Rob Kepple*

quickly learned that the staff is the heart of TDCAA. They are all welcoming and encouraging, and overall they love what they do.

What's a fun fact about you? I have a really high-pitch yell that comes in handy when I visit haunted houses every October.

What's something people may not know about TDCAA? Signing up to our TDCAA case summaries is a great way to stay up-to-date on the most recent Texas and federal court cases. Anyone is welcome to sign up—just go to www.tdcaa.com/case-summaries-sign-up.

Andrea “Andie” Peters

How long have you worked at TDCAA? Since October 2018

What are your main job duties? Assistant Meeting Planner. For TDCAA seminars, I book hotel rooms and blocks, set up conference rooms, take care of AV needs, do everything food- and beverage-related, make travel plans for our speakers, upload a lot of website stuff including training materials and speaker evals, make budgets for conferences ... the list goes on.

What do you like about the Association? That I work with really good, genuine people whom I am able to count on.

What's a fun fact about you? I am a really good tennis player, and caramel apples are my all-time favorite thing in the entire world.

What's something people may not know about TDCAA? We all get together in the conference room once a month before every conference and hand-stuff every single folder we give out at each conference.

How could members get involved with the Association? Volunteering to help at registration for an hour or two at conferences. When you see us behind the desk checking people in, we could always use a few extra hands, especially when we are in your city and you are able to come early.

Jalayne Robinson

How long have you worked at TDCAA? About six years.

What are your main job duties? As TDCAA's Director of Victim Services, my primary responsibility is to assist Texas elected prosecutors and their staff in providing support services to crime victims in their jurisdictions. I travel around Texas providing training to prosecutor offices. I assist victim assistance coordinators (VACs) and elected prosecutors in setting up programing

that meets the statutory duties for prosecutor offices.

What do you like about the Association? TDCAA keeps up with the latest in the field of criminal justice and shares this information with our members through TDCAA's bi-monthly journal, *The Texas Prosecutor*, and through training at our seminars offered throughout the year.

What's a fun fact about you? I was born on the 4th of July—my Daddy called me his little fire-cracker. And I raised 21 Toy Poodle puppies to pay for my graduate degree.

What's something people may not know about TDCAA? TDCAA is a member-driven organization. Our training and services are developed and presented by TDCAA members from all across the state who serve on committees and boards.

How could members get involved with the Association? We need your energy at TDCAA! If you have an interesting topic or innovative idea you have implemented in your office, please consider sharing with other TDCAA members, either by speaking at one of our conferences or writing an article for this journal. You can consider running for election for one of our boards or committees—these groups oversee production of our training, books and manuals, legislative work, diversity in prosecutor offices, and the journal. There's really something for every skill set.

Dayatra Rogers

How long have you worked at TDCAA? Since 2004

What are your main job duties? Database Manager & Registrar

What do you like about the Association? The passion we have in giving our members the very best of us.

What's a fun fact about you? I love planting and working in my flower bed.

LaToya Scott

How long have you worked at TDCAA? Four years

What are your main job duties? I organize conferences and meetings and create experiences for our members.

What do you like about the Association? Paid holidays

What's a fun fact about you? I like to play Sudoku.

“Every member I have met is always willing to share their story, share their knowledge, and share their experience as a prosecutor. On top of all the great members, the staff is also extraordinary. Since I have joined TDCAA, I have quickly learned that the staff is the heart of TDCAA. They are all welcoming and encouraging, and overall they love what they do.”
—Research Attorney
Monica Mendoza

*"Things people may not know about TDCAA: Clay Abbott, our DWI Resource Prosecutor, makes chili for a staff lunch once a year. It feels like a family here—we all help out to get things done before seminars. And it's very creepy in the office if you are the last one in the building."
—Reimbursement Clerk and Receptionist Amber Styers*

What's something people may not know about TDCAA? We are a customer service-based organization and because we are, our members are profoundly involved in the association.

How could members get involved with the Association? If you're an expert in your field, inquire about becoming a faculty advisor at our Prosecutor Trial Skills Course, and ask about our Train the Trainer program to become a future speaker for TDCAA.

The Andrew Smith

How long have you worked at TDCAA? Since 2001

What are your main job duties? Countin' cash and cuttin' checks.

What do you like about the Association? Always having support from my TDCAA family for my home family.

What's a fun fact about you? I can whip up some killer fried chicken wings.

What's something people may not know about TDCAA? We have only 16 employees.

How could members get involved with the Association? Volunteer on-site at one of our trainings near you.

Amber Styers

How long have you worked at TDCAA? I started as a temp in 2015, on and off for a while, but full time for a year and a half to date, or maybe the last two years. I really don't know!

What are your main job duties? Answering the phones and writing reimbursement checks.

What do you like about the Association? I have loved getting to know our members, and I love everyone on our staff and everything we do. This has been my favorite job ever.

What's a fun fact about you? I have a motorcycle. Also, I really like cold French fries.

What's something people may not know about TDCAA? Clay Abbott, our DWI Resource Prosecutor, makes chili for a staff lunch once a year. It feels like a family here—we all help out to get things done before seminars. And it's very creepy in the office if you are the last one in the building.

Back to Kenda

I hope you have learned more about these amazing people, but I am also optimistic that you saw something that may have piqued your interest about getting involved. As the staff mentions over and over, TDCAA is a membership-driven organization. These fine individuals can give us the tools, but it takes volunteer participation to make this machine work.

The key is this: If you want to get involved and make an impact on prosecutors, investigators, and staff across the state, all you have to do is ask. TDCAA has a number of standing committees that contribute to the work that the staff does; they include Legislative; Training; Diversity, Recruitment, and Retention; Publications; Editorial; Civil; Investigators; and Key Personnel & Victim Services. It really does just take a phone call to let someone know of your interest. The more engaged our members are, the stronger our organization will be.

Want to speak at a conference? Let TDCAA know that you'd like to attend Train the Trainer, or talk to someone on the Training Committee. Interested in the legislative process? Volunteer to come to Austin to learn the ropes during the session. You can stay for a day or a week, and no one is going to make you speak unless you want to or until you are ready. Recently worked on an intriguing case or running an amazing program? Reach out to the editor of this journal to write an article about it.

I hope you will take a moment to thank TDCAA staffers the next time you see them at a conference or talk to them on the phone. And consider this a personal invitation to be more active in TDCAA—*your* association. If you're not involved, you're missing out. It's just that simple. ✨

Takeaways from *Dixon v. State*: cell phones are private, trials are public

The “As The Judges Saw It” column, I was told, is meant to summarize a recent appellate opinion that impacts the day-to-day work of prosecutors with a bit of levity.

“I can absolutely do that,” I thought, quickly looking up the word “levity.” “Levitation is my strongest asset. I can levitate with the best of them—no prob.”

On January 15, the Court of Criminal Appeals issued its opinion in the non-death penalty capital murder case of *Thomas Dixon v. State*, PD-0048-19. And here I have to drop the levity for a moment, as the facts are serious.

The murder, the trial, and appeal to the Seventh Court

The underlying case dealt with a murder for hire. On July 10, 2012, a man named David Shepard killed Lubbock physician Joseph Sonnier in the garage of his home by stabbing and shooting him. Shepard pleaded no contest to capital murder in return for an agreed sentence of life without parole. The State alleged that Shepard was hired to murder Sonnier by plastic surgeon Thomas Dixon because Sonnier was dating Dixon’s former girlfriend and Dixon wanted her back.

After a mistrial, Dixon was tried and convicted of two counts of capital murder in the 140th District Court in Lubbock. Dixon’s attorneys appealed to the Seventh Court of Appeals in Amarillo, alleging an impressive 50 points of error. Two broad groupings of those issues were of particular interest to the Seventh Court: the denial of the defendant’s motion to suppress cell-site location information (CSLI) showing his whereabouts on certain dates (which is bad for the State) and the denial of a public trial (which is even worse for the State).

At trial, the State had admitted 51 pages of records from Shepard’s cellphone provider, showing both CSLI information placing Shepard in Lubbock and showing that he and Dixon had exchanged hundreds of messages in the weeks prior to the murder, some of which were about



By Britt Houston Lindsey

Chief Appellate Prosecutor in Taylor County

the victim. The State also, over the defendant’s objection, introduced CSLI from the defendant’s phone, which it had obtained without a warrant. At the time, this was entirely understandable; the Court of Criminal Appeals and every federal circuit that had considered the issue had uniformly held that you didn’t need a warrant for CSLI.¹ Unfortunately for the State, in 2018 the U.S. Supreme Court issued its 5-4 landmark opinion in *Carpenter v. United States*,² which held that obtaining cellphone records showing the physical locations of cellphones by tracking through cell towers without a warrant was a Fourth Amendment no-no. This is what’s known in the biz as a big “oh, crap” moment. The Seventh Circuit held that *Carpenter* mandated the exclusion of the CSLI, applied a constitutional harm standard, and held that the improper introduction of the CSLI required reversal.³ For the State, that’s bad.

Arguably even worse for the State was the second issue: denial of a public trial. Dixon claimed that members of the public were excluded at three points in the trial: when a sketch artist was told by a bailiff during jury selection that there was no room for him; when the trial court asked spectators “if everybody would please excuse yourself from the courtroom except for the attorneys” during an argument between the lawyers; and when several people were prevented from coming into the courtroom during closing argument by deputies who told them

that the trial court judge “doesn’t want anyone standing.” The reason that this is an arguably even worse problem is that denial of a public trial is one of the very few instances of structural error, and structural error is *never* harmless.⁴

Almost all errors in the trial court are subject to some sort of harmless error analysis—egregious harm, some harm, non-constitutional harm, or constitutional harm—depending on what kind of error it is. Not so with structural error that “goes to the very integrity of the legal system”⁵ and “affect[s] the framework within which the trial proceeds.”⁶ If structural error is committed in the trial court, no harm analysis applies and reversal is automatically required. The upshot is that the wrongful exclusion of members of the public from a trial can result in a new trial for the defendant, even with no showing that the defendant’s case was harmed. The Seventh Court initially abated the case back for a finding of facts from the trial court to determine if the court was closed on those three occasions for narrow and constitutionally permissible reasons, but it later reversed and remanded for a new trial after finding the trial court’s reasons insufficient.

The CCA weighs in

But that’s not *As The Judges Saw It*⁷ at the Court of Criminal Appeals. Writing for a unanimous court, Presiding Judge Keller agreed with the well-briefed arguments of Assistant Criminal District Attorney Lauren Murphree regarding both the harm analysis in the CSLI issue and error preservation in the public trial issue. Judge Keller first held that even assuming the CSLI evidence was erroneously admitted, it was “clearly harmless,” even under the relatively rigorous constitutional harm standard.

The Seventh Court had held that the CSLI evidence served to both demonstrate circumstantial evidence of Dixon’s complicity in the murder (by showing that he and Shepard worked closely together), and to impeach Dixon’s testimony by showing that he was untruthful with police when he said that he wasn’t in Lubbock in March 2012. Presiding Judge Keller saw otherwise, noting that the defendant’s presence in Lubbock on a day months before the murder occurred “were not particularly important to the prosecution,” especially when the defendant’s

own theory of the case was that he hired Shepard to track and photograph the victim.

With regard to impeaching the defendant with lying about his being in Lubbock on that date, Judge Keller noted that the same point had been effectively made with the proper introduction of the defendant’s gas purchase records, a point which the Seventh Court had downplayed. The defendant had also admitted that he lied in a police interview about knowing the victim and had called Shepard within minutes of the end of the interview, which undermined his credibility more than the CSLI evidence. In sum, the evidence about the defendant’s whereabouts and deceptions regarding March 12 “were not a significant pillar of the State’s case,” and its admission was harmless beyond a reasonable doubt.

A public trial

Now let’s turn to the public trial issue. Even though a showing of harm is not required for structural error, a defendant still must preserve error by objection, and the Court held that the defense had not preserved error as to the sketch artist and the hearing outside the jury’s presence. The objection to the sketch artist’s exclusion was not made until the following day. The Seventh Court held that the State didn’t point to facts in the record showing that the objection wasn’t made at the earliest opportunity, but Judge Keller pointed out that it’s not the State’s burden—the defendant must show that he made the objection at the earliest opportunity.

Regarding the hearing outside the presence of the jury, Judge Keller noted that the defense did object to clearing the courtroom but didn’t preserve error by obtaining a ruling or objecting to the trial court’s refusal to rule, moving instead to other matters.

As to the exclusions during closing arguments, the Court found no error. Judge Keller noted that the trial court determined that the courtroom was filled to capacity, and excluding spectators from a full courtroom is not a violation of the right to a public trial. The trial court had reasonably accommodated the public by using the largest courtroom, and it couldn’t be faulted for turning people away from a full courtroom. The Court reversed and remanded back to the Seventh Court to address Dixon’s remaining, what, 37 issues? Holy cow.

Almost all errors in the trial court are subject to some sort of harmless error analysis—egregious harm, some harm, non-constitutional harm, or constitutional harm—depending on what kind of error it is. Not so with structural error that “goes to the very integrity of the legal system” and “affect[s] the framework within which the trial proceeds.”

The takeaway

So what's this mean to me, the hard-working, front-line prosecutor? I'm so glad you asked. As to the CSLI issue, most prosecutors were already aware that *Carpenter* requires a warrant now, so this portion will probably only be of interest to my fellow appellate nerds (hi, guys!) that have a pre-*Carpenter* CSLI case pending on appeal, or any other case that involves the Texas Constitution and the Texas' exclusionary statute, Code of Criminal Procedure Art. 38.23(a). For any pending pre-*Carpenter* CSLI case, *Dixon* gives appellate prosecutors both a guide to follow and a case to cite for a harmless error argument. The other reason *Dixon* is noteworthy is Judge Hervey's concurrence, and it's a little technical. Trial prosecutors may wish to skip this next paragraph.

Judge Hervey noted that the lower court's constitutional harm analysis was based on the Court's 2016 opinion in *Love v. State*,⁸ which she would overrule. In *Love*, the defendant argued that text messages were admitted at trial in violation of Art. I, §9 of the Texas Constitution and the exclusionary rule in Art. 38.23(a), and the Court reversed after conducting an analysis for constitutional harm under Texas Rule of Appellate Procedure 44.2(a).⁹ Judge Hervey concluded that this is the wrong harm standard and one that unfairly punishes the State; because there is no inherent suppression remedy in Art. I, §9a and Art. 38.23(a) is a statutory remedy, the much more forgiving non-constitutional harm standard of Rule 44.2(b)¹⁰ should apply. Judges Newell and Keasler joined in the concurrence, and Judge Hervey noted that Presiding Judge Keller had expressed her agreement in a dissent in the 2001 case of *Hernandez v. State*.¹¹ Appellate prosecutors who have a case arguing that evidence should have been suppressed under Art. I, §9 and Art. 38.23(a) should read the concurrence in *Dixon* and Presiding Judge Keller's dissent in *Hernandez* and consider making an argument that a non-constitutional harm standard should apply.

Welcome back, trial prosecutors! The public trial aspect should probably make all of us take notice. It may seem a little strange that a judge asking the gallery to step outside during a verbal brawl or well-meaning court staff restricting entry to the courtroom to prevent a fire hazard could jeopardize a capital murder conviction, but that's exactly what almost happened here. In other cases, the exclusion of a member of the public has resulted in a reversal. In the 2010 U.S.

Supreme Court case cited in the opinion, *Presley v. Georgia*,¹² a cocaine trafficking case was reversed when a single observer (the defendant's uncle) was told to leave the courtroom during voir dire. In another cited case, *Cameron v. State*,¹³ the trial court's exclusion of three family members from voir dire initially resulted in the reversal of a murder conviction and a remand for a new trial by the Court of Criminal Appeals, although after rehearing the Court instead vacated the judgment of the court of appeals and remanded there for reconsideration. Clearly the public trial doctrine is a pretty important thing to keep in mind for any prosecutor who prefers to only try cases just the one time.

Judge Keller's opinion is something of a victory for a common-sense approach to acknowledging the trial court's ability to control the courtroom while still maintaining public access, but the near-reversal in the lower court underlines how important the issue can be. The key here is to be aware in court that a public trial should be public to every degree reasonably possible, and to be mindful of any exclusions that could take place, even inadvertently. When it is necessary that someone be turned away from or excluded from the courtroom, the reasons for the exclusion should be absolutely clear on the record, and it should be equally clear that the court considered and exhausted every reasonable alternative before doing so. It can be very tricky to tell judges how to run their courtrooms, so I advise that you make your second chair do it.

In conclusion, thank you for reading my inaugural ATJSI column and coming to my TED talk. I hope you found it both informative and levitational. As a reward to the careful reader who finished the entire column, there is a \$20 gift card to Chuy's taped under the State's table in the Court of Criminal Appeals. Good luck. ✨

Endnotes

¹ See *Ford v. State*, 477 S.W.3d 321, 330-35 (Tex. Crim. App. 2015); see also *Rivera v. State*, No. 01-18-00078-CR, 2019 Tex. App. LEXIS 3777 (Tex. App.—Houston [1st Dist.] May 9, 2019, pet. ref'd); *Carpenter v. United States*, 138 S.Ct. 2206, 2226 (2018) (Kennedy, J., dissenting).

² 135 S.Ct. 2206 (2018).

Continued on page 15 in the pink box

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Two great trainings ... that only kind of go together

When I was kid growing up in what is now suburban juggernaut Mansfield, Texas, I often cut through the woods to get to a convenience store near the old Carnation plant.

It was a rural area with lots of creek crossings, abandoned appliances, biting insects, and dangerous older kids. Unlike the generic QuikTrips of today, with their product standardization and illusion of choice, my destination store had a true variety of drinks and snacks as well as an aisle or two of nonsense items. I was after stuff to eat, but I could have purchased any number of fake plants, calendars, Falco cassettes, fuel additives, panty hose eggs, sewing patterns, age-inappropriate novelty pens, or candles. The only barriers were my lack of cash and my lack of desire to haul junk back through the woods—and I didn't think they'd sell me the pens.

I promise I'm going somewhere with this.

Occasionally, items would be taped together for sale. It wasn't really a two-for-one but more of a "Hey, buy both these things" situation—and the pairs only kind of fit together. The aforementioned fuel additive might be bundled with windshield wiper blades. They are both car things, but I can't imagine many people needed those two things at the exact same time. It only made a sort of sense to put them to together.

Which brings me to why I'm writing: to tell you about two trainings that only kind of fit together (like a stapler and glue). But unlike the convenience store of my youth, you don't have to go to both—though you certainly can, and you would get great value for your time and money if you do!

Fingerprinting course in Austin

First, TDCAA has worked with the Investigator Board to bring back fingerprint training. We are in talks with a contract instructor as this issue of the journal goes to press, and we plan to offer 36



By Brian Klas

TDCAA Training Director in Austin

hours of TCOLE Course No. 3855 this summer. The goal is to qualify attending investigators to competently provide rolled-print comparison testimony in court. We know that proving up priors can become frustrating for everyone as you wait for a witness from a separate agency to come and make a print comparison, and having an on-staff investigator with that expertise will mean one fewer thing to worry about in the heat of trial.

The fingerprint class will be June 8–12, and it will happen alongside our Organized Crime Conference here in Austin at the Crowne Plaza Hotel. Registration, however, will be entirely separate, and the fingerprint training will be free, though attendees will be entirely responsible for their travel, hotel, and food, and there will be no reimbursements for those expenses. Because fingerprint courses are so hands-on (hahahahaha), attendance will be capped to ensure the quality of the training. Look for the registration to come online (at www.tdcaa.com/training) in March.

Fundamentals of Management in Austin

The second training event is the very first stand-alone Fundamentals of Management Course from our Prosecutor Management Institute (PMI). Since its debut a few short years ago, we have put hundreds of county and district attorney personnel through this training already, and reviews of the course have been overwhelmingly

positive. In the past, the only way to attend this course was to organize a group of sufficient size, either all from one office or collected from several, and ask PMI trainers to travel to your jurisdiction. Because of office size, scheduling issues, and hiring issues, there have been many interested TDCAA members who have not been able to attend this course. We've considered offering this training here in Austin to accommodate those who can't attend under the current model, and as a test, we put on a trial version of the training at our last Elected Prosecutor Conference, and it worked well. (To accommodate the attendees and the time-frame, we had to remove portions of the course, but we will return to the full training going forward.)

If you want training on management and you want it delivered the way we've been doing it, you can still do that—information and directions can be found online at www.tdcaa.com/prosecutor-management-institute-pmi. If you missed PMI when it came to your county, can't get a big enough group together, or can't shut down a significant portion of your office for a week, then the standalone course in Austin is for you. Fundamentals of Management is for prosecutors and prosecutor's office staff who are now or are expected to someday supervise personnel. In many respects the course is a close cousin to our Prosecutor Trial Skills Course, in that everyone should take it eventually, and I hope that it grows to that point.

The standalone Fundamentals of Management Course will be held August 26–28 here in Austin. It is underwritten by the Texas District and County Attorneys Foundation, and the cost will be \$500 per attendee. That fee covers online assessments for all students, materials, equipment, presenters, and coffee service. Attendees will be responsible for food, travel, and hotel. Because this is an intensely interactive, content-rich program, attendance will be capped at 25. Registration for this course will appear online at www.tdcaa.com in May.

So now you know about these two not-quite-alike events that TDCAA will be offering in the near future. And see? They kind of go together. ❖

³ *Dixon v. State*, 566 S.W.3d 348, 363-64 (Tex. App.—Amarillo 2018).

⁴ *Waller v. Georgia*, 467 U.S. 39, 46 (1984).

⁵ *Gray v. Mississippi*, 481 U.S. 648, 668 (1984).

⁶ *Arizona v. Fulminante*, 499 U.S. 279, 309-10 (1991).

⁷ See what I did there?

⁸ 543 S.W.3d 835, 845 (Tex. Crim. App. 2016).

⁹ "[T]he court of appeals must reverse a judgment of conviction or punishment unless the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment." This is a tough standard.

¹⁰ "Any other error, defect, irregularity, or variance that does not affect substantial rights must be disregarded." Not nearly so tough a standard as Rule 44.2(a).

¹¹ 60 S.W.3d 106 (Tex. Crim. App. 2001).

¹² 558 U.S. 209 (2010).

¹³ 490 S.W.3d 57 (Tex. Crim. App. 2014).

Photos from our Prosecutor Trial Skills Course



Photos from our Investigator School



Award winners from Investigator School



TOP PHOTO: Ector County DA Bobby Bland (at left) presented the Chuck Dennis Award to Joe Commander, a DA investigator who retired from his office. ABOVE: Winners of the Professional Criminal Investigator (PCI) awards include Matt Andrews, James Carter, Buck Carroll, Brian Chason, Michael Dorris, Connie Gonzalez, Chris Hamilton, Elwood Mitchell, Kenneth Moten, Robert Pawley, Rafael Pruneda, and Robert Warner (not all are pictured). AT RIGHT FROM TOP: Four men were honored with the Career Investigator Award: Mike Carlson (pictured at left with Walker County CDA Will Durham at right), Donald Cohn (pictured at left with Harris County DA Chief Investigator Stephen Clappart), Joe Commander (pictured at right with Ector County DA Bobby Bland at right), and Mike Holm (pictured at right with Special Prosecution Unit Executive Director Jack Choate at left). Congratulations to all the award winners!

Likelihood ratios for lawyers (cont'd from front cover)

Forensic testimony at trial established there was a mixture of DNA on a bloodstain found on Mr. Ramsaran's sweatshirt. The forensic scientist testified that the defendant was the major contributor and that the victim "could not be excluded" as the minor contributor to the bloodstain. Statistical analysis revealed that it was 1.661 quadrillion times more likely that the blood sample from the sweatshirt contained a mixture of the defendant and victim's blood than two randomly selected individuals. The defendant was convicted of murder and sentenced to 25 years to life in prison.

On appeal in 2016, the intermediate appellate court reversed the defendant's conviction and ordered a new trial. The court's analysis centered on the prosecutor's statements in summation: "On that sweatshirt is [the defendant's] wife's DNA," and the DNA report "shows that [the victim's] DNA was on that area where the bloody spot is." Then, in summarizing the forensic expert's testimony, the prosecutor said, "We have the forensic people who say ... [the victim's] DNA is on that sweatshirt, to some degree." Ultimately, the court concluded that the prosecutor's misstatements alone were enough to reverse the conviction—the inaccurate and misleading description of the DNA evidence deprived the defendant of a fair trial.² In 2017, though, the highest appellate court in New York State reviewed this case, disagreed with the intermediate appellate court, and the conviction was restored.³

Lawyers and forensic scientists alike must learn lessons from cases like this. One court found the prosecutor's statements fundamentally unfair while another found them permissible. How can a prosecutor be confident that a conviction will not be reversed based on an improper comment regarding statistical conclusions during summation?

Prosecutors must consider two questions to ensure fair argument of DNA statistics to a factfinder. First, do I *understand* the conclusion? Second, do I understand the *value* of the conclusion? American inventor Charles Kettering once said, "Knowing is not understanding. There is a great difference between knowing and understanding: You can know a lot about something and not really understand it."⁴ Let's explore these two questions.

Do I understand the conclusion?

During the pendency of a case, the prosecutor gathers evidence from various sources. Wit-

nesses are located, interviewed, and prepared for trial testimony. Prosecutors scrutinize police officers' observations and paperwork. Now, more than ever before, forensic evidence is tested and, if possible, compared with DNA from a defendant. For that reason in particular, prosecutors must remember Kettering's wisdom. Simply knowing the results of forensic analysis does not mean one understands the conclusions. This is even truer when complicated algorithms are the foundation for DNA mixture analysis.

Many laboratories are using probabilistic genotyping software to aid in interpreting DNA mixtures. When a defendant's DNA profile is compared to DNA recovered on evidence from the crime scene, most probabilistic genotyping software platforms generate a statistic called a "likelihood ratio," which gives weight to the conclusion reached by analysts. Simply put, a likelihood ratio (LR) is a statistic that compares two scenarios and presents which scenario is more likely. In the context of forensic DNA analysis, the LR assesses the evidentiary support that a person of interest (e.g., the defendant) is a possible contributor to the crime scene evidence.

Here is an example. The DNA mixture found on the swab of a gun's trigger is approximately 10.4 trillion (1.04×10^{13}) times more probable if the sample originated from defendant John Doe and one unknown person than if it originated from two unknown persons. Therefore, the LR supports that John Doe is included as a contributor to this sample.⁵

Just as important as understanding what a LR does say is what a LR does *not* say. Several common misconceptions may cause a prosecutor to incorrectly present LR statistics. First, the LR is *not* a measure of how much more likely it is that the person of interest (e.g., the defendant) is the DNA donor to crime scene evidence. For example, it is improper to argue, "It is [LR] times more likely that the victim and the defendant are the contributors of this evidence profile than it is that the victim and a random, unrelated person are the contributors." Instead, the LR is a measure of how likely it is to obtain the evidence result *if* the person of interest is included rather than not.

Additionally, it is incorrect to argue, for example, "The LR is 100,000. Therefore, there is only a 1-in-100,000 chance that someone other than this defendant contributed the DNA on the

Simply put, a likelihood ratio (LR) is a statistic that compares two scenarios and presents which scenario is more likely. In the context of forensic DNA analysis, the LR assesses the evidentiary support that a person of interest (e.g., the defendant) is a possible contributor to the crime scene evidence.

crime scene evidence.” Yet another misconception is assuming definite inclusion or definite exclusion: that if an LR is greater than 1, a defendant is definitely included in the evidence mixture, and likewise, that a LR less than 1 means a defendant is excluded from the evidence mixture. Instead, the LR gives support, or weight, to a particular conclusion that is in line with the analyst’s interpretation.

Understanding flows from trial preparation. Regardless of the prosecutor’s experience level, thorough trial preparation is the foundation for understanding statistical conclusions. It is through trial preparation that the forensic scientist explains both what the statistical conclusion *is* and what it is *not*. During trial preparation, the forensic scientist explains the foundation for the conclusion, the methodology behind the conclusion, and most importantly, the limitations to the conclusion. To that end, the prosecutor must walk through all expected testimony with the forensic scientist. Every question that the prosecutor intends to ask at trial should be reviewed with the expert. By reviewing all questions, the prosecutor should understand the limits of the conclusions, and the expert can precisely answer each question.

Just as important as understanding what a likelihood ratio does say is what a likelihood ratio does not say.

Do I understand the *value* of the conclusion?

Not only must prosecutors understand the conclusion through trial preparation, but it is also incumbent that the prosecutor understands the *value* of the conclusions. The prosecutor must be guided by the forensic scientist—the true expert in this arena. If the forensic scientist takes a proactive role in explaining the meaning of complicated conclusions, then it is more likely that the prosecutor will fairly present the value of the expert’s conclusion.

For example, an LR that hovers just above the laboratory’s inconclusive range (e.g., an LR of one to 1,000) has significantly different value from an LR that exceeds the number of humans on Earth (e.g., 8,000,000,000). While both may include the defendant as a possible contributor, the latter statistic is more indicative of the defendant’s inclusion. Many, but not all, laboratories include sliding scales that describe the qualitative weight of the LR statistic (e.g., an LR between one and 10 is “limited support,” or an LR greater

than 10,000 is “very strong support”). Without a sliding scale, the prosecutor must be guided by the forensic scientist’s expert opinion.

After sufficient trial preparation, the prosecutor should understand the value of the statistical conclusion. Sometimes, the statistical conclusion is dispositive of guilt, but often a likelihood ratio statistic is merely corroborative. Where the line is drawn between dispositive of guilt and corroborative of guilt must be discussed with the forensic expert.

Let’s say the prosecution is attempting to prove that the firearm recovered in the defendant’s vehicle on October 15 is the murder weapon from a September 1 homicide. After analysis, the DNA expert concludes that there is a mixture of three persons on the trigger of the firearm with no major contributor. When comparing the defendant’s DNA exemplar to the mixture on the gun’s trigger, the defendant is “included as a possible contributor” to the mixture. Using probabilistic genotyping software, the DNA expert concludes that the “DNA mixture found on the swab of the trigger is approximately 2.8 million times more probable if the sample originated from John Doe and two unknown persons than if it originated from three unknown persons.” The laboratory considers all likelihood ratios over 1,000 to be inclusionary and, using a sliding scale, considers any likelihood ratio over 100,000 to be “very strong support” for inclusion.

In this example, the prosecutor cannot argue that the defendant matches the DNA on the trigger. However, it is fair argument to say the following:

- the laboratory threshold for inclusionary results is 1,000,
- 2.8 million is significantly greater than the 100,000-LR laboratory standard for “very strong support,”
- the lab weighed two different scenarios and found that it is 2.8 million times more likely to see this DNA on the evidence if the defendant is a part of the mixture than of other unknown people, and
- this likelihood ratio corroborates other evidence in the case.

The prosecutor must remember that no argument is “one size fits all.” The facts of the case and the conclusions of the DNA expert determine what is a fair argument.

Continued on page 22 in the pink box

An option for state jail felony offenders

“Hi, nice to meet you. What do you do?”

It's the very first question we ask everyone that we meet—“What do you do?” In so many ways, our jobs are our identity. They signify who we are to those we meet, they give us a sense of purpose, and they provide independence and self-sufficiency.

But for men and women re-entering the community from jail or prison, finding steady, stable employment is a significant challenge.¹ These challenges include lack of education or work history, obsolete skill sets, stigma of criminal backgrounds, lack of clarity around navigating the workforce space, missing soft skills, and more. These difficulties can, in turn, increase the likelihood that people will reoffend and return to confinement.

However, when incarcerated individuals complete educational or vocational training, their likelihood of returning to prison drops significantly.² Formerly incarcerated people who are employed are three times less likely to commit another crime than their unemployed counterparts.³ Successful reintegration efforts and incentives to choose rehabilitative options are key to decreasing recidivism. Providing educational, employment, and training opportunities for defendants can improve public safety, save taxpayers money, and increase participation in the workforce.

A NEW Choice

In recognition of these benefits, the 85th Texas Legislature passed House Bill 3130 in 2017, which created a pilot program to provide educational and vocational training to certain nonviolent state jail felony offenders placed on community supervision following a brief stint in a state jail facility rather than serving extensive sentences. (The Code of Criminal Procedure was amended to include this option and can be found in Art. 42A.562.) This bill was funded in the most recent 86th Legislative Session, and the Texas Department of Criminal Justice (TDCJ) began a competitive selection process to award this contract.

Goodwill Central Texas was awarded the first and only (for now—but see below) contract to operate this program in Texas. Goodwill's program, NEW (Navigating Education and Work) Choices, is operational in Travis and Williamson Counties



By Rachel Hampton, LMSW

Director of Workforce Advancement at Goodwill of Central Texas in Austin

with plans for future expansion to Hays County. The purpose of NEW Choices is to rehabilitate state jail felony defendants through tailored services. They include the following:

- immediate paid employment at Goodwill,
- an individualized service and discharge plan,
- wraparound case management support,
- mental health support (as needed),
- training in life skills and career advancement soft skills, such as resume help and mock interviews; lessons in financial wellness, communication, attitude, motivation, and time management; learning to be a team player, dependability, life stability, presentation, and family responsibilities (as needed),
- access to education (GED or high school diploma),
- access to occupational skills training, such as earning a commercial driver's license or training to become a computer tech, nurse's aide, phlebotomist, HVAC repair person, construction worker, or apartment maintenance worker, and
- placement into competitive employment at the end of the program, with the goal of employment at a livable wage.

NEW Choices is designed to serve defendants sentenced on or after September 1, 2019, for non-Title 5 state jail felonies. Community supervision is a requirement of NEW Choices, and the length of time on the program is at the judge's discretion, but it lasts at least 90 to 180 days.

We at Goodwill wanted to get the word out to those in the criminal justice system about this sentencing option. To those prosecutors in our service area (Travis, Williamson, and Hays Counties), please talk to local judges and community supervision offices about it if you think it might be suitable for qualifying defendants. Prosecutors in other counties have options as well: TDCJ just released another Request for Proposals for this very program (Solicitation 696-TC-20-P017), which was due February 20, 2020. If this program interests you, talk with your judges and to officials at local nonprofits who may be interested in competing for future such contracts—these programs need judicial support to get off the ground.

Conclusion

NEW Choices is just the first of—we hope—many additional opportunities for providing rehabilitative services to defendants that offer them an incentive to choose community supervision. This alternative option could increase public safety, reduce recidivism, and expand the Texas workforce. ❄

Endnotes

- ¹ Stephen J. Tripodi, Johnny S. Kim, and Kimberly Bender, "Is Employment Associated with Reduced Recidivism? The Complex Relationship between Employment and Crime," *International Journal of Offender Therapy and Comparative Criminology*, 54(5), 2020, 706-720.
- ² Hull, Forrester, Brown, Job, and McCullen, "Analysis of recidivism rates for participants of the academic, vocational, and transition education programs offered by the Virginia department of correctional education," *Journal of Correctional Education*, 51, 2000, 256-261.
- ³ Brazell, Crayton, Mujamal, Soloman, and Lindahl, "From the classroom to the community: Exploring the role of education during incarceration and re-entry," The Urban Institute, 2009.

Conclusion

In the *Ramsaran* case discussed earlier in this article, the value of the statistical conclusion was strongly corroborative of guilt—not guilt beyond a reasonable doubt. Although attorneys are accustomed to arguing reasonable inferences from adduced evidence, in the arena of forensic statistics, the conclusion is the conclusion. With an inclusionary likelihood ratio of 1.661 quadrillion, the prosecutor should have argued that the magnitude of this conclusion, coupled with all the other evidence in the case, met the burden of proof.

DNA evidence is a critical tool in both the prosecution of crime and the exoneration of the innocent. Therefore, attorneys must be mindful of correctly presenting forensic statistical evidence to ensure fair trials. ❄

Endnotes

- ¹ There are some slight modifications to the previously published article.
- ² *People v. Ramsaran*, 141 A.d.3d 865 (3rd Dept. 2016).
- ³ *People v. Ramsaran*, 29 NY 3d 1070 (2017).
- ⁴ https://todayinsci.com/K/Kettering_Charles/KetteringCharles-Quotations.htm, last visited January 28, 2020.
- ⁵ www1.nyc.gov/site/ocme/services/technical-manuals.page, last visited November 25, 2019.

Who must register as a sex offender?

Editor's note: In a past issue of this journal, author Hilary Wright published a chart listing who must register as a sex offender and for how long. Since then, the legislature has passed laws to change the rules, so here is the updated chart.



By Hilary Wright

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PC §	Offense	Length of Registration
15.01-031	Any attempt, conspiracy, or solicitation (as defined by PC Ch. 15) to commit any "attempt-eligible offense"	10 years
20.02	Unlawful Restraint, victim <17 years of age	10 years (lifetime if already a sex offender as an adult)
20A.02(a)(3)	Trafficking: Sex labor through force, fraud, or coercion	Lifetime
20A.02(a)(4)	Trafficking: Benefit from sex labor	Lifetime
20A.02(a)(7)	Trafficking: Sex labor of person <18 years of age	Lifetime
20A.02(a)(8)	Trafficking: Benefit from sex labor of child	Lifetime
20A.03	Continuous Trafficking of Persons <18 years of age	Lifetime
20.03	Kidnapping, victim <17 years of age	10 years (lifetime if already a sex offender as an adult)
20.04	Aggravated Kidnapping, victim <17 years of age	10 years (lifetime if already a sex offender as an adult)
20.04(a)(4)	Aggravated Kidnapping involving intent to violate or abuse the victim sexually	Lifetime
21.02	Continuous Sexual Abuse, victim <14 years of age	Lifetime
21.08	Indecent Exposure upon a <i>second</i> violation (which cannot be a deferred adjudication)	10 years
21.09	Bestiality	10 years
21.11(a)(1)	Indecency with a child by contact	Lifetime
21.11(a)(2)	Indecency with a child	10 years (lifetime if already a sex offender as an adult)
22.011	Sexual Assault	10 years
22.021	Aggravated Sexual Assault	Lifetime
25.02	Prohibited Sexual Conduct	Lifetime
30.02(d)	Burglary with intent to commit sexual felonies	Lifetime
33.021	Online Solicitation of a Minor	10 years
43.02(c-1)(2)	Prostitution if the person solicited is <18 years of age	10 years
43.04	Aggravated Promotion of Prostitution	10 years
43.05(a)(1)	Compelling Prostitution	10 years
43.05(a)(2)	Compelling Prostitution, victim <18 years of age	Lifetime
43.25	Sexual Performance by a Child	Lifetime
43.26	Possession or Promotion of Child Pornography	Lifetime
And also ...	A violation of the laws of another state, a foreign country, federal law, or the Uniform Code of Military Justice for "federally similar offense" or based on the violation of an offense containing elements substantially similar [but not for a deferred adjudication]	Same as the similar Texas offense

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