

# The Defender: Coronavirus Edition

A mini  newsletter

Corona week 9  
May 15, 2020



Happy Friday everyone! I am so glad that we have this newsletter (thank you, Maggie!), to help us communicate with each other beyond emails and Zoom (although those are critical) and with stories, and pictures, and family, and pets, and humor. With this edition, I also want to focus on communication with clients and their families.


It's tough to be ensnared in the criminal system. If you're out of custody, your case is dragging on. You can't talk to your attorney or social worker in person. If you had a job, it's probably gone. Extended families aren't supposed to hang out. And if you're in custody?! The fears and uncertainty that are a "normal" aspect of being incarcerated are magnified.

So this week, I'm asking that we all rededicate ourselves to reaching out to the people we represent – our clients, in or out of custody, and their families or loved ones. We may be all they have right now – and it's our job and our calling as public defenders.

I am truly proud to be a part of this, the biggest and best law firm in the State of New Mexico. And I look forward to the time, in a not-too-distant future, that I can climb into that state car (is the battery dead, I wonder?), drive to the offices, "mask-up" and check in with you in person.

- Ben

## Corona wind down

As the state begins to transition out of its initial lockdown,  our department is also preparing for what comes next. We are still in corona-time. Life and work are not back to normal, if they ever will be. So what will it look like next? Will we have to wear masks all the time? How about paid time off? Trials? Jail visits? Changes are coming. While we don't have all the answers yet, we have guiding stars to follow.



## A Hands on the Wheel profile

# Deputy Chief Philip Larragoite

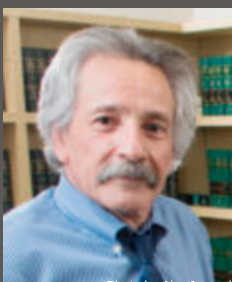


Photo by Abq Journal

Deputy Chief  
Philip Larragoite

Deputy Chief Philip Larragoite is constantly listening.

He's listening to people's words and actions, emotion and family ties. He's listening to what is not said.

And he's listening to the nuance of power and respect, what he calls the "coin of the realm" in New Mexico politics and culture.

"A lot of listening is curiosity, it really is. It's not a drive-by psychoanalysis. It's more of an intelligence gathering function," he said. "Because if you can find what drives people, you can help them with whatever their aspiration is."

And if helping that person with their aspiration helps you, your client or your department, "then it's a win-win."

See the rest of the story over the next few pages

When the media highlights the dedication and courage of “first responders” during this pandemic, I immediately think of my LOPD colleagues. We too are saving lives, one client at a time. We are on the front lines every day, pandemic or not. The people we protect from an overzealous State have hopes, dreams and aspirations -- and fears.” We too are charged with protecting people’s health, safety, welfare and liberty. Because our mission has perhaps become more challenging, our clients need us now more than ever. We must continue to put people before process and procedure. There are abundant opportunities in this chaos to change what has not been working and consolidate the improvements we have made to the criminal justice system thus far.



Our immediate challenge is how best to prepare LOPD to expand the services we provide to our clients while ensuring the health and safety of our LOPD colleagues. We must be able to effectively communicate with our clients, resume our jail visits and prepare for the trials that are keeping our clients in custody. And we must be constantly vigilant to ensure that there are no “reforms” that further cripple already fragile constitutional rights. There are no shortcuts to liberty. Make ‘em prove it!

- Philip

## Statewide Units



Habeas Unit  
Managing Attorney  
Amanda Stephenson

The Statewide Units division falls under Deputy Chief Philip Larragoite, who, in addition to admin duties, also helps field calls from clients and their families upset at the department or their attorney. He serves as the liaison to the LOPD Commission and takes the lead on legislative work.

The division includes two of the department's specialized statewide units: the Appellate Unit and the Post-Conviction Unit, aka the Habeas Unit.

The Appellate Unit, housed primarily in the Santa Fe office, handles all of the appeals for the department. The Habeas Unit, housed in the Albuquerque office, processes and pursues post-conviction actions for people incarcerated who are seeking relief from unjust sentencing and sentencing mistakes and from inhumane prison conditions.



Appellate Defender  
Kim Chavez Cook



Deputy Chief Philip Larragoite's down time consists of tinkering and enjoying his 1971 VW bus and other VW projects. He lives in Santa Fe with his girlfriend.

For the last 25-plus years Larragoite, who is now deputy chief over the Appeals and Habeas units, put this intelligence gathering to work as he navigated legislative and legal life in dozens of different positions.

He says he has worked through 50-some legislative sessions. Right out of law school in the early 1980s he worked as a bill drafter for the Legislative Council Service for a few years until he was appointed deputy director of the Legislative Council Service – a key position in the law making process.

“I was a scrivener. I love that word. I wrote lots of constitutional amendments,” he said.

Then he worked as a “lobbyist forever,” representing judges, magistrate judges, UNM, Museum of NM Foundation and other clients around the state. He currently serves on the Criminal Justice Reform Committee and a fines and fees committee for the national Uniform Law Commission, a legislature-appointed position that works to draft nationwide legislation

But about six years ago, he met Chief Bennett Baur at the Roundhouse, as Baur was advocating for the department and Larragoite was working as Chief

Counsel in the Senate Judiciary Committee.

“When I met Philip at the Roundhouse and I saw how he worked with people, I thought that the skills that made him great at the Legislature would transfer to being a great public defender. So I started suggesting he come to the department. I had in mind that he’d come straight to a policy job, but he didn’t want to do that – he wanted to go to court and represent people,” Baur said.

After years of watching new laws make the books, Larragoite felt maybe it was time to try see how those laws affect “real people” and to try something new to satisfy an old wish: public defense.

“Honestly when I got out of law school that is what I aspired to do, was to represent poor people,” he said. But he had two small children at the time and he had a different path laid out before him.

He’d come from a well-connected political family that raised him “in the shadow of the capitol” with a lobbyist dad, who founded the Association of Counties, and a mother who worked for high-level politicians and ran campaigns.

“Had I grown up in a family of plumbers, I’d have been a plumber,” he said.



Deputy Chief Philip Larragoite, Chief Bennett Baur and 12th District Defender Matt Chavez pose for an Albuquerque Journal photographer in 2018.

“So I postponed what I really wanted to do for 25 years” and instead went into the family business. We he finally joined LOPD, he took a position working cases in Santa Fe Magistrate Court.

“Now I was actually able to represent people. I’m fluent in Spanish, having grown up in Santa Fe, so I could talk to people and communicate with people. And I have family experience. I see how lives get wrecked. I’m able to talk to junkies and addicts and parents and cops ...cuz I know what’s up,” he said.

And he is able and willing to listen, going so far as to give his personal cell number to his clients facing trial.

“Anyone who has seen him work a Mag Court docket, with his arm around a man in a jumpsuit and cuffs, talking in Spanish to a mother in the hallway, giving a judge a sense of the humanity of his client – can see that this is something he was born to do,” Baur said.

Larragoite still uses his communication skills in his legislative life, which he didn’t leave entirely behind when he joined LOPD. He serves as the Chief of Staff to the Senate Judiciary Committee, meaning when the Legislature meets annually he takes time off of work and helps shepherd the committee process, offering advice and listening to legislators as they decide on bills.

But whether listening to a client, their family, the cops, or the most powerful of politicians, “what you end up with, at the end of the day, is credibility, trust and respect,” he said.



# What's next in corona-times?

Exactly what the next few weeks or months look like representing clients has been the topic of intense planning and researching for the Executive Team. Employee health must be protected, but we also must represent clients. It's what we do. Frequent changes in guidance from state and federal agencies has made creating a formal plan a difficult project. What are the courts doing? That influences how we respond. When do we get to meet face to face with clients? Administrative Social Distancing Leave will be ending soon. How do we start to come back to the office? Not all of these questions are answered yet, but some details are starting to emerge. Others will surface as the weeks unfold and each office figures out what works best for its people and clients. The special Coronavirus Editions that have been weekly will now be every two weeks. Chief Baur will be sending out more specific details as they are finalized. In the meantime, here are our two guiding stars:



We provide client services. So this will be one of two guiding stars. This is what we are striving for.

Telework if you can serve clients from home; go into work if you can't. This should be a guide for making decisions with District Defenders about office functions. When in the office, and especially when meeting with clients, ALWAYS use protective measures.

Have suggestions? Send them to [julie.kitch@lopdnm.us](mailto:julie.kitch@lopdnm.us)

# What's next in corona-times?

## Masks

Thank you Veronica Rosales and team for helping pack and deliver the LOPD masks.

Yes, we are going to have to wear masks in public and shared areas. More details to come, but for now, here are some pics of the LOPD masks. Also the union has been delivering disposable masks to some offices.



Las Cruces District Defender Kris Knutson



Aztec secretary Judy Montano



11th District Defender Matt Cockman - not quite getting it right.



Aztec Managing Attorney Sarah Field

Office managers have been working closely with fiscal to order necessary PPE and equipment to protect employees and clients. For example, the department has ordered sneeze guards for employees who have close frequent or constant contact with clients in offices. We have ordered face shields for others that have close contact with clients away from their desk (jails, courts, etc.). Office managers have also ordered disposable face masks for clients and LOPD visitors and additional cleaning supplies so that offices have what they need to clean personal and common areas.



Aztec atty Nicole Hall and Apollo in their own masks

# LOPD Commission Resolution

## CONCERNING PROTECTION OF THE HEALTH, SAFETY AND RIGHTS OF ALL NEW MEXICANS

WHEREAS, the health of all New Mexicans is of critical importance; and  
WHEREAS, the constitutional, statutory and procedural rights of all New Mexicans are critically important to maintaining justice in New Mexico; and  
WHEREAS, the Covid-19 pandemic has caused hardship and danger to New Mexicans including those participating directly in the justice system; and  
WHEREAS, all participants in the criminal justice system including court personnel, witnesses, jurors, counsel and parties must be made medically safe while protecting constitutional, statutory and procedural rights.

IT IS RESOLVED BY THE NEW MEXICO PUBLIC DEFENDER COMMISSION that the rights of New Mexicans must be protected, strengthened and zealously guarded during a time of crisis.

The judicial, executive and legislative branches are urged to take all necessary steps to improve and protect these rights. These rights derive from the United States and New Mexico Constitutions, New Mexico statutes, Supreme Court Rules and the Performance Standards of the Public Defender Commission.

BE IT FURTHER RESOLVED that the rights that must be protected include.

- 1) the effective assistance of counsel, including the ability to confer with counsel and to have counsel fully informed and prepared;
- 2) notice of charges and due process of law;

# LOPD Commission Resolution

- 3) proper probable cause procedures including preliminary hearings and grand jury hearings;
- 4) release before trial under reasonable conditions, and, if necessary, incarceration that is healthy;
- 5) confrontation of witnesses; and
- 6) the right to compel testimony and present live witnesses.

BE IT FURTHER RESOLVED that all court proceedings must be open to the public, and that defendants be afforded the right to personally appear in court with counsel; and

BE IT FURTHER RESOLVED that technological tools cannot substitute for necessary personal appearance when necessary to protect rights, and technological tools cannot substitute for necessary personal interaction among participants in the court room, including attorneys, clients, witnesses, jurors, court personnel and the public; and

BE IT FURTHER RESOLVED that when proceedings cannot be properly conducted by honoring the constitutional, procedural and evidentiary rules while protecting the health of participants and the liberty interest of the defendant, the proceeding must be delayed until a proper proceeding is possible.

BE IT FURTHER RESOLVED that waivers of some rights including personal appearance must be allowed only when intelligently made after consultation with counsel; and

BE IT FURTHER RESOLVED that hearings must not require the personal appearance of the defendant if other participants in the case are not required to appear; and



# LOPD Commission Resolution

BE IT FURTHER RESOLVED that in-person proceedings must not be conducted unless the aforementioned rights are protected and the health of the participants can be reasonably assured, including:

- 1) Jury trials, where the jury pool must be drawn from a representative cross section of the community, must not exclude large numbers of the community or cognizable groups of the population due to the Covid-19 crisis, must assure the health and safety of all participants, and must result in an impartial jury determined after adequate voir dire.
- 2) Evidentiary proceedings must be delayed until a proper and safe proceeding can be conducted absent the knowing and intelligent waiver of the procedure by the defendant.
- 3) Grand jury proceedings, which must not be conducted unless social distancing and other health protocols are honored.
- 4) Preliminary hearings must not be conducted until all procedural and evidentiary rules can be protected while protecting the health of the participants and the public.

BE IT FURTHER RESOLVED that whenever possible, an accused must be issued a summons to appear in court rather than being arrested or incarcerated. A summons for the defendant's appearance must issue unless a warrant is justified by a showing by clear and convincing evidence that the accused poses a danger to the community or is a flight risk.