

The Kansas Prosecutor



The official publication of the Kansas County and District Attorneys Association

Volume VII, No. 1, Spring 2010



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Our mission:
 The purpose of the KCDAA is to promote,
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About the Cover

The Doniphan County Courthouse, designed
 by George P. Washburn & Son, Architects and
 constructed by J. H. Wagenknecht, Wathena, KS,
 in 1906, occupies a full square block in Troy, KS,
 surrounded by the city's central business district.

From its lofty domes, you can see the grain
 elevators at Denton, the water towers at Highland
 and St. Joseph, Missouri, as well as many of
 the homes, churches, schools, and commercial
 buildings of the county, surrounded by rolling
 hills and large expanses of rich farmland.

Doniphan County is located in the northeast
 corner of Kansas, bordering the Missouri River.

Photo by John D. Morrison, Prairie
 Vistas Photography



President's Column

by Ann Swegle, KCDA President
Deputy District Attorney, Sedgwick County District Attorney's Office

Spring Conference Offers Highly Recommended CLEs

The KCDA 2010 Spring Conference will be held June 10 – 11 at the Hyatt Regency in Wichita. We are not alone in gathering in Wichita during that time for CLE credits and camaraderie. The Hyatt will also be hosting the Kansas Bar Association's (KBA) Annual Meeting and Joint Judicial Conference. The state's judges will also be convening by themselves across town at the Marriott.

Our CLE Committee has designed and organized an exceptional program. We are bringing in some dynamic speakers - some local, some not – who are prepared to both educate and entertain you.

Among the speakers is Todd Winegar, a Utah lawyer, lecturer, and trial consultant. On Thursday, June 10, Winegar will deliver a presentation and materials entitled "Trials of the Century." A variety of famous trials and lawyers will be highlighted. The focus will be on cross-examination techniques employed during the segment on the O.J. Simpson trial. The cross-examination of several witnesses, both by the defense and the prosecution, will be seen and analyzed, including the cross-examination of Mark Fuhrman by F. Lee Bailey.

Cross-examination rules and techniques will also be explored in the segment on the 1925 trial of John Scopes for teaching evolution to school children. You'll be able to listen to William Jennings Bryan being cross-examined by Clarence Darrow.

The ethics of dealing with difficult witnesses and attorneys and the ethics of "Rambo" litigation tactics will be discussed, using the 1935 Lindberg kidnapping trial as a vehicle.

Techniques employed in effective cross-examination of difficult witnesses will be explored while looking at the Nuremberg trials. You will watch Reich Marshall Herman Goering be cross-examined by United States Supreme Court Justice Robert H. Jackson, who served as chief prosecutor of Nazi leaders in the international war crimes trials.

Closing argument techniques will be explored,

using two more Clarence Darrow trials – the murder trial of Leopold & Loeb, whose murder of 14 year-old Bobby Franks has been dubbed the nation's first thrill killing, and Darrow's own trial on bribery charges. President Clinton's impeachment trial will also serve as an example to highlight persuasive techniques employed in closing arguments.

On Friday, you will be involved in an interactive experience with a long-time prosecutor, and a judge, who was once a long-time prosecutor. Kentucky Commonwealth Attorney Thomas Lockridge and Kentucky Circuit Judge Steve Wilson will present "Ethics: The Movie." During this presentation, you will witness a prosecutor encounter various situations with ethical implications.

The movie part of the program portrays interactions between a police detective and a prosecutor who are involved in the investigations of a violent home invasion and the subsequent prosecution of the individual accused of the robbery/murder. The movie is paused between scenes for issue spotting and discussion of the ethical implications of what has just transpired. Some issues and their proper resolution are quite clear, but others are not so neatly resolved, leaving room for different perspectives on what should be done.

This presentation was developed to cover a wide range of practical issues that prosecutors may confront at some point in their careers.

Both "Trials of the Century" and "Ethics: The Movie" come to us highly recommended from other prosecutors who have experienced the presentations. We expect these will be great CLE experiences that you will benefit from and enjoy.

We will also have a legislative update during the conference to inform you of new criminal justice legislation and other legislation of interest. We were successful in advancing all but one of our legislative initiatives. Our bill to amend the law to prohibit the reduction of sentences at probation violation

hearings died in committee. However, the rest of our legislative priorities fared much better.

Our proposals to amend K.S.A. 21-4204(a)(4) to extend the 10-year prohibition on gun possession to include drug manufacturers and to amend K.S.A. 65-4105(d) to add BZP (benzylpiperazine), an Ecstasy-type drug, to the list of schedule I drugs successfully passed both houses of the legislature fairly early in the session. The drug bill has been signed by the governor and, at this writing, the gun possession prohibition bill awaits the governor's signature.

The governor's signature is also the final step remaining to the enactment of the rest of our legislative initiatives. Those are:

- a request to amend the discovery statute, K.S.A. 22-3212, to allow for the protection of crime victims' and witnesses' personal identifiers, such as social security numbers and dates of birth during the discovery process;
- some proposed changes to the mistreatment of dependent adults statute; and

- our request for a *State v. Horn* fix to ensure those convicted of "Jessica's Law" attempts, conspiracies, and solicitations would be sentenced as off-grid offenders rather than as severity level 1 offenders.

We are grateful for the legislature's support of our suggestions to improve the Kansas criminal justice system.

In addition to all the great CLE presentations in store for you at the Spring Conference, on Friday evening there will be an opportunity for you to partake of some great entertainment provided by the Wichita Bar Association (WBA), which produces the Wichita Bar Show in conjunction with the KBA conference. The show is always full of song, dance, and satire. This year the show is called "The Furlough Follies" in honor of the court system's planned response to the budget shortfall. Tickets will be available for purchase through the WBA.

All in all, you should look forward to a fantastic educational and entertainment experience at the Spring Conference. I look forward to seeing you there. 🍷

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Legislator's Column

by Representative Joe Patton

Public Safety Issues Being Addressed by Legislators

The goal of every state legislator is to enact laws that make our Kansas communities stronger and safer. That has been a challenge during the last few years. With dwindling revenues, the state budget has been hit hard. Just in the last year, the Kansas Legislature and Governor Mark Parkinson have cut spending by nearly a billion dollars. And as every prosecutor and judge in the state knows, public safety programs and court services have suffered more than their fair share of funding reductions.

Still, with input from organizations like the Kansas County and District Attorneys Association, I worked with my fellow legislators to successfully strengthen public safety policy and address a number of issues raised through various court decisions. Some of the issues I led efforts to clarify and increase penalties for included our social hosting laws; security fraud laws protecting dependent adults; and Jessica's Law.

I introduced a bill last year to address concerns regarding underage drinking and in particular, adults who knowingly provide alcohol to our youth. The law made it illegal to intentionally host minors consuming alcohol, but enforcement of that law proved daunting. Law enforcement and prosecutors found it difficult to arrest or charge someone for social hosting because the person could claim ignorance – that they were not aware the teens were drinking alcohol.

During the 2009 session, I proposed a simple amendment to the law to give Kansas law enforcement and prosecutors the ability to more effectively enforce state laws aimed at reducing underage drinking.

House Bill 2165 added the word “recklessly” to the law to make sure the adult who is setting up the party, buying the alcohol, and helping carry the kegs into the basement cannot then pretend ignorance. The law's purpose is not to prosecute innocent or even merely negligent parents. It is not

aimed at parents who have a teenage son raid their liquor cabinet. It is meant to deter those adults who knowingly buy or provide alcohol to anyone under the legal drinking age.

Our social hosting law now holds adults responsible for providing alcohol to our children and exposing them to the dangers of driving intoxicated or violent actions such as rape.

As Vice Chairman of the House Corrections and Juvenile Justice, I helped lead committee efforts to address the Kansas Supreme Court's ruling in *State v. Horn*. You will recall in that decision, the Court determined there was a conflict between the general statutes on attempt, conspiracy, and conspiracy to commit an offense, and the specific statute known as Jessica's law. Jessica's Law provides attempts, conspiracies, and solicitations of off-grid offenses would remain an off-grid offense while the general statutes provide for less severe penalties. **House Bill 2435** as introduced by Rep. Lance Kinzer clarifies that the Legislature intended the penalty for these crimes would be an off-grid offense. This effectively would reverse the Court's finding for future cases.

House Bill 2435 also addresses the ruling of the Kansas Supreme Court in *State v. Trautloff*. The Court determined because the defendant's convictions for the rape, aggravated sodomy, aggravated indecent liberties with a child, and sexual exploitation of a child had been adjudicated on the same day, the convictions were not separate conviction events. The bill clarifies the Legislature's intention by deleting the definition of “prior conviction event” in the aggravated habitual sex offender statute so that any person convicted of two or more sexually violent crimes, despite the fact that the convictions occur on the same day, is a habitual sex offender subject to a mandatory life sentence without the possibility of parole.

The measure also would amend the statute

on terrorism and illegal use of weapons of mass destruction to provide that an attempt, conspiracy, or criminal solicitation to commit the crime would be an off-grid felony.

The House Corrections and Juvenile Justice Committee also introduced a measure to address issues raised by the Kansas Supreme Court regarding the intent of our state's sentencing guidelines. In *State v. Luttig*, the Court upheld current law that prohibits (unless otherwise provided) prior convictions of any crime be counted in determining the criminal history category if they enhance the severity level or applicable penalties, elevate the classification from misdemeanor to felony, or are elements of the present crime of conviction.

House Bill 2469 amends state statute so there is no doubt that prior convictions can be counted in determining the criminal history category of a defendant. It allows for a more accurate criminal history of the defendant for pre-sentence investigations and sentencing.

Growing concerns of the mistreatment of dependent adults led me to support during committee debate of **Senate Bill 67** that would increase the severity level of punishment of those who intentionally and unreasonably cause or permit injury or endangerment of a dependent adult. I was pleased to carry the bill on the House floor.

Prosecutors from across the state have shared with me stories of older Kansas who lost hundreds of thousands of dollars because of the misguided trust they placed in others whose only goal was to steal their money. The House Corrections and Juvenile Justice Committee agreed to amend the bill to the following severity levels:

- A severity level 2, person felony if the aggregate amount of the value of the resources is \$1,000,000 or more (the Senate's bill recommended severity level 5);
- A severity level 3, person felony if the aggregate amount of the value of the resources is at least \$250,000 but less than \$1,000,000 (the Senate's bill recommended severity level 5);
- A severity level 4, person felony if the aggregate amount of the value of the resources is at least \$100,000 but less than

\$250,000 (the Senate's bill recommended severity level 5);

- A severity level 5, person felony if the aggregate amount of the value of the resources is at least \$25,000 but less than \$100,000 (the Senate's bill recommended severity level 7); and
- A severity level 7, person felony if the aggregate amount of the value of the resources is at least \$1,000 but less than \$25,000 (the Senate's bill recommended severity level 9).

The committee also agreed to amend SB 67 to contain provisions from SB 411 regarding criminal possession of a firearm (as recommended by the Senate Committee on Judiciary) and provisions regarding identity theft and identity fraud.

Despite budget constraints, I am pleased the Kansas Legislature supported these and other efforts to strengthen our public safety policy to keep our communities safe. As a state legislator, it is my goal to make sure Kansas law enforcement, prosecutors, and judges have the right laws in place so they can protect our state's most vulnerable citizens. 🇺🇸

County Courthouse Portraits



Doniphan County Courthouse

John D Morrison

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See all 105 county courthouses at
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Guest Column

by Congressman Todd Tiahrt (R-Kan.)

We Must Ensure Kansas Remains a Safe Place to Live

So many times the role of prosecutors is viewed only within the limited context of a courtroom where justice can be delivered to both victims and the guilty. And while this is accurate, it represents only a minute portion of the work prosecutors and their employees carry out on a daily basis – all in an effort to uphold the laws of our land.

What many citizens do not realize is that like any other local government official, prosecutors are often saddled with unfunded mandates created by politicians responding to political forces. And because of the economic recession, local offices are dealing with the realities of budget cuts. Unfortunately, although budgets have been reduced, prosecuting caseloads have not gone down.

Prosecutors are on the front lines of helping make our justice system work properly, often working together with local, state, and federal law enforcement officials. Prosecuting offices, like law enforcement, should be given every tool necessary to successfully navigate the judicial framework to ensure citizens are afforded constitutional protections and the guilty do not escape punishment on technicalities.

Working with officials in the largest prosecuting jurisdiction in south central Kansas, I helped provide needed resources for

the Sedgwick County District Attorney's Office to implement a new records management system. This allowed the district attorney's office to modernize data sharing systems with the courts and law enforcement.

Six years ago, after the infamous BTK killer resurfaced, I worked with my colleagues in Congress to provide emergency funding needed by the Wichita Police Department to assist in the apprehension of the killer. We were able to get those resources where they were needed, and thanks to the incredible investigation by the Wichita Police Department, they captured the BTK serial killer a few months later in August 2005. During this process, the Wichita Police Department took advantage of cutting-edge technology to develop new investigative procedures that have since been studied by police agencies nationwide. And because the Wichita police so efficiently utilized their resources in capturing BTK, they were able to rededicate the remaining federal funds to help fight the growing gang activity in Sedgwick County.

As a long-standing member of the bi-partisan Congressional Caucus to Fight and Control Methamphetamine, I have worked to increase funding for the Midwest High Intensity Drug Trafficking Area (HIDTA) and

provide equipment to Kansas law enforcement to help fight this growing epidemic. With these resources and first-class work by prosecutors, we have been able to take drug traffickers off the streets and put them in jail. The work by law enforcement and prosecutors has moved Kansas from being the 4th largest meth-producing state in 2001 to 16th in 2009. We still have a lot more work to do in this area, but our communities have been made a lot safer in the process.

I hope we can continue to find partnerships between federal, state, and local law enforcement and prosecuting offices to battle methamphetamine manufacturing and trafficking so we reduce our state ranking even further.

In 2003, I introduced what is now commonly referred to as the Tiahrt trace data amendment that is now permanent law. The Fraternal Order of Police (FOP), the world's largest organization of sworn law enforcement officers, asked me to protect the integrity of trace data because public disclosure of this data could jeopardize ongoing investigations and endanger police officers' lives.

While this confidential data cannot be released to the public, it is available to all levels of law enforcement and prosecutors. Despite repeated attacks by big

city mayors such as New York's Michael Bloomberg, we have been able to preserve this privacy law, ensuring that trace data remains a valuable resource for prosecutors and law enforcement – while the privacy of law-abiding firearm owners remains secure.

Beyond being responsive to efforts to address crime, we have to find better ways to support preventative measures in hopes of reducing prosecution caseloads.

Stopping crime before it happens is always best. That is why I have been honored to fight for projects that support community policing efforts, school safety projects, and neighborhood economic development projects.

Throughout my service in Congress, I have appreciated feedback from Kansans who are on the ground working every day to make our communities better and our state stronger. As always,

if there are ideas for better partnerships between the federal government and local prosecution office needs, please do not hesitate to contact me. Ensuring Kansas remains a safe place to live, work and play is a responsibility we all take seriously, and I look forward to continuing our work in pursuit of that goal in the future.

You can learn more about Congressman Todd Tiaht at <http://tiaht.house.gov/>. 

About Congressman Todd Tiaht

Todd Tiaht (pronounced TEE-hart), R-Goddard, began serving the 4th District of Kansas in Congress in 1995. Todd was appointed to the powerful House Appropriations Committee in 1997 and currently serves as the Senior Republican on the Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies.

In addition to his leadership assignment on the House Appropriations Committee, Todd served four years on the House Permanent Select Committee on Intelligence from 2005-2008 at the request of the Speaker of the House and Republican Leadership. He is also a former member of the Board of Visitors for the U.S. Military Academy at West Point that provides advice on academics and academy life issues.

Todd is a champion of taxpayers and those who believe in the traditional American values of integrity, faith, and family. Todd grew up on his family's farm where, at a young age, he learned the values of hard work and frugality.

Before his service in Congress, he was employed by the Boeing Company in Wichita for nearly 14 years, where he worked on various aerospace projects including the Space Station, Air Force One, and the Comanche Helicopter.

As a member of the House Appropriations Committee, Todd is in a unique position to fight for the interests of all Kansans and for fiscal responsibility in the federal budget process. All

discretionary spending bills pass through this important committee. In addition to serving as Ranking Member on the Labor/HHS/Education Subcommittee, Todd is a member of the Defense Subcommittee.

Todd founded and serves as chairman of the House Economic Competitiveness Caucus and is leading the effort to help keep and create jobs in Kansas and the U.S. Under Todd's leadership in advancing the competitiveness agenda, the House of Representatives passed more than 50 pieces of legislation directly related to increasing the ability of U.S. workers to compete in a global economy.

As a Member of Congress, Todd has received numerous honors for his voting record on behalf of taxpayers, law enforcement officers, seniors and American families including an "A" voting record with National Right to Life, American Conservative Union, Family Research Council, the U.S. Chamber of Commerce, and the NRA. In 2009, Todd was named "Kansas Legislator of the Year" by the Kansas Fraternal Order of Police. He has also been named a Super Friend of Seniors, a Champion of Private Property Rights, and a Taxpayer's Hero.

Todd attended the South Dakota School of Mines and Technology and later transferred to Evangel College where he graduated and met his wife Vicki. Todd went on to earn his MBA from Southwest Missouri State. Todd and Vicki were blessed with three children, Jessica, John and Luke.

KCDAA Member Highlight:

Pawnee County Attorney John Settle

by Mary Napier, Editor, Kansas Prosecutor

Some KCDAA members have come to prosecution as a second career or share their time between two different careers at the same time. This can be challenging as well as rewarding at times.

Pawnee County Attorney John M. Settle is one of those KCDAA members. In addition to serving as Pawnee County Attorney and County Counselor since 1995, he is the owner and publisher of five central Kansas newspaper publications. But how did he become a prosecutor and newspaper owner in Kansas when he was actually born and raised in Oklahoma?

Let's start at the beginning. After graduating in 1974 from high school in Chickasha, Oklahoma, Settle attended Southwestern Oklahoma State University and graduated in 1977 with a bachelor's degree in Business Administration with a minor in journalism and marketing. He entered the University of Oklahoma School of Law joint JD/MBA program in the fall of 1977 with the intention of going to work in corporate America.

While in his second semester of law school he and his wife's oldest daughter Katie was born. Settle began interning with the Grady County District Attorney's office in Chickasha when Grady County District Attorney Tony Burns offered Settle a full-time job as soon as he completed his law degree. By that time reality had set in, and Settle decided he could finish his MBA later as it was time he got a full-time job to support his family.

As an intern and Assistant District Attorney with the Oklahoma 6th Prosecution District, Settle worked as a prosecutor in three of the four county seats of the district, Anadarko, Duncan and Chickasha, Oklahoma.

"I had my eyes opened as I learned how some of the families I had previously known, really lived their lives," said Settle.

After three years as a prosecutor, a family friend who was a banker, suggested Settle go into private practice and with business in the area booming, Settle decided to make that move.

Settle's private practice focused on banking, real estate and oil and gas, but while his practice



Paula and John Settle with their four grandchildren

was growing, he also put his name on the defense appointment list. He quickly realized he didn't like that side of the courtroom and fortunately became busy enough after only a few months that he was able to take his name off the defense list.

During the next couple of years, Settle's practice continued to be fairly busy until the collapse of Penn Square Bank in Oklahoma City which took most of the Oklahoma oil business down with it.

Oklahoma and the Chickasha economies were heavily dependent on the oil industry, so every business in the area was hit hard. One of the banks in Chickasha that Settle represented began to send him several foreclosures each week for filing. It was good to be busy but the bank's bad loans not only demanded most of Settle's time but it also took a toll on the bank. It wasn't long before a larger regional bank in Oklahoma City bought the Chickasha bank's assets. Since the Oklahoma City bank already had a law firm representing them, the bank's business went to them. With the loss of the bank business and the rest of the area's economy struggling, Settle decided he would rather prosecute than change his practice to become a divorce and defense lawyer.

Settle knew District Attorney Tom Gruber's 26th Prosecution District of Oklahoma needed an assistant to try felony cases and help with civil duties

in Woodward County. The District encompassed five northwest Oklahoma counties including Woodward County where the position was open.

Settle was already a pilot at that time and flew to Woodward to interview for the position.

Gruber offered Settle the assistant job, which included serving as counsel for the County Commissions of all five counties in the district. Settle was excited at the opportunity to wear the “white hat” again and since he was an avid quail hunter, the move was even more exciting as Woodward County was the center of some of the best quail hunting in the world.

Settle enjoyed prosecuting in Oklahoma and has high praise for the Oklahoma District Attorney’s Training and Coordination Council, Oklahoma’s counterpart to the KCDA. “I learned first-hand the value of being involved with your state’s bar and prosecutor organizations. While working in Oklahoma I tried to be as active as possible with the DATCC and also served on the Board of Directors of the Young Lawyer Division of the Oklahoma Bar Association,” commented Settle.

In May of 1987 Settle helped his parents,

Marshall and Frances Settle, negotiate the purchase of “The Tiller and Toiler”, the Larned, Kansas daily newspaper. His parents already owned several newspapers in Oklahoma and wanted to continue to expand.

“My dad had been trying to get me to consider working in the family business for quite some time, but I enjoyed the practice of law and had resisted,” said Settle. “However, several months after the purchase of the “The Tiller and Toiler” newspaper in Larned, my dad convinced me that he needed my help in Larned and the town looked like it could be a good fit for my family.” By July 1988, Settle decided to move to Larned and was a Kansas resident by September of that year.

For several weeks Settle’s career took a different path while he focused on the day-to-day operations of running the newspaper. It was late October 1988 before Settle had time to call the Office of the Clerk of the Kansas Supreme Court to request an application to join the Kansas Bar by motion. It is an understatement to say Settle was disappointed to find out that Kansas had repealed reciprocity with all other state bars effective July 1987, just two months after he had called the clerk’s office while he was working on the purchase of the newspaper in May 1987, to verify that Kansas reciprocated with Oklahoma.

Settle didn’t want to give up his legal career so he did the only thing he could do. He ordered the study materials and sat for the Kansas Bar in February 1989.



“In mid-April 1989, I finally got the news I had passed another bar and after letting out an Indian yell that scared everyone in the newspaper office, I contacted the Pawnee County District Court to ask that my name be added to the court appointment list,” said Settle.

From 1988 to June 1995, Settle balanced his responsibilities at the newspaper and as a legal professional. He limited his legal career to acting as a GAL for child in need of care cases, representing mental patients in involuntary commitment cases at Larned State Hospital, court appointments, and helping then Pawnee County Attorney Terry Gross during a period that Gross dealt with some personal medical issues.

While at the newspaper, John focused his attention on anything that needed done. He wrote stories, sold ads, took photos, wrote payroll and payable checks, ran the press, took out the trash, and vacuumed the carpet.

In September 1993, John purchased “The Ellinwood Leader”, a weekly newspaper in Ellinwood, Kansas. Over the years, Settle has acquired other publications as well. He now owns and publishes five central Kansas publications, including: “The Tiller and Toiler”, published twice weekly in Larned, Kansas; “The Ellinwood Leader”, published weekly in Ellinwood, Kansas; “The Lyons News”, published twice weekly in Lyons, Kansas; “The Hoisington Dispatch”, published weekly in Hoisington, Kansas; and “The Central Kansas Rocket”, published weekly and delivered to almost 14,000 homes in central Kansas in five different counties.

In June 1995, then Pawnee County Attorney Terry Gross took a position with the Kansas Attorney General’s office, so he offered to recommend Settle to the Pawnee County Republican Central Committee, which would provide the Governor with a name for Terry’s replacement. Settle’s name was forwarded to Kansas Governor Bill Graves in July 1995 and Governor Graves appointed Settle as Pawnee County Attorney.

Settle has been re-elected in that position each election since that time. Annually the Pawnee County Attorney’s Office handles about 325-350 criminal cases, close to 300 involuntary commitment cases from Larned State Hospital, several hundred traffic cases, 70-80 JV and CINC cases, and dozens of different issues for the commissioners and other county offices as Settle is also the Pawnee County Counselor and provides legal representation to the Pawnee County Commission.

However, Settle didn’t leave his newspapers behind when he returned to prosecution.

“I work on each case or issue for the county until what has to be done is complete. Then if there is something I need to do for the newspapers, I take care of that,” said Settle. “Luckily I have great staff in both offices that operate with minimal guidance. I try not to micro-manage and trust my staff to do the jobs they have been trained and educated to do.”

Settle has been asked many times how he balances the different interests of a prosecutor and a newspaper owner. Settle explains he is very careful to comply with the provisions of Rule 3.8 of the KRPC, and he handles all releases of information through written release rather than by giving



interviews concerning criminal cases.

The newspaper staff is sometimes afraid other media outlets will run information that Settle will not allow in his newspapers, but he explained, "They have come to understand that my position as Pawnee County Attorney sometimes trumps the interests of the newspaper." In spite of those challenges, Settle is fond of pointing out that, "...the Pawnee County Attorney's Office gets along very well with the local newspaper."

Settle also explained that he thinks his prosecution career has helped him be a better journalist rather than the other way around. He explains that attorneys look at issues from several different angles and try to analyze each relevant piece, which is a great critical thinking skill to have. Settle believes that type of thinking is very beneficial in most other careers and has been valuable in his newspaper business.

What does Settle think is the most difficult thing about being a prosecutor if it isn't balancing his prosecutor and newspaper careers?

"It is hard to prosecute someone in the community that you know or whose family you know," explained Settle. "Nobody likes getting disciplined or seeing someone they are related to in trouble. If you are a county attorney who does your job the way it should be done for any period of time, you are going to have contact with lots of families in your area that will not appreciate many of your actions."

So, what does Settle enjoy the most about his position as a county attorney?

"The best thing about being a county attorney is the opportunity to do 'good'... to wear the 'white hat'," said Settle. "Despite the fact that I enjoy small town newspapers, as a newspaper owner, I don't get up every day knowing that I am personally going to have the opportunity to 'directly' make a positive difference in my community that day. I know that is the case as a prosecutor. It is a great

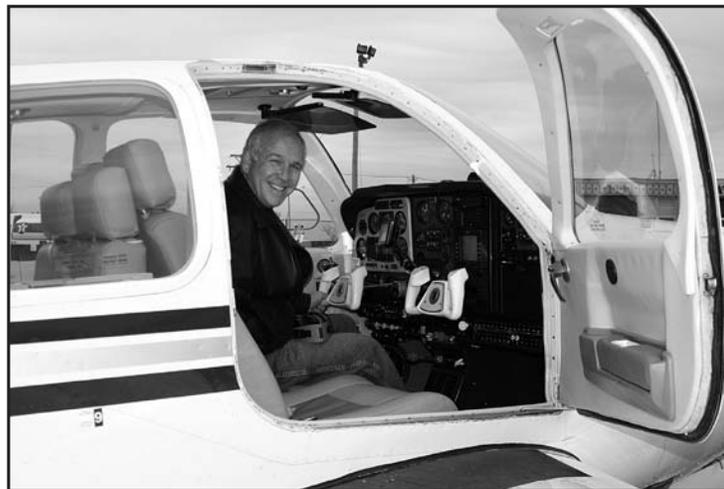
responsibility as well as a great opportunity that I am thankful for."

This feeling was reiterated for Settle when he received a card from the mother of a woman whose parental rights were terminated in a case he prosecuted a few years before. The mother wrote to thank him for "saving her granddaughter's life." Settle believes you can't make that kind of difference in many jobs.

Recently, as county counselor, Settle worked on "the single most important project I have ever had the privilege to work on." The project was the potential loss of Pawnee County's hospital.

"I would not have had the opportunity to devote time to that project were it not for my position as

the Pawnee County Attorney," said Settle. "Since we were successful in saving our community's hospital, we were able to insure that the citizens of Pawnee County would have access to a local hospital for many years to come; a need tremendously important for the future of the county



and its citizens."

While that was a great opportunity for Settle, he reminisced that the most exciting thing he has gotten to do as a Kansas prosecutor was to serve as president of the KCDAA in 2003.

"That was a great responsibility which I enjoyed enormously," said Settle. "It was truly an honor to serve in that position, knowing as I do the tremendous class, character, and competence of our Kansas prosecutors."

Settle joined the KCDAA after becoming the Pawnee County Attorney in 1995. He has served on several committees and held each officer position on the board as he worked his way through the ranks before becoming president. Settle is currently a member of the Board of Editors of the Kansas Prosecutor magazine.

"I believe my participation with the KCDAA

has truly enhanced my capabilities as an attorney as well as my career,” said Settle. “The KCDAA has provided a network of talented attorneys of very high character and professionalism to learn from. The opportunity to associate with such quality individuals cannot be replaced or duplicated.”

While Settle is active with KCDAA, he can't forget the newspaper part of his life. He is also a member of the Kansas Press Association and believes it provides a great service to Kansas and its members even though once in a while his career as a prosecutor might put him at odds with the KPA's legislative agenda.

When Settle isn't focused on prosecution or newspapers, he spends his time with his family of three daughters; Katie, Lindsey, and Kelly; two son-in-laws David and Ryan; and four grandkids, Logan, Rhett, Oliver, and Violet. He and Paula, his wife of 33 years, have discovered “grandkids are a lot more fun than you can imagine!”

Settle also enjoys golf, bowling, quail hunting and fishing; sometimes fishing competitively in BASS tournaments. Settle had the experience of

fishing as a co-angler with Kevin Van Dam at a tournament on Table Rock (you can see KVD on ESPN2 every Saturday morning on the Bassmasters or Bass Pro Shop's TV shows).

For several years Settle also field trialed birddogs as an amateur competitor, he served on the Board of the American Bird Hunters Association, and he owned two AFTCA Field Champions along with other competitive birddogs.

In addition, if Settle feels like being somewhere else, he has the ability to just hop in a plane and go. His dad was a pilot and he is also a private pilot with more than 1500+ hours total time. He enjoys flying his family around the country in a private aircraft.

“Of my extra-curricular activities, this is probably my favorite,” said Settle. “It is satisfying to be able to be in the office in Larned in the morning and make it to Topeka, Kansas City or Chickasha, Oklahoma that same afternoon, if necessary, to deal with whatever other responsibilities my careers might present and then make it back home that night.” 

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!

Deadlines for 2010:

Summer 2010: June 25

Fall 2010: October 22

Awards

Wyandotte County DA

Deputy District Attorney **Sheryl Lidtke** was named the 2009 Prosecutor of The Year for the Wyandotte County District Attorney's office at an office luncheon in December. Sheryl tried 12 cases in 2009 with nine guilty verdicts and one hung jury. Her case load consists of homicides and child sexual abuse cases. Congratulations Sheryl!



Births

Sedgwick County DA

Amanda Marino, Assistant District Attorney, in the 18th Judicial District (Sedgwick County), and her husband Andrew, announce the arrival of their daughter, Madeleine Louise, born November 11, 2009. She weighed 8 lbs. 12 ounces and was 21 inches long.

Tania Groover, Assistant District Attorney, in the 18th Judicial District (Sedgwick County), and her husband George announce the arrival of their daughter, Katherine Anne, born March 4, 2010. She weighed 8 lbs. 14 ounces and was 20 inches long.

Spring 2010

New Faces

Franklin County Attorney

James T. Ward is now an Assistant Franklin County Attorney. He began employment in the office in December 2009. Chad Sublet left the office and is now a SAUSA with the U.S. Attorney's Office in Wichita.



Leavenworth County Attorney

Leavenworth County hired **Rae Anderson** as an assistant county attorney. She graduated from the University of Kansas for her undergraduate degree and law school. After graduation, she moved to Colorado and practiced as a Deputy District Attorney in Fort Collins. She recently returned to Kansas to be near her family.



Riley County Attorney

Kendra Lewison, formerly of the Johnson County District Attorney's Office has joined the Riley County Attorney's office. Kendra spent five years working under Paul Morrison. She will be prosecuting person felonies and major crimes.



Saline County Attorney

Norman L. Davison, Jr. has joined the Saline County Attorney's office as an assistant county attorney. Davidson grew up in Lake Charles, La. and attended college at Louisiana State University, Baton Rouge. He earned a BS and MS degree and worked as a biologist for several years before enrolling

in law school at the University of Kansas. Norman graduated law school and passed the Kansas bar exam in 2003. He has worked in several different positions, including law clerk, private practice, KLS, and public defender. He is married to Angela Stoller, originally from Luray, Kan., and they have one child, Abigail, 6 months old, and two dogs. Norman enjoys sports, fishing, hunting, reading, and chess.



Retirements

Wyandotte County DA

Linda K. Fowler, Office Manager for the Wyandotte County District Attorney's office, retired on March 17, 2010 after 33 years of dedicated service. Although Linda has no immediate plans for her retirement, she will be spending a lot more time with her grandchildren. Linda was been the backbone of the office and will be missed.



Prosecutors Have a Duty to Give Back to Our Communities

By Stephen M. Howe, Johnson County District Attorney
and Jerome A. Gorman, Wyandotte County District Attorney

Community leaders and elected officials are often called upon for community service and volunteerism outside of our elected or appointed jobs. Albert Schweitzer once said, "Wherever a man turns, he can find someone who needs him." Library boards, school committees, homeless shelters, battered women's shelters, food pantries, and church leadership roles have long occupied personal time of many a community leader.

In our role as prosecutors, we receive the very same requests to serve the community. We as leaders, the ministers of justice throughout our cities and counties, should embrace these opportunities as a chance to give back to the greater good of our communities.

We would like to describe

to you one such opportunity that we recently experienced. In the summer of 2009, Sunflower House asked each of us if we would be willing to serve as co-chairs of their annual fundraiser event, which is an annual dinner-auction-dance. I think both of us immediately gasped and thought of the time commitment and the size of this event.

Sunflower House is a children's advocacy center founded in 1977 that provides the means to protect children in Wyandotte and Johnson counties from physical and sexual abuse through education and advocacy. Further, they provide forensic and medical services in those unfortunate situations where physical or sexual abuse has occurred.

Both of our offices deal directly with Sunflower House on a regular basis. The forensic interviewing they provide as part of the police or SRS investigation is comparable to none. The expert testimony provided in physical and sexual assault cases has provided prosecutors with the needed edge to obtain pleas and convictions in cases that are painful and difficult.

Every year Sunflower House holds a gala in conjunction with Valentine's Day. The event provides about 17 percent of Sunflower House's annual operating budget, so you can realize its importance. The gala is an extravagant black tie event that is sponsored by many local businesses and attended by many prominent persons from our counties. This year's leading sponsor was the University of Kansas Hospital. The event was also attended by Congressman Dennis Moore and his wife Stephene, Congressman Todd Tiahr, Governor Mark and Stacy Parkinson, Attorney General Steve and Betsy Six, Kansas State



Above: Co-chair Wyandotte County District Attorney Jerome and Vicki Gorman, Larry Moore, KMBZ Channel 9 news anchor, and Johnson County District Attorney Stephen and Cyndi Howe

Right: Congressman Dennis and Stephene Moore



Senate Majority Leader Derek Schmidt, and State Senator Chris Steineger. The honorary chairpersons were former Kansas Senate President Richard and Sue Bond.

Therefore, it was hard to say no to Sunflower House. It was clear that Sunflower House needed us, but it was also perplexing that Sunflower House needed US. What could two prosecutors bring to the table? It was certainly not our pretty faces, nor as we found out that night, not our comedic routine. But, needless to say we agreed to co-chair the gala. We feared the worst.

The months leading up to the gala were a lot less painful than we both imagined. It consisted of a few committee meetings, meetings with our staff to plan our presentation that night, and a few pre-events. Our most important task was to meet with the chefs at the Overland Park Convention Center to taste test and then

select the gala menu.

Actually, at the end of the night, we realized that the event went well (except for Jerry introducing the Governor as “Governor STEVE Parkinson”- oh well). Even more importantly, we helped Sunflower House raise nearly \$170,000. In addressing the gala attendees, Steve Howe, Johnson County District Attorney, stated “Sunflower House relies on the support from our community leaders. . . . Our goal is to show a united front in protecting our children from abuse.”

We met a lot of the faces behind Sunflower House and a lot of great volunteers who share the

same mission as we do to protect the children of our communities. All in all, we realized that our volunteering helped Sunflower House and helped our communities.

The special status we enjoy in our communities as a critical cog in the justice system should require and inspire us to return to our communities. We have all been blessed to attend law school and now practice law. We believe it is our civic duty, if not moral duty, to return to our communities. What better way than to assist a local agency that gives to those less fortunate than ourselves. ☺



Many prominent people attended the Sunflower House Gala, including:
Left: Governor Mark and Stacy Parkinson
Bottom Left: Cynthia Smith, former Sunflower House executive director, and former Kansas State Senate President Dick and Sue Bond
Bottom Right: Wyandotte County DA Jerry Gorman and United Missouri Bank President Craig Gaffney





Attorney General's Appellate Brief Checklist

by Kristofer Aillsieger, Assistant Solicitor General
Office of Kansas Attorney General Steve Six

Make Sure Your Appellate Briefs Get Approved by the AG's Office

Under Kansas Supreme Court Rule 6.10, the Attorney General's Office must approve all appellate briefs written by state prosecutors in criminal and post-conviction appeals.¹ This rule presumably stems from the statutory duty of the Attorney General to appear for the State in proceedings before the appellate courts.² And while it adds an extra step for county and district attorneys filing appellate briefs, it gives the Attorney General's staff an opportunity to identify issues of state-wide importance, as well as to maintain consistency in arguments presented by the State and ensure that all briefs filed on behalf of the State achieve the high standards the Court expects.

As a practical matter, the Attorney General's Office does not have the staff to thoroughly read and edit every brief that comes in for approval. Generally speaking, we focus on the issue statements and scan the substance of the arguments, seeking to identify novel or important issues and ensure that the arguments made are consistent with statewide policies and with the arguments made by other county or district attorneys on the same or similar issues. Then we look to ensure that each brief meets the organizational and formatting requirements of the Court and that it generally presents a high quality work product befitting the State.

The two most common issues that we find, and that will result in the Court rejecting a brief, include: (1) the failure to key every factual statement to the record, and (2) the failure to begin argument on each issue with a citation to the appropriate standard of review.

With respect to citing facts, Rule 6.02(d) (and by reference, Rule 6.03(c)) states that "The facts stated therein shall be keyed to the record on appeal by volume and page number so as to make verification reasonably convenient. Any material statement made without such a reference may be presumed to be without support in the record." What the Court wants to see is that every sentence in which a fact is asserted ends with a citation to the record on appeal. The method of merely citing the record at the end of a paragraph of factual statements does not truly meet the Court's expectations and is highly discouraged.

Rules 6.02(e) and 6.03(d) both state that "Each issue shall begin with citation to the appropriate standard of appellate review." The Court will reject briefs that do not include a standard of review for each issue. Briefs written by the Attorney General's Office begin the discussion of each issue with a separate subsection entitled "Standard of Review." However, while this is the practice we recommend, it is not required, and it is acceptable to merely include the standard of review at the beginning of the body of the argument on a given issue.

While these are the two most common issues that we look for, we review each brief to ensure compliance with all of the Court's rules. Therefore, as an aid both to us and to our fellow prosecutors, we have created the checklist found on the next page to help ensure that all briefs meet the Court's standards. While the vast majority of briefs we receive already meet or exceed the standards, we hope that this checklist will serve as an aid in brief preparation, especially for those local prosecutors who do not frequently write appellate briefs. 

Footnotes

1. Rule 6.10 states:

In all criminal matters and post conviction proceedings, copies of all briefs shall be served on the Attorney General of

this state. No brief shall be filed by or on behalf of the State of Kansas or any officer or agent thereof without the approval of the Attorney General or a member of the Attorney General's staff endorsed thereon.

2. See K.S.A. 75-702.

BRIEF APPROVAL CHECKLIST

Format (Sup. Ct. R. 6.07(a)):

- ___ Type: No smaller than 12 point
- ___ Margins: Left margin 1½"; all others, 1"
- ___ Spacing: Double spaced (except block quotes)

Cover (Sup. Ct. R. 6.07(b)):

- ___ Color: Blue for Appellee
 Yellow for Appellant
 Grey for Reply
- ___ Case Number
- ___ Caption
- ___ Lower court identified
- ___ Attorney name, bar number, address

Binding (Sup. Ct. R. 6.07(c)):

- ___ Properly bound (spiral binding if in excess of 15 pages)

Length (Sup. Ct. R. 6.07(c)):

- ___ Within page limit
 - Principal brief, 50 pages
 - w/ cross appeal, 60 pages
 - Reply brief, 15 pages
- ___ Certificate of Service (Sup. Ct. R. 6.07(e))

Contents (Sup. Ct. R. 6.03):*

- ___ Table of Contents (Sup. Ct. R. 6.03(a))
- ___ Nature of the Case (not required, but preferred)
- ___ Statement of the Issues (Sup. Ct. R. 6.03(b))
- ___ Factual Statement (Sup. Ct. R. 6.03(c))
- ___ **Facts keyed to the record** (Sup. Ct. R. 6.03(c))
- ___ Arguments and Authorities (Sup. Ct. R. 6.03(d))
- ___ **Standard of Review** (Sup. Ct. R. 6.03(d))
- ___ Conclusion (not required by rule, but necessary)
- ___ Signature Blocks (including signature of attorney)

* Because the State is almost always the appellee, reference is made to the rules concerning the requirements of the appellee's brief. For the requirements of an appellant's brief, see Sup. Ct. R. 6.02.

Sufficiency of Evidence Must Be Taken Seriously

by Marc Bennett, KCDA Sex Crimes Division
Deputy District Attorney, 18th Judicial District, Sedgwick County

When “sufficiency of the evidence” is raised in an appellant’s brief, most of us chalk it up as a throw-away issue and a sign that the ADO ran out of legitimate appeal issues. However, when it comes to multiple means cases sufficiency of evidence, this is an issue Kansas prosecutors must take very seriously—especially in light of recent case law.

What if tomorrow a witness reports to local law enforcement that she woke up to find she was being penetrated by a suspect. She yelled “stop,” but he continued while telling her to “be quiet.” Do you charge rape accomplished by force, by fear, or as a result of unconscious? On February 26, 2010, the Kansas Supreme Court made clear in State v. Wright, ___ P.3d ___, WL 672007 (2010) that Kansas prosecutors who face these questions must either have evidence sufficient to support each theory of the crime—“super-sufficiency” of evidence—or must demand a verdict form that specifically identifies the theory upon which the jury relied. Otherwise, an appellate court has the ability to determine that insufficient evidence was presented as to one theory and thereby, set aside the entire verdict.

In Wright, the defendant was a massage therapist hired by the victim. The day of the massage, Wright offered the victim a “full-body” massage which she accepted. Dozing off at one point, the victim awoke to the feeling of Wright’s finger moving “in and out of her vagina.” The victim reported she was paralyzed with fear, tensed up and ultimately left the massage. At the request of Defendant, a general verdict form was used that allowed the jury to find Wright either guilty of rape or not guilty—despite elements instructions that defined rape in three separate ways: force, fear, or unconsciousness.

When faced with alternative means of accomplishing an act, the rule has long been, “if the verdict can be justified on either of two interpretations of the evidence . . . the verdict cannot be impeached by showing that part of the jury proceeded upon one interpretation of the evidence and part on another.” State v. Wilson, 220 Kan. 341, 345, 552 P.2d 931 (1976); see also State v. Timley, 255 Kan. 286, 875 P.2d 242 (1994).

The Wright court recognized that State v. Dixon,

279 Kan. 563, 112 P.3d 883 (2005), created a conflict in alternative means case-law when it found harmless error where sufficient evidence existed as to only one theory presented by the state and clearly insufficient evidence as to the other. Citing Griffin v. United States, 502 U.S. 46, 116 L. Ed. 2d 371, 112 S.Ct 466 (1991), the Dixon court held:

“[O]ne can reasonably assume the jury did not behave capriciously and convict on a theory in which there was no evidence, when there was strong evidence supporting another theory.” Dixon, 279 Kan. at 605-606.

The Wright court acknowledged the “obvious pragmatic appeal” of the Dixon/Griffin rule, but unequivocally rejected the same:

“We are now persuaded that the [Wilson]/Timley alternative means rule is the only choice to ensure a criminal defendant’s statutory entitlement to jury unanimity. Any contrary language in Dixon is specifically disapproved.”

Citing the evidence that penetration occurred while the victim was unconscious and continued after she awoke and “tensed up,” the Wright court found sufficient evidence to support all theories presented, and upheld the conviction.

For Kansas Prosecutors though, the lesson is clear: clarify. Charge your theory of the case as simply as possible. Re-evaluate your case at the time of instructions and jettison any theories not supported by evidence. Most importantly, make sure your verdict form succinctly parses out each theory. Rape by force: guilty or not guilty. Rape by Fear: guilty or not guilty. Rape due to unconsciousness: guilty or not guilty. And so on. This is infinitely simpler than trying to convince an appellate court two years later that you presented “super-sufficient” evidence sufficient to support each theory of your case.

In short, don’t try a great case only to lose on appeal due not to a general lack of evidence, but due instead to a lack of evidence as to one theory of your case. 



National Academy of Science Study

by Karen C. Wittman, Assistant Attorney General
Traffic Safety Resource Prosecutor

Forensic Science: How Can We Make it Better?

Congress authorized the National Academy of Science (NAS) to conduct a study on forensic science under the Science, State, Justice, Commerce, and Related Agencies Appropriations Act of 2006.¹ The Forensic Science Committee was charged as follows:

- assess the present and future resource needs of the forensic science community to include: state and local crime labs, medical examiners, and coroners;
- make recommendations for maximizing the use of forensic technologies and techniques to solve crimes, investigate deaths, and protect the public;
- identify potential scientific advances that may assist law enforcement in using forensic technologies and techniques to protect the public;
- make recommendations for programs that will increase the number of qualified forensic scientists and medical examiners available to work in public crime laboratories;
- disseminate best practices and guidelines concerning the collection and analysis of forensic evidence to help ensure quality and consistency in the use of forensic technologies and techniques to solve crimes, investigate deaths, and protect the public;
- examine the role of the forensic community in the homeland security mission;
- [examine] interoperability of Automated Fingerprint Information Systems [AFIS]; and
- examine additional issues pertaining to forensic science as determined by the Committee.

The Committee consisted of members of the forensic science community, the legal community, and a diverse group of scientists. The committee met on eight occasions from 2006 through 2008. During the meetings, experts provided testimony on a multitude of topics. When not in meetings, the committee members reviewed published materials, studies, and reports related to the forensic science disciplines. Although the committee could not address all the issues raised, or figure out solutions to all the problems, the committee did agree on 13 specific recommendations to address what they felt were the most pressing issues.

This overview is to provide some insight into their findings. The author of this article highly encourages you to read the entire report. A PDF version is available from the National Academies Press at: <http://www.nap.edu/catalog/12589.html>.

Recommendation 1:

Congress should establish and appropriate funds for an independent federal entity, the National Institute of Forensic Science (NIFS).

REASONING:

As a prosecutor knows, crime labs throughout the country are under-resourced and understaffed. Trying to overcome stifling backlogs, lack of personnel, lack of qualified personnel, lack of equipment, meeting the demands of the criminal justice system, prioritizing cases, and producing the highest quality work is a cumbersome task. With all that in mind, there is little time for research or the sharing of information between the disciplines. Disciplines within the forensic arena range widely from police personnel doing forensic work (i.e. fingerprint examinations) to the highly technical field of DNA analysis and Forensic Pathology. There is also little supervision unless the laboratory voluntarily submits to accreditation.

Footnotes

1. Enacted November 22, 2005; P.L. No. 109-108, 119 Stat. 2290 (2005)

The committee determined there was a need outside the “law enforcement community” (i.e. FBI) for an organization that would direct research, promote quality standards, set educational standards, and oversee that quality was being produced in each discipline. Their suggestion was the creation of the National Institute of Forensic Science (NIFS).

Forensic science serves more than just law enforcement, but when it does serve law enforcement, it must be equally available to law enforcement officers, prosecutors, and defendants in the criminal justice system. The entity that is established to govern the forensic science community cannot be principally beholden to law enforcement.²

They propose NIFS governance must be strong enough and --- independent enough --- to identify the limitations of forensic methodologies and must be well-connected with the nation’s scientific research base in order to affect meaningful advances in forensic science practices. NIFS should be able to identify standards and enforce them.³ For example: if NIFS sets criteria for a particular type of analysis and determines the equipment and staffing with specific educational requirements necessary to meet the standards for quality analysis, then a laboratory not meeting those requirements could not provide that laboratory service.

Recommendation 2:

The NIFS, after reviewing established standards such as ISO 17025⁴, and in consultation with its advisory board, should establish standard terminology to be used in reporting on and testifying about the results of forensic science investigations and establish model lab reports.

REASONING:

“Identical,” “match,” “similar in all respects tested,” “cannot be excluded as the source of,” and

2. NAS report page 80
3. NAS report page 79
4. ISO/IEC 17025: specifies the general requirements for the competence to carry out tests and/or calibrations. It covers testing and calibration performed using standard methods, non-standard methods, and laboratory-developed methods. It is applicable to all organizations performing tests and/or calibrations. is for use by laboratories in developing their management system for quality, administrative and techni-

“consistent with,” are all used in reporting over many disciplines. Although they are sometimes used interchangeably, they may be interpreted differently in the criminal justice system. Unfortunately even within the disciplines, there is not a consensus on how things should be reported, hence, again a reason for oversight and standards.

Also lacking is the completeness of the laboratory report. Most reporting contains a short description of the item analyzed with results. There are some Scientific Working Groups (SWG) within the forensic profession that have standards, templates, and protocols for reporting. However, they are not uniformly or consistently used.

Forensic reports and any courtroom testimony stemming from them must include clear characterizations of the limitations of the analyses including associated probabilities where possible. Again, in order to attain this, research must be undertaken to evaluate the reliability of the steps of the various identification methods and the confidence intervals associated with the overall conclusions.⁵

Recommendation 3:

Research is needed to address issues of accuracy, reliability, and validity in the forensic science disciplines.

REASONING:

Clearly, any scientific or technical evidence presented in court needs to be of the highest quality. One of the weakest parts of the presentation for prosecutors is the lack of research when the science is questioned in court.⁶ “In many areas of forensic science little systematic research has been conducted to validate the field’s basic premises and techniques, and often there is no justification why such research would not be feasible.”⁷

There are several explanations for this: forensic practice grew out of the law enforcement arena and

cal operations. Laboratory customers, regulatory authorities and accreditation bodies may also use it in confirming or recognizing the competence of laboratories. ISO stands for International Organization for Standardization.

5. NAS report page. 186
6. NAS report pg. 187
7. NAS report pg. 187 quoting Giannelli from his work P.C. Giannelli. 2001 Scientific Evidence in Civil and Criminal Cases. *Arizona State Law Journal* 103:112

not the scientific arena, many disciplines work on an apprenticeship framework, and many scientific funding sources do not see forensic science as part of the science base they need to support.

Therefore, there must be a source of revenue for research geared to forensic endeavors and that source cannot come directly from a “law enforcement” source, whereby possibly tainting the credibility of the outcome.

Recommendation 4:

Congress should authorize and appropriate funds to remove all public forensic laboratories and facilities from the administrative control of law enforcement agencies or prosecutors’ offices.

REASONING:

Almost all forensic laboratories throughout the country are under the auspices of some law enforcement group. Although all forensic labs operate with the intent to obtain scientific results without consideration of law enforcement interests it does have what some people would consider a “look of impropriety.” Clearly, this is a lofty goal.

Recommendation 5:

The NIFS should encourage research programs on human observer bias and sources of human error in forensic examinations in an attempt to minimize potential bias and sources of human error in forensic practice.

REASONING:

Quoting Lt. Horatio Caine from a scene in CSI: Miami (regarding a suspect saying he isn’t going to be able to prove anything): “*That is a very dumb thing to say to a CSI.*”⁸

This statement implies CSI will find information, which will implicate the suspect. Most forensic personnel are far removed from the day-to-day investigation of the crime. However, there are instances when the investigative body does give facts and information to the analyst. How does that information play into the analysis? How does

knowing “who the bad guy is” play into what results are reported? Is it possible to measure how this information biases the analyst? This recommendation suggests we look into the error rate of the analysis based on the information the analyst knows about the crime and/or suspect.

Recommendation 6:

Congress should authorize and fund NIFS to work with the National Institute of Standards and Technology (NIST) to advance validation, reliability, and establish protocols for forensic examinations.

REASONING:

If we have uniformity in analysis and reporting, there will tend to be less error. Scientific Working Groups (SWGs) have been created for a number of disciplines to establish validated and reliable methods in which to formulate an identification. There are a number of SWGs that are currently in existence to set standards. The standards set include: guidelines for training, analysis, and expressing conclusions of analysis. Currently the FBI laboratory sponsors the following groups:

SWGGUN	Firearms and Toolmarks
SWGDOC	Forensic Documents
SWGMA	Materials Analysis
SWGDM	DNA Analysis Methods
SWGSTAIN	Bloodstain Pattern Analysis
SWGDOG	Dog and Orthogonal Detector Guidelines
SWGFACT	Forensic Analysis of Chemical Terrorism
SWGFM	Forensic Analysis of Radiological Materials
SWGFAST	Friction Ridge Analysis, Study and Technology
SWGMGF	Microbial Genetics and Forensics
SWGTTREAD	Shoeprint and Tire Tread Evidence

There is also a SWGDRUG, which is the working group for Analysis of Seized Drugs, but it is sponsored by the DEA and not the FBI. It is encouraging these groups do exist. However, laboratories

8. Conversation between James Fukes and Horatio Caine in CSI Miami episode “Double Cap,” 19th episode in the first season; first aired on March 31, 2003

are not required to follow these guidelines as these are voluntary programs.

Recommendation 7:

Laboratory accreditation and individual certification of forensic science professionals should be mandatory, and all forensic science professionals should have access to a certification process.

REASONING:

ACCREDITATION

Most forensic analysts would agree there must be mandatory accreditation and certification. The American Society of Crime Laboratory Directors (ASCLD) is dedicated to the standardization of crime labs in the United States. Their directives are:

1. To improve the quality of laboratory services;
2. To develop and maintain criteria to assess its level of performance and to strengthen its operation;
3. To provide an independent, impartial, and objective system; and
4. To offer users of the laboratory a means of identifying those which have demonstrated that they meet established standards.

They have set up a website for anyone to check to determine whether or not a lab has been accredited. See www.ascl-dlab.org for a state-by-state review. Unfortunately ASCLD accreditation is a voluntary process. The report suggests this should be a mandatory process and if you have not met the specifications, you cannot analyze and report results. The following Kansas labs have met or exceeded ASCLD standards and are accredited:

- Johnson County Sheriff's Office, Criminalistics Laboratory, Mission, KS
- Kansas Bureau of Investigation Great Bend Forensic Laboratory, Great Bend, KS

- Kansas Bureau of Investigation Kansas City Forensic Laboratory, Kansas City, KS
- Kansas Bureau of Investigation Pittsburg Forensic Laboratory, Pittsburg, KS
- Kansas Bureau of Investigation Topeka Forensic Laboratory, Topeka, KS
- Sedgwick County Regional Forensic Science Center, Wichita, KS

CERTIFICATION

In renowned forensic anthropologist Kathy Reich's book, *206 Bones*⁹ heroine, Temperance "Bones" Brennan proclaims: "Forensic science is popular right now, and people with minimal or no training are hot to be players." Brennan continues: "Board certification isn't a perfect answer...sure some incompetents slip through, just as in law or medicine. But it is a start. The letters behind a scientist's name aren't just for show. They're hard-earned. And they're a message that an expert has undergone peer scrutiny and meets a high set of ethical standards. And being certified in one field doesn't mean you're an expert in another."¹⁰

Although the accreditation process primarily addresses the management system, technical methods, and quality of the work of a laboratory (which includes the education and training of staff), certification is a process specifically designed to ensure the competency of the individual examiner.¹¹ Certification requires meeting mandatory undergraduate and graduate degrees depending on which discipline you wish to receive certification in. It requires mandatory proficiency testing, both written and practical. It also would require adhering to a code of ethics. Even the American Bar Association (ABA) is making suggestions. They are recommending certification standards be required of examiners, including "demanding written examination, proficiency testing, continuing education, recertification procedures and ethical code, and effective disciplinary procedures."¹²

9. Reichs, Kathy, *206 Bones*, Scribner Book Company, ISBN 0743294394, (2009)

10. Ibid pg. 302

11. NAS report pg. 208

12. NAS report pg. 208-209 citing ABA 2006 Report of the ABA Criminal Justice Section's Ad Hoc Innocence Committee to Ensure the Integrity of the Criminal Pro-

cess, *Achieving Justice: Freeing the Innocent, Convicting the Guilty*. P.C. Giannelli and M. Raeder (eds.) Chicago: ABA pg. 7 see also Criminal Justice Section Resolutions Going to the ABA House of Delegates in February 2010 Report 102A: www.abanet.org/crimjust/policy/mid-year2010/policymidyear2010.doc-2009-12-16

Recommendation 8:

Forensic laboratories should establish routine quality assurance and quality control procedures to ensure the accuracy of forensic analyses and the work of forensic practitioners.

REASONING:

Proficiency testing is conducted for a variety of reasons, including:

1. To determine the performance of individual laboratories for specific tests or measurements and to monitor laboratories' continuing performance;
2. To identify problems in laboratories and initiate remedial actions, which may be related to, for example, individual staff performance or the calibration of instrumentation;
3. To determine the performance characteristics of a method and to establish the effectiveness and comparability of new tests or measurement methods; or
4. To assign values to reference materials and assess their suitability for use in specific tests or measurement procedures.¹³

Proficiency testing has been addressed in court.¹⁴ It is best if the proficiency test is a "blind test" to the person doing the analysis. This means the person is unaware it is a test. ASCLD recommends at least one blind proficiency test be performed by an examiner each year.¹⁵ DNA protocols require two.

It only makes sense that an examiner should be tested periodically to ensure quality assurance and to detect any problems with protocols and equipment. There are a number of private companies that prepare and sell proficiency tests.¹⁶ Again this is a voluntary program and a costly one.

Recommendation 9:

There should be a national code of ethics for all forensic science disciplines. The code should contain enforcement procedures for serious violations.

REASONING:

Many organizations have ethical codes, like the American Academy of Forensic Science¹⁷, the Midwest Association of Forensic Science,¹⁸ and the California Association of Criminalists¹⁹ to name a few. The problem with ethical codes tied to an organization is the person must be a member of the organization for it to be enforced. So if a person chooses not to be a member of any organization, they have no ethical code that governs them.

Even if a person wished to join an organization with an ethical code, some have enforcement procedures and due process rights and others do not. Even if it is found they may have breached an ethical duty, there may not be a way to "take action" against the person.

Therefore, the NAS report suggests a uniform code across all forensic organizations that all analysts and laboratories have to abide by.

Recommendation 10:

Congress should authorize and appropriate funds to NIFS to establish education programs and to improve and develop graduate education programs. NIFS should also support law schools in establishing CLE programs for law students, practitioners, and judges.

REASONING:

A requirement for an entry-level position in most crime labs is at least a bachelor's degree in natural science or forensic science and many labs require

13. NAS report pg. 207 citing European Network of Forensic Science Institutes. *2005 Guidance on the Conduct of Proficiency tests and Collaborative Exercises Within*. ENFSI. Available at www.enfsi.eu/uploads/files/QCC-PT-001-003.pdf.

14. *United States v. Llera Plaza*, 188 F.Supp.2d 549, 565, 568 (E.D. Pa. 2002)

15. ASCLD Laboratory Accreditation Board Proficiency Review Program see <http://www.ascl-d-lab.org/legacy/>

[pdf/aslabinternproficiencyreviewprogram.pdf](http://www.ascl-d-lab.org/legacy/pdf/aslabinternproficiencyreviewprogram.pdf)

16. See <http://www.forensic-testing.net/> and <http://www.orchidcellmark.com/forensicdna/iqasproficiency.html> and <http://www.ctsforensics.com/default.aspx>

17. http://www.aafs.org/default.asp?section_id=aafs&page_id=aafs_bylaws#article2

18. <http://www.mafs.net/index.php?id=codeofethics>

19. <http://www.cacnews.org/membership/handbook.shtml>

a year or two of experience with a master's degree. Since the popularity of programs like CSI, there has been an influx of persons seeking this type of degree. With interest, comes programs at universities that may or may not rise to the level needed for a forensic science position. Laboratories are forced to evaluate each student individually to determine his/her suitability for a given position.

The Forensic Science Education Program Accreditation Commission (FEPAC) created a process to accredit undergraduate and graduate programs.²⁰ As of January 16, 2008, there have been 16 programs that have met the rigorous standards and accordingly have been accredited by FEPAC. For a listing of them go to: http://www.aafs.org/default.asp?section_id=resources&page_id=accredited_programs. With more and more universities being accredited, the programs that do not meet these standards will eventually disappear due to the competitive nature of the employment arena.

Also, what is needed is to educate the legal profession. The *Daubert*²¹ decision requires the judge to be a gatekeeper. The gatekeeping function requires the judge to evaluate the evidence to determine if the methodology of the technique is grounded in science and if so the studies/findings are admissible. As in most law schools the word 'science' is a four letter word and many law students shy away from science courses.

There have been some steps taken in an attempt to educate the legal profession. After the *Daubert* decision, the Federal Judicial Center published the *Reference Manual on Scientific Evidence*, and a second edition was issued in 2000 to facilitate the process of identifying and narrowing issues concerning scientific evidence by outlining for

judges the pivotal issues in the areas of science that are often subject to dispute.²²

There has been some effort by scientific organizations, such as ASCLD and the American Prosecutors Research Institute (APRI) to provide training and technical assistance, but again these are voluntary programs.

The NAS report suggests the best way is to offer more courses while in law school to students in the forensic disciplines, statistics and/or basic science methodology, or to provide credit for students wishing to take courses in those fields.²³

Recommendation 11:

Congress should authorize and allocate funds to states and jurisdictions to establish medical examiner systems. Funding should also be used to develop and promote standards for best practices, administration, staffing, education, training, and continuing education for competent death scene investigation and postmortem examinations.

REASONING:

As noted throughout the report, standardization is crucial to help eliminate error. To that end, the medical examiners system is a hodgepodge of different types of systems ranging from justice of the peace/coroner --- individuals with little or no training --- to certified medical examiners who are licensed physicians. Coroner qualifications vary widely in the U.S., from no statutory qualifications in Alabama and Arkansas, to qualification as a licensed physician like in Kansas. Just how bad it is can be summarized by a 2007 newspaper headline: "Teen Becomes Indiana's Youngest Coroner."²⁴

The National Institute of Justice has attempted to provide guidance for best practices with such

20. See FEPAC Accreditation Standards. Available at www.aafs.org/pdf/FEPAC%20Accreditation%20Standards%20_082307_.pdf

21. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 125 L.Ed.2d 469, 113 S.Ct. 2786 (1993); See also *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 143 L.Ed.2d 238, 119 S.Ct. 1167 (1999)

22. Citing NAS report page 234: Federal Judicial Center. 2000. *Reference Manual on Scientific Evidence*, 2nd ed., p. vi. See also the entire second edition available online [http://www.fjc.gov/public/pdf.nsf/lookup/sciman00.pdf/\\$file/sciman00.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/sciman00.pdf/$file/sciman00.pdf)

23. NAS Report pg. 236

24. See <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2007/05/12/national/a062146D47.DTL>

"Amanda Barnett, 18, had to receive special permission to attend a certification class given by the Indiana State Coroners Training Board because she was only 17 when it began. She scored 97 percent on the test, submitted four case reports and attended an autopsy...she will graduate high school next year. (2007)

things as Death Investigation: A Guide for the Scene Investigator²⁵ and Medicolegal Death Investigator: A systematic Training Program for the Professional Death Investigator.²⁶ The National Association of Medical Examiners (NAME) has created Autopsy Standards and Inspection Checklist and Forensic Pathology Autopsy Standards.²⁷ But as with everything, these are not mandatory guidelines.

The NAS report suggests moving to a Medical Examiner system throughout the United States, accreditation for quality assurance,²⁸ get a SWG group to determine the standards, and require continuing medical education.

Recommendation 12:

Congress should authorize and appropriate funds for the NIFS to launch a new broad-based effort to achieve nationwide fingerprint data interoperability.

REASONING:

AFIS has certainly improved the efficiency and reduced the amount of time it takes to identify a given individual from a fingerprint or to conduct a background investigation. However, many law enforcement AFIS programs are standalone systems and are only limited in the amount of prints placed in the system. There is in existence some regional AFIS systems (i.e. Western Identification Network²⁹). Some agencies have access to the FBI's database, however, that is again a standalone system. With all these different systems, it requires putting the information into more than one system at different times and delay in getting access to the systems.

NAS has suggested a broad-based AFIS interoperability system that would allow consistency with mapping of the minutiae (unique features found

within the patterns i.e. ridge ending, bifurcation, and short ridge (or dot)) and coordinating jurisdictional agreements and public policies that would allow law enforcement agencies to share fingerprint data more broadly. WIN is a good example that it can be done, but it will require persuading AFIS vendors to cooperate and collaborate with the law enforcement community and researchers to create and use baseline standards for sharing fingerprint image and minutiae data.

Recommendation 13:

Congress should provide funding to the NIFS to prepare, in conjunction with the Centers for Disease Control and Prevention and the FBI, forensic scientists and crime scene investigators for their potential roles in managing and analyzing evidence from events that affect homeland security.

REASONING:

Forensic Science played a very important role in the investigation of the first bombing of the World Trade Center in New York City (1993), and the Oklahoma City bombing (1995).³⁰ For Homeland Security, forensic science plays not only in the traditional roles of inferring what happened at the crime scene and who was involved, but also contributes more intensively to generating investigative leads and directing or redirecting lines of investigation.³¹ Usually, this type of investigation is done by many federal and military investigative groups rather than local medical and law enforcement entities.

Federal efforts to develop forensic science methods is relatively new. Construction of the new \$143 million National Bio-defense Analysis and Countermeasures Center (NBACC) Laboratory³² facility was completed in March 2009. Once fully

25 <http://www.ncjrs.gov/pdffiles/167568.pdf>

26. Clark, Steve ISBN: 096512990X/ ISBN-13: 9780965129909

27. http://thename.org/index.php?option=com_docman&task=doc_download&gid=18&Itemid=26

28. At the present time NAME has only accredited 54 medical/coroner systems in the United States.

29. <http://www.winid.org> Encompasses Alaska, California, Idaho, Oregon, Nevada, Montana, Utah, Washington and Wyoming and the number of searchable fingerprint records now include more than 22 million fingerprints also

included in WIN are: The Immigration and Naturalization Service (INS), the Postal Inspection Service and the Secret Service all joined WIN and became operational in 1991. The Internal Revenue Service became operational in 1993. The Federal Bureau of Investigation became operational in September 1997 and the Drug Enforcement Administration became operational in 1998.

30. NAS report pg. 279-280

31. NAS report pg. 280

32. See http://www.dhs.gov/files/labs/gc_1166211221830.shtm

operational, NBACC will employ a staff of 150 with an annual operations budget of \$50 million. There are a number of other programs being sponsored by the federal government, which shows a commitment to forensic science and homeland security.

The separation between the forensic community in each state and a central/federal forensic center stems from the heavy commitments of local agencies and the day-to-day operations and backlogs. Also many homeland security issues require specialized expertise, which may require access to information this is protected by security classification.

With all of this going on, it will still be local law enforcement and medical examiners who will be first to the scene and the federal forensic staff will have to utilize some of the resources of local agencies. Due to this interaction, it will be helpful to have the suggestions made by this NAS report for medical examiners and the forensic science community that could greatly enhance the capabilities of homeland security.

CONCLUSION:

To summarize after reading the 300 page assessment: The complexity of the report distills down to two fundamental issues: the need for both standardization and resources in the forensic community.³³

As a prosecutor, I find it refreshing to find a move toward standardization and quality assurance. I think this will make the job of presenting this information much easier and less apt to be challenged. However, you may think this is just fodder for cross-examination of the state's witness. I look at it as weeding out the charlatans and experts-for-hire. If these so called experts want to testify, they need to use standardized procedures and be certified. If they aren't, maybe in the future, a motion in limine will suffice to exclude a defense expert. (Another lofty goal.)

33. ASCLD Comments on the Release of the NAS Report on Forensic Science, Feb. 19, 2009.



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.

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June 25, 2010.**

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**Forensic Analyses
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by **Kim T. Parker, Chief Deputy District Attorney, 18th Judicial District**
Vice President, NDAA Board of Directors



NDAA Board of Directors Spring Meeting ~ Charleston, South Carolina

The spring meeting of the National District Attorneys Association was held in Charleston, South Carolina April 8-11, 2010. The meeting was significant as it was the first joint meeting of the NDAA Board of Directors and the Criminal Justice Section of the American Bar Association. This joint meeting was made possible by the well-respected District Attorney of Brooklyn, New York, Joe Hynes. DA Hynes has long served the NDAA and now also currently serves as the Chair of the ABA Criminal Justice Section. The primary achievement during this meeting was the adoption of a Joint Resolution urging trial and appellate courts to distinguish between “prosecutor error” and “prosecutor misconduct” to more accurately describe a lawyer’s action and to avoid unfairly damaging a lawyer’s reputation and impairing a lawyer’s professional advancement.

NDAA Summer Conference **July 11-14-2010** **Silverado Resort - Napa, California**

Make your plans to attend the 2010 NDAA Summer Conference, featuring keynote speakers: Sandra Day O’Connor, former United States Supreme Court Justice; Brooks Douglass, a homicide survivor and former Oklahoma State Senator; Congressman Ted Poe, 2nd Congressional District of Texas; and famed forensic psychiatrist Dr. Park Dietz. On the course agenda are many other outstanding presenters providing current legal education, making this a top-notch seminar on relevant and pressing prosecution topics.

Get your CLE in an exquisite setting at reasonable rates at the Silverado Resort, www.silverador-esort.com. Bring your family. Refocus. Re-energize. Rejuvenate. And, experience this world-class destination in the heart of wine country. Enjoy a breathtaking hot air balloon ride over gorgeous Napa Valley, take the Wine Train and dine aboard a lavishly

restored Pullman dining car, picnic in lush vineyards, and then enjoy some of the finest wineries and best restaurants in the nation. Don’t miss this great conference, all at an affordable price. Check it out and register online at www.ndaa.org.

National Advocacy Center **Columbia, South Carolina**

Efforts to provide excellent prosecutor training continue in full force at the National Advocacy Center. An increase of nearly one million dollars over FY2009 occurred, so the Center received \$1.175 million in funding for FY2010. This increase in funding was due in large part to the grassroots efforts from county and district attorneys across the nation contacting and writing letters of support to members of Congress. However, it is once again time to write and contact our Kansas Congressional members for the FY2011 appropriations cycle. The NDAA has submitted more than 70 project requests for NAC funding for prosecutor training, so our individual support for these requests are critical in a time of shrinking spending. *(See the sample letter on Page 30 and send your letter of support for the National Advocacy Center to your congressional leaders.)*

John R. Justice Loan **Repayment Program**

For the first time, FY2010 funding in the amount of \$10 million in loan repayments is available for state and local prosecutors along with public defenders. The NDAA has been lobbying for student loan forgiveness on behalf of state and local prosecutors in Congress for several years and this is a MAJOR VICTORY! NDAA worked closely with several stakeholder groups, including the American Bar Association and the National Association of Criminal Defense Lawyers to make this happen. The NDAA through Jason Baker,

Director of Government Affairs, is working with the Department of Justice to work out the details of the implementation strategy. A process of implementation and application is expected by this summer.

New Hires at NDAA

Executive Director Scott Burns announced the hiring of a new grants manager, Patrick St. Clair coming to us with extended experience of grant writing. Patrick has spent the past 10 years providing grant management and financial support for the Department of Justice, Office of Justice Programs (OJP) as a Senior Financial Assistant. Patrick is very aware of grant compliance requirements, is a great person, and will be a great addition to our NDAA Family. Scott Burns also announced the hiring of a very talented Chief Financial Officer, Tom Harrison, to make our financial situation our number one priority.

Prosecution Issues

NDAA continues to keep an eye on the National Academy of Sciences Report, the Webb bill, and any other issues that may affect state and local prosecutors across the nation. If you are experiencing issues that you believe can be addressed through NDAA, please contact

me at kparker@sedgwick.gov or Nola Foulston, Kansas State Director, at nfoulston@sedgwick.gov.

Membership

If you are not currently a member of NDAA, I personally urge you to become involved in this worthwhile organization. This association has a long standing history of providing excellent education, training to state and local prosecutors across the nation, and effectively representing our interests at a national level as the Voice of America's Prosecutors. Join now online at www.ndaa.org. 

DRAFT LETTER FOR NAC SUPPORT – FY11

Date Here

The Honorable
999 XXXXXX Office Building
Washington, DC

Dear Member of Congress:

On behalf of (YOUR STATE ASSOCIATION) we would like to thank you for the funding contained in the FY'10 Consolidated Appropriations Act for NDAA's National Advocacy Center (NAC). We appreciate your continued support for America's prosecutors and thank you for your steadfast leadership on criminal justice matters within the United States Congress.

NDAA has conducted state and local prosecutor training at the National Advocacy Center, in conjunction with the U.S. Department of Justice, since 1998 and the program is currently authorized (Public Law No: 110-424) through FY 2012 at a yearly funding level of \$4.75 million. The goal of the NAC is to equip thousands of state and local prosecutors from all 50 states with the advocacy skills to effectively represent their communities and constituents in the courtroom in order to ensure community safety. With 95% of criminal cases in America handled by state and local prosecutors, the NAC has been a valuable and highly-successful national training program for over a decade.

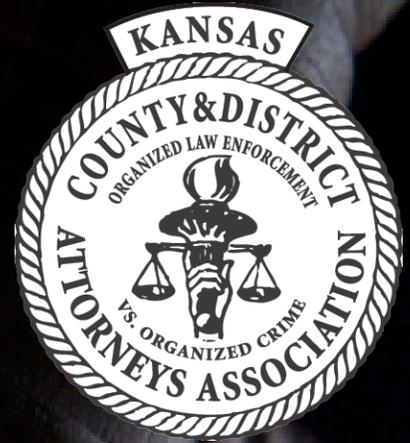
As you know, the NAC received \$1.175 million in funding through a project request out of the Byrne Discretionary Grant program within the FY'10 Consolidated Appropriations Act. While we appreciate all federal assistance provided for the NAC by the United States Congress, the NAC simply cannot sustain itself at this level of funding.

Simply put, these are desperate times for the NAC. If the current trends in decreased funding continue, the NAC will be forced to close its doors and will be unable to provide the desperately-needed courtroom training and expertise for close to 3,000 new prosecutors each year. We know that you have one of the most difficult jobs on Capitol Hill – especially during an increasingly difficult budget environment. On behalf of (YOUR STATE ASSOCIATION) and the National District Attorneys Association, it is our hope you will work to support increased funding for NDAA's National Advocacy Center to its authorized level of \$4.75 million for FY 2011. Thank you for all that you do for America's prosecutors.

Respectfully,

Download this word document at www.kcdaa.org, change it for your needs, and send it to your legislators today!

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