FOR THE DEFENSE

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In *Berry*, the Pennsylvania Supreme Court Says Prior Arrests are Irrelevant at Sentencing

The Pennsylvania Right to Know Law for Criminal Defense Lawyers

PACDL
PENNSYLVANIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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If you have interest in serving of the Foundation Board of Directors, please contact Beth Winters at pacdl@pacdl.org before March 3.

PACDL Foundation for Justice

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CONTENTS

Volume 10, Issue 1

OPENING STATEMENT

Brian J. McMonagle, PACDL President

Over the past three decades, I have had the great privilege of defending individuals in the federal courts of this great nation. Like many of you, I have enjoyed many battles in the courtrooms of Pennsylvania and beyond, arguing against the prosecutors of the Deparment of Justice and cross examing the special agents of the FBI. As a former prosecutor and a criminal defense attorney, I have always had great respect for these worthy adversaries and dedicated public servants who protect and serve our nation and our communities. Without their dedication and adherence to the principles of justice, our system would fail.

Recently, some of these dedicated men and women have been forced to resign and others threatened with termination because they did their jobs. FBI agents and federal prosecutors who were tasked with investigating the various crimes committed on January 6 now face the prospect of being fired for no other reason than they investigated criminal conduct that occurred at our nation's Capitol on that fateful day.

FBI agents and federal prosecutors are no different from the members of our organization in the essential role they play in our criminal justice system. Many of our trial opponents in the Department of Justice have dedicated their entire careers to investigating and prosecuting criminal conduct in this nation. FBI agents are willing risk their lives in defense of others, and some have lost their lives in the line of duty. During the aftermath of 9/11, the days following the Boston Marathon bombing, and in every domestic terrorist attack on American soil, it is these men and women who pursue those who threaten our democracy.

Every member of the PACDL has a constutionally guaranteed role in the criminal justice system, and we are committed to defending the constitutional rights of our clients with zeal and integrity. We recognize that our judicial system relies on the ethical and diligent work of all of its participants, including prosecutors and law enforcement. As defenders of the Constitution, we stand in solidarity with our colleagues across the aisle and their families as they endure this unprecedented threat to their careers, and to the integrity of the criminal justice system.

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In *Berry*, the Pennsylvania Supreme Court Says Prior Arrests are Irrelevant at Sentencing

Julia M. Gitelman

On September 26, 2024,[1] the Pennsylvania Supreme Court overturned a well-established line of precedent from the Pennsylvania Superior Court. The Court ruled that a sentencing court may not lawfully consider an individual's prior arrests—absent either juvenile adjudications or adult convictions—as a factor when imposing sentence. The Court held that, because "arrests without conviction happen to the innocent as well as the guilty,"[2] they hold no probative value in assessing a defendant's background or suitability for sentencing.

This landmark decision arose from the sentencing of Mr. James Berry, who had been convicted of multiple charges stemming from the sexual abuse of two minor family members. In its sentencing, the trial court relied in part on Berry's prior arrest record, which, despite containing multiple arrests, lacked any corresponding juvenile adjudications of delinquency or adult convictions. At sentencing, the court deviated upward from the Pennsylvania Sentencing Guidelines significantly, relying in part on Berry's arrest record.

Mr. Berry appealed from the imposition of this sentence to the Superior Court asserting that the trial court abused its discretion by, in relevant part, "crafting a sentence based at least in part upon his arrest record."[3] The Superior Court affirmed the trial court. The Pennsylvania Supreme Court granted appeal to address the question of whether sentencing courts can consider arrest records when assessing an appropriate sentence. Under *Berry*, they cannot.

The Presentence Investigation (PSI) report documented, among other topics, Berry's record of juvenile and adult arrests but provided no substantive evidence of the underlying allegations to the court. The trial court considered Berry's arrest history as a factor in its upward departure from the recommended sentencing guidelines applicable to his conviction:

> The truly sad part of this is the fracturing of this family. Watching both sides, Mr. Berry's parents on one side and his siblings on the other side. The fact

> that this family hasn't figured out a way to come together, it exemplifies the harm that was done to these children. It shows me that not only were [J.B.] and [J.J.] directly harmed by Mr. Berry's actions, but the victim's [sic] of his actions extend far beyond these two little boys.
>
> The fact that I've been watching and reading that [J.B.] is no longer in his own home and is struggling to stay and become part of [another individual]'s home, which is admirable, he is moving forward despite this victimization. It's a testament to [J.B.]'s strength, and I hope that he understands that and hears that. His testimony was not easy to give. He was forced to watch this video multiple times in this courtroom in front of strangers.
>
> I agree that Mr. Berry has a [c]onstitutional right to try his case, sir. I do not hold the fact there was a jury trial against him. However, there was a – [sic] in the process, that doesn't mean we don't revictimize the victim again. And in this particular case, this Court as well as the civilians had to sit there and watch as [J.B.] reacted to that video.
>
> *This Court has balanced Mr. Berry's prior record score of zero with the acts that the jury found him guilty of, the victim impact statements that have been made on behalf of [J.B.] and [J.J.]. I'm also taking into account that while this is Mr. Berry's first conviction, there are previous other contacts. This is not the anomaly that the zero would foreshadow for me*, and I have concerns about the predatory nature of Mr. Berry's behavior in taking advantage of these children at a time in which their family was going through the health concerns of their father.
>
> The fact that [J.B.] does suffer from Autism, and [J.J.] was at a very tender age at the time of these events that played a role into the sentencing and given the diminished capacity of the both of these young boys

(emphasis in the original).[4]

On appeal, the Pennsylvania Superior Court affirmed the trial court's decision, relying on its precedent that permitted consideration of prior arrests if the court acknowledged that those arrests did not result in convictions. The Superior Court asserted that, while Berry's arrest record was not factored into his prior record score, it nonetheless was used to inform the trial court's broader assessment of Berry's criminal history. The Pennsylvania Supreme Court, in a unanimous opinion authored by Justice Wecht, decisively rejected this approach, clarifying that arrests without convictions cannot be used to influence a sentencing decision in any way.

The Court's ruling emphasizes a fundamental distinction between arrests and convictions, which has long been a principle of criminal law. Justice Wecht's opinion underscores that arrest records, unsubstantiated by further adjudication, offer little, if any, insight into a defendant's criminal propensity or likelihood of recidivism. He explained that, by their very nature, arrests are fraught with ambiguity and should not be conflated with proven criminal behavior. As such, they are inadmissible and irrelevant in nearly every criminal law context, including sentencing.

Moreover, Justice Wecht's opinion carefully delineates the public policy concerns surrounding the use of arrest records in sentencing. He noted that arrests may be influenced by extraneous factors, such as race or socioeconomic status, which have no bearing on an individual's actual likelihood of committing future crimes. In particular, the Court cited the *Third Circuit's* decision in *United States v. Berry*, highlighting that the reliance on arrest records could exacerbate existing racial and economic disparities, recognizing that the "likelihood of arrest may be influenced by a variety of factors other than the actual commission of the charged crimes:"[5]

> [R]eliance on arrest records may also exacerbate sentencing disparities arising from economic, social and/or racial factors. For example, officers in affluent neighborhoods may be very reluctant to arrest someone for behavior that would readily cause an officer in the proverbial "high crime" neighborhood to make an arrest. A record of a prior arrest may, therefore, be as suggestive of a defendant's demographics as his/her potential for recidivism or his/her past criminality.[6]

The Court further referenced the Third Circuit's reliance on studies demonstrating that people of color are disproportionately stopped, arrested, and subsequently charged, often due to implicit bias. As a result, the Court acknowledged the risk that a sentencing court could perpetuate systemic discrimination by considering arrest records as evidence of a defendant's character or future criminality.

In rejecting the Commonwealth's argument that an arrest record could be relevant if the underlying conduct was established by a preponderance of the evidence, Justice Wecht emphasized that an arrest alone does not carry probative value. The Court expressed a strong preference for a more rigorous evidentiary standard, underscoring that sentencing decisions must be based on reliable and concrete information—information that an arrest record, in isolation, cannot provide. Justice Wecht highlighted that "evidence of a defendant's arrest record is inadmissible and irrelevant in nearly every criminal law context,"[7] including under the Rules of Evidence to demonstrate propensity or for impeachment,[8] at proceedings for revocation or re-sentencings,[9] or under the Sentencing Code.[10] Prior arrests are similarly "irrelevant to a consideration of the defendant's 'rehabilitative needs'"[11] or the "'protection of the public.'"[12] The Court carefully distinguished that where these contexts do permit consideration of a defendant's criminal history, they uniformly exclude any reliance or consideration of a defendant's arrest without convictions:

> …our law is clear. Prior arrests shed no reliable light upon criminal propensity, cannot be used as evidence of bad character or for impeachment purposes, are not a relevant sentencing consideration, and have no probative value for establishing a defendant's likelihood of recidivism…or are prior arrests a relevant consideration under the Sentencing Code.

This ruling brings Pennsylvania in line with the prevailing legal standard that excludes arrest records from sentencing considerations, aligning with federal principles and various state jurisdictions. Notably, the ruling also represents a stark departure from prior Superior Court decisions,[13] which had permitted the use of arrest records in sentencing under certain conditions. The Pennsylvania Supreme Court's ruling resolves the longstanding ambiguity surrounding the admissibility of arrest records, effectively creating a bright-line rule that courts cannot consider an arrest record in sentencing unless it is accompanied by a conviction or adjudication.

While the Court's decision resolved the case on statutory and evidentiary grounds, it did not address Mr. Berry's claim that the consideration of his arrest record violated his constitutional due process rights. The Court's refusal to reach the constitutional issue suggests that it was sufficient for the Court to clarify the evidentiary standards in sentencing. However, the decision has broad implications not only for the specific case of Mr. Berry but also for the entire Pennsylvania criminal justice system. It establishes a clear legal framework for sentencing judges to follow, potentially impacting a range of cases involving the consideration of prior arrests.

This decision also has significant evidentiary implications. The opinion can be interpreted to expressly prohibit any use of arrest records that do not result in a conviction or adjudication, and this ruling reinforces the broader principle that sentencing decisions should be based on reliable and substantive evidence.

Since *Berry*, this author located only a single unpublished opinion citing to it.[14] There, the Court vacated and remanded the judgment of sentence against Mr. Charles Woodson for a conviction of aggravated assault following his open guilty plea before the trial court.[15]

In 2022, Mr. Woodson entered an "open" guilty plea to aggravated assault following a "brutal road-rage incident."[16] The trial court received a pre-sentence investigation report as well as a psychological report. During the sentencing, the trial court stated that it "'…considered [Mr. Woodson's] arrest record…He has five prior arrests ranging from firearms violations to recklessly endangering another person, terroristic threats, to propulsion of missiles into an occupied vehicle…Three of those arrests were dismissed or withdrawn…'"[17] The trial court sentenced Mr. Woodson to a sentence outside the guidelines range. On appeal, Mr. Woodson raised a single issue: did the trial court abuse its discretion in sentencing powers when it sentenced him to a sentence "grossly higher than the guidelines prescribed"? He did not challenge the trial court's reliance on his prior arrests which did not lead to convictions, although the Pennsylvania Superior Court did reach that issue *sua sponte*.

The Superior Court determined that the trial court did not abuse its discretion for sentencing Mr. Woodson outside of the guidelines range.[18,19] The Superior Court did consider, *sua sponte*, whether the trial court sentenced Mr. Woodson illegally because it considered Mr. Woodson's arrest record in violation of *Berry*. The Superior Court did find that the trial court sentenced illegally. In so deciding, the Superior Court noted:[20]

> In September of this year, our Supreme Court issued its decision in Berry, supra. In Berry the Court held, "the fact of prior arrests cannot be a factor at sentencing ... mere arrests and indictments, without convictions ... have no value as probative matter." See Berry, 323 A.3d at 654. Our Supreme Court concluded that, even if the trial court relied on other legitimate factors in crafting the sentence, any case where the trial court considered the defendant's arrest record must be remanded for resentencing "without such consideration."[21]
>
> Our review of the sentencing transcript reveals the trial court explicitly considered Woodson's arrest record. See N.T., 3/8/23, at 33-34. Accordingly, we are constrained to vacate the judgment of sentence and remand for resentencing without consideration of Woodson's arrest record, other than those resulting in convictions. In so doing, the court need not consider Woodson's challenge to the discretionary aspects of his sentence and is free to impose a sentence it deems appropriate.[22]

In conclusion, the *Berry* decision marks a significant step in refining Pennsylvania's sentencing practices and ensuring that only relevant and reliable information is used to assess a defendant's background. It is a welcome development in the ongoing effort to create a more equitable and transparent criminal justice system, free from the biases that can stem from the undue reliance on arrest records. Future cases will undoubtedly examine the scope of this decision and its broader implications on sentencing law and criminal justice reform.

NOTES:

[1] *Commonwealth v. Berry*, 323 A.3d 642 (Pa. 2024).
[2] *Id.*
[3] *Id.* at 646. The Supreme Court did not consider Berry's other claims based on the trial court's consideration of Berry's cross-examination of one of the minor victims, the gravity of the offenses, and the "fracturing" of the family following Berry's crimes. *Id.* at n. 12.
[4] *Id.* at 646.
[5] *Id.* at 652.
[6] *Id.*, citing to *United States v. Berry*, 553 F.3d 273, 285 (3d Cir. 2009).
[7] *Id.* at 648.
[8] *Id.* at 649.
[9] *Id.* at 654.
[10] *Id.* at 649.
[11] *Id.*
[12] *Id.* at 651.
[13] *Commonwealth v. Shoemaker* (313 A.2d 342, Pa. Super. 1973).
[14] *Commonwealth of Pennsylvania v. Woodson*, No. 2168 EDA 2023, 2024 WL 5205605.
[15] *Woodson*, 2024 WL 5205605, at *1.
[16] *Id.*
[17] *Id.*
[18] *Id.* at *2.
[19] *Commonwealth v. Shull*, 148 A.3d 820, 836 (Pa. Super. 2016).
[20] *Id.* at *3.
[21] *Id.* at 656.
[22] *Id.*

About the Author

Julia M. Gitelman focuses her criminal defense practice on White Collar Criminal Defense and investigations in both federal and state courts. Prior to joining The Grail Law firm in the fall of 2021, Julia served as an Assistant Public Defender in Allegheny County and later as an associate at a Pittsburgh criminal defense firm. She is a member of the CJA Panel Mentee Program and volunteers as court appointed counsel in Grand Jury proceedings and in state court criminal cases. In law school, she clerked for federal Magistrate Judge Lisa Pupo Lenihan and Commonwealth Court Chief Judge Michael Hl Wojcik.

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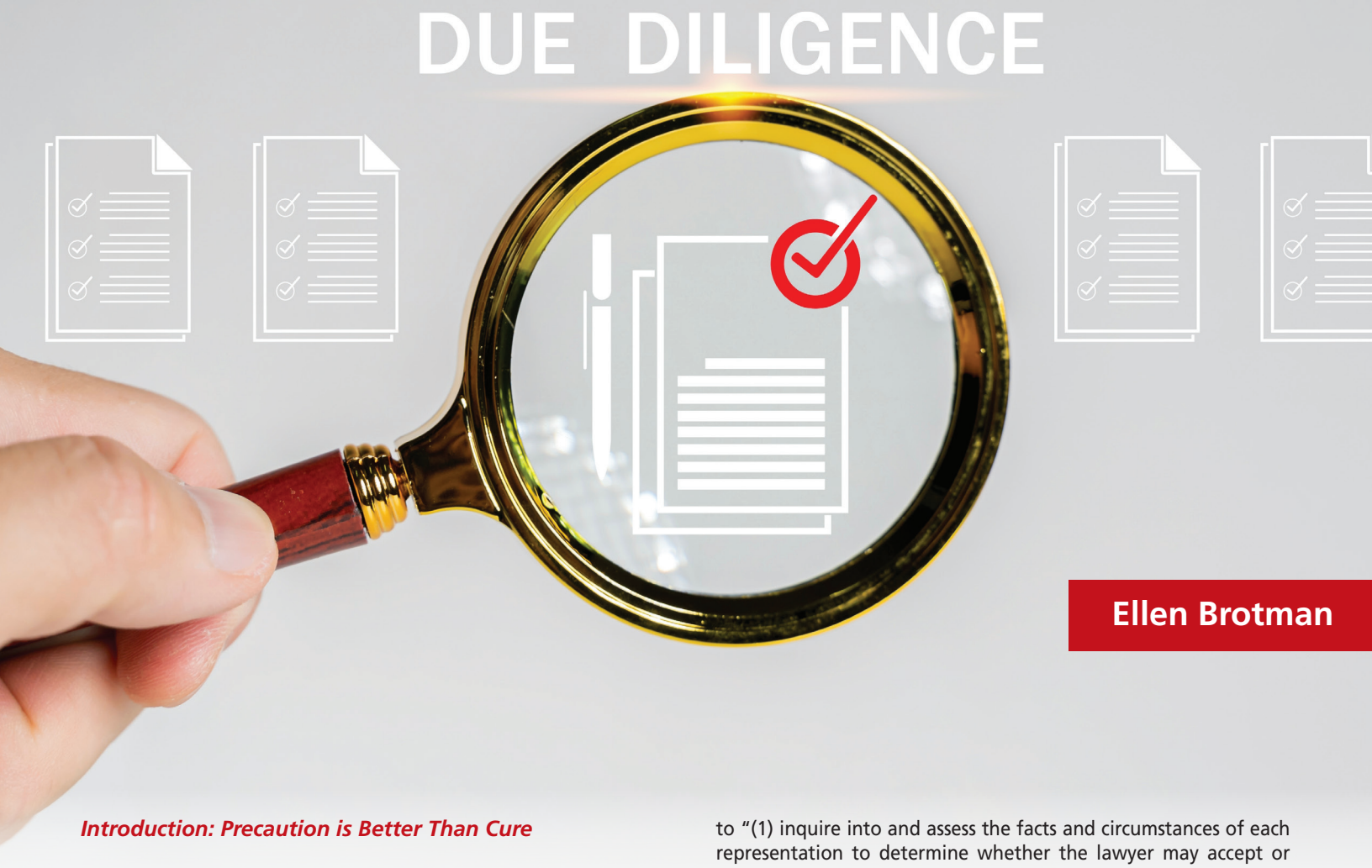
The Amendment of Rule 1.16 and ABA Formal Ethics Opinion 513: How Deep Must You Dig for Due Diligence on New Clients?



Ellen Brotman

Introduction: Precaution is Better Than Cure

As criminal defense lawyers, we care deeply about our clients, work tirelessly to protect them from their powerful adversaries and are constantly trying to find creative and novel interpretations of the law to reach the best possible result. We also know that our clients are in desperate situations and may be willing to resort to unethical means to escape the consequences they face. The experienced criminal defense attorney approaches each new representation with caution so as not to be drawn into conduct that would also place them in jeopardy. We are cautious about the authenticity of documentary or digital evidence the client offers. We may also be cautious about the use of certain "alibi" or other witnesses. We are especially cautious about the source of fee payments.

In August 2023, the American Bar Association amended Model Rule of Professional Conduct 1.16 (a) to explicitly require attorneys to "(1) inquire into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation; and to (2) reject or discontinue the representation if the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion with the client pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct" (Opinion 513).[1] This change in the Rule has not been adopted by Pennsylvania. However, the amendment to Rule 1.16 and Opinion 513 provide a helpful framework for determining what level of due diligence is reasonable.

We first turn to an examination of the Rules of Professional Conduct and the various ways in which they guide us when faced with clients who seek to put our skills to impermissible uses. We will then examine the change in the Rule and the guidance provided by Opinion 513.

The Rules of Professional Conduct Require Due Diligence

The type of caution that we have long applied to each new representation is soundly based in our common sense and our ethical duty to our clients, our partners, and our profession. Our own moral compasses guide us, as do the Rules of Professional Conduct. It is no surprise that the Rules prohibit knowingly assisting clients in perpetrating a fraud or a crime and require us to make reasonable efforts to ensure that our services are not made instruments of wrongdoing. The obligations and prohibitions in Rules 1.2(d), 1.4(a)(5), 3.3(b) and (c), and 4.1(b) implicitly require that attorneys be aware of the risks that our skills may be sought to assist client malfeasance. Let's look at these rules a bit more closely:

Rule 1.2(d)

Rule 1.2(d) implicitly requires lawyers to inquire into and assess the facts and circumstances of a matter to avoid counseling or assisting a crime or fraud:

> A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.
>
> Comments 9 and 10 explain this subsection:
>
> Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.
>
> Comment 9.
>
> When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

These warnings are included in Rule 1.2, which lays out the duties of the lawyer and the client in a representation. For criminal defense lawyers, this rule is important because it permits us to limit our representations to discrete parts of a defendant's case, as long as that limitation is made explicitly (preferably in writing) with the client's "informed consent." The rule also lays out what I like to call the rules of the road: the client decides where to go; the lawyer decides how to get there. In this context, the rule provides the warnings stated above to make clear that certain objectives and/or certain means are out of bounds.

Rule 1.4(a)(5)

Rule 1.4(a)(5) requires lawyers to "consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law."

This requirement is part of the duty to communicate with a client about important matters on a regular basis. As part of this duty, is the duty to communicate clearly to a client that the attorney's representation will not include conduct that violates the rules or other law. The lawyer's obligation to have this consultation implies a corollary obligation to determine the client's intentions and expectations, not just at the beginning of the representation, but throughout.

Rule 3.3(b) and (c)

Rule 3.3(b) and (c) require us to make sure that no party or witness in our control violates the duty of candor to the court. These subsections of the Rule state:

> A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
>
> The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

Comments 10 and 11 to these subsections underscore the extreme seriousness of the duty to inform the court and disclose confidential information:

> 10. Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to

> the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done — making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.
>
> 11. The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

It's hard to imagine the criminal defense lawyer who hasn't felt caught at least once in their career between their duty of confidentiality to the client and their duty of candor to the court. Many calls to PACDL's Lawyers Assistance Strike Force raise this difficult issue. Implicit in the duty to ensure that what is provided to the court is the duty to continue to "assess the facts and circumstances" of each case on an ongoing basis.[2]

Rule 4.1(b)

Rule 4.1(b) also implicitly requires lawyers to ensure that clients are not attempting to defraud a "third person." The Rule states "In the course of representing a client a lawyer shall not knowingly fail to disclose a material fact to a third person when disclosure is necessary to avoid aiding and abetting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Comment 3 to this Rule, titled, "Crime or Fraud by Client" provides a complicated but helpful analysis of the competing interests:

> Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6. Rule 1.6 permits a lawyer to disclose information when necessary to prevent or rectify certain crimes or frauds. See Rule 1.6(c). If disclosure is permitted by Rule 1.6, then such disclosure is required under this Rule, but only to the extent necessary to avoid assisting a client crime or fraud.

All the rules described above confirm the attorney's duty to be on guard and accountable in their dealings with their clients. Compliance with these rules implies a continuing level of diligence and assessment, not just in the beginning of each representation, but as the representation is ongoing. The American Bar Association's amendment of Rule 1.16 makes this implied duty express.

The Amendment of Rule 1.16 and Opinion 513's Guidance on Due Diligence.

Even prior to its amendment, Model Rule 1.16, entitled Declining or Terminating Representation, contemplated an inquiry into a client's conduct and circumstances. In Pennsylvania, RPC 1.16(a)(1) states: "Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: the representation will result in violation of the Rules of Professional Conduct or other law." This mandatory prohibition against taking or continuing in a case where the representation will violate the law clearly implies that the attorney must be diligent from the beginning to prevent a violation from occurring. Willful blindness will not be tolerated.

Notwithstanding the clear requirements of rules to prevent lawyers from participating or assisting in crime, the ABA found itself under pressure from Congress and state and federal regulatory authorities to amend Rule 1.16 and make explicit the duty to "inquire and assess into and assess the facts and circumstances of each representation to determine whether the lawyer may accept or continue the representation."[3] The amendment also added the following language as MRPC 1.16(a)(4):

> Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: 4) the client or prospective client seeks to use or persists in using the lawyer's services to commit or further a crime or fraud, despite the lawyer's discussion pursuant to Rules 1.2(d) and 1.4(a)(5) regarding the limitations on the lawyer assisting with the proposed conduct.

As reported in the ABA Journal, at the ABA House of Delegates debate on the amendment, ABA Treasurer Kevin Shepherd urged "its adoption to help preserve state-based judicial regulation of the profession. Voting against the measure, he said, would not only run counter to long-standing ABA policy but also invite federal regulation of the lawyers."[4] In August 2023, the resolution passed, and the amendment was approved.

In August 2024, the ABA's Standing Committee on Ethics and Professional Responsibility ("Standing Committee") published Opinion 513 and Comments 1 and 2. The updated Comment [2] to Rule 1.16 adopts a risk-based analysis to determine "the required level of a lawyer's inquiry and assessment" which will "vary for each client or prospective client" based on the particular facts and circumstances of the representation. It provides a non-exhaustive list of five potentially relevant factors: "(i) the identity of the client, such as whether the client is a natural person or an entity and, if an entity, the beneficial owners of that entity, (ii) the lawyer's experience and familiarity with the client, (iii) the nature of the requested legal services, (iv) the relevant jurisdictions involved in the representation (for example, whether a jurisdiction is considered at high risk for money laundering or terrorist financing), and (v) the identities of those depositing into or receiving funds from the lawyer's client trust account, or any other accounts in which client funds are held."[5]

According to Opinion 513, "when Rule 1.16(a) was amended, it was anticipated that only certain representations would necessitate a significant inquiry, namely, those where there appeared to be a heightened risk of crime or fraud typically because of the nature of the representation or because of the appearance of "red flags."[6] Opinion 513 makes clear that when there are unresolved questions of fact after an initial inquiry, the lawyer must make additional efforts to resolve those questions by conducting further reasonable inquiry, but that a lawyer "need not resolve all doubt. Rather, if some doubt remains even after the lawyer has conducted a reasonable inquiry, the lawyer may proceed with the representation as long as the lawyer concludes that doing so is unlikely to involve assisting or furthering a crime or fraud."[7] Additionally, the rule states that the obligation is to "conduct a *reasonable* risk-based inquiry, not a perfunctory one and not one that involves a dragnet-style operation to uncover every fact about every client."[8]

Opinion 513 makes clear that the requirement to be vigilant is not a requirement to be perfect. A reasonable and careful analysis of risk factors will sometimes fail.[9] Failure is not the only metric for a violation of the rule and "does not establish that the lawyer's inquiry and assessment was unreasonable, because the lawyer's judgment should be evaluated at the time it was made, not in hindsight."[10] The type of assessment that the amendment requires is no more than what has already been required by the rules described above. Making this requirement explicit emphasizes the importance of the initial inquiry, and the continuing nature of the obligation to take care.

Conclusion

As stated above, the amendment to Rule 1.16 has not yet been adopted in Pennsylvania.[11] The Court may not seek this amendment because, as we have seen, the duty to assess a client's situation before and during a representation already exists in the rules. Nevertheless, both the amendment and Opinion 513 emphasize the risk that attorneys run when new clients waving red flags arrive at the door. As criminal defense lawyers, we often rely on that uncomfortable feeling in our stomachs to strengthen our inquiries and be on guard. Our awareness of danger will alert us to conduct the reasonable investigation necessary and ensure our compliance with the rules and the law.

NOTES:

[1] *See* American Bar Association Formal Ethics Opinion 513 at 2.
[2] MRPC 1.16 (a).
[3] MRPC 1.16(a).
[4] *See* https://www.abajournal.com/web/article/house-adopts-model-rule-changes-on-representation-after-heated-debate. ("According to the Report that accompanied the resolution to amend the rule, "concerns about lawyers' unknowing involvement in their clients' crimes has increased the risk of federal oversight. As one example, the proposed ENABLERS Act would regulate lawyers and law firms as "financial institutions" and require them to disclose suspicious activity by their clients. The ABA has lobbied for many years against the ENABLERS Act and other similar legislation, arguing that such laws could impose a major regulatory burden on lawyers and law firms, as well as negatively impact lawyer-client confidentiality. Advocates of (the amendment) say the change to the Model Rule will address the federal government's anti-money-laundering goals without compromising lawyer-client confidentiality and without subjecting the legal profession to federal regulation.").
[5] Opinion 513 at 6.
[6] *Id*.
[7] Opinion 513 at 7.
[8] *Id*.
[9] Opinion 513 also reviewed earlier related opinions that are worth reading on this issue:

> "ABA Formal Opinion 463 addressed the "lawyer as gatekeeper" theory, which is based on the idea that "the lawyer has the capacity to monitor and to control, or at least to influence, the conduct of his or her clients and prospective clients in order to deter wrongdoing." The Opinion concluded that "the Model Rules neither require a lawyer to fulfill a gatekeeper role, nor do they permit a lawyer to engage in the reporting that such a role could entail." The Opinion recognized, however, that "[i]t would be prudent for lawyers to undertake Client Due Diligence ("CDD") in appropriate circumstances to avoid facilitating illegal activity or being drawn unwittingly into a criminal activity," and that a lawyer's ethical obligations may give rise to a duty to inquire and to conduct an "appropriate assessment."

Thereafter, ABA Formal Opinion 491 explained that Rule 1.2(d) requires lawyers to inquire into and assess the facts and circumstances of a matter to avoid counseling or assisting a crime or fraud. …Opinion 491 then provided a list of facts—citing the ABA Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing ("Good Practices Guidance")—that could prompt the lawyer's duty to inquire."
[10] Opinion 513 at 8.
[11] As of this writing, Oregon and Wyoming have adopted a revised rule. Washington State Bar just approved amendments which are being sent to the Washington Supreme Court. A recommendation to amend might soon be on the horizon in the following states: Alaska, Massachusetts, New York (amendments will be considered by NYSBA in April 2025), and North Dakota, DC, Ohio, Texas, and Wisconsin.

About the Author

Ellen Brotman of Brotman Law is based in Pennsylvania, with offices in Philadelphia and Washington, D.C. Ellen founded her firm in March 2017 and her practices include professional responsibility and ethics, criminal defense, and appellate advocacy. She is licensed to practice in Pennsylvania, District of Columbia, and New York. She has over thirty years of experience including handling representations before the Disciplinary Board of Pennsylvania, providing ethics advice, and representing individuals in a wide variety of high-profile white-collar cases. Ellen is a member of the PACDL Board of Directors and a recipient of the Charles P. Gelso President's Award.

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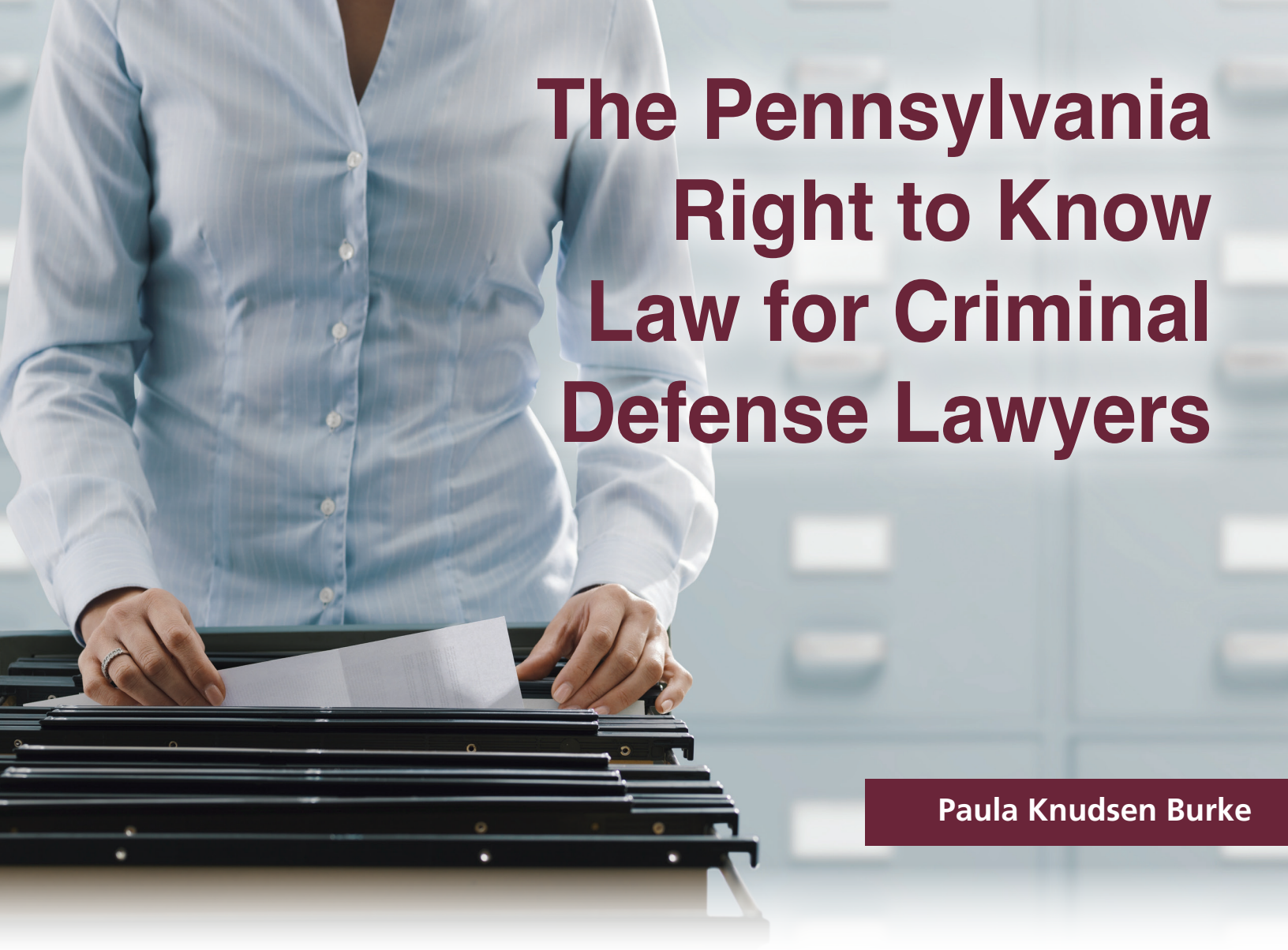


The Pennsylvania Right to Know Law for Criminal Defense Lawyers

Paula Knudsen Burke

A client is arrested and headed to trial. The prosecution turns over discovery. But what about facts, documents or other records that might be helpful for you to advocate for your client, but are not included in discovery? Or you represent a client where charges are possible but have not yet been filed. Some early information certainly could help shape defense strategy or tactics to minimize collateral consequences.

Criminal defense lawyers might consider filing public records requests. In Pennsylvania, the Right to Know Law ("RTKL"), codified at 65 P.S. §§ 67.101–67.3104, is the mechanism for obtaining public records.

Who can seek records?

While public records requests are sometimes thought to be used only by members of the media or gadfly citizens, the RTKL defines a "requester" as a person who is a legal resident of the United States and requests a record pursuant to the law.[1] In fact, the law specifically prohibits agencies from denying a requester access due to the intended use of the public record.[2] This means that criminal defense lawyers can and should avail themselves of RTKL requests that might be helpful for a particular client, or just as helpful information to have handy for everyday practice purposes.

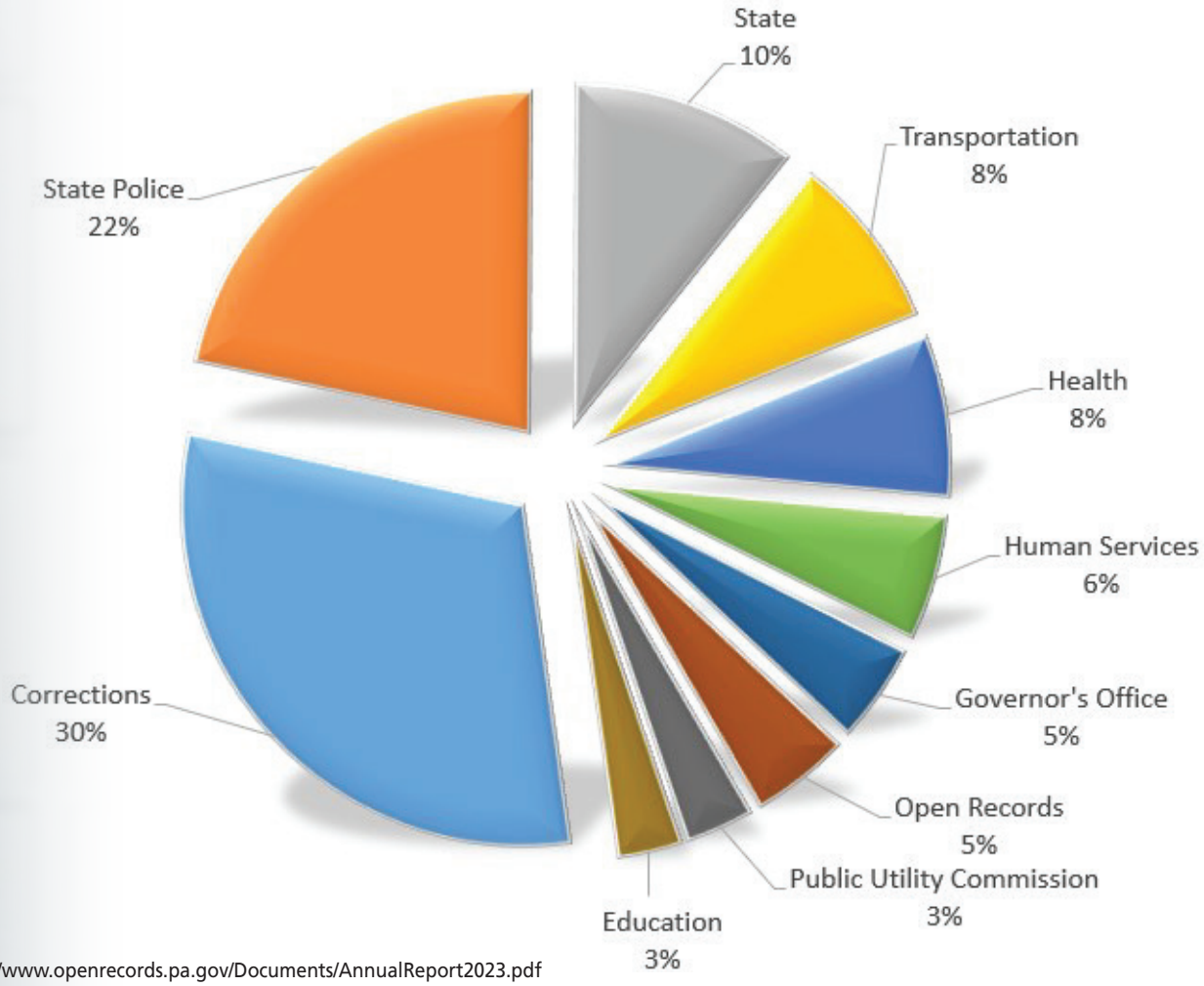
What kinds of records are available?

The definition of "record" under the RTKL is quite broad:

> Information, regardless of physical form or characteristics, that documents a transaction or activity of an agency and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the agency. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.[3]

Where to seek records?

The RTKL creates different categories of "agencies." A "local agency" includes local government units, authorities, boards, commissions and the like. Municipal police departments are "local agencies."[4] A "Commonwealth agency" includes executive branch departments, the Governor's office, the Office of Attorney General, the Department of the Auditor General, and the Treasury Department, among others.[5] The Pennsylvania Department of Corrections and the Pennsylvania State Police are both



https://www.openrecords.pa.gov/Documents/AnnualReport2023.pdf

Commonwealth agencies and both departments appear frequently in RTKL challenges.[6] In the state Office of Open Records 2023 report, DOC had 145 appeals and PSP 103 appeals, as shown in the chart, courtesy of OOR.[7]

The RTKL also separately defines "judicial agencies"[8] and "legislative agencies." Although at least one District Attorney tried to include this executive branch office[9] in the RTKL's definition of "judicial agency," the Supreme Court of Pennsylvania has rejected such an interpretation.[10] The type of records available from judicial and legislative agencies is much narrower than what is available from Commonwealth and local agencies. Only financial records may be obtained from judicial agencies[11] and "legislative record" is defined as 19 types of records.[12]

After considering what record is of interest and which agency likely holds that record, a requester (the person filing the RTKL request) must then identify the name and contact information of the "agency open records officer" or AORO. Each agency must designate an open records officer.[13] The Pennsylvania Office of Open Records ("OOR") maintains a database of agency open records officers throughout the Commonwealth, although sometimes AOROs change jobs, and the agency doesn't update the OOR database; therefore a phone call to may be necessary to confirm the contact information for the agency open records officer.[14]

How to seek records?

The OOR provides a standard RTKL form.[15] Some agencies, like the Pennsylvania State Police, also use their own form but will accept the OOR's standard form as well.[16] Requests may be submitted in person, by fax, email or U.S. mail. The request should be directed to the AORO. Make sure to keep a copy of the request, the manner in which it was sent, and date it was sent; if an appeal to the OOR is required (see page 16), this information will be required as part of the appeal. The request should be specific and not a fishing expedition. Requesters should avoid typical "lawyer" phrases, such as "any and all." The RTKL is meant as a way to access records, not to answer questions. The OOR maintains a Citizens' Guide that has additional practical tips on filing a RTKL request and related topics.[17]

Here is an example of a possible request:

DON'T DO THIS: *Dear Agency Open Records Officer, I would like you to tell me what happened when Officer John Smith left his post at the Maple Police Department. Why did the Neighborhood Police Department hire him? Did he engage in misconduct? Please tell me any and all things that he did wrong so I can use it to impeach him at later proceedings.*

BETTER IDEA: *To Maple PD Open Records Officer. I seek records of the agency's final action regarding the demotion or discharge of Officer*

O'Connor	Kaelen	T	Pittsburgh City Police Dept	12/12/2019	8/1/2018	employment as a police officer under the Act
Petro-Ryder	Rosemary	V	Philadelphia Police Dept	12/12/2019	10/25/2019	Permanent Physical or Psychological Impairement
Butler	Timothy	L	Elizabeth Borough Police Dept	6/18/2020	12/18/2018	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act
Cain	Antoine	R	Pittsburgh City Police Dept	6/18/2020	12/4/2018	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act
Dunne	Stephanie	D	Downingtown Borough Police Dept	6/18/2020	5/13/2019	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act
Friel	Barry	J	Valley Township Police Dept	6/18/2020	3/1/2018	Permanent Physical or Psychological Impairement
Kepple	Jared	E	Avonmore Borough Police Dept	6/18/2020	10/1/2018	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act
Kepple	Jared	E	Vandergrift Boro Police Dept	6/18/2020	2/5/2018	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act
Lehman	Matthew		Sharon City Police Dept	6/18/2020	6/5/2018	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act
Pisarcik	Kyle	A	Sykesville Borough Police Dept	6/18/2020	4/29/2019	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act
Pisarcik	Kyle	A	Reynoldsville Boro Police Dept	6/18/2020	4/27/2019	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act
Quinn	Timothy	J	Erie City Police Dept	6/18/2020	7/1/2020	Permanent Physical or Psychological Impairement
Talbert	Trent	N	Hanover Township Police Dept	6/18/2020	8/10/2018	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act
Talbert	Trent	N	Oakdale Borough Police Dept	6/18/2020	4/1/2018	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act
Marshall	Kaillie	M	Sharon City Police Dept	7/17/2020	4/1/2019	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act
Wallace	Scott	L	Philadelphia City Police Dept	9/17/2020	10/7/2018	Permanent Physical or Psychological Impairement
Coolen, Jr.	James		Philadelphia City Police Dept	11/5/2020	10/2/2019	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act
Molina	Alex	R	Jamestown Borough Police Dept	11/5/2020	9/10/2019	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act
Molina	Alex	R	South Pymatuning Twp Police Dept	11/5/2020	2/15/2019	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act
Moyer	Mitch	C	Harrisburg Police Dept	11/5/2020	8/29/2019	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act
Devault	Dustin	W	Forward Township Police Dept	12/10/2020	7/7/2020	Conviction for a disqualifying criminal offense and failure to maintain employment as a police officer under the Act

2023-01-19 2022-1974 PSP/RTK000002

A sample of records returned from the Pennsylvania State Police in 2023 in response to the author's RTKL request for municipal police officers whose MPOETC certifications were suspended, revoked or reinstated within a specified period of time.

John Smith in July 2024. Requester notes the Right to Know Law in Section 708(b)(7)(viii) states that information regarding discipline, demotion or discharge contained in a personnel file shall be exempt from disclosure. However, Section(b)(7)(viii) clarifies requesters are entitled to information regarding an employee's termination or demotion. "This subparagraph shall not apply to the final action of an agency that results in demotion or discharge."

EVEN BETTER IDEA: *To Neighborhood PD Open Records Officer. This is a request pursuant to the Right to Know Law. I seek records of the employment application materials, including writing sample and resume, for Officer John Smith, who was hired in December 2024. Requester notes that the Right to Know Law in Section 708(b)(7)(iv) states that "the employment application of an individual who is not hired by the agency" is exempt from disclosure. The legislature's intent was clear in drafting 708(b)(7)(iv); those applying, but not selected for state employment, should not be subject to public scrutiny. However, those applying and successfully obtaining public employment should be subject to public scrutiny through review of employment applications.*[18]

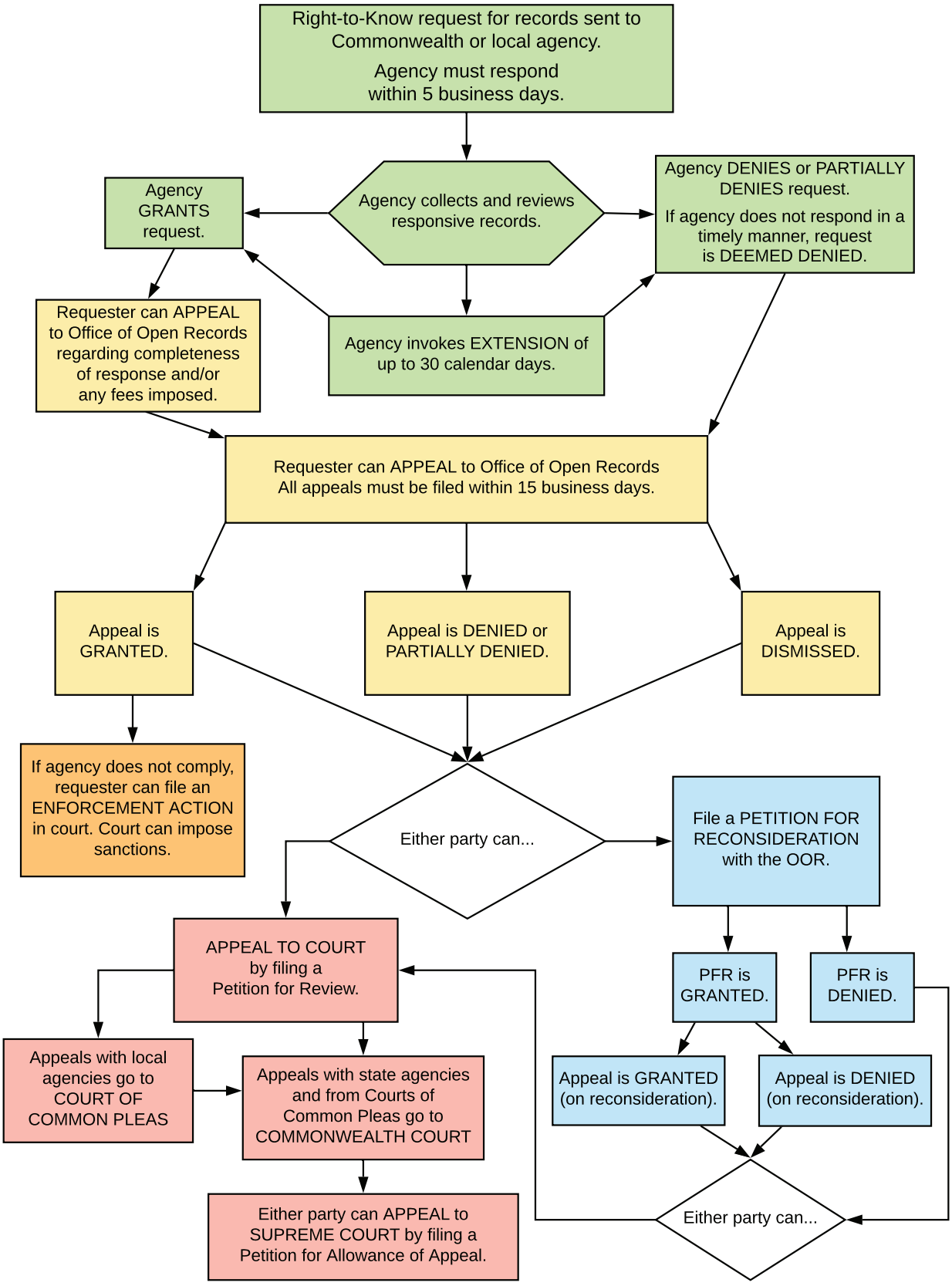
Thinking about the different agencies where records might be found allows for some creative lawyering. In the case of municipal police officers, a requester might consider filing RTKL requests with an employee's last place of employment, current place of employment and/or the Municipal Police Officers' Education and Training Commission (RTKL requests handled by PSP). The example above is an excerpt from a RTKL request the author submitted to the PSP seeking MPOETC records of officers whose certifications were suspended or revoked for the time period February 2019 through February 2022.[19]

What happens when a request is submitted?

An AORO must respond to the request within five business days.[20] Within that time period the AORO can grant the request in full or partially; deny the request; or issue an interim response extending the time for response.[21] Unfortunately, even for very basic information, agencies often invoke an extension. Section 902 allows an AORO to invoke an extension of 30 days for a number of different reasons, including the agency claiming the need for "legal review" of the requested records. The agency cannot take more than a 30 day extension unless the requester agrees in writing.[22] Occasionally, an agency will not respond at all, or within the required timeframe. These types of responses are called "deemed denied."[23]

Requesters who are dissatisfied with a full or partial denial or a "deemed" denial are permitted to appeal.[24] Appeals must be filed within 15 business days.[25] For most appeals, the appeal is filed with the Pennsylvania Office of Open Records.[26] Prior to the overhaul of the RTKL in 2008, if a requester wanted to appeal, they would have to go to court. With the approval of Senate Bill 1 of 2008, the legislature authorized the creation of a new office that would handle RTKL appeals—the Office of Open Records. "The OOR is a quasi-judicial, independent agency led by an Executive Director who is appointed by the governor to a six-year term. Within the OOR, 22 employees oversee and decide thousands of appeals per year, as well as perform dozens of trainings on the RTKL and Pennsylvania's open meetings law (the Sunshine Act)."[27] No lawyer is necessary for appeals at the OOR level and the process is free to use (no filing fees); the OOR aims to "make the process of filing an appeal as simple and foolproof as possible."[28]

Pennsylvania's Right-to-Know Law: Request through Appeal



For some appeals involving certain types of records, however, the appeal is not to the OOR, but rather to an agency's own appeals officer. For instance, County District Attorneys and the Office of Attorney General all utilize their own appeals officers within their respective offices.[29] However, District Attorneys' appeals officers only review records relating to access to criminal investigative records in possession of a local agency of that county;[30] other appeals not relating to criminal investigative records are handled by the OOR. If an appeal is filed with the OOR, but involves criminal investigative records, the OOR will transfer jurisdiction to the appropriate District Attorney appeals officer.[31]

After the OOR or an agency's own appeals officer makes a final determination, a requester may then seek judicial review—either in the Court of Common Pleas, or the Commonwealth Court. Courts of Common Pleas review appeals involving local agencies[32], such as municipal police departments, while the Commonwealth Court reviews appeals from Commonwealth agencies, legislative agencies, and judicial agencies.[33]

As an example of a local agency appeal, the OOR in May 2024 issued a final determination that the City of Harrisburg provide information about misconduct of five named police officers, among other records.[34] The City of Harrisburg appealed to the Dauphin County Court of Common Pleas, where the case is now pending.[35] Another example of a local agency appeal, which eventually made its way up on appeal to the Commonwealth Court, was a request for records related to a District Attorney's drug forfeiture funds. *In Lancaster County District Attorney v. Walker*, the OOR issued a final determination that the DA's office was required to release drug forfeiture records.[36] The District Attorney appealed to the Lancaster County Court of Common Pleas, which reversed the OOR. The requester then sought further review at the Commonwealth Court, which reversed the Court of Common Pleas.[37]

While the examples above proceeded from OOR to Common Pleas, RTKL requests involving Commonwealth, judicial and legislative agencies proceed immediately to Commonwealth Court. Such appeals are made from the agency's appointed open records officer, as in cases involving the Office of Attorney General,[38] or from the OOR to the Commonwealth Court. The Pennsylvania State Police, as noted in the chart above, is a frequent RTKL litigant. Just a few weeks ago a Commonwealth Court panel decision reversed the OOR's final determination in favor of the PSP and found that a portion of a request was sufficiently specific as it pertained to PSP communications about an arrest.[39]

A host of information about the RTKL, the appeals process, and a wide catalog of prior OOR final determinations can be found on the OOR's website: https://www.openrecords.pa.gov The website includes various search functions in the OOR Decisions (Docket Search), including searches by name of requester, county, issue, etc.

MVR and other video footage—NOT the RTKL!

Prior to 2017, motor vehicle recordings and other video footage from law enforcement could be requested under the RTKL. Then, after the Supreme Court of Pennsylvania's decision in 2017 allowing partial access to dash-cam video from a Pennsylvania State Police vehicle, the legislature quickly responded and passed a separate law regulating these recordings.[40] Act 22 of 2017[41] creates a process outside of the RTKL for requesting any "audio recording or video recording made by a law enforcement agency."[42] "Law enforcement" is defined as "a member of the Pennsylvania State Police, an individual employed as a police officer who holds a current certificate under 53 Pa.C.S. Ch. 21 Subch. D (relating to municipal police education and training), a sheriff, or a deputy sheriff."[43] Unlike RTKL requests, which can be filed at any time by a citizen of the United States, with an Act 22 request, there are strict temporal limits.[44] For example, a RTKL requester might have an interest in records that are several years or even several decades old. If the records still exist, pursuant to the agency's retention schedule, then a requester may seek them (although ultimately, particularly with criminal records, agencies and courts may be reluctant to release "cold case" records[45]). By contrast, under Act 22, a requester must file a written request "within 60 days of the date when the audio recording or video recording was made." In addition, the request form requires the requester to indicate why they are interested in the information and should be granted access to the same.[46] Although the OOR does not adjudicate Act 22 requests,[47] the agency maintains on its website a significant amount of information about the law and requesting access.[48]

Conclusion

The RTKL provides a valuable alternative to criminal defendants and their counsel seeking additional records and information possessed by government sources and related to the underlying charges and eventual prosecution. Utilizing this public records statute can help circumvent delays in the prosecution's production of relevant discovery and may provide access to key information not in possession of the respective prosecutor yet relevant to establishing a defendant's defense or alibi, or to disputing key aspects of the state's case against the defendant. While defense attorneys may excel in their Perry Mason[49] moments in court, vigorous advocacy for clients facing criminal charges may begin by filing a request with an agency seeking records that may have a decisive impact on your client's fate.

NOTES:

[1] 65 P.S. § 67.102.
[2] *Id*. § 67.301(b) (prohibiting Commonwealth agencies from denying requester access based on intended use of record); *id*. § 67.302(b) (prohibiting local agencies from denial based on intended use of record); *id*. § 67.303(b) (same for legislative agencies); and *id*. § 67.304(b) (same for judicial agencies); *see also id*. § 67.102 (defining "Commonwealth agency," "judicial agency," "legislative agency," and "local agency").
[3] *Id*. § 67.102.

▶ **Click here to view and/or print the full notes section for this article.**

About the Author

Paula Knudsen Burke is the Pennsylvania-based attorney for the Reporters Committee for Freedom of the Press, a nonprofit legal services organization based in Washington, DC. She has worked as both an attorney and journalist and has filed her fair share of RTKL requests and appeals. She appreciates the contributions to this article by her colleague Zach Babo, the E.W. Scripps Legal Fellow at the Reporters Committee.

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Defending the Future: The Power of Mentorship in Criminal Defense

Mentorship is the backbone of a strong and enduring criminal defense community. Whether it is guiding a new attorney through their first suppression hearing, offering strategic insights on plea negotiations, or simply being a sounding board during challenging cases, experienced lawyers play a critical role in shaping the next generation of defense attorneys. But mentorship is more than just imparting legal knowledge—it's about instilling confidence, ethical responsibility, and resilience in a demanding profession. In this article, we've gathered perspectives from criminal defense attorneys who have shared their experiences, insights, and lessons learned through mentoring. Their stories reflect the power of guidance, the importance of paying it forward, and the ways in which mentorship strengthens not just individual lawyers, but the entire defense bar.

David Crowley, Bellefonte

David Crowley has been a PACDL member since 1988, was its secretary for the first decade of this millennium and is the proud recipient of its 2006 Alan Jay Josel Advocacy Award. He has been the chief public defender of Centre County since 1989 where his practice currently focuses on appellate work and the state parole revocation hearings held at SCI Rockview and SCI Benner Township.

What inspired you to become a mentor, and how has the experience enriched your growth? Though I am descended from a long line of teachers who instilled in me the knowledge that there is great joy and satisfaction in making small contributions to the growth and success of others, to the extent some view me as a mentor it is a result of my unique career path. I have had the great fortune to have spent nearly 40 years running a public defender office that's only 15 minutes away from a major university. This has led to scores of interns spending a semester with me and dozens of assistants starting their careers with me. Being asked to present at conferences for PACDL and other professional associations has brought me into frequent contact with attorneys of all levels of experience seeking a little insight into experiences unique to me. I try to give freely a little time to anyone who asks because it does feel good helping others. During the 20 years I served on the faculty for the public defender's trial and appellate skills training at Dickinson, I always ended the week feeling that I learned as much or more from teaching than the students.

What qualities or skills do you believe are essential for being an effective mentor of criminal defense attorneys? To the extent mentoring boils down, sharing your experiences to support someone less experienced, one must have "walked the walk." You have to have survived enough battles to stake a claim to some level of expertise before you "talk the talk." A mentor must be honest, a good listener, and a clear communicator to effectively support a mentee. To these commonly recognized qualities I would add humility. One of my mentors is Fred Friedman, the longtime Minnesota public defender and radio personality. Fred is fond of saying we only learn by story, and we learn best by the stories of our failures. One should never be the hero of one's own story. Successful experiences are best shared with a measure of self-deprecation attributing to sheer luck, that which is rightfully hers.

How do you approach building trust and a strong rapport with your mentees? Mostly you are there to listen. Ideally, by talking it through with minimal cues from you they come to the best conclusion. A quick response to all questions asked is essential to the relationship. You cannot dodge phone calls and emails. You must be honest and admit when you do not have a good answer to a question. When you do have a definitive answer to a specific question, it should be documented with references to statute and case law.

Can you share an example of a mentoring moment that had a significant impact on a mentee's development? A good deal of the support I give to new attorneys here involves rebuilding the confidence lost in law school and suppressed by an occasionally cranky judge or consistently smug prosecutor. Over the years I have had several attorneys thank me for the confidence I showed in them by hiring them fresh out of law school or assigning them a big case. Sometimes my part of rebuilding confidence is as simple as spending a little time listening to something they need to vent about. Sometimes it's not even about the job. I once spent a two-hour drive to Harrisburg learning about the fire pits in Iraq. A former assistant recently stopped by to thank me for christening her "Boudica." Sensing her confidence might be waning as a major trial approached, I had told her she was the toughest person I knew. I said she was the reincarnation the Celtic warrior queen who devastated roman legions and burnt London to the ground. She said she carries my history lesson with her because her new office does not have our camaraderie and mutual support.

What are common challenges you encounter as a mentor, and how do you overcome them? Finding the time to do everything you would like to do is the biggest challenge to all things in life. Selectivity has to be the response here. I do not think that it is too common, but I have had experiences with people who are not sincere in their requests for guidance. You have to quickly weed out and block the game players. You also have to continually evaluate where your expertise lies and decline and refer as you deem appropriate. I am not the trial attorney I was ten years ago so most of the mentoring of our new attorneys is delegated to our trial deputy and first assistant. I think I am a better chief public defender than I was yesterday. These days I tend to prioritize calls from my brother and sister chiefs.

How do you balance guiding your mentee while allowing them to develop their own professional style? You must be open-minded. Situations where I have felt compelled to grab a mentee and pull him back from the edge are extremely rare. I generally start with "what do you think you should do?" I follow that up with "why?" and if I am subtly guiding the discussion they generally come to the conclusion I would have offered on their own. Sometimes they even come up with something better than I would have offered. In terms of style, my advice has always been "what works for me might not work for you." Within the parameters of what the profession demands of you in terms of honesty, civility and decorum find a way to comport yourself in a manner that is true to who you are. No one likes or respects a phony.

What advice would you give to attorneys considering becoming mentors in the criminal defense field? The profession is continually evolving. Each generation of lawyers is better equipped for practice than the last. Do not judge too quickly the intelligence and work ethic of those behind you in experience.

What strategies do you use to help mentees navigate the challenges of the criminal defense field, such as high-stress situations or ethical dilemmas? Especially when it is also a supervisory relationship, I look for signs of stress and ask if I can help. My office is always a safe place to vent frustrations even if the frustration is with me. If they cannot come to a resolution on their own I take pains to make sure they feel they are contributing to the resolution.

How do you measure success in a mentoring relationship? A kind word during a conference break from someone I helped years ago goes a long way.

Arthur T. Donato, Jr., Media

Since 1980, Mr. Donato has represented individuals and corporate entities in complicated criminal cases in both State and Federal Courts. He was a founding member and past president of both the Delaware County and Pennsylvania Associations of Criminal Defense Lawyers. Mr. Donato was privileged to serve on the Pennsylvania Supreme Court Criminal Procedural Rules Committee from 1992 to 1998. He is a Fellow of the American Board of Criminal Lawyers, Fellow of the American Bar Foundation, and a Fellow of the American College of Trial Lawyers. Since 1981, Mr. Donato has been a visiting lecturer at Villanova University speaking on "Use of the Insanity Defense in Criminal Prosecutions" and currently is an instructor in the Sociology and Criminal Justice Departments teaching "Sociolegal Aspects of Criminal Procedure" and "The Supreme Court and its Influence on American Society".

What inspired you to become a mentor, and how has the experience enriched your growth?

In my first years as a lawyer, many people were very generous with their time and advice. While not a comprehensive list, I credit my success to the following lawyers: Don Goldberg, John Rogers Carroll, Dick Sprague, Ron Kidd, Chuck Peruto, Bobby Simone, Tom Livingston, Carmen Bellefonte, Skip Miller, Frank Lord, Charlie Gelso, Albert Krieger, Neal Sonnett, and others. While these names are not recognizable to many of our members, as mine won't be 50 years from now, these are the people who taught me the professionalism of mentoring others. A question from a younger lawyer is a little gift from the profession, and the opportunity to help is very rewarding in itself.

What qualities or skills do you believe are essential for being an effective mentor of criminal defense attorneys?

A good mentor loves being a lawyer, understands the law, and is very understanding of the difficulties presenting to young lawyers. I vividly remember those days in the early '80's when I just didn't know what to do. I remember what it's like to have to admit I needed help to an older lawyer for whom I had great respect, and the internal courage required to reach out for help. So, I know the humility necessary to answer a question and take the time to do it gently and with encouragement.

How do you approach building trust and a strong rapport with your mentees?

In addition to what I've said above, it is taking the time, respecting the 'mentee' and his or her predicament.

Can you share an example of a mentoring moment that had a significant impact on a mentee's development?

I remember calling Don Goldberg with a question about a complicated bank fraud, money laundering case–my first one. I told him I had no idea what I was doing, only handling state prosecutions before that case. He invited me to lunch and asked me to bring the indictment and other documents with me. We discussed the case; he could not have been nicer or more encouraging. He answered all my questions, and as importantly, told me there was no 'magic, to practicing in Federal Court. "If you're a good lawyer in State Court, you'll be a good lawyer in Federal Court." "Be prepared, rely on me when you need to, read, and understand the caselaw." It was quite a moment. And, the next bank fraud, money laundering case I had was referred by him. That's a perfect mentoring moment—can't make more of an impact than that.

What are common challenges you encounter as a mentor, and how do you overcome them?

The biggest challenge is to take the call, put everything else aside, concentrate on the individual and the problem presented, and make sure he or she feels comfortable following up. "'Sorry to bother you again.' It's never a bother, feel free."

How do you balance guiding your mentee while allowing them to develop their own professional style?

It's important to emphasize that everyone has their own style and how important it is to "be yourself." I knew not to copy anyone–talk or argue or question like them. My style is not as bombastic as some of my mentors, not as dry as others. Being like someone else isn't the point. Helping people develop their own style is very much a part of mentoring.

What advice would you give to attorneys considering becoming mentors in the criminal defense field?

I'd advise them to do it. Try to find lawyers who they can help and reassure them that the help is willingly and enthusiastically given.

What strategies do you use to help mentees navigate the challenges of the criminal defense field, such as high-stress situations or ethical dilemmas?

I discussed the stress of being a criminal defense lawyer and the best ways to have a perspective to deal with it. I encourage young lawyers to reach out to me with any ethical dilemmas to discuss them and get input on the best way to deal with them.

How do you measure success in a mentoring relationship?

If it's an open, honest relationship making the younger lawyer comfortable to freely seek advice, it's successful.

Caroline G. Donato, West Chester

Caroline G. Donato is a Partner in MacElree Harvey's Criminal Defense Practice Group, focusing on federal and state business compliance matters, administrative investigations, Title IX investigations, CYS investigations, grand jury investigations, and defending criminal allegations. Caroline has been a proud PACDL member since 2014, has served on the Board of Directors since 2020, and she currently serves on the Executive Committee as the Secretary.

What inspired you to become a mentor, and how has the experience enriched your growth?

When there is an opportunity to do for others as others have done for me (and continue to do), I embrace it. True mentorship is organic, especially when there is a motivated, driven, and interested mentee. I think mentorship is a spectrum of involvement with another. On the most acute end of that spectrum, mentorship reinforces that I should always operate at peak potential, as is asked of the mentee, and take my own advice in challenging circumstances.

What qualities or skills do you believe are essential for being an effective mentor of criminal defense attorneys?

Patience and consistent, constructive feedback and reinforcement in the mentee's effort with work product. If the mentor does their job right, eventually the mentee will be doing their own assignments in their own cases one day, and if mistakes or misdirection can be addressed now while the responsibility rests with the mentor, then the mentee will be less likely to make the same mistakes on their own when it counts for their clients. That trend then translates to the mentee's mentee one day, and so on.

How do you approach building trust and a strong rapport with your mentees?

Clear expectations, honest feedback, encouragement to learn without judgment of mistakes, while simultaneously creating an environment where the feedback in an assignment becomes collaborative and neither the mentor nor mentee are concerned about hurting the other's feelings when striving for the best work product for the client.

Can you share an example of a mentoring moment that had a significant impact on a mentee's development?

I gave an assignment to a mentee in a serious case and asked her to focus on specific issues. In that process, she identified an additional issue, and she brought it to my attention. I was not receptive, and she persisted. She explained the new issue again, but in a different way. It was a good issue, and we ultimately raised it in the case. As a result of that specific issue being raised, during cross examination, the Commonwealth revealed an additional material issue, which led to the entire case being withdrawn. This is a long-winded example of witnessing professional growth in a mentee, which was a very cool experience for both of us.

What are common challenges you encounter as a mentor, and how do you overcome them?

So long as the mentee cares about the task and applies effort and exhibits genuine interest and concern, I experience no real challenges.

How do you balance guiding your mentee while allowing them to develop their own professional style?

The mentee is encouraged to observe various attorneys in court and take on various assignments from others. Over time, with experience, exposure, and encouragement, the mentee will find, adopt, and have confidence in their own voice and process.

What advice would you give to attorneys considering becoming mentors in the criminal defense field?

If you are going to do it, do it well. Spend the time and energy on a mentee as others have spent on you.

What strategies do you use to help mentees navigate the challenges of the criminal defense field, such as high-stress situations or ethical dilemmas?

I seek input from my own mentors, and if I came across a high stress situation or dilemma, I peripherally incorporate the mentee in the process so that she can learn how to navigate it without having any actual responsibility.

How do you measure success in a mentoring relationship?

When the mentee shows unreserved and independent thought and analysis and eventually succeeds on their own.

Philip Gelso, Kingston

Philip Gelso concentrates his practice in the areas of criminal and civil litigation. He is admitted to practice before the state and federal courts in Pennsylvania as well as the U.S. Court of Appeals for the Third Circuit and the U.S. Supreme Court. He served as President of the Board of Directors of Pennsylvania Association of Criminal Defense Lawyers (PACDL) from 2015 to 2017 and currently serves as a Past President, Co-chairperson of the Education Committees and Editor-in-Chief of *For The Defense*. He also serves as a board member and Treasurer of the PACDL Foundation for Justice. He has received PACDL President's and Directors Commendations and the 2018 PACDL Charles P. Gelso President's Award. He has lectured at Continuing Legal Education Seminars and webinars sponsored by PACDL, PBA and the Wilkes-Barre Law and Library Association.

What inspired you to become a mentor, and how has the experience enriched your growth?

I have been fortunate to have several mentors during my life and in their unique way, each has inspired me to be a mentor for others. In each mentorship, I have found that I benefited from the relationship. For example, I participate in a mentorship program where I was paired with a 1L who has an interest in pursuing a criminal defense career. This is a remote mentorship where we meet monthly to discuss law school experience/issues, career options, and sometimes just life. I found my role was often one of actively listening, framing the issues, and suggesting possible solutions. Upon graduation and admission to the bar, our mentorship relationship turned into a friendship. It is one I continue to cherish today.

What qualities or skills do you believe are essential for being an effective mentor of criminal defense attorneys?

Effective communication is the key to a successful mentorship relationship. Many issues vie for time, but giving your mentee your complete attention is paramount for success. This means listening conscientiously, being responsive, maintaining confidences, and always being a positive role model.

How do you approach building trust and a strong rapport with your mentees?

My experience has been that trust can only be built and a strong rapport developed by meeting regularly and staying in touch between meetings. Making a commitment to regular contact communicates to the mentee that they matter to you and that they are a priority. This commitment creates a foundation of trust and develops a strong rapport.

Can you share an example of a mentoring moment that had a significant impact on a mentee's development?

My mentoring moments come inside and outside of formal mentoring relationships. I recall a time when someone sought my advice about whether they should leave their law firm. I listened to why they wanted to leave and the benefits of staying. I explained several considerations for them to think about and we had several intense conversations about how best to proceed. In the end, I believe the person made the right decision and the framework we worked out together led them to that decision.

What are common challenges you encounter as a mentor, and how do you overcome them?

The biggest challenge to a mentor relationship is making the time for the relationship. Like any relationship, it requires time and attention, and both the mentor and mentee need to be committed to its success. For me, I schedule meetings and use reminders to connect with the mentee to ensure it remains a priority.

How do you balance guiding your mentee while allowing them to develop their own professional style?

I focus on helping a mentee find the solutions, rather than solving the problem for them. This is best accomplished through asking questions, posing alternative approaches and frameworks, and working together toward the mentee finding his or her own solutions.

What advice would you give to attorneys considering becoming mentors in the criminal defense field?

I think that mentorship opportunities arise every day, and they do not have to be part of a formally established program. Since I believe that commitment to the mentorship relationship is essential to its success, a person considering becoming a mentor must prioritize the relationship. A mentor must serve as a positive role model and strive to be their best self. When a mentee feels valued and important to the mentor, their growth and development is limitless.

What strategies do you use to help mentees navigate the challenges of the criminal defense field, such as high-stress situations or ethical dilemmas?

When I was younger, my role models always appeared to be calm, cool, and collected. As time passed, I discovered that this perception was far from reality and found great comfort in knowing that they were stressed too. I like to share that insight with a mentee so that they know I have felt (and continue to feel) the same way that they do and that they are not alone. On the more practical side, I often suggest that they pause in stressful situations and wait a moment or two (or more) before reacting as I found that initial reactions are not often the best ones.

How do you measure success in a mentoring relationship?

My measure of success in a mentoring relationship is when I see the mentee succeed personally and professionally.

Peter Kratsa, West Chester

Pete is the Chairperson of MacElree Harvey's Criminal Defense Practice Group. Despite his boyish good looks, he has been a criminal defense attorney for over 30 years. His practice includes representation of clients in state and federal criminal trials, grand jury investigations, internal investigations, appeals, state and federal regulatory matters, and juvenile delinquency matters.

What inspired you to become a mentor, and how has the experience enriched your growth?
I became a mentor despite myself. In my experience, criminal defense lawyers tend to be silos. Playing well with others is not our strong suit. Nevertheless, through happenstance and the perseverance of younger lawyers, I have found myself mentoring younger practitioners over the past decade-plus and the experience has been personally and professionally enriching. Observing mentees advance their legal skills and grow their confidence (and practices) is rewarding. Collaborating with these same lawyers is also beneficial to my own practice.

What qualities or skills do you believe are essential for being an effective mentor of criminal defense attorneys?
The ability to communicate and to listen.

How do you approach building trust and a strong rapport with your mentees?
Trust is fostered by assigning responsibilities and not interfering or looking over the mentee's shoulders. Encouraging feedback is also essential.

Can you share an example of a mentoring moment that had a significant impact on a mentee's development?
Allowing a mentee to prepare and handle the examination of witnesses at trial. Sitting second chair is a nice way to learn, but actively participating is much better.

What are common challenges you encounter as a mentor, and how do you overcome them?
A common challenge is not listening or being open to hearing mentees' opinions. A solution is to encourage them to tell me to shut up and listen.

How do you balance guiding your mentee while allowing them to develop their own professional style?
I share advice but recognize we each have our own style of litigating. They can borrow what they wish from me and develop their own identity.

What advice would you give to attorneys considering becoming mentors in the criminal defense field?
Even if you're resistant to it (like I was), you should try it. While you may feel old, it's a rewarding experience.

What strategies do you use to help mentees navigate the challenges of the criminal defense field, such as high-stress situations or ethical dilemmas?
Whether dealing with a stressful client, unreasonable prosecutor, or complicated ethical dilemma, talk it out with your colleagues. Obtaining different perspectives will get you to the right decision.

How do you measure success in a mentoring relationship?
I measure their success by their independence from me.

Mentorship is more than just a professional obligation—it is a cornerstone of a strong and capable defense bar. By sharing knowledge, offering guidance, and fostering confidence in newer attorneys, experienced criminal defense lawyers ensure that the principles of justice and zealous advocacy continue to thrive. The insights shared in this article highlight the profound impact mentorship has on both mentors and mentees, reinforcing the idea that no lawyer succeeds alone. A heartfelt thank you to those who took the time to contribute their experiences and wisdom.

NOTICE OF 2025 PACDL ANNUAL MEETING OF MEMBERS AND OFFICERS AND DIRECTORS NOMINATIONS PROCESS

In accordance with PACDL Bylaws, notice is now given that the PACDL Annual Meeting of Members shall be held on the date, time, and place and for the purposes specified below:

Date: Thursday, April 3, 2025 at 12:30 p.m.

Place: Harrisburg Hilton
1 North Second Street
Harrisburg, PA 17101

Purposes:

1) Election of Board Members and Officers. At the annual meeting, officers and directors shall be elected by members in good standing who attend the annual meeting.

2) Any other business properly before the Association.

Nomination Process.

Any member qualified to vote may be nominated as a candidate for any Officer or Board of Director position. A member may be nominated by one of three means:

a) by the Board Governance Committee;

b) any member of the Association qualified to vote may nominate by petition any other Member qualified to hold office; or

c) any member qualified to vote may nominate by petition himself or herself.

The Board Governance Committee is charged with recruiting and nominating candidates for election as Directors and Officers of the Association. It will nominate qualified candidates, endeavor to assure diversity, and consider candidates' years of membership and service to the Association and the profession.

The Association has notified its members of the candidates selected by the Board Governance Committee. Thereafter, any member of the Association qualified to vote may self-nominate or nominate another member qualified to hold office. Individuals who want to submit a nomination petition must do so no later than March 3, 2025 by forwarding it to PACDL's office. A copy of a petition may be obtained by calling PACDL at 717.234.7403.

Eligibility.

Only members with voting rights and whose dues are current at the time of his/her candidacy may be candidates. A written nomination petition must be forwarded to PACDL, 214 Senate Avenue, Suite 602, Camp Hill, PA 17011 or winters@pacdl.org signed by at least twenty (20) members in good standing no later than March 3, 2025.

Questions.

If you have any questions, please contact PACDL at 717.234.7403.

Notice of 2025 PACDL Annual Membership Meeting

The 2025 Annual Membership Meeting of PACDL is scheduled for Thursday, April 3, 2025 at 12:30 p.m. at the Harrisburg Hilton. The Annual Membership Meeting is being held for the purposes of the election of officers, consideration of the legislative platform, changes in the bylaws, election of directors to the PACDL Foundation Board of Directors and for any and all other business that may come before the membership.

Election of PACDL Officers.
The Board Governance Committee has announced the following slate of officers:

President: Brian J. McMonagle, Philadelphia
President-Elect: Jason Dunkle, State College
Vice President, Western District: Amy Levenson Jones, Pittsburgh
Vice President, Middle District: Edward F. Spreha, Harrisburg
Vice President, Eastern District: Michael Winters, Lancaster
Treasurer: Ashley E. Shapiro, Philadelphia
Secretary: Caroline G. Donato, West Chester

Note: Mr. McMonagle currently serves as PACDL president after having ascended to the office in September 2024 following the resignation of the president. Under the bylaws, Mr. McMonagle retains the office of President for the 2025-2026 term and has the option to renew his tenure for an additional term in 2026.

Platform Revision for Review and Consideration. The 2025-2026 proposed redline of the platform is indicated below. The PACDL platform is the policy blueprint for PACDL's legislative activity and is scheduled for consideration at the PACDL Annual membership meeting. Language that is stricken is proposed to be deleted. Any words underlined and appearing in bold, blue font color are proposed to be added.

12. Indigent Defense (2018), Rev. 2025

~~Pennsylvania's failure to provide any state-based funding for indigent defense must end. Individual defense counsel owes the same duty under the Sixth Amendment of the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution to indigent clients as those who privately retain him/her. PACDL supports reforms that enhance the delivery of defense services to ensure this obligation is met.~~

a) PACDL supports adequate State funding to ensure indigent defendants receive effective legal representation by addressing chronic local underfunding that leads to excessive caseloads, limited investigative resources, and funding disparities across jurisdictions.

b) Additionally, PACDL advocates for reforms to conflict counsel funding to:

- **Align attorney hourly rates with federal Criminal Justice Act (CJA) rates.**
- **Include annual adjustments for inflation and cost-of-living.**
- **Adhere to national workload standards for criminal defense.**
- **Allow flexibility to exceed hourly caps when necessary for an adequate defense.**

c) PACDL also endorses state tax credits for corporate entities investing in 501(c)(3) organizations that:

- **Fund, promote, and offer indigent defense CLE programs.**
- **Offer scholarships, grants, or CLE reimbursements to incentivize participation in indigent defense training focused on advocacy, forensic evidence and other critical topics.**
- **Provide targeted grants for rural and underserved areas where resources are scarce and to support loan forgiveness and competitive salaries to attract public defenders to high-need regions.**

Proposed Bylaw Amendments.

The Board of Directors proposes the following changes to the PACDL Bylaws. Any items in red font and struck through are proposed to be deleted. Language that is underscored and in blue font is proposed to be added.

Notice of 2025 PACDL Annual Membership Meeting

Article XIII. Awards
The Pennsylvania Association of Criminal Defense Lawyers shall present the following awards and commendations:

(a) The Liberty Award (one annually).
~~Presented to an individual, group or organization in recognition of a continuing commitment to the principles of liberty and equal justice under the law. Recipient(s) to be chosen by the President after consultation with the other officers.~~ The Liberty Award is presented annually to an individual, group, or organization that has demonstrated an unwavering and enduring commitment to the principles of liberty, justice, and equality under the law. This prestigious award honors those whose actions, advocacy, or leadership have made a significant and lasting impact in upholding fundamental rights and freedoms and promoting social justice for all. The recipient(s) will be chosen by the President, after consultation with the other officers, based on the significance and lasting impact of their contributions.

(b) The Charles P. Gelso **and Arthur T. Donato, Jr.** President's Award (one annually).
~~Presented to a member in special appreciation of outstanding contributions to the Association. Recipient to be chosen by the President.~~ This prestigious award is presented annually to a member who has made exceptional contributions to the Association, demonstrating leadership, dedication, and a profound commitment to its mission and values. The recipient must exemplify the highest standards of professional integrity, service, and support, reflecting the commitment and dedication of both Charles P. Gelso and Arthur T. Donato, Jr. The recipient will be selected by the President, who will base their decision on the nominee's sustained and outstanding engagement with the Association's work, and the positive influence the individual has had on the Association and its members.

(c) President's and Directors' Commendation(s) (number at the discretion of the President and Directors).

~~Presented at the discretion of the President and Directors to a member or members in recognition of special contributions to the Association during the previous year. Recipient(s) to be chosen by the officers and a member of the Board of Directors designated by the officers.~~

The President's and Directors' Commendation(s) are awarded at the discretion of the President and the Directors to one or more members in recognition of their exceptional contributions to the Association during the preceding year. These commendations honor individuals whose dedication, service, and efforts have had a significant and positive impact on the Association, whether through leadership, volunteerism, innovation, or other forms of engagement that advance the goals and objectives of the Association

(d) The Alan Jay Josel Advocacy Award (one annually). ~~Presented to a member in recognition of extraordinary advocacy in one or more cases, causes or issues during the previous year. Recipient to be chosen by the President after consultation with the other officers.~~
The Alan Jay Josel Advocacy Award is presented annually to a member who has demonstrated extraordinary advocacy in advancing one or more critical cases, causes, or criminal justice reform issues during the preceding year. This prestigious honor recognizes individuals whose passionate commitment to justice and tireless efforts have had a significant impact on the criminal defense legal community or specific groups in need as did Alan Jay Josel, a criminal defense lawyer from Montgomery County for over 20 years and former Chief Public Defender. The recipient must exhibit exemplary skills in advocacy, demonstrate a profound dedication to promoting positive change, and have contributed meaningfully to the protection and advancement of rights and interests through the individual's work. The recipient will be selected by the President, following consultation with the other officers, based on the individual's exceptional contributions to criminal defense advocacy in the previous year.

PACDL Foundation for Justice Annual Meeting
The Annual Meeting of the Pennsylvania Association of Criminal Defense Lawyers Foundation for Justice is scheduled for Thursday at 12:45 p.m. at the Harrisburg Hilton. In accordance with Article IV, Section 3 of the Foundation's Bylaws, no more than eight (8) directors of the Board shall be elected by the members of the Association at its Annual membership meeting. If you have any questions, please contact Beth Winters at 717.234.7403.

NOTICE OF 2025 ANNUAL MEETING OF THE PENNSYLVANIA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS FOUNDATION FOR JUSTICE

In accordance with the Pennsylvania Association of Criminal Defense Lawyers Foundation for Justice (Foundation) Bylaws, notice is now given that the Foundation shall hold its Annual Meeting on the date, time, and place and for the purposes specified below:

Date: Thursday, April 3, 2025

Time: Immediately following the Association's Annual Meeting (approx. 12:45 p.m.)

Place: Harrisburg Hilton
1 North Second Street
Harrisburg, PA 17101

Purposes:

1) Election of Board Members and Officers. At the annual meeting, officers and directors shall be elected by members in good standing who attend the annual meeting.

2) Any other business properly before the Association.

Election Process: According to the Bylaws, up to eight (8) Directors may be elected by PACDL members qualified to vote at the Annual Meeting.

Eligibility: Only members with voting rights and whose dues are current at the time of his/her candidacy may be candidates for the Foundation Board of Directors. If interested, please submit a letter of interest to Beth Winters, PACDL Foundation for Justice, 214 Senate Avenue, Suite 602, Camp Hill, PA 17011 or winters@pacdl.org no later than March 3, 2025.

The Foundation: Members of the Board of the Foundation govern and act to help the Foundation achieve its charitable, scientific, and educational purposes listed below. Additionally, the Board has set a personal fundraising goal for each director to help the Foundation achieve its charitable purposes.

a) Provide financial support, scholarships and grants for criminal defense attorneys to attend educational events, seminars, and trainings offered by the Pennsylvania Association of Criminal Defense Lawyers (PACDL) and other approved training providers so that the criminal defense attorneys are better informed, prepared, and positioned to be the best advocates for those accused of crimes;

b) Restore a balanced, common sense perspective to the administration of criminal justice by contributing thought leadership and research at a variety of public policy forums, editorials, and other venues including media advocacy;

c) Provide opportunities through fellowship and work-study programs for graduating law school students and newly graduated law students concerning criminal justice issues;

d) Educate the public, judges, and the media to the benefits of a fair and balanced criminal justice system that ensures that criminal defense attorneys can most effectively represent the accused and ensure that client constitutionally guaranteed rights are protected;

e) Build a network of advocates, leaders and legal scholars, and form partnerships with other associations and organizations to focus on the intersection of equal justice, education, and public policy research; and

f) Provide other programs and initiatives in further of the other lawful purposes authorized by 15 PA.C.S.A. § 5301 and Section 501(c)(3) of the Internal Revenue Code including general education and training programs for members of the public and others.

Questions.

If you have any questions, please contact PACDL at 717.234.7403.

Real Life Lessons In Marketing and Business Development: A Case Study for Criminal Defense Lawyers

Meg Pritchard

In past articles, I've talked about different marketing and business development topics and (hopefully) given some practical advice on strategy and tactics. But, often, there is a big gap between strategy and implementation—or between "here's what you should do" and "here's how it works in practice." Lawyers I've worked with have told me that sometimes the gap feels so large, the task of marketing themselves so overwhelming, or the possibility of success so abstract, that they throw up their hands and do nothing.

I get it. Why spend time and energy on marketing tasks that you're not sure are the right ones or what success would even look like?

Instead of theory and strategy, let's talk real life lessons in marketing and business development in the form of a case study on marketing and business development for a criminal defense lawyer.

Our "client" is based on real-life clients we've worked with. His name is made up for client confidentiality. While we're focusing on one lawyer, our case study also draws from our work with a number of clients and firms, and the lessons can be tailored and applied to teams of lawyers, practice groups or firms. Along the way, I'll offer some tips on how you can apply these lessons yourself.

Meet our client: Like you, our client "Paul" is a criminal defense lawyer. He handles a wide range of cases and issues, including defending clients accused of street crimes, white collar crimes like tax, mail, wire and bank fraud, and bribery and public corruption. He has tried cases in state and federal court and has handled appeals. He has public service experience, having been a public defender, and now has a well-established private practice with his firm.

Paul's firm, a mid-sized law firm with multiple offices in eastern Pennsylvania, handles matters for individuals, businesses and other entities across several legal and industry areas—including litigation, transactional, regulatory issues—although it is not quite a "full service" firm.

Our work with Paul followed several phases: discovery, strategy and tactics, implementation, review and realignment.

The discovery phase—identifying goals, priorities and positioning. Often, when our team asks clients about their goals, we hear "attract more clients" or "attract better clients." Sometimes we get "make more money," as often said with a straight face as with a cheeky smile. Of course, those are overarching goals, but in order to develop a strategy, we need to dig deeper into what that looks like for the lawyer, practice group or firm.

In the discovery phases, we ask a lot of questions, including:

- What kinds of clients are you looking to attract and what kind of work are you looking to do for them? Is this different from the clients and work you do now?
- Who are your competitors and how are you different from them?
- Why do you think clients want to work with you? What have clients said about working with you?
- How do your clients and work tend to come to you now? Internet search? Repeat clients? Referrals from past clients? Referrals from other lawyers in your firm or from outside lawyers and other professionals?
- What marketing and business development do you do now? What do you like and dislike? Do you feel these efforts are successful–why or why not?
- How much time do you have to or want to devote to marketing and business development?

These questions help us understand our clients, their practice and the target markets, and audiences for their marketing so we can develop the right strategies for them.

Paul's initial goal in reaching out was to be more strategic in his marketing and business development. He has earned a well-deserved reputation as an excellent lawyer within the criminal defense community in Pennsylvania, and in particular with lawyers and judges in his geographic region. He has repeatedly received accolades from peer-review programs such as Martindale-Hubbell and Super Lawyers.

From our discovery discussions with Paul, we learned that one category of target or "gold standard" clients were individuals and entities facing allegations of white-collar crimes. Paul's style of working with clients is deliberate, thoughtful, comprehensive, and collaborative.

Most of Paul's clients and cases come through referrals, often from other criminal lawyers. His reputation often drives referrals for clients and matters in his geographic region from lawyers and firms outside the area. While some clients also find his firm through Internet searches, these don't make up a large proportion of Paul's work. Because of the nature of his criminal defense work—including the sensitive nature of the allegations and the potential for reputational damage—existing clients rarely act as referral sources. They also aren't typically sources of repeat work, although there may be follow-on cases that result from the original criminal allegations.

When we talked to Paul about his comfort with marketing and business development, and what he had previously done in that area, he told us that he had been active in both national and regional professional associations and enjoyed the personal networking that those organizations provided. He had a presence on but was not a "power user" of LinkedIn, but understood the importance of the platform for networking. Paul also very much enjoyed writing about criminal law. He felt he had the time to devote to writing and was looking for guidance on how to incorporate more content into his marketing.

Setting the strategic priority—referral sources. Based on our conversations with Paul, we determined that referrals were the primary driver of his client pipeline. In marketing parlance, the strategic focus of his efforts should be bolstering his authority, increasing his visibility, and expanding his connection and reach with potential referral sources.

In plain English, he needed to communicate his skill and expertise in criminal law—and more often—to a wider audience

of potential referral sources so that when it was time for them to make a referral, Paul was both top of mind and the clear choice.

The core components of our strategy included publishing authoritative content on criminal law more frequently and to a wider audience, expanding his network of potential referral sources and increasing his engagement with that network. We also recommended that Paul update his firm bio and LinkedIn profile to highlight his experience and expertise, as well as his approach and work style. We wanted his on-line presence to reinforce his reputation as an accomplished criminal defense strategist and a skilled trial lawyer and resonate with the types of clients and work he wanted to attract.

Building the tactical plan. Based on these core components, we recommended that, at the outset, Paul focus his attention and resources on LinkedIn for both network building and as the primary place for publishing and distributing his content.

Paul's firm posted substantive content on its website and had a modest presence on social media, primarily LinkedIn. At the outset, publishing his articles on the firm website seemed like a simple enough process, but in order to get his content in front of a broad audience, Paul would also need to engage in some outbound marketing to bring readers to the website. While the firm had a centralized customer relationship management (CRM) and email system, Paul (or someone at his firm) would still have to build and maintain a mailing list, develop the email content and manage the email process.

In contrast, LinkedIn's platform capabilities enabled Paul to tackle his networking, and his content publication and distribution, all in one place. Because LinkedIn is a professional social media network, it also provided Paul with the potential for a much wider audience beyond his own network.

Implementing the LinkedIn program. Although Paul had a LinkedIn account and a modest network of connections, he had not used the platform much. After looking at his contacts and connections, on and off LinkedIn, we put together an outreach program to help Paul build his network. We helped him craft and send a series of messages to his connections telling them to be on the lookout for his articles on LinkedIn. After considering his goals and the time Paul was to dedicate to his marketing and business development, we worked with him to create a schedule of monthly articles six months in advance, and provided graphics, formatting and technical assistance to get his articles published.

Our work with Paul is just getting started, but he is already seeing positive engagement with his content and connections. After the initial six months of articles, we'll gauge the success of our efforts and make adjustments.

Building a plan that works for you. After reading our client case study, you're probably still wondering how to put your own marketing and business development plan into action. After all, what works for our client Paul might not work for you and your practice.

Here are some take-aways to help you get started:

- Start with the discovery questions and take the time to dig into the answers. You can uncover a treasure trove of information about you, your clients, and your practice that can help you focus on the right strategic priorities.
- Be honest with yourself about the time and energy you have to dedicate to marketing and business development. It's okay if you only have a little time to spend. You can get great results, if you use that time effectively and efficiently.
- Consider both what you like doing and what you're not comfortable with. Writing blogs or articles might be a good fit for you, or you might prefer video or podcasts. If you like public speaking, consider focusing on opportunities to present at conferences or give seminars. But if that makes you shake in your shoes or bores you to death, don't force yourself to do it. There is not one right way to market.
- What resources do you have available to you—people and technology? Are you a sole practitioner or part of a firm with a marketing department and marketing technology, or something in between? It is possible to market yourself effectively, no matter the resources you have.

About the Author

Meg Pritchard is a litigator and legal journalist turned content marketing strategist who helps leading law firms develop exceptional content that drives business growth. She is the founder and principal of CREATE Communications LLC. Meg is active on LinkedIn and believes you should be too. You can connect with her on LinkedIn (https://www.linkedin.com/in/megpritchard/), follow her company (https://www.linkedin.com/company/create-communications-llc), and read more insights on legal marketing on the CREATE website (www.create-cmm.com).

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