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SEE PAGE 35 FOR MORE INFORMATION

The Prosecutor's Toxic Objection: "Defense Counsel Knows That's Improper!"

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THE PROSECUTOR'S TOXIC OBJECTION:

Criminal defense trial lawyers have all been there. We are standing in front of the jury and have established the flow of our client's story, our theme, or our cross-examination when we hear it:

Prosecutor: ***Objection, defense counsel knows that's improper!*** [1]

Judge: ***Sustained.***

In the experience of many criminal defense attorneys, such an objection is often prompted by, at best, an evidentiary challenge that could be more accurately described by a familiar one-word objection. Instead, the prosecutor just scolded us like a provoked parent or a tattling toddler.[2] The risk of that two-second exchange is that, in the eyes of the jury, it will adjudicate the defense counsel as dishonest and conniving. Foremost, this is unfair to the accused and contaminates the accused's right to counsel and a fair trial. Its unfairness increases with each repetition of the same micro-exchange.

This speaking objection is improper in itself,[3] and it fails to declare the required, valid, substantive legal ground for the prosecutor's objection.[4] In violation of K.S.A. 60-419, the objection also asserts facts the prosecutor is incompetent to know (i.e., what defense counsel knows). Thereby, it also asserts facts that are not in evidence and will likely never "be supported by admissible evidence" in violation of KRPC 3.4(e). But isn't the prosecutor's objection and the judge's subsequent ruling even more toxic than that?[5]

Such accusations by the prosecutor against the criminal defense lawyer in a criminal jury trial are especially toxic. Significantly, by the phrase, "defense counsel knows," the prosecutor –

however inadvertently or deliberately – not only distracted the jury from the evidence but transformed the prosecutor's objection into an accusation of intentional[6] professional misconduct by the criminal defense lawyer.[7] This contamination potentially threatens the foundations of our criminal justice system.

THE TOXIN PERMEATES.

This improper objection is a colorless and odorless toxin often overlooked by attorneys and judges alike,[8] but which potentially corrodes the foundation of the criminal defense lawyer's vital role in our justice system.[9] It can permeate the consciousness of the judge, the jury, any media presence in the courtroom, and the members of the public who may be chosen to serve on future criminal trial juries.

Now, it may have been a fit of pique or mere slip of the tongue, but the prosecutor's objection accused defense counsel of intentional misconduct in front of the jury. Even worse, the judge's automatic or deliberate ruling of, "Sustained," authenticated the prosecutor's accusation again, in front of the jury. Neither the prosecutor nor the judge can see into the mind of the criminal defense lawyer. Yet, the prosecutor without evidence, accused the defense attorney of intentional misconduct, and the judge thoughtlessly ratified this likely baseless accusation.[10] In a criminal jury trial, this apparent agreement between the prosecutor and the judge sent a message to the jurors: In the courtroom there is a dichotomy. The prosecution and judge are the personification of goodness and justice, and the defense lawyer and the client are the embodiment of injustice and intentional evil. What juror in their right mind would then side with injustice and evil in a palace of justice? "Even subsequent jury instructions . . . 'may not ensure that [the prosecutor's] disparaging remarks have not already deprived the defendant of a fair trial.'"[11]

Jurors cannot help but to be drawn to the spectacle: the prosecutor and the judge vs. the defense lawyer. The jurors have already felt the frisson of tension in the air. Each repeat of this toxic refrain drives jurors closer and closer to the nearly inevitable, defense-chilling conclusion: "Defense counsel is evil, so the client must be GUILTY."

Surely, we are exaggerating, right?

The defense lawyer's role in the criminal justice system is not that of a villain seeking to obstruct justice.[12] In fact, it enjoys an impressive constitutional pedigree.[13] A close review of the U.S. Constitution reveals that, with the exception of the Article III courts, it does not elevate to express constitutional description the duties of any lawyer **except** that of the "accused['s] . . . right . . .to . . . the assistance of counsel for [their] defense."[14] Defense lawyers "are necessities, not luxuries. The right of one charged with [a] crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law."[15]

Criminal defense lawyers exist to keep the prosecutorial powers of government honest. The defense lawyer "must be and is interested in preventing the conviction of the innocent, but, absent a voluntary plea of guilty, we also insist that [they] defend [their] client whether [they] are innocent or guilty."[16] "The trial judge has the responsibility for safeguarding . . . the rights of the accused"[17] including by "be[ing] sensitive to the function[s] of the . . . defense counsel."[18] "It is impermissible for a prosecutor to discredit defense counsel in front of the jury."[19] "[T]he prosecutor is expected to 'refrain from impugning, directly or through implication, the integrity of or institutional role of defense counsel.'"[20] "[W]hen a prosecutor denigrates defense counsel, it directs the jury's attention away from the evidence and is therefore improper."[21] The Kansas Court of Appeals has commented that such express and even implicit accusations that the defendant and defense counsel were dishonest constituted "serious breaches of the standard of fair comment."[22]

When did fulfilling this vital check on expansive governmental power and prerogative to prosecute[23] equate to criminal defense counsel intentionally protecting "evil" or being on the wrong side of the law?[24]

MEDIA AND POPULAR CULTURE CONTAMINATE THE CRIMINAL JUSTICE SYSTEM WITH NEGATIVE STEREOTYPES.

Despite the intentions of our Founding Fathers, the criminal justice system today favors the prosecution. The presumption of innocence has become a *de facto* presumption of guilt.[25] Media and popular culture often inform the public that

criminal defense lawyers are dishonest – criminals representing criminals. Often in this instant-gratification era, the public sees a news story or Tik Tok post accusing someone of a heinous crime or accusing a defense lawyer of misconduct and rushes to judgment. The die is cast. The court of public opinion is set.[26] The accused is "guilty" long before their case ever reaches a courtroom. Sure, it is a great plot point in our favorite primetime television or Netflix series,[27] but offering to defend someone accused of a crime does not make defense lawyers "evil" or "criminal." These negative stereotypes undermine the presumption of innocence and right to a fair trial.

Our meager remedies? Kansas statutes warn jurors who know material facts about a case that they may be in contempt if they share that knowledge.[28] We might even sequester or partially sequester juror pools and impaneled juries to prevent them from being swayed by media, popular culture, or other members of the public during trial – although this is a rare occurrence[29] and does not erase their pretrial memories.

THE PROSECUTOR'S TOXIC OBJECTION EXACERBATES CONTAMINATION FROM MEDIA AND POPULAR CULTURE.

In front of a jury primed for bias, the above-described prosecutor – however inadvertently or deliberately – then accused the criminal defense lawyer of being dishonest – intentionally using words or conducting themself in a way that they knew violates substantive or procedural law, or the principles of ethics and professional conduct. The judge then authenticated this accusation by sustaining the prosecutor's "objection." And it doesn't stop there. If the media is present in the courtroom and chooses to disseminate that toxic accusation to the public, then that one toxic accusation – and the judge's authentication of it – potentially taints future jury pools and reinforces the negative stereotypes portrayed in media and popular culture.

The O.J. Simpson trial of the 1990s illustrated how quickly the media, and now popular culture, can disseminate such prosecutorial accusations to the public – even those made outside the presence of the jury. This prosecutor's toxic objection made national and even international news:

> "Mr. Scheck knows it's improper because there is no lawyer with half a brain, with an IQ above five who would not have known that such a question was improper." – Prosecutor Marcia Clark (1995).[30]

ANTITOXINS & ANTIDOTES

As members of our self-governing profession,[31] lawyers and judges have a professional duty to police each other's language and snap judgements to avoid contributing to the disintegration of the foundations of criminal justice.[32] We know this toxic tactic exists. What can the three separate participants in the trial do to combat it?

Prosecutors are "administrators of justice."[33] "The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict."[34] Ultimately, prosecutors will want to remember that "while [they] may strike hard blows, [they are] not at liberty to strike foul ones. It is as much [their] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."[35] "It is the county attorney, not the defendant, who holds a position of quasi-judicial authority and who is held to a higher standard and required to protect the fair trial rights of the defendant."[36] To help "eliminate any implicit biases" and "act to mitigate any improper bias or prejudice,"[37] prosecutors must mind their words and teach those newly joining the profession not to make such accusations in their objections – whether deliberately or not. We argue that making such an objection is, at best, a form of "retaliatory conduct" discouraged by the ABA Standards for the Prosecution Function.[38]

We, of course, do not wish to suggest that all prosecutors use this toxic tactic. As with any sophomoric or bush-league ploy, veteran, professional prosecutors discard and ridicule this tactic. Regrettably, however, this toxic objection is still frequently seen in criminal jury trials. Prosecutors have a duty to "seek to reform and improve the administration of criminal justice"[39] and to "stimulate and support efforts for remedial action." First then, it is those honorable, professional prosecutors who can help detoxify the criminal justice system by rooting out use of this toxic tactic by their less scrupulous colleagues and by training incoming young prosecutors not to make such accusatory objections.[40]

Judges too "should exercise restraint over [their] conduct and utterances,"[41] and "require similar conduct of staff, court officials and others subject to the judge's direction and control."[42] "A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter *pending* or *impending* in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing."[43] These rules and restrictions on judicial speech "are essential to the maintenance of the independence, integrity, and impartiality of the judiciary."[44] "When it becomes necessary during the trial for the judge to comment upon the conduct of . . . [defense] counsel, . . . the judge should do so outside the presence of the jury, if possible. Any such comment should . . . refrain[] from unnecessary disparagement of persons . . . ."[45] – especially criminal defense counsel.[46]

Judges will also want to resist being lured into this toxic constitution-bashing trap. The ABA Criminal Justice Standards exhort the trial judge "not [to] permit any person in the courtroom to embroil [them] in conflict, and [to] otherwise avoid personal conduct which tends to demean the proceedings . . . ."[47]

Instead, judges "ha[ve] the obligation to use [their] judicial power to prevent distractions from and disruption of the trial."[48] Even if the criminal defense lawyer does not object to the prosecutor's toxic objection, the trial judge may have a duty to respond *sua sponte* to the prosecutor's accusatory objection.[49] A simple ruling of, "Overruled," or "That is not a legal objection. Overruled," may be a sufficient deterrent. On the other hand, an immediate recess and a prompt hearing on the objection and future such objections might be in order.

Criminal defense lawyers must be bold and proactive to help judges, prosecutors, and other defense lawyers recognize the problem.

Even before a criminal jury trial begins, defense lawyers can voir dire prospective jurors. The meaning of objections and how the jurors might perceive the judge's rulings on counsels' objections has always been a proper aspect for trial counsel to discuss in voir dire. In a case where defense counsel has reason to fear the prosecutor will use this toxic objection, defense counsel may find it wise to more pointedly discuss with the venire the meaning of the objection and ruling at issue in this article.

Should the prosecutor utter this toxic objection during the trial, defense counsel should consider immediately asking the judge for a hearing outside the presence of the jury and the opportunity to argue the implications of such an objection. Once out of the jury's hearing, defense counsel should, if needed, educate the judge about the toxic effects of this objection and try to learn the judge's position on such objections, including their likely ruling.

Another possible antitoxin in the defense lawyer's first-aid kit is to file trial briefs or motions in limine, thereby attempting to describe and deter this ubiquitous pernicious practice. Grounds for these filings could include that it is not a proper objection that declares a valid, specific, substantive reason; it asserts facts not in or supported by evidence;[50] and, as discussed throughout this article, it undermines the accused's Sixth Amendment right to criminal defense counsel and a fair trial. At the very least, defense counsel should bring this prejudicial accusation and its equally prejudicial ruling to the judge's attention. The ABA Standards require that "[t]he trial judge . . . respect the obligation of counsel . . . to have the records show adverse rulings and reflect conduct of the judge which [defense] counsel considers prejudicial."[51] Respected or not, such obligations and confrontations with authority are uncomfortable for defense counsel. However, as eloquently memorialized in Henry Lord Brougham's defense of Queen Caroline, such "hazards and costs" are bedrock duties of conscientious criminal defense counsel.[52] "To save that client by all means and expedients . . . [they] must go on reckless of the consequences."[53]

1 This accusation masquerading as a prosecutorial objection is ubiquitous although not always recorded in the annals of law. *See, e.g.*, ***People v. Fielding***, 158 N.Y. 542, 544 (Ct. App. NY 1899) ("The purpose is to break the effect of anything I may say to you. ***He knows it is improper***.") (district attorney speaking) (emphasis added); ***People v. Hahn***, 350 N.E.2d 839, 847 (Ill. App. Ct. 1976) ("Your Honor, I object to any such reference. ***It's improper. Counsel knows it's improper***.") (emphasis added); ***Lanier v. State***, 533 So.2d 473, 487 (Miss. 1988) ("Your Honor, we object. ***It's improper and Mr. Wright knows it's improper***.") (emphasis added); ***State v. Shipley***, No. CA-8062, 1990 WL 187075, at *4 (Ct. App. Ohio Nov. 26, 1990) ("Objection, Your Honor, ***that is improper and he knows it is improper***.") (emphasis added); ***People v. Tran***, No. H021861, 2002 WL 1042324, at *14 (Ct. App. Cal. 6th May 22, 2002) ("***She knows it's improper*** to do that in front of the jury. She's a veteran attorney and ***she knows it's improper***.") (emphasis added).

2 In many ways, this outburst defies the standards of professionalism. "As an officer of the court, the prosecutor should . . . manifest[] a professional and courteous attitude toward the judge [and] opposing counsel . . . ." ABA Criminal Justice Standards for the Prosecution Function ("Standards for the Prosecution Function") § 3-6.2(a) (4th ed. 2017).

3 Speaking objections are generally disfavored. "Argument or a 'talking objection' is improper." Kan. R. 24 Dist. Rule 202; Kan. R. 19 Dist. Rule 5; s*ee also* Standards for the Prosecution Function § 3-6.6(d) ("The prosecutor should not bring to the attention of the trier of fact matters that the prosecutor knows to be inadmissible" including by "making impermissible comments or argument."). "[T]he trial judge has a right to preclude 'speaking' objections, in which under the guise of objecting the objector endeavors to make a speech to the jury." 1 Robert P. Mosteller, Kenneth S. Broun, George E. Dix, Edward J. Imwinkelried, David H. Kaye, Eleanor Swift, McCormick on Evidence "("McCormick on Evidence") §52, at 429 (8th ed. 2020). "If [] counsel is foolish enough to attempt such an objection, the judge might admonish counsel in the jury's hearing." *Id*. at 436.

4 "Proper objections must be timely and ***specific*** in order to preserve an issue for appeal." ***State v. Gilbert***, 272 Kan. 209, 212 (2001) (citing ***State v. Sims***, 265 Kan. 166, 174-75 (1998)) (emphasis added). "To help the judge make an intelligent ruling on the merits, the opponent should make a specific objection." McCormick on Evidence §52, at 424. "The prosecutor should not make objections without a reasonable basis, or for improper reasons such as to harass or to break the flow of opposing counsel's presentation." Standards for the Prosecution Function § 3-6.6(e); *See also* K.S.A. 60-404 (An objection should be "so stated as to make clear the specific ground of objection."); K.S.A. 22-3417 (A party should "make[] known to the court . . . [their] objection to the action of the court and [their] grounds therefor[e].").

5 Image: §172.554 TOXIC Placard. Electronic Code of Federal Regulations, https://www.ecfr.gov/current/title-49/subtitle-B/chapter-I/subchapter-C/part-172/subpart-F/section-172.554, 49 CFR §172.554 (1994).

6 The Kansas Rules of Professional conduct define "'Knowingly,' 'Known,' or 'Knows' . . . [as] actual knowledge of the fact in question." KRPC 1.0(g).

7 *See* KRPC 8.4.

8 *See, e.g.*, ***Fielding***, 158 N.Y. 542, 545 (Ct. App. NY 1899) (The judge: "I am going to permit [the district attorney] to sum up his case."); ***Hahn***, 350 N.E.2d 839, 847 (Ill. App. Ct. 1976) (The court: "The objection is sustained. This is improper. The jury should disregard that and pay no attention to it."); ***Shipley***, No. CA-8062, 1990 WL 187075, at *4 (Ct. App. Ohio Nov. 26, 1990) ("THE COURT: Sustained."); ***Tran***, No. H021861, 2002 WL 1042324, at *14 (Ct. App. Cal. 6th May 22, 2002) ("The trial court informed defense counsel that her motion was overruled and then asked defense counsel not to 'make such motion in front of the jury in the future.").

9 "A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials." KRPC, *Preamble: A Lawyer's Responsibilities* [5] (2014). "[A] lawyer should further the public's understanding of and confidence in a rule of law and the justice system . . . ," not disintegrate it by an inadvertent or intentional accusation. KRPC, *Preamble: A Lawyer's Responsibilities* [6] (2014).

10 Should the judge honestly and reasonably believe and agree that the criminal defense lawyer is knowingly violating rules of professional conduct, the judge should not take up the issue in front of the jury or even the prosecutor. Rather, the judge should "communicat[e] directly with the lawyer who may have committed the violation, or report[] the suspected violation to the appropriate authority," e.g., the disciplinary authorities. Kan. R. Judicial Conduct 2.15 & cmts. *See also* KRPC 8.3.

11 ***Hunter v. State***, 815 A.2d 730, 736 (Del. 2002) (quoting ***Walker v. State***, 790 A.2d 1214, 1219-20 (Del. 2002)) (discussing prosecutor's comment re: defense counsel's "gall").

12 "It is, of course, improper for the prosecutor 'to imply that defense counsel has fabricated evidence or otherwise to portray defense counsel as the villain in the case.'" ["A criminal defense lawyer may properly attack a witness' credibility even though that witness is also the [alleged] victim of the crime. The prosecutor, however, commits misconduct when, through careful use of words, [they] label[] defense counsel as an additional attacker in a prosecution of a violent offense."]. ***People v. Nieto***, 2023 WL 4247460, at *14 (Cal. Ct. App. 1st Jun. 29, 2023) (internal citations omitted).

13 *See, e.g.*, ***Gideon v. Wainwright***, 372 U.S. 335, 344 (1963).

14 U.S. Const. Amend. VI.

15 ***Gideon v. Wainwright***, 372 U.S. at 344.

16 ***United States v. Wade***, 388 U.S. 218, 257 (1926) (J. Black, concurring in part and dissenting in part).

17 ABA Criminal Justice Standards: Special Functions of the Trial Judge ("Standards for the Trial Judge") § 6-1.1(a) (3d ed. 2000).

18 Standards for the Trial Judge § 6-1.1(b).

19 ***Hunter***, 815 A.2d at 736 (Del. 2002).

20 ***State v. Lockhart***, 24 Kan.App.2d 488, 491-93, *rev. den.* (1997).

21 ***Nieto***, 2023 WL 4247460, at *14 (Cal. Ct. App. 1st Jun. 29, 2023)

22 ***Lockhart***, 24 Kan.App.2d at 491-93.

23 *See* Standards for the Prosecution Function § 3-4.2, 3-4.3, 3-4.4.

24 Image: §172.555 POISON INHALATION HAZARD placard. Electronic Code of Federal Regulations, https://www.ecfr.gov/ current/title-49/subtitle-B/chapter-I/subchapter-C/part-172/subpart-F#172.554, 49 CFR §172.555 (1997).

25 *See, e.g.*, Ariana Tanoos, *Shielding the Presumption of Innocence from Pretrial Media Coverage*, Indiana L. Rev. 50:997 (2017), accessed at: https://journals.iupui.edu/index.php/inlawrev/article/view/21528/20760; Patricia J. Williams, *The Nation: Media Give No Presumption Of Innocence*, NPR, https://www.npr.org/2011/07/18/138464822/the-nation-media-give-no-presumption-of-innocence (Jul. 18, 2011, 10:11 a.m. ET).

26 *See, e.g.*, Bruce Schneier, *The Court of Public Opinion Is About Mob Justice and Reputation as Revenge*, WIRED, https://www.wired.com/2013/02/court-of-public-opinion/ (Feb. 26, 2013, 9:30 a.m.); Madison Gesiotto, *Does innocent until proven guilty mean anything in public opinion?* The Hill, https://thehill.com/opinion/judiciary/429478-does-innocent-until-proven-guilty-mean-anything-in-public-opinion/ (Feb. 11, 2019, 6:00 p.m. ET).

27 It is not unusual for TV series and films to portray criminal defense lawyers as slimy, unethical, or even criminal. *Spoiler Alert: *See, e.g.*, "Tabula Rasa," Criminal Minds, S.3 E.19, CBS (2008) (criminal profiler on the stand verbally tears apart a visibly disheveled criminal defense lawyer, accurately accusing him of a gambling problem as his phone buzzes in court to announce the next round of horse racing results); "Mind Games," NCIS S.3 E.3, CBS (2005) (The serial killer's criminal defense lawyer becomes his protégé and commits copycat murders.); *See also generally*, How to Get Away with Murder, ABC (2014-2020); Law & Order, NBC (1990-2022); Law & Order: Special Victims Unit (1999-); The Lincoln Lawyer, Netflix

(2022-). Strikingly, while these authors searched for citations to specific examples, it was not uncommon to see a criminal defense lawyer instead referred to as a "criminal lawyer." *See, e.g.*, "Better Call Saul," Sony Pictures: About, https://www.sonypictures.com/tv/bettercallsaul (2023) ("*Better Call Saul's* final season concludes the complicated journey and transformation of its compromised hero, Jimmy McGill (Bob Odenkirk), into ***criminal lawyer*** Saul Goodman.") (emphasis added).

28 K.S.A. 22-3413.

29 *See, e.g.*, Jury Information, Cowley County Kansas: 19th Judicial District Court, https://www.cowleycountyks.gov/JuryInformation ("Traditionally, we do not sequester juries, even during their deliberation upon their verdict."); FAQ, Douglas County, https://www.douglascountyks.org/clerk-district-court/faq/will-i-be-sequestered ("Most trials in Douglas County are not sequestered jury trials. In fact, we have not had a sequestered jury trial in the last twenty years.").

30 Terri Vermeulen, *O.J. Lawyer: No plea-bargain discussions*, United Press Int'l (May 30, 1995) (emphasis added); Chicago Tribune, *Defense Ordered Not to Ask about a Statement Simpson Gave Police* (May 30, 1995); Kenneth B. Noble, *Simpson's Lawyers Press Attacks on Blood Evidence*, New York Times (May 31, 1995).

31 "The legal profession is largely self-governing . . . . The legal system is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement." KRPC Preamble, cmt. 10.

32 KBA Pillars of Professionalism, https://ksbar.org/?pg=pillars ("Be mindful that, as members of a self-governing profession, lawyers have an obligation to act in a way that does not adversely affect the profession or the system of justice."). These Pillars of Professionalism have been adopted by the Kansas Supreme Court, U.S. District Court for the District of Kansas, the Kansas Association of Defense Counsel, the Kansas Trial Lawyers Association, the Wichita Bar Association, and the Kansas Women Attorneys Association.

33 Standards for the Prosecution Function § 3-1.2(a); *See also* MRPC 3.8, cmt. 1 ("A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with [it]specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons.")

34 Standards for the Prosecution Function § 3-1.2(b).

35 ***State v. Manning***, 270 Kan. 674, 697-98 & Syl. ¶11 (2001) (citing ***Berger v. United States***, 295 U.S. 78, 88 (1935)).

36 ***State v. Gray***, 25 Kan.App.2d. 83, 86 (1998); *See also* ***Manning***, 270 Kan. at 701.

37 Standards for the Prosecution Function § 3-1.6(a).

38 *Id*. at § 3-6.6(b) ("If the prosecutor reasonably believes there has been misconduct by opposing counsel, . . . the prosecutor should . . . not [] engag[e] in retaliatory conduct that the prosecutor knows to be improper.").

39 *Id*. at § 3-1.2(f).

40 *See Id*. at § 3-1.12, 3-1.13.

41 Standards for the Trial Judge § 6-3.4(a).

42 *Id*. at § 6-3.4(b); *See also* Kan. R. Judicial Conduct 2.10(C).

43 Kan. R. Judicial Conduct 2.10(A) (emphasis in original).

44 *Id*. at cmt. 1.

45 Standards for the Prosecution Function § 6-3.5(b).

46 *See, e.g.*, ***State v. Plunkett***, 257 Kan. 135, 139-41 (1995) (trial judge's response to [] counsel's objection was discourteous and disparaging because it "implied to the jury that counsel was acting unprofessionally.").

47 Standards for the Prosecution Function § 6-3.4(a).

48 *Id*. at § 6-3.5(a).

49 *See* ***State v. Sperry***, 267 Kan. 287, 308 (1999).

50 Standards for the Prosecution Function § 3-1.4(b); KRPC 3.4(e).

51 Standards for the Prosecution Function § 6-2.4.

52 Monroe H. Freedman, *Henry Lord Brougham and Resolute Lawyering*, 37 Advoc. Q. 403 (2011) (publication of Hofstra University Law School) (quoting 2 The Trial of Queen Caroline 3 (1821)); *See also* defense counsel's duty to object to questions the court puts to witnesses (Fed. R. Evid. 614(c); ***United States v. Latimer***, 548 F.2d 311 (10th Cir. 1977); ***United States v. Albers***, 93 F.3d 1469 (10 Cir. 1996)); and defense counsel's duty to request recusal of the judge (***United States v. Cooper (in re Zalkind))***, 872 F.2d 1, 5 (1st Cir. 1989)).

53 *Henry Lord Brougham and Resolute Lawyering*, at 403.