



The Texas Prosecutor

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



Remembering Mark Hasse and Mike & Cynthia McLelland

Editor’s note: Ten years ago, two prosecutors in the Kaufman County Criminal District Attorney’s Office were murdered by a disgruntled defendant they had tried months before.

Mark Hasse, the office’s first assistant, was shot and killed in the courthouse parking lot on his way into work, and three months later, Mike McLelland, the elected DA, and his wife, Cynthia, were shot and killed in their own home. Their assailant, Eric Williams, was eventually arrested, tried, and convicted of capital murder; his wife, Kim Williams, was also tried and sentenced to 40 years in prison for her part in the crimes.

We asked members of the Kaufman County DA’s Office and the lead prosecutor of the trial team on the Williams case to look back on that time 10 years ago when their friends and colleagues were killed. For many of them, it was painful to remember the events of early 2013, but they generously shared their memories of that season, stories of their late coworkers, and lessons they have taken away from that awful time.

Amanda Morris **Key Personnel in Kaufman County**

This is probably my third or fourth attempt to put words on paper since we were asked to give some type of input for a

tribute for this journal. It’s hard. It’s still really hard, even after a whole decade, to find words. It’s been a struggle to think about those days that were probably the hardest days of my life.

Mark Hasse was one of two prosecutors I worked directly with at the time. I was his secretary, and at that time I had been working in the district attorney’s office for almost 10 years. I was lucky enough that I got to work with him from the time he came into our office until he was gone. Even though my dad begged me to quit my job during these events, I chose to stay. I chose to stay because I will not let evil win and I love what I do.

My desk was right outside his office. He would often come sit on the big windowsill (about the size of a small bench) by my desk and talk about cases we were working on, but he would always end up telling some kind of story from his days in Dallas as a prosecutor, or when he and a friend went into private practice, and about his plane and flying. He was a giving person and would often help anyway he could. I recall a time when one of our probation officers was having car trouble, so he told her to bring the car to his airplane hangar where he worked on it free of charge.

In 1995 Mark had a crash while flying an airplane that he had been working on. He suffered a significant head injury and was in a coma for a short time. He ended up having surgery and a metal plate was placed where his skull was shat-

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In memory of Lyn McClellan

Editor’s note: Since the Foundation’s inception in 2006, Mr. McClellan was a staunch but quiet supporter.

He made scores of donations, almost all in honor or in memory of a colleague. We were always struck by these contributions, which not only financially supported a cause dear to his heart but also publicly honored a friend and coworker. What a legacy to leave behind!

The legendary Lyn McClellan passed away on February 18. He was a retired felony bureau chief with the Harris County District Attorney’s Office, where he served from 1981 through 2008, and it is impossible to overstate the importance and influence he had in that office and the hundreds of prosecutors he trained and with whom he worked. He is easily one of the most beloved and respected prosecutors to ever work in Houston.

Lyn was already a division chief when I started in 1999, and he had already proven himself as a highly skilled lawyer with dozens of capital murders and other high-profile cases he had taken to trial. Soon after my arrival, he became the misdemeanor division chief, where he had the daunting task of teaching countless ~~years~~ baby prosecutors how to do their jobs with knowledge and, more importantly, integrity.

Having Lyn as your supervisor was the equivalent of having Tom Brady coaching your peewee football league. Although he never brought up his insanely impressive trial resume, we were all keenly aware of it. Suffice to say, when Lyn spoke, we listened. But he never seemed to demand or expect that of us. Lyn was a leader who never acted as anything other than an equal member of the group. He always had your back, but he never tried to steal your thunder. He had over 25 years’ more experience than any of us, but his sarcastic yet friendly demeanor let us know we could approach him for advice or a question. His office door was always open and often crowded with younger prosecutors seeking advice.

And like Tom Brady, he had little interest in retiring from trying cases. If a baby prosecutor



By Murray Newman (above right)
Criminal defense attorney in Houston, former Assistant District Attorney in Harris County, and Texas Prosecutors Society member (pictured with Lyn McClellan, above left)

had a little misdemeanor trial and wanted a second chair, all that person had to do was mention it to Lyn and he would be there with a moment’s notice. It was not unusual to see a defense attorney suddenly want to work the case out on trial day when he saw Lyn at counsel table.

Lyn was the humble teacher who knew the answer to any legal question you might have, but the real lessons he taught us were the ones he taught by example. Paradoxically, he was the loudest quiet man that I ever met. He had a voice that could echo across every floor of the office, but he rarely raised it unless caught up in a story that was making him laugh. I saw him frustrated with many a prosecutor (mostly me), but he never lost his cool with any of us. He pointed out our errors to us with a sense of humor, and we learned from those lessons. He also interceded with the upper echelons if our mistakes were so egregious that we had to answer to the Top Brass.

He was a prosecutor who knew the difference between a defendant who needed a small life-correction as opposed to being removed from society. If a young prosecutor wanted permission to do a drastic deviation from the norm when handling a case, he could run it by Lyn without fear of being mocked or getting into trouble. He would listen and usually agree when it came to the side of mercy (at least he did in the misdemeanor division!) if you could justify your position. Once

Continued in the green box on page 5

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Ten years ago: in remembrance

January 2023 marked the tenth anniversary of the murder of **Mark Hasse**, an Assistant Criminal District Attorney in Kaufman County, as he got out of his car to go into the courthouse.

This was a dark time for our profession in Texas, as there were no immediate suspects.

It became exponentially worse when the elected criminal district attorney, **Mike McClelland**, and his wife, **Cynthia**, were murdered in their home in March. Again, no immediate suspects. We lost two humble public servants and three wonderful people. We were painfully reminded that standing in the way of crime in your community can be a dangerous thing. During those dark days before the capture of the killer in April, I am proud to say that TDCAA was flooded with calls from prosecutors (and former prosecutors) who volunteered to go to Kaufman County and stand up to announce ready for the State.

The offers weren't necessary. They weren't necessary because the attorneys in the Kaufman County CDA's office refused to abandon their posts. **Erleigh Wiley**, a county court at law judge, courageously took the appointment as the elected CDA and led her unified office. They never missed a beat in representing their community, even in the face of tremendous uncertainty in the weeks before the killer was identified and arrested. In recognition of that courage, the entire staff of the Kaufman County CDA's Office was recognized with TDCAA's Lone Star Award in 2013, which recognizes those prosecutors "in the trenches" whose work might otherwise go unheralded. We at TDCAA are proud to serve such dedicated public servants, and we do so in memory of Mark, Mike, and Cynthia.

Membership dues increase in September

We are proud to have such a robust membership here at TDCAA. Payment of dues gives prosecu-



By Rob Kepple

TDCAA Executive Director in Austin

tors access to the TDCAA membership database; a \$50 discount on our legendary Legislative Update training; a copy of the bimonthly journal, *The Texas Prosecutor* (if you aren't already working in a prosecutor office); and starting in September, access to two hours of free online MCLE ethics training every year. We are also proud that our dues have remained low—we haven't raised them in over 20 years.

Starting with the new fiscal year in September 2023, we will be raising our dues by \$25, which means the new dues structure will be:

elected prosecutors	\$100
assistant prosecutors	\$85
investigators	\$80
key personnel and VACs	\$75
general membership	\$85
law students	\$60

We hope you will agree that membership in TDCAA, your professional home, continues to be a true value to you. We love serving you here at TDCAA World Headquarters!

Rule 3.09 gets another public hearing

On April 12 the State Bar Committee on Disciplinary Rules and Referenda (CDRR) held a public hearing on the proposed amendments to Rule 3.09 of the Texas Disciplinary Rules of Professional Responsibility. As I reported in the March–April 2023 edition of this journal, the proposed amendments would add parts of the American Bar Association (ABA) Model Rule 3.8 relating to ethical duties of prosecutors regarding newly discovered evidence of innocence found post-conviction. The CDRR has worked for nearly two years to slowly narrow the original

proposal to make it a notice provision: that prosecutors must give certain people notice if they know of new and credible information creating a reasonable likelihood that a convicted defendant did not commit the crime.

Jack Roady, Criminal District Attorney in Galveston County and our Board Chair, testified to thank the committee for their careful work but also alerted them that prosecutors were still opposed to the amendments relating to a new ethical duty to essentially turn the State's entire file over to the defense if some new information is indeed discovered. **Steve Condor**, Appellate Division Chief of the Tarrant County CDA's Office, did a great job of summarizing problems with the existing language. The next step is to await a vote by the CDRR on the final version of the rule that the committee intends to send to the State Bar Board for a vote. We will keep you informed.

The need ... the need for speed

It is always fun to learn that our friends in prosecution also have interesting lives outside of the courtroom. For instance, a couple years ago I discovered that our very own State Prosecuting Attorney **Stacey Soule** is a professional driving instructor, and is, well, wicked fast. Below is a picture of her (at right) and our friend Amy Befeld (at left), former governmental affairs staffer at the Texas Association of Counties, by Stacey's beloved Porsche GT 4, which I had the honor to drive on a parade lap on the Circuit of the Americas track (most fun I ever had at 50 miles an hour!).



Lyn approved something, he would take all the blame if it didn't end successfully.

He taught us leadership in countless intangible ways: Do what's right. Back up others who are doing what's right. Don't blame others. Don't tolerate bullies. Take responsibility. Take every opportunity to have a teachable moment. Don't ridicule honest mistakes. Have mercy when it doesn't offend the conscience. Brag on others' accomplishments, but never your own. Hear everything before you make a judgment against somebody. Never miss an opportunity to tell or hear a funny story. Always be proud of the team you are on and be there for your teammates.

I could probably list 100 more life lessons that Lyn McClellan taught the prosecutors he supervised. The funny thing is that he taught them all with his example, never through a lecture. The world would be a far better place with more Lyn McClellans in it.

The outpouring of grief, respect, and love for Lyn in his passing has been remarkable—and completely deserved. ❁

We have recently been introduced to a national nonprofit dedicated to protecting athletes, young and old, from abuse from coaches and others involved in sport training.

And if you read the April 2023 edition of the *Texas Bar Journal*, you saw a great piece on **Philip Mack Furlow**, the 106th Judicial District Attorney, and his Porsche Cayman S (pictured below). It seems like a great alternative to being in the courtroom!



I had just one question after going to the track with them both: What's up with the pajama pants that everyone wears? Turns out the track requires long pants made of cotton for safety, but this is Texas and it is dang hot on the track. So all the drivers pride themselves on sporting some colorful PJs!

SafeSport, a new resource in fighting abuse in sports

We have recently been introduced to a national nonprofit dedicated to protecting athletes, young and old, from abuse from coaches and others involved in sport training. In the wake of the repeated scandals involving the U.S. gymnastics program, the U.S. Center for SafeSport was established by Congress to devote resources to the investigation of complaints of abuse by sports coaches. You'd be surprised by how many coaches and athletes come under the Center's watch—thousands in Texas alone. If SafeSport investigators discover allegations of criminal conduct, the local prosecutors are going to hear about it. And if you have a case involving a youth sports coach, you might check the Center's robust online database to see if your suspect has a case file with SafeSport. You can learn more about the program on page 34 and online at <https://uscenterforsafesport.org>.

Emily Teegardin

Congratulations to **Emily Teegardin** on her appointment by **Governor Greg Abbott** as the 110th Judicial District Attorney serving Briscoe, Dickens, Floyd, and Motley Counties. Until February, Emily had served as the County Attorney in Briscoe County since 2006. Best wishes as you adjust to your new duties! ❄

Some sweet training on our schedule

Here at TDCAA Training HQ, we often focus on covering topics that will have the broadest possible impact for the most folks in our membership.

Any MCLE historian will see that we offer training on crimes against children about every two years. We do that because those are some of the most difficult and commonly tried cases in Texas. We offer our Prosecutor Trial Skills Course twice a year. That's because we have so many people rotating into our profession who need a focused look at the fundamentals of Texas criminal trials. If you're selling ice cream, you better have chocolate and vanilla (strawberry too—Neapolitan is a superior product). Not only are they delicious flavors, but they are also the most sought-after.

That said, a good ice cream vendor also knows you must have rum raisin (yuck) and pistachio (surprisingly tasty) on hand if you want to satisfy the tastes of as many ice cream lovers as possible. We're halfway through our 2023 season of training and I'm here to ring the bell—letting you know that we've got the usual solid choices of chocolate, vanilla, and strawberry, but we also have a few pints of rocky road in the freezer to keep you cool this summer.

What's coming up

I'm tempted to write that we're serving up three rare scoops of training to beat the summer heat, but I think the metaphor has run its course. At the end of July, we are putting on two conferences, both in Waco, aimed at a smaller segment of prosecutors. First up is our annual Advanced Trial Advocacy Course. Generously hosted again by the Baylor Law School, the course is a thorough exploration of a specific charge (this year it's intoxication manslaughter). Attendees will split their time between attending lectures and conducting key phases of trial in one of Baylor's practice courts. The performances will be recorded and critiqued by expert prosecutors, then attendees will review their recorded work one-on-one with another faculty member. To create the most realistic environment possible, the course is built around evidence and material from an actual case. Because the program's quality is dependent on a high faculty-to-student ratio, attendance is by application only and is



By Brian Klas

TDCAA Training Director in Austin

limited to 32 prosecutors. If you are ready to hone your trial skills, this course is for you. Look for applications and instructions in your mailbox or on TDCAA's website.

Our other school in Waco is a brand-new offering: the first ever Civil Practitioner Boot Camp. It's long been on the training wish list, and TDCAA's Civil Committee has worked for the last year to put together a course aimed squarely at prosecutors new to a civil caseload. Like our Prosecutor Trial Skills Course, this training will be taught using a faculty advisor model. Attendees will be assigned to tables with an experienced prosecutor to guide them through three days of lecture and case scenarios. Topics will range from core concepts of government representation to key procedural concerns. If you are new to civil work or you are looking to expand your skills, consider this new avenue of training. Like many of TDCAA's offerings, there is an additional hidden value here: the opportunity to meet and network with prosecutors from all over the state who are confronted with the same issues as you. The benefits of peer support and professional connections are unparalleled. Because this is a prototype course, attendance is limited. Check our website in the coming weeks for more details.

Summer closes out with a solution to a long-standing Prosecution Management Institute (PMI) problem. Currently, the only way to attend our three-day Fundamentals of Management course is as either a county hosting the training or as a guest of the hosting county. It is a solid delivery model for many offices, but for small offices and individuals who have missed out on the training, there hasn't been a reliable way to attend the course. This year, at the end of August, we are offering our first standalone PMI course here in Austin. Built by prosecutors with the assistance of professional consultants, this training provides current and prospective supervisors with the tools they need to effectively and ethically manage within an elected prosecutor's office. *Attendance will be limited.* Details for this course as well as instructions on how to host a course in your home county can be found on TDCAA's training page, www.tdcaa.com/training.

And other upcoming courses

If those three conferences don't pique your interest, why don't you sample one of our other great programs? For new prosecutors or those wanting a refresher, don't forget our Prosecutor Trial

Skills Course in July. Of consistent value, it is a foundational building block for a prosecutor's work. Later, at the tail end of summer, we have the Annual Criminal & Civil Law Conference. We'll be in Central Texas this year—at a waterpark. There will be over 40 hours of training to pick from and to later reflect upon as you float atop a manmade river. It screams for an ice cream treat!

And what if you can't make it out at all this summer? Don't forget to check out our website for online training. Keep an eye peeled for a collection of regional programs in the fall. Also remember that our Key Personnel & Victim Assistance Coordinator Conference will be held in November followed by our Elected Prosecutor Conference. At TDCAA we are driven by the needs of our membership, with the goal of delivering timely, relevant, and accessible training. If you still are unable to find what you're looking for, send me an email. If you want to get involved in TDCAA training, send me an email. If you would like assistance with some other training, send me an email. If you have a real issue with clever ice cream wordplay, keep it to yourself.

I hope to see you at an event soon. ❄️

Recent gifts to the Foundation*

Brian Baker
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* gifts received between February 4 and April 7, 2023

Introducing the newest members of the KP-VS Board

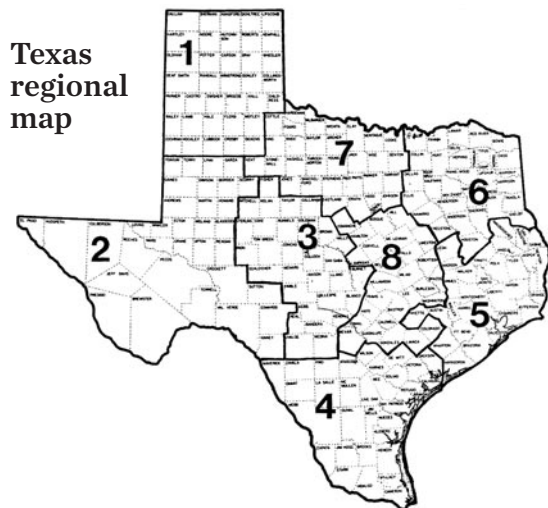
In November 2022, at the Key Personnel & Victim Assistance Coordinator Conference, board elections were held for the North-Central Area (Regions 3 & 7) and West Area (Regions 1 & 2).

Jake Wright (KP) of the County Attorney’s Office in Palo Pinto County was elected as the North-Central Area representative, and Karen Suarez (VAC) of the 112th DA’s Office was elected as the West Area representative. Adina Morris (KP & VAC) of the DA’s Office in Palo Pinto County from Region 7 was elected as Chairperson.

Two new members were recently appointed to the Board: Allison Bowen (Region 7) of the CDA’s Office in Tarrant County as a Designated VAC representative, and Casey Hendrix (Region 6) of the CDA’s office in Collin County as a Designated KP representative. See the map, below, to find out your region.



By Jalayne Robinson, LMSW
TDCAA Victim Services Director



Texas regional map

The Key Personnel–Victim Services 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 TDCAA’s KP–VAC Conference or be appointed, and have paid TDCAA 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 consider running for the Board. Elections are held each November at TDCAA’s KP–VAC Conference. If you have any questions, please email me at Jalayne.Robinson@tdcaa.com.

Below I have included introductions and photos from our newest Board members.

Allison Bowen
Director of Victim Services,
Tarrant County Criminal District
Attorney’s Office

“Thank you for your interest in me as a TDCAA Board member. It is an honor and a privilege to be a representative for my region. Throughout



Allison Bowen

my career as a victim service professional, I have long admired TDCAA's work. Its efforts have served as a reference to develop a successful victim service team in Tarrant County. I look forward to contributing a wealth of knowledge concerning victim rights, administrative processes, and best practices for working with victims, as well as the desire to exchange ideas with other experts in the criminal justice field.

"Briefly, I have listed a few of my accomplishments:

- graduate degree in psychology from Hunter College in New York;
- Before coming to the DA's office, I began a victim advocate program for homeless victims in Fort Worth. The program ensured homeless individuals were included in the criminal justice process and afforded their rights as crime victims;
- 20-plus years of professional experience in social services;
- over 15 years of professional experience in the criminal justice field, most in leadership positions;
- crime victim rights workshop facilitator for Tarrant County Criminal District Attorney's Office and the Tarrant County community;
- serve as a resource for crime victim liaisons with law enforcement agencies in Tarrant County. I also host quarterly meetings with other liaisons and VACs to ensure comprehensive services for victims; and
- I served on the 2021 Victim Impact Statement Revision Committee."

Karen Suarez
Legal Assistant & Victim Assistance Coordinator
112th District Attorney's Office

"I retired from teaching after 34 years with the Fort Stockton Independent School District. In May 2016, I was hired as a legal assistant and victim assistance coordinator for the 112th Judicial District Attorney's Office. Learning how to effectively serve victims and be a competent legal assistant has been an ongoing process. As Albert Einstein said, "The more I learn, the more I realize how much I don't know." I believe there are unlimited possibilities for growth, learning, and improvement through education, mentoring, and training. I am honored to serve as a representative on the TDCAA Key Personnel-Victim Services Board."



Karen Suarez

Jake Wright
Office Manager
County Attorney's Office in Palo Pinto County

"I began working as the office manager for the County Attorney's Office in November 2020 and was elected to the Board in November 2022. Some of the duties of the Office Manager position include managing misdemeanor cases from intake through disposition, working with victims to obtain protective orders, preparing mental health orders, researching cases, financial record keeping, and much more. I am very much looking forward to serving with the other dedicated professionals on the Board and contributing in any way I can!"



Jake Wright

Casey Hendrix
Community Engagement Coordinator
Criminal District Attorney's Office in Collin County

"As the Community Engagement Coordinator, I'm responsible for expanding awareness of our impact through social media, our community events, and specialized programs. I'm thrilled to assume this new role within our office, as I work directly with our District Attorney, Greg Willis, who is a humble, compassionate, and fearless leader. I look forward to using the knowledge from my previous role as a VAC and my current role within our office to represent Region 6 as your new Designated Key Personnel representative."



Casey Hendrix

Victim services consultations

As TDCAA's Victim Services Director, my primary responsibility is to assist elected prosecutors, VACs, and other prosecutor office personnel in providing support services for crime victims in their jurisdictions. I am available to provide training and technical assistance to you via

phone, via email, in person, or on 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; some photos of my recent office visits are below. ❄



TOP PHOTO: In the Criminal District Attorney's Office in Gregg County (from left to right): Jalayne Robinson, TDCAA Victim Services Director; Angela Herritage, Grand Jury Legal Assistant and Protective Orders; Cydney Willis, Assault FV Legal Assistant; and Jennifer Foster, Victim Assistance Coordinator. Not pictured but in attendance: Rita Raspberry.

MIDDLE PHOTO: In the District Attorney's Office in Harris County (back row left to right): Celeste Byrom, Assistant District Attorney and Director of Victim Services; Judie Chatman, VAC; Alondra Anaya-Morales, VAC; Jalayne Robinson, TDCAA Victim Services Director; Thanairy Garcia, VAC; and Amy Johnson-Duong, VAC. In the front row from left to right: Yeritza Quiroz, VAC; Stephanie Valverde, VAC; Monica Quintero, VAC; and Colleen Jordan, Assistant Director of Victim Services.

BOTTOM PHOTO (left to right): Jalayne Robinson TDCAA Victim Services Director; Jessica Morris, VAC in the County Attorney's Office in Montague County; Anna Bernal, VAC in the 97th Judicial District Attorney's Office; Casey Hall, 97th Judicial District Attorney; Charlie Hamilton, VAC in the 97th Judicial District Attorney's Office; and Shawna Franklin, VAC in the County Attorney's Office in Clay County.



Sufficiency to determine ‘serious’ injury

This year the Court of Criminal Appeals released two opinions, less than 40 days apart, discussing whether evidence was sufficient to show an injury was “serious.”

The opinions are by the same author. One was joined by all nine judges, the other by eight. So naturally these opinions can be read together to clarify the law, right?

Not really. I’m writing about them because they illustrate a couple of issues I see more and more in caselaw: What common knowledge can we assume factfinders to have, and what is a reasonable deduction from that knowledge rather than mere speculation? The ways that courts answer these questions don’t have a lot of objective boundaries, and the answers often feel arbitrary.

In *Garcia v. State*,¹ the Court of Criminal Appeals held a jury’s common knowledge about the nature of through-and-through gunshot wounds can allow it to make a reasonable deduction that the complainant faced a serious risk of death, even though she did not need a blood transfusion and she left the hospital a few hours after being stapled up. But in *Edwards v. State*,² the Court held that jurors do not “precisely” know the effects of cocaine addiction on a 1-year-old, so the verdict finding addiction and withdrawal a “serious mental deficiency, impairment, or injury” was irrational speculation.

Let’s look at these opinions to see if they can help us in the future.

Reasonable deductions about gunshot wounds

Garcia was an appeal from an aggravated assault conviction. One day Vital Garcia came home and found his girlfriend, Marissa, smoking pot with her “weed guy.”³ Garcia went in the bathroom, cocked his .40 caliber pistol, and came out blasting. The weed guy was shot multiple times before he jumped off a balcony. Marissa was shot twice: a through-and-through in her thigh and a through-and-through in her right breast.

Marissa tried to drive herself to the hospital but after a while thought she couldn’t make it, so she got out of her car and flagged down some officers for help. Marissa later testified she “went



By Clinton Morgan

Assistant District Attorney in Harris County

out” during the ambulance ride and did not remember much after that, though records described her as alert and conscious during the entire ambulance ride. A doctor testified he thought her injuries were serious bodily injury, despite the fact that bullets did not hit any important organs or blood vessels. Medical staff closed the wounds with 12 staples, and Marissa left the hospital after three hours and 20 minutes.

Garcia was convicted of aggravated assault of a family member by causing serious bodily injury. On direct appeal, in an opinion by Justice Bourliot, a divided panel of the Fourteenth Court held the evidence was insufficient to show the wounds met the statutory definition of “serious bodily injury” (SBI), namely that they created a substantial risk of death or caused “death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.”⁴

First, there was no evidence of scars or loss of bodily function, so the substantial risk of death was the only applicable definition of SBI. Relying on several intermediate court opinions holding that evidence of gunshot wounds, without more evidence of the severity of the wounds, was insufficient to show SBI, the panel reversed and remanded for a new punishment hearing for a lesser-included offense.

Justice Poissant dissented. She would have held the evidence was sufficient because 1) Marissa had four wide and deep wounds, 2) Marissa thought she was going to die and “went out” during the ambulance ride, 3) Marissa could not remove the staples for 10 days, and 4) a doctor

believed the wounds were SBI and had seen other people die after being shot in body locations near where Marissa was shot.

The Court of Criminal Appeals reversed, in an opinion by Judge Slaughter joined by seven others. (Judge Newell concurred without opinion.) Judge Slaughter wrote that the flaw in the Fourteenth Court's opinion, "broadly speaking, is that it failed to view the evidence in the light most favorable of the verdict and failed to permit the drawing of reasonable inferences by the jury."⁵

Judge Slaughter cited several pieces of evidence. First, she quoted a doctor's testimony that while Marissa's wounds weren't fatal, other victims' "chest area" wounds were.⁶ Next, Judge Slaughter pointed to the evidence that the wounds caused "significant bleeding" and "resulted in [Marissa] losing consciousness." From this, "the jury was free to apply its own commonsense and knowledge of this type of injury to conclude that, absent timely medical treatment to control bleeding and clean and repair the wounds, [Marissa] would have faced a substantial risk of death."

Let's look at the conclusions the court deemed "reasonable deductions." The jury deduced that Marissa passed out due to blood loss. That's certainly possible from the evidence, but there are multiple reasons someone could pass out after being shot: pain or shock, for instance. The mere sight of blood causes some people to get woozy, and anyone who's donated blood knows blood-sugar levels at a particular point in time can dramatically increase the chances of passing out from even minor trauma.

The court justified the deduction that Marissa passed out from blood loss because it believed the average juror knows enough about "this type of injury"—a through-and-through gunshot wound—to understand the severity of the bleeding it would cause. How much do you know about through-and-through wounds? My understanding—based mostly on movies and TV shows—is that a through-and-through hurts a lot, and if it hits a major blood vessel, it can be fatal. If someone suffered a through-and-through and passed out, I'd take him to the hospital. But if he didn't need a blood transfusion and checked out a few hours later, would I deduce he'd passed out from blood loss and therefore, beyond a reasonable doubt, he'd faced a substantial risk of death if the injury had gone untreated? The court held that such a deduction would be reasonable.

Mere speculation about a baby's cocaine addiction

Edwards was an appeal from a conviction for reckless injury to a child. Edwards did a lot of cocaine while she was nursing her baby. When the baby was 13 months old, Child Protective Services (CPS) tested one of the baby's hair follicles and the results showed cocaine metabolite levels that were literally off the charts; the test was capable of results up to 20,000 picograms of metabolite per milligram, but the baby's test results exceeded that, and a doctor testified he estimated the baby's true result would have been almost double.⁷ CPS gave the baby to a different guardian.

Edwards was charged with the second-degree felony of recklessly causing a child "serious mental deficiency, impairment, or injury."⁸ The evidence at trial included expert testimony that the levels of cocaine metabolites in the baby's system were "indicative of an addict that's doing it all the time which is going to cause ... withdrawals." The expert testified the amount of cocaine in the baby's system would cause "loss of appetite" and "psychological effects" and could lead to seizures and other brain disorders. The baby's new guardian testified the baby was "very clingy, very fussy," and a doctor said the baby was small for her age.

On appeal, a unanimous panel of the Third Court, in an unpublished opinion by Justice Baker, held this evidence was sufficient to support the verdict. The Third Court began by noting that there was no statutory definition of "mental deficiency," "mental impairment," or "mental injury," so it consulted a variety of commonsense definitions from dictionaries and recent intermediate court opinions (e.g. "mental" "is commonly understood to refer to the mind," and "injury" was "hurt, damage, or loss sustained"). It also noted a 2007 Court of Criminal Appeals opinion that had assumed, without deciding, that PTSD would be "serious mental deficiency, impairment, or injury."⁹

Based on the evidence, the Third Court held it was a reasonable deduction that 1) the baby had been exposed to so much cocaine she became addicted, and 2) she had experienced withdrawal symptoms sufficient to constitute serious mental deficiency, impairment, or injury.

The Court of Criminal Appeals granted review and, in an opinion again by Judge Slaughter, unanimously reversed. Judge Slaughter agreed

The evidence at trial included expert testimony that the levels of cocaine metabolites in the baby's system were "indicative of an addict that's doing it all the time which is going to cause ... withdrawals." The expert testified the amount of cocaine in the baby's system would cause "loss of appetite" and "psychological effects" and could lead to seizures and other brain disorders.

with the Third Court that the lack of statutory definitions meant the “jury was free to use the common and ordinary meanings” of the term “serious mental deficiency, impairment, or injury.” Indeed, Judge Slaughter went so far as to declare that “the meanings of ‘serious,’ ‘mental,’ and ‘injury’ are so obvious that we need not resort to dictionary definitions.”

Judge Slaughter then held that, while the evidence showed the baby had ingested a lot of cocaine, the evidence showed no sort of mental injury at all. The expert’s testimony had listed possible side effects of addiction the baby may have suffered, but there was no testimony the baby had actually suffered any of the mental effects of addiction.¹⁰

But what about jurors’ common knowledge about the evils of cocaine addiction? Judge Slaughter held that “while some jurors may have some degree of personal knowledge regarding drug addiction,” “the average juror would not have a common-sense understanding of precisely how drug addiction and withdrawal affect a child’s development, cognitive functioning, or mental health.” Therefore, it was speculation, not a reasonable deduction, for jurors to conclude the baby suffered mental injury from cocaine addiction and withdrawal. The Court reversed the conviction and remanded for consideration of possible lesser-included offenses.

The blurry bounds of knowledge

Let’s note what deductions were not deemed reasonable in *Edwards*. Jurors do not have enough knowledge to “precisely” know the effects of cocaine addiction on babies; therefore, it was mere speculation to conclude the baby had suffered mental impairment or injury from cocaine withdrawals.

How much do you know about the effects of cocaine addiction on babies? Is it more or less than how much you know about through-and-through gunshot wounds? Dear reader, I have graduated from multiple institutions of higher learning. I have watched almost every Sam Waterston episode of “Law & Order.” I have spent untold hours listening to singers describe drug use and addiction in terms both artistic and crude. My knowledge of through-and-through wounds and infant drug addiction is about the same: I’m quite confident they’re both bad.¹¹ I certainly don’t “precisely” know the effects of through-and-throughs, and I doubt the average juror does either. It strikes me as odd that my

common knowledge is sufficient to let me reasonably deduce a gunshot victim passed out from life-threatening blood loss as opposed to some other cause, but it’s mere speculation if I conclude a cocaine-addicted baby’s excessive fussiness and clinginess is a mental injury due to addiction and withdrawal.

I don’t say this to criticize either holding in particular. I say it because these cases illustrate how marginal sufficiency cases can be. Close cases are hard for judges; they can’t shrug away every evidentiary gap by just presuming the jury knows a lot, nor can they issue acquittals just because the State failed to prove a matter that is clearly within common knowledge. Courts must draw lines with very little objective guidance. The line from one case won’t always look like it matches up exactly with the line from others.

Unless you’ve got a case that’s factually on-point with *Garcia* or *Edwards*, there are not many productive takeaways here for prosecutors. You were already going to put on the best case you could. You will always have to rely on the common sense and knowledge of jurors and judges, and in some cases you’ll have to rely on them more than others. Fill in the gaps as best you can so the resulting verdict feels more like a reasonable deduction than mere speculation, but understand that is not always a clear line. ❖

Endnotes

- ¹ ___ S.W.3d ___, No. PD-0679-21, 2023 WL 151589 (Tex. Crim. App. Jan. 11, 2023).
- ² ___ S.W.3d ___, No. PD-0585-21, 2023 WL 2000060 (Tex. Crim. App. Feb. 15, 2023).
- ³ I am combining some background facts from the CCA’s opinion with information from the lower court’s opinion, *Garcia v. State*, 631 S.W.3d 875 (Tex. App.—Houston [14th Dist.] 2023).
- ⁴ Tex. Penal Code §1.07(a)(46).
- ⁵ *Garcia*, 2023 WL 151989 at *6.
- ⁶ The Court’s use of this testimony to uphold the verdict is noteworthy. Testimony about the lethality of “chest area” wounds—which sounds like it would include being shot in the heart or lungs—seems a little vague for analyzing the effects of the very specific type of “chest area” wound at issue here, a through-and-through breast wound.

But what about jurors’ common knowledge about the evils of cocaine addiction? Judge Slaughter held that “while some jurors may have some degree of personal knowledge regarding drug addiction,” “the average juror would not have a common-sense understanding of precisely how drug addiction and withdrawal affect a child’s development, cognitive functioning, or mental health.”

Photos from Train The Trainer

In *State v. Baldwin*, ___ S.W.3d ___ No. PD-0027-21, 2022 WL 1499508, at *11 (Tex. Crim. App. May 11, 2022), by a 5-4 vote, the Court of Criminal Appeals held that boilerplate language in a warrant affidavit about criminals' usage of cell phones could not create probable cause that a suspect had a cell phone on his person at the time of the offense. Four judges from the *Baldwin* majority joined *Garcia*. How boilerplate language about gunshot wounds other than the complainant's can help show, beyond a reasonable doubt, that the complainant faced a serious risk of death, but boilerplate language that criminals often carry cell phones combined with the possession of a cell phone by a person linked to a crime four days after the crime cannot create probable cause that the suspect had a cell phone on his person at the time of the crime is, perhaps, a question the court will address in the future. The question about what is common knowledge comes up in many contexts.

⁷ I am again combining facts found in the CCA's opinion with facts found in the lower court's opinion, *Edwards v. State*, N. 03-20-00138-CR, 2021 WL 2692350 (Tex. App.—Austin July 1, 2021) (not designated for publication).

⁸ Tex. Penal Code §22.04(a-1)(2), (e).

⁹ *Stuhler v. State*, 281 S.W.3d 706, 712-13 (Tex. Crim. App. 2007).

¹⁰ This is true enough, but how would a baby manifest the mental symptoms of withdrawal in a way that could be testified to? As a parent, I'd expect manifestations to be what the evidence showed here: "clinginess" and "fussiness." Last year the Court in *Shumway v. State*, ___ S.W.3d ___, No. PD-0108-20, 2022 WL 301737 (Tex. Crim. App. Feb. 2, 2022) recognized the problem of proving injuries to preverbal children and relaxed the corpus delicti rule—which ordinarily bars a conviction if the only evidence is a defendant's confession—in cases where there would be no perceptible physical injuries and the child was too young to outcry.

¹¹ In *Edwards*, the Third Court cited a National Institute on Drug Abuse definition of drug addiction as a "chronic" condition with "long-lasting changes in the brain." The Court of Criminal Appeals disregarded that definition because it wasn't introduced into evidence, but that comports with my notions of addiction and I assume others' as well.



Photos from our Prosecuting Crimes Against Children Conference



Photos from our Civil Law Conference



Gerald Summerford Award winner



Congratulations to Michael Hull, Assistant County Attorney in Harris County (pictured at left), for winning the Gerald Summerford Award (Civil Practitioner of the Year). He is pictured with Christian Menefee (right), County Attorney in Harris County.



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Remembering Mark Hasse and Mike & Cynthia McLelland (cont'd from front cover)

tered. He even brought his X-rays to work to show everyone because he thought we didn't believe him. The only permanent damage he suffered was the loss of his sense of smell. That turned into a funny story because our office loved to prank each other and joke around when time allowed. One day we sprinkled some dry parmesan cheese, the kind you get with your pizza, in his trash can so his office would smell like dirty feet. Later that afternoon one of our investigators was sitting in there talking to him about a case when we heard him ask, "What's that smell?" Mark responded, "I don't know, I can't smell anything." The investigator started sniffing around and finally found the cheese in the trash can. Mark started laughing and asked, "Who put that in there?" So the prank kind of backfired, but we confessed to it and we all shared a good laugh.

Mark's main passion was seeking justice. He cared about his cases and the people affected by crime. One year during the Christmas holiday he bought a few gifts and took them to Children's Hospital in Dallas where one of his child victims was admitted. He spent that Christmas Day with the child and her mom and gave them gifts to make sure they had a Christmas. He would often meet his victims and visit them outside of the office for the first meeting with them. He would do whatever he needed to make his victims, especially children, as comfortable and confident as possible. He was one of the most passionate prosecutors I've ever had the opportunity to work with.

Mike McLelland was our elected district attorney. He put people in the right places so the office could run the way it needed to. He had a legal background in mental health, so he didn't have significant experience in criminal law when he was initially elected DA. I always liked to hear stories about his prior clients and how he would go to the mental hospitals for hearings. His wife, Cynthia, was a nurse at Terrell State Hospital, so maybe that is what sparked his interest to represent those clients. Cynthia was a cordial lady who supported Mike and was his biggest fan. She loved to make quilts and bake. She would often make treats and bring them to the office, and we would joke about how she was trying to "plump us up." She and Mike were so infatuated with one another and were sure to let everyone know. They were like teenagers who had just started

dating. They loved to have guests at their house and even hosted a Christmas party for the office. Cynthia must have been baking for days with the number of goodies they would have. They were both sweet and caring.

They say time heals all wounds but unfortunately, we've learned that's not true. You learn to live and go on, but we will forever have triggers or situations that take us back to the beginning of 2013. Not only those of us that were in the office at the time, but our kids, other employees throughout the county, and the small town of Kaufman as a whole. We are forever changed. Mark, Mike, and Cynthia are dearly missed and will never be forgotten. Those of us who still work together will continue to gather and talk about memories and experiences. We've learned there is not a single person better to talk to than the ones who experienced a tragedy with you. They understand the continuing emotions, stresses, and the changes we've had to endure to cope. I am thankful for my work family and the bond we have. One thing I never thought while working in the district attorney's office is that I would become a crime victim myself. We were victims. We were victims who were working on our own case to help solve the murder of our coworker and boss. That's something I hope no one ever has to experience again.

While this was such a horrific tragedy, we got to witness firsthand how the law enforcement community comes together in a time of need. When one of their brothers is taken, they forget about any tension or disagreements between departments and agencies and work as a team. I have never seen so many levels of the justice system come together under one roof at the same time. We had everyone: local, state, and federal law enforcement; current prosecutors and staff; past prosecutors; and investigators in an old armory building set up as the investigation headquarters. I am beyond thankful for Bill Wirsky and Toby Shook for taking on this case and fighting for justice for not only Mark, Mike, and Cynthia but also their families, friends, those of us who were or still are employees in the district attorney's office, and all of Kaufman County, and

especially the small community of Kaufman. The day Eric Williams was sentenced to death is a day I will never forget. It brought some closure and a little relief, but we will always be impacted by this tragic event.

If you ever want to know the details of the “Kaufman County murders,” check out the book *In Plain Sight* by Kathryn Casey. Several of us didn’t want to talk to the media or the “book lady” because we didn’t want to gain any attention from this tragedy, but Ms. Casey must have some amazing investigative skills. It’s the closest thing to the facts of these events that I’ve seen yet.

Erleigh N. Wiley Criminal District Attorney in Kaufman County

For many of us who were colleagues of Mike McLelland and Mark Hasse, it is hard to believe that it has been 10 years since their murders and the murder of Mike’s wife, Cynthia.

For those of us who worked with Mike and Mark in Kaufman County, we remember where we were when we heard the disturbing news. And though it has been 10 years, sometimes it is hard to believe that they were murdered.

After I was appointed the DA, and having been with the Kaufman County District Attorney’s Office for 10 years, it has been an honor to work with some of the same people who were here in 2013 and to watch the growth and the progress over the last decade. The legacies of Mark and Mike in our office is profound. They will be remembered for their service, but also for the men they were to our office and to Kaufman County.

Michelle Bork Paralegal in Kaufman County

This has been a difficult week trying to put down words on paper. Every time I begin, emotions well up and I can’t finish. I have had to step away so many times, I’m not sure I can or even want to complete this tribute. Digging up some memories of those days, you think you are fine and have moved past the fear, pain, hurt, and sadness, and you realize you have just compressed everything deep down and tried to ignore it. So I will try my best to put things down, especially when I feel that only those who experienced that time together will truly understand the moments and feelings we went through and how we are dealing with it all now.

I had been a legal assistant for eight years and had worked under two district attorneys. I remember when Mike McLelland won the election. He was the third DA I had worked for. Some of us in the office were concerned about his military toughness that was perceived during the election—not that it was ever a bad thing. We were just used to having an easygoing atmosphere. When a new elected official comes in, you wonder if you will even “make the cut.”

The first day of work, Mike had us gather in one of the smaller courtrooms and spoke to us. He shared about who he was, what he had done, and what he wanted to do. He was determined that structure was needed in our office, and he told us that he would like things to be more efficient. The first month seemed like an evaluation, yet soon we realized Mike was a personable man. He cared for all of us, our families, and of course the citizens of Kaufman County.

Cynthia, his wife, was a sweet and caring woman. She would come to the office and bring us treats, especially her delicious “trash mix.” She would make quilts for prosecutors and staff, for those getting married, or for the babies on the way.

One of my fondest memories of Mike and one I am most thankful for is that he took care of us girls in the office and provided a chance for us to attend a paralegal certificate course. It helped us be successful in our jobs, but it also helped us financially when he told the county commissioners that his staffers were now paralegals and needed increased salaries. And this chance is still given by the current DA for any new staff that join us.

Mike brought in Mark Hasse as his first assistant. Mark was a smart man and a great prosecutor. He loved to share stories of his life, cases he had prosecuted, and his favorite pastime of flying planes. He would come to work in some wild sweaters—not wild in some people’s opinion, I am sure, but very dated to me. It would make us chuckle. At Christmastime we would wear ugly Christmas sweaters, which started as a joke, but after Mark was gone it became a way to honor him.

January 31, 2013, was a day we never expected. I was coming to work and I heard some

The day Eric Williams was sentenced to death is a day I will never forget. It brought some closure and a little relief, but we will always be impacted by this tragic event.

pops, but it did not sound like gunshots. Plus, I was so focused on getting into work because I was running a bit late that I did not think anything about it.

I walked into the courthouse and went into the restroom to freshen up before going in the office, where police sirens were heard around the square. I walked to the back doors and looked out, thinking how we usually have sirens passing by, but these seemed overwhelmingly close. One of our bailiffs ran out the back door saying that something happened. From there it is a blur—I'm not sure if I am just blocking it out, but by the time I got up to our front office, I remember a colleague trying to contact Mark on his cell. It was Mark who had been shot.

We stayed in our office with the doors shut, and the courthouse was put on lockdown. We were escorted out of the courthouse by law enforcement and our investigators armed with rifles, and we drove to the hospital right up the road. Mike McLelland wanted us to be in a safe location and to account for everyone outside of the courthouse. At the hospital, in a meeting room, we were in tears and in shock trying to understand what had happened. I remember Mike coming in to talk with us and he had been crying and his face was red. He was trying to be as strong as he could when he spoke about what had happened and told us that Mark had been killed. We prayed, we cried, and we held each other, some of us in complete shock and everything was at standstill. Mark was gone. Who does that? Why? And why Mark?

Escorted back to the office by law enforcement and our investigators, we tried to reach family members. I remember the phones at the office were continuing to ring nonstop. The news was spreading fast. My husband had left his job and parked as close as he could to the courthouse to pick me up. One of our investigators with an AR walked me to my husband's truck. After that, my husband did not want to leave my side. He would follow me to work each morning, and once we were at the office, we were met by investigators or law enforcement who escorted us inside with ARs in their hands.

In the days following, agents were in and out of our office asking questions, looking through Mark's office, and looking through files. Many worked long hours to figure out what happened—could it have been a defendant Mark was prosecuting, or one from his past? Was this murder random? Though some had suspicions, many

questions ran through our minds: Was it a one-time thing? If not, who is next? Do I need to be concerned—I was just a paralegal.

I kept going in to work. We all did—we wanted to be together, we understood each other, and we wanted to help figure out who did this and why. When I went home, my husband would make sure the house was safe, and we slept with a gun next to the bed, if my husband slept at all.

At one point, Mike McLelland stood at the steps of the sheriff's office pronouncing to all who could hear that he was going to find the son of a bitch and pull them out of whatever hole they crawled in. And we believed he would.

Easter weekend, while enjoying a hotdog cookout, time with family, and laughter, my husband got a phone call. All I remember was Michelle Stambaugh, our office manager and Mike's paralegal, was on the phone, and she said that Mike and Cynthia had been murdered. We were to meet at the Kaufman First Assembly of God Church. The questions overwhelmingly came up again: Were any of us safe, and who was next? Another prosecutor from our office or even the staff? We were told it would probably be best not to go home and stay somewhere for the weekend. We stayed at a hotel in Canton.

The next Monday, we didn't have to go back to work, but we all did. We had a job to do—we were scared, and we wanted to be with our office family. We talked, we cried, and some drowned ourselves with work. We chose to work because it had to go on. We had cases to prep and court that was still happening. The world does not stop when something like this occurs.

We waited for the day when law enforcement would catch the murderer and for his prosecution. We basically knew from the beginning who it was. I don't even want to give him the pleasure of mentioning his name. He is evil and will pay for what he has done. That day will come, and we are waiting.

An office is a family, and we became a stronger family through this time from January to April, and in the days, months, and years following. We talk about Mark, Mike, and Cynthia at times. We are still close with the McLelland children, whom we message or get to visit occasionally. That helps us all. Even this week, with us trying to gather our

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thoughts and memories of the tragic and horrifying events, we have managed to still support and help each other. Knowing that I am not the only one struggling makes me feel just a little better so I'm not losing it. These three will always be remembered. This time will never be forgotten, and we are not sure if it will ever be easy for us.

Leslie Odom
Assistant Criminal District Attorney
in Kaufman County

The difficulty of looking back 10 years in search of good memories in Kaufman is that they are only reached through reminders of trauma, stress, and sadness. And quite frankly, writing this tribute has been troubling because those were horrible, long days that turned into painful and lasting memories.

That being said, I will share a few memories of Mike, Cynthia, and Mark that I cherish.

It was clear to me that Mike and Cynthia both loved joining the office family. Mike was proud of the office, and I would often see him in the back of the courtroom. I recall following a jury trial success, he stopped by my office to visit and offer his "attaboys" to me. He would also handwrite his Christmas cards to us with thoughtful, personal messages; I still set those out each Christmas as my holiday décor. It was equally clear to me that Mike and Cynthia very much loved each other and their family. Cynthia was often in the office to visit or go to lunch with Mike; she would regularly bring treats or handmade quilts to attorneys and staff. She was truly a kind soul.

I didn't know Mark as well as Mike and Cynthia; however, I can still see his tall, thin figure walking the halls, more often than not wearing a camel trench coat. He always had stories for anyone who would listen to him. Mark was so fond of prosecution, but also of flying. To this day, when I see a small prop plane in the sky, I smile with Mark on my mind.

I choose not to write about the days following January 31, 2013 (Mark's death), with one exception: I recall hearing news travel through the office that prosecutor offices from across Texas, as well as the TDCAA administration, reached out to us immediately offering assistance. Those gestures were most appreciated, but the general feeling in the office was that we were moving forward together; nothing was going to stop us.

Shirley Bruner
Victim Assistance Coordinator
in Kaufman County

I was in the office on January 31, 2013, preparing my work for the day when I get a call that a shooting at the courthouse annex in the parking lot had occurred. Mark Hasse, one of our prosecutors, had been murdered. This was not real to me—I just could not believe this was happening. I was worried and scared for our office and courthouse families. I was also thinking who might be next.

After that, people from so many law enforcement agencies were in our office, and the secretaries were helping them go through Mark's cases in the investigation of his murder. The girls worked nonstop. The office had such a sense of loss, as though you were in a dream and were just waiting to wake up. We were just praying that the person responsible would be caught soon.

Mark was a good prosecutor. He was always a very caring person. When it came to the victims, he was there for them. I remember one case that involved a child and she was in the hospital. It was Christmastime. Mark went out and bought presents and he was going to take them to the little girl. He said he was going to spend Christmas with her.

Mark loved chocolate and he came to the candy jar daily. He came around to my office every day to ask how I was and to sit down to discuss a case he may be working on. I miss those chats and I think of him and his family often.

On March 30, 2013, I was watching TV at home when I got a phone call from Michelle Stambaugh, our office manager and Mike McLeland's personal secretary. She told me Mike and Cynthia both had been shot and killed at their home. I was so shocked and stunned by this. It just could not be happening. I thought about their families and what they were going through with this loss. Mike had been so bound and determined to find the person responsible for Mark's murder.

Mike always wanted to make a difference for Kaufman County. He really cared about his office and his staff. He was always so thoughtful and cared about the safety of his people. He was so excited to be a part of a program we put in place for observance of National Crime Victims' Rights Week. He liked to be involved and was always cheerful and ready to listen to you. Mike and Cynthia liked to entertain; Cynthia would bake cookies for our office, which Mike would proudly

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bring in. He would come around and announce that he had cookies for the office.

We still cope with the loss of Mark Hasse and Mike and Cynthia McLelland, and we pray that God continues to give us strength to do our work and keep all of us safe.

Bill Wirskye **First Assistant Criminal District** **Attorney in Collin County**

No case I've handled is more indelibly imprinted on my mind than the murders in Kaufman County in early 2013. Because it often seems to me like the murders happened yesterday, it's difficult to believe that Mark, Mike, and Cynthia have been gone for 10 years. In thinking about their deaths, I'd like to share some personal reflections and give an update on the case.

Mark Hasse and I had much in common: We both started our career in the Dallas County Criminal District Attorney's Office, we had many mutual friends in the North Texas legal community, and we shared a love of prosecution. It was, and is, hard for me to fathom that he was killed for doing what he loved—prosecuting cases. Back in 2013, I doubt many Texas prosecutors thought we could be targeted for seeking justice. I know that thought never seemed real to me. That all changed when Mark was gunned down outside the courthouse.

Mark was 57 years of age when he was murdered—10 years older than I was when I joined the case. Only now that I'm 57 and looking forward to many more years of enjoying life can I fully appreciate just how short his life was cut. In fact, the conversation I had with him the week before his death was centered on his plans for the future. He wanted to spend more time with his family, flying, and working on airplanes. Mark had many more years in front of him and I'm sad to think of all the pleasant experiences he missed. His colleagues, friends, and family members miss him terribly.

Mike and Cynthia McLelland were far from the anonymous homicide victims that I'd come to expect after years of prosecuting murder cases in a big city. I knew both of them, and I knew them to be good people. I watched them struggle to process Mark's murder, and I admired how they tried to comfort and rally the members of the Kaufman County Criminal District Attorney's Office as they persevered to keep prosecuting amidst fear and grieving. Then on the day before Easter Sunday 2013, I watched that office try to

process the unprecedented: losing Mike and Cynthia so shortly after losing Mark.

These days, I tend to think of Mike and Cynthia's grandchildren. I sometimes see their photos on Facebook, and I can sense the terrible toll that the murders have inflicted on the next generation of their family. I hope their grandkids grow up knowing what fine people their grandparents were, even if they never got a chance to meet them.

As for the capital murder case against Eric Williams, who murdered Mark, Mike, and Cynthia, the capital post-conviction process is on track. We are out of state court, having prevailed on both the direct appeal and the state writ. His death sentence is now in federal court on a writ, and we remain optimistic about the ultimate outcome. Kim Williams, his wife and accomplice, pled guilty for her role in the murders and is currently serving a 40-year prison sentence. Rest assured that even after all this time, a dedicated group of Texas prosecutors continues to work this case on a daily basis.

Interest in the case remains high, and I've been informed that "Dateline" will update its original episode on these crimes to mark the passage of 10 years in an episode that will air in the next few months. There have been numerous other TV shows, podcasts, and books written about the case. It seems almost monthly I get a new media inquiry about it.

As I look back at the murders and the death penalty trial, it's hard to take away any positives. But I do have warm feelings for the many dedicated professionals from diverse agencies and backgrounds who came to together in early 2013 to successfully solve and prosecute these murders. It was police and prosecutors at their finest, motivated by the need to stop the killings. These professionals remain some of my closest colleagues and friends. While many have moved on professionally, we remain bound together by our work 10 years ago in Kaufman County.

Processing unbelievable loss while living in fear was a challenge for Kaufman County 10 years ago. The Kaufman community and the DA's office have survived and continue to thrive. But I know everyone who lived through that time still carries scars and a profound sense of loss.

No case I've handled is more indelibly imprinted on my mind than the murders in Kaufman County in early 2013. Because it often seems to me like the murders happened yesterday, it's difficult to believe that Mark, Mike, and Cynthia have been gone for 10 years.

Michelle Stambaugh Office Manager in Kaufman County

Oh Lord, Mark Hasse was a walking story! Every single day you were sure to hear a new story (or a repeated one, as often happened) about one of his high-profile trials, flying planes, or the plane crash in 1995 that almost took his life. Mark was a very animated storyteller, and as much as we loved (and endured) his stories, we all knew that once he started a story, you were in it for a minimum of 45 minutes! And I'm certain there is not a person who loved the annual Ugly Christmas Sweater contest as much as Mark. We all thought his everyday sweaters were lacking in style, but he loved them and wore them proudly. In fact, because of his sweaters, we continue to honor him with ugly sweater days.

Mark also loved prosecuting. He loved putting away the bad guys, and he loved recounting his prosecution wins. He was a very eccentric man. Definitely a little on the odd, nerdy side—but so stinkin' funny and you could not help but love him. He always had a smile and story for everyone, he loved taking care of his mom, and he loved bidding on things on Ebay. He would submit bids on vehicles and other items and track the bids the entire day, anxiously waiting to see how the auction turned out.

Here's one funny, quirky memory: Mark loved Country Time Lemonade. He would keep 12 packs of the cans in the office fridge. He always knew how many he had in there. When lemonades would come up missing, he would check people's trash cans to try to solve the mystery of who was absconding with his drinks. He would have given the lemonade to anyone who wanted it, but the fact that they were taking it without asking made him crazy. Still makes me laugh.

The election that Mike McLelland won, putting him into office, was actually a really ugly campaign, and we had really loved working for our prior DA. As a result of the campaign and circulating rumors, we were all anxious about him coming into office. And, quite honestly, we worried about this experience and how he would lead. But Mike and Cynthia really ended up winning our hearts.

Mark loved putting away the bad guys, and he loved recounting his prosecution wins. He was a very eccentric man. Definitely a little on the odd, nerdy side—but so stinkin' funny and you could not help but love him.

After the election, he reached out to me to help with the transition between administrations. He would send messages to the office through me and began having meetings with staff to put their minds at ease.

He could definitely be an intimidating person. But after he took office and everyone got to know him, he was really a big ol' teddy bear. He and Cynthia really cared about the office and the staff. They would have Christmas parties at their home and invite the whole staff, Cynthia would bring weekly treats to the office, they loved everyone's children, and Mike actually gave both of my daughters their first real jobs by allowing them to do part-time work in the office during their summer breaks in high school and college. Mike always wanted to know what was going on with everyone's children and what activities they were involved in, and he always had a story to tell the kids to offer advice for whatever they were involved in (and it was most likely going to have some reference to something he experienced in the military).

Here's one funny story: Mike decided at one point that he was going to get into shape so he joined the local gym. He would stop by and exercise in the morning on his way into the office. During one of his morning exercises, a bar that he was working from broke (I'm still not clear on the specifics) and he face-planted on the floor. A day or two later the bruising had set in, and he walked in one morning with two black eyes, bruised cheeks, and a bruised forehead. Once I determined that he was OK—and after calling Cynthia to confirm (because she had been a nurse)—I have never laughed so hard. I still laugh today when I think about this big man walking into the office with his face bruised like that—and not because of some grand story, but because the bar broke and he fell!

When Mike came into the office, he primarily wanted to be an administrator and leave the prosecuting to the prosecutors (those were his words). But when big cases would come in, he certainly went into the courtroom. He was absolutely not the usual prosecutor, nor did he have a great deal of experience prosecuting, but he was a good leader and definitely started programs and practices that made the office a better place for the staff. It had been really hard over the years to get raises approved for the support staff, so Mike decided that he would pay for people to take a paralegal certificate course. He used that additional training and certification to request in-

creases for them. The girls were so grateful! This is still a practice that has continued to this day.

A sad thought I often have is that a position that Mike worked so hard to win, having run in two elections, is the very thing that took his life.

The morning Mark was shot, I was at my desk on the phone with my dentist's office trying to schedule appointments. We heard that shots had been fired outside the courthouse and the bailiffs were checking it out. Moments later, my colleague Ashley Cook came to my desk and said, "It was Mark! Mark was shot!" Within moments everyone in our office had gathered and the courthouse was cleared.

There was lots of confusion. Was Mark alive? Was he not? We heard there was also a car chase? So many bits and pieces of information were trickling in, and we were not sure what was true and what was not.

We were finally told that Mark had been taken to the hospital in Kaufman and we were all to go there; they had a room ready for us. Mike had the sheriff's department escort us over to make sure we all safe and accounted for. We all sat there numb, in shock and disbelief, waiting for word as to Mark's condition. Finally, Mike came into the room and he had clearly been crying. The first words he said were, "Those MFers (abbreviated for politeness) killed Mark." Tears and more tears. Why in the world? And who does this?

Everyone's phone was beginning to ring with loved ones wanting to make sure that people who worked at the courthouse were OK. I remember that I had not been able to answer my cell phone for a while in the midst of all of the chaos. When I finally checked my phone, there was a voicemail from my daughter who was in lockdown at her school. She was crying and saying, "Mom, please answer your phone. I'm scared." Not only had this horrible person created fear within our DA family, but he was affecting our children and family too.

The most heartbreaking of all the calls were the repeated phone calls we were getting from Mark's mom. She had heard that there had been a shooting at the courthouse, but no one was releasing the name of who had been shot. She had been trying to reach Mark on his cell phone and was getting no answer. She kept calling our receptionist's phone asking about Mark. Officers and a Department of Public Safety victim advocate were on their way to her house to break the news to her. We were instructed to tell her that we were accounting for everyone and would forward her

message. Our hearts were breaking for her and we could not say anything.

In the hours immediately following Mark's death, there was no work at the office. In fact, the following week we all showed up, but work was probably at the bare minimum of what had to be done. However, there is nowhere else we would have been. We all wanted to be in the office. Grief counselors were brought in—and we appreciated all that people wanted to do for us—but the reality was that we just wanted to be with each other. As the days went on there was a determination to keep going. And as more time passed, I really think everyone began to settle down and have a small sense of feeling comfortable again and breathing. And then the unthinkable happened: Mike and Cynthia were murdered in their own home.

My husband and I were at Sonic that evening when our pastor, Jerry Groom, called and asked me if I had talked to Mike that day. It was not uncommon for me and Mike to talk after hours and on weekends about the office. However, this was Easter weekend and not a lot was going on at the office so we had actually not spoken at all that day. I asked why and he said that he had heard that Mike and Cynthia had been shot in their home. What in the world?!

I immediately hung up and called David Byrnes, our sheriff at the time. He answered the phone, and I knew immediately by his somber tone that something was not OK. I told him about the phone call I had just received, and he told me that he was at Mike and Cynthia's home. He confirmed they had both been shot and were deceased, and I will never forget his next words: "Michelle, I have never seen anything like this."

Between the tears, not being able to breathe, and being sick to my stomach, all I could think was, "What do I do? What do I do? What do I do? I'm the office manager and need to make sure everyone is OK and that everyone knows." I began calling each prosecutor and staff member to tell them there was an office emergency and asking them to meet me at my church, which was at the center of town. After everyone arrived, I shared with them what had happened. I cannot begin to tell you the amount of sadness, anger, and fear in that room that evening.

Between the tears, not being able to breathe, and being sick to my stomach, all I could think was, "What do I do? What do I do? What do I do? I'm the office manager and need to make sure everyone is OK and that everyone knows."

There were so many questions and we had no answers. We were all fearful, as it was now clear that whoever had killed Mark and now Mike and Cynthia had something against our office. And this person was not afraid, as he went right into Mike and Cynthia's home. We were scared!

There were so many questions and we had no answers. We were all fearful, as it was now clear that whoever had killed Mark and now Mike and Cynthia had something against our office. And this person was not afraid, as he went right into Mike and Cynthia's home. We were scared!

A Forney police officer later arrived at the church and began asking us questions and giving us more information. He told us they had no idea who the perpetrator was or if they had more targets, but to be safe, they would encourage each of us to not stay in our own homes that evening. *What!?* I think that set off a whole new level of reality and fear for us. They did not want us to stay in our own homes? Was someone really aiming to pick off people from our office? I had two young daughters at home and we were scared.

Everyone began making other arrangements for the evening. For us, we had no family in the area, so we took our girls and went to a local hotel for the night. I remember as we checked in and it was raining, a man got on the elevator with us. He was soaking wet, carrying his muddy boots in his hand, and looking a little disheveled. Could this be the person? I held my girls a little closer, and my husband put his hand on the gun he was carrying in his pocket. From that night on through the next couple of months, every noise outside of our house scared us. Every person who seemed different was scary to us. Dogs barking outside our window scared us. We were all scared.

And while law enforcement kept saying they did not know who it was, we all kept saying it was Eric Williams.

That Monday, there were lots of tears and not a lot of work happening. Some people just sat together—no words were needed. Others sat and talked through their take of the events from the weekend; shared memories of Mark, Mike, and Cynthia; shared their questions—like why had Mike sent his security detail home that weekend? He'd had security at his house since Mark's murder, as did most of our prosecutors. But this was Easter weekend and Mike was Mike—he probably sent them home to be with their own families. And then, how did Eric know that no security was going to be there? And why did Cynthia feel so comfortable to open her door at 6 o'clock in the morning? So many questions.

When Eric and Kim Williams were finally arrested, the investigation and prosecution of Mark, Mike, and Cynthia's murders absolutely strengthened my belief in the justice system. And I think I can speak for the majority of the people who worked with us at the time of the murders that if nothing else, it created a determination and resolve that those murders would not be in vain and that we will keep showing up every day to bring justice for crime victims in Kaufman County.

Their murders definitely had different effects on each staff person at the time. Some had to have counseling, some still struggle with PTSD from the murders, and others are like me—we tuck it neatly away and keep going—until a television show or interview comes across the TV, someone asks about the murders, or one of Mike's children comes to the office to visit (which they usually do once a year). Then the memories return and so do all the fears and sadness. It's crazy how you can so vividly remember specific moments, thoughts, feelings, smells, conversations, etc. from such a traumatic moment and how all the original feelings can briefly return.

One of the biggest takeaways for me, which might be common sense, is to make sure people know how much they are appreciated and how you feel about them every day. You absolutely never know when your last day may be. Mark did not know when he dressed for work that day and got out of his truck that it would be his last day. Mike and Cynthia had no idea when they went to bed Saturday night that it would be their last evening together. Every day is a gift—we need to remember that and live that way. ❖

What a Domestic Violence High Risk Team can do in your jurisdiction

In 2019, Maria (not her real name), was beaten and strangled by her boyfriend, Robert. The day after the assault, Maria received services from an advocate from Texoma Alliance to Stop Abuse, our local family violence nonprofit.

Maria told the advocate that she was scared of Robert and that she wanted to get away from him, but she didn't know how. Maria agreed to let her case be a part of our recently formed Domestic Violence High Risk Team (DVHRT), which meant that members of the DVHRT would review her case with an eye toward ensuring her safety throughout the pendency of the criminal case and beyond.

Two days later, Robert bonded out of jail. When the advocate attempted to contact Maria, Robert answered the phone and told her not to call back. The advocate was deeply concerned for Maria's safety. The lethality screen, which police conducted at the scene of the original assault, indicated that this was a high-risk case, as Robert had previously threatened Maria with a gun. The day after Robert bonded out, the advocate received a text from Maria simply stating, "I want to get out." Police went by Robert's house to check on her, but no one would come to the door and she would not answer the phone. The advocate brought the case to the attention of the agencies in our DVHRT. Maria was at risk. How could we get her out of that house and to a safe place?

The situation described above is just what our Domestic Violence High Risk Team was designed to handle. Through our DVHRT, multiple agencies worked together quickly and efficiently to get Maria and her children out of harm's way and to a shelter in another town. (Stay tuned to learn how we did this in such a difficult situation.) In this article, you will also learn how you can successfully set up a DVHRT in your jurisdiction to provide an additional layer of protection for high-risk domestic violence victims in your community.



By Staley Heatly
46th Judicial District Attorney

Background

Domestic violence is a killer. In 2021, more than 200 Texans were murdered at the hands of a current or past intimate partner. In 2020, the number was 228. The vast majority of these victims were women.

Intimate partner violence (IPV) affects hundreds of thousands of Texans every year. Studies show that about 41 percent of women and 26 percent of men have experienced sexual violence, physical violence, and/or stalking by an intimate partner during their lifetime.¹ In 2021, more than 50,000 family violence cases were filed by prosecutors in our state. About 30 percent of these were felonies.² The unfortunate reality is that some of those defendants may ultimately murder an intimate partner in the future.

As prosecutors, what can we do to help prevent these future tragedies from occurring? Acting alone, our options are limited to solely what we can do inside a courtroom. To truly tackle the problem of domestic violence in our communities, however, we must step outside of our traditional prosecutorial role and work to create a strong community-coordinated response to domestic violence.

A coordinated response involves collaboration among different sectors and agencies, such as law enforcement, social services, healthcare providers, and community-based nonprofits. One of the most effective ways to bring these people together is through the creation of a Domestic Violence High Risk Team (DVHRT).

What is a DVHRT?

A DVHRT is a multidisciplinary group of professionals who work together to assess and manage the risk of harm for people experiencing domestic violence. The DVHRT meets regularly to review cases and to execute individual safety plans with the goals of protecting victims from further violence and holding offenders accountable.

Starting your DVHRT

- 1) Identify stakeholders specific to your community and bring them to the table.
- 2) Develop protocols and procedures for assessing and responding to high-risk cases, including risk assessment tools and safety planning strategies.
- 3) Establish regular communication and coordination among team members to ensure a seamless and effective response to high-risk IPV cases.

In 2018, my office spearheaded the formation of a DVHRT to operate in the three counties in my judicial district. Our DVHRT was initially funded by a grant from the Texas Council on Family Violence.³ While our grant funding ran out years ago, our DVHRT has remained active and requires no additional financial support from the involved entities. There is no one better positioned to lead the formation of a DVHRT than a prosecutor's office. As prosecutors, we are in a unique leadership position, and we can bring various groups to the table to tackle tough problems.

I started my campaign for a DVHRT by paying a visit to all three of my county sheriffs and telling them about the benefits of putting a team together. I did the same with the head of probation and the various chiefs of police in my district. Initially, I received the usual pushback that

comes when proposing something different from "the way it's always been done." There were concerns about resources, personnel, and capacity. It took a little convincing, but law enforcement agencies bought into the plan with an agreement that we would revisit the arrangement from time to time. The idea of a DVHRT was quickly embraced by my local community-based domestic violence (DV) program and the nearest family violence shelter, who were eager to provide critical services to high-risk victims in need. Now in its sixth year, our DVHRT continues to be strong.

Once the stakeholders were on board, we set an initial meeting to discuss the team's goals and objectives, as well as to begin outlining the duties and responsibilities of the team members. This eventually took the form of a Memorandum of Understanding (MOU) that was signed by all the DVHRT members and is reviewed and renewed every year.⁴ The MOU outlines the purpose of the DVHRT, describes its operation, includes the roles and responsibilities of all team members, and sets forth the lethality assessment tool that will be used by all agencies to determine which cases meet the high-risk criteria.

Determining risk

DVHRTs are designed to make the most of scarce resources by targeting the highest-risk cases of intimate partner violence. To do so, law enforcement must utilize a risk assessment tool during its initial investigation. There are several different validated risk assessments available.⁵ Our DVHRT uses the Domestic Violence Lethality Screen for First Responders (DVLS-FR). This one-page document has only 11 questions, so it does not take much time for first responders to gather the necessary information from the victim.⁶

An affirmative answer to any one of the first three questions on the DVLS-FR is a significant indicator of high risk for lethality. If the victim answers no to the first three questions, she may still be deemed high risk if she answers affirmatively on four of the next eight questions. Finally, if a victim does not answer enough questions to place her in the high-risk category, an officer may still determine that the case should be flagged as high risk if the officer believes the victim is in a potentially lethal situation. There is a box for the officer to write exactly what makes him concerned for the safety of the victim.

Pushing services

Once a victim is deemed high risk, the officer will attempt, at an appropriate time, to put the victim on the phone with an advocate from our local domestic violence program. The advocate will inform the victim of the wide array of available services and discuss safety planning strategies. These strategies could include transportation to a shelter, staying the night in a hotel, going to a relative's house, requesting a magistrate's order of emergency protection, or any number of options. The advocate's role is to work with the victim to problem-solve and safety plan.

If the victim is unwilling to talk with an advocate from the scene, the officer will provide what appears to be a hair stylist's business card (but really includes the phone number of our local domestic violence program) and encourage her to call later. The disguised card allows the victim to keep the phone number without tipping off the offender that she is considering reaching out for help. A copy of this business card is below in case you want to create something similar in your own jurisdiction.



Our goal is to get an advocate in touch with the victim as soon after the incident as possible. That could be an in-person meeting at the emergency room or police station or a phone conversation from the scene. If the victim is not connected to services at the time of the incident, the investigating law enforcement agency will send my office the victim's contact information, along with the DVLS-FR, by the next day. This doesn't always happen, but we usually do get the victim's name and contact information soon after the incident. If the victim has not talked to an advocate, our office will reach out to let her know about the available services.

Why do we work so hard to make services as easily accessible as possible for these victims? Because studies show that victims of domestic violence who receive early intervention services are more likely to be satisfied with the services provided, less likely to experience physical vio-

lence, and more likely to report feeling safe during the pendency of the case. It is how we can prevent homicides.

Contrast our strategy of pushing services to the usual response in a domestic violence case. In the typical case, an officer will arrive at the scene, take a report, provide the victim with information about the local DV program, then leave the scene after the investigation is complete. At that point, the victim is solely responsible for connecting herself to services. At a time when the victim has just been physically abused and is likely feeling scared and confused, we put the burden on her to figure out what she needs to do. That is a terrible way to keep victims safe.

DVHRT operations

If a victim agrees to accept services and have her case monitored by the DVHRT, then that case will be considered and discussed by team members. My jurisdiction is small enough that every case referred to the DVHRT is accepted. However, in larger jurisdictions, DVHRT members may vote on which cases to accept in recognition of the limited resources available.

Our DVHRT meets on the last Friday of every month at the local police department. As an entitlement to the team members, we provide lunch. Our meetings usually include county sheriffs, representatives from local police departments, a DA investigator, employees of the probation department, county attorneys, a representative from the closest domestic violence shelter (50 miles away), victim advocates from our local DV program, a counselor, and the DVHRT coordinator. Prior to the meeting, the DVHRT coordinator will send a list of the cases to be discussed so that all team members can be prepared with updates.

At the meetings, the team will consider the facts of the underlying cases, the lethality screens, the defendants' known criminal history, and the victims' needs and concerns. The team will work collaboratively to implement a safety plan for each victim, with each team member discussing his or her role. The meetings offer an excellent opportunity for team members to provide updates on exactly what is going on in each case. This could be discussing potential violations of bond conditions, or the fact that a final protective order is scheduled and the victim would like an

My jurisdiction is small enough that every case referred to the DVHRT is accepted. However, in larger jurisdictions, DVHRT members may vote on which cases to accept in recognition of the limited resources available.

escort from the parking lot to the courtroom. The specifics will vary from case to case, but the solutions will always be based on the specific needs of the victim. While the number of cases on the DVHRT can vary widely, we will usually review somewhere between 20 and 40 cases in a month. Some of these will have been on the list for months while others will be more recent.

The DVHRT meetings also provide an opportunity for all stakeholders to come together with an eye toward improving response. We devote a short portion of each DVHRT meeting to training on issues such as trauma-informed response, signs and symptoms of strangulation, stalking, and determining the predominant aggressor.⁷ As team members, we hold each other accountable and work to improve our response from scene investigation through prosecution.

The coordinator plays a key role on the DVHRT. This position can be filled by a victim assistant from a prosecutor's office or law enforcement agency, or by an advocate from a local DV agency. The coordinator will keep the list of all DVHRT cases and run the meetings. She also has the contact information of all DVHRT members so that when an incident occurs in a high-risk case, she doesn't have to wait for a meeting to start problem-solving. The coordinator has immediate access to the appropriate personnel for all the DVHRT members. Her calls receive top priority.

Informed investigation and prosecution

During the initial formation of our DVHRT, we all agreed that it would be beneficial to have the various law enforcement agencies in the three counties use the same protocols and paperwork when investigating IPV cases. Each law enforcement agency has a family violence packet composed of the Domestic Violence Lethality Screen for First Responders (DVLS-FR), a documentation chart for strangulation,⁸ the Notice to Adult Victims of Family Violence required by the Code of Criminal Procedure, an application for a Magistrate's Order of Emergency Protection, the "hair stylist's card" referenced previously, and a simple checklist to make sure that officers have followed the protocol in each case.

These family violence packets ensure uniformity in law enforcement response across the three counties. The lethality checklist helps officers gather the kind of information that puts the domestic violence incident into the appropriate context. While law enforcement agencies are responding to a discrete incident, we know that the incident is likely part of a pattern of abuse. Going through the form requires officers to ask questions about past abuse to gain a better, fuller understanding of the dynamics of the relationship between the suspect and the victim. An officer may consider the information he gathers on the form when making an arrest decision or when deciding whether he should request a magistrate's order of emergency protection on behalf of the victim.

The information gathered in the DVLS-FR can also inform important decisions we make as prosecutors related to bond, bond conditions, and ultimately, the appropriate charge and resolution of a given case. For example, a prosecutor will want to give extra time and attention to even a first-offense family violence misdemeanor assault case if the victim indicates in the DVLS-FR that the defendant has previously threatened to kill her with a deadly weapon. That is a huge red flag. Contrast that with a similar first offense assault where the victim answers "no" to all the questions on the lethality assessment. Between those two defendants, one case should obviously take priority over the other. That same information is also useful for a prosecutor in deciding whether to oppose the lifting of a magistrate's order of emergency protection or a no-contact bond condition.

Back to Maria

The way that Maria and her children were removed to safety is something that could come about only through the kind of close collaboration that occurs in a DVHRT. The plan to remove her from Robert's home was actually hatched by Clay Conley, our director of probation. Maria was on misdemeanor probation that was set to expire around the time of Robert's assault. Maria had not completed all her community service, which would not usually be a sufficient ground for revocation. However, working with the county attorney, Clay obtained a motion to revoke warrant for Maria, along with a PR bond from the local magistrate. He went to Robert's house with police and was able to get him to open the door by explaining that Maria needed to be taken into custody.

While law enforcement agencies are responding to a discrete incident, we know that the incident is likely part of a pattern of abuse. Going through the form requires officers to ask questions about past abuse to gain a better, fuller understanding of the dynamics of the relationship between the suspect and the victim.

All-star donors

The Foundation leadership continues to be humbled by our supporters,

people who care about our profession and want to see prosecutor training grow. We are especially awed by a few folks who prioritize prosecution and the Foundation on a regular basis. I think that before he passed, legendary retired Harris County Assistant District Attorney **Lyn McClellan** had donated to the Foundation “in honor of” about two-thirds of the prosecutors in the state!

I want to add **Beth Toben**, Assistant County & District Attorney in Limestone County, to the all-star list! I so enjoy coming into my office and seeing a little envelope from Beth on my desk. It is gratifying to know we are supported by such great people who keep our profession high on their list of priorities.

Scholarships for the Annual Conference

Not sure if you can afford the registration for TDCAA’s Annual Criminal and Civil Law Conference? Good news! The Mike Hinton Memorial Scholarship Fund is there to help. All you have to do is download the application on our website, complete it, and email it to me at Robert .Kepple@tdcaa.com. See you in Round Rock in September! ✨



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

Robert opened the door and appeared to enjoy seeing Maria arrested. The police took her directly to the jail where she was quickly processed and released to a victim advocate, who drove Maria to a local childcare facility to pick up her two children. From there, at Maria’s request, they were driven to safety at a family violence shelter 50 miles away.

This is the kind of outside-the-box solution that results when barriers to communication and cooperation between agencies are broken down.

As leaders in the criminal justice system, prosecutors are well-positioned to bring people together to tackle big problems. One could argue there is no bigger problem than the epidemic of domestic violence in our country. Domestic Violence High Risk Teams are an easily replicable, proven model, that could help us save countless lives across our state. ✨

Endnotes

¹ www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html.

² www.txcourts.gov/media/1454127/fy-21-annual-statistical-report-final.pdf.

³ These grants will be available starting in September of this year. Contact the policy team at the Texas Council on Family Violence at policy@tcfv.org for more information.

⁴ Email me at sheatly@co.wilbarger.tx.us if you would like a copy of our MOU or any other document.

⁵ The Danger Assessment for Law Enforcement (DA-LE) and Ontario Domestic Assault Risk Assessment (ODARA) are both popular but longer than the Domestic Violence Lethality Screen for First Responders.

⁶ A PDF of this assessment is available at www.tdcaa.com; search for “lethality screen for first responders.” It’s also available at <https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/domestic-violence-screening.pdf>.

⁷ There are some wonderful short, online trainings available on a variety of relevant topics on the website of the Institute for Community Coordinated Response. <https://instituteccr.org/on-demand-trainings>.

⁸ There are numerous quality documentation charts available online.

Answers to common questions about parole

It's been a few years since I last submitted an article for this very important audience of prosecutors and prosecutor office staff, so I wanted to come back and discuss some topics that I hope will be very helpful to you in your role.

I'll begin by providing a quick background on my "why."

My work history solely consists of post-conviction victim services—it's all I know! I started in 2007 with the Victim Services Division (VSD) of the Texas Department of Criminal Justice (TDCJ), which is a separate agency from the Board of Pardons and Paroles (BPP). For reference, VSD sends notifications to victims of crime, concerned citizens, and criminal justice professionals who register to receive updates via text, email, and/or letter, regarding parole review and decisions made by the Board.

Thanks to the Board's Chairman, David Gutiérrez, I was blessed with the opportunity to start the Board's Victim Liaison Program in 2017, which is funded by a VOCA (Victims of Crime Act) grant with the support of the Governor's Office. We focus specifically on assisting victims throughout the parole review process and, upon request, provide support and accompaniment to those who choose to speak with the Board. The VSD and BPP work together daily to ensure consistent and reliable services are provided to survivors after an offender is sentenced to TDCJ.

I realized early on that there can often be quite a gap between pre- and post-conviction, and I would love to help close that gap, with the goal of improving a victim's experience with the entire criminal justice system. I was asked to share the most frequently asked questions, from both victims and prosecutors, and I hope you find the following information to be beneficial.

What is parole?

First off, parole is the discretionary release of an offender by a Board of Pardons and Paroles decision, to serve the remainder of a sentence in the



By Libby Hamilton

Director, Victim Liaison Program, Texas Board of Pardons & Paroles

community under supervision. Parole is a privilege, not a right. While the Board is responsible for making release decisions and imposing conditions, the TDCJ Parole Division maintains supervision of the offender.

Questions about parole from crime victims

"The offender was sentenced to XX years. Why is s/he eligible for parole?"

This question usually comes in the form of a very frantic and upset phone call. We have to explain that almost all offenders have a parole eligibility date (PED), which is calculated by TDCJ Classification & Records, based on *when* the crime was committed and *what* they were convicted of. Only offenders who were given the death penalty or life without parole do not have a PED. Additionally, most offenders do not serve their entire sentence in custody; the majority will be required to complete an in-prison rehabilitative program, then be released to parole supervision prior to the discharge date.

"How do I protest the offender's release? What do I say?"

Protest letters can be submitted to VSD via mail, email, or fax. The contact information can be found at www.tdcj.texas.gov/divisions/vs/index.html. Additionally, state law allows for the victim, guardian of the victim, or close relative of a deceased victim to appear before the lead voter. The lead voter is the first voter on the panel, who conducts all interviews for a particular case. This "Board interview" can be conducted by phone, by

Zoom, or in person at the designated Board Office. Topics you might want to discuss include any fears or concerns regarding the offender's release, things you've experienced as a result of the crime, and anything else you want the Board to consider.

“What will the parole hearing be like?”

We do not hold formal parole “hearings” like we often see on TV. One Board member or parole commissioner is designated as the lead voter, and the victim's interview will take place with that individual only. The setting will depend on which type of interview you select (phone, Zoom, or in person), but all are intended to be informal, confidential opportunities for a crime victim to share thoughts with the lead voter. A meeting at the Board office will take place in a private conference room, and the offender remains incarcerated.

Accompaniment can be requested for support and assistance throughout the parole review process by contacting the Board's Victim Liaison Program (contact information provided at the end of this article).

“If I want to speak with the lead voter in person, where will the meeting take place?”

The facility where the offender is housed determines which of the seven Board offices will vote on the case. There are offices in Amarillo, Angleton, Austin, Gatesville, Huntsville, Palestine, and San Antonio.

“What does the Board look at when making parole decisions?”

The Board will consider a variety of factors, including but not limited to:

- severity of the offense,
- support and protest letters,
- length of the sentence vs. the amount of time served,
- the offender's criminal history,
- how the offender behaved during previous periods of supervision (if applicable),
- institutional adjustment and behavior, and
- the offender's age.

Voters will provide reasons for their approval or denial decisions. Note that protest letters are confidential and victim input is never provided as a denial reason. You can review the possible approval and denial reasons at www.tdcj.texas.gov/bpp/what_is_parole/reasons.htm.

Questions from prosecutors and VACs

The Board aims to be transparent with stakeholders, educate others about what we do, and maintain open communication with other agencies around the State. Chairman Gutiérrez, Chief of Staff Tim McDonnell, and I recently met with several district attorney's offices to discuss the Board's mission, parole review process, and services provided by Victim Liaison Program. These presentations have also allowed for valuable Q&A sessions. Here are some actual questions from prosecutors and victim assistance coordinators (VACs), plus our answers.

“How does parole really work? We want to be able to explain this to victims and better understand it ourselves. We'd be interested in knowing what portion of a sentence a defendant can really be expected to serve.”

Most offenders become parole-eligible once their calendar time (including time served in county jail) plus their good time and work time equal *one-fourth* of their sentence. The exception is when there is an affirmative finding of a deadly weapon, which requires the offender to serve half of the sentence before becoming eligible for parole. Laws pertaining to time calculation (good time and work time) are very complicated, and questions regarding inmate time management can be addressed by calling the TDCJ Classification and Records Office at 936/467-6387. The Board reviews only those offenders who are deemed eligible for parole by TDCJ.

Another benefit of a deadly weapon finding is that it prevents the offender from earning good time credit; therefore, only “flat time” (day-for-day) counts towards parole eligibility. The full list of 3g or “flat time only” offenses is provided in Code of Criminal Procedure Art. 42A.054.

There is an extensive Parole Eligibility Chart in the Appendix of the *Parole In Texas* publication, which can be viewed at www.tdcj.texas.gov/bpp/publications/PIT_English.pdf.

“What can we do to keep someone incarcerated?”

Submit a *thorough* protest letter with the specific reasons for your concerns. Not only does this information assist the parole panels in their release decisions, but it also helps them determine which

Submit a thorough protest letter with the specific reasons for your concerns. Not only does this information assist the parole panels in their release decisions, but it also helps them determine which conditions to impose if the offender is released to supervision.

conditions to impose if the offender is released to supervision. Generic or form letters such as “I object to parole” are less impactful. The Board Members and Parole Commissioners truly value your detailed input on why you are concerned about release for a particular offender.

“Anything you can tell us about the effect of pleas would be helpful. What can we do in the plea process to impact the duration of incarceration?”

If there are multiple charges, stack them when possible. This guarantees the victim of *each* offense the right to speak with the Board and request conditions, in addition to obviously increasing the amount of time the offender will have to serve.

Utilize the deadly weapon finding whenever possible, for reasons provided above.

Be aware that certain parole conditions, such as GPS monitoring and Super Intensive Supervision Program (SISP) can be imposed only on certain offenses.

Send the Board any background and reasons for the plea you’d want members to consider.

Be aware that most offenses require the offender to be reviewed by the Board *annually*. The more serious convictions allow the Board to “set off” or deny parole for longer periods of time (up to 10 years). For examples or further information, please contact me (my information is below).

“What can we do to help victims?”

First, make sure they register with VSD. If the victim is not able to complete the Victim Impact Statement, please provide VSD’s hotline number (800/848-4284) to ensure registration is completed.

Next, to avoid re-victimization, please be straightforward with survivors regarding when the offender will become eligible for parole. If you’re not sure when this will happen, please reach out to VSD!

Finally, please ensure victims are aware of the post-conviction services available to them. We want to provide support whenever possible in light of how difficult the parole review process can be.

“What happens when an offender is paroled and then violates the conditions of release?”

The parole revocation process is *very* different from regular parole review (when an offender is still incarcerated). The TDCJ Parole Division is responsible for the supervision of all parolees and for the investigation of alleged violations. Authorities there have the option to issue a warrant or summons or utilize sanctions in lieu of a warrant.

Parolees are guaranteed the right to due process, and if a revocation hearing is conducted, the Board has several options. These include continuing the offender’s parole with the same or modified conditions, transfer to an Intermediate Sanction Facility, transfer to a Substance Abuse Felony Punishment Facility, revocation of parole, or allowing the offender to discharge his or her current sentence.

For a comprehensive list of victims’ frequently asked questions, along with a 10-minute informational video, visit www.tdcj.texas.gov/bpp/VictimLiaison/VictimLiaison.html. If you are interested in an in-person training for your staff, please contact me at Libby.Hamilton@tdcj.texas.gov or 512/406-5833. I greatly appreciate you taking the time to read this article. ✨

To avoid re-victimization, please be straightforward with survivors regarding when the offender will become eligible for parole.



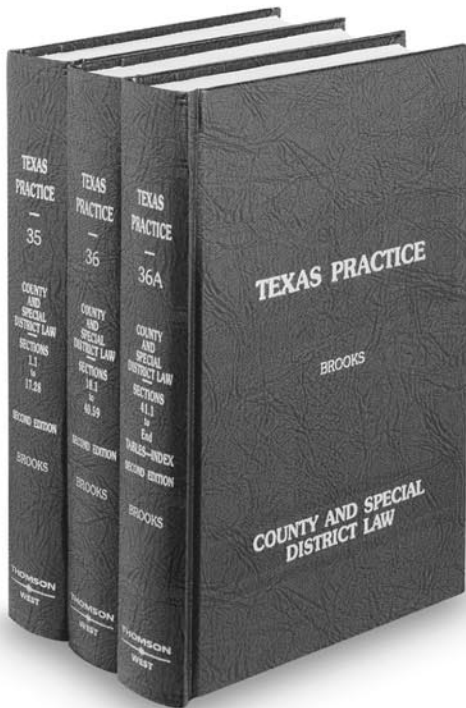
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By *David B. Brooks*

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David B. Brooks is a native Texan, born 1952 in San Benito. Educated in the Houston public schools, he later studied at the Johns Hopkins University, the University of Houston, and the University of Texas. He received his law degree from the UT School of Law in 1978. He has served in various legal capacities for Texas state agencies, the legislature, Texas counties, and other local governments. His area of consultation is devoted to public officials, governmental entities, and public law in Texas. He resides in Austin.



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Teaching kids that ‘One Pill Kills’

In cooperation with the Drug Enforcement Administration (DEA) and United States Attorney’s Office,

the Grayson County Criminal District Attorney’s Office put together a presentation entitled “One Pill Can Kill,” as part of the DEA’s campaign to combat the fatal effects of fentanyl overdoses.

We first rolled it out to the Grayson County Bar Association. Special Agent in Charge of the DEA’s Dallas Division, Eduardo Chavez, and Acting United States Attorney for the Eastern District of Texas, Britt Featherston, were gracious enough to provide their time and talents to the initial presentation. We had a packed house and educated a lot of attorneys and their staffs. Part of the presentation included videos, statistics, and photographs. We had interactive conversations with the crowd after each slide.

Our office decided to make a few changes to the program and amended the name to “One Pill Kills,” or OPK for short. We then began marketing the OPK program to our local school districts. The Grayson County Sheriff’s Office graciously agreed to send a narcotics investigator to each presentation, and Assistant United States Attorney Maureen Smith joined us too. We made the presentation with each representative and discussed their roles in combating fentanyl deaths. (A photo from one presentation is below right.)

We shared some alarming statistics with the students. The DEA headquarters in Washington D.C. has a “Forever” wall. On it are posted the pictures of youth and young adults who have died from fentanyl overdoses, as well as their ages at the time of death. According to Chavez, the DEA is running out of room on the wall and repeats the mantra, “Fentanyl is the new F-word”: It is fatal, and it is killing our friends and family. Here in Texas, the Department of State Health Services reports that unintentional fentanyl-related deaths have skyrocketed from 2019 to 2022: In 2019 there were just under 400 such deaths statewide, but by 2022, that number had reached over 1,600. Perhaps one of the most alarming statistics from our presentation is from the non-profit Families Against Fentanyl (FAF). A January 2023 study from FAF indicates that fentanyl deaths among children are rising faster than any other age group, having more than tripled in just two years. This study is consistent



By J. Brett Smith

Criminal District Attorney in Grayson County

with the dramatic increase in Texas fentanyl deaths over the last two years.

To date, we have presented the program to four school districts and several thousand students. We also made a special presentation to the Grayson County Department of Juvenile Services, both the post-adjudication facility and detention facility, reaching nearly 70 at-risk youths. We have been amazed at the interaction of the students and their awareness on the issue. In the words of one school superintendent, “If you don’t think kids are taking pills, you don’t know kids. Pills are odorless, easy to conceal, easy to consume, and hard to detect.” We are also aware that Mexican drug trafficking organizations are flooding our county with M30 rainbow fentanyl, which, frankly, looks like candy.

Our office has shared the PowerPoint presentation on TDCAA’s website (search for “One Pill Kills”). We are also more than willing to walk you through our method of presentation and handling the question-and-answer session that follows if you’d like. If we save the life of one child, our time will have been well-spent. ❁



U.S. Center for SafeSport is on forefront of abuse prevention

In response to high-profile cases of sexual abuse of minors within Olympic and Paralympic sport in the mid-2010s, the U.S. Center for SafeSport (the Center) was established by federal law.

The Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017¹ codified the Center, a Denver-based 501(c)(3) non-profit, as the nation's safe sport organization. It also gave the Center the scope and authority to resolve abuse and misconduct reports for the more than 11 million U.S. Olympic and Paralympic participants and charged the Center with developing policies, procedures, and training to prevent abuse and misconduct. In October 2020, the Empowering Olympic, Paralympic, and Amateur Athletes Act of 2020² became law, which strengthened the Center's oversight functions and mandates a reliable annual funding stream from the U.S. Olympic & Paralympic Committee (USOPC).

The SafeSport Code³ (the Code) governs all participants in the U.S. Olympic & Paralympic Movement (the Movement), which includes anyone involved in sport under the auspices of the USOPC or National Governing Bodies (NGB), such as USA Volleyball or USA Track and Field. This means the Center's jurisdiction extends from the athletes and coaches who will participate in the 2024 Paris Olympics all the way down to the local neighborhood gymnastics studio where coaches may be members of USA Gymnastics. The Center's independent oversight authority helps ensure those within the Movement adhere to the SafeSport Code and Minor Athlete Abuse Prevention Policies (MAAPP)⁴ that support athlete safety.



By Bobby Click
*Vice President, Response & Resolution,
U.S. Center for SafeSport in Denver*

With the mission of making athletes' well-being the centerpiece of the nation's sport culture, the Center exclusively accepts and investigates reports of abuse and misconduct involving individuals within the Movement. Our Response and Resolution⁵ department, which manages these investigations, makes up more than half of the Center's staff and includes former federal, local, and state law enforcement officials. The Center currently receives an average of more than 100 reports a week, which are reviewed by our dedicated team of investigators. Since its inception, the Center has received more than 10,000 reports of misconduct.

A Center investigation seeks to identify violations of the Code and may parallel a criminal investigation of a related matter. However, not all violations of the Code rise to the level of criminal conduct. For instance, the Code goes as far as prohibiting certain electronic communications or gifting between adults and minors.

As mandatory reporters of child abuse, Center staff are often in contact with law enforcement and state child welfare offices. If requested, the Center may put an investigation on a "law enforcement hold" until the law enforcement agency gives the green light for the Center to proceed with its investigation. Center staff are also available to answer requests for information whenever they arise.

The Center's independence from the Movement, and therefore from the individuals we in-

investigate, allows us to proceed with investigations fairly and impartially. Our investigations are neutral and adhere to a preponderance of evidence standard. At times, our lower burden of proof and ability to implement temporary safety measures allow us to act on cases when law enforcement cannot. For instance, when a report is made against an individual the Center deems to be an immediate threat to the sport community, we are able almost instantly to put in place temporary measures to limit his or her contact with certain individuals or suspend his or her participation in sport while our investigation proceeds.

Should the Center make a finding that abuse or misconduct occurred, regardless of whether the findings rise to criminal conduct, we determine appropriate sanctions that can range from a written warning to permanent ineligibility from participating in U.S. Olympic and Paralympic sport. Certain sanctions of adults are posted on the Center's public Centralized Disciplinary Database.⁶ Respondents have the right to an arbitration process to appeal a Center decision.

The Center has also received numerous reports from law enforcement and prosecutors from across the country. We encourage reporting by law enforcement to the Center anytime there is a potential connection to Olympic and Paralympic sport. Our goal is to educate the law enforcement community about the potential for cooperation with the Center and our alternative path to accountability to protect athletes.

The case descriptions below highlight the Center's unique legal structure and our potential to collaborate and supplement law enforcement's efforts to pursue justice.

Some examples

In June 2021, law enforcement arrested a 61-year-old Oregon man after he was indicted on four counts of second-degree sexual abuse.⁷ Over the course of an investigation that lasted several months and involved witnesses in multiple states, law enforcement established that the trainer had a sexual relationship with a 17-year-old girl, one of his athletes.

The girl's parent stated, "In our case, our daughter made the difficult decision to agree to talk to SafeSport following six months of (NGB) members calling SafeSport to report on her situation. At the time she spoke with SafeSport, she was not yet ready to talk to law enforcement. SafeSport and law enforcement worked together

to release the law enforcement hold [a request made by law enforcement for the Center to pause its investigation so that a criminal investigation can proceed unencumbered] so that SafeSport could interview her and temporarily suspend the assailant."

The matter was first reported to SafeSport and an immediate report to law enforcement was made. Despite her initial reluctance, the girl began to cooperate with the Center and eventually with law enforcement. The Center suspended the trainer from sport four months before his arrest, and he is now ineligible to participate in Olympic and Paralympic sport. On April 6, 2023, a news outlet reported that the respondent is expected to enter a plea in Oregon federal court.

In another case, a coach based in Washington state was accused of sexually assaulting a 15-year-old girl in 2016 and charged with four counts of third-degree rape of a child. A SafeSport investigator contacted local police in February 2021 and said she was investigating allegations of sexual misconduct after several athletes came forward and accused the coach of having relationships with underage athletes. Athletes, former coaches, parents, and other members of the sport community gave statements to the SafeSport investigator, who provided transcripts of their statements to a local police detective.

The Center reported to four separate law enforcement agencies, which corresponded to where the crimes occurred, and suspended the coach from sport more than a year before his arrest; he is now ineligible to participate in Olympic and Paralympic sport. The local prosecutor assigned to the criminal case used his knowledge of SafeSport and its Code to secure a \$500,000 bond with specific, sport-related restrictions. The respondent pled guilty and is currently incarcerated, serving a five-year sentence.

Conclusion

The Center hopes to continue to develop strong and productive working relationships with law enforcement as more agencies learn about our work to end abuse in sport. Please feel free to contact the Center by:

Continued on page 41 in the green box

A coach based in Washington state was accused of sexually assaulting a 15-year-old girl in 2016 and charged with four counts of third-degree rape of a child. A SafeSport investigator contacted local police in February 2021 and said she was investigating allegations of sexual misconduct after several athletes came forward and accused the coach of having relationships with underage athletes.

What is the Financial Crimes Intelligence Center?

In 2021, the Texas Legislature authorized the creation of the Financial Crimes Intelligence Center (FCIC).

The FCIC is a team of investigators and analysts who track financial organized crime across Texas. It officially launched in January 2022, and as of March 1, 2023, it has prevented or recovered over \$99 million in financial fraud. The FCIC is a state agency operated under an interlocal agreement between the Texas Department of Licensing & Regulation and the Smith County Criminal District Attorney's Office.

The victims

Almost everyone has had the experience of finding out their credit card or debit card has been compromised. It's a frustrating experience that can leave victims dealing with depleted bank accounts, waiting for new cards to access their money, and not knowing who stole their information or how it was stolen.

Around 2016, in Texas and across the nation, law enforcement began seeing an ever-growing number of compromised debit and credit card numbers due to gas pump skimming. Banks were also seeing an escalating rate of compromised cards. By law, banks must reimburse customers if a card transaction is reported to be fraudulent, even if the bank has no way to recover the funds from the criminal. This meant criminals got away with the money, and banks ate the losses.

The perpetrators

The largely invisible perpetrators of a significant amount of this fraud are transnational organized criminals who understand how to exploit our financial systems, skirt law enforcement, and avoid significant prosecution. In Texas, the clever criminals utilizing gas pump skimmers began almost exclusively as Cuban nationals who entered the United States legally. They then organized



By Jacob Putman

Criminal District Attorney in Smith County

themselves into small cells, with as few as three or four individuals who would take road trips along highways and back roads, planting skimming devices at gas pumps along their route. These cells could be operating individually or as part of a much larger crew, with some crews having over 20 members.

At the end of their route, they would turn around and retrace their steps, returning to their planted skimmers and retrieving the card numbers of any customer who happened to use that pump since the skimmer had been installed (the skimmers are installed inside the pump and undetectable by the customer or even law enforcement without proper training).

Occasionally, an individual or two would be caught on these trips, often resulting in state jail felony or third-degree felony charges of Credit Card/Debit Card Abuse or Possession of Fraudulent Information. The perpetrators would rarely be charged with Engaging in Organized Criminal Activity and rarely received much more than a slap on the wrist. The perpetrators would do their time, get out, and go right back to planting skimmers. And why wouldn't they? The potential profits are astronomical.

The problem

Low-level charges were doing nothing to deter these perpetrators from their criminal trade. They also were rarely caught. Most officers wouldn't know what a skimmer looks like if they found one. Gas pump technicians often threw skimmers away if they did find one. Even when a skimmer was found and a perpetrator caught, law enforcement and local prosecutors had no way of knowing just how many skimmers the perpetrator was responsible for.

The solution

The FCIC's success has come from a collaborative approach: training and advising local law enforcement and prosecutor offices how to recognize and combat these crimes, as well as serving as a centralized database for tracking gas pump skimmers and identifying suspects as they travel across jurisdictions. The FCIC has also pushed for key legislative changes allowing these crimes to be prosecuted under Penal Code Chapter 71 (Organized Crime) and requiring skimmer devices to be reported to law enforcement.

The approach has been so successful that counties utilizing its expertise have obtained first-degree felony indictments and large sentences from juries. For example, in Smith County, where the FCIC office is housed, our office has obtained life sentences on some of these organized crime members. These large sentences have proven the only way to deter the organized crime members from returning.

What can the FCIC do for you?

The FCIC exists to track organized crime members and to work with local law enforcement and prosecutors to tackle these crimes. The organized crews have morphed as prosecution has increased, moving into areas of large-scale fuel theft (thousands of gallons at a time)¹ and other major fraud. In addition to gas pump skimming and fuel theft, the FCIC works cases involving ATMs and point-of-sale skimming, check forgery rings, and almost any other type of organized crime with a financial component. The FCIC works closely with not only law enforcement, but also the financial, fuel, and retail sectors across the country.

Experts at the FCIC host trainings for interested law enforcement, serve as expert witnesses in appropriate cases, assist and advise in active investigations, and help identify suspects. They can be contacted by phone at 903/590-4977 or

email at TXFCIC@smith-county.com. Law enforcement can also make direct submissions into the FCIC intelligence database by accessing its secure portal; contact FCIC staff to receive a submission portal link. ✨

Endnote

¹ Read an article on prosecuting gasoline thieves with the FCIC's help at <https://www.tdcaa.com/journal/using-the-tax-code-to-go-after-gas-thieves>.

- calling 720/531-0344 or emailing resolutions@safesport.org with general inquiries or to work together on an investigative matter,
- contacting Patrick Caldwell at patrick.caldwell@safesport.org to request a virtual or in-person training,
- or reporting abuse and misconduct affecting an Olympic and Paralympic Movement affiliate through our Report a Concern portal⁸ or by calling 833/5US-SAFE (833/587-7233). That hotline is staffed from 8 a.m. to 4 p.m. Mountain Time on weekdays, with voicemail available all the time. ✨

Endnotes

¹ <https://www.congress.gov/bill/115th-congress/senate-bill/534>.

² <https://www.congress.gov/bill/116th-congress/senate-bill/2330/text>.

³ <https://uscenterforsafesport.org/wp-content/uploads/2022/02/2022-SafeSport-Code.pdf>.

⁴ <https://maapp.uscenterforsafesport.org>.

⁵ <https://uscenterforsafesport.org/response-and-resolution-process>.

⁶ <https://uscenterforsafesport.org/response-and-resolution/centralized-disciplinary-database>.

⁷ Note that identifying information has been removed.

⁸ <https://uscenterforsafesport.org/report-a-concern>.

An at-a-glance chart of punishments for drug possession, delivery, and manufacture

Sorted by Penalty Group, the charts on these two pages show the offense level and punishment ranges for both possession and delivery or manufacture for all amounts.



By Hilary Wright

Assistant Criminal District Attorney in Tarrant County

Amount Penalty Group 1	Punishment Range for Possession	Punishment Range for Delivery or Manufacture
Less than 1 gram	State jail felony (H&S Code Art. 481.115(b))*	State jail felony (H&S Code Art. 481.112(b))*
1 gram or more, but less than 4 grams	Third-degree felony (H&S Code Art. 481.115(c))	Second-degree felony (H&S Code Art. 481.112(c))
4 grams or more, but less than 200 grams	Second-degree felony (H&S Code Art. 481.115(d))	First-degree felony (H&S Code Art. 481.112(d))
200 grams or more, but less than 400 grams	First-degree felony (H&S Code Art. 481.115(e))	Enhanced first-degree felony: 10–99 years or life, and a fine up to \$100,000** (H&S Code Art. 481.112(e))
400 grams or more	Enhanced first-degree felony: 10–99 years or life, and a fine up to \$100,000** (H&S Code Art. 481.115(f))	Enhanced first-degree felony: 15–99 years or life, and a fine up to \$250,000* (H&S Code Art. 481.112(f))
Penalty Group 1-A		
Fewer than 20 units	State jail felony (H&S Code Art. 481.1151(b(1)))*	State jail felony (H&S Code Art. 481.1121(b)(1))*
20 or more units, but less than 80 units	Third-degree felony (H&S Code Art. 481.1151(b(2)))	Second-degree felony (H&S Code Art. 481.1121(b)(2))
80 units or more, but less than 4,000 units	Second-degree felony (H&S Code Art. 481.1151(b(3)))	First-degree felony (H&S Code Art. 481.1121(b)(3))
4,000 units or more, but less than 8,000 units	First-degree felony (H&S Code Art. 481.1151(b(4)))	Enhanced first-degree felony: 15–99 years or life, and a fine up to \$250,000** (H&S Code Art. 481.1121(b)(4))
8,000 units or more	Enhanced First-degree felony: 15–99 or life, and a fine up to \$250,000** (H&S Code Art. 481.1151(b(5)))	Enhanced first-degree felony: 15–99 years or life, and a fine up to \$250,000** (H&S Code Art. 481.1121(b)(4))
Penalty Group 1-B (fentanyl or any derivative)		
Under 1 gram	State jail felony (H&S Code Art. 481.115(b))*	State jail felony (H&S Code Art. 481.1123(a))
1–4 grams	Third-degree felony (H&S Code Art. 481.115(c))	Second-degree felony (H&S Code Art. 481.1123(b))
4–200 grams	Second-degree felony (H&S Code Art. 481.115(d))	Enhanced first-degree felony: 10–99 years or life, and a fine to \$20,000** (H&S Code Art. 481.1123(d))****
200–400 grams	First-degree felony (H&S Code Art. 481.115(e))	Enhanced first-degree felony: 15–99 years or life, and a fine to \$200,000** (H&S Code Art. 481.1123(e))****
Over 400 grams	Enhanced first-degree felony: 10–99 years or life in a state prison, and a fine up to \$100,000** (H&S Code Art. 481.115(f))	Enhanced first-degree felony: 20–99 years or life, and a fine up to \$H&S Code Art. 481.1123(f))****

Amount	Punishment Range for Possession	Punishment Range for Delivery or Manufacture
Penalty Group 2		
Less than 1 gram	State jail felony (H&S Code Art. 481.116(b))*	State jail felony (H&S Code Art. 481.113(b))*
1 gram or more, but less than 4 grams	Third-degree felony (H&S Code Art. 481.116(c))	Second-degree felony (H&S Code Art. 481.113(c))
4 grams or more, but less than 400 grams	Second-degree felony (H&S Code Art. 481.116(d))	First-degree felony (H&S Code Art. 481.113(d))
400 grams or more	Special first-degree felony: 5–99 or life and a fine up to \$50,000** (H&S Code Art. 481.116(e))	Enhanced first-degree felony: 10–99 or life and a fine up to \$100,000** (H&S Code Art. 481.113(e))
Penalty Group 2-A***		
Less than 2 ounces	Class B (H&S Code Art. 481.1161(b(1)))	
2 ounces or more, but less than 4 ounces	Class A (H&S Code Art. 481.1161(b(2)))	
4 ounces or more, but less than 5 pounds	State jail felony (H&S Code Art. 481.1161(b(3))*)	
5 pounds or more, but less than 50 pounds	Third-degree felony (H&S Code Art. 481.1161(b(4)))	
50 pounds or more, but less than 2,000 pounds	Second-degree felony (H&S Code Art. 481.116(b(5)))	
2,000 pounds or more	Special first-degree felony: 5–99 or life and a fine up to \$50,000** (H&S Code Art. 481.116(b(6)))	
Penalty Group 2-A***		
Less than 1 gram	State jail felony (H&S Code Art. 481.113(b))*	
1 gram or more, less than 4 grams	Second-degree felony (H&S Code Art. 481.113(c))	
4 grams or more, but less than 400 grams	First-degree felony (H&S Code Art. 481.113(d))	
400 grams or more	Enhanced first-degree felony: 10–99 or life and a fine up to \$100,000** (H&S Code Art. 481.113(e))	
Amount		
Penalty Group 3		
Less than 28 grams	Class A misdemeanor (H&S Code Art. 481.117(b))	State jail felony (H&S Code Art. 481.114(b))*
28 grams or more, but less than 200 grams	Third-degree felony (H&S Code Art. 481.117(c))	Second-degree felony (H&S Code Art. 481.114(c))
200 grams or more, but less than 400 grams	Second-degree felony (H&S Code Art. 481.117(d))	First-degree felony (H&S Code Art. 481.114(d))
400 grams or more	Special first-degree felony: 5–99 or life and a fine up to \$50,000** (H&S Code Art. 481.117(e))	Enhanced first-degree felony: 10–99 or life and a fine up to \$100,000** (H&S Code Art. 481.114(e))
Penalty Group 4		
Less than 28 grams	Class B (H&S Code Art. 481.118(b))	State jail felony (H&S Code Art. 481.114(b))
28 grams or more, but less than 200 grams	Third-degree felony (H&S Code Art. 481.118(c))	Second-degree felony (H&S Code Art. 481.114(c))
200 grams or more, but less than 400 grams	Second-degree felony (H&S Code Art. 481.118(d))	First-degree felony (H&S Code Art. 481.114(d))
400 grams or more	Special first-degree felony: 5–99 or life and a fine up to \$50,000** (H&S Code Art. 481.118(e))	Enhanced first-degree felony: 10–99 or life and a fine up to \$100,000** (H&S Code Art. 481.114(e))

* Pursuant to Tex. Code Crim. Proc. Art. 42A.551, probation is mandatory for a person *convicted* of a state jail felony who has no prior felony convictions, if the current charge is for any offense above that is punished as a state jail felony with these limitations:

- H&S Code 481.1151(b)(1) Possession of a Controlled Substance Penalty Group 1-A: fewer than 5 units
- H&S Code 481.1161(b)(3) Possession of a Controlled Substance Penalty Group 2-A: 1 pound or less

This does *not* apply if a jury assesses punishment of a state jail felony offense as laid out above and does not recommend probation. See Tex. Code of Crim. Proc. Art. 42A.551(e). Probation for these offenses is not mandatory if the person has *any* felony conviction that was not punished under Tex. Penal Code §12.44(a), including an adjudication of a deferred probation.

** The fine is required by statute. If no fine is imposed, it renders the judgment void, See *Saldivar v. State*, 542 S.W.3d 43 (Tex. App.–Houston [14th Dist.] 2017, pet. denied); *Barton v. State*, 962 S.W.2d 132 (Tex. App.–Beaumont 1997, pet. ref'd); *Scott v. State*, 988 S.W.2d 947 (Tex. App.–Houston [1st Dist.] 1999, no pet.).

*** Note the weight conversion between possession to manufacture or delivery from ounces to grams. It is unclear why the delivery portion of the statute is written this way, especially in light of the fact that 401 grams = 14.1449 ounces. Under the current language, possession with intent to deliver 401 grams of a substance under Penalty Group 2-A has a punishment range of 10–99 years in prison and up to a \$100,000 fine; but if you merely possess the same amount, it is punished as a state jail felony.

**** Pursuant to Tex. Code Crim. Proc. Art. 42A.102, a judge *may not* grant deferred adjudication community supervision for this offense.

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