

Approved: 3/13/97
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on February 20, 1997 in Room 313--S of the Capitol.

All members were present except: Representative Phill Kline (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: Jim Clark, County and District Attorneys Association
Terry Knowles, KBI
Kelly Kultala, City of Overland Park
Wendy McFarland, ACLU
Phylemon C. Yau, Assistant District Defender-Written testimony
Professor Karen Wittman, Washburn Law School

Others attending: See attached list

The Chair called the meeting to order at 3:40 p.m.

HB 2209: Criminal procedure, forensic evidence admitted at hearing for revocation of probation, community corrections or suspension of sentence.

Jim Clark, County and District Attorneys Association testified in support of **HB 2209**. The conferee stated that this bill proposes to amend the probation revocation statute with language taken from the preliminary hearing statute which allows admissibility of lab reports in preliminary hearings without the examiner's presence. Mr. Clark offered an amendment that would expand the number of laboratories to those laboratories certified by the Substance Abuse and Mental Health Services Administration. The conferee stated that counties such as Sedgwick and Johnson generate a large volume of lab reports and therefore, use facilities as far away as California. (Attachment 1)

Terry Knowles, Deputy Director, KBI testified in support of **HB 2209**. The conferee stated that this bill will provide relief for the scientists by allowing laboratory reports to be admitted as evidence during probation violation hearings, thereby eliminating the need for personal testimony. (Attachment 2)

Kelly Kultala representing the City of Overland Park testified to request that the City of Overland Park be added to the list of agencies authorized in **HB 2209**. (Attachment 3)

Wendy McFarland, ACLU, spoke in opposition to **HB 2209**. Ms McFarland directed the Committee members' attention to written testimony opposing **HB 2209** provided by Phylemon C. Yau, Assistant District Defender. Mr. Yau stated in his written testimony that the opinions expressed in the outlines are strictly personal beliefs and do not reflect the position of the Board of Indigent Defense Services. Mr. Yau outlined in his written testimony reasons why **HB 2209** will not be practical. The first reason was that the existing system works. The second reason listed by Mr. Yau is that cross examination is the only safeguard against false results. The third reason is that laboratory procedures and reporting formats are not standardized. (Attachment 4)

Karen Wittman, Adjunct Professor of Law, Washburn University testified in opposition to **HB 2209**. The conferee stated that she was a chemist for six years and came to understand since becoming an attorney the reason why it is important for the lab technician to testify in person. Ms Wittman cited several examples of falsifying evidence, incompetency and lack of resources as reasons why personal testimony is necessary. The conferee stated that with written reports there is the potential for misrepresentation, tendency to lose objectivity, and the possibility of misrepresentation of credentials. The conferee stated that **HB 2009** does not address new techniques. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 20, 1997.

The Committee members discussed with the conferee the listing of a lab technician's education, qualifications, experience will appear on a report.

In response to a question by Representative Dahl, Mr. Clark stated that he was not aware of any precedence in any other state for this bill. Mr. Clark offered an additional amendment to eliminate the issue of junk science as Ms Wittman discussed. Mr. Clark stated that on line 12 of page 2 after the word "identification" include words "defendant's urine for the presence of alcohol or controlled substances."

In response to Representative Garner's request, Mr. Knowles stated that he does not have the exact number of lab reports, but it would probably be around 12,000 total.

Mr. Knowles stated that along with the report the KBI submits a certificate of analysis explaining who did the report and what the background of that person is.

In response to Representative Presta's inquiry, Ms Wittman explained that the problem is not in verifying qualifications, but whether the information in the report reveals how a test was performed.

HB 2250: **Forensic examination prepared by Missouri Southern State College police academy regional crime lab admissible into evidence.**

Representative Howell testified in support of **HB 2250**. Representative Howell stated that this bill will provide that the Missouri Southern State College laboratory to reports would be accepted as other listed agencies. The conferee stated that Missouri Southern currently serves a large number of police departments in Southeast Kansas. Representative Howell stated that he has no problem with putting **HB 2250** into **SB 259**.

Terry Knowles, KBI, testified that the KBI is in support of **HB 2250**. Mr. Knowles reported to the Committee the KBI's plan to enhance the level of forensic services to the law enforcement agencies located in Southeast Kansas. The conferee referred to a map attached to his written testimony which shows by county the number of drug cases submitted to KBI laboratory in 1996. (Attachment 6)

Kelly Kultala testified to offer an amendment to add the City of Overland Park to the list of agencies authorized to introduce written forensic expert reports at preliminary examinations. (Attachment 3)

Jim Clark, County and District Attorneys Association spoke in support of **HB 2250**.

The Chair closed the hearing on **HB 2250**.

The Chair directed the Committee members' attention to **HB 2313**.

HB 2313: **Extending crime victim's compensation coverage to Kansas residents who have been victims of foreign terrorism.**

Representative Presta made a motion to recommend **HB 2313** favorably for passage. Representative Powell seconded the motion. The motion carries.

HB 2143: **Nonpecuniary damages in wrongful death action.**

A motion was made by Representative Swenson, seconded by Representative Klein to recommend **HB 2143** favorably for passage.

Representative Powell suggested that this issue needs to be studied to determine the impact and past experience.

Representative Powell made a motion to Table **HB 2143**. The motion was seconded by Representative Dahl. The motion fails with six voting in favor and twelve opposing.

The motion to pass **HB 2143** favorably carries.

HB 2250: **Forensic examination prepared by Missouri Southern State College Police Academy regional crime lab admissible into evidence.**

A motion was made by Representative Adkins to amend **HB 2250** to include the City of Overland Park. The motion was seconded by Representative Howell. The motion carries.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 20, 1997.

The Committee members discussed exporting this service out of state.

A motion was made by Representative Powell, seconded by Representative Adkins to recommend the bill favorably as amended. The motion carries.

HB 2209: **Criminal procedure, forensic evidence admitted at hearing for revocation of probation, community corrections or suspension of sentence.**

A motion was made by Representative Pauls, seconded by Representative Swenson to recommend **HB 2209** favorably for passage.

Representative Powell discussed concerns about affidavit evidence. Representative Garner concurred with Representative Powell's concern particularly with due process rights.

Representative Garner made a motion to Table **HB 2209**. The motion was seconded by Representative Haley. The motion carries.

The Chair adjourned the meeting at 5:20 p.m.

The next meeting is scheduled for February 24, 1997.

HOUSE JUDICIARY COMMITTEE COMMITTEE GUEST LIST

DATE: 2-20-97

NAME	REPRESENTING
Jim Clark	KC DAA
Frank Henderson Jr.	Ks. atty Gen -
Kelly Kuntala	City of Overland Park
Terrence Knowles	
Wanda B. Fawcett	ACLU
Jason Oldham	OJA
Brent Barton	KCID
Chris Keel	KTLA
Maryanne Lippincott	KTLA
Annex Lippincott	KTLA
David Bell	KBA
Heather Randall	Whitney, Samson, P.A.
Susan Baker	Heintz + Weir
Jenese McNamee	State Farm
Wes Hays	KMS
Genevieve Sebell	KTLA

#1

OFFICERS

Nanette L. Kemmerly-Weber, President
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Julie McKenna, Sec.-Treasurer
Paul J. Morrison, Past President



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Jerome A. Gorman
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Kansas County & District Attorneys Association

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EXECUTIVE DIRECTOR, JAMES W. CLARK, CAE • CLE ADMINISTRATOR, DIANA C. STAFFORD

Testimony in Support of

HOUSE BILL 2209

The Kansas County and District Attorneys requested HB 2209, and also appears in support of it.

The bill was requested to meet the requirements of State v. Miller, 20 Kan.App. 2d 378, 888 P.2d 399 (1995), which held that affidavits accompanying the community corrections officer's testimony, one of which was UA results, were insufficient to revoke defendant's community corrections assignment as the trial court failed to find good cause for suspending the right of confrontation, as required by Morrissey v. Brewer, 408 U.S. 471, 33 L.Ed.2d 484 (1972).

The bill proposes to amend the probation revocation statute with language taken from the preliminary hearing statute, K.S.A. 22-2902a, which allows the admissibility of lab reports in preliminary hearings, without the lab person's presence.

By making these changes, it is hoped that the hundred of UA samples being taken daily across the state will become admissible, should probation revocation be sought because of a "dirty" UA.

Without reducing strict admissibility standards, which seems necessary in view of the increasing volume of samples, any probation supervision which includes blood or urine testing will become totally ineffective as soon as probationers realize that UA results cannot be used to revoke probation.

House Judiciary
Attachment 1
2/20/97

1 provided in this section, the court shall cause the defendant to be brought
 2 before it without unnecessary delay for a hearing on the violation charged.
 3 The hearing shall be in open court and the state shall have the burden of
 4 establishing the violation. The defendant shall have the right to be rep-
 5 resented by counsel and shall be informed by the judge that, if the de-
 6 fendant is financially unable to obtain counsel, an attorney will be ap-
 7 pointed to represent the defendant. The defendant shall have the right
 8 to present the testimony of witnesses and other evidence on the defen-
 9 dant's behalf. Relevant written statements made under oath may be ad-
 10 mitted and considered by the court along with other evidence presented
 11 at the hearing. *Results of a forensic examination, analysis, comparison or*
 12 *identification prepared by the Kansas bureau of investigation, the federal*
 13 *bureau of investigation, the bureau of alcohol, tobacco and firearms of the*
 14 *United States department of the treasury, the state secretary of health and*
 15 *environment, the sheriff's department of Johnson, Shawnee or Sedgwick*
 16 *county, the police department of the cities of Topeka or Wichita, the Sedg-*
 17 *wick county regional forensic science center, the drug enforcement ad-*
 18 *ministration, the air force of the United States, the navy of the United*
 19 *States, the army of the United States* or *Bethany medical center, inc.*
 20 *located in Kansas City, Kansas, the report, or a copy of the report, of the*
 21 *findings of the forensic examiner shall be admissible into evidence in the*
 22 *same manner and with the same force and effect as if the forensic examiner*
 23 *who performed such examination, analysis, comparison or identification*
 24 *and prepared the report thereon had testified in person.* If the violation
 25 is established, the court may continue or revoke the probation, assign-
 26 ment to a community correctional services program, suspension of sen-
 27 tence or nonprison sanction and may require the defendant to serve the
 28 sentence imposed, or any lesser sentence, and, if imposition of sentence
 29 was suspended, may impose any sentence which might originally have
 30 been imposed. When a new felony is committed while the offender is on
 31 probation or assignment to a community correctional services program,
 32 the new sentence shall be imposed pursuant to the consecutive sentenc-
 33 ing requirements of K.S.A. 21-4608 and amendments thereto, and the
 34 court may sentence the offender to imprisonment for the new conviction,
 35 even when the new crime of conviction otherwise presumes a nonprison
 36 sentence. In this event, imposition of a prison sentence for the new crime
 37 does not constitute a departure.

laboratories certified by the Substance Abuse and Mental
 Health Services Administration

38 (c) A defendant who is on probation, assigned to a community cor-
 39 rectional services program, under suspension of sentence or serving a
 40 nonprison sanction and for whose return a warrant has been issued by
 41 the court shall be considered a fugitive from justice if it is found that the
 42 warrant cannot be served. If it appears that the defendant has violated



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

TESTIMONY
TERRY L. KNOWLES, DEPUTY DIRECTOR
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF HOUSE BILL 2209
FEBRUARY 20, 1997

Mr. Chairman and Members of the Judiciary Committee:

I appear today on behalf of the Kansas Bureau of Investigation (KBI) in support of House Bill 2209.

Scientists in the KBI Forensic Laboratory received some 2,783 subpoena in 1996, to testify as expert witnesses in criminal trials throughout the State of Kansas. The demands placed upon our forensic scientists are tremendous, given the fact that the KBI receives almost 50 new cases every business day. The scientists must adjust their case work to meet the mandates of court appearances all across the State.

HB 2209 will provide relief for the scientists by allowing laboratory reports to be admitted as evidence during probation violation hearings, thereby eliminating the need for personal testimony.

I appreciate very much the Committee's initiative in helping to streamline the process while at the same time permitting proper evidence to be presented during these proceedings.

Thank you. I would be happy to answer any questions.

*House Judiciary
Attachment 2
2/20/97*



City Hall • 8500 Santa Fe Drive
Overland Park, Kansas 66212

TESTIMONY
HOUSE JUDICIARY COMMITTEE
FEBRUARY 20, 1997
REP. TIM CARMODY - CHAIRMAN
RE: HB 2209 & 2250

The City of Overland Park would like to be added to the list of agencies authorized to introduce written forensic expert reports at preliminary examinations and, if possible, revocation hearings. This would eliminate the need for lab technicians to appear in person at these hearings.

The Overland Park Police Department (OPPD) has had an established, full-time, crime lab for over twenty years.

OPPD maintains on-site hard copy fingerprint data bases with excess of ten print cards. They handle all their own latent print and known ten print fingerprint identifications with two established full-time city employees qualified as fingerprint experts, Officer Gary Page and Detective Robert Leever. OPPD is an AFIS user, operating a satellite system in association with Kansas City, Missouri and Kansas City, Kansas.

Officer Page and Detective Leever are, both, court certified experts with the District Court of Johnson County, Kansas.

They have both received the "Fingerprint Classification" training with the FBI, the "Advanced Latent Fingerprint Techniques" training with the FBI and the "Advanced Palm Print Identification" training with the Mississippi State Crime Lab.

They are also in good standing with the International Association for Identification and the Kansas Division of the International Association for Identification.

Thank you for your consideration.

Kelly Kultala
Lobbyist
City of Overland Park

House Judiciary
Attachment 3
2/20/97

#4

STATE OF KANSAS

THIRD JUDICIAL DISTRICT PUBLIC DEFENDER

ALBERT R. BANDY
District Defender

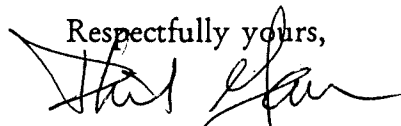
FAX: (913) 296-7418
TEL: (913) 296-1833
121 E. 6th Street
Topeka, Kansas 66603-3508

February 19, 1997

Members of the House Judiciary Committee:

Enclosed please find information for your consideration concerning house bill 2209 proposing the admission of forensic examination report at probation violation hearing. I have enclosed my outlines and some documents which are self explanatory. Please evaluate the enclosed information carefully. Opinions expressed in the outlines is strictly my personal believe and does not reflect the position of the Board of Indigent Defense Services. I respectfully request the committee to reject the proposed amendment.

Respectfully yours,



Phylemon C. Yau
Assistant District Defender

House Judiciary
Attachment 4
2/20/97

REASONS WHY HOUSE BILL 2209
PROPOSING THE ADMISSION OF
FORENSIC EXAMINATION REPORT IS NOT PRACTICAL

1. The existing system works.

Most probation violations are handled by stipulation to the violation.

In rare instances when a violation hearing is desired, most defense attorneys stipulate to the forensic report.

The existing system provides for recourse against frivolous litigation.¹

The current statute (KSA 22-3716) provides that "Relevant written statements made under oath may be admitted and considered by the court along with other evidence presented at the [probation violation] hearing." Under the current statute if the laboratory examiner swear to his/her report under oath (penalty of perjury) such report can be considered and admitted by the court.

2. Cross examination is the only safeguard against false result.

Many potential problems with forensic laboratory (FBI lab) revealed - recent news article.

Forensic examiner make mistake from time to time.

Forensic examiner may falsify examination results.

3. Laboratory procedures and reporting formats are not standardized.

One way to determine if laboratory examiner is following proper scientific procedure is through cross examination of the examiner's methodologies. Laboratory report does not lay out how the examiner arrived at his/her conclusions. Should the committee elects to adopt the proposed amendment, it would be prudence to require standardized reporting methods incorporating the necessary scientific steps taken by the forensic examiner in arriving at his/her conclusions.

¹ State v. Raymond Rother, No. 75,762; 75,763, slip op. Kan. Ct. App., held that expert witness fees incurred by the State can be assessed against the defendant as additional court costs at probation violation hearing.

The only safeguard a defendant has against false evidences is through competent cross examination. The proposed amendment will scarify this important safeguard for the sake of expediency and judicial economic in a limited number of cases. The purposed amendment is an invitation for time consuming civil suits and expensive litigations once a problem with the forensic examination is discovered.

Attorney General's Opinions:

KORA; parole board; certain records not required to be open. 89-127.

22-3712. Residences and diagnostic and treatment facilities; placement of probationers, parolees, persons on postrelease supervision and persons referred during presentence investigation; limitation on placement in facility. The Kansas parole board may establish and maintain residence facilities for the housing of probationers, parolees or persons on postrelease supervision, or may contract for such housing in facilities approved by it; it may establish and maintain diagnostic and treatment facilities for persons referred during presentence investigation or on probation, parole or postrelease supervision, or may contract for such facilities. As a condition of probation, parole or postrelease supervision, a probationer, parolee or person on postrelease supervision may be placed in such residence, diagnostic, or treatment facility by order of the court or parole board. Placement in a diagnostic or treatment facility shall not exceed 90 days or the maximum period of the prison sentence that could be imposed, but may be renewed for further ninety-day periods on certificates presented to the court by the director of such facility.

History: L. 1970, ch. 129, § 22-3712; L. 1972, ch. 317, § 85; L. 1990, ch. 309, § 18; L. 1992, ch. 239, § 269; July 1, 1993.

Source or prior law:
62-2234.

22-3713. State director of the parole board; appointment; other officers and employees; travel expenses. The Kansas parole board shall appoint a state director of the parole board who may appoint and prescribe, with the approval of the parole board, the duties of a deputy director and other employees required to administer the provisions of this act. The parole board may authorize one or more of its members to conduct hearings on behalf of the parole board.

The deputy director may exercise such powers and perform such duties of the director as may be authorized by the parole board. The director and all other officers and employees of the parole board shall be within the classified service of the Kansas civil service act. The residence requirements of the Kansas civil service act shall not apply to the appointment of the director or deputy director. All officers and employees of the parole board shall receive, in addition to their regular

compensation, their actual and necessary travel and other expenses incurred in the performance of their official duties.

History: L. 1970, ch. 129, § 22-3713; L. 1972, ch. 317, § 86; L. 1973, ch. 339, § 65; L. 1990, ch. 309, § 19; May 24.

Source or prior law:
62-2235.

22-3714, 22-3715.

History: L. 1970, ch. 129, §§ 22-3714, 22-3715; L. 1972, ch. 317, §§ 87, 88; Repealed, L. 1973, ch. 339, § 93; July 1, 1974.

Source or prior law:
62-2236, 62-2237.

Revisor's Note:

Later act, see 75-5216.

22-3716. Arrest for violating condition of probation, assignment to community corrections, suspension of sentence or nonprison sanction; time limitation on issuing warrant. (a) At any time during probation, assignment to a community correctional services program, suspension of sentence or pursuant to subsection (d) for defendants who committed a crime prior to July 1, 1993, and at any time during which a defendant is serving a nonprison sanction for a crime committed on or after July 1, 1993, or pursuant to subsection (d), the court may issue a warrant for the arrest of a defendant for violation of any of the conditions of release or assignment, a notice to appear to answer to a charge of violation or a violation of the defendant's nonprison sanction. The notice shall be personally served upon the defendant. The warrant shall authorize all officers named in the warrant to return the defendant to the custody of the court or to any certified detention facility designated by the court. Any court services officer or community correctional services officer may arrest the defendant without a warrant or may deputize any other officer with power of arrest to do so by giving the officer a written statement setting forth that the defendant has, in the judgment of the court services officer or community correctional services officer, violated the conditions of the defendant's release or a nonprison sanction. The written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. After making an arrest, the court services officer or community correctional services officer shall pre-

sent to the detaining authorities a similar statement of the circumstances of violation. Provisions regarding release on bail of persons charged with a crime shall be applicable to defendants arrested under these provisions.

(b) Upon arrest and detention pursuant to subsection (a), the court services officer or community correctional services officer shall immediately notify the court and shall submit in writing a report showing in what manner the defendant has violated the conditions of release or assignment or a nonprison sanction. Thereupon, or upon an arrest by warrant as provided in this section, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing shall be in open court and the state shall have the burden of establishing the violation. The defendant shall have the right to be represented by counsel and shall be informed by the judge that, if the defendant is financially unable to obtain counsel, an attorney will be appointed to represent the defendant. The defendant shall have the right to present the testimony of witnesses and other evidence on the defendant's behalf. Relevant written statements made under oath may be admitted and considered by the court along with other evidence presented at the hearing. If the violation is established, the court may continue or revoke the probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction and may require the defendant to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed. When a new felony is committed while the offender is on probation or assignment to a community correctional services program, the new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608 and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(c) A defendant who is on probation, assigned to a community correctional services program, under suspension of sentence or serving a nonprison sanction and for whose return a warrant has been issued by the court shall be considered a fugitive from justice if it is found that the warrant cannot

be served. If it appears that the defendant has violated the provisions of the defendant's release or assignment or a nonprison sanction, the court shall determine whether the time from the issuing of the warrant to the date of the defendant's arrest, or any part of it, shall be counted as time served on probation, assignment to a community correctional services program, suspended sentence or pursuant to a nonprison sanction.

(d) The court shall have 30 days following the date probation, assignment to a community correctional service program, suspension of sentence or a nonprison sanction was to end to issue a warrant for the arrest or notice to appear for the defendant to answer a charge of a violation of the conditions of probation, assignment to a community correctional service program, suspension of sentence or a nonprison sanction.

History: L. 1970, ch. 129, § 22-3716; L. 1972, ch. 317, § 89; L. 1984, ch. 112, § 9; L. 1986, ch. 123, § 24; L. 1990, ch. 112, § 1; L. 1992, ch. 239, § 301; L. 1993, ch. 291, § 198; L. 1994, ch. 291, § 65; July 1.

Source or prior law:
62-2244.

Law Review and Bar Journal References:

Subsection (2) mentioned as not applicable to county courts in certain instances, William M. Ferguson, 39 J.B.A.K. 351, 353 (1970).

Judges must spend more time on probation matters which add to delay in other court matters, George S. Reynolds, 12 W.L.J. 12, 15 (1972).

"Kansas Diversion: Defendant's Remedies and Prosecutorial Opportunities," Joseph Brian Cox, 20 W.L.J. 344, 356, 358, 359 (1981).

"Parole in Kansas," Carla J. Stovall, 60 J.K.B.A. No. 7, 27, 28 (1991).

Attorney General's Opinions:

Detention of suspected parole violators. 80-227.

Classification of crimes and penalties; effect of legislation providing for reduction of sentences. 84-57.

Reporting of abuse or neglect of children; court services officers. 89-100.

CASE ANNOTATIONS

1. Revocation of probation under prior law (62-2244) not subject to collateral attack under 60-1507. *Stewart v. State*, 206 K. 147, 150, 476 P.2d 652.

2. Personal service requirement waived by defendant's appearance at revocation hearing without objecting to proceeding or requesting continuance. *State v. Dunham*, 213 K. 469, 477, 479, 517 P.2d 150.

3. Hearing hereunder not reviewable by 60-1507 motion absent irregularities of constitutional proportion. *Toman v. State*, 213 K. 857, 518 P.2d 502.

4. Revocation of parole due to conviction of crime upheld even though appeal pending. *State v. Woods*, 215 K. 295, 296, 524 P.2d 221.

AM 17
Re
FEB 11 1997

Nos. 75,762
75,763

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

RAYMOND ROTHER,
Appellant.

SYLLABUS BY THE COURT

1.

A defendant shall be liable for court costs upon conviction in a criminal proceeding. K.S.A. 22-3801(a).

2.

Witness fees may be assessed by a district court as court costs in a criminal proceeding. K.S.A. 1995 Supp. 28-172a(d).

3.

Under the facts of this case, the district court did not err in its order allowing the expert witness fees incurred by the State to be assessed against the defendant as additional court costs.

Appeal from Harvey District Court; RICHARD B. WALKER, judge. Opinion filed February 7, 1997. Affirmed.

Doc 2

Rhonda Keylon Levinson, special appellate defender, and *Steven R. Zinn*, deputy appellate defender, for appellant.

Mary A. McDonald, county attorney, and *Carla J. Stovall*, attorney general, for appellee.

Before KNUDSON, P.J., ROYSE, J., and PADDOCK, S.J. —

KNUDSON, J.: Raymond J. Rother appeals the district court's order requiring him to pay as court costs the witness fee charged by the State's expert to testify at trial. He does not challenge the reasonableness of the fee. We affirm.

At Rother's probation revocation hearing, the State called an expert witness from a testing laboratory to establish that Rother's urine test was positive for cocaine and marijuana; usage of the drugs constituted a violation of his probation.

"It is well settled in [Kansas] that upon conviction in a criminal action the defendant is liable for the costs made in both the prosecution and defense of the case." *State v. Shannon*, 194 Kan. 258, 263, 398 P.2d 344, cert. denied 382 U.S. 881 (1965).

K.S.A. 22-3801(a) specifically requires the district court to charge a convicted

defendant with the court costs incurred.

Thus, the issue is whether the fee charged by the State's expert witness to testify falls within the category of court costs to be assessed.

K.S.A. 1995 Supp. 28-172a(d) states: "All other fees and expenses to be assessed as additional court costs shall be approved by the court Additional fees shall include, but are not limited to . . . witness fees." This statute expressly authorizes a district court to do precisely what was done in this case.

Rother's reliance on *State v. Jones*, 11 Kan. App. 2d 428, 724 P.2d 146 (1996), is misplaced. In *Jones*, the State attempted to recover costs incurred in apprehending five inmates after their escape from the Kansas State Penitentiary at Lansing. The Court of Appeals concluded that investigation expenses by a governmental entity are not recoverable as reparations or restitution under what is now K.S.A. 21-4610(d)(1) or K.S.A. 22-3717(k). Whether a witness fee may be included as court costs under K.S.A. 1995 Supp. 28-172a(d) is a clearly distinguishable issue from that of *Jones*.

We conclude that the district court's allowance of the \$479.50 expert witness fee was properly charged as court costs under the statute.



KANSAS BUREAU OF INVESTIGATION

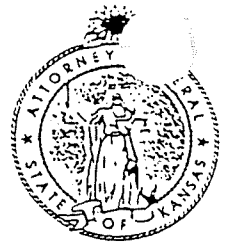
DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

1620 TYLER

TOPEKA, KANSAS 66612

(913) 296-8200



LARRY WELCH
DIRECTOR

CARLA J. STOVALL
ATTORNEY GENERAL

LABORATORY REPORT

ATTN: [REDACTED]

Date: [REDACTED]
KBI Case #: [REDACTED]
KBI Lab #: [REDACTED]
Contributing Agency #: [REDACTED]

VICTIM(S): [REDACTED]

SUSPECT(S):

ITEM(S) EXAMINED:

- # 23 LEM1 (pg. 2) - One fired bullet.
- # 21 { DD1 (pg. 3) - One .380 automatic caliber Remington fired cartridge case.
- DD2 (pg. 3) - One .380 automatic caliber Remington fired cartridge case.

RESULTS OF EXAMINATION

The fired bullet from Item LEM1 (pg. 2) is characteristic of a .380 automatic caliber bullet and exhibits class rifling characteristics of 6 lands and grooves with a right twist. Based on the rifling specifications of the bullet, possible .380 automatic caliber pistols that could have fired the bullet are: Echasa, Ceska-CZ, Beretta, Star, RPB Industries, Grendel, Garcia, Bryco Arms, Lorcin, Jennings, and Llama.

It is sometimes possible to fire a .380 automatic caliber cartridge in a 9mm Luger caliber pistol. Based on the rifling specifications of the bullet from Item LEM 1 (pg. 2), possible 9mm Luger caliber pistols that could have fired the bullet are: Jennings, Hi-Point, Colt, Stallard Arms, Llama, Astra, A.A. Arms, and SWD Inc.

(Continued-Page 2)


DOC 3

4-9

Page 2
09-177533
F97-001

The two fired cartridge cases from Items DD1 and DD2 (pg. 3) do not exhibit any bulging which is common when a .380 automatic caliber cartridge is fired in a 9mm Luger caliber pistol.

LARRY WELCH
DIRECTOR


Forensic Examiner
Firearms-Toolmarks

fj
07/03/96

Doc 3a

4-10

Dr



KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

1620 TYLER

TOPEKA, KANSAS 66612

(913) 296-8200



LARRY WELCH
DIRECTOR

CARLA J. STOVALL
ATTORNEY GENERAL

LABORATORY REPORT

ATTN: [REDACTED]

Date: [REDACTED]
KBI Case #: [REDACTED]
KBI Lab #: [REDACTED]
Contributing Agency #: [REDACTED]

VICTIM(S): [REDACTED]

REC'D [REDACTED]

SUSPECT(S):

ITEM(S) EXAMINED:

- TLS6 (pg. 1) - One blue t-shirt.
- TLS7 (pg. 1) - One light gray sweatshirt.
- TLS8 (pg. 1) - One plaid jacket.
- IF9 (pg. 3) - One fired bullet from chest.

RESULTS OF EXAMINATION

Examination of the clothing from Items TLS6, TLS7 and TLS8 (pg. 1) revealed a possible bullet hole in the left back of each. Microscopic and chemical examination of the area surrounding the holes failed to reveal the presence of any gunshot residue.

The fired bullet from Item IF9 (pg. 3) is characteristic of a .38 special/.357 magnum caliber bullet and exhibits class rifling characteristics of 5 lands and grooves with a right twist. Possible firearms that could have fired the bullet are revolvers manufactured by Smith & Wesson. However, no suspected firearm should be overlooked.

LARRY WELCH
DIRECTOR



Forensic Examiner
Firearms-Toolmarks

fj
05/09/96

Doc 4

4-11



KANSAS BUREAU OF INVESTIGATION

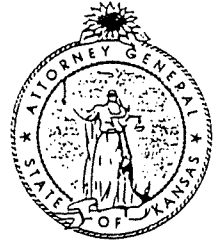
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STATE OF KANSAS

1620 TYLER

TOPEKA, KANSAS 66612

(913) 296-8200



LARRY WELCH
DIRECTOR

CARLA J. STOVALL
ATTORNEY GENERAL

LABORATORY REPORT

TO:



DATE

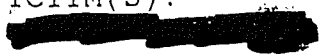
KBI CASE#

KBI LAB#

Contributing Agency Case#



VICTIM(S):



RECEIVED ON



SUSPECT(S):

ITEM(S) EXAMINED:

- Q1 - Blood sample.
- Q2 - Vitreous sample.
- Q3 - Urine sample.

RESULTS OF TOXICOLOGY EXAMINATION

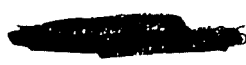
BLOOD: The result of the Ethyl Alcohol analysis was 0.19 grams per 100 milliliters of blood.

VITREOUS: The specimen quantity was insufficient for an Ethyl Alcohol analysis.

URINE: 11-nor-delta-9-tetrahydrocannabinol-9-carboxylic acid, Cocaine, and Benzoyllecgonine (a metabolite of Cocaine) were confirmed by Gas Chromatography/Mass Spectrometry (GC/MS). Nicotine and Cotinine were indicated but not confirmed. All other common drugs detectable in the urine drug screen including Amphetamines, Barbiturates, Benzodiazepines, Ethchlorvynol, Opiates, Phencyclidine, and Salicylates, were negative.

Larry Welch
DIRECTOR

Forensic Toxicologist



Doc 5

SHAWNEE COUNTY SHERIFF'S DEPARTMENT

LABORATORY REQUEST

ATTN: NARCOTICS DIV.

DATE: [REDACTED]

SN CASE #: [REDACTED]

LAB #: [REDACTED]

SUSPECT(s):
[REDACTED]

RECEIVED FROM: Officer [REDACTED]

DATE RECEIVED: [REDACTED]

ITEM(s) EXAMINED:
ITEM #1: Sandwich bag w/green vegetation, seeds and stems.

RESULTS OF EXAMINATION

Marijuana and its active ingredient, Tetrahydrocannabinol (THC), was detected in ITEM #1

[REDACTED]
C.S.S.T.

DOC 6

4-13



LARRY WELCH
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL

STATE OF KANSAS

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(913) 296-8200



CARLA J. STOVALL
ATTORNEY GENERAL

LABORATORY REPORT

Attn: [REDACTED]
TO: [REDACTED]

DATE [REDACTED]
KBI CASE# [REDACTED]
KBI LAB# [REDACTED]
Contributing Agency Case# [REDACTED]

RECEIVED ON [REDACTED]

VICTIM(S):

SUSPECT(S): [REDACTED]

ITEM(S) EXAMINED:

- .19 CB1 - Handrolled cigarette butt.
- 3.25 CB2 - Baggie containing vegetation.
- 61.89 CB4a - Ziplock bag containing vegetation.
- .39 CB6 - Handrolled cigarette butt.
- .57 CB8 - Baggie containing vegetation.

RESULTS OF EXAMINATION

Marihuana and its active ingredient, Tetrahydrocannabinol (THC), were detected in Items CB1, CB2, CB4a, CB6 and CB8.

Weights of Items CB1 and CB6 - 0.19 and 0.39 grams.

Net weights of Items CB2, CB4a and CB8 - 3.25, 61.89 and 0.57 grams.

Items should be picked up at your earliest convenience.

Larry Welch
DIRECTOR

[REDACTED]

Forensic Chemist

[REDACTED]

DOC 7



LARRY WELCH
DIRECTOR

KANSAS BUREAU OF INVESTIGATION

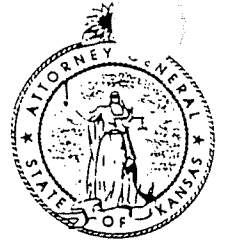
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(913) 296-8200



CARLA J. STOVALL
ATTORNEY GENERAL

CERTIFICATE of ANALYSIS

PURSUANT to KANSAS STATUTE KSA 22-3437 and KSA 53-601.

I, Cindy Patterson (BA), a duly employed Forensic Scientist for the Kansas Bureau of Investigation for over 11 years, having completed the Official Training Protocol of the KBI Forensic Laboratory for marihuana and tetrahydrocannabinol testing, and having previously analyzed over 6,000 samples for the presence of marihuana and/or tetrahydrocannabinol, have analyzed the evidence described in the KBI Laboratory Report for KBI Case# [REDACTED] KBI Lab# [REDACTED] which is attached and incorporated by reference herein. I hereby attest that the evidence was properly sealed at the initiation of the examination. In the performance of said analysis I followed the approved Standard Operating Policy for evidence handling, and sample analysis. The methodologies used include the following:

- Weight Determination
- Microscopic Examination
- Thin-Layer Chromatography
- Duquenois-Levine Color Test

These methodologies are generally recognized in the forensic specialty of chemistry as reliable for the identification of marihuana and/or tetrahydrocannabinol and have been accepted by the courts of Kansas in previous cases. All testing procedures were performed in an approved manner and all results were consistent with all pertinent quality assurance protocols for marihuana and/or tetrahydrocannabinol testing pursuant to the standards of the KBI Forensic Laboratory as set forth under the Director of the Kansas Bureau of Investigation.

I certify that I am the Forensic Scientist who performed the analysis and attest that the conclusion(s) on said Laboratory Report are, within reasonable scientific certainty, accurate.

I declare, verify and certify under penalty of perjury that the foregoing is true and correct, executed on this [REDACTED] day of [REDACTED], 199[REDACTED].

[REDACTED]

Forensic Chemist

Doc Ya

4-15

FBI use of DNA is called flawed

Fingerprinting technique used to provide evidence is based on miscalculations, report says.

The Associated Press

WASHINGTON — DNA fingerprinting can be powerful evidence in criminal trials, but the FBI uses a flawed statistical base in presenting the evidence to juries, two researchers said in a study to be published today.

"The FBI should change their method of calculation," said Daniel L. Hartl of the Washington University School of Medicine in St. Louis.

The study, co-written by Hartl and R.C. Lewontin of Harvard, was being published in the journal *Science*, which also included a rebuttal.

DNA fingerprinting is based on concept that each person has a unique genetic pattern. DNA, or deoxyribonucleic acid, is a molecule in the nucleus of body cells that contains the genetic pattern.

Scientists can extract the DNA pattern from blood, semen, hair or tissue recovered from crime

scenes. The pattern in those specimens can then be compared with the pattern in specimens taken from a suspect. The technique can also be used to determine parentage.

But Hartl said the FBI used an imprecise statistical comparison in applying this technique.

For example, he said, federal investigators will match a pattern established from crime scene material with the pattern for the genes in the suspect's DNA. The probability of any other individual's having the same pattern is then compared with a reference established for an entire race.

Using that system, Hartl said, federal prosecutors then can claim that the chances that any other person of the same gender and race had the same pattern is one out of tens of millions.

Actually, he said, the probabilities would be much lower if the reference pattern used was based on the same ethnic group as the

suspect.

Hartl cited as an example a Missouri rape case in which the accused man claimed that his brother committed the crime. DNA evidence from semen samples were compared and showed certain matches in the genetic pattern.

When the FBI compared that pattern with its broad reference pattern, it determined that the chances of anyone else's having that pattern was 1 in 178 million.

However, said Hartl, if the pattern had been compared with others in the suspect's family, the odds would have dropped to between 1 in 128 to 1 in 256.

The researcher said the evidence could be strengthened if the FBI used more genes to establish a pattern match between the crime scene specimen and the suspect. Even though there are thousands of genes, he said, the FBI typically uses only four or five to establish a pattern match. The more genes used, he said, the greater the certainty of a true match.

Hartl said the comparison also would be better defined if the FBI

used average patterns from subgroups within a racial group. For instance, if the suspect is of a certain ethnic group, then the probabilities should be based on an average reference pattern established from the same ethnic group.

The rebuttal by Ranajit Chakraborty of the University of Texas and by K.K. Kidd of Yale said current procedures used to present DNA evidence do not need to be changed to be useful in court.

"When the DNA typing is done with care, matches can provide overwhelming evidence that cannot be coincidental," the article said.

PUBLISHER'S NOTICE

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Doc 8

11-16

KBI erred; hair in lake from buffalo

By SHERRY PIGG

The Capital-Journal

12-10-73

The mystery of the hair pulled from the outlet area of Lake Perry is solved, and the search for a body is over.

On Thursday, the Kansas Bureau of Investigation reversed its earlier finding and said the hair "most likely" came from a buffalo hide that also was found in the outlet.

OSKALOOSA

The KBI's final report caps a mystery that began Saturday night when a Grantville man snagged a clump of more than 100 strands of straight, black hair on his hook while fishing.

A preliminary report from a KBI forensic scientist indicated the hair was human, prompting Jefferson County Sheriff Roy Dunnaway to bring in divers to search the outlet area on Sunday.

The only thing the divers found was a four-foot section of what they believed was buffalo hide. Sheriff's deputies took the hide to the KBI late Wednesday for examination.

Once KBI scientists were able to compare the hairs with the hide, they reversed their finding and Dunnaway called off his search.

"Frankly, it was human error," said KBI Director Robert Davenport. "Our people missed the mark on the exam. We regret that it happened, but we're human and humans do make mistakes."

Ron Jones, director of the KBI laboratory, said the fact the first sample of hair had many of the same characteristics as human hair was what prompted the initial erroneous identification.

He said the error was discovered during the second examination when comparisons were made between the clump of hairs and the hide.

After learning of the error Thursday, Davenport contacted Dunnaway to apologize and set the record straight. He also set about changing KBI procedures to ensure that on tricky cases laboratory supervisors double-check examination results before reports are released.

DOC 9

4-17

Evidence falsified; chemist accused

Charges of tainted police lab work cast doubt on at least 171 criminal convictions

By JULIA PRODIS
The Associated Press

*Top left
8-5-94*

HONDO, Texas — A police chemist whose testimony helped put at least three innocent men behind bars surrendered Thursday on charges he falsified evidence in a rape case.

Fred Zain's allegedly tainted lab work and shaky testimony has brought at least 171 criminal convictions into question in Texas and West Virginia, where he also faces charges.

Zain, 43, declined to comment as he arrived in court to answer charges of perjury related to evidence in a Uvalde County rape case.

"He should be put away for a long time like I was put away in prison doing hard labor," said Gilbert Alejandro, who was convicted of the rape in 1990 in part because of Zain's testimony.

Alejandro was freed two weeks ago after a medical examiner's report found his semen didn't match semen on the victim. Zain had testified that it matched. Two jurors testified in a hearing last week that they would have acquitted Alejandro without Zain's testimony.

In another Texas case in 1990, a man was convicted of murder in part because of Zain's testimony about blood tests he performed. Jack W. Davis came within one juror's vote of being sentenced to death and was instead sentenced to life.

Davis was freed after Zain changed his testimony and acknowledged that Davis' blood wasn't found at the crime scene.

If convicted, Zain could face up to 10 years in prison and a \$10,000 fine.

Zain, who was charged July 26, was freed Thursday night after posting a \$6,000 bail bond.

His lawyer refused to discuss the charges against his client, but said, "I think there's no criminal intent."

In West Virginia, Zain was charged last month with perjury and lying about performing tests in a 1991 murder trial.

He worked in West Virginia as a serologist for the state police from 1980 to 1989 before moving to San Antonio, 40 miles east of Hondo. A year ago, he was fired from his job as Bexar County's chief physical evidence officer.

Zain's faulty work first came to light in 1992 after evidence from a 1987 West Virginia rape case was retested and contradicted Zain's testimony. The rape conviction of Glen Dale Woodall was overturned.

Prompted by that case, the West Virginia Supreme Court found in a 1993 report that at least 71 cases there were questionable because of Zain's "long history of falsifying evidence in

criminal prosecutions."

Since then two men in West Virginia — imprisoned for years based partly on Zain's work — have been freed and granted retrials.

At least 100 other cases in Texas that relied on Zain's lab work also are being reviewed.

"It could be the first trickle before the dam breaks," said Alejandro's lawyer, Emmett Harris.

DOC 10

81-4

Thursday, January 30, 1997

NATIONAL

FBI CRIME LAB UNDER A MICROSCOPE SHAKE-UP FOLLOWS LAPSES THAT ARE TARNISHING
THE AGENCY'S REPUTATION
DAVID JOHNSTON ; ANDREW C. REVKIN The New York Times

For decades, the FBI's reputation as a crime-fighting agency has rested heavily on its high-tech forensic laboratory, which could solve baffling crimes from a speck of blood, a sliver of paint or the thinnest filament of human hair.

But an investigation by the Justice Department's inspector general has put the FBI laboratory, and the way the agency has used it, under the glare of public scrutiny.

The findings, turned over to FBI officials last week, are threatening to shatter the image of an agency on the cutting edge of scientific sleuthing.

On Monday, FBI officials announced a shake-up at the lab, transferring four senior employees, including the heads of the chemistry and explosives units, the first disciplinary personnel actions in what officials say will be a thorough overhaul of the lab's operations.

The report has not been made public, but current and former FBI lab officials who have been interviewed by the inspector general's office have said that dozens of cases have been affected by problems associated with the lab's work.

Among the problems cited by the officials were sloppy handling of evidence and lax procedures within the lab. In addition, they complained of the work of agents who use the lab to make their cases, including unreliable processing of the material sent to the lab for analysis and misuse of the lab's findings by FBI agents and their supervisors.

This range of problems has been evident in several well-known cases:

-- After federal agents searched the residence of Richard Jewell, a private security guard who was an early suspect in a

DOC 11

4-19

bombing at the Atlanta Olympics last summer, FBI scientists and other specialists warned that "you've got the wrong guy," an FBI laboratory official said. Their cautionary remarks, based on the absence of even trace amounts of explosive materials, went unheeded for months.

-- After a truck bombing in Oklahoma City in 1995, lab experts complained that field agents had haphazardly examined the crime-scene, the clothing of Timothy McVeigh, one of two defendants later charged with the explosion, and the vehicle driven by him. The evidence was handled sloppily, with some of it mistagged or spilled from evidence bags, when it was sent to the lab for examination.

Errors at the lab are already providing defense lawyers with ammunition to use in some of these cases and appear to threaten the FBI with challenges to expert forensic testimony in cases based on the more than 600,000 evidence examinations conducted each year by the lab.

The problem could expand beyond federal cases to affect evidence in thousands of state and local cases.

Doc 11a

Houston Chronicle
Copyright 1997

Friday, January 31, 1997

A NEWS

FBI crisis may be felt nationwide/Tests at crime lab allegedly tainted
ROBERT L. JACKSON, DAVID G. SAVAGE
Los Angeles Times

WASHINGTON - Fearing that an undetermined number of federal prosecutions could be put in jeopardy, Justice Department officials said Thursday they have been telling prosecutors and defense attorneys across the country in recent weeks about potential flaws in evidence caused by serious problems at the FBI crime laboratory here.

In the department's first comments about a still-secret inspector general's report on the lab, Deputy U.S. Attorney General Jamie Gorelick said that officials have sought to preserve the integrity of prosecutions by reporting evidentiary problems to both sides.

Gorelick said that she hopes no prosecutions will be compromised by the alleged misconduct and sloppy procedures in the FBI's lab. But several former federal prosecutors and legal experts disagreed, saying that hundreds of prosecutions could be affected.

These legal authorities said that shortcomings uncovered by the investigation could force the dismissal of some charges in federal or state prosecutions where FBI lab reports were crucial. New hearings could be granted in current cases and some old cases could be reopened, they added.

"This is explosive," said Neal Sonnett, a Miami defense attorney and former federal prosecutor. "They have had such a wonderful reputation, but if that is called into question, it could have a devastating effect in many cases."

"This is going to be a royal pain in the neck for judges and prosecutors," said Joseph DiGenova, a former U.S. attorney in the District of Columbia. He predicted that judges would grant many defense motions for additional data about FBI lab tests.

In a briefing for reporters, Gorelick acknowledged that "a

DOC 12

4-21

serious set of problems" had been uncovered during the inquiry, but she insisted that efforts have been under way to correct them, partly with assistance from a panel of outside scientists.

Some details of the inspector general's report emerged earlier this week when the FBI transferred three laboratory officials and suspended another for poor management.

Although first reports suggested that the lab was found to have used sloppy procedures in some cases, documents obtained by the Los Angeles Times said investigators also uncovered far more serious allegations that lab employees were pressured to alter the conclusions of their analyses of evidence and that supervisors sometimes changed the findings to support criminal prosecutions.

Gorelick declined to comment when asked if the inspector general has concluded that those allegations, made by several lab workers, had been proved.

The FBI is still "the best law enforcement agency in the world," she said, even though flaws were documented "in a limited number of units" in the lab.

Other sources said that one of these units deals with analysis of explosives, and that the Oklahoma City bombing prosecution and convictions in the World Trade Center bombing could suffer if federal courts rule that important pieces of evidence have been tainted by poor lab work.

The FBI laboratory conducts more than 600,000 examinations a year for federal, state, local and international law enforcement agencies.

Asked if she could give assurances that no prosecutions were being compromised, Gorelick replied: "Until we have the final report and until the courts have a chance to examine each and every allegation as it applies to each and every case, we won't be able to make blanket statements."

She declined to identify any specific case where a potential problem exists.

DOC 12a

4-22

#5

House Bill 2209
February 20, 1997
Karen C. Wittman
Adjunct Professor of Law
Washburn University
Outline in Opposition

A. Study-Univ. Of Illinois-Criminal Justice Department

1. Unequivocal Laboratory Results
2. Tougher/Maximum Sentencing

B. Zain's World-Fred Zain

1. Head of Serology Dept.
2. "pro-prosecution"
3. 133 cases
4. Misrepresented/Falsified Tests
5. Misrepresented Credential
6. Charged w/ perjury in two states

C. Allison Lancaster

1. Anonomous Tip
2. 5 Years Falsifying Drug Test

D. NY State Police Troopers

1. Evidence Tampering
2. Falsifying Fingerprints
3. 30 Cases

E. Problems Identified by Forensic Scientists

1. Incompetency
 - a. Inferior Qualification
 - b. Failure to provide resources, training, supervision
2. Practicing Science in the Legal Profession
 - a. Failure to remain objective
 - b. Not true to their science

House Judiciary
Attachment 5
2/20/97

3. Misrepresentation

- a. Credentials
- b. Findings

4. Ethical Code

- a. Enforcement
- b. ASCLD

F. Course-Forensic Science & Law

1. Cross-Examination

- a. Credentials
- b. Training
- c. Equipment
- d. Technique (new)
- e. General Evidence Handling/Packaging/storage
- f. Criteria for Reporting and Results
- g. Proficiency Testing

2. Unethical to be Unprepared for Scientific Evidence

G. Laboratorys/Organizations in HB 2209

- 1. No Indication of Impropriety
- 2. Great for Analyst

H. Summary

- 1. Scientific Evidence-important role
- 2. Potential for Abuse
- 3. Forensic Science Ethical Concerns
- 4. Cross-Examination Essential
- 5. Administrative vs. Due Process



Kansas Bureau of Investigation

Larry Welch
Director

Carla J. Stovall
Attorney General

TESTIMONY
TERRY L. KNOWLES, DEPUTY DIRECTOR
KANSAS BUREAU OF INVESTIGATION
BEFORE THE HOUSE JUDICIARY COMMITTEE
IN SUPPORT OF HOUSE BILL 2250
FEBRUARY 20, 1997

Mr. Chairman and Members of the Judiciary Committee:

I appear today on behalf of the Kansas Bureau of Investigation (KBI) in support of House Bill 2250.

While the KBI is always supportive of another forensic laboratory, in this case the Missouri Southern State College Regional Crime Laboratory in Joplin, I would like to take this opportunity to report to the Judiciary Committee the KBI's plan to enhance the level of forensic services to the law enforcement agencies located in Southeast Kansas.

As you are aware, drug submissions from Kansas law enforcement to the KBI Forensic Laboratory continue to increase. In 1996, the KBI received 5,788 drug cases from around the state which represents a 58 per cent increase since 1990. From the 15 counties in Southeast Kansas, we received 570 drug cases --- a 22 per cent increase just in the past two years. This does not include those drug cases that are being sent to Joplin for analysis.

In an effort to keep pace with the demand for drug analysis from Kansas law enforcement, the KBI hired an additional drug chemist in our west region laboratory in Great Bend, and an additional drug

chemist in Topeka. Further, we have instituted an overtime project during the past three months, working after hours and during the weekends to keep up with the state-wide demands for service. In spite of our best efforts, we are experiencing a backlog of cases.

One of the contributing factors to this backlog is the fact that KBI forensic scientists, in responding to subpoena for court testimony, must travel considerable distances from the KBI laboratories in Topeka and Great Bend. This greatly reduces the amount of time available to them to be "on the bench" analyzing cases.

A solution to this problem would be to create a satellite KBI laboratory in Southeast Kansas, possibly at Pittsburg, and to assign two drug chemists to examine the narcotic cases originating from that area.

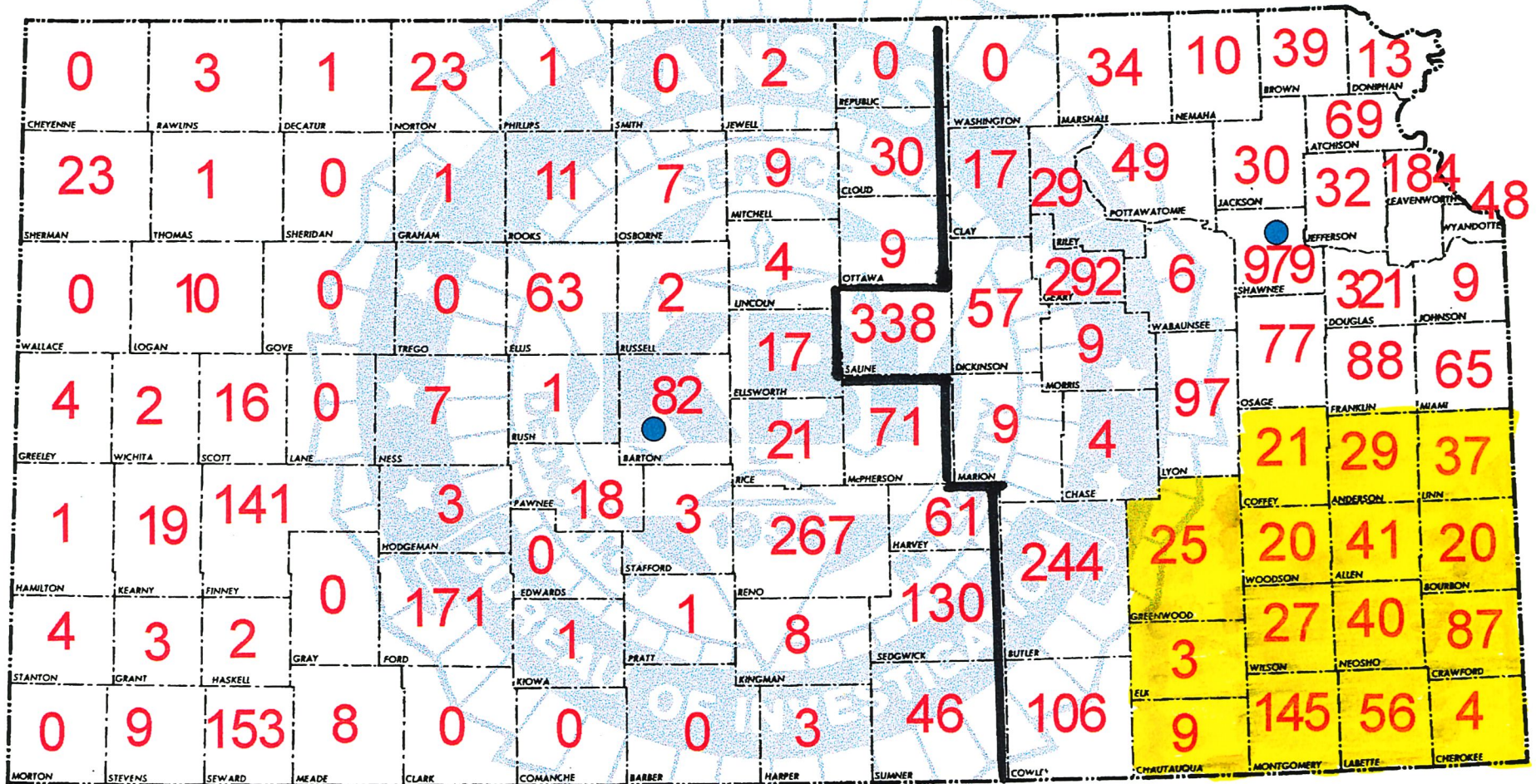
By establishing a satellite laboratory in Southeast Kansas, the travel time for KBI drug chemists would be greatly reduced, and would therefore, reduce the turnaround time required in analyzing drug cases.

The KBI will receive approximately \$190,000 through the High Intensity Drug Trafficking Area (HIDTA) grant to provide laboratory support to narcotic investigations specifically targeting the problem of methamphetamine. This money has already been approved by the Federal government, and could be utilized, in part, to help fund the satellite project in Southeast Kansas.

Attorney General Carla Stovall and the KBI are aggressively pursuing this satellite plan, as it would be a major step forward in meeting the needs of law enforcement agencies in Southeast Kansas. This, in turn, would free up chemists in Topeka and Great Bend to better serve law enforcement throughout the remainder of Kansas.

Thank you. I would be happy to answer any questions.

DRUG CASES SUBMITTED TO KANSAS BUREAU OF INVESTIGATION LABORATORY 1996



Municipal and County law enforcement	5,292
State law enforcement	468
Federal law enforcement	17
Others	11
TOTAL	5,788

● KBI Laboratories in Topeka
Headquarters and Great Bend
Regional Office