THE DEFENDER TIMES

All the news that’s fit to print... and then some

Our mission is the zealous defense of persons accused of crimes in Harris County, Texas.

The Four Pillars of Holistic Defense

1. Seamless access to legal and non-legal services that meet client needs;

2. Dynamic, interdisciplinary communication;

3. Advocates with an interdisciplinary skill set; and

4. A robust understanding of, and connection to, the community served.

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Race has been a defining issue in America long before we became an independent nation. The Founders, many of whom were slave owners, protected the institution of slavery in the U.S. Constitution. A century later, the dispute over the morality of slavery resulted in our deadliest war, with about three-quarters of a million killed. Even after the defeat of the Confederacy, attempts to provide equality for all citizens were undermined. The constitutional amendments that were intended to remedy slavery were quickly subverted.

The Fifteenth Amendment guaranteed the right to vote regardless of race, color or previous condition of servitude, but its effect was blocked by new hurdles that targeted African-Americans. The Fourteenth Amendment was meant to provide equal protection under the law, but it led to the inherently discriminatory doctrine of “separate but equal.” The Thirteenth Amendment was the most invidious in its application, because although it outlawed slavery, it left an exception for punishment upon conviction of a crime.

The Thirteenth Amendment saved the sugar industry in southeast Texas. After emancipation, few free persons wanted to cut cane until they became sick, disabled or died, the way slaves had been compelled. Convicting former slaves, and their decedents, on spurious charges such as vagrancy, allowed the prisons to lease out inmates to replace slave labor. This system built the Imperial Sugar Company in Sugar Land, Texas.

Even when “convict leasing” ended, communities of color continued to receive intense police scrutiny, resulting in arrests, convictions, sentences, fines and fees, that have ruined lives to this very day. Until recently, books and schools did not even cover this legal history about controlling and disabling citizens based solely on their color, race and ethnicity.

I do not have experience as a black or brown person living in America. My empathy comes from growing up with two adopted black sisters and attending public schools in New York City, where I was often the only white student in my classes. The inequities in the criminal legal system toward persons of color is what drew me to public defense. My hope is that by building a strong public defender office, and adding holistic practices, we are fighting against that unfairness. Much of the rest is cultural. I hope that the protests, by all citizens (including our small demonstration), are evidence that most Americans are starting to recognize what we already know – that the system must change.
This bill broadens the circumstances in which police officers may release (instead of arrest) a person who has allegedly committed the offense of public intoxication. The new circumstances under which a release is appropriate exist when the arrested individual:

verbatimly consents to voluntary admission to a facility that provides a place for individuals to become sober under supervision, and the facility admits the individual for supervision.

Please note that a police officer is not required to release the person to a sobering center. Such a release is optional on the part of the officer. The officer may still choose to arrest the person. This change in the law may or may not be something that comes up in your practice here at the Public Defender’s Office. But it is a positive development and it is something we should know.
To help be a part of historic change, every time one of our clients tells us a credible account of being abused by the police, our lawyers will encourage and assist them with the filing of a complaint with the internal affairs department of the offending officer. We must fight to curb and eliminate any police culture of violence. Abusive police conduct proliferates if it is tolerated and condoned because of silence. Furthermore, we must educate our clients and their families of the need to report abusive police conduct and how to protect themselves during police encounters. Once this pandemic is over, we will begin having “office hours” in the community at community centers in different Harris County neighborhoods. We have already started identifying places where we can go. We will work to have more of a presence in Harris County communities to provide free legal advice on criminal matters and to educate people on what to do during police encounters. We will encourage and educate people to file complaints against abusive police conduct.

The Felony Trial Division continues to work from home as much as possible. While working from home we are using this opportunity to work up our cases. We are getting ready for the trials that are to come. It is anticipated that our trial dockets will be heavy when we start trying cases again. Moreover, now more than ever marginalized people need us in Harris County. They are refusing to live “in the margin.” Recognizing that helping and uplifting marginalized people helps and uplifts all of Harris County, and that our division has too much talent for us not to help, our division is committed to helping our lawyers implement projects they have that could better the community and better our client’s lives. We are partnering to help get their ideas off the ground and soaring.
A long time ago when I was a baby public defender, someone gave me a job I was not ready for. Across the stormy ocean, very far from home, and without access to a legal research database, I hacked (with a blunt machete, not a computer) my way into the law.

On that tiny island that used US law and precedent, I represented a man who had lost all hope. He was an expat from the Philippines working for a pittance at a local tourist hotel. The job did not live up to what was promised, and he was homesick, broke, and struggling with undiagnosed mental health problems while living in a filthy, sweltering barracks with other workers.

One day he grabbed a knife and threatened to kill himself in front of his only friend there, a fellow countryman who tried to talk him out of it.

As the talking seemed to not be working, the friend struggled with my client over the knife, and the client, in the struggle, stabbed the friend in the neck inadvertently. Horrified and shocked, he jumped out of the window of the barracks, hoping to hit the sharp rocks beneath him. Of course, friends, you know what happened. He landed in the water. A local man saw him and quickly rescued him, and then he became my client.

Locked up in the small psychiatric cell at the local hospital, my client grieved and wept. The single psychiatrist in that country was also from the Philippines and she did her best to counsel and comfort him. I could tell she wanted to help him, but she found him competent, and I believed her. The DA offered to dismiss charges if he agreed to deportation. The family of the dead man agitated in the Philippines for murder charges and harsh punishment. I tried to imagine what that was like, the Philippines and I decided it was probably more akin to a lynching than a trial.

I sat on my porch with some other American lawyers I knew, drinking lukewarm Asahi and smoking harsh Korean cigarettes. “I think we have to prosecute him here, and then jeopardy attaches, and the Philippines can’t do anything to him.” I felt brave. We had double jeopardy protections; the Philippines had double jeopardy protections (I had bothered to check). That’s when I heard, for the first time, about the Separate Sovereigns doctrine. My heart lurched and for the millionth time that week, and I realized again how inadequate I was. Eventually, after a series of negotiations, the Philippine government agreed to confine my client to a mental hospital and not try him again if he were adjudicated of something in Palau. I pleaded him to an involuntary manslaughter charge, and his sentence was suspended for ten years, with the only condition being that he leave the country and not return. Later, the Philippine consul brought me a box of instant coffee packets and a large pineapple. I am still unsure whether that gesture was personal or professional, but it was better received than the melting sack of frozen fish I once found on my coffee table after I woke up from a nap. This is my round-about way of telling you, dear friends, that double jeopardy is weird. If you catch any sort of indication of it, much like a whiff of seafood coming from your living room on a warm, equatorial afternoon, it is a good idea to investigate immediately. Stay safe, and let me know if you need anything.

Love Always,
Take a Second Look at Those Pen Packets

By: Miranda Meador
Assistant Public Defender

Pen packets are a standard part of many trials, and are often not carefully reviewed during pretrial preparation. Given that for many defendants, the pen packets are the only evidence the State offers to prove up enhancements, they should be looked at more carefully. If the print cards, which are compared to our client’s prints taken at trial, are called into question, the State may have difficulty proving prior convictions. Recently, appellate attorneys have noticed some abnormalities in pen packets. Specifically, the 10-print cards (fingerprint cards) do not appear to have been taken when the defendant was booked into TDCJ for the offense on the attached judgment and his or her mug shot was taken. On one occasion, the print card for Offense A was completely devoid of identification – the defendant’s name, SID, etc. were blank. Since the print card was also of exceptional quality for a twenty-year-old offense, it was unlikely those fingerprints were taken when the client was booked into TDCJ for the corresponding offense. Additionally, the print card attached to the client’s second pen packet (Offense B) was identical to the one attached Offense A. It appears that TDCJ took the client’s prints at a recent time (such as when the client was sent back to TDCJ on parole violations), and attached the recent print card to both Offense A and Offense B’s pen packets.

In another instance, the print card had client identifiers, and also the NCIC number. The NCIC number did not correspond to the offense for which the pen packet was made. If the fingerprints are not taken when the client is booked, how can the State prove that the John Smith whose fingerprints are on that card is the same person in the photograph attached to the pen pack and the same John Smith sitting before the jury? Trial attorneys would be wise to review pen packets in advance of trial to look for inconsistencies, and then make a list of objections to the packets. It may save your clients years in prison. At the very least, it will make the State work to put them there.
5 Time Saving Tips in Office 365

By: Eugene Hong
Assistant Public Defender

Tip 1: Pinning Documents in Word

I use two form documents for every case – a conflict check and an investigator request. Instead of searching for these forms every time, I keep them pinned in Word, so that they’re easily available.

Tip 2: Pinning your favorite file folders in file explorer

About 80% of the time that I need a file, it'll be an active case file. Just like in Tip 1, I’ve made my Case Files Folder easily available by pinning it to the Quick Access section of File Explorer (the manilla folder icon sitting on the bottom of your screen).

Tip 3: Copy and paste your case file structure

For each of my case files, I typically have four folders – Correspondence, Investigation, Motions, and State Discovery. Rather than creating each individually, I keep a “blank case file” containing the four subfolders on my desktop, which I copy into new cases.

Tip 4: Saving groups of emails a PDF in outlook

The default method to save emails on outlook will be in either “.msg” or “.txt” formats. I prefer to save my emails as PDFs so that there is no question in the future as to whether the emails have been altered. Also, when I close out my client files, I want to be sure that I have all the relevant emails for the file and be able to save them all at once.

Single Email to PDF:
- Select your email File ➔ Print ➔ Under Printers, select “Microsoft Print to PDF” ➔ Print (Select where the file will save)

Group of Emails to PDF:
- Use the Search function to get the group of emails you want.
- While holding Control, select the emails you want to save.
- File ➔ Print ➔ Select Print to PDF.

Tip 5: Create an ad hoc to-do checklist on your phone using Outlook

In Outlook, you can flag emails so that you can follow up on them later. There are a lot of things possible with flags, but the simplest thing is to simply flag your actionable emails.

If your phone is configured to have your work email, then the flagged emails will show up in its own mailbox. When you’re done with the task, don’t forget to unflag the email.
Who is Our Client?

As we always do in this work, we have to begin with our clients. When it comes to COVID-19 and breath testing we have to consider whether or not our clients are immunocompromised, whether our clients are on certain types of medications that may suppress their immune system, and our clients’ lifestyles. We know that COVID-19 disproportionately impacts poor people and Black and Latinx communities. We also know that the criminal justice system disproportionately targets poor people and Black and Latinx communities. Many of our clients have little access to healthcare, masks, or gloves. Many of them are not able to work from home or keep their children out of childcare facilities. Some of our clients have recently been forced into unsafe housing environments like hospitals, jails, halfway houses, and homeless camps. These are all places where they could easily be exposed to COVID-19, or become infected with other diseases that compromise the immune system. We know that our clients are living in a fluid, changing world. Many of them are at high-risk for COVID-19 exposure and, worse, COVID-19 complications. Where are the safeguards to prevent the spread of COVID-19? Is disposing of the mouthpiece between subjects sufficient to prevent infection? It’s not.

Conclusion

The intent of this short piece is to highlight an area of evidence collection that has already become technologically obsolete (did you know all they’re really measuring is how much light is passed through when someone breathes into the machine?) and is now actually extremely dangerous. Yes, we will have more blood cases. Yes, I am still afraid of needles. That said, as a defense attorney, I would rather make the government actually prove a defendant’s blood alcohol content (BAC) through scientifically validated lab testing, than allow them to continue pushing cheaper, less accurate, and dangerous breath tests. I hope this article highlights the needed reform in this area of the law.
Gaining Understanding in Isolation

By: Brandy Gum
Assistant Public Defender

For days after the brutal killing of George Floyd, I kept seeing a meme shared on social media that said, “Has anyone mentioned that police will leave you alone if you don’t do illegal stuff?” That meme angered me so much, and I was even more frustrated to see that many people I knew were sharing the meme (and liking it). I wrote the below Facebook message on June 8—and posted the offending meme with the story:

“I’ve seen this photo floating around Facebook the last several days. It’s compelled me to share a story with you, and I hope you’ll take the time to read it through in its entirety:

A few years ago, I started my own defense practice. One of my first appointed clients was a young black man who was charged with possession of marijuana, a Class B misdemeanor. I read his offense report, and the police said they had initially approached my client because he was walking in the street with a large group of other people late at night, and when the police had asked them to move onto the sidewalk, the entire group refused. So the police explained that they detained my client to get an ID, and then smelled marijuana. They searched my client and found one small bag of marijuana, and promptly arrested him.

When I spoke to my client about the offense, he told me that, yes, he was walking home that night after his shift at Wendy’s. Actually, he said, he was not walking in the middle of the road—he’d been on the sidewalk. He also told me that he wasn’t with a group at all. He was by himself. He told me, ‘Mrs. Gum. The cops literally pulled up to me and searched me for no reason.’

The State offered time served, but my client refused to take it. Instead, we reset his case a few times and waited for the police-worn body camera footage to become available.

When I watched the video, I realized my client was telling the truth; there he was, walking alone on the sidewalk. But my client was also wrong about something: the police didn’t just ‘pull up on him’ for no reason. The police literally did a slide-stop when they saw him walking home. One officer jumped out and grabbed him and threw—THREW—him on the hood of the car. The officer then searched him and found a small bag of marijuana. The search was undoubtedly illegal—as was the stop—and there was no way the officer smelled anything on this poor boy before they flung him into the hood of the car.

Fortunately for my client, there were ethical prosecutors assigned to the case. The chief prosecutor agreed to a dismissal, but said she wanted to talk to my client first. The State asking to speak to your client is always risky, but since they had already agreed to a dismissal, I thought it would be ok.

I’ll never forget what the prosecutor told my young client that day. I’m going to dismiss your case. But I wanted to talk to you first and tell you that you did nothing wrong. I wanted to commmend you on how you acted when the police did that to you. You were polite, you remained calm, and you did everything right. I am going to file a complaint against those two officers. But, more importantly, I wanted to tell you that when you’re pulled over again—and there will be another time—to act exactly how you did this time. Because that’s how Black men get shot.”

That case has remained with me. I became a better lawyer because I understood a little more of what my clients go through daily. Why am I sharing this long story? Because my client was doing nothing wrong walking home from his part time job when the police grabbed him and threw him on the top of their police car. Posts like the ones below are not only hurtful, they’re factually incorrect.

One thing I already know about you if you shared or liked that meme is that you’re white. People of color in the United States know that it’s not true, because they are targeted for illegal stops, searches, airport scrutiny, harassment, and abuse because of the color of their skin.

These conversations are hard, but the only way we’ll learn is if we have them. My experiences, and your experiences, aren’t the same as everyone else’s. And, when we start to focus on that, we learn.

I’m STILL learning. Come learn with me.”

Initially, I thought that if my post changed one person’s mind, I’d be thrilled. Today, my post had been shared over 10,000 times! Being viral is a crazy thing. I’ve received some really heartfelt messages thanking me for sharing my story. Some people shared their own stories of being profiled, and one man even invited me to be on his podcast! I’ve also been called everything from a Karen (by those who only read the meme and not my accompanying post) to a c**t and police-hater by those who didn’t agree with me.

At the end of the day, we have all had stories like the ones I shared. We know the hard truth, which is that the police don’t leave you alone if you’re not doing anything illegal. So, thank you. Thank you for working so hard every day to combat the injustices that we see. Thank you for being the voice to those who are silenced. I AM always learning—and most of that knowledge comes from YOU.
Practice Pointers

TRIAL TIPS

By: Damon Parrish II
Assistant Public Defender

Being meek is great in religion, but horrible in war. Trial is war. A shaky-voiced lawyer seems weak and timid, whether that is true or not. That makes them seem vulnerable to a variety of attacks from the State. It might be easier said than done, but I recommend that whatever you are saying, say it with confidence. Say it loud, but don’t yell, say it with feeling, and act like you are standing on high ground. Use your voice and volume as a weapon against others, don’t let others use it against you.

PITHY PROVERBS

By: Jacquelyn Carpenter
Assistant Public Defender

“Storytelling reveals meaning without committing the error of defining it.”

- Hanna Arendt

Law school fails to teach storytelling, which is the fundamental skill of litigation and its own subtle art form. Therefore, to be effective, we must learn this skill for ourselves or risk ineffectiveness at our own craft.
What division are you working in/who is your supervising attorney?
Working in the juvenile division – Amanda Downing is my supervising attorney

What is your go-to meal when you're too tired to cook?
Pizza saves me when I don't feel like cooking since it is easy and one of the few things all of my kids will eat

Why did you want to intern at the PD's Office?
I was 6 years old when I first told my mom I that I wanted to be a lawyer. And despite being from a small town with no diversity, it was obvious to me the racial and economic disparity in the criminal justice system. I have always believed that no matter who you are or where you come from, you deserve good legal representation and someone in your corner. The PDO is doing all of the things I have dreamed of doing for the last 30 years, and I couldn’t be more excited to be an intern here! Before law school, I stayed home with my kids. We lived in 6 states in 6 years and 3 kids in 3 years. Once they all got into school full time, I got my chance to go back to school.

What do you do outside of law school?
When I am not in school, I love to spend time with my family, read a book that isn't about case law, and spend times with friends (and wine).

What question were you hoping we wouldn't ask you?
Afraid of being asked what I did before law school because ‘being a stay at home mom’ doesn’t always rank high on some people’s noble profession list. Ex: Career services tried to get me to change ‘house manager’ to ‘cruise ship director’ on my resume, in order to make me more appealing to employers. Haha.

Tell us a joke:
Why did the Cat in the Hat look in the toilet? Because he was looking for Thing Number 1 and Thing Number 2 (courtesy of my 8 yr old).
Knit Club

The Office’s oldest and most popular social group, Knit Club, continues to grow and prosper. Meeting via Zoom every Tuesday at 12:30 pm, Knit Club members have recently begun a “knit-along” where they will each endeavor to complete the same beautiful shawl. Knit Club founding member Amanda Koons’ cat, Pepper, is also joining in on the fun. As of the date of this publication, Chief Alex Bunin has not committed to the shawl project, and when asked for comment by this reporter, rolled his eyes and said, drily, “Maybe next time.” Ok, maybe not. But it sounds like what he would say if I did ask him.

Pets of the PDO

Kooper Cleary is a three-year old, larger than life (and breed standards) Yorkshire Terrier. He works hard and plays even harder. He loves barking, chasing bugs, and going for walks with his Mom, Kim, an assistant public defender in the Felony Trial division.

Quod Stultus Viverra

Cartoons from the Gallows
June 9, 1975 is the day I started my career in public service. I was nineteen years old when I began the Houston Police Academy and barely twenty when I hit the streets of Northeast Houston in September, 1975. Many of you were not even born then and a lot has changed in the last 45 years. I had fun during my twenty years with HPD and saw a lot of change in those 20 plus years.

During the last Felony Trial Division meeting, I heard attorneys talk about why they became public defenders/defense attorneys. Some mentioned getting stopped for no reason or the officer lying about why they stopped them. I can’t speak for other officers and the way they policed; I can only speak for myself. When I was there, you were required to write at least two tickets or have two arrests a day. If you did not produce, you had a sergeant chewing on your ass and threatening to send you to the jail division or to dispatch.

I remember my very first night as a new officer on probation. I was ready to fight crime and save the world. I was on the 11pm-7am shift and assigned to 7 district, which is the area north of the 610 loop and on either side of the Eastex Freeway (59 North). My training officer told me we needed to write a couple of tickets, so we were riding up and down Jensen drive looking for a taillight out or maybe expired plates. We wrote a couple of tickets and ran some calls and then it was time to eat. It was one o’clock in the morning when we were going to take our break. I didn’t want to eat, I wanted to fight crime! But young officers are taught not to question their training officer, so we went and got something to eat. We finished eating a little after two a.m. and the training officer drove us on down Jensen drive and pulled into the Jensen Drive-In Theater. I remember wondering why we were going into this closed parking lot- then I saw several other police cars parked there. We pulled up by the other patrol cars and I couldn’t see anyone in them. My training officer said, “You want the front seat or the back?” Say what!? He grabbed his pillow out of the trunk and crawled into the back seat to take a nap while I listened to the radio in case we got a call. This officer worked nights and also worked extra jobs during the day for extra money. Welcome to HPD. I did have other training officers that would work the entire shift and they taught me a lot.

After retiring from HPD, I worked in a narcotics task force for over eight years. I enjoyed this and worked up a lot of drug cases including one case that I went to trial on in Federal Court in Victoria, TX with the defense attorney being none other than Eric Davis. It was a crack cocaine case with the use of a confidential informant. The case fell apart and the defendant ended up pleading to a marijuana charge and the crack cocaine was dismissed if I remember correctly.

After working narcotics, I went to work for the Attorney General’s Office- Medicaid Fraud Control Unit in Houston. I did that for 8 years and worked with Investigator Cynthia Patterson. Cynthia left the AG’s office and started working as an investigator with the PDO. Cynthia was here about six months when she told me about an opening. I interviewed and was hired in April, 2012.

Working in the PDO with my law enforcement experience was a plus. I could tell when the officer was lying in a report or if it was just sloppy police work. I realize that all the clients are not innocent but I have found a few that were and was able to get their cases dismissed. For instance, I had a murder case involving two brothers with our office representing one of the brothers. I was able to locate two witnesses that were on video surveillance and had never been interviewed. The ADA agreed to have the witnesses testify before the grand jury so I brought them down and let them testify. Both the client and his brother were no-billed. Later, I used the same video surveillance to show the criminal justice students at Sam Houston State and University of Houston Clear Lake. I wanted to let them know that just because you are charged does not mean you are guilty.

I started thinking about retirement at the beginning of 2020. I had an Agg Kidnapping and Agg Sexual Assault of a Child case I was working on with Randy Martin. After looking over the case and doing a couple of interviews, I told Randy that I knew the client was innocent and I could prove it. I could not retire until I had finished that one case. Well, sure enough, the case finished, all the charges dropped and now I can retire. Forty-five years is a long time to be a public servant. I did not do it for the money, I did it because I enjoyed it.

In wrapping up, I want everyone to know that in my time as a cop and investigator, I have had a lot of bosses. I can say without a doubt that Alex Bunin is the best boss anyone could ever want to work for. He is fair, lets you do your job and does not micro-manage. Everyone in the office needs to make sure that Alex stays as Harris County’s Public Defender and you will enjoy your time here.