



# THE TEXAS PROSECUTOR

*The Official Journal of the*

**Texas District & County Attorneys Association**

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

## What is your office policy on social media?

In the wake of a couple of high-profile Facebook fails by prosecutors in other states, TDCAA asked prosecutors from six offices what they tell their employees about the proper use of their personal social media accounts.

In St. Louis in 2013, a three-judge appeals court panel said it was “troubled” and “concerned” that a prosecutor tweeted about a sexual assault trial in progress, noting that the use of tweets “immediately before and during trial greatly magnifies the risk that a jury will be tainted. ...” The prosecutor was not punished, but the story—and her tweeting history—made national news.<sup>1</sup>

This summer, an Idaho prosecutor stirred controversy for one of his Facebook comments. One of his friends posted a meme on his own Facebook page. It featured a photo of a peace officer standing in front of his patrol car with the following caption: “If we really wanted you dead all we’d have to do is stop patrolling your neighborhoods ... AND WAIT.” This prosecutor commented, “Great point. Where the police are under attack from politicians, and the police become less aggressive, the murder rates go up. I say, let them have their neighborhoods. They will be like Rwanda in a matter of weeks.” The longtime gang prosecutor told reporters later that his perspective (and his post) came from trying gang-related cases in Los Angeles for 12 years. His boss, the Kootenai County Prosecutor, did not punish his deputy.<sup>2</sup>

Perhaps most egregious, an assistant state attorney in Florida was suspended for a controversial post on his

Facebook page. On the day of a brutal attack on an Orlando nightclub this past summer—where 49 people were killed and 53 wounded—this prosecutor wrote, “All Orlando nightclubs should be permanently closed. With or without random gunmen they are zoos; utter cesspools of debauchery.” He also called the people of Orlando and those

who visit nightclubs “a melting pot of 3rd world miscreants and ghetto thugs.” It was not the first time this prosecutor had voiced his feelings on Facebook. In 2014, he wished a “Happy Mother’s day to all the crack hoes out there”—a sentiment that landed him in hot water with his boss, who gave his subordinate a stern talking-to about his office’s policy on social media.<sup>3</sup>

After the Orlando nightclub post, however, the State Attorney’s Office suspended the prosecutor on suspicion of violating the office’s social media policy, and all 55 cases he had tried were reviewed for signs of bias or prejudice. (He was cleared of any bias.) The veteran prosecutor was later fired for his remarks, and—this may not surprise anyone—he tweeted his outrage over losing his job: “I just got fired for a Facebook post after 20 years as a prosecutor. The Founding Fathers would turn in their graves. God help this country!”

Whether or not these prosecutors were punished

*Continued on page 24*

*By Sarah Wolf*  
TDCAA Communications  
Director in Austin

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# Biggest Annual in 15 years

Our yearly gathering of Texas prosecutors in Galveston was by all accounts a huge success. And huge in numbers—1,061 attendees and speakers, which is second only to the turnout in 2001 (just after the September 11 attacks) when 1,084 people went to our Annual. I want to thank our TDCAA Training Committee, led by **Melinda Westmoreland**, Assistant CDA in Tarrant County, for planning an agenda that left people complaining only that they couldn't go to all of it. And thanks to the TDCAA training team: **Brian Klas**, **Patrick Kinghorn**, and **LaToya Scott**, for making the magic happen.



*By Rob Kepple*  
TDCAA Executive Director in Austin

deserving of their honors. First, TDCAA has enjoyed the energy, expertise, and enthusiasm of **Justin Wood**, Assistant DA in Harris County, at the Legislature and at TDCAA trainings, for many years now. He is very deserving of the Oscar Sherrell Award for service to the association.

He is pictured below (on the right) with TDCAA's own **Shannon Edmonds**, who presented the award to Justin.

The Executive Director of the Special Prosecution Unit, **Jack Choate**, won the C. Chris Marshall Award for his contributions as a trainer and teacher. (He's pictured below right with Training

Committee Chair **Melinda Westmoreland**.) Jack has been a great presenter for the association, and as the one-time TDCAA Training Director really ramped up our offerings. The Lone Star Prosecutor, **Ralph Petty**, an Assistant DA in Midland County,

richly deserved the honor for his selfless support of other prosecutors for decades. Ralph is pictured below with **Teresa Clingman**, District Attorney in Midland County.

And finally, our local host in Galveston County, CDA **Jack Roady**, is the State Bar Criminal Justice Section Prosecutor of the Year. (He's pictured on the opposite page with **Jennifer Tharp**, Criminal District Attorney in Comal County.) Jack earned the honor for his selfless



*Teresa Clingman and Ralph Petty*

## And the award goes to ...

I want to congratulate our 2016 award winners, who were very



*Shannon Edmonds and Justin Wood*



*Melinda Westmoreland and Jack Choate*



Jennifer Tharp and Jack Roady

work in leading the prosecutorial effort to get out in front of the mixture DNA issue. Because of his tireless work, Texas leads the nation in creating the procedures to systematically address the problem.

Congratulations to all!

### MADD's 2016 Outstanding Prosecutors of the Year

Congratulations to **Bill Swaim** and **Allison Tisdale**, Assistant County Attorneys in Travis County, who in September were honored by Mothers Against Drunk Driving (MADD) with the prestigious Outstanding Prosecutor of the Year Award. (They're pictured at right.) Bill was honored for his work in using increased bonds and bond conditions to ensure that offenders with multiple DWI cases don't re-offend, and Allison was recognized for her expertise in blood and drug evidence and for her successful prosecution of high-profile cases. Thanks for your hard work, Bill and Allison—you deserve the recognition.

### Thanks for your service

This December will see the retirement of some great Texas prosecutors. In the next issue of *The Texas Prosecutor* journal, we will do our best to welcome all the new prosecutors and honor those who have ably served. But I want to take a quick moment to recognize our County Attorney in Jim Wells County, **Jesusa Sanchez-Vera**, who will retire in December after 32 years of service. Jesusa has been a force in her jurisdiction and among our county attorneys, and in terms of county



Allison Tisdale and Bill Swaim

attorney longevity she is third out of 177.

I would also like to recognize **Bruce Curry**, the DA in Kerr County and the current dean of Texas district attorneys, on his retirement at the end of the year after over 30 years of service. Bruce has run a good office for many years in the Hill Country, and his constituents have been well-served.

Thank you both for your service and leadership!

### California screamin'

On November 30 California Governor **Jerry Brown** signed into law Assembly Bill No. 1909. This bill, a reaction to some high-publicity *Brady* problems, has rattled our prosecutor friends in California. The new law provides that: 1) it is a misdemeanor for a person to willfully, intentionally, and wrongfully alter, manufacture, plant, conceal, or otherwise mess with evidence with the specific intent that someone will be wrongfully charged with a crime or that the evidence be produced as genuine at a trial; 2) it is a felony for a police officer to do any of that, and 3) it is a felony for a prosecutor to intentionally and in bad faith alter, modify, or withhold any physical matter, digital image, video recording, or relevant exculpatory material or information with the specific intent that the material or information will be concealed or destroyed or fraudulently represented as the original evidence at trial. (You can read the whole bill at [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB1909](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1909).)

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**Matthew Guerrero**, President of the California Attorneys for Criminal Justice (an association of criminal defense attorneys), which supported the bill, was quoted in a news report: “By signing AB 1909 into law, California is no longer going to allow this epidemic [of prosecutor misconduct] to grow with impunity. This law will put bad-acting prosecutors on notice; the state is watching your actions and these ethical violations will incur severe and justified punishment.”

Ouch. It is always chilling to be called out by name in such a statute. I talked to our friends in California and learned that the new statute doesn't do much differently—it is essentially a re-statement of tampering with evidence crimes already on the books. So why did California lawmakers feel the need to pass such a law? One theory is that California does not have an active bar grievance system that addresses prosecutor conduct—this lack frustrated California lawmakers and eventually led to this “message legislation.”

Can this happen in Texas? We may see such a bill in the upcoming legislative session, but I think the narrative in Texas has been different. Texas prosecutors have been very pro-active in addressing issues of *Brady*, exculpatory evidence, and discovery; the Texas Legislature has already passed laws expanding the reach of the State Bar when it comes to *Brady* violations; and as we all have noticed, the bar has been very active in punching the ticket of prosecutors over *Brady* complaints. Accountability for Texas prosecutors is alive and well.

Finally, those of you who heard the keynote speaker at our Annual in Galveston, **Alafair Burke**, remember her observation that passing laws aimed at punishing a bad actor is exactly the wrong approach when seeking to address *Brady* issues. That's because in reality prosecutors aren't out there deliberately trying to hide exculpatory evidence. So let's hope our friends in California keep their heads up. If not, you may be seeing a flood of résumés from California.

### **Colorado smokin'**

We are finally getting some numbers from Colorado on the impact of the legalization of marijuana. This really isn't a shocker to anyone: Crimes have increased, youth involvement in pot is up, and marijuana-related hospital admissions have exploded. And, it would seem, the illegal pot trade is still thriving. You can read all about it in a report recently issued by the Rocky Mountain High Intensity Drug Trafficking Area (HIDTA) task force by going to our website, [www.tdcaa.com/journal](http://www.tdcaa.com/journal), and looking in this issue's stories.

But on the other had, look at the boon to entrepreneurs: There are now 424 retail marijuana stores in Colorado, which beats McDonald's (202) and even Starbucks (322).

### **Our prosecutor family in Baton Rouge**

In August, a thousand-year flood engulfed Baton Rouge and the surrounding areas in Louisiana, which was every bit as damaging as Hurricane Katrina but with none of the media appeal. It seemed as if no one

in the nation paid any attention to our neighbors' plight. So I was gratified that when the call went out for help from the three hardest-hit Louisiana DA offices—many staff members' homes were devastated by the rains—the TDCAA Board quickly donated \$1,000 to the recovery effort.

But there was also a more urgent request—a request for people. Our friends at the Louisiana District Attorneys Association organized an effort to dispatch work crews to clean up every home of prosecutor office employees or law enforcement officers in the affected region. The number of houses was in the triple digits. With as good a staff as we have at TDCAA, I felt that I could leave the association to them for a few days and go to Baton Rouge.

The devastation is difficult to describe. (Check out the photos on the opposite page.) We have all seen the damage a tornado does. Take that, and mix in a primordial soup of water, heat, humidity, and mold. Each day I was assigned to a crew. Our job was to strip the house bare from the floor up to at least two feet above the crest of the water. Furniture, drywall, insulation, flooring, appliances—it all went into big piles by the street. After the house was stripped, the owners would get up to a \$15,000 construction stipend so they could get the power and water back on and move back in—to “shelter in place” as FEMA (the Federal Emergency Management Agency) calls it. The day I got there, tired crews had just completed their 64th house.

I was lucky the first two days:

The houses I worked in had had the power restored, which meant the air conditioners were on and huge fans were already starting the drying process. We did our best to save the things we could in each house. I was struck by the resilience of one homeowner, who in the face of a devastated home insisted that we salvage the kitchen and bathroom sinks. She had no give-up in her, and that provided a lot of motivation to keep after it. I will also never forget that day because I got my first Red Cross meal, served by a couple old guys who drove a Red Cross food truck down from New York. I want that job when I retire.

My last day was different. I was assigned to a crew of police officers from Lake Charles, who had been organized and directed by the Lake Charles DA John DeRosier. Our team of 20 drove north from Baton Rouge to rural Clinton. We inched our way through a small rural neighborhood that had been completely underwater for a week and found the house of a Louisiana crime lab employee. She was sitting out front of a house that had yet to be touched, except for the neat stack of photographs in wet frames sitting next to her.

We descended on the house, which clearly had been flooded nearly to the ceiling and only recently drained. And I mean descended, because each time you went into the darkened house it was a version of hell on earth. I've never seen so many rugged-looking cops gag from the stench. But no one slowed down—time after time men and women disappeared into the

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*TOP PHOTO: Debris that had been removed from houses was piled in yards. ABOVE: Salvaging what we could from a house. RIGHT: Going through a kitchen where everything had sat in floodwater for a week.*



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darkness to reappear with a shovel full of soggy, wet ... stuff. Clothes. Sheetrock. Insulation. Furniture. All soggy and dank and soft and with mold already forming. At one point one crew was inside throwing things out the windows while another crew carried the refuse to the pile accumulating in the front yard. And a special thanks to the two guys who pretty much single-handedly took on the kitchen, which still had all the appliances inside—and food that had long since rotted to mush.

It was at the end of this grueling day, looking at that mountain of trash we had built and a house that had been stripped down to the studs and sprayed with anti-mold chemicals, that I began to appreciate what makes our Louisiana friends so unique and admirable. It's what made **Pete Adams**, **Roxie Barrios Juneau**, and the other LDAA staffers instinctively organize their effort to help. You see, I never heard one complaint, one rant at the government, one call of how it wasn't fair that Hurricane Sandy on the East Coast was a month-long TV movie and government officials didn't even come to Baton Rouge for a week. People just got to work. I saw people who rely on each other as a family, a prosecutor and law enforcement family that could take care of each other one house at a time. The job was too big for any one person, but no one was left to fend for himself

*TOP PHOTO: Bulldozers were used for the heavy lifting. MIDDLE AND BOTTOM PHOTOS: Trash piled up curbside.*





# Being part of a winning team

because his family was there for him. It was a powerful lesson in what we can do together—and can do *only* together—and I was honored that they allowed me to be part of their family for those days.



I do have one complaint. I was not the only person who, at the end of the third day when someone shouted, “Buds for everybody!” was sorely disappointed to find that the Anheuser-Busch can in my hand contained ... water. (See the photo at left.) I brought that can home unopened as a reminder of the spirit of our friends in Louisiana. ❁

During the last few months I have been spending more weekend and evening time at my children’s baseball and softball fields, encouraging them to become team players and to experience the values of a well-rounded life. During that time, I have noticed the similarities between teamwork in a sports setting and in my own work as a prosecutor. Teamwork in the sports arena—resulting from a strong, hands-on work ethic and sound coaching—is much like teamwork in our field. It is a behavior that is learned and that, if practiced with clear objectives, can run circles around even its best individual member—and certainly against any criminal. And teamwork can become culturally ingrained to achieve positive results not only for the immediate circle but also for the community and for society at large.

For a team to excel requires that each player bring elements to the group that, when those ingredients are combined, yield a greater-than-one result. In my 13 years serving as a prosecutor, I am fortunate to have worked with individuals who brought to the table all the elements that made an excellent synergy. My current team includes Patty Acevedo,

John Cisneros, Dora Coy, Carlos Masso, Chuck Mattingly, Juan Mijares, L.J. Rabb, Oscar Rivera, and Marisela Salazar. Our office successes, in no small measure, were a team effort. For their work ethic and profound commitment to seeking justice for the victimized, there are no adequate words. This team has the greatest pride in representing the State in our judicial system and the humblest gratitude for having served the people of Willacy County to the very best of our abilities. Together



*By Bernard Ammerman*  
County & District Attorney in Willacy County

we made inroads in cutting crime to a 10-year low and reducing violent crime by 43 percent

As I remember taking office as Willacy County & District Attorney and then fast-forward to my imminent departure on December 31, I am reminded of President James Buchanan, who addressed incoming President Abraham Lincoln with a unique perspective about his own departure: “If you are as happy in entering the White House as I shall feel ... (upon leaving) ... you are a happy man indeed.” I leave office with certain misgivings about the fate of those for whom I will no longer fight and whose justice I must place in the hands of others. However, I also leave with a knowledge that my team and I always worked diligently to do the right thing. With

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that clear conscience, I'm a firm believer that as one door closes, another will open.

I also need to express that I am profoundly grateful for the opportunity to serve as president of TDCAA. It has been a rewarding experience. Looking back, I have come to realize that who we are as members of this organization is in no small part due to the head coach and leader, Rob Kepple. He is truly committed to seeking justice for Texans and, as the coach, he considers the angles, contemplates the ifs, and solves the most complicated problems for prosecutors. For every significant criminal-justice bill that affects prosecutors that is generated at the Capitol, 10 are handled by diplomacy before they get traction. His staff also embodies this pursuit by providing assistance daily to help prosecutors both in the courtroom and at the legislature.

TDCAA leadership in the next year will continue strongly with our 2017 President, Randall Sims, 47th Judicial District Attorney—a soul with a heart of gold—and President-Elect Jennifer Tharp, Comal County Criminal District Attorney, a force to be reckoned with, especially at the Capitol. I look forward to a great year under their commitment and fine leadership. ❖

# Fundamentals of Management's inaugural course

I am proud to report that on October 11–13, the Texas Prosecutor Management Institute held its first training—the pilot for what we hope will be a long-standing program for teaching prosecutors how to manage and supervise employees.

With financial support from the Foundation, we began our efforts in March when we hosted a management training and development session in Fredericksburg. We took what we learned there and, with the help of our experts in the field, Bob Newhouse and Sharon Lucas, we developed the Fundamentals of Management for Prosecutors Course.

The training program was beta-tested at the Harris County DA's Office—the participants selected for this first class represented a cross-section of experience in the office, and their job was not only to learn, but also to stick around after the course to help us de-bug it. Many management principles apply to all business environments, but this course is tailored to the unique aspects of prosecutor's offices.

So what did participants learn? As the name of the course implies,

we worked on fundamental skills of an effective manager: self-assessment, communicating with different people, conflict and conflict resolution, core management competencies, and effective coaching. For me, learning about how I best work with people around me was invaluable. And gaining insights into how to successfully resolve conflict in the workplace—that was priceless.

Over the next year, our vision is that this training will be ramped up for every prosecutor's office that wants it. Because this class is best taught by a team of experienced prosecutors, we will hold a version of TDCAA's Train The Trainer course specifically designed to teach this curriculum in the coming months. It will take time to train everyone on this fundamentals course because there are plenty of people who have been managing for years in prosecutor's office who have never had any formal training. We'd like to see everyone currently in a management position go through the course. After that, it can be taught on a regular basis for people who are newly promoted to a position with management duties.

This is not a "one-and-done" class. It takes repetition and follow-



*By Rob Kepple*  
TDCAA Executive  
Director in Austin

up. There are many other topic areas that will need separate courses—effective hiring practices, evaluating employees, basic employment law, and more—and we envision those will be developed in the coming years. Some of the training, both core courses and supplemental ones, may be provided through the TDCAA website.

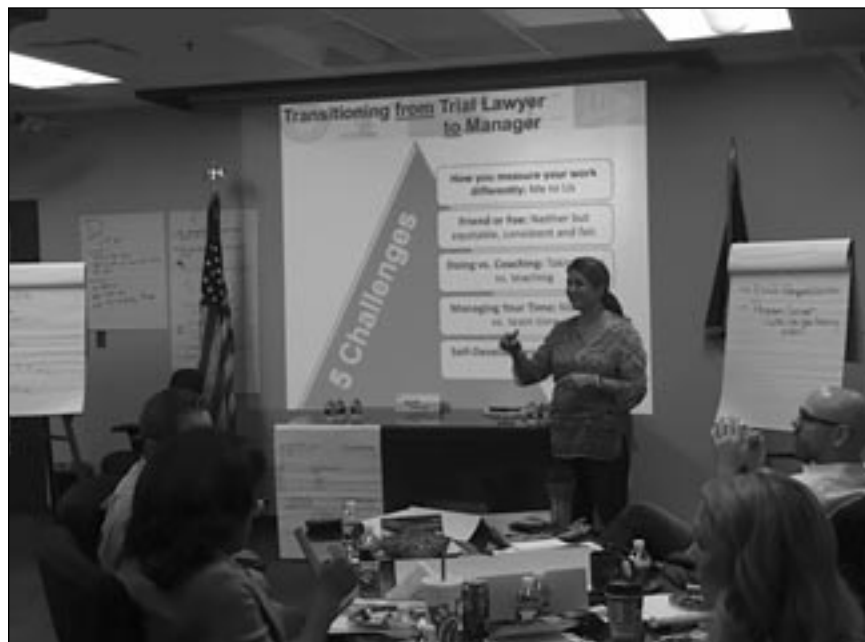
I want to thank the Foundation Board of Trustees for their support of this program. Their vision is that a well-run prosecutor's office enhances the quality of justice in the courthouse on a daily basis, and this effort promises to take prosecution in Texas to a new level of professionalism.

Stay tuned for more information as we ramp up this program. If you would like to know more, just give me a call at 512/474-2436. ❁

## Recent gifts to the Foundation\*

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\* gifts received between August 6 and October 7, 2016



*TOP PHOTO: Back row (standing) Harris County ADAs Luis Batarese and William Mejia; TDCAA Training Director Brian Klas; Harris County ADAs Paul Fortenberry, John Jordan, Kathy Braddock, Keri Fuller, and Crystal Okorafor; TDCAA Executive Director Rob Kepple, and Sharon Lucas of Newhouse Consultants. Front row (kneeling): Harris County ADAs Ashley Guice, Jamie Felicia, Jennifer Meriwether, and Cameron Calligan; and Bob Newhouse of Newhouse Consultants. ABOVE: Consultant Sharon Lucas teaching one of the sessions.*

# Proving greater right of possession in a multi-person household

The definition of “owner” in the Penal Code is intentionally broad. By defining the term as anyone who has a greater right to possession of the property than the defendant, the Penal Code allows the State more flexibility in designating owners for theft, burglary, and similar cases. In *Morgan v. State*,<sup>1</sup> the Court of Criminal Appeals examined how this broad definition applies when the defendant himself is an owner—though not the exclusive owner—of the property.



By *Andrea L. Westerfeld*  
Assistant Criminal District Attorney in Collin County

## The facts

Dewan Morgan moved in with his girlfriend, Regina.<sup>2</sup> He had a key to the apartment and at least occasionally contributed to household expenses, but he did not pay rent, and Regina never added him to the apartment lease. Morgan also did not list the apartment as his address on his driver’s license.

Seven months after he moved in, Regina and Morgan argued in the morning. Later in the day, they ran into each other at the store, and Morgan followed Regina back to the apartment. Regina locked the dead-bolt, which Morgan could not get into with his key. He knocked and rang the doorbell, then threw a rock to break the side window and kicked at the door. Regina called 911. Mor-

gan kicked in the door, pinned Regina to the bed, and bit, punched, and strangled her until the police arrived and arrested him.

Morgan was charged with burglary of a habitation. Regina testified at trial that when she locked him out of the apartment, she did not intend to revoke Morgan’s right to live at the apartment, but she did not want him to come into the apartment at that time. The jury convicted him.

On appeal, Morgan argued that he could not have committed burglary because he was an owner of the apartment. The Second Court of Appeals agreed.<sup>3</sup> It relied on Article 21.08 of the Code of Criminal Procedure, which provides that in an indictment, if multiple people own property in common, any or all of them may be alleged as the owner. Thus, the appellate court reasoned, Morgan was a co-owner of the property as a tenant and had a right to be inside.

## Greater right of possession

The Court of Criminal Appeals found that the case turned on the Penal Code definition of “owner” rather than Article 21.08.<sup>4</sup> Article 21.08 is only a rule of pleading and is not part of the definition of the

offense.<sup>5</sup> Rather, the Penal Code gives a specific definition of “owner” as not just a person with title or possession of the property, but also anyone with “a greater right to possession of the property” than the defendant.<sup>6</sup> The jury was charged on that definition, and as a specialized legal definition, it is the applicable definition in the case.

In defining ownership as including a greater right to possession, the Legislature specifically allowed for situations where two people may both own property but one has a greater right than the other. Indeed, the theft statute expressly provides that it is *not* a defense to prosecution that another person has an ownership interest in the property.<sup>7</sup>

The key, therefore, in the instant case was whether Regina had a *greater* right to possession of the apartment than Morgan. If they were equal co-tenants, then neither would have the legal right to exclude the other. Here, however, the evidence clearly showed that it was Regina’s apartment and Morgan was simply a roommate. Only Regina was on the lease, only Regina paid rent, and Regina had given Morgan a key. The Court of Criminal Appeals found that she also was free to take it away, and thus she had a greater right of possession to the apartment than Morgan. She was the owner under the Penal Code, and Morgan could be prosecuted for burglary.

Morgan also argued that he had effective consent to enter because he lived at the apartment and because

Regina testified that she did not intend to revoke his consent to live there by locking him out. But effective consent is determined at the time of the alleged criminal act.<sup>8</sup> Regardless of whether Regina still intended to allow Morgan to live at the apartment, the evidence showed that she had revoked his consent to enter *at the time of entry*. Regina testified that she did not want Morgan to come into the apartment, she wanted him to go away to cool off, and she intentionally locked the deadbolt that he could not open. Even if she intended to allow him in the apartment again later, he still did not have her consent to enter at that time.

### Lessons for the future

This opinion can be an extremely helpful tool in theft, criminal mischief, or burglary cases involving multiple owners. The key is establishing that the victim had a *greater* right of possession than the defendant did, not that the defendant had no right at all.

It is important to remember, though, that the argument worked in this case because it was clearly Regina's apartment and she had the authority to invite or exclude Morgan from it. If they had both been on the lease or paying rent, then the State likely could not have proven that Regina had a greater right of possession. Don't get carried away, but definitely keep this case in your toolbox when you need to prove ownership when the defendant is also an owner. ❁

### Endnotes

<sup>1</sup> *Morgan v. State*, No. PD-0758-15, 2016 WL 5404322, slip op. (Tex. Crim.App. Sept. 28, 2016).

<sup>2</sup> *Id.*, slip op. at 2-3.

<sup>3</sup> *Morgan v. State*, 465 S.W.3d 327, 330 (Tex. App.—Fort Worth 2015).

<sup>4</sup> *Morgan*, slip op. at 9.

<sup>5</sup> *Id.* at 9, n.25, citing *Freeman v. State*, 707 S.W.2d 597, 603 (Tex. Crim.App. 1986).

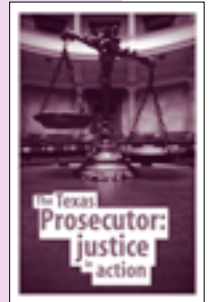
<sup>6</sup> Tex. Penal Code §1.07(a)(35)(A).

<sup>7</sup> Tex. Penal Code §31.10.

<sup>8</sup> *Morgan*, slip op. at 12, citing *Freeman*, 707 S.W.2d at 604.

### *Prosecutor booklets available for members*

We at the association offer to our members a 12-page booklet that discusses prosecution as a career. We hope it will be helpful for law students and others considering jobs in our field. Any TDCAA member who would like copies of this brochure for a speech or a local career day is welcome to email the editor at [sarah.wolf@tdcaa.com](mailto:sarah.wolf@tdcaa.com) to request free copies. Please put "prosecutor booklet" in the subject line, tell us how many copies you want, and allow a few days for delivery. ❁



*Photos from our Annual Update in Galveston*





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# A roundup of notable quotables

*“Even in prison, despite what people think, there are a multitude of treatment options. So you’re talking thousands of dollars of resources and time that were thrown at him that he ultimately refused.”*

—Montgomery County Assistant District Attorney Tyler Dunman, as quoted by the *Houston Chronicle* in a story about MoCo’s stiff sentence for repeat DWI offender Joe Ford Woods Jr., a 63-year-old parolee who got life in prison for his 12th DWI in early October. (<http://www.houstonchronicle.com/news/houston-texas/houston/article/Life-sentence-after-12th-DWI-conviction-9887173.php>)

**“I prayed with him and I forgave him and we just put it under the blood of Jesus.”**

—Steven Chaney, exonerated earlier this year of a 1987 double murder in Dallas, telling reporters about his meeting with Neil Pask, the onetime Dallas County prosecutor who tried Chaney for the murders, with whom Chaney reconciled before his exoneration. (<http://www.wfaa.com/news/local/dallas-county/man-convicted-of-double-murder-in-1987-on-flawed-evidence-freed/305877322>)

Have a quote to share? Email it to [Sarah.Wolf@tdcaa.com](mailto:Sarah.Wolf@tdcaa.com). Everyone who contributes one to this column will receive a free TDCAA T-shirt!

**“A criminal robbed our hotel room, but he couldn’t run away from a team of cross country runners!”**

—Patrick Leary, a member of the University of Arizona cross-country team that chased down a burglar found in their hotel room, eventually cornering the man in an alley. (The newspaper article [<http://www.star-telegram.com/news/nation-world/national/article105747511.html>] is really worth reading on your own.)

**“After arresting the subject for DWI, I inventoried his car. Located in the back seat was a large open box of whine [sic].”**

—offense report from a Hood County DWI arrest. We figure there’s lots of whine with most traffic stops. (Submitted by Lori Kaspar, Hood County Attorney)

**“Let’s have a serious talk about clowns.”**

—Post on the Orem (Utah) Police Department’s Facebook page, in light of creepy clown sightings across the country. (<https://www.facebook.com/OremDPS>)

**“A sad lawyer walked into a drinking establishment because he couldn’t pass the bar.”**

—the marquee on a building near TDCAA’s headquarters in Austin

*“I think God uses this man more than he knows.”*

—a Collin County man, who wished to remain anonymous, about Sheriff’s Deputy George White, who saved the life of the man’s son. Deputy White has saved the lives of seven people over the course of his 16-year career. (<http://www.wfaa.com/news/local/collin-county/north-texas-deputy-saves-seventh-life/327558291>)



# The importance of referrals

A list of phone numbers, websites, and resources that Texas victim assistance coordinators can use to help crime victims

*Editor's note: This is an excerpt from TDCAA's updated edition of the Victim Services Manual. A grant from the Texas Governor's Office will allow us to send a copy to all Texas prosecutor offices in January, so keep an eye out for it.*

Many times problems and issues arise after a crime occurs, and the crime victims we serve are in need of additional help. As VACs, our job is to assist as much as possible, gather information for our prosecutor, then refer the crime victim to other agencies and organizations that are geared to provide support for specific issues crime victims may face. From experience, I know it is difficult sometimes to figure out which agency or organization does what and where to refer a specific victim. This article highlights a few national and state agencies that provide assistance and support to crime victims. Many of these agencies have brochures and publications you can order or print for free to hand out to crime victims.

Local community resources also exist, so be sure and explore what is available in your community by trying one of the following methods:

- call 2-1-1 or go online to [www.211texas.org](http://www.211texas.org);
- see the TDCJ Crime Victims Clearinghouse local resource directory at [www.tdcj.state.tx.us/divisions/vs/victim\\_resource\\_directory.html](http://www.tdcj.state.tx.us/divisions/vs/victim_resource_directory.html);
- see Connect Directory (a referral service) maintained by the National Center for Victims of Crime at [victim-connect.org/get-help/connect-directory](http://victim-connect.org/get-help/connect-directory);
- go to the website for the Attorney General's Office, which also maintains a list of victim assistance contacts and links: [texasattorneygeneral.gov/cvs/crime-victim-assistance-contacts-links](http://texasattorneygeneral.gov/cvs/crime-victim-assistance-contacts-links); and
- visit the Office for Victims of Crime (OVC) website, which maintains a directory of nonemergency crime victim services agencies, at [ovc.ncjrs.gov/ovcdirectory/mobile/searchdirectory.aspx](http://ovc.ncjrs.gov/ovcdirectory/mobile/searchdirectory.aspx).

## National resources

### *Justice Solutions*

[www.justicesolutions.org/links.php](http://www.justicesolutions.org/links.php)

This website, maintained by professional crime victim service providers, provides contact information to a variety of agencies and organizations that can be of assistance in the victim services field. See the website (above) for information on:

- federal government agencies,
- related national organizations,
- criminal and juvenile justice and public policy organizations,
- state agencies and organizations (alphabetical by state),
- VOCA victim assistance agencies,
- state attorneys general VS programs,
- state DV and sexual assault coalitions,
- state corrections departments (adult and juvenile),
- victims rights compliance programs, and
- legal research and resources.

*By Diane Beckham*

TDCAA Senior Staff  
Counsel, and

*Jalayne Robinson,*  
LMSW

TDCAA Director of  
Victim Services

### *Mothers Against Drunk Driving (MADD)*

877/275-6233

*Victim Helpline: 877/MADD-HELP*

[www.madd.org](http://www.madd.org)

Mothers Against Drunk Driving, incorporated in 1980, is a 501(c)(3) nonprofit, grassroots organization with more than 600 chapters nationwide. MADD is not a crusade against alcohol consumption. Its focus is to look for effective solutions to the drunk-driving and underage drinking problems, while supporting those who have already experienced the pain of these senseless crimes.

### *National Center for Victims of Crime*

202/467-8700 or 800/FYI-CALL

[victimsofcrime.org](http://victimsofcrime.org)

The National Center for Victims of Crime (formerly the National Victim Center) is a nonprofit organization founded in 1985. The National Center provides resources and advocacy for victims of crime. Through

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collaboration with local, state, and federal partners, the National Center:

- advocates for stronger rights, protections, and services for crime victims;
- provides education, training, and evaluation; and
- serves as a source of current information on victims' issues.

The National Center offers email updates on news, legislative events, conferences and training opportunities that affect victims and victim advocates for all members of NCVC.

VictimConnect Resource Center is a place for crime victims to learn about their rights and options confidentially. VictimConnect is a program of the National Center for Victims of Crime and offers:

- a traditional telephone-based helpline: 855/4-VICTIM (855/484-2846);
- an innovative online chat at Chat.VictimConnect.org; and
- web-based information and service referrals at VictimConnect.org

### ***National Coalition Against Domestic Violence (NCADV)***

***Hotline: 800/799-7233; www.ncadv.org***

NCADV is dedicated to the empowerment of battered women and their children and is committed to the elimination of personal and societal violence in the lives of battered women and their children. NCADV's work includes coalition-building at the local, state, regional and national levels; support for the provision of community-based, non-violent alternatives—such as safe home and shelter programs—for battered women and their children; public education and technical assistance; policy development and innovative legislation; focusing on the leadership of NCADV's caucuses and task forces developed to represent the concerns of organizationally under-represented groups; and efforts to eradicate social conditions that contribute to violence against women and children.

### ***The National Organization of Parents of Murdered Children, Inc.***

***888/818-7662 or 513/721-5683***

***www.pomc.com; email: natlpomc@pomc.org***

Parents of Murdered Children, Inc. was founded in 1978

by the Reverend and Mrs. Robert Hullinger after their daughter Lisa, then 19 years old, was bludgeoned to death by an ex-boyfriend. Parents of Murdered Children is dedicated to the idea that grief must be shared, and its goal is to provide support and assistance to all survivors of homicide victims. POMC does not provide counseling but is a support group that publishes a survivors newsletter and holds conferences each year.

### ***National Organization for Victims Assistance (NOVA)***

***703/535-6682; trynova.org***

The National Organization for Victim Assistance is a private, nonprofit, 501(c)(3) organization of victim and witness assistance programs and practitioners, criminal justice agencies and professionals, mental health professionals, researchers, former victims and survivors, and others committed to the recognition and implementation of victim rights and services. Founded in 1975, NOVA is the oldest national victim assistance group in the United States. Its mission is to promote rights and services for victims of crime and crisis everywhere.

### ***National Victim Notification Network (VINE)***

***www.vinelink.com***

VINE, the National Victim Notification Network, is available to keep victims informed about the custody status and court status of their offenders. VINE is available in thousands of communities across the nation.

### ***Office for Victims of Crime (OVC)***

***202/307-5983; www.ovc.gov***

The Office for Victims of Crime (OVC) was established by the 1984 Victims of Crime Act (VOCA) to oversee diverse programs that benefit victims of crime. OVC provides substantial funding to state victim assistance and compensation programs. The agency also supports trainings designed to educate criminal justice and allied professionals regarding the rights and needs of crime victims. OVC is within the Office of Justice Programs, U.S. Department of Justice. The Office for Victims of Crime (OVC) also maintains a directory of nonemergency crime victim services agencies at [ovc.ncjrs.gov/ovcdirectory/mobile/searchdirectory.aspx](http://ovc.ncjrs.gov/ovcdirectory/mobile/searchdirectory.aspx).

## ***U.S. Resource Map of Crime Victim Services & Information***

To locate resources for crime victims who have become victims in another state, see [www.ovc.gov/map.html](http://www.ovc.gov/map.html).

### **State resources**

#### ***Texas Attorney General's Office—***

#### ***Crime Victim Services***

**800/983-9933 or 512/936-1200**

***texasattorneygeneral.gov/cvs/crime-victim-services-assisting-victims-of-violent-crime***

The Office of the Attorney General (OAG) serves victims of crime by administering the Crime Victims' Compensation Program and victim service-related grants and contracts, in addition to offering training and outreach programs.

#### **Crime Victims' Compensation Program**

The Crime Victims' Compensation (CVC) program reimburses out-of-pocket expenses to victims of violent crime and their families. The Crime Victims' Compensation fund can help eligible victims pay for medical and counseling bills incurred because of the crime and can help families cover the cost of the funeral for a loved one who has been killed.

The AG's Office offers training for victim assistance coordinators on CVC. All-day workshops give participants an overview of the compensation program, emphasizing the eligibility components. The training is free for all qualified participants. For more information on training opportunities through the Attorney General's office, visit its website at [texasattorneygeneral.gov/cvs/crime-victim-assistance-training](http://texasattorneygeneral.gov/cvs/crime-victim-assistance-training).

Crime Victim Compensation has adopted Presumptive Eligibility as a new component of the business process. Presumptive eligibility allows advocates who are trained by the AG's Crime Victim Services Division to work directly with victims to gather the required documentation and submit a thorough application packet to the Crime Victims' Compensation division. For more information on presumptive eligibility, see the Attorney General's website at [texasattorneygeneral.gov/cvs/crime-victims-compensation](http://texasattorneygeneral.gov/cvs/crime-victims-compensation). A VAC must have taken the CVC training before being eligible to participate in presumptive eligibility filing of CVC applications.

For more information on the national administra-

tion of crime victim compensation programs, see the National Association of Crime Victim Compensation Boards' website at [www.nacvcb.org](http://www.nacvcb.org).

#### **Grants and contracts**

Grants and contracts administered by the Office of the Attorney General help fund a broad range of victim-related services. Domestic violence shelters, rape crisis centers, hotlines, victim advocacy, education, assistance with CVC applications, and other victim-related services are available as a result of these grants and contracts. For more information, see the website at [texasattorneygeneral.gov/cvs/grants-and-contracts](http://texasattorneygeneral.gov/cvs/grants-and-contracts).

#### **Address Confidentiality Program**

The Texas Address Confidentiality Program (ACP), administered by the OAG, provides a substitute post office box address and free mail forwarding service for participants.

ACP is a safety tool and intended as one step in an overall safety plan. It is neither a witness protection program nor a guarantee of safety. For more information, see the OAG website at [texasattorneygeneral.gov/cvs/the-address-confidentiality-program-acp](http://texasattorneygeneral.gov/cvs/the-address-confidentiality-program-acp).

#### ***Texas Advocacy Project***

**512/476-5377; [www.texasadvocacyproject.org](http://www.texasadvocacyproject.org)**

***email: [info@texasadvocacyproject.org](mailto:info@texasadvocacyproject.org)***

Texas Advocacy Project provides free legal services to victims of domestic violence and sexual assault throughout the state of Texas. Texas Advocacy Project also offers support to victim services personnel and maintains hotlines for victims of various crimes:

- Family Violence Legal Line: 800/374-HOPE (statewide) and 512/476-5770 (Austin);
- Family Law Hotline: 800/777-FAIR (statewide) and 512/476-1866 (Austin); and
- Sexual Assault Hotline: 888/296-SAFE (statewide) and 512/225-9290 (Austin).

#### ***Texas Association Against Sexual Assault (TAASA)***

**512/474-7190; [taasa.org](http://taasa.org)**

The Texas Association Against Sexual Assault (TAASA) is committed to ending sexual violence in Texas through

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education, prevention, and advocacy. TAASA supports sexual assault survivors on their paths to hope, healing and justice. TAASA provides a variety of training opportunities. For more information, see its website at [taasa.org/about/training-technical-assistance](http://taasa.org/about/training-technical-assistance).

### ***Texas Department of Criminal Justice— Victim Services***

***512/406-5900; 800/848-4284***

***[www.tdcj.state.tx.us/divisions/vs/](http://www.tdcj.state.tx.us/divisions/vs/)***

The mission of Victim Services Division is to provide a central mechanism for victims and the public to participate in the Criminal Justice System. The Victim Services Division strives to reduce victimization through education within an environment of integrity, fairness, compassion, dignity, and respect.

TDCJ Victim Services also has a number of resources, including:

- VIS forms;
- in-person training for VACs;
- webinars on victim services issues;
- Texas Victim Assistance Training (TVAT) online;
- victim services publications, including the *Victim Services Information Manual*; and
- a confidential database—Victim Notification System (VNS)—for victim registration for notification regarding offender’s incarceration and parole review.

The department provides assistance in the following areas:

- determining inmate status;
- referral for restitution inquiries;
- automated toll-free telephone system for victims to obtain status information 24 hours a day (if requested, the automated phone system can call a victim to notify her when an inmate is being processed for release);
- processing victim impact statements, protest letters, and other information submitted by victims;
- assistance in scheduling meetings with parole board members during parole review;
- explanation of parole and mandatory supervision laws;
- training criminal justice professionals and offenders on victim awareness and sensitivity issues;
- prison tours for victims, concerned citizens, and criminal justice professionals;

- victim-witness screening and preparation prior to viewing an execution; and
- meetings with offenders through Victim-Offender Mediation/Dialogue if requested by the victim and upon approval and preparation by TDCJ. See below for more on Victim-Offender Mediation/Dialogue.

### **Victim-Offender Mediation/Dialogue (VOM/D)**

The Texas Department of Criminal Justice’s Victim Services Division offers victim-offender mediation/dialogue services for victims of violent crime. The VOM/D program sets up face-to-face meetings with offenders if requested by the victim and upon approval and preparation by TDCJ. Contact TDCJ at 800/848-4284 or by email at [victim.svc@tdcj.texas.gov](mailto:victim.svc@tdcj.texas.gov) for more information. To see a description of the VOM/D program, go to [www.tdcj.state.tx.us/divisions/vs/victim\\_vomd.html](http://www.tdcj.state.tx.us/divisions/vs/victim_vomd.html). Below are the portions of the Code of Criminal Procedure that address victim-offender mediation:

#### CCP Art. 56.13. Victim-Offender Mediation

The victim services division of the Texas Department of Criminal Justice shall:

- (1) train volunteers to act as mediators between victims, guardians of victims, and close relatives of deceased victims and offenders whose criminal conduct caused bodily injury or death to victims; and
- (2) provide mediation services through referral of a trained volunteer, if requested by a victim, guardian of a victim, or close relative of a deceased victim.

#### CCP Art. 5.08. Mediation in Family Violence Cases

Notwithstanding Article 26.13(g) or 42A.301(15), in a criminal prosecution arising from family violence, as that term is defined by §71.004, Family Code, a court shall not refer or order the victim or the defendant involved to mediation, dispute resolution, arbitration, or other similar procedures.

### **Victim Notification System (VNS)**

The Victim Notification System (VNS) utilizes a confidential database to provide registrants with notifications regarding offenders. Notifications are available via email, letter, or both. The system provides over 80 points of possible notification regarding several phases of an offender’s incarceration and the parole review process. Once an individual is added to the VNS, she will receive a confirmation letter with two brochures that further explain the services.

Victims of a crime, surviving family members, witnesses, or concerned citizens who would like to register for notification on an offender who is in TDCJ custody or on parole/mandatory supervision should contact TDCJ at 800/848-4284 or by email at [victim.svc@tdcj.texas.gov](mailto:victim.svc@tdcj.texas.gov). Victims can also register for notifications by text or by telephone, but this must be done separately. See the section on “Notification” at [www.tdcj.state.tx.us/divisions/vs/index.html](http://www.tdcj.state.tx.us/divisions/vs/index.html) for the links to register for text or automated telephone notification.

***TDCJ—Texas Crime Victim Clearinghouse  
800/848-4284***

***[tdcj.state.tx.us/divisions/vs/victim\\_txcvc.html](http://tdcj.state.tx.us/divisions/vs/victim_txcvc.html)***

The goal of the Clearinghouse is to provide the focus, leadership, and coordination necessary to continue and improve services so that victims are afforded a full measure of justice and every possible assistance. The Clearinghouse serves as a central source of information about services and issues involving crime victims in Texas and connects victims with community and state resources. The Clearinghouse produces a Victim Assistance Resource Directory of state agencies that provide services to victims at [www.tdcj.state.tx.us/divisions/vs/victim\\_resource\\_directory.html](http://www.tdcj.state.tx.us/divisions/vs/victim_resource_directory.html)

The Clearinghouse is responsible for updating the Victim Impact Statement every two years and collects the semi-annual VIS activity reports from prosecutor offices around the state. The Clearinghouse also sponsors conferences that brings hundreds of victims, criminal justice professionals, law enforcement, and victim services providers together so they can participate in an array of victim-related workshops.

***Texas District & County Attorneys Association  
(TDCAA)***

***512/474-2436; [www.tdcaa.com](http://www.tdcaa.com)***

TDCAA has three primary functions:

- producing comprehensive continuing legal education courses for employees in prosecutor offices;
- providing technical assistance to the prosecution community and related criminal justice agencies; and
- serving as liaison between prosecutors and other organizations involved in the day-to-day administration of criminal justice.

Through its Director of Victim Services, Jalayne

Robinson, TDCAA provides the information necessary to create a victim services department within a district attorney’s or county attorney’s office. TDCAA also includes forms and helpful documents on its website specifically geared toward victim services personnel in prosecutor offices. See [www.tdcaa.com/victim-services](http://www.tdcaa.com/victim-services).

***Texas Juvenile Justice Department (TJJJ)***

***512/490-7130***

***[www.tjjd.texas.gov/programs/victim\\_services.aspx](http://www.tjjd.texas.gov/programs/victim_services.aspx)***

The Texas Juvenile Justice Department (TJJJ) is committed to providing victims of juvenile crime their rights under the law, ensuring that they are informed, involved, and treated with dignity, fairness, and respect. Among the programs assisting victims, TJJJ provides victim notification. Upon request, the victim may be notified of:

- the offender’s commitment to the Texas Juvenile Justice Department;
- the minimum length of stay or length of the sentence;
- movements between placements within TJJJ;
- when the offender is to be considered for placement on parole or transfer to the Texas Department of Criminal Justice;
- when the offender is transferred to parole status or to the Texas Department of Criminal Justice; and
- the name, address, and telephone number of an appropriate TJJJ employee to contact for additional information.

***Texas Legal Services Center***

***888/343-4414; [www.tlsc.org/programs/avoice.asp](http://www.tlsc.org/programs/avoice.asp)***

Texas Legal Services Center (TLSC) is a non-profit legal office which provides assistance and training to poverty law advocates and their clients in the areas of litigation support, education and communication. TLSC sponsors projects that assist individuals in Texas and, in some cases, nationwide. TLSC manages Texas Law Help and Texas Lawyers Help, which are statewide web initiatives to increase access to justice.

TLSC also has a statewide project—Advocates for Victims of Crime (AVOICE)—which provides free direct legal representation and referrals to victims of violent crime, and providing education about crime victim’s

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rights. AVOICE lawyers offer legal advice, safety planning, *pro se* assistance, and legal representation. It also assists victims with applying for crime victim compensation claims.

AVOICE helps victims with the following legal matters:

- protective orders;
- family law (custody, child support, and divorce);
- employment;
- elder exploitation and abuse;
- financial crimes and identity theft;
- housing (helping clients terminate a lease when the crime occurred on the property);
- Title IX issues if the crime occurred at school;
- immigration (helping undocumented victims apply for a U-Visa, or T-Visa); and
- Crime Victims Compensation. ❄

## Other resources

Disaster Distress Helpline	800/985-5990
Identity Theft Resource Center	888/400-5530
National Alliance on Mental Illness	800/950-6264
National Center on Elder Abuse	800/677-1116
National Child Abuse Hotline	800/422-4453
National Domestic Violence Hotline	800/799-7233 800/787-3224 (TTY)
National Indigenous Women's Resource Center	406/477-3896
National Runaway Switchboard	800/786-2929
National Sexual Assault Hotline	800/656-4673
National Suicide Prevention Lifeline	800/273-TALK 888/628-9454 (Spanish) 800/799-4889 (TTY)
National Teen Dating Abuse Helpline	866/331-9474 866/331-8453 (TTY)
Overseas Citizens Services	888/407-4747
Parents of Murdered Children	888/818-7662
The Trevor Project—Crisis & Suicide Prevention Lifeline for LGBTQ Youth	866/488-7386

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## What's your office policy on social media? (cont'd)

for their posts, they still made headlines—and as the old(ish) saying goes, nothing on the Internet ever dies, so these stories will live on, embedded in the online ether, into eternity. That's (part of) why it's wise to be careful in what we post or tweet online, especially when said posts and tweets have to do with our jobs as prosecutors.

We asked six supervising prosecutors in jurisdictions across the state about their office's policy on social media. While a few said they don't have a written policy, they have all at least considered one, not least because of incidents on the national stage like those above. Here's what they each had to say about such policies.

### *Scott Durfee* *Assistant District Attorney and* *General Counsel in Harris* *County*

Our office's current social media policy is as follows:

OPERATIONS MANUAL SECTION 2.13: The District Attorney's Office recognizes that employees may participate in social networking sites on the internet such as MySpace, Facebook, and Twitter and may publish their own blogs. However, since any information shared online can reflect on this office, such postings should be personal and should not discuss any official business of the office or make reference to the office or an activity within the office. Any posting should not purport to describe office policy, as the administration will address office policies. You should not state your title or position in the office on any posting, as this may imply an official statement of the office. Your online conduct

should mirror your conduct in the office. Remember: Nothing online is truly anonymous. Information that you post online is often permanent or, at the least, may remain present for a long period of time.

As you might note, the current policy has been around since MySpace was a thing. It was drafted with the intention of being respectful of an employee's right to engage in free expression while drawing fair boundaries between office communications and personal communications. The tricky balance, of course, is in defining what "official business of the office" is and to what degree an employee's free expression rights include the right to make political comments about the manner in which the office is run.

It's sometimes tough to apply this policy narrowly, especially when the social media posts are critical of the District Attorney's policies or when they share internal communications not intended for public dissemination. But I think elected officials have to have really thick skin when reacting to criticism from inside or outside the office on social media, particularly if it's political speech. We have to basically keep our eye on the lines set by federal law in *Pickering v. Board of Education*<sup>4</sup> and *Connick v. Myers*<sup>5</sup> and avoid disciplining an employee for a social media posting unless the communication truly interferes with the office's operations to such a degree that it outweighs the employee's right to speak on a matter of public concern.

We remain confident that our staff will use good judgment and stay professional when communicating on social media about matters related

to the criminal justice system because the alternative—using bad judgment or being unprofessional—is so obviously inappropriate and fraught with ethical peril.

### *Patrick Wilson* *County and District Attorney* *in Ellis County*

This will probably come as a surprise, but I do not have a social media policy. Shortly after I took office, I spent a lot of time researching and contemplating the matter. I ultimately decided that as a governmental entity, there are just too many pitfalls with such a policy. It's one thing for a private entity to impose restrictions on an employee's speech; it's quite another for the government to do so. Knock on wood, but there has never been a social media incident with one of my employees. A few years ago, at one of my first TDCAA talks on the subject, I recall telling the group that I decided against adopting a policy. I explained that I would deal with any situations on a case-by-case basis. So far, so good.

### *Aaron Moncibaiz* *Assistant Criminal District* *Attorney in Lubbock County*

We really do not have a policy regarding social media *per se*, but we certainly don't want anyone affiliated with our office putting anything out there that would—or potentially could—embarrass the office. Our stance is pretty simple: We believe that as prosecutors we live in a glass house, and we are expected to live with a different, higher standard than anyone else. This is something we embrace and actively preach to our



prosecutors at all levels in our office.

I'm not aware of any actual incidents with prosecutors or staff being reprimanded for something they have posted on social media. From time to time, I will remind the people I supervise of the importance of not posting something that would or could potentially embarrass our office, but it has never been in direct response to an incident.

When Kaufman County prosecutors Mark Hasse and Mike McLeland were murdered back in 2013, we did gather every single attorney in our office for a meeting. This was literally a day or two after the murders, so there still wasn't a lot of information being released other than the speculation about the Aryan Brotherhood targeting prosecutors across the state. The purpose of the meeting was to remind everyone to be safe and to think twice about what they were posting on their social media accounts. It was stressed that it probably wasn't very smart to post where you lived, when you would and would not be at home, when you would and would not be at work, etc. I think this was a big eye-opener for a lot of our staff.

**Larry Moore**  
*Assistant Criminal District Attorney in Tarrant County*

Our office has a written policy on social media that elected Criminal District Attorney Sharen Wilson implemented when she initially took office, and it reads as follows:

Attorneys and other employees are forbidden from posting any content that they generate or access as a result of their position with the Tarrant County Criminal District Attorney's Office on a social media

website under their personal account. This includes content that may be captured with a personal device, but which the attorney or employee has access to or received because of their employment with the Tarrant County Criminal District Attorney's Office.

**Jarvis Parsons**  
*District Attorney in Brazos County*

I don't really have an office policy on social media. I have talked about it but not written it down. I have told my employees that they are responsible for what they put out there, which means if their Facebook posts harm the reputation of the office, then I will act accordingly. I have told them to think about my daughter, that if I lose this job because of their actions, I won't be able to feed and clothe her. So I ask them, "Did you think of Erin?" That usually works, and they have policed themselves.

We have also asked them not to have alcohol in pictures when they are at office functions, such as TDCAA's Annual or other official events. I have told them that reflects badly on our office because we are prosecuting drunk drivers.

**C. Scott Brumley**  
*County Attorney in Potter County*

While admitting it may constitute negligence *per se*, we do not have a formal policy on use of social media, other than to inform all employees of the office that, if they make their social media presence public, we will see it (and we have investigators who monitor defendants' social media

presence; it would not be difficult for them to find out if our people are putting scurrilous stuff out there). Personally, I would be far more concerned about prosecutors disclosing confidential information on social media than finding out about them bad-mouthing the office. In any event, we haven't really had an incident involving an employee yet.

With that said, I'm quite sure we'll have to promulgate such a policy, and probably in the not-too-distant future. We have found some "public" social media material from applicants that did not comport with the representations they made in their applications and supporting materials (hence, they are not current employees of our office). We do let applicants who get an interview know that we will be checking their social media, and ask them to "friend" us (or whatever that mumbo-jumbo is), but we do not ask for passwords as I've heard some employers do. We haven't had any backlash from employees about what we do. Since we don't do much, I'd have trouble imagining much of a colorable complaint about it. ❄

## Endnotes

<sup>1</sup> [http://www.sttoday.com/news/local/crime-and-courts/appeals-court-troubled-by-top-st-louis-prosecutor-s-mid/article\\_036c54b6-0e7c-5ed7-837c-901b03b799ec.html](http://www.sttoday.com/news/local/crime-and-courts/appeals-court-troubled-by-top-st-louis-prosecutor-s-mid/article_036c54b6-0e7c-5ed7-837c-901b03b799ec.html).

<sup>2</sup> <http://www.inlander.com/Bloglander/archives/2016/07/19/kootenai-county-prosecutor-barry-mchugh-no-discipline-for-attorneys-controversial-facebook-comment>.

<sup>3</sup> <http://people.com/celebrity/florida-assistant-state-attorney-ken-lewis-fired-for-orlando-facebook-post>.

# State jail dungeons and bad judgment dragons

How to use a prosecutor's inherent nerd-magic, attention to detail, and desire to see that justice is done to keep punishment ranges accurate

Let's be honest. I mean, let's be totally, totally honest here. We didn't become prosecutors on account of the fact that we are *not* nerds. We are nerds.

All prosecutors eventually assimilate and embrace our nerd-dom; those who don't will become probate attorneys sometime in the next calendar year. Being that we are nerds, we embrace the trivial and the trifling. We wield them like swords, swords we have named Glamdring and Longclaw—because nerd. You say things like, “The Millenium Falcon made the Kessel Run in less than 12 parsecs.” To which someone else replies, “A parsec is a unit of distance, not time.” Because nerd.

You lose your mind when someone on Facebook accidentally types “there” instead of “their” or “they're.” You shame them in the comments section because your [sic] that guy. Because nerd.

My point is that we are all about the little things. We enjoy knowing the little things and applying them and showing people up when they don't know the little things. These are skills nerds develop early in life to protect themselves from predators.

So please, *please* tell me why so many otherwise nerdy and detail-oriented prosecutors *constantly* conflate enhanced punishment ranges with enhanced degrees of offenses?

I'll wait while you think about it. [Elevator Muzak plays Rush's “Tom Sawyer” in the background for 30 seconds. Because nerd!]

Many prosecutors (and judges) who are much smarter than me (or you) have botched this one before. Because it's one of those things you don't need to know until you need to know it. So let's assume you need to know it right now, before you end up reversed on appeal and looking down shamefully at your orthopedic dress shoes through your non-ironic-but-in-fact-medically-necessary-Coke-bottle glasses.

## Enhancements vs. enhancements

We deal with two types of enhancements. Sometimes, we are actually enhancing the *degree* of the crime we are prosecuting, so a DWI goes from a Class B misdemeanor to a Class A misdemeanor to a third-degree felony based on whether it's a defendant's first, second, or anything-more-than-second offense. And with

each increase in the severity of the crime's degree, the punishment range becomes more severe. To wit: DWIs in the above example go from a max of 180 days in jail, to 365 days in jail, to 10 years in prison.

But there's another type of enhancement: enhancing the *punishment range* of the offense without enhancing the *degree* of the offense. And this is actually what happens most of the time in felonies. Under the enhancement schemes in Chapter 12 of the Texas Penal Code,<sup>1</sup> one type of felony can be enhanced and punished as if it were a more severe felony. But the degree of the felony stays the same.

Let's say you're charging someone with assaulting a public servant. It's a third-degree felony. The punishment range is two to 10 years. Now let's say the defendant has a prior conviction for possession of cocaine. That makes him a repeat offender, and the defendant may be looking at 20 years instead of only 10.

But here's the important thing: Only the *punishment range* has changed. The enhancement does not mean that upon conviction, this defendant now has a second-degree felony on his record. More specifically—and more importantly for the record—the judgment the court signs should not say that the defendant was convicted of a second-



*By Jon English*  
Prosecutor with the  
Special Prosecution  
Unit

degree felony. Because he was not. He was convicted of a third-degree felony, with an enhanced punishment range of up to 20 years.

We don't like the way that looks. Judges and support staff don't either. Because we know—we *know*—that a third-degree felony doesn't have a 20-year punishment range. If you are in a county where you print up your own judgments, your clerk may tell you you've made a mistake and insist you change it, or your judge might think there's an error and cross it out and change it on her own.

But that clerk and that judge would be wrong. And if you go along with it, you're wrong too. If the statute says an offense "*shall be punished* for a felony of the [blank] degree" and not "*is a felony* of the [blank] degree," then the offense doesn't change. Just the punishment.

### Why does it matter?

Third-, second-, and first-degree felonies are almost never going to come back to bite you if you mistakenly upgrade them, but they might bite the defendant. A first-degree felony is *worse* than a second-degree felony. And in the event, however unlikely, that the defendant gets into the free world and has someone pull his criminal history in a way that reflects the more severe offense classification, that defendant could potentially pay a price the legislature has not authorized us to impose on him.

But there are too many hypotheticals in that situation. Let me give you a real example of how it could cost you a punishment and make you redo a phase of a trial.

Say a defendant has committed

a state jail felony. But you look at his history and see that he has previously committed a third-degree felony and multiple state jail felonies. And upon the conviction for that last state jail felony, he did three years in prison.

"A-ha!" You say to yourself. "So that means the last state jail felony was actually a third-degree felony! That means he is now a repeat offender! I can make this offense a second-degree felony and he's looking at 20 years!"

And if you find yourself saying this, you have just fallen victim to one of the classic blunders.<sup>2</sup>

The previous state jail felony conviction, despite the fact the punishment range was enhanced to a third-degree felony range, is still just a state jail felony. You cannot morph it into a third-degree felony like it's a Pidgey evolving into a Pidegeotto. That also means you cannot enhance the defendant's new felony with the more severely punished state jail felony.

And unfortunately, this isn't a hypothetical scenario. This exact misfortune was suffered by one of our own in the summer of 2015.

### *Thomas v. State*

Cody Lang Thomas was charged with a state jail felony for theft between \$1,500 and \$20,000.<sup>3</sup> At both the pre-trial hearing and the sentencing hearing, the court, the State, and the defendant worked carefully together through the enhancement allegations. Thomas had previously served three years on a burglary of a building charge, a state jail felony that was punished as a third-degree felony because Thomas also had two previous state

jail felony convictions. The *coups de grâce* was the conviction for escape Thomas picked up in 2004 (a third-degree felony).

There was no ambiguity from any of the parties on what these previous convictions meant in the instant case. The judge, the State, and the defense all agreed on the record that because Thomas had been to the pen two separate times, this latest state jail felony could be enhanced to a second-degree felony. Thomas was sentenced to 20 years, a sentence twice as long as the maximum allowed by law.

The Texarkana Court of Appeals overturned this sentence in one of the most helpful, most clearly written opinions you're ever likely to see from a lower appeals court in Texas. Relying on precedent from both the Court of Criminal Appeals and its sister courts in Houston, the Sixth Court of Appeals ruled that when it comes to enhancements, there are two types of felonies: state jail felonies and non-state jail felonies.<sup>4</sup> And when it comes to enhancing state jail felonies, there are three subdivisions: standard state jail felonies, aggravated state jail felonies, and enhanced state jail felonies.<sup>5</sup> (See the chart on the next page for an at-a-glance explanation of the differences.)

Standard state jail felonies are exactly what they sound like: They are state jail felonies punished by not less than 180 days and not more than two years in a state jail.

Aggravated state jail felonies are state jail felonies for which there is a punishment range equal to a third-degree felony due to some kind of aggravating factor. These types of

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<i>Enhancement Groups</i>		
<b>Group Name</b>	<b>Group Makeup</b>	<b>Authority</b>
Non-state jail felonies	Capital felonies and 1st-, 2nd-, and 3rd-degree felonies	Tex. Penal Code §§12.31(a), 12.32(a), 12.33(a), 12.34(a)
Standard state jail felonies	State jail felony convictions resulting in incarceration in state jail facility for not more than two years or not less than 180 days	Tex. Penal Code §12.35(a)
Aggravated state jail felonies	State jail felony convictions punished under 3rd-degree felony punishment range due to aggravating factor	Tex. Penal Code §12.35(c)
Enhanced state jail felonies	State jail felony convictions punished under either 3rd-degree or 2nd-degree felony punishment range due to enhancements based on defendant's prior criminal convictions	Tex. Penal Code §12.425

state jail felonies can be found in §12.35 of the Penal Code.

Enhanced state jail felonies are state jail felonies for which there is a punishment range equal to either third- or second-degree felonies based on the defendant's criminal history. This enhancement scheme is found in §12.425 of the Penal Code.

The nomenclature is so important in describing these offenses. The underlying noun is still "state jail felony" despite the preceding adjectives. Sticking to this language is what keeps prosecutors out of trouble. If we let ourselves (or the defense or even the judge) start referring to the offense as if it has been enhanced by the punishment (e.g., saying, "it's a third-degree felony" instead of "it's an aggravated state jail felony"), someone is going to make a mistake. And mistakes and justice just don't hang out together very often. The court of appeals remanded *Thomas* for a new sentencing hearing—but also note that the Court of Criminal Appeals granted a petition for discretionary review on it in May.

## *Enhancing state jail felonies*

Under Texas Penal Code §12.425(a), a state jail felony punishable under §12.35(a) may be enhanced by proof of one of the following combinations of prior convictions:

- two standard state jail felony convictions or
- two enhanced state jail felony convictions or
- one standard state jail conviction and one enhanced state jail felony conviction.

Under PC §12.425(b), a state jail felony punishable under §12.35(a) may be enhanced by proof of two non-state jail felony convictions, where the second one was committed after the first one became final.

Under PC §12.425(c), a state jail felony for which punishment may be enhanced under §12.35(a) may be enhanced by proof of one of the following prior convictions:

- one non-state jail felony conviction or
- one aggravated state jail felony conviction.

## **Conclusion**

The reason God invented nerds is because we are tasked with providing precision to the universes, both DC and Marvel. It's a burden and no mistake. But for prosecutors, it's more than just our responsibility: It's our calling. Our attention to detail is the dilithium crystals that power the warp-drive of justice.

This responsibility will require us to politely and respectfully explain to the judge, clerks, and

maybe even your boss that the judgments and record shouldn't reflect enhanced offenses just because the punishment has been enhanced. But if you can survive spending all of ninth grade stuffed in your locker, you can survive that conversation.

The next time you're thinking about letting something trivial go rather than correct it when you have a chance, just remember this important lesson from *The Matrix*: "You step onto the road, and if you don't

keep your feet, there's no knowing where you might be swept off to.” —Hagrid to Agent Scully before they entered the Stargate.<sup>6</sup> \*

## Endnotes

<sup>1</sup> See Tex. Penal Code §12.42.

<sup>2</sup> The most famous of which is, “Never get involved in a land war in Asia.”

<sup>3</sup> See *Thomas v. State*, 481 S.W.3d 685 (Tex. App.—Texarkana 2015, PDR granted on other grounds).

<sup>4</sup> *Id.* at 689.

<sup>5</sup> *Id.* at 690.

<sup>6</sup> Not really. Obviously this is Frodo quoting Bilbo in *The Fellowship of the Ring*. But if it made you twitch a bit when you read it, you passed the test.

# A call to action

Prosecutors’ silence on current issues is deafening, and the public needs to hear your strong voices.

**D**espite the prevailing sentiment in popular media coverage, the prosecutor’s job has never been more important and more necessary than right now. And yet in our current political climate, the silence from law enforcement is deafening. Police are now depicted as offenders, prosecutors are portrayed as gatekeepers for cops’ corrupt behavior, and some criminals—now calling themselves victims—scream injustice for being unfair targets of overzealous officers. That is the ubiquitous narrative we see played out in the news media every week. And while it’s patently incorrect, the question becomes, how do we change it?

And why do I say “we”? Who am I? I once worked at TDCAA as the research attorney, and now I practice civil litigation in Fort Worth. In response to an article I wrote on gambling in Texas way back in 2004 when I was on staff at TDCAA, I received an onslaught of media attention and more than my fair share of hate mail. (“Markus Kypreos is a clown,” stated one. It’s still the best email I received in response to that article I wrote so long ago.)

Three more gambling articles—and even more criticism—followed, and 12 years later, I still get calls

from reporters asking questions about poker, eight-liners, and more recently, Draft Kings and Fan Duel, those online fantasy football games. Somehow, I have become the expert on Texas gambling law—yet I left TDCAA in 2006 and have been practicing civil litigation ever since. I say that not to brag, but as a respectful admonishment to all of you who have dedicated your lives to law enforcement.

How am I still the prosecution’s voice for illegal gambling? I respect all of you and your devotion to prosecuting criminals, but it should be *your* voice and *your* opinions offered to the public. The media are desperate for law enforcement’s rebuttal of criminals’ claims and all too often, your silence is used against you in the court of public opinion.

But the good news is that you already have much of what you need to counter this tide. You just need to channel it.

## Prosecutors and the media

You are already an expert in the field of criminal law. Many of you have specialized prosecutors throughout your office, and you try incredibly challenging cases involving complex criminal procedures. Part of my job at TDCAA was to connect prosecu-



*By Markus Kypreos*  
Former TDCAA  
Research Attorney, now a  
Litigator at Pennington  
Hill, LLP in Fort Worth

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tors with experts in other offices. TDCAA still does that today, but it is *not* the voice of Texas prosecutors and does *not* speak for you. That's because it's nearly impossible to garner consensus among 335 elected officials. It is (and always has been) up to the individual prosecutor offices to speak for themselves, and judging by the scarcity of prosecutors seen on TV, both nationally and locally, the number of prosecutors willing to speak out on controversial topics is few and far between.

And I get it. Besides the potential unwanted criticism and scrutiny, oftentimes you don't have time to invest and thoroughly review other cases and issues. But for the hundreds of excuses we can offer to decline an interview or stay silent, there are thousands of criminals, criminal defense attorneys, and reporters (amongst other groups) pummeling your profession, your purpose, and most importantly, your integrity.

It's certainly understandable not to comment on your cases or even on cases in which you're not involved in your own office. Most of us have interacted with reporters who have misconstrued or selectively quoted our words to fit their stories. It's aggravating and (understandably) causes many of us to make internal promises never to speak with the media again. You're also busy, overwhelmed with your own cases and balancing your personal life, so adding a side job as a commentator is not on the top of your to-do list.

The National District Attorneys Association (NDAA) has promulgated "standards for prosecutors to help guide them in their day-to-day performance." And some of these stan-

dards encourage prosecutors to participate in local, state, and national affairs for the improvement of the criminal justice system. Why? Because "an interested and informed citizenry can be a valuable partner in law enforcement," NDAA says. Today's community is no doubt interested. But are they informed? And if so, is the information accurate?

Because the office of the prosecutor is local, the responsibilities placed on each office are often specialized. Perhaps your office prosecutes a number of methamphetamine makers, while the neighboring county has more eight-liner cases than it can handle. As a result, your office has specialized knowledge and expertise in prosecuting drug cases. But imagine if every prosecutor's office were designed with that level of specificity necessary to prosecute every crime. The NDAA points out that such a scenario is both a prohibitive financial burden and an enormous duplication of effort on a county-by-county basis. Thus, the NDAA recommends a statewide association of prosecuting attorneys to alleviate the problem, but speaking out on behalf of the criminal justice system as a whole is a separate task. And there needs to be a bridge between the two: Not only can you help a neighboring prosecutor handling her first eight-liner case, but you can also speak to the media when they have questions about why poker tournaments can be illegal. It's *your* expertise and voice that your office (and law enforcement in general) needs.

### **An example**

Let me tell you a story. In 2014, I lis-

tened to the hit podcast *Serial*, which re-examined the case of Adnan Syed, an 18-year-old high school senior in Baltimore, Maryland, who was convicted of murdering his girlfriend in 1998. The podcast followed reporter Sarah Koenig as she investigated the murder case and questioned whether Syed might be innocent of the murder. The story was so popular that other media outlets began reporting on it.

Shannon Edmonds, the director of governmental relations at TDCAA, fielded a call from an online magazine looking for a prosecutorial point of view to rebut some of the innocence claims from *Serial*. I was the only person he could find who was willing to be quoted and interviewed on the record.

Let that sink in for a moment.

Reporters are so desperate for prosecutorial voices that they have to reach out to the *Texas prosecutors association* to find a voice about a *Maryland* case that happened 16 years prior. It's one thing for the Baltimore City State's Attorney's Office not to comment, as there was a pending appeal at the time, but the media had to contact TDCAA to find a law enforcement viewpoint.

I listened to the podcast because after working at TDCAA, I still follow interesting criminal cases, and *Serial* was extremely popular (over 80 million downloads) and unique in its approach to questioning a 16-year-old murder case. With that popularity came a loud clamor from the public that an innocent man had been convicted—solely based on a 12-episode podcast, which in my opinion was wholly deficient in presenting the prosecution's case. The podcast led to its own subject forum

on Reddit.com, wherein the general public dissected every fact of the case. Again, having worked at TDCAA, I attempted to disprove many of the innocence claims asserted in the podcast on Reddit.

I then agreed to the interview Shannon referred to me, which led to a podcast interview, and from there, I was contacted by a producer from the Discovery Channel, who asked to fly me to New York to discuss the case and defend the prosecution and Mr. Syed's conviction for an upcoming TV special. As I sat for three hours on camera, arguing on behalf of Maryland prosecutors and against Mr. Syed's innocence, all I could think of was how you seasoned prosecutors—who refute meritless defense theories and arguments on a daily basis—should be sitting in my chair. Not because I was ineffective, but because your voice automatically conveys credibility. It comes with the job. You are a prosecutor and as such, you are an expert on criminal law. Yet simply being an expert on criminal procedure and trying cases is no longer enough.

## Become proactive

This is my plea, my call to arms, my solicitation to all of you. I know a lot of you are frustrated with the recent portrayal of prosecutors in the media. I have no problem talking to the media and defending prosecutors, and I've learned some tough media lessons over the years, especially about television (such as don't eat a high-sodium meal right before you go on camera). But it needs to be you out there talking, not me, and it needs to be now.

So what can you do?

Let your voice be heard. Write

and publish articles on topics on which you have specialized knowledge. TDCAA is always looking for interesting articles in this journal, *The Texas Prosecutor*, for example. So is your local newspaper or TV station. Become the go-to prosecutor on a certain topic, and be willing to talk to the media about similar cases both statewide and nationally. Form a relationship with the local newspaper reporter for the courthouse beat or the TV news reporter in your community who covers criminal cases.

In my current practice, for example, I have formed relationships with local reporters who know me personally. If they print something inaccurate, I can immediately ask them for a retraction or correction, especially with online content that, in today's world, is immediate and ever-changing. Conversely, these reporters rely on me for information. Even if it's off the record, cooperation, especially over time, will foster a mutually beneficial relationship for everyone.

Most importantly, speak and be vocal as often as you can. Perhaps some of you who are elected district and county attorneys have instituted a gag order on your employees communicating with the media. If so, I implore you to reconsider that ban. If you want to limit employees from talking to the media about their cases due to ethical prohibitions, that's understandable, but Texas prosecutors need advocates of their own. They need public support from one another, and limiting individuals in your office from interacting with the media only amplifies the voices of criticism against prosecutors as a whole.

It's also worth noting that Maryland prosecutors took an unorthodox step to support their Baltimore brethren. As a result of the *Serial* case, just this October, 21 elected district attorneys from various Maryland counties collaborated and filed an *amicus curiae* brief in support of the State of Maryland and its case against Mr. Syed "as independently elected lead prosecutors for jurisdictions who are not parties to this case but have a stake in seeing that justice is done in all cases, no matter the level of sensationalism or public interest." An extraordinary case can sometimes lead to extraordinary measures, and we should praise Maryland prosecutors for applying an often forgotten tool in support of their fellow prosecutors.

## Conclusion

There are times when reticence is wise and silence is golden. Now is not that time. I urge all of you to make an extra effort and channel the commitment you all share in prosecuting criminals and protecting our communities by reminding the public how and why you serve them. All of us are aware of your dedication, passion, intensity, and zeal in representing the State of Texas inside the courtroom, but the public needs to see those same traits on display outside of the courthouse and in the media.

Martin Luther King, Jr. once said, "Our lives begin to end the day we become silent about things that matter." We all know how much your jobs matter. It's time to speak up and remind everyone else. ❖

## Texas District & County Attorneys Association

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# ... And to all a good night!

To end this issue (and this year) on an appropriately festive note, here we reprint an oldie but a goodie. In 1991, Kim Stelter, then a first-year appellate prosecutor in Harris County, filed a motion to extend time to file State's brief on *Sears v. State*. But this was no ordinary motion; she wrote it in the style of the classic poem "T'was the Night Before Christmas."

T'was the weeks before Christmas and for some odd reason,  
It's also appellate's busiest season,  
When I finish a brief I get more for my trouble,  
And the reading of records has my eyes seeing double.  
Still Defense Counsels rush to file all their briefs,  
With visions of dollars their efforts will reap.  
When what to my wondering eyes should appear,  
But two weeks of vacation (I've saved it all year).  
On Delta, on Southwest, on TWA,  
I'm headed to Grandma's—up, up, and away.  
But wait, there's one thing I've forgotten to mention,  
I need your permission to get an extension.  
I've filed lots of briefs, and they're listed below,  
But I can't file them all, and I've got lots to go.  
I hope that the new year will bring a solution,  
"No more extensions" is next year's resolution,  
I'll be back on the second and ready to write,  
Until then, "Merry Christmas, and to all a good night."

Delightful, yes? But it doesn't end there! The court, having considered the motion, ordered as follows:

In the weeks before Christmas the motions pile high.  
The judges plow through them with many a sigh.  
The reasons are wondrous, incredible, and sly,  
But now and then one catches the eye.  
A creative DA took pen in hand  
And rhymed us a reason. Heavens it's grand  
To read something other than the usual prose  
It's a real relief as any justice knows.  
And besides it's the holiday and we're feeling kind,  
We'll help out anyone who's in a real bind.  
So here's an extension in the appeal of Mr. Sears  
We wish for everyone the best of all years.  
The brief is now due on 1-29;  
If you can't get it here, better drop us a line.

"I've worked on lots of appeals in the years since and drafted hundreds of briefs, but this little motion seems to be my claim to fame—at least in the small world of Texas appellate law," Kim told us recently. "I guess you never know what you'll be remembered for."

We're grateful for Kim's creativity and her willingness to let us publish her poem (again) with her blessing. Happy holidays, everyone! ❄️