The Texas Prosecutor

The official journal of the Texas District and County Attorneys Association

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

A note of overdue gratitude to misdemeanor attorneys

The Misdemeanor Division Chief in the DA's Office in Harris County, Bernadette Haby, wrote an excellent article (on page 17) about a mural she painted on the wall in her office. Like almost everyone who reads it, I am inspired by both the mural and the story behind it.

By W. Clay Abbott
TDCAA DWI Resource Prosecutor in Austin

I am also very grateful to Judge Carolyn Dozier, a former prosecutor, for bringing it to my attention.

As I read the article, I asked myself, "When is the last time you said something nice to a misdemeanor prosecutor?" I had to think—which means the answer is, "It's been too long."

So, all you misdemeanor prosecutors out there, please take this column as an overdue "thank you" to y'all for what you do.

The difficulties and importance

A couple of times a year I have the privilege of presenting the opening talk at TDCAA's Prosecutor Trial Skills Course, where I cover ethics and try to inspire my audience of mostly young, newly hired misdemeanor prosecutors. I riff on both the difficulty of their jobs and the importance of their jobs, and I would like to look at those things a bit more systematically in this column.

The job of the misdemeanor prosecutor is just absurdly hard. We send the least experienced attorneys into the heaviest dockets with the greatest number of cases, the most frenetic pace, and the fewest support personnel, and we expect them to largely figure it out on their own.

We send our greenest prosecutors against the most experienced, best funded, and most highly motivated defense attorneys. The money in criminal defense is not in the big bad murder defendant's pockets but rather that of the "citi-

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Texas District and County Attorneys Association

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That's a wrap!

They say that everything is bigger in Texas, and that includes our conferences!

By Shannon Edmonds
TDCAA Executive Director in Austin

I am pleased to report that our 2025 Annual Criminal & Civil Law Conference at Round Rock's Kalahari Resort and Convention Center in September was our most-attended CLE event ever, with a final head count of 1,120 attendees and speakers. We also hosted the largest in-person Legislative Update on record with 606 people in attendance the day before the Annual Conference. As a certain someone might say: Those are *yuge* crowds!

We at TDCAA could not have reached these milestones without your support. Thank you for joining us and thank you also for your many constructive and appreciative evaluations of these CLE programs. On a personal note, I want to spotlight the TDCAA staff who pitched in to host these great events. We closed down TDCAA World Headquarters for the entire week for this all-hands-on-deck production, and your attendance and appreciation made it worth all the hard work and extra hours. Special thanks go out to Training Director **Brian Klas**, Meeting Planners **LaToya Scott** and **Andie Peters**, and the rest of our TDCAA team for knocking it out of the park!

Awards and recognitions

The Annual Conference provides us with an opportunity to recognize TDCAA members for their outstanding work. This year there was an added twist: For the first time, we presented those awards at our evening reception instead of at the opening of the course. (We found it worked really well, but let me know what you thought.) That reception was this year's venue for celebrating the following award winners as selected by TDCAA's Board of Directors.

State Bar Criminal Justice Section Prosecutor of the Year

Tonya Ahlschwede, 452nd Judicial District Attorney (Mason, Edwards, Kimble, McCulloch, and Menard Counties)

Tonya, who also chairs the board of the state's Border Prosecution Unit (BPU), was given this award in recognition of her legal and legislative work on statewide border security issues. And as if that hot potato topic wasn't enough to keep her busy, she also strung together an impressive collection of recent trial victories—including an arson conviction and long sentence for the person who burned down her courthouse a few years ago! Tonya was a worthy choice as Prosecutor of the Year, and it was a treat to have her local legislators and law enforcement officers at the reception to show their appreciation of her hard work.

Lone Star Prosecutor Award

Jacquelyn Johnson, First Assistant County & District Attorney, Aransas County

Jacquelyn Johnson was promoted to be the First Assistant in her office in 2024 and since then she has been delivering win after win in the court-

TOP LEFT: Jacquelyn Johnson was named the Lone Star Prosecutor; she is pictured at left with David Holmes, TDCAA Board President. BELOW LEFT: Tonya Ahlschwede was honored with the State Bar Prosecutor of the Year Award; she too is pictured at left with David Holmes, TDCAA Board President.

room, securing multiple convictions and maximum sentences for some of the worst offenders in her county. Her successes both in and out of the courtroom made her a perfect nominee for the Lone Star Award, which was created by the TDCAA Board specifically to recognize those prosecutors who distinguish themselves in their local courtrooms but whose work may otherwise go unnoticed throughout the state. Prosecutors like Jacquelyn would do what they do even if they were never recognized for their hard work, which makes it all the more special to be able to lift up such prosecutors to show them our association's appreciation for a job well done. To Jacquelyn and others laboring in the trenches: We see you, and we are grateful for what you do every day!

Kepple Award

Mike West, Assistant Criminal District Attorney, Smith County

In 2024, the TDCAA Board created the Kepple Award in honor of retiring executive director **Rob Kepple**. This award honors recipients whose career accomplishments—like Rob's—have left an indelible mark on the field of Texas criminal prosecution. This year's winner was **Mike West**, the chief appellate prosecutor from Smith County who recently retired after a distinguished appellate law career that spanned multiple prosecutor's offices over almost 40 years. Mike was recognized not only for personally working on thousands of appeals and writs over that time, but also for his willingness to share his accumulated legal wisdom with anyone who needed help. We wish him the best in retirement!

ABOVE: Mike West, at left, received the Kepple Award. He is pictured with David Holmes, TDCAA Board President, at right. ABOVE RIGHT: Glen Fitzmartin, second from right, was honored with the C. Chris Marshall Award for Distinguished Faculty. He is pictured with (left to right) TDCAA's Joe Hooker, Kristin Burns, and Brian Klas.

C. Chris Marshall Award

Glen Fitzmartin, Assistant Criminal District Attorney, Dallas County

TDCAA is known far and wide for the high quality of our legal training, and the C. Chris Marshall Award recognizes the best of the best among those who are called upon to train our members. The award is named in memory of former Tarrant County prosecutor **C. Chris Marshall,** a frequent TDCAA writer and trainer who was tragically killed in a courthouse shooting in 1992. This year's Chris Marshall Award winner is **Glen Fitzmartin**, felony trial bureau chief in the Dallas County Criminal DA's Office and current chair of TDCAA's Training Committee. Glen has long been a fixture at our Prosecutor Trial Skills Courses, and over the years he has generously shared with TDCAA attendees the knowledge and skills gained from his work not only as a prosecutor, but also as a defense attorney and judge. We are fortunate to have him directing our training efforts this year, and he is thoroughly deserving on this recognition from his peers. Well done, Glen!

It's a pleasure to get to single out our members for their professional excellence at a time when too many on social media would rather tear down the profession of prosecution. And with that in mind, if you look to this space of our journal in the spring, we will have more information on how you can nominate the worthy for recognition in 2026, including candidates for a new category of "rising stars" in each of TDCAA's eight regions of the state.

More jobs well done

As we close out 2025, I'd like you to join me in thanking our association president, **David Holmes**, County Attorney in Hill County, for his support and leadership during this year of transition at TDCAA. Not only did David take office a

Continued on page 7 in the tan box

In *Elsik v. State*, deported witnesses are not *per se* unavailable

Stand-up comedian (and actor, writer, and film producer) Stephen Wright is best known for his dead-pan delivery of one-liners.

By Britt Houston Lindsey
Chief Appellate Prosecutor in Taylor County

One of his best is, "Anywhere is walking distance if you have the time." It's hilarious, and it also contains an interesting sort of thought experiment. With time, preparation, and grit, it's possible for a healthy individual to walk to nearly any destination, at any distance. British adventurer and total badass Alice Morrison walked 1,000 miles crossing the Sahara Desert in 2020, and 700 to 800 people will walk to the summit of Mount Everest every year. Nobody would consider either of those "walking distance" in the ordinary use of the term, though, so whatever is considered walking distance depends on a fluid, fact-dependent concept of reasonable effort applied on a case-by-case basis.

Defining fact-dependent reasonable efforts is where this month's column comes in. This "As the Judges Saw It" offering involves a recent opinion of the Court of Criminal Appeals, *Elsik v. State*,[1] which deals with hearsay declarant unavailability when a witness has been deported, and what the Court considers reasonable efforts to obtain the declarant's presence or testimony at trial.

Background

Steven Elsik was charged with 13 counts of human smuggling (under the 2015–2021 version of the statute then in effect) after he was pulled over for driving an overweight vehicle, speeding, and evading, and he was found with 12 individuals stacked in the bed of a rental pickup truck under blankets, with one more in the passenger seat. An agent with the U.S. Border Patrol spoke with the individuals at the sheriff's office and took them into federal custody after all 13 identified themselves as Mexican citizens; two were under 18, making the offenses a second-degree felony, enhanced to first-degree punishment by a prior felony conviction. From the agent's testimony at trial, it appears that all 13 individuals were deported prior to trial.

When the agent began to testify as to the 13 passengers' statements giving their names, nationalities, and dates of birth, Elsik objected to hearsay, arguing that no exception existed and that the State had failed to prove the declarants' unavailability. The prosecutor stated that the statements were admissible under Rule 804(b)(3), the "Statement of Personal or Family History" exception, which includes statements about "the declarant's own birth; adoption; legitimacy; ancestry; marriage; divorce; relationship by blood, adoption, or marriage; or similar facts of personal or family history. ..."

Regarding unavailability, the prosecutor argued that they were so beyond the reach of the court that it was futile to try:

> Well, if I asked the Sheriff, gave him a subpoena to go into Mexico and serve the subpoenas there, I think he would look at me in askance and askew and tell me he doesn't have jurisdiction to serve subpoenas over there in Mexico and I'm not going to waste his time.

[1] 714 S.W.3d 27 (Tex. Crim. App. 2024).

> Once they were deported, we're not the federal government. We do not have the ability to hold onto them. They were outside our jurisdiction and outside our reach. And we were unable to get them and find them to even issue a subpoena.

Here, even though speaking truthfully as an officer of the court, the prosecutor offered no personal knowledge or factual support showing that the witnesses were truly unavailable. Judge Slaughter stated that the prosecutor's conclusory statement showed that the State simply assumed that the witnesses were unavailable after deportation and took no steps to attempt to secure their presence or testimony.

The trial court overruled the objection. Elsik was found guilty and sentenced to two 99-year sentences, 11 20-year sentences, and five years for evading arrest.

Elsik appealed the human smuggling counts, alleging legal insufficiency, violation of the Confrontation Clause, and hearsay. The San Antonio Court of Appeals found the evidence was legally sufficient and that there was no Confrontation Clause violation, but the hearsay argument found some traction.[2] Under Texas Rule of Evidence 804(a)(5), witness unavailability is shown when the person "is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure the declarant's attendance or testimony." The State had argued at trial that the witnesses had been deported to Mexico, were unable to be found much less subpoenaed, and that it was futile to even attempt doing so. The court of appeals held that the prosecutor's statement was not a substitute for competent evidence, and because the State failed to present any evidence that it had not been able, by process or other reasonable means, to procure the declarants' attendance or testimony, the trial court abused its discretion in finding the declarants unavailable.

Having found the evidence inadmissible hearsay, the court of appeals addressed harm. Under the non-constitutional harm standard of Texas Rule of Appellate Procedure 44.2(b), the reviewing court disregards error that does not affect a defendant's substantial rights, meaning that they "[will] not overturn the conviction if we have fair assurance from an examination of the record as a whole that the error did not influence the jury, or had but slight effect."[3] The court of appeals found that the effect was slight in all but the two offenses involving juveniles. The court reversed the two second-degree felonies and affirmed all others. The State petitioned the Court of Criminal Appeals.

As the Court of Criminal Appeals Judges Saw It

The Court of Criminal Appeals reversed and remanded on all 13 smuggling counts. The State had asked the Court to essentially adopt two bright line rules: one, that a prosecutor's statements as an officer of the court were inherently reliable for determining admissibility, and two, that a deported individual was *per se* unavailable for purposes of hearsay objections under Texas Rules of Evidence 804. The majority opinion of Judge Slaughter, joined by all judges except Presiding Judge Keller (who dissented without written opinion), declined both arguments.

The State had argued that under *State v. McGuire*,[4] the trial court can rely on the unsworn statement of a prosecutor in deciding admissibility, but the Court observed that in *McGuire*, the prosecutors were speaking from their own personal knowledge (regarding the length of time needed and difficulty getting a warrant at nighttime in their home county). Here, even though speaking truthfully as an officer of the court, the prosecutor offered no personal knowledge or factual support showing that the witnesses were truly unavailable. Judge Slaughter stated that the prosecutor's conclusory statement showed that the State simply assumed that the witnesses were unavailable after deportation and took no steps to attempt to secure their presence or testimony.

The State also cited the U.S. Supreme Court's opinion in *Mancusi v. Stubbs*,[5] which suggests that unavailability is shown when a state cannot compel a foreign witness to attend trial. Judge Slaughter observed that the text of Rule 804 requires the proponent to show an inability to procure not only attendance at trial, but to also show an inability to procure the witness's testimony. The federal version (Rule 804(a)(5)) on which our state rule is modeled requires an attempt be made to depose the witness; Tex. Code Crim. Proc. Art. 39.09 expressly permits depositions of nonresident witnesses taken "before any diplomatic or consular officer," and Tex. R. Evid. 804(b)(1)(B)(iii) expressly permits the introduc-

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[2] *Elsik v. State*, 678 S.W.3d 360 (Tex. App.–San Antonio 2023), *aff'd in part, rev'd in part*, 714 S.W.3d 27 (Tex. Crim. App. 2024).

[3] *Taylor v. State*, 268 S.W.3d 571, 579 (Tex. Crim. App. 2008).

[4] 689 S.W.3d 596 (Tex. Crim. App. 2024).

[5] 408 U.S. 204 (1972).

tion of depositions of nonresident witnesses taken "before any diplomatic or consular officer." Judge Slaughter further noted that parties had been able to so depose witnesses for over 130 years, citing the 1885 case of *Adams v. State*[6] in which the defendant could by statute depose and admit the testimony of four witnesses residing in Mexico.

The State argued that the process of obtaining a visa for deported witnesses was so impracticable as to be unfeasible, but there was no record built on that point in the trial court. The Court did disagree with the lower court's language that a "good faith" effort must be made, saying instead that "other reasonable means" is necessarily fact-dependent and determined on a case-by-case basis. Because the State showed no attempt on the record to secure the witnesses' presence or depose them either before or after deportation, the burden to show their unavailability was not met.

The takeaway

Elsik is not just an issue for prosecutors trying human smuggling cases; immigration consequences can hinder any prosecution. There are avenues to pursue the presence of a witness who is or could be subject to deportation proceedings, such as U-visas and T-visas under the Victims of Trafficking and Violence Act, Violence Against Women Act (VAWA) petitions, requests for Deferred Action (DA) or an Administrative Stay of Removal (ASR) for witnesses in immigration custody, and writs of habeas corpus. If your office deals with these frequently, it's likely your victim assistance coordinators have knowledge and experience here. Sometimes it will simply not be possible to secure a witness's presence through these measures, though, in which case you'll have to look to other means.

First, bear in mind that it may be possible to get the necessary evidence in through non-hearsay. In the recent case of *Gutierrez v. State*,[7] the Thirteenth Court of Appeals distinguished *Elsik* in finding that the evidence presented at a human smuggling trial under Tex. Penal Code §20.05 was not hearsay. In that case, the arresting

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[6] 19 Tex. Ct. App. 250, 260-62 (1885).

[7] No. 13-24-00208-CR, 2025 WL 2393597, 2025 Tex. App. LEXIS 6312 (Tex. App.–Corpus Christi Aug. 19, 2025, no pet. h.) (mem. op.).

year earlier than he originally planned, but he also had to on-board a new executive director (me!), which he did with patience and good humor. I am indebted to him for his leadership.

On January 1, 2026, David will transition into the role of TDCAA Board Chair—and boy howdy, does he have some big shoes to fill! Please join me in also thanking our outgoing board chair, **Erleigh Wiley**, CDA in Kaufman County, the next time you see her. She did some seriously heavy lifting for the association during her stint on the association leadership track—not least of all by overseeing the appointment of yours truly as executive director—and our association is on a firm foundation for the future thanks to her dedication and hard work.

But Erleigh is not the only person responsible for our continued growth and success who will soon be returning to their full-time day jobs. Other Board members whose terms end this year are **Jessica Frazier**, Asst. CDA in Comal County; **Shane Deel**, C&DA in Callahan County; **Will Durham**, CDA in Walker County; **Jacob Putman**, CDA in Smith County; and **Dusty Boyd**, DA in Coryell County. Everyone affiliated with TDCAA owes a debt of gratitude to these members of our leadership who have donated their time and talents to the continued success of our association.

Annual Business Meeting

Are you interested in serving in TDCAA's leadership? The Association's Annual Business Meeting will be held in conjunction with our Elected Prosecutor Conference at the Hyatt Regency on the Riverwalk in San Antonio on Wednesday, December 3, 2025. Part of that meeting's agenda will include the election of replacements for the Board positions mentioned above. For information about that nominations process, the qualifications for serving on our Board, and any other Board-related issues, please call or email me. We are a member-driven professional association, and "member" appears first in that description for a good reason! ❇

officer was asked on the stand, "[W]hat was the identification [the back seat passengers] provided?" and replied (over hearsay and Confrontation Clause objections) that they identified themselves using cards issued by the federal government of Mexico, identifying them as citizens. The court of appeals held that this was not a "statement" under Rule 801, because the officer "did not elicit an oral or written verbal expression, nor testify regarding nonverbal conduct that a person intended as a substitute for verbal expression."[8] The court of appeals further found that even if the information could be characterized as "a statement," it was not hearsay because it was not being used to prove the truth of the matter asserted; the officer explained that she had asked the passengers for identification because they were not wearing seatbelts and for officer safety.[9] The appellant in *Gutierrez* is petitioning the Court of Criminal Appeals, so while we should be careful of that particular holding, it's a useful reminder that not everything that looks like hearsay actually is.

Be aware that Elsik *does not stand for the proposition that one can never claim the unavailability of a deported declarant. Rather, the Court is telling us that unavailability for hearsay purposes cannot be assumed.*

Second, remember that not all hearsay exceptions depend on a showing of unavailability; hearsay exceptions under Tex. R. Evid. 803 apply regardless of whether the declarant is available as a witness (it's right there in the title and everything!). In *Elsik* the State argued in the alternative that the deported declarants' statements were admissible as statements against interest under Tex. R. Evid. 803(24), because the information potentially exposed them to criminal liability for illegal entry into the United States. The Court did not accept that argument because the remarks to the Border Patrol agents "reflected nothing more than basic identifying data," but if you have a valid exception under Rule 803, remember that *Elsik* is not a bar—immigration status won't keep out your excited utterance.

Finally, be aware that *Elsik* does not stand for the proposition that one can never claim the unavailability of a deported declarant. Rather, the Court is telling us that unavailability for hearsay purposes cannot be assumed. In that respect, the opinion in *Elsik* works as something of a roadmap for either securing the trial attendance or deposition testimony of the witness through reasonable means, or by showing that it was not possible to do so. If the witness is truly unavailable for trial or deposition despite the best efforts of your team or office, be prepared with the testimony of an investigator with documentation as exhibits, coupled with the statements by the prosecutor that all available efforts listed in *Elsik* were taken but proved fruitless. In other words: show your work, and if you have to walk, walk hard.[10] ❇

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[8] *Id*. at *39.

[9] *Id*. at *39–40. *Gutierrez* also observed, "The Court of Criminal Appeals has concluded that if a statement is introduced to explain how a defendant became a suspect or how the investigation focused on a defendant, then the statement is not hearsay because it is not offered for the truth of the matter asserted." *Nickerson v. State*, 312 S.W.3d 250, 262 (Tex. App.–Houston [14th Dist.] 2010 pet. ref'd) (first citing *Dinkins v. State*, 894 S.W.2d 330, 347 (Tex. Crim. App. 1995); and then citing *Jones v. State*, 843 S.W.2d 487, 499 (Tex. Crim. App. 1992), abrogated on other grounds by *Maxwell v. State*, 48 S.W.3d 196 (Tex. Crim. App. 2001) (holding testimony was not hearsay because it was not offered for the truth of the matter asserted, but rather to explain how the police officer began to suspect the appellant, seek an arrest warrant, and finally arrest him)).

[10] See *Walk Hard: the Dewey Cox Story* (Kasdan et al., Columbia Pictures, 2007).

A new notification system for crime victims

Lately, I have been fielding a lot of questions regarding the transition from Texas VINE (Victim Information Notification Everyday) to a new one called Texas IVSS-Counties (Integrated Victim Services System).

By Jalayne Robinson, LMSW
TDCAA Victim Services Director

Texas IVSS went live on September 1, 2025.

Texas IVSS-Counties is a free, secure, and confidential service. Once a crime victim registers in the system, the system automatically notifies that person in English or Spanish whenever:

- the suspect or defendant is booked or released,
- a court event has been set or changed, or
- there is a change in custody status, such as death, escape, or transfer to custody of the Texas Department of Criminal Justice (TDCJ).

Crime victims can be contacted by text, phone call, email or all three. They can also choose to set blackout dates or preferred hours when they want to be notified.

If crime victims were already registered with VINE, their registration has been carried over to the new system, so there is no need to re-register. In fact, on August 25, 2025, anyone who already registered with Texas VINE received an email stating that the State of Texas would transition to a new notification system and that no action was required on their part.

Here is the new website (portal) for Texas IVSS-Counties: **https://ivss-counties.tdcj.texas.gov.** You and crime victims can register there. The phone number is 866/268-8959, and you can request help with offender information, registering updates, or victim services in English or Spanish. If the offender is in the custody of the Texas Department of Criminal Justice (TDCJ [prison]), contact the TDCJ–Victim Services Division at 800/848-4294 for additional support.

Please note when you register that there's a red button for a "law enforcement elevated access request." We asked TDCJ about this, and we were told it's meant for law enforcement agencies only, not prosecutor offices.

Texas IVSS-Counties is a very valuable tool for victims to stay informed; however, we need to remember it is *not* an absolute guarantee of safety, of notification of release from jail, or of court case notifications.

In addition, not all local jails are set up with Texas IVSS-Counties. To find out if your county participates, go to the portal at https://ivss-counties.tdcj.texas.gov, register if you haven't already, and use the "search for an offender" function to see if the county's jail information is integrated into the system.

Victim services consultations

As TDCAA's Victim Services Director, my primary responsibility is to assist Texas prosecutors, victim assistance coordinators (VACs), and other prosecutor office staff in providing support services for crime victims in their jurisdictions. I am available to provide training and technical assistance to you via phone, email, in person, or Zoom. 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 host a training in your county for prosecutors and staff, please reach out to me at Jalayne.Robinson@tdcaa.com. I can tailor the training to meet your specific needs. If you'd like to host a regional training for several

surrounding counties in your area, I can do that—I just ask for access to a free location with presentation capabilities that will accommodate a crowd. Many offices across Texas are taking advantage of this free victim services training! See the photos below for recent in-office training I have provided. Not pictured is my visit to San Augustine and Sabine Counties. Thanks to 1st Judicial District Attorney Paul A. Robbins for hosting this training, and special thanks to Administrative Assistant Stacey Hamilton for all you did to make it happen. We had a great group in attendance.

PHOTO AT RIGHT: When VAC LaRonnia Gray in Jasper County (sitting at left in the photo, above) invited me to come out to their new office and present a group victim services training, I was very excited! Thank you, Criminal District Attorney Anne Pickle (seated at right in the photo), for hosting this great day. Also pictured in back from left to right: Sharley Markovich, former Criminal Misdemeanor Administrator; Davy Hill, former Criminal DA Investigator; Brittni Arnold, Criminal Felony Administrator; Paula Nash, VAC and Criminal Felony Administrator in Tyler County; Jewel Marsh, Assistant Criminal District Attorney; Johnnie Pierce, Criminal Felony Administrator; Jalayne Robinson, TDCAA Director of Victim Services; Jennie Hyatt Olsen, former Assistant Criminal District Attorney (now an ADA in San Augustine & Sabine Counties); and Jesse Shaver, former Criminal DA Investigator.

Key Personnel–Victim Services Board

On May 2, the Key Personnel–Victim Services Board met at TDCAA headquarters in Austin to plan the fall conference. It was an engaging and productive day filled with collaboration and creative ideas. Thank you to all our Board members for sharing your time and expertise.

If you are interested in serving on the Board, please contact me at Jalayne.Robinson@tdcaa.com for additional information. Elections for specific Texas regions are held each year during the TDCAA Key Personnel & Victim Assistance Coordinator Conference, and there are appointed representative positions as well.

TOP PHOTO: Many thanks to Criminal District Attorney Jennifer Tharp and ACDA Jessica Frazier for hosting this "Lunch & Learn" training in Comal County! So much fun sharing about victim services. PHOTO ABOVE: The KP–VS Board from left to right: Wendy Porter, Region 2; Sara Bill, Chairperson; Michelle Bork, Region 6; Michelle Stambaugh, Region 6; Chree Henderson, Region 7; Paula Nash, Region 5; Jalayne Robinson, TDCAA Director of Victim Services; Kristin Burns, TDCAA Domestic Violence Resource Prosecutor; Regina Brooks, Region 6; and Brian Klas, TDCAA Training Director. Not pictured is Wren Seabolt, Region 8.

'Tis the season for the Tree of Angels

The Tree of Angels is a meaningful Christmas program specifically held in memory and support of victims of violent crime. A Tree of Angels allows your community to recognize that the holiday season is a difficult time for families and friends who have suffered the crushing impact of a violent crime.

This special event honors and supports surviving victims' and their families by having loved ones bring an angel ornament to place on a Christmas tree. The first program was implemented in December 1991 initiated by Verna Lee Carr, State Director of People Against Violent Crime (PAVC) in Austin. Working as a volunteer victim advocate, she realized that the holiday season was especially difficult for victims and their families. PAVC wanted to do something special for these victims, so the organization began the tradition of having a statewide Tree of Angels ceremony. The Tree of Angels has become a memorable tradition observed in many communities, providing comfort, hope, support, and healing.

PAVC was founded by Nell Myers whose daughter, Cydney Myers, was brutally murdered in 1979. Upon learning of the injustices in the criminal justice system back in those days, Nell committed herself to making a difference in the lives of crime victims across the state of Texas. PAVC was established in Austin and has 36 charter members. Nell passed away on September 26, 2000, but her passing has not changed the organization's purpose.

It is my honor to share that I have been invited to deliver the closing remarks at the 35th Anniversary of the Annual Tree of Angels Ceremony honoring victims of violent crime. The event is scheduled for Sunday, December 7, 2025, at 2:00 p.m. at the Central Christian Church (1110 Guadalupe Street in downtown Austin). This meaningful event honors and remembers victims of violent crime and offers support and healing to the families and loved ones who continue their journey forward. I am deeply grateful for the opportunity to be part of such a powerful tradition of remembrance, hope and community.

Interested in hosting a Tree of Angels in your community?

A how-to guide is available electronically on how to establish a Tree of Angels ceremony in your community. The Tree of Angels is a registered trademark of PAVC, which is extremely sensitive to ensuring that its original meaning and purpose continues and is not distorted in any way. For this reason, PAVC asks if your city or county is interested in receiving a copy of the how-to guide, to please complete a basic informational form. After the form is completed and submitted to PAVC, you will receive instructions on how to download the guide. Please do not share it to avoid unauthorized use or distribution of the material.

Please contact Verna Lee at vernalee@peopleagainstviolentcrime.org or vernalee47@sbcglobal.net, and put Tree of Angels in the subject line. Include your city or county name to be added to the growing list of communities that have made the Tree of Angels an annual event of remembrance and hope. For a list of all counties who participate, check out the website treeofangels.org.

Victim Impact Statement (VIS) revision

In accordance with Art. 56A.151 of the Code of Criminal Procedure, the Texas Crime Victim Clearinghouse has revised the Victim Impact Statement (VIS) and related brochures and documents following the 89th Legislative Session this summer.

I had the privilege of serving on the TDCJ–Victim Services Division Victim Impact Statement Revision Committee, which convened several times in Austin to review the format and content of the VIS form and related materials. With crime victims in mind, the committee proposed and reviewed numerous updates to ensure the documents are clear, comprehensive, and consistent with current legislative changes.

I highly encourage you to download the newly revised VIS forms and brochures, which are now available at www.tdcj.texas.gov/publications/victim_impact_statement.html#vis.

Access the updated Texas Crime Victims' Rights Brochure at www.tdcj.texas.gov/documents/Texas_Crime_Victim_Rights_English.pdf

Many other updated brochures and publications may also be downloaded or ordered by mail for free (with limits of 50 per order) at tdcj.texas.gov/publications/index.html#victim. ❇

It is my honor to share that I have been invited to deliver the closing remarks at the 35th Anniversary of the Annual Tree of Angels Ceremony honoring victims of violent crime.

Foundation at the Annual Conference

Your Foundation leadership is proud of the work they've done to offer additional support to TDCAA in its mission to train and assist Texas prosecutors.

By Rob Kepple
TDCAF Executive Director in Austin

This year we took time to exhibit at TDCAA's Annual Criminal & Civil Law Conference in an effort to spread the word (and hand out the obligatory "fun size" candies). Next time you see our banners, stop by and say hello!

Legacy giving in action

If you have ever spent time conversing with your alma mater's alumni association, you are familiar with the terms "planned giving" and "legacy giving." They simply describe different ways you can plan a charitable gift on a schedule, in a way that maximizes tax benefits to you or that will mature in the future without the need to donate today. The Foundation, particularly its endowment fund, is positioned to accept such support for the benefit of the Texas prosecutors of the future, so stay tuned for more information on how you can plan a future gift that will support a legacy spent fighting for justice!

Annual Campaign update

In the last edition of *The Texas Prosecutor*, we announced the "$25 for 2025" Annual Campaign. The campaign's goal is to raise awareness of TDCAA's work that the Foundation helps to fund, and of course to raise money to support that work. TDCAA enjoys the support of a major grant from the Court of Criminal Appeals, but the association has always sought to diversify funding sources so that when the time comes it can nimbly meet your needs. So far, we are proud to have dozens of folks showing their support, many of them first-time donors. It is meaningful.

If you can, please consider showing your support for your profession through a modest gift of $25! Just click on the QR code at left. ❇

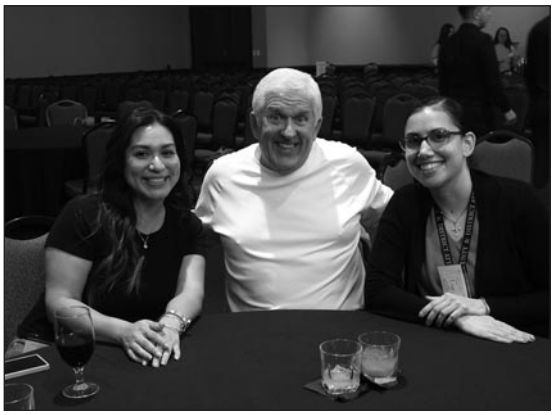
Recent gifts to the Foundation*

Justin Almand
Joe Bailey
Joe Bailey *in honor of three unnamed prosecutors*
Kent Birdsong
Kathy Braddock
Kathy Braddock *in memory of Don Stricklin*
Jay Condie
Colleen Davis
Susan Deski
Deborah Earley
Casey Garrett *in memory of Chuck Rosenthal*
Bert Graham *in memory of Ted Busch*
Lex Herrington
Luke Inman
Helen Jackson
George Lambright *in honor of Rob Kepple*
Natasha Mixon
Mindy Montford
James Montoya
Bill Moore
Dee Peavy
Mark Pratt *in honor of Dan Dent*
Paul Robbins
Hattie Sanderson
Ballard Shapleigh
Andrew Smith
Nick Stallings
Erin Stamey
Jeff Swain
Ricky Thompson
Ricky Thompson *in memory of Ted Busch*
Beth Toben
James Torres
Gary Trammel
Krispen Walker
Greg Willis
Mark Yarbrough
Jeri Yenne
Dana Young

* gifts received between August 18 and October 3, 2025

Photos from our Annual Conference

Photos from our KP–VAC Conference



ABOVE LEFT: Four women earned their Professional Victim Assistance Certificate (PVAC): (from left) Amy Doss and Kaylyn Glenn, both of the DA's Office in Montgomery County; Teri Rose in the CA's Office in Chambers County; and Eugena Franklin from the DA's Office in Harris County. Congratulations! ABOVE RIGHT: Adina Morris, a victim assistance coordinator (VAC) in the DA's Office in Palo Pinto County, was honored with the Suzanne McDaniel Award, which is given to a VAC who has exemplified the qualities that were so evident in Suzanne herself: advocacy, empathy, and the constant recognition of victims' rights. Adina is pictured at right with Brian Klas, at left, TDCAA Training Director. Congrats!

A note of overdue gratitude to misdemeanor attorneys (cont'd from the front cover)

zen accused"—the everyman defendants we find in county court. While the misdemeanor charge may not mean much to the five-time violent felon who has spent much of his life incarcerated, it means a lot to the first-time defendant. Those folks pay their defense attorneys well. Misdemeanor prosecutors must get dozens of cases ready on a docket; a defense attorney usually has one or two (and more time).

We also put our misdemeanor attorneys in front of judges who are understandably a bit fatigued with an ever-changing stream of new prosecutors. Our misdemeanor prosecutors are faced with opposing counsel the judge has known forever and sees in court often. Prosecutors usually have home court advantage, but less so in our justice of the peace (JP) and county courts.

Fortunately, misdemeanor cases are simple. (Yeah, right.) The misdemeanor driving while intoxicated (DWI) case is basically an intoxication manslaughter without the difficulties of causation or crash reconstruction, but also without the benefits of a crash or a victim to make jurors care. The domestic violence (DV) case is as tough as a DV homicide—except the victim is alive and often actively working for the other side. And let's face it: Misdemeanor DV victims are exactly the same people as felony DV victims, parents of reluctant child victims, and survivors in the most difficult sexual assault cases.

Oh, and our misdemeanor brethren get three strikes instead of 10 and only 15 minutes for jury selection.

When was the last time you said something encouraging to a misdemeanor attorney? If you had to pause and think, it has been too long.

But it's also a blast

Now personally my short time in the Misdemeanor Division constituted perhaps the most enjoyable days of my professional life. I had a blast. I was trying cases while my recent law school classmates in deep rug firms summarized depositions. I had unbelievable discretion for a lawyer with wet ink on his law license. I made lifelong friends (shout out to Trey Hill in Potter County and Mike West in Smith County). And most importantly I learned the skills that I relied on every day of the rest of my professional life. After all, if you can effectively present forensic toxicology from blood draws in a DWI case, doing the same with drugs, DNA, and tool marks are not a steep uphill climb. Just like in New York City, if you can make it in the misdemeanor division, you can make it anywhere.

Because the injuries, values, and priors are less in misdemeanor cases, the misdemeanor prosecutor gets more grace. It is OK to learn in the Misdemeanor Division. Losses are less visible and more expected. Defense lawyers and judges are there to train you with fire, and if you are lucky, you get a good misdemeanor chief. I certainly did in Rusty Thornton. He was an experienced, ex-county attorney from a small town. More importantly he was an outstanding teacher, coach, and mentor. He was stricken by muscular dystrophy and unfortunately passed from it far too soon. And although he was not tall in his wheelchair, he looms very large in the hall of great attorneys whom I owe. Offices should put great attorneys in trial positions because they will try hundreds of important cases in their careers. Offices should put even better prosecutors—those who can mentor and teach—in misdemeanor chief positions because they will train up the great prosecutors who will try thousands of important cases. If you want to do justice for a day, go try a case. If you want to do justice for decades, mentor a misdemeanor prosecutor.

Now the grace that is extended because of lesser injuries, values, and priors does not equate to lesser importance in the Misdemeanor Division. The majority of the people of the State of Texas who involuntarily enter the criminal justice system as victims find themselves in the hallways of county and JP courts. The large majority of those who are first-time offenders also find themselves in the hallways of county and JP courts. In larger counties, more jurors will serve in county and JP courts. Volume creates impact.

Impacting the public perception of prosecutors and criminal justice is not the only important aspect of misdemeanor prosecution. Rehabilitation, general deterrence, and specific deterrence lead far ahead of punishment and retribution as reasons we prosecute and punish misdemeanor offenses. Our best chance at stemming future misdemeanor and felony conduct is in prosecuting misdemeanors. But to really effect change, prosecuting misdemeanors must be done intelligently, compassionately, and with attention to each case—which is not so easy to do when

you have so many. A failure to rehabilitate in misdemeanors means we will probably have to rehabilitate the same offender as a felon. A greater volume and fewer resources make this difficult, but no one can argue that having fewer felony offenses is anything but good.

DWI and DV

We prosecute misdemeanors to keep first-time offenders from repeating really dangerous behavior. Nowhere is this truer than in our two most common misdemeanor offenses, DWI and DV assault. We know that offenders commit these crimes over and over. We also know that repeated impaired driving and repeated domestic assault will inevitably lead to preventable death. It is the hope of every prosecutor who has tried a capital murder of a peace officer that their efforts will save future officers' lives. But it is a documentable fact that where we have visible and continuous enforcement and prosecution of impaired driving, we have decreased impaired driving deaths. Misdemeanor prosecutions save lives. That is the good news.

The bad news is that those folks whose lives are spared never show up at our offices with thank-you cards or cookies. In DV cases, sometimes the person whose life you save shouts ugly things at you as you head back to your office. Around 60 percent of impaired driving fatalities are the impaired drivers themselves; those who survive and end up in the criminal justice system are rarely grateful as they leave court.

It is also the Misdemeanor Division that gives their felony brethren the priors that follow those DWI and DV offenders who will not be rehabilitated or deterred. This is also a worthy endeavor and accomplishment that any longtime felony prosecutor has celebrated, but for which very few misdemeanor prosectors are praised, simply because we don't know which offenders will go on and take lives.[1]

How long has it been since you told a misdemeanor prosecutor you appreciated their efforts? If you must think about it, it has been too long.

How long has it been since you told a misdemeanor prosecutor you appreciated their efforts? If you must think about it, it has been too long.

[1] For an example of a misdemeanor DV case that ended in capital murder, see an article from earlier this year: www.tdcaa.com/journal/everything-we-do-matters.

It takes a village

I have a longtime friend who has retired as the director at the National Traffic Law Center, Joanne Thomka. She vehemently scolded me every time I referred to a new prosecutor as a "baby." She is probably right, though I often countered with the fact that three of the greatest days of my life are when I met my babies: my son and two grandkids. Sadly, many prosecutors' offices are like the worst Baby Boomer parents, who told their babies something like, "Your bottles are in the fridge and your diapers are on the changing table. Here is a key to the door—see you at high school graduation." If it takes a village to raise a child, it certainly takes an entire office to raise a great prosecutor. I had a great office village.

My exhortation is to be to the new hires in your office what my numerous mentors were to me: attentive, patient, and most importantly, present. If we want new prosecutors to learn, to improve, to succeed, and to stay, it is going to take the whole office.

When was the last time you, as an experienced felony prosecutor, walked by the misdemeanor attorneys' office doors on a slow afternoon and called out, "Who has a trial coming up they want a fresh set of eyes on?" If you can't remember, it has certainly been too long.

If you are reading this as a misdemeanor prosecutor, thank you! I know these days are a bit unnerving and exhausting, but what you do is important. All of us know it—I hope you do too. ❇

A mural in the Misdemeanor Division

Greetings from Misdemeanor in Harris County, Texas!

By Bernadette Haby
Misdemeanor Chief in the DA's Office in Harris County

The Misdemeanor Division is the first assignment a new prosecutor will have in Harris County. It is where new attorneys learn the job and make their first friendships. They are young, excited, and ready to put in the work. They spend long hours in their offices and in our division's areas.

To improve morale and give our area some personality, the bureau chief at the time, Caroline Dozier, and I talked about adding artwork or inspiring sayings down the hallways in Misdemeanor. We had a variety of thoughts, including my idea of a large mural on the main hallway. I thought it would be fun to have a postcard-style mural, the kind that everyone takes a picture with to show that you've been to a new town. I wasn't really optimistic that this could ever happen, because these are the same gray walls I started with 21 years ago. To my surprise, our new administration approved the idea of a mural very quickly. Now I needed to actually make this thing happen.

I've always been interested in art. I enjoy drawing, painting, and all things crafty. My dad was a self-trained artist as a kid, and though he never finished, he had been an art major in college. He had painted commissioned artwork, and at home he would paint in our rooms (I had a

Photo by Roscoe Whitworth, Multimedia Content Director, DA's Office in Harris County

Knowing that one of their supervisors painted it for them and for the division adds to the morale and fun of the mural.

large Smurfette on my wall), and we had a huge '70s-style rainbow mural in our living room. He regularly encouraged drawing, painting, and being creative. He would teach me things to improve, but he was always the toughest critic. Other than Dad and a couple of high school classes, I have no formal art training, and I've certainly never painted a mural on a wall!

Because I wasn't on a time crunch for this project, I took my time with the design and creating a sketch. I started sometime in January 2025 and worked on it slowly. The sketch was on 11x15-inch watercolor paper, and I used watercolors, pencil, and alcohol markers.

I immediately knew I wanted the postcard-style mural to say "Greetings from Misdemeanor" with the background a merge of two colors, blue representing law enforcement and purple representing justice. In each of the letters of Misdemeanor, I wanted to include things that reflect our profession and that would specifically be relevant for new prosecutors. I included two of the most common TDCAA books for new trial lawyers (the Penal Code and *Predicates*); the Texas flag; law books, because we always have legal references to rely on; a trial lawyer at a podium because that's what we're learning to do in Misdemeanor; a jury performing its civic duty with the American flag; a gavel representing the judiciary and the courts we're in every day; a subpoena representing the power of the State and our contact with witnesses; handcuffs, a radio, and police badges for two of the largest law enforcement agencies in Harris County; and standing above all of these is, of course, Lady Justice.

On the left of the mural design, surrounding the title word "Misdemeanor," I added the Harris County Criminal Justice Center and the Harris County Criminal Courts seal. On the bottom of the mural is the city of Houston skyline and the local popular graffiti "Be Someone." This local graffiti has become a highly recognizable sentiment for Houstonians and it seemed appropriate for our new prosecutors: They are about to learn to "be someone" as a prosecutor, to their victims, and to the citizens of Harris County. Finishing off the mural is our bureau name, the Professional Development Bureau, and our Harris County District Attorney's Office seal.

When I completed the drawing design in February, I submitted it to the First Assistant and Chief of Staff for review, changes, and approval. With no changes, the approval came quickly, and it was time to transfer the image to the wall.

At the end of March, I started the project by cleaning the wall, filling holes and wall seams, measuring out the mural size, taping off the wall, painting a primer coat, and then painting the background colors. I recruited my 16-year-old daughter to help with this project as much as I could. Her art skills exceed mine, so this was a fun project to do together. I thought I could just project the image from the paper onto the wall with a large projector, where I could then transfer the sketch to the wall and begin painting. It was not until I had painted the entire background that I realized there was not enough room for the projector to fit in the hallway and illuminate the drawing large enough for the mural. In picking the location, I hadn't thought to make sure I wasn't in an enclosed hallway. I moved on to Plan B and tried to transfer the mural using the "grid method." I've never been a fan of this method, but I needed to get this image on the wall somehow. I traced a copy of the mural onto tracing paper and laid out a grid on the drawing to determine sizing. I used a chalk reel to lay the grid out onto the wall in the size that corresponded with the grid on the drawing. Both my daughter and I tried for hours to draw some of the mural on the wall with the grid method, but we could not get the placement down properly. I became so frustrated that I abandoned the entire grid method and moved to freehand drawing the mural onto the wall. Once the drawing was complete, I began the fun part of painting.

I painted the details in slowly, and because the drawing was freehanded, I was constantly making corrections or tweaks to it. Most of the mural was fun to paint, but there were definitely parts I was avoiding: the building, the court seal, and our office seal, specifically. The windows on the building just seemed like a nightmare, because the building is at an angle and I was painting it while on a ladder holding a level and a pencil. I came in committed to it one day and was embarrassed at how easy it was to just get it done. Same with the court seal. It was hard to see pencil lines on the black paint, but once I got it up there, it was fine.

The office seal was a different story. The details are too specific and precise. I tried the projector idea again but could not get a clear enough image. I decided to use the projector in my office where I had more room and I enlarged the image onto a large piece of white paper. I then taped carbon paper to the enlarged logo and traced it

Continued on page 21 in the tan box

What prosecutors should know about critical infrastructure attacks (CIAs)

At 5:33 a.m. on June 23, 2025, multiple emergency field technicians (techs) from Charter Communications rushed to Waxahachie.

By Vick A. Lombardo (left)
Senior Director, Corporate Physical Security, Southeast and Texas–Louisiana Regions, Charter Communications, &
Jennifer Tharp (right)
Criminal District Attorney in Comal County

They were responding to an internet outage that affected more than 10,000 residential customers and almost 100 businesses, including commercial, government, and emergency-related entities. At the same time, similar communication lines for AT&T were cut in the same area, disrupting most of Waxahachie's internet customers. When techs arrived, they found severed lines and a cutting tool abandoned nearby. This critical infrastructure assault (abbreviated CIA) left the community without service until almost 9 p.m.

This incident in Waxahachie is just one example of what occurs across the country on a weekly basis, disrupting 911 services at police dispatch facilities, cutting access to investigative files and research functions at police departments, and removing hospital staffs' abilities to read patients' medical files—when delays can be a life-threatening situation. All these functions require a reliable internet connection.

The repair process was so lengthy because techs had to individually splice more than 244 separate fiberglass strands, each no thicker than a sewing needle. (See the photo at right.) And why? Criminals—often copper thieves—strip the plastic sheathing and insulation from communication cables for a relatively small amount of scrap metal to sell at recycling centers.

To understand why this crime is growing so rapidly, one must understand the exponential growth in the price of copper. In October 2020, copper was $3.05 a pound; by late July 2025, it hit a high of $5.79 per pound, a 93-percent increase. As of mid-October 2025, copper remains at $5 a pound, lucrative for metal thieves looking for a simple theft to commit, resulting in attacks on internet lines, air conditioning units, and other copper-related utility assets. Meanwhile, the community pays the price: severed phone and internet lines. Students, families, businesses, and services grind to a standstill.

After contacting law enforcement, Charter and AT&T learned that the Ellis County Sheriff's Office was pursuing an organized copper theft group in the Waxahachie area, where multiple arrests had already occurred. Other thefts were still under investigation.

CIAs are common in Texas

Texas is a great place to live and lead, but unfortunately, we also lead in CIAs. In fact, Texas ranks No. 2 among all states in critical infrastructure attacks—and by a wide margin.

We must educate law enforcement on the realities of these crimes, which often unfold in broad daylight. Criminals in unmarked trucks or vans don hard hats and utility vests and use safety cones to pose as legitimate communication techs. They cut the lines, searching for copper, and either leave them if none is found, or they haul away the lines, as much as possible, to later burn the sheathing off and sell the valuable metal inside (as in the photo below).

The inside of a communication cable.

When law enforcement officers know what to look for, they can contact telecom providers to

verify whether seized materials belong to AT&T, Verizon, Charter Communications, or other telecommunications (telecom) entities. This confirmation provides law enforcement with probable cause for detention, evidence collection, and charges. The Texas Department of Public Safety (DPS) also plays a key role. DPS evaluates the eligibility of metal recycling entity (MRE) applicants and issues licenses. DPS also oversees transaction records and conducts routine inspections to ensure compliance with Texas laws. When suspicious regulated metals, such as copper, are identified, DPS investigators verify the date of purchase, review photos and/or video of the purchase, and review records to identify the seller. A key to identifying criminals is having the ability to compare sales transactions, by geographic area and time, to the time and place of CIAs, along with any video evidence collected in the vicinity.

Key to this additional manner and means of committing criminal mischief is the new definition of "critical infrastructure facility," which can be found in Penal Code §31.01(15).

Identifying a large portion of this criminal activity is made possible through the Texas Online Metals (TOM) system. TOM is the electronic statewide database where MREs are required to report all regulated transactions, to include the seller's driver's license or official government photo identification, vehicle information, and pictures of the vehicle utilized to drop off the "scrap" copper and its license plates. For those unfamiliar with TOM records, they are similar to Leads Online, an online database for pawn shops used by law enforcement to quickly search, identify, and recover stolen items. Comparing TOM records to evidence collected at various sites where fibers have been cut has led to numerous arrests and will greatly assist both law enforcement and prosecution efforts.

Deterring future CIAs

Until recently, CIAs were often charged as misdemeanor-level criminal mischief based on damage estimates. That changed with Senate Bill 1646, which amends Penal Code §28.03 (Criminal Mischief). It adds subsection (l), which provides a third-degree felony where the actor damages or destroys:

(a) copper or brass components of a critical infrastructure facility or

(b) equipment or communication wires appurtenant to or connected to a copper or brass component of the facility or on which the facility depends to properly function, *regardless of whether the equipment or communication wires are enclosed by a fence or other barrier*, and the damage or destruction causes, wholly or partly, the impairment or interruption of the facility, equipment, or communication wires.

Key to this additional manner and means of committing criminal mischief is the new definition of "critical infrastructure facility," which can be found in Penal Code §31.01(15). Additionally, the damage or destruction is to either copper or brass *or* equipment or communication wires connected to CIAs. Why does this matter? Well, some CIAs are fiber and there are no copper or brass components, but this change still allows charging and prosecution under the expanded criminal mischief statute.

SB 1646 also created a new offense: Unauthorized Possession of Certain Brass or Copper Material (Penal Code §31.22). Under this provision, a person commits an offense if he intentionally or knowingly possesses copper or brass material, and he is not an *authorized person*. This section lays out nine types of authorized persons (plus their agents, which makes 10 types of authorized persons), including the owner of the material, a public utility or telecommunications provider, and a cable service provider. Anyone who has had success investigating or prosecuting a case under Penal Code §31.21 (Unauthorized Possession of Catalytic Converter) will quickly recognize the similarities between that 2023 law and this new one, which is designed to work in a similar manner.

Key evidence for prosecution under this statute will be the investigative evidence showing that the person was not just in possession of the material but also is not one of 10 allowable possessors. SB 1646 also provides enhanced punishment ranges for Theft (see Penal Code §31.03(f-2)) and is now included as an underlying offense under Penal Code §71.02 (Engaging in Organized Criminal Activity).

SB 1646 took effect September 1, 2025, giving prosecutors new tools to pursue these cases aggressively.

Partnering with prosecutors

Telecommunication entities and infrastructure providers can greatly assist prosecution efforts by providing:

1) **detailed outage records**: specific internet cut details, including exactly where and at what time these criminal activities occur. Our Regional Operation Centers (ROCs) are constantly monitoring internet and communication lines. With such records, law enforcement can quickly gather

video surveillance and license plate recognition (LPR) records along the CIA egress routes, producing potential subject vehicle identifications, as well as possible facial recognition of subjects.

2) **equipment reference guides**, including infrastructure equipment description pamphlets, which reflect the photos and descriptions of all our infrastructure lines, so law enforcement can confirm the internet cable or lines in a given person's possession can be identified and whether that subject is not an *authorized person*. With such intelligence, potential subjects can be more easily detained for probable cause interviews.

3) **expert testimony from telecommunications experts**, as needed, who can verify that suspects are not authorized personnel regarding such telecommunications lines and equipment.

4) **educational PSAs** (public service announcements): videos for citizens, law enforcement and prosecutors to raise awareness and encourage reporting of CIAs as they occur, as well as provide identification of subjects and their vehicles.

5) **direct points of contact**: on-call telecommunications representatives to support law enforcement investigations by answering questions and concerns regarding the validity of various arguments by non-authorized persons as needed.

6) **on-site evidence**: CIA photos upon arrival, as telecommunications repair staff are instructed to immediately take close-up, medium-distance, and far-away pictures of any potential evidence left behind, while protecting any potential evidence until law enforcement can recover it.

By equipping staff and strengthening collaboration, telecom providers can supply the initial evidence and investigative leads needed to secure convictions.

Moving Texas forward

CIAs are escalating, and their effects ripple across daily life, cutting off communication, commerce, and public safety. By educating law enforcement, leveraging TOM, and applying SB 1646, Texas can shift from being one of the hardest-hit states to one of the most aggressive in prosecuting crimes. Together, law enforcement, prosecutors, and telecom providers can turn the tide: protecting communities, restoring trust, and making Texas a national leader not in CIAs, but in convictions. ❇

onto the mural. I was shocked and so relieved at how well it showed up on the purple background. I used the carbon paper again to paint out Professional Development Bureau in the font our office uses for any materials.

After about five months of painting, I finally finished and signed the mural at the beginning of September. I signed the mural in a few different ways. My obvious name signature is in the bottom right corner, but I also included a couple of artist Easter eggs. The badge number #1120 on the Harris County Sheriff's Office Badge represents my birthday of November 20. The Cause Number #80904 on the case paperwork represents the date I started as a Harris County prosecutor, August 9, 2004.

The completed mural is 11x7 feet, and the materials I used were primer, interior acrylic paint, craft acrylic paint, and Posca paint markers. I worked on it every weekend that I was available, but I didn't keep a detailed log of my hours. There were days I would work a few hours, and there were days I would put in eight hours. I was mostly having a great time with the project, so the time would usually fly by. If I had to guess, I would say the prepping and painting took around 150 hours. I was very thankful that this was an indoor project! The project cost about $250 in supplies and paint. I kept the cost relatively low because I already owned many of the materials I needed.

The response to the mural in our division and across the office has been overwhelmingly positive. For months, many misdemeanor people didn't realize I was painting the mural. They would come in on the weekends and find me on a ladder or laying on the floor painting and then confess they thought someone had been hired to come in and paint it. I think knowing that one of their supervisors painted it for them and for the division adds to the morale and fun of the mural. I see the imperfections of my work, but I am proud to have tackled this and actually finished it. I showed my dad, the toughest critic, a picture of the final product and he said it was perfect and that he couldn't have done better. I don't believe that, but it was the highest compliment.

I have some more ideas for our hallways and hope to tackle some of them soon. I would love the chance to design and paint another office mural as well. I've learned so much from this process and would really enjoy bringing some color, and I hope some smiles, to different areas of our office. ❇

19th-Century legal authority to hold a convicted defendant without bail

What local customs do you have in your county that you know are backed by the law ... someplace in statute ... but exactly where has become forgotten by time, replaced instead by, "That's how we've always done it around here" ?

By Jon English
Assistant Criminal District Attorney in Hays County

As I awaited a recent verdict, I reminded myself to ask for the defendant's bond to be revoked if the jury convicted him and for him to be taken into custody to await sentencing. That's a very normal motion for the State to make in our county in violent felony cases. It probably is in yours, too. While our local defense attorneys will sometimes argue against the motion being granted, the authority to grant it isn't ever challenged. It's just "how we've always done it around here."

But in this particular trial, the defense team wasn't local. And many issues that were typically not debated at trial between members of the county defense bar and the State had been constantly and passionately contested throughout by these out-of-town attorneys. That meant that, even more than usual, we had to pull caselaw that provided authority for practically every aspect of the case.

While the jury deliberated, it occurred to me that this defense team was going to insist there was no authority for a judge to revoke bond post-conviction but pre-sentence. Because their client was able to make practically any bond amount, at the very least they were going to insist that he was entitled to a new bond as he awaited sentencing. I reached out to some of my coworkers hoping someone had already researched this issue for our office. We all had our guesses, but ultimately the final answer came back as, "I'm honestly not sure. That's just how we've always done it."

So I fired up the Westlaw machine and started digging into the research to find the answer. By the time I was done, I had fallen down a rabbit hole all the way back into the late 19th Century.

The rabbit hole

The first thought I had was to research the scope of the right to bail found in the federal Constitution. If that sounds rudimentary to you, you're completely correct. I have to admit, I started this journey knowing next to nothing about issues surrounding the granting of bail. I spent the first seven years of my felony career prosecuting prison crimes with the Special Prosecution Unit (SPU), where practically all my defendants were already incarcerated. Bond was never an issue I had to deal with or learn about.

When I left the SPU and started prosecuting in my home county of Hays, I went from having practically all my defendants being locked up to practically all my defendants being on bond. All I knew was that the Eighth Amendment prevented excessive bail and that there were some crimes and circumstances under which bond could be denied.

The Supreme Court of the United States has not addressed the right to bail under the Eighth Amendment very often, but what we do know from the opinions it has issued is there is no absolute right to bail under the federal Constitution, only a right to be free from *excessive* bail.[1] However, the Texas Constitution provides that

[1] *Broussard v. Par. of Orleans*, 318 F.3d 644, 650 (5th Cir. 2003).

all "prisoners" have a right to bail, except in capital cases where proof is evident.[2] The term "prisoners" was used to differentiate between those who were incarcerated awaiting final disposition of their case, and those who had been finally convicted all the way through the appeals process.[3]

The Texas Constitution, somewhat confusingly, also provides for several instances where defendants are *not* eligible for bail in Article I, §§11(a)–11(c). The Code of Criminal Procedure once provided that all "prisoners" were eligible for bail unless denial of bail was explicitly permitted by the Texas Constitution or another statute, but the legislature changed the word "prisoners" to "persons" in 2021 without making a similar change to the wording of the Constitution.[4]

As my research continued, I was having difficulty finding cases that addressed the concept of a right to bail following conviction but before sentencing. When I came across a case called *Watkins* from the Tyler Court of Appeals, I didn't feel so bad—because the court in *Watkins* was looking for the same authority I was, and it noted it couldn't find any either.[5] But *Watkins* had an interesting statement in it from the court: It said the right to bail under the Texas Constitution applied only to defendants *prior* to conviction.[6]

The Tyler Court cited to an opinion by the Court of Criminal Appeals (CCA) called *Laday* from 1980.[7] When I looked at *Laday*, it cited to a series of CCA opinions that formed a chain of cases that stretched all the way back to 1874 and *Ex parte Ezell* from the old Supreme Court of Texas.[8]

Ex parte Ezell

Reading *Ezell* is painful. It is from an era that largely predates the use of grammatical and formatting tools such as paragraphs and punctuation. Not to mention the fact that the author of the opinion, Chief Justice Oran Roberts, talks kind of funny.

But the opinion thoroughly explains where the idea comes from that while bail is generally a right available to all prisoners, that right attaches only to prisoners before conviction.

In 1874, the Texas Constitution's language was practically the same as it is today concerning the right to bail. It said that all "prisoners" had a right to bail, except in certain capital cases.[9] However, D.M. Ezell and John Ivey, the appellants in the case, were being held without bail pending the appeal of their conviction, pursuant to a statute that provided for incarceration until a final decision on appeal by the Supreme Court.[10]

The appellants contended that the statute that held them in jail was in direct conflict with the constitutional provision making all prisoners bailable.[11] They argued that the constitutional provision providing for bail for all prisoners was put in place to enlarge the rights of the prisoner that occurred at common law, not to restrict them.[12] According to Ezell and Ivey, in the court of the King's bench in England, the court had sole discretion as to when to permit or deny bail, so a statute limiting that discretion and therefore decreasing the rights of the prisoner was counter-intuitive.[13] Furthermore, they said, whenever something was a matter of discretion at common law, it became a matter of right under the Texas Constitution.[14]

As my research continued, I was having difficulty finding cases that addressed the concept of a right to bail following conviction but before sentencing. When I came across a case called Watkins *from the Tyler Court of Appeals, I didn't feel so bad–because the court in* Watkins *was looking for the same authority I was, and it noted it couldn't find any either.*

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[2] Tex. Const. Art. I, §11.

[3] *Ex parte Ezell*, 40 Tex. 451, 452 (1874).

[4] Tex. Code Crim. Proc. Art. 1.07.

[5] *Watkins v. State*, 883 S.W.2d 377, 378 (Tex. App.–Tyler 1994, no pet.).

[6] *Id*.

[7] *Ex parte Laday*, 594 S.W.2d 102 (Tex. Crim. App. 1980).

[8] *Ex parte Ezell*, 40 Tex. 451 (1874).

[9] [A]ll prisoners shall be bailable upon sufficient sureties unless for capital offenses when the proof is evident; but this provision shall not be so construed as to prohibit bail after indictment found, upon an examination of the evidence by a judge of the supreme or district court, upon the return of the writ of habeas corpus, returnable in the county where the offense is committed." *Ex parte Ezell*, 40 Tex. 451, 453 (1874).

[10] "This application is made in the face of the statute which provides, that 'when the defendant appeals in any case of felony, he shall be committed to jail until the decision of the supreme court can be made.' See Pas. Dig. Art.. 3185." *Ex parte Ezell*, 40 Tex. 451 (1874).

[11] *Ex parte Ezell*, 40 Tex. 451, 452 (1874).

[12] *Id*.

[13] *Id*.

[14] *Id*.

My grandmother had an expression: "going around your elbow to get to your thumb." There's bound to be an easier explanation for why a judge is allowed to deny bail and take a defendant into custody after conviction but before sentencing that doesn't require citations to Old West-era caselaw. If not, the Old West cases are still good law.

And you have to remember, common law was, like, only a few weeks old or something at this point in ancient history. So they knew a lot about it back then.

Justice Roberts was evidently triggered by all this talk about the king's bench and common law. No one was going to tell *him* what the common law or king's bench was all about. He then unleashed a furious tirade aimed at providing a thorough legal education to all who would ever read his opinion (an audience which I assume consists entirely of the appellants and then, 150 years later, myself).

Roberts reasoned that if bail were to truly be applied to "all prisoners," then you would only have to go the pen if you couldn't pay bail, unless bail was set in an excessive amount, which would violate the Eighth Amendment of the Federal Constitution.[15] Roberts also pointed out that the constitution of 1845 of the Republic of Texas provided for exceptions to the right to bail made by the legislature.[16] With these two provisions in mind, Roberts found that it was constitutional for the legislature to make such a law restricting the right to bail.

When the right to bail applies

But there was still the issue of when the right to bail applied. Roberts came up with a magnificent quote arguing that what we're talking about is an allegation made prior to conviction: "If we look back through the long struggle against the tyranny and oppressions by which these great rights were secured, it will be found that the grievances complained of related to the treatment of prisoners before trial and conviction, and not after."[17]

He goes on to slam-dunk his opinion with a final quote from Hurd (who was some kind of legal philosopher I've never heard of): "Bail is only proper where it stands indifferent whether the party be guilty or innocent of the accusation against him, as it often does before his trial; but where that indifference is removed, it would, generally speaking, be absurd to bail him."[18]

The record is silent as to whether Roberts made a "mic drop" motion with his hand after writing this passage.

One more piece of the puzzle was clarified by the Court of Criminal Appeals in 1912, when it stated that the term "after conviction" as used in the Texas Constitution's passage relating to the governor's pardon power refers only to the determination of guilt by the jury.[19]

Of course, as you probably know already, there are also offenses and circumstances under which the court has discretion to set no bond based on the offense that has been committed, and the Code of Criminal Procedure allows for bond to be revoked for "good and sufficient cause."[20] Being convicted of the crime for which you are charged certainly falls under that broad category, given the flight concerns, concerns over public safety, or concerns of the victim that can be activated in such a situation.

My grandmother had an expression: "going around your elbow to get to your thumb." There's bound to be an easier explanation for why a judge is allowed to deny bail and take a defendant into custody after conviction but before sentencing that doesn't require citations to Old West-era caselaw. If not, the Old West cases are still good law.

But no law will ever replace everyone's local customs. "How we've always done it around here" will always be the supreme law of the land. ❇

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[15] *Ex parte Ezell*, 40 Tex. 451, 455 (1874).

[16] *Id*.

[17] *Ex parte Ezell*, 40 Tex. 451, 459 (1874).

[18] *Ex parte Ezell*, 40 Tex. 451, 460 (1874).

[19] *Snodgrass v. State*, 67 Tex. Crim. 615, 641–42, 150 S.W. 162, 174 (1912).

[20] Tex. Code Crim. Proc. Art. 17.09.

The little girl in the van

Everyone in Paris knew about the missionaries and their van. For months, they had camped out in the Home Depot parking lot, soliciting donations of cash and fast food in between occasional trips to a truck stop for showers.

By Erin Lewis
Assistant County & District Attorney, &
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Even when the van broke down and could no longer drive around town, no one suspected the couple were anything besides a strange pair of traveling preachers. It wasn't until a local family convinced them to allow the van to be towed for repairs that anyone had a clue that there was a child living inside, a discovery that led to one of the most heart-wrenching cases we've prosecuted.

Good Samaritans step in

Tom and Jennifer Bramlett are Paris locals. Tom is a handyman and does odd jobs for people as part of his family's ministry. The Bramletts were contacted by an elderly couple they had not met to fix a broken-down van. They went out to the Home Depot parking lot and met Ray and Ruth Macabbee. The Macabbees were "missionaries." Tom agreed to make repairs to the van but told the couple that the van had to be towed off the parking lot because he needed to drop the gas tank and he wouldn't do that in the parking lot. Ray refused and the Bramletts left—Jennifer later reported that it was clear Ray was in charge.

A few weeks later, the Bramletts got word that Ray was willing to have the van towed so they returned to the parking lot and called a tow truck. At some point, the tow truck driver opened a door to the vehicle and observed someone who appeared to be a 5- or 6-year-old girl in the back of the van. In the month that the Bramletts had been helping the Macabees, no one had ever seen or heard mention of a child.

The van was towed to the Bramletts' home that day and Tom got to work on it. Jennifer started trying to speak to Ruth and the child. Jennifer would ask questions and Ruth would respond, "The Lord is great; the Lord is good." Ruth would look to Ray before answering any questions, and the child was not allowed to speak. Ruth would tell the child to be quiet or shush her anytime she tried. As it got later in the evening, Tom stopped working on the van. Jennifer and Tom allowed the family to stay at their home that night. They offered to let them sleep inside but the family refused. That evening, Jennifer made a call to police because in her gut, she knew something was not right. The Paris Police Department responded that night, along with Child Protective Services (CPS) investigators. Ray and Ruth refused to exit the van and refused to let CPS lay eyes on the child. Because there was no warrant, police and CPS left the scene with plans to return the next morning.

While at the Bramletts' place, police determined the van was registered to Ray Alvarez Macabee. That name didn't produce any results, so the officer ran the name Ray Alvarez with his birth date, and lo and behold, that name produced a result for a Ramon Alvarez who had a protective order against him for two women. The photo on Ramon Alvarez's driver's license looked just like Ray Macabee and it was determined they were the same person.

The next morning, police and CPS returned to the Bramletts'. This time, detectives could see the inside of the van and it was horrendous. Inside was a makeshift toilet with urine and feces still inside, no food, and a small space near the wheel where the little girl (named Naomi) slept. The van was full of adult clothing but no children's clothes.

TOP TO BOTTOM PHOTOS: The van Ramon, Felisha, and Naomi lived in. The makeshift toilet inside the van. Naomi's "bed"—really, a pillow and blankets under a plywood shelf.

At this point, law enforcement decided to arrest Ramon and Ruth (whom they later learned is named Felisha Scroggins) for child endangerment. Felisha was able to produce a birth certificate to prove that Naomi was her daughter, and it was determined that Ramon was not Naomi's father. Naomi's date of birth was also located on the birth certificate, and this child that everyone thought was between 5 and 6 was actually 10 years old. Once maternity was established, CPS decided to remove Naomi from her mother's custody.

CPS investigators took Naomi to the Children's Advocacy Center (CAC) for a forensic interview. Naomi was dirty and hungry so CAC employees got her bathed, and prosecutor Erin Lewis (a co-author of this article), who had been alerted that the interview was about to take place, ordered Chick-Fil-A for Naomi to eat. The CAC employees found clothing for Naomi in her size, which was a 4T, while the forensic interviewer got set up for the interview.

To say the interview was not productive is a gross understatement. Naomi was able to give her name but not her birthdate. She would not answer questions and instead responded with statements like, "That's none of your business." She was convinced that the interview was a CIA operation. The interview lasted about four minutes before Naomi got up and left. Forensic interviewers see children and talk to them about the worst things that have happened to them, and the interviewers deal with this in their own way but we as prosecutors rarely see it. The interviewer that day was visibly emotional after seeing Naomi and talking to her, however briefly, because though Naomi made no outcries, it was obvious by her size and her statements that she had been through hell in her 10 years. After leaving the CAC, CPS transported Naomi to a nearby foster home.

Meanwhile, in this day and age of social media, someone with knowledge of the situation started posting about it on Facebook and the situation became local news. It also made the news in surrounding counties. Once the story got out, we were alerted to some TikTok videos that were circulating. Those videos introduced us to a woman claiming to be Ramon's daughter, Jacqueline. She stated that he had also abused her and that she was coming to town to report it to police. She did end up speaking to Detective David Whitaker about the abuse she suffered at Ramon's hands. Another person contacted Detective Whitaker and reported that she was Ramon's ex-wife and that they had a child together who lived in town. She believed Ramon came to Paris to look for that child.

The charging decision

Ramon and Felisha were initially arrested for endangering a child based upon the living conditions in the van, as well as the danger of leaving a person in the vehicle while it was being towed. However, from the beginning our instincts told us that charge didn't accurately reflect what Naomi had been subjected to. Those instincts were confirmed once we obtained the records from her first medical appointment in foster care. At barely 40 pounds and a little over three and a half feet tall, Naomi's height and weight were both far below the first percentile on the growth chart for her age. The pediatric nurse practitioner noted protein calorie malnutrition, uncorrected strabismus (misalignment of the eyes so they point in different directions) affecting her vision, and developmental delays in her motor skills. Naomi's foster mother also reported that she had difficulty walking for more than brief stints and had to be carried between classes at her school. We obtained her occupational therapy records, which documented that she had the motor development of a 3-year-old. Because she presented with stunting, meaning lost growth from childhood malnutrition, and because of the significant developmental delays, we believed we had a case for injury to a child causing serious bodily injury.

We decided around this time to try Ramon and Felisha separately. From what we had learned of them by this point, we knew that Ramon was the leader of their mini-cult and that Felisha would be a far more sympathetic defendant. We suspected that a jury would be more likely to assign the blame entirely to him and acquit her if we tried them together. By trying them separately, we could focus a jury's attention on Felisha's role in Naomi's captivity. Trying Felisha first would also give us a chance to fine-tune our case for Ramon's trial.

CPS proceedings

When a child is removed by CPS, the first hearing determines if the State will continue to have temporary managing conservatorship (TMC) of the child. After the Department of Family and Protective Services (DFPS, also called the Department) caseworkers removed Naomi from Felisha, they began searching for Naomi's father. Detective Whitaker also assisted. He received information that a man, James Reynolds, was claiming to be Naomi's father and had been looking for her for several years, even working with a police chief from Louisiana in his search. CPS reached out to him and amended its petition to include James as an alleged father to Naomi. Felisha corroborated that this man was indeed Naomi's father, but the Department wanted to confirm using genetic testing. The test was ordered at that first hearing. Felisha also listened to all the evidence presented about the removal and showed no emotion. She had already told the investigator and the CASA (Court Appointed Special Advocate, or guardian ad litem) that she wanted to relinquish her parental rights. She stated that she planned to continue on her mission with Ramon and she knew we wouldn't let her take Naomi with her so she would just relinquish. Ultimately, the Department was named temporary managing conservator for Naomi and her parents (Felisha and James) were ordered to complete services designed to reunite them with their daughter.

Meanwhile, Naomi was still in the foster home and was doing well. Part of a child being placed in a foster home is that she is provided with services and regular medical and dental care. At her first pediatric visit, Naomi's foster mom reported that the child had to be carried in because her legs were exhausted and hurting. It was so bad the nurse had to help Naomi and her foster mother to the car. The nurse practitioner ordered several tests and observed signs of severe malnutrition. Foster mom was told to supplement Naomi's diet with Ensure to get more calories in her. Foster mom also enrolled Naomi in school, got her into occupational, physical, and mental health therapy, and provided a safe space for Naomi to grow and thrive—and Naomi did just that. When she started school, Naomi had to be carried almost everywhere because her legs were so weak, but by the end of her six-month stay with the foster family, Naomi was running and playing and acting like a normal 10-year-old.

At some point, the genetic testing came back and Reynolds was indeed Naomi's dad, so the child's therapist and CASA began talking to her about him and introduced them. Reynolds was significantly older than Felisha; he had met her while she was a dancer at a club where Reynolds was a patron. The Department and CASA were reluctant to place Naomi with him because of his age and that he lived out of state—it would be very difficult to set up services for both of them. But the judge disagreed with all of us and ordered

At her first pediatric visit, Naomi's foster mom reported that the child had to be carried in because her legs were exhausted and hurting. It was so bad the nurse had to help Naomi and her foster mother to the car. The nurse practitioner ordered several tests and observed signs of severe malnutrition.

Naomi to be placed with her father immediately after the first permanency hearing, so in July, after six months with the foster family, Naomi was placed with her dad. She was so excited to have a dad to live with.

Prepping Naomi for trial

As we began to prepare for Felisha's trial, we looked at our general plan for prepping child witnesses and knew that those would not work. Normally, we meet with them three or four times prior to trial. During our first meeting, it's all very relaxed and non-threatening. We don't talk about the case—it's just introductions and ice breaking. The second meeting, we get into the facts a little bit but not in real depth. In the final meetings, we really delve into their testimony and take them down to the courtroom to let them sit in the witness chair and talk and get comfortable. In Naomi's case, though, by the time we started to get ready for trial, she lived several hours away in another state, which created challenges not only with preparation but also with getting her to trial. The day before trial started, Naomi arrived, and we crammed months of pretrial prep into an afternoon. Sitting on the floor in his office, Ben (a co-author of this article), Naomi, and a CAC counselor built random stuff out of Legos while Ben told her about the courtroom and the super-secret staircase we would take to get there. With her dad's encouragement, Naomi opened up a little bit, enough for us to prepare her for the courtroom. Before we went downstairs to explore it, Naomi picked out a stuffed animal from the basket in Ben's office and named her "Rosie the Fluff."

Naomi testified that she got Cheerios for breakfast, peanut butter and jelly for lunch, and half a block of dry ramen for dinner. She said that Ramon and Felisha got pork chops and hamburgers and anything they wanted, but if Naomi asked for anything they were eating, she was told no. She never went to the park, never went to school, never went to the doctor, and never played outside.

Felisha's trial

Felisha's injury to a child trial began with Jennifer Bramlett's testimony. She and her husband, Tom, were the ones who helped Ramon and Felisha with their van. As expected, she started our case with a vivid illustration of Naomi and her living conditions. We proceeded through the CPS investigator's testimony and then moved to the pediatric nurse practitioner who had assessed Naomi when she was placed in foster care. One expected pitfall in her testimony was that Naomi's bloodwork actually turned out much better than expected. Although we addressed that on direct examination, it still gave a point for the defense to hammer on cross. The defense also highlighted that while Naomi was extremely small for her age, she didn't look emaciated.

While Naomi was waiting to testify, she and the counselor from the CAC walked past Erin's office where the girl noticed Erin's cutout of Taylor Swift hanging on her door. Naomi thought it was Barbie and asked the counselor if Barbie worked in that office. As it turns out, Erin's maiden name is actually Barbee, which the counselor knew, so she told Naomi that Barbee did work in that office. (It didn't hurt that Erin was wearing a pink suit that day.) Naomi called Erin "Barbie" the rest of the day!

When Naomi was on the stand, Ben did the questioning. He asked her to identify her mother and she gave an appropriate identification, though later, Naomi asked if her mother was in the room. Naomi testified that she got Cheerios for breakfast, peanut butter and jelly for lunch, and half a block of dry ramen for dinner. She said that Ramon and Felisha got pork chops and hamburgers and anything they wanted, but if Naomi asked for anything they were eating, she was told no. She never went to the park, never went to school, never went to the doctor, and never played outside. Defense counsel asked a few questions on cross and Ben asked a few more things on re-direct, and Naomi was done. Erin walked out of the courtroom with Naomi to get something, and as she walked up the stairs, Naomi called out, "Bye, Barbie."

After Naomi left the stand, we moved on to her therapist from her months in foster care, followed by the investigating detective, and then Naomi's foster mother, Catherine Barnett. Barnett turned out to be an amazing asset to the case. Where every other witness had dealt with Naomi for only brief periods, Barnett saw her day-to-day life. She painted a picture for the jury, a picture of a child who was too weak to walk for more than a few minutes at a time and had to be carried between classes at the first school she had ever attended. Barnett described how Naomi would run into counters around the house because of her uncorrected vision—but also her amazement when she received glasses. She also took Naomi to months of occupational therapy, as an assessment showed that she had the motor development of a 3-year-old and was unable to pedal a bike or open a bottle of water. We finally put on brief testimony from a CASA, whom Felisha told during a status hearing that she wanted to give up her parental rights so she could go back out on her "mission."

At that point, we rested, and it was the defense's turn. Defense counsel had Felisha admon-

ished as to her Fifth Amendment rights, and Felisha decided to testify. Defense counsel questioned her about her background and life up to the point of the arrest. Felisha said that after Naomi's birth, she fell back into her old ways of drugs and strip clubs and "needed the Lord." She had prayed for God's guidance, and while driving, she saw Ramon Alvarez holding a wooden cross next to a van covered in Scripture and the name of Jesus. She took that as a sign from God and pulled over to talk to him. Shortly after meeting Ramon, Felisha and Naomi got in the van with him and off they went. Describing life with Ramon, Felisha testified that they would go where the Lord sent them and they lived on the donations of strangers. They were "married in the eyes of the Lord" pretty soon into their relationship and had been "married" for about seven years.

Felisha's testimony minimized her involvement and painted her as Ramon's victim. She testified that Ramon was in charge, he made the rules, and he made the decisions. She was to be submissive to him in all things. Her reasoning for hiding Naomi from the world was that they hid her only until they got to know people and then Naomi was always able to go out and play. All of this was contradicted by what Jennifer Bramlett and Naomi herself had testified. Felisha said on cross that until they left with Ramon, Naomi had grown normally and appropriately and that she noticed that Naomi was smaller than she should be but that she didn't really think anything of it. She testified that Naomi's meals were fine. Toward the end of cross, she testified that even if she disagreed with Ramon, she wouldn't ignore his directions.

Guilty on a lesser-included

Although we had indicted Felisha on first-degree injury to a child by intentionally or knowingly causing serious bodily injury, the defense requested a lesser-included instruction on injury by recklessness, a second-degree felony. Our judge was skeptical whether recklessness could apply when there was injury by omission, but he ultimately included the instruction, reasoning that failure to include a requested instruction would be likely grounds for reversal.

The first part of our closing arguments focused on two elements of the offense, serious bodily injury and the culpable mental state. For the injury, we shifted our focus from malnutrition to Naomi's developmental delays. Even though we were unable to locate the occupational therapists who had worked with her, we did obtain her records and enter them into evidence. We argued to the jury that her developmental delays, which required months of therapy, were a protracted loss or impairment of her normal bodily functions because she was unable to do simple tasks such as holding a pencil or opening a package of snacks. Turning to the mental state, we conceded that Felisha was probably not intentionally starving Naomi and instead we leaned on her knowledge. We pointed out the parental instinct to feed one's children, even if it meant the parent going without and the near-universal experience of kids needing to eat, and eat *a lot*.

The defense argument attacked the main weakness with our medical evidence, the lack of follow-through treatment and assessments as a result of Naomi's rapid placement in foster care. The defense also attempted some creative interpretation of the records and testimony by arguing that it wasn't believable that Naomi was completely unable to walk and if that were the case, the nurse practitioner would surely have noted it. On rebuttal, we took aim at that and highlighted it for the jury as the misleading ploy it was. We reminded the jury that during the foster mother's testimony, she kept correcting defense counsel every time he claimed Naomi was unable to walk. To underline the misstatements about Naomi's condition, we pulled out the medical records and directly read from the nurse's observations: "She can hardly walk." When Felisha took the stand earlier, she had said that they started living in the van with Ramon when Naomi was 3 years old. That became our final theme for the jury, that time stopped when Naomi entered the van. Her growth was frozen at that of a 3-year-old, as was her ability to grasp objects. Instead of growing up to be a normal 10-year-old girl, she was trapped for seven years eating dry ramen and sleeping under a shelf.

When Felisha took the stand earlier, she had said that they started living in the van with Ramon when Naomi was 3 years old. That became our final theme for the jury, that time stopped when Naomi entered the van. Her growth was frozen at that of a 3-year-old, as was her ability to grasp objects. Instead of growing up to be a normal 10-year-old girl, she was trapped for seven years eating dry ramen and sleeping under a shelf.

The jury deliberated for about 45 minutes that afternoon before breaking overnight, then deliberated another hour and a half the next morning. They sent out a note asking about the punishment range for the lesser included offense, which we had not addressed during voir dire. Ultimately, the jury found Felisha guilty of second-degree injury to a child causing serious bodily injury by recklessness.

Felisha was the only witness in the punishment phase. She testified that she had been sexually abused by her father and had dropped out

of school in the eighth grade to take care of her family when her father went to prison. She turned to drugs to deal with her pain. She continued to make herself the victim and never took any responsibility for victimizing Naomi due to her choices. On cross-examination, Felisha stated that she had not filed for divorce from Ramon and that she didn't know if she would. Her final statement was that she didn't know if she'd go right back out with Ramon or not.

Because Felisha had never been convicted of a felony, she was probation-eligible and we knew the defense was going to argue for probation—which counsel did. Counsel argued that Felisha has been a victim all her life and she just needed help. On rebuttal, Ben argued that probation was the easy way out for Felisha, that with probation there wasn't justice for Naomi. What Felisha had done to Naomi were not things probation could fix.

The jury deliberated for less than an hour, and as the court was about to announce a lunch break, the jury let the bailiff know they had a verdict. Shortly before noon, the judge read the verdict of 20 years' confinement in prison with no fine.

Re-charging Ramon

With Felisha's trial behind us, it was time to focus on Ramon. While preparing for Felisha's trial, we learned that Naomi had received a full psychological assessment upon being placed in foster care, and we obtained a copy of it. The psychologist had diagnosed Naomi with post-traumatic stress disorder (PTSD), which was consistent with her therapist's testimony. However, it wasn't until after Felisha's trial when we watched a video replay of a session from the Crimes Against Children Conference (provided by the Dallas Children's Advocacy Center) that we realized that PTSD is a distinct injury with its own charge. We searched through caselaw and concluded that PTSD could not only qualify as a serious mental impairment or injury under the injury to a child statute, but also that bodily injury and mental impairment or injury were distinct offenses that could each be charged.

We realized that PTSD is a distinct injury with its own charge. We searched through caselaw and concluded that PTSD could not only qualify as a serious mental impairment or injury under the injury to a child statute, but also that bodily injury and mental impairment or injury were distinct offenses that could each be charged.

Armed with that research and diagnosis, we sent Ramon's case back to the grand jury to obtain a superseding indictment on an additional first-degree count and set him for trial a few weeks later. Going into the second trial, we felt like we were in a far better position than we were the first time around. Unlike Felisha, Ramon would not be a sympathetic defendant, and we were now armed with a stronger case. Of course, knowing the case was stronger didn't reduce anyone's anxiety or make the second trial any easier.

Ramon's trial

The majority of evidence in Ramon's trial tracked Felisha's but with some adjustments. For example, during the nurse practitioner's testimony, we had not distinguished between acute and chronic malnutrition very well. The defense exploited that to conflate symptoms of the two conditions during the first trial. During Ramon's trial, we had the nurse describe the differences and explain how even a child with relatively normal lab work could be severely malnourished. She was also much more definitive in her opinion that Naomi had been malnourished for years.

Prepping Naomi this time was even more rushed. She arrived at the courthouse 30 minutes before she was set to take the stand. The CAC worker was there, and Ben went to prep her while another witness was on the stand. This time, Naomi was very hesitant to answer questions and shut down completely. The court took a lunch break and Erin came in to help with prep. Naomi remembered "Barbie" and was excited for more "glitter freckles" (Erin had gotten some temporary face tattoos of sparkly freckles for a concert and given them to Naomi after the first trial). She opened up some more and it was decided that Erin would do the direct on Naomi this go-'round.

Naomi did great in testimony and was able to tell her story again. Naomi had a stress ball that she carried this time instead of a stuffy. After defense counsel finished questioning Naomi, she got up to leave. She had been squeezing the stress ball so hard, the ball had popped open and the liquid inside had leaked everywhere. The bailiff and court reporter immediately went into clean-up mode. From the jury box, it looked like she had wet herself. But once outside of the courtroom, she jumped on her dad and hugged him tightly. She got her new glitter freckles and promised to come back and see us when she was close by. Dad was ready to get out of the courthouse.

The biggest change in the trial was the addition of psychologist Kevin Weatherly as our final witness. After walking through his education and experience to qualify him as an expert, we turned to the process of Naomi's psychological evaluation. For Naomi, the evaluation involved a clinical interview; mental status exam; and battery of intelligence, behavioral, and trauma assess-

ments. While we discussed all components of the evaluation, we spent most of our time discussing the Trauma Symptoms Checklist for Young Children (TSCYC). Naomi displayed extremely high scores on the TSCYC assessment, scoring at the 97th percentile for post-traumatic stress. The medical evidence had shown that Naomi fell below the first percentile for height and weight; now, the psychological evidence showed that she tested at the opposite extreme for trauma. After explaining each step of the evaluation process, Dr. Weatherly testified that he diagnosed Naomi with PTSD. The next questions tied everything together. Ben described Naomi's situation, living in a van, forced to sleep under a shelf, physically abused, and deprived of food, then asked if Dr. Weatherly would expect that to lead to PTSD. "One hundred percent, yes," was his answer. A couple of questions later, Ben asked if he would consider PTSD a serious mental impairment or deficiency. "Yes," he replied.

We rested after cross and prepared for argument. Unlike Felisha's attorney, Ramon's chose an all-or-nothing approach and did not ask for instructions on any lesser-included offenses. The State's arguments were largely the same, but Ramon's attorney framed the case as one of homelessness and Felisha's bad parenting. In rebuttal, we reminded the jury that every single witness who saw Ramon and Felisha said that Ramon was in charge. We pointed out that Felisha and Naomi had minimal clothing while Ramon had a whole wardrobe, that Ramon ate anything people brought him but tossed Naomi a block of dry ramen. Ramon was the leader of their miniature cult and the time had come for him to be held accountable. An hour and twenty minutes later, Ramon was found guilty as charged on both counts.

A daughter's testimony

Back at the beginning of this whole case, Detective Whitaker spoke to Ramon's biological daughter, Jacqueline. We could not use her testimony during the guilt–innocence phase, but we sure could use it in punishment. Ben reached out to Jacqueline by phone and talked to her about testifying. She was more than willing to testify, so the day before trial started, Jacqueline drove to Paris from another state to wait for her chance to tell her story.

Jacqueline's tale was slightly different from Naomi's but the abuse was similar. She had lived with her mom, dad (Ramon), and sister, and that life was unstable. They moved around a lot until they landed in New Mexico when she was 4. They stayed there for seven years. In New Mexico, Ramon operated a homeless shelter and moved his family into it. He was also running an unlicensed, illegal radio station that was eventually shut down by the Federal Communications Commission. At that point, the family was forced to sell the building that housed the shelter, and they started traveling in the van and a tiny RV. It was the same van in which Naomi was later found.

After several years of travelling, they landed in a Louisiana town south of Shreveport. They were attending a church where another pastor observed the hatred in Jacqueline's eyes toward Ramon. She eventually opened up to the pastor and told him about all of the abuse she had suffered at his hands, how she had been allowed to eat only rice and beans but that Ramon got the best of everything and she and her mom and sister got what was left, which wasn't much. At 18 years old, Jacqueline weighed 89 pounds, and it wasn't because she was suffering from an eating disorder. That malnourishment led to her being fully disabled at age 24 because she was unable to walk around while they were living in the van. She has irritable bowel syndrome and feels all her emotions in her stomach. She has complex PTSD and has nightmares every night about Ramon and the conditions she lived in. She has borderline personality disorder, which was linked to the trauma she endured. She attends individual therapy every two weeks and group therapy the other two weeks a month. Her most poignant testimony was about the physical and emotional abuse she suffered at her father's hands: "I was hated for no reason," she testified. "He hated me. Like, he wanted me dead, and I had no idea why. He loved my sister for some reason. She was the favorite, but me, I was hated." She testified that Ramon would kick her and hit her so hard she would have to catch her breath. He left bruises from grabbing her and holding onto her. He hit her on her right temple numerous times. The verbal abuse was also constant. Ramon was always screaming at her. One day, Ramon told her that he didn't care if Jacqueline went and drowned in the lake. Defense counsel did a minimal cross and then both sides rested and closed.

Closing arguments on punishment were simple. During the first part, we discussed the jury charge and common questions, such as how the

Continued on page 33 in the tan box

Jacqueline's most poignant testimony was about the physical and emotional abuse she suffered at her father's hands: "I was hated for no reason," she testified. "He hated me. Like, he wanted me dead, and I had no idea why. He loved my sister for some reason. She was the favorite, but me, I was hated."

Taking down a real estate fraudster

In 2019, while assigned to the White Collar Unit of the El Paso County District Attorney's Office, I was handed a new case to screen.

By Erin Delaney
Assistant District Attorney in El Paso County

The subject was Victor Bernard Dennis, the 39-year-old manager, director, and owner of KV Homes, LLC. Dennis was not a licensed real estate agent or mortgage lender or servicer (though he gave the impression he was), and he operated under several additional business names, none of which were registered with the State of Texas.

Between 2014 and 2017, Dennis advertised that he purchased homes "as is" on cardboard signs he posted on street corners and medians throughout the area surrounding Fort Bliss, our local Army post. Service members under orders to transfer away from Fort Bliss were eager to sell their homes and contacted Dennis because of this attractive offer. Dennis paid nothing to the service members for the homes, but instead represented he would assume their loans and take over their mortgage payments, a legal arrangement if handled properly. With this agreement, service members deeded their homes to Dennis, but he never legally assumed the mortgage loans on the homes and the mortgages remained in the original owners' names.

Dennis also advertised the homes he acquired in this way for sale on websites and on signs posted in the area, attracting buyers with offers of owner financing for buyers with little or no credit. When interested buyers called about the homes, Dennis claimed to be the homeowner and gave personal tours. After feeling out what the buyers could afford, he quoted and received down payments ranging from $5,000 to $15,000, all of which he kept for himself. He also quoted a monthly payment roughly matching the existing mortgage payment on the homes.

Dennis and buyers signed a contract titled "Standard Purchase and Sale Agreement" which failed to disclose the original liens (mortgage loans) on the properties. The document also failed to disclose that Dennis was conducting a wraparound mortgage transaction, a type of owner-seller financing, and did not comply with strict regulations for such transactions set out in the Texas Property Code.

Dennis often met buyers at a title company to create an appearance of credibility. There, buyers would sign an "Installment Land Contract" and "Note," along with other documents. The Note listed one of Dennis's bank accounts as the payment account. Buyers paid their monthly payments faithfully, most of which Dennis kept for himself instead of applying to the mortgages.

When the original homeowners—the service members—received notices that their mortgages were in arrears, they contacted Dennis. He assured them it was an error and he would resolve it. Dennis would then remit partial payments to the mortgage companies with the effect of delaying foreclosure for several months to over a year. Ultimately, however, most of the homes were foreclosed upon, devastating the service members' credit and leaving them with long-term financial consequences, including difficulty securing housing and vehicle loans.

Meanwhile, long after moving into what they believed were their new homes, buyers began receiving foreclosure notices and orders to vacate. Their calls to Dennis went unanswered. Left in confusion, buyers had to piece together the truth on their own, eventually contacting law enforcement. The El Paso Police Department's Financial Crimes Unit investigated this complex scheme and presented it to our office for prosecution.

Real estate fraud

This was not the first time I had seen a real estate fraud case while assigned to the White Collar

Unit. Our unit had handled two or three cases involving similar schemes before. However, none of those defendants had been quite as prolific as Dennis and, for various reasons, their cases did not result in convictions. When I received Dennis's case and saw just how many people had been deceived and hurt, it was evident there was a strong pattern of willful deception, eradicating any possible defense that this was a civil matter or that he was simply a legitimate businessman whose business "got away from him."

Piecing together the puzzle

Organizing the extensive records and information in this case was critical to successful prosecution. Each transaction for the acquisition and selling of 17 homes had at least two sets of victims: the service members and the buyers. Investigators in our office worked to locate each military homeowner, many of whom were deployed and therefore unavailable. Fortunately, their family members helped us establish contact or provided useful information. From these sources, we obtained mortgage company details and issued grand jury subpoenas to collect all relevant documents, including mortgage records, identities of mortgagees, amounts remitted by Dennis after each "sale," and foreclosure documentation.

From each buyer, we obtained copies of their contracts with Dennis, some receipts for payments, and their banking information. We then issued grand jury subpoenas for their bank records to prove the amounts they paid to Dennis. Dennis's own financial records were also subpoenaed to confirm the amounts he received from buyers.

Determining the total amount of the theft was straightforward. Because Dennis operated under a common scheme and continuing course of conduct, we concluded that we could prove his intent to deprive buyers of all amounts they paid, which was over $324,000. Any amounts Dennis did remit to the mortgage companies essentially served to further his scheme by staving off foreclosure, allowing him to continue receiving payments from buyers. To calculate the value of the theft of real property, I used the latest appraisal district valuations (which are historically below market value). They totaled over $2 million.

In December 2019, I charged Dennis with two first-degree felony counts of theft greater than $200,000. These included both monetary theft and theft involving the transfer or purported

parole instruction worked, that fines aren't paid to the victim, and that stacked or concurrent sentencing isn't a question for the jury to consider. The defense argument centered on Ramon's age, suggesting that at 60, he was unlikely to reoffend after his first felony conviction and should be given a lenient sentence. In rebuttal, Ben asked the jurors to think about Lady Justice and her scales and to consider the two lives Ramon had devastated. The only thing that could balance the scales, he argued, was a life sentence. After a little under two hours of deliberation, the jury returned punishment verdicts of 60 years on each count. We're fortunate in Lamar County to have a judge who defaults to stacking in child abuse cases, and Ramon's sentences were no exception. The judge ordered the sentences to run consecutively for a total of 120 years. Many times, after discharging the jury, our judge will offer jurors the courtroom balcony to observe sentencing (our historic district courtroom looks like it was taken straight from *To Kill a Mockingbird*). Not only did all 12 jurors remain for sentencing, but they also came back downstairs to hug Jacqueline.

Conclusion

While we were writing this article several months after the second trial, Ben received a text message from Reynolds, Naomi's father. He would occasionally call to give an update or text Ben a photo to share with the office, so we'd gotten to see some of her other new experiences, such as gymnastics and chicken fried steak. He wanted to let us know how she was doing and, of course, sent along a photo. Like any 11-year-old, Naomi looked unenthusiastic about her dad taking a picture while mid-bite at lunch. She was up to 70 pounds, almost twice the size of when we first saw her, and doing well in a home where she is loved. The difference from a year and a half before was absolutely astonishing.

In so many cases, we give our best effort and hope that we can make a difference in a victim's life. Naomi's case was the rare opportunity to *see* the difference and know that for one person, we did help make that change. ❇

transfer of title to real property under the value ladder applicable at the time Dennis began his scheme. I chose not to add a third count of securing execution of document by deception greater than $200,000 because, while an appropriate charge for his conduct on both sides of each real estate transaction, it did not adequately convey the enormity of the damage done. I wanted a jury at trial to focus on the whole picture and any conviction in this case to be recognizable for what it was: cold, hard theft. New this year is the offense of fraudulent sale, rental, or lease of residential real property in §32.57 of the Penal Code, which can be charged and prosecuted in addition to theft and securing.

Restitution amounts were calculated separately from the total theft. Because Dennis did remit some payments to mortgage companies, he did not keep all amounts buyers paid. Restitution owed to buyers was calculated as the total amount they paid to Dennis minus the amount he forwarded to mortgage companies. While buyers lost thousands of dollars (and potential equity and interest in the homes they believed they were purchasing), they did at least obtain the benefit from housing in exchange for their money during the time they occupied the properties.

It was determined that no restitution was owed to the original homeowners because they had voluntarily relinquished any equity they may have had in their homes when they deeded it to Dennis to assume their loans. Importantly, the main damage they suffered was to their credit, a consequential harm for which restitution is not available in Texas. Similarly, mortgage companies were not owed restitution because they ultimately recovered their collateral, the homes, through foreclosure.

While deferred for such a ruthless and exploitative scheme was nearly unthinkable, the prospect of securing one-third of restitution up-front was a significant benefit to the victims. I also understood that deferred preserved the full range of punishment (five to 99 years or life) if Dennis violated these terms.

Working out a plea

Plea negotiations began in 2020 during the COVID-19 lockdown, when in-person court proceedings were indefinitely suspended. Dennis's attorney stated that the defendant had $100,000 in restitution to pay up-front and would be able to pay the remaining restitution at a rate of $1,550 per month thereafter. In exchange, he wanted deferred adjudication.

While deferred for such a ruthless and exploitative scheme was nearly unthinkable, the prospect of securing one-third of restitution up-front was a significant benefit to the victims. I also understood that deferred preserved the full range of punishment (five to 99 years or life) if Dennis violated these terms.

After consulting with victims, who overwhelmingly prioritized restitution and a quick resolution, I agreed to the plea deal. Dennis pled guilty and paid the $100,000 restitution, which was distributed to the 19 buyers *pro rata* according to their individual losses. Dennis also paid his monthly restitution installments for a while, money he likely obtained from subsequent victims, as he never had legitimate employment during this time.

Another scheme

Predictably, Dennis did not change his behavior and immediately resumed fraudulent schemes involving real estate right after his plea. Starting in 2020, he began targeting a different type of property, unimproved land out in the county. Dennis accessed the county tax website and identified vacant tracts with delinquent property taxes, which indicated to him that the owners were either out of state, deceased, or otherwise inattentive.

Dennis placed "for sale" signs on these tracts, prompting inquiries from passersby. He met the interested buyers at the properties within minutes and negotiated terms. Once Dennis and a buyer had an agreement, he prepared fraudulent deeds transferring ownership of the land from the actual owners to his illegitimate company he called Legion Investments, LLC. He forged the owners' signatures, falsified notary seals and signatures, and filed the fraudulent deeds with the county clerk's office. Armed with these documents, Dennis appeared to be the owner of this land, holding it just long enough to complete a sale to the buyer.

Dennis then met buyers at various public locations, including Postal Annex and The UPS Store, locations that offer the services of a notary public, within a matter of days to complete the sale. Buyers either paid in full or made down payments, and Dennis executed a Warranty Deed transferring the property from Legion Investments to the buyers. Remaining payments owed

by buyers were collected via apps such as Azibo and Turbo Tenant.

By 2023, Dennis's new fraud came to light. Some buyers discovered the scam when they attempted to pay property taxes and learned from the Central Appraisal District that they were not the owners of record. Others saw new "for sale" signs posted on the properties they thought they had just purchased. When they contacted the listed real estate agents, they discovered that Dennis had never owned the land. One buyer had even started building a home on the property before discovering the fraud!

Dennis was arrested, and I quickly filed a motion to adjudicate guilt. He was held without bond until it was set at $100,000, keeping him in custody while many of his new cases trickled in. In his second scheme, 17 known properties were targeted, resulting in more than 20 victims and losses exceeding $200,000.

New charges

The cases from Dennis's new scheme were presented piecemeal from different investigators across multiple law enforcement agencies. Rather than waiting for all cases to trickle in and aggregating based on a common scheme or continuing course of conduct, I charged Dennis with each available offense applicable to the particular facts as each case was presented, knowing that he faced a punishment of five to 99 years or life if revoked. Dennis was therefore charged in four new indictments with multiple counts, including forgery of a financial instrument with intent to harm or defraud; tampering with a government record, license, or seal with intent to harm or defraud; and theft of property. These offenses carried punishment ranges from state jail to second-degree felonies. The State's recommendation was 25 years on the original first-degree felony revocation to run concurrent with the maximum punishment on the new charges, an admission of guilt to 10 unindicted cases (which were presented during plea negotiations) under the provisions of Texas Penal Code §12.45, and the State would decline three unindicted cases involving his wife as a co-defendant.

Dennis remained in the El Paso County Jail for over 670 days attempting to negotiate a more favorable recommendation. As the prosecutor for the State, I remained firm on my offer, convinced that a contested revocation could result in a sentence exceeding 25 years. Eventually, Dennis offered to cooperate with law enforcement by explaining how he executed his fraud in exchange for a reduced sentence of 20 years.

Plea agreement

On the record, I agreed to this counteroffer under two conditions: 1) Dennis had to provide complete information, and 2) that information must be *actionable by law enforcement* to prevent future scams like his. I was hopeful that Dennis would provide detailed information that law enforcement could use or disseminate to help reduce recurrent of this fraud.

Dennis accepted these terms on the record, and he and his attorney met with detectives. During that meeting, Dennis detailed how he exploited publicly available information on the county tax website to identify vulnerable target properties. He also described his technique to forge notary seals and offered recommendations for preventing similar fraud in the future.

Although Dennis was forthcoming, the information he provided was not actionable by police, as law enforcement has no authority to implement changes to systems used by the Tax Office, Notary Commission, or County Clerk's Office. Nevertheless, because he cooperated fully, I honored nearly the entire agreement, offering him 21 years instead of 20. Dennis accepted, and the court approved the plea.

Thirty days later, our office held a press conference to inform the public about Dennis's schemes and to educate citizens on how to recognize and avoid real estate fraud. After the press conference aired on local television newscasts, was published on news websites, and was posted on social media, eight additional victims came forward. Remarkably, they had been making monthly payments via digital apps for properties they purchased from Dennis the entire time he had been incarcerated.

The defrauded buyers in Dennis's latest scheme face challenges in resolving title to the land they thought they had bought. In some instances, the rightful owners, or their heirs, have never come forward or cannot be located. Buyers are aware that title is likely defective and they cannot invest in improvements without risk. In resolving these cases, buyers asked whether they needed to continue making their monthly pay-

Continued on page 37 in the tan box

After the press conference aired on local television newscasts, was published on news websites, and was posted on social media, eight additional victims came forward. Remarkably, they had been making monthly payments via digital apps for properties they purchased from Dennis the entire time he had been incarcerated.

Bridging the islands: enhancing communication between CPS and criminal prosecutors

By Robyn Beckham (left)
Assistant Criminal District Attorney in Kaufman County, &
Leslie Odom (right)
Assistant County & District Attorney in Ellis County

Introduction from Leslie Odom

As a CPS (Child Protective Services) prosecutor in Ellis County, I'm sure I am not alone in thinking, "I wish *The Texas Prosecutor* included more perspectives and knowledge from CPS attorneys." After nearly 17 years as a prosecutor, most of that time spent representing the Texas Department of Family and Protective Services (TDFPS), I've often wished that those of us representing CPS could have more of a voice in journals and trainings. Like many attorneys in similar roles, I have served as the sole CPS prosecutor in my county for almost the entirety of my practice of child protection law, and it is a role that can feel quite isolating, as if you work on an island all by yourself.

Imagine my excitement when TDCAA reached out and invited me to share my voice and perspective in this space! This is the first in a series of six articles exploring key aspects of prosecution from a CPS attorney's point of view. My hope is to foster stronger understanding and collaboration between CPS and the broader prosecutorial community.

To kick things off, I'm proud to co-author this first article with my longtime friend and fellow prosecutor, Robyn Beckham. Robyn serves as the Criminal Trial Chief in the Kaufman County Criminal District Attorney's Office, where she often handles criminal cases that run parallel to CPS proceedings. Together, our goal is to offer practical guidance on building stronger, more effective lines of communication between criminal prosecutors and CPS attorneys. Drawing from our combined experiences, we hope to shed light on the mutual benefits of collaboration—and why reaching out to your CPS counterpart doesn't just make the work easier but often leads to better outcomes for the cases and children we all care about.

Introduction from Robyn Beckham

Leslie is right: A CPS caseload can seem to the rest of us like it operates on its own island, complete with its own "island time" (thanks to unfamiliar ticking statutory clocks) and "island language." If you've ever attempted to review a CPS narrative and seen something like, "FP is UTD for PHAB to OV; however, TMC granted due to NSUP of OV and SB, and CASA is appointed," you know exactly what I mean. It can feel like you need a translator to figure out what's going on.

But once Leslie walked me through the wealth of knowledge and resources available to CPS attorneys, I realized how valuable that information could be to my own work as a criminal prosecutor. Simply put: The earlier we share information and collaborate, the stronger both our investigations and prosecutions can be. So let's get this conversation started.

Leslie, what exactly is it that you do on your island? What is the role of a CPS prosecutor, and where do your legal authorities come from?

Leslie's perspective on CPS: What I do and why

I will note at the outset that "CPS" is the common, all-encompassing way of referring to two separate programs within the Texas Department of Family and Protective Services: Child Protective Investigations (CPI) and Child Protective

Services (CPS). These are two of four distinct programs within the Texas Department of Family and Protective Services serving our state and communities in its efforts to ensure the safety of children, adults, and families.[1]

CPS becomes involved when DFPS (sometimes just called "the Department") receives an intake report containing allegations of the abuse or neglect of a child. But what exactly do those terms mean? Under Texas Family Code §261.001(1), (3), and (4), actions and inactions determined to be abuse, neglect, or exploitation include:

- physical, emotional, or sexual abuse;
- physical or medical neglect;
- sex or labor trafficking;
- neglectful supervision;
- abandonment;
- refusal to assume parental responsibility;

or

- illegal or improper use of a child.

However, it's important to note that CPS does *not* investigate reports where the alleged perpetrator does not reside in the child's home or is not a legal guardian or family member of the child.

You might be surprised to learn that the role of a CPS prosecutor involves far more than just appearing in court for termination of parental rights cases. Let's consider first that each report made to the Texas Abuse Hotline[2] creates a case with its own timeline. Some of those timelines are short, with CPS Statewide Intake closing the cases without requiring further investigation or involvement (for instance, reports involving allegations of abuse or neglect by a person "other than a person responsible for a child's care, custody, or welfare"[3]). But other cases' timelines can be much longer in length—perhaps even multiple years—if they follow the path of investigation, family-based safety services, and eventual legal intervention requiring CPS taking custody of the children.

When a case is determined to require further CPS investigation and involvement, it is referred

ments to Dennis and whether they truly had an ownership interest in land that had been fraudulently taken from someone else. In these instances, we have encouraged buyers to seek legal assistance from a licensed attorney and title company to resolve their property status issues.

Conclusion

Victor Bernard Dennis's schemes demonstrate how real estate fraud can devastate both vulnerable homeowners and unsuspecting buyers. His ability to exploit public information, forge official documents, and manipulate legal processes allowed him to operate undetected for years, leaving behind a trail of financial damage. While justice was ultimately served with Dennis receiving a significant prison sentence and paying restitution, his victims will be impacted for years to come. This case is a reminder of the need for public awareness, stronger safeguards in property transactions, and awareness of this type of fraud by law enforcement and prosecutors. ❇

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[1] To learn more about the four major programs of the Texas Department of Family and Protective Services, visit www.dfps.texas.gov/about_dfps.

[2] 800/252-5400 or www.txabusehotline.org.

[3] Tex. Family Code §261.301.

to the appropriate local CPS office. That is how such matters occurring in Ellis County end up on my desk.[4] I provide legal counsel to CPI during the initial investigation of the case, as they determine whether children should be taken into custody, or, alternatively, whether services can be provided safely to the family while the children remain in the family home. I provide counsel when the case rises to the necessity of CPS taking legal custody and possession of children. I even continue to provide counsel to CPS if children remain in CPS care after the termination of parental rights.

How I can assist criminal prosecutors

Why does any of this matter to my criminal prosecutor counterparts? Because at each stage of a family's involvement with CPS, we are gathering a wide range of information and evidence—about the children, their families, and the underlying issues that led to CPS involvement in the first place. Even if CPS doesn't open a case that is ultimately referred for further investigation, the records of Statewide Intake will include the details of the initial report, as well as potential collateral information gathered during the screening process. In other words, even a closed CPS case may still contain valuable leads, especially if you're building a criminal case against a parent or guardian.

Why does any of this matter to my criminal prosecutor counterparts? Because at each stage of a family's involvement with CPS, we are gathering a wide range of information and evidence–about the children, their families, and the underlying issues that led to CPS involvement in the first place.

This is why I encourage criminal prosecutors to reach out to your CPS attorney. We may be able to point you toward relevant records, explain case history, or help you access witnesses and information you didn't even know existed. I am certain that criminal prosecutors have had cases they were working on in which they needed to locate a CPS investigator mentioned in the case report. Guess what? I can very likely provide you with the most up-to-date contact information for that person. Even more crucially, I can help you track down children who are no longer in their original guardians' homes.

Envision the following scenario: You are prosecuting a mother charged with the physical abuse of her child. Your investigation reveals that CPS removed the child from his mother and terminated her parental rights. From your review of the records, you see that the child was adopted by a foster parent. Then the trail goes cold. Well, I can very likely obtain contact information for the foster parent. I may not always have the information you need, but we won't know if we don't try.

Now let's hear from Robyn on how this has worked in practice. Robyn, what information have I helped you gather for some of your criminal prosecutions, and how did you use it?

Robyn's criminal perspective: what I need from CPS

The CPS cases that most often overlap with criminal prosecution—and offer the richest potential for collaboration—are those involving the physical or sexual abuse of children. In these cases, working closely with a CPS attorney doesn't just help; it can significantly strengthen the case at every stage, from investigation to trial.

Physical abuse. If you're prosecuting a parent for Injury to a Child,[5] CPS's concurrent investigation can be an invaluable source of information—and in some cases, it may provide even more compelling evidence than what your law enforcement team collected. Here's what CPS may bring to the table:

- supplemental evidence collection: CPS caseworkers often take high-quality, close-range photographs of injuries, sometimes clearer and more detailed than those taken by police. Even more beneficial, these images are frequently taken in the child's home, giving you additional documentation of the crime scene and the child's living environment at the time of the offense.
- witness interviews: CPS caseworkers routinely speak with a broad range of people, including the child victim, siblings, caregivers, and even the alleged perpetrator. These interviews are sometimes audio- or video-recorded, and they often happen early in the process, before law enforcement is involved. That timing can result in spontaneous, unguarded statements. In fact, I've prosecuted cases where defendants made near-confessional statements to CPS caseworkers, only to change their stories when later questioned by police.
- reliable contact information: Even if CPS's investigation doesn't yield new evidence,

[4] My point of view here is specifically from that of the solo CPS prosecutor in my office; other counties–those medium and larger-sized prosecutor offices–may have a team of CPS prosecutors, and still other counties rely entirely on regional CPS counsel employed by CPS.

[5] Tex. Penal Code §22.04.

caseworkers often have up-to-date contact information for the child's protective guardians, which is critical for coordinating witness prep meetings or ensuring the child has a safe, supportive adult to accompany them to court.

But don't stop at the open CPS file! Leslie knows that I always ask for all *prior* CPS investigations involving the same family, especially when prosecuting a charge of intentional injury to a child. Why? Because one of the most common defenses in these cases is that the defendant's use of force constituted "reasonable discipline" under Texas Penal Code §9.61.[6] The best way to rebut this argument is by showing a history of prior physical abuse that clearly exceeds reasonable discipline, especially if it resulted in a history of visible injuries or multiple CPS interventions. Prior CPS records can provide additional context, helping to establish a history of excessive or escalating force that undermines the defendant's claims.

Sexual abuse. These cases present unique challenges to criminal prosecutors: delayed outcries, limited or no physical evidence, and complicated family dynamics. Here, information gathered during a CPS investigation can be uniquely helpful.

A CPS caseworker is sometimes the first professional to hear the child's account of abuse. Her documentation may capture the child's first verbal disclosure of the abuse to an adult, including the child's description of the act(s), a timeline of when events occurred, and the child's behaviors or emotional responses during the interview. This early contact can be pivotal; in fact, the CPS caseworker may qualify as the outcry witness under Code of Criminal Procedure (CCP) Art. 38.072, making the child's hearsay statement to her admissible in court.

In some cases, CPS records may reveal prior allegations of sexual abuse against the same offender, whether from the current victim, other children in the household, or unrelated minors. This evidence may support the admissibility of extraneous offenses or acts under CCP Art. 38.37, which the jury can hear in the guilt–innocence phase of trial and consider for all purposes, including the character of the defendant. CPS caseworkers sometimes elicit useful information from the defendant's family members about prior grooming behaviors and other red flags they noticed but failed previously to report, and this can become powerful corroborating evidence for a jury at trial.

At a minimum, CPS risk assessments and home studies can help us understand the child's living environment, family structure, and available support. This information allows prosecutors and victim assistance coordinators (VACs) to create a safety plan with the family, identify appropriate services, and make counseling referrals as needed.

CPS collaboration is also key in reducing secondary trauma for child victims. By coordinating early and ensuring that forensic interviews are scheduled appropriately, you can avoid unnecessary duplication, delays, or conflicting instructions. This coordinated effort ensures that the child receives trauma-informed care from the outset.

Child homicide or serious bodily injury (SBI) cases. When you're handling a case involving the death or serious bodily injury of a child, CPS records become even more critical. These are the most tragic, high-stakes cases we prosecute, and CPS often has the most comprehensive timeline of the child's final days. CPS caseworkers usually interview every available family member, sometimes several times, and may be the only professionals to establish congenial rapport with surviving relatives or caregivers. Their records of family contacts can help you:

- reconstruct the timeline leading up to the critical incident,
- identify inconsistencies in family members' accounts, and sometimes even
- expose prior patterns of harm or neglect that build your case theory.

In some cases, CPS records may reveal prior allegations of sexual abuse against the same offender, whether from the current victim, other children in the household, or unrelated minors. This evidence may support the admissibility of extraneous offenses or acts under CCP Art. 38.37, which the jury can hear in the guilt–innocence phase of trial and consider for all purposes, including the character of the defendant.

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[6] (a) The use of force, but not deadly force, against a child younger than 18 years is justified:

(1) if the actor is the child's parent or step-parent or is acting *in loco parentis* to the child; and

(2) when and to the degree the actor reasonably believes the force is necessary to discipline the child or to safeguard or promote his welfare.

(b) For purposes of this section, "*in loco parentis*" includes grandparent and guardian; any person acting by, through, or under the direction of a court with jurisdiction over the child; and anyone who has express or implied consent of the parent or parents" (Tex. Penal Code §9.61).

CPS attorneys have access to unique and powerful information, but you won't benefit from it if you don't ask. So, let's ask!

Leslie, how do criminal prosecutors make a proper request for this critical evidence and information?

Leslie's advice for gathering and interpreting CPS records

CPS uses a system called IMPACT (Information Management Protecting Adults and Children in Texas) to record the information gathered in cases. This will include the report to the Texas Abuse Hotline, notes and records from the initial investigation, and all evidence gathered through the subsequent stages of the case's timeline. Only those employed by or contracted with CPS have access to this system. However, CPS has created a one-stop-shop website, which provides instructions on how to request the release of this information for use in the prosecution of a criminal case.[7]

I will warn you that certain types of evidence may be available only for a limited time. For instance, while internal CPS policy may provide for a longer preservation period, the Texas Family Code requires only one year's preservation of the original recordings of the hotline reports.

I recommend that you request a copy of the entire case file from CPS, via a subpoena *deuces tecum* and/or court order.[8] Such a request should result in production of the entire case file, which may include any or all of the following: caseworker narratives, photographs, videos, audio recordings, court reports and/or orders, and treatment providers' records.

I will warn you that certain types of evidence may be available only for a limited time. For instance, while internal CPS policy may provide for a longer preservation period, the Texas Family Code requires only one year's preservation of the original recordings of the hotline reports.[9] For these reasons, I encourage you to make these requests as soon as possible, ideally in the pre-indictment, intake stage of a criminal prosecution.

Interpreting CPS records

Once you've received a copy of the case file, how do you read it? Robyn is right: It can look like a confusing alphabet soup. Let's revisit the example she provided earlier:

> "FP is UTD for PHAB to OV; however, TMC granted due to RTB / NSUP of OV and SB, and CASA is appointed."

This particular set of acronyms is actually intended to communicate the following:

> "The investigation into **F**oster **P**arent(s) has concluded with a disposition of **U**nable to **D**etermine for **Ph**ysical **Ab**use to the **O**ldest **V**ictim; however, **T**emporary **M**anaging **C**onservatorship has been granted due to **R**eason **t**o **B**elieve / **N**eglectful **Sup**ervision of the **O**ldest **V**ictim and **Sib**ling, and a **C**ourt **A**ppointed Special **A**dvocate has been appointed for the children."

Clear as mud, right? For your convenience, I have listed some of the most common acronyms and abbreviations in CPS records in the sidebar on the opposite page. If you would like additional resources to help you review CPS records, I will point you to the Texas Supreme Court Children's Commission. It has created several helpful (and free!) bench books and attorney toolkits, including a more extensive glossary of CPS acronyms and abbreviations.[10]

Robyn, once you have received the CPS file, what are the criminal prosecutor's next steps—both practically and ethically speaking—in handling that evidence?

Robyn's considerations for criminal prosecutors with CPS evidence

When handling CPS records, don't assume you have the full picture just because you received a set of responsive documents from your subpoena. CPS casefiles are often complex and cumulative. That means there may be addenda, supplemental reports, or updated narratives that were created after the initial production. That's why I recommend treating CPS records the same way we treat law enforcement casefiles: with follow-up and verification.

I recommend a "trust, but verify" approach. In the same way I go item-by-item through the police agency's evidence with the lead detective prior to trial, I schedule a similar pretrial meeting with the lead CPS caseworker assigned to the case. Here's what that looks like in practice:

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[7] dfps.texas.gov/policies/Case_Records/professional_duties.asp.

[8] Email your request with a subpoena *deuces tecum* and/or court order for release of records to records@dfps.texas.gov.

[9] Tex. Family Code §261.310(d)(3).

[10] benchbook.texaschildrenscommission.gov/index.

- Schedule a meeting well before trial with the lead CPS caseworker or Special Investigator. Use this time to go over the contents of the case file, clarify any confusing notations, and most importantly, ask if anything is missing or has been newly generated.
- Be specific in any follow-up subpoenas. If the caseworker references any additional interviews, assessments, or provider notes that weren't in your original production, draft a narrowly tailored subpoena or court order for those specific items.
- Disclose early and often. As soon as you receive CPS records, promptly review them and disclose them to the defense. Delays in turning over these records can create major ethical and procedural pitfalls down the line.
- Add CPS personnel to your witness and expert lists. CPS caseworkers can be invaluable at trial, not only as fact witnesses, but also sometimes as expert witnesses on topics such as child development, grooming, and patterns of abuse.

Following these steps helps protect the prosecution's timeline from unnecessary delays and ensures the case file is as complete and trial-ready as possible.

Ethical considerations

Is CPS "the State" for *Brady* or Michael Morton purposes? Short answer: No. CPS's role is to ensure the safety and welfare of children, not to investigate or prosecute crimes. CPS may be looking into claims of abuse or neglect, but "that alone does not automatically transform CPS caseworkers into law-enforcement officers or state agents."[11] This means that we, as criminal prosecutors, are not under an obligation to proactively seek out any and all CPS records that might conceivably exist in connection to a criminal defendant or child victim. However, if we do obtain CPS records or associated evidence, whether through subpoena or informal request, we must disclose them to the defense in a timely manner.

To stay ahead of potential issues, I have made it my practice to act in advance, requesting any CPS files that may be relevant to my criminal case in the intake stage of prosecution. This helps prevent last-minute surprises and gives me a chance

[11] *Harm v. State*, 183 S.W.3d 403, 407-08 (Tex. Crim. App. 2006); see also *Cates v. State*, 776 S.W.2d 170 (Tex. Crim. App. 1989).

Common CPS acronyms

AC	investigation disposition indicating Administrative Closure
AOP	Acknowledgment of Paternity
BVS	Bureau of Vital Statistics
CECJ	Court of Exclusive, Continuing Jurisdiction
CVS	Conservatorship
CWOP	Child Without Placement
FBSS	Family Based Safety Services
FK	Fictive Kin (i.e., treated like kin without a biological relationship)
ICPC	Interstate Compact on the Placement of Children
MDNG	investigation disposition indicating Medical Neglect
PMC	Permanent Managing Conservatorship
RAPR	investigation disposition indicating Refusal to Accept Parental Responsibility
SAPCR	Suit Affecting Parent-Child Relationship
SSCC	Single Source Continuum Contractor, e.g., Empower in our Region of Texas
SXAB	investigation disposition indicating Sexual Abuse
SXTR	investigation disposition indicating Sex Trafficking
TPR	Termination of Parental Rights
UTD	investigation disposition indicating Unable To Determine

Is CPS "the State" for Brady *or Michael Morton purposes? Short answer: No. CPS's role is to ensure the safety and welfare of children, not to investigate or prosecute crimes. CPS may be looking into claims of abuse or neglect, but "that alone does not automatically transform CPS caseworkers into law-enforcement officers or state agents."*

to identify and turn over *Brady* material before the defense requests it or the court orders it.

Additionally, familiarize yourself with how CPS interviews of defendants can potentially trigger *Miranda* issues. Although CPS investigators are not police officers, certain actions, such as coordinating interviews with law enforcement or questioning a suspect in custody, can arguably render them "state agents" under Texas caselaw. See, for example, *Cates v. State*,[12] *Harm v. State*,[13] and *Wilkerson v. State*,[14] which explore when statements to CPS caseworkers might be suppressed if obtained without proper warnings.

And finally, what should you do if the criminal defense attorney asks you for CPS records you don't already have in your possession? While we are not under an obligation (unless ordered by the court) to gather such records for the defense, I recommend that we issue our own subpoena to obtain the evidence. After all, we want a copy of anything the defense is getting so we have access to the same evidence they do. This will prevent you from being caught off guard by information the defendant may seek to introduce at trial. The defense may have equal subpoena power, but we have the responsibility to be ready. It's better to know what's out there than to be surprised by it in court.

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Concluding thoughts

From Leslie: I hope this article has given my criminal prosecutor friends the nudge and inspiration they need to reach out to their local CPS attorneys. We have access to such a wealth of information—but we won't know what criminal prosecutors need unless they ask! CPS spends so much time with the children and families on our caseload; you will find them to be very motivated to assist in creating positive outcomes for your criminal cases given the opportunity. Let's build more bridges between our islands, one phone call and one email at a time.

To my fellow CPS attorneys, don't be afraid to step off your own island occasionally. Seek out feedback from the criminal prosecutors regarding how CPS might be of further assistance in prosecuting their cases. Look for opportunities to improve the coordination of our efforts. And likewise, when you learn of positive outcomes in criminal prosecutions involving children or families on your CPS caseloads, share that information back to relevant CPS investigators and caseworkers. All of us benefit from receipt of positive news! While the criminal courtroom may seem foreign at times, strong partnerships lead to better outcomes—not just for us as professionals, but for the children and families we're all working to protect.

From Robyn: I hope this article helps my fellow criminal prosecutors feel more equipped and confident to work alongside CPS. Whether it's uncovering corroborating evidence, strengthening your trial witness lineup, or just getting the full picture of a child's home environment, CPS attorneys are some of our best resources for information. At the end of the day, our shared goal is justice and safety for vulnerable children, and that means making the most of every resource, every record, and every relationship. Let's keep the conversation going. ❇

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[12] *Cates v. State*, 776 S.W.2d 170 (Tex. Crim. App. 1989).

[13] *Harm v. State*, 183 S.W.3d 403 (Tex. Crim. App. 2006).

[14] *Wilkerson v. State*, 173 S.W.3d 521 (Tex. Crim. App. 2005).99

How to avoid the dreaded 'failure to communicate'

Any aficionado of fine film has surely viewed the great picture *Cool Hand Luke*. While I was watching the film recently, one scene stood out to me:

By Joshua Luke Sandoval
Assistant Criminal District Attorney in Bexar County

The prison captain, having engaged in a fit of brutality, looks at the protagonist and utters, "What we've got here is failure to communicate."

While the captain's statement was clearly intended to justify his misguided and violent outburst, this scene still got me thinking about communication. Whether we are a victim's advocate, investigator, support staffer, or prosecutor, clear communication is of vital importance to our work. We communicate in different ways, with different people, and with different goals in mind. While there are numerous ways to convey ideas, this article will focus on four: email, phone calls, in person conversations, and text messages.

Email

If your inbox is like mine, you are likely to receive 70-plus emails a day, each with different degrees of importance. As such, I must stress the importance of staying on top of your inbox as much as possible. Letting unread emails linger can result in lost information, missed deadlines, or even important witnesses losing interest in a case.

Email, as a form of communication, has many benefits. First, it affords the writer more time to construct the message. Emails can be more easily structured and organized, and one can contemplate the message before hitting send. In some ways, they are not too distinct from a grocery list in that one gets to assess the need, plan ahead, and organize an approach.

Emails can be deliberate and complete communication. Perhaps more so than other means, email is best at memorializing important pieces of information or a meeting. They leave little doubt as to what decisions were made and the appropriate course of action to be taken.

When to use email: If you have a great deal of information to convey, if organization is of key importance, if you need to send the same message to multiple people, or if you need to return to a message for follow-up, email is the right choice. In my work, it is a great way of following up with my team (ADA colleagues, victim advocate, and investigator) after a docket meeting.

When to avoid it: Email's strengths as a tool may prove rather useless in other situations. Its specificity and capacity to communicate multiple points may come across as impersonal, cold, or sterile in certain situations—for example, in contacting a victim or next of kin for the first time. Another weakness is its inefficiency with time-sensitive requests, which is likely due to how rapidly messages pile up in our inboxes. If you have a quick, single-issue message or inquiry from someone you know well, email is likely not the best choice.

Good practices for email: Carbon copying (CCing) colleagues is a helpful tool to keep multiple people in the information loop. Be sure to let recipients know to respond only to you (the sender) and not the group when that's what you're looking for. When you are the recipient of a carbon copied message, think twice before "replying to all," as it can unnecessarily flood email inboxes. Nobody likes opening their inbox seeing 50 emails comprised of "I'm in" and "Can't make it."

If you find yourself in a position of needing to send a mass email that doesn't require a response (perhaps a notice of sorts), then blind copy (BC) may be a good option, as it prevents recipients from replying to everybody.

Phone conversations

Who doesn't enjoy a good old-fashioned phone conversation? Even many of my younger colleagues readily admit that phone conversations are well-suited for time-sensitive issues. Despite so many other options, telephones still play a very important role in our daily communication because they capture tone and emotion, happen in real-time, and permit immediate clarification and inquiry.

When to pick up the phone: Contacting people on the telephone is often my preferred method when reaching out to individuals *outside* my office. If I have a quick question for a defense attorney (about something that isn't so important it should be memorialized in an email), a call is the most efficient means. Just the other day, I dialed an attorney to inquire if she was OK that we ask the judge for an hour apiece for voir dire on an upcoming trial. Using the phone worked perfectly as it was a simple enough matter that didn't really need intense documentation.[1]

Despite so many other options, telephones still play a very important role in our daily communication because they capture tone and emotion, happen in real-time, and permit immediate clarification and inquiry.

Serving as an embedded attorney at a Texas Anti-Gang center, I work very closely with numerous law enforcement agencies and prosecutors from other jurisdictions. As such, it is not unusual for me to be conferring with one agency when, suddenly, the need for a quick bit of information arises. Often, a phone call is the most efficacious means of procuring the tidbit and passing it along.

When to avoid it: In my experience, phone calls (on their own) are not the best option if you want to make sure conversations are memorialized. Additionally, they can't necessarily cover a topic, or multiple topics, in depth. However, you can always follow a phone call with an email. This email should encapsulate the salient points of the phone conversation, including the time, date, and purpose of the call, so that both parties are on the same page and the danger of miscommunication is minimized. Doing so also serves as a good reference point so that both parties can look back later.

If you are trying to convey some important or difficult information to a victim or next of kin (for example, preliminary meetings or discussions on proceeding on a case), a phone conversation may come across as less empathetic or even unprofessional, depending on the circumstances. It is my usual practice to avoid phone conversations in these situations. I personally believe that phone communications are incapable of imparting the personal and empathetic touch such situations require, and face-to-face meetings are the better option.

Good practices for the phone: Any discussion of phone conversations requires mention of etiquette regarding the notorious speakerphone. In a professional context, speakerphone is appropriate in precious few circumstances. If a call has multiple participants and it's treated as a conference call, there can be a place for speakerphone, but only with some very important considerations in place. Make sure everyone knows the call is on speaker, that all parties can adequately hear, and that the call is taking place in a professional and private setting (e.g., a closed conference room or office). On a personal note, I absolutely disdain speakerphone because there is too much interference, and I find that it is much more prone to miscommunications. I often find myself engaging in an annoying game of "Can you repeat that?" and "I'm sorry but you broke up." Even if your door is closed, the person you're calling may still feel uneasy at the possibility of his words being broadcast down the hallway.

Sometimes I want a handsfree option when on a call that my landline or cell phone just cannot afford (e.g., where I want to take notes as the conversation is happening). Rather than using speakerphone in such cases, I simply plug in my headphones and take care of business.

In addition, I have found it best to plan a time for a phone call. If the reason for the call is not a spontaneous need for information, try to schedule an appointment that is mutually convenient for both participants; this gives the parties preparation time while also avoiding phone tag.

In-person meetings

In terms of maximizing different methods of communication, nothing can beat an in-person meeting. It enables all parties to communicate not just with words (as an email would) and persuasive usages of tone (like a telephone conversation does), but it also permits visual cues (such as demonstratives, purposeful movement, facial

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[1] Whereas I would have been crushed if opposing counsel later denied the conversation with me, it wouldn't have had a huge impact on the prosecution of my case. Furthermore, one can always log the conversation in a brief sentence or two in your office's case management system.

expressions, etc.). In-person meetings can be dynamic, effective at disseminating information, and less likely to cause misunderstandings.

When to meet in person: As a prosecutor, I use in-person meetings for the most important interactions with victims, next of kin, and witnesses. Meeting in-person conveys the gravity of the situation and shows them that their trauma is important to me and my office. In-person meetings also tend to make participants more comfortable and thus more willing to discuss their trauma or recollection of events. It enables me to control the speed of the conversation and meet individuals where they are. I can also see the other person's face and detect any confusion when I am explaining something. If I notice pain or fear, I can slow things down or maybe move to another topic altogether.

In addition to initial meetings, I prefer to meet with victims and next of kin when circumstances have drastically changed the feasibility of proceeding on a case. If you have a case with a victim who was profoundly impacted by a crime and you find yourself needing to alter the offer (that you ideally discussed at a preliminary meeting) or perhaps even dismiss a case, then an in-person meeting is almost always the best course of action.

In my experience, in-person meetings are not just useful for victims. Some of the same advantages translate to communicating with our colleagues, too. When I prosecuted child sex cases, I found biweekly meetings with my team to be very useful, as these gatherings helped us stay on top of important cases. They also fostered frank and candid discussion that would be extremely difficult, if not impossible, over email or the phone.

When to avoid it: Live meetings take longer and can be more difficult to schedule. We are in a profession in which time is a valuable commodity, and in-person meetings are more time-consuming and take us away from our other duties.

Such meetings can be difficult for victims and witnesses. Whereas a phone conversation or even email can be taken care of during a lunch break or when work is slow, an in-person interview is different. Most witnesses find it less than pleasant to take time off work, drive downtown, and fight for parking, all just to discuss a traumatic event in their lives.

Good practices for meetings: "This meeting could have been an email!" is a sentiment so pervasive, it is basically a cliché. Remember that just because some information *could* be disseminated in an email doesn't mean that it is the best choice. Often, in-person meetings are valuable to minimize distractions and to discuss sensitive topics with a team—they can even be a good boost to morale.

Creating an agenda, even if informal, is a great way to ensure the meeting stays on track. Discussing at the beginning of the meeting what things need to be covered starts it off on the right foot and sets expectations. Furthermore, asking something like, "Is there anything else on this topic before we move onto X?" elicits input from participants and transitions to the next agenda item. In addition, time limits for meetings can make sure they don't turn into runaway trains. Just be cautious that a time limit doesn't cut off productive discussion.

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Text messages

Text messages are quick, convenient, and often the most subtle means of communication. Almost all of us have been in court and have needed to send a message immediately. Texting can be the quickest, quietest way of getting a message out.

When to send a text: Text messages are best utilized when conveying simple information or requests that leave little to interpretation. If I am in a docket and a case is going to plea, I may text my victim's advocate asking her to inform the victim that the case will be resolved.[2] Similarly, I have had many instances where we are on a short break during trial (so short it doesn't make sense to return to my office) where I send texts to advocates or investigators to check on the status of witnesses.

When to avoid it: Text messages can prove troublesome if they are pushed past their limits. I refrain from texting when I need to convey anything more than a simple point of inquiry or a single fact. Like email, text messaging focuses on only the written word. Unlike email, its abbreviated format can lend itself to missed information, miscommunication, or the misunderstanding that the curtness of the message means the

[2] This is usually only a good option if the resolution is what you have already discussed with the complainant. If there is a grave deviation from what you have discussed with your victim advocate, a text message may not fully capture the information that you will need to convey to the complainant.

sender is mad at the recipient. The reduced formality of text messaging can also come across as unprofessional in some settings.

Good practices for texting: Texts can be very easily overlooked and they are reliant on cooperative reception. Try as I might, it's still easy to forget to act on a text after reading it. Additionally, not everyone is glued to their cell phones in eager anticipation of your message. Texting is quick and often convenient, but replying isn't always convenient for the recipient.

Another aspect of text messages to be aware of is the importance of proofreading. I make liberal use of voice dictation, and sometimes it feels like my phone is conspiring against me to jumble up my message. No matter how clearly I think I speak, my phone possesses the uncanny ability to concoct a less-than-coherent message instead. Often, the time I intend to save using voice dictation is dashed by the edits and corrections that are required. Proofreading a message helps avoid miscommunication and subsequent clarification.

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Closing thoughts

Communicating is more than just the information conveyed. So much of successful communication depends on the timing and means of transmission. Each form that we touched on has its own strengths and weaknesses, and knowing the best manner and the appropriate time to communicate has a direct impact on the successful transmission of an idea. We have a slew of important messages to convey to witnesses, colleagues, and victims and numerous tools to do it. If you weigh your options, recognize your audience, and study your circumstances, you can avoid future "failures to communicate." ❇

Recent milestones of note

Recognitions

The DA's Office in Montgomery County was recently named the 2025 Prosecutor of the Year by Texas Parks & Wildlife. This award honors a person's (or office's) commitment to prosecuting cases that protect Texas's natural resources and citizens, as well as the dedication to working alongside Texas game wardens.

At our Legislative Update course in Edinburg, TDCAA presented Senator Juan "Chuy" Hinojosa with a Lone Star Award, which recognizes legislators who do work that helps prosecution. During the legislative session, Mr. Hinojosa helped pass several laws that created more rights for victims and increased the pay for district judges and district and county attorneys. In the photo below, he is pictured (center) with Terry Palacios, Criminal District Attorney in Hidalgo County (left) and Shannon Edmonds, TDCAA Executive Director (right).

Retirement

Mike West, a longtime prosecutor in Smith County, retired in September after 21 years in that office. Just the week before, he was honored with the Kepple Award at our Annual Criminal & Civil Law Conference in Round Rock.

Appointment

In October, Governor Greg Abbott appointed Kenneth Cusick as the Criminal District Attorney in Galveston County; Cusick replaces Jack Roady, who retired in September.

Prior to his appointment, Cusick was an assistant U.S. attorney for the Southern District of Texas; he also served in the U.S. Marine Corps, received a Bachelor of Science in economics from Texas A&M University, and earned his Juris Doctor from the South Texas College of Law.

Also in October, Governor Abbott appointed Barry Wallace, the first assistant criminal district attorney in Upshur County, as the new elected CDA. Former CDA Billy Byrd retired earlier in the month.

Wallace is a graduate of East Texas A&M and earned his law degree from St. Mary's University. He also served in the U.S. Navy.

Similarly, in Montgomery County, first assistant district attorney Mike Holley was appointed as the district attorney, replacing Brett Ligon, who had resigned to run for the Texas Senate. Holley served in the U.S. Army, primarily in the Judge Advocate General's Corps, and he earned his law degree from Texas Tech University's School of Law. ❇

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