Beloved Colleagues,

I am forgoing writing my usual column this month in favor of telling you about developments with this humble publication. I know that this is “just” an office newsletter, but I also know that our office is truly unique, a strange and lovely beast with a life of its own, greater than any one of us and better because of each of us.

I also owe a debt of gratitude to Eric Davis for entrusting this project to me, and for the ground he broke establishing the office’s first newsletter, and for all the hard work (which I am only now beginning to appreciate) he has put into it. He has been a valuable resource and remains inextricably involved in this publication, as I hope he always will.

In truth, editing this newsletter has largely been a hunting-and-gathering affair, a compilation effort rather than an editing effort- and our office is full of creative, brilliant minds who have submitted some really incredible work and have helped me in every possible way, including formatting and aesthetic direction. I can’t pick a favorite part of this newsletter. Truly. I hope you love it as much as I do.

In any event, my good friends, I hope this finds you safe, happy, and well and I look forward to being your devoted editrix.

Much Love and Best Practice,

ALLISON MATHIS

Editor-in-Chief
By Alex Bunin,  
Chief Public Defender

After our 20-month displacement following Hurricane Harvey, it was hard to believe another natural disaster could be so disruptive. Then came COVID-19. Although extreme weather may last days, once the mess is made there can be a plan to clean it up and move on. Our post-Harvey plan is still unfolding, but it is nowhere as disorienting as planning for the future under the current crisis.

I just got off a 90-minute Zoom call with county and city leaders and I have no clearer idea about what will happen to deal with the exploding jail population, the inability to hold regular court proceedings in person, the impediments to getting jurors to show up, where to put them, and how to hold jury trials. There are ideas – e.g. hold jury trials at NRG – but there are yet no plans or solutions. The [insert government official here] can order reopening of business as usual, but what if nobody shows up? There is no clear roadmap for how we do our jobs under a crisis that will last months and affect the legal system for years.

I do not get to decide those plans, just occasionally offer some advice. I do have authority over this office and I want to do whatever is best for our clients and what is best for you. I will try to keep you up-to-date and listen to your opinions. I suspect we will gradually return to coming to the CJC and JPC, but it will be slowly and not every day.

In the meantime, we are still expecting growth and expansion. Construction on the remainder of the 12th Floor of the CJC should be completed by the end of September. Furniture has been chosen that is consistent with what we already have on that floor (but no electronically raised desks). It will not arrive until January, so there will be temporary furniture until then.

I hope everyone will soon meet Leslie Ginzel, our new Chief of Holistic Services. As the former Executive Director of Beacon Law, she brings a wealth of knowledge and connections in the legal services community. She will help us add services like expunctions, nondisclosures, restoring driving and employment privileges, as well as working with those in the office, and outside, to address other client needs.

I am in the process of preparing a supplemental budget request to Commissioners Court for more employees. Like all criminal justice departments, we did not get our full request earlier this year. However, we now have statistical evidence from the Texas Meadows Mental Health Policy Institute that our outcomes continue to exceed those of the appointed and private bar. An earlier report by Council of State Governments Justice Center covered 2011-13. This 10-year report cover 2014-19. It clearly supports our growth.

The future is still bright however much the current crisis has dimmed its appearance.
SB 1913 – Ability-to-Pay Inquiries  
Effective Date: 09-01-17  
Author: Sen. Judith Zaffirini (D), Laredo  
Relevant Statute: Texas Code of Criminal Procedure art. 42.15(a-1)

HB 351 – Ability-to-Pay Inquiries  
Effective Date: 09-01-17  
Author: Rep. Terry Canales (D), Edinburg  
Relevant Statute: Texas Code of Criminal Procedure art. 42.15(a-1)

Both of these bills enacted Article 42.15(a-1) of the Code of Criminal Procedure. The statute is incredibly significant, but it has been roundly ignored by judges and defense attorneys alike. Here is the key part of the statute:

During or immediately after imposing a sentence in a case . . . a court shall inquire whether the defendant has sufficient resources or income to immediately pay all or part of the fines and costs.

If the defendant cannot pay, the judge can order the defendant to satisfy the fine and court costs by performing community service. Alternatively, the judge can simply waive payment of the money. Wow! This is a pretty big deal. All of our clients are indigent. It will be the rare client who can immediately pay anything. But I ask you this: Have you ever seen a judge perform one of these ability-to-pay inquiries? Have you ever asked the judge to perform one?

You shouldn’t even have to ask. The statute commands judges to do these inquiries sua sponte. But they could use a reminder from you. It is my understanding that these inquiries are not being done in Harris County. In all of the appeals I have handled, do you know how many records I have seen that contain ability-to-pay inquiries? None. Zero. Not a single one. And this law has been on the books for 33 months now.

I can’t understand why we are not pressing judges to do these inquiries in every single case we handle that results in an adult conviction. Why would we walk away with our client obligated to pay substantial amounts of money? Why wouldn’t we ask the judge to follow the law by evaluating our client’s ability to pay. The law applies in both felonies and misdemeanors.

The State Office of Court Administration (OCA) has published a bench card that describes this ability-to-pay process in detail. Go to www.txcourts.gov/media/1440389/sb-1913-district-county-court.pdf. You can print out this card and share it with the judges before whom you appear.

Jani Maselli and I have taught the Harris County district judges about this. Eric Davis was kind enough to allow me to teach about this in an internal CLE. And I have taught on this subject at the statewide Rusty Duncan CLE. But for some reason, the law is still pretty much being ignored. I urge you to ignore this law no longer. Please ask the judge to perform an ability-to-pay inquiry in the next case you handle that ends in a conviction.
DIVISION UPDATE

While each day is a vastly different day than the next, the Felony Trial Division continues defending those persons in Harris County accused of committing crimes. The Harris County District Courts have suspended Jury Trials through June 30, 2020, which means that our lawyers will not try any cases this month. Nevertheless, our lawyers have been utilizing the additional time to get ready for upcoming trials. Our division put on one training per week via Zoom in the month of May. We have been learning from our colleagues and from attorneys outside our office. We have covered topics including Cross Examining the Arresting Officer in a DWI case, Crossing Examining Complainants in Sexual Assault Case, How to Handle Suicidal Clients, and Challenging the State’s Experts. All of these topics help us grow as lawyers. These presenters kept us engaged despite not being in the same room. During the month of June, we will continue our In-House Training program by continuing to provide trainings once a week. The opportunity to collaborate with our colleagues from other divisions has grown during this unsettling time. Since the beginning of our office, our strength has been the collection of diverse perspectives. To help us better defend our clients, we have adjusted our model for Case reviews (our internal system for brainstorming cases) to invite people from different divisions to participate in our case review process. Moreover, our case reviews are no longer run only by the Felony Trial Division Chief. Our Senior Litigation Counsel now also lead case reviews. We are not in this alone.

Our lawyers continue to help each other by covering appearances if necessary, offering advice to each other on cases, and brainstorming on the unique situations that arise during this unusual time. We continue to ask for and receive help from lawyers in the other divisions of our office. Needless to say, our Administrative Assistants, Investigators, Social Workers, Case Managers, and Justice Advocates continue to provide us with tremendous support. Casandra Rodriguez facilitates our communication with the courts and our clients. Good outcomes for clients can never come quickly enough. Our lawyers persist by reaching out to prosecutors about cases, reviewing evidence, and filing pertinent motions. All of this, while our system of justice is not fully up and running. Their work continues to result in no bills, dismissals and getting bail for clients. Victories, large and small, seem a bit sweeter right now. We celebrate each others achievements while social distancing, of course. We also notice and celebrate the inspiring work being done in every division of our office. The time spent and the work done on the path to victory is worth it. We are very excited to say that our division has grown again by one during the pandemic. Salman Ali Kazim came into the world on May 16. Dad Saif Kazim, Mom Nermeen Kazim and Baby Salman are doing well. Saif reports that he and mom are exhausted with staying up at night with the new baby and then dealing with the ball of energy that is their toddler. This continues to be great place to work anytime, but especially now. We look forward to seeing everyone in person again soon. We’re all in this together.
Hello from Holistic Services! I'm just starting my 4th week with this office and if I haven't had the opportunity to meet/speak/zoom with you yet, I hope to in the near future. A little about me and my background. I am an attorney and prior to this position, I spent 13 years with Beacon Law, a program of The Beacon, which provides essential and next step services to restore hope and help end homelessness in Houston. I started out as the first intern, then became the first staff attorney and later the Program Director. Educationally, I hold an honors degree in Philosophy and Public Health from the University of Houston (2003), a Doctor of Jurisprudence from South Texas College of Law (2008) and is a 2018 graduate of the Rice University Leadership Institute for Nonprofit Executives. I've also served on the ABA Commission on Homelessness and Poverty and other advisor roles to other Sections. During my tenure as Program Director I was able to grow the budget and outputs of Beacon Law by more than 600%. A key reason for that increase is effective use of systems and processes to work as efficiently and effectively as possible. I intend to bring many of those same systems to this office so that Holistic Services can provide a robust array of services to the clients of this office while supporting the work of the criminal practice. When Alex and I first started discussing this role, I started doing research on other programs and best practices. I was thrilled when I visited the Civil Legal Needs page of the Bronx Defender’s website and realized that I was looking at a blueprint for Beacon Law. We provide the same services. Those struggling with poverty and criminal justice involvement have the same legal needs. These clients need assistance restoring their driver’s license because they are burdened by debt. They need access to expunction and nondisclosure services to support employment and housing opportunities. They need attorney intervention in eviction proceedings to keep their home and housing benefits. They need access to counsel if they hope that their disability claim will be approved. They need family law resources to right fit their child support. They need lawyers, advocates, counselors and social workers to address all of the collateral consequences that flow from a single arrest. With this realization, I knew exactly what I needed to do and I was the right person for this job. I’ve done it before and I am thrilled to build on that and make it even better. Keep your eyes peeled for additional announcements in the coming weeks. We’re going to be rolling out information on how holistic services will continue to grow and coordinate with the existing divisions. In the meantime, here is a link to “Locked Out: A Texas Legal Guide to Reentry, 4th Edition”. This is a publication I’ve been working on since 2015 and it, for all intents and purposes, is the Beacon Law bible. It is a guide for individuals, case managers and attorneys and we update it after each legislative session. We’ll continue to produce this guide to support those affected by the criminal justice system and I hope you find the resource helpful in your own practice.
EDUCATIONAL ADVOCACY

EARNs AN A+

The juvenile division’s educational advocacy program, under the direction of Christopher Sailer and Cynthia Adjain, has settled its first special education claim against an area school district. As a result of the settlement, our 14 year old client will receive $7,000 in compensatory education funds, which she can use to purchase behavioral therapies and academic tutoring from the private provider of her choice. In addition, our client will receive a full re-evaluation of her needs from an independent evaluator, including an autism evaluation and a functional behavior assessment, which may trigger her eligibility for additional services. Independent evaluations are valued at approximately $6,000. Our client, an 8th grader in Waller ISD, came to the office on an Aggravated Assault-Deadly Weapon charge that arose from an incident in her special education classroom. Our client receives special education services in a self-contained behavior classroom because of her emotional disturbance diagnosis. During an escalation, she threw a pair of children's scissors towards her teacher, who stood approximately 6 feet away. No injury resulted. But the principal called a sheriff's deputy to arrest our client, and the DA accepted charges for Aggravated Assault. She was transported to the Juvenile Detention Center, where she remained for four nights. When she returned to school she was recommended for expulsion. We advocated for the client at her expulsion hearing and at her "Manifestation Determination Review," a special education hearing that investigates whether a student's behavior was caused by her disability. Because the behavior was found to be a manifestation, she was expelled for 45 days instead of 120 days. We didn't think that was good enough. We filed for a "due process hearing" to challenge the expulsion. We also argued that the school had deprived our client of a "free and appropriate public education" by failing to ensure she made appropriate growth in academics and behavior. We were scheduled for a three-day trial on the matter before an administrative law judge at the end of May. But after a 10 hour mediation, we were able to achieve settlement. In addition to the aforementioned compensatory services, the school will also rescind the disciplinary expulsion that gave rise to our claim, leaving our client with a clean school record. Along with juvenile attorney Brian Yin, we were able to convince the ADA to dismiss the Aggravated Assault charge. We hope that, with a new service plan and additional supports, our client will have no further contact with the juvenile justice system.
May is Mental Health Awareness Month, and we wanted to highlight some notable community resources available for our clients and their families. These organizations focus on assisting individuals and their families seeking treatment or support for any mental health issues they may experience, at little to no cost to the client.

**Family Houston**
Programs currently focus on Veteran Services, Parent Resources, Case Management, Financial Stability Programs and of course, Counseling. Their counseling services are geared towards both children and adults, individually or as a family. The assist with managing depression or anxiety, settling conflicts between parents and children, resolving issues for couples, handling issues brought up in divorce, identifying substance abuse problems and ease work and home troubles.

**The Council on Recovery**
Programs to help assist individuals and families who have been impacted by substance abuse issues, co-occurring mental health issues, or these issues individually. They focus on individual treatments with the combination of other methods of therapy such as workshops & yoga.

**Hope and Healing Center & Institute**
Pertinent resources include case management to help individuals with therapy, mental health coaching, support groups, DBT-based services and more. This is a religious organization (Christian).

This list is not exhaustive, and there are many other organizations that focus on mental health awareness, and provide a substantive amount of services. If you believe your clients or their families could benefit from these programs, or any other resource, feel free to reach out to us at any time.
Services Spotlight

Yulanda King

Yulanda King, formerly a PDO Assistant Case Manager, recently moved positions and desks to become the Psychosocial Services Coordinator. What’s that, you ask?

“As Psychosocial Service Coordinator, I serve as liaison between the Public Defender’s office and other community agencies. I provide information and referrals for medical, psychological services, housing, employment, drug treatment, education, and other social services. Also, I assist in the development and implementation of Action Plans, while maintaining proper documentation of services provided for our clients.

I am available to connect clients with services at your request. Feel free to email, call, IM, or come by any time. I am readily available and happy to assist.”

Direct Line: (713) 274.6768
Yulanda.king@pdo.hctx.net
Trial Tactics
By: Damon Parrish, II

Trust yourself, trust your instincts, trust your preparation, trust your notes and most importantly trust your voice. Trial is scary and nerve racking, but there always comes a point in trial those feelings go away and you are just "in" trial. The sooner that moment comes, the better. That moment comes once I realize I am in trial, I am ready (despite that voice in my head saying opposite) and now it is time to give that prosecutor hell.

PITHY PROVERBS
Each month, Senior Trial Attorney Jackie Carpenter shares a meaningful saying and her interpretation of it as a criminal defense lawyer.

“Nine-tenths of wisdom consists of being wise in time.” -Theodore Roosevelt

Though possession may be nine-tenths of the law, to be in possession of wisdom, you have to know how to use what you got and when to use it to get what you want. Timing is truly everything.

On Impeachment and Ourselves
By: Ian Lloyd

Impeachment is the one place in a trial where you really have to think about who you are, more than in any other place, be it opening, closing or even voir dire. Furthermore, we all have to be able to adjust to whom it is we are examining.

When we are impeaching someone, never forget to "be mild with the mild, shrewd with the crafty, confiding to the honest, rough to the ruffian, and a thunderbolt to the liar. But in all this, never be unmindful of your own dignity. to bear all the powers of your mind, not that you may shine, but that virtue may triumph and justice prevail."

By: Betsy Stukes

Because everyone loves being a guinea pig, I had the utmost honor of having a 5 ½ hour hearing a few weeks ago in the 230th District Court...all via Zoom. It was weird; it had its challenges; but all in all, it was not nearly as bad as I expected as far as the practical concerns. Hearings are not only possible via Zoom, but in some ways, I believe they could be advantageous for us.

The Setup
Judge Morton was present in the courtroom, and so was my in-custody client. Everyone else appeared by Zoom—the court reporter, the witnesses, the prosecutor, and me. I let the client know ahead of time that I would be appearing digitally, and he was very understanding. But, truthfully, I regret that decision in some ways now because, even though he denies it, I think it was tough for him to be there without me being physically present. Everyone is different and has very different limitations, but consider appearing in person if your client will be in the courtroom.

Invoking The Rule
The practical implications of invoking The Rule are something worth considering at a Zoom hearing. In our case, the prosecutor suggested that his witnesses all be put in a virtual waiting room until it was their turn to testify. I have heard that waiting rooms can be individual and private, but as you probably seen, there have been a number of instances in which they have been mishandled. Ultimately, in our hearing, Judge Morton decided to make every witness log off completely and only log back in when it was their turn to testify. I have heard that waiting rooms can be individual and private, but as you probably seen, there have been a number of instances in which they have been mishandled. Ultimately, in our hearing, Judge Morton decided to make every witness log off completely and only log back in when it was their turn to testify. He acknowledged that they had no way to monitor whether witnesses were talking to each other about the case while they waited in a waiting room. To me, this was the right decision and something for which you should argue. It also makes it more difficult for the State to call their witnesses when they need them.

Lining Up Witnesses
As a somewhat obvious point, make sure your witnesses have access to the internet and know how to work Zoom before the hearing. What is becoming normal for us is still very foreign to many people. Before my hearing, I talked to the witnesses about downloading Zoom, emailed them a link, and then Joel did a pre-hearing Zoom call so that the witnesses could swear to their statements (thanks Joel!). It was all very helpful. When it comes time for a witness to testify, turn off your camera and microphone on Zoom, call the witness over the phone, and have them log into the court’s Zoom via the specific link you send them.

The Order of Witnesses May Be Off
Because the state’s witnesses were not stuck in the courthouse before they testified, some of them suddenly became unavailable, so the prosecutor ended up presenting witnesses in what I considered to be a nonsensical order. But, I would not be surprised if that is regularly the case in these hearings because the witnesses can go about their daily lives while waiting to testify. So, be flexible.

There is More Pressure to Get it Done
Once the hearing begins, be prepared to finish what you started. Judges no longer have the luxury of their own courtroom, so they reserve time for specific hearings. As such, continuing the hearing to the next day, say if it gets late or a witness is missing, is not as possible as it was before. In hindsight, my advice is if you think the hearing is going to take 5 ½ hours, advocate for an earlier start time than 1 PM.

Objections can be Awkward, but Press On
Objections are a little weird. Normally, when you stand up to make an objection in court, common sense tells most witnesses to wait until you have said what you need to say before they start talking, but on Zoom, standing up in your own house does not accomplish much. So, at the beginning of each witness, my first few objections usually interrupted the witness and made it impossible for the court reporter to hear either of us. With time, though, I learned to interrupt them once and then repeat my objection again for the record. After a few times of that, witnesses got the message to pause before answering, which made objections more fluid.

Exhibits and Refreshing a Witness’s Memory
The court reporter in our case had us pre-stamp and submit all of our potential exhibits to her in individual PDF files. The ones that were admitted, she kept; the ones that were not, she trashed. The prosecutor sent me his exhibits ahead of time, but I did not return the favor because I did not want to show some of my cards in case I did not end up using them at the hearing. No one was mad about that. When you show the witness an exhibit or a document to refresh his/her memory, you will have to share your screen via Zoom, and the prosecutor and everyone else will be able to see the document too. Make sure you have everything you could possibly need saved on your computer where you can easily access it. I found this to be more difficult than using paper copies and wished I had saved every single document because I ended up needing to use items that I did not expect.

A Short List of Things I Didn’t Hate about a Zoom Hearing
- I found it easier to focus without normal courtroom distractions—no CLO coming up to talk to the judge during your cross-examination, no doors slamming in the background, and no facial expressions by the judge to fruitlessly psycho-analyze. An important qualifier on this point is that I have no kids and no pets, so respectfully, this might be the complete opposite for others.
- When I did find myself getting distracted or nervous, I “pinned” the witness’s video and stared straight into his/her eyes else without anyone knowing. This made me feel very powerful despite it conveying no actual power.
- Phone use is much less obvious in a Zoom hearing, so when I needed help, I texted and asked for it (thanks Ana Paula!).
- Last, but perhaps most importantly, your suspicions are correct – you can respectfully have a Zoom hearing without putting on real pants. (Note: Neither I, nor the prosecutor stood up at any time during the hearing.)
I had started college in the fall of 2010. In September of that same year, my grandfather on my mother’s side passed away. My grandfather was the pillar of the family. I couldn’t imagine a worse hit. The world I was so certain I could mold and change (in that way that only college students could truly believe) had started to slip through my fingers.

I was devastated beyond words, beyond comprehension. In my intense grief, I didn’t even let my dorm-mate know I was heading to Mexico. It was only upon my return that I found out the police had been alerted and that they had been looking for me during the week I was gone.

The only way I could think to process death at that time was to shut down my emotions. I continued with my studies, trying, and in some ways succeeding, to push through like I always had. I finished my first semester with straight A’s. I continued through spring semester with four A’s and a B. I went into summer with a somewhat duller vision of my initial goal: “It will happen,” slowly became, “I will do my best,” almost as if I were preparing myself for an emotional breakdown. I spent summer of 2011 with my family. As I saw my mother fall into a deep sadness, I doubted my ability to truly empathize with my mother and her grief. I became convinced that they only way to get through this was to build that wall between myself and my emotions even higher. I was scared to feel the depth of my pain, let alone that of my mother’s.

Almost as if the world were playing a cruel joke, my paternal grandfather passed away as well. Very nearly a year to the day.

Seeing my father in pain, my wall became even stronger. For the first time, I was pulled apart by what I should do. I didn’t know if holding back my emotions was hurting or helping my parents. I wanted to be strong for them, but I also felt their grief. Did I want to add to their pain? Would it help them? I decided it wouldn’t, and I shut down even more.

I had built that wall so well, that I soon realized my own ability to process any type of grief or emotion was stunted. I had not grown, as I thought I would. I had not become stronger. I was like a dry piece of wood under enormous pressures. Even if I wanted to, at this point, I couldn’t express even basic emotions. The control I sought during those emotional times became my very own prison.

What’s worse is that in keeping out the bad emotions, I also managed to lock away the good ones. I forgot how great it felt to be with my family, I forgot how much I wanted to fight for them. I forgot that the whole motivation behind my wanting to be an attorney was to fight for them, and for my community.

But, I want to be strong again. Go to law school. It is my passion, something I knew I would enjoy doing even when I was nine years old. Seeing how my parents suffered in my childhood made me want to have the power to change, to help others. I hope I am able to break down this wall soon, and be able to truly reconnect with my family and properly grieve with them. All I hope to do has been for them. For me, that is true freedom.
Because of our love
Our connectedness predestined
To carry us through as we traverse this wilderness
Your lips intoxicate
As you profess the taste of mine also do to you
Your touch gives me the high
That doesn’t knock me down as drugs do to addicts
You came on strong at me
Resistance an insurmountable challenge
As you profess the taste of mine also do to you
Your touch gives me the high
That doesn’t knock me down as drugs do to addicts
You came on strong at me
Resistance an insurmountable challenge
You and my body won
NO Shame IN LOVE
You ASSERT
No one else could replace me
You avowed
I weakened at your mastery in gaining ownership of
me
So, the “NO” construct I could pronounce no MORE
I must have Faith
My Faith assures me our forever
All the way to Al-Jannah after
A satisfying longevity on earth
Though I’ve passed this road before
This time it is truer and permanent... I pray
No pain
No agony
No misery
Will ever befall me again
And you
I PRAY.
NEW WESTLAW TRAININGS COMING UP!

Our office has recently upgraded to Westlaw Edge, which provides myriad new (to us) services that can make your job MUCH easier!

If you’re a Westlaw pro or a total noob, come learn how to navigate these new features at the following Thursday afternoon trainings put on by Westlaw (link forthcoming in your email):

**JUNE 4, 2020: Refresher/Get Back Up To Speed**

**JUNE 11, 2020: New Features! Edge/Drafting Assistant**
Knit Club

The office’s oldest and largest social group, Knit Club, continues to grow and prosper during the pandemic via Zoom! Knit Club members come together once a week on Tuesdays at 12:30 pm to learn, commiserate, and laugh together. Knit Club is open to whoever wants to join, and no prior fiber arts experience or skill is required. One of our newest members, Bukky Oyewuwo, recently completed her first project, a beautiful handmade hat.

Pets of the PDO

Meet Bailey, devoted darling of the Mental Health Division’s own Nicholas Smith. Bailey is nine years old, enjoys lounging on sofas or underneath beds, and prefers to beg for pizza. She can be found sniffing under cushions or blankets in search of crumbs (preferably pizza crumbs).

Have a pet you'd like to nominate to be highlighted in the newsletter? Email their info to Nicholas.smith@pdo.hctx.net.