



The Texas Prosecutor

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



Domestic violence help—in a place where everybody knows your name

My daughter, Emilia, was in the eighth grade when she came storming into the house one spring afternoon. “Why didn’t you tell me that Ms. S was one of your kids?”

Her teacher, Ms. S, had been sexually abused when she was a child by her mother’s live-in boyfriend. The same man also abused her mother, so Ms. S grew up in a violent home. As a child, Ms. S had come forward to authorities to describe both types of horrific abuse committed by the same man with bravery and remarkable clarity. And apparently, earlier that day she had told her class a little about what she had learned from those experiences. Emilia looked at me with wide eyes and with an expression that was hard to describe: shock? Horror? Admiration?

Small town prosecution

I never kept my job as a rural prosecutor a secret from my kids. They knew that I was the voice in court for crime victims who oftentimes needed help in sharing their stories. What my children didn’t know was that growing up in a town of only 4,000 people, some of the friends and family who walked the halls of their schools, the aisles of Brookshire Brothers, and the bleachers on Friday nights were also the victims (and yes, defendants) in my cases. I had a hard and fast rule that I shared with all crime victims, young and old:



By Kristin Burns

TDCAA Domestic Violence Resource Prosecutor in Austin

I would never approach them in public, and I would never discuss their cases with anyone.

Rural prosecution has a special level of concern: anonymity in the land of small-town gossip. And, as my daughter sat looking at me with her big blue eyes wild with newly discovered information about one of her teachers, I understood why this rule was imperative. You see, Ms. S had shared parts of her story with her students; she dared to break through the stigma on her terms, to encourage them to be brave in the face of hard times. And in so doing, she reminded Emilia that her world is small, but not for the rea-

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In like a lion

The spring of every even-numbered year brings us the same three things: college basketball madness, crazy weather, and primary elections.

And it's a fair question to ask which of those three is the most dramatic.

While most of the election attention in March is reserved for statewide and congressional races, there were 55 local prosecutor offices on primary ballots around the state in 2026. County attorney and district attorney offices are usually up for grabs in presidential election years, but a smaller number of criminal district attorney offices (plus a few other exceptions) are decided during the mid-term elections. (And if you weren't aware of those cycles, have no fear—part of the reason TDCAA exists is to keep track of all this prosecutorial miscellany for you!)

While 55 prosecutor races will appear on ballots around the state this year, most (37) are uncontested. Of the remaining 18, 15 involved contested primary races. Those results included four incumbents winning a new term, three incumbents being defeated, one incumbent put to a run-off, and a second run-off for an open seat. But after the run-off dust settles at the end of May, things get much quieter in our world, politically speaking. Come November, only six prosecutor races between candidates of both parties will still be on the ballot. There are many possible explanations for the lack of broad competition for such important roles in our justice system, but Occam's razor leads me to this one: Most Texans are happy with their local prosecutor, despite what you might read on social media. And for that, we should all be grateful.

For those who want more specifics on prosecutor-specific primary results, look for that breakdown on our Legislative webpage: www.tdcaa.com/legislative/2026-primary-election-results.

Rising Stars

In our last issue, I promised you more information about a new set of awards coming in 2026. TDCAA's Board of Directors wants to recognize young prosecutors who are doing remarkable things across Texas, but the Board needs your help to identify and recognize them as the future



By Shannon Edmonds

TDCAA Executive Director in Austin

of prosecution in our great state. Here's what that will look like in practice.

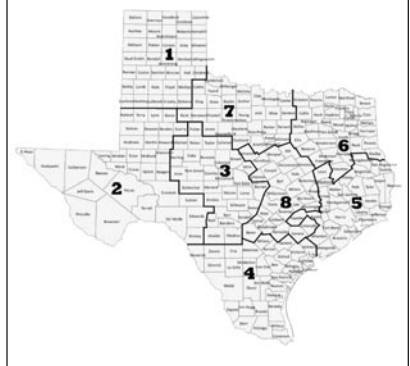
In late March, regional directors will begin to solicit nominations from the elected prosecutors in each of the eight TDCAA regions. (See the regional map, right, and the list of regional directors on the masthead [in the purple box] on the opposite page.) Those regional directors will then review the nominations they have received and forward suitable candidates to our association's Nominations Committee, which will send one nominee from each region to the Board for final approval as that region's Rising Star prosecutor. Those winners will be notified and recognized as such in this journal and at our Annual Conference in September.

To learn more about these new Rising Star Awards, the qualifications to be nominated, and where to send those nominations, visit www.tdcaa.com/rising-star-awards or search for "rising star" on our website.

Membership has its privileges

Unlike the State Bar of Texas, TDCAA is a voluntary professional membership organization. As such, we get bombarded with solicitations from vendors promising to help us "grow our membership" and increase the pool of people we serve. That got me wondering: How much room for "growth" do we really have in that respect?

Texas regional map



Ninety-eight percent of elected felony prosecutors in Texas are dues-paying members of TDCAA, and 90 percent of elected county attorneys—many of whom also have private practices on the side—are also paid members of our association. Many membership organizations can only dream of participation rates that high!

With that in mind, we ran some numbers on our membership as of December 31, 2025, starting with elected prosecutors (not counting those offices that were vacant as of that date). That research showed that 308 of 326 elected prosecutors (94 percent) were dues-paying members of TDCAA. That can be further broken down as:

- 81 of 82 district attorneys (99 percent) were members
- 49 of 50 criminal district attorneys (98 percent) were members
- 32 of 33 county attorneys with felony responsibility (97 percent) were members
- 131 of 146 county attorneys (90 percent) were members

In other words, 98 percent of elected felony prosecutors in Texas are dues-paying members of TDCAA, and 90 percent of elected county attorneys—many of whom also have private practices on the side—are also paid members of our association. Many membership organizations can only dream of participation rates that high! As with the election summary above, I believe that shows a high degree of satisfaction within our association. Of course, that doesn't mean things can't be improved; we are constantly searching for ways to better serve our members. But what it does mean is that we have a great base on which to make those improvements.

And what about the good people who work for those elected prosecutors? In future issues of this journal, I'll explore the membership rates for assistant prosecutors, investigators, victim assistance coordinators, and key personnel, and what conclusions we can draw from that data. Stay tuned!

A look ahead

Keep checking this space in future issues of The Texas Prosecutor journal for upcoming news about other association awards, an impending revision to our association's bylaws, more membership updates, and other planned improvements to our association. Meanwhile, this issue of the journal is once again chock full of great material, including articles on a domestic violence task force in Kleberg County, handling children in CPS's permanent managing conservatorship, and the many roles of an investigator in a prosecutor's office. I hope you enjoy them! And as always, if you ever have any questions about TDCAA or what we do, please don't hesitate to reach out for answers. We are here to serve you. ✱

A look back informs the future

Nostalgia is a seductive time sink, and it is one I occasionally succumb to. Recently, while digging around for an old jury selection chart, I found myself eyeballing TDCAA training brochures and binders from days gone by.

I went all the way back to the early 1990s. That is before my time with the association, but I assure you all, it was not that long ago. It is unsurprising that I came across agendas for courses that covered the same types of cases, topics, and sub-topics that we cover today. Turns out, people have been drinking too much booze and getting behind the wheel of a car for a long time. Shocking.

What became interesting was the deeper detail of how these topics were being covered. So much has changed. It isn't fair to say that training today is better than it was a few decades ago. The law is different. Juries are different. The world is different. To remain effective, training must also be different. Time's constant companion, inevitable change, prohibits perfection in prosecution. Good prosecutors don't arrive—but they make sure they are always on the way. Good training has to keep up.

Prosecuting Homicide & Adult Sexual Assault Conference

This spring and summer, TDCAA's training continues to be on the way. In April, your training committee has built an innovative agenda to cover issues in both homicide and adult sexual assault cases. Separate tracks will address the most difficult voir dire concepts in today's trials. In addition, a three-hour block on individual voir dire has been set aside for even deeper jury selection coverage. Later talks will be mixed as many topics address concepts as they apply to both homicide and sexual assault cases. Attendees may have some hard decisions to make regarding what presentations to attend, but time is a finite resource. All course materials will be available to all attendees. And, if two perfect topics overlap, maybe you can bring a friend or even make a new one to cover both.

Fundamentals of Management

In keeping with our need to adapt to our members' needs, this year will also see an expansion



By Brian Klas

TDCAA Training Director in Austin

of our standalone Fundamentals of Management offerings from PMI (the Prosecutor Management Institute). This popular course remains available to those counties who want to host it on their home turf—information about that more traditional delivery model is available on TDCAA's website.¹ The standalone courses, which are always held in Austin, are intended for individuals who missed the training in their counties or are otherwise unable to schedule a local course. The Austin classes provide training in the skills and development necessary for strong management in today's prosecutor offices. At the time of publishing, our June courses *may* already be full, but two August courses will open for registration soon. Keep an eye out—they fill up fast.

Advanced Trial Advocacy Course

The final event I would like to highlight is our yearly Advanced Trial Advocacy Course. It continues to target the most difficult cases being tried and the special skills to successfully prosecute them. This year, the focus will be on sexual assault of a child. Tarrant County prosecutors Madeline Jones and Dale Smith, our course directors, have identified a strong case to build the training around with a special focus on older child victims. Attendees will spend a week at Baylor Law School working in small groups with

¹ www.tdcaa.com/prosecutor-management-institute-pmi.

Continued on page 7 in the purple box

KP-VS Board elections and appointments

At the Key Personnel & Victim Assistance Coordinator Conference in November, Board elections were held for the South-Central (Regions 4 & 8) and East Areas (Regions 5 & 6).

Kaisha Hampton, a victim assistance coordinator (VAC) from the County Attorney's Office in Brazos County (Region 8) was elected as the South-Central representative, and Eugena Franklin, a VAC in the DA's Office in Harris County, was elected as the East Area representative. Both women will serve for a two-year term.

Each January, two at-large appointments to the KP-VS Board, one key personnel (KP) member and one VAC, are made by our TDCAA Board President and the KP-VS Board chairperson. I am pleased to announce that Jessica Ruiz, a key personnel and VAC in the 106th Judicial DA's Office, was appointed as the KP representative and Mackenzie Kile of the DA's Office in Dallas County was appointed as the VAC representative. They too will serve a term of two years. Welcome Kaisha, Eugena, Jessica, and Mackenzie!

The bi-annual KP-VS Board meeting was also held at the KP-VAC Conference where Michelle Stambaugh of the Criminal DA's Office in Kaufman County was elected as the 2026 Chairperson, along with Michelle Bork (also in Kaufman County) as the Vice Chair.

Many thanks to each of these dear ladies for your service to TDCAA and for taking time out from your busy schedules to serve on the Board.

The Board assists in preparing and developing operational procedures, standards, training, and educational programs. Regional representatives serve as a point of contact for their regions. To be eligible, each candidate must have the permission of the elected prosecutor, attend the elections at the yearly conference or be appointed, and have paid membership dues.

If you are interested in training and want to give input on speakers and topics at TDCAA conferences for KP and VACs, please



By Jalayne Robinson, LMSW
TDCAA Victim Services Director

consider running for the Board. Elections are held each November at the Key Personnel & Victim Assistance Coordinator Conference.

The next election will be November 5 at the conference in Fort Worth. Representatives for the West (Regions 1 & 2) and North Central Areas (Regions 3 & 7) will be up for election this time around. (A map of the regions is at left.) We would love for you to participate in the elections for a place on the board!

If you have any questions, please email me at Jalayne.Robinson@tdcaa.com.

Below I have included an introduction and photos of the newest members to our 2026 TDCAA Key Personnel-Victim Services Board.

Kaisha Hampton (Region 8)

Hello all, I am Kaisha Hampton, Victim Assistance Coordinator for the Brazos County Attorney's office, in Bryan. I have been with the office since May 2004. Twenty-one-plus years—wow! I have spent many years attending TDCAA conferences and



benefiting from the amazing training it has provided. I decided that it was time to take all these years of experience and give back by serving on the KP-VS Board. I look forward to getting to

Texas regional map



know more of you and being of service in any way that I can.

Eugena Franklin (Region 5)



Eugena Franklin is a Victim Assistance Coordinator and Team Lead in the Victim Services Division at the Harris County District Attorney's Office, where she brings over 30 years of experience advocating for and supporting victims of crime.

Over half of her career has been devoted to direct victim services, providing trauma-informed care, crisis intervention, safety planning, court advocacy, and coordinated resources for victims and their families.

In her current leadership role, Eugena supervises and mentors staff, oversees daily operations, and supports program development to ensure high-quality services for the community.

Mackenzie Kile (Region 6)



I am honored by the opportunity to serve as a part of the TDCAA Key Personnel-Victim Services Board. VACs and key personnel in district and county attorney's offices dedicate extraordinary energy into upholding the integrity of the justice system, elevating

the voices of victims, and promoting visions of a future free of violence; as such, I am incredibly grateful for the opportunity afforded by this Board to support and support these dedicated professionals across our region and the state of Texas.

Building community, advancing education and advocacy for processes that mitigate the impact of compassion fatigue and vicarious trauma, and supporting the training and development of the next generation of professionals are areas about which I am deeply passionate. I look forward to the opportunities afforded by my participation in this integral organization.

I bring more than a decade of working professionally in the field of victim services, with the past six years focused as a victim advocate and site coordinator for the Dallas County District Attorney's Office's Sexual Assault Kit Initiative (SAKI) and Cold Case Homicide team. I hold a

some of the best trial attorneys in the state. There they will hone their advocacy skills and learn new techniques to ensure they see justice done. Remember, this training is available by application only. If you are on the fence about applying, get off the fence. Not everyone can make it into this limited-attendance course, but failing to apply guarantees you won't get in. And remember, no one has already arrived—this is a growth profession.

Other great conferences in 2026

Built by prosecutors for prosecutors, TDCAA training targets the needs of our entire service group. In addition to the above conferences, the remainder of 2026 will bring our usual gamut of training opportunities. The Civil Law Conference in May will focus on the unique issues faced by prosecutors carrying a civil caseload with both expected legal updates and brand-new discussions. Our Annual Conference, for the first time ever, will be held in Waco. I'm excited for all of you to see what our committees and the city have to offer.

On the heels of Annual, our KP-VAC Conference will endeavor to meet the needs of the people whose work keeps the prosecution train on its tracks. During all of this, our online library will expand and evolve, our DWI training will visit a location near you, and our new Domestic Violence 101 course will continue meeting this long-term training need. In 2027 we will do it all over again. The topics we cover will look familiar, but I hope there are changes in the details. ❀

B.A. in psychology, an M.A. in Clinical Mental Health Counseling, and a Post-Master's Certificate in Trauma-Informed Clinical Practice, and I am on track to complete an M.S. in Victim Services Management this summer. I look forward to identifying meaningful ways to support fellow advocates and key personnel and if there is ever a way in which I can help, I'm just a phone call away.

Jessica Ruiz (Region 2)

I serve in the 106th Judicial District Attorney's Office (serving Dawson, Gaines, Garza, and Lynn Counties) and have seven years of experience working in victim services and as a key personnel member within the criminal justice system. I am pas-



sionate about supporting key personnel through strong leadership, collaboration, and practical training that enhances their ability to serve both victims and their offices effectively. In my role, I focus on promoting professional development, fostering communication, and helping build sustainable practices that support those working on the front lines. I am honored and excited to serve as the designated key personnel representative on the TDCAA Key Personnel-Victim Services Board and look forward to contributing ideas, contributing my experience, collaborating with fellow board members, and helping shape impactful training opportunities for prosecutor's offices across Texas.

National Crime Victims' Rights Week

Each April communities throughout the country observe National Crime Victims' Rights Week (NCVRW) by hosting events promoting victims' rights and honoring crime victims and those who advocate on their behalf. NCVRW will be observed April 19-25, 2026, with a theme of "Com-mUNITY! Focused on partner organizations uniting to uphold dignity, safety, and healing for victims."

Sign up for the NCVRW subscription list to receive the latest information about it at <https://ovc.ojp.gov/program/national-crime-victims-rights-week/subscribe>.

If your community hosts an event, we would like to publish photos and information in this journal. Please email me at Jalayne.Robinson@tdcaa.com to notify us with information and photos of your event. ❄

Victim services consultations

As TDCAA's Victim Services Director, my primary responsibility is to assist Texas prosecutors, VACs, and other prosecutor office staff members in providing support services for crime victims in their jurisdictions. I am available to provide victim services training and technical assistance to you via phone, by email, in person, or by Zoom. I can tailor individual or group training specifically for your needs. The training and assistance are free of charge. Are you a new VAC? This training would be perfect for you!

If you would like to schedule a free consultation, please email me at Jalayne.Robinson@tdcaa.com. Many offices across Texas are taking advantage of this free training. ❄

Navarro v. State and necessity: The Court overrules *Bowen sua sponte*

Remember *Erie Railroad Co. v. Tompkins*¹ from law school?

In *Erie*, the U.S. Supreme Court declared that federal courts hearing diversity cases must apply state law, overturning the 96-year-old case of *Swift v. Tyson*.² An interesting bit of law nerd trivia you may not remember about *Erie* is that neither of the parties actually asked the Court to do so.

Swift had been a grand experiment in attempting to create federal common law that would be uniform across the states as judges discovered natural law principles that would give rise to a “general commercial law,” but the opposite happened. Instead of uniformity, precedents were all over the place, allowing judges to invent law without legislative approval and leading to forum shopping. The majority opinion of Justice Louis Brandeis saw an opportunity to overturn a poorly reasoned and unworkable precedent, and *sua sponte* overturned *Swift*. The dissenting opinion of Justice Pierce Butler pointed out that neither party had raised the question of the validity of *Swift* and argued that the Court should not do so of its own volition.

The Court did something similar in *Mapp v. Ohio*.³ In *Mapp*, the Court ruled that the exclusionary rule was incorporated into the 14th Amendment and applied to the states, overruling *Wolf v. Colorado*.⁴ But again, neither party asked that the Court do that. Justice Harlan’s dissent in *Mapp* pointed out that not only had the appellant not requested in briefing that *Wolf* be overruled, but also the appellant had expressly disavowed that he was requesting such when pressed in oral argument. Only the amicus curiae brief of the ACLU (American Civil Liberties Union) had requested that the Court overrule *Wolf*, and in Justice Harlan’s view it was inappropriate for the Court to do so without full briefing and argument from the parties.



By Britt Houston Lindsey

Chief Appellate Prosecutor in Taylor County

In this installment of As the Judges Saw It, we examine *Navarro v. State*,⁵ a recent Court of Criminal Appeals case involving the applicability of the necessity and self-defense statutes in resisting arrest cases. As in *Erie*, the Court in *Navarro* saw and took the opportunity to overrule a problematic precedent *sua sponte*, and as in *Mapp*, only the amicus curiae requested it.

Background

Jerimiah Navarro was indicted on two counts of aggravated assault with a deadly weapon against a public servant using a trophy and a screwdriver, plus a third count of assault of a public servant by biting, and he was indicted separately for attempted arson of the building where the altercation took place. On April 25, 2014, New Braunfels police officers Brian Turner and Lucien Braan were dispatched to an upholstery business after 911 received three hang-up calls from that location. When Officer Turner arrived, several car radios were playing at full volume and a woman later identified as Navarro’s mother approached them outside with her hair, neck, chest, and arms covered in transmission fluid. Navarro appeared outside shouting that his mother was “the black

¹ 304 U.S. 64 (1938).

² 41 U.S. 1 (1842).

³ 367 U.S. 643 (1961).

⁴ 338 U.S. 25 (1949).

⁵ No. PD-0222-22, __S.W.3d__, 2025 WL 3144210, 2025 Tex. Crim. App. LEXIS 811 (Tex. Crim. App. Nov. 6, 2025).

At trial, Navarro admitted that he was resisting arrest but testified that he only bit Officer Turner because the officer was on top of him, cutting off his breathing, and he was desperate to get him off. He testified that biting Turner was “the only thing” he could do under the circumstances and a “desperate move.”

widow” and a “drug dealer” who should be arrested. Officer Turner tried to speak to Navarro, who retreated into the business. Officer Braan arrived at that time and his car video recorded the altercation.

Officer Turner followed Navarro inside and found the business in disarray, with transmission fluid “all over” the office and floor. Navarro was seated in the back of the office and refused Officer Turner’s requests to come outside and talk. Navarro tried to light a towel on fire, then rubbed it into the transmission fluid on the floor and set it on fire. Officers could be heard on the video saying, “Put it up,” and “Put it down,” repeatedly and telling Navarro eight times to “put the lighter down.” Navarro can be heard saying, “You’re going to die—everybody in this god**** building,” and “You’re going to die, mother*****. ... We’re all going to die.” Officers could later be heard telling Navarro to “put the screwdriver down” and “put your hands behind your back,” to which Navarro responded, “No.” Repeated efforts to tase him were unsuccessful. Navarro struck Officer Turner in the head with a trophy, attempted to stab both officers with a screwdriver, and bit a large chunk of flesh out of Officer Turner’s arm. After Navarro was cuffed and restrained, he was taken to the hospital for a broken nose, fractured wrist, and bruising.

At trial, Navarro admitted that he was resisting arrest but testified that he bit Officer Turner only because the officer was on top of him, cutting off his breathing, and he was desperate to get him off. He testified that biting Turner was “the only thing” he could do under the circumstances and a “desperate move.” He was asked on cross-examination if he thought the officers were “trying to cut off [his] breathing,” and he replied, “I don’t believe that was their intention, no.” At the charge conference, Navarro requested an instruction on the defense of necessity as to the assault on a public servant for biting Officer Turner, which was denied, although he did receive an instruction on self-defense. Navarro was convicted of count one for the aggravated assault with the screwdriver against Officer Turner, convicted of count three for the biting, and acquitted of the other aggravated assault against Officer Braan in count two and the attempted arson charge.

On appeal

Navarro appealed to the Third Court of Appeals, and the case was transferred to the First Court of Appeals pursuant to the Texas Supreme Court’s

docket equalization order.⁶ On appeal, Navarro argued that the trial court erred in not including an instruction on the defense of necessity, which provides that conduct that would otherwise be criminal is justified if:

- 1) the actor reasonably believes the conduct is immediately necessary to avoid imminent harm;
- 2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct; and
- 3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear.⁷

As to the third consideration, the Court of Criminal Appeals had previously held in *Bowen v. State*⁸ that the resisting arrest statute⁹ does not limit the necessity defense’s application, because a legislative purpose to exclude the defense does not plainly appear in its text of the offense.

Navarro argued that he was entitled to the necessity instruction because he thought he had no other choice but to bite Officer Turner, because Turner was on top of him and rendering him unable to breathe. Citing its own caselaw,¹⁰ the First Court held that “even if the defendant admits he committed the charged offense, he is not entitled to an instruction on the defense of necessity if it is undisputed that he provoked the difficulty that made it necessary for him to commit the offense. ... In other words, the defendant cannot claim it was necessary for him to commit the charged offense if he was responsible for having placed himself in the position from which he attempted to extricate himself by committing the offense.”¹¹

⁶ See Tex. Gov’t Code §73.001; Order Regarding Transfer of Cases from Courts of Appeals, Misc. Docket No. 20-9048 (Tex. Mar. 31, 2020).

⁷ Tex. Penal Code §9.22.

⁸ 162 S.W.3d 226, 229 (Tex. Crim. App. 2005).

⁹ Tex. Penal Code §38.03.

¹⁰ *McFarland v. State*, 784 S.W.2d 52, 54 (Tex. App.—Houston [1st Dist.] 1990, no pet.).

¹¹ *Navarro v. State*, 649 S.W.3d 603, 613 n.1 (Tex. App.—Houston [1st Dist.] 2022), *aff’d on other grounds*, ___ S.W.3d ___, 2025 WL 3144210, 2025 Tex. Crim. App. LEXIS 811 (Tex. Crim. App. 2025).

The First Court noted that there was a split among the courts of appeal on this issue: The First, Second, Thirteenth, and Fourteenth Courts had held in published opinions that a necessity defense is not available when the defendant is responsible for the predicament, the Fourth and Eleventh Courts had so held in unpublished opinions, the Fourth and Eighth Courts had applied the rule in certain circumstances, and the Fifth and Tenth Courts had held that provoking the difficulty does not negate a necessity defense.¹² The First Court was bound by the precedent of the Third Court in its decision, but because the Third Court had not ruled on the issue, it applied its own.¹³

The First Court held that under these facts, the necessity defense was not available. Navarro disobeyed Turner from the outset, his disobedience escalated into violence after Turner tried to remove Navarro from the office, and by his own account Navarro admitted that he precipitated the altercation. Because it was his own prior action that made the criminal conduct necessary, Navarro was not entitled to a necessity instruction. Navarro petitioned the Court of Criminal Appeals and was granted review.

As the judges saw it

In the Court of Criminal Appeals, Holly Weatherford of the Comal County Criminal District Attorney's Office argued that the First Court had correctly concluded that Navarro was not entitled to a necessity defense when he himself provoked the difficulty. John Messinger, writing for the State Prosecuting Attorney (SPA) as amicus curiae, echoed that argument but also argued that *Bowen v. State*, which held that the necessity defense is not legislatively excluded from the resisting arrest statute, was flawed from its inception and should be overruled.

The Court of Criminal Appeals affirmed, but on grounds different from the provoking the difficulty doctrine cited by the First Court: It overruled *Bowen*. Writing for the Court, Judge Parker held that "if a defendant would not be justified in using force to resist arrest under the self-defense statute to protect himself from the officer's use of force, he would also not be justified in using such force under the necessity statute." The self-de-

fense statute (Penal Code §9.31) has a clear exclusion for cases of resisting arrest:

(b) The use of force against another is not justified: ...

(2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c);

(c) The use of force to resist an arrest or search is justified:

(1) if, *before the actor offers any resistance*, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and

(2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.¹⁴

The court of appeals in *Bowen* had held that Bowen was not entitled to a necessity instruction because her use of force against an officer attempting to arrest her was covered by these sections of the self-defense statute, which expressly stated that she could not use force to resist arrest, even an unlawful arrest using excessive force, if the defendant offered resistance first. This, the *Bowen* court of appeals concluded, was a plain expression of "a legislative purpose to exclude the justification claimed for the conduct" under §9.22(3). The Court of Criminal Appeals in *Bowen* held that the lower court erred in looking to another defensive justification, and that the "legislative purpose to exclude" mentioned in §9.22(3) must "plainly appear" on the face of the Penal Code offense itself.¹⁵

So back to *Navarro*. The SPA argued, and Judge Parker agreed, that if the resisting arrest exclusion to the self-defense statute constitutes a plainly appearing legislative purpose to exclude the justification claimed for the conduct that it covers, then the appellant would fail as a matter of law to meet element three of the necessity de-

The SPA argued, and Judge Parker agreed, that if the resisting arrest exclusion to the self-defense statute constitutes a plainly appearing legislative purpose to exclude the justification claimed for the conduct that it covers, then the appellant would fail as a matter of law to meet element three of the necessity defense.

¹² *Id.*

¹³ *Id.*

¹⁴ Tex. Penal Code §9.31(b)(2), (c) (emphasis added in *Navarro*).

¹⁵ The amicus brief of the SPA further points out that no Penal Code statute actually contains an explicit limitation on the doctrine of necessity.

fense. Where *Bowen* went wrong was looking at the necessity defense statute in isolation and specifically precluding consideration of the self-defense statute, or any other defensive statute, in determining legislative exclusion. Application of the necessity defense to the exact same conduct excluded as self-defense to resisting arrest renders that exclusion useless. Because Navarro was not entitled to the self-defense instruction he received, he could not avail himself of a necessity instruction that would legally justify conduct that was, by law, not a justification.

Concurrence

Judge Yeary concurred, joined by Presiding Judge Schneck, saying that he joined the majority in all but the Court's discussion of *stare decisis*, particularly the consideration of the need for consistency in determining whether precedent should be overruled. Citing *In re Green*,¹⁶ the majority opinion discusses how the need for maintaining consistency with past decisions should be weighed against other factors, such as whether the original decision was flawed from the outset, it leads to inconsistent results, the rule conflicts with other precedent, and so on. To Judge Yeary's thinking, this should not be part of the analysis: "When this Court badly misconstrues statutory language, I do not think any interest in 'maintaining consistency' compels us to confer authoritative value on that judicial mistake." Although he agreed *Bowen* misconstrued §9.22, he disagreed that "we are constrained from overruling erroneous precedent unless we first consider all the various factors the Court enumerates. ... For me, it is enough simply to recognize that our prior construction of the statute was demonstrably erroneous."

Dissent

Judge Walker dissented, joined by Judge Newell and Judge McClure. Judge Walker noted that the Court granted review to determine whether Navarro was entitled to a necessity instruction even though he may have "provoked the difficulty," but rather than answer that question the Court went out of its way to overrule *Bowen*, which the lower court did not rely on and the parties did not raise. In so doing, the Court relied on an issue raised only by the SPA writing as amicus, which Judge Walker noted the Texas Supreme

Court and federal courts do not allow.¹⁷ Judge Walker believes that the Court's *sua sponte* decision of the issue deprives the parties of the opportunity to fully brief the matter, and that if the Court wished that issue addressed, it should grant the issue on its own motion and request briefing from the parties.¹⁸

Judge Parker's majority opinion responds to this argument by pointing out that the First Court of Appeals, being bound by the precedent of the Court of Criminal Appeals, could not have addressed the continuing viability of *Bowen*, and that "the SPA is no ordinary amicus; it actually has primary authority to represent the State in this Court. ... An appellant who ignores an amicus brief from the SPA does so at his peril."

The takeaway

The main takeaway of *Navarro* should be obvious: In a resisting arrest case, if the defendant isn't entitled to a self-defense instruction, he isn't entitled to a necessity instruction either. On the appellate level, the concurrence of Judge Yeary and Presiding Judge Schneck is noteworthy in that it may signal that the Court is more open to re-examining statutory interpretation that time has shown to be flawed. Judge Yeary eschews the factors the Court has weighed in the past in determining whether *stare decisis* should apply for a more direct approach of "if it's wrong, get rid of it." It will be of interest to both sides of the criminal bar to watch and see if and how this plays out as a trend.

Beyond that, the application of *Navarro* gets a little murky. In a pre-*Bowen* case, *Dudas v.*

¹⁷ In response, Judge Parker's majority opinion cites occasions in which the U.S. Supreme Court decided an issue not raised by the parties and/or raised only in an amicus brief, including *Davis v. United States*, 512 U.S. 452, 457 n* (1994) and *Teague v. Lane*, 489 U.S. 288, 300 (1989) (plurality op.), but sadly, not *Erie* or *Mapp*.

¹⁸ Citing Tex. Code Crim. Proc. Art. 44.45(a) ("The Court of Criminal Appeals may review decisions of the court of appeals on its own motion").

¹⁶ 713 S.W.3d 843, 853-54 (Tex. Crim. App. 2025).

The main takeaway of Navarro should be obvious: In a resisting arrest case, if the defendant isn't entitled to a self-defense instruction, he isn't entitled to a necessity instruction either.

State, the Seventh Court of Appeals joined a majority¹⁹ of the lower courts in finding that necessity is unavailable as a defense when the defendant also claims and receives an instruction on deadly force in self-defense. The very short discussion did not mention *Bowen*, but the courts which had discussed *Bowen* had distinguished it because it did not deal with deadly force under §9.32. Those cases found that by requiring a greater showing for the use of deadly force in self-defense, a legislative purpose to exclude the justification for this conduct plainly appears on the face of the statute. If it were otherwise, allowing a necessity defense in every case where a defendant used deadly force would render the greater showing required under §9.32 pointless and useless. Dudas petitioned the Court of Criminal Appeals arguing that these cases misapplied *Bowen* and was granted review. The SPA's response argued that even if the Court disagreed with the lower court's rationale regarding legislative purpose, other considerations of statutory construction regarding the necessity defense should preclude its application when deadly force is used.

¹⁹ See *Miller v. State*, 712 S.W.3d 235, 255-56 (Tex. App.—Eastland 2025, pet. filed) (collecting cases); *Sneed v. State*, No. 11-15-00320-CR, 2017 Tex. App. LEXIS 3912, 2017 WL 2588164, at *3 (Tex. App.—Eastland 2017, pet. ref'd) (mem. op.); see also, e.g., *Rollins v. State*, 709 S.W.3d 770, 2025 Tex. App. LEXIS 1659, 2025 WL 793890, at *6-7 (Tex. App.—Austin Mar. 13, 2025, pet. ref'd) (collecting cases); *Chase v. State*, 666 S.W.3d 832, 835 n.2 (Tex. App.—Tyler 2023), cert. denied, 144 S.Ct. 580, 217 L.Ed.2d 309 (2024); *Darkins v. State*, 430 S.W.3d 559, 571-72 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd); *Striblin v. State*, No. 04-17-00826-CR, 2019 Tex. App. LEXIS 1692, 2019 WL 1049233, at *4 (Tex. App.—San Antonio Mar. 6, 2019, pet. ref'd) (mem. op.); *Kelley v. State*, 05-15-00545-CR, 2016 Tex. App. LEXIS 3764, 2016 WL 1446147, at *7 (Tex. App.—Dallas Apr. 12, 2016, pet. ref'd) (mem. op.); *Wilson v. State*, No. 06-14-00021-CR, 2014 Tex. App. LEXIS 12188, 2014 WL 8332264, at *6 (Tex. App.—Texarkana Nov. 7, 2014, pet. ref'd) (mem. op.); *Rodriguez v. State*, No. 02-17-00371-CR, 2022 Tex. App. LEXIS 5080, 2022 WL 2840153, at *1 n.1 (Tex. App.—Fort Worth July 21, 2022, pet. ref'd) (mem. op.); *Toliver v. State*, No. 01-23-00802-CR, 2025 Tex. App. LEXIS 8371, at *23 and n.5 (Tex. App.—Houston [1st Dist.] Oct. 30, 2025, pet. filed) (mem. op.).

After *Dudas* and the SPA briefed and argued to the Court of Criminal Appeals, *Navarro* was handed down and *Bowen* was overruled. Both parties filed post-submission briefs: Dudas argues that *Navarro* does not apply because Dudas was charged with murder, not resisting arrest, and there is accordingly no explicit exclusion in the statute. The SPA points out that *Navarro* expressly did not limit the analysis to resisting arrest, noting that the self-defense statute also contains other exclusions, such as verbal provocation alone or consent. *Navarro* also noted that deadly force is excluded in §9.44(1) regarding the use of a deadly device (a “mantrap”) to protect property. The SPA argues that this same exclusion by negative implication applies to the use of deadly force in the self-defense statute: When a statute says that deadly force is justified only when certain conditions are fulfilled, the implication is that there can be no justification when those circumstances are absent.

Dudas is still pending in the Court of Criminal Appeals as of this writing, and even once it's decided, we probably haven't heard the last of when the necessity defense does and doesn't apply. Until we get more guidance from the Court, the wise move is to exercise caution and don't try to stretch *Navarro* into creative applications. ❖

When a statute says that deadly force is justified only when certain conditions are fulfilled, the implication is that there can be no justification when those circumstances are absent.

A new year, a new world?

Is it a new year already?! Time is flying by in my role as your Domestic Violence Resource Prosecutor.

While the talk of new year's resolutions is all around us, I am still feeling a bit reflective. Specifically, about the last issue of this journal where I wrote about Tarrant County's Fatality Review Team.¹ I mentioned that it is different from a Domestic Violence High Risk Team (also known as a DVHRT). Both have their strengths. Please see the May–June 2023 issue of *The Texas Prosecutor* for an excellent article by Staley Heatly on the subject.² This article walks through the who, what, where, when, and why of a DVHRT and how you can implement the model with great success. Remember that a DVHRT's goal is to connect the most at-risk victims with services as quickly as possible. It could save lives.

What I want to talk to you about now is how DVHRTs could utilize brand new and shiny tools courtesy of the 89th Texas Legislature. Consider this: We have several new tools at our disposal to keep family violence (FV) victims safe for a longer period, especially those who are deemed high risk. The best place to learn about these high-risk victims, including who they are, what their risks are, and what their needs may be, is DVHRTs. Information gained at the DVHRT meeting about risk and need can be implemented with our new tools.

Let's start with protective orders.

1 The Code of Criminal Procedure now extends the length of time defendants can be held under Art. 17.291 (Further Detention of Certain Persons) after posting bond if there is probable cause to believe the violence will continue if the defendant is immediately released. The holding agency *shall* hold the defendant for four hours after bond is posted. The holding period may be extended to up to 48 hours if authorized in writing by a magistrate. If the hold exceeds 24 hours after bond is posted, the writing needs to state that the magistrate concluded that violence will continue, there is probable cause for the instant offense, and during the past 10-year period the

¹ Read it at www.tdcaa.com/journal/difficult-conversations-about-domestic-violence-fatalities.

² www.tdcaa.com/journal/what-a-domestic-violence-high-risk-team-can-do-in-your-jurisdiction.



By Kristin Burns

TDCAA Domestic Violence Resource Prosecutor in Austin

defendant has been arrested for either a prior family violence offense or any other offense in which a deadly weapon was used or exhibited during the offense or immediate flight after the offense.

Notice that the statute requires only a prior arrest, not a conviction. And this is “shall” language—the legislature specifically removed the word “may.” But you can see that time is of the essence. Train local officers on your DVHRT to request these post-bond stays on high-risk cases. Train your magistrates too.

2 Article 17.292 of the Code of Criminal Procedure requires the period for a Magistrate's Order of Emergency Protection (MOEP) to be extended under certain circumstances under subsection (j). If a MOEP involves a case with family violence or serious bodily injury, then the period for a MOEP is no less than 61 days and up to 91 days. If the MOEP involves the use or exhibition of a deadly weapon, then the period for the MOEP is no less than 91 days and up to 121 days.

The legislature also added subsection (d-3) to require law enforcement officers to inform the magistrate about the risk to family violence victims, including the facts of the current offense, the defendant's criminal history, and his use of or access to a deadly weapon.

3 Section 85.025 (Duration of Protective Order) in the Family Code clarifies that protective orders extend two years after a final divorce decree, SAPCR (suit affecting the parent-child relationship), or conclusion of the criminal case.

The lesson is clear: These new laws extend the time to protect family violence victims and give

them time to (let's hope) establish their independence. Check these codes to see if the facts brought up at your DVHRT can lengthen any post-bail holds and MOEPs to increase victim safety.

What about the updates regarding bail? If a defendant is charged with aggravated assault, consider evaluating his current bail under the updated laws. He may be eligible to be held without bail if the State can prove that the defendant's current bail is insufficient to reasonably prevent his willful nonappearance in court, or to reasonably ensure the safety of the community, law enforcement, and the victim.³

All these new provisions require *knowledge* of a victim being at risk (the magistrate's knowledge for the protective order and the judge's knowledge regarding bail). And as Staley pointed out in his article, the DVHRT is the perfect place for members of law enforcement, prosecution, healthcare, Child Protective Services (CPS), and mental health to come together and notify each other of risk. It's up to prosecutors, as the State, to get that information into the hands of the decision-makers to protect victims.

DV 101 course

Domestic Violence 101 is TDCAA's new regional course for prosecutors, investigators, key personnel, victim assistance coordinators, law enforcement, and anyone who helps victims of intimate partner violence. The six hours of *free* CLE is a dynamic training with a new approach to age-old issues. So far, participants are singing the praises of the training as both creative and informative.

Let's talk about what you can learn if you join us in one of the remaining courses for 2026. The course starts by evaluating victims in a new light. It's not just about understanding the reality that victims are often reluctant or uncooperative. Prosecution is also about understanding why victims get into this position and how we can learn more about them and their circumstances. When we understand the victims' "why," we can build and present evidence-based cases to juries with better success.

Then the course goes into a topic that is brand new (and I am so excited about it): defendant psychology. While I am not a psychologist, I am learning as much as I can about FV defendants' mindset. This section of training digs deeply into

the types of defendants and their abusive behavior, highlights patterns associated with escalation, and evaluates which defendants are most dangerous. We also brainstorm potential cross-examination strategies and case evaluation based on defendant analysis.

No TDCAA course would be complete without a discussion of case evaluation and jury selection, and DV 101 is no different. How do you know if a case can survive a non-testifying victim? What do we do if the victim isn't cooperative? How do we present over-the-top facts to a jury? The course also talks about hearsay, *Crawford*, and our new friend (or maybe foe) *Heath*.⁴

We end the day by learning how to "board" a case the Brazos County way. Boarding is the process of breaking down a case piece by piece. The trial attorneys present the case's facts to members of the office, who then tear it down—in order to build it up. When the process is done correctly, there isn't a defensive theory, legal issue, or "public perception problem" that hasn't been addressed and overcome by the team.

Strategy and honest conversations are a cornerstone to DV 101. I am so excited about this class and the input from attendees so far. My plan is to bring the course to all eight TDCAA regions this year so everyone who wants to attend has the chance to.

Here is the rest of the 2026 schedule:

May 14 in Lubbock (Region 1)

June 10 in El Paso (Region 2)

June 24 in Nacogdoches (Region 5)

June 26 in Weatherford (Region 7)

June 30 in Tyler (Region 6).

(We have already presented classes in Burnet [Region 3], Carrizo Springs [Region 4], and Kyle [Region 8].)

Please see our webpage at www.tdcaa.com/training to register for upcoming dates and join us! ❁

The six hours of free CLE is a dynamic training with a new approach to age-old issues. So far, participants are singing the praises of the training as both creative and informative.

⁴ www.tdcaa.com/journal/diligently-prepare-and-be-vigilantly-aware-to-avoid-exclusion-under-heath.

³ Tx. Const. Art. I, §11d.

A new Foundation website

As the ways in which we connect with supporters, donors, and the people we serve grow, so does the need for a new website that offers a full view into what the Foundation does to support Texas prosecutors.

I am proud to present the Foundation website version 2.0 at www.tdcdf.org. The address is the same, but the site is different. It offers insights into the TDCAA programs that the Foundation supports, the donors who finance the work, and the ways donors can make a difference. Together we can continue to support the training and services that make TDCAA one of the premiere prosecutor associations in the county. The new site highlights our mission: to bring about a safer Texas by supporting professionalism in prosecution. The vision: So the State is always ready. When you have the chance, please check it out and let us know what you think.

I want to take the opportunity to thank some folks who have guided us in our giving program development the last year: Brian Harrison of the Texas A&M Foundation and Blake Johnson of Edward Jones in the Metroplex. Their insights and willingness to share for the greater good has been great for our Foundation.

2025 in the rear view

This last year was very busy for your Foundation leadership. The Foundation offered support for the tremendous work of TDCAA's Victim Services Director Jalayne Robinson and TDCAA's Domestic Violence Resource Prosecutor Kristin Burns. The Foundation also helped support Train the Trainer, the Advanced Trial Advocacy Course,



By Rob Kepple

TDCAF Executive Director in Austin

and Prosecutor Management Institute (PMI) trainings. All in all, the Foundation provided a record amount of support to TDCAA's services. Keep an eye out for the 2025 Annual Report coming to a mailbox near you.

Endowment funding for TDCAA

When Dan Boulware and Tom Krampitz breathed life into the Texas Prosecutors Society (TPS) in 2011, they had a vision of enduring support to the prosecutors of Texas through an endowment funded by those who shared that vision. Now with over 300 members, the Society has been so successful that it is time to make that support a reality. Thanks to the stewardship of Mike Turner and Buddy Ballard at Alpha Capital Management, the endowment fund is now in a position to begin offering that enduring support directly to TDCAA, and the Foundation leadership has voted to do just that in 2026. Exciting times! ✨

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* gifts received between December 5, 2025, and February 5, 2026

Photos from our Investigator Conference



Chuck Dennis Award winner



David Simon (at left in the photo above), a CDA investigator in Galveston County, was honored with the Chuck Dennis Investigator of the Year Award at the Investigator Conference. He is pictured with Johnny Freeze, the office's chief investigator (at right). Congratulations!



Photos from Train the Trainer



Domestic violence help—in a place where everybody knows your name (cont'd from the front cover)

sons she expected. Emilia thought her world was small because everyone knew her, her mom, and her grandparents. People would stop her on the street and say, “Aren’t you Stewart Burns’s granddaughter?” What she didn’t realize was that her world could intersect with my work, that people she knew and admired could also be victims of unspeakable crimes, people I had helped as a prosecutor at the DA’s office.

Prosecuting in rural jurisdictions carries an added burden: Crime victims are painfully aware that everyone knows their business. There are benefits of small-town life, certainly—such as having friends and neighbors to help you in your time of need—but domestic violence (DV) victims rarely call upon these folks for help. Shame often prevents victims from coming forward—in all communities, big and small—but in a small town, realizing that everyone could know you are a DV victim is overwhelming.

Which is why I was heartened and intrigued by an article I recently read. It was about a group formed in 2019 in Kleberg County to address several difficulties in helping victims of family violence.¹ This group, called the End Domestic Violence Task Force, was created to help victims of domestic violence find shelter, services, and justice in a community where everybody knows their name (and often their business). The article outlined the work this rural task force was doing to overcome everyday barriers as victims walk through the court system and the process of leaving abusers. I was so impressed with how the task force had identified issues in their community and attacked them head on—and in a way that could be implemented by other jurisdictions.

I sat down with J. Dean Craig, Assistant County Attorney in Kleberg County and member of the task force; Kathy Kimball, president of the task force; and Jennifer Radcliffe-Jones, vice president of the task force and Non-Residential Services Manager at The Purple Door,² a non-profit that provides services to victims of domestic violence and sexual assault, to discuss what this group has been doing. We talked about its

mission, strategies, and services, as well as how this model can be implemented by rural prosecutors statewide.

How it started

Jennifer had been working with local church ministries and pastors for years through The Purple Door. But she struggled to get volunteers and community “buy in” for her programs. And then one day, a volunteer from a local church was working when a victim of domestic violence came in particularly battered and bruised. The volunteer recognized the woman as someone from church, someone she saw every Sunday. It struck differently. For the first time, the woman she was helping was someone the volunteer knew, someone who was hurt badly enough and scared to the point that she sought out help. The extent of her injuries was startling and inspired this volunteer to action.

That volunteer went to her pastor at First Baptist Church Kingsville (known around town as First Kingsville), told him what she saw, and explained that domestic violence really was a problem in their community. From that point on, this pastor at First Kingsville was “all in,” and his support changed everything. He made it his personal mission to explain to other church leaders in town that DV was happening in their congregations too—it wasn’t something that happened only in other places. And once that message was understood and accepted, the Kingsville Ministerial Alliance went into overdrive. It’s a group of religious and community leaders, and they then joined forces with the county attorney’s office, local law enforcement, The Purple Door, and a representative of Naval Air Station in Kingsville to form the End Domestic Violence Task Force. It was meant to be an entity that acts, not just evaluates or studies, on behalf of victims.

A safe place to stay

The first action for the task force was based on work that local police officers were already doing: finding a safe place for victims to stay within their community after leaving an abuser. The task force learned that officers were pooling money to pay for hotel accommodations for domestic violence victims. The money wasn’t coming out of the police department’s budget—it was coming out of officers’ pockets. So the first step of the task

¹ www.ruralhealthinfo.org/rural-monitor/domestic-violence-task-force.

² <https://purpledoortx.org>.

These days, victims who need temporary lodging can stay within their community at this hotel. It all happens through a voucher program.

force was to find a local hotel that would offer discounted rates and added protection for victims who needed safe lodging. Local accommodations were imperative because the nearest family violence shelter was over 50 miles away—a barrier that women with children and jobs couldn't overcome. Even if they wanted to flee, it was next to impossible to go so far away when jobs, schools, family, and friends were all nearby.

The owner of a local hotel stepped up and offered his business as a safe space. He was trained to understand the dynamics of domestic violence and he is now a knowledgeable ally in the fight. These days, victims who need temporary lodging can stay within their community at this hotel. It all happens through a voucher program. Officers give the victim a voucher for her hotel stay, notify the hotel that they are coming, operate a close patrol on the hotel when victims are present, and notify The Purple Door that a voucher has been used. The voucher is also mailed to the police department and First Kingsville, which funds the program through its 501(c)(3) charter (more about that in a bit). The church pays the hotel for the voucher directly. To date, the task force and First Kingsville have sponsored close to 100 victims with the hotel voucher program.

The following day, an advocate from The Purple Door contacts the victim to discuss next steps, including any criminal case, protective orders, and safety planning. The goal is to educate victims on the systems and the people who are resources. This volunteer knows not only the process but also the points of contact at each partner agency. Additionally, the volunteer is well trained in the dynamics of domestic violence and knows that accurate information is key. Because early intervention helps develop rapport and cooperation long term, this step is vital.

A safe place within the community and early contact with the victim are two big wins to start the process off right.

A shoulder to cry on

With the hotel voucher program up and running, the next issue was victims feeling alone and overwhelmed, especially on court dates. Step two for the task force: the Court Accompaniment Program. Victims who complete protective order applications or who are involved in a criminal case are given the opportunity at both the county attorney's office and the police department to request court accompaniment. This group of trained volunteers go to court for hearings and

trials with victims so they aren't alone. Court accompaniment has been a popular request from military spouses stationed at the Naval Air Station in Kingsville who are oftentimes far from home, family, and friends. It's also utilized by locals. Prosecutor J. Dean Craig reports that it has been an incredible sight to see: a wall of advocates and volunteers sitting with victims in the courtroom. Victims say this program has had the most rewarding impact for them, to know they are supported through the criminal justice process. Court accompaniment has been a cornerstone feature of the task force.

A trusted location to share

When you walk through Kingsville, you'll see emblems on the doors of various businesses and churches (as in the photo, below). This sign indicates that a business or building is part of the "Trusted Partner, Trusted Location" network, meaning there's a knowledgeable volunteer inside from whom domestic violence victims can seek information.



These spots are selected through an application process initiated by the business owner. If selected, the business owner and other staff members must complete training on reporting to law enforcement, protective orders, criminal justice, and domestic violence dynamics.

While it's not a secret that a location has been selected, as the emblem in the doorway is clearly marked, they are often places where victims would have an unrelated, legitimate reason to visit: doctor's offices, hair salons, churches, etc. Those who work in these locations explain the process to victims, with the goal of giving them resources and pointing them in the right direction. Abusers are often hyper-focused on their victims and know where they are and what they are doing, which is why it is imperative that the trusted locations always provide an alternate reason for a victim's visit. People in town also know these trusted locations and can refer family and friends to those volunteers for more information.

A problem that has occurred with these locations, especially local churches, is turnover in leadership. The emblem remains in the doorway or windowfront indicating this spot is safe, but sometimes the management or ownership has changed and there are no longer any trained vol-

unteers present. One thing the task force is working on is to keep a more diligent record of changes in leadership so that they can either remove these places as a trusted location or train the new owner and employees should they be willing to participate.

A knowledgeable volunteer

Next is what many consider to be the most important component of the task force: training. Because what good is a volunteer army if the message doesn't coincide with domestic violence issues? The task force works with the Kingsville Ministerial Alliance and other organizations to train on domestic violence issues, the criminal justice process, and what to say (and not say) to victims. Training luncheons educate volunteers, members of the trusted location network, and community leaders, and as a result, potential jurors too! Prosecutor Craig reports that on more than one occasion, individuals who have completed task force training have appeared on jury panels. What a great resource to educate the entire panel—the prosecutor can call on someone who already knows the right answers to DV questions during voir dire.

Of particular interest is the training with local churches called Protect the Flock.³ This training, sponsored by CalledtoPeace.org, teaches participants to identify and respond to situations involving domestic abuse. Topics include what constitutes abuse, impacts of abuse on children and society, characteristics of abusers, supporting the oppressed, and others. When members of local religious communities understand this dynamic cannot be solved by prayer alone and are equipped with the knowledge of dynamics plus how to discuss the realities of domestic violence with victims, it is a game changer. The content of Protect the Flock has resonated well among Kleberg County's faithful and other community leaders.

A fountain of resources

Training luncheons and hotel vouchers are not free. First Kingsville has 501(c)(3) status and is

the official payor of these expenses, including the voucher program. All fundraising opportunities, such as speaker luncheons where participants are asked to make donations, go through the church's account. The task force has also seen a host of donations through businesses and individuals, many of whom are anonymous. Because, as the statistics tell us, we all likely know a victim of domestic abuse and we might support such causes, even if we don't want our name on the donor roster.

A path for the future

Looking forward, the task force wants to incorporate an assistance fund for victims needing help with legal matters, such as costly divorce and custody proceedings. The goal is to establish a fund where victims could receive the initial \$2,500 retainer for family law attorneys through the task force. The task force would then find local attorneys who are willing to work *pro bono* or at a reduced rate in these cases. Having legal freedom from abusers is hard if you can't afford an attorney, and it's not very smart to enter family law court *pro se*. This future goal could change the lives of so many, including the attorneys who volunteer their time—by helping domestic violence victims, these attorneys could find fulfillment in a way that we prosecutors know well.

Financial independence is one key to overcoming domestic violence. The task force wants to establish a mentorship program for financial training and trade education so that DV victims are set up for success as they move on with their lives. The goal is for victims to be more knowledgeable about finances and have a trade they can depend on, thus establishing independence and yes, self-confidence, too—believing in yourself and not listening to the negative words that have been thrown at you during a violent relationship. Knowing how to manage your money and having a trade to earn that money will be a life-changing step in the right direction.

An opportunity for prosecutors

This collaborative effort is based on volunteers. Kathy Kimball, the task force president, told me, "We want safe places for victims to go and for our volunteers to put them in touch with the right resources for help." Kathy's and Jennifer's advice for all of those wishing to implement a similar program is to "start small—you don't need grants or big funding. You just need people with big

Next is what many consider to be the most important component of the task force: training. Because what good is a volunteer army if the message doesn't coincide with domestic violence issues?

Continued on page 23 in the purple box

³ <https://calledtopeace.org/wp-content/uploads/2024/09/PTF-Church-Hosting-Kit-2024-Update.pdf>.

Maintaining our balance between law enforcement and liaison

The role of an investigator in a prosecutor's office differs significantly from that of a street officer or local agency detective, and it even varies widely across our big, beautiful state.

It is often dependent on the prosecutor's office, the type of jurisdiction (urban versus rural), departments within the district, and—frankly—the personalities of those involved in that particular judicial ecosystem. In many jurisdictions, it is seen as a coveted position for a senior investigator at the end of a successful and distinguished career with a local law enforcement agency.

I have a different opinion.

The job of the investigator is to maintain a delicate balance as a liaison between agencies and prosecutors. Picture, in your mind, the scales of justice. They are intended to represent fair and balanced coordination within a system where fairness and impartiality rule the day. Within this framework, I view the analogy as involving many scales. The investigator maintains multiple balances: between patrol officers and prosecutors, between CA or DA investigators and prosecutors, and between the public and prosecutors. Not all jurisdictions share the same demands, and the nuances of personality vary widely. Regardless of whom the investigator is dealing with, success requires a unique understanding of everyone's perspective. Communication is the key.

Prosecutor-office investigators need not be utilized merely as case runners or process servers. Rather, I see our role as a liaison in five primary areas:

- legal translator
- quality control officer
- strategic partner
- ethical safeguard
- relationship manager

As this article unfolds, I will describe what I mean by each and give some examples from my own personal experiences.

Legal translator

This role requires the investigator to translate the facts of a case into legally relevant evidence.



By Jason W. Buchanan

Criminal DA Investigator in Johnson & Somervell Counties

An investigator can serve as a sturdy bridge between the day-to-day hard work of “boots on the ground” officers and detectives and the courtroom standards set by the prosecutor's office.

A patrol officer may do a spectacular job documenting the facts of an offense in a report, but if those facts are not linked together so that the prosecutor can understand and clearly present them to a jury, we have nothing. The report can read more like a sterile checklist than a narrative of interconnected events culminating in probable cause. We have all read a report consisting of a list of conclusions based on what the officer was thinking. But such a report doesn't give us what we need to stitch things together and truly tell the facts of the investigation. A clear outline of the investigative process and what the officer was thinking can make a report much more powerful when it is translated into an indictment. It is an accepted practice that you don't put all the facts of an investigation into a warrant affidavit, but all those minor details and facts should *absolutely* be in the final investigative reports and supplements.

If prosecutors clearly communicate expectations to their constituent agencies, CA and DA investigators can reinforce those expectations to ensure receipt of the desired work product. While it is not necessarily the job of a prosecutor's investigator to reinvestigate a case, there are times when doing so becomes necessary. A recent example is when I received a call from a local pa-

trol officer who had written a warrant for unauthorized use of a vehicle. The warrant and affidavit were complete and sufficient except for one thing: There was nothing in the warrant stating that the vehicle's owner had not given the person in possession of the vehicle (the owner's son) permission to take the car or a specific time it was to be returned. I am certainly not criticizing the officer (because when you're under the gun with a complainant in a highly emotionally charged situation, we get in a hurry and can lose sight of even an obvious detail). When I explained the issue to the officer, he was embarrassed and added those details to the warrant. This is where the legal translation and a fresh set of eyes become valuable not only to prosecutors but also to the front-line officers. It is also a good way to gain their confidence and build credibility.

Another thing that comes up regularly is the difference between a search during a consensual encounter versus a *Terry* frisk. Search and seizure situations are a daily topic of discussion. We recently had a situation with a very good and experienced officer who had a consensual encounter with a citizen and ended up arresting him for possession of drugs and paraphernalia. Without going into too much detail, the officer conducted a pat-down of the subject and recovered the contraband—but without a clear verbal articulation on his body camera of the reasonable suspicion or probable cause for the search. I was asked to visit with this officer, provide him with materials clarifying the different types of searches, and offer suggestions on articulating his actions for the camera the next time. We didn't need to get his supervisors involved because in the situation's context, this was a minor issue that could be fixed with instructional resources and a friendly conversation. Which leads us into our next point: quality control.

Quality control officer

I think every prosecutor at one time or another has reviewed a case filed by a local law enforcement agency and shaken his head in bewilderment—or perhaps disgust—at the incomplete, chaotic bundle of clutter before him. Addressing the poor quality of the case file can be delicate, and it requires exceptional communication skills. Good communication is the connective tissue between law enforcement agencies and prosecutor offices.

The investigator should identify gaps or suppression risks—and address those identified by

hearts.” They saw an initial need with a safe, local place for victims to stay after leaving their abusers, and they got that program established before they moved on to the next. It wasn't a lofty, “we will stop domestic violence in our community”-type goal, but rather, small steps to help victims make big leaps.

I continue to be amazed at the power of people with big hearts and a drive to make the world around them better. I am convinced that the allies in our fight against domestic violence are all around us—we need only to call them to action with inspiring programs that help victims. This task force has certainly done just that, and so can you. These projects (hotel vouchers, court accompaniment, and a network of trusted locations) has cost the task force no money. Everything is done through fundraisers, donations, and sweat equity. We, as proud Texas prosecutors, have that drive in spades. Think about the needs of your own community and what DV problems you would address first. Maybe it's a safe place for victims to stay or a shoulder to cry. Or maybe it's a trusted location for them to get information about resources or training citizens to be knowledgeable volunteers—and knowledgeable jurors.

Whatever your needs, starting your own task force is a great first step. If you can help overcome the barriers of your community, you could save the life of your very own Ms. S. And she in turn, can inspire the next generation with her story of breaking the cycle of abuse, overcoming trauma on her own terms, and being brave in a small town where everybody knows your name. ❄

Criticism from a lawyer to a street cop may become contentious and might damage relationships, but a few well-placed suggestions from an experienced fellow officer (a CA or DA investigator) are more likely to be well received.

the prosecutor—as early in the process as possible. Key components include ensuring that probable cause and charging standards are met and, most importantly, that the elements of the offense are satisfied. Few things are more frustrating than reviewing a warrant affidavit prior to judicial presentation and discovering that the first two facts literally negate the elements of the offense (sadly, a real-life example I have encountered within the last six months). The sooner these weaknesses are identified and corrected, the more likely the outcome will be a favorable plea agreement or successful trial.

It can shake a good officer's confidence or cause him to unnecessarily dwell on a decision if he receives a call directly from a prosecuting attorney. (I too am a "self-punisher" and can sometimes overthink constructive criticism.) Plus, criticism from a lawyer to a street cop may become contentious and might damage relationships, but a few well-placed suggestions from an experienced fellow officer (a CA or DA investigator) are more likely to be well received. This is where investigators can truly shine. If investigators are getting to know the guys on the street when possible, it can pay dividends and prevent what can be a significant impact on an officer's confidence and performance. We should be in a constant state of building and maintaining strong relationships with municipal, county, state, and federal agencies.

The investigator can also work with local agencies to ensure the credibility of crime scene technicians, subject-matter experts, and other specialized professionals, as well as the admissibility of the evidence they provide. Maintaining close relationships with these people and understanding their strengths and limitations is critical as trial preparation approaches. As always, communication is key. I have frequent conversations with some of our crime scene technicians, and I like to ask them what their strengths are and what they dislike the most. I also ask what training they have attended and what they have coming up. Just these short interactions can tell us quite a bit about technicians. These are good things to keep in mind when going through crime scene photos and results with prosecutors. An investigator may have some insight into the scene based on what he knows about the technician who worked on it. It could also be valuable to stay up-to-date on the latest conclusions from the Texas Forensic Science Commission and other professional organizations. I'm very fortunate to

have a good relationship with a forensic odontologist; we have had some fascinating conversations about bite mark evidence and identification of victims through dental records.

Strategic partner

This is where the hard work of relationship building truly pays off. Prosecutors on the front lines in the courtroom set the strategy, and they can rely on their investigators to help execute it. Depending on the office and prosecutor, this help can include recommending follow-up interviews, identifying search warrant or subpoena opportunities, locating corroborating evidence, and addressing case vulnerabilities. This is where the investigator and prosecutor can work hand in hand to build a case, especially if there is a close working relationship.

A personal example that comes to mind is a recent sexual assault case. A detective had investigated the case to a point where the probable cause for arrest was present, but that was where he stopped. There was sufficient information to prosecute the offense, but there were many other avenues to pursue, for example, multiple electronic devices and online storage platforms to address. We on the prosecution team knew that the detective's caseload was significant and that time would be an issue, as trial dates were rapidly approaching. Instead of asking the detective to do this additional work, I myself wrote the warrants, executed them, and examined the evidence for my trial team. This was beneficial in several ways. The information came straight to our office for inclusion in the case file, there was no lag time between offices and communications, and the detective was appreciative of the assistance. A little extra effort on the part of the CA or DA investigator can be incredibly valuable, not only for the attorneys but also for local officers.

Another component of the strategic partner role is providing feedback, training, assistance, and guidance to outside professionals when needed. This requires finely tuned communication skills. Delivering constructive criticism or recommending additional training can be uncomfortable. For example, in my experience, what law enforcement professionals dislike more than anything is testifying. When a particular officer who is uncomfortable testifying is scheduled for court, a CA or DA investigator can help him with thorough case preparation sessions—reviewing expected questions and likely defense strategies. Such prep can significantly reduce

anxiety. Courtroom demeanor training or roll-call instruction can replace uncertainty with confidence. Such training can be done as a class prepared by prosecutors specifically for detectives and officers or more informally as a prosecutor stopping by patrol roll calls and giving 10–15 minutes of pointers for testifying. No one is ever excited to testify, but knowing what to expect from the prosecutor can put a witness at ease. I cannot stress thorough trial preparation with officers and detectives enough. Lawyers live in the courtroom, but we officers are only visitors.

The same applies to report writing and evidence documentation. Gentle reminders coupled with targeted training recommendations go a long way. As with courtroom demeanor and testimony, this training can be done with a 1–2-day class for local officers or at a roll call training where you spend 10–15 minutes talking about problems that have come up in prosecution and how to avoid them. Talk with your intake attorneys and ask what they are seeing. They can tell you who writes the best reports and who needs guidance. Sadly, if the report has made it all the way to the prosecutor's office, it has already gone through the entire review process at a law enforcement agency. It will take a team effort with an investigator and a prosecutor approaching an agency to relay that there are deficiencies and how to address them. It is best to handle this early—before you have a stack of cases that aren't prosecutable.

A phone call requesting that an officer get assistance with report writing is a last resort, but it is an option. How you ask will be the difference between improved performance and hurt feelings. "Officer Daniels is sending us terrible reports, and he needs some remedial training" is not what I recommend. Rather, try: "Officer Daniels is doing some great work and we're glad to see his cases come through, but we think if he can polish his writing style up a little, it can mean the difference between trial and a good plea agreement. Would you mind working with him on his documentation of events? That will really level up the quality of his cases." This is a much safer and softer approach than raw criticism, which can damage relationships. The minute you mention *trial* to an officer who isn't a good writer, he may start seeking help on his own.

If absolutely necessary, the prosecutor can go through a report with an officer individually and point out specific issues. This is *not* a job for an investigator.

Ethical safeguard

If the public does not trust us, we are without hope. Protecting the integrity of the prosecutor's office and maintaining public trust is an absolute must.

The CA or DA investigator should review potential Brady and discovery concerns and witness integrity issues as cases progress toward trial. "An ounce of prevention is worth a pound of cure" is an appropriate guiding principle here. An investigator who communicates regularly with officers and detectives will often hear early rumors of ethical issues or pending internal affairs investigations. These must be tracked carefully.

Due process violations, coercive interview techniques, and credibility or bias concerns can destroy an otherwise strong case. All good investigators understand that the goal of an investigation is not to put someone in jail or prison. The goal is to find the truth and proceed accordingly.

Establishing a culture of transparency, reinforcing disclosure obligations, and maintaining ethical boundaries between investigation and trial advocacy are critical to preventing miscarriages of justice and reputational harm.

Relationship manager

As an ambassador on behalf of the elected prosecutor, the investigator wears many hats—chief among them, communicator. Investigators will be tasked with delivering both bad news and good news.

Those who make themselves available by phone, maintain an open-door policy, and visit agencies socially—not only on official business—will find difficult conversations become easier. I recently had a tough conversation with an officer about searches. He is a good officer and he is very proud of his successes. I could tell immediately when I went over the incident with him that he was embarrassed and his feelings were a little hurt. I gave him some encouragement, but I could tell it still bothered him. It would bother me too. No one wants to be told they were wrong and that their mistakes ruined an otherwise good case.

In my previous job I had a brand-new officer working for me, and he wanted to do the right thing, but he also wanted things to be easy—which made it difficult for everyone else. I tried to gently guide him to the right answers, but finally I had to have a very blunt and truthful conversation with him. We worked closely together, and every day for three weeks he barely spoke to

Those who make themselves available by phone, maintain an open-door policy, and visit agencies socially—not only on official business—will find difficult conversations become easier.

There is no easy or good way to tell someone he was the problem, but it must be done. The best we can do is deliver the information as gently and in as friendly a manner as possible.

me. As we marched through those weeks, though, he came to see that I was right and that he still had much to learn. At the end of that assignment, he took me aside and apologized for his behavior, and he thanked me for my patience and the “kick in the butt” he needed. I haven’t seen him in almost two years, but the other day I received an email from him congratulating me on my retirement and thanking me again for being a good mentor.

There is no easy or good way to tell someone he was the problem, but it must be done. The best we can do is deliver the information as gently and in as friendly a manner as possible. I like to use what I call “the sandwich method.” When correcting behaviors, praise first, deliver the hard-to-hear facts, and then close out with more praise. If you are dealing with someone who cares about his performance, he will remember the correction. (I can give you an awful lot more details about times I performed poorly than the times I performed exceptionally.) These engagements will be much easier and better received if you are already out there interacting with officers. Attend some shift change briefings. Go have coffee. Grab some lunch. Get the detectives you work with daily to introduce you to as many officers as you can. Give them your card and your phone number. *Be available.* It takes some time, but you will reap benefits in the long run.

Something else we have instituted that is getting positive results is praising good work. When our office sends an email to an agency and asks the command staff to congratulate an officer or detective on a particularly outstanding performance or report, the word circulates. When officers discover it is possible to get public recognition for good work, good work starts happening more often. Recently we recognized several officers publicly at the countywide chiefs’ meeting. You could see the look of pride on the chiefs’ faces, and we asked them to go back to their departments and publicly congratulate the recognized officers. News of this praise spread quickly, and we are starting to see some benefits from that initiative. This recognition also helps offset the sting if constructive criticism later becomes necessary.

Everything I have written here can also be done by prosecutors. Engage with officers. Get to know their strengths and weaknesses. When those relationships are built, it will be easier to address those weaknesses.

The bottom line

We are all in this together. We all want thorough, complete, accurate, well-communicated, and ethical investigations and prosecutions. If that is not your goal, then perhaps shoe sales is a more appropriate profession (heavy sarcasm intended).

A good investigator should strive to fulfill all the roles discussed above, whether they are clearly labeled as an official job duty or not. With each of us working within our respective responsibilities, we can serve our communities in a way that fosters trust, justice, and accountability.

We are on the same side of the law as officers. The effectiveness of a CA or DA investigator can mean the difference between a mere arrest and an arrest followed by a conviction—and between short-term wins and long-term justice.

Let us strive not only to win battles, but to win the war. ❖

What prosecutors should know about PMC children

In our practice of child welfare law, and particularly as prosecutors representing the Department of Family and Protective Services (DFPS), our focus is the best interest of the children.

While we are litigating cases and determining whether reunification is a viable option or gathering evidence to seek termination of parental rights, we are focusing on the kids' needs and questioning whether their parents can meet those needs. The children's outcomes at this stage of a DFPS case are uncertain and still dependent on the choices and actions (and inactions) of their biological parents.

Our focus should not change in those cases that result in DFPS taking permanent managing conservatorship (PMC) of the children. That is when DFPS takes on the role of a parent to the child or youth once parental rights have been terminated or further restricted. DFPS is the decision-maker over the child or youth's placement, healthcare, and education. At this stage, it remains of the utmost importance to continue our advocacy for the children in seeking secure and stable outcomes so they can have that bright future they so very much deserve.

With that in mind, my goal with this article is to provide an introductory guide to not just the statutory requirements we must remember (and expect our caseworkers to testify to) but also to the plethora of resources and programs available to our PMC children. While we as prosecutors are not the decision-makers in their placement, healthcare, education, and such (as that role belongs to our client, CPS), I do find it beneficial to have some working knowledge of the programs and resources available.

As with most DFPS-related conversations, let's start with some terminology. Our PMC children and youth are in the "substitute care" of DFPS. As defined in DFPS policy, substitute care references the services and placements provided from the time a child or youth is removed from his or her home and placed into DFPS conservatorship, whether temporary or permanent. It is an all-encompassing term that refers to all the



By Leslie Odom

Assistant County & District Attorney in Ellis County

placement types a child might be in, including foster homes, kinship homes, residential treatment centers, and group homes. The goals of substitute care, while striving to achieve permanency for these children and youth, are to provide for their safety and protection but also for feelings of well-being and belonging, as reflected in DFPS policy.¹ As we continue, you will notice that foster care and substitute care are rather interchangeable. For example, we will visit the "Rights of Children and Youth in Foster Care," the title of which is not intended to imply the rights are for those in foster care to the exclusion of any other sort of placement. The defined rights belong to all in DFPS substitute care.

Permanency hearings after final order

Once it is determined to be in the best interest of a child or youth to be placed in PMC with DFPS, review hearings are statutorily required.² The

¹ The statutory guidance for these policies includes the Texas Family Code, Human Resources Code, and applicable federal laws. www.dfps.texas.gov/handbooks/DFPS/files/DFPS_pg_6000.asp.

² Texas Family Code §263.5031 (Permanency Hearings Following Final Order).

It is a safe assessment to say that PMC cases require less regular attention, but I've had children on my caseload who needed frequent institutionalization and medication reviews. One child in particular rotates in and out of psychiatric hospitalization every few months.

purpose of these hearings is to determine if the child's needs are being met and that continued efforts are being made to find permanency for the child or youth. If the child or youth is in DFPS conservatorship with parental rights terminated, the initial permanency review hearing after final order shall occur no later than 90 days after the court rendered the final order. Subsequently, permanency review hearings after final order shall occur at least once every six months so long as the child remains in the managing conservatorship of DFPS. If the child is in DFPS conservatorship with a parent or legal guardian appointed by the court as a possessory conservator, permanency reviews must occur at least once every six months until the child is no longer in DFPS managing conservatorship.

At the moment, I have 15 PMC children on my caseload. And although Ellis County is experiencing rapid growth, it is still dwarfed in size compared to larger Texas counties such as Harris or Dallas, so my numbers might not at all be similar to your county's. Even so, as I look back over the years, it seems the number of PMC cases has regularly been 30–50 percent the size of my TMC (temporary managing conservatorship) caseload at any given time. I add this sidenote to emphasize the importance of having some general working knowledge of CPS responsibilities and services for these children and youth.

I should also note there might be special cases requiring more court involvement than every six months to ensure appropriate care for a particular child. I think it is a safe assessment to say that PMC cases require less regular attention, but I've had children on my caseload who needed frequent institutionalization and medication reviews. One child in particular rotates in and out of psychiatric hospitalization every few months. If you find yourself with a child who needs a particular medication that CPS cannot approve independently, for instance, staff the case with the child's team (the caseworker, guardian ad litem, and attorney ad litem) and include the child's treating psychiatrist. If the psychiatrist is recommending the child receive the medication and can articulate that without it, the child's condition will deteriorate, perhaps it's an occasion to seek court intervention. In my experience, CPS can benefit, so to speak, from the intervention and orders of the court in such a scenario, and the child then receives the necessary medication. This practice, of course, requires a case-by-case

analysis and knowing the temperament of your court.

In Ellis County, our local rules direct County Court at Law No. 1 to handle all our CPS cases (with exceptions for conflicts), so my practice is spent nearly entirely with one judge, and my caseload is spread throughout the court's calendar (rather than, say, on a single day of the week). I've found that this schedule provides some flexibility that wouldn't exist if all CPS cases fell on a single day, in that our scheduling is wholly based on the statutory timelines and parties' availability. Previously, I practiced in a jurisdiction where a court would have an associate judge hear portions of the cases or even all the PMC cases and would have CPS docket days. Either arrangement can be managed once you know which setting you are navigating and you grow accustomed to it.

In the permanency hearing setting, how does the court determine if DFPS is continuing all efforts to achieve permanency for a child or youth? At each permanency hearing, the court shall review the following (and much more):

- Have all persons entitled to notice of the review hearings been given notice? These would include the child's guardian and attorney ad litem and foster parent or potentially adoptive foster parent. Notice to these people must occur no less than 10 days prior to the scheduled hearing.
- Is the placement still appropriate and necessary? If a child has been placed in substitute care out of Texas, is it in the child's best interest to continue there?
- If the youth is in some form of institutional care, is this the least restrictive placement option available that is consistent with the child's particular needs and interests? You might experience struggles ensuring a child or youth has been assigned the appropriate level of care. I don't mean those with Basic or Moderate service levels youth, but instead children with Specialized, Intense, and Intense Plus Levels; the differences in those assignments provide access to expansive arrays of services for those youth in the most need.³ When children on your caseload

³ DFPS provides a useful explanation of not only the various service levels but also the various anticipated characteristics of the child that would be so categorized at this website: www.dfps.texas.gov/Child_Protection/Foster_Care/Service_Levels.asp

engage in sexually aggressive behaviors or recurring self-injurious actions, it's imperative that their level assignments are closely managed. Do not fear requesting additional case staffings with caseworkers and supervisors if those conversations need to occur. It's much better that you address these issues (really, any issues, right?) with your client in those attorney-client conversations rather than the issues being poured over in open court.

- What are DFPS's permanency goals for the youth? Is he on a path toward adoption? If not, what are the long-term goals set out for him?

- For a youth aged 14 or older, is DFPS putting services into place to help him transition from substitute care to independent living?

- Is any medical care necessary and meeting the child's needs? As developmentally appropriate, has the youth been given an opportunity to share his opinion about the care being provided?

- If the child receives psychotropic medications, are there alternative nonpharmacological interventions, therapies, or strategies that might also be appropriate to meet the child's needs? Is the child being seen at least once every 90 days by prescribing physicians?

- In cases where the court has not terminated parental rights, has DFPS continued to provide services to the parent(s), are the parents participating, and how does best interest align for this child considering continued substitute care or return of the child to the parent?

- Has DFPS continued efforts to identify a family member or other adult willing to make a permanent commitment to the child?

- If the child is not a United States citizen, the court will inquire as to DFPS' efforts to give notice to appropriate consulates⁴ or otherwise determine if Special Immigrant Juvenile Status is appropriate, such that the DFPS should initiate that particular process. (For further information regarding DFPS policy and procedure in this regard, see the footnote.⁵)

- Has DFPS timely filed its required documents, including but not limited to its perma-

nency progress report (at least 10 days prior to the hearing date) and summary of medical care?⁶

I encourage review of the relevant Family Code sections regarding these review hearings. Yes, they are dense, but they provide a distinct outline of expectations useful for guiding your caseworker preparation.

Keeping in mind the items the court will review at each permanency hearing, think of yourself as complementary to the CPS caseworkers. Meaning, the caseworkers are the leaders in accomplishing all the tasks for the children and youth. They are responsible for timely PAL referrals (more on PAL to follow). They track the educational and medical needs of the children and youth. They are responsible for monitoring the placements and requesting placement stability meetings as necessary. We prosecutors provide counsel and support to ensure their permanency reports and our proposed orders correctly reflect all of those CPS efforts.

Rights, supports, and services

A good starting place in understanding DFPS's attempts to care and provide for PMC children is the agency's "Rights of Children and Youth in Foster Care" document that establishes a set of basic rights for all DFPS children.⁷ These rights were created to ensure the safety and stability of each child and youth.

Children and youth always have a right to access appropriate education and extracurricular activities if they choose. They have a right to basic quality of life services such as medical, dental, and behavioral healthcare but also normalcy in their lives. Yes, these children and youth may be in the substitute care of a government agency, but they are entitled to being normal kiddos. Youth may seek employment, keep their earnings, and secure their own bank accounts when appropriate and based on their age and maturity.

One significant right is to attend court. This right is also reflected in Texas Family Code §263.302, which provides that a "child shall attend each permanency hearing unless the court excuses the child's attendance." The child has a

Think of yourself as complementary to the CPS caseworkers—meaning, the caseworkers are the leaders in accomplishing all the tasks for the children and youth.

⁴ 8 C.F.R. §204.11.

⁵ For DFPS policy regarding non-citizen PMC children, please see www.dfps.texas.gov/handbooks/DFPS/files/DFPS_pg_6700.asp.

⁶ Texas Family Code §263.502(a) (Permanency Progress Report After Final Order) and §266.007 (Judicial Review of Medical Care).

⁷ www.dfps.texas.gov/Child_Protection/Foster_Care/Childrens_Rights.asp.

As PMC youth continue hitting age milestones, they will begin receiving education on DFPS services, programs, and benefits available to them; when and how they become eligible, and how to engage those services, programs, and benefits.

right to speak with the judge and ask about his case. He has the right to question his placement and the plans in place for him. I know that practically speaking, a child or youth's attendance cannot always happen. Placements are often counties away. DFPS will tell you that they do not have transporters available, or the child would really rather be in school (yes, this actually occurs). But direct your caseworkers to have those conversations timely and ahead of each court setting with the child or youth. PMC children and youth especially should be encouraged to use their voices whenever they can, but if they do not wish to attend, make sure the caseworker is having those personal conversations with the child or youth so the information can be correctly reported to the court.

I think in giving it a read-through, you will find that the "Rights of Children and Youth in Foster Care" list reflects DFPS's commitment to encouraging our children's growth in life skills as well—as the children age into youth, the rights grow with them. At age 14, youth begin participating in more young adulthood-focused activities, such as college and career planning. They are provided access to information regarding and assistance in enrolling in college or vocational job training programs. They also have the right to run their credit reports on an annual basis, and—perhaps even better in this regard—they are educated on how to interpret the credit report information and contest the reports if necessary.

Their foster parents or other care providers are required by DFPS policy to engage and encourage the children in experiential life skills, tasks, and activities. DFPS youth are to be provided with the skills to care for themselves, and the training is to be tailored to the youth's maturity and ability. Tasks such as grocery shopping, maintaining personal hygiene, performing basic household tasks, and using public transportation are considered minimum basic skills PMC youth should acquire. The intention of this type of training is that it's hands-on and experiential. In other words, let's not talk at them about grocery shopping but rather assist them in the actual activity! The expectation of the training is that it advances as the youth's age and maturity do. At some point, PMC youth should have access to ed-

ucation and training on financing a motor vehicle, for instance, and registering to vote.⁸

Also at age 14, youth are engaged in a process of meetings called Circles of Support (COS). COS include the youth in the process of creating his or her own transition plan. These meetings are scheduled between the youth and her caseworker at a time convenient and comfortable for the youth, and she can invite individuals from her own support group to the meetings—youth tend to invite teachers, church members, family, or birth parents if they are still involved in the youth's life. The goals of COS are to review the youth's plan, identify her strengths and goals, and then ensure the appropriate services are in place to meet those identified areas. It is best practice for a caseworker to begin planning for the youth's COS early, but it must occur 60 days prior to the child's 14th birthday.⁹

As PMC youth continue hitting age milestones, they will begin receiving education on DFPS services, programs, and benefits available to them; when and how they become eligible; and how to engage those services, programs, and benefits. Let's take a look at some of them.

Preparation for Adult Living (PAL)

Created in 1986 for older youth with the intention of preparing them to leave substitute care and enter independent adulthood, PAL classes begin for youth at age 16. DFPS identifies the target population for the PAL program as children 16 or older in substitute care who are likely to remain in care. PAL skills and training opportunities can extend until the youth turns 21.

At age 16, DFPS will engage the youth in an assessment process to determine his ability to function as an adult, and in turn, determine what plans and training are best to prepare him for adulthood. Potential services include GED classes, vocational training, preparation for college entrance exams, and driver's education. If the youth meets certain additional requirements, he might qualify for a transitional living allowance. The requirements are intended to promote responsible, adult-like behaviors and

⁸ www.dfps.texas.gov/Doing_Business/Purchased_Client_Services/Residential_Child_Care_Contracts/documents/24_Hour_RCC_Requirements_Addendum.pdf, See section 4500 Basic Life Skills and Social Skills.

⁹ www.dfps.texas.gov/handbooks/DFPS/Files?DFPS_pg_1120.asp#DFPS_1121_23.

decision-making, such as acquiring full-time employment, continuing with PAL life skills courses, and choosing appropriate living arrangements. Once the youth reaches age 18, and if he is continuing education and employment actively, he may qualify for additional benefits, such as after-care room and board assistance.¹⁰

Education and Training Vouchers (ETV) program

This program is federally funded and is intended to assist youth currently in or who have already exited the conservatorship of DFPS. Eligible youth range in from 16 to 23 years old and may qualify to receive up to \$5,000 per year, for up to five years, to attend college or vocational training. Youth in foster or extended foster care, who have already aged out of care, or who have been adopted out of DFPS care are some of the segments of the DFPS youth population who may qualify.¹¹

College tuition and fee waivers

Texas Education Code §54.367 establishes exemptions and waivers for tuition and fees payments for youth currently or formerly in DFPS conservatorship in a number of circumstances, including those in conservatorship before their 18th birthdays; those who were adopted from DFPS care on or before September 1, 2009; and those who might have even left care at 16 years of age or older on or after June 1, 2016, to return to a parent. If a youth qualifies for this program, he has until his 27th birthday to enroll in an eligible state-supported college or university.¹²

Comprehensive medical care

Comprehensive medical, dental, and behavioral services are available to children under age 18 in DFPS conservatorship, as well as youth in extended foster care up to age 21 (or 22 if completing high school or GED programs) and children formerly in foster care.

And there are incentives incorporated into some of these benefits. A program entitled “Adolescent 2 Adult,” as an example, has a rewards program to encourage youth up to age 21 to take control of their own health and to complete annual wellness visits and dental screenings. If youth engage in those visits and other health screenings, they can receive up to \$160 annually loaded onto a prepaid card for use however they choose! It might go without saying that many of the children and youth in DFPS care have particularized and increased healthcare needs given the trauma most of them have endured in their young lives, so it is certainly a benefit that such extensive coverage is available to them.¹³ And a rewards program surely provides additional incentive for these good health habits and routines.

Extended Foster Care (EFC)

As our PMC youth reach age 18, the reality of adulthood looms. However, through their COS and PAL meetings, they will be educated in advance of this birthday regarding their option to voluntarily continue in their foster care placements by enrolling in Extended Foster Care (EFC). EFC requires continued education and/or employment, among other things, and it allows the youth to remain in his established home and life patterns, which can be so positive. A subset within EFC is the option of Supervised Independent Living (SIL), which means the youth can transition into a more self-sufficient lifestyle (in their own apartment or college dorm room, for instance). If a youth decides to participate in EFC, alert the court pursuant to the guidance of Texas Family Code §§263.601–603.

As an aside, it should not really come as a surprise just given the simple nature of anyone aged 18 to 21 that they begin to think they can just do anything or everything they want to without need of a “parent’s” oversight (and in this instance they think of DFPS, the court, or their ad litem as the “parent”). If a youth does not enter EFC or exits EFC prior to age 21, the young adult enters what is termed Trial Independence. As defined by Texas Family Code §263.6015, Trial Independence requires an initial six months after the youth’s exit from care during which court jurisdiction is continued and review hearings may occur. DFPS at this point may have only limited

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¹⁰ www.dfps.texas.gov/child_protection/Youth_and_Young_Adults/Preparation_For_Adult_Living.

¹¹ Please visit the ETV website at <https://texasetv.com>, but DFPS also provides a helpful FAQ section at www.dfps.texas.gov/Child_Protection/Youth_and_Young_Adults/Education/ETV_FAQ.asp.

¹² www.dfps.texas.gov/Child_Protection/Youth_and_Young_Adults/Education/state_college_tuition_waiver.asp.

¹³ www.dfps.texas.gov/child_protection/Medical_Services/default.asp#what.

Many older youth transitioning out of foster care or who have recently exited foster care struggle with securing safe living conditions, and they risk homelessness.

involvement with the case, with the exception being provision of transitional living services or providing updates at a review hearing. The Family Code allows—and I’ve been before some courts who nearly always prefer—to extend the initial six months of Trial Independence to a full year. This period allows the youth to leave EFC without losing foster care eligibility, meaning that if something in his or her life independent of EFC goes awry, s/he can come back into care.

Youth during their trial independence period are ideally working to meet their own needs with family and/or community support. Anecdotally, however, consider a 19-year-old who confidently declines the option of EFC because he has located employment and has plans to move in with friends. Months later, a failed roommate arrangement or job loss throws the young man’s plans off. Returning to EFC could save him from homelessness or worse. It serves as his safety net. The benefit of the trial independence period is that the youth can decide if it’s best to re-enter foster care. All he needs to do is reach out to his PAL worker and start the process.¹⁴

Youth housing program

Many older youth transitioning out of foster care or who have recently exited foster care struggle with securing safe living conditions, and they risk homelessness. To provide housing assistance, DFPS partnered last year with the Texas Department of Housing and Community Affairs (TDHCA) to expand youths’ access to housing resources through the U.S. Department of Housing and Urban Development (HUD) with the creation of the Texas Foster Youth to Independence (FYI) program. The program provides access to housing vouchers throughout the state. Youth who qualify for the program may receive rental assistance and access to other services. Youth must be 18–24 years old to qualify. Regional liaisons have been set up throughout the state, and reaching out to your region’s liaison is the first

step in the process to determine if a particular youth is eligible.¹⁵

Activities with other DFPS youth

In my research for this article, I discovered opportunities for engagement and growth, including camps and conferences throughout the state, that I wasn’t aware of but feel I should mention for your reference and benefit. These include:

PEAKS Camps. Texas Network for Youth Services provides activities intended to promote self-esteem, improve communication and problem-solving skills, and simply have fun. Up to 40 youth at a time can participate in a four-day experiential learning camp, which includes activities ranging from expressive arts and rope courses to hiking and swimming.¹⁶

Statewide Teen Conference. This is a three-day conference coordinated through the efforts of Texas Woman’s University. It is focused on youth ages 14 to 23, and about 150 foster youth attend every year.

College Weekend. This event is hosted annually by Texas A&M University at Commerce. Youth with goals of attending college may attend. The agenda generally includes motivational speakers and workshops to provide guidance in college planning and financial aid.

In conclusion

Many of the trainings, programs, and educational opportunities that DFPS provides mirror what we naturally strive to provide for our own children—and rightly so. For our PMC children and youth, DFPS stands in the role of parent, and the responsibilities it carries must reflect the same thoughtful, intentional decision-making inherent in good parenting, at least as well as any government agency can. By preparing our caseworkers to meet the requirements of the relevant statutes and actively engaging with the guardian and attorney ad litem during permanency conferences, placement stability meetings, and court settings, we can ensure these children and youth fully benefit from the resources available to them.

¹⁴ For more information (and more significantly for a flowchart [who doesn’t love a flowchart?!] providing a visual explanation of the details entitled “Extended Court Jurisdiction Flow Chart”), please visit http://dfps.texas.gov/Child_Protection/Youth_and_Young_Adults/Transitional_Living/Extended_Foster_Care.

¹⁵ A list of DFPS regional liaisons for the Youth Housing Program is at https://dfps.texas.gov/Child_Protection/Youth_and_Young_Adults/Transitional_Living/Housing/regional_housing_liaisons.asp.

¹⁶ <https://tnoys.org/peaks-camp>.

Recent milestones of note

Effective advocacy for PMC children requires not only an understanding of the court's ongoing role and the expectations set forth in the Family Code, but also some working knowledge of the supports and services provided by and through DFPS designed to promote positive outcomes for children in care. Above all, we need to be encouraging our caseworkers to keep the lines of communication open and active with those PMC children and youth. We need to strive to see to it that those children and youth are seen, heard, and included in decisions affecting their lives are essential. These kiddos on your caseload are growing up. And don't we all hope that they are growing up into successful, independent, and happy adults? It is my hope that this article provides some guidance to you and ultimately contributes to the improved outcomes for our PMC children. ✱

Awards

Representative Joe Moody (D-El Paso) was presented with TDCAA's Lone Star Legislator Award at his capitol office. As one of the few former prosecutors in the Texas Legislature, Rep. Moody continues to seek thoughtful solutions to complex criminal justice issues. In 2025, he successfully fought to preserve local prosecutors' autonomy and keep the grand jury system from becoming an adversarial process. For helping prosecutors pursue justice and keep Texans safe, he was recognized as the sole Lone Star Legislator in the House this past session. He is pictured at right (in the middle) with TDCAA's Hector Valle (at left) and Shannon Edmonds (at right).



Representative A.J. Louderback (a former sheriff) was presented with TDCAA's Rookie of the Year Award. Louderback did an excellent job his freshman year helping law enforcement and prosecutors, constantly meeting with prosecutors to hear their concerns. His peace officer background is a rarity at the Texas Legislature, and having someone who understands the complexities of law enforcement helps create better laws. TDCAA awards only one freshman lawmaker the Rookie of the Year award per legislative session. Rep. Louderback is pictured in the photo at right (on the left) with TDCAA's Shannon Edmonds (on the right).



Anniversaries

Two TDCAA staffers celebrated their 10-year service anniversaries. Training Director Brian Klas and Meeting Planner LaToya Scott joined the association in January 2016 within two weeks of each other. At our Train the Trainer course in February, Brian and LaToya (pictured at right with Executive Director Shannon Edmonds in the middle) were honored with plaques commemorating their 10 years of service.



Retirements

Tom Caver, a CDA investigator in the Grayson County Criminal District Attorney's Office, retired in mid-February after a 25-year career in law enforcement. Caver served in the U.S. Marine Corps and worked at multiple municipalities.

Deaths

Riley Branch, the County Attorney in Stonewall County, died February 22. He graduated from Texas Tech Law School and also earned his MBA from Texas Tech Rawls College of Business. He had been County Attorney since January 2017. ✱

The weight of justice—take heart!

Code of Criminal Procedure Art. 2A.101 tells us, “It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done.”

The perpetual inquiry is: What is justice?

Antione De Rival is credited with saying, “The sword of justice has no scabbard.” There is no need to tell prosecutors to imagine the weight of a sword that never gets put away—this is our daily reality.

In this year’s episode of serving as a trial division prosecutor, this concept has been in the forefront for me, maybe more than usual. A series of emotionally charged cases in a row left me feeling a bit lost, really. Do we make a positive difference in anyone’s lives? Are victims’ lives actually made better from our involvement?

Two deeply emotional cases

On the eve of a defendant’s plea to indecency by contact with both of his biological daughters and sexual assault with a stepdaughter, the defendant committed suicide. I had been alerted to alarming emails he had sent the mother of the victims in the wee hours of morning, and I spent hours that day on the phone with law enforcement, working from out of town to help them enter the house where we thought he was. While we suspected we would not find him alive, there was a lingering hope officers could get there in time to stop him from self-harm.

In the end, the defendant was found deceased in his home from self-inflicted wounds to his forearms.

The aftermath of this man’s tragic ending was meeting with the three child victims to allow them to ask questions, explain what this meant for the case, and outline what services would remain available to them as they navigated the situation together. Understandably, one child, a middle schooler, asked, “What was the point of all of this?” (Unsaid was, “If it would just end like this?”) The question sparked an endless spiral of rumination for my trial partner and me. It brought back every case where we felt empty at



By Sarah Moore

Assistant District Attorney in Williamson County

the end, and it forced us to question every decision we had made. Did we make these girls’ lives better by being involved? Did we truly help them in any way? Was this “justice?”

While this wasn’t the first time a case has ended in this way and I’m certain it won’t be the last, there was something particularly poignant about this one. Maybe it was the fact that there were three victims and over the year and a half this case was pending on my docket, I got to know them all and their vibrant but distinct personalities. Maybe it was their honesty in how they struggled with loving their father: mourning the loss of relationship but also wanting him to be responsible for what he’d done. Maybe it was the way the older sister shared her experiences over time as she worked with a therapist while navigating her first year of college. Whatever the reason, this one hit differently.

The night before the defendant took his life, he wrote an email intended for the girls. In it, he apologized to each of them individually and confessed to everything he’d done, including sexual assaults that started when the older child was 5 years old. Things we didn’t even know about.

But did we see that justice was done? Did we appropriately toe the line in plea negotiations? Could we have done something differently to avoid a tragedy that will forever impact these girls’ lives?

This experience forced me to critically consider my job as a whole. Am I making a positive difference? It can certainly feel some days that I don’t. Maybe you feel the same way?

In contrast to the indecency case, there was another pivotal case for me in the last year. The case was charged as a first-degree manufacture and delivery with a notable aggravating factor: While out on bond for the drug charge, the defendant arranged for the person he thought was the “snitch” to be brought to his house at knifepoint, where he then assaulted her, kept her locked in a dark closet, and had her taken and released out in the county when he was done. After all, he couldn’t leave his house with an ankle monitor.

The kidnapping victim had an extensive rap sheet comprised mostly of drug charges. At the time of our trial, she had a pending aggravated kidnapping charge with dubious facts in a neighboring county and a felony for possessing a number of credit cards. Because she kept going in and out of jail and remained transient, we were not able to meet with her before the jury trial began. However, in a huge boon to our case, she was picked up shortly before trial on a warrant for the credit card case and wound up in our jail.

When it came time to call her as a witness, I sat with her in the holding cell in the back. I had never met her. In fact, I had told the jury in my opening exactly that: I have no idea what she will say. When I walked in, I saw a woman with multi-colored hair, a naivete that is hard to describe in words, and a truly guileless demeanor. I showed her one picture of the closet where the defendant had held her, just to make sure she would recognize it and to confirm I had properly identified it. When she saw it, her face immediately crumpled, she dropped to her knees, and she started crying. “That’s where [he] made me stay.” After that, I didn’t ask her any more questions.

When we put her on the stand, I just started asking about her drug history: When was the first time she had used? Why that particular drug? The story that unfolded was riddled with personal challenges and life setbacks. She was in a major car accident when she was in her first year of higher education and had to learn to walk again. Her mother, her best friend, took care of her when she moved back home during that season. Soon after, the painkillers turned into drugs, which turned into cheaper drugs that would impart a longer-lasting high, until she at last found herself in the state jail where she was forced into sobriety. Upon release, she was happy to be sober and looking to stay that way. A few weeks later, her mother died, sending her into another spiral of drug use and transience.

The jury absolutely felt sympathy for her. I got to give the closing we all want to present at the end of a trial like that: “Today is the day that this woman—whom the defendant has tried to portray as an unbelievable meth addict—gets justice, the day that the law protects her.” The defendant had no prior felony history and the jury returned a 40-year verdict. We were thankful jurors were as offended by the kidnapping as we were.

While we awaited the co-defendant’s trial date, the victim asked to go from the jail to inpatient treatment. She did. Upon completion, she asked to live with her father. She did. After nine months of sobriety, she delivered a powerful victim impact statement when the co-defendant elected to enter into a plea agreement. She is protective of her sobriety, she has a job, she is enrolled in college classes, and she recently told me, “I wish I had known how good sobriety would feel a long time ago. I wouldn’t have wasted so much time.” She celebrates every win: Getting an A in her class was something she never thought she was capable of, and yet she continues to excel. In another recent conversation, she said with a smile, “It’s nice to see a good part of the system for once.”

We can’t heal everyone in a day, but we can begin with a listening ear and a voice of compassion, with our armor at the ready, prepared to go into battle for those our society might deem “less than.”

So why do we do this job? As I’ve contemplated this question for the last year, I have arrived at an answer that works for me: The cost of being a bystander to injustice far outweighs the risks of taking a stand for it.

Be encouraged. There will be days when this job is deflating, discouraging, disheartening, and at times, absolutely heartbreaking. But they will be followed by days that are exhilarating, encouraging, and completely empowering—on those days, we feel like we truly change lives and right wrongs.

As I’ve ruminated in the last year, I was reminded of Elie Wiesel, a survivor of Nazi concentration camps, who said, “What hurts the victim most is not the cruelty of the oppressor, but the silence of the bystander.” Are we to speak when victims cannot? Are we to speak when they don’t want to? Are we to intervene when our action could cause further pain or harm, simply because to say nothing would be to side (in our silence) with the offender?

We can’t heal everyone in a day, but we can begin with a listening ear and a voice of compassion, with our armor at the ready, prepared to go into battle for those our society might deem “less than.”

Continued on the back cover

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Would we hold a good Samaritan accountable for performing CPR to save someone and in the process cause harm to the dying person's ribcage? Similarly, would we hold someone accountable for removing a tree limb that fell on a stranger, only to realize that the pressure of the limb was keeping the person from bleeding out? Assuming these two persons survived, would they be angry? Or would they be thankful a stranger cared enough to intervene? I suppose we could argue that both are possible, but is one more likely? More importantly, could the good Samaritan have slept at night knowing he passed by the stranger as he lay dying in the road and did nothing at all?

Prosecutors make these decisions every day. From one to another, I want to encourage you! Your job matters. What we do impacts our communities. What you champion matters, so

make it count. Do the right thing for the right reasons, and while the road doesn't get easier, at least it stays even.

The great science fiction writer Ursula K. LeGuin once said, "Justice is in the hands of the gods, an old poet wrote. Mortal hands hold only mercy and the sword." We carry so much power to impact the lives of many that we must wield that power wisely and with integrity. In so doing, we can, as Justice Berger advised, "strike hard blows," but not "foul ones." We will serve our communities and each individual in the criminal justice system fairly, remembering that no one is above or beneath the law. The laws that punish can also protect; the prosecutor who shows severity can also show mercy.

I would submit that where all these things converge is where we find justice. ✱