The Texas Prosecutor

The official journal of the Texas District and County Attorneys Association

March–April 2023 • Volume 53, 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

Recognizing—and battling—work fatigue

Editor's note: This article is excerpted from TDCAA's Victim Services Manual *(4th edition), which will be published in April.*

By Cyndi Jahn
Victim Services Director in the Criminal District Attorney's Office in Bexar County

Due to the subject matter of the cases we all handle, it is important to remember that every member of our office should take care of themselves on both a physical and mental level. Similarly, to serve crime victims to the best of our abilities and see that justice is done, we must make sure we are in the best place mentally and physically. Listening to others' stories and trauma may impact us, and we should listen to our minds and bodies as they tell us daily how we feel and if we are at our best. To do so, it's important to be educated on the variety of ways we can be affected by the trauma of others.

One thing to understand is why we do what we do. We are helpers! Helping others brings us a number of positive outcomes. We are providing valuable services for others, we want to do good, and it makes us feel worthwhile. We sometimes help others because we have suffered ourselves—maybe we want to repay the kindness shown to us, or we want to provide the assistance that was not available when we needed it most. We also help because we have empathy for others. We can identify with the pain of those who have endured often-terrible things. This empathy can and does make us vulnerable to other people's grief, fear, anger, and despair, and it brings these emotions into our own awareness and experience. Lastly, being a helper makes us feel committed or responsible to serving others. Most prosecutor office employees have lofty expectations for themselves and maintain a high work ethic, which often makes us vulnerable to feeling burdened, overwhelmed, and extended beyond what is reasonable for our own wellbeing.

We need to realize that we work in a toxic environment. We may not go to the office in a hazmat suit, but we are exposed daily to trauma and victimization transmitted

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The Texas Prosecutors Society

This spring, the TDCAF Board will be accepting nominations for the Texas Prosecutors Society (TPS).

By Rob Kepple
TDCAF & TDCAA Executive Director in Austin

The Society honors those who have served with distinction and who support the continued efforts of TDCAA to live up to our standard: "So the State is Always Ready."

The Texas Prosecutors Society was established in 2011. Its purpose is to bring together those who have demonstrated enduring support for the profession of prosecution. Using the Texas Bar Foundation as a model, nominees are asked to donate $2,500, or $250 over 10 years, to an endowment fund. The Society gathers each year at a reception during the Elected Prosecutor Conference to celebrate the new class of inductees and to catch up with old friends and colleagues.

Nominations are accepted by the Foundation Board, which also seeks nominations from the TDCAA Board. Nominees must have a minimum of five years' service as a prosecutor or other criminal justice professional and a significant and sustained contribution to the advancement of the profession and criminal justice in Texas.

Do you have someone in mind who fits the bill? Just let me know at Robert.Kepple@tdcaa.com. ❇

Recent gifts to the Foundation*

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* gifts received between December 3, 2022, and February 3, 2023

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Austin, TX 78701 • www.tdcaa.com

About *The Texas Prosecutor*

Published bimonthly by TDCAA through legislative appropriation to the Texas Court of Criminal Appeals. Subscriptions are free to Texas prosecutors, staff, and TDCAA members.

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Prosecutor Trial Skills Course

In January, TDCAA held our first of two Prosecutor Trial Skills Courses of the year.

By Rob Kepple
TDCAA Executive Director in Austin

This is one of our favorite conferences because we get to welcome so many new attorneys to the profession. And January's conference was the biggest ever at nearly 200 attendees. Almost 80 percent of them have been prosecutors less than six months, so there was a lot of work to do. In our initial polling of the group, I was gratified to see that the vast majority of attendees were there for one reason: to get better at trial. That is our job, to help you with what you need, which is how to best represent your community in court.

I want to thank our 32 faculty advisors. They are a dedicated group of experienced prosecutors who take time to give back. We couldn't do it without you, so thanks for your dedication.

Congratulations to Texas's new U.S. Attorneys

In December, the United States Senate confirmed the White House's choices for Texas's four United States Attorney positions. The hallmark of this group is experience as line prosecutors, and I'm sure they will serve the country and Texas well.

First, the White House stood pat on the Eastern District of Texas, with **Britt Featherston** being sworn in back in November 2021. Featherston started as an AUSA in 1996, and has served in the capacity of First Assistant U.S. Attorney, Executive Assistant U.S. Attorney, and supervisory U.S. Attorney. He was also appointed Acting United States Attorney in September 2016 and served in that capacity for 17 months. In January 2018, Featherston became the Justice Attaché for the U.S. Embassy in Kabul, Afghanistan. In addition to prosecuting high-profile cases, such as the dragging death of **James Byrd, Jr.**, in Jasper County, Featherston has been active with TDCAA in addressing the concerns of prosecutors with the State Bar Committee on Disciplinary Rules and Referenda and the efforts to amend Rule 3.09.

The Southern District of Texas is now served by **Alamdar Hamdani**. Hamdani joined the Southern District as an assistant in 2014 but has been with the Department of Justice since 2008. As an assistant, he was primarily responsible for the investigation and prosecution of national security and official corruption crimes. From 2010 to 2014, Hamdani served in the Counterterrorism Section of the Department of Justice's National Security Division, holding the position of deputy chief from 2012 to 2014. Prior to that, he was an AUSA in the Eastern District of Kentucky.

The Northern District of Texas is now served by **Leigha Simonton**. Simonton is a career federal prosecutor who worked in the U.S. Attorney's Office for almost 18 years before taking on the top role. In 2005, she began her career as an Assistant U.S. Attorney for the Northern District of Texas, practicing in the office's Appellate Division. As an appellate prosecutor, she primarily defended convictions and sentences against defendants' appeals in the Fifth Circuit, arguing more than 20 times before that court and acting as sole counsel in almost 400 criminal appeals. She also prosecuted cases at the trial-court level and provided extensive appellate advisory support to numerous trial teams throughout the district.

Finally, congratulations to one of the legends of state prosecution in Texas, **Jaime Esparza**, who is now the United States Attorney for the Western District of Texas. I first met Jaime at the Harris County DA's Office in the 1980s. Jaime eventually moved home to El Paso and was First Assistant Public Defender in the El Paso County Public Defender's Office; he later joined the County Attorney's Office as an assistant and later worked in the District Attorney's Office for the 34th Judicial District. Jaime took office as the elected DA in 1991. He is credited with creating the award-winning Domestic Violence 24-Hour

Project, bringing more focus and support to victims of domestic abuse. In 2005, Esparza was named Prosecutor of the Year by the State Bar of Texas, and in 2015 he received the National Mothers Against Drunk Driving President's Award for Outstanding Criminal Justice Prosecutor.

We are very excited about this new crew, and we can't wait to get to know them better.

Prosecutors and the victims of domestic violence

We recently received a letter at TDCAA World Headquarters regarding an article in the September-October edition of this journal written by **Philip McLemore**, an ADA in Brazos County. The article, "Lessons on family violence from working intake," caught the eye of a former ACA in Travis County, **Bill Swaim**. I will let you read Bill's email for yourself:

> "'Lessons on family violence from working intake'" in the recent *Texas Prosecutor* journal is an excellent article. When I first saw the article, my thoughts on this subject were not on the technical aspects of family violence prosecution but instead about the career impact resulting from my own intake experience reviewing family violence cases. ...
>
> When I started as an ACA with Travis County in 1992, intake attorneys spoke to protective order applicants about the legal process ahead of them and were responsible for reviewing and signing their applications as the office representative. Reading the applications with the applicant sitting at your desk was a very personal experience. The applications, of course, recounted the past and ongoing abuse, threats, and terror that brought the applicant to our office. It was an eye-opening experience.
>
> Since then, I've advocated for much more education in law school for future lawyers about domestic violence in our society. The principal takeaway from that experience for me as a prosecutor was a deeper concern for crime victims. I was certainly a better prosecutor from then on and not just on family violence cases.
>
> Our office some years later stopped the practice of intake attorneys working with protective order applicants. Instead, we created a separate protective order division. This change resulted in a noticeable drop in concern among prosecutors hired from that point forward about victim concerns. Instead, the focus became the courthouse club of colleagues, defense counsel, and judges. After all, the victims of crime only interact with prosecutors mostly before trial—if there is a trial. This same effect resulted from creating a distinct family violence division.
>
> Now retired, I can reflect on how my early sensitization to crime victim concerns, particularly in the domestic violence area, greatly influenced and enhanced my service to my community.
>
> In conclusion, I would hope prosecutor offices are organized to inculcate and emphasize crime victim sensitivity early and often in the careers of prosecutors.
>
> Thanks for the brief soap box."

Bill makes an excellent point about his days working the intake desk in Travis County, and *as a prosecutor* spending time with crime victims writing their protective orders. Bill's experience writing POs for domestic violence victims clearly impacted his approach to these important cases. This is exactly the kind of thoughtful approach to our domestic violence work that we hope we can energize with the creation of a Domestic Violence Resource Prosecutor position here at TDCAA. Stay tuned as we begin work on that initiative.

Rule 3.09 update

As you have read in past editions of this journal, the State Bar Committee on Disciplinary Rules and Referenda (CDRR) has been discussing amendments to Rule 3.09, Special Duties of Prosecutors. The question has been whether the rule should be amended to reflect recommendations by the American Bar Association to extend a prosecutor's ethical obligations to disclose exculpatory evidence and information to past cases, and if so, what those specific ethical obligations would be. The latest proposal of the CDRR was printed in the *Texas Bar Journal*. You can read

We are very excited about this new crew of U.S. Attorneys, and we can't wait to get to know them better.

The issue many have raised is how to comply with the proposed subsection (f)(1)(iii) regarding cooperation with the defense: "[The prosecutor shall] cooperate with the defendant's counsel by promptly providing all information known to the prosecutor regarding the underlying matter and the new information."

the proposal here, starting on page 70: www.texasbar.com/Content/NavigationMenu/CDRR/Agendas_Minutes/MeetingMaterialsJanuary42023.pdf.

The bar will hold a remote public meeting on the rule on April 12 at 10:00 a.m. The comment period on the rule ends April 13. The proposed amendment is one of disclosure, and we get the sense that most prosecutors are comfortable with that. The issue many have raised is how to comply with the proposed subsection (f)(1)(iii) regarding cooperation with the defense: "[The prosecutor shall] cooperate with the defendant's counsel by promptly providing all information known to the prosecutor regarding the underlying matter and the new information." Given Texas already has robust discovery provisions in the Code of Criminal Procedure via the Michael Morton Act, one is left to wonder what this proposed amendment means. In any event, if you have concerns about any of this, don't miss your chance to weigh in. If you have questions, contact me at Robert.Kepple@tdcaa.com.

Finally, I want to thank two people who worked very hard in this process. First, thanks to **Rick Hagen**, a criminal defense attorney in Denton who just completed his two-year stint on the CDRR. Rick was an honest broker on this issue and brought a lot of thoughtful insights into how this change would work in practice. Second, thanks to **Scott Brumley**, who until the end of 2022 chaired the TDCAA Rule 3.09 Committee. Scott resigned because he is on the State Bar committee now, taking Rick Hagen's place. This is a real plus for the State Bar! Congratulations, Scott. **Kriste Burnett**, the DA in Palo Pinto County, has graciously agreed to carry on as the new chair, so thanks, Kriste.

Parker County DA reunifies victims with memories

When **Jeff Swain** took over as the DA in Parker County, I am sure he had visions of fighting for the rights of crime victims in court. Little did he know some important work would be done ... in the property room.

Faced with the potential destruction of evidence from 1986, one would not expect much effort to go into the destruction order. But Jeff stopped when he found a class ring among the jewelry to be deep-sixed. Jeff's investigator, **Wendy Bravo**, went to work to find the ring's owner, and using good old-fashioned detective work, followed the leads until the jewelry—and its memories—were reunited with the rightful owner. (Read the whole story at www.nbcdfw.com/news/local/parker-county-das-office-reunites-keller-woman-with-jewelry-stolen-long-ago/3167209.)

Just a nice reminder of how important the little things are as we serve our constituents. Well done, Jeff and Wendy! ❇

Get ready for the fallout from *U.S. v. Rahimi* and *Bruen*

If you've seen one of my CLE presentations, you've probably figured out that I like memes.

By Britt Houston Lindsey
Chief Appellate Prosecutor in Taylor County

One of my favorites involves an imaginary conversation with one's anxiety:

Anxiety: Get ready.
Me: What?
Anxiety: Get ready.
Me: Ready for what?
Anxiety: I don't know, just get ready.

That's a pretty good metaphor for Second Amendment jurisprudence landscape in the wake of the U.S. Supreme Court's opinion in *New York State Rifle & Pistol Association Inc. v. Bruen*[1] and the Fifth Circuit's opinion in *United States v. Rahimi*.[2] Major changes are coming to the constitutionality of firearm legislation and regulation, but it's still anyone's guess where and how far reaching those changes will be.[3]

Background

Zackey Rahimi was involved in five shootings in and around Arlington, Texas, between December 2020 and January 2021, including shooting into the residence of an individual to whom he had sold narcotics; shooting at another driver after a wreck, fleeing, returning in a different vehicle, and shooting again at the other driver's car; shooting at a constable's car; and shooting into the air after his friend's credit card was declined at Whataburger (I am not making that last one up). Arlington police identified Rahimi as a suspect in the shootings and executed a warrant on his home, where they found a rifle and a pistol. Rahimi was at that time under a Texas state court civil protective order for an allegation of assault family violence, the terms of which expressly prohibited him from the possession of a firearm, which is (or was) a federal crime.

Federal prosecutors then indicted Rahimi for possession of a firearm while under a domestic violence restraining order in violation of 18 U.S.C. §922(g)(8). Rahimi moved to dismiss the federal indictment on the ground that §922(g)(8) is unconstitutional, while acknowledging that then-existing caselaw in the Fifth Circuit had expressly held otherwise.[4] The federal district court unsurprisingly denied his motion to dismiss, and a Fifth Circuit panel unsurprisingly upheld that denial based on that court's precedent.[5] That's when the surprises started happening.

Bruen and the U.S. Supreme Court

Only 15 days after the Fifth Circuit issued its first opinion in Rahimi's case, the U.S. Supreme Court handed down its opinion in *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*,[6] which saw a sea change in Second Amendment jurisprudence. *Bruen* involved a constitutional challenge to New York State's handgun carry licensure scheme. In 43 "shall issue" states, the state government issues licenses to carry handguns in public based on the satisfaction of certain threshold requirements; if the applicant meets those requirements, the state shall issue the license without regard to need or suitability. In six states, however, the State government makes issuance conditional on some further showing of the applicant's special need for a handgun. New York was one of the latter states, issuing only when the applicant demonstrated some special need for self-defense, which was there termed a "proper-cause" requirement. The petitioners were New York residents who did not claim any special need.

Since the U.S. Supreme Court's decision in *District of Columbia v. Heller*,[7] most lower courts had applied *Heller*'s two-step inquiry to determine the constitutionality of a particular law. First, courts asked whether the challenged law burdens conduct protected by the Second Amendment. If it did, courts analyzed whether the law was constitutuional utilizing a type of means-end scrutiny, which varied depending on what degree the law burdened the "core" historical right of self-defense.

The majority opinion of Justice Thomas, joined by Chief Justice Roberts and Justices Alito, Gorsuch, Kavanaugh, and Barrett, declined to adopt that two-part approach, holding instead that:

> when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'

Justice Thomas found that the right to bear arms in public was within the plain text of the Second Amendment, and that the burden fell to New York to show that the "proper cause" requirement was consistent with "this Nation's historical tradition of firearm regulation," meaning at the time of the Second Amendment's adoption in 1791 and the Fourteenth Amendment's adoption in 1868.

Using this approach, Justice Thomas found that the right to bear arms in public was within the plain text of the Second Amendment, and that the burden fell to New York to show that the "proper cause" requirement was consistent with "this Nation's historical tradition of firearm regulation," meaning at the time of the Second Amendment's adoption in 1791 and the Fourteenth Amendment's adoption in 1868. After a dizzying historical analysis spanning from the 13th to 20th Centuries, Justice Thomas and the majority concluded that the respondents for the State of New York had not met their burden to identify a historic American tradition justifying the State's proper-cause requirement.

The dissenting opinion of Justice Breyer, joined by Justices Sotomayor and Kagan, took issue with the majority deciding the issue on the basis of pleadings without a developed evidentiary record, limiting the analysis almost exclusively to history, "refus[ing] to consider the government interests that justify a challenged gun regulation, regardless of how compelling those interests may be" (citing gun violence statistics intended to demonstrate that compelling interest), and failing to identify and analyze the relevant historical facts, which Justice Breyer said "ignores abundance of historical evidence supporting regulations restricting the public carriage of firearms."[8]

As the Fifth Circuit Saw It

So back to the Fifth Circuit. A rehearing in *Rahimi* was held by a new panel, consisting of Judges Cory T. Wilson, Edith Jones, and James C. Ho. Attorneys for the U.S. Attorney's Office for the Northern District of Texas and the Department of Justice agreed that *Bruen* changed the analysis but not the outcome. They argued that the conduct burdened by §922(g)(8) did not fall within the scope of the Second Amendment right as it was articulated under both *Heller* and *Bruen*, "which protects only the right of *law-abiding, responsible* citizens[9] to possess firearms for self-defense" (emphasis in the Government's brief), and cited a long tradition both in England and the United States of prohibiting firearm possession by those who pose a threat to the community or to others' safety.[10] The Court found that this argument failed because:

1) it is inconsistent with *Heller*, *Bruen*, and the text of the Second Amendment,

2) it treats Second Amendment rights differently from other individually held rights, and

3) it has no limiting principles.[11]

That brought the court to the crux of the historical analysis under *Bruen*: whether Rahimi's conduct ran afoul of a "lawful regulatory measure" "prohibiting ... the possession of firearms" that is consistent with "the historical tradition that delimits the outer bounds of the right to keep and bear arms." Under this analysis, the Government must show similar historical regulations that imposed a comparable burden that was comparably justified, preferably from the era closest to the Second Amendment's enactment. The Government proffered multiple regulations, which included the Militia Act of 1662, the laws of several colonies and States which disarmed certain classes of people deemed dangerous, two proposed (but unadopted) amendments that emerged at State conventions on ratifying the

Constitution, surety laws requiring a bond to carry a weapon, and four state statutes codifying the ancient common law offense of "going armed to terrify the King's subjects." All were found to lack relevant similarity to the regulation at hand.

Having rejected all of the Government's proffered historical analogues, the Fifth Circuit concluded that §922(g)(8)'s ban on possession of firearms is an "outlier that our ancestors would never have accepted," that the statute is unconstitutional, and that Rahimi's conviction must be vacated. On February 2, 2023, United States Attorney General Merrick B. Garland issued a public statement that the Department of Justice would seek further review,[12] likely a rehearing en banc and petitioning the U.S. Supreme Court.

What's this mean for the rest of us?

Here's the tricky part: We know for certain after *Bruen* and *Rahimi* that state firearm regulations predicating handgun carry licenses on a showing of special need like New York's are unconstitutional, as are statutes criminalizing the possession of firearms by persons subject to domestic violence civil restraining orders such as 18 U.S.C. §922(g)(8), but it's very difficult to predict where we'll go next.

- A U.S. District Court in Fort Worth found a Texas law prohibiting carrying of handguns outside the home by 18- to 20-year-olds unconstitutional after *Bruen* in *Firearms Policy Coalition, Inc. v. McCraw*,[13] and the Department of Public Safety withdrew its appeal to the Fifth Circuit after *Rahimi* was issued.
- Another case in the U.S. Third Circuit Court of Appeals challenging a different subsection of the same statute as *Rahimi* went the other direction: In *Range v. Att'y Gen. United States*,[14] the court upheld 18 U.S.C. §922(g)(1), which criminalizes possession of a firearm by a felon (in that case a nonviolent felon who had committed welfare fraud). At least three federal district courts in Texas also upheld §922(g)(1) against facial or as-applied challenges: *United States v. Banuelos*,[15] *United States v. Jordan*,[16] and *Shipley v. Hijar*.[17] A number of other federal district court courts have held the same,[18] frequently citing Justice Scalia's admonition in *Heller* that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons."[19]
- In *Rigby v. Jennings*,[20] a federal district judge in Delaware cited *Bruen* in striking down provisions of Delaware's new law that prohibited distribution, possession, and manufacturing of unserialized firearms, aka "ghost guns."
- However, in *Nat'l Ass'n for Gun Rights, Inc. v. City of San Jose*,[21] a federal district judge in California relied on the historical analogue of surety laws (used to require an armed person to post a bond for firearm possession if there was "reasonable cause" to fear the person would cause injury or breach the peace) to uphold a municipal requirement that gun owners procure and maintain firearms liability insurance.
- In *United States v. Quiroz*,[22] a federal district judge in Texas dismissed a charge against a defendant who received (by purchasing) a firearm while under felony indictment, finding that 18 U.S.C. §922(n) was facially unconstitutional under *Bruen*. *Quiroz* is on appeal to the Fifth Circuit as of this writing. Three other federal district courts in Oklahoma, Tennessee, and Indiana have followed the same reasoning in *Quiroz* and held §922(n) unconstitutional;[23] three district courts in Oklahoma, Tennessee, and New York have gone the other direction and held §922(n) constitutional. [24]
- In *United States v. Price*,[25] a federal district court in West Virginia found that the historical record supported criminalization of possession of a firearm by a convicted felon, 18 U.S.C. §922(g)(1), but did not support criminalization of possession of a firearm with an altered or obliterated serial number, 18 U.S.C. §922(k).
- A Northern District of Texas court declined to follow *Price* in *United States v. Holton*,[26] saying that requiring serial numbers restricted only the manner in which a person may keep and bear arms, not on the right or ability to do so. That court criticized the holding in *Price*, saying that "between the *Price* court's expansive interpretation of 'possession' and its rigid interpretation of history, it is hard to imagine what gun laws would not fall within Second Amendment protection."
- A Maryland federal district court also declined to follow *Price* in *United States v. Tita*,[27] citing *Holton* and also finding that requiring a serial number does not impede one's ability to appropriately use a gun for self-defense.

That's just a sampling, and it's by no means exhaustive. Footnote 4 in the federal district court case of *United States v. Butts*[28] (upholding 18 U.S.C. §922(g)(1), possession of a firearm by a

Here's the tricky part: we know for certain after Bruen *and* Rahimi *that state firearm regulations predicating handgun carry licenses on a showing of special need like New York's are unconstitutional, as are statutes criminalizing the possession of firearms by persons subject to domestic violence civil restraining orders.*

felon) lists almost 30 post-*Bruen* opinions analyzing federal gun regulations; these particular cases all upheld the regulations in question, but the story is far from over. As of this writing, no fewer than 50 federal cases challenging the constitutionality of various firearm laws are pending around the country, and more are sure to follow. It seems likely that our own state courts will be watching the federal courts closely before jumping in too deeply.

One question of immediate import is to what degree *Bruen* will affect firearms restrictions as part of pretrial conditions of release. A federal district court has held that a person charged with a crime based on a finding of probable cause is not "law abiding" and the aforementioned surety statutes are a historical analogue to support a pretrial release restriction on the possession of firearms, in *United States v. Perez- Garcia*,[29] and that case is currently pending appeal to the Ninth Circuit. At least three other federal district court cases have made the same holding within just the last two months,[30] but as you can tell from the above discussion, this is a fast-moving and rapidly changing area of the law; many of the opinions discussed are only weeks old, or even days old. Only time will tell how everything plays out, so stay tuned. ❇

One question of immediate import is to what degree Bruen *will affect firearms restrictions as part of pretrial conditions of release.*

Endnotes

[1] 142 S.Ct. 2111 (2022).

[2] No. 21-11001, __F.4th__, 2023 U.S. App. LEXIS 2693 (5th Cir. Feb. 2, 2023)

[3] My devotion to TDCAA is so great that I'm writing on Super Bowl Sunday instead of watching the game. Are you ready for some endnotes?

[4] *United States v. McGinnis*, 956 F.3d 747 (5th Cir. 2020).

[5] *United States v. Rahimi*, No. 21-11001, 2022 WL 2070392 (5th Cir. June 8, 2022) (opinion withdrawn).

[6] 142 S.Ct. 2111 (2022).

[7] 554 U.S. 570 (2008).

[8] 142 S.Ct. at 2164 (2022).

[9] Both *Heller* and *Bruen* make reference to "law-abiding, responsible citizens" in describing the Second Amendment's reach; *Bruen* adds "ordinary, law abiding citizens." *Rahimi* at 8.

[10] *U.S. v. Rahimi*, No. 21-11001, "Supplemental Brief for Appellee the United States," pp. 6, 21-32, filed August 9, 2022.

[11] No. 21-11001, __F.4th__, 2023 U.S. App. LEXIS 2693 (5th Cir. Feb. 2, 2023). The Court here asks rhetorically if speeders, political nonconformists, and people who do not recycle or drive electric vehicles could be similarly stripped of their Second Amendment rights.

[12] www.justice.gov/opa/pr/statement-attorney-general-merrick-b-garland-regarding-united-states-v-rahimi (retrieved February 10, 2023).

[13] 21-CV-1245, 2022 U.S. Dist. LEXIS 152834, 2022 WL 3656996, at *11 (N.D. Tex. Aug. 31, 2022).

[14] 53 F.4th 262 (3d Cir. 2022).

[15] No. 22-CR-00903, 2022 U.S. Dist. LEXIS 229948, 2022 WL 17752205, at *5 (W.D. Tex. Nov. 10, 2022).

[16] No. EP-22-CR-01140-DCG-1, 2023 U.S. Dist. LEXIS 4764, 2023 WL 157789 (W.D. Tex. Jan. 11, 2023).

[17] No. EP-23-CV-11-KC, 2023 U.S. Dist. LEXIS 9886, 2023 WL 353994 (W.D. Tex. Jan. 20, 2023).

[18] *United States v. Moore*, No. 3:20-CR-00474-IM-1, 2023 U.S. Dist. LEXIS 7018, 2023 WL 154588, at *6 (D. Or. Jan. 11, 2023) catalogues a number of cases that as of January 2023 have made the same holding as *Range: United States v. Butts*, No. CR 22-33-M-DWM, 2022 U.S. Dist. LEXIS 197925, 2022 WL 16553037 (D. Mont. Oct. 31, 2022); *United States v. Carleson*, No. 3:22-CR-00032-SLG, 2022 U.S. Dist. LEXIS 222626, 2022 WL 17490753 (D. Alaska Oct. 28, 2022); *United States v. Siddoway*, No. 1:21-CR-00205-BLW, 2022 U.S. Dist. LEXIS 178168, 2022 WL 4482739 (D. Idaho Sept. 27, 2022); *United States v. Hill*, No. 21CR107 WQH, 2022 U.S. Dist. LEXIS 170214, 2022 WL 4361917 (S.D. Cal. Sept. 20, 2022); see also *Butts*, No. CR 22-33-M-DWM at *4 n. 4, 2022 U.S. Dist. LEXIS 197925 (collecting cases). *United States v. Martin*, No. 2:21-cr-00068, 2023 WL 1767161, 2023 U.S. Dist. LEXIS 18413 (D. Vt. Feb. 3, 2023), released just days later, holds the same.

[19] 554 U.S. at 626.

[20] ___ F.Supp.3d ___, 2022 U.S. Dist. LEXIS 172375, 2022 WL 4448220 (D. Del. Sept. 23, 2022).

[21] ____ F. Supp. 3d ____, No. 22-00501, 2022 U.S. Dist. LEXIS 138385, 2022 WL 3083715 (N.D. Cal. Aug. 3, 2022).

[22] ___ F.Supp.3d ___, 2022 WL 4352482, 2022 U.S. Dist. LEXIS 168329 (W.D. Tex. Sep. 19, 2022).

[23] *United States v. Stambaugh*, No. 22 Cr. 218 (PRW), 2022 U.S. Dist. LEXIS 206016, 2022 WL 16936043 (W.D. Okla. Nov. 14, 2022); *United States v. Holden*, No. 22 CR. 30 (RLM), 2022 U.S. Dist. LEXIS 212835, 2022 WL 17103509 (N.D. Ind. Oct. 31, 2022) (relying on *Quiroz*), appeal docketed, No. 22-3160 (Dec. 1, 2022); *United States v. Hicks*, 2023 WL 164170 (W.D. Tex. Jan. 9, 2023), appeal docketed, No. 23-50030 (Jan. 12, 2023).

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Photos from our Investigator Conference

Photos from our PMI Course in Bryan

Recognizing–and battling–work fatigue (cont'd from the front cover)

through the victims we serve. Our daily duties are full of repeated and cumulative stories of violence and trauma. We provide our total dedication to the needs of others, and trials and sentencings involve our complete attention. These things, especially when they are occurring simultaneously, can cause our minds and bodies distress, emotional disruption, re-experience (meaning, re-living the trauma), and avoidance of negative feelings. These notions are wonderfully described by Charles R. Figley in his 1995 publication *Compassion Fatigue: Toward a New Understanding of the Costs of Caring*: "We have not been directly exposed to the trauma scene, but we hear the story told with such intensity, or we hear similar stories so often, or we have the gift and curse of extreme empathy, and we suffer. We feel the feelings of our clients. We experience their fears. We dream their dreams. Eventually, we lose a certain spark of optimism, humor, and hope. We tire. We aren't sick, but we aren't ourselves."

The negative results of shouldering others' burdens can have one or more effects: vicarious trauma, compassion fatigue, or burnout. Each is different and can affect us in different ways. Fortunately, there are also positive outcomes from helping others, which I will discuss later in this article (namely compassion satisfaction and vicarious resilience.)

First, let's look at what Figley refers to as the "cost of caring." Vicarious or secondary trauma is the profound change in our psychological, physical, and spiritual wellbeing that occurs when we work with victims of trauma. Compassion fatigue is the profound emotional and physical erosion that takes place when we are unable to refuel and regenerate our minds and bodies. Lastly, burnout is the physical and emotional exhaustion that we can experience when we develop low job satisfaction, we feel powerless, and we are overwhelmed at work. One of my favorite quotes regarding the topic of job wellbeing is from an anonymous source: "It's not the load that breaks us down; it's the way we carry it."

Vicarious trauma

Let's first delve into vicarious trauma (VT), also referred to as secondary traumatic stress. VT is a change that happens because we care about others who have been hurt and we feel committed to helping them. This change can be physical, psychological, and spiritual. We may begin to question our deepest beliefs about the way life and the universe works, and we may question the nature of meaning and hope. This process unfolds over time. It is the cumulative effect from daily contact with victims, survivors, and people who are suffering.

Those who are the most at risk for VT are those who may have suffered trauma themselves, those who have added stress in other areas of their lives, and those who lack a social support system. People who do not practice good professional and work-life boundaries are also susceptible to vicarious trauma.

The following are common signs of VT to look for: We may experience difficulty in managing our emotions and making good decisions. We may face problems in managing our professional and work-life boundaries. We take on too much responsibility. We may find it difficult to leave work at the end of the day, or we may try to step in and control others' lives. We may begin to experience problems in our relationships with friends and family. Feeling disconnected to what's going on around you may also be a sign of VT. Even suffering from physical problems, such as aches, pains, and illness, can be a sign of vicarious trauma.

How do we cope with it? It's important to identify strategies that help prevent VT from becoming severe and to manage it during times when it is more problematic. The solution is: "escape," "rest," and "play." Escape means to get away from it all, both physically and mentally. Enjoy a book, go to the movies, take a day off during the workweek, play video games, or talk to friends about things other than work. To rest, do something relaxing without any goal or timeline: lay in the grass and watch the clouds, sip a cup of tea, take a nap, or get a massage. Playing might involve engaging in activities that make you laugh or lighten your spirits—share funny stories with a friend, be creative, craft, or take part in physical activity.

The goal is to transform vicarious trauma. Transforming VT is deeper than just coping with it. How do you nurture a sense of meaning and hope? What instills and renews hope? To answer these questions, undertake growth-promoting activities such as learning something new, writing, or being creative or artistic. Identify and challenge your own cynical beliefs. Stay connected and mark transitions, joys, and losses, and remind yourself of the importance of your work. One of the best ways to do so is to reach out to others who do similar jobs. Gather strength and hope directly from those who serve as you do.

Compassion fatigue

Compassion fatigue (CF) evokes specific behaviors and emotions in response to a victim's traumatic event. The result is very similar to the manifestation of PTSD (post-traumatic stress disorder), the difference being that the prosecutor office employee didn't experience the trauma first-hand. Unlike vicarious trauma, CF can occur from working with a single victim. It is not always from a build-up of trauma, but vicarious trauma can turn into compassion fatigue.

Symptoms of CF include physical and emotional exhaustion, insomnia, headaches, and increased susceptibility to illness. We also see increased use of alcohol and/or drugs in CF. Many of those suffering from compassion fatigue experience problems in their personal relationships; they may have poor self-care and suffer from depression. They experience a loss of purpose and apathy, which may lead to absenteeism and avoidance of work duties. When we are dealing with compassion fatigue, we must be aware of changes in our level of CF and make self-care a priority.

Cope with CF by spending time with friends, joining a caregiver support group, or writing in a journal. It often helps to cope with the stress in positive ways, such as spending time on hobbies or working with a counselor or therapist.

Burnout

Lastly, we need to discuss burnout. Burnout is complete physical and emotional exhaustion. If you are burnt out, you will feel powerless and overwhelmed at work. Any joy that you once received from work is now gone. Although this is occurring, our view of the world has not been damaged—most employees experiencing burnout have not lost their ability to feel compassion and empathy. What feelings does burnout cause? You may feel chronic fatigue, lack of concentration or focus, and physical symptoms of anxiety, depression, anger, isolation, emotional detachment, and even hopelessness.

Can someone overcome burnout? Burnout will not go away on its own! It will continue to worsen unless you address the underlying issues causing these feelings. Focus on the basics: good nutrition, exercise, and sleep. Take a vacation or leave of absence. Most people who experience burnout cannot overcome it while continuing to place themselves in the same work environment. Learn to politely say "no," as taking on more responsibility is generally not healthy when trying to combat burnout. Practice positive thinking. It's important to start small. Focus on a positive thought each morning. Then at the end of the day, think back to one good thing you accomplished.

Focusing on the development of your plan, you can look to the ABCs of self-care: A for awareness, B for balance, and C for connection.

Avoiding VT, CF, and burnout

Is it possible to avoid vicarious trauma, compassion fatigue and even burnout? Definitely! The answer is *self-care*. Always think to yourself: I nurture myself so I can nurture others. You must make a personal commitment to self. Why is this important? If you don't, you can get hurt! And because you matter! Because our crime victims matter! And because the work we do matters! Audre Lorde, an American writer and poet, said, "I have come to believe that caring for myself is not self-indulgent. Caring for myself is an act of survival."

It is extremely important to create a self-care plan directed specifically for yourself. As you construct this plan, ask a few questions:

- Why do I do this work?
- How do I measure success in my work?
- What can I control in my work?
- What are the costs and rewards of my work, and how am I personally changing?

Focusing on the development of your plan, you can look to the ABCs of self-care: A for awareness, B for balance, and C for connection.

First, awareness. Be aware of your own needs, limits, emotions, and resources. Know your own "trauma map": Have you experienced suffering in the past? It may serve you well to inventory your current lifestyle choices and make any changes you feel are necessary. Take care of your-

self. Create a self-care list and post it in your home and office.

Next, balance. How are you able to balance work and play? How do you take care of others at work and home and still take care of yourself? Balance is hard to achieve. If you concentrate specifically on balancing your work and home lives, you might find that it is extremely difficult—and if you aren't successful, you may feel as though you failed.

Sometimes we simply need to focus more heavily on work, such as during a trial. Other times, you may need to turn your attention more directly to home and family. More simply, try to learn when and where you need to place priorities while not letting one side suffer as your attention is directed elsewhere. Remember not to keep emotions bottled up. Maintain clear work boundaries and set realistic goals for yourself. It's important to learn and practice time management skills, as well as recognizing negative coping skills.

Sometimes we simply need to focus more heavily on work, such as during a trial. Other times, you may need to turn your attentions more directly to home and family. More simply, try to learn when and where you need to place priorities, while not letting one side suffer as your attention is directed elsewhere.

Finally, connection. We must understand and determine our connection to ourselves, others, and often, something larger than ourselves. This may be a spiritual or religious aspect to our lives. One idea for maintaining a connection is to develop a strong support system. Find friends and colleagues with whom you can talk about work. Debrief after difficult cases. Avoid professional isolation—you can't do this job alone. Also, find those friends with whom you can spend time without any interaction regarding your work life. Lastly, seek training to improve your job skills. This can open a better understanding to both the negative and positive forces around you at work.

To practice self-care at work, try not to take on more than you can handle. Develop a plan to coordinate your work schedule to remove distractions. This may involve asking family and friends to honor your work time by limiting their interruptions. Look for ways, if appropriate, to delegate some work to others. Daily, write down your top tasks and priorities. Do what you can to create a healthy work environment, and remember to schedule breathing room into every day. Do your best to work reasonable hours, understanding that there are times when this may not be possible. Finally, try to accomplish something non-work-related each day. Remember what Nicole Urdang, MS, NCC, DHM, a holistic psychotherapist said: "Overworking is often the heart of compassion fatigue and its first cousin, vicarious trauma. Making time for self-care activities leaves less room for overworking." Another of my favorite quotes is, "It is not selfish to refill your own cup so that you can pour into others. It's not just a luxury. It is essential."

Positive results from our work

As I promised earlier, here are the positive outcomes we can take from our jobs: compassion satisfaction and vicarious resiliency.

Compassion satisfaction is the pleasure we derive from doing a job well, from the ability to be an effective helper. It includes positive feelings about your colleagues and their efforts. One of the best examples is working together in a trial team. Seeing justice done for a crime victim is another strong, positive expression, and that contributes greatly toward compassion satisfaction. It is your contribution to the office and the greater good of society.

Vicarious resiliency focuses more directly on the individuals we serve. Resiliency comes from the unique and positive effect from exposure to a crime victim's ability to move forward with his or her own life. We can—and should—draw strength from the human capacity for healing and gain a more realistic perspective of our own problems. We can develop an appreciation of the positive dimensions of our own lives, reaffirm the value of our work, and strengthen our commitment to help victims of crime. Studies have shown that we must have empathy toward trauma survivors to develop vicarious resiliency.

Conclusion

What should we do if we think someone we care about is suffering from vicarious trauma, compassion fatigue, or burnout? First and foremost, be kind and supportive. This person may think she was successful in hiding her struggles. Remind her she did not do anything to cause these feelings, there are good reasons why we do what we do, and there are positive outcomes from our work with victims. Lastly, share your own experience and self-care plan. Never hesitate to suggest that she consider professional mental health care. It is always best to be safe rather than sorry!

Please remember that you are needed. The work you do is needed. Take care of yourself so you can care for those we serve in our communities. ❇

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Argue the jury charge at closing

I have no idea who did the jury charges when I was a misdemeanor prosecutor. The judge? Someone in my office? The jury charge fairy? I don't know.

By Daniel Cox
First Assistant District Attorney in Henderson County

It was the last thing on my radar. Jury charges just magically appeared when both sides had rested and it was time to charge and argue. Then when I went to felony court, my then-judge did his own charges, so for the first five or six years of my career, jury charges were the least of my concern.

Then my judge retired, and thus ended the practice of the court doing its own jury charges. Time for the State to step up. I went to the court reporter for that retired judge, who kept 20-something years' worth of jury charges on a flash drive, and I copied it. That way, when it came time to do my own charges, I at least had templates to work with.

But it wasn't always helpful. Trials are like snowflakes: No two are alike. The other day I found myself helping two different coworkers by compiling two different jury charges with two different trials in two different courts. These instructions included, among other things, lesser included offenses, affirmative defenses, deadly weapon allegations, enhancement paragraphs to be considered in punishment, and more. There was a lot. My head hurt. I got confused. And I realized whoever was doing closing argument was going to have to argue that charge and explain to the jury what these eight or so pages of legal mumbo-jumbo really meant.

And then it dawned on me: The State should always argue the charge during closing argument.

I think prosecutors are too focused on the dramatic closing argument—or as my boss calls it, the "make the jury cry" closing argument or the "this defendant sucks" closing argument. There's a place for such a thing; this very journal has published such articles, and every TDCAA Prosecutor Trial Skills Course includes a presentation on closing argument. But we may not stress the importance of arguing the charge enough.

Arguing the charge

Arguing the charge essentially boils down to 1) explaining the law to the jury, 2) discussing how a case's facts fit, and 3) proving the elements of the offense. I think arguing the charge should start in voir dire when we first explain the different issues that will come up in trial. Then we loop back to those examples in the State's closing argument.

Of course, that means prosecutors may have to predict the issues that a defense attorney will raise in front of a jury. Self-defense, for example. In selecting that jury, the prosecutor will obviously give examples of when self-defense is legally appropriate and when it's not. If opposing counsel argues defense of property? We would do the same. If someone breaks into your house in the middle of the night and threatens you with a knife, you can use deadly force. But if a 12-year-old slashes your tires in broad daylight, you don't realize it until two days later, and you track the kid down and shoot him? Not so much. When the jury gets instructions on self-defense, use those (or similar) examples, compare and contrast them with the evidence the jury heard in trial, and explain why the defendant is not allowed to use self-defense—or whatever the defense may be.

Trying a manufacture or delivery case? We all know to ask the venire panel, "How can you tell somebody is a drug dealer?" The panel's answers will consist of scales, baggies, security cameras, police scanners, large rolls of cash, etc. During

trial, officers will testify about what they found when they served the search warrant (in addition to dope): cash, scales, a police scanner, little baggies, and a ledger with the defendant's sales and customers. Tie it together with what the panelists said in voir dire: "You said yourselves in voir dire that this defendant is a drug dealer."

It works in other types of cases too. As crass as this will sound, I once tried a sexual assault of a child where the defendant penetrated the victim with "just the tip," for lack of a better term. He gave a confession to the police but tried to minimize the offense by saying he "barely stuck it in." Or, in football parlance, he broke the plane.

In voir dire, I asked if there were any football fans on the panel. I asked them what happens when the tip of the football "breaks the plane" of the goal line. The football may not go all the way into the end zone, but if the tip of the ball breaks the plane, that's a touchdown. Did I use that example of the ball breaking the plane from voir dire to explain how "just the tip" is sufficient for penetration? Yes, I did. My mom would have been so proud—I'm sure that's exactly the kind of thing she thought I'd be doing as a lawyer when I decided to go to law school.

A coworker tried a Burglary of a Habitation case. The victim owned a laundromat and lived in the back room. The back room had a bed, bathroom, and kitchenette, and that's where his mail was delivered. While the victim was out of town, the defendant broke in, entered that back room, and stole some personal belongings. A coworker asked the panel in voir dire about their houses and how you can tell people live in them. Among the answers: They sleep there, they spend the majority of their time there, it's the address on their driver's license, their clothes are there, they shower there, etc. The defense attorney asked for and got a lesser included instruction on burglary of a building because it was a laundromat, after all. And my coworker, in arguing the charge, read the definition of a habitation from the charge and tied together what the panelists said in voir dire (what makes up somebody's home) and what our victim had in the back room of the laundromat—were it not for the habitation in the back room, it would have been just a building. And the jury found the defendant guilty of burglary of a habitation.

I tried a murder last year with my boss and we thought sudden passion might be an issue. Before trial, we talked about what possible defenses could be raised, including self-defense, but concluded that based on the facts of our case, there's no way the defense could raise self-defense and maintain credibility with the jury—the defendant shot our victim in the back of the head three times. So in my voir dire, I did not address self-defense. No definition, no examples. Then what did the defense get up in opening statement and say? That the defendant, while angry because the victim (his ex-partner) was talking to other men, shot her because of sudden passion—but also the victim drew a gun on him first and he had to shoot her to defend himself.

So the defendant got a self-defense instruction, and I wished I had explained self-defense and gotten examples out of the panel in voir dire. It meant that I had no "like we talked about in voir dire" examples for self-defense, and I had to wing it in closing argument. Fortunately, the jury didn't buy the defendant's claim. I still feel that claiming self-defense under those facts was farfetched, but prosecutors should err on the side of caution. Better to cover an issue in voir dire and not need to argue it than to have to explain it to the jury for the first time in closing.

I even go over the verdict form with the jury in first close. I'll explain that the top line is for the foreperson to sign when the jury finds the defendant guilty of the charged offense. Only if jurors unanimously disagree as to whether he's guilty of that offense (which they must resolve in the defendant's favor) or don't believe beyond a reasonable doubt that he's guilty of that charged offense, do they then consider the next line, the first lesser-included offense.[1]

And then, only if they disagree as to the defendant's guilt of that lesser included offense, which again they must resolve in the defendant's favor or they do not find beyond a reasonable doubt that he's guilty of that lesser included offense, will they consider the next lesser included offense. And then, finally, I explain the last line, the line for not guilty.

I'll finish arguing the charge by telling the jury that the foreperson will sign the top line, because we have proven our case beyond a reasonable doubt, and I'll remind them why. I tell them why they don't even need to concern themselves with the other lines below the first one.

It works on punishment too

The same applies in punishment. The wording with the enhancement paragraphs is weird, espe-

Continued in the pink box on page 21

Arguing the charge essentially boils down to 1) explaining the law to the jury, 2) discussing how a case's facts fit, and 3) proving the elements of the offense. I think arguing the charge should start in voir dire where we first explain the examples we give for different issues that will come up in trial. Then we loop back to those examples in the State's first closing argument.

A bad start, a better outcome

It is often said that we learn more from our losses than our victories. I believe that to be true.

By Brett Smith
Criminal District Attorney in Grayson County

In our office, we encourage prosecutors not to fear losing, not to fear the "not guilty" verdict in a tough or thin case. We repeat the mantra that a prosecutor's job is not to obtain convictions, but to see that justice is done.

This was exemplified recently on a tough Continuous Sexual Abuse of a Child case where the odds were stacked against the State—those odds included the case's age and the only evidence being an outcry. But we did not fear the loss; we forged ahead, caught a few breaks, and saw that justice was done for our victim.

A stale case

Without making any excuses, I can safely say that every prosecutor's office has old cases. Furthermore, offices may also have cases that have "fallen off the radar." When I became the elected district attorney in mid-2018, we made several policy and personnel changes, which is common for a newly elected DA. Those changes came with a reckoning: We had to make a calculated decision on whether to proceed with *State of Texas v. Sim Bittick*, a case that had fallen through the cracks.

The investigation into the Sim Bittick case was stale and thin. As every prosecutor who handles child sexual assault cases knows, we all have cases with just a lonely outcry. There is no confession, no physical evidence, no DNA, and perhaps no witnesses other than a young victim. The only wrinkle on the Sim Bittick case was the allegation that the defendant's wife not only witnessed the heinous acts committed against our young victim, but also participated in the abuse. Tammy Bittick did not cooperate with law enforcement and would not corroborate her daughter's outcry of sexual abuse.

The allegation spanned a nearly five-year period from 2003 until 2008, and the case was sent to our office in early 2014. I assigned the case to Assistant District Attorney Nathan Young in 2019, which was a long time later. Nathan immediately set up a meeting to introduce himself to our victim, establish a rapport, and explain, very directly, why the case was just now being addressed by a prosecutor. The victim, T.M.R., was now in her mid 20s. At first SHE was bewildered that we were even talking to her about this case—why, after years and years, had nothing ever happened? We could tell she was hurt and confused.

Ultimately, all we could was to be honest and direct with her. We told her the case had been passed from one prosecutor to another and had only recently been assigned to Mr. Young. We told her that was *not* an excuse; it should never have happened that way, and we promised we would do everything in our power to get justice for her. After a long pause, T.M.R. gave a very considered answer that expressed that she was onboard and would do whatever she could to cooperate: She wanted to prevent Sim and Tammy Bittick from having access to any other children ever again and to pay for what they did.

Indictment and investigation

Ultimately, convinced of the victim's truthfulness concerning years of sexual abuse at her stepfather's hands, Nathan sought indictments against Sim Bittick, the victim's stepfather, for Continuous Sexual Abuse, and against his wife, Tammy Bittick, the victim's mother, for several counts of Aggravated Sexual Assault of Child. A Grayson County grand jury returned those indictments in March 2020, and both husband and wife were jailed.

Nathan set to work on his trial preparation, which involved a deep dive for detailed knowledge of Sim Bittick's background. With help from DA Investigator Mike Ditto and the Denison Police Department, Nathan located a tractor trailer rig Bittick used to drive; it was in the possession of Bittick's employer following his arrest. The 18-wheeler still contained Bittick's personal possessions, including several sex toys and some lingerie that the child victim indicated Bittick had worn during some of her abuse.

Perhaps most importantly in pre-trial preparation, Mike, our investigator, tracked down Sim Bittick's biological daughter, Michelle (not her real name). She was a very important witness as Bittick had sexually abused her in the 1990s. A Denison police detective, in his original investigation, noted that Sim had been indicted in the '90s for a sexual assault against Michelle and that she would be an important witness. Though Bittick had been indicted for these crimes, the case was ultimately dismissed "due to the State's inability to find the victim." The girl's grandparents (Sim Bittick's parents) had secreted her and removed her from the state to protect her.

Fast-forward seven years to when Investigator Ditto located her and then assisted us in interviewing her on a number of occasions. Interviews with Michelle proved extremely difficult. It is never easy to ask a victim to re-open wounds after decades of dormancy. Although it took several meetings and substantial time, Michelle finally detailed her father's abuse from decades before. The abuse she suffered was very similar to our more recent victim: It occurred around the same age range and in places under his secluded control; the defendant made the victims promise the interactions were secret; and it also involved anal play.

Despite a rocky trial prep where Michelle expressed doubts and was (understandably) emotional having had a 20-year-old wound ripped open regarding her abuse, she did end up testifying.

As trial prep pressed ahead, we knew that Tammy Bittick's testimony could be extremely helpful in corroborating the victim's story that her mother participated in the years of abuse. To that end, Nathan reached out to Tammy's lawyer to see if she was willing to tell the truth about the abuse and cooperate. A proffer agreement was provided and an interview conducted. After two hours, Tammy was finally willing to admit that on one occasion, she led her daughter to the co-defendant and "showed her what to do." Tammy

cially to the layperson: "If you find beyond a reasonable doubt that prior to the commission of the primary offense, the defendant was finally convicted of the felony offense of blah blah blah, and after that conviction became final, he was convicted of the felony offense of whatever, then you shall sentence him to a term of confinement between X and Y years. ... " For most jurors, a charge is probably an intimidating legal document with lots of definitions written in a fancy way. But you can break down the verbiage and simplify it: "He committed this felony, went to prison, got out, committed another felony, went to prison again, and now he's eligible for 25 years to life in prison." I hope you also covered this in voir dire in far clearer language than in the charge, so now you just remind jurors of the discussion about enhanceable and habitual penalties.

It's the same for an Unlawful Possession of a Firearm by a Felon case. The wording from the Penal Code on when a felon can and cannot possess a firearm can come off as verbose. Simplify it: "A felon cannot possess a firearm anywhere, under any circumstance, for the first five years after his release from confinement, for instance. This defendant was sentenced to five years in prison in 2016. His sentence discharged in 2021. And here he is in 2023, just two years later, in possession of a firearm."

Conclusion

In summary, you may not make the jury cry. You may not make them furious and want to leap out of the jury box and strangle the defendant out of anger. Your trial partner, who gets to stand up, rebut everything the defense attorney said, and then deliver the emotional close, may get the glory, the pats on the back, and hugs from the victim's family, but you will have laid the groundwork for him. You will have explained to the jury what that charge means. That final closing argument—the dramatic, emotional closing argument—doesn't mean as much if the jury doesn't know what the hell is going on in the first place. ❇

Endnote

[1] See *Sandoval v. State*, No. AP-77,081, 2022 Tex. Crim. App. LEXIS 844 (Tex. Crim. App. Dec. 7, 2022) (interpreting Tex. Code Crim. Proc. Art. 37.08 and disavowing *Barrios v. State*, 283 S.W.3d 348 (Tex. Crim. App. 2009)).

claimed that she did this only "to stay in a marriage with Sim because he provided for everyone," and she was worried he would leave because of his sexual dissatisfaction with her.

A phone call

Several months into trial preparation, our office received a phone call from a local attorney who indicated his client, who was incarcerated in the local jail, would like to talk to us about Sim Bittick. We set up a meeting with the attorney and his client at our office and interviewed the inmate under a proffer agreement with no promises or offers for his information.

What we received was a bombshell: According to the inmate, Mr. Bittick had offered him property and a residence upon his release from jail in exchange for the inmate killing the victim of our sexual assault case, her husband (whom Mr. Bittick identified as the "outcry witness"), and Tammy Bittick. Our office promptly brought in investigators from the Grayson County Sheriff's Office; one of them created a ruse in the jail to place a recording device in the cell Bittick and his cellmate shared. Sure enough, we caught the two of them discussing the execution of our victim in exchange for the property. Jail calls Bittick made also placed the covert recording into context, and a clear plot emerged to prevent our victim from testifying against her stepfather. A subsequent grand jury indicted Sim Bittick for multiple counts of Solicitation of Capital Murder and Retaliation.

Just months before trial, we got another call from Tammy Bittick's attorney. This time Tammy was ready to talk and tell the whole truth.

Another phone call

Just months before trial, we got another call from Tammy Bittick's attorney. This time Tammy was ready to talk and tell the whole truth. We believe Tammy saw the train coming down the tracks and decided it was time to jump off the bridge. We set up another proffer meeting with her and her attorney, and this time she gave a more accurate picture of what had happened when her daughter was 6 to about 12 years old. Tammy confirmed the dates, times, and locations of our victim's outcry statements. Not only had Tammy witnessed some of the sexual abuse, but she had also been a participant by luring or otherwise procuring the victim into the spider's web. T.M.R. had suffered consistent sexual abuse at the hands of Sim Bittick from the age of 6 until nearly her 12th birthday. By the time of trial, Tammy admitted that she had facilitated well over 30 sexual interactions between her own child and her husband, though she would never admit to actively participating in them.

The trial

Sim Bittick proceeded to trial in late August 2022. The jury heard from our victim, who was by now a young adult. The jury also heard Tammy Bittick's testimony, which clearly corroborated T.M.R.'s outcry statements. The jury also heard the jail snitch and his recordings of Sim Bittick soliciting the murder of our victim to prevent her from testifying. These recordings were particularly chilling as the defendant pontificated about creative ways to kill each potential victim to make it look like an accident; he laughed about each witness dying. Under Code of Criminal Procedure Art. 38.37, after ample notice and a hearing outside the presence of the jury, the extraneous victim, Michelle, the defendant's biological daughter, testified about the abuse she suffered at the defendant's hands. Her testimony was extremely profound and made several jurors emotional.

After about four days of testimony, the jury found Sim Bittick guilty of Continuous Sexual Abuse of a Child and Aggravated Sexual Assault of a Child. Judge Jim Fallon of the 15th Judicial District Court of Grayson County subsequently sentenced him to 98 years in prison without any possibility of parole.

The next domino to fall

In September 2022, Tammy Bittick pleaded guilty to several counts of Aggravated Sexual Assault of a Child. She went open to the court without the benefit of plea agreement. It also deserves note that when she testified at Sim Bittick's trial, she did so without any grant of testimonial immunity. Following a pre-sentence investigation (PSI), she was sentenced in December 2022. Despite her cooperation and comparatively smaller role in the sexual abuse, she was sentenced to life in prison with the possibility of parole in 30 years. At the conclusion of the pronouncement of sentence, Judge Fallon rejected the defendant's claim (which only came up at trial) that she was afraid her husband would kill her or her children. As the judge put it, "Any parent would gladly risk taking a bullet—or actually take a bullet—to pro-

tect their child from this type of horrible protracted abuse."

The takeaway

The assignment of this case to a determined and dedicated prosecutor, along with a run of good breaks, led to the best outcome we could have expected, and it all started out on the wrong foot. As trial attorneys, we are all fighters, or at least we should be. Do not fear stepping into the ring or getting struck in the face. Instead, fighters should fear only their own lack of preparation or lack of determination. So, work hard, prepare, be thorough, and pray for a few big breaks. ❇

Investigator scholarships are a thing of the past

C'est fini, es ist aus, finite est, ua pau, se acabo—however you say it, "It's over." The final Investigator Scholarships have been awarded.

By Bob Bianchi
DA Investigator in Victoria County

Here is a short recap of why the Investigator Scholarship program was discontinued. Around September 2022, the Investigator Board learned that continuing with the scholarship program meant the Board would be required to set up its own 501(c) nonprofit status instead of carrying it with TDCAA. We would have needed to open our own bank account, file paperwork with the Internal Revenue Service, and file required yearly, if not quarterly, documentation. It also meant one person would have to oversee the program at all times, which wasn't possible because the Board Chair, Vice-Chair, and Secretary positions change yearly. In the end the decision was made to terminate the program and disperse the remaining funds to a few scholarship applicants.

Each recipient received a scholarship check for $1,443.40. The winners of the final Investigator Scholarships are:

- Katie Carcerano, whose parent is Eric Carcerano in the DA's Office in Chambers County
- Madison Dziuk, whose parent is Karen Dziuk in the DA's Office in Wilson County
- Brooklyn Frenchwood, whose parent is Rochelle Frenchwood in the DA's Office in Fort Bend County
- Sing Gutierrez, whose parent is Selena Ortiz in the CDA's Office in Victoria County
- Lauren Pozzi, whose parent is Kerry Pozzi in the CDA's Office in Victoria County
- Jacy Roessler, whose parent is Amanda Roessler in the CDA's Office in Victoria County
- Nicolas Tellez, whose parent is Leticia Tellez in the CA's Office in Upton County

Congratulations to each recipient, as well as all the past scholarship winners, for their educational achievements so far in life.

Everyone on the Investigator Board is very proud of our TDCAA children for all the hard work and effort they have put in. The world is your oyster—we hope each of you finds that special pearl somewhere in life. ❇

Protective orders after criminal cases are disposed

Anyone who has been involved in criminal justice for a while understands the experience of watching our laws grow and change. The statutes governing protective orders are no different.

By Sara Bill (left)
Victim Assistance Coordinator;
Jacquelyn Johnson (center), and Amanda Oster (right),
Assistant County and District Attorneys, all in Aransas County

With the 86th Regular Session in 2019 came the passing of HB 1343, which added a new subsection to Chapter 7B of the Code of Criminal Procedure and gave us tools to ensure that victims are protected even after cases are disposed. This chapter has helped us modify our mindset to think about how victims are protected long after we clear the criminal cases off our desks and send them to storage.

Who can file?

Texas Code of Criminal Procedure Chapter 7B gives prosecutors options for seeking protective orders for the following types of offenses:

- Human Trafficking,
- Continuous Sexual Abuse of a Child,
- Indecency with a Child,
- Sexual Assault,
- Indecent Assault,
- Aggravated Sexual Assault,
- Stalking, and
- Compelling Prostitution.[1]

This sort of protective order can be sought by the victim, any adult acting on behalf of a victim younger than 18, a sexual offense response coordinator for a sexual offense, or a prosecutor.

Where to file?

Legally, these applications can be filed in a district court, juvenile court having district court jurisdiction, statutory county court, or a constitutional county court.[2] Practically, it'll depend on local judges. For example, our constitutional county court-at-law judge prefers that protective order applications for this section be filed in our district courts.

What happens after I file?

If you're somewhat familiar with the process of seeking protective orders in family violence cases, you'll notice some similarities for the 7B process. There will be a temporary ex parte order issued by the judge and then there will have to be a hearing on the application. For the temporary ex parte order to be granted, the court must find that there is "a clear and present danger of sexual assault or abuse, indecent assault, stalking, trafficking, or other harm to the applicant."[3] The term "a clear and present danger" is interesting because it seems to imply future harm. In contrast, the required finding to issue a final protective order requires "reasonable grounds to believe that the applicant is the victim of" one of the aforementioned offenses,[4] meaning that the burden for the final protective order is showing that the abuse happened. There is no requirement to show future danger, which is different from a family violence protective order.

Overlap with Family Code Title 4

Oddly enough, stalking is covered by Arts. 7B.002 and 7B.003, and under those sections, the burden for protective orders in a stalking case is "reasonable grounds" that the applicant was a victim of stalking. However, Article 7B.051 carves out a

slightly different process for requesting a stalking protective order. This section states that to obtain a stalking protective order this way, you will follow the procedures of Title 4 of the Family Code.[5] For a protective order for stalking under Art. 7B.051, it is a required finding that "probable cause exists to believe" stalking was committed and the conduct "indicates" the defendant is likely to engage in future stalking.[6] That being said, Arts. 7B.002 and 7B.003 seem like an easier path to get a stalking protective order than Art. 7B.051.

Title 4 of the Family Code is also incorporated with Chapter 7B of the Code of Criminal Procedure for offenses motivated by bias or prejudice. Specifically, there is a process by which we can get protective orders for victims of arson, criminal mischief, or graffiti when the crimes are motivated by bias or prejudice.[7] The burden of proof for this sort of protective order is probable cause to believe that one of those three offenses was committed, the defendant committed the offense because of bias or prejudice, and the defendant is "likely" to commit one of those three offenses again or a Title 5 Penal Code offense (crimes against persons) because of bias or prejudice.

Should I file?

You have some decisions to make. Going back to Art. 7B.001, the statute reads that the listed persons "may" file under Art. 7B.001(a). Without a criminal case then, prosecutors do not have to file an application for a protective order. Or if a criminal case has not been disposed, you do not have to file an application. So be wise about if and when you file an application. For example, if you have an adult victim of sexual assault, does it make sense for her to testify at a protective order hearing *and* a criminal jury trial? Is it beneficial for her emotional and mental wellbeing to have her describe the same conduct twice? (Note that Art. 7B.004 has a provision that allows hearsay statements of a child victim to be admissible at the protective order hearing.) What are the pros and cons of creating a record before a criminal trial?

If you plan to pursue a protective order while a criminal case is pending, keep discovery in mind. The applicant's affidavit in her protective order packet, whatever media she provides, any statements that deviate from what she told law enforcement initially, and the like—all should be disclosed to the defense in the criminal case. Larger offices may be at risk of a protective order attorney not disclosing information to the felony prosecutor, for example. Those attorneys may not even work in the same building. So be sure there is a system in place that ensures discovery from the protective order is provided to all required parties. Smaller offices are typically less of a concern because it is usually the same attorney who wears all the hats.

If the defendant has already been arrested on a charge, you can possibly ensure protection of the victim through bond conditions until the case is disposed. Most judges we've worked with don't require victim testimony to secure bond conditions, and in most situations we've even gotten the defense to agree to them. With bond conditions, a protective order may not be necessary for the time being.

Or maybe you're in a different situation altogether. Maybe you're not going to be able to prove a criminal charge beyond a reasonable doubt. Maybe criminal charges aren't going to be filed and maybe it does makes sense go for broke by seeking a protective order.

When you "shall" file

A lot of this decision-making will be much easier if prosecutors can secure a conviction or deferred adjudication on the types of charges that we're talking about. Art. 7B.001(a-1) mandates that a prosecutor shall promptly file an application for a protective order upon a conviction or deferred for the offenses we've been discussing. This duty applies to convictions or deferred orders with sentencings on or after September 1, 2019, regardless of offense date. The rationale is that a conviction or deferred constitutes "reasonable grounds" and thus satisfies the requirements to get a victim a protective order.[8] From a practical standpoint, our office fulfills this duty by filing the protective order application and protective order in the criminal case at the time of the plea for these types of offenses. Our district judges do the plea and grant the protective order, and the defendant is served with a copy of the protective order immediately after. It has been a fairly seamless experience to handle it this way. Obviously, you'll likely be at the mercy of your judges if they want to handle these situations differently.

If you plan to pursue a protective order while a criminal case is pending, keep discovery in mind. The applicant's affidavit in her protective order packet, whatever media she provides, any statements that deviate from what she told law enforcement initially, and the like–all should be disclosed to the defense in the criminal case.

However, if a victim 18 years or older tells us not to file an application after a conviction or deferred, we cannot file an application.[9] If a victim does not want this type of protective order, it is the practice of our office to have her state such on the record.

Informing the victim

The victim or her parent, guardian, or another adult acting on her behalf (if the victim is younger than 18 or an adult ward) has rights under Art. 56A.052. Victims have the right to know they may request that the prosecutor file an application for a protective order under Art. 7B.001. They also have the right to know the court in which the application for a protective order may be filed. If the victim or the victim's parent or guardian is present when the defendant is convicted or placed on deferred adjudication or community supervision, he or she should be notified about these rights by the court. If the victim or victim's parent or guardian is not present when the defendant is convicted or placed on deferred adjudication or community supervision, he or she is to be notified by the prosecutor. These rights are the bare minimum to follow. Failure to provide this information leaves prosecutors subject to the Texas Disciplinary Rules of Professional Conduct.

For practical purposes, cooperative victims should be notified of this process prior to the plea or conviction. A prosecutor and victim assistance coordinator should explain this process in advance and collect all of the information needed for an application for a protective order under Art. 7B.001 so it can be filed with the court at the time of the plea or conviction by jury.

Protective orders are just a piece of paper if we are not doing our job to enforce them. Make sure protective orders are entered into the database as required by law.

Duration

There are many possibilities for how long the protective order will last. It "may" be for the lifetime of the defendant and victim, or however long the order says. If the order does not specify, it will last for two years.[10] However, the order "shall" be for life if there is a deferred or conviction and the defendant is required to register for life as a sex offender.[11] The default position of our office is to request that the protective orders have a lifetime duration for all orders we seek under Chapter 7B. Our judges have not given us any pushback on this yet.

Modification

Look at you acting like a prosecutor and stuff! You got a protective order for someone who really needed it. Good work. But guess what? The order can be rescinded. For victims 18 or older, they can file with the court at any time to rescind the order, and so can the parent or guardian acting on a child's behalf.[12] There is an exception that a parent or guardian cannot file an application to rescind if the parent or guardian is the offender.

Enforcement

Protective orders are just a piece of paper if we are not doing our job to enforce them.

Make sure protective orders are entered into the statewide PO database as required by law. This is the responsibility of the law enforcement agency under §411.042(b)(6) of the Government Code, but make sure that it's getting done. We always advise victims to keep a certified copy of their protective order readily available in the event they need to prove its existence to an officer, but the database exists for a reason.

If needed, remind officers that Art. 14.03(b) requires that they "shall" arrest a person if the officer has probable cause the person violated Texas Penal Code §25.07 in the officer's presence.

Texas Penal Code §25.07 allows us to file criminal charges if bond conditions or the protective order is violated. If the §25.07 offense is a violation of a Chapter 7B protective order following the defendant's conviction or deferred adjudication for the victim of that offense, the §25.07 offense is a state jail felony.[13] The §25.07 offense will be a third-degree felony if the defendant has been previously convicted two or more times for a §25.07 offense or for out-of-state offenses that contain substantially similar elements.[14] The offense will also be a third-degree felony if the charged §25.07 offense occurred by assault or stalking.[15] Also, you can combine two or more violations of §25.07 within a 12-month period to file a third-degree felony.[16]

Closing remarks

It has been said that if a man cannot feel safe, he can never feel free. As prosecutors, we are in a privileged position to protect people and provide them with safety. Sometimes we do so with a sword; sometimes we do so with a shield. It takes wisdom to know which tool to use and courage to wield it when necessary. Wisdom without courage is useless, and so is courage without wis-

Continued in the pink box on page 29

Making the most of your (rural) SART

In 2021, the legislature enacted a statute requiring every county in the state to have or participate in a Sexual Assault Response Team, or SART, to improve the community response to sexual violence.[1]

By Alex Hunn
Assistant District Attorney in Brown & Mills Counties

The statute occupies just 1,500 words of the Government Code and includes several specific mandates for Texas counties. For the larger counties like Travis, multi-agency sexual assault task forces were already in place. For smaller counties like mine, the SART was an unexpected challenge with rapidly approaching deadlines.

One year ago, I was given the opportunity to assemble the Brown County Sexual Assault Response Team. In doing so, I was faced with two challenges: first, meeting the basic statutory requirements, and second, making the most of the opportunity to improve outcomes in sexual assault cases in the community. In this article, I will outline the basic requirements required by law for a SART, the unique challenges of building a SART in a rural county, and the ways our SART has taken advantage of the process to improve how we handle adult sexual assault cases in Brown and Mills Counties.

The basic requirements

Every county in Texas must establish its own Sexual Assault Response Team, with one exception: Two or more contiguous counties, each with population of 250,000 or less, may share a team.[2] This exception applies to more than 90 percent of Texas counties, including my own, Brown County.[3] The team must, at minimum, include a representative from a local sexual assault program, a prosecutor, a representative of the county's largest police department, the sheriff or his designee, a forensic nurse examiner, and a behavioral health representative, all initially designated by the county commissioners.[4]

The act provides no funding and does not designate who should take the initiative on assembling a SART. While the commissioners court could take the lead, I found from asking around that in almost every county, the district attorney's office led the initiative. Once the initial membership has been identified, however, the commissioner's court must actually sign off on the creation of the new SART.

Once assembled, a SART has only a few enumerated responsibilities. The team must create a protocol for coordinating responses to adult sexual assault in the county, and it must provide four hours of cross-agency training for team members.[5] And on December 1 of each odd-numbered year, the team must provide the county commissioners court with a list of members, a copy of the written protocols, and a summary detailing all sexual assault reports received by law enforcements with the final resolution of those cases.[6]

Challenges of operating a small-county SART

The first challenge of operating a SART in a small county is getting the organization off the ground to begin with. Here in Brown County, there are no specialists on the topic of sexual assault—none of our law enforcement agencies are large enough to have a sexual assault division, our District Attorney's Office has a total of five prosecutors with general felony dockets, and our SANE nurses are based 78 miles away in Abilene. Being from a small county has its advantages, though: The best people for your team are almost certainly people you already know!

Ultimately I was tasked with representing the District Attorney's Office, and each law enforcement agency in our jurisdiction had one crimes-against-persons investigator willing to join the SART. We had another windfall in the incredible dedication of our SANE nurse representative, Susie Striegler, who commutes from Abilene to be available for exams and for every SART meeting. She is also on the Taylor County SART and has relayed all their progress to our own SART—no rule prohibits someone from serving on more than one team, and anyone dedicated enough to sit on two will be an exceptional resource for both.

The next challenge is data collection. Every organization tracks cases a little differently and for different purposes. Prior to the SART, none of our local law enforcement agencies collected aggregate data on the numbers of sexual assault reports received, SANE exams conducted, and cases sent to our office for intake. At the outset, we prioritized collecting updated numbers from law enforcement every six months. For 2023, we'll be trying to collect this information every month. To make this happen, several people will have to do some unpaid work; law enforcement representatives will have to gather data, and someone on the SART will then have to process all this data into a single document.

Beyond the difficulties in collecting the data, another unique small-county difficulty has been a low number of cases overall. In a large agency, the number of sexual assault reports could be in the hundreds or even thousands for a year. In our county, none of our agencies have broken double digits in 2022. Due to the size of the data set, it has been more difficult to identify patterns and trends on which we can rely to troubleshoot issues with the investigation and prosecution of sexual assault. After the first round of data is gathered in 2023, I hope to compare notes with similarly situated counties.

The last challenge involves protocols. Large agencies often have specific protocols for specific offenses, including sexual assault, which can be used as a framework for the county-wide sexual assault protocols every SART must adopt. Prior to the enactment of the 2021 statute, all the pre-existing SARTs were in the most populous Texas counties. We can be thankful that many of these

dom. We hope that this article has increased your knowledge about the tools in your arsenal to fight the good fight. Now go and administer justice. ❇

Endnotes

[1] Tex. Code Crim. Proc. Art. 7B.001(a).

[2] Tex. Code Crim. Proc. Art. 7B.001(b).

[3] Tex. Code Crim. Proc. Art. 7B.002(a).

[4] Tex. Code Crim. Proc. Art. 7B.002(b).

[5] Tex. Code Crim. Proc. Art. 7B.051(a).

[6] Tex. Code Crim. Proc. Art. 7B.052(b).

[7] Tex. Code Crim. Proc. Art. 7B.101.

[8] Tex. Code Crim. Proc. Art. 7B.003(c).

[9] Tex. Code Crim. Proc. Art. 7B.001(a-2).

[10] Tex. Code Crim. Proc. Art. 7B.007(a).

[11] Tex. Code Crim. Proc. Art. 7B.007(b).

[12] Tex. Code Crim. Proc. Art. 7B.007(b).

[13] Tex. Penal Code §25.07(g)(1).

[14] Tex. Penal Code §25.07(g)(2).

[15] Tex. Penal Code §25.07(g)(1).

[16] Tex. Penal Code §25.72(e).

resources are available from TAASA, the Texas Association Against Sexual Assault, on its website.[7] TAASA provides guidelines on what to include in protocols along with several other helpful resources for operating a SART.

Going beyond the basic requirements

There are basic statutory requirements for every SART which we are all now scrambling to complete, but these belie the single most positive impact of the law: to bring together every organization in a county with a stake in the crime of sexual assault. The SART is an opportunity to build relationships with the people and organizations that are critical to understanding each sexual assault case that reaches our desks.

While there are certain people who must attend SART meetings by statute, there is no limit on the number of attendees. Even if you are not your organization's representative, the SART meeting is a good opportunity to ask questions about SANE exams or to find out what resources your local domestic violence shelter can provide to victims in these cases.

The required trainings are also an opportunity to improve your knowledge of the process. This year, my SART had one session dedicated entirely to SANE exams; our SANE representative gave a full, step-by-step explanation of how the exams are conducted, something that neither I nor any of our law enforcement members had known. Another session was spent outlining all the resources available to victims through MHMR and our local domestic violence shelter.

Finally, the data gathering. Even a small number of data points will give you an idea of how many sexual assault reports are made, what portion of those result in a SANE, and how many make it to your intake box. In another year or two, we will also have data on how many are ultimately indicted and how many result in a conviction. This data may result in some difficult but important conversations about how sexual assault reports are being handled in your county.

Conclusion

When the legislature determined that every county in Texas would have a SART, it left a lot of us scrambling. Scrambling to fulfill the requirements, sure, but also to make it an asset for our communities and not just another item on our agendas. I hope this article has provided a little guidance on achieving both. ❇

Endnotes

[1] Tex. Gov. Code §§351.251–351.258.

[2] Tex. Gov. Code §351.252.

[3] 2020 United States Census, www.census.gov.

[4] Tex. Gov. Code §351.252.

[5] Tex. Gov. Code §351.256.

[6] Tex. Gov. Code §351.257.

[7] https://taasa.org/resources/sexual-assault-response-teams.

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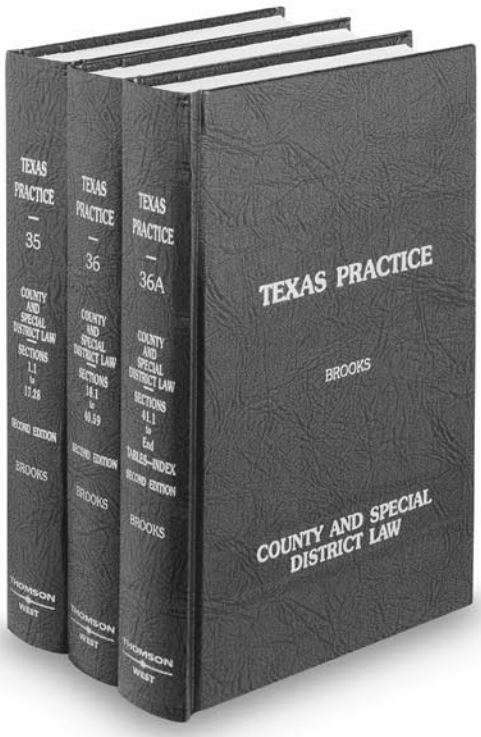

COUNTY AND SPECIAL DISTRICT LAW, 2D

(Vols. 35, 36 and 36A, Texas Practice Series)

By David B. Brooks

In the 33 years since its first publication in 1989, County and Special District Law has been cited many times in judicial opinions from Texas courts and in rulings from the Texas attorney general. It is the definitive authority in this area of the law, a vital source of easy-to-understand legal information important to lawyers, judges, public officials, and the citizenry.

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FORMAT: Book – Hardbound & eBook
COMPONENTS: Print 3
PAGES: 3279
PRINT PRODUCT NUMBER: 22056626
PRINT PRICE: $864.00
Price as of July 2022; subject to change without notice.
Updated annually by the author

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