

The Kansas Prosecutor



The official publication of the Kansas County and District Attorneys Association
Volume 20, No. 2, Summer 2023



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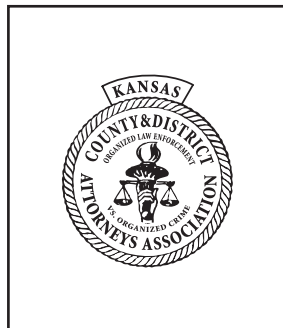
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Our mission:
The purpose of the KCDA is to promote,
improve and facilitate the administration
of justice in the state of Kansas.

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Table of Contents

President’s Column by *Chris McMullin* 4

2024 KCDA Legislative Request for Proposals 5

Prosecutors Serve as Legislative Advocates by *Chris McMullin* 6

Kansas Prosecutors Foundation Gives Scholarships..... 8

Guest Article: New KBI Director Focuses on Fentanyl Crisis
by *Tony Mattivi*..... 10

Prosecutor Highlight: From Prosecutor to Judge by *Amy Aranda* 12

KCDA Conference and Events Update by *Shannon Wilson*..... 13

KCDA Milestones - News From Across the State..... 14

NDA Update and Summer Conference Highlights 15

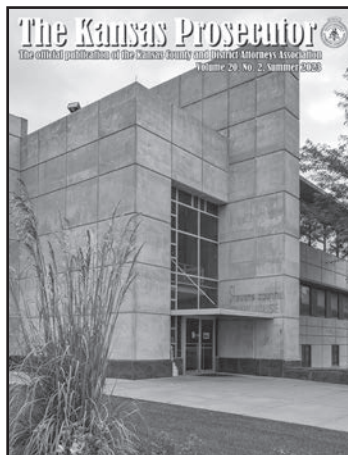
Case Alert: *Counterman v. Colorado*
by *Kris Ailslienger and Boyd Isherwood* 16

Well-Being in the Legal Profession: Where Are We in Kansas?
by *Danielle Hall*..... 18

Childfirst Forensic Interview Training Helps Prosecutors
by *Elizabeth Oliver* 22

Pretrial Publicity: Not Only a Threat to the Defendant
by *Wendy Patrick* 24

2023 KCDA Fall Conference - Save the Date 27



About the Cover

The first Stevens County Courthouse was built in 1888 in Hugoton. The second and present courthouse was constructed in the 1950s. The architect was Mann & Company of Hutchinson and David O Thompson Associates. The building faces south and is a two story stone, glass and concrete structure. The building is located on landscaped grounds in the center of Hugoton. The south front has a large window above the entrance. The building has a number of square walls, protrusions and walls rising above the structure. The building houses the County District Court of the 26th Judicial District.

Photo by John D. Morrison, Prairie Vistas Photography



President's Column

By Chris McMullin, KCDA President
Chief Deputy District Attorney, Johnson County

Prosecution is a Rewarding Profession

Greetings! I hope this message finds all of you well. As I write this, we just concluded another successful KCDA virtual conference. Thanks to all of our faculty, and especially to the Shannon Wilson's Continuing Legal Education Committee, and Melissa Munoz for putting together another great slate of presentations.

Since our last issue, I have had the privilege of testifying (in person) in front of our Legislature. One of the great opportunities that all of us have as Kansas prosecutors is the ability to participate in our deliberative democracy.

Some of you have done this for years. Some of you have never done this. But all of you have the opportunity and most certainly the ability to do so. Our organization would benefit from fresh faces and voices advocating for our legislative priorities.

When I walked into our beautiful Statehouse, I felt a bit of awe as I passed the photographs on those huge stone walls depicting Kansans of old. As I passed under the dome, I thought about all those who have done so before me, crafting the laws that have guided me through a career.

One of the practices that helps promote a healthy life is "daily gratitude." I try not to take for granted the opportunities that a career as a prosecutor present. I am grateful for the ability to:

- Work with professionals dedicated to keeping our community safe;
- Speak in court on behalf of the voiceless;
- Stand up in court for the defenseless;
- Bring our constitution to life in daily work;
- Work with others to guide our judicial system;
- Meet people from all walks of life;
- Learn, often every day;
- Teach;
- Speak to community groups;
- Mentor and be mentored;
- Lead; and learn from other leaders;

- Work in a stable profession;
- See and do things never imagined on day one of law school;
- Advocate for changes in the law in front of the Legislature;
- Interact with Judges, Justices and Legislators;
- Do "the right thing" as job #1.

A career as a Kansas prosecutor is so much more than handling cases. Prosecutors are community leaders, ministers of justice, and guardians of public safety. I encourage all of you to expand your horizons, get involved, and explore how far-reaching and rewarding your chosen profession can be. 🌟

County Courthouse Portraits



Stevens County Courthouse

John D Morrison

Prairie Vistas Gallery
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www.prairievistas.com



2024 KCDA A Legislative Request for Proposals

(One Proposal per page – use additional pages as needed)

The KCDA A Legislative Committee is soliciting Legislative Proposals for the KCDA A legislative agenda for the 2024 Legislative Session. This input from the membership will be considered by the Committee in making its recommendations to the KCDA A Board of Directors this fall.

This RFP is the first step in the process by gaining the input of the membership in changes needed to the Kansas Statutes for the benefit of prosecutors. Please submit your proposals with the information below as a minimum. Feel free to use additional pages, provide other information, background or cases that will aid the Committee in selecting and targeting the most critical issues. Thank you for your prompt attention to this matter.

1. Statute to amend or affected: _____
2. Please describe the need for this change as it applies to the membership of the KCDA A across the state as well as the specific concern in your jurisdiction.
3. Draft Language – Please attach an electronic copy of the statute with the change noted.
4. Are you aware of any previous legislative efforts like this proposal? If so, when and by whom?
5. Other organizations that might support this legislative proposal? Oppose?
6. Legislators or others already contacted about the proposal:
7. Your name and office in which you work and whether you would be willing to testify regarding the proposed legislation:

Submit proposals to: to BOTH Steve Kearney and Abe Pfannenstiel. Or to the KCDA A Office, 1200 W. 10th Ave, Topeka, KS 66604.

(Steve@kearneyandassociates.com & abe@kearneyandassociates.com)

Deadline for submission is September 1, 2023

Prosecutors Serve as Legislative Advocates

By Chris McMullin, KCDA President
Chief Deputy District Attorney, Johnson County

In my view, one of the roles assumed by a prosecutor is that of a legislative advocate. If a prosecutor works with a statute that needs amending, who better to change a criminal law than someone who deals with it regularly?

To that end, KCDA has a legislative agenda. Every year, we solicit proposed legislation from our membership, and the Board votes to determine which of the proposals it wants to prioritize. When the Legislature is in session, we work with KCDA legislative staff to find sponsors for our bills and provide written and live testimony in support of those bills.

Sometimes, proposed legislation, such as the Jailhouse Witness Bill from the 2023 session, draws negative attention. KCDA strongly opposes this bill. We feel this legislation is bad public policy and unnecessary. KCDA worked hard to oppose this measure in 2022 and 2023, and we will remain vigilant if its introduced again.

This is the first of two articles about the so-called “Jailhouse Witness” Bill, *HB 2293*. It was introduced during the 2023 session by the House Committee on Judiciary at the request of the Innocence Project. KCDA provided both written and live testimony in opposition to this bill, in both the House and Senate. The bill was not passed in 2023 but remains alive for 2024, and KCDA will again be an opponent.

This article will focus on the provisions of *HB 2293*. Our detailed opposition will be featured in the next issue of the Kansas Prosecutor.

The Legislative Research Department (part of the Kansas Legislature) prepared a *Supplemental Note* for the Senate version of the bill, which is excerpted as follows (*emphasis added*):

Disclosure Requirements

The bill would require, in any criminal prosecution, the prosecuting attorney (prosecutor) to disclose any intent to introduce testimony of a jailhouse witness, as defined by the bill, regarding statements made by a suspect or defendant, while

the jailhouse witness and suspect or defendant were both incarcerated, within the time provided by the section of the Code governing discovery.

The bill would also require the prosecutor to disclose to the defense:

- The criminal history of the jailhouse witness, *including pending or dismissed criminal charges*;
- The jailhouse witness’s cooperation agreement and any benefit, as defined by the bill, that has been requested by, provided to, or will be provided in the future to the witness;
- The contents of any statement allegedly given by the suspect or defendant to the jailhouse witness and the contents of any statement given by the witness to law enforcement regarding the statements allegedly made by the suspect or defendant, including the time and place such statements were given;
- Any information regarding the jailhouse witness recanting testimony or statements, *including the time and place of recantation, the nature of the recantation, and the names of the people present at the recantation*; and
- Any information regarding *other criminal cases* in which the testimony of the jailhouse witness *was introduced or was intended to be introduced* by a prosecutor regarding statements made by a suspect or defendant, including any cooperation agreement and any benefit the witness received in such case.

The court could allow the prosecutor to comply with these disclosure requirements after the time limit described above if the court finds the jailhouse witness was not known or the information the bill requires to be disclosed could not be discovered or obtained by the prosecutor exercising due diligence within such time period.

If the court finds that disclosure of the above information is likely to cause bodily harm to the jailhouse witness, the bill would allow the court to

order that the evidence be viewed only by defense counsel and not by the defendant or others, or issue a protective order.

Database

The bill would require each prosecutor's office to maintain a central record containing information regarding *cases in which jailhouse witness testimony is introduced or is intended to be introduced by a prosecutor* regarding statements made by a suspect or defendant, the substance of such testimony, and any benefit requested by, provided to, or to be provided in the future to such witness in connection with testimony provided by the witness.

The bill would require the prosecutor's office to forward this information to the Kansas Bureau of Investigation (KBI), which would be required to maintain a statewide database of such information. The database would be accessible only to prosecutors and its records would otherwise remain confidential and not subject to disclosure under the Kansas Open Records Act (KORA), and this confidentiality provision would not be subject to expiration or review under KORA.

Victim Notification

If a jailhouse witness receives any benefit in connection with offering or providing testimony

against a defendant, the bill would require the prosecutor to notify any victim connected to the criminal prosecution.

The bill was apparently introduced in response to a case that was dismissed due to concerns about testimony received from a cooperating incarcerated witness. The story of this case featured prominently in the proponent testimony.

As the *Supplemental Note* stated, KCDA's concern was that "the bill proposes requirements already imposed by current statutes, caselaw, rules of professional conduct, and court rules."

KCDA's Opinion

In the view of KCDA, this is a bad bill that creates new law, subject to new court interpretation, into an area that is already covered by statutes and rules that have been interpreted by the courts for decades. Litigants know how to deal with cooperating witnesses.

In the next issue of the *Kansas Prosecutor*, I will outline the way this type of witness and evidence is already handled by law and practice, rendering this proposed legislation unnecessary. I will be asking Kansas County and District Attorneys to contact their representatives to visit with them about this legislation. 🗣️

This is your association magazine.

Let us know what you want to see in the magazine or offer to write an article.

Email ideas to:

mary@napiercommunications.com

Next deadline: November 1, 2023

Kansas Prosecutors Foundation Gives Scholarships

The KCDA Board of Directors established the Kansas Prosecutors Foundation to further the administration of justice in the best interests of the public. In 2013, the KPF gave out its first law school student scholarships to a law school student from each regent law school. Recipients of KPF scholarships shall meet the following criteria:

- a Kansas resident;
- a 2L or 3L enrolled in a law school in Kansas;
- demonstrate a desire to become a prosecutor;
- exhibit previous or ongoing activities of public service;
- either be pursuing a career in prosecution or the administration of justice; and
- may not be a member within the first degree of relationship to either a member of the scholarship committee or the KPF board.



The \$1,000 scholarships have been awarded since 2013 and the winners are recognized at the KCDA Spring Conference. Read more about the 2023 recipients below.

2023 KPF KANSAS LAW SCHOOL SCHOLARSHIP WINNERS

Adam Brewster

Adam Brewster has had a long interest in government work since beginning college. During undergraduate school at the University of Central Missouri, Adam worked for Missouri Senator Brian Williams. While thankful for the wonderful opportunity, he quickly realized that politics was not the route he wished to pursue, and instead chose to go to law school. While in law school, he completed two internships with the Kansas Association of Counties and the Johnson County District Attorney's Office, furthering his appreciation of the law. Adam recently graduated from Washburn University School of Law with Dean's Honors and a Certificate in Advocacy. He will begin work with the Kansas Attorney General's Office after taking the bar.



She climbed the steps as a government affairs intern for the 2023 Kansas legislative session with Kearney and Associates and is currently working at a rural externship in general practice at Karstetter & Bina in McPherson, Kansas. Stacey grew up on a small farm in South Dakota, and after meeting the love of her



life in college, she married him and moved with him across the Midwest. A couple years later, she started her first career as a mother, eventually raising five sons. When they were young, Stacey earned her undergraduate degree from the University of South Dakota and then a master's degree in education from the University of Sioux Falls, putting her family first. She loved teaching journalism and English Language Arts for grades 6 through college for more than a dozen years, earning Teacher of the Year awards three different times and becoming adept at teaching and learning online during COVID. After her youngest son graduated from high school, Stacey headed to Topeka to follow a dream of becoming a lawyer who makes communities stronger. When she's not drinking coffee or studying for an exam,

Stacey Gleason

Stacey Gleason is a third-year law student at Washburn University where she participated as a member of the negotiating team, the Ag Law Society, and Rural Practice Organization.

she's training her two hunting dogs and planning road trips with her husband to small towns in Kansas.

Ashley Grams

Ashley Grams is a third-year law student who attends the University of Kansas School of Law. She is originally from Waleska, Georgia, and she obtained her bachelor's degree in criminal justice from the University of Georgia. She is currently a member of the University of Kansas Mock Trial Team as well as the Chief Prosecutor for the university's traffic court program. In addition, she is currently a clinical student in the university's Legal Aid Clinic, where she has had the opportunity to represent clients in court and assist them in their criminal cases. She is most proud of this work and plans to continue this work throughout 2023 until her graduation. At a mere 22 years old, she will be the first in her family to obtain a J.D. and enter the legal profession.



She has immense internship experience. She interned at the Bartow County District Attorney's Office in 2021, prior to attending law school. During her 1L summer, she interned at the Shawnee County District Attorney's Office. This summer, she is interning at the Hennipin County Attorney's Office in order to spend time with family prior to graduating law school. She plans on graduating in December 2023 and entering the field of criminal law as a prosecutor in Kansas.

Ron Mayer

Ron Mayer is a rising second-year law student at Washburn Law and a University of Colorado alum (1995). He spent a decade in the financial services industry, specializing in back-office support and trading, with a stint as an options principal. His



entrepreneurial spirit then led him to own and manage a small business for 15 years, navigating complexities of compliance standards, management protocols, and budgetary concerns in a regulated sector.

Concurrently, Ron refereed college basketball and came to recognize the value of enforcing rules for the betterment of the game, an ethos he brings to his prosecutorial interests.

Ron has been actively engaged with artificial intelligence over the last five years, particularly its applications in the legal field. His law school entrance essay focused on this topic, which is also the subject of a note he authored for an upcoming ABA newsletter on AI and the Law. He enjoys studying the applications of AI tools as support methods for prosecutors and their investigators.

Recently, Ron spent the summer at the C.F.T.C.'s Division of Enforcement, conducting in-depth research and writing memos on fraud and manipulation of cryptocurrencies, swaps, and futures contracts to bolster civil litigation strategies.

Jacob Reaves

After graduating high school in the Kansas City area, Jacob attended Kansas State University where he obtained a B.S. in both political science and history. Upon being admitted to Washburn University School of Law, his suspicions that the criminal side of his law studies would be his favorite topic area were proven correct. Also, after spending so much time in school, he felt it would be a disservice to himself and those around him if he didn't provide a benefit to the public at large. He began his journey attempting to get an internship in the criminal law field. After being able to shadow Judge Timothy P. McCarthy in Olathe, Kan., he took the next step and received a position as a prosecuting intern for the Shawnee County District Attorney's Office where he began working on the misdemeanor and traffic dockets. 🇺🇸





Guest Article

By Tony Mattivi, KBI Director

New KBI Director Focuses on the Fentanyl Crisis

In early February, following nomination by the Attorney General and confirmation by the Kansas Senate, I was named the 13th Director of the Kansas Bureau of Investigation (KBI).

My professional life has always centered on public service and public safety, as I was a prosecutor for nearly 30 years and a paramedic for 10 years before that. I began my legal career in the Shawnee County DA's Office, then worked in the Kansas Attorney General's Office. I then served as a federal prosecutor for over 20 years, working to hold criminals accountable for drug trafficking, terrorism, racketeering, gangs, money laundering, and other organized and violent criminal activity. I was privileged to successfully prosecute several notorious cases, including the al Qaeda operative who masterminded the bombing of the USS Cole, and the three Kansas militia members who plotted to slaughter Somali Muslim immigrants living and worshipping at an apartment building and mosque in Garden City.

Some other highlights of my career included prosecuting Terry Lee Loewen, a former U.S. Marine who attempted to detonate high explosives at the Wichita airport on behalf of al Qaeda, and John T. Booker, who conspired to detonate a truck bomb at Fort Riley in support of ISIS. I also worked at the U.S. Department of Justice's Regime Crimes Liaison Office in Iraq, advising the Iraqi High Tribunal as they tried members of Saddam Hussein's regime for war crimes and other atrocities.

The KBI has had one previous director who was a lawyer: Larry Welch, who graduated from the University of Kansas School of Law, and spent a career as an FBI agent before heading the KBI for more than a decade. But never before has the KBI been led by a former prosecutor. I believe this fresh perspective in the Director's chair will help strengthen an already-great organization and make

us even more responsive to the needs of prosecutors around Kansas.

During my time as a prosecutor, I worked closely with KBI agents, forensic scientists, and intelligence analysts, so stepping into this leadership role felt extremely familiar to me. One of the assurances I made to the Legislature and to KBI employees was that I would ensure that the Bureau was constantly innovating, finding solutions, and fostering partnerships so that we can increase the safety of Kansas communities and provide justice to those who are threatened or harmed by violence and crime.

In order to reach this goal, one of my objectives has been confronting an evolving threat in Kansas - the prevalence of fentanyl. In my first days as Director, Attorney General Kobach shared his concerns about fentanyl trafficking, and asked me to focus KBI personnel and resources on enforcement efforts to fend off this growing problem.

In turn, the Attorney General collaborated with Kansas law enforcement associations and state legislators to increase the penalties for the manufacturing and distribution of fentanyl, (and controlled substances containing fentanyl), so we could remove offenders from our communities who are profiting from fostering addiction. The new legislation, that became law July 1, changed the crime of manufacturing any fentanyl-related controlled substance from a drug severity level 2 felony to a drug severity level 1 felony. Also, a special sentencing rule was included for manufacturing or distributing any quantity of fentanyl-related controlled substance, which includes presumptive imprisonment and two times the maximum duration of the presumptive sentence term.

The KBI is amplifying our efforts to combat fentanyl trafficking in our state. There is no doubt

that fentanyl is brought into our state by a complex and organized network coordinated by Mexican drug cartels. China supplies the precursor materials to Mexico, where the cartels process the fentanyl in enormous quantities and smuggle it into our country to be distributed and sold. While fentanyl is most commonly manufactured into counterfeit pills that mimic Oxycodone, Percocet, and Xanax, we've seen it in heroin, cocaine, methamphetamine, and even marijuana. Since fentanyl is extremely cheap and potent, it is profitable for dealers to use it as a lacing agent in any street drug.

At the end of April, as our work was merely in its beginning stage, the fentanyl mission became imprinted on all of us, when our KBI community experienced our own devastating loss. A longtime KBI senior special agent and his family lost their 18-year-old son, Kooper, to this relentless drug. Kooper, like so many of the teens whose lives are cut short due to fentanyl, was smart, passionate, and had endless opportunities ahead of him until he ingested half a pill he was unaware was laced with a poison that would end his life.

We all couldn't believe this was happening to our family, to our friend. Unfortunately, fentanyl overdoses are becoming much more common in the U.S. and in Kansas. While just a few years ago fentanyl was primarily affecting the states closest to our southern border and major cities on our nation's coasts, now fentanyl poisonings are increasing exponentially in the Midwest and are harming our Kansas communities, both large and small. For Americans under the age of 50, fentanyl overdose is now the leading cause of death.

To make headway in this effort, we have launched a task force that will allow us to coordinate intelligence and narcotics resources between our state and federal law enforcement partners. This month the KBI is also introducing a K-9 unit – the first four fentanyl-detective law enforcement canines in Kansas – which will work closely with this narcotics team. With the help of our K-9 partners, we hope to disrupt all methods of fentanyl movement into Kansas. This will include intercepting narcotics coming into Kansas through

the mail, on our roadways and railways, and flown in by air. In addition, KBI agents are considering fatal fentanyl overdoses as homicide cases. We want to bring you a case that can hold those who distributed and sold the fentanyl criminally responsible for the tragic deaths they caused.

Notwithstanding these targeted enforcement efforts, we must recognize that we won't be able to enforce our way out of this crisis. To make real progress, we must increase awareness about this issue. We must teach kids and teens about counterfeit pills and addiction. They need to be encouraged to speak up in order to protect one another. Our youth have to recognize that the game has changed and experimenting with drugs can no longer be a part of growing up. The risks are too high.

For those already suffering from addiction, we have to be compassionate and not shame them away from seeking treatment or medical care. The resources to treat fentanyl and other opioid addiction have to be more available to addicts than the fentanyl that is killing them.

As prosecutors, I'm asking you for your help as well. We have provided the tools to be tough on the traffickers of this deadly drug so you can prosecute them to the fullest extent of the law. However, to do this we need those who overdose, and their associates who were using alongside them, to participate in the investigation. When an overdose happens, we need witnesses to call 911 and get help. We need them to cooperate with the police, and not hide in fear. These individuals cannot be the focus of the case because to make any real difference we have to access the dealers and manufacturers. If we can work together to aggressively arrest, charge, and prosecute those responsible for these drugs being in our neighborhoods perhaps we can slow the devastation fentanyl is causing.

I'm tremendously proud of the profound impact the KBI has on Kansas citizens and our criminal justice system. If the KBI can be of assistance to you, or if you can think of a way we can work with you to enhance public safety, I hope you won't hesitate to contact me. 📞



Counterfeit oxycodone pills - M30s or "dirty 30s"

Prosecutor Highlight: From Prosecutor to Judge

By Amy L. Aranda, First Assistant Lyon County Attorney

Laura Miser

Last fall, Laura Miser made history as the first woman appointed as a district court judge in the Fifth Judicial District, which serves Lyon and Chase Counties. Judge Miser was appointed by Governor Laura Kelly, and sworn in on October 28, 2022 filling the position of Judge Merlin Wheeler who retired after 32 years on the bench.

Miser knew from a young age that she wanted to become a lawyer and eventually a judge. Growing up in rural Indiana, while in the 8th grade, Miser became aware of a family friend who was experiencing legal issues that she felt resulted in a major unfairness and injustice. It was from that point that she made up her mind to become a lawyer and judge to help people. Miser set out on an educational path that brought her to Kansas where she graduated from Fort Hays State University and then the University of Kansas School of Law.

Prior to her appointment to the bench, Judge Miser consistently worked with a goal toward helping others. Miser initially worked in private practice, doing both civil and criminal defense work, and worked for Kansas Legal Services representing low income clients with domestic, juvenile, and criminal defense matters. Miser then redirected her career into prosecution. Miser has served as the Emporia Municipal Prosecutor, an Assistant Greenwood County Attorney, and most recently, as an Assistant Lyon County Attorney for approximately eight years. During her career in prosecution, Miser prosecuted every type of case from traffic tickets to felonies, and tried dozens of cases.

In addition, Miser has been a member of the Lyon Chase County Bar Association, Kansas Bar Association, NDAA, and the KCDA, where she served on the editorial board for the

Kansas Prosecutor magazine. During her time in prosecution, Miser also participated in numerous professional advisory teams including the Fifth Judicial District Drug Court Team and the Child Advocacy Center Team.

Always with an eye toward community involvement, Miser served on numerous other advisory boards including the Salvation Army Board of Directors, and local Youth Rodeo and 4-H advisory boards. Miser has also volunteered and given countless hours of her time to the Emporia Animal Shelter, and local friends and families in need.

Governor Kelly noted that due to Miser's unique perspective and diverse legal experience, she would serve the Fifth Judicial District well. Of her diverse legal career, Miser credits her time in prosecution with preparing her the most for her role on the bench. Miser feels that being a prosecutor is the best training for the bench. Miser points out that as a prosecutor, she was in court all the time, and was exposed to many different cases and opposing counsel. Miser notes, "as a

prosecutor I had to have a wide lens view of a case because my overall goal was always a just result. As a judge, I can help implement that just result, not just in criminal cases, but in all cases."

Miser believes that the case analysis skills she developed while prosecuting cases, evaluating evidence for charging decisions, and developing a good grasp of the rules of evidence all allowed her to transition seamlessly into her role on the bench. In addition, the case management skills she learned and developed over the years, as well as a strict eye to detail, have also carried over into her role on the bench as she develops new procedures and pre-trial orders while managing her court dockets.

Although she misses prosecuting cases, Miser



is enjoying her time on the bench. She has enjoyed hearing civil cases, including domestic cases, a lot more than she thought she would. She has presided over several civil bench trials and has enjoyed working through the evidence and the decision-making process. Miser's duties will also include overseeing the Lyon County Law Library and the CASA program.

As to being the first woman on the bench, Miser

notes that a lot of people, especially women, in the community have recognized it and commented to her about it. She appreciates the public interest in her landmark role for the Fifth Judicial District and hopes that it inspires other women and individuals with a rougher path to continue to seek their goals. As a new judge, Miser will continue to help others in the community as she has always done, just in a little bit different capacity. 🌟

KCDAA Conferences and Events Update

By Shannon Wilson, CLE Committee Chairperson

Our Spring 2023 KCDAA Virtual Conference was held June 22 and 23 and covered a variety of topics.

Day one included presentations about detainers and extraditions, responding to disciplinary complaints, brief writing and oral argument, ethical issues involved with Pro Se litigants, and a case study. There was also a helpful presentation by former District Court Judge (now prosecutor) Kevin O'Connor on how prosecutors are perceived from the Bench.

Day two included presentations about trial advocacy in sexual assault cases, ethics in plea bargaining, legislative updates, and a case study of the Kyle Rittenhouse case. I would like to extend

the sincere thanks of the CLE committee to all the presenters who helped to make the conference a success.

Our Fall Conference will be held in-person in Lawrence at the Doubletree on October 26 and 27, 2023. We will have presentations on a wide variety of topics including fentanyl, gangs, NIBIN, jury selection, combating consent defenses, and ethical considerations in sex crimes prosecutions. There are also social events being planned. We look forward to seeing you all there.

The KCDAA Board has decided to offer another Basic Trial Advocacy School in March 2024. Please look for further information regarding dates and location. 🌟

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 and photos to:
Editor Mary Napier
mary@napiercommunications.com

Next Deadline: Fall/Winter: Nov. 1

KCDAA Milestones - News from Across the State

Owen Honored for Outstanding Service to the Profession

At its annual meeting on Friday, June 23 at the Burge Union, University of Kansas, the Kansas Bar Association presented its Outstanding Service Award to attorney Tabitha D.R. Owen, Smith Center. The award recognizes service that significantly advances the administration of justice or the goals of the legal profession and the KBA.



Tabitha D.R. Owen

Tabitha D.R. Owen has been the Smith County attorney for more than 10 years and serves as Smith County counselor, city attorney for Smith Center, and co-counsel to Smith Center USD 237. She also serves as secretary/treasurer of the Kansas County and District Attorney's Association board of directors, is a member of the Supreme Court Language Access Committee, sits on the board of directors for the Kansas School Attorneys Association, and served on the Kansas Criminal Justice Reform Commission. Owen lives in Smith Center with her husband and two daughters.

Also receiving the award were Alan Alderson, Topeka; Erika Jurado-Graham, Kansas City, Missouri; Ronald Nelson, Overland Park; Tim O'Sullivan, Wichita; and Kate Marples Simpson, Lawrence.

Douglas County District Attorney's Office

The Douglas County District Attorney's Office recently announced staff changes and the addition of a new face to its team.

Previously the Assistant to the District Attorney, Kaidee Mehrer has been promoted to Director of Administration. Mehrer joined the DA's Office in November 2018 as a Discovery Coordinator/ Diversion Assistant before



Kaidee Mehrer

rising to a Senior Trial Assistant position in June 2021. As the Director of Administration, Mehrer manages the office's human resources operations and administrative staff.

Recently, Michelle Walter also accepted a new position when she moved from a Trial Assistant



Michelle Walter

position to Victim/Witness Coordinator. Walter began her career with the DA's Office in 2018 as a receptionist/discovery coordinator. In 2020, she was promoted to a trial assistant position where she worked on traffic, juvenile, truancy, misdemeanor and felony cases. In her role as a Victim/Witness Coordinator,

Walter serves as a liaison between victims and witnesses and the criminal justice system and provides support throughout the duration of a criminal case.

Joining Walter on the Victim/Witness Coordinator team is Claire Thomson. A recent graduate of the University of Kansas, Thomson majored in psychology and applied behavioral science with a specialty in youth development and juvenile justice. Thomson completed her practicum at the KU Truancy Prevention and Diversion Program now known as Center for Supportive Communities. Prior to working in the DA's Office, Thomson completed training with Kansas Suicide Prevention HQ and worked at KidsTLC, which provides behavioral and mental health services to children and their families in Kansas. 🏠



Claire Thomson

MILESTONE SUBMISSIONS

Send your information and photos to:
Editor Mary Napier
mary@napiercommunications.com

Next Deadline: Fall/Winter: Nov. 1

NDAAs Update and Summer Conference Highlights

By Marc Bennett, Sedgwick County District Attorney


At the NDAAs board of directors meeting, which preceded the association’s annual summer summit, committee chairs shared information regarding various national updates, including efforts to enhance recruitment (a job fair targeting law students was held last January in DC and will be repeated this coming January); a 501(c)(4) “social welfare” organization run by retired elected DA’s from California who lobby the state legislature there regarding public safety issues; and ongoing efforts to spread “wellness” awareness to offices. To close the board meeting, a new slate of officers was approved - including Maryland DA Charlie Smith, the new president of the association, members of the executive committee as well as “at-large” board member, Mark Dupree, District Attorney, Wyandotte County.

The summer summit then offered two days of training focused on combating violent crime. Highlights included the expanding role of digital evidence in successful prosecution. The director of the Alabama District Attorneys Association used a case study involving the random shooting death of the 19-year-old son (a young man in the Air Force) of an elected DA in Alabama to describe the maturation of the case utilizing surveillance video, cell phone tower information, ballistic evidence, and additional forensic evidence to prove the case. He also touted the training available for law enforcement officers at the National Computer Forensic Institute (NCFI) and wanted attendees to know the opportunities available at the soon-to-be-expanded facility in Alabama.

The various ways that offices around the country collect and utilize data was the subject of more than one panel discussion. A “crime strategy unit” in the DA’s office in Cuyahoga County (Cleveland) Ohio, works with more than 50 law enforcement agencies in their jurisdiction, so gathering and sharing data became a major goal for that office. Summarizing

daily crime updates to be shared among the various agencies has helped them identify when, where, and often, who, was committing a rash of “car jacking” offenses in that community. The East Baton Rouge, Louisiana DA’s office utilizes GIS Mapping to show “hot spots” for narcotics sales and overdoses to identify patterns and relationships between buyers and sellers in the community to lower overdose deaths.

Tom Lockridge (some of you will remember him as one half of the “Ethics Movie” training team from Kentucky who taught ethics at past KCDAAs conferences) provided an update on his new role as the violence crime resource officer in Kentucky. Like a traffic resource officer, he works for the AG and offers technical assistance, access to a brief bank, case theory development, and mentoring to prosecutors around his state grappling with increased violent crime.

Finally, the organization shared a renewed emphasis following the pandemic to offer expanded access to training both in-person and online, including leadership, trial ad, wellness, homicide investigation, and prosecuting gang crimes and ways to enhance interaction with law enforcement. For details, log on to NDAAs.org. 



NDAAs Conference attendees from L to R: Marc Bennett (Sedgwick County), Brit Managan (Sherman, Wallace and Greeley Counties); James Crux (Crawford County); Jessica Domme (AGs Office); and Suzanne Valdez (Douglas County).

Case Alert: *Counterman v. Colorado*

United States Supreme Court Holds Reckless Criminal Threat is Constitutional

By Kris Ailsieger, Deputy Solicitor General, Kansas Attorney General's Office and Boyd Isherwood, Chief Attorney, Appellate Division, Sedgwick County DA's Office

On June 27, 2023, the United States Supreme Court decided *Counterman v. Colorado*, 600 U.S. ___, No. 22-138, 2023 WL 4187751 (2023), a case that, while not directly involving the State of Kansas, will certainly have an impact on Kansas prosecutions and sentencing, as it overrules a relatively recent Kansas Supreme Court decision. In *Counterman*, the U.S. Supreme Court held that a recklessness mens rea meets constitutional muster for true threats that lie outside the protection of the First Amendment and can be prosecuted criminally.

This is significant for Kansas because in *State v. Boettger*, 310 Kan. 800 (2019), the Kansas Supreme Court held that the reckless provision of Kansas' criminal threat statute was unconstitutionally overbroad. The *Boettger* decision had cascading effects, invalidating all reckless criminal threat convictions pending appeal at the time, raising the bar for prosecution of criminal threat cases to only intentional threats, and probably most significantly, altering criminal history scores of those offenders with a prior criminal threat conviction. In most cases, the prior criminal threat conviction simply could not be included in an offender's criminal history because the courts believed it was impossible to determine whether the prior conviction was for an intentional threat or an unconstitutional reckless threat. The *Counterman* decision, however, should eliminate this problem.

In *State v. Boettger*, the Kansas Supreme Court analyzed K.S.A. 2018 Supp. 21-5415(a), which defined a criminal threat as a threat to “[c]ommit violence communicated with intent to place another in fear ... or in reckless disregard of the risk of causing such fear.” The court relied heavily on the case of *Virginia v. Black*, 538 U.S. 343 (2003), which involved a Virginia statute that outlawed cross burning “with an intent to intimidate” and included a provision that cross burning itself was prima facie evidence of an intent to intimidate. 538

U.S. at 348. The Supreme Court struck down the latter provision, but upheld the constitutionality of banning cross burning intended to intimidate. But, while upholding a prohibition against an intentional threat, the *Black* Court did not address whether any lesser mental state would suffice.

Nevertheless, the Kansas Supreme Court in *Boettger* divined from *Black* that to constitute a true threat that could be prosecuted without violating the First Amendment, the threat had to be made with intent to cause fear; mere reckless disregard for the risk of causing such fear was not enough. 310 Kan. at 812-23. Accordingly, the Court struck down the reckless threat portion of K.S.A. 21-5415(a) as unconstitutional.

But now, the *Counterman* decision invalidates the reasoning and holding of *Boettger*. Taking the question head-on, the *Counterman* Court analyzed the different levels of culpable mental state and determined:

[R]ecklessness offers the right path forward. We have so far mostly focused on the constitutional interest in free expression, and on the correlative need to take into account threat prosecutions' chilling effects. But the precedent we have relied on has always recognized—and insisted on “accommodat[ing]”—the “competing value[]” in regulating historically unprotected expression. [Citation omitted.] Here, as we have noted, that value lies in protecting against the profound harms, to both individuals and society, that attend true threats of violence—as evidenced in this case. [Citation omitted.] The injury associated with those statements caused history long ago to place them outside the First Amendment's bounds. When despite that judgment we require use of a subjective mental-state standard, we necessarily impede some true-threat prosecutions. And as we go up

the subjective mens rea ladder, that imposition on States' capacity to counter true threats becomes still greater—and, presumably, with diminishing returns for protected expression. In advancing past recklessness, we make it harder for a State to substantiate the needed inferences about mens rea (absent, as is usual, direct evidence). And of particular importance, we prevent States from convicting morally culpable defendants. [Citation omitted.] For reckless defendants have done more than make a bad mistake. They have consciously accepted a substantial risk of inflicting serious harm.

2023 WL 4187751 at *7. The Court unequivocally held that “a mental state of recklessness is sufficient” to establish a true threat, unprotected by the First Amendment. *Id.* at *2.

In light of the *Couterman* decision, we can and should argue to district courts—as well as to the appellate courts—that *Boettger* is no longer good law. While it will likely be some time before there is a Kansas Supreme Court case that acknowledges this, lower courts must recognize that the United States Supreme Court is the final arbiter of United States constitutional matters, and therefore, *Couterman* is controlling over *Boettger*.

Outside of attempting to prosecute a reckless criminal threat, the issue will most likely arise in the sentencing context where a defendant, relying on *Boettger*, will attempt to keep a prior criminal threat conviction from being counted in his criminal history score. To assist all of you with countering that argument, we have drafted a sample argument as follows:

Argument to make in district court:


The State of Kansas presents a good faith argument for the modification of the existing law set forth in *Boettger*, based upon the June 27, 2023, release of *Couterman v. Colorado*, 600 U.S. ___, No. 22-138, 2023 WL 4187751, (Decided June 27, 2023).

In *Boettger*, our Supreme Court ruled that the reckless criminal threat provision of K.S.A. 2018 Supp. 21-5415(a)(1), allowing for a conviction if a threat of violence was made in reckless disregard for causing fear, was unconstitutionally overbroad because it punishes conduct that may be

constitutionally protected under some circumstances. The *Boettger* opinion was based upon its interpretation of prior United States Supreme Court cases, primarily *Watts v. United States*, 394 U.S. 705, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969); *Virginia v. Black*, 583 U.S. 343, 123 S. Ct. 1536, 155 L. Ed. 2d 535 (2003), and *Elonis v. United States*, 575 U.S. 723, 135 S. Ct. 2001, 192 L. Ed. 2d 1 (2015).

In *Couterman*, the United States Supreme Court determined:

True threats of violence are outside the bounds of First Amendment protection and punishable as crimes. Today we consider a criminal conviction for communications falling within that historically unprotected category. The question presented is whether the First Amendment still requires proof that the defendant had some subjective understanding of the threatening nature of his statements. We hold that it does, but that a mental state of recklessness is sufficient. The State must show that the defendant consciously disregarded a substantial risk that his communication would be viewed as threatening violence. The State need not prove any more demanding form of subjective intent to threaten another. 2023 WL 4187751 at *2.

Boettger answered a question the United States Supreme Court had yet to explicitly decide. The Kansas Supreme Court read earlier opinions by the United States Supreme Court to support its conclusion that an intentional threat was required. But the Court has now decided the issue, and conclusively ruled that reckless criminal threats are constitutional. Thus, *Couterman* effectively reverses the Kansas Supreme Court's erroneous ruling on the requirements of the First Amendment. Kansas state courts are duty-bound to follow the decisions of the United States Supreme Court when interpreting the United States Constitution. See, e.g., *Trinkle v. Hand*, 184 Kan. 577, 579, 337 P.2d 665, cert. denied 361 U.S. 846, 80 S.Ct. 101, 4 L.Ed.2d 85 (1959) (Under Article VI of the United States Constitution, “the interpretation placed on the Constitution and laws of the United States by the decisions of the supreme court of the United States is controlling upon state courts and must be followed.”) .



Well-Being in the Legal Profession: Where Are We in Kansas?

By Danielle M. Hall, Executive Director, Kansas Lawyers Assistance Program

In 2016, the National Task Force on Lawyer Well-Being was established to address the high rates of mental health conditions and substance abuse among lawyers. The task force was a collaborative effort among various entities within the legal profession, including the ABA Commission on Lawyer Assistance Programs, the National Organization of Bar Counsel, the National Conference of Chief Judges, and the Association of Professional Responsibility Lawyers.¹ It was the first time that these national organizations had ever come together in this manner to tackle the important issues surrounding well-being within the profession.

A little over a year after its formation, the National Task Force released a groundbreaking report in August 2017, titled *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (the National Report). The report emphasized the need for a proactive and comprehensive approach to promoting well-being within the legal profession and provided 44 recommendations for the profession's key stakeholders—judges, regulators, law firms, law schools, bar associations, professional liability carriers, and lawyer assistance programs—to foster a healthier and more supportive environment in the legal profession and to change the culture and discussion surrounding well-being.²

The National Report relied upon startling

statistics from two separate studies which put a spotlight on the state of well-being among lawyers and law students and served as the basis for the task force's recommendations. These studies included the 2016 ABA CoLAP and Hazledon Betty Ford Foundation's study of mental health and substance use disorder among lawyers³ and the 2014 National Survey of Law Student Well-Being.⁴

Nearly 13,000 currently practicing lawyers participated in the study on lawyers. It found between 21% and 36% of respondents qualified as problem drinkers, and approximately 28%, 19%, and 23% were struggling with some level of depression, anxiety, and consistent stress, respectively. Roughly 11% of respondents reported having thoughts of suicide. Notably, this study found that younger lawyers in the first 10 years of practice and those working in private firms experience the highest rates of problem drinking and depression. It also highlighted the extreme reluctance of those suffering to access any sort of assistance or treatment, primarily due to stigma, shame, and fear of being "found out."

As for the law student study, 15 law schools and over 3,300 law students participated. It found 17% of students experienced some level of depression, 14% experienced severe anxiety, 23% had mild or moderate anxiety, and 6% reported serious suicidal thoughts in the past year. In addition, 43%

Footnotes

1. For a complete list of entities visit: https://www.americanbar.org/groups/lawyer_assistance/task_force_report/.
2. See The Report of the National Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change 2017*, <https://lawyerwellbeing.net/the-report/>.
3. P. R. Krill, R. Johnson, & L. Albert, The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys, 10 J. ADDICTION MED. 46 (2016). To access this study: https://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx.
4. J. M. Organ, D. Jaffe, & K. Bender, Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns, 66 J. LEGAL EDUC. 116 (2016). To access this study: <https://jle.aals.org/home/vol66/iss1/13/>.

of students reported binge drinking at least once in the prior two weeks and nearly one-quarter (22%) reported binge-drinking two or more times during that same period. Aptly named *Suffering in Silence*, the published study also highlighted the reluctance of students to seek help when experiencing these types of distress, believing that accessing resources to address a condition would negatively impact their ability to gain admission to the Bar or to find employment.

Based upon the startling figures from these studies, the National Task Force offered several reasons why immediate action is needed to improve the overall mental health of lawyers and law students. The report acknowledged the results from both surveys signal an elevated risk in the legal community for mental health and substance use disorders tightly intertwined with an alcohol-based social culture. The studies also, however, reflect that most lawyers and law students do not have a mental health condition or substance use disorder, but that does not mean that they're thriving. In fact, research suggests that lawyers generally experience lower levels of satisfaction in their personal and professional lives, as well as their overall well-being.⁵

Shortly after publication of the National Task Force Report, the Conference of Chief Justices⁶ and the American Bar Association⁷ adopted resolutions encouraging all jurisdictions to review and consider The National Report and its recommendations. The report has been instrumental in raising awareness about the importance of lawyer well-being, as well as initiating discussions on systemic changes within the legal profession. The National Task Force has encouraged organizations and individuals to act and implement strategies to promote well-being, reduce stigma around mental health, and enhance the overall quality of life for those in the legal profession. In fact, it is the National Task Force recommendations that prompted the creation of state task forces across the United States, including in Kansas.

The Formation of the Kansas Task Force for Lawyer Well-Being

The National Report was initially released at the ABA Commission on Lawyer Assistance Programs national conference held in Kansas City, Missouri in October 2017. Shortly thereafter, Greg Goheen (then-acting Kansas Bar Association President), Anne McDonald (then-acting Kansas Lawyers Assistance Program Executive Director) and Hon. Penny Moylan (then-acting Deputy Disciplinary Administrator for the State of Kansas), were each undertaking individual efforts to raise awareness of the National Report in Kansas through their respective organizations. The three joined efforts and requested authorization from the Kansas Supreme Court to form a state-wide Task Force for Lawyer Well-Being to implement the recommendations from the National Report. Then Chief Justice of the Kansas Supreme Court, Chief Justice Nuss, sanctioned the formation of a state task force and requested Justice Eric Rosen to serve as the Supreme Court's liaison to the task force. Consequently, an Executive Committee was officially formed and began the process of recruiting members from each stakeholder group identified within the National Report. The group's mission was *to engage in a long-term effort to enhance the culture of the legal profession by prioritizing lawyer well-being in Kansas*.

The first state-wide meeting was held on January 17, 2019, in the Fatzer Courtroom at the Kansas Judicial Center with Justice Rosen presiding. Chief Justice Nuss also attended a portion of the meeting and greeted the group of more than 50 lawyers and law students from all over the state. The Kansas Task Force continued meeting quarterly to collaborate and discuss each stakeholder's efforts to implement the recommendations from the National Report throughout 2019, 2020, and 2021.

In 2021, the Kansas Task Force determined that, much like the National Task Force realized, it needed data to form and support a long-term strategic plan for promoting well-being in the

5. The Report of the National Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change 2017*, introductory letter, <https://lawyerwellbeing.net/the-report/>.
6. See Conference of Chief Judges Resolution 6, available

at: <https://ccj.nesc.org/policy-resolutions>
7. See ABA Resolution 105, available at: https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_2018_hod_midyear_105.pdf.

profession within the state of Kansas. As a result, the Executive Committee requested permission from Chief Justice Marla Luckert to conduct a statewide study. With the greenlight from the Kansas Supreme Court, the group launched the large-scale effort of conducting a statewide voluntary survey to assess lawyer well-being in Kansas. The bulk of the work was taken on by lawyer, task force member, and then Ph.D candidate, Harrison Rosenthal. This survey took into consideration the six dimensions of well-being as defined by the National Task Force—emotional well-being, physical well-being, social well-being, occupational well-being, intellectual well-being, and spiritual well-being. The goal was to obtain actionable data in each of these areas that considered variables such as age, race, gender, geography, firm size, and practice area to help craft targeted well-being initiatives. Initial data from this survey has been provided to the Kansas Task Force Executive Committee for consideration. A comprehensive report is in progress and forthcoming for publication and distribution.

As a result of some of the initial data combined with the recognition that several of the recommendations for each of the stakeholder groups had already been implemented, the Kansas Task Force Executive Committee took some time to regroup and refocus efforts during the pandemic. One key area of focus was ensuring that the Executive Committee had representation from each of the stakeholder groups, as well as naming a chair for going forward. The current Executive Committee includes the Hon. Penny Moylan (chair), Stan Hazlett, Anne McDonald, Heather Cessna, Shelley Sutton, Ashley Jarmer, Bob Lambrechts, Julia Hart, Leah Terranova, Todd Thompson, Julia Butler, Deana Meade, and me, Danielle Hall. This group is tasked with putting together a strategic plan for the Kansas Task Force going forward. If you are interested in participating on the Kansas Task Force and assisting with stakeholder group efforts, please visit www.kslawyerwellbeing.com for more information.

Well-Being Week in Law and IWIL

While continuing to evaluate the Kansas Well-Being Survey data and working on a long-term strategic plan, the Kansas Task Force has made

it a priority to each year participate in National Well-Being Week in Law. This week is organized by the Institute for Well-Being in Law (IWIL), which is a 501(c)3 organization that developed out of the National Task Force. The initial work of the National Task Force relied largely on dedicated professionals who volunteered their time and effort to the movement while having to focus primarily on their full-time obligations. For effective, ongoing change, the work of the National Task Force needed to evolve into a permanent model. To that end, the Institute for Well-Being in Law was formed in December 2020. Its mission statement is as follows:

The Institute for Well-Being in Law (IWIL) is dedicated to the betterment of the legal profession by focusing on a holistic approach to well-being. Through advocacy, research, education, technical and resource support, and stakeholders' partnerships, we are driven to lead a culture shift in law to establish health and well-being as core centerpieces of professional success.

Each year, IWIL organizes and promotes activities and materials to be used by the state task force groups, bar associations, LAPS, law firms, and individuals for Well-Being Week in Law, which occurs the first week of May to align with Mental Health Awareness Month. Well-Being Week in Law is designed to raise awareness about mental health and encourage action and innovation across the profession to improve well-being.

This past May, the Kansas Task Force invited state and local bar associations, organizations, and firms to participate in Well-Being Week in the Law through a series of activities. The Kansas Task Force greatly appreciates all those who participated to raise awareness in Kansas. Next year, the Kansas Task Force will once again ask organizations to participate in this important event, so please watch your email next April for more information for your organization. For more information on National Well-Being Week in Law and the Institute for Well-Being in Law, please visit <https://lawyerwellbeing.net/>.

KALAP's Role in the Kansas Task Force and Services for Those in Need

The Kansas Lawyers Assistance Program (KALAP) has been fortunate to staff and spearhead

the efforts of the Kansas Task Force. It was important for both entities to come together at the table to work toward long term solutions for improving the culture of the profession, reduce stigma surrounding mental health and substance use disorder in the profession, and to ensure that needs of those in the profession as it relates to well-being are being met in our state. Those of us at KALAP, including the KALAP Board and our volunteers, believe in the mission of the National Task Force and the Kansas Task Force. In fact, our own mission and purpose at KALAP was recently amended to include not only protecting citizens from potential harm caused by lawyers in need of assistance, providing assistance to lawyers in need, and educating the bench and bar about causes and services available to those in need, but to also develop programs that emphasize the prevention of circumstances that might negatively impact a lawyer.⁸ Through the Kansas Task Force and the expansion of services at KALAP, we have had the opportunity to begin fulfilling this newly added mission. This is consistent with the recommendations from the National Task Force Report, which recommend that LAPs evaluate whether they have interest and funding to expand their programming beyond the traditional focus on treatment.⁹ KALAP will continue to evaluate our services, as well as our funding needs to support these efforts.

As the years have passed since those initial studies were conducted in 2014 and 2016, we have seen more surveys conducted both nationally and in individual states regarding law student, lawyer, and judicial well-being. These studies continue to give cause for action in our profession. Recent

studies show there is an even greater need for response since the release of the National Report in 2017. For instance, in 2020, the California Lawyers Association and the D.C. Bar participated in a study which has now yielded three published papers as part of a series. In the first paper, it was revealed roughly half of the lawyers screened positive for risky drinking and close to 30% screened for high-risk hazardous drinking.¹⁰ Most notably, a significant gender disparity was revealed, with female lawyers experiencing more mental distress and greater levels of overcommitment and work/family conflict. Other recent studies have found higher stress among lawyers of color on account of their race and ethnicity,¹¹ higher rates of suicide and suicide ideation among lawyers as compared to 2016,¹² and higher rates of burnout and lawyers leaving or consider leaving their legal employer or the legal profession due to burnout or stress.¹³

As more studies shed light on the state of well-being in the profession, it has also renewed attention on the importance of Lawyers Assistance Programs. LAPs are confidential, independent programs designed to support the well-being, mental health, and substance use recovery of lawyers, judges, law students, and other legal professionals. These programs offer a range of services and resources to assist individuals in the legal community.

In Kansas, KALAP's services include:

- Referrals for assessments or evaluations;
- Referrals for therapy and for treatment;
- Short term counseling sessions with a licensed counselor at no cost to the participant;
- Peer mentoring, monitoring, and support;

8. See Kansas Supreme Court Rule 233

9. The National Report, p. 46.

10. J. Anker, P.R. Krill, Stress, Drink, Leave: An Examination of Gender-Specific Risk factors for Mental Health Problems and Attrition Among Licensed Attorneys, 16PLoS One (2021), available at: <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0250563>.

11. R. Liebenberg & S. Scharf, Am Bar Assn, Practice Forward Report: Where Does the Legal Profession Go from Here? Lawyers Tell Us How and Where They Want to Work (2022), available at: <https://www.americanbar.org/content/dam/aba/administrative/law-practice-division/>

[practice-forward/2022-practice-forward-report.pdf](https://www.americanbar.org/content/dam/aba/administrative/law-practice-division/practice-forward/2022-practice-forward-report.pdf).

12. M. Thiese, J. Allen, M. Knudson, K. Free & P. Petersen, Depressive Symptoms and Suicidal Ideation Among Lawyers and Other Law Professionals, 63 J Occup Environ Med. 381 (2021). To access this study visit: <https://pubmed.ncbi.nlm.nih.gov/33928935/>.

13. NORC at the U. of Chicago., Lawyer Well-Being in Massachusetts, Final Report (2022), available at https://fingfx.thomsonreuters.com/gfx/legaldocs/lgpdknlazvo/NORC_MA%20Lawyer%20Well-Being%20Report_Final_2023_2_1.pdf.

- Modified interventions for lawyers who need assistance;
- Resiliency Groups and Peer to Peer Support Groups;
- Assistance with Diversion and Probation Plans required by Discipline;
- Assistance with Monitoring Contracts required by Admissions; and
- CLE programs to local and specialty bar associations or law firms.

In addition to our mental health and substance use disorder services, KALAP has recently established programs that assist with law practice management related issues. It is a goal of KALAP to provide resources and training in this area to assist with reducing stress as it relates to the business aspects of practicing law by providing lawyers with the tools they need to operate efficiently and effectively, hopefully also reducing the risk factors for burnout. Additionally, KALAP also provides assistance and resources for those who may be experiencing cognitive related conditions, as well as physical health conditions, that may be impacting the lawyer’s ability to practice.

If you or someone you know is in need of assistance, please contact KALAP at 785-368-8275 or by email at kalap@kscourts.org. Approaching a colleague can be scary, especially if you feel like you don’t know what to say or how you can help, but that is where KALAP can be of assistance.

Communication with KALAP is confidential under Kansas Supreme Court Rule 233, and that applies to those who seek assistance and to those who call regarding a colleague. It is also important to know that when you call our office about a colleague, you are not “reporting” your colleague, instead you are making a referral for services out of concern. KALAP can reach out to the person to see if we can provide help. If you are struggling and need assistance, please know that you are not alone in your struggles. There are others in this profession who have had the same experiences and will tell you that there is hope and help out there. KALAP is just a phone call or email away. 📞

About the Author

Danielle Hall is the Executive Director of the Kansas Lawyers Assistance Program where she oversees the daily operations and provides assistance to lawyers and law students who may be struggling with a mental health, substance abuse, or law practice management related issue. Prior to being appointed in 2019, she served as a deputy disciplinary administrator for the State of Kansas, where she prosecuted attorney misconducted cases and served as the attorney diversion coordinator. She currently serves as VP of Policy for Institute of Well-Being in Law and is on the executive committee of the Kansas Well-Being Task Force. She is also active in the American Bar Association, having served on many committees and is a regular contributor to the ABA LP Division Magazine.

Childfirst Forensic Interview Training Helps Prosecutors

By Elizabeth L. Oliver, Anderson County Attorney

Sex cases, particularly sex cases involving child victims, can be some of the more difficult cases to prosecute. As a prosecutor who has worked on multiple Jessica Law cases in Sumner and Anderson Counties, I have found that the key to success in prosecuting these cases is understanding the entirety of the process. This includes attending SANE/SART training, Childfirst forensic interview training, and advanced Childfirst training.

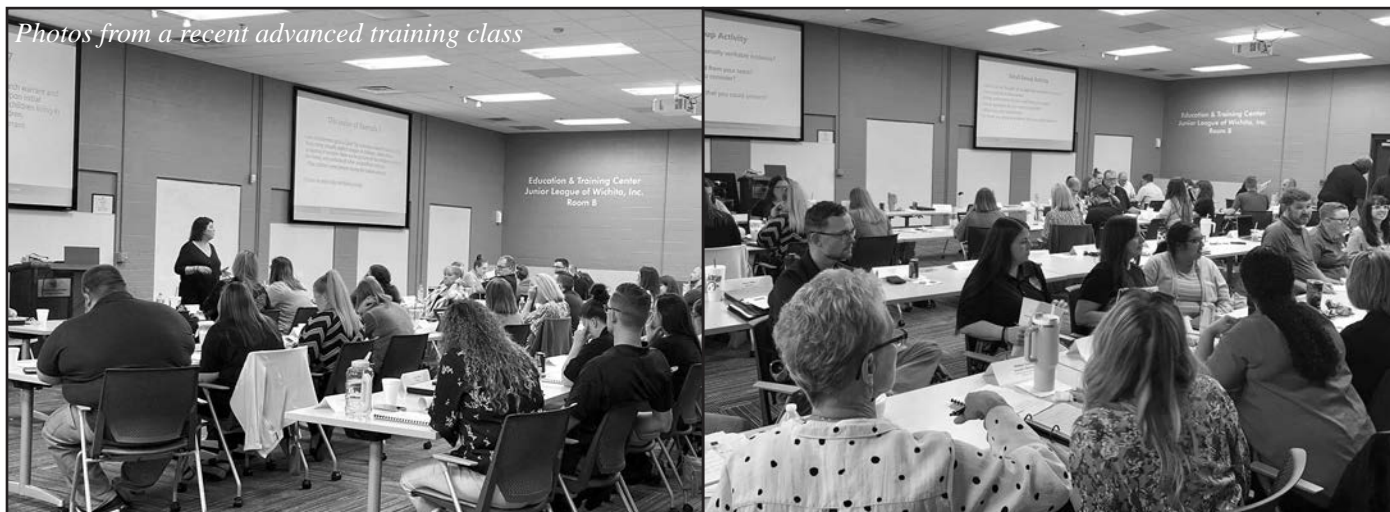
Today, I am on the board of Childfirst, and I firmly believe that every prosecutor handling child

sex cases should attend Childfirst forensic interview basic training.

Childfirst forensic interview basic training is a 40-hour training that focuses on:

- How to properly interview children;
- The dynamics of abuse;
- Defending the forensic interview in the courtroom;
- The use of anatomical drawings, and anatomical dolls in understanding the victim’s statements.

Photos from a recent advanced training class



I attended the training with Detective Hamm who is the main Anderson County Sheriff Officer in child abuse cases in Anderson County. The opportunity to attend the training with my detective gave us both an advantage in understanding each other's roles, the dynamics of interviewing, and improving testimony.

"As an investigator, I have had the privilege to attend basic and advanced Childfirst training courses. The instructors and course curriculum are top notch, and I found the training to be invaluable. I was extremely fortunate to have had my County Attorney attend these training courses with me. I believe that it is vital to the successful prosecution of cases involving children that prosecutors have a thorough understanding of the protocols utilized by their investigators, as well as to have the knowledge of how to effectively defend those protocols in the court room," Detective Hamm said.

As prosecutors, there are several benefits to attending the Childfirst forensic interview basic training and learning the Childfirst philosophy including:


- How to effectively question children of all ages on the stand;
- Understanding the techniques used in the forensic interview;
- The techniques used for getting around "blocks";
- Creating a space in the office suitable for meeting with children;
- Meeting with the child before the day of court;

- Preparing the child for the court room; and
- Letting the child's best interest and wellbeing guide your decisions throughout the stages of the prosecution.

Ellis County Attorney Robert Anderson, Jr. has also attended the forensic interview training.

He said, "I'm a big believer that it takes a whole team, or a village, to effectively respond to child sexual abuse. As the prosecutor, I recognize that my training, knowledge, attitude, decisions, and actions can have a profound effect on the whole team and the work that they do. For this reason, I believe it is imperative for prosecutors to take the time to understand what it is that their community partners do, and why. In this context, knowing what your Forensic Examiners are doing in their interviews and why helps you to understand and utilize their work, defend it, and present a stronger case."

Each year, the Western Kansas Child Advocacy Center puts on the Childfirst basic training as well as advanced training on other topics. Detective Hamm and I opted to take the advanced course on interviewing children with disabilities. It was imperative to gain more knowledge in this area to better serve and understand these victims and make sure we were well-equipped to build cases to completion when they arose in the future.

For more information on the Childfirst forensic interview training, visit the Western Kansas Child Advocacy Center's webpage at www.wkcac.com/childfirst, or contact the Program Director Kelly Robbins at fwk@wkcac.com. 

Pretrial Publicity: Not Only a Threat to the Defendant

How The Court Of Public Opinion Impacts The Right To A Fair Trial In A Court Of Law—For Both Sides

By Wendy L. Patrick, JD, PhD, Deputy District Attorney, San Diego County

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Pretrial publicity pervades the integrity of criminal trials by affording the public a sneak preview of the evidence, both admissible and inadmissible. The jury's charge is to decide a case based on the evidence presented in court. Yet due to the pervasive nature of pre-trial publicity through the broad spectrum of communication channels, some suspects are tried, convicted, and sentenced in the court of public opinion before a single piece of evidence is introduced in a court of law.

But pretrial publicity does not always favor the prosecution. When I first started practicing criminal law as a deputy public defender, fresh out of law school, prosecutors were much more popular than they are today. Accordingly, acknowledging the politics of public sentiment, we recognize that pretrial publicity impacts more than a defendant's right to a fair trial. It can impact the prosecution's right to a fair trial as well.

Framing the Narrative

As an example, depending on your facts, there may be a difference of public opinion about whether your case is about justice for the decedent, or injustice in charging the defendant with the crime. This dispute has permeated some high profile homicide prosecutions such as the trials of Kyle Rittenhouse and George Zimmerman, where the aggressors claim self-defense. Even civil cases spark this contentious public dynamic, as illustrated in the headline-grabbing Johnny Depp-Amber Heard dueling defamation trial. Divided over who was actually the victim, each side had a cheering section of supporters and detractors, referred to as "Team Johnny" and "Team Amber."

The point is that negative publicity is not directed only toward the defendant. Victim blaming and third-party culpability issues can impact a potential jury pool in a wide variety of ways that

often arise in the deliberation room, and sometimes depend on deliberation style. Researchers have examined the ways in which negative pretrial publicity biases juror decision making, depending on toward which party the negative evidence is directed.

Pretrial Publicity and Jury Deliberation

Christine L. Ruva et al. (2022) investigated the role of pretrial publicity and jury composition on the deliberation process.¹ Perhaps not surprisingly, they found that jurors exposed to negative-victim information demonstrated a bias in favor of the defense, while jurors exposed to negative-defendant information were biased in favor of the prosecution.

But they also considered deliberation style, distinguishing between evidence-driven and verdict-driven. They define evidence-driven as involving jurors discussing all relevant information from trial before making a decision, and verdict-driven is taking early and frequent straw polls, surrounded by discussions focused on verdict preferences rather than trial evidence. They found that deliberations of pure negative-victim juries appeared to be verdict driven, as demonstrated by spending less time discussing evidence presented at trial and taking more frequent straw polls.

Ruva et al. conclude that jury deliberations are not completely effective at reducing the bias caused by pretrial publicity, regardless of the composition


Footnote

1. Ruva, Christine L., Stephanie E. Diaz Ortega, and Kathleen A. O'Grady. 2022. "What Drives a Jury's Deliberation? The Influence of Pretrial Publicity and Jury Composition on Deliberation Slant and Content." *Psychology, Public Policy, and Law* 28 (1): 32–52. doi:10.1037/law0000310.supp (Supplemental).

of the jury. They note that this appears to be due to biased encoding of evidence presented at trial and source misattributions, which biases the deliberation room discussion of trial evidence and pretrial publicity.

May it Please the Court, and the Public

Our job is to fulfill our ethical responsibilities in prosecuting our case, not pleasing the public. Yet part of our case assessment involves recognizing that the charges, claims, and characters involved in some high profile prosecutions are predestined to create a media circus environment long before the case actually enters a courtroom. Meticulous investigation and preparation will help prosecutors

build solid cases designed to withstand pervasive public scrutiny. By taking the time to analyze what type of pre-trial publicity issues surround a particular case and toward which side it is directed, prosecutors can strategize the way they present their case, both in terms of office-sanctioned ethical pretrial publicity, and the way to present the evidence in court. 

About the Author

Wendy Patrick, JD, PhD, works as a deputy district attorney and also a behavioral expert and jury consultant. The views and information in this article are written in her personal capacity and do not reflect the views of her employer.



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2023 KCDA A Award Nominations

Please take time to nominate a member of the KCDA A whom you believe to be deserving of an award. This is the opportunity to recognize the accomplishments of the hard-working prosecutors who make up the membership of the KCDA A, and a policymaker who has championed the interests of the KCDA A.

FOUR categories of awards are eligible for nomination: Prosecutor of the Year, Lifetime Achievement Award, Associate Member Prosecutor of the Year, and Policymaker of the Year. The awards winners are chosen by the KCDA A Board of Directors. *

Award Qualifications:

The Prosecutor of the Year Award is presented to a prosecutor for outstanding prosecution of a case or cases throughout the year. Nominations may be made by either the prosecutor himself/herself or by a colleague. The nominee must be a regular member of the KCDA A.

The Lifetime Achievement Award is presented to a regular KCDA A member for his/her longevity as a prosecutor. The nominee must have served no less than 25 years in a prosecutor position, and not previously received this award. Nominations may be made by either the prosecutor himself/herself or by a colleague.

The Associate Member Prosecutor of the Year Award is presented to a prosecutor for outstanding prosecution of a case or cases throughout the year from an office other than a County or District Attorney's office. Nominations may be made by either the prosecutor himself/herself or by a colleague. The nominee must be an associate member of the KCDA A.

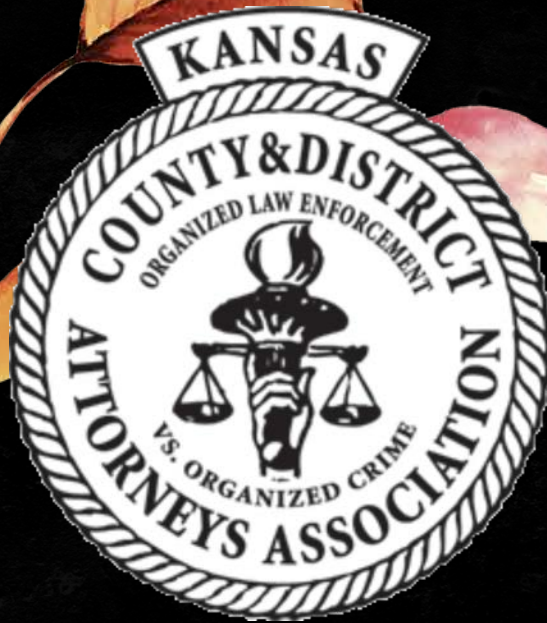
The Policymaker of the Year Award is presented to an individual who is determined to have made the most significant impact on policy related to county and district attorneys either during the past year or over an extended career of public service. One award is presented each year. The award is open to individuals having public policy making authority as evidenced by legislative support of the KCDA A.

To nominate yourself or one of your colleagues, please use the nomination form at kcdaa.org/awards. You may send your nominations to:

KCDA A
1200 SW 10th Ave.
Topeka, KS 66604
Fax: (785) 234-2433
E-mail: kcdaa10@gmail.com

All nominations MUST BE received by 5:00 p.m. on September 30, 2023. For questions, please contact Melissa M. at (785) 232-5822 or via e-mail at kcdaa10@gmail.com

*The Board of Directors reserves the right to choose which awards categories are granted each year, if any.



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