Anderson v. Quarterman, No. 06-70004, 2006 U.S. App. LEXIS 27135 (5th Cir. Nov. 1, 2006) (not desig. for pub.), *cert. denied*, 549 U.S. 1249 (2007)

Conviction: capital murder (Smith County, 2006)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: habeas corpus
IP's classification of misconduct: improper argument (vouching)

TDCAA Summary: During closing argument at the guilt/innocence phase of the defendant's capital murder trial, the prosecutor said: "Before I get into that, do you think that in this case that the defendant—the defense and the attorneys for the defendant—would ever have admitted that he was even in the house in the first place if his—the Cobbs'—property had not been found in his trailer? Do you think they would have come in and told you that? Do you think the defense would have come in here and admitted that the defendant sexually assaulted Bertha Cobb if his semen had not been in her vaginal cavity? There's no honor in what they did. They did it—" The defendant was convicted of capital murder and sentenced to death.

The federal district court denied the defendant's petition for habeas, and the defendant appealed. The 5th Circuit found the prosecutor's comment to be a bizarre and manifestly improper accusation that the defendant and his counsel would have chosen to exercise his right to remain silent if they could have, and he only waived it because of the evidence presented by the prosecution. However, the evidence against the defendant was overwhelming and the improper statements did not make the trial fundamentally unfair.

Comment: The prosecutor made a poorly constructed argument concerning a common closing argument theme – the presence of physical evidence at the crime scene meant the defendant could not simply deny his presence or involvement. The U.S. Supreme Court subsequently denied his petition for certiorari and his request for stay of execution.

Ketchum v. State, 199 S.W.3d 581 (Tex. App. — Corpus Christi 2006, pet. ref'd)

Conviction: sexual assault (Nueces County, 2006)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: criminal appeal
IP's classification of misconduct: improper argument (facts not in evidence)

TDCAA Summary: The defendant was convicted of aggravated sexual assault of a child. During cross-examination of the defendant's wife, the prosecutor made the following comment:

> Q. And [Ketchum], he did like to fish, didn't he?
> A. My husband, that is his great desire to fish.
> Q. He would fish at the [pier]?
> A. No. He had different spots. He had favorite spots that he went by himself that children would have gotten hurt.
> Q. I would have to agree that with him children would get hurt.

An objection was sustained, the jury was instructed to disregard, and the motion for mistrial was denied. The court of appeals found that the prosecutor improperly commented, but the prosecutor's comment was not so inflammatory that any prejudicial effect could not be cured by the trial court's instruction to disregard.

Perez v. State, 187 S.W.3d 110 (Tex. App. — Waco 2006, no pet.)

Conviction: DWI (Tarrant County, 2006)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: criminal appeal
IP's classification of misconduct: improper examination (violated 5th A. right)

TDCAA Summary: After his arrest for DWI, the defendant invoked his right to remain silent after receiving *Miranda* warnings. The state agreed to mute the portion of the videotape where the defendant invoked his right to remain silent, but then elicited the same testimony from the Intoxilyzer operator. The judge sustained a defense objection, gave an instruction to disregard, and denied a motion for mistrial.

The appeals court found the prosecutor's and officer's conduct to be the result of inadvertence and inattention and that their mistakes were not repeated. The question and answer were not calculated to inflame the minds of the jury. The curing instruction was effective and considering all the evidence, the certainty of conviction without the improper comment was great. The trial court did not err by denying a mistrial, and the conviction was affirmed.

Comment: The prosecutor made a mistake in good faith that had no effect on the outcome of the trial.

Pondexter v. Quarterman, No. 6:99cv68, 2006 U.S. Dist. LEXIS 73611 (E.D. Tex. Sep. 27, 2006) (not desig. for pub.), *aff'd*, 537 F.3d 511 (5th Cir. 2008), *cert. denied*, 555 U.S. 1219 (2009)

Conviction: capital murder (Bowie County, 2006)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: habeas corpus
IP's classification of misconduct: improper argument (misstated evidence)

TDCAA Summary: The defendant was convicted of capital murder and sentenced to death. In this "kitchen sink" writ, the defendant made numerous claims of actual innocence, prosecutorial misconduct, newly found evidence, and ineffective assistance of counsel. In one of the last points, he argued that the prosecution misstated the evidence during closing argument by claiming that a witness had testified he saw the defendant fire a bullet through the victim's brain. The witness actually said that he saw the defendant shoot the victim in the jaw.

On review of an ineffective assistance of counsel claim based on a failure to object to the prosecutor's argument, the court noted that there was testimony concerning the defendant shooting the victim in the head and/or in the jaw. Nevertheless, the court could not find a reasonable strategy as to why defense counsel did not object to the prosecutor's statement that the defendant had shot the victim in the brain. However, Pondexter failed to demonstrate a reasonable probability that but for counsel's failure to object, he would not have been convicted of capital murder.

Comment: There is no finding of prosecutor misconduct here. This is an IAC claim. The federal district court stated that the prosecutor had misstated the evidence, but noted that the lower courts had reviewed the evidence and it was clear that the victim's bullet wound to the jaw had been the cause of death. The defense attorney's failure to object had no bearing on the outcome of the trial. The U.S. Supreme Court subsequently denied certiorari and requested stays of execution. 555 U.S. 1219-1220 (2009).

Williams v. State, No. 05-05-00189/90-CR, 2006 Tex. App. LEXIS 4507 (Tex. App. — Dallas, June 25, 2006, no pet.) (not desig. for pub.)

Conviction: aggravated assault, aggravated robbery (Dallas County, 2006)

Procedural posture: criminal appeal

Innocence Project (IP) characterization: harmless

IP's classification of misconduct: improper argument (testifying for absent witness)

TDCAA characterization: minor trial error

TDCAA Summary: During the state's guilt-stage rebuttal argument at a trial on aggravated assault and aggravated robbery charges, the prosecutor discussed the failure of a witness to give her side of the story before trial: "You know what, I know people don't want to get involved in things like this. I understand that she may not have wanted to go out there and talk to the police officers, but you know what, she waits until what she says she's known for two weeks. You know what—if she had come to us, am I saying I would have dropped these charges? No, because I wouldn't have believed her story, but what I could have done is . . ." The trial court sustained a defense objection that the prosecutor was testifying and gave an instruction to disregard but denied a mistrial.

The appellate court held that the prosecutor's statement addressed her personal view of the witness' veracity, so the argument was improper. But the court ruled no mistrial was required because the instruction to disregard cured the error.

Cole v. State, 194 S.W.3d 538 (Tex. App. — Houston [1st Dist.] 2006 pet. ref'd)

Conviction: possession of prescription painkillers, possession of marijuana (Harris County, 2006)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: criminal appeal

IP's classification of misconduct: improper argument (impugned defense)

TDCAA Summary: During trial on charges of unlawful possession of codeine and unlawful possession of marijuana, the prosecutor argued at the guilt stage: (1) "Now, let's talk about the defense. All the smoking [sic] mirrors that they brought to distract you from the real issues. I always like to call it the spaghetti defense. Throw everything up." The trial court overruled an objection that the argument was striking at the defendant over the shoulders of counsel, and the appellate court subsequently held that any claim was waived because similar arguments were made elsewhere without objection. (2) The appellate court held a second argument attracting a similar objection was simply a response to that of the defense. (3) The prosecutor's third challenged argument ("And I want to talk to you about the proof on enhancement paragraph number one and the proof on enhancement paragraph number two 'cause you know Defense Counsel came up with another trick and asked you for 15 years") was also not improper, "[a]lthough the State could have used different language in referring to defense counsel's argument."

England v. State, No. 10-05-00021-CR, 2006 Tex. App. LEXIS 2524 (Tex. App. — Waco March 29, 2006, pet. ref'd) (not desig. for pub.)

Conviction: DWI (Tarrant County, 2006)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: criminal appeal
IP's classification of misconduct: improper examination (violated court order)

TDCAA Summary: At a felony DWI trial, the judge granted a motion in limine covering prior convictions, but the prosecutor cross-examined the defendant about his prior conviction for assault. The trial court sustained an objection, instructed the jury to disregard, and denied a mistrial. The appellate court held that the prosecutor's question was not calculated to inflame the minds of the jury and the instruction cured the error.

Carrera v. State, No. 08-05-00264-CR, 2007 Tex. App. LEXIS 2038 (Tex. App. — El Paso, March 15, 2007, no pet.) (not desig. for pub.)

Conviction: aggravated robbery (El Paso County, 2007)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: criminal appeal
IP's classification of misconduct: improper argument (facts not in evidence)

TDCAA Summary: During closing argument at an aggravated robbery trial, the prosecutor enumerated the specific offenses that the defendant had committed, as admitted by his mother. The prosecutor mentioned a juvenile burglary of habitation and a failure to appear offense. The prosecutor then stated that the defendant's mother was unaware of a conviction for public intoxication. The defense objected that the latter was not in evidence, but never obtained a ruling. The appellate court held the issue unpreserved and also harmless given the "array" of the defendant's other offenses before the jury and the minor nature of the PI.

Cloud v. State, Nos. 01-05-00817/18-CR, 2007 Tex. App. LEXIS 3299 (Tex. App. — Houston [1st Dist.] April 24, 2007, no pet.) (not desig. for pub.)

Conviction: indecency with a child, sexual assault (Harris County, 2007)

Procedural posture: criminal appeal

Innocence Project (IP) characterization: harmless

IP's classification of misconduct: improper examination (forced comment on veracity)

TDCAA characterization: minor trial error

TDCAA Summary: During examination of a child abuse investigator at the defendant's trial on charges of sexual assault of a child and indecency with a child, the prosecutor inquired: "What happens--what do you do if you do not believe the child?" The witness responded: "If we get one 'I don't believe the child,' I inform the district attorney that's working the case, we take the case and review then with, my feelings this is not a valid case." The prosecutor continued: "Would you testify on a case where you did not believe the child?" Before the witness responded, the trial court sustained the defense objection and instructed the jury to disregard.

The appellate court held that the questions were improper bolstering, but found that the defense failed to object to the first question and therefore had not preserved error, and the trial court properly granted the defense objection and instructed the jury to disregard the second question. The appeals court also rejected the defendant's argument that his trial counsel was ineffective for failure to object or seek a mistrial on the bolstering.

In the Matter of J.B.C., 233 S.W.3d 88 (Tex. App. — Fort Worth, 2008, pet. ref'd)

Conviction: murder (Tarrant County, 2007)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: juvenile appeal
IP's classification of misconduct: improper argument (vouching)

TDCAA Summary: During closing arguments at the juvenile's murder trial, the state addressed the juvenile and asserted, "we're so glad that that pot plant was so important to you," and later told the jury "we have the best darn circumstantial case that I've ever seen." The appellate court held that the state had engaged in improper jury argument by making a personal remark to the juvenile and by giving a personal opinion about the evidence, but found that the trial judge's instruction to disregard cured the error.

Jimenez v. State, 240 S.W.3d 384 (Tex. App. — Austin 2007, pet. ref'd), *cert. denied*, 555 U.S. 829 (2008)

Conviction: murder, injury to a child (Travis County, 2007)
Innocence Project (IP) characterization: harmless

Procedural posture: criminal appeal
IP's classification of misconduct: improper argument (misstated evidence, facts not in evidence)

TDCAA characterization: minor trial error

TDCAA Summary: After conviction for felony murder and injury to a child, the defendant appealed, alleging 36 instances of prosecutorial misconduct. The appellate court held that, in most instances, the state did nothing improper. But it held that five separate instances of unobjected-to argument were improper where the state: (1) criticized defense counsel personally, (2) made a remark about something not in evidence, (3 & 4) made unreasonable deductions from the evidence, and (5) commented on her own experiment that was not admitted into evidence. These arguments were unpreserved and found to be harmless.

TDCAA Comments: The prosecution was not perfect, but the defendant's claims of misconduct come across as an afterthought from a contentious trial where the defense did not consider anything so bad as to object more frequently.

Koole v. State, No. 13-06-026-CR, 2007 Tex. App. LEXIS 7172 (Tex. App. — Corpus Christi, Aug. 24, 2007, no pet.) (not desig. for pub.)

Conviction: sexual assault (Cameron County, 2007)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: criminal appeal
IP's classification of misconduct: improper examination (prejudicial comment)

TDCAA Summary: At a sexual assault trial, a psychiatrist testified that in his opinion, the defendant presented a very low risk of future dangerousness. On cross-examination, the prosecutor asked the witness, "And let me ask you this: Do you want him to babysit your son?" The trial court sustained the objection and instructed the jury to disregard the question but denied a mistrial. The appellate court, noting that the state was attempting to show that the defendant had lied to the witness, held that the instruction cured any potential harm.

Morales v. State, No. 08-06-00001-CR, 2007 Tex. App. LEXIS 8435 (Tex. App. — El Paso, Oct. 25, 2007, no pet.) (not desig. for pub.)

Conviction: injury to a child (El Paso County, 2007)
Innocence Project (IP) characterization: harmless

Procedural posture: criminal appeal
IP's classification of misconduct: improper examination (elicited inadmissible evidence)

TDCAA characterization: minor trial error

TDCAA Summary: After an injury to a child trial, the state conceded that it did not provide pretrial notice of a biting incident in its disclosures of extraneous offenses and bad acts prior to offering these acts into evidence. The appellate court held that the prosecutor intentionally elicited this testimony and disapproved, but, due to defense counsel's failure to obtain a ruling on his objection, found that nothing was preserved for review.

TDCAA Comments: Any violation of a pretrial notice of extraneous offenses is regrettable, but because the defense did not object, the issue was waived. The defendant did not, however, subsequently file an ineffective assistance of counsel claim to raise the alleged prosecutor misconduct issue.

Marin v. State, No. 04-06-00381-CR, 2007 Tex. App. LEXIS 6944 (Tex. App. — San Antonio, May 9, 2007, no pet.) (not desig. for pub.)

Conviction: aggravated sexual assault (Bexar County, 2007)
Innocence Project (IP) characterization: harmless

Procedural posture: criminal appeal
IP's classification of misconduct: improper argument (referenced possible sentences)

TDCAA characterization: minor trial error

TDCAA Summary: At trial on one count of aggravated sexual assault of a child and three counts of indecency with a child by contact, the trial court denied a mistrial requested during the prosecutor's punishment argument. The prosecutor argued that the state was not seeking consecutive sentences so they would run concurrently. Although the defense did not lodge an objection, the judge excused the jury and chided the prosecutor. Back before the jury, the prosecutor apologized and explained that the stacking decision belonged to the court. This argument drew an objection, an admonishment that the issue should not be mentioned again, an instruction that the issue was not for the jury to determine, and another apology. The intermediate court held that the argument improperly invited the jurors to speculate about the judge's decision while making their own about appropriate sentences. But, overall, the appeals court found the argument was harmless.

TDCAA Comments: Although this was clearly an improper argument that was possibly compounded by the prosecutor's attempted remedy, in context, the prosecutor's conduct reflects no more than a careless or ignorant mistake rather than a deliberate attempt to mislead jurors.

Brookshire v. State, No. 10-05-00406-CR, 2007 Tex. App. LEXIS 4798 (Tex. App. — Waco, June 20, 2007, no pet.) (not desig. for pub.)

Conviction: aggravated assault (Leon County, 2007)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: criminal appeal
IP's classification of misconduct: improper examination (violated 5th A. right)

TDCAA Summary: At a trial for aggravated assault with a deadly weapon, the prosecutor asked an officer if the defendant had given a statement or written anything down. The officer responded negatively to the line of questioning. The defense objected that the questioning commented on the defendant's refusal to make a statement and his failure to testify. The trial court sustained the objection, instructed the jury to disregard, and denied a mistrial.

The appellate court recognized that an instruction to disregard cures most improper questions and rarely requires a mistrial. In determining that the prejudicial impact of the questions was not so severe that it could not be cured by an instruction to disregard, the Court wrote: "The severity of the misconduct was attenuated by the fact that essentially the same information was entered elsewhere in response to defense counsel's questioning and without objection. *Lane v. State*, 151 S.W.3d 188, 193 (Tex. Crim. App. 2004). Further, the jury was presented with strong evidence of Brookshire's guilt."

Murphy v. State, No. 05-05-00715/720-CR, 2007 Tex. App. LEXIS 794 (Tex. App. — Dallas Feb. 2, 2007, pet. dism'd) (not desig. for pub.)

Conviction: aggravated assault, murder (Dallas County, 2007)
Procedural posture: criminal appeal
Innocence Project (IP) characterization: harmless
IP's classification of misconduct: improper examination (facts not in evidence)
TDCAA characterization: minor trial error

TDCAA Summary: The defendant was convicted of aggravated assault and murder. The defendant complained of the prosecutor's argument to the jury that "You want to stop people from getting stabbed because [their] friends were in a fight with a couple of guys." In response to this statement, defense counsel stated, "That's way outside the record," and the trial court responded: "The jury will recall the evidence." The prosecutor further argued, "You want to stop them, stop people from getting their submachine guns," and defense counsel objected that this was an argument outside the record. The trial court sustained this objection and instructed the jury to disregard "the last statement by the prosecutor." However, the trial court denied the defendant's motion for a mistrial.

Comment: The appellate court noted that the prosecutor's argument was an apparent reference to some testimony that had been developed outside the presence of the jury that the trial judge excluded. But the reference was obscure, and the appeals court held any error was cured by court's instructions.

Jabari v. State, 273 S.W.3d 745 (Tex. App. — Houston [1st Dist.] 2008, no pet.)

Conviction: aggravated sexual assault (Harris County, 2008)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: criminal appeal
IP's classification of misconduct: improper examination (elicited inadmissible evidence)

TDCAA Summary: The defendant was convicted of aggravated sexual assault and sentenced to life. During its case in chief the state offered two unadjudicated extraneous sexual assaults. When the defendant took the stand and admitted to two prior sexual assault convictions in California, the prosecutor cross-examined the defendant about the details of the crimes. The defense objection to the prosecutor's line of questions was overruled.

Among numerous points of error (including a completely frivolous *Brady* claim that was summarily rejected by the appellate court), the defendant complained that the prosecutor had cross-examined the defendant about the details of the California sexual assaults. The appellate court agreed that it was error to admit the details of the California sexual assaults. The court noted that the trial court had properly admitted other extraneous offenses that were admissible on the issue of identity, but that the details of the California sexual assaults were not sufficiently similar to the case at trial to be admissible on that basis. However, based on the ample evidence offered with regard to the properly-admitted extraneous offenses, the appellate court found that the error was harmless.

Brown v. State, 270 S.W.3d 564 (Tex. Crim. App. 2008), *cert. denied*, 556 U.S. 1211 (2009)

Conviction: capital murder (Harris County, 2008)
Innocence Project (IP) characterization: harmless

TDCAA characterization: minor trial error

Procedural posture: death penalty appeal
IP's classification of misconduct: improper argument (facts not in evidence, impugned defense)

TDCAA Summary: During rebuttal closing at the guilt stage of a capital murder trial in which the state sought the death penalty, the prosecutor responded to defense counsel's insinuation of prosecutorial misconduct by accusing defense counsel of lying. As the Court of Criminal Appeals held: "The record does not support [defense counsel's] insinuations that [the prosecutor] had directed the testimony of witnesses, and given that the insinuations were unreasonable and unfair, [the prosecutor] could properly respond to them." But the prosecutor's argument was improper because it "was not tailored to the facts in the record or to misstatements of opposing counsel." Instead, he "delved into matters that were well outside the record, and he gave his own opinion directly impugning the veracity of opposing counsel instead of disproving her allegations with testimony from the trial or simply pointing out that [defense counsel's] insinuations were nothing more than her own unsupported speculation and conjecture."

Ultimately the court decided there was no willful and calculated effort to deprive the defendant of a fair and impartial trial and no reason to conclude the defendant had been prejudiced by the remarks. "The objectionable statements were clearly directed at opposing counsel and not at appellant."

TDCAA Comments: The defense initiated the chain of events that followed.

Burkett v. Quarterman, No. H-07-1782, 2008 U.S. Dist. LEXIS 5554 (S.D. Tex. January 24, 2008), *aff'd*, *Burkett v. Thaler*, 379 Fed. Appx. 351 (5th Cir. 2010), *cert. denied*, 131 S.Ct. 801 (2010)

Conviction: indecency with a child (Montgomery County, 2008) **Procedural posture:** habeas corpus
Innocence Project (IP) characterization: harmless **IP's classification of misconduct:** improper argument (vouching)
TDCAA characterization: minor trial error

TDCAA Summary: The defendant was convicted of indecency with a child. The defendant made numerous claims of prosecutor error and misconduct on direct appeal, which were rejected. The claims were then litigated in a federal writ. Numerous claims were summarily rejected. In one claim, the defendant argued that the prosecutor improperly vouched for a witness in argument. The court rejected the claim, noting that the defense attorney had gone way outside the record in numerous attacks on the prosecution, and the prosecutor's comments for the most part were fair rebuttal. The court did note one place in argument where the prosecutor went outside the record but found that the trial court properly sustained the objection.

The federal district court also specifically rejected the defendant's *Brady* claims. Among them was a claim that the state should have disclosed that the victim noticed a tattoo on the perpetrator's arm. The federal court wrote that while this information *might* have been *Brady*, the defendant had not shown how disclosure of that statement would have affected the outcome of his trial.

Comment: It appears from this decision that the defense attorney should be the one sanctioned.

Dancer v. State, 253 S.W.3d 368 (Tex. App. — Fort Worth, 2008, pet. ref'd)

Conviction: aggravated robbery (Tarrant County, 2008)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: criminal appeal
IP's classification of misconduct: improper argument (impugned defense)

TDCAA Summary: During rebuttal closing argument at the guilt-innocence phase of a trial resulting in two convictions for aggravated robbery with a deadly weapon , the prosecutor denied that identity of the assailant was an issue, arguing, "He [the defense attorney] knows who it was. He knows who was carried out on that stretcher. It was the Defendant." The trial court sustained the defendant's objection that the argument was an attack upon the defendant over the shoulders of his counsel and instructed the jury to disregard the argument but denied the defendant's motion for mistrial. The trial court also told the jury that what the lawyers said was not evidence and the jurors indicated that they could follow the instruction. The appeals court affirmed the conviction, holding that the argument was not so extreme or manifestly improper that it could not be cured by an instruction to disregard and noting that evidence of guilt was also strong.

Thompson v. Quarterman, No. G-07-0314, 2008 U.S. Dist. LEXIS 63516 (S.D. Tex. Aug. 19, 2008)

Conviction: aggravated sexual assault (Brazoria County, 2008)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error
Procedural posture: habeas corpus
IP's classification of misconduct: improper argument (misstated law)

TDCAA Summary: After a conviction for aggravated sexual assault, the defendant filed a federal writ of habeas corpus alleging ineffective assistance of counsel. Among numerous unsuccessful allegations in support of the claim, the defendant asserted that his trial counsel was ineffective for failing to object to the prosecutor's argument urging that the jury apply parole law in assessing a sentence. Counsel did not object to the argument so as not to emphasize it. The trial court found the argument improper, but the jury was also instructed not to consider parole law in setting a sentence, and nothing demonstrated the jury disregarded the instruction. The federal judge concluded defense counsel's conduct was reasonable trial strategy.

Millican v. State, No. 09-08-103-CR, 2008 Tex. App. LEXIS 9451 (Tex. App. — Tyler, Dec. 17, 2008, no pet.) (not desig. for pub.)

Conviction: harassment (Tyler County, 2008)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: criminal appeal
IP's classification of misconduct: improper argument (impugned defense)

TDCAA Summary: At trial on a harassment of correctional officer ("chunking") charge, during the punishment phase argument, the prosecutor pointed out that the state had to offer into evidence reports referred to by a defense expert and stated, "Now, you got to wonder why that is." The defense objected that the prosecutor had improperly commented on his attorney's actions. The trial court sustained the objection but refused a request for a jury instruction to disregard. On appeal, the court agreed with the state that the argument was "only mildly inappropriate" and did not affect the defendant's substantive rights. "At most, the prosecutor's comments suggest the defense recognized that the doctor's reports contained evidence that did not favor Millican."

TDCAA Comments: The prosecutor was responding to the defense argument characterizing the defendant's problems as mental illness when the reports also attributed his behavior to his anti-social personality disorder. The side-bar comment may have been inappropriate, but same point could have been legitimately made.

Spencer v. State, No. 14-07-00683-CR, 2008 Tex. App. LEXIS 5524 (Tex. App. — Houston [14th Dist.] July 24, 2008, pet. dism'd) (not desig. for pub.)

Conviction: robbery (Harris County, 2008)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: criminal appeal
IP's classification of misconduct: improper argument (misstated evidence)

TDCAA Summary: During a robbery trial, the prosecutor argued that the reason a state's witness testified was out of a sense of propriety. In fact, the witness was reluctant and had been subpoenaed. Because the argument was not supported by the record, it was improper. But the appeals court found it was harmless error because the severity of the misconduct was minimal and the focus of the state's argument was on the witness's fear of retaliation.

Hines v. State, 269 S.W.3d 209 (Tex. App. — Texarkana 2008, pet. ref'd)

Conviction: indecency with a child (Smith County, 2008)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: criminal appeal
IP's classification of misconduct: improper examination (improper question)

TDCAA Summary: During the guilt-innocence stage of an indecency with a child case, without the defendant having testified, the prosecutor attempted to cross-examine the defendant's sister-in-law about whether the defendant had been convicted before. (The state had enhanced the defendant's charge with a previous burglary conviction, and he also had been convicted previously for assaulting his wife.) On objection, the trial court shut down any line of inquiry going beyond the fact of the previous assault against the wife. But on questioning the next witness, the defendant's wife, the prosecutor elicited testimony that she had been married to the defendant before he went to prison. The trial court sustained the objection and the defense requested an instruction to the jury to disregard as well as a mistrial. Out of presence of the jury, the prosecutor vigorously argued that his line of questioning was proper, but the trial court disagreed, held over his ruling on the mistrial, and gave an extensive strongly-worded instruction to disregard. The trial judge never declared a mistrial, finding that his admonition had been sufficient, and the defendant was found guilty and sentenced to life imprisonment.

On appeal, the prosecutor unsuccessfully continued urging the admissibility of the evidence. Noting that the statement concerning Hines's term in prison was very short and was not thereafter mentioned by anyone in the presence of the jury, the appeals court found that the decision by the trial court as to whether to declare a mistrial lay within the zone of reasonable disagreement and the decision not to do so was not error.

TDCAA Comments: The prosecutor's mistake was due to a misunderstanding of the law on introducing criminal history and extraneous offense evidence, but there is nothing to indicate the prosecutor's actions were maliciously or willfully wrong.

Lopez v. State, No. 01-06-01079-CR, 2008 Tex. App. LEXIS 3167 (Tex. App. — Houston [1st Dist.] May 1, 2008, pet. ref'd) (not desig. for pub.)

Conviction: murder (Harris County, 2008)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: criminal appeal
IP's classification of misconduct: improper examination (improper question)

TDCAA Summary: At a capital murder (death penalty waived) trial, the prosecutor asked the defendant's common-law wife whether the defendant's "personality is different when he's running around with that gun or is he just always mean?" The trial court sustained an objection, denied a mistrial, but instructed the jury to disregard. The appellate court held the question improper but the instruction was presumptively effective and no abuse by the trial judge in denying a mistrial.

TDCAA Comments: Minor trial error cured by instruction.

Johnson v. State, No. 05-06-01310-CR, 2008 Tex. App. LEXIS 2885 (Tex. App. — Dallas April 22, 2008, pet. ref'd) (not desig. for pub.)

Conviction: aggravated robbery (Collin County, 2008)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: criminal appeal
IP's classification of misconduct: presented false evidence

TDCAA Summary: During trial for aggravated robbery, first on direct and then repeatedly on cross-examination, the victim denied knowing the three defendants. On appeal, the appellate court held that other evidence in the record demonstrated that this testimony was false and the state had failed to correct it. But the record contained a letter in which the state had given the defense pre-trial notice of conflicting information about this precise issue. The court held that the letter demonstrated the state had knowingly discussed the false testimony at trial and had failed to correct it, but the information was not material because the defense engaged in extensive cross-examination and the state relied little on the evidence, so the defendant's due process rights were not violated.

TDCAA Comments: The state acted properly in giving the defense pre-trial notice of the conflicting information. Since the state may not have known the real nature of the relationship, it specifically and timely put the defense on notice and gave the defense the information it needed to attack the witness' credibility in court.

Solis v. State, No. 01-04-00491-CR, 2005 Tex. App. LEXIS 3044 (Tex. App. — Houston [1st Dist.] April 21, 2005, pet. ref'd) (not desig. for pub.)

Conviction: aggravated assault (Harris County, 2005)
Innocence Project (IP) characterization: harmless
TDCAA characterization: minor trial error

Procedural posture: criminal appeal
IP's classification of misconduct: improper argument (facts not in evidence)

TDCAA Summary: The defendant was convicted of aggravated assault and sentenced to 20 years. During closing on punishment, the state implied that the defendant had come by some of his wealth by illegal means. The trial court overruled the defense objections to the prosecutor's argument.

The appellate court, reviewing the trial record, found that the prosecutor's argument was not a reasonable deduction from the evidence. However, it found any harmful impact was minimal because the prosecutor only discussed facts in the record and was responding to defense arguments implying that the defendant had come by all of his wealth legally.

REVERSED AT LEAST IN PART DUE TO A PROSECUTOR'S CONDUCT (11 CASES)

Ex parte Wheeler, 203 S.W.3d 317 (Tex. Crim. App. 2006)

Conviction: manslaughter (Tarrant County, 2004) **Procedural posture:** habeas corpus
Innocence Project (IP) characterization: harmful **IP's classification of misconduct:** improper examination (violated court order)
TDCAA characterization: reversed at least in part due to prosecutor's conduct

TDCAA Summary: In this manslaughter/negligent homicide case, the trial judge granted a mistrial when the prosecutor asked the defense expert: "Are you aware that her insurance carrier found her at fault?" The trial court denied a defense double jeopardy writ in the second prosecution, but it was granted by the intermediate appellate court. The CCA reversed the appellate court and allowed the prosecution to proceed.

This was a hotly contested case that had been going for about a month (9-10 days of testimony). The CCA noted that "the advocates' tempers were frayed." But there was no indication that the case was going badly for the state. The CCA stated that there was no indication the prosecutor did not sincerely, although mistakenly, believe the defense expert had reviewed the report in question – the prosecutor may have been confused or misheard, but nothing in the record supported a finding of willful or reckless conduct. The area of questioning was appropriate, the specific question was not. To quote the CCA (with emphasis added):

> From all appearances, the prosecutor could well have thought that the trial was going fine. It is reasonable to conclude that he was, in his own mind, just giving the *coup de grace* to the defense expert. We cannot disagree with the trial judge's implicit conclusion that this was a question that was asked in ***good faith,*** albeit an impetuous, perhaps even stupid, question. The trial judge saw the prosecutor and could judge his credibility and integrity; she was entitled to conclude that the prosecutor acted with unwarranted zeal rather than malice or reckless disregard for the defendant's rights. We cannot say that the trial judge abused her discretion in finding that neither *Kennedy* nor *Peterson* would bar the defendant's retrial.

TDCAA Comments: The Innocence Project is incorrect; there was no court order violated, no defense motion in limine on the insurance decision, only a state motion not to mention monetary settlement. In fact, there is an actual finding that the prosecutor merely made a good faith mistake in open court.

Willis v. Cockrell, No. P-01-CA-20, 2004 U.S. Dist. LEXIS 13764 (W.D. Tex., July 21, 2004) (not desig. for pub.) (amended order at 2004 U.S. Dist. LEXIS 15950, Aug. 9, 2004)

Conviction: capital murder (Pecos County, 2004) **Procedural posture:** habeas corpus
Innocence Project (IP) characterization: harmful **IP's classification of misconduct:** failure to disclose evidence
TDCAA characterization: reversed at least in part due to prosecutor's conduct

TDCAA Summary: Relief granted for 3 reasons: 1) improper administration of antipsychotic medication to defendant; 2) *Brady* violation for failure to disclose mitigating information in forensic psychologist's report; and 3) ineffective assistance of counsel (IAC) for not presenting mitigating evidence.

No experts testified at trial. IAC was the big point here – the defense did not snap to the medication issue and did nothing at punishment. The state's expert was equivocal in his report. Under one hypothetical, he concluded future danger, and under another hypothetical, he concluded no future danger. The CCA found no *Brady* error in its assessment of whether the expert's report was subject to disclosure. The federal court disagreed and found that under federal law, the state had violated *Brady*.

TDCAA Comments: IAC was the main issue here; disclosure was a minor issue in the case and subject to differing legal opinions. This was a highly publicized arson case that a subsequent district attorney, Ori White, dismissed for actual innocence and apologized to the defendant, citing bad arson science. The Innocence Project reported that the original defense attorney had only spent about 3 hours with the defendant before trial, and the defendant had been affected by psychotropic drugs during trial.

Banks v. Dretke, 540 U.S. 668 (2004), on remand, *Banks v. Thaler*, 583 F.3d 295 (5th Cir. 2009), *cert. denied, Banks v. Dretke*, 540 U.S. 668 (2010)

Conviction: capital murder (Bowie County, 2004)
Procedural posture: habeas corpus
Innocence Project (IP) characterization: harmful
IP's classification of misconduct: failure to disclose evidence
TDCAA characterization: reversed at least in part due to prosecutor's conduct

TDCAA Summary: Capital murder. One state's witness—Cook—testified that the murder weapon was in the defendant's possession and said the defendant confessed the crime to him, but the prosecutor failed to correct the witness's misstatement on the stand that he hadn't talked to anyone before his testimony. (He had met with prosecutors in lengthy trial preparation.) The Fifth Circuit held that the defendant had not properly pleaded this claim because the defense failed to seek leave to amend its federal habeas petition. The SCOTUS did not disturb this ruling. Another state's witness—Farr—denied having a deal as an informant for the police, and the prosecutor did not correct the record. (Police had actually paid him $200 to help get the murder weapon.) More than 30 years after trial, the Fifth Circuit ruled that Farr's testimony affected only the punishment proceedings. The SCOTUS denied certiorari.

TDCAA Comments: This case presents a cautionary tale of how information that may not initially be exculpatory can become *Brady* evidence during trial. Hundreds of pages of court opinions discuss whether this information was *Brady*, whether it was material, cumulative, etc. Over the last three decades, this case has been back and forth in the courts. The Court of Criminal Appeals and the Fifth Circuit have each addressed this case three times, there have been four evidentiary hearings in addition to trial, and no less than five different directors of TDCJ listed as parties in the federal litigation (Johnson, Cockrell, Dretke, Quarterman, and Thaler—is this a record?). On August 1, 2012, Banks dropped further appeals in exchange for a life sentence.

Thomas v. State, 209 S.W.3d 268 (Tex. App. — Houston [1st Dist.] 2006, no pet.)

Conviction: aggravated robbery (Harris County, 2006) **Procedural posture:** criminal appeal
Innocence Project (IP) characterization: harmful **IP's classification of misconduct:** *Batson* violation
TDCAA characterization: reversed at least in part due to a prosecutor's conduct

TDCAA Summary: The defendant was convicted of aggravated robbery and sentenced to 50 years. On appeal, he complained of *Batson* error (overruled by the trial court) for the state having struck three venire members based on race. (The state used six of its 10 strikes on African-American jury panelists, and one African-American venire member was empanelled.) The state's reason for striking the three panelists was that they were crime victims, but other non-African-American panelists who had also been crime victims were not struck. Based on this inconsistency and the number of strikes used, the court found that the state did not carry its burden to demonstrate a race-neutral reason for striking one of the African-American venire panelists.

TDCAA Comments: Does every *Batson* case qualify as prosecutor misconduct suitable for discipline? Would that apply to the defense as well? (See, e.g., Dick Deguerin, who violated *Batson* in jury selection in the *Tom Delay* case in Travis County.)

Ex parte Castillo, No. AP-75,460, 2006 Tex. Crim. App. Unpub. Lexis 720 (Tex. Crim. App, June 21, 2006) (not desig. for pub.)

Conviction: attempted murder (Cameron County, 2006) **Procedural posture:** habeas corpus
Innocence Project (IP) characterization: harmful **IP's classification of misconduct:** failure to disclose evidence
TDCAA characterization: reversed at least in part due to a prosecutor's conduct

TDCAA Summary: This is a 3-paragraph unpublished opinion. The original conviction was for attempted murder with a 25-year sentence. The Court of Criminal Appeals noted that the trial court recommended relief for a *Brady* violation after a habeas hearing, but there is no factual information about the alleged violation in the opinion. The original conviction was in 1994, and the direct appeal was unpublished as well.

TDCAA Comments: It is impossible to evaluate prosecutor conduct from this opinion.

Graves v. Dretke, 442 F.3d 334 (5th Cir. 2006)

Conviction: capital murder (Burleson County, 2006) **Procedural posture:** habeas corpus
Innocence Project (IP) characterization: harmful **IP's classification of misconduct** failure to disclose evidence
TDCAA characterization: reversed at least in part due to a prosecutor's conduct

TDCAA Summary: The defendant was convicted and sentenced to death based largely on the testimony of a co-defendant. That co-defendant recanted his statements implicating Graves numerous times, and the court ruled that the recantations were not properly produced to the defense.

The prosecutors charged with retrial of the case dismissed it, citing a lack of /no evidence that Graves was involved in the murders.

TDCAA Comments: The subcommittee has analyzed this case at length, and there were many problems with how the prosecution was handled.

Ex parte Elliff, No. AP-75,679, 2007 Tex. Crim. App. Unpub. LEXIS 970 (Tex. Crim. App. May 9, 2007) (not desig. for pub.)

Conviction: murder (Nueces County, 2007)
Procedural posture: criminal appeal
Innocence Project (IP) characterization: harmful
IP's classification of misconduct: failure to disclose evidence
TDCAA characterization: reversed at least in part due to a prosecutor's conduct

TDCAA Summary: Twenty years after the defendant was convicted for murder, a person came forward to say that he told a prosecutor that someone else did the crime and was threatened into silence. The witness could not say who the prosecutor was, and one of the prosecutors died shortly after the trial. The trial court recommended relief be granted and the CCA agreed.

TDCAA Comments: Without the original prosecutor available to contest the allegations, the court granted relief.

Ex parte Masonheimer, 220 S.W.3d 494 (Tex. Crim. App. 2007)

Conviction: murder (Taylor County, 2007) **Procedural posture:** habeas corpus
Innocence Project (IP) characterization: harmful **IP's classification of misconduct:** failure to disclose evidence
TDCAA characterization: reversed at least in part due to a prosecutor's conduct

TDCAA Summary: Two attempted trials of the defendant for murder ended in mistrials. The CCA jeopardy-barred a third prosecution because of repeated *Brady* violations. The allegation was that the prosecutors failed to turn over exculpatory evidence in the form of hearsay statements of the defendant and evidence that the victim possessed steroids. The case was jeopardy-barred under the *Bauder* standard of reckless conduct, which has since been abandoned by the CCA in favor of the standard laid out by SCOTUS in *Oregon v. Kennedy*, and which requires more than merely reckless conduct by a prosecutor to bar further prosecution. (See the *Lewis* case listed next for more details about that change.)

TDCAA Comments: A careful reading of the opinion reveals that no court found intentional or knowing "prosecutorial misconduct." The trial court did find that the prosecutors had recklessly failed to disclose *Brady* information, and under the *Bauder* standard, a retrial was barred. Ironically, Judge Womack properly pointed out in dissent that the information in question was not *Brady* material to begin with. This is a cautionary tale about how: 1) a closed file policy can get a prosecutor in trouble – the defense knew the information in question but was able to play "gotcha" when the state didn't disclose things the defense already knew; and 2) changing prosecutors midstream can result in information getting left behind with the previous prosecutor. One of the prosecutors accepted a private reprimand from the State Bar. The other two contested their sanctions, and the Bar ended up dismissing those cases before trial in district court.

Ex parte Lewis, 165 S.W.3d 376 (Tex. App. — Fort Worth 2005), *rev'd,* 219 S.W.3d 335 (Tex. Crim. App. 2007)

Conviction: murder (Tarrant County, 2005)
Procedural posture: habeas corpus
Innocence Project (IP) characterization: harmless
IP's classification of misconduct: improper examination (violated 5th A. right to silence)
TDCAA characterization: reversed at least in part due to a prosecutor's conduct

TDCAA Summary: In three separate sequences in trial, the prosecutor asked questions that touched on the defendant's invocation of her right to remain silent. The defense objected on all three occasions and sought a mistrial after the second and third occasions. The court granted the mistrial on the third occasion, and the defense subsequently sought a writ to prohibit a retrial based on double jeopardy grounds under *Bauder*.

TDCAA Comments: The Court of Criminal Appeals subsequently reversed the intermediate court opinion that is cited by the Innocence Project. The CCA's opinion discarded the *Bauder* decision relating to recklessness and mistrials, in the process remanding the *Lewis* case to the intermediate court for analysis under the traditional *Oregon v. Kennedy* standard for reviewing mistrials. The defendant subsequently dismissed the appeal (2007 Tex. App. LEXIS 6891 (Tex. App. – Fort Worth August 9, 2007)). The prosecutor erred in this case, but no finding was made at any point that the prosecutor intentionally sought to compromise the defendant's due process rights.

Ex parte Jackson, No. 2-05-334-CR, 2006 Tex. App. LEXIS 2769 (Tex. App. — Fort Worth Apr. 6, 2006, no pet.)
(not desig. for pub.)

Conviction: capital murder (Montague County, 2006) **Procedural posture:** habeas corpus
Innocence Project (IP) characterization: harmless **IP's classification of misconduct:** improper argument (violated 5th A. right)
TDCAA characterization: reversed at least in part due to a prosecutor's conduct

TDCAA Summary: At the defendant's first trial, the prosecutor made comments during his opening statement on the defendant's potential failure to testify. After discussing the matter in chambers, the trial judge granted a mistrial. Following the mistrial, Jackson filed this pretrial habeas action, arguing that a retrial was jeopardy-barred.

The appeals court found that the evidence presented at the habeas hearing showed that the prosecutor's improper conduct was a blunder that was the result of inadvertence, sloppiness, or even simple negligence. The statements were not made intentionally or recklessly, and retrial was not barred.

Comment: There was no finding of prosecutor "misconduct" here; only a finding of a mistake. Facing re-trial for capital murder, the defendant subsequently pled no contest and was sentenced to life in prison. (See http://www.msnbc.msn.com/id/15119953/ns/us_news-crime_and_courts/t/life-term-ex-nurse-patient-killings/.)

Abbott v. State, 196 S.W.3d 334 (Tex. App — Waco 2006, pet. ref'd)

Conviction: indecency with a child (Ellis County, 2006)
Procedural posture: criminal appeal
Innocence Project (IP) characterization: harmless
IP's classification of misconduct: improper argument (burden shifting), improper examination (facts not in evidence)
TDCAA characterization: reversed at least in part due to a prosecutor's conduct

TDCAA Summary: In closing argument in the defendant's indecency with a child case, the defense asserted that the state had not met its burden of proof beyond a reasonable doubt and argued that a not-guilty verdict would not endorse child molestation or condemn the victim. In rebuttal, the prosecutor responded: "There is no gray area here. He did it, or he didn't do it. That's the only choice here. There is no gray area here. There is no notion that I believe he did it, but you didn't prove it." Shortly afterwards he correctly stated the law on the burden of proof. The defense objected that the prosecutor was misstating the law on the burden of proof. The objection was overruled, and the jury convicted the defendant. The court of appeals held that it was error to overrule the objection, but the error was harmless.

At punishment, the prosecutor asked the defendant whether his other stepdaughter had ever accused him of molesting her. The defense objection was sustained and a motion for mistrial was denied. The appeals court concluded it was unlikely the jury would have assessed the same punishment without the improper question (he received the max 20 years). The case was reversed and remanded for a new punishment hearing.

Comment: The first issue was an argument error. Regarding the second issue, the prosecutor's question was improper because the stepdaughter had recanted the molestation allegation, making that alleged abuse difficult to prove on punishment. At resentencing, the defendant received 10 years community supervision.

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TEXAS PROSECUTORS SET THE RECORD STRAIGHT ON PROSECUTORIAL MISCONDUCT

Prosecutors' Association Identifies Flaws in Past Research, Makes Recommendations for Avoiding Wrongful Convictions

AUSTIN, TEXAS (September 10, 2012) — Today, the Texas District and County Attorneys Association (TDCAA) released a ground-breaking report on prosecutorial misconduct that recommends ways in which prosecutors and others in the criminal justice system can prevent future wrongful convictions. TDCAA is the professional association for prosecutors in Texas and is the largest statewide association of prosecutors in the nation.

The prosecutors' report, entitled "Setting the Record Straight on Prosecutorial Misconduct," is the result of eight months of painstaking research by select members of TDCAA. The goal of the project was to delve into the factors that have contributed to wrongful convictions in Texas and identify steps that prosecutors and their association could take to avoid future errors and improve criminal justice outcomes. Although originally designed to study emerging research related to forensic science and other investigative techniques, the report changed its focus after the release in March 2012 of a "study" by the Northern California Innocence Project that claimed to identify 91 instances of egregious prosecutorial misconduct over a five-year period in Texas that had gone unsanctioned by authorities.

"The number of stories claiming prosecutorial misconduct seemed to be on the rise, but there was very little objective analysis of the issue," said Joe Shannon, Tarrant County Criminal District Attorney. "As the professional association for prosecutors in Texas, we thought it was important to determine the truth before anyone acted rashly in response to those headlines."

TDCAA's review of the Innocence Project's work in this area found it to be replete with errors, inconsistencies, and incomplete legal research. For instance, almost a dozen of the 91 cases cited by the Innocence Project as involving prosecutorial misconduct involved no actual misconduct or errors by the prosecutor. In fact, several of the court opinions in those cases

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specifically *approved* of the prosecutor's conduct! It turned out that the vast majority of the listed cases involved minor, unintentional, or harmless trial errors that did not violate the defendant's rights, impact the outcome of the case, or demonstrate any systemic problems. That left about six cases—out of a potential pool of more than *four million* criminal cases pending during the same period—in which a prosecutor arguably engaged in deliberately dishonest or fraudulent conduct that produced an unjust result.

"Texans should be reassured to know that true prosecutorial misconduct is incredibly rare in Texas," said Kenda Culpepper, Rockwall County Criminal District Attorney. "However, even a single act of intentional misconduct is one too many, and our profession is dedicated to stopping it from happening in the future. We hope this report is a step in that direction."

After reviewing the claims made by the Innocence Project, TDCAA went a step further and examined the underlying causes of the rare reversals for misconduct. The results of this project led to 10 findings and recommendations intended to guide prosecutors, their association, and policy-makers at large in preventing errors in the criminal justice system. Some of these suggestions, such as training on the use of modern eyewitness identification procedures, are already underway.

Perhaps the most important finding from that review was the prevalence of (frequently unintentional) failures to turn over evidence through the discovery process that might be favorable to the accused. Fortunately, a subsequent survey of current practices in Texas shows that most prosecutors have changed their internal procedures to help ensure that defendants get the information to which they are entitled.

"It's important for anyone advocating for changes to recognize that many wrongful convictions from the 1980s and 1990s were the result of policies or practices that are no longer used," said W. Lee Hon, Polk County Criminal District Attorney and current president of TDCAA. "It wouldn't make sense to base transportation policy decisions in 2012 on traffic patterns from 1992, and that common-sense rule of thumb applies to criminal justice policy as well."

Contrary to the Innocence Project's claims of inadequate oversight of Texas prosecutors, recent history also shows that prosecutors are accountable for their actions in numerous ways. The report lists specific examples of these checks and balances being used in Texas, and it also explains the legal and fiscal importance of maintaining prosecutorial immunity. The report further recommends increased funding for all facets of the criminal justice system to ensure that justice is never denied a victim, a defendant, or the public due to inadequate resources.

# # #

The full report can be accessed online at http://www.tdcaa.com/reports/setting-the-record-straight-on-prosecutor-misconduct. For more information about this topic or to schedule an interview, please call Sarah Wolf at 512/474-2436 or email her at Sarah.Wolf@tdcaa.com.