

TEL: (913)492-6200
FAX: (913)827-1708
CELL: (913)523-6570

LAW OFFICE OF
RODNEY K. MURROW, PA
PARKWAY PLAZA
8841 LONG STREET
LENEXA, KANSAS 66215

MURROWLAW@GMAIL.COM
WWW.MURROWLAW.COM
SKYPE: ROD.MURROW

ADMITTED IN KANSAS AND MISSOURI

February 12, 2013

“[Grand juries] are not appointed for the prosecutor or for the court; they are appointed for the government and for the people....” *Hale v. Henkel*, 201 U.S. 43, 61 (1906)

**Honorable Ladies and Gentlemen of the Kansas House Judiciary Committee Regarding
HB2182:**

I began as a skeptic.

When I was first approached to assist with the preparation and presentation of an issue to a grand jury convened pursuant to a citizen’s petition, I heard many concerns expressed about the prosecutor’s agenda concerning that case. It is certainly not unusual to hear allegations of bias and even conspiracy in such matters, so I took these concerns with the usual grain of salt. However, what I would watch transpire over the coming weeks would convince me absolutely that the procedures for obtaining a grand jury pursuant to a citizen’s petition as the law is currently written were in dire need of considerable and immediate reform.

The grand jury at issue was scheduled to be impaneled on October 26, 2012. A series of events leading up to that date resulted in the inescapable conclusion that the entire process had been hijacked by the prosecutor in direct contravention of K.S.A. 22-3001, *et seq.*

Monday, October 15

Eleven Days Prior to Grand Jury Impanelment

I received a telephone call from the district attorney requesting a list of witnesses that the petitioner wished to call before the grand jury. When I asked why this list of witnesses was needed in advance of convening the grand jury, I was told that it was so the district attorney’s office could “investigate” this issue and “prepare” to present the case to the grand jury. I then inquired as to why such “preparation” was necessary given that the prosecutor had no statutory right to assist the grand jury until he specifically made such a request to the grand jury and was allowed to do so. At this point, the grand jury was still eleven days away from being impaneled. Further, the statutory function of a grand jury is investigative and all such powers to call or identify witnesses were vested in the grand jury, not the prosecutor. I was told that such preparation was necessary so as not to “waste the grand jury’s time.”

I then inquired as to whether the district attorney’s office had sought and been provided a list of

HOUSE JUDICIARY

DATE: 2/12/13

ATTACHMENT ✓

witnesses by those who opposed the petition and I was informed that such a list had, in fact, been provided. I then asked whether the witness lists provided to the district attorney's office by both sides would be exchanged, in much the same way that witness lists are exchanged in discovery. The district attorney stated that he did not know and had never been asked that question before but that he would inquire and let me know, and we concluded the call.

Thursday, October 18

Eight Days Prior to Grand Jury Impanelment

The petitioner and I attended a scheduled meeting with two assistant district attorneys charged with assisting in the "presentation" of the case to the grand jury. Also present in the room was an investigator for the district attorney's office. I began by inquiring as to whether a decision had been made concerning the exchange of witness lists as discussed with the district attorney three days earlier. Both assistants informed me that they were unaware that I had made such a request, the district attorney had not mentioned it then and that there had been no discussions regarding issue.

We were again requested to provide a list of witnesses so that they could "investigate" and "prepare." Indeed, they had their own investigator present in the room just so he could assist in such an investigation. They further stated that they had the "right" to conduct the grand jury. We reviewed K.S.A. 22-3007 with them and pointed out that no such "right" exists under the statute and further that the power to investigate lies with the grand jury, not prosecutor. When asked what such "investigation" and "preparation" entailed, the assistant district attorneys stated that they needed to "interview the witnesses" so that they could "prepare" and not "waste the grand jury's time."

I then inquired as to how long they had been in possession of the list of witnesses provided by those whom oppose the petition, and I was told it was "about two weeks." When asked whether any of those witnesses had yet been "interviewed," both assistant district attorneys responded that they had not interviewed any of them and that they had taken no action on that witness list. I then asked why it was so important for them to have a list of witnesses from the petitioner to "interview" and "prepare" for the grand jury when they had taken no action regarding the witnesses proposed by those who opposed the petition despite having had it for two weeks. They had no answer. At this point, it became clear that the district attorney's office had clearly prejudged the issue and sought to subvert the grand jury process. The meeting concluded with the petitioner agreeing to provide the witness list to the judge who would be presiding over the grand jury.

Very shortly after the list was provided to the judge, it was turned over to the district attorney's office, and the district attorney's office immediately began contacting those witnesses to "interview" them. All witnesses with whom we spoke stated that they were told by representatives of the district attorney's office during this "interview" that the district attorney's office would be "conducting the grand jury and asking the questions." All such witnesses also stated that it was clear to them that the district attorney's office did not wish to see the case move forward.

Tuesday, October 23
Three Days Prior to Grand Jury Impanelment

I received a letter from the assistant district attorneys present at the October 18 meeting. A copy of that letter is attached hereto as Exhibit A. I responded with correspondence of my own that same day, a copy of which is attached hereto as Exhibit B, in which I outlined what I believe to be the significant bastardization of the grand jury procedures by the district attorney's office. Little did we know at the time that letter was written just exactly how prophetic it would become only three days later.

That letter stated in pertinent part as follows:

As we stated at our meeting, this is Mr. Cosby's eighth citizen-filed grand jury, and he has never been requested, let alone pressured, to identify witnesses to the county or district attorney's office prior to the impaneling of the grand jury.

You have continuously asserted, both to me and Mr. Cosby and other witnesses that you have been improperly contacting, that you will be conducting the grand jury and asking the questions. Not only is this assertion highly presumptuous on your part, it is directly contrary to the rights you are given in grand jury proceedings under Kansas law. At this juncture, you have no such authority. We addressed the statute directly in your presence when you stated during our meeting that you had a "right" to conduct the grand jury. KSA 22-3007 states as follows:

- (1) *When requested by any grand jury* it shall be the duty of the prosecuting attorney to attend sessions thereof for the purpose of examining witnesses or giving the grand jury advice upon any legal matter.
- (2) The prosecuting attorney shall, *upon his request*, be permitted to appear before the grand jury for the purpose of giving information relative to any matter cognizable by the grand jury, and *may be permitted to interrogate witnesses if the grand jury deems it necessary*. (Emphasis added)

Your office has not been requested *as required by KSA 22-3007(1)* to take any action by the grand jury because the grand jury has not yet even been impaneled. Further, you have made no request to appear before the grand jury *as required by KSA 22-3007(2)* and question witnesses because again, the grand jury has yet to even be impaneled.

Further, KSA 22-3010 reads in full as follows:

Prosecuting attorneys, special counsel employed by the grand jury, the

witness under examination and his counsel, interpreters when needed and, for the purpose of taking the evidence, the reporter for the grand jury, *may* be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting. (Emphasis added)

It is abundantly clear from the plain text of these two statutes that it is the grand jury which decides what witnesses will be called and what questions will be asked. *You have no statutory right to conduct these proceedings and you are blatantly misrepresenting your authority to witnesses likely to appear before that grand jury.* Further, you are seeking to influence their testimony by asking leading questions and knowingly misrepresenting that you will be in charge of the grand jury when you know that you have no such statutory right and in fact can only do so at the express request and/or approval of the grand jury, a grand jury which hasn't even yet been impaneled.

....

You are not "preparing." You are taking over the role of the grand jury and conducting an investigation when it was your office's failure to conduct that investigation that required the use of a citizen petition for a grand jury. The fact that your office failed to take any action on this matter strongly indicates that your office believes that there were no crimes worthy of investigation prior to the filing of the citizens' petition. This issue has received extensive local, and even national, press coverage with no action taken by your office. That is why the citizens' petition was required, and it is for just such cases that Kansas law authorizes the use of the citizens' petition.

Mr. Cosby has been very clear about his very valid, and now confirmed, concerns that there would be an attempt to hijack the grand jury process and improperly influence the grand jury. The statements in your October 23 correspondence and your actions to date make it crystal clear that your office is usurping the power now properly vested in the grand jury.

Friday, October 26
Grand Jury Impanelment

The grand jury dismissed the petition on the same day it was impaneled without calling a single witness.

On the day of the grand jury impanelment, process servers for the district attorney's office immediately began to serve subpoenas to those witnesses listed by the petitioner. It is unknown whether the grand jury requested this as required by statute but, given that the grand jury never called a single witness, it seems more likely that these subpoenas were prepared and served by the district attorney's office on their own volition. Shockingly, multiple witnesses reported being told by the districts attorney's process servers "not to worry" because "there is no way this case is moving

forward.” Apparently, representatives of the district attorney’s office no longer saw a need to even attempt to conceal their bias and contempt for the issue before the legally-impaneled grand jury.

The email from Dr. Bernard Franklin and the subpoena served for his minor daughter are attached hereto as Exhibit C. In that email, Dr. Franklin states that he was told by the district attorney that “...he [the district attorney] did not think there was another date beyond Tuesday and *he does not think this case will move forward.*” (Emphasis added) it should also be noted that by the time Dr. Franklin was even able to send this email at 5:00PM, the grand jury had already dismissed the petition without calling a single witness.

Conclusion

Although the right to a grand jury in Kansas is statutory rather than constitutional, the concept of a grand jury was enshrined by the Founders in the Fifth Amendment to the United States Constitution. Scholars have noted that:

Constitutional framers considered this protection “a bulwark against oppression” due to the grand jury’s historic powers to investigate the government and deny government indictments.²¹ . . . In addition to its traditional role of screening criminal cases for prosecution, common law grand juries had the power to exclude prosecutors from their presence at any time and to investigate public officials without governmental influence.²³ These fundamental powers allowed grand juries to serve a vital function of oversight upon the government.²⁴ The function of a grand jury to ferret out government corruption was the primary purpose of the grand jury system in ages past.²⁵

If It's Not a Runaway, It's Not a Real Grand Jury, 33 Creighton L. Rev. 821, 825-826 (2000).

The separation of powers enshrined in both the United States and Kansas Constitutions are the very heart of good government and the balance of power. Ultimately, it is the citizens who must be the final and ultimate check on criminal corruption and misconduct by elected officials. The grand jury, especially one convened pursuant to a petition by those very citizens, has long been the means by which the citizens can exercise that final and ultimate check on power. To allow that process to be held captive, and even perverted, by some of the very elected officials on whom the grand jury is supposed to be a check is to destroy the entire purpose of the grand jury. Indeed, it completely inverts the purpose of the grand jury and turns it into a tool by which elected officials can suppress and frustrate the will of the very citizens sought to be protected by it.

The current bill before this committee will prevent such further abuse by elected officials of the grand jury process when one is to be impaneled pursuant to a citizens petition. The grand jury created by a citizens petition is the vital process by which the governed can hold accountable those who govern them and I strongly encourage this committee to pass HB 2182 to prevent that essential

process from being subverted any longer.

I thank you for allowing me this time.

OFFICE OF DISTRICT ATTORNEY
STEPHEN M. HOWE, DISTRICT ATTORNEY

October 23, 2012

Rodney K. Murrow
Commerce Bank Building
8700 Monrovia, Suite 208
Lenexa, KS. 66215

Dear Mr. Murrow,

As the attorney for the petitioner, thank you for meeting with us last Thursday, October 18, 2012, regarding the upcoming grand jury proceedings. It is our duty to attend sessions for the purpose of examining witnesses or giving the grand jury advice on any legal matter when requested. As you are aware, prior to the meeting our office had previously requested that you provide us with a list of proposed witnesses and a summary of their testimony by October 15th. As of today's date we have not received the requested information regarding potential witnesses for the petitioner.

On October 15th, Mr. Phillip Cosby informed Ms. Jones that he had provided a witness list to Judge Gerald Elliott's office. During a subsequent phone conversation with Mr. Henderson, Mr. Cosby stated that he was refusing to provide the requested list and suggested that our office obtain the list from Judge Elliott. During our meeting last Thursday, Ms. Jones again requested a list of proposed witnesses and a summary of their testimony so we could properly prepare for the upcoming grand jury proceedings. Both you and Mr. Cosby repeatedly refused to provide any information regarding potential witnesses. You both also refused to discuss what crime or crimes you believed the grand jury should investigate and whom you felt was an appropriate defendant should the grand jury determine that a crime was committed.

During the meeting last Thursday, Mr. Cosby indicated that he was a potential witness but gave no indication as to the scope of his testimony. You identified Dr. Mark Laaser as a potential witness who will testify regarding the harm to minors from sexting. It is our understanding that Dr. Laaser's proposed testimony was originally intended to be presented through Skype. Due to the secrecy requirements of grand jury proceedings our office does not believe that using Skype, in place of live testimony, is appropriate. After discussing the Skype issue last Thursday, you suggested the possibility of presenting a video affidavit from Dr. Laaser. After considering the issue, we do not feel that would be appropriate either. A video affidavit would deprive the grand jury of its right to ask the witness questions. It is our position only live testimony would be appropriate. We find this to be particularly appropriate in Dr. Laaser's case, since he serves as an adjunct professor at a local university and our office has been given no indication that Dr. Laaser is unavailable or otherwise unable to appear before the grand jury.

You also indicated that one juvenile female witness, who was not identified during the meeting, may need immunity as a condition of her testimony. As was explained, the decision to grant immunity can only be made by the District Attorney. Information regarding

whether this witness desires immunity must be provided to this office no later than Thursday October 25th. This information should include for what actions the witness is believed to need immunity, the crime or crimes for which immunity is sought, confirmation that the actions giving rise to any criminal act in fact occurred in Johnson County, Kansas, and a summary of her testimony indicating why immunity is necessary.

You and Mr. Cosby also requested that the grand jury room would be equipped to show a power point presentation. We will make arrangements with court staff to ensure that the meeting room is equipped with the appropriate technology so that power point presentations will be possible. However, our office requests that a copy of any power point presentation and copies of any proposed exhibits of any kind that are intended to be presented to the grand jury be provided to our office no later than Thursday October 25th for our review. In the event that our office is selected to assist the grand jury in its proceedings we do not feel it appropriate to introduce evidence or exhibits that we have not had an opportunity to review.

We are, of course, aware that the grand jurors will ultimately decide if they wish to utilize our services in presenting information for their consideration and questioning witnesses. It is completely appropriate for us to prepare as if we will be assisting the grand jury. If the grand jury does decide to utilize our office as its attorneys, our preparation and ability to fully and adequately present your side of the issue will be compromised by your lack of cooperation and your unwillingness to provide us with the necessary information to properly prepare.

We recently received from Judge Elliott's staff, a list of names and contact information for potential witnesses for the petitioner. We have attempted to contact many of the identified individuals to prepare for the grand jury proceedings. Some witnesses spoke with us and were very forthcoming. Others, we were unable to reach. Natalie Wolfe and Jeremiah Enna, who are both on your proposed list, have refused to speak with us and instructed us to call you.


Please identify which witnesses, groups and organizations you believe you represent in these proceedings. We do not wish to inappropriately contact individuals represented by counsel. However it does appear to us your representation of some or all of the witnesses could present potential conflict of interest issues that we would like resolved in advance.

We have stated that it is our intention to present both sides of the case fairly, objectively and neutrally. To that end, we again request that you make your witnesses available to us so that we can adequately prepare for the proceedings in the event that the grand jury decides to utilize our services. Continued noncooperation will only impede our ability to properly and fully present your side of the issue.

Sincerely,



Keith Henderson
Assistant District Attorney



Heather Jones
Assistant District Attorney

TEL: (913)492-6200
FAX: (913)227-0149
CELL: (913)523-6570

LAW OFFICE OF
RODNEY K. MURROW, PA
COMMERCE BANK BUILDING
8700 MONROVIA, SUITE 208
LENEXA, KANSAS 66215

MURROWLAW@GMAIL.COM
WWW.MURROWLAW.COM
SKYPE: ROD.MURROW

ADMITTED IN KANSAS AND MISSOURI

October 23, 2012

Mr. Keith Henderson
Ms. Heather Jones
JOHNSON COUNTY DISTRICT ATTORNEY'S OFFICE
Johnson County Courthouse
P.O. Box 728
Olathe, KS 66050

RE: *Upcoming Overland Park Arboretum Statue Grand Jury Investigation*

Dear Mr. Henderson and Ms. Jones:

I am writing in response to your October 23, 2012 correspondence, a copy of which is attached. Your correspondence confirms that my clients' concerns were well-founded. It is clear that you are attempting to improperly take over the grand jury process and improperly influence the grand jury. By a copy of this letter to Judge Elliott, I am requesting that your office *immediately* cease any further "investigation" as such investigation is now properly the province of the grand jury. You have repeatedly misrepresented your role and authority to our witnesses, confirming our hesitation to provide them to you. As we stated at our meeting, this is Mr. Cosby's eighth citizen-filed grand jury, and he has never been requested, let alone pressured, to identify witnesses to the county or district attorney's office prior to the impaneling of the grand jury.

You have continuously asserted, both to me and Mr. Cosby and other witnesses that you have been improperly contacting, that you will be conducting the grand jury and asking the questions. Not only is this assertion highly presumptuous on your part, it is directly contrary to the rights you are given in grand jury proceedings under Kansas law. At this juncture, you have no such authority. We addressed the statute directly in your presence when you stated during our meeting that you had a "right" to conduct the grand jury. KSA 22-3007 states as follows:

- (1) *When requested by any grand jury* it shall be the duty of the prosecuting attorney to attend sessions thereof for the purpose of examining witnesses or giving the grand jury advice upon any legal matter.
- (2) The prosecuting attorney shall, *upon his request*, be permitted to appear before the grand jury for the purpose of giving information relative to any matter cognizable by the grand jury, and *may be permitted to interrogate witnesses if the grand jury deems it necessary*. (Emphasis added)

Your office has not been requested *as required by KSA 22-3007(1)* to take any action by the grand jury because the grand jury has not yet even been impaneled. Further, you have made no request to appear before the grand jury *as required by KSA 22-3007(2)* and question witnesses because again, the grand jury has yet to even be impaneled.

Further, KSA 22-3010 reads in full as follows:

Prosecuting attorneys, special counsel employed by the grand jury, the witness under examination and his counsel, interpreters when needed and, for the purpose of taking the evidence, the reporter for the grand jury, *may* be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting. (Emphasis added)

It is abundantly clear from the plain text of these two statutes that it is the grand jury which decides what witnesses will be called and what questions will be asked. *You have no statutory right to conduct these proceedings and you are blatantly misrepresenting your authority to witnesses likely to appear before that grand jury.* Further, you are seeking to influence their testimony by asking leading questions and knowingly misrepresenting that you will be in charge of the grand jury when you know that you have no such statutory right and in fact can only do so at the express request and/or approval of the grand jury, a grand jury which hasn't even yet been impaneled.

As I am sure you are aware, the Kansas Court of Appeals has recently addressed the proper role of the district attorney in a citizen-filed petition in the case of *State v. Turner*, 45 Kan.App.2d 744, 250 P.3d 286 (2011). In *Turner*, a citizen-filed petition sought a grand jury investigation of criminal activity by the Board of Public Utilities. After six months of hearings, the grand jury returned an indictment against Mr. Turner for two counts of theft and 55 counts of presenting a false claim. Mr. Turner filed a motion to dismiss the indictment for abuse of the grand jury by the district attorney's office and the district court granted that motion. The district court found that the "State failed to conduct a fair grand jury proceeding and allowed information to be presented to the grand jury in a manner that caused the grand jury to become prejudiced against Defendant Turner." *State v. Turner*, 45 Kan.App.2d at 748, 250 P.3d at 290 (Kan.App.,2011). The *Turner* court went on to note that:

After hearing from both parties, the district court found that the State and Delaney had undermined the grand jury process to the point of depriving Turner of due process and his Fifth Amendment rights. Specifically, the district court found that the grand jury was repeatedly subjected to highly improper and prejudicial comments by Delaney that attempted to link Turner to the Thompson murder investigation . . . "

Turner, 45 Kan.App.2d at 748, 250 P.3d at 290 (Kan.App.,2011)

On appeal, the Kansas Court of Appeals began its analysis by outlining the grand jury procedures under KSA 22-3001 *et seq.* as follows:

We begin by outlining the basic statutory structure of grand jury proceedings in Kansas. A grand jury may be summoned based upon a citizen-filed petition pursuant to K.S.A. 22-3001(2). Additionally, a district court may order a grand jury to be summoned in any county in the district when it is determined to be in the public interest. K.S.A. 22-3001(1). The grand jury shall consist of 15 members pursuant to K.S.A. 22-3001(3). After a grand jury is impaneled, a district court appoints a presiding juror and a deputy presiding juror pursuant to K.S.A. 22-3004. Oaths are administered pursuant to K.S.A. 22-3003. Once the grand jury is impaneled and sworn, a district judge charges the jurors, giving them "such information as he deems proper and is required by law, as to their duties, as to any charges of crimes known to the court and likely to come before the grand jury." K.S.A. 22-3005(1). After the grand jury is charged, however, "it shall retire to a private room, and inquire into the crimes cognizable by it." K.S.A. 22-3005(2).

Turner, 45 Kan.App.2d at 750, 250 P.3d at 291 - 292 (2011)

Significantly, *nowhere in this summary does the Kansas Court of Appeals identify any rights or authority of the county attorney or district attorney prior to the impaneling of the grand jury.* Even after the grand jury has been impaneled, the directions are given by the judge to the presiding juror and deputy presiding juror with no role or input allowed or required by statute from the county attorney or district attorney.

The Kansas Supreme Court has expressly stated the limited and discretionary role played by the county attorney in Kansas grand juries as follows:

"In Kansas, a grand jury is a creature of statute and not of the constitution. Its function is investigatory and accusatory in contrast to a petit jury, which determines the guilt or innocence of an accused. Unlike a jury trial or preliminary hearing, a district judge does not preside over the grand jury proceedings, nor does a defendant have a right to be present or call or cross-examine witnesses. The county attorney has a limited role in the grand jury proceedings . . ." (Emphasis added)

State v. Snodgrass, 267 Kan. 185, 190, 979 P.2d 664 (1999).

Your office is attempting to improperly conduct an investigation that is *solely* the province of the grand jury in advance of the grand jury even being impaneled. The investigation you are attempting to conduct is an investigation that would be conducted when your office actually has the authority to indict. However, upon certifying the petition to convene a grand jury, that power has been removed from your office and granted to the grand jury.

In your October 23 correspondence, you state that:

"We are, of course, aware that the grand jurors will ultimately decide if they wish to

utilize our services in presenting information for their consideration and questioning witnesses. It is completely appropriate for us to prepare as if we will be assisting the grand jury. If the grand jury does decide to utilize our office as its attorneys, our preparation and ability to fully and adequately present your side of the issue will be compromised by your lack of cooperation in your unwillingness to provide us with the necessary information to properly prepare.”

However, you are not merely “preparing.” At our meeting on October 18 at your office, I asked directly whether you had been given a list of witnesses on behalf of the City of Overland Park or the Arboretum. You stated that you had been given such a list two or 2 ½ weeks previously. I then asked whether any of those witnesses had been interviewed. You stated that they had not. To confirm that, I turned to your investigator, who was also present at that meeting, and asked whether he had interviewed any of the witnesses on behalf of the City of Overland Park or the Arboretum, and he indicated that he also had not. You went on to state that you didn’t even know if you would be interviewing any witnesses on behalf of the City of Overland Park or the Arboretum.

Beginning immediately after you acquired our list of witnesses, you have been burning up the phone lines attempting to interview the witnesses that we have identified. But just a few days earlier, you stated that you had interviewed none of the witnesses on behalf of the City of Overland Park or the Arboretum despite having had that list for two weeks or longer, and had no plans to do so. Not only are you invading the province of the grand jury by attempting to conduct an investigation at this point, you are blatantly attempting to influence our witnesses before they even get to the grand jury.

You are not “preparing.” You are taking over the role of the grand jury and conducting an investigation when it was your office’s failure to conduct that investigation that required the use of a citizen petition for a grand jury. The fact that your office failed to take any action on this matter strongly indicates that your office believes that there were no crimes worthy of investigation prior to the filing of the citizens’ petition. This issue has received extensive local, and even national, press coverage with no action taken by your office. That is why the citizens’ petition was required, and it is for just such cases that Kansas law authorizes the use of the citizens’ petition.

Mr. Cosby has been very clear about his very valid, and now confirmed, concerns that there would be an attempt to hijack the grand jury process and improperly influence the grand jury. The statements in your October 23 correspondence and your actions to date make it crystal clear that your office is usurping the power now properly vested in the grand jury.

Therefore, we hereby demand that:

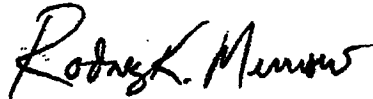
1. your office *immediately* cease any further attempts to contact any witnesses, whether they have been identified by us or on behalf of the City of Overland Park or the Arboretum or any other party;
2. your office be removed from any further involvement in this grand jury proceeding; and,

3. that you disclose all witnesses that you attempted to contact, and provide a summary of such contact including the questions you asked and the responses received to those questions, to the grand jury once it is impaneled.

Finally, we are asking that, pursuant to KSA 22-3006(3), Judge Elliott order that the grand jury be allowed to "...employ special counsel, investigators, and incur such other expenses for services and supplies as it and the court may deem necessary..." in lieu of your office's involvement.

I will address your legitimate issues concerning the immunity grant to the juvenile and the testimony of Dr. Mark Laaser separately.

Respectfully Yours,

A handwritten signature in black ink that reads "Rodney K. Murrow". The signature is written in a cursive style with a large initial "R".

Rodney K. Murrow

cc: Judge Elliott
Phillip Cosby

From: "Bernard Franklin, Ph.D." <bfranklinphd@gmail.com>
Subject: Fwd:
Date: October 26, 2012 5:00:43 PM CDT
To: Phillip Cosby AFA <pcosby@afa-ksmo.net>, Jimmy Dodd <jdodd@pastorserve.net>

Gentlemen.

Greetings from TCU in Ft. Worth, TX. I just concluded a brilliant conference on brain development for children from "trauma and hard places", led by Dr. Karyn Purvis. It was an absolutely outstanding conference.

I want to update you on a phone call that I had with the District Attorney. Since I was in the conference when he called this afternoon, he left a voice mail message about a subpoena and a special meeting he needed Christina to attend at 830 Monday morning. He wanted to serve the subpoena over the weekend. I called him back and told him that this was impossible since I was away and not due back to KC until Sunday evening. As for the meeting Monday morning, I shared with him that I could not make those arrangements this quickly. I have a number of things going on Monday morning, among those I have to take my mother-in-law to the airport as she has covered for me this week and needs to return home if the storm allows her to fly Monday morning. Obviously she is quite nervous. He then suggested Tuesday morning and I told him that I have a job interview Tuesday morning and I could not bring her to his office. We had a great conversation and I felt he was very understanding of our circumstances. I shared with him that I had not had time to brief my daughter on this case and the role she might play as I have been out of the city for much of October and this is not something I wish to discuss with her over the phone to prepare her for this appearance. Finally, I shared with him some of our challenges and that I was not eager for her to miss any school time. She is doing so well that I do not want to disrupt her attendance. Again he understood.

I asked if there was any other time period in the coming weeks that I could meet his needs and he indicated that he did not think there was another date beyond Tuesday and he does not think this case will move forward. To this I said that I did not want to get my daughter's anxiety up if this case may not move forward. I

EXHIBIT C

did not want to get my daughter's anxiety up if this case may not move forward. I then asked if our lack of attendance would disqualify us and he said it might. However, he said he would follow up with an email, which I have included here.

Bottom line, I cannot and will not meet this immediate time line. If he cannot provide us more time to prepare, I will not subject my daughter to this "rush to testify".

Good day gentlemen.

Bernard

----- Forwarded message -----

From: Denton, Bryan, DAT <Bryan.Denton@jocogov.org>
Date: Fri, Oct 26, 2012 at 3:32 PM
Subject:
To: "bfranklinphd@gmail.com" <bfranklinphd@gmail.com>

Dr. Franklin,

Thank you for whatever efforts you can make to have Christina here on Monday. I believe that if you are here with her before 11:00 a.m., there is a good chance that she could testify.

Bryan Denton

Chief Investigator

Johnson County District Attorney's Office

Cell: 913-449-9066

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL DIVISION

SUBPOENA

STATE OF KANSAS, Johnson County, Kansas ss.

IN THE MATTER OF CALLING A GRAND JURY

Case No. 12CV6987

Court No. 4

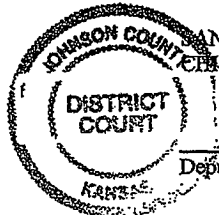
THE STATE OF KANSAS TO:

CHRISTINA E. FRANKLIN
C/O PARENT(S)
1404 RUBY AVE.
KANSAS CITY, KS 66103

****PLEASE REPORT TO ROOM 337, JOHNSON COUNTY COURTHOUSE, 100 N. KANSAS AVE., OLATHE, KANSAS ON THE DATE AND AT THE TIME INDICATED BELOW. CALL SHARMAN AT 715-3054 BEFORE COMING TO CONFIRM.**

You are hereby commanded to be and appear in your own proper person before the District Court of the Tenth Judicial District of the State of Kansas, sitting within and for Johnson County, in said county, on **MONDAY the 29TH day of OCTOBER, 2012 at 8:30 A.M.** of that day, then and there to testify before the grand jury in an action now pending and undetermined in said court, wherein the State of Kansas, and this do you in no wise omit to do under penalty of law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Olathe, in said County and State this 23rd day of October, 2012.



ANDY MCCURDY
CHIEF CLERK

Deputy Clerk

Melina Mercer

Heather R. Jones/sem #19869
Assistant District Attorney

RETURN OF SERVICE

I have served this subpoena by delivering a copy to: _____,
personally at _____, on the ___ day of _____, 2012 at
_____M. I hereby certify under penalty of perjury that the foregoing is true and correct.

Process Server