

Search: 

The Florida Bar News

[Advertising Rates](#) • [Classifieds](#) • [Attorneys Exchange](#) • [Archives](#) • [Subscribe](#) • [Journal News HOME](#)

June 1, 2010

Veteran Cops Join Fourth Circuit Public Defender's Office

By Jan Pudlow

Senior Editor

From his office, A.L. Kelly can see the Jacksonville Sheriff's Department and the comings and goings of those he knew when he was patrol director supervising 1,200 cops.

Now, he wears a badge identifying him as director of investigations for the Fourth Judicial Circuit's Public Defender's Office.

The two-tenths-of-a-mile walk between the two offices in downtown Jacksonville might as well be worlds apart.

"How's the dark side?" former colleagues ask when they come over for a deposition and stop by for a chat.

"The dark side is great," 56-year-old Kelly answers with a grin.

Really, Kelly says, working on the "dark side" since January 2009 has been illuminating.

He's learned that not everyone arrested is guilty, that sometimes cops make mistakes, and even the guilty may deserve a second chance.

"It has opened my eyes to look at the other side of the case. After 36 years in law enforcement, you can get tunnel vision: They're arrested, they're guilty," Kelly said.

"When I wore the blue police suit, I thought, 'I can't believe these lawyers are trying



to get criminals off.”

Now, he said, he respects the job the public defenders do, an essential part of the checks and balances of the criminal justice system.

Directing the PD investigators is not a job he would have sought out, Kelly admits.

Fourth Circuit Public Defender Matt Shirk’s mom has been Kelly’s friend since high school, and Kelly helped Shirk campaign. When Shirk was elected in 2008, he asked Kelly to lead his investigations department, because Shirk wanted retired certified law-enforcement officials with experience and training in criminal investigations.

Kelly had to think long and hard before accepting Shirk’s offer.

His first nagging thought: “You know, I’ve put people in jail for 36 years and now I’ll start taking them out?”

After listening to the advice of colleagues and friends — including former Florida Bar President Hank Coxe, who successfully made the switch from prosecutor to criminal defense attorney many years ago — Kelly accepted the job.

He got busy recruiting seven more retired veterans of the Jacksonville Sheriff’s Department, building a team dubbed “Kelly’s Heroes.”

If he hadn’t accepted Shirk’s offer, Kelly said: “I would have had tunnel vision for the rest of my life.”

Tension ran high between the lawyers and investigators, at first.

Investigators viewed the assistant public defenders as tree-hugging liberals, who in turn saw the investigators as lock-’em-up-and-throw-away-the-key cops who would scare witnesses into silence.

“I can tell you there were little jokes about us, like ‘Going to the doughnut store?’” Kelly recalls.

In the beginning, he said, the atmosphere “was kind of ice. Very cold. Like I told the guys, ‘You have to understand where the lawyers are coming from. You’re from the other side. You put their clients in jail. It’s up to us to break the ice. Just tell the truth, and with your knowledge, we’ll win them over.’”

Assistant Public Defender Andrea Fourman, in the Felony Repeat Offender Division, has been won over.

“I was skeptical at first that they weren’t necessarily on our side. They proved to be on our side,” Fourman said. “As soon as they started working and doing such a great job, they really turned me around.”

She’s watched them ply their law-enforcement connections, and she’s accompanied them in the field on investigations. Even though they wear shirts and badges identifying them as public defender investigators, and they keep their guns tucked away in fanny packs, not openly displayed on their belts, she said, clients’ family members and other witnesses often still see them as cops.

"You're trying to get him out?" one man asked incredulously.

And the investigator said, "We're trying to find the truth."

That exchange impressed Fourman.

"One of the main advantages of our investigators having a law-enforcement background is I can show them a police report and they can tell me what should have been done that wasn't done or what was done that shouldn't have been done," Fourman said. "It's a great tool for cross-examination."

Assistant Public Defender Christy Romero, formerly a prosecutor in Tampa, actually thought it was a good idea having former law-enforcement officers as PD investigators from the get-go.

"They have an eye for what we need, because they've done it," she said.

She really needed their help in preparing a case for trial that could have put her client away for a decade. Her client was charged with three counts of aggravated assault, one on a police officer, with a deadly weapon — her car. The woman faced three-year minimum mandatory sentences on each count.

During mayhem outside a nightclub at 2 a.m., police accused her of backing over two civilians and coming at them with her car. So the police shot at her car seven times, with one bullet hitting the woman in the shoulder and one bullet nicking a passenger.

"Our whole defense was she never saw them and she was just trying to get out of parking lot," Romero said.

Investigator Kendall Anderson, with 25 years experience as a sheriff's deputy, went to the club at 2 a.m. and took pictures to show how dark it was at that time.

"He ended up testifying," Romero said. "He didn't throw anybody under the bus, but now I am a defense attorney who has a police officer testifying for me."

Anderson knew inside and out the four-inch-thick manual detailing the sheriff's policy on discharging a firearm, so he knew the officer had not obeyed protocol while directing traffic: wearing safety vests identifying him as law enforcement, having a patrol car visible with lights flashing, and using safety cones.

Anderson and Investigator Hal Bennett found witnesses who described the scene in the parking lot as total chaos, confirming the club had closed because it was so violent that night. Investigator Denis Sanchez, a certified firearms trainer, was invaluable in helping Romero, who had no funds to hire an expert, understand the ballistics evidence.

After a four-day trial, in 30 minutes, the jury came back with not guilty verdicts.

"Like I told them, they helped save my client's life," Romero said. "That Kendall Anderson, the others are so jealous. I go downstairs and hug on him."

Sixty-year-old Hal Bennett worked 30 years at the Jacksonville Sheriff's Office handling cases involving narcotics, armed robberies, sex crimes, and homicides. He told his wife he wasn't sure he could make the switch to PD investigator. He was willing to give the job six months, and if he didn't like it, he'd quit.

He likes it.

"It's not that much of a change that you would think it would be. Here's why: When I was a detective supervisor, I was looking over the work of my guys, and see that here's an interesting thing that they didn't do," Bennett said.

"A good police officer wants to put out a good product. Police officers know what the rules are. Most are not fabricating evidence. If they make a good case, they have nothing to worry about. But if they make a lousy case, they will be embarrassed in a deposition."

He recently went on a golfing trip with his buddies, all retired law-enforcement officers, and when they razzed him a little about his new job, Bennett said, "I always tell them, 'Somebody has to help these people get a fair representation.' And they say, 'Yeah, yeah.'"

His new perspective has shown him how tough a job it is to be an assistant public defender, and he helps them understand how police officers think.

"I was shocked at how difficult the PDs' jobs are. The PDs can't pick their cases," Bennett said. "The state's case, and I'm not knocking state attorneys, but most of their cases are made for them when they walk through the door. PDs have to work from scratch. I hate to use the word that I felt sorry for them, but what a terrible burden they have to give these people a legitimate, reasonable defense."

Sometimes, Bennett says, he finds things out that do not help the client, and he levels with the assistant public defender so they can make decisions to negotiate the best deal.

Sometimes, he finds an innocent person is locked in jail.

One time, a woman's roommate had stolen her ID and got her credit cards and checkbook. Merchants with stacks of bad checks went to the state attorney's office to press charges; the woman was arrested and locked in jail.

"I go and I investigate and find out this woman is telling the truth," Bennett said. "We went to the state and showed them what happened. They dropped the charges. They had the wrong person. The woman sat in jail for 40 days. It makes you feel pretty good."

Bennett describes another "ridiculous case," where a 19-year-old man lived with his mom, paying for the cable TV and half the rent. He and his mom got into a heated argument and she threw him out. He came back the next day and took his property. Mom calls the police

and says her son broke in and stole her stuff. Her son was arrested and put in jail.

"I look at it and say, 'Wait a minute! Where is the intent to commit a crime?' I interview the uncle and verify the stuff taken is his own stuff. Mom admitted to me he paid half the rent and the cable. All they did was have an argument," Bennett said.

"Maybe he needs to be punished for not being respectful to his mother, but that's not a crime.

"They finally dropped the case after the guy spent a month in jail. Maybe he's not the greatest kid, but he didn't deserve to be in jail."

This veteran ex-cop who isn't ready to retire says he still gets to use the skills he had as a sheriff's deputy.

"But it's less stressful in that I'm not arresting people and not putting people in jail, and I'm not taking their freedom away," Bennett said.

"I respect these lawyers, I really do."

The respect is mutual.

"Speaking plainly, I think it would be fair to say that many of us, maybe the majority of us, had concerns about former police officers becoming investigators," said Billy Tedford, an assistant public defender in the Fourth Circuit for two-and-a-half years before recently landing a public defender's job outside Buffalo, New York, to be closer to family.

"I think the reason is obvious: Would the purpose of their prior employment for the past 20-plus years conform to the mission of the Public Defender's Office?

"But after working with the Investigations Department for approximately a year, I can honestly say I've never met a more talented group of people," Tedford said. "They are 100 percent dedicated to our clients and the mission of the Public Defender's Office."

When Shirk took office, he hired nine former law-enforcement officers for his investigative team.

"That decision has made a good thing better," Shirk said. "It has given us new perspectives on the cases we handle, better understanding of the policies of local law enforcement agencies, and defense tactics that have really leveled the playing field for us with the state in fulfilling our constitutional obligations to our clients."

David Douglas, who's been a PD4 investigator for nearly a decade, working under "three regimes," said before the new group of ex-cops came aboard in January 2009, they did not carry firearms. Now, they are trained and certified to carry concealed weapons.

"I knew many of these guys as patrol officers, as well as when they rose through the ranks," Douglas said, adding he's "been kicking around the system" in the Fourth Circuit since the early '80s.

"I have a lot of personal respect for their abilities. What we have now is a combined total of several hundred years of investigative

experience of former officers who were very good at law enforcement."

They're so good that two will be featured speakers at the statewide Florida Public Defender Association training conference in Clearwater Beach July 29-30, called "Building a Better Defense."

Bennett will take his audience step-by-step through a homicide case.

And 58-year-old Denis Sanchez, a certified firearms trainer, will teach what he knows about firearms and ballistics.

Sanchez, who does training for the Jacksonville Aviation Authority and owns a training school teaching certification and self-defense, was a sergeant in the Jacksonville Sheriff's Office where he worked for 26 years.

"Last December 2008, they commandeered me to come here. The sales pitch from Director Kelly was: 'I need you!' I asked a lot of questions, and realized I am not compromising my integrity. Some of these people have done some hideous stuff and lied to you, but the truth is the truth. If I can't find anything to help them, I tell it like it is," Sanchez said.

Sanchez said he had his reservations about working for the PD.

"But then it dawned on me: It will make law enforcement better."

When he was a sergeant on the street, Sanchez said, his job was to make sure arrests were constitutionally correct.

"If we messed up, we'd lose the case."

Now that he's working for the PD, Sanchez said, "The police know we have experience. They know they have to do a better job. They know we're going to catch them, because we've been there."

And yes, Sanchez says, he still gets a lot of ribbing from the sheriff's department folks.

"I tell them, 'The truth is the truth — and it's a good paycheck.'"

[News HOME](#)

[Revised: 05-21-2010]

© 2005 The Florida Bar