From the Chief’s Desk

By: Alex Bunin

There are many books and articles about management and leadership. They generally agree that there are basically two principles to running an organization – culture and rules. Culture is the atmosphere, environment and philosophy of an organization. Rules are ... rules.

An organization with a strong culture feels like everyone in it is on the same page and working toward shared goals. It is kind of place where those in the organization feel both respected and that they contribute to the common purpose. Culture is fuzzy. It is not written down, except perhaps in a mission statement or slogan. You know it when you are around it.

Rules are structure. They make things more predictable. Persons know what is expected of them and the limitations upon them. However, rules do not make culture. No matter how many rules there are, or how strictly they are enforced, they cannot force persons to work well together. In other words, respect and friendship are earned not ordered.

In a public defender office that means all there should share the common purpose of taking care of clients. Client-centered representation is a basic tenet of the office. No matter a person's title, if they are part of the office, the most valuable thing they can do for the organization is promote the culture. That means helping clients and helping each other to help clients. No rule can make that happen. We need everyone to work together.
Get Our Clients' Stuff Back:

Holistic Division's Expansion of Asset Forfeiture Representation

By: Betsy Stukes

This month, holistic attorney Veronica Campos and social worker Paul Boston joined forces and helped a client avoid ICE custody. Through the combined forces of Ana Paula Funes Baker and Roger Donley, the client—a Guatemalan immigrant without status in the US—was found incompetent, and eventually charges were dismissed. But then, the cloud looming over everyone’s heads was a dreaded, seemingly immovable ICE hold.

After consulting with community organizations, Veronica decided that the best argument to get the hold lifted was to lean on ICE’s soft spot—a lawsuit that placed a responsibility on them to release people who are at a higher risk of contracting COVID. Veronica supported her argument with evidence of the client’s severe psychiatric illness. Within three hours of submitting her request, ICE agreed to lift the hold.

That was great news! But, the client still had nowhere to go when he was released. That’s where Paul stepped in. He worked quickly to find a place that would house a Spanish-speaking immigrant with serious mental health concerns in an already-saturated housing market for people suffering from homelessness. Not an easy feat.

The client’s cases were dismissed very soon after the ICE hold was lifted, so if not for Veronica and Paul’s quick action, he would have likely been transported to ICE custody with in 48 hours and ultimately sent to Guatemala. Instead, the client walked out a free man in the US.

If you have a client who is not a citizen, make a referral to our immigration team at PDOImmigration@hctx.net. Or, if your client needs the help of a licensed social worker, send a referral to the psychosocial team at PDOPsychosocial@hctx.net.
Ideas for Legislative Change
By: Ted Wood

I recently made a presentation to the Trial Division on visiting judges. A question arose concerning the ability to object to a visiting judge. For those of you who did not attend the presentation, a review of this issue is probably in order. So I will take advantage of my chance to write something for the newsletter and talk about the subject here.

There is a statute that allows a party to object to the assignment of a particular visiting judge. The statute is Section 74.053(b) of the Texas Government Code. The problem for us is that this statute only applies in civil cases. The statute reads as follows:

If a party to a civil case files a timely objection to the assignment, the judge shall not hear the case. Except as provided by Subsection (d), each party to the case is only entitled to one objection under this section for that case.

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As you can see, the statute is specifically limited to civil cases. I intend to work toward getting this language broadened in the next legislative session so that criminal cases are included. This would allow us to object to an objectionable visiting judge. (Of course, the State would be able to object as well.)

Another significant subsection of Section 74.053 is Subsection (d) which says:

An assigned judge or justice who was defeated in the last primary or general election for which the judge or justice was a candidate for the judicial office held by the judge or justice may not sit in a case if either party objects to the judge or justice.

This language of this statute does not limit its application to civil cases. However, in 1993, the Court of Criminal Appeals interpreted Subsection (d) to apply only in civil cases. See Lanford v. Fourteenth Court of Appeals, 847 S.W.2d 581, 587 (Tex. Crim. App. 1993). This is another statute that I hope the Legislature will broaden to explicitly include criminal cases.

If you have any thoughts about these statutes, please let me know. Especially let me know if you think a legislative change would do more harm than good. The opinions expressed here are solely mine and are meant as a starting point for discussion.

Jury Charge Tip of the Month
By: Cheri Duncan

New month, new focus: jury charges regarding extraneous offense evidence.

We all know that the general rule is that extraneous offense evidence is admissible only during punishment. We also know, though, that the Rules of Evidence include a door through which the State can admit extraneous offense evidence during the guilt/innocence stage of trial, Rule 404(b)(2): “[B]ad acts evidence may be admissible for another purpose [i.e., not character conformity], such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

The prosecution regularly rattles off that list (“Your Honor, the extraneous offense is relevant to show motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident”) in response to a defense objection. This, however, IS NOT ENOUGH. The State must explain to the court and the defense the ‘logical and legal rationales that support [the bad act’s] admission on a basis other than ‘bad character’ or propensity purpose.” De la Paz v. State, 279 S.W.3d 336, 343 (Tex. Crim. App. 2009). This is different than merely reciting the full laundry list of exceptions.

Assuming the State satisfies this burden, you should move the court immediately for a limiting instruction under Tex. R. Evid. 105(a): The court upon request "shall restrict the evidence to its proper scope and instruct the jury accordingly..."

Most judges are used to instructing the jury that it cannot consider the evidence to prove propensity, but it is up to you to make sure the court also instructs the jury to limit its consideration for whatever issue or issues (motive, opportunity, etc.) the State has given for admissibility. You can cite De la Paz in support of your objection.

Timing is Key. The request for a limiting instruction must be made at the time the evidence is offered. Otherwise, the bad act is considered admitted for all purposes. See Delgado v. State, 235 S.W.3d 244, 251 (Tex. Crim. App. 2007).

If you raise this issue correctly during trial, you get a two-fer at jury charge time: you are entitled to a repeat of the limiting instruction, AND you are entitled to an instruction that jurors first must decide that the State has proved the extraneous offense beyond a reasonable doubt before they can consider it as evidence. Delgado, 235 S.W.3d at 251.

But remember: you won’t be entitled to a limiting instruction in the jury charge if you didn’t request one when the State first offered the evidence. So, to summarize:

1. Before the State offers bad acts evidence during the guilt/innocence phase, object and make the State explain the specific ground(s) for admissibility, other than to show character conformity, as required by Rule 404(b)(2). If the court rules the evidence is admissible, request a limiting instruction before the jury hears the evidence.

2. If you followed the above tip, then be sure to request that the (guilt/innocence phase) jury charge include both a limiting instruction and an instruction on the State’s burden of proof on the extraneous offense.
UPCOMING EVENTS

ANNUAL FREE CLE

Register Online: http://harriscountypublicdefender.org/pdo_cle/

10TH ANNUAL PDO 10-HOUR FREE CLE
OCTOBER 13-14, 2021

Wednesday, October 13

11:00 am - 11:15 am
Opening Remarks

11:15 am - 12:15 pm
Confessions in Sexual Assault Cases
Lisa Wayne
The Law Office of Lisa M. Wayne

12:15 pm - 1:15 pm
Forensic Interviewing in Sexual Assault Cases
Nick Canto
Forensic Consulting

1:15 pm - 1:45 pm
Lunch

1:45 pm - 2:45 pm
Voir Dire in Sexual Assault Cases
Eric Davis
Harris County Public Defender’s Office

2:45 pm - 3:45 pm
Cross-Examining the SANE nurse
Jed Silverman
The Law Office of Jed Silverman

3:45 pm - 4:00 pm
BREAK

4:00 pm - 5:00 pm
Cross-Examining the State’s Experts
Dr. Michael Brannon
The Institute for Behavioral Science and the Law

Thursday, October 14th

11:00 am - 12:00 pm
DUI and DWI
Sean Darvishi
The Law Offices of Sean Darvishi

12:00 pm - 1:00 pm
Search Warrants
Natalie Ware
Harris County Managed Assigned Counsel

1:00 pm - 1:30 pm
LUNCH

1:30 pm - 2:30 pm
Gangs
Monique Sparks
The Sparks Law Firm

2:30 pm - 2:45 pm
BREAK

2:45 pm - 3:45 pm
Confidential Informants
Leticia Quinones
Quinones & Associates

3:45 pm - 4:45 pm
Collateral Consequences in Drug or DWI Cases
Leslie Ginzler
Harris County Public Defender’s Office
Growing up, I was always fortunate to have a roof over my head and a loving and caring family. However, when we would make our trips to Houston, I realized that some of my family wasn't as fortunate. I watched several cousins go through the foster care system, and also grow up in households that made drugs a priority over their wellbeing. Ever since then, I made it a priority to want to help the kids who don't always have the guidance or resources they need to make it through high school and beyond. I started as a volunteer with Stand Up For Kids Street Outreach program, and I loved it. I wanted to become involved in any way possible. I soon became the Director of Outreach for the program, and am currently applying to be their Executive Director. Our organization's target population is homeless youth ages 17-24. However, through Outreach, we have noticed that sometimes they end up on the streets younger than that. We help anyone we come across regardless of age, and try to get them the resources they need but sometimes the resources are limited. Sometimes the only thing we can do is have a conversation with them, and offer them a care package. We typically go out on Tuesday's and pass out food care packages to the youth that we find in the Montrose Area. A large majority of kids, when homeless, frequent The Covenant House which is located in the heart of Montrose. The problem that we run into is that there aren't always beds available for everyone. We have learned that they either can't get beds, or they don't qualify, or often times they get kicked out of the program for being unable to meet their residential guidelines. This does create a problem for those youth seeking shelter, but it also gives us a steady population to help in that area. They are always hanging around, hoping to get a bed should one become available.

Our goal with Outreach is to try and keep them positive, offer them the resources that we have found through our networking with other organizations; but it can be very defeating at times when we aren't able to help them the way we want to help them. We try and offer care packages, as well as hygiene packages, but we depend so much on donations for these that sometimes we don't have everything they need or want. I have for the past two years, during Christmas time sent out an email to the PD Office and I have been overwhelmed with the amount of people that have offered to help. We have received care packages, gift cards to hand out during Christmas, and many donations to buy the items they need while living in this transitional lifestyle. We were able to involve the office, as well as the children of these kind souls. Many people told me it was a great activity to show their kids the importance of giving back. From stuffing care packages, to selling snowflakes for donations. This is the type of work that I love, being able to help others, encouraging others to help those in need; but more importantly being able to help a younger disadvantaged population. The hope is that in helping, they learn that everyone in this world isn't out to get them, and that there are people who want them to succeed. Sometimes, all you need is the faith of one person to keep you going.
Megan Harper's Newest Addition

Last weekend, the Harper family adopted Sandy from the Harris County Pets Shelter. Sandy is a Shepsky- a German Shepherd and Siberian Husky mix and is about 2 years old. She joins as last weekend, the Harper family adopted Sandy from the Harris County Pets Shelter. Sandy is a Shepsky- a German Shepherd and Siberian Husky mix and is about 2 years old. She joins Cinnamon and Bernie, apple head chihuahuas, that are still deciding what to make of their very large new sister. She loves to run and is quite obedient, given her former life as a stray. Welcome to the PDO extended family, Sandy.

Lawyer of the Week:

10/4: Nick Vitolo