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President’s Column

by Ellen Mitchell, KCDAA President, Saline County Attorney

Working Towards the Better Future

Eighty counties in Kansas are members of the Kansas County and District Attorney Association. There are also associate members including the Kansas Attorney General’s Office, city prosecutors, retired prosecutors, and attorneys for other State of Kansas agencies. Your Board of Directors has been hard at work, meeting almost every month to discuss board business, and meeting weekly during the legislative session.

A little over a year ago, the Board decided to create a prosecutor coordinator position. We studied the duties of coordinator positions in other states. We put together a job description, and hired Kim Parker, who was retiring from the Sedgwick County District Attorney Office. Kim has done a fabulous job promoting our profession, keeping us updated on legislative action of interest to prosecutors, and providing training to prosecutors and law enforcement.

Kim has been at the legislature throughout this session. She has done a great job keeping the Board updated on legislation involving DUI, asset forfeiture, escape, elder abuse, swatting, body cameras, compensation for wrongful convictions, elder abuse, the definition of possession, CBD oil, and other topics of interest. She has provided testimony on several bills. It is helpful to have someone at the legislature to advocate for prosecutors.

Kim was in Colby to provide training designed especially for prosecutors in small jurisdictions. Ron Paschal set the theme for the training with his ethics presentation, the “cat with many hats!” Prosecutors in small communities have situations unique to them, as they do wear many hats. A discussion was held regarding the relationship between law enforcement and the prosecutor in a small community. Dickinson County Attorney Andrea Purvis worked with Kim for an appellate practice CLE in May. We also had prosecutors from across the State and from all sizes of offices gathering at the Eisenhower Library and Museum in Abilene. Steve Obermeier, former appellate prosecutor in Johnson County, and current Assistant Solicitor General and Rachel Pickering, Assistant Solicitor General presented. The cost of the CLE included breakfast, lunch, and a tour of the library. Other CLE events will be held, including one on best practices for law enforcement as it relates to eyewitness identification and interrogation. Details will follow.

Several prosecutors met in Wichita, in December, to work with Sunflower Development in producing a video about Kansas prosecutors. The videos will be available for you to use when you speak at civic events. We hope some clips will be available for viewing at the spring conference. Prosecutors in the video address a variety of topics that promote our profession. The NDAA and other states have produced a video as well as part of a Why I’m a Prosecutor Campaign.

I am excited for the return of the Kansas Prosecutor. Nicole Van Velzen left her position with the Board of Editors of the Kansas Prosecutor. John Settle, long time prosecutor and good friend of KCDAA left Kansas, headed for the Oklahoma Attorney General’s Office. John kept the magazine on schedule for many years. Our new editor is Brian Foster of Sunflower Development. We are looking for a KCDAA member to volunteer to chair the Kansas Prosecutor committee. We are also looking for members who are willing to become part of the editorial board. If you are interested in sharing your talents, please contact me, or Kari Presley of Kearney and Associates. While we were not able to publish the last two editions, we are pleased to have the Kansas Prosecutor back in publication.
Every year, your Kansas County and District Attorney’s Association organizes and presents two conferences: Spring, held in June; and Fall, held in October. Attendees earn the yearly requirement of CLE - 12 hours including two hours of ethics - at each conference. The CLE Committee, which I chair, puts these together.

Traditionally, the conference dates coincided with the judicial conference, which was also held twice a year. “Back in the day” there were two-day court holidays in June and October, and almost every prosecutor in Kansas could attend both conferences if they so chose. (KCDAA even had past conferences in Colorado!!)

Several years ago, the October judicial conference was eliminated. This caused a dilemma for the CLE Committee. Without a two-day judicial holiday, it would be difficult for some offices to send attorneys to more than a portion of the fall conference, if at all. KCDAA adapted. The conference became a Sunday-Monday affair for a couple of years, over the Columbus Day holiday weekend. Then, we settled into a Columbus Day Monday-Tuesday routine, and front-loaded ethics and national speakers to accommodate members who could only come one day. Most Kansas courts were closed on Columbus Day. For a while, the Supreme Court even suggested to the District Courts that they have a light docket during our conference.

The Spring conference continued as it always had—Thursday/Friday, adding a golf tournament on Wednesday, coinciding with the June judicial conference. This year we helped sponsor a “pre-conference” seminar on the Wednesday prior to KCDAA in addition to the golf tournament. Recently, the Committee was informed that the judges have moved their 2019 conference to October 21-22, 2019 in Wichita. This is a Monday-Tuesday. There will be no Judicial Conference in June 2019, and thus no two-day court holiday in June. This obviously poses problems for KCDAA. The timing of the June conference was no accident—it fell just weeks before the Kansas July CLE deadline for attorneys. (The judicial CLE year ends in December.)

When should our Spring Conference be going forward? There are no court holidays in June. Moving it to July is too late - and try scheduling anything else in May.

This is an issue that the Board and the CLE Committee will be discussing. There will certainly be a Spring Conference in 2019. But your court will probably not be closed for two days. Please plan your CLE in accordance. And if you have any suggestions regarding this, please contact me at chris.mcmullin@jocogov.org. Stay tuned!!

A Note from the KCDAA CLE Committee

by Chris McMullin, Chief Deputy District Attorney, Johnson County

County Courthouse Portraits

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KCDAA in Action!

It is only mid-2018 and the KCDAA already has what seems like a year’s worth of activities and advocacy under its belt. Working backwards from today, the KCDAA completed its summer conference with a record attendance over recent years of 248 just last month. While the goal is always making each conference as seamless and user-friendly as possible for the attendees, the background work that begins typically a year in advance for each conference by the CLE Committee really deserves more than just a passing nod.

Even just skimming over the high points of the CLE committee’s responsibilities, they include the selection of the venue, the recruitment of the speakers, the submission and receipt of CLE approval from the CLE commission, the marketing and production of the agenda and materials for the membership, all related contracts and agreements with hotels, speakers and others, and of course, the selection of food. The CLE committee performs these duties on your behalf for two conferences/meetings a year, each offering at least 12 hours of CLE (including two hours of ethics). Thanks to Chris McMullin, who chairs the committee, and the committee members for their consistent participation, as well as Kari Presley, who makes the magic happen!

The Kansas Prosecutors Foundation has continued to grow and serve the interests of prosecution in Kansas. Its golf tournament fundraising event that coincides with the summer conference continues as one of its supporting efforts. It takes place the day before the conference begins and I would encourage you to put together a team next year and participate. Thanks to the generosity of our members, the Foundation was able to expand its award of scholarships to law students interested in pursuing a career in prosecution to a total of six. Those scholarships were awarded at the summer conference.

Still working backwards then, the 2018 Kansas legislature adjourned Sine Die on May 4th. To give you an idea of the daily advocacy efforts by the KCDAA, here are a few numbers to mull over: during the 2018 legislative session, there were 573 bills introduced, approximately 26% of which pertained to crimes and punishment. When the dust finally settled, 118 of the 573 bills introduced have become law. 27 of those (or 23% of all legislation enacted last year) came through the Judiciary Committees or House Corrections Committee. In other words, those three committees produce approximately 23% of the work product of the entire legislature. Keep in mind that all that activity is compressed into the time period from the second Monday each January until legislature adjourns Sine Die in the Spring. Once again thanks should be extended in this instance to legislative chair Todd Thompson, the Board of Directors for the weekly legislative phone calls, our lobbying team and the newest member of the effort, Kim Parker.

Looking ahead for the remaining months of 2018, even though we are in an election cycle for the entire House of Representatives and all statewide offices, the 2018 interim will still be busy. The Joint Committee on Corrections and Juvenile Justice Oversight; the Criminal Law Advisory Committee of the Kansas Judicial Council; the Kansas Sentencing Commission; and the Child Welfare System Task Force are all scheduled to still be meeting and conducting business.

Please mark your calendars for the fall KCDAA conference, scheduled for October 8th and 9th at the Hilton Garden Inn in Manhattan. More detailed information on registration and topics will be forthcoming as the CLE Committee finalizes the agenda.

I would be remiss if I did not make my standing plea that you consider taking active part in the legislative or CLE committees. You are encouraged to serve in these capacities to gain more insight into the KCDAA and help shape the direction of your organization.

Thank you all for your service in the pursuit of justice for all Kansans. It is my honor to have one small part in supporting your efforts.
I am writing this just as the 2018 Kansas legislature is packing up. Much was accomplished this session, and much is left to do in the off-season, to prepare for the 2019 legislative session. Our members are very active in the off-season working to improve the Kansas Criminal Justice System. The products developed in the off-season are instrumental and necessary to assist the legislature as they work to make Kansas the best state in the nation.

The official legislative session started January 8th, but much work was done in the months before by our members with their work with law enforcement, Kansas Attorney General, Kansas Judicial Council, Kansas Sentencing Commission, KCDAA Legislative committee, KCDAA Best Practices committee, DUI Task Force Group and KCDAA Board of Directors.

Our members were instrumental in the development of several legislative initiatives adopted this year, including changes to Asset Forfeiture, Open Records, Juvenile Justice, Elder Abuse, Counterfeiting, Escape, and a new criminal statute to combat ‘swatting’. Our DUI task force worked for nearly two years to create a comprehensive solution to the many legal issues that plague our DUI law. We introduced their proposal as SB374 and the surviving parts include fixes to implied consent and the counting of prior convictions.

Most criminal justice legislation must first pass through either the Senate Judiciary Committee chaired by Senator Richard Wilborn of McPherson, the House Judiciary Committee chaired by Representative Blaine Finch of Ottawa, or the House Corrections and Juvenile Justice Committee chaired by Russ Jennings of Lakin. These three committees are hardworking and carry a significant amount of legislation to the floor of their respective chambers. As your prosecutor coordinator, I prepare and deliver testimony on all legislative matters of interest to our association of Kansas prosecutors. Much of my time over the last four months was spent testifying or discussing legislation with the members of these three committees and their leadership. I can report that all three committees are comprised of committed Kansans who appreciate hearing from our association.

As the 2018 legislative session drew to a close, the course verse of a famous song replayed in my head. You all know the song, even the millennials have heard it. The song was released in 1969 by the Rolling Stones on the Let it Bleed album. You got it: “You can’t always get what you want but if you try sometimes, well you just might find, you get what you need”. We wanted, and we tried, but did we get what we need? If not this time, there is always ‘next year’, an oft repeated phrase at the Statehouse.

Kansas prosecutors understand the fight for truth, justice, and safe communities is never ending. We are up to the task. Round two for me at the Kansas legislature has been rewarding. I look forward to working with all of you in the days ahead as we push for good legislation to protect Kansas citizens and make the criminal justice system fair and just for everyone.
“Day in and day out, these men and women work with our law enforcement officers to protect our communities and put criminals behind bars. We can go to sleep at night knowing our children are safe because of their dedication to justice.” Kansas’ third district Congressman Kevin Yoder said of prosecutors. “I appreciate their service and advocacy, and was glad they could make it to DC for their annual National District Attorney’s Association Capital Conference.”

On January 23rd to 25th, elected County and District Attorneys met in Washington D.C. for this conference. Todd Thompson (Leavenworth County Attorney), Marc Bennett (Sedgwick County Attorney), Mark Dupree (Wyandotte District Attorney) Charles Branson (Douglas County District Attorney), Steve Howe (Johnson County District Attorney), and Brandon Jones (Osage and Anderson County Attorney), attended this conference meeting with elected officials and their administration discussing issues relevant to prosecutors.

The conference began with a legislative update and review of 2018 priorities for the association. The KCDAA delegation then met with the Kansas delegation to discuss topics relevant to our State. U.S. Senator Pat Roberts said of the visit, “I had a good discussion with Kansas prosecutors visiting Washington. I always learn about the latest needs of the front line of law enforcement. We discussed data sharing, substance abuse and its challenges and issues in the veterans courts. I am always glad to have their advice and counsel.”

One of the other relevant topics prosecutors addressed is the mental health crisis facing our state and nation. Todd Thompson, Secretary/Treasurer of KCDAA, said, “This is an important meeting to let our representatives in Washington know what we are facing on a daily basis.”

One of the main issues we raised was the need for mental health facilities which are paramount to efforts for helping defendants and our communities.

Following those discussions, the Kansas delegation participated in group discussions with the National Best Practice Committee, discussing policies being followed around the nation. Issues addressed were policies on handling officer involved shooting cases, implementing technology into the world of prosecutors, and general office policies. Charles Branson, KCDAA vice president, said, “It is energizing to hear and learn from other prosecutors around the country as they try to improve our criminal justice system with greater transparency and accountability.”

by Todd Thompson, Leavenworth County Attorney
Federal prosecution is a powerful tool in the fight against violent crime. The U.S. Attorney's Office is targeting the most violent criminals in the most violent areas of Kansas communities. We welcome the opportunity to work with local police chiefs, county sheriffs, district attorneys, community groups and victims' advocates throughout Kansas to develop customized plans to reduce violent crime.

The centerpiece of our violent crime reduction strategy is the reinvigoration of Project Safe Neighborhoods. What the Department of Justice calls “PSN 2.0” incorporates lessons learned since the original PSN program was launched in 2001. PSN 2.0 is not a one-size-fits-all approach; it is a collaborative program that will be tailored to the needs of each community and which relies heavily on our state and local partners.

Research and experience have demonstrated that violent crime is often concentrated in small areas and committed by a small number of bad actors. Our office’s prosecution and referral guidelines provide the necessary flexibility to focus federal prosecutorial resources on those people and in those Kansas communities suffering from violent crime.

Not every case needs to be prosecuted federally. In many cases prosecution in a state, local or tribal system can effectively remove a violent offender from the community and impose appropriate punishment. In other cases, federal prosecution may be the most effective tool for reducing violence. Our office looks forward to working closely with state, local and tribal prosecutors to coordinate our efforts and ensure that we pursue the most effective and efficient approach in each case.

In some instances, large-scale proactive cases can attack significant gang networks or criminal conspiracies, and many of those cases may be suited for federal prosecution. In other situations, we may want to take a violent individual off the street as quickly as possible, and federal firearms charges may present a way to do that. But we want to work with you in all cases to achieve the best solution for your communities.

Traditionally, we have relied on factors such as criminal history to prioritize federal prosecutions. We have learned, however, that criminal history may not always identify the most significant drivers of violent crime. As an example, research has shown that sometimes the persons driving violent crime are young offenders, sometimes gang members, with no lengthy criminal history. In such cases, we will consider federal prosecution based on the impact such offenders have on public safety.

We also have learned that effective violence reduction depends on working in partnership with a wide range of engaged stakeholders including community members and organizations, victims' advocates, social service providers, educators and others. Our PSN 2.0 objectives thus include support for programs to keep youth in school, on track, and out of gangs. We also encourage programs to reduce recidivism and engage communities in supporting those released from incarceration. Yet another part of PSN 2.0 is collecting and analyzing data to evaluate the effectiveness of our efforts.

Federal law enforcement represents only about 15 percent of all law enforcement resources nationwide. Our office will use our resources to work with you to make Kansas communities safer, and to do so in the most effective ways. The original PSN program produced strong results, and our goal is to implement PSN 2.0 so that we make a measurable difference in the safety of Kansas communities, but we need your help and partnership.
The Right Question

by Megan Ahsens, Assistant District Attorney, Johnson County

The most common question I get when someone finds out I prosecute domestic violence cases is, hands down, “Why don’t those women just leave?” It’s a simple question without a simple answer.

The answer to that question is as varied as the victims themselves. It is human nature to look upon an act of violence and comfort ourselves that we would never be in that situation because we wouldn’t make the same choices that the victim did. We wouldn’t be romantically involved with that guy. We wouldn’t have gone up to that guy’s apartment. We wouldn’t have gotten drunk at that bar. We blame the victim because then we never have to think it could happen to us. Fundamentally, we believe as a society that domestic violence is the victim’s problem and if she just leaves then that problem goes away. We know, as prosecutors, that that simply is not the case.

Consider, for a moment, how we speak about the hypothetical victim of domestic violence. We might say, for example, “John beat Mary last night!” That turns quickly into “Mary got beaten up last night!” Which morphs further into “Mary is a battered woman.” Gone completely from the conversation is John, the person who actually committed the crime and beat Mary.

Dorthy Stucky-Halley, Director of Victim’s Services with the Kansas Attorney General’s office has pioneered research into the different psychological profiles of batterers. We have partnered together to present the various psychological profiles with accompanying case studies in a presentation that aims to give prosecutors the tools to recognize the specific risks to victims in their own cases.

It is time to go beyond the one size fits all ‘cycle of violence’ approach to handling these cases. The FBI Behavioral Science Unit interviewed numerous serial killers to develop distinct profiles so that those killers, who otherwise blend well in society, could be apprehended and prosecuted before they could kill again. Domestic abusers also blend well in society so a greater insight into their profiles will be an effective tool for police and prosecutors to use to hold them accountable.

Some might consider it over the top to mention serial killers and domestic violence offenders in the same paragraph. However, consider that from 2009 through 2016, 54% of mass shootings were committed at home against women and children. 422 people were killed in mass shootings in that time period and 40% of that number were children.1

Domestic violence continues to be the single greatest predictor of violence against police officers as well. Of the 44 police officers murdered by gunfire in 2017, 33 of them were killed by someone with a history of abusing their intimate partners.2

These crimes are not just ‘the victim’s problem.’ Domestic violence offenders murder police officers and commit mass shootings in numbers too great to ignore. We must change the way we talk about and think about domestic violence. We need to stop asking, “why doesn’t she just leave” and start asking the more relevant question of, “Why does he beat her?” Only in asking the right question can we start to understand, and more importantly, predict the behavior of batterers.

2 Training Institute on Strangulation Prevention

Submit your announcements for the Fall edition of The Kansas Prosecutor by August 31st.

We would like to publish baby announcements, new attorneys, anniversaries, retirements, awards, office moves, if you have been published, or anything else you would like to share!

Send your milestones to: bfoster@sundevsolutions.com
State v. Baker: The Nesting Doll Dilemma

by Jason R. Lane and Joe Uhlman

State v. Baker presents serious problems to law enforcement agencies unprepared for its holding.\(^1\) In Baker, the Kansas Supreme Court held that, absent other justifications, a law enforcement agency’s inventory searches of closed containers within other containers will not be upheld unless it is accompanied with an established policy regarding searches of those containers.\(^2\) Much like a Matryoshka, or Russian nesting doll, the Court seems to visualize these smaller containers as stand-alone dolls within larger dolls, each requiring their own legal justification to search.

The Baker view of containers knocks against the current assumption of many law enforcement agencies: that any item they take custody of needs to be checked “to ensure that it is harmless, to secure valuable items . . . and to protect against false claims of loss or damage,”\(^3\) including smaller containers within that item. Because Baker’s holding upends this belief, Kansas prosecutors should be aware of what Baker means to the law enforcement agencies they represent, and of ways to protect these agencies against challenges to their inventory procedures.

Background

While on patrol, officers with the Lawrence Police Department spotted an individual they knew possessed outstanding warrants.\(^4\) This individual, Casey Baker, was confronted by officers shortly afterward in a home improvement store.\(^5\) Baker dropped his backpack and was arrested by the officers for the outstanding warrants.\(^6\) The officers took possession of the dropped bag and searched it, finding hypodermic needles in a Nintendo game case and methamphetamine inside a cell phone case.\(^7\) Baker was later convicted for possession of contraband.\(^8\)

Before trial, Baker moved to have the contraband evidence suppressed, asserting that law enforcement did not have lawful custody of the backpack when they searched it and therefore violated his Fourth Amendment rights.\(^9\) The District Court agreed that the officers did not have probable cause to search the bag, but ultimately upheld the search under the doctrine of inevitable discovery.\(^10\) The Court of Appeals agreed with this rationale, affirming the district court’s decision.\(^11\)

However, the Kansas Supreme Court disagreed. While the Court found it reasonable for officers to seize the backpack, it further determined the subsequent search of all the containers within the backpack was unreasonable because there was no established policy on the opening of closed containers during an inventory search.\(^12\) Without such a policy, and without other justifications for the search, the State could not show the containers containing the meth and paraphernalia would inevitably be searched by a preponderance of the evidence—and thus the doctrine of inevitable discovery did not apply.\(^13\)

Baker’s Potential Reach

The Kansas Supreme Court in Baker sent a clear message to law enforcement agencies across the state: if an agency is only going to rely solely on policy to justify their actions, those policies need to be firmly established. The direct application of Baker deals with intake policies at detention centers and storage of items in evidence rooms; however, the cases the Court relied upon in its holding should put prosecutors across the state on notice that inventory policies for car searches are implicated, too.

a. Intake at Detention Centers and Evidence Locker Storage

If Baker is kept confined to its facts, the holding of the Court is that inevitable discovery will not apply to officers who have no other justification for the search of closed containers within larger containers of personal property, and the officer’s department does not have established policies on how to inventory those containers-within-

2 Id. at 594 (2017).
5 Id.
6 Id.
7 Id.
8 Id. at 588.
9 Id. at 586.
10 Id. at 588.
11 Id. at 589.
12 Id. at 592–94.
13 Id.
containers. In situations where this narrow view of Baker may apply, a prosecutor seeking to use the inevitable discovery doctrine must 1) ensure the law enforcement agency has an inventory policy dealing with containers-within-containers, and 2) put on evidence of that policy at a suppression hearing.

First, the law enforcement agency must have an inventory policy dealing with containers-within-containers. It is unclear exactly what the Kansas Supreme Court has in mind for these policies, but it seemed to indicate that broad language is acceptable: “[o]pening all containers, no containers, or opening only those containers ‘whose contents officers determine they are unable to ascertain from examining the containers’ exteriors’ are all constitutionally permissible practices so long as they are standardized and well established.”

Even with broad language, however, there are a few general constitutional provisions regarding inventory searches that should be considered. In Illinois v. Layfette, the Supreme Court held that “[t]o determine whether [an inventory search] was unreasonable we must balance its intrusion on the individual’s Fourth Amendment interests against its promotion of legitimate governmental interests.” And as noted above, in South Dakota v. Opperman, the Supreme Court stated that inventory searches exist to “to ensure that [an item] is harmless, to secure valuable items . . . and to protect against false claims of loss or damage.”

Taken together, the Court seems to be stating an inventory policy that has broad language on how an agency deals with containers-within-containers will be valid as long as it is not overly intrusive, and as long as it promotes a valid governmental purpose. Note that this applies to both intake centers for detainees and evidence storage lockers: in Baker, the State put on evidence of both the local department’s evidence storage policy and the detention center’s intake policy, and the Court found both lacking.

And putting on evidence of this policy is the second thing prosecutors must do in similar situations to Baker. It is simply not enough for an officer to testify to his understanding of his agency’s way of doing business: in a situation where the inventory search policy is the only justification for a prior search, Baker requires that the inventory search would have included the container-within-a-container by a preponderance of the evidence. While the Court states that the policy need not be written, it seems an easy suggestion to put this policy in writing to ensure no confusion occurs.

b. Implications for Vehicle Searches

The Baker holding is not a novel holding of the Kansas Supreme Court. In reaching its conclusion, the Court relies on a quote from Florida v. Wells, where the U.S. Supreme Court held “that standardized criteria . . . must regulate the opening of containers found during inventory searches [which] is based on the principle that an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence.” Wells isn’t unique in this holding either. Wells builds on Colorado v. Bertine’s proposition that standardized criteria are necessary in law enforcement. Additionally, Wells’ holding about containers-within-containers has been cited nearly 600 times since its announcement. While the holding in Baker may be contentious, it certainly isn’t unique to Kansas.

However, the cases Baker relies on may set up new challenges down the road. Both Wells and Bertine deal with searches of vehicles—the container-within-a-container of Wells is a suitcase within a car, and Bertine deals with inventory searches of backpacks within vehicles. Additionally, many cases that cite favorably to Wells also deal with containers within vehicles. Thus,
it is entirely possible that the Kansas Supreme Court may extend the logic in Baker to vehicles as well—and in such an event, absent an established policy regarding closed or locked containers within vehicles, the search of these containers may be found impermissible.\textsuperscript{25}

However, since Wells, many federal district courts have held that as long as an officer was searching the closed containers to ensure officer safety or to safeguard potentially valuable possessions, the search is permissible.\textsuperscript{26} Because Baker may apply in the future to vehicle inventory searches, and because other courts have held that the core reasons for inventory searches justify those searches, this provides all the more reason that law enforcement agencies should consider Baker carefully and modify their vehicle inventory policies to accommodate its holding.

\section*{Sample Language to Satisfy Baker}

The million-dollar question is: what type of language would need to be added to existing policies to satisfy the container-within-a-container policy requirement of Baker? To that end, we surveyed our local law enforcement agencies’ inventory policies and attempted to construct language that we believe will satisfy Baker—or at least provide a starting point when discussing adding similar language to the policies with your local agencies:

All property taken into custody by [agency name] will be carefully and thoroughly searched to ensure that the property is harmless, and to secure valuable items for the property’s owner. This thorough search includes all physical storage containers, such as:

1. All containers that are opaque or its contents not ascertainable by visible inspection.
2. All locked containers whose contents cannot be ascertained by visible inspection. Officers will take care to open the locked container without causing unnecessary damage to the locking mechanism.
3. Any containers within any other container, if they are opaque, locked, or their contents

\textsuperscript{24} See supra note 22. 
\textsuperscript{25} Wells, 495 U.S. at 5 (“We hold that absent such a policy, the instant search was not sufficiently regulated to satisfy the Fourth Amendment and that the marijuana which was found in the suitcase.”) 
\textsuperscript{26} United States v. Como, 53 F.3d 87 (5th Cir. 1995); United States v. Velarde, 903 F.2d 1163 (7th Cir. 1990); United States v. Lowe, No. 95-10169, 1996 U.S. App. LEXIS 1946, at *4 (9th Cir. Jan. 24, 1996). 
\textsuperscript{29} Id. at 594.
otherwise not ascertainable by visible
inspection.

In all searches, care will be taken not to
damage or destroy any personal property.

It is our belief that the addition of the above
language into any existing written policy will
meet the established policy requirements for
a ‘container-within-a-container’ search, while
still striking the constitutional requirement
of inventory searches: that the search’s
intrusiveness is balanced against legitimate
government interests.27

Finally, while the Kansas Supreme Court
stated that a written policy was not required28,
remember that the State in Baker put on
competent evidence of their agencies’ policies
regarding inventory searches—but this didn’t
pass “constitutional muster” in the Court’s eyes
because it saw ambiguity where these agencies
almost certainly did not.29 Because of this, the
Court’s desired container policy should be set in
writing if at all possible.

**Conclusion**

*State v. Baker* presents major problems for law
enforcement agencies without established policies
about inventorying containers-within-containers.
Since the holding in Baker runs contrary to an
intuitive belief that a small container of personal
property within a slightly larger container doesn’t
warrant its own special legal protections, its holding
could catch many agencies unprepared.

However, with a written policy provision
explicitly covering the inventory search of
containers-within-containers, the *Matryoshka*
problem presented in *Baker* should not impede the
work of your law enforcement agencies. 30

Jason R. Lane is the Chief Deputy County Attorney
for Harvey County, Kansas. Joe Uhlman is a recent
University of Kansas School of Law graduate, Class
of 2018.

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