

CREATING ALTERNATIVES

Two Texas Opportunity & Justice Incubator alums founded the Texas Poverty Law Project to address inequities in the legal system.

INTERVIEW BY ERIC QUITUGUA

Since 2017, the Texas Opportunity & Justice Incubator has equipped attorneys with the business skills to establish practices serving low- and modest-income Texans. Attorneys Carl Guthrie and Kannon Moore, members of the State Bar of Texas program's fourth cohort, have taken some of the savvy they picked up from TOJI to launch the Texas Poverty Law Project. Through their nonprofit, the two and their team have focused on helping clients caught in the poverty cycle navigate the legal system. Guthrie and Moore spoke with the *Texas Bar Journal* not long after wrapping up the nation's first online criminal jury trial in August.

TELL ME ABOUT THE IMPETUS FOR THE TEXAS POVERTY LAW PROJECT. WHAT'S YOUR MOTIVATION FOR LAUNCHING THE NONPROFIT?

When we survey the legal landscape, we see too many traps that only exist for people living in poverty. These traps are self-perpetuating. They snag people who can't afford to pay fines for misdemeanors, who can't make it to court because of work, or logistics, or family, and who don't know about the protections written into the law to help them (because those protections, like most of the legal system, are absurdly convoluted). These traps often also involve some pretty severe power imbalances (think debt collection, evictions, criminal charges, etc.). We're fighting the issues that put people in poverty, trap people in poverty, and punish people for living in poverty. That includes everything from criminal charges and evictions to consumer protection and access to justice.

WHAT ARE THE MAIN LEGAL ISSUES YOU SEE THAT STEM FROM OR CONTRIBUTE TO POVERTY?

Our primary focus is at justice courts and municipal courts. These cases can quite literally lead to being unhoused or being incarcerated to significant and often traumatic effects on every aspect of our clients' lives. The system permits these outcomes, but the system doesn't provide counsel.

HOW ARE YOU ADDRESSING THIS?

We're building a system to provide criminal representation in justice of the peace and municipal courts where the law doesn't provide for attorneys. With our partners, we're building an in-house model for homeless shelters, addressing the needs of their

clients, and helping people get back on their feet. We're trying to push forward the idea of virtual court, allowing clients who don't have the time, money, or transportation to get access to justice in a way that's never been seen. As lawyers representing clients, we have an obligation to help each person we represent, on an individual basis, but if we want to see lasting change, if we want to make the system better, we have to tackle things on a bigger scale.

WHAT CAN YOU TELL ME ABOUT HOW THE VIRTUAL CRIMINAL JURY TRIAL WENT?

Number one thing is my client was happy, so I'm happy. She didn't believe she was guilty of the charge, and the jury agreed, at least halfway. We were able to put on an effective case, to connect and work with the jury panel, and to confront the state's witnesses and evidence. There was a hiccup or two for sure. We lost a juror because of connectivity issues—that's why we picked an alternate. There were some technical glitches here and there and, of course, who could forget the cat, but the funny thing is when the jury was surveyed afterward, none of them found any of those things to affect their ability to focus on the presentation of the case, and some of the technical struggles gave me an opportunity to bond with them and show that we were all going through it together—a momentary hiccup provided an unexpected opportunity for advocacy. Of the things that could have gone smoother, they can be worked out with practice. We've heard and seen a lot of comments from people who haven't done it saying that it can't be done. Maybe instead of saying that, we should figure out how to fix it.

WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF CONDUCTING JURY TRIALS THIS WAY (ESPECIALLY DURING A PANDEMIC)?

Before COVID-19, the average in Texas was 186 jury trials a week. There's been probably less than 30 since March. Trying to wait until COVID is "over" to start jury trials is untenable. Sure, some things can wait but for many, many clients, both criminal and civil, they just can't. People can't wait in jail until we find a vaccine—who knows when that will be, or even if? People can't wait with traffic tickets or criminal charges hanging over their heads, affecting jobs and housing and benefits, until lawyers decide we're ready to get back to it. People can't wait on debt claims and evictions and driver license holds, never knowing if they'll have a car next week, or money for groceries next week, or a home next month, until we as an industry decide we're ready to adjust. And as for the ideas involving live juries spaced out in the corners of the courtroom, or behind facemasks or even shields, to think that's better than videoconference is, well delusional. It's 2020 and everyone in society is adept at processing information and picking up on subtleties through screens—believe it or not people can even tell if someone is shifting in their chair by watching them on screen.

Second, virtual trials are an option alongside live trials. And it's important that it be phrased that way—an option. We're not trying to eliminate live trials (I want to be back in front of a live jury as much as anybody else); we're trying to create an alternative that can be used to help people who have quite simply never had access to the current system.

ANY WAYS THEY CAN BE IMPROVED BASED ON WHAT YOU JUST SAW?

Absolutely. I think we need to work on the platform. Then, of course, there's the digital divide and connectivity issues, but saying virtual court can't happen because people can't connect is searching for problems rather than solutions. One possible solution is to have bailiffs deliver hotspots and devices after people receive a jury summons or elect to have a virtual jury trial. Physical evidence is still something to figure out—maybe it creates a hard line on cases that can and can't use virtual trials. Maybe we figure out a way around it. We'll also need to address how to handle bigger jury panels if that becomes an issue.

CAN VIRTUAL COURTS IMPACT THE JURY POOL?

If we're talking about comparing virtual jury pools to live jury pools during COVID-19, then we think there's no question that virtual pools will be more representative. The virus is simply too big of a barrier for too many people. What's worse, that barrier is disproportionate in itself. COVID-19 continues to wreak havoc on communities of color and people living in poverty. We have to find solutions instead of problems. Virtual trials can enable participation among people who have never been able to participate. People who live too far out from the courthouse to afford the time or associated costs. People who don't have reliable transportation. People who have caregiving duties or family obligations. This is exactly what TPLP is trying to do—help people get access to justice who have been denied it because of not having enough money.

ANY LESSONS YOU PICKED UP FROM YOUR TIME WITH TOJI?

Moore: I was attracted to TOJI because of its focus on helping lawyers build practices that expand access to justice. TOJI is an in-depth how-to for building and sustaining a practice, and it's great to go through the program with other attorneys dealing with the same or similar issues as you. TOJI does a great job accomplishing its mission, and I highly recommend TOJI to any lawyer just setting out.

Guthrie: I think the biggest thing I learned from TOJI was to keep thinking outside the box. The legal industry isn't famed for being innovative or mutable, which is fine in some senses—the basic concept of due process is dependent on knowing what could/should/may happen in the future based on our actions now. But the problem is that the system doesn't work for many people, so we, as the guardians of justice in a very real sense, have to be flexible. TOJI, and the focus on innovation, technology, and the justice gap, really helped me see that.

WHAT'S NEXT FOR THE TEXAS POVERTY LAW PROJECT?

In the near future we're excited about our next project that's designed to survey the legal needs of the homeless community in Austin for the purpose of using that data to build specific programming to alleviate some of the most common legal problems facing our homeless neighbors.

*For more information about TPLP, which is a 501(c)(3) nonprofit, go to texaspovertylaw.org. **TBJ***

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