

The Kansas Prosecutor



The official publication of the Kansas County and District Attorneys Association
Volume VII, No. 3, Fall/Winter 2010



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 The purpose of the KCDA is to promote,
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For questions or comments about
 this publication, please contact the editor:
 Mary Napier
mary@napiercommunications.com
 (785) 783-5494

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 correspondence to: *The Kansas Prosecutor* editor, 1200 S.W.
 Tenth Avenue, Topeka, Kansas 66604 or e-mail Mary Napier
 at mary@napiercommunications.com.

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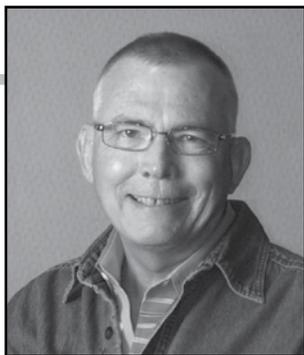
About the Cover



The Geary County Courthouse is a Roman Revival building commissioned May 20, 1899, and completed in May 1900 at a cost of \$35,000. It was built by the firm of Ziegler and Dalton of magnesium limestone quarried in the nearby bluffs. The stone was so soft that it could be hand sawed by the German and Swedish masons prominent in this area.

The architect was J.C. Holland, who designed similar courthouses elsewhere in Kansas, including those in Manhattan and Clay Center, with the Clay Center building also built by Ziegler and Dalton.

Photo by John D. Morrison, Prairie Vistas Photography



President's Column

by John Wheeler, Jr., KCDA President
Finney County Attorney

Random Thoughts

Although it seems like only yesterday, it was in 2004 when I received a phone call from Jerry Gorman, Wyandotte County District Attorney, asking me if I would consider being nominated to the Board of Directors of the Kansas County & District Attorneys Association. Jerry explained that the Board was seeking a representative from a mid-size county in western Kansas and my name had been mentioned. As I recall, we were days away from the fall conference, and the nominating committee needed an answer quickly. I admit that I was surprised that I was asked, but I was not prepared to give an immediate answer. I told Jerry that I would call him back the next day.

I was first elected as Finney County Attorney in 1992. My immediate predecessors had all been members of the Association and from my beginning in office I decided to remain a member as well. The conferences were convenient for me and my assistants to obtain our CLE hours. Also, the camaraderie among colleagues and the sharing of stories, I found were both entertaining and instructional. I had friends who were officers and directors at the time, but I admit that I had taken the Association for granted. Now I was being asked to accept a position of responsibility within the organization – to invest my time and energy for the betterment of the Association. Of course I knew that the “softer easier way” was to just to reply expressing my appreciation for being considered, but that I just didn’t have the time to invest on matters not directly related to my job as Finney County Attorney. However, I knew that I could find a way to find the time, and I had to admit that I did have the interest. I called Jerry back the next day and informed him that I would accept the nomination, and I would be honored to serve if elected. Over the succeeding six years, I have never regretted that decision. I only regret that I did not keep notes or a diary of sorts. However, I accept it’s probably best

for you readers that I did not.

Over the years, having advanced through the directorship positions, then the officer ranks of secretary/treasurer and vice president, I now have been granted the honor of serving as the president of this prestigious organization. I only hope that I can live up to your trust, and I certainly intend to expend my best efforts at doing so.

I want to take this early opportunity to encourage our members to become actively involved in our organization. We have sections in which we desperately need your active participation and input so that we can continue to present quality conferences with interesting topics and speakers. We have committees within our organization that would be greatly benefitted by new prosecutors with innovative ideas. Outside committees and commissions also call upon us to provide a KCDA member to participate with them in shaping their agendas. We also need and look for prosecutors interested in assisting with our legislative agenda by volunteering to testify before the legislative committees when the legislature is in session. One does not need to be an elected prosecutor to serve in these positions. We only ask that non-elected volunteers have the permission from their elected officials to volunteer their time outside of their office. I hope to write more specifically on these opportunities in the future.

In October, we had another successful and highly informative conference in Overland Park. Once again, I want to thank Justin Edwards and the CLE Committee for their dedicated efforts. I extend many thanks to the presenters as well. I know we all would prefer to return to the normal fall conference schedule held on a Monday and Tuesday. It made for far more convenient travel and allowed for more hours of CLE presentations. However, for as long as the Office of Judicial Administration determines there are insufficient funds to hold a fall conference

for the District Judges, we will have to schedule our fall conference around the Columbus Day holiday and the Sunday before the holiday because the courts are not in session on those days. If any of our members have any alternative suggestions, I am sure our CLE Committee and the Board of Directors would be happy to entertain them.

I want to welcome Marc Bennett, Sedgwick County Deputy District Attorney, as our newest member of the KCDA Board of Directors. Marc has been very active in our organization and has volunteered his experience and expertise as a presenter at conferences on many occasions. I look forward to working with him.

Lastly, I wish to extend my congratulations to our 2010 annual award winners. Jan Satterfield, Butler County Attorney was selected as Prosecutor of the Year. Jan has worked diligently as a prosecutor to protect the peace and dignity of the people in Butler County and the people of the state of Kansas for 20 years. In January 2011,

Jan will assume the bench as a Butler County District Court Judge. Although she will be missed by our organization, her good works will long be remembered and appreciated. Steve Obermeier, Johnson County District Attorney's Office Senior Attorney, was selected for the highly prestigious Lifetime Achievement Award. Steve has been with the Johnson County District Attorney's Office for 27 years and is highly regarded statewide for his skills in appellate practice. Besides that, Steve is a fine gentleman and lawyer. Congratulations to Jan and Steve! (You can learn more about them later in this issue.)

As has past Presidents before me, I solicit thoughts from all of our members as to how to serve you better, not only as to CLE programming, but also regarding the operation of our organization in general. Please feel free to contact me, other KCDA Board Members, or staff with your suggestions or criticisms. I can be reached via e-mail at jwheeler@finneycounty.org.

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Legislator's Column

by Representative Pat Colloton

Upcoming 2011 Legislation for the Corrections and Juvenile Justice Committee

The Corrections and Juvenile Justice Committee considers many of the bills that affect prison population and sentencing policies. This is an overview of upcoming legislation that could have an impact on the corrections system although the bills may be considered by other legislative committees. The two pieces of legislation expected during this session that will have the greatest impact on the corrections system come from the recommendations of the Kansas Criminal Code Recodification Commission and the recommendations of the DUI Commission.

The Kansas Criminal Code Recodification Commission, which includes legislators, prosecutors, judges, defense counsel, law enforcement, and law professors, has met over the last several years to update Chapter 21 of the Kansas statutes. The commission divided its work and the ensuing report to the legislature into two parts. The first was recodification without substantive changes to the criminal code. This was adopted by the legislature in the last session. The second part was a list of policy recommendations that are substantive changes to update and improve the criminal code in Kansas. These will likely be considered in the upcoming session.

During the last session, statutory changes to Chapter 21 of the Kansas statutes were made to provide consistency in

statutory language and to codify the judicial rulings that are current law (HB 2668). These were not substantive changes made to the law. The effective date of this legislation is July 1, 2011 so that interested parties currently have the opportunity to review it and to provide the legislature with feedback. Additionally the drug crimes previously contained in Chapter 65 were moved into Chapter 21. The existing statutes were simply grouped into core offenses of manufacture, distribution and possession but the provisions of the drug laws were not changed by the recodification. The drug crime changes became effective in July 2009.

This upcoming legislative session will consider the substantive law changes to the criminal code that are contained in the final report of the commission. The Criminal Advisory Committee of the Kansas Judicial Council has reviewed the policy changes in the criminal law that were recommended by the recodification commission. Their review is being provided to the Kansas Judicial Council and the council will recommend a bill that contains these policy changes with modifications approved by the council. The bill will contain numerous policy changes to improve the criminal code ranging from liability for smoking in a prohibited place, interference with judicial process, escape from custody, and criminal desecration

to changes such as expanding liability for sexually motivated crimes, aggravated incest, and human trafficking.

The DUI Commission has its final meeting scheduled in December and its recommendations are due to be presented to the legislature in January 2011. The commission is considering revisions to the law for the first three DUI convictions so that there will be increasing amounts of immediate jail time, a temporary loss of the driver's license and thereafter a restricted driving option with an interlock device. Under the proposed legislation all courts will be required to order an alcohol/drug evaluation upon conviction. Treatment can only be undertaken by a treatment provider with a DUI specialty who is licensed and approved by the Social and Rehabilitative Services agency. Records of all convictions and diversions are required to be reported to the KBI who will house the statewide central repository of records. One issue yet to be resolved is whether the refusal to take a breathalyzer will have a criminal sanction so that refusal sanctions exceed those that are imposed on drivers who agree to take the breathalyzer. Some prosecutors report that an increasing amount of their time and resources are being used for jury trials when there is a refusal to take a breathalyzer. The decisions about the provisions of this legislation

will be made in December and the final bill will be drafted and filed with the legislature.

The laws controlling the manufacture, sale and possession of illegal drugs will be the focus of several pieces of legislation. The Kansas Board of Pharmacy has compiled a list of substances that are on the federal schedule of controlled substances but not yet scheduled identically or scheduled at all in Kansas. A bill has been prepared to add or reschedule these approximately 17 substances to the Kansas list of controlled substances following the level of restriction presently applied under federal law and consistent with the factors required under Kansas standards contained in K.S.A. 65-4102(b).

The recodification commission has prepared and recommended a drug grid that separates possession, sale, and manufacture into four separate severity levels of sentencing. This will give prosecutors a grid that provides for severity of the offense as well as the current grid's provision for criminal history. Kansas is one of the very few states that does not provide for penalties based upon the quantity of illegal drugs involved in the crime. I have asked the executive committee of the Kansas County and District Attorneys Association to review the grid sentences for the various drug quantities to assure the legislature that they are appropriate. A bill that incorporates the grid changes likely will be recommended to the legislature by the Kansas Judicial Council.

During the last session, Kansas was the first state to outlaw K2, the cannabinoid substance similar to marijuana

that is sprayed on incense and sold to children such as middle school students, who can burn the incense and inhale the intoxicant. The compounds also can be purchased separately and smoked. The substance is a mixture of compounds with reported effects from blackouts to temporary intoxication, but the full short-term and long-term effects of the chemical mixtures on the body are not known. The DEA has begun action to prohibit their importation, use, or sale. Now a new series of mixtures collectively called K3 is being imported and is currently unregulated. Legislation to add K3 to the Kansas list of controlled substances is being prepared.

The Kansas Sentencing Commission has recommended legislation to amend K.S.A. 21-4718(b)(4) on departure sentencing because the Kansas Supreme Court in State v. Horn found the current statutory procedure unconstitutional. The amendment would authorize, in an upward departure sentence proceeding, the use of a departure jury, when the trial jury has been waived, and also authorizes waiver of that departure jury in favor of a trial by the court. Another bill would allow offenders supervised in the community to be supervised by either Court Services of Community Corrections, based on an assessment or risk needs, targeting limited resources to those offenders needing more intensive supervision and programming. Additional legislation is recommended regarding SB 123 administrative payment procedures. Although no legislation on the expanded use of drug courts for post conviction

diversion is proposed at this time, the Sentencing Commission has worked with the National Center for State Courts to produce a feasibility study regarding the use of drug courts in Kansas. The Center will report to the Kansas Supreme Court in December. The court will review the report and consider whether to expand the use of drug courts statewide. The data nationwide suggests that drug courts reduce recidivism by as much as 25 percent.

Several bills considered last session may be brought forward again in the 2011 session. The elimination of the death penalty was defeated in the Kansas Senate by a tie vote and may be brought forward again. Revising the offender registration law and separating sex offenses from other crimes that require regular reporting was proposed. The penalty for failure to report may also be reviewed. Another bill from last session likely to be considered will expand the eavesdropping statutes to include wireless communications.

Finally, legislation may be introduced to address the increasing prison population. Increases in the number of new crimes enacted by the legislature, increases in the severity of sentences, and increases in the number of special rules as well as reduction in funding for corrections programs and staff has caused new commitments to state prison to increase markedly in the past year. The prison system is over its maximum capacity for housing male inmates. The legislature may look at restoration of reentry programs and possibly the housing of offenders at the local level to manage the growth in the prison population. 🌐



Executive Director's Column

by Steve Kearney, KCDA Executive Director

2010 General Election Review

The election results on November 2, 2010 made history regarding statewide and congressional offices along with the seats in the Kansas Statehouse.

Kansas for the first time in decades (1964 had a Republican clean sweep of all statewide and congressional offices. Leading the state beginning in 2011 will be Governor Elect and former United States Senator Sam Brownback. The Governor's seat was an open race with Brownback winning by a two to one margin. The Attorney General's office will also get a new leader in Kansas Senate Majority Leader Derek Schmidt. The Attorney General's office was held by an appointed incumbent Democrat who was defeated by Senator Schmidt with more than 100,000 votes. Also appointed to fill unexpired terms, both the incumbent State Treasurer and Secretary of State were defeated handily by Ron Estes and Kris Kobach respectively.

In addition to the top state offices being Republican, all four U.S. Congressional seats and the U.S. Senate seats are now Republican with State Senator Tim Huelskamp winning the big 1st district, former State Senator and now second term Congresswoman Lynn Jenkins retaining her seat in the 2nd District, State Representative Kevin Yoder winning the 3rd District seat returning it to Republican hands, and newcomer Mike Pompeo winning the 4th District seat vacated by Congressman Todd Tiaht in his unsuccessful primary bid against Jerry Moran for the Republican nominee for the U.S. Senate.

The U.S. Senate election saw ever popular candidate Congressman, now Senator elect Jerry Moran prevail in a landslide victory in a race that was called by national news organization with the polls having barely closed.

The Kansas House went even more Republican after the election with Democrat incumbents losing 14 seats and Democrats failing to maintain Democratic representation in two others. The

winnowing of the Democrat minority in the House, which was at 49 the past two years now shrinks to 33 votes. That means a 92 – 33 Republican to Democrat margin in the 125 member House. Not since 1953 has the House been this Republican.

While the Kansas Senate was not up for election this cycle, there were two Senators appointed midterm who were standing for election. Both prevailed and did not change the make up of the Senate balance of power, which remains at 31 Republicans and 9 Democrats.

Worthy of note, three vacant seats will occur in the Kansas Senate in January as State Senator Schmidt moves to Attorney General, State Senator Jeff Colyer to Lt. Governor, and State Senator Tim Huelskamp takes his seat in the US Congress. Speculation is all three of those seats will be filled with current or former House members.

The one key office in the Senate that will open up is that of Majority Leader, once again as a result of Senator Schmidt vacating for the Attorney General's office. Conventional wisdom has current Ways and Means Chair, Senator Jay Emler, being elected to fill that role, but the race for that office has not fully developed at this time.

WHAT DOES ALL THIS MEAN FOR KANSAS?

Personnel

First, in terms of personnel, a new Administration typically will go as wide and deep as possible into the prior Administration's ranks to remove those individuals who are not like minded in the direction they want state government to go and how that needs to be accomplished. Agency heads, their deputies, and their legal counsel who have been instrumental in carrying forward a prior Administration's policies are likely candidates for replacement. Such positions may take a few months

to fill as the new Administration finds its bearings.

Office of the Repealer

The Governor Elect intends to establish an “Office of the Repealer.” The intention, however ominous sounding the title, is that team will review all statutes and particularly the regulations implementing them and repeal anything that gets in the way of the efficient delivery of government or doing business in Kansas.

I would recommend that once the office is established, organizations be prepared to present to the team a list of statutes and regulations, that should be repealed or changed that are unduly burdensome and do not have legitimate public health, safety or welfare concerns. This may be the opportunity of the decade to help government progress in Kansas.

Reorganization

The possibility exists that the incoming administration will by Executive Order split, abolish, combine or more closely align agencies and departments in like areas of responsibility into other entities. There will be more to follow on that topic as it matures, but this possibility should be weighed in terms of what impact it might have, if any.

Budget

The new Administration will have to present a budget to the Legislature shortly after assuming office in the most difficult budget times Kansas has experienced in decades. The transition team will likely be working to prepare a budget to address the almost half a billion dollar shortfall and loss of

ARRA dollars from the Federal Government to meet that deadline.

Conclusion

The new Administration with Governor Brownback at the helm is expected to be prosecution friendly and likely to support our initiatives as they improve the administration of justice in Kansas. The new Attorney General Derek Schmidt is a proven friend of the KCDAA, and we should expect a close and productive working relationship with his office. The changes in the legislature should not dramatically affect the committees we work closely with, and we expect to continue the same open and productive relationship with the legislature in both chambers and on both sides of the aisle that we historically have enjoyed. 🇺🇸

County Courthouse Portraits



Geary County Courthouse

John D Morrison

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Guest Column

by U.S. Attorney Barry Grissom

Immigration Enforcement in Kansas Must Start in the Workplace

As the new United States Attorney in Kansas, enforcing federal immigration laws is one of my responsibilities. I want to get off on the right foot by spreading the word to the state's employers that I believe enforcement has to begin in the workplace.

There's a lot of confusion in the air about federal immigration laws. We hear from many of our nation's leaders, including President Obama, that the system needs a complete overhaul. Along our nation's border with Mexico, drug cartel violence has reached alarming levels. In Arizona, United States Attorney General Eric Holder has stepped in to challenge the state's authority to create and enforce its own new immigration laws. State lawmakers who voted for the change say the federal government is not doing enough. The current Attorney General argues that immigration enforcement is a federal responsibility and warns against creating a patchwork of new state and local immigration laws.

Even though we are far from the border, enforcing federal immigration laws in Kansas remains a significant part of the daily workload of the U.S. Attorney's offices. Hardly a week passes without a federal grand jury in Kansas returning indictments charging defendants

with criminal immigration violations. In many cases, they are accused of re-entering the United States after being convicted of crimes committed in this country and deported. Just as often, they are accused of possessing forged documents and using stolen identities. Likewise, it is not unusual for Immigration and Customs Enforcement agents in Kansas to be called to various locations around the state to pick up carloads of illegal aliens stopped on the highway as they were being transported to look for jobs in Kansas and other states.

In some cases, illegal aliens are entering this country as part of a criminal enterprise, drug trafficking being the one we see the most. But that's far from common. In fact, the main reason foreign citizens come to this country illegally is to find work. Most of them are looking for jobs, even if it means enduring a dangerous and uncertain journey. Along the way, unlawful immigrants often become the victims of human traffickers and other unscrupulous characters who sell them phony identification documents and false dreams of citizenship.

I believe it would be unjust indeed to target enforcement efforts solely on those who come to this country unlawfully looking for work. Employers who

knowingly hire illegal immigrants are violating federal law, too. I believe in what President Obama has called "accountability for everybody." I plan to work with my colleagues in Homeland Security and Immigration and Customs Enforcement to make sure those Kansas employers who knowingly hire illegal aliens face the consequences. It's only fair now for me to send the warning, that this is the direction I see criminal immigration enforcement going in Kansas.

I see the same trend taking place across the nation. In a letter in September 2010 to Sen. John McCain, Homeland Security Secretary Janet Napolitano said that since January 2009 her agency has audited more than 3,200 employers suspected of hiring illegal aliens, compared to just 500 in 2008, leading to the debarment of 200 companies and individuals, \$40 million in financial sanctions, and more employer arrests than at any time in history.

Criminal prosecutions of employers who knowingly hire illegal immigrants have been rare in Kansas. The last one that made headlines was in 2006 when a Wichita company, Bob Eisel Powder Coatings, was ordered to pay a \$175,000 fine. The facts of the case were startling. The company admitted

ignoring warnings from the Social Security Administration that some of its employees were using false identities. The company repeatedly supplied cash to an employee so he could purchase false documents for himself and other employees including Social Security cards and resident alien cards.

Increasing enforcement at the workplace level probably will cause some conscientious employers to have concerns about making sure they stay in compliance with the law. For that reason, I want to encourage all Kansas business owners to be alert and to inform themselves about federal laws requiring them to hire only authorized workers and to accurately verify employment eligibility.

The good news is that Immigration and Customs Enforcement is more than willing to work with the private sector to educate employers about their responsibilities. Every employer should know or be told about E-Verify, for instance, which is an Internet-based system that allows an employer, using information reported on an employee's Form I-9, Employment Eligibility Verification, to determine the employee's eligibility to work in the United States. For most employers, using E-Verify is voluntary and limited to determining the eligibility of new hires only. There is no charge for using E-Verify, which is operated by the Department of Homeland Security and the Social Security Administration. More than 216,000 employers already are enrolled in the program and more

than 13 million queries were run through the system in fiscal 2010. For information about enrolling in E-Verify, call 888-464-4218 or e-mail E-Verify@dhs.gov.

In addition to focusing on workplace enforcement, the U.S. Attorney's office will continue to target other kinds of criminal immigration violations in Kansas as well. Identity theft is one of those. Many criminal immigration cases filed in Kansas have started when a U.S. citizen received warning that someone was using his or her Social Security number to work. The fraudulent use of Social Security numbers not only raises national security concerns, it also puts the victim of the identity theft in the position of having to explain that he or she is not responsible for some of the income attributed to his or her Social Security number. Unlawful re-entry after a felony conviction followed by deportation is another frequent violation. Anyone convicted of a felony and deported is permanently prohibited from returning to this country. The transportation of unlawful immigrants in the United States, usually by defendants who were paid for their services, is another violation our office will continue to target. Crimes committed by those who would prey on illegal immigrants are another target for my office. The 2008 conviction in U.S. District Court in Kansas of a self-described Indian chief who sold memberships in his so-called tribe to illegal immigrants in one such example.

I am also going to work to inform Kansas employers

that federal law prohibits immigration related unfair employment practices. The Justice Department's Office of Special Counsel for Immigration Related Unfair Practices has a public education program for employers. The Immigration and Nationality Act (INA) prohibits discrimination against U.S. citizens and non-citizens who are authorized to work on the basis of citizenship status or national origin in hiring, firing, and recruiting. It also prohibits discriminatory over-documentation of authorized workers.

In conclusion, I want to emphasize the point that I am dedicated to fulfilling my obligation to enforce current immigration laws in Kansas as well as to honor the commitment to safeguard civil rights in this state. The problems at the border with Mexico may seem far away from Kansas, but you can't do immigration enforcement solely at the border. You have to have interior enforcement to go along with it. The search for jobs is the magnet that is drawing so many illegal immigrants to our country, and that means you have to go after employers who are knowingly hiring illegal immigrants. 🇺🇸

Barry R. Grissom was confirmed by the United States Senate as the next United States Attorney for the District of Kansas Aug. 6, 2010. His law enforcement priorities include national security, violent crime, drug trafficking, financial fraud and crimes against children.

KCDAA Member Highlights: Amy J. Mellor, Assistant Barton CA & Tom Stanton, Deputy Reno County DA

by Mary Napier, Editor, Kansas Prosecutor

Law enforcement officers have very different day-to-day experiences than prosecutors. However, both work together to bring justice to the citizens of their area. According to Tom Stanton, Deputy Reno County District Attorney and former law enforcement officer, the major difference between the professions is “law enforcement officers have to answer the questions. [Prosecutors] have to ask them.” He also explained, “A law enforcement officer’s job begins at the time of the investigation when the prosecutor is normally not present. Law enforcement officers are required to build a case to prove the crime was committed beyond a reasonable doubt, and it is the prosecutor’s job to insure that the evidence is presented in such a way to obtain a just verdict.”

Amy J. Mellor, Assistant County Attorney in Barton County, was in law enforcement for 23 years before going to law school. For her, the difference between law enforcement and prosecution “is being in the courtroom prosecuting the case instead of being in the middle of the investigation.”

So, why did these two former law enforcement officers go to law school and become prosecutors? Mellor and Stanton both had some very different career experiences, so let’s find out.

Amy J. Mellor

Mellor grew up in Great Bend, Kan. and became acquainted with some reserve officers in high school. A few years later, she applied for the reserve program and was accepted. The appeal of law enforcement for Mellor was that you never knew for certain what you would be doing that day, the contact with citizens, and there was always a good challenge, which fit her well.

Mellor began her law enforcement career as a patrol officer for the Great Bend, Kansas Police Department in 1983. As a patrol officer, her duties were to

respond to calls, write investigative reports, work traffic accidents, and enforce laws and ordinances. Mellor tells us about her experience starting in law enforcement.

“A female officer in the 1980s was a rarity in central Kansas at the time. The sergeants who supervised me were very wary of my ability to function in a ‘man’s occupation,’ but the passage of time took care of that issue,” said Mellor. “It was just a matter of proving that I was serious about a career in law enforcement and didn’t expect any special considerations.”

As a young patrol officer, it also didn’t hurt that Mellor had her own personal backup. One day she had stopped a car in a parking lot and the male driver decided to argue with her. Across the parking lot, she heard her father’s voice yell, “Everything okay Aim?” Another time, she stopped a different man for a traffic violation. As she wrote the ticket, she saw her father drive by. She never really figured out how he managed to drive by at just the right time since he didn’t have a police scanner, but he did that on several occasions.

Just a few short years later in October 1986, Mellor was promoted to Corporal, which required her to supervise a shift of about seven officers and a dispatcher when the sergeant was off. A few short months later in February 1987, she was again

promoted. This time she was promoted to sergeant and was in charge of a shift full-time. About a month later, Mellor was promoted to detective. As a detective, Mellor was assigned a caseload and the follow-up investigation on all of those cases. Her area of specialization was child abuse, both physical and sexual.

“I felt I could truly make a difference in a child’s life,” said Mellor.

In April 1990, Mellor was promoted to detective sergeant. She still had her detective duties, but now had the responsibility of



Amy J. Mellor



Mellor in a Great Bend patrol car during a shift in the early 1980s.



Mellor at the end of a midnight shift with the Great Bend Police Department.

assigning cases and other supervisory duties. In 1995, Mellor left the Great Bend PD to take a position with the Kansas Lottery as an enforcement agent. After a few years managing internal security and security issues of lottery retailers, investigating violations of Kansas lottery statutes, and other duties, Mellor left the Kansas Lottery and took a position with the Pawnee County Sheriff's Office. She worked there from June 1998 to August 2005.

"Being a deputy for a county sheriff's office was a whole new ballgame," said Mellor. "A

police department doesn't have the responsibility of running a jail or serving civil process, which I soon learned is a very significant portion of a sheriff's duties."

Mellor also explained a significant event during her employment with Pawnee County.

"Surprisingly (and thankfully), the only time I was ever hurt in the line of duty was while I was working for the Pawnee County Sheriff's Office," she said. "The jail was located in the second story of the sheriff's office, and the first floor had been

converted to offices. On one New Year's Eve, an inmate decided to tear the sink off the wall and plug the shower and stool. This not only flooded the cell, but also the offices below the cell. About seven of us



Mellor (second from the right with dark hair and a hat) in the early 1990s when she was Detective Sergeant.



Mellor participated in the Law Enforcement Torch Run in the summer of 1989.



While working with the Pawnee County Sheriff's Department, Det. Mellor got a chance to share information about the importance of reading daily with second and third grade summer school students.

went upstairs with the intent to move the inmate to another cell. While attempting to restrain him, I was thrown into the solid steel door, which resulted in the entire side of my face being bruised. It looked bad, but it could have been so much worse.”

During Mellor's law enforcement career, many exciting things happened to her. She described one incident as a detective when she investigated an attempted homicide of a woman 8 ½ months pregnant. The woman came home and a man was inside her home with a stun gun. He attacked her with the stun gun, threw her down the unfinished stairs into the basement, and hit her on the head numerous times. She pretended to be dead and heard the man unscrewing the gas couplings from the furnace before he left. She waited until she was sure he was gone, got up, blew out some candles, opened a window, and went to find a neighbor for help. Her husband and the man he had “hired” were

charged in the case. Her baby was born a short time later and was fine. Later the woman and Mellor flew to New York and appeared in an episode of Geraldo Rivera about contract murders. Mellor said it was an extraordinary case.

Awards Mellor received during her law enforcement career, included:

- February 1996 LEAD (Leadership, Education, Action Against Drugs) Partnership Award (outstanding volunteer service)
- Great Bend Jaycees Outstanding Young Public Protector, 1993
- VFW Award for Outstanding Law Enforcement Officer, 2001

While her career provided her with some great memories, it also gave her some scary memories. While working for the Pawnee County Sheriff's Office, Mellor investigated a local man for numerous



Summer 2005

(left) Mellor received a Certificate of Appreciation from Sheriff Leon Shearrer of Pawnee County before leaving for law school.

(below) Mellor stands with her family as she gets ready to go to law school. From left: Mellor's father: Melvin Schartz, her daughter: Sarah Taylor, Sheriff Leon Shearrer, Mellor, and her mother: Marilyn Schartz.



crimes. He became involved with a young girl he considered his girlfriend. He abducted her and eventually took her to Mexico. After they were apprehended, the girl informed Mellor that the man had given Mellor's photo to the Mexican mafia. They were told to kill her and kidnap her daughter to be used as a prostitute in Mexico.

"The fact that he had included my daughter in this 'hit' was a feeling I can't even describe," said Mellor. "I was livid but at the same time it made me nauseous to think that my chosen occupation could put my family at risk. This continued to haunt me even after I moved on from Pawnee County to attend law school."

During her law enforcement career, Mellor enjoyed the people she met, helping victims, and investigating crimes, but it was often hard to juggle the demands of the job and that of being a mother. She also thought about going to law school, but her daughter was her first priority. So, she waited until her daughter graduated high school and applied for law school.

"Becoming a prosecutor was a natural transition and a good fit for me," said Mellor.

Mellor graduated with her law degree from Washburn's School of Law in 2008. During law school, Mellor got a chance to be a law clerk in the criminal division of the Kansas Attorney General's

office and was able to assist in the trial preparation of two capital murder cases. After law school, Mellor went to work for the Wyandotte County District Attorney's Office. While working for Wyandotte County, she handled adult felony cases, primarily drug and property crimes. In October 2010, Mellor returned to her hometown and became an Assistant County Attorney with the Barton County Attorney's Office.

After going to work for Wyandotte County, Mellor joined the KCDAA and other associations. She has attended as many KCDAA conferences as she can and hopes to be more active in the future. She believes associations are "absolutely crucial."

"I have learned through my many years of law enforcement, and life for that matter, how important contacts and networking are," said Mellor. "I have met so many people through these associations and

value their friendship, professional support, and advice.”

Mellor enjoys a lot of aspects of being a prosecutor. She enjoys being in the courtroom, the challenge of different types of cases, pursuing justice for victims of crime, working with law enforcement officers, and the camaraderie.

When she isn't working, Mellor enjoys reading and spending time with family. Mellor is very proud of her daughter and her family. Her daughter graduated from Kansas State University with a bachelor's degree the same day Mellor graduated from law school. Mellor's daughter and son-in-law also had their first baby in November, which this first time grandmother is very excited about.

Tom Stanton

Stanton was born in Albuquerque, N.M., and his father was a cost engineer for civil construction companies. During the first 13 years of his life, Stanton lived in Albuquerque, two different places in Colorado, LaPlata, Md., and then again in New Mexico. He lived in Farmington, N.M. from the age of 13 until he was 26 years old. After some time on the west coast in college, he returned to Farmington to attend San Juan College.

During Stanton's college education, his father lost his job, and Stanton had to work full-time to support his family. There happened to be openings at the Farmington Police Department and Stanton was interested in law, so he took the tests and became the first alternate for the academy. He was an alternate due to his reason for applying, but one of the persons ahead of him withdrew and he was admitted to the academy. He intended to work there for a year, but ended up working as a police officer and training officer for the city of Farmington from 1980 to 1984.

His duties were similar to any patrol officer. He worked cases ranging from barking dog complaints to homicides; however, Farmington was a little different as it was an oilfield town. The oil rig workers would work hard all week and go to town

on the weekends for a good time. So, officers had to break up fights and work to keep the peace between the residents and workers. In addition, there was a large Hispanic population, and it was a short distance from the Navajo Indian Reservation.

“An understanding of each of the local cultures was required to effectively be a police officer in Farmington,” said Stanton.

Stanton also described some of the exciting things about being a police officer.

“The most exciting thing career wise to happen to me was my assignment as a field-training officer, because it allowed me to help mold other police officers into good officers,” said Stanton. “Exciting moments is another issue. I worked homicide cases, which were exciting. High-speed chases were exciting if not downright frightening.

Facing down an armed gunman at one point in a domestic situation, and choosing not to shoot that person was also an exciting experience. What I've found about police work to be very interesting is that you could be driving around absolutely bored out of your mind, checking doors and buildings for break-ins one minute, and be involved in a chase or dispatched to a dangerous situation the next.”

After working full-time as a police officer and obtaining an Associate of Arts degree and later an Associate's Degree in Business Administration and Criminal Justice, Stanton got married and moved to Lawrence, Kan. to attend the University of Kansas.

While he continued his education at KU, Stanton got a job as a police officer for the university.

“The University of Kansas was a culture shock experience for me,” said Stanton. “The methods used in dealing with the campus population were quite different from the methods I had used as a municipal officer in Farmington. As soon as I arrived on campus, I made recommendations to change the ammunition they were using to better fit the situation. The department received my research and changed their ammunition accordingly.”

Stanton also described how dealing with students was different than residents of Farmington.

“The manner in which officers dealt with



Tom Stanton

students was also slightly different than the manner in which a normal patrol officer deals with citizens in a municipal environment,” said Stanton. “There was a large concern about the effect our actions would have on the perceptions of the student’s parents, to the extent that officers often suffered from a community belief that they were not true police officers. I attempted to do my job in the same manner as I would have in any other environment.”

While working for KU, Stanton was assigned to a task force to investigate the murder of a professor at his apartment. The investigation led them into the dangerous project areas of Kansas City, but they were able to solve the crime. Stanton thought that experience was pretty exciting along with attending KU basketball games as an officer and student when Danny Manning was playing. However, he didn’t think directing traffic in subzero weather was that exciting.

Stanton enjoyed being a police officer because he was able to help the citizens of the jurisdictions he worked in. He thought it was nice to be able to help solve people’s problems when they were in trouble, and arresting people made him believe he was helping communities be safe. Something he didn’t enjoy about law enforcement was testifying on the witness stand. He didn’t enjoy a defense attorney personally attacking him because he did his job. However, the worst part was the fear that his wife and child were constantly in danger.

Along with the good and bad of law enforcement, comes the scary situations.

“There were at least three separate occasions in which I faced armed suspects in situations where the chances of me having to defend myself by shooting were very real,” said Stanton.

Stanton’s law enforcement career came to an abrupt end after a foot chase at the KU football stadium. He climbed a high chain link fence and jumped down from the top. When he jumped, he tore his anterior cruciate ligament (ACL) in his right knee. He had surgery and the physicians informed him he couldn’t rely on his knee to run up and down stairs. That was a major part of his job at KU considering the multi-story buildings, so his career was over. However, he knew he wanted to be a prosecutor. So, after graduating with a Bachelor of Science in Business with honors, he attended the

University of Kansas Law School. He got his law degree in 1990.

After law school he was hired with Davis, Beall, McGuire and Thompson in Leavenworth. Stanton started there in the fall of 1990 and by the end of that year, a large portion of Leavenworth had been called to duty for the first Gulf War. Thus legal business went down and Stanton lost his job. In May 1991, he was hired in Saline County by CA Julie McKenna. While there he was promoted to First Assistant Saline County Attorney and remained there until January 2001. In 2001, McKenna lost the election, so Stanton had to look for another job. Keith Schroeder in Reno County hired him as his deputy, where he is still currently employed.

In Reno County, Stanton handles primarily drug cases, and occasional drug-related homicides. There have been three cases that stand out in Stanton’s mind.

“I assisted Keith in prosecuting a first-degree murder case in *State of Kansas v. Trevor Corbett*. The case lasted for approximately two weeks and required a great deal of skill in order to present the evidence,” said Stanton. “I also handled a case of attempted first-degree murder of a police officer in which a man named Tracallen Streeter shot Officer Michael Robinson of the Hutchinson Police Department. I was able to obtain convictions in that case for three counts of attempted first-degree murder of a police officer along with several drug charges. The third most interesting case would have been a homicide I handled in which a drug dealer was killed by one of her customers. The defendant indicated in a phone call out of the jail that he had killed the victim based on a method he had learned in a Hollywood movie.”

Just like law enforcement, prosecution has good and bad things. Stanton likes being able to help the community, but he thinks it is difficult to insure that justice is done in a manner that is acceptable by the citizens in the community. He also believes “it is sometimes difficult to deal with attorneys who are fond of making personal attacks against prosecutors who are simply doing the best job they can for the community.” Overall, the job is very rewarding for Stanton.

Stanton has been a member of the KCDA since he became a prosecutor in 1991. In 1999,

he got involved in committees and the board. His involvement started out as an attendee at conferences. Then he got involved in the CLE and legislative committees, which propelled him forward. He also served on the KCDAA Board of Directors and served two years as president. Since being president, Stanton has continued his work with the committees, and plans to be involved in the Kansas Prosecutor's Foundation as a trustee.

Stanton believes involvement with associations, like the KCDAA, is extremely important.

"The prosecutors in this state would have little cohesion if it were not for the Association," said Stanton. "We are able to affect legislation and public policy through the Association, and we get our training through the Association. The networking opportunities that are provided by a professional association are without compare."

As a prosecutor, Stanton has been given the following awards and honors:

- 2005 Prosecutor of the Year, KCDAA
- Kansas Alliance for Drug Endangered Children Outstanding Drug Endangered Children Leadership award, August 2006
- Elected to the Board of Directors of the KCDAA

- Served as KCDAA president for two years

Stanton and his wife enjoy being active in their church and spending time together or with their family. Stanton has two daughters and a son. Stanton also enjoys playing golf when he has the opportunity once or twice a year and camping with his son.

Stanton would also like to add the following:

"I'm really proud of the professional office that Keith Schroeder has been able to put together here in Reno County. The staff consists of six prosecutors, three of which have been named prosecutor of the year within the last five years. We have an incredible support staff and Hutchinson is a wonderful place to work," said Stanton. "I am also proud of the reputation the KCDAA has built up over the past few years in regard to legislative matters. There was a time when the KCDAA was not an influential voice in the legal policy of this state. Over the last several years, and with the help of a great executive director and his staff, we have come to a point where the legislature considers the position of the KCDAA to be vital in determining the policy for this state." 

We want to share your news!



If you have something you would like to share with the KCDAA membership, please keep us informed.

We'd like to publish baby announcements, new attorneys, anniversaries, retirements, awards won, office moves, if you've been published or anything else worth sharing with the KCDAA!

Information submitted is subject to space availability and the editorial board reserves the right to edit material. Send your information to:

KCDAA, attn: Mary Napier

1200 S.W. 10th Avenue

Topeka, Kansas 66604

(785) 232-5822

or e-mail:

mary@napiercommunications.com

Feel free to submit digital photos with your announcement!

Upcoming Deadlines:
Spring 2011: March 25
Summer 2011: July 15

Birth

Natalie Randall, Assistant Ford County Attorney, and husband Shawn Lehn proudly announce the birth of their daughter, Emileigh Claire Lehn, born October 13, 2010.



Congratulations

John Bryant, Deputy County Attorney for Leavenworth County and Kristiane Gray, Assistant County Attorney in Wyandotte County are engaged. The wedding is planned for August 2011 and to take place in Calgary, Alberta, Canada.



New Faces

Finney County Attorney's Office

The Finney County Attorney's office hired Jennifer Brown to be an Assistant County Attorney Aug. 23, 2010. Brown is a May 2010 graduate of Washburn University School of Law. During law school she worked as a law clerk for Bryan, Lykins, Hejtmanek and Fincher and also as a lobbyist for Federico Consulting. Brown spent a semester working with criminal and domestic cases as an intern for the Washburn Law Clinic. All of her experiences during law school have prepared her and will be beneficial in her new duties as an Assistant Finney County Attorney.

Brown received her Bachelor's degree from Colorado State University in Fort Collins, Colo. majoring in Finance. Sept. 18, 2010, she became Jennifer Cunningham when she married

Garden City Municipal Court Prosecutor, Jake Cunningham. They met during their first year at Washburn University School of Law and moved to Garden City, Kan. the day after the bar exam in July 2010.



Ford County Attorney's Office

Josh Seiden joined the Office of the Ford County Attorney in October. A graduate of the University of Kansas School of Law, Seiden previously volunteered at both the Douglas County District Court and the Missouri State Public Defender. He received an undergraduate degree in Political Science from the University of Missouri-Kansas City, where he served as news editor for the school's student newspaper. An Overland Park, Kan. native, Seiden also attended Johnson County Community College, where he served as editor-in-chief of the student newspaper. In his spare time, he enjoys Photoshop, people watching, and observing amateur ballroom dance



Josh Seiden



Grant County Attorney's Office

In April 2010, David C. Black was appointed to be the Grant County Attorney in Ulysses, Kan. He hired an associate, Jessica Akers, and she is an assistant Grant County Attorney in the Ulysses office at 204 E. Grant/P.O. Box 527, Ulysses, KS 67880.



Leavenworth County Attorney's Office

Leavenworth County is pleased to announce that Alice Walker has accepted a position as Assistant County Attorney with the County Attorney's Office. She is a graduate of Washburn University and the Washburn University of School of Law. She graduated law school in May and recently passed the Kansas Bar. She interned with the U.S. Army Judge Advocate General in Fort Hood, Texas and the Douglas County District Attorney's Office. She will be handling a caseload including domestic violence, juvenile, traffic, and general felony cases.



Logan County Attorney's Office

Margaret P. Mahoney is now the assistant Logan County Attorney and also the assistant Decatur County Attorney. She is living in Oakley (Logan County), but also has an office in Oberlin (Decatur County). She is a 2010 graduate of KU Law School. She began work in both counties the beginning of September. She will also maintain a private practice in both Oakley and Oberlin.



Prosecutor Milestone

Barry Wilkerson celebrated being a prosecutor for 20 years as of August 1, 2010. He began as an assistant Riley County Attorney Aug. 1, 1990 and served in that capacity for 10 years. Then in January 2001, he became the Pottawatomie County Attorney and served in that capacity until 2005 when he became Riley County Attorney.

2010 Prosecutor of the Year

Jan Satterfield Butler County Attorney

The Prosecutor of the Year award is given to a prosecutor for outstanding prosecution of cases throughout the year, and for significant contributions to the profession of prosecution during that year.

This year's winner was Jane Satterfield. Satterfield is the Butler County Attorney and has been a Kansas prosecutor for 20 years. She was recently elected as District Judge and will become a judge in January 2011. For the last 11.5 years, Satterfield has overseen one of the largest county attorney's offices in the state with a budget of \$850,000 and a staff of 15. She has had a superb



year with several high profile and substantial cases. During her career as a prosecutor, Satterfield has handled 16 homicide cases. Three of her cases involved burned and dismembered bodies. She was one of the first prosecutors to prosecute and handle an appeal on the crime of injury to a pregnant woman, which involved the beating of the mother and death of a fetus, has handled child pornography cases, and at one time filed an adultery case with successful conviction.

Satterfield received her Juris Doctorate from Washburn University in 1990. She is involved on the KBI committee, and is an Ethics Investigator for the KCDAA.

2010 Lifetime Achievement Award

Steve Obermeier Senior Attorney, Johnson County District Attorney's Office

The Lifetime Achievement Award is given to a prosecutor with at least 25 years in prosecution, and who has made great contributions to the profession of prosecution in Kansas.

This year's winner was Steve Obermeier. Obermeier has worked for the Johnson County District Attorney's office for 27 years. For the first two years, he was a paralegal, but after graduating from law school in 1985, he was assigned to the adult criminal division. In 1996, Obermeier became the first and only full-time appellate attorney for the office. He continues to serve in this capacity, and in 2009, he was promoted to Senior Attorney for the office.

Over the last 15 years, Obermeier has orally argued hundreds of appeals before the Kansas Court



of Appeals and the Kansas Supreme Court. He has written more than 1,000 appellate briefs, which has earned him the respect of judges and attorneys alike. He has been one of the attorneys of record in more than 170 published appellate opinions.

Obermeier has been an active member of the KCDAA and is involved on the legislative and CLE committees. He has also written articles for the Kansas Prosecutor magazine published by the KCDAA. Over the years, Obermeier has conducted dozens of CLEs for prosecutors and law enforcement on numerous topics. Obermeier has dedicated his life in the service to the citizens of Kansas, and has been a great asset to the KCDAA over the years.

Drug Grid and Court Rules in a Gant Case

by Tom Stanton, KCDAA Drug Section
Deputy Reno County District Attorney



New Drug Grid Contemplated

The Drug Section of the KCDAA has been asked to provide input for a possible change to the drug grid under the Kansas Sentencing Guidelines Act.¹ Drug crimes have been assigned a separate grid since the inception of guidelines in 1993.² There was a move in the last legislative session to combine the drug grid with the non-drug grid, which the legislature did not pass.³ The legislature has expressed a desire to amend the drug statutes to develop a system, which would base the severity of drug penalties on the quantities of controlled substances involved in the crimes. There has also been an expressed desire to develop a system, which reflects a proportionality consideration regarding the penalties vis-a-vis other drug and non-drug crimes.

The Association has been asked to submit proposed legislation to address these issues. There is a general consensus among prosecutors that combining the drug grid with the non-drug grid is not an optimal solution to the issues raised by the legislature. I have drafted a proposal, which would add one level to the drug grid. This level would fall between the current levels one and two of the grid, with sentences ranging from 92 to 144 months in prison. This would address the proportionality issue by placing a first-time conviction for manufacture of a controlled

substance in the new grid level, reserving level one for second or subsequent convictions.

The draft legislation suggests distribution cases for substances such as methamphetamine, cocaine, and heroin would be divided into categories of less than or equal to 3.5 grams (penalties consistent with current level 3 on the grid), 3.5 to 100 grams (penalties consistent with current level 2 on the grid), 100 to 1,000 grams (penalties consistent with the new level on the grid), and amounts greater than 1,000 grams (penalties consistent with current level 1 on the grid). Marijuana distribution cases would be assigned severity levels based on amounts less than or equal to 28 grams (penalties consistent with current level 3 on the grid), 28 to 450 grams (penalties consistent with current level 2 on the grid), 450 grams to 3,000 grams (penalties consistent with the new level on the grid), and amounts greater than 3,000 grams (penalties consistent with current level 1 on the grid). It has been proposed that distribution of pills containing opiates and narcotics be divided according to total number of milligrams involved, while drugs such as ecstasy, BZP, and LSD would be divided based on dosage units. Specific distribution levels for these drugs has not yet been determined.

Many new issues will become important in our consideration of this legislation. I am suggesting

that the weights for powder drugs be determined by total weight of the substance containing the controlled substance, not by a purity determination. Requiring that a purity determination be made in every case would severely burden an already over-worked KBI lab, and logic dictates that the substances offered for sale should be considered as prepared for sale when seized. We would also have to consider how the levels would be determined. For example, in an investigation involving several controlled buys of a controlled substance, the statute would need to give prosecutors the ability to consider the total weight of all purchases in determining the charges to be filed.

The Association's response to this issue will be important in the final product produced by the legislature. I am requesting input from members of the KCDAA in determining what to submit to the Board of Directors as a legislative proposal. If you have input on this issue, please contact me at thomas.stanton@renogov.org.

Footnotes

1. K.S.A. 21-4701, *et seq.*
2. K.S.A. 21-4705
3. H.B. 2518

The Appellate Court Rules in a *Gant* Case

The Kansas Court of Appeals has delivered a published opinion regarding the application of the good faith doctrine to searches conducted by law enforcement prior to the decision issued by the United States Supreme Court in *Gant v. Arizona*, 129 S.Ct. 1710, 556 U.S. ____ (2009). In *State v. Karson*, ____ Kan.App.2d ____, 235 P.3d 1260 (July 30, 2010), the Court of Appeals ruled that, although *Gant* applied to the search of the defendant's car, a second issue was raised under the facts of the case. That second issue was whether the facts required the application of the exclusionary rule, and thus the suppression of the evidence at trial.⁴ The Court settled the issue in the State's favor:

"We conclude that a police officer who conducts a search in reasonable reliance upon the settled case law of the Kansas Supreme Court and the United States Court of Appeals for the Tenth Circuit has not engaged

in misconduct even if a later United States Supreme Court decision deems the search invalid. Accordingly, under the good faith exception to the exclusionary rule, evidence found in such a search is not excluded based on the search's invalidity."⁵

It should also be noted that law enforcement officers in Kansas were also following a recent amendment to statutory law which they believed enabled them to search for evidence of any crime incident to arrest.⁶

The *Karson* Court correctly analyzed the purpose of the exclusionary rule. The suppression of evidence normally results in the dismissal of charges because of the inability to go forward with a prosecution, especially in a drug case. Suppression of evidence is only warranted in situations where the exclusion of evidence would deter future police misconduct. The *Karson* Court noted that the exclusionary rule "cannot be expected, and should not be applied, to deter

objectively reasonable law enforcement activity."⁷ Clearly, in cases of searches incident to arrest, which were conducted pre-*Gant*, officers were relying on what most thought was settled legal precedent, as well as established statutory authority. To suppress evidence under those circumstances would be to penalize law enforcement for following the law as established by their training and experience.

Finally, prosecutors should be mindful that *Karson* is not yet a final decision. The Kansas Supreme Court granted a petition for review on August 27, 2011. This is an issue which must be finally determined by the Kansas Supreme Court. 

4. *Karson* at 1264.
5. *Karson* at 1265, referring to *U.S. v. McCane*, 573 F.3d 1037 (10th Cir., 2009)
6. K.S.A. 2006 Supp. 22-2501
7. *Karson* at 1264, citing *United States v. Leon*, 468 U.S. 897, 919, 104 S.Ct 3405, 82 L.Ed.2d 677 (1984)

Do you have an article idea for the Kansas Prosecutor? Do you want to submit an article?

If so, send an e-mail to Mary Napier, editor, at mary@napiercommunications.com.



2011 Deadlines:
Spring 2011 - March 25
Summer 2011 - July 15
Fall 2011 - October 28



You can find archives of the Kansas Prosecutor in the members only section at www.kcdaa.org.

Gimme a Grand Jury

by Jan Satterfield, Butler County Attorney

Although rare, there are times in which the convening of a grand jury to review a prosecution and case serves the interests of the prosecutor and the public at large. In the state of Kansas, few cases are charged through the grand jury process. Normally, charges are initiated by the stroke of a pen by a prosecutor. Federally, all charging occurs through a grand jury indictment. There are many benefits to a grand jury, but there are also some caveats. I believe a grand jury can function as a critical evaluator in complex or challenging cases.

The grand jury process is outlined in K.S.A. 22-3001 et seq. The guidelines are general and simplistic. Unfortunately, there is very little Kansas case law in this area. There are two ways in which a grand jury can be convened in Kansas. A grand jury can be requested by a prosecutor to review criminal cases to determine if an indictment should be issued. The other form of a grand jury is a citizen's grand jury initiated by a petition of the citizens. Typically, a citizen's grand jury is convened to investigate perceived criminal activity involving government or a perceived failure of the prosecutor or system to charge or investigate a particular person or entity.

A grand jury has two functions: to charge and to investigate. For purposes of this article, I will only speak to grand juries as it relates to a grand jury initiated by a prosecutor as opposed to a citizen grand jury although many of the principles and characteristics are the same. In order for a prosecutor to convene a grand jury to review a case for potential charges, the prosecutor must petition the district court. A majority of the district judges in any judicial district may order a grand jury to be summoned in any county in the district when it is determined to be in the public interest.

Grand juries have been around for centuries. Most trace the grand jury system to Assize of Clarendon, established by King Henry II in 1166. Federally, grand jury indictments are guaranteed by the fifth amendment. It provides in pertinent part, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury." Of course, the federal felony prosecutions requirement of indictment by grand jury as a constitutional guarantee does not apply to the states. As of 1996,

23 states require prosecution of a felony to be begun by a grand jury. However, 17 of those states allow for waiver of the indictment process under certain circumstances. Kansas is not among them.

The grand jury shall consist of 15 members and is to be drawn and subpoenaed in the same manner as petit jurors. Juror qualification, which is the only basis to quash an indictment, stands, if 12 or more jurors qualify. A presiding juror and deputy presiding juror are selected and administered an oath as outlined in K.S.A. 22-3003. The remaining jurors are given a similar oath. Once a grand jury is impaneled and sworn in, the judge shall give the jury all information deemed proper and advise them of their duties as well as any crimes known to the court and likely to come before the jury. Keep in mind a grand jury may investigate matters beyond those placed before them. A grand jury shall employ a court reporter, may employ special counsel, investigators, and incur such other expenses it deems necessary with approval of the district court. Expenses are to be paid through the county general fund by statute. When sought by the grand jury, it shall be the duty of the prosecuting attorney to attend all sessions for the purpose of examining witnesses and giving advice, pursuant to K.S.A. 22-3008. Grand juries have subpoena authority for persons and documents and investigatory powers. Although no witness appearing before the grand jury shall be required to incriminate themselves, the presiding grand juror in consultation with the district judge and prosecuting attorney, may give transactional immunity or use and derivative immunity. Compulsory attendance rules and contempt rules apply. A witness has the right to have counsel present simply to interpose objections, but counsel may not otherwise speak. Grand jury proceedings are closed to the public and are secret in nature. The only persons present during the deliberations are the jurors themselves. An indictment or a "true bill" requires 12 or more jurors to concur. No grand jury may convene for more than 3 months unless extended by the court.

Prosecutors should provide a check on the quality and admissibility of evidence considered. The prosecutor should do sufficient legal research to provide guidance and advice to the grand

jury. A prosecutor should never allow perjured testimony. Although, hearsay is allowed, it is not advisable except in limited circumstances. Even though illegally seized evidence and inadmissible evidence can be offered, again, it serves no real purpose in informing or persuading a grand jury. In *United States v. Calandra*, 414 U.S. 338 (1974), the Court upheld the use in grand jury proceedings of unconstitutionally obtained evidence. In *United States v. Williams*, 504 U.S. 36 (1992), the Supreme Court virtually abandoned the traditional supervision over prosecutorial conduct in the grand jury. In that case, the prosecutor had failed to disclose exculpatory evidence. Without any meaningful judicial supervision of prosecutorial conduct, any check is left to the prosecutor's sense of fairness and proper behavior before the grand jury. (Note: Federally, there is a DOJ rule which says when a prosecuting attorney conducting a grand jury inquiry is personally aware of substantial evidence, which directly negates the guilt of a subject of the investigation, the prosecutor must present or otherwise disclose such evidence which is consistent with ABA standards). Any ethical standards or rules must be adhered to as well.

In order for a grand jury to truly serve as an independent body, provide the level of scrutiny and assessment to properly evaluate the case, and ultimately achieve what the prosecutor is seeking, a fair review of the case, it must be dealt with fair handedly and not as a "hand maiden." The purpose or function of the grand jury is to determine whether there is "probable cause" to believe the defendant committed the alleged offense, thus if indicted, avoiding the necessity of a preliminary hearing. It can serve as the voice of the people and the pulse of the people as it relates to a particular case. Further, there is also no reason a discussion cannot occur

between the prosecutor and the grand jury conveying the standard upon conviction of "beyond a reasonable doubt." In essence, it will be 12 similarly situated individuals who will ultimately determine the guilt of the accused.

Finally, by monitoring one's own conduct with the grand jury, a prosecutor can eliminate the old "ham sandwich" rhetoric. It has been said that a skillful prosecutor could convince a grand jury to indict "a ham sandwich." This cliché common among academics and practitioners exemplifies some of the consternation and controversy surrounding grand juries not further elaborated on herein.

Although no prosecutor will want to walk away from a grand jury with a "no bill," that may be perceived to constitute failure, it may be wise to listen to the concerns of grand jurors. In *Ducan v. Louisiana*, 391 U.S. 145 (1968), the Court underscored community participation in determining guilt or innocence, and a shared responsibility that results from group decisions. The need to win a unanimous verdict at trial will provide some disincentive to bring a weak case and should also serve as a disincentive to admit irrelevant or inadmissible evidence as well. The grand jury process is merely another tool for the prosecutor to consider using in a case that appears ripe. The process also gives the local community the sense of participation and investment in the criminal justice system that is necessary to assure local confidence in the system and lead ultimately to convictions. 🌐

Other Sources:

Goldstein, Grand Jury Practice, Law Journal Press, W.Y. 2007
Washburn, Kevin, Restoring the Grand Jury, 76 Fordham L. Rev, Vol. 76 (April 2008)



Faceoff - The General versus the Mullah: Arguing “Afghan-Style”

by Vic Braden, Deputy Kansas Attorney General, Criminal Litigation Division

Trouble with the Mullah

General Zazai, the 205th Afghan National Army (ANA) Corps¹ Commander, was pacing back and forth about five feet in front of me. His head was down, and I could tell that he was in deep thought. Suddenly, he stopped, looked straight at me, raised his white, bushy eyebrows², pointed his right index finger at me, and said “We need to visit the ‘Bad Man’ in Musa Qala.”

By this time, I had been the General’s military advisor for five months. I met with him every morning, gave him insight into the western view on a wide-variety of military and political issues, and traveled with him throughout southern Afghanistan. The usual morning routine was saluting the General, exchanging pleasantries, and taking my seat in the plush chair right next to his well-varnished, cherry-wood desk. My trusted interpreter, Darrell³, always sat next to me. Once settled, *chai* (hot green tea) would be served and the discussions would begin.

I found General Zazai to be a complex, difficult, and demanding man through this process. However, he was also fascinating. Each day with him had a slight twist, and this day’s “Bad Man” comment was no different. After the interpretation of the statement, I glanced at Darrell and questioned the phrase. “Bad” meant a troublemaker. I looked at the General and asked for the name of the “Bad Man.” He smiled and said “Mullah Salaam.” He cupped his right hand to his face and made a sweeping motion downward while telling me that the man had a long, black beard. He then placed his hands in

“Most of all, lawyers must be story tellers.”
Gerry Spence

front of his abdomen and made a horizontal arching movement with each hand toward his sides while stating that the Mullah was big.

After describing the man’s physical characteristics, General Zazai walked around his desk and sat down in his chair. He placed his elbows on the desk, grabbed his folded-up reading glasses with his right hand, and started tapping them lightly against his lips. After thinking for a minute or so, he said that I needed to schedule a UH-60 Black Hawk for the visit. The General informed me that the Mullah was the District Governor. According to General Zazai there were major security problems in this district. The violence was escalating and the Mullah claimed that the Afghan National Army did not provide enough security. The General wanted to conduct a *shura*⁴ to determine the extent of the problem. I sensed that the main issue may have not been the Army’s security, but the Mullah’s method of governance. General Zazai had heard enough and was going for a public showdown with the Mullah.

Same country, different backgrounds

The General’s other commitments meant it was about two weeks before the Musa Qala visit became a reality. In the interim I talked to some of the Afghan officers in the know and checked the internet about the District Governor. After completing the research, I thought about the lives of both men. They were both survivors in a world of chaos and violence, but the similarity ended there.

Some saw Mullah Abdul Salaam Alizai as an opportunist.⁵ He had embraced the Taliban movement and rose through the ranks to the grade

white hair, eyebrows, and beard that contrast sharply with his dark-brown skin.

3. An interpreter in Kandahar is under constant threat. If the Taliban find out that he is supporting the Americans, they will kidnap him, hang him from a light pole, and leave a note on his body telling others that this is what happens to those who support the Americans. Therefore, “Darrell” is an alias.

4. A *shura* is an Afghan version of an American town hall meeting.

5. Mullah is a title that generally means a Muslim man, educated in Islamic theology and sacred law. It carries credibility and respect within the Afghan society.

Footnotes

1. The 205th ANA Corps has changed recently. However, in early 2010 the 205th ANA Corps was a 16,000-man organization that provided security for the southern region of Afghanistan. This area is about the size and population of Kansas. The southern portion is oceans of desert sand and the northern portion is oceans of mountain ranges with narrow, fertile valleys in between. It includes the most volatile areas of Afghanistan: Kandahar and Helmand Province.

2. General Sher Mohammad Zazai is in his early 60s (the average life expectancy in Afghanistan for a man is 44) and stands 5’4” tall. The General’s distinct facial figure is his

of field commander. However, when the conditions were right, he defected from the Taliban and was rewarded for this act with an appointment as the District Governor of Musa Qala, Helmand Province, in January 2008. His selection was widely seen at the time as a step toward dialogue with the moderate Taliban. However, by January 2010, his ability to govern was under serious question. His style became more akin to a heavy-handed mob boss than an effective and fair governor, sort of a Tony Soprano, Afghan style.

The General, on the other hand, was a mix of military professional and statesman. By January 2010, he had accumulated 50 years of military service. He had attended the Leningrad Soviet Military Academy for four years in the mid-1970s, fought alongside the Soviets in the 1980s, hid from the Taliban in the 1990s, and re-emerged in 2003 when he was brought back into the new ANA as a Brigadier General in charge of the Judge Advocate Division. He was tapped as the Commander of the 205th ANA Corps in September 2008.

He was also known as a soldier-scholar, an intellectual man with exceptional language and writing skills.⁶ He helped to write the Afghanistan Constitution, and kept a copy of it by his desk.⁷ Although an outstanding writer, he considered his biggest intellectual talent as a linguist. He was gifted in the nuances of the two official languages of Afghanistan: Dari and Pashtu. Additionally, he spoke fluent Russian and considered his command of the Russian language unparalleled.



Photo by Senior Airman Kenneth Holston, U.S. Air Force

After looking at the careers of both men, I was looking forward to the Musa Qala Faceoff.

A scene of beauty, intrigue, and poverty

On January 5, 2010, the General and I jumped in a Black Hawk and headed west to see the Mullah. It was mid-afternoon by the time we landed in Musa Qala. The sky had gone deep blue with no clouds in sight. The gentle wind had a crisp coolness that required a light jacket.

The District Center⁸ was situated on the east bank of the Musa Qala River. From there you could look to the west and see the sandy riverbed that stretched a half a mile across. The spring thaw had not started; the waters flowed through the riverbed in a series of streams separated by sandbars. On the west bank there was a beautiful green turf that looked like grass, but may have been early growth wheat (or poppy). This area ran all along the river bank and extended about a mile to the west before hitting sandy-brown bluffs. It was a striking scene in the sea of surrounding desert.

A walled courtyard enclosed the District Center. Entering through the main gate my eyes zeroed in on two things. First, the courtyard was adorned with red roses in full bloom and the ground was carpeted with a thick turf of dormant grass. Second, a large man stood just inside the gate and was individually greeting the members of General Zazai's entourage. This man was about six-foot-tall and weighed about 300 pounds. It was Mullah Salaam.

Mullah Salaam wore an immaculate white *salwar kameez*⁹ with a light blue, gold trimmed

6. This skill is unique in southern Afghanistan where the literacy rate is 5% (10% for men and near zero for women).

7. Occasionally, General Zazai would summons his military lawyers into his office and quiz them on the legality of detentions. If a lawyer's response lacked legal foundation, the General would pick up the copy of the constitution on his desk, open it to the relevant section, and recite the portion pertinent to the issue.

8. The District Center is similar to the county courthouse.

9. The *salwar* are baggy pajama-like trousers. The legs are wide at the top, and narrow at the ankle. The trousers are held up by either an elastic waistband or a drawstring. The *kameez* is a long shirt. The side seams, left open below the waist-line, give the wearer greater freedom of movement. Most *salwar kameez* clothing is a tan or white color. However, some of the more affluent men have the neckline and bottom edges of their *kameez* decorated with embroidery or lace.

shawl wrapped around his shoulders. His *lungee*¹⁰ was a bright white. He wore an Afghan version of flip-flops.

He led us into a large room in the main District Center building. It was packed with 60 to 70 village elders, five to 10 members of the Afghan and International press, and a handful of coalition officers. Most of the group sat on

the floor cross-legged. However, I was able to find a seat along the north wall. Mullah Salaam sat two chairs to my left. General Zazai sat on a sofa along the east wall right next to the Mullah.

I took note of the village elders in the crowd, while I waited for the debate to begin. Their tattered and soiled clothes bore witness to years spent living under the intense sun in the arid climate; the harsh environment had also caused their dark-brown skin to become leathery and wrinkled. Five of the elders had suffered strokes that left one side of their face drooping. Gum disease had left them all with only one or two off-brown colored front teeth. A few had one or both eyes that were cloudy from what were probably cataracts. The average age was most likely late 30s to early 40s. However, they looked to a western like they were in their 70s or 80s.

Body odor was always an issue with the indoor gatherings. The heavy, pungent smell was building slowly as the temperature began to rise in the enclosed room. I was hoping for someone to crack a window open. However, the wish for a cool,

cleansing breeze would go unfulfilled. It was time for the *shura* to begin.



Photo by Senior Airman Kenneth Holston, U.S. Air Force

The Mullah cuts loose

After complementary introductions by General Zazai and Mullah Salaam, I settled in to listen to the self-proclaimed Talib's arguments.¹¹ I quickly became intrigued by the Talib's sense of style. His facial appearance was dark. His eyebrows and beard were thick and dyed black, and the beard extended down to the middle of his chest. The black eyeliner that he placed around his

eyes, coupled with each eye's dark-brown iris, gave a very ominous appearance. But it was the man's hands that caught that my eye. He had dyed the tips (up to the first knuckle) of each finger with *henna*¹² that produced a rich red-brown hue. His fourth and fifth finger on his left hand each had a thin silver-banded ring with a small red stone (signified being wounded in combat). He was running a brown prayer bead chain through the fingers of this hand. During his lively argument, the Talib's feet would occasionally slip out of the flip flops exposing his *henna*-dipped soles that matched his fingers.

The Talib had a lot on his mind. He started with a focus on the national government. He said that President Hamid Karzai lived in fear in his Kabul fortress. He got the village elders to laugh when he said that the government ministers were actually foreigners because they lived abroad for a majority of their lives and did as their wives told them to do. His most vicious attacks, however, were focused on the Helmand Provincial Governor Mangal.¹³ He told the crowd that Governor Mangal was a Communist

10. The *lungee* is a turban. The quality of the *lungee* varies, but for those poorer Afghans it is usually a beige or off-white color. Those with more money will have a *lungee* made of high quality material with detailed embroidery. The tail of the *lungee* is usually draped over the right shoulder and feathers down to the mid-chest.

11. Mullah Salaam wanted to be known as a Talib: a student

of Islam.

12. *Henna* comes from a flowering plant and is used to dye hair, nails, and skin. It is an ancient practice.

13. Mohammad Gulab Mangal was appointed governor of Helmand Province in March 2008. He was a well-educated man who worked for the Soviet Interior Ministry in Afghanistan in the 1970s.

and if left unchecked would take his revenge on those who supported the Mujahedeen in the 1980s. Mullah Salaam said that allowing Communists back into power was wrong and he would never allow the imposition of Communism upon the people again.

He then directed his argument toward the westerners. He questioned their courage by saying that when the coalition loses 100 soldiers, they start crying. However, he said the Afghans lose many, many more, and just keep fighting. He said that all he needed was 1,000 soldiers under his control and he would make Musa Qala secure. The Mullah then took an unexpected angle to his argument. He turned toward me and pointed his *henna*-dipped right index finger at me. He told the crowd that *sharia* law¹⁴ was not practiced because the foreign advisors made all of the decisions. He said that this fact made the Afghans prisoners in their own land. Mullah Salaam ended his tirade with a confirmation that he was a Talib at heart and in mind.

General Zazai's rebuttal

Once the Mullah was seated, General Zazai took the stage. He stood up and made the most impassioned speech during my tenure with him. He said that the advisors were not his boss. He looked out at the crowd, pointed his finger in his chest, and said, "I am the 205th Corps Commander and I make the decisions." He said that the advisors help him in understanding western culture and coordinating better with his coalition¹⁵ partner. He finished by saying that he got paid to provide security for the people so that they could live in peace and prosperity. He said his intent was to provide that security.

Persuasiveness

The *shura* ended abruptly with the sounds of incoming helicopters. The harshness of the exchange didn't obviate Afghan formality and all

participants made proper farewells.

I stared out from the UH-60 Black Hawk on the hour-long trip back to Camp Hero at the desert below me as darkness settled in. I thought about the exchange between Mullah Salaam and General Zazai. The Mullah had played upon the backward village elders' xenophobia and their desire for more security. His hope was to gain more power for himself. General Zazai was left defending the National Army's need to work with the foreigners to increase security. His argument might have worked if the locals were seeing an improvement in security. However, they were not. The Mullah's position was a winning hand for the time being. The only way to overcome it was for the ANA to get stronger, much stronger.

Epilogue

I left Afghanistan in mid-April 2010. One month later I read a newspaper article about General Zazai.¹⁶ He had submitted an eight-page report to the Afghan Ministry of Defense that accused Ahmed Wali Karzai (aka AWK), the half-brother of President Karzai, of protecting his friends, allies, and relatives from the Pashtun Popalzai tribe¹⁷ in illegally building offices, housing, and parking lots on over 1,000 acres of government land in and around Kandahar. AWK vehemently denied the accusation and President Karzai was not pleased about the allegations. In September 2010, General Zazai was removed from his position as the 205th ANA Corps Commander and re-assigned to Kabul.

Also in April 2010, the U.S. Marines assumed responsibility of the Musa Qala District from the British. Within three months, the Mullah was out as the District Governor. The official reason was health concerns. However, the underlying reason was the Mullah's corrupt private militia and his extremely energetic taxation of local businesses.¹⁸

14. *Sharia* law is generally considered a more traditional and conservative version of Islamic law.

15. The word "coalition" means the NATO military stationed in southern Afghanistan. In early 2010 it included forces from the United States, the United Kingdom, Canada, the Netherlands, and Australia. General Zazai's coalition partner was a British two-star general.

16. Dion Nissenbaum, McClatchy Newspapers, "Afghanistan president's brother, Ahmed Wali Karzai, under investigation," *The Christian Science Monitor* (May 18, 2010), <http://>

www.csmonitor.com/World/Asia-South-Central/2010/0518/Afghanistan-president-s-brother-Ahmed-Wali-Karzai-under-investigation.

17. This group is a major tribe in southern Afghanistan and includes the Karzai family.

18. Bill Ardolino, "Foreign Taliban direct the insurgency in Musa Qala: Deputy District Governor," *The Long War Journal* (July 11, 2010), http://www.longwarjournal.org/archives/2010/07/foreign_taliban_cont.php.

Ten months after the faceoff, the violence continues in Musa Qala. Corrupt and inept governance remains a problem, and the Afghan National Army continues to struggle in making the area secure. Meanwhile, the battered and tired villagers with their pungent body odor, poor health, and tattered clothes are still looking for peace.

About the Author

Vic is a Deputy Kansas Attorney General in charge of the Criminal Litigation Division. He is also a member of the Kansas Army National Guard and has been selected for promotion to Brigadier General.

From August 2009 to April 2010 he was the military advisor to the Commanding General of the Afghan Army forces in southern Afghanistan, General Zazai. He met with General Zazai daily, traveled with him to every military outpost in the south, and watched him routinely deal with political powerbrokers. Through these experiences, he gained exclusive insight into the complexity of leading within a governmental structure infected with corruption and patronage, observed the unvarnished facets of the Afghan culture, and witnessed critical public events with international implications.

Vic regularly speaks to civic organizations about his experiences in Afghanistan. If you would like for him to make a presentation to an organization in your area, feel free to email him at victor.j.braden@us.army.mil or vic.braden@ksag.org.



Photo by Major John Clark, Kansas National Guard



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CSI Effect and How KBI Databases Continue to Grow

By Lisa Burdett, West Region Lab Supervisor, DNA Technical Leader, Casework and Mike VanStratton, Lab Director, KBI Laboratories

Every one of us in the law enforcement community and in the judicial community has had to deal with the dreaded CSI effect. The actors on any of the CSI shows can and do solve crimes quickly with very little forensic evidence, usually just enough evidence to make a match is seen. No discipline has been hit as hard as DNA.

The expectations of jurors that DNA can solve anything from a drug case to a homicide have added pressure to the prosecutors and the scientists. The truth is DNA doesn't solve every case, but it can make a difference in a lot of them. Especially in those cases where no suspect was initially listed or known, a piece of evidence with DNA can make a huge difference.

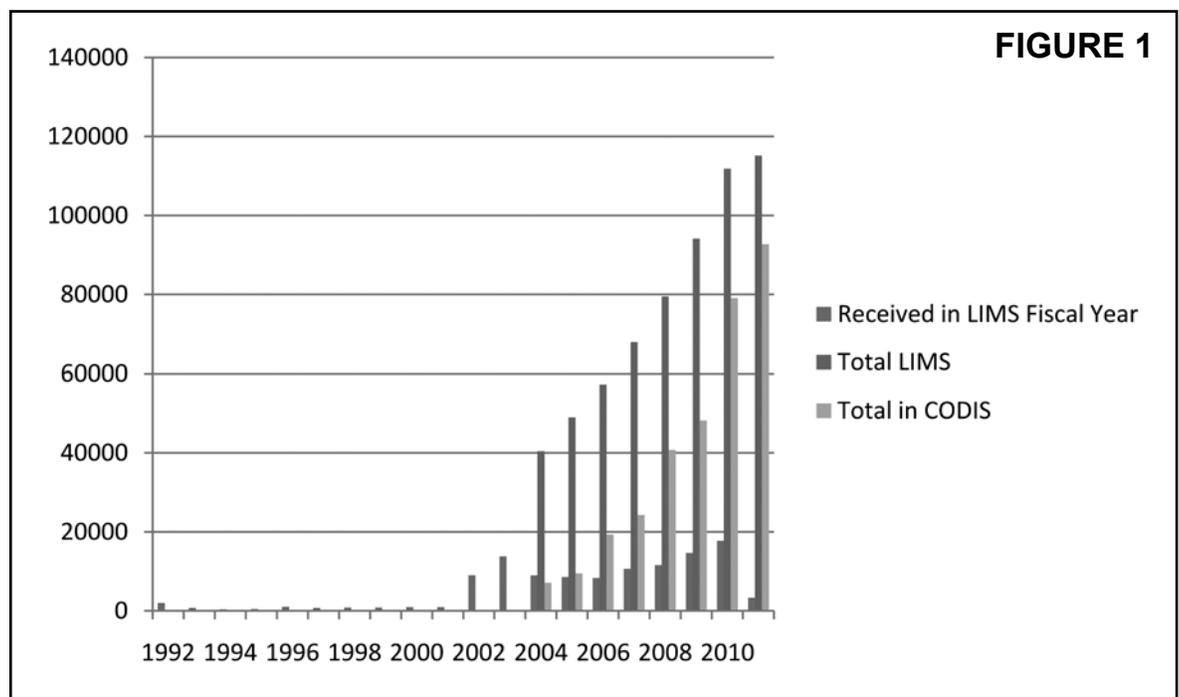
A drop of blood at a burglary, an item of clothing, or a cigarette butt left at a crime scene, when properly collected and preserved may provide a DNA profile of the suspect which can be uploaded and searched through CODIS. CODIS is the Federal Bureau of Investigation's COMbined DNA Index System. This is an integrated series of databases. There are LDIS (Local DNA Index System), SDIS (State DNA Index System), and NDIS (National DNA Index System). This allows a sample from Dodge City to be searched against samples from Wichita or Johnson County and the offender database in Kansas and then the other states. The profile in CODIS may provide law enforcement with the investigative lead needed to identify a suspect to a crime scene or a victim. DNA's ability to both identify and exonerate an individual to

a crime scene makes it a very powerful tool for law enforcement officers and prosecutors alike.

CODIS began in 1990 as a software project in 14 state and local laboratories. Kansas was fortunate enough to be one of those pilot states to use the new software to identify suspects. However, without a database to search for known profiles of offenders, samples from crime scenes, known as forensic samples, were of limited use to LEO.

In the beginning of our own database of offenders, only convicted offenders of violent crimes were collected, known as CVOs. Our database started out very small. In 1992 only 1965 samples had been collected for the year. Technology at the time meant that it was not uncommon for samples to take 6-9 months of testing to yield a profile.

Technology began to change, and there was a move to add more offenders to the database. In 2007, the arrestee bill was passed. This was a major undertaking for the laboratory. Prior to the arrestee samples, which are collected on buccal collectors, samples collected for the database were blood. The laboratory would send scientists and phlebotomists out to collect samples in the prisons across the state. So, the move to arrestees meant a change in the way the samples would be processed. In the mean time, samples continued to come in and at one



time the backlog was over 45,000 samples waiting to be tested, profiled, and uploaded into the database (see figure 1).

The good news is the DNA Databank samples backlogged now are under 7,000. (figure 2) This has been accomplished by a change in the processing of samples and a concerted effort by the scientists involved. These scientists, with backing from KBI administration and the AG's office, are on track to see the backlog eliminated in early 2011.

How does this impact prosecution?

As the number of samples increases in the database, the chances of a match between the offender sample (convicted offender or arrestee)

and the forensic unknown sample also increase. This has been seen in a record number of hits occurring in 2010. A "hit" is a match between an offender sample and an unknown sample. In August of this year, there were 327 hits. Last year, for the entire year of 2009, there were 177 hits. This means more investigative leads and more cases with a suspect identified to them.

The biological samples that at one time were left on the shelf by case work analysts are now being processed and that DNA profile is being entered into CODIS. Hits are occurring and the LEOs are being given names associated to that sample. The report given to the LEOs can act as PC to obtain a search warrant for a known sample to be collected from that

person. Crimes that at one time were not pursued because there was nothing to do with the case – are now being prosecuted.

So, what can CODIS do for you?

We can link cases together. So, if the bad guy hasn't been arrested for a drawable offense, we can still link burglaries, rapes, and homicides together. This aids LE in the investigation.

We can link a case to an offender. This is an investigative lead, not all matches are to the perpetrator of the crime, but with a name and more investigation, then prosecution is possible.

If you have any questions, please do not hesitate to contact Mike VanStratton at 785-296-8300 or Lisa Burdett at 620-792-4353. 📞

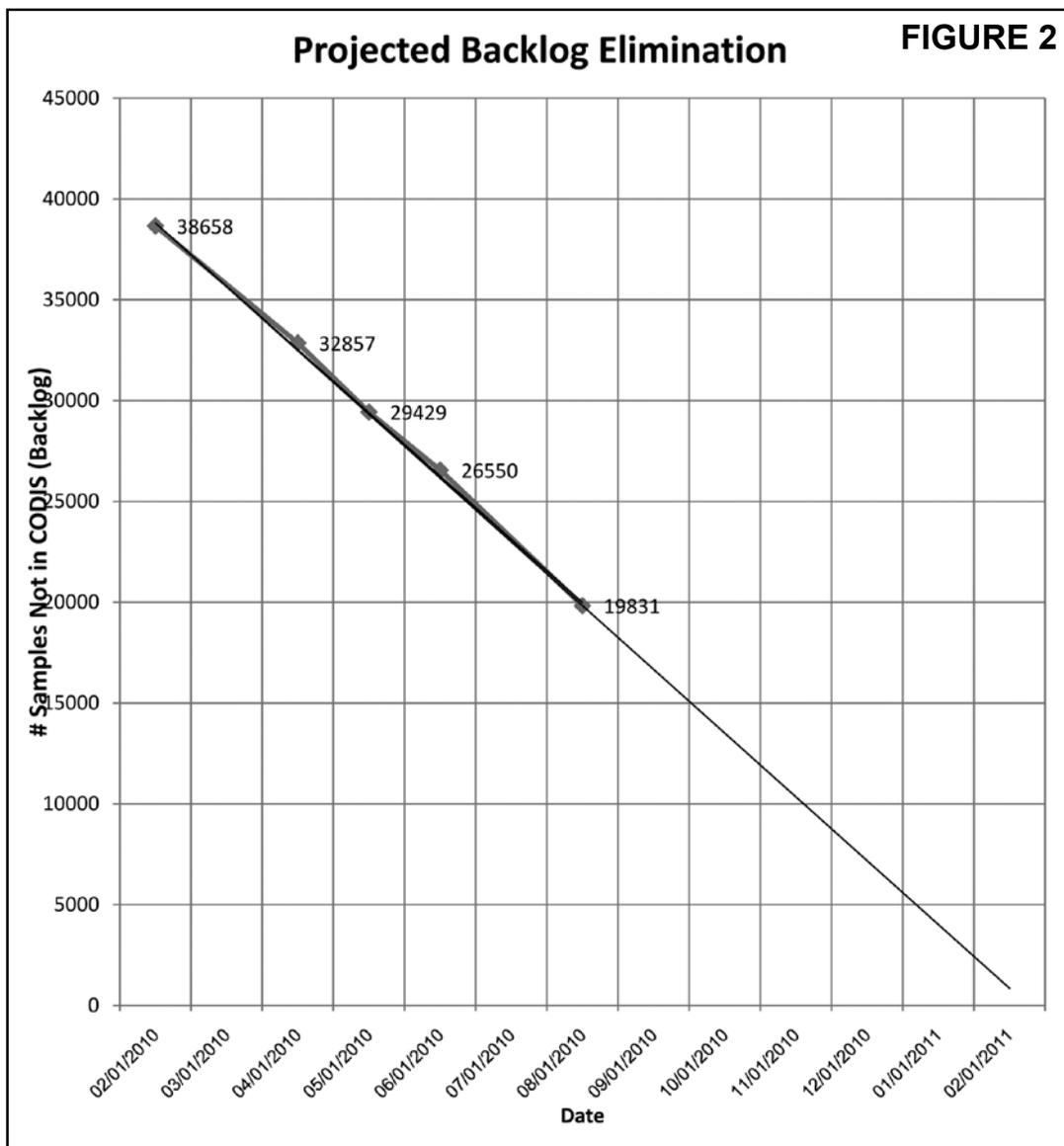


FIGURE 2



by Nola Foulston, 18th Judicial District of Kansas
Kansas Director, NDA Board of Directors

The National District Attorneys Association conducted its fall Board of Directors meeting in Scottsdale, Ariz. The following is a report on the actions taken by the board.

Strike Force Initiative

The Northern California Innocence Project of Santa Clara University School of Law has recently released a “study” entitled “Preventable Error: A Report on Prosecutorial Misconduct in California 1997-2009”¹ that provides a **scathing attack on prosecutors** in California alleging the failure to hold some prosecutors accountable despite their sometimes repeated use of unfair and deceptive tactics for the sake of securing convictions. *“There is no more harmful consequence of prosecutorial misconduct than the conviction of the innocent. Yet it occurs repeatedly, causing devastating damage to the lives of the innocent, as well as those victimized by true perpetrators who remain free.”*²

It is clear that prosecutors around the nation are subjected to repeated castigation by the negative images projected by the Innocence Project strategy with their often unfounded “success stories” of wrongfully convicted perpetrators ripped from the headlines. In response to this latest barrage by the *Innocence Project* and its offshoots, the **National District Attorneys Association Board of Directors** has begun its “**Strike Force**” initiative to appoint *ad hoc committees* to address emerging issues in prosecution so that responses by our organization, on behalf of prosecutors and the justice system, may be made with greater efficiency and with appropriate and factually accurate data. The areas to be addressed include the following: **Drug Legalization initiatives, Offender Re-Entry, Juvenile Life without Parole, Brady/Prosecutorial Misconduct, American Academy of Science issues, and the Webb Commission**³. Members of the Board of Directors are “staffing” these committees with the assistance of prosecutor coordinators and staff at headquarters to gather data and information and to be able to rapidly respond to issues that arise not only in their local communities, but across the nation

in response to media claims. These will be subsets of existing committees of the board, or as stand alone with flexibility in being able to respond to critical issues. Chief Deputy District Attorney Kim Parker and District Attorney Nola Foulston will serve on the Brady/Misconduct strike force [with a number of other elected prosecutors]. We certainly welcome any volunteers from Kansas Prosecution Offices to assist in this project. Please contact District Attorney Nola Foulston for further information at Foulston@sedgwick.gov.

NDA Applauds American Bar Association Resolution

The Criminal Justice Section of the ABA, under the leadership of its current chair, **District Attorney Charles Hynes of Brooklyn, New York**, was instrumental in the passage of Resolution 100B by the ABA House of Delegates. The resolution is as follows:

RESOLVED, that the American Bar Association urges trial and appellate courts when reviewing the conduct of prosecutors to differentiate between “error” and “prosecutorial misconduct.”

In its report to the House of Delegates, the criminal justice section emphasized that “...the term ‘prosecutorial misconduct’ has become a term of art in criminal law that is sometimes used to describe conduct by the government that violates a defendant’s rights whether or not that conduct was or should have been known by the prosecutor to be improper and whether or not the prosecutor intended to violate the Constitution or any other legal or ethical requirement. But, the term is not the equivalent of a finding of professional misconduct on the part of a prosecuting attorney. Nor does

every finding of ‘prosecutorial misconduct’ involve a finding that the prosecutor has engaged in misconduct ...or that any actions or omissions on the part of the prosecution involved maliciousness, knowing, intentional or even reckless wrongdoing.”

This is a significant act by the Criminal Justice Section of ABA and the credit goes to our NDAA members representing your interests with the ABA. For a full reading of the resolution and report, see the citation at the end of this article. ⁴

National Advocacy Center Strategy

In a continuing effort to support the training and education of prosecutors, the NDAA Board of Directors is in the process of exploring other alternatives in the event that funding from the Department of Justice is not forthcoming to keep the doors to our advocacy center open.

At the fall meeting, the board was presented with a concept proposal made by the University of Utah School of Law to engage with our organization to seek private and public funding to build a new facility on their campus as a permanent home for the National Advocacy Center. The impressive plans that the law school has developed include making the training center a model of excellence, using the latest technologies to provide quality training programs including remote learning and substantial interaction with the law school as a base of support for research initiatives in criminal justice issues.

Senator Orin Hatch, R.Utah, has pledged his commitment to working to increase training programs and has been meeting with Utah prosecutors, NDAA members, and the dean of the University of Utah Law School to enable legislation to fund a **duplex center** that would be home to both prosecutor and indigent defense attorneys for their continuing legal education in separate facilities adjacent to the law school but not incorporated therein. [the plan to include both prosecutors and defense is a realistic approach to funding efforts, however, all facilities would be separate and the NDAA would continue to have total control over its training and educational programs.] Hatch is reviewing options for enabling legislation for this program as a line item within the Justice Department budget and if funding is secure, the NDAA and other

groups would then be able to bid on the setting up of the appropriate training programs. After an extensive review of the project, the NDAA board has elected to commit to the S.J. Quinney College of Law at the University of Utah as our partner for this effort.

As we progress, I will keep you updated. It is a serious issue that our training needs for prosecutors be continued and that if we are not able to receive funding from DOJ for the National Advocacy Center, it is prudent that we begin to explore other options.

Justice and Generosity Fund

The NDAA has created a designated fund qualified to receive charitable and tax deductible contributions to meet the needs of prosecutor offices and individual prosecutors when the strain of circumstances and events are so great as to place an undue burden on an office or individual prosecutor. The fund is a subcommittee of the Finance Committee and subject to normal audits. District Attorney Nola Foulston has been appointed Committee Chair and is working with staff and other appointed prosecutors to define the scope of our mission and to determine qualifications for endowments from this fund that has received over \$15,000 to date. Donations in any amount are appreciated, and in the near future, when the new NDAA website is “online,” you are able to donate directly to the fund that is designed to assist prosecutors in catastrophic circumstances. In the past, the NDAA has given funds to assist the prosecutors in New Orleans after their devastating natural disaster, and donations have also been made to individual prosecutors who are in need of additional support from their colleagues in special circumstances.

Upcoming Meetings and Courses

The Capital Conference will be held in Washington, DC February 8-10. This is a working conference. Key Washington officials will be invited to address issues important to prosecutors. All are invited to attend.

The next page lists training opportunities scheduled for 2011 from the National District Attorneys Association and National Advocacy Center.

Upcoming NDAA Meetings and Courses

Prosecutor Bootcamp	National Advocacy Center	February 7-11, 2011, NAC, Columbia, SC
Trial Advocacy I	National Advocacy Center	February 28-March 4, 2011, NAC, Columbia, SC
Cross Examination	National Advocacy Center	March 14-17, 2011, NAC, Columbia, SC
Prosecutor Bootcamp	National Advocacy Center	March 21-25, 2011, NAC, Columbia, SC
ChildProof		April 3-8, 2011, NAC, Columbia, SC
Equal Justice for Children: Investigation and Prosecution of Child Abuse In Collaboration with The Family Justice Center Alliance: 11th Annual International Family Justice Center Conference	San Diego	April 4-8, 2011, Hilton San Diego Bayfront, San Diego, CA
Trial Advocacy I	National Advocacy Center	April 11-15, 2011, NAC, Columbia, SC 803.705.5050
Unsafe Havens II	National Advocacy Center	April 18-22, NAC, Columbia, SC
Investigation and Prosecution of Child Fatalities and Physical Abuse	Indianapolis, Indiana	May 2-6, 2011, Indianapolis, IN
Unsafe Havens I: Prosecuting Technology-facilitated Child Sexual Exploitation	Courtyard by Marriott Portland City Center Portland, OR	June 20-24, 2011
NDAA Summer Board and Committee Meetings and 2011 NDAA Summer Conference	Sun Valley Idaho	July 15-17, 2011 July 17-20, 2011

Endnotes

1. http://law.scu.edu/ncip/file/ProsecutorialMisconduct_BookEntire_online%20version.pdf
2. **Preventable Error: A report on prosecutorial misconduct in California.** Northern California Innocence Project at Santa Clara University School of Law 2010 by Kathleen M. Ridolfi and Maurice Possley
3. The National Criminal Justice Commission Act, S. 714, creates a blue-ribbon bipartisan commission charged with undertaking an 18-month comprehensive review of the nation's criminal justice system. The Commission will study all areas

of the criminal justice system including federal, state, local and tribal governments' criminal justice costs, practices, and policies. After conducting the review, the Commission will make recommendations for changes in, or continuation of oversight, policies, practices, and laws designed to prevent, deter, and reduce crime and violence, improve cost-effectiveness, and ensure the interests of justice. See the entire commentary on this bill at <http://webb.senate.gov/newsroom/pressreleases/2010-04-27-03.cfm>

4. <http://www.abanet.org/leadership/2010/annual/pdfs/100b.pdf>

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