

The Kansas Prosecutor

The official publication of the Kansas County and District Attorneys Association

Volume 12, No. 2, Summer 2015



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Our mission:
 The purpose of the KCDA is to promote,
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The Finney County Courthouse was built in Garden
 City, Kansas in 1928.

The courthouse is located at:
 425 N 8th Street
 Garden City, KS 67846-0798

*Photo by John D. Morrison, Prairie
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President's Column

by Marc Goodman, KCDA President
Lyon County Attorney

Get Involved in the Association!

It seems hard for me to look ahead and see the end of my tenure on the Board of Directors coming.

In reflecting on my years, I would ask our members to look more closely at the weeks leading to the fall conference. At first, this stands alone as: "oh, yeah, legislative proposals," and as has been true every year as the Legislative Chair and Committee will receive twelve or fifteen proposals, and sometimes more.

My best guess is that most members have no clue how many are received, or what happens after that. I would like to take a poll of who knows anything of the legislative process, which sets the beginnings and parameters of our work.

Understanding the Legislative Process

It is my belief that prosecutors as a whole, and especially newer ones, should be more aware and take the legislative issues more seriously and participate therein. Obviously, statutes already exist, and the annotations under them are crucial to our cases. However, what about judicial decisions that need legislative cures or "fixes?" What about new laws that are needed or old laws that should be repealed? What about the increasing myriad number of outside bills introduced that attempt to change or influence elements or sentencing?

How many members are aware of the intense legislative battles fought over immediate sanctions or "quick dips" for those on community corrections probation, even though I'm sure many of you curse them? How does a bill get through, how does it get hung up, how does it end in interim committees? How many know Patrick or Steve or Kari as lobbyists, not just the conference guys? How many of you have faced motions or oral argument on statutory interpretation or legislative intent? How many of you know how to find the history and notes on intent of the legislature?

Your Involvement is Key

Well, rather than what seems our near empty reminders and requests for proposals in August, the answer lies in your involvement. It lies in your involvement with some part of your association or its various sub-groups.

I have stressed ethical conduct and duties of prosecutors in prior issues, and my next to last rant is "DO SOMETHING!" I do not hire attorneys or staff who only want to go through the motions of prosecution or community involvement. As important as this association is, we should have that commitment here also. 

County Courthouse Portraits



Finney County Courthouse

John D Morrison

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Best Practices Committee Update

By Kim Parker, Sedgwick County Chief District Attorney

Kansas Prosecutor Committee Continues Efforts to Enhance Public Safety

Senior prosecutors from across Kansas are participating as members of a statewide Best Practices Committee. The committee was established to lead the ongoing efforts of Kansas prosecutors to protect Kansas citizens by encouraging improvements to the state's criminal justice system.

Wichita Meeting

Kansas prosecutors from fourteen Kansas counties gathered in Wichita in June at a meeting hosted by Sedgwick County District Attorney Marc Bennett. Committee members in attendance were, Kim Parker and Ann Swegle (Sedgwick), Barry Disney (Riley), Jerry Gorman (Wyandotte), Marc Goodman (Lyon), Amy Hanley (A.G.), John Settle (Pawnee), Laura Lewis (Meade), Sherri Schuck (Pottawatomie), Brandon Jones (Osage), Cheryl Marquardt (Leavenworth), Amy McGowan (Douglas), Mike Gayoso (Crawford), Tom Drees (Ellis), and Christina Trocheck (Saline). Two additional committee members, Doug Matthews (Barton) and Kevin Berens (Thomas), were unable to attend the June meeting.

A Collaborative Forum

The Kansas County and District Attorneys Association (KCDAA) Best Practices Committee provides a forum for state prosecutors to collaborate and discuss emerging public safety issues in order to continue to improve the criminal justice system.

This leadership by Kansas prosecutors mirrors a nationwide initiative, "Best Practices for Justice" led by Kristine Hamann, Visiting Fellow at the Bureau of Justice Assistance. Hamann is a former Assistant District Attorney in Manhattan, New York.

The charge of the committee is to identify and advise the KCDAA Board of Directors on new and emerging statewide issues for prosecutors as well as make recommendations to the Board for appropriate

statewide initiatives dedicated to improving the criminal justice system.

The committee meets at least twice annually and will address issues such as prosecutor media relations, law enforcement techniques, prosecutorial ethics, and pre-trial discovery policies. The committee will meet in September and again during the KCDAA fall conference in October. 



Legislative Update

by Patrick Vogelsberg, Associate

Looking Ahead to 2016

Prior to writing this article, I quickly reviewed my previous article for the Spring edition. To quote myself, "...the 2015 Veto Session may be shaping up to be a little longer [than the 2014 Veto Session]." Understatement of the year? Perhaps. The Veto, or "wrap-up," Session started on April 29 and concluded on June 12, which was the 114th day of the session – a state record. During the 2015 session, 746 bills were introduced, of which, 105 became law. This 14% passage rate seems to be fairly typical of the Kansas Legislature in recent memory. One thing to remember is that the 2015 session was the first year of a biennium. This means that 573 of those bills introduced in 2015 will be carried over for possible advancement during the 2016 session.

How did the KCDAA's legislative agenda fare?

The KCDAA introduced four bills: (1) A bill to fix to *State v. Murdock*, 299 Kan. 312 (2014) (passed in HB 2053); (2) A bill amending the search warrant statute in response to *State v. Powell*, 299, Kan. 690 (2014) (passed in HB 2055); (3) A bill increasing penalties for residential burglary (SB 20 passed out of the Senate Corrections and Juvenile Justice Committee on February 4, 2015, but failed to be debated on the Senate floor); and (4) A bill that would amend the aggravated battery statute to specifically include strangulation (HB 2017 passed out of the House Corrections Committee on February 3, 2015, but failed to be debated on the floor of the House.).

So of the four bills the KCDAA introduced, two became law and the other two advanced out of committee and will be available during the 2016 session for further action. I would like to point out that in regards to HB 2053, the Kansas Supreme Court has recently overruled *Murdock in State v. Keel*, ___ Kan. ___, ___ P.3d ___ decided August 28, 2015 (No.106,096).

The Kansas Legislative Research Department's

website is an excellent resource that provides summaries of all legislation passed during the 2015 session. See www.kslegresearch.org.

What can we expect in 2016?

First, the KCDAA office has received many legislative proposals from membership for consideration for the 2016 KCDAA legislative agenda. The KCDAA legislative committee is chaired by Leavenworth County Attorney Todd Thompson and will conclude its review of every proposal by the fall conference. The KCDAA board will review the recommendations of the legislative committee and make the determination of what pieces of legislation will make up the final agenda.

Second, the KCDAA closely monitors and provides input on many pieces of legislation brought by others during any session. While it is too early to be certain on what specific legislation will be introduced, there are indicators that the following subjects may come up during the 2016 session:

- Juvenile reform;
- Capital punishment;
- Marijuana;
- Body cameras;
- Sexually violent predator treatment program; and,
- Further efforts to deter new prison admissions and revocations of probation and parole.

With these subjects and others, the KCDAA will likely be asked to provide input for legislators. If any prosecutor would like to assist with the KCDAA's testimony or provide his or her own testimony, please do not hesitate to contact the KCDAA office.

It is an honor to assist in the representation of the KCDAA at the Statehouse. As always, thank you for upholding the high ethical standards of prosecution and for your work on a daily basis in representing the people of Kansas. ☺

The Kansas Prosecutor *Seeks Advisory Council Members*

If you'd like to help us compile the quarterly magazine, please contact Nicole Van Velzen at nickiv@gmail.com.



**If you still need your
KCDAAs Years of Service Pin,**

contact Kari Presley at the KCDAAs office
(785) 232-5822 or kari@kearneyandassociates.com

KCDAA Member Highlight: Family Balance

by Amanda G. Voth, Assistant Attorney General

Donna Longsworth & Sherri Becker

The alarm starts beeping at 5:30 a.m., waking you from your much-needed and much-desired slumber; just enough time to get everything – or most things – done before making a mad dash out the door. After hurriedly getting yourself ready (maybe nobody will notice if my socks don't match or I don't do my hair today, you think to yourself), you pick up around the house, pack the diaper bag or school bag, pack bottles or lunches, make something that resembles a breakfast, wake up the kids, change diapers or clothes, shuffle them off to eat their breakfast (did she seriously throw her yogurt on the floor again?), stick tooth brushes in their mouths, run around the house looking for their shoes, and head out the door. And although it feels like an entire morning has just passed, you still have to drop your kids off at daycare or school and head into work. If this scenario sounds familiar, you must be a working parent. This article highlights two women who are full-time moms and full-time prosecutors.

Donna Longsworth graduated from Wichita State University with a bachelor's degree in general studies. She worked at a civil law firm in Wichita as a paralegal for several years before attending the University of Kansas School of Law. Although she had planned to practice civil law, a Criminal Justice clinic her last year of law school changed her mind. She interned at the Douglas County District Attorney's Office and decided she had an interest in prosecution that she wanted to pursue. After law school, she began her prosecution career as an Assistant County Attorney in Harvey County. Several years later, she was hired by then-Sedgwick County District Attorney Nola Foulston. She has worked in the Office of the District Attorney in Sedgwick County for over 10 years.

During her career, Donna has prosecuted every type of crime, from felony DUIs, drug crimes, sex crimes, and domestic violence-related crimes, to first degree murder. Donna also teaches several courses at the Law Enforcement Training Center.

Most recently, she accepted a position as the Chief of the Juvenile Offender Division, where she continues to have a full case load, as well as supervise other Assistant District Attorneys.



Donna Longsworth and children Devin & Julia

While in Sedgwick County, Donna had twins – Julia and Devin – who are now 8 years old. Donna says her co-workers and the baby-on-board program that Nola implemented were instrumental in allowing her, as a single mother, to provide for her family while being a mother. When her twins were two months old, Donna brought Julia and Devin to the office with her, and continued doing so for several months, while handling her assigned cases and duties. When she had court, she would take a blanket and lay one of the babies down in a co-worker's office. It wasn't unusual for her to come back from court to find a co-worker rocking one of her babies while talking on the phone or typing a journal entry. Donna also recalls multiple occasions in which she would be on-call and would have to go to a judge's house with her twins in tow. "The judges were always welcoming and had no problem with it," she says. Donna says everyone was eager to help – from people she worked with in her office, to the judges, and even law enforcement. She notes that Nola, and now District Attorney Marc Bennett, have always been welcoming of kids in the office on necessary occasions, and that all are understanding of her situation.

In fact, a few times, Nola would stop by Donna's office and ask what Donna was preparing for dinner that night. After Donna said she hadn't even had time to think that far, Nola said, "Okay, see you all at my house at 6:00!" Another time, Donna remembers that she had a multiple-witness preliminary hearing coming up. Marc Bennett stepped in, and insisted on doing the prelim for her so that she could go on her kids' field trip to the pumpkin patch instead. Donna still treasures the memories she made by going with Julia and Devin on the field trip. Donna says she "wouldn't have those same memories, and wouldn't be able to be a successful mother and prosecutor" without the support of her co-workers, family and friends.



Sherri Becker and family; husband DJ and sons Abel (2) and Lucas

Sherri Becker, an Assistant County Attorney in Leavenworth County, agrees that the culture of the office is very important in balancing work as a prosecutor and being a mom. She notes that she is very fortunate that Todd Thompson, the County Attorney, has implemented policies that allow flexibility, and that he has built a culture in the office in which family is important. Sherri says she is allowed to be more motivated and dedicated to the office when she knows that if a family issue arises, her boss won't be upset with her.

Sherri has been at the Leavenworth County

Attorney's Office since she graduated from Washburn Law School in 2011. Prior to law school, she worked at the Payless corporate office for a year, after graduating from Emporia State University with a degree in Business Management. When she started law school, she believed she wanted to practice business law, but an internship at the Shawnee County District Attorney's Office her third year of law school changed her mind. After being treated like a prosecutor by having her own docket, her own cases, and experiencing what a prosecutor does, she knew that pursuing a career as a prosecutor was what she needed to do.

Sherri is currently a domestic violence prosecutor, handling everything from top-level crimes to misdemeanors. Sherri and her husband DJ have two children: Abel, who is 2 years old, and Lucas, who is just a few months old.

Although Sherri notes that some skills as a prosecutor have helped her as a mother, she notes that, especially in her role as a domestic violence prosecutor, her children have taught her more about being a prosecutor. Lucas and Abel have taught Sherri the importance of the human element of the cases she handles. She regularly asks herself what she can do in her job to help facilitate change and make it a better situation for the defendant's families. She notes that her children have taught her about the bigger picture, and Sherri has aided in developing programs within the community that can benefit victims of domestic violence and their families. Although she notes that, at times, she doesn't have a choice other than to request prison sentences, she also knows there are still a lot of normal people who just make bad decisions. She works to help the defendant's family benefit from the criminal justice process.

While both Donna and Sherri work hard as prosecutors, and find mothering a very important and rewarding job, juggling both roles is not without challenges. Sherri notes that it has been difficult to hear that caregivers have seen her children meet milestones while she has been away at work. She also notes it's challenging to only see Abel and Lucas for two hours each evening. "Trying to cram in dinner, a bath, prayers, story time, and bedtime, makes you feel like you don't have much time with them." But to ease the

situation, Sherri focuses on spending quality time with her children, playing with tractors or farm animals with her oldest, and reading books, telling stories, or dancing and listening to music.

Donna says that one challenge has been to fight the exhaustion that is brought on by working full time and being a full-time single parent. She also laughs while recalling another parent-unique challenge: trying to keep her suits free of food stains and smudges from goodbye hugs and kisses.

But being a prosecutor has also helped with parenting, as both Donna and Sherri say that prioritizing is key in both roles. Donna notes that effective skills in organization, time-management, and communication with caregivers have been really helpful in being able to balance her role as a mother and prosecutor. Sherri notes that multi-tasking is also important both as a prosecutor and a mother.

Both Sherri and Donna have good advice for working parents. “Never say never!” Donna says. Don’t say you’ll never allow your children to sit in front of the television or you’ll never let them use a pacifier. “You can end up eating those words!” She has also found that a benefit of being a prosecutor

and a mom is that she is more aware of possible criminal behavior and she is more sensitive in approaching personal situations. Finally, Donna notes, “time goes very quickly, so spend quality time with your children when you can.”

Sherri’s big piece of advice to parents is to “cut yourself some slack.” She acknowledges that all mothers deal with mother’s guilt, but notes that there is a benefit to showing your children that you’re a working mom, and that there is a larger purpose. She tells her oldest son that she’s going to work to “fight the bad guys,” and tries to explain that other people need her too. “Show them the benefit in what you’re doing.” But maximize the time you do have with them, and make the time count.

And this great advice is something you should remember, while you and your kids dash inside your house after work, while you look into the refrigerator just hoping that by some miracle a meal would appear, and while you make a mental list about the homework and projects that have to be complete before bath time and bed time, and the laundry and dishes and case work and trial prep that has to be done before *your* bed time. 🍷



WE ARE LOOKING TO HIGHLIGHT FORMER COLLEGE ATHLETES IN THE FALL/WINTER EDITION.

Do you know a colleague we could interview? Please contact Nicole Van Velzen at nickiv@gmail.com or (785) 424-4063 today!

KCDAA Milestones

Babies



Chelsea Anderson and her husband Jesse welcomed Cole Rogers Anderson to their family on August 21. Cole weighed 7 lbs. 14 oz. and was 19.75 inches long. Chelsea is a charging attorney for adult and juvenile offender cases in Sedgwick County.

Katie Devlin, Wyandotte



County Assistant District Attorney, and her husband Travis welcomed their first child, Zoey Lucile, on May 11, 2015. She weighed 9 lbs. 10 oz.



Marriage

Sedgwick County Assistant District Attorney Jason Roach and Suzanne Jenkins exchanged nuptials on July 4, 2015. Jason is an attorney in the Financial Crimes Division.



New Faces

On June 1, **Carissa Brinker** started with the Lyon County Attorney's office. She is a 2010 graduate of Washburn University School of Law, and initially will be doing traffic and misdemeanor cases.

Mike Leyba joined the Montgomery County Attorney's office as an Assistant County Attorney in March.

Congratulations

On July 19 at the NDAA Summit on Prosecution Integrity in Chicago, **Amy Hanley**, Assistant Attorney General at the Kansas Attorney General's Office, was presented with the 2015 National District Attorneys Association President's Award in recognition for outstanding service on the NDAA Board of Directors, NDAA Executive Committee, and NDAA Women Prosecutors Section.



Sedgwick County Deputy District Attorney **Ron Paschal** has been appointed Co-Chair of the ABA Criminal Justice Section Ethics, Gideon & Professionalism Committee. This Committee of the American Bar Association is a nationwide committee that reviews the relevant rules of professional conduct and makes recommendations for policy changes in addition to providing practical education.

Mr. Paschal brings over two decades of practical trial experience to the Committee. Ron has been a long-time member of the Wichita Bar Association Grievance and Ethics Committee and currently chairs the statewide Prosecutors Grievance and Ethics Committee. He has taught Trial Advocacy and Professionalism at the local, state and national level for many years. Mr. Paschal has a long history of community service, having served on the Supreme Court Task Force on Permanency Planning since 2004 and as a past president of the Child Advocacy Center of Sedgwick County.



Job Changes

Sarah Washburn resigned from the Lyon County Attorney's office to accept a staff attorney position with the Kansas Highway Patrol.



Photos from the Spring Meeting





A.G's Office Needs Your Help to Strengthen the State's Capacity in Criminal Appeals

by Derek Schmidt, Kansas Attorney General

The general rule under Kansas law long has been that “[t]he county attorney looks after criminal cases in the district court, the Attorney General looks after criminal appeals in the Supreme Court...”¹ The statutory directive for the attorney general to represent the state in criminal appeals has been in place since 1879,² while subsequent statutes recognize the duty of county and district attorneys in criminal trial courts within their jurisdictions.³

In practice, of course, the general rule is not a bright-line demarcation. The attorney general often assists county and district attorneys in criminal trials,⁴ and county and district attorneys often assist the attorney general in criminal appeals.⁵ The Kansas Supreme Court has commented favorably on “the mutual cooperation and assistance which exists between the offices of the attorney general and the county attorneys...”⁶

This is as it should be. In criminal cases, we all represent the same client – the State of Kansas – in the pursuit of justice.

Appellate Practice

On the appellate side, Supreme Court Rule 6.10 requires the attorney general to approve before filing every criminal appellate and post-conviction brief on behalf of the State. That rule is the source of the requirement that county and district attorneys submit proposed briefs to our office for review and approval before filing.

Since at least 2011, our office has worked to ensure this process actually adds *value* – not just steps – to the State’s overall appellate advocacy by consistently reviewing submitted briefs for substance and suggesting modifications that may strengthen the State’s appellate position. This coordinating role also helps the State avoid advocating inconsistent positions on appeal. We have been returning to the author between one-fourth and one-third of proposed briefs with suggestions for modification, and I hope this heightened review and interactive process has been helpful. In my view, this practice is an important component of the “mutual cooperation

1. *Heinz v. Bd. of Comm'rs of Shawnee Cnty.*, 136 Kan. 104, 12 P.2d 816, 818 (1932).

2. Since 1879, the pertinent core of K.S.A. 75-702 has remained unchanged: “The attorney general shall appear for the state, and prosecute and defend all actions and proceedings, civil or criminal, in the supreme court...” In 2013, the Legislature added amendments to clarify that the statute applies to “any and” all actions and proceedings, to expand its scope to the Court of Appeals and to all federal courts (including the U.S. Supreme Court), and to expressly provide that when the attorney general is performing this role the attorney general controls the state’s case. Those additions did not disturb the longstanding core of the statute.

3. See K.S.A. 19-702(a) (“[I]t shall be the duty of the county attorney to appear in any court having jurisdiction within the county and prosecute or defend on behalf of the people all actions and proceedings, civil or criminal, in which the state or the county is a party or interested.”); see also K.S.A. 22a-104 (“[I]t shall be the duty of the district attorney to appear in the several courts of the judicial district in which the district attorney is elected and to prosecute or defend, on behalf of the people therein, all matters arising under the laws of this state, and such civil matters as are instituted by the district attorney, in which the state or any county in such

judicial district is a party or has an interest.”).

4. Since 1879, the statutes have required the attorney general to assist county attorneys. See K.S.A. 75-704 (“The attorney general shall consult with and advise county attorneys, when requested by them, in all matters pertaining to their official duties.”); see also *State v. Abu-Isba*, 235 Kan. 851, 685 P.2d 856 (1984) (attorney general may prosecute criminal case in district court absent objection by county attorney).

5. Since 1977, the statutes have recognized this role for the county and district attorneys. See K.S.A. 22-3612(a) (“In representing the interests of the state in appeals from criminal actions in the district courts of this state to the supreme court or court of appeals or in other post-conviction actions arising from criminal prosecutions, the attorney general shall invoke the assistance of the county or district attorney of the county in which the action originally commenced.”); but see Supreme Court Rule 6.,¹⁰ (prohibiting the filing by the State of any brief in a criminal appeal or post-conviction case without approval by the attorney general’s office).

6. *State ex rel. Stephan v. Reynolds*, 234 Kan. 574, 578, 673 P.2d 1188, 1192 (1984).

and assistance which exists between the offices of the attorney general and the county attorneys.”

I often have heard from county attorneys who would like the attorney general’s office to shoulder more of the State’s load in criminal appeals.⁷ After all, the law makes that our job, right? But we are acutely constrained both by capacity⁸ and by the inertia of the customary practice of counties handling their own criminal appeals.⁹ Still, despite those limitations, we would like to do more.

So in that spirit, let me offer information about a new statutory authority we are implementing at the attorney general’s office to allow us to do more criminal appellate work on behalf of the State thus relieving county attorneys of that burden. I would be grateful for your help in making this operate effectively. By implementing this new authority with “mutual cooperation and assistance,” the attorney general and county and district attorneys can build the State’s institutional capacity to handle appeals and thereby strengthen the State’s overall appellate advocacy in criminal cases.

Building Capacity

Despite its longstanding role in *every* criminal appeal from all 105 counties, and its role in both state and federal post-conviction proceedings from throughout Kansas, the attorney general’s office until recently has had only two attorneys dedicated solely to criminal appeals.¹⁰ They do a great job, but they’re mere mortals. Two simply is not enough.

Given the fundamental importance of appellate advocacy in criminal cases, and the central statutory role of the attorney general’s office in that advocacy, in an ideal world I would ask the Legislature for increased funding to add more criminal appellate attorneys. But this is the real world, not an ideal one, and the likelihood of added appropriations for criminal appellate work is not good.¹¹

That’s why we’re attempting a different strategy to accomplish the critical objective of expanding appellate capacity. In 2014, I requested new statutory authority to allow the attorney general’s office to enter into contracts with county and district attorneys to handle the appeals from locally prosecuted

7. In this article, and for purposes of contracting for appeals under the new statutory authority, the term “criminal appeals” means direct appeals, K.S.A. 60-1507 post-conviction proceedings, and other post-conviction actions arising from criminal prosecutions that reach the state appellate courts.

8. For example, in addition to the appellate work in state courts, our office has the exclusive authority to represent the State of Kansas in time-intensive appeals before the U.S. Supreme Court. See K.S.A. 75-702 (“The attorney general shall appear for the state ... in all federal courts ... in which the state shall be ... a party, and shall ... control the state’s prosecution...”). Our criminal appeals attorneys currently are briefing the State’s appeals in *Kansas v. Sidney Gleason* (Barton County) and the consolidated cases *Kansas v. Jonathan Carr* and *Kansas v. Reginald Carr* (both Sedgwick County), all three of which will be argued at the U.S. Supreme Court in October. We also are preparing petitions for certiorari seeking U.S. Supreme Court review in three other criminal cases. Similarly, our appellate attorneys represent Kansas in federal district court and the Tenth Circuit Court of Appeals in all federal habeas corpus cases arising from state convictions.

9. Despite the terms of the statute, the longstanding *practice* has been for county attorneys to provide for the actual handling of the criminal appeals arising from their jurisdiction subject only to consultation with the attorney general and review and approval of briefs as required by Supreme Court

Rule 6.10. To put this contrast between law and practice into focus, the statute provides that the attorney general is to handle for the State “all ... [criminal] ... prosecutions ... in the Kansas Supreme Court [and] Court of Appeals”, see K.S.A. 75-702, but so far this year the attorney general’s office has been the State’s principal representative in only four of the 52 criminal appeals scheduled for Kansas Supreme Court argument as of the writing of this article. To demonstrate the point a different way, during fiscal year 2015 the attorney general’s office approved 833 briefs in criminal or post-conviction appeals from county and district attorneys to be filed in the state appellate courts while we actually drafted and filed 43 briefs ourselves.

10. Anticipating the new contract appeals discussed in this article, we recently added a third appeals attorney. The current revenue stream is not sufficient to sustain that position, but as more counties contract with the attorney general’s office for appeals services it will become so.

11. I recall serving in the State Senate years ago when then-Attorney General Phill Kline requested added funds to expand the appellate capacity of the attorney general’s office. That request went nowhere. Moreover, with the new Kansas Bureau of Investigation forensics laboratory at Washburn University coming on line this fall, the attorney general’s office will need to prioritize appropriations requests for the new scientists and other personnel needed to meet the statewide demand for forensic sciences in the criminal justice system.

criminal cases. Our proposal was supported in the Legislature by the KCDAA, and it became law.¹²

The idea is simple: Counties are already paying the cost of handling each and every appeal and post-conviction matter – either through the cost of travel and lodging and time for staff attorneys or through the cost of hiring outside counsel. If counties would redirect roughly those same costs toward paying the Office of the Attorney General to handle their appeals, then we could use money that *already is being spent* to build and strengthen specialized institutional capacity to handle the State’s criminal appeals and post-conviction work.

The new system is voluntary. To use a trite but true phrase, this really is a situation where the whole can be greater than the sum of the parts or, in the similarly trite alternative, this can be a win-win for all of the state’s prosecuting attorneys.

Now, I know this will not be attractive to every county. But I hope it will be to many. For small counties with few appeals, annual contracts are like insurance – a fixed-price guarantee that attorney general resources will be available when needed and that the infrequent appeal will not disrupt the ordinary priorities for local resources. For mid-sized and larger counties, annual contracts are a management tool that can free resources and personnel to focus on constant and recurring local needs rather than sporadic or infrequent appeals.

Most important, by entering into these contracts, you can help aggregate to the attorney general’s office public safety resources that now are diffused throughout the state. That focusing and aggregating of resources will provide the certainty I need to build and sustain criminal appeals capacity. That strengthened capacity, in turn, helps all of us represent the State in the pursuit of justice.

The cost of a contract for appellate services is based on the volume of appeals generated by a county in recent years. It’s cheap insurance and a cheap resource-management tool. The county

gains budget stability and certainty by shifting the risk of unpredictable appellate costs to the attorney general’s office.

If this article sounds like a sales pitch, that’s because it is. But I believe in what I’m selling – the idea that by voluntarily working together in “mutual cooperation and assistance” to use this new authority to build the state’s appellate capacity, the attorney general’s office and county and district attorneys can strengthen the State’s overall work in criminal appeals. It’s not about benefiting me or my office – it’s about building and improving the overall capacity of the State in criminal appellate advocacy. That’s an interest we all share.

The attorney general’s office currently has in place contracts to handle all criminal appeals from six counties.¹³ We need more. I hope you will consider contracting with the attorney general’s office to handle your appellate work. I recently sent you a letter with more details on the subject. If you want to enter into an appeals contract, want more information, or want to discuss this further, please contact us and let’s talk.¹⁴ 



12. The new authority is contained in K.S.A. 22-3612, particularly in subsections (a) and (b).

13. We currently handle all appeals from Bourbon, Chautauqua, Ellis, Kingman, Montgomery and Rush counties. In addition, Lincoln County has requested a contract for our office to handle the appeal of one particular case.

14. The principal points of contact in our office for appeals contracts, in addition to me, are Chief Deputy Attorney General Jeff Chanay (jeff.chanay@ag.ks.gov), Deputy Attorney General Vic Braden (vic.braden@ag.ks.gov), or Deputy Solicitor General Kris Ailslieger (kris.ailslieger@ag.ks.gov). We all can be reached at (785) 296-2215.

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